
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: SB 1228 **Hearing Date:** April 24, 2018
Author: Lara
Version: March 21, 2018
Urgency: No **Fiscal:** Yes
Consultant: SJ

Subject: *Substance Use Disorder: Licensed and Certified Treatment Programs*

HISTORY

Source: Recovery Reform Now

Prior Legislation: SB 636 (Bradford), never heard in Senate Health 2017
AB 285 (Melendez), held on suspense in Assembly Appropriations 2017
SB 1283 (Bates), failed passage in Senate Health 2016
AB 2255 (Melendez), held on suspense in Assembly Appropriations 2016
AB 848 (Stone), Ch. 744, Stats. of 2015
AB 2491 (Nestande), held on suspense in Senate Appropriations 2014

Support: Breathe Life Healing Centers; California Council of Community Behavioral Health Agencies; Consumer Attorneys of California; Young People in Recovery

Opposition: Disability Rights of California

PURPOSE

The purpose of this bill is to: 1) prohibit a licensed alcoholism or drug abuse recovery or treatment facility from referring a patient to a facility, residence, or dwelling that is not either licensed or certified, or from engaging in patient brokering, as defined; 2) require the Department of Health Care Services (DHCS) to establish a program to approve organizations that certify facilities, residences, or dwellings that provide substance use disorder continuum of care, but are not licensees, and meet specified requirements that include a ban on patient brokering; and 3) require an alternative custody program that provides substance use disorder continuum of care to either be license or certified, as specified.

Existing federal law prohibits, pursuant to the federal Fair Housing Act (FHA), housing discrimination on the basis of race, color, religion, sex, handicap, familial status, and national origin. (42 U.S.C. §3601 et seq.)

Existing federal law defines “handicap” as a physical or mental impairment which substantially limits one or more major life activities, a record of having such an impairment, and being regarded as having such an impairment. “Handicap” does not include current, illegal use of or addiction to a controlled substance. (42 U.S.C. §3602, subd. (h).)

Existing law provides that the Department of Health Care Services (DHCS) has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities. (Health & Saf. Code, §11834.01.)

Existing law defines “alcoholism or drug abuse recovery or treatment facility” or “facility” means any premises, place, or building that provides 24-hour residential nonmedical 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. (Health & Saf. Code, §11834.02, subd. (a).)

Existing law requires a licensee to provide at least one of the following nonmedical services: recovery, treatment, or detoxification services. Requires DHCS to adopt regulations requiring records and procedures appropriate for the type of service provided. Provides that the records and procedures can include all of the following: admission criteria; intake process; assessments; recovery, treatment, or detoxification planning; referral; documentation of provision of recovery, treatment, or detoxification services; discharge and continuing care planning; or indicators of recovery, treatment, or detoxification outcomes. (Health & Saf. Code, §11834.26)

Existing law permits a sheriff or a county director of corrections to offer a program to eligible county jail inmates to participate in a voluntary alternative custody program, as specified. Permits a sheriff or county director of corrections to enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote alternative custody placements. (Pen. Code, §1170.06, subd. (a).)

Existing law provides that an alternative custody program shall include, but is not limited to, the following:

- Confinement to a residential home during the hours designated by the sheriff or the county director of corrections.
- Confinement to a residential drug or treatment program during the hours designated by the county sheriff or the county director of corrections.
- Confinement to a transitional care facility that offers appropriate services.
- Confinement to a mental health clinic or hospital that offers appropriate mental health services. (Pen. Code, §1170.06, subd. (b).)

Existing law provides that inmates sentenced to a county jail for a determinate term of imprisonment pursuant to a misdemeanor or a felony pursuant to Section 1170 subdivision (h), and only those persons, are eligible to participate in the alternative custody program authorized by this section, except as otherwise provided. (Pen. Code, §1170.06, subd. (c).)

Existing law provides that the following county jail inmates are not eligible to participate in the alternative custody program:

- The person was screened by the sheriff or the county director of corrections using a validated risk assessment tool and determined to pose a high risk to commit a violent offense.
- The person has a history, within the last 10 years, of escape from a facility while under juvenile or adult custody, including, but not limited to, any detention facility, camp, jail, or state prison facility.

- The person has a current or prior conviction for an offense that requires the person to register as a sex offender. (Pen. Code, §1170.06, subd. (d).)

Existing law provides that in order to implement alternative custody, the sheriff or the county director of corrections shall create, and the participant shall agree to and fully participate in, an individualized treatment and rehabilitation plan. When available and appropriate for the individualized treatment and rehabilitation plan, the sheriff or the county director of corrections shall prioritize the use of evidence-based programs and services that will aid in the participant's successful reentry into society while he or she takes part in alternative custody. Case management services shall be provided to support rehabilitation and to track the progress and individualized treatment plan compliance of the inmate. (Pen. Code, §1170.06, subd. (f)(1).)

