

**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.)

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Prepared By: The Professional Staff of the Committee on Rules

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BILL: CS/CS/SB 804

INTRODUCER: Community Affairs Committee; Children, Families, and Elder Affairs Committee; and Senator Harrell

SUBJECT: Substance Abuse Services

DATE: April 15, 2021

REVISED: \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Delia</u>	<u>Cox</u>	<u>CF</u>	<u>Fav/CS</u>
2.	<u>Hackett</u>	<u>Ryon</u>	<u>CA</u>	<u>Fav/CS</u>
3.	<u>Delia</u>	<u>Phelps</u>	<u>RC</u>	<u>Favorable</u>

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**Please see Section IX. for Additional Information:**

COMMITTEE SUBSTITUTE - Substantial Changes

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**I. Summary:**

CS/CS/SB 804 makes several changes to provisions governing the licensure and regulation of substance abuse treatment programs, including recovery residences.

The bill makes it a third degree felony to falsify information, or to withhold material facts, on an application for licensure as a substance abuse service provider.

The bill authorizes the Department of Children and Families (DCF) to suspend a service provider's license for failing to pay, within 60 days of a date set by the DCF, administrative fines and accrued interest related to disciplinary action taken against the service provider. The bill also mandates that a service provider pay fines and accrued interest resulting from violations of patient referral prohibitions within 60 days of a date specified by the DCF. If a service provider fails to remit payment within 60 days, the bill requires the DCF to immediately suspend the service provider's license.

The bill also broadens the eligibility for exemption from employment disqualification for certain prior criminal offenses to specified employees of an applicant recovery residence and to applicant recovery residence administrators.

The bill prohibits certain classes of dwellings that are used as recovery residences from having their occupancy category changed or being reclassified for the purpose of enforcement of the

Florida Building Code and from the Florida Fire Prevention Code's requirement for installation of fire sprinklers.

The DCF's Office of Administrative Services estimates there will be an indeterminate negative fiscal impact to both private substance abuse service providers and state government.

The bill has an effective date of July 1, 2021.

## II. Present Situation:

### Substance Abuse

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>1</sup> According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>2</sup> SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>3</sup> 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.<sup>4</sup> Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.<sup>5</sup>

In 2018, approximately 20.3 million people aged 12 or older had a SUD related to corresponding use of alcohol or illicit drugs within the previous year, including 14.8 million people diagnosed with alcohol use disorder and 8.1 million people diagnosed with drug use disorder.<sup>6</sup> The most common SUD diagnoses in the United States are related to the use of alcohol, tobacco, cannabis, opioids, hallucinogens, and stimulants.<sup>7</sup>

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<sup>1</sup> The World Health Organization, *Mental Health and Substance Abuse*, available at <https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse>; (last visited February 27, 2021); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at <https://www.drugabuse.gov/publications/media-guide/science-drug-use-addiction-basics> (last visited February 21, 2021).

<sup>2</sup> The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at <https://www.naatp.org/resources/clinical/substance-use-disorder> (last visited February 21, 2021).

<sup>3</sup> The Substance Abuse and Mental Health Services Administration (The SAMHSA), *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited February 21, 2021).

<sup>4</sup> The NIDA, *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 February 21, 2021).

<sup>5</sup> *Id.*

<sup>6</sup> The SAMHSA, *Key Substance Use and Mental Health Indicators in the United States: Results from the 2018 National Survey on Drug Use and Health*, p. 2, available at <https://www.samhsa.gov/data/sites/default/files/cbhsq-reports/NSDUHNationalFindingsReport2018/NSDUHNationalFindingsReport2018.pdf> (last visited February 21, 2021).

<sup>7</sup> The Rural Health Information Hub, *Defining Substance Abuse and Substance Use Disorders*, available at <https://www.ruralhealthinfo.org/toolkits/substance-abuse/1/definition> (last visited February 21, 2021).

