The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Appropriations

BILL:	CS/SB 326
INTRODUCER:	Children, Families, and Elder Affairs Committee and Senators Clemens and Sachs
SUBJECT:	Substance Abuse Services
DATE:	April 8, 2015 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Crosier	Hendon	CF	**Fav/CS**
2.	Brown	Pigott	AHS	**Recommend: Fav/CS**
3.	Brown	Kynoch	AP	**Pre-meeting**

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 326 establishes processes for the voluntary certification of recovery residences and recovery residence administrators. The Department of Children and Families (DCF) is required to approve at least one credentialing entity by December 1, 2015, for the development and administration of the certification programs. The credentialing entity or entities must establish procedures for the certification of recovery residences.

The DCF is required to publish a list of all recovery residences and recovery residence administrators on its website but the bill allows for a recovery residence or recovery residence administrator to be excluded from the list under certain circumstances.

The bill has an indeterminate fiscal impact on the DCF.

The bill provides an effective date of July 1, 2015.

II. Present Situation:

Recovery residences (also known as "sober homes") function under the premise that individuals benefit in their recovery by residing in a recovery residence. There is no universally accepted definition of a recovery residences; however unlike most halfway houses, which receive government funding and limit the length of stays, recovery residences are designed to be financially self-sustaining through rent and fees paid by residents, and there is no limit on the

length of stay for those who abide by the rules.[1] Recovery residences are abstinence-based environments where consumption of alcohol or other drugs results in evictions.[2] A 2009 Connecticut study notes the following: "Sober houses do not provide treatment, [they are] just a place where people in similar circumstances can support one another in sobriety. Because they do not provide treatment, they typically are not subject to state regulation."[3]

Some recovery residences voluntarily join coalitions or associations[4] that monitor health, safety, quality, and adherence to the membership requirements for the specific coalition or association.[5] The exact number of recovery residences in Florida is currently unknown.[6] The facilities, operators, and organizational design of recovery residences vary greatly. The location of the home can be crucial to recovery, and the placement of the home in a single-family neighborhood might help residents avoid temptations that other environments can create.[7] Organizationally, these homes can range from a private landlord renting his or her home to recovering addicts to corporations that operate full-time treatment centers across the country and employ professional staff.[8]

In 2013, the DCF conducted a study of recovery residences in Florida.[9] The DCF sought public comment relating to community concerns for recovery residences. Three widely-held concerns for the recovery residences were the safety of the residents, safety of the neighborhoods, and lack of governmental oversight.[10]

Concerns raised by participants at public meetings included:
- Residents being evicted with little or no notice;
- Unscrupulous landlords, including an alleged sexual offender who was running a women's program;
- A recovery residence owned by a bar owner and attached to the bar;
- Residents dying in recovery residences;
- Lack of regulation and harm to neighborhoods;

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[1] *Recovery Residence Report;* Department of Children and Families, Office of Substance Abuse and Mental Health, October 1, 2013, (on file with the Senate Committee on Children, Families and Elder Affairs).
[2] *Id*.
[3] *Id*.
[4] *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses,* J Psychoactive Drugs, June 2008; 40(2): 153-159, Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A .available at *http://www.biomedsearch.com/article/Clean- sober-place-to-live/195982213.html*
[5] *Id*.
[6] *DCF Report* at page 6.
[7] M.M. Gorman *et al., Fair Housing for Sober Living: How the Fair Housing Act Addresses Recovery Homes for Drug and Alcohol Addiction*, THE URBAN LAWYER v. 42, No. 3 (Summer 2010) (on file with the Senate Committee on Children, Families and Elder Affairs).
[8] M.M. Gorman *et al*., *supra* note 2.
[9] Ch. 2013-040, L.O.F. The 2013-2014 General Appropriations Act directed DCF to determine whether to establish a licensure/registration process for recovery residences and to provide the Governor and Legislature with a report on its findings. In its report, DCF was required to identify the number of recovery residences operating in Florida, identify benefits and concerns in connection with the operation of recovery residences, and the impact of recovery residences on effective treatment of alcoholism and on recovery residence residents and surrounding neighborhoods. DCF was also required to include the feasibility, cost, and consequences of licensing, regulating, registering, or certifying recovery residences and their operators. DCF submitted its report o the Governor and Legislature on October 1, 2013.
[10] *Recovery Residence Report, supra* footnote 4.

