California Board of
PSYCHOLOGY

1625 North Market Blvd., Suite N-215, Sacramento, CA 95834
T (916) 574-7720 F (916) 574-8672 Toll-Free (866) 503-3221
www.psychology.ca.gov

MEMORANDUM

DATE	March 30, 2016
TO	Policy and Advocacy Committee
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #5 (a)(11) – Legislative Update – SB 1101 (Weickowski) Alcohol and Drug Counselors: Regulation

Background:

This bill prohibits any person from using the title of licensed alcohol and drug counselor unless the person has applied for and obtained a license from the State Department of Public Health. Specifies the minimum qualifications for a license, including, a criminal background check. Requires the department to ensure that the criminal history of the applicant is reviewed before issuing a license.

Location: Senate Health Committee

Status: From Senate Committee on Health with author's amendments.

Action Requested:
The staff recommendation to recommend the full Board take an "Oppose Unless Amended" position on SB 1101 (Weickowski).

Attachment A is the analysis of SB 1101 (Weickowski)
Attachment B is the language of SB 1101 (Weickowski)
Attachment C is the Senate Health analysis of SB 1101 (Weickowski)

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: **SB 1101** **VERSION:** **AMENDED: 03/28/2016**

AUTHOR: **WIECKOWSKI (D)** **SPONSOR:**

- California Association of Alcohol and Drug Educators (co-sponsor)
- California Consortium of Addiction Programs and Professionals (co-sponsor)
- California Association of DUI Treatment Programs (co-sponsor)

BOARD POSITION: NONE

SUBJECT: **ALCOHOL AND DRUG COUNSELORS: REGULATION**

Summary:

This bill proposes licensing alcohol and drug counselors under the State Department of Health Care Services.

Existing Law:

1) Requires the Department of Health Care Services (DHCS) to review and certify alcohol and other drug programs meeting state standards, and to develop standards for ensuring minimal statewide levels of service quality provided by alcohol and other drug programs. (Health and Safety Code (HSC) §11755(k) and (l)).

2) Identifies 10 organizations as approved by DHCS to register and certify alcohol and drug counselors. (9 California Code of Regulations (CCR §13035(a))

3) Requires these DHCS-approved certifying organizations to gain and maintain accreditation with the National Commission for Certifying Agencies (NCCA). (Title 9 CCR §13035(c))

4) Requires all alcohol and drug (AOD) counselors providing counseling services in an AOD program to register to obtain certification as an AOD counselor with one of the approved certifying organizations within 6 months of their hire date. Certification must be completed within 5 years. (Title 9 CCR §13035(f))

5) Sets minimum education and experience requirements that the certifying organizations must require, including the following (Title 9 CCR §13040):

   - At least 155 hours formal AOD education, covering specified topics;
   - At least 160 hours supervised AOD training based on specified curriculum;
   - At least 2,080 hours of work experience providing AOD counseling;

- Passage of a written or oral exam.

6) Prior to certifying a registrant as an AOD counselor, the certifying organization must contact all other DHCS-approved certifying organizations to determine if the registrant's certification was ever revoked. If revoked, the certifying organization must document reasons for granting or denying certification. (Title 9 CCR §13045)

This Bill:

1) Provides for licensure of alcohol and drug counselors under the State Department of Health Care Services (DHCS). (HSC §1179.80)

2) Prohibits a person from using the "licensed alcohol and drug counselor" title unless they have obtained a license issued by DHCS. (HSC §1179.80(b))

3) Outlines the minimum qualifications for obtaining an alcohol and drug counselor license, as follows (HSC §1179.80(c)):

    a. Has a master's or doctoral degree from an accredited or approved school in a specified profession, including addiction counseling, psychology, social work, counseling, marriage and family therapy, or counseling psychology;

    b. The degree contained at least 21 semester units of addiction specific education approved by a DHCS-recognized certifying organization;

    c. Has passed an exam deemed acceptably by one of the DHCS's approved certifying organizations;

    d. Is currently credentialed as an advanced alcohol and drug counselor in good standing with one of the certification organizations recognized by DHCS, with no history of revocation;

    e. Can document completion of certain specified coursework; and

    f. Submits to a state and federal criminal background check.

4) Allows for a one year grandparenting period. During this one-year period, applicants with 12,000 experience hours are exempted from the degree requirements, the examination requirements, and the specified coursework requirements. However, such applicants must pass the exam within one year of the end of their licenses' first renewal period. (HSC §1179.81)

5) Provides that a license for an alcohol and drug counselor is valid for two years, and that 36 hours of continuing education must be completed in order to be eligible for renewal. (HSC §1179.82)

6) Allows DHCS to revoke a license if one of the following occur (HSC §1179.82(c)):

    a. The licensee loses his or her credential from the certifying organization; or

    b. The licensee is convicted of a felony substantially related to the qualifications, functions or duties of a licensed alcohol and drug counselor.

7) Allows DHCS to deny, suspend, or delay a license if it determines the person has a criminal conviction or criminal charge pending, that is substantially related to actions as a licensed alcohol and drug counselor. (HSC §1179.84(b))

8) Allows DHCS to waive action to deny, suspend or delay a license under the following circumstances (HSC §1179.84(b)):

    a. For a felony conviction, more than five years have passed since convicted; or

    b. For a misdemeanor, the applicant must not be incarcerated, on work release, probation, or parole and must be in substantial compliance with all court orders.

