

STATE OF OKLAHOMA

2nd Session of the 45th Legislature (1996)

COMMITTEE SUBSTITUTE
FOR ENGROSSED
HOUSE BILL NO. 2964

By: Seikel of the House
and
Cain of the Senate

COMMITTEE SUBSTITUTE

An Act relating to property; amending 60 O.S. 1991, Sections 860, 861, 862, 863, 864, 865 and 866, which relate to the Developmentally or Physically Disabled Persons Community Residential Living Act; changing name of act to Community Residential Living for Persons with Developmental Disabilities Act; modifying legislative intent; modifying terms; providing for transfer of jurisdiction from the State Department of Health to the Department of Human Services; providing for effect of certain rules; requiring promulgation of rules; updating and clarifying language; providing for prior licensed group homes; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 60 O.S. 1991, Section 860, is amended to read as follows:

Section 860. Sections ~~±~~ 860 through ~~6~~ 867 of this ~~act~~ title shall be known and may be cited as the "~~Developmentally or Physically Disabled Persons~~ Community Residential Living for Persons with Developmental Disabilities Act".

SECTION 2. AMENDATORY 60 O.S. 1991, Section 861, is amended to read as follows:

Section 861. A. The Legislature makes the following findings ~~respecting~~ with regard to the rights of persons with developmental ~~or physical~~ disabilities:

1. Persons with developmental ~~or physical~~ disabilities have a right to appropriate treatment, services, and habilitation for such disabilities-;

2. The treatment, services, and habilitation for a person with developmental ~~or physical~~ disabilities should be designed to maximize the developmental potential of the person and should be provided for in the setting that is least restrictive of the person's personal liberty-; and

3. All programs for persons with developmental ~~or physical~~ ~~Disabilities~~ disabilities should meet standards which are designed to ~~assure~~ ensure:

- a. the most favorable possible outcome for those served, and,
- b. in the case of residential programs for persons with developmental ~~or physical~~ disabilities, ~~assure~~ that care is appropriate to the needs of the persons being served by such programs, ~~assure~~
- c. that the persons admitted to facilities of such programs are persons whose needs can be met through services provided by such facilities, and ~~assure~~
- d. that the facilities subject to such programs provide for the humane care of the residents of the facilities and protect their rights.

B. The Legislature declares that it is the goal of the ~~Developmentally or Physically Disabled Persons~~ Community Residential Living for Persons with Developmental Disabilities Act to improve the quality of life of all ~~developmentally or physically disabled~~ persons with developmental disabilities and to integrate ~~developmentally or physically disabled~~ persons with developmental disabilities into the mainstream of society by ensuring them the availability of community residential opportunities in the residential areas of this state. In order to implement this goal, the ~~Developmentally or Physically Disabled Persons~~ Community Residential Living for Persons with Developmental Disabilities Act shall be liberally construed toward that end.

SECTION 3. AMENDATORY 60 O.S. 1991, Section 862, is amended to read as follows:

Section 862. As used in the ~~Developmentally or Physically Disabled Persons~~ Community Residential Living for Persons with Developmental Disabilities Act:

1. "~~Board~~ Commission" means the ~~State Board of Health~~ Commission for Human Services;

2. "~~Commissioner~~" means the ~~Commissioner of the State Department of Health~~;

~~3.~~ "Developmental disability" means a severe, chronic disability of a person which:

- a. is attributable to a mental ~~or physical~~ impairment or combination of mental and physical impairments, such as mental retardation, cerebral palsy, or autism,
- b. is manifested before the person attains twenty-two (22) years of age,
- c. is likely to continue indefinitely,
- d. results in substantial functional limitations in three or more of the following areas of major life activity:
 - (1) self-care,

- (2) receptive and expressive language,
- (3) learning,
- (4) mobility,
- (5) self-direction,
- (6) capacity for independent living, and
- (7) economic self-sufficiency, and

e. reflects the person's need for a combination and sequence of special, interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended duration and are individually planned and coordinated;

~~4. "Developmentally disabled person" means a person with a developmental disability;~~

~~5. "Physical disability" means a condition which causes the restricted use of extremities by an individual or which limits other bodily functions of an individual and which requires the specialized training, habilitation or rehabilitation services provided by a group home;~~

3. "Director" means the Director of the Department of Human Services;

~~6. 4. "Group home", unless otherwise specified by law, means a community-based residential facility located in a single-family zoning area that admits not more than six (6) developmentally or physically disabled persons requiring~~ with developmental disabilities who require specialized living arrangements, and that provides for them such persons a home that is subject to the care and supervision of a responsible adult and which is licensed by or which has a contract with the State Department of Health Human Services;

~~7. 5. "Permitted use" means a use by right which is authorized in all residential zoning districts; and~~

~~8.~~ 6. "Political subdivision" means a municipality or county, whichever holds primary jurisdiction.

SECTION 4. AMENDATORY 60 O.S. 1991, Section 863, is amended to read as follows:

Section 863. A. 1. A group home is a residential use of property for the purposes of zoning and shall be treated as a permitted use in all residential zones or districts, including all single-family residential zones or districts of all political subdivisions of this state. No political subdivision may require that a group home, its owner, or operator obtain a conditional use permit, special use permit, special exception, or variance different from those required for other dwellings of similar density in the same zone. ~~Provided;~~ provided, however, prior to the establishment of a group home in any residential area within a political subdivision, the owner of such home shall file with the political subdivision an application for the establishment of such group home in such residential area. The political subdivision shall provide for notice to be given to all affected real property owners. The notice shall contain a legal description of the property and the street address or approximate location of the group home.

