

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 479

SPONSOR(S): Caruso

TIED BILLS: **IDEN./SIM. BILLS:** SB 704

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR or BUDGET/POLICY CHIEF
1) Children, Families & Seniors Subcommittee	15 Y, 0 N	Morris	Brazzell
2) Health Care Appropriations Subcommittee	15 Y, 0 N	Fontaine	Clark
3) Health & Human Services Committee		Morris	Calamas

SUMMARY ANALYSIS

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

DCF licenses substance abuse treatment providers. The bill requires substance abuse service provider applicants to include in their licensure applications the names and locations of any recovery residences to which the applicant plans to refer patients or from which the applicant plans to accept patients. The bill also requires current licensees to report such information to DCF by July 1, 2022. Licensees must report any changes in referral information to DCF within 30 business days. The bill authorizes DCF to issue administrative fines of \$1,000 per violation of such reporting requirement and suspend or revoke a service provider's license for repeat violations.

Current law establishes statutory rights for individuals receiving substance abuse services from any service provider, including the right to possess clothing and other personal effects. Service providers are permitted to take only temporary custody of an individual's personal effects, and may do so only when medically necessary or for safety reasons. The bill requires service providers to return any personal effects taken from an individual to that individual upon discharge, even if the discharge is against medical advice.

Florida law allows voluntary certification of recovery residences and recovery residence administrators, and DCF has approved two credentialing entities to do so. Certified recovery residence administrators (CRRAs) are responsible for overall management of a recovery residence, as well as supervision of residents and staff. The administrators are currently prohibited from managing more than three recovery residences at any given time.

The bill requires recovery residence administrators, as part of the certification process, to demonstrate the ability to effectively and appropriately respond to the needs of residents, maintain residence standards, and meet all other current statutory certification requirements. Under the bill, a CRRAs who demonstrates such ability is permitted to actively manage more than 50 residents, instead of three residences, at once only if the CRRAs provides written justification to the credentialing entity and the credentialing entity approves the request. However, the bill prohibits a CRRAs from managing more than 100 residents under any circumstances.

The bill has an insignificant, indeterminate, positive fiscal impact on DCF and no fiscal impact on local governments.

The bill is effective upon becoming a law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. EFFECT OF PROPOSED CHANGES:

Background

Substance Abuse

Approximately 1.1 million Floridians have a substance use disorder.¹ Substance abuse refers to the harmful or hazardous use of psychoactive substances, including alcohol and illicit drugs.² Substance use disorders occur when the chronic use of alcohol or drugs causes significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.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 use disorder.⁴ Brain imaging studies of persons with substance use disorders show physical changes in areas of the brain that are critical to judgment, decision making, learning and memory, and behavior control.⁵

According to the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition, a diagnosis of substance use disorder is based on evidence of impaired control, social impairment, risky use, and pharmacological criteria.⁶ The most common substance use disorders in the United States are from the use of alcohol, tobacco, cannabis, stimulants, hallucinogens, and opioids.⁷

Substance Abuse Treatment in Florida

DCF administers a statewide system of safety-net services for substance abuse and mental health (SAMH) prevention, treatment, and recovery.

DCF provides treatment for substance abuse through a community-based provider system that offers detoxification, treatment and recovery support for adolescents and adults affected by substance misuse, abuse or dependence:⁸

- **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.⁹
- **Treatment Services:** Treatment services¹⁰ include a wide array of assessment, counseling, case management, and support services that are designed to help individuals who have lost their abilities to control their substance use on their own and require formal, structured intervention and support. Some of these services may also be offered to the family members of the individual in treatment.¹¹
- **Recovery Support:** Recovery support services, including transitional housing, life skills training, parenting skills, and peer-based individual and group counseling, are offered during

¹ Substance Abuse and Mental Health Administration, *Behavioral Health Barometer, Florida, Volume 6*, (2020), https://www.samhsa.gov/data/sites/default/files/reports/rpt32826/Florida-BH-Barometer_Volume6.pdf (last visited Jan. 5, 2022).

² World Health Organization, *Substance Abuse*, http://www.who.int/topics/substance_abuse/en/ (last visited Jan. 5, 2022).

³ Substance Abuse and Mental Health Services Administration, *Substance Use Disorders*, <http://www.samhsa.gov/disorders/substance-use> (last visited Jan. 5, 2022).

⁴ National Institute on Drug Abuse, *Drugs, Brains, and Behavior: The Science of Addiction*, <https://www.drugabuse.gov/publications/drugs-brains-behavior-science-addiction/drug-abuse-addiction> (last visited Jan. 5, 2022).

