



REPORT TO LAW & LEGISLATION COMMITTEE City of Sacramento

915 I Street, Sacramento, CA 95814-2671

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Consent
June 5, 2007

Honorable Members of the
Law and Legislation Committee

**Title: Legislative Position: Support SB 992 Relating to Adult Recovery
Maintenance Facilities and Support AB 724 Relating to Sober Living Homes**

Location/Council District: Citywide

Recommendation: Staff recommends that the Law and Legislation Committee adopt a support position on SB 992 and AB 724.

Contact: Yvette Rincon, Legislative Analyst, (916) 808-5827

Presenters: Yvette Rincon

Department: City Manager's Office

Division: Governmental Affairs

Organization No: 0310

Description/Analysis

Issue: Councilmember Pannell requested that staff bring forward SB 992 and AB 724 for the Committee's consideration.

SB 992 would create a new class of alcohol and drug recovery facilities known as "Adult Maintenance Recovery Facilities" (ARMFs) to be licensed by the Department of Alcohol and Drug Programs (ADP). Under existing law, ADP licenses "Treatment and Recovery" facilities and this bill would include ARMFs as facilities that are licensed. Additionally, SB 992 would eliminate the prohibition against levying licensing fees for licensure of nonprofit organizations or local governmental entities, with respect to fees for licensure of an alcoholism or drug abuse recovery or treatment facility or an adult recovery maintenance facility.

SB 992 requires ADP to license ARMFs and applies existing recovery and treatment facility licensing requirements to ARMFS, including the application process and procedures for dealing with violations. This bill defines an ARMF as a facility that provides alcohol- or drug-free housing whose rules, peer-led

groups, staff activities, or other structured operations are directed toward maintenance of sobriety for adults in early recovery from substance abuse.

The bill requires ADP to develop regulations for licensing ARMFs no later than January 1, 2010. This bill requires ARMFs to provide specified recovery maintenance services, including after care, referral to community resources, referral to offsite treatment services, documentation on process, and participation in self-help groups. The bill also allows ARMFs to require or provide drug and alcohol testing. This bill, after January 1, 2010, would prohibit referral by a court, probation or parole officer or other service entity of any person to an ARMF or recovery or treatment facility that is not licensed. Finally this bill would establish the Residential and Outpatient Programs Compliance Branch Licensing and Certification Trust Fund in the State Treasury to be used exclusively to cover administration costs of licensing and certifying the process established by this bill.

AB 724 would create a definition of "sober living home" in order to clarify a local government's authority to regulate the use and occupancy of a single-family residence location in a single family residential zone that is not a sober living home or other licensed facility. This bill will place a valid definition for the term sober living home as well as requirements that must be followed which local governments can rely on to determine the scope of local regulation applicable to use.

Policy Considerations: SB 992 provides quality assurance and accountability for programs that already exist in the continuum of services available for people who are in the process of recovering from drug or alcohol dependency. Licensing these facilities will provide accountability to ADP for the operation of these facilities and thereby build public trust and confidence in our communities with such facilities.

AB 724 provides local governments with the tool they need to distinguish between a legitimate sober living home and an illegitimate one. Often times, owners or operators will falsely claim to be operating a sober living home to avoid local regulation. Most of these properties present substandard conditions and can thereby avoid local regulation by claiming to be a sober living home.

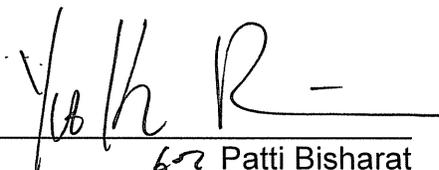
Environmental Considerations: None.

Committee/Commission Action: None.

Rationale for Recommendation:

Financial Considerations: SB 992 and AB 724 present no fiscal impact on the City.

Emerging Small Business Development (ESBD): None

Approved by: 
for Patti Bisharat
Director of Governmental Affairs

Recommendation Approved:

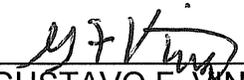

GUSTAVO F. VINA
Assistant City Manager

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Attachment 1

June 5, 2007

The Honorable Patricia Wiggins
California State Senate
State Capitol, Room 4081
Sacramento, California 95814
ATTN: Legislative Director

Subject: Support SB 992 Substance Abuse: Adult Recovery Maintenance Facilities

Dear Senator Wiggins,

On behalf of the City of Sacramento, I am pleased to write in support of SB 992. SB 992 would create a new class of alcohol and drug recovery facilities known as "Adult Maintenance Recovery Facilities" (ARMFs) to be licensed by the Department of Alcohol and Drug Programs (ADP). It requires ADP to license ARMFs and applies existing recovery and treatment facility licensing requirements to ARMFs, including the application process and procedures for dealing with violations.

SB 992 provides quality assurance and accountability for programs that already exist in the continuum of services available for people who are in the process of recovering from drug or alcohol dependency. Licensing these facilities will provide accountability to ADP for the operation of these facilities and thereby build public trust and confidence in our communities with such facilities.

Thank you for introducing this important legislation.

Sincerely,

SANDY SHEEDY, Chair
Law and Legislation Committee

cc: Senator Darrell Steinberg
Senator Dave Cox
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates

Attachment 2

June 5, 2007

The Honorable John J. Benoit
California State Assembly
State Capitol, Room 4144
Sacramento, California 95814
ATTN: Legislative Director

Subject: Support AB 724 Sober Living Homes

Dear Assembly Member Benoit:

On behalf of the City of Sacramento, I am pleased to write in support of AB 724. AB 724 would create a definition of "sober living home" in order to clarify a local government's authority to regulate the use and occupancy of a single-family residence location in a single family residential zone that is not a sober living home or other licensed facility. This bill will place a valid definition for the term sober living home as well as requirements that must be followed which local governments can rely on to determine the scope of local regulation applicable to use.

AB 724 provides local governments with the tool they need to distinguish between a legitimate sober living home and an illegitimate one. Often times, owners or operators will falsely claim to be operating a sober living home to avoid local regulation. Most of these properties present substandard conditions and can thereby avoid local regulation by claiming to be a sober living home.

Thank you for introducing this important legislation.

Sincerely,

SANDY SHEEDY, Chair
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cc: Senator Darrell Steinberg
Senator Dave Cox
Assembly Member Dave Jones
Assembly Member Alan Nakanishi
Assembly Member Roger Niello
Mayor Fargo and Members of the City Council
David Jones, Emanuels and Jones and Associates

AMENDED IN SENATE MAY 2, 2007

AMENDED IN SENATE APRIL 11, 2007

SENATE BILL

No. 992

Introduced by Senator Wiggins

(Coauthors: Assembly Members Karnette and Strickland)

February 23, 2007

An act to amend Sections 11831.5, 11834.01, 11834.02, 11834.09, 11834.10, 11834.15, 11834.17, 11834.18, 11834.20, 11834.21, 11834.22, 11834.23, 11834.24, 11834.25, 11834.26, 11834.30, 11834.31, 11834.32, 11834.36, and 11834.50 of, to add Section 11834.11 to, and to repeal and add Section 11834.16 of, the Health and Safety Code, relating to substance abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 992, as amended, Wiggins. Substance abuse: adult recovery maintenance facilities.

Existing law provides for the licensure, certification, and regulation of alcoholism or drug abuse recovery or treatment facilities serving adults, administered by the State Department of Alcohol and Drug Programs. Existing law requires the department to grant certification to any alcoholism or drug abuse recovery or treatment program requesting the certification. Existing law prohibits the department from levying a fee for certification of nonprofit organizations or local governmental entities under these provisions.

This bill would require the department to also administer the licensure; ~~certification~~; and regulation of adult recovery maintenance facilities, as defined. This bill would delete the prohibition against levying fees for certification of nonprofit organizations or local governmental entities.

Existing law requires the department to calculate and establish a fee for initial licensure, and for extension of the period of licensure, of an alcoholism or drug abuse recovery or treatment facility. Existing law also prohibits fees from being levied for licensure of nonprofit organizations or local governmental entities.

This bill would eliminate the prohibition against levying licensing fees for licensure of nonprofit organizations or local governmental entities, with respect to fees for licensure of an alcoholism or drug abuse recovery or treatment facility or an adult recovery maintenance facility.

