ADVOCATES FOR RESPONSIBLE TREATMENT

http://www.responsibletreatment.org

San Juan Capistrano, CA 92675
949-637-2570
info@responsibletreatment.org

April 9, 2017

Mr. Reyes Diaz, Consultant
Senate Health Committee
State Capitol, Room 2191
Sacramento, CA 95814

SB 1228 (Lara)
OPPOSE
Senate Health Committee
Hearing Date: April 17, 2018

Dear Mr. Diaz,

Advocates for Responsible Treatment, is an all-volunteer, citizens' advocacy group representing Southern California which wishes to ensure recovery businesses operate in a safe, humane and legal manner. We look for win-wins for both recovering addicts AND neighbors. While we can understand why well-intentioned observers might initially be drawn to conclude that SB 1228 would be reasonable legislation, we urge in-depth scrutiny. We are writing today to **OPPOSE SB 1228** (Lara).

Reading this bill, Senators should be asking themselves: why is the addiction treatment industry, particularly Recovery Reform Now, supporting this bill? The answer: because it gives industry exactly what it wants, more money, while requiring next to nothing in return.

SB 1228 - Section 11977.10

SB 1228 starts by proposing that a licensed facility will not refer a patient to an unlicensed facility. Is there any evidence this is even a problem? Most licensees don't "refer" a patient to a facility. They put the patient in a residence that is captive to the business. This part of the bill appears to be set up to urge licensees to get certification for the residences they currently oversee. Yet, the quality of proposed certification is superficial.

SB 1228 also states a licensee will not "engage in patient brokering," but then fails to assign any penalties. This section of the bill does nothing to improve the safety of patients nor to deter real patient brokering. Incredibly, under SB 1228, the only people prohibited from patient brokering are those in treatment centers. The bill is very clear that only if the person involved DIRECTLY provides the patient will they be addressed by the bill. The middlemen are not addressed. What about the labs that get data about dirty urine samples and notify other rehabs? What about the phone banks luring people to treatment centers? What about the moles going to AA, luring recovering addicts with promises of free housing? Why are they not also prohibited? As long as the actual BROKERS continue to operate with impunity, treatment centers will continue to pay, especially if the State has no penalties.

Patient brokering is a form of human trafficking. Why can't the California Legislature propose a real anti-patient brokering bill? Is it because everyone feels sorry for an imaginary, unwitting patient broker? If so, then make a first occurrence a low penalty and increase the penalties exponentially with

every human peddled. Patient brokers urge recovering addicts to relapse so they can be sold to another rehab. Patient brokers encourage the cycle of relapse, and ultimately death. Why would our legislature put the lives of criminals above those of recovering addicts?

California already has a number of laws that make patient brokering illegal. These laws include:

- **Health & Safe Code Section 445**: *"No person, firm partnership, association or corporation, or agent or employee thereof, shall for profit refer or recommend a person to a physician, hospital, health-related facility, or dispensary for any form of medical care or treatment of any ailment or physical condition."*
- **Insurance Code Section 1871.1(a)**: *"It is unlawful to knowingly employ runners, cappers, steerers, or other persons to procure clients or patients to perform or obtain services or benefits pursuant to Division 4 (commencing with Section 3200) of the Labor Code or to procure clients or patients to perform or obtain services or benefits under a contract of insurance or that will be the basis for a claim against an insured individual or his or her insurer."*
- **B&P Sec. 2273(a)**: *"Except as otherwise allowed by law, the employment of runners, cappers, steerers, or other persons to procure patients constitutes unprofessional conduct."*
- **B&P Sec. 650(a):** *"Except as provided in Chapter 2.3 (commencing with Section 1400) of Division 2 of the Health and Safety Code, the offer, delivery, receipt, or acceptance by any person licensed under this division or the Chiropractic Initiative Act of any rebate, refund, commission, preference, patronage dividend, discount, or other consideration, whether in the form of money or otherwise, as compensation or inducement for referring patients, clients, or customers to any person, irrespective of any membership, proprietary interest, or coownership in or with any person to whom these patients, clients, or customers are referred is unlawful."*

A violation of B&P Sec. 650 already has the following penalties:

