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By:  Hancock S.B. No. 1212

A BILL TO BE ENTITLED

AN ACT

relating to verification of employability of and consent to prescription medications obtained by certain nursing facility employees; authorizing a fee.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1.  Section 411.1106(b), Government Code, is amended to read as follows:

(b)  The executive commissioner of the commission, or the executive commissioner's designee, is entitled to obtain from the department criminal history record information maintained by the department that relates to a person who is:

(1)  an applicant for employment for a position in which the person, as an employee, would have access to sensitive personal or financial information, as determined by the executive commissioner, in:

(A)  the eligibility services division of the commission; or

(B)  the commission's office of inspector general; [~~or~~]

(2)  an employee of the commission who has access to sensitive personal or financial information, as determined by the executive commissioner; or

(3)  a medication aide or nurse aide who is the subject of a verification of employability request submitted under Section 242.053, Health and Safety Code.

SECTION 2.  Subchapter B, Chapter 242, Health and Safety Code, is amended by adding Section 242.053 to read as follows:

Sec. 242.053.  VERIFICATION OF EMPLOYABILITY OF CERTAIN FACILITY EMPLOYEES REQUIRED; FEE. (a) In this section:

(1)  "Medication aide" means an individual who administers medication to nursing facility residents and holds a permit issued under Section 242.610.

(2)  "Nurse aide" means an individual who provides nursing or nursing-related services to nursing facility residents under the delegated authority of a nurse. The term includes an individual who is required to be listed in the nurse aide registry under Chapter 250. The term does not include an individual licensed under Chapter 301, Occupations Code.

(b)  A nursing facility may not employ a medication aide or nurse aide or contract for medication aide or nurse aide services with a medication aide or nurse aide unless the facility obtains from the commission a verification of employability for the medication aide or nurse aide under this section. The executive commissioner by rule shall establish standards for verification of employability under this section as necessary to protect facility residents.

(c)  A nursing facility shall request, in the form and manner prescribed by commission rule, the commission to verify the employability of a medication aide or nurse aide who is applying for employment or requesting a contract with the facility. The commission may not verify the employability of a medication aide or nurse aide unless the commission obtains the criminal history record information described by Subdivision (2) for the medication aide or nurse aide and determines that nothing in the information would disqualify the individual from employment as a medication aide or nurse aide. In determining whether to verify the employability of a medication aide or nurse aide, the commission shall:

(1)  consider the information provided to the commission by the facility;

(2)  consider the information made available to the commission by the Department of Public Safety of the State of Texas under Section 411.1106, Government Code, or by the Federal Bureau of Investigation or another criminal justice agency under Section 411.087, Government Code;

(3)  consider the commission's records, including any information included in a registry maintained by the commission; and

(4)  require the medication aide or nurse aide to submit a complete set of fingerprints to the commission for purposes of conducting a criminal history background check.

(d)  The commission may require a nursing facility requesting the commission to verify employability under Subsection (c) to pay to the commission a fee set by commission rule in an amount not to exceed the administrative costs the commission incurs in complying with a request under Subsection (c).

SECTION 3.  Section 242.505, Health and Safety Code, is amended by amending Subsection (c) and adding Subsections (g), (h), and (i) to read as follows:

(c)  Subject to Subsection (g), consent [~~Consent~~] to the prescription of psychoactive medication given by a resident or by a person authorized by law to consent on behalf of the resident is valid only if:

(1)  the consent is given voluntarily and without coercive or undue influence;

(2)  the person prescribing the medication or that person's designee provided the following information, in a standard format approved by the commission [~~department~~], to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident:

(A)  the specific condition to be treated;

(B)  the beneficial effects on that condition expected from the medication;

(C)  the probable clinically significant side effects and risks associated with the medication; and

(D)  the proposed course of the medication;

(3)  the resident and, if appropriate, the person authorized by law to consent on behalf of the resident are informed in writing that consent may be revoked; and

(4)  the consent is evidenced in the resident's clinical record by:

(A)  a signed form prescribed by the facility or by a statement of the person prescribing the medication or that person's designee that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained; and

(B)  if applicable, the original or a copy of the written consent required by Subsection (g).

(g)  In addition to the requirements of Subsection (c), consent to the prescription of an antipsychotic or neuroleptic medication is valid only if:

(1)  the consent to the prescription of that medication is given in writing by the resident for whom the medication is prescribed or by a person authorized by law to consent on behalf of the resident; and

(2)  the person prescribing the medication or that person's designee provides the information listed in Subsection (h), in a standard format approved by the commission, to the resident and, if applicable, to the person authorized by law to consent on behalf of the resident.

(h)  The information required under Subsection (g)(2) must include:

(1)  the nature of the medication;

(2)  the means of administering the medication, including:

(A)  the dosage;

(B)  the administration schedule;

(C)  the method of delivery; and

(D)  the expected duration of administration;

(3)  the right of the resident or a person authorized by law to consent on behalf of the resident to refuse medication;

(4)  the potential medical and clinical consequences of refusing the medication; and

(5)  an explanation of treatment alternatives and the right of the resident or a person authorized by law to consent on behalf of the resident to choose such treatments.

(i)  In addition to other requirements of this section, before administering an antipsychotic or neuroleptic medication, the nursing facility shall inform the resident or a person authorized by law to consent on behalf of the resident about facility policies and procedures relating to consent and, on request of the resident or authorized person, shall make available a written copy of those policies and procedures.

SECTION 4.  (a) As soon as practicable after the effective date of this Act, the executive commissioner of the Health and Human Services Commission shall adopt rules necessary to implement Section 242.053, Health and Safety Code, as added by this Act.

(b)  Notwithstanding Section 242.053, Health and Safety Code, as added by this Act, a nursing facility licensed under Chapter 242, Health and Safety Code, is not required to comply with that section or rules adopted under that section until January 1, 2020.

SECTION 5.  Section 242.053, Health and Safety Code, as added by this Act, applies only to the employment of a medication aide or nurse aide or a contract entered into with a medication aide or nurse aide on or after the effective date of this Act.

SECTION 6.  This Act takes effect September 1, 2019.