This bill would establish the Residential and Outpatient Programs Compliance Branch Licensing and Certification Trust Fund in the State Treasury. The bill would require the trust fund, upon appropriation by the Legislature, to be used exclusively to cover administrative costs of the licensing and certification process services established by the bill.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11831.5 of the Health and Safety Code
2 is amended to read:

3 11831.5. (a) Certification shall be granted by the department
4 pursuant to this section to any qualified alcoholism or drug abuse
5 recovery or treatment program, regardless of the source of the
6 program's funding, upon approval of a completed application and
7 payment of the required fee. The certification shall be valid for a
8 period of not more than two years. The department may extend
9 the certification period upon receipt of an application for renewal
10 and payment of the required certification fee prior to the expiration
11 date of the certification.

12 (b) The purposes of certification under this section shall be all
13 of the following:

14 (1) To identify programs that exceed minimal levels of service
15 quality, are in substantial compliance with the department's
16 standards, and merit the confidence of the public, third-party
17 payers, and county alcohol and drug programs.

18 (2) To encourage programs to meet their stated goals and
19 objectives.

1 (3) To encourage programs to strive for increased quality of
2 service through recognition by the state and by peer programs in
3 the alcoholism and drug field.

4 (4) To assist programs to identify their needs for technical
5 assistance, training, and program improvements.

6 (c) Certification may be granted under this section on the basis
7 of evidence satisfactory to the department that the requesting
8 alcoholism or drug abuse recovery or treatment program has an
9 accreditation by a statewide or national alcohol or drug program
10 accrediting body. The accrediting body shall provide accreditation
11 that meets or exceeds the department's standards and is recognized
12 by the department.

13 (d) Certification, or the lack thereof, shall not convey any
14 approval or disapproval by the department, but shall be for
15 information purposes only.

16 (e) The standards developed pursuant to Section 11830 and the
17 certification under this section shall satisfy the requirements of
18 Section 1463.16 of the Penal Code.

19 (f) The department and the State Department of Social Services
20 shall enter into an interagency agreement to establish a process by
21 which the Department of Alcohol and Drug Programs can certify
22 residential facilities or programs serving primarily adolescents, as
23 defined in paragraph (1) of subdivision (a) of Section 1502, that
24 provide alcoholism and drug abuse recovery or treatment services.

25 (g) Regulations adopted by the department pursuant to this
26 section shall be adopted as emergency regulations in accordance
27 with Chapter 3.5 (commencing with Section 11340) of Part 1 of
28 Division 3 of Title 2 of the Government Code, and for the purposes
29 of that chapter, including Section 11349.6 of the Government
30 Code, the adoption of these regulations is an emergency and shall
31 be considered by the Office of Administrative Law as necessary
32 for the immediate preservation of the public peace, health and
33 safety, and general welfare. Notwithstanding Chapter 3.5
34 (commencing with Section 11340) of Part 1 of Division 3 of Title
35 2 of the Government Code, including subdivision (e) of Section
36 11346.1 of the Government Code, any emergency regulations
37 adopted pursuant to this section shall be filed with, but not be
38 repealed by, the Office of Administrative Law and shall remain
39 in effect until revised by the department. Nothing in this
40 subdivision shall be interpreted to prohibit the department from

1 adopting subsequent amendments on a nonemergency basis or as
2 emergency regulations in accordance with the standards set forth
3 in Section 11346.1 of the Government Code.

4 SEC. 2. Section 11834.01 of the Health and Safety Code is
5 amended to read:

6 11834.01. (a) The department has the sole authority in state
7 government to license adult alcoholism or drug abuse recovery or
8 treatment facilities and adult recovery maintenance facilities.

9 (b) In administering this chapter, the department shall issue new
10 licenses for a period of two years to those programs that meet the
11 criteria for licensure set forth in Section 11834.03, ~~and the criteria~~
12 ~~for certification set forth in Chapter 7 (commencing with Section~~
13 ~~11830).~~

14 (c) Onsite program visits for compliance shall be conducted at
15 least once during each licensure ~~or certification~~ period. However,
16 the department may waive an onsite program visit for compliance
17 no more than once every other licensure ~~or certification~~ period if
18 the provider has demonstrated satisfactory compliance as
19 determined by regulation.

20 (d) The department may conduct announced or unannounced
21 site visits to facilities licensed pursuant to this chapter for the
22 purpose of reviewing for compliance with all applicable statutes
23 and regulations.

24 (e) Except where otherwise directly stated or necessarily
25 implied, all provisions of this chapter shall apply to adult
26 alcoholism or drug abuse recovery or treatment facilities and to
27 adult recovery maintenance facilities.

28 (f) On or before July 1, 2009, the department, in consultation
29 with providers of alcohol and other drug recovery, treatment,
30 detoxification, and adult recovery maintenance services, county
31 alcohol and drug program administrators, local government
32 jurisdictions, funding and referral organizations and agencies, and
33 appropriate state agencies, shall develop and adopt emergency
34 regulations governing the licensing and operation of adult recovery
35 maintenance facilities, including regulations governing services
36 related to special needs as these needs are identified by the
37 department.

38 SEC. 3. Section 11834.02 of the Health and Safety Code is
39 amended to read:

1 11834.02. (a) As used in this chapter, the following terms have
2 the following meanings:

3 (1) “Alcoholism or drug abuse recovery or treatment facility”
4 means any premises, place, or building that provides 24-hour
5 residential nonmedical services to adults who are recovering from
6 problems related to alcohol, drug, or alcohol and drug misuse or
7 abuse, and who receive alcohol, drug, or alcohol and drug recovery
8 treatment or detoxification services.

9 (2) “Adult recovery maintenance facility” means any facility,
10 place, or building that provides alcohol- or drug-free housing whose
11 rules, peer-led groups, staff activities, or other structured operations
12 are directed *primarily* toward maintenance of sobriety for adults
13 in early recovery from substance abuse or adults who recently have
14 completed alcoholism or drug abuse recovery or treatment services.
15 This facility is designed to promote independent living in a
16 supervised setting, but does not provide professional recovery and
17 treatment services onsite. The facility may require that adults
18 receive offsite-certified alcoholism or other drug treatment services.
19 The facility is otherwise authorized to receive public funds for
20 individual residents. *An adult recovery maintenance facility does*
21 *not include an unstructured living arrangement that requires*
22 *residents to abstain from using alcohol or drugs.*

23 (3) “Adults” may include, but are not limited to, the following:

24 (A) Persons 18 years of age or older and their minor children.

25 (B) Emancipated minors, which may include, but is not limited
26 to, persons under 18 years of age and their minor children.

27 (4) “Emancipated minors” means persons under 18 years of age
28 who have acquired emancipation status pursuant to Section 7002
29 of the Family Code.

30 (b) Notwithstanding paragraph (1) of subdivision (a), an
31 alcoholism or drug abuse recovery or treatment facility may serve
32 adolescents upon the issuance of a waiver granted by the
33 department pursuant to regulations adopted under subdivision (c)
34 of Section 11834.50.

35 SEC. 5. Section 11834.09 of the Health and Safety Code is
36 amended to read:

37 11834.09. (a) Upon receipt of a completed written application
38 for initial licensure or extension of licensure, fire clearance, and
39 applicable fee from the applicant, and subject to the department’s
40 review and determination that the applicant can comply with this

1 chapter and regulations adopted pursuant to this chapter, the
2 department may issue any of the following:

3 (1) A single license to the following types of alcoholism or drug
4 abuse recovery or treatment facilities:

5 (A) A residential facility.

6 (B) A facility wherein separate buildings or portions of a
7 residential facility are integral components of a single alcoholism
8 or drug abuse recovery or treatment facility and all of the
9 components of the facility are managed by the same provider.

10 (2) A single license to an adult recovery maintenance facility.

11 ~~(3) A single certification to an outpatient program.~~

12 (b) The department shall commence the licensure of adult
13 recovery maintenance facilities only after developing and adopting
14 regulations for purposes of Section 11834.01. However, the
15 licensing activity shall not commence later than January 1, 2010.

16 (c) Failure to submit a completed written application for initial
17 licensure or extension of licensure, fire clearance, and payment of
18 the required licensing or certification fee in a timely manner shall
19 result in termination of the department's licensure or certification
20 review and shall require submission of a new application by the
21 applicant.

22 (d) Failure of the applicant to demonstrate the ability to comply
23 with this chapter or the regulations adopted pursuant to this chapter
24 shall result in departmental denial of the applicant's application
25 for licensure or certification.

26 SEC. 6. Section 11834.10 of the Health and Safety Code is
27 amended to read:

28 11834.10. A licensee shall not operate an alcoholism or drug
29 abuse recovery or treatment facility or an adult recovery
30 maintenance facility beyond the conditions and limitations
31 specified on the license.

