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There is general consensus that co-locating those battling substance abuse in residential settings can help rehabilitation. But communities rarely welcome sober homes into their midst. Laws at the federal, state, and local levels protect recovery facilities against measures aimed at excluding them and codify standards of care for the treatment of recovering residents.

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WHAT EVERY MUNICIPAL ATTORNEY SHOULD KNOW ABOUT THE FIRST AMENDMENT

By: Roger Horner and Ian Williams, Senior Specialists and Legal Editors, Thomson Reuters Practical Law Government Practice Service

No prerogatives are more fundamental to American democracy than those guaranteed by the First Amendment. Whether safeguarding speech, press, or religion, the right to assembly and petition, or a corollary right recognized by the Supreme Court—the freedom of association—local government lawyers are responsible for ensuring that each is protected.

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Regulating Sober Living Homes-A Bicoastal Perspective

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and NORMAN A. DUPONT, *Partner, Ring Bender LLP, Newport Beach, California*



Introduction:
More Americans have died from drug overdose in recent years than died in the Iraq, Afghanistan, and Viet Nam Wars combined.[1] In 2023 alone, more than 112,000 people lost their lives due to drug overdose in the United States according to the Centers for Disease Control and Prevention.[2] Given this sobering statistic, it is clear that for those struggling to recover from substance use disorder, participation in rehabilitative programs can be instrumental. Sober homes/recovery residences, where recovering residents live with others on a similar journey, provide a beneficial environment to help people recover instead of becoming another statistic, but can also present concerns for occupants of the homes as well as for surrounding communities. Advising our clients on how to protect the health, safety, and welfare of *all* residents is of the utmost importance. This article provides a brief examination of federal and state regulations governing sober homes/recovery residences and the legal issues involved.

I. Basic Federal Protections. 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.[3]

II. Federal Case Law. 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.[4]

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 Supreme 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."[5]

2. The Eighth Circuit in ***Oxford House–C v. City of St. Louis*** upheld an ordinance allowing no more than eight (8) unrelated persons in a group home and three (3) in a single-family dwelling.[6]

3. The Eastern District of New York 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.[7]

4. The Western District of Washington held in ***Children's Alliance v. City of Bellevue*** that a city ordinance limiting homes to six (6) residents, two (2) caretakers and minor children was invalid.[8]

5. In ***Jeffrey O. v. City of Boca Raton,*** the Southern District of Florida 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." [9]

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 ***Schwarz v. City of Treasure Island,***[10] the Eleventh Circuit 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.[11] 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.[12]

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 or saturation in a particular city or 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,[13] 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 Eighth Circuit 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.[14]

3. The Sixth Circuit held in ***Larkin v. State of Mich. Dept. of Social Services*** 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.[15]

4. In ***Harding v. City of Toledo,*** the Northern District of Ohio held that a five hundred foot (500') distance requirement between "adult family homes" was reasonable and served the public interest of controlling the concen-

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Norman (Norm) Dupont advises clients in complex litigation, environmental and municipal law matters. He has tried environmental, antitrust, contract, labor, tort, and other cases and has argued environmental and municipal law appeals. Norm is active in the ABA and local bar organizations, was named "Lawyer of the Year" for Environmental Law-Orange County for 2023, and serves as an advisor on constitutional law matters to ABA's Section of Environment, Energy & Resources. He served from 2019-2022 on the ABA Standing Committee on Publications Oversight. Norm actively participates in his community, and serves on the Board of Directors for Women Against Gun Violence, a Los Angeles based group which supports sensible gun regulation.

tration of such homes.[16]
5. One legal treatise provides that clustering community residences-especially recovery residences-on a block and neighborhood 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 incompetent and unethical operators, and protect this vulnerable population from abuse, mistreatment, exploitation, enslavement, and theft.[17]
6. Recently, the Eleventh Circuit upheld a distance limitation of one thousand feet (1000') between community residences in the case of ***Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale*** because it permitted certified and/or licensed community residences to house up to ten (10) residents as of right (exceeding the City's definition of family that provided for no more than three (3) unrelated persons).[18]
7. The United States District Court for the Central District of California stated in ***SoCal Recovery, LLC v. Costa Mesa,***[19] "Because SoCal has presented evidence to suggest that the 650-foot separation requirement substantially impacted only disabled persons in Group Homes rather than nondisabled persons in boarding houses, it has made a prima facie case of disparate impact discrimination;" however this issue is currently being considered by the Ninth Circuit in ***The Ohio House, LLC v. City of Costa Mesa and Brandon Stump,***[20] so we will have to wait and see what happens.