⁵ Id.

⁶ *Supra*, note 4.

⁷ Id.

⁸ Department of Children and Families, *Treatment for Substance Abuse*, <https://www.myflfamilies.com/service-programs/samh/substance-abuse.shtml> (last visited Jan. 5, 2022).

⁹ Id.

¹⁰ 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.

¹¹ *Supra*, note 8.

and following treatment to further assist individuals in their development of the knowledge and skills necessary to maintain their recovery.¹²

Substance Abuse Service Provider Licensure

DCF regulates substance abuse treatment by licensing service providers and individual service components under ch. 397, F.S., and rule 65D-30, F.A.C. Licensed service components include a continuum of substance abuse prevention,¹³ intervention,¹⁴ and clinical treatment services.¹⁵ DCF uses a tier-based system of classifying violations and may issue administrative fines up to \$500 for violations committed by a licensee.¹⁶

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.¹⁷ "Clinical treatment services" include, but are not limited to, the following licensable service components:¹⁸

- 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; and
- Residential treatment.

Applicants for licensure as a substance abuse service provider must submit an application to DCF and include, at a minimum:¹⁹

- 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,²⁰

¹² Id.

¹³ Section 397.311(26)(c), F.S. Prevention is a process involving strategies that are aimed at the individual, family, community, or substance and that preclude, forestall, or impede the development of substance use problems and promote responsible lifestyles. See also, Department of Children and Families, *Substance Abuse: Prevention*, <https://www.myflfamilies.com/service-programs/samh/prevention/index.shtml> (last visited Jan. 5, 2021). Substance abuse prevention is best accomplished through the use of ongoing strategies such as increasing public awareness and education, community-based processes and evidence-based practices. These prevention programs are focused primarily on youth, and, in recent years, have shifted to the local level, giving individual communities the opportunity to identify their own unique prevention needs and develop action plans in response. This community focus allows prevention strategies to have a greater impact on behavioral change by shifting social, cultural and community environments.

¹⁴ Section 397.311(26)(b), F.S. Intervention is structured services directed toward individuals or groups at risk of substance abuse and focused on reducing or impeding those factors associated with the onset or the early stages of substance abuse and related problems.

¹⁵ Section 397.311(25), F.S.

¹⁶ Section 397.415, F.S.

¹⁷ *Supra*, note 15.

¹⁸ Section 397.311(25)(a), F.S.

¹⁹ Section 397.403, F.S.

²⁰ Service providers operating under a regular annual license shall have 18 months from the expiration date of their regular license within which to meet local zoning requirements. Applicants for a new license must demonstrate proof of compliance with zoning requirements prior to the department 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; and
- 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.

Current law does not require applicants for licensure as a substance abuse provider or current licensees to include the names and locations of any recovery residence to which the applicant plans to refer patients and from which the applicant plans to receive patient, and no penalty exists for such action.

Rights of Individuals Receiving Substance Abuse Treatment

Current law establishes statutory rights for individuals receiving substance abuse services, including the right to dignity, non-discriminatory services, quality services, confidentiality, counsel, and habeas corpus.²¹ Specifically, an individual is entitled to the right to possess clothing and other personal effects.²² Service providers are permitted to take only temporary custody of an individual's personal effects, and may do so only when medically necessary or for safety reasons. Providers must document both the reason for taking custody and a list of personal effects taken in the patient's clinical record.²³ Service providers who violate these rights are liable for damages, unless acting in good faith, reasonably, and without negligence.²⁴

Current law does not require substance abuse service providers to return any personal effects taken from an individual to that individual upon discharge, even if the discharge is against medical advice.

Recovery Residences

Recovery residences (also known as "sober homes" or "sober living homes") are alcohol- and drug-free living environments for individuals in recovery who are attempting to maintain abstinence from alcohol and drugs.²⁵ These residences offer no formal treatment (though they may mandate or strongly encourage attendance at 12-step groups) and are self-funded through resident fees.²⁶

Section 397.311(37), F.S., defines a recovery residence as a residential dwelling unit, or other form of group housing, offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment.

Recovery residences can be located in single-family and two-family homes, duplexes, and apartment complexes. Most recovery residences are located in single-family homes, zoned in residential neighborhoods.²⁷

Recovery Residence Certification

²¹ Section 397.501, F.S.

²² Section 397.501(5), F.S.

²³ Id.

²⁴ Section 397.501(10), F.S.

²⁵ Douglas L. Polcin, Ed.D., MFT, and Diane Henderson, B.A., *A Clean and Sober Place to Live: Philosophy, Structure, and Purported Therapeutic Factors in Sober Living Houses*, 40(2) J Psychoactive Drugs 153–159 (June 2008).

²⁶ Id.

²⁷ Hearing before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary, House of Representatives, One Hundred Fifteenth Congress, Sept. 28, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115hhrg33123/html/CHRG-115hhrg33123.htm>. See also The National Council for Behavioral Health, *Building Recovery: State Policy Guide for Supporting Recovery Housing* (2017), https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18_Recovery-Housing-Toolkit_5.3.2018.pdf?dof=375ateTbd56 (last visited Jan. 5, 2022).

Florida established voluntary certification programs for recovery residences and recovery residence administrators, implemented by private credentialing entities.²⁸ Prior to certification programs, recovery residences were generally unregulated, engaging in patient brokering and deceptive marketing practices.²⁹ Under the voluntary certification program, the Department of Children and Families (DCF) approved two credentialing entities to design the certification programs and issue certificates: the Florida Association of Recovery Residences certifies the recovery residences and the Florida Certification Board (FCB) certifies recovery residence administrators.³⁰

Certified recovery residence administrators (CRRAs) are individuals responsible for the overall management of a recovery residence, as well as the supervision of residents and paid or volunteer staff.³¹ Prior to obtaining certification, CRA applicants must successfully undergo a level 2 background screening pursuant to ch. 435, F.S.³² Additionally, the FCB currently requires CRRAs to:³³

- Hold at least a high school diploma, GED, or equivalent;
- Undergo 10 hours of on-the-job supervision of the applicant's performance of related recovery residence administrator, manager, or residential management services within a recovery residence setting;
- Obtain three professional letters of recommendation;
- Pass an exam administered by the FCB;
- Complete 10 hours of continuing education annually; and
- Apply for certification renewal annually.

Current law prohibits CRRAs from, among other things, actively managing more than three recovery residences at any given time.³⁴

Patient Referrals

While certification is voluntary, Florida law incentivizes certification. Since 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a recovery residence unless the recovery residence holds a valid certificate of compliance and is actively managed by a certified recovery residence administrator.³⁵ Violators of this prohibition are subject to an administrative fine of \$1,000 per occurrence.³⁶ Certain exceptions allow referrals to or from uncertified recovery residences:³⁷

- Referrals made by a licensed service provider under contract with a behavioral health managing entity.³⁸

²⁸ Sections 397.487–397.4872, F.S.

²⁹ Palm Beach County Grand Jury, Fall Term A.D. 2016, *Report on the Proliferation of Fraud and Abuse in Florida's Addiction Treatment Industry* (Dec. 8, 2016), <http://www.sa15.state.fl.us/stateattorney/SoberHomes/content/GrandJuryReport2.pdf> (last visited Jan. 5, 2022). See also Florida Trend, *Addicted to rehab: A look at Florida's sober Houses*, <https://www.floridatrend.com/article/21954/addicted-to-rehab-a-look-at-floridas-sober-houses> (last visited Jan. 5, 2022) and NPR, *Beach Town Tries to Reverse Runaway Growth of 'Sober Homes'*, <https://www.npr.org/sections/health-shots/2017/08/10/537882989/beach-town-tries-to-reverse-runaway-growth-of-sober-homes> (last visited Jan. 5, 2022).

³⁰ The DCF, *Recovery Residence Administrators and Recovery Residences*, available at <https://www.myflfamilies.com/service-programs/samh/recovery-residence/> (last visited Jan. 5, 2022).

³¹ The Florida Certification Board (The FCB), *Certified Recovery Residence Administrator (CRA)*, available at <https://flcertificationboard.org/certifications/certified-recovery-residence-administrator/> (last visited Jan. 5, 2022).

³² Section 397.4871(5), F.S.

³³ The FCB, *Certification Guidelines: Credential Standards and Requirements Table: Certified Recovery Residence Administrator (CRA)*, p. 4-5, available at <https://flcertificationboard.org/wp-content/uploads/CRA-Standards-and-Requirements-Tables-January-2020.pdf> (last visited Jan. 5, 2022).

³⁴ Section 397.4871(6)-(8), F.S.

³⁵ Section 397.4873(1), F.S.

³⁶ Section 397.4873(6), F.S.

³⁷ Section 397.4873(2), F.S.

³⁸ DCF contracts for behavioral health services through regional systems of care called behavioral health managing entities. The seven managing entities, in turn, contract with and oversee local service providers for the delivery of mental health and substance abuse services throughout the state. See Department of Children and Families, *Managing Entities*, <http://www.dcf.state.fl.us/service-programs/samh/managing-entities/index.shtml> (last visited on Jan. 5, 2022).

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

Current law does not require recovery residence administrator certification applicants to demonstrate the ability to effectively and appropriately respond to the needs of residents, maintain residence standards, and meet all other current statutory certification requirements.

DCF publishes a list of all certified recovery residences and recovery residence administrators on its website.³⁹ As of January 2022, there are 449 certified recovery residences in Florida.⁴⁰ Recovery residences can be located in single-family and two-family homes, duplexes, and apartment complexes. Most recovery residences are located in single-family homes, zoned in residential neighborhoods.⁴¹

Effect of the Bill

Substance Abuse Service Provider Licensure

The bill requires substance abuse service provider license applicants to include the names and locations of any recovery residence to which the applicant plans to refer patients and from which the applicant plans to receive patients.

Under the bill, by July 1, 2022, current licensees must report to DCF the names and locations of any recovery residence to which the licensee has referred patients or from which the licensee has received patients. Current licensees must also report any changes to such information to DCF no more than 30 business days after the change. Licensed service providers who violate this requirement will be subject to an administrative fine of \$1,000 per occurrence. The bill authorizes DCF to suspend or revoke a service provider's license for repeat violations of reporting requirements.

Rights of Individuals Receiving Substance Abuse Treatment

The bill requires substance abuse service providers to return any personal effects taken from an individual to that individual upon discharge, even if the discharge is against medical advice.

³⁹ Section 397.4872, F.S.

⁴⁰ Department of Children and Families, *Recovery Residence Administrators and Recovery Residences*, <https://www.myflfamilies.com/service-programs/samh/recovery-residence/> (last visited Jan. 5, 2022).

⁴¹ Hearing before the Subcommittee on the Constitution and Civil Justice of the Committee on the Judiciary, House of Representatives, One Hundred Fifteenth Congress, Sept. 28, 2018, <https://www.govinfo.gov/content/pkg/CHRG-115hhrg33123/html/CHRG115hhrg33123.htm>. See also The National Council for Behavioral Health, *Building Recovery: State Policy Guide for Supporting Recovery Housing* (2017), https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18_Recovery-HousingToolkit_5.3.2018.pdf?dof=375ateTbd56 (last visited Jan. 5, 2022).

Recovery Residence Certification

The bill requires recovery residence administrators, as part of the certification application process, to demonstrate the ability to demonstrate the ability to effectively and appropriately respond to the needs of residents, maintain residence standards, and meet all other current statutory certification requirements.

Under the bill, a CRRA who demonstrates such ability is permitted to actively manage more than 50 residents at once only if the CRRA provides written justification to the credentialing entity and the credentialing entity approves the request. However, the bill prohibits a CRRA from managing more than 100 residents under any circumstances.

The bill is effective upon becoming a law.

B. SECTION DIRECTORY:

Section 1: Amends s. 397.403, F.S., relating to license application.

Section 2: Creates s. 397.4104, F.S., relating to record of recovery residences used by service providers.

Section 3: Amends s. 397.4871, F.S., relating to recovery residence administrator certification.

Section 4: Amends s. 397.501, F.S., relating to rights of individuals.

Section 5: Provides the bill is effective upon becoming a law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

DCF may see an indeterminate, insignificant, increase in revenue if licensed service providers are required to pay fines for failing to timely report the names and locations of each recovery residence to which the service provider has referred patients to, or from which patients were received.⁴²

2. Expenditures:

DCF may see an indeterminate, insignificant, increase in expenditures associated with updates to its licensure system, the cost of which can be absorbed within current resources.⁴³

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

⁴² Department of Children and Families, Agency Analysis of 2022 House Bill 479, p. 4 (Nov. 24, 2021).

⁴³ *Id.*

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Licensed service providers who commit certain violations will be subject to fines, which could have an economic impact on such providers.

A recovery residence whose administrator currently manages more residents than the administrator is approved to manage (50 or 100 residents) may need to reduce the number of residents or employ additional administrator(s).

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable. The bill does not appear to affect county or municipal governments.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

Current law provides sufficient rule-making authority to implement the provisions of the bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/ COMMITTEE SUBSTITUTE CHANGES