

AMENDED IN SENATE MARCH 21, 2018

**SENATE BILL**

**No. 1228**

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**Introduced by Senator Lara**

February 15, 2018

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An act to add Part 4 (commencing with Section 11977) to Division 10.5 of the Health and Safety Code, and to amend Section 1170.06 of the Penal Code, relating to public health.

LEGISLATIVE COUNSEL'S DIGEST

SB 1228, as amended, Lara. ~~Alcohol or drug abuse recovery or treatment programs.~~ *Substance use disorder: licensed and certified treatment programs.*

~~Existing~~

(1) Existing law provides for the licensure and regulation of alcoholism or drug abuse recovery or treatment facilities serving adults by the State Department of Health Care Services, as prescribed. Existing law restricts a licensee from operating an alcoholism or drug abuse recovery or treatment facility beyond the conditions and limitations specified on the license.

~~This bill would state the intent of the Legislature to enact legislation to protect people from treatment fraud and patient brokering while in recovery from opioid and other substance abuse.~~

*This bill would enact the Substance Use Disorder Patient Protection Act to prohibit a licensee or an employee of a licensee from referring a patient to a facility, residence, or dwelling that is not either a licensee or certified, or engaging in patient brokering. The act would define "patient brokering" to include, among other things, directly referring a patient to a provider of substance use disorder continuum of care in exchange for any economic benefit. The act would require the*

department to establish a program to approve organizations that certify facilities, residences, or dwellings which provide substance use disorder continuum of care, are not licensees, and meet specified requirements that include a ban on patient brokering.

(2) Existing law authorizes a sheriff or a county director of corrections to offer a program under which certain types of inmates committed to a county jail are allowed to participate in a voluntary alternative custody program in lieu of their confinement in the county jail. A voluntary alternative custody program includes confinement to a residential drug or treatment program.

This bill would require an alternative custody program that provides substance use disorder continuum of care to either be licensed or certified, within the meaning of the Substance Use Disorder Patient Protection Act.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~-yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. The Legislature finds and declares all of the  
2 following:

3 (a) The opioid epidemic is a nationwide scourge that claimed  
4 approximately 1,925 lives in California in 2016, and drug and  
5 opioid overdoses are currently in the top 20 causes of death  
6 statewide.

7 (b) The need for quality recovery services has grown, driven  
8 by the opioid crisis and changes in federal law that requires  
9 insurance coverage of substance use disorders. Yet, only one in  
10 five people who need treatment for opioid use disorders currently  
11 receives treatment, according to the United States Surgeon  
12 General.

13 (c) Desperation is fueling a surge in patient brokering or patient  
14 trafficking, where unscrupulous services refer people with  
15 substance use disorders to programs that are inappropriate for  
16 their needs in order to gain access to insurance payments.

17 (d) California disfavors patient referrals by physicians and  
18 other specified health care providers for medical services or goods  
19 at facilities in which the physician or health care provider has a  
20 “financial interest.”

1 (e) However, patient referral by nonmedical personnel is largely  
2 undefined and unregulated, and standards of quality are  
3 inconsistent across the substance use disorder continuum of care.

4 (f) California has an interest in ending patient brokering and  
5 trafficking and increasing the availability of quality recovery  
6 services to encourage patients' recovery and stability.

7 SEC. 2. Part 4 (commencing with Section 11977) is added to  
8 Division 10.5 of the Health and Safety Code, to read:

9  
10 **PART 4. SUBSTANCE USE DISORDER PATIENT PROTECTION**

11  
12 11977. This part shall be known, and may be cited, as the  
13 Substance Use Disorder Patient Protection Act.

14 11977.5. The following definitions shall apply to this part:

15 (a) "Certified" or "certify" means verified by an approved  
16 organization as providing specified services in accordance with  
17 Section 11977.15.

18 (b) "Department" means the State Department of Health Care  
19 Services.

20 (c) "Licensee" means an alcoholism or drug abuse recovery  
21 or treatment facility licensed pursuant to this division.

22 (d) "Patient brokering" means, directly or indirectly through  
23 the use of another person, entity, or technology, referring or  
24 recommending a patient or other individual to a provider of  
25 substance use disorder continuum of care in exchange, or  
26 anticipation of an exchange, for any economic benefit, including,  
27 but not limited to, a rebate, refund, commission, preference,  
28 patronage dividend, discount, or other item of value.

