HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 807 Marketing Practices for Substance Abuse Services
SPONSOR(S): Children, Families & Seniors Subcommittee, Hager
TIED BILLS: **IDEN./SIM. BILLS:** SB 788

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	13 Y, 0 N, As CS	Langston	Brazzell
2) Criminal Justice Subcommittee	11 Y, 0 N	Merlin	White
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Substance abuse affects millions of people in the United States each year. Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236. Deaths caused by heroin and fentanyl increased more than 75% statewide compared to 2014.

The Florida Department of Children and Families (DCF) regulates substance abuse treatment through licensure. Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services. Individuals in recovery from substance abuse may reside in recovery residences (alcohol- and drug-free living environments) while they receive treatment services on an outpatient basis. Florida does not license recovery residences but allows voluntary certification for recovery residences and recovery residence administrators, implemented by private credentialing entities.

The Legislature appropriated funds for FY 2016-17 to the State Attorney for the Fifteenth Judicial Circuit to conduct a study aimed to strengthen investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry and submit the study to the Governor and the Legislature by January 1, 2017. In its report, the Task Force identified patient brokering and fraudulent marketing as key problems in the substance abuse treatment industry.

CS/HB 807 implements several of the recommendations from the Task Force to address these and other abusive practices in the substance abuse treatment industry. The bill:

- Expands the current prohibitions on referrals between licensed treatment providers and recovery residences that do not obtain voluntary certification from DCF.
- Prohibits a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence from engaging in deceptive marketing practices and provides criminal penalties for those who do.
- Makes it unlawful for any person to knowingly and willfully make a materially false or misleading statement or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed service provider, in marketing, advertising materials, or other media or on a website with the intent to induce another person to seek treatment with that service provider.
- Adds the term “benefit” to the list of items solicited or received that may not be used to induce the referral of a patient and adds patient brokering to the offenses that can be investigated and prosecuted by the Office of Statewide Prosecution and to the crimes that constitute “racketeering activities.” Additionally, the bill creates enhanced penalties for higher volumes of patient brokering.
- Creates a new provision for applications for disclosure of patient records for individuals receiving substance abuse services in an active criminal investigation, permitting the court, at its discretion, to enter an order authorizing the disclosure of an individual’s substance abuse treatment records without prior notice.
- Makes a number of changes to DCF’s licensure of substance abuse treatment providers in chapter 397 to strengthen and improve the regulation of service providers.

The bill will have an indeterminate fiscal impact on state government.

This bill provides an effective date of July 1, 2017.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Substance Abuse

Substance abuse affects millions of people in the United States each year. Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance use disorders occur when the chronic use of alcohol and/or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[2] It is often mistakenly assumed that individuals with substance use disorders lack moral principles or willpower and that they could stop using drugs simply by choosing to change their behavior.[3] In reality, drug addiction is a complex disease, and quitting takes more than good intentions or a strong will. In fact, because drugs change the brain in ways that foster compulsive drug abuse, quitting is difficult, even for those who are ready to do so.[4]

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[5] The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.[6]

Opioid Epidemic

Florida is in the midst of an opioid crisis.[7] Drug overdose is now the leading cause of injury-related death in the United States.[8] In 2015, Florida ranked fourth in in the nation with 3,228 deaths from drug overdoses, and at least one opioid caused 2,566 of those deaths.[9] Statewide, in 2015, heroin caused 733 deaths, fentanyl caused 705, oxycodone caused 565, and hydrocodone caused 236; deaths caused by heroin and fentanyl increased more than 75% statewide when compared with 2014.[10]

Florida's prescription opioid overdose rate increased from 1.5 per 100,000 in 1999 to 5.8 per 100,000 in 2014.[11] The crackdown on pill mills dispensing prescription opioid drugs, such as oxycodone and hydrocodone, has contributed to the rise in heroin addiction.[12] With the introduction of synthetic opiates such as fentanyl, which is 100 times more potent than morphine, and carfentanil, which is 1,000 times more potent than morphine, Florida is on pace this year to double the number of overdose deaths from 2016.[13]

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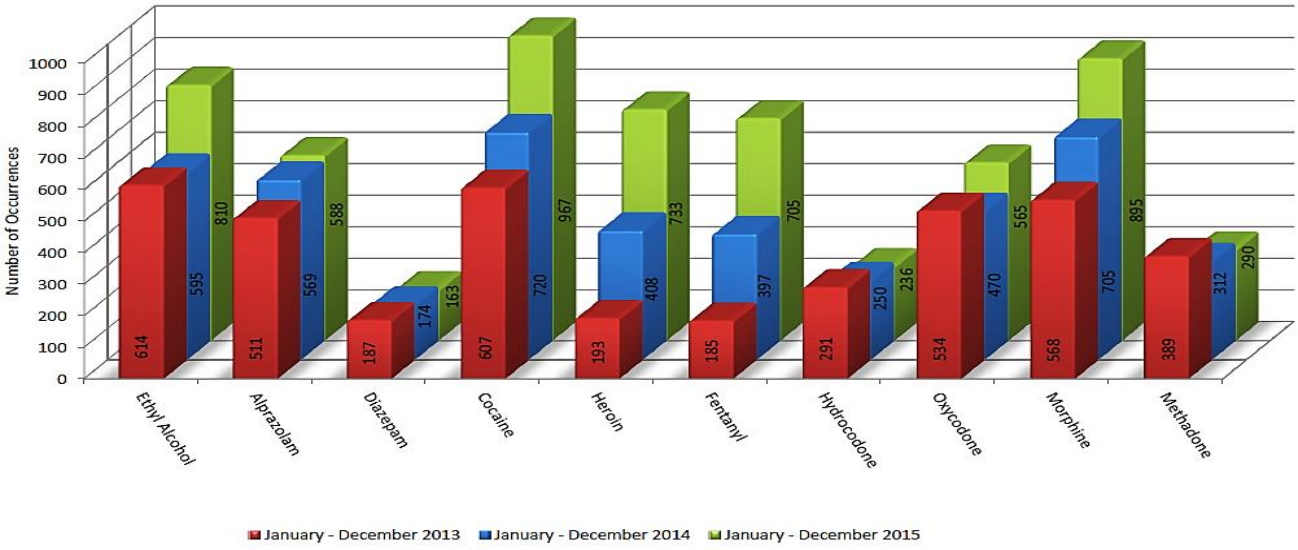
[1] WORLD HEALTH ORGANIZATION. *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited March 10, 2017).
[2] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* http://www.samhsa.gov/disorders/substance-use (last visited March 1, 2017).
[3] NATIONAL INSTITUTE ON DRUG ABUSE, *Understanding Drug Use and Addiction*, http://www.drugabuse.gov/publications/drugfacts/understanding-drug-abuse-addiction (last visited March 10, 2017).
[4] *Id*.
[5] *Supra*, note 2.
[6] *Id*.
[7] Palm Beach County Sober Homes Task Force Report 2017, Jan. 1, 2017, *available at* http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/SHTFReport2017.pdf (last visited March 10, 2017).
[8] *Id*.
[9] *Id*.
[10] *Id*.
[11] *Id*.
[12] *Id*.
[13] *Id*.