Existing law provides that the sheriff or his or her designee or the county director of corrections or his or her designee shall permit program participants to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, participate in life skills or parenting training, utilize substance abuse treatment services, or seek medical, mental health, and dental assistance based upon the participant's individualized treatment and release plan. Participation in other rehabilitative services and programs may be approved by the case manager if it is specified as a requirement of the inmate's individualized treatment and rehabilitative case plan. (Pen. Code, §1170.06, subd. (j)(1).)

Existing law prohibits, under the Fair Employment and Housing Act (FEHA), discrimination against any person in any housing accommodation on the basis of race, color, religion, sex, sex, gender, gender identity, gender expression, sexual orientation, marital status, national origin, ancestry, familial status, source of income, disability, or genetic information of that person. Specifies that discriminatory land use regulations, zoning laws, and restrictive covenants are unlawful acts. (Gov. Code, §12955.)

This bill establishes the Substance Use Disorder Patient Protection Act.

This bill defines "certified" or "certify" as verified by an approved organization as providing specified services in accordance with Section 11977.15.

This bill defines "department" as DHCS.

This bill defines "licensee" as an alcoholism or drug abuse recovery or treatment facility licensed pursuant to this division.

This bill defines "patient brokering" as, directly or indirectly through the use of another person, entity, or technology, referring or recommending a patient or other individual to a provider of substance use disorder continuum of care in exchange, or anticipation of an exchange, for any economic benefit, including, but not limited to, a rebate, refund, commission, preference, patronage dividend, discount, or other item of value.

This bill defines "substance use disorder continuum of care" as strategies and services designed to promote behavioral health, prevent alcohol and substance use disorders, treat alcohol and substance use disorders, and support recovery.

This bill provides that a licensee or an employee of a licensee shall not do any of the following:

- Refer a patient to a facility, residence, or dwelling that is not either a licensee or certified.
- Engage in patient brokering.

This bill provides that DHCS shall establish a program to approve organizations that certify facilities, residences, or dwellings which provide substance use disorder continuum of care, are not licensees, and meet the requirements listed below.

This bill provides that a facility, residence, or dwelling that provides substance use disorder continuum of care and is not a licensee shall only be certified pursuant to this section if it provides all of the following:

- Emergency response plan for patients.
- Nondiscrimination policy based on race, ethnicity, language, religion, gender, gender identity, sexual orientation, and any other state-recognized protected category.
- Staff cultural competence.
- Access to overdose prevention measures available without a prescription.
- Accounting system that documents individual resident financial transactions.
- Prohibition on work as a precondition for treatment and requirements that any work performed be subject to a paid work agreement.
- Resident code of conduct.
- Reporting of patient deaths to the certifying organization.
- Transparent policies and consumer protections, including policies and procedures for disclosing financial obligations, such as forfeiture of any deposits and fees resulting from a premature departure, and a written contract specifically describing services to be provided.
- Ban on patient brokering.
- Regular inspections by the certifying organization.
- Any other requirements the department deems necessary for the best interests of individuals needing a substance use disorder continuum of care.

This bill provides that the Substance Use Disorder Patient Protection Act shall not be construed to limit the ability of the Attorney General or any other law enforcement officer to bring a civil or criminal action against any entity or individual that is a licensee or certified.

This bill provides that if an alternative custody program provides substance use disorder continuum of care, the provider of the program shall either be a licensee or certified.

This bill provides that the terms “substance use disorder continuum of care,” “licensee,” and “certified” shall have the same meanings as those terms are defined in Health and Safety Code section 11977.5.

This bill makes findings and declarations about the opioid epidemic and its toll on overdoses in the state; the growing need for treatment services and the surge in patient brokering and trafficking because of the need for services; and the state’s interest in increasing the availability of quality recovery services to encourage patients’ recovery and stability.

COMMENTS

1. Need for This Bill

According to the author:

The need for quality [substance use] recovery services has grown, driven by the opioid crisis and federal laws that require insurance coverage for substance use disorders. The Mental Health Parity and Addiction Equity Act of 2008 and Affordable Care Act of 2010 made insurance for substance abuse disorders available to many Californians for the first time.

The federal Substance Abuse and Mental Health Services Administration recognizes the need for quality services along the substance use disorder continuum of care, which includes inpatient recovery, outpatient services, and recovery residences that provide stable housing and support for people in long-term recovery.

...Desperation is fueling a surge in patient brokering or patient trafficking, where patients are referred to recovery services that do not meet their needs and put them at risk of relapse. Numerous news articles have shown the dreadful cost of brokering to patients and their families. Patients have been recruited with the offer of cash payments or drugs. Patients with acute medical needs have even died after being referred to facilities that did not meet their needs. Insurance fraud and overbilling for medical services can result from patient brokering.

