

LEGISLATIVE ANALYSIS AND PUBLIC POLICY ASSOCIATION

# MODEL RECOVERY RESIDENCE CERTIFICATION ACT

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## SECTION I. SHORT TITLE.

This Act may be referred to as the “Model Recovery Residence Certification Act” or “Model Act.”

### Commentary

Recovery residences are commonly referred to by a number of names, including sober living houses, sober living environments, and recovery homes. Facilities designated as halfway houses or three-quarter houses may also qualify as recovery residences. The Model Act’s drafters chose to use the term “recovery residence” for this model because it more accurately reflects the ideals behind the creation of these residences; that is, that individuals in recovery should have a welcoming, warm, home-like place to live while continuing their recovery journey.

## SECTION II. LEGISLATIVE FINDINGS.

- (a) The [legislature]<sup>1</sup> hereby finds that substance use disorder constitutes a serious threat to the health and welfare of the citizens of [state].
- (b) Recovery residences support the recovery of individuals with substance use disorder and help prevent relapse, criminal justice system involvement, and overdose.<sup>2</sup>
- (c) Recovery residences are designed to address the needs of individuals in recovery from substance use disorder through the provision of a safe and healthy living environment and a community of supportive recovering peers to which residents are accountable.
- (d) It is in the best interests of individuals in recovery from substance use disorder and of the communities in which recovery residences are situated that recovery residences be certified in accordance with nationally recognized standards in order to protect recovery

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<sup>1</sup> This Act contains certain bracketed words and phrases (e.g., “[legislature]”). Brackets indicate instances where state lawmakers may need to insert state-specific terminology or facts.

<sup>2</sup> Amy A. Mericle, Jennifer Miles, and Fred Way, *Recovery Residences and Providing Safe and Supportive Housing for Individuals Overcoming Addiction*, 45 J. OF DRUG ISSUES 368-384 (Sept. 2015); Leonard A. Jason, Margaret I. Davis, and Joseph R. Ferrari, *The Need for Substance Abuse After-care: Longitudinal Analysis of Oxford House*, 32(4) ADDICTIVE BEHAVIORS 803-818 (April 2007); Leonard A. Jason, Bradley D. Olson, Joseph R. Ferrari, and Anthony T. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96(10) AM. J. OF PUB. HEALTH 1727-1729 (Nov. 2006); Douglas L. Polcin, Rachael A. Korcha, Jason Bond, and Gantt Galloway, *Sober Living Houses for Alcohol and Drug Dependence: 18-month Outcomes*, 38(4) J. OF SUBSTANCE ABUSE TREATMENT 356-365 (June 2010); Douglas L. Polcin, Rachael A. Korcha, Jason Bond, and Gantt Galloway, *What Did We Learn From Our Study on Sober Living Houses and Where Do We Go From Here?*, 42(4) J. OF PSYCHOACTIVE DRUGS 425-433 (Dec. 2010).

residence residents and communities from harm caused by poorly managed or fraudulent recovery residences.<sup>3</sup>

## Commentary<sup>4</sup>

Multiple peer reviewed studies<sup>5</sup> show that well-run recovery residences have a long-lasting, positive impact on individuals in or seeking recovery from substance use disorders. Residents are more likely to stay in recovery, become or stay employed, and interact less with the criminal justice system than similarly situated non-residents. Douglas Polcin, *et al.*, conducted a study of two types of recovery residences – one associated with and located on the site of an outpatient treatment center and the other consisting of freestanding recovery residences not affiliated with any kind of treatment.<sup>6</sup> The authors interviewed 300 individuals at 6-, 12-, and 18-month intervals from the time the individuals entered the recovery residence.<sup>7</sup> At 18 months, 42-46 percent of study participants reported total abstinence from drug use, even though nearly all of the participants had left their respective recovery residences by that time.<sup>8</sup> The authors also found that while 42 percent of participants had been arrested in the six month period prior to entering the recovery residence, only 28 percent were arrested during the 18-month period after entering a recovery residence.<sup>9</sup>

Additionally, Leonard A. Jason, *et al.*, conducted a study of Oxford Houses, which are democratically run and self-supporting recovery residences, that compared outcomes for 150 individuals who completed substance use disorder treatment facilities in the Chicago area. The individuals were randomly assigned to either: (1) residence in an Oxford House; or (2) to receipt of only community-based aftercare services, such as step-down to outpatient care and/or referral to mutual aid groups (identified as “Usual Care”).<sup>10</sup> Researchers tracked participants over a two-year period and reported on their substance use, employment, and child custody issues, if any.<sup>11</sup> Only 31.3 percent of participants assigned to an Oxford House reported substance use after 24 months, while 64.8 percent of participants who received Usual Care reported substance use.<sup>12</sup>

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<sup>3</sup> Jake Bernstein, *Inside the Shady World of Sober Homes*, PACIFIC STANDARD (Sept. 11, 2013)

<https://psmag.com/social-justice/inside-shady-world-sober-homes-drug-clinics-kickbacks-shoddy-care-65982>.

<sup>4</sup> The commentary area serves two primary purposes. The first purpose is to provide the reader with background information about the genesis of language in the Act. To the extent that the model language is based on already-proposed legislation or a particular document, the commentary notes this. The second purpose is to provide explanation about why the Act contains particular provisions and the rationale behind these decisions, along with a discussion of issues (occasionally controversial) with which policymakers must grapple when state-specific legislation is introduced, negotiated, and amended.

<sup>5</sup> See FN 2.

<sup>6</sup> Douglas L. Polcin, Rachael A. Korcha, Jason Bond, and Gantt Galloway, *What Did We Learn From Our Study on Sober Living Houses and Where Do We Go From Here?*, 42(4) J. OF PSYCHOACTIVE DRUGS 425-433 (Dec. 2010).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> *Id.*

<sup>10</sup> Leonard A. Jason, Bradley D. Olson, Joseph R. Ferrari, and Anthony T. Lo Sasso, *Communal Housing Settings Enhance Substance Abuse Recovery*, 96(10) AM. J. OF PUB. HEALTH 1727-1729 (Nov. 2006).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

Additionally, at the 24-month mark, 76.1 percent of Oxford House participants were employed versus 48.6 percent of Usual Care participants.<sup>13</sup> Finally, of the women involved in the study, 50 percent of those with children had lost custody of them.<sup>14</sup> At the conclusion of the study, 30.4 percent of women assigned to an Oxford House had regained custody of their children while only 12.8 percent of women receiving Usual Care regained custody.<sup>15</sup>

While recovery residences can provide a critical bridge from early recovery to a healthy, stable, and engaged life in the community, a lack of recovery residence standards can lead to the exploitation and victimization of individuals in recovery. In Massachusetts and California, for example, some recovery residence operators took advantage of residents by requiring them to undergo drug testing at facilities from whom the operators received kickbacks.<sup>16</sup> Additionally, a New York recovery residence operator threatened residents with eviction if they did not receive services from a particular treatment provider.<sup>17</sup> According to an article about recovery residences published in *Governing* magazine, “[t]here is rampant abuse of the system, including patient brokering, devious market practices, kickbacks from treatment providers, and insurance fraud.”<sup>18</sup>

In 2015, Palm Beach County, Florida led the state of Florida in opioid overdose deaths.<sup>19</sup> Criminal investigations conducted in the county found “so-called sober homes that allow residents to continue to partake of illegal drugs, patient brokering, enslavement of residents into prostitution, kickbacks, bribery, and other abuses.”<sup>20</sup> A grand jury investigation was also conducted, which found

... evidence of horrendous abuses that occur in recovery residences that operate with no standards. For example, some residents were given drugs so that they could 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.<sup>21</sup>

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<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> Bernstein, *supra* note 3.

<sup>17</sup> *Id.*

<sup>18</sup> Heather Stratman and Dave Aronberg, *Sober Living Homes and the Regulation They Need*, GOVERNING (May 14, 2018) <https://www.governing.com/gov-institute/voices/col-regulation-sober-living-homes-recovery-residences-need.html>.

<sup>19</sup> Daniel Lauber, *Principles to Guide Zoning for Community Residences for People with Disabilities in Delray Beach, Florida*, 3<sup>rd</sup> Ed. at 5, (River Forest IL. Planning/Communications, August 2017); The Palm Beach Grand Jury in the Circuit Court of the 15<sup>th</sup> Judicial Circuit in and for Palm Beach County, Florida, *Report on the Proliferation of Fraud and Abuse in Florida’s Addiction Treatment Industry at 16-17*, (Dec. 8, 2016).

<sup>20</sup> *Id.* at 3.

<sup>21</sup> *Id.* at 4.



In January 2017, the Palm Beach County Sober Homes Task Force, formed at the request of the Florida Legislature, presented a detailed report on the problems surrounding Florida's substance use disorder treatment industry that identified several legislative/regulatory proposals to address abuses.<sup>22</sup> Since then, legislators substantially strengthened Florida laws and regulations covering treatment industry activities, including recovery residences.<sup>23</sup>

### **SECTION III. PURPOSE.**

The [legislature's] purpose in enacting this Act is to:

- (a) Establish a voluntary certification process for recovery residences;
- (b) Establish standards and procedures for such certification, including those that uphold industry best practices and support a safe, healthy, and effective recovery environment;
- (c) Promote quality and positive outcomes for the residents of recovery residences;
- (d) Outline the rights of those individuals in recovery from substance use disorder who are residents of a recovery residence, including the right to continue to receive prescribed or dispensed medications, including medication for the treatment of substance use disorder;
- (e) Provide training and technical assistance for recovery residence operators and staff;
- (f) Protect residents against unreasonable and unfair practices in setting and collecting fees and other residence payments;
- (g) Establish procedures for data collection and to study the effectiveness of recovery residence regulation within the state; and
- (h) Establish penalties for recovery residences engaged in kickbacks, inducements, patient brokering, and other types of unethical and immoral behaviors.

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<sup>22</sup> Palm Beach County Sober Homes Task Force, *Identification of Problems in the Substance Abuse Treatment and Recovery Residence Industries with Recommended Changes to Existing Laws and Regulations*, OFF. OF STATE ATT'Y (Jan. 1, 2017), <http://www.sa15.state.fl.us/stateattorney/SoberHomes/content/SHTFReport2017.pdf>.

