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March 13, 2018

Honorable Jim Wood
Chair, Health Committee
California State Assembly
Capitol Building, Room 6005
Sacramento, CA 95814

RE: AB 2214 (RODRIGUEZ) – OPPOSE

Dear Assembly Member Wood:

Disability Rights California (DRC), a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, **opposes AB 2214**. This bill is scheduled for hearing in the Assembly Health Committee on March 20, 2018.

This bill creates an intricate and coercive structure for the certification of “sober living residences” that, under state law and design, are intended to provide housing and supportive relationships for drug and alcohol addiction treatment. However, like many of the predecessors of these bills, AB 2214 violates both state and federal Fair Housing Acts, the Americans with Disabilities Act, state and federal rights to privacy, eliminates housing opportunities for individuals seeking to live in supportive environments, and creates a massive and expensive state regulatory scheme to oversee the process. As set forth below, DRC opposes this bill.

The Federal Fair Housing Amendments Act (hereafter “Fair Housing Act”) prohibits discrimination against individuals with disabilities in housing and housing-related activities. The Ninth Circuit has affirmed that sober living homes are protected under the Fair Housing Act. *Pacific Shores Properties LLC v. City of Newport Beach*, 730 F.3d 1142, 1157 (9th Cir. 2013). The

Fair Housing Act recognizes that community opposition has too often led to state and local restrictions that put burdensome restrictions on persons with disabilities and particularly those that reside in group residences. Local prejudices and fears often motivate discriminatory intent and animus toward those that live in the residences. NIMBY fears have been well documented and are very often the impetus for restrictive regulations. The Fair Housing Act prohibits those practices. AB 2214 steps over that line.

Under a not so well camouflaged pretense of creating a “voluntary” certification program, this bill imposes regulatory requirements on sober living residences, especially those that do not voluntarily participate in the certification program, by restricting opportunities for individuals with disabilities in recovery. While the bill may not facially evidence discriminatory intent or is otherwise neutral on its face, it has that impact.

In the *Pacific Shores* case noted above, the Court concluded that the City of Newport Beach’s group home ordinance, although neutral on its face, was intended to eliminate sober living homes:

“Prior to the Ordinance, group homes were classified as single housekeeping units and therefore were able to operate freely in residential zones, subject only to the restrictions that governed other residences. After the Ordinance's enactment, however, every group home was required to submit a detailed application for a special use permit and/or reasonable accommodation in order to continue operating and to attend public hearings at which those applications were subjected to public comment. Subjecting an entity protected by anti-discrimination laws to a permit or registration requirement, when the requirement is imposed for a discriminatory purpose, has obvious adverse impacts upon that entity, and being forced to submit to such a regime is sufficient to establish injury in a disparate treatment claim. See *Flores v. Pierce*, 617 F.2d 1386, 1391 (9th Cir.1980) (Kennedy, J.), cert. denied, 449 U.S. 875, 101 S.Ct. 218, 66 L.Ed.2d 96 (1980). This would be true even if such permits were granted freely, which is decidedly not the case here.”
Pac. Shores Properties LLC, v City of Newport Beach at 1163-11164

(Emphasis added.)

The practical effect of this bill will be eliminate housing opportunities for persons with disabilities in the midst of both a treatment and homelessness

crisis in this state. The very terms of this “voluntary” certification program evidence how that will happen. First, once a certification program the bill provides that “any state agency, state contracted vendor, county agency, county contracted vendor, licensed or certified alcohol drug treatment program, certified alcohol counselor or a person or entity licensed in the healing arts” or a judge or parole board shall first refer a person to a certified residence. Section 11834.19 (j)(1). The exception for a referring entity that determines it is in the “individual’s best interest” even contains the punitive qualifier that any such referral must accompany a notice to “available certifying organizations of that decision.” Section 11834.19 (k). Thus, on the natural, residences that are not certified will be starved of referrals and disabled individuals who may choose to live in a non-certified residence will be forced out of housing and sober living relationships.

