

BILL ANALYSIS

C.S.H.B. 2579
By: Rodriguez
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas has approximately 1,500 children in institutions such as nursing homes and intermediate care facilities for the mentally retarded (ICF-MRs). Although the state has assumed financial responsibility for these children, parents and guardians retain their legal rights. Under such circumstances, it is logical for the state to expect the parents and guardians to continue to assume a parental role. Parents and guardians should be encouraged and enabled to participate in planning and decision-making for their institutionalized children and should remain actively involved in the lives of their children to the maximum extent possible for the duration of the children's stay in the institution. This should start before the children are admitted and continue through their stay and discharge from the facility.

In many cases, the parents of institutionalized children are involved and active in their lives. In some cases, however, the children are placed in the institution and the parents or guardians fail to remain involved. The state has not fully developed processes which engage the parents or guardians in important decision-making regarding the children. This becomes especially critical when emergency medical or permanency decisions need to be made.

The primary purpose of C.S.H.B. 2579 is to encourage parental participation in the lives of their children in institutions. It will empower parents and guardians in their relationships with their institutionalized children. It will also facilitate their participation in planning activities and decision-making for their children. The bill delineates the roles of parents and facilities with regard to staying connected to the children and the decision-making process, and puts in place some protections for the children when the parents or guardians cannot be found.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Executive Commissioner of the Health and Human Services Commission (HHSC) in SECTION 1 and SECTION 2 of this bill.

ANALYSIS

The bill directs the HHSC executive commissioner to develop and implement a system by which the Department of Aging and Disability Services (DADS) ensures that a child's parent or guardian is fully informed of all community-based services and other service and support options before a child is placed in certain institutions enumerated in the bill. The bill sets forth specific criteria relating to how, when, and by what persons or entities such information is to be provided to the child's parent or guardian. The information requirements do not apply to emergency placements or certain commitments under the Code of Criminal Procedure.

The bill provides that, on admission of a child to an institution to which the bill is applicable, DADS shall require the child's parent or guardian to submit certain identifying, employment, and locating information, as well as identifying and locating information concerning a relative or other person DADS may contact in an emergency. The parent or guardian must also provide a signed acknowledgement of responsibility indicating agreement to notify the institution of changes in contact information and to make every effort to participate in the child's life and planning activities for the child.

The bill directs the HHSC Executive Commissioner to adopt rules under which DADS is to require a nursing facility in which a child resides to request from the child's parent or guardian a written reauthorization of the child's plan of care on an annual basis.

The bill requires institutions to which the bill is applicable to notify appropriate agencies of a request for placement of a child in the institution. Such institutions are required to make reasonable accommodations to promote participation by the parent or guardian in all planning and decision-making regarding the child's care. The bill defines in detail the planning and decision-making activities for which participation is to be promoted, and the reasonable accommodations required to facilitate participation by the parent or guardian.

The bill directs ICF-MRs and nursing facilities to notify the parent or guardian of a child residing in such facilities of plan reviews and reauthorization meetings, and sets forth certain criteria relating to the required notifications.

The bill sets forth certain requirements relating to the duties of ICF-MRs and nursing facilities to notify the child's parent, guardian, other contact person, or DADS in the event of an emergency situation involving the child, and to request DADS to initiate a search for a parent or guardian when efforts by the facility to locate them have been unsuccessful.

The bill directs DADS to develop and implement a process for conducting such searches, and sets forth procedures to be followed if the search by DADS is unsuccessful, including referral to the child protective services division of the Department of Family and Protective Services (DFPS) if the child is younger than 18 years old, and referral to the adult protective services division of DFPS if the child is 18 years of age or older. The respective duties of the child protective services division and the adult protective services division upon receipt of such referrals, including court involvement where necessary, are set forth in the bill.

The bill sets forth requirements applicable to transferring children between institutions relating to obtaining consent from the child's parent or guardian, unless an emergency situation exists.

The bill sets forth a mechanism through which DADS is to collect information regarding involvement of parents and guardians of children residing in institutions to which the bill is applicable, and provides that aggregate information shall be made public upon request.

The bill establishes certain timelines for the performance of duties delegated to HHSC and to DADS under the Act.

The bill provides dates on or after which certain provisions of the bill are applicable.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

Similarities between the two bills will not be noted, nor will differences in wording that the committee does not regard as major or significant. In the committee's opinion, there are the following significant differences between the original and the substitute:

The original bill applies when DADS is notified of a request for placement. The substitute applies when DADS or a local mental health authority is notified of a request for placement. Conforming changes are made in various sections of the bill.

The substitute adds DADS employees to the list of persons or entities through which preadmission information may be provided to the parent or guardian of a child.

The original prohibited the institution in which the child's parent or guardian is considering placing the child from providing information about community-based services and other support options available to the child. The substitute allows the institution to provide the information,

but provides that the information must also be provided by a local mental retardation authority, private entity, or DADS employee.

The original provided that DADS must ensure that the parent or guardian receives the preadmission information not later than the seventh day after DADS receives the request for placement. The substitute sets the period at 14 working days.

The substitute adds language exempting the parent or guardian of a child being committed to an institution under certain provisions of the Code of Criminal Procedure from the preadmission information requirement.

The substitute strikes the requirement in the original that a parent or guardian must provide a social security number on the admission form.

The original required a certain facilities to "obtain" annual written reauthorization from the child's parent or guardian of the child's plan of care. The substitute requires the facilities to "request" such reauthorization.

In the substitute, references to facility or agency responsibilities have, in some cases, been prefaced with the phrase "attempt to" to address the possibility of not being able to locate parents/guardians, or garner their cooperation in order to fulfill the requirement.

Language in the substitute was added to clarify the intent that a parent/guardian is to be notified quickly, and a response requested, in the event of any emergency involving the child.

The substitute adds a provision to require DADS to collect and maintain aggregate information regarding the involvement of parents or guardians in the lives of children in institutions, and to obtain stakeholder input in determining what types of information to collect. The substitute also requires DADS to make the aggregate information available to the public upon request.