

BILL ANALYSIS

Senate Research Center
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S.B. 1752
By: Uresti
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When patients suffering from mental illness decompensate, family, friends, and health care providers are often left guessing regarding the wishes of the patient.

There is currently a section of the Civil Practice and Remedies Code that provides for advanced directives for patients with mental illness whereby, while lucid, they can specify their wishes regarding the care they would like to receive should they decompensate. However, mental health advocates, attorneys, and judges are largely unaware of this provision as it does not appear in a section of the code with which they are familiar.

The unfortunate result is that this tool, though on the books, is severely underutilized.

S.B. 1752 seeks to increase the awareness and utilization of mental health advanced directives by moving the language from the Civil Practice and Remedies Code to the Health and Safety Code.

As proposed, S.B. 1752 amends current law relating to advance directives for persons with mental illness.

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 166.002(1), Health and Safety Code, to redefine "advance directive."

SECTION 2. Amends Chapter 166, Health and Safety Code, by adding Subchapter E, as follows:

SUBCHAPTER E. ADVANCE DIRECTIVE FOR PERSON WITH MENTAL ILLNESS

Sec. 166.201. DEFINITIONS. Defines "assisted outpatient treatment team" and "mental illness" in this subchapter.

Sec. 166.202. WRITTEN DIRECTIVE BY COMPETENT ADULT; NOTICE TO PHYSICIAN. (a) Authorizes a competent adult to at any time execute a written directive under this subchapter.

(b) Requires the declarant, except as provided by Subsection (c), to sign the directive in the presence of two witnesses who qualify under Section 166.003 (Witnesses), at least one of whom must be a witness who qualifies under Section 166.003(2) (relating to requiring at least one of the witnesses, in any circumstance in which this chapter (Advance Directives) requires the execution of an advance directive or the issuance of a nonwritten advance directive to be witnessed, to meet certain criteria). Requires the witnesses to sign the directive. Prohibits a judge of a court with probate jurisdiction from being a witness.

(c) Authorizes the declarant, in lieu of signing in the presence of witnesses, to sign the directive and have the signature acknowledged before a notary public.

(d) Requires a declarant to notify the declarant's physician of the existence of a written directive. Authorizes another person, if the declarant is incompetent or otherwise mentally or physically incapable of communication, to notify the declarant's physician of the existence of the written directive. Requires the physician to make the directive a part of the declarant's medical record.

Sec. 166.203. FORM OF WRITTEN DIRECTIVE. Authorizes a written directive to be in a certain form as set forth herein.

SECTION 3. Effective date: upon passage or September 1, 2013.