

By: Noble

H.B. No. 4696

A BILL TO BE ENTITLED

AN ACT

1
2 relating to transferring certain investigations of abuse, neglect,
3 and exploitation to the Health and Human Services Commission and
4 the on-site investigation and survey of certain providers by the
5 Health and Human Services Commission.

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

7 SECTION 1. Section 142.009 (j), Health and Safety Code, is
8 amended to read as follows:

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

13 SECTION 2. Section 142.018(b), Health and Safety Code, is
14 amended to read as follows:

15 (b) A home and community support services agency that has
16 cause to believe that a person receiving services from the agency
17 has been abused, exploited, or neglected by an employee of the
18 agency shall report the information to[+]

19 [~~(1)~~] the commission [~~department, and~~]

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

23 SECTION 3. Section 253.001(4), Health and Safety Code, is
24 amended to read as follows:

1 (4) "Facility" means:

2 (A) a facility:

3 (i) licensed by the Health and Human
4 Services Commission [~~department~~]; or

5 (ii) licensed under Chapter 252;

6 (B) an adult foster care provider that contracts
7 with the Health and Human Services Commission [~~department~~];

8 (C) a home and community support services agency
9 licensed by the Health and Human Services Commission [~~department~~]
10 under Chapter 142; [~~or~~]

11 (D) a prescribed pediatric extended care center
12 licensed under Chapter 248A; or

13 (E) a residential child-care operation regulated
14 under 26. T.A.C. Chapter 748 or 749.

15 SECTION 4. Section 260A.002(a-1), Health and Safety Code,
16 is amended to read as follows:

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

27 SECTION 5. Section 260A.007, Health and Safety Code, is

1 amended to read as follows:

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

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

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

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

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

21 (5) write an investigation report that includes:

22 (A) the investigator's personal observations;

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

24 (C) a summary of each witness statement,
25 including the statement of the resident that suffered the alleged
26 abuse, neglect, or exploitation and any other resident interviewed
27 in the investigation; and

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

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

9 (o) The department must make an unannounced visit to the
10 facility when conducting an investigation of abuse or neglect.

11 SECTION 6. Section 48.251(a)(3), Human Resources Code, is
12 amended to read as follows:

13 (3) "Facility" means:

14 (A) a facility listed in Section 532.001(b) or
15 532A.001(b), Health and Safety Code, [~~including community services~~
16 ~~operated by the Department of State Health Services or Department~~
17 ~~of Aging and Disability Services,~~] as described by those sections,
18 or a person contracting with a health and human services agency to
19 provide inpatient mental health services; [~~and~~]

20 (B) a facility licensed under Chapter 252, Health
21 and Safety Code[]; and

22 (C) a residential child-care operation regulated
23 under 26 T.A.C. Chapter 748 or 749.

24 SECTION 7. Sections 48.252(a), (b), and (c), Human
25 Resources Code, are amended to read as follows:

26 (a) The commission [~~department~~] shall receive and, except
27 as provided by Subsection (b), shall investigate under this

1 subchapter reports of the abuse, neglect, or exploitation of an
2 individual receiving services if the person alleged or suspected to
3 have committed the abuse, neglect, or exploitation is a provider.

4 (b) The department may not investigate under this
5 subchapter reports of abuse, neglect, or exploitation alleged or
6 suspected to have been committed by a provider that is operated,
7 licensed, certified, or registered by a state agency that has
8 authority under this chapter or other law to investigate reports of
9 abuse, neglect, or exploitation of an individual by the provider.
10 The department shall forward any report of abuse, neglect, or
11 exploitation alleged or suspected to have been committed by a
12 provider described by this subsection to the commission
13 [~~appropriate state agency~~] for investigation.

14 (c) The commission [~~department~~] shall receive and
15 investigate under this subchapter reports of abuse, neglect, or
16 exploitation of an individual who lives in a residence that is
17 owned, operated, or controlled by a provider who provides home and
18 community-based services under the home and community-based
19 services waiver program described by Section 534.001(11)(B),
20 Government Code, regardless of whether the individual is receiving
21 services under that waiver program from the provider:

22 (1) an individual who lives in a residence that is
23 owned, operated or controlled by a provider who provides home and
24 community-based services under the home and community-based
25 services waiver program described by Section 534.001(11)(B),
26 Government Code, regardless of whether the individual is receiving
27 services under that waiver program from the provider; and

1 (2) an elderly person or a person with a disability who
2 lives in a residential child-care operation regulated under 26
3 T.A.C. Chapter 748 or 749.

