

PETITION FOR DECLARATORY STATEMENT
BEFORE THE FLORIDA DEPARTMENT OF CHILDREN AND FAMILIES

IN THE MATTER OF:

Amethyst Recovery Center, LLC,
Petitioner

Case No.: _____

_____ /

PETITION FOR DECLARATORY STATEMENT

Petitioner, Amethyst Recovery Center, LLC, (Petitioner) pursuant to Section 120.565, Fla. Stat., and Rule 18-105, F.A.C., serves this Petition for Declaratory Statement on the Florida Department of Children and Family (“DCF”). The Petitioner believes a controversy exists and/or is in doubt concerning the applicability of statutory provisions under Sections 397.487 and 397.4871, Fla. Stat. and as grounds in support of its Petition states as follows:

Petitioner is a Substance Abuse treatment facility and is currently licensed by DCF for Day or Night treatment with Community Housing. (D/N with Community Housing) pursuant to Section 397.401 with standards defined in Rule 65D-30.0081. Petitioner is located at 2000 SE Port St. Lucie Blvd. Suites A, B, C D, Port St. Lucie, Florida 34942. All the Petitioner’s licensed components, including Community Housing is owned by one company, Amethyst Recovery Center, LLC. The Community Housing is not a wholly owned subsidiary.

Amethyst has standing to request a Declaratory Statement from the DCF agency because FARR (Florida Association of Recovery Residences) has threatened provider license suspension or revocation of D/N with Community Housing [including Residential 5] programs that are not certified pursuant to Section 397.487 Fla. Stat. by July 1, 2018. FARR’s position substantially affects the Petitioner as the standards for Recovery Residences are inconsistent with DCF’s regulations governing D/N with Community Housing. The State Attorneys office has stated that it agrees with FARR’s position.

Amethyst is not involved with any litigation related to the question presented for a Declaratory Statement. Amethyst has not filed or plans to file a similar question with any other state or local agency.

BASIS OF THE REQUEST FOR AN AGENCY DECLARATORY STATEMENT

Does the Voluntary Certification of Recovery Residences administered by FARR apply to a Florida treatment facility that is licensed by DCF to provide clinical services under D/N treatment with Community Housing program?

The Statutory provisions and agency rules on which the Declaratory Statement is sought relates to Sections 397.487 and 397.4871.

DAY/NIGHT WITH COMMUNITY HOUSING

DCF regulates substance abuse treatment through licensing individual treatment components under Chapter 397, Fla. Sta. and Rule 65D-30, F.A.C.

Petitioner operates a D/N with Community Housing which is one service component set out in Rule 65D-30. DCF issued one license which is valid for the specific service component listed for the specific location identified on the license. Sec. 397.407 (6). A separate license is required for each service component maintained by the service provider listed in Sec. 397.311 (26).

Petitioner Amethyst provides clinical treatment defined as professional directed, deliberate, and planned regime of services and interventions that are designed to reduce or eliminate the misuse of drugs and alcohol and promote a healthy, drug-free lifestyle. Clinical treatment services include D/N with Community Housing as a “licensable service component”. Section 397.311 (26(a)).

D/N treatment with Community Housing means 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 a week**. Section 397.311 (26(a)(3)). (Bolded for emphasis). Clinical treatment services include a range of licensable service components set out in Rule 65D-30. Some of these are Addictions receiving facility, Day or Night treatment, D/N treatment with community housing, Detoxification, Intensive inpatient treatment, and Intensive outpatient treatment, to name a few.

Standards for D/N Treatment with Community housing require that clients live in a supportive, community housing location **while participating in treatment**. Further 65D-30.0081 prohibits D/N Community Housing operators from providing services in the community housing. There are no resident fees for living in community housing, length of stay is determined by clinical team based on the individual's progress in treatment. There are no referrals made or accepted to the Community Housing component; it is a part of the service component licensed by DCF. An individual must be admitted to a clinical treatment program to live in the Community Housing component of the program. Community Housing is used solely for the purpose of assisting clients, who are participating in treatment experience needed life skills to transition to independent living.

RECOVERY RESIDENCES

The Florida legislature found that “a person suffering from addiction has a higher success rate of achieving long-lasting sobriety when given the opportunity to build a stronger foundation by living in a Recovery Residence **after completing treatment**. The Legislature further finds that this state and its subdivisions have a legitimate state interest in protecting these persons, who represent a vulnerable consumer population in need of adequate housing. “Section 397.487 (1) Fla. Stat. “Voluntary certification of recovery residences”. (Bolded for emphasis).

Recovery residences (also known as sober homes or sober living homes) are alcohol and drug-free living environments for individuals in recovery who are trying to maintain abstinence. A recovery residence offers no formal treatment, but some residences strongly encourage voluntary attendance at 12-step groups. An individual living in a recovery residence is required to pay for room and board and any other services they receive in the residence.

