

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: Community Affairs Committee

BILL: CS/SB 1006

INTRODUCER: Community Affairs Committee and Senator Fasano

SUBJECT: Community Residential Homes

DATE: March 14, 2006

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Goltry</u>	<u>Whiddon</u>	<u>CF</u>	<u>Fav/1 amendment</u>
2.	<u>Herrin</u>	<u>Yeatman</u>	<u>CA</u>	<u>Fav/CS</u>
3.	_____	_____	<u>HA</u>	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____
6.	_____	_____	_____	_____

## I. Summary:

This committee substitute (CS) amends s. 419.001, F.S., relating to community residential homes. The CS updates the definition of a “community residential home” to include homes that serve 7 to 14 unrelated residents who are clients of the Agency for Persons with Disabilities, the Department of Elderly Affairs, the Department of Juvenile Justice, and homes licensed by the Agency for Health Care Administration (AHCA). It requires that prior to occupancy of a home with six or fewer residents, the sponsoring agency must provide the local government with the most recently published data identifying all community residential homes in the district in which the proposed home is to be located in order to show that no other community residential home is within a radius of 1,000 feet.

This CS substantially amends section 419.001 of the Florida Statutes.

## II. Present Situation:

Historically, community housing options for persons with disabilities, frail elderly persons, dependent or delinquent children, and persons with mental illnesses have been limited. Although the transition from providing services in large institutions to community based programs began in the 1970’s, the availability of safe, appropriate, and affordable housing in Florida has been an ongoing challenge. The “NIMBY” (Not In My Back Yard) syndrome is used to describe the opposition to siting affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. This opposition began to be routinely challenged during the 1980’s as policy and practice reform led to the development of more opportunities for persons with disabilities to live independently and participate fully in their communities. In 1989, the Legislature enacted chapter 89-372, L.O.F., which was codified as chapter 419, F.S. The legislation was aimed at preventing or reducing inappropriate institutional care by encouraging the development of community-based residential environments for persons with special needs who were served by the Department of Health and Rehabilitative Services (DHRS). At that time,

DHRS had responsibility for programs for persons with developmental disabilities and mental illnesses, dependent and delinquent children, and elderly and disabled adults, so that the reporting and registration of homes was placed solely within that department. The original legislation required DHRS to establish a statewide registry of all licensed community residential homes. However, this requirement was repealed in 2000.<sup>1</sup> In the intervening years, the responsibilities of DHRS for services to persons with developmental disabilities, frail elderly persons, children involved with the delinquency system, and the licensure of most residential programs have been transferred to other executive branch departments or agencies.

The Federal Fair Housing Act of 1988 prohibits discrimination on the basis of a handicap in all types of housing transactions. The Act defines a “handicap” to mean those mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled under the Fair Housing Act, by virtue of that status.<sup>2</sup>

The Florida Fair Housing Act in s. 760.23(7)(b), F.S., provides that, “It is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.” The statute states further that “discrimination” is defined as to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA). In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective community-based services.<sup>3</sup> The *Olmstead* decision interpreted Title II of the ADA and its implementing regulation, requiring states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.” The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age.

Currently, s. 419.001, F.S., requires a sponsoring agency<sup>4</sup> to notify the chief executive officer of the local government in writing when a site for a community residential home has been selected

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<sup>1</sup> Chapter 2000-338, Laws of Florida.

<sup>2</sup> United States Department of Justice, [http://www.usdoj.gov/crt/housing/housing\\_coverage.htm](http://www.usdoj.gov/crt/housing/housing_coverage.htm)

<sup>3</sup> See *Olmstead v. L. C.*, 527 U.S. 581 (1999).

<sup>4</sup> Section 419.001(1)(e), F.S., defines “sponsoring agency” as “an agency or unit of government, a profit or nonprofit agency, or any other person or organization which intends to establish or operate a community residential home.”

in an area zoned for multifamily use. The notice must include the address of the site, the residential licensing category, the number of residents, and the community support requirements of the program. The notice must also contain a statement from the district administrator of The Department of Children and Families Services (DCF) indicating the need for the proposed home, the licensing status of the home, and how the home meets applicable licensing criteria for the safe care and supervision of the residents. The district administrator must provide local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is to be located.<sup>5</sup>

The local government reviews the notification from the sponsoring agency in accordance with the zoning ordinance of the jurisdiction in which the community residential home is located. The local government then has up to 60 days to respond and if no response is given within 60 days, the sponsoring agency may establish the home at the site in question.<sup>6</sup> A home with six or fewer residents is deemed a single family unit, and such a home is allowed in a single - or multi-family zoned area without approval by the local government, provided that the home does not exist within a 1,000 feet radius of another home with 6 or fewer residents and the sponsoring agency or DCF notifies the local government at the time of occupancy that the home is licensed by DCF.<sup>7</sup>

Section 419.001(1) (d), F.S., includes in the definition of a “resident” the following:

- “Frail elder” pursuant to s. 400.618, F.S., means a functionally impaired elderly person who is 60 years of age or older and who has physical or mental limitations that restrict the person's ability to perform the normal activities of daily living and that impede the person's capacity to live independently.
- Person with a “handicap” pursuant to s. 760.22(7)(a), F.S., means a person that has a physical or mental impairment which substantially limits one or more major life activities, or he or she has a record of having, or is regarded as having, such physical or mental impairment or a person with a developmental disability as defined in s. 393.063, F.S.
- “Developmentally disabled person” pursuant to s. 393.063, F.S., means a person with a disorder or syndrome that is attributable to retardation, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome and which constitutes a substantial handicap that can reasonably be expected to continue indefinitely.
- “Nondangerous mentally ill person” means a person with a “mental illness” as defined in s. 394.455(18), F.S., which is “an impairment of the mental or emotional processes that exercise conscious control of one's actions or of the ability to perceive or understand reality, which impairment substantially interferes with a person's ability to meet the ordinary demands of living, regardless of etiology. For the purposes of this part, the term does not include retardation or developmental disability as defined in chapter 393, intoxication, or conditions manifested only by antisocial behavior or substance abuse impairment.”
- “Child” means a “child who is found to be dependent” as defined in s. 39.01(14), F.S., and a “child in need of services” pursuant to ss. 984.03(9) and 985.03(8), F.S.