### *Substance Abuse Treatment in Florida*

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.<sup>8</sup> The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.<sup>9</sup> Each of these laws governed different aspects of addiction, and thus had different rules promulgated by the state to fully implement the respective pieces of legislation.<sup>10</sup> However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.<sup>11</sup> In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).<sup>12</sup>

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.<sup>13</sup> However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.<sup>14</sup> As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.<sup>15</sup>

The DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. Services are provided based upon state and federally-established priority populations.<sup>16</sup> The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.<sup>17</sup>

- **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.<sup>18</sup>

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<sup>8</sup> The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> Chapter 93-39, s. 2, L.O.F., which codified current ch. 397, F.S.

<sup>13</sup> See s. 397.601(1) and (2), F.S. An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

<sup>14</sup> Darran Duchene and Patrick Lane, *Fundamentals of the Marchman Act*, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at <http://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/> (last visited February 21, 2021) (hereinafter cited as “Fundamentals of the Marchman Act”).

<sup>15</sup> *Id.*

<sup>16</sup> See chs. 394 and 397, F.S.

<sup>17</sup> The DCF, *Treatment for Substance Abuse*, available at <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited February 21, 2021).

<sup>18</sup> *Id.*

- **Treatment Services:** Treatment services<sup>19</sup> 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.<sup>20</sup>
- **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.<sup>21</sup>

### Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,<sup>22</sup> intervention,<sup>23</sup> and clinical treatment services.<sup>24</sup>

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 healthy, drug-free lifestyle.<sup>25</sup> “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.
- Residential treatment.<sup>26</sup>

<sup>19</sup> *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.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

<sup>22</sup> Section 397.311(26)(c), F.S. “Prevention” is defined as “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, The DCF, *Substance Abuse: Prevention*, <https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml> (last visited February 21, 2021). Substance abuse prevention is achieved 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, in 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.

<sup>23</sup> Section 397.311(26)(b), F.S. “Intervention” is defined as “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.”

<sup>24</sup> Section 397.311(26), F.S.

<sup>25</sup> Section 397.311(26)(a), F.S.

<sup>26</sup> *Id.*

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.<sup>27</sup>

### *Application for Licensure*

Individuals applying for licensure as substance abuse service providers must submit applications on specified forms provided, and in accordance with rules adopted, by the DCF.<sup>28</sup> Applications must include, at a minimum:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the department of the applicant service provider’s financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.
- Proof of the ability to provide services in accordance with the DCF rules.
- Any other information that the DCF finds necessary to determine the applicant’s ability to carry out its duties under this chapter and applicable rules.<sup>29</sup>

### *Adverse Action - Applicant or Licensee*

Section 397.401, F.S., prohibits any person or agency from acting as a substance abuse service provider unless the person or agency is licensed or exempt from licensure. Based on a licensure inspection or resulting from a complaint, a provider may be cited for violations of licensure standards and a fine may be imposed.<sup>30</sup> Fines are levied based on the severity and prevalence of the violation and range in amounts per day, per violation, up to a maximum of \$500.<sup>31</sup>

Section 397.415(1)(d), F.S., allows the DCF to deny, suspend, or revoke the license of a service provider or suspend or revoke the license as to the operation of any service component or

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<sup>27</sup> Chapter 2015-100, L.O.F.

<sup>28</sup> Section 397.403(1), F.S.

<sup>29</sup> *Id.*

<sup>30</sup> Section 397.415(1)(a)1., F.S.

<sup>31</sup> Section 397.415(1)(a)2.-3., F.S.

location identified on the license for false representation of a material fact in the license application or omission of any material fact from the application.

### **Substance Abuse Treatment Employee Background Screening and Exemptions**

Certain individuals affiliated with substance abuse treatment providers must undergo background screening prior to receiving a license. 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 and peer specialists who have direct contact with individuals receiving services to undergo a level 2 background screening.<sup>32</sup>

Individuals applying for licensure must provide, at a minimum, the following:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the DCF of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.<sup>33</sup>

In lieu of requiring the applicant to submit the information, the DCF is required to accept proof of accreditation by an accrediting organization with requirements comparable to Florida licensure regulations, or through another nationally recognized certification process which the DCF finds acceptable, and which meets the minimum licensure requirements of ch. 397, F.S.<sup>34</sup>

### **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.<sup>35</sup> These residences offer no formal treatment (though they

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<sup>32</sup> Section 435.04, F.S., provides standards and necessary criteria for level 2 background screening.