<sup>23</sup> OFF. OF STATE ATT'Y, PALM BEACH COUNTY SOBER HOMES TASK FORCE: 2020 LEGISLATIVE UPDATE (Jan. 9, 2020), <http://www.sa15.state.fl.us/stateattorney/SoberHomes/content/minutes/1-24-20Minutes.pdf> (containing a description of the Task Force's activities and Florida legislative activity).

## SECTION IV. DEFINITIONS.

*[States may already have definitions in place for some or all of the following listed terms. In such case, states are free to use those definitions in place of those listed below.]*

For purposes of this Act, unless the context clearly indicates otherwise, the words and phrases listed below have the meanings given to them in this section:

- (a) Applicant.— “Applicant” means any individual, organization, or entity who has applied for certification of a recovery residence.
- (b) Certified recovery residence.— “Certified recovery residence” means a recovery residence that has completed the application process and been approved for certification by the [State agency or certifying organization, whichever is applicable] or that has been automatically certified pursuant to the provisions of Section V, subsection (c) of this Act.
- (c) Certifying organization.— “Certifying organization” means an organization under contract with or otherwise designated by the [State agency] and tasked with the responsibility of certifying recovery residences under this Act.
- (d) Community residence.— “Community residence” means a residential living arrangement for unrelated individuals with disabilities living as a single functional family in a single dwelling unit who are in need of the mutual support furnished by other residents of the community residence as well as support services, if any, provided by the staff, if any, of the community residence. A community residence seeks to emulate a biological family to foster normalization of its residents and integrate them into the surrounding community. Its primary purpose is to provide shelter and support in a family-like environment. The term does not include any other group living arrangement for unrelated individuals who are not disabled.
- (e) Co-occurring disorder.— “Co-occurring disorder” means the co-existence of both a mental health and a substance use disorder.<sup>24</sup>
- (f) House manager.— “House manager” means an individual either designated by the owner or operator of a certified recovery residence or elected by the residents of a certified recovery residence who may or may not live on-site and is, or may be, responsible for the

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<sup>24</sup> *Mental Health and Substance Use Disorders*, SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMIN. (SAMHSA), <https://www.samhsa.gov/find-help/disorders> (last modified Apr. 13, 2019).

day-to-day operation of the certified recovery residence including, but not limited to, interviewing potential residents, resident acceptance and welcoming procedures, resolution of resident disputes, maintenance of any resident records, and ensuring resident adherence to the policies and procedures of the recovery residence. This term is not applicable to Oxford Houses and may not be applicable to other Level I residences.

- (g) Licensed state drug and alcohol treatment service provider.— “Licensed state drug and alcohol treatment service provider” means any individual or entity who is licensed, registered, or certified within [state] to treat substance use disorders or who has a Drug Addiction Treatment Act of 2000 waiver from the Substance Abuse and Mental Health Services Administration (SAMHSA) to treat individuals with opioid use disorder using medications approved for that indication by the Food and Drug Administration.
- (h) Medication-assisted treatment (MAT).— “Medication-assisted treatment” means the use of medication, in combination with counseling and behavioral therapies, to provide a “whole-patient” approach to the treatment of opioid or other substance use disorder and any concomitant conditions associated therewith.<sup>25</sup>
- (i) National Alliance for Recovery Residences (NARR).— “NARR” is a nonprofit organization with a nationally recognized standard for the certification of recovery residences that works with and supports state affiliate organizations.
- (j) Operator.— “Operator” means the lawful owner or lessee of a recovery residence or a person employed and designated by the owner or lessee of the recovery residence to have primary responsibility for oversight of the recovery residence, including, but not limited to, hiring and termination of recovery residence staff, recovery residence maintenance, and responding to complaints being investigated by the [state agency]. This term is not applicable to a Level 1 recovery residence.
- (k) Overdose reversal drug.— “Overdose reversal drug” means naloxone hydrochloride or another drug that is approved by the federal Food and Drug Administration (FDA) for the emergency treatment of an overdose.

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<sup>25</sup> *Medication-assisted-treatment*, SAMHSA, <https://www.samhsa.gov/medication-assisted-treatment> (last updated Dec. 16, 2020).

- (l) Oxford House.— “Oxford House” means a model of recovery housing, referred to as the Oxford House Model™, that is democratically run, self-supporting, and substance-free. Each Oxford House is chartered by its umbrella organization, Oxford House, Inc., and must abide by the procedures as set out in the Oxford House Manual©.
- (m) Peer support worker.— “Peer support worker” means someone with the lived experience of recovery from a substance use disorder who provides non-clinical, strengths-based support to others experiencing similar challenges.<sup>26</sup>
- (n) Recovery.— “Recovery” means a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential.<sup>27</sup>
- (o) Recovery residence.— “Recovery residence” means a type of community residence that provides a safe, healthy, family-like, substance-free living environment that supports individuals in recovery from substance use disorder. Recovery residences:
- (1) Emulate a biological family;
  - (2) Are centered on peer support and community integration;
  - (3) Benefit individuals in recovery by reinforcing the skills and choices that help support sustained recovery from substance use disorder and providing a supportive peer community to which residents are accountable, and ensuring access to mutual aid groups, recovery support services, and other needed services and supports; and
  - (4) May be located in single-family homes, multi-family dwellings, and mixed-use structures.<sup>28</sup>
- (p) Resident.— “Resident” means an individual who resides in a recovery residence.
- (q) Staff.— “Staff” means employees, contractors, or volunteers who provide monitoring, assistance, or other services for the use and benefit of a recovery residence and its residents. This term may include, but is not limited to, a house manager, peer support workers, and on-site counselors.

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<sup>26</sup> *Value of Peers*, SAMHSA, [https://www.samhsa.gov/sites/default/files/programs\\_campaigns/brss\\_tacs/value-of-peers-2017.pdf](https://www.samhsa.gov/sites/default/files/programs_campaigns/brss_tacs/value-of-peers-2017.pdf) (2017).

<sup>27</sup> *Working Definition of Recovery*, SAMHSA, <https://store.samhsa.gov/sites/default/files/d7/priv/pep12-recdef.pdf> (2012).

<sup>28</sup> *Recovery Housing: Best Practices and Suggested Guidelines*, SAMHSA, <https://www.samhsa.gov/sites/default/files/housing-best-practices-100819.pdf> (2018).

- (r) [State agency].— “[State agency]” means the [agency designated by the Legislature]. The [State agency] is responsible for [the certification of recovery residences under this Act or contracting with or designating a certifying organization to certify recovery residences under this Act].
- (s) [State agency or certifying organization] registry.— “[State agency or certifying organization] registry” means the list of recovery residences maintained by the [State agency or certifying organization] that have applied for certification and have been approved or denied by the [State agency or certifying organization], or from whom the [State agency or certifying organization] has revoked certification.
- (t) Substance-free.— “Substance-free” means being free from the use of alcohol, illicit drugs, and the illicit use of prescribed drugs. This term does not prohibit medications prescribed, dispensed, or administered by a licensed healthcare professional, such as pharmacotherapies specifically approved by the Food and Drug Administration (FDA) for treatment of substance use disorder as well as other medications approved by the FDA for the treatment of co-occurring disorders, when such medications are taken as directed.
- (u) Substance use disorder.— “Substance use disorder” means a pattern of use of alcohol or other drugs leading to impairment that meets the applicable diagnostic criteria delineated in the Diagnostic and Statistical Manual of Disorders (DSM-5) of the American Psychiatric Association, or in any subsequent editions.

## Commentary

“Medication assisted treatment” may be referred to by another name or names (*e.g.*, medication for addiction treatment or medication for opioid use disorder) within a state, and state legislatures should feel free to modify the definitions to fit the language in use in their state.

Peer support workers may be referred to by different names depending upon the setting in which they practice. Common titles include peer specialists, recovery coaches, peer advocates, recovery supporters, and peer recovery support specialists.

Where the bracketed term “state agency” is used within this document, including in the definitions, it should be replaced by “department,” “board,” “commission,” or similar shortened form of the department or agency designated by the state legislature to certify recovery residences within the state or oversee a certifying organization contracted to perform certifications on behalf of the state. For example, the definition in subsection (r) above, when modified by a state, could read:

“Department.—‘Department’ means the Department of Health and Human Services. The Department is responsible for ...”

The definition of “state agency” does not designate a specific state department or agency as each state legislature is in the best position to know which particular state agency is best suited to perform the duties outlined in this Model Act. In some states, this will be the agency designated by the Substance Abuse and Mental Health Services Administration (SAMHSA) as the single state authority for substance use services (SSA). This is the agency that, among other things, administers the state, territory, or tribe’s Substance Abuse Prevention and Treatment Block Grant. A list of SSA’s, current as of July 2020, can be found here: <https://samhsa.gov/sites/default/files/ssa-directory.pdf>. In other states, there may be a separate state licensing agency or other authority who may be best equipped to serve as either the certifying agency or to contract with or designate a certifying body to serve this function.

## **SECTION V. VOLUNTARY CERTIFICATION OF RECOVERY RESIDENCES**

*[This section provides for the voluntary certification of recovery residences. State legislatures may wish to have a state agency certify recovery residences (“Option A”). Alternatively, states may prefer to contract with or otherwise delegate the certification process to an outside certifying organization (“Option B”). In order to accommodate both Options within this Act, subsections (a) and (e) of Section V contain two mutually exclusive alternatives for language for legislatures to consider, marked as “Option A” and “Option B” respectively. The remainder of Section V language (other than the use of “state agency” or “certifying organization,” as appropriate) is the same, regardless of which Option a state chooses.]*

### **[Option A]**

- (a) In general.— The [State agency] shall establish and provide for the administration of a voluntary training and certification program (“certification program”) for operators of recovery residences seeking certification under this section.

### **[Option B]**

- (a) In general.— The [State agency] shall approve, contract with, or otherwise officially designate a certifying organization to perform one or more of the functions of the [State agency] pursuant to this section or shall otherwise delegate such functions to the approved certifying organization.

### **[Both Options A and B]**

- (b) Maintenance of standards.— The [State agency] shall designate the national standard to be used by the certification program established pursuant to this section and such program shall maintain those standards and practices.