E. Reasonable Accommodations. The 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).

1. Are cities required to have such procedures? Yes.[21]
2. 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.[22]
3. An accommodation is not reasonable if it imposes undue financial and administrative burdens on the government or requires a fundamental alteration in the zoning scheme[23].
(a) 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. 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.[24]

4. Local Governments may require annual re-certification of ongoing need for reasonable accommodations once granted. People move; things change. A Ninth Circuit case held that a policy that required disabled participants to provide updated medical information every three years recertifying that they are disabled did not discriminate against the participant on the basis of his disability. [25]

F. Governments Can Pass Housing Rstrictions on Sober Homes/Recovery Residences That Are Narrowly Tailored to Serve a Legitimate State Interest. 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. 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. In contrast, regulatory schemes that do not provide an actual benefit to the disabled residents have been stricken.
1. In *Bangarter v. Orem City Corp.*, the Tenth Circuit stated, "the Fair Housing Amendments Act should not be interpreted to preclude special restrictions upon the disabled that are really beneficial to, rather than discriminatory against, the handicapped."[26]
2. In ***Familystyle of St. Paul, Inc. v. City of St. Paul,*** the Eighth Circuit held that the relevant question is whether legislation is rationally related to a government purpose.[27]
3. 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.[28]
4. 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 a discriminatory impact.[29]

G. Policy Statements. Federal and state authorities have issued guidance to recovery residence operators.
1. 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, the agencies stated:

> Operators of group homes for 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.[30]

2. 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.[31]
>
> 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 Families] license has no oversight other than fire code compliance. This has proven to be extremely harmful to patients.[32]

H. 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 District 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.[33]

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 FHA and Title II of the 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.[34]

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 potential danger to the residents that is presented by the risk of fires, and therefore Plaintiffs are entitled to their requested accommodation."[35]

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

A. Federal Legislation.

1. H.R. 6, "Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act or the Support for Patients and Communities Act" passed into law on October 24, 2018 and provided, in the context of housing, a requirement for the Substance Abuse and Mental Health Services Administration (SAMHSA) to develop best practices for operating recovery housing.[36]

2. SAMHSA issued "Best Practices for Recovery Housing" on September 1, 2023.[37] Importantly, SAMHSA recommended that recovery housing entities be certified stating, "Certification is one noted remedy to address unethical and illegal practices in recovery housing. The National Alliance for Recovery Residences (NARR) has developed the most widely referenced national standards to ensure well-operated, ethical, and supportive recovery housing."[38]

B. State Laws/Legislation. As indicated below, states are diversified in their approaches to sober homes/recovery residences. Fourteen states provide for voluntary certification of sober homes/recovery residences (Colorado, Delaware, Florida, Indiana, Maine, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, Ohio, Rhode Island, Texas, and West Virginia). Four have created licensing requirements for at least some types of sober homes/recovery residences (Arizona, California, Louisiana, and Pennsylvania). Two require compliance with state law without requiring any licensing or certification (Minnesota and Utah).

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Sober Homes *cont'd from page 9*

One requires that sober homes/recovery residences alert the next of kin when a client is evicted for relapsing (New Jersey). Two require that sober homes/recovery residences notify cities and counties before they open in their jurisdiction (Arizona and Tennessee). Two are studying the issue of sober homes/recovery residences (Illinois and Massachusetts). Five require registration with the state simply for notice purposes with no apparent certification or licensing requirements (Connecticut, Hawaii, Illinois, Montana, and Wisconsin). Four address patient brokering and deceptive marketing practices in sober homes/recovery residences (Connecticut, Florida, Georgia, and Tennessee), and two passed legislation to provide that sober homes/recovery residences are prohibited as a home-based business (Kansas and Oklahoma). The remaining states appear to have nothing in their codes addressing sober homes/recovery residences (Alabama, Alaska, Arkansas, Idaho, Iowa, Kentucky, Michigan, Mississippi, Nebraska, Nevada, New Mexico, North Carolina, North Dakota, Oregon, South Carolina, Vermont, and Wyoming).[39]

1. Arizona

ARIZ. REV. STAT. § 36-2062 passed in 2018 requiring mandatory licensure of all sober living homes by an approved national organization that will contract with the Department. SB 1361/HB 2317 (2024) is currently pending and would provide for verification from local jurisdictions regarding compliance with all zoning, building, fire, and licensing ordinances.

