HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/CS/HB 1069 Substance Abuse Services
SPONSOR(S): Children, Families & Seniors Subcommittee; Hager
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 1418

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	11 Y, 0 N, As CS	Langston	Brazzell
2) Health Care Appropriations Subcommittee	11 Y, 0 N, As CS	Fontaine	Pridgeon
3) Health & Human Services Committee			

SUMMARY ANALYSIS

Substance abuse affects millions of people in the United States each year. 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). Florida does not license recovery residences but allows voluntary certification for recovery residences and recovery residence administrators. Licensed treatment providers and non-certified recovery residences are limited in the referrals they may make to each other. The bill addresses issues related to recovery residences by:

- Allowing a licensed service provider to accept a referral from a noncertified recovery residence if the resident has experienced a recurrence of substance use and it appears that the resident may benefit from such services.
- Prohibiting a recovery residence, its owners, directors, operators, employees, or volunteers from benefitting directly or indirectly from referrals.
- Requiring certified recovery residences to comply with the applicable provisions of the Florida Fire Prevention Code for either one-family and two-family dwellings, public lodging establishments, or rooming houses, or other housing facilities, as applicable.

Chapter 435, F.S., contains standard procedures for criminal history background screening by DCF of certain prospective employees, including some seeking employment with substance abuse treatment providers. If an individual has committed any of the 52 listed statutory offenses, that individual must be disqualified from employment. However, an employee who has been disqualified may be able to request an exemption from disqualification from the appropriate agency. The bill amends statute related to background screening for substance abuse treatment provider personnel by:

- Expanding the screened offenses for owners, directors, and chief financial officers certified recovery residence to include those enumerated in s. 408.809, F.S.
- Expanding the substance abuse treatment staff and volunteers who are subject to a level 2 background screening to include anyone with direct contact with individuals receiving treatment and expanding the screened offenses to include those enumerated in s. 408.809, F.S.
- Expanding the crimes for which an individual can receive an exemption from disqualification without the statutorily imposed waiting period, if they are working only with individuals 13 years of age and older.
- Requiring DCF to render a decision on an application for exemption from disqualification within 60 days after DCF receives the complete application.
- Allowing an individual to work under supervision for up to 90 days while DCF is evaluates his or her application for an exemption from disqualification, so long as it has been five or more years since the individual completed all non-monetary conditions associated with his or her most recent disqualifying offense.
- Granting the head of the appropriate agency authority to grant an exemption from disqualification which is limited solely to employment related to providing mental health and substance abuse treatment.

The bill has a negative, yet likely insignificant, fiscal impact upon DCF due to the increased workload associated with the processing of background screenings for personnel of residential recovery residences. This can be absorbed within existing resources.

The bill provides an effective date of July 1, 2018.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] Substance abuse disorders occur 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 abuse disorder.[3] Brain imaging studies of persons with substance abuse disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.[4]

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

Opioid Abuse

Opioids are psychoactive substances derived from the opium poppy, or their synthetic analogues.[7] They are commonly used as pain relievers to treat acute and chronic pain. An individual experiences pain as a result of a series of electrical and chemical exchanges among his or her peripheral nerves, spinal cord, and brain.[8] Opioid receptors occur naturally and are distributed widely throughout the central nervous system and in peripheral sensory and autonomic nerves.[9] When an individual experiences pain, the body releases hormones, such as endorphins, which bind with targeted opioid receptors.[10] This disrupts the transmission of pain signals through the central nervous system and reduces the perception of pain.[11] Opioids function in the same way by binding to specific opioid receptors in the brain, spinal cord, and gastrointestinal tract, thereby reducing the perception of pain.[12]

Opioids are commonly abused, with an estimated 15 million people worldwide suffering from opioid dependence.[13] Opioids can create a euphoric feeling because they affect the regions of the brain

