

1                                   A bill to be entitled  
 2       An act relating to long-term care; amending s. 400.141,  
 3       F.S.; requiring licensed nursing home facilities to  
 4       satisfy specified financial responsibilities; creating s.  
 5       400.1411, F.S.; requiring maintenance of financial  
 6       responsibility as a condition of licensure of nursing home  
 7       facilities; providing for payment of any outstanding  
 8       judgments or settlements pending when a nursing home  
 9       facility license is suspended by the Agency for Health  
 10      Care Administration; providing conditions for suspension  
 11      of a nursing home facility license; requiring the agency  
 12      to adopt rules; providing an effective date.

13

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

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16           Section 1. Subsection (20) of section 400.141, Florida  
 17 Statutes, is amended to read:

18           400.141 Administration and management of nursing home  
 19 facilities.--Every licensed facility shall comply with all  
 20 applicable standards and rules of the agency and shall:

21           (20) Satisfy the financial responsibility requirements of  
 22 s. 400.1411. The required financial responsibility shall not be  
 23 used for litigation costs or attorney's fees for the defense of  
 24 any claim against a nursing home pursuant to common law or s.  
 25 400.023 or s. 400.0233. ~~Maintain general and professional~~  
 26 ~~liability insurance coverage that is in force at all times. In~~  
 27 lieu of satisfying the financial responsibility requirements of  
 28 s. 400.1411 ~~general and professional liability insurance~~

29 ~~coverage~~, a state-designated teaching nursing home and its  
 30 affiliated assisted living facilities created under s. 430.80  
 31 may demonstrate proof of financial responsibility as provided in  
 32 s. 430.80(3)(h).

33  
 34 Facilities that have been awarded a Gold Seal under the program  
 35 established in s. 400.235 may develop a plan to provide  
 36 certified nursing assistant training as prescribed by federal  
 37 regulations and state rules and may apply to the agency for  
 38 approval of their program.

39 Section 2. Section 400.1411, Florida Statutes, is created  
 40 to read:

41 400.1411 Financial responsibility.--

42 (1) As a condition of licensure and to maintain an active  
 43 license, and prior to the issuance or renewal of an active  
 44 license or reactivation of an inactive license for operating a  
 45 nursing home facility in the state, an applicant must  
 46 demonstrate to the satisfaction of the agency and the Office of  
 47 Insurance Regulation of the Financial Services Commission  
 48 financial responsibility to pay claims and costs ancillary  
 49 thereto arising out of the rendering of, or the failure to  
 50 render, care or services by one of the following methods:

51 (a) Establishing and maintaining an escrow account  
 52 consisting of cash or assets eligible for deposit in accordance  
 53 with s. 625.52 in the per claim amounts specified in paragraph

54 (b);

55 (b) Obtaining and maintaining general and professional  
 56 liability coverage in an amount not less than \$500,000 per

57 claim, with a minimum annual aggregate of not less than \$1  
58 million, from an authorized insurer as defined under s. 624.09,  
59 from an eligible surplus lines insurer as defined under s.  
60 626.914(2), or from a Florida domiciled risk retention group as  
61 defined under s. 627.942(9); or

62 (c) Obtaining and maintaining an unexpired, irrevocable  
63 letter of credit, established pursuant to chapter 675, in an  
64 amount not less than \$500,000 per claim, with a minimum  
65 aggregate availability of credit not less than \$1 million. The  
66 letter of credit must be payable to the nursing home facility as  
67 beneficiary upon presentment of a final judgment indicating  
68 liability and awarding damages to be paid by the nursing home  
69 facility or upon presentment of a settlement agreement signed by  
70 all parties to such agreement when such final judgment or  
71 settlement is a result of a claim arising out of the rendering  
72 of, or the failure to render, care and services. The letter of  
73 credit must be nonassignable and nontransferable. Such letter of  
74 credit must be issued by any bank or savings association  
75 organized and existing under the laws of this state or under the  
76 laws of the United States that has its principal place of  
77 business in this state or has a branch office that is authorized  
78 under the laws of this state or of the United States to receive  
79 deposits in this state.

80 (2)(a) Each insurer, self-insurer, or risk retention group  
81 must promptly notify the agency and the Department of Insurance  
82 of cancellation or nonrenewal of insurance required by this  
83 section. Unless the nursing home facility demonstrates that it  
84 is otherwise in compliance with the requirements of this

85 section, the agency shall issue a conditional license to the  
86 nursing home facility. The conditional license remains in effect  
87 until the nursing home facility demonstrates compliance with the  
88 requirements of this section. If any judgments or settlements  
89 are pending at the time of issuance of the conditional license,  
90 those judgments or settlements must be paid in accordance with  
91 this section unless otherwise mutually agreed to in writing by  
92 the parties. This paragraph does not abrogate a judgment  
93 debtor's obligation to satisfy the entire amount of any  
94 judgment.

