

# **Meeting Agenda – October 19,2016**

## **Sober Homes Task Force**

1. Introductions
2. Review and Final Drafts of Proposed Legislation (attachments 1-7)
  - a. F.S 397.311 Definitions
  - b. F.S. 817.505 (patient brokering)
  - c. F.S. 397.1000 – 1009 (Licensing of certain Recovery Residences)
  - d. F.S. 397.487 (mandatory certification of certain Recovery Residences)
  - e. F.S. 397.55 (Marketing)
3. Discussion of materials provided by FADAA (supplemental attachments 1-4)
4. Public comments
5. Closing remarks

# Attachment #1

## Licensing of Certain Recovery Residences

**1. The State already regulates the same type of residences when they are affiliated with a treatment facility.**

Recovery Residences are not required to be licensed under state law; however, the Florida Administrative Code Provisions define the “Community Housing” component of “Day or Night Treatment with Community Housing” as well as the “Residential Treatment” component of “Licensed Service Providers” in a way that is substantially similar to what are referred to as “Commercial Recovery Residences”. *See*, Rules 65D-30.004, 65D-30.007, and 65D-30.0081 F.A.C. and these entities are required to be licensed. Section 397.311(25)(a) 3. and 9. and Section 397.403, *Fla. Stats.* The only difference is that “Community Housing” and “Residential Treatment” entities are owned/operated by their affiliated treatment facility whereas “Commercial Recovery Residences” can currently be operated by anyone.

**2. The Federal Government intended the State(s) to regulate group homes for persons with disabilities including “Commercial Recovery Residences”.**

The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) provided a Joint Statement in 1999 that provided that “the great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate.” Further, it stated that “neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency and encourage[d] the states to commit the resources needed to make these systems (group homes for persons with disabilities including persons recovering from alcohol/drug abuse) responsive to resident and community needs and concerns”.

*See*, Joint Statement of DOJ and HUD, “Group Homes, Local Land Use, and the Fair Housing Act” <http://www.justice.gov/crt/about/hce/final81.php> at 4. (August 18, 1999). We seem to follow this when it comes to the entities that are classified as Community Residential Homes (Chapter 419, *Fla. Stat.*) and Adult Family-Care Homes (Chapter 429, *Fla. Stat.*), but yet we do not follow this statement for commercial recovery residences. All are dealing with the same protected class of people: disabled/handicapped.

**3. This is a consumer protection issue.**

The operators are hiding behind the protections of Federal Acts (ADA and FHA) in order to exploit/abuse residents for a profit in many instances. In those instances, there are Deceptive Trade Practice Violations, Patient Brokering, and Insurance Fraud occurring. *See*, Sections 501.2077, 817.505, and 817.234, *Fla. Stats.*

**4. There is a legitimate state interest in preventing addiction relapse.**

There are much less incidences of relapse in “Community Housing” homes that are licensed by DCF whereby the owners/ operators have accountability and take responsibility for the health, safety, and welfare of their residents.

**5. This proposed legislation does not apply to the “Oxford House” scenario/ National Association of Recovery Residences Levels I and II.**

We are trying to regulate the operators, owners, and/or administrators of what is essentially a commercially advertised housing service for persons that are in “active” treatment (treatment offsite) versus an “Oxford House”/ NARR Level I and II residence, which is a residence for persons who are established in their recovery (i.e. done with addiction treatment) and are peer-run/peer-supported.

## **Attachment # 2**

### **Legal memo re: Licensing of Certain Recovery Residences**

#### **I. THE PROPOSED LEGISLATION PROVIDING FOR LICENSING OF COMMERCIAL RECOVERY RESIDENCES.**

The proposed legislation providing for licensing of commercial recovery residences does not impose distance requirements or limit the location of commercial recovery residences from any residential zoning district. Further, the regulations do not apply to peer-managed, peer-supported homes in which each resident is a signatory to a single lease (Oxford House and/or National Association of Recovery Residences Level I and II). The regulations imposed by the proposed legislation apply only to operators of homes that house individuals in “active” treatment and have a Licensed Recovery Residence Administrator living with the individuals that are residents of the Commercial Recovery Residence. The proposed regulations include background checks on operators to help ensure that houses are not owned, operated, or managed by persons with recent criminal backgrounds (i.e. sexual offenders) and they require licensure including inspections to ensure that the houses are not attached to inappropriate structures (i.e. a drugstore, pharmacy, or bar). The proposed legislation is aimed at ensuring there is basic consumer protection afforded to the tenants of the homes by providing accountability of the operators as stated above. This proposed legislation is narrowly tailored to protect the persons living in the homes in order to help avoid relapse and to ensure their safety so long as the tenants are undergoing “active” treatment at a licensed service provider facility. Those homes that are directly affiliated with a treatment facility that provide housing to persons similarly situated have licensing requirements imposed upon them by the state that are stricter than these proposed regulations. Additionally, there is a requirement in the proposed legislation that all commercial recovery residence owners, operators, and/or administrators must provide either forty-eight (48) hours’ notice prior to eviction of a tenant or, in the alternative, they must provide alternative accommodations for the tenant or hospitalization pursuant to the Marchman Act. This is responsive to the legitimate state interest of affording the tenants due process, providing them a safe place to live, preventing homelessness, and preventing addiction relapse.

#### **II. GOVERNMENTS CAN PASS HOUSING RESTRICTIONS THAT ARE NARROWLY TAILORED TO SERVE A LEGITIMATE STATE INTEREST.**

##### **A. Joint Statement of the Department of Housing and Urban Development and the Department of Justice.**

The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) provided a Joint Statement in 1999 that provided that “the great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate.” Further, it stated that “neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency and encourage[d] the states to commit the resources needed to make these systems (group homes for persons with disabilities including persons recovering from alcohol/drug abuse) responsive to resident and community needs and concerns”. See, Joint Statement of DOJ and HUD, “Group Homes, Local Land Use, and the Fair Housing Act” [http://www.justice.gov/crt/about/hce/fina8\\_1.php](http://www.justice.gov/crt/about/hce/fina8_1.php) at 4. (August 18, 1999).

## **B. Fair Housing Amendments Act.**

The Fair Housing Amendments Act provides justification for housing restrictions that federal courts have narrowly construed. “A governmental entity may act on the basis of protecting the public health and safety of other individuals.” *See*, 42 U.S.C. § 3604(f)(9).

## **C. Federal Cases.**

Pursuant to *Bangarter v. Orem City Corp*, 46 F.3d 1491 (10th Cir. 1995) at 1504, “the Fair Housing Amendments Act should not be interpreted to preclude special restrictions upon the disabled that are really beneficial to, rather than discriminatory against, the handicapped.” Further, “restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the Fair Housing Amendments Act if the benefit to the handicapped in their housing opportunities clearly outweigh whatever burden to them.” In the context of facially neutral government actions that have a discriminatory impact on the handicapped or other groups protected by the Fair Housing Act, courts have uniformly allowed defendants to justify their conduct despite the discriminatory impact if they can prove that they, “furthered, in theory and in practice, a legitimate, bona fide governmental interest and no alternative would serve that interest with less discriminatory effect.” *Id.* *See also, Family Style of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F.2d 91 (8th Cir. 1991), *reh’g. denied* (Feb. 15, 1991) (Court held that the relevant question is whether legislation is rationally related to a government purpose).

## **III. WHAT HAVE OTHER STATES DONE/WHAT ARE THEY DOING?**

### **A. Arizona**

Arizona’s House and Senate recently passed a Bill (HB 2107(2016)) requiring recovery residences to notify cities and counties when they open and requiring the residences to have trained managers, maintenance plans, and supervision for residents, however it is still awaiting signature by the Governor.

