

Bill as
Introduced

HB 377 - AS INTRODUCED

2021 SESSION

21-0455
10/05

HOUSE BILL **377**

AN ACT relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

SPONSORS: Rep. Connors, Hills. 15; Rep. Cornell, Hills. 18; Rep. Goley, Hills. 8; Rep. Snow, Hills. 19; Sen. D'Allesandro, Dist 20

COMMITTEE: Executive Departments and Administration

ANALYSIS

This bill allows substance-free recovery houses to be granted an exemption by the state fire marshal for certain requirements of the state fire code.

Explanation: Matter added to current law appears in *bold italics*.
Matter removed from current law appears [~~in brackets and struck through~~].
Matter which is either (a) all new or (b) repealed and reenacted appears in regular type.

STATE OF NEW HAMPSHIRE

In the Year of Our Lord Two Thousand Twenty One

AN ACT relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

Be it Enacted by the Senate and House of Representatives in General Court convened:

1 1 New Section; Fire Marshal; Exemption for Recovery Houses. Amend RSA 153 by inserting
2 after section 10-c the following new section:

3 153:10-d Exemption for Recovery Houses.

4 I. An owner or operator of a recovery house which is in compliance with rules adopted by the
5 commissioner of health and human services under RSA 172-B:2, V for the voluntary registry for
6 operators of recovery houses or who is certified by the New Hampshire Coalition of Recovery
7 Residences may apply to the state fire marshal and maybe granted an exemption under RSA 153:5,
8 IV from certain requirements of the state fire code, provided the following requirements are in place:

9 (a) A properly maintained electrical system.

10 (b) A properly maintained heating system, inspected and tagged annually by a qualified
11 service technician, including a domestic sprinkler head over the unit and smoke separation from
12 living area.

13 (c) Properly maintained cooking appliances.

14 (d) Street number of the recovery house posted and visible from the street.

15 (e) No smoking within 10 feet of the building unless approved by the local fire
16 department.

17 (f) A written evacuation plan submitted to and approved by the local fire department.

18 (g) Monthly evacuation drills must be conducted with documentation available for
19 review onsite.

20 (h) Basement living spaces shall have an exit directly to grade.

21 (i) The facility shall have a minimum of 200 gross square feet per resident.

22 (j) At least one escape window in each sleeping room. An escape window shall comply
23 with the state fire marshal's most recent informational bulletin document relative to size and
24 dimensions.

25 (k) Installed interconnected smoke and carbon monoxide alarms, electrically powered
26 with battery backup, on each level and in each sleeping room. Ten-year battery alarms with wireless
27 interconnectivity may be substituted for electrically powered alarms. For occupancies exceeding 8
28 occupants, the installation of a complete fire alarm system, with carbon monoxide detection,
29 including automatic notification to the local fire department shall be required.

30 (l) Annual compliance inspection by the local fire department.

HB 377 - AS INTRODUCED

- Page 2 -

1 (m) If the travel distance to an exit is greater than 75 feet, or for occupancies with living
2 space above the second floor regardless of travel distance, there shall be 2 remote means of egress
3 from each floor.

4 (n) A 24-hour emergency contact person with contact information and the approved
5 building occupant load shall be posted in the common area of the building so it is readily visible to
6 the fire department.

7 II. In this section, "recovery house" means a residence that provides a safe, healthy, family-
8 like, substance-free living environment that supports individuals in recovery from addiction and is
9 centered on peer support and a connection to services that promote long-term recovery; provided that
10 "recovery housing" shall not include a halfway house or any other facility requiring a license
11 pursuant to RSA 151.

12 2 Effective Date. This act shall take effect 60 days after its passage.

CHAPTER 26
HB 377 - FINAL VERSION

2021 SESSION

21-0455
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HOUSE BILL **377**

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HB 377 - FINAL VERSION

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9 like, substance-free living environment that supports individuals in recovery from addiction and is
10 centered on peer support and a connection to services that promote long-term recovery; provided that
11 "recovery housing" shall not include a halfway house or any other facility requiring a license
12 pursuant to RSA 151.

26:2 Effective Date. This act shall take effect 60 days after its passage.

Approved: May 06, 2021
Effective Date: July 05, 2021

Committee Minutes

SENATE CALENDAR NOTICE

Executive Departments and Administration

Sen Sharon Carson, Chair
Sen John Reagan, Vice Chair
Sen Denise Ricciardi, Member
Sen Kevin Cavanaugh, Member
Sen Suzanne Prentiss, Member

Date: March 17, 2021

HEARINGS

Wednesday	03/24/2021	
(Day)	(Date)	
Executive Departments and Administration	REMOTE 000	9:00 a.m.
(Name of Committee)	(Place)	(Time)
9:00 a.m.	HB 117	relative to the use of force at New Hampshire national guard facilities.
9:15 a.m.	HB 377	relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.
9:30 a.m.	HB 356	relative to the city of Manchester employees' contributory retirement system.
9:45 a.m.	HB 318	proclaiming the daring jumping spider to be the state spider of New Hampshire.

Committee members will receive secure Zoom invitations via email.

Members of the public may attend using the following links:

1. Link to Zoom Webinar: <https://www.zoom.us/j/97478051865>
2. To listen via telephone: Dial (for higher quality, dial a number based on your current location): 1-301-715-8592, or 1-312-626-6799 or 1-929-205-6099, or 1-253-215-8782, or 1-346-248-7799, or 1-669-900-6833
3. Or iPhone one-tap: +13017158592,,97478051865# or +13126266799,,97478051865#
4. Webinar ID: 974 7805 1865
5. To view/listen to this hearing on YouTube, use this link:
<https://www.youtube.com/channel/UCiBZdtriRnQdmg-2MPMiWrA>
6. To sign in to speak, register your position on a bill and/or submit testimony, use this link:
<http://gencourt.state.nh.us/remotecommittee/senate.aspx>

The following email will be monitored throughout the meeting by someone who can assist with and alert the committee to any technical issues: remotesenate@leg.state.nh.us or call (603-271-6931).

EXECUTIVE SESSION MAY FOLLOW

Sponsors:

HB 117

Rep. Graham

Sen. Giuda

HB 377

Rep. Connors

Rep. Cornell

Rep. Goley

Rep. Snow

Sen. D'Allesandro

HB 356

Rep. Long

HB 318

Rep. McGhee

Cameron Lapine 271-2104

Sharon M Carson
Chairman

Senate Executive Departments and Administration Committee

Cameron Lapine 271-2104

HB 377, relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

Hearing Date: March 24, 2021

Time Opened: 9:15 a.m.

Time Closed: 9:56 a.m.

Members of the Committee Present: Senators Carson, Reagan, Cavanaugh and Prentiss

Members of the Committee Absent: Senator Ricciardi

Bill Analysis: This bill allows substance-free recovery houses to be granted an exemption by the state fire marshal for certain requirements of the state fire code.

Sponsors:

Rep. Connors

Rep. Cornell

Rep. Goley

Rep. Snow

Sen. D'Allesandro

Who supports the bill: Max Schultz (State Fire Marshal's Office), Paul Parisi (State Fire Marshal's Office), Representative Carol McGuire (Merrimack – District 29), Sean Toomey (State Fire Marshal's Office), Representative Erika Connors (Hillsborough – District 15), Lucinda Hope, Representative Jeff Goley (Hillsborough – District 8), Ruth Larson, Nikki Fordey, Richard DeMark, and Patricia Cornell.

Who opposes the bill: Kim Bock (New Hampshire Coalition of Recovery Residences), Elliott Berry, Evan Draper (NHCORR), Christine Wellington, Ryan O'Callaghan, Rachael Azotea, Rebecca Martin, Donna Mombourquette, Jules Johnson, Shanna Large-Reusch, Kristine Paquette, Alyssa Ng, Trey Rich, Dominic Rich, Lisa MacDonald, Adam Moulton, Adam Draper, Freeman Toth (BM-CAP Homeless Outreach & Housing Stabilization), Keith Anderson, Michelle Leclerc, and Shanna Griffin.

Who is neutral on the bill: Jake Berry (New Futures) and Jonathan Gerson.

Summary of testimony presented in support:

Representative Erika Connors

Hillsborough – District 15

- Representative Connors chaired the Committee to Study State and Municipal Authority Governing Recovery Houses (Laws of 2020, 37:151). She said that the Study Committee

recommended mirroring the language of HB 311 (2020) as it was amended by the House before dying on the table in the Senate.

- Rep. Connors said that recovery houses offer a bridge for those in recovery between a rehab facility and a home. She said that they offer rules, structure, therapy, and a drug-free environment as a piece of the road to recovery.
- Rep. Connors said that HB 377 does not reduce or eliminate true sober housing. She said that some people take advantage of people in recovery and get around the Life Safety Code.
- Rep. Connors said that people in recovery are protected under the Americans with Disabilities Act (ADA) but are not being protected by bad actors operating recovering housing. She said that HB 377 is permissive legislation allowing true recovery houses to operate under less stringent regulations.
- Senator Reagan said he has participated in conversations about sober homes for many years. He said he was informed that the square footage requirement in HB 377 is four times the federal requirement for square footage. He asked if there was a reason for that.
 - Rep. Connors said that she wasn't sure what the federal requirements were, but that the language in HB 377 came from the Fire Marshal's Office (FMO).
- Senator Reagan asked if anyone could answer his question about square footage requirements.
 - Senator Carson said that there were individuals from the FMO who had signed up to testify.
- Senator Cavanaugh said there have been a lot of problems with bad actors in Manchester, involving 16 adults living in one home in a residential neighborhood. He asked if HB 377 was a way to shut down bad actors.
 - Rep. Connors said that the idea of HB 377 is not to affect zoning in any way, but it is to look at what a sober home is and look at bad actors while helping places doing good.
- Senator Carson asked Rep. Connors to supply the Committee with the Final Report of the Study Committee.
 - Rep. Connors said she did not have the Final Report at hand but would send it to the Committee. She said Senator D'Allesandro was the Senate member on the Study Committee.

Representative Carol McGuire

Merrimack – District 29

- Representative McGuire said that HB 377 sets the specifications for safety requirements that are needed in a recovery home to deal with the large amount of older housing stock without sprinkler systems.
- Rep. McGuire said that HB 377 creates a framework for safety if sprinkler systems are not required.
- Rep. McGuire said that the FMO can currently issue waivers on a one-on-one basis but HB 377 will put in statute what the essential minimum requirements are for a building without a sprinkler system operating as recovery housing.
- Rep. McGuire said that older houses in cities and towns do not have sprinklers and need to take special efforts towards safety if they are going to be used as a recovery home.
- Senator Reagan asked if Rep. McGuire could answer his question about the square footage requirements.
 - Rep. McGuire said that the issue never came up in House Executive Departments

and Administration's hearing on HB 377.

