

## **BILL ANALYSIS**

H.B. 248  
By: Murr  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Organizations and individuals in the substance abuse and recovery community have consistently advocated for clearer laws relating to patient brokering, a practice in which a patient is referred to another provider or facility in exchange for a kickback. This practice is believed to be expanding within various states, including Texas, and while there have been recent legislative efforts to address the subject in other states, current federal and state laws regarding patient brokering remain too narrow and are often not enforced appropriately. H.B. 248 seeks to deter this behavior and establish better reporting and data collecting mechanisms to ensure accurate data about the prevalence of this practice can be reported for the state, including by establishing a task force on patient solicitation and proposing changes relating to the solicitation of patients and certain marketing practices.

### **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. 248 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 that act or those provisions. The task force is composed of eight members and each member must have expertise in the field of health care or advertising. Four members are appointed by the executive commissioner of the Health and Human Services Commission (HHSC) and four are appointed by the attorney general. The bill provides the following with regard to the task force:

- task force members serve without compensation;
- the task force is administratively attached to HHSC;
- the attorney general and HHSC must provide the task force with information the task force requests to allow the task force to fulfill its duties; and
- the information so provided is confidential and is not subject to disclosure under state public information law.

H.B. 248 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 conduct that violates the Treatment Facilities Marketing Practices Act or applicable Occupations Code provisions and legislative recommendations for preventing such conduct and improving enforcement of that act or those provisions.

H.B. 248 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. The bill changes the legislative purpose of the act to provide that:

- nothing in the act should be construed to prohibit a chemical dependency facility from advertising its services in a general way or promoting its specialized services; and
- in distinguishing between the marketing activities of a mental health facility or chemical dependency facility and its clinical functions, the public should be able to clearly distinguish such matters.

H.B. 248 prohibits a treatment facility or a person employed or under contract with a treatment facility, if acting on behalf of the treatment facility, from doing the following:

- in relation to intervention and assessment services, contracting with, offering to remunerate, or remunerating a person who operates an intervention and assessment service that makes referrals to a treatment facility for outpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is, as follows:
  - operated by a community mental health and intellectual disability center HHSC funds;
  - operated by a county or regional medical society;
  - a qualified mental health referral service as defined by the Treatment Facilities Marketing Practices Act; or
  - owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape; or
- contracting 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 recovery residence through a call center or website presence, unless the terms of that contract are disclosed to the prospective patient.

H.B. 248 makes it a violation of the Treatment Facilities Marketing Practices Act for a person to do the following:

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

H.B. 248 increases from \$1,000 to \$2,000 the minimum civil penalty for a violation of the Treatment Facilities Marketing Practices Act.

H.B. 248 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 does the following:
  - 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 does the following:
  - 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 a second degree felony; and
- with respect to the solicitation of patients offenses regarding the healing arts, the bill does the following:
  - 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;
  - 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 of not less than \$100 or more than \$200 to a Class B misdemeanor.

H.B. 248 applies only to an offense committed on or after the bill's effective date. The bill provides for the continuation of the law in effect before the bill's effective date for purposes of an offense, or any element thereof, that occurred before that date

**EFFECTIVE DATE**

September 1, 2023.