

BILL ANALYSIS

C.S.H.B. 1128
By: Menendez
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Current law allows certain adult surrogate decision-makers to consent to medical treatment on behalf of an adult patient of a home and community support services agency if the person is mentally or physically incapable of communication. Persons who are incarcerated and who are suffering from mental illness can currently refuse medical treatment, despite the person's potentially delusional state. This refusal can exacerbate their condition.

C.S.H.B. 1128 seeks to provide for the treatment of such inmates by allowing certain adult surrogate decision-makers to consent to medical treatment on behalf of an adult inmate of a county or municipal jail who is mentally or physically incapable of communication.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 1128 amends the Health and Safety Code to expand the definition of "patient" for purposes of the Consent to Medical Treatment Act, to include a person who is an inmate of a county or municipal jail. The bill includes an adult inmate of a county or municipal jail among the persons on whose behalf medical treatment is authorized to be consented to by an adult surrogate meeting certain criteria, if the inmate is comatose, incapacitated, or otherwise mentally or physically incapable of communication. The bill prohibits a surrogate decision-maker for such an incapacitated inmate from consenting to psychotropic medication, involuntary inpatient mental health services, or psychiatric services calculated to restore competency to stand trial.

C.S.H.B. 1128 authorizes a person who is an available adult surrogate to consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. The bill prohibits a successor surrogate from being appointed at the conclusion of the period and authorizes only the patient or the patient's appointed guardian of the person, if the patient is a ward under provisions of the Probate Code relating to guardianship, to consent to medical treatment.

C.S.H.B. 1128, in provisions of law relating to the prerequisites for consent by a surrogate decision-maker to the medical treatment of a patient, includes an inmate who is comatose, incapacitated, or otherwise mentally or physically incapable of communication among the patients whose mental or physical inability to communicate and proposed medical treatment are required to be described by the attending physician in the patient's medical record.

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1128 contains a provision not included in the original expanding the definition of "patient" for purposes of the Consent to Medical Treatment Act.

C.S.H.B. 1128 contains a provision not included in the original authorizing a person who is an available adult surrogate to consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a limited period. The substitute contains a provision not included in the original prohibiting a successor surrogate from being appointed at the conclusion of the period and authorizing only the patient or the patient's appointed guardian of the person under certain conditions.