The Department of Healthcare Services licenses and certifies inpatient and outpatient treatment centers. But lack of oversight in California leaves patients vulnerable to insurance fraud and referral to unscrupulous providers that do not follow the highest standards of care. While licensed substance use disorder treatment facilities may provide non-medical services including referrals, patient referral by non-medical personnel is largely undefined and unregulated.

...SB 1228, the Substance Use Disorder Patient Protection Act, would define patient brokering as “referring or recommending a patient or other individual to a provider of substance use disorder continuum of care in exchange” for financial benefit, and give DHCS oversight to ban the practice by licensed facilities and their personnel.

SB 1228 will require referrals from licensed facilities or county-administered alternative custody programs only to those programs that meet high standards of patient care and protect patients from physical, sexual or financial abuse. SB 1228 standards of care are consistent with those recommended by the National Association of Recovery Residences.

Federal law has broad protections for group housing arrangements including for people in recovery from substance use disorders.... SB 1228 recognizes the importance of such housing to long-term recovery and the need to increase access to services.

...Having access to high quality recovery services for the formerly incarcerated or those in alternative custody programs is critical. One California county drug court program has recognized the need to improve care across the substance use disorder continuum of care, including in recovery residences that are designed to promote recovery and prevent relapse while patients receive outpatient care....

...[E]xpanded oversight by California is essential to protecting patients and ensuring their long-term recovery.

2. Background

Residential Treatment Facilities

Residential Treatment Facilities (RTFs) licensed by DHCS, based on what is commonly referred to as the social model, provide recovery, treatment, or detoxification services. The services provided by these social model RTFs include group and individual counseling, educational sessions, and alcoholism or drug abuse recovery and treatment planning. Social model RTFs are authorized to provide clients with first aid and emergency care. Since the passage of AB 848 (Stone, Chapter 744, Statutes of 2015), RTFs can apply to DHCS for an additional license to provide incidental medical services by a licensed physician and surgeon or other health care practitioner, as specified. DHCS licenses about 1,020 RTFs. As part of their licensing functions, DHCS conducts reviews of licensed RTFs at least once every two years, or as necessary; checks for compliance with statute and regulations to ensure the health and safety of clients; investigates all complaints; and has the authority to suspend or revoke an RTF's license for a violation of statute or regulations.

Patient Brokering

Several news articles highlight the issue of “patient brokering,” whereby individuals—sometimes called “interventionists”—lure clients seeking substance use disorder 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 monitoring, while billing the insurance plan. (See <<https://www.ocregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction/>>; <<https://www.nytimes.com/2015/05/31/nyregion/three-quarter-housing-a-choice-for-recovering-addicts-or-homelessness.html>>; <<http://www.citywatchla.com/index.php/los-angeles-for-rss/11340-california-s-rehab-system-is-in-crisis-it-s-time-to-borrow-a-page-from-florida-s-playbook>>; <<https://www.addictionpro.com/article/special-report-two-states-ocean-view-and-ethical-cloud>>[all as of Apr. 18, 2018].) Some 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 that they would have no clients at all if they did not engage in it. As a result, some facility operators keep interventionists on retainer, often for \$5000 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, facility operators have allegedly been dumping them in the streets. In many news articles, the issue is largely attributed to facilities that do not require state licensure or oversight, including sober living homes.

Housing for the Disabled

The U.S. Department of Justice (DOJ) and Department of Housing and Urban Development (HUD) are responsible for enforcing the federal Fair Housing Act (FHA). In a joint statement issued in November 2016, the DOJ and HUD clarified that although the term “group home” does not have a specific legal meaning, land use and zoning officials as well as courts have referred to some residences for persons with disabilities as group homes.

(<https://www.justice.gov/opa/file/912366/download>.) In its statement, the departments defined the term “group home” as a dwelling that is or will be occupied by unrelated persons with disabilities, and specified that the term includes “homes occupied by persons in recovery from alcohol or substance abuse, who are persons with disabilities under the [FHA].” The statement indicates that although some group homes provide residents with in-home supportive services, the provision of support services is not required for a group home to be protected under the FHA. In California, the FEHA provides substantially similar protections as the FHA for those with disabilities.

3. California Department of Insurance (CDI) Investigation

A recent CDI investigation highlights the growing concern surrounding sober living homes. In November 2016, the CDI issued a press release about an investigation that resulted in the arrest of the operators of some Southern California sober living homes, Community Recovery of Los Angeles (CRLA). (<<http://www.insurance.ca.gov/0400-news/0100-press-releases/2016/release128-16.cfm>> [as of Apr. 18, 2018].) 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. The affected insurers paid nearly \$44 million before discovering the suspected fraud and stopping payments to CRLA. CRLA 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 indicates that CRLA operated both sober living homes, which were claiming to be licensed, and DHCS-certified outpatient programs.