29 (e) "Substance use disorder continuum of care" means  
30 strategies and services designed to promote behavioral health,  
31 prevent alcohol and substance use disorders, treat alcohol and  
32 substance use disorders, and support recovery.

33 11977.10. A licensee or an employee of a licensee shall not do  
34 any of the following:

35 (a) Refer a patient to a facility, residence, or dwelling that is  
36 not either a licensee or certified.

37 (b) Engage in patient brokering.

38 11977.15. (a) The department shall establish a program to  
39 approve organizations that certify facilities, residences, or

1  *dwellings which provide substance use disorder continuum of care,*  
2  *are not licensees, and meet the requirements of subdivision (b).*

3  *(b) A facility, residence, or dwelling that provides substance*  
4  *use disorder continuum of care and is not a licensee shall only be*  
5  *certified pursuant to this section if it provides all of the following:*

6  *(1) Emergency response plan for patients.*

7  *(2) Nondiscrimination policy based on race, ethnicity, language,*  
8  *religion, gender, gender identity, sexual orientation, and any other*  
9  *state-recognized protected category.*

10  *(3) Staff cultural competence.*

11  *(4) Access to overdose prevention measures available without*  
12  *a prescription.*

13  *(5) Accounting system that documents individual resident*  
14  *financial transactions.*

15  *(6) Prohibition on work as a precondition for treatment and*  
16  *requirements that any work performed be subject to a paid work*  
17  *agreement.*

18  *(7) Resident code of conduct.*

19  *(8) Reporting of patient deaths to the certifying organization.*

20  *(9) Transparent policies and consumer protections, including*  
21  *policies and procedures for disclosing financial obligations, such*  
22  *as forfeiture of any deposits and fees resulting from a premature*  
23  *departure, and a written contract specifically describing services*  
24  *to be provided.*

25  *(10) Ban on patient brokering.*

26  *(11) Regular inspections by the certifying organization.*

27  *(12) Any other requirements the department deems necessary*  
28  *for the best interests of individuals needing a substance use*  
29  *disorder continuum of care.*

30  *11977.20. This part shall not be construed to limit the ability*  
31  *of the Attorney General or any other law enforcement officer to*  
32  *bring a civil or criminal action against any entity or individual*  
33  *that is a licensee or certified.*

34  *SEC. 3. Section 1170.06 of the Penal Code is amended to read:*

35  *1170.06. (a) Notwithstanding any other law, a sheriff or a*  
36  *county director of corrections is authorized to offer a program*  
37  *under which inmates as specified in subdivision (c), who are not*  
38  *precluded by subdivision (d), and who have been committed to a*  
39  *county jail may be allowed to participate in a voluntary alternative*  
40  *custody program as defined in subdivision (b) in lieu of their*

1 confinement in a county jail. Under this program, one day of  
2 participation is in lieu of one day of incarceration in a county jail.  
3 Participants in the program shall receive any sentence reduction  
4 credits that they would have received had they served their sentence  
5 in a county jail, and are subject to denial and loss of credit pursuant  
6 to subdivision (d) of Section 4019. The sheriff or the county  
7 director of corrections may enter into contracts with county  
8 agencies, not-for-profit organizations, for-profit organizations, and  
9 others in order to promote alternative custody placements.

10 (b) (1) As used in this section, an alternative custody program  
11 shall include, but is not limited to, the following:

12 ~~(1)~~

13 (A) Confinement to a residential home during the hours  
14 designated by the sheriff or the county director of corrections.

15 ~~(2)~~

16 (B) Confinement to a residential drug or treatment program  
17 during the hours designated by the county sheriff or the county  
18 director of corrections.

19 ~~(3)~~

20 (C) Confinement to a transitional care facility that offers  
21 appropriate services.

22 ~~(4)~~

23 (D) Confinement to a mental health clinic or hospital that offers  
24 appropriate mental health services.

25 (2) (A) *If an alternative custody program provides substance*  
26 *use disorder continuum of care, the provider of the program shall*  
27 *either be a licensee or certified.*

28 (B) *For purposes of this paragraph, the terms “substance use*  
29 *disorder continuum of care,” “licensee,” and “certified” shall*  
30 *have the same meanings as those terms are defined in Section*  
31 *11977.5 of the Health and Safety Code.*

32 (c) Except as provided by subdivision (d), inmates sentenced  
33 to a county jail for a determinate term of imprisonment pursuant  
34 to a misdemeanor or a felony pursuant to subdivision (h) of Section  
35 1170, and only those persons, are eligible to participate in the  
36 alternative custody program authorized by this section.

