

BILL ANALYSIS

Senate Research Center
82R24416 GCB-F

H.B. 1128
By: Menendez (Van de Putte)
Administration
5/14/2011
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1993, the legislature passed S.B. 332 creating the Consent to Medical Treatment Act. The bill authorized consent for medical treatment to be made by a surrogate decision maker on behalf of an incapacitated, comatose, or otherwise mentally or physically incapable patient in a nursing facility or hospital. At that time, only a competent adult patient or the patient's temporary or permanent guardian could consent to non-emergency medical or surgical treatment. However, doctors found that incapacitated patients needed immediate treatment for conditions that were important, yet not considered an emergency. As such, the Consent to Medical Treatment Act was created.

In 2007, the legislature passed H.B. 3473, which added "home and community support services" to the list of facilities that may seek a surrogate decision maker in the Consent to Medical Treatment Act.

H.B. 1128 adds an adult inmate of a county or municipal jail to the Consent to Medical Treatment Act. Amending the statute would allow an additional avenue of relief for individuals in crisis. It would authorize a correctional facility to seek the speedy assistance of a loved one, without the need for a lengthy and expensive court proceeding. H.B. 1128 also provides guidance and protection for county and municipal jails who want to ensure that treatment decisions are made in the patient's best interest.

H.B. 1128 amends current law relating to consent to certain medical treatments by a surrogate decision-maker on behalf of certain inmates.

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 313.002(8), Health and Safety Code, to redefine "patient."

SECTION 2. Amends Section 313.004, Health and Safety Code, by amending Subsection (a) and adding Subsections (e) and (f), as follows:

(a) Authorizes an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient, if an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication, to consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;

(3) a majority of the patient's reasonably available adult children;

(4) the patient's parents; or

(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(e) Prohibits a surrogate decision-maker, notwithstanding any other provision of this chapter, if the patient is an adult inmate of a county or municipal jail, from also consenting to:

(1) psychotropic medication;

(2) involuntary inpatient mental health services; or

(3) psychiatric services calculated to restore competency to stand trial.

(f) Authorizes a person who is an available adult surrogate, as described by Subsection (a), to consent to medical treatment on behalf of a patient who is an adult inmate of a county or municipal jail only for a period that expires on the earlier of the 120th day after the date the person agrees to act as an adult surrogate for the patient or the date the inmate is released from jail. Prohibits a successor surrogate from being appointed, and authorizes only the patient or the patient's appointed guardian of the person, if the patient is a ward under Chapter XIII (Guardianship), Texas Probate Code, to consent to medical treatment.

SECTION 3. Amends Section 313.005(a), Health and Safety Code, as follows:

(a) Requires the attending physician, if an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, to describe the:

(1) patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record; and

(2) proposed medical treatment in the patient's medical record.

SECTION 4. Effective date: September 1, 2011.