2. California

California has licensing requirements for recovery residences (CAL. 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 2574 (2024) to provide that a sober living home in a neighborhood zoned for residential use need not be considered a residential use of property when evidence demonstrates that the sober living home is an integral part of a licensed drug treatment facility located elsewhere, and AB 1438 (2024) to provide that the use of drugs or alcohol, without other lease violations is not reason for eviction.

3. Colorado

Colorado has certification requirements contained in COLO. REV. STAT. § 27-80-129, which provides that effective January 1, 2020, a person shall not operate a recovery residence or sober living home unless the facility is certified, the home is an Oxford House, the home has been operating for more than 30 years, or it is a community-based organization that provides reentry services as described in COLO. REV. STAT. §17-33-101(7). Colorado is currently attempting to pass legislation (SB 24-048 (2024) that provides that recovery residences, sober living facilities, and sober homes are residential uses of land for zoning purposes.

4. Connecticut

Connecticut requires each certified 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. Further, it provides penalties for falsely advertising certification status. (CONN. GEN. STAT. § 179-716.

5. Delaware

The state recently passed a law (HS 1 for HB 114 as amended by SA 1 (2023) that provides for voluntary certification of recovery residences and treats certified recovery residences the same as single-family residences for zoning purposes.

6. 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, and clarified the law regarding patient brokering in the context of recovery residences. In addition, in 2021, legislation passed clarifying fire and building inspection requirements providing that a single or two-family dwelling that is a certified recovery residence or Oxford House under the Florida Fire Protection Code and does not have a change in occupancy under the Florida Building Code may not be reclassified solely due to such use. In 2023, the Legislature passed Proviso #1901 to provide funding for a statewide study to be completed to support a zoning template for local governments in Florida. The study is ongoing, but it is expected to be completed in June 2024 and we expect for the zoning template to be filed as draft legislation for the 2025 legislative session. CS/HB 1065 and CS/SB 1180 (2024) recently passed to provide that a local ordinance or regulation may not further regulate the duration of a resident's stay in a certified recovery residence within a multifamily zoning district after June 30, 2024. Said provision is set to expire July 1, 2026.

7. Georgia

GA. CODE §26-5-80 prohibits patient brokering and kickbacks.

8. 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 HAW. REV. STAT. §321-193.7. Currently, there is legislation pending (SB 2642/HB 2750 (2024)) that will provide for mandatory registration including the requirement that a public information meeting be held before locating clean and sober homes in counties with a population of 500,000 as well as proof of compliance with local zoning.

9. Illinois

ILL. COMP. STAT. § 55-40 defines "recovery residence" and provides for state registration for listing in an online database and encourages national accreditation from an entity that has developed uniform national standards for recovery residences. Currently, there is pending legislation (HB 2962 (2024)) to provide for 1 year for the Department to establish minimum standards and requirements for the licensure of recovery residence and impose penalties for failure to meet those standards.

10. Indiana

IND. CODE § 12-7-2-158.2 and IC -12-21-2-3 as amended by P.L. 35-2016, Section 56 together 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.

11. Kansas

HB 2704 (2024) is currently before the legislature and provides that a no-impact home-based business shall not be used to operate a structured sober living home.

12. Kentucky

HB 462 (2024) is pending before the Senate, which will provide for mandatory certification of recovery residences.

13. Louisiana

LA. REV. STAT. § 40: 2159.1 provides for residential substance use disorder facilities to be licensed and provides for onsite access to one form of FDA approved opioid agonist treatment.

14. Maine

Recovery residences must be certified to receive contracts and housing assistance in accordance with ME. REV. STAT. tit. 5 §20057.

