

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2023-2024 Regular Session

SB 913 (Umberg)
Version: April 15, 2024
Hearing Date: April 23, 2024
Fiscal: Yes
Urgency: No
ID

SUBJECT

Substance use disorder treatment: facilities

DIGEST

This bill permits city attorneys or district attorneys, and city or counties, as specified and with the consent or approval of the Department of Health Care Services (DHCS), to enforce specified provisions or conduct announced or unannounced site visits of licensed alcohol or drug recovery or treatment facilities (RTFs).

EXECUTIVE SUMMARY

Substance use disorders (SUD) are a serious concern that many Californians struggle with across the state. One form of treatment and services for those with SUDs is through alcohol or drug recovery or treatment facilities (RTFs), which provide nonmedical detoxification, individual sessions, group sessions, educational sessions, alcoholism or drug abuse recovery or treatment planning, or incidental medical services in a residential setting. RTFs must be licensed by the Department of Health Care Services (DHCS), which has the sole state authority to license such programs and enforce state law regarding such programs and facilities. DHCS also certifies alcohol or other drug programs, which include treatment services, recovery services, detoxification services, and medications for addiction treatment. Such programs must be in compliance with state alcohol or drug certification standards. In recent years, concerns have been raised by local residents and journalists that licensed and unlicensed RTFs are not providing quality services and are not complying with the rules regarding those entities. To address this issue, SB 913 provides cities and counties the ability, with the consent of DHCS, to enforce the laws regarding standards and licensure for RTFs, and to conduct announced or unannounced site visits of licensed RTFs with DHCS approval. SB 913 is sponsored by the League of California Cities, and is supported by a variety of California cities, and is opposed by the California Association of Alcohol and Drug Program Executives, the California Consortium of

Addiction Programs and Professionals, and the Steinberg Institute. This bill passed out of the Senate Health Committee on a vote of 10 to 0.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Provides that the Department of Health Care Services (DHCS) has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities (RTF's) and to certify alcohol or other drug programs. (Health & Saf. Code §§ 11834.01, 11832.)
- 2) Defines an "alcohol or drug abuse recovery or treatment facility" to mean any premises, place, or building that provides residential non-medical services to adults who are recovering from problems related to alcohol, drug, or alcohol and drug misuse or abuse, and who need alcohol, drug, or alcohol and drug recovery treatment or detoxification services. A RTF may serve adolescents with a waiver from DHCS, as specified. (Health & Saf. Code § 11834.02.)
- 3) Defines an "alcohol or other drug program" or "program" as a business entity with a physical location in the state that provides one or more of the following: treatment services; recovery services; detoxification services; or medications for addiction treatment. (Health & Saf. Code § 11832.2.)
- 4) Provides a process and standards for the licensure of RTF's, providing RTF's with two-year licenses, with the ability to renew licenses. (Health & Saf. Code § 11834.01 et seq.)
- 5) Requires that DHCS make onsite program visits for compliance at least once during the two-year period of licensure, and permits DHCS to conduct announced or unannounced site visits to licensed RTF's for the purpose of reviewing for compliance of applicable statutes and regulations. (Health & Saf. Code § 11834.01.)
- 6) Requires that any alcohol or other drug program be certified by DHCS, and specifies the process for certification. Specifies that certification shall be for a two-year period, if a program submits a written renewal application before the expiration of the certification and remains in compliance. (Health & Saf. Code §§ 11832.3, 11832.6.)
- 7) Requires that laboratory or certified outpatient treatment programs that lease, manage, or own housing units that are offered to individuals concurrently utilizing the laboratory or outpatient services maintain separate contracts for the housing, and requires that the offer of housing not depend on the individual's agreement to receive services from either the laboratory or certified outpatient treatment program. (Health & Saf. Code § 11831.65.)

