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 1166
INTRODUCER:	Senators Altman and Storms
SUBJECT:	Community Residential Homes
DATE:	March 25, 2010
REVISED:	

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Wolfgang	Yeatman	CA	**Favorable**
2.	Hansson	Walsh	CF	**Favorable**
3.				
4.				
5.				
6.				

I. Summary:

The bill exempts group homes for people with disabilities within planned residential communities, planned unit developments designed to serve people with developmental disabilities, from the requirement that group homes for people with disabilities may not be located within 1,000 feet of each other.

This bill substantially amends sections 393.501 and 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 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. 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.

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.[1]

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 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.[2] 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.

Chapter 393.0651(5), F.S., requires the Agency for Persons with Disabilities to facilitate the placement of clients within smaller, less-restrictive residential settings. Some have argued that personal outcomes for persons with developmental disabilities are highly correlated with the number of other individuals, possessing similar disabilities, with whom they live.[3] In addition, some have also noted a concern that congregating these individuals would create segregation similar to institutionalization.

The provision of Medicaid services to residents of certain types of residential settings is largely governed by the requirements of the Medicaid Developmental Disabilities Home and

[1] United States Department of Justice, *Housing and Civil Enforcement Section*, http://www.justice.gov/crt/housing/housing_coverage.php, (last visited March 11, 2010).
[2] *See Olmstead v. L.C.*, 527 U.S. 581 (1999).
[3] Agency for Persons with Disabilities Bill Analysis, SB 1166, March 16, 2010 (on file with the committee).

Community-Based Services (DD-HCBS) Waiver. According to Page 1-9 of the Medicaid DD-HCBS Waiver Coverage and Limitations Handbook,[4]

> [T]he purpose of the DD waiver is to promote, maintain and restore the health of eligible recipients with developmental disabilities; to minimize the effects of illness and disabilities through the provision of needed supports and services in order to delay or prevent institutionalization; and to foster the principles of self-determination as a foundation for services and supports. The intent of the waiver is to provide a viable choice of services that allow eligible recipients to live as independently as possible in their own home or in the community and to achieve productive lives as close to normal as possible as opposed to residing in an Intermediate Care Facility for the Developmentally Disabled (ICF/DD) or other institutional settings.

Section 393.501(2), F.S., directs the agency to establish, by administrative rule, distance requirements between APD-licensed homes. The language, in rule 65G-2.015, F.A.C., prohibits the siting of contiguous APD-licensed homes.

Section 419.001, F.S., regulates homes with multiple residents. Section 419.001(1) (d), F.S., includes in the definition of a "resident" the following:

- "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 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" means a "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] Developmental Disabilities Waiver Services Coverage and Limitations Handbook, *available at* http://portal.flmmis.com/FLPublic/Portals/0/StaticContent/Public/HANDBOOKS/CL_08_070701_Waiver_DevSev_ver1%203%20(2).pdf. (Last visited, March 24, 2010).

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."[5] The law dictates how local governments can regulate community residential homes and homes that would be community residential homes but consist of six or fewer residents.

A community residential home should be licensed with a government agency. Section 419.001, F.S., requires a sponsoring agency[6] 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 entity[7] 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 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.[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. 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.[9]

The local government may deny the siting of a community residential home if the site selected:

- Does not conform with zoning laws,
- Does not meet licensing criteria,
- Would substantially alter the nature and character of the area, which the statute states would occur when the community residential home is within:
    - 1,200 feet of another existing community residential home or
    - 500 feet of an area of single-family zoning.

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 the sponsoring agency notifies the local government at the time of occupancy that the home is licensed.[10]

[5] Section 419.001(1)(a), F.S.
[6] 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.
[7] 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)(d), F.S.
[8] Section 419.001(3)(a), F.S.
[9] Section 419.001(3)(b), F.S.
[10] Section 419.001(2), F.S.

III. Effect of Proposed Changes:

Section 1
The bill amends s. 393.501, F.S., to make it clear that, although the Agency for Persons with Disabilities is tasked with adopting rules to address the number of facilities for disabled person on a lot or adjacent lots, there shall be no restriction on the number of facilities designated as community residential homes located within a planned residential community. This statutory provision would invalidate those parts of 65G-2.015, F.A.C., that are inconsistent.

Section 2
The bill amends s. 419.001, F.S., to define "planned residential community" as a "planned unit development that is planned and developed as a whole, is designed to serve the unique needs of residents who have developmental disabilities, and may include two or more community residential homes." The development must obtain all local government approvals except for approvals based on proximity limitations created due to the type of resident living in the community. The bill exempts community residential homes, or homes that would be community residential homes except that they have less than seven residents, within planned residential communities from the 1,000 foot proximity limitation. Homes for these residents may be contiguous to each other.

Section 3
The bill provides an effective date of July 1, 2010.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

This bill may encourage developers to build planned unit developments that serve the needs of developmentally disabled persons.

C. Government Sector Impact:

VI. Technical Deficiencies:

None.

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.