

RECOVERY

The official newsletter of the RCORP Rural Center of Excellence on SUD Recovery at the Fletcher Group



IT PAYS TO KNOW THE RULES

2

HOW TO PROTECT YOURSELF

3

YOUR COMPLIANCE CHECKLISTS

4

SAFETY IS NO ACCIDENT



The Fletcher Group Rural Center of Excellence

by Founder and Chief Medical Officer Dr. Ernie Fletcher

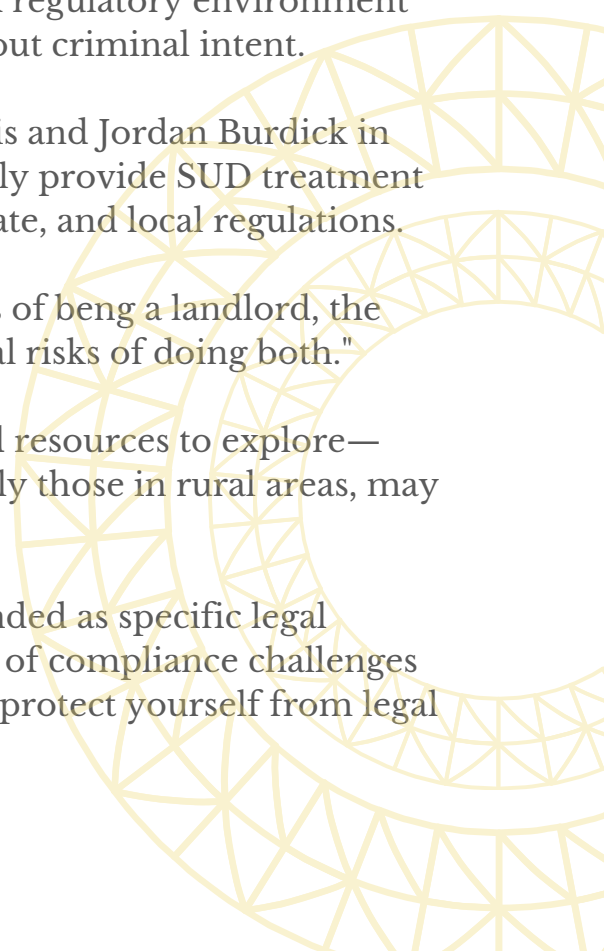
Recovery home operators find themselves in a complex regulatory environment in which non-compliance can occur inadvertently without criminal intent.

As explained by healthcare attorneys Daphne Kackloudis and Jordan Burdick in our August 1 webinar, recovery homes that simultaneously provide SUD treatment must navigate an even more complex web of federal, state, and local regulations.

"Such dual entities," says Kackloudis, "face the legal risks of being a landlord, the risks of running a treatment program, and the additional risks of doing both."

State and local laws also vary widely, requiring time and resources to explore—time and resources that many recovery homes, especially those in rural areas, may find in short supply.

That's why this issue of our newsletter, though not intended as specific legal advice, is dedicated to giving you a basic understanding of compliance challenges as well as some easily manageable steps you can take to protect yourself from legal jeopardy.



IT PAYS TO KNOW THE RULES

Adhering to landlord/tenant laws is complicated by the fact there are so many. On the federal level, there's the *Fair Housing Act* (FHA), the *Anti-Kickback Statute* (AKS), and the *Eliminating Kickbacks in Recovery Act* (EKRA). Numerous state laws apply as well but vary widely. To be on the safe side, we encourage you to inquire locally regarding your state's anti-kickback and landlord/tenant laws.

The **Fair Housing Act** prevents discrimination against those with disabilities, including those in recovery from addiction. "Recovery home residents have the right to request reasonable accommodations," says healthcare attorney Jordan Burdick. "That includes any modifications needed to ensure equal access and opportunities. Because those rights are inalienable, you should never ask residents to waive them either verbally or in legal documents such as lease agreements or house rules."

The **Anti-Kickback Statute** prohibits any remuneration intended to induce patient referrals or generate business for services paid for by federal programs like Medicare or Medicaid. "Remuneration includes cash, discounts, stipends, free rent, or anything else of value," says healthcare attorney Daphne Kackloudis. "Financial assistance should be offered only after and on the basis of true and documented financial need. If not, the appearance of inducement can get you into hot water."

The **Eliminating Kickbacks in Recovery Act** (EKRA) also criminalizes remuneration in exchange for patient referrals to recovery homes or clinical treatment facilities. "EKRA is broader than AKS," says Burdick, "because it applies to all insurers, not just federal payors like Medicare and Medicaid. It also goes further in protecting a resident's freedom to choose a treatment provider. Because of EKRA, it's even more important to avoid the appearance of steering residents to your own treatment services."

