

BILL ANALYSIS

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S.B. 34
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 34 requires patient consent for the administration of psychoactive medications in State Supported Living Centers (SSLCs) and establishes the patient's right to refuse them unless there is a medication-related emergency, the client's legally authorized representative consents to the administration, or there is a court order overriding the client's refusal.

Currently, there are no statutes outlining requirements for administration of psychoactive medications to persons in residential care facilities (i.e., primarily SSLCs) even though these drugs affect the central nervous system, modifying behavior, cognition, and emotional state. Psychoactive medication classes include: antipsychotics or neuroleptics, antidepressants, agents for control of mania or depression, anti-anxiety agents, sedatives, hypnotics, other sleep-promoting drugs, and psychomotor stimulants.

According to the 2008 Department of Justice (DOJ) report, many patients receive psychotropic medication with no diagnosis at all or are only identified as having a Mental Disorder, Not Otherwise Specified. The DOJ found that the quality of psychiatric diagnosis falls "far below" professionally accepted standards. The absence of adequate behavioral assessments to identify the causes of maladaptive behaviors contributes to misuse of psychotropic medications. Seventy-eight percent of those with maladaptive behaviors receive psychotropic medications regularly, often with multiple medications for the same condition. This was described as an unusually high percentage and DOJ found no clinical justification for the rates. The consequence and risk of misusing psychotropic medications are that they can affect and modify negatively one's central nervous system, behavior, cognition, and emotional state.

Currently, a nonmedical professional (i.e., the superintendent of a state school) consents to psychoactive medications for all residents who do not have capacity and have no guardian.

Section 592.038 (Freedom from Unnecessary Medication) of the Health and Safety Code outlines a patient's freedom from unnecessary medication and prohibits medication from being used as punishment, for staff convenience, as a substitute for a habilitation program, or in quantities that interfere with the client's habilitation program. Medications may only be authorized by prescription of a physician, who is required to closely supervise their use. Section 592.054 (Duties of Superintendent or Director) permits the superintendent or director to provide, without further consent, necessary care and treatment to each court-committed resident and make available necessary care and treatment to each voluntary resident. However, consent is required for all surgical procedures.

S.B. 34 outlines the requirements to obtain and document consent or refusal; to prescribe psychoactive medications; to apply for a court order to authorize psychoactive medications and the client's rights when this application is filed; and to enable a court to issue an order authorizing the administration of one or more classes of psychoactive medications to the patient. The bill identifies elements that a court considers to find a client is a threat to himself/herself, or others in a state school, procedures to appeal a court order committing the client to a residential care facility, and establishes court order expiration dates. The bill also establishes the criteria for a court hearing and order authorizing psychoactive medications in determining whether or not a patient is incompetent to stand trial.

As proposed, S.B. 34 amends current law relating to the administration of psychoactive medications to persons receiving services in certain facilities.

[**Note:** While the statutory reference in this bill is to the Texas Department of Mental Health and Mental Retardation (TXMHMR), the following amendments affect the Department of Assistive and Rehabilitative Services, as the successor agency to TXMHMR.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

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 F.

SECTION 2. Amends Section 592.054(b), Health and Safety Code, to provide that consent, notwithstanding Subsection (a) (relating to the ability of the superintendent of a residential care facility or the director of a community center to provide necessary care and treatment to court committed residents without consent), is required for all surgical procedures and the administration of psychoactive medications, as provided by Section 592.153.

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

SUBCHAPTER F. ADMINISTRATION OF PSYCHOACTIVE MEDICATIONS

Sec. 592.151. DEFINITIONS. Defines "capacity," "medication-related emergency," and "psychoactive medication" in this subchapter.

Sec. 592.152. ADMINISTRATION OF PSYCHOACTIVE MEDICATION. (a) Prohibits a person from administering a psychoactive medication to a client receiving voluntary or involuntary residential care services who refuses the administration unless:

- (1) the client is having a medication-related emergency;
- (2) the refusing client's representative authorized by law to consent on behalf of the client has consented to the administration;
- (3) the administration of the medication regardless of the client's refusal is authorized by an order issued under Section 592.156; or
- (4) the administration of the medication regardless of the client's refusal is authorized by an order issued under Article 46B.086 (Court-Ordered 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:

- (1) the consent is given voluntarily and without coercive or undue influence;
- (2) the treating physician or a person designated by the physician provides certain information, in a standard format approved by the Texas Department of Mental Health and Mental Retardation (TXMHMR), to the client and, if applicable, to the client's representative authorized by law to consent on behalf of the client;

(3) the client and, if appropriate, the client's representative authorized by law to consent on behalf of the client are informed in writing that consent is authorized to be revoked; and

(4) the consent is evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documents that consent was given by the appropriate person and the circumstances under which the consent was obtained.

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

(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 according to certain criteria, and to administer the smallest therapeutically acceptable dosages of medication for the client's condition.

(f) Requires 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 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 that treatment of the client with the psychoactive medication be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Sec. 592.153. ADMINISTRATION OF MEDICATION TO CLIENT COMMITTED TO RESIDENTIAL CARE FACILITY. (a) Defines "ward" in this section.

