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	May 6, 2016
TO	Board of Psychology
FROM	Jason Glasspiegel Central Services Coordinator
SUBJECT	Agenda Item #22 (a)(11) – Legislative Update – SB 1101 (Wieckowski) 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 Department of Consumer Affairs. 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 Appropriations Committee

Status: From Senate Committee on Business Professions and Economic Development: Do pass to Committee on Appropriations. (8-0)

Hearing: 05/16/2016 10:00 a.m., John L. Burton Hearing Room (4203)

Action Requested:
No action is requested at this time. Staff will continue to watch SB 1101 (Wieckowski).

Attachment A is the analysis of SB 1101 (Wieckowski)
Attachment B is the language of SB 1101 (Wieckowski)
Attachment C is the Senate Business, Professions and Economic Development Committee analysis of SB 1101 (Wieckowski)

CALIFORNIA STATE BOARD OF PSYCHOLOGY

BILL ANALYSIS

BILL NUMBER: **SB 1101** **VERSION:** **AMENDED: 04/11/2016**

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 Department of Consumer Affairs.

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 Department of Consumer Affairs (DCA). (Business and Professions Code (BP) §4451(a)(1))

2) Prohibits a person from using the "licensed alcohol and drug counselor" title unless they have obtained a license issued by DCA. (BP §4455(a))

3) Outlines the minimum qualifications for obtaining an alcohol and drug counselor license, as follows (BP §4455(b)):

    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 acceptable 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, by a certifying organization, licensure board, or certifying entity;

    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, the specified coursework requirements, but not the fingerprint requirement. Such applicants must pass the exam within one year of the end of their licenses' first renewal period.
(BP §4456(a))

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. (BP§4457)

6) Allows the Department to revoke a license if one of the following occur (BP §4457(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 the Department 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 the actions of a licensed alcohol and drug counselor. (BP§4459(b)(1)(A))

8) Allows the Department to waive action to deny, suspend or delay a license under the following circumstances (BP§4459(b)(2)):

   a. For a felony conviction, more than five years have passed since convicted, and at the time of application the applicant must not be incarcerated, on work release, probation, or parole, on post-release community supervision, or serving any part of a suspended sentence and in substantial compliance with all court orders relating to fines, restitution, or community service; or

   b. For a misdemeanor, at the time of application, the applicant must not be incarcerated, on work release, probation, or parole, on post-release community supervision, or serving any part of a suspended sentence and in substantial compliance with all court orders relating to fines, restitution, or community service.

   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 Consumer Affairs. 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 the Department of Drug and Alcohol Programs (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 The Board of Behavioral Sciences (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 within 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 Consortium of Addiction Programs and Professionals (co-sponsor)
California Association for Alcohol and Drug Educators (co-sponsor)
California Association of DUI Treatment Programs (co-sponsor)
Alpha Project
Associated Rehabilitation Program for Women, Inc.
California Society of Addiction Medicine
Clean and Sober Transitional Living
Community Social Model Advocates, Inc.
Inland Valley Recovery Services
International Certification and Reciprocity Consortium
MARSTE Training
Sacramento Recovery House, Inc.

Skyway House
Soroptimist House of Hope
Strategies for Change
Sun Street Centers
Visions of the Cross, Inc.

Oppose:

- None at this time.

7) History

2016

04/19/16 From committee: Do pass and re-refer to Com. on APPR. (Ayes 8. Noes 0. Page 3591.) (April 18). Re-referred to Com. on APPR.
04/14/16 Re-referred to Com. on B., P. & E.D.
04/14/16 Set for hearing April 18 in B., P. & E.D. pending receipt.
04/11/16 Re-referred to Com. on RLS.
04/11/16 Withdrawn from committee.
04/11/16 From committee with author's amendments. Read second time and amended. Re-referred to Com. on HEALTH.
03/29/16 March 30 set for first hearing canceled at the request of author.
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.

