

BILL ANALYSIS

H.B. 3331
By: Murr
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There have been calls to clarify laws relating to patient brokering with respect to substance abuse and treatment facilities. The practice of patient brokering may be expanding within various states, including Texas, as indicated by the recent passage of legislation and reforms on the subject in states such as Florida and Arizona. Federal and state patient brokering laws are too narrow and may not be enforced appropriately by federal, state, and local oversight agencies and law enforcement authorities.

H.B. 3331 seeks to deter this behavior and to establish better reporting and data collecting mechanisms to ensure that accurate data about the prevalence of this practice can be reported for the state. The bill establishes a task force on patient solicitation and also proposes changes relating to the solicitation of patients and other prohibited marketing practices and relating to certain conduct constituting offenses regarding patient solicitation.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3331 amends the Health and Safety Code to establish the task force on patient solicitation to study and make recommendations on preventing conduct that violates the Treatment Facilities Marketing Practices Act or the generally applicable Occupations Code provisions prohibiting the solicitation of patients by health professionals and to improve enforcement of those statutory provisions. The bill provides for the composition of the task force and member expertise and provides the following:

- task force members serve without compensation;
- the task force is administratively attached to the Health and Human Services Commission (HHSC);
- the attorney general and HHSC must provide the task force with information requested by the task force to allow the task force to fulfil its duties; and
- the information so provided is confidential and is not subject to disclosure under state public information law.

H.B. 3331 requires the task force, not later than December 1 of each even-numbered year, to submit to the legislature a report that includes a summary of civil or criminal actions brought on

behalf of the state and administrative actions by state regulatory agencies in the preceding biennium for violations of the Treatment Facilities Marketing Practices Act or applicable Occupations Code provisions and legislative recommendations for preventing conduct that violates that act or provisions and improving enforcement of that act or those provisions.

H.B. 3331 includes solicitation or inducement through the Internet to purchase the services provided by a treatment facility in the definition of "advertising" or "advertise" for purposes of the Treatment Facilities Marketing Practices Act. With respect to the legislative purpose of the act stating that the public should be able to distinguish between the marketing activities of the facility and its clinical functions, the bill specifies that the public should be able to clearly distinguish the two.

H.B. 3331 prohibits a treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, from contracting with a marketing provider who agrees to provide general referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or website presence, unless the terms of that contract are disclosed to the prospective patient.

H.B. 3331 makes the following a violation of the Treatment Facilities Marketing Practices Act:

- making a false or misleading statement or providing false or misleading information about the facility's services or location in the facility's advertising media or on its website; or
- providing a link on the facility's website that redirects the user to another website containing such false or misleading statements or information.

H.B. 3331 increases from \$1,000 to \$2,000 the minimum civil penalty for a violation of the Treatment Facilities Marketing Practices Act.

H.B. 3331 amends the Occupations Code to change the following offenses regarding the solicitation of patients:

- with respect to the Class A misdemeanor soliciting patients offense, the bill:
 - expands the conduct that constitutes the offense to include knowingly offering to pay or agreeing to accept, directly or indirectly, overtly or covertly any benefit or commission to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency;
 - increases the penalty for the offense from a Class A misdemeanor to a state jail felony;
 - increases the penalty for a subsequent offense or if the actor was employed by a federal, state, or local government at the time of the offense from a third degree felony to a second degree felony; and
 - establishes that provisions relating to the offense do not prohibit advertising unless the advertising is prohibited under the Treatment Facilities Marketing Practices Act;
- with respect to the Class A misdemeanor failure to disclose offense regarding the solicitation of patients, the bill:
 - expands the conduct that constitutes the offense to include accepting a benefit or a commission to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency without disclosing, among other required disclosures, that the person will receive, directly or indirectly, a benefit or commission for securing or soliciting the patient;
 - increases the penalty for the offense from a Class A misdemeanor to a state jail felony; and
 - increases the penalty for a subsequent offense or if the actor was employed by a federal, state, or local government at the time of the offense from a third degree felony to second degree felony; and
- with respect to the solicitation of patients offenses regarding the healing arts, the bill:

- expands the conduct that constitutes the offense applicable to a person practicing the art of healing with or without the use of medicine to include providing any benefit or commission to another for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine;
- expands the conduct that constitutes the offense applicable to a person who accepts or agrees to accept anything of value for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine to include accepting or agreeing to accept any benefit or commission for such acts; and
- changes the punishment for the applicable offenses from a misdemeanor punishable by a fine only of not less than \$100 or more than \$200 to a Class B misdemeanor.

EFFECTIVE DATE

September 1, 2021.