(b) Prohibits a person from administering a psychoactive medication to a client who refuses to take the medication voluntarily unless:

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

(2) the client is under an order issued by Section 592.156 authorizing the administration of the medication regardless of the client's refusal; or

(3) 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. 592.154. PHYSICIAN'S APPLICATION FOR ORDER TO AUTHORIZE PSYCHOACTIVE MEDICATION; DATE OF HEARING. (a) Authorizes a physician 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:

(1) the physician believes that the client lacks the capacity to make a decision regarding the administration of the psychoactive medication;

(2) the physician determines that the medication is the proper course of treatment for the client; and

(3) the client has been committed to a residential care facility under Subchapter C (Commitment to Residential Care Facility), Chapter 593, 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) Requires that an application be filed under this section state:

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

(2) each medication the physician wants the court to compel the client to take;

(3) whether an application for commitment to a residential care facility under Subchapter C, Chapter 593, has been filed;

(4) whether an order committing the client to a residential care facility has been issued and, if so, under what authority it was issued;

(5) the physician's diagnosis of the client; and

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

(c) Requires that an application filed 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 requires that the hearing be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. Authorizes the court, 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, to transfer the application for an order to authorize psychoactive medication to the county where the client has been transferred.

(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 requires the hearing 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. 592.155. RIGHTS OF CLIENT. Entitles a client for whom an application for an order to authorize the administration of a psychoactive medication is filed to:

(1) to be represented by a court-appointed attorney who is knowledgeable about issues to be adjudicated at the hearing;

(2) to meet with that attorney as soon as is practicable to prepare for the hearing and to discuss any of the client's questions or concerns;

(3) to receive, immediately after the time of the hearing is set, a copy of the application and written notice of the time, place, and date of the hearing;

- (4) to be informed, at the time personal notice of the hearing is given, of the client's right to a hearing and right to the assistance of an attorney to prepare for the hearing and to answer any questions or concerns;
- (5) to be present at the hearing;
- (6) to request from the court an independent expert; and
- (7) to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interest.

Sec. 592.156. 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:

(1) 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

(2) if the client was committed to a residential care facility by a criminal court with the jurisdiction over the client, that treatment with the proposed medication is in the best interest of the client, and either:

(A) 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 592.157; or

(B) the client has remained confined in a correctional facility, as defined by Section 1.07 (Definitions), Penal Code, for a period exceeding 72 hours while awaiting transfer for competency restoration treatment, and presents a danger to the client or others in the correctional facility as a result of a mental disorder or mental defect as determined under Section 592.157.

(c) Requires the court, in making the finding that treatment with the proposed medication is in the best interests of the client, to consider:

(1) the client's expressed preferences regarding treatment with psychoactive medication;

(2) the client's religious beliefs;

(3) the risks and benefits, from the perspective of the client, of taking psychoactive medication;

(4) the consequences to the client if the psychoactive medication is not administered;

(5) the prognosis for the client if the client is treated with psychoactive medication;

(6) alternative, less intrusive treatments that are likely to produce the same results as treatment with psychoactive medication; and

(7) less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

(d) Requires that a hearing under this subchapter 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 associate judge who has training regarding psychoactive medications. Authorizes the magistrate or associate judge 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 judge.

(f) Entitles a party to a hearing de novo by the judge if an appeal of the magistrate's or associate judge'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, if a hearing or an appeal of an associate judge's or magistrate's report is to be held in a county court in which the judge is not a licensed attorney, to request that the proceeding be transferred to a court with a judge who is licensed to practice law in this state.

(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 reasons for the court's determinations.

(i) Requires that an order entered under this section 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 TXMHMR.

(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" for purposes of this section.

(l) Provides that an order issued under the section, for a client described by Subsection (b) (2) (B), authorizes the initiation of any appropriate mental health treatment for the patient awaiting transfer, and does not constitute authorization to retain the client in a correction facility for competency restoration treatment.

Sec. 592.157. FINDING THAT CLIENT PRESENTS A DANGER. Requires the court, in making a finding under Section 592.156(b)(2) that, as a result of a mental disorder or mental defect, the client presents a danger to the client or others in the residential care facility in which the client is being treated or in the correctional facility, as applicable, to consider:

(1) an assessment of the client's present mental condition; and

(2) 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. 592.158. 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. 592.159. 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 592.156.

(b) Provides that the issuance of an order under Section 592.156 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. 592.160. EXPIRATION OF ORDER. (a) Provides that an order issued under Section 592.156 expires on the anniversary of the date the order was issued, except as provided by Subsection (b).

(b) Provides that an order issued under Section 592.156 for a client awaiting trial in a criminal proceeding expires on the date that the defendant is acquitted, is convicted, or enters a plea of guilty of 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.

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

(a) Provides that this article only applies to a defendant who meets certain criteria, including a defendant who, after a hearing held under Section 547.106 or 592.156, Health and Safety Code, if applicable, has been found to not meet the criteria prescribed by Sections 592.156(a) and (b), Health and Safety Code, for court-ordered administration of psychoactive medications.

(b) Requires that a 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 592.156, Health and Safety Code, except that, for a defendant in an outpatient treatment program, the motion may be filed at any time.

SECTION 5. Effective date: September 1, 2013.