87th Legislative Session Advocacy Handbook

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Current Legislation

Recovery Housing

HB 292 (Rep. Murr)- voluntary recovery housing certification:

- Assigned to Public Health committee;
- Define recovery housing in statute;
- Direct HHSC to appoint one or more certifying agencies;
- Request certified recovery residences to have a certified administrator;
- Prohibit recovery homes from engaging in patient brokering or kickbacks and from using false, misleading or deceptive marketing;
- Strengthen the fair housing rights of residents in certified recovery housing.

HB 544 (Rep. Minjarez)- voluntary recovery housing certification with referral section:

- Assigned to House Public Health committee
- Similar wording of HB 292;
- Require state funded recovery housing to be certified;
- Restrict referrals from state funded and licensed facilities and professionals to certified homes.

HB 707 (Rep. Moody)- study on expanding recovery housing

- Assigned to House Public Health committee
- Conduct a study on expansion of recovery housing in rural and urban areas across Texas;
- Identify the impact of state and federal regulatory deficiencies on recovery housing;
- Identify the current status of recovery housing in Texas.

Additional Information:

There is national legislation that includes a similar study being brought to the U.S. House by Reps. Trone, Chu and Levine. More information on the national legislation can be found here: https://trone.house.gov/media/press-releases/reps-trone-chu-and-levin-introduce-legislation-expand-availability-high-quality

Community Recovery Organizations

HB 898 (Rep. White)- establishment and support of Community Recovery Organizations (CRO's)

- Assigned to House Public Health committee
- Directs agencies to identify potential funding sources;
- Establishes a definition of CRO in statue;
- Governance by peers & affected family members;
- Aligns and implements national best practices;
- Establish and administer a grant program for CRO's that meet criteria.

Additional Information:
This wording has stirred some interesting conversations. A CRO definition covers both mental health and substance use peer programs.
While there is some tension, the support is rather strong in the MH and SUD community for this bill.

Patient Brokering

HB 1161 (Murr)- establishing a report on state actions to prevent chemical dependency facilities from engaging in certain prohibited solicitation practices.

- Assigned to House Public Health committee
- written report regarding prohibited solicitation practices by SUD service providers;
- annual report is posted publicly on AG's site;
- Strengthen current Patient Brokering and Anti Kickback statutes.

HB 3331 (Murr)- establishing a report on state actions to prevent chemical dependency facilities from engaging in certain prohibited solicitation practices.

- Creates a task force to make recommendations for prevention of violations;
- Written report regarding prohibited solicitation practices by SUD service providers;
- Strengthens current statute by implementing enforcement mechanisms and stronger penalties;
- Clearly defines solicitation, deceptive marketing parameters and kickback activities.

Additional Information:
Although some of these laws are already in statute, patient brokering and kickbacks have become commonplace in across Texas due to lack of enforcement and reporting.

87th TX Legislature

HB 544 (Minjarez)

relating to creating a voluntary certification for recovery housing

WHAT IT DOES -- Protects a vulnerable population and promotes cost effective outcomes for individuals in recovery from substance use disorder using market incentives and education to promote the use of ethical and best practices. It empowers consumer choice and provides them with a means of reporting concerns.

- Defines recovery housing in statute.
- Directs HHSC to adopt standards that are consistent with nationally recognized standards and recognize one or more credentialing organizations to develop and administer a voluntary certification program. ***Voluntary certification avoids the fair housing rights discrimination of mandatory certification.***
- Establishes credentialing organization requirements including application, certification, recertification, and disciplinary procedures, training requirements and code of ethics.
- Excludes other housing models or facilities such as boarding homes, nursing and continuing care facilities, assisted living, IDD group homes, family shelters, child care facilities, hotels...
- Requires certified recovery housing to be managed by trained administrators, ensuring a designated person is responsible for knowing and upholding laws, ethics and standards.
- Directs HHSC to prepare an annual report on recovery housing certifications and revocations.
- Prohibits recovery homes from engaging in patient brokering or kickbacks and from using false, misleading or deceptive marketing.
- **Incentivizes voluntary certification by**:
    - Strengthening the fair housing rights of residents in certified recovery housing
    - Requiring state funded recovery housing to be certified, and
    - Restricting referrals from state funded and licensed facilities and licensed professionals

WHY WE NEED IT -- Well operated recovery housing is a proven and cost effective means of promoting recovery from substance use issues and cost savings. However, there has been rise in "bad players" given the current marketplace:

- Fraudulent business practices, patient brokering, kickbacks and misleading marketing cause unethical referrals, financial exploitation and inadequate support.
- Lack of knowledge around scope of service, codes of ethics and best practices can result in negligence, relapse, injury or death of residents.
- Charges have been filed against recovery housing related to sexual harassment and exploitation.
- Individuals have a difficult time distinguishing recovery housing that use best practices from "bad players" and those just claiming to be recovery housing.
- Individuals do not know where to report concerns and fear repercussions (e.g. losing their housing, support, job or career).
- State agencies that received concerns regarding recovery housing have no mechanism for recording or addressing the complaints.
- State and local government are restricted from regulating recovery housing (e.g. required licensure) due to the fair housing rights of residents, which is why the National Council on Behavioral Health and Model State Drug Laws recommend voluntary recovery housing certification as the solution.

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Voluntary Recovery Housing Certification
Costs and Funding Opportunities

What will it cost? *$4.16 to $5 per bed per month*.

Voluntary recovery housing certification programs administered by non government organizations (NGOs) have been implemented in over 30 states in the nation. Based on cost data from two states (Ohio and Oklahoma) that have implemented NGO administered certification programs and that have done comprehensive environmental scans, we estimate the average biennial certification / recertification cost per home in Texas will be between ***$4.16 to $5 per bed per month***.

Who pays for it?

In most states, the recovery housing provider pays the application fee. The cost of the fee is offset by the type and level of market based incentives that a state puts in place.

Market-based Incentives: If certification is linked to:

- Referrals - the cost is offset with higher occupancy rates and lower marketing costs.
- Training - the cost is offset by lowering workforce development costs and increased quality or productivity.
- Housing vouchers - the cost is offset by higher occupancy and lower bad debt rates. Recovery housing often turnaway applicants or absorb their inability to pay rent until they secure a job.
- Interest-free, revolving loans - the cost is offset by interest savings. This mechanism was first established through The Federal Anti-Drug Abuse Act in 1988 to expand recovery housing capacity. It allowed providers to borrow startup funds and pay back the principal back over time, which replenished the loan fund. Many states have continued this program, including Texas.

Some states underwrite the cost of the initial certification and expect providers to pay for biennial recertification. Oklahoma underwrote the initial cost certification for 50 recovery homes in 2020 and an additional 50 recovery homes in 2021.

Where do incentive dollars come from?

Different states have used different and/or a combination of strategies to incentive voluntary recovery housing certification:

- **Zero dollars** - Some states have restricted referrals to certified recovery homes, without having to spend any money. This is accomplished either in statute (e.g. Florida) or in contract (e.g. Ohio).
- **Federal dollars** - Some states have leveraged federal dollars to that inceivinze recovery housing certification: Substance Abuse Prevention and Treatment Block Grant (SABG), Opioid Response (Texas has been awarded more than $176 million), and Opioid Settlement Dollars (Texas is anticipated to receive up to $1.5 billion)
- **State dollars** - Some states have elected us to general revenue to incentivize voluntary recovery housing certification. In Texas, Alcohol Excise Tax has not been increased since 1984. A 0.5% increase in tax could generate over $2 Million annually and create sustainable revenue for substance use recovery support services, including housing.

Patient Brokers Exploiting Texans

What is Patient Brokering?

Within healthcare, the term patient brokering means giving or getting anything of value to induce a patient/client referral. This practice is also known as receiving kickbacks, body brokering or patient trafficking. While referral fees may be a best practice in some industries, it causes underlying problems in healthcare[1]:

- **Fraud**: From intentional misrepresentation to submission of unwarranted claim for payment
- **Waste**: Behavior inconsistent with sound fiscal, business, or clinical practices, resulting in unnecessary cost, and reimbursement of unnecessary services.
- **Harm**: Ineffective treatment by financially-driven patient referral patterns without a focus on clinical needs, resulting in substandard care or patient deaths (overdose, suicide, medication mismanagement)
- **Exploitation**: Mines financial resources such as insurance benefits and personal savings, especially out-of-network billing that can result in families being responsible for the amount not covered by insurance.

