

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

(This document is based on the provisions contained in the legislation as of the latest date listed below.)

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1418

INTRODUCER: Senator Rouson

SUBJECT: Substance Abuse Services

DATE: January 23, 2018

REVISED: _____

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|----|---------|----------------|-----------|--------|
| 1. | Delia | Hendon | CF | Fav/CS |
| 2. | | | CJ | |
| 3. | | | RC | |

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1418 modifies requirements for licensed substance abuse service providers offering treatment to individuals living in recovery residences. Recovery residences (also known as “sober homes”) are alcohol and drug-free living environments where individuals with substance use disorder reside while they receive treatment services on an outpatient basis.

The bill allows licensed service providers to accept referrals from noncertified recovery residences when it appears that the resident may benefit from such services. The bill further requires certified recovery residences to comply with relevant provisions of the Florida Fire Prevention Code.

SB 1418 also addresses instances involving individuals who have been disqualified for employment with substance abuse service providers following a failed background screening. The bill requires the Department of Children and Families (“DCF”) to render a decision on an application for exemption from disqualification within 60 days of receiving the application, and allows an individual to work for up to 90 days while DCF evaluates his or her application for an exemption under certain conditions. The bill expands the authority of an agency secretary to grant an exemption from disqualification for employment to include individuals applying for work providing mental health and substance abuse treatment. The bill also increases the number of offenses screened for on background checks of owners, directors, and chief financial officers of certified recovery residences.

The bill will likely have an indeterminate fiscal impact on the state and is effective July 1, 2018.

II. Present Situation:

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Substance use disorder occurs when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.² Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.³ Brain imaging studies of persons with substance use disorder show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

Substance Abuse Treatment in Florida

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services.

DCF provides treatment for substance abuse through a community-based provider system that serves adolescents and adults affected by substance misuse, abuse or dependence.⁵ DCF regulates substance abuse treatment by licensing individual treatment components under chapter 397, F.S., and chapter 65D-30, F.A.C.

The 2017 Legislature passed and the Governor approved HB 807, which made several changes to DCF's licensure program for substance abuse treatment providers in chapter 397, F.S.⁶ HB 807 revised the licensure application requirements and process and required applicants to provide detailed information about the clinical services they provide.

Recovery Residences

Recovery residences function under the premise that individuals benefit in their recovery by residing in an alcohol and drug-free environment. Recovery residences are designed to be

¹ World Health Organization, *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited January 17, 2018).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, available at <http://www.samhsa.gov/disorders/substance-use> (last visited January 18, 2018).

³ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, available at <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited January 17, 2018).

⁴ Id.

⁵ Department of Children and Families, *Treatment for Substance Abuse*, <http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification>, (last visited January 17, 2018).

⁶ Ch. 2017-173, L.O.F.

financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.⁷

Section 397.311, F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment. A 2009 Connecticut study notes the following: “Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation.”⁸

Federal Fair Housing Act and Americans with Disabilities Act

The Federal Fair Housing Act of 1988 (FFHA)⁹ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a “handicap” to mean mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term “major life activity” may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, person convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.¹⁰

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.¹¹ Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.¹²

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).¹³ In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing

⁷ *Recovery Residence Report*; Department of Children and Families, Office of Substance Abuse and Mental Health, October 1, 2013, (on file with the Senate Committee on Children, Families and Elder Affairs).

⁸ *Id.*

⁹ 42 U.S.C. 3601 *et seq.*

¹⁰ U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited January 17, 2018).

¹¹ S. 760.23(7)(b), F.S.

¹² S. 760.23(9)(b), F.S.

¹³ *Olmstead v. L.C.*, 527 U.S. 581, (1999).

regulation, which requires states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.”

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹⁴ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹⁵

Based on this protected class status held by individuals in substance abuse recovery, federal courts have held that mandatory conditions placed on housing for people in recovery from either state or sub-state entities, such as ordinances, licenses, or conditional use permits, are overbroad in application and result in violations of the FFHA and ADA.¹⁶ Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.¹⁷ Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.¹⁸

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.¹⁹ However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.²⁰ Further, these regulations must not single out housing for disabled individuals and place requirements that are different and unique from the requirements for housing for the

¹⁴ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited January 18, 2018).

¹⁵ *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

¹⁶ Department of Children and Families, *Recovery Residence Report*, Oct. 1, 2013, available at <http://www.dcf.state.fl.us/programs/samh/docs/SoberHomesPR/DCFProvisoRpt-SoberHomes.pdf> (last visited January 18, 2018).. See, e.g., *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); *Oxford House, Inc.*, 819 F. Supp. 1179; *Marbrunak v. City of Stow, OH.*, 947 F.2d 43 (6th Cir. 1992); *United States v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Wash. 1997); *Oxford House-Evergreen v. Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991); *Potomac Group Home, Inc.*, 823 F. Supp. 1285 (D. Md. 1993).

