




MEMORANDUM

TO: Daniel Fellin, Esq., Chief Counsel

FROM: Nancy Marcus Newman, Esq. 

RE: Recovery Housing Licensing, Legislative Review

DATE: May 3, 2021

Below is a discussion of the enabling legislation (Senate Bill 446) with commentary on the resulting regulatory framework.

A. De Facto Mandatory Licensure

While the Department purports to have set forth “voluntary” licensure requirements, in practice licensure required in the current Regulations proposed by DDAP (the “Regs”) will be mandatory for many houses to remain a viable going concern.

Once the new licensing program is in place, DDAP will require drug and alcohol recovery houses to get a license if they (1) want to receive referrals from state agencies or state-funded facilities or (2) want to receive federal or state funding to deliver recovery house services. Operators housing the most vulnerable members of the recovery community rely on these referrals and will need to become licensed or close their doors. Remaining unlicensed is not a voluntary option.

Whether or not a recovery house operator “wants” to seek state or federal funding to deliver recovery housing services is a choice and is voluntary. However, referrals from state agencies or state-funded facilities should be ***based upon the needs of the individual being referred*** to recovery housing as part of aftercare or recovery planning in which the state agency or facility is involved. People in recovery seeking supportive, safe recovery housing come from a variety of backgrounds and geographic areas. The past history of substance use, treatment and recovery is unique for each individual seeking housing. These referrals should be determined based upon the best interests of the resident, not based upon the preferences of the recovery housing operator to

be “voluntarily” licensed or not. I understand that state referrals are being used to incentivize operators to pursue licensure, however this significantly limits available options for individuals in recovery.

I am Founder and President of The Bridge Foundation, a Pennsylvania nonprofit 501c3 public charity, and for over a decade we have provided “Bridge to Recovery” grants to individuals transitioning from treatment to recovery housing. I personally administer these grants. There is no public funding, all of our funds are from private donors, many of whom are family members of young people who have died from opiate overdoses. I work with other local nonprofit organizations who provide similar grants. The overwhelming majority of our grant applicants and recipients come to us from state funded treatment facilities. The determination of which recovery house the individual is referred to is based upon the needs of the individual and prioritizes re-integrating into a local community where their recovery will be optimally supported. This may include geographic considerations, proximity to family, employment, or “people, places and things” that are best avoided. Limiting referrals by state funded facilities to *only* licensed recovery houses *greatly diminishes the available choices* for individuals in recovery seeking supportive housing.

Under DDAP’s current regulations, the following individuals with disabilities (substance use disorder) are **prohibited** from being referred by state agencies to non-licensed recovery houses:

1. Those leaving a state-funded treatment facility (the treatment facility necessarily refers the client to after-care recovery housing upon discharge);
2. referred by state agencies or state-funded facilities, which may include a domestic abuse agency, a crisis treatment center, homeless shelter or any other number of social services organizations that receive any state funding at all (this could be just one small state or federal grant);
3. referred by or coming from hospitals that receive public funding;
4. referred by Recovery Community Organizations that receive any SAMHSA funding through the SCA;
5. exiting a correctional facility or involved in a parole program (PA Department of Corrections officers make the recovery housing referral);
6. involved with Child Protective Services Professionals having input into the housing referral based upon the needs of the child and family reunification.

As a practical matter, unlicensed recovery houses will only be able to accept residents who are private pay and receive no social services support whatsoever. This is not a “voluntary” licensure scenario. They will simply go out of business.

Recommendation. An alternative *Certification Process* with Department oversight of houses certified or chartered by a nationally recognized standard of best practices would resolve this issue and retain quality housing options and oversight of non-licensed recovery houses.

B. Language Considerations (SB 446)

1. SECTION 2311-A. DEFINITIONS

"DRUG AND ALCOHOL RECOVERY HOUSE." HOUSING FOR INDIVIDUALS RECOVERING FROM DRUG OR ALCOHOL ADDICTION, WHICH PROVIDES THOSE INDIVIDUALS WITH A SAFE AND SUPPORTIVE DRUG AND ALCOHOL-FREE ENVIRONMENT THAT MAY INCLUDE PEER SUPPORT AND OTHER RECOVERY SUPPORT SERVICES.

This does not include “counseling”, “narcotic treatment programs”, “medical directors” or any other form of treatment. Facilities providing these services should be in another category altogether and regulated accordingly. In fact, the Regs would appropriately apply *as drafted* to transitional housing providing that higher level of treatment-oriented services. To resolve this inherent language problem throughout the Regs (overlaps with “treatment”), I suggest the Regs differentiate what additional services are offered at the house and allow an exemption for houses limited to “peer and other recovery support services” as defined in SB 446 to receive all referrals on a parity with licensed facilities provided they are **Certified by an entity overseen by DDAP** (see my prior Memorandum for this suggested framework).

2. §2312-A POWERS AND DUTIES OF DEPARTMENT.

- §2312-A (A) “LICENSURE OR CERTIFICATION.- - THE DEPARTMENT SHALL LICENSE OR CERTIFY DRUG AND ALCOHOL RECOVERY HOUSES. Legislative intent is best served by the recommended framework of the Department regulating both administration of Licensure and oversight of Certification. SB 446 envisions that Recovery Houses should be *either licensed or certified* by the Department...rather than licensed or not overseen by the Department at all. If licensure is the only option, then rogue operators will simply skip licensure and continue to operate. Consumers should understand that houses that are neither licensed nor certified should not be operating at all. Rogue is rogue...not just unlicensed.
- §2312-A (A)(1)-(2): The legislation clearly envisions allowing both referrals and funding to CERTIFIED RECOVERY HOUSES.
- Importantly, §2312-A eliminates licensing from the provisions altogether:
 - (3) INDIVIDUALS WHOSE TREATMENT IS FUNDED WITH FEDERAL OR STATE FUNDING SHALL ONLY BE REFERRED TO A CERTIFIED DRUG AND ALCOHOL RECOVERY HOUSE.
 - (4) A STATE OR COUNTY COURT SHALL GIVE FIRST CONSIDERATION TO A CERTIFIED DRUG AND ALCOHOL RECOVERY HOUSE WHEN RESIDENTIAL RECOMMENDATIONS ARE MADE FOR INDIVIDUALS UNDER THEIR SUPERVISION.

The PARR Certification Process was well known to the legislature and was intended to be retained and incorporated into the new legislative and regulatory framework. The legislative intent to formally incorporate Recovery House Certification in Pennsylvania, clearly stated in the language of the law, should be included at the regulatory level, and in fact the Department has a duty to do so.