

## HOUSE OF REPRESENTATIVES STAFF FINAL BILL ANALYSIS

**BILL #:** CS/CS/HB 319 Substance Abuse Service Providers

**SPONSOR(S):** Criminal Justice & Public Safety Subcommittee and Children, Families & Seniors Subcommittee, Caruso and others

**TIED BILLS:** **IDEN./SIM. BILLS:** CS/CS/SB 804

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**FINAL HOUSE FLOOR ACTION:** 115 Y's 0 N's **GOVERNOR'S ACTION:** Approved

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### SUMMARY ANALYSIS

CS/CS/HB 319 passed the House on April 27, 2021, as CS/CS/SB 804.

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. It serves children and adults who are otherwise unable to obtain these services (such as individuals who are not covered under Medicaid or private insurance and do not have the financial ability to pay for the services themselves).

DCF licenses substance abuse treatment programs. The bill makes it a third-degree felony to willfully and knowingly make a false representation in a substance abuse service provider license application or to willfully and knowingly omit any material fact from such license application.

Recovery residences offer drug- and alcohol-free living environments for individuals in recovery. Florida law allows voluntary certification of recovery residences and recovery residence administrators, by two DCF-approved credentialing entities. While the certification process is voluntary, Florida incentivizes recovery residences to be certified: licensed treatment providers are generally prohibited from referring individuals to non-certified recovery residences, and may be fined for doing so. The bill requires licensed service providers who are fined by DCF for making prohibited referrals to pay interest on administrative fines. The bill requires DCF to immediately suspend the license of a service provider who does not pay such fines, and respective interest, within 60 days. The bill also requires DCF to immediately suspend the license of a service provider or service component for not paying an administrative fine plus applicable interest for committing any violation specified in DCF's tier-based violation system.

Substance abuse treatment provider employees and recovery residence administrators undergo Level 2 criminal background screening, and may be disqualified from employment unless exempted by DCF. However, exemption eligibility varies by employee type. The bill broadens the eligibility for exemption from employment disqualification for owners, directors, and chief financial officers of applicant certified recovery residences and applicant recovery residence administrators by allowing the same exemptions from disqualification applicable to service provider personnel to apply to such individuals.

Property development in Florida is governed in part by the Florida Building Code (FBC). The bill prohibits reclassification under the FBC for a single-family or two-family dwelling that is converted to a certified recovery residence solely based upon the conversion. The bill also prohibits a local government or the Fire Marshal from requiring a certified recovery residence to install a fire sprinkler system in a single-family or two-family property based solely upon the use of such property as a certified recovery residence.

The bill has insignificant negative and positive fiscal impacts on DCF, and no fiscal impact to local governments.

The bill was approved by the Governor on June 21, 2021, ch. 2021-128, L.O.F., the effective date of this bill is July 1, 2021.

This document does not reflect the intent or official position of the bill sponsor or House of Representatives.

**STORAGE NAME:** h0319z1.CFS.DOCX

**DATE:** 6/24/2021

# I. SUBSTANTIVE INFORMATION

## A. EFFECT OF CHANGES:

### Background

#### Mental Health Services in Florida

The Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment and recovery for children and adults who are otherwise unable to obtain these services. SAMH programs include a range of prevention, acute interventions (e.g. crisis stabilization), residential treatment, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations.

#### *Behavioral Health Managing Entities*

In 2001, the Legislature authorized DCF to implement behavioral health managing entities (ME) as the management structure for the delivery of local mental health and substance abuse services.<sup>1</sup> The implementation of the ME system initially began on a pilot basis and, in 2008, the Legislature authorized DCF to implement MEs statewide.<sup>2</sup> Full implementation of the statewide managing entity system occurred in April 2013; all geographic regions are now served by a managing entity.<sup>3</sup>

In FY 2019-2020, the network service providers under contract with the MEs served 274,560 individuals.<sup>4</sup>

#### Substance Abuse

Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.<sup>5</sup> Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.<sup>6</sup> Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance use disorder.<sup>7</sup> Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.<sup>8</sup>

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.<sup>9</sup> The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.<sup>10</sup>

#### Substance Abuse Treatment in Florida

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<sup>1</sup> Ch. 2001-191, Laws of Fla.

<sup>2</sup> Ch. 2008-243, Laws of Fla.

<sup>3</sup> *The Department of Children and Families Performance and Accountability System for Behavioral Health Managing Entities*, Office of Program Policy Analysis and Government Accountability, July 18, 2014.

<sup>4</sup> Department of Children and Families, *Substance Abuse and Mental Health Triennial Plan Update for Fiscal Year 2019-2020*, (Dec. 31, 2020) <https://www.myflfamilies.com/service-programs/samh/publications/docs/2019-2020%20Triennial%20Plan%20Update.pdf> (last visited April 27, 2021).

<sup>5</sup> World Health Organization, *Substance Abuse*, [http://www.who.int/topics/substance\\_abuse/en/](http://www.who.int/topics/substance_abuse/en/) (last visited April 27, 2021).

<sup>6</sup> Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited April 27, 2021).

<sup>7</sup> National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited April 27, 2021).

<sup>8</sup> Id.

<sup>9</sup> *Supra*, note 6.

<sup>10</sup> Id.

In 1970, the Legislature enacted ch. 397, F.S., governing the treatment and rehabilitation of drug dependents.<sup>11</sup> The following year, the Legislature enacted ch. 396, F.S., titled the “Myers Act” as the state’s comprehensive alcoholism prevention, control, and treatment act, modeled after the federal Hughes Act.<sup>12</sup> In 1993, legislation combined ch. 396 and ch. 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (“the Marchman Act”).<sup>13</sup> The Marchman Act supports substance abuse prevention and remediation through a system of prevention, detoxification, and treatment services to assist individuals at risk for or affected by substance abuse.

Additionally, the Department of Children and Families (DCF) administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery. SAMH programs include a range of prevention, acute interventions (such as crisis stabilization or detoxification), residential, transitional housing, outpatient treatment, and recovery support services. Services are provided based upon state and federally-established priority populations and delivered through community-based providers.<sup>14</sup>

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence:<sup>15</sup>

- **Detoxification Services:** Detoxification services use medical and clinical procedures to assist individuals and adults as they withdraw from the physiological and psychological effects of substance abuse.<sup>16</sup>
- **Treatment Services:** Treatment services<sup>17</sup> include a wide array of assessment, counseling, case management, and support that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.<sup>18</sup>
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.<sup>19</sup>

DCF regulates substance abuse treatment by licensing individual treatment components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse

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<sup>11</sup> Department of Children and Families, *Marchman Act User Reference Guide 2003*, <https://www.myflfamilies.com/service-programs/samh/crisis-services/docs/marchman/marchmanacthand03p.pdf> (last visited April 27, 2021).

<sup>12</sup> *Id.*

<sup>13</sup> Ch. 93-39, s. 2, Laws of Fla., codified in ch. 397, F.S.

