

STORAGE NAME: h1795a.lt

DATE: April 8, 1999

**HOUSE OF REPRESENTATIVES
AS REVISED BY THE COMMITTEE ON
ELDER AFFAIRS & LONG TERM CARE
ANALYSIS**

BILL #: HB 1795

RELATING TO: Assisted Living Facilities/Air Conditioning

SPONSOR(S): Representative Sobel and others

COMPANION BILL(S): SB 2314 (s)

ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:

- (1) HEALTH CARE LICENSING & REGULATION YEAS 6 NAYS 1
 - (2) ELDER AFFAIRS & LONG TERM CARE
 - (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
 - (4)
 - (5)
-

I. SUMMARY:

HB 1795 requires all applicants seeking an assisted living facility license to provide documentation that the facility is equipped with a functioning air conditioning system capable of maintaining indoor air temperatures between 65 and 75 degrees Fahrenheit during the summer period, as of July 1, 1999.

The bill establishes a 6 month time frame for existing facilities to comply with the same standards, and directs such facilities to do whatever is necessary to maintain indoor temperatures between 65 and 75 degrees Fahrenheit during the summer period before compliance.

Provides an effective date of July 1, 1999.

According to the Department of Elder Affairs, this bill will have a fiscal impact on the assisted living industry in two ways:

- (1) to provide the required documentation may result in facilities having to pay an air conditioning contractor for an "equipment sizing calculation" to document that the present air conditioning equipment is capable of maintaining the specified temperatures; and
- (2) the cost of installation of air conditioning systems in those facilities which do not presently have them may be prohibitively expensive and cause some facilities to cease operation.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

There is an increased concern over air conditioning within long-term care facilities due to two deaths that occurred last summer in a nursing home related to a lack of air conditioning and dehydration.

Currently, statutes do not require air conditioning in assisted living facilities or even that a certain temperature or range of temperatures be maintained. By placing people in facilities without air conditioning, they are being subjected to safety hazards that could adversely affect their fragile health.

Rule 58A-5.023, Florida Administrative Code (F.A.C.), specifies that indoor temperatures are to be maintained at least 72 degrees inside when the outside temperature is 65 degrees or below and no higher than 85 degrees. Temperatures of 90 degrees or above result in the facility being cited and residents moved.

Federal regulations, 42 CFR 483.15, require that all nursing homes which are Medicare or Medicaid certified after October 1, 1990, maintain temperatures between 71 and 81 degrees Fahrenheit. Nursing homes which are regulated under state law and regulations only, must ensure that the facility have comfortable and safe temperature levels (59A-4.122, F.A.C.).

Section 400.442(1)(a), F.S. gives the Department of Elder Affairs (DOEA) rule authority to establish heating, ventilation, and other housing conditions which affect the health, safety, and comfort of residents in assisted living facilities (ALFs). The Department of Health has authority through its role in ensuring the safety and sanitation of both ALFs and nursing homes to regulate the temperatures in ALFs [s. 381.006(6)].

Pursuant to its rule authority, the DOEA is currently in the process of amending the ALF rule (Chapter 58A-5, F.A.C.) to require all facilities licensed or renovated after 6 months from the effective date of the rule to maintain indoor temperatures not to exceed 85 degrees. This will have the effect of "grandfathering" in those facilities which do not presently have air-conditioning and requiring air conditioning for newly-licensed or renovated facilities. The rule also requires that indoor temperatures be no lower than 68 degrees at night, and 72 degrees by day. The rule permits the residents to regulate thermostats in their own rooms.

Pursuant to s. 381.006, F.S., Chapter 64E-11, F.A.C., requires that mechanical cooling devices be made available for use in those areas of buildings occupied by residents when inside temperatures exceed 85 degrees Fahrenheit.

B. EFFECT OF PROPOSED CHANGES:

This bill requires (functioning) air conditioning equipment in all assisted living facilities, and creates a new provision under the license application process for facilities to document that the facility's air conditioning equipment is capable of maintaining specified temperatures during the summer months. The bill also requires that facilities which are presently licensed comply with the documentation requirements, and before compliance, maintain the specified temperatures during the summer period. Other than the instance just stated, this bill does not actually require that ALFs maintain indoor temperatures between the specified temperatures of 65 and 75 degrees Fahrenheit.

