HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: CS/HB 823 Substance Abuse and Recovery Fraudulent Business Practices Pilot Program
SPONSOR(S): Health & Human Services Committee; Rooney, Jr. and others
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Health & Human Services Committee	14 Y, 0 N, As CS	McElroy	Calamas
2) Appropriations Committee			
3) Judiciary Committee			

SUMMARY ANALYSIS

CS/HB 823 establishes the Substance Abuse and Recovery Fraudulent Business Practices Pilot Program (Program) within the office of the State Attorney for the 15th Judicial Circuit (State Attorney). The State Attorney is responsible for the development and coordination of the Program. The Program is tasked with identifying and implementing strategies to address fraudulent business and unethical marketing practices in the provision of substance abuse services. These strategies must be possible within current resources and existing law. The State Attorney is authorized to end the Program upon completion of these tasks.

Membership in the program consists of the State Attorney and an advisory panel. The State Attorney may appoint or remove a member of the advisory panel; however, the bill establishes nine members who must be on the panel. Membership does not disqualify a member from holding any other public office or from being employed by a public entity, except that a member of the Legislature may not serve on the advisory panel. Members serve without compensation.

The bill requires a report to the Governor, President of the Senate and Speaker of the House of Representatives by October 1st of every year that the Program is in development or is being implemented.

The bill does not appear to have a fiscal impact on state or local government.

The bill takes effect upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Present Situation

Recovery Residences

There is no universally accepted definition of "recovery residence" (also known as "sober home" or "sober living home"). Commonly, recovery residences:

- Are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs;
- Offer no formal treatment but perhaps mandate or strongly encourage attendance at 12-step groups; and
- Are self-funded through resident fees, and residents may reside there as long as they are in compliance with the residence's rules.[1]

Section 397.311, F.S., defines a recovery residence as 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. The exact number of recovery residences in Florida is currently unknown.[2]

Multiple studies have found that individuals benefit in their recovery by residing in a recovery residence. For example, an Illinois study found regarding those residing in an Oxford House, a very specific type of recovery residence, that:

> [T]hose in the Oxford Houses had significantly lower substance use (31.3% vs. 64.8%), significantly higher monthly income ($989.40 vs. $440.00), and significantly lower incarceration rates (3% vs. 9%). Oxford House participants, by month 24, earned roughly $550 more per month than participants in the usual-care group. In a single year, the income difference for the entire Oxford House sample corresponds to approximately $494,000 in additional production. In 2002, the state of Illinois spent an average of $23,812 per year to incarcerate each drug offender. The lower rate of incarceration among Oxford House versus usual-care participants at 24 months (3% vs. 9%) corresponds to an annual saving of roughly $119,000 for Illinois. Together, the productivity and incarceration benefits yield an estimated $613,000 in savings per year, or an average of $8,173 per Oxford House member.[3]

A cost-benefit analysis regarding residing in Oxford Houses (OH) found variation in cost and benefits, compared to other residences.

> While treatment costs were roughly $3,000 higher for the OH group, benefits differed substantially between groups. Relative to usual care, OH enrollees exhibited a mean net benefit of $29,022 per person. The result suggests that the additional costs associated with OH treatment, roughly $3000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and drug and alcohol use as well as increases in earning from employment… even under the most conservative assumption, we find a

[1] *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses,* J Psychoactive Drugs, Jun 2008; 40(2): 153–159, Douglas L. Polcin, Ed.D., MFT and Diane Henderson, B.A.
[2] *Recovery Residence Report*, Department of Children and Families, Office of Substance Abuse and Mental Health, October 1, 2013, available at http://www.myflfamilies.com/service-programs/substance-abuse/publications (last viewed Feb. 7, 2016). The total number is currently unknown, given that the operation of a recovery residence is not under the purview of a mandatory regulatory program.
[3] L. Jason, B. Olson, J., Ferrari, and A. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery,* 96 American Journal of Public Health (10), (2006), at 1727-1729.

statistically significant and economically meaningful net benefit to Oxford House of $17,800 per enrollee over two years.[4]

Additionally, a study in California which focused on recovery residences in Sacramento County and Berkeley found:

- Residents at six months were 16 times more likely to report being abstinent;
- Residents at 12 months were 15 times more likely to report being abstinent; and
- Residents at 18 months were six times more likely to report being abstinent.[5]

