

CONCURRENCE IN SENATE AMENDMENTS

AB 1158 (Petrie-Norris)

As Amended September 3, 2021

Majority vote

SUMMARY

Requires that an alcoholism or drug abuse recovery or treatment facility (RTF) licensed by the Department of Health Care Services (DHCS) that serves more than six residents must maintain specified insurance coverages, including commercial general liability insurance and employer's liability insurance. Requires a licensee that serves six or fewer residents must maintain general liability insurance coverage. Requires that any government entity that contracts with a privately owned Recovery Resident (RR) or RTF to provide treatment services for more than six residents, require the contractors to, at all times, maintain specified insurance coverage, including commercial general liability insurance and employer's liability insurance and to include the government entity as an additional insured. Requires any government entity that contracts with an RTF to provide treatment services for six or fewer residents to require the contractor, at all times, to maintain general liability insurance coverages, which includes the government entity as an additional insured.

Senate Amendments:

- 1) Differentiate insurance coverage requirements between a licensed RTF that serves more than six residents and those that treat six or fewer residents.
- 2) Clarify that for purposes of this bill a certificate of self-insurance for worker's compensation does not satisfy the requirements.
- 3) Clarify that a privately owned RR may meet the insurance requirements of this bill by obtaining coverage from either an admitted insurer, or a non-admitted insurer that is eligible.
- 4) Specify that this bill does not prohibit a government entity from requiring of a privately owner recovery residence, quality and performance standards or levels of insurance coverage that are similar to, or that exceed, the standards and levels when contracting for recovery resident services.
- 5) Clarifies that a RR that is managed by its residents and operates on a not-for-profit basis is not prohibited from obtaining coverage under a policy of residential property insurance.
- 6) Clarifies that for purposes of 5), above, a RR operates as a not-for-profit if it satisfies all of the following:
 - a) It does not accept or require valuable consideration from or on behalf of residents other than a pro rata share of living expenses;
 - b) It is not owned by, or under contract with, an AOD or RTF; and,
 - c) It is not owned by, or under contract with, an affiliate, contractor, or intermediary of an AOD or RTF.
- 7) Defines "government entity" to mean the state, a county or a city.

COMMENTS

- 1) *RTFs*. RTFs are based on what is commonly referred to as the social model, and are licensed to provide recovery, treatment, and detoxification services. The services provided by these RTFs include group and individual counseling, educational sessions, and alcoholism or drug abuse recovery and treatment planning. As part of their licensing function, DHCS conducts reviews of RTF operations every two years, or as necessary. DHCS's Substance Use Disorder Compliance Division checks for compliance with statute and regulations to ensure the health and safety of RTF residents and investigates all complaints related to RTFs, including deaths, complaints against staff, and allegations of operating without a license. DHCS has the authority to suspend or revoke a license for conduct in the operation of an RTF that is inimical to the health, morals, welfare, or safety of either an individual in, or receiving services from, the facility or to the people of the State of California.
- 2) *Unlicensed RR/Sober Living Home (SLH)*. A RR/SLH is a residence for people in recovery from substance abuse. It may serve as support for individuals undergoing treatment but it does not provide treatment or care, whether medical or personal (as in an RTF). The state laws and licensing requirements that govern treatment and care facilities do not currently include RRs. Therefore, the state does not keep any list of registered RRs, conduct inspections of RRs, or perform any of the other activities associated with licensing facilities. The effectiveness of sober living as one component of a person's successful recovery program is not controversial. The California Research Bureau estimates that there are at least 12,000 sober living beds in the state to serve an eligible population of between 25,000 and 35,000 individuals.

A 2010 report on the National Institutes of Health (NIH) website, "Sober Living Houses for Alcohol and Drug Dependence: 18-month Outcomes," states that SLHs are not formal treatment programs and are not obligated to comply with state or local regulations applicable to treatment. However, NIH does not provide a formal definition of an SLH. The report also mentions that it is difficult to determine how many SLHs there are in California because they are outside of the purview of state licensing authorities. The NIH report cites the protection that the federal Fair Housing Act (FHA) affords SLHs to be located in residentially zoned areas, personal privacy under the Fourth Amendment, and the right of people with disabilities to live together for a shared purpose, such as mutually assisted recovery and maintenance of an abstinent lifestyle.

