

TESTIMONY OF DAVE ARONBERG, STATE ATTORNEY, 15TH JUDICIAL CIRCUIT, FLORIDA

My name is Dave Aronberg. I'm the State Attorney for Florida's 15th Judicial Circuit, which covers all of Palm Beach County. As the Chief Law Enforcement officer for a county at the forefront of the national opioid crisis, I want to thank you, Mr. Chairman, and all of the committee members, for your leadership in confronting this unprecedented epidemic. I also applaud your advocacy of the 21st Century Cures Act, which will speed the discovery and development of new cures and treatments, including alternatives to the addictive prescription painkillers that have led to so many needless deaths.

Because of Palm Beach County's tropical climate and long established drug treatment industry, we have always been a destination for people with substance use disorder. [See PowerPoint Slide #2.] In recent years, however, we have seen an influx of unscrupulous individuals who enrich themselves by exploiting those in recovery. These opportunists are misusing well-intended federal laws to prey on opioid addicts, who are often willing to participate in patient brokering, illegal kickbacks and insurance fraud in exchange for illicit benefits such as cash, free rent, transportation and even drugs themselves.

This is the Florida Shuffle. [See PowerPoint Slide #3.] It starts with deceptive marketing practices, offers or inducements, such as a free one-way plane ticket to a Florida rehab center. Today, 75% of all private-pay patients in Florida drug treatment centers come from out of State, and for too many of them, they leave our community only in ambulances or body bags. Once in Florida, the patient goes through a course of treatment covered by insurance. Together, the Affordable Care Act (ACA) and the Mental Health Parity and Addition Equity Act of 2008 provide coverage for drug rehabilitation on a traditional fee-for-service basis with no yearly or lifetime limits and with relapse always covered as an essential health benefit. During outpatient phases of treatment, the out-of-state patient, in need of a place to live, will be referred to a sober home, which is a group home for individuals in recovery. The Americans with Disabilities Act (ADA) and Fair Housing Amendments Act (FHAA) together prevent the regulation or inspection of these residences, and so many are little more than flophouses where drug abuse, human trafficking and other crimes are prevalent. When insurance benefits are exhausted, outpatient care ends and the individual leaves the sober home. A relapse, however, will trigger a new round of treatment, so rogue providers seek profit through endless failure rather than sobriety.

In July 2016, our office formed a Sober Homes Task Force to crack down on the fraud and abuse in the drug treatment industry. Our Task Force has since made 41 arrests, mostly for illegal patient brokering, which is a third-degree felony in Florida punishable by up to 5 years in prison. We also work with the U.S. Attorney's Office for the Southern District of Florida to

target insurance fraud, which led to the recent federal conviction and 27-and-a-half year sentence for drug treatment and sober home kingpin Kenneth Chatman.

As we succeed in arresting rogue providers and shutter corrupted facilities, we have seen the criminal element leave Palm Beach County for other communities unaware of the Florida shuffle. We have held training sessions for prosecutors and law enforcement officials throughout the State and we're offering our assistance to jurisdictions throughout the country.

On the legislative front, our office empaneled a Grand Jury and created two additional citizens' Task Forces to recommend changes to State law, leading to the 2017 passage of Florida House Bill 807, which tightened enforcement and oversight of the drug recovery industry.

But local and State law enforcement cannot solve this problem alone. We need the federal government to fix federal laws and regulations that exacerbate the national problem and tie our hands at the local level. My Chief Assistant, Alan Johnson, and I offer five recommendations:

First, address private insurance abuses by adopting the Affordable Care Act's outcome-based reimbursement model used in the Medicare program instead of the current fee-for-service reimbursement model for private pay drug rehab. This would reward the best recovery centers while shuttering rogue operators. It could also improve patient outcomes, as providers will be incentivized towards a longer term, lower-level continuum of care rather than ineffectual short bursts of intensive forms of treatment with no follow up. Studies have shown that a more effective and less expensive approach is to provide decelerated care over 12 months instead of an unending series of intensive 7 to 14 day inpatient stays followed by intensive outpatient treatment for 4 to 6 weeks marked by over-testing and overbilling.

Second, address the abuses in the sober home industry by clarifying the Americans with Disabilities Act and Fair Housing Act to allow states and local governments to enact reasonable regulations for the health, safety and welfare of vulnerable sober home residents. The Department of Justice (DOJ) and the Department of Housing and Urban Development (HUD) attempted to issue such a clarification last year, but it was unhelpful. Entitled "State and Local Land Use Laws and Practices and the Application of the Fair Housing Act," the Joint Statement seemed to ignore the realities on the ground that the very federal laws designed to protect individuals in recovery – the ADA and the FHAA -- are instead being used to shield those who do them harm. Chief Assistant Alan Johnson will now offer three additional recommendations.
