

1-1 By: Price, et al. (Senate Sponsor - Nelson) H.B. No. 1824
 1-2 (In the Senate - Received from the House May 10, 2021;
 1-3 May 10, 2021, read first time and referred to Committee on Health &
 1-4 Human Services; May 21, 2021, reported favorably by the following
 1-5 vote: Yeas 9, Nays 0; May 21, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to the continuity of services received by individuals
 1-20 receiving services at state hospitals and state supported living
 1-21 centers, the establishment of a pilot program to provide behavioral
 1-22 health or psychiatric services to certain residential care facility
 1-23 residents, and court orders for psychoactive medication for certain
 1-24 patients.

1-25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-26 SECTION 1. Section 574.102, Health and Safety Code, is
 1-27 amended to read as follows:

1-28 Sec. 574.102. APPLICATION OF SUBCHAPTER. (a) This
 1-29 subchapter applies to the application of medication to a patient:

1-30 (1) subject to a court order for mental health
 1-31 services under this chapter or other law; or

1-32 (2) transferred from a residential care facility to an
 1-33 inpatient mental health facility under Section 594.032.

1-34 (b) For purposes of this subchapter, a reference to a
 1-35 patient includes a person described by Subsection (a).

1-36 SECTION 2. The heading to Section 574.103, Health and
 1-37 Safety Code, is amended to read as follows:

1-38 Sec. 574.103. ADMINISTRATION OF MEDICATION TO PATIENT UNDER
 1-39 COURT-ORDERED MENTAL HEALTH SERVICES OR TRANSFERRED FROM A
 1-40 RESIDENTIAL CARE FACILITY TO AN INPATIENT MENTAL HEALTH FACILITY.

1-41 SECTION 3. Section 574.103(b), Health and Safety Code, is
 1-42 amended to read as follows:

1-43 (b) A person may not administer a psychoactive medication to
 1-44 a patient under court-ordered inpatient mental health services or
 1-45 to a person transferred from a residential care facility to an
 1-46 inpatient mental health facility under Section 594.032 who refuses
 1-47 to take the medication voluntarily unless:

1-48 (1) the patient is having a medication-related
 1-49 emergency;

1-50 (2) the patient is under an order issued under Section
 1-51 574.106 or 592.156 authorizing the administration of the medication
 1-52 regardless of the patient's refusal; or

1-53 (3) the patient is a ward who is 18 years of age or
 1-54 older and the guardian of the person of the ward consents to the
 1-55 administration of psychoactive medication regardless of the ward's
 1-56 expressed preferences regarding treatment with psychoactive
 1-57 medication.

1-58 SECTION 4. Sections 574.104(a) and (b), Health and Safety
 1-59 Code, are amended to read as follows:

1-60 (a) A physician who is treating a patient in an inpatient
 1-61 setting may, on behalf of the state, file an application in a

2-1 probate court or a court with probate jurisdiction for an order to
2-2 authorize the administration of a psychoactive medication
2-3 regardless of the patient's refusal if:

2-4 (1) the physician believes that the patient lacks the
2-5 capacity to make a decision regarding the administration of the
2-6 psychoactive medication;

2-7 (2) the physician determines that the medication is
2-8 the proper course of treatment for the patient;

2-9 (3) the patient is:

2-10 (A) under an order for inpatient mental health
2-11 services under this chapter or other law;

2-12 (B) transferred from a residential care facility
2-13 to an inpatient mental health facility under Section 594.032; or

2-14 (C) the subject of a filed ~~an~~ application for
2-15 court-ordered mental health services under Section 574.034 or [~~7~~
2-16 574.0345,] 574.035 [~~, or 574.0355 has been filed for the patient~~];
2-17 and

2-18 (4) the patient, verbally or by other indication,
2-19 refuses to take the medication voluntarily.

