

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

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

BILL: CS/CS/SB 2466

SPONSOR: Health, Aging, and Long-Term Care Committee, Banking and Insurance Committee and Senator Webster

SUBJECT: Nursing Home Firesafety

DATE: April 13, 2004 REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Emrich</u>	<u>Deffenbaugh</u>	<u>BI</u>	<u>Fav/CS</u>
2.	<u>Harkey</u>	<u>Wilson</u>	<u>HC</u>	<u>Fav/CS</u>
3.	_____	_____	<u>AHS</u>	_____
4.	_____	_____	<u>AP</u>	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This bill requires all nursing homes to be protected by approved automatic sprinkler systems and provides a time schedule for such homes to be in compliance:

- Each “hazardous area” of a nursing home, as defined by the National Fire Protection Association, must be protected by an approved sprinkler system by December 31, 2007; and
- The entire nursing home must be protected by an approved sprinkler system by December 31, 2009.

The bill authorizes the Department of Financial Services (Department) to grant two 1-year extensions for installing sprinkler systems in nonhazardous areas of nursing homes, but prohibits extensions for installing systems in hazardous areas of such homes. The legislation authorizes the department to adopt rules, enforce the sprinkler system standards, and impose administrative sanctions for nursing homes in violation of these provisions.

The bill establishes a loan guarantee program called the “State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program,” which will help nursing homes defray the cost of installing sprinkler systems. This loan guarantee program provides up to \$4 million from the Insurance Regulatory Trust Fund to provide nursing homes that might not otherwise be able to secure a loan, the ability to do so for capital improvements. The State Fire Marshal is authorized to enter into limited loan guarantee agreements with one or more qualified public depositories in Florida and such agreements provide a limited guarantee by the state covering up to fifty percent of the principal sum loaned by the financial institution to an eligible nursing home for the sole purpose of the initial installation of a fire protection system approved by the State Fire Marshal.

The Agency for Health Care Administration (Agency) estimates that there are 35 nursing homes in the state which would have to comply with the measure's provisions at a total cost of \$4.41 million. The Agency estimates that Medicaid would pay a total of \$395,452 or \$162,531 in General Revenue, and \$232,921 from the Medical Care Trust Fund. The bill authorizes adjustments to the Medicaid rate paid to providers to allow reimbursement over a 5-year period to cover the portion of the cost of installing automatic sprinkler systems that will be paid by Medicaid.

The bill substantially amends s. 633.022, F.S.

The bill creates ss. 633.024 and 633.0245, F.S.

## **II. Present Situation:**

### **Fire Safety-Sprinkler Systems**

The Division of State Fire Marshal under the Department of Financial Services is responsible for protecting Floridians from fire hazards under chapter 633, F.S. Under s. 633.025, F.S., the State Fire Marshal, along with each municipality, county and special district with firesafety responsibilities, has adopted the most current edition of the National Fire Protection Association (NFPA) 101, Life Safety Code. That Code provides standards for fire alarms, fire suppression systems, and for automatic sprinkler systems for various buildings, including buildings occupied as "health care occupancies" which include nursing homes. Under the Code, hazardous areas within nursing homes include the following: boiler and fuel-fired heater rooms, laundries, paint shops, repair shops, soiled linen rooms, trash collection rooms, specified storage rooms, and laboratories employing flammable or combustible materials.

According to representatives with national fire sprinkler associations,<sup>1</sup> installation of automatic sprinkler systems prevents fire and the toxic smoke and gases produced by fire. When sprinklers are present in a building, the chances of dying in a fire are cut by one-half to two-thirds, compared to fires where sprinklers are not present. When measured by the average number of deaths per thousand fires in 1994-1998, the reduction associated with sprinklers is 82 percent for properties that care for the aged or sick. Also, the costs associated with insuring properties with sprinkler systems are less, compared to such costs for buildings with no sprinkler systems.