Comparison of Drug Caused Deaths in Florida 2013 – 2015[14]



Substance Abuse Treatment

In the early 1970s, the federal government created formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[15] These provided separate funding streams and requirements for alcoholism and drug abuse; in response, the Florida Legislature enacted Chapters 396, F.S., (alcohol) and 397, F.S. (drug abuse).[16] In 1993, legislation combined Chapters 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").[17] The Marchman Act supports the prevention and remediation of substance abuse through a comprehensive system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

The Florida Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals lacking Medicaid or private insurance and do not have the financial ability to self-pay). SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.[18] In addition to providing services, DCF regulates substance abuse treatment pursuant to Chapter 397, F.S., and Chapter 65D-30, F.A.C.

Licensed Service Components

DCF regulates substance abuse treatment through licensure. Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services.[19] Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and

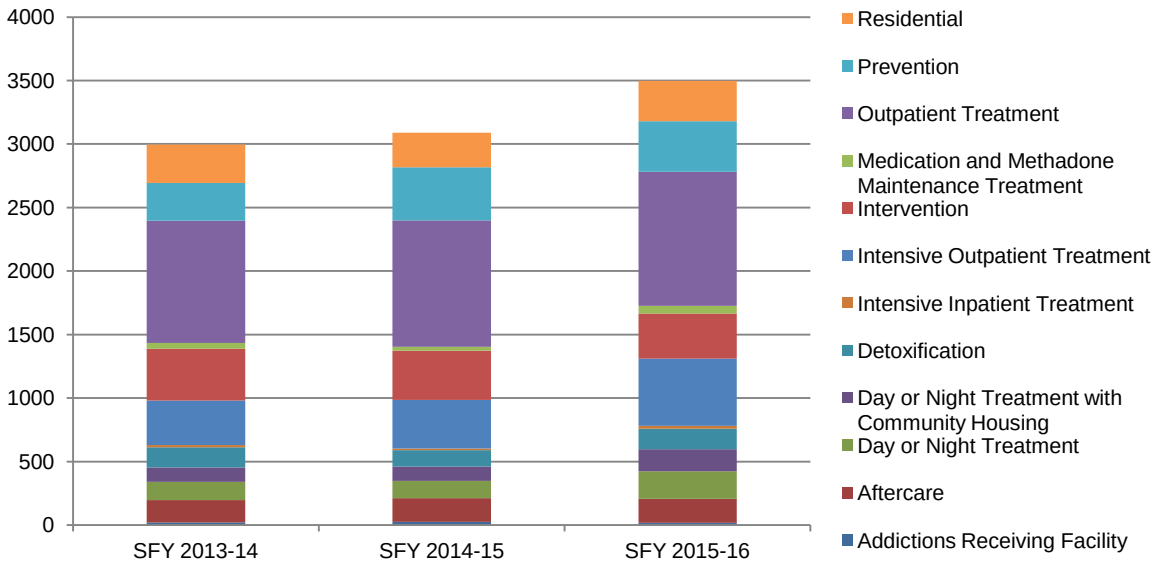
[14] *Id*. at 7.
[15] Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5.
[16] *Id*.
[17] Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.
[18] These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.
[19] s. 397.311(25), F.S.

alcohol and promote a healthy, drug-free lifestyle; “clinical treatment services” include, but are not limited to, the following licensable service components:

- Addictions receiving facility,
- Day or night treatment,
- Day or night treatment with community housing,
- Detoxification,
- Intensive inpatient treatment,
- Intensive outpatient treatment,
- Medication-assisted treatment for opiate addiction,
- Outpatient treatment, and
- Residential treatment.[20]

The most commonly licensed service components are outpatient treatment and intensive outpatient treatment. For FY 2015 – 2016, DCF issued 1,057 licenses for outpatient treatment and 529 licenses for intensive outpatient treatment.

Licensed Service Components[21]



All private and publicly-funded entities providing substance abuse services must be licensed, unless exempt. Exemptions are available for:

