

**Department of Health Care Services
Proposed Trailer Bill Legislation**

Strengthening Oversight for Substance Use Disorder Licensing and Certification

FACT SHEET

Issue Title: Strengthening Oversight for Substance Use Disorder Licensing and Certification. The Department of Health Care Services (DHCS) proposes to require mandatory certification of outpatient alcohol or other drug (also known as substance use disorder (SUD)) programs and improve the Residential and Outpatient Program Licensing Fund (ROPLF) fee process.

Background:

Mandatory Certification for Outpatient Programs

DHCS has the sole authority to license, certify, and monitor SUD recovery or treatment facilities to support the health and safety of program clients (Health and Safety Code, Division 10.5, Chapter 7.5, Sections 11830.1, 11834.01 and 11834.30). DHCS is responsible for all activities associated with SUD facility licensure and/or certification, compliance with statutory and regulatory requirements, and client-related health and safety issues. These activities include, but are not limited to, initial facility application and on-site reviews, renewal processes, on-site monitoring compliance reviews, and complaint investigations of facilities, counselors, and client deaths.

Currently, residential SUD facilities are required to be licensed. While outpatient SUD facilities can voluntarily apply for certification, which is offered to all SUD treatment facilities and programs. Facilities that hold a DHCS voluntary certification are required to exceed minimum levels of service quality and must be in substantial compliance with State program standards, specifically the [Alcohol and/or Other Drug Certification Standards](#). Currently, many SUD treatment programs provide outpatient SUD treatment services without seeking voluntary certification from DHCS. These outpatient SUD programs are not subject to any governmental oversight, leading to unregulated facilities, poor quality of care, and patient safety risks. Previously, several bills were proposed to establish requirements for mandatory licensure or certification for outpatient SUD facilities, including SB 325 (Hill, 2019), AB 920 (Petrie-Norris, 2019), AB 77 (Petrie-Norris, 2021); however, those bills were unsuccessful.

Improvement of the ROPLF Fee Processes

SB 84 (Chapter 177, Statutes of 2007) established the ROPLF, consisting of specified fees, fines, and penalties collected from licensed SUD treatment facilities and certified programs. The revenues are intended to support and maintain sufficient resources for DHCS to administer the program and provide adequate oversight of its providers. The fees for SUD facilities were last increased in 2014 through SB 857 (Committee on Budget and Fiscal Review, Chapter 31, Statutes of 2014) and operationalized through [Mental Health and SUD Information Notice 14-022](#). Since 2014, fourteen legislative bills have passed that have resulted in additional SUD provider oversight requirements, all of which increased DHCS workload and staffing requirements (31 new positions), which are currently supported by ROPLF. Current fees are based on the workload and staffing resources needed in 2014, and fees have not increased since then, despite the workload nearly doubling as a result of

expanding SUD provider oversight requirements and the hiring of 31 new staff positions to perform these legislatively mandated operations. Additionally, in recent years, the ROPLF has experienced a steady decline of revenue as a result of increased program closures and program closures associated with the COVID-19 public health emergency. This loss of revenue has further contributed to the ROPLF becoming insufficient to sustain existing staff resources. If DHCS is unable to fund staff resources for licensing and certification activities with current ROPLF revenue levels, DHCS must pursue an increase to the fees.

As part of the 2022 budget process, DHCS requested to increase provider fees by 63 percent (\$3.5 million) to allow fees to support the administrative functions of the program as originally intended. However, the proposed fee increase was denied by the Legislature because of the concern that it would exacerbate the shortage of treatment programs, increase costs to already struggling programs, and prevent additional programs from coming into the field. Although the Budget Act of 2022 included GF for the estimated increased fee collection for FY 2022-23, a long-term solution is still needed.

Justification for the Change: DHCS is proposing to require mandatory certification of outpatient SUD programs and improve the ROPLF fee process.

Mandatory Certification for Outpatient Programs

California patients, their families, and healthcare payors need assurance that all SUD treatment programs and facilities are delivering treatment that is effective, efficient, safe, and high-quality. DHCS recognizes there is a gap in oversight with the current voluntary outpatient SUD certification program. Therefore, DHCS is proposing to require the certification of outpatient SUD programs. DHCS intends to maintain the voluntary certification for residential programs and facilities licensed by other departments. Mandatory certification of outpatient SUD facilities provides DHCS with the necessary oversight to verify facility compliance with applicable laws and establishes oversight mechanisms similar to residential SUD facility licensure requirements, such as criteria for acceptable facility performance, application and licensing requirements, structural requirements, program inspections, administrative actions such as certification termination, revocation or denial, and program appeal rights.

Mandatory certification of outpatient SUD programs will further address the quality of care and patient safety across the entire SUD treatment continuum of care. Outpatient SUD programs subject to mandatory certification will be required to come into compliance no later than January 1, 2024 (Health and Safety Code Section 11832.25).

Improvement of the ROPLF Fee Processes

Because the revenues in the ROPLF are insufficient to sustain existing staff resources, DHCS is proposing to amend the processes to implement a fee increase. Specifically, DHCS proposes to be authorized to determine fees similar to other state licensing programs. Accordingly, DHCS would be required to evaluate all licensing fees annually and based on its projected costs for the forthcoming fiscal year, any excess fees remaining in the ROPLF at the close of the fiscal year shall be carried forward and taken into consideration in establishment of fees for the subsequent fiscal year.

If DHCS proposes to increase licensing and certification fees, DHCS would be required to justify the increase by showing that sufficient assets are not currently available in the ROPLF. If a fee increase is needed, DHCS would be required to post a report on its website that contains an overview of the assets, liabilities, and balance in the ROPLF and justifies DHCS' need to increase the licensing and certification fees. The report would also include elements such as an itemized statement of income and expenses for the ROPLF since the last report.

In addition, this proposal would remove the process of reporting and receiving approval from the Legislature and allow DHCS to implement a fee increase in a more efficient manner to better support the operation and oversight of SUD facilities while providing transparency for the Legislature and providers.

In addition, with the creation of a mandatory certification for outpatient SUD programs, DHCS will utilize a fee structure for mandatory certification that is similar to the current fee structure for licensing and voluntary certification, which would help to support the oversight responsibilities associated with the new mandatory certification.

Summary of Arguments in Support:

Mandatory Certification for Outpatient Programs

- DHCS will be able to implement an oversight program for outpatient programs through mandatory certification, to support a higher quality of care.
- Quality monitoring will increase, and program integrity will improve.

Improve the ROPLF Fee Processes

- DHCS will be able to streamline ROPLF fee increase process.
- DHCS will have the necessary resources to continue critical oversight activities.

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