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Work Session I:
Sober Homes and the Opioid Epidemic:

Federal and State Laws Affecting Local Government's Ability to Regulate Sober Homes/Recovery Residences

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IMLA PRESENTATION MATERIALS ON
SOBER HOMES AND THE OPIOID EPIDEMIC:
FEDERAL AND STATE LAWS AFFECTING LOCAL GOVERNMENT'S ABILITY TO REGULATE SOBER HOMES/RECOVERY RESIDENCES

I. Persons in recovery from substance use disorder are protected under the Fair Housing Amendments Act (FHA) and Americans with Disabilities Act (ADA); therefore, they may locate in all residential zoning districts in accordance with federal law.

A. FAIR HOUSING AMENDMENTS ACT (FHA).

1. Under the Fair Housing Amendments Act, the term "handicap" means, with respect to a person, a "physical or mental impairment which substantially limits one or more of such person's major life activities, a record of having such an impairment, or being regarded as having such an impairment." 42 U.S.C. § 3602(h). The term "physical or mental impairment" includes "alcoholism" and "drug addiction" (other than addiction caused by current, illegal use of a controlled substance). 24 C.F.R. 100.201.

2. Under the FHA, it is unlawful to discriminate against or otherwise make unavailable or deny a dwelling to any buyer or renter because of a handicap of that buyer, renter, or person residing in or intending to reside in, that dwelling after it is sold, rented, or made available. 42 U.S.C. § 3604(f)(1).

B. AMERICANS WITH DISABILITIES ACT AMENDMENTS ACT (ADA).

1. Under the ADA, the term "disability" means, a physical or mental impairment which substantially limits one or more major life activities; a record of having such an impairment; or being regarded as having such an impairment. 42 U.S.C. § 12102(2), 29 U.S.C. § 705(20).

2. "Alcoholism" and "drug addiction" are considered "impairments" under the definitions of disability set forth in the ADA.[1]

[1] *Buckley v. Consolidated Edison Co. of New York, Inc.*, 155 F.3d 150, 154 (2d Cir. 1998) (*en banc)* (recovering drug addicts may be considered to have a "disability" under the ADA).

II. Many jurisdictions have grappled with the issue of regulating sober homes/recovery residences within the confines of the law. Some jurisdictions have successfully addressed issues such as overcrowding, safety, length of stay, distance, and parking, while others have not. Here is a summary of federal case law related to regulations of group homes for persons with disabilities applicable to sober homes and/or recovery residences:

A. SOBER HOMES/RECOVERY RESIDENCES ARE NOT A BUSINESS.

1. A sober home/recovery residence is not a business, or at least it is no more of a business than renting out a house to a tenant or tenants.

2. Sober living homes/recovery residences can constitute "dwelling[s]" within the meaning of the Fair Housing Act.[2]

B. DEFINING "FAMILY" TO LIMIT THE NUMBER OF UNRELATED PERSONS PERMITTED IN A DWELLING UNIT. The case law runs the gamut. A limit seems to be acceptable as long as the definition of "Family" is applied to everyone and as long as there is a reasonable accommodation process to except sober homes/recovery residences from the regulation.

1. In *City of Edmonds v. Oxford House, Inc.*, the Court stated, "It remains for lower courts to decide whether *Edmonds*' actions (in applying ordinance, which defined a family as no more than five (5) unrelated individuals to the *Oxford House* in an attempt to limit its occupants to no more than five (5) individuals) against *Oxford House* violates the Fair Housing Amendments Act's prohibitions."[3]

2. The Court in *Oxford House–C v. City of St. Louis*, (upholding ordinance allowing no more than eight (8) unrelated persons in a group home and three (3) in a single-family dwelling).[4]

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[2] *Caron Foundation of Florida, Inc. v. City of Delray Beach*, 879 F. Supp.2d 1353 (S.D. Fla. 2012).
[3] *City of Edmonds v. Oxford House, Inc.,* 514 U.S. 725 (1995)
[4] *Oxford House–C v. City of St. Louis,* 77 F.3d 249, 252 (8th Cir. 1996)

3. The Court in *Human Resource Research and Management Group, Inc. v. County of Suffolk*, held that a limitation of six (6) occupants in a substance abuse recovery home is invalid.[5]

4. The Court in *Children's Alliance v. City of Bellevue*, held that a city ordinance limiting homes to six (6) residents, two (2) caretakers and minor children was invalid.[6]