32 SEC. 7. Section 11834.11 is added to the Health and Safety
33 Code, to read:

34 11834.11. On and after January 1, 2010, no state or local social
35 services, law enforcement, corrections agency, court, probation
36 officer, or parole officer shall refer any person to an alcoholism
37 or drug abuse recovery or treatment facility or an adult recovery
38 maintenance facility that is not licensed.

39 SEC. 8. Section 11834.15 of the Health and Safety Code is
40 amended to read:

1 11834.15. (a) (1) The department shall calculate and establish
2 the fee for initial licensure ~~or certification~~ of alcoholism or drug
3 abuse recovery or treatment facilities and for extension of the
4 period of licensure ~~or certification~~. The nonrefundable licensing
5 ~~or certification~~ fee shall be calculated every two years.

6 (2) The initial fee for licensure ~~or certification~~ shall equal the
7 department's cost of processing the application, performing the
8 onsite visit, conducting followup visits, and investigating
9 complaints.

10 (3) The extension fee for licensure ~~or certification~~ shall equal
11 the department's cost of processing the extension application,
12 performing compliance visits, and investigating complaints.

13 (b) (1) The licensing ~~and certification~~ fees required pursuant
14 to this section may be imposed by the department as of January 1,
15 2010, for all initial and extension applications.

16 (2) The department may assess civil penalties in accordance
17 with Sections 11834.31 and 11834.34.

18 (c) The department may charge a fee to cover the cost of a
19 followup visit to determine program compliance.

20 (d) (1) On or before July 1, 2009, the department shall adopt
21 emergency regulations, applicable only to adult recovery
22 maintenance facilities, to implement the fee process for initial
23 licensure, extension of licensure, ~~initial certification, extension of~~
24 ~~certification~~, followup compliance visit, and civil penalties.

25 (2) The initial fee for licensure ~~or certification~~ shall equal the
26 department's cost of processing the application, performing the
27 onsite visit, issuing initial licenses, conducting followup visits,
28 and investigating complaints.

29 (e) There is hereby established in the State Treasury a
30 Residential and Outpatient Programs Compliance Branch Licensing
31 ~~and Certification~~ Trust Fund. All initial licensure fees, extension
32 of licensure fees, ~~initial certification fees, extension of certification~~
33 ~~fees~~, followup compliance visit fees, and civil penalty fees
34 collected from the providers of licensing and certification services
35 shall be deposited into this fund.

36 (f) (1) Upon appropriation by the Legislature, the trust fund
37 shall be used exclusively to cover the administrative costs of the
38 licensing and certification process incurred by the department,
39 including staff salaries and benefits, related travel costs, and state
40 operational and administrative costs.

1 (2) A reserve equal to 10 percent of the total initial licensure
2 fees, extension of licensure fees, ~~initial certification fees, extension~~
3 ~~of certification fees~~, followup compliance visit fees, and civil
4 penalty fees collected during the preceding fiscal year may be held
5 in each trust account to reimburse the department if the actual cost
6 for the licensure, ~~certification~~, inspection, and investigation exceeds
7 fees collected during a fiscal year.

8 (3) Except as otherwise provided in this section, if funds remain
9 in the trust fund after appropriation by the Legislature and
10 allocation for the costs associated with the initial licensure and
11 extension of licensure of alcoholism or drug abuse recovery or
12 treatment facilities, the initial licensure or extension of licensure
13 of adult recovery maintenance facilities, the initial licensure and
14 extension of licensure of outpatient programs, and followup
15 compliance visits, a percentage of the excess funds, to be
16 determined by the department, shall be annually set aside for
17 automation, technical assistance, and training of providers.

18 SEC. 9. Section 11834.16 of the Health and Safety Code is
19 repealed.

20 SEC. 10. Section 11834.16 is added to the Health and Safety
21 Code, to read:

22 11834.16. In order to obtain a license ~~or certification~~, the
23 provider shall submit to the department a complete written
24 application for extension and appropriate licensure ~~or certification~~
25 fee for each subsequent two-year period 30 days prior to the
26 expiration date shown on the license ~~or certification~~. Failure to
27 submit the required written application and extension fee prior to
28 the expiration date shown on the license ~~or certification~~ shall result
29 in automatic termination of the license ~~or certification~~ by the
30 operation of law.

31 SEC. 11. Section 11834.17 of the Health and Safety Code is
32 amended to read:

33 11834.17. No city, county, city and county, or district shall
34 adopt or enforce any building ordinance or local rule or regulation
35 relating to the subject of fire and life safety in alcoholism and drug
36 abuse recovery or treatment facilities or adult recovery maintenance
37 facilities that is more restrictive than those standards adopted by
38 the State Fire Marshal.

39 SEC. 12. Section 11834.18 of the Health and Safety Code is
40 amended to read:

1 11834.18. (a) Nothing in this chapter shall authorize the
2 imposition of rent regulations or controls for licensed alcoholism
3 or drug abuse recovery or treatment facilities or adult recovery
4 maintenance facilities.

5 (b) Licensed alcoholism and drug abuse recovery or treatment
6 facilities and adult recovery maintenance facilities shall not be
7 subject to controls on rent imposed by any state or local agency
8 or other local government or entity.

9 SEC. 13. Section 11834.20 of the Health and Safety Code is
10 amended to read:

11 11834.20. The Legislature hereby declares that it is the policy
12 of this state that each county and city shall permit and encourage
13 the development of sufficient numbers and types of alcoholism or
14 drug abuse recovery or treatment facilities and adult recovery
15 maintenance facilities as are commensurate with local need.

16 The provisions of this article apply equally to any chartered city,
17 general law city, county, city and county, district, and any other
18 local public entity.

19 For the purposes of this article, “six or fewer persons” does not
20 include the licensee, members of the licensee’s family, persons
21 employed as facility staff, or minor dependents of the resident.

22 SEC. 14. Section 11834.21 of the Health and Safety Code is
23 amended to read:

24 11834.21. Any person licensed under this chapter who operates
25 or proposes to operate an alcoholism or drug abuse recovery or
26 treatment facility or an adult recovery maintenance facility, the
27 department or other public agency authorized to license such a
28 facility, or any public or private agency that uses or may use the
29 services of the facility to place its clients, may invoke the
30 provisions of this article.

31 This section shall not be construed to prohibit any interested
32 party from bringing suit to invoke the provisions of this article.

33 SEC. 15. Section 11834.22 of the Health and Safety Code is
34 amended to read:

35 11834.22. An alcoholism or drug abuse recovery or treatment
36 facility or an adult recovery maintenance facility that serves six
37 or fewer persons shall not be subject to any business taxes, local
38 registration fees, use permit fees, or other fees to which other
39 single-family dwellings are not likewise subject. Nothing in this
40 section shall be construed to forbid the imposition of local property

1 taxes, fees for water service and garbage collection, fees for
2 inspections not prohibited by Section 11834.23, local bond
3 assessments, and other fees, charges, and assessments to which
4 other single-family dwellings are likewise subject. Neither the
5 State Fire Marshal nor any local public entity shall charge any fee
6 for enforcing fire inspection regulations pursuant to state law or
7 regulation or local ordinance, with respect to alcoholism or drug
8 abuse recovery or treatment facilities or adult recovery maintenance
9 facilities that serve six or fewer persons.

10 SEC. 16. Section 11834.23 of the Health and Safety Code is
11 amended to read:

12 11834.23. Whether or not unrelated persons are living together,
13 an alcoholism or drug abuse recovery or treatment facility or an
14 adult recovery maintenance facility that serves six or fewer persons
15 shall be considered a residential use of property for the purposes
16 of this article. In addition, the residents and operators of the facility
17 shall be considered a family for the purposes of any law or zoning
18 ordinance that relates to the residential use of property pursuant
19 to this article.

20 For the purpose of all local ordinances, an alcoholism or drug
21 abuse recovery or treatment facility or an adult recovery
22 maintenance facility that serves six or fewer persons shall not be
23 included within the definition of a boarding house, rooming house,
24 institution or home for the care of minors, the aged, or the mentally
25 infirm, foster care home, guest home, rest home, sanitarium, mental
26 hygiene home, or other similar term that implies that the alcoholism
27 or drug abuse recovery or treatment home or the adult recovery
28 maintenance facility is a business run for profit or differs in any
29 other way from a single-family residence.

