Client Alert: California Enacts Four New Addiction Treatment Laws Banning Patient Brokering, Strengthening Licensure Requirements, and Increasing Penalties

On September 26, 2018, California Governor Jerry Brown signed four new addiction treatment bills into law that ban patient brokering, strengthen licensure requirements, and increase penalties against addiction treatment facilities.

SB 1228 Prohibits Patient Brokering

SB 1228 is intended to end patient brokering and trafficking and increase the availability of quality recovery services. The nationwide opioid epidemic has claimed countless lives and is one of the top 20 causes of death in California. The enormous need for recovery services has resulted in unscrupulous actors engaging in patient brokering and trafficking in order to collect insurance payments. The new law explicitly prohibits such practices.

Specifically, the following individuals and entities are prohibited from giving or receiving compensation or anything of value for the referral of a person who is seeking addiction treatment services:

- Residential addiction treatment facilities licensed by the California Department of Health Care Services (DHCS)
- Outpatient addiction treatment facilities certified by DHCS
- Owners, partners, officers, directors, or shareholders with at least a 10 percent interest in licensed or certified addiction treatment facilities
- Employees and individuals working for licensed and certified addiction treatment facilities.

Although SB 1228 does not directly apply to sober living homes, licensed and certified addiction treatment facilities are prohibited from accepting compensation or anything of value for patient referrals and are subject to penalties for violating this law, including suspension or revocation of the facility's licensure and certification. Thus, SB 1228 bans a widespread practice in the addiction treatment industry whereby licensed or certified facilities pay sober living homes for referrals.

SB 992 Adds Sober Living Home Disclosure Requirements

SB 992 requires licensed and certified addiction treatment facilities to disclose ownership, control of, or a financial interest in sober living homes. This new sober living home disclosure requirement signals DHCS' increased interest in the relationships between sober living homes and addiction treatment facilities and may be the first step in increased oversight of sober living homes.

SB 992 also prohibits denying a client admission to an addiction treatment facility on the basis of having a valid prescription for narcotic replacement treatment or medication-assisted treatment for substance use disorders, and requires the licensee to develop a plan to address a relapse by the resident.

SB 823 Strengthens Licensure Standards

SB 823 strengthens licensure requirements for addiction treatment facilities in California. The new law requires DHCS to adopt the American Society of Addiction Medicine treatment criteria, or an equivalent evidence-based standard, as the minimum standard of care for licensed facilities. DHCS is required to adopt regulations implementing these requirements by January 1, 2023, and is authorized to issue provider bulletins or similar instructions until such regulations are adopted.

AB 3162 Increases Penalties

AB 3162 makes new licenses issued by DHCS provisional for the first year and revocable for good cause. A licensee is prohibited from reapplying for an initial license for five years following a revocation of a provisional license. The law also increases the penalty for operating an unlicensed facility from $200 per day to $2,000 per day and increases the penalties for violations of the licensing and regulatory provisions across the board. Finally, the new law requires all licensed services offered to be provided at the licensed facility.

For questions regarding this update, please contact:

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