

Date of Hearing: June 8, 2021

ASSEMBLY COMMITTEE ON HEALTH  
Jim Wood, Chair  
SB 434 (Bates) – As Introduced February 16, 2021

**SENATE VOTE:** 38-0

**SUBJECT:** Substance abuse and mental health services: advertising and marketing.

**SUMMARY:** Prohibits entities, licensed or certified by the state to provide substance use or mental health disorder services, from making false statements or providing false information in advertising or marketing, as specified. Specifically, **this bill:**

- 1) Prohibits an operator of an alcoholism or drug abuse recovery or treatment facility (RTF) or a certified alcohol or other drug programs (AOD program) licensed or certified by the Department of Health Care Services (DHCS) or a licensed psychiatric or mental health facility licensed by the Department of Social Services (DSS) from doing any of the following:
  - a) Making or providing a false or misleading statement or information about the entity's products, goods, services, or geographical locations in its marketing, advertising materials, or media, or on its website or on a third-party website;
  - b) Including on its website a picture, description, staff information, or the location of an entity, along with false contact information that surreptitiously directs the reader to a business that does not have a contract with the entity; or,
  - c) Including on its internet website false information or an electronic link that provides false information or surreptitiously directs the reader to another website.
- 2) Defines for purposes of this bill a licensed psychiatric or mental health facility to include the following:
  - a) A mental health rehabilitation center;
  - b) A psychiatric health facility; and,
  - c) A social rehabilitation facility.
- 3) Permits DHCS and DSS to investigate an allegation of a violation of this bill and to impose one or more sanctions including, but not limited to the following:
  - a) Assessment of monetary penalties;
  - b) Suspension and/or revocation of license or certification; and,
  - c) Cease and desist orders for psychiatric health facilities

**EXISTING LAW:**

- 1) Requires DHCS to license RTFs that provide residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery, treatment, or detoxification services.

- 2) Grants DHCS the authority to implement a program certification procedure for AOD treatment recovery services (AOD programs) and to develop standards and regulations for the AOD programs describing the minimal level of service quality required of the service providers to qualify for and obtain state certification.
- 3) Prohibits a DHCS licensed RTF or certified AOD program, and specified individuals associated with or employed by those facilities and programs, from giving or receiving remuneration or anything of value for the referral of a person who is seeking AOD abuse recovery and treatment services, as specified. Permits DHCS to investigate allegations of violations and take action, such as revocation of licensure or certification, or assessment of penalties.
- 4) Requires a psychiatric health facility licensed by DHCS to provide 24-hour inpatient care for people with mental health disorders, as specified, including psychiatry, clinical psychology, psychiatric nursing, social work, rehabilitation, drug administration, and appropriate food services.
- 5) Establishes within the California Community Care Facilities Act social rehabilitation facilities (SRF), which provide social rehabilitation services for no longer than 18 months in a group setting to adults recovering from mental illness who temporarily need assistance, guidance, or counseling, that are licensed by the DSS.
- 6) Requires DHCS to license mental health rehabilitation centers operated by counties, county contract providers, or other organizations that include program evaluation measures such as that clients show improved global assessments scores, improved functional behavior, and reduced medication levels, as specified.
- 7) Prohibits a licensee, officer, or employee of a licensed SRF from making or disseminating any false or misleading statement regarding the facility or any of the services provided by the facility.
- 8) Permits DHCS and DSS to investigate allegations of violations of law and to impose penalties or sanctions including but not limited to the following:
  - a) Assessment of monetary penalties;
  - b) Suspension and/or revocation of license or certification; and,
  - c) Cease and desist orders for psychiatric health facilities.

**FISCAL EFFECT:** According to the Senate Appropriations Committee, pursuant to Senate Rule 28.8, negligible state costs.

**COMMENTS:**

- 1) **PURPOSE OF THIS BILL.** According to the author, opioid addiction has soared and unscrupulous rehabilitation operators have rushed in to take advantage of mandatory mental health treatment coverage required by the federal Patient Protection and Affordable Care Act. The quality of care in these facilities is not consistent and does not always adhere to a specific set of standards. In the case of Brandon Nelson, his parents were assured that he would receive therapy sessions, a case manager, a house manager, and more. Unfortunately,

that is not what he received. This bill, known as “Brandon’s Law,” prohibits an operator of a licensed RTF or AOD program from providing any form of false advertising or marketing services, including making a false or misleading statement about the entity’s products, goods, services, or geographical locations. This bill also authorizes DHCS to investigate allegations of misconduct and impose sanctions. The author concludes by stating that the goal of this bill is to protect individuals with addiction and ensure that they are receiving the treatment they are promised.

