

BEFORE THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

IN THE MATTER OF:

Notice ID# 20539961 (June 13, 2018)

Amethyst Recovery Center, LLC,

Petitioner

**MOTION TO INTERVENE BY FLORIDA
ASSOCIATION OF RECOVERY RESIDENCES**

The Florida Association of Recovery Residences (FARR) hereby serves its Motion to Intervene, pursuant to Rule 28-105.0027, F.A.C.

In conjunction with its Motion to Intervene, FARR also submits and incorporates comments on Amethyst Recovery Center, LLC's ("Amethyst") Petition, as set forth below. Amethyst has submitted a Petition in which it asks the Florida Department of Children and Families ("DCF") to interpret Florida statutes such that Sections 397.487 and 397.4871 would not apply to its provision of Day or Night Treatment with Community Housing. For the reasons set forth herein, FARR urges the DCF to reject that interpretation.

Basis for Motion to Intervene

FARR has a direct interest in the nature and outcome of these proceedings. Fla. Stat. §§ 397.487-397.4873 provide a statutory scheme of credentialing and regulating recovery residences in Florida. FARR is an affiliate of the National Alliance for Recovery Residences (NARR) and operates as a nonprofit entity administering certification programs according to NARR standards. FARR is a "credentialing entity" under Fla Stat. § 397.311, and has been approved by the DCF under Fla. Stat. § 397.487(2). Under Fla. Stat. § 397.4873, a recovery residence's ability to make or accept referrals depends, in many cases, upon whether it is certified by a credentialing agency. As of the time of this Motion, FARR believes it is the only credentialing entity approved in Florida for the certification of recovery residences. FARR therefore has a substantial interest in this Department's ultimate decision concerning what entities are subject to certification by a credentialing entity.

For these reasons, FARR submits that it should be permitted to intervene as party to the Petition filed by Amethyst, pursuant to Fla. Stat. § 120.52(13)(b) and Rule 28-105.0027(2)(c), F.A.C.

Discussion and Comments

It is FARR's position that Fla. Stat. §§ 397.487 and 397.4871 are properly interpreted to apply to entities licensed for Day or Night treatment with Community Housing ("D/N with Community Housing"). There is no question that these statutes apply to "recovery residences" in Florida. "Recovery residence" is defined as "a residential dwelling unit, or other form of group housing, that is offered or advertised through any means, including oral, written, electronic, or printed means, by any person or entity as a residence that provides a peer-supported, alcohol-free, and drug-free living environment." Fla. Stat. § 397.311(37). The "Community Housing" component of "D/N with Community Housing" fits squarely within the definition of "Recovery Residence": such housing is residential in nature, houses a group of people, is offered and/or advertised to persons seeking substance abuse treatment, and provides a living environment that is peer-supported, alcohol-free, and drug-free. There is no aspect of "community housing" that distinguishes it from "recovery residence."

The definition of "Day or night treatment with community housing" is "a program intended for individuals who can benefit from living independently in peer community housing while participating in treatment services for a minimum of 5 hours a day for a minimum of 25 hours per week." Fla. Stat. § 397.311(26)(a)(3). This definition is a sub-definition of "Clinical treatment," indicating that D/N with Community Housing is licensable, which indeed it is under DCF rules. There is nothing in the statute to indicate that a provider is free from requirements placed on recovery residences if it operates housing that meets the definition of "recovery residence," notwithstanding that it may label itself under another name.

To interpret the statute in any other manner, such as the way Amethyst suggests in its Petition, would frustrate the intent and the letter of Florida statutes. As set forth below, (1) the legislative purpose of statutory amendments was to create oversight of group residences for people undergoing substance abuse treatment, (2) the practices of clinical treatment providers have evaded much-needed oversight of group housing, (3) NARR certification criteria are consistent with the requirements of Florida law, and (4) treating "community housing" as distinct from "recovery residence" would be inconsistent with the statutory scheme.

