

HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

BILL #: CS/HB 295 Substance Abuse Service Providers
SPONSOR(S): Children, Families & Seniors Subcommittee, Caruso and others
TIED BILLS: **IDEN./SIM. BILLS:** CS/SB 210

FINAL HOUSE FLOOR ACTION: 118 Y's 0 N's **GOVERNOR'S ACTION:** Approved

SUMMARY ANALYSIS

CS/HB 295 passed the House on May 2, 2023, as CS/SB 210.

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. It serves children and adults who are otherwise unable to obtain these services.

DCF licenses substance abuse treatment facilities, such as addiction receiving facilities and intensive inpatient and outpatient treatment. The bill requires DCF to establish a mechanism by January 1, 2024, for imposing and collecting fines for failed inspections of substance abuse service providers, and for improper referrals made by a licensed provider.

The bill prohibits the use of the following substances on the premises of licensed substance abuse service providers: alcohol; medical marijuana; illegal drugs; and prescription drugs used by a person other than for whom the medication is prescribed. The bill requires applicants for licensure as substance abuse service providers to provide proof that the provider will prohibit the use of such substances, and prohibits referrals from licensed providers to recovery residences that allow the use of the barred substances on the premises.

The bill specifies that a referral to a recovery residence includes the placement of a patient by a licensed service provider into the licensed community housing component of the provider's day or night treatment program, regardless of whether the community housing component is affiliated with the licensed service provider.

A certified recovery residence with a DCF-approved discharge policy may immediately discharge or transfer a resident in accordance with the approved policy under certain circumstances. The bill makes it a second degree misdemeanor for any person discharged from a recovery residence to willfully refuse to leave the premises after being warned by the owner or an authorized employee.

The bill has an insignificant, indeterminate, negative fiscal impact on DCF and no fiscal impact on local governments.

The bill was approved by the Governor on June 27, 2023, ch. 2023-298, L.O.F., and will become effective on July 1, 2023.

I. SUBSTANTIVE INFORMATION

A. EFFECT OF CHANGES:

Background

Substance Abuse

Approximately 1.1 million Floridians have a substance use disorder.¹ Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.² Substance use 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.³ 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 disorder.⁴ Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁵

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁶ The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.⁷

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. 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:⁸

- **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.⁹
- **Treatment Services:** Treatment services¹⁰ include a wide array of assessment, counseling, case management, and support services 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.¹¹

¹ Substance Abuse and Mental Health Administration, *Behavioral Health Barometer, Florida, Volume 6*, (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32826/Florida-BH-Barometer_Volume6.pdf (last visited February 10, 2023).

² World Health Organization, *Substance Abuse*, <https://www.afro.who.int/health-topics/substance-abuse> (last visited February 11, 2023).

³ Substance Abuse and Mental Health Services Administration, *Substance Use Disorders* <https://www.samhsa.gov/find-help/disorders> (last visited February 11, 2023).

⁴ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://nida.nih.gov/sites/default/files/soa.pdf> (last visited February 11, 2023).

⁵ *Id.*

⁶ NYSDOHA AI Substance Use Screening and Risk Assessment in Adults, Table 3: DSM-5 Diagnostic Criteria for Diagnosing and Classifying Substance Use Disorders, https://www.ncbi.nlm.nih.gov/books/NBK565474/pdf/Bookshelf_NBK565474.pdf (last visited February 11, 2023).

⁷ 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 13, 2023).

⁸ Department of Children and Families, *Treatment for Substance Abuse*, <https://www.2myfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited March 15, 2023).

⁹ *Id.*

¹⁰ *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.

¹¹ *Supra*, note 8.

- **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.¹²

Licensure of Substance Abuse Service Providers

DCF regulates substance abuse treatment, establishing licensure requirements and licensing service providers and individual service components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,¹³ intervention,¹⁴ and clinical treatment services.¹⁵ DCF uses a tier-based system of classifying violations and may issue administrative fines of up to \$500 for violations committed by a licensee.¹⁶

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.¹⁷ “Clinical treatment services” include, but are not limited to, the following licensable service components:¹⁸

- 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.