- 8) Provides that DHCS may investigate allegations of violations of the applicable provisions of the Health and Safety Code related to residential treatment facilities and referral services, and allows the department to assess a penalty, suspend or revoke an RTFs license or the certification of an outpatient program, deny a RTFs application for licensure or for extension or modification of a license, or suspend or revoke the certification of a counselor for any violations. (Health & Saf. Code § 11831.7.)
- 9) Prohibits a licensed recovery or treatment facility (RTF) or a certified alcohol or drug program from:
 - a) Making a false or misleading statement or providing false or misleading information about an entity's products, goods, services, or geographical locations in its advertising materials, or media, as defined;
 - b) Making false or misleading statement or providing false or misleading information about medical treatments or medical services offered in its marketing, advertising, or media, as defined;
 - c) Including on its website a picture, description, staff information, or the location of an entity, along with false contact information, that surreptitiously directs the reader to a business that does not have a contract with the entity;
 - d) Including on its website false information or an electronic link that provides false information or surreptitiously directs the reader to another internet site.
- 10) Prohibits a licensed alcoholism or drug abuse recovery or treatment facility, an owners or similar person with an interest of 10 percent or more in a RTF, as specified, an employee of an RTF, an alcohol or other drug program, an owner or similar person with a 10 percent or more interest in a certified alcohol or other drug program, or an employee of a certified alcohol or other drug program from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery treatment services. (Health & Saf. Code § 11831.6.)

This bill:

- 1) Provides that the provisions relating to a laboratory or certified outpatient treatment program that leases, manages, or owns housing units that are offered to individuals concurrently utilizing the laboratory or outpatient services may be enforced, with the consent of DHCS, by a city attorney or a district attorney of the appropriate city or unincorporated area in which the housing units are located.
 - a) Provides that its provisions do not supersede DHCS's authority to enforce the applicable sections.
- 2) Requires that DHCS adopt a process by which a city or county may request approval from the DHCS to conduct site visits of RTF's, as described.

- 3) Permits a city, or a county if the facility is located in an unincorporated area, to request permission from DHCS to conduct a site visit pursuant to DHCS's prescribed process, and to conduct an announced or unannounced site visit upon approval by DHCS.
- 4) Requires that a request to conduct site visits include reasonable grounds that the facility is not in compliance with this chapter.
- 5) Specifies that its provisions allowing a city or county to conduct site visits, as specified, do not supersede DHCS's authority.

COMMENTS

1. Author's statement

According to the author:

SB 913 directly confronts the burgeoning issue of unlicensed sober living homes and Substance Use Disorder (SUD) treatment facilities, especially those engaging in unethical practices like patient brokering. This bill aims to establish a robust framework for oversight and enforcement, ensuring that these entities operate with integrity and provide evidence-based care. By empowering cities with the authority to conduct site visits and enabling the enforcement of compliance laws against patient brokering, SB 913 strives to create a safe and dignified recovery environment. This legislation is a crucial step in safeguarding individuals in recovery from exploitation and in promoting high standards of care within sober living and SUD treatment facilities.

2. Substance Use Disorder (SUD) treatment facilities and their regulation

Substance use disorders (SUD) and addiction are a serious issue for many Californians. Reports suggest that as many as nine percent of Californians are dealing with an SUD.¹ The issue has become a focus of public policy discussions and public discourse in recent years with the rise of the dangerous drug fentanyl, as the death rate from fentanyl has increased dramatically in the last decade.² In the wake of this issue, many institutions and treatment facilities in the state work to treat and support those dealing with addiction. Some of these treatments include cognitive behavioral therapy and family therapy, and others include medication-assisted treatment. Some treatment can be accomplished as outpatient services, in that the individual receives the treatment and

¹ California Healthcare Foundation, Substance Use in California Almanac: Prevalence and Treatment, (Jan. 2022), available at <https://www.chcf.org/publication/2022-edition-substance-use-california/#related-links-and-downloads>.

² *Id.*; Ana B. Ibarra et al, California's opioid deaths increased by 121% in 3 years. What's driving the crisis?, CalMatters (Jul. 25, 2023), available at <https://calmatters.org/explainers/california-opioid-crisis>.

services in clinics or primary care offices, and do not require hospitalization. Other types of treatment entail treatment or detoxification services in general acute care hospitals or other similar facilities, and residential programs in which clinically managed SUD treatment and recovery services are provided in a supportive living setting.³

DHCS regulates and licenses residential facilities that provide certain services for SUD recovery in a residential setting. It has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities. (Health & Saf. Code § 11834.01.) Licensure is required when a facility provides detoxification, individual sessions, group sessions, educational sessions, alcoholism or drug abuse recovery or treatment planning, or incidental medical services.⁴ DHCS issues licenses for two-year periods, is required to complete onsite program visits for compliance at least once during the two-year period, and has the authority to conduct announced or unannounced site visits to licensed facilities for the purpose of reviewing the facility for compliance. (Health & Saf. Code § 11834.01.) To become licensed, RTFs must meet certain criteria for their services and programs, and follow specific minimum standards of care for treatment and acceptance of patients. DHCS also has the sole authority in state government to certify alcohol or other drug programs, which include treatment services, recovery services, detoxification services, and medications for addiction treatment. (Health & Saf. Code §§ 11832, 11832.2.) Such programs must be in compliance with state alcohol or drug certification standards. Many facilities licensed by DHCS as RTFs are also certified.

