SUPPORT FOR PATIENTS AND COMMUNITIES ACT: STANDARDIZING RECOVERY HOUSING

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Health Care Alert

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On October 24, 2018, President Trump signed into law comprehensive opioid legislation known as the "Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment for Patients and Communities Act" or the "SUPPORT for Patients and Communities Act" (referred to herein as the "Support Act"). [1] The Support Act is the culmination of bipartisan efforts to draft and pass legislation in both the House and Senate over the past year. Section 7031 of the Support Act addresses recovery housing. [2]

RECOVERY HOUSING: AN IMPORTANT TOOL TO SUSTAINED RECOVERY

The Support Act defines "recovery housing" as a "shared living environment free from alcohol and illicit drug use and centered on peer support and connection to services that promote sustained recovery from substance use disorders." [3] Recovery homes serve as an important middle step in bridging the gap between inpatient services for substance use disorder treatment and independent living by providing a place to reside free of alcohol or drugs for newly sober individuals seeking to maintain abstinence. Recovery homes are a proven tool for increasing the likelihood and the sustainability of recovery. [4] While recovery homes do not provide substance use disorder treatment services, recovery home owners may require or encourage residents to attend outpatient recovery programs as a condition to living at the home and may evict residents who do not remain abstinent or who otherwise do not comply with the home's rules. The threat of eviction may encourage continued abstinence. Some insurers provide coverage for recovery housing, but typically the cost of the housing and related services falls to residents and their families. [5]

In some cases, recovery housing owners may also hold ownership or other financial interests in the entities that provide substance use disorder treatment services or the laboratories those treatment providers use to conduct drug testing associated with such treatment. [6] These dual interests in treatment providers and recovery homes can result in the appearance of, or actual, conflict of interest. The appearance of a conflict of interest may come to fruition when owners of recovery homes allow residents to disregard rules prohibiting the use of illegal drugs or alcohol. [7] The use of these substances frequently leads to relapses that, in turn, translate into more treatment services and longer residential stays. [8]

The importance of having a supportive place to live that is conducive to continued recovery cannot be understated, especially for residents who may otherwise be homeless or who live in environments that present opportunities for use of illegal drugs or alcohol. Given the pervasiveness of the opioid epidemic, the importance of ensuring recovery housing that promotes sustained recovery cannot be overstated. The Support Act seeks to

promote recovery housing that sustains recovery by mandating (i) the creation of standards applicable to recovery housing, and (ii) the identification of indicators of suspect recovery housing.

ENSURING ACCESS TO QUALITY RECOVERY HOUSING

The Support Act defines recovery housing to emphasize the goal of "sustained recovery" and directs the Secretary of the Department of Health and Human Services (the "Secretary") to (1) identify best practices for operating recovery homes in order to promote that recovery and (2) identify indicators of recovery housing operations where sustained recovery likely goes unmet. [9] In both cases, the Support Act mandates that due consideration be given to how recovery housing is able to support recovery and prevent relapse, recidivism, or overdose (including overdose death), including by improving access and adherence to treatment, including medication-assisted treatment. [10]

With respect to quality, the Support Act requires the Secretary, in consultation with relevant stakeholders, to identify best practices, such as model laws, for implementing suggested minimum standards for operating recovery housing. [11] In identifying these best practices, the Secretary is required to consult with:

1. relevant divisions of the Department of Health and Human Services, including the Substance Abuse and Mental Health Services Administration, the Office of Inspector General, the Indian Health Service, and the Centers for Medicare and Medicaid Services;
2. the Secretary of Housing and Urban Development;
3. State health departments, tribal health departments, state Medicaid programs, and state insurance agencies;
4. health insurance issuers;
5. national accrediting entities and reputable providers of, and analysts of, recovery housing services, including Indian tribes, tribal organizations, and tribally designated housing entities that provide recovery housing services, as applicable;
6. individuals with a history of substance use disorder; and
7. other stakeholders identified by the Secretary. [12]

Also, in consultation with the stakeholders identified above, the Secretary must identify common indicators that could be used to identify fraudulent recovery housing. [13] In doing so, the Secretary "shall consider how law enforcement, public and private payers, and the public can best identify and report fraudulent recovery housing operators." [14] The Secretary must identify or develop indicators related to:

unusual billing practices;

average lengths of stays;

excessive levels of drug testing (in terms of cost or frequency); and

unusually high levels of recidivism. [15]