### **B. California**

California is the only state that currently has licensing requirements for recovery residences (Health and Safety Code section 11834.30), but the state of California ties the license to state funding for the houses (they all are subsidized by the state to some extent). This present scenario is different because Florida does not subsidize all recovery residences. California also attempted to pass legislation this year (SB 1283 (2016)) that was very similar to Florida’s law regarding voluntary certification of recovery residences in order to provide more oversight of homes.

### **C. Connecticut**

Connecticut tried to pass a Bill (Proposed HB 6278 (2015)) that required each sober house to (1) register as a business with the municipality in which it is located and the Department of Public Health and (2) have naloxone available on the premises for residents, all of whom have received training in administering the drug.

### **D. Massachusetts**

Massachusetts recently passed a voluntary certification program in conjunction with NARR (HB 1828 (2014)) very similar to Florida’s voluntary certification of recovery residences. It requires the state of Massachusetts to refuse to hand out grants to any home that isn’t certified. It also bars state-funded addiction treatment programs from referring clients to any recovery residence that hasn’t gone through the program. To be certified, recovery residences must show that they have strict rules against drug use on the property, that they track their residents’ progress, and that they organize peer support programs, among other requirements. They also must undergo safety inspections by a state-approved certifying organization.

**D. Minnesota**

Minnesota Association of Sober Homes (MASH) formed in 2007 to provide for voluntary minimum standards for recovery residences in the MASH network.

**E. New York**

New York is currently trying to pass state legislation and has been for many years. The latest version that passed the Senate last year (S3989A (2016)) and requested support for creating a sober living task force similar to Florida's HB 823 (2016), which provided for a Substance Abuse and Recovery Fraudulent Business Practices Pilot Project.

**F. New Jersey**

New Jersey Governor Chris Christie signed legislation in 2014 requiring recovery residences to alert the next of kin when a client is evicted for relapsing. (Named "Nick's Law" after Nick Rhodes, a 24- year old heroin addict who died after being kicked out of a recovery residence for using drugs).

**G. Ohio**

The Ohio Department of Mental Health and Addiction Services recently set aside \$2.5 Million in grant money for recovery residences that are peer-run and meet certain state criteria.

**H. Pennsylvania**

Pennsylvania has attempted to pass a law similar to Florida's law providing for voluntary certification of recovery residences (HB 1298 (2014)).

**I. Utah**

In May, 2015, the state of Utah began requiring recovery residences to be licensed (by amending UCA § 62A-2). To qualify, the homes need to have a medical treatment plan and meet minimal staffing guidelines.

Overall, the States are all over the place. Two States that have successfully passed legislation provide for a voluntary certification of recovery residences (Florida and Massachusetts). Two States have created licensing requirements for recovery residences (California and Utah). One state has created a requirement that recovery residences alert the next of kin when a client is evicted for relapsing (New Jersey). The remaining States that have attempted state regulation of recovery residences are either trying to implement a licensing scheme or a voluntary certification process or have provided for self regulation that is made more attractive by increased state funding (Minnesota, Ohio, and Pennsylvania).

**IV. THERE ARE NO CASES DIRECTLY ON POINT THAT ADDRESS THE REGULATIONS THAT WE ARE PROPOSING BY OUR DRAFT LEGISLATION.**

**A. Most of the Federal Cases Striking Regulatory Schemes in the Context of FHA and ADA are About Restrictions on Oxford Houses.**

In *Human Resource Research and Management Group, Inc. v. County of Suffolk*, a County ordinance that was intended to avoid overcrowding, ensure proper supervision and avoid excess debris which imposed location requirements and occupancy limitations on Oxford House was held to be discriminatory because it was not rationally related to the proffered reasons for ordinance where there was no proof of excess debris, overcrowding or need for 24/7 supervision. *See, Id.* at 687 F.Supp 2d 237 (E.D. New York 2010). Also, in *Tsombanidis v. West Haven Fire Department*, fire safety regulations were held not to have a discriminatory impact, but failure to treat Oxford home as a one-family dwelling under fire regulations did have discriminatory

impact. *See, Id.* at 352 F.3d 565 (2nd Cir. 2003) (superseded by regulation as stated in *Mhany Management, Inc. v. County of Nassau* (2nd Cir. 2016)).

**B. In the Alternative, the Federal Cases Striking Regulatory Schemes in the Context of FHA and ADA Have Zoning/Distance Requirements.**

In *Nevada Fair Housing Center, Inc. v. Clark County*, the court held that there was no justification for a 1,500 foot spacing requirement between group homes and a registry of group homes purporting to provide for accountability of the homes by providing the home's information to police, fire-fighting, rescue, or emergency medical services did not benefit the handicapped, and so the ordinance was struck down. *Id.* at 565 F.Supp. 2d 1178 (D. Nevada 2008). In *Pacific Shores Properties, LLC v. City of Newport Beach*, an ordinance that amended the definition of "single housekeeping unit" to exclude living arrangements in which residents are not all signatories to a single written lease and do not choose their own housemates adversely affected the availability of group homes and restricted them from most residential zones was struck down. *See, Id.* at 730 F.3d 1142 (9th Cir. 2013).

**C. Our Proposed Legislation Does Not Apply to Oxford Houses and Has No Distance Requirements.**

Our proposed legislation contained in HB \_\_\_\_/ SB \_\_\_\_ applies to homes that are managed and are operated by a third party in which the persons living in the homes are in active treatment (receiving treatment services at a licensed service provider facility as defined by § 397.311(24) *Fla. Stat.*) This legislation does not apply to recovery residences that are peer-supported and peer-managed wherein the persons living in the home are established in their recovery and are each a party to a single lease agreement (i.e. Oxford House and/or NARR Levels I and II).

**V. CONCLUSION.**

Based on the foregoing, it is clear that the proposed legislation is narrowly tailored to further a legitimate government interest of providing consumer protection laws for residents of commercial recovery residences who are purchasing a housing service while they are in active treatment. The government interest/intent is to provide the residents of these homes with due process rights that are afforded to every single residential tenant in the state of Florida, to prevent homelessness, to provide the residents with a safe place to live, and to help prevent addiction relapse.

## **Attachment # 3**

# **ETHICAL MARKETING PRACTICES**

### **I. THE PROPOSED LEGISLATION REGARDING UNETHICAL MARKETING PRACTICES/PATIENT BROKERING.**

The proposed legislation regarding the prohibition of unethical marketing practices as well as the prohibition against patient brokering does not discriminate against persons in recovery from substance use disorder. In fact, both of these proposed bills are designed to protect persons in recovery. Regulation of operators of treatment facilities and recovery residences via legislation that prohibits payments for patient referrals and prohibits making false or misleading statements on websites and prohibits kickbacks will help protect the consumer and will help prevent relapse.

### **II. GOVERNMENTS CAN PASS RESTRICTIONS THAT ARE NARROWLY TAILORED TO SERVE A LEGITIMATE STATE INTEREST.**

#### **A. Joint Statement of the Department of Housing and Urban Development and the Department of Justice.**

The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) provided a Joint Statement in 1999 that encouraged the states to commit the resources needed to make these systems (group homes for persons with disabilities including persons recovering from alcohol/drug abuse) responsive to resident and community needs and concerns. See, Joint Statement of DOJ and HUD, "Group Homes, Local Land Use, and the Fair Housing Act" [http://www.justice.gov/crt/about/hce/fina8\\_1.php](http://www.justice.gov/crt/about/hce/fina8_1.php) at 4. (August 18, 1999).

#### **B. Fair Housing Amendments Act.**

The Fair Housing Amendments Act provides justification for housing restrictions that federal courts have narrowly construed. "A governmental entity may act on the basis of protecting the public health and safety of other individuals." See, 42 U.S.C. § 3604(f)(9).