- Senator Prentiss asked if there needed to be rulemaking authority to grant waivers under HB 377.
 - Rep. McGuire said that there are already rules for the FMO to issue a waiver and that HB 377 creates an easier, standard waiver rather than requiring a unique one in each case.

Paul Parisi

FMO

- Mr. Parisi said that he has worked with local fire departments, and especially Manchester's fire department, as well as many in the recovery community to try to find a solution. He said that it is clear that the number of overdose deaths exceed the number of fire deaths and he does not want to tip the scales the other way.
- Mr. Parisi said that HB 377 strikes a balance between fire suppression provisions and the potential financial hardships that some requirements could create. He said that because sober houses are recognized as rooming and lodging houses, they require more robust fire suppression systems.
- Mr. Parisi said that if a recovery home is complying in general and, specifically, with items A through N of HB 377, they can seek an exemption from the greater fire suppression requirements.
- Mr. Parisi said that HB 377 creates a mechanism for residences to demonstrate their safety measures while giving a more viable exemption to portions of Chapter 26 of the Life Safety Code.
- Mr. Parisi said that HB 377 is a standardized process for how the State handles recovery houses from a safety perspective, which may reduce "Not In My Backyard" issues because there will be a clear rule state-wide.
- Mr. Parisi said that HB 377 leverages the existing infrastructure between the New Hampshire Coalition of Recovery Residences (NHCORR) and administrative rules Saf-C 6000, showing the extent of the compromise and allowing the General Court to decide what is appropriate.
- Addressing Senator Reagan's square footage question, Mr. Parisi said that the NHCORR checklist lists 50 square feet per sleeping room while HB 377 lists 200 square feet as the gross square footage per dwelling unit per person. He said that the NHCORR requirement is per bedroom while HB 377 is discussing the unit itself.
- Senator Cavanaugh said that his biggest issue before the COVID-19 pandemic was the recovery home problem in Manchester. He asked if HB 377 would make it easier to take on bad actors taking advantage of people in recovery.
 - Mr. Parisi said that he would believe that statement to be accurate. He said that HB 377 would legitimize people doing the right thing and acting to help people while weeding out the bad actors. He said that this has been an issue for many years. He said that local fire chiefs have been left in the lurch relative to enforcement while looking for a state-wide solution.
- Senator Carson asked if any buildings would be grandfathered in under HB 377.
 - Mr. Parisi said no. He said that if a fire chief was to come across a recovery residence once the statute was enacted, they would ask the residence to come into compliance. He said that the chief would work with the residence even if they'd been in operation for months or years. Mr. Parisi said it is called a corrective action plan.
- Senator Carson asked how long an existing house would have to come up to code.
 - Mr. Parisi said it would depend on how many issues there are with a home, how

much money the home has to spend, and how serious the problems are. He said if a chief went in and there weren't the proper number of egress points and no smoke or carbon monoxide alarms, there would be a serious and tight corrective action plan. If it was more minor, like needing to develop an evacuation plan or posting a "No Smoking Within 10 Feet" sign, then the chief would give more time.

Paul Toomey

FMO

- Mr. Toomey supported Mr. Parisi's comments.

Summary of testimony presented in opposition:

Kim Bock

NHCORR

- Ms. Bock said that NHCORR is appointed by the State to certify recovery housing as meeting national standards. She said there are currently 50 houses in New Hampshire that meet those standards.
- Ms. Bock said that HB 377 is not necessary because the FMO already has the legislative authority to issue a variance to the code regulations, in RSA 153:5-IV, which applies to all buildings, structures, and equipment.
- Ms. Bock said that HB 377 was discriminatory, as it only carves out recovery residences and does not apply to any similar homes. She said that RSA 153:5-IV applies to everyone equally.
- Ms. Bock said that HB 377 is oppressive to recovery housing, knowing that there isn't enough housing in New Hampshire. She said that people in recovery have a 60% greater chance of long-term recovery if they enter a recovery home. She said that long-term recovery reduces the societal costs, as it reduces relapse rates and reduces the rate of reentry into treatment.
- Ms. Bock said that HB 377 mandates an additional cost of \$15,000 for every recovery residence. She said that RSA 153:5-IV allows every individual structure to develop their own plan. She said that provisions of HB 377 are non-negotiable and will cost an additional \$15,000.
- Ms. Bock said that recovery houses did not make a huge profit and no one is getting rich off of running them. She said seven houses closed during the COVID-19 pandemic due to the economic downturn.

Elliott Berry

New Hampshire Legal Assistance

- Mr. Berry said that he is opposed to HB 377 but not opposed to what people are trying to do. He said he understands the problem of substandard housing and does not want to fight with the FMO or the Manchester Fire Department.
- Mr. Berry said that HB 377 did not solve the problem. He said that the real problem is substandard sober homes, but the bill only applies to those that have gone through the process of being certified and would, therefore, apply to only responsible actors.
- Mr. Berry said that HB 377 could lead to litigation, which he believed the State would lose.

He said that the Fair Housing Act does not allow discrimination on the basis of disability. He said that HB 377 is explicitly aimed at one kind of disability and no other type of housing is subjected to that standard.

- Mr. Berry said that the Fire Code and the Life Safety Code exist to ensure the safety of the building, not to regulate who occupies a building. He said that HB 377 treats recovery housing differently and is going to be struck down by a court.
- Senator Cavanaugh said that he disagreed with Mr. Berry's comments. He said that there are a lot of bad actors in Manchester and there is frustration from the Fire Department that there are too many people living in a home with no way to shut them down. He said that he felt that HB 377 was a tool for fire departments to close down bad actors and help good programs. He said that HB 377 goes towards preventing bad actors from buying houses and having multiple adults living in them and claiming they were a family. He asked Mr. Berry to touch on those comments.
 - Mr. Berry said that he understood Senator Cavanaugh's comments. He said that Line 6 of HB 377 says that the bill only applies to recovery houses that have been certified by NHCORR. He said that irresponsible bad actors would not be covered by HB 377. Mr. Berry said that, from a technical, legal perspective, HB 377 would be a law that treats certified recovery houses differently than any other kind of facility.
- Senator Cavanaugh said that he felt HB 377 gives leniency to good actors and gives them a break, allowing them to get away from a more expensive sprinkler system upgrade.
 - Mr. Berry said that Senator Cavanaugh could be correct and that it is possible a court could be convinced. He said it would be a battle in court.

Christine Wellington

NHCORR Board Member

- Ms. Wellington supported comments from Ms. Bock and Mr. Berry.
- Ms. Wellington said that people in recovery should have as wide of a choice for housing as other individuals.
- Ms. Wellington said that, in 2016, the federal Department of Justice and the federal Department of Housing and Urban Development issued guidance making it explicit that recovery homes fall under the Fair Housing Act. She said that HB 377 singles out housing for people with a disability and applies more regulations.
- Ms. Wellington said that HB 377 sets 14 different standards that create a rigid standard that certified and registered homes would have to make and do not seem to apply to potential bad actors.
- Ms. Wellington said that many people who are not certified are not bad actors. She said that they would still have to go through the normal process in RSA 153:5-IV, which she said is a good example of a neutral law applying to all housing operators.

Neutral Information Presented:

Jake Berry

New Futures

- Mr. Berry said that New Futures has no position on HB 377. He said that it is a sensitive and important issue and access to stable housing is critical to long-term recovery.

- Mr. Berry said that the safety and security of homes and inhabitants is important.
- Mr. Berry urged the Committee to dig deep into their work and ensure there are no unintended consequences.
- Mr. Berry said that the immediate threat of a fire is not the only danger people in recovery face. He said that they have long-term safety concerns in overcoming the addiction crisis.

cml

Date Hearing Report completed: March 25, 2021

Speakers

Senate Remote Testify

Executive Departments and Administration Committee Testify List for Bill HB377 of Support: 10 Oppose: 19 Neutral: 1 Total to Testify: 9

<u>Name</u>	<u>Email Address</u>	<u>Phone</u>	<u>Title</u>	<u>Representing</u>	<u>Position</u>	<u>Testify</u>
Schultz, Max	maxim.f.schultz@dos.nh.gov	603.419.9469	State Agency Staff	NH State Fire Marshal's Office	Support	Yes
Bock, Kim	executivedirector@nhcorr.org	Not Given	A Member of the Public	New Hampshire Coalition of Recovery Residences	Oppose	Yes
Parisi, Paul	paul.j.parisi@dos.nh.gov	603-931-9538	State Agency Staff	NH State Fire Marshal's Office	Support	Yes
Berry, Jake	jberry@new-futures.org	603.493.8781	A Lobbyist	New Futures	Neutral	Yes
Berry, Elliott	eberry@nhla.org	Not Given	A Lobbyist	Myself	Oppose	Yes
McGuire, Carol	Not Given	Not Given	An Elected Official	Merrimack 29	Support	Yes
Toomey, Sean	Not Given	Not Given	State Agency Staff	State Fire Marshal's Office	Support	Yes
Draper, Evan	evan@startingpointnh.com	603.387.2479	A Member of the Public	Myself-NHCORR	Oppose	Yes
Wellington, Christine	chriswellington10@comcast.net	603.553.8498	A Member of the Public	Myself	Oppose	Yes
Mombourquette, Donna	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Johnson, Jules	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Hope, Lucinda	lmhope46@gmail.com	Not Given	A Member of the Public	Myself	Support	No
Azotea, Rachael	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Martin, Rebecca	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Large-Reusch, Shanna	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Paquette, Kristine	kristinepaquette@homesteadinn.org	603.247.3064	A Member of the Public	Myself	Oppose	No
Rich, Trey	treyr@theprocessrecoverycenter.com	Not Given	A Member of the Public	Myself	Oppose	No
Rich, Dominic	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
MacDonald, Lisa	lamac17@yahoo.com	603-491-8934	A Member of the Public	Myself	Oppose	No

3/24/2021

Senate Remote Testify

Goley, Rep. Jeff	Not Given	Not Given	An Elected Official	Myself	Support	No
Larson, Ruth	ruthlarson@msn.com	Not Given	A Member of the Public	Myself	Support	No
Fordey, Nikki	nikkif610@gmail.com	Not Given	A Member of the Public	Myself	Support	No
DeMark, Richard	demarknh114@gmail.com	603.520.5582	A Member of the Public	Myself	Support	No
Cornell, Patricia	Not Given	Not Given	An Elected Official	Myself	Support	No
Moulton, Adam	Adam@reverencehouse.com	Not Given	A Member of the Public	Myself	Oppose	No
Draper, Steven	steve@theinsdoc.com	603-289-6446	A Member of the Public	Myself	Oppose	No
Toth, Freeman	FreemanToth@BM-CAP.Org	603.856.9104	State Agency Staff	BM-CAP Homeless Outreach & Housing Stabilization	Oppose	No
anderson, keith	Keithr.anderson@yahoo.com	603.262.3964	A Member of the Public	Myself	Oppose	No
Leclerc, Michelle	Not Given	Not Given	A Member of the Public	Myself	Oppose	No
Griffin, Shanna	shanna.r.griffin@hitchcock.org	16034568301	A Member of the Public	Myself	Oppose	No

Testimony

Cameron Lapine

From: Evan Draper <evan@startingpointnh.com>
Sent: Tuesday, March 23, 2021 10:50 AM
To: Cameron Lapine
Subject: opinion

This bill will increase the amount of requirements the fire department must place upon recovery houses and will include fire alarm systems that are connected to the local fire department. We estimate the cost of these systems to be in the range of \$15K. There are a multitude of other, less costly items as well.

