

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 885 Residential Facilities
SPONSOR(S): Health Innovation Subcommittee, Avila
TIED BILLS: **IDEN./SIM. BILLS:** SB 1174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health Innovation Subcommittee	12 Y, 0 N, As CS	McElroy	Poche
2) Health Care Appropriations Subcommittee			
3) Health & Human Services Committee			

SUMMARY ANALYSIS

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. Pursuant to s. 419.001(3)(c), F.S., a community residential home may not be constructed within a radius of 1,200 feet of another such home or within a radius of 500 feet of an area of single-family zoning. Similarly, pursuant to 419.001(2), F.S., a home of six or fewer residents which otherwise meets the definition of a community residential home may not be constructed within a radius of 1,000 feet of another such home. The statute, however, is silent as to which zoning requirement applies when determining the proper distance between a community residential home and a home of six or fewer residents which otherwise meets the definition of a community residential home.

CS/HB 885 amends s. 419.001, F.S., to prohibit a community residential home and a home of six or fewer residents which otherwise meets the definition of a community residential home from being located within a radius of 1,200 feet of each other. The bill does not impact the status of any community residential home or home of six or fewer residents which otherwise meets the definition of a community residential home permitted and operating as of July 1, 2016.

The bill does not appear to have a fiscal impact on state or local governments.

The bill provides an effective date of July 1, 2016.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Community Residential Homes

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's¹, the availability of safe, appropriate, and affordable housing in Florida has been an ongoing challenge. The primary obstacle was the opposition to establishing affordable housing or housing for persons with disabilities or special needs in residential neighborhoods. In an attempt to address this issue the Legislature enacted s. 419.01, F.S., which establishes the siting requirements applicable to local governments for community residential homes.

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.² Residency in a community residential home is limited to individuals who qualify as:

- “Developmentally disabled,” as defined in s.393.063, F.S., which includes a person with a disorder or syndrome that is attributable to intellectual disability, cerebral palsy, autism, spina bifida, or Prader-Willi syndrome; that manifests before the age of 18; and that constitutes a substantial handicap that can reasonably be expected to continue indefinitely;
- A “frail elder” as defined in s. 429.65(9), F.S., which includes 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;
- “Handicapped” pursuant to s. 760.22(7)(a), F.S., which includes a person who 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;
- A nondangerous person who has a “mental illness” as defined in s. 394.455(18), F.S., which includes 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 the person’s ability to meet the ordinary demands of living; or
- A child who is found to be dependent by the court pursuant to ss. 39.01(14), and 984.03 F.S., and a “child in need of services” as defined in ss. 984.03(9) and 985.03(8), F.S.

Community residential homes must be licensed by the Department of Elderly Affairs, the Agency for Persons with Disabilities, the Department of Juvenile Justice, the Department of Children and Families, or the Agency for Health Care Administration (collectively the “licensing entity”).³

¹ Normalization and deinstitutionalization have long been held to provide benefits to individuals with special needs. Normalization is a social science theory based upon the proposition “that the quality of life increases as an individual’s access to culturally typical activities and settings increases.” Deinstitutionalization seeks to remove individuals from placement in the more restrictive environment of institutions to the less restrictive environment of mainstream society. Working in concert these two principles encourage the development of community-based living arrangements for individuals with special needs. *Normalization and Deinstitutionalization of Mentally Retarded Individuals: Controversy and Facts, American Psychologist*, August 1987, Vol 42, No. 8,809-816.

² Section 419.001, F.S.

³ Section 419.001(1)(b), F.S.

Local Government Approval of Proposed Community Residential Homes

Local government is responsible for the site approval of a proposed community residential home. A sponsoring agency⁴ is required 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.⁵ 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.⁶ The notice must also contain a statement from the licensing entity 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.⁷ The sponsoring agency must provide the local government with the most recently published data that identifies all community residential homes in the district in which the proposed site is to be located.⁸ 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.⁹ 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.¹⁰

A local government may not deny the siting of a community residential home unless the site selected:¹¹

- Does not otherwise conform to existing zoning regulations applicable to other multifamily uses in the area;
- Does not meet licensing criteria ; or
- Would substantially alter the nature and character of the area by being located within a radius of:
 - 1,200 feet of another existing community residential home or
 - 500 feet of an area of single-family zoning.

Section 419.001, F.S. additionally addresses siting requirements for homes with six or fewer residents which otherwise meet the definition of a community residential home. These homes are considered a single-family unit and a noncommercial, residential use for the purpose of local laws and ordinances.¹² These homes are allowed in a single- or multi-family zoned area without approval by the local government provided:¹³

- The home does not exist within a radius of 1,000 feet of another such home; and
- The sponsoring agency notifies the local government at the time of occupancy that the home is licensed.

Section 419.001, F.S., is silent as to which zoning requirement (within a radius of 1,200 feet or within a radius of 1,000 feet) applies when determining the proper distance between a community residential home and a home with six or fewer residents which otherwise meets the definition of a community residential home.

⁴ 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.

⁵ Section 419.001(3)(a), F.S.

⁶ Id.

⁷ Id.

⁸ Id.

⁹ Id.

¹⁰ Section 419.001(3)(b), F.S.

¹¹ Section 419.001(3)(c), F.S.

¹² Section 419.001(2), F.S.

¹³ Id.

Effect of Proposed Changes

CS/HB 885 amends s. 419.001, F.S., to prohibit a community residential home and a home of six or fewer residents which otherwise meets the definition of a community residential home from being located within a radius of 1,200 feet of each other. The bill expressly states that, for purposes of local land use and zoning determinations, the legal nonconforming use status of any community residential home lawfully permitted and operating as of July 1, 2016 is not affected, which "grandfathers in" those community residential homes and homes with six or fewer residents which otherwise meet the definition of a community residential home existing prior to the effective date of the bill.

B. SECTION DIRECTORY:

Section 1: Amends s. 419.001, F.S., relating to site selection of community residential homes.

Section 2: Provides an effective date of July 1, 2016.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Not applicable.

C. DRAFTING ISSUES OR OTHER COMMENTS:

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On January 19, 2016, the Health Innovation Subcommittee adopted a strike-all amendment to HB 885. The amendment:

- Clarified that a community residential home and a residential home of six or fewer residents may not be located within a radius of 1,200 feet of each other;
- Deleted an unnecessary provision requiring all distance requirements in s. 419.001, F.S., to be applied equally to all community residential homes and homes with 6 or fewer residents that otherwise meet the requirements of a community residential home, regardless of which state agency serves the residents of the home or homes.

This analysis is drafted to the committee substitute as passed by the Health Innovation Subcommittee.