

BILL ANALYSIS

S.B. 750
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

There is no legislation monitoring and strictly outlining requirements for the administration of psychoactive medications to persons in residential care facilities. These medication classes include antipsychotics or neuroleptics, antidepressants, agents for control of mania or depression, anti-anxiety agents, sedatives, hypnotics, other sleep-promoting drugs, and psychomotor stimulants. Patients are not given the right to refuse the administration of these medications even though these medications exert an effect on the patient's central nervous system, thus modifying their behavior, cognition, and emotional state.

This bill establishes that the patient may not be administered psychoactive medications once they have refused them, unless there is a medication-related emergency, the client's legally authorized representative has consented to the administration, or there is a court order overriding the client's refusal. The bill also outlines requirements which determine the validity of the patient or the representative's consent, requirements regarding a physician's application for order to authorize psychoactive medications and the client's rights when this application is filed, and requirements that the client must fall under in order to enable a court to issue an order authorizing the administration of one or more classes of psychoactive medications to the patient. This bill also states what will be considered when a court finds that a client is a threat to himself or herself or others in the residential care facility, what the client may do to appeal a court order committing themselves to a residential care facility, and provides information regarding court order expiration dates. The bill also includes the criteria for a court hearing and order authorizing psychoactive medications in determining whether or not a patient is incompetent to stand trial.

As proposed, S.B. 750 provides that consent from a person receiving services in a residential care facility is required for the administration of psychoactive medications. The bill also prohibits a person from administering a psychoactive medication to a client who refuses to take it voluntarily unless the client meets certain requirements. This bill also adds rules and regulations for the administration of psychoactive medications to persons in residential care facilities.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (MHMR), the following amendments affect the Department of Aging and Disability Services, as the successor agency to MHMR.]

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 592.038, Health and Safety Code, by adding Subsection (d), to provide that each client has the right to refuse psychoactive medication, as provided by Subchapter E.

SECTION 2. Amends Section 592.054(b), Health and Safety Code, to provide that notwithstanding Subsection (a) (relating to the requirement that certain residents be provided with available necessary care and treatment), consent is required for, as provided by Section 592.083, the administration of psychoactive medications.

SECTION 3. Amends Chapter 592, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

Sec. 592.081. DEFINITIONS. Defines "capacity," "medication-related emergency," and "psychoactive medication."

Sec. 592.082. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) Prohibits a person from administering a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless the client is having a medication-related emergency, the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration, the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.086, or the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086 (Court-Ordered Medications), Code of Criminal Procedure.

(b) Provides that consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if the consent is given voluntarily and without coercive or undue influence; the treating physician or a person designated by the physician provides certain information regarding the medication in a standard format approved by the Texas Department of Mental Health and Mental Retardation (MHMR), to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client; the client and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent may be revoked; and the consent is evidenced in the client's clinical record by a signed form prescribed by the facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

(c) Requires the physician, if the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, to meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) Requires that a client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, be documented in the client's clinical record.

(e) Requires a treating physician, in prescribing psychoactive medication, to prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically, and administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) Requires a physician, if a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency, to document in the client's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any, and to provide treatment of the client with the psychoactive medication in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Sec. 592.083. ADMINISTRATION OF MEDICATION TO CLIENT COMMITTED TO RESIDENTIAL CARE FACILITY. (a) Defines "ward."

(b) Prohibits a person from administering a psychoactive medication to a client who refuses to take the medication voluntarily unless the client meets certain requirements.

Sec. 592.084. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) Authorizes a physician who is treating a client to file an application in probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal under certain conditions.

(b) Requires that an application filed under this section state certain information.

(c) Requires that an application filed under this section be filed separately from an application for commitment to a residential care facility.

