

**LEGISLATIVE BUDGET BOARD**

**Austin, Texas**

**FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION**

**April 6, 2009**

**TO:** Honorable Jane Nelson, Chair, Senate Committee on Health & Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: SB1520** by Shapleigh (Relating to the protection and care of individuals with mental retardation residing in certain residential care facilities.), **As Introduced**

**No significant fiscal implication to the State is anticipated.**

SECTIONS 1 and 2 would amend Chapter 592 of the Health and Safety Code, the Persons with Mental Retardation Act. The bill would add the right to refuse psychoactive medication and would require consent for the administration of psychoactive medications to persons receiving services in a residential care facility, including state schools and the center operated by the Department of Aging and Disability Services (DADS) and the Intermediate Care Facility for persons with Mental Retardation (ICF-MR) component of the Rio Grande State Center operated by the Department of State Health Services (DSHS).

SECTION 3 would add Subchapters E and F to Chapter 592 of the Health and Safety Code. Subchapter E, Administration of Psychoactive Medications, would prohibit administration of psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless certain requirements are satisfied. The bill would establish requirements for the provision of consent and require documentation of a client's refusal of consent in the client's clinical record. The bill would require a treating physician to prescribe the medication with the fewest side effects or potential for adverse side effects in the smallest therapeutically acceptable dosage for the client's condition. The bill would require the physician issuing an order to administer the medication without the client's consent to provide documentation in the client's clinical record and require treatment that is least restrictive of the client's personal liberty.

The bill would enable a physician to file an application in a 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 circumstances. The bill would provide a client with rights pertaining to the hearing including the right to be represented by a court-appointed attorney and the right to be present at the hearing. The bill would permit the court to issue an order authorizing the administration of one or more psychoactive medications 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, pending certain criteria. The bill would provide for a client appeal.

Subchapter F, Use of Restraints in State Schools, would require the Executive Commissioner of the Health and Human Services Commission (HHSC) to adopt rules to ensure that a mechanical or physical restraint is not administered to a resident of a state school except in certain circumstances, that the administration of the restraint ends immediately once the imminent risk of physical injury abates, and that a mechanical or physical restraint is not administered to a resident as punishment or part of a behavior plan. The Executive Commissioner would be required to adopt rules prohibiting use of prone and supine holds except as transitional holds. The Executive Commissioner would be required to adopt rules by January 1, 2010. The bill would prohibit use of a straitjacket or papoose board to restrain a resident of a state school. The bill would require a state school to report to the Executive Commissioner each incident in which a physical or mechanical restraint is administered to a state school resident.

SECTION 4 would amend the Code of Criminal Procedure so that Articles 46B0.86(a) and (b) would apply to a defendant who after a hearing under the new subchapter, has been found not to meet the criteria for court-ordered administration of psychoactive medications.

SECTION 6 would require a state agency to request a waiver or authorization from a federal agency if it is required to implement any provision of the bill.

DADS and DSHS indicate they can absorb costs associated with implementation of the provisions regarding psychoactive drugs within current resources. The Office of Court Administration indicates that while the hearings and other procedures will increase the work of the court system, the increase should not be so material as to result in the need for new judge and/or court personnel and no significant fiscal implication to the State is anticipated. To the extent that the bill results in a reduction in the administration of psychoactive medications, there could be additional cost savings to the Medicaid program but these savings cannot be estimated and are not included in this analysis.

This analysis assumes the rulemaking at HHSC regarding the use of restraints can be accomplished within existing resources. DADS indicates training materials would need to be modified to reflect the new rules and that these modifications can be made within existing resources.

### **Local Government Impact**

OCA indicates that while the hearings and other procedures will increase the work of the court system, the increase should not be so material as to result in the need for new judge and/or court personnel and no significant fiscal implication to local government is anticipated.

**Source Agencies:** 212 Office of Court Administration, Texas Judicial Council, 537 State Health Services, Department of, 539 Aging and Disability Services, Department of

**LBB Staff:** JOB, CL, JI, LL