

By: Noble

H.B. No. 4696

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the reporting and investigation of certain allegations
3 of abuse, neglect, and exploitation, the making and investigation
4 of complaints alleging violations of certain health facility
5 licensing requirements, and the content of the employee misconduct
6 registry.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

8 SECTION 1. Section 261.005, Family Code, is amended to read
9 as follows:

10 Sec. 261.005. REFERENCE TO EXECUTIVE COMMISSIONER OR
11 COMMISSION. Unless otherwise provided by a provision of this
12 chapter, in [In] this chapter:

13 (1) a reference to the executive commissioner or the
14 executive commissioner of the Health and Human Services Commission
15 means the commissioner of the department; and

16 (2) a reference to the Health and Human Services
17 Commission means the department.

18 SECTION 2. Section 261.105(c-1), Family Code, is amended to
19 read as follows:

20 (c-1) Notwithstanding Subsections (b) and (c), if a report
21 under this section relates to a child with an intellectual
22 disability receiving services in a state supported living center as
23 defined by Section 531.002, Health and Safety Code, or the ICF-IID
24 component of the Rio Grande State Center, the department shall

1 immediately notify the commission and the commission shall proceed
2 with the investigation of the report as provided by Section
3 261.404. Notwithstanding Section 261.005, in this subsection,
4 "commission" means the Health and Human Services Commission.

5 SECTION 3. Section 261.404, Family Code, is amended by
6 amending Subsections (a), (a-1), (a-2), (a-3), (b), (c), and (d)
7 and adding Subsection (a-4) to read as follows:

8 (a) Notwithstanding Section 261.005, in this section:

9 (1) "Commission" means the Health and Human Services
10 Commission.

11 (2) "Executive commissioner" means the executive
12 commissioner of the Health and Human Services Commission.

13 (a-1) The commission [~~department~~] shall investigate a
14 report of abuse, neglect, or exploitation of a child receiving
15 services from a provider, as those terms are defined by Section
16 48.251, Human Resources Code, or as otherwise defined by rule. The
17 commission [~~department~~] shall also investigate, under Subchapter
18 F, Chapter 48, Human Resources Code, a report of abuse, neglect, or
19 exploitation of a child receiving services from an officer,
20 employee, agent, contractor, or subcontractor of a home and
21 community support services agency licensed under Chapter 142,
22 Health and Safety Code, if the officer, employee, agent,
23 contractor, or subcontractor is or may be the person alleged to have
24 committed the abuse, neglect, or exploitation.

25 (a-2) [~~(a-1)~~] For an investigation of a child living in a
26 residence owned, operated, or controlled by a provider of services
27 under the home and community-based services waiver program

1 described by Section 534.001(11)(B), Government Code, the
2 department, in accordance with Subchapter E, Chapter 48, Human
3 Resources Code, may provide emergency protective services
4 necessary to immediately protect the child from serious physical
5 harm or death and, if necessary, obtain an emergency order for
6 protective services under Section 48.208, Human Resources Code.

7 (a-3) [~~(a-2)~~] For an investigation of a child living in a
8 residence owned, operated, or controlled by a provider of services
9 under the home and community-based services waiver program
10 described by Section 534.001(11)(B), Government Code, regardless
11 of whether the child is receiving services under that waiver
12 program from the provider, the department shall provide protective
13 services to the child in accordance with Subchapter E, Chapter 48,
14 Human Resources Code.

15 (a-4) [~~(a-3)~~] For purposes of this section, Subchapters E
16 and F, Chapter 48, Human Resources Code, apply to an investigation
17 of a child and to the provision of protective services to that child
18 in the same manner those subchapters apply to an investigation of an
19 elderly person or person with a disability and the provision of
20 protective services to that person.

21 (b) The commission [~~department~~] shall investigate a report [~~the~~]
22 under this section under rules developed by the executive
23 commissioner.