#### **C. Federal Cases.**

Pursuant to *Bangarter v. Orem City Corp*, 46 F.3d 1491 (10th Cir. 1995) at 1504, "the Fair Housing Amendments Act should not be interpreted to preclude special restrictions upon the disabled that are really beneficial to, rather than discriminatory against, the handicapped." Further, "restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the Fair Housing Amendments Act if the benefit to the handicapped in their housing opportunities clearly outweigh whatever burden to them." In the context of facially neutral government actions that have a discriminatory impact on the handicapped or other groups protected by the Fair Housing Act, courts have uniformly allowed defendants to justify their conduct despite the discriminatory impact if they can prove that they, "furthered, in theory and in practice, a legitimate, bona fide governmental interest and no alternative would serve that interest with less discriminatory effect." *Id.* See also, *Family Style of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F.2d 91 (8th Cir. 1991), *reh'g. denied* (Feb. 15, 1991) (Court held that the relevant question is whether legislation is rationally related to a government purpose).

### **III. THERE IS A LEGITIMATE STATE INTEREST IN PROTECTING CONSUMERS.**

The operators are hiding behind the protections of Federal Acts (ADA and FHA) in order to exploit/abuse residents for a profit in many instances. In those instances there are Deceptive Trade Practice Violations, Patient Brokering, and Insurance Fraud occurring. *See*, Sections 501.2077, 817.505, and 817.234, *Fla. Stats.* Further, the recovery industry is aware of these unethical practices that are running rampant and they are taking action to try to prevent such fraud and crimes from occurring as the National Association of Addiction Treatment Providers launched a campaign in the last year to try to clean up the industry through voluntary self regulation in order to provide access to respectful, ethical and effective care. The national opioid epidemic has made it that much harder to crack down on these unethical providers in a timely manner, however, and we cannot afford to wait to let the industry work it out themselves. Therefore, we need to provide regulations that are enforceable with criminal penalties in order to incentivize ethical behavior by operators by punishing those that are taking advantage of this very vulnerable group of consumers. The proposed legislation protects consumers by providing penalties for unethical providers and it helps law enforcement by providing a statute directed at patient brokering/ unethical marketing in the realm of substance abuse treatment. We have a legitimate state interest in protecting consumers from fraud, human trafficking, exploitation, and abuse.

### **IV. CONCLUSION.**

We cannot allow more people in recovery to die at the hands of those that are supposed to help them. We must move forward with this legislation in order to save lives.

## Attachment # 4

### 817.505. Patient brokering prohibited; exceptions; penalties

(1) It is unlawful for any person, including any health care provider, ~~or~~ health care facility, or recovery residence to:

(a) Offer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage to or from a health care provider or health care facility;

(b) Solicit or receive any commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring patients or patronage to or from a health care provider or health care facility;

(c) Solicit or receive any commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider or health care facility, or recovery residence; or

(d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).

(2) For the purposes of this section, the term:

(a) “Health care provider or health care facility” means any person or entity licensed, certified, or registered; required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered with the Agency for Health Care Administration or the Department of Health; any person or entity that has contracted with the Agency for Health Care Administration to provide goods or services to Medicaid recipients as provided under s. 409.907; a county health department established under part I of chapter 154; any community service provider contracting with the Department of Children and Families to furnish alcohol, drug abuse, or mental health services under part IV of chapter 394; any substance abuse service provider licensed under chapter 397; or any federally supported primary care program such as a migrant or community health center authorized under ss. 329 and 330 of the United States Public Health Services Act.

(b) “Health care provider network entity” means a corporation, partnership, or limited liability company owned or operated by two or more health care providers and organized for the purpose of entering into agreements with health insurers, health care purchasing groups, or the Medicare or Medicaid program.

(c) “Health insurer” means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity providing health care benefits, any self-insurance plan as defined in s. 624.031, any health maintenance organization authorized to transact business in the state pursuant to part I of chapter 641, any prepaid health clinic authorized to transact business in the state pursuant to part II of chapter 641, any prepaid limited health service organization authorized to transact

business in this state pursuant to chapter 636, any multiple-employer welfare arrangement authorized to transact business in the state pursuant to ss. 624.436-624.45, or any fraternal benefit society providing health benefits to its members as authorized pursuant to chapter 632.

(d) “Rent subsidy” means a subsidy paid by a licensed service provider, directly or indirectly, for the benefit of a patient receiving substance abuse services.

(e) “Recovery residence” means a residential dwelling unit or other form of group housing that is offered or advertised through any means, including oral, written, electronic, or printed means, and any person or entity as a residence that provides a peer-supported, alcohol free, and drug free living environment.

(f) “Commercial Recovery Residence” means: A recovery residence where one or more residents is in treatment, as defined in s.397.311, with a private for profit licensed treatment provider that offers substance abuse services through one or more licensed service components, when a rent subsidy is paid, in whole or in part, by the provider or by anyone on behalf of the provider.

\_(3) This section shall not apply to:

(a) Any discount, payment, waiver of payment, or payment practice not prohibited by U.S.C. s. 1320a-7b (b) or regulations promulgated thereunder. 42

(b) Any payment, compensation, or financial arrangement within a group practice as defined in s. 456.053, provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice.

(c) Payments to a health care provider or health care facility for professional consultation services.

(d) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under the insurance code.

(e) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.

(f) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan. However, nothing in this section affects whether a health care provider network entity is an insurer required to be licensed under the Florida Insurance Code.

(g) Insurance advertising gifts lawfully permitted under s. 626.9541(1)(m).

(h) Commissions or fees paid to a nurse registry licensed under s. 400.506 for referring persons providing health care services to clients of the nurse registry.

(i) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of

health care goods or services to enable consumers to select appropriate providers or facilities, provided that such information service:

1. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;
2. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;
3. Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and
4. Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.

(j) Any activity permitted under s. 429.195(2).

(k) Referrals from recovery residences to other recovery residences, provided that no commission, benefit, bonus, rebate, kickback, or bribe is offered or received, directly or indirectly, by the referring or receiving recovery residence, its employees, officers, or owners, their family members or members of their household.

(l) The payment of a rent subsidy, as defined in this section, limited to a maximum of \$200 per patient, per week, in whole or in part, directly or indirectly for the benefit of a patient, by a licensed service provider to a patient or commercial recovery residence.

(4)(a) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

(b) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the violation involves patients receiving treatment by a licensed treatment provider as defined in s.397.311, and where the prohibited conduct involves 10 or more patients, but fewer than 20 patients, commits a felony of the second degree as provided in s. 775.082, s.775.083, or 775.084.

(c) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the violation involves patients receiving treatment by a licensed treatment provider as defined in s.397.311, and where the prohibited conduct involves 20 or more patients, commits a felony of the first degree as provided in s. 775.082, s.775.083, or 775.084. Notwithstanding any other provision of law, the court shall

sentence any person convicted of committing the offense described in this paragraph to a mandatory minimum sentence of 3 years' imprisonment.

(5) Notwithstanding the existence or pursuit of any other remedy, the Attorney General or the state attorney of the judicial circuit in which any part of the offense occurred may maintain an action for injunctive or other process to enforce the provisions of this section.

(6) The party bringing an action under this section may recover reasonable expenses in obtaining injunctive relief, including, but not limited to, investigative costs, court costs, reasonable attorney's fees, witness costs, and deposition expenses.

(7) The provisions of this section are in addition to any other civil, administrative, or criminal actions provided by law and may be imposed against both corporate and individual defendants.

Attachment # 5

397.487 Certification of recovery residences

(1)The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) For the purposes of this section:

(a) "Recovery residence" means a residential dwelling unit or other form of group housing that is offered or advertised through any means, including oral, written, electronic, or printed means, and any person or entity as a residence that provides a peer-supported, alcohol free, and drug free living environment.

(b) "Commercial Recovery Residence" means: A recovery residence where one or more residents is in treatment, as defined in s.397.311, with a private for profit licensed treatment provider that offers substance abuse services through one or more licensed service components, when a rent subsidy is paid, in whole or in part, by the provider or by anyone on behalf of the provider.

