

**REPORT TO THE
TWENTY-SEVENTH LEGISLATURE
STATE OF HAWAII
2013**

**RELATING TO THE
CLEAN AND SOBER HOMES AND HALFWAY HOUSES TASK FORCE**

**PREPARED BY:
ALCOHOL AND DRUG ABUSE DIVISION**

**DEPARTMENT OF HEALTH
STATE OF HAWAII
NOVEMBER 2012**

EXECUTIVE SUMMARY

Purpose and background. The Clean and Sober Homes and Halfway Houses Task Force was convened by the Director of Health in response to legislation introduced in recent sessions of the Hawaii State Legislature, and in anticipation of the increase in the need for housing of probationers and parolees stemming from the enactment of Justice Reinvestment Initiative legislation – Act 139 and Act 140, Session Laws of Hawaii 2012. These homes, which are located in communities throughout the state, provide housing for substance abuse and mental health clients transitioning from the treatment setting to life in the community, and a stable living environment for offenders on supervised release who are under the supervision of the Department of Public Safety, probationers under the supervision of the Judiciary's Adult Client Services Branch and parolees under the supervision of the Hawaii Paroling Authority.

Task Force composition. The Task Force was composed of representatives from County planning departments, the Hawaii Paroling Authority, homelessness advocates, clean and sober home and halfway house providers, legislators from the House and Senate, a legal representative to address issues such as fair housing, mental health and substance abuse, as well as representatives from the Judiciary and the Departments of Health, Human Services and Public Safety.

Subcommittees. The Task Force was organized into two subcommittees: the Subcommittee on Definitions and the Subcommittee on Monitoring and Registration. The responsibility of the Subcommittee on Definitions, which was chaired by Deputy Attorney General Andrea Armitage, was to review and make recommendations for changes for terms defined in Section 46-4, Hawaii Revised Statutes (HRS), relating to county zoning. The Subcommittee on Monitoring and Registration, which was chaired by Nancy Haag, Chief, Alcohol and Drug Abuse Division, was responsible for developing the conceptual framework for a registry of clean and sober homes and the criteria by which these homes would be monitored.

Fair Housing Act. Clean and sober homes and halfway houses provide a means for persons to return to the community through support in a home-like environment without the rigid structure of a therapeutic care facility or therapeutic living program which require licensure. Many need the support of a home environment while trying to deal with the stressors of reintegrating back into the community while maintaining sobriety. Often, neighboring residents have expressed concerns over the legal operation of such homes in their immediate vicinity and the compliance of those homes with State and County laws.

Agencies' referral and placement criteria and processes. Public health agencies' clients who are referred and placed in clean and sober homes are in transition from the treatment setting to independent living. Similarly, public safety agencies' clients on supervised release, probation or parole who are referred and reside in these homes are transitioning from institutionalization or in-community supervision to independent living.

For both public health and public safety related clients, the alcohol- and drug-free environment provides the necessary support to minimize relapse or recidivism, respectively.

Altarum Institute Technical Assistance. On October 23, 24 and 25, 2012, the Altarum Institute, a consultant to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) provided technical assistance and consultation to Task Force members regarding federal, national and state policies and lessons learned and offered next steps for consideration by the Task Force.

Clean and sober housing is an important, national issue. How to effectively plan and “handle” clean and sober housing is a national issue. There are few states that are dealing with this in a substantive way. As such, there is no precedent to provide guidance on what strategies to implement, or the potential impact on providers and available housing stock.

The issue is housing, and housing only. Unlike treatment modalities that may entail licensure and/or accreditation, clean and sober housing is a housing issue... a safe, secure and substance free place to live, which does not take into consideration any services or programming that may be going on inside the house. Clean and sober housing is not treatment, and should not be considered in lieu of treatment. It may be a challenge to make sure the line between housing and treatment is not blurred.

A voluntary registry can provide baseline quality assurance. There should be a centralized voluntary registry, as well as some incentive for providers to register. The registry can serve as a centralized location where people can go to see an inventory of well-run clean and sober homes. The criteria for inclusion on the registry will need to be developed and discussed with key stakeholders. The incentive for programs to seek inclusion on the registry will also need to be determined. One option would be to require all State-funded referral sources to only refer clients to homes that are registered. The registry would include some checklist of agreed-upon criteria: having the necessary permits, good policies and procedures, training, etc..

TASK FORCE RECOMMENDATIONS

Statutory amendments

Definitions for the terms “clean and sober home” and “community support home.” The definition in Section 46-4(f), HRS for the term “clean and sober home,” should be amended and moved to an appropriate Chapter or Section within the Hawaii Revised Statutes. Similarly, the definition for the term “community support home” should be added to an appropriate chapter(s) or section(s) within the Hawaii Revised Statutes. The term “halfway house” does not need to be

defined as the State's only halfway house is contracted with State agencies that monitor the provider's compliance with contract requirements.

Statutory amendments to Section 46-4, HRS, relating to county zoning, will:

Clarify the conditions under which group homes will be allowed to have up to eight unrelated adults in a group home.

Eliminate the conflict with federal Fair Housing Act provisions.

Eliminate definitions for terms that are defined elsewhere in the HRS, are not used, or will be codified elsewhere in the HRS.

Registration

There is agreement to establish a voluntary registry of homes. A determination must be made on the designated State agency that will maintain the registry. The Task Force recommends that the placement of the proposed registry should be based on the following criteria:

The entity works with, and is familiar with the populations to be served.

The entity has the ability (or potential) to leverage other resources.

The entity conducts monitoring/oversight activities as part of its current functions.

The following agencies (listed in no particular order) were suggested for administering the registry:

Executive Branch

Department of Commerce and Consumer Affairs (DCCA)

Department of Health (DOH)

Department of Public Safety (PSD)

Hawaii Paroling Authority (HPA)

Department of Human Services (DHS)

Hawaii Public Housing Authority (HPHA)

Legislative Branch

Office of the Ombudsman

Judiciary Branch

Adult Client Services (probation)

Monitoring

The discussion on monitoring focused on the need to develop definitions of terms and deciding on the establishment of a registry and initial discussion about registration requirements. The elements to be monitored will be developed after a decision is made about the State agency that will be responsible for monitoring of voluntarily registered homes.

Funding and resources

State agencies' support for establishing a registry is conditional: resources for staffing and operating costs to establish and operate the registry must be weighed with other agency priorities. In addition, the cost to operationalize recommendations for establishing a registry and monitoring of homes is subject to the agreed upon elements to be included in the registering and monitoring of homes

CONCLUSION

The work of the Clean and Sober Homes and Halfway Houses is a first step of a work-in-progress. As stated in the Altarum Institute report, "the issue is housing, and housing only. Unlike treatment settings that may require licensure and/or accreditation, clean and sober housing is a housing issue. Such housing provides a safe, secure and substance free place to live for those in recovery."

While the Clean and Sober Homes and Halfway Houses Task Force has made significant strides in addressing concerns about housing for individuals transitioning from the treatment setting or from institutionalization to independent living in the community, much more remains to be accomplished. For example, as the implementation of the Justice Reinvestment Initiative, adds to the need for housing of offender subpopulations, a means to identify appropriate, affordable homes that are alcohol- and drug-free, and in compliance with County zoning, health and safety requirements are critical.

Issues needing further discussion and deliberation:

The definition for the term "clean and sober home" has been settled, however, the terms "registration" and "monitoring" need more clarification.

Agreement is pending on the appropriate location(s) within the Hawaii Revised Statutes for definitions.

A single entity for the registration of clean and sober homes needs to be designated to operate or contract the registry function. The registry function will require further discussion as its applicability extends beyond Task Force

members' focus on alcohol- and drug-free housing for substance abusers and offenders.

A final proposed budget necessary to staff and operationalize the registry needs to be developed. Policies, procedures and guidelines for registry operation also need to be developed.

An analysis needs to be conducted to assess the financial impact on residents who have limited resources as registration and monitoring criteria are adopted.

Next steps:

A considerable commitment of time from those with the specialized expertise to address the major components of the registration and monitoring functions will be needed to:

Develop the proposed State-sanctioned training program for stakeholders (i.e., providers, State and County staff, etc.) to cover topics that include but are not limited to best practices for operating a clean and sober home (e.g., how to be a good neighbor).

Compile all applicable federal, State and County requirements so that members can:

Develop registry and monitoring criteria that address public health and public safety interests.

Decide on how complaints will be handled and/or logged.

Recommendation. The Clean and Sober Homes and Halfway Houses Task Force recommends that:

The Administration support the amendments proposed by the Task Force to amend Section 46-4, Hawaii Revised Statutes, relating to county zoning; and

The Governor and Director of Health continue their support of work of the Task Force to address the issues and its assigned tasks.

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PURPOSE AND BACKGROUND

The Clean and Sober Homes and Halfway Houses Task Force was convened by the Director of Health in response to legislation introduced in recent sessions of the Hawaii State Legislature, and in anticipation of the increase in the need for housing of probationers and parolees stemming from the enactment of Justice Reinvestment Initiative legislation – Act 139 and Act 140, Session Laws of Hawaii 2012. These homes, which are located in communities throughout the state, provide housing for substance abuse and mental health clients transitioning from the treatment setting to life in the community, and a stable living environment for offenders on supervised release who are under the supervision of the Department of Public Safety, probationers under the supervision of the Judiciary's Adult Client Services Branch and parolees under the supervision of the Hawaii Paroling Authority.

Task Force members representing County agencies responsible for planning and permitting, State agencies that refer clients to these homes, service providers and consumers were charged with submitting a report prior to convening of the 2013 Session of the Hawaii State Legislature that addresses:

The scope and nature of the accountability plan for clean and sober homes and halfway houses;

The process by which the houses will be monitored;

The way in which concerns of the community members are balanced with the concerns of those requiring the support of the homes;

How the homes will be regulated short of direct governmental oversight; and

Findings and recommendations of the Task Force and any proposed legislation that may be necessary to effectuate those recommendations.

In response to legislation introduced in recent Sessions of the Hawaii State Legislature, and in anticipation of the increase in the need for housing of probationers and parolees stemming from the enactment of Justice Reinvestment legislation – Act 139 and Act 140, Session Laws of Hawaii 2012 – the Clean and Sober Homes and Halfway Houses Task Force was convened by the Director of Health to address concerns expressed about clean and sober homes and halfway houses. These homes, which are located in communities throughout the state, provide housing for those suffering

from substance abuse and mental illness transitioning from the treatment setting to life in the community, and a stable living environment for offenders on supervised release who are under the supervision of the Department of Public Safety, probationers under the supervision of the Judiciary's Adult Client Services Branch, and parolees under the supervision of the Hawaii Paroling Authority.

Currently, definitions for various types of residences (e.g., clean and sober home, drug rehabilitation home, halfway house, etc.) are defined in Section 46-4, Hawaii Revised Statutes (HRS), relating to county zoning. Section 46-4, HRS, also includes definitions for terms that are either not used (e.g., drug rehabilitation home) or are defined in other parts of the Hawaii Revised Statutes (e.g., intermediate care facility/intellectually disabled community, mental health treatment facility, etc.). Task Force deliberations focused on types of housing that do not require State licensure, but are subject to County zoning and permitting requirements.

TASK FORCE COMPOSITION

The Clean and Sober Homes and Halfway Houses Task Force is composed of representatives from:

Each of the four County planning departments;

Legislators from the Hawaii State Senate and House of Representatives, as assigned by the President of the Senate and Speaker of the House of Representatives, respectively;

Department of Public Safety;

The Hawaii Paroling Authority;

The Judiciary – Adult Client Services;

Homelessness advocates;

Operators of clean and sober homes and halfway houses;

The Department of the Attorney General;

The Department of Human Services; and

The Department of Health (Adult Mental Health and Alcohol and Drug Abuse Divisions)

Conveners. Loretta J. Fuddy, Director of Health; Keith Y. Yamamoto, Deputy Director of Health; and Lynn N. Fallin, Deputy Director, Behavioral Health Administration.

Alcohol & Drug Abuse Division (ADAD) Staff. Nancy A. Haag, ADAD Chief; Chris Yamamoto, ADAD Planner; Wendy Nihoa, Treatment & Recovery Branch (TRB) Chief; Terri Nakano, TRB Program Specialist.

Consultants. (Diana Williams, Michael Botticelli and Danielle Larsen) On October 23, 24 and 25, 2012, the Altarum Institute, a consultant to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) provided technical assistance and consultation to Task Force members regarding federal, national and state policies and lessons learned; and, offered a summary of next steps for consideration by the Clean and Sober Task Force.

Members. Task Force members are as follows:

Andrea Armitage
Deputy Attorney General
Department of the Attorney General

Bert Matsuoka
Chair
Hawaii Paroling Authority

Steven Balcom
Crisis Services Director
Adult Mental Health Division

Connie Mitchell
Executive Director
Institute for Human Services

Dale Cua
Department of Planning
Senior Planner
County of Kauai

Representative John M. Mizuno
Chair, House Committee on Human Services

John Dudoit
Director
Makana O Ke Akua Inc.

Max Otani
Administrator, Intake Service Centers Division
Department of Public Safety

Senator Will Espero
Chair, Senate Committee on Public Safety,
Government Operations and Military Affairs

Jamie Peirson
Chief, Land Use Permit Division
Department of Planning and Permitting
City and County of Honolulu

Susan Gagorik
Planning Program Manager
Administrative Permits Division
Hawaii County Planning Department

Lorraine Robinson
Executive Director
TJ Mahoney and Associates

Nancy A. Haag
Chief
Alcohol and Drug Abuse Division

Aaron Shinmoto
Planning Program Administrator
Zoning Administration and Enforcement
Division
County of Maui

Alan Johnson
Chief Executive Officer
Hina Mauka

Lori Tsuhako
Homeless Programs Administrator
Department of Human Services
Benefit, Employment and Support Services
Division

Cheryl Marlow
Administrator
Judiciary - Adult Client Services Branch

Alternates. Alternates designated by members are as follows: Kanui Bell (for Connie Mitchell), Talia Cardenas and Kandy Key (for Lorraine Robinson), Francis Cerizo and

Carolyn Cortez (for Aaron Shinmoto), Louise Crum (for Cheryl Marlow), Jeffrey Darrow and Larry Nakayama (for Susan Gagorik), William "Bill" Mousser (for Alan Johnson), Michelle Nakata (for Andrea Armitage), Wendy Nihoa and Terri Nakano (for Nancy A. Haag), and Tommy Johnson and Charles "Chuck" Sizemore (for Bert Matsuoka).

Other participants. Others who participated during Task Force deliberations included: Senator Jill N. Tokuda, Chair, Senate Committee Education; Representative Jo Jordan, Member, House Committees on Human Services, Culture and the Arts, Finance, Hawaiian Affairs, and Health; Pat McManaman, Director of Human Services, Department of Human Services; Hakim Ouansafi, Executive Director, Hawaii Public Housing Authority; Janice Bennett, Judiciary – Drug Court; Raymond Berdon, Jr., Hale Mali'e Kane (House of Peaceful Men); Jonathan Black, Tradition House; Joe Chavez, Oxford House; Erin Connor, Office of Senator Jill N. Tokuda; Lilia Espiritu, Alcohol and Drug Abuse Division; Heather Grimshaw, Oxford House, Inc.; Brian Jess, Tradition House Foundation; Christine Johnson, child sex abuse advocate; Sione Keni, Oxford House, Inc.; Tangee Lazarus, United Self Help; Krystin Marfil; Lance Nakada, He Ala Hou o Ke Ola; Tamah-Lani Noh and Dallen Paleka, Hawaii Advisory Commission on Drug Abuse and Controlled Substances; Keith Ridley, Office of Health Care Assurance; Joan Sakaba, Judiciary – Adult Client Services Branch; Jody Solbach, Tradition House; Laurie Young, Department of Human Services; Vanessa Williams; and Todd Larsen.

