

Written Testimony:

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RE: Draft State of Texas Analysis of Impediments to Fair Housing Choice (AI) as presented to the Board

Thank you for the opportunity to provide testimony. My name is Jason Howell. I am a persons in long-term recovery from mental health conditions and substance use issues, which is why I am so passionate about fair housing choice.

I have several concerns about the current Draft State of Texas Analysis of Impediments to Fair Housing Choice (AI). I have highlighted them below along with recommended solutions.

1.	The report perpetuates confusion and related discrimination around who is a FHAA-protected person by not explicitly including the civil rights definition of “disabled”. To address this issue, the following should be added to the report:
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With regards to federal Fair Housing Amendments Act of 1988 (FHAA), Section 504 of the Rehabilitation Act of 1973 (Section 504) and Title II of the Americans With Disabilities Act (ADA or Title II), a person with a “handicap” or “disability” is defined as someone with a physical or mental impairment that substantially limits one or more major life activities; or who has a record of having such an impairment; or who is regarded as having such an impairment.

As used in this definition:

- A. **Physical or mental impairment** includes:
 - o Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or
 - o Any mental or psychological disorder, such as mental retardation, organic brain syndrome, emotional or mental illness, and specific

Note: This definition is broader than the definition used to qualify for Social Security disability benefits, so a person may be protected under the FHA but still not be eligible for disability or supplemental security income (SSI). The definition also means that, even if you do not now have a disability, you are protected if you are treated differently because you have a history of mental or physical disability or because someone believes you have a disability

learning disabilities. The term physical or mental impairment includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, Human Immunodeficiency Virus infection, mental retardation, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

- B. **Major life activities** means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
- C. Has a **record of such an impairment** means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more major life activities.
- D. Is **regarded as having** an impairment means:
 - Has a physical or mental impairment that does not substantially limit one or more major life activities but that is treated by another person as constituting such a limitation;
 - Has a physical or mental impairment that substantially limits one or more major life activities only as a result of the attitudes of other toward such impairment; or
 - Has none of the impairments defined in paragraph (a) of this definition but is treated by another person as having such an impairment.

2.	The report minimizes the number of persons with disabilities protected under FHAA by highlighting American Community Survey data and categories, without noting the results are based on a narrower definition of “disabled”. To address this issue, the following should be added to the report:
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The total number of persons with disabilities is unknown, but according to the American Community Survey, which uses a more narrow definition of “disability”, There are more than three million Texans with a disability (11.6% of the total non-institutionalized state population)...

Using American Community Survey data, Figure 2-10 highlights some subpopulations within the large community of person with disabilities.

3.	While the report includes the prevalence of adults who are dependent on or abused an illicit drug or alcohol in the past year, it fails to include the number of persons who are in recovery. To address this issue, the following should be added to the report under the section: Special Needs Populations Data / Persons with Substance Use Disorders
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Whereas National Survey on Drug Use and Health (NSDUH) identifies individuals who qualify for treatment services, another 10% of adults identify as being in recovery (Facing Addiction: Surgeon General’s Report on Alcohol, Drugs and Health, 2016.) Safe and stable housing is a supportive dimension of recovery (SAMHSA, 2012)

In addition, consider replacing the sub-heading with “Persons with Disabilities (Substance Use Disorder and Recovery) similar to the previous sub-heading “Persons with Disabilities (Mental, Physical, and Developmental)”. This will help clarify who is a FHHA-protected person.

5. **The report fails to include a known impediment and mischaracterizes the scope and definition of “boarding homes” under Chapter 260. This must be corrected.**

Chapter 260 Boarding Home statute is facially discriminatory because it enables the regulation of housing based on residents FHHA-protected status.

As identified in the previous Analysis of Impediments, the implementation of Chapter 260 Boarding Home ordinances at the local level has caused fair housing discrimination. This issue continues, if not has increased over the last number of years. Since it has not been resolved, the impediment must be added to the current Analysis of Impediments.

The current report states, *“Note, however, that Chapter 260 does not apply to the full range of FHAA-protected persons; it applies to persons with disabilities, but the definition of boarding house would not cover facilities based on family status or recovering alcohol and drug addicts.”*

- This inaccurately minimize the impediment. While some persons in recovery and functionally equivalent families have successfully sued local government for fair housing discrimination caused by Boarding Home ordinances, many other have and continue to experience barriers to housing choice. Granted, these groups should be statutorily excluded from Chapter 260, but currently they are not. Regardless, the impediment is well document and must be included.