<sup>14</sup> These priority populations include, among others, persons diagnosed with co-occurring substance abuse and mental health disorders, persons who are experiencing an acute mental or emotional crisis, children who have or are at risk of having an emotional disturbance, and children at risk for initiating drug use.

<sup>15</sup> Department of Children and Families, *Treatment for Substance Abuse*, <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited April 27, 2021).

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* Research indicates that persons who successfully complete substance abuse treatment have better post-treatment outcomes related to future abstinence, reduced use, less involvement in the criminal justice system, reduced involvement in the child protective system, employment, increased earnings, and better health.

<sup>18</sup> *Supra*, note 15.

<sup>19</sup> *Id.*

prevention,<sup>20</sup> intervention,<sup>21</sup> and clinical treatment services.<sup>22</sup> DCF uses a tier-based system of classifying violations and may issue administrative fines up to \$500 for violations committed by a licensee.<sup>23</sup>

Clinical treatment is a professionally directed, deliberate, and planned regimen of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle.<sup>24</sup> “Clinical treatment services” include, but are not limited to, the following licensable service components:<sup>25</sup>

- Addictions receiving facility.
- Day or night treatment.
- Day or night treatment with community housing.
- Detoxification.
- Intensive inpatient treatment.
- Intensive outpatient treatment.
- Medication-assisted treatment for opiate addiction.
- Outpatient treatment.
- Residential treatment.

### Recovery Residences

Recovery residences (also known as “sober homes” or “sober living homes”) are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.<sup>26</sup> These residences offer no formal treatment (though they may mandate or strongly encourage attendance at 12-step groups) and are self-funded through resident fees.<sup>27</sup>

Section 397.311(37), F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, 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.

Recovery residences can be located in single-family and two-family homes, duplexes, and apartment complexes. Most recovery residences are located in single-family homes, zoned in residential neighborhoods.<sup>28</sup>

#### *Benefits of Recovery Residences*

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<sup>20</sup> Section 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. See also, Department of Children and Families, *Substance Abuse: Prevention*, <https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml> (last visited April 27, 2021). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.

<sup>21</sup> Section 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.

<sup>22</sup> Section 397.311(25), F.S.

<sup>23</sup> Section 397.415, F.S.

<sup>24</sup> *Supra*, note 22.

<sup>25</sup> Section 397.311(25)(a), F.S.

<sup>26</sup> Douglas L. Polcin, Ed.D., MFT, and Diane Henderson, B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, 40(2) *J Psychoactive Drugs* 153–159 (June 2008).

<sup>27</sup> *Id.*

<sup>28</sup> Hearing before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary, House of Representatives, One Hundred Fifteenth Congress, Sept. 28, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115hhrg33123/html/CHRG-115hhrg33123.htm>. See also The National Council for Behavioral Health, *Building Recovery: State Policy Guide for Supporting Recovery Housing* (2017), [https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18\\_Recovery-Housing-Toolkit\\_5.3.2018.pdf?dof=375ateTbd56](https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18_Recovery-Housing-Toolkit_5.3.2018.pdf?dof=375ateTbd56) (last visited April 27, 2021).

Multiple studies have found that individuals in recovery benefit from residing in a recovery residence. For example, individuals in recovery residing in an Oxford House, a very specific type of recovery residence, had significantly lower substance use, significantly higher income, and significantly lower incarceration rates than those individuals who participate in usual group care.<sup>29</sup>

Oxford House (OH) is a non-profit organization that rents out single-family homes for individuals recovering from addiction. The OH model is a recovery residence of six to fifteen residents that is democratically run, self-supporting, and drug free.<sup>30</sup> Each OH recovery residence operates pursuant to a charter issued by the OH organization. Three or more OHs within a 100-mile radius make up one OH chapter. A representative from each house meets with the others on a monthly basis to exchange information, seek resolution of problems in a particular house, and express that chapter's vote on larger issues within the OH organization. The OH Board of Directors solely determines whether to grant or revoke an OH's charter and exercises authority over the policies and officers of the OH.<sup>31</sup> In 1988, Congress recognized OH as a model for recovery residences and required states to establish a recurring loan fund to support groups wishing to establish recovery residences like OH.<sup>32</sup>

A cost-benefit analysis regarding residing in Oxford Houses found variation in cost and benefits compared to other residences. The result suggests that the additional costs associated with OH treatment, roughly \$3,000, are returned nearly tenfold in the form of reduced criminal activity, incarceration, and substance use as well as increases in earning from employment.<sup>33</sup> Additionally, another study found that residents of a recovery residence were more likely to report abstaining from substance use at a much higher rate:

- 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.<sup>34</sup>

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<sup>29</sup> An Illinois study found that those in the OHs had lower substance use (31.3% vs. 64.8%), higher monthly income (\$989.40 vs. \$440.00), and lower incarceration rates (3% vs. 9%). OH 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 OH 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 OH 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 OH member. L. Jason, B. Olson, J., Ferrari, and A. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96 Am. J. of Pub. Health 10, (2006), at 1727-1729.

<sup>30</sup> Oxford House, *The Purpose and Structure of Oxford House*, [http://www.oxfordhouse.org/userfiles/file/purpose\\_and\\_structure.php](http://www.oxfordhouse.org/userfiles/file/purpose_and_structure.php) (last visited April 27, 2021).

<sup>31</sup> Id.

<sup>32</sup> Oxford House, History and Accomplishments, [http://www.oxfordhouse.org/userfiles/file/oxford\\_house\\_history.php](http://www.oxfordhouse.org/userfiles/file/oxford_house_history.php) (last visited April 27, 2021). See also The Anti-Drug Abuse Act, P.L. 100-690, sec. 1916A (1988). This mandate was subsequently changed to a permissive provision in 1990 and codified in 42 U.S.C. sec. 300x-25.

<sup>33</sup> "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 statistically significant and economically meaningful net benefit to OH of \$17,800 per enrollee over two years." 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).

<sup>34</sup> D. Polcin, R. Korcha, J. Bond, and G. Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-Month Outcome*, 38 J. Substance Abuse Treatment 356-365 (2010).

## Federal Law Applicable to Recovery Residences

The Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities.<sup>35</sup> The ADA requires broad interpretation of the term “disability” so as to include as many individuals as possible under the definition.<sup>36</sup> The ADA defines disability as a physical or mental impairment that substantially limits one or more major life activities.<sup>37</sup> Disability also includes individuals who have a record of such impairment, or are regarded as having such impairment.<sup>38</sup> The phrase “physical or mental impairment” includes, among others,<sup>39</sup> drug addiction and alcoholism.<sup>40</sup> However, this only applies to individuals in recovery: ADA protections are not extended to individuals who are actively abusing substances.<sup>41</sup>

Additionally, the Fair Housing Amendments Act of 1988 (FHA) prohibits housing discrimination based upon an individual’s handicap.<sup>42</sup> 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.<sup>43</sup> This includes individuals who have a record of such impairment, or are regarded as having such impairment.<sup>44</sup> Drug and alcohol addictions are considered to be handicaps under the FHA.<sup>45</sup> 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.

