

BILL ANALYSIS

Senate Research Center
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S.B. 856
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Health & Human Services
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As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 1993, the 73rd Legislature passed S.B. 332, which created the Consent to Medical Treatment Act. The bill authorized consent for medical treatment to be made by a surrogate decision-maker on behalf of an incapacitated, comatose, or otherwise mentally or physically incapable patient in a nursing facility or hospital. At that time, only a competent adult patient or the patient's temporary or permanent guardian could consent to non-emergency medical or surgical treatment. Hospitals and doctors had found that incapacitated patients often needed immediate treatment for important non-emergency conditions. As such, the Consent to Medical Treatment Act was created.

In 2007, the 80th Legislature passed H.B. 3473, which added "home and community support services" to the list of facilities authorized to seek a surrogate decision-maker under the Consent to Medical Treatment Act.

S.B. 856 adds an adult inmate of a county or municipal jail to the provisions of the Consent to Medical Treatment Act. Amending the statute would allow an additional avenue of relief for individuals in crisis. The bill allows a correctional facility to seek the speedy assistance of a loved one, without the need for a lengthy and expensive court proceeding. S.B. 856 provides guidance and protection for county and municipal jails that want to ensure that treatment decisions are made in the patient's best interest. As an added safeguard for certain advocacy organizations, the bill lists treatments for which a jail cannot seek the consent of a surrogate decision maker.

As proposed, S.B. 856 amends current law relating to consent to certain medical treatments by a surrogate decision-maker on behalf of certain inmates.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 313.004, Health and Safety Code, by amending Subsection (a) and adding Subsection (e), as follows:

(a) Authorizes an adult surrogate from the following list, in order of priority, who has decision-making capacity, is available after a reasonably diligent inquiry, and is willing to consent to medical treatment on behalf of the patient, if an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication, to consent to medical treatment on behalf of the patient:

(1) the patient's spouse;

(2) an adult child of the patient who has the waiver and consent of all other qualified adult children of the patient to act as the sole decision-maker;

(3) a majority of the patient's reasonably available adult children;

(4) the patient's parents; or

(5) the individual clearly identified to act for the patient by the patient before the patient became incapacitated, the patient's nearest living relative, or a member of the clergy.

(e) Prohibits a surrogate decision-maker, notwithstanding any other provision of the chapter, if the patient is an adult inmate of a county or municipal jail, from also consenting to:

(1) psychotropic medication;

(2) involuntary inpatient mental health services; or

(3) psychiatric services calculated to restore competency to stand trial.

SECTION 2. Amends Section 313.005(a), Health and Safety Code, to require the attending physician, if an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail, is comatose, incapacitated, or otherwise mentally or physically incapable of communication and, according to reasonable medical judgment, is in need of medical treatment, to describe the patient's comatose state, incapacity, or other mental or physical inability to communicate in the patient's medical record, and proposed medical treatment in the patient's medical record.

SECTION 3. Effective date: September 1, 2011.