

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Children, Families, and Elder Affairs Committee

BILL: SB 1348

INTRODUCER: Senator Bogdanoff

SUBJECT: Community Residential Homes

DATE: March 25, 2011 REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|------------------|
| 1. | Daniell | Walsh | CF | Favorable |
| 2. | _____ | _____ | CA | _____ |
| 3. | _____ | _____ | BC | _____ |
| 4. | _____ | _____ | _____ | _____ |
| 5. | _____ | _____ | _____ | _____ |
| 6. | _____ | _____ | _____ | _____ |

I. Summary:

This bill amends the definition of “community residential home” to include sober transitional living homes. The bill defines the term “sober transitional living home” to mean a community residential home that provides a peer-supported and managed alcohol-free and drug-free living environment. A sober transitional living home must follow all local and county standards of occupancy and may not provide onsite substance abuse treatment unless it is provided by a licensed service provider.

This bill substantially amends section 419.001, 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 placing affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. This opposition began to be routinely challenged during the 1980s 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.

Fair Housing Act

The Federal Fair Housing Act of 1988 (FHA)¹ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA 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 FHA 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 FHA, by virtue of that status.²

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 provides that “discrimination” is defined 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.

Community Residential Homes

In 1989, the Florida Legislature enacted ch. 89-372, Laws of Florida, which was codified as ch. 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. A community residential home is a home consisting of “7 to 14 unrelated residents who operate as the functional equivalent of a family, including such supervision and care by supportive staff as may be necessary to meet the physical, emotional, and social needs of the residents.”³

The following are included in the definition of a “resident:”

- “Frail elder” pursuant to s. 429.65, 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

¹ 42 U.S.C. 3601 *et seq.*

² See U.S. Dep’t of Justice, *The Fair Housing Act*, http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Mar. 23, 2011); *see also* M.M. Gorman *et al.*, *Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, *THE URBAN LAWYER* v. 42, no. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).

³ Section 419.001(1)(a), F.S.

- 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.
- “Developmental disability” 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. . . . 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 who is found to be dependent” as defined in s. 39.01(12), F.S., and a “child in need of services” pursuant to ss. 984.03(9) and 985.03(8), F.S.⁴

Section 419.001(3), F.S., requires a sponsoring agency⁵ to notify the chief executive officer of the local government in writing when a site for a community residential home has been selected 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 licensing entity⁶ indicating the licensing status of the home and how the home meets applicable licensing criteria for the safe care and supervision of the residents. The 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 to be located. 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 may only deny the siting of a community residential home if the site selected:

- Does not conform to existing zoning laws;
- Does not meet applicable licensing criteria;
- Would substantially alter the nature and character of the area.⁷

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 foot radius of another home with six or fewer residents and

⁴ Section 419.001(1)(e), F.S.

⁵ Section 419.001(1)(f), 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.”

⁶ Section 419.001(1)(b), F.S., defines “licensing entity” as the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Family Services, or the Agency for Health Care Administration, all of which are authorized to license a community residential home to serve residents, as defined in s. 419.001(1)(e), F.S.

⁷ Section 419.001(3)(c), F.S.

the sponsoring agency notifies the local government at the time of occupancy that the home is licensed.⁸

Sober Living Homes

“Sober living homes’ function under the belief that housing addicts in an environment that fosters recovery, such as low crime, drug free, single family neighborhoods, is essential to the success of any addict’s treatment.”⁹ Proponents of sober living homes believe that “such environments foster sobriety and encourage trust and camaraderie between home residents.”¹⁰ Living in a sober living home community allows a recovering addict the opportunity to develop practical life skills and build self confidence.¹¹

The facilities, operators, and organizational design of sober living homes vary greatly. It is argued that the location of the home is critical to recovery, and placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.¹² Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.¹³

Because of the wide range in variety, the sober living home concept can easily be abused. For example, some homes under the guise of a “sober living home” may have twenty to thirty individuals renting space from a landlord who is simply seeking to maximize rent and where no actual treatment is provided.¹⁴

One example of a sober living home is Florida Sober Living. This organization offers residential housing, with minimal therapy, for addicts and alcoholics to live and recover together.¹⁵ Florida Sober Living has a strict zero tolerance policy and requires participation in AA or another 12 step recovery program.¹⁶

III. Effect of Proposed Changes:

This bill amends ch. 419, F.S., relating to community residential homes, to include sober house transitional living homes in the definition of “community residential home.”