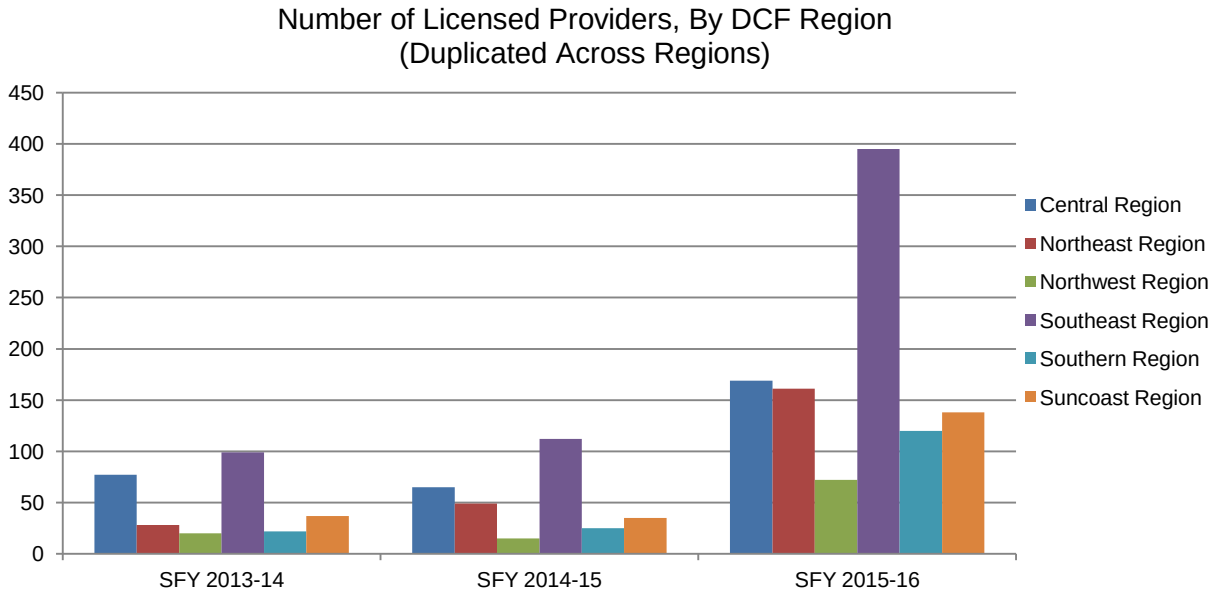
- Hospitals or hospital-based components licensed under Chapter 395, F.S.;
- Nursing home facilities as defined in s. 400.021, F.S.;
- Substance abuse education programs established pursuant to s. 1003.42, F.S.;
- Facilities or institutions operated by the federal government;
- Physicians or physician assistants licensed under Chapter 458 or Chapter 459, F.S.;
- Psychologists licensed under Chapter 490, F.S.;
- Social workers, marriage and family therapists, or mental health counselors licensed under Chapter 491, F.S.;
- Facilities licensed under Chapter 393, F.S., which, in addition to providing services to persons with developmental disabilities, also provide services to persons developmentally at risk as a consequence of exposure to alcohol or other legal or illegal drugs while in utero; and

[20] s. 397.311(25)(a), F.S.
[21] Department of Children and Families, Licensure of Substance Abuse Services, PowerPoint Presentation to Children, Families, and Seniors Subcommittee on February 16, 2017 (PowerPoint on file with Children, Families, and Seniors Subcommittee staff).

- Facilities licensed under s. 394.875, F.S., as crisis stabilization units.[22]

Churches, nonprofit religious organizations, and denominations are also exempt from licensure, if their services are solely religious, spiritual, or ecclesiastical in nature.[23]

The number of substance abuse treatment providers providing treatment under those components has increased significantly over the last three years, particularly in Southeast Florida.



Recovery Residences

Commonly, recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.[24] These residences offer no formal treatment but perhaps mandate or strongly encourage attendance at 12-step groups; and are self-funded through resident fees.[25]

Section 397.311(36), F.S., defines a "recovery residence" as 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.

Benefits of Recovery Residences

Multiple studies have found that individuals benefit in their recovery by residing in a recovery residence. Specifically, individuals in recovery residing in an Oxford House (OH), a very specific type of recovery residence, had significantly lower substance use, significantly higher income, and significantly lower incarceration rates than those individuals who participate in usual group care.[26]

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[22] s. 397.405, F.S.
[23] s. 397.405(8), F.S.
[24] *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, J Psychoactive Drugs, Jun 2008; 40(2): 153–159, Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A.
[25] *Id*.
[26] An Illinois study found that those in the OHs had lower substance use (31.3% vs. 64.8%), higher monthly income ($989.40 vs. $440.00), and lower incarceration rates (3% vs. 9%). OH participants, by month 24, earned roughly $550 more per month than participants in the usual-care group. In a single year, the income difference for the entire OH sample corresponds to approximately $494,000 in additional production. In 2002, the state of Illinois spent an average of $23,812 per year to incarcerate each drug offender. The lower rate of incarceration among OH versus usual-care participants at 24 months (3% vs. 9%) corresponds to an annual saving of

A cost-benefit analysis regarding residing in Oxford Houses found variation in cost and benefits compared to other residences. The result suggests that the additional costs associated with OH treatment, roughly $3,000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and substance use as well as increases in earning from employment.[27] Additionally, another study found that residents of a recovery residence were more likely to report abstaining from substance use at a much higher rate:

- Residents at six months were 16 times more likely to report being abstinent;
- Residents at 12 months were 15 times more likely to report being abstinent; and
- Residents at 18 months were six times more likely to report being abstinent.[28]

Federal Law Applicable to Recovery Residences

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities.[29] The ADA requires broad interpretation of the term "disability" so as to include as many individuals as possible under the definition.[30] The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.[31] Disability also includes individuals who have a record of such impairment, or are regarded as having such impairment.[32] The phrase "physical or mental impairment" includes, among others[33], drug addiction and alcoholism.[34] However, this only applies to individuals in recovery: ADA protections are not extended to individuals who are actively abusing substances.[35]

Additionally, the Fair Housing Amendment Acts of 1988 (FHA) prohibits housing discrimination based upon an individual's handicap.[36] A person is considered to have a handicap if he or she has a physical or mental impairment which substantially limits one or more of his or her major life activities.[37] This includes individuals who have a record of such impairment, or are regarded

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roughly $119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated $613,000 in savings per year, or an average of $8,173 per OH member. L. Jason, B. Olson, J., Ferrari, and A. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96 AM. J. OF PUB. HEALTH 10, (2006), at 1727-1729.

[27] "While treatment costs were roughly $3,000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of $29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly $3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment… even under the most conservative assumption, we find a statistically significant and economically meaningful net benefit to OH of $17,800 per enrollee over two years." A. Lo Sasso, E. Byro, L. Jason, J. Ferrari, and B. Olson, *Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model*, 35 EVALUATION AND PROGRAM PLANNING (1), (2012).

