

AMENDED IN ASSEMBLY JULY 14, 2021

AMENDED IN ASSEMBLY JUNE 28, 2021

AMENDED IN SENATE APRIL 8, 2021

AMENDED IN SENATE MARCH 8, 2021

SENATE BILL

No. 349

Introduced by Senator Umberg

(Coauthors: Assembly Members Davies and Kalra)

February 9, 2021

An act to add Chapter 3 (commencing with Section 11980.01) to Part 3 of Division 10.5 of the Health and Safety Code, relating to substance abuse.

LEGISLATIVE COUNSEL'S DIGEST

SB 349, as amended, Umberg. California Ethical Treatment for Persons with Substance Use Disorder Act.

Existing law provides for the licensure and regulation of adult alcoholism or drug abuse recovery or treatment facilities by the State Department of Health Care Services and authorizes the department to enforce those provisions. Existing law also requires the department to implement a program certification procedure for alcohol and other drug treatment recovery services. Existing law generally prohibits specified persons, programs, or entities, such as an alcoholism or drug abuse treatment facility or a person employed by, or working for, an alcohol or other drug program, from giving or receiving anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services, and authorizes the department to investigate allegations of violations of those provisions, and to assess various penalties upon a person, program, or entity that is found in violation of

those provisions. Existing law requires all programs licensed or certified by the department pursuant to those provisions to disclose any ownership or control of, or financial interest in, a recovery residence, as defined.

This bill would create the California Ethical Treatment for Persons with Substance Use Disorder Act to provide protection for substance use disorder treatment clients and their families. The bill would declare the intent for its provisions to be construed in favor of maximizing protections for clients, families, and their communities. The bill would impose requirements and proscribe unlawful acts relating to marketing and advertising with respect to treatment providers, as defined by the bill. The bill would require a treatment provider doing business in the state to adopt a client bill of rights for persons receiving treatment for substance use disorder, as specified, and to make the bill of rights available to all clients and prospective clients.

The bill would require a treatment provider to maintain records of referrals to or from a recovery residence, as specified. Specified acts made unlawful by the bill would be subject to a civil fine of up to \$20,000 per violation. The bill would authorize the Attorney General, a district attorney, ~~any other government entity or agency, or any other party with an ascertainable interest to bring an action to enjoin a violation of its provisions, for declaratory relief, a county counsel, a city attorney, or any injured person or entity to bring a claim for declaratory relief~~ or to recover a civil penalty, as specified. The bill also would authorize the department to investigate allegations of violations of the bill and to take subsequent action, including assessing penalties on a treatment provider and suspending or revoking the license or certification of a treatment facility.

Vote: majority. Appropriation: no. Fiscal committee: yes.
 State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. The Legislature finds and declares all of the
- 2 following:
- 3 (a) California remains in the grip of an epidemic of substance
- 4 use disorders.
- 5 (b) The state is fortunate to have many quality substance use
- 6 disorder treatment programs. These programs and their staff
- 7 perform tireless and lifesaving work, much of it entirely outside
- 8 the limelight, and much of it thankless, on an illness that is still

1 far too stigmatized. These are not the programs giving rise to this
2 act.

3 (c) It is the intent of the Legislature in enacting this act to deny
4 advantage to programs and personnel that engage in or support
5 predatory, unsafe, and unethical practices. These practices create
6 barriers to desperately needed treatment, and cause incalculable
7 needless harm to desperate families and the communities they live
8 in. Enacting legislation that sets forth, and provides for the
9 enforcement of, uniform ethical standards for treatment programs
10 benefits all residents of California by improving the availability
11 of high-quality, ethical treatment, and by protecting families and
12 individuals in crisis from misleading information and other
13 unethical practices.

14 SEC. 2. Chapter 3 (commencing with Section 11980.01) is
15 added to Part 3 of Division 10.5 of the Health and Safety Code,
16 to read:

17

18 CHAPTER 3. ETHICAL TREATMENT FOR PERSONS WITH
19 SUBSTANCE USE DISORDER

20

21 11980.01. (a) This chapter shall be known, and may be cited,
22 as the California Ethical Treatment for Persons with Substance
23 Use Disorder Act.

24 (b) The purpose of this chapter is to provide protection for
25 substance use disorder treatment clients and their families. This
26 chapter shall be construed in favor of maximizing protections for
27 clients and families, and the communities in which they live.

28 11980.02. The following definitions apply for purposes of this
29 chapter:

30 (a) “Certified treatment program” means an outpatient program
31 certified pursuant to Chapter 7 (commencing with Section 11830)
32 of Part 2.