Example: An Emergency Room, detox, residential or outpatient treatment facility or a drug confirmation lab offers or provides compensation to a treatment provider or recovery home operator, their staff or family in exchange for referring an individual to their service. The kickback is funded by overcharging the insurance company or exploiting other financial resources tied to service delivery. The referring agent may even require the client to utilize the services as a condition of admission or continued stay. In the case of recovery homes, residency may be contingent on utilization of these services. Clients or residents with "good insurance" may be offered an inducement (e.g. cash, gifts or "fee forgiveness") to participate in fraudulent activity. "Fee forgiveness" waives the individual's deductible, copays and coinsurance.

Prevalence in Texas' Addiction Treatment and Recovery Field

Patient brokering has plagued healthcare for decades and was prevalent in Texas in the late 1980s and early 1990s. Numerous investigations occurred, and as a result of legislation passed in the 1990s[2], patient brokering was drastically reduced. Since then, the marketplace has changed and laws have become outdated and forgotten. A new wave of patient brokering has arisen across the nation, and as other states address this issue, "bad players" move to states, such as Texas, where patient brokering is less scrutinized.

As highlighted in a 2019 U.S. Government Accountability Office (GAO)[3] Report, patient brokers have recently targeted recovery housing residents. Four of the five states studied had investigated and taken legislative action to address patient brokering between clinical service providers and recovery housing. The fifth state, Texas, had not. If we look beyond Texas state agencies, there is ample evidence that patient brokering is occurring in our State:

Patient Brokering Cases in Texas

- **Current** - [Houston case. Still ongoing investigation].
- **Past Civil Courts**- In the last 5 years, Sun Clinical Laboratories and Mission Toxicology, both based in Texas, have been sued for over $153 million in "fee forgiveness" schemes, illegal kickbacks and fraudulent billing by Aetna[4] , Blue Cross and Blue Shield and United Healthcare.

  2019- United Healthcare sues Axis Diagnostic, Sky Toxicology Ltd., Frontier Toxicology Ltd., Hill Country Toxicology Ltd., and Eclipse Toxicology Ltd[5] operating out of San Antonio for $56 million claiming illegal kickbacks to healthcare providers and addiction treatment facilities. Cigna sued two of these companies for $20 million in 2015 claiming another "fee forgiveness" scheme.

  2018- United Healthcare sues Sun Clinical Laboratories and Mission Toxicology for $44 million in fraudulent billing and kickbacks.

  2017- Blue Cross and Blue Shield sued Texas based labs, Sun Clinical Laboratories and Mission Toxicology for $33 Million for fraudulent billing and kickbacks[6]

  2015- Health Diagnostics was sued by Cigna for $84 million "fee forgiveness" scheme.

Current System Is Not Stopping Patient Brokering in Texas

- Federal patient brokering laws (Anti-Kickback Statute[7] and Recovery Kickback Prohibition[8]) are too narrow to protect Texans. Plus, federal law enforcement are selective about where to get involved.
- Texas patient brokering laws [2,9] are not enforced and are too narrow.
- Few local, county district attorney's focus on healthcare fraud, let alone addiction treatment/behavioral health fraud.
- State oversight agencies have limited oversight and resources.
- Whistleblowers are reluctant to come forward in fear of losing their housing, support or job. Barriers include stigma and marginalization, confusion around where and what to report, disbelief that change will occur.

Policy Recommendations

- Update and strengthen Texas' patient brokering laws [2,9]
- Create a task force in Texas similar to the one in Florida[10], and add a recovery community liaison to facilitate reporting and provide peer support for whistleblowers who may need new housing or employment.
- Implement and incentive voluntary recovery housing certification linked to nationally recognized standards as outlined in National Council for Behavioral Health policy toolkit[11].

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Community Recovery Organizations

Peer and family support programs improve the quality and duration of recovery for individuals living with mental health (MH) and substance use disorders (SUD). Within these programs, individuals share resources, develop coping skills, and establish empowered relationships that promote self-efficacy, and engagement.[1] Although historically, substance use and mental health programs have operated in separate continuums, they share a great deal in common. Each provides a bridge for a formalized cooperative relationship between their peer and family support networks.

As an inclusive term, a community recovery organization (CRO) is defined as a nonprofit organization that mobilizes resources inside and outside of a local community to increase the prevalence and quality of long-term recovery for individuals with mental health or substance use challenges and their affected family members. Establishing CRO's in statute also reinforces governance by peers and affected family members, as well as clarity around funding. Examples of CRO's in Texas are Consumer-operated services programs (COSPs) in the MH community and recovery community organizations (RCOs) in the SUD community.