In 2013, the Department of Children and Families (DCF) conducted a study of recovery residences in Florida.[6] DCF sought public comment relating to community concern for recovery residences. Three common concerns were the safety of the residents, safety of the neighborhoods and lack of governmental oversight.[7] Participants at public meetings raised the following concerns:

- Residents being evicted with little or no notice;
- Drug testing might be a necessary part of compliance monitoring;
- Unscrupulous landlords, including an alleged sexual offender who was running a woman'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;
- Whether state agencies have the resources to enforce regulations and adequately regulate these homes;
- 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 moneys or medication;
- Treatment providers that will refer people to any recovery residence;
- 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 in these recovery residences;
- Activities going on in recovery residences that require adherence to medical standards and that treatment services may be provided to clients in recovery residences. This included acupuncture and urine tests;
- Houses being advertised as treatment facilities and marketed as the entry point for treatment rather than as a supportive service for individuals who are exiting treatment;
- False advertising;
- Medical tourism;
- Insurance fraud, through unnecessary medical tests;
- Lack of uniformity in standards; and
- Patient brokering, in violation of Florida Statutes.[8]

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[4] A. Lo Sasso, E. Byro, L. Jason, J. Ferrari, and B. Olson, *Benefits and Costs Associated with Mutual-Help Community-Based Recovery Homes: The Oxford House Model*, 35 Evaluation and Program Planning (1), (2012).
[5] D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome,* 38 Journal of Substance Abuse Treatment, 356-365 (2010).
[6] 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 to the Governor and Legislature on October 1, 2013.
[7] *Recovery Residence Report, supra* footnote 4.
[8] Id.

Federal Law Applicable to Recovery Residences

Americans with Disabilities Act

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities.[9] The ADA requires broad interpretation of the term "disability" so as to include as many individuals as possible under the definition.[10] The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.[11] Disability also includes individuals who have a record of such impairment, or are regarded as having such impairment.[12] The phrase "physical or mental impairment" includes, among others[13], drug addiction and alcoholism.[14] However, this only applies to individuals in recovery: ADA protections are not extended to individuals who are actively abusing substances.[15]

Fair Housing Amendment Act

The Fair Housing Amendment Acts of 1988 (FHA) prohibits housing discrimination based upon an individual's handicap.[16] A person is considered to have a handicap if he or she has a physical or mental impairment which substantially limits one or more of his or her major life activities.[17] This includes individuals who have a record of such impairment, or are regarded as having such impairment.[18] Drug and alcohol addictions are considered to be handicaps under the FHA.[19] However, current users of illegal controlled substances and persons convicted for illegal manufacture or distribution of a controlled substance are not considered handicapped under the FHA.

Case Law

An individual in recovery from a drug addiction or alcoholism is protected from discrimination under the ADA and FHA. Based on this protected class status, federal courts have held that mandatory conditions placed on housing for people in recovery from either state or sub-state entities, such as ordinances, licenses or conditional use permits, are overbroad in application and result in violations of

[9] 42 U.S.C. s. 12101. This includes prohibition against discrimination in employment, State and local government services, public accommodations, commercial facilities, and transportation. U.S. Department of Justice, *Information and Technical Assistance on the Americans with Disabilities Act*, available at http://www.ada.gov/2010_regs.htm (last visited March 14, 2014).
[10] 42 U.S.C. s. 12102.
[11] Id.
[12] Id.
[13] 28 C.F.R. s. 35.104(4)(1)(B)(ii). The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic) and tuberculosis.
[14] 28 C.F.R. s. 35.104(4)(1)(B)(ii).
[15] 28 C.F.R. s. 35.131.
[16] 42 U.S.C. § 3604. Similar protections are also afforded under the Florida Fair Housing Act, s. 760.23, F.S., which 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. The statute provides that "discrimination" is defined to include a refusal to make reasonable accommodations in rules, policies, practices, or services, when such accommodations may be necessary to afford such person equal opportunity to use and enjoy a dwelling.
[17] 42 U.S.C. § 3602(h).
[18] Id.
[19] *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993).

the FHA and ADA.[20] Additionally, regulations which require registry of housing for protected classes, including recovery residences, have been invalidated by federal courts.[21] Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.[22]

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.[23] However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.[24] Further, these regulations must not single out housing for disabled individuals and place requirements which are different and unique from the requirements for housing for the general population.[25] Instead, the FHA and ADA require that a reasonable accommodation be made when necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.[26] The governmental entity bears the

