



JENNIFER KENT
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

August 9, 2019

The Honorable Anthony J. Portantino, Chair
Senate Appropriations Committee
State Capitol, Room 2206
Sacramento, CA 95814

Dear Senator Portantino:

ASSEMBLY BILL 919 (AS AMENDED JULY 8, 2019) - OPPOSE

The Department of Health Care Services (DHCS) must inform you of its opposition to Assembly Bill (AB) 919, which would require DHCS to establish an enforcement program for patient brokering, as specified, and would place specific requirements on housing contracts, discounted housing, and discounted transportation for an individual who is seeking recovery or treatment services.

DHCS is supportive of efforts to address the enforcement of patient brokering violations. However, DHCS has adopted an oppose position for AB 919; DHCS has existing authority to enforce patient brokering, and the bill does not grant DHCS or another entity additional authority to oversee the housing provisions required by the bill.

DHCS already has sufficient authority to enforce patient brokering statutes. SB 1228 (Lara, Chapter 792, Statutes of 2018) specifically prohibits the giving or receiving of remuneration or anything of value for the referral of a person seeking substance use disorder treatment. It also authorized DHCS to investigate patient brokering and take appropriate enforcement action. SB 1228 enhanced DHCS' existing regulatory authority to investigate allegations of complaints in licensed and certified alcohol and/or other drug (AOD) treatment facilities and against registered and certified AOD counselors by specifically adding patient brokering provisions. In January 2019, DHCS released Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice 19-002 which provided guidance regarding the implementation of SB 1228.

AB 919 would allow a laboratory or certified outpatient program that leases, manages, or owns housing units to offer housing to their clients as long as they maintain separate contracts for the housing. It would also allow for a DHCS-licensed AOD treatment facility to offer discounted housing to an individual following discharge, as long as specific requirements are met. However, this bill does not identify an oversight authority responsible for monitoring compliance, which may lead to the public misperception that

Honorable Anthony J. Portantino
Page 2
August 9, 2019

DHCS would ensure compliance. DHCS does not have authority to ensure compliance for any activity that is outside of the certified outpatient program's purview.

If you have any questions regarding our position, please feel free to contact me at (916) 440-7500.

Sincerely,

Carol Gallegos, Deputy Director
Legislative & Governmental Affairs
Department of Health Care Services

Enclosure: MHSUDS Information Notice 19-002

cc: The Honorable Assembly Member Cottie Petrie-Norris
State Capitol, Room 4144
Sacramento, CA 95814

Vice Chair and Members, Senate Appropriations Committee
Senate Republican Caucus
Senate Floor Analysis
Department of Finance
CHHSA Legislative Unit
GO Deputy Legislative Secretary



JENNIFER KENT
DIRECTOR

State of California—Health and Human Services Agency
Department of Health Care Services



GAVIN NEWSOM
GOVERNOR

DATE: January 29, 2019

MHSUDS INFORMATION NOTICE NO.: 19-002

TO: COUNTY BEHAVIORAL HEALTH DIRECTORS
COUNTY DRUG & ALCOHOL ADMINISTRATORS
COUNTY BEHAVIORAL HEALTH DIRECTORS ASSOCIATION OF CALIFORNIA
CALIFORNIA COUNCIL OF COMMUNITY BEHAVIORAL HEALTH AGENCIES
COALITION OF ALCOHOL AND DRUG ASSOCIATIONS
CALIFORNIA ASSOCIATION OF ALCOHOL & DRUG PROGRAM EXECUTIVES, INC.
CALIFORNIA ALLIANCE OF CHILD AND FAMILY SERVICES
CALIFORNIA OPIOID MAINTENANCE PROVIDERS
CALIFORNIA STATE ASSOCIATION OF COUNTIES
CALIFORNIA CONSORTIUM OF ADDICTION PROGRAMS AND PROFESSIONALS

SUBJECT: IMPLEMENTATION OF SENATE BILL (SB) 1228
(Chapter 792, Statutes of 2018)

PURPOSE

This Information Notice (IN) notifies and provides guidance to Department of Health Care Services (DHCS) licensed or certified alcohol and/or other drug programs (AOD programs) of the passage of SB 1228, which will go into effect on January 1, 2019.