(c) "Rent subsidy" means a subsidy paid by a treatment provider, directly or indirectly, for the benefit of a patient receiving substance abuse services.

(3) The department shall approve at least one credentialing entity by December 1, 2015 for the purpose of developing and administering a voluntary certification program for recovery residences. The approved credentialing entity shall:

(a)Establish recovery residence certification requirements

(b)Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.
2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff

(d) Develop a code of ethics

(e) Establish application, inspection, and annual certification renewal fees. The application fee for a commercial recovery residence subject to subsection (10) may not exceed \$1500. The application fee for commercial recovery residences and recovery residences not subject to subsection (10) may not exceed \$300 per certification. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed \$1500 for a commercial recovery residence subject to subsection (10) of this subsection, and \$300 for all other licensees.

(3) A credentialing entity shall require the recovery residence to submit the following documents with the completed application and fee:

(a) A policy and procedures manual containing:

1. Job descriptions for all staff positions.
2. Drug-testing procedures and requirements
3. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.
4. Policies to support a resident's recovery efforts.
5. A good neighbor policy to address neighborhood concerns and complaints.

(b) Rules for residents.

(c) Copies of all forms provided to residents.

(d) Intake procedures.

(e) Sexual predator and sexual offender registry compliance policy.

(f) Relapse policy.

(g) Fee schedule.

(h) Refund policy.

(i) Eviction procedures and policy

(j) Code of ethics

(k) Proof of insurance.

(l) Proof of background screening

(m) Proof of satisfactory fire, safety, and health inspections.

(4)A certified recovery residence must be actively managed by a certified recovery residence administrator. All applications for certification must include the name of the certified recovery residence administrator who will be actively managing the applicant recovery residence.

(5)Upon receiving a complete application, a credentialing entity shall conduct an onsite inspection of the recovery residence.

(6)All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a pleas of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04, unless the department has issued an exemption under s. 397.4872. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

(7)A credentialing entity shall issue a certificate of compliance upon approval of the recovery residence's application and inspection. The certification shall automatically terminate 1 year after issuance if not renewed.

(8)Onsite follow-up monitoring of a certified recovery residence may be conducted by the credentialing entity to determine continuing compliance with certification requirements. The credentialing entity shall inspect each certified recovery residence at least annually to ensure compliance.

(a)A credentialing entity may suspend or revoke a certification if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified by the credentialing entity within the time period specified.

(b)A certified recovery residence must notify the credentialing entity within 3 business days after the removal of the recovery residence's certified recovery residence administrator due to termination, resignation, or any other reason. The recovery residence has 30 days to retain a certified recovery residence administrator. The credentialing

entity shall revoke the certificate of compliance of any recovery residence that fails to comply with this paragraph.

(c) If any owner, director, or chief financial officer of a certified recovery residence is arrested for or found guilty of, or enters a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) while acting in that capacity, the certified recovery residence shall immediately remove the person from that position and shall notify the credentialing entity with 3 business days after such removal. The credentialing entity shall revoke the certificate of compliance of a recovery residence that fails to meet these requirements.

(d) A credentialing entity shall revoke a recovery residence's certificate of compliance if the recovery residence provides false or misleading information to the credentialing entity at any time.

(9) A person may not advertise to the public, in any way or by any medium whatsoever, any recovery residence as a "certified recovery residence" unless such recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

(10) A commercial recovery residence, as defined in s.397.311, is required to be a "certified recovery residence" prior to accepting any "rent subsidy", directly or indirectly, from a licensed service provider.

Attachment # 6

A bill to be entitled

An amendment to the Hal S. Marchman Alcohol and Other Drug Services Act to create Part X of chapter 397 pertaining to the licensure, certification and operation of Commercial Recovery Residences in this state; providing for the amendment of § 397.305 F.S., creating subsection(12) expressing an additional legislative intent and purpose; providing for the amendment of §397.311 F.S., to add the definitions of the terms "commercial recovery residence", "individual", "active treatment", "agency", "disabling condition", "marketing practices", "substance abuse lead generator" and "resident" as used in chapter 397; providing for the amendment of s.397.487, F.S., to require certification of commercial recovery residences; Amending s. 817.505, F.S.; providing that the violation of the prohibition against certain marketing unethical marketing practices by a provider or operator is a violation of the Florida Deceptive and Unfair Trade Practices Act; providing for the creation of § 397.1000 requiring that all commercial recovery residences be licensed by the Agency of Health Care Administration establishing civil fines and criminal sanctions for violations of Part X. Providing for the creation of § 397.1001 requiring an application for the licensure of a commercial recovery residence; providing for the creation of § 397,1002 establishing a licensure process and fees for licensed commercial recovery residences; providing for the creation of § 397.1003 authorizing inspections of commercial recovery residences; providing for the creation of § 397.1004 establishing the agency's authority to deny, suspend, or revoke the licenses of commercial recovery residences; providing for the creation of § 397.1005 pertaining to the well-being of residents in commercial recovery residences; providing for the creation of § 397.1006 requiring training and education programs for owners of commercial recovery residences; providing for the creation of § 397.1007 to require residency agreements between the owner of a commercial recovery residence and each resident of a commercial recovery residence; providing for the creation of § 397.1008 establishing a bill of rights for residents of commercial

recovery residences; providing for the creation of § 397.1009 pertaining to a resident's enforcement of the bill of rights.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Amendments to § 397.305, legislative intent by creating subsection (12) pertaining to commercial recovery residences:

(12) It is the intent of the Legislature that commercial recovery residences be licensed to provide for the health, safety and welfare of disabled adults who are recovering from substance abuse and who choose to live in a drug and alcohol free family-type living arrangement. The Legislature recognizes that the licensure of commercial recovery residences plays an important part in providing a continuum of support for assisting individuals in active recovery. Further, it is the intent of the Legislature to require that a licensed recovery residence administrator live in the commercial recovery residence.

Section 2. Amending § 397.311, Definitions as follows:

(1) "Agency" means the agency for health care administration.

(9) "Commercial Recovery Residence" means: A recovery residence where one or more residents are in treatment, as defined in s.397.311, with a private for profit licensed treatment provider that offers substance abuse services through one or more licensed service components, when a rent subsidy is paid, in whole or in part, by the provider or by anyone on behalf of the provider.

(24) "Individual" means a person who receives alcohol or drug abuse treatment services delivered by a licensed service provider or a person who is disabled due to substance abuse residing in a recovery residence or commercial recovery residence. The term does not include an inmate pursuant to part VIII of this chapter unless expressly so provided.

(51) "Treatment" means: An individual who is currently receiving, about to receive or has recently completed day or night treatment with community housing, or outpatient treatment, including intensive outpatient treatment.

Section 3. Amending 397.487 requiring mandatory certification of commercial recovery residences and providing for voluntary certification of recovery residences.

Section 4. Amending chapter 397 by creating Part X to require the licensure of commercial recovery residences:

**PART X**

**RECOVERY RESIDENCES**

- 397.1000 License required; violations
- 397.1001 License application
- 397.1002 License process; fees
- 397.1003 Inspection; right of entry
- 397.1004 Denial, suspension, and revocation of license
- 397.1005 Well-being of residents of commercial recovery residences
- 397.1006 Training and continuing education
- 397.1007 Commercial recovery residence agreements
- 397.1008 Bill of rights
- 397.1009 Civil actions by residents to enforce rights

**397.1000 License required; violations**

(1) It is unlawful for any person to own or operate a commercial recovery residence unless it is licensed by the Agency for Health Care Administration.

(2) A violation of subsection (1), commits

(a) a misdemeanor of the first degree for a first violation, punishable as provided in s. 775.082 or s. 775.083 (b) a felony of the third degree for a second or subsequent violation, punishable as provided in s. 775.082 or s.775.083.

