

MEMORANDUM

Agenda Item No.11(A) (23)


TO: Honorable Chairman Joe A. Martinez
and Members, Board of County Commissioners

DATE: October 2, 2012

FROM: R. A. Cuevas, Jr.
County Attorney

SUBJECT: Resolution urging the Florida
Legislature to enact
comprehensive legislation during
the 2013 session to protect the
elderly and other vulnerable
populations that reside in
Assisted Living Facilities

The accompanying resolution was prepared and placed on the agenda at the request of Prime Sponsor Commissioner Rebeca Sosa.



R. A. Cuevas, Jr.
County Attorney

RAC/smm



MEMORANDUM

(Revised)

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Please note any items checked.

- "3-Day Rule" for committees applicable if raised
- 6 weeks required between first reading and public hearing
- 4 weeks notification to municipal officials required prior to public hearing
- Decreases revenues or increases expenditures without balancing budget
- Budget required
- Statement of fiscal impact required
- Ordinance creating a new board requires detailed County Manager's report for public hearing
- No committee review
- Applicable legislation requires more than a majority vote (i.e., 2/3's _____, 3/5's _____, unanimous _____) to approve
- Current information regarding funding source, index code and available balance, and available capacity (if debt is contemplated) required

Approved _____ Mayor
Veto _____
Override _____

Agenda Item No. 11(A) (23)
10-2-12

RESOLUTION NO. _____

RESOLUTION URGING THE FLORIDA LEGISLATURE TO ENACT COMPREHENSIVE LEGISLATION DURING THE 2013 SESSION TO PROTECT THE ELDERLY AND OTHER VULNERABLE POPULATIONS THAT RESIDE IN ASSISTED LIVING FACILITIES, FURTHER URGING FLORIDA'S GOVERNOR AND APPLICABLE STATE AGENCIES TO TAKE ALL REGULATORY AND ENFORCEMENT ACTIONS NECESSARY TO ENSURE THE HEALTH AND SAFETY OF RESIDENTS OF ASSISTED LIVING FACILITIES

WHEREAS, from 2006 to 2011 there was a 25 percent increase in the number of licensed Assisted Living Facilities in Florida that care for elderly and other vulnerable people; and

WHEREAS, this increase in Assisted Living Facilities is perhaps due to medical breakthroughs and scientific advancement that has resulted in people living longer than in the past; and

WHEREAS, as individuals' life spans increase, their ability to live on their own and take care of themselves eventually becomes challenging for both the elderly person and their families; and

WHEREAS, Assisted Living Facilities play an important role in providing housing, meals and personal services for elderly and other vulnerable people who do not need ongoing hospital or nursing home care, but need ongoing assistance; and

WHEREAS, as of September, 2011, there were approximately 2,960 Assisted Living Facilities in Florida, with almost one-third of this total, approximately 900, located in Miami-Dade County; and

WHEREAS, Assisted Living Facilities take many different forms, with some housing as few as seven residents, while others having hundreds of residents, with around one-half of all Assisted Living Facilities licensed to care for ten or fewer residents; and

WHEREAS, the Agency for Healthcare Administration licenses Assisted Living Facilities in Florida; and

WHEREAS, all Assisted Living Facilities in Florida are subject to regulation under administrative rules adopted by the Florida Department of Elder Affairs, in consultation with the Florida Agency for Healthcare Administration, the Department of Children and Family Services, and the Department of Health; and

WHEREAS, in addition to a standard license, an Assisted Living Facility may have specialty licenses that authorize the Assisted Living Facility to provide Limited Nursing Services, Limited Mental Health Services and Extended Congregate Care Services for residents whose health would otherwise disqualify them from residing in an Assisted Living Facility, but who benefit from remaining in the Assisted Living Facility with which that they are familiar; and

WHEREAS, most Assisted Living Facilities in Florida provide safe and high quality housing and services for their residents, but at the end of the 2011 session beginning on April 30, 2011, the Miami Herald published a three-part series entitled "Neglected to Death" which exposed examples of abuses occurring in some Assisted Living Facilities and criticized the state regulatory responses to such cases; and

WHEREAS, the series identified a number of examples of alleged egregious acts occurring related to elderly and vulnerable people living in Assisted Living Facilities; and

WHEREAS, the series criticized state agency responses to the alleged egregious acts claiming that:

- Nearly once a month residents in Assisted Living Facilities die from abuse and neglect, with some caretakers altering and forging records to conceal evidence, but law enforcement agencies almost never make arrests;
- Facilities are routinely caught using illegal restraints, including powerful tranquilizers, locked closets and ropes, but the state rarely punishes them;
- State regulators could have shut down 70 facilities in the past two years for a host of severe violations, but only seven facilities were closed;
- Although the number of Assisted Living Facilities has increased substantially over the last five years, the state has reduced critical inspections by 33 percent;
- Although the state has the authority to fine Assisted Living Facilities that break the law, the penalties are routinely decreased, delayed or dropped altogether;
- The state's lack of enforcement has prompted other government agencies to cut off funding and in some cases the agencies refuse to send clients to live in certain Assisted Living Facilities;
- In at least one case, an investigation was never performed by the Agency for Healthcare Administration, although a woman drowned after wandering off the premises;
- It took Agency for Healthcare Administration inspectors an average of 37 days to complete a complaint investigation in 2009, which was ten days longer than five years earlier; and
- At least five times, other state agencies were forced to take the lead in shutting down homes when the Agency for Healthcare Administration did not act; and

