
SENATE COMMITTEE ON HEALTH

Senator Dr. Richard Pan, Chair

BILL NO: SB 541
AUTHOR: Bates
VERSION: February 18, 2021
HEARING DATE: March 17, 2021
CONSULTANT: Reyes Diaz

SUBJECT: Substance use disorder treatment facilities and programs: disclosure of license and certification status

SUMMARY: Requires an entity licensed or certified by the Department of Health Care Services to provide substance use disorder treatment services to disclose information about its license or certification, including the number and expiration date, in specified circumstances.

Existing law:

- 1) Requires the Department of Health Care Services (DHCS) to license alcoholism or drug abuse recovery or treatment facilities (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. [HSC §11834.01, et seq.]
- 2) Grants DHCS the authority to implement a program certification procedure for alcohol and other drug treatment recovery services and to develop standards and regulations for the alcohol and other drug treatment recovery services describing the minimal level of service quality required of the service providers to qualify for and obtain state certification. [HSC §11830.1]
- 3) Requires a DHCS licensed RTF or certified program to disclose to DHCS ownership or control of, or financial interest in, a recovery residence, or any contractual relationship with an entity that regularly provides professional services or substance use disorder treatment or recovery services to clients of licensed RTFs or certified programs, if the entity is not part of the certified program or licensed RTF. [HSC §11833.05]
- 4) Defines a “recovery residence” as a residential dwelling that provides primary housing for individuals who seek a cooperative living arrangement that supports personal recovery from an SUD and that does not require licensure by DHCS or does not provide licensable services, as specified, including residential dwellings commonly referred to as “sober living homes,” “sober living environments,” or “unlicensed alcohol and drug free residences.” [HSC §11833.05]

This bill: Requires a DHCS licensed RTF and certified program to disclose a license or certification number and the expiration date of the license or certification in all of the following circumstances:

- a) To any person who inquires about the license or certification in writing, verbally, electronically, or by any other method of communication between the person and the RTF or program;
- b) Posted on the website of the RTF or program, as specified, in a clear and conspicuous manner; and,

- c) Included in any print, audio, or electronic advertising or marketing of the facility or program, as specified, in a clear and conspicuous manner.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

- 1) *Author's statement.* According to the author, over the past few years, the Legislature has recognized that consumers with substance use disorders (SUDs) have disabling conditions and that these consumers and their families are vulnerable. However, there are no provisions in code that require for license and certification information for state-approved facilities to be posted publicly online and freely given to those who ask for it. This bill would require a licensed facility or certified program to disclose its information on licensure, specifically its license number and expiration date, to any individual who inquires about the information. In addition, it requires the program or facility to include its licensing information on their website or electronic communications and all marketing materials. All individuals seeking treatment and their families deserve the right to have this basic type of information about state-approved facilities. This bill would increase transparency in the addiction industry.
- 2) *Background.* Over the years, the media has reported on troubles within the general addiction treatment industry, both in California and in the nation. Some highly publicized news articles ("How Some Southern California drug rehab centers exploit addiction," *Orange County Register*, May 21, 2017; "A Choice for Recovering Addicts: Relapse or Homelessness," *New York Times*, May 30, 2015; "California's Rehab System is in Crisis ..." *CityWatch Los Angeles*, June 23, 2016; and "Special Report: Two states with an ocean view, and an ethical cloud," *Addiction Professional*, March 18, 2013) highlighted the issue of "patient brokering" whereby unscrupulous individuals (sometimes called "interventionists" or "body brokers") lure clients seeking SUD treatment services, buy insurance policies for the clients or offer to pay their deductibles, and "sell" them to facility operators that do not provide any type of treatment services or regular, all the while billing insurance plans. Some of the individuals involved in this practice have been quoted in news articles as acknowledging that the practice may be wrong; however, they also claim that the practice is so ubiquitous in California and the nation that they would have no clients at all if they did not engage. As a result, some facility operators keep interventionists on retainer, often for \$5,000 to \$10,000 a month, regardless of how many clients an interventionist refers to them in order to remain in business. After clients' insurance coverage is exhausted, unscrupulous facility operators have been allegedly dumping those clients in the streets where they continue their addictions. In many news articles, the issue is mostly attributed to facilities that do not require state licensure or oversight, known as sober living homes or recovery residences.
- 3) *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 which preyed on those with SUDs in order to bilk insurance companies out of millions. 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.

- 4) *Senate Health Committee informational hearing and subsequent legislation.* 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 licensed RTFs; insurance coverage; patient referrals; and the state's regulation and oversight of the system, including the inability to impose restrictions on unregulated sober living homes. The hearing provided an overview of issues that had been affecting 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, including CDI's enforcement of unscrupulous sober living home operators that had been unlawfully providing services. The goal of the hearing was to examine the issues and to seek strategies and policies that would prevent unscrupulous individuals from exploiting the various industries that are supposed to help treat those with SUDs; to recognize federal and state protections for those with disabilities, including their housing rights and options for supportive housing at sober living homes; and to ensure that policies are not enacted, either at the local or state level, that will limit the number of recovery or treatment options for those who need them.

The Legislature passed, and Governor Brown signed, a package of bills that aimed to address the emerging issues in the SUD treatment and recovery realm. SB 1228 (Lara, Chapter 792, Statutes of 2018) prohibits facilities that are licensed or certified by DHCS, and anyone associated with them, from gaining financially for referring a person to treatment, also known as “patient brokering.” SB 992 (Hernandez, Chapter 784, Statutes of 2018) and AB 3162 (Friedman, Chapter 775, Statutes of 2018) made several changes to licensing statute for RTFs, particularly requiring RTFs and other facilities under DHCS’s purview to disclose certain business relationships, including with sober living homes, and requiring all RTF licensed services to be provided within the structures notated on an RTF’s license.

- 5) *Related legislation.* SB 349 (Umberg) requires every treatment provider, as defined, operating in the state to adopt and make available a client bill of rights that ensures those seeking substance use disorder treatment have the right to safe and ethical treatment. Prohibits treatment providers from making false or misleading statements in marketing or advertising, as specified. *SB 349 is scheduled to be heard in this Committee on March 17, 2021.*

SB 434 (Bates) prohibits specified 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. *SB 434 was heard in this Committee on March 10, 2021, and passed out by a vote of 11-0.*

- 6) *Prior legislation.* SB 1086 (Umberg of 2020) was substantially similar to SB 349 (Umberg). *SB 1086 was not heard in this Committee because of restraints caused by the COVID-19 pandemic.*

SB 589 (Bates of 2019) and SB 863 (Bates of 2020) were substantially similar to SB 434. *SB 589 was vetoed by Governor Newsom because it referenced recovery residences and third parties. SB 863 was not heard in this Committee because of restraints caused by the COVID-19 pandemic.*

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.

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.

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.

- 7) *Amendments.* The author requests that the Committee approve an amendment that, in the case of including license and certification information in any advertising or marketing, a DHCS-licensed RTF or certified program could make a statement that it is licensed or certified and also provide a link to its website where the information would be available.

SUPPORT AND OPPOSITION:

Support: None received

Oppose: None received

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