

## **BILL ANALYSIS**

Senate Research Center  
81R12211 UM-D

S.B. 1520  
By: Shapleigh  
Health & Human Services  
4/5/2009  
As Filed

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

On March 15, 2005, the United States Department of Justice (DOJ) notified the Department of Aging and Disability Services (DADS) of its intent to initiate a Civil Rights of Institutionalized Persons Act (CRIPA) investigation of Lubbock State School. DOJ released the letter of findings regarding the Lubbock State School on December 11, 2006. On March 11, 2008, DOJ notified DADS of its intent to expand its CRIPA investigation to Denton State School. Five months later, on August 20, 2008, DOJ notified DADS that it would expand the investigation to include the remaining state schools.

After the Lubbock investigation, DOJ found that the Lubbock school "substantially departed from generally accepted professional standards of care in its failure to: protect residents from harm; provide adequate behavioral services; provide freedom from unnecessary or inappropriate restraints; provide adequate habilitation; provide adequate medical care (including psychiatric services, general medical care, pharmacy services, dental care, occupation and physical therapy, and physical and nutritional management); and provide services in the most integrated setting appropriate to their needs."

On December 1, 2008, DOJ released its letter of findings for the remaining 12 state schools. DOJ's most recent letter signifies that the serious problems found at the Lubbock State School are not unique to one state school and are indicative of systemic issues. DOJ attributes these systemic issues to high staff attrition and vacancy rates for direct care staff and clinical professionals. In fact, since fiscal year 2004, DADS has suspended or fired more than 800 employees for abusing residents. Until DADS can successfully retain, train, and supervise its staff, the problems and deficiencies identified by DOJ cannot be addressed.

As proposed, S.B. 1520 adopts recommendations by the DOJ regarding the use of psychotropic medications and restraints in Texas state schools.

[**Note:** While the statutory reference in this bill is to the Texas Department of Health (TDH), the following amendments affect the Department of Aging and Disability Services, as the successor agency to TDH.]

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 592.152, Health and Safety Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 592.038, Health and Safety Code, by adding Subsection (d), to provide that each client has the right to refuse psychoactive medication, as provided by Subchapter E.

SECTION 2. Amends Section 592.054(b), Health and Safety Code, to provide that notwithstanding Subsection (a) (relating to care and treatment provided to each court-committed resident), consent is required for all surgical procedures and as provided by Section 592.082, the administration of psychoactive medications.

SECTION 3. Amends Chapter 592, Health and Safety Code, by adding Subchapters E and F, as follows:

SUBCHAPTER E. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

Sec. 592.081. DEFINITIONS. Defines "capacity," "medication-related emergency," and psychoactive medication."

Sec. 592.082. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) Prohibits a person from administering medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless the client is having a medication-related emergency; the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration; the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.086; or the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086 (Court-Order Medications), Code of Criminal Procedure.

(b) Provides that consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client is valid only if certain requirements are met.

(c) Requires the physician if the treating physician designates another person to provide the information under Subsection (b), then, not later than two working days after that person provides the information, excluding weekend and legal holidays, to meet with the client and, if appropriate, the client's representative who provided the consent, to review the information and answer any questions.

(d) Requires that a client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, be documented in the client's clinical record.

(e) Requires a treating physician, in prescribing psychoactive medication, to prescribe, consistent with clinically appropriate medical care, the medication that has the fewest side effects or the least potential for adverse side effects, unless the class of medication has been demonstrated or justified not to be effective clinically and administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) Provides that if a physician issues an order to administer psychoactive medication to a client without the client's consent because the client is having a medication-related emergency the physician is required to document in the client's clinical record in specific medical or behavioral terms the necessity of the order and that the physician has evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and requires that treatment of the client with the psychoactive medication to be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Sec. 592.083. ADMINISTRATION OF MEDICATION TO CLIENT COMMITTED TO RESIDENTIAL CARE FACILITY. (a) Defines "ward."

(b) Prohibits a person from administering a psychoactive medication to a client who refuses to take the medication voluntarily unless the client is having a medication-related emergency; the client is under an order issued under Section 592.086 authorizing the administration of the medication regardless of the client's refusal; or the client 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.

Sec. 592.084. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) Authorizes a person who is treating a client to file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication; the physician determines that the medication is the proper course of treatment for the client; and the client has been committed to a residential care facility under Subchapter C (Commitment to Residential Care Facility), Chapter 593 (Admission and Commitment to Mental Retardation Services), or other law or an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed for the client.

(b) Sets forth requirements for an application filed under this section.

(c) Requires that an application under this section be filed separately from an application for commitment to a residential care facility.

(d) Authorizes the hearing on the application to be held on the same date as a hearing on an application for commitment to a residential care facility under Subchapter C, Chapter 593, but prohibits the hearing from being held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. Authorizes the court to transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred if the hearing is not held on the same date as the application for commitment to a residential care facility under Subchapter C, Chapter 593, and the client is transferred to a residential care facility in another county.

(e) Authorizes the court to grant one continuance on a party's motion and for good cause shown, subject to the requirement in Subsection (d) that the hearing is required to be held not later than 30 days after the filing of the application. Authorizes the court to grant more than one continuance only with the agreement of the parties.

Sec. 592.085. RIGHTS OF CLIENT. Entitles a client for whom an application for an order to authorize the administration of a psychoactive medication is filed to certain rights.

Sec. 592.086. HEARING AND ORDER AUTHORIZING PSYCHOACTIVE MEDICATION. (a) Authorizes the court to issue an order authorizing the administration of one or more classes of psychoactive medication to a client who has been committed to a residential care facility or is in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding a hearing under this section.

