

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

SB 349 (Umberg)
Version: March 8, 2021
Hearing Date: April 6, 2021
Fiscal: Yes
Urgency: No
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SUBJECT

California Ethical Treatment for Persons with Addiction Act

DIGEST

This bill establishes the California Ethical Treatment for Persons with Addiction Act. The bill creates a series of requirements for treatment providers and makes unlawful specified business practices to provide protection for substance use disorder treatment clients and their families.

EXECUTIVE SUMMARY

According to the National Center for Health Statistics, from 1999 to 2017, the age-adjusted rate of drug overdose deaths nearly quadrupled.¹ Tragically, the problem has only accelerated, with over 81,000 drug overdose deaths in the United States in the 12 months ending in May 2020.² This represents the highest number of overdose deaths ever recorded in a 12-month period. The Centers for Disease Control and Prevention (CDC) issued a series of recommendations in response to the surge, among them was expanding awareness about and access to and availability of treatment for substance use disorders.

California is home to many drug and alcohol treatment facilities. However, widespread reports of abuse in the industry have led to calls for stronger regulations and oversight. This bill establishes the California Ethical Treatment for Persons with Addiction Act. It aims to set in place guardrails for the industry and to provide stronger enforcement mechanisms to rein in the most untoward practices.

¹ NCHS Fact Sheet, *NCHS Data on Drug Overdose Deaths* (June 2020) NCHS, https://www.cdc.gov/nchs/data/factsheets/factsheet_drug_poisoning.pdf [as of Mar. 18, 2021]. All further internet citations are current as of March 18, 2021.

² Press Release, *Overdose Deaths Accelerating During COVID-19* (December 17, 2020) Centers for Disease Control and Prevention, <https://www.cdc.gov/media/releases/2020/p1218-overdose-deaths-covid-19.html>.

The bill is sponsored by the California Consortium of Addiction Programs & Professionals and the National Alliance for Model State Drug Laws. It is supported by a number of groups, including the County Behavioral Health Directors Association of California and Advocates for Responsible Treatment. There is no known opposition. This bill passed the Senate Health Committee on a vote of 10-0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Grants the State Department of Health Care Services (“the department”) sole authority to license adult alcoholism or drug abuse recovery or treatment facilities. (Health & Saf. Code § 11834.01.)
- 2) Requires the department to issue new licenses for a period of two years to those programs that meet specified criteria and requires them to conduct onsite program visits for compliance at least once during the license period. The department has authority to conduct additional, announced or unannounced site visits to facilities for the purpose of reviewing for compliance with all applicable statutes and regulations. (Health & Saf. Code § 11834.01.)
- 3) Requires the department to implement a program certification procedure for alcohol and other drug treatment recovery services with the goal of ensuring quality assurance of alcohol and other drug programs and expanding the availability of funding resources. The department, after consultation with the County Behavioral Health Directors Association of California (CBHDAC), and other interested organizations and individuals, shall 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. However, compliance with these standards shall be voluntary on the part of programs. (Health & Saf. Code § 11830.1.)
- 4) Prohibits specified persons, programs, or entities from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery or treatment services, including alcoholism or drug abuse recovery or treatment facilities, their owners, officers, or employees, as specified. (Health & Saf. Code § 11831.6.)
- 5) Requires licensed facilities and certified programs to disclose to the department any ownership or control of, or financial interest in, a recovery residence, and any contractual relationship with an entity that regularly provides professional services or addiction treatment or recovery services to clients of programs certified or facilities licensed by the department, if the entity is not part of the

program certified or facility licensed by the department. (Health & Saf. Code § 11833.05.)

- 6) Authorizes the department to investigate and penalize facilities in violation. (Health & Saf. Code § 11831.7.)

