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Residential Care Facilities in the Neighborhood: Federal, State, and Local Requirements

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*Prepared at the Request of
Senator Charles S. Poochigian*

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Executive Summary

During the past decade, local governments have expressed ongoing concerns about the impact of federal and state laws on land use decisions affecting residential care facilities (including group homes). It is widely accepted that persons with physical and mental disabilities, and other special needs, deserve to live in the community – in contrast to an institution – and that facilities located in residential neighborhoods allow them to participate in, and become a part of, that community. However, local governments face concern from homeowners that these residential facilities will have a negative impact on their neighborhoods.

The right of individuals with special needs to live in the community versus the right of neighbors to preserve the integrity of their neighborhood results in the longstanding conflict between federal, state, and local government requirements that affect land use regulation. This report identifies these requirements and their impact on the placement of residential care facilities in communities.

DIFFERENT POSITIONS

Community members generally agree that persons with disabilities and other special needs deserve to live in a community setting like a residential care or treatment facility instead of being isolated and institutionalized. But, it is a common reaction to feel uneasy, concerned, or fearful when a facility moves in next door or down the street.

Advocates and facility licensees point out that care and treatment facilities have to be put in *someone's* neighborhood. They argue that neighbors' fear is largely unfounded; they point to examples of facilities peacefully coexisting with neighbors and studies that conclude that residential care facilities do not have a negative affect on neighborhood safety and property values. In addition, advocates find that neighbors are often uninformed about the facility program and residents, which leads to misconceptions.

However, communities do experience problems with facilities. Seventy-two cities responding to a 1999 League of California Cities survey had received one or more complaints ranging from increased traffic, noise, and other neighborhood disturbances – to code violations – to criminal activities such as assaults and burglaries. The majority of complaints involved facilities that serve youth, individuals with mental illness, and individuals with alcohol or drug addictions.

BACKGROUND

In 1977, the Lanterman Developmental Disabilities Act established the right of Californians with developmental and physical disabilities to receive treatment and live in “the least restrictive environment.” This means that, instead of being institutionalized, persons with special needs are entitled to live in normal residential surroundings where they can experience maximum independence and participate in community life while

receiving services and care. However, when residential care facilities began opening in neighborhoods, the event often triggered community fears. In response, local governments used land use regulations, especially zoning, to exercise control over where facilities located.

Over the years a number of legislative actions have affected this local response. Federal laws were enacted to promote the integration of individuals with disabilities into the community and prohibit discrimination against them. California enacted its own laws to prohibit discrimination in housing opportunities. In addition, several court cases clarified how federal and state laws interact with local government responsibilities.

More recently, the California Senate created a task force in 1997 to analyze and report on the issues relating to facility oversight and placement. And in 2000, California voters approved Proposition 36, the Substance Abuse and Crime Prevention Act. This act diverts thousands of nonviolent drug offenders from prison into community treatment programs, including residential treatment facilities.

LICENSED RESIDENTIAL CARE FACILITIES

There are over 15,000 licensed residential care facilities throughout the state. Four state agencies are responsible for licensing and overseeing the range of community-based residential facilities. Several types of facilities provide services to diverse populations. Residential care facilities are designed for individuals who require 24-hour supervision but who do not generally need medical care beyond routine health checks and medication monitoring. Residents generally share responsibilities, meals, and recreational activities; they attend schools, work, and use other services in the community.

The California Department of Social Services licenses group homes and small family homes for children and youth. Group Homes provide supervision and services in a structured environment primarily for children and youth in the foster care system. Small Family Homes provide care in a family setting for six or fewer children with physical and developmental disabilities. In addition, the department licenses facilities for adult and elderly residents who are not able to provide for their own daily needs, have AIDS or HIV, or are recovering from mental illness.

The Department of Alcohol and Drug Programs (DAPD) licenses Alcoholism or Drug Abuse Recovery or Treatment Facilities which provide a range of services in a supportive environment for adults who are addicted to alcohol or drugs. In addition, the Department of Corrections uses DAPD-licensed facilities to provide community-based drug treatment and recovery services to offenders under the Substance Abuse and Crime Prevention Act.

The Department of Health Services licenses community-based residential health facilities that provide skilled nursing care on a continuous and intermittent basis. These facilities serve adults and children who are severely developmentally or physically disabled, or are terminally ill.

FEDERAL REQUIREMENTS

Two federal laws impact local land use practices with respect to residential care facilities. The Fair Housing Act, as amended in 1988, promotes the integration of individuals with disabilities into the community. The broad protections of this act apply to residential care facilities because most residents have disabilities of some kind. In addition, group homes for children are protected under the Act's "familial status" provision. While the Act does not pre-empt local authority over zoning laws, it applies to local government entities and prohibits zoning or land use decisions or policies that exclude or otherwise discriminate against individuals with disabilities and other protected classes. The Act also requires that that local government make reasonable accommodations in policies and practices when accommodations are necessary to provide equal housing opportunities.

The 1990 federal Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. The subsequent Supreme Court "Olmstead" decision clarified that the ADA requires states to place individuals in community settings rather than institutions.

STATE REQUIREMENTS AND RESPONSIBILITIES

State laws also impact local land use practices with respect to residential care facilities. The California Fair Employment and Housing Act, like the federal FHA, prohibits housing discrimination based on disability and familial status. Other state laws protect residents with disabilities from discrimination in housing, and require that reasonable accommodation or modification of the premises be made for individuals with disabilities.

Residential care facilities must have a valid license to operate. The licensing process consists of a background check on the applicant and an on-site facility inspection to ensure that the facility meets health and safety standards. When all health and safety requirements are met, the licensing agency issues a license valid for two years. It conducts a comprehensive facility evaluation on an annual or bi-annual basis. Deficiencies are cited and monetary penalties can be assessed if the facility does not come into compliance with licensing laws and regulations. In addition, the state licensing agency investigates complaints and addresses the concerns of neighbors and other community members.

State law requires that residential care facilities that serve six or fewer residents be considered a residential property and be treated the same as a single-family home. This means that local government can impose on these facilities only those local use restrictions or fees that apply to other single-family residences.

State laws also address overconcentration of facilities. Except for residential facilities for the elderly and alcohol and drug facilities, new residential care facilities must be located at least 300 feet from another facility. Local governments can object to requests for placement closer than these limits.

LOCAL REQUIREMENTS AND RESPONSIBILITIES

Cities and counties have authority to adopt local land use and related regulations, such as zoning and permit requirements. Unlike small facilities, large residential care facilities (those with seven or more residents) are subject to local land use regulations and other restrictions such as special permit requirements (for example, having to obtain a local health department permit for central food service). Local governments may impose notification and public hearing requirements. However, the requirements must not apply exclusively to residential care facilities, and local governments must follow state-mandated procedural requirements such as holding hearings for zoning decisions.

Local government entities are required to make reasonable accommodations for programs serving individuals with disabilities. In some instances, accommodation may include exceptions to zoning ordinances for large facilities with seven or more residents.

Public safety is a major issue related to residential care facilities in the community. Service providers contend that the safety issue is often used as a smokescreen by neighbors and local governments for taking discriminatory actions that are based on fear. However, some neighbors have experienced problems that impact neighborhood safety (such as assaults, threats and other actions by facility residents as described in the League of California Cities survey). When public safety issues occur, federal and state laws do not pre-empt local authority or responsibility to deal with it. Local rules that are enacted and enforced to provide for the community's safety are not prohibited under federal or state law as long as they are applied to all community members and groups.

“Elected officials and neighbors have a duty to welcome group homes and other community residences, and to educate themselves and their colleagues about the need for such housing options, and the requirements of the FHA and the ADA, just as providers and residents have a duty to be good neighbors and to respond to breaches of that duty with corrective action.”

League of California Cities, 2002

PUBLIC POLICY ISSUES

The overarching public policy issue continues to be that of balancing the rights of individuals with special needs to live and participate in the community with the rights of the communities and individuals to protect the welfare of their families and neighborhoods. This issue sometimes plays out as a conflict between state (and federal) requirements to protect individuals from discrimination and local governments' right and responsibility to exercise control over its communities.

The League of California Cities and a coalition of advocates for community care residents suggest that three issues need to be addressed to reconcile residential care facilities and community

concerns. The first is a comprehensive plan to be used as a tool to address community needs while integrating residential care facilities into neighborhoods. The second is uniform standards and universal licensing of facilities for children and youth to protect residents and the community. The third issue is adequate and affordable housing for residential care facilities.

