

SUBJECT: Addressing continuity of care for certain residential care facility patients

COMMITTEE: Public Health — committee substitute recommended

VOTE: 10 ayes — Klick, Guerra, Allison, Coleman, Collier, Jetton, Oliverson,
Price, Smith, Zwiener

0 nays

1 absent — Campos

WITNESSES: For — Dan Chandler; (*Registered, but did not testify*: Allison Greer, CHCS; Molly White, Conservative Republicans of Texas; Elisa Tamayo, Emergence Health Network; Christine Yanas, Methodist Healthcare Ministries of South Texas, Inc.; Lee Johnson, Texas Council of Community Centers; Lacy Waller)

Against — (*Registered, but did not testify*: Lee Spiller, Citizens Commission on Human Rights; Aaryce Hayes, Disability Rights Texas)

On — (*Registered, but did not testify*: Tim Bray and Scott Schalclin, HHSC)

BACKGROUND: Health and Safety Code ch. 574, subch. G governs the administration of medication to a patient under court order for mental health services. Under sec. 574.106, a court may issue an order authorizing the administration of one or more classes of psychoactive medication to a patient who:

- is under a court order to receive inpatient mental health services; or
- is in custody awaiting trial in a criminal proceeding and was ordered to receive inpatient mental health services in the six months preceding a hearing under this section.

Under sec. 574.103, a person may not administer a psychoactive medication to a patient under court-ordered inpatient mental health services who refuses to take the medication voluntarily unless certain

circumstances exist, including if the patient is under an order issued under Section 574.106 authorizing the administration of the medication regardless of the patient's refusal.

Under Health and Safety Code sec. 592.156, a court could 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.

Health and Safety Code sec. 594.032 allows the transfer of a court-committed resident of a residential care facility to a state mental hospital for mental health care under certain circumstances.

Health and Safety Code sec. 594.014 provides that a client cannot be transferred to another facility or discharged from intellectual disability services unless the client is given the opportunity to request and receive an administrative hearing to challenge the proposed transfer or discharge.

A small number of State Supported Living Center (SSLC) residents experience intensive behavioral or psychiatric needs beyond the supports available in typical SSLC settings, and concerns have been raised regarding the current procedural hurdles for temporary transfers of such residents to different settings and the separate mental health commitment order that state hospitals must obtain before they can compel medications for such residents if hospitalization is needed. There have been calls to provide a better continuity of care for this group of residents.

DIGEST:

CSHB 1824 would include patients transferred from a residential care facility to an inpatient mental health facility in the provisions governing the administration of psychoactive medication to patients under court order for mental health services.

The bill also would allow the Health and Human Services Commission (HHSC) to establish a pilot program for the temporary transfers of residents from originating residential care facilities to alternate residential care facilities to provide behavioral health or psychiatric services for those

residents.

Pilot Program. The pilot program would have to include one alternate residential care facility for psychiatric services and one or two alternate residential care facilities for intensive behavioral health services.

The HHSC executive commissioner, in consultation with a work group, would be required to specify by rule the types of information the commission would have to collect during the pilot program to:

- evaluate the outcome of the program;
- ensure the rights of individuals in the program were commensurate with the rights of individuals at the originating facility, as appropriate; and
- ensure services provided under the program met applicable requirements for staff member to resident ratios.

The HHSC executive commissioner also would be required to establish the work group to consult in adopting the rules. The group would be composed of:

- two intellectual disability advocates, one of whom was from Disability Rights Texas;
- one representative from a local intellectual and developmental disability authority;
- a board certified behavioral analyst with specified expertise;
- a psychiatrist with specified expertise;
- a psychologist with specified expertise;
- a current or former resident of a state supported living center (SSLC);
- a family member or guardian of a current or former resident of an SSLC; and
- any other individual the commissioner considered appropriate.

Alternate residential care facility for psychiatric services. Under the pilot

program, the alternate residential care facility for psychiatric services would be required to:

- use an interdisciplinary treatment team to provide clinical treatment similar to the clinical treatment provided at a state hospital and directed toward lessening the signs and symptoms of mental illness;
- employ or contract for the services of at least one psychiatrist and employ a board certified behavioral analyst who both had expertise in diagnosing and treating individuals with intellectual disabilities;
- assign staff members to residents in the program at an average ratio not to exceed three residents to one direct support professional during the day and evening and six residents to one direct support professional over night;
- provide additional training to direct support professionals working on the alternate psychiatric care unit regarding the service delivery system for residents on that unit; and
- ensure that each psychiatric unit complied with certain certification requirements under Medicaid, as appropriate.