[1] World Health Organization. *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited January 13, 2018).
[2] Substance Abuse and Mental Health Services Administration, *Substance Use Disorders,* available at http://www.samhsa.gov/disorders/substance-use (last visited January 13, 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 13, 2018).
[4] Id.
[5] *Supra*, note 2.
[6] Id.
[7] World Health Organization, *Information Sheet on Opioid Overdose*, World Health Organization (Nov. 2014), *available at* http://www.who.int/substance_abuse/information-sheet/en/ (last visited January 13, 2018).
[8] National Institute of Neurological Disorders and Stroke, *Pain: Hope through Research*, (Jan. 2014), *available at* https://www.ninds.nih.gov/Disorders/Patient-Caregiver-Education/Hope-Through-Research/Pain-Hope-Through-Research (last visited January 13, 2018).
[9] Gjermund Henriksen, Frode Willoch; *Brain Imaging of Opioid Receptors in the Central Nervous System,* 131 BRAIN 1171-1196 (2007), available at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2367693/ (last visited January 13, 2018).
[10] Id.
[11] Id.
[12] Department of Health and Human Services- Substance Abuse and Mental Health Services Administration, *SAMHSA Opioid Overdose Prevention Toolkit: Facts for Community Members*, (2013, rev. 2014) p. 3, available at https://www.integration.samhsa.gov/Opioid_Toolkit_Community_Members.pdf (last visited January 13, 2018).
[13] *Supra*, note 7.

involved with pleasure and reward, which can lead to abuse.[14] Continued use of these drugs can lead to the development of tolerance and psychological and physical dependence.[15] This dependence is characterized by a strong desire to take opioids, impaired control over opioid use, persistent opioid use despite harmful consequences, a higher priority given to opioid use than to other activities and obligations, and a physical withdrawal reaction when opioids are discontinued.[16] Approximately 4-6 percent of patients who misuse prescription opioids transition to heroin and 80 percent of people who use heroin first misused prescription opioids.[17]

An overabundance of opioids in the body can lead to a fatal overdose. In addition to their presence in major pain pathways, opioid receptors are also located in the respiratory control centers of the brain.[18] Opioids disrupt the transmission of signals for respiration in the identical manner that they disrupt the transmission of pain signals. This leads to a reduction, and potentially cessation, of an individual's respiration. Oxygen starvation will eventually stop vital organs like the heart, and then the brain, and can lead to unconsciousness, coma, and possibly death.[19] Within 3-5 minutes without oxygen, brain damage starts to occur, soon followed by death.[20] However, this does not occur instantaneously as people will commonly stop breathing slowly, minutes to hours after the drug or drugs were used.[21] An opioid overdose can be identified by a combination of three signs and symptoms referred to as the "opioid overdose triad": pinpoint pupils, unconsciousness, and respiratory depression.[22]

The drug overdose death rate involving opioids has increased by 200% since 2000 and has now become the leading cause of accidental deaths in the United States.[23] Nationwide, in 2015, more than 33,091 deaths involved an opioid (licit or illicit),[24] and 15,000 people died from overdoses involving prescription opioids.[25] The most common drugs involved in such deaths were methadone, oxycodone, and hydrocodone. In 2016, in Florida, heroin caused 952 deaths, fentanyl caused 1,390 deaths, oxycodone caused 723 deaths, and hydrocodone caused 245 deaths.[26]

National Public Health Emergency

In March 2017, President Trump established the President's Commission on Combating Drug Addiction and Opioid Crisis (Commission). Its mission is to study the scope and effectiveness of the federal response to the drug and opioid crisis and to make recommendations to the President for improving that response. Commission members include Governor Chris Christie, Governor Charlie Baker,

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[14] National Institute on Health, National Institute on Drug Abuse, *Which classes of Prescription Drugs are Commonly Misused?* (rev. Aug. 2016), available at https://www.drugabuse.gov/publications/research-reports/misuse-prescription-drugs/which-classes-prescription-drugs-are-commonly-misused (last visited January 13, 2018).
[15] *Supra*, note 9.
[16] *Supra*, note 7.
[17] National Institute on Health, National Institute on Drug Abuse, *Opioid Overdose Crisis*, (June 2017), available at https://www.drugabuse.gov/drugs-abuse/opioids/opioid-overdose-crisis (last visited January 13, 2018).
[18] K.T.S. Pattinson, *Opioids and the Control of Respiration*, British Journal of Anaesthesia, Volume 100, Issue 6, pp. 747-758, *available at* http://bja.oxfordjournals.org/content/100/6/747.full (last visited January 13, 2018).
[19] Harm Reduction Coalition*, Guide to Developing and Managing Overdose Prevention and Take-Home Naloxone Projects* (Fall 2012), http://harmreduction.org/wp-content/uploads/2012/11/od-manual-final-links.pdf (last visited January 13, 2018).
[20] Id. at 9.
[21] Id. at 9.
[22] *Supra*, note 7.
[23] Centers for Disease Control and Prevention, *Increases in Drug and Opioid Overdose Deaths – United States, 2000-2014,* Morbidity and Mortality Weekly Report (MMWR) 64(50); 1378-82, available at http://www.cdc.gov/mmwr/preview/mmwrhtml/mm6450a3.htm?s_cid=mm6450a3_w (last visited January 13, 2018).
[24] Centers for Disease Control and Prevention, *Increases in Drug and Opioid Overdose Deaths – United States, 2010-2015,* Morbidity and Mortality Weekly Report (MMWR) 65(50-51); 1445-52, available at https://www.cdc.gov/mmwr/volumes/65/wr/mm655051e1.htm?utm_campaign=colorado.ourcommunitynow.com%20website&utm_source=ocn_story&utm_medium=website (last visited January 13, 2018).
[25] Centers for Disease Control and Prevention, *Prescription Opioid Overdose Data*, available at https://www.cdc.gov/drugoverdose/data/overdose.html (last visited January 13, 2018).
[26] Florida Department of Law Enforcement, Medical Examiners Commission, *Drugs Identified in Deceased Persons by Florida Medical Examiners 2016 Annual Report*, available at http://www.fdle.state.fl.us/MEC/Publications-and-Forms/Documents/Drugs-in-Deceased-Persons/2016-Annual-Drug-Report.aspx (last visited January 13, 2018).