- (c) Automatic certification.—The [State agency or certifying organization]<sup>29</sup> shall determine that a recovery residence that has received a certificate or charter from an organization approved by the [State agency or certifying organization], such as a NARR-affiliated organization or Oxford House, Inc., or a chapter thereof, and that provides documentation of such certification or charter as required under paragraph (e)(1), has met all requirements for certification under this section. Such residences shall be issued a certification pursuant to this section and shall not be subject to subsections (g) or (h) regarding inspections.
- (d) Application requirements.— Individuals or organizations may apply for certification of a recovery residence. Applicants shall submit a completed application to the [State agency or certifying organization] that includes, at a minimum:
- (1) The name of the individual or organization making application for certification;
  - (2) The proposed name, if any, of the recovery residence;
  - (3) The address and telephone number of the recovery residence;
  - (4) The applicant’s address and telephone number, if different from the address and telephone number of the recovery residence;
  - (5) The applicant’s email address or, if an organization, the email address of the person responsible for the application;
  - (6) The name and contact information of the applicant’s parent organization, if applicable;
  - (7) The maximum number of residents to be housed in the recovery residence;
  - (8) The square footage of space per person per bedroom;
  - (9) The name, address, and telephone number of the operator of the recovery residence, if different than the applicant;
  - (10) The applicant’s signature and date signed; and
  - (11) Any other information required by the [certifying organization or State agency by regulation].

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<sup>29</sup> Where “state agency or certifying organization” is indicated in brackets throughout this document, it indicates that states should choose one or the other, not both. For example, if a state selects Option B of this section, the bracketed section should be changed to “certifying organization” where that designation makes sense.

(e) Application documents.— The [State agency or certifying organization] shall require the applicant to, at a minimum, submit the following documents with the completed application and fee:

- (1) A copy of the applicant’s documentation from a certifying organization approved by the [State agency], such as a certificate from a NARR-affiliated organization, or a copy of its Oxford House Charter, if applicable. Pursuant to subsection (c) above, if an applicant provides this documentation, they are exempt from providing the remaining documents as listed in paragraphs (2) – (9) below;
- (2) If the premises for the recovery residence is leased, documentation from the owner that the applicant has permission from the owner to operate a recovery residence on the premises;
- (3) A policy and procedures manual, if applicable;
- (4) Rules for residents;
- (5) Copies of all forms provided to residents, which should include, but not be limited to, the recovery residence’s medication, drug-testing, relapse, refund, and eviction or transfer policies;
- (6) Fee schedule;
- (7) Proof of business insurance, including any general liability insurance, appropriate to the services provided, if applicable; and
- (8) Proof of completed background screening referenced in subsection (o) below, if applicable.

**[Option A]**

(f) Application fee.— Applicants shall submit a non-refundable application fee in an amount to be determined by the [State agency] by rule. Application fees shall be deposited into the [state general fund or other fund designated by the legislature] for use by the [State agency] to administer this Act.

**[Option B]**

(f) Application fee.— Applicants shall submit a non-refundable application fee in an amount to be determined by the certifying organization which shall be paid directly to the certifying organization for use by the organization to administer this Act.



**[Both Options A and B]**

- (g) Inspection pursuant to application.— Upon receiving a completed application, the [State agency or certifying organization] shall conduct an onsite inspection of the recovery residence for the purpose of ensuring the residence is in compliance with the requirements of this Act and meets the standards for certification.
- (h) Ongoing inspections.— The [State agency or certifying organization] shall inspect each certified recovery residence at least [once each year/every two years] to ensure continued compliance and may conduct additional inspections to confirm correction of any deficiencies or for the purpose of investigating a complaint.
- (i) Correction of deficiencies in application.— If the [State agency or certifying organization] identifies a deficiency in an application, the applicant shall have thirty (30) days from the date of the notification of the deficiency to correct the deficiency, unless an extension is granted by the [State agency or certifying organization].
- (j) Correction of deficiencies following inspection.— If the [State agency or certifying organization] identifies a deficiency following inspection of the recovery residence, either during the application process or any subsequent inspection, or as a result of a verified complaint from a resident or staff member, the [State agency or certifying organization] shall require the applicant or operator, if different than the applicant, to submit a plan of action to correct the deficiency within a specified time period. The plan of action shall include the steps that will be taken by the recovery residence or its operator to correct the deficiency and the time frame within which such corrections will be made. The [State agency or certifying organization] shall establish the deadline for submission of the plan of action based on each residence's specific circumstances and the deficiencies which are required to be corrected.
- (k) Certification.— The [State agency or certifying organization] shall issue a certification upon approval of a recovery residence's application and inspection. Applications shall be approved or denied within thirty (30) days of receiving all required documentation and completing the required inspection. The certification shall automatically terminate two (2) years after issuance, if not renewed or if an extension is not granted.

- (l) Content of certification.— The certification issued to the recovery residence applicant shall specify the following:
- (1) The name of the holder of the certification, which may be the individual applicant or the name of the parent organization;
  - (2) The address to which the certification applies;
  - (3) The maximum number of persons to reside in the recovery residence; and
  - (4) The expiration date.
- (m) Display of certification.— Certifications shall be publicly displayed in the recovery residence.
- (n) Non-transferrable.— Certifications issued pursuant to this section shall not be transferred to an address other than the one specified on the certification.
- (o) Background checks.— All owners, operators, directors, and chief financial officers of an applicant recovery residence are subject to background screening. This subsection is not applicable to recovery residences eligible for automatic certification under subsection (c) above. A recovery residence may be ineligible, and the [State agency or certifying organization] may deny a recovery residence’s application, if any owner, operator, director, or chief financial officer has been found guilty of, or has entered a plea of guilty or nolo contendere to, regardless of adjudication, any of the following offenses within five (5) years prior to the application, and provided that five (5) years have elapsed since the owner, operator, director, or chief financial officer has completed or has been lawfully released from any confinement, supervision, or nonmonetary condition imposed by a court for the most recent disqualifying offense, unless the [State agency or certifying organization] has entered an exemption:
- (1) Serious offenses related to healthcare fraud;
  - (2) Patient brokering;
  - (3) Criminal use of confidential personal information; or
  - (4) Abuse, neglect, or exploitation of vulnerable persons.
- (p) Appeal of denial based on background check.—An applicant may appeal a denial an application based on the results of a background screening within thirty (30) days of

notification of such denial, and the [State agency or certifying organization] shall freely grant such appeals where the facts support doing so.

- (q) Removal of owner, operator, director, or chief financial officer.— If any owner, operator, director, or chief financial officer of a certified recovery residence is arrested for, or found guilty of, or enters a plea of nolo contendere to, regardless of adjudication, any offense listed in subsection (o) above while acting in that capacity, the certified recovery residence shall take steps to remove the individual from that position and shall notify the [State agency or certifying organization] within three (3) business days after such removal. The [State agency or certifying organization] shall revoke the certification of any recovery residence that fails to comply with this subsection. This subsection does not apply to chartered Oxford Houses.
- (r) Renewal application.— At least [30/60/90] days prior to the expiration of certification, a certified recovery residence shall submit a renewal application and any required fee to the [State agency or certifying organization] in a format required by the [State agency or certifying organization]. Upon inspection and determination by the [State agency or certifying organization] that the recovery residence continues to meet the requirements of this Act, the [State agency or certifying organization] shall reissue a certification for a period of [one to two]<sup>30</sup> years.
- (s) Online applications.—The [State agency or certifying organization] shall allow applicants to submit initial and renewal applications through an online portal that includes the ability to upload supporting documentation and electronically pay any fees.
- (t) Online registry.—The [State agency or certifying organization] shall publish and maintain an online registry of all certified recovery residences which shall be accessible to governmental entities, licensed drug and alcohol treatment service providers, and the public through the [State agency or certifying organization] website. The [State agency or certifying organization] registry shall be updated at least monthly.

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<sup>30</sup> The reviewers were split on the time period for which a certification is valid with some in favor of one year terms and others favoring a longer period of time so as not to overburden the certifying entity.

## Commentary

The provisions of this section are taken mostly from Fla. Stat. Ann. § 397.487 (2019), Haw. Rev. Code § 321-193.7 (2019), and Ariz. Admin. Code R9-12-103 (2019).

A State may choose to administer the certification program provided by Section V through a designated State agency (“Option A”) or may contract with a certifying organization to perform those functions on behalf of the State (“Option B”). The Model Recovery Residence Certification Act working group’s (“working group”) consensus was that the role of the State agency should be limited to: (1) selecting the national standard and/or organizations as the reference standards for the state; (2) identifying and contracting with an in-state organization to act as the standards and certifying organization; (3) oversight of the certifying organization; and (4) adjudicating appeals regarding adverse certification actions. The working group noted that government agencies may lack the needed expertise to promote best practices for recovery residences, and that using a state agency to certify recovery residences may result in higher costs and may prevent some residences from seeking certification. The drafters included both options to allow states to choose the certification body that best fits the state’s circumstances.

Paragraph (e)(1) provides that a recovery residence with an Oxford House Charter (“Charter”) or that is certified by a state agency-approved organization, such as a NARR affiliate, should provide documentation of such with the recovery residence’s written application for state certification under this section. The intent is to allow recovery residences that have met the standards for a Charter or for certification by a NARR-affiliated organization or similar entity recognized by the state to provide documentation of that certification as evidence of the recovery residence’s compliance with those standards. Currently, NARR is affiliated with organizations in 28 states that perform certifications of recovery residences based on the NARR standard, while Oxford House, Inc. is the umbrella organization for more than 3,000 Oxford Houses in 49 states.<sup>31</sup> State agencies should determine, either by rule or through policy, which organizations’ credentials they will accept as evidence of meeting the certification requirements of this section. Subsection (c) is intended to allow the state agency to accept the documentation provided under (e)(1) as evidence that the recovery residence has met all requirements for certification under this section and to automatically certify such recovery residence upon receipt of that documentation.