Licensure Requirements

DCF is required to establish the minimum licensure requirements and rules to address noncompliance. Licensure requirements must include, but are not limited to:¹⁹

- Standards and procedures for the administrative management of the licensed service component, including procedures for recordkeeping, referrals, and financial management;
- Standards consistent with clinical and treatment best practices that ensure the provision of quality treatment for individuals receiving substance abuse treatment services;
- The number and qualifications of all personnel, including, but not limited to, management, nursing, and qualified professionals, having responsibility for any part of an individual’s clinical treatment. These requirements must include, but are not limited to:

¹² *Id.*
¹³ 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*, <https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml> (last visited February 11, 2023). 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, 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.
¹⁴ 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.
¹⁵ S. 397.311(26), F.S.
¹⁶ S. 397.415, F.S.
¹⁷ Section 397.311(25)(a), F.S.
¹⁸ *Id.*
¹⁹ S. 397.410, F.S.

- Education; credentials, such as licensure or certification, if appropriate; training; and supervision of personnel providing direct clinical treatment;
- Minimum staffing ratios to provide adequate safety, care, and treatment;
- Hours of staff coverage;
- The maximum number of individuals who may receive clinical services together in a group setting; and
- The maximum number of licensed service providers for which a physician may serve as medical director and the total number of individuals he or she may treat in that capacity.
- Service provider facility standards, including, but not limited to:
 - Safety and adequacy of the facility and grounds;
 - Space, furnishings, and equipment for each individual served;
 - Infection control, housekeeping, sanitation, and facility maintenance; and
 - Meals and snacks.
- Disaster planning policies and procedures.

Application for Licensure

Applicants for licensure as a substance abuse service provider must submit an application to DCF and include, at a minimum:²⁰

- 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;²¹
- 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; and
- 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.
- Names and locations of any recovery residences to which the applicant service provider plans to refer patients or from which the provider plans to accept patients.

²⁰ S. 397.403, F.S.

²¹ 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.

Inspections

DCF is authorized to conduct announced or unannounced inspections, at any time, of a licensed provider to determine statutory and regulatory compliance. DCF may inspect suspected unlicensed providers with permission from the provider or with a warrant.²² DCF must schedule periodic inspections of licensed service providers in order to minimize costs and the disruption of services; these inspections are done annually, unless a provider is accredited, in which case they are done triennially.²³

Violations found during inspection are classified according to the nature of the violation and the gravity of its probable effect on the individuals receiving substance abuse treatment. The classification of the violation must be indicated and provided on written notice to the provider. DCF is required to issue a citation for violations and impose an administrative fine, notwithstanding correction of the violation.²⁴

Following licensing inspections, regional offices may prepare and distribute to providers a report that includes a list of noncompliance issues, if any, with rule or statutory references and a request that the provider submit a plan for corrective action, including required completion dates.²⁵

DCF Remedies for Noncompliance

Under current law, if DCF determines that an applicant, licensed service provider, or a licensed service component is not operating in compliance with all statutory and regulatory requirements, DCF may deny, suspend, revoke, or impose reasonable restrictions or penalties on the license or any portion of the license.²⁶ In 2017, DCF's authority to take action against service providers operating in noncompliance was expanded.²⁷ DCF adopted rules to classify violations and establish the basis for issuing administrative fines in 2019. The rules also established a uniform system of procedures to impose disciplinary sanctions.²⁸

Despite having the statutory authority and established rules and procedures in place to impose fines, DCF reported that between July 1, 2017, and December 1, 2022, the agency did not issue any fines or impose other statutory remedies against service providers for inspection violations²⁹ or for any other statutory violations.³⁰

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.³¹ 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.³²

A recovery residence is a residential dwelling unit, 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. In

²² S. 397.411, F.S.

²³ Rule 65D-30.0036, F.A.C.

²⁴ S. 397.411, F.S.

²⁵ Rule 65D-30.0037, F.A.C.

²⁶ S. 397.415, F.S.

²⁷ Chapter 2017-173, Laws of Fla.

²⁸ See, Rule 65D-30.0038, F.A.C., and DCF Form CF-MH Form 4039, Substance Use Treatment Facility Licensing Standards Classification of Violation.

²⁹ Ss. 397.411, and 397.415, F.S.

³⁰ DCF email response to Al Johnson, Chief Assistant State Attorney for the 15th Judicial Circuit, Palm Beach Florida; regarding the State Attorney Addiction Recovery Taskforce Update/Public Records Request. (Email dated December 14, 2022, on file with the House Children, Families, & Seniors Subcommittee).

