

BILL ANALYSIS

C.S.S.B. 1074
By: West
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 (443 nursing homes) had a violation of federal quality care requirements that caused actual harm to nursing home residents, including dehydration, physical abuse, and sexual assault, or placed residents at risk of death or serious injury. These 443 nursing homes serve 37,417 residents.

SB 1074 requires a nursing home owner or employee to report certain reports of abuse or neglect to the Texas Department of Human Services (DHS) and to law enforcement. It also expands 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, and enhances the interview and investigation processes related to abuse or neglect.

RULEMAKING AUTHORITY

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

ANALYSIS

SECTION 1. Amends Section 242.125, Health and Safety Code, by requiring a report made by an owner or employee of an institution relating to abuse or neglect or another complaint described by Section 242.126(c)(1), as amended, to be made to the Texas Department of Human Services (DHS) and the law enforcement agency described by Section 242.135(a). Includes an exception as provided by Section 242.135 to the requirement that a local or state law enforcement agency receiving a report of abuse or neglect refer the report to DHS or the designated agency.

SECTION 2. Amends Section 242.126, Health and Safety Code, by amending Subsections (c), (e), and (g), and adding Subsections (l), (m), and (n), as follows:

(c) Requires the agency to begin the investigation within 24 hours of receipt of the report or other allegation if the report of abuse or neglect or other complaint alleges that a resident has been a victim of any act or attempted act described by Section 21.11 (Indecency With a Child), 22.011 (Sexual Assault), 22.021 (Aggravated Sexual Assault), Penal Code; or a resident has suffered bodily injury as defined by Section 1.07 (Definitions), Penal Code, because of conduct alleged in the report of abuse or neglect or other complaint.

(e) Requires an investigator for an investigating agency that is investigating a report of abuse or neglect or other complaint to interview each available witness, including the resident that suffered the alleged abuse or neglect if the resident is able to communicate, or another resident or other witness identified as having relevant knowledge; to make a photographic record of any injury to a resident, subject to Subsection (n); and to include the statement of the resident that suffered the alleged abuse or neglect and any other resident interviewed in the investigation in a summary of

each witness statement.

(g) Requires DHS to delete photographs of any injury to the resident from any copy of the investigation report made available to the public.

(l) Requires DHS or the designated agency, within 24 hours of receipt of a report of abuse or neglect or other complaint described by Section (c)(1), to report the report or complaint to the law enforcement agency described by Section 242.135(a) and to cooperate with that law enforcement agency in the investigation of the report or complaint as described by Section 242.135.

(m) Provides that the inability or unwillingness of a local law enforcement agency to conduct a joint investigation under Section 242.135 does not constitute grounds to prevent or prohibit DHS from performing its duties under this chapter. Requires DHS to document any instance in which a law enforcement agency is unable or unwilling to conduct a joint investigation under Section 242.135.

(n) Requires the investigator, if DHS determines that, before a photographic record of an injury to a resident may be made under Subsection (e), consent is required under state or federal law, to seek to obtain any required consent, and to refrain from making the photographic record unless the consent is obtained.

SECTION 3. Amends Section 242.127, Health and Safety Code, to require the report, record, or working paper, and the name, address, and phone number of the person making the report, to be disclosed to a law enforcement agency as necessary to permit the law enforcement agency to investigate a report of abuse or neglect or other complaint in accordance with Section 242.135.

SECTION 4. Amends Subchapter E, Chapter 242, Health and Safety Code, by adding Section 242.135, as follows:

Sec. 242.135. DUTIES OF LAW ENFORCEMENT; JOINT INVESTIGATION. (a) Requires a law enforcement department or designated agency to investigate a report of abuse or neglect or other complaint described by Section 242.126(c)(1) jointly with the municipal law enforcement agency or the sheriff's department of the county as appropriate.

(b) Requires the law enforcement agency described by Subsection (a) to acknowledge the report of abuse or neglect or other complaint and begin the joint investigation required by this section within 24 hours of receipt of the report or complaint. Requires the law enforcement agency to cooperate with DHS or the designated agency and report to DHS or the designated agency the results of the investigation.

(c) Provides that the requirement that the law enforcement agency and DHS or designated agency conduct a joint investigation under this section does not require that a representative of each agency be physically present during all phases of the investigation or that each agency participate equally in each activity conducted in the course of the investigation.

SECTION 5. Amends Article 2.27, Code of Criminal Procedure, as follows:

Art. 2.27. New heading: INVESTIGATION OF CERTAIN REPORTS ALLEGING ABUSE. (a) Creates this subsection from existing text.

(b) Requires the appropriate local law enforcement agency, on receipt of a report of abuse or neglect or other complaint of a resident of a nursing home, convalescent home, or other related institution under Section 242.126(c)(1), Health and Safety Code, to investigate the report as required by Section 242.135, Health and Safety Code.

SECTION 6. Requires DHS, not later than January 1, 2004, to determine 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 and federal law, and to adopt any rules necessary to implement any consent requirement.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSSB 1074 requires that a report made by an owner or employee of an institution be made to both DHS and law enforcement only if the report relates to abuse or neglect or another complaint described by Section 242.126(c)(1), Health and Safety Code, as amended.