The bill also does not present an express statement, such as presently in ALF rule, that residents be able to maintain individual control over the thermostats in their rooms. As a result, residents may be prohibited from adjusting the air temperature in their rooms due to the facility's effort to comply with an implied duty to maintain specified temperatures during the summer months.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. The Agency for Health Care Administration will be required to document the availability of air conditioning in all assisted living facilities.

(3) any entitlement to a government service or benefit?

No.

b. If an agency or program is eliminated or reduced:

(1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

(2) what is the cost of such responsibility at the new level/agency?

N/A

(3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

a. Does the bill increase anyone's taxes?

No.

b. Does the bill require or authorize an increase in any fees?

No.

c. Does the bill reduce total taxes, both rates and revenues?

No.

d. Does the bill reduce total fees, both rates and revenues?

No.

e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes, the requirements of the bill will force assisted living facilities to install and maintain air conditioning or be in violation of the licensure requirements of the law.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

N/A

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

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(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 400.411, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.411, to require documentation from any applicant seeking an assisted living facility license after July 1, 1999, to prove that the facility is equipped with a functional air conditioning system maintaining temperatures between 65 and 75 Fahrenheit during the summer.

Section 2. Establishes that existing facilities licensed prior to July 1, 1999 must comply with the changes referenced in s. 400.411 (11), F.S., within 6 months of that date. In the interim, the facility must take the necessary steps to maintain the indoor temperature between 65 and 75 degrees Fahrenheit during the summer.

Section 3. Provides an effective date of July 1, 1999.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. **DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**

1. Direct Private Sector Costs:

There will be a financial impact on hundreds of the facilities in the state that currently do not have air conditioning. According to the Department of Elder Affairs, the cost of installing and running air conditioning may be prohibitively expensive and may cause some facilities to cease operation.

2. Direct Private Sector Benefits:

This bill may be of benefit to the residents because the facilities will have a controlled temperature during the summer seasons.

3. Effects on Competition, Private Enterprise and Employment Markets:

According to the DOEA, this bill will impact facilities that accept low income residents because the facility may not have the income to comply with the requirements of this bill, resulting in the denial of housing for low income residents.

D. **FISCAL COMMENTS:**

None.

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. **APPLICABILITY OF THE MANDATES PROVISION:**

This bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds.

B. **REDUCTION OF REVENUE RAISING AUTHORITY:**

This bill does not reduce the authority that municipalities or counties have to raise revenues in the aggregate.

C. **REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:**

This bill does not reduce the percentage of a state tax shared with counties or municipalities.

V. COMMENTS:

Some of the facilities which may be affected serve mostly residents who receive Optional State Supplementation (OSS) which provides a maximum of \$665 per month to pay for room, board and personal care services (this is a combination of personal income including federal social security benefits and a maximum of \$208 in OSS per month). This is less than half of the estimated average low-end rate for a private pay resident, which is approximately \$1,400 per month. To require such facilities to bear the expense of installing and running air conditioning would cause some facilities to close or increase their rates and further reduce the placement options for OSS recipients.

While it is unclear what type of documentation would be acceptable to demonstrate air conditioning capacity as required in the bill, if other than a sworn affidavit, ALFs may incur the expense of acquiring this documentation biannually. One way this is demonstrated is by an "equipment sizing calculation"

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(initially) which must be completed by a licensed air conditioning contractor, and subsequent proof submitted every two years, that the equipment is in good working order.

According to the DOEA, the temperatures specified in the bill may be uncomfortably cool for seniors who in general have decreased ability to regulate their own internal temperatures as a result of the aging process, and are frequently more cold than hot.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 1999, the Committee on Health Care Licensing & Regulation adopted a strike everything amendment. The amendment provides the Department of Elder Affairs and the Agency for Health Care Administration statutory authority to promulgate rules governing the "cooling" of certain facilities effective July 1, 1999. Provides an effective date of July 1, 2000, for these facilities to comply with legislation.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

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