
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: AB 1779
AUTHOR: Daly
VERSION: June 24, 2019
HEARING DATE: July 10, 2019
CONSULTANT: Reyes Diaz

SUBJECT: Recovery residences

SUMMARY: Requires the Department of Health Care Services (DHCS) to adopt specified standards for recovery residences that receive state funding. Permits specified entities to report suspected activity to DHCS and to take specified action.

Existing law:

- 1) Grants DHCS the sole authority in state government to administer, license, certify, and regulate all substance use disorder (SUD) functions and programs. [HSC §11750, et seq.]
- 2) Requires DHCS to license alcoholism or drug abuse recovery or treatment facilities (RTFs) that provide 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. [HSC §11834.01, et seq.]
- 3) Defines “recovery residences” (RRs) as residential dwellings that provide primary housing for individuals who seek a cooperative living arrangement that supports personal recovery from an SUD and that do not require licensure by DHCS or do not provide licensable services, as specified, including, but not limited to, residential dwellings commonly referred to as “sober living homes” (SLHs), “sober living environments,” or “unlicensed alcohol and drug free residences.” [HSC §11833.05]
- 4) Requires DHCS to ensure all covered mental health and SUD benefits are provided through county Medi-Cal managed care plans (MCMCP). Deems a county that has opted into the Drug Medi-Cal Organized Delivery System (DMC-ODS) waiver a MCMCP. [WIC §14197.1]

This bill:

- 1) Requires DHCS to adopt the most recent standards approved by the National Alliance for Recovery Residences (NARR) as the minimum standard for receiving state funding for RR housing.
- 2) Requires each specific residence performance requirement that exceeds the NARR standards for RRs to be added to the minimum standard for receiving state funding for RR housing upon distribution of the Best Practices for Operating Recovery Housing (BPORH) by the U.S. Department of Health and Human Services (USDHHS), as specified.
- 3) Requires an RR that is certified by a recognized affiliate of NARR and has adopted NARR-approved standards, as specified, to be presumed to have met the minimum best practices operating requirement.

- 4) Requires an applicant for, or the recognition, registration, or certification of, an RR to be denied or revoked by a state affiliate of NARR under any of the following circumstances:
 - a) The residence owner or operator name in the application is listed on the USDHHS exclusion list for participation in federal programs, as specified;
 - b) An applicant has previously applied for licensure or certification from DHCS, as specified, or previously held a license and an application was denied or the license was revoked, suspended, terminated, surrendered, forfeited, or otherwise subject to disciplinary or administrative 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; and,
 - c) The RR is not operating in compliance with NARR or BPORH requirements, or applicable state or federal laws.
- 5) Permits a city, county, city and county, or local law enforcement that has documented evidence that an RR is not operating in compliance, as specified, or in a manner that suggests fraudulent activity is occurring or in a manner requiring licensure by DHCS, to report these findings to DHCS, as specified.
- 6) Permits DHCS or a city, county, city and county, or local law enforcement to request that the RR obtain recognition, registration, certification, or licensure, as applicable within 90 days of being notified of a deficiency by DHCS. Requires an RR that is providing treatment for addiction to cease providing services until the appropriate license has been issued.
- 7) Specifies that this bill does not prohibit a county contracting authority from requiring quality and performance standards that are similar to, or that exceed, the standards described in this bill, when contracting for RR services.
- 8) Permits an entity to enter into a memorandum of understanding (MOU) with a county for the purposes of determining if the county's requirements meet or exceed the minimum requirements of the entity. Permits an MOU to include the granting of reciprocity based on the requirements of the county contract.
- 9) Makes findings and declarations about the effects of SUDs and the need for housing options for those in recovery.