³¹ 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*, 40(2) J Psychoactive Drugs 153–159 (June 2008).

³² *Id.*

2019 the definition was amended to also include as a recovery residence a community housing component of a licensed day or night treatment facility with community housing.³³

Recovery residences can be located in single-family and two-family homes, duplexes, and apartment complexes. Most recovery residences are located in single-family homes, zoned in residential neighborhoods.³⁴

Voluntary Certification of Recovery Residences

Florida has a voluntary certification program for recovery residences and recovery residence administrators, implemented by private credentialing entities.³⁵ Under the voluntary certification program, two DCF-approved credentialing entities administer certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board (FCB) certifies recovery residence administrators.³⁶

In order to become certified, a recovery residence must submit the following documents with an application fee to the credentialing entity:

- A policy and procedures manual containing:
 - Job descriptions for all staff positions;
 - Drug-testing procedures and requirements;
 - A prohibition on the premises against alcohol, illegal drugs, and the use of prescription medications by an individual other than for whom the medication is prescribed;
 - Policies to support a resident's recovery efforts; and
 - A good neighbor policy to address neighborhood concerns and complaints.;
- Rules for residents;
- Copies of all forms provided to residents;
- Intake procedures;
- Sexual predator and sexual offender registry compliance policy;
- Relapse policy;
- Fee schedule;
- Refund policy;
- Eviction procedures and policy;
- Code of ethics;
- Proof of insurance;
- Proof of background screening; and
- Proof of satisfactory fire, safety, and health inspections.

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.³⁷ Currently, there are 190 certified recovery residence providers in Florida.³⁸

Discharge from Recovery Residence

³³ Chapter 2019-159, Laws of Fla.

³⁴ Hearing before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary, House of Representatives, One Hundred Fifteenth Congress, Sept. 28, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115hhrg33123/html/CHRG-115hhrg33123.htm>. See also The National Council for Behavioral Health, *Building Recovery: State Policy Guide for Supporting Recovery Housing* (2017), https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18_Recovery-Housing-Toolkit_5.3.2018.pdf?dof=375ateTbd56 (last visited February 13, 2023).

³⁵ Ss. 397.487–397.4872, F.S.

³⁶ The DCF, *Recovery Residence Administrators and Recovery Residences*, available at <https://www.myflfamilies.com/service-programs/samh/recovery-residence/> (last visited February 13, 2023).

³⁷ S. 397.4872, F.S.

³⁸ According to the Florida Association of Recovery Residences (FARR), there are 190 certified recovery residence providers in Florida that operate at 555 locations, with a total of 7,717 beds. (Email dated February 15, 2023 from FARR on file with Children, Families, and Seniors Subcommittee staff). FARR was founded in 2011 to evaluate and monitor standards-based recovery support services provided in community-based, residential settings throughout Florida.

A certified recovery residence with a DCF-approved discharge policy may immediately discharge or transfer a resident in accordance with the approved policy under any of the following circumstances:

- The discharge or transfer is necessary for the resident's welfare;
- The resident's needs cannot be met at the recovery residence; or
- The health and safety of other residents or recovery residence employees is at risk or would be at risk if the resident continues to live at the recovery residence.³⁹

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.⁴⁰ A licensed service provider or recovery residence is considered to have made a referral if the provider or recovery residence informs the patient about the name, address, or other details of a recovery residence or licensed service provider or informs a service provider or recovery residence of any identifying details about a patient. Violators of this prohibition are subject to an administrative fine of \$1,000 per occurrence.⁴¹

Certain exceptions allow referrals to or from uncertified recovery residences:⁴²

- Referrals made by a licensed service provider under contract with a behavioral health managing entity.⁴³
- Referrals made 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 of patients to or from a recovery residence that has no direct or indirect financial relationship 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 by Congress, and where the residence or any resident of the residence does not directly or indirectly receive a benefit.

With these exceptions, this means that there may be some recovery residences receiving referrals that may not be following the requirements in law for certified recovery residence, such as restricting the use of substances at the recovery residence.

Day or Night Treatment: Community Housing Component

Community housing is a type of group home that provides supportive housing for individuals who are undergoing treatment for substance abuse.

Day or night treatment is one of the licensable service components of clinical treatment services. This service is provided in a nonresidential environment with a structured schedule of treatment and rehabilitative services.⁴⁴ Some day or night treatment programs have a community housing component, which is a program intended for individuals who can benefit from living independently in peer

³⁹ S. 397.487(11), F.S.

