



RECOVERY RESIDENCE TASK FORCE

RECOMMENDATIONS



**WEST VIRGINIA OFFICE OF
DRUG CONTROL POLICY**
WV Department of Health & Human Resources

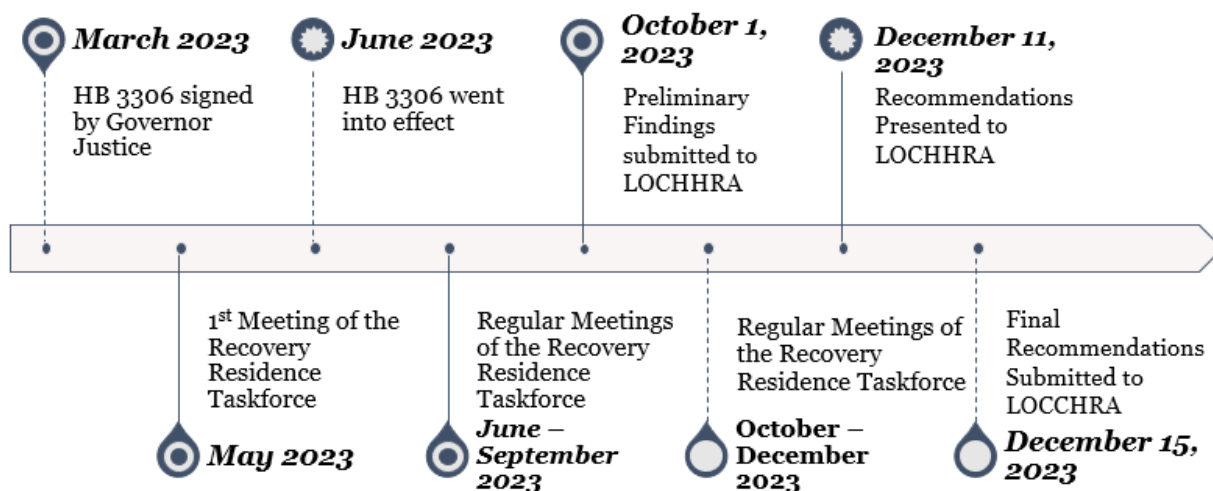
WV Office of Drug Control Policy

2023

Recovery Residence Task Force

House Bill 3306 (2023) amended W. Va. Code 16-5T-2(c)(20) to have the Office of Drug Control Policy create a “Sober Living Home/Recovery Residence Task Force” (Task Force). The Task Force looked at “insurance fraud, human trafficking, success of programs, and any other relevant issues.”

Starting in May 2023, the Task Force met at least monthly to discuss these issues and recommendations. The Task Force hosted speakers from other states, reviewed existing state law surrounding recovery residences, and examined law from other states.



Issues Identified by the Task Force

The Task Force identified the following issues related to recovery residences in West Virginia:

1. Insurance Fraud

On September 11, 2023, a meeting was held with representatives of the Offices of Insurance Commissioner (OIC) about any insurance issues related to recovery residences. The OIC assists with insurance fraud cases involving private insurance carriers. The OIC queried its case management system for any investigations related to insurance fraud and recovery residences from 2019 to September 2023. They were able to identify only two cooperative investigations, one with the West Virginia State Police and one with the federal Health and Human Services OIG/WV Medicaid Fraud Control Unit. The OIC also had one investigation involving a drug testing company that was associated with a recovery residence.

2. Human Trafficking

There have been anecdotal reports of uncertified residences that require residents to produce and sell items (e.g. t-shirts, bracelets, mugs, etc.) in the community; of uncertified residences that force residents to travel to other states and ask for monetary donations; and of uncertified residences that own thrift shops and ask residents to work in the shop for no pay.

3. Success of Programs

Recovery is a dynamic process which makes determining outcome measures that can be compared across programs a challenge.

Individuals present at recovery residences have varying degrees of recovery capital, which is all resources someone has access to and the capacity of the individual to use those resources to support their recovery, including social, physical, human, and cultural capital. The Advanced Recovery Management System (ARMS) is a system that promotes recovery support services to facilitate resident transition from active addiction to healthy, pro-social networks and tracks recovery capital gains.

The success of programs is difficult to measure and it must be done in a manner that does not create negative unintended consequences, such as, refusing to house an individual based on their perceived chance of success.