For ~~the~~ purposes of this section, the term "affected real property owners" shall mean all owners of real property which is located within three hundred (300) feet of the exterior boundary of the property on which the group home is to be located. The political subdivision may deny the application if the owner of the group home fails to obtain a license from the ~~State Department of Health~~ Department of Human Services or if the group home fails to comply with the spacing requirements of subsection B of this section.

2. After the initial approval process, the political subdivision shall have the right to require a rezoning application, special exception, or variance filing and a public hearing, if ~~they~~

~~would~~ such procedures are normally be required for any other similar use in the zoning district.

B. 1. Any rules promulgated by the State Board of Health for purposes of implementing the Community Residential Living for Persons with Developmental Disabilities Act shall remain in effect until such rules are superseded by rules promulgated by the Commission for Human Services, pursuant to this section. At such time, rules promulgated by the State Board of Health shall terminate.

2. For the purposes of safeguarding the health and safety of developmentally or physically disabled persons with developmental disabilities and avoiding an over-concentration of group homes, either along or in conjunction with similar community-based residences, within one hundred eighty (180) days of the effective date of the ~~Group Homes for Developmentally or Physically Disabled Persons Act~~ Community Residential Living for Persons with Developmental Disabilities Act, the ~~Board~~ Commission for Human Services shall promulgate rules ~~and regulations~~ which shall encompass the following matters:

~~1.~~ a. limitations on the number of new group homes to be permitted on blocks, block faces, and other appropriate geographic areas, to one thousand two hundred (1,200) feet between group homes, or similar community residential facilities serving persons in drug, alcohol, juvenile, child, parole, and other programs of treatment, care, supervision, or rehabilitation in a community setting~~†~~†

~~2.~~ b. assurance that adequate arrangements are made for the residents of group homes to receive such care and habilitation as is necessary and appropriate to their needs and to further their progress towards independent living~~†~~†

- ~~3.~~ c. protection of the health and safety of the residents of group homes. Compliance with these ~~regulations~~ rules shall not relieve the operator of any group home of the obligation to comply with the requirements or standards of a political subdivision pertaining to building, housing, health, fire, safety, and motor vehicle parking space that generally apply to single-family residences in the zoning district. No requirements for business licenses, gross receipt taxes, environmental impact studies, or clearances may be imposed on such homes if such fees, taxes, or clearances are not imposed on all structures in the zoning district housing a like number of persons. A group home shall not be excluded from a single family zone as a result of requirements promulgated by the ~~Board,~~ Commission,
- ~~4.~~ d. procedures by which a resident of a residential zoning district or the governing body of a political subdivision in which a group home is, or is to be, located may petition the ~~Commissioner~~ Department of Human Services to deny an application for a license to operate a group home on the grounds that the operation of such a home would be in violation of the limits established pursuant to the provisions of paragraph 1 of subsection B of this section~~;~~ and
- ~~5.~~ e. fees for licenses or renewal of licenses required by this section.

C. In order to facilitate the implementation of subparagraph a of paragraph 1 2 of subsection B of this section, the ~~Commissioner~~ Department shall maintain a list of the location, capacity, and current occupancy of all group homes. The ~~Commissioner~~ Department shall ensure that this list shall not contain the names or other

identifiable information about any residents of such home and that copies of this list shall be available upon request to any resident of this state and any state agency or political subdivision.

SECTION 5. AMENDATORY 60 O.S. 1991, Section 864, is amended to read as follows:

Section 864. Any restriction, reservation, condition, exception, or covenant in any subdivision plan, deed, plat, or other instrument of or pertaining to the transfer, sale, lease, or use of property shall not specifically prohibit the residential use of such property by a group home, provided the provisions of this section shall not otherwise prohibit any restriction, reservation, condition, exception or covenant in any such instrument effecting the occupancy, structure and use of such property.

SECTION 6. AMENDATORY 60 O.S. 1991, Section 865, is amended to read as follows:

Section 865. As used in ~~this act~~ the Community Residential Living for Persons with Developmental Disabilities Act a group home does not include any of the following:

1. A hospital or home for ~~the mentally ill~~ persons with mental illness;
2. An establishment commonly described as an alcohol or substance abuse rehabilitation center; or
3. A residential facility for persons released from or assigned to correctional institutions.

SECTION 7. AMENDATORY 60 O.S. 1991, Section 866, is amended to read as follows:

Section 866. A political subdivision, by ordinance, may provide that a group home, ~~as defined in paragraph 6 of Section 862 of this title,~~ may consist of not more than eight (8) ~~developmentally or physically disabled~~ persons with developmental disabilities.

SECTION 8. AMENDATORY 60 O.S. 1991, Section 867, is amended to read as follows:

Section 867. Group homes which ~~are~~ were licensed by the State Department of Health prior to November 1, 1989, shall not be subject to the group home size limitation of six (6) persons and ~~will~~ are not ~~be~~ required to meet ~~this~~ such limitation as a condition of renewal of the license of the group home by the Department of Human Services or as a condition of renewal of the contract with the Department, as long as the group home remains in the same physical facility and otherwise complies with the provisions of the license, and rules pertaining thereto.

SECTION 9. It being immediately necessary for the preservation of the public peace, health and safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

45-2-2683

CJ