The bill defines the term “sober house transitional living home” to mean a community residential home that provides a peer-supported and managed alcohol-free and drug-free living environment. The home must be supervised by a house manager who ensures that a sober living

⁸ Section 419.001(2), F.S.

⁹ M.M. Gorman *et al.*, *supra* note 2.

¹⁰ *Id.*

¹¹ 12 Step Treatment Centres, *Sober Living Home Transitional Housing*, http://www.12step treatmentcentres.com/SOBER_LIVING_HOME_TRANSITIONAL_HOUSING_95.asp (last visited Mar. 23, 2011).

¹² M.M. Gorman *et al.*, *supra* note 2.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ Florida Sober Living, *Home*, <http://www.floridasoberliving.com/> (last visited Mar. 23, 2011).

¹⁶ *Id.*

environment is maintained and who offers structure and peer support. A sober house transitional living home must adhere to local municipal or county standards of occupancy and substance abuse treatment may not be provided onsite unless it is provided by a licensed service provider.¹⁷

The bill also provides that the limitations of the definition of “sober house transitional living home” do not apply to a sober living facility that is affiliated with, managed by, or operated by a licensed service provider.

The bill provides an effective date of July 1, 2011.

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:

The Fair Housing Act (FHA) prohibits a large range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability or handicap. Because disability has been interpreted as including individuals recovering from drug or alcohol addiction, discriminatory practices involving recovering addicts are forbidden.¹⁸ Accordingly, if there are too many restrictions placed on sober house transitional living homes, the restrictions may run afoul with the FHA and the owner or operator of a home may bring suit to seek relief under the FHA.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

¹⁷ A licensed service provider is defined as a public agency under ch. 397, F.S.; a private for-profit or not-for-profit agency under ch. 397, F.S.; a physician or other private practitioner licensed under ch. 397, F.S., or a hospital that offers substance abuse services through one or more licensed service components. Section 397.311(17), F.S.

¹⁸ M.M. Gorman *et al.*, *supra* note 2.

B. Private Sector Impact:

To the extent a sober house transitional living home must be licensed similarly to a community residential home, the owner or operator of the sober house transitional living home may have fees associated with licensing.

C. Government Sector Impact:

According to the Agency for Health Care Administration, Department of Children and Family Services, and the Department of Juvenile Justice, the bill will not have an operational or fiscal impact on them.¹⁹

VI. Technical Deficiencies:

On lines 44-46, the bill provides that the limitations of the definition of sober house transitional living home do not apply to a *sober living facility* that is affiliated with, managed by, or operated by a licensed service provider. The term “sober living facility” is not defined in current law and the bill does not provide a definition.

The bill provides that a sober house transitional living home is to be supervised by a house manager who “ensures that a sober living environment is maintained and who offers structure and peer support.” It is unclear how the house manager is expected to “ensure” that a sober living environment is maintained. Additionally, the bill does not provide whether there are any ramifications if a house manager does not maintain a sober living environment.

VII. Related Issues:

None.

VIII. Additional Information:**A. Committee Substitute – Statement of Substantial Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill’s introducer or the Florida Senate.

¹⁹ See Agency for Health Care Admin., *2011 No Agency Impact Statement* (Mar. 1, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs); Dep’t of Children and Families (statement for HB 1055) (on file with the Senate Committee on Children, Families, and Elder Affairs); Dep’t of Juvenile Justice, *House Bill 1055* (Mar. 7, 2011) (on file with the Senate Committee on Children, Families, and Elder Affairs).