SB 1228 adds Sections 11831.6 and 11831.7 to the California Health and Safety Code (HSC). Section 11831.6 prohibits licensed and/or certified alcoholism or drug abuse recovery and treatment facilities, owners, partners, directors, employees, and/or shareholders from giving or receiving anything of value for the referral of a person to a substance use disorder (SUD) treatment facility. These prohibitions will become effective on January 1, 2019.

This IN also notifies DHCS licensed and/or certified alcoholism or drug abuse recovery and treatment facilities of the passage of HR 6 on October 24, 2018. Subtitle J of Title VIII of HR 6, entitled “Eliminating Kickbacks in Recovery Act of 2018” adds Section 220

to Title 18 of the US Code. Section 220 imposes criminal penalties of up to \$200,000 and imprisonment for 10 years for any individual who solicits or receives remuneration in return for referring a patient to a recovery home, clinical treatment facility, or laboratory. DHCS licensed and/or certified alcoholism or drug abuse recovery and treatment facilities are encouraged to review this new federal law and its application to their operations.

Examples of Conduct that Violates SB 1228

The following are examples of conduct by licensed or certified AOD programs or counselors that would violate Section 11831.6:

- 1) Soliciting or receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring a patient to a licensed and/or certified alcoholism or drug abuse recovery and treatment facility.
- 2) Any form(s) of commission or bonus paid to treatment facilities, owners, partners, directors, employees, and/or shareholders in exchange for a client referral to a licensed and/or certified alcoholism or drug abuse recovery and treatment facility.
- 3) Any form(s) of tangible or intangible compensation provided to a client for referral to a licensed and/or certified alcoholism or drug abuse recovery and treatment facility. This includes recruitment and payments to potential clients at Alcoholics Anonymous meetings, Narcotics Anonymous meetings, and any other recovery meetings.
- 4) Providing remuneration to any call center and/or company in exchange for a client referral.
- 5) Selling potential client information to bidders in order for the bidder to secure a potential client's enrollment at a licensed and/or certified alcoholism or drug abuse recovery and treatment facility.

Penalties for Violation of SB 1228

Section 11831.7 allows DHCS to investigate allegations of violations of Section 11831.6, and, upon finding a violation, permits DHCS to impose the following potential penalties:

1. Assessment of a civil penalty of up to \$2,000 against a licensed and/or certified alcoholism or drug abuse recovery and treatment facility for each occurrence of a violation of section 11831.6;
2. Suspension of an alcoholism or drug abuse recovery and treatment facility's license or certification;

3. Revocation of an alcoholism or drug abuse recovery and treatment facility's license or certification;
4. Denial of any new application for licensure for a period of five (5) years from when the applicant is found to have violated HSC 11831.6;
5. Denial of an extension of the licensing period;
6. Denial of any applications for modification to a license;
7. Suspension of the registration or certification of a counselor or;
8. Revocation of the registration or certification of a counselor.

Allegations of violations of Section 11831.6 can be submitted to DHCS via e-mail at SUDComplaints@dhcs.ca.gov or by calling the toll free complaint line at 877-685-8333.

RESOURCES

Senate Bill 1228:

http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201720180SB1228

Federal SUPPORT Bill:

<https://www.congress.gov/bill/115th-congress/house-bill/6/text?q=%7B%22search%22%3A%5B%22hr+6%22%5D%7D&r=1>

DHCS Information Notices:

<https://www.dhcs.ca.gov/formsandpubs/Pages/MHSUDS-Information-Notices.aspx>;

Questions pertaining to this IN should be directed to Nicolé Nicholson-Sands, Complaints Section Chief at (916) 345-7584 or Nicole.Nicholson-Sands@dhcs.ca.gov.

Sincerely,

Original signed by

Brenda Grealish, Acting Deputy Director
Mental Health & Substance Use Disorder Services