

Date of Hearing: June 8, 2021

ASSEMBLY COMMITTEE ON HEALTH
Jim Wood, Chair
SB 541 (Bates) – As Amended June 2, 2021

SENATE VOTE: 37-0

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 (DHCS) to provide substance use disorder (SUD) treatment services to disclose information about its license or certification, including the license or certification number and expiration date, in specified circumstances. Specifically, **this bill:**

- 1) Requires a DHCS licensed alcoholism or drug abuse recovery or treatment facility (RTF) and an alcohol and other drug treatment program (AOD) 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 AOD program;
 - b) Posted on the internet website of the RTF in a clear and conspicuous manner the following language and a link to DHCS' website, that contains the license number and expiration date: "Licensed by the State Department of Health Care Services";
 - c) Included in any print, audio, or electronic advertising or marketing of the RTF in a clear and conspicuous manner. For purposes of complying with this bill, permits the RTF to include the following language and a link to DHCS' internet website that contains the license number and expiration date: "Licensed by the State Department of Health Care Services.";
 - d) Posted on the internet website of the AOD program or the services provided by the program in a clear and conspicuous manner the following language and a link to DHCS' website that contains the certification number and expiration date: "Certified by the State Department of Health Care Services"; and,
 - e) Included in any print, audio, or electronic advertising or marketing of the AOD program or the services provided by the program in a clear and conspicuous manner. For purposes of complying with this bill permits the AOD program to include the following language and a link to DHCS' internet website that contains the certification number and expiration date: "Certified by the State Department of Health Care Services."

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 and to develop standards and regulations for AOD treatment recovery services describing the minimal level of service quality required of the service providers to qualify for and obtain state certification.
- 3) Requires a DHCS licensed RTF or certified AOD 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 SUD 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.
- 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.”

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, over the past few years, the Legislature has recognized that consumers with SUDs have disabling conditions and that these consumers and their families are vulnerable. However, there are no provisions in law that require 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 RTF or certified AOD 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 facility or program to include its licensing information on their website or electronic communications and all marketing materials. The author concludes, 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.**
 - a) **Treatment Facility Licensing and Certification.** DHCS has sole authority to license facilities that provide 24-hour residential nonmedical services to eligible adults who are recovering from problems related to AOD misuse or abuse. Licensure is required when at least one of the following services is provided: detoxification; group sessions; individual sessions; educational sessions; or, AOD abuse recovery or treatment planning. Additionally, facilities may be subject to other types of permits, clearances, business taxes, or local fees that may be required by the cities or counties in which the facilities are located. Many facilities licensed as RFTs by DHCS are also certified by DHCS. Other non-residential, outpatient programs (AOD programs) may also be certified by DHCS; but certification is not mandatory. Certification by DHCS identifies those facilities that exceed minimum levels of service quality and are in substantial compliance with State program standards, specifically the Alcohol and/or Other Drug Certification Standards.

DHCS does not license alcohol and drug residential treatment programs with six or less beds, known as "sober living homes."

- 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.** Orange County, in a support position, states that as opioid addiction has soared, unscrupulous rehab operators have rushed in to take advantage of mandatory behavioral health treatment coverage required by the federal Patient Protections and Affordable Care Act. Consumers with SUDs have disabling conditions and these consumers and their families are vulnerable. However, there are no provisions in code that require for licensure or certification information for state-approved treatment entities to be posted publicly online and freely given to those who ask for it. Additionally, there are facilities currently online that purport to be licensed by the DHCS and the Department of Social Services, when both departments have confirmed that these facilities are not. Orange County states that this bill would rectify this loophole by requiring a licensed or certified facility or program to disclose its license number and expiration date, to any individual who inquires about the information and to be included in all marketing materials. Orange County concludes that failure to disclose the information would be investigated by DHCS and follow the consequences established in SB 1228 (Lara), Chapter 792, Statutes of 2018.

4) **RELATED LEGISLATION.**

- a) 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 pending referral in Assembly Rules Committee.
- b) 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 is pending hearing in the Assembly Health Committee.

5) **PREVIOUS LEGISLATION.**

- a) SB 1086 (Umberg) of 2020, was substantially similar to SB 349. SB 1086 was not heard because of the shortened Legislative calendar caused by the COVID-19 pandemic.
- b) SB 589 (Bates) of 2019 and SB 863 (Bates) of 2020 were substantially similar to SB 434. 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.

- c) 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.
- d) 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.
- e) SB 1228 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 Association of Alcohol and Drug Program Executives
County of Orange

Opposition

None on file.

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