

SENATE BILL 207

By Haile

AN ACT to amend Tennessee Code Annotated, Title 6;
Title 33; Title 47; Title 63 and Title 68, relative to
alcohol and drug services.

WHEREAS, on October 24, 2018, President Donald J. Trump signed the Substance Use-Disorder Prevention that Promotes Opioid Recovery and Treatment (SUPPORT) for Patients and Communities Act into law; and

WHEREAS, the SUPPORT for Patients and Communities Act required the Substance Abuse and Mental Health Services Administration (SAMHSA) to develop best practices for operating recovery residences; and

WHEREAS, on October 8, 2019, SAMHSA published these best practices and suggested guidelines as Ten Guiding Principles; and

WHEREAS, the General Assembly finds that recovery residences are a key strategy to assist individuals living with substance use disorder in achieving and maintaining recovery; and

WHEREAS, it is critical that these residences function with evidence-based practices and sound operating procedures that center on a safe, sober living environment in which individuals can gain access to community supports and therapeutic services to advance their recovery; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. This act shall be known and may be cited as the "Stopping Addiction and Fostering Excellence (SAFE) Act."

SECTION 2. Tennessee Code Annotated, Section 6-54-145, is amended by deleting the section and substituting instead the following:

6-54-145. Municipal notice requirements.

(a) A municipality shall display in the city hall or other building that houses the municipality's seat of local government, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

PURSUANT TO TENNESSEE CODE ANNOTATED, § 33-2-405, IT IS UNLAWFUL FOR A PERSON, PARTNERSHIP, ASSOCIATION, OR CORPORATION TO OWN OR OPERATE A SERVICE OR FACILITY THAT PROVIDES ALCOHOL AND DRUG ABUSE PREVENTION AND/OR TREATMENT WITHIN THE MEANING OF TITLE 33 OF THE TENNESSEE CODE ANNOTATED WITHOUT HAVING OBTAINED A LICENSE. A VIOLATION OF THIS REQUIREMENT IS A CLASS B MISDEMEANOR. EACH DAY OF OPERATION WITHOUT A LICENSE CONSTITUTES A SEPARATE OFFENSE. REPORT ANY SUSPECTED UNLICENSED ALCOHOL AND DRUG ABUSE PREVENTION AND/OR TREATMENT SERVICES TO THE TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES' OFFICE OF LICENSURE BY DIALING [WEST TENNESSEE LICENSURE OFFICE PHONE NUMBER; MIDDLE TENNESSEE LICENSURE OFFICE PHONE NUMBER; OR EAST TENNESSEE LICENSURE OFFICE PHONE NUMBER, AS APPLICABLE TO THE LOCATION OF THE MUNICIPALITY].

(b) If a municipality maintains a website, then the notice required under subsection (a) must be placed prominently on the municipality's website.

(c) As used in this section, "municipality" means an incorporated city or town, or a county with a metropolitan form of government.

SECTION 3. Tennessee Code Annotated, Section 33-2-402, is amended by deleting subdivision (3) and substituting instead the following:

(3) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling, or supervision of persons with

substance use disorder, or services to persons designed to prevent substance use disorder that either receive funds from the department of health or assess fees for services provided; however, a DUI school operated by a state institution of higher education is not considered alcohol and drug services for purposes of this part;

SECTION 4. Tennessee Code Annotated, Title 33, Chapter 2, Part 4, is amended by adding the following as a new section:

33-2-424. Prohibited practices generally.

(a) A treatment facility shall not:

(1) Refer drug tests to an out-of-network laboratory if an in-network laboratory is reasonably available to meet the patient's drug testing needs;

(2) Order or perform confirmatory testing in the absence of a documented medical or legal need for the testing;

(3) Enter into any contract or agreement with a third-party payor that includes any inducement or incentive to reduce or limit services to a level or duration below what is in the best clinical interest of the patient; or

(4) Request, receive, or retain payment for substance use disorder treatment services provided to a patient as a result of conduct described in subdivision (a)(1), (a)(2), or (a)(3).

(b) In addition to any other punishment authorized by law, an entity that knowingly violates this section is subject to suspension or revocation of the entity's license pursuant to § 33-2-407 and the imposition of civil penalties under § 33-2-409.

(c) As used in this section, "treatment facility" means a developmental center, treatment resource, group residence, boarding home, sheltered workshop, activity center, rehabilitation center, hospital, community mental health center, counseling center, clinic, group home, halfway house, or any other entity that provides a mental

health, intellectual, or developmental disability service or an alcohol and drug abuse prevention and/or treatment facility.

SECTION 5. Tennessee Code Annotated, Title 33, Chapter 2, is amended by adding the following as a new part:

33-2-1401. Part definitions.

