

Date of Hearing: April 23, 2019

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
AB 1779 (Daly) – As Amended April 22, 2019

SUBJECT: Recovery residences

SUMMARY: Requires the Department of Health Care Services (DHCS) to adopt as minimum standards for operating recovery housing, the Best Practices for Operating Recovery Housing (BPORH), once they are distributed by the U.S. Department of Health and Human Services (HHS), as the minimum requirements for counties seeking to offer recovery housing using state funding. Requires that until the BPORH are distributed, DHCS to adopt the most recent standards approved by the National Alliance for Recovery Residences as the minimum standard for receiving state funding for recovery residence housing. Specifically, **this bill:**

- 1) Defines a “recovery residence” to mean a residential dwelling that provides primary housing for individuals who seek a cooperative living arrangement that supports personal recovery from a substance use disorder (SUD) and that does not require licensure by DHCS or does not provide licensable services.
- 2) Requires DHCS to adopt BPORH which includes suggested minimum standards for operating recovery housing as the minimum requirements for counties seeking to offer recovery housing using state funding.
- 3) Requires DHCS, until the BPORH are distributed, to adopt the most recent standards approved by the National Alliance for Recovery Residents (NARR) as the minimum standard for receiving state funding for recovery residence housing.
- 4) Provides a residence that is certified by an organization that is currently a recognized affiliate of NARR and that has adopted the standards approved by NARR, and subsequently the standards identified by the BPORH, is presumed to have met the minimum requirement for best practices.
- 5) Requires an entity that recognizes, registers, or certifies a recovery residence to do all of the following:
 - a) Require an applicant for registration or certification of a recovery residence to submit evidence demonstrating that opioid overdose reversal medication is readily available in case of an onsite opioid overdose emergency;
 - b) Require the owner, operator, or responsible resident to complete a minimum of 10 hours per year of recovery residence training, to include at a minimum, the subjects of ethics, health and safety topics related to addiction recovery and maintenance, and emergency planning procedures;
 - c) Require the recovery residence to maintain the most current standards published by NARR, until the BPORH is distributed; and,

- d) Require the recovery residence to maintain the standards of the BPORH within six months of its initial distribution.
- 6) Requires an entity that recognizes, registers, or certifies a recovery residence to deny or revoke an application for recognition, registration or certification by a recovery residence under any of the following circumstances:
 - a) If the residence owner or operator named in the application is listed on the HHS' exclusions list that excludes certain individuals and entities from participation in the Medicare and State health care programs;
 - b) If an applicant has previously applied for a license to operate a residential alcoholism or drug abuse recovery or treatment facility (RTF), or a certified alcoholism or drug abuse recovery or treatment program (AOD), or previously held a license to operate a RTF and that application was denied or the previous license was revoked, suspended, terminated, surrendered, forfeited or otherwise subject to disciplinary or administration action by DHCS including the imposition of civil penalties, when DHCS determines recognition, registration or certification would be inconsistent with the ethical and safety standards required for that status; or,
 - c) If the residence is not operating in compliance with NARR or BPORH requirements or applicable state or federal laws. Requires the entity to notify DHCS if these circumstances apply.
 - 7) Authorizes a city, county, city and county, or local law enforcement entity that has documented evidence that a recovery residence is not operating in compliance with NARR or BPORH standards to an extent that resident or community safety is being impacted, in a manner that suggest fraudulent activity is occurring, or in a manner that would require licensure as an RTF, to report these findings to DHCS or to an entity that recognizes, registers or certifies a recovery residence. Authorizes DHCS or a city, county, city or county or local law enforcement to request that the residence obtain recognition, registration certification or licensure, as applicable, as a RTF within 90 days of being notified of that deficiency by DHCS or an entity that recognizes, registers or certifies a recovery residence in order to improve the conditions at the residence and support positive relationships with the community.
 - 8) Requires that if the recovery residence is providing treatment for addiction, the recovery residence is to cease providing services that may be provided only with a valid license until the appropriate license has been issued.
 - 9) Requires DHCS to maintain and post on its website a registry containing the following information:
 - a) The street address of each recovery residence that has had its recognition, registration or certification revoked, or whose application was denied by an entity that recognizes, registers or certifies a recovery residence; and,
 - b) The name of each operator of a recovery residence that has had its recognition, registration, or certification revoked, or whose application has been denied by an entity that recognizes, registers or certifies a recovery residence.