Meetings. Meetings were convened by the Department of Health as follows:

August 16, 2012	Committee of the Whole
August 30, 2012	Committee of the Whole
September 6, 2012	Committee of the Whole
September 13, 2012	Committee of the Whole
September 20, 2012	Subcommittees for Definitions and Monitoring and Registration
October 4, 2012	Committee of the Whole and Subcommittees for Definitions and Monitoring and Registration
October 18, 2012	Committee of the Whole
October 23, 2012	Consultants Diana Williams, Michael Botticelli and Danielle Larsen of Altarum Institute meeting with State and County Agencies
October 24, 2012	Consultants Diana Williams, Michael Botticelli and Danielle Larsen of Altarum Institute meeting with Legislators and Providers
October 25, 2012	Consultants Diana Williams, Michael Botticelli and Danielle Larsen of Altarum Institute meeting with Committee of the Whole
October 30, 2012	Subcommittees for Definitions and Monitoring and Registration
November 1, 2012	Committee of the Whole
November 15, 2012	Committee of the Whole
November 29, 2012	Committee of the Whole
December 10, 2012	Committee of the Whole

Subcommittees. The Task Force was organized into two subcommittees: the Subcommittee on Definitions and the Subcommittee on Monitoring and Registration. The responsibility of the Subcommittee on Definitions, which was chaired by Deputy Attorney General Andrea Armitage, was to review and make recommendations for changes for terms defined in Section 46-4, Hawaii Revised Statutes (HRS), relating to county zoning. The Subcommittee on Monitoring and Registration, which was chaired by Nancy Haag, Chief, Alcohol and Drug Abuse Division, was responsible for developing the conceptual framework for a registry of clean and sober homes and the criteria by which these homes would be monitored.

DISCUSSION

Fair Housing Act. Clean and sober homes and halfway houses provide a means for persons to return to the community through support in a home-like environment without the rigid structure of a therapeutic care facility or therapeutic living program which require licensure. Many need the support of a home environment while trying to deal with the stressors of reintegrating back into the community while maintaining sobriety. Often, neighboring residents have expressed concerns over the legal operation of such homes in their immediate vicinity and the compliance of those homes with State and County laws.

As stated in the "Joint Statement of the Department of Justice and the Department of Housing and Urban Development on Group Homes, Local Land Use, and the Fair Housing Act," (see Appendix A) the Fair Housing Act makes it unlawful:

To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.*

To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

What constitutes a reasonable accommodation is a case-by-case determination.

* Federal laws define a person with a disability as "Any person who has a physical or mental impairment that substantially limits one or more major life activities; has a record of such impairment; or is regarded as having such an impairment."

Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

Licensed facilities. The Department of Health, Office of Health Care Assurance (OHCA) assures high levels of care through establishment and implementation of State licensing for health care facilities, programs and home and community-based care giving settings and related services and programs. OHCA performs contractual requirements between the State and the federal Centers for Medicare and Medicaid Services (CMS), formerly the Health Care Financing Administration, to perform survey and certification activities using federal regulations to enable health care providers to participate in Medicare (Title XVIII) and Medicaid (Title XIX).

OHCA's State Licensing Section is responsible for administering licensing rules and developing standards to ensure the quality of care for certain community-based facilities which must be licensed by the State, but not certified for Medicare participation. These facilities include adult residential care homes (ARCH), expanded care ARCH, special treatment facilities (STF), developmentally disabled domiciliary homes (DDDH) and assisted living facilities.

OHCA's Medicare Section is responsible for administering licensing rules and developing standards as required to ensure quality of care for certain medical facilities which must be licensed by the State. These include adult day health centers, ambulatory surgical centers, home health agencies, hospitals, intermediate care facilities for the intellectually disabled, skilled nursing and intermediate care facilities and clinical laboratories. In addition, the Medicare Section is responsible for implementing the federal survey and certification agreement between the State and CMS for Medicare/Medicaid providers, and the Clinical Laboratory Improvement Amendments (CLIA) laboratories. Medicare/Medicaid providers include ambulatory surgical centers, home health agencies, hospitals, intermediate care facilities for the intellectually disabled, skilled nursing facilities, end-state renal disease facilities, hospices, rehabilitation agencies, rural health clinics, and portable x-ray facilities.

County permitting for clean and sober homes and halfway houses. For purposes of county permitting, the classification of a clean and sober home, halfway house and/or transitional home is based primarily on the number of unrelated adult residents. When occupied by no more than five unrelated residents, these residences are classified as a "family," and may occupy a dwelling "by right" (i.e., without any zoning or land use permit). The exception is when a "family" resides in a residence that is either licensed or monitored by a State agency. Then, up to eight unrelated persons may reside in the dwelling. Examples of such residences are Adult Residential Care Homes, Special Treatment Facilities, or similar residential settings. In such cases, the dwelling may

include a resident manager in addition to the eight residents. In addition, a facility operated by, or under the direct management of a government agency as one of its core functions may be classified as a "public use and structure" and may not be subject to any particular zoning requirements regarding location, size or number of residents.

Residential facilities that exceed the "family rule" regarding the number of permitted residents, are classified as a "group living facility." If permitted in the zoning district, a group living facility requires a conditional use permit (CUP) before it is authorized by the zoning code. Prior to submitting a CUP application, the applicant must present the proposal to the neighborhood board for the affected area. Advance written notification of the neighborhood board presentation must be provided to all landowners of properties adjoining the proposed group living facility. Upon acceptance for processing the application, property owners adjoining the proposed clean and sober home, halfway house or transitional home are notified that a CUP for a group living facility has been accepted and is being processed. An administrative public hearing is conducted on the request; the County permitting agency has up to 90 days to process and render its written decision which may be to: (1) allow, (2) allow with modifications and/or conditions, or (3) deny approval of the application.

The Hawaii County Planning Department allows "group living facilities" with up to eight residents plus staff (who are excluded from the count) as a permitted use, provided that they are licensed or certified and monitored by the State Department of Health or Human Services (DOH/DHS). The applicant must confer with DOH/OHCA or DHS and submit the Zoning Clearance Form which they received from the agency. The County planning agency issues a signed clearance form if the application is for eight or less residents. The form indicates that DOH or DHS will be licensing, certifying or monitoring the facility.

If clean and sober homes, drug rehabilitation homes and/or halfway houses do not require a license from DOH/DHS, they will not meet the definition of "group living facility" and must remain at five unrelated adults, which includes staff in the count for the home. On State Land Use Agricultural Land, a Special Permit application can be submitted for an increase in the number of people.

Agencies' referral and placement criteria and processes. Public health agencies' clients who are referred and placed in clean and sober homes are in transition from the treatment setting to independent living. Similarly, public safety agencies' clients on supervised release, probation or parole who are referred and reside in these homes are transitioning from institutionalization or in-community supervision to independent living. For both public health and public safety related clients, the alcohol- and drug-free environment provides the necessary support to minimize relapse or recidivism, respectively.

Public health

Department of Health – Alcohol and Drug Abuse Division (ADAD)

ADAD–funded clients access 65 clean and sober home sites; 31 sites are self-run Oxford Houses which are contracted through ADAD.

Through substance abuse treatment contracts and the discretionary Access to Recovery (ATR) federal grant, ADAD funds clients' placements in clean and sober homes on all islands except Lanai.

ADAD staff conducts contract compliance monitoring annually.

Department of Health – Adult Mental Health Division (AMHD)

Through contracts, AMHD maintains an inventory of mental health supportive housing providers: group homes, semi-independent and independent living arrangements. Support (but not therapy or treatment) is provided on-site. Homes do not require OHCA licensure.

Approximately 700 beds at all levels are needed statewide. The majority of homes/beds are in Honolulu; there are gaps in areas such as the North Shore of Oahu.

AMHD screens locations where clients will reside and conducts annual monitoring for contract compliance. In addition, AMHD housing services staff conducts on-site visits.

The *target* length of stay for 24-hour group homes is 6 months, a target that is rarely hit. The *target* length of stay for 8-16 hour group homes is up to 2 years.

Supportive housing is State funded and it is not Medicaid reimbursable.

Public safety

Department of Public Safety (PSD) – supervised release

The Intake Service Center (ISC), which oversees offenders on supervised release, does not make housing referrals. Initial placements are court ordered and are initiated by the defendant's attorney; ISC oversees the offender's placement.

ISC does not have contracts or funding for clean and sober home placements, however, the agency has an "informal" list (including organizations such as U.S.

Vets) which is subject to change, depending on reports that may be received regarding specific homes.

Bed use by pretrial ISC clients totaled 60 to 65 beds statewide in Fiscal Year 2012: 40 beds on Oahu, 10 on Kauai and 15 on the Big Island last year. (Maui reported no clean and sober home use for the report period.)

Judiciary, Adult Client Services (ACS) – probation

ACS does not have contracts or funding for clean and sober home placements, however, the agency does have agreements with Oxford House, Friends of Hawaii Drug Court and Po`ailani, Inc. which are limited to addressing emergency housing needs. ACS clients may also access clean and sober housing through ADAD's contract for substance abuse treatment and case management for non-violent offenders.

Clients' length of stay in clean and sober homes range between 1 and 3 months, depending on whether they are able to find employment.

The Mental Health Court program relies on AMHD case managers to check on the appropriateness of client placements. Clients, who receive Social Security Disability Insurance or public assistance, are responsible for rent payment.

The Hawaii Drug Court program conducts house visits and has informal procedures for housing placement. Clients are housed in Oxford Houses. A home that can house up to 8 women and their children is managed by Friends of the Hawaii Drug Court.

One of the Adult Probation staff maintains a binder containing information on homes where clients have been housed. Staff observation is that living conditions at sites can change on short notice. ACS staff relies on clients' reports to assess whether a location is appropriate for placement.

In assessing whether a site is appropriate for probationers, ACS staff checks include but are not limited to: written house rules, the operator of the facility and the operator's knowledge of offenders and effective practices, funding sources that support operation of the home, etc..

Hawaii Paroling Authority (HPA) – parole

Of the 1,600 parolees statewide, approximately 9.5% (153) parolees reside in clean and sober homes.

The parolee identifies the residence in which s/he will live. A parole officer conducts a site visit of the address to ensure cleanliness, that the home is well maintained and that it is not overcrowded.

There are approximately 158 homes that house parolees: 144 on Oahu and 14 on the Neighbor Islands.

Parolees pay between \$300 to \$400 per month for rent.

HPA maintains a list of homes that includes the address, contact information for the home, capacity, as well as the type of clients who can be accommodated (e.g., maximum number of parolees, sex offenders, mental health, etc.).

Clean and sober home providers. Providers' resident-oriented perspectives on establishing and operating clean and sober homes are as follows:

Makana O Ke Akua Inc. began its services in March 2003 serving 6 parolees who were displaced with the closure of the Fresh Start program. As of September 1, 2012, the organization operates 7 homes. Each home has an on-site, live-in manager. The organization has a total of 56 bedrooms, 100 beds and 28½ bathrooms. Each home has "house rules" that residents must agree to before moving in. Rules cover conduct (e.g., use of alcohol and/or drugs), personal cleanliness, room and common area maintenance, curfew, attendance at AA/NA meetings, visitors, overnight absences and self-sufficiency. Residents who are asked to leave (1 of 5 or 20%) move to shelters (e.g., IHS), beaches, parks or another house with less structure.

Hale Mali'e Kane (House of Peaceful Men), which has been in existence for 18 years, operates 3 homes with a total of 48 beds on the Waianae coast. (One particular home has 10 bedrooms, 2 kitchens and 2 living rooms.) Each home has one full-time and one half-time manager for 24-hour coverage; house managers have gone through the program. The organization is in the process of applying for tax-exempt status under Section 501(c)(3) of the Internal Revenue Code. The cost of rent remains at \$300 per month, the same amount that was charged when the first home opened its doors. Residents are Judiciary HOPE probationers and substance abuse outpatient treatment clients. Approximately 40%-50% are parolees from Waiawa Correctional Facility, Oahu Community Correctional Center and returnees from correctional facilities in Arizona.

Oxford Houses are democratically self-run by the residents who elect officers to serve six-month terms. Officers have fixed terms of office. Any recovering substance abuser can apply to get into any Oxford House by completing an application and being interviewed by members of the House. The application is considered by the membership of the House. If there is a vacancy and if 80% of the members approve, the applicant is accepted and moves in. If an applicant does not get voted into one house s/he can apply for admission at another house.

TJ Mahoney & Associates. TJ Mahoney is currently the only provider covered under the "halfway house" definition. As a contracted agency for the Department of Public Safety, TJ Mahoney engages female residents in programs and services that are intended for offenders to achieve self-sufficiency and reintegration into the

community. TJ Mahoney & Associates is a non-profit organization dedicated to helping prison inmates become responsible, productive members of their communities. The agency's objective is to improve the likelihood of successful community reentry, thereby reducing recidivism and the long-term financial and social costs of incarceration. The organization operates programs in Alaska and Hawaii. TJ Mahoney & Associates opened its first Hawaii program, Miller Hale, in 1990 through contracts with the Federal Bureau of Prisons and Pretrial Services. Two years later, Matlock Hale, a 16-bed program for female offenders was opened. In 2003, both programs relocated to the current facility on Kaaahi Street. Miller Hale became Mahoney Hale, and Matlock Hale became Ka Hale Ho'āla Hou No Nā Wāhine (The Home of Reawakening for Women).

Tradition House operates 5 homes (4 homes for men and 1 for women) in Windward Oahu. Most (80%) of the residents are employed in the organization's landscaping business. The process for obtaining a conditional use permit is daunting for providers, particularly since the process requires expertise (e.g., drafting) that is costly for applicants who lack the requisite skills and knowledge for submission of an application. (It was pointed out that County procedures may seem cumbersome but they are intended to protect all current and prospective residents.)

**ALTARUM INSTITUTE TECHNICAL ASSISTANCE
AND SUMMARY OF NEXT STEPS FOR THE CLEAN AND SOBER HOMES AND
HALFWAY HOUSES TASK FORCE**

On October 23, 24 and 25, 2012, the Altarum Institute, a consultant to the federal Substance Abuse and Mental Health Services Administration (SAMHSA) provided technical assistance and consultation to Task Force members regarding federal, national and state policies and lessons learned and offered next steps for consideration by the Task Force.

The Massachusetts experience. *In meetings with State and County agency representatives, legislators and providers, consultants Diana Williams, Michael Botticelli and Danielle Larsen of Altarum Institute provided Task Force members with information on Massachusetts' pioneering efforts to address the issue of clean and sober housing. Based on their knowledge of the current status of efforts in Massachusetts and discussions with Task Force members representing State and County agencies, legislators, providers and consumers, consultants shared their insights on how Hawaii might proceed. (See Appendix B)*

Lessons learned in Massachusetts

Prior to addressing the issue of clean and sober housing, the Massachusetts Department of Public Health, Bureau of Substance Abuse Services (BSAS) had a long history of using clean and sober housing with few complaints.

Despite a strong treatment system, BSAS had a high demand for supportive housing.

There were legal barriers for housing opportunities for people with criminal records.

The increase in the number of young adults with substance use disorders also increased the demand for clean and sober "programs."

Most complaints from state and local officials, parents and consumers were attributable to a few independent operators. Complaints involved:

Nuisance complaints (e.g., noise, disruptive behavior, drug use).

Occupancy and sub-standard living conditions.

Operating unlicensed treatment programs.

Lack of community notification when opening a clean sober home.

Unfair housing practices and opportunistic operators (exorbitant) rent, eviction policies and practices).

Phases/steps established to ensure progress

In 2007, BSAS met with clean and sober home operators to:

Review all applicable state and local laws and regulations; inform participants that they are subject to any non-discriminatory law and regulations (e.g., zoning, building, sanitation and fire codes).

Review mandatory state substance abuse licensing requirements.

Review and discuss "best practices."

In 2008, BSAS established a voluntary, public registry of clean and sober homes.

The registry included:

Basic information on the location, cost, residency expectations, etc..

"Frequently Asked Questions" for consumers, families and referral sources regarding housing (as opposed to "treatment programs").

Complaint log with applicable action on those complaints.

Only operators that had undergone voluntary training on "best practices" (i.e., including good neighbor policies, home operations and management, etc.) could register.

BSAS also sent letters to criminal justice partners and other interested parties asking them to refer clients only to registered homes. Very few operators registered as there was no incentive to do so. Of the estimated 400 to 500 providers, only 8 registered.

