

BILL ANALYSIS

Senate Research Center
88R1457 KKR-F

H.B. 248
By: Murr (Kolkhorst)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that there is no mechanism for reporting patient brokering, an illegal marketing practice within the recovery home industry. H.B. 248 would require a yearly report to be released by the Office of Attorney General (OAG), in conjunction with the Health and Human Services Commission of Texas, detailing any state actions such as injunctions or penalties assigned to any licensed chemical dependency centers for "patient brokering." This report will be posted on OAG's website and distributed to legislative committees relating to public health. H.B. 248 would ensure a mechanism for reporting that will be used to bring awareness to illegal marketing practices.

H.B. 248 amends current law relating to solicitation of patients and other prohibited marketing practices and the establishment of the task force on patient solicitation and increases criminal penalties.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subtitle E, Title 2, Health and Safety Code, by adding Chapter 110, as follows:

CHAPTER 110. TASK FORCE ON PATIENT SOLICITATION

Sec. 110.001. DEFINITION. Defines "task force."

Sec. 110.002. PURPOSE. Provides that the task force on patient solicitation (task force) is established to study and make recommendations on preventing conduct that violates Chapter 164 (Treatment Facilities Marketing and Admission Practices) of this code or Chapter 102 (Cancer Prevention and Research Institute of Texas), Occupations Code, and to improve enforcement of those chapters.

Sec. 110.003. MEMBERSHIP. (a) Provides that the task force is composed of eight members as follows:

(1) four members the executive commissioner of the Health and Human Services Commission appoints; and

(2) four members the attorney general appoints.

(b) Requires each task force member to have expertise in the field of health care or advertising.

(c) Provides that task force members serve without compensation.

Sec. 110.004. ADMINISTRATIVE ATTACHMENT. Provides that the task force is administratively attached to the health and Human Services Commission (HHSC).

Sec. 110.005. ACCESS TO INFORMATION; CONFIDENTIALITY OF PROVIDED INFORMATION. Requires the attorney general and HHSC to provide the task force with information the task force requests to allow the task force to fulfill its duties. Information provided under this section is confidential and is not subject to disclosure under Chapter 552 (Public Information), Government Code.

Sec. 110.006. REPORT. Requires the task force, not later than December 1 of each even-numbered year, to submit to the legislature a report that includes:

(1) 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 conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code; and

(2) legislative recommendations for preventing conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code, and improving enforcement of those chapters

SECTION 2. Amends Section 164.002, Health and Safety Code, as follows:

Sec. 164.002. LEGISLATIVE PURPOSE. Provides that the purpose of this chapter is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency facilities, rather than chemical dependency treatment facilities, by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients. Provides that nothing in this chapter should be construed to prohibit a mental health facility or chemical dependency facility from advertising its services in a general way or promoting its specialized services. Provides that the public, however, should be able to clearly distinguish between the marketing activities of the facility and its clinical functions.

SECTION 3. Amends Section 164.003(1), Health and Safety Code, to redefine "advertising" or "advertise."

SECTION 4. Amends Section 164.006, Health and Safety Code, as follows:

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. Prohibits a treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, from:

(1)-(3) makes no changes to these subdivisions;

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient or outpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and intellectual disability center the commission funds, rather than a community mental health and intellectual disability center funded by the department and the department of aging and disability services;

(B)-(C) makes no changes to these paragraphs;

(D) makes a nonsubstantive change to this paragraph;

(5) contract with a marketing provider who agrees to provide general referrals or leads for the placement of prospective patients with a service provider or in a recover residence through a call center or Internet website presence, unless the terms of that contract are disclosed to the prospective patient.

SECTION 5. Amends Section 164.010, Health and Safety Code, as follows:

Sec. 164.010. PROHIBITED ACTS. Provides that it is a violation of this chapter, in connection with a marketing of mental health services, for a person to:

(1)-(3) makes no changes to these subdivisions;

(4) obtains or discloses information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or in the case of a minor, the person's parent, managing conservator, or legal guardian or another person with authority to give that authorization;

(5) makes nonsubstantive changes to this subdivision;

(6) 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 Internet website; or

(7) providing a link on the facility's Internet website that redirects the user to another Internet website containing false or misleading statements or information described by Subdivision (6).

SECTION 6. Amends Section 164.011(a), Health and Safety Code, as follows:

(a) Authorizes the attorney general, a district attorney, or a county attorney, if it appears that a person is in violation of this chapter, to institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than \$2,000, rather than not less than \$1,000, and not more than \$25,000 per violation.

SECTION 7. Amends Section 102.001, Occupations Code, as follows:

Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) Provides that a person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind or 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.

(b) Provides that an offense under this section is a state jail felony, rather than a Class A misdemeanor, except as provided by Subsection (c).

(c) Provides that an offense under this section is a felony of the second degree, rather than a felony of the third degree, if it is shown on the trial of the offense that the person meets certain criteria.

SECTION 8. Amends Section 102.004, Occupations Code, as follows:

Sec. 102.004. APPLICABILITY TO ADVERTISING. Provides that Section 102.001 does not prohibit advertising, unless the advertising is:

(1)-(2) makes nonsubstantive changes to these subdivisions; or

(3) prohibited under Chapter 164, Health and Safety Code, as applicable.

SECTION 9. Amends Section 102.006, Occupations Code, as follows:

Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) Provides that a person commits an offense if:

(1) the person, in a manner otherwise permitted under Section 102.001, accepts remuneration, 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; and

(2) makes a conforming change to this subdivision.

(b) Provides that an offense under this section is a state jail felony, rather than a Class A misdemeanor, except as provided by Subsection (c).

(c) Provides that an offense under this section is a felony of the second degree, rather than a felony of the third degree, if certain circumstances are shown on the trial of the offense.

SECTION 10. Amends Sections 102.051(a), (b), and (c), Occupations Code, as follows:

(a) Provides that a person commits an offense if the person:

(1) makes no changes to this subdivision; and

(2) employs or agrees to employ, pays or promises to pay, or rewards or promises to reward or provide any benefit or commission to another for soliciting or securing a patient or patronage.

(b) Provides that a person commits an offense if the person accepts or agrees to accept anything of value or any benefit or commission for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine.

(c) Provides that an offense under Section 102.051 (Soliciting Patients; Offense) is a Class B misdemeanor, rather than a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2023.