[28] D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome*, 38 Journal of Substance Abuse Treatment, 356-365 (2010).

[29] 42 U.S.C. § 12101. This includes prohibition against discrimination in employment, State and local government services, public accommodations, commercial facilities, and transportation. U.S. Department of Justice, *Information and Technical Assistance on the Americans with Disabilities Act*, *available at* http://www.ada.gov/2010_regs.htm (last visited March 10, 2017).

[30] 42 U.S.C. § 12102.

[31] *Id*.

[32] *Id*.

[33] 28 C.F.R. § 35.104(4)(1)(B)(ii). The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV (whether symptomatic or asymptomatic), and tuberculosis.

[34] 28 C.F.R. § 35.104(4)(1)(B)(ii).

[35] 28 C.F.R. § 35.131.

[36] 42 U.S.C. § 3604. Similar protections are also afforded under the Florida Fair Housing Act, s. 760.23, F.S., which 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 statute provides that "discrimination" is defined 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.

[37] 42 U.S.C. § 3602(h).

as having such impairment.[38] Drug and alcohol addictions are considered to be handicaps under the FHA.[39] However, current users of illegal controlled substances and persons convicted for illegal manufacture or distribution of a controlled substance are not considered handicapped under the FHA.

An individual in recovery from a drug addiction or alcoholism is protected from discrimination under the ADA and FHA. Based on this protected class status, 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 FHA and ADA.[40] Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.[41] Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.[42]

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.[43] However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.[44] 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 general population.[45] Instead, the FHA 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.[46] 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.[47]

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

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[38] *Id*.
[39] *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993).
[40] 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 March 10, 2017). *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).
[41] *Recovery Residence Report, supra* note 40. *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).
[42] *Recovery Residence Report, supra*, note 40. *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).
[43] 42 U.S.C. § 3604(f)(9).
[44] *Recovery Residence Report, supra*, note 40. *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).
[45] *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).
[46] *Recovery Residence Report, supra*, note 40. 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, s*ee, Jeffrey O.*, 511 F. Supp. 2d 1339; *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992).
[47] *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).

recovery residence administrators, implemented by private credentialing entities. Under the voluntary certification program, DCF approved two credentialing entities to design the certification programs and issue certificates: The Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.

Sections 397.487, and 397.4871, F.S., set criteria for certification, including a requirement that the certified recovery residences be actively managed by a certified recovery residence administrator. Level 2 background screening is required for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. Section 397.4872, F.S., allows DCF to 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. Under s. 397.487, F.S., the credentialing entities must deny, suspend or revoke certification if a recovery residence or a recovery residence administrator fails to meet and maintain certain criteria. The credentialing entity must inspect recovery residences prior to the initial certification and during every subsequent renewal period, and must automatically terminate certification if it is not renewed within one year of the issuance date. It is a first degree misdemeanor[48] for any entity or person who advertises as a "certified recovery residence" or "certified recovery residence administrator", respectively, unless the entity or person has obtained certification under this section.[49]

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 holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary.[50]

DCF publishes a list of all certified recovery residences and recovery residences administrators on its website.[51] As of March 1, 2017, there were 257 certified recovery residences in Florida.[52]

Issues Regarding Recovery Residences and the Substance Abuse Treatment Industry

In 2016, the Circuit Court of the Fifteenth Judicial Circuit, in Palm Beach, empaneled a Grand Jury and convened a task force focusing on issues with recovery residences and the substance abuse treatment industry.

Palm Beach County Grand Jury Findings

The Grand Jury found fraud and abuse occurring between recovery residences and certain providers within the substance abuse treatment industry[53] and that unregulated recovery residences harm their residences and the community.[54]

One of the main problems the Grand Jury focused on was deceptive marketing.[55] The Grand Jury heard testimony on how online marketers representing disreputable treatment providers use harmful practices, including using internet search terms to hijack the name and reputation

[48] A first degree misdemeanor is punishable by not more than one year imprisonment and not more than a $1,000 fine. ss. 775.082, 775.083, F.S.
[49] ss. 397.487 and 397.4871, F.S.
[50] s. 397.407, F.S.
[51] s. 397.4872, F.S.
[52] FLORIDA ASSOCIATION OF RECOVERY RESIDENCES, *Certified Residences*, http://farronline.org/certification/certified-residences/ (last visited March 1, 2017).
[53] PRESENTMENT OF THE PALM BEACH COUNTY GRAND JURY, *Report on the Proliferation and Abuse in Florida's Addiction Treatment Industry*, (Dec. 8, 2016), *available at*, http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/GrandJuryReport2.pdf (last visited March 10, 2017).
[54] *Id*. at 5.
[55] *Id*. at 11, 16.

of prominent respected treatment providers to route the person seeking treatment to an unrelated referral agency.[56] Marketers also encourage individuals to seek the most intensive treatment possible, rather than the treatment in their best interest, in order to generate a larger fee.[57]

Another issue of focus was the illegal rent subsidies that some treatment providers paid to recovery residences for patient referrals[58] The Grand Jury heard testimony that many residents in recovery residences are in need of financial assistance for housing when they leave a residential treatment setting and move to outpatient; many of these individuals are from out-of-state and do not have jobs.[59] In many instances, this leads to the treatment provider paying the resident's rent at a recovery residence in exchange for the recovery residence having referred the resident to the treatment provider for treatment.[60]

Additionally, some recovery residences and treatment providers offer incentives to keep an individual at a particular provider or recovery residence; these incentives include gym memberships, scooters, cigarettes, clothes, and gift cards.[61] Brokers frequently approach individuals offering incentives to get them to move to another treatment provider or recovery residence for the broker's benefit without regard to the needs of the individual.[62]

The Grand Jury also heard testimony about other problems in some recovery residences, including residents being given drugs so that they would fail drug tests and be able to re-engage in services generating insurance payments to providers, residents being sexually abused, and residents being forced to work in labor pools.[63]