Second, section 11834.19(c)(12) authorizes the “approved certifying organization” to charge a fee for certification. There are no limits on the amount of the fee. The effect, perhaps intentionally, will be to exclude small sober living residence landlords from actually participating in the program. Not only is this an unwarranted intrusion into professional judgment, it has two very negative effects. It creates a boondoggle for the certifying organizations, allowing them to charge very high fees by providing them a monopoly on the market. However, more importantly, it is likely to greatly limit sober living options for people who most need them, particularly if there are not sufficient “certified” homes or if an individual cannot afford the additional costs of these certified homes created by the bill. Again, this will serve to remove small sober living homes from the market and narrow available housing and treatment options. This could lead to increased recidivism and crime, as we remove options from people that might assist them in their rehabilitation.

Third, section 11834.19(c)(1-16) mandates a vast list of requirements, including a certification of nonprofit status, affiliation with a national organization, website registry, drug testing requirements that would only allow the most sophisticated entities to be certified. Again, this chokes the supply of housing and treatment options and narrows the residences that will actually be available to disabled persons.

Furthermore, section 11384.19(a)(5), which purports to deem these certified homes “residential use of property and a use of property by a single family” is unnecessary. Fair housing laws already are clear that

individuals with disabilities living together are considered residential, single family uses. The primary inference to be drawn from this language is that individuals with these disabilities who choose to live together in non-certified homes are not single-family residential uses, which is not the law and would subject them to additional discrimination.

Like the Fair Housing Act, the Americans with Disabilities Act prohibits public entities from discriminating against individuals through zoning ordinances and decisions. This bill, which seeks to regulate sober living homes through state sanctioned certifications, is subject to the anti-discrimination provisions of Title II of the ADA.

Likewise, the state and federal Constitutions protect person's right to privacy. State and local regulations that intrude upon living arrangements of unrelated individuals infringe on both state federal privacy rights.

Not only does this bill facilitate discrimination, it also would require the creation of an entire government infrastructure at both state and local levels that is unnecessary and costly. There is no need to create an unnecessary and costly program and bureaucracy.

Sober living homes are meant to be a way for people recovering from drug addiction or alcoholism to live in an affordable, sober environment. People who want to live together to maintain their sobriety should not be subject to regulations that will be intrusive and regularly interfere with their lives. This bill creates regulatory agencies, prompts yearly inspections, allows frequent investigations and requires homes to notify local governments of their location. No such obligations are imposed on individuals without disabilities who choose to live with others. The residents of these homes should be treated as any other resident in the neighborhood would be treated. The fact that this bill does not enforce its restrictions against other group residences including, for example, sororities, fraternities, unrelated individuals living together for common purpose, patently demonstrates that this bill is targeted toward limiting the living and treatment relationships of persons with disabilities.

Unfortunately, this bill seeks to recast as “voluntary” a patently unlawful attempt to eliminate sober living residences that serve persons with disabilities from our communities. It is not difficult to decipher the intent, many sober living residences will not be able to financially or practically meet the requirements of certification, will be unable to receive referrals,

and will therefore be choked from neighborhoods, and importantly, result in lost housing and treatment options.

As a final note, this bill would serve to incite neighborhood opposition directed squarely at the uncertified residences. Those with certifications would be incentivized to focus neighborhood opposition to treatment residences on those residences that lack certifications (perhaps that is even why the bill provides that if a referral is made by an individual or entity to an uncertified residence that a notice must be given to certified residences.) This bill is bad policy and exactly the wrong kind of measure when treatment and housing is so desperately needed.

For these reasons, DRC opposes this bill. Please contact me if you have any questions about our position or if I can provide any further information.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis Child". The signature is fluid and cursive, with the first name "Curtis" and last name "Child" clearly distinguishable.

Curtis Child
Legislative Director
Disability Rights California

cc: Honorable Freddie Rodriguez, California State Assembly
Linda Tenerowicz, Legislative Assistant, Office of Assembly Member Rodriguez
Honorable Members, Assembly Health Committee
Paula Villescaz, Principal Consultant, Assembly Health Committee