This bill:

- 1) Establishes the California Ethical Treatment for Persons with Addiction Act.
- 2) Provides the following definitions:
 - a) “certified treatment program” means an outpatient program certified pursuant to Health and Safety Code section 11830 et seq.;
 - b) “treatment facility” means a facility that is, or is required to be, licensed to provide substance use disorder treatment services, including a residential alcoholism or drug abuse recovery or treatment facility licensed pursuant to Health and Safety Code section 11834.01 et seq.; and
 - c) “treatment provider” means a licensed treatment facility or a certified treatment program.
- 3) Requires treatment providers to adopt, and make available to all clients and prospective clients, a client bill of rights that ensures that persons seeking treatment for a substance use disorder have specified rights. They are also required to maintain records of referrals made to or from recovery residences, including, if available, information about where the client referred by a treatment provider ultimately elected to go.
- 4) Provides that marketing or advertising materials published or disseminated by a treatment provider must provide accurate and complete information, in plain language that is easy to understand, which includes:
 - a) information about the types and methods of services provided or used, and information about where they are provided, as specified; and
 - b) the treatment provider’s name and brand.
- 5) Requires any certified treatment program providing outpatient services that has a relationship with any other entity with a housing component to adhere to the requirements in Section 11833.05 of the Health and Safety Code and to clearly provide this information about its program to prospective clients and to the department, and shall distinguish itself from a licensed residential treatment facility.
- 6) Declares it unlawful for a treatment provider to:
 - a) knowingly and willfully make a materially false or misleading statement, or provide false or misleading information, about the nature, identity, or location of substance use disorder treatment services in advertising

- materials, on a call line, on an internet website, or in any other marketing materials;
- b) knowingly make a false or misleading statement about their status as an in-network or out-of-network provider.
- 7) Declares it unlawful for any person or entity to:
- a) knowingly provide, or direct any other person or entity to provide, false or misleading information about the identity of, or contact information for, any treatment provider;
 - b) knowingly include false or misleading information about the internet address of any treatment provider's website, or to surreptitiously direct or redirect the reader to another website;
 - c) suggest or imply that a relationship with a treatment provider exists, unless the treatment provider has provided express, written consent to indicate that relationship, and made the required disclosure pursuant to Section 11833.05; or
 - d) knowingly make a materially false or misleading statement about substance use disorder treatment services.
- 8) Makes a violation of certain provisions a deceptive act or practice under the Unfair Competition Law regardless of whether any consumer was actually misled or deceived.
- 9) Provides a cause of action for individuals or entities harmed by violations to seek specified damages, including treble damages.
- 10) Authorizes the Attorney General, district attorneys, and other specified entities to seek civil penalties, and injunctive and declaratory relief.
- 11) Charges the department with promulgating regulations to ensure compliance with these provisions and authorizes it to investigate and penalize violations.

COMMENTS

1. Stated intent of the bill

According to the author:

The United States is in the grip of an epidemic of substance use disorders, with an average of 185 Americans dying of overdose and addiction-related complications every day. While California has many excellent treatment programs, the unsafe and unethical practices of other system actors are steering these vulnerable people away from the care these programs provide and the treatment they desperately need. Abuses

within the treatment industry have become so prevalent and common that they have been given a name: The Florida Shuffle, a cycle in which recovering users are wooed aggressively by rehabs and freelance “patient brokers” in an effort to fill beds and collect insurance money. Southern California’s “Rehab Riviera” is well known to be an area in which a network of rehab facilities exist in a quasi-medical realm where evidence-based care is rare, licensed medical staffers are optional, conflicts of interest are rampant, and regulation is stunningly lax. The result is preventable harm to some of California’s most vulnerable residents and unnecessary pain for their loved ones. This bill seeks to end these predatory behaviors by establishing uniform ethical standards for treatment programs, and mechanisms for enforcing these standards.

The California Consortium of Addiction Programs & Professionals, the sponsor of the bill, write in support:

SB 349 will create the first “Clients’ Bill of Rights” for addiction patients. This important statement about what clients should expect from their treatment provider is a valuable tool for informing clients about services they are obliged to receive and the ethical way in which they should be provided. This will empower clients to clearly understand their rights and to discuss any failure to provide adequate services with their provider.

Writing in support, the County Behavioral Health Directors Association of California states:

SB 349 establishes a standard set of ethics for the substance abuse treatment industry in order to protect individuals living with a Substance Use Disorder (SUD) and their families. According to research conducted by the CDC, in 2018, 67,367 drug overdose deaths occurred in the United States. SB 349 seeks to prevent these deaths by hindering the development of inadequate facilities. For example, Southern California’s “Rehab Riviera” is well known to be an area in which a network of rehab facilities exist in a quasi-medical realm where questions have previously been raised regarding the application of evidence-based care, use of licensed medical staff, potential conflicts of interest, and a relaxed regulatory environment. When encountering a similar situation, the Florida Circuit Court empaneled a grand jury in 2016 to study the SUD environment and treatment practices. The National Alliance for Model State Drug Laws combined several of the grand jury’s recommendations into a Model Ethics Act for states.