24 (c) If a report under this section relates to a child with an
25 intellectual disability receiving services in a state supported
26 living center or the ICF-IID component of the Rio Grande State
27 Center, the commission [~~department~~] shall, within 24 hours [~~one~~

1 ~~hour~~] of receiving the report, notify the facility in which the
2 child is receiving services of the allegations in the report.

3 (d) If, during the course of the commission's ~~[department's]~~
4 investigation of reported abuse, neglect, or exploitation, a
5 caseworker of the commission ~~[department]~~ or the caseworker's
6 supervisor has cause to believe that a child with an intellectual
7 disability described by Subsection (c) has been abused, neglected,
8 or exploited by another person in a manner that constitutes a
9 criminal offense under any law, including Section 22.04, Penal
10 Code, the caseworker shall immediately notify the commission's
11 ~~[Health and Human Services Commission's]~~ office of inspector
12 general and promptly provide the commission's office of inspector
13 general with a copy of the commission's ~~[department's]~~
14 investigation report.

15 SECTION 4. Section 142.009(j), Health and Safety Code, is
16 amended to read as follows:

17 (j) Except as provided by Subsections (h) and (l), a a ~~[an~~
18 ~~on-site]~~ survey may ~~[must]~~ be conducted within 18 months after a
19 survey for an initial license. After that time, an on-site survey
20 must be conducted at least every 36 months.

21 SECTION 5. Section 142.018(b), Health and Safety Code, is
22 amended to read as follows:

23 (b) A home and community support services agency that has
24 cause to believe that a person receiving services from the agency
25 has been abused, exploited, or neglected by an employee of the
26 agency shall report the information to [+

27 ~~[-1-]~~ the commission ~~[department, and~~

1 ~~[(2) the Department of Family and Protective Services~~
2 ~~or other appropriate state agency as required by Section 48.051,~~
3 ~~Human Resources Code].~~

4 SECTION 6. Section 252.039, Health and Safety Code, is
5 amended to read as follows:

6 Sec. 252.039. POSTING. Each facility shall prominently and
7 conspicuously post for display in a public area of the facility that
8 is readily available to residents, employees, and visitors:

9 (1) the license issued under this chapter;

10 (2) a sign prescribed by the commission ~~[department]~~
11 that specifies complaint procedures established under this chapter
12 or rules adopted under this chapter and that specifies how
13 complaints may be registered with the commission ~~[department]~~;

14 (3) a notice in a form prescribed by the commission
15 ~~[department]~~ stating that inspection and related reports are
16 available at the facility for public inspection and providing the
17 commission's ~~[department's]~~ toll-free telephone number that may be
18 used to obtain information concerning the facility;

19 (4) a concise summary of the most recent inspection
20 report relating to the facility;

21 (5) a notice providing instructions for reporting an
22 allegation of abuse, neglect, or exploitation to the commission
23 ~~[Department of Family and Protective Services]~~; and

24 (6) a notice that employees, other staff, residents,
25 volunteers, and family members and guardians of residents are
26 protected from discrimination or retaliation as provided by
27 Sections 252.132 and 252.133.

1 SECTION 7. Section 252.121(a), Health and Safety Code, is
2 amended to read as follows:

3 (a) A person, including an owner or employee of a facility,
4 who has cause to believe that a resident is being or has been
5 subjected to abuse, neglect, or exploitation shall report the
6 suspected abuse, neglect, or exploitation to the commission
7 [~~Department of Family and Protective Services, as required by~~
8 ~~Chapter 48, Human Resources Code, or Chapter 261, Family Code, as~~
9 ~~appropriate~~]. The commission [~~Department of Family and Protective~~
10 ~~Services~~] shall investigate the allegation of abuse, neglect, or
11 exploitation in the manner prescribed by the commission [~~provided~~
12 ~~by Chapter 48, Human Resources Code, or Section 261.404, Family~~
13 ~~Code, as applicable~~].

