

BILL ANALYSIS

C.S.H.B. 3611
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties observe that, in an effort to enable persons with intellectual and developmental disabilities to gain skills and develop independence in the self administration of medications, the Department of Aging and Disability Services (DADS) began allowing certain clients who are receiving services from certain intermediate care facilities for the mentally retarded (ICF-MR) or waiver programs to self-administer medication with assistance from trained but unlicensed personnel. Those parties further observe that the department uses certain assessment criteria based on a client's physical ability to take the client's own medication, and the administration of medications is monitored by administrative and nursing personnel to assure safety. The parties note that, recently, the Texas Board of Nursing determined that this self administration should be based on the cognitive ability, rather than the physical ability, of each person to take his or her own medication. Many individuals served in these community-based programs cannot meet the standards required by this new criteria.

C.S.H.B. 3611 seeks to allow certain unlicensed persons to provide administration of medication to certain Texans served in small and medium ICFs-MR and certain waiver programs and to establish certain safeguards to ensure safety. The bill also proposes to create a pilot program to evaluate licensed vocational nurses providing on-call services by telephone to certain clients who are under the care of the licensed vocational nurses.

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. 3611 amends the Human Resources Code to authorize an unlicensed person to provide administration of medication to a person with intellectual and developmental disabilities who is served in a small licensed or certified intermediate care facility for the mentally retarded (ICF-MR) with not less than one and not more than eight beds; in a medium licensed or certified ICF-MR with not less than nine and not more than 13 beds; by certain specified Section 1915(c) waiver programs administered by the Department of Aging and Disability Services (DADS) without the requirement that a registered nurse delegate or oversee each administration. The bill authorizes such administration of medication if the medication is an oral medication, a topical medication, or a metered dose inhaler; the medication is administered to the client for a stable or predictable condition; the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status, and the registered nurse has determined that the client's health status permits the administration of medication by an unlicensed person; and the unlicensed person has been trained or determined to be competent, including through a demonstration of proper technique by the unlicensed person, by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication. The bill clarifies that the administration of medication other than medication described in the bill is subject to the rules of the Texas Board of Nursing regarding

the delegation of nursing tasks to unlicensed persons in independent living environments.

C.S.H.B. 3611 requires DADS to ensure that the administration of medication by an unlicensed person is reviewed at least annually and after any significant change in a client's condition by a registered nurse or licensed vocational nurse under the supervision of a registered nurse and that an applicable facility or program has policies to ensure that the determination of whether an unlicensed person may provide administration of medication to a client may be made only by a registered nurse. The bill requires DADS to verify that each client is assessed to identify the client's needs and abilities regarding the client's medications; that the administration of medication by an unlicensed person to a client is performed only by an unlicensed person who is authorized to perform that administration; and that the administration of medication to each client is performed in such a manner as to ensure the greatest degree of independence, including the use of an adaptive or assistive aid, device, or strategy as allowed under program rules. The bill requires DADS to enforce the bill's provisions relating to the administration of medication for clients with intellectual and developmental disabilities.

C.S.H.B. 3611 authorizes a registered nurse performing a required client assessment under the bill's provisions or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication under the bill's provisions to be held accountable or civilly liable only in relation to whether the nurse properly performed the assessment, conducted the training, and determined whether the unlicensed person is competent to provide administration of medication to clients. The bill authorizes the board to take disciplinary action against a registered nurse or licensed vocational nurse under the bill's provisions only in relation to whether the registered nurse properly performed the required client assessment, the registered nurse or licensed vocational nurse properly trained the unlicensed person in the administration of medication, and the registered nurse or licensed vocational nurse properly determined whether an unlicensed person is competent to provide administration of medication to clients. The bill prohibits a registered nurse or licensed vocational nurse from being held accountable or civilly liable for the acts or omissions of an unlicensed person performing administration of medication. The bill provides that its provisions relating to the administration of medication for clients with intellectual and developmental disabilities control to the extent of a conflict with other law.

C.S.H.B. 3611 adds a temporary provision, set to expire September 1, 2013, to require the board and DADS to conduct a pilot program beginning not later than September 1, 2011, and ending on August 31, 2012, to evaluate licensed vocational nurses providing on-call services by telephone to clients who are under the care of the licensed vocational nurses. The bill requires the licensed vocational nurses to use standardized and validated protocols or decision trees in performing telephone on-call services in the pilot program and requires DADS to collect data to evaluate the efficacy of such nurses performing those services. The bill requires the board and DADS, in consultation with affected stakeholders, including public and private providers, registered and licensed vocational nurses employed by applicable facilities or providers of applicable services, and other persons or entities the executive director of the board and the commissioner of DADS consider appropriate, to develop the goals and measurable outcomes of the pilot program, review the outcomes of the pilot program and make recommendations regarding potential regulatory or statutory changes, and, on notice of unsafe or ineffective nursing care discovered in the pilot program, review the data or the outcomes and make recommendations for corrective action. The bill requires the board and DADS, not later than December 1, 2012, to submit a report detailing the findings of the pilot program and any jointly developed recommendations to the Senate Committee on Health and Human Services and the House Committee on Public Health.

C.S.H.B. 3611 requires DADS, in developing any policies, processes, or training curriculum required by the bill, to convene an advisory committee of affected stakeholders, including public and private providers and registered and licensed vocational nurses employed by the applicable facilities or providers of applicable services and other persons or entities DADS considers

appropriate. The bill defines "administration of medication," "client," and "unlicensed person."

