March 19, 2019

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

RE: AB 940 (MELENDEZ) as amended March 12, 2019 – OPPOSE

Dear Assembly Member Wood:

Disability Rights California (DRC), a non-profit advocacy organization that advances and protects the rights of Californians with disabilities, regrets to inform you that we respectfully oppose AB 940. This bill is currently pending in the Assembly Health Committee.

AB 940 proposes to expand the oversight of “patient brokering” to include banning the practice in “recovery residences.” Last year SB 1228 (Lara) was signed by the governor. That bill banned patient brokering for medically licensed alcohol and drug abuse treatment programs. DRC supported SB 1228, as amended, as an important tool to help promote the integrity of drug abuse and treatment programs and eliminate fiscal incentives of unscrupulous programs that merely intended to gain access to participants’ insurance benefits. When it was introduced, SB 1228 contained a certification scheme for sober living homes, which were deleted before going to the governor for his signature. DRC had opposed those provisions.

This bill now takes a different approach to achieve the same goal: regulation of residential housing that is protected by state and federal Fair Housing laws. While it purports to just limit patient brokering, the bill
restrictively defines sober living homes as “recovery residences” and then establishes a whole host of operational requirements and certifications. In fact, the very definition of a “recovery residence” in this bill is language that has been proposed in several bills in the past to establish a regulatory structure for sober living homes (see e.g. AB 285 (Melendez) (2017).) On top of that, it gives the Department of Health Care Services the authority to impose massive fines on residents for patient brokering, a practice that may make sense with licensed facilities, but not residences.

We believe that this bill must be seen for what it is: an attempt to regulate sober living homes and chase them from communities. 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 940 steps over that line.

AB 940 seeks to mitigate the restrictions imposed on sober living homes by defining the residences as “commercially operated.” There is no definition of what that means. Nearly all rental residences are operated for a commercial purpose. A landlord renting property to several individuals living together certainly can be defined as a “commercial” operation. Furthermore, sober living residences usually consist of several individuals living together in a supportive environment. The fact that money may exchange hands would arguably bring these residences within the definition of a “commercial” operation.

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 cannot be subjected to regulations that will be intrusive and regularly interfere with their lives. This bill is bad policy and exactly the wrong kind of measure when treatment and housing are 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,

[Signature]

Curtis Child  
Legislative Director  
Disability Rights California

cc: Honorable Melissa Melendez, California State Assembly  
Samantha Henson, Legislative Director, Office of Assembly Member Melendez  
Honorable Members, Assembly Health Committee  
Judith Babcock, Associate Consultant, Assembly Health Committee  
Alex Khan, Consultant, Assembly Republican Caucus Committee