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## SENATE COMMITTEE ON INSURANCE

Senator Susan Rubio, Chair

2021 - 2022 Regular

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<b>Bill No:</b>	AB 1158	<b>Hearing Date:</b>	July 8, 2021
<b>Author:</b>	Petrie-Norris		
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<b>Urgency:</b>	No	<b>Fiscal:</b>	Yes
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**SUBJECT:** Alcoholism or drug abuse recovery or treatment facilities: recovery residence: insurance coverage

**DIGEST:** Requires licensed alcoholism or drug abuse recovery or treatment facilities (RTF or licensee) and recovery residences (RRs) that serve more than six residents to maintain commercial liability and other insurance coverages. Requires government entities that contract with RRs that serve more than six residents to require those entities to maintain similar insurance coverages required of RTFs. For RTFs and RRs that serve fewer than six residents, requires maintenance of simple general liability insurance coverage.

### **ANALYSIS:**

Existing law:

- 1) Prohibits housing discrimination at the federal level on the basis of race, color, religion, sex, handicap, familial status, and national origin. "Handicap," also known as disability, is defined as a physical or mental impairment that substantially limits one or more major life activities, including having a drug addiction or alcoholism, as specified. (Fair Housing Act, 42 USC § 3601 - 3619)
- 2) Prohibits, under the Fair Employment and Housing Act, discrimination against any person in any housing accommodation on the basis of race, color, religion, sex, marital status, national origin, ancestry, familial status, or disability. Specifies that discriminatory land use regulations, zoning laws, and restrictive covenants are unlawful acts. (Government Code § 12955)
- 3) Creates the California Department of Insurance (CDI), headed by the Insurance Commissioner, and authorizes CDI, among various duties, to regulate the business of insurance in this state.
- 4) Requires businesses provide workers' compensation benefits to its employees purchasing insurance from a licensed insurer or through the State Compensation Insurance Fund, or through securing permission from the Department of Industrial Relations to self-insure against the liability to pay compensation. (Labor Code § 3700)
- 5) Requires businesses meet compulsory financial responsibility requirements for all business-owned vehicles. Insurance limits of \$15,000 for personal injury (\$30,000 in the aggregate), and \$5,000 for property damage meet these requirements. (Vehicle Code § 16500, 16502(a))

- 6) Grants the Department of Health Care Services (DHCS) sole authority to license RTFs that provide 24-hour 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. (Health and Safety Code § 11834.01)
- 7) Requires, for purposes of local regulation, an RTF that serves six or fewer persons to be considered a residential use of property. (Health and Safety Code § 11834.23)
- 8) Prohibits an RTF that serves six or fewer persons from being included within the definition of a boarding house, rooming house, institution or home for the care of minors, the aged, or persons with mental health disorders, foster care home, guest home, rest home, community residence, or other similar term that implies that the RTF is a business run for profit or differs in any other way from a single-family residence.
- 9) Defines “recovery residences” as a residential dwelling that provides primary housing for individuals who seek a cooperative living arrangement that supports personal recovery from a substance use disorder (SUD) and that does not require licensure by DHCS or does not provide licensable services, as specified, including, but not limited to, residential dwellings commonly referred to as “sober living homes” (SLHs), “sober living environments,” or “unlicensed alcohol and drug free residences.”
- 10) Requires a DHCS licensed RTF or certified program to disclose to DHCS ownership or control of, or financial interest in, a “recovery residence (RR),” as defined, or any contractual relationship with an entity that regularly provides professional services or substance use disorder treatment or recovery services to clients of licensed RTFs or certified programs, if the entity is not part of the certified program or licensed RTF. (Health and Safety Code §11833.05)
- 11) Defines “policy of residential property insurance” to mean a policy insuring individually owned residential structures of not more than four dwelling units, individually owned condominium units, or individually owned mobile homes, and their contents, located in this state and used exclusively for residential purposes or a tenant’s policy insuring personal contents of a residential unit located in this state. (Insurance Code § 10087).

