

SUBJECT: Destroying records of wrongful admissions to mental health facilities

COMMITTEE: Public Health — committee substitute recommended

VOTE: 5 ayes — Berlanga, Hirschi, Glaze, Janek, Maxey

0 nays

3 absent — Coleman, Davila, Delisi

SENATE VOTE: On final passage, Local and Uncontested Calendar, March 26 — 31-0

WITNESSES: (*On House companion, HB 1308*)

For — Douglas Cameron, Psychee Coalition International; Traci J. McCorkle; Joyce Bieganowski; Kevin Leyendecker

Against — None

DIGEST: CSSB 443 would allow courts to seal or destroy records pertaining to former mental health patients who were admitted to or treated by mental health facilities absent any medical necessity. Records pertaining to patients who had attained majority could be ordered destroyed; records pertaining to minors would have to be sealed until two years after the minor attained majority, at which time they would be destroyed unless the former patient petitioned otherwise. Sealed records could not be opened by anyone except the former patient.

The bill would apply to former mental health patients who were admitted between January 1, 1985, and December 31, 1993, to a mental health facility that pled guilty to unlawfully conspiring to offer and pay remuneration for referrals to its services. It would not apply to patients committed to a facility by court order or patients who had not been released from the facility.

CSSB 443 would specify procedures that former patients would have to follow in delineating which records would be subject to an order. It also would establish procedures for notifying providers and facilities and assembling, sealing, and destroying records. Entities subject to a court order

issued under its provisions would have to delete all references identifying the former mental patient from their records and record storage systems.

Former mental health patients successfully petitioning for an order could deny without civil or criminal liability for perjury the existence of any record subject to the order and the order itself, as well as their admission to or treatment at any facility that was covered by the order. These former patients could not file an action against a facility or health care provider related to an event or activity that formed the basis of a record subject to the court's order. However, juveniles could file an action or complaint at any time before their records were destroyed.

Persons who violated court orders regarding destruction or sealing of records would commit a Class B misdemeanor, with a maximum penalty of 180 days in jail and a \$2,000 fine.

CSSB 443 would take effect September 1, 1997, and would apply to records created before, on or after that date. The changes in law made by the bill would apply only to an action filed on or before January 1, 1999. Provisions for bringing suit to seal or destroy records; procedures for petition, notice, hearing and order; and required actions following a court order would expire January 1, 1999.

**SUPPORTERS
SAY:**

CSSB 443 would allow individuals who were fraudulently admitted to mental health facilities to remove information regarding those referrals from their medical records. An interim study prior to the 73rd session uncovered significant abuses by psychiatric facilities, including fraudulent referrals and admission of individuals who had no need for psychiatric services. While the Legislature was able to put protections into law to keep many of those abuses from recurring, many individuals who were victimized are still feeling the effects because records of the fraudulently ordered psychiatric treatment remain. These records can subject those individuals to discrimination in the application process for jobs, college, the military, security clearances, health insurance and life insurance for the rest of their lives.

CSSB 443 would solve this problem by allowing these individuals to deny their fraudulent admission to a mental health facility without being subject

to perjury if they could prove in court that the referral to the facility was not medically necessary. The records regarding fraudulent admission and treatment could also be expunged from their health records.

The bill would not impose undue burdens on facilities or persons who have records relating to fraudulent mental health care. It would define very narrowly who could pursue this remedy to apply only to those persons who were admitted between certain dates to a facility that has pled guilty to paying kickbacks or conspiracy to defraud. In addition, the bill would put the burden of determining the location of all relevant medical records on the person filing suit, and would require notice to any person or entity possessing records that may be ordered expunged so that they would have the opportunity to appear in court if they did not agree that the records should be expunged.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute was drafted by the Legislative Council and added the provision relating to the ability of juvenile former mental health patients to file an action or complaint before records were destroyed.