The list of individuals subject to a criminal background screening in subsection (o) is not meant to be exhaustive, but rather is meant to be illustrative of the types of individuals and officers that should be subject to such a screening. Individuals subject to background screening should be those individuals in a position of authority within the organizational structure of the recovery residence, including those who have direct contact with residents or potential residents or who have fiscal or financial control of the recovery residence. Moreover, the list of offenses in subsection (o) that preclude certification of a recovery residence is not intended to discriminate against individuals who may have a criminal record due to an underlying substance use disorder. The drafters understand that many individuals in recovery have a criminal history. The offenses

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<sup>31</sup> NARR, <https://narronline.org/> (last visited Dec. 17, 2020); OXFORD HOUSE, <https://www.oxfordhouse.org/userfiles/file/> (last visited Dec. 17, 2020).

listed in this subsection are intended to protect residents of recovery residences from being the victims of fraud, negligence, exploitation, or other harm or abuse. With that in mind, a few reviewers suggested that the list of disqualifying criminal offenses in subsection (o) also include homicide and certain sex crimes such as sexual assault, sexual battery, and lewd and lascivious performance with a child.

Fees for an initial or renewal application should not be prohibitive. Legislators should bear in mind that the cost of applying for certification will most likely be paid by or passed on to the residents, and such cost should not have the unintended consequence of dissuading individuals from applying. Moreover, states should not base the cost of applying on the number of beds or residents in a recovery residence. States should consider supplementing the cost of applying through a grant or other funding in order to offset the cost for eligible applicants. States should also consider implementing a waiver process for recovery residences that can demonstrate that the required fee is prohibitive.

Under subsection (r) related to renewal applications, states may wish to adopt a renewal procedure whereby certified recovery residences are not obligated to go through the entire application process again but may simply logon to the website of the certifying organization or State agency, verify that all of their information remains correct, and receive a renewal certificate. Exceptions might be made for residences or providers with a history of complaints that have led to remedial action.

The timeframes set forth in this section – for length of certifications, submission of renewal applications, and inspections – are only suggested timeframes. States should choose a time period that works best for their certifying agency. However, the drafters do not recommend that renewal certifications or inspections occur less frequently than once every two years, as a longer time period may result in recovery residences lapsing into non-compliance. Additionally, states should choose the due date for submission of renewal applications to allow the agency (or contracted certifying organization) sufficient time to complete review of the renewal application and inspection before the recovery residence’s certification expires.

It was recommended that prior to beginning certifications of recovery residences pursuant to this section, the certifying entity should reach out to any and all known recovery residences via U.S. Mail with a letter of invitation asking them to certify and including contact information for the certifying entity and the training and technical assistance provider, if different than the certifying entity, in case of any questions.

## **SECTION VI. SERVICES OFFERED AND LEVELS OF SUPPORT.**

The [State agency or certifying organization] shall certify applicants at one of the following levels of support:<sup>32</sup>

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<sup>32</sup> *Recovery Residence Levels of Support*, NARR, [https://narronline.org/wp-content/uploads/2016/12/NARR\\_levels\\_summary.pdf](https://narronline.org/wp-content/uploads/2016/12/NARR_levels_summary.pdf)

- (a) Level 1 – peer run.— A Level 1 peer run recovery residence provides no onsite paid staff or operator of the recovery residence. Level 1 recovery residences are self-governed and democratically run. No onsite services are provided at a Level 1 recovery residence, and there is no paid staff within the residence.
- (b) Level 2 – monitored.— Level 2 recovery residences provide an onsite house manager or managers who are often compensated by free or reduced recovery residence fees. Residents participate in the governance of the residence in concert with the recovery residence staff and operator. Level 2 recovery residences provide community/house meetings, peer recovery supports, and involvement in self-help and/or offsite treatment services.
- (c) Level 3 – supervised.— Level 3 recovery residences provide a paid house manager, administrative support, and a certified peer recovery support service provider. Resident participation in recovery residence governance varies, with most limited to senior resident participation. Level 3 recovery residences provide community/house meetings, peer recovery supports, and are linked with mutual support groups and clinical services in the community, peer or professional life skills training onsite, and peer recovery support services. They may also provide other programmatic services, delivered by either peer or paid staff, but do not offer clinical services.
- (d) Level 4 – service provider.— Level 4 recovery residences are much more structured than other levels of support. Resident stays in a Level 4 recovery residence are typically briefer than in other recovery residences, and residents may transfer from a Level 4 recovery residence to a Level 1 – 3 residence. Level 4 recovery residences provide onsite clinical services delivered by paid, licensed or otherwise credentialed staff, administrative support, mutual support group meetings, life skills training, and peer recovery support services.

## Commentary

The levels of support identified in the NARR standards are intended to encompass all types of recovery residences, from Oxford Houses and other democratically operated homes that jointly lease the property housing the residence (Level 1), to more rigidly structured homes intended for briefer stays for those individuals requiring more onsite services (Level 4). The purpose of certifying recovery residences at a certain level is: (1) to ensure that the recovery residence provides the required services and is appropriately staffed and organized to do so; and

(2) to facilitate linkage of individuals to recovery residences best suited to meet their needs. For example, a Level 3 recovery residence should ensure that it has a peer support worker on staff, and failure to have such a person on staff could result in reclassification at a lower level.

## **SECTION VII. RECOVERY RESIDENCE STANDARDS.**

The [State agency or certifying organization] shall adopt nationally recognized standards of operation for recovery residences. Such standards shall be set out in rule and shall be posted on the [State agency or certifying organization]’s website.

### **Commentary**

States should research national recovery residence standards of operation and adopt those standards which best suit the purpose and intent of the state’s recovery residence certification act. However, the reviewers recommend adoption of the NARR standard – the NARR *National Standard 3.0 Compendium*, the *NARR Code of Ethics*, and the *NARR Ethical Policies Regarding Drug Testing*. The NARR *National Standard 3.0 Compendium* sets out the standards to which recovery residences should adhere and the justification for each of the standards. A copy of the *Compendium* can be found here: <https://narronline.org/wp-content/uploads/2019/09/NARR-Compendium-C-v6.pdf>.

NARR’s *Ethical Policies Regarding Drug Testing* (<https://narronline.org/wp-content/uploads/2019/03/NARR-Drug-Testing-Policy.pdf>) asserts that “it is unethical to drug test for any other reason besides supporting recovery.” The drafters believe that recovery residences should consider implementing a drug testing protocol that is “fair, uniformly implemented, and appropriate” for residents. It is the working group’s opinion that drug testing standards should not be mandatory, particularly as relates to Level 1 recovery residences, but should remain within the prerogative of each recovery residence.

## **SECTION VIII. TERMINATION OF RESIDENCY.**

(a) In general.—Notwithstanding any other provision of law or any rights or obligations under [State landlord/tenant statutory references], a certified recovery residence may terminate a resident’s tenancy in the recovery residence in accordance with the recovery residence’s approved termination or relapse policy and the signed resident agreement. In the case of a resident who is terminated from a Level 3 or Level 4 recovery residence, the recovery residence should make a reasonable effort to link that individual to more appropriate support or care, to the extent such support or care is available, and subject to the willingness of the terminated resident to accept such support or care.

(b) Return of property.—

- (1) A resident whose tenancy is terminated pursuant to this section, or who has voluntarily left the residence permanently, has thirty (30) days from the date of termination or the date of voluntary departure to make a written request to the recovery residence for the return of any personal property left in the residence by the tenant on his or her departure.
  - (2) Upon receipt of a request as specified in paragraph (b)(1), the recovery residence shall return any personal property belonging to the resident within sixty (60) days from the date of the request.
  - (3) The recovery residence is not bound to retain the personal property of a resident whose tenancy is terminated or who has voluntarily permanently left the residence indefinitely, nor shall it be responsible for the relocation, storage, or safeguarding of such property. Recovery residences shall specify the length of time it will retain personal property beyond the thirty (30)-day period specified in paragraph (b)(1) in the documentation provided to prospective or new residents at the time of their application to the recovery residence, but such time period shall not be less than any amount of time required by law.
  - (4) In a case where a resident appeals termination pursuant to subsection (c), the time periods provided in paragraphs (b)(1)-(3) are stayed during the pendency of the appeal.
- (c) Appeal.—A resident whose tenancy has been terminated by the recovery residence can file a complaint with the [State agency or certifying organization] within thirty (30) days of the termination to appeal such termination. The resident may not remain on the premises of the recovery residence during the pendency of the appeal.

## Commentary

This section has been included at the request of some members of the working group in order to ensure that recovery residences are not obligated to go through the sometimes lengthy process of evicting a resident whose continued presence in the recovery residence presents a risk of harm to him or herself, other residents, or staff. The appeals process is to ensure that an individual's residency is not terminated for inappropriate reasons, such as retaliation related to a complaint or unwillingness to comply with unreasonable requests or demands, or for a reason that is not valid under the terms of the residency agreement signed by the parties as a condition of the individual's residency.



## SECTION IX. RESIDENTS' RIGHTS.

If any provision of this Act or application thereof to any individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provisions or applications, and to this end, the provisions of this Act are severable.

### Commentary

Recovery residences assist their residents in developing the “recovery capital” needed to achieve and sustain a life in recovery. Recovery capital is the range of internal (intrapersonal) and external resources that can be drawn upon to initiate and sustain recovery from substance use disorder.<sup>33</sup> As noted in the NARR standard, recovery capital includes personal recovery capital, which is comprised of elements such as health, financial security, safe shelter, self-esteem, and self-efficacy.<sup>34</sup>

While there are many examples of resident rights, they reinforce these core values of human recovery capital. [They validate] residents’ agency, shifting previous experiences of complying with an external authority to finding authority within themselves. Resident rights establish an individual’s prerogative to be in the community and have grievances and autonomy. Establishing resident rights empowers a population that may be unaware that they have rights as a result of previous experiences with discrimination. Upholding rights helps set the tone of trust between the residence operators, among residents, and within their community.<sup>35</sup>

States should adopt a core list of nationally recognized residents’ rights that are geared toward creating the sense of personal recovery capital discussed above. However, simply having a list of rights without any recourse for a resident whose rights are infringed upon by a recovery residence owner, operator, or house manager would be of little value. Therefore, states should ensure that there is a clearly defined process in place, such as the filing of a complaint with the

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<sup>33</sup> See Robert Granfield and William Cloud, *COMING CLEAN: OVERCOMING ADDICTION WITHOUT TREATMENT* (New York University Press 1999); William Cloud and Robert Granfield, *A Life Course Perspective on Exiting Addiction: The Relevance of Recovery Capital in Treatment*, 44 *NORDIC COUNCIL FOR ALCOHOL & DRUG RSCH.* 185-202 (2004); and William Lee White and William Cloud, *Recovery Capital: A Primer for Addictions Professionals*, 9 *COUNSELOR* 22-27 (2008).

