MACS
Maryland Association of Community Services

March 1, 2024
Health and Government Operations Committee
HB 1359 – Facilities – Disabilities and Juveniles – Community Relations Plan
Testimony Submitted by Laura Howell, Chief Executive Officer
Position: Oppose

The Maryland Association of Community Services (MACS) is a non-profit association of over 125 agencies across Maryland serving people with intellectual and developmental disabilities (IDD). MACS members provide residential, day and supported employment services to thousands of Marylanders, so that they can live, work and fully participate in their communities.

HB 1359 would subject people living in group homes licensed by the Developmental Disabilities Administration to different treatment than their non-disabled peers, by setting up a structure through a community relations plan for public scrutiny and "feedback". Per the attached legal analysis conducted by private attorneys with extensive experience in disability law, the requirements under HB 1359 are very likely a violation of the federal Fair Housing Amendments Act.

In 1988, the Federal Fair Housing Amendments Act extended the protections of the Fair Housing Act to people with disabilities. This addressed the critical issue of discrimination in housing that people with disabilities faced, including people living in small group homes licensed by the Maryland Developmental Disabilities Administration, and operated by community providers. Before these legal protections were put in place, community fear and opposition at times had a significant negative impact on the ability of people with developmental disabilities to live in communities of their choosing. In one instance in Maryland, community members threatened to burn down a home if a provider located a small group home in their neighborhood.

The Fair Housing Amendments Act provides much needed protection against requirements such as those outlined in HB 1359, and there is precedent under Maryland judicial decisions that provide similar support. Twenty years ago, the US District Court of Maryland held that a county requirement mandating prospective providers of group homes to "notify neighbors and civic organizations" with a variety of information about the group home violated the Fair Housing Amendments Act. The Court held that because neighbors and civic organizations were not invited to comment on other residential units, the law was invalid.

The Court, in that ruling, stated "The neighbor notification rule, and defendants' proffered justifications for it, necessarily assume that people with disabilities are different from people without disabilities and must take special steps to "become a part of the community." This requirement is equally as offensive as would be a rule that a minority family must give notification and invite comment before moving into a predmoninantly white neighborhood. The obvious result of these notifications to neighbors is the antithesis of the professed "integration" goal of defendants. Indeed notices of this sort galvanize neighbors in their opposition to the homes."

8835 Columbia 100 Parkway, Unit P, Columbia, Maryland 21045
www.macsonline.org • (410) 740-5125

The United States and Maryland have made tremendous progress in supporting Marylanders with developmental disabilities to have the same rights and opportunities as all other citizens, including the most basic right of being free from discrimination in where they live. HB 1359 would single out citizens with developmental disabilities who live in small group homes for discrimination, inconsistent with both existing State and Federal law.

MACS respectfully urges an unfavorable report.

For more information, contact Laura Howell at lhowell@macsonline.org

Brown Goldstein & Levy

MEMORANDUM

TO: Laura Howell
CEO, Maryland Association of Community Services

FROM: Sharon Krevor-Weisbaum
Lauren A. DiMartino
BROWN, GOLDSTEIN & LEVY, LLP

DATE: February 28, 2024

RE: Fair Housing Act Implications of HB 1359

This Memorandum provides an analysis of the fair housing issues arising out of House Bill 1359, which would require that certain State residential centers and private group homes establish, implement, and revise community relations plans. The Bill amends Maryland Health-Gen Code § 7-610 to require a statement that the applicant for a private group home will "[e]stablish and implement a community relations plan that meets the requirements of § 7-501(c)(1)(II)." Although § 7-501(c)(1)(II) does not define "community relations plan," it mandates that such a plan include:

> A description of the processes and procedures for (A) [t]he residential center to provide to communities identified by the local jurisdiction regular updates regarding community relations issues, including parking, traffic, complaints, construction, and general activity around the residential center; and (B) [c]ommunities to provide feedback regarding the community relations plan.

We conclude that requiring a community relations plan for group homes very likely violates the Fair Housing Act.

