

BILL ANALYSIS

C.S.H.B. 2325
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

A recent federal report released in October of 2002 by the Special Investigations Division of the Committee on Government Reform titled "Nursing Home Conditions in Texas: Many Nursing Homes Fail to Meet Federal Standards for Adequate Care," revealed that thirty-nine percent of Texas nursing homes had a violation that caused actual harm to their residents, such as dehydration, physical abuse, sexual assault, or risk of serious injury or death. CSHB 2325 requires a nursing home owner or employee to report abuse or neglect to the Texas Department of Human Services (DHS) and to law enforcement, and require investigation of the allegations.

RULEMAKING AUTHORITY

This bill expressly delegates rulemaking authority to the Department of Human Services in SECTION 6 of the bill.

ANALYSIS

CSHB 2325 amends the Health and Safety Code by requiring a report of abuse or neglect by an owner or employee of a institution to be made to the Department of Human Services (DHS) and to a local or state law enforcement agency.

CSHB 2325 adds to the provisions for the conditions under which DHS is required to investigate reports of abuse or neglect within 24 hours to include allegations of certain sexual offenses and bodily injury to a resident. The bill requires DHS to interview the resident that suffered the alleged abuse or neglect or witness if the resident is able to communicate. The bill requires the investigator to take photos of any injury to the resident, but only after determining if consent is required under state and federal law. If consent is required, DHS or the designated agency is required to seek and obtain consent, and prohibits DHS or the designated agency from making a photographic record unless required consent is obtained. The bill requires DHS or the designated agency to take a statement from the resident that suffered the alleged abuse or neglect or other resident. The bill requires DHS and the appropriate law enforcement agency to jointly investigate certain reports of abuse or neglect or other complaints, and requires the law enforcement agency to acknowledge such reports and begin the joint investigation within 24 hours. The bill requires DHS or the designated agency to report certain reports of abuse or neglect or other complaints to the appropriate law enforcement agency within 24 hours, and requires DHS or the designated agency to cooperate with the law enforcement agency in the investigation. The bill requires DHS to document any instance in which a law enforcement agency is unable or unwilling to cooperate, and affirms that any lack of cooperation by a law enforcement agency does not constitute grounds to prevent or prohibit DHS from performing its duties.

CSHB 2325 requires DHS to share report information with a law enforcement agency as necessary to investigate a report of abuse or neglect. Requires DHS and the appropriate law enforcement agency to cooperate with each other in investigations of abuse or neglect or other complaints and require law enforcement to report the results of their investigation to DHS.

CSHB 2325 requires DHS to determine whether consent is required under state or federal law before a

photographic record of an injury to a resident may be made, and shall adopt any rules necessary to implement any consent requirement no later than January 1, 2004.

CSHB 2325 provides that a representative of each agency need not be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the investigation. The bill requires that on receipt of a report of abuse or other complaint of a resident of a nursing home, convalescent home, or other related institution, the appropriate local law enforcement agency must investigate the report.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

House Bill 2325 requires DHS to interview a resident who suffered alleged abuse or neglect. CSHB 2325 requires DHS to interview a resident who suffered alleged abuse or neglect or other witness if the resident is able to communicate.

HB 2325 requires DHS to make a photographic record of any injury to a resident after obtaining any consent required under state or federal law. CSHB 2325 outlines specific procedures DHS must follow for obtaining such consent and explicitly prohibits DHS from making a photographic record unless such consent is obtained. CSHB 2325 requires DHS to write an investigation report that includes the statement of the resident that suffered the alleged abuse and any other resident interviewed in the investigation.

CSHB 2325 requires a law enforcement agency conducting a joint investigation under Section 242.135, Health and Safety Code to acknowledge certain reports of abuse or neglect or other complaints and begin its investigation within 24 hours. HB 2325 has no such provisions.

CSHB 2325 states explicitly that the inability or unwillingness of a local law enforcement agency to conduct a joint investigation required under Section 242.135, Health and Safety Code does not relieve DHS of its duties under the chapter. HB 2325 has no such provision.

CSHB 2325 requires DHS to determine not later than January 1, 2004 whether, before a photographic record of an injury to a resident may be made under Subsection 242.126(e), Health and Safety Code, as amended by this Act, consent is required under state or federal law and shall adopt any rules necessary to implement any consent requirement. HB 2325 has no such requirement.

CSHB 2325 provides that a representative of each agency need not be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the investigation. CSHB 2325 requires that on receipt of a report of abuse or other complaint of a resident of a nursing home, convalescent home, or other related institution, the appropriate local law enforcement agency must investigate the report.