Before the temporary transfer of a resident to an alternate psychiatric residential care unit, a resident would have to be examined by a licensed psychiatrist who indicated that the resident was presenting with symptoms of mental illness to the extent that care, treatment, and rehabilitation could not be provided in the originating facility. HHSC could transfer such a resident for an initial period not to exceed 60 days for the purposes of receiving psychiatric services.

Alternate residential care facility for behavioral health services. Under the pilot program, an alternate residential care facility for behavioral health services would be required to:

- use an interdisciplinary treatment team specially trained to provide clinical treatment designed to serve the residents;
- employ board certified behavioral analysts with expertise in diagnosing and treating individuals with intellectual disabilities to

- provide a ratio of one analyst to each 12 beds full-time;
- employ a professional qualified to provide counseling consistent with evidence-based, trauma-informed treatment;
- assign staff members to residents at a specified ratio;
- provide additional training to direct support professional working at the alternate facility as specified by the bill; and
- ensure that the intensive behavioral health units complied with certain certifications under Medicaid.

Before the temporary transfer of a resident to an intensive behavioral health unit, an interdisciplinary team would have to determine whether the resident was an individual who remained likely to cause substantial bodily injury to others and required an intensive behavioral health environment to continue treatment and protect others, despite the team having on two or more occasions developed or revised an action plan in response to the occurrence of a significant event and provided appropriate treatment and implementation of the plan.

A significant event would include the rate of the resident's challenging behavior remaining consistently above baseline for at least four of six months after implementation of the action plan and either the intensity of the behavior having caused serious injury to others or the resident's physical aggression to others having resulted in more than three crisis restraints in the last 30 days.

In making its determination on a temporary transfer of a resident to an alternate behavioral facility, the interdisciplinary team would be required to document and collect evidence regarding the reason the resident required an intensive behavioral health environment to continue treatment and protect other residents or the general public. The team would have to provide its findings, including any documentation and evidence, to:

- the HHSC associate commissioner with responsibility for SSLCs;
- the director of the SSLC;
- the independent ombudsman;
- the resident or the resident's parent, if the resident was a minor; and

- the resident's legally authorized representative.

The HHSC associate commissioner with responsibility for SSLCs could make an exception to the admission criteria to require a resident to participate in the established program. The exception would have to be based on a determination that the resident's behavior posed an imminent threat to others.

A resident transfer to an alternate residential care facility for behavioral health services could not exceed six months except under certain circumstances allowing an extension of a one-time period of three months if an interdisciplinary team determined:

- the resident met the standard for admission to the program;
- an extension would likely enable the resident to no longer meet the criteria for the program; and
- the extension was approved by the HHSC associate commissioner with responsibility for SSLCs.

At the end of the required time period for the transfer, the resident would have to be returned to the originating facility within 7 days after the expiration of that period. If the treatment team determined at any time during a resident's transfer that the resident no longer required an intensive behavioral health environment, the resident would have to be transferred back to the originating facility within 7 days after the determination was made.

If the HHSC associate commissioner responsible for SSLCs determined that there were extenuating circumstances preventing the transfer within the specified time periods, the commissioner could extend the period by additional three-day periods for as long as the extenuating circumstances prevented the transfer.

Hearing and appeal. A resident would be entitled to an expedited administrative hearing to challenge a determination made by the HHSC associate commissioner requiring temporary transfer to a behavioral

health services facility despite admission criteria. The hearing would have to be held within seven days of the date of the determination by the HHSC associate commissioner.

A resident subject to a transfer decision based on the admission criteria for a temporary transfer to a behavioral health facility would be entitled to an administrative hearing. The hearing would be limited to determining whether the transfer decision complied with the admission criteria established by the bill. A resident could waive the right to such a hearing, but if a hearing was requested, the transfer could not occur until after the hearing.

A resident would be entitled to a hearing to challenge an extension of their temporary transfer to a behavioral health facility.

An individual could appeal a decision made at a hearing by filing the appeal in a district court in Travis County by the 30th day after the date a final order was provided to the individual. The appeal would be by trial de novo.

Transfer, return, discharge. A voluntary resident could not be temporarily transferred to an alternate residential care facility under the pilot program without legally adequate consent to the transfer.

A temporary transfer under the program would not be considered a permanent transfer and would not be a discharge from the originating care facility. The originating facility would be required to maintain a vacancy for the resident while the resident was participating in the program, and a resident would have to be returned to the originating facility after participating.

A resident transferred to an alternate facility under the program who no longer required treatment at a residential care facility could be transferred to an alternative placement or discharged directly from the alternate facility without returning to the originating facility.

Other provisions. By November 1, 2022, HHSC would be required to consult with the work group established by the bill and adopt any necessary rules to implement the bill's pilot program.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2021.