Fifteenth Circuit Task Force

The Legislature appropriated $275,000 in nonrecurring general revenue funds for FY 2016-17 to the State Attorney for the Fifteenth Judicial Circuit to conduct a study regarding strengthening investigation and prosecution of criminal and regulatory violations within the substance abuse treatment industry. With the appropriation, the State Attorney established three groups: a Law Enforcement Task Force to investigate and arrest the rogue players in the treatment and recovery residence industries, using current laws; a Proviso Task Force, including members of organizations named in the legislative proviso, to study the issues and make specific recommendations for positive change through legislation and regulatory enhancements; and a third, larger and more inclusive group, to further study the problem and recommend solutions (the Task Force).[64]

Like the Grand Jury, the Task Force, in its report, identified patient brokering and fraudulent marketing as key problems with some providers within the substance abuse treatment industry.[65] The Task Force found that the economic environment of the substance abuse treatment industry in Florida serving patients from out-of-state with private insurance creates

[56] *Id*. at 13.
[57] *Id*. at 14.
[58] *Id*. at 6, 8. The Grand Jury heard testimony that the average referral fee to a recovery residence from a treatment provider is $500 per week per patient and that the more a provider bills, the more the provider can pay in kickbacks to recovery residences to obtain more patients.
[59] *Id*.
[60] *Id*. at 18.
[61] *Id*.
[62] *Id*.
[63] *Id*. at 17.
[64] *Supra*, note 7 at 2.
[65] *Id*.

the opportunity for abuses such as overbilling for services, deceptive marketing, patient brokering, and incentives to relapse.[66]

With respect to patient brokering, the Task Force found that it was common practice for certain substance abuse treatment providers to pay a weekly fee or kickback to their patients' recovery residences, with the understanding that the recovery residences will allow the patients to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program.[67] The Task Force found that patient brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace among certain treatment providers. Some treatment providers and recovery residences were also offering incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more.[68] As a result of patient brokering, there exists an economic incentive for the patient, the substance abuse treatment provider, and the recovery residence for the patient to continually cycle through treatment and relapse.[69] The task force found that this cycle at times ends in the patient's overdose and death.[70]

Patient Brokering

Florida's patient brokering statute, s. 817.505, F.S., makes it unlawful for any person to engage in patient brokering. Patient brokering is paying to induce, or make a payment in return for, a referral of a patient to or from a health care provider or health care facility. Such payments include commissions, bonuses, rebates, kickbacks, bribes, split-fee arrangements, in cash or in kind, provided directly or indirectly.[71] A violation of the patient brokering statute is a third degree felony[72], and may also be remedied by an injunction or any other enforcement process. Private entities bringing an action under the patient brokering statute may recover reasonable expenses, including attorney fees.[73]

The patient brokering statute applies to any person regulated, or statutorily exempt from regulation, by the Agency for Health Care Administration or the Department of Health, who has a Medicaid provider contract, or who has a contract with DCF to provide substance abuse or mental health services under part IV of chapter 394. It expressly applies to "substance abuse providers" licensed under chapter 397.

The patient brokering statute has been used in cases involving split-fee arrangements; for example, an assignment of benefits scenario in which a non-provider suggested a patient go to a particular MRI facility, paid the facility for the MRI and billed the insurer a greater amount.[74] It has also been used in self-referral arrangements; for example, an arrangement by which a series of shell companies, nominee owners and independent contractors were used to conceal relationships that generated a high-volume of Personal Injury Protection patients to a particular provider through a toll-free referral number.[75]

Arrests of Substance Abuse Treatment Provider and Recovery Residence Personnel

[66] *Id*.
[67] *Id*. at 10.
[68] *Id*.
[69] *Id*. Often insurers are required to cover each relapse as a separate event; as a result, there is an economic incentive for bad actors in the industry to encourage relapse.
[70] *Id*.
[71] s. 817.505(1), F.S.
[72] A third degree felony is punishable by not more than five years of imprisonment and not more than a $5,000 fine. ss. 775.082, 775.083, F.S.
[73] s. 817.505(4), (6), F.S.
[74] *Medical Management Group of Orlando, Inc. v. State Farm Mut. Auto. Ins. Co*., 811 So. 2d 705 (Fla. 5th DCA 2002).
[75] *State Farm Mut. Auto. Ins. Co. v. Physicians Group of Sarasota, L.L.C*., 9 F. Supp. 3d 1303 (M.D. Fla. Mar. 25, 2014) (denying motion to dismiss).

Since Fall 2016, law enforcement has arrested sixteen individuals for patient brokering in Palm Beach County.[76] The first arrest was the CEO of Whole Life Recovery, which provided intensive outpatient treatment.[77] By November 23, five more individuals had been arrested for patient brokering under s. 817.505, F.S.[78] In December 2016, six individuals were charged in a federal complaint that included patient brokering, insurance fraud, and allegations of human trafficking.[79] Most recently, the owner of Chapters Recovery, which provides outpatient treatment and intensive outpatient treatment, was arrested on 93 counts of patient brokering.[80] According to the arrest report, he paid $325,000 to three sober home operators who enrolled residents living in their sober homes in treatment programs at Chapters Recovery.[81]

Recommendations to Address Abuses in the Substance Abuse Treatment Industry

Based on the testimony it heard, the Grand Jury made the following recommendations:

- Prohibit deceptive advertising;
- Provide disclaimers and other useful information to patients;
- Require marketing entities, marketers, and admissions personnel to be licensed;
- Require licensure and certification of commercial[82] recovery residences;
- Eliminate the statutory provision allowing patient referrals to an uncertified recovery residence owned by a substance abuse treatment provider;
- Prohibit patient referrals from an uncertified recovery residence to a substance abuse treatment provider;
- Treat substance abuse licensure as a privilege rather than a right;
- Provide better resources by raising license and service fees;
- Prohibit the solicitation or receipt of any "benefit" under the patient brokering statute;
- Increase criminal penalties and minimum fines for patient brokering;
- Create penalty enhancements for large-scale patient brokering;
- Add patient brokering to the Statewide Prosecutor's jurisdiction;
- Permit disclosure of patient records, for the purpose of an ongoing criminal investigation, without prior notice; and
- Promote education and interagency collaboration with respect to investigations into the substance abuse treatment industry.[83]

