PALM BEACH COUNTY SOBER HOMES TASK FORCE REPORT

IDENTIFICATION OF PROBLEMS IN THE SUBSTANCE ABUSE TREATMENT AND RECOVERY RESIDENCE INDUSTRIES WITH RECOMMENDED CHANGES TO EXISTING LAWS AND REGULATIONS

JANUARY 1, 2017

BACKGROUND AND SCOPE

Florida is in the midst of an opioid crisis. Although South Florida has experienced the worst of this crisis, it is present and growing in other areas of the State. The crackdown on pill mills dispensing opioid drugs, such as oxycodone and hydrocodone, has contributed to the rise in heroin addiction. The introduction of synthetic opiates such as fentanyl (100 times more potent than morphine), and carfentanil (1000 times more potent than Morphine), puts Florida on a pace to double the number of overdose deaths over last year's horrific numbers. Federal laws, including the Mental Health Parity and Addiction Equity Act of 2008 and the Affordable Care Act of 2012, have dramatically increased required insurance coverage for behavioral health issues, including substance abuse treatment. Children remain on their parents' insurance policies until age 26 and pre-existing conditions may no longer be excluded from coverage. Young adults with a Substance Use Disorder (SUD) are being marketed to Florida's recovery residences, also known as sober homes, and substance abuse treatment providers by the thousands, and many in this vulnerable class are being exploited and abused. The lack of effective oversight of this industry, especially in the private sector, has allowed bad actors to flourish, significantly contributing to the rising death toll.

The Americans with Disabilities Act (ADA) and the Fair Housing Act (FHA) have combined to limit government oversight of recovery residences that house persons recovering from SUDs. Florida has become a medical vacation destination as desperate parents continue to send their adult children to Florida for treatment. The flood of out-of-state patients, with insurance covering more lucrative out-of-network programs, has created a billion-dollar industry in Florida, with little oversight.

Recognizing the problem, the Florida Legislature asked Dave Aronberg, State Attorney for the 15th Judicial Circuit, to form a Task Force to study the issue and recommend changes to Florida law and administrative rules to combat this crisis. Mr. Aronberg established three groups. First, a Law Enforcement Task Force to investigate and arrest the rogue players in the treatment and recovery residence industries, using current laws. These coordinated law enforcement efforts have also helped to identify the strengths and weaknesses of existing criminal laws. Second, a Proviso Task Force, including members of organizations named in the legislative proviso, was created to study the issues and make specific recommendations for positive change through legislation and regulatory enhancements. Lastly, a third, larger and more inclusive group, was created from a broad-based combination of industry representatives, public officials, private organizations and individuals to further study the problem and recommend solutions. The following report reflects the findings of the study and contains a number of recommendations endorsed by the two Task Force groups. The recommendations in this report reflect the overwhelming consensus of the groups although there was not unanimous agreement on all recommendations outlined in the report.

The economic environment of substance abuse treatment in Florida, primarily in the private sector, creates the opportunity for abuse: overbilling for services, most notably confirmatory and quantitative urinalysis testing (UA); marketing abuses; patient brokering; unregulated "flophouses" masquerading as sober homes and a system that encourages relapse. There is an incentive for marketers to refer patients to an out-of-network program, resulting in more referrals of out-of-state patients to providers in Florida. Out-of-network providers are generally not bound by contract to a set fee schedule for services. Thus, there is an economic incentive for providers who are not bound by pre-set charges to treat out-of-network patients. In a recent Optum report, it was estimated that insurance company reimbursement for out-of-network drug treatment was, on average, three times the amount paid for the same in-network

services.[1] That same study showed that 75% of private sector patients actively being treated in Florida are from out-of-state.

There are a number of causes contributing to the explosive expansion of this tragic opioid epidemic. A Florida Department of Law Enforcement study in conjunction with the Medical Examiners Commission, released in September 2016, aptly shows that this is not solely a Palm Beach County, or South Florida crisis. Statewide, in 2015, heroin caused 733 deaths,[2] fentanyl, 705, oxycodone, 565, and hydrocodone, 236. Deaths caused by heroin increased by 79.7 percent, and fentanyl by 77.6 percent statewide when compared with 2014. Total deaths in 2015 with morphine detected, 1,483; fentanyl detected, 911; heroin, 779.[3] All indications are that the statewide death toll for 2016 will be significantly higher. According to the Palm Beach County Medical Examiner's Office, there have been 377 opiate overdose deaths in Palm Beach County alone through September 2016.

In addition to the terrible cost in human life, there are public costs, including the psychological toll on our community of first responders. Through October 24, 2016, Palm Beach County Fire Rescue (PBCFR) reported over 3,000 overdose responses, with more than 1 in 10 resulting in death. Police and Fire departments have routinely engaged mental health professionals to assist first responders in dealing with the crisis. The cost of an average PBCFR "run" is between $1,000 and $1,500. Ten years ago, the average dose of Narcan required to reverse an overdose was .5 mg. Today, it is not uncommon for first responders to administer 10 mg. due to the higher potency of fentanyl and carfentanil.

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[1] Optum; *Young Adults and the Behavioral Health System*.

[2] *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2015 Annual Report, FDLE (September 2016) (for counties with over twenty cases detected with heroin alone, Palm Beach County (165), Orlando (108), Ft. Lauderdale (80), Ft. Myers (43), Sarasota (68), Jacksonville (45), Pensacola (28), Miami (92), Tampa (35), Daytona Beach (20)).

[3] *Drugs Identified in Deceased Persons by Florida Medical Examiners*, 2015 Annual Report, FDLE (September 2016).

SUMMARY

The Legislature needs to recognize that the substance abuse treatment industry is a part of the healthcare system. Currently, there is little oversight of the industry,[4] other than licensing as a right, unlike other areas of healthcare licensed and regulated by the Department of Health (DOH) and Agency for Health Care Administration (AHCA).[5] Recovery residences, connected to treatment providers by commerce, housing vulnerable patients engaged in intensive outpatient treatment, currently are not regulated at all. All too often, the result is the warehousing of patients in unlicensed, unregulated, substandard housing that encourages anything but sobriety. It is imperative that the Department of Children and Families (DCF) be given the mandate and resources to effectively oversee both treatment providers and recovery residences connected through commerce to the providers. Sober housing for patients involved in intensive outpatient treatment is akin to Adult Family Care Facilities (AFC) in that these homes also house disabled individuals that require care and assistance. Increased oversight of this billion-dollar industry can be financed primarily through reasonable licensing fees and other fees for service. By allowing the industry to fund regulation through reasonable fees, to provide for DCF services and FARR certification for commerce-related recovery residences, it will become much more difficult for bad actors to thrive.

Marketing is another unregulated area that contributes to this crisis. No marketing norms or standards exist within the industry. Marketers and admissions personnel are not required to obtain licensing or certification. There is no minimum education, training or experience required. Some marketers create an online presence whereby potential patients and their families are willfully mislead and misdirected by unqualified individuals who offer

[4] It is important to note that a different level of oversight exists between the private treatment system and the publically funded system. Providers publically funded by DCF through a contract with a Managing Entity have annual program reviews, are required to have a consumer complaint system, have contract obligations related to quality of care, and are actively investigated if misrepresentation or fraud is indicated.

[5] § 429.01(3), Fla. Stat. (2016) ("the principle that a license issued under this part is a public trust and a privilege and is not an entitlement . . . .").

diagnoses and placement recommendations. Often the result of these "lead generators" is a referral to a provider in Florida. In many cases, the referral is to a treatment center or recovery residence in Florida that is not the original destination requested or sought by the caller. To protect the vulnerable consumer, minimum marketing standards need to be developed by DCF, including education, training, licensing and certification by the Florida Certification Board (FCB). In addition, an ethics in marketing statute would be helpful to provide guidance in this area of the industry. Lastly, knowing, intentional and material misrepresentations should be criminalized.

While this crisis cannot be eliminated through criminal investigation and prosecution alone, law enforcement requires more effective tools than are currently available. The Task Force has attached several specific recommendations: greater penalties and other enhancements to the patient brokering statute; enactment of a fraud statute specific to intentional and knowing material misrepresentations by marketers; requirement that any recovery residence referral, either to or from a provider, be by or to a recovery residence that is certified by a credentialing entity (currently FARR) and managed by a certified recovery residence administrator (currently FCB).

To allow for a more efficient and effective response to criminal wrongdoing within the treatment and recovery residence industries, funding should be made available for training local law enforcement agencies and prosecutors to more effectively navigate privacy concerns, while investigating and prosecuting persons or entities who engage in patient brokering and other fraudulent activities. Additionally, the jurisdiction of the Attorney General's Office of Statewide Prosecution should be expanded to add patient brokering to the list of prosecutable crimes as well as inclusion on the predicate list for the purpose of Racketeering (RICO) prosecution. Lastly, investigating cases involving behavioral health[6] is extremely difficult. Florida privacy laws requiring prior notice of disclosure of records should adopt the same

[6] § 397.501(7)(a)5, Fla. Stat. (2016); 42 U.S.C. § 290dd-2(b)(C)(disclosure of records), 42 C.F.R. § 2.17(a) and 42 C.F.R. § 2.67 (undercover operations).

federal exception for ongoing investigations, allowing patient notice to be given after an investigation, but before records are released to the public.

For purposes of this report, the Task Force has determined that there is a vast difference between a classic recovery residence and a commercial recovery residence. A classic recovery residence or sober home is a grouping of like-minded individuals who choose to live together in a sober environment. In most cases, the residents are all signatories of any lease agreement. In this regard, a recovery residence generally does not house persons who require intensive outpatient treatment or higher level of care. More importantly, a recovery residence, in this context, does not have an ongoing economic relationship with a treatment provider.

When referring to a commercial recovery residence, the Task Force is limiting the discussion and its legislative and regulatory recommendations to those commercial residences that are owned or operated either by a treatment provider or another third party, are engaged in commerce with a treatment provider, and house a vulnerable class of recovering addicts attending intensive outpatient programs. This is an important distinction. All recovery residences, as a grouping of disabled persons choosing to live a sober lifestyle together as a group, are protected by federal law from discrimination. However, the commerce between commercial recovery residences and treatment providers can and should be regulated. Commercial recovery residences, engaged in commerce with treatment providers, require regulation, not for the purpose of limiting or restricting them, but rather to protect this vulnerable class of disabled persons from exploitation and abuse. For the remainder of this report, the Task Force will be identifying statutory clarifications and enhancements to existing law as they pertain to treatment providers and commercial recovery residences only.

A number of specific written statutory recommendations are attached to this report. There are other important issues, including fundamental changes to DCF's role in cleaning up the industry, that have not been reduced to specific written statutory language. We urge the Legislature to develop and enact legislation in keeping with the recommendations of the Task Force. Most significantly, the Legislature must create a statutory structure that adequately

funds DCF, funds a credentialing entity for commercial recovery residences (currently FARR), and gives DCF the authority to effectively regulate and license these businesses.

We acknowledge and applaud the recent Palm Beach County Grand Jury Presentment on these issues. Many of the recommendations published in the Presentment are adopted by this Task Force. The Presentment is attached to this report. (Attachment #1).

IDENTIFICATION OF ABUSES IN THE INDUSTRY AND RECOMMENDED SOLUTIONS

THE ROLE OF DCF

As of August 31, 2016, there were a total of 931 substance abuse treatment providers licensed in Florida, holding 3,417 separate component (program) licenses.[7] The Southeast Region (Palm Beach, Broward and the Treasure Coast had 321 licensed providers, (34% of providers) holding 1307 component licenses (38% of all licenses). From April-July, 2016, the Southeast Region alone received 241 Provider Application Packets for the licensure of 606 program components (63 from new providers). The DCF Southeast Region Office of Substance Abuse and Mental Health currently has 9 licensing specialists. The total number of licensing specialists in the 6 DCF state regions combined is 25. Licensing specialists also have the duty and obligation to perform any monitoring of programs in addition to processing licenses and license renewals. Experience shows that DCF rarely moves to revoke the license of a treatment provider. The lack of resources and statutory limitations have undermined DCF's ability to monitor treatment providers. For example, unlike AHCA or the Managing Entity, which oversees state funded providers under contract, DCF personnel do not have the ability or resources to make unannounced auditing visits. Additional staff and authority would allow the Department to be more effective when investigating complaints and enforcing laws against a problem provider.

[7] information provided by DCF to the Palm Beach County Recovery Residences Task Force.