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[20] *Recovery Residence Report*, *supra* footnote 4. *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339, (Local zoning and density restrictions invalid as discriminatory to individuals in recovery); *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179 (City singled out plaintiffs for zoning enforcement and inspections on the basis of disability; plaintiff demonstrated city ignored zoning violations by people without disabilities); *Marbrunak v. City of Stow, OH.,* 947 F. 2d 43, (6th Cir. 1992) (Conditional use permit requiring health and safety protections was an onerous burden); *U.S. v. City of Baltimore, MD,* 845 F. Supp. 2d. 640 (D. Md. 2012) (Conditional ordinance was overbroad and discriminatory); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491, (W.D. Wash. 1997) (Zoning scheme establishing classes of facilities was overbroad and created an undue burden on a protected class); *Oxford House-Evergreen,* 769 F. Supp. 1329, (Refusal to issue permit was based on opposition of neighbors, not on protection of health and safety as claimed); *Potomac Group Home, Inc.,* 823 F. Supp. 1285, (County requirement for evaluation of program offered at facility at public board, where decisions were based on non-programmatic factors, such as neighbor concerns; requirement to notify neighboring property and enumerated civic organizations violated the FHA).

[21] *Recovery Residence Report, supra* footnote 4. *Nevada Fair Housing Center, Inc., v. Clark County, et. al.,* 565 F. Supp. 2d 1178, (D. Nev. 2008) (Invalidating state statute requiring Nevada State Health Department to operate a registry of group homes); *See, Human Resource Research and Management Group,* 687 F. Supp. 2d 237, (Defendant-city failed to show that registration, inspection and background check requirements were narrowly tailored to support a legitimate government interest); *Community Housing Trust et. al., v. Department of Consumer and Regulatory Affairs et. al.,* 257 F. Supp. 2d 208, (D.C. Cir. 2003) (Zoning administrator's classification of plaintiff-facility to require a certificate of occupancy rose to discriminatory practice under FHA). *See*, e.g., *City of Edmonds v. Oxford House et. al.,* 574 U.S. 725 (1995) (City's restriction on composition of family violated FHAA); *Safe Haven Sober Houses LLC, et. al., v. City of Boston, et. al.,* 517 F. Supp. 2d 557, (D. Mass. 2007); *United States v. City of Chicago Heights*, 161 F. Supp. 2d 819, (N.D. Ill. 2001) (City violated FHA by requiring inspection for protected class housing that was not narrowly tailored to the protection of disabled); *Human Resource Research and Management Group,* 687 F. Supp. 2d 237, (City's purported interest in the number of facilities, in relation to the zoning plan, was not a legitimate government interest; and there was insufficient evidence to justify action by the city in relation to the protection of this class. The city also failed to justify the requirement for a 24 hour staff member, certified by the New York State Office of Alcoholism and Substance Abuse Services).

[22] *Recovery Residence Report, supra* footnote 4. *See e.g., Larkin v. State of Mich.* 883 F. Supp. 172, (E.D. Mich. 1994), judgment aff'd 89 F. 3 d 285, (6th Cir. 1996) (No rational basis for denial of license on the basis of dispersal requirement, and local government's refusal to permit. The Court did find, however, that the city was not a party to the lawsuit because the state statute did not mandate a variance); *Arc of New Jersey, Inc., v. State of N.J.* 950 F. Supp. 637, D.N.J. 1996) (Municipal land use law, including conditional use, spacing and ceiling quotas violated FHA); *North Shore-Chicago Rehabilitation Inc. v. Village of Skokie*, 827 F. Supp. 497, (N.D. Ill. 1993) (Municipalities may not rely on the absence of a state licensing scheme to deny an occupancy permit); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen,* 798 F. Supp. 228 (D.N.J. 1992) (City denial of permit on the basis of failure to obtain state license was due to the city's discriminatory enforcement of zoning enforcement); *Ardmore, Inc. v. City of Akron*, Ohio, 1990 WL 385236 (N.D. Ohio 1990) (Granting a preliminary injunction against the enforcement of an ordinance requiring conditional use permit, even though it was applied to everyone, because Congress intended to protect the rights of disabled individuals to obtain housing).

[23] 42 U.S.C. s. 3604(f)(9).

[24] *Recovery Residence Report, supra* footnote 4. *Bangerter v. Orem City Corp.,* 46 F.3d 1491*,* (10th Cir. 1995) (Any requirements placed on housing for a protected class based on the protection of the class must be tailored to needs or abilities associated with particular kinds of disabilities, and must have a necessary correlation to the actual abilities of the persons upon whom they are imposed); *Association for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth,* 876 F. Supp. 614, (D.N.J. 1994) (State and local governments have the authority to protect safety and health, but that authority may not be used to restrict the ability of protected classes to live in the community); *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204,822 F. Supp. 204, (Special conditions may not be imposed under the pretext of health and safety concerns).

[25] *Bangerter v. Orem City Corp.,* 46 F.3d 1491*,* (10th Cir. 1995) (Invalidating and act and ordinance that facially singles out the handicapped, and applies different and unique rules to them); *Human Resource Research and Management Group, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D. N.Y. 2010), ("It is undisputed that [the ordinance] is discriminatory on its face, in that it imposes restrictions and limitations solely upon a class of disabled individuals"); *Potomac Group Home Corp. v. Montgomery County*, *Md*., 823 F. Supp. 1285 (No other county law or regulation imposed a similar requirement on a residence occupied by adults without disabilities).

[26] *Recovery Residence Report, supra* footnote 4. 42 U.S.C. s. 3604(f)(3)(B); 42 U.S.C. s. 12131, *et. seq.,* 28 C.F.R. s. 35.130(b)(7). To comply with the reasonable accommodation provisions of the ADA, regulations have been promulgated for public entities (defined by 28 C.F.R. s. 35.104). This includes a self-evaluation plan of current policies and procedures and modify as needed (28 C.F.R. s. 35.105). This is subject to the exclusions of 28 C.F.R. s. 35.150. For interpretation by the judiciary, s*ee, Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (Local ordinance invalid because city failed to make reasonable accommodations for individuals with disabilities); *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450, (D.N.J. 1992) (Reasonable accommodation means changing some rule that is generally applicable to everyone so as to make it less burdensome for a protected class).

burden of proving through objective evidence that a regulation serves to protect the health and safety of the community and is not based upon stereotypes or unsubstantiated inferences.[27]

Florida Regulation of Recovery Residences

In Florida, recovery residences are not licensed by the state. Because federal courts interpret state and local licensure requirements for recovery residences as violations of the ADA and FHA, the matter appears to be preempted. Instead, in 2015 Florida enacted sections 397.487-397.4872, F.S., which establish voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities. Under the voluntary certification program, DCF approved two credentialing entities to design the certification programs and issue certificates: The Florida Association of Recovery Residences will certify the recovery residences and the Florida Certification Board will certify recovery residence administrators.

Section 397.487, and 397.4871, F.S., set criteria for certification, including a requirement that the certified recovery residences be actively managed by a certified recovery residence administrator. Level 2 background screening is required for all recovery residence owners, directors and chief financial officers, and for administrators seeking certification. Section 397.4872, F.S., allows DCF to exempt an individual from the disqualifying offenses of a Level 2 background screening if the individual meets certain criteria and the recovery residence attests that it is in the best interest of the program.

Under s. 397.487, F.S., the credentialing entities must deny, suspend or revoke certification if a recovery residence or a recovery residence administrator fails to meet and maintain certain criteria. The credentialing entity must inspect recovery residences prior to the initial certification and during every subsequent renewal period, and must automatically terminate certification if it is not renewed within one year of the issuance date.

According to the Florida Association of Recovery Residences, there are 226 certified recovery residences in Florida.[28] Section 397.4872, F.S., requires DCF to publish a list of all certified recovery residences and recovery residences administrators on its website.

While certification is voluntary, Florida law incentivizes certification. Section 397.407, F.S., prohibits licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator or is owned and operated by a licensed service provider or a licensed service provider's wholly owned subsidiary. This prohibition takes effect July 1, 2016, giving the recovery residences and administrators time to obtain certification.

In addition, ss. 397.487 and 397.4871, F.S., make it a first degree misdemeanor[29] for any entity or person who advertises as a "certified recovery residence" or "certified recovery residence administrator", respectively, unless the entity or person has obtained certification under this section.

Florida Deceptive and Unfair Trade Practices Act

The Florida Deceptive and Unfair Trade Practices Act[30] (FDUTPA) makes unlawful unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce. Violations of FDUTPA are investigated and prosecuted by state attorneys, or the Office of Legal Affairs in the Office of the Attorney General if the violations affect more than one judicial circuit. (s. 501.203, F.S.) Violations maybe remedied by declaratory judgment, injunction, or an

[27] *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775, (7th Cir. 2002) (Denial for a variance due to purported health and safety concerns for the disabled adults could not be based on blanket stereotypes); *Oxford House- Evergreen v. City of Plainfield,* 769 F. Supp. 1329 (D.N.J. 1991) (Generalized assumptions, subjective fears and speculation are insufficient to prove direct threat to others), *Cason v. Rochester Housing Authority,* 748 F. Supp. 1002, (W.D.N.Y. 1990).
[28] Florida Association of Recovery Residences, Certified Residences, available at http://farronline.org/certification/certified-residences/ (last viewed Feb. 7, 2016).
[29] A first degree misdemeanor is punishable by not more than one year imprisonment and not more than a $1,000 fine. Ss. 775.082, 775.083, F.S.
[30] Sections 501.201-501.213, F.S.

action for actual damages; in addition, a court may order sequestration or freezing of assets, receivership, contract amendment, divestment of interests, dissolution or reorganization of any enterprise, or any other legal or equitable relief. (s. 501.207, F.S.) In addition, a court may assess civil penalties of up to $10,000 per violation. (s. 501.2075, F.S.)

FDUTPA imposes larger penalties for willful violations against senior citizens (age 60 or older), persons with disabilities, and military servicemembers and their families. In this context, a person with a disability is one who has a mental or educational impairment that substantially limits one or more major life activities, such as caring for oneself, working, speaking and learning. The civil penalty for a violation of this sort is not more than $15,000.[31]

Courts have defined an "unfair practice" as "one that offends established public policy and one that is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers."[32] Similarly, courts have define a "deceptive act" as one in which there is a "representation, omission, or practice that is likely to mislead the consumer acting reasonably in the circumstances, to the consumer's detriment."[33]

FDUTPA has been used in cases involving similarly-named companies, which could lead consumers to believe them to be the same[34]; in "bait-and-switch" cases[35]; and instances of unreasonable pricing[36], among many other types of activities.

FDUTPA applies broadly, to any person who engages in this conduct, and would apply to this conduct by substance abuse treatment providers and recovery residences.

Patient Brokering

Florida's patient brokering act, s. 817.505, F.S., (Act) makes it unlawful for any person to engage in patient brokering. Patient brokering is paying to induce, or make a payment in return for, a referral of a patient to or from a health care provider or health care facility. Such payments include commissions, bonuses, rebates, kickbacks, bribes, split-fee arrangements, in cash or in kind, provided directly or indirectly.[37] A violation of the Act is a third degree felony[38], and may also be remedied by an injunction or any other enforcement process. Private entities bringing an action under the Act may recover reasonable expenses, including attorney fees.[39]

The patient brokering statute applies to any person regulated (or statutorily exempt from regulation by) the Agency for Health Care Administration or the Department of Health, or which has a Medicaid provider contract, or which has a contract with the Department of Children and Families to provide substance abuse or mental health services under part IV of chapter 394. The Act expressly applies to "substance abuse providers" licensed under chapter 397.

The Act also appears to apply to recovery residences. Chapter 397 establishes a voluntary certification program for recovery residences, administered by certification entities chosen by DCF. The certification is not a license; in addition, it is unclear whether a recovery residence is a "substance abuse provider" under the Act because that term is not defined in chapter 397. However, even if a

[31] Section 501.2077, F.S.
[32] *PNR, Inc. v. Beacon Prop. Mgmt*., 842 So.2d 773, 777 (Fla.2003) (quoting Samuels v. King Motor Co., 782 So.2d 489, 499 (Fla. 4th DCA 2001)).
[33] Id. at 777 (quoting *Millennium Communs. & Fulfillment, Inc. v. Office of the AG, Dep't of Legal Affairs*, 761 So.2d 1256, 1263 (Fla. 3d DCA 2000)).
[34] *See, e.g., Rain Bird Corp. v. Taylor*, N.D.Fla.2009, 665 F.Supp.2d 1258
[35] *See, e.g., Fendrich v. RBF, L.L.C*., App. 4 Dist., 842 So.2d 1076 (2003).
[36] *See, e.g., Colomar v. Mercy Hosp., Inc*., S.D.Fla.2006, 461 F.Supp.2d 1265
[37] Section 817.505(1), F.S.
[38] A third degree felony is punishable by not more than five years of imprisonment and not more than a $5,000 fine. Ss. 775.082, 775.083, F.S.
[39] Section 817.505(4), (6), F.S.

recovery residence is not a health care facility, it is a "person"[40] subject to the Act if the recovery residence participates in a patient brokering arrangement with a substance abuse facility or provider licensed under ch. 397, F.S.

The Act has been used in cases involving split-fee arrangements; for example, an assignment of benefits scenario in which a non-provider suggested a patient go to a particular an MRI facility, paid the facility for the MRI and billed the insurer a greater amount.[41] The Act has also been used in self-referral arrangements; for example, an arrangement by which a series of shell companies, nominee owners and independent contractors were used to conceal relationships that generated a high-volume of Personal Injury Protection patients to a particular provider through a toll-free referral number.[42]

Effect of Proposed Changes

CS/HB 823 creates the Substance Abuse and Recovery Fraudulent Business Practices Pilot Program (Program) within the office of the State Attorney for the 15th Judicial Circuit (State Attorney). The State Attorney is responsible for the development and coordination of the Program. The State Attorney is also authorized to end the Program once the Program's tasks have been completed.

The Program is required to:

- Identify the types of fraudulent business and unethical marketing practices engaged in by providers of substance abuse services and recovery residences;
- Collect and organize data on substance abuse treatment industry and recovery residences' unethical or fraudulent marketing and business practices;
- Conduct a census of local, state, and federal efforts to address patient brokering and unfair and deceptive trade practices to identify overlapping missions, maximize existing resources, and strengthen current programs;
- Review the adequacy of the patient brokering and unfair and deceptive trade practices laws;
- Develop a range of strategies to address patient brokering and unfair and deceptive trade practices and evaluate their effectiveness and cost;
- Plan, coordinate and implement strategies to address patient brokering and unfair and deceptive trade practices which are possible within current resources and existing law;
- Recommend revisions to law and state agency practices which may enhance state and local efforts to address patient brokering and unfair and deceptive trade practices.

Membership in the Program consists of the State Attorney and an advisory panel. The State Attorney may appoint or remove a member of the advisory panel; however, the bill establishes nine members who must be on the panel:

- A representative of DCF who has been appointed by the Secretary of DCF;
- The Sheriff of Palm Beach County or designee;
- A representative from the local business organizations;
- A representative from the health insurance industry;
- A representative from the substance abuse treatment industry;
- The Executive Director or designee of the Florida Association of Recovery Residences;
- The Executive Director or designee of the Florida Alcohol and Drug Abuse Association;
- A county official; and
- An official representing local cities.

[40] "Person" is not defined by the Act. Section 1.01(3), F.S., defines "person" as including "individuals, children, firms, associations, joint adventures, partnerships, estates, trusts, business trusts, syndicates, fiduciaries, corporations, and all other groups or combinations". This definition applies in every instance in which "person" is not expressly defined differently.
[41] *Medical Management Group of Orlando, Inc. v. State Farm Mut. Auto. Ins. Co*., App. 5 Dist., 811 So.2d 705 (2002).
[42] *State Farm Mut. Auto. Ins. Co. v. Physicians Group of Sarasota, L.L.C*., M.D.Fla.2014, 9 F.Supp.3d 1303 (denying motion to dismiss).

Membership on the advisory panel does not disqualify a member from holding any other public office or from being employed by a public entity, except that a member of the Legislature may not serve on the advisory panel. Members serve without compensation.

The bill requires a report to the Governor, President of the Senate and Speaker of the House of Representatives by October 1st of every year that the Program is in development or is being implemented.

The bill takes effect upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Creates s. 16.619, F.S., relating to the Substance Abuse and Recovery Fraudulent Business Practices Pilot Program.
Section 2: The act takes effect upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not Applicable. This bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES

On February 9, 2016, the Health & Human Services Committee adopted one amendment and reported the bill favorably as a committee substitute. The amendment establishes the Substance Abuse and Recovery Fraudulent Business Practices Pilot Program within the office of the State Attorney for the 15th Judicial Circuit.

The analysis is drafted to the committee substitute as passed by the Health & Human Services Committee.