<sup>33</sup> Section 397.403(1)(a)-(g), F.S.

<sup>34</sup> Section 397.403(2), F.S.

<sup>35</sup> The SAMSHA, *Recovery Housing: Best Practices and Suggested Guidelines*, p. 2, available at <https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf> (last visited February 22, 2021).

may mandate or strongly encourage attendance at 12-step groups) and are, in some cases, self-funded through resident fees.<sup>36</sup>

A recovery residence is defined as “a residential dwelling unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which 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.”<sup>37</sup>

### ***Oxford House Model***

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 specific type of recovery residence, had significantly lower rates of substance use, significantly higher income, and significantly lower incarceration rates than those individuals who participate in usual group care.<sup>38</sup>

OH is a non-profit organization that rents out single-family homes for individuals recovering from addiction.<sup>39</sup> The OH model is a recovery residence of six to fifteen residents that is democratically run, self-supporting, and drug-free.<sup>40</sup> Each OH recovery residence operates pursuant to a charter issued by the OH organization. Three or more OHs within a 100-mile radius make up one OH chapter. A representative from each house meets with the others on a monthly basis to exchange information, seek resolution of problems in a particular house, and express that chapter’s vote on larger issues within the OH organization. The OH Board of Directors solely determines whether to grant or revoke an OH’s charter and exercises authority over the policies and officers of the OH.<sup>41</sup> In 1988, Congress passed the Anti-Drug Abuse Act, which, among other provisions, recognized OH as a model for recovery residences and required states to

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<sup>36</sup> The Society for Community Research and Action, *Statement on Recovery Residences: The Role of Recovery Residences in Promoting Long-term Addiction Recovery*, available at <https://www.scra27.org/what-we-do/policy/policy-position-statements/statement-recovery-residences-addiction/> (last visited February 22, 2021).

<sup>37</sup> Section 397.311(37), F.S.

<sup>38</sup> 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 diminished 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, available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC1586125/> (last visited February 21, 2021).

<sup>39</sup> Oxford House, *Oxford House Residential Leases and the Landlord Relationship: The Legal and Policy Reasons Underlying Oxford House Group Leases*, available at <https://oxfordhouse.org/userfiles/file/landlords.php#:~:text=Oxford%20House%2C%20Inc.%2C%20a,Montgomery%20County%2C%20Maryland%20in%201975> (last visited February 22, 2021).

<sup>40</sup> Oxford House, *The Purpose and Structure of Oxford House*, available at [http://www.oxfordhouse.org/userfiles/file/purpose\\_and\\_structure.php](http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php) (last visited February 22, 2021).

<sup>41</sup> *Id.*

establish a recurring loan fund to support groups wishing to establish recovery residences like OH.<sup>42</sup>

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.<sup>43</sup> Additionally, another study found that residents of a recovery residence were more likely to report abstaining from substance use at a higher rate, including 19 percent of residents sampled had been abstinent from drugs and alcohol for six months upon entering an OH; that proportion increased to 39 percent after six months of residency, and by 18 months 42 percent of the residents studied had achieved complete abstinence.<sup>44</sup>

### ***Voluntary Certification of Recovery Residences in Florida***

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.<sup>45</sup> Under the voluntary certification program, the DCF has 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.<sup>46</sup>

### ***Patient Referrals***

While certification is voluntary, Florida law incentivizes certification. Since 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.<sup>47</sup> There are certain exceptions that allow referrals to or from uncertified recovery residences, including:

- A licensed service provider under contract with a behavioral health managing entity.