FISCAL EFFECT: According to the Assembly Appropriations Committee, unknown, likely minor one-time administrative costs to DHCS to adopt a standard. Ongoing costs, likely in the hundreds of thousands of dollars, to post information and develop information-sharing protocols with certifying entities, and collect and report on complaints

PRIOR VOTES:

Assembly Floor:	76 - 0
Assembly Appropriations Committee:	13 - 0
Assembly Health Committee:	15 - 0

COMMENTS:

- 1) *Author's statement.* According to the author, 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 continuing recovery. By adopting best practices including minimum standards for RRs, California can take a significant step towards increasing the number of safe RRs for individuals seeking to continue their recovery and reintegrating back into society.
- 2) *RRs/SLHs.* A 2010 report on the National Institutes of Health (NIH) website, "Sober Living Houses for Alcohol and Drug Dependence: 18-month Outcomes," states that SLHs are not formal treatment programs and are not obligated to comply with state or local regulations applicable to treatment. However, NIH does not provide a formal definition of an SLH. The report also mentions that it is difficult to determine how many SLHs there are in California because they are outside of the purview of state licensing authorities. The NIH report cites the protection that the federal Fair Housing Act (FHA) affords SLHs to be located in residentially zoned areas, personal privacy under the Fourth Amendment, and the right of people with disabilities to live together for a shared purpose, such as mutually assisted recovery and maintenance of an abstinent lifestyle.

According to DHCS's website, some types of residences do not provide alcohol and other drug services and therefore do not require licensure by DHCS, including cooperative living arrangements with a commitment or requirement to be free from alcohol and other drugs, sometimes referred to as RRs, SLHs, transitional housing, or alcohol- and drug-free housing. DHCS states that while SLHs are not required to be licensed by DHCS, they may be subject to other types of permits, clearances, business taxes, or local fees, which may be required by the cities or counties in which they are located. If an SLH is providing licensable services then it must obtain a valid residential treatment facility (RTF) license from DHCS. Licensable services can include, but are not limited to, detoxification services, group sessions, individual sessions, one-on-one counseling, educational sessions, or recovery, treatment, or discharge planning. If an SLH is providing just one of the mentioned services, then it should be classified as an RTF and must obtain a valid license from DHCS.

DHCS's DMC-ODS waiver permits counties to use RRs in their continuum of services if they adhere to the following guidelines: the RR does not provide SUD services that would require licensure by DHCS; all residents of a RR are actively engaged in medically necessary recovery support services to be provided off-site; each county develops guidelines for contracted RR entities; and, the county provides monitoring and oversight of the RR.

- 3) *Housing for the disabled.* In a joint statement issued in November 2016 by the federal Department of Justice (DOJ) and Department of Housing and Urban Development (HUD), which together are responsible for enforcing the FHA, DOJ and HUD declare that the term "group home" does not have a specific legal meaning, though land use and zoning officials and the courts have referred to some residences for persons with disabilities as group homes, including homes occupied by persons in recovery from alcohol or substance abuse that are commonly called "sober homes" (SLHs). DOJ and HUD contend that persons with disabilities have the same FHA protections whether or not their housing is considered a group home, and that a household where two or more persons with disabilities choose to live together, as a matter of association, may not be subject to requirements or conditions that are not imposed on households consisting of persons without disabilities. DOJ and HUD further state that the provision of services (medical, supervisory, supportive, etc.) is not required for

a group home to be protected under the FHA. Group homes can also be opened by individuals or organizations, both for-profit (“commercially operated”) and not-for-profit, and still be protected by the FHA. Further, the FHA does not require a person who resides in an SLH to have participated in or be currently participating in a substance abuse treatment program to be considered a person with a disability. The fact that a resident of an SLH may currently be illegally using a controlled substance does not deprive the other residents of the SLH of the protection of the FHA. The DOJ and HUD statement also says that localities and states must ensure that actions to enforce criminal and other laws against SLHs are not taken to target SLHs and are applied equally, regardless of whether the residents of housing are persons with disabilities.

- 4) *Related legislation.* AB 919 (Petrie-Norris) adds various provisions to existing law that prohibits “patient brokering” in order to prevent specified entities from inducing an individual to receive recovery or treatment services by providing free housing, transportation, and other related services. Requires DHCS to establish an enforcement program, as specified. *AB 919 is was heard in this Committee on July 3, 2019, and passed out by a vote of 8-0.*

AB 920 (Petrie-Norris) requires DHCS to convene a technical advisory workgroup, as specified, to make recommendations on potential changes to current laws and regulations relevant to substance use disorder services. Requires a report to the Legislature, as specified. *AB 920 was heard in this Committee on July 3, 2019, and passed out by a vote of 8-0.*