A related policy issue is an equitable distribution of facilities among communities. Neighborhoods with densely clustered facilities do not provide a “normal” community

environment for residents; they also change in character. Currently, however, care facilities are not evenly distributed among neighborhoods; they are overwhelmingly located in moderate- and low-income neighborhoods. Neighborhoods with several facilities want other communities to take their “fair share.”

The Senate Concurrent Resolution 27 Care Facilities Task Force analyzed the issues relating to facility oversight and siting. While task force members – local government representatives, service providers, and fair housing advocates – agreed on the need for reform, they disagreed on specific solutions such as limiting facilities. The task force concluded that a long-range approach that promoted quality residential care and a wider dispersal of residential care facilities would be most helpful in addressing the range of concerns. Subsequent legislation and state administrative actions addressed many of the specific recommendations; legislation that would have implemented other recommendations was vetoed, primarily for fiscal reasons.

Proposition 36, the Substance Abuse and Crime Prevention Act of 2000 (SACPA), brought new attention to the siting issue. Prior to its passage, local governments expressed concern about the proliferation of new recovery or treatment facilities that would be established to meet the demand created by the new act. In addition, fears were heightened because the residents would be convicted drug offenders.

There has been a 17% increase in residential treatment capacity as a result of SACPA. Much of this increase is from expanding facilities that are already established in neighborhoods. The Department of Alcohol and Drug Programs reports that cooperation between state and local government entities has been positive. However, some communities are experiencing conflicts between neighbors and facilities. For example, neighbors oppose expanding facilities, and advocates point to long waiting lists for treatment that result from this opposition.

COMPLICATED ISSUES, NO EASY RESOLUTIONS

In conclusion, there are no easy resolutions to the complicated ongoing issues around siting residential care facilities in the community. Some goals conflict, like local control and federal/state protections. In addition some “quality” issues are hard to legislate. For example, what are the best strategies for making marginal licensed facilities (those that generate the greatest number of concerns and complaints) into quality facilities and good neighbors? A related issue concerns both quality and capacity. Should marginal facilities be tolerated in areas where there are not enough quality facilities to meet the demand? Resolutions that address and balance the needs of neighbors, the needs of residents needing services, and the needs of local government are difficult to identify and achieve.

Introduction

ISSUE

During the past decade, local governments have expressed ongoing concerns about the impact of federal and state law on zoning and land use decisions affecting group homes and other residential care facilities. Facilities that are located in residential neighborhoods play an important role in integrating individuals into the mainstream community. Living in the community – in contrast to institutional living – allows individuals with special needs such as physical, developmental, and mental disabilities to live as normally as possible. However, when facilities locate in residential neighborhoods, some homeowners and neighbors become concerned that the facility will pose a safety or other negative impact, and angry with local government that their concerns are not being adequately addressed.

Balancing the rights of individuals with special needs to live in the community and the rights of neighbors to preserve the integrity of their neighborhood result in a longstanding conflict between federal, state, and local government requirements that impact land use regulation.¹ It is often unclear to community residents, and others, what requirements apply to facility siting,^{*} and how federal and state requirements affect local government's ability to address a local land use issue.

This report identifies the federal and state laws and regulations, and the local laws and ordinances, that impact the siting of group homes and other residential care facilities in neighborhoods and communities. It delineates the responsibilities and requirements of the three governmental levels, and identifies policy issues. (For purposes of this report, the term “residential care facilities” includes group homes.)

DIFFERENT POSITIONS

By and large, community members agree that persons with disabilities and other special needs deserve to live in a community setting like a residential care or treatment facility instead of being isolated and institutionalized. But, it is a common reaction to feel uneasy, concerned, or fearful when a facility moves in next door or down the street. A recent news article headline sums up a frequent neighborhood position: “*Treatment centers are great, but put this one elsewhere.*”² (See Appendix A for some newspaper accounts of recent conflicts between neighbors and residential care facilities.)

Advocates and facility licensees point out that care and treatment facilities have to be put in *someone's* neighborhood. They argue that “nimbyism” is based on fear that is largely unfounded. They point to existing facilities that have become accepted and valued neighbors,

NIMBY is an acronym for “Not in My Backyard,” a phrase that is used in this context to describe resistance from individuals and groups to having residential care facilities located in their neighborhoods.

^{*} Siting refers to the process of determining a location and starting operation of a residential facility.

and studies that conclude that residential care facilities do not have a negative affect on neighborhoods in terms of safety and property values.³ In addition, advocates find that community members are often uninformed about the population that will be served and why they are there. This leads to misconceptions about the residents and the risks posed by the facility.

However, communities do experience problems with facilities. The League of California Cities surveyed over 450 cities in 1999 to identify the number and types of complaints they had received about residential care facilities. Seventy-two cities responded; they identified one or more complaints ranging from increased traffic, noise, and other neighborhood disturbances to code violations. Some cities also reported receiving complaints about criminal activities such as assaults and burglaries. Facilities that serve youth, individuals with mental illness, and individuals with alcohol or drug addictions were identified as the source of the majority of complaints.⁴

BACKGROUND

Prior to the 1970s, persons with physical, developmental, and mental disabilities who were not cared for by family members were cared for in large institutions like state hospitals and training centers. During the 1970s and 1980s, California and other states recognized that these institutions had become “warehouses” that segregated children and adults with special needs from their communities. There were horror stories about the treatment of many residents. In addition, a large number of individuals did not need the extremely costly level of care provided in an institution. Instead, they could more effectively learn life skills and function, with services and support, in a family-like environment within the community.

In 1977, the Lanterman Developmental Disabilities Services Act established the right of individuals with developmental disabilities to receive treatment and live in “the least restrictive environment.”⁵ This means that persons with special needs are entitled to live in normal residential surroundings where they can experience maximum independence and participate in community life while receiving services and care. The Act reflected the general agreement that persons with special needs should be a part of the community.

However, the transition from institutional to community care was not a smooth one. Siting new facilities in neighborhoods triggered community fears about living close to a home with several individuals who had disabilities. It raised concerns about safety, crime, and impact on the neighborhood character and property values. In response to community concerns, many local governments used land use regulations, especially zoning, to exercise control over where facilities located. Advocates charged that local governments were reacting to community NIMBYism and supporting neighbors at the expense of their citizens with disabilities.

Beginning in the late 1980s, Congress amended the federal Fair Housing Act to promote the integration of individuals with disabilities into the community. It also enacted the American with Disabilities Act to prohibit discrimination against individuals with disabilities. In California, the legislature enacted the Fair Housing and Employment Act

to prohibit discrimination in housing opportunities. These federal and state laws impact local land use decisions and requirements.

There have been several court cases and legislative efforts over the years to clarify federal and state law. However, questions and different interpretations by resident and neighborhood advocates continue. In 1997, The California Senate passed a concurrent resolution (SCR 27) in response to an increased number of complaints about the proliferation of group homes and residential facilities. SCR 27 established a task force to analyze and report on the issues relating to facility oversight and siting.⁶

In 2000, California voters approved Proposition 36, the Substance Abuse and Crime Prevention Act (SACPA). Effective July 2001, this act significantly changed the state's criminal justice and drug treatment systems by diverting thousands of nonviolent drug offenders from prison into community treatment, including residential treatment facilities. Prior to its passage, concerns about the impact of more facilities on neighborhoods were raised by local government organizations.

Residential Care Facilities Described

Four state agencies license and oversee more than 15,000 residential care facilities throughout the state. These include several types of facilities that provide services to diverse populations. The facilities vary in size and capacity: from one to more than 100 residents. Small facilities are generally defined as six or fewer beds; large facilities have seven or more beds. In some small facilities, the licensee provides care in his or her own home; in most facilities, paid staff provide care on a live-in or shift basis.

Residential care facilities are designed for individuals who require 24-hour supervision but who do not generally need medical care beyond routine health checks and medication monitoring. Some people live in residential facilities because they require this level of support, others because they do not have the resources to allow them to live independently (such as funds for personal care attendants.) These facilities provide residents the opportunity to be a part of the community and participate in community life. Residents share responsibilities, meals, and recreational activities; they attend schools, work, and use other services in the community. (See table on page 11 for numbers and capacity.)

LICENSING AGENCIES AND TYPES OF FACILITIES

Department of Social Services

The California Department of Social Services (DSS) Community Care Licensing Division licenses a range of community-based residential facilities for adults and children.

Group Homes are both small and large facilities that provide supervision and services in a structured environment primarily for children and youth in the foster care system.⁷ Children who have been removed from home due to parental neglect or abuse are placed in group homes when they need more intensive treatment services than are available in a foster family home. In addition, lower risk juvenile offenders who can benefit from treatment receive probation and are placed in group homes as a low-end sentencing option or an alternative to juvenile detention facilities.