- The Task Force recommends adoption of language as applied to AHCA in the Assisted Living Facilities Act[8], making licenses for substance abuse treatment providers and recovery residences engaged in commerce with those providers a privilege, rather than a right, for purposes of licensure and enforcement of standards. As with AHCA, DCF should be given greater ability to monitor and effectively investigate complaints, as well as license. Chapter 397 should include provisions allowing DCF greater flexibility to deny or delay the issuance of licenses where there are concerns with compliance. For example, when a license is revoked or surrendered, a significant time period should be required before a provider may re-apply. Re-application should require greater scrutiny.

- Additionally, DCF should be given the ability to license commercial recovery residences engaged in commerce with treatment providers. Licensing should encompass more than just safety issues such as fire code compliance. DCF should have the ability to require significant protocols be followed, akin to those utilized by AHCA for the oversight of ALF and AFC licenses.

- Require DCF to develop standards, similar to the National Alliance of Recovery Residences (NARR) standards, which must be met by applicants prior to issuing a license to the commercial recovery residence.

- Marketing practices standards should be included in the requirements for all components of licenses. Standards should address advertising, internal and external admissions and call centers, staff training, minimum qualifications and compensation, referrals of patients the center cannot accept, and compliance with the Florida Patient Brokering Act.

[8] § 429.01(3), Fla. Stat. (2016).

- Create and nationally advertise a hotline for DCF to investigate complaints against treatment providers and commercial recovery residences in Florida. A separate investigative division should be established to monitor compliance as well as marketing abuses.

At the present time, DCF funding is barely sufficient to process provider and component licenses. Increased funding is imperative. That funding can be made revenue neutral. Adequate funding for DCF can be achieved through an increase in fees for non-public licensed providers and commercial recovery residences. This includes reasonable fees for licensing, ongoing oversight of licensed components, including monitoring of compliance with housing standards and protocols, adequate investigative resources, and robust enforcement of standards, including license revocation. The industry can well afford increased fees sufficient to provide for adequate staffing. Staffing is needed not only for licensing and renewals, but regular auditing, investigation and legal staff to pursue license revocation, if appropriate. As a billion-dollar industry, substance abuse treatment providers should be willing and easily able to absorb the level of scrutiny that will curb the abuses that are currently all too prevalent, and preventable. It is in their best interest to rid the State of those rogue operators who "body snatch" patients from legitimate providers and recovery residences.

- Expand the role of DCF to more effectively monitor and investigate abuses, including consumer complaints, in the substance abuse treatment and commercial recovery residence industries.

- Provide adequate revenue-neutral funding through reasonable increases in licensing fees and fees for service.

PATIENT BROKERING

Due to the fact that most private patients are from out-of-state, treatment providers in Florida often refer them to recovery residences or accept referral from recovery residences to their treatment facilities. A common practice within the industry in Florida is for the treatment

provider to pay a weekly fee or kickback to the recovery residence, with the understanding that the recovery residence will allow the patient to live at the residence for free or at a greatly reduced rent while attending the provider's outpatient treatment program. This practice was developed, in part, to ensure that out-of-state patients have a local place to live after they step down from inpatient to outpatient treatment. Most out-of-state patients who are attending intensive outpatient treatment are not locally employed, and while some are able to pay rent, many do not have the means. Without a local, stable address, it would be difficult, if not impossible, for a provider to treat the patient. This creates economic pressure for the provider to find a way to house the patient locally. Brokering, by providing kickbacks to the recovery residence in exchange for the delivery of a patient, is commonplace. Some treatment providers and recovery residences offer incentives such as gym memberships, scooters, weekly massages, chiropractic services, cigarettes, clothes, gift cards and more. Brokers known as "body snatchers" will approach an individual with an SUD and convince them to move to another recovery residence or treatment provider that offers "better stuff."

As a result of patient brokering, there exists an economic incentive for both the patient and the provider to recycle through treatment. Often insurers are required to cover each relapse as a separate event (analogous to breaking a leg one week, and an arm the next). Therefore, a relapse is an event that triggers the cycle of coverage anew. For example, if a patient's benefits expire after inpatient treatment, followed by 8 weeks of outpatient treatment, a new series of benefits are triggered upon relapse, resulting in the patient being eligible for additional treatment, its level and length dependent upon the policy terms. As a result, there is an economic incentive for bad actors in the industry to encourage relapse. It is not uncommon for a person to be in this cycle of treatment/relapse for years. All too often, this cycle ends in overdose and death.

Regulating the type of residence that houses vulnerable persons undergoing intensive outpatient treatment, where there is an economic nexus between provider and residence, does not violate the rights of the patients under the ADA or FHA, any more than does AHCA licensing and regulating housing of disabled and elderly residents at an AFC. The purpose is to protect

disabled persons from being exploited or abused. The purpose is to ensure that patients are living in a safe environment that encourages recovery. Any residence that does not have an economic connection to a treatment provider would not be subject to DCF licensing requirements or be required to be FARR certified. It is the economic connection and protection of patients that enables oversight.[9]

Right now, it is a violation of the patient brokering statute to offer or pay any commission, 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 patients or patronage to or from a health care provider. § 817.505(1)(a), Fla. Stat. (2016). It is also a violation to solicit or receive the benefits described above (1) "in return for referring patients or patronage to or from a health care provider" or (2) "in return for the acceptance or acknowledgment of treatment from a health care provider." § 817.505(1)(b)-(c), Fla. Stat. The model upon which the industry currently rests is illegal. Artifices such as "case management agreements," "bona fide employee" and marketing agreements are generally transparent attempts to evade prosecution. A kickback is a kickback.

If the Legislature chooses to recognize the reality that out-of-state private pay and insured patients require housing while attending intensive outpatient levels of care, and that it is in the public interest that treatment providers be allowed to subsidize that housing without being in violation of the patient brokering statute, then there must be mandatory, effective, meaningful oversight and control over the housing component.

- The problem is so pressing and the ramifications of failure so severe, that the Task Force recommends meaningful DCF oversight and enforcement as well as mandatory credentialing (currently FARR certification) for any commercial recovery residence that is allowed to receive a subsidy, directly or indirectly, from the

[9] *See* Attachment #3, legal memo by Terrill Pyburn, City Attorney, Coconut Creek.

treatment provider in exchange for referrals to, or from, that provider, or otherwise contracts in any way with a provider.

- The Task Force also recommends that the Legislature adopt changes to § 397.407(11). (Attachment #2). Specifically, a licensed service provider should not be allowed to refer a "prospective, current or discharged patient to, or accept a referral from" a recovery residence unless the recovery residence is certified and actively managed by a certified recovery residence administrator.

- Commercial recovery residences that contract with a service provider, directly or indirectly, need to be licensed and monitored by DCF and be required to maintain identifiable standards, such as those required by AHCA licensed residences, or to maintain standards similar to those required under the National Alliance of Recovery Residences (NARR) platform.

- To avoid the "institutionalization" of patients in recovery, restrict the licensure category for IOP or Day/Night treatment from providing free or subsidized housing to a patient beyond 90 days within one calendar year.

- With regard to the Patient Brokering Statute[10] (Attachment #4), add the word "benefit" to the prohibited items solicited or received in return for patient referrals. In addition, enhanced penalties for multiple brokering offenses are needed, along with significant fines to deter this course of conduct.

- The commercial recovery residence credentialing entity must be adequately funded through increased certification fees and fees for service.

[10] § 817.505, Fla. Stat. (2016).

MARKETING

Currently, there are no provisions in Chapter 397 to control unethical marketing practices that prey on distressed families or individuals in crisis seeking treatment. There are no educational, vocational, licensing or certification requirements for admissions personnel, marketers or advocates in the industry. Patients and their families are routinely misled, misdirected and misdiagnosed by unqualified individuals motivated by profit. The State of Florida licenses haircutters. We must do better in protecting disabled people with substance use disorders.

- A marketer or admissions employee directing patients to specific treatment programs should be required to have certain minimum education and/or certification qualifications and should be prohibited from diagnosing and/or recommending specific levels of care without the appropriate license or certification.

- A marketing entity referring patients to Florida should be required to have a registered agent in the State for service of process.

- The Legislature should enact § 397.55 "Prohibition of Unethical Marketing Practices" (Attachment #5), an ethical marketing statute that would be useful to clarify standards in the industry. This would include appropriate disclaimers.

Certain predatory marketing practices involve fraudulent misrepresentation at a time when potential patients and their loved ones are in crisis and most vulnerable. Marketers who knowingly and willfully make materially false statements, whether in advertising or by direct communication, with current or potential patients, should be held criminally accountable. False statements of material fact may include misleading representation about the "identity, products, goods, services, or geographical location" of a service provider or recovery residence by the marketer or marketing entity.

- The Legislature should enact § 817.0345; "Prohibition of Fraudulent Marketing Practices" (Attachment #6) to criminalize and deter the most serious marketing abuses involving fraudulent representations.

ATTORNEY GENERAL OFFICE OF STATEWIDE PROSECUTION: JURISDICTION

The Office of Statewide Prosecution has jurisdiction over certain crimes when they are committed in multiple circuits. The crimes are set out in statute. Currently, patient brokering is not specifically enumerated. It would enhance law enforcement efforts to combat unlawful patient brokering by providing jurisdiction to the Attorney General in those cases that cross circuit lines.

- The Legislature should amend § 16.56 (Attachment #7) to include patient brokering as a specific offense, enabling the Attorney General to investigate and prosecute this crime.

- The Legislature should amend § 895.02 (Attachment #8) to add patient brokering to the predicate offenses constituting "racketeering activity" enabling the Attorney General to investigate and prosecute criminal enterprises that commit these crimes in one or more circuits.

IMPEDIMENTS TO EFFECTIVE PROSECUTION: RECOMMENDATIONS

Criminal cases in Florida are investigated by law enforcement and submitted to the state attorney for the filing of criminal charges. The privacy protections afforded by both federal and state law for the protection of persons being treated for behavioral health conditions significantly impacts the ability of law enforcement to effectively investigate in these areas. For example, an officer is at risk of violating privacy laws by walking up to a known recovery residence and asking routine questions of the residents such as whether and where they receive treatment.

Commencing an undercover operation of a treatment provider or recovery residence requires prior court approval. This is known as a "Title 42" order. It is time consuming and

costly. The patient notification requirements under State law are unclear as to when such notification is required. As a result, one Palm Beach County Circuit Judge refused to sign a requested "Title 42" preliminary order without prior notification to all patients, who were unknown at the time. The average law enforcement agency simply does not have the resources to develop these kinds of extensive investigations within their jurisdictions.

Most criminal investigations are initiated by a complaint; a car is stolen, a person is battered, etc. But the abuses in the drug treatment industry, particularly patient brokering, are not likely to come to light through a person with direct knowledge of these illegal practices. Patients, providers and recovery residence operators are all complicit in patient brokering. For example, there is no incentive for a patient who is benefiting from the arrangement to come forward and initiate a complaint. Therefore, the privacy issue is compounded by the lack of direct complaints and cooperation by this vulnerable class.

- The Task Force recognizes that there are impediments to prosecution that are based on federal law. The difficulties and expense of effective investigation into the abuses of the treatment industry underscore the need for better oversight of providers and recovery residences. There is a legislative cure for the inconsistency between federal and state law regarding adequate notice to the patient. § 397.501 Rights of Individuals (Attachment #9) should be amended to follow the criteria for the issuance of a preliminary court order by specifically adopting the language found in 42 C.F.R. § 2.66(b).

- In order to enhance law enforcement's ability to investigate abuses within the industry, the Legislature should consider additional state funding for law enforcement training in the areas of patient brokering, marketing and healthcare fraud in the substance abuse treatment industry. Training is necessary to enable smaller agencies and counties/circuits throughout Florida to be able to take on these complex investigations.

STANDARD OF CARE/MEDICAL NECESSITY

Potential abuse has expanded to include confirmatory and quantitative drug testing, DNA, genetic testing, pathology, and any diagnostic test that a physician is privileged to order, including up-coded office visits. A point of care (POC) urinalysis test kit is readily available over the counter and costs a few dollars. Confirmatory testing at a laboratory involves sophisticated instruments, often tests for specific and collateral drugs (panels) and routinely results in billings of thousands of dollars per sample. In many cases confirmatory testing is ordered by treatment providers multiple times per week. Medical doctors sign off on such testing as medically necessary and, in many cases, major insurance carriers are compelled to pay claims for laboratory testing without prior authorization based on "access to care" requirements found in federal law. In other words, laboratory testing as a complement to clinical care may be routinely billed for without legitimate proof of medical necessity. This is one of the engines that currently run the industry.

