

By: Price

H.B. No. 1824

Substitute the following for H.B. No. 1824:

By: Klick

C.S.H.B. No. 1824

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the continuity of services received by individuals
3 receiving services at state hospitals and state supported living
4 centers, the establishment of a pilot program to provide behavioral
5 health or psychiatric services to certain residential care facility
6 residents, and court orders for psychoactive medication for certain
7 patients.

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

9 SECTION 1. Section 574.102, Health and Safety Code, is
10 amended to read as follows:

11 Sec. 574.102. APPLICATION OF SUBCHAPTER. (a) This
12 subchapter applies to the application of medication to a patient:

13 (1) subject to a court order for mental health
14 services under this chapter or other law; or

15 (2) transferred from a residential care facility to an
16 inpatient mental health facility under Section 594.032.

17 (b) For purposes of this subchapter, a reference to a
18 patient includes a person described by Subsection (a).

19 SECTION 2. The heading to Section 574.103, Health and
20 Safety Code, is amended to read as follows:

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

24 SECTION 3. Section 574.103(b), Health and Safety Code, is

1 amended to read as follows:

2 (b) A person may not administer a psychoactive medication to
3 a patient under court-ordered inpatient mental health services or
4 to a person transferred from a residential care facility to an
5 inpatient mental health facility under Section 594.032 who refuses
6 to take the medication voluntarily unless:

7 (1) the patient is having a medication-related
8 emergency;

9 (2) the patient is under an order issued under Section
10 574.106 or 592.156 authorizing the administration of the medication
11 regardless of the patient's refusal; or

12 (3) the patient is a ward who is 18 years of age or
13 older and the guardian of the person of the ward consents to the
14 administration of psychoactive medication regardless of the ward's
15 expressed preferences regarding treatment with psychoactive
16 medication.

17 SECTION 4. Sections 574.104(a) and (b), Health and Safety
18 Code, are amended to read as follows:

19 (a) A physician who is treating a patient in an inpatient
20 setting may, on behalf of the state, file an application in a
21 probate court or a court with probate jurisdiction for an order to
22 authorize the administration of a psychoactive medication
23 regardless of the patient's refusal if:

24 (1) the physician believes that the patient lacks the
25 capacity to make a decision regarding the administration of the
26 psychoactive medication;

27 (2) the physician determines that the medication is

1 the proper course of treatment for the patient;

2 (3) the patient is:

3 (A) under an order for inpatient mental health
4 services under this chapter or other law;

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

7 (C) the subject of a filed [an] application for
8 court-ordered mental health services under Section 574.034 or [
9 574.0345,] 574.035 [~~or 574.0355 has been filed for the patient~~];

10 and

11 (4) the patient, verbally or by other indication,
12 refuses to take the medication voluntarily.

13 (b) An application filed under this section must state:

14 (1) that the physician believes that the patient lacks
15 the capacity to make a decision regarding administration of the
16 psychoactive medication and the reasons for that belief;

17 (2) each medication the physician wants the court to
18 compel the patient to take;

19 (3) whether an application for court-ordered mental
20 health services under Section 574.034, 574.0345, 574.035, or
21 574.0355 has been filed;

22 (4) whether a court order described by Subsection
23 (a)(3) for [inpatient mental health] services for the patient has
24 been issued and, if so, under what authority it was issued;

25 (5) the physician's diagnosis of the patient; and

26 (6) the proposed method for administering the
27 medication and, if the method is not customary, an explanation

1 justifying the departure from the customary methods.

2 SECTION 5. Sections [574.106](#)(a) and (a-1), Health and Safety
3 Code, are amended to read as follows:

4 (a) The court may issue an order authorizing the
5 administration of one or more classes of psychoactive medication to
6 a patient who:

7 (1) is described by Section [574.102](#)(a) [~~under a court~~
8 ~~order to receive inpatient mental health services~~]; or

9 (2) is in custody awaiting trial in a criminal
10 proceeding and was ordered to receive inpatient mental health
11 services in the six months preceding a hearing under this section.