> *(h) A violation of this section is a public offense and is punishable upon a first conviction by imprisonment in a county jail for not more than one year, or by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code , or* ***by a fine not exceeding fifty thousand dollars ($50,000), or by both that imprisonment and fine****. A second or subsequent conviction is punishable by imprisonment pursuant to subdivision (h) of Section 1170 of the Penal Code , or by that imprisonment and a fine of fifty thousand dollars ($50,000).*

Patient brokering in exchange for compensation of 5 figures is not uncommon. Indeed, Brokers, Moles, Poachers, and Marketers can make $30,000 per month. This is why Florida's penalties, which address ANYONE engaged in brokering are in line with California's B&P Sec. 650:

> *(4)(a)* ***Any person****, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity,* ***who violates any provision of this section commits a felony of the third degree, punishable as provided in s. 775.082 or s. 775.084, and shall be ordered to pay a fine of $50,000.***
> *(b) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other business entity, who violates any provision of this section, where the prohibited conduct involves 10 or more patients but fewer than 20 patients,* ***commits a felony of the second degree, punishable as provided in s. 775.082or s. 775.084, and shall be ordered to pay a fine of $100,000.***
> *(c) Any person, including an officer, partner, agent, attorney, or other representative of a firm, joint venture, partnership, business trust, syndicate, corporation, or other*

business entity, who violates any provision of this section, where the prohibited conduct involves 20 or more patients, ***commits a felony of the first degree, punishable as provided in s. 775.082 or s. 775.084, and shall be ordered to pay a fine of $500,000.***

In the context of California's and Florida's similar regulations, it would appear that SB 1228 is actually reducing penalties for patient brokering. ***What should particularly alarm Senators is that, with Florida having tough anti-patient brokering laws already on its books, California is a sitting duck for national patient brokers looking to send addicts to a state with lax regulation.*** We conclude that the anti-patient brokering section of SB 1228 was designed as a smokescreen to make it look as though the bill did something beneficial for addicts, when in reality it does nothing.

SB 1228 - Section 11977.15

SB 1228 then segues into a section requiring that DHCS "establish a program to approve organizations that certify facilities, residences or dwellings," which are not otherwise licensed. The state of California is derelict in its licensing of residences. On the one hand, through DHCS, the State licenses residences that provide treatment, clearly a commercial use of housing. On the other, the state continues to ignore that recovering addicts, active in recovery and receiving treatment in commercial zones, are living **dependently** in unlicensed residences that provide the same services California licenses for other protected classes under the Community Care Act. These business-operated, "Recovery Care Residences" address addicts during a very vulnerable stage of recovery and should be licensed. That the Legislature has had evidence of the need for licensing since as long ago as when the California Senate Office of Oversight and Outcomes published "Rogue Rehabs: State failed to police drug and alcohol homes, with deadly results," dated 9/4/12, is a sign of the Legislature's stigma toward recovering addicts.

SB 1228, instead of proposing California license Recovery Care Residences, urges the state adopt yet another voluntary, third party certification system. Ironically, most of the proposed certification standards look like those that are already available from a myriad of third-party accreditors and certifiers. SAMSHA, the branch of U.S. Health and Human Services, indicates they "approve of" accreditation by:

CARF International —
Commission on Accreditation of Rehabilitation Facilities(http://carf.org)
Council on Accreditation (http://coanet.org/home/)
The Joint Commission/
The Joint Commission-Accredited Recovery Network in Southern California
(https://www.jointcommission.org)
"The Top Accreditation in the Country"
National Commission on Correctional Health Care (https://www.ncchc.org)

In addition, in California, the California Consortium of Addiction Programs and Professionals provides certification for a fee. These accreditors/certifiers provide an absurdly low level of scrutiny, precisely BECAUSE they have a conflict of interest. On March 12, the House Subcommittee on Investigations and Oversight began an investigation into the Joint Commission's accreditation of hospitals owing to reports that the Joint Commission has been

looking the other way at under-performing hospitals[1]; it has yet to start investigating accreditation of addiction treatment centers in California.