The Task Force made several in-depth recommendations, including:

- *Imposing greater penalties and other enhancements to the patient brokering statute*: The Task Force identified statutory changes to address patient brokering. It recommends that a licensed substance abuse treatment provider not be allowed to refer a "prospective, current or

[76] Christine Stapleton, *Drug treatment CEO arrested on 93 counts of patient brokering*, PALM BEACH POST, Feb. 23, 2017, *available at*, http://www.palmbeachpost.com/news/breaking-news/drug-treatment-ceo-arrested-counts-patient-brokering/xHgSlIZlNiJZxjiqox57KP/ (last visited March 3, 2017).
[77] Lawrence Mower, *Boynton Beach addiction treatment center's CEO, operator arrested*, PALM BEACH POST, Oct. 25, 2016, *available at*, http://www.mypalmbeachpost.com/news/boynton-beach-addiction-treatment-center-ceo-operator-arrested/LlVfJDqWo4GXsyjEDTA4TK/ (last visited March 3, 2017).
[78] Ryan Van Velzer, *More arrests made in crackdown on illegal sober home activities*, SUNSENTINEL, Nov. 23, 2016, *available at* http://www.sun-sentinel.com/local/palm-beach/fl-more-arrests-sober-homes-bust-20161123-story.html (last visited March 3, 2017).
[79] John Pacenti, Christine Stapleton, Mike Stucka, PALM BEACH POST, Dec. 21, 2016, *available at*, http://www.palmbeachpost.com/news/crime--law/subject-post-investigation-arrested-sober-home-fraud/794mQ13ejXytKUgpdhoHOI/ (last visited March 3, 2017).
[80] *Supra*, note 76.
[81] *Id*.
[82] The Grand Jury differentiated between an OH recovery residence model and a "commercial" recovery residence that is a for-profit business operated by a third party; however, federal law applies to both models. See the discussion of Federal Law Applicable to Recovery Residences on pages 6-7, *infra*, for more detail.
[83] *Supra*, note 53, *passim.*

discharged patient to, or accept a referral from" a recovery residence unless the recovery residence is certified and actively managed by a certified recovery residence administrator.[84] It also recommends that the term "benefit" should be added to the prohibited items solicited or received in the patient brokering statute and that there should be enhanced penalties for multiple patient brokering offenses.[85] Additionally, for the prosecution of patient brokering, the Task Force recommends adding patient brokering to the enumerates list of offenses the Office of Statewide Prosecution, within the Office of the Attorney General, may prosecute and adding patient brokering to the predicate offenses constituting "racketeering activities."[86]

- *Enacting a fraud statute specific to intentional and knowing material misrepresentations by marketers:* It recommends creating a statutory prohibition of unethical marketing practices within Chapter 397, F.S., and creating criminal penalties for fraudulent marketing practices.[87]
- *Requiring greater restrictions on any recovery residence referral*: It recommends expanding the individuals subject to referral provisions and addressing referrals from recovery residences to treatment providers.
- *Increasing DCF's authority to effectively regulate[88] substance abuse treatment providers*: This includes increasing the fees charged by the department and the number of staff it has for licensure inspection.[89]
- *Modify privacy requirements for patient records relating to criminal investigations:* It recommends that, for criminal investigations, the court, at its discretion, be able to enter an order authorizing the disclosure of an individual's substance abuse treatment records without prior notice, so that providers and recover residence operators are not tipped off to an undercover criminal investigation.[90] Federal law requires adequate notice, but state law requires prior notice; at least one judge has rejected the state's argument that adequate notice does not require prior notice.[91]

Florida Law on Deceptive Marketing and Unfair Practices

The Florida Deceptive and Unfair Trade Practices Act[92] (FDUTPA) makes unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Violations of FDUTPA are investigated and prosecuted by state attorneys, or the Department of Legal Affairs in the Office of the Attorney General if the violations affect more than one judicial circuit.[93] Violations may be remedied by declaratory judgment, injunction, or an action for actual damages; in addition, a court may order other legal or equitable relief.[94] In addition, a court may assess civil penalties of up to $10,000 per violation.[95] FDUTPA imposes larger penalties for willful violations against senior citizens (age 60 or older), persons with disabilities, and military service members and their families. In this context, a person with a disability is one who has a mental or educational impairment. The civil penalty for a violation of this sort is not more than $15,000.[96]

[84] *Id*. at 12.
[85] *Id*.
[86] *Id*. at 14.
[87] *Id*. at 13-14
[88] The Task Force found that DCF lacks resources, including adequate staffing, and faces statutory limitations that undermine its ability to regulate substance abuse treatment providers.
[89] *Supra*, note 7 at 5-7.
[90] *Id*. at 15.
[91] *Supra*, note 53.
[92] ss. 501.201-501.213, F.S.
[93] s. 501.203, F.S.
[94] s. 501.207, F.S.
[95] s. 501.2075, F.S.
[96] s. 501.2077, F.S.

Courts have defined an "unfair practice" as "one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers."[97] Similarly, courts have defined a "deceptive act" as one in which there is a "representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."[98]

FDUTPA has been used in cases involving similarly-named companies, which could lead consumers to believe them to be the same[99]; in "bait-and-switch" cases[100]; and instances of unreasonable pricing[101], among many other types of activities. FDUTPA applies broadly, to any person who engages in this conduct, and would apply to this conduct by substance abuse treatment providers and recovery residences.

Effect of the Bill

CS/HB 807 implements several of the recommendations from the Task Force to address the problems within the substance abuse treatment industry.