1. *The legislative purpose of statutory amendments was to create oversight of group residences for people undergoing substance abuse treatment.*

In 2015, the Florida Legislature enacted HB 21, which created Fla. Stat. § 397.487, and thus created the system by which recovery residences obtained certificates of compliance from a credentialing entity. HB 21 further amended Sections 397.311 and 397.407. The amendment to Section 397.311 added the definition of “recovery residence,” in addition to other related definitions. The amendment to Section 397.407 added subsection (11), a provision that read in full:

Effective July 1, 2016, a service provider licensed under this part may not refer a current or discharged patient to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in s. 397.487 and is actively managed by a certified recovery residence administrator as provided in s. 397.4871 or the recovery residence is owned and operated by a licensed service provider or a licensed service provider’s wholly owned subsidiary. For purposes of this subsection, the term “refer” means to inform a patient by any means about the name, address, or other details of the recovery residence. However, this subsection does not require a licensed service provider to refer any patient to a recovery residence.

Under this provision, a service provider could place a patient in a residence without obtaining any certification as long as the service provider “owned and operated” the residence.

In 2017, the Legislature passed HB 807, which deleted Section 397.407(11) and added Section 397.4873. Under the new statute, all recovery residences must have a certificate of compliance in order to accept referrals, regardless of whether the recovery residence is owned by the licensed service provider, subject to certain other exceptions. A “referral” occurs any time a provider informs “a patient by any means about the name, address, or other details of a recovery residence”. Section 397.4873(3) (this definition of “referral” is unchanged from the previous version of the statute).

The now-superseded statutory text permitted a licensed service provider to house patients in residences owned by that provider without any need for certification. The fact that the statute explicitly contemplated this scenario – a licensed service provider owning patient residences – shows that the Legislature, at that time, permitted D/N with Community Housing programs to have an exception to the general rule that recovery residences must be certified. The 2017 amendment in HB 807 eliminated that exception. This amendment shows that the legislature intended to end the exception that applied to D/N treatment with Community Housing programs.

It is therefore incorrect for Amethyst to state in its Petition that “For Community Housing, there are no referrals to the Community Housing component of a D/N treatment facility.” (Petition, p. 4). The treatment facility must obviously inform a patient of the name and address of the residence, which constitutes a “referral” under § 397.4873(3). Amethyst’s argument presupposes that the statute excludes “community housing” from the definition of “recovery residence,” which the statute does not.

2. *The practices of clinical treatment providers have evaded much-needed oversight of group housing.*

Community-based recovery housing, when coupled with outpatient clinical care, has been shown to produce improved outcomes for persons seeking resilient recovery from substance use disorder. However, research has also shown that such improved outcomes depend on patients/residents’ engagement in meaningful, community-based activities while residing in peer-supportive environments that foster a culture of recovery support. The “Recovery Support” domain of NARR Quality Standards suggests thirteen concrete practices that promote resident engagement in their own recovery plan. D/N with Community Housing licensure criteria pertaining to the housing component focus entirely on property and safety concerns. FARR certification of licensed providers’ recovery housing ensures that the residential environments, where patients spend 85% of their week, contribute positively to the overall therapeutic experience. Without any requirement for certification by some credentialing entity, the DCF has no means of ensuring that any community housing is conducive to patients’ well-being.

The history of patient housing practices in Florida has demonstrated the need for this oversight. The recent Grand Jury Report, upon which the Legislature based its amendments to Chapter 397, specifically 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 a part of a DCF license has no oversight other than fire code compliance. This has proven to be extremely harmful to patient.

http://www.sa15.state.fl.us/stateattorney/SoberHomes/_content/GrandJuryReport2.pdf, p.17 (last visited July 17, 2018). The grand jury report continued:

[T]here is a need for oversight on patient housing during PHP and IOP treatment, which most often takes place immediately after discharge from inpatient treatment. Accordingly, the Grand Jury finds that the Legislature should eliminate the loophole found in Florida Statute section 397.407(11) that allows treatment providers to refer patients to uncertified recovery residences that they own.