The law provides DHCS a variety of tools for enforcing this licensing regime. DHCS is empowered to investigate allegations of violations, and as previously mentioned, may make announced and unannounced site visits as part of this authority. It may, upon finding a violation by an RTF, assess a penalty, suspend or revoke the license of the facility, or deny an application for a license or a license renewal. (Health & Saf. Code § 11831.7.) It may also enforce the certification of alcohol or drug programs provisions through similar penalty or suspension or revocation of the certification.

3. SB 913 aims to increase regulation and inspection of RTFs through enforcement by local enforcement officials

In recent years, as the number of RTFs in the state has increased, concerns have been raised that these RTFs are not adequately regulated to prevent fraud and ensure high standards of care.⁵ SB 913 proposes to address this issue by providing mechanisms for

³ California Healthcare Foundation, *supra* note 1 p. 34.

⁴ Dept. of Health Care Services, Facility Licensing (accessed Apr. 16, 2024), available at <https://www.dhcs.ca.gov/provgovpart/Pages/Licensing-and-Certification-Facility-Licensing.aspx>.

⁵ Caroline Grinder, Cal Cities moves recovery housing reform forward, League of California Cities (Mar. 27, 2024), available at <https://www.calcities.org/news/post/2024/03/27/cal-cities-moves-recovery-housing-reform-forward>.

DHCS to provide guidance and approval for local city officers to conduct enforcement of and investigation into licensed RTFs. It specifically does this by providing that a city attorney or county may enforce certain provisions relating to RTFs with the approval or consent of DHCS, and by requiring regulations from DHCS for the process through which cities and counties would request the required approval.

The first provision of SB 913 allows that a city attorney or district attorney of a city or unincorporated area in which an RTF exists may enforce the provisions at Health and Safety Code Section 11831.65 that provide specified requirements to keep housing and treatment services separate. A city attorney or district attorney may only enforce those provisions with the consent of DHCS, and SB 913 explicitly states that its provisions allowing local enforcement do not supersede DHCS's authority to enforce the section.

In addition, SB 913 allows a city or a county in which an RTF resides to request permission from DHCS to conduct announced or unannounced site visits of RTFs. SB 913 requires that the request for permission must be approved by DHCS, and that the request must include reasonable grounds that the facility is not in compliance with the licensure requirements for RTFs. Again, SB 913 clarifies that its provisions do not supersede the department's authority to issue licenses, complete onsite program visits, and conduct announced or unannounced site visits. Lastly, to implement the process for cities or counties to request permission, SB 913 requires that DHCS adopt a process that allows a city or county to make the request for approval to DHCS to conduct a site visit. Through these provisions, SB 913 provides the opportunity for local government officials to enforce the state's laws on RTFs and their licensure, through the consent or approval by DHCS through a specified process.

4. Amendments

To address concerns raised previously in the Senate Health Committee, the author has agreed to accept amendments that eliminate the District Attorney from enforcement provisions under Section 1. A full mock-up of the proposed committee amendments are attached at the end of this analysis.

5. Arguments in support

According to the League of California Cities, which is the sponsor of SB 913:

Residential recovery housing provides a range of benefits to some of California's most vulnerable residents, and it is critical their needs are prioritized over profits. Compliance with state licensing laws administered through the Department of Health Care Services is essential to safeguarding residents' well-being and maintaining quality care.

SB 913 would augment state licensing efforts by requiring the Department of Health Care Services to adopt a process that allows cities to request approval to conduct site visits and enforce compliance with existing state licensing laws. By collaborating with cities, the state can leverage local resources to supplement its regulatory efforts.

Cities are positioned to respond promptly to emerging issues or changes in their communities. Allowing them to partner with the state to conduct site inspections and enforce licensing laws enables swift action to address violations, ensure compliance, and protect public health and safety. SB 913 would help meet our shared goals of ensuring treatment facilities meet standards for patient care, which is central to effective treatment outcomes and community well-being.

6. Arguments in opposition

According to the California Association of Alcohol and Drug Program Executives, which is opposed to this bill:

Expanding city attorneys' authority to enforce DHCS licensing laws would establish a truly perilous precedent; one that would not only jeopardize the integrity of the regulatory process, but also endanger the well-being of vulnerable individuals receiving SUD treatment. Entrusting such crucial oversight responsibilities to local entities lacking specialized expertise in substance use disorder treatment and recovery could result in inconsistent enforcement practices at best and completely erode the effectiveness of regulatory enforcement at worst.