    In order to qualify for a waiver, the applicant must not have convicted of a felony sexual offense and must not present a danger to the public.

Comments:

1) **Background.** Although regulations promulgated by the DHCS require AOD counselors working within its licensed or certified facilities to become certified, this requirement does not apply outside its licensed or certified facilities. As a result, many practitioners of drug and alcohol treatment are not regulated.

    In May 2013, the California Senate Office of Oversight and Outcomes (SOOO) published a report titled, "Suspect Treatment: State's Lack of Scrutiny Allows Unscreened Sex Offenders and Unethical Counselors to Treat Addicts." The report presents evidence that California's system for addiction treatment allows registered sex offenders and other serious felons, as well as counselors facing current drug and alcohol charges and those already revoked for misconduct, to provide treatment. The report finds that counselors can easily flout education and training requirements; that the system does not allow for criminal background checks for counselors; and that the system contains gaps that can be exploited by counselors who move between private organizations that register and certify counselors. The SOOO report recommends that drastic changes to California's counselor certification system should be considered. Among a list of many recommendations, the report recommends a requirement for fingerprint-based criminal background checks for anyone working as a counselor.

2) **Intent.** This bill will create a licensing process for alcohol and drug counselors under the Department of Health Care Services. The author notes that most states already have a licensing program for such counselors, but California does not. In addition, the author notes that California does not currently even require a background check for alcohol and drug counselors. This bill will help ensure public protection by specifying minimum education qualifications for a license, requiring passage of an examination, and requiring a criminal background check.

3) **Scope of Practice Missing.** This bill does not explicitly define the scope of practice for an alcohol and drug counselor. The bill requires alcohol and drug counselors to receive some training in counseling techniques and approaches and crisis intervention. A defined scope of practice would help clarify that an alcohol and drug counselor is not permitted to practice within the scope of practice of the Board's licensees.

4) **Title Act Versus Practice Act.** This bill is currently written as a title act, meaning that using the title of "licensed alcohol and drug counselor" is prohibited unless such a license is held.

A practice act is a law that prohibits the practice of a profession unless a license is held. At this time, the bill is not a practice act, and the Board's licensees may continue to practice alcohol and drug counseling that is within the scope of their practice, education, and experience, as long as they do not use the title "licensed alcohol and drug counselor."

If at any point this bill became a practice act, the Board would need to request that it be amended to contain language stating the following:

"This bill shall not be construed to constrict, limit, or withdraw the licensing acts related to the practice of psychology."

5) **Single Diagnosis Practitioner.** This bill would create a license to treat only one diagnosis. An alcohol and drug counselor would therefore have to be able to differentiate between an issue that is solely attributed to alcohol and drug abuse problems and symptoms and issues that may be attributable to a diagnosis outside his or her scope of practice.

SB 570 (2014), which was a previously proposed bill to license alcohol and drug counselors, contained the following language. It may be helpful in this bill as well:

"Alcohol and drug counseling includes understanding and application of the limits of the counselor's own qualifications and scope of practice, including, but not limited to, screening and, as indicated, referral to or consultation with an appropriately licensed health practitioner consistent with the client's needs. Every licensee who operates an independent counseling practice shall refer any client assessed as needing the services of another licensed professional to that professional in a timely manner."

6) **Past Legislation:**

- **SB 570 (De Saulnier) of 2014** This bill would have established the Alcohol and Drug Counselor Licensing Board within the Department of Consumer Affairs for the purposes of licensing and regulating Advanced Alcohol and Drug Counselor Interns (AADCIs) and Licensed Advanced Alcohol and Drug Counselors (LAADCs). This bill died in the Assembly.

- **AB 2007 (Williams) of 2012** would have established a licensing and certification system for AADCs to be administered by the Department of Public Health. This bill was held in Assembly Health Committee.

- **SB 1203 (DeSaulnier) of 2010** would have instituted a licensing and certification structure for AOD counselors by DADP. SB 1203 was held in the Assembly Rules Committee.

- **SB 707 (DeSaulnier) of 2009**, which was substantially similar to SB 1203 of 2010, died on the Assembly Appropriations Committee Suspense File.

- **AB 239 (DeSaulnier) of 2008** would have established two categories of licensed alcoholism and drug abuse counselors for persons licensed to practice alcoholism and

drug abuse counseling under clinical supervision, and persons licensed to conduct an independent practice of alcoholism and drug abuse counseling, and to provide supervision to other counselors, both to be overseen by BBS. AB 239 was vetoed by Governor Arnold Schwarzenegger who stated, in his veto message, that he was directing DADP to work to craft a uniform standard for all alcohol and drug counselors whether in private practice or in facilities.

- **AB 1367 (DeSaulnier) of 2007** would have provided for the licensing, registration and regulation of Alcoholism and Drug Abuse Counselors, as defined, by BBS. AB 1367 died on Assembly Appropriations Committee Suspense File.

- **AB 2571 (Longville) of 2004** would have created the Board of Alcohol and Other Drugs of Abuse Professionals in DCA and established requirements for licensure of AOD abuse counselors. AB 2571 failed passage in the Assembly Health Committee.

- **AB 1100 (Longville) of 2003** would have enacted the Alcohol and Drug Abuse Counselors Licensing Law, to be administered by BBS. AB 1100 was held in the Assembly Business and Professions Committee.