This comprehensive, non-clinical approach helps build capacity, includes affected family members, increases accountability, supports recovery oriented efforts and is grounded in national best practices. While it is important to continue to offer peer support in both spectrums, a unified term further clarifies eligibility criteria for current and future funding sources and aligns these continuums. Establishing CRO's in statute may also create a single provider type for state policy purposes while still preserving the uniqueness, self identity and best practices of each model.

Linking peer and family support systems for individuals with mental health and/or substance use conditions, by establishing Community Recovery Organizations in statute would:

- Establish a definition inclusive of peer / family governed entities focused on MH and SUD
- Clarify funding eligibility criteria and direct agencies to identify potential funding sources
- Align and implement national best practices
- Bridge cooperative relationships between MH and SUD peer organizations

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2020 Policy Survey Results

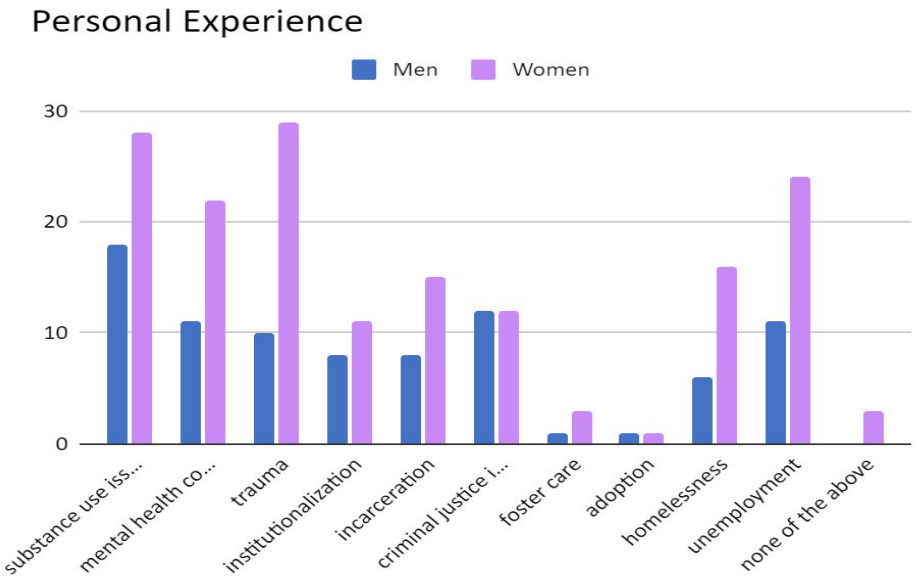
Texans Affected by Substance Use Speak Up

RecoveryPeople advocates for greater access, choice and protections for individuals and families affected by substance use and related mental health challenges. There are approximately 4 million Texans with substance use disorders (SUD), of which half are in recovery and half are still struggling in the disease. At least 25% of the US has an immediate family member with SUD, of which 90% live with a person in active addiction. In Texas over 7 million families are impacted by SUD. To empower the voice of lived experience, RecoveryPeople conducted a survey in 2020 to identify policy priorities.

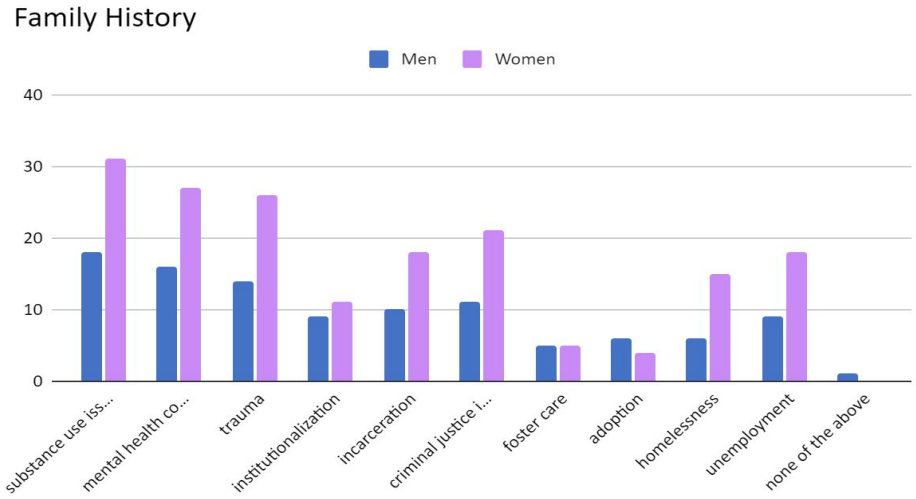
***Findings**:*

Using a five-point likert scale ranging from strongly disagree to strongly agree, respondents overwhelmingly supported eight policy priorities listed below. In addition, 60-percent indicated that their recovery or wellness had been negatively impacted by COVID. All respondents identified as having substance use issues, and many reported a confluence of lived experience and challenges. Women reported greater confluence than men. Over 90-percent identified as having a substance use issue and being an affected family member (AFM).