Group homes also serve children who are not in the foster care system. Some children in group homes have serious developmental or emotional disabilities. Others are participating in alcohol and drug treatment or other programs. Children with less severe physical and developmental disabilities are placed in **Small Family Homes**.

The DSS also licenses facilities (commonly known as “board and care homes”) for adult residents who are not able to provide for their own daily needs. **Residential Care Facilities for the Elderly** make up the greatest number of community care homes, followed by **Adult Residential Facilities**. In addition,

“... They [children with disabilities] learn how to live as a family. The group home fosters the very same family values our most exclusive residential zoning districts advance.”

American Planning Association, 1997

Social Rehabilitation Facilities provide care for adults recovering from mental illness, and *Residential Care Facilities for the Chronically Ill* serve adults who have Acquired Immune Deficiency Syndrome (AIDS) or the Human Immunodeficiency Virus (HIV).⁸

SOBER LIVING HOMES

Sober Living Homes are alcohol- and drug-free residences that allow residents to live in a supportive environment.

Although residents generally receive services from a licensed recovery or treatment program, Sober Living Homes are cooperative living arrangements, not residential care facilities. They are not required (or eligible) to be licensed, and are not subject to Department of Alcohol and Drug Program oversight and regulatory requirements.

Residents of Sober Living Homes must comply with state landlord/tenant and eviction laws and all local ordinances that apply to other similar residences.

DAPD Fact Sheet

Department of Alcohol and Drug Programs

The state Department of Alcohol and Drug Programs (DAPD) Licensing and Certification Branch licenses *Alcoholism or Drug Abuse Recovery or Treatment Facilities*. These facilities provide recovery or treatment services in a supportive environment for adults who are addicted to alcohol or drugs. Services include detoxification, group and individual sessions, education, and recovery planning.⁹

The state Department of Corrections uses DAPD-licensed facilities to provide community-based drug treatment and recovery services to offenders under the SACPA. (The Department of Corrections does not license residential facilities.) The offender population in community facilities includes inmate mothers and their young children, and homeless parolees who need multiple services.

Department of Health Services

The State Department of Health Services (DHS) Licensing and Certification Division licenses four types of community-based residential health facilities. These facilities provide skilled nursing care on a continuous and/or intermittent basis.

Congregate Living Health Facilities are small facilities that provide care to individuals who are severely physically or developmentally disabled, or terminally ill. *Intermediate Care Facilities for the Developmentally Disabled* provide personal care, training, and supportive services to adults and children in large facilities; *Intermediate Care Facilities for the Developmentally Disabled - Habilitative* serve the same population in smaller facilities. *Intermediate Care Facilities for the Developmentally Disabled - Nursing* serve medically fragile adults and children in both small and large facilities. Medically fragile individuals are medically stable but have conditions (such as a feeding tube) that require special care, supplies, or equipment.¹⁰

GROUP HOMES & RESIDENTIAL CARE FACILITIES STATEWIDE

Type	Licensing Entity	Total Number	Total Number <6	Total Capacity
Group Home	DSS	1,660	1,353	16,602
Small Family Homes	DSS	386	386	1,756
Adult Residential Facility	DSS	4,761	4,052	39,419
Social Rehabilitation Facility	DSS	71	4	920
Residential Care Facility/Elderly	DSS	6,227	4,703	148,530
Residential Care Facility/Chronically Ill	DSS	28	11	406
Alcohol & Drug Abuse Recovery/Treatment Facility	DAPD	803	325	19,636
Congregate Living Health Facility	DHS	9	9	705
Intermediate Care Facility/DD	DHS	13	Not Available	1,019
Intermediate Care Facility/DD- Habilitative	DHS	780	Not Available	4,854
Intermediate Care Facility/ DD- Nursing	DHS	307	Not Available	1,877
TOTAL		15,045	10,843	235,724

Sources: DSS (9/15/02), DAPD (9/30/02); and DHS (8/26/02)

Federal Requirements

FAIR HOUSING ACT

The broad protections of the federal Fair Housing Act (FHA), as amended in 1988, apply to nearly every type of housing, including residential care facilities. The Act prohibits discrimination on the basis of specified characteristics in sale, rental, zoning, land use restriction, and other rules.¹¹

The Act does not pre-empt local authority over zoning laws. However, it applies to local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected classes, such as individuals with disabilities (or people associated with such individuals, like families).

Residential care facilities are generally covered under the FHA as most residents have disabilities of some kind. In addition, court cases have found that group homes for children are protected under the Act's "familial status" provision that addresses discrimination against children under age 18 in the household.

There has been a significant amount of litigation to interpret and clarify FHA protections. In addition, the United States Department of Justice and the Department of Housing and Urban Development issued a joint statement in 1999 on the impact of the FHA on group homes and local land use.¹² The Joint Statement clarifies that the FHA makes it unlawful to:

- Use land use policies or take action that treats groups of individuals with disabilities less favorably than other groups.
- Take action against, or deny, a permit for a home because of the disability of individuals who live or would live there.
- Refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodation may be necessary to afford individuals or groups with disabilities an equal opportunity to "use and enjoy housing."

THE FAIR HOUSING ACT

The Fair Housing Act (FHA) is included in Title VIII of the Civil Rights Act, enacted by Congress in 1968. The FHA addresses state and federal housing barriers and segregation by prohibiting housing discrimination based on race, color, religion, sex and national origin.

In 1988, Congress passed the Fair Housing Amendments Act (Public Law 100-430) to strengthen its enforcement provisions. It added "handicap" (disability) and "familial status" to the list of protected classes under the FHA.

The definition of disability under the Act includes mental illness, developmental disabilities, physical impairments, persons with AIDS or HIV, and persons recovering from addiction who are not currently using illegal drugs.

The FHA does not cover individuals who are currently using, or have been convicted for the manufacture and distribution of, illegal drugs. In addition, the FHA protections do not apply to individuals with disabilities if there is recent, credible evidence that his or her conduct "would constitute a direct threat to the health or safety of other individuals ... [or will cause] substantial physical damage to the property of others."

Reasonable Accommodation

The FHA requires that local governments make reasonable accommodations in “rules, policies, practices, or services,” when accommodations are necessary to provide equal housing opportunities. The reasonable accommodations requirement applies to zoning ordinances and other land use regulations and practices.

The accommodation should be the least drastic measure necessary to achieve its purpose. For example, a care facility that serves children or adults with physical disabilities could request that ramps, wide doorways, and other building renovations be allowed to accommodate residents in wheelchairs.

A reasonable accommodation is determined on a case-by-case basis. Local governments can deny a request for reasonable accommodation if it would “fundamentally alter the nature of the ordinance, neighborhood, or local zoning procedures; undermine the legitimate purposes and effects of existing zoning regulations; or impose undue financial and administrative burdens on the municipality.”¹³

THE AMERICANS WITH DISABILITIES ACT

The federal Americans with Disabilities Act prohibits discrimination against qualified individuals with disabilities in all programs, activities, and services of public entities. It guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications.

An individual with a disability is defined as a person who has a physical or mental impairment that substantially limits one or more major life activities, or a person who is perceived by others as having such an impairment.

AMERICANS WITH DISABILITIES ACT

Title II of the 1990 Americans with Disabilities Act (ADA) covers all state and local government activities, regardless of the government entity’s size. It also applies whether or not the local government is receiving federal funds.¹⁴

Olmstead Decision

In 1999, the United States Supreme Court issued a decision on the impact of the ADA on community care. The “Olmstead” decision clarified that the ADA requires states to place persons with disabilities in community settings rather than institutions when three conditions are met: 1) treatment professionals have determined that community placement is appropriate; 2) the individual does not object to community placement; and 3) the placement can be reasonably accommodated, taking into account the resources available to the state and the need of others with disabilities.¹⁵

State Requirements and Responsibilities

FAIR EMPLOYMENT AND HOUSING ACT AND OTHER LAWS

Like the FHA, the California Fair Employment and Housing Act (FEHA) prohibits housing discrimination based on disability, familial status, and other protected factors. Under FEHA, discriminatory practices include treating individuals or groups in protected classes differently than others, or imposing different requirements. In addition, state law under the Unruh Civil Rights Act, the Lanterman Developmental Disabilities Services Act, and the Lanterman-Petris-Short Act protects individuals with mental, developmental, or physical disabilities from discrimination in the provision of housing. Disability rights sections in the Civil Code prohibit discrimination and require reasonable accommodation or modification of the building to enable residents with disabilities to have equal access and “full enjoyment of the premises.”¹⁶

LAND USE AND ZONING

Small Facilities Treated Like Single-Family Homes

State law requires that residential care facilities that serve six or fewer residents be considered a residential property. (“Six or fewer persons” generally refers to the number of residents and does not include facility operators and staff.) These facilities must be treated the same as a single-family home. As a result, small residential care facilities are exempt from all local land use and zoning restrictions, taxes, or fees that do not apply to single-family homes. In addition, small facilities are not required to notify local authorities or neighbors of their intent to move into the neighborhood or of their presence.¹⁷ (See Appendix C for relevant statutes.)