California LEGISLATIVE INFORMATION

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

AMENDED IN SENATE APRIL 11, 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 ~~Part 6.5~~ *Chapter 9.7* (commencing with Section ~~1179.80)~~ *4450)* to Division ~~1 of,~~ *2 of* the ~~Health~~ *Business* and ~~Safety~~ *Professions* 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 establish the Alcohol and Drug Counseling Professional Bureau within the Department of Consumer Affairs, specify the bureau's powers and duties, and authorize the bureau to adopt necessary rules and regulations. The bill* would prohibit ~~any~~ *a* 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 Health Care Services~~ *bureau* 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~~ *the bureau to establish the fees* for an ~~original~~ *initial* alcohol and drug counselor license and ~~the license~~ *a* renewal ~~fee be~~ *license in an amount* reasonably related to the ~~department's~~ *bureau's* actual costs in performing its ~~duties under this part,~~ *duties,* but to not exceed $200.

This bill would require the ~~department~~ *bureau* to ~~ensure that~~ *review* the state and federal level criminal history of the applicant ~~is reviewed~~ before issuing a license, and the ~~department~~ *bureau* would be required, with exceptions, to deny, suspend, delay, or set aside a person's license if, at the time of the ~~department's~~ *bureau'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.~~

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

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

SECTION 1. *Chapter 9.7 (commencing with Section 4450) is added to Division 2 of the Business and Professions Code, to read:*

CHAPTER 9.7. Alcohol and Drug Counseling Professionals
Article 1. Administration

4450. *For purposes of this chapter the following definitions apply:*

(a) "Bureau" means the Alcohol and Drug Counseling Professional Bureau established pursuant to Section 4452.

(b) "Department" means the Department of Consumer Affairs.

(c) "Director" means the Director of Consumer Affairs.

4451. *(a) (1) There is established within the department the Alcohol and Drug Counseling Professional Bureau, under the supervision and control of the director.*

(2) (A) The duties of enforcing and administering this chapter is vested in the chief, of the bureau and he or she is responsible to the director for performing those duties.

(B) The chief shall serve at the pleasure of director.

(3) Every power granted or duty imposed upon the director pursuant to this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to the conditions and limitations that the director may prescribe.

(b) Notwithstanding any other law, the powers and duties of the bureau pursuant to this chapter are subject to review by the appropriate policy committee of the Legislature.

4452. *Protection of the public is the highest priority for the bureau in exercising its licensing, regulatory, and disciplinary functions. If the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.*

4453. *The bureau may adopt necessary rules and regulations for the administration and enforcement of this chapter and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this chapter. The rules and regulations shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).*

4454. *The director may employ and appoint all employees necessary to properly administer the duties of the bureau in accordance with civil service regulations.*

Article 2. Licensing

4455. *(a) No person shall use the title of licensed alcohol and drug counselor unless the person has applied for and obtained a license from the bureau.*

(b) An 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 State Department of Health Care Services.

(3) Is currently credentialed as an advanced alcohol and drug counselor and in good standing with a certification organization recognized by the State Department of Health Care Services pursuant to Section 13035 of Title 9 of the California Code of Regulations, as that section 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 applicant has completed all of the following courses:

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

(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 subjects:

(i) Initial interviewing process.

(ii) Biopsychosocial assessment.

(iii) Differential diagnosis.

(iv) Diagnostic summaries.

(v) Cooccurring disorders, referral processes, and the evaluation of clients using placement criteria, including the American Society of Addiction Medicine 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 subjects:

(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 subjects:

(i) Community resources.

(ii) Consultation.

(iii) Documentation.

(iv) Resources for persons who are HIV positive.

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

(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 subjects:

(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 both a state and federal level criminal offender record information search pursuant to Section 4459.

4456. *(a) For a period not to exceed one year, as determined by the bureau, from the date the bureau commences accepting applications for an initial license, an applicant who has a minimum of 12,000 hours experience is not required to meet the requirements of paragraphs (1), (2), and (4) of subdivision (b) of Section 4455.*

(b) Applicants who do not meet the requirements of paragraphs (1), (2), and (4) of subdivision (b) of Section 4455 shall sit for the masters level exam required by paragraph (2) of subdivision (b) of Section 4455 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.

