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Jordan Lewis, PhD, Policy Director
The Pennsylvania Department of Drug and Alcohol Programs
2601 N. 3rd Street, 5th Floor
Harrisburg, PA 17110

Dear Director Lewis,

Thank you for the opportunity to comment following submission of the Standards for Drug and Alcohol Recovery House Licensure promulgated by the Department of Drug and Alcohol Programs in final omitted regulation through the IRRC. We are commenting on the final form regulation resubmitted on October 1st, 2021.

As noted in prior communications, PRO-A does not operate or represent recovery houses. Our concern is for the recovering people who need these houses as part of their recovery process. PRO-A wants reasonable regulatory standards that serve to set a foundation for safe, structured recovery housing.

We are pleased that the resubmitted final form regulations remove the requirement for costly and unnecessary audits noted by the IRRC as potentially beyond the statutory authority of the Department. These changes move the final form regulations closer to attainability for recovery house operators and their largely indigent residents. However, we do believe that the resubmitted regulations remain overburdensome as written.

As we have consistently noted, these licensed houses will serve persons who, by their status as persons in recovery are recognized as a federally protected class. Specifically, under the Fair Housing Act, state and local governments are prohibited from enacting or enforcing land use or zoning laws that discriminate against persons because of a legally protected characteristic, their recovery from a substance use disorder. Meanwhile, the American Disabilities Act prohibits discrimination against individuals with disabilities, including recovery from a substance use disorder in all areas of public life, including public accommodations.

The withholding of housing to a protected class is discriminatory in both instances where that discrimination is intentional or if it creates discrimination as applied. Every person coming out of a state funded program must now go to one of these licensed houses. We support such standards, but believe they need to be kept as minimal as possible. These persons are largely indigent, highly marginalized individuals often living at subsistence levels. Nearly all lack other options for housing and these stricter standards will increase their out-of-pocket costs. Many of these residents will simply not be able to afford to pay these additional costs. If they cannot afford access to housing, the application of the regulations will effectively bar people access to housing as they leave state funded programing. This may invite legal action as they seem to be discriminatory in practice to a protected class.

The final form regulations resubmitted on October 1st, 2021 fail to consider the economic burden on the house operators and by extension, the marginalized community members to whom the costs of these regulations will be passed on to. As an example, the language of Act 59 of 2017 allows for house operators and house officers as managing entities. The law as we read it does not require training or employee records beyond a criminal background check. This allows for resident self-run programming using the Oxford House model or similar structures who do not utilize on site employees or volunteers in the traditional sense. The final form standards and checklist contain requirements for job descriptions, training, training assessment, training plans and training feedback mechanisms for each staff person and volunteer. We are unaware of any economic impact review that was done with recovery house operators of these staffing and training requirements on the house operators and by extension their economically marginalized residents. These sections are roughly consistent with licensing regulations promulgated by the Department in respect to treatment licensure, the historical purview of the Department, and fail to accommodate all models of recovery housing.

We noted in a previous comment period that in the physical plant section, the final form regulations contain a requirement: "*Shall maintain an indoor temperature in the drug and alcohol recovery house between 65°F and 90°F at all*

times." The parallel and less restrictive drug and alcohol treatment regulations with identical language (705) also allows for "*mechanical ventilation such as fans*." By removing that language from the parallel section, the recovery house regulations require central air conditioning. All houses governed by these regulations must be maintained within these temperature parameters. The costs of air conditioning in every internal room of every house will be passed on to people unlikely to be able to pay those additional expenses, making the regulations a barrier to accessing housing for this federally protected class who are often economically marginalized. It is disparate and unnecessary.

Had the Department conducted an examination with house operators with of these regulations, including the burden of the physical plant requirements, paperwork, reports, forms, and related requirements with recovery house operators in various rural, suburban, and urban communities across the state, it would have led to a better understanding of the overburdensome nature of the regulations. This was not done. As noted in this letter and prior communications, the operant standard for considering what is included in these regulations should center around what the state absolutely must regulate to achieve it narrow and necessary goals. Regulatory language should support the least intrusive way to meet these narrow and necessary goals contained within the law without becoming overburdensome. Anything beyond that will effectively bar access to housing for persons who lack the resources to pay for these prohibitively high standards, which may run contrary to federal law protecting persons under the American Disabilities Act.

As the entity that oversaw the recovery house taskforce over six years ago, we heard recovery house operators and residents repeatedly express concern about discrimination at the local level, which can occur through the withholding of business licenses, occupancy permits and incorporation documents to make it more difficult to provide housing to persons in recovery. We noted at the time in our final report to the Department in December of 2015 that education should be considered for local regulatory entities on the need to develop and enforce standards that apply evenly to all similar housing stock in regard to safety and occupancy considerations across housing stock within their purview and not limit such processes to focus on recovery housing.

We see in the DDAP Recovery House Checklist that all such organizational documents must be included for consideration of a licensing application. This may set a recovery house operator in an untenable situation of being denied such documents because of local discriminatory practices and fined by the Department for operating a recovery house without a license. We would recommend an appeal process be included in the regulation for houses who are being denied rightful access to such documents. This appeal process should be extended to the local complaint process delineated in section 717.32. These types of discriminatory processes are the very reason why residents of these houses are protected by the Fair Housing Act and American Disabilities Act. Delineating ways for the regulated community to be protected from and to seek redress from such discriminatory practices in the regulatory process is vital. This would help operators and by extensions their residents navigate this very difficult and highly discriminatory environment.

Language in the Recovery House Licensing Checklist section 717.17 Personnel Management addresses resumption of use among volunteers or staff by requiring recovery house operators to have written policies and procedures addressing "relapse or recovery house staff and volunteers, including consequences for the violation of the policy." The language seems to address resumption of active use for a person who has a substance use condition as willful misconduct. This section would have been a good opportunity to express the need to address resumption of use using a recovery friendly workplace process which the Department has rightfully advocated for more widely across our state labor force.

Director Lewis – we are always available and invite dialogue to further this process. We think such dialogue would be most beneficial prior to resubmission if for any reason that the concerns we or other stakeholder groups express lead to additional revision of the regulations. Such a process would expedite the adoption of these critical final form regulations.

Respectfully submitted,

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