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: SB 326

INTRODUCER: Senator Clemens

SUBJECT: Substance Abuse Services

DATE: February 9, 2015 REVISED:

| | ANALYST | STAFF DIRECTOR | REFERENCE | ACTION |
|---|---|---|---|---|
| 1. | Crosier | Hendon | CF | **Pre-meeting** |
| 2. | | | AHS | |
| 3. | | | AP | |

## I. Summary:

SB 326 establishes processes for the voluntary certification of recovery residences and recovery residence administrators. The Department of Children and Families (DCF or department) is required to approve credentialing entities to develop and administer the certification programs. The credentialing entities are required to establish procedures for the certification of recovery residences. The credentialing entities must establish procedures to administer the application, certification, recertification and disciplinary processes; monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements; interview and evaluate residents, employees and volunteer staff on their knowledge and application of certification requirements; provide training for owners, managers, and staff; develop a code of ethics and establish the application, inspection and annual certification renewal fees.

The also bill provides for application, examination and certification fees for the recovery residence administrator. The credentialing entity is authorized in the bill to suspend or revoke certification if a certified recovery residence administrator does not meet and maintain certain criteria. The bill allows DCF to exempt an individual from disqualifying offenses of a level 2 background screening if the individual meets certain criteria and the recovery residence attests to that such exemption is in the best interest of the program. The DCF is also required to publish a list of all recovery residences and recovery residence administrators on its website but allows for the exclusion of a recovery residence or recovery residence administrator upon written request.

The bill has an indeterminate fiscal impact on the DCF and may reduce the costs for local governments. This bill has an effective date of July 1, 2015.

## II. Present Situation:

Recovery residences (also known as "sober homes") function under the premise that individuals benefit in their recovery by residing in a recovery residence. There is no universally accepted

definition of a recovery residences; however unlike most halfway houses, which receive government funding and limit the length of stays, recovery residences are 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.[1] Recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in evictions.[2] 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."[3]

Some recovery residences voluntarily join coalitions or associations[4] that monitor health, safety, quality, and adherence to the membership requirements for the specific coalition or association.[5] The exact number of recovery residences in Florida is currently unknown.[6] The facilities, operators and organizational design of recovery residences vary greatly. It is argued that the location of the home is critical to recovery and placing the home in a single-family neighborhood helps to avoid temptations that other environments can create.[7] Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[8]

In 2013, the DCF conducted a study of recovery residences in Florida.[9] The DCF sought public comment relating to community concerns for recovery residences. Three common concerns for the recovery residences were the safety of the residents, safety of the neighborhoods and lack of governmental oversight.[10]

The following concerns were raised by participants at public meetings:

- Residents being evicted with little or no notice;
- Unscrupulous landlords, including an alleged sexual offender who was running a women's program;
- A recovery residence owned by a bar owner and attached to the bar;

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[1] Department of Children and Families, Office of Substance Abuse and Mental Health, *Recovery Residence Report* (Oct. 1, 2013) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[2] *Id.*
[3] *Id.*
[4] Douglas L. Polcin, Ed.D., MFT and Diane Henderson B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses,* The Journal of Psychoactive Drugs, Vol. 40, No. 2, June 2008; pp. 153-159, available at http://www.biomedsearch.com/article/Clean- sober-place-to-live/195982213.html
[5] *Id.*
[6] *DCF Report* at page 6.
[7] M.M. Gorman *et al., Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction,* THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families, and Elder Affairs).
[8] M.M. Gorman *et al.*, *supra* note 2.
[9] Ch. 2013-040, L.O.F. The 2013-2014 General Appropriations Act directed DCF to determine whether to establish a licensure/registration process for recovery residences and to provide the Governor and Legislature with a report on its findings. In its report, DCF was required to identify the number of recovery residences operating in Florida, identify benefits and concerns in connection with the operation of recovery residences, and the impact of recovery residences on effective treatment of alcoholism and on recovery residence residents and surrounding neighborhoods. DCF was also required to include the feasibility, cost, and consequences of licensing, regulating, registering, or certifying recovery residences and their operators. DCF submitted its report o the Governor and Legislature on October 1, 2013.
[10] *Recovery Residence Report, supra* note 4.