NHCORR finds the bill to be

- 1 - not necessary - the fire marshal already has the power to give recovery houses variances from sprinkler systems in NH.
- 2 - discriminatory - it only applies to recovery houses, not other houses of similar nature with more than 4 unrelated people.
- 3 - oppressive - the costs imposed on houses may deter recovery houses from opening and may cause some to close.

**COMMITTEE TO STUDY STATE AND MUNICIPAL AUTHORITY
GOVERNING RECOVERY HOUSING
HB 1245
CHAPTER LAW 37:151; LAWS OF 2020**

REPORT

The above-named committee studied state and municipal authority governing recovery housing to ensure the safety and wellbeing of individuals and families residing in recovery housing and to promote positive integration of recovery housing within surrounding neighborhoods.

FINDINGS

Committee members developed a list of key stakeholders which included the State Fire Marshal's Office, the Manchester Fire Department, the Department of Health and Human Services, the New Hampshire Coalition of Recovery Residents (NHCORR), the New Hampshire Municipal Association and New Hampshire Legal Assistance. An individual with experience in residing in a sober living environment provided an additional perspective for committee members.

Numerous attempts have been made in the past few years to develop a legislative solution to the issues of recovery housing. All parties agree these facilities do good work and serve a need in the community. The bottom line is having a safe place to reside for those living in recovery. The most recent of these legislative attempts, HB 311, sought to grant authority to the State Fire Marshal's Office to grant an exemption from fire code requirements to recovery housing.

The City of Manchester started to take a hard look at recovery housing once they realized individuals were becoming repeat participants in their *Safe Station* program. They set about attempting to determine how many of these housing units were located in the city. They estimate approximately 50 of these residences are operating in the state's largest city at any given time. There is no way to determine where these residences are located until the fire department investigates a fire call, an overdose or a fatality. Not being registered or identified, these places are popping up in some neighborhoods resulting in zoning issues. However, the vast majority of these housing owners want to do the right thing.

There remains a stigma attached to this type of housing. When sober living housing moves into a neighborhood, it can frighten those already living in the area.

Having a safe, secure recovery housing environment is the key to learning how to get back into society as a functioning individual. Seven out of ten individuals do not make it to sobriety. Two have a 50/50 shot. Generally, one in ten actually recovers and becomes sober.

Through its Bureau of Licensing and Certification, the Department of Health and Human Services currently has the authority to regulate facilities that perform health services. Because sober housing is more the situation of providing a safe environment, the Department does not have the authority to regulate such housing, which is subject to the federal Fair Housing Act. It does maintain a voluntary state registry which allows for protections to those living in recovery housing. Housing on the state registry is required to be certified, based on the standards of the National Alliance for Recovery Residences (NARR). The state affiliate to this national organization is NHCORR, which works with individual recovery housing agencies to attain certification.

The concerns municipalities tend to have with recovery housing are local zoning issues. But they are fairly limited in addressing these concerns. Under the federal Fair Housing Act and Americans with Disabilities Act municipalities cannot discriminate against recovery housing. They cannot treat recovery housing any different from any other group housing. It's a limitation cities and towns have to live with. Municipalities should be urging recovery housing owners to become certified.

As documented in case law, recovery housing should be treated as single family housing, not group housing or congregate living. Houses attempt to bring a sense of family to an individual in recovery.

The state and local municipalities should be cautious of creating requirements that are more onerous than are applicable to other similar structures or homes. Requirements for inspection, identification or medical information aimed solely at recovery homes will clearly raise fair housing issues, as are regulations that suggest that their motivation go to stereotypical assumptions of persons in recovery. The requirements for life safety codes and other safety regulations must be applicable to all similarly situated housing types. The focus needs to be on the structure. Local zoning regulates structures by and large, and not those who occupy them.

How do we ensure the environment in this type of housing is conducive to recovery? How do we ensure the facilities are adequate? Should we develop state overview to include adequate fire protections? NHCORR certifies organizations for inclusion on the state registry. But what about these other places that are not following the national standards? Recovery housing has a responsibility to provide a basic level of safety for its residents.

RECOMMENDATIONS

The committee will continue to work with the Department of Health and Human Services, NHCORR and NARR on the voluntary certification process.

The committee recommends legislation be filed to define the term "recovery housing" and create a state process to provide for an exemption to some provisions within the fire code.

The committee suggests reexamining the basic minimum standards included in House Bill 311 for possible changes.

Respectfully submitted,

Erika Connors (dx)

Representative Erika Connors
Hillsborough District 15

Stephen Pearson (dx)

Representative Stephen Pearson
Rockingham District 6

Timothy Josephson (dx)

Representative Timothy Josephson
Grafton District 11

Lou D'Allesandro (dx)

Senator Lou D'Allesandro
Senate District 20

**Committee To Study State and Municipal Authority Governing
Recovery Housing
HB 1245, Chapter Law 37:151, Laws of 2020**

Organizational Meeting Minutes

TO: Members of the Committee

FROM: Deb Martone
Senate Legislative Aide

MEETING DATE: October 15, 2020, 1:00 pm, Via Zoom

Members of the Committee Present: Senator Lou D'Allesandro
Representative Erika Connors
Representative Stephen Pearson
Representative Timothy Josephson

Meeting Discussion:

Senator D'Allesandro opened the organizational meeting and read aloud the meeting guidelines regarding RSA 91-A, the Right-To-Know law. He then nominated Representative Connors as Chair of the committee. The nomination was seconded and the vote was 4-0 to confirm.

Senator D'Allesandro reviewed the duties of the committee as outlined in HB 1245. Committee members shall study state and municipal authority governing recovery housing to ensure the safety and wellbeing of individuals and families residing in recovery housing, and to promote positive integration of recovery housing within surrounding neighborhoods. The committee shall also study incentives for recovery operators to adhere to nationally recognized quality standards.

Committee members developed an initial list of key stakeholders to hear from at the next meeting. These include the New Hampshire Fire Marshall, the Manchester Fire Chief, the Department of Health and Human Services, New Hampshire Legal Assistance, the New Hampshire Municipal Association and the New Hampshire Coalition of Recovery Residents.

NEXT MEETINGS: October 20, 2020 1:00 pm Via Zoom
 October 22, 2020 12:00 pm Via Zoom

REPORT DUE: November 1, 2020

**Committee To Study State and Municipal Authority
Governing Recovery Housing
HB 1245, Chapter Law 37:151, Laws of 2020**

Regular Meeting Minutes

TO: Members of the Committee

FROM: Deb Martone
Senate Legislative Aide

MEETING DATE: October 20, 2020, 1:00 pm, Via Zoom

Members of the Committee Present: Representative Erika Connors
Representative Stephen Pearson
Representative Timothy Josephson
Senator Lou D'Allesandro

Meeting Discussion:

Representative Connors opened the meeting with the reading of the Right-to-Know script. Committee members then turned their attention to the testimony of numerous key stakeholders.

NH Fire Marshal Paul Parisi related to the committee his office's experience working closely with key stakeholders in an attempt to pass a legislative solution to the issues with recovery housing. These included local fire and building officials, the New Hampshire Coalition of Recovery Residents (NHCORR), the Attorney General's Office, the Department of Safety and individual recovery housing unit owners. All parties agree the bottom line is having a safe place to reside for those living in recovery, at least temporarily. No one wants to see anyone hurt due to an unsafe condition.

Most individuals don't expect a fire to occur in a house they are staying in. Most don't check for fire protection when they are staying in a place, such as smoke alarms, having two exits from the building, and that the windows are working properly. They do, however, expect a level of safety from those in control of the housing. On average, 6-8 individuals die from fire in New Hampshire each year.

HB 311 was a good solution to this issue. The proposal would allow the NH Fire Marshal's Office to issue a reasonable accommodation, a variance, upon request provided there was some equivalencies put in place. These equivalences would reduce the risk of a fire, and would include:

- properly maintained electrical, heating and cooking systems;

- a single sprinkler head over a boiler, as well as having a smoke separation where the boiler or heating plant was located to the remainder of the living space;
- a visible street number, 24-hour contact information, and an occupant load visibly posted for emergency responders;
- a written evacuation plan with evacuation drills;
- a minimum of 200 square feet per person per resident in the house;
- basement living spaces must have an exit to grade;
- sleeping spaces must have proper egress windows;
- two remote egresses in addition to the window if travel distance is in excess of 75 feet, or if there were living spaces above the second floor;
- interconnected smoke and carbon monoxide alarms throughout the house; if the occupant load of the house is greater than eight, a complete fire alarm system is required;
- an annual inspection by the local fire department and compliance.

These items are reasonable and would be acceptable as a variance, in lieu of the normally required fire sprinkler system.

Manchester Fire Chief Dan Goonan informed the committee the fire department started to take a hard look at recovery housing once individuals came through the *Safe Station* program. The fire department was experiencing a couple hundred individuals per month in the new program, and quickly realized the need for good sober living and recovery housing treatment, as individuals were becoming repeat participants in the program. The department set about trying to determine how many of these housing units were located in the city. Chief Goonan worked with Senator D'Allesandro to develop a proposal to help them identify these types of places as they opened. Unfortunately, their proposal was unsuccessful.

It's all about a reasonable number of occupants and safety measures. There are approximately 50 of these such residences at any time in the city of Manchester. There is no way to determine where these residences are located until the department investigates a fire call, an overdose or a fatality. It's a "Wild West Show," with no regulation whatsoever.

Currently, the city is working on identifying these places and working with the owners. They are looking to develop a checklist of requirements to open up such a facility. Not being registered or identified, these places are popping up in some neighborhoods resulting in zoning issues. It's a nightmare for some of these neighborhoods, and a real mess for the city. There is also a remaining stigma attached to this type of housing. When sober living housing moves into a neighborhood, it can scare those already living in the area.

Representative Connors inquired if the city has zoning requirements for other disability-like housing. Manchester Fire Marshall Peter Lennon stated there is nothing currently in zoning that specifically addresses the disability issue. Chief Goonan pointed out on one side of the equation is the fire code; on the other side is the building code. We have

rooming houses and congregate living. All of these parties are attempting to get on the same page in Manchester. These places are being identified every week, but the city needs additional guidance and ground rules from the Legislature. The vast majority of these owners want to do the right thing.