This loophole only benefits treatment providers who can afford to own patient housing in addition to an inpatient treatment center, and allows them to refer patients to non-certified recovery residences which have no DCF or FARR oversight. In other words, it allows providers to send patients to unverified and unregulated recovery residences while those patients are in their most vulnerable state of recovery (during or immediately after inpatient treatment).

This is contrary to the purpose of recently enacted section 397.407(11), which was designed to protect patients from being referred to unregulated recovery residences. The fact that the provider happens to have an ownership interest in the uncertified recovery residence does nothing to protect this vulnerable class of disabled consumers. Therefore, we recommend that this loophole for provider-owned referrals be closed.

Id., pp. 21-22.

Amethyst's position is completely contrary to the Legislative intent behind closing this loophole for providers who own housing.

3. *NARR certification criteria are consistent with the requirements of Florida law.*

NARR Support Level IV Recovery Residences are the housing components of licensed outpatient treatment providers. Community housing components of D/N with Community Housing are thus considered Level IV Recovery Residences. Such Recovery Residences are required to offer clinical services; however, in accordance with state law, these clinical services are not delivered within the residence itself. Support Level IV Recovery Residences blend clinical and social models of recovery to produce enhanced outcomes for the population served. Incidentally, this blended model mirrors the statutory definition of "Day or night treatment with community housing" in Fla. Stat. § 397.311(26)(a)(1). NARR Support Level IV locations account for 39.22% of FARR current census. All have successfully achieved this blend and comply with NARR Quality Standards for Support Level IV Residences.

Amethyst claims that it cannot be considered a "Recovery Residence" because recovery residences must charge for rent. To the contrary, NARR Quality Standards are silent on the subject of patient responsibility for payment for room and board while living in certified

recovery housing operated by a licensed outpatient provider. Actually, many certified recovery residences accept payment from third-party entities and/or family members until the resident has achieved gainful employment.

FARR does, however; deny certification to any applicant, regardless of NARR Support Level, when evidence demonstrates that “free or discounted room and board” is offered as a patient inducement to drive enrollment in outpatient services. Such a practice would violate Fla. Stat. § 817.505, which prohibits patient brokering. FARR considers the practice of “bundling room and board” into D/N with Community Housing services as consistent with Florida Law. Patients who are engaged in twenty-five (25) hours a week of clinical outpatient care cannot reasonably be expected to also maintain full-time employment to support their basic needs for shelter and nutrition. This practice does not, in FARR’s opinion, violate Fla. Stat. § 817.505 or produce an event of non-compliance with NARR Quality Standards.

However; should FARR uncover, as part of its certification process, that these patient benefits are employed by an applicant for marketing purposes as an inducement to drive enrollment in a D/N with Community Housing program, this would result in a recommendation for declination by the FARR Certification Administrator to the FARR Compliance Committee. Amethyst, therefore, is not required to charge rent to its patients in order to obtain FARR certification, as long as it is not otherwise violating generally applicable Florida law prohibiting patient brokering.

In addition, Amethyst has listed eight “FARR requirements” in its petition that it claims are inconsistent with “the Community Housing component of licensed service providers” (Petition, p. 3). This assertion is incorrect. Taken in turn:

- **NARR Quality Standards 2.03-3.04 (Resident fees and required policies and accounting systems):**

These standards do not mandate that the licensed provider charge rent, if the practice of providing residence rent-free is permitted by Florida Law (D/N with Community Housing License or State funded vouchers). NARR Quality Standards state that Recovery Residences **must inform residents of all FEES and CHARGES** they will, **or could potentially be responsible for**, have a clear refund policy, and implements an accounting system that documents financial transactions. Fees and charges include more than housing. Licensed service providers are required to provide residents a fee schedule which includes costs associated

with treatment and treatment w/housing, ancillary charges, any fines for community rule violations, drug testing, etc.

