

BILL ANALYSIS

C.S.H.B. 1824
By: Price
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

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. C.S.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.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 11 of this bill.

ANALYSIS

C.S.H.B. 1824 amends the Health and Safety Code to make provisions relating to administration of psychoactive medication to a patient under court order for mental health services applicable to the application of medication to a patient transferred from a residential care facility to an inpatient mental health facility. The bill prohibits a person from administering a psychoactive medication to a person who is such a patient who refuses to take medication voluntarily unless the patient is having a medication-related emergency, the patient is under an order authorizing the administration of the medication regardless of the patient's refusal, or the patient is a ward who is 18 years of age or older and the guardian of the person of the ward consents to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

C.S.H.B. 1824 requires the costs for a hearing relating to administration of psychoactive medication to a patient committed to a residential care facility for certain intellectual disability services to be paid by the county that ordered the commitment. The bill establishes that an order authorizing the administration of psychoactive medication for such a patient expires on the anniversary of the date the order was issued.

C.S.H.B. 1824 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. The pilot program must include:

- one alternate residential care facility for psychiatric services; and
- one or two alternate residential care facilities for intensive behavioral health services.

C.S.H.B. 1824 requires the executive commissioner of HHSC to do the following:

- establish a work group to consult in adopting applicable rules;
- specify by rule, in consultation with the work group, the types of information HHSC must collect during the pilot program that do the following:
 - evaluate the outcome of the pilot program;
 - ensure the rights of persons in the pilot program are commensurate with the rights of persons at the originating facility, as appropriate; and
 - ensure services provided under the pilot program meet the applicable requirements.

The bill provides for the composition of the work group, in addition to any individual the executive commissioner considers appropriate to appoint, as follows:

- two representatives who are intellectual disability advocates, one of whom is from Disability Rights Texas;
- one representative from a local intellectual and developmental disability authority;
- a board certified behavioral analyst with expertise working with individuals with intellectual disabilities;
- a psychiatrist and a psychologist both with expertise working with individuals with intellectual disabilities;
- a current or former resident of a state supported living center; and
- a family member or guardian of a current or former resident of a state supported living center.

C.S.H.B. 1824 prohibits a temporary transfer of a resident under the pilot program from the originating residential care facility to an alternate residential care facility to receive intensive behavioral health or psychiatric services from being considered a permanent transfer and establishes that the temporary transfer is not a discharge from the originating residential care. A voluntary resident may not be temporarily transferred to an alternate residential care facility under the pilot program without legally adequate consent to the transfer.

C.S.H.B. 1824 requires a resident to be returned to the originating residential care facility after participating in the pilot program and requires the originating residential care facility to maintain a vacancy for the resident while the resident participates in the pilot program. A resident who is transferred to an alternate residential care facility under the pilot program who no longer requires treatment at a residential care facility may be transferred to an alternative placement or discharged directly from the alternate residential care facility without returning to the originating residential care facility.

C.S.H.B. 1824 provides for the temporary transfer under the pilot program of a resident to an alternate residential care facility for psychiatric services. With respect to such a facility, the bill does the following:

- requires a resident to be examined before the temporary transfer to an alternate psychiatric residential care unit 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;
- authorizes HHSC to transfer a resident for an initial period not to exceed 60 days for the purposes of receiving those services; and
- sets out certain requirements for the alternate residential care facility for psychiatric services operated under the pilot program related to:
 - use of an interdisciplinary treatment team;
 - employing or contracting for a psychiatrist and certified behavioral analyst;
 - the ratio of staff assigned to applicable residents;
 - additional training to direct support professionals; and
 - compliance with ICF-IID certification requirements under Medicaid.

C.S.H.B. 1824 provides for the temporary transfer under the pilot program of a resident to an alternate residential care facility for behavioral health services. The bill requires an interdisciplinary team, before the temporary transfer of a resident to an intensive behavioral health unit, to do the following:

- 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, as described by the bill, and appropriate treatment and implementation of the plan 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; and
- in making such a determination, 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.