In 2010, BSAS was mandated by the Legislature to conduct a study of alcohol- and drug-free housing to address:

The number of clean and sober homes in the Commonwealth;

Compile a list of problems created by the operation of such homes;

Recommend standards and requirements necessary to protect residents; and

Examine feasibility of licensing, regulating, registering or certifying clean and sober home operators.

To accomplish this, the Department of Public Health:

Conducted a legal review of relevant local, state and federal laws;

Conducted a review of relevant case law;

Reviewed other states' policies and regulations related to clean and sober housing; and

Met with state and local officials, housing operators, consumers and treatment providers.

Summary of other states' actions

No state or local entity has successfully adopted a mandatory regulatory, licensure or certification program for clean and sober housing.

Attempts to regulate have been struck down in federal court based on the Fair Housing Act.

Where states have a contractual relationship, they can certify providers based on established criteria, including compliance with applicable laws and regulations.

In 2012, legislative action is pending on the report submitted by BSAS. Major findings of the report are as follows:

BSAS' existing statutory and regulatory authority is limited to the licensure of alcohol and drug treatment facilities and programs. BSAS has no authority over housing and therefore does not regulate alcohol- and drug-free housing. However, to the extent that an alcohol- and drug-free housing provider offers or requires residents to participate in a substance abuse treatment program on- or off-site, BSAS has authority to require licensure of that treatment program.

The federal Fair Housing Act limits the Commonwealth's and BSAS' authority to implement mandatory licensure, regulation, registration or certification requirements directed specifically at alcohol- and drug-free housing providers and residents. Federal courts have repeatedly rejected state and local efforts to regulate alcohol- and drug-free housing.

Local governments should be encouraged and supported in their use of existing nondiscriminatory legal tools to address legitimate health and safety, building, fire, zoning and criminal impacts of alcohol- and drug-free housing.

Residents of alcohol- and drug-free housing should be educated about existing consumer protection remedies to assert their rights against unscrupulous operators of alcohol- and drug-free housing.

BSAS should continue to investigate and triage, as appropriate, complaints related to alcohol- and drug-free housing providers, including complaints alleging that providers advertise, offer or require residents to participate in an unlicensed on- or off-site substance abuse treatment program.

With additional resources, BSAS could implement a voluntary training program for alcohol- and drug-free housing providers, with a directive to all state agencies and their vendors to only refer clients to BSAS-trained alcohol- and drug-free housing providers.

Cost impact:

Staffing and operating costs for registry and conducting on-site monitoring.

Conducting provider training.

Establishment of a special fund into which 'registration fees' are deposited could be established to offset the costs associated with staffing and operating the registry, conducting training for providers, etc.

Altarum Summary and Observations for Hawaii Task Force Consideration

Clean and sober housing is an important, national issue. How to effectively plan and “handle” clean and sober housing is a national issue. There are few states that are dealing with this in a substantive way. As such, there is no precedent to provide guidance on what strategies to implement, or the potential impact on providers and available housing stock.

Hawaii has demonstrated a commitment to this issue by bringing multiple stakeholders (representatives from State and County agencies, providers, and legislators) together to address very challenging issues.

It is widely accepted that housing is a significant key to recovery or aspect of relapse. There is a broad commitment that clean and sober homes are valuable to peoples’ recovery and have an appropriate place in the community. Well-run, well-operated housing serves everyone — a value to both the residents and the community.

The issue is housing, and housing only. Unlike treatment modalities that may entail licensure and/or accreditation, clean and sober housing is a housing issue... a safe, secure and substance free place to live, which does not take into consideration any services or programming that may be going on inside the house. Clean and sober housing is not treatment, and should not be considered in lieu of treatment. It may be a challenge to make sure the line between housing and treatment is not blurred.

The Fair Housing Act (FHA) is an important piece of legislation. The FHA protects individuals with disabilities, including individuals in recovery, from discriminatory practices. Individuals leaving jails and prisons, many of whom also have substance use issues, have housing needs. Participants in community reentry programs are not afforded the same protections under FHA because housing is one facet of services offered; community reentry usually includes job training, counseling and mental health support. With this in mind the Task Force should look at community reentry housing and sober housing as separate issues.

It is going to be about balance. The challenge for those seeking to resolve issues surrounding the clean and sober homes issue is in finding a way to balance the needs of the community and the housing needs of people in recovery. Channels already exist to address many of the complaints against clean and sober homes, in the same manner as other housing (e.g., police for noise and parking complaints). County land use officials agreed that zoning issues would continue to fall under their purview.

There is unanimous understanding that even within the boundaries of existing federal law that something needs to be done to protect vulnerable consumers and address valid community concerns.

Quality is important. While most referral entities assess program quality, there is no

agreed-upon standard. There is not a standardized assessment on what constitutes a well-run clean and sober house, and there are no shared strategies. It is based on individual determination, and there is no way to share information.

A voluntary registry can provide baseline quality assurance. There should be a centralized voluntary registry, as well as some incentive for providers to register. The registry can serve as a centralized location where people can go to see an inventory of well-run clean and sober homes. The criteria for inclusion on the registry will need to be developed and discussed with key stakeholders. The incentive for programs to seek inclusion on the registry will also need to be determined. One option would be to require all State-funded referral sources to only refer clients to homes that are registered. The registry would include some checklist of agreed-upon criteria: having the necessary permits, good policies and procedures, training, etc..

Finances. The Task Force will need to do a cost analysis to determine the amount of resources needed and the appropriate revenue source.

Altarum Next Steps Considerations

Strong partnerships will be important moving forward. As the Task Force develops recommendations, it will be important to keep in mind the strengths and responsibilities of current partners, to utilize the strengths and expertise of participants. Additionally, as Hawaii and other states move forward with planning for sober housing, it is important to remember that this is a national issue. We need to keep communication lines open, gather and share knowledge with other states, federal partners, and other stakeholders.

While there is an emerging framework, there are significant details that remain to be resolved. Although the Task Force has made vast strides, the Task Force should consider allowing adequate time for thorough discussion of those issues that remain. For example:

What will be included in the registry checklist?

Which entity will be responsible?

How will complaints be handled and/or logged?

What are the resource needs for the recommendations?

What are the standard criteria for inclusion in the registry?

Additional time would allow for better and clearer recommendations and also give housing providers sufficient time to prepare for implementation.

A voluntary registry coupled with an incentive for providers to register, may be a

viable option. In order to register, it is suggested that providers would need to demonstrate, among other things:

Participation in State-sanctioned training program (to be developed).

Compliance with all applicable federal, State and County requirements.

Knowledge about the difference between operating a housing program vs. a treatment program.

Best practices for operating a clean and sober home (e.g., how to be a good neighbor).

The Task Force will need to decide which agency will be the steward for the registry. One entity may be responsible for administering and operating the registry, but each entity has its roles and responsibilities to ensure that information posted is accurate and timely.

Registry recommendations. The Task Force will need to flush out recommendations regarding:

Criteria for inclusion in the registry need to be clearly communicated with housing and referral programs and providers, stakeholders and partners.

Deciding on the stewardship of the central repository of information.

Logging of complaints and deciding on who accesses information.

Any recommendations made by the Task Force must consider the Fair Housing Act (FHA). The FHA addresses the need to protect individuals from discriminatory practices, and is an important piece of legislation that will guide and shape the recommendations on what can and should be included in the proposed legislation.

Resources and existing housing. It will be important for the Task Force to assess and monitor the possible impact that recommendations may have on current clean and sober housing providers, referral sources and clients. Drastic changes could lead to unintended consequences, including but not limited to: loss of available housing for people, increase in expenses for clean and sober home managers, increase in expenses for clients and increased demand and decrease in resources.

Finances. The Task Force will need to conduct a cost analysis to determine the amount of resources needed to staff and operationalize its recommendations for establishing a registry and monitoring of homes. The analysis should also include possible revenue sources that would reduce the commitment of public funding and also minimize costs that would increase rents beyond affordability for those who are focused on reintegration into the community.

FINDINGS AND RECOMMENDATIONS
OF THE CLEAN AND SOBER HOMES AND HALFWAY HOUSES TASK FORCE AND
THE SUBCOMMITTEES ON DEFINITIONS AND MONITORING AND REGISTRATION

The Task Force and subcommittee work was a collaborative process. The findings and recommendations below represent a collaborative review, discussion and recommendation process among Task Force, subcommittee and individuals and organizations in attendance at the meetings.

Definitions

Definitions for the terms “clean and sober home” and “community support home.”
The definition [in Section 46-4(f), HRS] for the term “clean and sober home,” should be amended and moved to an appropriate Chapter or Section within the Hawaii Revised Statutes. Similarly, the definition for the term “community support home” should be added to an appropriate chapter(s) or section(s) within the Hawaii Revised Statutes.

Recommendation. “Clean and sober home” means a dwelling that is designed to provide a stable, independent environment of alcohol and drug free living conditions to sustain recovery and that is shared by unrelated adult persons who are attempting to maintain a life of sobriety.

Clean and sober homes are protected under the federal Fair Housing Act. They cannot be treated any differently than other rentals. Hawaii law cannot require public hearings for clean and sober homes if hearings are not required for similarly situated rentals.

Recommendation. “Community support home” means a dwelling that is designed to provide a stable, independent environment for adults who may be under the supervision of the criminal justice system to assist them to readjust to living in the community.

Residents in community support homes are not protected under the federal Fair Housing Act.

“[A]dults who may be under the supervision of the criminal justice system” includes persons who are on pre-trial status, probation and parole.

Recommendation. The term “halfway house” does not need to be defined as the State’s only halfway house is contracted with State agencies that monitor the provider’s compliance with contract requirements.

Statutory amendments to Section 46-4, HRS, relating to county zoning, that will:

Clarify the conditions under which group homes will be allowed to have up to eight unrelated adults in a group home.

When occupied by no more than five unrelated adults, residents in a home are classified as a "family," and may occupy a dwelling "by right" (i.e., without any zoning or land use permit). The proposed amendment to Section 46-4, HRS, allows up to eight unrelated adults – excluding from the count the resident manager and the manager's family members – to reside in a home if the home is "licensed, certified, registered, or monitored by the State." Clean and sober homes with eight or fewer residents are covered within the definition of "family," which is defined by blood, marriage or adoption.

Recommendation. Amend Section 46-4(d), HRS, to read as follows:

(d Neither this section nor any other law, county ordinance, or rule shall prohibit group living in facilities with eight or fewer residents [and] not related to the home operator or facility staff, for purposes or functions that are licensed, certified, registered, or monitored by the State [as provided for under section 321-15.6, or in an intermediate care facility for individuals with intellectual disabilities in the community for persons, including mentally ill, elder, disabled, developmentally disabled, or totally disabled persons, who are not related to the home operator or facility staff; provided that those]. Resident managers or supervisors shall not be included in this residential count. These group living facilities shall meet all applicable county requirements not inconsistent with the intent of this subsection and including building height, setback, maximum lot coverage, parking, and floor area requirements.

Eliminate the conflict with federal Fair Housing Act provisions.

The requirement for home operators to notify neighboring property owners and the requirement to conduct a public information meeting is contrary to federal Fair Housing Act provisions that are intended to have one rule that is equally applied to everyone. Although home operators often voluntarily provide notification to neighboring property owners as part of a good neighbor policy, requiring the notification and informational meeting statutorily are proscribed by the federal Fair Housing Act.

Recommendation. Delete the requirement for a public informational meeting specified in subsection Section 46-4(e), HRS:

~~[(e) No permit shall be issued by a county agency for the operation of a halfway house, a clean and sober home, or a drug rehabilitation~~

~~home unless a public informational meeting is first held in the affected community. The State shall provide notification and access to relevant information, as required, under chapter 846E.~~

~~A clean and sober home shall be considered a residential use of property and shall be a permitted or conditional use in residentially designated zones, including but not limited to zones for single-family dwellings.]~~

Eliminate definitions for terms that are defined elsewhere in the HRS, are not used, or will be codified elsewhere in the HRS.

Definitions for terms that are defined elsewhere in the Hawaii Revised Statutes, are not used, or will be codified elsewhere, should be deleted from Section 46-4, HRS.

Recommendation. Definitions for terms in Section 46-4(f), HRS, that should be deleted are as follows:

- Clean and sober home
- Developmentally disabled person
- Disabled person
- Drug rehabilitation home
- Elder
- Halfway house
- Intermediate care facility for individuals with intellectual disabilities in the community
- Mental health treatment facility
- Mentally ill person
- Totally disabled person
- Treatment program

~~[(f) For purposes of this section:~~

~~"Clean and sober home" means a house that is operated pursuant to a program designed to provide a stable environment of clean and sober living conditions to sustain recovery and that is shared by unrelated adult persons who:~~

- ~~(1) Are recovering from substance abuse;~~
- ~~(2) Share household expenses; and~~
- ~~(3) Do not require twenty-four-hour supervision, rehabilitation, or therapeutic services or care in the home or on the premises; provided that the home shall meet all applicable laws, codes, and rules of the counties and State.~~

~~"Developmentally disabled person" means a person suffering from developmental disabilities as defined under section 333F-1.~~

~~"Disabled person" means a person with a disability as defined under section 515-2.~~

~~"Drug rehabilitation home" means:~~

- ~~(1) A residential treatment facility that provides a therapeutic residential program for care, diagnosis, treatment, or rehabilitation for socially or emotionally distressed persons, mentally ill persons, persons suffering from substance abuse, and developmentally disabled persons; or~~
- ~~(2) A supervised living arrangement that provides mental health services, substance abuse services, or supportive services for individuals or families who do not need the structure of a special treatment facility and are transitioning to independent living;~~

~~provided that drug rehabilitation homes shall not include halfway houses or clean and sober homes.~~

~~"Elder" means an elder as defined under section 356D-1.~~

~~"Halfway house" means a group living facility for people who:~~

- ~~(1) Have been released or are under supervised release from a correctional facility;~~
- ~~(2) Have been released from a mental health treatment facility;~~
~~or~~
- ~~(3) Are receiving substance abuse or sex offender treatment; and are housed to participate in programs that help them readjust to living in the community.~~

~~"Intermediate care facility for individuals with intellectual disabilities in the community" means an identifiable unit providing residence and care for eight or fewer individuals with intellectual disabilities. Its primary purpose is the provision of health, social, and rehabilitation services to the individuals with intellectual disabilities through an individually designed active treatment program for each resident. No person who is predominantly confined to bed shall be admitted as a resident of such a facility.~~

~~"Mental health treatment facility" means a psychiatric facility or special treatment facility as defined under section 334-1.~~

~~"Mentally ill person" has the same meaning as defined under section 334-1.~~

~~"Totally disabled person" means a "person totally disabled" as defined under section 235-1.~~

~~"Treatment program" means a "substance abuse program" or "treatment program", as these terms are defined under section 353G-2.]~~

REGISTRATION AND MONITORING

Registration

Recommendation. Establish a voluntary registry.

Establishing a voluntary registry of homes. A more formalized means is needed for agencies to refer clients for alcohol and drug free housing. The establishment and operation of a voluntary registry would serve as a resource for referring agencies and clients to access information on available beds.

The registry would serve as a repository for registration of homes and tracking of complaints. The entity that oversees/coordinates the registry would field and route questions and complaints to the appropriate agency for response. If the registry serves as a "preferred" list, it might be an incentive for providers to be listed.

Unresolved Issues include the following:

A determination must be made by the designated State agency to maintain the registry as part of its day-to-day operations or to contract the function to a non-government organization.

The scope of responsibility to be assumed by the agency that administers the registry and the referring agencies' roles need to be clarified (e.g., criteria for adding/removing homes, ...).

Scheduling/conducting training and technical assistance sessions for providers (e.g., best practices, ...).

Providing/arranging for technical assistance to providers (e.g., steps involved in obtaining approvals, dealing with neighborhood boards, ...).

Responsibility for triaging and conducting follow-ups on complaints.

After a determination is made on the assignment of the appropriate State agency that will administer the registry, other conforming amendments (e.g., to Chapters 321, 353, 353G, 356D, 601, HRS) need to be developed to cover other affected agencies' clients who reside in these homes.