As used in this part:

(1) "Alcohol and drug prevention and/or treatment facility" or "ADTF" means an institution, treatment resource, group residence (boarding home, sheltered workshop, activity center), rehabilitation center, hospital, community mental health center, nonresidential office-based opiate treatment facility, nonresidential substitution-based treatment center for opiate addiction, DUI school, counseling center, clinic, halfway house, recovery residence, or other entity, by these or other names, providing alcohol and drug services; however, a DUI school operated by a state institution of higher education is not considered an alcohol and drug prevention and treatment facility for purposes of this chapter and "alcohol and drug prevention and treatment facility" does not include any facility otherwise licensed or certified by the department of mental health and substance abuse services, including certified recovery court programs, the department of health, a facility approved by the department of education, or treatment programs operated by the department of correction;

(2) "Alcohol and drug services" includes evaluation, treatment, residential personal care, habilitation, rehabilitation, counseling, or supervision of persons with substance use disorder, or services to persons designed to prevent substance use disorder that either receive funds from the department of health or assess fees for services provided; however, a DUI school operated by a state

institution of higher education is not considered alcohol and drug services for purposes of this part;

(3) "Levels of care" means the continuum of support ranging from nonclinical recovery housing to clinical and licensed treatment;

(4) "Municipality" means an incorporated city or town, or a county with a metropolitan form of government;

(5) "Organization" means any nationally recognized recovery residence standards organization, any affiliate of any nationally recognized recovery residence standards organization, or grantees of any state or federal department or agency;

(6) "Peer" means an individual with lived experience in recovery and the appropriate skills to support a recovery community;

(7) "Recovery residence" means any ADTF, including any residence classified as a single family residence under § 13-24-102, that provides a safe, healthy, and family-like, substance-free living environment centered on peer support that assists individuals in recovery from substance use disorder with services that promote long-term recovery, including, but not limited to, direct connection to other peers in recovery, mutual support groups, and recovery support services; and

(8) "Substance-free" does not mean free of substances that are prescription medications taken as directed by a licensed prescriber, such as pharmacotherapies specifically approved by the federal food and drug administration (FDA) for the treatment of opioid use disorder, as well as other medications with FDA-approved indications for the treatment of co-occurring disorders.

33-2-1402. List of approved recovery residence organizations.

(a) The department of mental health and substance abuse services shall establish and maintain on its website a list of organizations.

(b)

(1) A recovery residence that is not recognized or certified by an organization or funded by a state or federal department or agency is required to display in a prominent place within the recovery residence, a sign at least eleven inches (11") in height and seventeen inches (17") in width stating:

NOTICE: THIS IS A RECOVERY RESIDENCE THAT IS DESIGNED TO ASSIST MEN AND/OR WOMEN WHO DO NOT REQUIRE MORE STRUCTURED TREATMENT ENVIRONMENTS TO RECOVER FROM SUBSTANCE USE DISORDER; **HOWEVER, THIS RESIDENCE MAY NOT COMPLY WITH NATIONAL OR STATE STANDARDS.**

THIS RESIDENCE IS NOT LICENSED OR FUNDED BY THE TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES AS IT IS PRIVATELY FUNDED AND DOES NOT PROVIDE TREATMENT SERVICES. IF YOU ARE IN NEED OF TREATMENT SERVICES, PLEASE CALL THE TENNESSEE REDLINE AT 1-800-889-9789.

IF YOU WOULD LIKE ADDITIONAL INFORMATION REGARDING ADDITIONAL SUBSTANCE USE DISORDER SERVICES AND RESOURCES, **INCLUDING ADDITIONAL INFORMATION REGARDING APPROVED RECOVERY RESIDENCE OPTIONS,** PLEASE VISIT THE TENNESSEE DEPARTMENT OF MENTAL HEALTH AND SUBSTANCE ABUSE SERVICES WEBSITE AT <https://www.tn.gov/behavioral-health.html>.

THIS IS A NOTICE POSTED PURSUANT TO TENN. CODE ANN. § 33-2-1402.

(2) In addition to any other punishment authorized by law, a person or entity that knowingly violates this section is subject to action by the attorney general and reporter or a person described in § 47-18-109(a)(1) under the Tennessee Consumer Protection Act of 1977, as compiled in title 47, chapter 18, part 1.

(c) The department of correction shall:

(1) Recognize the approved recovery residences as approved placements for those persons with substance use disorder to community supervision;

(2) Indicate which placements on any list of placements for community supervision are approved recovery residences; and

(3) Establish a preference for approved recovery residences by encouraging placements in the residences.

(d)

(1) A licensed or certified service provider, judge, or magistrate shall not refer an individual, who is appropriate for housing in a recovery residence to support the individual's recovery from a substance use disorder, to a recovery residence, including a recovery residence owned or operated by the referent, that is not recognized or certified by an organization, or funded by a state or federal department or agency.

