

## **BILL ANALYSIS**

Senate Research Center  
87R20945 EAS-F

H.B. 1824  
By: Price et al. (Nelson)  
Health & Human Services  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

There are individuals residing at state hospitals and state supported living centers who require certain psychiatric services and who experience significant events that require an intensive behavioral health environment in order to continue treatment. These individuals sometimes require different treatment and attention than can be provided in traditional settings at those facilities, and in such cases, the resident may need to be temporarily transferred to another location that is able to meet the resident's needs.

H.B. 1824 seeks to provide for the continuity of care for such individuals receiving behavioral health or psychiatric services and certain court orders required for that care as well as to establish a pilot program to provide those services to certain residential care facility residents.

H.B. 1824 amends current law relating to the continuity of services received by individuals receiving services at state hospitals and state supported living centers, the establishment of a pilot program to provide behavioral health or psychiatric services to certain residential care facility residents, and court orders for psychoactive medication for certain patients.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 11 (Section 594.102, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Health and Human Services Commission in SECTION 12 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 574.102, Health and Safety Code, as follows:

Sec. 574.102. APPLICATION OF SUBCHAPTER. (a) Creates this subsection from existing text. Provides that Subchapter G (Administration of Medication to Patient Under Court Order for Mental Health Services) applies to the application of medication to a patient:

(1) creates this subdivision from existing text and makes a nonsubstantive change; or

(2) transferred from a residential care facility to an inpatient mental health facility under Section 594.032 (Transfer of Court-Committed Resident).

(b) Provides that for purposes of this subchapter, a reference to a patient includes a person described by Subsection (a).

SECTION 2. Amends the heading to Section 574.103, Health and Safety Code, to read as follows:

Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER COURT-ORDERED MENTAL HEALTH SERVICES OR TRANSFERRED FROM A RESIDENTIAL CARE FACILITY TO AN INPATIENT MENTAL HEALTH FACILITY.

SECTION 3. Amends Section 574.103(b), Health and Safety Code, as follows:

(b) Prohibits a person from administering a psychoactive medication to certain patients, including to a person transferred from a residential care facility to an inpatient mental health facility under Section 594.032, who refuses to take the medication voluntarily unless:

(1) makes no changes to this subdivision;

(2) the patient is under an order issued under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) or 592.156 (Hearing and Order Authorizing Psychoactive Medication), rather than under Section 574.106, authorizing the administration of the medication regardless of the patient's refusal; or

(3) makes no changes to this subdivision.

SECTION 4. Amends Sections 574.104(a) and (b), Health and Safety Code, as follows:

(a) Authorizes a physician who is treating a patient in an inpatient setting, rather than who is treating a patient, to, on behalf of the state, file an application in a probate court or a court with probate jurisdiction for an order to authorize the administration of a psychoactive medication regardless of the patient's refusal if:

(1) and (2) makes no changes to these subdivisions;

(3) the patient is:

(A) creates this paragraph from existing text and makes a nonsubstantive change;

(B) transferred from a residential care facility to an inpatient mental health facility under Section 594.032; or

(C) the subject of a filed application for court-ordered mental health services under Section 574.034 (Order for Temporary Inpatient Mental Health Services) or 574.035 (Order for Extended Inpatient Mental Health Services), rather than an application for court-ordered mental health services under Section 574.034, 574.0345 (Order for Temporary Outpatient Mental Health Services), 574.035, or 574.0355 (Order for Extended Outpatient Mental Health Services) has been filed for the patient; and

(4) makes no changes to this subdivision.

(b) Requires that an application filed under Section 574.104 (Physician's Application for Order to Authorize Psychoactive Medication; Date of Hearing) state certain information, including whether a court order described by Subsection (a)(3) for services for the patient, rather than a court order for inpatient mental health services for the patient, has been issued and, if so, under what authority it was issued.

SECTION 5. Amends Sections 574.106(a) and (a-1), Health and Safety Code, as follows:

(a) Authorizes the court to issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

(1) is described by Section 574.102(a), rather than is under a court order to receive inpatient mental health services; or

(2) makes no changes to this subdivision.

