



**OFFICE OF
THE STATE ATTORNEY**

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY



**DAVID ARONBERG
STATE ATTORNEY**

Sober Homes Task Force Meeting Minutes

Sober Home Task Force Tip Line 1-844-324-5463

Meeting Location: WPB Police Community Room 600 Banyan Blvd, West Palm Beach, FL 33401

Meeting Date: November 8, 2016

Welcome/Introductions:

Al Johnson opened the second Task Force meeting at 10:00am

Proviso Group Members

In Attendance

Thomas Baird
Mark Fontaine
Jeffrey Lynne
Scott Palmer
Shanon Materio
Dr. Rachel Needle
Captain Houston Park
Terrill Pyburn
Michael Weiner

Absent Members

Valerie Allen
Dr. Karen Dodge

The State Attorney's Office

Dave Aronberg
Mike Edmundson
Bill Ferris
Al Johnson
Henry Salinas
Mary Ann Senatore
Kari Williams

The meeting began with a welcome from Al Johnson, followed by the Proviso Group and public audience attendees introducing themselves

All attendees informed that meeting minutes are being taken and the meetings are audio-recorded.

Note: Due to an audio technical malfunction, the 10am-12:30 portion of this meeting did not record properly

“Sunshine Law” Overview:

Mr. Johnson highlighted the importance of the Sunshine Law and its implications for this Task Force. As an example, he cautioned the group not to use “reply all” in the use of email, regarding what is coming or will be coming before the Task Force.

State Attorney Dave Aronberg thanked everyone for his or her involvement, restating the urgency on this issue.

Statistics Given:

There have been over 4,000 Opioid related Opioid overdose responses where Narcan has been deployed by County or municipal Fire Rescue. This aggregate includes Palm Beach County Fire Rescue and several municipal first responders. The average cost to the county for each response (“run”) is between \$1,000 and \$1,500, conservatively (approximately 4-6 million). This does not include the costs associated with treatment at the hospital. In addition, not included in the PBCFR numbers; there were over 300 overdose drop-offs at the JFK Hospital emergency room in the first 3 weeks of October.

Captain Houston Park, Palm Beach County Fire Rescue opened the meeting with an overview of an upcoming program, as of January 2017, that will be a working collaboration with JFK Medical Centers and Palm Beach County Fire Rescue. This program will include a follow up system of Medication-assisted treatment (MAT), including opioid treatment programs combining behavioral therapy and medications to treat substance use disorders. This treatment assisted program will follow individuals meeting criteria, for up to 30 days who have been admitted with a drug overdose.

Mr. Johnson focused the meeting on the purpose at hand of this all-day meeting, which was to discuss possible revisions and changes to the following Florida Statutes. Handouts were given to all members and public attendees of the following documents which were discussed and reviewed.

- FS. 817.505 (patient brokering)
 - F.S. 817.0345 (proposed fraudulent marketing legislation)
 - F.S. 397.407 (proposed amendment to Licensure Process; Fees)
 - F.S. 397.55 (Marketing)
- Review synopsis of issues and recommendations

The discussions regarding FS 817.505, FS 817.0345 and part of FS 397.407 was discussed from 10:30am through 12:30pm. Those changes are documented in the attached proposed revisions. The meeting took lunch from 12:30-1:30 pm.

FS 817.505 (patient brokering) proposed revisions:

817.505. Patient brokering prohibited; exceptions; penalties

- (1) It is unlawful for any person, including any health care provider, or health care facility, 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
 - (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.

(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, 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)(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 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, 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.

FS 817.0345 (proposed fraudulent marketing legislation) proposed revision:

Section 817.0345, Florida Statutes, is created to read:

817.0345. Prohibition of fraudulent marketing practices.

It is unlawful for any person to knowingly and willfully make materially false or misleading statements or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed substance abuse treatment provider, as defined in chapter 397, in marketing, advertising materials or other media, or on their respective websites with the intent to induce another person to seek treatment with that provider.

Any person who violates this section commits a felony of the third degree, punishable as provided in s.775.082, s.775.083, or s.775.084.