<sup>34</sup> *National Standard 3.0 Compendium*, NARR, <https://narronline.org/wp-content/uploads/2019/02/NARR-Standard-Compendium-v3.pdf> (last updated Feb. 2019).

<sup>35</sup> *Id.*

agency designated to certify recovery residences in that state, for residents to seek redress for a violation of this section.

## **SECTION X. TRAINING AND TECHNICAL ASSISTANCE.**

The [State agency or certifying organization] shall develop a training and technical assistance program for the benefit of recovery residences and certified recovery residences which shall serve the following purposes:

- (a) To assist owners, operators, house managers, and other staff with:
  - (1) Developing an understanding of the statutes and regulations applicable to recovery residences in [state];
  - (2) Completing the application process for certification; and
  - (3) Answering questions regarding the day-to-day operation of recovery residences;
- (b) To assist newly certified recovery residences with any questions or issues that might arise;
- (c) To encourage consistency in standards among certified recovery residences;
- (d) To improve the quality and effectiveness of recovery residences and their ability to serve diverse communities; and
- (e) To promote a collaborative relationship between certified recovery residences and the [State agency or certifying organization].

### **Commentary**

This section is applicable to both recovery residences that are not certified under this Act and those that are. The intent is to allow all recovery residences to take advantage of the training and technical assistance offered pursuant to this section.

## **SECTION XI. ACCESS TO MEDICATION.**

- (a) In general.—All certified recovery residences shall ensure that residents who are legitimately prescribed or dispensed medications, including medications for the treatment of substance use disorder, from an individual or a treatment program legally authorized to prescribe or dispense such medications, have access to such medication and are not denied tenancy in a recovery residence or made to discontinue the use of the medication for continued residency.

- (b) Security.— As long as such provisions do not impair the ability of the resident to take such medications as prescribed and such requirements are disclosed to the resident at the time of intake, certified recovery residences shall:
- (1) Require that residents receiving medications, including medications for the treatment of substance use disorder, safely store their medications according to national standards for recovery residences, which may include keeping such medications in a lockbox to which only the resident and the house manager of the recovery residence have access; or
  - (2) Otherwise implement provisions for the safe storage of, and access to, such medications.

### Commentary

Medication assisted treatment (MAT) is associated with higher rates of treatment retention and lower rates of illicit drug use, criminal justice system involvement, and overdose than treatment for substance use disorders that does not include MAT.<sup>36</sup> In addition, treatments that include MAT increase patients' ability to gain and maintain employment and improves birth outcomes among pregnant women with a substance use disorder.<sup>37</sup> It is, therefore, important that recovery residence residents have continued access to lawfully prescribed or dispensed MAT while residing in a recovery residence. Individuals should not be declined admission to a recovery residence because they are taking medications approved by the FDA for the treatment of substance use disorder, nor should they be required to discontinue such use as a condition of continued residence. Recovery residences should have appropriate policies and controls in place for residents receiving MAT or other legitimately prescribed or dispensed medications. This section is intended to preserve their right to receive such medications while simultaneously safeguarding the sobriety of other residents.

### SECTION XII. ACCESS TO FINDING AND REFERRALS.

- (a) Limitation on the use of funds.—Federal, state, county, and local government funds, including grant funds, used for the support of recovery residences shall be available only to recovery residences certified under this Act.
- (b) Limitation on referrals.— Licensed inpatient or outpatient state drug and alcohol treatment service providers and any state-funded or state-operated program of any type

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<sup>36</sup> *Medication-Assisted Treatment (MAT)*, SAMHSA, <https://www.samhsa.gov/medication-assisted-treatment> (last modified Jan. 4, 2021).

<sup>37</sup> *Id.*

that refers individuals to recovery residences, may not make a referral of a prospective, current, or discharged patient to, or accept a referral of such a patient from, a recovery residence unless, at the time of referral, the recovery residence is certified pursuant to this Act as identified by the [State agency or certifying organization] registry or as verified by telephone call to the [State agency or certifying organization].

- (c) Referral defined.—For purposes of this section, a licensed state drug and alcohol treatment service provider or recovery residence makes a referral if the provider or recovery residence informs a patient by any means about the name, address, or other details of a recovery residence or licensed state drug and alcohol treatment service provider, or informs a provider or a recovery residence of any identifying details about a patient.
- (d) No obligation.—Nothing in this subsection requires a licensed state drug and alcohol treatment service provider to refer a patient to, or accept a referral from, a recovery residence.
- (e) Exceptions.—Subsection (b) does not apply to:
  - (1) Referrals by a recovery residence to a licensed state drug and alcohol treatment service provider when the recovery residence, its owners, directors, operators, or employees do not benefit, directly or indirectly, from the referral; or
  - (2) The referral of a patient to, or acceptance of a referral of such a patient from a recovery residence:
    - (A) That has no direct or indirect financial or other referral relationship with the licensed service provider;
    - (B) That is democratically operated by its residents pursuant to a charter from an entity recognized or sanctioned by Congress; and
    - (C) Where the residence or any resident of the residence does not receive a benefit, directly or indirectly, for the referral.

## Commentary

Model Act working group members recommend that any registry of recovery residences should have: (1) a public-facing website that does not include residence addresses; and (2) a separate website that includes residence addresses, requiring a user name and password

combination for licensed treatment providers and governmental entities access to verify certification for referrals and funding purposes.

To encourage recovery residences to become certified and submit to regulation under this Act, and because there is a preference for recovery residences to be certified, states should limit receipt of any federal, state, county, or local funds to certified recovery residences, as well as limit referrals by licensed treatment providers to certified recovery residences. Portions of this section related to referrals were taken from Fla. Stat. Ann. § 397.4873. To date, the drafters are not aware of any court cases involving such restrictions. The purpose of the telephone verification in subsection (b) is to allow referrals to newly-certified recovery residences that do not yet appear on the online registry.

Legislatures should be mindful that it will take time for recovery residences to complete the certification process after the effective date of this Act, particularly if there is a backlog of residences seeking certification. Therefore, the reviewers recommend that the effective date of this section be delayed by 12 to 18 months to give residences the time needed to become certified.

### **SECTION XIII. LOCAL ZONING.**

*[This section includes two mutually exclusive options for consideration by legislatures. Option A is for states that choose to take a minimalist approach to zoning for recovery residences. Option B is for those states that choose a more comprehensive approach to the zoning requirements for recovery residences in statute.]*

#### **[Option A]**

Except as otherwise provided for in this Act, and notwithstanding any other law or regulation to the contrary, any state, county, or local zoning ordinance enacted in [state]:

- (a) Shall treat a recovery residence as a residential use of property which shall have all rights and responsibilities accorded to a residential use property; and
- (b) Shall not subject the recovery residence to any restrictions, prohibitions, or other provisions, including provisions related to the building or fire codes, that are not also applicable to residential uses in similar types of structures (*i.e.*, single-family detached, single-family attached, multi-family structures) in the same zoning district if occupied by a single family.

#### **[Option B]**

- (a) In general.—Except as otherwise provided for in this Act, and notwithstanding any other law or regulation to the contrary, any state, county, or local zoning ordinance enacted in [state]:

- (1) Shall treat a recovery residence as a residential use of property which shall have all rights and responsibilities accorded to a residential use of property; and
  - (2) Shall not subject the recovery residence to any restrictions, prohibitions, or other provisions, including provisions related to the building or fire codes, that are not also applicable to residential uses in similar types of structures (*i.e.*, single-family detached, single-family attached, multi-family structures) in the same zoning district if occupied by a single family.
- (b) Allowed as of right.—When the number of tenants in a recovery residence does not exceed the number of unrelated people allowed by a jurisdiction’s zoning laws, the recovery residence shall be allowed to locate within that zoning district as of right.
- (c) Housing additional residents.—Notwithstanding subsection (b), and subject to the provisions of subsection (e), when a recovery residence houses, or seeks to house, more unrelated people than a jurisdiction’s zoning laws allow, the residence shall be permitted to locate within the zoning district as provided for below:<sup>38</sup>
- (1) Recovery residence allowed as a permitted use.—
    - (A) A Level 1 or 2 recovery residence shall be allowed as a permitted use in all zoning districts where residential uses are permitted, so long as the residence provides evidence that it has been certified by the [State agency or certifying organization] or is in the process of becoming certified.
    - (B) A Level 3 or 4 recovery residence shall be allowed as a permitted use in all zoning districts where multi-family housing is allowed, so long as the residence provides evidence that it has been certified by the [State agency or certifying organization] or is in the process of becoming certified.
  - (2) Recovery residence allowed as a reasonable accommodation.—If a recovery residence is not certified and is not in the process of becoming certified, the state, county, or locality shall offer a reasonable accommodation process including, but not limited to, a special use, conditional use, or special exception, subject solely to specific standards narrowly tailored to determine that the proposed recovery

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<sup>38</sup> Standard Housing Code Requirements regarding minimum square footage for bedrooms and living space may still apply.

residence will operate in a manner that provides the same sort of protections to residents that licensing or certification of other community residences furnish in the state.<sup>39</sup>

(d) Level 3 or Level 4 residence in single-family district.—The state, or a county, or a locality shall allow a Level 3 or 4 recovery residence to locate in a single-family residential district by a reasonable accommodation process including, but not limited to, a special use, conditional use, or special exception, subject solely to specific standards narrowly tailored to determine:

- (1) That the recovery residence, alone or in combination with any existing community residences, will not alter the residential stability of the single-family zoning district;
- (2) That the recovery residence will be compatible with the residential uses allowed as of right in the zoning district; and
- (3) That the recovery residence, in combination with any existing community residences, will not alter the residential character of the surrounding neighborhood by creating or intensifying an institutional atmosphere or by creating or intensifying a de facto social service district by clustering or concentrating community residences on a block or in a neighborhood.