(a-1) Makes nonsubstantive changes to this subsection.

SECTION 6. Amends Section 574.107, Health and Safety Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires that the costs for a hearing under this subchapter for a patient committed under Chapter 574 (Court-Ordered Mental Health Services), rather than for a hearing under this subchapter, be paid in accordance with Sections 571.017 (Compensation of Court-Appointed Personnel) and 571.018 (Costs).

(c) Requires that the costs for a hearing under this subchapter for a patient committed under Chapter 593 (Admission and Commitment to Intellectual Disability Services) be paid by the county that ordered the commitment under that chapter.

SECTION 7. Amends Section 574.110, Health and Safety Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Provides that an order issued under Section 574.106 for a patient that is committed under Chapter 574, other than a patient to whom Subsection (a-1) or (b) (relating to certain expiration dates for an order issued for a patient who is returned to a correctional facility to await trial) applies, expires on the expiration or termination date of the order for temporary or extended mental health services in effect when the order for psychoactive medication is issued. Makes a nonsubstantive change.

(a-1) Provides that an order issued under Section 574.106 for a patient that is committed under Chapter 593 expires as provided by Section 592.160 (Expiration of Order).

SECTION 8. Amends Section 576.025(a), Health and Safety Code, as follows:

(a) Prohibits a person from administering a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless certain conditions are met, including unless the administration of the medication regardless of the patient's refusal is authorized by an order issued under Section 592.156.

SECTION 9. Amends Section 592.152(a), Health and Safety Code, as follows:

(a) Prohibits a person from administering a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless certain conditions are met, including unless the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 574.106.

SECTION 10. Amends Section 592.153(b), Health and Safety Code, to prohibit a person from administering a psychoactive medication to a client who refuses to take the medication voluntarily unless certain conditions are met, including unless the client is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the client's refusal.

SECTION 11. Amends Chapter 594, Health and Safety Code, by adding Subchapter D, as follows:

**SUBCHAPTER D. TEMPORARY TRANSFER BETWEEN RESIDENTIAL CARE  
FACILITIES PILOT PROGRAM**

Sec. 594.101. DEFINITIONS. Defines "alternate residential care facility," "local intellectual and developmental disability authority," "originating residential care facility," "state supported living center," and "temporary transfer."

Sec. 594.102. TEMPORARY TRANSFERS BETWEEN RESIDENTIAL CARE FACILITIES PILOT PROGRAM. (a) Authorizes the Health and Human Services Commission (HHSC) to establish a pilot program for the purpose of providing for temporary transfers of residents from originating residential care facilities to alternate residential care facilities to provide behavioral health or psychiatric services for those residents. Requires that the pilot program include one alternate residential care facility for psychiatric services and one or two alternate residential care facilities for intensive behavioral health services.

(b) Requires the executive commissioner of HHSC (executive commissioner), in consultation with the work group described by Section 594.103, by rule to specify the types of information HHSC is required to collect during the pilot program to evaluate the outcome of the pilot program, to ensure the rights of persons in the pilot program are commensurate with the rights of persons at the originating facility, as appropriate, and to ensure services provided under the pilot program meet the applicable requirements under Section 594.108(c)(4) and 594.109(f)(4).

Sec. 594.103. WORK GROUP MEMBERS. Requires the executive commissioner, if a pilot program is established under this subchapter, to establish a work group to consult in adopting the rules described by Section 594.102(b). Provides that the work group is composed of:

- (1) two representatives who are intellectual disability advocates, one of whom is from Disability Rights Texas;
- (2) one representative from a local intellectual and developmental disability authority;
- (3) a board certified behavioral analyst with expertise working with individuals with intellectual disabilities;
- (4) a psychiatrist with expertise working with individuals with intellectual disabilities;
- (5) a psychologist with expertise working with individuals with intellectual disabilities;
- (6) a current or former resident of a state supported living center;
- (7) a family member or guardian of a current or former resident of a state supported living center; and
- (8) any other individual the executive commissioner considers appropriate to appoint to the work group.

Sec. 594.104. TEMPORARY TRANSFER LIMITATIONS. Provides that a temporary transfer under a pilot program established under this subchapter is prohibited from being considered a permanent transfer and is not a discharge from the originating residential care facility.