## 2) BACKGROUND.

### a) **Licensed and Certified Substance Abuse and Mental Health Treatment Programs.**

RTFs that are licensed by DHCS provide group and individual counseling, educational sessions, and alcoholism or drug abuse recovery, treatment planning, and detoxification services. Social model RTFs are allowed to provide clients first aid and emergency care, and since the passage of AB 848 (Stone), Chapter 744, Statutes of 2015, RTFs can obtain an additional license from DHCS that allows RTFs to provide incidental medical services by a licensed physician and surgeon or other health care practitioner, as specified.

DHCS also offers a voluntary facility certification to programs that provide day treatment, outpatient, and nonresidential detoxification. This certification is granted to programs that exceed minimum levels of service quality and are in substantial compliance with state program certification standards. Certification is available to residential and nonresidential programs. DHCS licenses about 1,000 RTFs and certifies approximately 900 outpatient facilities.

SRFs, which are licensed by DSS and have a mental health program certified by DHCS, provide 24 hour a day non-medical care and supervision in a group setting to adults recovering from a mental illness who temporarily need assistance, guidance or counseling. SRFs provide a wide range of alternatives to acute psychiatric hospitalization and institutional care based on the principles of community-based treatment. Community-based treatment includes a high level of care provided in a homelike setting, individual and group counseling, psychiatric services, pre-vocational and vocational assistance, community participation, and linkages to other community services. SRFs cannot deliver detox services regarding substance abuse. However, sometimes there may be a client that goes to therapy or outpatient psychiatric care for that component of the substance abuse treatment. Furthermore, SRFs cannot have a client that requires 24-hour medical care. Mental Health certification is required for this type of facility. There are about 200 licensed SRFs operating in California with a residential capacity of over 2,025.

### b) **Cracking down on unscrupulous activities in California.** In November 2016, the California Department of Insurance (CDI) issued a press release about an investigation that resulted in the arrest of the operators of some Southern California sober living homes, operated as Community Recovery of Los Angeles (CRLA). The operators were arrested on several felony counts of grand theft and identity theft for allegedly conspiring to defraud clients and insurers out of more than \$176 million. Affected insurers paid nearly \$44 million before discovering the suspected fraud and stopping payments to CRLA, which was accused of luring people with treatment marketing schemes and stealing patient identities to buy health insurance policies for people without their knowledge, as well as committing such acts as submitting claims for services not

provided, falsely representing CRLA as a licensed RTF while not being licensed as such, and filing fraudulent health insurance policy applications. A document posted on DHCS's website indicated at the time that CRLA operated both recovery residences, which were claiming to be licensed, and DHCS-certified outpatient programs. In March 2018, the *Orange County Register* subsequently reported that one of the operators of CRLA plead guilty to 46 felony counts involving the insurance billing scheme and received 11 years in state prison following a plea to 28 counts of money laundering, seven counts of grand theft, six counts of identity theft, and five counts of insurance fraud.

In January 2020, CDI, through a joint effort with the Orange County District Attorney's Office, shut down an alleged \$3.2 million health care fraud ring that preyed on those with SUDs in order to bilk insurance companies out of millions of dollars. Several individuals were charged with multiple felony counts including insurance fraud and money laundering in connection with the scheme. Insurance Commissioner Ricardo Lara stated that the suspects are accused of finding patients across the country who were seeking help for their SUDs, and flying them to California to enter treatment at Casa Bella International Inc., which was owned and operated by one of the suspects. In order to obtain payment from the insurance company for these clients, the suspects are accused of directing employees to fill out policies for the patients using false information. The suspect who owned the facility is alleged to have paid the other co-conspirators upwards of \$10,000 per patient who stayed enrolled in treatment for more than 30 days.

Most recently, in June 2020, CDI issued another press release announcing the arrests of five more suspects who are alleged to have been conspiring with the suspects arrested earlier in the year. The new defendants face up to 21 years in prison for their alleged involvement in a scheme that resulted in \$60 million in fraudulent billing and \$11.7 million in insurance losses. Authorities allege that all the defendants used mass media marketing campaigns to identify addicted clients from across the country who were seeking treatment. According to CDI, the conspirators and their employees then falsified clients' health care insurance applications to circumvent California residency requirements and closed enrollment periods; employed a money-laundering scheme they devised to conceal their involvement in paying clients' insurance premiums; and, trafficked their clients into Southern California treatment facilities.