14 SECTION 8. Section 252.125, Health and Safety Code, is
15 amended to read as follows:

16 Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT.
17 Before the completion of the investigation by the commission
18 [~~Department of Family and Protective Services~~], the commission
19 [~~department~~] shall file a petition for temporary care and
20 protection of a resident if the commission [~~department~~]
21 determines[~~, based on information provided to the department by the~~
22 ~~Department of Family and Protective Services,~~] that immediate
23 removal is necessary to protect the resident from further abuse,
24 neglect, or exploitation.

25 SECTION 9. Sections 253.001(1) and (4), Health and Safety
26 Code, are amended to read as follows:

27 (1) "Commission" means the Health and Human Services

1 Commission [~~"Commissioner"~~ means the commissioner of aging and
2 disability services].

3 (4) "Facility" means:

4 (A) a nursing facility[+
5 [~~(i)~~] licensed by the commission under
6 Chapter 242 [~~department~~]; [~~or~~]

7 (B) an intermediate care facility for
8 individuals with an intellectual disability [~~(ii)~~] licensed by the
9 commission under Chapter 252;

10 (C) [~~(B)~~] an adult foster care provider that
11 contracts with the commission [~~department~~];

12 (D) [~~(C)~~] a home and community support services
13 agency licensed by the commission [~~department~~] under Chapter 142;
14 [~~or~~]

15 (E) [~~(D)~~] a prescribed pediatric extended care
16 center licensed by the commission under Chapter 248A;

17 (F) an assisted living facility licensed by the
18 commission under Chapter 247;

19 (G) a day activity and health services facility
20 licensed by the commission under Chapter 103, Human Resources Code;

21 (H) a residential child-care facility as defined
22 by Section 42.002, Human Resources Code, at which an elderly person
23 or a person with a disability resides or is in the facility's care;

24 (I) a provider who provides home and
25 community-based services under the home and community-based
26 services (HCS) waiver program or the Texas home living (TxHmL)
27 waiver program; or

1 (J) a facility that is exempt from licensure
2 under Section 252.003.

3 SECTION 10. Section 260A.001, Health and Safety Code, is
4 amended by adding Subdivision (1-a) to read as follows:

5 (1-a) "Commission" means the Health and Human Services
6 Commission.

7 SECTION 11. Section 260A.002, Health and Safety Code, is
8 amended by amending Subsections (a-1) and (c) and adding Subsection
9 (d) to read as follows:

10 (a-1) Notwithstanding any other provision of this chapter,
11 a report made under this section that a provider is or may be
12 alleged to have committed abuse, neglect, or exploitation of a
13 resident of a facility other than a prescribed pediatric extended
14 care center shall be investigated by the commission [~~Department of~~
15 ~~Family and Protective Services~~] in accordance with Subchapter F,
16 Chapter 48, Human Resources Code, and this chapter does not apply to
17 that investigation. In this subsection, "facility" and "provider"
18 have the meanings assigned by Section 48.251, Human Resources Code.

19 (c) Except as provided by Subsection (d), a [A] person shall
20 make an oral or electronic report immediately on learning of the
21 abuse, neglect, or exploitation [~~and shall make a written report to~~
22 ~~the department not later than the fifth day after the oral report is~~
23 ~~made~~].

24 (d) A facility or service provider shall submit a provider
25 investigation report to the commission not later than the fifth day
26 after the date a report is made under Subsection (c).

27 SECTION 12. Section 260A.007, Health and Safety Code, is

1 amended by amending Subsection (e) and adding Subsection (e-1) to
2 read as follows:

3 (e) In investigating the report of abuse, neglect,
4 exploitation, or other complaint, the investigator for the
5 department shall:

6 (1) conduct [~~make~~] an unannounced investigation
7 [~~visit to the facility~~] to determine the nature and cause of the
8 alleged abuse, neglect, or exploitation of the resident;

9 (2) interview each available witness, including the
10 resident who suffered the alleged abuse, neglect, or exploitation
11 if the resident is able to communicate or another resident or other
12 witness identified by any source as having personal knowledge
13 relevant to the report of abuse, neglect, exploitation, or other
14 complaint;