5. In *Jeffrey O. v. City of Boca Raton*, the Court stated, "I do not think the Fair Housing Act is violated merely by having a cap on the number of unrelated individuals who can live in a single-family dwelling. Furthermore, I find nothing wrong with the number three (3) that the City has chosen. A city must draw a line somewhere… while I find no legal problem with the cap of three (3) unrelated individuals per se, the limitation without any exception for handicapped individuals or an established reasonable accommodation procedure violates the Fair Housing Act."[7]

C. LIMITING THE CHANGE IN OCCUPANCY OF A DWELLING UNIT BY LIMITING THE ALLOWED RATE OF TURNOVER OF PROPERTIES. This appears to be acceptable as long as it is applied to all similarly situated properties (short-term rentals) and only if an accommodation procedure is in place to except sober houses from the regulation. (Beware of possible state preemption laws on vacation rentals).

1. In the case of *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008), the court upheld a limitation that only permitted a change in occupancy no more often than two (2) times per year in the City's RU-75 (single-family) zoning district in order to uphold the City's intent to "create pockets of stable, single-family neighborhoods" but it further stated that a reasonable accommodation should be granted to the City's turnover rule within the RM-15 (multi-family) zoning district (the City prohibited a change in occupancy more often than six (6) times) and remanded the case to be decided by the District Court. *Id.*[8] The District Court reheard the matter and in February, 2010, a jury returned a verdict finding the City liable for failing to provide a reasonable accommodation to Plaintiffs.[9]

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[5] *Human Resource Research and Management Group, Inc. v. County of Suffolk*, 687 F.Supp.2d 237, 265-266 (E.D.N.Y. 2010)
[6] *Children's Alliance v. City of Bellevue,* 950 F. Supp. 1491, 1499 (W.S. Wash. 1997)
[7] *Jeffrey O. v. City of Boca Raton,* 511 F. Supp.2d 1339, 1358-1359 (S.D. Fla. 2007)
[8] *Schwarz v. City of Treasure Island*, 544 F.3d 1201 (11th Cir. 2008)
[9] *Schwarz v. City of Treasure Island,* 2010 WL 2869473 (M.D. Fla. 2010)

D. DISTANCE REQUIREMENTS BETWEEN FACILITIES. The case law is varied. Some districts have allowed them, but the majority have not; however, with a detailed study, it may be possible to impose distance requirements if it is shown that there is a need for them due to overconcentration/ saturation in a particular city/ town and so long as relief is available via conditional use/special exception.

1. In accordance with the Joint Statement of the Department of Housing and Urban Development (HUD) and the Department of Justice, [10] local governments may take into account concerns about overconcentration and proximity of group homes (including "sober homes") one to another if they can prove actual overconcentration taking into account all group homes for persons with disabilities (typically through a detailed study).

2. In *Familystyle of St. Paul, Inc. v. City of St. Paul*, the Court held that a distance requirement of a quarter mile from an existing group home did not conflict with the language and purpose of the Fair Housing Act by limiting the housing choices of persons with mental illness.[11]

2. The Court in *Larkin v. State of Mich. Dept. of Social Services*, held that a fifteen hundred foot (1500') distance requirement between residential facilities for disabled persons was in violation of and preempted by the Fair Housing Amendments Act and the court further held that while deinstitutionalization was a legitimate goal, the state did not show how the statutory restrictions advanced that goal. [12]

3. The Court in *Harding v. City of Toledo*, held that a five hundred foot (500') distance requirement between "adult family homes" was reasonable and served the public interest of controlling the concentration of such homes.[13]

5. One legal treatise provides that clustering community residences especially recovery residences on a block and neighborhood

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[10] Joint Statement of the Department of Housing and Urban Development and the Department of Justice, State and Local Land Use Laws and Practices and the Application of the Fair Housing Act at 12 (November 10, 2016)

[11] *Familystyle of St. Paul, Inc. v. City of St. Paul,* 923 F.2d 91, 92 (8th Cir. 1991) *reh'g denied* (Feb 15, 1991)

[12] *Larkin v. State of Mich. Dept. of Social Services,* 89 F.3d 285, 290-291(6th Cir.1996)

[13] *Harding v. City of Toledo,* 433 F. Supp. 2d 867, 873-874 (N.D. Ohio 2006)

reduces their efficiency by obstructing their ability to foster normalization and community integration. For residents of those homes to achieve long-term sobriety, it is critical to establish regulations and procedures that assure a proper family-like living environment, free of drugs and alcohol that weed out the incompetent and unethical operators, and protect this vulnerable population from abuse, mistreatment, exploitation, enslavement, and theft.[14]