This proposal not only undermines the established regulatory framework but also poses a significant threat to the efficiency and effectiveness of the complaint process. DHCS has made substantial strides in enhancing its procedures to expedite the review and resolution of complaints. In the last two years alone, the average time to close a complaint has been nearly halved, plummeting from 245 days to just 114 days. Entrusting city attorneys with oversight of the complaint process would not only overlook these remarkable improvements but also disregard the specialized expertise and knowledge possessed by DHCS in regulating licensed SUD facilities.

Handing over such critical responsibilities to entities lacking the requisite experience and resources would jeopardize the safety and well-being of individuals receiving treatment. It is imperative to uphold the authority of DHCS and maintain its role in overseeing the complaint process to ensure timely and thorough enforcement of regulatory standards within the SUD treatment landscape.

In conclusion, while we share the goal of ensuring safe and effective treatment for individuals in recovery from a substance use disorder, SB 913, in its current form, would create unsafe, hostile environments by green lighting “no knock” warrants by city officials who have no expertise in the DHCS regulatory process. This bill raises significant legal, practical, and ethical concerns around how California regulates licensed SUD facilities.

SUPPORT

League of California Cities (sponsor)
City of Fountain Valley (sponsor)
UNB Community (sponsor)
City of Cypress
City of Garden Grove
City of Mission Viejo
City of Laguna Beach
City of Placentia

OPPOSITION

California Association of Alcohol and Drug Program Executives
California Consortium of Addiction Programs and Professionals
Steinberg Institute

RELATED LEGISLATION

Pending Legislation:

AB 2081 (Davies, 2024) requires an operator of a licensed RTF or certified alcohol or drug program to include on its website and intake paperwork a disclosure that the individual may confirm the status of the facility’s licensure on DHCS’s website. AB 2081 is currently in the Assembly Appropriations Committee.

AB 2121 (Dixon, 2024) requires an RTF to confirm that it is located more than 300 feet from any RTF or any community care facility, and would require DHCS to notify in writing the city or county in which the facility is located of the issuance of the license. AB 2121 is currently in Assembly Committee on Health.

Prior Legislation:

SB 1165 (Bates, Ch. 172, Stats. 2021) prohibited licensed RTF operators from making or providing false or misleading statements or information about medical treatments and services in their marketing, advertising material, internet website, or media or social media.

AB 1967 (Daly, 2022) would have authorized local agencies to require a conditional use permit for transitional or supportive housing with seven or more residents, and would also authorize a local agency to require a specified distance between two or more housing development projects, including between a residential care facility or sober living home. AB 1967 died in the Assembly Housing and Community Development Committee.

SB 1087 (Moorlach, 2020) would have required licensed RTF's to have at least one fire extinguisher and smoke alarms within specified areas of the recovery home. SB 1087 died in the Senate Rules Committee.

SB 1144 (Bates, 2020) would have required DHCS to take action against unlicensed facilities that are disclosed as a recovery residence, and would have authorized DHCS to refer a substantiated complaint to other enforcement agencies, as appropriate. SB 1144 died in the Senate Health Committee.

SB 1228 (Lara, Ch. 792, Stats. 2018) prohibited specified persons, programs, or entities, including a licensed RTF, from giving or receiving remuneration or anything of value for referring a person seeking recovery or treatment services, and authorized DHCS to investigate and impose sanctions for violations of the prohibition.

SB 1268 (Bradford, 2018) would have prohibited certain persons, programs, or entities, including an RTF, from giving or receiving remuneration or anything of value for the referral of a person seeking recovery and treatment services, and would have made the violation a misdemeanor. SB 1268 died in the Assembly Appropriations Committee.

SB 1290 (Bates, 2018) would have made it unlawful for any licensee, operators, employee, or patient of an RTF or other person to offer or pay a commission or other benefit to induce the referral of a patient or patronage to or from an RTF, and would have established the Commission on Substance Abuse and Recovery. SB 1290 died in the Senate Appropriations Committee.

AB 3162 (Friedman, Ch. 775, Stats. 2018) made an initial license for a new RTF a provisional license for one year and revocable for good cause, would have required services provided be specified on the license, and would have increased civil penalties for a violation of the licensing and regulatory provisions.