The Fair Housing Amendments Act of 1988 ("FHAA"), 42 U.S.C. § 3601, et seq., extended the protections of the federal Fair Housing Act ("FHA") to persons with disabilities. Under Section 3604(f)(2) of the FHAA, it is unlawful to discriminate against any person in the "terms, conditions, or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with such dwelling because of a handicap of that person." 42 U.S.C. § 3604(f)(2). The FHAA was "intended to reach a wide array of discriminatory housing practices, including licensing laws which purport to advance the health and safety of communities." *Potomac Grp. Home Corp. v. Montgomery Cnty., Md.*, 823 F. Supp. 1285, 1294 (D. Md. 1993). When "the enactment or imposition of health, safety or land-use requirements" are imposed "on congregate living arrangements among non-related persons with disabilities" that "are *not* imposed on families and groups of similar size of other unrelated people, these requirements have the effect of discriminating against persons with disabilities." *Id.* (quoting H.R.Rep. No. 100–711, 100th Cong., 2d Sess. 24, *reprinted in* 1988 U.S.Code Cong. & Admin.News at 2173, 2185) (emphasis added). For these reasons "courts have consistently invalidated a wide range of municipal licensing, zoning and other regulatory practices affecting persons with disabilities." *Id.*

Under Maryland and federal law, residential sites for people with disabilities are deemed single-family dwellings. *Potomac Grp. Home*, 823 F. Supp. at 1294 (stating that where, like here, health and safety "requirements are not imposed on families and groups of similar size of other unrelated people, [they] have the effect of discriminating against people with disabilities"); *see also* MD Health-Gen Code § 10-518(b); § 7-603(b)(1) (mandating that a small private group home be "deemed conclusively a single-family dwelling").

Cases challenging discriminatory ordinances and laws such as HB1359 may prove an FHA claim either if (1) a defendant treated the plaintiff differently because of membership in a protected class, such as people with disabilities (facial discrimination or disparate treatment), or (2) the defendant's neutral action had an unnecessary discriminatory effect on a class of people (disparate impact). Here, because HB 1359 targets group homes, a disparate treatment claim could be made.[1] *See Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501 (10th Cir. 1995) "[S]tatutes that single out for regulation group homes for the handicapped are facially discriminatory." *Larkin v. State of Mich. Dep't of Soc. Servs*., 89 F.3d 285, 290 (6th Cir. 1996) (finding that because a statute requiring notice to all residents within 1500 feet of a foster home applied only to "facilities which will house the disabled, and not to other living arrangements," it was facially discriminatory) (citations omitted). "[F]or facially discriminatory statutes to survive a challenge under the FHAA, the defendant must demonstrate that they are 'warranted by the unique and specific needs and abilities of those handicapped persons' to whom the regulations apply." *Id.* In other words, they cannot be generally applied to all group homes as HB 1359 seeks to do.

Notably, intentional discrimination under the FHA "need not be motivated by dislike for, or animosity against, people with disabilities; the legislative history of the Fair Housing Act shows that Congress intended equally to prohibit discrimination resulting from 'false and over-protective assumptions about the needs of handicapped people, as well as unfounded fears of difficulties about the problems that their tenancies may pose.'" *Bryant Woods Inn, Inc. v. Howard County, Md.*, 911 F.Supp. 918, 929 (D. Md. 1996) (quoting H.R. No. 100–711, U.S.C.C.A.N. 2185 (1988)); *see also Hum. Res. Rsch. & Mgmt. Grp., Inc. v. Cnty. of Suffolk*, 687 F. Supp. 2d 237, 264

[1] A disparate treatment violation can still be proven under the FHA even when the law or ordinance applies to other classes of people in addition to people with disabilities—such as HB 1359's application to juvenile care facilities. *See, e.g.*, *Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1158 (9th Cir. 2013). Alternatively, a plaintiff may succeed on disparate impact grounds by showing that HB 1359 violates the FHA by making it more costly and burdensome for licensed homes to locate or operate in Maryland, and, as a result, disparately impacts people with disabilities. *See Bangerter v. Orem City Corp.*, 46 F.3d 1491, 1501 (10th Cir. 1995).

(E.D.N.Y. 2010) (stating that discriminatory intent can be found even where there is "a benign desire to help the disabled") (citing *International Union, United Auto. Aerospace & Agricultural Implement Workers v. Johnson Controls, Inc*., 499 U.S. 187, 199 (1991)). "In this regard, government officials are generally held to act with discriminatory intent, regardless of their personal views, when they implement the discriminatory desires of others." *Bryant Woods Inn*, 911 F.Supp. at 929; *see also Hum. Res. Rsch. & Mgmt. Grp.*, 687 F. Supp. 2d at 264 (finding that "the democratic process alone is insufficient to justify an otherwise unlawfully discriminatory law," particularly where citizen concerns may be based on stereotypes).

