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Addiction Treatment Programs Receive Important DHCS Guidance on New Laws (SB 1228, SB 992, SB 3162)

For several months, California addiction treatment providers have been awaiting guidance from the California Department of Health Care Services (DHCS) on the details of several major legal changes enacted in September 2018, including SB 1228, SB 992, and SB 3162.

On January 29, 2019, DHCS published two key information notices outlining guidelines for compliance with these laws. Available here and here, we have highlighted key takeaways from DHCS' informational notices that addiction treatment programs and professionals need to focus on.

Please read carefully for some significant new requirements:

SB 1228 – Prohibition of Patient Brokering

In its Information Notice 19-002, DHCS provides guidance regarding compliance with SB 1228, which went into effect on January 1, 2019. DHCS notifies addiction treatment facilities of the passage of the new federal law, the "Eliminating Kickbacks in Recovery Act of 2018," which went into effect on October 24, 2018.

DHCS provides the following examples of conduct that violates SB 1228:

• **Payment of Referral Fees:** Soliciting or receiving any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind, in return for referring a patient to a licensed and/or certified alcoholism or drug abuse recovery and treatment facility.

• **Payment of Commissions/Bonuses:** Any form(s) of commission or bonus paid to treatment facilities, owners, partners, directors, employees, and/or shareholders in exchange for a client referral to a licensed and/or certified alcoholism or drug abuse recovery and treatment facility.

• **Paying Clients to Attend a Program:** Any form(s) of tangible or intangible compensation provided to a client for a referral to a licensed and/or certified alcoholism or drug abuse recovery and treatment facility. This includes recruitment and payments to potential clients at Alcoholics Anonymous meetings, Narcotics Anonymous meetings, and any other recovery meetings.

• **Paying Call Centers for Referrals:** Providing remuneration to any call center and/or company in exchange for a client referral.

• **Patient Brokering:** Selling potential client information to bidders in order for the bidder to secure a potential client's enrollment at a licensed and/or certified alcoholism or drug abuse recovery and treatment facility.

MHSUDS Information Notice No.: 19-002

Additionally, SB 1228 permits DHCS to assess a civil penalty of up to $2,000 against an addiction treatment facility for each occurrence of a violation of the new law. DHCS may also suspend or revoke a facility's license and/or certification and may deny new applications for licensure.

SB 992 – Sober Living Home Disclosures; MAT;

and Relapse Plans Required

In its Information Notice 19-003, DHCS provides guidance regarding compliance with SB 992, which requires new disclosures related to sober living homes, non-discrimination against individuals who receive medication assisted treatment, and submission of a written relapse plan by all residential treatment facilities currently holding a license.

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 is anticipated to be the first step in increased oversight of sober living homes in the coming year and beyond.

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.

Finally, SB 992 requires all currently licensed residential treatment facilities to submit a written relapse plan to their assigned DHCS analyst no later than April 1, 2019.

The relapse plan must address:

• **When a resident relapses**, including when a resident is on the licensed premises after consuming alcohol or using illicit drugs;

• **Details** of how the treatment stay and treatment plan of the resident will be adjusted to address the relapse episode;

• **How the resident** will be treated and supervised while under the influence of alcohol or illicit drugs; and

• **Resident discharge** and continuing care plan, including when a residential treatment facility determines that a resident requires services beyond the scope of their license.

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As part of the relapse plan, a licensed residential treatment facility must detail its policies and procedures how it will treat and supervise a resident who consumed alcohol or illicit drugs within the past twenty-four (24) hours.

AB 3162 – Licensable Services Must be On-Site; Provisional Licenses

In its Information Notice 19-003, DHCS provides guidance regarding compliance with AB 3162, which, among other things, requires that all licensable services be provided on-site, and establishes a one-year provisional licensure period for new facilities.

AB 3162 requires that all licensed residential treatment facilities provide all licensable services to its residents within the facility or facilities identified by street address on the license. A licensed residential treatment facility is prohibited from transporting its residents to an off-site location to receive any licensable services. DHCS defines licensable services as:

• **Detoxification Services:** Any service designed to support and assist an individual in the alcohol and/or drug withdrawal process and to explore plans for continued service;

• **Recovery Services:** Any assistance provided to a resident to maintain abstinence from the use of alcohol or

drugs, maintain sobriety, or maintain any goal achieved during treatment for a substance use disorder. Recovery services include the following: assessment, case management, counseling services, educational sessions, medication monitoring, and/or development of a recovery plan, and;

• **Treatment Services:** Any assistance provided to a resident to obtain abstinence from the use of alcohol or drugs, obtain sobriety, or obtain any goal associated with recovery from a substance use disorder. Treatment services include the following: assessment, case management, counseling services, educational sessions, medication monitoring, and/or development of a treatment plan.

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Additionally, AB 3162 sets forth a new rule that all initial licenses issued on or after January 1, 2019, to operate a residential treatment facility will be valid for a period of two years and provisional for the first year. During this provisional licensure period

DHCS may revoke the provisional licenses for a variety of reasons including the following:

a. Repeats any Class A deficiency within the one-year period;
b. Repeats any Class B deficiency within the one-year period;
c. Provides incidental medical services without obtaining approval from DHCS;
d. Fails to monitor, or document, resident detoxification checks;
e. Fails to staff the facility's operation with qualified individuals, including detoxification services;
f. Fails to monitor, or document, resident self-administration of medication;
g. Fails to securely store medications;
h. Allows, either intentionally or unintentionally, the use of prescription medications for any person other than the individual whose name appears on the label;
i. Allows bulk medications at the residential treatment facility, excluding over the counter medications;
j. Fails to destroy medications in accordance with the licensee's written policy and procedures, as approved by DHCS;
k. Operates beyond the authorized treatment capacity;
l. Denies DHCS staff entry into the residential treatment facility;
m. Fails to provide documents requested by DHCS, including resident and staff files;
n. Fails to begin providing licensable services within three (3) months from the effective date on the provisional license;
o. Fails to adhere to the licensee's policy and procedures; or
p. Misrepresents any material fact to DHCS by purposefully, knowingly, recklessly, or negligently asserting a false fact or statement, orally or in writing, or concealing a fact or information.

MHSUDS Information Notice No.: 19-003

If DHCS revokes a license during the provisional period, the licensee cannot apply for initial residential treatment facility license for a period of five (5) years following such revocation.

In the coming weeks and months, we anticipate further programs to explain in greater detail the implications of DHCS' guidance. In the interim, addiction treatment programs with questions about SB 1228, SB 992, and AB 3162 should contact Kathryn Edgerton (**kedgerton@nelsonhardiman.com**), Harry Nelson (**hnelson@nelsonhardiman.com**), and the Nelson Hardiman team for additional information.

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