4457. *(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 cooccurring disorder, and three hours of cultural competency.

(c) The department may revoke a license issued pursuant to this chapter 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.

4458. *The bureau shall establish the fees for an initial alcohol and drug counselor license or a renewal license in an amount reasonably related to the department's actual costs in performing its duties under this chapter not to exceed two hundred dollars ($200).*

4459. *(a) Before issuing a license, the bureau shall review both the state and federal level criminal history of the applicant.*

(b) (1) (A) 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.

(B) An applicant who has 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 the requirements of this subdivision if the department finds any of the following:

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

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

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

(D) Granting the waiver will not endanger the public health, safety, or welfare.

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

Article 3. Construction of Chapter

4460. *(a) This chapter does not constrict, limit, or prohibit a facility or program that is licensed or certified by this state, a county-contracted alcohol and drug treatment facility or program, or a driving-under-the-influence program from employing or contracting with an alcohol and drug counselor who is certified by a certifying organization accredited and approved by this state pursuant to Chapter 8 (commencing with Section 13000) of Division 4 of Title 9 of the California Code of Regulations as that chapter read on January 1, 2017.*

(b) This chapter does not require a facility or program licensed or certified by this state, a county-operated or contracted alcohol and drug treatment program or facility, or a driving-under-the-influence program to utilize the services of an alcohol and drug counselor licensed pursuant to this chapter.

SENATE COMMITTEE ON
BUSINESS, PROFESSIONS AND ECONOMIC DEVELOPMENT
Senator Jerry Hill, Chair
2015 - 2016 Regular

Bill No:	SB 1101	**Hearing Date:**	April 18, 2016
Author:	Wieckowski		
Version:	April 11, 2016		
Urgency:	No	**Fiscal:**	Yes
Consultant:	Sarah Huchel		

Subject: Alcohol and drug counselors: regulation

SUMMARY: Establishes the Alcohol and Drug Counseling Professional Bureau (Bureau) within the Department of Consumer Affairs (DCA) to license and regulate the title protection of licensed alcohol and drug counselors.

Existing law:

1) Establishes the DCA within the Business, Consumer Services, and Housing Agency. (Business and Professions Code (BPC) Section 100)

2) States that the boards, bureaus, and commissions in DCA are established for the purpose of ensuring that those private businesses and professions deemed to engage in activities which have potential impact upon the public health, safety, and welfare are adequately regulated in order to protect the people of California. To this end, they establish minimum qualifications and levels of competency and license persons desiring to engage in the occupations they regulate upon determining that such persons possess the requisite skills and qualifications necessary to provide safe and effective services to the public, or register or otherwise certify persons in order to identify practitioners and ensure performance according to set and accepted professional standards. (BPC § 101.6)

3) Establishes the Medi-Cal program, administered by Department of Health Care Services (DHCS), under which qualified low-income individuals receive health care services. (Health and Safety Code (HSC) Section 11750)

4) Establishes the Drug Medi-Cal (DMC) program, which provides substance use disorder services to Medi-Cal recipients. (HSC § 11750)

5) Allows DHCS to enter into contracts with counties for the provision of DMC services. If a county declines to contract with DHCS, existing law requires DHCS to contract for services in the county to ensure beneficiary access. (HSC §11758.20)

6) Requires each county to fund the nonfederal share for DMC services through realignment funds, as specified. (HSC §11758.10)

7) Requires providers of DMC services to obtain certification from DHCS to provide those services. (HSC § 11755)

This bill:

1) Establishes the Bureau within the DCA to regulate the practice of alcohol and drug counselors.

2) States that protection of the public shall be the highest priority for the Bureau in exercising its licensing, regulatory and disciplinary functions. Whenever the protection of the public is inconsistent with other interest sought to be promoted, the protection of the public shall be paramount.

3) Authorizes the DCA director to appoint a chief with the approval of the Director of Finance, whose duty is to enforce and administer the Bureau's laws.