- Residents dying in recovery residences;
- Lack of regulation and harm to neighborhoods;
- Land use problems and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking;
- Mismanagement of resident funds or medication;
- Lack of security at recovery residences and abuse of residents;
- The need for background checks of recovery residence staff;
- The number of residents living in some recovery residences and the living conditions of these recovery residences;
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are existing treatment;
- False advertising;
- Medical tourism;
- Whether state agencies have the resources to enforce regulations and adequately regulate these homes;
- The allegation that medical providers are capable of ordering medical tests, and billing insurance companies were doing so unlawfully;
- Lack of uniformity in standards; and
- Alleged patient brokering, in violation of Florida Statutes.[11]

Currently, recovery residences, or their functional equivalent, are not subject to the DCF of state oversight. Furthermore, there is not currently a statewide certification process for recovery residence administrators. The DCF does not identify or endorse any entities that are responsible for the certification of recovery residence professionals.

Persons that are licensed or employed in professions that serve vulnerable populations are required to be of good moral character and most are required to comply with background screening requirements in ch. 435, F.S. Currently, the level 2 background screening requirements in s. 435.04, F.S., does not apply to staff employed by a licensed substance abuse treatment provider that have direct contact with adults who are not developmentally disabled that are receiving services.[12] This specific adult population is not considered a vulnerable population under ch. 435, F.S.,[13] and therefore, the licensed service provider personnel that have direct contact only with this specific adult population are not subject to level 2 background screening requirements.

The department is aware of at least one private entity in Florida, the Florida Association of Recovery Residences (FARR) that currently certifies recovery residences in accordance with national standards of the certification program developed by the National Alliance of Recovery Residences (NARR). Certification is voluntary and the national standards are only for the certification of recovery residences – recovery residence administrators are not currently certified under the existing certification program.

[11] *Id.*
[12] Section 397.451, F.S.
[13] Section 435.02(6), F.S.

**Federal Law**

***Fair Housing Act***

The Federal Fair Housing Act of 1988 (FHA)[14] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FHA defines a “handicap” to mean those 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 one’s self, learning, speaking or working. The FHA also protects persons who have a record of such impairment, or are regarded as having such impairment. Current users of illegal controlled substances, person convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FHA.[15]

The Florida Fair Housing Act in s. 760.23(7)(b), F.S., 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. The statue defines “discrimination” to include a refusal to make reasonable accommodations in rules, policies, practices or services when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.

***Americans with Disabilities Act***

In July 1999, the United States Supreme Court held that the unnecessary institutionalization of people with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[16] 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 regulation, requiring 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.[17] 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 FHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[18]

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[14] 42 U.S.C. 3601 *et seq.*

[15] *See* U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Feb. 13, 2015).

[16] *Olmstead v. L.C.,* 527 U.S. 581, (1999).

[17] 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 Feb. 6, 2014).

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

## III. Effect of Proposed Changes:

**Section 1** amends s. 397.311, F.S., to add definitions for six new terms to implement the voluntary program for certification of recovery residences – "certificate of compliance," "certified recovery residence," certified recovery residence administrator," "credentialing entity," "recovery residence," and "recovery residence administrator."

The bill defines the term "certified recovery residence" to mean "a recovery residence that holds a valid certificate of compliance or that is actively managed by a certified recovery residence administrator." As written, this would allow a recovery residence to be certified by virtue of the professional certification of the administrator. The bill does not define "actively managed" and it is unclear whether multiple recovery residences that were managed by the same administrator could be certified by virtue of the administrator's certification.

The bill also defines the term "recovery residence" to mean "a residential dwelling unit, or other form of group housing, that is 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." This definition could include other types of housing such as supportive housing for homeless persons, domestic violence shelters, or halfway houses operated by or under contract with the Florida Department of Corrections and the Florida Department of Juvenile Justice. It is also unclear whether "other form of group housing" refers to the physical grouping of housing units, such as a group of apartments or townhomes, or the group living arrangements for a specific group or population, such as group homes, foster homes, or community residential homes.

**Section 2** creates a new section of Florida Statutes, requiring DCF to approve one or more credentialing entities for the purposes of developing and administering a voluntary certification program for recovery residences. The bill prescribes a series of standards that would be codified for a credentialing entity and the requirements and criteria that recovery residences must meet in order to be certified. However, the bill does not specify the criteria or approval process that DCF must use to evaluate and approve a credentialing entity. The bill does not appear to give DCF discretion, or the ability to "deny" approval of a credentialing entity. In addition, the bill does not provide DCF with rule-making authority necessary to establish the requirements and process for evaluating and approving these credentialing entities.