"Boarding home facility" means an establishment that furnishes, in one or more buildings, lodging to three or more persons with disabilities or elderly persons who are unrelated to the owner of the establishment by blood or marriage... (CHAPTER 260. BOARDING HOME FACILITIES)

5. **The report falsely states that “Texas counties would not have the power to exclude boarding homes for groups other than persons with disabilities from residential areas...” This statement inaccurate, misleading and should be deleted.**

Local government has the power to define and maintain the characteristics of neighborhoods as long as they do not violate fair housing law. For example, local government cannot excluding housing from a residential area based on the residents’ protected class status, regardless of Chapter 260.

5. **The report fails to explain why the regulation of Assisted Living Homes under Chapter xx is less likely to cause an impediment, where as the regulation of Boarding Homes under Chapter 260 certainly does.**

Under Chapter 247, "Assisted living facility" means an establishment that:

- A. furnishes, in one or more facilities, food and shelter to four or more persons who are unrelated to the proprietor of the establishment;
- B. Provides: personal care services; or administration of medication by a person licensed or otherwise authorized in this state to administer the medication;
- C. may provide assistance with or supervision of the administration of medication; and

- D. may provide skilled nursing services for the following limited purposes: coordination of resident care with outside home and community support services agencies and other health care professionals; provision or delegation of personal care services and medication administration as described by this subdivision; assessment of residents to determine the care required; and for periods of time as established by department rule, delivery of temporary skilled nursing treatment for a minor illness, injury, or emergency.

Note, the population housed in Assisted Living Facilities, by statute, need high levels of care. This may be used to justify the need for higher levels of protection via licensure.

In contracts, the population housed in Chapter 260 Boarding Homes are individuals who receive services that do not inherently establish that they need or want a higher level of protection than anyone else in the neighborhood.

Whereas the Boarding Home statute is facially discriminatory because it raise a barrier based on a resident's FHHA-protected statute, the Assisted Living Facility statute focus on a residents needs, regardless of whether they a FHHA-protected person.

it is quite common for states and/or local governments to establish licensing systems for group home operators in order to protect the health and safety of residents with limited abilities to protect themselves

6.	The report loosely uses the term “group home” and makes statements that contradicts HUD and DoJ cautions around regulating group homes. Broad statements that support licensing of all “group homes” should be removed.
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The term “group home” is inconsistently used throughout the document, which makes broad statements around the licensing of “group homes” irresponsible and in some cases, inaccurate. In the *JOINT STATEMENT OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT AND THE DEPARTMENT OF JUSTICE STATE AND LOCAL LAND USE LAWS AND PRACTICES AND THE APPLICATION OF THE FAIR HOUSING ACT*, the DoJ and HUD clearly raise concerns around local and state governments ability to regulate “group housing” above and beyond other households in the neighborhood.

Fair housing discrimination is determined on a case-by-case basis. For example:

- This relatively specific statement is true, especially if there was clarification that this was referring to Chapter 591 group homes for person with intellectual disabilities.
 - *“While persons with cognitive disabilities are FHAA-protected persons, it is quite common for states and/or local governments to establish licensing systems for group home operators in order to protect the health and safety of residents with such disabilities.”*
- Broad statement are problematic and false.
 - *“Group home licensing systems are not considered to create barriers to fair housing choice for protected classes”*

7. **The report mischaracterized Housing First research and fails to mention barriers to housing choice for persons in recovery from substance use issue. The Housing First claims should be deleted and recovery housing should be added.**

It is important to distinguish the difference between substance use, substance misuse and substance use disorder. Housing First study cited¹ in the report looked at substance use rather than assessing participants for substance use disorder, therefore it is inaccurate to say that persons with substance use disorder living in Housing First did not increase their substance use. programs, which are programs.

In contrast, the report fails to identify recovery housing as an evidence-based model for persons with substance use disorder that improves abstinence, mental health, employment and monthly incomes as well as decrease criminal justice involvement.^{2,3}

Substance use is the use of substances such as alcohol or illicit drugs.

Substance misuse is the use of substances at high doses or in inappropriate situations which can cause health or social problem — immediately or over time (e.g. binge drinking). 61 million people in the United States admitted to binge drinking in the past year and more than 44 million people used an illicit or non-prescribed drug in the past year. The health and social problems from misuse range from low severity and transient to serious, enduring, and costly consequences.

Substance use disorder (SUD) is that prolonged, repeated use of substances at high doses and/or high frequencies (quantity/frequency thresholds vary across substances) which carries the problems of substance misuse and a separate, independent, diagnosable illness that significantly impairs health and function and may require special treatment. SUD can range from mild and temporary to severe and chronic. SUD occur when

¹ Padgett, Deborah K, Leyla Gulcur, and Sam Tsemberis. Housing First Services for People Who Are Homeless with Co-Occurring Serious Mental Illness and Substance Abuse. *Research on Social Work Practice*, Vol. 16 No. 1, January 2006.

² <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2860009/>

³ <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC2888149/>