DCF does not license recovery residences. The legislature enacted law to establish a program for recovery residences and recovery residence administrators. DCF approved two credentialing private entities to design a certification program and issue certificates. FARR certifies the recovery residences and The Florida Certification Board certifies recovery residence administrators.

Since July 1, 2016, Florida has prohibited licensed substance abuse service providers from referring patients to a Recovery Residence unless the Residence holds a valid certificate of compliance from FARR and is actively managed by a FARR certified recovery residence administrator. There is no such mandate for the Community Housing component of a licensed D/N treatment facility. This difference between a Community House and a Recovery Residence is the area of conflict and doubt that has arisen.

FARR requires applicants to have policies or procedures which licensed service providers cannot comply with. Rule 65D-30, prohibits D/N Community Housing operators from providing services in the housing. FARR requirements below are part of a clinical program and would not apply to D/N Treatment with Community Housing.

- Evidence of documentation that residents participate in the development of their recovery plan including an exit plan and lifelong plan.
- Weekly schedule of recovery-oriented presentations, group exercises, and activities.

Neither the definition of “recovery residence” nor Section 397.487 make mention of providing services to residents. Regardless of whether the services are clinical, life skills or are “recovery oriented.”

The following FARR requirements are also inconsistent with the Community Housing component of licensed service providers and may also be inconsistent with Recovery Residences as FARR seeks to fit NARR (National Alliance of Recovery Residences) levels onto the Florida models:

- Resident fees and required policies and accounting systems.
- Residents have a voice in the acceptance of new members.
- Residents share in household expenses.
- Policies that promote resident-driven length of stay.
- Some rules are made by and enforced by the residents (not the staff).
- A resident council that has a voice in the governance of the home.
- Evidence of documentation that residents participate in the development of their recovery plan including an exit plan and lifelong plan.
- Weekly schedule of recovery-oriented presentations, group exercises, and activities.

DISCUSSION/CONCLUSION

Licensed facilities are being bombarded with notice, blogs, memos, e-mails from FARR, the State Attorneys Office, and a member of the Sober Home Task Force-Proviso Group with interpretations mandating that voluntary certification from FARR is required for DCF licensed facilities. Further FARR and its supporters are equating licensable components such as Community Housing with Recovery Residences or Sober Homes.

For Community Housing, there are no referrals to the Community Housing component of a D/N treatment facility. There are no referrals from a D/N treatment facility to Community Housing. D/N treatment and Community Housing are one and the same in the “eyes of the statute”. Clients in Community Housing are participating in treatment. Unlike a sober living facility where clients have completed treatment and are now focusing on sober living. DCF mandates that no services are to be provided in Community Housing. Clients are in treatment and are residing in Community Housing and are not charged for rent or food.

Section 387.4871 requires that a FARR certified Recovery Residence be actively managed by a certified recovery residence administrator. The only staff coverage for Community Housing that is required is a paid employee on call during the time when clients are at the housing location. Rule 56D-30.0081.

Our review of the Statutes and Rules lead to one conclusion which is that FARR’s voluntary certification is not required for a DCF licensed facility. However, FARR and its supporters are pushing voluntary certification and advising the community that it is mandatory to avoid suspension of DCF license and avoid sanctions imposed for operating.

A review of CS/CS/HB 807 Final Bill Analysis does not provide any historical support for FARR’s attempt to push D/N treatment facilities with Community Housing into their certification program. DCF already has the right to enter and inspect a licensed provider at any time to determine statutory and regulatory compliance. Noncompliance licensed facilities are provided with reports of their noncompliance and given corrective action plans with completion deadlines. DCF may deny, suspend or revoke a license, it may impose restrictions and penalties on licensed providers who are not in compliance.

DCF also recognizes accreditation by accrediting organizations such as the Commission on Accreditation of Rehabilitation Facilities (CARF), The Joint Commission (TJC), and the Council on Accreditation (COA). Where providers are licensed based in part on a survey report of a DHS recognized accrediting organization, the license includes a statement to that effect. 65D-30.003 (a)(d). On the other hand, Recovery Residences had no such accrediting organizations. To correct some of the deficiencies found in an unaccredited and unregulated residence, the legislature created the certification process now under FARR’s jurisdiction. There would be no need to create a certification process for a housing component of D/N treatment which already had accredited organizations.

Because of the FARR certification deadline, Petitioner Amethyst requests an expedited review so that the agency can issue a Declaratory Statement clarifying the applicability of Sections 397.487 and 397.4871 to Florida licensed facilities under Section 397.401, 387.311 and Rule 65D-30.0081.

CERTIFICATE OF SERVICE

I **CERTIFY** that a true and correct copy of the Petition for Declaratory Statement has been furnished by E-Mail, Agency.Clerk@myfamilies.com; and to Fax No. 850-922-3947 to the Agency Clerk, Department of Children and Families at 1317 Winewood Blvd., Building 2, Room 204, Tallahassee, Florida 32399-0700. on June 12, 2018.

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By: **/s/ Karina P. Gonzalez**

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