

Group Homes Siting

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Issue

Provide an overview of the interplay of federal, state, and local laws on the siting of group homes for people with disabilities. This report updates OLR Report [2009-R-0361](#).

Summary

Federal and state laws that prohibit discrimination against people with disabilities constrain Connecticut towns' ability to (1) direct where group homes serving such people can operate, (2) limit the number of homes that can be located in a particular area, and (3) require providers to notify town officials or neighbors before opening a home. They also require towns to make reasonable changes in zoning and other rules to provide equal housing opportunities for this population. These laws define disability broadly and also prohibit discrimination based on "family status," which extends their reach to group homes for children, with or without disabilities, in state custody.

This background report briefly describes these statutes and related case law and their effect on local control of group homes. Since it is not a comprehensive case law review and because the Office of Legislative Research is not authorized to render legal opinions, this report should not be construed as providing any.

Background

States began moving people with mental and physical disabilities into the community from state-operated institutions in the 1960s and 1970s. Because some of these people needed more support than their families could provide or lacked financial resources to live independently, public and private agencies developed group homes and, more recently, "sober houses" for people in

recovery from substance abuse disorders, to accommodate them. These facilities, which are often located in single family homes and can house three, six, or a dozen unrelated individuals (often with staff), enable people with disabilities to live in residential neighborhoods where their needs can be met and they can integrate into the community.

As group homes proliferated and began serving more types of individuals, conflicts arose between property owners concerned over their families' safety and their property values and group home operators and disability rights advocates. Some local governments responded by enacting zoning and other ordinances that restricted, among other things, where and how many group homes could operate in the community and required operators to notify local officials before they opened a home. In return, the federal government and states enacted laws protecting people with disabilities against discrimination.

Group Homes in Connecticut

Connecticut currently has around 950 homes with beds to serve 4,500 people with mental and physical disabilities and children under state control. This includes facilities licensed by the Department of Public Health (DPH), Department of Developmental Services (DDS), and Department of Children and Families (DCF).

Group Home Definition

The term “group home” does not have one, consistent meaning under the law. Rather, it is a broad term often used to refer to residences for unrelated individuals with a variety of disabilities. A group home may serve individuals with a particular type of disability or a variety of disabilities. The group home’s operator may be for-profit or nonprofit and may or may not receive federal or state assistance.

Local zoning ordinances and state statutes and regulations all use different terms and definitions that apply in varying situations (e.g., for licensing, zoning approval, and siting requirements). Such definitions may be based on the number of occupants in the group home, whether the home receives public funding, licensing requirements, or other attributes. State and federal law prohibits discrimination on the basis of disability, though, irrespective of whether the housing is considered a group home.

Federal Law

The 14th Amendment’s Equal Protection Clause prohibits states from denying a person equal protection of the law. This and three federal laws – section 504 of the Rehabilitation Act of 1973; Title II of the Americans with Disabilities Act (ADA); and the Fair Housing Act, especially its 1988 amendments (FHAA) – limit local control over group home siting. The FHAA is probably the most significant since it applies to dwellings. The three laws build on one another by applying consistent definitions and nondiscrimination standards.

Protected Populations

All three laws protect individuals with current, past, or perceived disabilities against discrimination in housing. Under all three, a person has a disability if he or she (1) has a physical or mental impairment that substantially limits one or more major life activities, (2) has a history of such an impairment, or (3) is perceived as having an impairment. Under these criteria, people with HIV/AIDS and those recovering from, or in treatment for, drug addiction or alcoholism have a disability, as well as people with physical and mental impairments.

None of these laws protect people who currently use illegal drugs. The FHAA also excludes (1) people convicted of illegally manufacturing or distributing drugs, even if they have a disability, and (2) people with disabilities who present a direct threat to other people or their property.

The FHAA also applies to “family status,” which it defines as one or more people under age 18 living with (1) a parent or person with legal custody or (2) someone designated by a parent or legal custodian. Consequently, the same types of acts that constitute discrimination against people with disabilities apply to group homes for children in DCF custody.