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<sup>42</sup> Oxford House, History and Accomplishments, available at [http://www.oxfordhouse.org/userfiles/file/oxford\\_house\\_history.php](http://www.oxfordhouse.org/userfiles/file/oxford_house_history.php) (last visited February 22, 2021). See also The Anti-Drug Abuse Act, P.L. 100-690, s. 1916A (1988). This mandate was subsequently changed to a permissive provision in 1990 and codified in 42 U.S.C. § 300x-25.

<sup>43</sup> “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) at p. 7, available at <http://europepmc.org/backend/ptpmcrender.fcgi?accid=PMC3596872&blobtype=pdf> (last visited February 22, 2021).

<sup>44</sup> D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome*, 38 J. Substance Abuse Treatment 356-365 (2010) available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2860009/> (last visited February 22, 2021).

<sup>45</sup> Sections 397.487–397.4872, F.S.

<sup>46</sup> The DCF, *Recovery Residence Administrators and Recovery Residences*, available at <https://www.myflfamilies.com/service-programs/samh/recovery-residence/> (last visited February 22, 2021).

<sup>47</sup> Section 397.4873(1), 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.
- Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.
- Referrals to, or accepted referrals from, a recovery residence with no direct or indirect financial or other referral relationship with the licensed service provider, and that is democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress, and where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.<sup>48</sup>

The DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.<sup>49</sup> As of February 15, 2021, there were 391 certified recovery residences in Florida.<sup>50</sup>

## **Background Screening**

### ***Background Screening Process***

Current law establishes standard procedures for criminal history background screening of prospective employees and 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,<sup>51</sup> and may include criminal records checks through local law enforcement agencies.<sup>52</sup> A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through the 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.<sup>53</sup>

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.<sup>54</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to the FDLE.<sup>55</sup>

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<sup>48</sup> Section 397.4873(2)(a)-(d), F.S.

<sup>49</sup> Section 397.4872(2), F.S.

<sup>50</sup> The Florida Association of Recovery Residences, *Certified Recovery Residences established by s. 397.487, F.S.*, available at <https://www.myflfamilies.com/service-programs/samh/recovery-residence/docs/FARR%20Certified%20Recovery%20Residences.pdf> (last visited February 23, 2021).

<sup>51</sup> 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, available at <https://www.nsopw.gov/> (last visited February 23, 2021).

<sup>52</sup> Section 435.03, F.S.

<sup>53</sup> Section 435.04, F.S.

<sup>54</sup> Section 435.05(1)(a), F.S.

<sup>55</sup> Section 435.04(1)(a), F.S.

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to the FDLE within five working days after receiving it.<sup>56</sup> Additionally, for both levels of screening, the FDLE must perform a criminal history record check of its records.<sup>57</sup> For a level 1 screening, this is the only information searched, and once complete, the FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>58</sup> For level 2 screening, the 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.<sup>59</sup> The person undergoing screening 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.<sup>60</sup>

### ***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 is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or expunged for, any of the 52 offenses enumerated in s. 435.04(2), F.S., or similar law of another jurisdiction.<sup>61</sup>

### ***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 offenses, s. 435.07, F.S., allows the head of the appropriate agency (in the case of substance abuse treatment, the Secretary of the DCF) to exempt applicants from disqualification under certain circumstances.<sup>62</sup>

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,<sup>63</sup> career offender,<sup>64</sup> or sexual offender (unless not required to register)<sup>65</sup> cannot ever be exempted from disqualification.<sup>66</sup>

Additionally, individuals employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain felony offenses may be exempted from disqualification from employment, without waiting for three years.<sup>67</sup> These crimes include certain offenses related to:

- Prostitution;

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<sup>56</sup> Section 435.05(1)(b)-(c), F.S.

<sup>57</sup> *Id.*

<sup>58</sup> Section 435.05(1)(b), F.S.

<sup>59</sup> Section 435.05(1)(c), F.S.

<sup>60</sup> Section 435.05(1)(d), F.S.

<sup>61</sup> *See* s. 435.04(2), F.S., for a full list.