This bill:

- 1) Requires an RTF that serves more than six residents to maintain all of the following insurance coverages obtained from an admitted insurer:
  - a) Commercial general liability insurance that includes coverage for premises liability, products and completed operations, contractual liability, personal injury and advertising liability, abuse, molestation, sexual actions, and assault and battery, with minimum coverage amounts for bodily injury or property damage of not less than \$1 million per occurrence;

- b) Commercial or business automobile liability insurance covering all owned vehicles, hired or leased vehicles, non-owned vehicles, and borrowed and permissive uses, with minimum coverage amounts for bodily injury or property damage of not less than \$1 million per occurrence;
  - c) Workers' compensation insurance, as specified;
  - d) Employer's liability insurance, with minimum coverage amounts for bodily injury or disease of not less than \$100,000 per occurrence; and,
  - e) Professional liability and errors and omissions insurance that includes an endorsement for contractual liability, with minimum coverage of \$1 million per occurrence and \$2 million aggregate, with a contract that includes an endorsement for defense and indemnification of any government entity with which the RTF has contracted, if applicable.
- 2) Requires an RTF that serves six or fewer residents to maintain general liability insurance coverage of an unspecified amount.
  - 3) Requires government entities (defined as the state, county or city) that contract with a privately owned RR or RTF that provides services for more than six residents to require the contractor, at all times, to maintain all of the insurance coverages in 1) above, with the government entity included as an additional insured, obtained from an admitted insurer. Defines "government entity as the state and any political subdivision of the state, including counties, joint powers authorities, and any other unit of local government."
  - 4) Authorizes DHCS to waive the insurance requirements in 1) and 2) above if DHCS determines the licensee is denied coverage based solely on the services provided or if coverages are generally not available. Similarly authorizes a government entity to waive insurance requirements in 3) above for the same reason.
  - 5) Amends the definition of residential property insurance to specifically exclude any coverage or indemnity for the payment of any fine, penalty, or restitution in any criminal, civil, or administrative action or proceeding, or any coverage or indemnity for the payment of any loss or liability arising from the operation of either an RR or an RTF. Applies to policies issued, renewed, or amended on or after January 1, 2022.

## Background

According to the author:

"Currently, there is no existing state law that requires a substance abuse treatment facility or recovery residence to maintain minimum insurance coverage levels. The lack of this requirement puts patients and workers at risk. With more Californians seeking alcohol or drug abuse recovery or treatment facilities or recovery residences for assistance, stronger consumer protections are needed now. While there are many good actors in the state helping individuals get on their feet, some media reports detail

unscrupulous business practices that are using patients for profits. The most notable of media investigatory reports being a series by the Orange County Register describing the “Rehab Riviera,” and the abuses in substance abuse recovery services in Southern California, operating with little to no government regulation and/or private insurance industry risk management.

It is critical that patients seeking recovery receive the care they need without worrying about their safety. This bill will ensure that licensed drug abuse recovery and treatment facilities and recovery residences that contract with the government maintain minimum insurance coverage levels to protect patients and workers from abuse or injury.”

This bill deals with two different types of facilities that provide alcohol or drug abuse recovery or treatment services. One is a residential treatment facility that must be licensed, though different rules apply depending on whether the facility houses more than 6 residents. The other is a recovery residence, essentially a cooperative living arrangement where people recovering from substance abuse disorders can live in a clean environment, avoid temptation, etc. during recovery.

Residential treatment facilities can significantly vary in size and offer services, including some medical care. Some look like a typical home, while others may be large dedicated facilities like a converted hotel. A facility must obtain a valid license to operate in the state from the DHCS if it is providing 24-hour non-medical, residential, and/or alcoholism or drug abuse recovery or treatment services. DHCS has promulgated a number of regulations that require certain mandatory standards for a licensed facility.

A recovery residence that provides primary housing for people in recovery and does not provide any 24-hour non-medical, residential, and/or alcoholism or drug abuse recovery or treatment services, it is not required to maintain a license from DHCS to operate. The state’s mandatory standards for licensed facilities also do not apply.

This bill is aimed at providing protection against bad actors in this sober living and treatment space. The required coverages are in line with what several counties already require of their licensed RTFs.