Overconcentration of Facilities

State law requires that new health and community care facilities – group homes, small family homes, adult residential care, and social rehabilitation facilities – be sited at least 300 feet from another residential health or community care facility. Congregate living health facilities are to be sited at least 1,000 feet from any other facility. Residential care facilities for the elderly and alcoholism or drug abuse recovery or treatment facilities are excluded from overconcentration provisions. (See Appendix C for relevant statutes.)

Local government can request that an application for licensure be denied on the basis of overconcentration. Prior to approving a license, the licensing agency must notify them about the new facility’s location to allow them the opportunity to object or dispute the overconcentration determination. (The Department of Social Services, for example, sends a form to the local government entity that states whether the proposed facility would result in overconcentration. If the local government entity does not object, the license is granted.)

LICENSING AND OVERSIGHT¹⁸

LICENSING AGENCY RESPONSIBILITIES

- Approve/deny license applications
- Enforce licensing laws and regulations
- Maintain public files on licensed facilities
- Investigate complaints
- Revoke licenses and impose fines when necessary

Residential care facilities are required by state law to have a valid license to operate. State licensing agencies are responsible for overseeing residential care facilities and ensuring that they are in compliance with health and safety laws and regulations. (Licensing does not regulate facilities' treatment programs.) In addition, the licensing agency provides public information about specific facilities, such as licensing status, complaints lodged against them, and pending investigations. (See Appendix B for relevant statutes and regulations.)

The Licensing Process

The licensing process is essentially the same among state licensing agencies. An orientation for potential applicants covers licensing requirements and the licensee's responsibilities. It includes issues such as determining a location, informing neighbors, and addressing neighborhood expectations and concerns.

The formal approval process begins when the licensing agency receives a completed application and fee payment. (With some exceptions, there is a licensing fee for residential care facilities.) The licensing agency completes a background check on the applicant and a facility inspection. It determines the facility capacity based on space and any fire clearance conditions. When all requirements are met, the licensing agency issues a license valid for two years, unless it is extended. (Group homes are initially issued a provisional license; after 12 months they receive a permanent license if they have complied with licensing laws and regulations.)

The licensing agency conducts a comprehensive evaluation to ensure that all residential facilities remain in compliance with laws and regulations. (The Department of Social Services conducts annual evaluation visits; the Department of Alcohol and Drug Programs visits at least once every two years.) Prior to the visit, the licensing entity reviews the facility file. It may contact local law enforcement and neighbors if there has been a complaint, or if the facility has a history of problems. In addition, the licensing agency follows up on neighborhood issues that have surfaced.

The licensing agency inspects the physical plant; reviews administrative, personnel, and resident files; and interviews staff and residents. It also reviews the staffing ratios and staff qualifications, and how the facility addresses neighborhood complaints. When deficiencies are found, the licensing agency gives a written notice to the licensee and verifies in a follow-up visit that the corrections were made. If the deficiencies are not corrected, the licensing agency issues civil penalties; it can ultimately revoke the facility's license if the licensee does not comply with requirements.

Staffing and Facility Maintenance

Most complaints about residential facilities stem from lack of supervision. Inadequate staffing and supervision of facility residents can directly affect the safety of both the residents and the neighborhood. In addition, property maintenance issues create friction. A run-down facility in need of repair may create safety concerns. In addition, its condition reflects not only on the facility but on the neighborhood's appearance.

Licensing regulations require that at least one qualified staff person be with the residents and/or on the premises at all times. The minimum number of direct care staff required to be present is based on the number of residents. All staff must be at least 18 years of age, free of communicable disease, and have a medical clearance and first aid certification. In addition, staff must undergo a criminal record clearance (and a child abuse check to work in a small family home or group home). Staff must also receive appropriate training.

In addition, licensing regulations require that residential care facilities be "clean, safe, sanitary and in good repair at all times for the safety and well-being of residents, employees, and visitors." For example, licensees must keep doorways, porches and walkways free of obstruction.

Resident Information and Confidentiality

Federal regulations and state laws require that facility licensee and staff respect and protect the residents' right to privacy and confidentiality. In addition, access to information about children in group homes is restricted to staff, the licensing agency, and the child's authorized representative unless a juvenile court judge issues a court order allowing access to other designated individuals.¹⁹

The Complaint Process

The state licensing agency is responsible for addressing the complaints and concerns of neighbors and other community members. The complainant's identity can be kept confidential. If requested, the licensing agency will notify the complainant of the outcome after investigating the complaint.

Neighborhood Complaint Procedures

*"Group homes successfully serving children with the same needs often fare very differently in their relationships with neighbors and the community in general. Sometimes this is because of local circumstances beyond the control of the licensee. More often, however, this is because of differences in approach to local communication. Public relations are important!"*²⁰

State law requires that group homes with six or fewer residents have written neighborhood complaint procedures that include a method of immediate response to complaints and incidents. The group home's licensee (or designated person)

GOOD NEIGHBOR GUIDELINES

The Department of Social Services and the Department of Alcohol and Drug Programs have each published "good neighbor" guidelines for group homes and alcohol and drug treatment facilities. These resource guides address neighborhood concerns about safety, client and staff conduct, and poor maintenance. They include strategies for establishing and maintaining positive relationships with neighbors and the community.

must investigate and respond to the person making the complaint or reporting the incident. In addition, the licensee must be available at a specific time each week to meet residents and learn of neighborhood problems.²¹

Local Requirements and Responsibilities

POWERS AND LIMITATIONS

The California Constitution gives local governments authority to enact and implement local planning and land use regulations to protect the public health, safety, and welfare. They have the right to adopt and enforce planning and land use requirements with one caveat: local ordinances do not conflict with federal and state laws. As a result, federal and state laws that prohibit discrimination related to housing (such as the FHA, ADA, and FEHA) impact the authority of local governments in this area.

ZONING AND OTHER RESTRICTIONS

Each local government entity is required to adopt a general plan that includes a land use element. The primary means of implementing general plan goals is through zoning ordinances. Zoning is based on the concept of separating land uses according to their impact.²² Local ordinances identify use zones (such as residential and commercial), the land uses permitted on a given site, and the standards for each zone's permitted use. Local governments also issue conditional (special) use permits to allow facilities that are considered essential or desirable to locate in a zoning district restricted to different uses.

Differences Between Small and Large Facilities

As stated in the previous section, small facilities (those that house six or fewer residents) are considered to be a residential use of property. They must be treated the same as single-family residences.

In contrast, residential care facilities with seven or more residents are not considered residential property. These large facilities are subject to local land use, zoning ordinances, and other restrictions such as special permit requirements (for example, having to obtain a local health department permit for central food service).

Reasonable Accommodation

Local government entities are required to make reasonable accommodations for programs serving individuals with disabilities. In some instances, accommodation may include exceptions to zoning or other ordinances for care facilities. For example, in some communities, alcohol and drug facilities located in residential neighborhoods have received approval from local government to increase the number of residents in existing facilities in order to reasonably accommodate the need to serve additional individuals.

WHERE TO GO WITH COMPLAINTS/CONCERNS

Small Facilities (six or fewer) are treated by state law as residential properties; they have the same restrictions as other single family residences.

The state licensing agency is responsible for addressing concerns and complaints about the facility, staff, and residents.

Large Facilities (seven or more) are subject to local requirements and restrictions. These generally include advance notice and a public hearing process.

The county or city is responsible for addressing concerns and complaints about local requirements and processes.

The state licensing agency is responsible for addressing concerns and complaints about the facility, staff, and residents.

Public Notification and Hearings

Like other individual residential properties, small facilities are not required to provide notice that they are moving into a neighborhood or community. In addition, their decision about where to locate the facility is not subject to a public hearing process.

In contrast, local governments may impose notification and public hearing requirements on large facilities for seven or more residents. However, local governments may not establish requirements that apply exclusively to residential care facilities as this would be a violation of the FHA.²³ In addition, local governments must follow state-mandated procedural requirements such as holding hearings for zoning decisions.