Governor Roy Cooper, Congressman Patrick Kennedy, Professor Bertha Madras, and Florida Attorney General Pam Bondi.

On October 26, 2017, President Donald Trump announced the issuance of a Nationwide Public Health Emergency[27] and a 5-point strategy for combating the opioid crisis, including: [28]

- Improving access to prevention, treatment, and recovery services, including the full range of medication-assisted treatments;
- Targeting availability and distribution of overdose-reversing drugs;
- Strengthening our understanding of the crisis through better public health data and reporting;
- Providing support for cutting edge research on pain and addiction; and
- Advancing practices for pain management.

On November 1, 2017, the Commission released its final report and recommended:[29]

- Reducing administrative burdens associated with accessing federal funding for opioid-related and substance use disorder-related activities in the states;
- Developing and providing training related to standards of care for opioid prescribers, alternatives to opioids, and screening for substance use and mental health risks in patients;
- Enhancing the use of prescription drug monitoring programs;
- Treating opioid addiction, overdose reversal, and recovery; and
- Research and development.

Florida Public Health Emergency

On May 3, 2017, Governor Scott signed Executive Order 17-146.[30] The executive order directs the State Health Officer and Surgeon General to declare a statewide public health emergency due to the opioid epidemic and to take any action necessary to protect the public health.[31] It additionally directs the State Health Officer and Surgeon General to issue a standing order for opioid antagonists, such as naloxone, to ensure access to emergency responders.

Since its initial issuance, the Governor has extended the public health emergency declaration several times. The most recent extension was declared with Executive Order 17-329, issued on December 22, 2017, for 60 days.[32]

Substance Abuse Treatment in Florida

In the early 1970s, the federal government furnished grants for states to develop continuums of care for individuals and families affected by substance abuse.[33] The grants provided separate funding streams and requirements for alcoholism and drug abuse. In response, the Florida Legislature enacted ch. 396, F.S., (alcohol) and ch. 397, F.S. (drug abuse).[34] In 1993, legislation combined ch. 396 and ch. 397,

[27] The White House, Office of the Press Secretary, "President Donald J. Trump is Taking Action on Drug Addiction and the Opioid Crisis," Oct. 26, 2017, available at https://www.whitehouse.gov/the-press-office/2017/10/26/president-donald-j-trump-taking-action-drug-addiction-and-opioid-crisis (last visited January 13, 2018).
[28] U.S. Dep't of Health and Human Services, *Opioids: The Prescription Drug & Heroin Overdose Epidemic*, available at https://www.hhs.gov/opioids (last visited January 13, 2018).
[29] The President's Commission on Combating Drug Addiction and the Opioid Crisis, *Final* Report, available at https://www.whitehouse.gov/sites/whitehouse.gov/files/images/Final_Report_Draft_11-1-2017.pdf (last visited January 13, 2018).
[30] Office of the Governor, Executive Order no. 17-149 (Opioid Epidemic), May 3, 2017, available at: http://www.flgov.com/wp-content/uploads/2017/05/17146.pdf (last visited January 13, 2018).
[31] Id.
[32] Office of the Governor, Executive Order no. 17-329 (Opioid Epidemic Extension), December 22, 2017, available at http://www.flgov.com/wp-content/uploads/orders/2017/EO_17-329.pdf (last visited January 13, 2018).
[33] Department of Children and Families, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with Children, Families, and Seniors Subcommittee staff).
[34] Id.