15 (3) [~~personally~~] inspect any physical circumstance
16 that is relevant and material to the report of abuse, neglect,
17 exploitation, or other complaint and that may be objectively
18 observed;

19 (4) if an on-site investigation is conducted, make a
20 photographic record of any injury to a resident, subject to
21 Subsection (n);

22 (5) write an investigation report that includes:

23 (A) the investigator's personal observations;

24 (B) a review of relevant documents and records;

25 (C) a summary of each witness statement,

26 including the statement of the resident that suffered the alleged

27 abuse, neglect, or exploitation and any other resident interviewed

1 in the investigation; and

2 (D) a statement of the factual basis for the
3 findings for each incident or problem alleged in the report or other
4 allegation; and

5 (6) for a resident of an institution or assisted
6 living facility, inspect any court order appointing a guardian of
7 the resident who was the subject of the alleged abuse, neglect, or
8 exploitation that is maintained in the resident's medical records
9 under Section 242.019 or 247.070.

10 (e-1) In addition to the requirements under Subsection (e),
11 the commission shall make an unannounced visit to a facility to
12 conduct an investigation of abuse or neglect.

13 SECTION 13. Section 48.0021, Human Resources Code, is
14 amended to read as follows:

15 Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE
16 COMMISSIONER. Unless otherwise provided by a provision of this
17 chapter, in [In] this chapter:

18 (1) a reference to the Health and Human Services
19 Commission means the Department of Family and Protective Services;
20 and

21 (2) a reference to the executive commissioner means
22 the commissioner of the Department of Family and Protective
23 Services.

24 SECTION 14. Section 48.051, Human Resources Code, is
25 amended by adding Subsection (b-1) and amending Subsection (c) to
26 read as follows:

27 (b-1) This subsection applies only to a provider under the

1 home and community-based services (HCS) waiver program or the Texas
2 home living (TxHmL) waiver program, an intermediate care facility
3 licensed under Chapter 252, Health and Safety Code, or a home and
4 community support services agency licensed under Chapter 142,
5 Health and Safety Code. Except as provided by Subsections (a) and
6 (b), a person, including an officer, employee, agent, contractor,
7 or subcontractor of a facility or provider subject to this
8 subsection, having cause to believe that an individual receiving
9 services from the facility or provider is in the state of abuse,
10 neglect, or exploitation shall immediately report to the commission
11 the information required by Subsection (d). Notwithstanding
12 Section 48.0021, in this subsection "commission" means the Health
13 and Human Services Commission.

14 (c) The duty imposed by Subsections (a), (b), and (b-1)
15 [~~(b)~~] applies without exception to a person whose knowledge
16 concerning possible abuse, neglect, or exploitation is obtained
17 during the scope of the person's employment or whose professional
18 communications are generally confidential, including an attorney,
19 clergy member, medical practitioner, social worker, employee or
20 member of a board that licenses or certifies a professional, and
21 mental health professional.

22 SECTION 15. Section 48.251(a), Human Resources Code, is
23 amended by adding Subdivisions (1-a) and (2-a) and amending
24 Subdivision (3) to read as follows:

25 (1-a) "Commission" means the Health and Human Services
26 Commission, notwithstanding Section 48.0021.

27 (2-a) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission,
2 notwithstanding Section 48.0021.

3 (3) "Facility" means:

4 (A) a facility listed in Section 532.001(b) or
5 532A.001(b), Health and Safety Code, [~~including community services~~
6 ~~operated by the Department of State Health Services or Department~~
7 ~~of Aging and Disability Services,~~] as described by those sections,
8 or a person contracting with a health and human services agency to
9 provide inpatient mental health services; [~~and~~]

10 (B) a facility licensed under Chapter 252, Health
11 and Safety Code; and

12 (C) a residential child-care facility as defined
13 by Section 42.002 at which an elderly person or a person with a
14 disability resides or is in the facility's care.

