

BILL ANALYSIS

C.S.S.B. 572
By: Springer
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Because of visitation restrictions imposed during the COVID-19 pandemic, patients and residents of many health care facilities were prevented from receiving in-person visits from clergy or other religious counselors during stressful and end-of-life situations. There are concerns that these visitation restrictions constitute a denial of residents' and patients' First Amendment rights to the free exercise of religion. C.S.S.B. 572 seeks to resolve this issue by prohibiting health care facilities from prohibiting a resident or patient from receiving in-person visitation with a religious counselor at the resident's or patient's request during a public health emergency while also allowing these facilities to develop safeguards to protect the health and safety of all parties involved and mitigate the spread of a communicable disease.

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 2 of this bill.

ANALYSIS

C.S.S.B. 572 amends the Health and Safety Code to prohibit an applicable health care facility from prohibiting a resident or patient of the facility from receiving in-person visitation with a religious counselor on the patient's or resident's request during a public health emergency except as required by federal law or a federal agency. The bill requires the executive commissioner of the Health and Human Services Commission by rule to develop guidelines to assist health care facilities in establishing in-person religious counselor visitation policies and procedures and requires that the guidelines do the following:

- establish minimum health and safety requirements for in-person visitation with religious counselors;
- allow facilities to adopt reasonable time, place, and manner restrictions on in-person visitation with religious counselors to mitigate the spread of a communicable disease and address the patient's or resident's medical condition; and
- provide special consideration to patients and residents who are receiving end-of-life care.

C.S.S.B. 572 applies to the following health care facilities:

- state-licensed home and community support services agencies;
- state-licensed hospitals;
- state-licensed nursing facilities;
- state-regulated continuing care facilities;
- state-licensed assisted living facilities; and

- state-licensed special care facilities.

The bill clarifies that "religious counselor" means an individual acting substantially in a pastoral or religious capacity to provide spiritual counsel to other individuals. The bill establishes that a public health emergency is either a state or local disaster declared under the Texas Disaster Act of 1975 or a public health disaster under the Communicable Disease Prevention and Control Act. The bill sets out the purposes of its provisions with respect to protecting religious liberty and preventing costly lawsuits and administrative complaints.

EFFECTIVE DATE

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

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 572 differs from the engrossed in minor and nonsubstantive ways to conform to certain bill drafting conventions, the following summarizes only the substantial differences between the engrossed and committee substitute versions of the bill.

While both the engrossed and the substitute seek to protect the religious liberty of patients and residents of health care facilities, the substitute changes the provisions of the engrossed as follows:

- provides for the right of a patient or resident to receive in-person visitation with a religious counselor, which includes any individual acting substantially in a pastoral or religious capacity to provide spiritual counsel, whereas the engrossed was limited only to the right to have visitation from a member of the clergy;
- expands the facilities to which the bill's provisions apply to include a state-licensed home and community support services agency and replaces references to "inpatient health care facilities" with references to "health care facility";
- omits the definitions of "patient" and "resident" from the engrossed;
- omits the requirement from the engrossed for the rules adopted to include certain definitions;
- revises the purpose of the bill's provisions as established by the engrossed;
- omits the procedural provision from the engrossed regarding visitation before the implementation of the rules regarding clergy visits; and
- includes a procedural provision not in the engrossed specifying that the executive commissioner must establish the guidelines as soon as practicable after the bill's effective date.