- **NARR Quality Standard 8.01 (Residents have a voice in the acceptance of new members):**

Recovery residences must provide current residents **with a voice** in the acceptance of new members. This does not mean the provider should allow the residents to conduct screening assessment and/or make final admission determinations. Many NARR Support Level IV Recovery Residences incorporate a senior peer in the new resident orientation process. The senior peer informs management via written evaluation of any potential risks presented by the new member or his/her perceptions regarding the new resident’s willingness to comply with community rules/requirements. Other NARR Support Level IV Recovery Residences incorporate a “buddy system” wherein a senior peer is assigned to accompany new residents during all offsite excursions during the first four weeks. The senior peer communicates to management any concerns observed pertaining to that new resident’s engagement in community-based activities. The peer voice is essential to fostering a culture of recovery support within the residential peer community. Furthermore, this accommodation allows new residents to get acquainted with peers. It further enhances the community by providing senior peers responsibility for nurturing a culture recovery support

- **NARR Quality Standard 28.04 (Residents share in household expenses)**

There is no FARR requirement that “Residents share in household expenses.” Rather, in order to be certified, recovery residences are required to show that 50% of the following six criteria are met.

28. Creating a “functionally equivalent family” within the household		Applied to Levels			
As evidenced by meeting at least 50% of the following:		I	II	III	IV
.01	<input type="checkbox"/> Are residents involved in food preparation?	✓	✓	✓	✓
.02	<input type="checkbox"/> Do residents have control over who they live with?	✓	✓	✓	✓
.03	<input type="checkbox"/> Do residents help maintain and clean the home e.g. chores?	✓	✓	✓	✓
.04	<input type="checkbox"/> Do residents share in household expenses?	✓	✓	✓	✓
.05	<input type="checkbox"/> Family or house meetings at least once a week?	✓	✓	✓	✓
.06	<input type="checkbox"/> Do residents have access to the common areas of the home?	✓	✓	✓	✓

This standard ensures that there is a “functionally equivalent family” in the residence, which is foundational to Fair Housing protections for persons with a substance use disorder. One of the six criteria is “do residents share in household expenses?” However, the recovery residence must meet only three of the criteria in order to be certified – for instance, if residents are involved in food preparation and cleaning, and they have access to the common areas of the home, then they need not necessarily share in household expenses.

- **NARR Quality Standard 8.02 (Policies that promote resident-driven length of stay.)**

This standard is inapplicable to Amethyst. A D/N with Community Housing provider is considered a Level IV Recovery Residence. Level IV Recovery Residences determine the length of stay based on clinical assessment. As Standard 8 makes clear, “policies and procedures that promote resident-driven length of stay” does not apply to Level IV Recovery Residences:

8. Support housing choice		Applied to Levels			
		I	II	III	IV
As evidenced by:					
.01	<input type="checkbox"/> Applicant screening policies and procedures provide current residents a voice in the acceptance of new members.	✓	✓	✓	✓
.02	<input type="checkbox"/> Policies and procedures that promote resident-driven length of stay	✓	✓	✓	
.03	<input type="checkbox"/> Policies and procedures that defend residents’ fair housing rights	✓	✓	✓	✓

- **NARR Quality Standard 12.01 (Involve peers in governance in meaningful ways)**

Amethyst has misleadingly re-worded this standard as “some rules are made by and enforced by the residents (not the staff).” In reality, peer governance is an essential factor in creating a family equivalent and a culture wherein residents hold one another accountable to community rules and engagement in concrete recovery plans. This does not necessarily suggest that residents create and enforce rules, but that they should be provided the opportunity to contribute to creation and enforcement of some rules. For example, ethical operators would never want or permit residents to hold “negative contracts”, *i.e.* have knowledge that a fellow housemate is using alcohol and/or illicit drugs and failing to inform management.

As another example: as part of developing a healthy lifestyle, most recovery residences, regardless of Support Level, assign household chores to their residents. Often, operators form a peer council that is empowered to determine chore responsibilities and to hold peers accountable

for completing these assignments. The peer council may decide that TVs should be silenced at 11 pm so as to create/maintain a harmonious living environment for all residents. This standard is intended to implement peer governance in meaningful ways and prepare residents for independent living.