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 the FHA and ADA.<sup>46</sup> Additionally, federal courts have invalidated regulations that require registry of housing for protected classes, including recovery residences.<sup>47</sup> Further, federal courts have enjoined state action that is predicated on discriminatory local government decisions.<sup>48</sup>

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<sup>35</sup> 42 U.S.C. § 12101. This includes prohibitions 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*, [http://www.ada.gov/2010\\_regs.htm](http://www.ada.gov/2010_regs.htm) (last visited April 27, 2021).

<sup>36</sup> 42 U.S.C. § 12102.

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> 28 C.F.R. § 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 (whether symptomatic or asymptomatic), and tuberculosis.

<sup>40</sup> 28 C.F.R. § 35.104(4)(1)(B)(ii).

<sup>41</sup> 28 C.F.R. § 35.131.

<sup>42</sup> 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.

<sup>43</sup> 42 U.S.C. § 3602(h).

<sup>44</sup> *Id.*

<sup>45</sup> *Oxford House, Inc. v. Town of Babylon*, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993).

<sup>46</sup> Department of Children and Families, *Recovery Residence Report*, Oct. 1, 2013, <https://www.myflfamilies.com/service-programs/samh/publications/docs/SoberHomesPR/DCFPProvisoRpt-SoberHomes.pdf> (last visited April 27, 2021). See, e.g., *Jeffrey O. v. City of Boca Raton*, 511 F. Supp. 2d 1339 (S.D. Fla. 2007); *Oxford House, Inc.*, 819 F. Supp. 1179; *Marbrunak v. City of Stow, OH.*, 947 F.2d 43 (6th Cir. 1992); *United States v. City of Baltimore, MD*, 845 F. Supp. 2d. 640 (D. Md. 2012); *Children's Alliance v. City of Bellevue*, 950 F. Supp. 1491 (W.D. Wash. 1997); *Oxford House-Evergreen v. Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991); *Potomac Group Home, Inc.*, 823 F. Supp. 1285 (D. Md. 1993).

<sup>47</sup> *Recovery Residence Report*, supra note 46. See, e.g., *Nevada Fair Housing Center, Inc., v. Clark County, et. al.*, 565 F. Supp. 2d 1178 (D. Nev. 2008); See, *Human Resource Research and Management Group*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Community Housing Trust et. al., v. Dep't of Consumer and Regulatory Affairs et. al.*, 257 F. Supp. 2d 208 (D.C. Cir. 2003); *City of Edmonds v. Oxford House et. al.*, 574 U.S. 725 (1995); *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).

<sup>48</sup> *Recovery Residence Report*, supra note 46. See, e.g., *Larkin v. State of Mich.* 883 F. Supp. 172 (E.D. Mich. 1994), judgment *aff'd* 89 F.3d 285 (6th Cir. 1996); *Arc of New Jersey, Inc., v. State of N.J.*, 950 F. Supp. 637, (D.N.J. 1996); *North Shore-Chicago Rehab., Inc. v.*

State and local governments have the authority to enact regulations, including housing restrictions, which serve to protect the health and safety of the community.<sup>49</sup> However, this authority may not be used as a guise to impose additional restrictions on protected classes under the FHA.<sup>50</sup> Further, these regulations must not single out housing for disabled individuals and place requirements that are different and unique from the requirements for housing for the general population.<sup>51</sup> Instead, the FHA and ADA require state and local governments to make reasonable accommodations necessary to allow a person with a qualifying disability equal opportunity to use and enjoy a dwelling.<sup>52</sup> The governmental entity bears the 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.<sup>53</sup>

### *Voluntary Certification of Recovery Residences in Florida*

Florida established voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.<sup>54</sup> Under the voluntary certification program, DCF approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board certifies recovery residence administrators.

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

- A policy and procedures manual;
- Rules for residents;
- Copies of all forms provided to residents;
- Intake procedures;
- Sexual predator and sexual offender registry compliance policy;
- Relapse policy;
- Fee schedule;
- Refund policy;
- Eviction procedures and policy;
- Code of ethics;
- Proof of insurance;
- Proof of background screening; and
- Proof of satisfactory fire, safety, and health inspections.

While certification is voluntary, Florida law incentivizes certification. Since 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified

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*Village of Skokie*, 827 F. Supp. 497 (N.D. Ill. 1993); *Easter Seal Soc. of New Jersey, Inc. v. Township of North Bergen*, 798 F. Supp. 228 (D.N.J. 1992); *Ardmore, Inc. v. City of Akron, Ohio*, 1990 WL 385236 (N.D. Ohio 1990).

<sup>49</sup> 42 U.S.C. § 3604(f)(9).

<sup>50</sup> *Recovery Residence Report*, supra, note 46. See, e.g., *Bangerter v. Orem City Corp.*, 46 F.3d 1491, (10th Cir. 1995); *Ass'n for Advancement of the Mentally Handicapped, Inc. v. City of Elizabeth*, 876 F. Supp. 614 (D.N.J. 1994); *Pulcinella v. Ridley Tp.*, 822 F. Supp. 204 (E.D. Pa. 1993).

<sup>51</sup> *Bangerter v. Orem City Corp.*, 46 F.3d 1491 (10th Cir. 1995); *Human Res. Research and Mgmt. Grp, Inc. v. County of Suffolk*, 687 F. Supp. 2d 237 (E.D.N.Y. 2010); *Potomac Grp. Home Corp. v. Montgomery Cnty., Md.*, 823 F. Supp. 1285 (D. Md. 1993).

<sup>52</sup> *Recovery Residence Report*, supra, note 46. 42 U.S.C. § 3604(f)(3)(B); 42 U.S.C. § 12131, et. seq., 28 C.F.R. § 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. § 35.104). This includes a self-evaluation plan of current policies and procedures and modify as needed (28 C.F.R. § 35.105). This is subject to the exclusions of 28 C.F.R. § 35.150. For judicial interpretation, see, *Jeffrey O.*, 511 F. Supp. 2d 1339; *Oxford House Inc., v. Township of Cherry Hill*, 799 F. Supp. 450 (D.N.J. 1992).

<sup>53</sup> *Oconomowoc Residential Programs, Inc., v. City of Milwaukee*, 300 F. 3d 775 (7th Cir. 2002); *Oxford House- Evergreen*, 769 F. Supp. 1329; *Cason v. Rochester Housing Auth.*, 748 F. Supp. 1002 (W.D.N.Y. 1990).