E. REASONABLE ACCOMMODATIONS.

1. Government must 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. 42 U.S.C. § 3604 (f)(3)(B).

2. Are cities required to have such procedures? Yes.[15]

3. Reasonable Accommodation Requests are not automatically granted. The government must be given an opportunity to make a final decision with respect to the request, which necessarily includes the ability to conduct a meaningful review of the requested accommodation to determine if such an accommodation is required by law.[16]

4. An accommodation is not reasonable if it, either:

a. Imposes undue financial and administrative burdens on the government; or

b. Requires a fundamental alteration in the zoning scheme.[17]

1) Requiring a municipality to waive a zoning rule ordinarily would cause a "fundamental alteration" of its zoning scheme if the proposed use was incompatible with surrounding land uses.

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[14] Daniel Lauber, Principles to Guide Zoning for Community Residences for People with Disabilities in Delray Beach, Florida, 3rd Ed. at 5, (River Forest IL. Planning/Communications, August 2017)
[15] *Jeffrey O. v. City of Boca Raton,* 511 F.Supp.2d 1339 (S.D. Fla. 2007)
[16] *Schwarz v. City of Treasure Island*, 544 F.3d 1201, 1219 (11th Cir. 2008).
[17] *School Bd. of Nassau County, Fla. v. Arline*, 480 US 273, 288 n.17, 107 S.Ct.1123, 94 L.Ed.2d 307 (1987), Schwarz, supra. at 1220.

2) If the proposed use is quite similar to surrounding uses expressly permitted by the zoning code, it will be more difficult to show that a waiver of the rule would cause a "fundamental alteration" of the zoning scheme.[18]

5. Local Governments may require annual re-certification of ongoing need for reasonable accommodations once granted. People move. Things change. A 9th Circuit Court case held that a policy that required disabled participants to provide updated medical information every three (3) years recertifying that they are disabled did not discriminate against the participant on the basis of his disability. [19]

F. GOVERNMENTS CAN PASS HOUSING RESTRICTIONS ON SOBER HOMES/RECOVERY RESIDENCES THAT ARE NARROWLY TAILORED TO SERVE A LEGITIMATE STATE INTEREST. These restrictions seem to be upheld without any exceptions or accommodations required as long as there is an *actual benefit* to the disabled residents and not just a pretext to cover a discriminatory motive.

1. Federal Law.

a. The Fair Housing Act provides justification for regulatory schemes that federal courts have narrowly construed. A governmental entity may act on the basis of protecting the public health and safety of other individuals. *See*, 42 U.S.C. § 3604(f)(9).

2. Federal Cases.

a. Regulatory schemes that are narrowly tailored to serve a legitimate state interest have been upheld as long as there is an *actual benefit* to the disabled residents and not just a pretext to cover a discriminatory motive.

1) In *Bangarter v. Orem City Corp.*, the Court stated, "the Fair Housing Amendments Act should not be interpreted to preclude special restrictions upon the

[18] *Bryant Woods Inn, Inc. v. Howard County, Md.*, 124 F.3d 597 (4th Cir. 1997).
[19] *Weinreich v. Los Angeles County Metropolitan Transp. Authority*, 114 F.3d 976 (1997), *cert. denied, Weinreich v. Los Angeles County Metropolitan Transp. Authority*, 522 U.S. 971 (1997).

disabled that are really beneficial to, rather than discriminatory against, the handicapped".[20]

2) In *Familystyle of St. Paul, Inc. v. City of St. Paul,* the Court held that the relevant question is whether legislation is rationally related to a government purpose. By contrast, regulatory schemes that do not provide an *actual benefit* to the disabled residents have been stricken.[21]

b. By contract, regulatory schemes that do not provide an *actual benefit* to the disabled residents have been stricken.