PUBLIC SAFETY

Safe neighborhoods are a critical concern to local governments, neighbors and other community members. Facility licensees, staff, and residents share this concern.

Facility licensees, advocates, and service providers contend that the safety issue is often used as a smokescreen by neighbors and local governments for taking actions that are discriminatory and based on reasons other than safety. In their view, the common perception that care facility residents will cause problems is generally based on fear, not facts. However, some neighbors and local governments have experienced problems that impact neighborhood safety (such as assaults, threats, and other actions by facility residents as described in the League of California Cities survey).

Federal and state laws do not pre-empt local authority or responsibility to deal with public safety issues when they occur. Local rules that are enacted and enforced to provide for the community's safety are not prohibited under federal or state law as long as they are applied to all community members and groups. In addition, persons with or without disabilities who present a direct threat to the persons or property of others are not protected under anti-discrimination laws.²⁴

Public Policy Issues

STATE AND LOCAL RESPONSIBILITIES

The overarching public policy issue continues to be that of balancing the rights of individuals with special needs to live and participate in the community with the rights of the individuals to protect the welfare of their families and their neighborhoods.

This issue often plays out as a conflict between state (and federal) requirements to protect individuals from discrimination and local governments' right and responsibility to exercise control over its communities. At other times, the conflict remains largely at the local level. While ensuring that all citizens are protected from discrimination, local governments must be sensitive to the needs of their citizens who reside in care facilities and be responsive to the concerns of individuals who live in and wish to preserve the character of their neighborhoods and communities.

Reconciling Residential Care Facilities and Community Concerns

The National League of Cities and the Coalition to Preserve the Fair Housing Act (a coalition of numerous advocacy groups) have been working together on balancing rights and concerns. In 1999, they published a joint document that describes their differing positions and areas of consensus. They identify three issues that need to be addressed in reaching a consensus on siting residential facilities for individuals with disabilities and facilities for children. These issues also pertain to other community residential care facilities.²⁵

Comprehensive Plan to Balance Needs

The first issue is the need for a state or local comprehensive plan that is developed in consultation with community stakeholders and used as a tool for balancing needs and providing for the welfare of all citizens on a long-range basis. The plan will provide a guideline for establishing ordinances that take into account community needs while integrating residential care facilities into neighborhoods throughout the community.

STATE OF CALIFORNIA POLICY ON RESIDENTIAL CARE FACILITIES

“The Legislature hereby declares that it is the policy of this state that each county and city shall permit and encourage the development of sufficient numbers and types of residential care facilities as are commensurate with local need.”
(Welfare and Institutions Code)

Similar intent language exists for facilities serving persons with mental illness, persons addicted to alcohol or drugs, persons with life-threatening illness, persons with developmental disabilities and the elderly.

LEAGUE OF CALIFORNIA CITIES POLICY ON RESIDENTIAL CARE FACILITIES

“ The League supports permitting cities to exercise review and land use regulation of group home facilities and residential care facilities in residential neighborhoods including the application of zoning, building and safety standards. State and county licensing agencies should be required to confer with the city's planning agency in determining whether to grant a license to a community care facility. The League recognizes that better review and regulation of residential care facilities will protect both the community surrounding a facility and the residents within a facility from a poorly managed facility or the absence of state oversight.”

Uniform Standards and Universal Licensing

The second issue is the need for uniform standards and universal licensing of facilities for children and youth. State licensing agencies must provide adequate oversight to ensure that licensing requirements are strictly enforced to provide appropriate supervision and support of residents and protect the surrounding community.

(Similarly, the need for mandated licensure for Sober Living Homes, or an alternative means of oversight, has been an issue for several years. The need for oversight is based on the same premise: consistent standards would protect and benefit both the residents and the community. Cities responding to the League of California Cities survey reported that Sober Living Homes were responsible for a large number of complaints. To date, however, legislative efforts to regulate them have failed.)

Adequate and Affordable Housing

The third issue is the need for adequate and affordable housing. Housing is necessary for children and adults with special needs to live in the community. The lack of adequate housing is a key problem facing individuals who need to live in residential care. Responsibility for addressing the housing problem cannot be limited to a specific community or jurisdiction. Instead, broad regional approaches – using collaborative planning processes that have adequate resources – must be implemented.

Fair Share Among Neighborhoods

A related policy issue is the equitable distribution of facilities among communities. In order for children and individuals with special needs to live as normal a life as possible, facilities should be located in a residential neighborhood. In addition, facility residents should be able to remain in their own communities, close to their families.

To accomplish both goals, facilities should be scattered throughout residential districts rather than be concentrated in any single neighborhood or community. Neighborhood associations and many advocates for individuals with special needs agree that a neighborhood composed primarily of residential care facilities would adversely impact the neighborhood and all its residents, including facility residents. Facilities that are so densely clustered – overconcentrated – as to recreate an institutional environment defeat the purpose of community-based care.²⁶

Currently, residential care facilities are not evenly distributed among neighborhoods (or counties). Facilities are overwhelmingly located in moderate- and low-income neighborhoods. Many are concentrated in rural areas and counties. As a result, many of these communities feel they are being unfairly targeted. They charge that other neighborhoods and communities are successfully avoiding their “fair share” of residential care facilities and call for a more even distribution.

Housing costs are generally identified as the major factor in location decisions. Facilities also cite accessibility to services for the target population as a reason for locating in

specific areas. However, because there is generally no documentation of need for residential care facilities in specific communities, it is not known whether clusters of facilities represent over-concentration or instead reflect an appropriate response to the needs within that community.²⁷

CARE FACILITIES TASK FORCE²⁸

In 1998, the SCR 27 Care Facilities Task Force – comprised of local government representatives, social service providers, and fair housing advocates – analyzed the issues relating to facility oversight and siting to recommend needed changes in state law. While members agreed on the need for reform, they disagreed on what direction such reform should take.

Local officials supported legislative action that would allow greater local involvement (such as increasing the required distance between facilities, placing moratoriums on new facilities, and other measures that would limit facility expansions and prevent new facilities in communities that already had several facilities). In contrast, service providers who had experienced neighborhood resistance and proponents of fair housing opposed such action and stressed the importance of retaining existing state and federal fair housing protections and equal opportunities for facility residents. Fair housing advocates further maintained that existing laws allow persons with disabilities the right to choose where to live regardless of the number of persons with disabilities in a particular community, and that spacing and density restrictions violate these laws.

The task force concluded that there were no quick solutions to the complicated issues and concerns. Instead, they presented long-range recommendations that would promote quality residential care and a wider dispersal of residential care facilities. The task force recommended establishing pilot programs to try out new approaches, and implementing statewide mechanisms to enhance quality of services while preserving neighborhoods. It recognized that there would be costs associated with implementing these recommendations.

Legislation to implement the Task Force recommendations was contained in several bills. Some were vetoed or died in committee; however, over half of the recommendations were implemented through legislation or were administratively addressed. For example, legislation created a pilot project to encourage group homes to work with neighborhood residents to resolve issues. The pilot sites experienced a significant reduction in complaints. This reduction was attributed to ongoing communication and coordination among the licensing agency, local law enforcement, and other local government entities. Based on this experience, in 1999 the Department of Social Services directed all licensing offices to establish local task forces if requested by the community.²⁹

A 1999 group home reform bill included a number of facility management and operations improvements for group homes. It required a neighbor complaint process to respond to neighbors' concerns, a provisional license process to more easily revoke the license if needed, financial audits, community advisory boards, staff training, and an expedited fingerprint process. In addition, "Good Neighbor" guidebooks were developed and

distributed to group homes and alcohol and drug facilities. (See Appendix D for a description of bills related to facility siting.)

PROPOSITION 36 – SUBSTANCE ABUSE AND CRIME PREVENTION ACT

The Substance Abuse and Crime Prevention Act (SACPA) brought new attention to the siting issue. Effective January 2001, non-violent adult offenders charged with simple drug possession or drug use offenses complete treatment in the community instead of a jail or prison term.³⁰ Prior to its passage, local governments expressed concern about the proliferation of new recovery or treatment facilities that would be established to meet the demand created by the new act. In addition, fears were heightened because the residents would be convicted drug offenders.

The Department of Alcohol and Drug Abuse Prevention reports that the treatment capacity across the state has expanded significantly as a result of SACPA (including a 17% increase in licensed residential programs).³¹ Much of the increase in community treatment/recovery beds is from expanding facilities that are already established in neighborhoods, not from new facilities. And, the “new” drug offender population generally consists of the same persons who have previously been in established facilities – they are just entering treatment programs via a new mechanism.