2. Cracking down on deceptive and dangerous treatment facility practices

“Rehab Riviera” references an area comprised of Los Angeles, Orange, Riverside and San Bernardino counties where there are more than 1,000 centers operating.³ It was also the title of an investigation into the Southern California treatment facility industry and the fraudulent schemes and dangerous practices that abounded. These practices included deceptive advertising, failure to disclose what services were being provided, insurance fraud, undisclosed relationships with unlicensed residential facilities, and releasing patients in an unethical manner, potentially exacerbating the homelessness crisis in Southern California.

This bill takes aim at many of these practices and seeks to restore a more client-centered regulatory approach. It requires every licensed treatment facility or certified treatment program (together “treatment providers”) to adopt and make available to clients a bill of rights ensuring patients are afforded basic rights and protections.

The bill also goes directly at the deceptive practices many treatment providers were found to have engaged in. It requires marketing or advertising materials to be written in easy to understand language and include only accurate and complete information, including the provider’s name and brand. The information must detail the types and methods of services provided or used, as specified, and the location where they are provided.

To ensure greater transparency, certified treatment programs providing outpatient services that have a relationship with entities with a housing component must follow certain guidelines and make this clear to both prospective clients and the department. They must distinguish themselves from licensed residential treatment facilities. To create more of a paper trail within the web of programs and services, the bill requires treatment providers to maintain records of referrals made to or from recovery residences, including information about where the clients ultimately elected to go.

Drawn right from the investigations and the model law referenced above, the bill makes it unlawful for treatment providers to:

- knowingly and willfully make a materially false or misleading statement, or provide false or misleading information, about the nature, identity, or location of substance use disorder treatment services in advertising materials, on a call line, on an internet website, or in any other marketing materials; or
- knowingly make a false or misleading statement about their status as an in-network or out-of-network provider.

³ Teri Sforza, et al., *How some Southern California drug rehab centers exploit addiction* (May 21, 2017) Orange County Register, <https://www.ocregister.com/2017/05/21/how-some-southern-california-drug-rehab-centers-exploit-addiction/>.

It further makes it unlawful for any person or entity to:

- knowingly provide, or direct any other person or entity to provide, false or misleading information about the identity of, or contact information for, any treatment provider;
- knowingly include false or misleading information about the internet address of any treatment provider's website, or to surreptitiously direct or redirect the reader to another website;
- suggest or imply that a relationship with a treatment provider exists, unless the treatment provider has provided express, written consent to indicate that relationship, and made the required disclosure pursuant to Section 11833.05; or
- knowingly make a materially false or misleading statement about substance use disorder treatment services.

The bill prohibits a treatment provider from requesting, receiving, or retaining payment for substance use disorder treatments provided to a client by a treatment provider as a result of this unlawful conduct. The bill further declares that a violation of the above provisions, excluding the section regarding the client bill of rights, constitutes a "deceptive act or practice" for purposes of the Unfair Competition Law (UCL), Business and Professions Code Section 17200 et seq., regardless of whether a consumer was misled or deceived. This provides the predicate offense for those so authorized to bring civil actions against violators for the remedies provided for under the UCL.

The bill subjects a person or entity that "knowingly violates any provision" of these same sections to a "civil fine" of no more than \$20,000 per violation. However, another provision provides that any person or entity who violates any of the provisions of the bill is subject to a "civil monetary penalty" of no more than \$20,000. The former provision is redundant here and the author has agreed to remove it from the bill. The bill will also be amended to make stylistic changes in terminology, including replacing the word "addiction" with the more inclusive term "substance abuse disorder."

To ensure those harmed by these practices are able to seek redress against those responsible, the bill authorizes any person or entity who suffers any ascertainable monetary loss or property, real or personal, as a result of the conduct declared unlawful above, to bring an action against the treatment provider who committed the violation and against any other person or entity who knowingly aided, abetted, or took part in the violation. Courts are authorized to award all appropriate legal or equitable relief and three times the damages sustained by any person in interest. The court is required to also award reasonable attorney's fees, filing fees, and reasonable costs of suit. To make this latter provision clear, the author has agreed to add language providing for such fees and costs to a "prevailing plaintiff" in such actions.