30 This section shall not be construed to forbid any city, county, or
31 other local public entity from placing restrictions on building
32 heights, setback, lot dimensions, or placement of signs of an
33 alcoholism or drug abuse recovery or treatment facility or an adult
34 recovery maintenance facility that serves six or fewer persons as
35 long as the restrictions are identical to those applied to other
36 single-family residences.

37 This section shall not be construed to forbid the application to
38 an alcoholism or drug abuse recovery or treatment facility or an
39 adult recovery maintenance facility of any local ordinance that
40 deals with health and safety, building standards, environmental

1 impact standards, or any other matter within the jurisdiction of a
2 local public entity. However, the ordinance shall not distinguish
3 alcoholism or drug abuse recovery or treatment facilities or adult
4 recovery maintenance facilities that serve six or fewer persons
5 from other single-family dwellings or distinguish residents of
6 alcoholism or drug abuse recovery or treatment facilities or adult
7 recovery maintenance facilities from persons who reside in other
8 single-family dwellings.

9 No conditional use permit, zoning variance, or other zoning
10 clearance shall be required of an alcoholism or drug abuse recovery
11 or treatment facility or an adult recovery maintenance facility that
12 serves six or fewer persons that is not required of a single-family
13 residence in the same zone.

14 Use of a single-family dwelling for purposes of an alcoholism
15 or drug abuse recovery or treatment facility or an adult recovery
16 maintenance facility serving six or fewer persons shall not
17 constitute a change of occupancy for purposes of Part 1.5
18 (commencing with Section 17910) of Division 13 or local building
19 codes. However, nothing in this section is intended to supersede
20 Section 13143 or 13143.6, to the extent those sections are
21 applicable to alcoholism or drug abuse recovery or treatment
22 facilities or adult recovery maintenance facilities serving six or
23 fewer residents.

24 SEC. 17. Section 11834.24 of the Health and Safety Code is
25 amended to read:

26 11834.24. No fire inspection clearance or other permit, license,
27 clearance, or similar authorization shall be denied to an alcoholism
28 or drug abuse recovery or treatment facility or an adult recovery
29 maintenance facility because of a failure to comply with local
30 ordinances from which the facility is exempt under Section
31 11834.23, if the applicant otherwise qualifies for a fire clearance,
32 license, permit, or similar authorization.

33 SEC. 18. Section 11834.25 of the Health and Safety Code is
34 amended to read:

35 11834.25. (a) For the purposes of any contract, deed, or
36 covenant for the transfer of real property executed on or after
37 January 1, 1979, an alcoholism or drug abuse recovery or treatment
38 facility that serves six or fewer persons shall be considered a
39 residential use of property and a use of property by a single family,
40 notwithstanding any disclaimers to the contrary.

1 (b) For the purposes of any contract, deed, or covenant for the
2 transfer of real property executed on or after the date that licensure
3 commences for adult recovery maintenance facilities, an adult
4 recovery maintenance facility that serves six or fewer persons shall
5 be considered a residential use of property and a use of property
6 by a single family, notwithstanding any disclaimers to the contrary.

7 SEC. 19. Section 11834.26 of the Health and Safety Code is
8 amended to read:

9 11834.26. (a) An alcoholism or drug abuse recovery or
10 treatment facility shall provide at least one of the following
11 nonmedical services:

- 12 (1) Recovery services.
- 13 (2) Treatment services.
- 14 (3) Detoxification services.

15 (b) The department shall adopt regulations requiring records
16 and procedures that are appropriate for each of the services
17 specified in subdivision (a). The records and procedures may
18 include all of the following:

- 19 (1) Admission criteria.
- 20 (2) Intake process.
- 21 (3) Assessments.
- 22 (4) Recovery, treatment, or detoxification planning.
- 23 (5) Referral.
- 24 (6) Documentation of provision of recovery, treatment or
25 detoxification services.
- 26 (7) Discharge and continuing care planning.
- 27 (8) Indicators of recovery, treatment, or detoxification outcomes.

28 (c) In the development of regulations implementing this section,
29 the written record requirements shall be modified or adapted for
30 social model programs.

31 (d) An adult recovery maintenance facility shall ~~provide, but~~
32 ~~not be limited to providing, any~~ *maintain documentation on*
33 *services provided to, and progress made by, clients who are*
34 *referred to the adult recovery maintenance facility by a public*
35 *agency. An adult recovery maintenance facility shall also provide*
36 *at least one of the following recovery maintenance services:*

- 37 (1) Aftercare.
- 38 (2) Referral to community resources.
- 39 (3) Referral to offsite certified alcoholism or other drug recovery
40 or treatment services when required.

1 ~~(4) Documentation on progress made or services received from~~
2 ~~referral agencies.~~

3 ~~(5)~~

4 (4) Participation in self-help groups on or off premises.

5 (e) The adult recovery maintenance facility may require or
6 provide drug and alcohol testing and self-help groups on or off the
7 premises.

8 (f) The adult recovery maintenance facility shall maintain
9 records in order to document the services provided.

10 SEC. 20. Section 11834.30 of the Health and Safety Code is
11 amended to read:

12 11834.30. (a) No person, firm, partnership, association,
13 corporation, or local governmental entity shall operate, establish,
14 manage, conduct, or maintain an alcoholism or drug abuse recovery
15 or treatment facility or an adult recovery maintenance facility to
16 provide recovery, treatment, detoxification, or recovery
17 maintenance services within this state without first obtaining a
18 current valid license issued pursuant to this chapter.

19 (b) No person, firm, partnership, association, corporation, or
20 local governmental entity shall operate, establish, manage, conduct,
21 or maintain an adult recovery maintenance facility to provide
22 recovery maintenance services within this state without first
23 obtaining a current valid license issued pursuant to this chapter.

24 (c) Any facility that is operated primarily for the purpose of
25 providing alcoholism or drug abuse recovery or treatment services
26 or requires clients to obtain these services and requires supervision
27 shall be licensed.

28 (d) Any provider of both an alcoholism and drug abuse recovery
29 or treatment services facility and an adult recovery maintenance
30 facility shall hold a separate license for each facility.

31 SEC. 21. Section 11834.31 of the Health and Safety Code is
32 amended to read:

33 11834.31. If a facility is alleged to be in violation of Section
34 11834.30, the department shall conduct a site visit to investigate
35 the allegation. If the department's employee or agent finds evidence
36 that the facility is providing alcoholism or drug abuse recovery,
37 treatment, detoxification, or recovery maintenance services without
38 a license, the employee or agent shall take the following actions:

39 (a) Submit the findings of the investigation to the department.

1 (b) Upon departmental authorization, issue a written notice to
2 the facility stating that the facility is operating in violation of
3 Section 11834.30. The notice shall include all of the following:

4 (1) The date by which the facility shall cease providing services.

5 (2) Notice that the department will assess against the facility a
6 civil penalty of two hundred dollars (\$200) per day for every day
7 the facility continues to provide services beyond the date specified
8 in the notice.

9 (3) Notice that the case will be referred for civil proceedings
10 pursuant to Section 11834.32 in the event the facility continues to
11 provide services beyond the date specified in the notice.

12 (c) Inform the facility of the licensing requirements of this
13 chapter.

14 SEC. 22. Section 11834.32 of the Health and Safety Code is
15 amended to read:

16 11834.32. (a) The director may bring an action to enjoin the
17 violation of Section 11834.30 in the superior court in and for the
18 county in which the violation occurred. Any proceeding under this
19 section shall conform to the requirements of Chapter 3
20 (commencing with Section 525) of Title 7 of Part 2 of the Code
21 of Civil Procedure, except that the director shall not be required
22 to allege facts necessary to show or tending to show lack of
23 adequate remedy at law or irreparable damage or loss.

24 (b) With respect to any and all actions brought pursuant to this
25 section alleging actual violation of Section 11834.30, the court
26 shall, if it finds the allegations to be true, issue its order enjoining
27 the alcoholism or drug abuse recovery or treatment facility or the
28 adult recovery maintenance facility from continuance of the
29 violation.

30 SEC. 23. Section 11834.36 of the Health and Safety Code is
31 amended to read:

32 11834.36. (a) The director may suspend or revoke any license
33 ~~or certification~~ issued under this chapter, or deny an application
34 ~~for licensure or certification, for extension of the licensing or~~
35 ~~certification period, or to modify the terms and conditions of a~~
36 ~~license or certification~~ *for licensure, for extension of the licensing*
37 *period, or to modify the terms and conditions of a license*, upon
38 any of the following grounds and in the manner provided in this
39 chapter:

1 (1) Violation by the licensee ~~or certified provider~~ of any
2 provision of this chapter or regulations adopted pursuant to this
3 chapter.