Policy	% agree or strongly agree
All Texas communities (both urban and rural) need a recovery ecosystem that includes prevention, treatment and recovery support services.	100%
Texas youth with substance use issues need access to alternative peer groups, recovery high schools, and/or collegiate recovery programs.	100%
Texans with substance use issues need greater access to recovery support services and centers operated by members from the local recovery community.	100%
Texans with substance use issues need greater access to quality and affordable recovery housing that use ethical standards and best practices.	98%
Texans with substance use issues who are arrested on non-violent charges should be diverted to treatment and recovery support services rather than imprisoned.	98%
Texans with substance use issues returning to the community from incarceration or institutionalization should be linked to recovery support services upon release.	100%
Sales taxes on addictive substances (e.g. alcohol and nicotine) should be used to fund prevention, treatment and recovery support services.	96%
Individuals who call 911 or in good faith provide emergency care when someone is overdosing should be given legal protections. These protections are often called "Good Samaritan" laws.	100%
My recovery or wellbeing has been negatively impacted by COVID-19.	60%



Every respondent identified as being in recovery from substance use and/or mental health conditions. 5 out of 8 women reported higher levels of co-occurring substance use and mental health conditions in tandem with trauma. Overall, men with a substance use disorder showed a higher rate of involvement with the criminal justice system. These results also showed that women were more likely to experience combinations of substance use, mental health conditions, trauma, incarceration, homelessness and unemployment then male respondents, 2 to 1 in some cases.



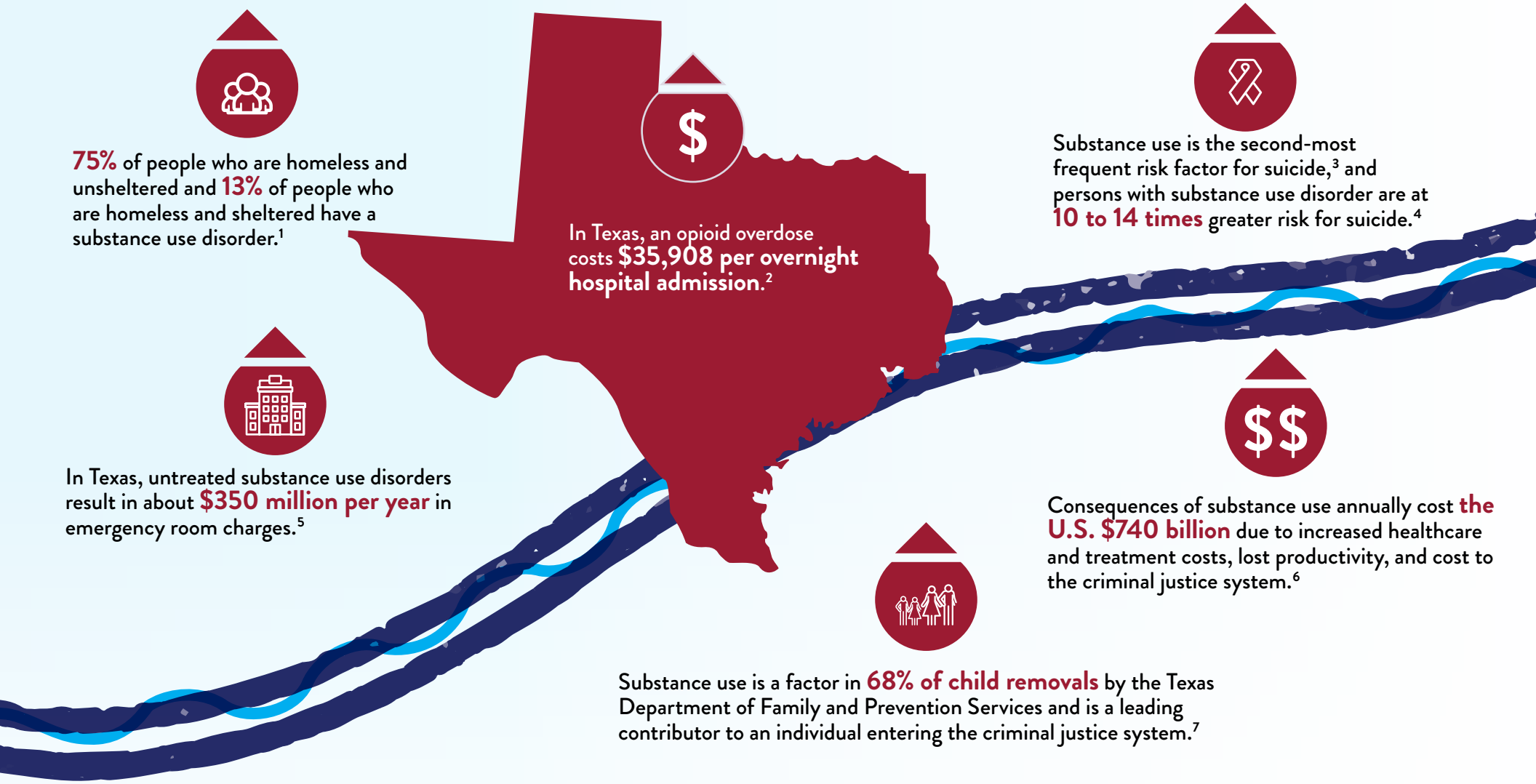
Over 90% of all respondents had both personal experience and family members with a substance use disorder. Of those who reported family history and personal experience with substance use disorders and mental health conditions, over a third of them noted concurring trauma, institutionalization and incarceration within their families.