At 1:30pm discussion of the remaining documents resumed.

FS 397.407 (proposed amendment to Licensure Process; Fees) proposed revision:

Amendment to §397.407 (11)

Effective July 1, 2017, a service provider licensed under this part may not refer a prospective, current or discharged patient to, or accept a referral from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in §397.487 and is actively managed by a certified recovery residence administrator as provided in §397.4871. For purposes of this subsection, the term "refer" means to inform a patient by any means about the name, address, or any other details of the recovery residence. However, this subsection does not require a licensed service provider to refer, or accept referral of any patient to or from a

recovery residence. This section shall not apply to public treatment providers, licensed by the Department and under contract to the Managing Entity.

F.S. 397.55 (Marketing) proposed revisions:

Section 397.55, Florida Statutes, is created to read:

397.55 Prohibition of unethical marketing practices. The Legislature recognizes that consumers of substance use disorder treatment and their families represent a vulnerable population easily victimized by fraudulent marketing practices which adversely impacts the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, substance use disorder treatment providers licensed under this chapter, operators of recovery residences and third parties who provide any form of advertising of marketing services to such providers and operators, may not engage in the following marketing practices:

(1) Making false or misleading statements or providing false or misleading information about their, or their client's location, 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. 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 any agreement with any person or entity representing that they are able to generate referrals or leads for placement of patients in either a treatment program or a recovery residence, a call center or internet web-based presence, unless the marketing provider discloses the following to the inquiring party, so that he or she can make an informed health care decision:

(a) Clear and concise language and instructions that allows the caller or inquiring party to easily identify whether the marketing entity represents specific licensed programs and/or recovery residences that pay a fee to the marketing entity, and the identity of those programs or residences.

(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.

(5) Any person or entity which engages in the commerce of attempting to generate referrals or leads for placement of patients in either a treatment program or recovery residence, no matter the form, but including a call center or internet web-based presence, shall first obtain licensure from the Florida Department of Business and Professional Regulation and shall have an office in the State of Florida for the purpose of service of process.

(6) 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.

(7) 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.775.089 or s.775.083.

Review synopsis of issues and recommendations

PALM BEACH COUNTY SOBER HOMES TASK FORCE

IDENTIFICATION OF PROBLEMS IN THE SUBSTANCE ABUSE TREATMENT INDUSTRY AND RECOMMENDED CHANGES TO LAWS AND REGULATIONS FOR THE 2017 LEGISLATIVE SESSION

Synopsis of the issues

Over the past decade, federal privacy laws have collectively impacted the Substance Abuse Treatment Industry in ways that could not have been predicted. The Mental Health Parity and Addiction Equity Act of 2008 (Parity Act), placed behavioral health on a par with physical health, resulting in a drastic increase in coverage for substance abuse treatment. Subsequently, the Affordable Care Act allowed young adults to stay on their parents' policies until age 26, eliminated exclusions for pre-existing conditions, and required treatment for mental health and substance abuse to be included on every insurance policy. These two pieces of legislation inadvertently created an opportunity for a group of bad actors to exploit a vulnerable class of young adults, suffering from Substance Use Disorder. Additionally, persons with a Substance Use Disorder (SUD) are considered disabled under the Americans With Disabilities Act (ADA) and the Fair Housing Act (FHA). These federal protections have effectively prevented municipalities from identifying and regulating the growing number of Recovery Residences in residential areas. While a municipality may adopt regulations that may affect Recovery Residences, Federal Statutes require that reasonable accommodation be afforded to those residences. In a Palm Beach County municipality, there have been 550 requests for reasonable accommodations regarding Recovery Residences.

