

SUBJECT: Requiring written consent to use psychoactive drugs in nursing homes

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Frank, Hinojosa, Klick, Meza, Miller, Noble

1 nay — Clardy

2 absent — Deshotel, Rose

WITNESSES: For — Amanda Fredriksen, AARP; Patricia Ducayet, State Long-Term Care Ombudsman; Jerry Tindel; (*Registered, but did not testify:* Aaron Gregg, Alzheimer's Association; Monica Ayres, Citizens Commission on Human Rights Texas; Kyle Piccola, The Arc of Texas)

Against — Liam Fry, Austin Geriatric Specialists, TMDA; Lara Cline, Texas Healthcare Association; Michael Krol, Texas Medical Association; Michelle Coffey; Haiyan Liu; Vishal Malpani; P. Duncan Murray; (*Registered, but did not testify:* Betsy Madru, Houston Methodist; David Thomason, LeadingAge Texas; Jon Opelt, Texas Alliance for Patient Access)

On — (*Registered, but did not testify:* David Kostroun, Health and Human Services Commission)

BACKGROUND: Health and Safety Code sec. 242.505(b) specifies that a person may not administer psychoactive medication to a resident of a convalescent or nursing facility unless the resident is having a medication-related emergency or the person authorized to consent on the behalf of the resident has consented to the prescription.

Health and Safety Code sec. 242.505(c) states that consent to the prescription of psychoactive medication is valid only if it is given voluntarily without coercive or undue influence; if the resident and/or person authorized to consent on behalf of the resident are notified that consent may be revoked; and if the consent is evidenced in the resident's

clinical record. The person prescribing the medication or that person's designee also must notify the resident and/or authorized surrogate of:

- the specific condition to be treated;
- the beneficial effects expected from the medication;
- the probable significant side effects or risks of the medication; and
- the proposed course of the medication.

DIGEST:

CSHB 2050 would specify that consent to the prescription of an antipsychotic or neuroleptic medication to a resident of a nursing facility, convalescent facility, or other related institution would be valid only if it was given in writing on a form prescribed by the Health and Human Services Commission by a resident or by a person authorized to consent on behalf of the resident.

The bill also would require the original or a copy of written consent for the prescription of any psychoactive medication to be evidenced in the resident's clinical record.

The bill would take effect September 1, 2019.

**SUPPORTERS
SAY:**

CSHB 2050 would protect patients in nursing homes and long-term care facilities and prevent the abuse of antipsychotic and neuroleptic medication by ensuring that written and informed consent was received prior to the prescription of these drugs to a patient.

The bill would protect patients in nursing homes and long-term care facilities by creating a high threshold for obtaining and documenting informed consent prior to the prescription of antipsychotic and neuroleptic drugs, which can be harmful if administered to a patient that was not diagnosed with psychosis. The bill would not burden nursing homes and long-term care facilities because consent to prescribe psychoactive drugs is already required under statute.

CSHB 2050 also would reduce the potential for the abuse of antipsychotic and neuroleptic drugs in nursing homes by increasing the requirements for

their use. These drugs have been misused as quick fixes for behavioral problems, rather than treatments for a diagnosed mental health disorder. Requiring that residents or their authorized designees provide written and informed consent to receive these drugs would prevent the overuse and inappropriate use of potentially dangerous medications.

Requiring written consent would not impose a time-consuming burden on nursing homes, as the form could be faxed or emailed to a facility. Providing this written consent would help to ensure that patients were treated with the best quality of care.

OPPONENTS
SAY:

CSHB 2050 would burden nursing homes and long-term care facilities and could prevent patients from receiving needed medical care in a timely fashion by increasing the requirements for consent to the prescription of antipsychotic and neuroleptic drugs.

The bill would burden nursing homes by unnecessarily expanding requirements for consent to receive certain drugs. Nursing homes and similar facilities already are required to receive informed consent from residents or their authorized designees before prescribing antipsychotic or neuroleptic drugs. Sufficient protections are in place under current statute.

CSHB 2050 could prevent the timely provision of medical care to residents of long-term care facilities by adding a time-consuming step to the consent process. When a patient experiences a mental health episode, it is crucial for caretakers to provide medical intervention as soon as possible. Requiring them to add the process of obtaining written consent, in addition to existing consent requirements, would be impractical and could result in harm to the resident.

As rural facilities continue to close, families are forced to send their loved ones to clinics far away from home to receive needed care. Adding the requirement for written consent to be obtained by the designees of a resident if the resident was unable to provide consent themselves could seriously delay needed medical treatment for these patients.

OTHER
OPPONENTS
SAY:

While informed consent is necessary for the administration of certain drugs to patients, CSHB 2050 would address an issue that could be better addressed at the physician-patient level than at a facility level.