Summary:

This study was conducted to obtain an understanding of the policy priorities of people with substance use disorders and affected family members. Although respondents represented many race and ethnic groups, we strive to further increase equity, diversity and inclusion in future surveys and activities. The results of the survey sample show strong support for capacity building and improved access across the recovery ecosystem, as well as a potential need for increased services for women.

Social & Economic Cost of Substance Use

Investing in substance use prevention, treatment & recovery services reduces costs and saves Texas money.



75% of people who are homeless and unsheltered and **13%** of people who are homeless and sheltered have a substance use disorder.[1]

In Texas, an opioid overdose costs **$35,908 per overnight hospital admission.**[2]

Substance use is the second-most frequent risk factor for suicide,[3] and persons with substance use disorder are at **10 to 14 times** greater risk for suicide.[4]

In Texas, untreated substance use disorders result in about **$350 million per year** in emergency room charges.[5]

Consequences of substance use annually cost **the U.S. $740 billion** due to increased healthcare and treatment costs, lost productivity, and cost to the criminal justice system.[6]

Substance use is a factor in **68% of child removals** by the Texas Department of Family and Prevention Services and is a leading contributor to an individual entering the criminal justice system.[7]

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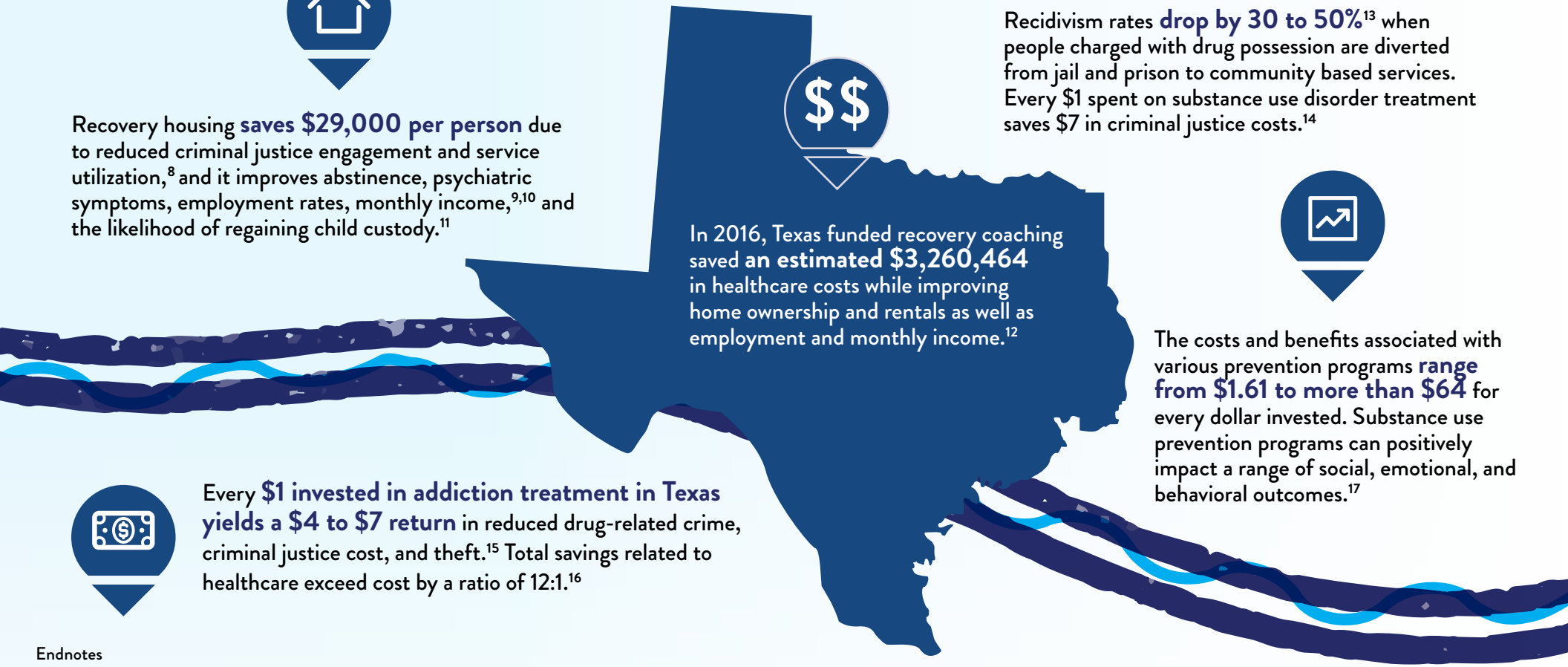
Social & Economic Savings of a System of Care

Upstream investments effectively reduce downstream costs related to substance use.

Recovery housing **saves $29,000 per person** due to reduced criminal justice engagement and service utilization,[8] and it improves abstinence, psychiatric symptoms, employment rates, monthly income,[9,10] and the likelihood of regaining child custody.[11]

Recidivism rates **drop by 30 to 50%**[13] when people charged with drug possession are diverted from jail and prison to community based services. Every $1 spent on substance use disorder treatment saves $7 in criminal justice costs.[14]



