

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1560
By: Zaffirini
Health & Human Services
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The purpose of this legislation is to align current practice regarding obtaining consent in substance abuse facilities with statute. During the Department of State Health Services (DSHS) rulemaking process for H.B. 3146, 82nd Legislature, Regular Session, 2011, it became apparent that the bill inadvertently would impose an unworkable burden on detox facilities by requiring physicians to be physically present to receive a patient's consent for medication treatment. Current practice allows for consent to be obtained from facility staff without a physician being physically present, and H.B. 3146 did not intend to prohibit this process. While these agency rules have not yet been adopted, failure to address this issue through legislation could result in DSHS being required to enforce this new rule, which could have serious effects on detox facilities.

C.S.S.B. 1560 would allow physicians to delegate to an employee of the facility the ability to obtain consent for medication treatment. The bill also would allow non-medication consent to be explained in writing, and would clarify language related to a patient being admitted after a screening but prior to an assessment. This bill would not allow or establish new consent obtaining practices.

The committee substitute would clean up and modify the definition of "mental health professional"; direct the executive commissioner of the Health and Human Services Commission to establish in rule efforts to obtain consent for the treatment of chemically dependent persons; allow for physicians to designate another mental health professional to obtain consent to medication, and require a physician meet the patient no later than two business days after admission; ensure patients' right to refuse unnecessary and excessive medication; and clean up and clarify terms regarding the admission process to obtain treatment for chemical dependency by striking the definition of "assessment," since "screening" accomplishes the goal.

C.S.S.B. 1560 amends current law relating to the regulation of chemical dependency treatment facilities and certain other facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 462.009, Health and Safety Code) and SECTION 4 (Section 462.012, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 164.003(6), Health and Safety Code, to redefine "mental health professional."

SECTION 2. Amends Section 164.009(e), Health and Safety Code, to prohibit a chemical dependency facility from representing or recommending that a prospective patient should be admitted to a facility for treatment unless and until a mental health professional, rather than the mental health professional, determines that the patient meets the facility's admission standards.

SECTION 3. Amends Sections 462.009(a) and (b), Health and Safety Code, as follows:

(a) Prohibits a treatment facility licensed by the Department of State Health Services (DSHS) under Chapter 464 (Facilities Treating Alcoholics and Drug-Dependent Persons) from providing treatment to a patient without the patient's legally adequate consent.

Deletes existing text entitling a patient receiving treatment in a treatment facility to refuse a medication, therapy, or treatment unless the patient fulfills criteria as set forth relating to the patient's age, competency to make decisions, or a written or verbal order issued or authenticated by a physician treating the patient.

(b) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to prescribe standards for obtaining a patient's legally adequate consent under this section, including rules prescribing reasonable efforts to obtain a patient's consent and requiring documentation for those efforts.

Deletes existing text requiring that the decision of a guardian or of a person legally authorized to consent to medical treatment on the patient's behalf under Subsection (a)(2) (providing that a patient is not entitled to refuse a medication, therapy, or treatment if the patient has been adjudicated to be incompetent and the patient's guardian consent to medication, therapy, or treatment) be based on knowledge of what the patient would desire, if known.

SECTION 4. Amends Subchapter A, Chapter 462, Health and Safety Code, by adding Sections 462.010, 462.011, 462.012, and 462.013, as follows:

Sec. 462.010. CONSENT TO MEDICATION. Provides that consent to the administration of prescription medication given by a patient receiving treatment in a treatment facility licensed by DSHS under Chapter 464 or by a person authorized by law to consent on behalf of the patient is valid only if:

- (1) the consent is given voluntarily and without coercive or undue influence;
- (2) the patient and, if appropriate, the patient's representative authorized by law to consent on behalf of the patient are informed in writing that consent may be revoked; and
- (3) the consent is evidenced in the patient's clinical record by a signed form prescribed by the treatment 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.

Sec. 462.011. RIGHT TO REFUSE MEDICATION. (a) Provides that each patient receiving treatment in a treatment facility licensed by DSHS under Chapter 464 has the right to refuse unnecessary or excessive medication.

(b) Prohibits medication from being used by the treatment facility as punishment or for the convenience of the staff.

Sec. 462.012. MEDICATION INFORMATION. (a) Requires the executive commissioner to by rule require the treating physician of a patient admitted to a treatment facility licensed by DSHS under Chapter 464 or a person designated by the physician to provide to the patient in the patient's primary language, if possible, information relating to the prescription medications ordered by the physician.

(b) Requires that the required information, at a minimum:

- (1) identify the major types of prescription medications; and

(2) specify for each major type:

(A) the conditions the medications are commonly used to treat;

(B) the beneficial effects on those conditions generally expected from the medications;

(C) side effects and risks associated with the medications;

(D) commonly used examples of medications of the major type; and

(E) sources of detailed information concerning a particular medication.

(c) Requires the treating physician to, if the physician designated another person to provide the information under Subsection (a), then, not later than two working days after that person provides the information, excluding weekends and legal holidays, meet with the patient and, if appropriate, the patient's representative who provided consent for the administration of the medications under Section 462.010, to review the information and answer any questions.

(d) Requires the treating physician or the person designated by the physician to also provide the information to the patient's family on request, but only to the extent not otherwise prohibited by state or federal confidentiality laws.

Sec. 462.013. LIST OF MEDICATIONS. (a) Requires the facility administrator of a treatment facility licensed by DSHS under Chapter 464 to, on the request of a patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any, provide to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator, a list of the medications prescribed for administration to the patient while the patient is in the treatment facility. Requires that the list include, for each medication, the name of the medication, the dosage and schedule prescribed for the administration of the medication, and the name of the physician who prescribed the medication.

(b) Requires that the list be provided before the expiration of four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any. Authorizes the list, if sufficient time to prepare the list before discharge is not available, to be mailed before the expiration of 24 hours after discharge to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator.

(c) Authorize a patient or the patient's legal guardian or managing conservator, if any, to waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the results of the project.

SECTION 5. Amends Section 462.025(h)(4), Health and Safety Code, to redefine "screening."

SECTION 6. Repealers: Sections 462.009(c) (relating to the documentation of a patient's refusal to receive medication, therapy, or treatment), (d) (relating to the documentation of a physician's order to administer a medication), (e) (relating to consent given by a patient or a person authorized by law to consent to treatment on the patient's behalf for the administration of a medication, therapy, or treatment), (f) (authorizing a person who consents to the administration of a medication, therapy, or treatment to revoke the consent), and (g) (relating to the application of consent given by a patient or a person authorized by law to consent to treatment on the patient's behalf), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015; and

Section 462.025(h)(2) (defining “assessment”), Health and Safety Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015.

SECTION 7. Effective date: upon passage or September 1, 2015.