

BILL ANALYSIS

Senate Research Center
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H.B. 4454
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Patient brokering is the illegal exchange of something of value for a patient referral. Those engaging in patient brokering may use deceptive practices to direct a prospective patient to one service provider over another for compensation or benefits. This creates an exploitive relationship, harming and misleading individuals as they attempt to receive honest, quality care.

Following numerous investigations into patient brokering, the 73rd Legislature passed legislation addressing unethical/illegal marketing practices rampant at the time and drastically reduced patient brokering. In the over 30 years since, however, a need to update statute to reflect changes in healthcare and marketing processes has become necessary.

H.B. 4454 would establish a task force to study and make recommendations on avoiding patient exploitation and deceptive practices, update marketing mechanisms, include outpatient and recovery housing in applicable facilities, and increase fines for engaging in the practice. H.B. 4454 is a refile of H.B. 248 (88R), which passed unanimously out of the House. This would help protect consumers from further harm and update regulations to combat these issues.

H.B. 4454 amends current law relating to solicitation of patients and other prohibited marketing practices, the establishment of the task force on patient solicitation, and the prosecution of certain related criminal offenses.

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 the Health and Safety Code, or Chapter 102 (Solicitation of Patients), Occupations Code, and to improve enforcement of those chapters.

Sec. 110.003. MEMBERSHIP. (a) Provides that the task force is composed of eight members, including four members the executive commissioner appoints and 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. Provides that 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 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 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 certain practices. Requires that nothing in this chapter 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, however, the public 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" and "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) makes no changes to this subdivision;

(2)-(3) makes nonsubstantive changes to these subdivisions;

(4) 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 inpatient or outpatient treatment of mental illness or chemical dependency unless the intervention and assessment service meets certain criteria, including operated by a community mental health and intellectual disability center that HHSC funds, rather than funded by the Department of State Health Services and the Department of Aging and Disability Services; or

(5) 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 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 the marketing of mental health services, for a person to:

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

(4) obtain or 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 certain persons;

(5) makes a nonsubstantive change to this subdivision;

(6) make a false or misleading statement or provide false or misleading information about the treatment facility's services or location in the treatment facility's advertising media or on its Internet website; or

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

Makes a nonsubstantive change to this section.

SECTION 6. Amends Section 164.011(a), Health and Safety Code, to authorize 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 \$1,000, and not more than \$25,000 per violation.

SECTION 7. Amends Section 102.001(a), Occupations Code, to provide 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.

SECTION 8. Amends Section 102.004, Occupations Code, to provide that Section 102.001 (Soliciting Patients; Offense) does not prohibit advertising, unless the advertising meets certain criteria, including being prohibited under Chapter 164, Health and Safety Code, as applicable, and to make nonsubstantive changes.

SECTION 9. Amends Section 102.006(a), Occupations Code, to make conforming changes.

SECTION 10. Amends Sections 102.051(a) and (b), Occupations Code, to make conforming changes.

SECTION 11. Makes application of this Act prospective.

SECTION 12. Effective date: September 1, 2025.