4. Confusion About the Appropriate Entity to Handle Recovery Residence Issues.

There have been anecdotal reports that people are unsure about who to call whenever there are potential issues with recovery residences. Currently, the West Virginia Attorney General's Office, Medicaid Fraud Control Unit (MFCU) investigates claims of Medicaid fraud. These investigations, however, are only provider related issues. MFCU does not investigate any alleged violations of state law.

5. Uncertified Recovery Residences are Receiving Improper Referrals.

There have been anecdotal reports of uncertified recovery residences receiving improper referrals. W. Va. Code §16-59-3(b) prevents certain entities from referring people to an uncertified recovery residence.

6. Patient Brokering

There are issues about patient brokering and receiving kickbacks. There are reports of recovery housing forcing, either explicitly or implicitly, its residents to use a certain treatment provider. Specifically, there are incidents of mandating the use of a particular provider as a condition to staying at the recovery residence. Additionally, some recovery residences will not provide reasonable access or transportation to providers that are not their preferred provider. There are also reports of providers

renting “office space” at a recovery residence, but upon inspection there is nothing resembling “office space” in the recovery residence.

7. What to do with Recovery Residences Currently Under Investigation

If a recovery residence is engaging in illegal activity, there needs to be a way to protect the individuals living there without jeopardizing the investigation.

8. Supplemental Nutrition Assistance Program (SNAP) Fraud

Recovery residence operators have been reported as using resident’s SNAP benefits inappropriately. These reports include using benefits for personal food items and not following proper protocols for acquiring food. There have also been reports of operators refusing to return SNAP benefits at the time of discharge.

9. Confusion about Current Laws

During the meeting with the OIC, it was represented that the current laws are not clear. Particularly noted was the absence of who is supposed to enforce these laws.

Recommendations

1. Designate an Entity to Handle the Investigation and Prosecution of Recovery Residence Crimes Under State Law.

The US Attorney’s Health Care Fraud Task Force investigates crimes, including crimes involving recovery residences, in southern West Virginia. The US Attorney lacks the authority, however, to prosecute violations of state law.

This Task Force recommends state law be amended to designate a state agency that is responsible to enforce state law. Ideally, the designation should be made to an entity with a similar composition as the US Attorney’s Health Care Fraud Task Force, except that it is responsible to investigate and prosecute violations of West Virginia law. Regardless, the recommended entity should consist of prosecutors and law enforcement entities.

The designated state entity should communicate with local law enforcement and the US Attorney’s Office to ensure that investigations are handled by the property entity and limit duplication of efforts. The designated state entity should investigate and prosecute claims of patient brokering, human trafficking, and other laws related to recovery residences.

This recommendation is not intended to remove authority from any current government agency, office, or department.

(Recommendation provides solutions for insurance fraud, human trafficking, confusion about appropriate entities to handle complaints, receiving or sending inappropriate referrals, and patient brokering.)

2. Make Receiving an Improper Referral Actionable.

While W. Va. Code §16-59-3 makes it a misdemeanor to make a referral to an uncertified recovery residence, but it does not make receiving an improper referral an actionable offense. As it's written now, an uncertified recovery residence may not “advertise” that it is certified under W. Va. Code §16-59-2(h). However, neither of the above code sections prohibit a recovery residence from receiving an improper referral. Requiring an uncertified recovery residence to expressly identify itself as uncertified or to receive a fine for taking an improper referral could reduce the number of improper referrals.

(Recommendation provides a solution for receiving inappropriate referrals.)

3. Designate an Agency to Assess Fines as Listed in Statute

In W.Va. Code **§16-59-3** it is stated that, “A person who violates this section commits a misdemeanor, punishable by a fine of not less than \$500 nor more than \$1,000”. Also, W. Va. Code §16-59-2(h) creates a fine for an uncertified recovery residence to advertise itself as a certified recovery residence. At this time, there is no agency designated to assess these fines. Establishing a process for this section in code could alleviate issues related to inappropriate referrals.

Additionally, the legislature could designate where to put any fines collected, e.g., the Ryan Brown Fund or the West Virginia First Foundation.

(Recommendation proposes a solution for receiving or sending inappropriate referrals, confusion about the appropriate entity to handle recovery residence issues, and patient brokering.)

4. Amend W. Va. Code §16-59-3(c) to Allow for New Recovery Residences to Receive State Funding.

W. Va. Code §16-59-3 could be amended to allow for new recovery residences to receive state funding in areas where there are gaps in the continuum of care. Currently, the policy states, “No recovery residence is eligible to receive funds from any source within the State Treasury unless it holds a valid certificate of compliance as provided in §16-59-2 of this code.” This causes issues in areas of the state that lack recovery residences because state and federal funds cannot be used to increase capacity.