SB 786 (Mendoza, 2017) would have required that DHCS deny an application for a new RTF facility, if the proposed facility is in proximity to an existing facility in a residentially-zoned area, and would have made initial licensees provisional and revocable for good cause. SB 786 died in the Senate Health Committee.

AB 2255 (Melendez, 2016) would have required the certification of sober living homes not required to be licensed RTF's, and would have required DHCS to maintain and post

on its website a registry of each certified drug and alcohol free residence. AB 2255 died in the Assembly Appropriations Committee.

AB 2403 (Bloom, 2016) would have authorized DHCS to deny an RTF's application for a facility license if the facility would result in overconcentration in the area in which it is to be located, as specified, and would have authorized a city or county to request a license application be denied for overconcentration. AB 2403 died to the Assembly Appropriations Committee.

PRIOR VOTES:

Senate Health Committee (Ayes 10, Noes 0)

PROPOSED COMMITTEE AMENDMENTS TO SB 913

SECTION 1.

Section 11831.65 of the Health and Safety Code is amended to read:

11831.65.

(a) A laboratory or certified outpatient treatment program that leases, manages, or owns housing units that are offered to individuals who concurrently utilize laboratory or outpatient services shall maintain separate contracts for the housing. The contract shall clearly state that payment for housing is the responsibility of the individual and does not depend on insurance benefits. The contract shall include a repayment plan for any subsidized rent, and the laboratory or certified outpatient treatment program shall make a good faith effort to collect the debt. The offer for housing shall not depend on the individual's agreement to receive services from either the laboratory or the certified outpatient treatment program.

(b) An alcoholism or drug abuse recovery or treatment facility licensed under this part shall only offer an individual discounted housing following discharge from the facility if all of the following conditions are met:

(1) The alcoholism or drug abuse recovery or treatment facility and the individual enter into a written contract for housing that is separate from the contract for treatment, if the individual also pursues outpatient treatment.

(2) The contract described in paragraph (1) includes a repayment plan for any subsidized rent, and the alcoholism or drug abuse recovery or treatment facility makes a good faith effort to collect the debt.

(3) The offer for housing is not dependent upon the individual's agreement to attend outpatient treatment at a program that is owned or operated by the alcoholism or drug abuse recovery or treatment facility.

(c) An alcoholism or drug abuse recovery or treatment facility licensed under this part shall only offer transportation services to an individual who is seeking recovery or treatment services if all of the following conditions are met:

(1) Any ground transportation provided to an individual who is seeking recovery or treatment services is for a distance of less than 125 miles.

(2) Any air transportation provided to an individual who is seeking recovery or treatment services includes a return ticket that may be used by the individual upon discharge.

(3) A return ticket not used by an individual upon discharge is made available to the individual upon request for a period of one year following the individual's discharge.

(d) This section does not prohibit a person, program, or entity from providing an individual educational or informational materials about community resources, including, but not limited to, housing assistance.

~~(e) (1) The provisions of this section may be enforced, with the consent of the department, by the city attorney of a city in which the housing units are located or by the district attorney if the housing units are located in the unincorporated area of the county.~~

(e) (1) The provisions of this section may be enforced, with the consent of the department, by the city attorney of a city in which the housing units are located or by County Counsel and the County Behavioral Health Agency if the housing units are located in the unincorporated area of the county.

(2) This subdivision does not supersede the department's authority to enforce this section.

SEC. 2.

Section 11834.01 of the Health and Safety Code is amended to read:

11834.01.

The department has the sole authority in state government to license adult alcoholism or drug abuse recovery or treatment facilities, consistent with all of the following:

(a) In administering this chapter, the department shall issue new licenses for a period of two years to those programs that meet the criteria for licensure set forth in Section 11834.03.

(b) Onsite program visits for compliance shall be conducted at least once during the license period.

(c) The department may conduct announced or unannounced site visits to facilities licensed pursuant to this chapter for the purpose of reviewing for compliance with all applicable statutes and regulations.

(d) (1) The department shall adopt a process that allows a city or county to request approval from the department to conduct a site visit as described in subdivision (c).

(2) A city, or a county if the facility is located within the unincorporated area of the county, may request permission from the department to conduct a site visit pursuant to the process described in paragraph (1) and, upon the approval of the department, may conduct an announced or unannounced site visit as described in subdivision (c).

(3) The request described in paragraph (2) shall include reasonable grounds that the facility is not in compliance with this chapter.

(4) This subdivision does not supersede the department's authority pursuant to this section.