

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 2230

SPONSOR: Senator Meek

SUBJECT: Nursing Homes; Receivership

DATE: March 17, 2000 REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Carter</u>	<u>Wilson</u>	<u>HC</u>	<u>Favorable</u>
2.	_____	_____	<u>FP</u>	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

I. Summary:

Senate Bill 2230 requires the Agency for Health Care Administration (AHCA or the agency) to petition the courts for appointment of a receiver for a nursing home facility under two specified circumstances: (1) when AHCA has filed an administrative complaint to revoke the facility’s license or (2) when the facility has received notice to terminate Medicare and it has not come into compliance with Medicare standards within 10 days after the date of termination. An appointed receiver must operate the nursing home facility, as provided under s. 400.126, F.S., the state law governing receivership of nursing home facilities, until: (1) the facility is sold to new ownership or (2) the facility has been brought into compliance with all applicable care standards and the licensee has satisfied AHCA that it has the intent and the means to operate the facility in full compliance with state and federal standards. The agency is delegated rulemaking authority to administer the provisions of the bill. Funding for the administration of the provisions of the bill is to be obtained from the Resident Protection Trust Fund.

This bill amends s. 400.126, *Florida Statutes* (F.S.).

II. Present Situation:

Under certain circumstances a nursing home may be placed under the control of a receiver. A receiver is a fiduciary of the court who is an indifferent person between the parties to a cause appointed by the court to receive and preserve the property or funds in litigation or to perform the ongoing obligations of a business entity that is a party to litigation.

Section 400.126, F.S., provides for receivership proceedings against nursing home owners and operators. Receivership proceedings may be initiated as an alternative to or in conjunction with an injunctive proceeding. Under s. 400.126, F.S., the agency is authorized to petition a court of competent jurisdiction for a receiver for four specified reasons: (1) an unlicensed nursing home is being operated and the owner or operator refuses to apply for a license, in accordance with law; (2) a licensee is closing the facility or has informed AHCA that it intends to close the facility and

adequate arrangements have not been made for relocation of the residents within 7 days of the closing of the facility, except that when AHCA has not made adequate arrangements for relocating nursing home residents who are Medicaid recipients residing in a facility that is a Medicaid provider and the facility notified the agency at least 90 days prior to the closing date, the agency's failure to make adequate arrangements is not, in and of itself, grounds for petitioning for the appointment of a receiver; (3) the agency determines that conditions exist in the facility which present an imminent danger to the health, safety, or welfare of the residents of the facility or a substantial probability that death or serious physical harm would result from conditions in the facility; or (4) the licensee lacks the financial ability to operate the nursing home, as evidenced by issuance of bad checks or an accumulation of delinquent bills for such items as personnel salaries, food, drugs, or utilities.

Courts are empowered to grant a petition for receivership only upon finding that the health, safety, or welfare of residents of the facility would be threatened if a condition existing at the time that the petition was filed is permitted to continue. A receiver is charged with making provisions for the continued health, safety, and welfare of all residents of the facility by exercising those powers and performing those duties granted by the court and:

- operating the facility in a manner to assure safety and adequate health care for the residents,
- conducting the ongoing business activities of the facility,
- correcting or eliminating deficiencies in the structure or furnishings of the facility which endangers the safety or health of residents while they remain in the facility,
- contracting with and hiring agents or employees to carry out the powers and duties of the receiver,
- honoring all leases, mortgages, and secured transactions governing the building in which the facility is located and all goods and fixtures in the building, but only to the extent of payment of rent for use of the building during the receivership period or payment pursuant to a purchase agreement that becomes due during the receivership period,
- exercising full power to direct and manage and to discharge employees of the facility, subject to any contract rights they may have, paying employees at the rate of compensation, including benefits, approved by the court (receivership does not relieve the owner of any obligation to employees made prior to the appointment of a receiver and not carried out by the receiver), and
- taking possession of all property or assets of residents which are in the possession of the facility or its owner and maintaining or transferring such property or assets as provided by law.