12 (a-1) The court may issue an order under this section only
13 if the court finds by clear and convincing evidence after the
14 hearing:

15 (1) that the patient lacks the capacity to make a
16 decision regarding the administration of the proposed medication
17 and treatment with the proposed medication is in the best interest
18 of the patient; or

19 (2) if the patient was ordered to receive inpatient
20 mental health services by a criminal court with jurisdiction over
21 the patient, that treatment with the proposed medication is in the
22 best interest of the patient and either:

23 (A) the patient presents a danger to the patient
24 or others in the inpatient mental health facility in which the
25 patient is being treated as a result of a mental illness [~~disorder~~
26 ~~or mental defect~~] as determined under Section [574.1065](#); or

27 (B) the patient:

1 (i) has remained confined in a correctional
2 facility, as defined by Section 1.07, Penal Code, for a period
3 exceeding 72 hours while awaiting transfer for competency
4 restoration treatment; and

5 (ii) presents a danger to the patient or
6 others in the correctional facility as a result of a mental illness
7 [~~disorder or mental defect~~] as determined under Section 574.1065.

8 SECTION 6. Section 574.107, Health and Safety Code, is
9 amended by amending Subsection (a) and adding Subsection (c) to
10 read as follows:

11 (a) The costs for a hearing under this subchapter for a
12 patient committed under this chapter shall be paid in accordance
13 with Sections 571.017 and 571.018.

14 (c) The costs for a hearing under this subchapter for a
15 patient committed under Chapter 593 shall be paid by the county that
16 ordered the commitment under that chapter.

17 SECTION 7. Section 574.110, Health and Safety Code, is
18 amended by amending Subsection (a) and adding Subsection (a-1) to
19 read as follows:

20 (a) An [~~Except as provided by Subsection (b), an~~] order
21 issued under Section 574.106 for a patient that is committed under
22 this chapter, other than a patient to whom Subsection (a-1) or (b)
23 applies, expires on the expiration or termination date of the order
24 for temporary or extended mental health services in effect when the
25 order for psychoactive medication is issued.

26 (a-1) An order issued under Section 574.106 for a patient
27 that is committed under Chapter 593 expires as provided by Section

1 [592.160.](#)

2 SECTION 8. Section [576.025\(a\)](#), Health and Safety Code, is
3 amended to read as follows:

4 (a) A person may not administer a psychoactive medication to
5 a patient receiving voluntary or involuntary mental health services
6 who refuses the administration unless:

7 (1) the patient is having a medication-related
8 emergency;

9 (2) the patient is younger than 16 years of age, or the
10 patient is younger than 18 years of age and is a patient admitted
11 for voluntary mental health services under Section [572.002\(3\)\(B\)](#),
12 and the patient's parent, managing conservator, or guardian
13 consents to the administration on behalf of the patient;

14 (3) the refusing patient's representative authorized
15 by law to consent on behalf of the patient has consented to the
16 administration;

17 (4) the administration of the medication regardless of
18 the patient's refusal is authorized by an order issued under
19 Section [574.106](#) or [592.156](#); or

20 (5) the administration of the medication regardless of
21 the patient's refusal is authorized by an order issued under
22 Article [46B.086](#), Code of Criminal Procedure.

23 SECTION 9. Section [592.152\(a\)](#), Health and Safety Code, is
24 amended to read as follows:

25 (a) A person may not administer a psychoactive medication to
26 a client receiving voluntary or involuntary residential care
27 services who refuses the administration unless:

1 (1) the client is having a medication-related
2 emergency;

3 (2) the refusing client's representative authorized by
4 law to consent on behalf of the client has consented to the
5 administration;

6 (3) the administration of the medication regardless of
7 the client's refusal is authorized by an order issued under Section
8 [574.106](#) or [592.156](#); or

9 (4) the administration of the medication regardless of
10 the client's refusal is authorized by an order issued under Article
11 [46B.086](#), Code of Criminal Procedure.

12 SECTION 10. Section [592.153\(b\)](#), Health and Safety Code, is
13 amended to read as follows:

14 (b) A person may not administer a psychoactive medication to
15 a client who refuses to take the medication voluntarily unless:

16 (1) the client is having a medication-related
17 emergency;

18 (2) the client is under an order issued under Section
19 [574.106](#) or [592.156](#) authorizing the administration of the medication
20 regardless of the client's refusal; or

21 (3) the client is a ward who is 18 years of age or older
22 and the guardian of the person of the ward consents to the
23 administration of psychoactive medication regardless of the ward's
24 expressed preferences regarding treatment with psychoactive
25 medication.

26 SECTION 11. Chapter [594](#), Health and Safety Code, is amended
27 by adding Subchapter D to read as follows:

1 SUBCHAPTER D. TEMPORARY TRANSFER BETWEEN RESIDENTIAL CARE

2 FACILITIES PILOT PROGRAM

3 Sec. 594.101. DEFINITIONS. In this subchapter:

4 (1) "Alternate residential care facility" means a
5 residential care facility other than the one in which a resident
6 resides prior to a temporary transfer.