15 SECTION 16. Sections 48.252(b) and (c), Human Resources
16 Code, are amended to read as follows:

17 (b) The department may not investigate under this
18 subchapter reports of abuse, neglect, or exploitation alleged or
19 suspected to have been committed by a provider that is operated,
20 licensed, certified, or registered by a state agency that has
21 authority under this chapter or other law to investigate reports of
22 abuse, neglect, or exploitation of an individual by the provider.
23 The department shall forward any report of abuse, neglect, or
24 exploitation alleged or suspected to have been committed by a
25 provider described by this subsection to the commission
26 [~~appropriate state agency~~] for investigation.

27 (c) The commission [~~department~~] shall receive and

1 investigate under this subchapter reports of abuse, neglect, or
2 exploitation of:

3 (1) an individual who lives in a residence that is
4 owned, operated, or controlled by a provider who provides home and
5 community-based services under the home and community-based
6 services waiver program described by Section 534.001(11)(B),
7 Government Code, regardless of whether the individual is receiving
8 services under that waiver program from the provider; and

9 (2) an elderly person or a person with a disability who
10 lives in or is in the care of a residential child-care facility as
11 defined by Section 42.002.

12 SECTION 17. Sections 48.253(a), (b), and (c), Human
13 Resources Code, are amended to read as follows:

14 (a) On receipt by the commission [~~department~~] of a report of
15 alleged abuse, neglect, or exploitation under this subchapter, the
16 commission [~~department~~] shall initiate a prompt and thorough
17 investigation as needed to evaluate the accuracy of the report and
18 to assess the need for emergency protective services, unless the
19 commission [~~department~~], in accordance with rules adopted under
20 this subchapter, determines that the report:

21 (1) is frivolous or patently without a factual basis;

22 or

23 (2) does not concern abuse, neglect, or exploitation.

24 (b) After receiving a report that alleges that a provider is
25 or may be the person who committed the alleged abuse, neglect, or
26 exploitation, the commission [~~department~~] shall notify the
27 provider [~~and the appropriate health and human services agency~~] in

1 accordance with rules adopted by the executive commissioner.

2 (c) The provider identified under Subsection (b) shall:

3 (1) cooperate completely with an investigation
4 conducted under this subchapter; and

5 (2) provide the commission [~~department~~] complete
6 access during an investigation to:

7 (A) all sites owned, operated, or controlled by
8 the provider; and

9 (B) clients and client records.

10 SECTION 18. Sections 48.254(a) and (c), Human Resources
11 Code, are amended to read as follows:

12 (a) The executive commissioner by rule shall establish
13 procedures for the commission [~~department~~] to use to forward a copy
14 of the initial intake report and a copy of the completed provider
15 investigation report relating to alleged or suspected abuse,
16 neglect, or exploitation to the appropriate provider [~~and health~~
17 ~~and human services agency~~].

18 (c) A provider that receives the findings of an [~~a~~
19 ~~completed~~] investigation from the commission report under
20 Subsection (a) shall forward the findings [~~report~~] to the managed
21 care organization with which the provider contracts for services
22 for the alleged victim.

23 SECTION 19. Sections 48.255(a) and (b), Human Resources
24 Code, are amended to read as follows:

25 (a) The executive commissioner shall adopt rules to:

26 (1) prioritize investigations conducted under this
27 subchapter with the primary criterion being whether there is a risk

1 that a delay in the investigation will impede the collection of
2 evidence in that investigation; and

3 (2) [~~establish procedures for resolving disagreements~~
4 ~~between the department and health and human services agencies~~
5 ~~concerning the department's investigation findings; and~~

6 [~~(3)~~] provide for an appeals process by the commission
7 [~~department~~] for the alleged victim of abuse, neglect, or
8 exploitation.

9 (b) A confirmed investigation finding by the commission
10 [~~department~~] may not be changed by the administrator of a facility,
11 a community center, a local mental health authority, or a local
12 intellectual and developmental disability authority.