Recommendation. The Task Force recommends that the placement of the proposed registry should be based on the following criteria:

The entity works with, and is familiar with the populations to be served.

The entity has the ability (or potential) to leverage other resources.

The entity conducts monitoring/oversight activities as part of its current functions.

It is understood that establishing of the registry is 'uncharted ground;' the agency assigned to implement the registry functions may not meet all of the elements cited above. Although there is agreement that a registry be established and that its placement should be based on the above criteria, there remain unresolved issues:

Whether the registry function will be performed within the agency to which funds are appropriated, or if the function will be contracted to an external entity remains to be decided.

The agency that administers the registry would be responsible for coordinating registry functions with State and County agencies, housing providers, as well as other stakeholders (e.g., referring agencies and organizations).

Funding for staffing and operating costs would be required to establish and implement the registry function.

Whether a State-contracted provider is to be placed on the register automatically.

Based on agencies' functions – whether in serving the populations to be housed in clean and sober homes, in leveraging other resources, or in conducting investigative, regulatory or enforcement activities.

The following agencies (listed in no particular order) were suggested for administering the registry:

Executive Branch

Department of Commerce and Consumer Affairs (DCCA) [§26-9(b), HRS]

The department shall protect the interests of consumers, depositors, and investors throughout the State. It shall set standards and enforce all laws and rules governing the licensing and operation of, and register and supervise the conduct of, trades, businesses, and professions, including banks, insurance companies, brokerage firms, and other financial institutions.

Department of Health (DOH) [§26-13, HRS]

The department shall administer programs designed to protect, preserve, care

for, and improve the physical and mental health of the people of the State. Without limit to the generality of the foregoing, the programs shall include the administration and enforcement of matters and laws of public health of the State, including the state hospital, but excluding assistance and care for the indigent and the medically indigent.

Department of Public Safety (PSD) [§26-14.6(b), HRS]

The department of public safety shall be responsible for the formulation and implementation of state policies and objectives for correctional, security, law enforcement, and public safety programs and functions, for the administration and maintenance of all public or private correctional facilities and services, for the service of process, and for the security of state buildings.

(c) Effective July 1, 1990, the Hawaii paroling authority and the crime victim compensation commission are placed within the department of public safety for administrative purposes only.

Hawaii Paroling Authority (HPA) [§353-62(a)(1-9), HRS]

... determines the time at which parole shall be granted to any eligible individual; establishes rules of operation to determine conditions of parole applicable to any individual granted parole; provides continuing custody, control, and supervision of paroled individuals; revokes or suspends parole and provides for the authorization of return to a correctional institution for any individual who violates parole or any condition of parole; ...

Department of Human Services (DHS) [§26-14(b), HRS]

The department shall administer programs designed to improve the social well-being and productivity of the people of the State. Without limit to the generality of the foregoing, the department shall concern itself with problems of human behavior, adjustment, and daily living through the administration of programs of family, child and adult welfare, economic assistance, health care assistance, rehabilitation toward self-care and support, public housing, and other related programs provided by law.

Hawaii Public Housing Authority [Chapter 356D, Parts I thru IX]

Administers the State's public housing programs. Agency functions include management of programs for federal and State low income housing, elders, Authority-County cooperation, State rent supplement program, and the State sales housing program.

Legislative Branch

Office of the Ombudsman [§96-8, HRS]

The Office of the Ombudsman investigates administrative acts of agencies which might be: contrary to law; unreasonable, unfair, oppressive, or unnecessarily discriminatory, even though in accordance with law; based on a mistake of fact; based on improper or irrelevant grounds; unaccompanied by an adequate statement of reasons; performed in an inefficient manner; or otherwise erroneous. The ombudsman may investigate to find an appropriate remedy. ("Agency" includes any permanent governmental entity, department, organization, or institution, and any officer, employee, or member thereof acting or purporting to act in the exercise of the officer's, employee's, or member's official duties, ...)

Judiciary Branch

Hawaii State Constitution, Article VI, The Judiciary; Judicial Power (Section 1)

The judicial power of the State shall be vested in one supreme court, one intermediate appellate court, circuit courts, district courts and in such other courts as the legislature may from time to time establish. The several courts shall have original and appellate jurisdiction as provided by law and shall establish time limits for disposition of cases in accordance with their rules. Participation in programs operated by Courts (e.g., adult probation, Drug Court, Mental Health Court, etc.) is restricted to those who are under Court supervision. Thus, the use of resources that may be leveraged would be restricted to those who are under Court supervision.

Monitoring

The discussion on monitoring focused on the need to develop definitions of terms and deciding on the establishment of a registry and initial discussion about registration requirements. The elements to be monitored will be developed after a decision is made about the State agency that will be responsible for monitoring of voluntarily registered homes. Based on the preliminary discussion on requirements, members suggested the following list for the monitoring of homes:

Compliance with County zoning, health and safety requirements.

Policies and procedures for homes that address:

Management of the home (e.g., peer run, monitored, supervised, service provider)
Purpose (alcohol- and drug-free)
Becoming a resident of the home
Being asked to leave the home
Urinalysis policy
Reporting violations (e.g., parole, probation, etc.)

General liability insurance:

Minimum amounts to be determined

Home should have house rules, including but not limited to:

Rent amount
Termination of tenancy
Employment requirement
Duties/tasks to be performed as resident of the house
Appropriate conduct with adjacent neighbors and within the neighborhood (i.e., noise level, designated smoking areas)
Curfews

Training requirement examples:

Training on good neighbor policy.
Training to provide assistance to homes who may want to expand beyond the 8 resident limit, requiring the obtaining of a conditional use permit.

Advantages for homes being on the registry are as follows:

Homes on the registry may have up to 8 unrelated adult residents as opposed to 5 for unregistered homes. (If proposed amendments to Section 46-4, Hawaii Revised Statutes, are enacted.)

Homes on the registry would be "preferred" by State agencies or by providers contracted by the State.

Public and private entities may utilize the registry to assist in locating clean and sober homes.

Tracking of complaints to be maintained on the registry.

The entity that oversees the registry would field complaints and maintain a log of the complaints.

The entity would route the complaints to the appropriate agency for resolution.

The entity could provide education to the complainant on fair housing practices and proper complaint channels.

Criteria for removal of a home from the registry need to be delineated.

Details on due process requirements need to be details to be determined.

Funding and resources

State agencies' support for establishing a registry is conditional: resources for staffing and operating costs to establish and operate the registry must be weighed with other agency priorities. In addition, the cost to operationalize recommendations for establishing a registry and monitoring of homes is subject to the agreed upon elements to be included in the registering and monitoring of homes.

CONCLUSION

The work of the Clean and Sober Homes and Halfway Houses Task Force is a first step of a work-in-progress. As stated in the Altarum Institute report, "the issue is housing, and housing only. Unlike treatment settings that may require licensure and/or accreditation, clean and sober housing is a housing issue. Such housing provides a safe, secure and substance free place to live for those in recovery."

While the Clean and Sober Homes and Halfway Houses Task Force has made significant strides in addressing concerns about housing for individuals transitioning from the treatment setting or from institutionalization to independent living in the community, much more remains to be accomplished. For example, as the implementation of the Justice Reinvestment Initiative adds to the need for housing of offender subpopulations, a means to identify appropriate, affordable homes that are alcohol- and drug-free, and in compliance with county zoning, health and safety requirements are critical.

Issues needing further discussion and deliberation:

The definition for the term "clean and sober home" has been settled, however, the terms "registration" and "monitoring" need more clarification.

Agreement is pending on the appropriate location(s) within the Hawaii Revised Statutes for definitions.

A single entity for the registration of clean and sober homes needs to be designated to operate or contract the registry function. The registry function will require further discussion as its applicability extends beyond Task Force members' focus on alcohol- and drug-free housing for substance abusers and

offenders.

A final proposed budget necessary to staff and operationalize the registry needs to be developed. Policies, procedures and guidelines for registry operation also need to be developed.

An analysis needs to be conducted to assess the financial impact on residents who have limited resources as registration and monitoring criteria are adopted.

Next steps:

A considerable commitment of time from those with the specialized expertise to address the major components of the registration and monitoring functions will be needed to:

Develop the proposed State-sanctioned training program for stakeholders (i.e., providers, State and County staff, etc.) to cover topics that include but are not limited to best practices for operating a clean and sober home (e.g., how to be a good neighbor).

Compile all applicable federal, State and County requirements so that members can:

Develop registry and monitoring criteria that address public health and public safety interests.

Decide on how complaints will be handled and/or logged.

Recommendation. The Clean and Sober Homes and Halfway Houses Task Force recommends that:

The Administration support the amendments proposed by the Task Force to amend Section 46-4, Hawaii Revised Statutes, relating to county zoning; and

The Governor and Director of Health continue their support of work of the Task Force to address the issues and its assigned tasks.

APPENDIX

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

- B. Massachusetts Study Regarding Sober (Alcohol and Drug Free) Housing in response to Chapter 283, Section 10, of the Acts of 2010**

- C. Draft Bill for an Act Relating to Group Homes**

- D. Members' Comments on Report Draft**

APPENDIX A

JOINT STATEMENT OF THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

GROUP HOMES, LOCAL LAND USE, AND THE FAIR HOUSING ACT

Since the federal Fair Housing Act ("the Act") was amended by Congress in 1988 to add protections for persons with disabilities and families with children, there has been a great deal of litigation concerning the Act's effect on the ability of local governments to exercise control over group living arrangements, particularly for persons with disabilities. The Department of Justice has taken an active part in much of this litigation, often following referral of a matter by the Department of Housing and Urban Development ("HUD"). This joint statement provides an overview of the Fair Housing Act's requirements in this area. Specific topics are addressed in more depth in the attached Questions and Answers.

The Fair Housing Act prohibits a broad range of practices that discriminate against individuals on the basis of race, color, religion, sex, national origin, familial status, and disability.⁽¹⁾ The Act does not pre-empt local zoning laws. However, the Act applies to municipalities and other local government entities and prohibits them from making zoning or land use decisions or implementing land use policies that exclude or otherwise discriminate against protected persons, including individuals with disabilities.

The Fair Housing Act makes it unlawful --

To utilize land use policies or actions that treat groups of persons with disabilities less favorably than groups of non-disabled persons. An example would be an ordinance prohibiting housing for persons with disabilities or a specific type of disability, such as mental illness, from locating in a particular area, while allowing other groups of unrelated individuals to live together in that area.

To take action against, or deny a permit, for a home because of the disability of individuals who live or would live there. An example would be denying a building permit for a home because it was intended to provide housing for persons with mental retardation.

To refuse to make reasonable accommodations in land use and zoning policies and procedures where such accommodations may be necessary to afford persons or groups of persons with disabilities an equal opportunity to use and enjoy housing.

What constitutes a reasonable accommodation is a case-by-case determination.

Not all requested modifications of rules or policies are reasonable. If a requested modification imposes an undue financial or administrative burden on a local government, or if a modification creates a fundamental alteration in a local government's land use and zoning scheme, it is not a "reasonable" accommodation.

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The disability discrimination provisions of the Fair Housing Act do not extend to persons who claim to be disabled solely on the basis of having been adjudicated a juvenile delinquent, having a criminal record, or being a sex offender. Furthermore, the Fair Housing Act does not protect persons who currently use illegal drugs, persons who have been convicted of the manufacture or sale of illegal drugs, or persons with or without disabilities who present a direct threat to the persons or property of others.

HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable dispute resolution procedures, like mediation, as alternatives to litigation.

DATE: AUGUST 18, 1999

Questions and Answers

on the Fair Housing Act and Zoning

Q. Does the Fair Housing Act pre-empt local zoning laws?

No. "Pre-emption" is a legal term meaning that one level of government has taken over a field and left no room for government at any other level to pass laws or exercise authority in that area. The Fair Housing Act is not a land use or zoning statute; it does not pre-empt local land use and zoning laws. This is an area where state law typically gives local governments primary power. However, if that power is exercised in a specific instance in a way that is inconsistent with a federal law such as the Fair Housing Act, the federal law will control. Long before the 1988 amendments, the courts had held that the Fair Housing Act prohibited local governments from exercising their land use and zoning powers in a discriminatory way.

Q. What is a group home within the meaning of the Fair Housing Act?

The term "group home" does not have a specific legal meaning. In this statement, the term "group home" refers to housing occupied by groups of unrelated individuals with disabilities.⁽²⁾ Sometimes, but not always, housing is provided by organizations that also offer various services for individuals with disabilities living in the group homes. Sometimes it is this group home operator, rather than the individuals who live in the home, that interacts with local government in seeking permits and making requests for reasonable accommodations on behalf of those individuals.

The term "group home" is also sometimes applied to any group of unrelated persons who live together in a dwelling -- such as a group of students who voluntarily agree to share the rent on a house. The Act does not generally affect the ability of local governments to regulate housing of this kind, as long as they do not discriminate against the residents on the basis of race, color, national origin, religion, sex, handicap (disability) or familial status (families with minor children).

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Q. Who are persons with disabilities within the meaning of the Fair Housing Act?

The Fair Housing Act prohibits discrimination on the basis of handicap. "Handicap" has the same legal meaning as the term "disability" which is used in other federal civil rights laws. Persons with disabilities (handicaps) are individuals with mental or physical impairments which substantially limit one or more major life activities. The term mental or physical impairment may include conditions such as blindness, hearing impairment, mobility impairment, HIV infection, mental retardation, alcoholism, drug addiction, chronic fatigue, learning disability, head injury, and mental illness. The term major life activity may include seeing, hearing, walking, breathing, performing manual tasks, caring for one's self, learning, speaking, or working. The Fair Housing Act also protects persons who have a record of such an impairment, or are regarded as having such an impairment.

Current users of illegal controlled substances, persons convicted for illegal manufacture or distribution of a controlled substance, sex offenders, and juvenile offenders, are not considered disabled under the Fair Housing Act, by virtue of that status.

The Fair Housing Act affords no protections to individuals with or without disabilities who present a direct threat to the persons or property of others. Determining whether someone poses such a direct threat must be made on an individualized basis, however, and cannot be based on general assumptions or speculation about the nature of a disability.

Q. What kinds of local zoning and land use laws relating to group homes violate the Fair Housing Act?

Local zoning and land use laws that treat groups of unrelated persons with disabilities less favorably than similar groups of unrelated persons without disabilities violate the Fair Housing Act. For example, suppose a city's zoning ordinance defines a "family" to include up to six unrelated persons living together as a household unit, and gives such a group of unrelated persons the right to live in any zoning district without special permission. If that ordinance also disallows a group home for six or fewer people with disabilities in a certain district or requires this home to seek a use permit, such requirements would conflict with the Fair Housing Act. The ordinance treats persons with disabilities worse than persons without disabilities.

A local government may generally restrict the ability of groups of unrelated persons to live together as long as the restrictions are imposed on all such groups. Thus, in the case where a family is defined to include up to six unrelated people, an ordinance would not, on its face, violate the Act if a group home for seven people with disabilities was not allowed to locate in a single family zoned neighborhood, because a group of seven unrelated people without disabilities would also be disallowed. However, as discussed below, because persons with disabilities are also entitled to request reasonable accommodations in rules and policies, the group home for seven persons with disabilities would have to be given the opportunity to seek an exception or waiver. If the criteria for reasonable accommodation are met, the permit would have to be given in that instance, but the ordinance would not be invalid in all circumstances.

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Q. What is a reasonable accommodation under the Fair Housing Act?

As a general rule, the Fair Housing Act makes it unlawful to refuse to make "reasonable accommodations" (modifications or exceptions) to rules, policies, practices, or services, when such accommodations may be necessary to afford persons with disabilities an equal opportunity to use or enjoy a dwelling.

Even though a zoning ordinance imposes on group homes the same restrictions it imposes on other groups of unrelated people, a local government may be required, in individual cases and when requested to do so, to grant a reasonable accommodation to a group home for persons with disabilities. For example, it may be a reasonable accommodation to waive a setback requirement so that a paved path of travel can be provided to residents who have mobility impairments. A similar waiver might not be required for a different type of group home where residents do not have difficulty negotiating steps and do not need a setback in order to have an equal opportunity to use and enjoy a dwelling.