WHEREAS, at the same time as the Herald series, the Florida Legislature passed HB 4045 during the 2011 state legislative session, which repealed (i) a requirement for the annual dissemination of a list of Assisted Living Facilities that had been sanctioned or fined; (ii) a requirement for an Assisted Living Facility to report monthly any liability claims filed against it; and (iii) a requirement to disseminate the results of the inspection of each Assisted Living Facility; and

WHEREAS, on June 27, 2011, Governor Rick Scott vetoed HB 4045, stating that it was not prudent to reduce reporting requirements for Assisted Living Facilities until the state

conducted a thorough examination of state regulation and oversight of Assisted Living Facilities;
and

WHEREAS, to this end, Governor Scott formed an Assisted Living Facility Workgroup for the purpose of examining current Assisted Living Facility regulations and oversight and developing recommendations to improve the state's ability to monitor quality and safety in Assisted Living Facilities and ensure the well-being of their residents; and

WHEREAS, the Assisted Living Facility Workgroup held a number of meetings and public hearings and in December, 2011 issued its final report and recommendations:

- Increase Assisted Living Facility administrator qualifications;
- Expand and improve training for administrators and other staff;
- Increase survey and inspection activity with a focus on facilities with poor track records;
- Create a systematic appeal process for residents who want to contest a notice of eviction;
- Increase reporting of resident data by facilities;
- Enhance enforcement capacity by state agencies;
- Create a permanent policy review and oversight council with members representing all stakeholder groups;
- Require all facilities with at least one resident receiving mental health care to be licensed as an Limited Mental Health facility;
- Provide greater integration of information from all agencies involved in Assisted Living Facility regulation in order to identify potential problems sooner; and

WHEREAS, in September, 2011, the Florida Senate conducted an interim study of regulatory oversight of Assisted Living Facilities in Florida, Interim Report 2012-128, Review Regulatory Oversight of Assisted Living Facilities in Florida; and

WHEREAS, Interim Report 2012-128 recommended that the Legislature enact comprehensive Assisted Living Facility legislation to better protect residents from abuse, neglect or otherwise harmful conditions in Assisted Living Facilities in Florida; and

WHEREAS, the Florida Legislature considered bills during the 2012 session that would have implemented the various recommendations for comprehensive reform of the laws governing Assisted Living Facilities in Florida, including SB 2074 by the Senate Health Regulation Committee and HB 7133 by the House Health and Human Services Committee; and

WHEREAS, while both the House and Senate passed versions of Assisted Living Facility reform bills, both chambers could not come to agreement on a single bill, and as such no such legislation passed during the 2012 session; and

WHEREAS, following the 2012 session, Governor Scott formed a second Assisted Living Facility Workgroup among administration and industry officials which is expected to release recommendation for new administration regulations of Assisted Living Facilities in the coming months; and

WHEREAS, adoption of improved administrative regulations related to Assisted Living Facilities is an important step towards improving conditions at Assisted Living Facilities, but the Florida Legislature needs to place the highest priority on passage of comprehensive Assisted Living Facility legislation during the 2013 session to protect the elderly and other vulnerable populations the reside in such facilities,

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF MIAMI-DADE COUNTY, FLORIDA, that this Board:

Section 1. Urges the Florida Legislature to enact comprehensive Assisted Living Facility legislation during the 2013 session to protect the elderly and other vulnerable populations that reside in such facilities.

Section 2. Urges Florida's Governor and applicable state agencies to increase regulatory and enforcement actions related to Assisted Living Facilities to ensure the safety of Florida's most vulnerable residents.

Section 3. Directs the Clerk of this Board to send a certified copy of this resolution to the Governor, Senate President, House Speaker and the Chair and Members of the Miami-Dade State Legislative Delegation.

Section 4. Directs the County's state lobbyists to advocate for the passage of the legislation and action set forth in Sections 1 and 2 above, and authorizes and directs the Office of Intergovernmental Affairs to include this item in the 2013 State Legislative Package when it is presented to the Board.

The Prime Sponsor of the foregoing resolution is Commissioner Rebeca Sosa. It was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____ and upon being put to a vote, the vote was as follows:

Joe A. Martinez, Chairman
Audrey M. Edmonson, Vice Chairwoman
Bruno A. Barreiro
Lynda Bell
Esteban L. Bovo, Jr.
Jose "Pepe" Diaz
Sally A. Heyman
Barbara J. Jordan
Jean Monestime
Dennis C. Moss
Rebeca Sosa
Sen. Javier D. Souto
Xavier L. Suarez

The Chairperson thereupon declared the resolution duly passed and adopted this 2nd day of October, 2012. This resolution shall become effective ten (10) days after the date of its adoption unless vetoed by the Mayor, and if vetoed, shall become effective only upon an override by this Board.

MIAMI-DADE COUNTY, FLORIDA
BY ITS BOARD OF
COUNTY COMMISSIONERS

HARVEY RUVIN, CLERK

By: _____
Deputy Clerk

Approved by County Attorney as
to form and legal sufficiency.



Jess M. McCarty