33 (b) “Treatment facility” means a facility that is, or is required
34 to be, licensed to provide substance use disorder treatment services,
35 including a residential alcoholism or drug abuse recovery or
36 treatment facility licensed under Chapter 7.5 (commencing with
37 Section 11834.01) of Part 2.

38 (c) “Treatment provider” means a licensed treatment facility or
39 a certified treatment program.

1 11980.03. (a) Every treatment provider operating in the state
2 shall adopt, and make available to all clients and prospective
3 clients, a client bill of rights that ensures that persons receiving
4 treatment for a substance use disorder have the right to all of the
5 following:

6 (1) To be treated for the life-threatening, chronic disease of
7 substance use disorder with honesty, respect, and ~~dignity~~. *dignity,*
8 *including privacy in treatment and in care of personal needs.*

9 (2) To be informed by the treatment provider of all the aspects
10 of treatment recommended to the ~~client~~. *client, including the option*
11 *of no treatment, risks of treatment, and expected result or results.*

12 (3) To be treated by licensed and certified treatment providers
13 with qualified staff.

14 (4) To receive evidence-based treatment.

15 (5) To be treated simultaneously for co-occurring behavioral
16 health conditions, when medically appropriate and the treatment
17 provider is authorized to treat co-occurring conditions.

18 (6) To receive an individualized, outcome-driven treatment
19 plan.

20 (7) To remain in treatment for as long as the treatment provider
21 is authorized to treat the client.

22 (8) To receive support, education, and treatment for their
23 families and loved ones, if the treatment provider is authorized to
24 provide these services.

25 (9) To receive care in a treatment setting that is safe and ethical.

26 (10) *To be free from mental and physical abuse, exploitation,*
27 *coercion, and physical restraint.*

28 (11) *To be informed of these rights once enrolled to receive*
29 *treatment, as evidenced by written acknowledgment or by*
30 *documentation by staff in the clinical record that a written copy*
31 *of these rights were given.*

32 (12) *To be informed by the treatment provider of the law*
33 *regarding complaints, including, but not limited to, to be informed*
34 *of the address and telephone number of the department.*

35 ~~(10)~~

36 (13) To receive ethical care that covers and ensures full
37 compliance with the requirements set forth in Chapter 5
38 (commencing with Section 10500) of Division 4 of Title 9 of the
39 California Code of Regulations.

1 (b) This section does not require a treatment provider to provide
2 treatment or services for which they will not be reimbursed.

3 11980.04. (a) Any marketing or advertising materials published
4 or disseminated by a treatment provider shall provide accurate and
5 complete information, in plain language that is easy to understand,
6 and shall include both of the following:

7 (1) Information about the types and methods of services
8 provided or used, and information about where they are provided,
9 using the categories of treatment identified in subdivision (a) of
10 Section 11834.26 and the levels of care established pursuant to
11 subdivision (a) of Section 11834.015.

12 (2) The treatment provider's name and brand.

13 (b) Any certified treatment program providing outpatient
14 services that has a relationship with any other entity with a housing
15 component shall adhere to the requirements in Section 11833.05
16 and shall clearly provide this information about its program to
17 prospective clients and to the department, and shall distinguish
18 itself from a licensed residential treatment facility.

19 (c) It is unlawful for a treatment provider to knowingly and
20 willfully make a materially false or misleading statement, or
21 provide false or misleading information, about the nature, identity,
22 or location of substance use disorder treatment services in
23 advertising materials, on a call line, on an internet website, or in
24 any other marketing materials.

25 (d) It is unlawful for a treatment provider to knowingly make
26 a false or misleading statement about their status as an in-network
27 or out-of-network provider.

28 (e) It is unlawful for any person or entity to knowingly provide,
29 or direct any other person or entity to provide, false or misleading
30 information about the identity of, or contact information for, any
31 treatment provider.

32 (f) It is unlawful for any person or entity to knowingly include
33 false or misleading information about the internet address of any
34 treatment provider's website, or to surreptitiously direct or redirect
35 the reader to another website.

36 (g) It is unlawful for any person or entity to suggest or imply
37 that a relationship with a treatment provider exists, unless the
38 treatment provider has provided express, written consent to indicate
39 that relationship, and made the required disclosure pursuant to
40 Section 11833.05.

1 (h) It is unlawful for any person or entity to knowingly make a
2 materially false or misleading statement about substance use
3 disorder treatment services.

4 (i) A violation of this section constitutes a deceptive act or
5 practice under the Unfair Competition Law (Chapter 5
6 (commencing with Section 17200) of Part 2 of Division 7 of the
7 Business and Professions Code), regardless of whether any
8 consumer was actually misled or deceived.

9 11980.06. (a) Every treatment provider shall maintain records
10 of referrals made to or from recovery residences, including, if
11 available, information about where the client referred by a
12 treatment provider ultimately elected to go.

