

STORAGE NAME: h1795s1.lt

DATE: April 16, 1999

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

BILL #: CS/HB 1795

RELATING TO: Assisted Living Facilities/Temperatures

SPONSOR(S): Committee on Elder Affairs & Long Term Care, 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 YEAS 7 NAYS 3
- (3) HEALTH & HUMAN SERVICES APPROPRIATIONS
- (4)
- (5)

I. SUMMARY:

Committee Substitute for HB 1795 amends section 400.023, F.S., 1998 Supplement, to require the Agency for Health Care Administration, in consultation with the Department of Children and Family Services and the Department of Elder Affairs, to adopt and enforce rules related to the cooling of nursing home facilities. Further, it amends section 400.441, F.S., 1998 Supplement, to require the Department of Elder Affairs, in consultation with the Agency for Health Care Administration, the Department of Children and Family Services, and the Department of Health, to adopt rules, policies, and procedures related to the cooling of assisted living facilities.

It provides an effective date of July 1, 1999.

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 resulting from dehydration. The facility had an air conditioning system which was apparently not functioning. 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 has comfortable and safe temperature levels (59A-4.122, F.A.C.).

Currently, statutes do not require air conditioning in assisted living facilities or even that a certain temperature or range of temperatures be maintained. Section 400.441(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). Rule 58A-5.023(2), Florida Administrative Code (F.A.C.), requires that indoor temperatures fall no lower than 65 degrees at night and no lower than 72 degrees in the daytime when outside temperatures are 65 degrees or below. Rule 58A-5.023(3), F.A.C., provides that mechanical cooling devices must be used when inside temperatures exceed 85 degrees. The rule permits the residents to regulate thermostats in their own rooms. 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 Department of Health may have general, but not specific, 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 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:

Committee Substitute for HB 1795 amends section 400.023, F.S., 1998 Supplement, to require the Agency for Health Care Administration, in consultation with the Department of Children and Family Services and the Department of Elder Affairs, to adopt and enforce rules related to the cooling of nursing home facilities. Further, it amends section 400.441, F.S., 1998 Supplement, to require the Department of Elder Affairs, in consultation with the Agency for Health Care Administration, the Department of Children and Family Services, and the Department of Health, to adopt rules, policies, and procedures related to the cooling of assisted living facilities.

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?

Yes. The Agency for Health Care Administration is given authority to adopt and enforce rules related to cooling in nursing homes. The Department of

Elder Affairs is given authority to adopt rules related to cooling in assisted living facilities.

- (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 adopt and enforce rules related to cooling in nursing homes. The Department of Elder affairs is given authority to adopt rules related to cooling in 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?

No.

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:

(1) parents and guardians?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Sections 400.023 and 400.411, F.S., 1998 Supplement

E. SECTION-BY-SECTION ANALYSIS:

Section 1. Amends s. 400.023, F.S., 1998 Supplement, to require the Agency for Health Care Administration, in consultation with the Department of Children and Family Services and the Department of Elder Affairs, to adopt and enforce rules related to the cooling of nursing home facilities.

Section 2. Amends s. 400.411, F.S., 1998 Supplement, to require the Department of Elder Affairs in consultation with the Agency for Health Care Administration, the Department of Children and Family Services, and the Department of Health, to adopt rules, policies, and procedures related to the cooling of assisted living facilities.

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 may be a cost to facilities that have no cooling system.

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:

None

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 or other cooling systems may cause some facilities to close or increase their rates and further reduce the placement options for OSS recipients.

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. The amendment also establishes temperature standards.

On April 12, 1999, the Committee on Elder Affairs and Long Term Care adopted a Committee Substitute which took out the specific temperature standards passed by the Committee on Health Care Licensing and Regulation.

VII. SIGNATURES:

COMMITTEE ON HEALTH CARE LICENSING & REGULATION:

Prepared by:

Staff Director:

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AS REVISED BY THE COMMITTEE ON ELDER AFFAIRS & LONG TERM CARE:

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