<sup>62</sup> *See* s. 435.07(1), F.S.

<sup>63</sup> Pursuant to s. 775.261, F.S.

<sup>64</sup> Pursuant to s. 775.261, F.S.

<sup>65</sup> Pursuant to s. 943.0435, F.S.

<sup>66</sup> Section 435.07(4)(b), F.S.

<sup>67</sup> Section 435.07(2), F.S.

- Third degree burglary of a structure or conveyance;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking);
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia; and
- Any related criminal attempt, solicitation, or conspiracy.<sup>68</sup>

To seek exemption from disqualification, an employee of a substance use service provider must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification, and the DCF must grant or deny the application within 60 days of the receipt of a completed application.<sup>69</sup>

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.<sup>70</sup> Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.<sup>71</sup> This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion. 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. Evidence that may support an exemption includes, but is not limited to:

- 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.<sup>72</sup>

After the DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review

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<sup>68</sup> *Id.*

<sup>69</sup> Section 397.4073(1)(f), F.S.

<sup>70</sup> Section 435.07(3)(a), F.S.

<sup>71</sup> The DCF, *CF Operating Procedure 60-18, Personnel: Exemption from Disqualification*, at p. 1, (Aug. 1, 2010), available at <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf> (last visited February 23, 2021) (hereinafter, “The DCF Operating Procedure”).

<sup>72</sup> *Id.* at p. 3-4.

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.<sup>73</sup> 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.<sup>74</sup>

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted. 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 makes an initial determination whether to grant or deny the exemption.<sup>75</sup>

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 DCF Secretary to grant or deny the exemption.<sup>76</sup> After an exemption request decision is final, the background screener provides a written response to the applicant as to whether the request is granted or denied.<sup>77</sup>

If the DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.<sup>78</sup> 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.<sup>79</sup> 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.<sup>80</sup> It must also inform the denied applicant of the availability of an administrative review pursuant to ch. 120, F.S.<sup>81</sup>

### ***Background Screening and Exemptions from Disqualification for Recovery Residences***

Sections 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. The 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

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<sup>73</sup> *Id.* at p. 5.

<sup>74</sup> *Id.*

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*

<sup>77</sup> *Id.* at 5.

<sup>78</sup> *Id.* at 6.

<sup>79</sup> *Id.*

<sup>80</sup> *Id.*

<sup>81</sup> 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. *See* The DCF Operating Procedure at p. 6.

that it is in the best interest of the program.<sup>82</sup> Since 2016, the DCF has granted 16 exemptions and denied four exemption requests, one of which was granted after an administrative appeal.<sup>83</sup> Additionally, the background screening requirements of these sections are duplicative of the requirements in ch. 435, F.S.

### **Florida Building Code**

The Florida Building Code (the Building Code) establishes a single set of documents that apply to the design, construction, erection, alteration, modification, repair, or demolition of public or private buildings, structures, or facilities and to the enforcement of these requirements and allows effective and reasonable protection of public safety, health, and general welfare at the most reasonable cost to the consumer.<sup>84</sup> The Legislature has vested in local governments the authority to inspect and enforce the provisions of the Building Code to protect public health and safety.<sup>85</sup> Each local government and each legally constituted enforcement district<sup>86</sup> with statutory authority is required to regulate building construction, and each state agency must enforce the Building Code on all public or private buildings, structures, and facilities, unless such responsibility is statutorily delegated to another unit of government.<sup>87</sup>

### **Florida Fire Prevention Code**

Section 633.202, F.S., authorizes the State Fire Marshall to adopt by rule the Florida Fire Prevention Code (the Fire Code) which must contain all fire safety laws and rules that govern the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities and the enforcement of fire safety laws and rules.<sup>88</sup> The State Fire Marshal must adopt both the current edition of the National Fire Protection Association's Standard 1, Fire Prevention Code and the current edition of the Life Safety Code, NFPA 101, by reference and may modify the selected codes and standards as needed to accommodate the specific needs of the state.<sup>89</sup> Section 633.208, F.S., establishes minimum fire safety standards for residential buildings.