Representative Pearson commented the concept of having a minimally required checklist is not foreign to New Hampshire. He cited the example of foster care. He reminded committee members whichever type of proposal gets adopted, it would apply to all cities and towns in the state. This type of housing exists in all locations of New Hampshire. Representative Josephson agreed some type of basic checklist could benefit all cities and towns.

Atty. Melissa St. Cyr, Chief Legal Officer for the Department of Health and Human Services indicated they, too, have been working with interested parties on this issue. Through its Bureau of Licensing and Certification, they currently have the authority to regulate facilities that perform health services. Because sober housing is more the situation of providing a safe environment, DHHS does not have the authority to regulate such housing. Sober housing is subject to the federal Fair Housing Act. As housing, they don't receive compensation from Medicare, Medicaid or insurance. Residential treatment centers cannot make referrals to sober housing not listed on the state registry. The registry allows for protections to those living in sober housing. Atty. St. Cyr also clarified that the Department has no regulating authority over rooming or boarding houses, as they are not considered a healthcare facility. The Department maintains the registry, which assists the process of referrals from their Bureau of Drug and Alcohol Services.

Jenny O'Higgins, Legislative Liaison and Senior Policy Analyst for DHHS' Behavioral Health Division, provided the committee with some background. A voluntary state registry for recovery housing was established in 2018. The Department does not have authority to remove "bad actors" from the registry, nor do they have safety oversight or the ability to require particular documentation. It has been attempting to change the language from "alcohol and drug free housing" to the more current "recovery housing" terminology, add additional safety documentation to be listed on the registry, and gain the authority to prohibit or remove houses due to the severity or frequency of complaints. Housing on the state registry is now required to be certified. Certification is based on the National Association of Recovery Residents' standards. The state affiliate to the national association is NHCORR. They work with individual recovery housing agencies to become certified. With certification, state or federal funding is prohibited to houses not listed on the state registry. This incentivizes recovery housing owners to become certified, although the registry itself remains voluntary.

Atty. Cordell Johnston of the New Hampshire Municipal Association reiterated recovery housing is important. These facilities do good work and serve a need in the community. The concerns municipalities have tend to be about zoning issues. These concerns arise because neighbors are worried. They see activity and strangers in their neighborhood and don't know what's going on. Unfortunately, municipalities are fairly limited in addressing these concerns. They can have zoning provisions that regulate group homes.

Under the federal Fair Housing Act and Americans with Disabilities Act (ADA), municipalities cannot discriminate against recovery housing. They cannot treat recovery housing any different from any other group housing. It's a limitation cities and towns have to live with.

NHMA supports whatever the state can do to provide confidence that these facilities are run as safely and responsibly as possible.

Kim Bock, Executive Director, New Hampshire Coalition of Recovery Residents submitted written testimony to committee members. All parties recognize the need for recovery housing, and are all on the same page with safety. Individuals in recovery have a disability, and are protected by the ADA and HUD laws. Director Bock cited various state case law concerning overregulation of recovery houses. Per case law, recovery houses should be treated as single family houses, and not group housing or congregate living.

NHCORR reviews all documents a recovery house may have. They ensure the corporation is in good standing with the state, has proper insurance, and functions as a respectable business. They review documentation required to be signed by a recovering individual and operational documents of the house. They sit down with both recovery housing operators and residents, and undertake an annual walk-through of the house. (The walk-through is not called an inspection as NHCORR has no credentials.) They observe heating and cooking appliances, and ensure a street number is on the house, and visible from the street. Currently, they do not require a single sprinkler head over the boiler, but are amenable to adding such a standard. Residents are instructed to give anyone who comes to the door with concerns, pertinent contact information for the operators of the house. This information must also be posted. NHCORR requires evacuation plans be posted on every floor, and that evacuation drills are recorded. All smoke detectors must be checked during such drills. An outside meeting place must be designated, away from emergency equipment. NHCORR ensures there is 200 square feet per person in the house. In addition, 50 square feet per person is required in a bedroom. Residents cannot be housed in living rooms, dining rooms or kitchens. Typically, NHCORR is seeing two people in a bedroom; if the room is exceptionally large it might contain 3 people. Every bedroom must have two adequate egresses. They don't currently require basements to have an exit to grade. Smoke detectors are required in every bedroom, on every floor, and near the heating system.

There is no magic number for the appropriate number of individuals in a single family residence. Houses attempt to bring a sense of family to an individual in recovery, which is most important in fire safety. Residents in recovery housing build significant connections that result in helping each other escape from a burning structure. This has been reflected in case law.

Residents in recovery housing have a disability and cannot be discriminated against in any neighborhood. They belong in all neighborhoods. NHCORR requires a written "good neighbor" policy for all certified recovery housing. This policy limits the type of language used by the residents outside of the building. Residents must be pleasant to all neighbors.

The house must be kept in decent repair, with a neat and orderly yard. Parking policies are required.

NHCORR certifies four different levels of homes:

- Level One – similar to an Oxford house-style home; a group of individuals living in a home and determine it to be a sober home. Written rules and regulations are required to be certified by NHCORR. An Oxford style model does not require written rules and regulations as they can change as individuals come and go. But it must be sober.
- Level Two and Three – more services are offered to the residents, such as additional written rules, i.e., a curfew, or a prohibition of working 3rd shift. Reiki or yoga might be offered, as well. The opportunity to learn how to write a resume or job search might also be presented.
- Level Four – a home that offers treatment and may be licensed.

If something is going to be done, it should be done at the state level. Consistency is important.

Representative Josephson wondered if it would be helpful if the local Fire Marshal joins NHCORR when they perform an annual walk-through. He believes the physical limitations of space in a house would limit the number of residents. Representative Pearson added that outside of the municipal setting, there are actual regulations on the number of residents. These are tied to legitimate septic issues. He inquired if NHCORR is required to be notified of neighbor complaints. Director Bock indicated presently, they only entertain complaints from current or former residents. But they are currently discussing expanding it to neighbor complaints. Representative Pearson stated he has a problem sociologically with the concept of developing a sense of family and equating that to an actual family. His 25 years of experience in an urban environment dealing with emergency circumstances tell him that is just not the case. Folks who have recently decided to live together don't necessarily behave in that manner. It's not realistic, although a fantastic goal. In response to Representative Pearson's comments, Director Bock stated she was merely paraphrasing the court's decision in the Oxford House, Inc., Et Al vs. H. "Butch" Browning case, which compared the family unit of a "natural" family to the family unit of an Oxford-style house.

Representative Connors inquired as to whether the NHCORR certification process differed from the DHHS registry process. Director Bock believes DHHS is requesting organizations go to NHCORR for certification. DHHS agreed.

Atty. Elliott Berry of New Hampshire Legal Assistance stated he recognizes the extraordinary challenge for municipalities because whatever is done at the local or state level must apply to registered and nonregistered facilities. It would be very difficult in zoning and building regulations to distinguish between certified and noncertified homes. The Fair Housing Act provides challenges to municipalities and the state in attempting to deal with issues around recovery housing. The act prohibits potential discrimination

against people on the basis of disability, or discrimination against them for a particular disability. A familiar example would be when a permit is denied for a facility based on discriminatory opposition from neighbors, based on stereotypical fears about people in recovery. But it gets more complicated as the act also prohibits regulations that cause a "disparate impact". That would be facially-neutral requirements that have a disparate, negative effect on members of a protected class, such as persons with disabilities. This comes up frequently where you have a single family zone that limits the creation of homes for only one family, and they define "family" as no more than three or four unrelated people in the home. It's a facially-neutral classification but it has a very, very negative impact on persons with disabilities who desire to live in a single family home. In many cases it will be struck down as having a disparate impact.

The most severe complication of the act is its definition of discrimination. It includes the failure to grant a request for a reasonable accommodation that's necessary to afford persons with disabilities an equal opportunity to use and enjoy housing. Under intentional discrimination and disparate impact, you are not asking for special treatment. But in fact, with persons with disabilities it is a violation of the Fair Housing Act to deny a reasonable accommodation that is necessary to enable a disabled person to use and enjoy property on an equal basis. Usually this occurs when a sponsor is trying to get a variance from a provision of a local zoning ordinance. It is a thorny, difficult thing for local regulators.

What is not covered by the act are current users of illegal, controlled substances. In Atty. Berry's experiences, current users will usually have a look-back period of approximately six months. Individuals convicted of the manufacture or distribution of controlled substances are not protected by the act, nor are individuals found guilty of a sex offense.

The Fair Housing Act overrides state and local legislation.

Voluntary certification or licensing does not raise issues with the Fair Housing Act.

Requirements that protect the health and safety of residents of a home are fine. Fire safety and lifesaving requirements are appropriate. State and municipalities, however, should watch out for requirements that are more onerous than are applicable to other similar structures or homes. Requirements for inspection, identification or medical information aimed solely at recovery homes will clearly raise fair housing issues, as are regulations that suggest that their motivation go to stereotypical assumptions of persons in recovery. Any state or local regulations that require residents in recovery homes be involved actively in treatment would be illegal. The requirements for life safety codes and other safety regulations must be applicable to all similarly situated housing types.

One of the common problems that people trying to create recovery housing run into is that often recovery housing is misclassified. A group home or a single family home might be treated as if it is a rooming house or boarding house. You need to focus on the structure. Ensure individuals occupying those structures are being treated equally.

Another problematic instance is when you have a single family home, a recovery home of six or seven people, and it is permitted use, and the municipality requires a public hearing simply because of the nature of the individuals occupying the home. That would be a clear violation of the Fair Housing Act.

Keep in mind the obligation of a municipality to reasonably accommodate any kind of facility for persons with a disability does have defenses. The most common is an undue, financial administrative burden. In terms of a recovery home, Atty. Berry questions if it would be a defense to argue that the granting of the variance or the reasonable accommodation would fundamentally alter the zoning scheme. He has seen very little case law on what "fundamental alteration" means. It is relevant to the question as to whether you can limit the number of recovery homes in a particular zoning district. For the most part, it is highly suspect. However, at some point, a municipality will argue that by having so many recovery homes consisting of people who may only be living in a place for 12-18 months, will fundamentally alter the zoning scheme of a district that is defined as single family. At some point you might have so many recovery homes that you're actually creating something contrary to federal policy, which is to have a dispersion of persons with disabilities rather than concentrating them into one or two areas. Federal policy is very strong on have integration of persons with disabilities into all residential districts. An overconcentration of recovery homes in a district could create the problem of segregation.