Discriminatory Acts

All three acts are intended to ensure equal treatment of people with disabilities under the terms of zoning codes and other regulations, as well as equal treatment in approval processes for the location of housing for people with disabilities. An ordinance or rule can be discriminatory:

1. on its face or because it has a discriminatory intent (e.g., imposing restrictions that apply only to people with drug abuse histories);
2. because it has an unjustified discriminatory effect, which occurs when it is neutral on its face but in practice has a disparate impact on a group of protected persons or perpetuates segregated housing patterns because of, among other things, handicap or familial status; or
3. as applied, because the municipality failed to make a reasonable accommodation for someone based on a disability.

Even if a court finds a rule or ordinance is discriminatory, it may still find the rule or ordinance lawful if it is supported by a legally sufficient justification. What constitutes a legally sufficient justification depends on the jurisdiction and whether the rule or ordinance is discriminatory on its face, in its intent, in its effect, or as applied.

Under federal law, a court may find that a rule or ordinance is lawful, despite its discriminatory effect, if (1) it is necessary to achieve a “substantial, legitimate, nondiscriminatory interest” of the

municipality and (2) the interest could not be served by a less discriminatory practice ([24 C.F.R. § 100.500\(b\)](#)).

FHAA

The FHAA was crafted specifically to address land use regulation. According to the U.S. House Judiciary Committee upon passing the 1988 Amendment, it is:

intended to prohibit the application of special requirements through land use regulations, restrictive covenants, and conditional or special use permits that have the effect of limiting the ability of such individuals [people with disabilities] to live in the residence of choice in the community....Another method of making housing unavailable to people with disabilities has been the application or enforcement of otherwise neutral rules and regulations on health, safety and land-use in a manner which discriminates....These and similar practices would be prohibited (H.R. Rep. No. 100-711, at 18, 24(1988), reprinted in 1988 U.S.C.C.A.N. 2173, 2185).

Under the FHAA, it is unlawful to discriminate in the sale or rental of, or otherwise make unavailable or deny, a dwelling because of a disability of the buyer or renter, anyone associated with the buyer or renter, or anyone who may live in the dwelling.

Although the FHAA does not cover lodging for transient guests, such as hotels, courts have held that a dwelling does not need to be a permanent residence to come under the FHAA's protections. In making this determination, courts have considered various factors such as the (1) intent of the person returning to the residence, (2) length of time one expects to remain at that location, (3) absence of an alternative place of residence, (4) nature of the occupancy, and (5) relationship between the resident and the owner of the property (*Connecticut Hospital v. City of New London*, 129 F.Supp.2d 123 (2001) at 134 (citing *Villegas v. Sandy Farms, Inc.*, 929 F.Supp. 1324, 1328 (D.Or. 1996))).

What is a Dwelling under the FHAA?

"Dwelling," for purposes of FHAA means "any building, structure, or portion thereof which is occupied as, or designed or intended for occupancy as, a residence by one or more families, and any vacant land which is offered for sale or lease for the construction or location thereon of any such building, structure, or portion thereof" ([42 U.S.C. § 3602\(b\)](#)). Its requirements and prohibitions do not apply to single-family houses owned by landlords with fewer than four rental properties and dwelling units in buildings containing four or fewer total units so long as the landlord occupies one of the units ([42 U.S.C. § 3603\(b\)](#)).

The act also requires governments to make "reasonable accommodations" in rules, policies, practices, or services that are needed to provide equal housing opportunities for this population;

refusal to do so is discrimination. Courts have defined "reasonable" to mean a change that would

not (1) fundamentally alter the nature of the rules, procedures, or neighborhood; (2) impose an undue financial or administrative burden on the government; or (3) undermine the legitimate purpose of the rule ([42 U.S.C. § 3601, et seq.](#)).