DHCS states that while RR/SLHs are not required to be licensed by DHCS, they may be subject to other types of permits, clearances, business taxes, or local fees, which may be required by the cities or counties in which they are located. If an RR/SLH is providing licensable services then it must obtain a valid RTF license from DHCS. Licensable services can include, but are not limited to, detoxification services, group sessions, individual sessions, one-on-one counseling, educational sessions, or recovery, treatment, or discharge planning. If an SLH is providing even one of the mentioned services, then it should be classified as an RTF and obtain a valid license from DHCS.

- 3) *FHA and the Americans with Disabilities Act (ADA)*. The FHA makes it illegal to engage in various discriminatory practices relating to the sale and rental of housing based on race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. FHA also prohibits land use regulations, zoning ordinances, and restrictive covenants from

discriminating in housing on the basis of the aforementioned categories. FHA also states that groups of people with disabilities living together in a single dwelling unit are considered a family.

In addition, the ADA affords civil rights protection to individuals with disabilities, similar to the protections provided to individuals on the basis of race, sex, national origin, and religion. Under the ADA, an individual with a "disability" is someone who has a current "physical or mental impairment" that "substantially limits" one or more of that person's "major life activities," such as caring for one's self, working, etc., or has a record of such a substantially limiting impairment, or is regarded as having such an impairment. The protections of the ADA apply to those who have successfully completed a drug rehabilitation program, or who are currently enrolled in such programs.

In a joint statement issued in November 2016 by the federal Department of Justice (DOJ) and Department of Housing and Urban Development (HUD), which together are responsible for enforcing the FHA, DOJ, and HUD declare that the term "group home" does not have a specific legal meaning, though land use and zoning officials and the courts have referred to some residences for persons with disabilities as group homes, including homes occupied by persons in recovery from alcohol or substance abuse. DOJ and HUD contend that persons with disabilities have the same FHA protections whether or not their housing is considered a group home, and that a household where two or more persons with disabilities choose to live together, as a matter of association, may not be subject to requirements or conditions that are not imposed on households consisting of persons without disabilities.

DOJ and HUD further state that the provision of services (medical, supervisory, supportive, etc.) is not required for a group home to be protected under the FHA. Group homes can also be opened by individuals or organizations, both for-profit ("commercially operated") and not-for-profit, and still be protected by the FHA. Further, the FHA does not require a person who resides in an RR to have participated in or be currently participating in a substance abuse treatment program to be considered a person with a disability. The fact that a resident of an RR may currently be illegally using a controlled substance does not deprive the other residents of the RR of the protection of the FHA. The DOJ and HUD statement also says that localities and states must ensure that actions to enforce criminal and other laws against RRs are not taken to target RRs and are applied equally, regardless of whether the residents of housing are persons with disabilities.

- 4) *Commercial liability insurance.* Commercial liability insurance (also called business liability insurance and commercial general liability insurance) protects California businesses from financial loss resulting from claims of injury or damage caused to others by an owner or its employees. Commercial Liability Insurance is generally not mandatory for businesses operating in California. A policy typically covers: a) Bodily Injury; b) Personal; c) Advertising Injury; and, d) Legal Defense and Judgments.

According to the Author

With more Californians seeking RTFs or RRs for assistance, stronger consumer protections are needed now. While there are many good actors in the state helping individuals get on their feet, some media reports detail unscrupulous business practices that are using patients for profits. The most notable of media investigatory reports being a series by the Orange County Register describing the "Rehab Riviera," and the abuses in substance abuse recovery services in Southern California, operating with little to no government regulation and/or private insurance industry

risk management. It is critical that patients at treatment facilities receive the care they need without worrying about their safety. In concluding the author states, that this bill will ensure that licensed RTFs and unlicensed RRs that contract with the government maintain minimum insurance coverage levels. By guaranteeing minimum insurance coverage levels, patients and their families will be much better protected.