The U.S. Department of Justice and the Department of Housing and Urban Development reiterate the principle that if a law treats "groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities," that law violates the FHA. *Group Homes, Local Land Use, and the Fair Housing Act*, Joint Stmt. of U.S. Dep't of Just. and Dep't of Housing & Urban Dev., Aug. 6, 2015, https://www.justice.gov/crt/joint-statement-department-justice-and-department-housing-and-urban-development.

> [S]uppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance . . . requires [a group home for six or fewer people with disabilities] to seek a use permit, such requirement[ ] would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

Id; *see also Pac. Shores Properties, LLC v. City of Newport Beach*, 730 F.3d 1142, 1147 (9th Cir. 2013) ("[I]t is unlawful discrimination to subject individuals to 'the rigors of the governmental or administrative process ... with an intent to burden, hinder, or punish them by reason of their [membership in a protected class.]'") (quoting *Flores v. Pierce*, 617 F.2d 1386, 1391 (9th Cir.1980)). This principle extends to laws that impose requirements like a community relations plan on group homes.

For example, twenty years ago, the U.S. District Court of Maryland held that a county requirement mandating prospective providers of group homes to "notify neighbors and civic organizations" with a variety of information about the group home violated the FHAA. *Potomac Grp. Home*, 823 F. Supp. at 1289, 1297. The Montgomery County law required the group home provider to share with neighborhood groups information including the type of group home planned, the type of residents that would live in the home and contact information for a person "to whom questions or complaints about the proposed group home may be addressed." *Id.* at 1289. The law required the notice to be sent at the time of submission for the initial license and each

subsequent year. *Id.* The law also "invite[d] neighbors to provide 'continuing input.'" *Id.* The Court held that because neighbors and civic organizations were not invited to comment "upon any family residential unit nor on any other properly zoned residential unit in the County besides group homes for the disabled," the law was facially invalid unless it could be supported by a "legitimate government interest." *Id.* at 1296 (citation omitted). The County's justification—"to notify the community of the existence of the home so that the home can eventually become a part of the community"—was considered an insufficient justification:

> The neighbor notification rule, and defendants' proffered justifications for it, necessarily assume that people with disabilities are different from people without disabilities and must take special steps to "become a part of the community." This requirement is equally as offensive as would be a rule that a minority family must give notification and invite comment before moving into a predominantly white neighborhood. The obvious result of these notifications to neighbors is the antithesis of the professed "integration" goal of defendants. Indeed, notices of this sort galvanize neighbors in their opposition to the homes.

Id.

Similarly, the U.S. Court of Appeals for the Tenth Circuit reversed the dismissal of an FHA challenge to a law requiring a group home operator "to establish a community advisory committee through which all complaints and concerns of the neighbors could be addressed." *Bangerter*, 46 F.3d at 1496, 1505. In doing so, it explained that courts should be "chary about accepting the justification that a particular restriction upon the handicapped really advances their housing opportunities rather than discriminates against them in housing." *Id.* at 1504. If a restriction appears to be "based upon unsupported stereotypes or upon prejudice and fear stemming from ignorance or generalizations," it "would not pass muster" under the FHA. *Id.* Only "restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the FHAA if the benefit to the handicapped in their housing opportunities clearly outweigh whatever burden may result to them." *Id*.

There is also a line of cases invalidating laws requiring group homes to provide notice to neighbors located within a certain distance of the proposed sites. In addition to the *Potomac Group Home* case discussed earlier, *see, e.g.*, *Larkin*, 89 F.3d at 290; *Ardmore, Inc. v. City of Akron, Ohio*, No. 90-CV-1083, 1990 WL 385236, at *1 (N.D. Ohio Aug. 2, 1990). And cases that require a more rigorous application process that involves a series of otherwise irrelevant questions, *see, e.g. Stewart B. McKinney Found., Inc. v. Town Plan & Zoning Comm'n of Town of Fairfield*, 790 F. Supp. 1197, 1204 (D. Conn. 1992) (holding that a zoning commission requiring a group home for people with HIV to answer questions about topics such as "the average age of the occupants, the

disposal of garbage," "payment of rent and other expenses, staffing of the property, services or facilities that would be provided at the property, and transportation" was likely a violation of the FHA); *Ardmore,* 1990 WL 385236 at *1. Both types of cases provide support for our conclusion that HB 1357 violates the FHA.

In sum, HB 1359's requirement that group homes create and revise "community relations plans" very likely violates the FHA because it is facially discriminatory (i.e. it applies to group homes but not other homes of the same size), it is not narrowly tailored, it is overly burdensome without a legitimate government objective, and it is likely driven by discriminatory sentiments of community members.