

By: Vo

H.B. No. 4454

A BILL TO BE ENTITLED

AN ACT

relating to solicitation of patients and other prohibited marketing practices and the establishment of the task force on patient solicitation; increasing criminal penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subtitle E, Title 2, Health and Safety Code, is amended by adding Chapter 110 to read as follows:

CHAPTER 110. TASK FORCE ON PATIENT SOLICITATION

Sec. 110.001. DEFINITION. In this chapter, "task force" means the task force on patient solicitation created under this chapter.

Sec. 110.002. PURPOSE. The task force is established to study and make recommendations on preventing conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code, and to improve enforcement of those chapters.

Sec. 110.003. MEMBERSHIP. (a) The task force is composed of eight members as follows:

(1) four members the executive commissioner appoints;  
and

(2) four members the attorney general appoints.

(b) Each task force member must have expertise in the field of health care or advertising.

(c) Task force members serve without compensation.

Sec. 110.004. ADMINISTRATIVE ATTACHMENT. The task force is administratively attached to the commission.

Sec. 110.005. ACCESS TO INFORMATION; CONFIDENTIALITY OF PROVIDED INFORMATION. The attorney general and the commission shall provide the task force with information the task force requests to allow the task force to fulfill its duties. Information provided under this section is confidential and is not subject to disclosure under Chapter 552, Government Code.

Sec. 110.006. REPORT. Not later than December 1 of each even-numbered year, the task force shall submit to the legislature a report that includes:

(1) 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 conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code; and

(2) legislative recommendations for preventing conduct that violates Chapter 164 of this code or Chapter 102, Occupations Code, and improving enforcement of those chapters.

SECTION 2. Section 164.002, Health and Safety Code, is amended to read as follows:

Sec. 164.002. LEGISLATIVE PURPOSE. The purpose of this chapter 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. Nothing in this chapter should be construed to prohibit a mental health facility or chemical dependency facility from advertising its services in a general way or promoting its specialized services. However, the public should be able to clearly distinguish between the marketing activities of the facility and its clinical functions.

SECTION 3. Section 164.003(1), Health and Safety Code, is amended to read as follows:

(1) "Advertising" or "advertise" means a solicitation or inducement, through print or electronic media, including radio, television, the Internet, or direct mail, to purchase the services provided by a treatment facility.

SECTION 4. Section 164.006, Health and Safety Code, is amended to read as follows:

Sec. 164.006. SOLICITING AND CONTRACTING WITH CERTAIN REFERRAL SOURCES. A treatment facility or a person employed or

under contract with a treatment facility, if acting on behalf of the treatment facility, may not:

(1) contact a referral source or potential client for the purpose of soliciting, directly or indirectly, a referral of a patient to the treatment facility without disclosing its soliciting agent's, employee's, or contractor's affiliation with the treatment facility;

(2) offer to provide or provide mental health or chemical dependency services to a public or private school in this state, on a part-time or full-time basis, the services of any of its employees or agents who make, or are in a position to make, a referral, if the services are provided on an individual basis to individual students or their families. Nothing herein prohibits a treatment facility from:

(A) offering or providing educational programs in group settings to public schools in this state if the affiliation between the educational program and the treatment facility is disclosed;

(B) providing counseling services to a public school in this state in an emergency or crisis situation if the services are provided in response to a specific request by a school; provided that, under no circumstances may a student be referred to the treatment facility offering the services; or

(C) entering into a contract under Section 464.020 with the board of trustees of a school district with a disciplinary alternative education program, or with the board's designee, for the provision of chemical dependency treatment services;

(3) provide to an entity of state or local government, on a part-time or full-time basis, the mental health or chemical dependency services of any of its employees, agents, or contractors who make or are in a position to make referrals unless:

(A) the treatment facility discloses to the governing authority of the entity:

(i) the employee's, agent's, or contractor's relationship to the facility; and

(ii) the fact that the employee, agent, or contractor might make a referral, if permitted, to the facility; and

(B) the employee, agent, or contractor makes a referral only if:

(i) the treatment facility obtains the governing authority's authorization in writing for the employee, agent, or contractor to make the referrals; and

(ii) the employee, agent, or contractor discloses to the prospective patient the employee's, agent's, or contractor's relationship to the facility at initial contact; [~~or~~]

(4) in relation to intervention and assessment services, contract with, offer to remunerate, or remunerate a person who operates an intervention and assessment service that makes referrals to a treatment facility for inpatient or outpatient treatment of mental illness or chemical dependency unless the intervention and assessment service is:

(A) operated by a community mental health and intellectual disability center the commission funds [~~funded by the department and the Department of Aging and Disability Services~~];

(B) operated by a county or regional medical society;

(C) a qualified mental health referral service as defined by Section 164.007; or

(D) owned and operated by a nonprofit or not-for-profit organization offering counseling concerning family violence, help for runaway children, or rape; or

(5) contract with a marketing provider who agrees to provide general referrals or leads for the placement of prospective patients with a service provider or in a recovery residence through a call center or Internet website presence, unless the terms of that contract are disclosed to the prospective patient.