Municipalities can consider legitimate issues like on-street parking and sewage disposal, particularly when a reasonable accommodation is being requested. If the applicant complies with the zoning ordinance and doesn't need a variance, that's a bigger problem. There is a broader, allowable set of considerations when the municipality is faced with a request of reasonable accommodation. Reasonable accommodation is supposed to be an interactive process. When a proponent of a recovery home is asking the town for a variance, rather than simply saying no, it is really important that the planning board or ZBA offer an alternative while protecting the needs of the municipality and accommodating the needs of the people with disabilities. Saying no really begs for a lawsuit.

Regarding the issue of identification, if you have a single family structure that is going to be occupied by a number of people no bigger than the typical family, the fact they would somehow have to be publicly identified is a big problem. If I'm a family with a developmentally disabled child, is there any justification under any circumstances whatsoever that I would be required to disclose to the neighbors that I have a child with developmental disabilities? The answer is clearly no. The same problems come with the requirement of a publicly identified recovery home.

The major justification for extensive regulation of foster care facilities is that you're dealing with minor children. The state has profound obligations to protect children in a way they don't for adults.

One of the tools municipalities have to deal with problems posed by uncertified recovery homes is basic code enforcement. Manchester has a Certificate of Occupancy program whereby every three years the owner of the property has to get a renewal of their Certificate of Occupancy. Along with that comes an inspection. If that is applied evenly to all rental structures, then you can do it.

Representative Josephson sought confirmation that all structures located in the same type of zoning must be treated equally. Voluntary certification with an annual inspection is okay, as long as it's voluntary. Atty. Berry explained anything a municipality does to encourage a sponsor or proponent of a recovery home to get certification, as long as it's voluntary, is laudable and legal.

Senator D'Allesandro indicated one of his concerns is with the proliferation of these homes. No one is opposed to people rehabilitating and restructuring their life. But it appears people were taking advantage of these individuals, and calling it a "sober house". Yet, people were dying of overdoses in these facilities, and we had facilities that were accommodating a number of people in a congested area. Senator D'Allesandro met with Chief Goonan and toured the city of Manchester, looking at some of these places. Some places calling themselves sober homes were not very good settings. Our goal is to create an atmosphere where these are good places that perform a good function, and that the function comes to a desired result in attaining sobriety and introducing people back to a "normal life". Accreditation became an issue, and DHHS got involved. We all want to get to the right point. But how do we get there in terms of providing the accommodations, a safe environment, that allows people to continue on their path to sobriety? How do we do that in a reasonable way? They charge fairly exorbitant amounts of money for people to be in these sober homes. However, these places are being discouraged; "everyone wants neighbors, but they only want the neighbors that they want". The question is, how do we move forward? Atty. Berry agreed it is difficult, but to the extent that you're dealing with structures that have more than one dwelling unit, i.e., duplexes and triplexes, that's when you can use your traditional housing code requirements to ensure the people living there are living in safe, decent, sanitary conditions. The harder problem is where they are in a conventional single family home, which would normally be considered a group home setting, where there's no jurisdiction for the housing code department to perform periodic inspections. The housing code generally does not apply to owner-occupied housing. That is really difficult. Anything municipalities can do to encourage these owners to get certification is strongly urged. Not helpful at all is the fact that many people have very problematic neighbors that want nothing to do with recovery houses.

Atty. Berry believes that in the vast majority of cases, both the Fair Housing Act and the ADA are very beneficial, but they can prove to be very challenging for municipalities. Senator D'Allesandro commented in a place like Manchester where you have density and multifamily dwellings, i.e., 7-10 apartments within one building, the city can't be restrictive. But by the same token, health and safety standards have to be applied due to the number of residents. Atty. Berry doesn't believe we need much special legislation for recovery homes.

Representative Connors sought confirmation that certified and noncertified recovery housing cannot be treated differently. Atty. Berry explained part of the problem is the legal assumption that because they're not certified, they don't follow those standards. He has not seen a case where an owner or operator of an uncertified facility has been punished for not having certification. But it is questionable. Go back to the concept that local zoning regulates structures by and large, and not who occupies them. Therefore, to require certification in a single family home occupied by five people operating as a family in a sober living unit, it would be very, very hard to subject them to higher standards because they didn't seek certification. NHCORR Director Bock added that most of the case law has been established by Oxford houses, which are a specific type of house with their own national governing organization. NHCORR can certify an Oxford house, but it doesn't have to happen. Atty. Berry clarified it would be legally risky, legally questionable to require that kind of housing to seek certification.

Committee members approved the minutes of the October 15, 2020 organizational meeting and subsequently adjourned.

NEXT MEETING: October 22 at 12:00 pm, at which time the committee will hear testimony from an individual who spent two years in a recovery house, and a decade as a professional firefighter. In addition, committee members will discuss and determine recommendations for inclusion in its final report, which is due November 1, 2020.

**Committee To Study State and Municipal Authority
Governing Recovery Housing
HB 1245, Chapter Law 37:151, Laws of 2020**

Revised Meeting Minutes

TO: Members of the Committee

FROM: Deb Martone
Senate Legislative Aide

MEETING DATE: October 22, 2020, 12:00 pm, Via Zoom

Members of the Committee Present: Representative Erika Connors
Representative Stephen Pearson
Representative Timothy Josephson
Senator Lou D'Allesandro

Meeting Discussion:

Representative Connors opened the meeting with the reading of the Right-to-Know script. Committee members approved the minutes of the October 20, 2020 meeting, and then turned their attention to additional testimony.

Charlie Hatfield is a former firefighter and recovering alcoholic with three years' sobriety. His experience with sober housing was one year at Providence Place in Portland, Maine.

Charlie explained some folks will enter a rehab facility, go straight back into their lives and continue on as they were. A majority of folks, however, are urged to go on to sober living immediately after exiting a rehab facility.

It is not uncommon to look at getting sober as being reborn; being given back a productive and joyous life, and getting back to contributing to society. "It's learning how to tie my shoes all over again. How do I do laundry? How do I do food shopping?" In some ways it is a "PTSD" of sorts. Many alcoholics and drug addicts suffer from some sort of traumatic background. It's easy to see why they go down those roads. It's basically learning how to get back into society as a person all over again. Having a solid sober housing facility is the real key.

Charlie had a fortunate sober house experience at Providence Place. The organization followed safety codes, and it was a safe and secure environment. Charlie attributes his sobriety success to that environment. He is aware of sober housing that is run by questionable methods. Some sober housing owners/managers will only collect the rent in cash.

Providence Place had a restrictive policy that required Charlie to attend a certain number of meetings per week. He had to have a sponsor and be working the steps while maintaining employment. If independently wealthy, the recovering individual would have to volunteer 30 hours per week. Charlie stressed to the committee he needed that structure. A solid sober house will make or break a recovering individual.

Charlie gave committee members some statistics on sobriety. Seven out of ten individuals do not make it. Two have a 50/50 shot. Generally, one in ten actually recovers and becomes sober.

Charlie was lucky to be in a safe sober house. He explained he already felt "subhuman". You go from a solid rehab facility into a questionable sober house. That is reflected in the care of the facility. Is getting sober worth it if you're living in a dump with no real structure or goal of sobriety? You might as well just go back into society and take your chances.

Senator D'Allesandro sought validation of the recovery statistics. He noted if correct it would be a ten percent recovery, which is low. Charlie agreed to get back to the committee on this item. Senator D'Allesandro stated he equates the facility with the environment. If the environment is conducive to recovery, the facility is adequate, decent and clean. He has visited facilities that were not conducive to recovery. How do we make sure the facilities are adequate? How do we ensure the environment is conducive to recovery? The cash payment demanded by some sober housing facilities takes advantage of individuals. Senator D'Allesandro asked Charlie if he is currently in recovery. Charlie responded he is three years' sober. In his world, he will be in recovery until such time as he drinks or he dies.

Charlie suggested stricter code enforcement might be the answer. Other than that, how do we hold people accountable for doing the right thing? He was already feeling subhuman and absolutely worthless, wondering if he should even make an attempt at recovery, or worse. It's all about a healthy environment, safety-wise and mental-wise. That is reflected in a clean and safe house. How do we ensure standards are enforced? Getting out of a rehab facility and getting into recovery in a sober house, Charlie felt he was almost beaten into submission—in a good way. He was forced to acknowledge he had a problem and needed help. He needed to place his care in the hands of others whom he believed would have his best interests in mind. How do you justify sending an individual into an environment such as a basement apartment, with no secondary means of egress, no smoke detectors? You don't have to live in an environment that is unsafe. At that point you are merely doing what you are told to do to get sober.

Representative Pearson expressed his appreciation for Charlie's perspective on recovery, especially with his emergency services background. He commented that some organizations in recovery base their decisions on financial considerations. Obviously, there is a cost to recovery and a financial element involved. But an environment that looks out for your wellbeing is different from the typical parental unit with 2.5 children. In

a single family home, for example, there can be 6-8 residing adults. These can be folks struggling with different areas of sobriety. Adults who don't know each other, coming together with a common goal. Representative Pearson asked Charlie how these individuals would interact with each other, and the familiarity they might have. After all, they don't really know each other; they're strangers with a common element. It is a foreign environment and an unfamiliar setting. What did Charlie rely on for his safety, both physical and mental? Charlie explained you need to get "beaten down" to a certain extent in order to build yourself back up. You basically submit to everything and follow someone else's lead. In the process of getting sober you learn that you're allowed to establish personal boundaries. Living in a sober house with other men attempting to get sober is a challenging environment in itself. Some individuals are there against their will, not "buying into" the program. Eventually you learn to take accountability for yourself. The bottom line with these facilities is, yes, it all comes down to money.

Some people enter sober living assuming other folks have made such an environment a safe one for them. Representative Pearson maintained sober living does have a responsibility to provide a basic level of safety for residents.

Charlie shared that when an individual normally leaves a rehab facility they are, at a minimum, one month sober. Sometimes they can enter an extended program for ninety days or even six months. When you leave the rehab facility your brain is still scrambled, still in early recovery. The body, physically, requires 1.5 years to reach a baseline "normal" due to all of the alcohol in its system. It takes five years for an individual's brain to "normally" function again, without the influence of drugs or alcohol. In early recovery your brain is still fairly scrambled. You're merely going through the motions. The last thing you're thinking about are safety considerations.

Representative Josephson asked about the familiarity and the bond between those 6-8 adults in a sober house. Do you have a responsibility towards one another? Is that something that is promoted? How integral is that to the care and recovery? Charlie reminded committee members "no one else can help an alcoholic like another alcoholic, someone who has been there in their shoes".

Positive reinforcement from fellow individuals who are attempting sobriety does exist. Being in close contact, bonds do develop. You're in a house with other individuals who are all attempting to, once again, become 'human'. You can make some amazing relationships in recovery, lifesaving relationships. You also meet many "bozos" along the way. Keep in mind just because you are in sober living doesn't mean you are going to make it. One in ten people attempting to become sober will actually achieve success. But the first 3-5 years are very telling. Representative Josephson agreed if there was an emergency in the sober house, residents that have bonded would help each other get out. Charlie believes sober living organizations can't truly be caring for individuals in recovery if they demonstrate no concern for basic safety.