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<sup>5</sup> Section 419.001(3)(a), F.S.

<sup>6</sup> Section 419.001(3)(b), F.S.

<sup>7</sup> Section 419.001(2), F.S.

Community residential homes that serve “residents” as defined in s. 419.001, F.S., are licensed by or operated through a contractual agreement between private providers and state agencies.

### III. Effect of Proposed Changes:

**Section 1** amends s. 419.001, F.S., to revise the definition of “community residential home” to include homes whose residents are clients of agencies other than DCF, specifically the Agency for Persons with Disabilities, the Department of Elderly Affairs, the Department of Juvenile Justice, and programs licensed by AHCA to conform with the divestiture of programs to those agencies. The CS does not expand the pool of potential residents of community residential homes as defined in chapter 419. It deletes the definition of “department” as the Department of Children and Family Services.

The CS requires that, prior to occupancy, the home’s sponsoring agency must provide the local government with the most recently published data compiled that identifies all community residential homes in the district in which the proposed site is located, to confirm that no other community residential home is within a radius of 1,000 feet of the proposed home with six or fewer residents.

**Section 2** provides that the CS takes effect date July 1, 2006.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

#### D. Other Constitutional Issues:

In 1988, Congress enacted the Fair Housing Amendments Act to extend coverage to persons with disabilities. This extension of coverage prohibits a state or its political subdivision from requiring or permitting any action that would have the effect of limiting the ability of an individual with a disability from residing in their choice of communities. To the extent that any additional requirements imposed by this CS could be construed as limiting access to community residences for persons with disabilities, it may be challenged as a violation of the Federal and Florida Fair Housing Act and the Americans with Disabilities Act.

**V. Economic Impact and Fiscal Note:**

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

Sponsoring agencies, some of whom are private nonprofit agencies, would be required to obtain information from a variety of state agencies regarding the location of community residential homes in the vicinity of the home they are proposing to open. This may require additional staff or information technology resources for these providers.

C. Government Sector Impact:

The AHCA licenses several categories of facilities that would be considered a community residential home as defined in this CS. They include Assisted Living Facilities (ALFs), Adult Family Care Homes (AFCHs), Intermediate Care Facilities (ICFs), and some Residential Treatment Facilities (RTFs). These facilities serve persons with mental illnesses, developmental and physical disabilities, children with emotional disturbances, and elderly persons. The number of these facilities located in areas zoned residential is unknown.

AHCA Licensed Facilities by Type and Number of Beds				
Provider Type	Total All Facilities	# Facilities ≤ 6 Beds	# Facilities 7 - 14 Beds	Total ≤ 14 Beds
ALF	2323	938	405	1343
AFCH	461	461	0	461
ICF DD	105	38	2	40
RTF	70	8	28	36
<b>Total</b>				<b>1880</b>

Source: Agency for Health Care Administration.

The AHCA has a web-based facility locator system which allows the user to search for facility by type and location, including proximity to a given address in mile increments. For those facility types licensed by AHCA, this site could be used to identify similar programs located within a one-mile radius.<sup>8</sup>

The Agency for Persons with Disabilities has more than 1,200 residential facilities licensed by the agency located throughout the state. The majority of these licenses are held by private providers who would fit the statutory definition of “sponsoring agency.”

The Department of Juvenile Justice reports that they do not serve children in need of services in homes with fewer than 14 residents and, therefore, are not affected by this legislation.

<sup>8</sup> See Agency for Health Care Administration, <http://facilitylocator.floridahealthstat.com/proximity/facloc.shtml>.

The Department of Elderly Affairs and DCF report that AHCA is the licensing entity for programs that operate community residential homes, as defined in the CS, that serve persons with mental illnesses, frail elderly persons, and physically disabled adults.

#### **VI. Technical Deficiencies:**

The CS does not change references in the statute to “districts” and “district administrator.” This organizational structure is used by DCF, but is not the organizational framework for the other departments and agencies mentioned in the CS.

#### **VII. Related Issues:**

Although the 1,000-foot space between homes is not a new requirement, the compilation of data verifying that there are no other community residential homes within that space prior to occupancy of a home imposes a new duty on service providers and agencies. Using the existing definition of “sponsoring agency,” most agencies seeking licensure to provide residential services would not possess the “most recently published data compiled that identifies all community residential homes in the district.” In order to comply with the mandatory reporting requirements, prospective residential providers would have to contact each of the various state agencies authorized to license community residential homes to obtain the most recent data regarding the locations of those homes. This requirement could create a hardship for these individual providers and delay the licensure process. Since licensure databases change on a routine basis (as new community residential homes are licensed), such delays could potentially result in local governments making decisions based upon outdated licensure information.

## **VIII. Summary of Amendments:**

None.

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This Senate staff analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

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