While insurance companies generally pay a percentage of the billed amount, it is not unusual for unscrupulous treatment providers to bill tens or hundreds of thousands of dollars in insurance claims for confirmatory and quantitative UA and other laboratory testing for an individual patient over the course of treatment. In many instances, confirmatory test results are never reviewed by the ordering physician. In addition, unscrupulous providers will submit falsely labeled samples purportedly given by active patients. Frequently, a business nexus exists between the owners of treatment programs, recovery residences and drug testing laboratories.

Currently, there is little communication between stakeholders in the areas of medical necessity, insurance fraud and appropriate standards of care. While the market may correct itself to some degree, it is counterproductive if the market over-corrects and persons with substance use disorders are not properly covered and treated. Inadequate treatment will invariably lead to more overdoses, and more deaths.

- The issue of billing for unnecessary treatment that is fraudulent on its face, including urinalysis or other laboratory testing, is covered under current fraud statutes. As a

further deterrent for those bad actors who knowingly and intentionally defraud private payers or insurance companies, the Legislature should consider enhanced penalties based on significant dollar amount thresholds; over $100,000, $500,000, $1,000,000.

- The standard of care involved in substance abuse treatment is not easily defined or universally accepted. The Task Force will continue to study the issue and report any findings or recommendations to the Legislature.

- To facilitate communication between industry and government stakeholders, the Task Force recommends that the Legislature create an ongoing statewide government/private sector panel to examine standard-of-care abuses in the industry, pool resources and share information. The panel should include the Attorney General, Florida Department of Financial Services-Fraud Division (DFS), Department of Business and Professional Regulation, DOH, AHCA, representatives from the insurance industry, the Florida Alcohol and Drug Abuse Association (FADAA), DCF, FARR, doctors and treatment providers, representatives of local government and first responders, among other potential stake-holders. This panel would be tasked with identifying areas of abuse and coordinating efforts within the private industry and government agencies to curb those abuses as well as recommending appropriate action by the Legislature and executive branches.

RECOGNIZING THE NEED FOR ANCILLARY SERVICES AT RECOVERY RESIDENCES

A great deal of discussion among Task Force members has revolved around whether active patients require ancillary services at their recovery residence as part of the continuum of care. The debate does not include substance abuse treatment, which is not recognized as a function of the residence. Ancillary services could include assistance with transportation, obtaining government benefits, obtaining a job, obtaining a driver's license, life skills training, and overall support in a sober environment. The Task Force will continue to study this issue and will report its findings to the Legislature.

ALTERNATIVES TO DCF LICENSING OF RECOVERY RESIDENCES: AHCA

As an alternative agency to DCF, and in addition to mandatory FARR certification for patient housing connected by commerce to treatment providers, there is an argument to be made that AHCA should license commercial recovery residences with patients engaged in active intensive treatment. This type of license would be similar to a license for an Adult Family Care Home (AFC).

At the very least, AHCA licensure may be considered if a recovery residence supervises one or more residents who receive medication assisted treatment (MAT). Under such circumstances, the Recovery Residence appears to meet the definition of an ALF, which already requires licensure by AHCA.[11]

The reasoning behind mandatory licensure for ALFs equally applies to Recovery Residences. The purpose of the Assisted Living Facilities Act "is to promote the availability of appropriate service for . . . adults with disabilities in the least restrictive and most homelike environment, to encourage the development of facilities that promote dignity, individuality, privacy, and decision making ability of such persons, to provide for the health, safety, and welfare of residents . . ., to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such

[11] "Assisted living facility" means any building . . . which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator." § 429.02(5), Fla. Stat. (2016). "Personal services" means . . . supervision of the activities of daily living and the self-administration of medication and other similar services . . ." § 429.02(17), Fla. Stat. (2016). "Supervision" means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities." § 429.02(24), Fla. Stat. (2015). "Activities of daily living" means functions and tasks for self care . . ." § 429.02(1), Fla. Stat. (2015).

residents, and to ensure that needed economic , social, mental health, health, and leisure services are made available to residents . . . through the efforts of [AHCA] [DCF], [DOH], assisted living facilities, and other community agencies." § 429.01(2), Fla. Stat. (2014).

CONCLUSION

The addiction treatment industry in Florida has a long history of providing quality care and effective treatment. There is a recent trend by unethical providers, however, to exploit the patients they serve and to use the lack of effective oversight to promote patient brokering, excessive billing of services, and inappropriate patient care. This report is written to address systemic problems in the system, created by some, and it should not be assumed these abuses are practiced by all providers.

Many individuals, both Floridians and patients from out of state, find long-term recovery as a result of their engagement in substance abuse treatment. While there are many reputable treatment providers who have a long history of delivering quality care, the reputation of the industry has been negatively affected, and the well-being of patients jeopardized, by a number of providers who have used their license to provide treatment as a means to deliver inadequate care, put patients at risk, use unethical marketing and brokering practices, and practice fraud. This proliferation of fraud and abuse within the substance abuse treatment and recovery residence industries requires immediate attention by the Legislature. Currently, there is very little oversight of providers and no oversight of most recovery residences. Creating a vibrant, adequately funded system of oversight through either DCF or AHCA is crucial. The funding can and should be acquired through increased licensing fees and fees for service, which would make the enhancement revenue neutral. In addition, recovery residences engaged in commerce with treatment providers need to be certified and managed by a certified recovery residence administrator.

Certain law enforcement measures will be helpful to both deter criminality and assist law enforcement in its investigation of patient brokering. The Legislature needs to address abuses in marketing by criminalizing material misrepresentations. Referrals to and from

treatment providers and commercial recovery residences should be allowed only when the recovery residence is certified by a credentialing entity. Jurisdiction should be given to the Attorney General to criminally prosecute patient brokering that occurs across multiple circuits.

Aggressive law enforcement efforts alone will not eliminate all the industry bad actors, any more than criminalizing grand theft auto has eliminated all car thefts. Without bold action the problem will certainly worsen. Currently, paying rent and amenities for patients in order to induce the patient to use a particular provider constitutes patient brokering. If the Legislature recognizes the need to permit treatment providers to subsidize recovery residences housing patients in IOP and day/night treatment programs, those commercial recovery residences need to be both licensed by DCF or AHCA and certified by a credentialing entity. One way this can be achieved is through the creation by DCF of a community residential overlay license connected to intensive outpatient treatment components. A provider may only provide rent subsidy to a recovery residence under this dual system of licensure, along with certification of the residence, and for a limited time.

Marketers and admission personnel should be licensed and subject to marketing standards developed by the Legislature. The most egregious material misrepresentations should be criminalized. The Task Force will continue to study the industry standards and will be making further recommendations regarding marketing and treatment personnel qualifications and appropriate standard of care issues.

The Legislature should create a statewide panel of public and private stakeholders to share information and recommend ongoing improvements in substance abuse treatment industry standards.

While the problems identified in this report have a significant impact on the Southeast part of the state, the Task Force has found that these practices also occur in other communities across Florida. The goal of this report is to ensure that all patients receive quality treatment without being subject to fraud or abuse. The Task Force encourages swift and decisive action by the Legislature.

OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

DAVE ARONBERG
STATE ATTORNEY

ATTACHMENT #1

PALM BEACH COUNTY

GRAND JURY PRESENTMENT

DECEMBER 8, 2016

IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT IN AND FOR PALM BEACH COUNTY, FLORIDA

PRESENTMENT OF THE PALM BEACH COUNTY GRAND JURY

REPORT ON THE PROLIFERATION OF FRAUD AND ABUSE IN FLORIDA'S ADDICTION TREATMENT INDUSTRY

FALL TERM A.D. 2016

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December 8, 2016

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INTRODUCTION

In the midst of the growing national health crisis involving opioid addiction, Dave Aronberg, State Attorney for the Fifteenth Judicial Circuit of Florida, called for this Grand Jury to investigate how government agencies are addressing the proliferation of fraud and abuse occurring within the addiction treatment industry. This Grand Jury was further asked to make appropriate findings and recommendations on how these agencies can better perform their duties to ensure that communities remain safe and individuals with substance use disorders are protected.

"[A] grand jury may investigate the actions of public bodies and officials concerning the use of public funds." *In re Grand Jury Invest. of Fla. Dept. Health & Rehab. Servs.*, 659 So. 2d 347, 350 (Fla. 1st DCA 1995). Such a grand jury has the "right to express the view of the citizenry with respect to public bodies and officials in terms of a 'presentment,' describing misconduct, errors, and incidences in which public funds are improperly employed." *Miami Herald Pub. Co. v. Marko*, 352 So. 2d 518, 522 (Fla. 1977). As explained in *Kelly v. Sturgis*, 453 So. 2d 1179, 1182 (Fla. 5th DCA 1984):

> Grand juries have a lawful function to investigate possible unlawful actions for all persons, private citizens and public officials alike, and to return indictments when warranted. As *Marko* notes, grand juries also have a lawful and proper function to consider the actions of public bodies and officials in the use of public funds and

> report or present findings and recommendations as to practices, procedures, incompetency, inefficiency, mistakes and misconduct involving public offices and public monies. 352 So. 2d at 522. *See also Appeal of Untreiner,* 391 So. 2d 272 (Fla. 1st DCA 1980).

Kelly v. Sturgis, 453 So. 2d 1179, 1182 (Fla. 5th DCA 1984).

In accepting this important assignment, the Grand Jury reviewed five major areas of concern in regulatory oversight and enforcement: (1) marketing, (2) commercial group housing designed for persons in recovery (also known as recovery residences, sober homes, or halfway houses), (3) the ability of the Department of Children and Families to take action, (4) the strength and clarity of the patient brokering statute, and (5) law enforcement's ability to take action.

The Grand Jury heard testimony and received evidence from a wide range of sources, including the Department of Children and Families (DCF), Florida Association of Recovery Residences (FARR), Florida Certification Board (FCB), Florida Alcohol and Drug Abuse Association (FADAA), Florida Attorney General's Office of Statewide Prosecution, Palm Beach County Fire Rescue, the insurance industry, law enforcement, treatment industry professionals (including a psychiatrist, a licensed clinical social worker, and a marketing director), parents of children victimized by abuses like patient brokering, a City Commissioner, owners of recovery residences, private and municipal attorneys who extensively litigated treatment and recovery housing issues over the past decade, and residents from local communities impacted by the proliferation of recovery residences.

In this report, we discuss the economic, statutory, and regulatory forces that make Florida the premier medical tourism destination for substance abuse treatment and recovery housing. We identify the main types of fraud and abuse occurring within the treatment industry and how bad actors have managed to avoid detection for so long. We then explain what tools DCF, FARR, and local law enforcement agencies need to provide meaningful oversight in this industry. Finally, we make recommendations on how to clarify and enhance criminal laws to more effectively address the increase in patient brokering, which is one of the most common, damaging, and lucrative ways that this vulnerable class of consumers is being exploited.

OVERVIEW

Over the past decade, federal laws have collectively impacted the substance abuse treatment industry in ways that could not have been predicted. First, the Mental Health Parity and Addiction Equity Act of 2008 (Parity Act) placed behavioral health on a par with physical health, which resulted in a drastic increase in coverage for substance abuse treatment. *See* 29 U.S.C. § 1185a (2009). Subsequently, the Patient Protection and Affordable Care Act (ACA) allowed young adults to stay on their parents' policies until age 26, eliminated exclusions for pre-existing conditions, and required treatment for mental health and substance abuse to be included on every insurance policy. *See* 124 Stat. 119 (2010). These laws inadvertently created a lucrative opportunity for bad actors to exploit a vulnerable class of young adults suffering from addiction.

Addiction is also recognized as a disability under the Americans With Disabilities Act (ADA) and Fair Housing Act (FHA). *See* 42 U.S.C. § 12101 (2008); 42 U.S.C. § 3602 (2016). Over the past decade, bad actors have been using these laws to hide their exploitation of the very people that these laws were meant to protect. This is especially true in the business of recovery housing, where many unregulated homes have become unsafe and overcrowded "flophouses" where crimes like rape, theft, human trafficking, prostitution, and illegal drug use are commonplace.