Not all requested modifications of rules or policies are reasonable. Whether a particular accommodation is reasonable depends on the facts, and must be decided on a case-by-case basis. The determination of what is reasonable depends on the answers to two questions: First, does the request impose an undue burden or expense on the local government? Second, does the proposed use create a fundamental alteration in the zoning scheme? If the answer to either question is "yes," the requested accommodation is unreasonable.

What is "reasonable" in one circumstance may not be "reasonable" in another. For example, suppose a local government does not allow groups of four or more unrelated people to live together in a single-family neighborhood. A group home for four adults with mental retardation would very likely be able to show that it will have no more impact on parking, traffic, noise, utility use, and other typical concerns of zoning than an "ordinary family." In this circumstance, there would be no undue burden or expense for the local government nor would the single-family character of the neighborhood be fundamentally altered. Granting an exception or waiver to the group home in this circumstance does not invalidate the ordinance. The local government would still be able to keep groups of unrelated persons without disabilities from living in single-family neighborhoods.

By contrast, a fifty-bed nursing home would not ordinarily be considered an appropriate use in a single-family neighborhood, for obvious reasons having nothing to do with the disabilities of its residents. Such a facility might or might not impose significant burdens and expense on the community, but it would likely create a fundamental change in the single-family character of the neighborhood. On the other hand, a nursing home might not create a "fundamental change" in a neighborhood zoned for multi-family housing. The scope and magnitude of the modification requested, and the features of the surrounding neighborhood are among the factors that will be taken into account in determining whether a requested accommodation is reasonable.

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Q. What is the procedure for requesting a reasonable accommodation?

Where a local zoning scheme specifies procedures for seeking a departure from the general rule, courts have decided, and the Department of Justice and HUD agree, that these procedures must ordinarily be followed. If no procedure is specified, persons with disabilities may, nevertheless, request a reasonable accommodation in some other way, and a local government is obligated to grant it if it meets the criteria discussed above. A local government's failure to respond to a request for reasonable accommodation or an inordinate delay in responding could also violate the Act.

Whether a procedure for requesting accommodations is provided or not, if local government officials have previously made statements or otherwise indicated that an application would not receive fair consideration, or if the procedure itself is discriminatory, then individuals with disabilities living in a group home (and/or its operator) might be able to go directly into court to request an order for an accommodation.

Local governments are encouraged to provide mechanisms for requesting reasonable accommodations that operate promptly and efficiently, without imposing significant costs or delays. The local government should also make efforts to insure that the availability of such mechanisms is well known within the community.

Q. When, if ever, can a local government limit the number of group homes that can locate in a certain area?

A concern expressed by some local government officials and neighborhood residents is that certain jurisdictions, governments, or particular neighborhoods within a jurisdiction, may come to have more than their "fair share" of group homes. There are legal ways to address this concern. The Fair Housing Act does not prohibit most governmental programs designed to encourage people of a particular race to move to neighborhoods occupied predominantly by people of another race. A local government that believes a particular area within its boundaries has its "fair share" of group homes, could offer incentives to providers to locate future homes in other neighborhoods.

However, some state and local governments have tried to address this concern by enacting laws requiring that group homes be at a certain minimum distance from one another. The Department of Justice and HUD take the position, and most courts that have addressed the issue agree, that density restrictions are generally inconsistent with the Fair Housing Act. We also believe, however, that if a neighborhood came to be composed largely of group homes, that could adversely affect individuals with disabilities and would be inconsistent with the objective of integrating persons with disabilities into the community. Especially in the licensing and regulatory process, it is appropriate to be concerned about the setting for a group home. A consideration of over-concentration could be considered in this context. This objective does not, however, justify requiring separations which have the effect of foreclosing group homes from locating in entire neighborhoods.

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Q. What kinds of health and safety regulations can be imposed upon group homes?

The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health 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. 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. We encourage the states to commit the resources needed to make these systems responsive to resident and community needs and concerns.

Regulation and licensing requirements for group homes are themselves subject to scrutiny under the Fair Housing Act. Such requirements based on health and safety concerns can be discriminatory themselves or may be cited sometimes to disguise discriminatory motives behind attempts to exclude group homes from a community. Regulators must also recognize that not all individuals with disabilities living in group home settings desire or need the same level of services or protection. For example, it may be appropriate to require heightened fire safety measures in a group home for people who are unable to move about without assistance. But for another group of persons with disabilities who do not desire or need such assistance, it would not be appropriate to require fire safety measures beyond those normally imposed on the size and type of residential building involved.

Q. Can a local government consider the feelings of neighbors in making a decision about granting a permit to a group home to locate in a residential neighborhood?

In the same way a local government would break the law if it rejected low-income housing in a community because of neighbors' fears that such housing would be occupied by racial minorities, a local government can violate the Fair Housing Act if it blocks a group home or denies a requested reasonable accommodation in response to neighbors' stereotypical fears or prejudices about persons with disabilities. This is so even if the individual government decision-makers are not themselves personally prejudiced against persons with disabilities. If the evidence shows that the decision-makers were responding to the wishes of their constituents, and that the constituents were motivated in substantial part by discriminatory concerns, that could be enough to prove a violation.

Of course, a city council or zoning board is not bound by everything that is said by every person who speaks out at a public hearing. It is the record as a whole that will be determinative. If the record shows that there were valid reasons for denying an application that were not related to the disability of the prospective residents, the courts will give little weight to isolated discriminatory statements. If, however, the purportedly legitimate reasons advanced to support the action are not objectively valid, the courts are likely to treat them as pretextual, and to find that there has been discrimination.

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For example, neighbors and local government officials may be legitimately concerned that a group home for adults in certain circumstances may create more demand for on-street parking than would a typical family. It is not a violation of the Fair Housing Act for neighbors or officials to raise this concern and to ask the provider to respond. A valid unaddressed concern about inadequate parking facilities could justify denying the application, if another type of facility would ordinarily be denied a permit for such parking problems. However, if a group of individuals with disabilities or a group home operator shows by credible and un rebutted evidence that the home will not create a need for more parking spaces, or submits a plan to provide whatever off-street parking may be needed, then parking concerns would not support a decision to deny the home a permit.

Q. What is the status of group living arrangements for children under the Fair Housing Act?

In the course of litigation addressing group homes for persons with disabilities, the issue has arisen whether the Fair Housing Act also provides protections for group living arrangements for children. Such living arrangements are covered by the Fair Housing Act's provisions prohibiting discrimination against families with children. For example, a local government may not enforce a zoning ordinance which treats group living arrangements for children less favorably than it treats a similar group living arrangement for unrelated adults. Thus, an ordinance that defined a group of up to six unrelated adult persons as a family, but specifically disallowed a group living arrangement for six or fewer children, would, on its face, discriminate on the basis of familial status. Likewise, a local government might violate the Act if it denied a permit to such a home because neighbors did not want to have a group facility for children next to them.

The law generally recognizes that children require adult supervision. Imposing a reasonable requirement for adequate supervision in group living facilities for children would not violate the familial status provisions of the Fair Housing Act.

Q. How are zoning and land use matters handled by HUD and the Department of Justice?

The Fair Housing Act gives the Department of Housing and Urban Development the power to receive and investigate complaints of discrimination, including complaints that a local government has discriminated in exercising its land use and zoning powers. HUD is also obligated by statute to attempt to conciliate the complaints that it receives, even before it completes an investigation.

In matters involving zoning and land use, HUD does not issue a charge of discrimination. Instead, HUD refers matters it believes may be meritorious to the Department of Justice which, in its discretion, may decide to bring suit against the respondent in such a case. The Department of Justice may also bring suit in a case that has not been the subject of a HUD complaint by exercising its power to initiate litigation alleging a "pattern or practice" of discrimination or a denial of rights to a group of persons which raises an issue of general public importance.

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The Department of Justice's principal objective in a suit of this kind is to remove significant barriers to the housing opportunities available for persons with disabilities. The Department ordinarily will not participate in litigation to challenge discriminatory ordinances which are not being enforced, unless there is evidence that the mere existence of the provisions are preventing or discouraging the development of needed housing.

If HUD determines that there is no reasonable basis to believe that there may be a violation, it will close an investigation without referring the matter to the Department of Justice. Although the Department of Justice would still have independent "pattern or practice" authority to take enforcement action in the matter that was the subject of the closed HUD investigation, that would be an unlikely event. A HUD or Department of Justice decision not to proceed with a zoning or land use matter does not foreclose private plaintiffs from pursuing a claim.

Litigation can be an expensive, time-consuming, and uncertain process for all parties. HUD and the Department of Justice encourage parties to group home disputes to explore all reasonable alternatives to litigation, including alternative dispute resolution procedures, like mediation. HUD attempts to conciliate all Fair Housing Act complaints that it receives. In addition, it is the Department of Justice's policy to offer prospective defendants the opportunity to engage in pre-suit settlement negotiations, except in the most unusual circumstances.

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1. The Fair Housing Act uses the term "handicap." This document uses the term "disability" which has exactly the same legal meaning.
 2. There are groups of unrelated persons with disabilities who choose to live together who do not consider their living arrangements "group homes," and it is inappropriate to consider them "group homes" as that concept is discussed in this statement.

APPENDIX B

Study Regarding Sober (Alcohol and Drug Free) Housing In response to Chapter 283, Section 10, of the Acts of 2010

Massachusetts Department of Public Health, Bureau of Substance Abuse Services

I. Legislative Mandate and Summary of Findings

This report responds to the Massachusetts Legislature's directive (Chapter 283, Section 10 of the Acts of 2010) to the Department of Public Health, Bureau of Substance Abuse Services (BSAS), to prepare a study of alcohol and substance free housing, sometimes referred to as "sober housing" or Alcohol and Drug Free Housing ("ADF Housing").

ADF Housing is a form of group housing that offers an alcohol and drug free living environment for individuals recovering from alcohol or substance use disorders. As a condition of occupancy, residents of ADF Housing agree not to use alcohol or substances. Over the years, surrounding neighbors and community stakeholders have expressed concerns to municipalities, legislators and BSAS about the presence of ADF Housing in local communities. Concerns also have been expressed regarding the need to protect residents from unscrupulous ADF Housing providers.

These complaints and concerns prompted the General Court to request this study from BSAS to address the following issues:

- Documentation of the number of sober homes operating in the Commonwealth;
- Any problems created by the operation of sober homes, including impacts on neighborhoods and surrounding areas;
- Standards and requirements necessary to protect the home's residents; and
- The feasibility of licensing, regulating, registering or certifying sober homes or operators.

The report's findings are based on the following information:

- Review of other states' policies, regulations, etc. related to ADF Housing;
- Legal analysis of relevant local, state and federal laws;
- Meetings with ADF Housing operators;
- Meetings and conversations with local municipal officials regarding problems with ADF Housing;
- Summary of complaints about ADF Housing; and
- Compilation of ADF Housing numbers through various methodologies.

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The major findings of the report are as follows:

- A. BSAS' existing statutory and regulatory authority is limited to the licensure of alcohol and drug treatment facilities and programs.¹ BSAS has no authority over housing and therefore does not regulate ADF Housing. However, to the extent that an ADF Housing provider offers or requires residents to participate in a substance abuse treatment program on or off-site, BSAS has authority to require licensure of that treatment program.
- B. The federal Fair Housing Amendments Act (FHAA) limits the Commonwealth's and BSAS' authority to implement mandatory licensure, regulation, registration or certification requirements directed specifically at ADF Housing providers and residents. Federal courts have repeatedly rejected state and local efforts to regulate ADF Housing.
- C. Local governments should be encouraged and supported in their use of existing nondiscriminatory legal tools to address legitimate health and safety, building, fire, zoning and criminal impacts of ADF Housing.
- D. Residents of ADF Housing should be educated about existing consumer protection remedies to assert their rights against unscrupulous operators of ADF Housing.
- E. BSAS should continue to investigate and triage as appropriate complaints related to ADF Housing providers, including complaints alleging that providers advertise, offer or require residents to participate in an unlicensed on or off-site substance abuse treatment program.
- F. With additional resources, BSAS could implement a voluntary training program for ADF Housing providers, with a directive to all state agencies and their vendors to only refer clients to BSAS-trained ADF Housing providers. BSAS estimates the cost of implementation of such a voluntary training program at a minimum to be from \$242,103.00 - \$257,625.00 per year. Appendix A provides a detailed budget breakdown of the projected costs.

II. Description and Number of ADF Homes Operating in Massachusetts \

A. Description of ADF Housing

This report uses the term "ADF housing or homes" to refer to the variety of group housing arrangements, however designated or legally structured, that provide an alcohol and drug free living environment for people in recovery from substance use disorders. ADF Housing is also referred to as sober housing, alcohol and substance free housing, clean-and-sober housing, alcohol-free or sober-living environments, three-quarter way

¹ 105 CMR 164.000 "Licensure of Substance Abuse Treatment Programs."

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houses, re-entry homes and other similar names. ADF Housing includes both transitional and permanent housing models which may be operated by a variety of entities, including state and federal government agencies, licensed mental health and addiction treatment agencies, for-profit and non-profit organizations, the occupants themselves, or private landlords.

Some ADF Housing models are funded in full or part by state and federal agencies, including, among others, Housing and Urban Development (HUD), and the MA Department of Housing and Community Development (DHCD). For example, MassHousing, the Massachusetts Housing Finance Agency, is an independent, quasi-public agency charged with providing financing for affordable housing in Massachusetts. The Center for Community Recovery Innovations, Inc. (CCRI), a nonprofit subsidiary corporation of MassHousing, provides one-time gap funding to (1) increase the availability of affordable, alcohol and drug free housing in Massachusetts; (2) promote intervention, recovery and successful tenancies for residents with chemical dependency; and (3) provide equitable service and resources, geographically and for all populations, with a special focus on housing and services for women with children, adolescent/young women, youth, veterans, ex-offenders or other underserved populations.

ADF Housing models that are funded by state or federal agencies have contractual requirements meant to ensure that the homes are in compliance with all relevant housing laws and regulations. Most often, residents in these homes are provided case management services to support their ongoing sobriety. In fact, BSAS partners with DHCD to provide funding for case management services in DHCD-supported ADF Housing.

ADF Housing can be distinguished from conventional private housing occupied by individuals and families by the fact that residents of ADF Housing are in recovery from substance use disorders, and agree not to drink alcohol or use substances as a condition of occupancy. The residents themselves reinforce their recovery through support from other recovering persons.

The structure of ADF Housing and residency requirements vary widely as they are established by the individual operators or funders. For example, ADF Housing may have live-in staff, require participation in house meetings, mandate random drug testing, and require residents to abide by house rules. Residents may participate in a variety of recovery-related activities in the community including attending Alcoholics Anonymous or Narcotics Anonymous meetings, in addition to employment training or educational programs. Some residents receive licensed mental health or addiction treatment services while living in ADF Housing; yet, a number of homes simply require the maintenance of sobriety as the only condition of residency. ADF Housing providers require that residents pay rent in advance by the week or the month. Rents vary and mirror the non-ADF Housing market in that rents range anywhere from \$125.00 per week to thousands of dollars per month.

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A well-known national model of ADF Housing is the Oxford House model. Oxford Houses are democratically run, self-supporting alcohol and drug free homes. Each house has between six and 15 residents. There are separate Oxford Houses for men and women, with some for women with children. The number of Oxford Houses nationally has grown from one in 1975 to over 1,200 in 2010, including 12 houses with 114 beds in Massachusetts.² An umbrella organization connects all Oxford Houses and allocates resources, allowing new houses to be developed. The Massachusetts Sober Housing Corporation operates an additional four homes in Massachusetts according to Oxford House principles.

It is well understood that when persons with substance use disorders are presented with a stable housing environment, they are more likely to sustain recovery than persons who do not have this basic need met. ADF Housing provides important recovery support for individuals who otherwise may have few housing options due to poverty, estrangement from usual social and familial support systems and/or a history of incarceration. Individuals who reside in ADF Housing are able to live independently in the community since they are no longer in the acute phase of their illness. Having access to ADF Housing avoids homelessness, relapse to substance use, increased medical costs, a return to criminal activity and an increase in the rate of premature death.