4 (2) Repeated violation by the licensee ~~or certified provider~~ of
5 any of the provisions of this chapter or regulations adopted pursuant
6 to this chapter.

7 (3) Aiding, abetting, or permitting the violation of, or any
8 repeated violation of, any of the provisions described in paragraph
9 (1) or (2).

10 (4) Conduct in the operation of an alcoholism or drug abuse
11 recovery or treatment facility or an adult recovery maintenance
12 facility that is inimical to the health, morals, welfare, or safety of
13 either an individual in, or receiving services from, the facility or
14 to the people of the State of California.

15 (5) Misrepresentation of any material fact in obtaining the
16 alcoholism or drug abuse recovery or treatment facility license or
17 the adult recovery maintenance facility license, ~~or~~
18 ~~misrepresentation of any material fact in obtaining certification.~~

19 (6) Failure to pay any civil penalties assessed by the department.

20 (b) The director may temporarily suspend any license prior to
21 any hearing when, in the opinion of the director, the action is
22 necessary to protect residents of the alcoholism or drug abuse
23 recovery or treatment facility or the adult recovery maintenance
24 facility from physical or mental abuse, abandonment, or any other
25 substantial threat to health or safety. The director shall notify the
26 licensee of the temporary suspension and the effective date of the
27 temporary suspension and at the same time shall serve the provider
28 with an accusation. Upon receipt of a notice of defense to the
29 accusation from the licensee, the director shall, within 15 days,
30 set the matter for hearing, and the hearing shall be held as soon as
31 possible. The temporary suspension shall remain in effect until the
32 time the hearing is completed and the director has made a final
33 determination on the merits. However, the temporary suspension
34 shall be deemed vacated if the director fails to make a final
35 determination on the merits within 30 days after the department
36 receives the proposed decision from the Office of Administrative
37 Hearings.

38 SEC. 24. Section 11834.50 of the Health and Safety Code is
39 amended to read:

1 11834.50. The department shall adopt regulations to implement
 2 this chapter in accordance with the purposes required by Section
 3 11835. These regulations shall be adopted only after consultation
 4 with appropriate groups affected by the proposed regulations. The
 5 regulations shall include, but not be limited to, all of the following:
 6 (a) Provision for a formal appeal process for the denial,
 7 suspension, or revocation of a license ~~or certification~~.
 8 (b) Establishment of requirements for compliance, procedures
 9 for issuance of deficiency notices and civil penalties for
 10 noncompliance.
 11 (c) Provision for the issuance of a waiver for an alcoholism or
 12 drug abuse recovery or treatment facility to serve not more than
 13 three adolescents, or 10 percent of the total licensed capacity,
 14 whichever is less, age 14 years and older, when a need exists and
 15 services specific to adolescents are otherwise unavailable. The
 16 regulations shall specify the procedures and criteria for granting
 17 the waiver. The procedures shall include, but not be limited to,
 18 criminal record reviews and fingerprinting.
 19 (d) Establishment of the elements and minimum requirements
 20 for recovery, treatment, detoxification, and recovery maintenance
 21 services.
 22 (e) Provision for an expedited process for reviewing an
 23 application for licensure when a license is terminated pursuant to
 24 subdivision (c) of Section 11834.40.

25
 26
 27 CORRECTIONS: _____
 28 Text—Page 15.
 29 _____

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SENATE HEALTH
COMMITTEE ANALYSIS
Senator Sheila J. Kuehl, Chair

BILL NO: SB 992
S
AUTHOR: Wiggins
B
AMENDED: April 11, 2007
HEARING DATE: April 18, 2007
9
FISCAL: Appropriations
9
2
CONSULTANT:
Dunstan/cjt

SUBJECT

Substance abuse: licensing and certification of substance abuse facilities

SUMMARY

Requires the Department of Alcohol and Drug Programs (DADP) to license Adult Recovery Maintenance Facilities (ARMFs) and applies existing alcohol and drug abuse recovery or treatment facilities licensure requirements to ARMFs. Establishes a variety of administrative procedures related to certification by DADP.

CHANGES TO EXISTING LAW

Existing law:
Existing law declares it is the policy of the state for each city and county to permit and encourage a sufficient number and type of recovery and treatment facilities commensurate with local need. Existing law defines a recovery or treatment facility as any premise, place, or building that provides 24-hour residential non-medical services to adults who are recovering from problems related to substance abuse and who need substance abuse recovery
Continued---

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treatment or detoxification services. Existing law requires that a licensee shall provide at least one of recovery services, treatment services or detoxification services

Existing law requires any person or entity applying for a license to operate a treatment facility to file with DADP an application, a fire clearance approved by the State Fire Marshal or local fire enforcement officer, and a license fee. DADP is required to set the license fees, however nonprofit and government entities are not subject to the fee. Existing law gives DADP the authority to levy civil penalties on license holders for violations of licensing law, including failure to obtain a license while providing services requiring a license.

Existing law also requires treatment facilities with six or fewer persons to be regarded as a residential use and to be treated no differently than other residential uses, including the applicability of business license fees and local registration or permit fees.

Existing law also requires DADP to certify drug and alcohol recovery treatment services such as outpatient treatment services, which are not subject to licensing. Existing law declares that certification shall not convey any approval or disapproval by the department but shall be for informational purposes only.

This bill:

SB 992 requires DADP to license ARMFs and applies existing recovery and treatment facility licensing requirements to ARMFs, including the application process and procedures for dealing with violations. This bill defines an ARMF as a facility that provides alcohol- or drug-free housing whose rules, peer-led groups, staff activities, or other structured operations are directed toward maintenance of sobriety for adults in early recovery from substance abuse.

The bill requires DADP to develop regulations for licensing ARMFs no later than January 1, 2010. This bill requires ARMFs to provide specified recovery maintenance services, including after care, referral to community resources, referral to offsite treatment services, documentation on process, and participation in self-help groups. The bill also allows ARMFs to require or provide

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drug and alcohol testing.

This bill, after January 1, 2010, would prohibit referral by a court, probation or parole officer or other service entity of any person to an ARMF or recovery or treatment facility that is not licensed.

This bill would establish new requirements for the process of receiving certification and provides criteria for the calculation of the license fee and certification fee. The bill establishes a special fund for deposit of fees and civil penalties and makes the fund subject to appropriation by the Legislature for the administrative costs of DADP's licensing and certification program. This bill establishes a reserve requirement of 10 percent for the fund and allows excess funds to be set aside for automation, technical assistance and training of providers.

This bill extends several statutory protections regarding existing recovery and treatment facilities to ARMFs including: 1) provisions that facilities serving six or fewer persons are not subject to any business taxes, local registration fees, use permit fees, or other fees to which other single-family dwellings are not likewise subject; 2) requires that a facility that serves six or fewer persons, whether or not unrelated persons are living together, to be considered a residential use of property; 3) exempts facilities from local rent control ordinances; and 4) local regulation relating to fire and life safety cannot be more restrictive than the State Fire Marshall's standards.

This bill makes many of the same procedures that now apply to licensing also apply to certification, including certification revocation and appeals. The bill requires that the regulations to implement the licensing law also contain the appropriate provisions for certification.

FISCAL IMPACT

Unknown

BACKGROUND AND DISCUSSION

Need for the bill

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The author states that SB 992 will help ensure a safe environment for recovering addicts in their transition to sober living, and for the surrounding community. The author points out that this bill is designed to bring accountability to the local recovery maintenance field by giving law enforcement and local government a means by which to sanction bad operators. The author points out

that there is a need for a continuum of substance abuse services, but DADP currently licenses only those recovery or treatment facilities which are typically staffed 24 hours per day and are frequently based on a variety of social and medical models of treatment. In contrast, ARMFs do not have a clear state mandate for the quality of their services or facilities. This bill is intended to address this situation by creating a new licensure category for maintenance facilities that help individuals maintain their newly won sobriety.

Purpose of DADP licensing and regulation

According to DADP, health and safety concerns are the primary focus of the licensing process. The licensing application process includes a review of the facility's program in the following areas: fire clearance, water supply clearance, plan of operation, total occupancy and treatment capacity determination, reporting requirements, personnel requirements and records, admission agreements, health screening resident records, personal rights, telephones, transportation, health-related services, food service, activities, buildings and grounds, outdoor and indoor activity space, storage space, fixtures, furniture, and equipment.