- Land use problems and nuisance issues caused by visitors at recovery residences, including issues with trash, noise, fights, petty crimes, substandard maintenance, and parking;
- Mismanagement of resident funds or medication;
- Lack of security at recovery residences and abuse of residents;
- The need for background checks of recovery residence staff;
- The number of residents living in some recovery residences and the living conditions of these recovery residences;
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are in existing treatment;
- False advertising;
- Medical tourism;
- The sufficiency or lack of state agency resources to enforce regulations and adequately regulate the homes;
- Allegations that medical providers are ordering medical tests and billing insurance companies unlawfully;
- Lack of uniformity in standards; and
- Alleged patient brokering in violation of Florida Statutes.[11]

Currently, recovery residences, or their functional equivalents, are not subject to DCF oversight. Furthermore, there is no statewide certification process for recovery residence administrators. The DCF does not currently identify, endorse, or certify any entities as being responsible for the certification of recovery residence professionals.

Persons that are licensed or employed in professions that serve vulnerable populations are required to be of good moral character and most are required to comply with background screening requirements under ch. 435, F.S. Currently, the level 2 background screening requirements under s 435.04, F.S. do not apply to staff employed by a licensed substance abuse treatment provider who have direct contact with adults who are not developmentally disabled.[12] This specific adult population is not considered a vulnerable population under ch. 435, F.S.,[13] and, therefore, the licensed service provider personnel who have direct contact with this specific adult population only are not subject to level 2 background screening requirements.

The DCF is aware of at least one private entity in Florida – the Florida Association of Recovery Residences (FARR) – that currently certifies recovery residences in accordance with national standards of the certification program developed by the National Alliance of Recovery Residences (NARR). Certification is voluntary, and the national standards are only for the certification of recovery residences. Recovery residence administrators are not currently certified under the existing certification program.

[11] *Id*.
[12] Section 397.451, F.S.
[13] Section 435.02(6), F.S.

Federal Fair Housing Act

The Federal Fair Housing Act of 1988 (FFHA)[14] prohibits discrimination on the basis of a handicap in all types of housing transactions. The FFHA defines a "handicap" to mean mental or physical impairments that substantially limit one or more major life activities. The term "mental or physical impairment" may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term "major life activity" may include seeing, hearing, walking, breathing, performing manual tasks, caring for oneself, learning, speaking, or working. The FFHA also protects persons who have a record of such impairment or are regarded as having such impairment. Persons who are currently using controlled substances illegally, person convicted of illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders are not considered disabled by virtue of that status under the FFHA.[15]

The Florida Fair Housing Act provides that it is unlawful to discriminate in the sale or rental of, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a handicap of a person residing in or intending to reside in that dwelling after it is sold, rented, or made available.[16] Discrimination includes a refusal to make reasonable accommodations in rules, policies, practices, or services when such accommodations may be necessary to afford a handicapped person equal opportunity to use and enjoy a dwelling.[17]

Americans with Disabilities Act

In July 1999, the U.S. Supreme Court held that the unnecessary institutionalization of persons with disabilities is a form of discrimination prohibited by the Americans with Disabilities Act (ADA).[18] In its opinion, the Court challenged federal, state, and local governments to develop more opportunities for individuals with disabilities through accessible systems of cost-effective, community-based services. This decision interpreted Title II of the ADA and its implementing regulation, which requires states to administer their services, programs, and activities "in the most integrated setting appropriate to meet the needs of qualified individuals with disabilities."