1) In *Human Resource Research and Management Group, Inc. v. County of Suffolk,* a County ordinance that was intended to avoid overcrowding, ensure proper supervision and avoid excess debris which imposed location requirements and occupancy limitations on Oxford House was held to be discriminatory because it was not rationally related to the proffered reasons for the ordinance where there was no proof of excess debris, overcrowding or need for 24/7 supervision.[22]

2) In *Tsombanidis v. West Haven Fire Department,* fire safety regulations were held not to have a discriminatory impact, but failure to treat Oxford Home as a one-family dwelling under fire regulations did have discriminatory impact.[23]

3. Policy Statements/Secondary Statements.

a. Joint Statement of HUD and DOJ. In a Joint Statement of the Department of the Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ), the agencies charged with enforcing the Fair Housing Act, those agencies stated, "Operators of group homes for

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[20] *Bangarter v. Orem City Corp.,* 46 F.3d 1491, 1504 (10th Cir. 1995)
[21] *Familystyle of St. Paul, Inc. v. City of St. Paul,* 923 F.2d 91 (8th Cir. 1991), *reh'g denied,* (Feb. 15, 1991)
[22] *Human Resource Research and Management Group, Inc. v. County of Suffolk,* 687 F. Supp. 2d 237 (E.D.N.Y. 2010)
[23] Tsombanidis v. West Haven Fire Department, 352 F.3d 565 (2d Cir. 2003) (superseded by regulation as stated in Mhany Management, Inc. v. County of Nassau, 819 F.3d 581 (2nd Cir. 2016))

persons with disabilities are subject to applicable state and local regulations addressing health and safety concerns unless those regulations are inconsistent with the Fair Housing Act or other federal law. Licensing and other regulatory requirements that may apply to some group homes must also be consistent with the Fair Housing Act. Such regulations must not be based on stereotypes about persons with disabilities or specific types of disabilities." Joint Statement of the Department of Housing and Urban Development and the Department of Justice.[24]

b. Palm Beach County, Florida Grand Jury Report. The failure to comply with minimal standards was a focus of a grand jury that the Palm Beach County State Attorney's Office convened to investigate fraud and abuse in the addiction treatment industry. The grand jury report states:

> The Grand Jury received evidence from a number of sources that recovery residences operating under nationally recognized standards, such as those created by the National Alliance for Recovery Residences (NARR), are proven to be highly beneficial to recovery. The Florida Association of Recovery Residences (FARR) adopts NARR standards. One owner who has been operating a recovery residence under these standards for over 20 years has reported a 70% success rate in outcomes. The Grand Jury finds that recovery residences operating under these nationally approved standards benefit those in recovery and, in turn, the communities in which they exist.
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> In contrast, the Grand Jury has seen evidence of horrendous abuses that occur in recovery residences that operate with no standards. For example, some residents were given drugs so that they go back into detox, some were sexually abused, and others were forced to work in labor pools. There is currently no oversight on these businesses that house this vulnerable class. Even community housing that is part of a DCF [Department of Children and

[24] State and Local Land Use Laws and Practices and the Application of the Fair Housing Act at 12. (November10, 2016)

> Families] license has no oversight other than fire code compliance. This has proven to be extremely harmful to patients.[25]

G. FIRE SPRINKLERS. The case law seems to provide that Sober Homes/Recovery Residences are to be treated the same as single-family residences in relation to fire-sprinkler requirements.

1. In *Nevada Fair Housing Center, Inc. v. Clark County*, the Court held that the state statute that required group homes of four or more to register in order to provide information to police, fire-fighting, rescue, or emergency medical services was facially discriminatory because it treated handicapped individuals different than everyone else and there was no evidence of any legitimate safety concerns to justify the statute.[26]

2. In *Tsombanidis v. West Haven Fire Dep't*, the owner and residents of a group home for recovering alcoholics and drug addicts brought an action against the City and the City Fire District for alleged violations of the Fair Housing Amendments Act (FHA) and Title II of the Americans with Disabilities Act (ADA). The Court determined that the fire code had a disparate impact on residents, determined that the City had engaged in intentional discrimination by failing to classify an Oxford House as a single family residence, created disparate impact, and failed to reasonably accommodate residents' handicap, and awarded damages and attorney's fees.[27]

3. In *Oxford House, Inc., et. al. v. H. "Butch" Browning, State Fire Marshal*, the Court held that the residents of an Oxford home were entitled to a reasonable accommodation from the fire safety features that the state Fire Marshal was demanding in order to afford the residents of the home an "equal opportunity" to "use and enjoy" their home. Further, the Court stated that, "without the requested accommodation the Oxford House West Hale residents' recovery from alcoholism and drug addiction and perhaps even their lives would be in danger. The requested accommodation- that the Fire Marshal interpret the term "family" in a manner that would capture the type of relationship shared among the residents of Oxford House West Hale however, would not increase the