Last year fires in nursing homes occurred in two states. In Tennessee, a fire in a nursing home killed eight people and in Connecticut, sixteen residents died in a nursing home fire. Officials in those two states reported that there were no sprinkler systems in the buildings.

The Insurance Regulatory Trust Fund is authorized and created by s. 624.523, F.S. It is funded by a variety of insurance-related fees, including fines, taxes, application fees and license fees required by the Insurance Code.

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<sup>1</sup> American Fire Sprinkler Association and the National Fire Protection Association.

## Nursing Homes

Pursuant to part II of chapter 400, F.S., nursing homes are licensed by the Agency. According to representatives with the Agency, nursing homes under s. 400.232, F.S., are required to be in compliance with the minimum standards of the National Fire Protection Association (NFPA) 101, Life Safety Code, as adopted by the State Fire Marshall under s. 633.025, F.S., and with the Florida Building Code under s. 553.73, F.S. However, the fire safety standards and the Building Code provisions do not require all existing nursing homes to be fully sprinkled because the automatic sprinkler system standards are dependent on the specific physical plant conditions of each nursing home, such as construction type, height in stories, size of facility, etc.

There are currently 35 existing nursing home facilities in the state that are not “fully” sprinkled, but these facilities are still in compliance with all the aforementioned standards and codes. According to Agency officials, the 35 nursing homes have approximately 4,300 to 5,000 beds which are either partially sprinkled or are completely without sprinklers. This represents about 5 percent of Florida’s nursing home beds.

### III. Effect of Proposed Changes:

**Section 1.** Amends s. 633.022, F.S., pertaining to Uniform Firesafety Standards, to provide that notwithstanding any law to the contrary, a nursing home licensed under part II of chapter 400, F.S., must be protected by an approved, supervised automatic sprinkler system in accordance with section 9 of the National Fire Protection Association (NFPA) Pamphlet 101, Life Safety Code, the current edition, according to the following schedule:

- Each “hazardous area” which is defined by section 19.3.2.1.5 of the National Fire Protection Association (NFPA) Pamphlet 101, Life Safety Code, current edition, of a nursing home must be protected by the approved sprinkler system by December 31, 2007; and,
- The “entire” nursing home must be protected by the sprinkler system by December 31, 2009.

The Department is authorized to grant up to two 1-year extensions for compliance with the requirement that the entire nursing home be protected by an approved, automatic sprinkler system, if it determines that the nursing home has been prevented from complying with the requirement for reasons “beyond” the nursing home’s control. An extension may not be granted for installing systems in hazardous areas. The bill authorizes adjustments to the Medicaid rate paid to providers to allow reimbursement over a 5-year period to cover the portion of the cost of installing automatic sprinkler systems that will be paid by Medicaid. The Department is authorized to adopt rules to enforce these provisions. It must enforce this subsection and any nursing home in violation of this subsection may be subject to administrative sanctions.

**Section 2.** Creates s. 633.024, F.S., to provide legislative intent which states that it is essential to ensure effective fire protection for the safety and welfare of nursing home residents who are most vulnerable to injury or death in the event of a fire. Due to the high cost of retrofitting fire protection systems for homes not originally designed with a fire protection system, action is necessary by the state to provide a limited state guarantee of loans covering these costs which will expedite the immediate installation of fire protection systems in nursing homes.

The bill states a legislative finding that it is in the public interest that the guarantee loan program be funded via the Insurance Regulatory Trust Fund which is funded by the proceeds of fire insurance premiums written in Florida.

**Section 3.** Creates s. 633.0245, F.S., to establish a loan guarantee program called the “State Fire Marshal Nursing Home Fire Protection Loan Guarantee Program,” which will help nursing homes defray the cost of installing sprinkler systems. This program gives nursing homes that might not otherwise be able to secure a loan, the ability to do so for capital improvements. Because of the state’s guarantee on the loan, the nursing home will be able to secure favorable interest rates, according to representatives with the Department. The State Fire Marshal, with the assistance of the Division of Treasury within the Department, will administer the program out of existing resources. No more than \$4 million of the balance in the Insurance Regulatory Trust Fund in any fiscal year may be at risk at any time; the loan guarantee agreements are valid for no more than 10 years; and no loan guarantee application will be accepted after June 30, 2005.