SECTION 5. Section 164.010, Health and Safety Code, is amended to read as follows:

Sec. 164.010. PROHIBITED ACTS. It is a violation of this chapter, in connection with the marketing of mental health services, for a person to:

(1) advertise, expressly or impliedly, the services of a treatment facility through the use of:

(A) promises of cure or guarantees of treatment results that cannot be substantiated; or

(B) any unsubstantiated claims;

(2) advertise, expressly or impliedly, the availability of intervention and assessment services unless and until the services are available and are provided by mental health professionals licensed or certified to provide the particular service;

(3) fail to disclose before soliciting a referral source or prospective patient to induce a person to use the services of the treatment facility an affiliation between a treatment facility and its soliciting agents, employees, or contractors;

(4) obtain or disclose information considered confidential by state or federal law regarding a person for the purpose of soliciting that person to use the services of a treatment facility unless and until consent is obtained from the person or, in the case of a minor, the person's parent, managing

conservator, or legal guardian or another person with authority to give that authorization; ~~[or]~~

(5) represent that a referral service is a qualified mental health referral service unless and until the referral service complies with Section 164.007;

(6) make a false or misleading statement or provide false or misleading information about the facility's services or location in the facility's advertising media or on its Internet website; or

(7) provide a link on the facility's Internet website that redirects the user to another Internet website containing false or misleading statements or information described by Subdivision (6).

SECTION 6. Section 164.011(a), Health and Safety Code, is amended to read as follows:

(a) If it appears that a person is in violation of this chapter, the attorney general, a district attorney, or a county attorney may institute an action for injunctive relief to restrain the person from continuing the violation and for civil penalties of not less than \$2,000 ~~[\$1,000]~~ and not more than \$25,000 per violation.

SECTION 7. Section 102.001, Occupations Code, is amended to read as follows:



Sec. 102.001. SOLICITING PATIENTS; OFFENSE. (a) A person commits an offense if the person knowingly offers to pay or agrees to accept, directly or indirectly, overtly or covertly any remuneration in cash or in kind or 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.

(b) Except as provided by Subsection (c), an offense under this section is a state jail felony [~~Class A misdemeanor~~].

(c) An offense under this section is a felony of the second [~~third~~] degree if it is shown on the trial of the offense that the person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

SECTION 8. Section 102.004, Occupations Code, is amended to read as follows:

Sec. 102.004. APPLICABILITY TO ADVERTISING. Section 102.001 does not prohibit advertising, unless the advertising is:

(1) false, misleading, or deceptive; [~~or~~]

(2) not readily subject to verification, if the advertising claims professional superiority or the performance of

a professional service in a superior manner; or

(3) prohibited under Chapter 164, Health and Safety Code, as applicable.

SECTION 9. Section 102.006, Occupations Code, is amended to read as follows:

Sec. 102.006. FAILURE TO DISCLOSE; OFFENSE. (a) A person commits an offense if:

(1) the person, in a manner otherwise permitted under Section 102.001, accepts remuneration, 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; and

(2) does not, at the time of initial contact and at the time of referral, disclose to the patient:

(A) the person's affiliation, if any, with the person for whom the patient is secured or solicited; and

(B) that the person will receive, directly or indirectly, remuneration, a benefit, or a commission for securing or soliciting the patient.

(b) Except as provided by Subsection (c), an offense under this section is a state jail felony [~~Class A misdemeanor~~].

(c) An offense under this section is a felony of the second [~~third~~] degree if it is shown on the trial of the offense that the

person:

(1) has previously been convicted of an offense under this section; or

(2) was employed by a federal, state, or local government at the time of the offense.

SECTION 10. Sections 102.051(a), (b), and (c), Occupations Code, are amended to read as follows:

(a) A person commits an offense if the person:

(1) practices the art of healing with or without the use of medicine; and

(2) employs or agrees to employ, pays or promises to pay, or rewards or promises to reward or provide any benefit or commission to another for soliciting or securing a patient or patronage.

(b) A person commits an offense if the person accepts or agrees to accept anything of value or any benefit or commission for soliciting or securing a patient or patronage for a person who practices the art of healing with or without the use of medicine.

(c) An offense under this section is a Class B misdemeanor [~~punishable by a fine of not less than \$100 or more than \$200~~]. Each violation of this section is a separate offense.

SECTION 11. The changes in law made by this Act apply only to an offense committed on or after the effective date of this

Act. An offense committed before the effective date of this Act is governed by the law in effect on the date the offense was committed, and the former law is continued in effect for that purpose. For purposes of this section, an offense was committed before the effective date of this Act if any element of the offense occurred before that date.

SECTION 12. This Act takes effect September 1, 2025.