The bill sets out the persons to whom the interdisciplinary team is required to provide the team's findings regarding whether the proposed resident should participate in the pilot program.

C.S.H.B. 1824 authorizes the associate commissioner of HHSC with responsibility for state supported living centers to make an exception to admission criteria to require a resident to participate in a pilot program and requires the exception to be based on a determination that the resident's behavior poses an imminent threat to others. The bill sets out certain requirements for an alternate residential care facility for behavioral health services operated under the pilot program related to:

- use of an interdisciplinary treatment team;
- employing a professional qualified to provide specified counseling;
- employing board certified behavioral analysts and the ratio of analysts to beds;
- the ratio of staff assigned to applicable residents;
- additional training to direct support professionals; and
- compliance with ICF-IID certification requirements under Medicaid.

The bill prohibits a resident transfer to such a facility from exceeding six months and authorizes that initial period to be extended by an additional, one-time period of three months under certain conditions. The bill requires, at the end of either of those periods, as applicable, the resident to be returned to the originating residential care facility not later than the seventh day after the expiration of that period.

C.S.H.B. 1824 requires, if at any time during a resident's temporary transfer to the pilot program, the interdisciplinary treatment team determines that the resident no longer requires an intensive behavioral health environment to continue treatment and protect public safety, the resident 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. If the associate commissioner determines that there are extenuating circumstances, as prescribed by the bill, preventing the transfer within the applicable period, the associate commissioner may extend the applicable period by an additional three days and may 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.

C.S.H.B. 1824 provides for the following administrative hearings:

- an expedited administrative hearing for a resident to challenge the resident's required participation in the pilot program based on the determination that the resident's behavior poses an imminent threat to others;
- an administrative hearing for a resident who is subject to a transfer decision of a resident to an intensive behavioral health unit under the pilot program; and
- an administrative hearing with HHSC for a resident to contest an extension of the initial period of a resident transfer to an alternate residential care facility for behavioral health services.

An individual may appeal a decision made at such a hearing 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 and such an appeal is by trial de novo.

C.S.H.B. 1824 requires HHSC, not later than November 1, 2022, to consult with the work group and adopt any necessary rules to implement the bill's provisions relating to a temporary transfer between residential care facilities pilot program.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1824 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Whereas the original included provisions providing for the temporary transfer of a resident between the originating residential care facility and an alternate residential care facility for a period not to exceed 12 months for the purpose of receiving intensive behavioral health or psychiatric services, the substitute does not. Instead, the substitute includes provisions relating to establishing a temporary transfers between residential care facilities pilot program that do the following:

- authorize 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;
- require the executive commissioner to establish a work group to consult in adopting rules regarding the types of information HHSC must collect during the pilot program;
- provide for certain limitations on a temporary transfer under the pilot program and for a temporary transfer of a voluntary resident;
- set out provisions providing for the temporary transfer under the pilot program of a resident to an alternate residential care facility for psychiatric services;
- set out provisions providing for the temporary transfer under the pilot program of a resident to an alternate residential care facility for behavioral health services;
- authorize the associate commissioner of HHSC with responsibility for state supported living centers to make an exception to admission criteria to require a resident to participate in the pilot program;
- provide for the following administrative hearings:
 - an expedited administrative hearing for such a resident to challenge the resident's required participation in the pilot program;
 - an administrative hearing for a resident who is subject to a transfer decision of a resident to an intensive behavioral health unit under the pilot program; and
 - an administrative hearing with HHSC for a resident to contest an extension of the initial period of a resident transfer to an alternate residential care facility for behavioral health services; and
- authorize an individual to appeal a decision made at one of those hearings and provides for the right to appeal.

Whereas the original required the executive commissioner to adopt certain rules defining the qualifications and conditions for resident participation in intensive behavioral or psychiatric treatment, the substitute does not. Instead, the substitute requires HHSC, not later than November 1, 2022, to do the following:

- consult with the work group; and
- adopt any necessary rules to implement the substitute's provisions relating to temporary transfer between residential care facilities pilot program.