(e) Limitation on number of residents.<sup>40</sup>—Where a recovery residence is allowed as a permitted use, no more than twelve (12) individuals may reside in a single dwelling unit. To allow for more than twelve (12) residents, a state, county, or locality shall offer a reasonable accommodation process including, but not limited to, a special use, conditional use, or special exception, subject solely to specific standards narrowly tailored to determine:

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<sup>39</sup> “Subject solely to specific standards narrowly tailored” means that recovery residences shall be exempt from the other standards applied to other special uses, conditional uses, or special exceptions. This provision is needed because the typical standards are not relevant to the four circumstances for requiring a special use, conditional use, or special exception for a recovery residence. In addition, jurisdictions should make a further reasonable accommodation by significantly reducing or eliminating fees for a special use, conditional use, or special exception so that the cost of these applications — which can run thousands of dollars in some cities and counties — do not act as an impediment to establishing a recovery residence.

<sup>40</sup> See FN 37, *supra*.

- (1) The number of residents over twelve (12) is needed to enable the financial and/or therapeutic viability of the recovery residence; and
- (2) That the recovery residence will emulate a biological family and operate as a functional family as opposed to a boarding or rooming house, nursing home, short term rental, continuing care facility, motel, hotel, treatment center, rehabilitation center, institutional use, or other non-residential use.

## Commentary

By far, the largest point of contention among the working group’s members was the extent to which the law should address zoning issues related to recovery residences. One considerable challenge to the drafters, which carries over to legislators implementing statutory language, is that a statute or rule regarding zoning must meet requirements under both the Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA). Individuals with substance use disorder fall within a class of people with disabilities that are protected by the ADA and FHA. As a result, a zoning law cannot treat individuals with disabilities any differently than it treats those without and any implemented zoning requirement must not discriminate against the residents of a recovery residence, either intentionally or unintentionally. Recovery residence owners routinely ask courts to determine the validity of locally enacted zoning regulations. Perhaps not unexpectedly, court decisions vary considerably and are very fact specific.<sup>41</sup>

Due to the lack of consensus among the working group members, the model proposes two mutually exclusive zoning options for consideration by legislatures. Option A is the version preferred by most, though not all, of the working group members. Compared to Option B, this option provides a less statutorily prescribed provision, while still protecting recovery residences from discrimination through local zoning regulations. It seeks to alleviate one of the most common issues faced by recovery residences located in single-family zoning districts – the actual or attempted treatment of a recovery residence as a boarding or rooming house, thereby imposing on the residence fire and/or building code requirements that other single-family and multi-family homes in the area do not face. In short, Option A prohibits a local zoning district from treating a

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<sup>41</sup> See, e.g., *Oxford House-Evergreen v. City of Plainfield*, 769 F. Supp. 1329 (D.N.J. 1991) (challenging limitation on number of tenants in single-family home); *Oxford House, Inc., et. al. v. H. “Butch” Browning, State Fire Marshal*, 266 F. Supp. 3d 896 (2017) (finding that Oxford House residents should be treated as a “family” for purposes of fire code enforcement); *Human Res. Research & Mgmt. Grp. v. Cty. of Suffolk*, 687 F.Supp.2d 237 (E.D.N.Y. 2010) (finding statute facially discriminatory for requiring (1) notice and approval of site location; (2) a certified site manager living on-site; (3) limiting occupancy to six tenants; and (4) licensing requirement); *Cherry Hill Twp. v. Oxford House, Inc.*, 621 A.2d 952 (N.J.Sup. 1993) (finding township’s definition of “family” unconstitutionally vague); *Brockton Fire Dep’t v. St. Mary Broad Street, LLC*, 181 F. Supp. 3d 155 (enjoining enforcement of state sprinkler law on state law and FHA grounds); *City of Edmonds v. Oxford House, Inc.*, 514 U.S. 725 (1995) (finding that “rules designed to preserve the family character of a neighborhood, fastening on the composition of households rather than on the total number of occupants living quarters can contain” do not fall within the FHA’s absolute exemption); *Harmony Haus Westlake, LLC v. Parkstone Prop. Owners Ass’n, Inc.*, 440 F. Supp. 3d 654 (W.D. Tex. 2020) (homeowners association’s refusal to grant reasonable accommodation violated FHA).



recovery residence any differently than any other single-family or multi-family residence in the same zoning district.

Subsection (a) of Option B is identical to Option A and serves the same purpose. However, Option B recognizes that local jurisdictions have often adopted ordinances that designate the maximum number of people who can reside in a single-family or multi-family residence. Subsection (b) states that recovery residences that fall within those local definitions shall be allowed as of right in single-family and multi-family zoning districts, meaning that if they fall within those parameters, the residence need take no further action to exist in those zoning districts. Subsection (c) sets out a method by which a recovery residence that has more residents than allowed by local zoning ordinances can obtain a “special use permit” or other exception to the ordinance allowing the recovery residence to maintain a higher number of residents and still be located within that zoning district. Pursuant to subsection (c), if a recovery residence is certified or in the process of becoming certified and it is a Level 1 or 2 residence, it is allowed or nothing further is needed. If the recovery residence is certified or in the process of being certified and it is a Level 3 or 4 residence in a multi-family zoning area, it is also allowed as a permitted use. Paragraph (c)(2) provides that if the residence does not fall within subsections (a), (b), or (c)(1), the locality must offer a reasonable accommodation process that allows the residence to make its case for a special use/conditional use permit. Subsection (d) provides a means for a Level 3 or Level 4 recovery residence to make a case to locate within a single-family residential zoning area. Finally, subsection (e) provides that even in cases where a residence is allowed as a permitted use, the residence must seek a reasonable accommodation to house more than 12 individuals within a single dwelling unit. Several working group members suggested that rather than have a maximum number of residents allowed per dwelling included in statute, the number of residents allowed per dwelling should be calculated based on the square footage of the bedrooms. For example, each resident should have at least 50 square feet of living space per bedroom so a four-bedroom house with at least 100 square feet per bedroom would have a maximum of eight residents while the maximum number of residents allowed in a six bedroom house with 100 square feet of space per bedroom would be 12.

One provision not included in Option B above, but recommended by several reviewers, is a requirement that a recovery residence seeking to house more people than fit within a local zoning district’s definition of “family” or “household,” be allowed as a permitted use so long as the residence is located a specified distance away from the next nearest community residence and is certified or in the process of becoming certified.<sup>42</sup> The majority of reviewers objected to this language, in part due to concerns that such provisions might violate the ADA and/or FHA, and states should be aware that inclusion of such language in an Act dealing exclusively with recovery residences could be determined to be discriminatory as this section applies only to recovery residences and not to other types of group homes.<sup>43</sup> As mentioned above, any state statute or rule or local ordinance regarding zoning must meet both ADA and FHA requirements,

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<sup>42</sup> An example of a currently-in-force zoning provision containing such a requirement can be found at Dublin, Ohio Code of Ordinances, § 153.073, [https://codelibrary.amlegal.com/codes/dublin/latest/dublin\\_oh/0-0-0-99051](https://codelibrary.amlegal.com/codes/dublin/latest/dublin_oh/0-0-0-99051).

<sup>43</sup> It is beyond the purview of this Model Act to include a provision that is applicable to other types of group homes (e.g., domestic violence shelters, assisted living facilities, etc.) though states may choose to do so in such a way that it overcomes any potential discriminatory impact.

and it is a matter of intense debate and numerous court cases as to whether a spacing requirement violates those requirements.<sup>44</sup> Moreover, guidance from federal agencies on this issue is unclear. In a 2016 joint statement, the U.S. Department of Justice (DOJ) and U.S. Department of Housing and Urban Development (HUD) stated that “the Fair Housing Act does not prevent state or local governments from taking into account concerns about over-concentration of group homes that are located in close proximity to each other” when determining whether to grant a reasonable accommodation to a group home that houses or seeks to house more individuals than are allowed under the local ordinance.<sup>45</sup> However, those agencies also said, “[b]ecause an across-the-board spacing requirement may discriminate against persons with disabilities in some residential areas, any standards that state or local governments adopt should evaluate the location of group homes for persons with disabilities on a case-by-case basis.”<sup>46</sup> Thus, given the potential issues with including language regarding spacing requirements for recovery residences at the state level, the choice to include such a requirement might be best left to individual localities.

#### **SECTION XIV. DATA COLLECTION.**

(a) In general.—Certified recovery residences may collect outcome data regarding their residents in the following areas in order to assess the effectiveness of the level of care provided by the recovery residence:

- (1) Abstinence from substance use;
- (2) Change in employment or education status;
- (3) Change in earnings;
- (4) Housing stability;
- (5) Admissions and readmissions to treatment;
- (6) Criminal justice involvement;
- (7) Child welfare involvement;

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<sup>44</sup> To date, more courts have struck down such provisions than have upheld them. For more information, see, *supra*, FN 36. See also, *Oxford House, Inc. v. City of Raleigh*, No. 5:98-CV-113-BO(2), 1999 WL 1940013, at \*5 (E.D.N.C. Jan. 26, 1999) (default judgment in favor of Defendant city on challenge to spacing requirement); DEPT. OF JUSTICE, JOINT STATEMENT OF THE DEPT. OF HOUS. AND URBAN DEV. AND THE DEPT. OF JUSTICE: STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUS. ACT, <https://www.justice.gov/opa/file/912366/download> (Nov. 10, 2016); *Larkin v. State of Michigan Dep’t of Social Servs.*, 89 F.3d 285, 291 (6<sup>th</sup> Cir. 1996) (finding that “integration is not a sufficient justification” for imposition of 1,500-foot spacing requirement but declining to express an opinion as to whether a more narrowly tailored law would pass muster); *Horizon House Developmental Servs., Inc. v. Upper Southampton*, 804 F. Supp. 683 (E.D. Pa. 1992) (invalidating 1,000-foot spacing requirement for group homes).

<sup>45</sup> DEPT. OF JUSTICE, JOINT STATEMENT OF THE DEPT. OF HOUS. AND URBAN DEV. AND THE DEPT. OF JUSTICE: STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUS. ACT, (Nov. 10, 2016) 12 – 13, <https://www.justice.gov/opa/file/912366/download>.