Recovery Residence Referrals

The bill expands the prohibitions on referrals to and from recovery residences that do not obtain voluntary certification from DCF. Licensed service providers may now only accept referrals from certified recovery residences. Current law is only limited in *where* providers could refer patients to; the bill expands this and limits *from whom* they may accept referrals. The bill also includes prospective patients in these referral prohibitions. After June 30, 2019, violators are subject to a $1,000 fine per occurrence.

The bill removes the exemption for referrals to a recovery residence that is owned and operated by a licensed service provider or its wholly owned subsidiary.

Patient Records

The bill creates a new provision for applications for disclosure of patient records for individuals receiving substance abuse services in an active criminal investigation. For criminal investigations, the court, at its discretion, will be able to enter an order authorizing the disclosure of an individual's substance abuse treatment records without prior notice. Existing law would continue to apply to applications filed alone or as part of a pending civil investigation.

Marketing Prohibitions

Deceptive Marketing

The bill expands the types of deceptive actions prohibited beyond those covered under FDUTPA, and provides criminal penalties. It provides a legislative finding that consumers of substance abuse treatment have disabling conditions and that such consumers and their families are vulnerable and at risk of being easily victimized by fraudulent marketing practices that adversely impact the delivery of health care.

[97] *PNR, Inc. v. Beacon Prop. Mgmt*., 842 So. 2d 773, 777 (Fla. 2003) (quoting *Samuels v. King Motor Co.*, 782 So. 2d 489, 499 (Fla. 4th DCA 2001)).
[98] *Id*. at 777 (quoting *Millennium Communs. & Fulfillment, Inc. v. Office of the AG, Dep't of Legal Affairs*, 761 So. 2d 1256, 1263 (Fla. 3d DCA 2000)).
[99] *See, e.g., Rain Bird Corp. v. Taylor*, 665 F. Supp. 2d 1258 (N.D. Fla. Sept. 10, 2009).
[100] *See, e.g., Fendrich v. RBF, L.L.C*., 842 So. 2d 1076 (Fla. 4th DCA 2003).
[101] *See, e.g., Colomar v. Mercy Hosp., Inc*., 461 F. Supp. 2d 1265 (S.D. Fla. Nov. 17, 2006).

Based on this finding, the bill prohibits a service provider, an operator of a recovery residence, or a third party who provides any form of advertising or marketing services to a service provider or an operator of a recovery residence from engaging in any of the following marketing practices:

- Making a false or misleading statement or providing false or misleading information about the provider's, operator's, or third party's products, goods, services, or geographical locations in its marketing, advertising materials, or media or on its website. This is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Including on its website false information or electronic links, coding, or activation that provides false information or that surreptitiously directs the reader to another website. This is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.
- Conduct prohibited by the patient brokering statute, s. 817.505. F.S.
- Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or a web-based presence, unless the service provider or the operator of the recovery residence discloses specified information to the prospective patient.[102] This is a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083, F.S.

Fraudulent Marketing

The bill makes it unlawful for any person to knowingly and willfully make a materially false or misleading statement or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed service provider, as defined in chapter 397, F.S., in marketing, advertising materials, or other media or on a website with the intent to induce another person to seek treatment with that service provider. Such fraudulent marketing is a felony of the third degree, punishable as provided in ss. 775.082, 775.083, or 775.084, F.S.

Patient Brokering

The bill adds the term “benefit” to the list of items solicited or received that may not be used to induce the referral of a patient. The bill also adds patient brokering to the offenses that can be investigated and prosecuted by the Office of Statewide Prosecution and to the crimes that constitute “racketeering activities.”

The bill creates a $50,000 fine for patient brokering. Additionally, the bill creates enhanced penalties for higher volumes of patient brokering. For brokering of 10 to 19 patients, the crime is a second-degree felony punishable as provided in ss. 775.082 or 775.084, F.S., and includes a $100,000 fine. For brokering of 20 or more patients, the crime is a first-degree felony punishable as provided in ss. 775.082 or 775.084, F.S., and includes a $500,000 fine. The bill also adds patient brokering into the offense severity ranking chart; this will dictate the number of points that will be added to an offender’s scoresheet for sentencing purposes.

Substance Abuse Licensure

The bill makes a number of changes to DCF’s licensure of substance abuse treatment providers in chapter 397 to strengthen and improve the regulation of such providers, which are generally based on AHCA’s statutory approach to licensure. The bill also addresses licensure issues identified by DCF.

The bill revises the licensure application requirements and process, requiring providers as part of the application to provide proof that they have obtained accreditation by the 2nd renewal. Providers must

[102] If the marketing provider provides instructions that allow the prospective patient to easily (1) determine whether the marketing provider represents specific licensed service providers or recovery residences that pay a fee to the marketing provider and the identity of such service providers or recovery residences and (2) access lists of licensed service providers and recovery residences on the department website, it is exempt from this prohibition.

also provide detail in the application about the clinical services they will provide. DCF must set licensure fees to be sufficient to cover the cost of regulation. The bill limits DCF to issuing only one probationary license per provider and only when doing so would not place the health, safety, or welfare or individuals at risk. DCF is also prohibited from issuing a license if staff do not pass background screenings and subsequently fail to obtain exemptions.

The bill increases penalties for operating without a license, making it a third-degree felony.

The bill addresses the quality of substance abuse treatment by specifying that clinical treatment may only be provided by a licensed or certified nurse, qualified professional, a recovery support specialist, or another professional pursuant to rule. The bill creates a definition for "recovery support specialist" as well as for "clinical supervisor" and requires the former to be certified by a credentialing entity and the latter to be background screened.

The bill creates s. 397.410, F.S., which requires DCF to have drafted rules for minimum standards for licensure by January 1, 2018, that address:

- Administrative management;
- Standards for clinical and treatment best practices;
- Qualifications of all personnel, including staffing ratios; and
- Service provider facility standards.

The new section also requires DCF to classify violations by scope and nature.

The bill authorizes DCF to inspect providers on announced or unannounced basis to see if minimum requirements are met and grants DCF more flexibility in scheduling inspections.