13 (b) For purposes of this section, “recovery residence” has the
14 same meaning as in Section 11833.05.

15 (c) For purposes of this section, “referral” means when a person
16 or entity informs a client by any means of the name, address, or
17 other identifying information for a recovery residence with the
18 intent that the client may consider using that recovery residence.

19 11980.08. (a) The department shall promulgate regulations
20 to ensure compliance with this chapter by treatment providers.

21 (b) (1) A treatment provider shall not request, receive, or retain
22 payment for substance use disorder treatments provided to a client
23 by a treatment provider as a result of conduct declared unlawful
24 under this chapter.

25 (2) *A person or entity who violates this chapter shall be subject*
26 *to a civil penalty of not more than twenty thousand dollars*
27 *(\$20,000) for each violation.*

28 (2)

29 (3) Any person or entity who suffers any ~~ascertainable monetary~~
30 ~~loss or property, real or personal, injury or damages, including,~~
31 *but not limited to, paying for treatment or services that were*
32 *performed in violation of this chapter, as a result of the use or*
33 *employment by another a treatment provider or other person of*
34 *any method, act, or practice declared unlawful under this chapter*
35 *may bring an action or assert a counterclaim therefor in any court*
36 ~~of competent jurisdiction, a claim~~ *against the treatment provider*
37 *who committed the violation and against any other person or entity*
38 *who knowingly aided, abetted, or took part in the violation. In any*
39 *action brought under this paragraph, the court shall, in addition to*
40 *any other appropriate legal or equitable relief, award three times*

1 the damages sustained by any ~~person in interest~~. *injured person*.
2 In any action under this paragraph, the court shall also award
3 reasonable attorney's fees, filing fees, and reasonable costs of suit
4 *fees and costs* to a prevailing plaintiff.

5 ~~(3) The Attorney General, a district attorney, any other~~
6 ~~government entity or agency, or any other person with an~~
7 ~~ascertainable interest, may bring an action for declaratory relief,~~
8 ~~to declare that an act or practice violates this chapter or to enjoin~~
9 ~~a person or entity who has violated, is violating, or is otherwise~~
10 ~~likely to violate a provision of this chapter. If the action is~~
11 ~~successful, in whole or in part, the court shall award attorney's~~
12 ~~fees, costs of investigation and prosecution, filing fees, and all~~
13 ~~other reasonable costs of bringing the action, to the plaintiff or~~
14 ~~prosecutor.~~

15 (4) (A) *The Attorney General, a district attorney, a county*
16 *counsel, a city attorney, or any person who has suffered any injury*
17 *or damages, including, but not limited to, paying for treatment or*
18 *services that were performed in violation of this chapter, may bring*
19 *a claim that an act or practice violates this chapter and seek one*
20 *or more of the following:*

21 (i) *Declaratory relief to enjoin a person or entity who has*
22 *violated or is violating this chapter.*

23 (ii) *A civil penalty of not more than twenty thousand dollars*
24 *(\$20,000) for each violation of this chapter.*

25 (B) *If a claim under clause (i) or (ii) is successful, in whole or*
26 *in part, the court shall award reasonable attorney's fees and costs*
27 *to the plaintiff or prosecutor.*

28 ~~(4)~~

29 (5) The department may investigate an allegation of a violation
30 of ~~any provision of~~ this chapter. Upon finding a violation, the
31 department may do any or all of the following pursuant to Section
32 11831.7 with respect to the offending provider:

33 (A) For the first violation of this chapter by a treatment provider,
34 issue a notice of violation and a corrective action plan with a time
35 certain date *of no more than four months* for compliance. If the
36 treatment provider fails to adhere to the corrective action plan and
37 time certain date, the department may take further action pursuant
38 to subparagraphs (B) to (D), inclusive.

39 (B) Assess a penalty upon the treatment provider.

1 (C) Suspend or revoke the license of a treatment facility, or the
2 certification of a certified program, or deny an application for
3 licensure or certification.

4 (D) Recommend disciplinary action, including, but not limited
5 to, termination of employment and suspension or revocation of a
6 license or certification.

7 ~~(5) A person or entity who violates any provision of this chapter
8 shall be subject to a civil penalty of not more than twenty thousand
9 dollars (\$20,000) for each violation.~~

10 ~~(6) The Attorney General, a district attorney, or any other
11 government entity or agency with an ascertainable interest, may
12 bring an action to recover any civil penalty provided for in this
13 chapter. If the action is successful, in whole or in part, the court
14 shall award attorney's fees, costs of investigation and prosecution,
15 filing fees, and all other reasonable costs of bringing the action,
16 to the plaintiff or prosecutor.~~