The economic environment of Substance Use Treatment (SUT) creates the opportunity for abuses; overbilling for services; most notably confirmatory and quantitative urinalysis testing (UA); marketing abuses, patient brokering and encouraging relapse. In addition, there is an incentive for marketers to refer patients to an out-of-network program, resulting in more referrals from out-of-state patients to providers in Florida. Out-of-network providers are generally not bound by contract to a set fee schedule for services. There is an economic incentive for providers who are not bound by pre-set charges to treat out-of-network patients. In a recent Optum report, it was estimated that insurance companies' reimbursement for out of network drug treatment was, on average, three times the amount paid for the same in-network services.¹

The following abuses are commonplace:

¹ Optum; *Young Adults and the Behavioral Health System*

- 1- **MARKETING:** Some marketers create an on-line presence whereby potential patients and their families are willfully misled and misdirected by unqualified individuals offering diagnosis and placement recommendations. Often the result of these “lead generators” is a referral to a provider in Florida. In many cases, the referral is to a treatment center or Recovery Residence that is not the original destination requested or sought by the caller. Marketers, who are actually working on behalf of a specific provider routinely misrepresent, misinform and misdirect individuals with Substance Use Disorders and their families. Providers treating out-of-state patients are uniformly out-of-network. Florida has become a medical tourism destination. No marketing norms or standards exist within the industry.
- 2- **LABRATORY TESTING:** Potential abuse has expanded to include UA, DNA, Genetic Testing, Pathology, PAP, and any diagnostic test that a physician is privileged to order, including up-coded office visits. A point of care (POC) urinalysis test kit is readily available over the counter and costs a few dollars. Confirmatory testing at a laboratory involves sophisticated instruments, routinely tests for specific and collateral drugs (panels) and may result in billing of thousands of dollars per sample. In many cases, confirmatory testing is ordered by treatment providers multiple times per week. Medical doctors sign off on such testing as medically necessary, and in many cases, major insurance carriers like Cigna are compelled to pay claims for laboratory testing without prior authorization based on “access to care” requirements found in federal law. In other words, laboratory testing as a complement to clinical care may be routinely billed for without legitimate proof of medical necessity. This is one of the engines that currently run the industry. While insurance companies generally pay a percentage of the billed amount, it is not unusual for unscrupulous treatment providers to bill tens or hundreds of thousands of dollars in insurance claims for confirmatory UA and other laboratory testing for an individual patient over the course of treatment. In many instances, confirmatory test results are never reviewed by the ordering physician. In addition, unscrupulous providers will submit falsely labeled samples purportedly given by active patients. Frequently, a business nexus exists between the owners of a treatment program, Recovery Residences and drug testing laboratories.
- 3- **FREE RENT:** Due to the fact that most patients are from out-of-state, treatment providers in Florida often refer them to Recovery Residences or accept referral from Recovery Residences to their treatment facilities. A practice within the industry in Florida is for the treatment provider to pay the Recovery Residence with the understanding that the Recovery Residence will allow the patient to live there for free or at a greatly reduced rent. This practice was developed in order to ensure that out-of-state patients have a local place to live after they step down from in-patient to out-patient treatment. Many, if not most, out of state patients do not have a local job and while some are able to pay rent, many do not have the means. Without a local stable address, it would be difficult if not impossible for the provider to treat the patient. This creates an economic imperative for the provider to find a way to house the patient locally. Some treatment providers and Recovery Residences offer incentives such as gym memberships, scooters, weekly messages, chiropractic services, cigarettes, clothes, gift cards and more. Brokers known as “body snatchers” will approach an individual with a Substance Abuse Disorder and convince them to move to another Recovery Residence and/ or treatment provider that offers “better stuff.”
- 4- **CHRONIC RELAPSE SYNDROME:** As a result of patient brokering, there exists an economic incentive for both the patient and the provider to recycle through treatment. Often insurers are required to cover each relapse as a separate event (analogous to breaking a leg one week, and an arm the next). Therefore, a

relapse is an event which triggers the cycle of coverage anew. For example, if a patient's benefits expire after inpatient treatment, followed by 8 weeks of out-patient treatment, a new series of benefits are triggered upon relapse, resulting in the patient being eligible for the same series of treatments all over again. As a result, there can be an economic incentive for bad actors in the industry to encourage relapse. There is also an incentive for the patient, who is receiving free rent, and other benefits, to perpetuate this cycle. It is not uncommon for a person to be in this cycle of treatment/relapse for years.