- **SB 1716 (Vasconcellos) of 2002** would have required BBS to license and regulate alcohol and drug abuse counselors. SB 1716 was held in the Assembly Business and Professions Committee.

- **SB 537 (Vasconcellos) of 2001** would have required DCA to initiate a comprehensive review of the need for licensing substance abuse counselors. SB 537 was vetoed by Governor Gray Davis due to cost concerns. In his veto message, the Governor directed DADP to require counselors in drug and alcohol treatment facilities to be certified for quality assurance purposes.

7) Support and Opposition.

Support:

- California Association of Alcohol and Drug Educators (co-sponsor)
- California Consortium of Addiction Programs and Professionals (co-sponsor)
- California Association of DUI Treatment Programs (co-sponsor)
- California Narcotic Officers' Association
- Community Social Model Advocates, Inc.
- MARSTE Training Services
- Sacramento Recovery House, Inc.
- Sun Street Centers

Oppose:

- None at this time.

7) History

2016
03/28/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
03/17/16 Set for hearing March 30.

02/25/16 Referred to Com. on HEALTH.
02/18/16 From printer. May be acted upon on or after March 19.
02/17/16 Introduced. Read first time. To Com. on RLS. for assignment. To print.

SB-1101 Alcohol and drug counselors: regulation. (2015-2016)

AMENDED IN SENATE MARCH 28, 2016

CALIFORNIA LEGISLATURE— 2015–2016 REGULAR SESSION

SENATE BILL No. 1101

Introduced by Senator Wieckowski

February 17, 2016

An act to add ~~Sections 11751.1 and 131055.3 to, and to add~~ Part 6.5 (commencing with Section 1179.80) to Division 1 of, the Health and Safety Code, relating to alcohol and drug counselors.

LEGISLATIVE COUNSEL'S DIGEST

SB 1101, as amended, Wieckowski. Alcohol and drug counselors: regulation.

Existing law provides for the registration, certification, and licensure of various healing arts professionals. Existing law provides for various programs to eliminate alcohol and drug abuse, and states the finding of the Legislature that state government has an affirmative role in alleviating problems related to the inappropriate use of alcoholic beverages and other drug use.

This bill, among other things, would prohibit any person from using the title licensed alcohol and drug counselor unless the person had applied for and obtained a license from the State Department of ~~Public Health,~~ *Health Care Services* and would specify the minimum qualifications for a license, including, but not limited to, educational qualifications, being currently credentialed as an advanced alcohol and drug counselor, and having submitted to a criminal background check. The bill would provide that a license for an alcohol and drug counselor would be valid for 2 years unless at any time during that period it is revoked or suspended, that the license would be authorized to be renewed prior to the expiration of the 2-year period, and that a licensee fulfill continuing education requirements prior to renewal. The bill would also require that the license fee for an original alcohol and drug counselor license and the license renewal fee be reasonably related to the department's actual costs in performing its duties under this part, but to not exceed $200. ~~The~~

This bill would require the department to ensure that the state and federal level criminal history of the applicant is reviewed before issuing a license, and the department would be required, with exceptions, to deny, suspend, delay, or set aside a person's license if, at the time of the department's determination, the person has a criminal conviction or pending criminal charge relating to an offense, the circumstances of which substantially relate to actions as a licensed alcohol and drug counselor. *The bill would also require the department to oversee the disciplinary actions of certifying organizations it approves, as provided.*

~~This bill, effective July 1, 2017, would transfer the administrative and programmatic functions of the State Department of Health Care Services pertaining to alcohol and drug counselor certification and the approval and regulation of certifying organizations to the department. The bill would also require the State Department of~~

~~Public Health to oversee the disciplinary actions of certifying organizations it approves, as provided.~~

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: no

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Part 6.5 (commencing with Section 1179.80) is added to Division 1 of the Health and Safety Code, to read:

PART 6.5. Regulation of Alcohol and Drug Counseling Professionals
CHAPTER 1. Licensing

1179.80. (a) ~~A~~ *For purposes of this part, "department" means the State Department of Health Care Services.*

(b) A person shall not use the title of licensed alcohol and drug counselor unless the person has applied for and obtained a license from the ~~State Department of Public Health.~~ *department.*

~~(b)~~

(c) The applicant for an alcohol and drug counselor license shall meet minimum qualifications that include, but are not limited to, all of the following:

(1) Has earned a master of arts, master of science, or doctoral degree in addiction counseling, psychology, social work, counseling, marriage and family therapy, counseling psychology, clinical psychology, or other clinically focused major that requires no less than 21 semester units, or equivalent, of addiction specific education approved by a certifying organization recognized by the department, from an institution of higher learning accredited by a regional accrediting agency, or a board for private postsecondary education.

(2) Has demonstrated competence by passing a master's level exam accepted by a certifying organization approved by the department.

(3) Is currently credentialed as an advanced alcohol and drug counselor and in good standing with a certification organization recognized by the ~~Department of Health Care Services~~ *department* pursuant to Section 13035 of Title 9 of the California Code of Regulations, as it read on January 1, 2017, and has no history of revocation by a certifying organization, licensure board, or certifying entity.

(4) Has documented to the certifying organization that the following courses have been completed:

(A) Three semester units, or the equivalent, of psychopharmacology and physiology of addiction, including any of the following areas:

(i) Examination of the effects of alcohol and similar legal psychoactive drugs to the body and behavior.