Upon the conclusion of Charlie's testimony, the committee turned to its work on developing recommendations for inclusion in its final report. Representative Connors

referenced HB 311, a proposal she had previously offered that would allow for a reduced fire code variance for boarding and rooming houses. Senator D'Allesandro referenced other pieces of legislation that had previously been brought forward. He wanted to know what we have on the books right now. DHHS also put together a series of proposals. Where are we with those? Representative Connors indicated her legislation last session was based on fire safety codes. Legislation that was enacted included a voluntary registration program whereby sober homes can apply and be certified through NHCORR. They are listed on the DHHS state registry enabling them to receive funding and referrals. The new laws, however, do not address concerns with "bad actors". We don't know they exist until there is a problem. Senator D'Allesandro agreed it was a legitimate concern. Places were popping up without proper supervision or environment, although categorizing themselves as "safe housing" or "sober housing". How do we deal with those? Locally, based on an ordinance? Or do we develop state overview with guidelines, procedures and compliance with local rules and regulations to include adequate fire protections? Representative Connors stated there have been concerns with leaving it up to municipalities, as it could lead to inconsistencies in code enforcement among differing towns. She is in favor of an overall state approach.

Senator D'Allesandro commented on the social stigma attached to the issue. He gave an example of transitional housing that was constructed on the west side of Manchester that was initially met with some resistance. Upon adhering to local regulations, it now appears to be functioning well. What it comes down to is, is the facility decent. Is the environment conducive to recovery?

Representative Connors wondered how we differentiate between those that are following local guidelines and those that aren't. We have a list of those that have been approved. Is there a way to treat them differently without violating the Fair Housing Act? Senator D'Allesandro recounted problems with high rises in his district. How much regulation is overregulation? Fair housing is becoming a significant issue at a time when you can't find housing.

Representative Connors reiterated NHCORR is certifying these organizations for inclusion on the state registry. But what about these other places that are not following any of those guidelines?

Representative Pearson referenced Atty. Elliott Berry's testimony indicating certified and noncertified facilities are being treated the same. That lends itself to questioning what the value of certification is. Problematic with NHCORR's certification is that it was developed by them alone. It has not had any input from the State Fire Marshal's Office nor from the Legislature. In addition, NHCORR has stated a walk-through of a recovery house by a local fire department would be "oppressive". If basic, fundamental safety is not a priority, then what are we doing here? The organization responsible for certification and placement on the state registry appears to be fighting basic core elements of safety. The state has had no input in determining minimum standards. Senator D'Allesandro noted NHCORR recently received \$375,000 from the Governor's Commission on Alcohol and Other Drugs. What was that for, to develop a process by which they evaluate sober

housing? Don't they have established criteria? Jenny O'Higgins of DHHS reminded the committee the standards in question are actually set by NARR, the National Alliance For Recovery Residences. NHCORR is New Hampshire's affiliate, and they monitor national standards. NHCORR did not develop the certification standards. Ms. O'Higgins provided committee members with a link to the standards, which include fire safety. She provided a companion document which explains how the standards were chosen and why. She also included a policy toolkit for states which describes how other states are handling this issue. Ms. O'Higgins indicated the issue is fairly complex. Some states who have taken a stricter approach are now facing fair housing lawsuits. Some that have required certification or had a voluntary certification program seem to be the most successful. However, that doesn't solve all the concerns that have arisen. But it is the best foot forward presently. Voluntary certification was our next best step.

Sean Toomey, New Hampshire Deputy Fire Marshal, reminded the committee the framework has already been established for the state building and fire codes for different residential living situations, such as a single family home, a group living home with 4-16 people, and a hotel/dorm situation with more than 16 people. The current challenge is reasonable accommodations for recovery residents, and treating them similar to a family. Most often, for the 4-16 people situation we want to treat it like a single family home.

The sprinkler situation is the biggest issue in working with some recovery houses. The State Fire Marshal's Office looks for good smoke alarms, good egress, fire extinguishers, etc. We have the framework currently. But if these places aren't categorized as a lodging/rooming situation with 4-16 recovery residents, and instead are categorized as a single family home, the Fire Marshal wants to ensure it is on solid ground. Representative Connors inquired if Deputy Toomey was familiar with the NARR/NHCORR standards and if so, how closely are they related to appropriate fire standards. Deputy Toomey wanted the opportunity to review the NARR standards. He indicated they used that model in the framework for HB 311 for some of the more recent variances his office has issued without a sprinkler system. He thinks they are "almost there" as far as the fire code side for most facilities. The remaining issue is do we stay with "up to 16 people"? What happens if it is a larger home with 30 people? Is 30 people in a single family home a reasonable number? Representative Connors agreed 30 people might not be able to be considered a single family unit. There are, however, exceptions around the country.

Representative Pearson inquired how the State Fire Marshal defines "family". What does "family" mean in this instance? The term may be used in an attempt to escape further regulation. Deputy Toomey explained it is typically a mother, father and a few children. From the Life Safety Code perspective, a single family home is considered a single family with up to 3 outsiders. But the Life Safety Code, part of the state fire code, doesn't define family. That leaves the dictionary definition, which allows for expanding the scope. And that's what federal courts have ruled. The Oxford-style sober living facility has a family-type living arrangement.

Some of these facilities are run amazingly well; others pose a concern for the State Fire Marshal's Office from a fire safety perspective. Deputy Toomey believes it almost has to

be a on a case-by-case basis, with a good structure behind it. Should the “bad ones” be categorized as a lodging/rooming house and be required to comply with those rules? That is not a family. Legal advice might be required to make it work.

Representative Josephson wondered if we should beef up the certification process with additional fire safety. There is more turnover than what you might have in a normal family. Representative Pearson reminded committee members real estate laws governing the transfer of property have certain requirements of houses when they are turned over. He questions the standards NHCORR operates under. In addition, family members are not typically charged rent. Deputy Toomey added with recovery housing you have individuals staying together like a family, but there is a transactional component as well, similar to a landlord/tenant situation. Representative Connors commented it does get tricky, such as in a situation where an older, college-aged son or daughter might pay rent while living at home with parents.

This complex problem has been looked at across the country and everyone is trying to develop solutions. There is no good answer presently. What do we want to do in New Hampshire moving forward? Is there a way in which we could proceed and gain a bit of traction without opening ourselves up to lawsuits?

Charlie Hatfield agreed with the committee in that it appears the term “family” is what everything hinges on. Are individuals in recovery “family members”? “Yes, you develop a bond with others in the house, but I wouldn’t leave my wallet on the counter.” Taking it a step further, Charlie shared one of the best things his family did for him was to cut him off. If an individual is not willing to help themselves there is nothing you can do for them.

Representative Pearson acknowledged NHCORR is following a set of national standards. But the Legislature has modified national standards numerous times before and adopted them as New Hampshire’s own. We literally do it with the fire code currently. The Fire Marshal’s Office has an issue with the standards in that they are falling a bit short. Representative Connors wondered if an organization doesn’t follow the NARR standards for recovery housing, does it mean they aren’t considered recovery housing?

Committee members requested additional time to review the NARR standards’ documentation they have received.

A motion to adjourn was made and adopted.

NEXT MEETING: October 29, 2020 1:00 pm Via Zoom

REPORT DUE: November 1, 2020

**Committee To Study State and Municipal Authority
Governing Recovery Housing
HB 1245, Chapter Law 37:151, Laws of 2020**

Regular Meeting Minutes

TO: Members of the Committee

FROM: Deb Martone
Senate Legislative Aide

MEETING DATE: October 29, 2020, 1:00 pm, Via Zoom

Members of the Committee Present: Representative Erika Connors
Representative Stephen Pearson
Representative Timothy Josephson
Senator Lou D'Allesandro

Meeting Discussion:

Representative Connors opened the meeting with the reading of the Right-To-Know script. Committee members approved a revision to the minutes of the October 22, 2020 meeting, then began to discuss final recommendations.

Representative Josephson indicated it is tricky balancing between finding appropriate legislation that will allow for any sort of protections, while also being aware of the provisions of the Fair Housing Act. The certification we have presently is a good method. Perhaps legislation is needed to clarify that these types of homes shall be subject to applicable zoning ordinances.

Representative Pearson reiterated striking a balance. He referenced the *Joint Statement of the Department of Justice and the Department of Housing and Urban Development* article given to committee members by Atty. Elliott Berry of NH Legal Assistance. "The great majority of group homes for persons with disabilities are subject to state regulations intended to protect the health and safety of their residents. The Department of Justice and HUD believe, as do responsible group home operators, that such licensing schemes are necessary and legitimate." The issue involves using those practices to mask a discriminatory act. Weaponizing fair housing and HUD to basically say we don't want any rules or regulations is a misuse of that. There needs to be a balance. Clearly, the purpose of fair housing is to prevent discrimination for these places to exist. No one is saying, "we don't want a recovery house." We recognize the value of such, but at the same time we have a responsibility to protect those that cannot protect themselves. The current certification process is good, but we have an opportunity to add to the standards to solidify them as our own.

Representative Connors stated NHCORR has just started the certification process with the state in creating their list online. That is definitely a good first step. But we do still have the concerns of the places that are not following that regulation. The biggest problem we're seeing is that the definition of family does not exist. As a different approach, we could develop a definition of recovery housing with specific criteria; a group of people living as a family to support recovery. We could also revert back to HB 311 regarding the fire safety code. Should an organization need the proposed variance, they would be required to meet the definition of recovery house. If they don't meet the definition, they should be subject to the standard building code for boarding or rooming houses, or wherever their numbers qualify. If they are actually a recovery house and meet the definition we develop, they would then have the possibility of the state variance. Representative Pearson agreed. Representative Josephson also agreed with defining recovery housing, but indicated committee members need to keep fair housing in mind. Representative Connors referenced the National Council For Behavioral Health's document, *Building Recovery: State Policy Guide for Supporting Recovery Housing*, which lists various state sample definitions of recovery housing, including having peer support. Organizations calling themselves recovery housing and not really providing a safe environment or having peer support are not truly recovery housing. If we define recovery housing it will be helpful to both local and state officials going forward. Senator D'Allesandro urged committee members not to use the term "family". It is actually individuals living together to provide an environment conducive to sober living.

