

# 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.)

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Prepared By: Health Regulation Committee

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BILL: SB 278

INTRODUCER: Senator Margolis

SUBJECT: Nursing Home Facilities

DATE: February 16, 2007

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Bedford</u>	<u>Wilson</u>	<u>HR</u>	<b>Favorable</b>
2.	_____	_____	<u>MS</u>	_____
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

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## I. Summary:

This bill provides legislative intent to encourage all nursing homes to have emergency electrical power system capacity to allow these facilities to remain fully operational during and after an emergency and to provide care to residents evacuated from other nursing homes.

The bill requires the Agency for Health Care Administration (AHCA) to implement a 2-year pilot program to increase the capacity for emergency electrical power systems of eligible nursing homes. The bill specifies criteria that a nursing home must meet to be eligible to participate in the pilot program. For eligible nursing homes that choose to contract for the supply of an electrical generator when needed, the bill requires AHCA to reimburse up to one-half the cost of the contract not to exceed \$7,500 for each year of the 2-year pilot program. Subject to appropriation, the agency is also required to reimburse for the cost of installing a permanent, pre-designed electrical service entry that allows a quick connection to a temporary generator.

The bill requires AHCA to develop a reimbursement plan to maximize federal funding in order to expand the pilot program. The plan must be submitted to the Legislature by December 31, 2007.

This bill creates s. 400.0627, F.S.

## II. Present Situation:

### Experience of Nursing Homes During the 2004, 2005, 2006 Hurricane Seasons

During the 2004 hurricane season, there were four hurricanes, which caused evacuations of the general population in the state of Florida. This affected 56 nursing home facilities, with a total of

4,491 residents being evacuated. Hurricanes Charlie and Frances caused 10 nursing home facilities to close or be inactive. Altogether, the four storms caused damage to 86 nursing home facilities. It is believed that 349 nursing home facilities lost power and switched to generators during the four hurricanes.

During the 2005 hurricane season, there were five recorded hurricanes, which caused Florida evacuations. There were 21 nursing home facilities that were completely evacuated and 4 that were partially evacuated with a total of 1,795 residents being displaced. Only one nursing home facility was actually closed or became inactive during the entire 2005 season. There were 51 nursing home facilities that sustained some type of damage from the hurricanes. A total of 239 nursing home facilities lost power and switched to generators during the hurricane season with one additional nursing home facility losing power without the availability of a generator.

During the 2006 hurricane season, there were two tropical storms, which caused Florida evacuations. Tropical Storm Alberto caused one nursing home to evacuate 89 residents as a precautionary measure. This evacuation took place without incident. Tropical Storm Ernesto caused one nursing home to evacuate 23 residents as a precautionary measure. This evacuation took place without incident.

Currently, there is no statutory requirement for the evacuation of residents from one nursing home facility to another. However, evacuations generally take place between like facilities. Each nursing home facility submits a Comprehensive Emergency Management Plan (CEMP), which outlines the details of where the patients will be evacuated, and includes agreements between the facilities. These plans are submitted for approval by the local county emergency management agency as outlined below.

### **Emergency Management**

Under s. 252.35, F.S., the Division of Emergency Management in the Department of Community Affairs is responsible for maintaining a comprehensive statewide program of emergency management and for coordinating with efforts of the Federal Government, other departments and agencies of state government, county and municipal governments and school boards, and private agencies that have a role in emergency management. Included is a provision to set forth policy guidance for sheltering people with special needs.

Under s. 400.23(2)(g), F.S., AHCA must adopt rules establishing minimum criteria for the preparation and annual update of a nursing home's CEMP after consultation with the Department of Community Affairs. At a minimum, the rules must provide for plan components that address emergency evacuation transportation; adequate sheltering arrangements; post disaster activities, including emergency power, food, and water; post-disaster transportation; supplies; staffing; emergency equipment; individual identification of residents and transfer of records; and responding to family inquiries. Each nursing home facility is required to develop a CEMP, based on the criteria outlined by AHCA, and submit the CEMP to the local county for approval. The CEMP is subject to review and approval by the local emergency management agency. During its review, the local emergency management agency must ensure that the following agencies, at a minimum, are given the opportunity to review the plan: the Department of Elderly Affairs, the Department of Health, AHCA, and the Department of Community Affairs. Also, appropriate

volunteer organizations must be given the opportunity to review the plan. The local emergency management agency must complete its review within 60 days and either approve the plan or advise the facility of necessary revisions.

Rule 59A-4.126, F.A.C., incorporates by reference a publication (AHCA 3110-6006, March 1994) which lists the minimum criteria for a nursing home's CEMP. The CEMP must state the procedures to ensure that emergency power, whether natural gas or diesel, is supplied to the nursing home. If the fuel supply is natural gas, the plan must identify alternate means should loss of power occur that would affect the natural gas system. The plan must state the capacity of the emergency fuel system.

