

SUBJECT: Administration of psychoactive medication to residential care clients

COMMITTEE: Human Services — favorable, without amendment

VOTE: 8 ayes — Rose, Herrero, Darby, Elkins, Hernandez, Legler, Naishtat, Walle
0 nays
1 absent — Hughes

SENATE VOTE: On final passage, April 30 — 31-0

WITNESSES: For — Aaryce Hayes; (*Registered, but did not testify:* Dawn Choate, The Arc of Texas; Kathryn Lewis, Advocacy, Inc.; Justin Marlin, Texans Care for Children)
Against — None
On — Colleen Horton, Texas Center for Disability Studies

BACKGROUND: Under Health and Safety Code, sec. 591.003 a “client” is a person receiving mental retardation services from the department or a community center.

Under Health and Safety Code, sec. 592.031, each client has the same rights as other citizens of the United States and Texas unless the client’s rights have been lawfully restricted. Under Health and Safety Code, sec. 592.038, each client has the right to not receive unnecessary or excessive medication. Medication may not be used as punishment, for the convenience of the staff, as a substitute for a habilitation program, or in quantities that interfere with the client’s habilitation program.

Medication for each client may be authorized only by prescription of a physician, and a physician must closely supervise its use.

DIGEST: SB 750 would amend the Health and Safety Code to give clients the right to refuse psychoactive medications and would require that clients give

consent in order to receive these medications. The bill would add rules and regulations that would have to be followed before psychoactive medications were administered to a person receiving voluntary or involuntary residential care services.

Right to refuse psychoactive medication. SB 750 would amend sec. 592.038 to grant each client the right to refuse psychoactive medication. SB 750 also would amend sec. 592.054, to require that consent be obtained before the administration of psychoactive medications.

Administration of psychoactive medication. SB 750 would add sec. 592.082 to establish requirements for the administration of psychoactive medication against a client's wishes. A person would not be allowed to administer a psychoactive medication to a client who was receiving voluntary or involuntary residential care services and refused the administration of the drugs unless:

- the client was having a medication-related emergency;
- the refusing client's representative authorized by law to consent on behalf of the client had consented to the administration;
- the administration of the medication, regardless of the client's refusal, was authorized by a court order.

Consent to the administration of psychoactive medication given by a client or by a person authorized by law to consent on behalf of the client would only be valid, if:

- the consent was given voluntarily and without coercive or undue influence;
- the treating physician or a person designated by the physician provided to the client:
 - the specific condition to be treated;
 - the beneficial effects on that condition expected from the medication;
 - the probable health care consequences of not consenting to the medication;
 - the generally accepted alternatives for the medication, if any, and why the physician recommends that they be rejected; and
 - the proposed course of the medication;

- the client and, if appropriate, the clients' representative authorized by law to consent on behalf of the client was informed in writing that consent would be revoked; and
- the consent was evidenced in the client's clinical record by a signed form prescribed by the residential care facility or by a statement of the treating physician or a person designated by the physician that documented that consent was given by the appropriate person and the circumstances under which the consent was obtained.

If the treating physician designated another person to provide the client with pertinent information about the medication, the physician would be required to meet with the client or the client's representative to review the information and answer any questions.

A client's refusal or attempt to refuse to receive psychoactive medication, whether given verbally or by other indications or means, would be required to be documented in the client's clinical record.

In prescribing psychoactive medication, a treating physician would be required to prescribe, consistent with clinically appropriate medical care, the medication with the fewest side effects or least potential for adverse side effects, unless the class of medication had been demonstrated or justified not to be effective clinically. The treating physician would also be required to administer the smallest therapeutically acceptable dosages of medication for the client's condition.

If a physician issued an order to administer psychoactive medication to a client without the client's consent because the client was having a medication-related emergency:

- the physician would be required to document in the client's clinical record in specific medical or behavior terms the necessity of the order and that the physician had evaluated but rejected other generally accepted, less intrusive forms of treatment, if any; and
- treatment of the client with the psychoactive medication would be provided in the manner, consistent with clinically appropriate medical care, least restrictive of the client's personal liberty.

Administration of medication to client committed to residential care facility. SB 750 would create sec. 592.083 to regulate the administration of medication to a client committed to residential care facility. A person

would not be allowed to administer a psychoactive medication to a client who refused to take the medication unless:

- the client was having a medication-related emergency;
- the client was under a court to receive the medication;
- the client was a ward who was 18 years of age or older and the guardian of the person of the ward consented to the administration of psychoactive medication regardless of the ward's expressed preferences regarding treatment with psychoactive medication.

Physician's application for order to authorize psychoactive medication. A physician who was treating a client would be allowed to file an application in a probate court or a court with probate jurisdiction on behalf of the state for an order to authorize the administration of a psychoactive medication regardless of the client's refusal if:

- the physician believed that the client lacked the capacity to make a decision regarding the administration of the psychoactive medication;
- the physician determined that the medication was the proper course of treatment for the client; and
- the client had been committed to a residential care facility or application for commitment had been filed for the client.