Rehabilitation Act

This law makes it unlawful for any entity, including municipalities, receiving federal financial assistance to discriminate on the basis of disability. It also requires these entities to make reasonable accommodations. It is intended to eliminate discrimination on the basis of disability in a broad range of federally supported activities, including housing, and has been used to challenge zoning decisions and practices ([29 U.S.C. § 794](#); [28 C.F.R. pt. 39](#) & [41](#)).

ADA

Title II of the ADA prohibits discrimination by any public entity on the basis of disability. It is intended to end government discrimination in the same areas of life as the Rehabilitation Act, but it is not linked to federal funding. Consequently, all government activities, including land use regulation, must be free from discrimination.

ADA regulations prohibit governments from (1) using criteria, such as the definition of family, that have a discriminatory effect and (2) using licensing or other requirements that restrict a person with a disability from enjoying any right, privilege, or opportunity others enjoy. They require governments to (1) make reasonable modifications in policies and procedures and (2) administer programs, services, and activities in the most integrated appropriate setting, which may be a single family residential area ([42 U.S.C. §12132](#); [28 C.F.R. § 35.130](#)).

Connecticut Law

Discrimination Against People with Disabilities Prohibited

The Connecticut Constitution prohibits discrimination against people on the basis of physical or mental disability (CT Const. Article XXI). State statutes mirror the FHAA by making it illegal to (1) discriminate against people with physical or mental disabilities in housing sales or rentals or to otherwise make housing unavailable to them and (2) refuse to make reasonable accommodations in rules, practices, or services. It defines disability to include intellectual or physical disability and any disability covered by the FHAA.

Connecticut law also makes it illegal to discriminate on the basis of familial status, which it defines as people under age 18 living with their parents, legal custodian (e.g., DCF), or the parents' or custodians' designee ([CGS §§ 46a-64b](#) & [64c](#)).

Group Home Siting

In addition to its broad ban against discrimination, Connecticut statutes address group home location, concentration, and notice issues. They prohibit local zoning regulations from treating the following types of group homes (referred to as community residences) in any way different from a single-family residence:

1. a licensed group home housing six or fewer adults with intellectual disabilities;
2. a licensed group home housing six or fewer people receiving mental health or addiction services paid for or provided by the Department of Mental Health and Addiction Services;
3. a licensed child-care residential facility housing six or fewer children with mental or physical disabilities; or
4. a licensed facility providing hospice care to six or fewer people, under certain conditions ([CGS § 8-3e](#)).

A group home for people with intellectual disabilities or children with mental or physical disabilities cannot be established within 1,000 feet of an existing one without the local zoning authority's approval ([CGS § 8-3f](#)).

State law also prohibits municipalities from barring DPH-licensed group homes that provide housing and support services for eight or fewer “mentally ill adults” in areas zoned for multifamily dwellings. By law, “mentally ill adult” means an adult with a mental or emotional condition that has substantial adverse effects on his or her ability to function, but excludes those who are dangerous to themselves or others, alcohol- or drug-dependent, or placed in housing by the Superior Court or Department of Correction ([CGS § 8-3g](#) and [CGS § 19a-507a](#)).

Such group homes cannot be established (1) within 1,000 feet of another one or (2) if its residents will bring the total population in all such residences above 0.1% of the town's total population. DPH licenses these residences, and the law requires a license applicant to send a copy of its application to the town's governing body and the appropriate regional mental health board. Residents of the town where such a residence is located or planned can ask DPH to deny the application on the grounds that the site violates either of the locational criteria and can ask DMHAS to withdraw its funding because the home violates this or any other law governing the home's operation ([CGS § 19a-507b\(a\) & \(b\)](#)).

Once any group home begins operation, any town resident can petition the supervising state agency to take action against it on the grounds that it is violating any law governing its operation. Before

submitting a petition, the resident must obtain the town legislative body's approval ([CGS §§ 8-3e\(b\)](#) and [19a-507d](#)).

