



June 25, 2021,

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 submit comment on the Standards for Drug and Alcohol Recovery House Licensure regulations that have been promulgated by the Department of Drug and Alcohol Programs in final omitted regulation through the Independent Regulatory Review Commission and resubmitted on June 14<sup>th</sup>, 2021.

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. As we have stated throughout this entire process, PRO-A wants reasonable regulatory standards that serve to set a foundation for safe, structured recovery housing.

We are incredibly pleased with many of the changes in the regulations in the revised and resubmitted final form regulations. We believe that moving these regulations out of subchapter 709 reserved for freestanding treatment facilities into a section specifically for recovery housing is consistent with the true nature of these residences as defined in Act 59 of 2017. They are housing, not treatment. We agree with no longer requiring annual staff written performance reviews or staff members or volunteers. We are relieved that CPR and First Aid trained staff will no longer be required to be always in houses 24/7 due to the significant costs of this measure, ultimately shouldered by the residents. These changes and others 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.

It is worth noting that 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 programming. This may invite legal action as they seem to be discriminatory in practice to a protected class.

The Department acknowledges that the regulations are stricter than other states who have been narrower in their regulatory applications to conform with federal protections. As noted on page 4 of the regulatory analysis, the submitted standards hold licensed recovery houses to a higher standard than other states which have enacted similar laws governing recovery housing. The state or local government must have a compelling reason to regulate these houses for them to be permissible. The kinds of things that the state can regulate are narrow and do not result in discriminatory treatment of a protected class.

The operant standard for considering what is included in these regulations should center around what the state absolutely must regulate to achieve its narrow and necessary goals. Regulatory language should support the least intrusive way to meet these narrow and necessary goals without becoming overburdensome. Anything beyond that will

effectively bar access to housing for persons coming out of state funded facilities who lack the resources to pay for the higher standards.

A good example of how these regulations create a needless burden for persons living in them are the annual audit requirements. The Department seems to make the assumption that the (largely recovering) house operators will not be able to handle financial record keeping using standard accounting practices and therefore require audits to meet the requirements of the law. Other businesses in Pennsylvania not run by and for recovering people lack annual audit requirements. Examples of small, licensed businesses without audit requirements include real estate brokers, hair salons, childcare centers, generally all with less intrusive standards.

The requirements of Act 59 of 2017 are simply to have house operators put in place policies & procedures for the management of funds in accordance with standard accounting practices. The regulations exceed the requirements of the law by putting in place expensive audit processes. Regulations could easily be developed in accordance with the law to require the keeping of records in accordance with standard accounting process – like other small businesses do, without requiring overburdensome and expensive audits for all houses.

Beyond the audit requirements, the sheer volume of record keeping, reporting and staffing requirements in these regulations remain overburdensome when considered in whole. In a few instances, the regulations appear to contain higher standards than licensed treatment centers. One example is *“for the licensee shall keep hard copy resident records in a locked cabinet and secure digital resident records on a protected data system.”* The regulations appear to require both as there is no mention that records can be either hard copy or digital but use the word “shall” and “and.” The regulations should specify that both are acceptable.

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 705 physical plant regulations for drug and alcohol facilities allows for *“mechanical ventilation such as fans.”* By removing that language from the parallel section, the recovery house regulations appear to require air conditioning in all houses. The costs of air conditioning and digital records will be passed on to people who are unable to pay those additional costs, which in turn make the regulations a barrier to accessing housing for this federally protected class.

Paying for these additional requirements is simply not an option for the vast majority of the persons living in these residences. These residents far too often put everything they own into a plastic bag, look for any shelter available and seek minimum wage work while facing court fees and a myriad of other economic challenges. Recovery houses evolved around serving these rejected members of our society. They simply cannot pay these costs and will be forced to move into unmonitored rogue houses, the very circumstance we tried so extremely hard to prevent through our recovery house taskforce’s efforts.

Our sense from meeting with recovery house operators and recovery house associations are that they invite standards and share common concern with the state. Unfortunately, these final form regulations remain overburdensome. We would respectfully suggest the withdrawal of these final form regulations and for the Department to sit down with the regulated community and interest groups, like ours who advocate for persons in recovery in order that language be developed to provide a minimum standard for recovery housing without a lot of these overburdensome requirements.

Our concern remains that because these final form regulations are so expansive, they will invite legal action which will in effect result in these regulations being found to be discriminatory.

Director Lewis – we are always available and invite discussion. We share common objectives and believe that there are more moderate regulatory options than those submitted by the Department on June 14<sup>th</sup>, 2021.

Respectfully submitted,



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