An application to authorize psychoactive medication would be required to state:

- that the physician believed that the client lacked the capacity to make a decision regarding administration of the psychoactive medication and the reasons for that belief;
- each medication the physician wanted the court to compel the client to take;
- whether an application for commitment to a residential care facility had been filed;
- whether an order committing the client to a residential care facility had been issued and, if so, under what authority it was issued;
- the physician's diagnosis of the client; and
- the proposed method for administering the medication and, if the method was not customary, an explanation justifying the departure from the customary methods.

An application to authorize psychoactive medication would be filed separately from an application for commitment to a residential care facility.

The hearing on the application would be held on the same date as a hearing on an application for the commitment to a residential care facility, but the hearing must be held not later than 30 days after the filing of the application for the order to authorize psychoactive medication. If the hearing was not held on the same date as the application for commitment to a residential care facility and the client was transferred to a residential care facility in another county, the court would transfer the application to the new county.

The court could grant one continuance on a party's motion and for good cause shown. The court could grant more than one continuance only with the agreement of the parties.

Rights of clients. SB 750 would establish rights of clients. A client for whom an application for an order to authorize the administration of a psychoactive medication was filed would be entitled:

- to be represented by a court-appointed attorney who was knowledgeable about issues to be adjudicated at the hearing;
- to meet with that attorney as soon as possible to prepare for the hearing and to discuss any of the client's questions or concerns;
- to have received, immediately after the time the hearing was set, a copy of the application and written notice of the time, place, and date of the hearing;
- to be informed, at the time personal notice of the hearing was given, of the client's right to a hearing and right to an attorney to prepare for the hearing and to answer any questions or concerns;
- to be present at the hearing;
- to request from the court an independent expert; and
- to be notified orally, at the conclusion of the hearing, of the court's determinations of the client's capacity and best interests.

Hearing and order authorizing psychoactive medication. SB 750 would create Sec. 592.086 to establish rules for conducting a hearing on and rules regarding an order to authorize the administration of psychoactive medication. The court would be allowed to issue an order

authorizing the administration of one or more classes of psychoactive medication to a client who:

- had been committed to a residential care facility; or
- was in custody awaiting trial in a criminal proceeding and was committed to a residential care facility in the six months preceding the hearing.

The court would be allowed to issue an order only if it found after the hearing:

- that the client lacked the capacity to make a decision regarding the administration of the proposed medication and that treatment with the proposed medication was in the best interest of the client; or
- if the client was committed to a residential care facility by a criminal court with jurisdiction over the client, that:
 - the client presented a danger to the client or others in the residential care facility in which the client was being treated as a result of a mental disorder or mental defect as determined under Section 592.087; and
 - treatment with the proposed medication was in the best interest of the client.

In making the finding that treatment with the proposed medication would be in the best interest of the client, the court would consider:

- the client's expressed preferences regarding treatment with psychoactive medication;
- the client's religious beliefs;
- the risks and benefits, from the perspective of the client, of taking psychoactive medication;
- the consequences to the client if the psychoactive medication was not administered;
- the prognosis for the client if the client was treated with psychoactive medication;
- alternative, less intrusive treatments that would be likely to produce the same results as treatment with psychoactive medication; and
- less intrusive treatments likely to secure the client's consent to take the psychoactive medication.

The hearing would be conducted on the record by the probate judge or a judge with probate jurisdiction, except a judge would be allowed to refer a hearing to a magistrate or court-appointed master who had been trained regarding psychoactive medications. The magistrate or master would be allowed to effectuate the notice, set hearing dates, and appoint attorneys as required. A record would not be required if the hearing was held by a magistrate or court-appointed master.

A party would be entitled to a hearing de novo by the judge if an appeal of the magistrate's or master's report was filed with the court before the fourth day after the date the report was issued. The hearing de novo would be held not later than the 30th day after the date the application for an order to authorize psychoactive medication was filed.

If a hearing or an appeal of a master's or magistrate's report would be held in a county court in which the judge was not a licensed attorney, the proposed client or the proposed client's attorney would be allowed request that the proceeding be transferred to a court with a judge who was licensed to practice law in this state. The county judge would transfer the case after receiving the request, and the receiving court would hear the case as if it had been originally filed in that court.

As soon as practicable after the conclusion of the hearing, the client would be entitled to have provided to the client and the client's attorney written notification of the court's determinations. The notification would include a statement of the evidence on which the court relied and the reasons for the court's determinations.

An order would authorize the administration to a client, regardless of the client's refusal, of one or more classes of psychoactive medications specified in the application and consistent with the client's diagnosis. The order would permit an increase or decrease in a medication's dosage, restitution of medication authorized but discontinued during the period the order was valid, or the substitution of a medication within the same class.

The classes of psychoactive medications in the order would be required to conform to classes determined by the MHMR.