¹⁷ *Recovery Residence Report*, supra note 16. See, e.g., *Nevada Fair Housing Center, Inc., v. Clark County, et. al.*, 565 F. Supp. 2d 1178 (D. Nev. 2008); See, *Human Resource Research and Management Group*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Community Housing Trust et. al., v. Dep’t of Consumer and Regulatory Affairs et. al.*, 257 F. Supp. 2d 208 (D.C. Cir. 2003); *City of Edmonds v. Oxford House et. al.*, 574 U.S. 725 (1995); *Safe Haven Sober Houses, LLC, et. al., v. City of Boston, et. al.*, 517 F. Supp. 2d 557 (D. Mass. 2007); *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819 (N.D. Ill. 2001).

¹⁸ *Recovery Residence Report*, supra, note 16. See, e.g., *Larkin v. State of Mich.* 883 F. Supp. 172 (E.D. Mich. 1994), judgment *aff’d* 89 F.3d 285 (6th Cir. 1996); *Arc of New Jersey, Inc., v. State of N.J.*, 950 F. Supp. 637, (D.N.J. 1996); *North Shore-Chicago Rehab., Inc. v. Village of Skokie*, 827 F. Supp. 497 (N.D. Ill. 1993); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228 (D.N.J. 1992); *Ardmore, Inc. v. City of Akron, Ohio*, 1990 WL 385236 (N.D. Ohio 1990).

¹⁹ 42 U.S.C. § 3604(f)(9).

²⁰ *Recovery Residence Report*, supra, note 16. See, e.g., *Bangerter v. Orem City Corp.*, 46 F.3d 1491, (10th Cir. 1995); *Ass’n for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F. Supp. 614 (D.N.J. 1994); *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204 (E.D. Pa. 1993).

general population.²¹ Instead, the FFHA and ADA require state and local governments to make reasonable accommodations necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.²² The governmental entity bears the burden of proving through objective evidence that a regulation serves to protect the health and safety of the community and is not based upon stereotypes or unsubstantiated inferences.²³

Voluntary Certification of Recovery Residences in Florida

Florida does not license recovery residences. Instead, in 2015 the Legislature enacted sections 397.487–397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.

While certification is voluntary, Florida law incentivizes certification. Since July 1, 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence is certified and is actively managed by a certified recovery residence administrator.²⁴ Referrals by licensed service providers to uncertified recovery residences are limited to those licensed service providers under contract with a managing entity as defined in s. 394.9082, F.S.; referrals by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral; and referrals before July 1, 2018 by a licensed service provider to that licensed service provider's wholly owned subsidiary.²⁵

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.²⁶ As of January 13, 2018, there were 312 certified recovery residences in Florida.²⁷

Substance Use Disorder and Criminal History

Persons who have recovered from a substance use disorder or mental illness often have a criminal history.²⁸ Common offenses would include using and selling illegal substances, prostitution, or financial fraud. Section 435.04, F.S., allows persons with disqualifying offenses identified through background screening to apply to the respective state agency head (the Secretary of the Department of Children and Families or the Secretary of the Agency for Health

²¹ *Bangerter v. Orem City Corp.*, 46 F.3d 1491 (10th Cir. 1995); *Human Res. Research and Mgmt. Grp, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Potomac Grp. Home Corp. v. Montgomery Cnty., Md.*, 823 F. Supp. 1285 (D. Md. 1993).

²² *Recovery Residence Report*, *supra*, note 16. 42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12131, *et. seq.*, 28 C.F.R. § 35.130(b)(7). To comply with the reasonable accommodation provisions of the ADA, regulations have been promulgated for public entities (defined by 28 C.F.R. § 35.104). This includes a self-evaluation plan of current policies and procedures and modify as needed (28 C.F.R. § 35.105). This is subject to the exclusions of 28 C.F.R. § 35.150. For judicial interpretation, *see, Jeffrey O.*, 511 F. Supp. 2d 1339; *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992).

²³ *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775 (7th Cir. 2002); *Oxford House- Evergreen*, 769 F. Supp. 1329; *Cason v. Rochester Housing Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990).

²⁴ S. 397.4873(1), F.S.

²⁵ S. 397.4873(2), F.S.

²⁶ S. 397.4872, F.S.

²⁷ Florida Association of Recovery Residences, *Certified Residences*, <http://farronline.org/certification/certified-residences/> (last visited January 17, 2018).

²⁸ SB 450 Department of Children and Families Bill Analysis. Oct. 11, 2017. On file with the Senate Committee on Children, Families and Elder Affairs.

