

By: Hancock

S.B. No. 1212

A BILL TO BE ENTITLED

AN ACT

1
2 relating to verification of employability of and consent to
3 prescription medications obtained by certain nursing facility
4 employees; authorizing a fee.

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

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

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

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

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

18 (B) the commission's office of inspector
19 general; ~~or~~

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

23 (3) a medication aide or nurse aide who is the subject
24 of a verification of employability request submitted under Section

1 242.053, Health and Safety Code.

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

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

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

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

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

23 (c) A nursing facility shall request, in the form and manner
24 prescribed by commission rule, the commission to verify the
25 employability of a medication aide or nurse aide who is applying for
26 employment or requesting a contract with the facility. The
27 commission may not verify the employability of a medication aide or

1 nurse aide unless the commission obtains the criminal history
2 record information described by Subdivision (2) for the medication
3 aide or nurse aide and determines that nothing in the information
4 would disqualify the individual from employment as a medication
5 aide or nurse aide. In determining whether to verify the
6 employability of a medication aide or nurse aide, the commission
7 shall:

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

10 (2) consider the information made available to the
11 commission by the Department of Public Safety of the State of Texas
12 under Section 411.1106, Government Code, or by the Federal Bureau
13 of Investigation or another criminal justice agency under Section
14 411.087, Government Code;

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

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

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

26 SECTION 3. Section 242.505, Health and Safety Code, is
27 amended by amending Subsection (c) and adding Subsections (g), (h),

1 and (i) to read as follows:

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

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

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

13 (A) the specific condition to be treated;

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

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

18 (D) the proposed course of the medication;

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

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

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

1 was obtained; and

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

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

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

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

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

18 (1) the nature of the medication;
19 (2) the means of administering the medication,

20 including:

21 (A) the dosage;
22 (B) the administration schedule;
23 (C) the method of delivery; and
24 (D) the expected duration of administration;

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

27 (4) the potential medical and clinical consequences of

1 refusing the medication; and

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

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

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

16 (b) Notwithstanding Section 242.053, Health and Safety
17 Code, as added by this Act, a nursing facility licensed under
18 Chapter 242, Health and Safety Code, is not required to comply with
19 that section or rules adopted under that section until January 1,
20 2020.

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

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