Proposition 36

Demand for treatment has increased with the passage in 2000 of Proposition 36 or the Substance Abuse and Crime Prevention Act of 2000 (SACPA). Proposition 36 requires probation and drug treatment instead of incarceration for individuals convicted of possession, use, transportation for personal use, or being under the influence of controlled substances and similar parole violations, but not for the sale or manufacture of drugs. Eligible offenders receive up to one year of drug treatment and six months of after care.

Related legislation

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SB 1000 (Harman) requires DADP to license adult recovery maintenance facilities. To be heard in Senate Health Committee on April 25th.

SB 530 (Dutton) prohibits DADP from licensing a facility if another facility was located within 300 feet. To be heard in Senate Health Committee on April 18th.

AB 724 (Benoit) provides that a local government's authority to regulate, without restriction, the use and occupancy of a single-family residence location in a

single-family residential zone, unless the residence is a sober living home, a DADP licensed facility, or other licensed facility, as specified. The bill would become operative only if SB 992 is enacted.

Prior legislation

SB 987 (Karnette, 2000) would have required DADP to administer the licensure and regulation of adult recovery maintenance facilities, as specified. This measure died in the Assembly.

SB 986 (Karnette, 1999) would have required DADP to license and regulate adult recovery maintenance facilities: any facility that provides alcohol or drug-free housing which is organized and directed toward maintenance of sobriety for persons in early recovery from substance abuse. This measure was vetoed by the Governor.

SB 1540 (Karnette, 1998) would have required state licensure of adult recovery maintenance facilities or sober living homes and plans regarding community care facilities. This measure was vetoed by the Governor.

AB 3007 (Emmerson, 2006) prohibited DADP from licensing a facility if another facility was located within 300 feet. The bill was held on the Assembly Appropriations suspense file.

Arguments in support

The California Association of Addiction Recovery Resources (CAARR) supports the bill because it is necessary to impose accountability on recovery maintenance facilities. They

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argue that licensure provides accountability because of the existing authority that DADP has to act against a licensee who does not meet the state's standards. CAARR believes that licensing will help, to some degree, in addressing complaints from local governments and neighbors about what some critics call proliferation and problems arising from the establishment of group homes in residential neighborhoods. They argue that, with licensing of these facilities, DADP will have authority to inspect and sanction facilities that are operating out of compliance with their license. CAARR believes this bill will help resolve some local problems as well as bolster the integrity of residential treatment and recovery maintenance programs around the state. The League of California Cities says that SB 992 will provide quality assurance and accountability for programs that already exist in the continuum of services available for people who are in the

process of recovering from drug or alcohol dependency.

Letter of Concern

The Sober Living Network (network) argues that the bill will not address problem houses. They blame the problems on houses that tolerate unlawful and disruptive behavior that will not be licensed under this bill. The network is concerned it will actually increase the number of problem houses as the ones not subject to licensure will be relatively less expensive than ARMFs which will have the expense of the requirements of the bill, including paying licensing fees. The network also argues that the definition of an ARMF is not measurable and could include other types of congregate support housing.

COMMENTS AND QUESTIONS

1. What is an ARMF? The bill contains a definition of ARMFs, but the definition is broad and could be construed to include other types of facilities such as homeless or battered women's shelters. In addition, the definition could be construed as applying to a group of recovering substance abusers informally deciding to cohabit and assist each other in maintaining their sobriety, including holding 12-step meetings. Although DADP will be developing regulations to implement this legislation, including clarifying the definition of an ARMF, a suggested change to

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tighten up the definition follows:

Suggested amendment
Page 5, line 5

(2) "Adult recovery maintenance facility" means any facility, place, or building that provides alcohol- or drug-free housing whose rules, peer-led groups, staff activities, or other structured operations are directed primarily toward maintenance of sobriety for adults in early recovery from substance abuse or adults who recently have completed alcoholism or drug abuse recovery or treatment services. This facility is designed to promote independent living in a supervised setting, but does not provide professional recovery and treatment services onsite. The facility may require that adults receive offsite ~~certified~~ alcoholism or other drug treatment services. The facility is otherwise authorized to receive public funds for individual residents. An adult recovery maintenance facility is not an unstructured living arrangement that requires residents to abstain from using alcohol or drugs.

2. There is a potential conflict between this bill and budget trailer bill pertaining to license fees. The trailer bill is not in print and the language is likely to undergo further change. Should the trailer bill be enacted, subsequent amendments may be required to conform SB 992 to the trailer bill.

3. Clarification needed on services that ARMF should provide. As part of the definition of ARMFs, the bill lists some specific services, but it is unclear if ARMFs are required to offer some or all of the services. The author has suggested the following amendment which will clarify the requirements:

Suggested amendment
Page 13, line 22

(d) An adult recovery maintenance facility shall ~~provide~~ maintain documentation on services provided to, and progress made by, clients who are referred by public agencies. An adult recovery maintenance facility shall also provide, but not be limited to providing, ~~any~~ at least one (1) of the following recovery maintenance services:

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- (1) Aftercare.
- (2) Referral to community resources.
- (3) Referral to offsite certified alcoholism or other drug recovery or treatment services when required.
- ~~(4) Documentation on progress made or services received from referral agencies.~~
- (5) Participation in self-help groups on or off premises.

4. Language relating to certification needs to be amended out of the bill. The bill adds some language related to certification in addition to licensing. The section of the code that the bill is placed in deals only with licensing, creating potential confusion and limiting some of DADP's flexibility regarding certification. Attached is a mockup of the amendments deleting certification.

POSITIONS

Support: California Association of Addiction Recovery Resources (sponsor)

Associated Rehabilitation Program for Women, Inc.
Fellowship Center Alcohol Drug Services Program
Gateway Foundation for Women
League of California Cities
Mary Lind Foundation
Progress House
Roque Center, Inc.

Tulare County Alcoholism Council, Inc.

Oppose: None received.

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11834.01. (a) The department has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities and adult recovery maintenance facilities.

(b) In administering this chapter, the department shall issue new licenses for a period of two years to those programs that meet the criteria for licensure set forth in Section 11834.03 ~~, and the criteria for certification set forth in Chapter 7 (commencing with Section 11830)~~.

(c) Onsite program visits for compliance shall be conducted at least once during each licensure ~~or certification~~ period. However, the department may waive an onsite program visit for compliance no more than once every other licensure ~~or certification~~ period if the provider has demonstrated satisfactory compliance as determined by regulation.

(d) The department may conduct announced or unannounced site visits to facilities licensed pursuant to this chapter for the purpose of reviewing for compliance with all applicable statutes and regulations.

(e) Except where otherwise directly stated or necessarily implied, all provisions of this chapter shall apply to adult alcoholism or drug abuse recovery or treatment facilities and to adult recovery maintenance facilities.

(f) On or before July 1, 2009, the department, in consultation with providers of alcohol and other drug recovery, treatment, detoxification, and adult recovery maintenance services, county alcohol and drug program administrators, local government jurisdictions, funding and referral organizations and agencies, and appropriate state agencies, shall develop and adopt emergency regulations

governing the licensing and operation of adult recovery maintenance facilities, including regulations governing services related to special needs as these needs are identified by the department.

11834.09. (a) Upon receipt of a completed written application for initial licensure or extension of licensure, fire clearance, and applicable fee from the applicant, and subject to the department's review and determination that the applicant can comply with this chapter and regulations adopted pursuant to this chapter, the department may issue any of the following:

(1) A single license to the following types of

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alcoholism or drug abuse recovery or treatment facilities:

(A) A residential facility.

(B) A facility wherein separate buildings or portions of a residential facility are integral components of a single alcoholism or drug abuse recovery or treatment facility and all of the components of the facility are managed by the same provider.

(2) A single license to an adult recovery maintenance facility.

~~(3) A single certification to an outpatient program.~~

(b) The department shall commence the licensure of adult recovery maintenance facilities only after developing and adopting regulations for purposes of Section 11834.01. However, the licensing activity shall not commence later than January 1, 2010.

(c) Failure to submit a completed written application for initial licensure or extension of licensure, fire clearance, and payment of the required licensing ~~or certification~~ fee in a timely manner shall result in termination of the department's licensure ~~or certification~~ review and shall require submission of a new application by the applicant.

(d) Failure of the applicant to demonstrate the ability to comply with this chapter or the regulations adopted pursuant to this chapter shall result in departmental denial of the applicant's application for licensure ~~or certification~~.

