

BILL ANALYSIS

Senate Research Center

S.B. 443
By: Moncrief
Jurisprudence
2-20-97
As Filed

DIGEST

Currently, Texas law provides no legal remedy for individuals who are wrongly referred to psychiatric facilities and who receive medically unnecessary services. An interim study prior to the 73rd Legislature uncovered significant abuses by psychiatric facilities, including fraudulent referrals and admissions of individuals who had no need of psychiatric services. While the legislature passed several psychiatric hospital reform measures during the 73rd legislative session, problems remain. This legislation provides a mechanism whereby persons can expunge information regarding medically unnecessary psychiatric admissions and services from their medical records.

PURPOSE

As proposed, S.B. 443 establishes the remedies for fraudulent referrals to mental health facilities and provides penalties.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 4G, Health and Safety Code, by adding Chapter 322, as follows:

CHAPTER 322. EXPUNCTION OF RECORDS RELATING TO CERTAIN MENTAL HEALTH FACILITY ADMISSIONS

Sec. 322.001. DEFINITION. Defines "mental health facility."

Sec. 322.002. RIGHT TO EXPUNCTION. Provides that a person who has been admitted to a mental health facility is entitled to have all records and files relating to the admission expunged if the admission has been found by a court to have been medically unnecessary; the person has been released from the facility; and the person has not been readmitted to a facility within a certain time period.

Sec. 322.003. PROCEDURE FOR EXPUNCTION. Authorizes a person who is entitled to expunction of records under Section 322.003 to file a petition requesting expunction in a court of appropriate jurisdiction. Requires the petitioner to provide a list of all health care providers, hospitals, individuals, and facilities believed to have records or files subject to expunction. Sets forth the terms by which the court is required to set a hearing; give notice of the hearing; and enter an order directing expunction and directing the individuals or entities to turn over all appropriate records and files. Establishes the conditions by which each individual and entity named in the order is required to relinquish or obliterate the relevant records and files. Establishes that the court records concerning the expunction proceeding are not open for inspection except by the petitioner.

Sec. 322.004. EFFECT OF EXPUNCTION. Prohibits the release, dissemination, or use of the expunged records and files after entry of an expunction order; and authorizes the petitioner to deny the occurrence of the admission and the existence of the expunction order. Prohibits the petitioner, on entry of an expunction order, from pursuing any cause of action

arising from the activities memorialized in the expunged records against the facility or health care providers subject to the expunction.

Sec. 322.005. VIOLATION OF EXPUNCTION ORDER. Provides that a person who acquires knowledge of an admission to a mental health facility and who knows of an order expunging the records and files relating to that admission commits a Class A misdemeanor if the person knowingly releases, disseminates, or otherwise uses the records or files.

Sec. 322.006. EXPIRATION OF CHAPTER. Provides that this chapter expires January 1, 2005.

SECTION 2. Effective date: September 1, 1997.

SECTION 3. Emergency clause.