

Study Regarding Sober (Alcohol and Drug Free) Housing

**In response to Chapter 283, Section 10
of the Acts of 2010**



**Massachusetts Department of Public Health
Bureau of Substance Abuse Services**



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In response to Chapter 283, Section 10 of the Acts of 2010, the Department of Public Health (DPH) Bureau of Substance Abuse Services (BSAS) conducted a study of alcohol and drug free (ADF) housing, also known as "sober homes."

The law requires the study to explore the feasibility of licensing, regulating, registering or certifying sober homes or operators, and document the number of sober homes operating in the state, the standards and requirements necessary to protect the health and safety of the home's residents and any problems created by the operation of sober homes, including impacts on neighborhoods and surrounding areas.

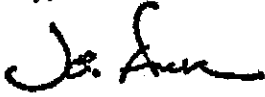
To complete this report, DPH undertook a comprehensive process that included conducting significant research on all of the areas in the report, including legal research/analysis and comparative policies with other states; DPH also held multiple meetings with constituents and providers. Federal housing law preempts some areas of state regulation, necessitating a thorough review of case law as well. As will be outlined in the report, the Department's statutory and regulatory authority over ADF housing is limited, and much of the research offered new information on ADF housing to DPH staff. Although this process brought the Department beyond the requested date in the legislation, this comprehensive review has resulted in several findings that we hope will offer constructive next steps at the state, municipal and provider levels, including:

1. DPH BSAS' existing statutory and regulatory authority is limited to the licensure of alcohol and drug treatment facilities and programs. BSAS has no authority over housing and therefore does not regulate ADF Housing.
2. The federal Fair Housing Amendments Act (FHAA) limits DPH authority to implement mandatory licensure, regulation, registration or certification requirements directed specifically at ADF Housing providers and residents. Federal courts have repeatedly rejected state and local efforts to regulate ADF Housing.
3. Local governments should be encouraged and supported in their use of existing nondiscriminatory legal tools to address legitimate health and safety, building, fire, zoning and criminal impacts of ADF Housing where they occur.
4. Residents of ADF Housing should be educated about existing consumer protection remedies to assert their rights against unscrupulous operators of ADF Housing.

5. DPH should continue to investigate and triage as appropriate complaints related to ADF Housing providers, including complaints alleging that providers advertise, offer or require residents to participate in an unlicensed substance abuse treatment program, on or off-site.
6. The Legislature could consider legislation and provision of funding for implementation by DPH of a voluntary training program for ADF Housing providers, with a directive to all state agencies and their vendors to refer clients to BSAS-trained ADF Housing providers only.

As a follow-up to this study, DPH will work in collaboration with the Department of Housing and Community Development (DHCD) and the Office of Consumer Affairs and Business Regulation to convene a working group on Sober Homes to determine a strategy for addressing these findings. We will invite members of the Legislature to participate in this process and look forward to continuing to work together to examine this important issue.

Sincerely,

A handwritten signature in black ink, appearing to read "John Auerbach". The signature is fluid and cursive, with the first name "John" being more prominent than the last name "Auerbach".

John Auerbach
Commissioner

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

Massachusetts Department of Public Health, Bureau of Substance Abuse Services

I. Legislative Mandate and Summary of Findings

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

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

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

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

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

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

The major findings of the report are as follows:

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

II. Description and Number of ADF Homes Operating in Massachusetts

A. Description of ADF Housing

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

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

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

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

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

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

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

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

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

B. ADF Housing Estimates

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

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

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

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

III. Legal Authority to Regulate ADF Housing

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

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

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

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

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

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

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

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

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

B. State Zoning Act

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

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

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

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

C. State and Local Regulation of ADF Housing

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

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

D. Regulation of ADF Housing in Other States

A 2009 research report prepared for the Connecticut Legislature⁵ and a recent informal survey of state substance abuse treatment agencies did not identify any state that has adopted a mandatory regulatory, licensure or certification program for ADF Housing. Some states exercise authority through contracts, loans and grants that provide funding for ADF Housing providers or residents. All states regulate substance abuse treatment services, including residential treatment services. As explained above, under the FHAA federal courts have invalidated various local and state efforts to regulate ADF Housing.

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

As a response to the growing concern of legislators, municipal officials and citizens of communities experiencing a proliferation of ADF Housing, BSAS established a public facing, web-based voluntary listing of ADF Housing operators in January 2008: <http://www.mass.gov/eohhs/provider/licensing/facilities/residential-facilities/adf-housing-registry/>

The purpose of the listing was threefold:

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

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

⁵ "Sober Houses," Office of Legislative Research, Saul Siegel, Chief Analyst, September 2, 2009, available at <http://www.cga.ct.gov/2009/rpt/2009-R-0316.htm>.

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

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

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

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

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

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

V. BSAS Licensure of Substance Abuse Treatment Facilities and Programs

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

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

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

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

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

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

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

These treatment mandates include among others:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

VII. Conclusion

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

- Documentation of the number of sober homes operating in the Commonwealth;
- Any problems created by the operation of sober homes, including impacts on neighborhoods and surrounding areas;
- Standards and requirements necessary to protect the home's residents; and

- The feasibility of licensing, regulating, registering or certifying sober homes or operators (Chapter 283, Section 10 of the Acts of 2010).

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

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

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

This BSAS study concludes that:

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

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

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

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