Section 633.208(8)(a), F.S., provides that the provisions of the Life Safety Code, as contained in the Fire Code, do not apply to one-family and two-family dwellings. While local governments may adopt fire sprinkler requirements for one-family and two-family dwellings, the Legislature intends that economic consequences of the fire sprinkler mandate on homeowners be studied before the enactment of such a requirement.<sup>90</sup> Any local government that desires to adopt a fire

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<sup>82</sup> Section 397.4872, F.S.

<sup>83</sup> E-mail correspondence with John Paul Fiore, Legislative Specialist, Department of Children and Families, dated March 1, 2021 (on file with the Senate Children, Families, and Elder Affairs committee).

<sup>84</sup> Section 553.72(1), F.S.

<sup>85</sup> Section 553.72(2), F.S.

<sup>86</sup> Section 553.80(2)(a), F.S., provides that any two or more counties or municipalities, or any combination thereof, may, in accordance with the provisions of ch. 163, F.S., governing interlocal agreements, form an enforcement district for the purpose of enforcing and administering the provisions of the Building Code. Each district so formed shall be registered on forms to be provided for that purpose.

<sup>87</sup> Section 553.80(1), F.S.

<sup>88</sup> Section 633.202(1), F.S.

<sup>89</sup> Section 633.202(2), F.S.

<sup>90</sup> Section 633.208(8)(a), F.S.

sprinkler requirement on one-family or two-family dwellings must prepare an economic cost and benefit report that analyzes the application of fire sprinklers to one-family or two-family dwellings or any proposed residential subdivision.<sup>91</sup> The report must consider the tradeoffs and specific cost savings and benefits of fire sprinklers for future owners of property.<sup>92</sup>

### III. Effect of Proposed Changes:

The bill amends s. 397.403, F.S., relating to substance abuse service provider license applications, criminalizing the withholding or misrepresentation of pertinent information from an application to the DCF for licensure as a substance abuse service provider. Specifically, the bill provides that any applicant who willingly and knowingly makes a false representation of, or omits, any material fact from an application for licensure commits a third degree felony.<sup>93</sup>

The bill amends s. 397.415, F.S., relating to denial, suspension, and revocation of, and other remedial actions against, substance abuse provider licenses, requiring the DCF to immediately suspend the license of a substance abuse service provider in instances where the DCF issues a final order directing the provider to pay an administrative fine by a specified date and the provider fails to remit payment, plus any applicable interest, within 60 days of that date.

The bill amends ss. 397.487 and 397.4871, F.S., relating to the voluntary certification of recovery residences and recovery residence administrators, creating an alternative path to certification for recovery residences and their administrators which would otherwise be ineligible due to an owner, director, or chief financial officer of the residence, or a recovery residence administrator, being disqualified upon a level 2 background screening. Under the bill, if the DCF determines that an owner, director, or chief financial officer of a recovery residence, or a recovery residence administrator, has met the requirements for an exemption from disqualification applicable to service provider personnel under s. 435.07, F.S., or s. 397.4073, F.S., as described above, the residence or administrator will not automatically be deemed ineligible for certification.

The bill amends s. 397.4873, F.S., relating to referrals between providers and recovery residences. Under the bill, in instances where a provider violates the patient referral prohibition and the DCF issues a final order imposing an administrative fine as a result, the provider must pay the fine plus interest at the rate established in s. 55.03, F.S.<sup>94</sup> for each day beyond the date specified by the final order. If the provider fails to remit payment, plus any applicable interest, within 60 days of the date established by the final order, the DCF must immediately suspend the provider's license.

The bill amends s. 553.80, F.S., relating to enforcement of the Florida Building Code, providing that any single-family or two-family dwelling that is converted into a certified recovery residence, or that is a recovery residence and has a charter recognized by Congress, does not

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<sup>91</sup> *Id.*

<sup>92</sup> *Id.*

<sup>93</sup> A third degree felony is punishable by a term of imprisonment not exceeding 5 years and a fine not to exceed \$5,000. Sections 775.082 and 775.083, F.S.