2-20 (b) An application filed under this section must state:

2-21 (1) that the physician believes that the patient lacks
2-22 the capacity to make a decision regarding administration of the
2-23 psychoactive medication and the reasons for that belief;

2-24 (2) each medication the physician wants the court to
2-25 compel the patient to take;

2-26 (3) whether an application for court-ordered mental
2-27 health services under Section 574.034, 574.0345, 574.035, or
2-28 574.0355 has been filed;

2-29 (4) whether a court order described by Subsection
2-30 (a)(3) for ~~[inpatient mental health]~~ services for the patient has
2-31 been issued and, if so, under what authority it was issued;

2-32 (5) the physician's diagnosis of the patient; and

2-33 (6) the proposed method for administering the
2-34 medication and, if the method is not customary, an explanation
2-35 justifying the departure from the customary methods.

2-36 SECTION 5. Sections 574.106(a) and (a-1), Health and Safety
2-37 Code, are amended to read as follows:

2-38 (a) The court may issue an order authorizing the
2-39 administration of one or more classes of psychoactive medication to
2-40 a patient who:

2-41 (1) is described by Section 574.102(a) ~~[under a court
2-42 order to receive inpatient mental health services]~~; or

2-43 (2) is in custody awaiting trial in a criminal
2-44 proceeding and was ordered to receive inpatient mental health
2-45 services in the six months preceding a hearing under this section.

2-46 (a-1) The court may issue an order under this section only
2-47 if the court finds by clear and convincing evidence after the
2-48 hearing:

2-49 (1) that the patient lacks the capacity to make a
2-50 decision regarding the administration of the proposed medication
2-51 and treatment with the proposed medication is in the best interest
2-52 of the patient; or

2-53 (2) if the patient was ordered to receive inpatient
2-54 mental health services by a criminal court with jurisdiction over
2-55 the patient, that treatment with the proposed medication is in the
2-56 best interest of the patient and either:

2-57 (A) the patient presents a danger to the patient
2-58 or others in the inpatient mental health facility in which the
2-59 patient is being treated as a result of a mental illness ~~[disorder
2-60 or mental defect]~~ as determined under Section 574.1065; or

2-61 (B) the patient:

2-62 (i) has remained confined in a correctional
2-63 facility, as defined by Section 1.07, Penal Code, for a period
2-64 exceeding 72 hours while awaiting transfer for competency
2-65 restoration treatment; and

2-66 (ii) presents a danger to the patient or
2-67 others in the correctional facility as a result of a mental illness
2-68 ~~[disorder or mental defect]~~ as determined under Section 574.1065.

2-69 SECTION 6. Section 574.107, Health and Safety Code, is

3-1 amended by amending Subsection (a) and adding Subsection (c) to
3-2 read as follows:

3-3 (a) The costs for a hearing under this subchapter for a
3-4 patient committed under this chapter shall be paid in accordance
3-5 with Sections 571.017 and 571.018.

3-6 (c) The costs for a hearing under this subchapter for a
3-7 patient committed under Chapter 593 shall be paid by the county that
3-8 ordered the commitment under that chapter.

3-9 SECTION 7. Section 574.110, Health and Safety Code, is
3-10 amended by amending Subsection (a) and adding Subsection (a-1) to
3-11 read as follows:

3-12 (a) An [~~Except as provided by Subsection (b), an~~] order
3-13 issued under Section 574.106 for a patient that is committed under
3-14 this chapter, other than a patient to whom Subsection (a-1) or (b)
3-15 applies, expires on the expiration or termination date of the order
3-16 for temporary or extended mental health services in effect when the
3-17 order for psychoactive medication is issued.

3-18 (a-1) An order issued under Section 574.106 for a patient
3-19 that is committed under Chapter 593 expires as provided by Section
3-20 592.160.

3-21 SECTION 8. Section 576.025(a), Health and Safety Code, is
3-22 amended to read as follows:

3-23 (a) A person may not administer a psychoactive medication to
3-24 a patient receiving voluntary or involuntary mental health services
3-25 who refuses the administration unless:

3-26 (1) the patient is having a medication-related
3-27 emergency;

3-28 (2) the patient is younger than 16 years of age, or the
3-29 patient is younger than 18 years of age and is a patient admitted
3-30 for voluntary mental health services under Section 572.002(3)(B),
3-31 and the patient's parent, managing conservator, or guardian
3-32 consents to the administration on behalf of the patient;

3-33 (3) the refusing patient's representative authorized
3-34 by law to consent on behalf of the patient has consented to the
3-35 administration;

3-36 (4) the administration of the medication regardless of
3-37 the patient's refusal is authorized by an order issued under
3-38 Section 574.106 or 592.156; or

3-39 (5) the administration of the medication regardless of
3-40 the patient's refusal is authorized by an order issued under
3-41 Article 46B.086, Code of Criminal Procedure.