⁴⁰ S. 397.4873(1), F.S.

⁴¹ S. 397.4873(6), F.S.

⁴² S. 397.4873(2), F.S.

⁴³ DCF contracts for behavioral health services through regional systems of care called behavioral health managing entities. The seven managing entities, in turn, contract with and oversee local service providers for the delivery of mental health and substance abuse services throughout the state. See Department of Children and Families, *Managing Entities*, <http://www.dcf.state.fl.us/service-programs/samh/managing-entities/index.shtml> (last visited on February 13, 2023).

⁴⁴ S. 397.311(26)(a)2., F.S.

community housing while participating in treatment services at a day or night treatment facility for a minimum of 5 hours a day for a minimum of 25 hours per week.⁴⁵

Prior to 2019, the community housing component of a licensed day or night treatment program was not included in the definition of “recovery residence”. In 2019, after the Legislature amended the definition of “recovery residence” to include the community housing component, DCF addressed the statutory change to the definition of “recovery residence” in a memo. The department stated that as a result of the change in definition, providers licensed for day or night treatment with community housing must be certified as a recovery residence in order to accept or receive patient referrals from licensed treatment providers or existing recovery residences.⁴⁶ The memo did not specifically address whether the community housing component requires certification if the only individuals residing there were clients of the licensed day or night treatment program.

Effect of the Bill

Licensure of Substance Abuse Service Providers

Use of Substances

The bill prohibits the use of the following substances on the premises of substance abuse service providers licensed by DCF:

- Alcohol;
- Medical marijuana;
- Illegal drugs; and
- Prescription drugs used by a person other than for whom the medication is prescribed.

The bill requires applicants for licensure as substance abuse service providers to provide proof that the provider will prohibit the use of such substances. The bill also prohibits a service provider from referring a prospective, current, or discharged patient to, or from accepting a referral from, a recovery residence that allows the use of these substances on the premises. This applies whether the recovery residence is certified or exempt from certification.

Fine Imposition and Collection

The bill requires DCF to establish a mechanism for imposing and collecting fines for violations related to the inspections of licensed substance abuse service providers and referrals to recovery residences by January 1, 2024.

⁴⁵ S. 397.311(26)(a)3., F.S.

⁴⁶ DCF Memo to the Substance Abuse Prevention, Intervention, and Treatment Providers, dated July 1, 2019 (on file with the House Children, Families, & Seniors Subcommittee).

Recovery Residence

Referrals

The bill expands the activities that qualify as a referral for regulatory purposes. Under the bill, referrals will now include the placement of a patient by a licensed service provider into a licensed housing component of the provider's day or night treatment program, regardless of whether the community housing component is affiliated with the licensed service provider. This ensures that all community housing components are subject to the recovery residence registration requirements in current law when they accept referrals.

Discharge and Refusal to Leave

The bill makes the willful refusal to depart from a recovery residence after discharge, or after being warned to leave by the owner or employee of the recovery residence, a second degree misdemeanor, punishable as provided in s. 775.082 or s. 775.083, F.S.⁴⁷

The bill provides an effective date of July 1, 2023.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

The Provider Licensure and Designations System (PLADS) will need to be modified to include monitoring proof of the provider's prohibition of alcohol, medical marijuana, illegal drugs, and the use of prescribed medications by an individual other than the individual whom the medication is prescribed. DCF provided an estimate of \$20,000 to modify the system and believes that the cost can be absorbed by the existing budget for PLADS enhancements.⁴⁸

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

⁴⁷ A second degree misdemeanor is punishable by a term of imprisonment not to exceed 60 days and a fine not to exceed \$500.

⁴⁸ DCF Agency Bill Analysis HB 295 (2023), p.6 (on file with the House Children, Families, & Seniors Subcommittee). The PLADS system provides a portal for providers to electronically register and apply to provide services for substance abuse components and receiving facility designation. The system allows providers to check on the status of their licenses, track inspections and respond to corrective action plans. DCF Substance Abuse and Mental Health Licensure and Regulation, available at <https://www.myflfamilies.com/service-programs/licensing/samh/> (last visited February 15, 2023).

Licensed substance abuse service providers operating in noncompliance with statutory and regulatory requirements may be subject to fines.

D. FISCAL COMMENTS:

None.