Representative Connors first recommendation is to continue to work with DHHS on NHCORR and the national organization on the voluntary certification process. Her second recommendation would be to propose legislation that would define recovery housing, and create a process through the state if an organization needs to apply for an exception for fire and safety codes. Representative Pearson agreed the base foundation needs to be the definition of what a recovery house actually is. That will prevent those that misuse that to try to mask a boarding house, for example. Those that are legitimate recovery housing operators should have no opposition. He suggested various stakeholders will want input into such a definition. Also, as we're tying certification into eligibility for funding, we should have a say in what the definition of a certified location is. Taking NHCORR or NARR's lead and "tweaking" it for New Hampshire would be a win/win. Representative Connor inquired if Representative Pearson's suggestion was to revise the newly enacted legislation for that standard, or continue to examine same going forward. Representative Pearson remarked the State Fire Marshall's Office was comfortable with HB 311. Let's revisit that and determine what is reasonable, meets the intent, and doesn't clash with fair housing. They are basic and minimum standards. Representative Connors agreed there are no major, onerous expenses in HB 311, such as sprinkler systems.

Representative Josephson wondered if the committee wanted to look at the possibility of penalties for "bad actors". Representative Connors agreed that may be something we would explore further down the road. The penalty of not following those regulations would mean the organization would, in fact, be a boarding house, which would require

compliance with those type of fire safety codes, or risk being shut down. It is an incentive to become certified, as well.

A motion to adjourn was made, seconded and adopted.

REPORT DUE: November 1, 2020



Robert L. Quinn
Commissioner

State of New Hampshire

DEPARTMENT OF SAFETY

Division of Fire Safety

Office of the State Fire Marshal

Office: 110 Smokey Bear Boulevard, Concord, NH 03301

Mailing Address: 33 Hazen Drive, Concord, NH 03305

Telephone: 603-223-4289 • Fax: 603-223-4294

www.nh.gov/firesafety



Paul J. Parisi
State Fire Marshal

LEGISLATIVE POSITION NH DEPARTMENT OF SAFETY

HB 377: Relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

LSR 21-0455

Committee: Executive Departments and Administration

Position: SUPPORT

Date: February 4, 2021

Dear Honorable Members of the Committee:

House Bill 377 would create a statute that allows the state fire marshal to grant recovery residences an exemption to certain requirements of the state fire code. This exemption may be granted under the following conditions:

1. The recovery residence is in compliance with the voluntary registry for recovery residences, or
2. The recovery residence is certified by the NH Coalition of Recovery Residences, and
3. A list of fire safety requirements are met, and
4. The fire department is permitted access for inspection annually.

In addition, this bill defines what a recovery residence is.

Many of you are aware that we have been working together with local fire departments, especially the Manchester Fire Department, as well as numerous stakeholders in the recovery community, for several years now, trying to find a solution to the issue surrounding balancing fire and life safety with reasonable, inexpensive access to recovery residences.

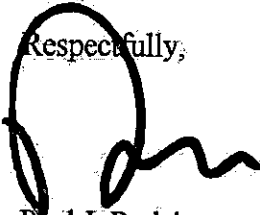
It is not lost on those of us in the fire service that the number of overdose deaths in NH far exceed the number of deaths that occur in residential structures. While we are anxious to help in reducing the number of overdose deaths, we certainly don't want to tip the scales the other way. Therefore, we urge caution to those involved in this issue to ensure safety in all aspects.

The NH State Fire Marshal's Office supports this bill because it standardizes the way our state handles recovery residences from a fire safety perspective; it may reduce the number of "not in

my backyard" issues that arise because the law will be clear; it strikes a reasonable balance between life safety and access to recovery residences; it leverages existing infrastructure, specifically NH CORR and the variance process in Saf-C 6000; and finally it shines a bright light on the extent of compromise we are willing to give, and allows the general court, the people's representatives, an opportunity to decide if it's appropriate for the state fire marshal to be issuing an exception under these broad conditions.

Thank you for the opportunity to testify, and for your consideration. Please do not hesitate to contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul J. Parisi". The signature is stylized with a large initial "P" and a wavy line extending to the right.

Paul J. Parisi
State Fire Marshal



Robert L. Quinn
Commissioner

State of New Hampshire

DEPARTMENT OF SAFETY

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Paul J. Parisi
State Fire Marshal

LEGISLATIVE POSITION NH DEPARTMENT OF SAFETY

HB 377: Relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

LSR 21-0455

Committee: Executive Departments and Administration

Position: SUPPORT

Date: March 24, 2021

Dear Honorable Members of the Committee:

House Bill 377 would create a statute that allows the state fire marshal to grant recovery residences an exemption to certain requirements of the state fire code. This exemption may be granted under the following conditions:

1. The recovery residence is in compliance with the voluntary registry for recovery residences, or
2. The recovery residence is certified by the NH Coalition of Recovery Residences, and
3. A list of fire safety requirements are met, and
4. The fire department is permitted access for inspection annually.

In addition, this bill defines what a recovery residence is.

Many of you are aware that we have been working together with local fire departments, especially the Manchester Fire Department, as well as numerous stakeholders in the recovery community, for several years now, trying to find a solution to the issue surrounding balancing fire and life safety with reasonable, inexpensive access to recovery residences.

It is not lost on those of us in the fire service that the number of overdose deaths in NH far exceed the number of deaths that occur in residential structures. While we are anxious to help in reducing the number of overdose deaths, we certainly don't want to tip the scales the other way. Therefore, we urge caution to those involved in this issue to ensure safety in all aspects.

This bill strikes a balance between the fire suppression provisions required by the State Fire Code, and the financial hardships those requirements could create for sober living residences. Under the State Fire Code, sober living residences are categorized as rooming or lodging houses, which require a more robust, and therefore more expensive, set of fire suppression systems. HB 377 gives sober living residences an avenue to be exempted from Chapter 26 of the Life Safety Code, which is the portion of the State Fire Code that pertains to lodging or rooming houses. If a sober living residence is complying with the State Fire Code in general, and they are complying with items (a)-(n) of HB 377, then they can seek an exemption from the greater fire suppression requirements that ordinarily apply to lodging or rooming houses. This bill creates a mechanism for sober living residences to demonstrate they have sufficient fire safety measures, which reassures the firefighting community, while granting an exception to portions of Chapter 26 of the State Fire Code, which makes it more viable for the sober living residences to occupy building

The NH State Fire Marshal's Office supports this bill because it standardizes the way our state handles recovery residences from a fire safety perspective; it may reduce the number of "not in my backyard" issues that arise because the law will be clear; it strikes a reasonable balance between life safety and access to recovery residences; it leverages existing infrastructure, specifically NH CORR and the variance process in Saf-C 6000; and finally it shines a bright light on the extent of compromise we are willing to give, and allows the general court, the people's representatives, an opportunity to decide if it's appropriate for the state fire marshal to be issuing an exception under these broad conditions.

Thank you for the opportunity to testify, and for your consideration. Please do not hesitate to contact me if you have any questions.

Respectfully,

A handwritten signature in black ink, appearing to read "Paul J. Parisi". The signature is stylized with a large initial "P" and a wavy line for the rest of the name.

Paul J. Parisi
State Fire Marshal



MEMORANDUM

To: Chairperson Senator Sharon Carson and Members of the Senate Executive Departments & Administration Committee

From: New Hampshire Coalition of Recovery Residences

Kim Bock, Executive Director
Kristine Paquette, Board Chair
Dave Berry, Board Member
Suzanne Boisvert, Board Member
Evan Draper, Board Member
Steve Draper, Board Member
Michelle Leclerc, Board Member
Donna Mombourquette, Board Member
Adam Moulton, Board Member
Kathleen Ryan, Board Member
Christine Wellington, Board Member

Re: Opposition to HB 377

Date: March 23, 2021

We submit this memorandum in opposition to HB 377. The New Hampshire Coalition of Recovery Residences (NHCORR) is a statewide non-profit organization that serves as the DHHS-approved certifying agency for the state's recovery residences. HB 377 proposes to permit the State Fire Marshal to grant certain exemptions from the state fire code to recovery residences that are "in compliance with rules adopted by the commissioner of health and human services under RSA 172-B:2 for the voluntary registry for operators of recovery houses or who is certified by the New Hampshire Coalition of Recovery Residences." (HB 377, p. 1, lines 4 – 7.) In reality, if passed, this bill would impose costly and numerous specific conditions on owners of recovery homes seeking exemptions that would not be imposed on owners of similarly situated dwellings seeking the same exemptions. We believe the bill is unnecessary as RSA 153:5 already sets out in a nondiscriminatory manner which dwellings are exempt from certain fire code requirements and also permits the State Fire Marshal to grant exemptions at his or her discretion (RSA 153:5, III and IV). Most importantly, we believe that this bill violates the federal Fair Housing Act.

HB 377 is Unnecessary Because RSA 153:5 Provides the State Fire Marshal with the Ability to Grant Fire Code Exemptions in a Non-Discriminatory Manner

RSA 153:5, III exempts “detached one, or 2-family dwelling units in a structure used only for residential purposes” from requirements to install automatic fire suppression or sprinkler systems.

RSA 153:5, IV permits the state fire marshal to grant exemptions from fire code rules “if he or she finds that such exemption does not constitute a hazard to the public welfare and safety.” The owner will then have “a reasonable time, as determined by the state fire marshal” to make the required alterations.

This facially neutral law exempts all detached one and two-family dwellings from requirements to install certain fire suppression equipment and allows all other owners to request exemptions from fire code requirements. The fire marshal then has the discretion to grant or deny such requests and to impose conditions upon an owner seeking such exemption. Those conditions could include any or all of the conditions listed in HB 377 (p. 1, lines 9 – 30, p. 2 lines 1 – 6).

By contrast, HB 377 singles out recovery residences and imposes an oppressive list of conditions applicable only to owners of recovery residences and requires that these conditions must already be in place in order to even apply for an exemption.

HB 377, if Enacted, Will Violate the Federal Fair Housing Act

HB 377 unnecessarily and impermissibly targets recovery homes for greater scrutiny and enforcement and imposes different and more oppressive conditions upon them. This constitutes discrimination under the Fair Housing Act and is therefore unlawful.

People in recovery from substance use are considered persons with disabilities under the federal Fair Housing Act

People with disabilities, including those in recovery from substance use are members of a “protected class” under the Fair Housing Act (FHA).¹ When Congress added disability to the FHA in 1988, it wanted to ensure that persons with disabilities have the same housing opportunities as others: “The Act is intended to prohibit the application of special requirements through land use regulations, restrictive covenants, and conditional or special use permits that have effect of limiting the ability of such individuals to live in the residence of their choice in the community.”²

Recovery Residences Are Also Covered by the FHA

Recovery residences provide housing for those in recovery and are also covered by the FHA. Providers of housing for persons with disabilities, including recovery residences, cannot be subject

¹ “Handicap” means, with respect to a person – (1) a physical or mental impairment which substantially limits one or more of such person’s major life activities, (2) a record of having such impairment, or (3) being regarded as having such impairment, but the term does not include current, illegal use or addiction to a controlled substance (as defined in section 102 of the Controlled Substances Act (21 U.S.C. 802)). 42 U.S.C. § 3602 (h).

