

ASSOCIATED INDUSTRIES OF FLORIDA
**LEGISLATIVE
INTERIM BRIEF**



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**DAILY INTERIM LEGISLATIVE BRIEF FROM FEBRUARY 7, 2001
SOURCE: ASSOCIATED INDUSTRIES OF FLORIDA**

Lt. Governor Frank Brogan's efforts in promoting practical reform of the long term care industry in Florida continued today in the Senate Health, Aging and Long-Term Care Committee. Acting as the chairman of the erstwhile Task Force on Availability and Affordability of Long-Term Care (which formally disbanded on Monday, February 5), Mr. Brogan yet again promoted reforms that would both improve the quality of care and provide relief for the industry from reckless litigation. Mr. Brogan aptly pointed out to the committee that Florida cannot have effective reform that does not both address the quality of care and the avalanche of lawsuits against long-term care providers.

The virtual plundering of Florida's nursing homes has amounted to legal banditry under Florida's current law, which provides relatively weak defenses for the nursing homes and a welcome mat to trial attorneys looking for a market niche. As a result, carriers of long term care insurance are fleeing Florida and both for-profit and non-profit nursing homes and assisted living facilities are facing enormous financial risk and our elder citizens are experiencing sky-rocketing increases in their insurance premiums.

One idea to solve the problem was introduced and advocated by the trial attorneys and their friends in committee today. The idea is to create a long-term care joint underwriting association or JUA for long-term care insurance. Conceptually, JUA's are an insurer of last resort organized and partially subsidized by the state and insurance carriers. JUA's are designed to insure "poor risk." For example, in workers' compensation, there are high-risk industries or jobs that for an underwriter are impossible to approve. A JUA can step in and provide the necessary insurance for these truly high-risk employers. But, what makes a JUA a sustainable and practical insurer of last resort is the presence of numerous, competitive carriers and a varied mix of risk in the market. These competitive carriers, absorbing the practical risk in the market, fund the JUA through fees or charges applied by the state. What makes the JUA a very, very poor solution for Florida's long term care crisis is the virtual absence of numerous carriers. In addition, and most importantly, under current law as it relates to litigation, every nursing home is a high and uninsurable risk. *The law, and not the lack of competitive insurance carriers, is the reason that the market is uninsurable.*

Finally, the few long term care insurance carriers who have made an attempt to provide service in Florida could not possibly pay the fees necessary to fund a JUA. The debate on this JUA concept was cut short due to a lack of time. But, make no mistake; this will be an ever-present proposal in the weeks ahead.

Unfortunately, this idea could provide legislators for a "place to go" as an alternative to making the very hard, practical decisions related to litigation reform. We will have to work hard to educate our legislature regarding the impracticability of JUA scheme for long term care insurance in Florida.

Please send your comments or suggestions to us at aif@aif.com or call the Governmental Affairs department at (850)224-7173.

- For more information on all of the important legislative information concerning the business community, go to our "members only" Florida Business Network web site at <http://fbnnet.com>
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