

BILL ANALYSIS

Senate Research Center

S.B. 85
By: Moncrief
Health & Human Services
2-10-97
As Filed

DIGEST

Currently, Texas law requires the members of a surrogate consent committee to be composed of individuals trained in certain fields, and requires the committee to designate its own committee chair and to perform certain duties in connection with an application for treatment. This bill will add professionals trained in nursing to the list of individuals qualified to serve on a surrogate consent committee, require the Texas Department of Mental Health and Mental Retardation to appoint a committee chair, and transfer some of the duties of the committee to the department and to medical assistance programs serving persons with mental retardation who receive care in intermediate care facilities.

PURPOSE

As proposed, S.B. 85 provides regulations for surrogate decision making within the Texas Department of Mental Health and Mental Retardation.

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 Sections 597.043(c) and (f), Health and Safety Code, to add health care professionals with specialized training in nursing to the list of qualified individuals from which members of the surrogate consent committee (committee) are drawn. Requires the Texas Department of Mental and Mental Retardation (department), rather than the committee, to designate a committee chair.

SECTION 2. Amends Section 597.044(b), Health and Safety Code, to require an application for a treatment decision to include a description of generally accepted alternatives to the proposed treatment, including the risks and potential benefits to the client of the alternatives, and the reasons for rejecting the alternatives. Renumbers existing subdivisions (5)-(7) as (6)-(8).

SECTION 3. Amends Section 597.045, Health and Safety Code, as follows:

Sec. 597.045. NOTICE OF REVIEW OF APPLICATION FOR TREATMENT DECISION. Requires the department to appoint a committee following receipt of an application for a treatment decision that meets the requirements of Section 597.044(b). Deletes requirement that the department notify pro bono attorney programs in the area in which the client resides of the intent to review an application for treatment decision. Requires the ICF-MR facility (a medical assistance program serving persons with mental retardation who receive care in intermediate care facilities) with assistance from the department to send notice of the review to certain individuals actively involved in the care and welfare of the client. Makes a conforming change.

SECTION 4. Amends Section 597.046(c), Health and Safety Code, to make conforming and nonsubstantive changes.

SECTION 5. Amends Sections 597.048(a), (e), and (f), Health and Safety Code, to require the

committee to note in the committee's record the reason the committee did not interview and observe the client before making a determination of the client's best interest. Authorizes, rather than requires, the committee to suspend review of the application if a person applies for appointment as the client's guardian. Makes nonsubstantive and conforming changes.

SECTION 6. Amends Section 597.049(d), Health and Safety Code, to require the committee to determine a date on which the consent expires.

SECTION 7. Amends Section 597.050(b), Health and Safety Code, to require the ICF-MR facility, rather than the committee, to send a copy of the committee's opinion to certain individuals and the department. Deletes the requirement that the director of the client's ICF-MR facility be notified. Makes conforming changes.

SECTION 8. Amends Section 597.052(b), Health and Safety Code, to authorize the interdisciplinary team to consent to psychoactive medication subsequent to the initial consent for administration of psychoactive medication made by a surrogate consent committee in accordance with rules of the department until the expiration date of the consent.

SECTION 9. Amends Section 597.054, Health and Safety Code, to delete the requirement that the committee phase in its initial review process for applications for treatment decisions regarding adult clients who do not have legal guardians and who are receiving psychoactive medication. Makes a conforming change.

SECTION 10. Repealer: Section 597.055, Health and Safety Code (Expiration).

SECTION 11. Emergency clause.
Effective date: upon passage.