The ADA and the *Olmstead* decision apply to all qualified individuals with disabilities regardless of age. A former drug addict may be protected under the ADA because the addiction may be considered a substantially limiting impairment.[19] In addition, in the *United States of America v. City of Boca Raton*, the court held that the city's ordinance excluding substance abuse treatment facilities from residential areas violates the FFHA because it unjustifiably prohibits these individuals from enjoying the same rights and access to housing as anyone else.[20]

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[14] 42 U.S.C. 3601 *et seq.*
[15] *See* U.S. Department of Justice, *The Fair Housing Act, available at* http://www.justice.gov/crt/about/hce/housing_coverage.php (last visited Feb. 13, 2015).
[16] *See* s. 760.23(7)(b), F.S.
[17] *See* s. 760.23(9)(b), F.S.
[18] *Olmstead v. L.C.*, 527 U.S. 581, (1999).
[19] U.S. Commission on Civil Rights, *Sharing the Dream: Is the ADA Accommodating All? available at* http://www.usccr.gov/pubs/ada/ch4.htm#_ftn12 (last visited Feb. 6, 2014).
[20] *United States of America vs. City of Boca Raton* 1008 WL 686689 (S.D.Fla.2008).

III. Effect of Proposed Changes:

Section 1 amends s. 397.311, F.S., to add definitions for six new terms to implement the voluntary program for certification of recovery residences:

- Certificate of compliance;
- Certified recovery residence;
- Certified recovery residence administrator;
- Credentialing entity;
- Recovery residence; and
- Recovery residence administrator.

The bill defines the term "certified recovery residence" to mean "a recovery residence that holds a valid certificate of compliance or that is actively managed by a certified recovery residence administrator." As written, this could allow a recovery residence to be certified by virtue of the professional certification of its administrator. The bill does not define "actively managed" and it is unclear whether multiple recovery residences that were managed by the same administrator could be certified by virtue of their administrator's certification.

The bill also defines the term "recovery residence" to mean "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, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment." This definition could include other types of housing, such as supportive housing for homeless persons, domestic violence shelters, or halfway houses operated by or under contract with the Florida Department of Corrections and the Florida Department of Juvenile Justice. It is unclear whether "other form of group housing" refers to the physical grouping of housing units, such as a group of apartments or townhomes, or the group living arrangements for a specific group or population, such as group homes, foster homes, or community residential homes.

Section 2 creates s, 397.487, F.S., requiring the DCF, by December 15, 2015, to approve one or more credentialing entities that will function to develop and administer a voluntary certification program for recovery residences. The bill prescribes a series of standards that would be codified for a credentialing entity and the requirements and criteria that recovery residences must meet in order to be certified. However, the bill does not specify the criteria or approval process that the DCF must use to evaluate and approve a credentialing entity. The bill does not appear to give the DCF discretion or the ability to "deny" approval of a credentialing entity. In addition, the bill does not provide the DCF with specific rule-making authority necessary to establish the requirements and process for evaluating and approving credentialing entities.

In the bill, the credentialing entities are required to establish processes for several functions, such as training and development of a code of ethics. It is unclear if this is directed toward staff and volunteers, or for individuals living in a recovery residence. A policy and procedures manual would also be required to include a "good neighbor" policy to address neighborhood concerns and complaints.

As previously noted, the term "credentialing entity" is defined as a "nonprofit organization that develops and administers professional certification programs according to nationally recognized

certification and psychometric standards" but the bill does not require the certification to be based on nationally-recognized standards or psychometric standards. The certification of recovery residences would not be considered a type of professional certification but rather a type of facility or organization certification.

The credentialing entity must also establish application, inspection, and annual certification renewal fees. Application and annual certification renewal fees may not exceed $100; however, the inspection fee must reflect actual costs for inspectors. An inspection must be performed before a recovery residence can be approved for certification. The credentialing entity must inspect certified recovery residences at least once a year. The bill does not specify the tasks or expenses that could be included in the cost of inspection, nor does the bill establish a maximum dollar amount for the fee that a recovery residence must pay for an inspection. The establishment of fees for application, inspection, and certification appears to be the only compensation that a credentialing entity would receive in exchange for administering recovery residences.

