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Sober Living Homes in California: Options for State and Local Regulation

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Executive Summary

Sober living is an effective part of a successful treatment program for many people in recovery from substance abuse. Sober living homes, which the law generally treats as residences rather than treatment facilities, are integral to California's system of substance abuse resources. State laws and licensing requirements governing treatment and care facilities do not apply to sober living homes, which are protected under state and federal law as residences of people with disabilities. For this reason, no state agency formally regulates sober living homes.

State and local governments have considered ways to regulate sober living homes, often arguing that these homes have begun to act more like businesses, impinging on the residential character and use of areas where they are concentrated together or clustered with licensed recovery facilities. Recent ordinances in Newport Beach and Costa Mesa have faced major legal challenges, while a proposed framework for the city of Los Angeles has failed to become law. Other California local governments that have recently explored, advanced or enacted regulation of sober living homes include San Clemente (2016), Laguna Niguel (2016), San Juan Capistrano (2016), Laguna Hills (2015), San Jose (2015), Encinitas (2015), San Bernardino County (2014) and Redlands (2005).

Legislative attempts to regulate sober living homes have been unsuccessful. Out of 25 bills affecting sober living homes introduced since the 1998-99 legislative session, only three

reached the Governor's desk — and those were vetoed.

Community concerns around sober living homes are not unique to California. Recently, laws creating statewide voluntary certification or accreditation of sober living homes have been introduced in Pennsylvania (2016) and passed in Massachusetts (2014). In St. Paul, Minnesota, an ordinance passed in 2008 requires a 330-foot buffer between sober living homes and places restrictions on occupancy and parking, similar to buffers and other restrictions proposed or enacted in California cities. These examples show that California's issues are far from unique and that the policy solutions being pursued elsewhere reflect many of the same options available to California and its local governments.

In addition to reviewing state and federal laws affecting sober living homes, local efforts to regulate them, regulatory efforts in other states and recent legal challenges to regulation, this report discusses other dimensions of sober living in California. These include:

- The statewide eligible population and bed capacity (preliminary estimates);
- Referrals and relationships between treatment facilities and sober living homes;
- Private and public certification of sober living homes;
- Recent proposed legislation;
- Policy options.

Introduction

The integration of housing for people with special needs into California residential communities is an ongoing challenge. In the area of recovery from substance abuse, “social model” programs – programs which emphasize self-help and social reinforcement rather than treatment under a “medical model” – have gained ground over the past few decades.¹ People in recovery now generally seek to live in places that resemble ordinary households in residential neighborhoods rather than isolated facilities like the farms and state hospitals that were used to treat alcoholics and addicts in the mid-20th century.

Citizens and local civic leaders generally express support² for efforts to help substance abusers recover, as well as the concept of integrating people with special needs as equal members of their communities. In practice, however, the concentration of sober living homes in certain areas, their association with licensed facilities and the perception that they are run primarily for profit have led to local efforts to regulate or otherwise limit their establishment.

Alcoholics and addicts – as long as they are trying to recover and have not been convicted of major drug crimes – constitute a protected class of disabled persons under state and federal law.³ Advocates for the specialized housing and residential programs that serve this population argue that an irrational and, in fact, illegal bias leads many to prefer not to have such facilities in their own neighborhoods. On the other hand, local governments have brought forward the complaint that recovery programs are developing into a private industry that threatens the residential character of established neighborhoods. Local officials have warned of a “Rehab Riviera” of expensive recovery facilities disrupting or displacing family neighborhoods, particularly in Southern California coastal communities.⁴

This report focuses on one particular type of housing for persons in recovery: the sober living

home. In 2002, the California Research Bureau published “Residential Care Facilities in the Neighborhood: Federal, State, and Local Requirements,”⁵ a study focused primarily on state-licensed facilities across multiple areas of need, including but not limited to recovery from substance abuse. While this report will provide some updated information on the legal and regulatory frameworks we addressed in 2002 that apply to both licensed and unlicensed facilities, its primary purpose is to address the unlicensed sober living home as both an integral part of California’s system of substance abuse resources and a driver of ongoing controversy.

A sober living home is a residence for people in recovery from substance abuse. It may serve as a crucial, or even indispensable, support for individuals undergoing treatment but it does not provide treatment or care, whether medical or personal (as in an assisted living facility). The state laws and licensing requirements that govern treatment and care facilities do not currently include sober living homes. This means that the state does not keep any list of registered sober living homes, conduct inspections of sober living homes or perform any of the other activities associated with licensing facilities.

A sober living home may be completely self-governed or have formal on-site management, but in the latter case, the managers’ duties relate to the administration of the house rather than the tenants or their recovery (as in “case management”). The tenants of a sober living home pay rent and abide by house rules, which always include maintenance of sobriety and participation in a self-help program.⁶ Multiple studies have shown the effectiveness of this kind of environment as a support for people transitioning out of drug or alcohol treatment.⁷

The effectiveness of sober living as one component of a person’s successful recovery program is not controversial. The concern underlying this study is better framed as whether these homes – which are heavily

protected under federal and state law as disabled people's residences – have in some cases moved away from their intent and evolved into something else, and if so, what the appropriate policy responses might be. The sheer opulence of certain facilities has led some to question their focus on recovery. A listing of sober living homes in the West Los Angeles area shows monthly rents of up to \$10,000 and amenities that may seem more appropriate to a luxurious resort than an environment of recovery, such as fine dining, in-room spa treatments and horseback riding.⁸

The social model calls for the environment of recovery to be close, both physically and structurally, to the typical or normative model of residential life in the surrounding community, and the legal protections that surround sober living homes protect them as residences. In this context it is understandable why neighbors and civic leaders who otherwise support recovery and the social model might question facilities whose other attractions seem to outweigh their promise of a clean and sober environment. On the other hand, there is no legal or therapeutic reason why a sober living home should be more austere than the market will apparently bear.

Not every local controversy around sober living homes or similar facilities has been of the "Rehab Riviera" variety. Landlords in less affluent areas have allegedly offered dangerous, overcrowded or otherwise illegal housing under the pretext of sober living or similar uses. New York City recently evacuated some of its unregulated "three-quarter homes" for the addicted, homeless and mentally ill after finding that they "crammed up to eight people in a room and often had rodents and blocked fire exits."⁹

While there have been no high-profile cases of this nature in California in recent years, we found several historical examples. In 2000, *The Los Angeles Times* reported "homes so overcrowded that residents were living in their

cars" in San Jose.¹⁰ A 1992 column in the same newspaper cited, in various parts of Southern California, "as many as 55 recovering drug addicts and alcoholics ... living in a single home," men who "surrender their welfare checks to sleep on plywood pallets in bare cubicles with exposed wiring" and women who "seek shelter in the home of a therapist who has been accused of demanding sexual favors from female tenants."¹¹ While such dismal situations are a far cry from the "Rehab Riviera" controversy, in both cases there is an underlying suspicion that the profit motive of the operator of the house has eclipsed its purpose as a place to help people recover from substance abuse and reintegrate into society.

Furthermore, regardless of how luxurious or spartan it is, a sober living home in a residential neighborhood tends to be distinguishable from a traditional household, even while the law does not regard it as such, and in many cases despite the best efforts of its management and tenants. At a minimum, the residents tend to be much more transient than a typical family member; their group demographics are visibly different from the expected demographics of a family unit; their day-to-day schedules often differ from the typical schedule of a middle- or working-class family; and they sometimes engage in visible group activities related to their recovery that traditional families would not be likely to engage in.

Beyond this, neighbors of some sober living homes have complained of higher levels of noise, secondhand smoke, foot traffic, street parking and other nuisances that they attribute to the presence of the home.¹² Whether or not the latter claims are valid and fair, we can reasonably expect the visible differences between sober living and other homes in settled, single-family neighborhoods to continue to attract curiosity and attention, if not suspicion and complaint, from neighbors in more conventional situations. When sober living homes and related treatment facilities become concentrated in one area, the

differences can become even more visible and raise concerns about the character of the neighborhood. Yet there are also many examples of well-run sober living homes co-existing peacefully and even amicably with their neighbors in residential areas.¹³

Overall, it seems that cities and neighbors on the one hand, and persons in recovery on the other, have a mutual interest in successfully integrating sober living homes as part of the fabric of the community. While neighborhoods have an interest in maintaining their residential character and quality of life, the social model of recovery also depends on sober living homes existing in such neighborhoods without disrupting them. As one sober living advocacy organization puts it, “Homes which cause problems for neighbors are not providing their residents with the living skills that are an integral part of the sober living experience.”¹⁴

Whether recovery facilities multiply and displace neighborhoods or governments regulate sober living homes such that they become concentrated in only a few areas, as has been shown to occur with sex offender housing restrictions¹⁵ – both have a similar end result. In other words, a regime that is either overly restrictive or overly permissive is likely to lead to greater segregation and concentration of recovery facilities, an environment that is not conducive to recovery and reintegration into society. In contrast, a constructive regulatory framework for sober living homes could conceivably be built around the recovery and wider communities’ mutual interest in successful integration.

Dimensions of Sober Living in California

Estimating the statewide eligibility group and total capacity

The number of sober living homes, the total capacity of these homes and the overall need for sober living capacity are difficult to

determine. In general, there is a lack of enumerated data on either the homes themselves or the populations they serve. In the interests of defining the overall scope of the issue, the California Research Bureau has developed a preliminary set of estimates indicating that there are at least 12,000 sober living beds in the state to serve an eligible population of between 25,000 and 35,000 individuals. The assumptions and calculation used to develop these estimates are as follows.

Sober living homes in general require that tenants participate actively in a recovery self-help fellowship. The largest of these, Alcoholics Anonymous, reports a national active membership of 1.28 million in January 2015.¹⁶ If California has a share of this membership commensurate with its share of the national population, the number of Alcoholics Anonymous members here would be around 156,000. A published estimate from 2008 showed that 85 percent of the total self-help recovery fellowship population was in Alcoholics Anonymous, 13 percent in Narcotics Anonymous and 2 percent in other groups.¹⁷ Applying these figures to the current national membership of Alcoholics Anonymous, and assuming California’s share is proportional to its share of the national population, we estimate that there are about 183,500 recovery self-help group members living in California.

Since tenants generally stay in sober living homes transitionally rather than permanently, we can further limit our estimate of the eligibility group to those in the early stages of recovery. In 2015, Narcotics Anonymous reported that 8 percent of its members were in their first year of sobriety and 27 percent were in years two through five.¹⁸ Assuming that the distribution across the latter years is even, meaning about 6.75 percent of the fellowship is in each of years two through five, we can infer from this data that around 14.75 percent of active members are in their first or second years of sobriety (“being clean” in Narcotics Anonymous terminology.)

Further assuming that this distribution pattern is similar across all self-help fellowships, we can apply this percentage to our estimate of the total recovery self-help group population for an estimate of 27,000 individuals in California being credible candidates for tenancy in a sober living home. Using the same method and the previous year's data from Narcotics Anonymous, we found a figure of 33,000; thus we feel it is reasonable to express our final estimate as a range from 25,000 to 35,000. Since neither Alcoholics Anonymous nor Narcotics Anonymous publish their survey methodology, and we have had to extrapolate the estimates from this data, this figure should be considered more as a marker against which to measure the inventory and existing capacity of sober living homes.

Unfortunately, it is even more difficult to estimate the total number of sober living homes. This is because there is no existing requirement for sober living homes to identify themselves as such in any official capacity, unless they are participating in programs beyond the minimum legal requirements for such a home to exist (see "Private and public certification" below.) About 750 homes are members of one of the two major associations that organize and promote sober living in California¹⁹ – The Sober Living Network and the California Consortium of Addiction Programs and Professionals – but these organizations do not capture every sober living home or equivalent establishment in the state.

Furthermore, we do not know how many people can live in each of the 750 homes. Because they are unlicensed, the only restrictions on occupancy that can be applied to them are restrictions on all residential units of the same type (single-family, duplex, multi-family or other types of housing or lodging as defined in state and local law). A count of sober living homes and beds in Costa Mesa found an average density of 5.6 beds per home.²⁰ If this is typical for the 750 associated homes statewide, there are about 4,200 beds within both

networks. (However, this number may reflect the city's interpretation of a zoning law that allows up to 6 persons per unit without a use permit, regardless of the unit's size, as much as or more than it reflects the average occupancy of sober living homes throughout the state.)

This still tells us little about total statewide capacity, given our lack of knowledge of the associations' rates of capture, but it does suggest a considerable gap between the availability of space in sober living homes and the size of the eligibility group, assuming the associations capture at least a significant minority of the total capacity. A national online directory of recovery resources lists a total of 2,155 sober living homes in California, a list that overlaps considerably, perhaps completely, with the two association membership lists.²¹ At an average of 5.6 beds per home the list would imply a statewide inventory of about 12,000 beds, but there may still be many more homes that do not appear in the directory.

Only a fraction of the eligibility group will actually choose sober living homes. Some enter recovery from home environments that are adequately supportive once their substance abuse is known and treated, while others find housing in different programmatic formats, such as transitional or permanent supportive housing for homeless persons. However, all evidence suggests an unmet and growing demand for beds in sober living homes.²² It is also worth considering that the more luxurious sober living homes may be attracting a large number of tenants from outside the state.

Referrals and relationships

Tenants often find their way to sober living homes through referrals from the criminal justice system or professionals they encounter during treatment. In a study of sober living homes in Sacramento County, 44 percent of referrals were by "self, family and friends" while 29 percent were through the criminal justice system and 15 percent were from inpatient treatment.²³ Since sober living homes cannot

provide treatment, referral relationships between treatment facilities and sober living homes that exist in close physical and financial proximity could bring into question the status of the home and the licensed facility as legal entities independent of each other. We have found no example to date of proceedings against a California sober living home using this legal framework, but there have been such proceedings against three-quarter home operators in New York.²⁴

Criminal-justice referrals to sober living homes are part of a broader movement toward dealing with alcoholism and addiction in the community rather than prisons or jails. The history of this movement is beyond the scope of this report, but we might quickly note its persistence and broad impacts in California, beginning with the transition from “drunk tanks” to detoxification centers in the 1960s²⁵ and continuing with the Substance Abuse and Crime Prevention Act (Proposition 36) in 2000, which called for drug offenders to receive treatment rather than jail sentences, as well as the ongoing penal realignment with its emphasis on rehabilitation in community settings.

This movement has received broad support,²⁶ not only because it seems like a more humane approach than custodial sentencing for substance abuse, but also because it promises both cost savings and a reduction in recidivism. On the other hand, the placement of drug and alcohol offenders in the community may increase demand for sober living homes²⁷ and, in some cases, raise neighborhood concerns around their presence.²⁸

Californians researching sober living resources on their own – the “self, family and friends” who made up the largest group of referrers in the Sacramento study – are likely to come across information and resources offered by one of two major associations: The Sober Living Network, organizing about 500 homes in the Southern California region under six county-level coalitions and the California Consortium of

Addiction Programs and Professionals, registering 255 homes throughout the state. With reference to the Consortium, the state Department of Health Care Services (DHCS) states on its website: “It is important to note that while sober living environments or alcohol and drug free housing are not required to be licensed by DHCS, operators are required to comply only with local zoning and occupancy ordinances. For more information please contact the California Consortium of Addiction Programs and Professionals ...”²⁹

Both sober living home associations require certain standards for membership. Similarly, some county governments have set requirements that sober living homes must meet before the courts, probation department or other local agencies will refer offenders or social-service clients to them. In the next section, we will examine the certification requirements of these public and private agencies as both a final consideration in our analysis of the dimensions of sober living and a springboard for further discussion of possible regulatory measures.

Private and public certification

Both of the major sober living home associations have extensive membership requirements and offer training and other resources to the staff and operators of sober living homes. The Sober Living Network has network-wide as well as local policies across the six county-level coalitions it comprises; the network-wide requirements for membership include home inspections for health and safety, training for house managers, liability insurance (which the Network offers members at a discount) and adherence to a code of standards.³⁰

The latter touches on issues of community integration in various places – for example, physical planning guidelines that forbid the establishment of smoking areas abutting adjacent property. There is one section of the

organization's code of standards devoted entirely to the issue:

Section 8: Community relationships and good neighbor policies

Homes are expected to make a positive contribution to the life of the neighborhood. Homes which cause problems for neighbors are not providing their residents with the living skills that are an integral part of the sober living experience.

1. House rules must foster behavior among residents which is respectful of neighbors and the community.
2. Excessive neighborhood or community complaints are evidence of poor home management, and will be considered as possible grounds for termination of membership privileges.
3. Residents must be given the contact information of a responsible party representing the home, and instructed that the information must be provided to neighbors upon request. A responsible party representing the home must respond to neighborhood complaints within 12 hours of receipt of a complaint, even if it is not possible to resolve the issue immediately.
4. Rules regarding noise, smoking, and loitering must be responsive to neighbors' reasonable complaints.
5. In neighborhoods where street parking is scarce, homes must have and enforce rules regarding parking courtesy such that residents do not monopolize parking in areas immediately adjacent to the home.³¹

Issues of community integration as well as the legal status of sober living homes receive further treatment in the Network's training curriculum, with workshop topics that include "keeping a house healthy, safe and neighbor friendly" and "recovery or treatment activities that cross the line."³²

The California Consortium of Addiction Programs and Professionals also has a published set of standards for sober living homes (which it terms "sober living environments" or "SLEs") that touches on many of the same issues, stating that "the residents will be mindful of noise levels of conversations, designated smoking areas that will not affect the neighbors, and walking on sidewalks and paths to destinations."³³ Sober living homes that wish to

join or remain on the Consortium's registry submit to self-monitoring agreements and annual visits by peers to ensure that they are meeting the code of standards. Currently, the Consortium reports on their website that they are in the process of aligning their standards with the more comprehensive National Association of Recovery Residences standards, and that future applicants for their registry should prepare to meet the latter.³⁴

Several county governments have adopted certification procedures for sober living homes that receive funding or referrals from local courts and county agencies. Orange County's certification system, established in 2002, is possibly the oldest and probably the most extensive of these.³⁵ Certification requires an inspection of the facility as well as submission to surprise inspections at any time while certified; there are strict standards for the maintenance of properties; homes must adopt a good-neighbor policy to receive and remedy complaints; and they must place curfews and other restrictions on tenant behavior.

Kern County has adopted a similar system with an even more specific set of restrictions related to neighborhood impacts including bans on "loud, abusive or vulgar language" and smoking or socializing in the front yard.³⁶ Alameda County uses Consortium registration to certify sober living programs that receive county funding.³⁷ A September 2013 presentation by the Network refers to a proposal by the Los Angeles County Department of Substance Abuse Prevention and Control to train staff at all sober living homes in the county³⁸; however, according to the department this plan did not come to fruition.³⁹

The existence of a certification system does not prevent all conflicts between cities or their residents and sober living homes and there are no tools at this time to assess the impact of either public or private certification on the number, quality or integration of sober living homes. But these systems, based on local

experience and a common need to balance the rights and interests of sober living tenants and their neighbors, are a likely template for either replication in new locations or a system of regulation at a larger scale. We will revisit this concept in “Policy options,” below.

Overview of state and federal laws affecting sober living homes

Federal laws and regulation

The following federal laws have been influential in the development of sober living as a largely unregulated housing sector.

Fair Housing Act (1988)

The Fair Housing Act (FHA), as amended in 1988, promotes the integration of individuals with disabilities into the community. While the FHA does not pre-empt local authority over zoning laws, it applies to local government entities and prohibits zoning or land use decisions or policies that exclude or otherwise discriminate against individuals with disabilities and other protected classes. The FHA also requires that local government make reasonable accommodations in policies and practices when accommodations are necessary to provide equal housing opportunities.

Americans with Disabilities Act (1990)

The 1990 Americans with Disabilities Act (ADA) prohibits discrimination against individuals with disabilities. The subsequent Supreme Court “Olmstead” decision clarified that the ADA requires states to place individuals in community settings rather than institutions.

Code of Federal Regulations §100.201

This section defines “handicapped” status protected by FHA and ADA to include recovering alcoholics and addicts.

State law

In general, California law reinforces federal law in prohibiting housing discrimination against persons with disabilities, including alcoholics and addicts in recovery. However, a 2003

opinion by the state Attorney General has been very influential in allowing local governments to enact restrictions on sober living homes.

Fair Employment and Housing Act (1959)

The Fair Employment and Housing Act prohibits housing discrimination based on disability. Other state laws protect residents with disabilities from discrimination in housing, and require that reasonable accommodation or modification of the premises be made for individuals with disabilities.

Government Code 65008 (a), (b) and (d)(2)

This section prohibits discrimination in zoning laws and different requirements on single-family or multi-family homes based on any protected status of the residents, including disability.

City of Santa Barbara v. Adamson, 27 Cal. 3d 123, 134 (1980)

This decision of the California Supreme Court found that the city’s definition of “family” based exclusively on blood, marriage or legal adoption, which was used to limit the number of unrelated persons who could live in a single housekeeping unit, violated the right to privacy enumerated in the state constitution.

86 Opinions of the California Attorney General 30 (2003)

This opinion of the California Attorney General found that communities can prohibit lodging houses in residential areas, a mechanism that cities have since used in legislation to limit the development of sober living homes and other unlicensed group homes.

Local efforts to regulate sober living homes

There are multiple instances of local governments moving to regulate sober living homes in California. In January 2013, the Los Angeles City Council sent a proposed Community Care Facilities Ordinance back to committee for review.⁴⁰ If enacted, the ordinance would have classified any home with

more than one lease in a single-family zone as a boarding house, which is prohibited in all residential zones under existing code. This measure has been heavily opposed by sober living advocates including The Sober Living Network⁴¹ and it is unclear whether or not the issue will become active again in the future.

In July 2015, a federal judge dismissed a challenge to a 2014 Costa Mesa ordinance that requires a 650-foot buffer between sober living and other kinds of unlicensed group homes while limiting sober living homes to seven beds, a case described in detail under “Recent legal challenges to sober living home regulation,” below. In October 2015, the city council moved to expand these restrictions from single-family neighborhoods to the entire city.⁴²

An earlier (2008) ordinance in neighboring Newport Beach greatly reduced the number of sober living homes in the city⁴³ but has been the subject of costly litigation, which will also be explained in detail under “Recent legal challenges” below. Other California local governments that have recently explored, advanced or enacted regulation of sober living homes include San Clemente (2016),⁴⁴ Laguna Niguel (2016),⁴⁵ San Juan Capistrano (2016),⁴⁶ Laguna Hills (2015),⁴⁷ San Jose (2015),⁴⁸ Encinitas (2015),⁴⁹ San Bernardino County (2014)⁵⁰ and Redlands (2005).⁵¹

Regulatory efforts in other states

Community issues around sober living homes are not unique to California. There are several instances of state and local governments outside of California moving to regulate sober living homes in recent years. Pennsylvania legislation introduced in February 2016 would create a state board and voluntary certification system for sober living homes.⁵² A 2014 law passed by the Massachusetts General Court⁵³ directs the state’s bureau of substance abuse services to establish a voluntary training and accreditation program for sober living homes and mandates that all state agencies or vendors with statewide contracts refer clients only to

homes certified through this program. In St. Paul, Minnesota, an ordinance passed in 2008⁵⁴ requires a 330-foot buffer between sober living homes and restricts their occupancy and use of parking under some circumstances; the city recently considered and rejected a proposal to expand the buffer to 1,320 feet.⁵⁵ These examples show not only that California’s issues are far from unique, but also that the policy solutions being pursued elsewhere reflect many of the same options available to our state and local governments.

Recent legal challenges to sober living home regulation

In *Solid Landings Behavioral Health, Inc. v. City of Costa Mesa* (2015 U.S. District LEXIS 52475),⁵⁶ a group of owners and operators of residential drug and alcohol rehabilitation homes came together to file a complaint against the City of Costa Mesa concerning a recently passed ordinance (No. 14-13). This ordinance amended planning, zoning, and development in the city to require sober living and other group homes to obtain a special use permit. It gave them 90 days to file for the permit and a year to comply.

The ordinance found the following:

- Tranquility, safety, and community are reasons persons invest in single-family neighborhoods.
- An increased number of sober living homes cause noise, secondhand smoke, and overcrowding.
- The deleterious impact of overconcentration of these homes changes the character of single-family neighborhoods and affects disabled persons’ residential recovery.
- Recovering addicts need a comfortable living environment to finish their programs.
- Sober living household size and makeup affects water, sewer, roads, parking, and other city services.

- Having too many sober living homes with large households in proximity to each other affects disabled persons' chance to live in normal residential surroundings.
- Sober living homes are not in character with single-family neighborhoods, yet responsible operation of them offers disabled persons the opportunity to live in single-family neighborhoods.

The owners and operators who filed the complaint alleged that the ordinance violated the Fair Housing Amendments Act, the Americans with Disabilities Act, and the Fourteenth Amendment to the Constitution. The complaint was initially dismissed for procedural reasons. Allowed to re-plead, in the second filing, they added additional allegations:

- City officials were trying to discriminate against sober living homes.
- Data did not support city concerns about safety and overconcentration.
- A 650-foot separation rule unreasonably subjected disabled persons to embarrassment and humiliation.
- The application process and information required for special use permits and reasonable accommodations is discriminatory and violates federal law.

In its analysis, the court⁵⁷ found the ordinance did not violate federal law, did not subject disabled persons to disparate treatment or impact, and did not deny them reasonable accommodation. The Court granted the City of Costa Mesa's request for dismissal and denied the complaint as moot. An appeal of this decision ended in the city's favor, with the plaintiffs agreeing to shut down 33 facilities without receiving any legal fees from the city.

⁵⁸

In *Pacific Shores Properties, LLC v. City of Newport Beach* (746 F.3d 936, 2014 U.S. App. LEXIS 4071 9th Cir. 2014),⁵⁹ an owner and two

residents representing two unlicensed sober living houses and a state licensed facility challenged a permanent zoning ordinance (No. 2008-5) that sought to exclude group homes from the city by changing the definition of "single housekeeping unit."

Before the ordinance, group homes could locate anywhere without a special permit, but the new ordinance now required each single housekeeping unit to have a single written lease and household residents to decide who would be a member of the household. These two changes to the definition of single housekeeping unit would disqualify sober living homes because residents do not sign written leases nor are residents chosen by each other, but rather staff chooses the residents to ensure the household is a sober living environment. Sober living homes had 90 days to apply for a special use permit (if they were in an appropriate zone that allowed for them).

The ordinance:

- Regulated group homes as "residential care facilities" but not as "single housekeeping units."
- Restricted group homes from locating in most residential zones under any circumstances.
- Allowed group homes to obtain a special use permit to locate in multi-family residential zones.
- Set special use permit criteria to limit the number of facilities per block and consideration of the character of the neighborhood.
- Provided for a waiver for a residential care facility if it is a necessary reasonable accommodation for disabled persons in accordance with federal and state law.

The owner and residents that brought the complaint against the City of Newport Beach alleged that they were discriminated against through the enactment and enforcement of the ordinance based on the Fair Housing Act, the

Americans with Disabilities Act, the California Fair Employment and Housing Act and the Equal Protection Clause.

Initially, the district court found that:

- Group homes had not suffered any harm or disparate treatment from the ordinance.
- There was no violation of federal and state law.
- There had not been any discriminatory intent on the part of the City.

The district court held, however, that a revised moratorium that was part of the enactment and enforcement of the ordinance on group homes was discriminatory.

On appeal, a subsequent panel of judges overturned the district court decision, finding that “evidence is sufficient to permit the protected individuals to proceed to trial under a disparate treatment theory.” Substantial evidence, formerly deemed irrelevant by the district court, persuaded the court the City did indeed intentionally discriminate against group homes and that this discriminatory intent on the part of the City affected the ability of the owner and residents to show that they had been targets of discrimination.

In July 2015, *The Orange County Register* reported that the parties in *Pacific Shores* had reached a settlement agreement under which the city will pay \$5.25 million to the plaintiffs; the ordinance is still in place.⁶⁰

Policy options

Statewide licensing or re-classification of some sober living homes

One approach that has appeared frequently in state legislation is to expand the state’s licensing power to encompass sober living homes in addition to residential treatment and care facilities (see Appendix.) The general problem with this approach is that the Fair Housing Act and related state and federal instruments generally prohibit any

governmental entity from requiring a residence for a protected class of people to be licensed, at least insofar as the residences of the general population do not bear an equal licensing requirement. To require licensing of sober living homes within the existing legal frameworks, the state would have to make the argument that a sober living home is not strictly a residence, but also a business offering personal or professional services similar or equivalent to those currently subjected to state licensure (including drug treatment.)

For this reason, sober living homes generally work to avoid both the appearance and the actuality of providing such services to their residents.⁶¹ As mentioned above in “Private and public certification,” one association offers training for operators to avoid “crossing the line” into treatment. Even if the state required sober living homes that provide services to carry licenses as “adult recovery maintenance facilities,” as various recent legislative proposals have intended, the sober living homes that are able to demonstrate their purely residential status could presumably continue to operate without a license, under the protection of other state and federal laws and legal frameworks.

Another option that might achieve similar results would be to increase state-level enforcement activities against facilities, including some sober living homes, which provide drug and alcohol treatment without the appropriate licenses under current law.

Fair share and geographic distribution

In our previous report “Residential Care Facilities in the Neighborhood,” we wrote extensively on the issue of “fair share” in the siting of such facilities. Behind the overall movement to provide for people with special needs in the community, rather than institutions, is a desire on everyone’s part for communities to be as integrated and inclusive as possible. “Facility residents,” we wrote, “should be able to remain *in their own communities*, close to their families.” [emphasis

added] Furthermore, “[f]acilities that are so densely clustered – overconcentrated – as to recreate an institutional environment defeat the purpose of community-based care.”⁶²

Sober living homes today present a different set of circumstances from those described in “Residential Care Facilities.” In that report, we described the clustering of care facilities in poor and rural areas, a fact that is seemingly based on a need for cost savings as well as successful “NIMBY” (“not in my backyard”) campaigns in affluent areas. The clustering of sober living homes in affluent communities is driven by an apparently booming market and the failure of “NIMBY” efforts to prevent their proliferation, even in some of the state’s wealthiest communities.⁶³ Despite these very different underlying factors, the principles of fair share and integrated communities are equally applicable in the case of sober living homes, as is our concern about overconcentration.

A pattern could emerge as more cities move to regulate and restrict the presence of sober living homes. We do not know to what extent the growth of sober living homes in Costa Mesa that led to the passage of a restrictive ordinance in 2014 was a direct result of the reduction in Newport Beach’s sober living homes, which came about because of a restrictive ordinance passed in 2008. But the sequence of events in these two adjoining cities suggests a “domino effect” of sober living home operators moving from one city to the next to avoid regulation, especially if these local regulations continue to withstand legal challenges. The logical conclusion of this process would be a true “Rehab Riviera” – whole communities transformed into recovery campuses with little in the way of traditional communal life.

On the other hand, substance abuse affects people of every class and every community has a substance abuse problem. Since sober living homes are an effective support for the recovery and reintegration of alcoholics and addicts,

there is likely to be an authentic need for them in every community. It would be possible, but costly, to conduct a statewide needs assessment to determine what are minimal, optimal and excessive numbers of sober living beds for each city. Alternatively, the state could adopt as part of its future planning guidelines or housing element law a strictly population-based formula for determining the same. Such a policy framework would not have to be intensely prescriptive or regulatory to have a strong impact on the distribution of sober living homes among California communities.

State or local law could also potentially address the issue of some sober living homes functioning essentially as extended-stay hotels or – as they are classified in several proposed or enacted ordinances⁶⁴ – boarding houses. Sober living homes in general serve people with ties to the community where they are located. If a home is serving tenants from distant locations within or outside California, there is arguably a threshold beyond which the homes actually are functioning more as an inn than a residence. However, the history of recent efforts to limit short-term rentals in San Francisco⁶⁵ suggests the complexity and difficulty of creating functional public policy to regulate this kind of activity.

Statewide certification

At least two other states are currently developing statewide certification schemes for their sober living homes. There are many possible ways to organize and accomplish such a scheme, but all of them rely on the state’s own involvement with sober living homes, primarily as a referrer or funder of those who refer tenants to the homes. This also reflects the experience of California counties that require certification of all county-involved sober living homes. Both the Massachusetts and Pennsylvania certification schemes are voluntary; the repeated failure of presumably more prescriptive licensure legislation in California may reflect the challenges to placing any such blanket requirement on sober living

homes. For this reason, the government's role in referring tenants is an important lever to encourage participation in any public certification system.

Both county and private certification systems for sober living homes, as described above, focus on successful integration of the home and its tenants in the neighborhood. This is the primary advantage of certification from the perspective of the community. The state has a further interest in the supportive quality of homes that are being used in connection with other state programs such as penal realignment. A statewide certification scheme could also address overconcentration – albeit not necessarily of the “Rehab Riviera” variety – by limiting the number of new certifications based on local need.

There are several different ways the state could approach certification. The existing private associations of sober living homes both have credible systems of their own and could be adopted as partners, as Alameda County has apparently done with the California Consortium of Addiction Programs and Professionals. The state could also consider requiring county governments to adopt certification schemes of their own, perhaps including an option to use one of the associations, which would likely be an attractive option in smaller counties without the resources to develop a local system. A more centralized approach similar to the systems under development in Pennsylvania and Massachusetts would likely require the appointment of a state board and some new positions in state government to oversee and operate the system.

Appendix: Recent proposed legislation

The following table includes all bills directly or indirectly affecting sober living homes that have been introduced since the 1998-99 legislative session.

Year	Status	Bill, Sponsor	Description
1998	Vetoed by Governor.	SB 1540 (Karnette)	Required state licensure of adult recovery maintenance facilities or “sober living homes” and required the Department of Social Services to develop plans regarding community care facilities.
1999	Vetoed by Governor.	SB 986 (Karnette)	Required the Department of Alcohol and Drug Programs to license and regulate adult recovery maintenance facilities and directed department to establish fees to regulate such facilities.
2000	Died in Assembly Health Committee.	SB 987 (Karnette)	Required the Department of Alcohol and Drug Programs to administer the licensure and regulation of adult recovery maintenance facilities.
2001	Never heard in committee.	SB 239 (Morrow)	Required court, probation department, Department of Corrections, or California Youth Authority to refer persons to a sober living facility only if certified.
2001	Never heard in committee.	SB 1089 (Karnette)	Required the Department of Social Services to develop and submit to the Legislature plans regarding a statewide database of alcohol and drug abuse treatment and recovery facilities and a plan for regulating unlicensed residential programs.
2002	Died in Senate Appropriations.	AB 2317 (Chu)	Required the Department of Alcohol and Drug Programs to develop and adopt emergency regulations governing the licensing and operation of adult recovery maintenance facilities on or before July 1, 2003.
2003	Never heard in committee.	SB 340 (Florez)	Required the Department of Alcohol and Drug Programs to administer the licensure and regulation of adult recovery maintenance facilities.
2005	Died in Senate Appropriations.	AB 36 (Strickland)	Required the Department of Alcohol and Drug Programs to license Adult Recovery Maintenance Facilities.

Year	Status	Bill, Sponsor	Description
2006	Never heard in committee.	AB 1225 (Strickland)	Required the owner of an alcoholism and drug abuse recovery or treatment facility that serves more than six unrelated persons to notify the local law enforcement agency of its existence. The bill would have prohibited a facility from existing in a location with more than five facilities within a square mile, with more than one facility located on a single city block, or within 1,000 feet of another facility.
2007	Never heard in committee.	AB 327 (Horton)	Required Department of Social Services, in consultation with the Department of Alcohol and Drug Programs and other state departments to establish and maintain a statewide computerized database of community care licensing facilities and alcoholism and drug abuse treatment and recovery facilities.
2007	Died in Senate Health Committee.	AB 724 (Benoit)	Defined “sober living home” as a residential property which is operated as a cooperative living arrangement to provide an alcohol- and drug-free environment for persons recovering from alcoholism or drug abuse, or both, who seek a living environment in which to remain clean and sober, and which meets other specified requirements.
2007	Vetoed by Governor.	SB 992 (Wiggins)	Required the Department of Alcohol and Drug Programs to license Adult Recovery Maintenance Facilities.
2009	Died in Assembly Appropriations.	AB 1055 (Chesbro)	Expanded the Department of Alcohol and Drug Programs licensure authority for alcohol and drug treatment facilities to include 24-hour facilities that do not require a health facility license.
2009	Never heard in committee.	SB 214 (Benoit)	Provided that a sober living home is exempt from licensure under specified conditions. A residence housing those purported to be recovering from drug and alcohol abuse would be presumed to be a sober living home if it has been certified, registered, or approved by a recognized nonprofit organization that provides a credible quality assurance for applicants or members.

Sober Living Homes in California: Options for State and Local Regulation

Year	Status	Bill, Sponsor	Description
2009	Gut and amended to address a different subject.	SB 689 (Hollingsworth)	Authorized a county or city to prohibit a person released on parole, after having served a term of imprisonment in state prison for any offense for which registration as a sex offender is required, from residing during the period of parole, in any single family dwelling with any other person also on parole after having served a term of imprisonment in state prison for any offense for which registration as a sex offender is required, unless legally related by blood, marriage or adoption.
2010	Died in Senate Appropriations.	AB 2221 (Beall)	Permitted 24-hour residential treatment facilities that provide services to adults recovering from alcohol and drug abuse that are licensed by the Department of Alcohol and Drug Programs to provide medical services and the facility would not require a health facility license.
2012	Died in Assembly Appropriations.	AB 40 (Mansoor)	Required an alcoholism or drug abuse program licensee to report specified events or incidents, including the death of a resident, within one working day of the event or incident.
2012	Never heard in committee.	AB 1983 (Mansoor)	Defined integral alcohol and drug abuse treatment facilities for purposes of licensure by the Department of Alcohol and Drug Programs and excluded integral facilities from being residential use of property.
2014	Died in Assembly.	AB 2335 (Mansoor)	Exempted a sober living home or supportive housing from licensure as an alcohol and drug treatment program.
2014	Died in Senate.	AB 2491 (Nestande)	Required the Department of Health Care Services to license and regulate adult recovery maintenance facilities. Exempted sober living homes from licensure.
2016	Died in Assembly Health Committee.	AB 838 (Brough and Harper)	Required any recovery houses operated by licensed community care facility to be deemed to be facilities that provide treatment or services under the license of the community care facility.
2016	Inactive bill.	AB 1283 (Bates and Brough)	Allowed a city, county, or both to adopt health and safety standards and enforcement mechanisms for structured sober living homes.

Year	Status	Bill, Sponsor	Description
2016	Held in Assembly Appropriations.	AB 2255 (Melendez and Brough)	Defined sober living homes as residential property that meets specified requirements, presume a residence is a sober living home if certified/registered/approved by a state-recognized non-profit association, and require the non-profit to establish minimum standards for sober living home.
2016	Held in Assembly Appropriations.	AB 2403 (Bloom, Wilk, Allen, Brough)	Authorized the Department of Health Care Services to deny an application for a new facility license if the proposed location is in proximity to an existing facility that would result in overconcentration.
2016	Died in Assembly Public Safety Committee.	AB 2772 (Chang, Brough, Bates, Wagner)	Required a person seeking treatment at an alcoholism and drug abuse recovery or treatment facility because he or she has been ordered or required to participate in a drug treatment program pursuant to the Penal Code to seek treatment from an alcoholism and drug abuse recovery or treatment facility that is licensed by the Department of Health Care Services and in compliance with the local laws where the facility is located.

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