(ii) Damage to the body and behaviors.

(iii) Damage to the brain, liver, and other organs.

(iv) Tolerance, cross tolerance, and synergistic effects.

(v) Physiological differences between males and females.

(vi) Disease model, including neurobiological signs and symptoms.

(B) Three semester units, or the equivalent, of clinical evaluation and psychopathology, including any of the following areas:

(i) Initial interviewing process.

(ii) Biopsychosocial assessment.

(iii) Differential diagnosis.

(iv) Diagnostic summaries.

(v) ~~Co-occurring~~ *Cooccurring* disorders, referral processes, and the evaluation of clients using placement criteria, including the American Society of Addiction Medicine (ASAM) patient placement criteria or other validated clinical tools, to determine the most appropriate level of care for the client and eligibility for admission to a particular

alcohol and other drug abuse treatment program.

(C) Three semester units, or the equivalent, of counseling/psychotherapy for addiction, including all of the following areas:

(i) Introduction to counseling.

(ii) Introduction to techniques and approaches.

(iii) Crisis intervention.

(iv) Individual counseling focused on addiction.

(v) Group counseling.

(vi) Family counseling as it pertains to addiction treatment.

(D) Three semester units, or the equivalent, in case management, including all of the following areas:

(i) Community resources.

(ii) Consultation.

(iii) Documentation.

(iv) HIV-positive resources.

(E) Three semester units, or the equivalent, of client education, including all of the following areas:

(i) Addiction recovery.

(ii) Psychological client education.

(iii) Biochemical and medical client education.

(iv) Sociocultural client education.

(v) Addiction recovery and psychological family education.

(vi) Biomedical and sociocultural family education.

(vii) Community and professional education.

(F) Three semester units, or the equivalent, of professional responsibility law and ethics, including all of the following:

(i) Ethical standards, legal aspects, cultural competency, professional growth, personal growth, dimensions of recovery, clinical supervision, and consultation.

(ii) Community involvement.

(iii) Operating a private practice.

(G) Three semester units, or the equivalent, of supervised fieldwork.

(5) Has submitted to a state and federal level criminal offender record information search as part of a criminal background check pursuant to Section 1179.84.

1179.81. (a) For a period not to exceed one year from the date of accepting applications for the license, applicants with 12,000 hours experience are not required to meet the requirements of paragraphs (1), (2), and (4) of subdivision ~~(b)~~ *(c)* of Section 1179.80.

(b) Applicants who do not meet requirements of paragraphs (1), (2), and (4) of subdivision ~~(b)~~ *(c)* of Section 1179.80 shall sit for the masters level exam required by paragraph (2) of subdivision ~~(b)~~ *(c)* of Section 1179.80 before the first renewal period and shall provide proof of passing the exam to the certifying organization before one year after the end of the first renewal period.

1179.82. (a) A license for an alcohol and drug counselor shall be valid for two years unless at any time during that period it is revoked or suspended. The license may be renewed prior to the expiration of the two-year

period.

(b) To qualify to renew the license, a licensee shall have completed 36 hours of continuing education units approved by the certification organization during the two-year license renewal period, which shall include six hours of ethics and law, six hours of ~~co-occurring~~ *cooccurring* disorder, and three hours of cultural competency.

(c) The department may revoke the license of a licensed alcohol and drug counselor who is licensed pursuant to subdivision ~~(b)~~ *(c)* of Section 1179.80 if either of the following occurs:

(1) The licensee loses his or her credential granted by the certifying organization.

(2) The licensee has been convicted of a felony charge that is substantially related to the qualifications, functions, or duties of a licensed alcohol and drug counselor. A plea of guilty or nolo contendere to a felony charge shall be deemed a conviction for the purposes of this paragraph.

1179.83. The license fee for an original alcohol and drug counselor license and the license renewal fee shall be reasonably related to the ~~State Department of Public Health's~~ *department's* actual costs in performing its duties under this part, but shall not exceed two hundred dollars ($200).

1179.84. (a) Before issuing a license, the ~~State Department of Public Health~~ *department* shall ensure that the state and federal level criminal history of the applicant is reviewed.

(b) (1) The department shall deny, suspend, delay, or set aside a person's license if, at the time of the department's determination, the person has a criminal conviction or criminal charge pending, relating to an offense, the circumstances of which substantially relate to actions as a licensed alcohol and drug counselor. Applicants who have a criminal conviction or pending criminal charge shall request the appropriate authorities to provide information about the conviction or charge directly to the department in sufficient specificity to enable the department to make a determination as to whether the conviction or charge is substantially related to actions as a licensed alcohol and drug counselor.

(2) However, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, the department may waive this subdivision if it finds any of the following:

(A) For waiver of a felony conviction, more than five years have elapsed since the date of the conviction. At the time of the application, the applicant shall not be incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence and shall be in substantial compliance with all court orders pertaining to fines, restitution, and community service.

(B) For waiver of a misdemeanor conviction or violation, at the time of the application, the applicant shall not be incarcerated, on work release, on probation, on parole, or serving any part of a suspended sentence and shall be in substantial compliance with all court orders pertaining to fines, restitution, and community service.

(C) The applicant is capable of practicing licensed alcohol and drug treatment services in a competent and professional manner.

(D) The granting of the waiver will not endanger the public health, safety, or welfare.