- 5- **IMPEDIMENTS TO EFFECTIVE INVESTIGATION:** Criminal cases in Florida are investigated by law enforcement and submitted to the state attorney for the filing of criminal charges. The privacy protections afforded by both federal and state law for the protection of persons being treated for behavioral health conditions significantly impacts the ability of law enforcement to effectively investigate in these areas. For example, an officer is at risk of violating privacy laws by walking up to a known Recovery Residence and asking routine questions of the residents such as whether and where they receive treatment.

Commencing an undercover operation of a treatment provider or Recovery Residence requires prior court approval, known as a "Title 42" order. It is time consuming and costly. The patient notification requirements under State law are unclear as to when such notification is required. As a result, one Circuit Judge refused to sign a requested "Title 42" preliminary order without prior notification to all patients, who were unknown at the time. The average-size law enforcement agency simply does not have the resources to develop these kinds of extensive investigations within their jurisdictions. Most witnesses at the ground level are individuals with Substance Use Disorder or recovering individuals with Substance Use Disorder. Even in the rare event that a patient cooperates with law enforcement as a witness, there are credibility and reliability issues.

Most criminal investigations are initiated by a complaint; a car is stolen, a person is battered, identity theft, etc. However, the abuses in the drug treatment industry, particularly patient brokering, are not likely to come to light through a person with direct knowledge of these illegal practices. Patients, providers and Recovery Residence operators are all complicit in patient brokering. For example, there is no incentive for a patient who is benefiting from the arrangement to come forward and initiate a complaint. Therefore, the privacy issue is compounded by the lack of direct complaints and cooperation by this vulnerable class.

- 6- **INADEQUATE RESOURCES FOR DCF REGARDING LICENSURE AND OVERSIGHT:** As of August 31, 2016, there were a total of 931 substance use treatment providers licensed in Florida, holding 3,417 separate component (program) licenses.² The Southeast Region (Palm Beach, Broward and the Treasure Coast had 321 licensed providers, (34% of providers) holding 1307 component licenses (38% of all licenses). From April-July, 2016, the Southeast Region alone received 241 Provider Application Packets for the licensure of 606 program components (63 from new providers). The DCF Southeast Region Office of Substance Abuse and Mental Health currently has 9 licensing specialists. The total number of licensing specialists in the 6 state regions combined is 25. Licensing specialists also have the duty and obligation to perform any monitoring of programs in addition to processing licenses and license renewals. Experience shows that DCF rarely revokes the license of a treatment provider. Additional staff and authority would

² Information provided by DCF to the Palm Beach County Recovery Residences Task Force

allow the Department to be more forceful in investigating complaints and taking action against a problem provider.

SUGGESTED SOLUTIONS

MARKETING

- An ethical marketing statute would be useful to clarify standards in the industry. This would include appropriate disclaimers.
- There are certain predatory marketing practices that involve fraudulent misrepresentation at a time when potential patients and their loved ones are in crisis and most vulnerable. Marketers who knowingly and willfully make materially false statements, whether in advertising or by direct communication with current or potential patients, should be held criminally accountable. False statements of material fact may include misleading representation about the “identity, products, goods, services, or geographical location” of a service provider or Recovery Residence by the marketer or marketing entity. It is recommended that the legislature enact 817.0345; prohibition of fraudulent marketing practices.
- A marketer directing patients to specific treatment program should be required to have certain minimum education and/or certification qualifications and should be prohibited from diagnosing and/or recommending specific levels of care without the appropriate license or certification.
- A marketing entity referring patients to Florida should be required to have a registered agent in the State for service of process.
- Entities that supply advertising services to refer potential patients be licensed by a Florida consumer protection agency.

LABORATORY TESTING & OVERBILLING

- The issue of billing for unnecessary treatment, including urinalysis or other laboratory testing is covered under current fraud statutes. As a further deterrent for those bad actors who knowingly and intentionally defraud private payers or insurance companies, the legislature should consider enhanced penalties based on significant dollar amount thresholds; over \$100,000, \$500,000, \$1,000,000.
- Create an ongoing state-wide government/private sector panel to examine standard-of-care abuses in the industry, pool resources and share information. The panel should include the Attorney General, Department of Insurance Fraud, Department of Business and Professional Regulation, Department of Health/AHCA, representatives from the insurance industry doing business in Florida, Florida Alcohol and Drug Abuse Association, DCF, FARR, Medical Doctors and in-patient and out-patient treatment providers, among other potential stake-holders. This panel would be tasked with identifying areas of abuse and coordinating efforts within the private industry and government agencies to curb those abuses as well as recommending appropriate action by the legislature or executive.

