SPONSOR: Rep. Harris & Rep. Longhurst & Sen. Pinkney & Sen. Lockman
Reps. Baumbach, Bush, K. Williams; Sens. Buckson, Hansen, S. McBride

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE SUBSTITUTE NO. 1
FOR
HOUSE BILL NO. 114

AN ACT TO AMEND TITLES 16 AND 25 OF THE DELAWARE CODE RELATING TO RECOVERY HOUSING.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Chapter 22A of Title 16 by making deletions as shown by strike through and insertions as shown by underline as follows:

CHAPTER 22A. RECOVERY HOUSING

§ 2201A. Definitions.

As used in this chapter:

(1) "Applicant" means any individual, organization, or entity applying for certification of a recovery house.

(2) "Certified recovery house" means a recovery house certified by the certifying organization.

(3) "Certifying organization" means an organization under contract with or otherwise designated by the Division to certify recovery houses under this chapter.

(4) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(5) "Division" means the Division of Substance Abuse and Mental Health.

(6) "Fund" means the Certified Recovery House Fund established under § 2216A of this title.

(7) "Operator" means the owner or lessee of a recovery house.

(8) "Oxford House" means a recovery house chartered by Oxford House, Inc.

(9) "Recovery house" means a house for individuals recovering from substance use disorders that provides a safe and supportive substance-free environment, which may include peer support and other recovery support services.

(10) "Registry" means the list of certified recovery houses the certifying organization maintains.

(11) "Resident" means an individual who resides in a recovery house.

(12) "Substance-free" means free from alcohol, marijuana, illicit drugs, and the illicit use of prescribed drugs.

(13) "Substance use disorder" means a pattern of use of alcohol or other drugs leading to impairment that meets the applicable diagnostic criteria delineated in the most recent edition of the Diagnostic and Statistical Manual of Disorders of the American Psychiatric Association.

§ 2202A. Certifying organizations; standards; regulations; application system; training and technical assistance.

1. The Division shall do all of the following:

(1) Authorize and contract with a certifying organization to establish and administer a voluntary certification program for recovery houses and a training program for operators.

(2) Adopt nationally recognized standards for the certifying organization.

(3) Adopt nationally recognized standards for the operation of recovery houses.

(4) Promulgate regulations and establish processes and requirements as necessary to implement this chapter.

(b) Subject to the Division's approval, the certifying organization shall establish processes and requirements related to all of the following:

(1) Certification and required 2-year renewal applications.

(2) Admission agreements including termination and relapse policies.

(3) Inspecting recovery houses.

(4) Reporting, receiving, investigating, and resolving complaints.

(5) Confidentiality.

(6) Data collection and reporting related to residents including all of the following:

a. Demographics.

b. Length of stay.

c. Length of time substance free.

d. Employment history.

e. Criminal history.

f. Community network.

g. Destination upon vacating certified recovery house.

h. Any other criteria as required by the Division.

(7) Maintaining the online registry established under § 2204A of this title.

(8) Suspending or revoking a certification.

(9) Total number of approved and denied certifications.

(10) Appeals.

(11) Establish, operate, and maintain an online system enabling operators to submit applications, upload supporting documentation, pay fees, and report data.

(12) Develop and provide training and technical assistance programs for recovery houses.

§ 2203A. Fees.

(a) Subject to the Division's approval the certifying organization may impose a standardized fee on an operator for any of the following purposes:

(1) Issuing or renewing a certification.

(2) Inspecting a recovery house.

(b) The Division shall set the maximum fee the certifying organization may impose in regulation. The maximum fee must approximate and reasonably reflect the costs necessary to defray the certifying organization's expenses.

(c) An operator shall pay fees imposed under this section to the certifying organization.

§ 2204A. Online Registry.

(a) The certifying organization shall publish and maintain a registry. The registry must include the following information concerning every certified recovery house:

(1) Contact information including the operator's telephone number.

(2) Locality.

(3) The total number of beds available by demographic category.