B. ADF Housing Estimates

In April 2007, BSAS invited all identified ADF Housing providers to a meeting to discuss concerns expressed by both members of the Legislature and municipalities, about the seemingly sudden proliferation of ADF Housing. At the meeting, BSAS encouraged ADF Housing providers to work cooperatively with local authorities, offering “Best Practice” suggestions on being a “good neighbor” in their local communities. At the same time, BSAS also distributed a written survey to attempt to understand what, if any, services were being provided in these homes that might require BSAS licensure as a treatment program. Approximately 27 of the nearly 200 invited ADF Housing operators attended the April meeting; BSAS received 18 completed surveys. Based on these surveys it did not appear that the ADF Housing operators involved were providing any treatment services that required licensure by BSAS.

As ADF Housing is subject to state and federal fair housing laws, the Commonwealth is prohibited in all but very narrow circumstances from imposing requirements on ADF Housing that differ from requirements imposed on other types of housing. There is not now, nor has there ever been, a comprehensive centralized directory or listing of ADF Housing in the Commonwealth. The absence of a centralized registry makes it impossible to accurately document the number of ADF homes in the state. BSAS has attempted to document the number of ADF homes through an internet and newspaper search, as well as using information that BSAS has collected in the form of advertisements, flyers, complaints, and word of mouth since the April 2007 meeting. This method of documentation has identified approximately 300 privately-operated ADF homes throughout the Commonwealth. BSAS believes that this represents only a fraction

² See Oxford House web site: http://www.oxfordhouse.org/directory_listing.php. Accessed 9/13/2011.

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of the total number of such homes. This estimate excludes ADF Housing sites operated or subsidized by state and federal agencies, or homes operated using the Oxford House model. These ADF Housing models have regulatory, contractual or -- in the case of the Oxford House model -- additional requirements from a well-established national umbrella organization designed to ensure their safe operation and compliance with applicable state, local and federal laws.

III. Legal Authority to Regulate ADF Housing

Individuals in recovery who are not currently using alcohol or substances are disabled within the meaning of the federal Fair Housing Amendments Act (FHAA), the Massachusetts Zoning Act, and other federal and state laws that prohibit discrimination on the basis of disability. These laws limit the ability of state and local governments to establish regulatory, zoning or land use requirements directed specifically at ADF Housing providers or residents; including regulation in the form of mandatory licensure, registration or certification requirements. However, as explained below, ADF Housing is subject to reasonable local and state health, safety, building, fire, land use, zoning and criminal law requirements consistent with state and federal anti-discrimination laws.

A. The Federal Fair Housing Amendments Act (FHAA)³

The FHAA⁴ prohibits housing discrimination on the basis of handicap in the sale or rental of housing or in the provision of services or facilities in connection with housing (42 U.S.C. § 3604(f)(1)-(2)). The FHAA prohibits discrimination by individuals, and local, state and federal government. Individuals in treatment or recovery from substance use who are not currently using alcohol or substances are protected under the FHAA. (See, e.g., Oxford House, Inc. v. Town of Babylon, 819 F. Supp. 1179, 1182 (E.D.N.Y. 1993); U.S. v. Southern Management Corp., 955 F.2d 914, 921-23 (4th Cir. 1992)).

In application, the FHAA prohibits local and state governments from imposing any licensure, regulatory, certification, zoning, land use, health and safety or other requirements on ADF Housing that have a discriminatory intent or effect. The FHAA also requires local and state governments to modify or alter otherwise neutral requirements that might interfere with an individual's "equal opportunity to use and enjoy a dwelling under the 'reasonable accommodation' requirement of the law." The FHAA does not prohibit reasonable local or state restrictions on the number of occupants permitted to occupy a dwelling. (See City of Edmonds v. Oxford House, Inc., 514 U.S. 725 (1995) (invalidating ordinance excluding housing occupied by more than five (5) unrelated persons in single-family residential zone)).

³ Title II of the Americans with Disabilities Act (ADA) (42 U.S.C. § 12131 *et seq.*), Section 504 of the Rehabilitation Act of 1973 (29 U.S.C. § 794 *et seq.*), and the Massachusetts Fair Housing Law (M.G.L. c. 151B) all impose non-discrimination requirements on local and state governments similar to those contained in the FHAA and are not discussed separately here.

⁴ The Fair Housing Act (42 U.S.C. § 3601 *et seq.*) was amended by the Fair Housing Amendments Act (FHAA) in 1988 to prohibit discrimination on the basis of handicap. (42 U.S.C. § 3602(h))

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A recent federal case illustrates the extent to which the FHAA restricts a local or state government's ability to regulate ADF housing. In Human Resource Research and Management Group, Inc. et al. v. County of Suffolk, 687 F. Supp. 2d 237 (E.D.N.Y. 2010), the federal district court struck down four (4) provisions of a local ordinance that applied to "substance abuse houses": (1) a site-selection provision establishing a notice and approval procedure to assess the desirability of the proposed substance abuse housing in the area under consideration; (2) a requirement that each substance abuse house must have a "certified site manager" living on site 24-hours per day, seven days a week; (3) a limitation of six individuals receiving substance abuse services in the house; and (4) a licensing requirement, which includes a fee and an inspection provision. The court ruled that because the ordinance on its face applied to housing for persons recovering from substance abuse, the law is subject to heightened scrutiny under the FHAA. Applying that standard, the court found that the local government failed to prove, using studies or other reliable evidence, that the requirements of the ordinance served to further any legitimate governmental interest, and that the requirements are the least restrictive way to advance that interest. (*Id.* at 241-42).

Under the FHAA, state or local laws that facially discriminate against housing for persons with disabilities, such as ADF housing, is subject to heightened scrutiny. (See e.g., Suffolk, 687 F. Supp.2d at 256; Community House, Inc. of Boise, Idaho, 490 F.3d 1041, 1050 (9th Cir. 2007); Larkin v. State of Michigan Dep't. of Social Services, 89 F.3d 285, 290 (6th Cir. 1996); and Bangerter v. Orem City Corp., 46 F.3d 1491, 1503-1504 (10th Cir. 1995)). Under that standard, the government bears the burden to show with reliable studies or evidence that the law (1) benefits the persons in recovery, or (2) responds to legitimate safety concerns, rather than being based on stereotypes. With respect to both requirements, the law must be the least restrictive means to achieve the government's interest. If a nondiscriminatory alternative exists, the facially discriminatory law is invalid under the FHAA. Applying this standard, federal courts have repeatedly rejected state and local efforts to regulate ADF housing. (See, e.g., Nevada Fair Housing Center, Inc. v. Clark County, NV, 565 F. Supp. 2d 1178 (D. Nev. 2008) (invalidating group home statute imposing spacing requirements and establishing registry of group homes for disabled) and Jeffrey O. v. City of Boca Raton, 511 F. Supp. 2d 1339 (S.D. Fla. 2007) (invalidating local ordinance barring sober homes from residential areas and occupancy limit of three unrelated people in residential area)).

In sum, the FHAA imposes a significant complication to local or state governments seeking to impose licensure, regulatory, registration or certification requirements on ADF Housing. The Commonwealth and BSAS would need to prove with reliable evidence or studies that any proposed mandatory licensure, certification or registration requirement (1) benefits the residents of ADF Housing, or responds to legitimate safety concerns in the community, (2) is narrowly tailored, and (3) that a nondiscriminatory alternative means of achieving those goals is not available.

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B. State Zoning Act

In addition to the FHAA, the Massachusetts Zoning Act (MZA) specifically prohibits local government actions that discriminate against persons with disabilities:

Notwithstanding any general or special law to the contrary, local land use and health and safety laws, regulations, practices, ordinances, by-laws and decisions of a city or town shall not discriminate against a disabled person. Imposition of health and safety laws or land-use requirements on congregate living arrangements among non-related persons with disabilities that are not imposed on families and groups of similar size or other unrelated persons shall constitute discrimination. (MGL c. 40A, §3, ¶4).

The 1959 “Dover Amendment” to the State Zoning Act also exempts nonprofit educational uses from local zoning ordinance or bylaw use restrictions, except for “reasonable regulations” concerning bulk, dimensional and parking requirements. (M.G.L. c. 40A, §3, ¶2). To qualify as an educational use, the “dominant activity” of the use must be educational. (Fitchburg Housing Authority v. Bd. of Zoning Appeals of Fitchburg, 380 Mass. 869, 874 (1980)). ADF housing would not qualify for such an exemption. While treatment programs involve educating individuals, the “dominant activity” of ADF housing is residential, not educational.

ADF Housing may be protected from local land use and health and safety regulations under both paragraphs 2 and 4 of Section 3 the State Zoning Act. (See, e.g., Granada House, Inc. v. City of Boston, 1997 WL 106688 (Mass. Super. Ct.) (interpreting the anti-discrimination language in §3 with reference to the FHAA to invalidate a local zoning requirement prohibiting a residential treatment program from locating in a residential neighborhood)).

C. State and Local Regulation of ADF Housing

ADF Housing may be regulated by local and state government consistent with the FHAA and State Zoning Act. The FHAA and the State Zoning Act allow enforcement of nondiscriminatory regulations concerning bulk, dimensional and parking requirements, and occupancy limits. In addition, ADF Housing is subject to the State Sanitary Code, which provides standards for fitness for human habitation and is enforced by local boards of health. (M.G.L. c. 111, § 127A and 105 CMR 410.000). ADF Housing is subject to the State Building Code (MGL c. 143) and the State Fire Code (M.G.L. c. 148) which are enforced by local building and fire authorities. (See, e.g., Mass. Sober Housing Corporation (MSHC) v. Automatic Sprinkler Appeals Board, 66 Mass. App. Ct. 701, 702 (2006) upholding automatic fire sprinkler system requirement applied to ADF Housing). Finally, state and local law enforcement agencies have the authority and responsibility to enforce criminal law if illegal activity is occurring on or near ADF Housing.

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Therefore, the FHAA and the State Zoning Act impose significant challenges to state and local government efforts to implement licensure, regulatory, registration or certification requirements for ADF Housing that are not required for other types of housing.

D. Regulation of ADF Housing in Other States

A 2009 research report prepared for the Connecticut Legislature⁹ and a recent informal survey of state substance abuse treatment agencies did not identify any state that has adopted a mandatory regulatory, licensure or certification program for ADF Housing. Some states exercise authority through contracts, loans and grants that provide funding for ADF Housing providers or residents. All states regulate substance abuse treatment services, including residential treatment services. As explained above, under the FHAA federal courts have invalidated various local and state efforts to regulate ADF Housing.

IV. Documentation of Complaints or Problems Allegedly Related to the Operation of ADF Housing

As a response to the growing concern of legislators, municipal officials and citizens of communities experiencing a proliferation of ADF Housing, BSAS established a public facing, web-based voluntary listing of ADF Housing operators in January 2008:

<http://www.mass.gov/eohhs/provider/licensing/facilities/residential-facilities/adf-housing-registry/>

The purpose of the listing was threefold:

- Provide a centralized listing with basic information on ADF Housing such as rental costs, residency expectations, ADA accessibility, etc;
- Provide information in a Frequently Asked Questions (FAQ) format regarding the differences between ADF Housing and licensed BSAS treatment programs; and
- Provide a centralized complaint log where complaint allegations concerning ADF Housing operators were investigated and/or triaged by BSAS to the appropriate state or local authorities.

As part of this 2008 effort, BSAS sent a letter to criminal justice officials outlining the differences between BSAS-licensed treatment programs and facilities and ADF Housing, in addition to informing them of the voluntary listing opportunity. Additionally, BSAS encouraged judges and parole and probation officers who routinely refer people to ADF Housing, to refer only to those ADF Housing operators who provided information to BSAS. Although criminal justice officials encouraged ADF Housing operators to provide this information, the overwhelming majority of them did not. In fact, today there are only 10 ADF homes listed on the BSAS website. BSAS believes that the reason for the lack of response from ADF Housing operators is directly related to the fact that there was no incentive or benefit to the operators for voluntary participation.

⁹“Sober Houses,” Office of Legislative Research, Saul Siegel, Chief Analyst, September 2, 2009, available at <http://www.cga.ct.gov/2009/rpt/2009-R-0316.htm>.

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BSAS is aware of the numerous complaints received regarding ADF Housing operators. These complaints have been lodged by residents of ADF Housing, neighbors and municipal officials. The nature of complaints range from nuisance complaints (noise) to more serious complaints regarding substandard housing conditions, alcohol and drug use on the property, and fatal and non-fatal overdoses of residents. Although BSAS has received frequent complaints about ADF Housing, the majority of complaints are in reference to only a few ADF homes relative to the number of homes that exist in the Commonwealth. In other words, there are many complaints about a few homes and no complaints about the vast majority of others.

BSAS has determined that all complaints about ADF homes fall into specific categories and have existing avenues for resolution. For example:

- All nuisance complaints (such as noise), disruptive behavior of residents, and drug use complaints are typically handled by the local police;
- Complaints regarding occupancy and substandard living conditions are typically handled by municipal Building and Fire Departments;
- Complaints regarding unlicensed substance treatment programs are typically handled by the DPH, specifically BSAS;
- Complaints regarding unfair housing practices, including eviction practices, are typically handled in housing court; and
- Complaints regarding unscrupulous ADF Housing operators are typically handled through the Attorney General's Consumer Protection Division within the Consumer Protection and Advocacy Bureau.

In general, it is not possible to comprehensively document or quantify the impact of ADF Housing on residents, neighborhoods and local municipalities for two reasons. First, depending upon the nature of the complaint, the avenue for resolution rests with various local and state agencies. Second, there is no mandated central repository where substantiated complaints are logged⁶.

Although BSAS was able to document egregious complaints related to a few ADF homes, the Department was also able to identify currently existing avenues for resolution of those complaints. Overall, despite the large number of ADF houses in the Commonwealth, there appears to be few major problems that need addressing. This is likely due to the fact that a majority of ADF housing providers routinely comply with all applicable building, safety, zoning and occupancy requirements.

⁶ And for the reasons explained in the legal analysis section of the report, it is unlikely that a state law *requiring* registration of ADF Housing, or tracking of complaints involving ADF Housing, is permissible under the FHAA. (See, e.g., Nevada Fair Housing Center v. Clark County, et al., 565 F. Supp. 2d 1178, 1184 (D. Nev. 2008) (invalidating state statute requiring Nevada Health Division to compile and maintain registry of unlicensed group homes for persons with disabilities, including ADF Housing, under the FHAA))

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V. BSAS Licensure of Substance Abuse Treatment Facilities and Programs

BSAS' existing statutory and regulatory authority is limited to the licensure of alcohol and drug treatment facilities and programs.⁷ BSAS has no authority over housing and therefore does not regulate ADF Housing. However, as the single state authority responsible for substance abuse prevention and treatment, BSAS licenses all substance abuse treatment facilities and programs in the Commonwealth under 105 CMR 164.000, "Licensure of Substance Abuse Treatment Programs." These regulations are divided into two sections; part one of the regulations applies to all levels of care and part two establishes additional requirements depending upon the level of care. Four levels of care are defined in the regulations:

- 1) Acute treatment services that include inpatient and outpatient detoxification programs;
- 2) Outpatient services such as traditional outpatient counseling and day treatment programs;
- 3) Opioid treatment programs such as outpatient methadone programs; and
- 4) Residential rehabilitation which is comprised of:
 - Residential Rehabilitation for Adults;
 - Residential Rehabilitation for Adults with their Families;
 - Residential Rehabilitation for Adolescents; and
 - Residential Rehabilitation for Operating under the Influence Second Offenders.

The residential designations above are largely descriptive and self-explanatory. BSAS licenses residential treatment programs for adults, in male-only, female-only and co-ed settings. These residential treatment programs include short-term Transitional Support Service programs, as well as longer term (6-12 month) residential treatment programs that operate using one of three clinical models: social model, recovery model or therapeutic community model. Additionally, licensure requirements are detailed for residential treatment for adults living with their children up to 18 years old (sometimes referred to as family residential programs), including a specialized family program that serves single men with their children or men with their partner and children, specialized programs for adolescents with substance use disorders, and a 14 day residential program for those individuals who have been convicted a second time for driving under the influence of alcohol or drugs.

