

BILL ANALYSIS

C.S.H.B. 868
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Texas law currently prohibits the release of certain confidential information, such as medical records and treatment plans regarding mentally ill patients. Several exceptions are made to this prohibition, such as for governmental agencies, law enforcement or medical personnel, the parent of a patient who is a minor, and for purposes of financial audits and legislative inquiries relating to state hospitals. C.S.H.B. 868 seeks to allow mental health professionals to share certain confidential information about a patient with other individuals who can play a meaningful role in treatment progress.

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. 868 amends the Health and Safety Code to include among the individuals and entities to whom certain health professionals are authorized to disclose confidential mental health information the patient's family members or friends, if the information concerns the patient's location; the patient's anticipated stay at the location; the visiting hours, if any, of the patient's location; whether the patient needs clothing or other personal items; the professional's opinion regarding the duration of the patient's stay in a facility, if applicable; or the need for commitment of the patient. The bill authorizes a professional to disclose confidential information to such a person only when, if the patient has capacity, the professional first obtains the patient's consent to the disclosure, or the professional gives the patient an opportunity to object to the disclosure, including an opportunity to object before the patient actually consults with or is interviewed by the professional, and the patient does not object to the disclosure; or when, if the patient lacks capacity, the professional believes that the disclosure of confidential information will facilitate the patient's recovery, and the professional has a reasonable belief that the patient would not object to the disclosure of confidential information. The bill authorizes a patient who regains capacity to prohibit continued disclosures of confidential information by a professional to the patient's family members or friends.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 868 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

SECTION 1. Section 611.001, Health and Safety Code, is amended by adding Subdivision (3) to read as follows:

(3) "Mental health services provider" means an unlicensed individual who performs mental health services for a patient, including evaluation and coordination of services.

SECTION 2. Section 611.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsection (e) to read as follows:

(a) A professional may disclose confidential information only:

- (1) to a governmental agency if the disclosure is required or authorized by law;
- (2) to medical personnel, mental health services providers, or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
- (3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
- (4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
- (5) to the patient's personal representative if the patient is deceased;
- (6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
- (7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
- (8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);
- (9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

HOUSE COMMITTEE SUBSTITUTE

No equivalent provision.

SECTION 1. Section 611.004, Health and Safety Code, is amended by amending Subsection (a) and adding Subsections (e) and (f) to read as follows:

(a) **Except as provided by Subsections (e) and (f), a** [~~A~~] professional may disclose confidential information only:

- (1) to a governmental agency if the disclosure is required or authorized by law;
- (2) to medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the patient to the patient or others or there is a probability of immediate mental or emotional injury to the patient;
- (3) to qualified personnel for management audits, financial audits, program evaluations, or research, in accordance with Subsection (b);
- (4) to a person who has the written consent of the patient, or a parent if the patient is a minor, or a guardian if the patient has been adjudicated as incompetent to manage the patient's personal affairs;
- (5) to the patient's personal representative if the patient is deceased;
- (6) to individuals, corporations, or governmental agencies involved in paying or collecting fees for mental or emotional health services provided by a professional;
- (7) to other professionals and personnel under the professionals' direction who participate in the diagnosis, evaluation, or treatment of the patient;
- (8) in an official legislative inquiry relating to a state hospital or state school as provided by Subsection (c);
- (9) to designated persons or personnel of a correctional facility in which a person is detained if the disclosure is for the sole purpose of providing treatment and health care to the person in custody;

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; ~~or~~

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code;

(12) to a mental health services provider if:

(A) the information is nonmedical demographic information about a patient, including address, name, or phone number; and

(B) the professional determines that the information is necessary for the mental health services provider to coordinate the provision of services to the patient; or

(13) to a person who is considered by the professional as willing and capable of contributing substantially to the patient's recovery, if the professional determines that disclosing the information will assist the person in making that contribution.

(e) A person described by Subsection (a)(2) who receives confidential information under that subsection is immune from civil or criminal liability from an action taken based on the information received if the action is taken in good faith. If the person is a professional or a mental health services provider and the patient continues to receive regular treatment or services from the person, the person must attempt to obtain accurate medical or mental health records regarding the patient as necessary to provide

(10) to an employee or agent of the professional who requires mental health care information to provide mental health care services or in complying with statutory, licensing, or accreditation requirements, if the professional has taken appropriate action to ensure that the employee or agent:

(A) will not use or disclose the information for any other purposes; and

(B) will take appropriate steps to protect the information; ~~or~~

(11) to satisfy a request for medical records of a deceased or incompetent person pursuant to Section 74.051(e), Civil Practice and Remedies Code; or

(12) to the patient's family members or friends, if the information concerns:

(A) the patient's location;

(B) the patient's anticipated stay at the location;

(C) the visiting hours, if any, of the patient's location;

(D) whether the patient needs clothing or other personal items;

(E) the professional's opinion regarding the duration of the patient's stay in a facility, if applicable; or

(F) the need for commitment of the patient.

treatment or services.

(e) A professional may disclose confidential information to a person described by Subsection (a)(12) only when:

(1) if the patient has capacity, the professional first obtains the patient's consent to the disclosure, or the professional gives the patient an opportunity to object to the disclosure, including an opportunity to object before the patient actually consults with or is interviewed by the professional, and the patient does not object to the disclosure; or

(2) if the patient lacks capacity, the professional believes that the disclosure of confidential information will facilitate the patient's recovery, and the professional has a reasonable belief that the patient would not object to the disclosure of confidential information.

(f) A patient who regains capacity may prohibit continued disclosures of confidential information by a professional to a person described by Subsection (a)(12).

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 2. Same as introduced version.