"EKRA is a relatively new law with little precedent or regulatory guidance," adds Kackloudis. "As a result, the regulatory contours of EKRA and how stringently it will be enforced are still unclear. But the potential penalties are severe. They can include not only monetary penalties but also exclusion, meaning you would no longer be able to receive Medicare or Medicaid payments."



WATCH THE VIDEO of our August 1 webinar with health-care attorneys Daphne Kackloudis and Jordan Burdick of the Brennan Manna Diamond law firm in Columbus, Ohio.

[CLICK HERE](#)



Be Wary of Background Checks "Federal law doesn't prohibit background checks on residents," says Kackloudis, "but the Department of Housing and Urban Development does recommend against it. If you decide to screen tenants with background checks, make sure you check everyone in the same manner according to the same policy with all disqualifying criteria set down in writing."

HOW TO PROTECT YOURSELF

“You don't have to have bad intentions to violate federal law,” says healthcare attorney Daphne Kackloudis. “But if you know—or should know—that an arrangement might violate the law and take no steps to mitigate the potential violation, you may be held liable.”

According to Kackloudis, one of the best ways to protect yourself is to have leases and all other legal documents contain the following details.

- The name of the operator, address of the property, and name of the resident
- The length of the agreement
- A complete list of provided recovery services
- Language that makes it clear that residents have the opportunity to make informed choices about who they engage with for recovery services and supports
- Clearly stated financial obligations and expectations
- Rent including how much, when it's due, and what happens if a payment is late
- Rent deposit (assuming it is required), including how much, when it's due, and when and how a resident can request that their deposit be returned
- When and how both the recovery home operator and the resident may end the agreement



- A detailed statement of the resident's rights
- House rules and/or what is expected of the resident
- Grievance procedures
- Signature (and date) of both operator and resident

KICKBACK CONCERNS FOR DUAL OPERATIONS

SUD treatments refer to clinical and medical services such as withdrawal management, therapy, and medication-assisted treatments. According to healthcare attorney Jordan Burdick, facilities that provide such treatments in addition to recovery housing can often find themselves at greater risk of violating laws against kickbacks and illegal inducements. “That's because such facilities have a natural financial interest in steering their residents towards their own or affiliated treatment services.”

Such ‘dual operations’ are also prone to a second violation: restricting a resident's freedom to select an SUD treatment provider of their own choice. “EKRA in particular targets providers that impinge on that right. If the only way for a resident to remain in housing is to get clinical treatments there, that effectively removes a patient's ability to choose their own provider.”

Billing and Fraud Risks

No matter where an SUD treatment is administered—whether it's within a recovery home or outside—billings for clinical services are prone to fraudulent practices such as overbilling, billing for services not provided, or providing unnecessary services to increase revenue. Such practices that violate the *Anti-Kickback Statute*, the *Eliminating Kickbacks in Recovery Act*, and the *False Claims Act* can carry heavy penalties of up to \$200,000 and imprisonment for up to 10 years.

COMPLIANCE CHECKLISTS

“The important thing,” says healthcare attorney Daphne Kackloudis, “is to spot a potential problem in advance and figure out how to mitigate it.” The two unofficial checklists below can help you do that.

Your Landlord/Tenant Best Practice Checklist

- Maintain a drug- and alcohol-free environment
- Maintain a resident-driven length of stay
- Allow residents to freely choose their service providers
- Maintain a landlord-tenant relationship with residents
- Make clear in your orientation, policies, and wall postings what is expected of residents and how they are to be treated when living in your residence
- Keep an open line of communication about two-sided expectations
- Your residents’ rights policy should also outline a process by which a resident can bring forward a concern, what you are committed to doing to address and respond to such concerns, how you will maintain documents and records related to the concern, and detailed timelines for both you and the resident throughout the grievance process

Your Federal Compliance Checklist

- Charge fair market value rent regardless of whether the resident receives treatment services within your facility or somewhere else
- Develop a financial needs policy and procedure for housing clients
- Complete a thorough and standardized review of financial need
- Complete a thorough clinical assessment for each housing client
- Periodically re-evaluate each client’s clinical need for housing
- Ensure that “free housing” is not stated or implied on any website or advertisement
- Develop a policy that describes the purpose of the housing program and discusses applicable laws and prohibitions
- Establish a compliance “hotline” where employees can bring concerns to management to avoid potential qui tam issues*



NARR Agrees!

The National Alliance for Recovery Residences establishes ethical standards for recovery housing operators. The standards include maintaining a drug-free environment, respecting residents' rights, and fostering a supportive community.

Operators are accountable for aligning their actions and practices with ethical guidelines. This includes transparency in operations, fair treatment of residents, and adherence to legal and regulatory requirements.

The NARR Code of Conduct emphasizes the importance of protecting residents' rights. This includes the right to privacy, the right to fair treatment, and the right to participate in their recovery plan.

*Qui tam lawsuits empower whistleblowers to file suit on the government's behalf for false or fraudulent claims submitted to receive payment.