(E) The applicant has not been convicted of a felony sexual offense.

CHAPTER 2. Powers and Duties of the Department

~~1179.85.It is the intent of the Legislature that the administrative and programmatic functions of the State Department of Health Care Services pertaining to alcohol and drug counselor certification and the approval and regulation of certifying organizations be transferred, pursuant to Section 131055.3, to the State Department of Public Health effective July 1, 2017.~~

1179.86. The ~~State Department of Public Health~~ *department* shall oversee the disciplinary actions of certifying organizations it approves by performing the following duties:

(a) Require that certifying organizations maintain national accreditation by the Institute for Credentialing Excellence, or another accrediting agency should the institute no longer perform this function to the department's satisfaction.

(b) Adopt a uniform code of conduct, uniform disciplinary guidelines, and consumer complaint procedures for alcohol and drug counselors.

(c) Withdraw approval and certifying authority of a certifying organization that does not uphold any disciplinary action rendered by the department.

(d) Coordinate complaint investigations with certifying organizations in a manner that objectively collects information pertinent to making decisions for the protection of the public.

(e) Require that certifying organizations provide updated information for all certified and registered alcohol and drug counselors each quarter and information specific to individual counselors and registrants upon demand.

CHAPTER 3. Construction of Part

1179.87. (a) This part shall not be construed to constrict, limit, or prohibit state licensed or certified facilities or programs, county contracted alcohol and drug treatment facilities or programs, or driving-under-the-influence programs from employing or contracting with alcohol and drug counselors certified by a certifying organization accredited and state approved under Chapter 8 (commencing with Section 13000) of Division 4 of Title 9 of the California Code of Regulations as it read on January 1, 2017.

(b) This part shall not be construed to constrict, limit, or prohibit state licensed or certified facilities or programs, county contracted alcohol and drug treatment facilities or programs, or driving-under-the-influence programs from employing or contracting with licensed advanced alcohol and drug counselors (LAADCs) or advanced alcohol and drug counselor interns (AADCIs) when stipulating that licensed professionals be employed or contracted with.

(c) This part shall not be construed to mandate the use of LAADCs or AADCIs in state licensed or certified facilities or programs, county operated or contracted alcohol and drug treatment programs or facilities, or driving-under-the-influence programs.

~~SEC. 2.Section 11751.1 is added to the Health and Safety Code, to read:~~

~~11751.1.Effective July 1, 2017, the State Department of Public Health shall succeed to and be vested with all the duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Health Care Services, pursuant to Section 131055.3, as they relate to the certification of alcohol and drug counselors and the approval and regulation of certifying organizations.~~

~~SEC. 3.Section 131055.3 is added to the Health and Safety Code, to read:~~

~~131055.3.(a)Effective July 1, 2017, the State Department of Public Health shall succeed to and be vested with all the duties, powers, purposes, functions, responsibilities, and jurisdiction of the State Department of Health Care Services as they relate to the certification of alcohol and drug counselors and the approval and regulation of certifying organizations.~~

~~(b)Notwithstanding any other law, any reference in statute, regulation, or contract to the State Department of Health Care Services shall be construed to refer to the State Department of Public Health when it relates to the transfer of duties, powers, purposes, functions, responsibilities, and jurisdiction made pursuant to this section.~~

~~(c)All fees collected, unexpended balances of appropriations, and other funds available for use by the State Department of Health Care Services in connection with any function or the administration of any law transferred to the State Department of Public Health pursuant to the act that added this section shall be available for use by the State Department of Public Health for the purpose for which the fees were collected, the appropriation was originally made, or the funds were originally available.~~

~~(d) No contract, lease, license, or any other agreement to which the State Department of Health Care Services is a party shall be made void or voidable by reason of this section, but shall continue in full force and effect with the State Department of Public Health assuming all of the rights, obligations, and duties of the State Department of Health Care Services with respect to the transfer of duties, powers, purposes, functions, responsibilities, and jurisdiction made pursuant to this section.~~

~~(e)All books, documents, forms, records, data systems, and property of the State Department of Health Care Services with respect to the transfer of duties, powers, purposes, functions, responsibilities, and jurisdiction made pursuant to this section shall be transferred to the State Department of Public Health.~~

~~(f)(1)Positions filled by appointment by the Governor in the State Department of Health Care Services whose principal assignment was to perform functions transferred pursuant to this section shall be transferred to the State Department of Public Health.~~

~~(2)All employees serving in state civil service, other than temporary employees, who are engaged in the performance of functions transferred pursuant to this section, are transferred to the State Department of Public Health pursuant to the provisions of Section 19050.9 of the Government Code. The status, positions, and rights of those persons shall not be affected by their transfer and shall continue to be retained by them pursuant to the State Civil Service Act (Part 2 (commencing with Section 18500) of Division 5 of Title 2 of the Government Code), except as to positions the duties of which are vested in a position exempt from civil service. The personnel records of all employees transferred pursuant to this section shall be transferred to the State Department of Public Health.~~

~~(g)Any regulation, order, or other action adopted, prescribed, taken, or performed by an agency or officer in the administration of a program or the performance of a duty, power, purpose, function, or responsibility related to the certification of alcohol and drug counselors and the approval and regulation of certifying organizations in effect prior to July 1, 2017, shall remain in effect unless or until amended, readopted, or repealed, or until they expire by their own terms, and shall be deemed to be a regulation or action of the agency to which or officer to whom the program, duty, power, purpose, function, responsibility, or jurisdiction is assigned pursuant to this section.~~