Applying Federal Law to Local Ordinances

Group homes throughout the country have challenged local ordinances that address four broad areas: (1) maximum occupancy limits, (2) dispersion requirements, (3) prior notice requirements, and (4) licensing and health and safety codes. Below, we briefly describe the issues involved and cite key court rulings on them.

Maximum Occupancy

Many of the challenges to local control over group home siting involve ordinances that limit the number of unrelated people who can live in a home. Such limits are specifically exempt from the FHAA if they are based on the maximum number of occupants in a dwelling ([42 U.S.C. § 3607\(b\)\(1\)](#)). A local government may generally restrict the ability of groups of people to live together if the restriction is imposed regardless of disability status and (1) does not intentionally discriminate against people with disabilities, (2) does not have an unjustified discriminatory effect, and (3) the municipality makes reasonable accommodations for people with disabilities if necessary.

Many municipalities base occupancy limits on a definition of “family” rather than a number of occupants in a dwelling. They typically define “family” as (1) any number of people related genetically or by marriage or (2) a specific number of unrelated people. But the U.S. Supreme Court has held that caps based on “family size” are not “occupancy limits” that are exempt from the FHAA.

In *Edmonds v. Oxford House*, the city of Edmonds (WA) claimed its zoning law’s definition of “family” was a maximum occupancy limit that warranted exemption from FHAA. Edmonds defined “family” as “persons [without regard for number] related by genetic, adoption or marriage, or a group of five or fewer [unrelated] individuals.”

The Court ruled that Edmonds was not exempt from the FHAA. Because the city’s definition permitted any number of related people to live in a single family house, it did not actually cap the number of people who could live in such a dwelling. Consequently, Justice Ginsberg determined the FHAA exemption does not apply to restrictions based on family definitions, which are designed to foster a neighborhood’s family character, but only to total occupancy limits, that is, a numerical ceiling designed to prevent overcrowding in living quarters (*City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995)).

The Edmonds Court did not hold that rules limiting unrelated individuals are, *per se*, invalid, just that they are plainly subject to FHAA and must be scrutinized carefully for their discriminatory intent or effect.

Dispersion

Some communities attempt to limit the location of group homes through dispersion (i.e., spacing and density) restrictions. Spacing restrictions require a minimum distance between group homes or between group homes and other community sites like schools. Density restrictions limit the percentage of a community's population that consists of group home residents. As noted above, Connecticut law contains both.

Federal courts are divided as to whether dispersion restrictions violate FHAA. Spacing restrictions that apply only to persons with disabilities are generally considered discriminatory on their face. Only the Eighth Circuit, which applies a less burdensome standard of review to facially discriminatory laws (i.e., whether the law is rationally related to a legitimate government interest), has upheld such spacing restrictions and only in certain circumstances. (*Human Resource Research and Management Group, Inc. v. County of Suffolk*, 687 F.Supp.2d 237, 255 (E.D.N.Y. 2010) declining to adopt the less burdensome standard.) In one case, it held that the state and local government's prohibition on group homes within 1,320 feet of each other was rationally related to its legitimate interest in preventing group homes from becoming so densely clustered as to recreate an institutional environment in the community (*Familystyle of St. Paul, Inc. v. City of St. Paul, Minn.*, 728 F.Supp. 1396, *aff'd* 923 F. 2d 94 (8th Cir. 1991).

In contrast, other federal jurisdictions that have considered facially discriminatory zoning restrictions apply a more stringent standard of review (generally whether a restriction benefits the protected class or responds to legitimate safety concerns raised by the individuals affected, rather than being based on stereotypes).

The Second Circuit, of which Connecticut is a part, has not issued a controlling ruling on dispersion restrictions, but lower courts in the jurisdiction have issued persuasive rulings that employed the more stringent standard (*Human Resource Research*, 687 F. Supp.2d 237, 257, held that a municipal code that, among other things, limited the number of substance use homes to no more than four per two-square mile area, could not show that the discriminatory law served a legitimate public purpose).