<sup>54</sup> Sections 397.487–397.4872, F.S.

recovery residence administrator.<sup>55</sup> Violators of this prohibition are subject to an administrative fine of \$1,000 per occurrence.<sup>56</sup> Certain exceptions allow referrals to or from uncertified recovery residences.<sup>57</sup>

- Referrals made by a licensed service provider under contract with a behavioral health managing entity.<sup>58</sup>
- Referrals made by a recovery residence to a licensed service provider when the recovery residence or its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral.
- Referrals made before July 1, 2018, by a licensed service provider to that licensed service provider's wholly owned subsidiary.
- Referrals of patients to or from a recovery residence that has no direct or indirect financial relationship or other referral relationship with the licensed service provider and that is democratically operated by its residents pursuant to a charter from an entity recognized by Congress, and where the residence or any resident of the residence does not directly or indirectly receive a benefit.

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.<sup>59</sup> As of February 2021, there are 391 certified recovery residences in Florida.<sup>60</sup>

Recovery residences may be located within single-family homes. Conversion of use of such homes to a recovery residence can trigger new requirements under the Florida Building Code and the Florida Fire Prevention Code.

## Background Screening

### *Substance Use Disorder and Criminal History*

Some individuals receiving substance abuse treatment have a criminal or violent history. About 54% of state prisoners and 61% of sentenced jail inmates incarcerated for violent offenses meet the Diagnostic and Statistical Manual of Mental Disorders, 4<sup>th</sup> Edition, (DSM-IV) criteria for drug dependence or abuse.<sup>61</sup> Additionally, individuals who use illicit drugs are more likely to commit crimes, and it is common for many offenses, including violent crimes, to be committed by individuals who had used drugs or alcohol prior to committing the crime, or who were using at the time of the offense.<sup>62</sup> As a result, individuals who have recovered from a substance use disorder or mental illness often have a criminal history.

Some of these individuals with criminal pasts, once in recovery, may contribute to the substance abuse treatment industry as a volunteer, peer, or other employee of a substance abuse treatment program that provides support. Social support services have been shown to facilitate recovery from a substance use disorder or mental illness.<sup>63</sup> Additionally, these individuals bring many "lived experiences," including

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<sup>55</sup> Section 397.4873(1), F.S.

<sup>56</sup> Section 397.4873(6), F.S.

<sup>57</sup> Section 397.4873(2), F.S.

<sup>58</sup> DCF contracts for behavioral health services through regional systems of care called behavioral health managing entities. The seven managing entities, in turn, contract with and oversee local service providers for the delivery of mental health and substance abuse services throughout the state. See Department of Children and Families, *Managing Entities*, <http://www.dcf.state.fl.us/service-programs/samh/managing-entities/index.shtml> (last visited on April 27, 2021).

<sup>59</sup> Section 397.4872, F.S.

<sup>60</sup> Florida Association of Recovery Residences, *Certified Residences*, <http://farronline.org/certification/certified-residences/> (last visited April 27, 2021).

<sup>61</sup> Jennifer Bronson, et al., *Drug Use, Dependence, and Abuse Among State Prisoners and Jail Inmates, 2007-2009*, U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Statistics, June 2017, <https://www.bjs.gov/content/pub/pdf/dudaspi0709.pdf> (last visited April 27, 2021).

<sup>62</sup> National Institute on Drug Abuse, *Principles of Drug Abuse Treatment for Criminal Justice Populations: A Research-Based Guide*, [https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice\\_0.pdf](https://d14rmgtrwzf5a.cloudfront.net/sites/default/files/txcriminaljustice_0.pdf) (last visited April 27, 2021).

<sup>63</sup> Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Treatment, *What Are Peer Recovery Support Services?*, <https://store.samhsa.gov/system/files/sma09-4454.pdf> (last visited April 27, 2021).



experience navigating the criminal justice system, which give them the ability to assist others in recovery.<sup>64</sup> However, the crimes committed during the period while these individuals were abusing substances may disqualify them from employment in the substance abuse treatment industry due to Florida's background screening process.

### *Background Screening Process*

Current law establishes standard procedures for criminal history background screening of prospective employees; ch. 435, F.S., outlines the screening requirements. There are two levels of background screening: level 1 and level 2. Level 1 screening includes, at a minimum, employment history checks and statewide criminal correspondence checks through the Florida Department of Law Enforcement (FDLE) and a check of the Dru Sjodin National Sex Offender Public Website,<sup>65</sup> and may include criminal records checks through local law enforcement agencies. A level 2 background screening includes, but is not limited to, fingerprinting for statewide criminal history records checks through FDLE and national criminal history checks through the Federal Bureau of Investigation (FBI), and may include local criminal records checks through local law enforcement agencies.<sup>66</sup>

Every person required by law to be screened pursuant to ch. 435, F.S., must submit a complete set of information necessary to conduct a screening to his or her employer.<sup>67</sup> Such information for a level 2 screening includes fingerprints, which are taken by a vendor that submits them electronically to FDLE.<sup>68</sup>

For both level 1 and 2 screenings, the employer must submit the information necessary for screening to FDLE within five working days after receiving it.<sup>69</sup> Additionally, for both levels of screening, FDLE must perform a criminal history record check of its records.<sup>70</sup> For a level 1 screening, this is the only information searched, and once complete, FDLE responds to the employer or agency, who must then inform the employee whether screening has revealed any disqualifying information.<sup>71</sup> For level 2 screening, FDLE also requests the FBI to conduct a national criminal history record check of its records for each employee for whom the request is made.<sup>72</sup> As with a level 1 screening, FDLE responds to the employer or agency, and the employer or agency must inform the employee whether screening has revealed disqualifying information. If the employer or agency finds that an individual has a history containing one of these offenses, it must disqualify that individual from employment.

The person whose background is being checked must supply any missing criminal or other necessary information upon request to the requesting employer or agency within 30 days after receiving the request for the information.<sup>73</sup>

### *Disqualifying Offenses*

Regardless of whether the screening is level 1 or level 2, the screening employer or agency must make sure that the applicant has good moral character by ensuring that the employee has not been arrested for and is awaiting final disposition of, been found guilty of, regardless of adjudication, or entered a plea of nolo contendere or guilty to, or been adjudicated delinquent and the record has not been sealed or

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<sup>64</sup> Department of Children and Families, *Florida Peer Services Handbook*, 2016, <https://www.myflfamilies.com/service-programs/samh/publications/docs/peer-services/DCF-Peer-Guidance.pdf> (last visited April 27, 2021).

<sup>65</sup> The Dru Sjodin National Sex Offender Public Website is a U.S. government website that links public state, territorial, and tribal sex offender registries in one national search site. The website is available at <https://www.nsopw.gov/> (last visited April 27, 2021).

<sup>66</sup> Section 435.04, F.S.

<sup>67</sup> Section 435.05(1)(a), F.S.

<sup>68</sup> Sections 435.03(1) and 435.04(1)(a), F.S.

<sup>69</sup> Section 435.05(1)(b)-(c), F.S.

<sup>70</sup> Id.

<sup>71</sup> Section 435.05(1)(b), F.S.

<sup>72</sup> Section 435.05(1)(c), F.S.

<sup>73</sup> Section 435.05(1)(d), F.S.

expunged for, any of the following 52 offenses prohibited under Florida law, or similar law of another jurisdiction:<sup>74</sup>

- Section 393.135, F.S., relating to sexual misconduct with certain developmentally disabled clients and reporting of such sexual misconduct.
- Section 394.4593, F.S., relating to sexual misconduct with certain mental health patients and reporting of such sexual misconduct.
- Section 415.111, F.S., relating to adult abuse, neglect, or exploitation of aged persons or disabled adults.
- Section 777.04, F.S., relating to attempts, solicitation, and conspiracy to commit an offense listed in this subsection.
- Section 782.04, F.S., relating to murder.
- Section 782.07, F.S., relating to manslaughter, aggravated manslaughter of an elderly person or disabled adult, or aggravated manslaughter of a child.
- Section 782.071, F.S., relating to vehicular homicide.
- Section 782.09, F.S., relating to killing of an unborn child by injury to the mother.
- Chapter 784, F.S., relating to assault, battery, and culpable negligence, if the offense was a felony.
- Section 784.011, F.S., relating to assault, if the victim of the offense was a minor.
- Section 784.03, F.S., relating to battery, if the victim of the offense was a minor.
- Section 787.01, F.S., relating to kidnapping.
- Section 787.02, F.S., relating to false imprisonment.
- Section 787.025, F.S., relating to luring or enticing a child.
- Section 787.04(2), F.S., relating to taking, enticing, or removing a child beyond the state limits with criminal intent pending custody proceedings.
- Section 787.04(3), F.S., relating to carrying a child beyond the state lines with criminal intent to avoid producing a child at a custody hearing or delivering the child to the designated person.
- Section 790.115(1), F.S., relating to exhibiting firearms or weapons within 1,000 feet of a school.
- Section 790.115(2)(b), F.S., relating to possessing an electric weapon or device, destructive device, or other weapon on school property.
- Section 794.011, F.S., relating to sexual battery.
- Former s. 794.041, F.S., relating to prohibited acts of persons in familial or custodial authority.
- Section 794.05, F.S., relating to unlawful sexual activity with certain minors.
- Chapter 796, F.S., relating to prostitution.
- Section 798.02, F.S., relating to lewd and lascivious behavior.
- Chapter 800, F.S., relating to lewdness and indecent exposure.
- Section 806.01, F.S., relating to arson.
- Section 810.02, F.S., relating to burglary.
- Section 810.14, F.S., relating to voyeurism, if the offense is a felony.
- Section 810.145, F.S., relating to video voyeurism, if the offense is a felony.
- Chapter 812, F.S., relating to theft, robbery, and related crimes, if the offense is a felony.
- Section 817.563, F.S., relating to fraudulent sale of controlled substances, only if the offense was a felony.
- Section 825.102, F.S., relating to abuse, aggravated abuse, or neglect of an elderly person or disabled adult.
- Section 825.1025, F.S., relating to lewd or lascivious offenses committed upon or in the presence of an elderly person or disabled adult.
- Section 825.103, F.S., relating to exploitation of an elderly person or disabled adult, if the offense was a felony.
- Section 826.04, F.S., relating to incest.

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<sup>74</sup> Section 435.04(2), F.S.

- Section 827.03, F.S., relating to child abuse, aggravated child abuse, or neglect of a child.
- Section 827.04, F.S., relating to contributing to the delinquency or dependency of a child.
- Former s. 827.05, F.S., relating to negligent treatment of children.
- Section 827.071, F.S., relating to sexual performance by a child.
- Section 843.01, F.S., relating to resisting arrest with violence.
- Section 843.025, F.S., relating to depriving a law enforcement, correctional, or correctional probation officer of means of protection or communication.
- Section 843.12, F.S., relating to aiding in an escape.
- Section 843.13, F.S., relating to aiding in the escape of juvenile inmates in correctional institutions.
- Chapter 847, F.S., relating to obscene literature.
- Section 874.05, F.S., relating to encouraging or recruiting another to join a criminal gang.
- Chapter 893, F.S., relating to drug abuse prevention and control, only if the offense was a felony or if any other person involved in the offense was a minor.
- Section 916.1075, F.S., relating to sexual misconduct with certain forensic clients and reporting of such sexual misconduct.
- Section 944.35(3), F.S., relating to inflicting cruel or inhuman treatment on an inmate resulting in great bodily harm.
- Section 944.40, F.S., relating to escape.
- Section 944.46, F.S., relating to harboring, concealing, or aiding an escaped prisoner.
- Section 944.47, F.S., relating to introduction of contraband into a correctional facility.
- Section 985.701, F.S., relating to sexual misconduct in juvenile justice programs.
- Section 985.711, F.S., relating to contraband introduced into detention facilities.

#### *Exemption from Disqualification*

If an individual is disqualified due to a pending arrest, conviction, plea of nolo contendere, or adjudication of delinquency to one or more of the disqualifying offenses, s. 435.07, F.S., allows the Secretary of the appropriate agency (in the case of substance abuse treatment, DCF) to exempt applicants from that disqualification under certain circumstances:<sup>75</sup>

- Three years have elapsed since the individual has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a disqualifying felony; or
- The applicant has completed or been lawfully released from confinement, supervision, or nonmonetary condition imposed by a court for a misdemeanor or an offense that was a felony at the time of commission but is now a misdemeanor.

Receiving an exemption allows that individual to work despite the disqualifying crime in that person's past. However, an individual who is considered a sexual predator,<sup>76</sup> career offender,<sup>77</sup> or sexual offender (unless not required to register)<sup>78</sup> cannot ever be exempted from disqualification.<sup>79</sup>

Additionally, individuals employed, or applicants for employment, by treatment providers who treat adolescents 13 years of age and older who are disqualified from employment solely because of certain crimes may be exempted from disqualification from employment, without applying the 3-year waiting period. These crimes include certain offenses related to:<sup>80</sup>

- Prostitution;

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<sup>75</sup> Section 435.07(1), F.S.

<sup>76</sup> Section 775.261, F.S.

<sup>77</sup> Section 775.261, F.S.

<sup>78</sup> Section 943.0435, F.S.

<sup>79</sup> Section 435.07(4)(b), F.S.

<sup>80</sup> Section 435.07(2), F.S.

- Unarmed burglary of a structure;
- Third degree felony grand theft;
- Sale of imitation controlled substance;
- Forgery;
- Uttering or publishing a forged instrument;
- Sale, manufacture, delivery, or possession with intent to sell, manufacture, or deliver controlled substances (excluding drug trafficking); and
- Use, possession, manufacture, delivery, transportation, advertisement, or sale of drug paraphernalia.

To seek exemption from disqualification, an employee must submit a request for an exemption from disqualification within 30 days after being notified of a pending disqualification.<sup>81</sup> However, the individual must first have paid all court-ordered payments (e.g., fees, fines, costs of prosecution or restitution) and three years must have passed since the individual's release from confinement and completion of supervision (e.g., probation) and satisfaction of all other nonmonetary conditions (e.g., community service) before DCF can consider his or her request.<sup>82</sup>

The disqualified employee must submit an exemption packet to provide information for DCF to use in determining whether he or she meets the statutory standards for an exemption from disqualification.<sup>83</sup> The packet requests the employee to provide:<sup>84</sup>

- A certified copy from the court file of the petition (filing of information), and final disposition for each disqualifying criminal offense;
- A copy of the arrest report for each disqualifying criminal offense. If the report is not available, a statement from the court or law enforcement agency that the record does not exist or has been destroyed is acceptable;
- A copy of arrest reports and dispositions for any additional identified criminal offenses;
- Documentation from the probation department or court documenting release from supervision if probation or parole was given;
- Two or more original, signed letters of recommendation or letters of reference that attest to good moral character;
- Proof of rehabilitation;<sup>85</sup>
- Employment history record; and
- An explanation of personal history, e.g., explain what happened with each arrest, current home life, education/training, family members, goals, and community involvement.

To be exempted from disqualification and thus be able to work, the applicant must demonstrate by clear and convincing evidence that he or she should not be disqualified from employment.<sup>86</sup> Clear and convincing evidence is a heavier burden than the preponderance of the evidence standard but less than beyond a reasonable doubt.<sup>87</sup> This means that the evidence presented is credible and verifiable, and that the memories of witnesses are clear and without confusion.<sup>88</sup> This evidence must create a firm belief and conviction of the truth of the facts presented and, considered as a whole, must convince DCF

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<sup>81</sup> Section 397.4073(1)(f), F.S.

<sup>82</sup> Department of Children and Families, *Request for an Exemption*, <https://www.myflfamilies.com/service-programs/background-screening/> (last visited April 27, 2021).

<sup>83</sup> Id.

<sup>84</sup> Department of Children and Families, *Exemption Request Checklist*, <https://www.myflfamilies.com/programs/backgroundscreening/docs/Exemption%20Request%20Checklist.pdf> (last visited April 27, 2021).

<sup>85</sup> Proof of rehabilitation includes successful completion of court-ordered treatment or counseling, educational or training certificates, proof of participation in community activities, special recognition, or awards received.

<sup>86</sup> Section 435.07(3)(a), F.S.

<sup>87</sup> Department of Children and Families, CF Operating Procedure 60-18, Personnel: Exemption from Disqualification, Appendix B, (Aug. 1, 2010), <https://www.myflfamilies.com/admin/publications/cfops/CFOP%20060-xx%20Human%20Resources/CFOP%2060-18,%20Exemption%20from%20Disqualification.pdf> (last visited April 27, 2021).

<sup>88</sup> Id.

representatives without hesitancy that the requester will not pose a threat if allowed to hold a position of special trust relative to children, vulnerable adults, or to developmentally disabled individuals.<sup>89</sup> Evidence that may support an exemption includes, but is not limited to:<sup>90</sup>

- Personal references;
- Letters from employers or other professionals;
- Evidence of rehabilitation, including documentation of successful participation in a rehabilitation program;
- Evidence of further education or training;
- Evidence of community involvement;
- Evidence of special awards or recognition;
- Evidence of military service; and
- Parenting or other caregiver experiences.

After DCF receives a complete exemption request package from the applicant, the background screening coordinator searches available data, including, but not limited to, a review of records and pertinent court documents including case disposition and the applicant's plea in order to determine the appropriateness of granting the applicant an exemption.<sup>91</sup> These materials, in addition to the information provided by the applicant, form the basis for a recommendation as to whether the exemption should be granted.<sup>92</sup>

After all reasonable evidence is gathered, the background screening coordinator consults with his or her supervisor, and after consultation with the supervisor, the coordinator and the supervisor will recommend whether the exemption should be granted.<sup>93</sup> The regional legal counsel's office reviews the recommendation to grant or deny an exemption to determine legal sufficiency; the criminal justice coordinator in the region in which the background screening coordinator is located also reviews the exemption request file and recommendation and makes an initial determination whether to grant or deny the exemption.<sup>94</sup>

If the regional criminal justice coordinator makes an initial determination that the exemption should be granted, the exemption request file and recommendations are forwarded to the regional director, who has delegated authority from the DCF Secretary to grant or deny the exemption.<sup>95</sup> After an exemption request decision is final,<sup>96</sup> the background screener provides a written response to the applicant as to whether the request is granted or denied.<sup>97</sup>

If DCF grants the exemption, the applicant and the facility or employer are notified of the decision by regular mail.<sup>98</sup> However, if the request is denied, notification of the decision is sent by certified mail, return receipt requested, to the applicant, addressed to the last known address and a separate letter of denial is sent by regular mail to the facility or employer.<sup>99</sup> If the application is denied, the denial letter must set forth pertinent facts that the background screening coordinator, the background screening coordinator's supervisor, the criminal justice coordinator, and regional director, where appropriate, used

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<sup>89</sup> Id.

<sup>90</sup> Id. at 3-4.

<sup>91</sup> Id. at 5.

<sup>92</sup> Id.

<sup>93</sup> Id.

<sup>94</sup> Id.

<sup>95</sup> Id.

<sup>96</sup> At no point during the evaluation process may an evaluator rely on criminal history reports with an effective date that is more than 60 days old. If the most recent criminal history report is more than 60 days old at the time of review, new criminal history reports must be generated prior to the final decision being made.

<sup>97</sup> *Supra* note 84 at 5.

<sup>98</sup> Id. at 6.

<sup>99</sup> Id.

in deciding to deny the exemption request.<sup>100</sup> It must also inform the denied applicant of the availability of an administrative review<sup>101</sup> pursuant to ch. 120, F.S.<sup>102</sup>

### *Substance Abuse Treatment Employee Background Screening and Exemptions*

Only certain individuals affiliated with substance abuse treatment providers require background screening. Section 397.4073, F.S., requires all owners, directors, chief financial officers, and clinical supervisors of service providers, as well as all service provider personnel who have direct contact with children receiving services or with adults who are developmentally disabled receiving services and peer specialists who have direct contact with individuals receiving services to undergo a level 2 background screening. However, certain personnel are excluded from background screening requirements:<sup>103</sup>

- Persons who volunteer at a program for less than 40 hours per month and who are under direct and constant supervision by persons who meet all screening requirements;
- Service providers who are exempt from licensing; and
- Persons employed by the Department of Corrections in an inmate substance abuse program unless they have direct contact with unmarried inmates under the age of 18 or with inmates who are developmentally disabled.

Other statutory provisions are tailored to facilitate individuals in recovery who have disqualifying offenses being able to work in substance abuse treatment. For example, DCF may grant exemptions from disqualification that would limit service provider personnel to working with adults in substance abuse treatment facilities.<sup>104</sup> DCF may also grant exemptions for service providers which treat adolescents 13 years of age and older, whose background checks indicate certain drug crimes<sup>105</sup> may be granted an exemption without the usual three-year waiting period for felonies.<sup>106</sup>

Similarly, if five years or more (or three years or more in the case of a certified peer specialist or applicant) have elapsed since the person has completed or been lawfully released from confinement, supervision, or non-monetary condition imposed by a court for the most recent disqualifying offense, an employee may work with adults with substance use disorders until DCF makes a final determination regarding the request for an exemption from disqualification.<sup>107</sup> These individuals must work under the supervision of qualified personnel until DCF makes a final determination on the exemption request.

