

House Bill No. 1267

An act relating to nursing homes; amending s. 400.23, F.S.; providing for alternative bed locations in nursing home rooms and providing criteria for bed placement; requiring a signed statement from the resident or representative if the alternative bed placement is not in compliance with the Florida Building Code; requiring the facility to maintain a log of alternative bed placements and to retain the signed statements; requiring the nursing home to notify the Agency for Health Care Administration with respect to such practice; amending s. 633.022, F.S.; requiring nursing homes to be protected by certain automatic sprinkler systems; providing a schedule; authorizing the Division of State Fire Marshal to grant certain time extensions; authorizing the division to adopt certain rules; providing for administrative sanctions under certain circumstances; requiring adjustments to certain provider Medicaid rates for reimbursement for Medicaid's portion of costs to meet certain requirements; requiring funding for such adjustments to come from existing nursing home appropriations; creating s. 633.024, F.S.; providing legislative findings and intent; creating s. 633.0245, F.S.; authorizing the State Fire Marshal to enter into an investment agreement with public depositories to establish the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program as a limited loan guarantee program to retrofit nursing homes with fire protection systems; providing investment and agreement limitations; requiring the State Fire Marshal to solicit requests for proposals; providing for application requirements and procedures; providing for review and approval by the State Fire Marshal; providing application requirements and procedures for program loans by public depositories; providing deadlines and limitations; limiting certain claims for loss under certain circumstances; providing a definition; authorizing the State Fire Marshal to adopt rules; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraph (a) of subsection (2) of section 400.23, Florida Statutes, is amended to read:

400.23 Rules; evaluation and deficiencies; licensure status.—

(2) Pursuant to the intention of the Legislature, the agency, in consultation with the Department of Health and the Department of Elderly Affairs, shall adopt and enforce rules to implement this part, which shall include reasonable and fair criteria in relation to:

(a) The location of the facility and housing conditions that will ensure the health, safety, and comfort of residents, including an adequate call system. In making such rules, the agency shall be guided by criteria recommended by nationally recognized reputable professional groups and associations with knowledge of such subject matters. The agency shall update or revise

such criteria as the need arises. The agency may require alterations to a building if it determines that an existing condition constitutes a distinct hazard to life, health, or safety. In performing any inspections of facilities authorized by this part, the agency may enforce the special-occupancy provisions of the Florida Building Code and the Florida Fire Prevention Code which apply to nursing homes. Residents or their representatives shall be able to request a change in the placement of the bed in their room, provided that at admission they are presented with a room that meets requirements of the Florida Building Code. The location of a bed may be changed if the requested placement does not infringe on the resident's roommate or interfere with the resident's care or safety as determined by the care planning team in accordance with facility policies and procedures. In addition, the bed placement may not be used as a restraint. Each facility shall maintain a log of resident rooms with beds that are not in strict compliance with the Florida Building Code in order for such log to be used by surveyors and nurse monitors during inspections and visits. Any resident or resident representative who requests that a bed be moved shall sign a statement indicating that they understand the room will not be in compliance with the Florida Building Code, but they would prefer to exercise their right to self-determination. The statement must be retained as part of the resident's care plan. Any facility that offers this option shall notify the agency of this practice by submitting a letter signed by the nursing home administrator of record and a copy of the facility's policies and procedures. The agency is directed to provide assistance to the Florida Building Commission in updating the construction standards of the code relative to nursing homes.

Section 2. Subsection (4) is added to section 633.022, Florida Statutes, to read:

633.022 Uniform firesafety standards.—The Legislature hereby determines that to protect the public health, safety, and welfare it is necessary to provide for firesafety standards governing the construction and utilization of certain buildings and structures. The Legislature further determines that certain buildings or structures, due to their specialized use or to the special characteristics of the person utilizing or occupying these buildings or structures, should be subject to firesafety standards reflecting these special needs as may be appropriate.