F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act ("the Marchman Act").[35] The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

Additionally, the 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. 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.[36]

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence.[37]

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.[38]
- **Treatment Services:** Treatment services[39] include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.[40]
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.[41]

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and ch. 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,[42] intervention,[43] and clinical treatment services.[44]

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 alcohol and promote a

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[35] Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.
[36] 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.
[37] Department of Children and Families, *Treatment for Substance Abuse*, http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification, (last visited January 13, 2018).
[38] Id.
[39] Id. Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child-protective system, employment, increased earnings, and better health.
[40] *Supra*, note 37.
[41] Id.
[42] S. 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. *See also,* Department of Children and Families, *Substance Abuse: Prevention,* http://www.myflfamilies.com/service-programs/substance-abuse/prevention, (last visited January 13, 2018). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments
[43] S. 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.
[44] S. 397.311(25), F.S.

healthy, drug-free lifestyle.[45] "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.[46]

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 ch. 397.[47] The bill revised the licensure application requirements and process and required applicants to provide detailed information about the clinical services they will provide. It also required DCF to set licensure fees sufficient to cover the cost of regulation.

Recovery Residences

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.[48] These residences offer no formal treatment (though they may mandate or strongly encourage attendance at 12-step groups) and are self-funded through resident fees.[49]

Section 397.311(36), 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.

Benefits of Recovery Residences

Multiple studies have found that individuals in recovery benefit from residing in a recovery residence. For example, 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.[50]

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

[45] Id.
[46] S. 397.311(25)(a), F.S.
[47] Ch. 2017-173, L.O.F.
[48] 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,* J Psychoactive Drugs, Jun 2008; 40(2): 153–159.
[49] Id.
[50] 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 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.

activity, incarceration, and substance use as well as increases in earning from employment.[51] 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.[52]

Federal Law Applicable to Recovery Residences

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities.[53] The ADA requires broad interpretation of the term "disability" so as to include as many individuals as possible under the definition.[54] The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.[55] Disability also includes individuals who have a record of such impairment, or are regarded as having such impairment.[56] The phrase "physical or mental impairment" includes, among others[57], drug addiction and alcoholism.[58] However, this only applies to individuals in recovery: ADA protections are not extended to individuals who are actively abusing substances.[59]

Additionally, the Fair Housing Amendment Acts of 1988 (FHA) prohibits housing discrimination based upon an individual's handicap.[60] 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.[61] This includes individuals who have a record of such impairment, or are regarded as having such impairment.[62] Drug and alcohol addictions are considered to be handicaps under the FHA.[63] 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

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[51] "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).

[52] 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).

[53] 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 January 13, 2018).

[54] 42 U.S.C. § 12102.

[55] Id.

[56] Id.

[57] 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.

[58] 28 C.F.R. § 35.104(4)(1)(B)(ii).

[59] 28 C.F.R. § 35.131.

[60] 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.

[61] 42 U.S.C. § 3602(h).

[62] *Id*.

[63] *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993).

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.[64] Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.[65] Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.[66]

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.[67] However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.[68] 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.[69] 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.[70] 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.[71]

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. 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.

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.[72] Referrals by licensed service providers to uncertified recovery residences are limited to those licensed service providers under contract with a managing

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[64] 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 13, 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).

[65] *Recovery Residence Report,* supra note 64. *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).

[66] *Recovery Residence Report,* supra, note 64. *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).

[67] 42 U.S.C. § 3604(f)(9).

[68] *Recovery Residence Report*, supra, note 64. *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).

[69] *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).

[70] *Recovery Residence Report, supra,* note 64. 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).

[71] *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).

[72] S. 397.4873(1), F.S.

