

Florida Model?

The confusing issues around combining outpatient treatment and sober/transitional living

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Disclaimer

- **General discussion, not specific legal advice**
- **No Attorney-Client relationship by listening**
- **Seek legal counsel in applicable jurisdiction**

Overview of Presentation

- Understanding the Florida Model
- Overview of issues
- California approach to licensing
- Florida approach to licensing
- Questionable business models
- Questions Ahead

Defining Florida Model

- (Unlicensed) Residential setting
 - Sober Living
 - Transitional Living
 - Extended Care
- Outpatient program
 - Partial hospitalization program (PHP)
 - Day programs
 - Intensive outpatient program (IOP)
 - Outpatient programs (OP)
- Program has more flexibility to step down from more intense, structured programming over time to less structured as participants/patients progress

Assessing Florida Model: 3 different questions

- Clinical assessment:
 - Standards, e.g. NARR
 - Is it effective?
 - Is it supported by evidence-based outcomes?
- Licensing:
 - Is it legal?
 - Does the jurisdiction allow the combination?
 - What licensure is required for the distinct elements?
- Reimbursement:
 - What elements are paid for health plans?
 - What are the requirements for coverage?

Historical approach: FHA/ADA federal protection for unlicensed residences of 6 or fewer

- Extensive federal law that 6 or fewer residents with a disability cannot be subjected to any legal requirements that is not applied to other families or individuals living in single family residences—illegality of disparate treatment of disabled individuals
- Florida model rationale: If the unlicensed residential component is legally protected, then it's just a matter of meeting requirements for outpatient, right?

California Licensing Model

- **Licensed Residential Treatment Facilities:** DHCS licenses 24-hour, adult residential, non-medical alcohol and/or other drug recovery and treatment facilities that provide treatment services (*i.e.*, non-medical detox, group, individual or educational sessions, recovery/treatment planning, other individualized services.)
- **Outpatient:** Certification by DHCS or Accreditation by CARF/Joint Commission is optional (but demanded by payors)

California Approach to Unlicensed Residence

- **Unlicensed Residences:** Unlicensed residences known as sober living, transitional housing, or extended care facilities that provide substance-free housing and living arrangements
 - Limited to “hotel” services and “house meetings”
 - No treatment services are allowed
 - No insurance reimbursable services are provided

Florida Licensure Model

- DCF licensed model: Day Night Treatment with Community Housing
 - Outpatient model is licensed. Housing is at least approved by DCF or Licensed Congregate Care Facility. See FAR 65(D)30.
 - Separate site housing and services with same population requires a license.
 - Florida objects to unlicensed or unaccredited sober living or recovery residences opening IOP programs, Labs, or those residences sending clients to IOP programs and being paid to do so or having their rent paid. But unlicensed Outpatient programs is not an issue.
 - Avoided because of residential expense
 - Common separation – different operators and different populations
- New Florida regulations – covering all residential

Reality: Many sober living residences are doing much more than providing residential services.

- FHA/ADA protections are for residential living (bed and meals).
- What happens when the residence imposes limitations, such as taking away smartphones, limiting personal freedom in the name of structured recovery?
- What about medication management? UDT? Physician/therapist involvement?
- When is the residence in sober living more than just a residence?

Big question: What are the linkages with the program services provided?

- NARR definitions: Self-directed, outside lives
 - Level 1 Recovery Residence
 - Level 2 Recovery Residence
 - Level 3 + 4 Residences
- When does a resident's outside life involve treatment services?

New issues: marketing and coordination

- Marketing the services
- Sober Living referral relationships
- Who covers the cost of sober living? What does the client think they are buying?

California-specific problems with Florida model

Because California does not require outpatient to be licensed (certification is optional), using the “Florida model” is sometimes perceived by the State as a circumvention of licensure.

Title 9 of the Cal. Code of Regulations, Section 10508, Licensure of Integral Facilities – Certification standards define an “integral facility”:

(a) The licensee may provide housing and alcoholism or drug abuse recovery or treatment services in the same building or the licensee may house residents in one building and provide services in another building, provided that all of the buildings are:

- (1) Integral components of the same facility,
- (2) Under the control and management of the same licensee, and
- (3) Licensed as a single facility.

(b) Multiple facility programs which do not meet the criteria of Subsection (a) of this regulation shall secure independent licenses for each separate facility in accordance with the requirements of this chapter.

Gray areas of Florida model in California

- Marketing focus
- Interrelationship of Business Entities – no formal law or regulation
- Difference between unlicensed residence and outpatient alone, as opposed to a multi-setting treatment offering with licensed and step-down options

Legislative Frameworks

AB 2255

- 2015: Florida and Massachusetts established voluntary certification processes for recovery residences that take effect in July 2016
- AB2255 would add the same optional certification standards for “drug and alcohol free residences”:
 - a sober “lifestyle” for all residents, including live-in managers, operators, or owners;
 - active participation by residents in “legitimate programs of recovery from substance use disorder” (e.g., AA/NA);
 - when available and referred, continued use by residents of ongoing outpatient treatment, aftercare, or other recovery maintenance services “in accordance with a clinically managed system of care if one exists for the resident”; and
 - a zero tolerance policy towards “consumption or possession of alcohol or controlled substances being used in any manner not consistent with a documented prescription” by owners, managers, operators, and residents.

AB 2255 Continued

- AB 2255 would also require:
 - Mandatory “good neighbor polic[ies] to address neighborhood concerns and complaints”
 - Mandatory policies on relapse, eviction, and emergency planning
 - DHCS online registry of sober living certification status and disciplinary record
- AB 2255 does not include state certification – delegated to an approved certifying organization, which in turn would set up establish an application process, certification standards (including annual inspections), and a disciplinary process for investigations and enforcement actions

Local Solutions: SB 1283 Fails ...

- SB 1283 model: authorize cities and counties to regulate “structured sober living homes” via mandatory registration
 - *property* owner’s name, address, and contact telephone number, or, if leased, a copy of the lease including statement that the property will be used as a structured sober living home.
 - In-home supervision requirements during all hours of operation.
 - establishment and maintenance of an operation plan that facilitates the rehabilitative process, including discharge planning, and that addresses maintenance of the property and noise abatement consistent with local ordinances.
 - health and safety standards and enforcement mechanisms
- SB 1283 failed to pass in the Senate Health Committee and appears to be dead in this legislative session

Local Regulations Proliferate

- Cities experimenting with additional economic and non-economic restrictions:
 - Registration/certification requirements
 - Ownership disclosures
 - Density restrictions
 - Operational requirements: insurance, posting rules and regulations, operational plans, policies and procedures, including discharge planning, property maintenance, and noise abatement
 - Filing reports
 - “Transient taxes”
 - 24/7 in-home supervision requirements
 - Resident active participation in recovery programs during their stay

Concluding Thoughts

- Further clarification from the State of California is necessary
- Licensure of outpatient programs would be an improvement
- Local ordinances make operation more complicated
- Best strategy is driven by therapeutic model that encompasses residential

Questions?



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