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[25] The Palm Beach Grand Jury in the Circuit Court of the 15th Judicial Circuit In and For Palm Beach County, Florida, Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry, (Dec. 8, 2016)

[26] *Nevada Fair Housing Center, Inc. v. Clark County,* 565 F. Supp. 2d 1178 (D. Nev. 2008)

[27] *Tsombanidis v. West Haven Fire Dep't*, 352 F.3d 565 (2d Cir. 2003), *superseded on other grounds by Mhany Mgmt., Inc. v. City of Nassau,* 819 F.3d 581 (2d Cir. 2016)

potential danger to the residents that is presented by the risk of fires, and therefore Plaintiffs are entitled to their requested accommodation."[28]

III. Federal and State Laws/Legislation is starting to provide clarification to cities/towns where the courts have failed (although some states have provided better guidance than others).

A. FEDERAL LEGISLATION.

1. H.R. 4684, "Ensuring Access to Quality Sober Living Act" was introduced into the House Energy and Commerce Committee on December 19, 2017 and it defines, "recovery housing", directs the Secretary of Health and Human Services to publish and disseminate best practices for operating a recovery housing based on the National Alliance of Recovery Residences (NARR) Standards and input from other nationally accredited recovery housing entities and from stakeholders and to disseminate such best practices to the government of each state and provide technical assistance to states seeking to adopt such best practices and it further authorizes the appropriation of $3,000,000 for 2018 through 2020. On December 22, 2017 it was referred to the Subcommittee on Health. No other action has been taken since the date it was submitted.

2. H.R. 5100, "The Recovery Home Certification Act" was introduced into the House Energy and Commerce Committee and the Committee on Judiciary and it proposes to task the Director of the Center for Substance Abuse Treatment and Recovery with establishing model quality standards in order for organizations to receive certifications as a recovery home within six (6) months of becoming law and provides for grants to states to establish and operate recovery certification programs. It also provides for $40,000,000 for each year of fiscal years 2019-2023 and provides penalties for patient brokering. No action has been taken since the date it was submitted.

3. S. 2456, "The Comprehensive Addiction and Recovery Act, (CARA) 2.0 Act of 2018" was introduced into the Committee on Health, Education, Labor, and Pensions on February 27, 2018 and it proposes to: fund a national drug awareness campaign, provide limits on initial prescriptions for opioids by limiting them to three (3) days while exempting chronic care; provide $300,000,000 in funds annually to make naloxone available to first responders and train them to use it; require the

[28] *Oxford House, Inc., et. al. v. H. "Butch" Browning, State Fire Marshal,* Case 3:15-cv-00282-BAJ-EWD (M.D. LA 2017)

Department of Health and Human Services to issue quality standards and best practices for operating recovery housing in the United States based on National Alliance of Recovery Residences (NARR) standards; require the use of the prescription drug monitoring program database to track opioid prescriptions, and to increase civil and criminal penalties for opioid manufacturers that fail to report suspicious orders among other things. No action has been taken since the date it was submitted.

B. STATE LAWS/LEGISLATION.

1. Alabama

None.

2. Alaska

None.

3. Arizona

Arizona's House and Senate passed legislation in 2016 (HB 2107) requiring recovery residences to notify cities and counties when they open and requiring the residences to have trained managers, maintenance plans, and supervision for residents where at least 25% of the residents are undergoing treatment at a separate licensed [treatment] facility. Also, HB 2529 and SB 1465 (2018) proposes mandatory certification of all sober living homes by an approved national organization that will contract with the Department. While SB 1451 and HB 2496 (2018) proposes to outlaw patient brokering. Both sets of pending legislation are moving through committees.

4. Arkansas

None.

5. California

California has licensing requirements for recovery residences (Health and Safety Code §§ 11834.01 – 11834.18), but the State of California ties the license to state funding for the houses. California is also attempting to pass legislation this year (AB 285 (2018)) that provides for voluntary certification of recovery residences in order to provide best

practices for operation of recovery residences that do not receive state funding.

6. Colorado

On July 18, 2017, Colorado passed SB 17-193, which approved appropriation of one million dollars to the University of Colorado to establish or expand programs for research concerning prevention, treatment and recovery support strategies for substance use disorders.

7. Connecticut

Connecticut passed HB 5741 (2017), which became effective on October 1, 2017, that required each recovery residence to: (1) register with the State's Department of Mental Health and Addiction Services and (2) maintain a supply of opioid antagonists on the premises and train all residents on how to administer the medication if even one resident is diagnosed with opioid use disorder.