4) Requires that the Bureau be subject to review by the appropriate policy committee of the Legislature.

5) Authorizes the Bureau to establish necessary rules and regulations for the administration and enforcement of this bill, and such laws shall be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedures Act.

6) Establishes title protection for the title "licensed alcohol and drug counselor" (counselor).

7) Requires an applicant for licensure to have the following minimum requirements for licensure, which are not exhaustive:

   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 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.

   b) Has demonstrated competence by passing a master's level exam accepted by a certifying organization approved by the Department of Health Care Services. (DHCS)

   c) Is currently credentialed as an advanced alcohol and drug counselor and in good standing with a certification organization recognized by DHCS, as specified, and has no history of revocation by a certifying organization, licensure board, or certifying entity.

   d) Establishes minimum course requirements for coursework in psychopharmacology and physiology of addiction, clinical evaluation and psychopathology, counseling and psychotherapy for addiction, case management, client education, professional responsibility law and ethics, and supervised fieldwork, as specified.

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

8) Establishes specified exemptions for a period of one year from the date of accepting applications for the license for applicants with 12,000 hours experience.

9) Requires applicants who do not meet specified requirements sit for the master's level exam before the first renewal period and provide proof of passing the exam to the certifying organization before one year after the end of the first renewal period.

10) Establishes that a license for a counselor is 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.

11) Requires 36 hours of continuing education for license renewal, which shall include six hours of ethics and law, six hours of instructions on co-occurring disorders, and three hours of cultural competency.

12) Authorizes the Bureau to revoke the license of a counselor if either of the following occurs:

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

b) 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.

13) Establishes the license fee for a counselor license and the license renewal fee to be reasonably related to the Bureau's actual costs in performing its duties under this part, but shall not exceed $200.

14) Requires the Bureau to review an applicant's state and federal criminal history prior to issuing a license.

15) Requires the DCA to deny, suspend, delay, or set aside a person's license if, at the time of the DCA'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.

16) Requires that an applicant who has a criminal conviction or pending criminal charge to request the appropriate authorities to provide information about the conviction or charge directly to the DCA in sufficient specificity to enable the DCA to make a determination as to whether the conviction or charge is substantially related to actions as a licensed alcohol and drug counselor.

17) Authorizes the DCA, after a hearing or review of documentation demonstrating that the applicant meets the specified criteria for a waiver, to waive the criminal background requirements if the DCA finds any of the following:

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

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

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

d) Granting the waiver will not endanger the public health, safety, or welfare.

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

18) States that the bill does not constrict, limit, or prohibit a facility or program that is licensed or certified by this state, a county-contracted alcohol and drug treatment facility or program, or a driving-under-the-influence program from employing or contracting with a counselor who is certified by a certifying organization accredited and approved by this state, as specified.

19) States that this chapter does not require a facility or program licensed or certified by this state, a county-operated or contracted alcohol and drug treatment program or facility, or a driving-under-the-influence program to utilize the services of a licensed counselor.

FISCAL EFFECT: Unknown. This bill has been keyed "fiscal" by Legislative Counsel.

COMMENTS:

1. **Purpose.** This bill is co-sponsored by the California Consortium of Addiction Programs and Professionals, the California Association for Alcohol and Drug Educators, and the California Association of DUI Treatment Programs. According to the Author's office, "Legislation is necessary to create a simple, self-sustaining licensure program, and provide statutory authority for strengthening the counselor certification system in California. Modeled after the Genetic Counselor Licensing Act, the bill would differentiate Master's level counselors from other certified counselors. It would restrict the use of the title 'licensed alcohol [and] drug counselor' thereby enabling consumers and payers to readily identify counselors capable of providing service at an advanced level, independent from a licensed or certified facility.

"In 2011, the Substance Abuse and Mental Health Services Administration (SAMHSA) published national "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. The state issued 'license' for counselors with a Master's degree (or higher) proposed by this bill would establish the license level featured in the SAMSHA Career Ladder – an important first step in creating a comprehensive career ladder for the entire profession in California.

"The combination of the state-licensed category established in this bill and the envisioned privately certified counselor categories would complete the career ladder for the entire workforce, from entry-level individuals with a high school or GED to those with an advanced degree."

2. **Sunrise Review.** The Legislature uses a "Sunrise Model" for the purpose of assessing requests for new or increased occupational regulation, including the creation of any new licensing scheme or licensing entity within the DCA. Government Code Sections 9148 et seq. require that "Prior to consideration by the Legislature of legislation . . . creating a new category of licensed professional, a plan for the establishment and operation of the proposed . . . new category of licensed professional shall be developed by the author or sponsor of the legislation." The Code further states: "The necessary data and other information required by this section shall be provided to the Legislature with the initial legislation and forwarded to the policy committees in which the bill will be heard."

   Correspondingly, the Committee Rules of this Committee require: "Prior to hearing any bill or other measure that proposes to create a new state licensing agency or a new category of licensed or regulated professional, the Author or sponsor of the legislation shall develop a plan for the establishment and operation of the agency or creation of the new licensed category in accordance with the requirements of Government Code Section 9148 et seq. The plan shall include the completion of a regulation proposal review worksheet titled the "Sunrise Questionnaire" by the Author or sponsor of the legislation."

   This questionnaire is designed to assist proponents of new regulatory programs to collect and organize information that is necessary for an objective evaluation of the need and justification for the proposal. If a new program is to be established within the DCA or any other agency under this Committee's jurisdiction, the Committee is better informed based on responses in the questionnaire and in a better position to properly evaluate and respond to the proposal. Typically the completion of the Sunrise process is a multi-year effort, with meetings and hearings being convened during the fall Interim Recess in order for the Committee to hear testimony from the stakeholders in a legislative proposal, including both the proponents and the opponents. This enables the Committee to ascertain the level of need for regulation, the type of regulation that is needed, any impediments to adopting the proposed regulatory scheme, and whether the proposed regulation is adequate to address the identified level of consumer harm, and is the least onerous way to efficiently regulate in that area.

The author submitted a Sunrise questionnaire, which has aided this analysis, but does not fully explain the decisions made in the current version of the bill.

According to information provided by the Sunrise Questionnaire, California currently does not require licensure for alcohol and drug counselors. DHCS requires certification for alcohol and drug counselors employed by certain inpatient programs, but outpatient treatment programs -- where 70% of Californians seek treatment -- are not regulated by any state agency, according to a 2008 report by the Little Hoover Commission.

DHCS recognizes three agencies to provide certification, and each program develops its own classroom curriculum, training, supervisor and work experience requirements. Background checks are not performed and there is no central repository of counselor information, including disciplinary action taken to suspend or revoke certification for misconduct. DHCS can direct a certifying organization to take action against a counselor for misconduct, but there is nothing to prevent a counselor who has had certification suspended or revoked from obtaining certification from another organization.

Approximately 36,000 registered or certified alcohol and drug counselors work in 2,534 private and publicly funded drug and alcohol programs in California. With the implementation of the ACA, many newly-insured people are expected to seek treatment. The federal government and insurers, meanwhile, may impose greater standards on providers. In combination, these developments are likely to lead to greater scrutiny of California's system of overseeing those who provide drug and alcohol treatment.

According to a 2013 report by the Office of Statewide Health Planning and Development California Workforce Investment Board, "California is already experiencing statewide and regional shortages and mal-distribution in many critical mental health professions. In particular, California's historically underfunded, Public Mental Health System (PMHS) suffers from a critical shortage of qualified mental health personnel to meet the needs of the diverse population they serve, in addition to mal-distribution, lack of diversity, and under-representation of practitioners with consumer and family member lived experience. Healthcare reform implementation and other key trends, such as population growth and aging, will exacerbate these challenges."

3. **Practice Act (Licensure/Scope of Practice) vs. Title Act Protection.** A practice act along with licensure confers the exclusive right to practice a given profession on practitioners who meet specified criteria related to education, experience, and examination, and often is embodied in a statutory licensing act (i.e., those who are not licensed cannot lawfully practice the profession). A practice act is the highest and most restrictive form of professional regulation, and is intended to avert severe harm to the public health, safety or welfare that could be caused by unlicensed practitioners.