The Senate Health Committee Analysis provides a thorough history of the California Department of Insurance’s recent history regarding its enforcement actions against bad actors:

“In November 2016, the California Department of Insurance (CDI) issued a press release about an investigation that resulted in the arrest of the operators of some Southern California sober living homes), operated as Community Recovery of Los Angeles (CRLA). The operators were arrested on several felony counts of grand theft and identity theft for allegedly conspiring to defraud clients and insurers out of more than \$176 million. Affected insurers paid nearly \$44 million before discovering the suspected fraud and stopping payments to CRLA, which was accused of luring people with treatment marketing schemes and stealing patient identities to buy health insurance policies for people without their knowledge, as well as

committing such acts as submitting claims for services not provided, falsely representing CRLA as a licensed RTF while not being licensed as such, and filing fraudulent health insurance policy applications. A document posted on DHCS's website indicated at the time that CRLA operated both recovery residences, which were claiming to be licensed, and DHCS-certified outpatient programs. In March 2018, the Orange County Register subsequently reported that one of the operators of CRLA plead guilty to 46 felony counts involving the insurance billing scheme and received 11 years in state prison following a plea to 28 counts of money laundering, seven counts of grand theft, six counts of identity theft, and five counts of insurance fraud.

In January 2020, CDI, through a joint effort with the Orange County District Attorney's Office, shut down an alleged \$3.2 million health care fraud ring which preyed on those with SUDs in order to bilk insurance companies out of millions. Several individuals were charged with multiple felony counts including insurance fraud and money laundering in connection with the scheme. Insurance Commissioner Ricardo Lara stated that the suspects are accused of finding patients across the country who were seeking help for their SUDs, and flying them to California to enter treatment at Casa Bella International Inc., which was owned and operated by one of the suspects. In order to obtain payment from the insurance company for these clients, the suspects are accused of directing employees to fill out policies for the patients using false information. The suspect who owned the facility is alleged to have paid the other co-conspirators upwards of \$10,000 per patient who stayed enrolled in treatment for more than 30 days.

Most recently, in June 2020, CDI issued another press release announcing the arrests of five more suspects who are alleged to have been conspiring with the suspects arrested earlier in the year. The new defendants face up to 21 years in prison for their alleged involvement in a scheme that resulted in \$60 million in fraudulent billing and \$11.7 million in insurance losses. Authorities allege that all the defendants used mass media marketing campaigns to identify addicted clients from across the country who were seeking treatment. According to CDI, the conspirators and their employees then falsified clients' health care insurance applications to circumvent California residency requirements and closed enrollment periods; employed a money-laundering scheme they devised to conceal their involvement in paying clients' insurance premiums; and trafficked their clients into Southern California treatment facilities."

### **Suggested Amendments**

1) This bill makes a change to the residential property insurance definition that may require adjustment after recent amendments limit the applicability of the robust insurance requirements to RTFs and RRs with more than 6 residents. Existing law requires that an RTF that serves six or fewer persons, for purposes of local regulation, be considered a residential use of property, and this bill only requires a general liability insurance policy of those smaller facilities. The Committee may wish to amend the bill to account for this legal standard by allowing for the required general liability insurance for

these small facilities to be included, or added on as a rider, to a typical residential property insurance policy.

2) This bill waives insurance requirements based on the findings of DHCS or a government entity regarding the availability of insurance. The structure of this exception would potentially allow a licensee to petition for waiver after just one attempt to find coverage. While this language seeks to provide protection to licensees who may be unable to find insurance from an admitted carrier, it could also potentially result in a patchwork of insurance requirements by city or county. The Committee may wish to remove the exception in favor of amending the bill to allow RTFs and RRs to shop the surplus lines market (insurers admitted in other states) for the required insurance coverages.