PATIENT BROKERING

- Clarify the brokering statute by including the word “benefit” in identifying inducement
 - As a deterrent, enhance penalties under the patient brokering statute.
 - Increase the level of a 3rd degree felony violation from level 1 to level 6 in the Criminal Punishment Code.
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- For “serial” offenders who broker more than 10 but fewer than 20 patients, increase the offense to a 2nd degree felony, level 7, and an offender who brokers 20 or more patients, to a 1st degree felony, level 8, with a 3-year minimum mandatory term of incarceration. There should also be minimum fines that reflect the amount of money made by patient brokers. For example, trafficking in 28 grams or more of oxycodone currently has a minimum \$500,000 fine. A typical patient broker can make \$500 per week for every patient he sends to a treatment provider. Some easily make \$10,000 per week. Similar enhancement penalties can be found in the theft of identity statute or trafficking statute.
 - Allocate funds to Law Enforcement Agencies specifically for training in the investigation of unlawful activity within the treatment and Recovery Residence industry.

REGULATE COMMERCE BETWEEN PATIENT HOUSING AND TREATMENT CENTERS

- If the legislature chooses to recognize the reality that out-of-state private pay patients require housing while attending outpatient levels of care and it is in the public interest that treatment providers be allowed to subsidize that housing without being in violation of the patient brokering statute if there must be effective, meaningful oversight and control over the housing component.
- The purpose of adding § 397.407(11), Fla. Stat. (2016) was to protect patients who are in their most vulnerable stage of recovery (during or immediately after inpatient treatment) from being referred to unregulated Recovery Residences. This reasoning should equally apply to mandate certification of any Recovery Residence that houses patients actively receiving IOP or higher level of treatment.
- Overlay Licensure Categories: The creation by DCF of a new licensing category of Intensive Outpatient Treatment (IOP) with Community Housing similar to the current license for Day/Night Treatment with Community Housing (Day/Night).
- Community Housing must be certified by a credentialing entity approved by DCF.
- The licensing of both Day/Night and IOP with community housing overlay allows the licensee to provide housing for patients while in the program. DCF will license both the treatment and housing components of these programs. DCF must be adequately funded to both license and monitor the housing component associated with outpatient services. However, as previously noted, DCF is currently does not have remotely enough resources to adequately regulate either. In order to ensure that Treatment providers licensed in these overlay categories may only house their patients in licensed and certified Recovery Residences, whether owned, leased or contracted. Allow for an exemption for those residences under contract with a Managing Entity.
- Out Patient (OP) programs are not eligible for housing overlay.
- Clarify that no out-patient program may provide rent subsidy, or other benefit to induce a patient to choose that program, unless licensed as D/N or IOP with housing overlay component.

- DCF to develop standards, similar to National Alliance of Recovery Residences (NARR) standards, which must be established prior to issuing a license that, includes a housing overlay.
- Mandatory certification or accreditation of the residential component for Day/Night and IOP with community housing overlay. Allow for an exemption for those residences under contract with a Managing Entity.
- Requiring licensure of this treatment component and certification of these overlay residences regulates commerce, is for the benefit of patients in treatment, and is not in violation of the ADA or FHA.
- To avoid the “institutionalization” of patients in recovery, restrict the licensure category for IOP with housing overlay from providing free housing to a patient beyond 90 days within one calendar year.