   A title act and a certification or registration program, on the other hand, reserves the use of a particular professional (named) designation to practitioners who have demonstrated specified education, experience or other criteria such as certification

by another organization. A title act typically does not restrict the practice of a profession or occupation and allows others to practice within that profession; it merely differentiates between practitioners who meet the specified criteria, and are authorized by law to represent themselves accordingly, (usually by a specified title) and those who do not. Some title acts also include a state certification or registration program, or reliance on a national certification or registration program, so that those who use the specified title, and hold themselves out to the public, have been certified or registered by a state created or national entity as having met the specified requirements. This entity may also regulate to some extent the activities of the particular profession by setting standards for the profession to follow, and to also provide oversight of the practice of the profession by reporting unfair business practices or violations of the law and either denying or revoking a certification or registration if necessary.

4. **California Senate Office of Oversight and Outcomes (CSOOO) Report.** A 2013 report by CSOOO extensively examined the current process to become an AADC, and noted some of the systemic flaws. "California is one of only two states among the nation's 15 largest that makes no attempt to review counselors' criminal backgrounds. Even within California, alcohol and drug counselors are the only health-related profession not required to undergo these checks. Among those who submit to screening are acupuncturists, dental hygienists, optometrists, and veterinarians.

   "In 2004, Governor Gray Davis directed the California Department of Alcohol and Drug Programs (DADP) to come up with regulations for certifying counselors. [Current regulations require 30% of staff providing alcohol and drug counseling in any program must be certified by 2010, and counselors who work in privately-run facilities that do not receive public funds are exempt.]"

   The CSOOO cross-checked lists of counselor names against individuals who have been excluded from receiving Medicare and Medi-Cal payments because of misconduct, including fraud or other criminal activity. CSOOO found several counselors who were able to keep working despite having their registrations or certifications revoked; they simply signed up with a different certifying organization. The organizations are supposed to check with their counterparts to make sure that an applicant has not been ordered revoked by DHCS. However, the regulation states that the check must be done only when the organization certifies counselors, not when they register, providing for a regulatory loophole. Regulations allow counselors to work for five years without being certified, meaning that a revoked counselor could go that long without being detected. After five years, that same counselor might be able to register with another of the certifying organizations and keep working.

   This bill is sponsored by the three accredited alcohol and drug counselor certifying organizations approved by the DHCS.

5. **Cost of substance abuse**. According to the CSOOO report, "Substance abuse is a key driver of California's most costly problems. As many as two-thirds of all parents who enter the state's $19-billion child welfare system are affected by substance

abuse, while an estimated 60,000 to 70,000 children who are born each year in California have been exposed in the womb to alcohol, tobacco or other drugs."

"California hospitals incur $1.3 billion in costs due to alcohol-related incidents. Studies conducted by Kaiser Permanente in California show that the health maintenance organization's members who sought substance abuse treatment had medical costs more than four times that of other clients prior to seeking treatment.

"Severe overcrowding in California's $10-billion prison system has prompted federal judges to consider taking control of the system away from the state. County jail policies in 20 counties are guided by court-imposed population caps, which force sheriffs, every day, to release offenders early. Approximately 80 percent of the offenders in these over-packed prisons and jails are involved with substance abuse, and for many, addiction is an integral part of their criminal lifestyles....

"In California, substance abuse treatment is a sound investment. According to data collected by the state Department of Alcohol and Drug Programs, Californians who entered treatment in 2006 reduced their contact with the criminal justice system by 57 percent, and the number who had a job grew from 24,433 upon entering treatment to 30,198 upon exiting treatment, a 24 percent increase in employment. Both of these statistics illustrate positive results not only for individuals and families, but also for public coffers.