While there is no way to accurately assess the number[1] of these unregulated businesses in Florida, one indication is the number of reasonable accommodation requests made by recovery residences to avoid local zoning restrictions. In one municipality alone, there have been 550 requests by recovery residences for reasonable accommodation. Unfortunately, the most common way of identifying a house as a recovery residence occurs during calls for service. These calls range from overdoses, crimes committed inside the house, or general complaints from the community. These unregulated businesses not only harm their residents directly, but indirectly harm others in recovery by perpetuating a negative stigma. The Grand Jury finds that the problem is the unregulated businesses that house these residents, not the residents themselves.

The average substance use disorder (SUD) patients in Florida are young adults from out-of-state with little to no independent source of income.[2] This demographic has proven to be a critical component of "the Florida model," which is loosely defined as outpatient treatment coupled with recovery housing. The model has proven to be extremely lucrative given the ease of setting up and operating an outpatient treatment center (which can be opened in any strip mall) while warehousing patients off-site in unregulated homes.

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[1] DCF Recovery Residence Report, p.8 (Oct. 1, 2013).
[2] Optum White Paper: *Young adults and the behavioral health system*, p.4 (2014).

The problem is that most of these young adult patients from out-of-state cannot afford housing while in treatment. Without a consistent form of patient housing, this model would not work. Currently, patient housing is often paid by treatment providers in exchange for illegal patient referrals.

Out-of-state patients are targeted by Florida treatment providers because they typically have out-of-network plans. In a recent Optum report, it was estimated that reimbursement for out-of-network treatment was, on average, three times the amount paid for the same in-network services.[3] Additionally, SUD patients of this demographic are generally unwilling or unable to cooperate with law enforcement. These characteristics, coupled with impractical privacy restrictions on oversight, make this patient population exceptionally vulnerable to patient brokering and other forms of exploitation.

The Grand Jury finds that the main criminal and regulatory violations occurring within Florida's substance abuse treatment industry involve deceptive marketing, insurance fraud, and patient brokering. It begins with the deceptive marketing that draws in this vulnerable class of consumers. Online marketers use Google search terms to essentially hijack the good name and reputation of notable treatment providers only to route the caller to the highest bidder, which could

[3] Optum White Paper: *Young adults and the behavioral health system*, p.4 (2014).

simply be another referral agency. Parents acting out of desperation and ignorance are easily convinced to send their young adult children far from home in hopes of effective treatment. The evolution of technology has far surpassed the few laws that exist to govern such conduct.

Insurance fraud is another major problem in Florida's substance abuse treatment industry. For example, a point of care (POC) urinalysis (UA) test kit is readily available over the counter and costs under ten dollars. On the other hand, confirmatory and quantitative testing at a lab involves sophisticated instruments, tests for specific and collateral drugs (panels), and results in charges that can exceed five thousand dollars per test. In many cases, confirmatory and quantitative tests are ordered by treatment providers multiple times per week.

Doctors may sign off on such testing as being medically necessary. There are many instances, however, where no prior authorization is required before a claim is paid. As one major insurance carrier explained: claims for confirmatory testing and other treatment are paid without prior doctor authorization based on "access to care" requirements found in federal law. In other words, clinical care is routinely billed and paid without any proof of medical necessity. Some providers bill for services never rendered and others submit falsely labeled samples. Even when confirmatory tests are ordered by a doctor, many are never reviewed, evincing the lack of medical necessity in the first place.

Although insurance companies generally only pay a percentage of the billed amount for out-of-network services, it is not unusual for treatment providers to receive hundreds of thousands of dollars in insurance payments for confirmatory tests for a single patient over the course of treatment. In one example shown to the Grand Jury, a well-known treatment provider billed a single patient's insurance over $600,000, mainly for drug tests, in just a seven-month period.[4]

In addition to deceptive advertising and insurance fraud, patient brokering is a major problem in this industry as well. The Grand Jury heard testimony that the average patient referral fee to a recovery residence from a treatment provider is $500 per week per patient. The more the treatment provider bills, the more the provider can pay in kickbacks to obtain more patients. This leads patients away from quality treatment providers to businesses that are only concerned with billing as much as possible. The amount of patient brokering that occurs in one area can actually be used as a yard-stick to measure the other forms of fraud and abuse occurring within the industry. Meanwhile, treatment suffers and overdose rates continue to rise.[5]

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[4] The 24-year-old Ohio-native who came to Florida to receive this "treatment" died after that seven-month period from a Carfentanil overdose.

[5] Delray Beach Overdose Statistics (2016); Lake Worth Overdose Statistics (2016); Boynton Beach Overdose Statistics (2016); Zack McDonald, *Bay County battles to keep opioid epidemic at bay*, Panama City News Herald, Oct. 8, 2016.

According to the most recent national statistics, an opioid-related death occurs every 19 minutes. The introduction of Fentanyl, one hundred times more potent than morphine, and Carfentanil, an elephant tranquilizer one thousand times more potent than morphine, have made heroin even deadlier. FDLE recently reported a dramatic increase in opioid-related deaths throughout the state[6], and there have been 406 opioid related overdose deaths in Palm Beach County alone through October of this year. Palm Beach County Fire Rescue reported more than 3,000 instances where Narcan, an opioid antidote, was deployed.[7]

The Grand Jury finds this type of epidemic to be devastating to local resources. The average cost of a Palm Beach County Fire Rescue response to an overdose is between $1,000 and $1,500. Additionally, Palm Beach County Fire Rescue spent $55,725 on Narcan for the 2015 fiscal year, and another $182,900 in 2016. First responders have also reported higher rates of post traumatic stress disorder (PTSD) based on having to deal with multiple overdose deaths on a daily basis.

To combat the proliferation of fraud and abuse in the treatment industry during the current heroin epidemic, the Grand Jury recommends a number of

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[6] FDLE, 2015 Annual Report, *Drugs Identified in Deceased Persons by Florida Medical Examiners* (Sept. 2016).
[7] Palm Beach County Fire Rescue Narcan Use Statistics (1/1/16 – 10/24/16).

legislative and regulatory changes. The Legislature has the ability to act on these recommendations. When it comes to the business of health care, the Legislature has already made statements of intent on its ability to regulate:

> [S]uch professions shall be regulated only for the preservation of the health, safety, and welfare of the public under the police powers of the state. Such professions shall be regulated when: (a) **Their unregulated practice can harm or endanger the health, safety, and welfare of the public, and when the potential for such harm is recognizable and clearly outweighs any anticompetitive impact which may result from regulation**. (b) The public is not effectively protected by other means, including, but not limited to, other state statutes, local ordinances, or federal legislation. (c) Less restrictive means of regulation are not available.

§ 456.003(1), (2)(a)-(c), Fla. Stat. (2016) (emphasis added).

We find that the unregulated practices within the substance abuse treatment industry and connected business of recovery housing have harmed and endangered the health, safety, and welfare of the public and persons suffering from SUDs. We find that the potential for such harm is recognizable and clearly outweighs any anticompetitive impact that may result from regulation. We also find that the public has clearly not been protected by other means, and less restrictive means are not available. This Grand Jury has identified five (5) areas in need of legislative and regulatory change.

First, deceptive marketing should be strictly prohibited, and willful, intentional, and material misrepresentations should be punished with criminal

sanctions. Treatment providers should be held accountable for the conduct of the marketers they employ. Advertising for substance abuse treatment should be held to a higher standard like advertising in other health care fields, and should provide consumers with important information in the form of upfront disclaimers. Marketing and admissions personnel who have direct contact with this vulnerable class of consumers should also be licensed and/or certified to ensure they possess minimum education, training, and experience.

Second, there should be oversight on businesses designed to provide housing and other services for persons in recovery. At the very least, oversight is needed on businesses that engage in commerce with treatment providers. This can be accomplished by: (1) requiring FARR certification and DCF licensing for certain types of commercial recovery housing, (2) prohibiting treatment providers from referring patients to any uncertified recovery residences, and (3) prohibiting treatment providers from accepting referrals from uncertified recovery residences.

Third, DCF should be adequately funded and staffed to take action against violators and perform inspections with greater depth and frequency. This can be accomplished by treating licenses as a privilege rather than a right, and by providing DCF with the resources it needs to regulate this massive industry. The Grand Jury finds that this can be done in a state revenue neutral manner by raising license and service fees.

Fourth, the patient brokering statute should be clarified and strengthened. Given the great lengths to which patient brokers have gone to creatively disguise their kickbacks as legitimate activities, the patient brokering statute should be amended to prohibit the solicitation or receipt of any "benefit" in exchange for patient referrals or acceptance of treatment. Moreover, serious crimes should have serious consequences. The Grand Jury finds that patient brokering is a very serious crime, with potentially deadly results. Penalties for patient brokering should be enhanced, especially when it involves large-scale brokering. Minimum fines should also be reflective of the outrageous profits made by patient brokers. Additionally, the Florida Attorney General's Office of Statewide Prosecution should be given concurrent jurisdiction with the State Attorney's Offices to assist in the prosecution of patient brokering.

Finally, the Grand Jury recommends that law enforcement be given better tools to deal with the current types of fraud and abuse. This would include reducing impractical privacy restrictions that prevent legitimate investigation, and promoting more education among local law enforcement agencies on both state and federal privacy laws. The Grand Jury finds that this can be achieved through better collaboration between government agencies and private business, especially insurance companies.

FINDINGS AND RECOMMENDATIONS

I. MARKETING

The Grand Jury finds that people suffering from addiction and their families are often in an extremely vulnerable position while seeking treatment services. This vulnerable class of consumers is more prone to being victimized by deceptive marketing practices that are harmful to the recovery process. Neither DCF nor any regulatory agency, however, currently provides adequate oversight of the marketing practices of treatment providers. There is even less oversight for online marketing, which is one of the most common methods of marketing used by an industry that draws a majority of its patients from other states.

The Grand Jury has found that a number of harmful marketing practices have become standard practice in Florida's private substance abuse treatment industry. The main abuses consist of: (1) false representation of services, (2) false representation of location, and (3) real-time auctioning of patients through clearing houses, also known as "lead generators." We heard testimony from industry professionals with extensive experience in online marketing of addiction treatment services. One witness demonstrated how online marketers use Google search terms to essentially hijack the name and reputation of notable treatment providers only to route the caller to another referral agency.

For example,[8] a person looking for treatment in Seattle types the following search terms into a Google search bar: "Drug Rehab Seattle." A marketer's listing appears in the search results as "Drug Rehab Seattle." The listing purports to be a treatment center in Seattle. But when the person calls the number listed, the marketer silently routes the call to one of five different customers of the marketer. Some of those customers are simply other call centers or referral services. Others might be good or bad treatment centers in Florida that have paid the marketer for the referral.

One of the problems with this practice is the monetary conflict of interest created once a "lead" is already paid for. For example, when a treatment center pays $1,000 for a lead, they are compelled to convince that caller to go to *their* treatment center, regardless of what the caller says or whether that particular treatment is in the caller's best interest. The level of care recommended will also be influenced by this monetary incentive. A person calling about outpatient treatment may be urged to get more intensive (and expensive) treatment under this scenario. The Grand Jury finds that deceptive marketing practices like these are detrimental to a patient's chances of receiving quality care and the appropriate level of care. These practices are also harmful to the reputation of quality

[8] Deceptive Marketing Exhibit #1, p.1 (2016).

treatment providers who have worked hard to establish their reputation. Accordingly, we make the following recommendations:

A. Prohibit deceptive advertising

The Grand Jury recommends that materially deceptive advertising for substance abuse treatment be punishable by criminal sanctions. We also recommend that treatment providers be held accountable for the actions of the marketers they employ. A provider should not simply pay a flat fee to a marketing company and then look the other way while that company engages in improper conduct like patient brokering. If a marketing agent or entity violates the law, the provider who benefits from such service should be liable as well.

B. Provide disclaimers and other useful information

The Grand Jury recommends that a marketing entity or agent must be upfront and truthful about who they are, what they do, and where they are located. At the very least, disclaimers should be made to notify patients about material information and other potential conflicts of interest. Material information would include where to report fraud and abuse (as most out-of-state consumers may not even realize that DCF is the agency that regulates substance abuse treatment in Florida) and where to find success rates on providers and recovery residences. We recommend that providers continue to keep consumers informed throughout the continuum of care by making such information readily accessible.

C. Require licensing for marketing and admissions

Given the vulnerability of this class of consumers, the Grand Jury finds that marketers and admissions personnel that have direct contact with current and future patients should have minimum education, training, and experience. Marketers and admissions personnel should be licensed by DCF or certified by a credentialing agency like interventionists who provide similar services,[9] and they should be prohibited from diagnosing or recommending specific levels of care without the appropriate license or certification to do so. At the very least, marketing entities operating in Florida should be licensed by a Florida consumer protection agency and have a registered agent located in Florida.