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.[73]

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.[74] As of January 13, 2018, there were 312 certified recovery residences in Florida.[75]

Background Screening

Substance Use Disorder and Criminal History

Certain individuals receiving substance abuse treatment may have a criminal or violent history. About 54% of state prisoners and 61% of sentenced jail inmates incarcerated for violent offenses met the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, (DSM-IV) criteria for drug dependence or abuse. [76] Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.[77] As a result, individuals who have recovered from a substance use disorder or mental illness often have a criminal history.[78]

Some of these individuals, with criminal pasts, once in recovery may contribute to the substance abuse treatment industry as a volunteer, peer,[79] or other employee 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.[80] Additionally, these individuals bring many "lived experiences," including experience navigating the criminal justice system, which give them the ability to assist others in recovery.[81] However, the crimes committed during the period while these individuals were abusing substances may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

Background Screening Process

In 1995, the Legislature created standard procedures for criminal history background screening of prospective employees; ch. 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,[82] and may

[73] S. 397.4873(2), F.S.
[74] S. 397.4872, F.S.
[75] Florida Association of Recovery Residences, *Certified Residences*, http://farronline.org/certification/certified-residences/ (last visited January 13, 2018).
[76] Jennifer Bronson, et al., Drug Use, *Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009,* U.S. DEPARTMENT OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, available at https://www.bjs.gov/content/pub/pdf/dudaspji0709.pdf (last visited January 13, 2018).
[77] *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, NATIONAL INSTITUTE ON DRUG ABUSE, available at https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf (last visited January 15, 2018).
[78] Department of Children and Families Agency Analysis for 2018 Senate Bill 450, (Oct. 11, 2017) (on file with the Children, Families, and Seniors Subcommittee staff).
[79] DCF's Florida Peer Services Handbook defines a peer as an individual who has life experience with a mental health and/or substance use condition. Department of Children and Families, Florida Peer Services Handbook. *Available at* http://www.myflfamilies.com/service-programs/substance-abuse/publications (last visited Nov. 2, 2017).
[80] 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 Nov. 2, 2017).
[81] *Supra*, note 79 at p. 10.
[82] 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 March 15, 2016).

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.[83]

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.[84] Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.[85]

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.[86] Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.[87] For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.[88] For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.[89] As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. Once the employer or agency then determines if the information contains any employment disqualifiers. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.[90]

Disqualifying Offenses

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and are awaiting final disposition of, have been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or have been adjudicated delinquent and the record has not been sealed or expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:[91]

- Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, relating to murder.
- Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, relating to vehicular homicide.

[83] S. 435.04, F.S.
[84] S. 435.05(1)(a), F.S.
[85] Ss. 435.03(1) and 435.04(1)(a), F.S.
[86] S. 435.05(1)(b)-(c), F.S.
[87] Id.
[88] S. 435.05(1)(b), F.S.
[89] S. 435.05(1)(c), F.S.
[90] S. 435.05(1)(d), F.S.
[91] S. 435.04(2), F.S.

- Section 782.09, relating to killing of an unborn child by injury to the mother.
- Chapter 784, relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, relating to assault, if the victim of the offense was a minor.
- Section 784.03, relating to battery, if the victim of the offense was a minor.
- Section 787.01, relating to kidnapping.
- Section 787.02, relating to false imprisonment.
- Section 787.025, relating to luring or enticing a child.
- Section 787.04(2), relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, relating to sexual battery.
- Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, relating to unlawful sexual activity with certain minors.
- Chapter 796, relating to prostitution.
- Section 798.02, relating to lewd and lascivious behavior.
- Chapter 800, relating to lewdness and indecent exposure.
- Section 806.01, relating to arson.
- Section 810.02, relating to burglary.
- Section 810.14, relating to voyeurism, if the offense is a felony.
- Section 810.145, relating to video voyeurism, if the offense is a felony.
- Chapter 812, relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, relating to incest.
- Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, relating to negligent treatment of children.
- Section 827.071, relating to sexual performance by a child.
- Section 843.01, relating to resisting arrest with violence.
- Section 843.025, relating to depriving a law enforcement, correctional, or correctional probation officer means of protection or communication.
- Section 843.12, relating to aiding in an escape.
- Section 843.13, relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, relating to obscene literature.
- Section 874.05, relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, relating to escape.
- Section 944.46, relating to harboring, concealing, or aiding an escaped prisoner.

- Section 944.47, relating to introduction of contraband into a correctional facility.
- Section 985.701, relating to sexual misconduct in juvenile justice programs.
- Section 985.711, relating to contraband introduced into detention facilities.