In order to create new and viable referral options, operators could be given a probationary or provisional certification during the start-up phase and then be required to obtain WVARR certification. If the recovery residence is not certified within a set

time-period after it is operational, further funding will be withheld. Alternately, new recovery residences could be required to have a certified recovery residence as a sponsor and obtain a life and safety inspection prior to receiving any state funding. New recovery residences could also be required to undergo a risk screening process, developed by the funding agency, similar to the Bureau for Medical Services (BMS) process for new clinical services.

WVARR created this map to help identify areas where recovery residences may be needed:

<https://public.tableau.com/app/profile/mira.mirzaian3467/viz/WVARRMap/WVARRMap>

(Recommendation proposes a solution for receiving or sending inappropriate referrals.)

5. Mandate the Use of an Outcome Tracking System for All Certified Recovery Residences.

Advanced Recovery Management System (ARMS) is a platform that promotes recovery support services that facilitate resident transition from active addiction to healthy, pro-social networks and tracks recovery capital gains. A system such as this could provide a standardized mechanism for assessing a resident's progress while being housed.

ARMS may also be an effective tool for tracking referrals to further reinforce recommendation number two.

(Recommendation proposes a solution to measuring the success of programs.)

6. Create a Reentry Housing Infrastructure.

Individuals being discharged from correctional facilities need a safe place to live. While recovery and sober living home capacity has grown, housing for individuals exiting corrections with a substance use disorder (SUD) is limited in certain areas of West Virginia such as the eastern panhandle. Housing for those exiting corrections who do not have an SUD is even harder to find, which results in hundreds of people being held in prisons and jails after their release dates.

(Recommendation proposes a solution for receiving or sending inappropriate referrals.)

7. Life and Safety Requirement Consistent with Applicable State and Federal Law for Non Certified Recovery Residences.

The state of West Virginia believes that West Virginia Alliance of Recovery Residence (WVARR) certification is the gold standard for providing safe, quality recovery housing for individuals with an SUD. Uncertified recovery residences, however, are not subject to WVARR's standards. In order to ensure that individuals living in a

recovery residence are not subjected to substandard living conditions, uncertified recovery residences that meet certain requirements, i.e., over a certain number of beds, that provides a particular level of care, that are in a particular class of building, etc., could be required to have minimal life and safety inspections. Any requirements should be consistent with applicable state and federal laws.

(Recommendation provides solutions for insurance fraud, human trafficking, confusion about appropriate entities to handle complaints, receiving or sending inappropriate referrals, and patient brokering.)

8. Create a Designation of the Recovery Residence in the Required Filings to Operate a Business in West Virginia.

In order to operate in West Virginia, businesses must do certain things, including register with the West Virginia Secretary of State (WVSOS) and the West Virginia State Tax Department (Tax Department). Currently, the WVSOS has a searchable database for businesses that includes listing out a business purpose.

Amendments could be made that provide a designation of operating a recovery residence for business purposes with the WVSOS and/or the Tax Department. Doing so would enable the state to better understand the recovery residence capacity in the state. It may be necessary, however, to modify the existing databases to make them searchable by business type. While this recommendation may not capture the actual location of every recovery residence, it would provide the names and business addresses of most recovery residence operators.

(Recommendation proposes a solution for confusion about appropriate entities to handle complaints and sending inappropriate referrals.)

Next Steps

The following are action steps that have derived from the meeting of this Task Force that do not require legislative action.

1. Creating an advocacy group for recovery residents under the Recovery Community Organizations (RCOs).

Use the existing Recovery Community Organizations (RCOs) to implement a peer recovery rights advocacy network. Recovery residents can reach out to these advocates if they believe their rights are being violated. Advocates can assist them with finding a certified recovery residence that best meets their recovery needs and filing formal complaints.

(Recommendation proposes a solution for insurance fraud, human trafficking, confusion about the appropriate entity to handle complaints, receiving or sending inappropriate referrals, and patient brokering.)

2. Continue to meet as a Task Force.

This Task Force can continue to collaborate to assess recovery residences in West Virginia to ensure individuals in recovery are able to have a safe space that is also conducive to recovery.

3. Work with the “You Can” initiative with the West Virginia Fusion Center (WVFC) to assist with human trafficking issues.

In September of 2023, the You Can initiative was launched by the WVFC and Governor Justice. Working with WVFC and recovery residences could help eliminate human trafficking of people in recovery in West Virginia.