AB 940 (Melendez) prohibits a recovery residence, as specified, from giving or receiving remuneration or anything of value for the referral of a person who is seeking recovery and treatment services, and requires DHCS to impose a minimum fine of \$10,000 for each violation. *AB 940 is pending in the Assembly Health Committee.*

SB 589 (Bates) prohibits specified entities in the SUD treatment or recovery services industry from making false or misleading statements, as specified, and from engaging in conduct involving the unlawful giving or receiving remuneration or anything of value for referring a person to treatment or recovery services, as specified. *SB 589 was heard in the Assembly Health Committee on June 18, 2019, and passed out by a vote of 14-0.*

- 5) *Prior legislation.* SB 992 (Hernandez) requires programs licensed or certified by DHCS to disclose certain business relationships, as specified, including with RRs, and makes changes to current law for licensed RTFs to improve client treatment and provide DHCS more oversight authority over RTFs.
- 6) *Support.* The California Consortium of Addiction Programs and Professionals (CCAPP), sponsor of this bill, argues that RRs are an important element to California’s continuum of care for addiction treatment and recovery and have been shown to improve outcomes, reduce recidivism, reunite families, and diminish homelessness. CCAPP states that RRs save lives and strengthen communities, and without quality sober living, in many cases, people vested in recovery from addiction would face uncertain futures and bleak prospects for continuing the road to productivity and abstinence. CCAPP also argues that in order for any RR quality assurance program to work, it must not contradict the federal FHA and Americans with Disabilities Act (ADA), and the approach used by this bill accomplishes this by not creating a new facility category for licensing, but by encouraging private certification as a means to distinguish good homes from bad. Allowing homes to certify gives consumers, referring agents, and local governments the tool they need to make decisions about housing for loved

ones facing addiction and incorporating RRs into the landscape of caring communities throughout California. Other supporters, largely local government representatives, state that while most operators manage their residences well, requiring the adoption of standards is a first step toward protecting individuals and families seeking recovery housing.

- 7) *Opposition.* The California Association of Alcohol and Drug Program Executives, Inc. (CAADPE) argues that this bill imposes significant restrictions and regulations on individuals with disabilities, and no such restrictions or regulations are imposed upon similar individuals who do not have these disabilities. CAADPE states the ADA prohibits discrimination against individuals with disabilities by state and local governments, including the programs and services offered by a jurisdiction's housing development, planning, and zoning agencies. Protecting the opportunities for persons with disabilities to reside in the least restrictive community residential settings should be held inviolate. CAADPE states that unfortunately this bill seeks to undo those protections and undermines the state's longstanding Community Care Licensing Act.
- 8) *Policy concerns.* This bill has various provisions that place oversight of RRs receiving state funds with entities that do not appear to be appropriate, as current policies, such as the DMC-ODS, require counties that elect to provide optional RR services to be the ones to monitor and oversee RRs with which they contract. Other provisions in this bill only permit oversight entities to take action, which has the potential to weaken existing law. Further, this bill only identifies RRs that receive state funding, yet there are federal funds that counties are permitted to use to pay for housing an individual in an RR. Lastly, language contained in the findings and declarations section of this bill confuses RRs with DHCS-licensed RTFs, which are the only residential facilities permitted under existing state law to provide treatment services.
- 9) *Amendments.* After discussions with Committee staff and the sponsor, the author requests the Committee approve the following amendments to address the policy concerns:
 - a) In the legislative findings and declarations, delete language that confuses RRs with licensed RTFs that provide treatment, and language that attempts to distinguish RRs under contract with counties as legitimate versus those RRs that are not under contract;
 - b) Include RRs that receive federal funds as well by replacing "state" with "public funds";
 - c) Specify that DHCS can adopt standards equivalent to NARR;
 - d) Require counties to terminate contracts with RRs under specified circumstances;
 - e) Add outpatient certified programs to language where appropriate for consistency; and,
 - f) Place the requirement on reporting RR suspected activity on counties that contract with them for consistency with current policies.

SUPPORT AND OPPOSITION:

Support: California Consortium of Addiction Programs and Professionals (sponsor)
 California Apartment Association
 City of Long Beach
 City of Mission Viejo
 County Behavioral Health Directors Association of California

Oppose: California Association of Alcohol and Drug Program Executives, Inc.