II. PATIENT HOUSING

The Grand Jury received evidence from a number of sources that recovery residences operating under nationally recognized standards, such as those created by the National Alliance for Recovery Residences (NARR), are proven to be highly beneficial to recovery. The Florida Association of Recovery Residences (FARR) adopts NARR standards.[10] One owner who has been operating a recovery residence under these standards for over 20 years has reported a 70% success rate

[9] Carey Davidson, *Navigating the Maze of Addiction Treatment*, TogetherAZ Blog: An Ethical Compass, Oct. 31, 2016.
[10] NARR/FARR Overview; NARR Quality Standards (July 15, 2015).

in outcomes. The Grand Jury finds that recovery residences operating under these nationally approved standards benefit those in recovery and, in turn, the communities in which they exist.

In contrast, the Grand Jury has seen 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.[11] 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 patients.

The Grand Jury also received extensive testimony about many patients' financial need for housing during treatment. Detox, residential treatment, partial hospitalization (PHP), and intensive outpatient (IOP) are time-consuming levels of care, and are not conducive to working normal hours. Even after finishing inpatient treatment, most out-of-state, young adult patients don't have local jobs lined up or the resources to afford housing. As a result, patients receiving these levels of care are often unable to afford housing during such treatment.

Given this reality, some type of financial assistance for housing is needed.

[11] Susan Taylor Martin, *Addicts say recovery program stole their money*, Tampa Bay Times, Nov. 18, 2012.

Currently, this financial assistance for housing is typically paid through patient brokering. A treatment provider pays a patient's rent at a recovery residence in exchange for referring the resident to the provider for treatment. Alternatively, a provider will refer the patient to housing owned by the provider after being discharged from inpatient treatment. Both treatment providers and recovery residences offer incentives such as gym memberships, scooters, cigarettes, clothes, and gift cards to keep patients at a particular provider or recovery residence. Brokers known as "body snatchers" approach patients and convince them to move to other recovery residences and/or providers that offer "better stuff." The Grand Jury finds that it would be difficult, if not impossible, to eliminate these practices altogether without addressing the legitimate need for financial assistance with patient housing. Therefore, the Grand Jury makes the following recommendations:

A. Require DCF license and FARR certification for commercial recovery housing, especially when connected to treatment

The Grand Jury recommends that commercial[12] recovery residences be licensed by DCF and certified by FARR. At the very least, commercial recovery residences that contract with treatment providers should be licensed by DCF and certified by FARR. Allowing providers to contract with unregulated sober homes

[12] Unlike the traditional "Oxford" model that has become a rarity in Florida, commercial recovery residences are for-profit businesses operated by a third party.

is like allowing hospitals to contract with unlicensed food vendors. The safety concerns for patients are obvious. A similar law already exists that prohibits treatment providers from referring clients to non-certified recovery residences. *See* § 397.407(11), Fla. Stat. (2016). If a treatment provider is prohibited from *referring* a patient to a non-certified home, it should certainly be prohibited from *hiring* a non-certified home as an independent contractor to provide housing and other treatment-related services for the patient.

One way to accomplish the oversight needed while also addressing patients' need for financial assistance with housing would be to create a new DCF license that allows treatment providers to assist PHP and IOP patients with housing by providing a limited, needs-based scholarship for rent. The first and most important requirement for this license would be FARR certification of the housing component in addition to periodic inspections by DCF. This requirement could be waived for publicly funded providers under contract with a Managing Entity.[13]

The limitations on this license would also have to be clear and strictly enforced. Patients would have to apply for the scholarship based on financial need. The scholarship would be paid directly to the licensed/certified recovery residence, would be capped at $200 per week for a maximum of 12 weeks, and could only be

[13] According to DCF, treatment providers that contract with the Managing Entities for public funds are held to higher standards.

used for rent. This is not only to promote self-sufficient reintegration, but to avoid the strong economic motive to promote a cycle of unnecessary treatment and/or relapse. The Grand Jury heard testimony about countless patients who have fallen prey to this cycle of dependence and its devastating impacts on recovery. It is not uncommon for a person to be in this cycle of treatment/relapse for years.

Ultimately, the scholarship amount and time limits could be periodically changed by DCF based on the standard length of time that IOP treatment is designed to last and the fair market value of rent in the area. The Grand Jury finds that this license would properly regulate commerce between the business of recovery housing and treatment while protecting the health, safety, and welfare of the patients in recovery. The Grand Jury finds that the Legislature already requires mandatory licensure for similar group housing for disabled individuals, and the reasoning behind such licensure equally applies to recovery residences.[14] The

[14] "'Assisted living facility' means any building . . . which undertakes through its ownership or management to provide housing, meals, and one or more personal services for a period exceeding 24 hours to one or more adults who are not relatives of the owner or administrator." § 429.02(5), Fla. Stat. (2015). "'Personal services' means . . . supervision of the activities of daily living and the self-administration of medication and other similar services . . ." § 429.02(17), Fla. Stat. "'Supervision' means reminding residents to engage in activities of daily living and the self-administration of medication, and, when necessary, observing or providing verbal cuing to residents while they perform these activities." § 429.02(24), Fla. Stat. "'Activities of daily living' means functions and tasks for self care . . ." § 429.02(1), Fla. Stat.

purpose of the Assisted Living Facilities Act is:

> to promote the availability of appropriate service for . . . **adults with disabilities** in the least restrictive and most homelike environment, to encourage the development of facilities that promote dignity, individuality, privacy, and decision making ability of such persons, to provide for the health, safety, and welfare of residents . . ., to promote continued improvement of such facilities, to encourage the development of innovative and affordable facilities particularly for persons with low to moderate incomes, to ensure that all agencies of the state cooperate in the protection of such residents, and to ensure that needed economic, social, mental health, health, and leisure services are made available to residents . . . through the efforts of [AHCA] [DCF], [DOH], assisted living facilities, and other community agencies.

§ 429.01(2), Fla. Stat. (2014) (emphasis added). The Grand Jury believes that disabled individuals living in recovery residences deserve the same type of protection as those living in Assisted Living Facilities or Adult Family Care Homes.

B. Eliminate loophole that allows for patient referrals to uncertified recovery residences owned by a provider

As discussed above, the Grand Jury finds that there 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.

C. Prohibit patient referrals from uncertified recovery residences to treatment providers

Additionally, the Grand Jury heard testimony on how patient brokering most often occurs as referrals from the recovery residences to the treatment providers. As a result, we recommend that referrals from uncertified recovery residences to treatment providers be prohibited. The Grand Jury recommends amending section 397.407(11), Fla. Stat. as follows:

> Effective July 1, ~~2016~~ 2017, a service provider licensed under this part may not refer a prospective, current or discharged patient to,

or accept a referral from, 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 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. This section shall not apply to publicly funded treatment providers licensed by the Department and under contract to a Managing Entity.

III. ENABLE DCF TO TAKE ACTION

The Grand Jury heard testimony from a number of industry professionals on the inability of DCF to take swift and reasonable action when faced with blatant violations of both DCF regulations and criminal law. Expensive and time-consuming procedures like a Chapter 120 administrative hearing are required before DCF can suspend or revoke a license. At best, a treatment provider found in violation of regulations will negotiate a voluntary withdrawal of their license, but then be able to immediately reapply for a new license with no time limit or higher level of scrutiny. We find that DCF's difficulties in taking reasonable action stems from the fact that a license to provide substance abuse treatment is treated as a right, rather than a privilege. This prevents DCF from acting efficiently for the benefit of the patients who are being exploited and abused across the board. We believe a license for substance abuse treatment should be treated the

same as a license in other health care fields.

The Grand Jury also received extensive testimony and evidence about DCF's lack of resources.[15] As of August 31, 2016, there were 931 substance abuse treatment providers licensed in Florida, holding 3,417 separate component licenses. The Southeast Region (Palm Beach, Broward and the Treasure Coast) had 321 licensed providers, holding 1,307 component licenses. From April-July, 2016, the Southeast Region alone received 241 Provider Application Packets for the licensure of 606 program components (63 from new providers).

The Southeast Region currently has only 9 licensing specialists. The total number of licensing specialists in the 6 state regions combined is 25. Licensing specialists also have the duty and obligation to perform any monitoring of programs in addition to processing licenses and license renewals. The Grand Jury also heard testimony that these same licensing specialists routinely leave DCF to make more money by working for treatment providers. The Office of Inspector General (OIG) is tasked with providing support, but they also have inadequate resources. Overall, DCF is grossly understaffed and underfunded to regulate this billion-dollar industry. Therefore, the Grand Jury makes the following recommendations:

[15] DCF Response to Sober Homes Task Force Request (Sept. 13, 2016).

A. Treat license as a privilege instead of a right

The Grand Jury recommends treating the issuance of a license for substance abuse treatment a privilege, rather than a right. This can be done by adopting the language used in the Assisted Living Facilities Act, which states: "The principle that a license issued under this part is a public trust and a privilege and is not an entitlement should guide the finder of fact or trier of law at any administrative proceeding or in a court action initiated by the Agency for Health Care Administration [AHCA] to enforce this part." § 429.01(3), Fla. Stat. (2016).

Doing so would allow DCF to adopt a system similar to that used by AHCA, with greater ability to monitor as well as license. For example, anyone can open a substance abuse treatment center. If licenses were treated as a privilege, DCF could require reasonable qualifications for ownership and administration of treatment facilities. Treating licenses as a privilege would also allow DCF greater flexibility to deny or delay the issuance of licenses where there are compliance concerns. The Grand Jury further recommends whenever a license is revoked or surrendered, re-application should require a minimum waiting period and greater scrutiny.

Finally, the Grand Jury heard testimony that an unlimited number of treatment providers have been allowed to open in a given geographical location which has created a supply of treatment services that far outweighs demand. The

Grand Jury heard testimony about how this imbalance in supply and demand encourages patient brokering, poaching, and other forms of abuse by bad actors in the industry. If licenses were treated as a privilege, DCF could counteract this problem by requiring a certificate of need for new treatment facilities to open. The Grand Jury finds that this practice is already done in other health care fields and would be beneficial to the substance abuse treatment industry as well.

B. Provide better resources by raising licensing and service fees

The Grand Jury finds that DCF's current resources for regulating the substance abuse treatment industry are grossly inadequate. Given the volume of providers, DCF clearly needs more staff and training to achieve meaningful oversight. This can be accomplished in a revenue neutral way. Licensing and service fees should be increased to reflect the lucrative profit margin of a typical treatment provider. Likewise, the Grand Jury has received evidence that FARR, much like DCF, is grossly underfunded and understaffed to accommodate the needed oversight of recovery residences throughout the State of Florida. Therefore, we recommend that FARR be adequately funded as well by increasing certification and service fees. Alternatively, if raising fees for both DCF and FARR are unable to adequately fund the oversight needed for this industry, we urge the Legislature to consider appointing another health agency such as DOH or AHCA to regulate substance abuse treatment.

IV. STRENGTHEN PATIENT BROKERING STATUTE

Anti-kickback statutes like Florida's patient brokering statute are designed to prevent healthcare fraud and abusive practices resulting from provider decisions that are based on self-interest rather than cost, quality of care, or necessity of services. *See United States v. Patel*, 778 F.3d 607, 612 (7th Cir. 2015). These statutes are also designed to "protect patients from doctors whose medical judgments might be clouded by improper financial considerations." *See id.*

The Grand Jury heard testimony from victims and families who have been devastated by patient brokering. The Grand Jury also heard testimony from a number of industry professionals who have seen the negative impacts of patient brokering on recovery. We find that patient brokering is extremely harmful to recovery, and such practices during the current heroin epidemic have contributed to the exhaustion of public resources, an increase in overdoses, and death. The public has a vested interest in eliminating patient brokering and making sure persons with SUDs are treated successfully.

The Grand Jury also heard testimony from industry professionals who have openly stated that patient brokering is the standard, not the exception, in Florida's substance abuse treatment industry. Over the years, different ways of covering up kickbacks have been developed, such as "case management" contracts between treatment providers and recovery residences. Brokers hide kickbacks in many

different ways, such as luxurious amenities, cigarettes, plane flights, scooters, vacations, and gift cards. To combat this elusive and devastating practice, the Grand Jury makes the following recommendations:

A. Prohibit the solicitation or receipt of any "benefit"

The Grand Jury recommends that Florida's patient brokering statute, § 817.505, Fla. Stat. (2016), be amended to prohibit the solicitation or receipt of any "benefit" in exchange for referring patients to, or accepting treatment from, a particular treatment provider. This would put both patient brokers and legitimate industry professionals on notice that any inducement or reward for the referral or acceptance of patients is clearly prohibited.