15. Maryland

HB 1411 (2016)/SB 1094 (2016) approved a credentialing entity to develop and administer a certification process for recovery residences with certification required for any recovery residence that receives state funds, operates as a "certified" recovery residence or is advertised as "certified."

16. Massachusetts

HB 2004 (2024) is pending, which provides for the establishment of a special task force to investigate best practices for housing and HB 2014 (2024), which provides for the establishment of a Bureau of Substance Addiction Services to determine the regional need for recovery housing throughout the commonwealth including locations, number of occupants, and municipal zoning. Additionally, MASS. GEN. LAWS Ch.123 § 18A provides for voluntary training and an accreditation program for operators of alcohol and drug free housing.

17. Minnesota

MINN. STAT. § 254B.181, provides that all sober homes must comply with applicable state laws and regulations and local ordinances related to maximum occupancy, fire safety, and sanitation. Additionally, SF 3973 and HF 3954 (2024) are currently pending and propose to amend the statute to allow sober home residents to allow legally prescribed medication as directed by a licensed prescriber.

18. Missouri

MO. REV. STAT. 9 § 30-3.310 requires certification for every recovery support organization to maintain a contract with the department, to serve Medicaid individuals, and to serve individuals whose referral sources require the provider to be certified by the department.

19. Montana

SB 94 was passed last year (2023) and provides, among other things, that a recovery residence must register with the Department of Public Health and Human Services and must meet state and municipal standards related to a residence's dwelling size and occupancy, including, but not limited to, safety requirements, building codes, zoning regulations, and local ordinance requirements. It also provides that the Department of Health and Human Services must indicate which recovery residences are certified on its website.

20. Nebraska

LB 208 (2023) was filed last year and reintroduced this year and it provides that, a county may adopt or enforce an ordinance that prohibits operating a short-term rental only if the law prohibits the use of a short-term rental for the purpose of operating a structured sober living home.

21. New Hampshire

N.H. REV. STAT. § 172-B:2 provides for voluntary certification. Further N.H. Rev. Stat. § 153:10-d provides that an owner or operator of a recovery house which is in compliance with rules adopted by the Commissioner of Health and Human Services may apply to the State Fire Marshal and may be granted an exemption under N.H. REV. STAT. § 153:5, IV from certain requirements of the state fire code provided that certain minimum requirements are in place.

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22. New Jersey

A3977 (2024) is pending, which provides for a definition of "Cooperative sober living residence" and requires the Commissioner of the Department of Community Affairs to publish on the department's website a list of each licensed cooperative sober living residence in the state. A3978 (2024) is also pending and provides for the establishment of a "Substance Use Disorder and Addiction Treatment Best Practices Task Force" to study and present a report of its findings and recommendations to the Governor no later than 2 years after the organization of the task force.

Next A3929 (2024) would provide for preliminary approval of cooperative sober living residences by a municipality before the issuance of a license. Then S252 (2024) provides for the requirement that cooperative sober living residences must obtain approvals from zoning, fire, health, and building authorities before a license can be approved by the state. Also, A2198 (2024) provides that the Department of Human Services has the authority to regulate sober living homes and requires background checks and other protections for residents. A3230 (2024) requires the Department of Community Affairs to approve the credentialing entity to develop and administer a certification program. While A3974 (2024) prohibits the use of deceptive marketing practices by substance use disorder treatment providers.

Currently, N.J. REV. STAT. § 26:2G-25 provides that no sober living home can deny a resident the ability to use prescription medicine and requires the homes to provide notice to a patient's next of kin whenever the patient voluntarily withdraws or is involuntarily evicted from such facility.

23. New York

SO3349 (2024) proposes to create a certified recovery residences task force to establish best practice guidelines for certified recovery living residences that illustrated the most appropriate and effective environment for persons recovering from a chemical dependency. SO6094 (2024) would define certified recovery residences and then then require the Chief Executive Officer of a Municipality be notified in writing as to the address, number of residents, type of community residence, and community support requirements of the program. Further, A5547 (2024) provides for the definition of "Sober living homes" and provides for certification of Sober living homes.