The Department reports that cooperation among state and local government entities in implementing SACPA has been positive. However, some communities are experiencing conflicts between neighbors and facilities. For example, some neighbors oppose expanding facilities, and advocates point to long waiting lists for treatment that result from this opposition.³²

COMPLICATED ISSUES, NO EASY RESOLUTIONS

In conclusion, there are no easy resolutions to the complicated ongoing issues around siting residential care facilities in the community. Some goals conflict, like local control and federal/state protections. In addition some “quality” issues are hard to legislate. For example, what are the best strategies for making marginal licensed facilities (those that generate the greatest number of concerns and complaints) into quality facilities and good neighbors? A related issue concerns both quality and capacity. Should marginal facilities be tolerated in areas where there are not enough quality facilities to meet the demand? Resolutions that address and balance the needs of neighbors, the needs of residents needing services, and the needs of local government are difficult to identify and achieve.

Appendix A – News Articles on Residential Care Facilities in Neighborhoods

[See next page]

GROUP HOMES: BIG NEED, BIG FEARS

By MAREVA BROWN, Bee Staff Writer

Teen Sex offenders need help—where to house them can be toughest part.

Inside a dark-brown, four-bedroom house in the Sacramento region live six young teenagers who are learning not to be the rapists and child molesters of tomorrow.

The boys, most of them 13 and 14 years old and victims of molestation themselves, have been placed in this group home because, despite their sex offenses, probation officers believe they will benefit from intensive therapy and do not pose a significant threat to society.

Staff members take precautions: Youths are bused to a private school so they won't mix with other children. They don't go outside without an adult escort, and they aren't allowed to play basketball in the street like the other neighborhood kids.

But the appearance of this and five other similar group homes on quiet residential streets in a neighborhood near Sacramento over the past decade have been enough to prompt some neighbors to sell their homes.

Last month, similar unrest broke out in Elk Grove, where a newly opened group home for youthful sex offenders is being opposed in a highly publicized battle. The city has sued the state, saying it wasn't notified about the home, and wants the state to remove it.

However, behavioral experts say group homes are the best - and perhaps last - chance to stop young sexual offenders from developing into hard-core predators.

"It's a horrible conflict," said Marti Fredericks, executive director of the agency that runs the Sacramento-area homes, but not the one in Elk Grove. She agreed to discuss her program on condition that its name and location not be revealed because she is prohibited by law from identifying them.

"We want to feel safe in our neighborhoods. Nobody, including me, would want to have a group home next door," Fredericks said. "But we have to be in somebody's neighborhood. So you try to make the best choice you can, where you'll have the least amount of impact."

By law, group homes are designed to provide youths with the most homelike setting possible with therapists and mentors to guide them to productive lives. For years, California law has been based on the philosophy that troubled children should receive help, not punishment, because children are more likely to be rehabilitated than adults. When group homes first became licensed about 20 years ago, they were modeled on that line of thought.

"The notion is that these kids are not developmentally finished," said Carroll Schroeder, executive director of the California Alliance of Child and Family Services, a lobbying group for nonprofit agencies that aid troubled families. "They're still growing up. And adolescents are always trying on new ways of acting, new friends. So there really is a belief that these kids can change. Nothing has to be a lifelong pattern."

Experts say that is especially true when dealing with young sex offenders.

Most teens have not yet cemented their sexual habits, and at least one psychologist who treats these sex offenders said that allows a critical window of opportunity for therapy.

"The earlier you get them, the more malleable the sexual behaviors are," said Baljit Atwal, who evaluates young offenders and makes recommendations for care to Sacramento County's juvenile court judges. "With an adult, their personality is developed, and it's very, very difficult to change them at that point. Especially their sexual attractions." [continued on next page]

Atwal said she looks at a variety of criteria when deciding whether to recommend that a child go to a group home, the California Youth Authority, or elsewhere. These include the level of force or aggression used to subdue the victim, the level of criminal sophistication, the offender's willingness to admit the crime and whether the offender was himself a victim of molestation.

Typical group-home candidates are first-time offenders who have not been physically aggressive with their victims and have chosen members of their own family to victimize. In most cases, Atwal has found, young offenders are repeating abuses that happened to them.

"Would we get someone (bound for a group home) who stalks their victims and whisks them away from their local park or school? Probably not," said Steve Clanton, who oversees the placement unit, which includes group homes, for Sacramento County's Probation Department.

"Any type of real predatory, violent sexual act would get (a youth sent to) the California Youth Authority."

Of the group-home youths she treats, Frederick said, boys often select victims who mirror the appearance and circumstances of their own molestation.

"He's kind of gotten frozen at that age where he was molested," Fredericks said. "And so we are really talking through their own victim issues, so they can understand why they molest others."

Across California, 11,500 children - nearly 12 percent of the state's foster care population - live in nearly 1,700 group homes. Sacramento County has 98 group homes dedicated to treating a variety of adolescent problems. Each is specially designed to teach children to variously manage their anger, stop drinking or doing drugs, or stop molesting young children.

Although the Elk Grove home, and the homes that Fredericks runs, cater to juvenile delinquents, just 6,800 of the state's 97,000 foster children have faced criminal charges. The rest have been removed from their families to protect them after allegations that they were being abused or neglected.

But many foster children also have been caught acting in sexually inappropriate ways, including many who hadn't initially disclosed that they were victims of molestation. That's why officials say there will continue to be more group homes dedicated to treating them.

State officials don't categorize group homes by treatment type, so it is unclear how many of the state's group homes provide sex-offender therapy.

In Sacramento County, however, probation officials estimate that 15 percent to 20 percent of the group homes do treat sex offenders.

Nonetheless, the demand for care far outpaces the number of available beds.

In Fredericks' program, for example, 20 youths were accepted last year into six group homes for a program that lasts about two years.

An additional 48 youths were approved for admission and put on a waiting list but were never admitted. Sixty-three more were refused because their crimes were too violent or they had too many mental health problems to do well in such care.

Schroeder, of the Alliance of Child and Family Services, said Californians can't afford not to treat them.

"If we just lock them away, you might not have to worry about them for a year or two," he said. "But terrible things are going to happen to that kid when you lock him away. And then you've got a real problem - for a long time."

The Sacramento Bee
November 11, 2002

PLANNED HOME FOR DISABLED DRAWS OPPOSITION

By JENNIFER VIGIL, Staff Writer

The families want a specially equipped home for their disabled loved ones. The residents of Fourth Street in National City want the building to fit into their neighborhood of small ranch homes.

Both sides have clashed in recent weeks as the Cheneweth Foundation, owner of the site proposed for the group home, has wended its way through the city's application process.

The city's Planning Commission, despite reservations, approved the project this week, a decision that is final unless opponents appeal the matter to the City Council. The council, however, will discuss on Tuesday whether a public hearing is warranted to review the decision. The foundation, which aims to help the disabled become better integrated into the community, hopes to build a 3,800-square-foot facility that will be home to six people, with a small staff to aid them.

To achieve that goal, the foundation purchased two lots on Fourth, demolished the existing homes and prepared plans for one large structure equipped with hundreds of thousand of dollars worth of upgrades. Those are needed to allow disabled people to use the home.

Alarmed residents, however, question why a large facility should be allowed to locate near single-family homes and say city zoning laws should preclude such an operation in a residential area.

"We're never against anybody living in the neighborhood as long as they obey National City's laws," said Ronald Bib, who lives across the street from the proposed development.

State law, however, allows for such facilities in areas zoned as residential, provided that six people or fewer live in them, and requires that cities and counties comply.

Proponents argue that the home must be large, with outsized doorways and other amenities, so wheelchair users can get around with ease.

"We don't want you to give these people special privileges," Pam Brunson, the foundations' program director, told planning commissioners. "We just want you to accommodate their needs."

The residents and planning commissioners also have had to endure accusations of intolerance, which they vigorously deny.

"What I'm hearing is some people have the right to live as they want, but they don't seem to feel people with developmental disabilities have the same rights," said Elaine Barrack of La Mesa, who wants her daughter to move into the home.

They are not biased against the disabled, residents and city officials insist, but are fearful that a large home resembling a medical facility will tower over the middle-class neighborhood and alter its character.

The area, about a block from Paradise Valley Hospital and several medical-office buildings, is surrounded by single-story homes, some on raised foundations with manicured lawns, others on dirt lots. ...

"We did not deny this because they will be taking care of disabled people," said Frank Parra, the commission's chairman, in reference to the group's previous votes against the project. "It's strictly because of the fact that it looks like an institution."

The planning commission's objections led the Cheneweth Foundation to slightly shrink its plans and turn the building around, to reduce the number of entrances facing Fourth. Planners also dropped the roof height to 17 feet, and commissioners asked them to look at moving more doors and installing more landscaping.