13 SECTION 20. Sections 48.256(a), (b), and (c), Human
14 Resources Code, are amended to read as follows:

15 (a) The executive commissioner shall adopt rules that
16 prescribe the appropriate manner in which [~~health and human~~
17 ~~services agencies and~~] managed care organizations provide the
18 commission [~~department~~] with information necessary to facilitate
19 the:

20 (1) identification of individuals receiving services
21 from providers; and

22 (2) [~~to facilitate~~] notification of providers by the
23 commission [~~department~~].

24 (b) The executive commissioner shall adopt rules requiring
25 a provider to provide information [~~to the administering health and~~
26 ~~human services agency~~] necessary to facilitate the:

27 (1) identification by the commission [~~department~~] of

1 individuals receiving services from providers; and

2 (2) [~~to facilitate~~] notification of providers by the
3 commission [~~department~~].

4 (c) A provider of home and community-based services under
5 the home and community-based services waiver program described by
6 Section 534.001(11)(B), Government Code, shall post in a
7 conspicuous location inside any residence owned, operated, or
8 controlled by the provider in which home and community-based waiver
9 services are provided, a sign that states:

10 (1) the name, address, and telephone number of the
11 provider;

12 (2) the effective date of the provider's contract with
13 the commission [~~applicable health and human services agency~~] to
14 provide home and community-based services; and

15 (3) the name of the legal entity that contracted with
16 the commission [~~applicable health and human services agency~~] to
17 provide those services.

18 SECTION 21. Sections 48.258(a) and (b), Human Resources
19 Code, are amended to read as follows:

20 (a) The commission [~~health and human services agencies~~]
21 shall[, ~~at the direction of the executive commissioner, jointly~~]
22 develop and implement a system to track reports and investigations
23 under this subchapter.

24 (b) To facilitate implementation of the system, the
25 commission [~~health and human services agencies~~] shall use
26 appropriate methods of measuring the number and outcome of reports
27 and investigations under this subchapter.

1 SECTION 22. Section 103.008(b), Human Resources Code, is
2 amended to read as follows:

3 (b) Any person may request an inspection of a facility by
4 notifying the commission in writing of an alleged violation of a
5 licensing requirement. The complaint shall be as detailed as
6 possible and signed by the complainant. The commission shall:

7 (1) if the complaint alleges abuse, neglect, or
8 exploitation, perform an [on-site] inspection as soon as feasible
9 but not [no] later than the 14th day [30 days] after the date the
10 commission receives [receiving] the complaint, unless after an
11 investigation the complaint is found to be frivolous; [The
12 commission shall respond to a complainant in writing.]

13 (2) if the complaint does not allege abuse, neglect,
14 or exploitation, investigate the complaint not later than the 45th
15 day after the date the commission receives the complaint;

16 (3) respond to a complainant in writing; and

17 (4) [The commission shall also] receive and
18 investigate anonymous complaints.

19 SECTION 23. The following provisions are repealed:

20 (1) Section 252.121(b), Health and Safety Code;

21 (2) Section 252.126(b), Health and Safety Code;

22 (3) Section 48.252(a), Human Resources Code; and

23 (4) Section 48.254(b), Human Resources Code.

24 SECTION 24. (a) As soon as practicable after the effective
25 date of this Act, but not later than December 1, 2024, the
26 commissioner of the Department of Family and Protective Services
27 shall transfer any department funds and resources, including

1 information technology, documents, and personnel allocated for the
2 investigation of reports under Subchapter F, Chapter 48, Human
3 Resources Code, to the Health and Human Services Commission to
4 allow the commission to perform the functions described under
5 Subchapter F, Chapter 48, Human Resources Code, as amended by this
6 Act.

7 (b) Notwithstanding the effective date of this Act, the
8 Health and Human Services Commission is not required to comply with
9 changes in law made by this Act until the transfer required by
10 Subsection (a) of this section is completed.

11 SECTION 25. If before implementing any provision of this
12 Act a state agency determines that a waiver or authorization from a
13 federal agency is necessary for implementation of that provision,
14 the agency affected by the provision shall request the waiver or
15 authorization and may delay implementing that provision until the
16 waiver or authorization is granted.

17 SECTION 26. This Act takes effect September 1, 2023.