24. Ohio

H.B. 227 and S.B. 105 (2024) provides that the Ohio Department of Mental Health and Addiction Services shall monitor the operation of recovery housing in this state by doing either of the following: (1) certifying recovery residences through a process established by the department or accepting accreditation or its equivalent from the Ohio affiliate of the National Alliance for Recovery Residences; Oxford House, Inc., or any other organization that is designated by the department. Further, it provides for mandatory certification or accreditation after January 1, 2025.

Also, H.B. 33 (2023) passed last year and provides that beginning January 1, 2025 no person or government entity shall advertise or represent any residence or other building to be a recovery residence unless the residence is registered and regulated by the Department of Rehabilitation and Correction under 2967.14 of the Revised Code (pertaining to Halfway Houses or Community Residential Centers).

25. Oklahoma

SB 46 (2024) is currently pending, which would provide that a home-based business for the purpose of operating a structured sober living home is prohibited. Also, 43A OKLA. STAT. tit. 43A § 3-417.1 prohibits any transitional living center or halfway house from being located within 1,000 feet of any public or private elementary or secondary school.

26. Oregon

ORS 90.243 defines qualifications for drug and alcohol free housing.

27. Pennsylvania

Pennsylvania approved SB 446 (2017-2018)/HB 119 (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. Then in 2021, 28A PA. CONS. STAT. Ch. 717 was approved for mandatory licensure of "drug and alcohol recovery houses" to avoid confusion between certification of residences versus licensure for treatment facilities and to provide stricter required standards for drug and alcohol recovery houses.

28. Rhode Island

The Rhode Island legislature approved SB 2225 (2018)/HB 8212 (2018), in 2018, to require the Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals to establish and promulgate the overall Plans, Policies, Objectives, and Priorities for state Substance-abuse Education, Prevention and Treatment and to voluntarily certify recovery housing directly, or through a contracted entity, as defined by department guidelines, which includes adherence to using National Alliance for Recovery Residences (NARR) standards. Certification is required to receive referrals and/or state funds.

29. South Carolina

SB 445 (2024) is currently pending and will provide for the creation of a voluntary certification program for recovery housing based upon nationally recognized standards, such as those established by the National Alliance for Recovery Residences (NARR) and Oxford House.

30. Tennessee

TENN. CODE § 6-54-145 provides a definition for "Sober living home" and further provides that a municipality may adopt an ordinance encouraging Sober living homes to be chartered (Oxford Home) or become a not-for-profit that

prescreens new affiliates and requires them to adhere to a code of ethics. Further, TENN. CODE § 33-2-1402 provides that the Department of Mental Health and Substance Abuse Services shall establish and maintain on its website a list of certified organizations and those that are not certified are required to post an 11"x17" sign providing they are not certified. It also prohibits deceptive marketing.

31. Texas
HB 4431 (2023) recently passed providing for voluntary accreditation of recovery housing. The Health and Human Services Commission shall adopt minimum standards for accreditation as a recovery house that are consistent with the quality standards established by the National Alliance for Recovery Residences and the Oxford House Incorporated. It also prohibits patient brokering and deceptive marketing. This bill became effective on September 1, 2023. Further, a recovery house that is not accredited in accordance with this bill will be ineligible for state funding effective September 1, 2025. Additionally, TEX. REV. CIV. STAT. § 229.151 defines "structured sober living homes" and TEX. REV. CIV. STAT. § 229.152 provides that a municipality may adopt standards for structured sober living homes that comply with state and federal Fair Housing laws and the Americans with Disabilities Act of 1990.

32. Utah
UTAH ADMIN. CODE r. 501-18 provides basic health and safety standards for recovery residences and minimum administration requirements.

33. Virginia
VA. CODE § 37.2 – 431.1 defines "recovery residence" and provides for mandatory certification by the Department of Behavioral Health and Development Services according to the standards set forth by the National Alliance for Recovery Residences (NARR) and Oxford House and minimum square footage requirements to be met.

36. Washington
WASH. REV. CODE § 41.05.760 provides that the Washington State Healthcare Authority shall establish and maintain a registry of approved recovery residences and that the Authority may contract with a nationally recognized recovery residence certification organization based in Washington to maintain the registry.