3-42 SECTION 9. Section 592.152(a), Health and Safety Code, is
3-43 amended to read as follows:

3-44 (a) A person may not administer a psychoactive medication to
3-45 a client receiving voluntary or involuntary residential care
3-46 services who refuses the administration unless:

3-47 (1) the client is having a medication-related
3-48 emergency;

3-49 (2) the refusing client's representative authorized by
3-50 law to consent on behalf of the client has consented to the
3-51 administration;

3-52 (3) the administration of the medication regardless of
3-53 the client's refusal is authorized by an order issued under Section
3-54 574.106 or 592.156; or

3-55 (4) the administration of the medication regardless of
3-56 the client's refusal is authorized by an order issued under Article
3-57 46B.086, Code of Criminal Procedure.

3-58 SECTION 10. Section 592.153(b), Health and Safety Code, is
3-59 amended to read as follows:

3-60 (b) A person may not administer a psychoactive medication to
3-61 a client who refuses to take the medication voluntarily unless:

3-62 (1) the client is having a medication-related
3-63 emergency;

3-64 (2) the client is under an order issued under Section
3-65 574.106 or 592.156 authorizing the administration of the medication
3-66 regardless of the client's refusal; or

3-67 (3) the client is a ward who is 18 years of age or older
3-68 and the guardian of the person of the ward consents to the
3-69 administration of psychoactive medication regardless of the ward's

4-1 expressed preferences regarding treatment with psychoactive
 4-2 medication.

4-3 SECTION 11. Chapter 594, Health and Safety Code, is amended
 4-4 by adding Subchapter D to read as follows:

4-5 SUBCHAPTER D. TEMPORARY TRANSFER BETWEEN RESIDENTIAL CARE
 4-6 FACILITIES PILOT PROGRAM

4-7 Sec. 594.101. DEFINITIONS. In this subchapter:

4-8 (1) "Alternate residential care facility" means a
 4-9 residential care facility other than the one in which a resident
 4-10 resides prior to a temporary transfer.

4-11 (2) "Local intellectual and developmental disability
 4-12 authority" has the meaning assigned by Section 531.002.

4-13 (3) "Originating residential care facility" means the
 4-14 residential care facility at which the resident resides prior to a
 4-15 temporary transfer.

4-16 (4) "State supported living center" has the meaning
 4-17 assigned by Section 531.002.

4-18 (5) "Temporary transfer" means the transfer of a
 4-19 resident from the originating residential care facility to an
 4-20 alternate residential care facility to receive behavioral health or
 4-21 psychiatric services for a limited time.

4-22 Sec. 594.102. TEMPORARY TRANSFERS BETWEEN RESIDENTIAL CARE
 4-23 FACILITIES PILOT PROGRAM. (a) The commission may establish a pilot
 4-24 program for the purpose of providing for temporary transfers of
 4-25 residents from originating residential care facilities to
 4-26 alternate residential care facilities to provide behavioral health
 4-27 or psychiatric services for those residents. The pilot program
 4-28 must include:

4-29 (1) one alternate residential care facility for
 4-30 psychiatric services; and

4-31 (2) one or two alternate residential care facilities
 4-32 for intensive behavioral health services.

4-33 (b) The executive commissioner, in consultation with the
 4-34 work group described by Section 594.103, by rule shall specify the
 4-35 types of information the commission must collect during the pilot
 4-36 program to:

4-37 (1) evaluate the outcome of the pilot program;

4-38 (2) ensure the rights of persons in the pilot program
 4-39 are commensurate with the rights of persons at the originating
 4-40 facility, as appropriate; and

4-41 (3) ensure services provided under the pilot program
 4-42 meet the applicable requirements under Section 594.108(c)(4) and
 4-43 594.109(f)(4).