Residents had asked that they build two new homes, rather than one large facility, a suggestion that the home's supporters say would be impractical and prohibitively expensive. Foundation officials say they cannot afford to stock two structures with the specialized equipment the home's residents would require and that they already spent \$40,000 to redesign their plans to satisfy the commission.

The equipment includes deep tubs for the bathrooms, computers and a ceiling-rail system that would allow those with some mobility to guide themselves from room to room without wheelchairs. The rails cost \$10,000 a room, Brunson said. ...

The home will be built six months after city permits are issued, Brunson said. The foundation is planning three more homes but hasn't determined where they will be located.

The San Diego Union-Tribune
October 12, 2002

SUPES CONTINUE GROUP HOME PUBLIC HEARING

By MARTI TAYLOR-DN Staff Writer

Agencies will have to discuss concerns with residents.

"I don't want it in my community!" Those were the sentiments echoed at a public hearing held by the Tehama County Board of Supervisors by a handful of residents near what could become two new group homes in Red Bluff.

North Valley Children Family Services has proposed to locate two group homes on Dawn Drive in Red Bluff which are less than 300-feet apart. NVCFS has contracted with the Tehama County Department of Social Services to establish and operate a 24-hour facility that will address the needs of two unserved categories of youth ages 12 to 17.

The State of California Department of Social Services provides the board of supervisors the opportunity to protest the licensing of group homes if the homes are located within 300-feet of each other.

Several residents of the Dawn Drive and White Road community spoke during the public testimony section of the hearing asking the board to consider protesting the licensing and approval of one of the group homes.

"It is tough enough to raise my four daughters without a criminal element being introduced into our neighborhood," said resident Kevin Cruz. Fellow resident Daniela Sartori called the introduction of the homes a, "prescription for disaster."

Randi Gottlieb Robinson spoke on behalf of social services along with Rich North of NVCFS, to clarify misconceptions regarding the homes. Gottlieb Robinson told the audience the reason the location was identified was because of the ability to have homes close enough together to run one facility but to separate the genders.

Gottlieb Robinson also dispelled rumors that the homes would be for delinquent or criminal youth. "This is not a population of children who have ever broken the law. It is a teenage crisis and runaway center. It will serve a pre-delinquent population," said Gottlieb Robinson.

The program would service those who are not in foster care but are temporarily out of their homes and are at risk of entering the system and those who are entering the foster system and placed into emergency care by Child Protective Services. The program would serve youth for a period up to but not exceeding 30 days.

The proposed homes will each have a six-bed capacity and be located across the street from one another. One home would service girls and the other would service boys. As well both homes would have around the clock "awake" supervision consisting of a minimum of two staff members for each house.

The board voted unanimously to continue the matter 60 days in an effort to give NVCFS and social services adequate time to go out into the community and dispel rumors as well as inform the community of the accurate facts regarding the homes. The board will return to the matter at their meeting on Oct. 8.

Red Bluff Daily News
August 21, 2002

Appendix B – State Laws and Regulations on Residential Facilities

STATE AUTHORITY FOR RESIDENTIAL FACILITIES			
Facility Type	Licensing Entity	Statute	Code of CA Regulations
Group Home	DSS	Health and Safety (H&S) Code Section 1500	Title 22 84000-84808
Adult Residential Facility	DSS	H&S Code Section 1500	Title 22 85000-85091.4
Social Rehabilitation Facility	DSS	H&S Code Section 1500	Title 22 81000-81088
Residential Care Facility/ Elderly	DSS	H&S Code Section 1569	Title 22 87100-87731.4
Residential Care Facility/ Chronically Ill	DSS	H&S Code Section 1568.01	Title 22 87800-87924
Alcoholism & Drug Abuse Recovery/Treatment Facility	DAPD	H&S Code Section 11834.01	Title 9 10500-10631
Congregate Care Facility	DHS	H&S Code Section 1267.8	Title 17 56100-56610
Intermediate Care Facility/ DD	DHS	H&S Code Section 1267.8	Title 17 56100-56610
Intermediate Care Facility/ DD-Habilitative	DHS	H&S Code Section 1267.8	Title 17 56100-56610
Intermediate Care Facility/ DD-Nursing	DHS	H&S Code Section 1267.8	Title 17 56100-56610

Appendix C – State Laws Related to Siting of Residential Care Facilities

AUTHORITY	SUBJECT	REQUIREMENT
Health and Safety (H&S) Code Section 1267.8	Zoning – Health facilities	Licensed residential health facilities with six or fewer persons and congregate care facilities are considered residential use of property; residents and operators are considered a family for zoning purposes.
H&S Code Section 1267.9	Overconcentration – Health facilities	State policy to prevent overconcentration of health facilities. New facilities must be 300 feet or more from existing residential health or community care facilities (except for Residential Care Facilities for the Elderly); congregate living facilities must be 1000 feet or more from other existing facilities. Local government must approve requests for shorter distances.
H&S Code Section 1250.5	Overconcentration – Community Care Facilities (Group Homes, Adult Residential Facilities, Social Rehabilitation Facilities)	State policy to prevent overconcentration of residential care facilities. New facilities must be 300 feet or more from existing community care facilities (except for Residential Care Facilities for the Elderly). Local government must approve requests for shorter distances.
H&S Code Section 1566.3	Zoning – Community Care Facilities (Group Homes, Adult Residential Facilities, Social Rehabilitation Facilities)	Licensed residential community care facilities with six or fewer persons are considered residential use of property; residents and operators are considered a family for zoning purposes.
H&S Code Section 1569.85	Zoning – Residential Care Facilities for the Elderly	Licensed residential care facilities for the elderly with six or fewer persons are considered residential use of property; residents and operators are considered a family for zoning purposes.
H&S Code Section 11834	Legislative Intent Local Regulation/ Zoning – Alcoholism or Drug Abuse Recovery or Treatment Facilities	State policy that each county and city allow and encourage enough recovery or treatment facilities to meet local needs. Licensed facilities that serve six or fewer persons are not subject to any local taxes, permits or fees not applicable to single-family homes; facilities are considered residential use of property; residents and operators are considered a family for zoning purposes.

AUTHORITY	SUBJECT	REQUIREMENT
Welfare and Institutions (W&I) Code Section 5115	Legislative Intent Zoning – Persons with disabilities	State policy that persons with disabilities are entitled to live in normal residential surroundings. Care of six or fewer persons with disabilities is residential use of property for zoning purposes.
W&I Code Section 5116	Zoning – Facilities for children	Licensed family care or group home for six or fewer children with disabilities or dependent and neglected children is considered residential use of property for zoning purposes.

Appendix D – Recent Legislation Related to Siting of Residential Care Facilities (1997-2002)

YEAR	STATUS	BILL	DESCRIPTION
1997	Chapter 561	AB 323 (Baca)	Created pilot in San Bernardino County to encourage group homes to work with neighborhood residents to resolve issues and reduce complaints. CDSS expanded pilot to Shasta County. (SCR 27 recommendation)
1997	Died in Committee	AB 631 (Morrow)	Required that person released on probation participate in a licensed facility if required to go through alcohol and drug abuse rehabilitation program. (SCR 27 recommendation)
1997	Died in Committee	AB 756 (Kuykendall)	Extended the overconcentration requirement to 1000 feet.
1997	Died in Committee	AB 1288 (Wood)	Required prior local government approval for group homes housing residents convicted of a serious or violent felony or a residential burglary.
1997	Died in Committee	SB 139 (Kopp)	Extended the 300-foot overconcentration requirement to alcohol and drug facilities.
1997	Chapter 96	SCR 27 (Kopp)	Established SCR 27 task force comprised of local government and social service representatives to address community concerns resulting from an increase of residential care and treatment facilities and make recommendations.
1998	Chapter 898	AB 1068 (Campbell)	Required criminal background check for previously exempt social rehabilitation facilities; extended background check for intermediate care facilities/developmentally disabled to direct care staff and others.
1998	Chapter 311	SB 933 (Thompson, GH Reform Bill)	Provided a comprehensive series of group home reforms including several changes to improve management and staff training, and accountability and oversight requirements. Examples: required that group homes first be issued a temporary provisional license that can be suspended if the facility is not in compliance; clarified that group home have specific community representatives (like neighbors) on existing boards of directors or advisory board; required a “Good Neighbor” handbook; and expedited the fingerprint process. (SCR 27 recommendations included)