11834.15. (a) (1) The department shall calculate and establish the fee for initial licensure ~~or certification~~ of alcoholism or drug abuse recovery or treatment facilities and for extension of the period of licensure or certification. The nonrefundable licensing ~~or certification~~ fee shall be calculated every two years.

(2) The initial fee for licensure ~~or certification~~ shall equal the department's cost of processing the application,

performing the onsite visit, conducting followup visits, and investigating complaints.

(3) The extension fee for licensure ~~or certification~~ shall equal the department's cost of processing the extension application, performing compliance visits, and investigating complaints.

(b) (1) The licensing ~~and certification~~ fees required pursuant to this section may be imposed by the department

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as of January 1, 2010, for all initial and extension applications.

(2) The department may assess civil penalties in accordance with Sections 11834.31 and 11834.34.

(c) The department may charge a fee to cover the cost of a followup visit to determine program compliance.

(d) (1) On or before July 1, 2009, the department shall adopt emergency regulations, applicable only to adult recovery maintenance facilities, to implement the fee process for initial licensure, extension of licensure, ~~initial certification, extension of certification,~~ followup compliance visit, and civil penalties.

(2) The initial fee for licensure ~~or certification~~ shall equal the department's cost of processing the application, performing the onsite visit, issuing initial licenses, conducting followup visits, and investigating complaints.

(e) There is hereby established in the State Treasury a Residential and Outpatient Programs Compliance Branch Licensing and Certification Trust Fund. All initial licensure fees, extension of licensure fees, ~~initial certification fees, extension of certification fees~~, followup compliance visit fees, and civil penalty fees collected from the providers of licensing and certification services shall be deposited into this fund.

(f) (1) Upon appropriation by the Legislature, the trust fund shall be used exclusively to cover the administrative costs of the licensing and certification process incurred

by the department, i

related travel costs, and state operational and administrative costs.

(2) A reserve equal to 10 percent of the total initial licensure fees, extension of licensure fees, ~~initial certification fees, extension of certification fees~~, followup compliance visit fees, and civil penalty fees collected during the preceding fiscal year may be held in each trust account to reimburse the department if the actual cost for the licensure, ~~certification,~~ inspection, and investigation exceeds fees collected during a fiscal year.

(3) Except as otherwise provided in this section, if funds remain in the trust fund after appropriation by the Legislature and allocation for the costs associated with

the initial licensure and extension of licensure of alcoholism or drug abuse recovery or treatment facilities, the initial licensure or extension of licensure of adult

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recovery maintenance facilities, the initial licensure and extension of licensure of outpatient programs, and followup compliance visits, a percentage of the excess funds, to be determined by the department, shall be annually set aside for automation, technical assistance, and training of providers.

11834.16. In order to obtain a license ~~or certification~~, the provider shall submit to the department a complete written application for extension and appropriate licensure ~~or certification~~ fee for each subsequent two-year period 30 days prior to the expiration date shown on the license ~~or certification~~. Failure to submit the required written application and extension fee prior to the expiration date shown on the license ~~or certification~~ shall result in automatic termination of the license ~~or certification~~ by the operation of law.

11834.36. (a) The director may suspend or revoke any license ~~or certification~~ issued under this chapter, or deny an application for licensure ~~or certification~~, for extension of the licensing ~~or certification~~ period, or to modify the terms and conditions of a license ~~or certification~~, upon any of the following grounds and in the manner provided in this chapter:

(1) Violation by the licensee ~~or certified~~ provider of any provision of this chapter or regulations adopted pursuant to this chapter.

(2) Repeated violation by the licensee ~~or certified~~ provider of any of the provisions of this chapter or regulations adopted pursuant to this chapter.

(3) Aiding, abetting, or permitting the violation of, or any repeated violation of, any of the provisions described in paragraph (1) or (2).

(4) Conduct in the operation of an alcoholism or drug abuse recovery or treatment facility or an adult recovery maintenance facility that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California.

(5) Misrepresentation of any material fact in obtaining the alcoholism or drug abuse recovery or treatment facility license or the adult recovery maintenance facility license, or misrepresentation of any material fact in obtaining certification.

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(6) Failure to pay any civil penalties assessed by the department.

(b) The director may temporarily suspend any license prior to any hearing when, in the opinion of the director, the action is necessary to protect residents of the alcoholism or drug abuse recovery or treatment facility or the adult recovery maintenance facility from physical or mental abuse, abandonment, or any other substantial threat to health or safety. The director shall notify the licensee of the temporary suspension and the effective date of the temporary suspension and at the same time shall serve the provider with an accusation. Upon receipt of a notice of defense to the accusation from the licensee, the director shall, within 15 days, set the matter for hearing, and the hearing shall be held as soon as possible. The temporary suspension shall remain in effect until the time the hearing is completed and the director has made a final determination on the merits. However, the temporary suspension shall be deemed vacated if the director fails to make a final determination on the merits within 30 days after the department receives the proposed decision from the Office of Administrative Hearings.

11834.50. The department shall adopt regulations to implement this chapter in accordance with the purposes required by Section 11835. These regulations shall be adopted only after consultation with appropriate groups affected by the proposed regulations. The regulations shall include, but not be limited to, all of the following:

(a) Provision for a formal appeal process for the denial, suspension, or revocation of a license or certification.

(b) Establishment of requirements for compliance, procedures for issuance of deficiency notices and civil penalties for noncompliance.

(c) Provision for the issuance of a waiver for an alcoholism or drug abuse recovery or treatment facility to serve not more than three adolescents, or 10 percent of the total licensed capacity, whichever is less, age 14 years and older, when a need exists and services specific to adolescents are otherwise unavailable. The regulations shall specify the procedures and criteria for granting the waiver. The procedures shall include, but not be limited to, criminal record reviews and fingerprinting.

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(d) Establishment of the elements and minimum requirements for recovery, treatment, detoxification, and recovery maintenance services.

(e) Provision for an expedited process for reviewing an application for licensure when a license is terminated pursuant to subdivision (c) of Section 11834.40.

AMENDED IN ASSEMBLY MAY 15, 2007
AMENDED IN ASSEMBLY MAY 1, 2007
AMENDED IN ASSEMBLY APRIL 19, 2007
AMENDED IN ASSEMBLY APRIL 12, 2007
AMENDED IN ASSEMBLY MARCH 26, 2007
CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 724

Introduced by Assembly Member Benoit
(Coauthor: Senator Wiggins)

February 22, 2007

An act to add Section 11834.255 to the Health and Safety Code, relating to residential facilities.

LEGISLATIVE COUNSEL'S DIGEST

AB 724, as amended, Benoit. Sober living homes.

Existing law provides for the licensure and regulation of various community care facilities by the State Department of Social Services. Existing law also provides for the licensure and regulation by the State Department of Alcohol and Drug Programs of alcoholism and drug abuse recovery and treatment facilities for adults.

This bill would provide that a sober living home, as defined, is exempt from licensure under these provisions. The bill also would provide that a residence housing those purporting to be recovering from drug and alcohol abuse would be presumed to be a sober living home if it has been certified, registered, or approved by a governmental or nonprofit

organization that provides a credible quality assurance service for applicants or members.

The bill would become operative only if SB 992 is enacted and takes effect on or after January 1, 2008.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 11834.255 is added to the Health and
2 Safety Code, to read:

3 11834.255. (a) The purpose of this section is to provide a
4 definition of a “sober living home” so as to give both those
5 purporting to operate these facilities and local code and law
6 enforcement agencies the ability to determine whether residences
7 housing former drug and alcohol abusers ~~and probationers and~~
8 ~~parolees~~ are exempt from local regulation or exercise of local
9 police powers.

10 (b) For purposes of this chapter, “sober living home” means a
11 residential property that is operated as a cooperative living
12 arrangement to provide an alcohol- and drug-free environment for
13 persons recovering from alcoholism or drug abuse, or both, who
14 seek a living environment in which to remain clean and sober, and
15 that satisfies all of the following requirements:

16 (1) Residents of the facility, including live-in managers,
17 operators, or owners, are living a sober lifestyle.

18 (2) Residents actively participate in legitimate programs,
19 including, but not limited to, Alcoholics Anonymous or Narcotics
20 Anonymous programs, and maintain current records of meeting
21 attendance.

