

BILL ANALYSIS

C.S.S.B. 1560
By: Zaffirini
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties assert that previous legislation relating to obtaining patient consent to medication and treatment in chemical dependency treatment facilities had some unintended consequences that place substantial burdens on these facilities. The parties contend that failure to address this issue through legislation could have serious effects on facilities. C.S.S.B. 1560 seeks to address this issue.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 of this bill.

ANALYSIS

C.S.S.B. 1560 amends the Health and Safety Code to establish that certain statutory provisions relating to a patient's consent to or refusal of a medication, therapy, or treatment at certain treatment facilities do not apply to a licensed chemical dependency treatment facility. The bill prohibits a licensed chemical dependency treatment facility from providing treatment to a patient without the patient's legally adequate consent. The bill requires the executive commissioner of the Health and Human Services Commission by rule to prescribe standards for obtaining a patient's legally adequate consent to treatment, including rules prescribing reasonable efforts to obtain a patient's consent and requiring documentation for those efforts.

C.S.S.B. 1560 conditions the validity of consent to the administration of prescription medication given by a patient receiving treatment in a licensed chemical dependency treatment facility or by a person authorized by law to consent on the patient's behalf on the consent being given voluntarily and without coercive or undue influence; the patient and, if appropriate, the patient's representative authorized by law to consent on the patient's behalf being informed in writing that consent may be revoked; and the consent being evidenced in the patient's clinical record by a signed form prescribed by the treatment 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. The bill establishes that each patient receiving treatment in a licensed chemical dependency treatment facility has the right to refuse unnecessary or excessive medication. The bill prohibits medication from being used by the treatment facility as punishment or for the convenience of the staff.

C.S.S.B. 1560 requires the executive commissioner by rule to require the treating physician of a patient admitted to a licensed chemical dependency treatment facility or the physician's designee to provide to the patient in the patient's primary language, if possible, information relating to prescription medications ordered by the physician. The bill requires the information, at a minimum, to identify the major types of prescription medications and specify for each major

type the conditions the medications are commonly used to treat, the beneficial effects on those conditions generally expected from the medications, side effects and risks associated with the medications, commonly used examples of medications of the major type, and sources of detailed information concerning a particular medication. The bill requires the treating physician, if the physician designates another person to provide the information regarding the prescription medication ordered by the physician, not later than two working days after that person provides the information, excluding weekends and legal holidays, to meet with the patient and, if appropriate, the patient's representative who provided consent for the administration of the medications to review the information and answer any questions. The bill requires the treating physician or the physician's designee to also provide the information to the patient's family on request but only to the extent not otherwise prohibited by state or federal confidentiality laws.

C.S.S.B. 1560 requires the facility administrator of a licensed chemical dependency treatment facility, on the request of a patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any, to provide to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator a list of the medications prescribed for administration to the patient while the patient is in the treatment facility. The bill requires the list to include, for each medication, the name of the medication, the dosage and schedule prescribed for the administration of the medication, and the name of the physician who prescribed the medication. The bill requires the list to be provided before the expiration of four hours after the facility administrator receives a written request for the list from the patient, a person designated by the patient, or the patient's legal guardian or managing conservator, if any. The bill authorizes, if sufficient time to prepare the list before discharge is not available, the list to be mailed before the expiration of 24 hours after discharge to the patient, the person designated by the patient, and the patient's legal guardian or managing conservator. The bill authorizes a patient or the patient's legal guardian or managing conservator, if any, to waive the right of any person to receive the list of medications while the patient is participating in a research project if release of the list would jeopardize the project's results.

C.S.S.B. 1560 redefines "screening," for purposes of statutory provisions relating to the voluntary admission of a patient to a chemical dependency treatment facility, to specify that screening occurs after a patient is admitted. The bill repeals the definition of "assessment" for purposes of those provisions.

C.S.S.B. 1560 specifies that the mental health professional who performs the mental health evaluation used to represent or recommend that a prospective patient be admitted to a chemical dependency facility for treatment and the mental health professional who makes a determination that a patient meets the facility's admission standards do not have to be the same mental health professional.

C.S.S.B. 1560 repeals Section 462.025 (h)(2), Health and Safety Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2015.

COMPARISON OF SENATE ENGROSSED AND SUBSTITUTE

While C.S.S.B. 1560 may differ from the engrossed in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 164.003(6), Health and Safety Code, is amended to read as follows:

No equivalent provision.