<sup>46</sup> *Id* at 12 (responding to the question “Can a state or local government impose spacing requirements on the location of group homes for persons with disabilities?”).

- (8) Civic engagement;
  - (9) Access to needed physical, behavioral health services, and social services;
  - (10) Access to private or public health insurance;
  - (11) Length of stay in the recovery residence; and
  - (12) Number of terminations due to relapse.
- (b) Report to [state agency or certifying organization].—If collected by the recovery residence, outcome data shall be reported to the [State agency or certifying organization] on a quarterly basis in such form and in such manner as the [State agency or certifying organization] may provide by rule. All such data submitted shall be de-identified to remove any personally identifiable information.
- (c) Study of state recovery housing needs.—The [State agency or certifying organization] may conduct an environmental scan and needs assessment study to determine the recovery housing needs of [state] and the location and adequacy of available residences to meet that need. Any initial study should be completed within [n] months of enactment of this Act. Subsequent studies should be completed no less frequently than once every three (3) years thereafter.
- (d) Survey areas.—The study provided by subsection (c) may assess the adequacy of recovery housing in each of the following areas:
- (1) Adequacy relative to population in all areas of the state;
  - (2) Adequacy of low-cost or subsidized recovery residences; and
  - (3) Adequacy for under-served and difficult-to-serve populations, including parents with children, pregnant women, re-entry populations, persons living with HIV, ethnic, racial, and other minorities, physically disabled persons, and tribal communities.
- (e) Study results.—The outcomes determined by any study conducted pursuant to subsection (c) shall be included in the annual report referenced in subsection (f).
- (f) Annual report.—The [State agency or certifying organization] shall analyze any data collected pursuant to subsections (a) and (c) and shall issue an annual report to the Governor, the House of Representatives [committee], and the Senate [committee] assessing the effectiveness of certified recovery residences within [State].

- (g) Public access to report.—The [State agency or certifying organization] shall make the annual report referenced in subsection (f) available on its website for use by the public.

## Commentary

The National Council for Behavioral Health recommends that recovery residences collect information about outcome measures “to gain a better picture of long-term treatment and recovery for people with addiction disorders.”<sup>47</sup> In addition to gaining a better understanding of the effectiveness of recovery residences, collecting data about outcome measures helps to satisfy requirements for SAMHSA’s Block Grant and discretionary funding to states.<sup>48</sup>

SAMHSA Block Grants, which are mandated by Congress, provide funds and technical assistance to the 50 states, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, six Pacific jurisdictions, and one tribal entity. Grant funds can be used to plan, implement, and evaluate activities that prevent and treat substance use disorder and promote public health, including recovery support services. There is another SAMHSA Block Grant program that provides funding for mental health services. According to SAMHSA, grantees use block grants for prevention, treatment, recovery support, and other services to supplement Medicaid, Medicare, and private insurance coverage by ensuring access to care among the uninsured and providing needed services and supports that are not covered by these sources. These types of grant funds could be used by states to supplement the state’s own funding of this Act. This includes funding the agency used to certify recovery houses or paying the fees for someone living in a recovery residence if he or she is receiving services that would be covered by insurance (*e.g.*, a level 3 or 4 residence). Reporting recovery residence outcome measures to the state provides the state with more data to report when seeking grant funding.<sup>49</sup>

## SECTION XV. DENIAL, SUSPENSION, OR REVOCATION OF CERTIFICATION.

- (a) Denial of applications.— The [State agency or certifying organization] may deny an application if:
- (1) The applicant does not meet the requirements of Section V;
  - (2) The applicant does not comply with the requirements for certified recovery residences as set forth in this Act or as may be set forth in regulation; or

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<sup>47</sup> *Building Recovery: State Policy Guide for Supporting Recovery Housing*, NAT’L COUNCIL FOR BEHAV. HEALTH, [https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18\\_Recovery-Housing-Toolkit\\_5.3.2018.pdf?dof=375ateTbd56](https://www.thenationalcouncil.org/wp-content/uploads/2018/05/18_Recovery-Housing-Toolkit_5.3.2018.pdf?dof=375ateTbd56) (last modified May 18, 2018).

<sup>48</sup> *Substance Abuse and Mental Health Block Grants*, SAMHSA, <https://www.samhsa.gov/grants/block-grants> (last updated Aug. 13, 2020).

<sup>49</sup> *Id.*

- (3) The applicant, owner, or operator provides materially false or misleading information on an initial or renewal application.
- (b) Suspension or revocation of certification.—The [State agency or certifying organization] may suspend or revoke a certification, or the [State agency] may issue a fine in an amount not to exceed [amount of maximum fine], if:
- (1) The applicant, owner, or operator provides materially false or misleading information on a renewal application, as part of an inspection, or in response to a complaint;
  - (2) A certified recovery residence is not in compliance with any provision of this Act;
  - (3) A certified recovery residence fails to file a plan of action with the [State agency or certifying organization] to correct any identified deficiencies within the time required by the [State agency or certifying organization];
  - (4) A certified recovery residence fails to remedy any deficiency identified by the [State agency or certifying organization] within the time required by the recovery residence’s approved plan of action, unless an extension of time is granted by the [State agency or certifying organization]; or
  - (5) The nature or number of violations revealed by any type of inspection or investigation of a recovery residence indicates a direct risk to the life, health, or safety of a resident, staff member, visitor, or other individual on the premises.
- (c) Nature or number of violations.— In determining whether a violation poses a direct risk to the life, health, or safety of a resident, staff member, visitor, or other individual on the premises of the certified recovery residence as provided for in paragraph (b)(5) of this section, the [State agency or certifying organization] shall consider the following:
- (1) Repeated violations of statutes or rules;
  - (2) Pattern of violations;
  - (3) Types of violations;
  - (4) Severity of violations; and
  - (5) Number of violations.
- (d) Review of adverse ruling. —Any decision by the [State agency or certifying organization] to deny, revoke, or suspend a certification, or otherwise impose sanctions

on a recovery residence, is reviewable. Upon receiving an adverse determination, the recovery residence may request an administrative hearing pursuant to the [State Administrative Procedures Act] within thirty (30) days after completing the appeals process offered by the [State agency or certifying organization] pursuant to Section XVII. In a case where a recovery residence appeals the decision of [the certifying organization], the [State agency] shall represent [the certifying organization] in any administrative hearing.

- (e) Notification regarding denial, suspension, or revocation.—The [State agency or certifying organization] shall provide written notification of any decision to deny, suspend, or revoke a certification to the recovery residence operator. The written notification shall include an explanation of the reason for the denial, suspension, or revocation; any rights of appeal the recovery residence may have; and the process for asserting those rights. The [State agency or certifying organization] shall also provide written notification of the suspension or revocation of a certification to the county, city, or locality where the recovery residence is located.
- (f) Reapplication after denial or revocation.—A recovery residence whose application for certification is denied may reapply for certification immediately upon correction of the deficiency or violation that resulted in the denial. A recovery residence whose certification is revoked may reapply for certification one (1) year after such revocation, or upon a showing that the circumstances that resulted in the revocation no longer exist, whichever occurs first.

## Commentary

This section sets out the grounds upon which a certification can be denied, revoked, or suspended, or a recovery residence can be fined. Most of these provisions are taken from Fla. Stat. Ann. § 397.487 (2019). States should allow sufficient time for correction of a deficiency or violation based on the type of deficiency or violation identified and, further, should be generous in granting extensions of time if the failure to correct a deficiency or violation is outside the control of the recovery residence owner or operator.

Denial, suspension, or revocation of a recovery residence’s certification should be a “last resort” measure with regard to violations that do not impact the health, welfare, or safety of residents, staff, or others on the premises of a recovery residence. States should consider collaborating with the training and technical assistance program created in Section X to create an

educational program covering the correction of violations: (1) that do not create a health or safety risk for residents or others; and (2) that relate to a residence's application for certification.

## **SECTION XVI. COMPLAINTS.**

- (a) In general.—The [State agency or certifying organization] shall establish a toll-free telephone number or an online complaint form, or both, to receive complaints from residents, staff, and the general public regarding certified recovery residences.
- (b) Types of complaints.— The [State agency or certifying organization] shall receive and review complaints that meet the following conditions:
- (1) Complaints based on the complainant's first-hand knowledge regarding the allegations;
  - (2) Complaints concerning the health of residents and safety of the recovery residence;
  - (3) Complaints concerning management of the recovery residence including, but not limited to, house environment, financial procedures, staffing, house rules and regulations, improper handling of resident terminations, and recovery support environment; or
  - (4) Complaints concerning illegal activities or threats.
- (c) Investigation.—
- (1) Complaints regarding illegal activities or threats shall be immediately referred to law enforcement in the jurisdiction where the recovery residence is located. The [State agency or certifying organization] shall continue to investigate matters referred to law enforcement that involve complaints contained in subsection (b)(4) unless otherwise requested by law enforcement to stay its investigation.
  - (2) The [State agency or certifying organization] shall investigate all other types of complaints listed in subsection (b) which are received via the toll-free telephone number, online complaint form, or via referral from a certifying organization, and may take any action necessary to conduct such investigation including, but not limited to, interviewing the recovery residence operator, house manager, staff, and residents, and conducting an inspection of the premises.

- (d) Notification regarding investigation.—If, upon completion of the investigation, the [State agency or certifying organization] determines that the complaint is well founded, the [State agency or certifying organization] shall notify the recovery residence operator of the actions required to bring the recovery residence into compliance with this Act or with notification of the intent to revoke or suspend the recovery residence’s certification pursuant to Section XV of this Act.
- (e) Correction of deficiencies.—The recovery residence shall file a plan of correction with the [State agency or certifying organization] within the time required by the [State agency or certifying organization] based on the nature of the complaint. The plan shall outline all steps the recovery residence will take to correct any deficiencies identified through a complaint investigation and shall include the time period within which such deficiencies shall be corrected, unless an extension is subsequently granted by the [State agency or certifying organization].
- (f) Appeals.—The outcome of any complaint investigation is reviewable by the [State agency or certifying organization]. Upon receiving a notification of deficiencies, the recovery residence may request an administrative hearing pursuant to the [State Administrative Procedures Act] within thirty (30) days after completing the appeals process through the [State agency or certifying organization] pursuant to Section XVII.
- (g) Anonymity.—When making a complaint pursuant to this section, an individual must disclose his or her identity to the [State agency or certifying organization]. During an investigation of the complaint, the [State agency or certifying organization], to the extent practicable, shall not disclose the identity of the complainant.