(d) Authorizes the hearing on the application to be held on the same day as a hearing on an application for commitment to a residential care facility under Subchapter C (Commitment to Residential Care Facility), Chapter 593 (Admission and Commitment to Mental Retardation Services), but requires that the hearing be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. Authorizes the court, if the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county, to transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(e) Authorizes the court, subject to the requirement in Subsection (d) that the hearing is required to be held not later than 30 days after the filing of the application, to grant one continuance on a party's motion and for good cause shown. Authorizes the court to grant more than one continuance only with the agreement of the parties.

Sec. 592.085. RIGHTS OF CLIENT. Entitles a client for whom an application for an order to authorize the administration of a psychoactive medication is filed to certain legal rights and access to documentation.

Sec. 592.086. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) Authorizes the court to issue an order authorizing the administration of one or more classes of psychoactive medication to a client who has been committed to a residential care facility or is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) Authorizes the court to issue an order under this section only if the court makes certain findings by clear and convincing evidence after the hearing.

(c) Requires the court, in making the finding that treatment with the proposed medication is in the best interest of the client, to consider certain factors.

(d) Requires that a hearing under this subchapter be conducted on the record by the probate judge or judge with probate jurisdiction, except as provided by Subsection (e).

(e) Authorizes a judge to refer a hearing to a magistrate or court-appointed master who has training regarding psychoactive medications. Authorizes the magistrate or master to effectuate the notice, set hearing dates, and appoint attorneys as required by this subchapter. Provides that a record is not required if the hearing is held by a magistrate or court-appointed master.

(f) Entitles a party to a hearing de novo by the judge if an appeal of the magistrate's or master's report is filed with the court before the fourth day after the date the report is issued. Requires that the hearing de novo be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) Authorizes the proposed client or the proposed client's attorney, if a hearing or an appeal of a master's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, to request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state. Requires the county judge to transfer the case after receiving the request, and the receiving court to hear the case as if it had been originally filed in that court.

(h) Entitles the client, as soon as practicable after the conclusion of the hearing, to have provided to the client and the client's attorney written notification of the court's determinations under this section. Requires that the notification include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) Requires that an order entered under this section authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. Requires that the order permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) Requires that the classes of psychoactive medications in the order conform to classes determined by MHMR.

(k) Authorizes an order issued under this section to be reauthorized or modified on the petition of a party. Provides that the order remains in effect pending action on a petition for reauthorization or modification. Defines "modification."

Sec. 592.087. FINDING THAT CLIENT PRESENTS A DANGER. Provides that, in making a finding under Section 592.086(b)(2) (relating to the court finding clear and convincing evidence that the client exhibits certain characteristics that warrant treatment with the proposed medication) that the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect the court is required to consider an assessment of the client's present mental condition; and whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

Sec. 592.088. APPEAL. (a) Authorizes a client to appeal an order under this subchapter in the manner provided by Section 593.056 (Appeal) for an appeal of an order committing the client to a residential care facility.

(b) Provides that an order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

Sec. 592.089. EFFECT OF ORDER. (a) Provides that a person's consent to take a psychoactive medication is not valid and may not be relied on if the person is subject to an order issued under Section 592.086.

(b) Provides that the issuance of an order under Section 592.086 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Sec. 592.090. EXPIRATION OF ORDER. (a) Provides that, except as provided by Subsection (b), an order issued under Section 592.086 expires on the anniversary of the date the order was issued.

(b) Provides that an order issued under Section 592.086 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. Requires that an order continued under this subsection be reviewed by the issuing court every six months.

SECTION 4. Amends Articles 46B.086(a) and (b), Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to a defendant who meets certain requirements, including a defendant who, after a hearing held under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) or 592.086, Health and Safety Code, has been found not to meet the criteria prescribed by Sections 574.106(a) (regarding the circumstances in which the court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient) and (a-1) (regarding the circumstances in which the court may issue an order under this section only), or Sections 592.086(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) Makes a conforming change.

SECTION 5. Effective date: September 1, 2009.

EFFECTIVE DATE

September 1, 2009.