Under the program, the State Fire Marshal is authorized to enter into limited loan guarantee agreements with one or more qualified public depositories in Florida and such agreements provide a limited guarantee by the state covering up to fifty percent of the principal sum loaned by the financial institution to an eligible nursing home for the sole purpose of the initial installation of a fire protection system approved by the State Fire Marshall. The bill authorizes the State Fire Marshal to create by rule an application form which must be submitted by each eligible nursing home<sup>2</sup> intending to install a fire protection system funded by a loan from a designated lender. The bill sets forth minimum application requirements and further provides that:

- Private lenders are competitively selected by the State Fire Marshal;
- Nursing home fire protection systems must be in compliance with the Fire Safety Code; and
- The State and the lending institution will hold the security interest in the nursing home property where the fire protection system is to be installed for the duration of the loan guarantee.

**Section 4.** Provides an effective date of July 1, 2004.

#### **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, s. 24(a) and (b) of the Florida Constitution.

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<sup>2</sup> An eligible nursing home means a nursing home facility providing nursing services as defined under ch. 464, F.S., licensed under part II of ch. 400, F.S., and certified by the Agency as lacking an installed fire protection system as defined in s. 633.021(8), F.S.

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:

The Agency provided the fiscal analysis below:

If the costs associated with retrofitting currently exempted nursing homes (35) are passed on in the Medicaid cost-report, the total state share (General Revenue) could be approximately \$162,531 for implementation. This calculation is based on a cost of \$3 per square foot for 35 facilities at 42,000 square feet each (including the average cost per facility at \$126,000 for a total of approximately 1,069 million square feet. The entire cost to the 35 nursing homes is \$4.41 million in total project costs. This analysis assumes the following:

- All 35 facilities install sprinklers in year 1;
- Reimbursement is based on Fair Rental Value System (FRVS);
- No providers are limited to their Per Bed Standard Limitation; and
- All providers are 65 percent on their FRVS Indexing Curve.

Nursing homes that have to install automated sprinkler systems and which qualify to participate in the bill's loan guarantee program administered by the State Fire Marshal will benefit. (*See, Government Sector Impact, below.*)

C. Government Sector Impact:

**Agency for Health Care Administration**

<b><u>Non-Recurring Impact:</u></b>	<b>Amount Year 1 (FY 04-05)</b>	<b>Amount Year 2 (FY 05-06)</b>
<b>Revenues</b>		
<b>Total Non-Recurring Revenues</b>	<b>\$0</b>	<b>\$0</b>
<b>Total Non-Recurring Expenditures</b>	<b>0</b>	<b>0</b>
<b><u>Recurring Impact:</u></b>		
<b>Revenues</b>		
U.S. Grants-Title XIX Medical Assistance	232,921	232,921
<b>Total Recurring Revenues</b>	<b>232,921</b>	<b>232,921</b>
<b>Expenditures</b>		
Nursing Home Care	395,452	395,452
<b>Total Recurring Expenditures</b>	<b>\$395,452</b>	<b>\$395,452</b>

**Long Run Effects Other Than Normal Growth:**

Any future increases in patient days will result in additional staff time that will be reflected in cost reports and per diem rates.