4-44 Sec. 594.103. WORK GROUP MEMBERS. If a pilot program is
 4-45 established under this subchapter, the executive commissioner
 4-46 shall establish a work group to consult in adopting the rules
 4-47 described by Section 594.102(b). The work group is composed of:

4-48 (1) two representatives who are intellectual
 4-49 disability advocates, one of whom is from Disability Rights Texas;

4-50 (2) one representative from a local intellectual and
 4-51 developmental disability authority;

4-52 (3) a board certified behavioral analyst with
 4-53 expertise working with individuals with intellectual disabilities;

4-54 (4) a psychiatrist with expertise working with
 4-55 individuals with intellectual disabilities;

4-56 (5) a psychologist with expertise working with
 4-57 individuals with intellectual disabilities;

4-58 (6) a current or former resident of a state supported
 4-59 living center;

4-60 (7) a family member or guardian of a current or former
 4-61 resident of a state supported living center; and

4-62 (8) any other individual the executive commissioner
 4-63 considers appropriate to appoint to the work group.

4-64 Sec. 594.104. TEMPORARY TRANSFER LIMITATIONS. A temporary
 4-65 transfer under a pilot program established under this subchapter
 4-66 may not be considered a permanent transfer and is not a discharge
 4-67 from the originating residential care facility.

4-68 Sec. 594.105. TEMPORARY TRANSFER OF VOLUNTARY RESIDENT. A
 4-69 voluntary resident may not be temporarily transferred to an

5-1 alternate residential care facility under a pilot program under
 5-2 this subchapter without legally adequate consent to the transfer.

5-3 Sec. 594.106. RETURN OF RESIDENT. A resident shall be
 5-4 returned to the originating residential care facility after
 5-5 participating in a pilot program under this subchapter. The
 5-6 originating residential care facility shall maintain a vacancy for
 5-7 the resident while the resident participates in the pilot program.

5-8 Sec. 594.107. TRANSFER OR DISCHARGE OF RESIDENT. A
 5-9 resident who is transferred to an alternate residential care
 5-10 facility under a pilot program under this subchapter who no longer
 5-11 requires treatment at a residential care facility may be
 5-12 transferred to an alternative placement or discharged directly from
 5-13 the alternate residential care facility without returning to the
 5-14 originating residential care facility.

5-15 Sec. 594.108. ALTERNATE RESIDENTIAL CARE FACILITY FOR
 5-16 PSYCHIATRIC SERVICES. (a) Before the temporary transfer of a
 5-17 resident to an alternate psychiatric residential care unit under a
 5-18 pilot program under this subchapter, the resident must be examined
 5-19 by a licensed psychiatrist who indicates that the resident is
 5-20 presenting with symptoms of mental illness to the extent that care,
 5-21 treatment, and rehabilitation cannot be provided in the originating
 5-22 residential care facility.

5-23 (b) The commission may transfer a resident under a pilot
 5-24 program under this subchapter for an initial period not to exceed 60
 5-25 days for the purposes of receiving psychiatric services.

5-26 (c) The alternate residential care facility for psychiatric
 5-27 services operated under a pilot program under this subchapter must:

5-28 (1) use an interdisciplinary treatment team to provide
 5-29 clinical treatment that is:

5-30 (A) directed toward lessening the signs and
 5-31 symptoms of mental illness; and

5-32 (B) similar to the clinical treatment provided at
 5-33 a state psychiatric hospital;

5-34 (2) employ or contract for the services of at least one
 5-35 psychiatrist who has expertise in diagnosing and treating persons
 5-36 with intellectual disabilities;

5-37 (3) employ a board certified behavioral analyst who
 5-38 has expertise in diagnosing and treating persons with intellectual
 5-39 disabilities;

5-40 (4) assign staff members to residents participating in
 5-41 the pilot program at an average ratio not to exceed:

5-42 (A) three residents to one direct support
 5-43 professional during the day and evening; and

5-44 (B) six residents to one direct support
 5-45 professional over night;

5-46 (5) provide additional training to direct support
 5-47 professionals working on the alternate psychiatric care unit
 5-48 regarding the service delivery system for residents served on that
 5-49 unit; and

5-50 (6) ensure that each psychiatric unit complies with
 5-51 the requirements for ICF-IID certification under the Medicaid
 5-52 program, as appropriate.