(2) In referring an individual to an approved recovery residence, a licensed or certified service provider, judge, or magistrate shall consider the following:

(A) The culture of the recovery residence, which may include, but is not limited to:

(i) The permissiveness of unhealthy behaviors;

(ii) The degree of adherence to outside meeting attendance;

(iii) Other peers' investment in recovery; and

(iv) The general living environment;

(B) The levels of care the recovery residence provides, including:

(i) The type, nature, and intensity of the therapeutic services and recovery supports provided; and

(ii) The ability to address specific needs;

(C) The utilization of certified or appropriately trained peers with relevant lived experience;

(D) The geographic area, neighborhood, or external surrounding environment of the recovery residence;

(E) The physical living environment of the recovery residence;

(F) The nature of current residents, including:

(i) The current residents' commitment to sobriety;

(ii) The current residents' employment status; and

(iii) The current residents' support of other residents;

(G) The use of medicated assisted treatment (MAT) in the recovery residence, including:

(i) The operator's or other residence staff's support for MAT;

(ii) The proper monitoring of the use of MAT;

(iii) The residents' support of MAT; and

(iv) The availability of peers with MAT experience for residents with severe opioid use disorder (OUD);

(H) The level of training and professionalism of residence staff, which may include, but is not limited to, training in co-occurring disorders and crisis intervention;

(I) The recovery residence's reputation regarding ethical business practices, which may include, but is not limited to, fraud and abuse of residents;

(J) The recovery residence's relapse policy; and

(K) The availability of opioid-overdose reversal drugs.

(3) Any licensed or certified provider that violates subdivision (d)(1) is subject to the suspension or revocation of the provider's license or certificate by the appropriate licensing or certification board and the imposition of civil penalties as authorized under the appropriate title.

(4) Any judge or magistrate who violates subdivision (d)(1) is subject to disciplinary action by the board of judicial conduct pursuant to title 17, chapter 5, part 3.

(5) This subsection (d) does not otherwise limit the discharge or referral options available for a person in recovery from a substance use disorder to any other appropriate placements or services.

(6) As used in this subsection (d), "refer" does not include the order of an individual to a recovery residence that is not recognized or certified by an organization, or funded by a state or federal department or agency, if the

individual selected the recovery residence independent of influence from the licensed or certified service provider, judge, or magistrate.

(e)

(1) No state funds may be used to support a recovery residence that is not recognized or certified by an organization.

(2) Subdivision (e)(1) does not apply to a recovery residence that is already receiving state or federal funds through a grant process administered by a state or federal department or agency.

33-2-1403. Prohibited marketing practices for recovery residences.

(a) A recovery residence shall not engage in any of the following marketing practices:

(1) Making a materially false or misleading statement or providing materially false or misleading information about the residence's identity, products, goods, services, or geographical locations in its marketing, advertising materials, or media, or on its website;

(2) Including on its website false information or electronic links, coding, or activation that provides false information or that surreptitiously directs the reader to another website;

(3) Soliciting, receiving, or making an attempt to solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engaging or making an attempt to engage in a split-fee arrangement in return for a referral or an acceptance or acknowledgement of treatment from a service provider of alcohol and drug services or ADTF; or

(4) Entering into a contract with a marketing provider who agrees to generate referrals or leads for the placement of patients with a service provider of

alcohol and drug services or in an ADTF through a call center or a web-based presence. This subdivision (a)(4) does not apply if the service provider of alcohol and drug services or the operator of the ADTF discloses to the prospective patient, so that the patient can make an informed healthcare decision, in clear and concise language and instructions that allow the prospective patient to easily determine whether the marketing provider represents specific service providers or recovery residences that pay a fee to the marketing provider, and the identity of the service providers of alcohol and drug services or ADTF.

(b) In addition to any other punishment authorized by law, a person or entity that knowingly violates this section is subject to:

(1) Suspension or revocation of the recovery residence's status as an approved recovery residence for purposes of the list maintained by the department of mental health and substance abuse services pursuant to § 33-2-1402(a); and

(2) Action by the attorney general and reporter or a person described in § 47-18-109(a)(1) under the Tennessee Consumer Protection Act of 1977, as compiled in title 47, chapter 18, part 1.

SECTION 6. Tennessee Code Annotated, Section 47-18-104(b), is amended by adding the following new subdivisions:

() A violation of § 33-2-424;

() A violation of § 33-2-1402(b);

() A violation of § 33-2-1403(a);

SECTION 7. Tennessee Code Annotated, Section 63-1-159, is amended by deleting the section and substituting instead the following:

63-1-159. Prohibited offer or payment, or offer or solicitation, of commission for referral of patient or patronage with respect to alcohol or drug services.

(a) A healthcare provider licensed under this title, with respect to alcohol and drug services, as defined in § 33-2-402, shall not knowingly:

(1) Offer or pay a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from:

(A) A licensee or facility licensed under title 33, chapter 2, part 4;

or

(B) A recovery residence, an employee of a recovery residence, a nationally recognized recovery residence standards organization or its affiliate, or an employee of a nationally recognized recovery residence standards organization or an employee of its affiliate under title 33, chapter 2, part 14;

(2) Solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from:

(A) A licensee or facility licensed under title 33, chapter 2, part 4;

or

(B) A recovery residence, an employee of a recovery residence, a nationally recognized recovery residence standards organization or its affiliate, or an employee of a nationally recognized recovery residence standards organization or an employee of its affiliate under title 33, chapter 2, part 14;

(3) Solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from:

(A) A licensee or facility licensed under title 33, chapter 2, part 4;

or

(B) A recovery residence, an employee of a recovery residence, a nationally recognized recovery residence standards organization or its affiliate, or an employee of a nationally recognized recovery residence standards organization or an employee of its affiliate under title 33, chapter 2, part 14; or

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under subdivision (a)(1), (a)(2), or (a)(3).

(b) Any healthcare provider licensed under this title, with respect to alcohol and drug services, that violates this section is subject to suspension or revocation of the healthcare provider's license by the appropriate healthcare licensing board and the imposition of civil penalties as authorized under this title.

SECTION 8. Tennessee Code Annotated, Section 68-1-138, is amended by deleting the section and substituting instead the following:

68-1-138. Prohibited offer or payment, or offer or solicitation, of commission for referral of patient or patronage with respect to alcohol or drug services.

(a) A healthcare facility or provider licensed under this title, with respect to alcohol and drug services, as defined in § 33-2-402, shall not knowingly:

(1) Offer or pay a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from:

(A) A licensee or facility licensed under title 33, chapter 2, part 4;

or

(B) A recovery residence, an employee of a recovery residence, a nationally recognized recovery residence standards organization or its affiliate, or an employee of a nationally recognized recovery residence standards organization or an employee of its affiliate under title 33, chapter 2, part 14;

(2) Solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from:

(A) A licensee or facility licensed under title 33, chapter 2, part 4;

or

(B) A recovery residence, an employee of a recovery residence, a nationally recognized recovery residence standards organization or its affiliate, or an employee of a nationally recognized recovery residence standards organization or an employee of its affiliate under title 33, chapter 2, part 14;

(3) Solicit or receive a commission, benefit, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from:

(A) A licensee or facility licensed under title 33, chapter 2, part 4;

or

(B) A recovery residence, an employee of a recovery residence, a nationally recognized recovery residence standards organization or its affiliate, or an employee of a nationally recognized recovery residence standards organization or an employee of its affiliate under title 33, chapter 2, part 14; or

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under subdivision (a)(1), (a)(2), or (a)(3).

(b) Any healthcare facility or provider licensed under this title, with respect to alcohol and drug services, that violates this section is subject to suspension or revocation of the healthcare facility's or provider's license by the appropriate licensing board and the imposition of civil penalties as authorized under this title.

SECTION 9. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 10. This act takes effect July 1, 2022, the public welfare requiring it.

Recovery Residences

Section by Section Summary

Section 1

Section 1 of the bill titles the legislation as the Stopping Addiction and Fostering Excellence (SAFE) Act.

Section 2

Section 2 of the bill amends the existing SAFE Act to keep only the municipal notice requirements relative to owning and operating an alcohol and drug abuse prevention and/or treatment facility.

Section 3

Section 3 of the bill amends the definition of “Alcohol and drug services” to be consistent in the use of the terminology “substance use disorder” throughout.

Section 4

Section 4 of the bill prohibits a treatment facility from referring drug tests to an out-of-network lab when an in-network lab is available, ordering or performing needless confirmatory testing, entering into a scheme with a third-party payor to limit services to a level below the needs of the patient, and requesting, receiving, or retaining payment for the aforementioned conduct. A violation of these prohibitions subjects the entity to suspension or revocation of the entity’s license and the imposition of civil penalties.

Section 5

Section 5 of the bill creates standards for recovery residences in Tennessee. Only approved recovery residences, those who have been certified by a nationally-recognized recovery residence standards organization or funded by a state or federal department or agency, will be eligible to receive referrals or state funding, subject to appropriations. Unapproved recovery residences will be required to post signage that they do not follow best practices. This section also prohibits recovery residences from engaging in kickback schemes and false advertising.

Section 6

Section 6 of the bill adds the new offenses created under Sections 4 and 5 of the bill to the list of unfair or deceptive acts prohibited by the Tennessee Consumer Protection Act.

Section 7

Section 7 of the bill adds recovery residences to the existing kickback provisions in Title 63.

Section 8

Section 8 of the bill adds recovery residences to the existing kickback provisions in Title 68.

Section 9

Section 9 of the bill is the effective date section (07/01/22).