### **Related/Prior Legislation**

SB 349 (Umberg) requires every treatment provider operating in the state, as defined, to adopt and make available a client bill of rights that ensures those seeking SUD treatment have the right to safe and ethical treatment. SB 349 also prohibits treatment providers from making false or misleading statements in marketing or advertising, as specified. *SB 349 is set to be heard in the Assembly Health Committee on July 6, 2021.*

SB 434 (Bates) prohibits specified entities, licensed or certified by the state to provide substance use or mental health disorder services, from making false statements or providing false information in advertising or marketing, as specified. *SB 434 is pending in the Assembly Appropriations Committee.*

SB 541 (Bates) requires an entity licensed or certified by DHCS, to provide substance use disorder treatment services, to disclose information about its license or certification, including the number and expiration date, in specified circumstances. *SB 541 is pending in the Assembly Appropriations Committee.*

AB 381 (Davies and Petrie-Norris) requires a licensed RTF, at all times, to maintain at least two unexpired doses of naloxone on the premises, as specified. *AB 381 is pending in the Senate Appropriations Committee.*

SB 486 (Bates, 2019) would have prohibited a commercially operated recovery residence from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services. AB 486 would have also required DHCS to impose a fine of \$50,000 for each violation. *SB 486 failed passage in Health Committee.*

AB 1779 (Daly, 2019) would have required DHCS to adopt specified standards for recovery residences that receive state funding, and would have permitted specified entities to report suspected activity to DHCS and to take specified action. *AB 1779 was held on the Senate Appropriations Committee suspense file.*

SB 992 (Hernandez, Chapter 784, Statutes of 2018) requires programs licensed or certified by DHCS to disclose certain business relationships, as specified, including with an RR, and makes changes to current law for licensed RTFs to improve client treatment and provide DHCS more oversight authority over RTFs.

SB 1228 (Lara, Chapter 792, Statutes of 2018) prohibits certain persons, programs, or entities, including a licensed RTF and persons employed by, or working for, that program, from giving or receiving remuneration or anything of value for the referral of a person who is seeking alcoholism or drug abuse recovery and treatment services, as specified.

AB 686 (Santiago, Chapter 958, Statutes of 2018) requires a public agency to administer its programs and activities relating to housing and community development in a manner to affirmatively further fair housing.

AB 3162 (Friedman, Chapter 775, Statutes of 2018) makes RTF licenses provisional for one year; requires services offered by an RTF to be specified on the license and provided within the licensed RTF, as specified; and, increases civil penalties for the violation of licensing law.

**ARGUMENT IN SUPPORT:**

The sponsor of the measure, the California Department of Insurance, writes:

Currently, there is no existing state law that requires any alcohol or drug abuse recovery or treatment facility or recovery residence to maintain minimum insurance coverage levels. Any business, including a sober living home, could reasonably have liability that a residential insurance policy would not sufficiently cover. Commercial insurance coverage that is available today is more suitable for the risks associated with this type of business. For example, based on their activities, commercial general liability and workers' compensation coverages are needed by alcohol or drug abuse recovery or treatment facilities or recovery residences; conversely, a residential insurance policy does not cover those risks but are used today to presently cover these businesses. Currently, a number of county contracts across the state with recovery residences or alcohol or drug abuse recovery or treatment facilities require that these facilities maintain specified levels of coverage that are consistent with commercial insurance.

**ARGUMENT IN OPPOSITION:**

The Los Angeles County Sober Living Coalition argues in an opposition to a previous version of the bill that Health and Safety Code Section 11853.5 will eliminate the lowest cost and most effective housing options for low income people sharing housing. This provision required entities contracting with governments to provide all of the insurance coverages discussed above. Their position calls for the deletion of the section. Recent amendments have not deleted the section but have limited its applicability to those homes with six or fewer residents. It is unclear if this amendment will impact their opposition, but if it does staff will notify the Committee via addendum.

**SUPPORT:**

California Department of Insurance (Sponsor)  
Associated Rehabilitation Program for Women, INC.

California Consortium of Addiction Programs and Professionals  
Casa Palmera  
City of Torrance  
Community Social Model Advocates  
Elevate Addiction Services  
Hathaway recovery Substance Abuse and Behavioral treatment Center  
Opus Health, LLC  
Orange County Recovery Collaboration  
Orange County Board of Supervisors  
San Jose City College Alcohol and Drug Studies Program  
Soroptimist House of Hope  
Stepping Stone of San Diego  
The Purpose of Recovery  
The Turning Point Home

**OPPOSITION:**

Los Angeles County Sober Living Coalition

**-- END --**