

BILL ANALYSIS

Senate Research Center

S.B. 972
By: Harris
Health & Human Services
3-31-97
Committee Report (Amended)

DIGEST

Currently, every competent person has the right to informed consent, and to refuse medical treatment. In addition, every person has the right to express, through directives to physicians, that person's treatment desires in the event the person becomes incapacitated due to terminal illness or traumatic accident. These laws do not address an individual with mental illness, or a mentally ill patient who has no trusted person to act as a durable power of attorney. This legislation creates an advanced directive statute for mental health treatment that will allow individuals with mental illness to make choices regarding their treatment in the event their illness leaves them incapable of exercising choice at a later date.

PURPOSE

As proposed, S.B. 972 establishes a procedure for making mental health treatment decisions on behalf of an incapacitated individual, and authorizes a declaration for mental health treatment.

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 Title 6, Civil Practice and Remedies Code, by adding Chapter 137, as follows:

CHAPTER 137. DECLARATION FOR MENTAL HEALTH TREATMENT

Sec. 137.001. DEFINITIONS. Defines "adult," "attending physician," "declaration for mental health treatment," "health care provider," "incapacitated," "mental health treatment," and "principal."

Sec. 137.002. PERSONS WHO MAY EXECUTE DECLARATION FOR MENTAL HEALTH TREATMENT; PERIOD OF VALIDITY. Authorizes an adult who is not incapacitated to execute a declaration for mental health treatment, including consent or refusal of treatment. Sets forth the effective and expiration dates of a declaration.

Sec. 137.003. EXECUTION AND WITNESSES. Requires a declaration to be signed by the principal in the presence of two or more subscribing witnesses. Prohibits certain persons from acting as a witness. Requires the witness, for the witness's signature to be effective, to sign a statement regarding the principal's soundness of mind, awareness of the nature of the declaration, and request that the witness serve as a witness to the principal's execution of the document.

Sec. 137.004. HEALTH CARE PROVIDER TO ACT IN ACCORDANCE WITH DECLARATION FOR MENTAL HEALTH TREATMENT. Requires a physician or other health care provider to act in accordance with the declaration for mental health treatment when the principal has been found to be incapacitated. Requires a physician or other provider to continue to seek and act in accordance with the principal's informed consent if the principal is capable of providing informed consent.

Sec. 137.005. LIMITATION ON LIABILITY. Sets forth the terms by which a physician, health or residential care provider, or certain other persons are not liable for professional misconduct for an act of omission done in good faith. Establishes the conditions under which those persons or entities do not engage in professional misconduct.

Sec. 137.006. DISCRIMINATION RELATING TO EXECUTION OF DECLARATION FOR MENTAL HEALTH TREATMENT. Prohibits certain persons or entities from charging a person a different rate, refusing care, or discharging a person because the person has executed a declaration for mental health treatment. Prohibits the same persons or entities from requiring a person to execute a declaration for treatment before admitting the person, insuring the person, or allowing the person to receive care.

Sec. 137.007. USE AND EFFECT OF DECLARATION FOR MENTAL HEALTH TREATMENT. Sets forth the terms by which a physician or health care provider is required to make a declaration a part of the principal's medical record, and shall comply with the declaration. Establishes the conditions by which the physician or other provider is authorized to withdraw from providing treatment if that person is unwilling to comply with the declaration.

Sec. 137.008. DISREGARD OF DECLARATION FOR MENTAL HEALTH TREATMENT. Sets forth the terms by which the physician or other health care provider is authorized to subject the principal to mental health treatment contrary to the principal's wishes as expressed in a declaration. Defines "emergency." Provides that a declaration does not limit any authority provided by Chapter 573 or 574, Health and Safety Code, to take a person into custody or admit or retain a person in a mental health treatment facility. Provides that this section does not apply to the use of electroconvulsive or other convulsive treatment.

Sec. 137.009. CONFLICTING OR CONTRARY PROVISIONS. Sets forth the terms by which mental health treatment instructions contained in a declaration supersede any contrary or conflicting instructions given by a durable power of attorney or guardian after execution of the declaration. Requires treatment instructions to be conclusive evidence of a declarant's preference in a medication hearing.

Sec. 137.010. REVOCATION. Establishes the conditions by which a declaration for mental health treatment is revoked. Requires a principal's care provider who is informed of, or provided with a revocation of, a declaration for treatment to record the revocation and give notice to certain other providers.

Sec. 137.011. FORM OF DECLARATION FOR MENTAL HEALTH TREATMENT. Sets forth the form of a declaration for mental health treatment.

SECTION 2. Emergency clause.

Effective date: upon passage.

SUMMARY OF COMMITTEE CHANGES

Amendment 1.

Page 10, strike lines 6-15 from the form for "Declaration for Mental Health Treatment," and add replacement provisions regarding preferences for emergency treatment.

Amendment 2.

Page 6, line 11, after the word "principal," add ", or principal's guardian, if appropriate,".