5-53 Sec. 594.109. ALTERNATE RESIDENTIAL CARE FACILITY FOR
 5-54 BEHAVIORAL HEALTH SERVICES. (a) Except as provided by Subsection
 5-55 (c), before the temporary transfer of a resident to an intensive
 5-56 behavioral health unit under a pilot program under this subchapter,
 5-57 an interdisciplinary team must determine whether the resident is an
 5-58 individual who, despite an interdisciplinary team having on two or
 5-59 more occasions developed or revised an interdisciplinary team
 5-60 action plan in response to the occurrence of a significant event
 5-61 described by Subsection (b), and appropriate treatment and
 5-62 implementation of the plan, including treatment targeted to the
 5-63 individual's challenging behaviors, remains likely to cause
 5-64 substantial bodily injury to others and requires an intensive
 5-65 behavioral health environment to continue treatment and protect
 5-66 other residents or the general public.

5-67 (b) For purposes of Subsection (a), a significant event
 5-68 includes:

5-69 (1) the rate of the resident's challenging behavior

6-1 has remained consistently above baseline for at least four of six
 6-2 months after implementation of the interdisciplinary team action
 6-3 plan; and

6-4 (2) either:

6-5 (A) the intensity of the resident's behavior has
 6-6 caused serious injury to others; or

6-7 (B) the resident's physical aggression towards
 6-8 others has resulted in more than three crisis restraints in the last
 6-9 30 days.

6-10 (c) The associate commissioner of the commission with
 6-11 responsibility for state supported living centers may make an
 6-12 exception to admission criteria to require a resident to
 6-13 participate in a pilot program under this subchapter. The
 6-14 exception must be based on a determination that the resident's
 6-15 behavior poses an imminent threat to others.

6-16 (d) In making a determination under Subsection (a), the
 6-17 interdisciplinary team shall document and collect evidence
 6-18 regarding the reason the resident requires an intensive behavioral
 6-19 health environment to continue treatment and protect other
 6-20 residents or the general public.

6-21 (e) The interdisciplinary team shall provide the team's
 6-22 findings, including any documentation and evidence regarding the
 6-23 proposed resident, regarding whether the proposed resident should
 6-24 participate in a pilot program under this subchapter to:

6-25 (1) the associate commissioner of the commission with
 6-26 responsibility for state supported living centers;

6-27 (2) the director of the state supported living center;

6-28 (3) the independent ombudsman;

6-29 (4) the resident or the resident's parent, if the
 6-30 resident is a minor; and

6-31 (5) the resident's legally authorized representative.

6-32 (f) An alternate residential care facility for behavioral
 6-33 health services operated under a pilot program under this
 6-34 subchapter must:

6-35 (1) use an interdisciplinary treatment team that is
 6-36 specially trained to provide clinical treatment designed to serve
 6-37 residents who meet criteria for the pilot program;

6-38 (2) employ board certified behavioral analysts with
 6-39 expertise in diagnosing and treating persons with intellectual
 6-40 disabilities to provide a ratio of one analyst serving each twelve
 6-41 beds full-time in accordance with commission rules providing
 6-42 appropriate procedures for maintaining that ratio;

6-43 (3) employ a professional qualified to provide
 6-44 counseling consistent with evidence-based, trauma-informed
 6-45 treatment;

6-46 (4) assign staff members to residents participating in
 6-47 the program at an average ratio not to exceed:

6-48 (A) three residents to one direct support
 6-49 professional during the day and evening; and

6-50 (B) six residents to one direct support
 6-51 professional at night;

6-52 (5) provide additional training to direct support
 6-53 professionals working at the alternate residential care facility
 6-54 regarding the service delivery system for residents served at that
 6-55 facility; and

6-56 (6) ensure that the intensive behavioral health units
 6-57 comply with the requirements for ICF-IID certification under the
 6-58 Medicaid program, as appropriate.