(b) The certifying organization shall update the registry at least monthly.

(c) The certifying organization must limit the access to the addresses of recovery houses to the Division and other persons authorized by the Division with a bona fide need for access.

(d) The certifying organization shall disseminate the registry electronically to any of the following entities that refer individuals to recovery housing:

(1) State agencies, including the Department of Corrections.

(2) State contracted vendors.

(3) State courts, including drug courts.

§ 2205A. Zoning.

(a) Notwithstanding provisions under Title 9 or Title 22, or any other law, ordinance, or rule to the contrary, a zoning ordinance adopted by a county or municipality must construe a certified recovery house to be a permitted single-family residential use of a property and accord the house the rights and responsibilities of a single-family residence.

(b) Except for restrictions, prohibitions, or other provisions applicable to residential uses in similar structures in the same zoning district occupied by a single family, a county or municipality must not subject a certified recovery house to a restriction, prohibition, or other provision.

§ 2206A. Certified recovery housing admission agreements; termination.

(a) A certified recovery house's admission agreement must include the house's termination and relapse policies.

(b) An individual must agree to the terms of a certified recovery house's admission agreement and sign the agreement before residing there.

(c) Except if a resident refuses, whenever a certified recovery house terminates the resident's admission agreement, the house shall make a reasonable effort to connect the resident with appropriate services.

§ 2207A. Records.

(a) Records related to a resident maintained under this chapter are not public records as defined in Chapter 100 of Title 29.

(b) Records related to a certified recovery house, or the certifying organization maintained under this chapter, are not public records as defined in Chapter 100 of Title 29.

§ 2208A. Limitations on referrals.

(a) Except as otherwise provided under subsection (b) of this section, a State agency, State court, or an entity having a contract with the State must not refer an individual to a recovery house.

(b) An agency, court, or entity may refer an individual to a recovery house whenever any of the following conditions exist:

(1) The recovery house is certified under this chapter or is an Oxford House.

(2) The agency, court, or entity receives confirmation from the certifying organization that the recovery house has applied for certification.

(c) Whenever an agency, court, or entity refers an individual under paragraph (b)(2) of this section, the agency, court, or entity shall inform the certifying organization.

(d) Whenever an agency, court, or entity cannot refer an individual requiring recovery housing, under subsection (b) of this section, the agency, court, or entity shall refer the individual to housing that does not endanger the individual's health, recovery, or safety.

§ 2209A. Data collection; environmental scan and needs assessment.

(a) The Division must require certified recovery house operators to collect and report data to assess the effectiveness of recovery houses.

(b) Subject to subsection (c) of this section, the Division shall conduct an environmental scan and needs assessment study to determine the State's recovery housing needs and the availability and distribution of recovery houses to meet the State's needs.

(c) The Division shall conduct an initial study under subsection (b) of this section within 1 year of this chapter's enactment. After the initial study, the Division shall conduct a study at least once every 3 years.

§ 2210A. Annual report.

(a) The Division shall analyze data collected under this chapter and issue a report at least annually.

(b) The Division shall provide a copy of the report issued under subsection (a) of this section to all of the following:

(1) The Governor.

(2) The Secretary of the Department of Health and Social Services.

(3) The Director of the Delaware Housing Authority.

(4) The Chairs of the Senate Health and Social Services Committee and Senate Housing and Land Use Committee.

(5) The Chairs of the House Health and Human Development Committee and House Housing Committee.

(6) The Director and Librarian of the Division of Research of Legislative Council.

(7) The Delaware Public Archives.

(8) The Behavioral Health Consortium.

§ 2211A. Immunity.

(a) Except as otherwise provided under subsection (b) of this section, a person who makes a complaint under the chapter in good faith is not liable in a civil or criminal action because of the complaint.

(b) Subsection (a) of this section does not apply to a person engaging in a violation of federal, state, or local law, or regulation.

§ 2212A. Prohibition against retaliation.