(b) Authorizes the court to issue an order under this section only if the court finds by clear and convincing evidence after the hearing that the client lacks the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication is in the best interest of the client or if the client; was committed to a residential care facility by a criminal court with jurisdiction over the client, that the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect as determined under Section 592.087; and treatment with the proposed medication is in the best interest of the client.

(c) Requires the court, in making the finding that treatment with the proposed medication is in the best interest of the client, to consider certain information regarding the client.

(d) Requires a hearing under this subchapter to be conducted on the record by the probate judge or judge with probate jurisdiction except as provided by Subsection (e).

(e) Authorizes a judge to refer a hearing to a magistrate or court-appointed master who has training regarding psychoactive medications. Authorizes the magistrate or master to effectuate the notice, set hearing dates, and appoint attorneys as required by this subchapter. Provides that a record is not required if the hearing is held by a magistrate or court-appointed master.

(f) Provides that a party is entitled to a hearing de novo by the judge if an appeal of the magistrate's or master's report is filed with the court before the fourth day after the date the report is issued. Requires that the hearing de novo be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

(g) Authorizes the proposed client or the proposed client's attorney to request that the processing be transferred to a court with a judge who is licensed to practice law in this state if a hearing or an appeal of a master's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney. Requires the county judge to transfer the case after receiving the request and requires the receiving court to hear the case as if it had been originally filed in that court.

(h) Entitles the client to have provided to the client and the client's attorney written notification of the court's determinations under this section as soon as practicable after the conclusion of the hearing. Requires that the notification include a statement of the evidence on which the court relied and the reasons for the court's determinations.

(i) Requires an order entered under this section to authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. Requires that the order permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order is valid, or the substitution of a medication within the same class.

(j) Requires that the classes of psychoactive medications in the order conform to classes determined by the Texas Department of Health.

(k) Authorizes an order issued under this section to be reauthorized or modified on the petition of a party. Provides that the order remains in effect pending action on a petition for reauthorization or modification. Defines "modification."

Sec. 592.087. FINDING THAT CLIENT PRESENTS A DANGER. Requires the court, in making a finding under Section 592.086(b)(2) that the client presents a danger to the client or others in the residential care facility in which the client is being treated as a result of a mental disorder or mental defect to consider an assessment of the client's present mental condition; and whether the client has inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

Sec. 592.088. APPEAL. (a) Authorizes a client to appeal an order under this subchapter in the manner provided by Section 593.056 (Appeal) for an appeal of an order committing the client to a residential care facility.

(b) Provides that an order authorizing the administration of medication regardless of the refusal of the client is effective pending an appeal of the order.

Sec. 592.089. EFFECT OF ORDER. (a) Provides that a person's consent to take a psychoactive medication is not valid and prohibits a person's consent from being relied on if the person is subject to an order issued under Section 592.086.

(b) Provides that the issuance of an order under Section 592.086 is not a determination or adjudication of mental incompetency and does not limit in any other respect that person's rights as a citizen or the person's property rights or legal capacity.

Sec. 592.090. EXPIRATION OF ORDER. (a) Provides that except as provided by Subsection (b), an order issued under Section 592.086 expires on the anniversary of the date the order was issued.

(b) Provides that an order issued under Section 592.086 for a client awaiting trial in a criminal proceeding expires on the date the defendant is acquitted, is convicted, or enters a plea of guilty or the date on which charges in the case are dismissed. Requires that an order continued under this subsection be reviewed by the issuing court every six months.

#### SUBCHAPTER F. USE OF RESTRAINTS IN STATE SCHOOLS

Sec. 592.151. DEFINITION. Defines "executive commissioner."

Sec. 592.152. USE OF RESTRAINTS. Requires the executive commissioner of the Health and Human Services Commission to adopt rules to ensure that a mechanical or physical restraint is not administered to a resident of a state school unless the restraint is necessary to prevent imminent physical injury to the resident or another and is the least restrictive restraint effective to prevent imminent physical injury; the administration of a mechanical or physical restraint to a resident of a state school ends immediately once the imminent risk of physical injury abates; and a mechanical or physical restraint is not administered to a resident of a state school as punishment or as part of a behavior plan.

Sec. 592.153. RESTRAINTS PROHIBITED. Prohibits a person from using a straitjacket or a papoose board to restrain a resident of a state school.

Sec. 592.154. CONFLICT WITH OTHER LAW. Provides that to the extent of a conflict between this subchapter and Chapter 322 (Use of Restraint and Seclusion in Certain Health Care Facilities), this subchapter controls.

SECTION 4. Amends Articles 46B.086(a) and (b), Code of Criminal Procedure, as follows:

(a) Provides that this article applies only to a defendant who, after a hearing held under Section 574.106 (Hearing and Order Authorizing Psychoactive Medication) or 592.086, Health and Safety Code, has been found not to meet the criteria prescribed by Section 574.106(a) and (a-1), or Sections 592.086(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) Requires that the motion to compel medication be filed not later than the 15th day after the date a judge issues an order stating that the defendant does not meet the criteria for court-ordered administration of psychoactive medications under Section 574.106 or 592.086, Health and Safety Code.

SECTION 5. Requires the executive commissioner of the Health and Human Services Commission to adopt rules required under Section 592.152, Health and Safety Code, as added by this Act, not later than January 1, 2010.

SECTION 6. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 7. Effective date: upon passage or September 1, 2009.