

BILL ANALYSIS

S.B. 34
By: Zaffirini
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Concerns have been raised that current law does not adequately outline requirements for the administration of psychoactive medications to persons in residential care facilities, including state-supported living centers. According to industry experts, these types of drugs, which include antipsychotics, antidepressants, antianxiety agents, sedatives, hypnotics, sleep-promoting drugs, and psychomotor stimulants, can affect a person's central nervous system and modify behavior, cognition, and emotional state. Observers point to a recent federal report asserting that many patients receive psychotropic medication without a proper diagnosis and that the absence of adequate behavioral assessments to identify the causes of maladaptive behaviors contributes to misuse of psychotropic medications, with many patients receiving multiple medications for the same condition.

Advocates in Texas contend that state law should strive to recognize and protect the individual dignity and worth of each person with mental disabilities and to provide each patient freedom from unnecessary medication. According to these advocates, the law should seek to prohibit medication from being used as punishment, for staff convenience, as a substitute for a habilitation program, or in quantities that interfere with the client's habilitation program and to require proper consent before medication is administered. S.B. 34 intends to further these efforts by amending current law relating to the administration of psychoactive medications to persons receiving services in certain facilities.

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

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

S.B. 34 amends the Health and Safety Code to establish that each client receiving mental retardation services from the Department of Aging and Disability Services or a community center has the right to refuse psychoactive medication and to require consent for the administration of psychoactive medications to a client committed to a residential care facility.

S.B. 34 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, or the administration of the medication regardless of the client's refusal is authorized by a court order. The bill establishes that consent to the administration of psychoactive medication given by a client or by a person authorized by law on the client's behalf is valid only if the consent is given voluntarily and without coercive or undue influence; if the treating physician or the physician's designee provides to the client and, if applicable, the client's authorized representative certain information relating to the condition being treated and to the medication; if the client and, if appropriate, the client's authorized representative are informed in writing that consent may be revoked; and if the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care 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.

S.B. 34 requires the treating physician, if the physician designates another person to provide the required information relating to the condition being treated and the medication, to meet with the client and, if appropriate, the client's representative who provided the consent not later than two working days after that person provides the information, excluding weekends and legal holidays, to review the information and answer any questions. The bill requires a client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, to be documented in the client's clinical record. The bill 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 to administer the smallest therapeutically acceptable dosages of medication for the client's condition. The bill requires a physician, if the 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 requires treatment of the client with the psychoactive medication to be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

S.B. 34 prohibits a person from administering a psychoactive medication to a client committed to a residential care facility who refuses to take the medication voluntarily unless the client is having a medication-related emergency, the client is under a court order authorizing the administration of the medication regardless of the client's refusal, or the client is a ward who is 18 years of age or older and the guardian of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

S.B. 34 authorizes a physician who is treating a client 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 if the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication, the physician determines that the medication is the proper course of treatment for the client, and the client has been committed to a residential care facility or an application for commitment to a residential care facility has been filed for the client. The bill sets out the information required to be stated in such an application and requires the application to be filed separately from an application for commitment to a residential care facility. The bill authorizes the hearing on the application to be held on the same date as a hearing on an application for commitment to a residential care facility but requires the hearing to be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. The bill authorizes a court, if the hearing is not held on the same date as the application for commitment to a residential care facility 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. The bill authorizes a court to grant one continuance on a party's motion and for good cause shown, subject to the requirement that the hearing be held not later than 30 days after the filing of the application. The bill authorizes a court to grant more than one continuance only with the agreement of the parties.

S.B. 34 entitles a client for whom an application for an order to authorize the administration of a psychoactive medication is filed to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing; to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns; to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing; to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns; to be present at the hearing; to request from the court an independent expert; and to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

S.B. 34 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 the bill's provisions. The bill authorizes a court to issue such an order only if the court makes certain findings regarding the administration of the proposed medication and the specific circumstances of the client, including a finding that treatment with the medication is in the best interest of the client. The bill requires the court, in making the finding that treatment with the proposed medication is in the best interest of the client, to consider the following: the client's expressed preferences regarding treatment with psychoactive medication; the client's religious beliefs; the risks and benefits, from the perspective of the client, of taking psychoactive medication; the consequences to the client if the psychoactive medication is not administered; the prognosis for the client if the client is treated with psychoactive medication; alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

S.B. 34 requires a hearing on an order to authorize the administration of psychoactive medication to be conducted on the record by the probate judge or judge with probate jurisdiction, except that a judge may refer a hearing to a magistrate or court-appointed associate judge who has training regarding psychoactive medications. The bill authorizes the magistrate or associate judge to effectuate the notice, set hearing dates, and appoint attorneys as required by the bill and establishes that a record is not required if the hearing is held by a magistrate or court-appointed associate judge. The bill entitles a party to a hearing de novo by the judge if an appeal of the magistrate's or associate judge's report is filed with the court before the fourth day after the date the report is issued and requires the hearing de novo to be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed. The bill authorizes the proposed client or the proposed client's attorney to request that the proceeding be transferred to a court with a judge who is licensed to practice law in Texas if a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney. The court requires a county judge to transfer the case after receiving such a request and requires the receiving court to hear the case as if it had been originally filed in that court.

S.B. 34 entitles the client to have written notification of the court's determinations provided to the client and the client's attorney as soon as practicable after the conclusion of the hearing. The bill requires the notification to include a statement of the evidence on which the court relied and the reasons for the court's determinations. The bill requires an order entered under the bill's provisions to 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. The bill requires the order to 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 and requires the classes of psychoactive medications in the order to conform to classes determined by the Department of State Health Services. The bill authorizes an order to be reauthorized or modified on the petition of a party and specifies that the order remains in effect pending action on a petition for reauthorization or a change of a class of medication authorized in the order. The bill establishes that, for a client who has remained confined in a correctional facility for a period exceeding 72 hours while awaiting transfer for competency restoration treatment and who presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect, an order issued authorizing psychoactive medication authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer and does not constitute authorization to retain the client in a correctional facility for competency restoration treatment.

S.B. 34 requires a court 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 a facility in making a finding that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable. The bill authorizes a client to appeal an order authorizing the administration of psychoactive medication in the manner provided for an appeal of an order committing the client to a residential care facility and establishes that an order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order. The bill establishes 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 the bill's provisions and establishes that the issuance of such an order 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. The bill specifies that an order authorizing the administration of a psychoactive medication expires on the anniversary of the date the order was issued, except that such an order issued 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 on the date on which charges in the case are dismissed. The bill requires the issuing court to review such an order every six months.

S.B. 34 amends the Code of Criminal Procedure to make conforming changes.

EFFECTIVE DATE

September 1, 2013.