B. Increase criminal penalties and minimum fines

Currently, patient brokering is a third degree felony of the lowest level under the Criminal Punishment Code with no minimum fine. *See* 817.505(4), Fla. Stat. Given the devastating effects of this crime, the Grand Jury recommends that patient brokering be raised from a level 1 to a level 5 felony. The Grand Jury also recommends that offenders be ordered to pay minimum fines that reflect the high profits of patient brokering.

Between California and Florida[16], the average referral fee for a new patient can easily run up to $5,000. A typical patient broker can make up to $500 per week for every patient sent to a provider. Brokers with multiple recovery residences make up to $10,000 per week. Currently, there is no minimum fine for patient brokering, no matter how many counts are charged. Meanwhile, there is currently a minimum $500,000 fine for unlawfully possessing 25 grams or more of oxycodone. *See* § 893.135(1)(c)3.c., Fla. Stat. (2016). Minimum fines like this should be mandated to provide enough financial deterrent to those who make hundreds of thousands of dollars a year from brokering multiple patients.

C. Create penalty enhancement for large-scale brokering

For large-scale patient brokering, involving 10 or more patients at a time, the penalty should be increased to a second degree felony, level 7. For large-scale brokering, involving 20 or more patients, the penalty should be increased to a first degree felony, level 8. Recidivist brokers who continue to broker patients should likewise face enhanced penalties. Similar penalty enhancements can also be found in the identity theft statute. *See* § 817.568, Fla. Stat. (2016).

D. Add brokering to Statewide Prosecution's jurisdiction

Currently, patient brokering is not defined as racketeering activity under the

[16] According to one out-of-state industry professional, Palm Beach International Airport is infamous for having patient brokers trolling for new arrivals.

RICO statute. *See* § 895.02(8)(a), Fla. Stat. (2016). As discussed above, however, patient brokering routinely involves fraud (in disguising kickbacks) and is utilized by those committing other forms of healthcare fraud. As recently observed by the Eleventh Circuit, defendants commit fraud, like falsifying records to justify ordering more than what is necessary to enhance the amount of kickbacks. *See United States v. Vernon*, 723 F.3d 1234, 1241 (11th Cir. 2013). Specifically, the Grand Jury received evidence on how kickbacks are increased by billing for unnecessary UA confirmatory and quantitative testing.

The Grand Jury heard testimony from the Florida Attorney General's Office of Statewide Prosecution, which is designed to handle prosecutions of multi-county organized fraud schemes such as this. Statewide Prosecution, however, currently does not have jurisdiction to prosecute patient brokering despite the resources and desire to do so. Accordingly, we recommend that the RICO statute be amended to include patient brokering as a predicate offense, and to amend Florida Statute section 16.56, to give the Office of Statewide Prosecution concurrent jurisdiction with the State Attorney's Offices over patient brokering so that they can assist local law enforcement agencies in the investigation and prosecution of these fraudulent criminal enterprises throughout the state.

V. ENABLE LAW ENFORCEMENT TO TAKE ACTION

The Grand Jury heard testimony from law enforcement with extensive experience in the field of health care fraud. One of the biggest hurdles to investigations in this industry is that the victims of patient brokering (the patients themselves) rarely report these crimes. In many cases, patients are complicit because they receive free rent, amenities, and other benefits from engaging in the crime. Moreover, many out-of-state young adult patients have a mistrust of police to begin with.

We also heard that state officials, along with members of the FBI and United States Attorney's Office, have conducted investigations into a number of treatment providers and recovery residences. In doing so, they found that there are privacy laws specific to mental health and substance abuse treatment that are extremely burdensome and impractical in their application. Law enforcement officers face criminal penalties for violating these laws. *See* 42 C.F.R. § 2.4. One of the most onerous restrictions requires notification for the disclosure of patient records, which could compromise the integrity of ongoing investigations.

As a general matter, confidentiality is paramount to the integrity of an ongoing criminal investigation. When criminals realize they are being investigated, they take measures to evade prosecution. Thus, notification of an investigation to the suspected criminals or to persons that would likely advise those

criminals of the investigation is harmful to the investigation itself. Currently, courts have full discretion whether or not to require patient notification. 42 C.F.R. § 2.66(b).

Under state law, the timing of patient notification is less clear. Section 397.501 states that protected parties must be given "adequate notice" whenever disclosure is sought. *See* § 397.501(7)(h), Fla. Stat. (2016). "Adequate notice" is not defined anywhere in Chapter 397. The State has argued that section 397.501 incorporates the federal confidentiality regulations found in 42 C.F.R. §§ 2.1-2.67, and under those federal confidentiality regulations, "adequate notice" does not mean "prior notice." At least one Palm Beach County judge has rejected this argument and refused to authorize disclosure of records without first notifying all protected parties. As a practical matter, the State cannot give notice to patients before the State knows who those patients are, and the State would be violating privacy rights by seeking out information that identified anyone as a patient without prior authorization. Accordingly, the Grand Jury makes the following recommendations:

A. Reduce impractical privacy restrictions on investigation

The Grand Jury recommends that section 397.501(7)(h) expressly permit disclosure of patient records without prior notification under the same circumstances found in section 42 C.F.R. § 2.66(b). This strikes a fair balance

between the privacy rights of patients and the need for law enforcement to investigate crimes that are being committed against those same patients.

B. Promote education and inter-agency collaboration

The Grand Jury also finds that most local law enforcement agencies are lacking in education on how to navigate the many federal and state privacy laws in this industry. Therefore, the Grand Jury recommends more training and education of local law enforcement on how to properly comply with federal and state privacy laws in the course of their investigations. Agencies like DCF, DOH, AHCA, FARR, and local law enforcement need to have better protocols in place for sharing information and working together on these types of investigations in the substance abuse treatment industry.

CONCLUSION

The Grand Jury finds a compelling and urgent need for both increased oversight and enforcement in Florida's substance abuse treatment industry. The problems outlined in this report exist throughout our state and continue to spread throughout the country. Although there is no simple answer to these complex problems, we believe our recommendations provide a step in the right direction and can be implemented without any negative fiscal impact on state resources. The Grand Jury strongly urges the Legislature to consider the recommendations in this report and take appropriate action before these problems worsen.

SUMMARY OF RECOMMENDATIONS

- Prohibit deceptive advertising and punish with criminal sanctions.
- Require disclaimers that notify patients and families about material information.
- Require marketers and admissions personnel to be licensed.
- Require DCF license and FARR certification for commercial recovery residences, especially those that contract with treatment providers.
- Eliminate loophole that allows for patient referrals to uncertified recovery residences owned by a treatment provider.
- Prohibit treatment providers from accepting patient referrals from uncertified recovery residences.
- Treat license as a privilege rather than a right.
- Require credentials such as a background check for owning a treatment center.
- Require certificate of need for new treatment providers.
- Provide adequate resources to DCF and FARR by raising fees.
- Amend § 817.505, Fla. Stat. to prohibit the solicitation or receipt of any "benefit" in exchange for referrals or treatment.
- Increase criminal penalties and minimum fines for patient brokering.
- Create penalty enhancements for large-scale patient brokering.
- Enable the Office of Statewide Prosecution to prosecute patient brokering.
- Amend § 397.501(7)(h), Fla. Stat. to allow disclosure of patient records without prior notification under the same circumstances as found in 42 C.F.R. § 2.66(b).
- Educate local law enforcement on privacy laws and promote better inter-agency collaboration.

EXHIBIT LIST

LEGAL AUTHORITY

CASES — PAGE(S)

STATUTES

DISTRIBUTION REQUEST

The Grand Jury requests this Presentment and Report be furnished to the following:

1. Honorable Rick Scott, Governor
2. Honorable Jeff Atwater, Chief Financial Officer
3. Honorable Pam Bondi, Attorney General
4. Honorable Joe Negron, Senate President
5. Honorable Richard Corcoran, House Speaker
6. Honorable Jeff Clemens, State Senator
7. Honorable Bobby Powell, State Senator
8. Honorable Kevin Rader, State Senator
9. Honorable Ray Rodrigues, House Majority Leader
10. Honorable Joseph Abruzzo, State Representative
11. Honorable Lori Berman, State Representative
12. Honorable Bill Hager, State Representative
13. Honorable Al Jacquet, State Representative
14. Honorable MaryLynn Magar, State Representative
15. Honorable Rick Roth, State Representative
16. Honorable David Silvers, State Representative
17. Honorable Emily Slosberg, State Representative
18. Honorable Matt Willhite, State Representative
19. Honorable Mary Lou Berger, Palm Beach County Major
20. Honorable Gary R. Nikolits, Palm Beach County Property Appraiser
21. Honorable Ric L. Bradshaw, Palm Beach County Sheriff
22. Honorable Ken Lawson, Dept. of Business & Professional Regulation Secretary
23. Honorable Mike Carroll, Dept. of Children and Families Secretary
24. Honorable Drew Breakspear, Office of Financial Regulation Commissioner
25. Honorable Dr. Celeste Philip, Dept. of Health Surgeon General
26. Honorable Justin Senior, Agency for Health Care Administration Interim Secretary
27. Honorable David Altmaier, Office of Insurance Regulation Commissioner
28. Honorable Rick Swearingen, Florida Dept. of Law Enforcement Commissioner
29. Honorable Barbara Palmer, Agency for Persons with Disabilities Executive Director
30. Verdenia C. Baker, Palm Beach County Administrator
31. Richard Radcliffe, Palm Beach County League of Cities Executive Director
32. Christina Henson, Palm Beach County Criminal Justice Commission

CERTIFICATE OF PRESENTMENT

The Grand Jury respectfully submits this Presentment this _____ day of December, 2016.

_____
[NAME OF FOREPERSON]
Foreperson
Palm Beach County Grand Jury
Fall Term 2016

As authorized and required by law, we have advised the Grand Jury returning this presentment.

I, DAVID ARONBERG, State Attorney and Legal Advisor, Palm Beach County Grand Jury – Fall Term 2016, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this _____ day of _____, 2016.

_____
DAVID ARONBERG
State Attorney, Fifteenth Judicial Circuit of Florida
Legal Advisor
Palm Beach County Grand Jury, Fall Term 2016

I, ALAN JOHNSON, Chief Assistant State Attorney and Legal Advisor, Palm Beach County Grand Jury – Fall Term 2016, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 16 day of December, 2016.

_____
ALAN JOHNSON
Chief Assistant State Attorney
Legal Advisor
Palm Beach County Grand Jury, Fall Term 2016

I, BRIAN L. FERNANDES, Chief Assistant State Attorney and Legal Advisor, Palm Beach County Grand Jury – Fall Term 2016, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 8th day of December, 2016.

BRIAN L. FERNANDES
Chief Assistant State Attorney
Legal Advisor
Palm Beach County Grand Jury, Fall Term 2016

I, JUSTIN CHAPMAN, Assistant State Attorney and Legal Advisor, Palm Beach County Grand Jury – Fall Term 2016, hereby certify that I, as authorized and required by law, have advised the Grand Jury which returned this report on this 8th day of December, 2016.

JUSTIN CHAPMAN
Assistant State Attorney
Legal Advisor
Palm Beach County Grand Jury, Fall Term 2016

OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

DAVE ARONBERG
STATE ATTORNEY

ATTACHMENT #2

§ 397.407 (11)

Proposed Amendment to Licensure Process: Fees

Amendment to §397.407 (11)

Effective July 1, 2017, a service provider licensed under this part may not refer a prospective, current or discharged patient to, or accept a referral from, a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in §397.487 and is actively managed by a certified recovery residence administrator as provided in §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 any other details of the recovery residence. However, this subsection does not require a licensed service provider to refer, or accept referral of any patient to or from a recovery residence, or the licensed service provider, as applicable. This section shall not apply to a referral by a recovery residence to a licensed service provider, provided that the recovery residence, its owners, operators or employees, receives no benefit, directly or indirectly, in exchange for the referral. This section shall not apply to public treatment providers, licensed by the Department and under contract to the Managing Entity.

OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

DAVE ARONBERG
STATE ATTORNEY

ATTACHMENT #3

Legal Memo-Regulation of Recovery Residences

I. THE PROPOSED LEGISLATION PROVIDING FOR LICENSING OF COMMERCIAL RECOVERY RESIDENCES.

The proposed legislation providing for licensing of commercial recovery residences does not impose distance requirements or limit the location of commercial recovery residences from any residential zoning district. Further, the regulations do not apply to peer-managed, peer-supported homes in which each resident is a signatory to a single lease (Oxford House and/or National Association of Recovery Residences Level I and II). The regulations imposed by the proposed legislation apply only to operators of homes that house individuals in IOP or PHP treatment and have a Licensed Recovery Residence Administrator living with the individuals that are residents of the Commercial Recovery Residence. The proposed regulations include background checks on operators to help ensure that houses are not owned, operated, or managed by persons with recent criminal backgrounds (i.e. sexual offenders) and they require licensure including inspections to ensure that the houses are not attached to inappropriate structures (i.e. a drugstore, pharmacy, or bar). The proposed legislation is aimed at ensuring there is basic consumer protection afforded to the tenants of the homes by providing accountability of the operators as stated above. This proposed legislation is narrowly tailored to protect the persons living in the homes in order to help avoid relapse and to ensure their safety so long as the tenants are undergoing IOP or PHP treatment at a licensed service provider facility. Those homes that are directly affiliated with a treatment facility that provide housing to persons similarly situated have licensing requirements imposed upon them by the state that are stricter than these proposed regulations. Additionally, there is a requirement in the proposed legislation that all commercial recovery residence owners, operators, and/or administrators must provide either forty-eight (48) hours' notice prior to eviction of a tenant or, in the alternative, they must provide alternative accommodations for the tenant or hospitalization pursuant to the Marchman Act. This is responsive to the legitimate state interest of affording the tenants due process, providing them a safe place to live, preventing homelessness, and preventing addiction relapse.

II. GOVERNMENTS CAN PASS HOUSING RESTRICTIONS THAT ARE NARROWLY TAILORED TO SERVE A LEGITIMATE STATE INTEREST.

A. Joint Statement of the Department of Housing and Urban Development and the Department of Justice

The Department of Housing and Urban Development (HUD) and the Department of Justice (DOJ) provided a Joint Statement in 1999 that provided that "the great majority of group homes for persons with disabilities are subject to state regulations intended to protect the heath and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate." Further, it stated that "neighbors who have concerns that a particular group home is being operated inappropriately should be able to bring their concerns to the attention of the responsible licensing agency and encourage[d] the states to commit the resources needed to make these systems (group homes for persons with disabilities including persons recovering from alcohol/drug abuse) responsive to resident and community needs and concerns". *See* Joint Statement of DOJ and HUD, "Group Homes, Local Land Use, and the Fair Housing Act" http://www.justice.gov/crt/about/hce/fina8 1.php at 4. (August 18, 1999).

B. Fair Housing Amendments Act

The Fair Housing Amendments Act provides justification for housing restrictions that federal courts have narrowly construed. "A governmental entity may act on the basis of protecting the public health and safety of other individuals." *See* 42 U.S.C. § 3604(f)(9).

C. Federal Cases

Pursuant to *Bangarter v. Orem City Corp*, 46 F. 3d 1491, 1504 (10th Cir. 1995), "the Fair Housing Amendments Act should not be interpreted to preclude special restrictions upon the disabled that are really beneficial to, rather than discriminatory against, the handicapped." Further, "restrictions that are narrowly tailored to the particular individuals affected could be acceptable under the Fair Housing Amendments Act if the benefit to the handicapped in their housing opportunities clearly outweigh whatever burden to them." In the context of facially neutral government actions that have a discriminatory impact on the handicapped or other groups protected by the Fair Housing Act, courts have uniformly allowed defendants to justify their conduct despite the discriminatory impact if they can prove that they, "furthered, in theory and in practice, a legitimate, bona fide governmental interest and no alternative would serve that interest with less discriminatory effect." *Id.*; *see also Family Style of St. Paul, Inc. v. City of St. Paul, Minn.*, 923 F. 2d 91 (8th Cir. 1991), *reh'g. denied* (Feb. 15, 1991) (holding the relevant question is whether legislation is rationally related to a government purpose).

III. WHAT HAVE OTHER STATES DONE/WHAT ARE THEY DOING?

A. Arizona

Arizona's House and Senate recently passed a Bill (HB 2107) requiring recovery residences to notify cities and counties when they open and requiring the residences to have trained managers, maintenance plans, and supervision for residents.

B. California

California is the only state that currently has licensing requirements for recovery residences (Health and Safety Code section 11834.30), but the state of California ties the license to state funding for the houses (they all are subsidized by the state to some extent). This present scenario is different because Florida does not subsidize all recovery residences. California also attempted to pass legislation this year (SB 1283 (2016)) that was very similar to Florida's law regarding voluntary certification of recovery residences in order to provide more oversight of homes.

C. Connecticut

Connecticut tried to pass a Bill (Proposed HB 6278 (2015)) that required each sober house to (1) register as a business with the municipality in which it is located and the Department of Public Health and (2) have naloxone available on the premises for residents, all of whom have received training in administering the drug. While the legislation did not pass, the industry

began self-regulating through the state's Department of Mental Health and Addiction Services, which began to voluntarily certify sober living houses by requiring that the homes follow minimum standards and implement house rules.

D. Delaware

The state recently passed an administrative directive to provide some state funding to provide short-term rent assistance to recovery and sober homes that obtain certification through NARR.

E. Maryland

HB 1411 (2016) formally approved a credentialing entity to develop and administer a certification process for recovery residences and is extremely similar to Florida's law regarding voluntary certification. Specifically, the Maryland State Association for Recovery Residences (M-SARR) was recently formed and offers voluntary certification for recovery and sober homes, which comes with access to some funding for individuals coming out of jail or prison.

F. Massachusetts

Massachusetts recently passed a voluntary certification program in conjunction with NARR (HB 1828 (2014)) very similar to Florida's voluntary certification of recovery residences. It requires the state of Massachusetts to refuse to hand out grants to any home that isn't certified. It also bars state-funded addiction treatment programs from referring clients to any recovery residence that hasn't gone through the program. To be certified, recovery residences must show that they have strict rules against drug use on the property, that they track their residents' progress, and that they organize peer support programs, among other requirements. They also must undergo safety inspections by a state-approved certifying organization.

G. Minnesota

Minnesota Association of Sober Homes (MASH) formed in 2007 to provide for voluntary minimum standards for recovery residences in the MASH network.

H. New York

New York is currently trying to pass state legislation and has been for many years. The latest version that passed the Senate last year (S3989A (2016)) and requested support for creating a sober living task force similar to Florida's HB 823 (2016), which provided for a Substance Abuse and Recovery Fraudulent Business Practices Pilot Project.

I. New Jersey

New Jersey Governor Chris Christie signed legislation in 2014 requiring recovery residences to alert the next of kin when a client is evicted for relapsing. (Named "Nick's Law"

after Nick Rhodes, a 24- year old heroin addict who died after being kicked out of a recovery residence for using drugs).

J. Ohio

The Ohio Department of Mental Health and Addiction Services recently set aside $15 Million in grant money for recovery residences that are peer-run and meet certain state criteria in order to entice them to become voluntarily certified.

K. Pennsylvania

Pennsylvania has attempted to pass a law similar to Florida's law providing for voluntary certification of recovery residences (HB 1298 (2014)). The Legislature created the Certification of Drug and Alcohol Recovery Houses Task Force in 2014, which is expected to release its formal recommendation soon to establish a voluntary certification process for recovery houses that would be tied to professional referrals and state funding.

L. Utah

In May, 2015, the state of Utah began requiring recovery residences to be licensed (by amending § 62A-2). To qualify, the homes need to have a medical treatment plan and meet minimal staffing guidelines.

Overall, the States are all over the place. Two States that have successfully passed legislation provide for a voluntary certification of recovery residences (Florida and Massachusetts). Two States have created licensing requirements for recovery residences (California and Utah). One State has created a requirement that recovery residences alert the next of kin when a client is evicted for relapsing (New Jersey). One State has created a requirement that recovery residences notify cities and counties before they open in their jurisdiction (Arizona). The remaining States that have attempted state regulation of recovery residences are either trying to implement a licensing scheme or a voluntary certification process or have provided for self regulation that is made more attractive by increased state funding (Connecticut, Delaware, Maryland, Minnesota, Ohio, and Pennsylvania).

IV. THERE ARE NO CASES DIRECTLY ON POINT THAT ADDRESS THE REGULATIONS PROPOSED IN THE DRAFT LEGISLATION.

A. Most of the Federal Cases Striking Regulatory Schemes in the Context of FHA and ADA are About Restrictions on Oxford Houses

In *Human Resource Research and Management Group, Inc. v. County of Suffolk*, a county ordinance that was intended to avoid overcrowding, ensure proper supervision and avoid excess debris which imposed location requirements and occupancy limitations on *Oxford Homes* was held to be discriminatory because it was not rationally related to the proffered reasons for ordinance where there was no proof of excess debris, overcrowding or need for 24/7 supervision. 687 F. Supp 2d 237 (E.D. N.Y. 2010). Also, in *Tsombanidis v. West Haven Fire Department,*

fire safety regulations were held not to have a discriminatory impact, but failure to treat *Oxford Homes* as a one-family dwelling under fire regulations did have discriminatory impact. *See, Id.* at 352 F.3d 565 (2nd Cir. 2003) (superseded by regulation as stated in *Mhany Management, Inc. v. County of Nassau*, 819 F. 3d 581 (2nd Cir. 2016)).

B. In the Alternative, the Federal Cases Striking Regulatory Schemes in the Context of FHA and ADA Have Zoning/Distance Requirements

In *Nevada Fair Housing Center, Inc. v. Clark County*, the court held that there was no justification for a 1,500-foot spacing requirement between group homes and a registry of group homes purporting to provide for accountability of the homes by providing the home's information to police, fire-fighting, rescue, or emergency medical services did not benefit the handicapped, and so the ordinance was struck down. 565 F. Supp. 2d 1178 (D. Nevada 2008). In *Pacific Shores Properties, LLC v. City of Newport Beach*, an ordinance that amended the definition of "single housekeeping unit" to exclude living arrangements in which residents are not all signatories to a single written lease and do not choose their own housemates adversely affected the availability of group homes and restricted them from most residential zones was struck down. 730 F. 3d 1142 (9th Cir. 2013).

C. Our Proposed Legislation Does Not Apply to Oxford Houses and Has No Distance Requirements

The proposed legislation applies to homes that are managed and are operated by a third party in which the persons living in the homes are in IOP or PHP treatment (receiving treatment services at a licensed service provider facility as defined by § 397.311(24), Fla. Stat.). This legislation does not apply to recovery residences that are peer-supported and peer-managed wherein the persons living in the home are established in their recovery and are each a party to a single lease agreement (i.e. Oxford Homes and/or NARR Levels I and II).

V. CONCLUSION

Based on the foregoing, it is clear that the proposed legislation is narrowly tailored to further a legitimate government interest of providing consumer protection laws for residents of commercial recovery residences who are purchasing a housing service while they are in IOP or PHP treatment. The government interest/intent is to provide the residents of these homes with due process rights that are afforded to every single residential tenant in the State of Florida, to prevent homelessness, to provide the residents with a safe place to live, and to help prevent addiction relapse.

OFFICE OF THE STATE ATTORNEY

FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY

DAVE ARONBERG
STATE ATTORNEY

ATTACHMENT #4

§ 817.505

Patient Brokering

817.505 Patient Brokering

817.505. Patient brokering prohibited; exceptions; penalties

(1) It is unlawful for any person, including any health care provider, or health care facility, to:

(a) Offer or pay a ~~any~~ commission, 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 patients or patronage to or from a health care provider or health care facility;

(b) Solicit or receive a ~~any~~ 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 patients or patronage to or from a health care provider or health care facility;

(c) Solicit or receive a ~~any~~ 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 health care provider or health care facility, or

(d) Aid, abet, advise, or otherwise participate in the conduct prohibited under paragraph (a), paragraph (b), or paragraph (c).