(3) The agency may maintain an action in circuit court to enjoin the unlawful operation of a commercial recovery residence provided the agency has first given the violator 14 days' notice of its intent to maintain an action and the violator fails to apply for licensure within that 14 day period. If the agency determines that the health, safety, and welfare of individuals are jeopardized, the agency may move for an emergency

injunction to enjoin the operation of the commercial recovery residence at any time during the 14 day period. If the owner or operator of a commercial recovery residence has already applied for licensure under this chapter and has been denied licensure, the agency may move immediately to obtain an emergency injunction.

(4) Violations of the agency's rules and standards established for the operation of a commercial recovery residence shall subject the owner or operator to a fine in an amount not less than \$500. The fine may be levied notwithstanding the correction of the violation. The fine may be levied for each day the agency determines that the violation occurred, and for each day the violation continues beyond any date specified by the agency for correction or compliance.

### **397.1001 License application.**

(1) Applicants for a license under this part must apply to the agency on forms provided by the agency and pay the fee for an application proscribed by the agency. Applications shall include at a minimum:

(a) Information establishing the name and address of the applicant for a commercial recovery residence license and its recovery residence administrator, and also of each member, owner, officer, and shareholder, if any.

(b) Information establishing the competency and ability of the applicant and recovery residence administrator to carry out the requirements and rules of this part.

(c) Proof satisfactory to the agency of the owner's financial ability and organizational capability to operate in accordance with this part.

(d) Proof of liability insurance coverage in amounts set by the agency's rule.

(e) Sufficient information to conduct a background screening of the owner and recovery residence administrator as established by the agency's rule.

(2) If the results of the background screening indicate that any owner, director, or chief financial officer has been found guilty of, regardless

of adjudication, or has entered a plea of nolo contendere or guilty to any offences prohibited under the screening standard established by the agency's rule, a license may not be issued to the applicant unless an exemption from disqualification has been granted by the agency. The owner, director, or chief financial officer has 90 days within which to obtain the required exemption, during which time the applicant's license remains in effect.

(3) If the owner, director, or chief financial officer is arrested or found guilty of, regardless of adjudication or has entered a plea of nolo contendere or guilty to any offense prohibited under the screening standard while acting in that capacity, that person shall immediately be removed from that position and the recovery residence shall notify the agency within 2 days after such removal, excluding weekends and holidays. Failure to remove the owner, director or chief financial officer shall result in the revocation of the commercial recovery residence's license.

(a) The burden of proof with respect to any requirement for application for licensure as a commercial recovery residence under this part is on the applicant.

(b) The owner of a commercial recovery residence shall also submit to the agency proof that it is has been certified as a commercial recovery residence by a credentialing entity, as required by s. 397.487.

### **397.1002 Licensure process; fees**

(2) The agency shall by rule establish the license process to include fees based upon the resident capacity of the commercial recovery residence.

(2) The agency shall assess a fee of \$500 for the late filing of an application for renewal of a license.

(3) Licensure and renewal fees shall be deposited in an appropriate fund of the agency to be used for the actual cost of monitoring, inspecting and overseeing the operations of commercial recovery residences.

### **397.1003 Inspection; right of entry;**

(1) An authorized agent of the agency shall upon reasonable notice periodically inspect a recovery residence to determine whether it is in compliance with its license and or a certificate of compliance issued by a credentialing entity.

(2) An authorized agent of the agency may, with the permission of a recovery residence administrator, or pursuant to a warrant, enter and inspect a commercial recovery residence it reasonably suspects to be operating in violation of this part or a certificate of compliance issued by a credentialing entity.

(3) An application for licensure as a commercial recovery residence under this part constitutes full permission for an authorized agent of the agency to enter and inspect the commercial recovery residence.

### **397.1004 Denial, suspension, and revocation of license**

(1) If the agency determines that an applicant or licensed commercial recovery residence owner or operator is not in compliance with all of the requirements of this part or a certificate of compliance issued by a credentialing entity, the agency may deny, suspend, revoke, or impose reasonable restrictions or penalties, including fines on the owner or operator of the commercial recovery residence. The agency may:

(a) Impose a moratorium on any further leasing of rooms to potential residents of a commercial recovery residence.

(b) Impose an administrative fine of up to \$500 per day against the owner or operator for any violations of this part or failure to comply with the standards maintained by a credentialing entity for the operation of a commercial recovery residence.

(c) Suspend or revoke the license of the commercial recovery residence.

(1) If a commercial recovery residence's license has been revoked, the owner or operator shall be barred from submitting any application for licensure to the agency for one year after the revocation.

(2) Proceedings to revoke or suspend the license of a commercial recovery residence shall be conducted in accordance with chapter 120.

(3) The agency with the assistance of the States Attorney may maintain an action in court to enjoin the operation of any licensed or unlicensed commercial recovery residence, or violation of the provisions of this part or the certificate of compliance issued by the credentialing entity.

### **397.1005 Well-being of residents of commercial recovery residences**

The agency, in consultation with the Department of Health and the Department of Children and Families shall by rule, establish minimum standards to ensure the health, safety and well-being of each resident in a commercial recovery residence.

### **397.1006 Training and continuing education**

All commercial recovery residence owners and operators shall complete training and education programs regarding the requirements of this part and the operation of a commercial recovery residence in accordance with the standards of compliance to be certified as a commercial recovery residence by a credentialing entity. All owners or operators shall be required to participate in periodic continuing education programs as specified by rule.

### **397.1007 Commercial recovery residence agreements**

(1) Each resident of a commercial recovery residence, must be covered by a residency agreement, executed before or at the time of admission, between the owner or operator of the commercial recovery residence and the resident. Each party to the contract shall be provided a duplicate copy or the original agreement, and the owner or operator of the commercial recovery residence shall maintain the original agreement on file for 5 years after expiration of the agreement.

(2) Each residency agreement shall specify the personal care and accommodations to be provided by the commercial recovery residence, the

rate or charges, a requirement of at least 30 days' notice before a rate increase, and any other provisions required by rule.

### **397.1008 Bill of rights**

(1) A resident of a commercial recovery residence may not be deprived of any civil or legal rights, benefits, or privileges guaranteed by law, the State Constitution, or the Constitution of the United States solely by reason of status as a resident of a commercial recovery residence. Each resident has the right to:

(a) Live in a safe and decent living environment, free from abuse and neglect.

(b) Be treated with consideration and respect and with due recognition of personal dignity, individuality and privacy.

(c) Keep and use the resident's own clothes and other personal property in the resident's immediate living quarters, so as to maintain individuality and personal dignity.

(d) Have unrestricted private communications, including receiving and sending unopened correspondence, having access to a telephone, (e) Be free to participate in and benefit from community services and activities and to achieve the highest possible level of independence, autonomy, and interaction within the community.

(f) Manage the resident's own financial affairs unless the resident shall have designated someone else to do so.

(g) Have reasonable opportunity for regular exercise several times a week and to be outdoors at regular and frequent intervals.

(h) Exercise civil and religious liberties, including the right to independent personal decisions. Religious beliefs or practices and attendance at religious services may not be imposed upon a resident.

(i) Have access to adequate or appropriate health care.

(j) Have at least 30 days' notice of relocation or termination of residency from the commercial recovery residence unless the resident engages in a pattern of conduct that is harmful or offensive to other residents, or the resident does not comply with the rules of the commercial recovery residence.

(K) If the residency is being terminated pursuant to subsection (j), the resident shall be given a minimum of 48 hours notice, unless the resident is provided alternative accommodations, or is hospitalized pursuant to the Marchman Act.

(k) Present grievances and recommend changes to the recovery residence administrator.

(3) The owner, operator, or recovery residence administrator may not serve notice upon a resident to leave the premises or take any other retaliatory action against any person who:

(a) Exercises any right set forth in this section.

(b) Appears as a witness in any hearing pertaining to the licensure of the commercial recovery residence.