In the bill, the credentialing entities are required to establish processes for several items, such as training and development of code of ethics. It is unclear if this is directed towards staff and volunteers, or for those individuals living in the recovery residence. The policy and procedures manual would also be required to include a "good neighbor" policy to address neighborhood concerns and complaints.

As previously noted, the term "credentialing entity" is defined as a "nonprofit organization that develops and administers professional certification programs according to nationally recognized certification and psychometric standards" but the bill does not require the certification to be based on nationally recognized standards or psychometric standards. The certification of

recovery residences would not be considered a type of professional certification but rather a type of facility or organization certification.

This section also requires the credentialing entity to, among many other things, "interview and evaluate residents, employees and volunteer staff on their knowledge and application of certification requirements." It is not clear why the credentialing entity would need to interview and evaluate residents on their knowledge of the certification requirements.

The credentialing entity must also establish application, inspection, and annual certification renewal fees. Application and annual certification renewal fees may not exceed $100, however, the inspection fee shall reflect actual costs for inspectors. An inspection must be performed before a recovery residence can be approved for certification. The approved credentialing entity must inspect certified recovery residences at least once a year. The bill does not specify the tasks or expenses that could be included as an actual cost of inspection, nor does the bill establish a maximum dollar amount for the fee that a recovery residence must pay for an inspection. The establishment of fees for application, inspection and certification appears to be the only compensation that a credentialing entity would receive in exchange for administering recovery residences.

The bill specifies that the credentialing entity shall require all employees of a recovery residence to submit to and pass a level 2 background screening pursuant to s. 435.04, F.S., as a condition of certification. The DCF is responsible for receiving and reviewing the results of the background screenings in order to determine if an employee meets the "certification requirements." The credentialing entity shall deny a recovery residence's application and may revoke or suspend the certification if employees subject to the disqualifying offenses set forth in s. 435.04(2), F.S., do not have an exemption granted by DCF pursuant to s. 397.4872, F.S.

The bill requires that all employed staff of recovery residences must submit to and pass a level 2 background screening pursuant to s. 435.04, F.S. If an employee is subject to a disqualifying offense set forth in s. 435.04(2), F.S, DCF may grant an exemption from disqualification for disqualifying offenses pursuant to s. 397.4872, F.S. (created in section 4 of the bill). As written, the exemptions provided in s. 397.4872, F.S., conflict with the existing requirements in s. 435.07, F.S. In s. 435.07(4)(b), F.S., disqualifications from employment are not allowed to be removed from, nor may an exemption be granted to, any person who is a sexual predator as designated pursuant to s. 775.21, F.S., career offender pursuant to s. 775.261, F.S., or sexual offender pursuant to s. 943.0435, F.S., unless the requirement to register as a sexual offender has been removed pursuant to s. 973.04354, F.S.

The bill also makes it a misdemeanor, pursuant to ss. 775.082 or 775.083, F.S., to advertise as a "certified recovery residence" unless such residence has secured a certificate of compliance.

**Section 3** creates a new section of Florida Statutes, requiring DCF to approve one or more credentialing entities for the purposes of developing and administering a voluntary certification program for recovery residence administrators. The bill sets forth standards that would be codified for a credentialing entity and the requirements and criteria that recovery residence administrators must meet to be certified. However, the bill does not specify the criteria or approval process that DCF must use in order to evaluate and approve a credentialing entity.

The bill requires the credentialing entity to approve qualified training entities to provide precertification training to applicants and continuing education to certified recovery residence administrators. An approved credentialing entity or its affiliate is prohibited from providing training to applicants and continuing education to recovery residence administrators to avoid a conflict of interest. The bill's language does not clarify how the provision of training by the approved credentialing entity would create a conflict of interest or what would constitute a conflict of interest. It is also unclear if DCF would have to review the criteria used by the credentialing entity to evaluate and approve qualified training entities as part of its own process to evaluate and approve the credentialing entity. The bill does not specify whether there is a fee associated with the training and which entity would receive the fees.

