

BILL ANALYSIS

C.S.H.B. 283
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently employees working in Mental Health and Mental Retardation (MHMR) facilities are subject to burdening practices during investigations in which an employee is accused of an incident of abuse, neglect or exploitation. These practices include immediate suspension without pay, unspecified rights, and, even if claims are found baseless, employees still have un-amended allegations on record against them, and are often not reimbursed back pay for the duration of their suspension.

Employees lack stated and codified rights during and after the investigation process. C.S.H.B. 283 attends to this issue by clarifying the rights of employees accused of abuse, neglect and exploitation.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTIONS ONE and TWO of the bill.

ANALYSIS

The substitute amends Subchapter F, Chapter 48, Human Resources Code by adding Sections 48.257 and 48.258.

The substitute directs the executive commissioner to adopt rules providing for the protection of the rights of an employee at a facility who is accused of abusing, neglecting, or exploiting an individual with a disability receiving services in the facility.

The substitute provides that the rules adopted by the executive commissioner include the right to receive information regarding the fact that an investigation is being conducted; the specific nature of allegations made against the accused employee; the date, time and place of the alleged incidents of abuse, neglect, or exploitation; and the opportunity for a hearing to contest the findings of the investigation. The substitute provides that the rules also include the employee's right to employ legal counsel or obtain other legal assistance for the investigation, hearing, or appeal; the right to request a hearing on the findings of the investigation; and to present evidence during a hearing, such as live testimony or voluntary written statements of witnesses. The Department of Aging and Disability Service (DADS) or the Department of State Health Services (DSHS) is required to inform an employee being accused in an investigation of the employee's rights.

In the event that an investigation or hearing on a report of abuse, neglect, or exploitation of an individual with a disability receiving service in a facility by an employee results in a determination that the allegation of abuse, neglect, or exploitation is unfounded, unconfirmed or inconclusive, DADS or DSHS is required to include that determination in any records maintained by the department or facility relating to the allegation, including the department's or facility's client abuse and neglect records; compensate the employee for any lost wages; restore any lost benefits, including leave time, to the employee; on request, reinstate the employee to the employee's original position or a position that is comparable in terms of compensation, benefits, and other conditions of employment.

The substitute requires that the commission include the determination of an unfounded, unconfirmed or inconclusive allegation in the applicable employee misconduct registry, or, the nurse aide registry. Additionally, the Department of Family and Protective Services shall include that determination in any records maintained by the department relating to the allegation.

SECTION 2 of the substitute requires the executive commissioner of the Health and Human Services Commission adopt the rules required by Section 48.257 Human Resources Code, as added by this act, not later than December 1, 2007.

EFFECTIVE DATE

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The term "substitute" will be used in reference to C.S.H.B. 283. The term "original" will be used in reference to H.B. 283.

The substitute modifies the original, striking Section 48.257(b)(5). Original Section 48.257(b)(5) allowed an accused employee to appeal the decision of a hearing examiner to a neutral third party.

The substitute modifies the original, striking Section 48.258(a). Original Section 48.258(a) required an investigator to note concern in the event that an investigation found a reported incident to be the cause of an inadequate staff-to-patient ratio and not a case of abuse, neglect, or exploitation. The sections following original Section 48.258(a) are appropriately arranged in the substitute according to the striking.

The substitute modifies the original, striking the Section designated as 48.258(b)(1)(E) in the original. This removes a requirement in the original that directed the Department of Aging and Disability (DADS) to "remove any information related to the allegation of abuse, neglect, or exploitation by the employee from the department's or entity's client abuse and neglect records".

The substitute modifies the original, changing language in original Section 48.258(b)(2). The original section read "the commission shall remove any information related to the allegation of abuse, neglect, or exploitation by the employee from the". The substitute changes this language to read "the commission shall include that determination in the applicable registry if any information relating to the allegation of abuse, neglect, or exploitation by the employee is recorded in the".

The substitute modifies the original, changing language in original Section 48.258(b)(3). The original section read "the Department of Family and Protective Services shall remove any information related to the allegation of abuse, neglect, or exploitation by the employee from the department's child and adult protective services records". The substitute changes the language to read "the Department of Family and Protective Services shall include that determination in any records maintained by the department relating to the allegation of abuse, neglect, or exploitation by the employee".