Arguments in Support

The Insurance Commissioner, sponsor of this bill, states that by requiring minimum insurance coverages for RTFs and RRs, and by requiring state regulatory agencies work more closely together, this bill will ensure that adequate coverage exists to protect persons from harm and cover the claims of those who are unfortunately harmed. It will also ensure essential information sharing to help with state regulatory investigations. In concluding, the Insurance Commissioner states, this bill is creating a safer environment so consumers can get the treatment they need without having to worry about their safety, especially when a state government entity is contracting with a RR or RTF.

Arguments in Support if Amended

The Advocates for Responsible Treatment (ART), in a support if amended position on a prior version of the bill, states that California licenses businesses to operate SUD treatment programs in houses located in single-family zoning through the state. These are mostly for-profit, commercial enterprises, which are protected from local regulation by the state health code. Tragically, accidents and efforts do transpire in the facilities, too often costing lives, and sometimes resulting in lawsuits. For this reason, it is important that, like all other healthcare facilities, these facilities be required to carry basic business insurance. ART seeks amendments that would require insurance companies to set standards based on the hard data of how accidents and errors occur and the disturbances traced to particular operators through public records. Insurance companies can then enforce those standards by refusing to insure companies that do not adhere to them. ART concludes by stating, that if the legislature believes standards should be set, requiring insurance companies to set standards would be a far better solution than a third-party organization, though the optimal solution would be for the state to license all commercially operated houses.

Arguments in Opposition

The Los Angeles County Sober Living Coalition is opposed unless amended and requests that the requirement that privately operated recovery homes must provide commercial insurance be removed. They state that this bill will eliminate the lowest cost and most effective housing options for low income people sharing housing. Commercially operated treatment centers should not be confused with small homes used by myriad government entities for vulnerable people. In concluding they state that big treatment centers should, of course, have commercial insurance but the small operators who make a few beds available for poor people will not be able to maintain affordable beds for people who chose recovery if held to the same standard as large, licensed recovery centers.

FISCAL COMMENTS

According to the Senate Appropriations Committee, DHCS estimates increased staffing costs of \$610,000 in fiscal year 2024-24 and \$574,000 ongoing General Fund; the California Department of Corrections and Rehabilitation report potential costs which are unknown; and, potential state-reimbursable mandate costs for local public safety agencies also unknown.

VOTES:**ASM HEALTH: 15-0-0**

YES: Wood, Mayes, Aguiar-Curry, Bigelow, Bonta, Burke, Carrillo, Flora, Maienschein, McCarty, Nazarian, Chiu, Rodriguez, Santiago, Waldron

ASM INSURANCE: 13-0-0

YES: Daly, Mayes, Berman, Bigelow, Chen, Cooley, Cooper, Frazier, Gipson, Grayson, Rodriguez, Voepel, Wood

ASM APPROPRIATIONS: 16-0-0

YES: Lorena Gonzalez, Bigelow, Calderon, Carrillo, Chau, Megan Dahle, Davies, Fong, Gabriel, Eduardo Garcia, Levine, Quirk, Robert Rivas, Akilah Weber, Holden, Luz Rivas

ASSEMBLY FLOOR: 75-0-4

YES: Aguiar-Curry, Arambula, Bauer-Kahan, Bennett, Berman, Bigelow, Bloom, Boerner Horvath, Bryan, Burke, Calderon, Carrillo, Cervantes, Chau, Chen, Chiu, Choi, Cooley, Cooper, Cunningham, Megan Dahle, Daly, Davies, Flora, Fong, Frazier, Friedman, Gabriel, Gallagher, Cristina Garcia, Eduardo Garcia, Gipson, Lorena Gonzalez, Gray, Grayson, Holden, Irwin, Jones-Sawyer, Kalra, Lackey, Levine, Low, Maienschein, Mathis, Mayes, McCarty, Medina, Mullin, Muratsuchi, Nazarian, Nguyen, O'Donnell, Patterson, Petrie-Norris, Quirk, Ramos, Reyes, Luz Rivas, Robert Rivas, Rodriguez, Salas, Santiago, Seyarto, Smith, Stone, Ting, Valladares, Villapudua, Voepel, Waldron, Ward, Akilah Weber, Wicks, Wood, Rendon
ABS, ABST OR NV: Kiley, Lee, Quirk-Silva, Blanca Rubio

UPDATED

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