

By: Hinojosa

S.B. No. 1198

A BILL TO BE ENTITLED

AN ACT

relating to investigations and decisions regarding allegations of abuse, neglect, or exploitation by employees at certain facilities.

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

SECTION 1. Subchapter F, Chapter 48, Human Resources Code, is amended by adding Sections 48.257 and 48.258 to read as follows:

Sec. 48.257. RULES REGARDING RIGHTS OF ACCUSED EMPLOYEES.

(a) The department and the Texas Department of Mental Health and Mental Retardation shall jointly adopt rules specifying for an investigation, hearing, and appeal under this subchapter the rights of an employee at a facility operated by the Texas Department of Mental Health and Mental Retardation who is accused of abusing, neglecting, or exploiting an individual with a disability receiving services in the facility.

(b) The rules adopted under Subsection (a) must include the right to:

(1) receive information regarding:

(A) the fact that an investigation is being conducted;

(B) the specific nature of allegations made against the accused employee;

(C) the date, time, and place of the alleged incidents of abuse, neglect, or exploitation; and

(D) the opportunity for a hearing to contest the

1 findings of the investigation;

2 (2) employ legal counsel or obtain other legal  
3 assistance for the investigation, hearing, or appeal under this  
4 subchapter;

5 (3) present evidence during a hearing or appeal, such  
6 as live testimony or voluntary written statements of witnesses; and

7 (4) appeal the decision of a hearing examiner to a  
8 neutral third party.

9 (c) The Texas Department of Mental Health and Mental  
10 Retardation shall inform an employee described by Subsection (a) of  
11 the employee's rights under this section.

12 Sec. 48.258. RESULTS OF CERTAIN INVESTIGATIONS AND  
13 DECISIONS FOLLOWING CERTAIN HEARINGS AND APPEALS. (a) If, after  
14 an investigation of a report of the abuse, neglect, or exploitation  
15 of an individual with a disability receiving services in a facility  
16 operated by the Texas Department of Mental Health and Mental  
17 Retardation, the investigator determines that a reported incident  
18 was not the result of abuse, neglect, or exploitation but may be  
19 attributable to an inadequate staff-to-patient ratio, the  
20 investigator shall note the concern in the investigation report.

21 (b) If an investigation of or a hearing or appeal on a report  
22 of abuse, neglect, or exploitation of an individual with a  
23 disability receiving services in a facility operated by the Texas  
24 Department of Mental Health and Mental Retardation by an employee  
25 of that department results in a determination that the allegation  
26 of abuse, neglect, or exploitation is unfounded or inconclusive:

27 (1) the Texas Department of Mental Health and Mental

1 Retardation shall:

2 (A) remove all evidence of the allegation from  
3 the accused employee's personnel file;

4 (B) compensate the employee for any lost wages  
5 and restore any lost benefits, including leave time, to the  
6 employee;

7 (C) on request, reinstate the employee to the  
8 employee's original position or a position that is comparable in  
9 terms of compensation, benefits, and other conditions of  
10 employment; and

11 (D) remove any information related to the  
12 allegation of abuse, neglect, or exploitation by the employee from  
13 the department's client abuse and neglect records;

14 (2) the Texas Department of Human Services shall  
15 remove any information related to the allegation of abuse, neglect,  
16 or exploitation by the employee from the employee misconduct  
17 registry under Section 253.007, Health and Safety Code, and, as  
18 applicable, the nurse aide registry under Chapter 250, Health and  
19 Safety Code; and

20 (3) the Department of Protective and Regulatory  
21 Services shall remove any information related to the allegation of  
22 abuse, neglect, or exploitation by the employee from the  
23 department's child and adult protective services records.

24 SECTION 2. The Texas Department of Mental Health and Mental  
25 Retardation and the Department of Protective and Regulatory  
26 Services shall jointly adopt the rules required by Section 48.257,  
27 Human Resources Code, as added by this Act, not later than December

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1 1, 2003.

2 SECTION 3. This Act takes effect September 1, 2003.