At least one member of industry agrees that this entire third-party "stamp of approval" process the state and federal government has set up does NOT represent the quality of oversight provided by government licensing. In fact, Tony Senella, CEO of Tarzana Treatment Centers said about non-governmental certification at the State Senate Health Committee Hearing on January 31st:

> Senella: (43:28 on the video). *One of the significant issues that I don't know that the public at large* ***or even members of the legislature fully understand*** *is there is a substantial difference between the public system of care and the private system of care that does not contract for public funds. The oversight and accountability in the public system of care bar none is leaps and bounds above what goes on in the private sector... for many providers.* ***Even though some of them voluntarily get accredited by accrediting bodies, I myself have three different accreditations by the joint commission and two certifications by the joint commission-- the Joint Commission and other accrediting bodies don't really bother themselves too much with my business practices, so if I want to be some scam artist out there hustling admissions into my facility, even though I'm accredited and have to meet a certain set of standards to keep that accreditation, what I do in my business practices is largely NOT something they monitor or look into when they come do their site visits and their monitoring.*** *And so in the private sector that does not contract with counties or other government entities, they do not have the same set of oversights, monitoring and auditing that the public sector does have.*

The oversight and accountability Senella finds desirable also do not exist under SB 1228, which brings us back to WHY the addiction treatment industry:

1) proposed "certification" in Florida,
2) is proposing "certification" in Arizona and California and
3) is proposing "certification" at a federal level in H.R. 5100 the Recovery Home Certification Act of 2018.

Not because it provides an incentive for houses to operate at a substantially higher level of quality, but because "certification" makes money. In contrast, state licensing does not. Indeed, with the "right" certification, a house can claim it is "certified" and private insurance companies can be billed for highly lucrative treatment, even without a state license.

DHCS doesn't actually have to legislate more stringent certification standards. In fact, if the sponsors of the bill just ASKED the many certification agencies for additional, voluntary, more stringent certification standards for unlicensed residences, certifiers would add them. It is a stain on the addiction treatment industry that it is aware of negligence, abuse and substandard for care and treatment and does not, on its own, introduce such standards and call for licensing. The reason Senator Lara and the Legislature have been drafted to promote certification in this bill is because industry wants to capture a new revenue stream: addicts in the court system.

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[1] "E&C Leaders Request Information on Hospital Accreditation Processes," 3/12/18; https://energycommerce.house.gov/news/press-release/ec-leaders-request-information-hospital-accreditation-processes/

SB 1228 - Sec. 3

Remember that at the beginning of this letter, we said that this bill is about the industry getting money? In the 2018 legislative session, two separate bills, AB 2214 and SB 1228, proposed by industry suggest the sticky fingers of the addiction treatment industry are very intent on grabbing addicts in the criminal justice system. Not content to try to float a bill through one legislator, it is hitting up as many as possible with the same ideas. It would seem the industry has outdone itself this season.

Why does the addiction treatment industry care so much about addicts in our court system? First, because under California's and the federal government's generous insurance plans, addicts in the court system can now be signed up for lucrative, private insurance, treatment contracts. SB 1228 will divert court-involved drug addicts, presently sent to houses (often state licensed or state certified, often covered by state or county funding) to the much more poorly regulated "certified houses." The expense and quality of treatment received will not be overseen by the state.

The other reason the addiction treatment industry cares about these addicts? Because they represent a reliable, recurring revenue stream. If the Legislature just blindly turns customers over to them on a very regular basis, no treatment center has to do any real advertising or marketing. This will help reduce the industry's desperate search for additional grist for the addiction treatment mill. For-profit Treatment Centers would like the State Legislature to believe that there are not enough beds. The reality: in order to fill beds, for-profit Treatment Centers aggressively market to out-of-state addicts, who, according to industry insiders, make up to 80% of their customers. As industry sees legislation in Florida and Arizona begin to make marketing to such clients harder, industry is looking for a new revenue stream.

We hope the Health Committee has not missed this detail because SB 1228 is a jackpot for the addiction treatment industry. SB 1228 will route addicts in the court-system, who have no say in their treatment options, to more expensive, less effective treatment with poorer oversight. In short, when you vote on SB 1228, remember this: under current health insurance requirements, the addiction treatment industry makes a fortune when the legislature mandates patients into for-profit, private insurance-covered treatment of dubious quality. This is morally wrong.

We are disappointed that Senator Lara has floated this bill. **We vehemently oppose SB 1228 and have sent letters similar to this to the entire Senate Health Committee.**

Sincerely,

Laurie Girand
Steering Committee Member
Advocates for Responsible Treatment