35. West Virginia
SB 301 (2024) is currently pending and provides that tenancy for eviction purposes under the landlord and tenant laws include those persons residing in a sober living home. HB 4943 and SB 541 (2024) provide that a municipality may limit or prohibit the use of a home-based business for the purpose of operating or maintaining a structured sober living home. SB 491 (2024) expands the definition of "recovery residence" and references the West Virginia Alliance for Recovery Residences in the context of referencing the entities the Department of Health can contract with to have them provide for voluntary certification of recovery residences through a contract with the Department of Health based upon the standards determined by the National Alliance for Recovery Residences (NARR). In addition, it provides that a municipality or county may require verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing.

36. Wisconsin.
WIS. STAT. § 46.234 defines "recovery residence" and provides that the Department of Human Services shall establish and maintain a registry of approved recovery residences. Registration is required for all referrals and state funding.

C. Oxford Houses. States and local go ernments cannot impose certification requirements on "Oxford Houses." 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 or illicit drugs.[40] Courts have generally stricken regulations imposed on Oxford Houses.

IV. Best Practices. Regardless of whether a state already has implemented sober home/recovery residence legislation or is yet to do so, there are resources which provide best practices to guide them.

A. National Alliance for Recovery Residences. NARR has affiliates in 30 states and emerging affiliates in nine more states.[41] 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.

B. State Model. 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. FLA. STAT. § 397.487, which was established by HB 21 in 2015, requires, among other things that applicants to operate recovery residences must submit a policy and procedures manual containing:

a) Job descriptions for all staff positions.
b) Drug-testing procedures and requirements.
c) A prohibition on the premises against alcohol, illegal drugs, and the use of prescribed medications by an individual other than the

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Sober Homes *cont'd from page 13*

individual for whom the medication is prescribed.
d) Policies to support a resident's recovery efforts.
e) A good neighbor policy to address neighborhood complaints and concerns.
f) Rules for residents.
g) Copies of all forms provided to residents.
h) Intake procedures.
i) Sexual predator and sexual offender registry compliance policy.
j) Relapse policy.
k) Fee schedule.
l) Refund policy.
m) Eviction procedures and policy Code of ethics.
n) Proof of insurance.
o) Proof of background screening
p) Proof of satisfactory fire, safety and health inspections.

C. Legal standards. It is clear that the requirements under FLA. STAT. § 397.487, 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.

V. Final Thoughts as to What You Can Do at the Local Level. Local government lawyers can assist their jurisdictions with sober home/recovery residence issues as follows

- Educate residents and elected officials as to applicable Federal and State Law.
- Create a definition of "family," if you don't have one already.
- Create a Reasonable Accommodation process, if you don't have one already and require annual recertification of the need for the reasonable accommodation.

- If you believe your city has issues with overconcentration of sober homes/ recovery residences, then we encourage you to get a professional study completed before creating any regulations imposing distance requirements and that study and any resulting ordinances must take into account *all types of group homes for people with disabilities, not just homes for people recovering from substance use disorder.*

- Create best practices similar to those listed above as advised by NARR and/or those in FLA. STAT. § 397.487, and require that sober homes/recovery residences follow those standards if seeking to house more than the allotted number of people in a home per your city's definition of family.

- Keep in mind that any regulations imposing certification requirements on sober homes/ recovery residences must address health and safety concerns and *benefit* the disabled residents and Oxford Houses, must be excluded from any certification requirement.

CONCLUSION:

In summary, sober homes and recovery residences are protected against exclusion and limitation by a spectrum of federal regulations, guidance, and case law, and in many states the operators of those facilities are subject to some modicum of oversight and increasing certification requirements. These restrictions are generally oriented towards the laudable societal goal of protecting members of the community that are in recovery from substance use disorder. Local government attorneys need to be aware of the relevant legal parameters as they play a role in that process.