The bill contains a provision establishing level 2 background screening for each recovery residence administrators. If as a result of the background screening a recovery residence administrator is subject to a disqualifying offense set forth in s. 435.04(2), F.S, DCF may grant an exemption from disqualification for disqualifying offenses pursuant to s. 397.4872, F.S. (created in section 4 of the bill). As written, the exemptions provided in s. 397.4872, F.S., conflict with the existing requirements in s. 435.07, F.S, which provides that disqualification from employment may not be removed from, nor may an exemption be granted to, any person who is a sexual predator as designated pursuant to s. 775.21; career offender pursuant to s. 775.261; or sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 973.04354, F.S.

The bill requires a credentialing entity to establish a certification program that "is directly related to the core competencies" but this is not defined. The credentialing entity is given the authority to suspend or revoke an administrator's certificate of compliance, but does not provide for any appeal.

**Section 4** creates a new section of Florida Statutes, which provides exemptions to staff disqualifications and administrator ineligibility due to disqualifying offenses identified in the background screening results. It is not clear if DCF or the credentialing entity is responsible for notifying the individual that he or she is subject to qualifying defenses, a time period for submitting a request for exemption, who should be notified of DCF's decision regarding the request for exemption, or how a decision made by DCF regarding an exemption can be contested, if at all.

By April 1, 2016, a credentialing entity shall submit a list of certified recovery residences and certified recovery residence administrators to DCF which will be posted on the department's website.

**Section 5** amends s. 397.407, F.S., requiring licensed substance abuse treatment providers (licensed service providers) to only refer current and discharged patients to recovery residences that hold a valid certificate of compliance as provided in s. 394.487, F.S., (created in section 2 of the bill), is actively managed by a certified recovery residence administrator as provided in s. 397.4871, F.S., (created in section 3 of the bill), or both, if owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary after July 1, 2016.

**Sections 6, 7, 8, 9 and 10** revises statutory cross-references.

**Section 11** provides an effective date of July 1, 2015.

## 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 fiscal impact of SB 326 on recovery residences or recovery residence administrators is indeterminate as it is dependent upon the number of individuals and entities that elect to participate in the voluntary certification program. Application fees may not exceed $100 for certification of a recovery residence. Recovery residence certification also requires inspection fees to be charged at cost. Application fees for recovery residence administrators cannot exceed $225 and renewal fees cannot exceed $100.

The bill requires fingerprints be submitted to FDLE and FBI as part of the required background screening and provides these costs be covered by prospective employees or volunteers of the credentialing entity. The cost for level 2 background screens range from $38 to $75 depending upon the selected vendor.[19]

### C. Government Sector Impact:

The bill requires DCF to review level 2 background screening results for the employees of recovery residences and all applicants to become certified recovery residence administrators as a condition of certification. The department is additionally required to review all requests for exemptions from disqualifying offenses. This will increase the number of screenings and requests for exemptions that DCF handles per year. The extent

[19] Department of Children and Families, *Background Screening*, http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp (lasted visited Feb. 14, 2015).

of the increase is indeterminate as the exact number of recovery residences and associated employees is currently unknown. According to DCF, a background screening FTE position is capable of completing 7,655 screenings per year.[20] The cost for this position is $63,917 with an annual recurring expense of $60,035.[21]

## VI. Technical Deficiencies:

As written, the certification requirements that must be established by an approved credentialing entity as required by section 2 of the bill appear to contradict with the definition of "credentialing entity" in section 1 of the bill.

The bill does not specify whether an employee of a recovery residence must undergo level 2 background screening each year as a requirement for application for renewal of a recovery residence's application. The bill does not address persons who are not required to be re-fingerprinted. Clarification is needed as this would impact workload and fiscal impact to DCF.

The bill specifies that the certification of recovery residences and recovery residence administrators is voluntary; however, the bill requires licensed substance abuse treatment providers to only refer current and discharged patients to recovery residences that hold a valid certificate of compliance, is actively managed by a certified recovery residence administrator, or both, or is owned and operated by a licensed service provider or licensed service provider's wholly owned subsidiary.

## VII. Related Issues:

None.

## VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.311, 397.407, 212.055, 394.9085, 397.405, 397.416, and 440.102

This bill creates the following sections of the Florida Statutes: 397.487, 397.4871 and 397.4872.

## IX. Additional Information:

### A. Committee Substitute – Statement of Changes:

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

None.

### B. Amendments:

None.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.

[20] Department of Children and Families, *Senate Bill 326 Analysis*, (Jan. 27, 2015).
[21] *Id*.