### **Requirements for Nursing Home Licensure**

Nursing Homes are licensed under part II of ch. 400, F.S. Under s. 400.232, F.S., the design, construction, erection, alteration, modification, repair, and demolition of all public and private health care facilities are governed by the Florida Building Code and the Florida Fire Prevention Code under ss. 553.73 and 633.022, F.S. In addition to the requirements of ss. 553.79 and 553.80, F.S., which govern permits, applications, issuance, inspections, and enforcement, AHCA must review the facility plans and survey the construction of nursing homes.

Since July 1982, all nursing home facilities licensed under part II of ch. 400, F.S., have been required to have an onsite Essential Electrical System (EES) with an onsite fuel supply of up to 64 hours. The design, installation, operation, and maintenance of this EES is reviewed by AHCA. The EES must meet the minimum codes and standards of the National Fire Protection Association (NFPA) 99, 70, and 110 as adopted by the state fire marshal, for a level I Type I EES. This EES supplies electrical service to the three main electrical branches, including the Life Safety branch, the Critical Branch, and the Equipment Branch within 10 seconds of normal service interruption. As required by the NFPA standards, these emergency electrical branches provide emergency electrical service to specified electrical components of the facility such as the fire alarm system, the nurse call system, the emergency egress lighting system, the exit lighting system, the magnetic door locking system, and selected critical convenience receptacles and equipment in the facility. However, the EES is not required to provide electrical service to the Heating, Ventilation, and Air Conditioning (HVAC) equipment of the facility nor to the general lighting or other electrical items not specifically required by the NFPA codes and standards.

In addition, since 1996, all new nursing home facilities and new additions to these facilities have been required to have an EES that supplies electrical power to all ventilating fans, ice making equipment, refrigeration equipment, and selected HVAC equipment as determined by the facility, for a period up to 72 hours of continuous service at actual load capacity of the generator. Since 2000, all of these codes and standards have been part of the Florida Building Code (FBC) ch. 4, s. 420 as required by ch. 533, F.S. All new codes and standards and all revisions to the existing codes and standards affecting the physical plant of nursing home facilities are the sole responsibility of the Florida Building Code Commission (FBC). The FBC is not subject to waiver or variance via ch. 120, F.S.

Of the 673 existing active licensed nursing home facilities, there are 29 facilities constructed prior to 1982 that do not have an existing generator system. Four of these facilities have

submitted plans to construct a generator system. These facilities house only residents who do not require any life support systems, and as such, these facilities are in compliance with all state and federal codes and standards through the use of a battery supplied emergency electrical system that supplies emergency power to the life safety components of the facility as required by NFPA 99 for 1-½ hours duration. These components include the fire alarm, nurse call, emergency egress lighting, exit lighting, and locking systems.

### **Class I Deficiency**

In accordance with s. 400.23(7), F.S., AHCA conducts annual surveys at all nursing home facilities at least every 15 months to evaluate and make determinations as to the degree of compliance with state and federal regulations. Findings of deficient practice are classified according to the nature and the scope of the deficiency.

Under s. 400.23(8)(a), F.S., a class I deficiency is a deficiency that AHCA determines presents a situation in which immediate corrective action is necessary because the facility's noncompliance has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident receiving care in a facility. This deficiency is subject to civil penalties as outlined in the statute.

The classification of a deficiency affects the licensure status of the facility. A conditional license is issued if a facility has one or more class I or class II deficiencies, or class III deficiencies not corrected within the time established by AHCA. The agency publishes quarterly a "Nursing Home Guide Watch List" that identifies each facility that met the criteria for a conditional license on any day within the quarter covered by the list. In addition, a facility that is cited for a class I deficiency, two or more class II deficiencies arising from separate surveys or investigations within a 60-day period, or has had three or more substantiated complaints within a 6-month period, each resulting in at least one class I or class II deficiency, is placed on a 6-month survey cycle for the next 2-year period.

### **III. Effect of Proposed Changes:**

**Section 1.** Creates s. 400.0627, F.S., to provide state financial assistance to eligible nursing homes to increase their emergency electrical power system capacity.

*Subsection (1)* encourages each nursing home in this state to have an emergency electrical power system capacity that is sufficient to remain fully operational during and after an emergency. The purpose is to maintain the health and safety of nursing home residents and to provide care to residents who might be evacuated from other nursing homes.

*Subsection (2)* requires AHCA to implement a 2-year pilot program to provide the capability for increasing the capacity of emergency electrical power systems of nursing homes. The nursing homes must meet five criteria to be eligible: be located in Bay, Broward, Collier, Miami-Dade, Escambia, Monroe, Okaloosa, Palm Beach, Santa Rosa, or Walton County; not be in the hurricane evacuation zone in its county; not have been cited for a class I deficiency within the 30 months preceding the beginning of the pilot program; have the capacity, as determined by the agency, to receive and agree to receive at least 30 transferred residents that are evacuated from

another nursing home, and; have a contract with a company that is able to supply a generator when needed.