(4)(a) Notwithstanding any provision of law to the contrary, each nursing home licensed under part II of chapter 400 shall be protected by an approved, supervised automatic sprinkler system in accordance with section 9 of National Fire Protection Association, Inc., Life Safety Code, in accordance with the following schedule:

1. Each hazardous area of each nursing home shall be protected by an approved, supervised automatic sprinkler system by no later than December 31, 2008.

2. Each entire nursing home shall be protected by an approved, supervised automatic sprinkler system by no later than December 31, 2010.

(b) The division may grant up to two 1-year extensions of the time limits for compliance in subparagraph (a)2. if the division determines that the

nursing home has been prevented from complying for reasons beyond its control.

(c) The division is authorized to adopt any rule necessary for the implementation and enforcement of this subsection. The division shall enforce this subsection in accordance with the provisions of this chapter, and any nursing home licensed under part II of chapter 400 that is in violation of this subsection may be subject to administrative sanctions by the division pursuant to this chapter.

(d) Adjustments shall be made to the provider Medicaid rate to allow reimbursement over a 5-year period for Medicaid's portion of the costs incurred to meet the requirements of this subsection. Funding for this adjustment shall come from existing nursing home appropriations.

Section 3. Section 633.024, Florida Statutes, is created to read:

633.024 Legislative findings and intent; ensuring effective fire protection of vulnerable nursing home residents essential; retrofit of existing nursing homes expedited by limited state loan guarantee; funding through Insurance Regulatory Trust Fund.—

(1) It is the intent of the Legislature to promote the essential public purpose of ensuring effective fire protection for the safety and welfare of nursing home residents of this state who, because of their inability to protect themselves, are most vulnerable to catastrophic injury or death in the event of a fire. The Legislature finds that this purpose is served by requiring the installation of appropriate fire protection systems in all nursing home facilities in this state that do not currently have fire protection systems in operation for the protection of their residents. The Legislature finds that the high capital cost of retrofitting appropriate fire protection systems at nursing home facilities not originally designed with fire protection systems has discouraged the owners and operators of such facilities from doing so. The Legislature therefore finds that state action to provide a limited state guarantee of loans covering these capital costs will expedite the immediate installation of fire protection systems at facilities that lack such systems and thereby ensure effective protection for those nursing home populations that are now most vulnerable to the catastrophic effects of fire.

(2) Because the Insurance Regulatory Trust Fund is funded by the proceeds of fire insurance premiums written in this state, the Legislature finds that it is in the public interest for moneys held in the Insurance Regulatory Trust Fund to be used to fund the limited loan guarantee program that mobilizes private funding for the retrofitting of fire protection systems at unprotected nursing homes located in this state.

Section 4. Section 633.0245, Florida Statutes, is created to read:

633.0245 State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program.—

(1) The State Fire Marshal, with the assistance of the Division of Treasury of the Department of Financial Services, may enter into an investment

agreement concerning the investment of certain funds held in the Insurance Regulatory Trust Fund for the purpose of establishing a limited loan guarantee program to be known as the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program. The investment must be limited as follows:

(a) Not more than \$4 million of the balance in the Insurance Regulatory Trust Fund in any fiscal year may be at risk at any time for the purpose of limited loan guarantees.

(b) Such funds at risk at any time may not be used to guarantee any limited loan guarantee agreement for a period longer than 10 years.

(c) No limited loan guarantee agreement based on invested funds may be entered into after December 1, 2006.

(2) The State Fire Marshal may enter into limited loan guarantee agreements with one or more financial institutions qualified as public depositories in this state. Such agreements shall provide a limited guarantee by the State of Florida covering no more than 50 percent of the principal sum loaned by such financial institution to an eligible nursing home, as defined in subsection (10), for the sole purpose of the initial installation at such nursing home of a fire protection system, as defined in s. 633.021(8), approved by the State Fire Marshal as being in compliance with the provisions of s. 633.022 and rules adopted thereunder.