(c) Files a civil action alleging a violation of this part or notifies a state attorney or the Attorney General of a possible violation of this part.

(4) Any recovery residence that terminates the residency of an individual who has participated in activities specified in subsection (4) shall show good cause for the termination of an agreement in a court of competent jurisdiction.

(5) Any person who reports a complaint concerning a suspected violation of this part or the services and conditions in a commercial recovery residence, or who testifies in any administrative or judicial proceeding arising from such a complaint, is immune from any civil or criminal liability therefor, unless the person acted in bad faith or with malicious purpose or the court finds that there was a complete absence of a justiciable issue of either law or fact raised by the losing party.

### **397.1009 Civil action by residents to enforce rights:**

(1) Any resident whose rights as specified in this part are violated has a cause of action against the owner, operator, or recovery residence administrator of a commercial recovery residence who was responsible for the violation. The action may be brought by the resident, or by a person or organization acting on behalf of a resident with the consent of the resident to enforce the right. The action may be brought in any court of competent jurisdiction seeking to enforce such rights and to recover

actual damages, and punitive damages when malicious, wanton, or willful disregard of the resident's rights can be shown. Any resident who prevails in any such action is entitled to recover reasonable attorney's fees, costs of the action, and damages, unless the court finds that the resident has acted in bad faith or with malicious purpose or that there was a complete absence of a justiciable issue of either law or fact. A prevailing defendant is entitled to recover reasonable attorney's fees pursuant to s. 57.105. The remedies provided in this section are in addition to other legal and administrative remedies available to a resident or to the agency.

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Attachment # 7

Section 397.355, Florida Statutes, is created to read:

397.335 Prohibition of unethical marketing practices. -The Legislature recognizes that individuals with substance abuse disorders have disabling conditions that put them at risk of being vulnerable to fraudulent marketing practices. To protect the health, safety, and welfare of this vulnerable population, substance abuse treatment providers licensed under this chapter and operators of recovery residences may not engage in the following marketing practices:

(1) Making false or misleading statements or providing false or misleading information about their products, goods, services, or geographical location in their marketing, advertising materials, or media or on their respective websites.

(2) Including on their respective websites coding that provides false information or surreptitiously directs the reader to another website.

(3) Soliciting or receiving a commission, benefit, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split fee arrangement in return for a referral or an acceptance or acknowledgement of treatment from a health care provider, health care facility, or recovery residence. A violation of this subsection is a violation of prohibition on patient brokering and is subject to criminal penalties under s.817.505.

(4) Entering into a marketing contract with a substance abuse lead generator that engages in marketing through a call center, unless the call center discloses the following to the caller so that he or she can make an informed health care decision:

(a) The substance abuse treatment programs it represents

(b) Clear and concise instructions that allow the caller to easily access a list of licensed substance abuse treatment agencies, both public and private, on the department website.

A substance abuse treatment provider licensed under this chapter which is operating as a partial hospitalization or an outpatient program, including an intensive outpatient program, may not offer a prospective patient free or reduced rent at a recovery residence to induce the prospective patient

to choose it as the patient's provider and may not make a direct or an indirect payment to a recovery residence for a patient's housing or other housing-related services, other than a rent subsidy to a commercial recovery residence as authorized by s.817.505. A provider or operator that violates this section commits a violation of the Florida Deceptive and Unfair Trade Practices Act under s. 501.2077 (2). The Department of Children and Families shall submit copies of findings related to violations by entities licensed and regulated under this chapter to the Department of Legal Affairs.

(5) In addition to any other punishment authorized by law, whoever knowingly and willfully violates paragraphs (1), (2) or (4) of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s.775.082 or s.775.083.



## Supplement # 1

### Proposals for Action Offered to Proviso Group Regarding by The Florida Alcohol & Drug Abuse Association

1. Promote ethical marketing practice legislation
  - Review/refine/enhance SB1138
  - Review Relevancy of Patient Brokering Statutes 817.505(3) -(attached)
1. Request Attorney General Advisory Opinion on Patient Brokering in regards to the substance abuse treatment industry
2. Promote funding for regulatory enforcement (i.e. adequate DCF staff)
3. Promote funding for recovery residence certification
4. Modify background screening statutes (attached)
5. Establish statewide hotline to report abuses in industry
6. Clarify/Revise licensable service components for Intensive Outpatient Treatment and Day/Night treatment with Community Housing Overlay (attached)
7. Promote adjustments in referral process (attached)
8. Develop communication strategy between providers, law enforcement, regulatory agencies and the courts

**supplement # 2**

**817.505 Patient brokering prohibited; exceptions; penalties.—**

- (3) This section shall not apply to:
- (a) Any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. s. 1320a-7b(b) or regulations promulgated thereunder.
  - (b) Any payment, compensation, or financial arrangement within a group practice as defined in s. 456.053, or a company licensed under s. 397 provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice.
  - (c) Payments to a health care provider or health care facility for professional consultation services.
  - (d) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under the insurance code.
  - (e) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.
  - (f) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan. However, nothing in this section affects whether a health care provider network entity is an insurer required to be licensed under the Florida Insurance Code.
  - (g) Insurance advertising gifts lawfully permitted under s. 626.9541(1)(m).
  - (h) Commissions or fees paid to a nurse registry licensed under s. 400.506 for referring persons providing health care services to clients of the nurse registry.
  - (i) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, provided that such information service:
    - 1. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;
    - 2. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;
    - 3. Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and
    - 4. Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.
  - (j) Any activity permitted under s. 429.195(2).
- (4) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084.

## Supplement # 3

### Key Provisions to Changes Related to Background Screening

1. Chapter 394 (Mental Health) creates Exemptions from Disqualification
  - A. Creates “fast pass” exemption process for extended service provider personnel providing supports to individuals aged 18 or older if:
    - 5 or more years since conviction of misdemeanor disqualifying offense OR
    - 7 or more years since conviction of felony disqualifying offense AND
    - Not been convicted of crimes against developmentally disabled, children or elderly individuals AND
    - Not convicted of sex crimes or homicide AND
    - Adds new offenses contained that disqualify and individual from the “fast pass” to include: patient brokering, Medicaid fraud, or insurance fraud
    - Sexual predators, career offenders and sexual offenders required to register do not qualify
  - B. Creates “provisional exemption” if individual is within the 5 yr/7yr window or personnel working under chapter 394 who are within three years of conviction of their most recent disqualifying offense so long as above conditions are met and each employer submit written acknowledgement of disqualifying offenses
2. Chapter 397 (Substance Abuse) makes modifications to Exemptions from Disqualification
  - A. Creates “fast pass” exemption process for extended service provider personnel providing supports to individuals aged 18 or older if:
    - 5 or more years since conviction of misdemeanor disqualifying offense OR
    - 7 or more years since conviction of felony disqualifying offense AND
    - Not been convicted of crimes against developmentally disabled, children or elderly individuals AND
    - Not convicted of sex crimes or homicide AND
    - Adds new offenses contained that disqualify and individual from the “fast pass” to include: patient brokering, Medicaid fraud, or insurance fraud
    - Sexual predators, career offenders and sexual offenders required to register do not qualify
  - B. Creates “provisional exemption” if individual is within the 5 yr/7yr window or personnel working under chapter 397 who are within three years of conviction of their most recent disqualifying offense so long as above conditions are met and each employer submit written acknowledgement of disqualifying offenses
  - C. Clarifies in the Certification of Recovery Residence statute that Level 2 background screening be subject to additional disqualifying offenses outlined in s. 408.807 as well as eligible for exemptions outlined in substance abuse chapter
  - D. Clarifies in the Certification of Recovery Residence Administrator statute that Level 2 background screening be subject to additional disqualifying offenses outlined in s. 408.809 as well as eligible for exemptions outlined in substance abuse chapter
3. Chapter 408.809 (Background screening in medical facilities) – deletes obsolete dates
4. Chapter 435.04 (Background screening) – deletes obsolete dates

394.4572 Screening of mental health personnel.—

(2) ~~The department or the Agency for Health Care Administration may grant EXEMPTIONS FROM DISQUALIFICATION -as provided in chapter 435.~~

(a) The department and the Agency for Health Care Administration may grant to any service provider personnel an exemption from disqualification as provided in s. 435.07.