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3611 omits a provision included in the original defining "assistance with self-administered medication." The substitute differs from the original, in a bill provision defining "unlicensed person" as an individual not licensed as a health care provider, by specifying that the definition means such an individual who provides services at or for certain applicable intermediate care facilities for the mentally retarded (ICF-MR) or certain specified Section 1915(c) waiver programs administered by the Department of Aging and Disability Services (DADS), whereas the original contains no such specification.

C.S.H.B. 3611 differs from the original by making the bill's provisions applicable to the administration of medication provided to certain persons with intellectual and developmental disabilities who are served in a small licensed or certified ICF-MR with not less than one and not more than eight beds or a medium licensed or certified ICF-MR with not less than nine and not more than 13 beds, rather than any licensed and certified ICF-MR, as in the original. The substitute omits a provision included in the original making the bill's provisions applicable to the administration of medication provided to certain persons with intellectual and developmental disabilities who are served by a Community Living Assistance and Support Services waiver.

C.S.H.B. 3611 differs from the original by authorizing an unlicensed person to provide administration of medication to a client under certain conditions, whereas the original requires the Texas Medical Board by rule to authorize the administration of medication by unlicensed persons under certain conditions. The substitute differs from the original, in a bill provision establishing the conditions under which an unlicensed person is authorized to provide administration of medication to a client, by requiring that the medication be administered to the client for a stable or predictable condition, whereas the original includes no such requirement. The substitute differs from the original, in that same bill provision, by requiring that the client has been personally assessed by a registered nurse initially and in response to significant changes in the client's health status, and the registered nurse has determined that the client's health status permits the administration of medication by an unlicensed person, whereas the original requires the board by rule to require that a licensed nurse assess each client with intellectual and developmental disabilities to determine the appropriate level of assistance the client needs with the administration of medication and to establish the criteria related to the necessary skills and knowledge that must be demonstrated to permit the client to have medications administered by an unlicensed person.

C.S.H.B. 3611 differs from the original, in provisions setting out the requirements for an unlicensed person to be authorized to administer medication, by requiring that the unlicensed person has been determined to be competent by a registered nurse or licensed vocational nurse under the direction of a registered nurse regarding proper administration of medication, including through a demonstration of proper technique by the unlicensed person, whereas the original includes no such requirement.

C.S.H.B. 3611 differs from the original by requiring DADS to ensure that the administration of medication by an unlicensed person is reviewed at least annually and after any significant change in a client's condition by a registered nurse or a licensed vocational nurse under the supervision of a registered nurse, whereas the original requires DADS to ensure that medications administered by an unlicensed person are overseen by a registered nurse or licensed vocational nurse under the supervision of a registered nurse. The substitute contains a provision not included in the original requiring DADS to ensure that an applicable facility or program has

policies to ensure that the determination of whether an unlicensed person may provide administration of medication to a client may be made only by a registered nurse. The substitute differs from the original by requiring DADS to verify that each client is assessed to identify the client's needs and abilities regarding the client's medications, whereas the original requires DADS to ensure that medications administered by an unlicensed person are performed after receiving training to address the client's identified skill and knowledge deficits until the client demonstrates competence in independent medication management. The substitute contains a provision not included in the original requiring DADS to verify that the administration of medication by an unlicensed person to a client is performed only by authorized unlicensed persons. The substitute contains a provision not included in the original requiring DADS to enforce the bill's provisions.

C.S.H.B. 3611 contains a provision not included in the original establishing the conditions under which a registered nurse performing a required client assessment or a registered nurse or licensed vocational nurse training an unlicensed person or determining whether an unlicensed person is competent to perform administration of medication is authorized to be held accountable or civilly liable. The substitute contains a provision not included in the original establishing the conditions under which the board is authorized to take disciplinary action against a registered nurse or licensed vocational nurse under the bill's provisions. The substitute contains a provision not included in the original prohibiting a registered nurse or licensed vocational nurse from being held accountable or civilly liable for the acts or omissions of an unlicensed person performing administration of medication.

C.S.H.B. 3611 contains a provision not included in the original providing that the bill's provisions relating to the administration of medication for clients with intellectual and developmental disabilities control to the extent of a conflict with other law.

C.S.H.B. 3611 contains provisions not included in the original requiring the Texas Board of Nursing and DADS to conduct a pilot program to evaluate licensed vocational nurses providing on-call services by telephone to certain clients who are under the care of the licensed vocational nurses, establishing certain requirements of licensed vocational nurses and DADS under the pilot program, and requiring the board and DADS to submit a report detailing the findings of the pilot program and any jointly developed recommendations to specified committees in the senate and the house of representatives. The substitute contains a provision not included in the original requiring the board and DADS, in consultation with certain affected stakeholders, to develop the goals and measurable outcomes of the pilot program, review the outcomes of the pilot program and make recommendations regarding potential regulatory or statutory changes, and, on notice of unsafe or ineffective nursing care discovered in the pilot program, review the data or the outcomes and make recommendations for corrective action. The substitute contains a provision not included in the original establishing that the bill's provisions relating to the pilot program expire September 1, 2013.

C.S.H.B. 3611 omits a provision in the original requiring the board and DADS to enter into a memorandum of understanding regarding the administration of medication to persons with intellectual and developmental disabilities.

C.S.H.B. 3611 differs from the original in conforming and nonsubstantive ways.