BILL ANALYSIS

Senate Research Center   S.B. 209
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Jurisprudence
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As Filed

DIGEST

Currently, questions surround the legality of surrogate consent committees' authorization to make major treatment decisions for mentally retarded intermediate care facilities for persons with mental retardation (ICF-MR) patients, because the law creating authorization expired before it went into effect. S.B. 209 reinstates and establishes the authority of the committees' powers to perform surrogate decision-making.

PURPOSE

As proposed, S.B. 209 regulates the surrogate decision-makers and surrogate consent committees' power to make decisions concerning medical treatment for clients.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Board of Mental Health and Mental Retardation in SECTION 1 (Sections 597.002, and 597.021(a) and (b), Health and Safety Code) and to the Texas Department of Mental Health and Mental Retardation in SECTION 1 (Section 597.043 (e), Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Reenacts Chapter 597, Health and Safety Code, as amended by Chapter 450, Acts of the 75th Legislature, 1997, as follows:

CHAPTER 597. CAPACITY OF CLIENTS TO CONSENT TO TREATMENT

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 597.001. DEFINITIONS. Defines "highly restrictive procedure," "client," "committee," "ICF-MR," "interdisciplinary team," "major medical and dental treatment," "psychoactive medication," and "surrogate decision-maker."

Sec. 597.002. RULES. Authorizes the Texas Board of Mental Health and Mental Retardation (board) to adopt rules by the 180th day after the effective date of this chapter.

Sec. 597.003. EXCEPTIONS. Sets forth circumstances in which this chapter does not apply to certain decisions.

SUBCHAPTER B. ASSESSMENT OF CLIENT'S CAPACITY; INCAPACITATED CLIENTS WITHOUT GUARDIANS

Sec. 597.021. ICF-MR ASSESSMENT OF CLIENT'S CAPACITY TO CONSENT TO TREATMENT. Authorizes the board, by rule, to require an intermediate care facility for persons with mental retardation (ICF-MR) to make treatment decisions when there is evidence to suggest that an individual is incapable of doing so. Requires the use of a uniform assessment process to determine a client's capacity to make treatment decisions.

SUBCHAPTER C. SURROGATE CONSENT FOR ICF-MR CLIENTS

Sec. 597.041. SURROGATE DECISION-MAKERS. Sets forth a list of actively involved adults authorized to consent to medical treatment on behalf of a client who lacks a legal guardian and also who lacks the capacity to make a decision concerning medical treatment. Provides that a surrogate decision-maker is not liable for choices made on behalf of the client, and that the decisions carry the same validity as if the client had the capacity to make them. Provides that only a court of record under Chapter V, Texas Probate Code, has the power to resolve a dispute about the right to act as a surrogate decision-maker.

Sec. 597.042. SURROGATE CONSENT COMMITTEE ESTABLISHED; DEPARTMENTAL SUPPORT. Requires the Texas Department of Mental Health and Mental Retardation (department) to maintain a list of people qualified to serve on a surrogate consent committee (committee). Requires the department to provide staff and assistance to perform the duties of this subchapter.

Sec. 597.043. COMMITTEE MEMBERSHIP. Requires a committee to be composed of three to five members and requires consensus from members regarding treatment decisions. Sets forth a list of prohibitions for committee membership, and requirements for the composition of the committee. Requires at least one member of the committee to fulfill the qualifications in Subsection (c). Requires a member of the committee, by rule, to participate in education and training. Requires the department to designate a committee chair.

Sec. 597.044. APPLICATION FOR TREATMENT DECISION. Requires the ICF-MR facility to file an application for a treatment decision under certain conditions including the lack of a decision-maker. Requires an application to be in the form prescribed by the department, and to be signed by the applicant. Sets forth other information required to be included in the application.

Sec. 597.045. NOTICE OF REVIEW OF APPLICATION FOR TREATMENT DECISION. Requires the department to appoint a committee after receipt of an approved application. Requires the ICF-MR facility to schedule a review of the application. Requires the ICF-MR facility to send certain information concerning the committee, the application, and opportunities to appeal, to the client and actively involved individuals.

Sec. 597.046. PREREVIEW OF APPLICATION. Requires the committee chair to review the application to assess the need for additional information necessary to determine a client's best interest concerning a treatment decision. Authorizes a committee member to consult with certain non-committee members. Requires the department to provide consultation with a health care professional when reviewing a treatment about psychoactive medication, if the committee does not include an individual listed in Section 597.043(c)(1).

Sec. 597.047. CONFIDENTIAL INFORMATION. Requires certain persons to provide any information requested by the committee that is relevant to the client's need for treatment.

Sec. 597.048. REVIEW OF APPLICATION. Requires the committee to review the application as provided in the notice under Section 597.045. Entitles certain persons to present evidence during the application review. Authorizes the committee to take testimony or review evidence from any person who might assist in determining the client's best interest. Provides that formal rules of evidence do not apply to committee proceedings. Requires the committee to interview the client to determine the client's best interests, and, if this proves impossible, requires the reason to be documented. Authorizes the committee chair to suspend review of the application for five days if any person applies for appointment as the client's guardian in accordance with the Texas Probate Code.

Sec. 597.049. DETERMINATION OF BEST INTEREST. Requires the committee to determine whether the proposed treatment promotes the client's best interest, and sets forth provisions regarding guardianship decisions. Requires the committee to consider fully the client's preference as articulated at any time, and requires the committee to consent or refuse treatment on the client's behalf. Requires the committee to determine effective and expiration dates for consent. Provides that a committee member is not liable for choices made on behalf of the client.

Sec. 597.050. NOTICE OF DETERMINATION. Requires the committee to issue a written opinion of its determinations, and other information. Requires the committee to send a copy of its opinion to certain persons.

Sec. 597.051. EFFECT OF COMMITTEE'S DETERMINATION. Provides that this chapter does not limit the availability of other lawful means of obtaining a client's consent for medical treatment.

Sec. 597.052. SCOPE OF CONSENT. Authorizes the committee or the surrogate decision-maker to release certain records. Sets forth provisions for the administration of psychoactive medication. Authorizes certain persons to consent to decisions involving risk to client protection and rights.

Sec. 597.053. APPEALS. Authorizes certain persons to appeal the committee's decision by taking certain actions. Requires a person to file an appeal by the 15th day after the effective date of the committee's determination. Authorizes the appellant to request a transfer of the hearing under certain conditions, and requires the judge to transfer the case. Requires a copy of the petition to be served on all parties of record in the proceedings before the committee. Authorizes the court to issue a restraining order to facilitate the appeal under certain conditions. Requires the court to expedite the trial if the restraining order is granted.

Sec. 597.054. PROCEDURES. Requires each ICF-MR to develop procedures for the committees. Provides that a committee is not subject to certain chapters of the Government Code.

SECTION 2.   Emergency clause.
            Effective date: upon passage.