(b) Since extended service provider personnel are effective in the successful recovery of individuals with mental health or substance use disorders, personnel who provide supports for adults 18 years of age and older, may be automatically exempted from disqualification from employment if:

1. it has been 5 or more years since the most recent conviction of a misdemeanor disqualifying offense as provided in s. 435.07; or
2. it has been 7 or more years since the most recent conviction of a felony disqualifying offense as provided in s. 435.07; and
3. has not been found guilty or convicted of the following offenses:
  - a. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
  - b. Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
  - c. Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
  - d. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
  - e. Section 782.04, relating to murder.
  - f. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
  - g. Section 787.025, relating to luring or enticing a child.
  - h. Section 794.011, relating to sexual battery.
  - i. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
  - j. Section 794.05, relating to unlawful sexual activity with certain minors.
  - k. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
  - l. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
  - m. Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
  - n. Section 826.04, relating to incest.
  - o. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
  - p. Section 827.04, relating to contributing to the delinquency or dependency of a child.
  - q. Former s. 827.05, relating to negligent treatment of children.
  - r. Section 827.071, relating to sexual performance by a child.
  - s. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
  - t. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
  - u. Section 409.920, relating to Medicaid provider fraud.
  - v. Section 409.9201, relating to Medicaid fraud.

- w. Section 817.234, relating to false and fraudulent insurance claims.
- x. Section 817.505, relating to patient brokering.
- y. Section 895.03, relating to racketeering and collection of unlawful debts.
- z. Section 896.101, relating to the Florida Money Laundering Act.

(c) The department or Agency of Health Care Administration may grant provisional exemptions from disqualification to extended service provider personnel who have not met the timeframe of 5 years for disqualifying misdemeanors or 7 years of disqualifying felonies or for other service provider personnel licensed under this chapter who do not meet the requirements set forth in s. 435.07 if a written acknowledgement of disqualifying offenses is submitted to the department and agency by each employer. It is the legislative intent to grant provisional exemptions unless the department of agency determines in writing that the provisional exemption would harm the health safety and welfare of individuals with mental health or substance use disorders. The department or agency reserves the right to require personnel who have been granted a provisional exemption must submit to Level 2 background check annually until they reach allowable timeframes set forth in this paragraph.

(d) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any person who is a:

1. Sexual predator as designated pursuant to s. 775.21;
2. Career offender pursuant to s. 775.261; or
3. Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

397.451 Background checks of service provider personnel.—

(4) EXEMPTIONS FROM DISQUALIFICATION.—

(a) The department may grant to any service provider personnel an exemption from disqualification as provided in s. 435.07.

(b) Since rehabilitated substance abuse impaired persons are effective in the successful treatment and rehabilitation of individuals with substance use disorders, for service providers which treat adolescents 13 years of age and older, service provider personnel whose background checks indicate crimes under s. 817.563, s. 893.13, or s. 893.147 may be exempted from disqualification from employment pursuant to this paragraph.

(c) Since extended service provider personnel are effective in the successful recovery of individuals with mental health or substance use disorders, personnel who provide supports for adults 18 years of age and older, may be automatically exempted from disqualification from employment if:

1. they meet the definition of s. 397.451 (b); or
  2. it has been 5 or more years since the most recent conviction of a misdemeanor disqualifying offense as provided in s. 435.07; or
  3. it has been 7 or more years since the most recent conviction of a felony disqualifying offense as provided in s. 435.07; and
3. has not been found guilty or convicted of the following offenses:
- a. Section 393.135, relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
  - b. Section 394.4593, relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
  - c. Section 415.111, relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
  - d. Section 777.04, relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
  - e. Section 782.04, relating to murder.
  - f. Section 782.07, relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.

- g. Section 787.025, relating to luring or enticing a child.
- h. Section 794.011, relating to sexual battery.
- i. Former s. 794.041, relating to prohibited acts of persons in familial or custodial authority.
- j. Section 794.05, relating to unlawful sexual activity with certain minors.
- k. Section 825.102, relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- l. Section 825.1025, relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- m. Section 825.103, relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- n. Section 826.04, relating to incest.
- o. Section 827.03, relating to child abuse, aggravated child abuse, or neglect of a child.
- p. Section 827.04, relating to contributing to the delinquency or dependency of a child.
- q. Former s. 827.05, relating to negligent treatment of children.
- r. Section 827.071, relating to sexual performance by a child.
- s. Section 916.1075, relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- t. Section 944.35(3), relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- u. Section 409.920, relating to Medicaid provider fraud.
- v. Section 409.9201, relating to Medicaid fraud.
- w. Section 817.234, relating to false and fraudulent insurance claims.
- x. Section 817.505, relating to patient brokering.
- y. Section 895.03, relating to racketeering and collection of unlawful debts.
- z. Section 896.101, relating to the Florida Money Laundering Act.

(c) The department or Agency of Health Care Administration may grant provisional exemptions from disqualification to extended service provider personnel who have not met the timeframe of 5 years for disqualifying misdemeanors or 7 years of disqualifying felonies or for other service provider personnel licensed under this chapter who do not meet the requirements set forth in s. 435.07 if a written acknowledgement of disqualifying offenses is submitted to the department and agency by each employer. It is the legislative intent to grant provisional exemptions unless the department of agency determines in writing that the provisional exemption would harm the health safety and welfare of individuals with mental health or substance use disorders. The department or agency reserves the right to require personnel who have been granted a provisional exemption must submit to Level 2 background check annually until they reach allowable timeframes set forth in this paragraph.

(d) The department may grant exemptions from disqualification which would limit service provider personnel not described in s. 397.451(4)(c) to working with adults in substance abuse treatment facilities.

(e) Disqualification from employment under this chapter may not be removed from, nor may an exemption be granted to, any person who is a:

1. Sexual predator as designated pursuant to s. 775.21;
2. Career offender pursuant to s. 775.261; or
3. Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.

397.487 Voluntary certification of recovery residences.—

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo

contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872 or meets the qualification set for in this chapter. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.

397.4871 Recovery residence administrator certification.—

(5) All applicants are subject to level 2 background screening as provided under chapter 435. An applicant is ineligible, and a credentialing entity shall deny the application, if the applicant has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872 or meets the qualification set for in this chapter. In accordance with s. 435.04, the department shall notify the credentialing agency of the applicant's eligibility based on the results of his or her background screening.

397.4872 Exemption from disqualification; PUBLICATION.—

~~(1) Individual exemptions to staff disqualification or administrator ineligibility may be requested if a recovery residence deems the decision will benefit the program. Requests for exemptions must be submitted in writing to the department within 20 days after the denial by the credentialing entity and must include a justification for the exemption.~~

~~(2) The department may exempt a person from ss. 397.487(6) and 397.4871(5) if it has been at least 3 years since the person has completed or been lawfully released from confinement, supervision, or sanction for the disqualifying offense. An exemption from the disqualifying offenses may not be given under any circumstances for any person who is a:~~

~~(a) Sexual predator pursuant to s. 775.21;~~

~~(b) Career offender pursuant to s. 775.261; or~~

~~(c) Sexual offender pursuant to s. 943.0435, unless the requirement to register as a sexual offender has been removed pursuant to s. 943.04354.~~

(3) By April 1, 2016, each credentialing entity shall submit a list to the department of all recovery residences and recovery residence administrators certified by the credentialing entity that hold a valid certificate of compliance. Thereafter, the credentialing entity must notify the department within 3 business days after a new recovery residence or recovery residence administrator is certified or a recovery residence or recovery residence administrator's certificate expires or is terminated. The department shall publish on its website a list of all recovery residences that hold a valid certificate of compliance. The department shall also publish on its website a list of all recovery residence administrators who hold a valid certificate of compliance. A recovery residence or recovery residence administrator shall be excluded from the list upon written request to the department by the listed individual or entity.