- A nursing home facility must not be located within the hurricane evacuation zone of the county in which it is located. Through a comparative analysis of the geographical location of all nursing home facilities in the state within the designated counties, AHCA has estimated that approximately 140 nursing home facilities are not located in hurricane evacuation zones and would therefore be eligible to participate in the pilot program based on this requirement.
- This bill makes nursing homes that have been cited for any class I deficiency within the last 30 months ineligible for reimbursement. According to AHCA, it is possible that of the approximately 140 eligible nursing home facilities, there would be five nursing homes that would not be eligible because they have had a class I deficiency.
- The nursing home must have the capacity, as determined by AHCA, to accept at least 30 evacuees from other nursing homes. This bill does not address what kind of policy would have to be adopted by AHCA in order to comply with federal, state, and local laws regarding the safety of the nursing home residents in relationship to capacity. If in the event of an emergency, a nursing home is allowed to exceed its authorized capacity there needs to be specific standards to do so. According to AHCA, there are no criteria for accepting evacuees into a nursing home facility. A rule would have to be written. According to AHCA, smaller nursing homes would be excluded from participation because there may not be enough physical space to accommodate an additional 30 residents. So of the 140 eligible nursing home facilities AHCA estimates that approximately 9 facilities will be too small.
- The nursing homes must agree to receive residents who are transferred from other facilities in the event of an emergency. There are also liability issues and costs associated with these transferred residents. The severity of these issues is partially dependent upon how capacity is defined. Payment for these transferred patients is another potential issue that is dependent upon the definition of capacity.
- The nursing home must have a contract with a company to supply a temporary electrical generator when needed. Because there are no eligibility criteria regarding hurricane hardening of the physical plant of the receiving facility, residents will be evacuating into a facility partially funded by AHCA that may not be structurally safe during a hurricane event. AHCA has published criteria for existing facilities to implement to protect residents during a hurricane event. These criteria include the protection of exterior openings, the securing of roof top mounted equipment, and structural upgrades for roofing systems. By not including these criteria as an eligibility factor, the Agency will be encouraging evacuations into facilities that may not be structurally safe during a hurricane event.

*Subsection (3)* requires AHCA, if funds are available, to reimburse eligible nursing homes for up to one-half the cost of the contract to secure an electrical generator. The reimbursement is not to exceed \$7,500.00 for each year of the 2-year pilot program. Subject to appropriation, and the facility obtaining three bids, AHCA is required to reimburse an eligible facility for the lowest bid

for the cost of a permanent, predesigned electrical service entry that allows a quick connection to a temporary electrical generator. All of the reimbursement is on a first-come, first-served basis.

*Subsection (4)* requires a nursing home facility that participates in this program to properly maintain the installation and allow AHCA access as needed to inspect the installation.

*Subsection (5)* specifies that a nursing home facility is not required to participate in this program, but if it does, it must comply with all current codes and standards.

*Subsection (6)* authorizes AHCA to adopt rules pursuant to ss. 120.536(1) and 120.54, F.S.

*Subsection (7)* requires AHCA to develop a reimbursement plan that will maximize any federal funds with the purpose of expanding the pilot program. The plan must be presented to the President of the Senate and the Speaker of the House of Representatives by December 31, 2007. The impact of the pilot program on Medicaid appears to be limited to modifications that will be required to the Nursing Facility Services Coverage and Limitations Handbook to include the eligibility criteria for reimbursement, billing procedures, and other information necessary to implement the act.

**Section 2.** Provides that the bill takes effect upon becoming a law.

#### **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 Art. VII, s. 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 Art. I, s. 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 Art. III, Subsection 19(f) of the Florida Constitution.

#### **V. Economic Impact and Fiscal Note:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

Facilities that are eligible to be reimbursed for the costs of upgrading their emergency electrical power system capacity will benefit, if they chose to do an upgrade. They will be

reimbursed up to \$7,500 per year for the 2-year pilot program towards the cost of their contracts to have emergency power generators available. They will also be reimbursed for the lowest of three bids for the construction of the quick connection to a temporary electrical generator. Each facility that chooses to participate in this program will have a \$2,000 plan review fee required per statute for plans submitted for review by the agency.

**C. Government Sector Impact:**

The agency estimates that it would cost \$2,502,824 to reimburse all eligible facilities for upgrading their emergency electrical power system capacity to remain “fully operational” during the 2007-08 fiscal year and \$2,496,824 for the 2008-09 fiscal year. This is after taking into consideration expected revenues from the required plan review fees. It must also be understood that because this bill requires contracts with companies guaranteeing availability to supply generators and the installation of the quick connection within the fiscal years of 2007-09, the increased demand for emergency generators and emergency connections may drive costs higher than this estimate.

**VI. Technical Deficiencies:**

The bill does not define “fully operational” or “capacity” to care for residents evacuated from other nursing home facilities.

**VII. Related Issues:**

None.





## **VIII. Summary of Amendments:**

None.

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

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