(3) The State Fire Marshal shall solicit requests for proposals from qualified financial institutions willing to fund loans to eligible nursing homes for the installation of fire protection systems approved by the State Fire Marshal under the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program. Each request for proposal shall specify the terms and conditions under which the responding institution is prepared to make loans under the program, including, but not limited to, applicable interest rates, repayment terms, credit policies, loan fees, and proposed security interests to be executed by the borrower. After evaluation of all requests for proposals, the State Fire Marshal shall select one or more responding institutions as designated lenders under the program.

(4) The State Fire Marshal shall prescribe by rule an application form for participation in the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program to be submitted by each eligible nursing home that desires to install a fire protection system funded by a loan from a designated lender under the program. Nothing in this section shall be deemed to require an eligible nursing home to do business with a designated lender. At a minimum, the application shall require each applicant to provide the following information:

(a) The name and address of the eligible nursing home.

(b) The name and address of the owner of the nursing home or, if the owner is a partnership, the name and address of the general partner.

(c) The lessee of the nursing home premises, if any.

(d) A complete description of the structure or structures where the fire protection system is to be installed, including age, physical dimensions, overall square footage, a real extent of proposed coverage areas, and other relevant information concerning the premises.

(e) Bed capacity of the nursing home, including beds eligible for Medicare or Medicaid reimbursement.

(f) A statement regarding the availability to the applicant of third-party reimbursement for installation of the fire protection system.

(g) The location of closest water mains and fire hydrants, if any.

(h) Complete sealed drawings showing the fire protection system to be installed.

(i) Cost documentation, with a separate breakdown of cost for labor and materials.

(j) Verification of the application by the applicant.

(5) The State Fire Marshal shall evaluate each application submitted under this section to determine whether the proposed fire protection system is feasible for installation as proposed and complies with all applicable firesafety code provisions. An application may not be approved without a positive determination by the State Fire Marshal under this subsection. If the State Fire Marshal is able to determine that the proposed fire protection system is feasible and complies with applicable firesafety codes, the application shall be approved for submission to one or more lenders for funding. If the application is insufficient, the State Fire Marshal shall notify the applicant in writing and identify areas of deficiency that must be corrected in order for the application to be approved.

(6) As soon as practicable after approval, each approved application shall be submitted by the State Fire Marshal to one or more designated lenders for funding. Upon request of a designated lender, an approved applicant shall provide the lender with documentation of its credit history and financial status. If, after review of the applicant's documentation, a lender refuses to fund the application, the lender shall promptly notify the applicant and the State Fire Marshal in writing of any reasons for its action. If the lender agrees to fund the application, the lender shall notify the applicant and the State Fire Marshal and schedule a closing date for the loan.

(7) At closing, the applicant shall execute appropriate documents necessary to provide the lender and the State Fire Marshal with a security interest in the property where the fire protection system is to be installed. The State Fire Marshal shall then execute a limited loan guarantee in favor of the lender guaranteeing no more than 50 percent of the face value of the loan.

(8) A designated lender covered by a limited state guarantee for a loan under this section is not entitled to file a claim for loss pursuant to the guarantee unless all reasonable and normal remedies available and customary for lending institutions for resolving problems of loan repayments are

exhausted. If the lender has received collateral security in connection with the loan, the lender must first exhaust all available remedies against the collateral security.

(9) No application for participation in the State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program may be accepted by the State Fire Marshal after June 30, 2006.

(10) For purposes of this section, “eligible nursing home” means a nursing home facility that provides nursing services as defined in chapter 464, is licensed under part II of chapter 400, and is certified by the Agency for Health Care Administration to lack an installed fire protection system as defined in s. 633.021(8).

(11) The State Fire Marshal may adopt any rules necessary to implement the provisions of this section.

Section 5. This act shall take effect July 1, 2005.

Approved by the Governor June 14, 2005.

Filed in Office Secretary of State June 14, 2005.