

BILL ANALYSIS

Senate Research Center
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S.B. 35
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 35 protects a patient's right to refuse or consent to psychiatric medications by eliminating the use of *pro re nata* (PRN) (i.e., *as needed*) psychotropic medications via injection, except in the event of a psychiatric emergency, an overriding court order, or written consent given by the patient. This would not prohibit or limit a physician's ability to order the injection of emergency psychotropic medications, but only limit the method by which a physician may order PRN psychiatric medications.

Currently, the Department of State Health Services (DSHS) allows staff to administer PRN medications by injection. According to the Texas Administrative Code, PRN medication only may be used with the consent of a patient. Allowing psychotropic medications to be written as injectable, PRN in effect allows the medication to be used as an emergency medication, in the absence of an emergency, without the need for a corresponding doctor's order, in violation of state policy and constitutional law. This is documented in death investigation records.

Medications can be provided to patients on a standing order or on an as-needed (PRN) basis as long as the patient consents to the medication. The prescribing of the PRN medication may not be substituted as an emergency medication, but instead, only can be administered if appropriate consent is obtained. Strict procedures apply when it becomes necessary to override a patient's objections to treatment. It only can be done in two situations: when there is a psychiatric emergency, or, after a hearing, when a court orders the administration of medication over the patient's refusal.

There currently is no ban on the use of PRN orders for psychotropic medications via injection. There is the potential for abuse of PRN medications by injection because they can be improperly used as emergency medications. If a person willingly takes medications there are no grounds for it to be ordered via injection versus orally unless there is a compelling medical reason. Allowing psychotropic medications to be administered PRN by injection makes it easy for staff to use this route of administration when the patient is not willing to consent to taking the medications orally, even though PRN medications only may be used with the consent of the patient. When staff are given the option to take the administration of the psychiatric medication into their own hands and are allowed to do so on an "as needed" basis, they may use the medications as a means of discipline, punishment, coercion, or merely out of convenience for staff members.

This legislation requires DSHS to develop rules to ensure that PRN injectable psychoactive medications are not abused and are only used in emergency situations.

As proposed, S.B. 35 amends current law relating to the *pro re nata* administration of psychoactive medication in certain residential health care facilities.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 576.0255, Health and Safety Code) and SECTION 3 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 576.025(a), Health and Safety Code, to prohibit, subject to Section 576.0255, the administration of a psychoactive medication to a patient receiving voluntary or involuntary mental health services who refuses the administration unless certain conditions are met.

SECTION 2. Amends Subchapter B, Chapter 576, Health and Safety Code, by adding Section 576.0255, as follows:

Sec. 576.0255. PRO RE NATA ADMINISTRATION OF PSYCHOACTIVE MEDICATION IN CERTAIN RESIDENTIAL HEALTH CARE FACILITIES. (a) Requires the executive commissioner of the Health and Human Services Commission (executive commissioner), for each health and human services agency that regulates the care or treatment of a resident at a facility, to adopt rules to govern the pro re nata administration of psychoactive medication to facility residents.

(b) Requires that the rules adopted under Subsection (a):

(1) allow for the pro re nata administration of a psychoactive medication by injection in a medication-related emergency; under a court order, such as an order described by Section 576.025(a)(4) (relating to the administration of medication regardless of the patient's refusal as authorized by an order issued under Section 574.106) or (5) (relating to the administration of medication regardless of the patient's refusal as authorized by an order issued under Article 46B.086, Code of Criminal Procedure); or on a per request basis by a facility resident, subject to Subsection (d);

(2) require a practitioner who administers psychoactive medication in a medication-related emergency to document in the resident's clinical record the administration, including the reason for the administration and the effect of the administration, using specific medical and behavioral terms;

(3) prescribe training on the criteria that must be met to administer psychoactive medication pro re nata in a medication-related emergency; and

(4) require a person employed by a facility to attend training on a resident's consent to treatment and refusal of consent to treatment that includes information instructing staff on identification of behaviors signifying a resident's refusal to consent to administration of medication, and effective intermediate measures to calm residents in distress by the use of methods other than control and intervention.

(c) Prohibits a nurse licensed in this state and employed by a facility, in a medication-related emergency, from administering psychoactive medication pro re nata by injection unless the nurse has attended the training under Subsection (b)(3).

(d) Requires the facility, except as otherwise provided by Section 576.025 or rules adopted under this section, before each individual pro re nata administration of a psychoactive medication by injection, to first obtain from the resident a signed consent. Requires that the signed consent indicate that the resident prefers administration of the medication by injection over oral administration.

(e) Defines "facility," "health and human services agency," "medication-related emergency," and "psychoactive medication" in this section.

SECTION 3. (a) Requires the executive commissioner, not later than January 1, 2014, to adopt the rules required by Section 576.0255, Health and Safety Code, as added by this Act.

(b) Provides that a health care practitioner subject to Section 576.0255, Health and Safety Code, as added by this Act, is not required to comply with that section until January 1, 2014.

SECTION 4. Effective date: September 1, 2013.