YEAR	STATUS	BILL	DESCRIPTION
1998	Vetoed/ Fiscal issues	SB 1540 (Karnette)	Required a plan for establishing and maintaining a statewide computerized data base for all community care facilities and alcoholism and drug abuse treatment and recovery facilities; and a plan for identifying and regulating existing unlicensed residential programs. (SCR 27 recommendation)
1998	Died in committee	SB 1971 (Watson)	Required that an assessment be developed of the residential needs of persons who live in licensed residential facilities and persons who live in other living arrangements in which services are provided. Required that a statewide database be established and maintained. (SCR 27 recommendation)
1999	Gutted/ Converted	AB 373 (Pacheco)	[Previous language extended separation requirement from 300 to 1,000 feet.]
1999	Never heard in committee	AB 533 (Nakano)	Clarified that facility operator cannot claim “six or fewer” status if operating two or more facilities located within 1,000 feet of each other.
1999	Died in Assembly	AB 997 (Campbell)	Prohibited additional licenses to providers who have not operated their facilities well in existing communities; added language that strengthens role of group home community advisory body.
1999	Died in Assembly	AB 1025 (Havice)	Added language that strengthens role of group home community advisory body. (SCR 27 recommendation)
1999	Died in committee	SB 268 (Rainey)	Required that residential facilities for the elderly be counted for purposes of the 300-foot separation requirement.
1999	Vetoed/ Fiscal issues)	SB 887 (Ortiz)	Strengthened laws associated with group home operator fraud.
1999	Vetoed/ Fiscal issues	SB 986 (Karnette)	Required sober living facilities that offer services and programs to be state licensed. (SCR 27 recommendation)
1999	Died in committee	SB 987 (Karnette, Follow-up to SB 1540)	Required the Department of Alcohol and Drug Programs to administer licensing and regulation of alcohol and drug facilities. [Previous amendments that required group home siting locations to be posted on DSS website, authorized local needs assessment and siting plans to be developed as part of general plan, and required “Good Neighbor” handbooks to be distributed to neighbors were deleted from the bill.] (SCR 27 recommendation)

YEAR	STATUS	BILL	DESCRIPTION
2001	Chapter 188	AB 950 (Wright)	Required that training and testing requirements apply to direct care staff persons employed in a licensed community care facility for persons with developmental disabilities that receives regional center funding. (SCR 27 recommendation)
2002	Vetoed/Fiscal & workload issues	AB 2175 (Daucher)	Required Governor's Office of Planning and Research to develop and adopt guidelines for addressing human services matters (including assessment of residents in care facilities) within the local government's general plan to improve quality of life for targeted members and community. (SCR 27 recommendation)

(SCR 27 recommendation) = requirement consistent with SCR 27 Task Force recommendation

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- California Law: <http://www.leginfo.ca.gov/calaw.html>
- California Code of Regulations: <http://www.calregs.com/>
- California Department of Alcohol and Drug Programs, Licensing and Certification Branch: information about licensing Alcohol and Drug Treatment or Recovery Facilities, <http://www.adp.cahwnet.gov/LCB/LCBhome.shtml>
- California Department of Health Services, Licensing and Certification: information about licensing community health facilities, <http://www.dhs.cahwnet.gov/lnc/default.htm>
- California Department of Social Services, Community Care Licensing Division: information about licensing community care facilities, <http://www.cclcd.ca.gov/default.htm>
- Drug Policy Alliance. California Proposition 36 – The Substance Abuse and Crime Prevention Act of 2000: information about SACPA implementation activities, <http://www.prop36.org/>
- League of California Cities: information about local perspective and policies on residential care facilities, <http://www.cacities.org/doc.asp?intParentID=1018>

Notes

¹ California Senate Health and Human Services Committee, *Senate Concurrent Resolution 27: Residential Care and Treatment Facilities Report to the Legislature and the Governor* (Sacramento: Senate Publications, 1998); and Cameron Whitman and Susan Parnas, *Fair Housing: The Siting of Group Homes for the Disabled and Children*, Local Officials Guide (Washington D.C.: U.S. Department of Health and Human Services, 1999) i.

² Peter Rowe, "Treatment Centers are Great, But Put This One Elsewhere," *San Diego Union-Tribune*, Lifestyle Section, E-1, April 25, 2002.

³ California Senate Health and Human Services Committee, *Senate Concurrent Resolution 27*, p 4; and American Planning Association, *Policy Guide on Community Residences*, American Planning Association Newsletter [1997] 6, at <http://w1.planning.org/policyguides/commres.htm>

⁴ League of California Cities. "Results of League Survey of Cities on Group Home Issues." Letter from Dan Carrigg, Legislative Representative, to Members, Assembly Human Services Committee, Assembly Local Government Committee, Senate Health and Human Services Committee, Senate Local Government Committee, and Legislative Secretary, Governor's Office. February 8, 2000.

⁵ The Lanterman Developmental Disabilities Services Act, Welfare and Institutions Code Division 4.5, starting with Section 4500.

⁶ California Senate Health and Human Services Committee, *Senate Concurrent Resolution 27 Report* (Sacramento: Senate Publications, 1998).

⁷ Lisa Foster, *Foster Care Fundamentals: An Overview of California's Foster Care System*, (Sacramento: California Research Bureau, California State Library, December 2000) 23-24. Foster care is the 24-hour out-of-home care provided to children in need of substitute parenting because their own families are unable or unwilling to care for them. This report describes the role of group homes for children.

⁸ California Department of Social Services website at http://www.dss.cahwnet.gov/cdssweb/Residentia_180.htm

⁹ California Department of Alcohol and Drug Programs website at <http://www.adp.cahwnet.gov/LCB/LCBhome.shtml>

¹⁰ California Department of Developmental Services website at <http://www.dds.ca.gov.livingarrang/main/icf001.cfm>; and California Care Network website at http://www.calcarenet.ca.gov/continuous_med_care_fac.asp

¹¹ Michael Mirra, *Group Homes and Zoning Under the Fair Housing Act*. Building Better Communities Network, April 1998, at <http://216.118.74.208/index.cfm?method=grouphomes>

¹² U.S. Department of Justice and U.S. Department of Housing and Urban Development. *Group Homes, Local Land Use, and the Fair Housing Act. A Joint Statement.* (Washington D.C.: the Departments, August 2001).

¹³ 42 U.S.D. 3504(f)(3)(B); and Cameron Whitman and Susan Parnas, *Fair Housing Local Officials Guide*, 8-9.

¹⁴ U.S. Department of Justice, *A Guide to Disability Rights Laws* (Washington D.C.: the Department, August 1999) 1-3.

¹⁵ California Department of Developmental Services, *Olmstead Planning in California* (Sacramento: the Department). <http://www.dds.ca.gov/lccc/main/olmsteadplanning.cfm>

¹⁶ California Fair Employment and Housing Act (Government Code Sections 12900-12996); Unruh Civil Rights Act (Civil Code Section 51); Lanterman Developmental Disabilities Services Act (Welfare and Institutions Code Sections 4500-4903); Lanterman-Petris-Short Act (Welfare and Institutions Code Sections 5000-5550); and Civil Code Section 54.1.

¹⁷ Welfare and Institutions Code Sections 5115-5116; Health and Safety Code starting with Section 1400.

¹⁸ California Department of Social Services, *Community Care Licensing, Evaluator Manual, Comprehensive Evaluation Tool for Group Home Evaluations* (California: the Department, January 2000) and Licensing Regulations, Title 22; California Department of Alcohol and Drug Programs Licensing Regulations, Title 9; and California Department of Health Services Licensing Regulations, Title 17. See page 36 for specific sections.

¹⁹ Code of Federal Regulations, Title 42, Chapter 1 Part 2 require confidentiality for residents of Alcohol and Drug Abuse Recovery and Treatment Facilities; Health and Safety Code Sections 1557.5 requires that Group Home, Adult Residential Care, and Social Rehabilitation Facilities “protect the privacy and confidentiality” of information about residents; Health and Safety Code Section 87870(c) provides confidentiality for residents of Residential Care Facilities for the Chronically Ill; and Health and Safety Code Section 87570(c) provides confidentiality for residents of Residential Care Facilities for the Elderly.

²⁰ California Department of Social Services, *Group Home Providers: Establishing and Maintaining Positive Relationships in the Community*, Self-Assessment Guide (Sacramento: the Department, December 2001) 6.

²¹ Health and Safety Code Section 1524.5.

²² Chet Boddy, *Zoning*, 2000 at <http://www.chetboddy.com/articles/zoning.htm>. Mr. Boddy is a Real Estate Appraiser in Mendocino, California.

²³ Cameron Whitman and Susan Parnas, *Fair Housing Local Officials Guide*, 12.

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