² H. Rep. No. 100-711, at 24 (1988), reprinted in 1988 U.S.C.A.N. 2173, 2185.

to more oppressive laws and regulations than other similarly situated housing owners. Congress has made it clear that the FHA applies to the “imposition of health, safety or land-use requirements on congregate living arrangements among non-related persons with disabilities . . . not imposed on families and groups of similar size of other unrelated people.”³

Recovery Residences Cannot be Subject to More Restrictive or Oppressive Conditions than Other Similarly Situated Dwellings

In 2016, the U.S. Department of Justice and the U.S. Department of Housing and Urban Development issued guidance which specifically addressed the parameters of state and local laws governing recovery homes.⁴ The guidance reiterates that the laws must be neutral and “enforced in a neutral manner.”

State and local governments’ enforcement of neutral requirements regarding safety, licensing, and other regulatory requirements governing group homes do not violate the Fair Housing Act so long as the ordinances are enforced in a neutral manner, they do not specifically target group homes, and they do not have an unjustified discriminatory effect on persons with disabilities who wish to reside in group homes.⁵

HB 377 is not a neutral law and it is not intended to be enforced neutrally. It specifically targets recovery homes for disparate treatment. It would impose significant hardships on recovery residence owners with the possibility that some may not be able to continue to operate and will result in limiting housing opportunities for those in recovery.

Addressing the Legitimate Concerns of New Hampshire Fire Officials and Other Governmental Authorities

In the hearing before the House Executive Departments and Administration Committee, State Fire Marshal Parisi and Manchester Fire Chief Goonan spoke compellingly of their concerns and particularly with housing providers operating overcrowded homes with unsafe conditions. We acknowledge and agree with those concerns and the need to address them. However, the proposed legislation does not resolve those concerns and seems more likely to harm recovery residences that comply with health and safety standards.

HB 377 Only Regulates Recovery Houses That are Already in Voluntary Compliance with State or NHCORR Standards

³ *Id.*

⁴ *State and Local Land Use Laws and Practices and the Application of the Fair Housing Act*, U.S. Dep’t of Justice and U.S. Dep’t of Hous. & Urban Dev. (Nov. 10, 2016) available at <https://www.justice.gov/opa/file/912366/download>. The Joint Statement specifically included homes for persons recovering from substance use in its definition of group homes: “In this Statement, the term ‘group home’ includes homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the Act.” *Id.* at 7.

⁵ *Id.* at p. 13.

The only types of recovery homes subject to the proposed legislation are NHCORR-certified homes or those in compliance with the voluntary DHHS registry (HB 377 p. 1, lines 4 – 7; *see also* RSA 172-B:2, V). The operators of these homes have already chosen to comply with standards set by state regulation and/or NHCORR standards and they are the least likely to pose the types of risks that fire officials fear. But they seem to be the only ones that would be subject to enhanced requirements in order to obtain an exemption from statutory fire codes. Assumably, operators of homes not covered by HB 377 could still apply for exemptions pursuant to RSA 153:5, IV and they would not be subject to the requirements set out in HB 377 section 153:10-d, I (a) – (n) (p. 1, lines 9 – 30 and p. 2, lines 1 – 6).

State and Local Fire and Other Officials Already Have the Authority to Enforce Fire and Safety Codes on Recovery Homes of All Types as They Do with All Dwellings

We agree that unscrupulous housing providers and those operating homes under unsafe conditions should be subject to full enforcement of existing laws and codes. The FHA does not protect those who exploit their residents or put their safety at risk. But we cannot support legislation that has a discriminatory effect on people in recovery residing in legitimate recovery residences. This is what we believe will occur if HB 377 passes into law.

There are Solutions That Can Address Fire Officials' Concerns

While we do not believe that in its current form, HB 377 is a lawful or equitable solution to the issues raised, we are willing to continue to work with the State Fire Marshal and others to address their legitimate concerns. We are also appreciative of the recognition of NHCORR's role in working to create safe homes for people in recovery.

Sincerely,

Kim Bock

for the entire Board at NHCORR

NH State Fire Marshal's Office

March 24, 2021

NH Senate ED&A

HB 377 Testimony Notes

This bill strikes a balance between the fire suppression provisions required by the State Fire Code, and the financial hardships those requirements could create for sober living residences. Under the State Fire Code, sober living residences are categorized as rooming or lodging houses, which require a more robust, and therefore more expensive, set of fire suppression systems. HB 377 gives sober living residences an avenue to be exempted from Chapter 26 of the Life Safety Code, which is the portion of the State Fire Code that pertains to lodging or rooming houses. If a sober living residence is complying with the State Fire Code in general, and they are complying with items (a)-(n) of HB 377, then they can seek an exemption from the greater fire suppression requirements that ordinarily apply to lodging or rooming houses. This bill creates a mechanism for sober living residences to demonstrate they have sufficient fire safety measures, which reassures the firefighting community, while granting an exception to portions of Chapter 26 of the State Fire Code, which makes it more viable for the sober living residences to occupy buildings.

Voting Sheets

**Senate Executive Departments and
Administration Committee
EXECUTIVE SESSION RECORD
2021 Session**

Bill # HB 377

Hearing date: 3-24-21

Executive Session date: 3-31-21

Motion of: OTP Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Carson, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Reagan, Vice Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ricciardi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Prentiss	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: Consent Vote: 5-0

Committee Member	Present	Made by	Second	Yes	No
Sen. Carson, Chair	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Reagan, Vice Chair	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Ricciardi	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Sen. Prentiss	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>

Motion of: _____ Vote: _____

Committee Member	Present	Made by	Second	Yes	No
Sen. Carson, Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Reagan, Vice Chair	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Ricciardi	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Cavanaugh	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sen. Prentiss	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Reported out by: Sen. Cavanaugh

Notes: _____

Committee Report

STATE OF NEW HAMPSHIRE

SENATE

REPORT OF THE COMMITTEE
FOR THE CONSENT CALENDAR

Wednesday, March 31, 2021

THE COMMITTEE ON Executive Departments and Administration

to which was referred **HB 377**

AN ACT

relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

Having considered the same, the committee recommends that the Bill

OUGHT TO PASS

BY A VOTE OF: 5-0

Senator Kevin Cavanaugh
For the Committee

This bill allows substance-free recovery houses to be granted an exemption by the State Fire Marshal for certain requirements of the State Fire Code. In recent years, there has been a boom of bad actors buying single family homes in New Hampshire communities, calling them recovery houses, and using them to take advantage of people in recovery. HB 377 is an effort to promote the well intentioned, legitimate recovery houses that are doing good work by giving them an easier set of standards to meet with respect to the Fire Code. HB 377 will also shine more light on the bad actors and make it more clear to those in recovery and the community which recovery houses are legitimate and which are not. HB 377 is a recommendation of the Committee to Study State and Municipal Authority Governing Recovery Houses (Laws of 2020, 37:151).

Cameron Lapine 271-2104

FOR THE CONSENT CALENDAR

EXECUTIVE DEPARTMENTS AND ADMINISTRATION

HB 377, relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

Ought to Pass, Vote 5-0.

Senator Kevin Cavanaugh for the committee.

This bill allows substance-free recovery houses to be granted an exemption by the State Fire Marshal for certain requirements of the State Fire Code. In recent years, there has been a boom of bad actors buying single family homes in New Hampshire communities, calling them recovery houses, and using them to take advantage of people in recovery. HB 377 is an effort to promote the well intentioned, legitimate recovery houses that are doing good work by giving them an easier set of standards to meet with respect to the Fire Code. HB 377 will also shine more light on the bad actors and make it more clear to those in recovery and the community which recovery houses are legitimate and which are not. HB 377 is a recommendation of the Committee to Study State and Municipal Authority Governing Recovery Houses (Laws of 2020, 37:151).

General Court of New Hampshire - Bill Status System

Docket of HB377

Docket Abbreviations

Bill Title: relative to the authority of the state fire marshal to grant an exemption from fire code requirements to recovery houses.

Official Docket of HB377.:

Date	Body	Description
1/10/2021	H	Introduced (in recess of) 01/06/2021 and referred to Executive Departments and Administration HJ 2 P. 45
1/27/2021	H	Public Hearing: 02/04/2021 10:15 am Members of the public may attend using the following link: To join the webinar: https://www.zoom.us/j/99659562277 / Executive session on pending legislation may be held throughout the day (time permitting) from the time the committee is initially convened.
2/16/2021	H	Committee Report: Ought to Pass (Vote 19-0; CC) HC 12 P. 6
2/24/2021	H	Ought to Pass: MA VV 02/24/2021 HJ 3 P. 9
3/4/2021	S	Introduced 03/04/2021 and Referred to Executive Departments and Administration; SJ 7
3/17/2021	S	Remote Hearing: 03/24/2021, 09:15 am; Links to join the hearing can be found in the Senate Calendar; SC 16
3/31/2021	S	Committee Report: Ought to Pass, 04/08/2021; Vote 5-0; CC; SC 18
4/8/2021	S	Ought to Pass: RC 23Y-1N, MA; OT3rdg; 04/08/2021; SJ 11
4/29/2021	S	Enrolled RC 24Y-0N, MA, (In recess of 04/22/2021); SJ 13
4/29/2021	H	Enrolled (in recess of) 04/09/2021 HJ 7 P. 101
5/10/2021	H	Signed by Governor Sununu 05/06/2021; Chapter 26; Eff: 07/05/2021

NH House

NH Senate

Other Referrals

Senate Inventory Checklist for Archives

Bill Number: HB 377

Senate Committee: ED+A

Please include all documents in the order listed below and indicate the documents which have been included with an "X" beside

Final docket found on Bill Status

Bill Hearing Documents: {Legislative Aides}

- Bill version as it came to the committee
 All Calendar Notices
 Hearing Sign-up sheet(s)
 Prepared testimony, presentations, & other submissions handed in at the public hearing
 Hearing Report
 Revised/Amended Fiscal Notes provided by the Senate Clerk's Office

Committee Action Documents: {Legislative Aides}

All amendments considered in committee (including those not adopted):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Executive Session Sheet

Committee Report

Floor Action Documents: {Clerk's Office}

All floor amendments considered by the body during session (only if they are offered to the senate):

___ - amendment # ___ ___ - amendment # ___

___ - amendment # ___ ___ - amendment # ___

Post Floor Action: (if applicable) {Clerk's Office}

___ Committee of Conference Report (if signed off by all members. Include any new language proposed by the committee of conference):

___ Enrolled Bill Amendment(s)

___ Governor's Veto Message

All available versions of the bill: {Clerk's Office}

___ as amended by the senate ___ as amended by the house

final version

Completed Committee Report File Delivered to the Senate Clerk's Office By:

Cameron M. Spive
Committee Aide

7/20/21
Date

Senate Clerk's Office AK