(2) For the purposes of this section, the term:

(a) "Health care provider or health care facility" means any person or entity licensed, certified, or registered; required to be licensed, certified, or registered; or lawfully exempt from being required to be licensed, certified, or registered with the Agency for Health Care Administration or the Department of Health; any person or entity that has contracted with the Agency for Health Care Administration to provide goods or services to Medicaid recipients as provided under s. 409.907; a county health department established under part I of chapter 154; any community service provider contracting with the Department of Children and Families to furnish alcohol, drug abuse, or mental health services under part IV of chapter 394; any substance abuse service provider licensed under chapter 397; or any federally supported primary care program such as a migrant or community health center authorized under ss. 329 and 330 of the United States Public Health Services Act.

(b) "Health care provider network entity" means a corporation, partnership, or limited liability company owned or operated by two or more health care providers and organized for the purpose of entering into agreements with health insurers, health care purchasing groups, or the Medicare or Medicaid program.

(c) "Health insurer" means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity

providing health care benefits, any self-insurance plan as defined in s. 624.031, any health maintenance organization authorized to transact business in the state pursuant to part I of chapter 641, any prepaid health clinic authorized to transact business in the state pursuant to part II of chapter 641, any prepaid limited health service organization authorized to transact business in this state pursuant to chapter 636, any multiple-employer welfare arrangement authorized to transact business in the state pursuant to ss. 624.436-624.45, or any fraternal benefit society providing health benefits to its members as authorized pursuant to chapter 632.

(3) This section shall not apply to:

(a) Any discount, payment, waiver of payment, or payment practice not prohibited by 42 U.S.C. s. 1320a-7b (b) or regulations promulgated thereunder.

(b) Any payment, compensation, or financial arrangement within a group practice as defined in s. 456.053, provided such payment, compensation, or arrangement is not to or from persons who are not members of the group practice.

(c) Payments to a health care provider or health care facility for professional consultation services.

(d) Commissions, fees, or other remuneration lawfully paid to insurance agents as provided under the insurance code.

(e) Payments by a health insurer who reimburses, provides, offers to provide, or administers health, mental health, or substance abuse goods or services under a health benefit plan.

(f) Payments to or by a health care provider or health care facility, or a health care provider network entity, that has contracted with a health insurer, a health care purchasing group, or the Medicare or Medicaid program to provide health, mental health, or substance abuse goods or services under a health benefit plan when such payments are for goods or services under the plan. However, nothing in this section affects whether a health care provider network entity is an insurer required to be licensed under the Florida Insurance Code.

(g) Insurance advertising gifts lawfully permitted under s. 626.9541(1)(m).

(h) Commissions or fees paid to a nurse registry licensed under s. 400.506 for referring persons providing health care services to clients of the nurse registry.

(i) Payments by a health care provider or health care facility to a health, mental health, or substance abuse information service that provides information upon request and without charge to consumers about providers of health care goods or services to enable consumers to select appropriate providers or facilities, provided that such information service:

1. Does not attempt through its standard questions for solicitation of consumer criteria or through any other means to steer or lead a consumer to select or consider selection of a particular health care provider or health care facility;

2. Does not provide or represent itself as providing diagnostic or counseling services or assessments of illness or injury and does not make any promises of cure or guarantees of treatment;

3. Does not provide or arrange for transportation of a consumer to or from the location of a health care provider or health care facility; and

4. Charges and collects fees from a health care provider or health care facility participating in its services that are set in advance, are consistent with the fair market value for those information services, and are not based on the potential value of a patient or patients to a health care provider or health care facility or of the goods or services provided by the health care provider or health care facility.

(j) Any activity permitted under s. 429 195(2).

-(4)(a) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, and shall be ordered to pay a fine of $50,000.

(b) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 10 or more patients, but fewer than 20 patients, commits a felony of the second degree as provided in s. 775.082, s.775.083, or 775.084, and shall be ordered to pay a fine of $100,000.

(c) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, and where the prohibited conduct involves 20 or more patients, commits a felony of the first degree as provided in s. 775.082, s.775.083, or 775.084, and shall be ordered to pay a fine of $500,000.

(5) Notwithstanding the existence or pursuit of any other remedy, the Attorney General or the state attorney of the judicial circuit in which any part of the offense occurred may maintain an action for injunctive or other process to enforce the provisions of this section.

(6) The party bringing an action under this section may recover reasonable expenses in obtaining injunctive relief, including, but not limited to, investigative costs, court costs, reasonable attorney's fees, witness costs, and deposition expenses.

(7) The provisions of this section are in addition to any other civil, administrative, or criminal actions provided by law and may be imposed against both corporate and individual defendants.

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ATTACHMENT #5

§ 397.55

Prohibition of Unethical Marketing Practices

397.55 Marketing

Section 397.55, Florida Statues, is created to read:

397.55 Prohibition of unethical marketing practices. The Legislature recognizes that consumers of substance use disorder treatment and their families represent a vulnerable population easily victimized by fraudulent marketing practices which adversely impacts the delivery of health care. To protect the health, safety, and welfare of this vulnerable population, substance use disorder treatment providers licensed under this chapter, operators of recovery residences and third parties who provide any form of advertising of marketing services to such providers and operators, may not engage in the following marketing practices:

(1) Making false or misleading statements or providing false or misleading information about their, or their client's location, products, goods, services, or geographical location in their marketing, advertising materials, or media or on their respective websites.

(2) Including on their respective websites coding that provides false information or surreptitiously directs the reader to another website.

(3)Soliciting or receiving a commission, benefit, bonus, rebate, kickback or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split fee arrangement in return for a referral or an acceptance or acknowledgement of treatment from a health care provider, health care facility. A violation of this subsection is a violation of prohibition on patient brokering and is subject to criminal penalties under s.817.505.

(4) Entering into any agreement with any person or entity representing that they are able to generate referrals or leads for placement of patients in either a treatment program or a recovery residence, a call center or internet web-based presence,

unless the marketing provider discloses the following to the inquiring party, so that he or she can make an informed health care decision:

(a) Clear and concise language and instructions that allows the caller or inquiring party to easily identify whether the marketing entity represents specific licensed programs and/or recovery residences that pay a fee to the marketing entity, and the identity of those programs or residences.

(b) Clear and concise instructions that allow the caller to easily access a list of licensed substance abuse treatment agencies, both public and private, on the Department website.

(5) Any person or entity which engages in the commerce of attempting to generate referrals or leads for placement of patients in either a treatment program or recovery residence, no matter the form, but including a call center or internet web-based presence, shall first obtain licensure from the Florida Department of Business and Professional Regulation and shall have an office in the State of Florida for the purpose of service of process.

(6) A provider or operator that violates this section commits a violation of the Florida Deceptive and Unfair Trade Practices Act under s. 501.2077 (2). The Department of Children and Families shall submit copies of findings related to violations by entities licensed and regulated under this chapter to the Department of Legal Affairs.

(7) In addition to any other punishment authorized by law, whoever knowingly and willfully violates paragraphs (1), (2) or (4) of this section shall be guilty of a misdemeanor of the first degree, punishable as provided in s.775.089 or s.775.083.

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ATTACHMENT #6

§ 817.0345

Proposed Fraudulent Marketing Legislation

817.0345 Proposed Fraudulent Marketing Legislation

Section 817.0345, Florida Statues, is created to read:

817.0345. Prohibition of fraudulent marketing practices.

It is unlawful for any person to knowingly and willfully make materially false or misleading statements or provide false or misleading information about the identity, products, goods, services, or geographical location of a licensed substance abuse treatment provider, as defined in chapter 397, in marketing, advertising materials or other media, or on their respective websites with the intent to induce another person to seek treatment with that provider.

Any person who violates this section commits a felony of the third degree, punishable as provided in s.775.082, s.775.083, or s.775.084.

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ATTACHMENT #7

§ 16.56

Statewide Jurisdiction over Patient Brokering

16.56. Office of Statewide Prosecution

(1) There is created in the Department of Legal Affairs an Office of Statewide Prosecution. The office shall be a separate "budget entity" as that term is defined in chapter 216. The office may:

(a) Investigate and prosecute the offenses of:

1. Bribery, burglary, criminal usury, extortion, gambling, kidnapping, larceny, murder, prostitution, perjury, robbery, carjacking, ~~and~~ home-invasion robbery**, and patient brokering**;

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ATTACHMENT #8

§ 895.02

Brokering as RICO Predicate

895.02. Definitions

As used in ss. 895.01-895.08, the term:

(8) "Racketeering activity" means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce, or intimidate another person to commit:

(a) Any crime that is chargeable by petition, indictment, or information under the following provisions of the Florida Statutes:

1. Section 210.18, relating to evasion of payment of cigarette taxes.

2. Section 316.1935, relating to fleeing or attempting to elude a law enforcement officer and aggravated fleeing or eluding.

3. Section 403.727(3)(b), relating to environmental control.

4. Section 409.920 or s. 409.9201, relating to Medicaid fraud.

5. Section 414.39, relating to public assistance fraud.

6. Section 440.105 or s. 440.106, relating to workers' compensation.

7. Section 443.071(4), relating to creation of a fictitious employer scheme to commit reemployment assistance fraud.

8. Section 465.0161, relating to distribution of medicinal drugs without a permit as an Internet pharmacy.

9. Section 499.0051, relating to crimes involving contraband, adulterated, or misbranded drugs.

10. Part IV of chapter 501, relating to telemarketing.

11. Chapter 517, relating to sale of securities and investor protection.

12. Section 550.235 or s. 550.3551, relating to dogracing and horseracing.

13. Chapter 550, relating to jai alai frontons.

14. Section 551.109, relating to slot machine gaming.

15. Chapter 552, relating to the manufacture, distribution, and use of explosives.

16. Chapter 560, relating to money transmitters, if the violation is punishable as a felony.

17. Chapter 562, relating to beverage law enforcement.
18. Section 624.401, relating to transacting insurance without a certificate of authority, s. 624.437(4)(c) 1., relating to operating an unauthorized multiple-employer welfare arrangement, or s. 626.902(1)(b), relating to representing or aiding an unauthorized insurer.
19. Section 655.50, relating to reports of currency transactions, when such violation is punishable as a felony.
20. Chapter 687, relating to interest and usurious practices.
21. Section 721.08, s. 721.09, or s. 721.13, relating to real estate timeshare plans.
22. Section 775.13(5)(b), relating to registration of persons found to have committed any offense for the purpose of benefiting, promoting, or furthering the interests of a criminal gang.
23. Section 777.03, relating to commission of crimes by accessories after the fact.
24. Chapter 782, relating to homicide.
25. Chapter 784, relating to assault and battery.
26. Chapter 787, relating to kidnapping or human trafficking.
27. Chapter 790, relating to weapons and firearms.
28. Chapter 794, relating to sexual battery, but only if such crime was committed with the intent to benefit, promote, or further the interests of a criminal gang, or for the purpose of increasing a criminal gang member's own standing or position within a criminal gang.
29. Former s. 796.03, former s. 796.035, s. 796.04, s. 796.05, or s. 796.07, relating to prostitution.
30. Chapter 806, relating to arson and criminal mischief.
31. Chapter 810, relating to burglary and trespass.
32. Chapter 812, relating to theft, robbery, and related crimes.
33. Chapter 815, relating to computer-related crimes.

34. Chapter 817, relating to fraudulent practices, false pretenses, fraud generally, ~~and~~ credit card crimes**, and patient brokering**.

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ATTACHMENT #9

§ 397.501

Rights of Individuals

397.501. Rights of individuals

(7) (g) An order authorizing the disclosure of an individual's records may be applied for by any person having a legally recognized interest in the disclosure which is sought. The application may be filed separately or as part of a pending civil **or criminal** action in which it appears that the individual's records are needed to provide evidence. An application must use a fictitious name, such as John Doe or Jane Doe, to refer to any individual and may not contain or otherwise disclose any identifying information unless the individual is the applicant or has given a written consent to disclosure or the court has ordered the record of the proceeding sealed from public scrutiny.

(h) **Notice not required. An application under this section may, in the discretion of the court, be granted without notice. Although no express notice is required to owners, agents, and employees of the treatment provider, to the person holding the records, or to any patient whose records are to be disclosed, upon implementation of an order so granted any of the above persons must be afforded an opportunity to seek revocation or amendment of that order, limited to the presentation of evidence on the statutory and regulatory criteria for the issuance of the court order found in this section and the federal confidentiality regulations found in 42 C.F.R. §§ 2.1-2.67.** ~~The individual and the person holding the records from whom disclosure is sought must be given adequate notice in a manner which will not disclose identifying information to other persons, and an opportunity to file a written response to the application, or to appear in person, for the limited purpose of providing evidence on the statutory and regulatory criteria for the issuance of the court order~~.