The bill specifies that a credentialing entity must require all owners, directors, and chief financial officers of a recovery residence applicant to pass a level 2 background screening under s. 435.04, F.S., as a condition of certification. The DCF is responsible for receiving and reviewing the results of the background screenings to determine if an employee meets the "certification requirements." A credentialing entity must deny a recovery residence's application and may revoke or suspend the certification of any owner, director, or chief financial officer, if the background screening indicates that such individual is subject to the disqualifying offenses set forth in s. 435.04(2), F.S., and does not have an exemption granted by the DCF under s. 397.4872, F.S.

The bill provides that under no circumstances may a disqualification from employment be removed from, nor may an exemption be granted to, any person who is a sexual predator,[21] a career offender,[22] or sexual offender,[23] unless the requirement to register as a sexual offender has been removed under s. 943.04354, F.S.

If any owner, director, or chief financial officer of a recovery residence is arrested or found guilty of any offense listed in s. 435.04(2), F.S., the certified recovery residence must immediately remove the person from his or her position and notify the credentialing entity within three business days after removal.

The bill also makes it a misdemeanor, under s. 775.082 or 775.083, F.S., to advertise as a "certified recovery residence" unless such residence has secured a certificate of compliance.

Section 3 creates s. 397.4871, F.S., requiring the DCF, by December 1, 2015, to approve at least one credentialing entity that will function to develop and administer a voluntary certification program for recovery residence administrators. The bill sets forth standards that would be codified for a credentialing entity and the requirements and criteria that recovery residence administrators must meet to be certified. However, the bill does not specify the criteria or approval process that the DCF must use in order to evaluate and approve a credentialing entity.

[21] *See* s. 775.21, F.S.
[22] *See* s. 775.261, F.S.
[23] *See* s. 943.0435, F.S.

The bill requires a credentialing entity to approve qualified training entities to provide pre-certification training to applicants and continuing education to certified recovery residence administrators. An approved credentialing entity or its affiliate is prohibited from providing training to applicants and continuing education to recovery residence administrators, in order to avoid a conflict of interest. The bill does not clarify how the provision of training by the approved credentialing entity would create a conflict of interest or what would constitute a conflict of interest. It is also unclear if the DCF is required under the bill to review the criteria used by a credentialing entity to evaluate and approve qualified training entities as part of the DCF's own process to evaluate and approve the credentialing entity. A credentialing entity is required to establish application, examination, and certification fees and an annual certification renewal fee. The application, examination, and certification fees may not exceed $225 and the annual certification renewal fee may not exceed $100.

The bill contains a provision establishing level 2 background screening for each recovery residence administrator applicant. If the background screening indicates that a recovery residence administrator is subject to a disqualifying offense set forth in s. 435.04(2), F.S, the DCF may grant an exemption from disqualification for disqualifying offenses under s. 397.4872, F.S., as created in section 4 of the bill.

The bill requires a credentialing entity to establish a certification program that "is directly related to the core competencies." The latter term is not defined. A credentialing entity is given the authority to suspend or revoke an administrator's certificate of compliance but does not provide a process for appeal.

If a certified recovery residence administrator of a recovery residence is arrested or found guilty of any offense listed in s. 435.04(2), F.S., he or she must be immediately removed from his or her position, and notification must be provided to the credentialing entity within three business days after removal. The recovery residence has 30 days to retain another certified recovery residence administrator. Failure to meet these requirements will result in revocation of a residence's certificate of compliance.

The bill provides conditions that allow a certified recovery residence administrator to qualify a recovery residence to receive referrals from licensed service providers by registering with his or her credentialing entity and by submitting an affidavit attesting that he or she is actively managing the recovery residence and is not using his or her status to qualify any additional recovery residences to receive referrals.

Section 4 creates s. 397.4872, F.S., which provides exemptions to staff disqualifications and administrator ineligibility due to disqualifying offenses identified in the background screening results. The DCF may exempt a person from a disqualifying offense if it has been at least three years since the person completed or has been lawfully released from confinement, supervision, or sanction.

By April 1, 2016, a credentialing entity must submit a list of certified recovery residences and certified recovery residence administrators that the credentialing entity has certified, if any, to the DCF, and the DCF must post any submitted lists on its website.

