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HUD's "significant facilities" rule for seniors-only housing is eliminated

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In December, President Clinton signed legislation to repeal the requirement that housing include *significant facilities and services* for older persons to qualify for an exemption to the Fair Housing Act's family-status provision.

Housing providers backed the legislation [H.R. 660], but it was strongly opposed by children's rights advocates, who argued that amending the law was unnecessary in light of HUD's promulgation, in August 1995, of a rule which defines significant facilities and services. According to the Senate Judiciary Committee report which accompanied the legislation, the *significant facilities and services* requirements were unclear, and enforcing HUD's new regulation would result in "inherent ambiguity."

Many, including the American Association of Retired Persons (AARP), had complained that the rule required too many unnecessary and expensive changes to flourishing "seniors only" communities. "The rule required far more than the law required," said Martin Corry, AARP's Federal Affairs Director.

According to the February 1995 edition of the AARP's *Bulletin*, complaints against HUD's proposed rule were "particularly vociferous" in mobile-home parks. Park owners and tenants nationwide inundated HUD, AARP and other groups with mail attacking the proposed rule. "HUD regulations should preserve, rather than eliminate, senior communities," urged one such letter.

According to Corry, "To make this law workable and avoid endless litigation will require more than an improved proposed rule. The only reasonable alternative is to clean up the law itself."

The Senate Judiciary Committee agreed with Corry. "There have been so many lawsuits that the exemption Congress intended is now being revoked as a practical matter by threat of litigation," the committee said.

Opponents of the *significant facilities and services* requirement also argued that it had the effect of discriminating against low-income seniors because of compliance costs. Housing providers were constantly having to improve their facilities which, in turn, drove up rent prices.

Under the amended provision, the key requirement for an exemption to the Fair Housing Act's family-status provision is that "at least 80 percent of the occupied units [be] occupied by at least one person who is 55 years of age or older." The housing facility or community also must publish and adhere to policies and procedures that demonstrate an intent to provide housing to persons who are 55 years old or older.

The amended provision also calls for HUD to promulgate rules for verifying the age of occupants by "reliable surveys and affidavits." The new HUD rules also must include examples of the types of policies and procedures that demonstrate an intent to provide over-55 housing.

In an attempt to protect real estate brokers, the new rule bars the imposition of monetary damages against people who relied, in good faith, on the application of the seniors housing exemption. Good faith reliance can be shown only if the person had no knowledge that the community or facility in question did not qualify for the seniors only exemption and the community or facility certified in writing that it did qualify for the

exemption.

Although the *significant facilities and services* requirements were the most confusing aspects of the seniors housing exemption, it was not the only one. Many gray areas of the exemption still trouble the industry, according to David Schless of the American Seniors Housing Association. "The new law should give the guidance that the vast majority of housing providers have been looking for," he said.