22 (3) Owners, managers, operators, and residents observe and
23 promote a zero tolerance policy regarding the consumption or
24 possession of alcohol or controlled substances, except for
25 prescription medications obtained and used under direct medical
26 supervision. *The observation and promotion of this policy may*
27 *take into account demonstrable efforts made by residents to*
28 *respond to, and prevent additional violations of, the policy.*

29 (4) Owners, managers, operators, and residents do not provide
30 onsite any of the following services, as they are defined in

1 paragraph (6) of subdivision (a) of Section 10501 of Title 9 of the
2 California Code of Regulations:

- 3 (A) Detoxification.
- 4 (B) Educational counseling.
- 5 (C) Individual or group counseling sessions.
- 6 (D) Treatment or recovery planning.
- 7 (5) The number of residents who are subject to the sex offender
8 registration requirements of Section 290 of the Penal Code does
9 not exceed the limit set forth in Section 3003.5 of the Penal Code
10 and does not violate the distance provisions set forth in Section
11 3003 of the Penal Code.

12 (6) ~~No resident requires~~ *Residents do not require* nonmedical
13 care or supervision, as those terms are defined in Section 1503.5
14 and ~~paragraph (3) of subdivision (a) of Section 80001 of~~ *in* Title
15 22 of the California Code of Regulations.

16 (7) Owners, managers, operators, and residents ensure that the
17 property and its use comply with applicable state and local law.

18 (c) A residence housing those purporting to be recovering from
19 drug and alcohol abuse shall be presumed to be a sober living home
20 if the residence has been certified, registered, or approved by a
21 recognized nonprofit organization that provides a credible quality
22 assurance service for applicants or members.

23 (d) A sober living home shall be exempt from licensure under
24 Chapter 7.5 (commencing with Section 11834.01).

25 (e) *Nothing in this section shall be construed to prohibit minor*
26 *children who are dependents of a resident of the facility from also*
27 *residing in the facility.*

28 SEC. 2. This act shall become operative only if Senate Bill
29 992 is enacted and takes effect on or before January 1, 2008.

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ASSEMBLY THIRD READING
 AB 724 (Benoit)
 As Amended May 15, 2007
 Majority vote

HEALTH 10-4 APPROPRIATIONS 15-0

Ayes: Dymally, Nakanishi, Berg, Emmerson, Gaines, Hernandez, Huff, Lieber, Salas, Strickland	Ayes: Leno, Walters, Caballero, DeSaulnier, Emmerson, Huffman, Karnette, Krekorian, La Malfa, Lieu, Ma, Nakanishi, Nava, Sharon Runner, Solorio
Nays: De Leon, Hancock, Hayashi, Ma	

SUMMARY : Defines a "sober living home" (SLH) as a residential property that is operated as a cooperative living arrangement to provide an alcohol- and drug-free environment for persons recovering from alcoholism or drug abuse, or both, who seek a living environment in which to remain clean and sober, and that satisfies specified requirements. Specifically, this bill :

- 1) Requires a SLH to satisfy all of the following requirements:
 - a) Residents of the facility, including live-in managers, operators, or owners, are living a sober lifestyle;
 - b) Residents actively participate in legitimate programs, including, but not limited to, Alcoholics Anonymous or Narcotics Anonymous programs, and maintain current records of meeting attendance;
 - c) Owners, managers, operators, and residents observe and promote a zero tolerance policy regarding the consumption or possession of alcohol or controlled substances, except for prescription medications obtained and used under direct medical supervision. States that the observation and promotion of this policy may take into account demonstrable efforts made by residents to respond to, and prevent

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additional violations of, the policy;

- d) Owners, managers, operators, and residents do not provide onsite any of the following services, as defined by existing regulations:
 - i) Detoxification;
 - ii) Educational counseling;
 - iii) Individual or group counseling sessions; and,
 - iv) Treatment or recovery planning;
 - e) Complies with limits on the number of residents who are subject to the sex offender registration requirements, as specified, and does not violate distance provisions, as specified;
 - f) Residents do not require nonmedical care or supervision, as specified; and,
 - g) Owners, managers, operators, and residents ensure that the property and its use comply with applicable state and local law.
- 2) Presumes that a residence is a SLH if the residence has been certified, registered, or approved by a recognized governmental or nonprofit organization that provides a credible quality assurance service for applicants or members.
- 3) States that this bill does not prohibit minor children who are dependents of a resident of the facility from also residing in the facility.
- 4) Provides that the purpose of providing a definition of a SLH is to give both those purporting to operate these facilities and local code and law enforcement agencies the ability to determine whether residences housing former drug and alcohol abusers are exempt from local regulation or exercise of local police powers.
- 5) Makes this bill operative only if SB 992 (Wiggins) is enacted and takes effect on or before January 1, 2008.

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FISCAL EFFECT : According to the Assembly Appropriations Committee, no significant costs.

COMMENTS : According to the sponsor, the City of Riverside, this bill is based on its direct experience with the illegal uses of single family residential properties where the owners or operators falsely claim to be operating SLHs to avoid local regulation. The city points out that few, if any, of the residents or occupants of these properties are actually recovering alcoholics or addicts. Furthermore, it states that most of these properties present substantial, substandard conditions in violation of the Uniform Housing Code, which are adopted in most municipal codes. The purpose of this bill is to codify a meaningful definition for the term sober living home which everyone can rely upon in their efforts to determine the actual nature and scope of local regulation applicable to the use of any given single family residential property.

SLHs are residences or congregate living situations providing a supportive living environment to recovering alcohol and drug abusers. SLHs operate on the concept that by surrounding oneself with individuals who are experiencing the same self-help learning process, recovering from one's addiction is much easier. Residents may participate in Twelve-Step meetings or other educational meetings to help maintain their sobriety and pursue other activities, including employment. The California Department of Alcohol and Drug Programs (ADP) points out that sober living homes are exempt from licensure and have no authority to offer treatment or services. However, ADP indicates there have been numerous complaints relating to unlicensed facilities, including SLHs. ADP specifies that on average, it receives 125 complaints per year. Many of the complaints indicate that unlicensed facilities, including SLHs, are offering addiction treatment services.

According to Substance Abuse and Mental Health Services Administration publication entitled "Siting Drug and Alcohol Treatment Programs: Legal Challenges to the NIMBY Syndrome" many people recognize the pervasiveness of alcohol and drug problems but such concern has not always resulted in communities welcoming alcohol and other drug treatment programs into their neighborhoods. Community opposition, often referred to as "not in my backyard" (NIMBY) syndrome, often prevents or delays the

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siting of a treatment program. The publication states that the NIMBY syndrome is not new, and it does not arise solely in opposition to alcohol and other drug treatment programs. Community resistance often is mobilized to prevent the opening

or expansion of many types of health and social service facilities, including shelters for the homeless, group homes for the mentally ill, halfway houses for ex-offenders, and health-related facilities for those with Acquired Immuno Deficiency Syndrome. The publication indicates reasons for resisting treatment programs and includes five myths about siting a treatment facility: 1) community residents may fear that property values will decline; 2) merchants may be concerned that crime will increase; 3) the community may believe that a treatment program will bring in "outsiders," perhaps outsiders of a different class or ethnic group; 4) the community may believe that there already is an over-concentration of services in the vicinity; and, 5) the community may simply confuse the problem's solutions with its manifestations.

The Fair Employment Housing Act (FEHA) makes it unlawful to engage in various discriminatory practices on the sale and rental of housing based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. It also prohibits discriminatory land use regulations, zoning laws, and restrictive covenants that would similarly be discriminatory against the above categories. FEHA also specifies that groups of persons with disabilities living together in a single dwelling unit are considered a family.

The City of Riverside states that this bill is based on its experience with the illegal uses of single family residential properties where the owners or operators falsely claim to be operating a SLH to avoid local regulation. They state that few of the residents of these homes are actually recovering alcoholics or addicts but are using these residents as illegal boarding houses hiding behind a self-serving label.

The American Civil Liberties Union (ACLU) states in its opposition to a prior version of this bill that this bill would impose intrusive and unrealistic restrictions on SLHs which could result in the elimination of these transitional housing options for people in recovery. ACLU also points out that this bill violates the Fourth Amendment prohibition against unreasonable searches and seizures because it would allow law or

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code enforcement officials to enter SLHs without cause and demand to review an individual's drug testing results and attendance at drug treatment meetings. ACLU also states that this bill's language allowing a city or county to regulate without restriction is too broad, especially since there are constitutional protections and federal and state statutes such as the FEHA and the American with Disabilities Act which prohibits discrimination.