- c) **Senate Health Committee informational hearing.** On January 31, 2018, the Senate Health Committee held an informational hearing to examine the SUD treatment system with a focus on treatment and services provided in RTFs; insurance coverage; patient referrals; and, the state's regulation and oversight of the system. The hearing provided an overview of recent issues that have affected the state regarding unscrupulous facility operators, and gave an opportunity for state regulators to highlight efforts they have undertaken to combat the exploitation of the SUD system. The goal of the hearing was to examine the issues and to seek strategies and policies that will prevent unscrupulous individuals from exploiting the various industries that are supposed to help treat those with SUDs, as well as to recognize federal and state protections for those with disabilities, and to ensure that policies are not enacted, either at the local or state level, that will limit the number of treatment options for those who need them.

- 3) **SUPPORT.** The California Consortium of Addiction Programs and Professionals (CCAPP) states that this bill will prohibit treatment programs from making false or misleading

information about the entity's products, goods, services, or geographical locations in its marketing, advertising materials, or media, or on its internet website and will prohibit placing electronic links that provide false information or surreptitiously directs the reader to another internet website. According to CCAPP, these practices are the foundational conduit for patient brokering and must be stopped. The practice of ensnaring vulnerable people seeking help for loved ones is rampant in California and although the state cannot stop this practice nationwide, it must do all that it can to ensure that California treatment programs cannot continue to support these practices with their patronage. CCAPP concludes by stating that this bill, combined with federal statute that raises fines and consequences for patient brokering, will give the DHCS the ability to revoke or suspend facility licenses and/or assess significant civil penalties for this behavior.

#### **4) RELATED LEGISLATION.**

- a) AB 381 (Davies and Petrie-Norris) requires a licensed RTF, at all times, to maintain at least two unexpired doses of naloxone on the premises, as specified. AB 381 is pending hearing in the Senate Health Committee.
- b) AB 1158 (Petrie-Norris) requires a licensee operating an RTF to maintain specified insurance coverages, including, among others, commercial general liability insurance and employer's liability insurance, as specified. AB 1158 is pending referral in the Senate.
- c) SB 110 (Wiener) expands Medi-Cal SUD services to include contingency management services, as specified, subject to utilization controls. SB 110 is pending referral in the Assembly.
- d) SB 349 (Umberg) creates the California Ethical Treatment for Persons with Addiction Act to provide further protections for SUD clients and their families. SB 349 is pending referral in the Assembly.
- e) SB 541 (Bates) requires a facility licensed or certified by DHCS to disclose specified information about its license or certification in specified circumstances that include, among others, posting on its website and in any advertising or marketing in a clear and conspicuous manner. SB 541 is pending hearing in Assembly Health Committee.

#### **5) PREVIOUS LEGISLATION.**

- a) SB 589 (Bates) of 2019 and SB 863 (Bates) of 2020 were substantially similar to this bill. SB 589 was vetoed by Governor Newsom with the following veto message:

“While it is important to protect vulnerable patients and their families from unethical marketing practices, I am concerned that as crafted, this measure creates a false promise. DHCS has no jurisdiction or licensing oversight over recovery residences or third parties. As such, it cannot take enforcement against those entities for violations of advertisement requirements.”

SB 863 was not heard because of the shortened Legislative calendar caused by the COVID-19 pandemic.

- b) AB 3162 (Friedman), Chapter 775, Statutes of 2018, made various changes to current law regarding licensed RTFs including: making initial licenses provisional for one year; requiring services offered by the RTF to be specified on the license and provided within the licensed RTF, as specified; and, increasing civil penalties for the violation of licensing law.
- c) SB 992 (Hernandez), Chapter 784, Statutes of 2018, requires programs licensed or certified by DHCS to disclose certain business relationships, as specified, including with a recovery residence, and makes changes to current law for licensed RTFs to improve client treatment and provide DHCS more oversight authority over RTFs.
- d) SB 1228 (Lara), Chapter 792, Statutes of 2018, prohibits certain persons, programs, or entities, and persons employed by, or working for, that program, from giving or receiving remuneration or anything of value for the referral of a person who is seeking SUD recovery and treatment services, as specified.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

Advocates for Responsible Treatment  
 California Consortium of Addiction Programs and Professionals  
 Casa Palmera  
 Central Valley Recovery Services, Inc.  
 City of Torrance  
 Community Social Model Advocates, Inc.  
 County Behavioral Health Directors Association of California  
 County of Orange  
 Hathaway Recovery Substance Abuse and Behavioral Treatment Center  
 My Time Recovery  
 Palm House, Inc.  
 Soroptimist House of Hope, Inc.  
 Stepping Stone of San Diego  
 The Purpose of Recovery

### **Opposition**

None on file.

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