### *Recovery Residence Background Screening and Exemptions*

Sections 397.487 and 397.4871, F.S., require level 2 background screening for all recovery residence owners, directors and chief financial officers and for administrators seeking certification. DCF may exempt these individuals from disqualifying offenses if the recovery residence attests that it is in the best interest of the program.<sup>108</sup> To receive an exemption, an individual must submit a request in writing to DCF within 20 days after the denial of certification by a credentialing entity and must include justification for the exemption.<sup>109</sup>

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<sup>100</sup> Id.

<sup>101</sup> All notices of denial of an exemption shall advise the applicant of the basis for the denial, that an administrative hearing pursuant to s. 120.57, F.S., may be requested, and that the request must be made within 21 days of receipt of the denial letter or the applicant's right to an appeal will be waived.

<sup>102</sup> *Supra*, note 84 at 6.

<sup>103</sup> Section 397.4073(1)(c)-(e), F.S.

<sup>104</sup> Section 397.4073 (4)(c), F.S.

<sup>105</sup> Specifically, ss. 817.563, 893.13, or 893.147, F.S.

<sup>106</sup> Section 397.4073 (4)(b), F.S., provides exemptions for crimes under ss. 817.563, 893.13, and 893.147, F.S. These exemptions only apply to providers who treat adolescents age 13 and older, as well as personnel who work exclusively with adults.

<sup>107</sup> Section 397.4073(1)(g), F.S.

<sup>108</sup> Section 397.4872, F.S.

<sup>109</sup> Department of Children and Families, Agency Analysis of 2021 HB 319, p. 4 (Jan. 25, 2021).

The exemptions from disqualification that apply to substance abuse treatment personnel under s. 397.4073, F.S., do not currently apply to recovery residence owners, directors, chief financial officers, and administrators.

Since 2016, DCF has granted 12 exemptions and denied three exemption requests, one of which was granted after an administrative appeal.<sup>110</sup> The vast majority of applicants were eligible and did not require an exemption.

### Florida Building Code

Part IV of ch. 553, F.S., the “Florida Building Codes Act” (Building Code), provides a mechanism for the uniform adoption, updating, interpretation, and enforcement of a single, unified state building code that must be applied, administered, and enforced uniformly and consistently from jurisdiction to jurisdiction.<sup>111</sup> The Building Code is adopted, updated, and interpreted by the Florida Building Commission, and is enforced by local governments.<sup>112</sup>

The Building Code places different requirements on buildings based on occupancy, which is the primary purpose of the building.<sup>113</sup> Structures can be classified into one or more occupancy groups based on the nature of the hazards and risks to building occupants generally associated with the intended purpose of the building or structure.<sup>114</sup> Local building officials determine the appropriate classifications for buildings based on use and occupancy.<sup>115</sup> Occupancy classifications include:

- Assembly;
- Business;
- Educational;
- Factory and industrial;
- High hazard;
- Institutional;
- Mercantile;
- Residential;
- Storage; and
- Utility and miscellaneous.

The Building Code requires certain occupancy classifications to have fire sprinkler systems, including:<sup>116</sup>

- Alcohol and drug centers;
- Assisted living facilities;
- Congregate care facilities;
- Group homes;
- Halfway houses;
- Residential board and custodial care facilities; and
- Social rehabilitation facilities.

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<sup>110</sup> E-mail from with John Paul Fiore, Legislative Specialist, Department of Children and Families, dated March 30, 2020.

<sup>111</sup> See section 553.72(1), F.S.

<sup>112</sup> Sections 553.72, & 553.73, F.S.

<sup>113</sup> Section 302.1 of the Building Code (Building), Seventh Edition.

<sup>114</sup> Id.

<sup>115</sup> E-mail from Colton Madill, Deputy Legislative Affairs Director, Department of Business and Professional Regulation, dated Feb. 9, 2021.

<sup>116</sup> Section 310 of the Building Code (Building), Seventh Edition.

Each occupancy classification contains subgroups. For example, the Residential Group R occupancy classification includes apartments, boarding houses, group homes, hotels, and motels. Residential Group R structures are required to have automatic sprinkler systems.<sup>117</sup>

Structures may be reclassified under the Building Code when occupancy of such building changes. Establishing a recovery residence in a single-family or two-family dwelling may constitute a change of occupancy and reclassify the dwelling as a Residential Group R structure, triggering the requirement to install fire sprinklers.

### *Local Enforcement of the Florida Building Code*

The Legislature provides local governments authority to inspect all buildings, structures, and facilities within their jurisdictions to protect public health, safety, and welfare.<sup>118</sup>

Every local government must enforce the Building Code and issue building permits.<sup>119</sup> It is unlawful for a person, firm, or corporation to construct, erect, alter, repair, secure, or demolish any building without first obtaining a permit from the local government enforcing agency or from such persons as may, by resolution or regulation, be directed to issue such permit, upon the payment of reasonable fees as set forth in a schedule of fees adopted by the enforcing agency.<sup>120</sup>

A building permit is an official document or certificate issued by the local building official that authorizes performance of a specific activity.<sup>121</sup> A building official is a local government employee or a person contracted by a local government who supervises Building Code activities, including plan review, enforcement, and inspection to ensure work complies with the Building Code.<sup>122</sup>

### Fire Prevention

Florida's fire prevention and control law, ch. 633, F.S., designates the state's Chief Financial Officer as the State Fire Marshal.

The State Fire Marshal adopts by rule the Florida Fire Prevention Code (Fire Code), which contains all fire safety laws and rules that pertain to the design, construction, erection, alteration, modification, repair, and demolition of public and private buildings, structures, and facilities, and the enforcement of such fire safety laws and rules.<sup>123</sup> The State Fire Marshal adopts a new edition of the Fire Code every three years. When adopting a new edition of the Fire Code, the State Fire Marshal must adopt the most recent version of the National Fire Protection Association (NFPA) Standard 1, Fire Prevention Code, and the NFPA 101 Life Safety Code.<sup>124</sup>

State law requires all municipalities, counties, and special districts with fire safety responsibilities to enforce the Fire Code as the minimum fire prevention code to operate uniformly among local governments and in conjunction with the Florida Building Code.<sup>125</sup> Each county, municipality, and special district with fire safety enforcement responsibilities must employ or contract with a fire safety inspector (certified by the State Fire Marshal) to conduct all fire safety inspections required by law.<sup>126</sup>

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<sup>117</sup> Section 903.2.8 of the Building Code (Residential), Seventh Edition.

<sup>118</sup> Section 553.72, F.S.

