

The Florida Senate
BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

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

BILL: SB 102

INTRODUCER: Senator Book

SUBJECT: Recovery Residences

DATE: February 18, 2019

REVISED: _____

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Delia	Hendon	CF	Pre-meeting
2.			HP	
3.			JU	
4.			RC	

I. Summary:

SB 102 requires that all recovery residences operating throughout the state obtain certification through a credentialing entity approved by the Department of Children and Families (“DCF” or the Department). Currently, certification of recovery residences in Florida is voluntary. The bill would mandate that all recovery residences obtain certification by April 1, 2020, if currently operating and uncertified, and upon the date of opening for all residences that open on or after October 1, 2019. The bill also requires that each recovery residence employ a certified recovery residence administrator within the same timeframes. The bill provides that operating a recovery residence without a current and unsuspended certificate of compliance is punishable as a first-degree misdemeanor.

The bill has an indeterminate fiscal impact and has an effective date of October 1, 2019.

II. Present Situation:

Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.¹ Substance use disorder occurs when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.² Repeated drug use leads to changes in the brain’s structure and function that can make a person more susceptible to developing a substance use

¹ World Health Organization. *Substance Abuse*, available at http://www.who.int/topics/substance_abuse/en/ (last visited on February 13, 2019).

² Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, available at <http://www.samhsa.gov/disorders/substance-use> (last visited on February 13, 2019).

disorder.³ Brain imaging studies of persons with substance use disorder show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁴

Substance Abuse Treatment in Florida

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

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

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

Recovery Residences

Recovery residences function under the premise that individuals benefit in their recovery by residing in an alcohol and drug-free environment. Recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the length of stay for those who abide by the rules.

Section 397.311, F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment. A 2009 Connecticut study notes the following: "Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation."⁷

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 on February 13, 2019).

⁴ *Id.*

⁵ Department of Children and Families, *Treatment for Substance Abuse*, <http://www.myflfamilies.com/service-programs/substance-abuse/treatment-and-detoxification>, (last visited on February 13, 2019).

⁶ Ch. 2017-173, L.O.F.

⁷ *Id.*

Federal Fair Housing Act and Americans with Disabilities Act

The Federal Fair Housing Act of 1988 (FFHA)⁸ prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a “handicap” to mean mental or physical impairments that substantially limit one or more major life activities. The term “mental or physical impairment” may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, persons convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.⁹

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.¹⁰ Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.¹¹

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).¹² In its opinion in the *Olmstead* case, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, which requires states to administer their services, programs, and activities “in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities.”

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.¹³ In addition, in the *United States of America v. City of Boca Raton*, the court held that the city’s ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.¹⁴

Based on this protected class status held by individuals in substance abuse recovery, federal courts have held that mandatory conditions placed on housing for people in recovery from either state or sub-state entities, such as ordinances, licenses, or conditional use permits, are overbroad

⁸ 42 U.S.C. 3601 *et seq.*

⁹ U.S. Department of Justice, *The Fair Housing Act*, available at http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited on February 13, 2019).

¹⁰ S. 760.23(7)(b), F.S.

¹¹ S. 760.23(9)(b), F.S.

¹² *Olmstead v. L.C.*, 527 U.S. 581, (1999).

¹³ U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All?*, available at http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited on February 13, 2019).

¹⁴ *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

in application and result in violations of the FFHA and ADA.¹⁵ Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.¹⁶

The FFHA and ADA require state and local governments to make reasonable accommodations necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.¹⁷ 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.¹⁸ Generally, a local government applying a zoning ordinance to sober homes must advance a legitimate governmental interest, and that the requirements of the ordinance are the least restrictive way to advance that interest.¹⁹

In November 2016, the U.S. Department of Housing and Urban Development and the U.S. Department of Justice issued joint guidance on application of the FFHA as it relates to group homes, including recovery residences.²⁰ The joint guidance essentially states that a city can deny a group home if it “would impose an undue financial and administrative burden on the local government or fundamentally alter the essential nature of the locality’s zoning scheme”²¹ (too many group homes in one neighborhood, for example, might be a consideration). Licensing and other group home requirements may be permissible. If so, however, they “must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities.”²² Action can be taken based on criminal activity, providing actions “are not taken to target group homes and are applied equally, regardless of whether the residents of housing are persons with disabilities.”²³

Voluntary Certification of Recovery Residences in Florida

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

¹⁵ 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 on February 13, 2019). 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).

¹⁶ *Recovery Residence Report*, supra note 15. 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).

¹⁷ *Recovery Residence Report*, supra, note 15. 42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12131, et. seq., 28 C.F.R. § 35.130(b)(7).

¹⁸ *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775 (7th Cir. 2002); *Oxford House- Evergreen*, 769 F. Supp. 1329.

¹⁹ *Human Resource Research and Management Group, Inc. et al. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010).

²⁰ *Joint Statement of the Department of Housing and Urban Development and the Department of Justice: State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, November 7, 2016, available at <https://www.justice.gov/crt/page/file/909956/download>.

²¹ *Id.*

²² *Id.*

²³ *Id.*

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

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.²⁶ As of February 13, 2019, there were 404 certified recovery residences in Florida.²⁷ The total number of available beds at these residences was 5,786: 2,915 available beds at these residences were men's beds, 1,493 were women's, and 1,378 were unisex.²⁸ As of January 2019, 25 counties in Florida contained at least one certified recovery residence.²⁹

III. Effect of Proposed Changes:

Section 1 requires that all recovery residences in operation throughout the state before October 1, 2019, obtain certification no later than April 1, 2020, and that all established on or after October 1, 2019, obtain certification before commencing operation.

The bill requires all recovery residences to submit a policy and procedures manual containing, among other items, a prohibition against the possession or use of alcohol and illegal drugs on the premises of a residence, and a prohibition against the use of prescription medication for anyone who does not have a proper prescription, to the credentialing entity.

The bill requires a recovery residence to retain a certified recovery residence administrator within 30 days after the termination, resignation, or removal of a then current certified administrator.

The bill specifies that no one may operate a recovery residence as certified unless it has a current and unsuspended certification or is not yet required by statute to obtain certification, and that doing so is punishable as a first-degree misdemeanor.

Section 2 requires that all recovery residence administrators employed throughout the state before October 1, 2019, obtain certification no later than April 1, 2020, and that all hired on or after October 1, 2019, obtain certification before beginning employment.

²⁴ S. 397.4873(1), F.S.

²⁵ S. 397.4873(2), F.S.

²⁶ S. 397.4872, F.S.

²⁷ Florida Association of Recovery Residences, *Certified Residences*, <http://www.dcf.state.fl.us/programs/samh/docs/FARR%20Certified%20Recovery%20Residences.pdf> (last visited February 13, 2019).

²⁸ *Id.*

²⁹ *Id.*

Section 3 provides an effective date of October 1, 2019.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

It is possible that mandatory certification could result in a challenge under the FFHA or ADA given the presently unclear state of federal law on the issue.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

There will likely be an indeterminate impact on currently uncertified recovery residences in obtaining certification.

C. Government Sector Impact:

DCF may be impacted through any changes needed to make the recovery residence certification program mandatory, however it is unclear how significant this impact would be as the Department has already established credentialing entities.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends sections 397.487 and 397.4871 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Changes:

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

None.

B. Amendments:

None.

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