Section 5 amends s. 397.407, F.S., to prohibit licensed substance abuse treatment providers (licensed service providers) from referring a current or discharged patient to a recovery residence unless the residence holds a valid certificate of compliance as provided in s. 394.487 (created in section 2 of the bill) or is actively managed by a certified recovery residence administrator as provided in s. 397.4871 (created in section 3 of the bill), or both, or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. This prohibition is effective July 1, 2016. The bill specifies that a license service provider is not required to refer any patient to a recovery residence.

Sections 6, 7, 8, 9, and 10 revise statutory cross-references.

Section 11 provides an effective date of July 1, 2015.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

The fiscal impact of CS/SB 326 on recovery residences or recovery residence administrators is indeterminate. Because certification is voluntary, it is unknown how many residences and administrators will seek certification. Application fees may not exceed $100 for certification of a recovery residence. Recovery residence certification also requires inspection fees to be charged a cost. Application fees for recovery residence administrators cannot exceed $225 and renewal fees cannot exceed $100.

The bill requires fingerprints be submitted to FDLE and FBI as part of the required background screening and provides these costs must be covered by prospective

employees or volunteers of the credentialing entity. The cost for level 2 background screens range from $38 to $75, depending upon the selected vendor.[24]

C. Government Sector Impact:

The bill requires the DCF to review level 2 background screening results for any owners, directors, and chief financial officers of recovery residences. The DCF is also required to review all requests for exemptions from disqualifying offenses. To the extent that residences seek certification and owners, directors, and chief financial officers submit to background screening, this will increase the number of screenings and requests for exemptions that the DCF handles each year. The extent of the increase is indeterminate as the exact number of recovery residences and applicants to be certified recovery residence administrators is unknown. According to the DCF, a background screening FTE position is capable of completing 7,655 screenings per year.[25] The first-year cost for this position is $63,917 with an annual recurring cost of $60,035.[26]

VI. Technical Deficiencies:

The certification requirements that must be established by an approved credentialing entity under section 2 of the bill appear to contradict with the definition of "credentialing entity" in section 1 of the bill.

The bill does not specify whether any owner, director, and chief financial officer of a recovery residence must undergo level 2 background screening each year as a requirement for application for renewal of a recovery residence's application. The bill does not address persons who are not required to be re-fingerprinted.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends the following sections of the Florida Statutes: 397.311, 397.407, 212.055, 394.9085, 397.405, 397.416, and 440.102.

This bill creates the following sections of the Florida Statutes: 397.487, 397.4871, and 397.4872.

[24] http://www.dcf.state.fl.us/programs/backgroundscreening/map.asp, Department of Children and Families' website, accessed February 14, 2015.
[25] 2015 Agency legislative Bill Analysis, Department of Children and Families (January 27, 2015).
[26] *Id*.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:
(Summarizing differences between the Committee Substitute and the prior version of the bill.)

CS by Children, Families, and Elder Affairs on February 9, 2015:
The committee substitute:

- Directs the Department of Children and Families (DCF) to approve at least one credentialing entity for the voluntary certification of recovery residences by December 1, 2015;
- Limits the requirement to conduct level 2 background screening to owners, directors, and chief financial officers and to deny a recovery residence's application if any owner, director, or chief financial officer has been found guilty of, regardless of adjudication to any offense listed in s. 435.04(2), F.S. unless the DCF has issued an exemption under s. 397.4872, F.S.;
- Directs the credentialing entity to establish application, examination, and certification fees not to exceed $225 and an annual certification renewal fee not to exceed $100;
- Provides for the immediate removal a certified recovery residence administrator who is arrested or found guilty of certain offenses and provides notification requirements, timeframe within which to hire a new administrator, and revocation of certificate for failure to follow requirements;
- Provides criteria for a certified recovery residence administrator to qualify a recovery residence for referrals from licensed service providers and allows the administrator to act as a qualifying agent under certain parameters; and
- Clarifies that exemptions from disqualifying offenses for staff or administrators cannot be granted under any circumstances for certain types of offenses.

B. Amendments:

None.