- **NARR Quality Standard 12.03 (A resident council that has a voice in the governance of the home.)**

Standard 12 nurtures a peer supportive environment and helps create a functional family dynamic. It does not mean that residents are responsible for managing or governing the home, but rather that residents have a voice in governance of their home.

- **NARR Quality Standard 10.01 (evidence of documentation that residents participate in the development of their recovery plan including an exit plan and lifelong plan):**

Typically, NARR Support Level IV Recovery Residences show compliance to this standard via individual Treatment Plans and Treatment Plan reviews. This does not mean that clinical services are actually being provided in the residence. In the certification process, FARR requests evidence that treatment planning also includes community integration and social model integration. Examples include attending mutual aid meetings and/or faith-based organization meetings, participating in educational opportunities, developing a network of sober support contacts, obtaining a 12 step sponsor/recovery mentor and/or recovery coach, engaging in a concrete recovery pathway, community volunteerism or service commitments, community-based life skills programming, attending employment readiness classes, or while enrolled in IOP/OP level of care, obtaining employment while participating in clinical services. This Standard is consistent with the DCF's requirements for D/N with Community Housing services as set forth in 65D-30.0081(2), F.A.C.

- **NARR Quality Standard 21.02 (Weekly schedule of recovery-oriented presentations, group exercises, and activities.)**

There is no requirement that these presentations, exercises and activities be provided onsite at the recovery residence. Recovery Residences may demonstrate that residents are participating in "recovery support services in formal settings" recognized by NARR such as: evidencing Treatment Modalities, Life Skills Programming, Relapse Prevention, Peer Support Services are delivered at the clinical facility. This Standard is also consistent with the DCF's

requirements for D/N treatment with Community Housing services as set forth in 65D-30.0081(2), F.A.C.

d. Treating “community housing” as distinct from “recovery residence” would be inconsistent with the statutory scheme.

Prior to amendments to the relevant statutes, a business operating D/N with Community Housing could refer patients to the community housing it owned as long as it was licensed by the DCF for its clinical services. Under 65D-30.0081, F.A.C., such a provider faced virtually no scrutiny regarding its “community housing” beyond demonstrating that it complied with fire, health, and safety codes. Providers could therefore avoid having to satisfy credentialing entities that the “community housing” did what was contemplated by the statutory definition of “Day or night treatment with community housing”: “a program intended for individuals who can benefit from living independently in peer community housing while participating in treatment services”. Without FARR certification, there would be no way for the DCF or any other state agency to be satisfied that patients are likely to benefit at all from their living condition.

It is unlikely that the Florida Legislature ever intended for such providers to escape this scrutiny when other recovery residences generally had to seek certification. However, following the 2017 amendments to the statute, there can be no lingering doubt. The statute contains broad definitions of both “recovery residence” and “referral” that clearly encompass the business practices that Amethyst describes in its Petition. Under the statutory interpretation that Amethyst proposes, providers that own recovery residences could return to pre-amendment conditions as long as they seek licensure as a “day or night treatment with community housing” provider. This is precisely the conduct that the amendments sought to eliminate.

Conclusion

Although Amethyst has attempted to identify FARR “requirements” that are inconsistent with Florida law, in reality the NARR guidelines that FARR employs are entirely consistent with, and help to further, existing Florida law as it pertains to D/N with Community Housing providers. Furthermore, nowhere in its petition does Amethyst identify any definition or characteristic of its housing component that does not fall squarely within the definition of “recovery residence” in the relevant statute. Both the text of the statute and the intent of the legislature dictate that businesses licensed to provide day or night treatment with community housing should be governed by Sections 397.487 and 397.4871.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Motion to intervene has been furnished by e-mail to Agency.Clerk@myflfamilies.com; and by e-mail to counsel for Amethyst Recovery Center, LLC: Karina P. Gonzales, Esquire, at Karina@floridahealthcarelawfirm.com and Admin.Pleadings@floridahealthcarelawfirm.com on July 3, 2018.

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