

BILL ANALYSIS

Senate Research Center
80R8603 JLL-F

H.B. 3473
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Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, only nursing facilities and hospitals are permitted under the Consent to Medical Treatment Act (Chapter 313, Health and Safety Code) to obtain consent to medical treatment from an adult surrogate on behalf of an adult who is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

As the aged and disabled population receiving home care services continues to grow, agencies are encountering more situations where the patient is unable to provide consent to the treatment being provided by the home care agency, which can create delays in the initiation of services designed to keep these patients at home. This is sometimes seen in self-neglect cases that are referred to home care services by Adult Protective Services where direction is needed regarding who can act as an adult surrogate when immediate family cannot be easily located.

H.B. 3473 adds home and community support services agencies to the Consent to Medical Treatment Act. This bill provides guidance and protection to home and community support services agencies who want to ensure that treatment decisions are made in the patient's best interest even if the patient is comatose, incapacitated, or otherwise mentally or physically incapable of communication.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to any state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 313.002, Health and Safety Code, by adding Subdivision (3-a) and amending Subdivision (8), to define "home and community support services agency" and redefine "patient."

SECTION 2. Amends Section 313.004(a), Health and Safety Code, to include an adult patient of a home and community support services agency (agency) who is comatose, incapacitated, or otherwise mentally or physically incapable of communication as a person for whom certain adult surrogates who meet certain requirements are authorized to consent to medical treatment on behalf of the patient.

SECTION 3. Amends Sections 313.005(a) and (d), Health and Safety Code, to require a surrogate decision-maker's consent to medical treatment that is not made in person to be reduced to writing in the patient's medical record, signed by the agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible. Makes conforming changes.

SECTION 4. Amends Section 313.007(b), Health and Safety Code, to include an agency or a person acting as an agent for or under the control of an agency as persons and entities not subject to criminal or civil liability and that have not engaged in unprofessional conduct if the medical treatment consented to under this chapter is done in good faith under the consent to medical treatment and does not constitute a failure to exercise due care in the provision of the medical treatment.

SECTION 5. Effective date: September 1, 2007.