

BILL ANALYSIS

C.S.H.B. 985
By: Menendez
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, the current system for reporting instances of suspected abuse, neglect, or endangerment of elderly and disabled citizens in assisted living or nursing home care facilities is too slow and ineffectual. C.S.H.B. 985 seeks to address this issue by requiring the Department of Aging and Disability Services to receive reports of abuse, neglect, and exploitation through the department's telephone hotline and to dispatch investigators.

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 SECTION 1 of this bill.

ANALYSIS

Section 531.0055, Government Code, as amended by Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, expressly grants to the executive commissioner of the Health and Human Services Commission all rulemaking authority for the operation of and provision of services by the health and human services agencies. Similarly, Sections 1.16-1.29, Chapter 198 (H.B. 2292), Acts of the 78th Legislature, Regular Session, 2003, provide for the transfer of a power, duty, function, program, or activity from a health and human services agency abolished by that act to the corresponding legacy agency. To the extent practical, this bill analysis is written to reflect any transfer of rulemaking authority and to update references as necessary to an agency's authority with respect to a particular health and human services program.

C.S.H.B. 985 amends the Health and Safety Code to transfer provisions of law relating to reports of abuse and neglect in convalescent and nursing homes, including reporting and investigation requirements and procedures; anonymous reports, confidentiality, immunity, and privileged communication provisions; requirements relating to a central registry of reported cases; criminal penalties for offenses relating to failure to report abuse, neglect, or exploitation and to a report made in bad faith or made maliciously or recklessly; prohibitions against and procedures and remedies for retaliation; and required duties of law enforcement agencies. The bill makes such provisions of law applicable to an assisted living facility and includes exploitation among the abuses addressed under such provisions.

C.S.H.B. 985 requires the Department of Aging and Disability Services (DADS) to operate the department's telephone hotline to receive reports of abuse, neglect, or exploitation and dispatch investigators. The bill requires a report of abuse, neglect, or exploitation to be made to DADS' telephone hotline or to a local or state law enforcement agency. The bill requires a report of abuse, neglect, or exploitation alleging that a resident's health or safety is in imminent danger; that a resident has recently died, been hospitalized or treated in an emergency room, or has suffered bodily injury because of conduct alleged in the report; that a resident has been a victim of any act or attempted act that constitutes an offense of continuous sexual abuse of a young child, indecency with a child, sexual assault, or aggravated sexual assault; or that a resident has suffered bodily injury because of conduct alleged in the report to be made both to DADS'

telephone hotline and to the appropriate law enforcement agency. The bill requires a local or state law enforcement agency that receives a report of abuse, neglect, or exploitation, other than a law enforcement agency conducting a joint investigation with DADS, to refer the report to DADS.

C.S.H.B. 985 requires each facility to prominently and conspicuously post a sign containing certain specified information for display in a public area of the facility that is readily available to residents, employees, and visitors and requires a facility to provide the telephone hotline number to an immediate family member of a resident of the facility upon the resident's admission into the facility.

C.S.H.B. 985 provides for the meaning of "institution" by reference to Health and Safety Code provisions relating to convalescent and nursing homes and related institutions and makes statutory provisions relating to reports relating to deaths of residents applicable to such an institution.

C.S.H.B. 985 adds a temporary provision, set to expire October 31, 2012, to require DADS, using existing resources, to test, evaluate, and determine the most effective and efficient staffing pattern for receiving and processing complaints by expanding customer service representatives' hours of availability at the department's telephone hotline call center. The bill requires DADS to report the findings of the evaluation to the House Committee on Human Services and the Senate Committee on Health and Human Services not later than September 1, 2012.

C.S.H.B. 985 requires a nursing home, convalescent home, or related institution; an assisted living facility; and a person, including an owner or employee of such an institution or facility, to comply with the bill's provisions and the rules adopted under those provisions.

C.S.H.B. 985 makes a conforming change by requiring DADS to conduct an investigation in accordance with the bill's provisions after receiving a report of abuse, exploitation, or neglect of a resident of an assisted living facility and removing language requiring DADS to conduct a preliminary investigation of such allegations to determine if there is evidence to corroborate the allegation and to conduct a thorough investigation of the allegation if there is evidence to corroborate the allegation. The bill exempts the collection of administrative penalties by DADS for violations of the bill's provisions prohibiting retaliation against certain persons for reporting specified violations from a provision of law prohibiting DADS from collecting an administrative penalty from an assisted living facility if the facility corrects the violation not later than the 45th day after the date the facility received the required notice.

C.S.H.B. 985 defines "abuse," "department," "executive commissioner," "exploitation," "neglect," and "resident" and provides for the meanings of "facility" by reference.

C.S.H.B. 985 amends the Code of Criminal Procedure to make a conforming change relating to the investigation of certain reports alleging abuse, neglect, exploitation, or other complaints of a resident of a nursing home, convalescent home, or other related institution or an assisted living facility by the appropriate law enforcement agency.

C.S.H.B. 985 amends the Human Resources Code to make changes conforming to the transfer of provisions of law relating to reports of abuse and neglect in convalescent and nursing homes and assisted living facilities.

C.S.H.B. 985 establishes that a change in law made by the bill does not apply to certain offenses committed, causes of action that accrue, or disciplinary actions for conduct that occurred before the effective date of the bill and provides that the former law is continued in effect for purposes of governing such offenses, causes of action, or disciplinary actions. The bill requires DADS to implement the bill's provisions using only existing resources and personnel and to ensure that the services provided on the bill's effective date are at least as comprehensive as the services

provided on the day before the bill's effective date. The bill makes conforming and nonsubstantive changes.

C.S.H.B. 985 repeals Subchapter E, Chapter 242, Health and Safety Code, to conform to the transfer of provisions of law relating to reports of abuse and neglect in convalescent and nursing homes and assisted living facilities.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 985 differs from the original by requiring the Department of Aging and Disability Services (DADS) to operate the department's telephone hotline to receive reports of abuse, neglect, or exploitation and dispatch investigators, whereas the original requires DADS to establish and operate a telephone hotline, at each of the department's regional offices, to receive reports of abuse, neglect, or exploitation and requires each of the department's regional offices to continuously operate the telephone hotline with a live operator to receive reports and to dispatch investigators.

C.S.H.B. 985 omits a provision included in the original requiring the executive commissioner of the Health and Human Services Commission by rule to establish the qualifications necessary for a person to work as a live operator.

C.S.H.B. 985 contains a provision not included in the original providing for the meaning of "institution," for purposes of resident death reporting requirements, by reference to Health and Safety Code provisions relating to convalescent and nursing homes and related institutions. The substitute differs from the original by making provisions relating to resident death reporting requirements applicable only to an institution, as defined by the bill, whereas the original makes those provisions applicable to a facility, defined by the bill as an institution or assisted living facility.

C.S.H.B. 985 contains a provision not included in the original requiring DADS, using existing resources, to test, evaluate, and determine the most effective and efficient staffing pattern for receiving and processing complaints by expanding customer service representatives' hours of availability at the department's telephone hotline call center. The substitute contains a provision not included in the original requiring DADS to report the findings of the evaluation to the House Committee on Human Services and the Senate Committee on Health and Human Services not later than September 1, 2012. The substitute contains a provision not included in the original establishing that the bill's provisions relating to the required evaluation and report expire October 31, 2012.

C.S.H.B. 985 differs from the original in conforming and nonsubstantive ways.