The Florida Senate

BILL ANALYSIS AND FISCAL IMPACT STATEMENT

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

Prepared By: The Professional Staff of the Committee on Children, Families, and Elder Affairs

BILL: CS/SB 1636

INTRODUCER: Children, Families, and Elder Affairs and Senator Gruters

SUBJECT: Substance Use Disorder Treatment Services

DATE: January 24, 2024 REVISED:

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	Hall	Tuszynski	CF	**Fav/CS**
2.			AHS	
3.			FP	

Please see Section IX. for Additional Information:

COMMITTEE SUBSTITUTE - Substantial Changes

I. Summary:

CS/SB 1636 creates the Substance Use Disorder Housing Advisory Council, which has the primary function of conducting a study, with the aid of the University of South Florida College of Public Health, to evaluate the national best practice standards from the Substance Abuse and Mental Health Services Administration, with the goal of removing obstacles to therapeutic housing within this state to be in compliance with federal law.

The bill also requires the Council to conduct a review of statewide zoning codes to determine what effect, if any, local laws have on the ability of private sector licensed service providers to provide modern, evidence-based, effective treatment and ancillary therapeutic housing to persons in this state.

The bill details membership and appointment requirements of the council and requires a preliminary report with findings and recommendations on July 1, 2027 and a final report on September 1, 2027. The statute repeals on September 1, 2027.

The bill makes patient records in recovery residences confidential under s. 397.501(7), F.S.

The bill also prohibits any local law, ordinance, or regulation from regulating the duration or frequency of a resident’s stay in certain certified recovery residences in areas where multifamily uses are allowed.

The bill provides for an effective date of July 1, 2024.

II. Present Situation:

Substance abuse is the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.[1] According to the Diagnostic and Statistical Manual of Mental Disorders, fifth Edition (DSM-5), a diagnosis of substance use disorder (SUD) is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.[2] SUD occurs when an individual chronically uses alcohol or drugs, resulting in significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.[3] Repeated drug use leads to changes in the brain's structure and function that can make a person more susceptible to developing a substance abuse disorder.[4] Imaging studies of brains belonging to persons with SUD reveal physical changes in areas of the brain critical to judgment, decision making, learning and memory, and behavior control.[5]

Among people aged 12 or older in 2021, 61.2 million people (or 21.9 percent of the population) used illicit drugs in the past year.[6] The most commonly used illicit drug was marijuana, which 52.5 million people used.[7] In the past year:[8]

- Nearly 2 in 5 young adults 18 to 25 used illicit drugs;
- 1 in 3 young adults 18 to 25 used marijuana;
- 9.2 million people 12 and older misused opioids;
- 46.3 million people aged 12 and older (16.5 percent of the population) met the applicable DSM-5 criteria for having a substance use disorder, including 29.5 million who were classified as having an alcohol use disorder and 24 million who were classified as having a drug use disorder. The percentage was highest among young adults aged 18 to 25;

In 2021, 94% of people aged 12 or older with a substance use disorder did not receive any treatment.[9]

[1] The World Health Organization, *Mental Health and Substance Abuse*, available at https://www.who.int/westernpacific/about/how-we-work/programmes/mental-health-and-substance-abuse (last visited January 18, 2024); the National Institute on Drug Abuse (NIDA), *The Science of Drug Use and Addiction: The Basics*, available at https://archives.nida.nih.gov/publications/media-guide/science-drug-use-addiction-basics (last visited January 18, 2024).

[2] The National Association of Addiction Treatment Providers, *Substance Use Disorder*, available at https://www.naatp.org/resources/clinical/substance-use-disorder (last visited January 18, 2024).

[3] The Substance Abuse and Mental Health Services Administrator (The SAMHSA), *Substance Use Disorders*, available at https://www.samhsa.gov/find-help/disorders (last visited January 18, 2024).

[4] The NIDA, *Drugs, Brains, and Behavior: The Science of Addiction*, available at https://nida.nih.gov/publications/drugs-brains-behavior-science-addiction/drug-misuse-addiction (last visited January 18, 2024).