(6) "Mental health professional" means a:

- (A) "physician" as defined by Section 571.003;
- (B) "licensed professional counselor" as defined by Section 503.002, Occupations Code;
- (C) "chemical dependency counselor" as defined by Section 504.001, Occupations Code;
- (D) "psychologist" offering "psychological services" as defined by Section 501.003, Occupations Code;
- (E) "registered nurse" licensed under Chapter 301, Occupations Code;
- (F) "advanced practice registered nurse" as defined by Section 301.152 [~~"vocational nurse" licensed under Chapter 301~~], Occupations Code;
- (G) "licensed marriage and family therapist" as defined by Section 502.002, Occupations Code; ~~and~~
- (H) "social worker" as defined by Section 505.002, Occupations Code; and
- (I) "physician assistant" licensed under Chapter 204, Occupations Code.

SECTION 2. Section 164.009(e), Health and Safety Code, is amended.

SECTION 1. Same as engrossed version.

SECTION 3. Sections 462.009(a) and (b), Health and Safety Code, are amended to read as follows:

No equivalent provision. (*But see SECTION 3 below.*)

- (a) A treatment facility licensed by the department under Chapter 464 may not provide treatment to a patient without the patient's legally adequate consent. [~~A patient receiving treatment in a treatment facility is entitled to refuse a medication, therapy, or treatment unless:~~
 - ~~[(1) the patient is younger than 18 years of age, the patient is admitted under Section 462.022(a)(3)(A), and the patient's parent, managing conservator, or guardian consents to the medication, therapy, or treatment on behalf of the patient;~~
 - ~~[(2) the patient has been adjudicated to be incompetent to manage the patient's personal affairs or to make a decision to refuse the medication, therapy, or treatment and the patient's guardian of the person or another person legally authorized to consent to medical treatment consents to the medication, therapy, or treatment on behalf of the patient; or~~
 - ~~[(3) a physician treating the patient determines that the medication is necessary~~

(*See Section 462.010(a) below.*)

~~to prevent imminent serious physical harm to the patient or to another individual and the physician issues a written order, or a verbal order if authenticated in writing by the physician within 24 hours, to administer the medication to the patient.]~~

~~(b) The executive commissioner by rule shall prescribe standards for obtaining a patient's legally adequate consent under this section, including rules prescribing reasonable efforts to obtain a patient's consent and requiring documentation for those efforts. [The decision of a guardian or of a person legally authorized to consent to medical treatment on the patient's behalf under Subsection (a)(2) must be based on knowledge of what the patient would desire, if known.]~~

No equivalent provision.

SECTION 4. Subchapter A, Chapter 462, Health and Safety Code, is amended by adding Sections 462.010, 462.011, 462.012, and 462.013 to read as follows:

(See Sections 462.009(a) and (b) above.)

Sec. 462.010. CONSENT TO MEDICATION.

Sec. 462.011. RIGHT TO REFUSE MEDICATION.

Sec. 462.012. MEDICATION INFORMATION.

Sec. 462.013. LIST OF MEDICATIONS.

(See Section 462.010(b) below.)

SECTION 2. Section 462.009, Health and Safety Code, is amended by adding Subsection (h) to read as follows:

(h) This section does not apply to a treatment facility licensed by the department under Chapter 464.

SECTION 3. Subchapter A, Chapter 462, Health and Safety Code, is amended by adding Sections 462.010, 462.011, 462.012, 462.013, and 462.014 to read as follows:

Sec. 462.010. CONSENT TO TREATMENT AT CERTAIN FACILITIES. (a) A treatment facility licensed by the department under Chapter 464 may not provide treatment to a patient without the patient's legally adequate consent.

(b) The executive commissioner by rule shall prescribe standards for obtaining a patient's legally adequate consent under this section, including rules prescribing reasonable efforts to obtain a patient's consent and requiring documentation for those efforts.

Sec. 462.011. CONSENT TO MEDICATION.

Sec. 462.012. RIGHT TO REFUSE MEDICATION.

Sec. 462.013. MEDICATION INFORMATION.

Sec. 462.014. LIST OF MEDICATIONS.

SECTION 5. Section 462.025(h)(4), Health and Safety Code, is amended to read as follows:

(4) "Screening" means the process a treatment facility uses to determine whether a prospective patient presents sufficient signs, symptoms, or behaviors to warrant a more in-depth assessment by a qualified professional after the patient is admitted.

SECTION 6. The following provisions of the Health and Safety Code, including provisions amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, are repealed:

- (1) Sections 462.009(c), (d), (e), (f), and (g); and
- (2) Section 462.025(h)(2).

SECTION 7. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2015.

SECTION 4. Same as engrossed version.

SECTION 5. Section 462.025(h)(2), Health and Safety Code, is repealed.

SECTION 6. Same as engrossed version.