7 (2) "Local intellectual and developmental disability
8 authority" has the meaning assigned by Section 531.002.

9 (3) "Originating residential care facility" means the
10 residential care facility at which the resident resides prior to a
11 temporary transfer.

12 (4) "State supported living center" has the meaning
13 assigned by Section 531.002.

14 (5) "Temporary transfer" means the transfer of a
15 resident from the originating residential care facility to an
16 alternate residential care facility to receive behavioral health or
17 psychiatric services for a limited time.

18 Sec. 594.102. TEMPORARY TRANSFERS BETWEEN RESIDENTIAL CARE
19 FACILITIES PILOT PROGRAM. (a) The commission may establish a pilot
20 program for the purpose of providing for temporary transfers of
21 residents from originating residential care facilities to
22 alternate residential care facilities to provide behavioral health
23 or psychiatric services for those residents. The pilot program
24 must include:

25 (1) one alternate residential care facility for
26 psychiatric services; and

27 (2) one or two alternate residential care facilities

1 for intensive behavioral health services.

2 (b) The executive commissioner, in consultation with the
3 work group described by Section 594.103, by rule shall specify the
4 types of information the commission must collect during the pilot
5 program to:

6 (1) evaluate the outcome of the pilot program;

7 (2) ensure the rights of persons in the pilot program
8 are commensurate with the rights of persons at the originating
9 facility, as appropriate; and

10 (3) ensure services provided under the pilot program
11 meet the applicable requirements under Section 594.108(c)(4) and
12 594.109(f)(4).

13 Sec. 594.103. WORK GROUP MEMBERS. If a pilot program is
14 established under this subchapter, the executive commissioner
15 shall establish a work group to consult in adopting the rules
16 described by Section 594.102(b). The work group is composed of:

17 (1) two representatives who are intellectual
18 disability advocates, one of whom is from Disability Rights Texas;

19 (2) one representative from a local intellectual and
20 developmental disability authority;

21 (3) a board certified behavioral analyst with
22 expertise working with individuals with intellectual disabilities;

23 (4) a psychiatrist with expertise working with
24 individuals with intellectual disabilities;

25 (5) a psychologist with expertise working with
26 individuals with intellectual disabilities;

27 (6) a current or former resident of a state supported

1 living center;

2 (7) a family member or guardian of a current or former
3 resident of a state supported living center; and

4 (8) any other individual the executive commissioner
5 considers appropriate to appoint to the work group.

6 Sec. 594.104. TEMPORARY TRANSFER LIMITATIONS. A temporary
7 transfer under a pilot program established under this subchapter
8 may not be considered a permanent transfer and is not a discharge
9 from the originating residential care facility.

10 Sec. 594.105. TEMPORARY TRANSFER OF VOLUNTARY RESIDENT. A
11 voluntary resident may not be temporarily transferred to an
12 alternate residential care facility under a pilot program under
13 this subchapter without legally adequate consent to the transfer.

14 Sec. 594.106. RETURN OF RESIDENT. A resident shall be
15 returned to the originating residential care facility after
16 participating in a pilot program under this subchapter. The
17 originating residential care facility shall maintain a vacancy for
18 the resident while the resident participates in the pilot program.

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

26 Sec. 594.108. ALTERNATE RESIDENTIAL CARE FACILITY FOR
27 PSYCHIATRIC SERVICES. (a) Before the temporary transfer of a

1 resident to an alternate psychiatric residential care unit under a
2 pilot program under this subchapter, the resident must be examined
3 by a licensed psychiatrist who indicates that the resident is
4 presenting with symptoms of mental illness to the extent that care,
5 treatment, and rehabilitation cannot be provided in the originating
6 residential care facility.

7 (b) The commission may transfer a resident under a pilot
8 program under this subchapter for an initial period not to exceed 60
9 days for the purposes of receiving psychiatric services.

10 (c) The alternate residential care facility for psychiatric
11 services operated under a pilot program under this subchapter must:

12 (1) use an interdisciplinary treatment team to provide
13 clinical treatment that is:

14 (A) directed toward lessening the signs and
15 symptoms of mental illness; and

16 (B) similar to the clinical treatment provided at
17 a state psychiatric hospital;

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

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

24 (4) assign staff members to residents participating in
25 the pilot program at an average ratio not to exceed:

26 (A) three residents to one direct support
27 professional during the day and evening; and

1 (B) six residents to one direct support
2 professional over night;

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

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

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

24 (b) For purposes of Subsection (a), a significant event
25 includes:

26 (1) the rate of the resident's challenging behavior
27 has remained consistently above baseline for at least four of six

1 months after implementation of the interdisciplinary team action
2 plan; and

3 (2) either:

4 (A) the intensity of the resident's behavior has
5 caused serious injury to others; or

6 (B) the resident's physical aggression towards
7 others has resulted in more than three crisis restraints in the last
8 30 days.