~~(h)No suit, action, or other proceeding lawfully commenced by or against any agency or other officer of the state, in relation to the administration of any program or the discharge of any duty, power, purpose, function, or responsibility transferred pursuant to this section, shall abate by reason of the transfer of the program, duty, power, purpose, function, or responsibility under this section.~~

SENATE COMMITTEE ON HEALTH
Senator Ed Hernandez, O.D., Chair

BILL NO: SB 1101
AUTHOR: Wieckowski
VERSION: March 28, 2016
HEARING DATE: March 30, 2016
CONSULTANT: Reyes Diaz

SUBJECT: Alcohol and drug counselors: regulation

SUMMARY: Requires the Department of Health Care Services (DHCS) to issue licenses for alcohol and drug counselors, as specified, and prohibits a person from using the title "licensed alcohol and drug counselor," unless the person has applied for and obtained a license from DHCS, and meets all of the criteria for licensure.

Existing law:

1) Provides for the registration, certification, and licensure of various healing arts professionals.

2) Creates, within the Department of Consumer Affairs (DCA), the Board of Behavioral Sciences (BBS), which licenses marriage and family therapists, clinical social workers, professional clinical counselors, and educational psychologists, and sets, communicates, and enforces standards for safe and competent mental health practice.

3) Gives DHCS sole authority in state government to determine the qualifications, including the appropriate skills, education, training, and experience, of personnel working within any substance use disorder (SUD) facility or program licensed or certified by DHCS.

4) Requires DHCS to require individuals providing counseling services, except as specified, at a DHCS-licensed or certified facility or program to be registered with or certified by a certifying organization (CO) approved by DHCS. Requires COs to be accredited by the National Commission for Certifying Agencies.

5) Prohibits DHCS from approving a CO that does not, prior to registering or certifying an individual, contact other DHCS-approved COs to determine whether an individual has ever had registration or certification revoked.

6) Gives DHCS authority to conduct periodic reviews of COs to determine compliance with all applicable laws and regulations, and to take actions for noncompliance, including revocation of DHCS's approval.

This bill:

1) Requires DHCS to issue licenses for alcohol and drug counselors and prohibits a person from using the title "licensed alcohol and drug counselor" (LADC) unless the person has applied for and obtained a license from DHCS.

2) Requires an applicant for LADC licensure to meet minimum qualifications that include, but are not limited to the following:

    a) Has earned a master of arts, master of science, or doctoral degree in addiction counseling, psychology, social work, counseling, marriage and family therapy, counseling psychology, clinical psychology, or other clinically focused major that requires no less than 21 semester units, or equivalent, of addiction specific education approved by a CO recognized by DHCS, from an institution of higher

learning accredited by a regional accrediting agency, or a board for private postsecondary education;

b) Has demonstrated competence by passing a master's level exam accepted by a DHCS-approved CO;

c) Has a current credential as an advanced alcohol and drug counselor and is in good standing with a DHCS-approved CO, and has no history of revocation by a CO, licensure board, or certifying entity;

d) Has documented to the CO that three semester units, or the equivalent, of the following courses have been completed:

   i. Psychopharmacology and physiology of addiction, as specified;
   ii. Clinical evaluation and psychopathology, as specified;
   iii. Counseling/psychotherapy for addiction, as specified;
   iv. Case management, as specified;
   v. Client education, as specified.
   vi. Professional responsibility law and ethics, as specified;
   vii. Supervised fieldwork; and,

e) Has submitted to a state and federal level criminal offender record information search as part of a criminal background check.

3) Provides that, for a period not to exceed one year from the date DHCS accepts applications for licensure, applicants with 12,000 hours of experience are not required to meet the education requirements in a), b), or d) of 2) above. Requires these applicants to sit for the master's level exam required in b) of 2) above before the first renewal period of licensure and to provide proof of passing the exam to the CO before one year after the end of the first renewal period.

4) Authorizes DHCS to revoke an LADC license if either of the following occurs: a) the licensee loses his or her credential granted by a CO, or b) the licensee is convicted of a felony charge that is substantially related to the qualifications, functions, or duties of an LADC.

5) Requires DHCS to review an applicant's state and federal criminal history before issuing a license. Requires DHCS to deny, suspend, delay, or set aside a person's license if at the time of DHCS's determination the person has a criminal conviction or criminal charge pending relating to an offense with circumstances that are substantially related to actions as an LADC. Requires applicants who have a criminal conviction or pending criminal charge to request the appropriate authorities to provide information about the conviction or charge directly to DHCS in sufficient specificity to enable DHCS to make a determination as to whether the conviction or charge is substantially related to actions as an LADC.

6) Allows DHCS, after a hearing or review of documentation demonstrating that an applicant meets specified criteria, to waive the requirements in 5) above as follows:

   a) For a waiver of a felony conviction, more than five years have elapsed since the date of the conviction;

   b) For a waiver of a felony or for a waiver of a misdemeanor conviction or violation, at the time of application, prohibits the applicant from being incarcerated, on work release, on probation, on parole, or serving any part of a suspended

sentence. Requires the applicant to be in substantial compliance with all court orders pertaining to fines, restitution, and community service;

c) The applicant is capable of practicing LADC treatment services in a competent and professional manner, and the applicant has not been convicted of a felony sexual offense; and,

d) The granting of the waiver will not endanger the public health, safety, or welfare.