The bill also expands DCF's authority to take action against a service provider. It requires DCF to use a tier-based system of classifying violations and issuing fines or requiring other action. It allows for each day a violation occurs to be considered a separate violation. The bill authorizes use of corrective action plans; allows moratoria or immediate license suspensions for client health, safety or welfare; requires visible posting of notice of a moratorium or suspension; and allows DCF to deny, suspend, or revoke a license due to:

- False representation;
- An act affecting client health or safety;
- A violation of statute or rule;
- A demonstrated pattern of deficient performance; or
- Failure to remove personnel failing background screening.

The bill also reorganizes Part II of chapter 397 by renumbering several sections. It also repeals s. 397.471, F.S., as its provisions are incorporated into new section s. 397.410, F.S. The bill also conforms cross-references.

The bill provides an effective date of July 1, 2017.

B. SECTION DIRECTORY:

Section 1: Amends s. 16.56, F.S, relating to Office of Statewide Prosecution.
Section 2: Amends s. 397.311, F.S., relating to definitions.
Section 3: Amends s. 397.321, F.S., relating to duties of the department.
Section 4: Amends s. 397.401, F.S., relating to license required; penalty; injunction; rules waivers.
Section 5: Renumbers s. 397.405, F.S., relating to exemptions from licensure.
Section 6: Renumbers s. 397.406, F.S.

Section 7: Amends s. 397.403, F.S., relating to license application.
Section 8: Amends s. 397.407, F.S., relating to licensure process; fees.
Section 9: Renumbers and amends s. 397.451, F.S., relating to background checks of service provider personnel.
Section 10: Renumbers s. 397.461, F.S., relating to unlawful activities relating to personnel; penalties.
Section 11: Creates s. 397.410, F.S., relating to rules; licensure requirements; minimum standards.
Section 12: Renumbers s. 397.419, F.S., relating to quality improvement programs.
Section 13: Amends s. 397.411., F.S., relating to inspection; right of entry; classification of violations; records.
Section 14: Amends s. 397.415, F.S., relating to denial, suspension, and revocation; other remedies.
Section 15: Repeals s. 397.471, F.S., relating to service provider facility standards.
Section 16: Creates s. 397.4873, F.S., relating to referrals to or from recovery residences; prohibitions; penalties.
Section 17: Amends s. 397.501, F.S., relating to rights of individuals.
Section 18: Creates s. 397.55, F.S., relating to prohibition of deceptive marketing practices.
Section 19: Creates s. 817.0345, F.S., relating to prohibition of fraudulent marketing practices.
Section 20: Amends s. 817.505, F.S., relating to patient brokering prohibited; exceptions; penalties.
Section 21: Amends s. 895.02, F.S., relating to definitions.
Section 22: Amends s. 921.0022, F.S., relating to Criminal Punishment Code; offense severity ranking chart.
Section 23: Amends s. 212.055, F.S., relating to discretionary sales surtaxes; legislative intent; authorization and use of proceeds.
Section 24: Amends s. 394.4573, F.S., relating to Coordinated system of care; annual assessment; essential elements; measures of performance; system improvement grants; reports.
Section 25: Amends s. 394.9085, F.S., relating to behavioral provider liability.
Section 26: Amends s. 397.416, F.S., relating to substance abuse treatment services; qualified professional.
Section 27: Amends s. 397.753, F.S., relating to definitions.
Section 28: Amends s. 409.1757, F.S., relating to persons not required to be refingerprinted or rescreened.
Section 29: Amends s. 440.102, F.S., relating to drug-free workplace program requirements.
Section 30: Amends s. 985.045, F.S., relating to court records.
Section 31: Provides an effective date of July 1, 2017.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. The bill requires that fees cover the cost of regulation; it also requires DCF to create a new tiered system of violations, some of which would be subject to the assessment of fines. The amount of additional revenue from licensure fees and fines depends on the amounts set by rule and the number of licensees paying them.

2. Expenditures:

   Indeterminate. This depends on the amount of licensure fee revenue received (see Revenues, above). Additionally, the bill requires clinical supervisors to be background screened; however, the number of clinical supervisors who would need to be background screened is unknown. The number of background screens impacts the department's costs of conducting screenings and fees for participation in the Background Screening Clearinghouse administered by the Agency for Health Care Administration.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

If the changes to patient brokering statutes deter treatment providers and recovery residence operators from giving persons in recovery from substance abuse inducements such as gym memberships, scooters, cigarettes, clothes, and gift cards, these individuals will receive fewer such inducements.

Substance abuse treatment providers and recovery residence operators who are engaging in practices that would be made illegal under this bill may be subject to new monetary fines and criminal penalties unless they adapt their business practices.

Marketing businesses will need to obtain a license from DBPR. Such businesses will need to open an office in Florida if they have no presence in the state but market substance abuse treatment services on behalf of providers located in Florida.

Licensed service providers will need to pay for background screenings for clinical supervisors, unless these individuals are exempt, such as due to having already been screened within five years.

Licensed service providers of clinical services who are not already accredited will need to obtain accreditation by the second renewal.

Licensed service providers who commit certain violations will be subject to fines and other licensure actions such as moratoria, license suspension, revocation, and denial, which could have an economic impact on such providers.

D. FISCAL COMMENTS:

The volume and complexity of patient brokering cases that the Office of Statewide Prosecution may choose to prosecute is unknown. The Office of Statewide Prosecution can absorb these prosecutions within existing resources; however, without increased funding, if it elects to prosecute a large number of patient brokering cases, then it would need to divert employees from prosecuting other offenses.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   Not applicable. This bill does not appear to affect county or municipal governments.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On March 8, 2017, the Children, Families, and Seniors Subcommittee adopted four amendments that:

- Removes the requirement that substance abuse marketers obtain a license from DBPR;
- Made a technical change to clarify a reference to patient brokering;
- Removed reference to an inapplicable section of the criminal code;
- Added patient brokering into the offense severity ranking chart for sentencing purposes; and
- Strengthened DCF's licensure of substance abuse service providers in ch. 397, F.S.

The bill was reported favorably as a committee substitute. The analysis is drafted to the committee substitute.