[5] *Id.*

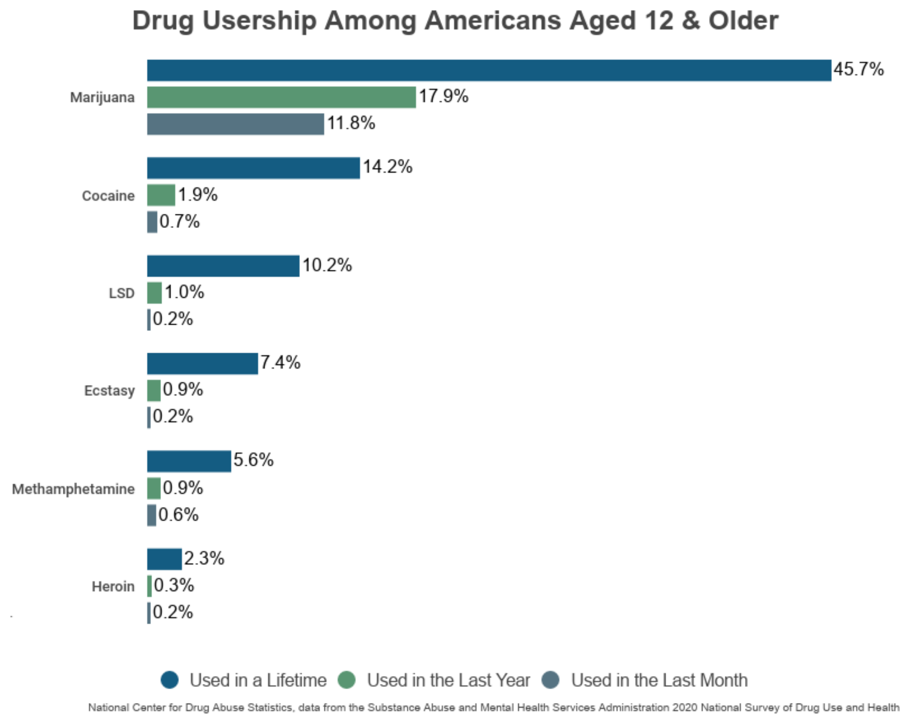
[6] U.S. Department of Health and Human Services, *SAMHSA Announces National Survey on Drug Use and Health (NSDUH) Results Detailing Mental Illness and Substance Use Levels in 2021*, available at https://www.hhs.gov/about/news/2023/01/04/samhsa-announces-national-survey-drug-use-health-results-detailing-mental-illness-substance-use-levels-2021.html (last visited January 18, 2024).

[7] *Id.*

[8] *Id.*

[9] *Id.*

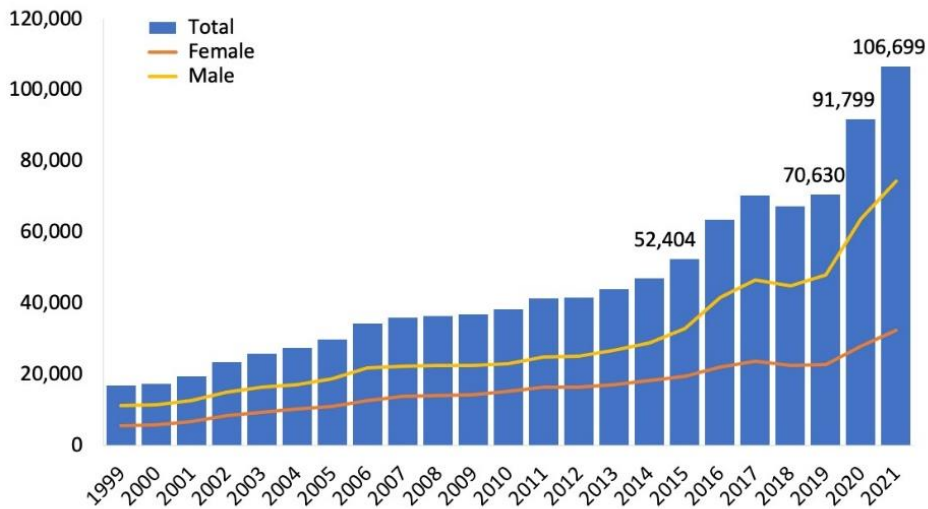
In 2020, according to the National Center for Drug Abuse Statistics[10], the specific drug breakdowns were as follows:



More than 106,000 persons in the U.S. died from drug-involved overdose in 2021, including illicit drugs and prescription opioids.[11] The following graph shows the total number of U.S. drug overdose deaths from 1999 to 2021.[12] The bars overlaid by lines show the number of deaths by gender.[13]

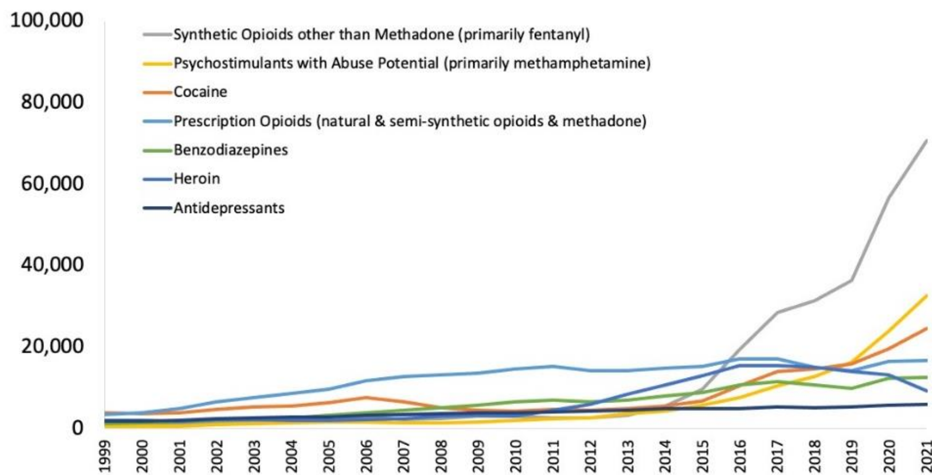
[10] National Center for Drug Abuse Statistics, *Drug Abuse Statistics*, available at https://drugabusestatistics.org/ (last visited January 18, 2024).
[11] National Institute on Drug Abuse, *Drug Overdose Death Rates*, available at https://nida.nih.gov/research-topics/trends-statistics/overdose-death-rates (last visited January 18, 2024).
[12] *Id.*
[13] *Id.*

National Overdose Deaths



*Includes deaths with underlying causes of unintentional drug poisoning (X40–X44), suicide drug poisoning (X60–X64), homicide drug poisoning (X85), or drug poisoning of undetermined intent (Y10–Y14), as coded in the International Classification of Diseases, 10th Revision. Source: Centers for Disease Control and Prevention, National Center for Health Statistics. Multiple Cause of Death 1999-2021 on CDC WONDER Online Database, released 1/2023.

Deaths involving synthetic opioids other than methadone (primarily fentanyl) continued to rise with 70,601 overdose deaths reported in 2021.[14] Those involving stimulants, including cocaine or psychostimulants with abuse potential (primarily methamphetamine), also continued to increase with 32,537 overdose deaths in 2021.[15]



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[14] *Id.*
[15] *Id.*

Substance Abuse Treatment in Florida

In the early 1970s, the federal government enacted laws creating formula grants for states to develop continuums of care for individuals and families affected by substance abuse.[16] The laws resulted in separate funding streams and requirements for alcoholism and drug abuse. In response to the laws, the Florida Legislature enacted chs. 396 and 397, F.S., relating to alcohol and drug abuse, respectively.[17] Each of these laws governed different aspects of addiction, and thus, had different rules promulgated by the state to fully implement the respective pieces of legislation.[18] However, because persons with substance abuse issues often do not restrict their misuse to one substance or another, having two separate laws dealing with the prevention and treatment of addiction was cumbersome and did not adequately address Florida's substance abuse problem.[19] In 1993, legislation was adopted to combine ch. 396 and 397, F.S., into a single law, the Hal S. Marchman Alcohol and Other Drug Services Act (Marchman Act).[20]

The Marchman Act encourages individuals to seek services on a voluntary basis within the existing financial and space capacities of a service provider.[21] However, denial of addiction is a prevalent symptom of SUD, creating a barrier to timely intervention and effective treatment.[22] As a result, treatment typically must stem from a third party providing the intervention needed for SUD treatment.[23]

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. Services are provided based upon state and federally-established priority populations.[24] The DCF provides treatment for SUD through a community-based provider system offering detoxification, treatment, and recovery support for individuals affected by substance misuse, abuse, or dependence.[25]

- **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.[26]

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[16] The DCF, *Baker Act and Marchman Act Project Team Report for Fiscal Year 2016-2017*, p. 4-5. (on file with the Senate Children, Families, and Elder Affairs Committee).

[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] Chapter 93-39, s. 2, L.O.F., codified as ch. 397, F.S.

[21] *See* ss. 397.601(1) and (2), F.S., An individual who wishes to enter treatment may apply to a service provider for voluntary admission. Within the financial and space capabilities of the service provider, the individual must be admitted to treatment when sufficient evidence exists that he or she is impaired by substance abuse and his or her medical and behavioral conditions are not beyond the safe management capabilities of the service provider.

[22] Darran Duchene and Patrick Lane, Fundamentals of the Marchman Act, Risk RX, Vol. 6 No. 2 (Apr. – Jun. 2006) State University System of Florida Self-Insurance Programs, available at https://flbog.sip.ufl.edu/risk-rx-article/fundamentals-of-the-marchman-act/ (last visited January 18, 2024)(hereinafter cited as "fundamentals of the Marchman Act").

[23] *Id.*

[24] *See* ch. 394 and 397, F.S.

[25] The DCF, *Treatment for Substance Abuse*, available at https://www.myflfamilies.com/services/samh/treatment (last visited January 18, 2024).

[26] *Id.*

- **Treatment Services**: Treatment services[27] 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.[28]
- **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.[29]

Licensure of Substance Abuse Service Providers

The DCF regulates substance use disorder 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 prevention[30], intervention[31], and clinical treatment services.[32]

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.[33] "Clinical treatment services" include, but are not limited to, the following licensable service components:

- 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.[34]

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[27] *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.
[28] *Id.*
[29] *Id.*
[30] Section 397.311(26)(c), F.S. "Prevention" is defined as "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* The DCF, *Substance Abuse Prevention*, https://www.myflfamilies.com/services/samh/substance-abuse-prevention (last visited January 19, 2024).
[31] Section 397.311(26)(b), F.S. "Intervention" is defined as "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."
[32] Section 397.311(26), F.S.
[33] Section 397.311(26)(a), F.S.
[34] *Id.*

Application for Licensure

Individuals applying for licensure as substance abuse service providers must submit applications on specified forms provided, and in accordance with rules adopted, by the DCF.[35] Applications must include, at a minimum:

- Information establishing the name and address of the applicant service provider and its director, and also of each member, owner, officer, and shareholder, if any.
- Information establishing the competency and ability of the applicant service provider and its director to carry out the requirements of ch. 397, F.S.
- Proof satisfactory to the DCF of the applicant service provider's financial ability and organizational capability to operate in accordance with ch. 397, F.S.
- Proof of liability insurance coverage in amounts set by the DCF by rule.
- Sufficient information to conduct background screening for all owners, directors, chief financial officers, and clinical supervisors as provided in s. 397.4073, F.S.
- Proof of satisfactory fire, safety, and health inspections, and compliance with local zoning ordinances. Service providers operating under a regular annual license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the DCF issuing a probationary license.
- A comprehensive outline of the proposed services, including sufficient detail to evaluate compliance with clinical and treatment best practices, for:
  - Any new applicant; or
  - Any licensed service provider adding a new licensable service component.
- Proof of the ability to provide services in accordance with the DCF rules.
- Any other information that the DCF finds necessary to determine the applicant's ability to carry out its duties under this chapter and applicable rules.[36]

Florida does not license recovery services; instead, in 2015, the Legislature enacted sections 397.487-397.4872, F.S., which establishes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[37]

Recovery Residences

Recovery residences (also known as "sober homes, "sober living homes," "Oxford Houses," or "Halfway Houses") are non-medical settings designed to support recovery from substance use disorders, providing a substance-free living environment commonly used to help individuals transition from highly structured residential treatment programs back into their day-to-day lives (e.g., obtaining employment and establishing more permanent residence).[38] Virtually all

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[35] Section 397.403(1), F.S.
[36] *Id.*
[37] Chapter 2015-100, L.O.F.
[38] Recovery Research Institute, *Recovery Residences*, available at https://www.recoveryanswers.org/resource/recovery-residences/ (last visited January 18, 2024). Substance abuse prevention is achieved 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.

encourage or require attendance at 12-step mutual-help organizations like Alcoholics Anonymous (AA) or Narcotics Anonymous (NA), but recovery homes have varying degrees of structure and built-in programmatic elements:[39]

- **Length of Stay**: some may have a limited or otherwise predetermined, length of stay, while others may allow individuals to live there for as long as necessary provided they follow the house rules.
- **Monitoring**: some, but not all, provide monitoring to maintain substance-free, recovery-supportive living environments and help facilitate house members' progress by implementing a number of rules and requirements (i.e., mutual-help organization attendance, attendance at house meetings, curfews, restrictions on outside employment, and limits on use of technology). Typically as individuals successfully follow these rules over time, restrictions become more lenient and individuals have greater latitude in their choices both in and outside of the recovery residence.
- **Size**: while recovery residences range in the number of individuals living there at any given time, there are typically at least 6-8 residents of the same gender.

A recovery residence is defined as "a residential unit, the community housing component of a licensed day or night treatment facility with community housing, or other form of group housing, which 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."[40]

Voluntary Certification of Recovery Residences and Administrators in Florida

Florida utilizes voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.[41] Under the voluntary certification program, the DCF has 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 (the FCB) certifies recovery residence administrators.[42]

The DCF publishes a list of all certified recovery residences and recovery residence administrators on its website. As of January 20, 2024, there were 359 certified recovery residences in Florida.[43]

Privacy Rights of Individuals Receiving Substance Abuse Treatment

Section 397.501, F.S., establishes statutory rights for individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel, and habeas corpus. Current law protects individual records and prohibits records of service providers to be disclosed without the written consent of the individual to

[39] *Id.*
[40] Section 397.311(38), F.S.
[41] Sections 397.487-397.4872, F.S.
[42] The DCF, Recovery Residence Administrators and Recovery Residences, available at: https://www.myflfamilies.com/services/samh/recovery-residence-administrators-and-recovery-residences (last visited Jan. 21, 2024).
[43] *Id.*

whom they pertain except to specific persons (i.e., medical personnel in a medical emergency and service provider personnel if they need to know the information to carry out duties) and for certain reasons (i.e., law enforcement if the records are related to an individual's commission of a crime or if they apply to the reporting of incidents of suspected child abuse and neglect).[44]

III. Effect of Proposed Changes:

Section 1 of the bill creates s. 397.342, F.S., to establish the Substance Use Disorder Housing Advisory Council. The intent of the council is to ensure state standards for recovery residences conform to national best practice standards to the greatest extent possible and to study local governmental obstructions to achieving these national best practice standards through zoning regulations. The council is required to be composed of seven members who are as follows:

- A representative of the Executive Office of the Governor, appointed by the Governor.
- A member of the Senate and a representative of the Florida Association of Managing Entities, appointed by the President of the Senate.
- A member of the House of Representatives and a representative of the Florida Association of Managing Entities, appointed by the Speaker of the House of Representatives.
- A representative from the DCF, appointed by the Governor.
- A representative from the Agency for Health Care Administration (AHCA), appointed by the Governor.
- A representative of the Florida Association of Recovery Residences, appointed by the Governor.
- A representative of the Palm Beach County State Attorney Addiction Recovery Task Force, appointed by the Governor.

The bill requires the University of South Florida to assist the advisory council in conducting a study to evaluate the national best practice standards from the Substance Abuse and Mental Health Services Administration, with the goal of removing obstacles to therapeutic housing within the state to be in compliance with the American Disabilities Act of 1990, as amended, 42 U.S.C. ss. 12101 et. Seq., and the Fair Housing Amendments Act of 1988. The section also requires the council to review statewide zoning codes to determine what effect, if any, local laws have on the ability of private sector licensed service providers to provide modern, evidence-based, effective treatment and ancillary therapeutic housing to persons in this state.

The bill requires the DCF, in conjunction with AHCA, to provide a preliminary report to the Governor, the President of the Senate, and the Speaker of the House of Representatives. The report must detial the findings of the studies and recommendations of the council by June 1, 2027. The bill also requires a final report to be provided to the Governor, the President of the Senate, and the Speaker of the House of Representatives by September 1, 2027.

The bill requires repeal of the council on September 1, 2027, unless reviewed and saved from repeal by the Legislature.

Section 2 of the bill amends s. 397.305, F.S., to make the following legislative findings:

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[44] Section 397.501(7), F.S.

- Addiction treatment services are a fully integrated part of the private and public health care system.
- Service providers licensed under the chapter and community housing certified under the chapter are deemed a necessary part of the private and public health care system.

The bill also establishes legislative intent to identity and remove barriers that prevent coordinated health care between medical and clinical providers to persons with substance use disorders.

Section 3 of the bill amends s. 397.487, F.S., to amend the legislative findings of the voluntary certification statute to find that the state's interest in protecting persons suffering from addiction includes adequate housing, which is attained through the certification of recovery residences that meet national best practice standards.

The bill cross-references the right to confidentiality of records, s. 397.501(7) F.S., in the voluntary certification statute to require that section of law to govern a recovery residence that meets the criteria of day or night treatment with community housing.

The bill also prohibits a local law, ordinance, or regulation adopted after January 1, 2024 to regulate the duration or frequency of a resident's stay in a certified recovery residence in areas where multifamily uses are allowed.

Section 4 provides for an effective date of July 1, 2024.

The bill makes conforming language changes throughout.

IV. Constitutional Issues:

A. Municipality/County Mandates Restrictions:

None.

B. Public Records/Open Meetings Issues:

None.

C. Trust Funds Restrictions:

None.

D. State Tax or Fee Increases:

None.

E. Other Constitutional Issues:

None.

V. Fiscal Impact Statement:

A. Tax/Fee Issues:

None.

B. Private Sector Impact:

None.

C. Government Sector Impact:

There is an indeterminate negative fiscal impact on the DCF. This impact will likely include a workload cost and a cost to fund the study. Workload expenses of the DCF will include the administrative support required to operate, plan, and coordinate the actions and meetings of the council, necessary expenses allowed to council members, and the drafting of the required report.

VI. Technical Deficiencies:

None.

VII. Related Issues:

None.

VIII. Statutes Affected:

This bill substantially amends ss. 397.305 and 397.487 of the Florida Statutes.
This bill creates s. 397.342 of the Florida Statutes.

IX. Additional Information:

A. Committee Substitute – Statement of Substantial Changes:

(Summarizing differences between the Committee Substitute and the prior version of the bill.)

None.

B. Amendments:

CS by Children, Families and Elder Affairs January 23, 2024:
The committee substitute adds two members to the Council, both to be representatives of the Florida Association of Managing Entities; one appointed by the President of the Senate and the other appointed by the Speaker of the House of Representatives.

This Senate Bill Analysis does not reflect the intent or official position of the bill's introducer or the Florida Senate.