4 SECTION 8. Sections 48.253(a), (b), and (c), Human
5 Resources Code, are amended to read as follows:

6 (a) On receipt by the commission [~~department~~] of a report of
7 alleged abuse, neglect, or exploitation under this subchapter, the
8 commission [~~department~~] shall initiate a prompt and thorough
9 investigation as needed to evaluate the accuracy of the report and
10 to assess the need for emergency protective services, unless the
11 commission [~~department~~], in accordance with rules adopted under
12 this subchapter, determines that the report:

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

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

16 (b) After receiving a report that alleges that a provider is
17 or may be the person who committed the alleged abuse, neglect, or
18 exploitation, the commission [~~department~~] shall notify the
19 provider [~~and the appropriate health and human services agency~~] in
20 accordance with rules adopted by the executive commissioner.

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

22 (1) cooperate completely with an investigation
23 conducted under this subchapter; and

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

26 (A) all sites owned, operated, or controlled by
27 the provider; and

(B) clients and client records.

SECTION 9. Sections [48.254](#)(a) and (b), Human Resources Code, are amended to read as follows:

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

(b) The commission [~~department~~] shall redact from an initial intake report and from the copy of the completed provider investigation report any identifying information contained in the report relating to the person who reported the alleged or suspected abuse, neglect, or exploitation under this subchapter [~~Section [48.051](#)~~].

SECTION 10. Sections [48.255](#)(a) and (b), Human Resources Code, are amended to read as follows:

(a) The executive commissioner shall adopt rules to:

(1) prioritize investigations conducted under this subchapter with the primary criterion being whether there is a risk that a delay in the investigation will impede the collection of evidence in that investigation; and

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

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

1 exploitation.

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

6 SECTION 11. Section 48.256(a), (b), and (c), Human
7 Resources Code, are amended to read as follows:

8 (a) The executive commissioner shall adopt rules that
9 prescribe the appropriate manner in which [~~health and human~~
10 ~~services agencies and~~] managed care organizations provide the
11 commission [~~department~~] with information necessary to facilitate
12 the:

13 (1) identification of individuals receiving services
14 from providers; and

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

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

20 (1) identification by the commission [~~department~~] of
21 individuals receiving services from providers; and

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

24 (c) A provider of home and community-based services under
25 the home and community-based services waiver program described by
26 Section 534.001(11)(B), Government Code, shall post in a
27 conspicuous location inside any residence owned, operated, or

1 controlled by the provider in which home and community-based waiver
2 services are provided, a sign that states:

3 (1) the name, address, and telephone number of the
4 provider;

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

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

11 SECTION 12. Sections 48.258(a) and (b), Human Resources
12 Code, are amended to read as follows:

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

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

21 SECTION 13. Section 103.008(b), Human Resources Code, is
22 amended to read as follows:

23 (b) Any person may request an inspection of a facility by
24 notifying the commission in writing of an alleged violation of a
25 licensing requirement. The complaint shall be as detailed as
26 possible and signed by the complainant. The commission shall
27 perform an [~~on-site~~] inspection as soon as feasible but no later

1 than 14 [~~30~~] days after receiving the complaint if the complaint is
2 related to abuse, neglect, or exploitation, unless after an
3 investigation the complaint is found to be frivolous. If the
4 complaint does not allege abuse, neglect, or exploitation, the
5 commission shall investigate within 45 days after receiving the
6 complaint. The commission shall respond to a complainant in
7 writing. The commission shall also receive and investigate
8 anonymous complaints.

9 SECTION 14. (a) As soon as practicable after the effective
10 date of this Act, but not later than December 1, 2023, the
11 commissioner of the Department of Family and Protective Services
12 shall transfer any department funds and resources, including
13 information technology, documents, and personnel allocated for the
14 investigation of reports under Subchapter F, Chapter 48, Human
15 Resources Code, to the Health and Human Services Commission to
16 allow the commission to perform the functions described under
17 Subchapter F, Chapter 48, Human Resources Code, as amended by this
18 Act.

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

23 SECTION 15. If before implementing any provision of this
24 Act a state agency determines that a waiver or authorization from a
25 federal agency is necessary for implementation of that provision,
26 the agency affected by the provision shall request the waiver or
27 authorization and may delay implementing that provision until the

1 waiver or authorization is granted.

2 SECTION 16. This Act takes effect September 1, 2023.