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## OLR Bill Analysis

**SB 419 (File 536, as amended by Senate "A")\***

***AN ACT CONCERNING RESPONSIBLE PARTY AGREEMENTS AND THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTH CARE AGENCIES AND HOMEMAKER-HOME HEALTH AIDE AGENCIES.***

**SUMMARY:**

This bill requires anyone who individually or jointly establishes, conducts, operates, or maintains a nursing home, home health care agency, or homemaker-home health aide agency to maintain professional liability insurance or other indemnity against liability for professional malpractice. The amount of insurance each such person must carry against claims for injury or death for malpractice must be at least \$1 million for one person, per occurrence, with an aggregate (i.e., the total for all claims within the coverage period) of at least \$3 million.

The bill explicitly exempts residential care homes from this liability insurance requirement.

In most circumstances, the law prohibits nursing homes, residential care homes, rest homes with nursing supervision, and chronic and convalescent nursing homes ("nursing home facilities") from enforcing a surety contract (a contract making another person, the guarantor, liable for the applicant's bill). It carves out two exceptions: if the applicant (1) transferred property for less than fair market value to the guarantor or a close family member, for purposes of the applicant's eligibility for Medicaid or (2) fails to apply for Medicaid. (Medicaid does not pay for residential care home services; thus as a practical matter, this law does not apply to them.)

The bill extends the prohibition, and the exceptions, to admission agreements entered into by a nursing home facility and a responsible party who has access to an applicant's or resident's assets or financial information. It expands the notice requirements for such contracts and

extends the notice requirements to such agreements with responsible parties. It specifies how the notices must appear.

The bill explicitly allows nursing home facility staff to fill out and submit a Medicaid application on a resident's or prospective resident's behalf. To do so, the facility needs the written authorization of the person or his or her authorized representative.

The bill also makes technical and conforming changes.

\*Senate Amendment "A" (1) adds the residential care home exemption, (2) clarifies that all of the exceptions and notice requirements concerning nursing home facility third-party guarantor contracts also apply to admission agreements with responsible parties, and (3) applies the notice requirement to contracts or agreements entered into on and after October 1, 2012.

EFFECTIVE DATE: October 1, 2012, except the malpractice insurance requirements are effective January 1, 2013.

## **NURSING HOME CONTRACTS**

### ***Contractual Notice***

Existing law requires enforceable third-party nursing home facility contracts to have a clause stating that they are enforceable against the guarantor or his or her spouse, children, or grandchildren if (1) they received assets or property from the applicant for less than fair market value or (2) the applicant fails to complete a Medicaid application.

Under the bill, such contracts and responsible party admission agreements must have notice provisions containing the information described above, including references to a responsible party and his or her spouse, children, or grandchildren. The bill also requires such contracts or admission agreements to have notice provisions stating the following:

1. state and federal law prohibit a nursing home facility from requiring a third party to personally guarantee payment as a condition of admission or continued stay and

2. because of the complexity involved in filling out a Medicaid application, it may be advisable for the person completing the application to seek professional assistance or legal advice.

The notice must be printed in at least 10-point bold type, stated in plain and simple language, and, whenever possible and in accordance with any applicable federal guidelines, in the recipient's primary language.

Under the bill, all of these notice requirements apply to contracts or agreements entered into on and after October 1, 2012.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable  
Yea 45 Nay 0 (04/02/2012)

Human Services Committee

Joint Favorable  
Yea 13 Nay 0 (04/26/2012)