

## **BILL ANALYSIS**

C.S.H.B. 4454  
By: Vo  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The bill author has informed the committee that organizations and individuals in the substance abuse and recovery community have consistently advocated for clearer and updated laws relating to patient brokering, a practice in which a patient is referred to another provider or facility in exchange for a kickback. The bill author has further informed the committee that this practice is believed to be expanding within various states, including Texas, and that current federal and state laws regarding patient brokering remain too narrow and outdated and are not enforced appropriately. C.S.H.B. 4454 seeks to deter patient brokering and provide better enforcement against this practice by establishing a task force on patient solicitation, modernizing the Treatment Facilities Marketing Practices Act, and increasing the civil penalty for violations of that act.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change 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**

C.S.H.B. 4454 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 Occupations Code provisions prohibiting the solicitation of patients by health professionals and to improve enforcement of that act and those provisions. The bill provides the following with regard to the task force:

- the task force is composed of eight members, each of whom 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;
- task force members serve without compensation;
- the task force is administratively attached to HHSC;
- the attorney general and HHSC are required to provide the task force with information the task force requests to allow the task force to fulfill its duties; and
- that information is confidential and is not subject to disclosure under state public information law.

The bill 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 the applicable

Occupations Code provisions and legislative recommendations for preventing such conduct and improving enforcement of that act and those provisions.

C.S.H.B. 4454 revises the legislative purpose of the Treatment Facilities Marketing Practices Act as follows:

- removes the specification that the chemical dependency facilities with respect to which the purpose applies are treatment facilities;
- extends the applicability of the provision establishing that nothing in the act should be construed to prohibit a mental health facility from advertising its services in a general way or promoting its specialized services to a chemical dependency facility; and
- specifies that the distinction the public should be able to make between the marketing activities of a mental health facility or chemical dependency facility and its clinical functions is a clear distinction.

The bill includes in the definition of "advertising" and "advertise," for purposes of the act, solicitation or inducement through the Internet to purchase the services provided by a treatment facility.

C.S.H.B. 4454 extends to outpatient treatment the applicability of the prohibition against a treatment facility or a person employed or under contract with a treatment facility contracting with, offering to remunerate, or remunerating, in relation to intervention and assessment services, a person who operates such a service that makes referrals to a treatment facility for inpatient treatment of mental illness or chemical dependency unless the 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.

The bill also prohibits a treatment facility or a person employed or under contract with a treatment facility and acting on the facility's behalf from 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.

C.S.H.B. 4454 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 treatment facility's services or location in the treatment 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.

C.S.H.B. 4454 increases from \$1,000 to \$2,000 the minimum civil penalty for a violation of the Treatment Facilities Marketing Practices Act.

C.S.H.B. 4454 amends the Occupations Code to expand the conduct that constitutes the offense of soliciting patients 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. For purposes of the offense, the bill includes advertising that is

prohibited under the Treatment Facilities Marketing Practices Act among the advertising expressly prohibited by the offense.

C.S.H.B. 4454 expands the conduct that constitutes the offense of failure to disclose with regard to the solicitation of a patient 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.

C.S.H.B. 4454 expands the conduct that constitutes the offense of solicitation of patients regarding the healing arts as follows:

- with respect to the conduct that is applicable to a person practicing the art of healing with or without the use of medicine, includes rewarding or promising to provide any benefit or commission to another for soliciting or securing a patient or patronage; and
- with respect to the conduct that is 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, includes accepting or agreeing to accept any benefit or commission for such acts.

C.S.H.B. 4454 applies only to an offense committed on or after the bill's effective date. An offense committed before the bill's effective date is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For these purposes, an offense was committed before the bill's effective date if any element of the offense occurred before that date.

#### **EFFECTIVE DATE**

September 1, 2025.

#### **COMPARISON OF INTRODUCED AND SUBSTITUTE**

While C.S.H.B. 4454 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute omits the following penalty increases, which were present in the introduced:

- for the offense of soliciting patients, from a Class A misdemeanor to a state jail felony, and the enhanced penalty from a third degree felony to a second degree felony;
- for the offense of failure to disclose with regard to the solicitation of a patient, from a Class A misdemeanor to a state jail felony, and the enhanced penalty from a third degree felony to a second degree felony; and
- for the offense of solicitation of patients regarding the healing arts, from a misdemeanor punishable by a fine ranging from \$100 to \$200 to a Class B misdemeanor.