An order would be allowed to be reauthorized or modified on the petition of a party. The order would remain in effect pending action on a petition

for reauthorization or modification. "Modification" would mean a change of a class of medication authorized in the order.

Finding that a client presents a danger. SB 750 would create sec. 592.087 to establish requirements for a finding that a client presented a danger to the client or others in a residential-care facility. In investigating the claim and ruling on the order a court would consider:

- an assessment of the client's mental condition; and
- whether the client had inflicted, attempted to inflict, or made a serious threat of inflicting substantial physical harm to the client's self or to another while in the facility.

Appeal. SB 750 would create sec. 592.088 to establish a right to, and rules regarding, an order for administration of psychoactive medications. A client would be allowed to appeal the order in the same manner that a client would an order committing the client to a residential care facility. An order authorizing the administration of medication regardless of the refusal of the client would be effective pending an appeal of the order.

Effect of an order. SB 750 would create sec. 592.089 to place limits on the effect of an order. A person's consent to take a psychoactive medication would not be valid and could not be relied on if the person was subject to an order authorizing the administration of psychoactive medications. The issuance of an order requiring administration of psychoactive drugs would not be a determination of mental incompetency and would not limit in any other respect that person's rights or property rights or legal capacity.

Expiration of an order. SB 750 would create sec. 592.090 to state that an order generally would expire on the anniversary of the date it was issued. An order for a client awaiting trial in a criminal proceeding would expire on the date the defendant was acquitted, was convicted, or entered a plea of guilty or the date on which charges in the case were dismissed. A continued order would be reviewed by the issuing court every six months.

Other provisions.

Competency to stand trial. SB 750 would amend Code of Criminal Procedure, art. 46B.086, which deals with competency to stand trial, to conform with the policies and regulations concerning a court order for the

administration of psychoactive medications that would be required by SB 750.

Definitions. Under SB 750, “capacity” would mean a client’s ability to:

- understand the nature and consequences of a proposed treatment, including the benefits, risks, and alternatives to the proposed treatment; and
- make a decision whether to undergo the proposed treatment.

“Medication-related emergency” would mean a situation where it was immediately necessary to administer medication to a client to provide:

- imminent probable death or substantial bodily harm to the client because the client:
 - overtly or continually was threatening or attempting to commit suicide or serious bodily harm; or
 - was behaving in a manner that indicated that the client was unable to satisfy the client’s need for nourishment, essential medical care, or self-protection; or
- imminent physical or emotional harm to another because of threats, attempts, or other acts the client overtly or continually made or committed.

“Psychoactive medication” would mean medication prescribed for the treatment of symptoms of psychosis or other severe mental or emotional disorders and that was used to exercise an effect on the central nervous system to influence and modify behavior, cognition, or the affective state when treating the symptoms of mental illness. “Psychoactive medication” would be the following categories:

- antipsychotics or neuroleptics;
- antidepressants;
- agents for control of mania or depression;
- antianxiety agents;
- sedatives, hypnotics, or other sleep-promoting drugs; and
- psychomotor stimulants.

Effective date. The bill would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 750 would give clients of Texas' state schools the right to refuse psychoactive medications and would require that clients give consent in order to receive these medications.

Under current law, it is a nonmedical professional — the superintendent of a state school — who consents to psychoactive medications for all residents who do not have capacity and have no guardian. According to the Department of Justice, many residents of Texas state schools receive psychoactive medication without a proper diagnosis. The Department of Justice found that the quality of psychiatric diagnosis in Texas state schools falls far below professionally accepted standards.

The capacity of persons with intellectual disability is constitutionally assumed and it is the Legislature's responsibility to ensure the basic right to be free from unnecessary medications. The bill would implement best practices recommended by the Department of Justice and would make the rights of clients of state schools consistent with the rights of the disabled in other institutions.

The definition used for "medication-related emergency" in SB 750 would incorporate the long-standing practice in the mental-health field of retroactive consent. Once consent was given or the consent requirement was suspended by an emergency situation, the treating physician would be allowed to administer additional psychoactive medications in order to stabilize any unforeseen complication.

**OPPONENTS
SAY:**

SB 750 would not fix the problems it attempts to solve. While it is important to respect an individual's right to control the medications in the individual's body, the bill would not address adequately the issue of unnecessary or harmful medications being administered to clients. While the bill's requirements that a client or the client's guardian be given adequate information to make an informed choice about the medication would be helpful, the most effective fix that could be made would be better training for prescribing physicians and the creation and dissemination of better guidelines to help ensure appropriate levels of medication were administered to clients.

SB 750 would use a definition of "medication-related emergency" that is too restrictive. There are two kinds of medication-related emergencies. The first is a situation in which medication is needed to stabilize or correct an underlying condition. The bill covers this scenario. The second situation

involves the administration of psychoactive drugs to correct a complication, such as a side effect or over-sedation, caused by an administration of other psychoactive drugs. Under the bill, a treating physician could not give these drugs under the medication-related emergency exemption and would need to find proper procedural method to work around a client's lack of consent.