NOTES

1. https://.dcas.dmdc.osd.mil/dcas/app/conflictCasualties (last viewed April 15, 2024).
2. https://www.cdc.gov/nchs/nvss/vsrr/drug-overdose-data.htm (last viewed on April 15, 2024).
3. 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).
4. Caron Foundation of Florida, Inc. v. City of Delray Beach, 879 F. Supp.2d 1353 (S.D. Fla. 2012).
5. City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995).
6. Oxford House–C v. City of St. Louis, 77 F.3d 249, 252 (8th Cir. 1996).
7. Human Resource Research and Management Group, Inc. v. County of Suffolk, 687 F.Supp.2d 237, 265-266 (E.D.N.Y. 2010).
8. Children's Alliance v. City of Bellevue, 950 F. Supp. 1491, 1499 (W.D. Wash. 1997).
9. Jeffrey O. v. City of Boca Raton, 511 F. Supp.2d 1339, 1358-1359 (S.D. Fla. 2007).
10. Schwarz v. City of Treasure Island, 544 F.3d 1201 (11th Cir. 2008).
11. *Id.*
12. Schwarz v. City of Treasure Island, 2010 WL 2869473 (M.D. Fla. 2010).
13. 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).

14. Familystyle of St. Paul, Inc. v. City of St. Paul, 923 F.2d 91, 92 (8th Cir. 1991), reh'g denied (Feb 15, 1991).
15. Larkin v. State of Mich. Dept. of Social Services, 89 F.3d 285, 290-291 (6th Cir.1996).
16. Harding v. City of Toledo, 433 F. Supp. 2d 867, 873-874 (N.D. Ohio 2006).
17. Daniel Lauber, *Principles to Guide Zoning for Community Residences for People with Disabilities in Delray Beach, Florida*, 3d Ed. at 5, (River Forest IL. Planning/Communications, August 2017).
18. Sailboat Bend Sober Living, LLC v. City of Fort Lauderdale, 46 F.4th 1265 (11th Cir. 2022).
19. SoCal Recovery, LLC v. City of Costa Mesa, 2023 WL 8263377, at 10 (C.D. Cal. 2023).
20. The Ohio House, LLC v. City of Costa Mesa and Brandon Stump, no. 22-56181 (9th Cir. 2023).
21. *Jeffrey O., supra* note 9.
22. *Schwarz, supra* note 8 at 1219.
23. School Bd. of Nassau County v. Arline, 480 US 273, 288 n.17, 107 S.Ct.1123, 94 L.Ed.2d 307 (1987), *Schwarz, supra* note 10 at 1220.
24. Bryant Woods Inn, Inc. v. Howard County, 124 F.3d 597 (4th Cir. 1997).
25. Weinreich v. Los Angeles County Metropolitan Transp. Authority, 114 F.3d 976 (9th Cir. 1997), cert. denied, Weinreich v. Los Angeles County Metropolitan Transp. Authority, 522 U.S. 971 (1997).
26. Bangarter v. Orem City Corp., 46 F.3d 1491, 1504 (10th Cir. 1995).
27. *Familystyle, supra* note 14.
28. Human Resource Research and Management Group, Inc. v. County of Suffolk, 687 F. Supp. 2d 237 (E.D.N.Y. 2010).
29. Tsombanidis v. West Haven Fire Department, 352 F.3d 565 (2d Cir. 2003) (superseded by regulation as stated in Perricone-Bernovich v Tohill, 843 Fed.Appx. 419 (2d Cir. 2021)).
30. *Joint Statement*, *supra* note 11.
31. Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry, The Palm Beach Grand Jury in the Circuit Court of the 15th Judicial Circuit In and For Palm Beach County, Florida, (Dec. 8, 2016).
32. *Id.*
33. Nevada Fair Housing Center, Inc. v. Clark County, 565 F. Supp. 2d 1178 (D. Nev. 2008).
34. Tsombanidis, *supra* note 29.
35. Oxford House, Inc.. v. H. "Butch" Browning, State Fire Marshal, No. 3:15-cv-00282-BAJ-EWD (M.D. La. 2017).
36. Public Law No. 115-271 (10/24/2018) Congress.gov/bill/115th-congress/house-bill/6 (last visited on March 3, 2024).
37. Store.samhsa.gov/sites/default/files/pep23-10-00-002.pdf (last visited on March 3, 2024.)
38. *Id.* at 10.
39. Please note that this list represents only a snapshot at a point in time, is not comprehensive, and should not be taken to constitute legal advice or guidance. The authors 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.
40. http://www.oxfordhouse.orgq-uestions_and_answers.#q3 (last viewed March 3, 2024).
41. http://www/info@narronline.org (last viewed March 3, 2024).

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