The bill also authorizes actions to be brought by the Attorney General, a district attorney, and specified others with an ascertainable interest, against violators for

declaratory and injunctive relief, and to recover civil monetary penalties. If the action is successful, the court is required to award attorney's fees, costs of investigation and prosecution, as provided, filing fees, and all other reasonable costs of bringing the action. Given some inconsistencies between the various enforcement provisions, the author has agreed to amendments to consolidate the provisions granting injunctive and declaratory relief and to harmonize the remedies of the remaining provisions.

The department is also given certain obligations and additional authority. It must promulgate regulations to ensure compliance with the bill's provisions. The department is authorized to investigate allegations of violation of these provisions and upon substantiating one, may assess a penalty upon the treatment provider; suspend or revoke the license of a treatment facility, or the certification of a certified program; deny an application for licensure or certification; or recommend disciplinary action, including, but not limited to, termination of employment and suspension or revocation of a license or certification.

SUPPORT

California Consortium of Addiction Programs & Professionals (co-sponsor)

National Alliance for Model State Drug Laws (co-sponsor)

Advocates for Responsible Treatment

California Consortium of Addiction Programs and Professionals

Casa Palmera

Central Valley Recovery Services, Inc.

County Behavioral Health Directors Association of California

Humboldt Recovery Center

A New Path

Opus Health, LLC

The Purpose of Recovery

San Jose City College Alcohol and Drug Studies Program

Stepping Stone of San Diego

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation:

SB 434 (Bates, 2021) prohibits an operator of a licensed alcoholism or drug abuse recovery or treatment facility, a certified alcohol or other drug program, and a licensed mental health rehabilitation center, psychiatric health facility, or social rehabilitation facility, from engaging in various acts, including making a false or misleading

statement about the entity's products, goods, services, or geographical locations. The departments responsible for the respective licensure and certification of such entities are charged with investigating and penalizing violations. This bill is currently in the Senate Human Services Committee.

SB 541 (Bates, 2021) requires a facility licensed or program certified by the department to disclose its license or certification number and the date that the license or certification is scheduled to expire in specified circumstances that include, among others, posting on its internet website and in any advertising or marketing in a clear and conspicuous manner. The department is charged with investigating and penalizing violations. This bill is currently in the Senate Appropriations Committee.

AB 381 (Davies & Petrie-Norris, 2021) requires a licensee, at all times, to maintain at least two unexpired doses of naloxone on the premises and have at least one staff member on the premises who knows the specific location of the naloxone and who has been trained to administer it. The bill provides a qualified immunity for trained staff members from civil or criminal liability. This bill is currently in the Assembly Health Committee.

AB 1098 (Daly, 2021) establishes the Excellence in Recovery Residence Housing Act. It requires the development and publishing of consensus-based guidelines and nationally recognized standards for counties to promote the availability of high-quality recovery residence housing for individuals with a substance use disorder and to dissuade the use of, contracting with, or referral to, recovery residences that do not meet these guidelines and standards. This bill is currently in the Assembly Health Committee.

AB 1158 (Petrie-Norris, 2021) requires a licensee operating an alcoholism or drug abuse recovery or treatment facility to maintain specified insurance coverages, including, among others, commercial general liability insurance and employer's liability insurance. It also requires specified reporting from facilities to government entities contracted with such facilities in connection with serious injuries or deaths. This bill is currently in the Assembly Health Committee.

Prior Legislation:

SB 1086 (Umberg, 2020) was substantially identical to the current bill. It was held under submission in the Senate Health Committee.

SB 992 (Hernandez, Ch. 784, Stats. 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 treatment providers to improve client treatment and provide the department more oversight authority.

SB 1228 (Lara, Ch. 792, Stats. 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 recovery and treatment services, as specified.

AB 3162 (Friedman, Ch. 775, Stats. 2018) made various changes to current law regarding treatment providers including making licenses provisional for one year; requiring services to be specified on the license and provided within the facility, as specified; and, increasing civil penalties for the violation of licensing law.

PRIOR VOTES:

Senate Health Committee (Ayes 10, Noes 0)