- 10) Requires, notwithstanding any other law, that on and after January 1, 2021, a state agency, state contracted vendor, county agency, county contracted vendor, licensed or certified alcohol drug treatment program, a certified alcohol drug counselor, or a person or entity licensed in the healing arts of the Business and Professions Code that directs SUD treatment, to refer a person to a certified recovery residence, if available, before referring that person to a recovery residence that is not certified.
- 11) Requires a judge or parole board that sets terms and conditions for the release, parole, or discharge of a person from custody, if it requires a person to reside in a sober living environment, to refer a person to a certified recovery residence, if available, before referring that person to a recovery residence that is not certified, so that proper rehabilitation in accordance with the terms and conditions of the court's orders or terms of release as applied may be accomplished.
- 12) Prohibits state or county funding to be allocated to a recovery residence that has not submitted evidence demonstrating that opioid overdose reversal medication is readily available in case of an onsite opioid overdose emergency, except as otherwise provided by federal law.
- 13) Permits a county contracting authority to require quality and performance standards that are similar to, or that exceed, the standards described in this bill when contracting for recovery residence or sober living services.
- 14) Permits an entity to enter into a memorandum of understanding with a county for the purposes of determining if the county's requirements meet or exceed the minimum requirements of the entity. Allows a memorandum of understanding to include the granting of reciprocity based upon the requirements of the county contract.
- 15) Requires DHCS to report to the Legislature on or before January 1, 2025, the number and types of complaints received by entities and DHCS under 7) above, the status of complaints received, and the geographic concentration of reported complaints.

EXISTING LAW:

- 1) Requires DHCS to license RTFs that provide 24-hour residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery, treatment, or detoxification services.
- 2) Requires RTF licensees to provide at least one of the following nonmedical services: recovery; treatment; or, detoxification services. Requires DHCS to adopt regulations requiring records and procedures appropriate for the type of service provided. Provides that the records and procedures may include all of the following: admission criteria; intake process; assessments; recovery, treatment, or detoxification planning; referral; documentation of provision of recovery, treatment, or detoxification services; discharge and continuing care planning; or, indicators of recovery, treatment, or detoxification outcomes.
- 3) Requires a treatment facility that serves six or fewer persons to be considered a residential use of property whether or not unrelated persons are living together. Requires the residents

and operators of the facility to be considered a family for the purposes of any law or zoning ordinance that relates to the residential use of property.

- 4) Excludes, for the purposes of local ordinances, a treatment facility that serves six or fewer persons from the definition of a boarding house, rooming house, institution, or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the alcoholism or drug abuse recovery or treatment home is a business run for profit or differs in any other way from a single-family residence.
- 5) Authorizes a city, county, or other local public entity to place restrictions on building heights, setback, lot dimensions, or placement of signs of a treatment facility that serves six or fewer persons as long as the restrictions are identical to those applied to other single-family residences.
- 6) Specifies that any local ordinance that deals with health and safety, building standards, environmental impact standards, or any other matter within the jurisdiction of a local public entity also applies to a treatment facility. Prohibits local ordinances from distinguishing treatment facilities that serve six or fewer persons from other single-family dwellings or distinguishing residents of treatment facilities from persons who reside in other single-family dwellings.
- 7) Prohibits a conditional use permit, zoning variance, or other zoning clearance from being required of an alcoholism or drug abuse recovery or treatment facility that serves six or fewer persons, that is not required of a single-family residence in the same zone.
- 8) Prohibits, under the California Fair Employment and Housing Act (FEHA), discrimination against any person in any housing accommodation on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. Specifies that discriminatory land use regulations, zoning laws, and restrictive covenants are unlawful acts.
- 9) Prohibits under the federal Americans with Disabilities Act of 1990 (ADA), discrimination by any public entity by reason of an individual's disability. Makes it unlawful, under the federal Fair Housing Act (FHA), to make unavailable or deny, a dwelling to any buyer or renter because of a disability.

FISCAL EFFECT: This bill has not yet been analyzed by a fiscal committee.

COMMENTS:

- 1) **PURPOSE OF THIS BILL.** According to the author, recovery residences are one stop along a lengthy process for people seeking to emerge from drug or alcohol addiction. However, unlike RTFs, which are subject to licensure by the state, recovery residences are private apartments or houses that are not licensed or regulated. Despite the growing death toll from opioid and alcohol abuse and addiction, California lacks a uniform set of standards to guide individuals and their loved ones in identifying safe, reliable housing accommodations that will be conducive to recovery. This bill will enable California to provide accurate and up-to-date information that will protect individuals and families seeking recovery housing. By adopting best practices including minimum standards for recovery

residents, California will take a significant step towards increasing the number of residences that are safe for people in recovery and for the communities where they are located.

2) BACKGROUND.

- a) **Unlicensed recover residences/sober living homes.** A recovery residence/sober living home is a residence for people in recovery from substance abuse. It may serve as support for individuals undergoing treatment but it does not provide treatment or care, whether medical or personal (as in an assisted living facility). The state laws and licensing requirements that govern treatment and care facilities do not currently include sober living homes. Therefore, the state does not keep any list of registered sober living homes, conduct inspections of sober living homes, or perform any of the other activities associated with licensing facilities. A sober living home may be completely self-governed or have formal on-site management, but in the latter case, the managers' duties relate to the administration of the house rather than the tenants or their recovery (as in "case management"). The tenants of a sober living home pay rent and abide by house rules, which always include maintenance of sobriety and participation in a self-help program. Multiple studies have shown the effectiveness of this kind of environment as a support for people transitioning out of drug or alcohol treatment. The effectiveness of sober living as one component of a person's successful recovery program is not controversial. The California Research Bureau estimates that there are at least 12,000 sober living beds in the state to serve an eligible population of between 25,000 and 35,000 individuals.
- b) **ADA, FHA, and Equal Protection.** The FHA makes it illegal to engage in various discriminatory practices relating to the sale and rental of housing based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. FEHA also prohibits land use regulations, zoning ordinances, and restrictive covenants from discriminating in housing on the basis of the aforementioned categories. FEHA also states that groups of people with disabilities living together in a single dwelling unit are considered a family.

In addition, the ADA gives civil rights protection to individuals with disabilities, similar to the protections provided to individuals on the basis of race, sex, national origin, and religion. Under the ADA, an individual with a "disability" is someone who has a current "physical or mental impairment" that "substantially limits" one or more of that person's "major life activities," such as caring for one's self, working, etc., or has a record of such a substantially limiting impairment, or is regarded as having such an impairment. The protections of the ADA apply to those who have successfully completed a drug rehabilitation program or who are currently enrolled in such programs. Alcoholics and addicts, as long as they are trying to recover and have not been convicted of major drug crimes, constitute a protected class of disabled persons under state and federal law.

- c) **Senate Health Committee informational hearing.** On January 31, 2018, the Senate Health Committee held an informational hearing to examine the SUD treatment system with a focus on treatment and services provided in RTFs; insurance coverage; patient referrals; and, the state's regulation and oversight of the system. The hearing provided an overview of recent issues that have affected the state regarding unscrupulous facility operators, and gave an opportunity for state regulators to highlight efforts they have

undertaken to combat the exploitation of the SUD system. The goal of the hearing was to examine the issues and to seek strategies and policies that will prevent unscrupulous individuals from exploiting the various industries that are supposed to help treat those with SUDs, as well as to recognize federal and state protections for those with disabilities, and to ensure that policies are not enacted, either at the local or state level, that will limit the number of treatment options for those who need them.

- 3) **SUPPORT.** NAAR states that several states including Florida, Massachusetts, Pennsylvania, Rhode Island, and Indiana have adopted laws similar to those proposed in this bill, and other states are in the process of doing so. This bill offers protection for consumers, and addresses legitimate community concerns about poorly managed and overcrowded properties. In conjunction with California and federal legislation enacted last year it will reduce the incidence of insurance-related fraud and the exploitation of vulnerable individuals in need of recovery support services. This bill ensures that state funds will only be spent on recovery housing that meets national best practice standards and is subject to oversight. It also ensures that referrals from state-licensed service providers are not made to substandard and predatory operators. NARR concludes by stating that this bill offers consumer and public protections without compromising the fair housing rights of disabled individuals. This bill provides third-party oversight by recovery housing experts, ensuring compliance with standards that offers both consumers and community members a resource to address their complaints.
- 4) **OPPOSITION.** Advocates for Responsible Treatment (ART) states the vast majority of residential addiction recovery housing in the state of California are not cooperative living environments. It is commercial enterprise posing as a residential use. Thus, the intent of this bill is to provide a gloss of respectability to a highly profitable business model for which industry is seeking concessions, privileges, and revenue. Recovering addicts, active in recovery and receiving treatment in commercial zones are living dependently in unlicensed residences that provide the same services for which the state requires licenses for other protected classes under the Community Care Act. The Legislature has had evidence of the need for licensing of commercial operations since September 4, 2012 when the California Senate Office of Oversight and Outcomes published "Rogue Rehabs: State failed to police drug and alcohol homes, with deadly results." ART concludes that under no circumstances should the legislature give yet another third party certification veneer of respectability away in exchange for helping certifying agencies make money. To protect recovering addicts from ongoing abuse and fraud, the legislature must bring the entire industry up to an appropriate standard; instead of this bill, it is critical that the State of California license recovery residence.
- 5) **RELATED LEGISLATION.**
 - a) AB 615 (Brough) imposes a fine of not more than \$10,000 or imprisonment in a county jail for 16 months, or two or three years, or both for persons who willfully violates the prohibition against giving or receiving remuneration or anything of value for the referral of a person who is seeking AOD abuse recovery treatment services. AB 615 is pending in the Assembly Public Safety Committee.

- b) AB 704 (Patterson) requires a person who has frequent contact with clients of an RTF to be subject to a criminal record review. AB 704 is pending in the Assembly Appropriations Committee.
- c) AB 919 (Petrie-Norris) establishes an enforcement program within DHCS to focus on the oversight duties related to patient brokering activities conducted by an RTF or an AOD program licensed or certified by the DHCS. AB 919 is pending in the Assembly Health Committee.
- d) AB 920 (Petrie-Norris) exempts RTFs that serve six or fewer persons and are engaged in an economic relationship with a treatment provider that owns or operates two or more of these facilities from being considered as a residential use of property, thus subject to oversight and restrictions. AB 920 is pending in the Assembly Health Committee.
- e) AB 940 (Melendez) expands the list of entities and individuals who are prohibited from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services to include a recovery resident, as specified, and an owner, partner, officer, director or shareholder of a recovery residence. AB 940 is pending in the Assembly Health Committee.
- f) SB 589 (Bates) prohibits an operator of a licensed RTF, a certified AOD, a recovery residence, or a third party that provides any form of advertising or marketing services to any of those entities, from engaging in various acts, including making a false or misleading statement about the entity's products, goods, services, or geographical locations. Authorizes DHCS to investigate allegations of a violation of these provisions and to impose sanctions, as specified. SB 589 is pending in the Senate Appropriations Committee.

6) PREVIOUS LEGISLATION.

- a) AB 285 (Melendez) of 2017 was substantially similar to this bill. AB 285 was held in the Assembly Appropriations Committee.
- b) AB 2214 (Rodriguez) of 2018 was substantially similar to this bill. AB 2214 was held in the Assembly Appropriations Committee.
- c) AB 2255 (Waldron) of 2016 was substantially similar to this bill. AB 2255 would have established state oversight of "drug and alcohol free residences" or sober living homes. AB 2255 was held in the Assembly Appropriations Committee.
- d) AB 2403 (Bloom) of 2016 would have established a new definition of "integral facility" for licensure purposes, and a prohibition on licensure approval for facilities whose siting would result in overconcentration, as defined. AB 2403 was held in the Assembly Appropriations Committee.
- e) SB 1283 (Bates) of 2016 would have allowed a city, county, or city and county to adopt, by ordinance, health and safety standards and enforcement mechanisms for structured sober living homes, as defined. SB 1283 failed passage in the Senate Health Committee.

- f) AB 2491 (Nestande) of 2014 would have exempted sober living homes from licensure as an adult alcoholism or drug abuse recovery or treatment facility and required sober living homes to meet specified requirements, including the active participation of residents in legitimate recovery programs and the maintenance of records of meeting attendance. AB 2491 was held under submission in the Senate Appropriations Committee.

REGISTERED SUPPORT / OPPOSITION:

Support

Anaheim Lighthouse
Association of California Cities – Orange County
Bridges Professional Treatment Services
Broadway Treatment Center
California Consortium Of Addiction Programs And Professionals
Central Valley Recovery Services
Community Recovery Resources
Community Social Model Advocates
National Alliance for Recovery Residences
Northbound Treatment Services
Orange County Recovery Collaboration
Sacramento Recovery House, Inc.
Soroptimist House of Home
Stephen J. Russell & Associates
The Camp
The Villa Center
Valley Sober Living
Windstone Addiction Centers, Inc.

Opposition

Advocates for Responsible Treatment
Disability Rights California

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