## Commentary

The language of this section is taken primarily from NH Admin. Code R. He-A 305.07 and is intended to provide residents and members of the public, typically individuals who reside in the same neighborhood where the recovery residence is located, with an avenue to have complaints regarding the recovery residence addressed. The intent of subsection (b) is to limit the types of complaints required to be investigated by the agency designated for such purposes so as not to tie up resources with unnecessary investigations.

The text of this section allows for complaints to be made either by phone, through an online complaint form, or both. The phone option is included because certain individuals, particularly recovery residence residents, may not have access to a computer or Internet service



in order to file an online complaint. Conversely, the state agency or certifying agency may not have adequate staff to handle complaint calls without an online complaint form also available. Ideally, states should have both a telephone complaint line and an online complaint form.

Subsection (g) regarding anonymity is primarily intended to protect residents or staff members who make a complaint from retaliation by the recovery residence operator or owner. It is not the intent of that subsection to facilitate or encourage anonymous complaints but rather to shield complainants, as much as is possible, from potential retaliation.

## **SECTION XVII. APPEALS.**

(a) In general.—The [State agency or certifying organization] shall establish an appeals process for recovery residences, certified recovery residences, residents, and complainants for the following purposes:

- (1) Appeal from denial, suspension, or revocation of certification, including denials based on the outcome of a background check;
- (2) Appeal from termination of residency pursuant to Section VIII(c);
- (3) Appeal from any imposition of a sanction against the recovery residence; and
- (4) Appeal from the outcome of a complaint investigation.

(b) Administrative process.—The recovery residence, certified recovery residence, resident, or other complainant may request an administrative hearing pursuant to the [State Administrative Procedures Act] within thirty (30) days after completing the appeals process offered by the [State agency or certifying organization] pursuant to subsection (a).

## **SECTION XVIII. CRIMES AND PENALTIES.**

(a) Prohibition against patient brokering.—

- (1) In general.—It is unlawful for any person, including any licensed state drug and alcohol treatment service provider or any health care provider or health care facility, to:
  - (A) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a

licensed state drug and alcohol treatment service provider, health care provider, or health care facility;

(B) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a licensed state drug and alcohol treatment service provider, health care provider, or health care facility;

(C) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a licensed state drug and alcohol treatment service provider, health care provider, or health care facility; or

(D) Aid, abet, advise, or otherwise participate in the conduct prohibited under subparagraphs (A) – (C).

(2) Violation.—

(A) A violation of subparagraph(a)(1)(A) is a [category of misdemeanor or felony] and, upon conviction thereof, the individual may be sentenced to [range of potential criminal sentences], fined not more than [dollar amount of fine], or both.

(B) A violation of subparagraph (a)(1)(B) is a [category of misdemeanor or felony] and, upon conviction thereof, the individual may be sentenced to [range of potential criminal sentences], fined not more than [dollar amount of fine], or both.

(C) A violation of subparagraph (a)(1)(C) is a [category of misdemeanor or felony] and, upon conviction thereof, the individual may be sentenced to [range of potential criminal sentences], fined not more than [dollar amount of fine], or both.

(3) Section not applicable.—This section shall not apply to any payment, waiver of payment, or payment practice expressly authorized by 42 U.S.C. § 1320a-7b(b)(3) or regulations adopted thereunder.

(b) Prohibition against retaliation.—

- (1) In general.—No recovery residence owner, operator, director, staff member, including house managers, nor any volunteer or resident, shall be subject to retaliation including, but not limited to, interference, threats, coercion, harassment, or discrimination, for the making of any complaint against a recovery residence or against a recovery residence owner, operator, or chief financial officer.
- (2) Violation.—A violation of paragraph (b)(1) shall subject the violator to all available civil remedies at law and may result in a civil fine of not more than [maximum dollar amount of fine]. In addition, a violation may result in criminal penalties pursuant to [applicable state law regarding witness tampering or retaliation].

(c) Misrepresentation of certification.—

- (1) In general.— A recovery residence that has not been certified pursuant to this Act and holds itself out as a certified recovery residence shall be subject to an injunction and will be subject to a fine of not more than [dollar amount of maximum fine] for each violation.
- (2) Operation not prohibited.—Nothing in this Act prohibits a recovery residence that has not been certified from operating or advertising as an uncertified recovery residence or from offering residence to persons recovering from substance use disorder.

(d) Unlawful referral.—In addition to any other punishment provided by law, any person who willfully and knowingly violates Section XII(b) of this Act commits a [category of misdemeanor or felony] and, upon conviction thereof, may be sentenced to [range of potential criminal sentences], fined not more than [dollar amount of fine], or both.

(e) Use of fines.—All fines collected pursuant to this section shall be deposited into [general fund] for use by the [State agency] to administer this Act.

## Commentary

This section is largely taken from NARR *Ethical Policies Regarding Inducements*<sup>50</sup> and Fla. Stat. Ann. § 817.505. The Florida statute provides the basis for the specific prohibitions included in this section, while the NARR document includes examples of situations involving inducements, kickbacks, and patient brokering that may violate those provisions.

As discussed in the commentary to Section II, there are stories across the country of recovery residence operators engaging in a pattern of behavior designed to increase their own profits at the expense of their residents by accepting kickbacks, inducements, commissions, or bribes as well as committing insurance fraud by referring residents for treatments and services they do not require or do not receive. The evidence indicates that a simple prohibition against this conduct without consequence does not serve as a strong enough deterrent against this kind of behavior. Therefore, states should impose civil and criminal penalties sufficient to act as a deterrent. States should look to their currently existing patient brokering statutes, if any, for guidance on the appropriate level of penalty (misdemeanor or felony) and amount of fine.

It was recommended by the reviewers that there be a grace period after the effective date of this Act for recovery residences to come into compliance with the Act before the full weight of the penalties is imposed.

## SECTION XIX. CONFIDENTIALITY.

- (a) Recovery residence records.—Records of residents maintained by certified recovery residences are confidential and may not be released without the signed consent of the individual who is the subject of the record. Such records may be subject to the Health Insurance Portability and Accountability Act of 1996 (HIPAA), 42 U.S.C. § 290dd-2, 42 C.F.R. Part 2, and applicable state statutes and regulations regarding the confidentiality of such records.
- (b) [State agency].— The [State agency] shall not maintain any personally identifiable information regarding any resident of a certified recovery residence in connection with its role as the [recovery residence certifying agency or overseer of the certifying organization].

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<sup>50</sup> *Ethical Policies Regarding Inducements*, NARR, <https://narronline.org/wp-content/uploads/2019/03/NARR-Ethics-Policy-Statement-2018-Inducements.pdf> (last updated Mar. 2019).

**SECTION XX. FUNDING.**

*[This section includes two options for subsection (a) for consideration by legislatures. Option A is for those states where the State agency is responsible for administering the certification program. Option B is for those states where a certifying organization is responsible for administering the certification program. The remainder of Section XX is the same regardless of which Option is chosen by a state.]*

**[Option A]**

- (a) Budget allocation.—The legislature will appropriate [\$ \_\_\_\_\_ for fiscal years \_\_\_\_\_] to the [State agency] for the purpose of funding, in whole or in part, the initial start-up and ongoing activities required as part of this Act. The legislature may also appropriate funds to be tendered to certified recovery residences for the purpose of data collection activities under Section XIV.

**[Option B]**

- (a) Budget allocation.—The legislature will appropriate [\$ \_\_\_\_\_ for fiscal years \_\_\_\_\_] to the [State agency] for the purpose of funding, in whole or in part, the initial start-up and ongoing activities required as part of this Act. Such funds shall be paid to [the certifying organization] under contract with or otherwise delegated by the [State agency] to administer the certification program under this Act. The legislature may also appropriate funds to be tendered to certified recovery residences for the purpose of data collection activities under Section XIV.

**[Options A and B]**

- (b) Pursuit of funding.—The [State agency shall or certifying organization may] pursue all federal funding, matching funds, and foundation or other charitable funding for the initial start-up and ongoing activities required under this Act.
- (c) Acceptance of gifts.—The [State agency or certifying organization] may accept such gifts, grants, and endowments, from public or private sources, as may be made from time to time, in trust or otherwise, for the use and benefit of the purposes of this Act and expend the same or any income derived from it according to the term of the gift, grant, or endowment.

## Commentary

Funding sections in model laws can be complicated, as states fund projects through legislation in a variety of ways, and there is no “one size fits all.” However, if the Model Act omits the funding discussion entirely, the legislation gives the appearance of an “unfunded mandate.”

As currently drafted, the Act references five potential sources of funds for some or all of the cost: (1) state budget allocation; (2) federal funds; (3) public or private gifts; (4) fines collected for violations of Section XV; and (5) application and renewal fees as set out in Section V. If a state opts to contract with a certifying organization, funds allocated to the State agency under this section should be used to fund the contract.

## **SECTION XXI. RULES AND REGULATIONS.**

The [State agency] may promulgate such rules and regulations as are necessary to effectuate this Act.

## **SECTION XXII. SEVERABILITY.**

If any provision of this Act or application thereof to any individual or circumstance is held invalid, the invalidity does not affect other provisions or applications of the Act that can be given effect without the invalid provisions or applications, and to this end, the provisions of this Act are severable.

## **SECTION XXIII. EFFECTIVE DATE.**

For purposes of initiating the certification program, this Act shall be effective on [specific date or reference to normal state method of determination of the effect].

## Commentary

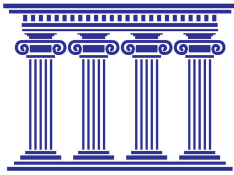
It is the opinion of the reviewers that enforcement of this Act should be phased in to allow recovery residences and certification entities to come into compliance without violating any provision of the Act.

It was also recommended by reviewers that states implement an educational campaign for a period of 18 months prior to the effective date and that training and technical assistance be available to recovery residences during that time.

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