The Secretary must disseminate the identified best practices to state agencies; Indian tribes, tribal organizations, and tribally designated housing entities; the Attorney General of the United States; the Secretary of Labor; the

Secretary of Housing and Urban Development; state and local law enforcement agencies; health insurance issuers; recovery housing entities, and the public. [16]

Despite these mandates, "[n]othing in this section shall be construed to provide the Secretary with the authority to require States to adhere to minimum standards in the State oversight of recovery housing." [17] As a result, state action will be required before any of the outcomes of the mandates may be implemented in that state. [18] Such state action may permit the state to recognize particular circumstances that may exacerbate problems unique to the facility, its residents, the larger community, or a neighborhood. Alternately, certain communities may attempt to block facilities (i.e., "not in my back yard.")

For example, a city might pass land-use laws to control the location or concentration of group or supportive homes (including recovery homes) in a specific neighborhood. States might impose licensure requirements that control the size and operation of recovery homes. California already requires a facility that provides housing and nonmedical recovery-focused services (such as detoxification, group sessions, individual sessions, educational sessions, and/or alcoholism or drug abuse recovery or treatment planning) to be licensed and limits such facilities to six patients. [19]

The opioid epidemic has resulted in greater need for recovery housing. The Support Act recognizes the increased demand and requires standards to be created to ensure that the recovery homes are operated with a goal of sustaining recovery and not for fraudulent purposes.

K&L Gates' health care practice can assist health systems and hospitals, and other providers and suppliers in responding to changes implemented by the Support Act and assessing how the Support Act would affectthem. We will continue to closely monitor developments related to the Support Act. Please note that this is one in a series of alerts and podcasts from K&L Gates discussing various provisions of the Support Act.

NOTES:

[1] Support for Patients and Communities Act, Pub. L. 115-271.
[2] The primary purpose of this section is to "identify and facilitate the development of best practices, which may include model laws for implementing suggested minimum standards, for operating recovery housing." See *id.* Section 7031 amends the Public Health Service Act to add a new section 550.
[3] See *id.* at § 7031(f)(1).
[4] *See, e.g.,* Carla Rash et al., *Substance Abuse Treatment Patients in Housing Programs Respond to Contingency Management Interventions,* J. OF SUBSTANCE ABUSE TREATMENT (Jan. 2017) at 97–102.
[5] *See, e.g.,* Douglas Polcin, Ed.D. et al., *What Did We Learn from Our Study on Sober Living Houses and Where do We Go from Here*, J. OF PSYCHOACTIVE DRUGS (Dec. 2010) at 425.
[6] *See generally,* Jean Lyon, *Preying on the Vulnerable: Sober Home Fraud*, HMS (April 27, 2017), available at www.hms.com/preying-on-the-vulnerable-sober-home-fraud.
[7] *See, e.g.,* Mike Clary & Skyler Swisher, *Feds Charge Six in South Florida Sober Home Fraud Scheme*, SUN SENTINEL (Dec. 21, 2016); see also Kyle Swenson, "*Junkie Hunters" Lured Addicts to Scam "Sober Home" in $58 Million Fraud*, Feds Say, WASH. POST (July 14, 2017).
[8] *Id.*
[9] Support Act §§ 7031(f)(1), (a)(1), (b)(1).

[10] *Id.* at § 7031(d).
[11] *Id.* at § 7031(a)(1).
[12] *Id.* at § 7031(a)(2).
[13] *Id.* at § 7031(b)(1), (b)(2).
[14] *Id.* at § 7031(b)(3)(A).
[15] *Id.* at § 7031(b)(3)(B).
[16] *Id.* at § 7031(c).
[17] *Id.* at § 7031(e).
[18] Some states have already taken action to regulate recovery housing. For example, Florida prohibits a licensed treatment provider to refer a patient to a recovery house unless the house has been certified by the Florida Association of Recovery Residences ("FARR"). See FLA. STAT. § 397.4873. FARR uses the National Recovery Residence Quality Standards adopted by the National Alliance of Recovery Residences ("NARR"). FARR serves as the NARR affiliate for Florida.
[19] *See* CAL. CODE REGS. tit. 9, §§ 10501(a)(5), 10505.

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