37 (d) An inmate committed to a county jail who meets any of the  
38 following criteria is not eligible to participate in the alternative  
39 custody program:

1 (1) The person was screened by the sheriff or the county director  
2 of corrections using a validated risk assessment tool and determined  
3 to pose a high risk to commit a violent offense.

4 (2) The person has a history, within the last 10 years, of escape  
5 from a facility while under juvenile or adult custody, including,  
6 but not limited to, any detention facility, camp, jail, or state prison  
7 facility.

8 (3) The person has a current or prior conviction for an offense  
9 that requires the person to register as a sex offender as provided  
10 in Chapter 5.5. (commencing with Section 290) of Title 9 of Part  
11 1.

12 (e) An alternative custody program may include the use of  
13 electronic monitoring, global positioning system devices, or other  
14 supervising devices for the purpose of helping to verify a  
15 participant's compliance with the rules and regulations of the  
16 program. The devices shall not be used to eavesdrop or record any  
17 conversation, except a conversation between the participant and  
18 the person supervising the participant, in which case the recording  
19 of the conversation is to be used solely for the purposes of voice  
20 identification.

21 (f) (1) In order to implement alternative custody for the  
22 population specified in subdivision (c), the sheriff or the county  
23 director of corrections shall create, and the participant shall agree  
24 to and fully participate in, an individualized treatment and  
25 rehabilitation plan. When available and appropriate for the  
26 individualized treatment and rehabilitation plan, the sheriff or the  
27 county director of corrections shall prioritize the use of  
28 evidence-based programs and services that will aid in the  
29 participant's successful reentry into society while he or she takes  
30 part in alternative custody. Case management services shall be  
31 provided to support rehabilitation and to track the progress and  
32 individualized treatment plan compliance of the inmate.

33 (2) For purposes of this section, "evidence-based practices"  
34 means supervision policies, procedures, programs, and practices  
35 demonstrated by scientific research to reduce recidivism among  
36 individuals under probation, parole, or postrelease community  
37 supervision.

38 (g) The sheriff or the county director of corrections shall  
39 prescribe reasonable rules to govern the operation of the alternative  
40 custody program. Each participant shall be informed in writing

1 that he or she is required to comply with the rules of the program,  
2 including, but not limited to, the following rules:

3 (1) The participant shall remain within the interior premises of  
4 his or her residence during the hours designated by the sheriff or  
5 his or her designee or the county director of corrections or his or  
6 her designee.

7 (2) The participant shall be subject to search and seizure by a  
8 peace officer at any time of the day or night, with or without cause.  
9 In addition, the participant shall admit any peace officer designated  
10 by the sheriff or his or her designee or the county director of  
11 corrections or his or her designee into the participant's residence  
12 at any time for purposes of verifying the participant's compliance  
13 with the conditions of his or her detention. Prior to participation  
14 in the alternative custody program, each participant shall agree in  
15 writing to these terms and conditions.

16 (3) The sheriff or his or her designee, or the county director of  
17 corrections or his or her designee, may immediately retake the  
18 participant into custody to serve the balance of his or her sentence  
19 if an electronic monitoring or supervising device is unable for any  
20 reason to properly perform its function at the designated place of  
21 detention, if the participant fails to remain within the place of  
22 detention as stipulated in the agreement, or if the participant for  
23 any other reason no longer meets the criteria under this section.

24 (h) Whenever a peace officer supervising a participant has  
25 reasonable suspicion to believe that the participant is not complying  
26 with the rules or conditions of the program, or that a required  
27 electronic monitoring device is unable to function properly in the  
28 designated place of confinement, the peace officer may, under  
29 general or specific authorization of the sheriff or his or her  
30 designee, or the county director of corrections or his or her  
31 designee, and without a warrant of arrest, retake the participant  
32 into custody to complete the remainder of the original sentence.

33 (i) This section shall not be construed to require a sheriff or his  
34 or her designee, or a county director of corrections or his or her  
35 designee, to allow an inmate to participate in this program if it  
36 appears from the record that the inmate has not satisfactorily  
37 complied with reasonable rules and regulations while in custody.  
38 An inmate shall be eligible for participation in an alternative  
39 custody program only if the sheriff or his or her designee or the  
40 county director of corrections or his or her designee concludes that

1 the inmate meets the criteria for program participation established  
2 under this section and that the inmate’s participation is consistent  
3 with any reasonable rules prescribed by the sheriff or the county  
4 director of corrections.

5 (1) The rules and administrative policies of the program shall  
6 be written and shall be given or made available to each participant  
7 upon assignment to the alternative custody program.

8 (2) The sheriff or his or her designee or the county director of  
9 corrections or his or her designee shall have the sole discretion  
10 concerning whether to permit program participation as an  
11 alternative to custody in a county jail. A risk and needs assessment  
12 shall be completed on each inmate to assist in the determination  
13 of eligibility for participation and the type of alternative custody.

14 (j) (1) The sheriff or his or her designee or the county director  
15 of corrections or his or her designee shall permit program  
16 participants to seek and retain employment in the community,  
17 attend psychological counseling sessions or educational or  
18 vocational training classes, participate in life skills or parenting  
19 training, utilize substance abuse treatment services, or seek  
20 medical, mental health, and dental assistance based upon the  
21 participant’s individualized treatment and release plan.  
22 Participation in other rehabilitative services and programs may be  
23 approved by the case manager if it is specified as a requirement  
24 of the inmate’s individualized treatment and rehabilitative case  
25 plan.

26 (2) Willful failure of the program participant to return to the  
27 place of detention prior to the expiration of any period of time  
28 during which he or she is authorized to be away from the place of  
29 detention, unauthorized departures from the place of detention, or  
30 tampering with or disabling, or attempting to tamper with or  
31 disable, an electronic monitoring device is punishable pursuant to  
32 Section 4532 and shall additionally subject the participant to a  
33 return to custody pursuant to subdivisions (g) and (h). In addition,  
34 participants may be subject to forfeiture of credits pursuant to the  
35 provisions of Section 4019, or to discipline for violation of rules  
36 established by the sheriff or the county director of corrections.

37 (k) (1) Notwithstanding any other law, the sheriff or his or her  
38 designee or the county director of corrections or his or her designee  
39 shall provide the information specified in paragraph (2) regarding  
40 participants in an alternative custody program to the law



1 enforcement agencies of the jurisdiction in which persons  
2 participating in an alternative custody program reside.

3 (2) The information required by paragraph (1) shall consist of  
4 the following:

5 (A) The participant's name, address, and date of birth.

6 (B) The offense committed by the participant.

7 (C) The period of time the participant will be subject to an  
8 alternative custody program.

9 (3) The information received by a law enforcement agency  
10 pursuant to this subdivision may be used for the purpose of  
11 monitoring the impact of an alternative custody program on the  
12 community.

13 (l) It is the intent of the Legislature that the alternative custody  
14 programs established under this section maintain the highest public  
15 confidence, credibility, and public safety. In the furtherance of  
16 these standards, the sheriff or the county director of corrections  
17 may administer an alternative custody program pursuant to written  
18 contracts with appropriate public agencies or entities to provide  
19 specified program services. No public agency or entity entering  
20 into a contract may itself employ any person who is in an  
21 alternative custody program. The sheriff or the county director of  
22 corrections shall determine the recidivism rate of each participant  
23 in an alternative custody program.

24 (m) An inmate participating in this program shall voluntarily  
25 agree to all of the provisions of the program in writing, including  
26 that he or she may be returned to confinement at any time with or  
27 without cause, and shall not be charged fees or costs for the  
28 program.

29 (n) If a phrase, clause, sentence, or provision of this section or  
30 application thereof to a person or circumstance is held invalid, that  
31 invalidity shall not affect any other phrase, clause, sentence, or  
32 provision or application of this section, which can be given effect  
33 without the invalid phrase, clause, sentence, or provision or  
34 application and to this end the provisions of this section are  
35 declared to be severable.

36 ~~SECTION 1. It is the intent of the Legislature to enact~~  
37 ~~legislation to protect people from treatment fraud and patient~~  
38 ~~brokering while in recovery from opioid and other substance abuse.~~

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