As provided in paragraph 400.126(4)(a), F.S., a person (corporate or natural) who is served with notice of appointment of a receiver is liable to pay the receiver for any goods or services provided by the receiver after the date of the order if the person would have been liable for the goods or services as supplied by the owner. The court must set the compensation of the receiver, which is considered a necessary expense of receivership, and may require the receiver to post a bond. A receiver may petition the court that he or she not be required to honor any lease, mortgage, secured transaction, or other wholly or partially executory contract entered into by the owner of the facility if the rent, price, or rate of interest required to be paid under the agreement was substantially in excess of a reasonable rent, price, or rate of interest at the time the contract was

entered into, or if any material provision of the agreement was unreasonable, when compared to contracts negotiated under similar conditions.

Within 30 days after termination of the receivership, unless this time frame is extended by the court, the receiver must give the court a complete accounting of all property of which the receiver has taken possession, of all funds collected and disbursed by the receiver, and of the expenses of the receivership. A licensee that is placed in receivership by the court is liable for all expenses and costs incurred by the Resident Protection Trust Fund that are related to capital improvement and operating costs and are no more than 10 percent above the facility's Medicaid rate which occur as a result of the receivership.

The total number of facilities for which receiverships were appointed between January 1, 1998 and December 31, 1999, a 24-month period, was five and the total number of nursing home licensure revocations during the same period was less than five. Two multifacility nursing home chains, Chartwell and NuCare, sold off their facilities before AHCA initiated licensure revocation or receivership actions against either corporate entity, although receivers were appointed to operate three of the seven Chartwell facilities and at least one of the five NuCare facilities. Also, during the same period of time, the agency had a receiver appointed to operate one other facility, South Lake in Jacksonville.

III. Effect of Proposed Changes:

Section 1. Amends s. 400.126, F.S., relating to nursing home receivership proceedings, by revising subsection (2) to add new paragraphs (a), (b), and (c) and designate the present language contained in that subsection as paragraph (d). Subsection (2) of s. 400.126, F.S., is amended to require AHCA to petition a court of competent jurisdiction for appointment of a receiver to oversee the day-to-day operations of certain nursing home facilities. Two circumstances are specified as the basis for petitioning a receiver, as provided in the bill: (1) when AHCA has filed an administrative complaint to revoke the facility's license or (2) when the facility has received notice to terminate Medicare and it has not come into compliance with Medicare standards within 10 days after the date of termination.

An appointed receiver must operate the nursing home facility, as provided under s. 400.126, F.S., until: (1) the facility is sold to new ownership or (2) the facility has been brought into compliance with all applicable care standards and the licensee has satisfied AHCA that it has the intent and the means to operate the facility in full compliance with state and federal standards.

The agency is delegated rulemaking authority to administer this provision of the bill. Funding for the receivership, as provided for in the bill, is to come from the Resident Protection Trust Fund.

Language is deleted from paragraph 400.126(2)(d), F.S., which limits to 60 days the duration of an appointment of AHCA or an AHCA employee as a receiver; authorizes the agency or its designated employee who is appointed a receiver to petition the court for a one time only 30-day extension of such receivership; and authorizes the court to grant the extension upon a showing of good cause.

Section 2. Provides a July 1, 2000, effective date.

IV. Constitutional Issues:**A. Municipality/County Mandates Restrictions:**

The provisions of this bill have no impact on municipalities and the counties under the requirements of Article VII, Section 18 of the Florida Constitution.

B. Public Records/Open Meetings Issues:

The provisions of this bill have no impact on public records or open meetings issues under the requirements of Article I, Subsections 24(a) and (b) of the Florida Constitution.

C. Trust Funds Restrictions:

The provisions of this bill have no impact on the trust fund restrictions under the requirements of Article III, Subsection 19(f) of the Florida Constitution.

V. Economic Impact and Fiscal Note:**A. Tax/Fee Issues:**

None.

B. Private Sector Impact:

At a minimum, nursing home facility licensees will incur some additional costs, over and beyond regular operating costs, related to payment of the receiver's expenses and marketing costs that arises from efforts to rehabilitate the image of the business once the receivership ends through either sale or compliance. Other additional costs may be incurred in the form of reimbursement of expenditures from the Resident Protection Trust Fund related to repair of the physical facility or resident care. Opportunity costs may result from a moratorium imposed or injunctive action that prohibits admission of new residents and loss of residents residing in the facility at the time the receiver was appointed.

C. Government Sector Impact:

This bill will have a fiscal impact relating to the required receiverships. Since the underlying conduct is variable, both in substance and frequency, it is impossible to project what the fiscal impact may be without experiential details.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Amendments:

None.

This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.