<sup>94</sup> Section 55.03, F.S., provides guidelines to be used by the Chief Financial Officer in setting rates of interest payable on judgments or decrees for each calendar quarter.

have a change of occupancy for purposes of enforcing the Florida Building Code solely on the basis of its conversion to use as a recovery residence. This exception would apply to recovery residences such as the Oxford House.

The bill amends s. 633.208, F.S., relating to minimum fire safety standards, providing that a single- or two-family dwelling that is a certified recovery residence may not be reclassified for the purposes of enforcing the Florida Fire Prevention Code solely due to such use. This exception would apply to recovery residences such as the Oxford House.

The bill is effective July 1, 2021.

#### **IV. Constitutional Issues:**

##### **A. Municipality/County Mandates Restrictions:**

The bill does not appear to require cities and counties to expend funds or limit their authority to raise revenue or receive state-shared revenues as specified by Article VII, Section 18 of the Florida Constitution.

##### **B. Public Records/Open Meetings Issues:**

None.

##### **C. Trust Funds Restrictions:**

None.

##### **D. State Tax or Fee Increases:**

None.

##### **E. Other Constitutional Issues:**

None identified.

#### **V. Fiscal Impact Statement:**

##### **A. Tax/Fee Issues:**

None.

##### **B. Private Sector Impact:**

The DCF anticipates that there may be an indeterminate negative fiscal impact to licensed substance abuse service providers contracting with managing entities, as these providers

will be subject to administrative fines of up to \$1,000 per occurrence for violations of the patient referral provisions of s. 397.4873, F.S.<sup>95</sup>

**C. Government Sector Impact:**

The DCF anticipates that there may be an indeterminate positive impact on state government through collection of administrative fines levied upon licensed substance abuse service providers contracting with managing entities. A small, indeterminate expenditure may be required in order to modify the DCF's web-based licensing system to account for changes made by the bill. The DCF also predicts that there will be an indeterminate cost associated with administrative appeals hearings if local service providers appeal license suspensions.<sup>96</sup>

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

None.

**VIII. Statutes Affected:**

This bill substantially amends the following sections of the Florida Statutes: 397.403, 397.415, 397.487, 397.4871, 397.4873, 553.80, and 633.208.

**IX. Additional Information:**

**A. Committee Substitute – Statement of Substantial Changes:**

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

**CS/CS by Community Affairs on March 24, 2021:**

The Committee Substitute:

- Removes “intentionally” from the bill’s provision punishing the willful, knowing, and intentional misrepresentation or omission of material fact from an application for licensure as a substance abuse service provider;
- Removes the provision that would allow a behavioral health managing entity’s licensed service provider to make or accept a referral from a recovery residence that is not certified by a credentialing organization and managed by a certified recovery residence administrator;
- Makes a technical change to the provision pertaining to the conversion of a single-family or two-family dwelling into a certified recovery residence, as it relates to the Florida Building Code.
- Amends the provision relating to the installation of fire sprinklers in single- or two-family dwellings certified as recovery residences.

<sup>95</sup> The DCF, *Agency Analysis of SB 804*, at p. 7 (January 25, 2021) (on file with the Senate Children, Families, and Elder Affairs Committee).

<sup>96</sup> *Id.*



**CS by Children, Families, and Elder Affairs on March 2, 2021:**

The Committee Substitute:

- Eliminates the provision of the bill permitting a credentialing agency to determine if specified employees of an applicant recovery residence or applicant recovery residence administrator meet the criteria for exemption from employment disqualification for certain prior criminal offenses.
- Broadens the eligibility for exemption from employment disqualification pursuant to s. 435.07 and 397.4073, F.S., to include owners, directors, and chief financial officers of an applicant recovery residence and applicant recovery residence administrators.

**B. Amendments:**

None.