

By: Nelson

S.B. No. 70

A BILL TO BE ENTITLED

AN ACT

relating to the investigation of abuse, neglect, or exploitation in an intermediate care facility for the mentally retarded.

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

SECTION 1. Section 252.122(a), Health and Safety Code, is amended to read as follows:

(a) A person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person shall report the abuse or neglect to the Department of Family and Protective Services [~~department~~], to a designated agency, or to both the Department of Family and Protective Services [~~department~~] and the designated agency, as specified in [~~department~~] rules adopted by the Department of Family and Protective Services.

SECTION 2. Section 252.124(b), Health and Safety Code, is amended to read as follows:

(b) A local or state law enforcement agency that receives a report of abuse or neglect shall refer the report to the Department of Family and Protective Services [~~department~~] or the designated agency.

SECTION 3. Sections 252.125(a), (c), (d), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) The Department of Family and Protective Services

1 ~~[department]~~ or the designated agency shall make a thorough  
2 investigation promptly after receiving either the oral or written  
3 report.

4 (c) In the investigation, the Department of Family and  
5 Protective Services ~~[department]~~ or the designated agency shall  
6 determine:

7 (1) the nature, extent, and cause of the abuse or  
8 neglect;

9 (2) the identity of the person responsible for the  
10 abuse or neglect;

11 (3) the names and conditions of the other residents;

12 (4) an evaluation of the persons responsible for the  
13 care of the residents;

14 (5) the adequacy of the facility environment; and

15 (6) any other information required by the Department  
16 of Family and Protective Services ~~[department]~~.

17 (d) The investigation may include a visit to the resident's  
18 facility and an interview with the resident, if considered  
19 appropriate by the Department of Family and Protective Services  
20 ~~[department]~~.

21 (e) If the Department of Family and Protective Services  
22 ~~[department]~~ attempts to carry out an on-site investigation and it  
23 is shown that admission to the facility or any place where a  
24 resident is located cannot be obtained, a probate or county court  
25 shall order the person responsible for the care of the resident or  
26 the person in charge of a place where the resident is located to  
27 allow admission for the investigation and any interview with the

1 resident.

2 (f) Before the completion of the investigation, the  
3 Department of Family and Protective Services [~~department~~] shall  
4 file a petition for temporary care and protection of the resident if  
5 the Department of Family and Protective Services [~~department~~]  
6 determines that immediate removal is necessary to protect the  
7 resident from further abuse or neglect.

8 (g) The Department of Family and Protective Services  
9 [~~department~~] or the designated agency shall make a complete written  
10 report of the investigation and submit the report and its  
11 recommendations to the district attorney and the appropriate law  
12 enforcement agency and, if necessary, to the Department of Family  
13 and Protective Services [~~department~~] on the Department of Family  
14 and Protective Services' [~~department's~~] request.

15 SECTION 4. Section 252.126, Health and Safety Code, is  
16 amended to read as follows:

17 Sec. 252.126. CONFIDENTIALITY. A report, record, or  
18 working paper used or developed in an investigation made under this  
19 subchapter is confidential and may be disclosed only for purposes  
20 consistent with the rules adopted by the executive commissioner of  
21 the Health and Human Services Commission [~~board~~] or the designated  
22 agency.

23 SECTION 5. Section 252.129, Health and Safety Code, is  
24 amended by adding Subsection (d) to read as follows:

25 (d) The department and the Department of Family and  
26 Protective Services shall cooperate to ensure that the central  
27 registry required by this section accurately includes reported

1 cases of resident abuse and neglect.

2 SECTION 6. Sections 252.134(a) through (e), Health and  
3 Safety Code, are amended to read as follows:

4 (a) A facility licensed under this chapter shall submit a  
5 report to the Department of Family and Protective Services  
6 ~~[department]~~ concerning the death of:

7 (1) a resident of the facility; and

8 (2) a former resident that occurs 24 hours or less  
9 after the former resident is transferred from the facility to a  
10 hospital.

11 (b) The report must be submitted not later than the 10th  
12 working day after the last day of each month in which a resident of  
13 the facility dies. The facility must make the report on a form  
14 prescribed by the Department of Family and Protective Services  
15 ~~[department]~~. The report must contain the name and social security  
16 number of the deceased.