95 (b) If financial responsibility requirements are met by  
96 maintaining an escrow account or letter of credit as provided in  
97 this section, upon the entry of an adverse final judgment  
98 arising from a claim maintained in contract or in tort pursuant  
99 to common law or s. 400.023 or s. 400.0233, or from  
100 noncompliance with the terms of a settlement agreement arising  
101 from a claim maintained in contract or in tort pursuant to  
102 common law or s. 400.023 or s. 400.0233, the licensee of the  
103 nursing home facility, the nursing home facility, or the entity  
104 that owns, operates, manages, or controls the nursing home  
105 facility, shall pay the entire amount of the judgment together  
106 with all accrued interest, or the amount maintained in the  
107 escrow account or provided in the letter of credit as required  
108 by this section, whichever is less, within 60 days after the  
109 date such judgment became final and subject to execution, unless  
110 otherwise mutually agreed to in writing by the parties. If  
111 timely payment is not made by the licensee of the nursing home  
112 facility, the nursing home facility or the entity that owns,

113 operates, manages, or controls the nursing home facility, the  
 114 agency shall impose an immediate moratorium or emergency  
 115 suspension of the license of the nursing home facility. Nothing  
 116 in this paragraph shall abrogate a judgment debtor's obligation  
 117 to satisfy the entire amount of any judgment.

118 (3) Upon the entry of an adverse final judgment arising  
 119 from a claim maintained in contract or in tort pursuant to  
 120 common law or s. 400.023 or s. 400.0233, or from noncompliance  
 121 with the terms of a settlement agreement arising from a claim  
 122 maintained in contract or in tort pursuant to common law or s.  
 123 400.023 or s. 400.0233, the licensee of the nursing home  
 124 facility, the nursing home facility, or the entity that owns,  
 125 operates, manages, or controls the nursing home facility, shall  
 126 pay the judgment creditor the lesser of the entire amount of the  
 127 judgment with all accrued interest or the per claim amounts  
 128 specified in paragraph (1)(b), within 60 days after the date  
 129 such judgment became final and subject to execution, unless  
 130 otherwise mutually agreed to in writing by the parties. Such  
 131 adverse final judgment shall include any cross-claim,  
 132 counterclaim, or claim for indemnity or contribution arising  
 133 from the claim maintained in contract or in tort pursuant to  
 134 common law or s. 400.023 or s. 400.0233. Nothing in this  
 135 subsection shall abrogate a judgment debtor's obligation to  
 136 satisfy the entire amount of any judgment. Upon notification of  
 137 the existence of an unsatisfied judgment or payment pursuant to  
 138 this subsection, the agency shall notify the nursing home  
 139 facility by certified mail that its license shall be suspended  
 140 unless, within 30 days after the date of mailing, it either:

141           (a) Shows proof that the unsatisfied judgment has been  
 142 paid in the amount specified in this subsection; or  
 143           (b) Furnishes the department with a copy of a timely filed  
 144 notice of appeal and either:  
 145           1. A copy of a supersedeas bond posted in the amount  
 146 required by law; or  
 147           2. An order from a court of competent jurisdiction staying  
 148 execution on the final judgment pending disposition of the  
 149 appeal.  
 150           (4) The agency shall issue an immediate moratorium or  
 151 emergency suspension of the license of a nursing home facility  
 152 that, 30 days after receipt of a notice from the agency, has  
 153 failed to:  
 154           (a) Satisfy a claim maintained in contract or in tort  
 155 pursuant to common law or s. 400.023 or s. 400.0233 against it;  
 156           (b) Furnish the agency with a copy of a timely filed  
 157 notice of appeal and a copy of a supersedeas bond properly  
 158 posted in the amount required by law; or  
 159           (c) Furnish the agency with an order from a court of  
 160 competent jurisdiction staying execution on the final judgment  
 161 pending disposition of the appeal.  
 162           (5) Any deceptive, untrue, or fraudulent representation by  
 163 the nursing home facility with respect to any provision of this  
 164 section shall result in permanent disqualification from any  
 165 exemption to mandated financial responsibility as provided in  
 166 this section and shall result in the immediate moratorium or  
 167 emergency suspension of the license of the nursing home  
 168 facility.

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169           (6) The agency shall adopt rules pursuant to ss. 120.536  
170 and 120.54 to implement the provisions of this section.

171           Section 3. This act shall take effect July 1, 2008.