9 (c) The associate commissioner of the commission with
10 responsibility for state supported living centers may make an
11 exception to admission criteria to require a resident to
12 participate in a pilot program under this subchapter. The
13 exception must be based on a determination that the resident's
14 behavior poses an imminent threat to others.

15 (d) In making a determination under Subsection (a), the
16 interdisciplinary team shall document and collect evidence
17 regarding the reason the resident requires an intensive behavioral
18 health environment to continue treatment and protect other
19 residents or the general public.

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

24 (1) the associate commissioner of the commission with
25 responsibility for state supported living centers;

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

27 (3) the independent ombudsman;

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

3 (5) the resident's legally authorized representative.

4 (f) An alternate residential care facility for behavioral
5 health services operated under a pilot program under this
6 subchapter must:

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

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

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

18 (4) assign staff members to residents participating in
19 the program at an average ratio not to exceed:

20 (A) three residents to one direct support
21 professional during the day and evening; and

22 (B) six residents to one direct support
23 professional at night;

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

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

4 (g) Except as provided by Subsection (h), a resident
5 transfer to an alternate residential care facility for behavioral
6 health services under a pilot program under this subchapter may not
7 exceed six months.

8 (h) The initial period described by Subsection (g) may be
9 extended by an additional, one-time period of three months if:

10 (1) an interdisciplinary team determines:

11 (A) the resident meets the standard for admission
12 under this section; and

13 (B) an extension of the initial period will
14 likely enable the resident to no longer meet the criteria for the
15 pilot program within the period of the extension; and

16 (2) the extension is approved by the associate
17 commissioner of the commission with responsibility for state
18 supported living centers.

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

27 (j) Except as provided by Subsection (k), at the end of the

1 period described by Subsection (g) or (h), as applicable, the
2 resident shall be returned to the originating residential care
3 facility not later than the seventh day after the expiration of that
4 period.

5 (k) If the associate commissioner of the commission with
6 responsibility for state supported living centers determines that
7 there are extenuating circumstances preventing the transfer within
8 the period described by Subsection (i) or (j), as applicable, the
9 associate commissioner may extend the applicable period by an
10 additional three days and may extend each of those additional
11 three-day periods by an additional three days for as long as the
12 occurrence of those extenuating circumstances prevent the
13 resident's transfer. For purposes of this subsection, "extenuating
14 circumstances" include extremely hazardous weather conditions or
15 another disaster that prevents the timely transfer of a resident.

16 Sec. 594.110. ADMINISTRATIVE HEARINGS. (a) A resident is
17 entitled to an expedited administrative hearing under Section
18 594.015 to challenge the resident's required participation under
19 Section 594.109(c) in a pilot program under this subchapter. The
20 hearing must be held not later than seven days after the date the
21 associate commissioner determines that the resident should
22 participate in the pilot program.

23 (b) A resident who is subject to a transfer decision
24 described by Section 594.109 is entitled to an administrative
25 hearing under Section 594.015. The hearing shall be limited to
26 determining whether the transfer decision complies with Section
27 594.109. A resident may waive the right to a hearing, but if a

1 hearing is requested the resident may not be transferred until
2 after the administrative hearing.

3 (c) A resident is entitled to an administrative hearing with
4 the commission to contest an extension described by Section
5 594.109(h).

6 Sec. 594.111. RIGHT TO APPEAL. An individual may appeal a
7 decision made at a hearing described by Section 594.110 by filing
8 the appeal in a district court in Travis County not later than the
9 30th day after the date a final order is provided to the individual.
10 An appeal under this section is by trial de novo.

11 SECTION 12. Not later than November 1, 2022, the Health and
12 Human Services Commission shall consult with the work group
13 described by Section 594.103, Health and Safety Code, as added by
14 this Act, and adopt any necessary rules to implement Subchapter D,
15 Chapter 594, Health and Safety Code, as added by this Act.

16 SECTION 13. This Act takes effect immediately if it
17 receives a vote of two-thirds of all the members elected to each
18 house, as provided by Section 39, Article III, Texas Constitution.
19 If this Act does not receive the vote necessary for immediate
20 effect, this Act takes effect September 1, 2021.