In 2016, Texas funded recovery coaching saved **an estimated $3,260,464** in healthcare costs while improving home ownership and rentals as well as employment and monthly income.[12]

The costs and benefits associated with various prevention programs **range from $1.61 to more than $64** for every dollar invested. Substance use prevention programs can positively impact a range of social, emotional, and behavioral outcomes.[17]

Every **$1 invested in addiction treatment in Texas yields a $4 to $7 return** in reduced drug-related crime, criminal justice cost, and theft.[15] Total savings related to healthcare exceed cost by a ratio of 12:1.[16]

Endnotes

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SUBSTANCE USE PREVENTION, TREATMENT, AND RECOVERY—like a river—is an individual, fluid process with ebbs and flows

Substance Use Disorder in Texas

Taking a Costly & Devastating Toll on our Citizens, Families, Communities

Substance Use Disorder (SUD)—Substance use issues are the result of using alcohol or other drugs in a manner, situation, amount, or frequency that harms the individual and/or those around him/her, despite consequences.[1] Over time, repeated and hazardous use can lead to changes in brain circuits involved with obsessive thinking, reward, stress response, and executive functions like decision making and self-control.

- SUD is a chronic disease—like diabetes, cancer, heart disease, and asthma—and it falls on a spectrum from mild to severe. Severe SUD is commonly referred to as addiction.
- Individuals can and do recover, and symptom recurrence (relapse) rates for SUD (40 – 60%) are comparable to those for chronic diseases, such as diabetes (20 – 50%), hypertension (50 – 70%), and asthma (50 – 70%).[2]
- People of any age, gender, or economic status can become addicted to alcohol or other drugs. Certain factors can increase the likelihood and speed of developing SUD: family history, mental health conditions, peer pressure, adverse childhood experiences, and use at an early age.[3]

Prevalence—Texas is facing a significant, ongoing addiction epidemic, well beyond the opioid epidemic that has received the bulk of the attention and funding in recent years.