8. Delaware

The state recently passed an administrative directive to provide some state funding to provide short-term rent assistance to recovery and sober homes that obtain certification through NARR.[29]

9. Florida

In 2015, HB 21 passed, which defined "recovery residence" and provided for voluntary certification of recovery residences, but mandated that referrals from state licensed treatment providers could only be to recovery residences certified by the Florida Association of Recovery Residences (FARR). In 2016, the Legislature passed HB 823, which created the Substance Abuse and Recovery Fraudulent Business Practices Pilot Program, which funded a task force led by Palm Beach County State Attorney, Dave Aronberg, to study the issue of sober living homes. In 2017, HB 807 passed, which provided that referrals from recovery residences to licensed treatment centers had to be made by certified recovery residences only, and provided penalties for deceptive marketing,

[29] http://www.burlingtoncountrytimes.com/news/recovery-road/some-see-voluntary-certification-as-a-model-to-bring-standards/article-6f3c0640-e483-11e5-bf5d-0b1f2885cabc.html

and clarified the law regarding patient brokering in the context of recovery residences. During the most recent Legislative Session, HB 1069 (2018) was proposed, which would have closed additional loopholes by providing additional clarification regarding the definition of "benefit" for patient brokering. The recent legislation also would have addressed background check requirements that were created by HB 21 (2015) to help provide for exceptions on a case by case basis in the case of recovery residence owners/operators/administrators that are recovered themselves, but have a criminal history involving lesser drug crimes. In addition, the recent legislation also would have clarified the fire inspection requirements in order to provide a consistent, state-wide interpretation as to what is required for recovery residences in terms of fire and smoke alarms and smoke detectors. Unfortunately, even though HB 1069 passed the House and was agreed to by all Senate committees, the session ended just before the final vote on the Senate floor. It is likely that this bill will return next year.

10. Georgia

SB 352 (2018) was approved by the Senate recently and provides prohibitions against patient brokering and kickbacks and appoints an Executive Director of Substance Abuse, Addiction and Related Disorders to serve at the pleasure of Governor. There does not appear to be a companion bill.

11. Hawaii

In 2014, the Hawaii Legislature passed a law that required the Department of Health to establish a voluntary "clean and sober homes registry" to assist individuals recovering from substance abuse to find an environment that supports their recovery. The law prohibits homes from advertising as registered "clean and sober homes" unless they are registered and in good standing with the Health Department as stated in HRS §321-193.7.

12. Idaho

None.

13. Illinois

Just filed HB 4913 (2017-2018)/SB 3117 (2017-2018), which defines "recovery residence" and requires state registration for listing in

online database and encourages national accreditation from an entity that has developed uniform national standards for recovery residences.

14. Indiana

SB 402/HB 1006 (2017) were recently approved, which define "recovery residences" and require recovery residences to be certified and meet standards established by the Division of Mental Health and Addiction through Administrative Rules. Recovery residences must be certified through a state approved entity, which is yet to be determined, and follow NARR-like standards in order to receive state funding. SB 402 (2017) passed April 25, 2017 and HB 1006 (2017) passed April 28, 2017.

15. Iowa

None.

16. Kansas

None.

17. Kentucky

None.

18. Louisiana

None.

19. Maine

There is a December 2017 newspaper article claiming that a Bill will be filed next session to provide for certification of recovery residences following NARR standards, but no Bill could be found.[30]

20. Maryland

HB 1411 (2016)/SB 1094 (2016) passed which formally approved a credentialing entity to develop and administer a certification process for recovery residences and provides for voluntary certification. Specifically,

[30] Bill to regulate addiction recovery homes moves forward in Legislature, Portland Press Herald (December 14, 2017).

the Maryland State Association for Recovery Residences (M-SARR) was recently formed and offers voluntary certification for recovery and sober homes, which comes with access to some funding for individuals coming out of jail or prison.

21. Massachusetts

Massachusetts passed a voluntary certification program in conjunction with NARR (HB 1828 (2014)). It requires the State of Massachusetts to refuse grants to any home that is not certified. It also bars state-funded addiction treatment programs from referring clients to any recovery residence that has not gone through the program. To be certified, recovery residences must show that they have strict rules against drug use on the property, that they track their residents' progress, and that they organize peer support programs, among other requirements. They also must undergo safety inspections by a state-approved certifying organization. Currently, HB 3207 (2018) is pending which provides for annual safety inspections to ensure that certified homes are not in violation of state and local building codes, bylaws and sanitary codes in order to be on a list of certified alcohol and drug free housing. The pending legislation is moving through committees.

22. Michigan

None.

23. Minnesota

The Minnesota Association of Sober Homes (MASH) formed in 2007 to provide for voluntary minimum standards for recovery residences in the MASH network.[31]

24. Mississippi

None.

25. Missouri

None.

[31] http://mnsoberhomes.org/about-us/

26. Montana

None.

27. Nebraska

None.

28. Nevada

None.

29. New Hampshire

The Governor's Commission on Alcohol Abuse Prevention, Treatment and Recovery was established by the Legislature in 2000 and revised in 2014.[32]

30. New Jersey

In 2014, legislation passed that required recovery residences to alert the next of kin when a client is evicted for relapsing. (Named "Nick's Law" after Nick Rhodes, a 24- year old heroin addict who died after being kicked out of a recovery residence for using drugs). In 2015, the Legislature enacted a law requiring state colleges and universities that have 25% of their student body living on campus to provide a sober housing option by August 2019. N.J.S.A. §C.18A-3B-70. In 2016, the Legislature considered several bills that would: (1) specify that the Department of Human Services may regulate sober living homes and halfway houses as residential substance abuse aftercare facilities and (2) require facility owners and employees to complete background checks (S1962 (2016)/A1911 (2016)), but it does not appear that they passed. In 2018, the Legislature is considering a bill that would create a revolving loan program that provides loans to construct sober houses for eligible applicants who demonstrate that project costs are legitimate and that the sober house will be responsibly managed once it is established (A551 (2018)). Additionally, the Legislature is considering defining sober living residence as "Inherently Beneficial Uses" (A3288 (2018)/ S948 (2018)).

[32] http://www.dhhs.nh.gov/dcbcs/bdas/documents/gc-overview-summary.pdf

31. New Mexico

None.

32. New York

New York is attempting to pass state legislation (A6369 (2017)/ A6422 (2017)) to provide a process for certification and inspections of sober living homes and the establishment of a toll free hotline to respond to complaints. It appears that both bills are still in committees.

33. North Carolina

None.

34. North Dakota

None.

35. Ohio

The Ohio Department of Mental Health and Addiction Services recently set aside $15 Million in grant money for recovery residences that are peer-run and meet certain state criteria in order to entice them to become voluntarily certified.[33]

36. Oklahoma

None.

37. Oregon

Proposed legislation directs the Director of the Department of Consumer and Business Services and Oregon Health Authority to study barriers to effective treatment for and recovery from substance use disorders and to report and make recommendations to the Legislative Assembly by June 30, 2018 (HB 4143 (2018)).

[33] http://www.burlingtoncountrytimes.com/news/recovery-road/some-see-voluntary-certification-as-a-model-to-bring-standards/article-6f3c0640-e483-11e5-bf5d-0b1f2885cabc.html

38. Pennsylvania

Pennsylvania recently approved SB 446 (2017-2018) to require either state licensure or certification in order to be eligible for state funding. The Bill became effective on December 19, 2017.

39. Rhode Island

In 2016, HB8056 was proposed, which would have required NARR certification for all recovery residences that receive referrals from state agencies or state funded facilities. It does not appear to have passed.

40. South Carolina

None.

41. South Dakota

None.

42. Tennessee

Currently, proposed legislation provides for a limit of no more than six people in a residence zoned single-family and authorizes municipalities to adopt an ordinance requiring sober living homes to provide notification to the municipality of certain information regarding the home and establish and comply with an operational plan (HB 1929 (2017-2018)/SB 2214 (2017-2018)). Also, HB 2068 (2017-2018)/SB 2005 (2017-2018) proposes to prohibit false advertising/deceptive marketing by an alcohol and drug treatment facility or a third party.

43. Texas

None.

44. Utah

In May 2014, the State of Utah began requiring that recovery residences be licensed (by amending §§ 62A-2 – 108.2). To qualify, the homes need to have a medical treatment plan and meet minimal staffing guidelines.

45. Vermont

In 2014, SB 5219 was proposed which would have provided voluntary certification and require that any sober house that received funding from the state had to follow certain standards/best practices for operation of the homes. It does not appear to have passed.

46. Virginia

None.

47. Washington

None.

48. West Virginia

None.

49. Wisconsin

Currently proposed legislation defines "sober living residence" and provides funding for them (AB 287 (2017-2018)). This Bill was first filed in 2015 and was re-filed in 2017.

50. Wyoming

None.

C. OBSERVATIONS.

It is worth noting that the states are all diversified in their approaches to addressing this topic. Five states have successfully passed legislation to provide for a voluntary certification of recovery residences (Florida, Hawaii, Indiana, Maryland, and Massachusetts). Two states have created licensing requirements for at least some types of recovery residences (California and Utah). One state has created a requirement that recovery residences alert the next of kin when a client is evicted for relapsing (New Jersey). One state has created a requirement that recovery residences notify cities and counties before they open in their jurisdiction (Arizona). One state is providing funding for recovery residences with no apparent regulations (Wisconsin). Three states are studying the issue of recovery residences (Colorado, New Hampshire, and Oregon). Three states either

have passed legislation, or are considering passing legislation, to address patient brokering and deceptive marketing practices in recovery residences (Florida, Georgia, and Tennessee). The remaining states that have attempted state regulation of recovery residences are trying to either implement a voluntary certification process or have provided for self-regulation that is made more attractive by increased state funding for those that are certified (California, Connecticut, Delaware, Illinois, Minnesota, New York, Ohio, Pennsylvania, Rhode Island, and Vermont).[34]

IV. Conclusion.

A. States and local governments can impose certification requirements on all recovery residences as long as the requirements imposed address health and safety concerns and *benefit* the disabled residents and Oxford Houses are excluded from the mandatory certification requirement.

1. "Oxford Houses" must be excluded from any mandatory regulatory schemes.

a. An Oxford House Charter gives a group of six or more recovering individuals the right to call itself an Oxford House and to use the Oxford House system of operations set forth in the Oxford House Manual, forms and other publications. There is no charge for the charter but it has three conditions: (1) the group must be democratically self-run following the procedures of the Oxford House Manual, (2) the group must be financially self-supporting and pay all its own bills, and (3) the group must immediately expel any resident who returns to using alcohol illicit drugs.[35]

2. Courts have generally stricken regulations imposed upon Oxford Houses.

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[34] Please note that this list may not be all inclusive. The author of this document searched each state's legislative page for pending legislative information and searched the internet using common search terms for statutes/legislation, but may have missed statutes/legislation and/or there may be legislation that has been filed since the date that this document was prepared.

[35] http://www.oxfordhouse.org/userfiles/file/questions_and_answers.php.

B. The National Alliance of Recovery Residences (NARR) has affiliates in 27 states and emerging affiliates in three more states.[36] That is over half of the United States. Those with NARR Affiliates can refer to the standards adopted by those affiliates and require that they be followed as best practices to protect the residents of the homes.

C. If your state does not have a NARR Affiliate, not to worry, you can require that recovery residences in your jurisdiction follow best practices by implementing standards similar to the following:

1. Section 397.487, *Fla. Stat.*, which was established by HB 21 in 2015, requires, among other things:

a. Procedures for Recovery Residences to:

1) Submit the following documents with the completed application and fee:

a) A policy and procedures manual containing:

i. Job descriptions for all staff positions.

ii. Drug-testing procedures and requirements.

iii. A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the individual for whom the medication is prescribed.

iv. Policies to support a resident's recovery efforts.

v. A good neighbor policy to address neighborhood

[36] http://www/info@narronline.org.

complaints and concerns.

vi. Rules for residents.

vii. Copies of all forms provided to residents.

viii. Intake procedures.

ix. Sexual predator and sexual offender registry compliance policy.

x. Relapse policy.

xi. Fee schedule.

xii. Refund policy.

xiii. Eviction procedures and policy.

xiv. Code of ethics.

xv. Proof of insurance.

xvi. Proof of background screening.

xvii. Proof of satisfactory fire, safety and health inspections.

D. It is clear that the requirements under Section 397.487, *Fla. Stat.* are designed to benefit the protected class by protecting residents of recovery residences against fraud, misrepresentation, exploitation and abuse. This is an example of narrowly tailored legislation that furthers the legitimate government interest of providing consumer protection laws for residents of commercial recovery residences who are purchasing a housing service while they are participating in treatment off site. The government interest/intent is to provide the residents of these homes with due process rights afforded to every single residential tenant, to prevent

homelessness, to provide the residents with a safe place to live, and to help prevent addiction relapse.

E. In summary, local governments can pass ordinances that protect residents of sober homes/recovery residences so long as the ordinance *actually benefits* the residents of the homes.