STRENGTHEN OVERSIGHT AND RESOURCES FOR DCF

- Make DCF licensing of treatment providers a privilege, rather than a right for purposes of licensure and enforcement of standards.
- Adopt language used in the Assisted Living Facilities Act³ which states: “The principle that a license issued under this part is a public trust and a privilege and is not an entitlement...”
- When it comes to the business of health care, the Legislature has already made extensive statements of intent and belief with regard to protecting the health and safety of patients. *See* § 456.003(1), (2)(a)-(c), Fla. Stat. (2016). Both the federal government and the vast majority of the recovery industry view and treat substance use disorders as a health issue. “It is the intent of the Legislature that persons desiring to engage in any lawful profession regulated by the department shall be entitled to do so as a matter of right if otherwise qualified. (2) The Legislature further believes that such professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when: (a) Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation. (b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation. (c) Less restrictive means of regulation are not available. § 456.003(1), (2)(a)-(c), Fla. Stat.
- Create a system similar to that used by the Agency for Health Care Administration with greater ability to monitor as well as license.
- Allow DCF greater flexibility to deny or delay the issuance of licenses where there are concerns with compliance.
- Whether a license is revoked or surrendered, require a significant time period before a provider may re-apply. Re-application should require greater scrutiny.
- DCF to include marketing practices standards in the license requirements for all components of licenses. Standards will address key areas, including: advertising, internal and external admissions and call centers, staff training and compensation, referrals of patients the center cannot accept, compliance with the Florida Patient Brokering Act.
- Create and advertise a hotline to investigate complaints.
- Create a separate investigative division to monitor compliance as well as marketing abuses

³ § 429.01(3), Fla. Stat. (2016).

Adequately fund DCF

- Industry funding – increase fees appropriately to provide adequate staffing. This includes not only licensing and renewals, but regular auditing, investigation and legal staff to pursue license revocation if appropriate.
- Revenue neutral – adequate funding of the Department can be achieved through an increase in fees for service. This includes reasonable fees for licensing, ongoing oversight of licensed components, including monitoring of compliance with housing standards and protocols, adequate investigative resources, robust enforcement of standards, including license revocation. As a billion-dollar industry, substance use treatment providers should be readily willing and easily able to absorb the level of scrutiny that will curb the abuses that are currently all too prevalent, and preventable.

Alternatives to DCF Licensure of Housing Overlay: AHCA

- Alternatively, and in addition to mandatory FARR certification for patient housing provided by treatment programs with housing overlay, there is an argument to be made that AHCA license Recovery Residences with patients engaged in active treatment. This type of license would be similar to a license for an Assisted Living Facility (ALF) or Adult Family Care Home (AFC).
- At the very least, AHCA licensure should be mandated where a Recovery Residence supervises one or more residents receiving medicated assisted treatment (MAT). Under such circumstances, the Recovery Residence appears to meet the definition of an ALF, which already requires licensure by AHCA.ⁱ

⁴ “Assisted living facility” means any building . . . which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator.” § 429.02(5), Fla. Stat. (2015). “Personal services” means . . . supervision of the activities of daily living and the self-administration of medication and other similar services . . .” § 429.02(17), Fla. Stat. (2015). “Supervision” means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities.” § 429.02(24), Fla. Stat. (2015). “Activities of daily living” means functions and tasks for self-care . . .” § 429.02(1), Fla. Stat. (2015).

- The reasoning behind mandatory licensure for ALF’s equally applies to Recovery Residences. The purpose of the Assisted Living Facilities Act “is to promote the availability of appropriate service for . . . adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote dignity, individuality, privacy, and decision making ability of such persons, to provide for the health, safety, and welfare of residents . . ., to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic , social, mental health, health, and leisure services are made available to residents . . . through the efforts of [AHCA] [DCF], [DOH], assisted living facilities, and other community agencies.” § 429.01(2), Fla. Stat. (2014).

Senator Jeff Clemens was present, and expressed concerns and encouragement for what this group is doing. Senator Clemens also gave recommendations for revisions to legislative language. Mr. Johnson and the Proviso Group thanked Senator Clemens for his recommendations and input.

Next Meeting	Date	Location
Proviso Group	December 19, 2016	Community Room-West Palm Beach Police Station
Task Force	December 21, 2016	Community Room- West Palm Beach Police Station

Minutes transcribed by: Mary Ann Senatore November 8, 2016
Minutes approved by: Al Johnson