It is unlawful to knowingly retaliate against a person who makes a complaint under this chapter. Violation of this subsection is a civil violation subject to a minimum fine of $1,000 and a maximum fine of $5,000.

§ 2213A. Misrepresentation of certification.

(a) Unless certified under this chapter, it is unlawful for an operator to advertise, imply, or represent that a recovery house is certified. Violation of this subsection is a civil violation punishable by a fine of no more than $ 20,000.

No fine will be assessed if an operator is actively remedying a violation. For the purposes of this subsection, each day a violation occurs is a separate violation.

(b) Whenever a court determines the amount of a fine assessed under subsection (a) of this section, the court shall consider the operator's history of violations.

§ 2214A. Access to funding.

(a) Except for certified recovery houses, Oxford Houses, or recovery houses authorized by the Division, it is unlawful for a recovery house to accept state or local funding. Violation of this subsection is a civil violation punishable by a fine of no more than twice the amount of funding accepted in violation of this subsection.

(b) Whenever a court determines the amount of a fine assessed under subsection (a) of this section, the court shall consider the operator's history of violations.

§ 2215A. Disposition of money collected from fines and penalties.

Whenever a court assesses a fine or penalty on a defendant for a violation of this chapter, after collecting the fine, the fine must be transmitted to the prothonotary or clerk of court and credited to the Fund.

§ 2216A. Certified Recovery House Fund.

(a) A special fund, known as the "Certified Recovery House Fund," is created to support the implementation of this chapter.

(b) The following receipts shall be credited to the Fund:

(1) Money received under § 2215A of this title.

(2) Grants, gifts, and other money intended for the Fund.

(3) Money appropriated or transferred to the Fund by the General Assembly.

(c) The State Treasurer shall invest the Fund consistent with the investment policies established by the Cash Management Policy Board and credit interest to the Fund monthly consistent with the rate established by the Cash Management Policy Board.

(d) Money in the Fund at the end of a State fiscal year carries forward and shall not revert to the General Fund unless so required by a subsequent Act of the General Assembly.

§ 2217A. Disbursements from the Fund.

(a) No disbursements from the Fund shall be made unless authorized by the Director.

(b) Disbursements from the Fund are permitted only for the following authorized uses:

(1) To provide training and technical assistance for recovery residence operators and staff.

(2) To offset reasonable administrative expenses associated with implementing and effectuating the intent of this Act.

(3) Any other use approved by the Division.

(c) The requirements under Chapter 69 of Title 29 are waived for disbursements made from the Fund.

Section 2. Amend Chapter 51, Title 25 by making deletions as shown by strike through and insertions as shown by underline and by redesignating accordingly:

§ 5102. Exclusions from application of this Code.

The following arrangements are not intended to be governed by this Code, unless created solely to avoid such application:

(6) A certified recovery residence as defined in § 2201A of Title 16.

Section 3. This Act takes effect upon enactment and is implemented eighteen months from the date of enactment.

Section 4. This Act shall be known as the "Matthew D. Klosowski Act".

SYNOPSIS

Substance use disorder constitutes a severe threat to the health and welfare of the citizens of Delaware. Recovery residences address the needs of individuals in recovery from substance use disorder by providing a safe and healthy living environment and a community of supportive recovering peers to which residents are accountable. Recovery residences support the recovery of individuals with substance use disorder and help prevent relapse, criminal justice system involvement, and overdose. Ensuring the certification of recovery residences according to nationally recognized evidence-based standards protects residents and communities from the harm caused by poorly managed or fraudulent recovery residences.

This Act institutes a voluntary certification process for recovery residences under standards and procedures that uphold evidence-based best practices and support a safe, healthy, and effective recovery environment. This Act establishes residents' rights of a recovery residence and protects residents against unreasonable and unfair practices in setting and collecting fees and other residence payments. This Act provides training and technical assistance for recovery residence operators and staff. This Act enables the data collection needed to study the effectiveness of Delaware's recovery residences. This Act also excludes a certified recovery house admission agreement from the provisions of the Landlord-Tenant Code.