408.809 Background screening; prohibited offenses.—If, upon rescreening, a person who is currently employed or contracted with a licensee as of June 30, 2014, and was screened and qualified under ss. 435.03 and 435.04, has a disqualifying offense that was not a disqualifying offense at the time of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency no later than 30 days after receipt of the rescreening results by the person.

(5) A person who serves as a controlling interest of, is employed by, or contracts with a licensee on July 31, 2010, who has been screened and qualified according to standards specified in s. 435.03 or s. 435.04 must be rescreened by July 31, 2015, in compliance with the following schedule. If, upon rescreening, such person has a disqualifying offense that was not a disqualifying offense at the time

of the last screening, but is a current disqualifying offense and was committed before the last screening, he or she may apply for an exemption from the appropriate licensing agency and, if agreed to by the employer, may continue to perform his or her duties until the licensing agency renders a decision on the application for exemption if the person is eligible to apply for an exemption and the exemption request is received by the agency within 30 days after receipt of the rescreening results by the person. ~~The rescreening schedule shall be:~~

~~(a) Individuals for whom the last screening was conducted on or before December 31, 2004, must be rescreened by July 31, 2013.~~

~~(b) Individuals for whom the last screening conducted was between January 1, 2005, and December 31, 2008, must be rescreened by July 31, 2014.~~

~~(c) Individuals for whom the last screening conducted was between January 1, 2009, through July 31, 2011, must be rescreened by July 31, 2015.~~

#### 435.04 Level 2 screening standards.—

(1)(a) All employees required by law to be screened pursuant to this section must undergo security background investigations as a condition of employment and continued employment which includes, but need not be limited to, fingerprinting for statewide criminal history records checks through the Department of Law Enforcement, and national criminal history records checks through the Federal Bureau of Investigation, and may include local criminal records checks through local law enforcement agencies.

~~(b) Fingerprints submitted pursuant to this section on or after July 1, 2012, must be submitted electronically to the Department of Law Enforcement.~~

~~(d) An agency may require by rule that fingerprints submitted pursuant to this section must be submitted electronically to the Department of Law Enforcement on a date earlier than July 1, 2012.~~

## Supplement # 4

### Key Provisions to Changes Related to Recovery Residence Glitch

1. Deletes the definition of day or night treatment with community housing
2. Adds new definition of licensable service component to include Programs with Housing Overlay to mean any OP, Day or Night Treatment, or IOP program providing clinical services who are connected to a specific recovery residence, community housing, or otherwise. The term does not include residential or inpatient.
3. Provides a solution to substance abuse treatment providers who do not have a certified recovery residence within 25-mile radius
4. Narrows the exemption from referral process of recovery residences wholly owned by treatment provider to recovery residences that have 50% or more of its tenants in active treatment at their treatment facility
5. Increases the fee for recovery residence application and renewal to \$500 for recovery residences with 50% or more of its tenants in active treatment with one specific treatment provider
6. Clarifies in the Certification of Recovery Residence statute that Level 2 background screening be subject to additional disqualifying offenses outlined in s. 408.807 as well as eligible for exemptions outlined in substance abuse chapter

397.311 Definitions.—As used in this chapter, except part VIII, the term

(25) Licensed service components include a comprehensive continuum of accessible and quality substance abuse prevention, intervention, and clinical treatment services, including the following services:

(a) "Clinical treatment" means 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. As defined by rule, "clinical treatment services" include, but are not limited to, the following licensable service components:

1. "Addictions receiving facility" is a secure, acute care facility that provides, at a minimum, detoxification and stabilization services; is operated 24 hours per day, 7 days per week; and is designated by the department to serve individuals found to be substance use impaired as described in s. 397.675 who meet the placement criteria for this component.
2. "Day or night treatment" is a service provided in a nonresidential environment, with a structured schedule of treatment and rehabilitative services.
3. ~~"Day or night treatment with community housing" means a program intended for individuals who can benefit from living independently in peer community housing while participating in treatment services for a minimum of 5 hours a day for a minimum of 25 hours per week.~~
4. "Detoxification" is a service involving subacute care that is provided on an inpatient or an outpatient basis to assist individuals to withdraw from the physiological and psychological effects of substance abuse and who meet the placement criteria for this component.
5. "Intensive inpatient treatment" includes a planned regimen of evaluation, observation, medical monitoring, and clinical protocols delivered through an interdisciplinary team approach provided 24 hours per day, 7 days per week, in a highly structured, live-in environment.

6. "Intensive outpatient treatment" is a service that provides individual or group counseling in a more structured environment, is of higher intensity and duration than outpatient treatment, and is provided to individuals who meet the placement criteria for this component.

7. "Medication-assisted treatment for opiate addiction" is a service that uses methadone or other medication as authorized by state and federal law, in combination with medical, rehabilitative, and counseling services in the treatment of individuals who are dependent on opioid drugs.

8. "Outpatient treatment" is a service that provides individual, group, or family counseling by appointment during scheduled operating hours for individuals who meet the placement criteria for this component.

9. "Programs with housing overlay" means any program intended for individuals who can benefit from living in a peer community setting while participating in treatment services such as outpatient, day or night treatment, or intensive outpatient treatment. This term does not include inpatient or residential treatment.

~~10.9.~~—"Residential treatment" is a service provided in a structured live-in environment within a nonhospital setting on a 24-hours-per-day, 7-days-per-week basis, and is intended for individuals who meet the placement criteria for this component.

397.407 Licensure process; fees.—

(11) Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 or the recovery residence is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. . If no such residences exist within a 25 miles radius, the service provider may refer to a recovery residence who has submitted an application for certification as long as the service provider has notified the department and credentialing entity in writing. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

397.487 ~~Voluntary~~ certification of recovery residences.—

(1) The Legislature finds that a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a recovery residence after completing treatment. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. It is the intent of the Legislature to protect persons who reside in a recovery residence.

(2) Recovery residences who are connected to treatment defined in s. 397.311 who have more than 50% of its tenants in active treatment must receive certification.

(2) The department shall approve at least one credentialing entity by December 1, 2015, for the purpose of developing and administering a ~~voluntary~~ certification program for recovery residences. The approved credentialing entity shall:

(a) Establish recovery residence certification requirements.

(b) Establish procedures to:

1. Administer the application, certification, recertification, and disciplinary processes.

2. Monitor and inspect a recovery residence and its staff to ensure compliance with certification requirements.

3. Interview and evaluate residents, employees, and volunteer staff on their knowledge and application of certification requirements.

(c) Provide training for owners, managers, and staff.

(d) Develop a code of ethics.

(e) Establish application, inspection, and annual certification renewal fees. The application fee for stand-alone recovery residences not connected to clinical treatment may not exceed \$100. Any onsite inspection fee shall reflect actual costs for inspections. The annual certification renewal fee may not exceed \$100. The application fee for recovery residences connected to clinical treatment may not exceed \$500 with onsite inspections reflecting actual costs for inspections, and renewal fees not to exceed \$500.

(6) All owners, directors, and chief financial officers of an applicant recovery residence are subject to level 2 background screening as provided under chapter 435. A recovery residence is ineligible for certification, and a credentialing entity shall deny a recovery residence's application, if any owner, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any offense listed in s. 435.04(2) unless the department has issued an exemption under s. 397.4872 or meets the qualification set forth in this chapter. In accordance with s. 435.04, the department shall notify the credentialing agency of an owner's, director's, or chief financial officer's eligibility based on the results of his or her background screening.