Care Administration) for an exemption if it has been three or more years since their conviction. The applicant must produce all court records regarding their convictions, letters of recommendation, evidence of their rehabilitation, education documents, evidence of employment, and fill out a questionnaire. The requirements of this exemption often deter persons from applying to work as volunteers, peers, or other employees of a substance abuse treatment program that provides support. Social support services have been shown to facilitate recovery from a substance use disorder or mental illness is facilitated by the use.²⁹

Background Screening Process

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees; chapter 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,³⁰ and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but, is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.³¹

For both levels of screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing a disqualifying offenses, it must disqualify that individual from employment.

Individuals Requiring Background Screening Under Chapter 397, F.S.

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services to undergo level 2 background screening.

Regarding recovery residences, s. 397.487 and s. 397.4871, F.S., each require level 2 background screening for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. DCF may exempt an individual from the disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program.³²

²⁹ U.S. Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment. What Are Peer Recovery Support Services? Available at <https://store.samhsa.gov/shin/content/SMA09-4454/SMA09-4454.pdf> (last visited January 17, 2018).

³⁰ The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited January 17, 2018).

³¹ S. 435.04, F.S.

³² S. 397.4872, F.S.

III. Effect of Proposed Changes:

Section 1 amends s. 394.4572, F.S., relating to screening of mental health personnel, by expanding the group of individuals for whom an agency head can grant exemptions from disqualification to include applicants otherwise disqualified from employment. Specifically, the bill allows an agency head to grant exemptions from disqualification to those seeking to work solely in mental health treatment programs or facilities or in programs or facilities that treat co-occurring substance use and mental health disorders.

Section 2 amends s. 397.4073, F.S., relating to personnel background checks, to require DCF to render a decision on an application for exemption from employment disqualification within 60 days after DCF receives the complete application. The bill imposes this requirement in cases involving owners, directors, chief financial officers, clinical supervisors, and personnel of service providers, who have direct contact with children or developmentally disabled adults receiving services, and who are disqualified from employment pursuant to level 2 background screening and seek an exemption from disqualification. The bill also mandates level 2 background screenings for any of the personnel listed above who have direct contact with individuals receiving treatment.

The bill expands the scope of background screenings for owners, directors, and chief financial officers of certified recovery residences to also screen for those offenses enumerated in s. 408.809, F.S., and allows an individual to work under supervision for up to 90 days while DCF evaluates his or her application for an exemption from disqualification under certain conditions. The bill also adds additional crimes, such as prostitution, 3rd degree burglary, 3rd degree grand theft, 3rd degree forgery, and related attempt crimes, to an existing list in statute for which an individual may receive an exemption from disqualification, where those individuals are working with adolescents 13 years of age and older and adults with substance use disorders.

Section 3 amends s. 397.487, F.S., relating to recovery residences, to require that all certified recovery residences comply with the provisions of the Florida Fire Prevention Code which apply to one-family and two-family dwellings, public lodging establishments or rooming houses, or other housing facilities as applicable.

Section 4 amends s. 397.4873, F.S., relating to referrals to or from recovery residences, by modifying existing restrictions on referrals to or from recovery residences to allow referrals by a recovery residence to a licensed service provider when a resident has experienced a recurrence of substance use and, in the best judgment of the recovery residence administrator, it appears that the resident may benefit from clinical treatment services. The bill also provides that a recovery residence or its owners, directors, operators, employees, or volunteers may not benefit from referrals made pursuant to provisions of s. 397.4873, F.S.

Section 5 amends s. 435.07, F.S., by specifying that applicants who will be exempted from disqualification for employment solely because of the newly added crimes in Section 2 of the bill may be exempted from disqualification without a statutorily imposed 3 year waiting period following release from confinement or court-ordered supervision.

Section 6 provides an effective date of July 1, 2018.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The bill may have an impact on recovery residences which need to modify features of existing physical structures or move to new locations in order to comply with relevant provisions of the Florida Fire Prevention Code. This impact is indeterminate.

C. Government Sector Impact:

DCF may be impacted by an increased workload associated with the newly added time limit on rendering decisions for employment disqualification exemptions. This impact is not expected to be significant.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 394.4572, 397.4073, 397.487, 397.4873, 435.07.

IX. Additional Information:**A. Committee Substitute – Statement of Changes:**

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on January 22, 2018:

- Removed the creation of a new licensable component of “treatment with housing overlay” and restores the deletion of day and night treatment with community housing.
- Expanded the staff and volunteers who are subject to a level 2 background screening to include anyone with direct contact with individuals receiving treatment; these personnel must also undergo a background screening as required in s. 408.809, F.S.
- Expanded the crimes for which an individuals may receive an exemption from disqualification without the statutorily imposed waiting period, if they are working with adolescents 13 years of age and older and adults with substance use disorders.
- Allowed an individual to work under supervision for up to 90 days while DCF is evaluates his or her application for an exemption from disqualification under certain conditions

B. Amendments:

None.