Part one of the regulations establishes licensing procedures and requirements applicable to all levels of care. Included under this section are regulations that define minimum standards for such things as governance of a facility/program, required notifications to the Department, finances, non-discrimination and accommodation, written policies and procedures, confidentiality, staffing patterns, training and supervision, required inspections and child safety.

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Part two of the regulations defines additional requirements for specific levels of care. Additional requirements for Residential Rehabilitation in part two are found in 105 CMR 164.000-164.454. The following section of the report will discuss some of the additional regulatory requirements that distinguish residential substance abuse treatment programs from ADF Housing.

In general, residential rehabilitation treatment programs are defined in 105 CMR 164.400 as offering “. . . organized substance abuse treatment and education services featuring a planned program of care in a 24-hour residential setting. Services are provided in permanent facilities where clients reside on a temporary basis . . .” Additionally, services are required to operate 24 hours a day, 7 days per week, 365 days a year. While the regulations require compliance with all applicable building, occupancy, fire, and zoning laws, the focus of the regulations is on ensuring that minimum standards are met regarding the treatment of substance use disorders in residential rehabilitation facilities.

These treatment mandates include among others:

- Establishment of minimum staffing patterns, including qualifications for specially trained staff members in adolescent and family treatment programs and nursing staff in Transitional Support Services and Second Offender programs;
- Specific service requirements for children in family residential programs;
- Specific in-service training for all staff employed by the program focused on treatment of addictive disorders and related corollary issues;
- Initial clinical assessment;
- The provision of ongoing daily clinical services and monitoring to improve the resident’s ability to remain alcohol and substance free;
- The provision of psychiatric consultation, diagnostic and evaluative services;
- Referral to appropriate medical, ongoing psychiatric and gambling treatment services that may not be provided directly by the program;
- Safe storage and administration of medications for general medical, psychiatric and substance abuse conditions;
- Ensuring the facility is kept free of illicit drug and alcohol use; and
- Provision of confidential space for individual and group treatment.

Since ADF Housing operators provide only housing, not treatment, they are not subject to these regulations. However, to the extent that an ADF Housing provider offers or requires residents to participate in a substance abuse treatment program on or off-site, BSAS has authority to require licensure of that treatment program.

VI. What the Commonwealth and Local Governments Can Do to Address Impacts of ADF Housing and Protect the Residents of ADF Housing

- A. The FHAA limits the Commonwealth and BSAS’ authority to implement mandatory licensure, regulation, registration or certification requirements directed specifically at ADF Housing providers and residents.**

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Federal courts have repeatedly rejected state and local efforts to regulate ADF Housing providers and residents. The Commonwealth and BSAS would need to prove with reliable evidence or studies that any proposed mandatory licensure, certification or registration requirement (1) benefits the residents of ADF Housing, or responds to legitimate safety concerns in the community, (2) is narrowly tailored, and (3) that a nondiscriminatory alternative means of achieving those goals is not available. Applying this standard, federal courts have invalidated numerous and wide-ranging state and local government efforts to regulate ADF Housing, including registration, neighborhood notification, site selection, occupancy, and on-site management requirements. It is the Department's opinion that these legal parameters significantly contributed to BSAS' inability to identify any state or local government that has adopted a mandatory regulatory program for privately-funded and operated ADF Housing that has withstood legal challenge under the FHAA

B. Local governments should be encouraged and supported in their use of existing nondiscriminatory legal tools to address legitimate health and safety, building, fire, zoning and criminal impacts of ADF Housing.

ADF Housing is subject to existing state and local laws and regulations applicable to all residential properties. Cities and towns have the legal authority and responsibility to enforce health, safety, zoning, building and fire code, and criminal law requirements applicable to all residential properties, including ADF Housing. Local governments should be encouraged and supported in their use of existing nondiscriminatory legal tools to address impacts of ADF housing, if any. The availability of nondiscriminatory legal tools to address local impacts and to protect residents of ADF Housing suggests that state regulation directed specifically at ADF Housing would be difficult to defend under the FHAA.

C. Residents of ADF Housing should be educated about existing consumer protection and fair housing remedies to assert their rights against unscrupulous operators of ADF Housing.

Residents of ADF Housing – like any tenants – can pursue legal remedies for unsafe or unsanitary living conditions or unfair business practices of ADF Housing providers in housing court or superior court under the state Consumer Protection Act. (M.G.L. c. 93A & 940 CMR 3.17) In addition, residents of ADF Housing can pursue legal remedies under state and federal fair housing laws. (M.G.L. c. 111, § 151B & 804 CMR 02.00).

D. BSAS will continue to investigate and triage complaints related to ADF Housing, including complaints alleging that providers advertise or offer an unlicensed substance abuse treatment program or facility, on or off-site.

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BSAS is the single state authority responsible for substance abuse prevention and treatment. ADF Housing – appropriately – is not licensed, funded or regulated by BSAS because it is housing for people in recovery from substance use, not a substance use treatment program or facility. ADF homes are able to refer residents to BSAS licensed treatment providers, as well as licensed mental health providers, employment agencies and to community medical care. In fact, assisting ADF Housing residents with connection to appropriate community supports for recovery may serve the best interest of some residents.

BSAS has the statutory authority and will continue to investigate allegations about any ADF Housing operator who is allegedly providing treatment services, and require them to immediately cease and desist the activity until such time as BSAS licensure has been obtained. In this case, the entity would no longer be an ADF home, but a licensed BSAS treatment facility/program, subject to all of the requirements of licensure, including providing documented evidence of need for the service in the particular community.

BSAS currently triages to the appropriate state and local authorities all complaints it receives about ADF Housing that are not related to the need for licensure. BSAS plans to continue this function going forward.

- E. With funding, BSAS could implement an expansive and effective voluntary training program for ADF Housing providers. Additionally, the Legislature could consider a legislative mandate that other state agencies such as probation and parole only refer clients to BSAS-trained ADF Housing providers.**

BSAS could establish a voluntary training program for ADF Housing providers building upon the current structure described in Section IV of this report. BSAS would exclude from participation in this voluntary training process ADF Housing operated or funded by federal and state agencies, as those homes already have existing contractual, and in some cases, regulatory requirements as a condition of funding. BSAS would also exclude houses operated as part of the Oxford Model from voluntary certification for similar reasons detailed in Section III of this report.

BSAS proposes a voluntary training program for privately-funded ADF Housing providers with a refresher course to be offered every two years. BSAS would list on its website the ADF Housing providers that have participated in the voluntary training. In order to remain on the list, an ADF Housing provider must continually have someone associated with the home who has received the training. The training program would consist of the provision of the following information:

- federal, state and local laws;
- all relevant local, state and federal laws pertaining to housing for persons with disabilities;
- municipal authorities' contact information for the community where the ADF Housing is located;

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- activities requiring BSAS licensure;
- BSAS website that offers ADF Housing operators the opportunity to provide additional information in a central location about their residency requirements;
- licensed substance abuse treatment programs serving the community where the ADF Housing is located;
- tenants' rights and eviction procedures;
- sample tenancy agreements; and
- "Best Practices" related to being a "good neighbor".

BSAS does not currently have the funding necessary to implement this program and it estimates the minimum annual cost of implementation of such a voluntary training program to be \$242,103 - \$257,625 per year based on the Bureau's very modest estimation that 300 ADF homes exist in Massachusetts that are eligible to participate in this training (see page 7). It is important to note that with the potential implementation of this program and the expected increase in identified eligible homes which would simultaneously occur, the BSAS would see a proportionate increase in costs. A full financial analysis (based on the assumption of 300 homes), including detailed line item costs, are included in Appendix A.

BSAS has learned from experience that voluntary initiatives will not work unless there is a significant incentive for ADF Housing providers to participate. Specifically, the Legislature would have to require that all state agencies and their vendors refer persons exclusively to ADF homes that have obtained training. A significant number of ADF Housing referrals come from state agencies such as the Office of Commissioner of Probation or the Department of Corrections. Making voluntary training a requirement for receiving housing referrals would provide a monetary incentive for ADF Housing operators to participate in the process. If the Legislature were to undertake this action, BSAS suggests there be a minimum of a one-year grace period from the time the law is enacted until the time it will be enforced. During this one-year interim period, BSAS would develop, advertise and deliver the voluntary training curriculum and create the website listing of participants. The advantage of this approach is that it would result in a centralized list of all ADF homes that have completed the training, something BSAS does not have at this time. The training itself should help to provide ADF Housing operators with a clear understanding of the laws they are subject to and present a "best practice" standard in terms of tenant protections and the importance of becoming a part of a community.

VII. Conclusion

The General Court requested that BSAS study the issue of ADF Housing and address the following items:

- Documentation of the number of sober homes operating in the Commonwealth;
- Any problems created by the operation of sober homes, including impacts on neighborhoods and surrounding areas;
- Standards and requirements necessary to protect the home's residents; and
- The feasibility of licensing, regulating, registering or certifying sober homes or operators (Chapter 283, Section 10 of the Acts of 2010).

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BSAS has outlined the difficulties of reliably quantifying the number of ADF homes in the Commonwealth and documenting the real problems and impacts associated with ADF Housing. In both cases, the difficulty lies in the fact that there is no centralized repository for this information. Nevertheless, BSAS outlined a number of strategies it employed to address these questions as comprehensively as possible. Currently, BSAS projects that there are, at a minimum, 300 ADF homes operating in the Commonwealth. This projection excludes those ADF homes that are funded directly with state and federal dollars and homes operated under the umbrella of the Oxford Houses.

BSAS was able to document some problems and complaints associated with a few ADF Housing operators. In all cases, avenues for resolution were already available. BSAS was also able to document some complaints that were successfully resolved by local municipalities by using available legal tools.

Finally, BSAS documented complaints from neighbors anticipating problems due to the proposed siting of an ADF home in the neighborhood. These concerns usually involved fear of increased traffic volume and criminal activity, and plunging home values. BSAS was unable to verify that these anticipated problems materialize in any significant way in neighborhoods where ADF homes exist. Municipalities and neighbors may have general unfounded fears that state and federal laws exempt ADF Housing from all regulation. However, this is not the case. ADF Housing providers and residents are subject to nondiscriminatory enforcement of reasonable health and safety, building, fire, zoning, land use, and criminal laws.

This BSAS study concludes that:

- There would likely be no significant benefit to the residents of ADF Housing through the imposition of mandatory licensure, regulatory, registration or certification requirements. In fact, all relevant standards and protections necessary to protect the residents already exist in housing regulation and in consumer protection laws;
- There are no significant safety concerns in neighborhoods where ADF Housing operators are located; in fact, many ADF Housing go unnoticed by neighbors and municipal officials due to their minimal impact in the community; and
- There are no available nondiscriminatory alternative means for achieving the perceived goals of resident and community safety; in fact, the report's list of typical categories of complaints reflects what those specific alternative means for addressing impacts are.

In light of limitations imposed by the federal Fair Housing Amendments Act (FHAA) on governmental authority to require mandatory licensure, regulation, registration or certification requirements directed specifically at ADF Housing, BSAS has proposed a voluntary training process as an alternative to mandatory regulation. In order for the alternative process to be effective, BSAS recommends that the Legislature require that

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state agencies and their vendors refer individuals only to those ADF homes that have obtained and maintain voluntary training from BSAS. Implementation of the BSAS proposal would require the Legislature to provide funding for the training initiative, estimated at \$242,103.00 - \$257,625.00 per year assuming that there are 300 homes that are eligible to receive training. Additionally, BSAS will continue to investigate and triage complaints concerning ADF homes.

BSAS thanks the General Court for seeking the Department's assistance in understanding the complex array of issues surrounding ADF Housing. This report addresses the questions posed as comprehensively and as objectively as possible, outlining both the legal restrictions related to mandatory regulation of ADF Housing and a proposed alternative voluntary training program. The Department hopes that this report will assist the General Court in determining the best course of action to take in relationship to ADF Housing.

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A BILL FOR AN ACT

RELATING TO GROUP HOMES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. Concerns about group homes have been expressed
2 over the years regarding their location and operations. The
3 Clean and Sober Homes and Halfway Houses Task Force convened by
4 the Director of Health explored ways to develop a plan to ensure
5 that these homes are properly monitored and accountable for
6 meeting occupancy, zoning and permitting requirements.

7 The Clean and Sober Homes and Halfway Houses Task Force
8 was formed in response to legislation introduced in recent
9 Sessions of the Hawaii State Legislature, and in anticipation of
10 the need for housing of probationers and parolees stemming from
11 the enactment of Justice Reinvestment Initiative legislation -
12 Act 139 and Act 140, Session Laws of Hawaii, 2012. These homes,
13 which are located in communities throughout the state, provide
14 housing for those suffering from substance abuse, including those
15 who may have co-occurring mental health issues, as they
16 transition from the treatment setting to life in the community.
17 They also provide a stable living environment for offenders on
18 supervised release who are under the supervision of the

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1 department of public safety, probationers under the supervision
2 of the Judiciary's adult client services branch and parolees
3 under the supervision of the Hawaii paroling authority.

4 Clean and sober homes and halfway houses provide a means for
5 persons to return to the community through support in an alcohol-
6 and drug-free home-like environment without the rigid structure
7 of a therapeutic living program which requires licensure. The
8 support of a home environment fulfills a need for those who are
9 trying to deal with the stressors of reintegrating back into the
10 community while maintaining sobriety. Notwithstanding the needs
11 of those who benefit from these homes, neighboring residents have
12 expressed concerns over the legal operation of such homes in
13 their immediate vicinity and the compliance of these homes with
14 state and county laws.

15 Currently, various types of group homes are defined in
16 subsection 46-4(d), Hawaii Revised Statutes (HRS), relating to
17 county zoning. The subsection includes definitions for terms
18 that are either not used or are defined in other parts of the
19 Hawaii Revised Statutes. In addition, subsection 46-4(e), HRS,
20 requires that a public informational meeting be held before a
21 halfway house, clean and sober home or a drug rehabilitation home
22 is located in a community, in violation of the federal Fair
23 Housing Act.

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1 The purpose of this Act is to ensure that residents of
2 group homes are afforded access to a stable, alcohol- and
3 drug-free home-like living environment in residences that are in
4 compliance with federal, state and county requirements.

5 SECTION 2. Section 46-4, Hawaii Revised Statutes, is
6 amended to read as follows:

7 "**§46-4 County zoning.** (a) This section and any ordinance,
8 rule, or regulation adopted in accordance with this section shall
9 apply to lands not contained within the forest reserve boundaries
10 as established on January 31, 1957, or as subsequently amended.

11 Zoning in all counties shall be accomplished within the
12 framework of a long-range, comprehensive general plan prepared or
13 being prepared to guide the overall future development of the
14 county. Zoning shall be one of the tools available to the county
15 to put the general plan into effect in an orderly manner. Zoning
16 in the counties of Hawaii, Maui, and Kauai means the
17 establishment of districts of such number, shape, and area, and
18 the adoption of regulations for each district to carry out the
19 purposes of this section. In establishing or regulating the
20 districts, full consideration shall be given to all available
21 data as to soil classification and physical use capabilities of
22 the land to allow and encourage the most beneficial use of the
23 land consonant with good zoning practices. The zoning power

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1 granted herein shall be exercised by ordinance which may relate
2 to:

3 (1) The areas within which agriculture, forestry, industry,
4 trade, and business may be conducted;

5 (2) The areas in which residential uses may be regulated or
6 prohibited;

7 (3) The areas bordering natural watercourses, channels, and
8 streams, in which trades or industries, filling or
9 dumping, erection of structures, and the location of
10 buildings may be prohibited or restricted;

11 (4) The areas in which particular uses may be subjected to
12 special restrictions;

13 (5) The location of buildings and structures designed for
14 specific uses and designation of uses for which
15 buildings and structures may not be used or altered;

16 (6) The location, height, bulk, number of stories, and size
17 of buildings and other structures;

18 (7) The location of roads, schools, and recreation areas;

19 (8) Building setback lines and future street lines;

20 (9) The density and distribution of population;

21 (10) The percentage of a lot that may be occupied, size of
22 yards, courts, and other open spaces;

23 (11) Minimum and maximum lot sizes; and

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1 (12) Other regulations the boards or city council find
2 necessary and proper to permit and encourage the
3 orderly development of land resources within their
4 jurisdictions.