7) Establishes criteria for DHCS to oversee the disciplinary actions of COs, including requiring COs to maintain national accreditation by the Institute for Credentialing Excellence (ICE) or another accrediting agency if ICE no longer performs its functions to DHCS's satisfaction, and adopting a uniform code of conduct, uniform disciplinary guidelines, and consumer complaint procedures for LADCs.

FISCAL EFFECT: This bill has not been analyzed by a fiscal committee.

COMMENTS:

1) *Author's statement.* According to the author, SB 1101 will bolster the mental health treatment workforce and improve the quality of addiction treatment for Californians by strengthening DHCS's current certification program and establishing title protection for substance use disorder (SUD) counselors. By implementing a licensure program within the existing certification program under DHCS, California will make quality treatment a priority in the state's mental health treatment delivery system, including in outpatient, residential, and private-practice settings. The current lack of professional standards, along with a disregard for the public's health and safety by not requiring a criminal background check, has created a statewide system that lacks consistent employee retention, and places patients in dangerous situations when unknowingly seeking treatment from unscreened counselors. Requiring licensees to prove educational qualifications, advanced alcohol and drug counseling skills, and experience, and to pass a nationally recognized exam, will improve the quality of our addiction treatment delivery system, keep dedicated counselors in the profession, and generate career opportunities for higher wages.

2) *Background.* According to the author's background information, in 2011, the Substance Abuse and Mental Health Services Administration (SAMHSA) published the "Scopes of Practice & Career Ladders for Substance Use Disorder Counseling." Certifying organizations are working toward adopting a multi-level professional career ladder for the counselors they certify. A state-issued license for counselors with a master's degree (or higher) proposed by this bill would establish the license level featured in SAMHSA's career ladder. The combination of licensure and the current certification process would complete the career ladder for the entire workforce, from entry-level individuals with a high school or general education development level education to those with an advanced degree.

3) *Suspect Treatment: State's lack of scrutiny allows unscreened sex offenders and unethical counselors to treat addicts.* This May 2013 Senate Office of Oversight and Outcomes report stated that for three decades the state and the SUD treatment industry have been unable to agree on a framework to give the state authority to credential counselors. The report concludes that California's public-private hybrid system precludes criminal background checks and leaves gaps that can be exploited by SUD counselors who move between seven DHCS-approved COs that register and certify them. (As of March 2016, DHCS's Web site only lists three approved COs.) While the report acknowledged that many counselors draw from their own struggles with SUD to excel at jobs with not much pay, some come to the

profession with serious criminal backgrounds, which the report states raises questions about their fitness to treat clients, who are often at the most vulnerable time of their lives.

4) *SUD counselor certification.* To meet current counselor requirements, individuals must be registered with or certified by one of three DHCS-approved COs. (Current regulations adopted in 2005 list 10 COs.) In order for a CO to issue certification, individuals must meet requirements established in regulations, which include completion of at least 155 hours of formal classroom education, as defined; have documented completion of at least 160 hours of supervised alcohol or other drug program counseling and 2,080 or more hours of work experience; and received a score of at least 70% on an approved exam. Regulations allow for individuals who are registered with a CO to provide counseling services while working toward completion of certification requirements. Certification is valid for two years and a counselor is required to complete 40 hours of continuing education every two years for renewal.

5) *Recent DHCS administrative changes.* Prior to its elimination and transfer of its programs to DHCS, the Department of Alcohol and Drug Programs (ADP) approved as many as nine COs. Each CO had its own code of conduct and disciplinary guidelines, which, as noted in the SOOO report, made it difficult for ADP to be consistent in enforcement. Since the transfer of ADP programs to DHCS, the three currently approved COs have agreed to a uniform code of conduct and disciplinary guidelines, which DHCS enforces. According to the sponsors of this bill, the three COs have requested DHCS to incorporate both the uniform code of conduct and the uniform disciplinary guidelines in DHCS's upcoming redrafting of counselor certification regulations. DHCS also now has a Web page that lists the current approved COs and a page that lists counselors that have had their certification revoked, which according to DHCS is updated monthly.

6) *Prior legislation.* SB 570 (DeSaulnier of 2013), would have established the Advanced Alcohol and Drug Counselor Licensing Act and created a licensing and certification system for SUD counselors to be administered by a newly created board within DCA. *SB 570 was held on suspense in the Assembly Appropriations Committee.*

   AB 2007 (Williams of 2012), would have established a licensing and certification system for AOD counselors to be administered by the Department of Public Health. *AB 2007 was held in the Assembly Health Committee.*

   SB 1203 (DeSaulnier of 2010), would have established a licensing and certification structure for AOD counselors by ADP. *SB 1203 was held in the Assembly Rules Committee.*

   SB 707 (DeSaulnier of 2009), was substantially similar to SB 1203. *SB 707 died on the Assembly Appropriations Committee suspense file.*

   AB 239 (DeSaulnier of 2008), would have established two categories of licensed SUD counselors for persons licensed to practice SUD counseling under clinical supervision, and persons licensed to conduct an independent practice of SUD counseling, and to provide supervision to other counselors, both to be overseen by BBS. *AB 239 was vetoed by Governor Schwarzenegger who stated in his veto message that he was directing ADP to work to craft a uniform standard for all alcohol and drug counselors whether in private practice or in facilities.*

