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From Bad to Worse: Draconian Addiction Treatment Bill Passes Health Committee

Last month, we analyzed the pending Assembly Bill 2403, expressing the concern that it threatens the resurgence of NIMBYism in California. Since its initial introduction in February, Assembly Member Richard Bloom and his co-authors amended AB 2403 in ways that make it even worse – and, yesterday, it passed 15-0 in the Assembly Committee on Health. The bill will now be considered by the Committee on Appropriations.

As amended, AB 2403 seeks to amend Section 11834.09 of the California Health and Safety Code, which currently grants the Department of Healthcare Services (DHCS) discretion in issuing licenses to residential addiction treatment facilities. Historically, pursuant to this law, DHCS has issued separate licenses to separate treatment facilities, regardless of their location, proximity, or the cumulative number of clients receiving treatment. AB 2403 would eliminate the Department's discretion, forcing DHCS to issue a single license to any group of facilities with a cumulative total of more than six residents (not including program staff) that share a common ownership, management, or any affiliation at all – even including the use of a common meal service or sharing the same consultant. By defining any commonalities as sufficient to treat all residences as "integral facilities," the bill would dramatically narrow the legal protection against NIMBYism. For the first time, cities and zoning boards would have the ability to block residential treatment centers whenever neighbors object.

The amended bill goes even further in empowering counties, cities, and local zoning boards to shun addiction treatment facilities and block them from their neighborhoods. AB 2403 would amend Health and Safety Code Section 11834.23, which establishes that local zoning authorities have no power to treat small group homes housing people with disabilities, including those in the recovery community, differently than traditional families. As amended, the bill excludes integral facilities from the protections afforded to residential treatment facilities under California law. If this bill were to pass, the only facilities that would be protected from NIMBYism would be single residential facilities serving six or fewer clients that have no common ownership, management, consultants, or meal services with any other facility. Individually-operated addiction treatment facilities are costly to operate, and the bill would prevent economies of scale and the benefits of consolidation and coordination – ironically moving in the opposite direction of the broader direction of the rest of the healthcare system towards larger provider organizations. The end result would be a drastic reduction in the availability of addiction treatment facilities at a time when the nation is facing a drug epidemic.

The amended bill also seeks to amend Health and Safety Code Section 11834.20, which unequivocally states that it is the policy of the State of California that each county and city shall encourage the development of sufficient numbers and types of addiction treatment facilities, commensurate with local need. Contrary to this policy, AB 2403 proposes density restrictions to prevent "over-concentration." The bill defines over-concentration as two or more addiction treatment facilities that are located within 300 feet of each other, and establishes a presumption of over-concentration if the proposed location of a new facility is within 300 feet of an existing facility. The bill also requires DHCS to deny any application of a new facility that is located within 300 feet of a licensed facility unless approval of the license would not conflict with regulations of the city or county in which the proposed facility will be located. The bill also allows any city or county to request a denial of an application for a license on the basis of over-concentration, and would require DHCS to give 45 days' notice to the local city or county planning authority before approving any new addiction treatment facility license.

If this bill were to pass, cities and zoning boards would have the ability to block residential treatment centers whenever neighbors object. In light of the current lack of access to care for people in need of addiction treatment, and the nationwide drug epidemic, this power to limit housing could be devastating.

Addiction treatment facilities should take this bill seriously and convey to their representatives the concern that AB 2403 is contrary to the public policy of encouraging the development of sufficient numbers and types of addiction treatment facilities and would likely result in local governments shutting down facilities with common ownership and preventing the growth of effective treatment providers. We have included suggested talking points and information for operators who wish to contact the Health Committee of the Assembly and other political representatives to call their attention to concerns about AB 2403.

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