4. Alternative Custody Program (ACP)

Current law permits a sheriff or a county director of correction to offer a program to inmates who have been committed to a county jail to participate in a voluntary ACP in lieu of confinement in county jail. The sheriff or county director of corrections is permitted to enter into contracts with county agencies, not-for-profit organizations, for-profit organizations, and others in order to promote ACP placements. ACPs include, but are not limited to, confinement in:

- A residential home during the hours designated by the sheriff or the county director of corrections;
- A residential drug or treatment program during the hours designated by the sheriff or the county director of corrections;
- A transitional care facility that offers appropriate services; and,
- A mental health clinic or hospital that offers appropriate mental health services.

The sheriff or county director of corrections is required to create, and the ACP participant is required to fully participate in, an individualized treatment and rehabilitation plan that prioritizes the use of evidence-based programs and services that will aid in the participant's successful reentry into society while he or she takes part in the ACP. ACP participants are allowed to seek and retain employment in the community, attend psychological counseling sessions or educational or vocational training classes, participate in life skills or parenting training, use substance use disorder treatment services, or seek medical, mental health, and dental assistance based upon his or her individualized treatment and release plan.

This bill requires that if an ACP provides substance use disorder continuum of care, the provider of the program must be a licensee or certified.

5. Amendment

The author intends to make a technical amendment to clarify that certified facilities, residences, or dwellings that are not licensed RTFs do not provide treatment services. The amendment reads:

Section 11977.15(b)(6):

Prohibition on work as a precondition for ~~treatment residence~~ and requirements that any work performed be subject to a paid work agreement.

6. Argument in Support

According to the California Council of Community Behavioral Health Agencies:

SB 1228, the Substance Use Disorder Patient Protection Act, will create much needed safeguards for patients in recovery from substance use disorders (SUD). The bill will prohibit recovery programs currently licensed by the state of California from engaging in patient brokering or trafficking. Additionally, the bill will require licensed recovery programs to refer patients only to certified facilities that meet high standards of patient care and protect patients from physical or financial abuse.

Specifically, the bill will require: maintaining life-saving overdose prevention measures that are available without a prescription, such as Naloxone; prohibiting work as a precondition of treatment and require paid work agreements; nondiscrimination rules and staff cultural competence training; maintaining a resident code of conduct; reporting patient deaths; and maintaining transparent policies and consumer protection standards, which includes a written contract specifically describing services to be provided to patients.

By strengthening oversight across the SUD continuum of care, SB 1228 will help guarantee that no matter what their needs, patients will find a safe place to recover. Research shows that the patients in recovery from substance use are at their most vulnerable period of relapse in the first four years of treatment. Yet, that is exactly when patients are most susceptible to unscrupulous practices, including patient brokering and insurance fraud committed by treatment

providers. More than 1900 Californians died from opioid overdoses in 2016, and many more have died from excessive alcohol use and other substances. By strengthening the SUD continuum of care, California can become a national leader in the fight against addiction.

7. Argument in Opposition

According to Disability Rights California:

We commend the author for seeking to improve the quality of recovery services and prohibit the practice of patient brokering. However, a certification scheme that is used to deprive individuals with alcohol and drug addiction disabilities the opportunity to reside in a residence because of their disability imposes an unlawful restriction protected by both the state and federal Fair Housing Act. Additionally, it restricts housing opportunities for individuals seeking to live in supportive environments, and creates an expensive state regulatory scheme to oversee the process.

The Federal Fair Housing Amendments Act prohibits discrimination against individuals with disabilities in housing and housing-related activities....The Fair Housing Act recognizes that community opposition has too often led to state and local restrictions that put burdensome restrictions on persons with disabilities and particularly those that reside in group residences. Local prejudices and fears often motivate discriminatory intent and animus toward those that live in the residences. NIMBY fears have been well documented and are very often the impetus for restrictive regulations. The Fair Housing Act prohibits those practices. SB 1228 steps over that line.

...The practical effect of this bill will eliminate housing opportunities for persons with disabilities in the midst of both treatment and homelessness crisis in the state. The very terms of the certification program evidence how that will happen....[R]esidences that are not certified cannot receive referrals and individuals with disabilities who may choose to live in non-certified residence cannot do so. Those residences that cannot maintain certification would be forced to close their doors. The loss of sober living homes is a tragic result for those in need of an affordable supportive home for maintaining sobriety.

...Sober living homes are meant to be a way for people recovering from drug addiction or alcoholism to live in an affordable, sober environment. People who want to live together to maintain sobriety cannot be subject to regulations that will be intrusive and regularly interfere with their lives.

-- END --