- The Health and Human Services Commission estimates 6.1 million Texas adults and 162,000 Texas youth have a SUD.
- 51.1% of Texans use alcohol. Many do so hazardously (binge drink): 34.9% of young adults and 25% of adults over the age of 25. Some develop an alcohol use disorder: 10.1% of young adults and 5.1% of adults over the age of 25.[4]
- 19.4% of Texans use illicit drugs.[5] The DEA lists methamphetamine and cocaine as large and growing threats to Texans; causing 915 and 886 deaths respectively in 2018.[6] Opioids—such as Fentanyl, other prescription drugs, and heroin—killed 1,609 Texans in 2018.[7]
- At least 25% of the US has a 1st degree family member with SUD, of which 90% live with a person in active addiction.[8]

Preventable and Divertable—SUD is preventable. Scientists have developed a broad range of evidence-based prevention programs and strategies for individuals and communities that positively alter the balance between risk and protective factors.[9] Diversion programs effectively avoid the costly consequences of SUD e.g. emergency services, homelessness, institutionalization, and criminal justice involvement.

- The costs and benefits associated with various prevention programs range from $1.61 to more than $64 for every dollar invested. Substance use prevention programs can positively impact a range of social, emotional, and behavioral outcomes.[10]
- Human brains continue to develop until age 25, making the delay of first use so important. More than 90% of adults with SUD started using before age 18; half of them before age 15.[11]

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- In 2018, 27% of Texas high school students used alcohol.[12] 47% of those who begin drinking before the age of 14 later develop alcohol dependence, compared with only 9% of those who wait until they are 21 or older to start.[13]
- Recidivism rates drop by 30 to 50%[14] when people charged with drug possession are diverted from jail and prison to community based services. Every $1 spent on SUD treatment saves $7 in criminal justice costs.[15]

Treatable—Treatment for SUD is effective. SUD treatment includes a full continuum of care, effectively matching individuals with needed services based on individual risk factors, life circumstances, complexity of challenges being faced, and the severity of their substance use. For maximum benefit, a full array of treatment services are needed throughout Texas.

- Treatment improves individuals' productivity, health, and overall quality of life.[16]
- Total savings related to healthcare exceed cost by a ratio of 12:1.[17]
- Treatment pays for itself. The average annual cost of a Medicaid recipient with untreated SUD was $1,000 higher in 2015 than recipients who did receive SUD treatment. Because untreated SUD drives the cost of other health conditions, SUD treatment lowers overall health costs, even when you include the cost of SUD treatment.[18]

Recovery Journey—Recovery is a process of change through which individuals improve their health and wellness, live a self-directed life, and strive to reach their full potential. Recovery supportive dimensions include health, home, purpose, and community.[19]

- Approximately 2 million Texans have recovered from alcohol or other drug issues.[20]
- Those with lower internal and external assets and higher problem severity often need greater levels of support and services.[21] Free mutual aid meetings (e.g. 12 Step and Faith-based) are a vital resource, but they cannot address all recovery support needs.
- Recovery housing saves $29,000 per person due to reduced criminal justice engagement and service utilization,[22] and it improves abstinence, psychiatric symptoms, employment rates, monthly income[23,24] and the likelihood of regaining child custody.[25]
- In 2016, Texas funded recovery coaching saved an estimated $3,260,464 in healthcare costs while improving home ownership and rentals as well as employment and monthly income.[26]

Service Gaps—A majority of Texans with SUD do not receive the services they need. Texas has a shortage of substance use prevention, treatment, and recovery workforce and service providers. This is especially true in rural communities.

- Texas had the third lowest ratio of substance use providers in 2010, compared to other states, at 17.7 per 1,000 adults with SUD. The national average was 32.1 per 1,000.[27]
- In 2014, only 6% of Texas adults and 5% of youth with SUD who were eligible for state-funded services received treatment.[28]
- In Texas, less than $1 of every $1,000 of general revenue spending goes to substance use agencies (the national average is over $4 per $1,000).[29]
- Only 10.2% of Texas schools (742 of 7,260) are able to access SUD prevention programs.
- Overdoses are the leading cause of maternal deaths in Texas according to a 2016 report.[30]
- Substance use is a factor in 68% of child removals by the Texas Department of Family and Prevention Services and a leading contributor to individuals entering the criminal justice system.[31]

References: recoverypeople.org/tx-sud-facts

Contact us with any questions and to learn more about supporting substance use prevention, treatment, and recovery services in Texas.

Contact: