

DATE: September 5, 2023

Behavioral Health Information Notice No: 23-045

TO: California Alliance of Child and Family Services
California Association for Alcohol/Drug Educators
California Association of Alcohol & Drug Program Executives, Inc.
California Association of DUI Treatment Programs
California Association of Social Rehabilitation Agencies
California Consortium of Addiction Programs and Professionals
California Council of Community Behavioral Health Agencies
California Hospital Association
California Opioid Maintenance Providers
California State Association of Counties
Coalition of Alcohol and Drug Associations
County Behavioral Health Directors
County Behavioral Health Directors Association of California
County Drug & Alcohol Administrators

SUBJECT: California Ethical Treatment for Persons with Substance Use Disorder (SUD) Act: Implementation of Senate Bill 349 (SB 349)

PURPOSE: Establishes requirements for all Licensed or Certified Substance Use Disorder (SUD) Recovery or Treatment Facilities to adopt and make available a client bill of rights and prohibits providers from making false or misleading statements in marketing or advertising.

REFERENCE: [Senate Bill \(SB\) 349](#) (Health and Safety Code (HSC) Section 11857 et seq.)

BACKGROUND:

To further protect the health, safety, and welfare of individuals seeking treatment for a SUD, SB 349, added Chapter 14, commencing with Section 11857, to Part 2 of Division 10.5 of the HSC. Known as the California Ethical Treatment for Persons with Substance Use Disorder Act (Act), SB 349 became effective on January 1, 2023.



POLICY:

The Act requires an alcohol or other drug (also known as substance use disorder (SUD))¹ recovery or treatment facilities licensed and/or certified by the DHCS to adopt a client bill of rights for persons receiving treatment for SUD, and to make the bill of rights available to all clients and prospective clients. The Act also sets forth specific unlawful acts related to marketing and advertising and authorizes enforcement of the Act by the Attorney General, any district attorney, county counsel, city attorney or injured person. Furthermore, the Act gives DHCS the authority to investigate any allegation that a licensed or certified facility is violating the Act.

Summary of SB 349:

HSC Section 11857.2 requires every treatment provider to adopt and make available to all clients and prospective clients, a client bill of rights that ensures that individuals receiving treatment for a SUD have the right to all of the following:

- 1) To be treated for the life-threatening, chronic disease of substance use disorder with honesty, respect, and dignity, including privacy in treatment and in care of personal needs
- 2) To be informed by the treatment provider of all the aspects of treatment recommended to the client, including the option of no treatment, risks of treatment, and expected result or results
- 3) To be treated by treatment providers with qualified staff
- 4) To receive evidence-based treatment
- 5) To be treated simultaneously for co-occurring behavioral health conditions, when medically appropriate and the treatment provider is authorized to treat co-occurring conditions
- 6) To receive an individualized, outcome-driven treatment plan²
- 7) To remain in treatment for as long as the treatment provider is authorized to treat the client
- 8) To receive support, education, and treatment for their families and loved ones, if the treatment provider is authorized to provide these services
- 9) To receive care in a treatment setting that is safe and ethical
- 10) To be free from mental and physical abuse, exploitation, coercion, and physical restraint

¹ This BHIN uses “SUD” as preferred clinical terminology, consistent with the current edition of the Diagnostic and Statistical Manual of Mental Disorders, medical societies, professional organizations, recovery advocates, and [federal guidance](#) regarding the use of non-stigmatizing, person-centered language.

² Treatment, recovery plan or problem list as required by the CalAIM Initiative.

- 11) To be informed of these rights once enrolled to receive treatment, as evidenced by written acknowledgment or by documentation by staff in the clinical record that a written copy of these rights were given
- 12) To be informed by the treatment provider of the law regarding complaints, including, but not limited to, to be informed of the address and telephone number of DHCS
- 13) To receive ethical care that covers and ensures full compliance with the requirements set forth in Chapter 5 (commencing with Section 10500) of Division 4 of Title 9 of the California Code of Regulations and the alcohol and other drug program certification standards adopted in accordance with Section 11830.1, if applicable

HSC Section 11857.3 requires any marketing or advertising materials published or disseminated by a treatment provider to provide accurate and complete information, in plain language that is easy to understand. Marketing or advertising materials shall include both of the following:

- (1) Information about the types and methods of services provided or used, and information about where they are provided, using the categories of treatment identified in subdivision (a) of Section 11834.26 and the levels of care established pursuant to subdivision (a) of Section 11834.015 (i.e. treatment, recovery or detoxification services, etc.)
- (2) The treatment provider's name and brand

Additionally, Section 11857.3 prohibits:

- A treatment provider from making false or misleading statements, or providing false or misleading information, about the nature, identity, or location of substance use disorder treatment services in advertising materials, on a call line, on an internet website, or in any other marketing materials
- A treatment provider from making false or misleading statements about their status as an in-network or out-of-network provider
- A person or entity from providing, or directing any other person or entity to provide, false or misleading information about the identity of, or contact information for, any treatment provider
- A person or entity from including false or misleading information about the internet address of any treatment provider's website, or to surreptitiously direct or redirect the reader to another website
- A person or entity from suggesting or implying that a relationship with a treatment provider exists, unless the treatment provider has provided express, written consent to indicate that relationship

- A person or entity working within a licensed or certified alcoholism or drug abuse recovery or treatment facility from making a false or misleading statement about substance use disorder treatment services

A violation of HSC 11857.3 constitutes a deceptive act or practice under the Unfair Competition Law (Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code), regardless of whether any consumer was actually misled or deceived.

HSC Section 11857.4 requires every treatment provider to maintain records of referrals made to or from recovery residences, including, if available, information about where the client ultimately elected to go.

HSC Section 11857.5 prohibits a treatment provider from requesting, receiving, or retaining payment for SUD treatments provided to a client as a result of conduct declared unlawful under the Act. Section 11857.5 further provides declaratory relief and the imposition of civil penalties for violations of the Act. In addition to DHCS' authority, the Attorney General, a district attorney, a county counsel, a city attorney, or any person who has suffered any injury or damages, including, but not limited to, paying for treatment or services that were performed in violation of the Act, may bring a claim that an act or practice violates Chapter 14 and seek one or both of the following:

- 1) Declaratory relief to enjoin a person or entity who has violated or is violating this chapter and/or;
- 2) A civil penalty of not more than twenty thousand dollars (\$20,000) for each violation

Legal action may be taken for an act or practice that violates the Act. Additionally, DHCS may investigate an allegation of a violation. Upon finding a violation, DHCS may take any action under HSC Sections 11831.7, 11834.34, and 11834.36 with respect to the offending provider, including, but not limited to, suspension or revocation of a license or certification. If the DHCS imposes a civil penalty, the civil penalty shall not be more than twenty thousand dollars (\$20,000) for each violation.

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COMPLIANCE:

All licensed and certified facilities shall demonstrate compliance with the California Ethical Treatment for Persons with Substance Use Disorder Act beginning January 1, 2023.

Questions regarding this information notice should be directed the SUD Licensing and Certification Section by email at LCDQuestions@DHCS.CA.gov.

Sincerely,

Original signed by

Janelle Ito-Orille, Chief
Licensing and Certification Division