<b><u>Total Revenues and Expenditures:</u></b>	<b>Amount Year 1 (FY 04-05)</b>	<b>Amount Year 2 (FY 05-06)</b>
Sub-Total Non-Recurring Revenues	\$0	\$0
Sub-Total Recurring Revenues	232,921	232,921
<b>Total Revenues</b>	<b>232,921</b>	<b>232,921</b>
Sub-Total Non-Recurring Expenditures	\$0	\$0
Sub-Total Recurring Expenditures	395,452	395,452
<b>Total Expenditures</b>	<b>395,452</b>	<b>395,452</b>
<b><u>Difference (Total Revenues minus Total Expenditures):</u></b>	<b>\$162,531</b>	<b>\$162,531</b>

**Comments:**

The estimated cost to Medicaid due to the passage of CS/CS/SB 2466 is \$395,452. The bill specifies that the Medicaid provider reimbursement rate adjustment to pay for Medicaid’s portion of the cost of the sprinkler systems must come from existing nursing home appropriations. This calculation assumes that all hazardous area automatic sprinkler systems are corrected before December 31, 2007 and are in conjunction with the “entire nursing home” automatic sprinkler system. The Agency for Health Care Administration’s Office of Plans and Construction provided information that approximately 35 nursing homes are currently without automatic sprinkler systems. The installation fee of an

automatic sprinkler system is three dollars per square foot and was taken from the *Fire Sprinkler Incentive Act of 2003* by the U.S. Congress.

As each facility without an automatic sprinkler system has until December 31, 2009, to install the automatic sprinkler system, there is no way to know how many facilities will immediately comply with CS/CS/SB 2466 or how many facilities will wait until the deadline to come into compliance. Therefore, for purposes of this analysis, it is assumed that all 35 providers will install their automatic sprinkler systems in year 1. In addition, Medicaid nursing home per diem reimbursement rates are set semi-annually on a prospective basis. This means that a nursing home's prior fiscal period costs are inflated forward to determine the current period reimbursement rate for the facility. Due to this prospective rate setting, it can be almost a year before the cost of installing an automatic sprinkler system will be reimbursed to the facility.

For this calculation, it is assumed that no facility shall request and have executed its option for two one-year extensions beyond the deadline to comply with CS/SB 2466. The date that all facilities shall comply with CS/CS/SB 2466 is December 31, 2009. The installation of an automatic sprinkler system is a major purchase and considered a capital improvement. These items are classified as Property costs and are reported on Schedule T "Capital Additions and Improvements" in the facility's cost report. For providers reimbursed under the Fair Rental Value System (FRVS), the cost to install the automatic sprinkler system to the facility is added to the property indexing and becomes part of the property component of the final reimbursement per diem. There are limits to how much this property indexing can increase. This is referred to as the "Per Bed Standard Limitation." Should a facility be capped by its Per Bed Standard Limitation, then they will not receive additional reimbursement for the cost of the sprinkler system.

### **Department of Financial Services**

The State Fire Marshal anticipates that there will be no immediate fiscal impact to the Department as the result of the legislation. Because the bill involves a loan guarantee program rather than a loan program, state funds currently held in the Insurance Regulatory Trust Fund would be drawn on only in the event that a borrower whose loan was covered by a state guarantee defaulted on the loan. In the event that no defaults were to occur, no money would ever be drawn from the Insurance Regulatory Trust Fund. The Insurance Regulatory Trust Fund is authorized and created by s. 624.523, F.S. It is funded by a variety of insurance-related fees, including fines, taxes, application fees and license fees required by the Insurance Code.

The Department has projected that the Insurance Regulatory Trust Fund will contain a balance of approximately \$40 million at the conclusion of the 2003-04 fiscal year. Under this bill, no more than \$4 million on the Trust Fund may be placed at risk as a reserve to fund loan guarantees. It is anticipated that a separate account would be created within the fund to contain this reserve. No payments from the reserve will occur unless and until a demand is made against the state's guarantee of a loan that has become nonperforming. The legislation limits the guarantee period to 10 years and the bill provides that a lender

must exhaust ordinary remedies and collateral before making a claim against the state guarantee.

The Department does not anticipate that any additional positions will be necessary in order for the State Fire Marshal to implement the bill. Consequently, no increase in salary, expense or O.C.O. is being sought, and no additional staffing costs are expected.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Amendments:**

None.

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

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