5 The council of any county shall prescribe rules,
6 regulations, and administrative procedures and provide personnel
7 it finds necessary to enforce this section and any ordinance
8 enacted in accordance with this section. The ordinances may be
9 enforced by appropriate fines and penalties, civil or criminal,
10 or by court order at the suit of the county or the owner or
11 owners of real estate directly affected by the ordinances.

12 Any civil fine or penalty provided by ordinance under this
13 section may be imposed by the district court, or by the zoning
14 agency after an opportunity for a hearing pursuant to chapter 91.
15 The proceeding shall not be a prerequisite for any injunctive
16 relief ordered by the circuit court.

17 Nothing in this section shall invalidate any zoning
18 ordinance or regulation adopted by any county or other agency of
19 government pursuant to the statutes in effect prior to July 1,
20 1957.

21 The powers granted herein shall be liberally construed in
22 favor of the county exercising them, and in such a manner as to
23 promote the orderly development of each county or city and county

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1 in accordance with a long-range, comprehensive general plan to
2 ensure the greatest benefit for the State as a whole. This
3 section shall not be construed to limit or repeal any powers of
4 any county to achieve these ends through zoning and building
5 regulations, except insofar as forest and water reserve zones are
6 concerned and as provided in subsections (c) and (d).

7 Neither this section nor any ordinance enacted pursuant to
8 this section shall prohibit the continued lawful use of any
9 building or premises for any trade, industrial, residential,
10 agricultural, or other purpose for which the building or premises
11 is used at the time this section or the ordinance takes effect;
12 provided that a zoning ordinance may provide for elimination of
13 nonconforming uses as the uses are discontinued, or for the
14 amortization or phasing out of nonconforming uses or signs over a
15 reasonable period of time in commercial, industrial, resort, and
16 apartment zoned areas only. In no event shall such amortization
17 or phasing out of nonconforming uses apply to any existing
18 building or premises used for residential (single-family or
19 duplex) or agricultural uses. Nothing in this section shall
20 affect or impair the powers and duties of the director of
21 transportation as set forth in chapter 262.

22 (b) Any final order of a zoning agency established under
23 this section may be appealed to the circuit court of the circuit

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1 in which the land in question is found. The appeal shall be in
2 accordance with the Hawaii rules of civil procedure.

3 (c) Each county may adopt reasonable standards to allow the
4 construction of two single-family dwelling units on any lot where
5 a residential dwelling unit is permitted.

6 (d) Neither this section nor any other law, county
7 ordinance, or rule shall prohibit group living in facilities with
8 eight or fewer residents [~~and~~] not related to the home operator
9 or facility staff, for purposes or functions that are licensed,
10 certified, registered, or monitored by the State [~~as provided for~~
11 ~~under section 321-15.6, or in an intermediate care facility for~~
12 ~~individuals with intellectual disabilities in the community for~~
13 ~~persons, including mentally ill, elder, disabled, developmentally~~
14 ~~disabled, or totally disabled persons, who are not related to the~~
15 ~~home operator or facility staff; provided that those~~]. Resident
16 managers or supervisors shall not be included in this residential
17 count. These group living facilities shall meet all applicable
18 county requirements not inconsistent with the intent of this
19 subsection and including building height, setback, maximum lot
20 coverage, parking, and floor area requirements.

21 [~~(e) No permit shall be issued by a county agency for the~~
22 ~~operation of a halfway house, a clean and sober home, or a drug~~
23 ~~rehabilitation home unless a public informational meeting is~~

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1 ~~first held in the affected community. The State shall provide~~
2 ~~notification and access to relevant information, as required,~~
3 ~~under chapter 846E.~~

4 ~~A clean and sober home shall be considered a residential use~~
5 ~~of property and shall be a permitted or conditional use in~~
6 ~~residentially designated zones, including but not limited to~~
7 ~~zones for single-family dwellings.~~

8 ~~(f) For purposes of this section:~~

9 ~~"Clean and sober home" means a house that is operated~~
10 ~~pursuant to a program designed to provide a stable environment of~~
11 ~~clean and sober living conditions to sustain recovery and that is~~
12 ~~shared by unrelated adult persons who:~~

- 13 ~~(1) Are recovering from substance abuse;~~
- 14 ~~(2) Share household expenses; and~~
- 15 ~~(3) Do not require twenty-four-hour supervision,~~
16 ~~rehabilitation, or therapeutic services or care in the~~
17 ~~home or on the premises;~~

18 ~~provided that the home shall meet all applicable laws, codes, and~~
19 ~~rules of the counties and State.~~

20 ~~"Developmentally disabled person" means a person suffering~~
21 ~~from developmental disabilities as defined under section 333F-1.~~

22 ~~"Disabled person" means a person with a disability as~~
23 ~~defined under section 515-2.~~

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1 ~~"Drug rehabilitation home" means:~~

2 ~~(1) A residential treatment facility that provides a~~
3 ~~therapeutic residential program for care, diagnosis,~~
4 ~~treatment, or rehabilitation for socially or~~
5 ~~emotionally distressed persons, mentally ill persons,~~
6 ~~persons suffering from substance abuse, and~~
7 ~~developmentally disabled persons; or~~

8 ~~(2) A supervised living arrangement that provides mental~~
9 ~~health services, substance abuse services, or~~
10 ~~supportive services for individuals or families who do~~
11 ~~not need the structure of a special treatment facility~~
12 ~~and are transitioning to independent living;~~

13 ~~provided that drug rehabilitation homes shall not include~~
14 ~~halfway houses or clean and sober homes.~~

15 ~~"Elder" means an elder as defined under section 356D-1.~~

16 ~~"Halfway house" means a group living facility for people~~
17 ~~who:~~

18 ~~(1) Have been released or are under supervised release from~~
19 ~~a correctional facility;~~

20 ~~(2) Have been released from a mental health treatment~~
21 ~~facility; or~~

22 ~~(3) Are receiving substance abuse or sex offender~~
23 ~~treatment; and~~

APPENDIX C

 .B. NO.

1 ~~are housed to participate in programs that help them~~
2 ~~readjust to living in the community.~~

3 ~~"Intermediate care facility for individuals with~~
4 ~~intellectual disabilities in the community" means an identifiable~~
5 ~~unit providing residence and care for eight or fewer individuals~~
6 ~~with intellectual disabilities. Its primary purpose is the~~
7 ~~provision of health, social, and rehabilitation services to the~~
8 ~~individuals with intellectual disabilities through an~~
9 ~~individually designed active treatment program for each resident.~~
10 ~~No person who is predominantly confined to bed shall be admitted~~
11 ~~as a resident of such a facility.~~

12 ~~"Mental health treatment facility" means a psychiatric~~
13 ~~facility or special treatment facility as defined under section~~
14 ~~334-1.~~

15 ~~"Mentally ill person" has the same meaning as defined under~~
16 ~~section 334-1.~~

17 ~~"Totally disabled person" means a "person totally disabled"~~
18 ~~as defined under section 235-1.~~

19 ~~"Treatment program" means a "substance abuse program" or~~
20 ~~"treatment program", as those terms are defined under section~~
21 ~~353G-2.]~~

22 ~~[(g)]~~ (e) Neither this section nor any other law, county
23 ordinance, or rule shall prohibit the use of land for employee

APPENDIX C

 .B. NO.

1 housing and community buildings in plantation community
2 subdivisions as defined in section 205-4.5(a)(12); in addition,
3 no zoning ordinance shall provide for elimination, amortization,
4 or phasing out of plantation community subdivisions as a
5 nonconforming use."

6 SECTION 3. Statutory material to be repealed is bracketed
7 and stricken. New statutory material is underscored.

8 SECTION 4. This Act shall take effect upon its approval.

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INTRODUCED BY: _____

APPENDIX D

Members' Comments on Report Draft (in the order in which comments were received)

From: Peirson, James H. [mailto:jpeirson@honolulu.gov]
Sent: Monday, December 17, 2012 8:41 AM
To: Yamamoto, Chris Y.
Subject: RE: Reminder: Deadline for Comments on the Report of the Clean and Sober Homes and Halfway Houses Task Force

No comments to add, Chris; just, "Good job!"

Jamie

•••

From: Alan Johnson [mailto:ajohnson@hinamauka.org]
Sent: Monday, December 17, 2012 9:43 AM
To: Yamamoto, Chris Y.
Subject: FW: Reminder: Deadline for Comments on the Report of the Clean and Sober Homes and Halfway Houses Task Force

Hi Chris,

Another point for removing your comment that is a parenthetical note to yourself: (Chris: Wendy and/or Alan Johnson were supposed to add in a DRAFT budget.) is that any budget would depend on who is selected given their operational infrastructure. If a state agency is chosen as indicated, then I would not be in the best position to prepare a budget for them since I am not familiar with their internal operating procedures:

State agencies' support for establishing a registry is conditional: resources for staffing and operating costs to establish and operate the registry must be weighed with other agency priorities. In addition, the cost to operationalize recommendations for establishing a registry and monitoring of homes is subject to the agreed upon elements to be included in the registering and monitoring of homes. (Chris: Wendy and/or Alan Johnson were supposed to add in a DRAFT budget.)

A single entity for the registration of clean and sober homes needs to be designated to operate or contract the registry function. (The registry function will require further discussion as its applicability extends beyond Task Force members' focus on alcohol- and drug-free housing for substance abusers and offenders.)

An final proposed budget necessary to staff and operationalize the registry needs to be developed. Policies, procedures and guidelines for registry operation also need to be developed.

(Please note the typo "budgetnecessary" should be "budget necessary" with a space between.)

Mahalo, Alan

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APPENDIX D

From: Susan Gagorik [mailto:sgagorik@co.hawaii.hi.us]
Sent: Monday, December 17, 2012 11:27 AM
To: Yamamoto, Chris Y.
Cc: Darrow, Jeff; 'Nakayama, Larry'
Subject: FW: Reminder: Deadline for Comments on the Report of the Clean and Sober Homes and Halfway Houses Task Force

Chris,

Just another note: We will continue to work with current language in HRS 46-4, whereby a Clean and Sober Home and Halfway house are not licensed group living facilities, therefore, it is a permitted uses as long as there are not more than 5 unrelated people.

Let us know if you have any questions.
Susan

From: Jeff Darrow [mailto:jdarrow@co.hawaii.hi.us]
Sent: Monday, December 17, 2012 11:03 AM
To: Gagorik, Susan
Subject: RE: Reminder: Deadline for Comments on the Report of the Clean and Sober Homes and Halfway Houses Task Force

Susan,

Might want to mention that the way the HRS reads now, "clean and sober homes" and "community support homes" will be still limited to five persons.

Thanx,

Jeff

From: Susan Gagorik [mailto:sgagorik@co.hawaii.hi.us]
Sent: Monday, December 17, 2012 10:54 AM
To: 'Yamamoto, Chris Y.'
Cc: Darrow, Jeff; 'Nakayama, Larry'
Subject: RE: Reminder: Deadline for Comments on the Report of the Clean and Sober Homes and Halfway Houses Task Force

Hi Chris,

Should further discussions convene to work on a draft bill, we offer the following comments:

- Counties Dept. of Public Works (Building Divisions) should be contacted regarding their building code requirements for Clean and Sober homes with 6-8 unrelated individuals. Does HRS, Section 46-4(d) pre-empt building codes, including ADA requirements? Although, Planning will give the green light, applicants may face roadblocks when it comes to building construction requirements.

APPENDIX D

- Even if the community meeting requirements are removed from HRS, Section 46-4, any Use Permit or Special Permit will require a public hearing.
- When establishing Registry procedures, the State will need to discuss the following:
 - Create a form for securing Zoning Clearance from the Counties
 - Develop a notification procedure for informing counties when an applicant is on the register (so we know which homes are entitled to 8 residents)

Thank you for the opportunity to provide comments.

Susan
Susan K. Suzuki Gagorik
Planning Program Manager - Administrative Permits Division
County of Hawaii Planning Department
101 Pauahi Street, Suite 3
Hilo, Hawaii 96720
Phone: (808) 961-8154
Fax: (808) 961-8742
Website: <http://hawaiicounty.gov/planning>
Downtown Hilo Website: <http://hawaiicounty.gov/pl-edh2025>
<http://ourdowntownhilo.com>

•••

From: Gwen E Murakami [mailto:Gwen.E.Murakami@courts.hawaii.gov]
Sent: Monday, December 17, 2012 12:19 PM
To: Yamamoto, Chris Y.
Cc: Cheryl R Marlow
Subject: Footnote for Clean and Sober Draft

Chris,

Cheryl Marlow is on leave, but asked that I forward this to you for the footnote for the Clean and Sober draft:

"The Judiciary is not a regulatory agency and therefore does not have the expertise and/or resources to provide oversight for such a directory. In addition, the Judiciary does not contract with or provide referrals to clean and sober housing entities."

If you have any questions, please call me at 539-4574.

Thank you,
Gwen Murakami

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From: Balcom, Steven
Sent: Monday, December 17, 2012 12:34 PM
To: Yamamoto, Chris Y.; andrea.j.armitage@hawaii.gov; dcua@kauai.gov;

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jdudoit@mokainc.org; dudoitjb@yahoo.com; senespero@capitol.hawaii.gov;
sgagorik@co.hawaii.hi.us; Haag, Nancy A.; Alan Johnson (ajohnson@hinamauka.org);
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lorraine@reawakeningforwomen.org; aaron.shinmoto@mauicounty.gov
Cc: Michelle.E.Nakata@hawaii.gov; 'uesugi@capitol.hawaii.gov'; jdarrow@co.hawaii.hi.us;
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kanuib@ihs-hawaii.org; talia@reawakeningforwomen.org; francis.cerizo@mauicounty.gov;
Carolyn Cortez (Carolyn.Cortez@co.maui.hi.us); sentokuda@capitol.hawaii.gov;
e.conner@capitol.hawaii.gov; repjordan@capitol.hawaii.gov
Subject: RE: Reminder: Deadline for Comments on the Report of the Clean and Sober Homes
and Halfway Houses Task Force

Please note and consider the following:

On page 1, approximately halfway through the last paragraph a statement begins, "These homes, which are located in communities throughout the state..." and then includes both substance abuse and mental health clients in the population of focus. This may be somewhat misleading and confuses separate processes and inventories of beds that are specifically set aside for mental health consumers and which have not been a part of this discussion. While it is true that occupants of Clean and Sober Homes may also have a mental health diagnosis that has not been the focus of concern for this committee. I would recommend amending the sentence to read, "These homes, which are located in communities throughout the state, provide housing for substance abuse clients, including those who may have co-occurring mental health issues, as they transition from the treatment setting..."

On page 8, under Department of Health – Adult Mental Health Division (AMHD)

...the second bullet point indicates, "Approximately 700 beds at all levels are needed statewide." In fact AMHD has a current inventory of approximately 700 beds statewide. I suspect the need for beds is far greater than what we currently have in our inventory but that number has not been quantified yet. Also, a careful review of our inventory would reveal more shortage areas than just the North Shore of Oahu. I would recommend changing this bullet point to simply read, "AMHD currently provides approximately 700 beds for housing at various levels of support."

...the fourth bullet point states that, "Most residents do not stay in supportive housing/group homes for a period of more than six months." In fact the length of stay on average is much higher than that; one of the reasons that there are not sufficient vacancies to help move people out of higher levels of care into the community. The *target* length of stay for 24-hour Group Homes is 6 months, a target that is rarely hit. The *target* length of stay for 8-16 hour group Homes is up to 2 years. I would recommend deleting this bullet point altogether.

On page 18 correct the typo "pre-trail" status under the definition of Community Support home; should read "pre-trial"

On page 28 under the heading "Issues needing further discussion and deliberation" correct the typo "An final proposed..." should read "A final proposed..." and insert space between 'budget'

APPENDIX D

and 'necessary'

I did not review the appendixes.

Steve

Steven Balcom, MA
AMHD Crisis/Residential Services Coordinator
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steven.balcom@doh.hawaii.gov

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