Notice Requirements

Courts have held that state and local laws that require group homes for people with disabilities to notify local officials or neighbors before beginning operations are discriminatory under the FHAA. In *Human Resource Research*, a federal court overturned a Suffolk County, New York ordinance that required substance abuse home operators to notify the town's chief elected officer and county legislator of a home's proposed address before beginning operation. The court found the ordinance was discriminatory on its face as it required specialized notice other residences were not required to provide. It rejected the county's claim that it had a legitimate interest in ensuring that the homes were uniformly dispersed to prevent any one neighborhood's resources from being drained and noted that notice requirements would be more likely to facilitate opposition and animosity toward the home (*Human Resource Research*, 687 F. Supp. 2d at 261).

Governments also try to establish notice requirements by requiring group homes to obtain special exceptions or conditional permits before they can start operating. A federal court rejected this approach in a case involving a residence for homeless people with HIV/AIDS in Fairfield, Connecticut. The town told the group home provider that it needed a special exception to rent rooms in a two-family home in a residential zone because the facility's use would make it a nursing home or charitable institution. To obtain the special exception, the provider would have to submit a site plan, reports from the fire marshal and local health department, and a certificate of need from DPH and be the subject of a public hearing. The provider also had to complete a questionnaire about the property's use and its residents.

The court concluded the special exception requirement was discriminatory under the FHAA because, among other reasons, the public hearing requirement held HIV-infected people up to public scrutiny in a way not required of other unrelated people planning to live together. It found that the town could have used less discriminatory ways to gather information about zoning concerns and ensure compliance with its zoning regulations (*Stewart B. McKinney Foundation, Inc. v. Town Planning and Zoning Commission of the Town of Fairfield*, 790 F. Supp. 1197 (1992)).

Licensing and Health and Safety Codes

Most group homes for people with disabilities are subject to state licensing requirements, which typically include provisions to protect residents' health and safety. Courts have expressly held that the FHAA does not preempt state licensing statutes. And, local zoning ordinances may reference the licensing status of a housing facility and limit certain approvals to licensed facilities only. But these requirements; state and local housing, building, and fire safety codes; and enforcement of them can sometimes have a discriminatory effect.

One of the issues in a complex case in West Haven, Connecticut was whether a sober house had to install a fire safety sprinkler system and make other structural changes even though families living in similar houses faced no such requirements. Town officials imposed these requirements after learning that a single family residence was to be used to house unrelated people recovering from alcohol and drug abuse. They reclassified the residence as a boarding house and ordered the owner to evict four of the seven residents and make structural changes to conform to the town's property maintenance code.

The court held that the town's classifying the home as a boarding or rooming house and requiring structural changes had an undeniable discriminatory effect. It found the house would not be able to operate in a single-family zone; residents, unlike a family with seven related members, would not be able to live in any neighborhood with single-family zoning; and recovering alcoholics and drug addicts could not live in a sober house in a residential setting in order to enhance their chances of making a full recovery (*Tsombanidis v. West Haven Fire Department*, 352 F.3d 565 (2d Cir. 2003), *superseded by regulation*, 24 C.F.R. § 100.500 (2013)).

Further Reading

Connolly and Merriam, [Group Homes](#), American Bar Association (2014).

Connolly and Merriam, [Planning and Zoning for Group Homes: Local Government Obligations and Liability Under the Fair Housing Amendments Act](#), Urban Lawyer, Spring 2015.

Eyer, [The Rehabilitation Act Redux](#), 23 Yale L. & Pol'y Rev. (2005).

[Group Homes, Local Land Use, and the Fair Housing Act](#), Joint Statement of the Department of Justice and Department of Housing and Urban Development, July 25, 2008.

[Implementation of the Fair Housing Act's Discriminatory Effects Standard](#), Final Rule, February 15, 2013.

[State and Local Land Use Laws and Practices and the Application of the Fair Housing Act](#), Joint Statement of the Department of Justice and Department of Housing and Urban Development, November 10, 2016.

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