AB 1367 (DeSaulnier of 2007), would have provided for the licensing, registration, and regulation of Alcoholism and Drug Abuse Counselors, as defined, by BBS. *AB 1367 died on Assembly Appropriations Committee suspense file.*

AB 2571 (Longville of 2004), would have created the Board of Alcohol and Other Drugs of Abuse Professionals within DCA and established requirements for licensure of SUD counselors. *AB 2571 failed passage in the Assembly Health Committee.*

AB 1100 (Longville of 2003), would have enacted the Alcohol and Drug Abuse Counselors Licensing Law, to be administered by BBS. *AB 1100 was held in the Assembly Business and Professions Committee.*

SB 1716 (Vasconcellos of 2002), would have required BBS to license and regulate SUD counselors. *SB 1716 was held in the Assembly Business and Professions Committee.*

SB 537 (Vasconcellos of 2001), would have required DCA to initiate a comprehensive review of the need for licensing SUD counselors. *SB 537 was vetoed by Governor Davis due to cost concerns. In his veto message, the Governor directed ADP to require counselors in drug and alcohol treatment facilities to be certified for quality assurance purposes.*

7) *Support.* The California Narcotic Officers' Association (CNOA) states that there are an estimated 3.5 million people with an SUD diagnosis who receive treatment in more than 2,500 private and public SUD programs throughout the state. CNOA also states that California is among a minority of states that do not have a state-administered licensing program for SUD counselors, and one of only two large states that do not perform criminal background checks on SUD counselors. Community Social Model Advocates, Inc. and MARSTE Training Services state that this bill allows SUD specialists to become full partners in the integrated treatment teams required for the future of health care, and that SUD professionals will be encouraged to continue to obtain a greater degree of skill and education while allowing program owners and directors to use a mixture of licensed and certified counselors according to the treatment parameters of each program.

8) *Technical amendments.* Provisions in this bill reference counselor certification regulations that list COs not currently approved by DHCS. Other provisions in this are not consistent in the use of terminology. In order to ensure consistency and avoid referencing outdated regulations, the author may wish to accept the following technical amendments:

   a. Section 1179.80:

   (b) A person shall not use the title of ~~*licensed alcohol and drug counselor*~~ ***"licensed advanced alcohol and drug counselor"*** unless the person has applied for and obtained a license from the ~~State Department of Public Health.~~ *department.*

   (c) The applicant for an ***advanced*** alcohol and drug counselor license shall meet minimum qualifications that include, but are not limited to, all of the following:

   (3) Is currently credentialed as an advanced alcohol and drug counselor and in good standing with a certification organization recognized by the ~~Department of Health Care Services~~ *department* ~~*pursuant to Section 13035 of Title 9 of the California*~~

~~*Code of Regulations, as it read on January 1, 2017,*~~ and has no history of revocation by a certifying organization, licensure board, or certifying entity.

b. Section 1179.82:

(a) A license for an ***advanced*** alcohol and drug counselor shall be valid for two years unless at any time during that period it is revoked or suspended. The license may be renewed prior to the expiration of the two-year period.

(c) The department may revoke the license of a licensed ***advanced*** alcohol and drug counselor who is licensed pursuant to subdivision ~~(b)~~ *(c)* of Section 1179.80 if either of the following occurs:

(2) The licensee has been convicted of a felony charge that is substantially related to the qualifications, functions, or duties of a licensed ***advanced*** alcohol and drug counselor. A plea of guilty or nolo contendere to a felony charge shall be deemed a conviction for the purposes of this paragraph.

c. Section 1179.84:

(b) (1) The department shall deny, suspend, delay, or set aside a person's license if, at the time of the department's determination, the person has a criminal conviction or criminal charge pending, relating to an offense, the circumstances of which substantially relate to actions as a licensed ***advanced*** alcohol and drug counselor. Applicants who have a criminal conviction or pending criminal charge shall request the appropriate authorities to provide information about the conviction or charge directly to the department in sufficient specificity to enable the department to make a determination as to whether the conviction or charge is substantially related to actions as a licensed ***advanced*** alcohol and drug counselor.

(C) The applicant is capable of practicing licensed ***advanced*** alcohol and drug ~~*treatment*~~ ***counseling*** services in a competent and professional manner.

(D) The granting of the waiver will not endanger the ~~*public*~~ ***public's*** health, safety, or welfare.

d. Section 1179.87:

(a) This part shall not be construed to constrict, limit, or prohibit state licensed or certified facilities or programs, county contracted alcohol and drug treatment facilities or programs, or driving-under-the-influence programs from employing or contracting with alcohol and drug counselors ***registered with or*** certified by a certifying organization ***that is*** accredited and state approved ~~*under Chapter 8 (commencing with Section 13000) of Division 4 of Title 9 of the California Code of Regulations as it read on January 1, 2017*~~.

SUPPORT AND OPPOSITION:

Support: California Association of Alcohol & Drug Educators (cosponsor)
California Association of DUI Treatment Programs (cosponsor)
California Consortium of Addiction Programs and Professionals (cosponsor)
California Narcotic Officers' Association

Community Social Model Advocates, Inc.
MARSTE Training Services
Sacramento Recovery House, Inc.
Sun Street Centers

Oppose: None received

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