Exemption from Disqualification

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offices, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, DCF) to exempt applicants from that disqualification under certain circumstances[92] Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,[93] career offender,[94] or sexual offender (unless not required to register)[95] cannot ever be exempted from disqualification.[96]

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification.[97] However, the individual must first have paid all court-ordered payments (e.g., fees, fines, costs of prosecution or restitution) and three years have passed since the individual's release from confinement and completion of supervision (e.g., probation) and satisfaction of all other nonmonetary conditions (e.g., community service) before DCF can consider his or her request.[98]

DCF sends the disqualified employee an Exemption Packet for the employee to complete to provide DCF information for DCF to use in determining whether he or she meets the statutory standards for an exemption from disqualification.[99] This packet requests the employee to provide: [100]

- A certified copy from the court file of the State Attorney's Petition (filing of information), and Final Disposition for each disqualifying criminal offenses.
- A copy of the arrest report for each disqualifying criminal offenses. If the report is not available, a statement from the court or Law Enforcement Agency that the record does not exist or has been destroyed is acceptable.
- A copy of arrest reports and dispositions for any additional identified criminal offenses.
- Documentation from the probation department or Court documenting release from supervision if probation or parole was given.
- Two or more original, signed letters of recommendation or letters of reference that attest to good moral character.
- Proof of rehabilitation.[101]
- Employment history record.
- Explanation of personal history, e.g., explain what happened with each arrest, current home life, education/training, family members, goals, and community involvement.

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.[102] Clear and

[92] s. 435.07(1), F.S.
[93] s. 775.261, F.S.
[94] s. 775.261, F.S.
[95] s. 943.0435, F.S.
[96] s. 435.07(4)(b), F.S.
[97] S. 397.4073(1)(f), F.S.
[98] Department of Children and Families, Exemption Package, p. 1 (on file with Children, Families, and Seniors Subcommittee staff).
[99] Id.
[100] Department of Children and Families, CF Operating Procedure 60-18, Personnel: Exemption from Disqualification, Appendix B, (Aug. 1, 2010), (on file with Children, Families, and Seniors Subcommittee staff).
[101] Proof of rehabilitation may take the form of letters from employers, or community members, records of successful participation in a rehabilitation program, further education or training certifications, special awards of recognition, or information, which indicates that the applicant is not a danger to the safety or well being of others.
[102] S. 435.07(3)(a), F.S.

convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.[103] This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion.[104] This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals.[105] Evidence that may support an exemption includes, but is not limited to:[106]

- Personal references.
- Letters from employers or other professionals.
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program.
- Evidence of further education or training.
- Evidence of community involvement.
- Evidence of special awards or recognition.
- Evidence of military service.
- Parenting or other caregiver experiences.

DCF states on the Exemption Review Request Checklist that an applicant's failure to provide all relevant documentation will delay the review process and may leave DCF with insufficient evidence of rehabilitation to support an exemption from disqualification.[107]

After DCF receives a complete exemption request package from the applicant, the Background Screening Coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.[108] These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.[109]

After all reasonable evidence is gathered, the Background Screening Coordinator consults with the Background Screening Coordinator's Supervisor, and after consultation with the Background Screening Coordinator's Supervisor, the Coordinator and the Supervisor will recommend whether the exemption should be granted.[110] The Regional Legal Counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the Criminal Justice Coordinator in the region in which the Background Screening Coordinator is located also reviews the exemption request file and recommendation and make an initial determination whether to grant or deny the exemption.[111]

If the Regional Criminal Justice Coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the Regional Director, who has delegated authority from the Secretary to grant or deny the exemption.[112] After an exemption request decision is final,[113] the Background Screener provides a written response to the applicant as to whether the request is granted or denied.[114]

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[103] *Supra*, note 100 at p. 1.
[104] Id.
[105] Id.
[106] Id. at 3-4.
[107] *Supra*, note 100 at Appendix B.
[108] Id. at p. 5.
[109] Id.
[110] Id. at 5.
[111] Id.
[112] Id.
[113] At no point during the evaluation process may an evaluator rely on criminal history reports with an effective date that is more than 60 days old. If the most recent criminal history report is more than 60 days old at the time of review, new criminal history reports must be generated prior to the final decision being made.
[114] *Supra*, note 100 at 5.

If DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.[115] However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.[116] If the application is denied, the denial letter must set forth pertinent facts that the Background Screening Coordinator, the Background Screening Coordinator's Supervisor, the Criminal Justice Coordinator, and Regional Director, where appropriate, used in deciding to deny the exemption request.[117] It must also inform the denied applicant of the availability of an administrative review[118] pursuant to ch. 120, F.S.[119]

In fiscal year 2015-2016, DCF reviewed 433 requests for exemption from disqualification; of those, 340 were granted and 93 were denied.[120] Of the 93 denials, 19 were for the SAMH program.[121]

Individuals Requiring Background Screening Under Ch. 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. However, certain personnel are excluded from background screening requirements:

- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;
- Service providers who are exempt from licensing; and
- Persons employed by the Department of Corrections in a substance abuse service program who have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.[122]

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. For example:

- DCF may grant exemptions from disqualification that would limit service provider personnel to working with adults in substance abuse treatment facilities.[123]
- Employees for service providers which treat adolescents 13 years of age and older, whose background checks indicate crimes under s. 817.563, s. 893.13, or s. 893.147, F.S., may be granted an exemption pursuant to s. 397.4073(4)(b), F.S., without the usual three-year waiting period for felonies.[124]
- If five or more years or more have elapsed since the most recent disqualifying offense, employees may work with adults with substance use disorders until DCF makes a final determination regarding the request for an exemption from disqualification.[125] These individuals

[115] Id. at 6.
[116] Id.
[117] Id.
[118] All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.
[119] *Supra*, note 100 at 6.
[120] Department of Children and Families, Background Screening Program, Exemption Process Map, (Oct. 19, 2016) (on file with Children, Families, and Seniors Subcommittee staff).
[121] Id.
[122] S. 435.07(2), F.S.
[123] S. 397.4073 (4)(c), F.S.
[124] S. 397.4073 (4)(b), F.S., provides exemptions for crimes under ss. 817.563, 893.13, and 893.147, F.S. These exemptions only apply to providers who treat adolescents age 13 and older; as well as personnel who work exclusively with adults.
[125] S. 397.4073(1)(f), F.S.

must work under the supervision of a qualified psychologist, clinical social worker, marriage and family therapist, mental health counselor, or a master's level certified addiction professional until DCF makes a final determination regarding the request for an exemption from disqualification.

Regarding recovery residences, ss. 397.487 and 397.4871, F.S., 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.[126]

Effect of Proposed Changes

Recovery Residences

CS/HB 1069 expands the statutory findings on who may benefit from living in a recovery residence to include not only those individuals who have completed treatment, but also those who are continuing to receive substance abuse treatment.

The bill permits a licensed service provider to accept a referral from a noncertified recovery residence for a resident of the recovery residence, if the 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. Under the bill, neither the recovery residence, nor its owners, directors, operators, employees, or volunteers may benefit directly or indirectly from any referrals to a licensed service provider.

The bill also requires certified recovery residences to comply with the applicable provisions of the Florida Fire Prevention Code for either one-family and two-family dwellings, public lodging establishments, or rooming houses, or other housing facilities, as applicable.

Background Screening

The bill defines "peer specialist" as a person who has been in recovery from a substance abuse disorder or mental illness for at least two years and who uses his or her lived experience to deliver services in behavioral health settings to support others in their recovery, or as a person who has experience as a family member or a caregiver of a person with a substance abuse disorder or mental illness. Beginning July 1, 2018, peer specialists will be subject to level 2 background screenings; and, along with recovery residency owners, directors, chief financial officers, and clinical supervisors, be subject to background screenings for the offenses in s. 408.809, F.S.

In addition to the offenses listed in s. 435.04, F.S., s. 408.809(4), F.S. requires screening for the following offenses or any similar offense of another jurisdiction:

- Any authorizing statutes, if the offense was a felony.
- Chapter 408, F.S., if the offense was a felony.
- Section 409.920, F.S., relating to Medicaid provider fraud.
- Section 409.9201, F.S., relating to Medicaid fraud.
- Section 741.28, F.S., relating to domestic violence.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 817.034, F.S., relating to fraudulent acts through mail, wire, radio, electromagnetic, photoelectronic, or photooptical systems.
- Section 817.234, F.S., relating to false and fraudulent insurance claims.

[126] S. 397.4872, F.S.