"A long-term study conducted on northern California patients in the addiction treatment system run by Kaiser Permanente, the state's largest health maintenance organization, showed that providing substance abuse treatment reduces the health care costs of those struggling with addiction while adding only minimal costs to the system. Medical care costs decreased by $155 per month, five years after admission to treatment for the patients who sought help, while costs for a comparison group remained stable. The study found that while the average medical costs for those with substance abuse problems was four times higher than the comparison group in the six months before the study group was admitted to treatment, average costs were only twice as high five years later, even with the addition of the treatment costs."

Maximizing the effectiveness of treatment programs must begin with confidence in the treatment provider, but the current regulatory system for AADCs provides inconsistent consumer protection.

6. **Questions for the Committee**. The Committee members and Author may wish to consider the following issues as this bill moves forward:

   a) Independent bureau within DCA. This bill essentially establishes an independent licensing bureau within DCA to regulate a title protection act. If a bill only protects a title, a bureau is not necessary for licensure or enforcement.

      The Board of Behavioral Sciences currently licenses and regulates Licensed Marriage and Family Therapists (MFTs), Licensed Clinical Social Workers (LCSWs), and Licensed Professional Clinical Counselors (LPCCS) – other allied health professionals also trained in mental and social health services. These

licenses have similar work and experience requirements and enforcement concerns.

However, BBS has expressed resistance to adding another license to its regulation authority due to insufficient resources. Licensing boards are required to be self-sustaining, and receive no General Fund money. The Committee may wish to consider whether it is appropriate to have a completely separate bureau to administer a license similar to existing regulatory programs, or whether it would be more efficient to create a committee within BBS which could provide expert guidance while the BBS board could continue to manage enforcement and discipline.

b) No scope of practice. This bill does not establish what a licensed alcohol and drug counselor may and may not do, or how the practitioner's profession intersects with other licensed professionals. The Author should specify what the practice of alcohol and drug counseling constitutes.

c) Master's level education and experience requirements. This bill creates a license for mental health treatment of a single diagnosis – alcohol and substance abuse. This license requires a master's level education and experience similar to these requirements for a LPCC, MFT, and LCSW. There is no uniform educational requirement for certification, and many certification bodies do not require a bachelor's degree.

The Committee may wish to consider whether the educational and experience requirements are commensurate with the level of expertise needed for sufficient alcohol and drug treatment, given the current levels required for other, similar license types that are trained to handle a myriad of other mental health issues, and the current standards for certified alcohol and drug counselors.

d) Criminal provisions. The Author may wish to consider expanding the bill's consideration of felony charges. Because the duties of an alcohol and drug counselor are not defined, it is unclear which felonies may substantially relate. Is murder or sexual assault permissible under certain circumstances?

e) Builds upon a broken system. While this legislation compliments the existing certification programs, it is building upon a flawed system, as noted in the reports cited above. The Author may wish to improve regulations on the lower-levels of providers and ensure quality control across a greater number of facilities. The Author may also want to consider consolidating oversight of the certification programs so that the Bureau would have primary responsibility for determining the education requirements for counselors.

7. **Arguments in Support.** Soroptimist House of Hope writes, "California needs the same level of professionalism from our workforce which is common in 32 states and most developed countries. Because California does not license alcohol drug counselors, our programs are unable to participate fully in funding provided for addiction treatment under the ACA. We suffer chronic shortages of qualified staff and we contend with tremendous turnover as talented practitioners leave the profession to become licensed as mental health practitioners."

SUPPORT AND OPPOSITION:

Support:

California Consortium of Addiction Programs and Professionals (co-sponsor)
California Association for Alcohol and Drug Educators (co-sponsor)
California Association of DUI Treatment Programs (co-sponsor)
Alpha Project
Associated Rehabilitation Program for Women, Inc.
California Society of Addiction Medicine
Clean and Sober Transitional Living
Community Social Model Advocates, Inc.
Inland Valley Recovery Services
International Certification and Reciprocity Consortium
MARSTE Training
Sacramento Recovery House, Inc.
Skyway House
Soroptimist House of Hope
Strategies for Change
Sun Street Centers
Visions of the Cross, Inc.

Opposition: None on file as of April 14, 2016.

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