Sec. 594.105. TEMPORARY TRANSFER OF VOLUNTARY RESIDENT. Prohibits a voluntary resident from being temporarily transferred to an alternate residential care facility under a pilot program under this subchapter without legally adequate consent to the transfer.

Sec. 594.106. RETURN OF RESIDENT. Requires a resident to be returned to the originating residential care facility after participating in a pilot program under this subchapter. Requires the originating residential care facility to maintain a vacancy for the resident while the resident participates in the pilot program.

Sec. 594.107. TRANSFER OR DISCHARGE OF RESIDENT. Authorizes a resident who is transferred to an alternate residential care facility under a pilot program under this subchapter who no longer requires treatment at a residential care facility to be transferred to an alternative placement or discharged directly from the alternate residential care facility without returning to the originating residential care facility.

Sec. 594.108. ALTERNATE RESIDENTIAL CARE FACILITY FOR PSYCHIATRIC SERVICES. (a) Requires a resident, before the temporary transfer of a resident to an alternate psychiatric residential care unit under a pilot program under this subchapter, to be examined by a licensed psychiatrist who indicates that the resident is presenting with symptoms of mental illness to the extent that care, treatment, and rehabilitation cannot be provided in the originating residential care facility.

(b) Authorizes HHSC to transfer a resident under a pilot program under this subchapter for an initial period not to exceed 60 days for the purposes of receiving psychiatric services.

(c) Requires the alternate residential care facility for psychiatric services operated under a pilot program under this subchapter to:

(1) use an interdisciplinary treatment team to provide clinical treatment that is directed toward lessening the signs and symptoms of mental illness and is similar to the clinical treatment provided at a state psychiatric hospital;

(2) employ or contract for the services of at least one psychiatrist who has expertise in diagnosing and treating persons with intellectual disabilities;

(3) employ a board certified behavioral analyst who has expertise in diagnosing and treating persons with intellectual disabilities;

(4) assign staff members to residents participating in the pilot program at an average ratio not to exceed three residents to one direct support professional during the day and evening and six residents to one direct support professional over night;

(5) provide additional training to direct support professionals working on the alternate psychiatric care unit regarding the service delivery system for residents served on that unit; and

(6) ensure that each psychiatric unit complies with the requirements for ICF-IID certification under the Medicaid program, as appropriate.

Sec. 594.109. ALTERNATE RESIDENTIAL CARE FACILITY FOR BEHAVIORAL HEALTH SERVICES. (a) Requires an interdisciplinary team, except as provided by Subsection (c), before the temporary transfer of a resident to an intensive behavioral health unit under a pilot program under this subchapter, to determine whether the resident is an individual who, despite an interdisciplinary team having on two or more occasions developed or revised an interdisciplinary team action plan in response to the occurrence of a significant event described by Subsection (b), and appropriate treatment and implementation of the plan, including treatment targeted to the individual's challenging behaviors, remains likely to cause substantial bodily injury to others and requires an intensive behavioral health environment to continue treatment and protect other residents or the general public.

(b) Provides that for purposes of Subsection (a), a significant event includes the rate of the resident's challenging behavior has remained consistently above baseline for at least four of six months after implementation of the interdisciplinary team action plan and either the intensity of the resident's behavior has caused serious injury to others or the resident's physical aggression towards others has resulted in more than three crisis restraints in the last 30 days.

(c) Authorizes the associate commissioner of HHSC (associate commissioner) with responsibility for state supported living centers to make an exception to admission criteria to require a resident to participate in a pilot program under this subchapter. Requires that the exception be based on a determination that the resident's behavior poses an imminent threat to others.

(d) Requires the interdisciplinary team, in making a determination under Subsection (a), to document and collect evidence regarding the reason the resident requires an intensive behavioral health environment to continue treatment and protect other residents or the general public.

(e) Requires the interdisciplinary team to provide the team's findings, including any documentation and evidence regarding the proposed resident, regarding whether the proposed resident should participate in a pilot program under this subchapter to:

(1) the associate commissioner with responsibility for state supported living centers;

(2) the director of the state supported living center;

(3) the independent ombudsman;

(4) the resident or the resident's parent, if the resident is a minor; and

(5) the resident's legally authorized representative.

(f) Requires an alternate residential care facility for behavioral health services operated under a pilot program under this subchapter to:

(1) use an interdisciplinary treatment team that is specially trained to provide clinical treatment designed to serve residents who meet criteria for the pilot program;

(2) employ board certified behavioral analysts with expertise in diagnosing and treating persons with intellectual disabilities to provide a ratio of one analyst serving each twelve beds full-time in accordance with HHSC rules providing appropriate procedures for maintaining that ratio;

(3) employ a professional qualified to provide counseling consistent with evidence-based, trauma-informed treatment;

(4) assign staff members to residents participating in the program at an average ratio not to exceed three residents to one direct support professional during the day and evening and six residents to one direct support professional at night;

(5) provide additional training to direct support professionals working at the alternate residential care facility regarding the service delivery system for residents served at that facility; and

(6) ensure that the intensive behavioral health units comply with the requirements for ICF-IID certification under the Medicaid program, as appropriate.

(g) Prohibits a resident transfer to an alternate residential care facility for behavioral health services under a pilot program under this subchapter, except as provided by Subsection (h), from exceeding six months.

(h) Authorizes the initial period described by Subsection (g) to be extended by an additional, one-time period of three months if:

(1) an interdisciplinary team determines the resident meets the standard for admission under this section and an extension of the initial period will likely enable the resident to no longer meet the criteria for the pilot program within the period of the extension; and

(2) the extension is approved by the associate commissioner with responsibility for state supported living centers.

(i) Requires a resident, except as provided by Subsection (k), if at any time during a resident's temporary transfer to a pilot program under this subchapter, the interdisciplinary treatment team determines that the resident no longer requires an intensive behavioral health environment to continue treatment and protect public safety, to be transferred back to the originating residential care facility not later than the seventh day after the date the interdisciplinary team makes that determination.

(j) Requires the resident, except as provided by Subsection (k), at the end of the period described by Subsection (g) or (h), as applicable, to be returned to the originating residential care facility not later than the seventh day after the expiration of that period.

(k) Authorizes the associate commissioner, if the associate commissioner with responsibility for state supported living centers determines that there are extenuating circumstances preventing the transfer within the period described by Subsection (i) or (j), as applicable, to extend the applicable period by an additional three days and to extend each of those additional three-day periods by an additional three days for as long as the occurrence of those extenuating circumstances prevent the resident's transfer. Provides that for purposes of this subsection, "extenuating circumstances" include extremely hazardous weather conditions or another disaster that prevents the timely transfer of a resident.

Sec. 594.110. ADMINISTRATIVE HEARINGS. (a) Provides that a resident is entitled to an expedited administrative hearing under Section 594.015 (Administrative Hearing) to challenge the resident's required participation under Section 594.109(c) in a pilot program under this subchapter. Requires that the hearing be held not later than seven days after the date the associate commissioner determines that the resident should participate in the pilot program.

(b) Provides that a resident who is subject to a transfer decision described by Section 594.109 is entitled to an administrative hearing under Section 594.015. Requires that the hearing be limited to determining whether the transfer decision complies with Section 594.109. Provides that a resident is authorized to waive the right to a hearing, but if a hearing is requested the resident is prohibited from being transferred until after the administrative hearing.

(c) Provides that a resident is entitled to an administrative hearing with HHSC to contest an extension described by Section 594.109(h).

Sec. 594.111. RIGHT TO APPEAL. Authorizes an individual to appeal a decision made at a hearing described by Section 594.110 by filing the appeal in a district court in Travis County not later than the 30th day after the date a final order is provided to the individual. Provides that an appeal under this section is by trial de novo.

SECTION 12. Requires HHSC, not later than November 1, 2022, to consult with the work group described by Section 594.103, Health and Safety Code, as added by this Act, and adopt any necessary rules to implement Subchapter D, Chapter 594, Health and Safety Code, as added by this Act.

SECTION 13. Effective date: upon passage or September 1, 2021.