

- SUBJECT:** Establishing a task force on patient solicitation; increasing penalties
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 8 ayes — Klick, Guerra, Allison, Jetton, Oliverson, Price, Smith, Zwiener
2 nays — Campos, Collier
1 absent — Coleman
- WITNESSES:** For — Kim Arrington, Woodlands Recovery Centers; Elizabeth Henry; (*Registered, but did not testify:* Duane Galligher, Association of Substance Abuse Programs; Sherri Layton, La Hacienda Treatment Center; Texas Association of Addiction Professionals; Matthew Lovitt, National Alliance on Mental Illness Texas)
Against — None
- BACKGROUND:** Health and Safety Code sec. 164.002 states that the legislative purpose of the Treatment Facilities Marketing Practices Act is to safeguard the public against fraud, deceit, and misleading marketing practices and to foster and encourage competition and fair dealing by mental health facilities and chemical dependency treatment facilities by prohibiting or restricting practices by which the public has been injured in connection with the marketing and advertising of mental health services and the admission of patients.
There have been calls to clarify and improve enforcement of laws on patient brokering with respect to substance abuse and treatment centers in the state.
- DIGEST:** HB 3331 would establish a task force on patient solicitation to study and make recommendations on preventing conduct that violated the Treatment Facilities Marketing Practices Act (TFMPA) or provisions of the Occupations Code prohibiting the solicitation of patients and to improve enforcement of those statutory provisions.

The task force would be composed of eight members with expertise in the field of health care or advertising, four of whom would be appointed by the executive commissioner of the Health and Human Services Commission (HHSC) and four appointed by the attorney general. The task force would be administratively attached to HHSC and its members would serve without compensation.

The attorney general and HHSC would be required to provide the task force with information requested by the task force to allow it to fulfill its duties. The information provided would be confidential and would not be subject to disclosure under state public information law.

Report. No later than December 1 of each even-numbered year, the task force would be required to submit to the legislature a report that included:

- a summary of civil or criminal actions brought on behalf of the state and administrative actions by state regulatory agencies in the preceding biennium for violations of TFMPA or applicable Occupations Code provisions; and
- legislative recommendations for preventing conduct that violated the TFMPA or applicable provisions of the Occupations Code, and improving their enforcement.

The bill would include solicitation or inducement through the internet to purchase the services provided by a treatment facility in the definition of "advertising" or "advertise" for the purposes of the TFMPA. The Health and Safety Code would be amended to state that the public should be able to clearly distinguish between marketing activities of a mental health or a chemical dependence treatment facility and its clinical functions.

A treatment facility or a person employed under contract with a treatment facility and acting on its behalf would be prohibited from contracting with a marketing provider who agreed to provide general referrals or leads for the placement of patients with a service provider or in a recovery residence through a call center or internet website presence, unless the

terms of that contract were disclosed to the prospective patient.

The bill would establish the following as violations of the TFMPA:

- making a false or misleading statement or providing false or misleading information about the facility's services or location in the facility's advertising media or on its internet website; or
- providing a link on the facility's internet website that redirected the user to another website containing false or misleading statements or information.

The bill would increase from \$1,000 to \$2,000 the minimum penalty per violation of the TFMPA.

The bill also would amend the Occupations Code to change offenses related to the solicitation of patients. For the class A misdemeanor offense regarding soliciting patients, the bill would:

- expand the conduct that constituted the offense to include knowingly offering to pay or agreeing to accept, directly or indirectly, overtly or covertly any benefit or commission to or from another for securing or soliciting a patient or patronage for or from a person licensed, certified, or registered by a state health care regulatory agency;
- increase the penalty for the offense from a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to a state-jail felony (180 days to two years in a state jail and an optional fine of up to \$10,000);
- increase the penalty for a repeat offense or for an offender who was employed by a federal, state, or local government at the time of the offense from a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) to a second-degree felony (two to 20 years in prison and an optional fine of up to \$10,000); and
- establish that provisions related to the offense do not prohibit advertising unless the advertising was prohibited under the TFMPA.

For the class A misdemeanor offense regarding failure to disclose the solicitation of patients, the bill would:

- expand the conduct that constituted the offense to include accepting a benefit, or a commission to secure or solicit a patient or patronage for a person licensed, certified, or registered by a state health care regulatory agency without disclosing that the person would receive, directly or indirectly, remuneration, a benefit, or a commission for securing or soliciting the patient;
- increase the penalty for the offense from a class A misdemeanor to a state-jail felony; and
- increase the penalty for a repeat offense or for an offender who was employed by a federal, state, or local government at the time of the offense from a third-degree felony to a second-degree felony.

For the offenses regarding the solicitation of patients as it related to the practice of the art of healing, the bill would:

- expand the conduct that constituted the offense applicable to a person practicing the art of healing with or without the use of medicine to include providing any benefit or commission to another for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine;
- expand the conduct that constituted the offense applicable to a person who accepted or agreed to accept anything or value for soliciting or securing a patient or patronage for a person who practiced the art of healing with or without the use of medicine to include accepting or agreeing to accept any benefit or commission for such acts; and
- change the punishment for the applicable offenses from a misdemeanor punishable by a fine of not less than \$100 or more than \$200 to a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000).

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after the effective date.