<sup>119</sup> Sections 125.01(1)(bb), 125.56(1), & 553.80(1), F.S.

<sup>120</sup> See ss. 125.56(4)(a) & 553.79(1), F.S.

<sup>121</sup> Section 202 of the Building Code (Building), Seventh Edition.

<sup>122</sup> Section 468.603(2), F.S.

<sup>123</sup> Sections 633.202(1) and (2), F.S.

<sup>124</sup> Id. The NFPA is the National Fire Protection Association. Founded in 1896, the NFPA delivers information and knowledge through no more than 300 consensus codes and standards, research, training, education, outreach and advocacy. NFPA, *About NFPA*, <https://www.nfpa.org/about-nfpa> (last visited April 27, 2021).

<sup>125</sup> The Florida Building Code is the statewide building code for all construction in the state. Every local government must enforce the Florida Building Code and issue building permits. See *generally* ch. 553, F.S.

<sup>126</sup> Section 633.216(1), F.S.



Inspections occur on existing premises in accordance with the minimum inspection frequency schedule under the Fire Code, depending on occupancy risk classification.<sup>127</sup> Minimum fire prevention inspection frequencies do not apply to detached one- and two-family dwellings.<sup>128</sup>

### Minimum Fire Inspection Frequency

Occupancy Risk Classification	Frequency
High	Annually
Moderate	Biennially
Low	Triennially
Critical Infrastructure	Per authority having jurisdiction

Occupancy risk classification takes the minimum water supply, structure volume and combustibility of the structure's contents into account to determine classification. Examples of risk classification include:<sup>129</sup>

- **High:** Department stores, paper processing plants, auditoriums and theaters, repair garages.
- **Moderate:** Restaurants, unoccupied buildings, cold storage warehouses, and amusement occupancies.
- **Low:** Parking garages, doctor's offices, barber and beauty shops, churches, and municipal buildings.
- **Critical Infrastructure:** Hospitals, schools, and prisons.

Administrative rules set the minimum fire safety standards for residential alcohol and drug abuse treatment prevention programs or mental health residential treatment facilities and crisis stabilization units.

In 2017, there were 16,004 fires in single-family or two-family dwellings in this state and 5,521 fires in all other residential occupancies. In 2019, the NFPA estimated that there were 339,500 home fires with single-family or two-family home fires reporting nine deaths per 100,000 reported home fires, a higher ratio than other homes or apartments.<sup>130</sup>

Current law exempts single-family and two-family dwellings from the provisions of the Life Safety Code provided in the Fire Code, which means such dwellings are not required to install fire sprinkler systems unless specifically required by a local government.<sup>131</sup> However, the use of such dwellings for a residential substance abuse treatment prevention program may trigger a reclassification (change of occupancy) for the building, likely to residential board and care occupancy. The Florida Fire Prevention Code requires fire sprinklers for residential board and care occupancy.<sup>132</sup>

### Effect of the Bill

#### Substance Abuse Service Providers

The bill creates a new crime of making false representations or omitting information on a substance abuse service provider license application. Under the bill, substance abuse service provider applicants

<sup>127</sup> Section 10.2.7 of the 7<sup>th</sup> Edition of the Florida Fire Prevention Code.

<sup>128</sup> Section 10.2.4.7 of the 7<sup>th</sup> Edition of the Florida Fire Prevention Code.

<sup>129</sup> National Fire Protection Association, *How Much Water is Needed*, [https://www.nfpa.org/assets/gallery/firewise/operationWater/step1\\_3.htm](https://www.nfpa.org/assets/gallery/firewise/operationWater/step1_3.htm) (last visited April 27, 2021).

<sup>130</sup> *Id.* at p. 4.

<sup>131</sup> Section 633.208(8), F.S.

<sup>132</sup> Department of Financial Services, Agency Analysis of 2021 HB 319, p. 1 (Feb. 17, 2021); under the Fire Code, a residential board and care occupancy is an occupancy used for lodging and boarding of four or more residents not related by blood or marriage to the owners or operators, for the purpose of providing personal care services.

who willfully and knowingly make a false representation in a license application or who willfully and knowingly omit any material fact from a license application commit a third degree felony.<sup>133</sup>

The bill requires licensed service providers who are fined by final order of DCF for referring patients to uncertified recovery residences to pay the fine plus interest, as specified under s. 55.03, F.S., for each day beyond the due date of the fine. If the service provider does not pay the fine plus interest within 60 days of the due date, the bill requires DCF to immediately suspend the license. The bill also requires DCF to immediately suspend the license of a service provider or service component for not paying an administrative fine plus applicable interest for committing any violation specified in the established tier-based violation system.

#### Exemption from Employment Disqualification

Currently, DCF may grant exemptions from disqualification to service provider personnel that would limit such personnel to working with adults in substance abuse treatment facilities. DCF may also grant exemptions from disqualification to service provider personnel who treat adolescents 13 years of age or older and personnel whose background checks indicate certain drug crimes without a waiting period.

The bill broadens the eligibility for exemption from employment disqualification for owners, directors, chief financial officers of applicant certified recovery residences and applicant recovery residence administrators by allowing the same exemptions from disqualification applicable to service provider personnel to apply to such individuals.

#### Florida Building Code

The bill prohibits a change of occupancy (the reclassification of the primary use of a single or two-family dwelling) under the Building Code for single-family and two-family dwellings that convert to certified recovery residences solely due to such conversion. This prohibition also applies to a recovery residence that has a charter from an entity recognized or sanctioned by Congress, which appears to describe the Oxford House model of recovery residences.

#### Fire Prevention

The bill prohibits a local government or the Fire Marshal from reclassifying a certified recovery residence or a recovery residence that is an Oxford House under the Fire Code solely based upon the use of the property as a recovery residence. This means that such residences are not required to install fire sprinklers.

The bill provides an effective date of July 1, 2021.

## **II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT**

### **A. FISCAL IMPACT ON STATE GOVERNMENT:**

#### **1. Revenues:**

DCF may see an indeterminate, insignificant, increase in revenue if licensed service providers are required to pay interest on fines for referring patients to uncertified recovery residences.<sup>134</sup>

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<sup>133</sup> Ss. 775.082 and 775.083, F.S. A third degree felony is punishable by a sentence of up to 5 years in prison and a fine up to \$5,000.

<sup>134</sup> *Supra* note 109.

2. Expenditures:

DCF may see an indeterminate, insignificant, increase in expenditures associated with administrative appeals if service providers appeal license suspensions.<sup>135</sup>

The bill may have an insignificant positive impact on prison beds due to the creation of a new third degree felony.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

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<sup>135</sup> Id.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed service providers who commit certain violations will be subject to interest on fines and other licensure actions, such as license suspension, which could have an economic impact on such providers.

Owners of certified recovery residences may have lower costs of operation if they are not required to install fire sprinklers, and that savings may be passed on to residents in the cost of service.

Fire sprinkler contractors may experience a decrease in demand for services.

D. FISCAL COMMENTS:

None.