- Section 817.481, F.S., relating to obtaining goods by using a false or expired credit card or other credit device, if the offense was a felony.
- Section 817.50, F.S., relating to fraudulently obtaining goods or services from a health care provider.
- Section 817.505, F.S., relating to patient brokering.
- Section 817.568, F.S., relating to criminal use of personal identification information.
- Section 817.60, F.S., relating to obtaining a credit card through fraudulent means.
- Section 817.61, F.S., relating to fraudulent use of credit cards, if the offense was a felony.
- Section 831.01, F.S., relating to forgery.
- Section 831.02, F.S., relating to uttering forged instruments.
- Section 831.07, F.S., relating to forging bank bills, checks, drafts, or promissory notes.
- Section 831.09, F.S., relating to uttering forged bank bills, checks, drafts, or promissory notes.
- Section 831.30, F.S., relating to fraud in obtaining medicinal drugs.
- Section 831.31, F.S., relating to the sale, manufacture, delivery, or possession with the intent to sell, manufacture, or deliver any counterfeit controlled substance, if the offense was a felony.
- Section 895.03, F.S., relating to racketeering and collection of unlawful debts.
- Section 896.101, F.S., relating to the Florida Money Laundering Act.

In addition, the bill expands 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 to include:

- Prostitution.
- Burglary (3rd degree felony).
- Grand theft of the third degree (3rd degree felony).
- Forgery (3rd degree felony).
- Uttering forged instruments (3rd degree felony).
- Obtaining property or services in return for worthless checks, drafts, or debit card orders (3rd degree felony).
- Related attempt crimes.

For individuals who seek an exemption from disqualification for employment in substance abuse treatment following a level 2 background screening, the bill requires DCF to render a decision on the application for exemption from disqualification within 60 days after DCF receives the complete application. Additionally, the bill allows an individuals to work under supervision for up to 90 days while DCF is evaluates his or her application for an exemption from disqualification, so long as it has been five or more years since the individual completed all non-monetary conditions associated with his or her most recent disqualifying offense.

The bill also gives the head of the appropriate agency authority to grant an exemption from disqualification to work solely in mental health or substance abuse treatment programs and facilities, or in those programs or facilities that treat co-occurring substance use and mental health disorders, to an employee otherwise disqualified from employment under s. 435.07, F.S.

The bill provides an effective date of July 1, 2018.

B. SECTION DIRECTORY:

Section 1: Amends s. 394.4572, F.S., relating to screening of mental health personnel.
Section 2: Amends s. 397.4073, F.S., relating to background checks of service provider personnel.
Section 3: Amends s. 397.487, F.S., relating to voluntary certification of recovery residences.
Section 4: Amends s. 397.4873, F.S., relating to referrals to or from recovery residences; prohibitions; penalties.
Section 5: Amends s. 435.07, F.S., relating to exemptions from disqualification.

Section 6: Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   The fiscal impact to DCF is likely insignificant as the department's Background Screening Office currently processes level 2 background screenings for personnel and volunteers of recovery residencies. The addition of peer specialists is not expected to be a significant workload increase.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Indeterminate.

D. FISCAL COMMENTS:

None.

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 January 17, 2018, the Children, Families, and Seniors Subcommittee adopted a strike-all amendment that:

- 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 background screening requirements for owners, directors, CFOs, and clinical supervisors of substance abuse programs and owners, directors, and CFOs and certified recovery residences to include a background screening as required in s. 408.809, F.S.
- 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.
- Required DCF to grant or deny an application for an exemption from disqualification within 60 days after receiving a complete application.
- 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
- Allowed DCF or AHCA, as applicable, to grant an exemption from disqualification, following a level 2 background screening, to individuals with disqualifying offenses to work solely in mental health treatment programs or substance abuse treatment facilities or in those that treat co-occurring substance use and mental health disorders.
- Specified that owners, directors, and CFOs and certified recovery residences are eligible for the exemptions from disqualification in s. 397.4073, F.S.
- Allowed a licensed service provider to accept a referral from a noncertified recovery residence if the resident has relapsed. Neither the recovery residence, nor its owners, directors, operators, employees, or volunteers may benefit directly or indirectly from such referrals.
- Required certified recovery residences to comply with the applicable fire code provisions for a one- or two-family dwellings, public lodging establishments, rooming houses, or other housing facilities, as applicable.

On February 6, 2018, the Health Care Appropriations Subcommittee adopted one amendment that:

- Defines "peer specialist" as a person who has been in recovery from a substance abuse disorder or mental illness for at least two years and who uses his or her lived experience to deliver services in behavioral health settings to support others in their recovery, or a person who has experience as a family member or a caregiver of a person with a substance abuse disorder or mental illness;
- Specifies that peer specialists, along with other service provider personnel, are subject to level 2 background screenings and that such screenings also include the standards provided in s. 408.809, F.S., effective July 1, 2018.

The bill was reported favorably as a committee substitute. This analysis is drafted to the bill as amended by the Health Care Appropriations Subcommittee.