17 (c) The Department of Family and Protective Services  
18 ~~[department]~~ shall correlate reports under this section with death  
19 certificate information to develop data relating to the:

20 (1) name and age of the deceased;

21 (2) official cause of death listed on the death  
22 certificate;

23 (3) date, time, and place of death; and

24 (4) name and address of the facility in which the  
25 deceased resided.

26 (d) Unless specified by rules adopted by the executive  
27 commissioner of the Health and Human Services Commission ~~[board]~~

1 ~~rule~~], a record under this section is confidential and not subject  
2 to the provisions of Chapter 552, Government Code.

3 (e) The Department of Family and Protective Services  
4 ~~[department]~~ shall develop statistical information on official  
5 causes of death to determine patterns and trends of incidents of  
6 death among persons with mental retardation and related conditions  
7 and in specific facilities. Information developed under this  
8 subsection is not confidential.

9 SECTION 7. Subchapter G, Chapter 48, Human Resources Code,  
10 is amended by adding Section 48.3015 to read as follows:

11 Sec. 48.3015. INVESTIGATION OF REPORTS IN ICF-MR. (a)  
12 Notwithstanding Section 48.301, the department shall receive and  
13 investigate reports of abuse, neglect, or exploitation of an  
14 individual with a disability receiving services in an intermediate  
15 care facility for the mentally retarded.

16 (b) The executive commissioner shall adopt rules governing  
17 investigations conducted under this section and the provision of  
18 services as necessary to alleviate abuse, neglect, or exploitation.

19 SECTION 8. Section 161.071, Human Resources Code, is  
20 amended to read as follows:

21 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The  
22 department is responsible for administering human services  
23 programs for the aging and disabled, including:

24 (1) administering and coordinating programs to  
25 provide community-based care and support services to promote  
26 independent living for populations that would otherwise be  
27 institutionalized;

1           (2) providing institutional care services, including  
2 services through convalescent and nursing homes and related  
3 institutions under Chapter 242, Health and Safety Code;

4           (3) providing and coordinating programs and services  
5 for persons with disabilities, including programs for the  
6 treatment, rehabilitation, or benefit of persons with  
7 developmental disabilities or mental retardation;

8           (4) operating state facilities for the housing,  
9 treatment, rehabilitation, or benefit of persons with  
10 disabilities, including state schools for persons with mental  
11 retardation;

12           (5) serving as the state unit on aging required by the  
13 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)  
14 and its subsequent amendments, including performing the general  
15 functions under Section 101.022 to ensure:

16                 (A) implementation of the federal Older  
17 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its  
18 subsequent amendments, including implementation of services and  
19 volunteer opportunities under that Act for older residents of this  
20 state through area agencies on aging;

21                 (B) advocacy for residents of nursing facilities  
22 through the office of the state long-term care ombudsman;

23                 (C) fostering of the state and community  
24 infrastructure and capacity to serve older residents of this state;  
25 and

26                 (D) availability of a comprehensive resource for  
27 state government and the public on trends related to and services

1 and programs for an aging population;

2 (6) performing all licensing and enforcement  
3 activities and functions related to long-term care facilities,  
4 including licensing and enforcement activities related to  
5 convalescent and nursing homes and related institutions under  
6 Chapter 242, Health and Safety Code;

7 (7) performing all licensing and enforcement  
8 activities related to assisted living facilities under Chapter 247,  
9 Health and Safety Code;

10 (8) performing all licensing and enforcement  
11 activities related to intermediate care facilities for persons with  
12 mental retardation under Chapter 252, Health and Safety Code, other  
13 than investigations of reported abuse, neglect, or exploitation;

14 (9) performing all licensing and enforcement  
15 activities and functions related to home and community support  
16 services agencies under Chapter 142, Health and Safety Code; and

17 (10) serving as guardian of the person or estate, or  
18 both, for an incapacitated individual as provided by Subchapter E  
19 of this chapter and Chapter XIII, Texas Probate Code.

20 SECTION 9. This Act applies only to a report of suspected  
21 abuse, neglect, or exploitation that is made on or after the  
22 effective date of this Act. A report of suspected abuse, neglect,  
23 or exploitation that is made before the effective date of this Act  
24 is governed by the law in effect on the date the report was made, and  
25 that law is continued in effect for that purpose.

26 SECTION 10. This Act takes effect September 1, 2009.