6-59 (g) Except as provided by Subsection (h), a resident
 6-60 transfer to an alternate residential care facility for behavioral
 6-61 health services under a pilot program under this subchapter may not
 6-62 exceed six months.

6-63 (h) The initial period described by Subsection (g) may be
 6-64 extended by an additional, one-time period of three months if:

6-65 (1) an interdisciplinary team determines:

6-66 (A) the resident meets the standard for admission
 6-67 under this section; and

6-68 (B) an extension of the initial period will
 6-69 likely enable the resident to no longer meet the criteria for the

7-1 pilot program within the period of the extension; and
 7-2 (2) the extension is approved by the associate
 7-3 commissioner of the commission with responsibility for state
 7-4 supported living centers.

7-5 (i) Except as provided by Subsection (k), if at any time
 7-6 during a resident's temporary transfer to a pilot program under
 7-7 this subchapter, the interdisciplinary treatment team determines
 7-8 that the resident no longer requires an intensive behavioral health
 7-9 environment to continue treatment and protect public safety, the
 7-10 resident shall be transferred back to the originating residential
 7-11 care facility not later than the seventh day after the date the
 7-12 interdisciplinary team makes that determination.

7-13 (j) Except as provided by Subsection (k), at the end of the
 7-14 period described by Subsection (g) or (h), as applicable, the
 7-15 resident shall be returned to the originating residential care
 7-16 facility not later than the seventh day after the expiration of that
 7-17 period.

7-18 (k) If the associate commissioner of the commission with
 7-19 responsibility for state supported living centers determines that
 7-20 there are extenuating circumstances preventing the transfer within
 7-21 the period described by Subsection (i) or (j), as applicable, the
 7-22 associate commissioner may extend the applicable period by an
 7-23 additional three days and may extend each of those additional
 7-24 three-day periods by an additional three days for as long as the
 7-25 occurrence of those extenuating circumstances prevent the
 7-26 resident's transfer. For purposes of this subsection, "extenuating
 7-27 circumstances" include extremely hazardous weather conditions or
 7-28 another disaster that prevents the timely transfer of a resident.

7-29 Sec. 594.110. ADMINISTRATIVE HEARINGS. (a) A resident is
 7-30 entitled to an expedited administrative hearing under Section
 7-31 594.015 to challenge the resident's required participation under
 7-32 Section 594.109(c) in a pilot program under this subchapter. The
 7-33 hearing must be held not later than seven days after the date the
 7-34 associate commissioner determines that the resident should
 7-35 participate in the pilot program.

7-36 (b) A resident who is subject to a transfer decision
 7-37 described by Section 594.109 is entitled to an administrative
 7-38 hearing under Section 594.015. The hearing shall be limited to
 7-39 determining whether the transfer decision complies with Section
 7-40 594.109. A resident may waive the right to a hearing, but if a
 7-41 hearing is requested the resident may not be transferred until
 7-42 after the administrative hearing.

7-43 (c) A resident is entitled to an administrative hearing with
 7-44 the commission to contest an extension described by Section
 7-45 594.109(h).

7-46 Sec. 594.111. RIGHT TO APPEAL. An individual may appeal a
 7-47 decision made at a hearing described by Section 594.110 by filing
 7-48 the appeal in a district court in Travis County not later than the
 7-49 30th day after the date a final order is provided to the individual.
 7-50 An appeal under this section is by trial de novo.

7-51 SECTION 12. Not later than November 1, 2022, the Health and
 7-52 Human Services Commission shall consult with the work group
 7-53 described by Section 594.103, Health and Safety Code, as added by
 7-54 this Act, and adopt any necessary rules to implement Subchapter D,
 7-55 Chapter 594, Health and Safety Code, as added by this Act.

7-56 SECTION 13. This Act takes effect immediately if it
 7-57 receives a vote of two-thirds of all the members elected to each
 7-58 house, as provided by Section 39, Article III, Texas Constitution.
 7-59 If this Act does not receive the vote necessary for immediate
 7-60 effect, this Act takes effect September 1, 2021.

7-61

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