

By: Cortez

H.B. No. 2374

A BILL TO BE ENTITLED

AN ACT

relating to the abuse, neglect, and exploitation of recipients of home health services; creating an offense; providing penalties.

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

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 142A to read as follows:

CHAPTER 142A. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF RECIPIENTS OF CERTAIN SERVICES

Sec. 142A.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a recipient by the recipient's caregiver, family member, or other individual who has an ongoing relationship with the recipient; or

(B) sexual abuse of a recipient, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (Indecent Exposure), or Chapter 22, Penal Code (Assaultive Offenses), committed by the recipient's caregiver, family member, or other individual who has an ongoing relationship with the recipient.

(2) "Department" means the Department of Aging and Disability Services.

(3) "Executive commissioner" means the executive

1 commissioner of the Health and Human Services Commission.

2 (4) "Exploitation" means the illegal or improper act
3 or process of a caregiver, family member, or other individual who
4 has an ongoing relationship with the recipient using the resources
5 of a recipient for monetary or personal benefit, profit, or gain
6 without the informed consent of the recipient.

7 (5) "Neglect" means the failure to provide for one's
8 self the goods or services, including medical services, that are
9 necessary to avoid physical or emotional harm or pain or the failure
10 of a caregiver to provide the goods or services.

11 (6) "Recipient" means an individual, including a
12 patient, who receives a service.

13 (7) "Service" means a home health service as defined
14 by Section 142.001.

15 Sec. 142A.002. REPORTING OF ABUSE, NEGLECT, AND
16 EXPLOITATION. (a) A person, including an employee of a person
17 licensed under Chapter 142 to provide a service, who has cause to
18 believe that the physical or mental health or welfare of a recipient
19 has been or may be adversely affected by abuse, neglect, or
20 exploitation caused by another person shall report the abuse,
21 neglect, or exploitation in accordance with this chapter.

22 (b) Each person licensed under Chapter 142 to provide a
23 service shall require each employee providing a service, as a
24 condition of employment with the person, to sign a statement
25 acknowledging that the employee may be criminally liable for
26 failure to report the abuse, neglect, or exploitation.

27 (c) A person shall make an oral report to the department

1 immediately on learning of the abuse, neglect, or exploitation and
2 shall make a written report to the department not later than the
3 fifth day after the date the oral report is made.

4 Sec. 142A.003. CONTENTS OF REPORT. (a) A report of abuse,
5 neglect, or exploitation is nonaccusatory and reflects the
6 reporting person's belief that a recipient has been or will be
7 abused, neglected, or exploited or has died as a result of abuse or
8 neglect.

9 (b) The report must contain:

10 (1) the name and address of the recipient;

11 (2) the name and address of the person responsible for
12 the care of the recipient, if available; and

13 (3) other relevant information.

14 (c) Except for an anonymous report made under Section
15 142A.004, a report of abuse, neglect, or exploitation under Section
16 142A.002 must include the address or phone number of the person
17 making the report so that an investigator may contact the person for
18 any necessary additional information. The phone number, address,
19 and name of the person making the report must be deleted from any
20 copy of the report or information from the report that is released
21 to the public, to the person licensed under Chapter 142 to provide a
22 service, or to an agent of the person licensed under Chapter 142 to
23 provide a service.

24 Sec. 142A.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR
25 EXPLOITATION. (a) The department shall accept but discourage the
26 submission of an anonymous report of abuse, neglect, or
27 exploitation, and act on the report in the same manner as the

1 department acts on an acknowledged report.

2 (b) The department is not required to investigate an
3 anonymous report that accuses a named individual of abuse, neglect,
4 or exploitation.

5 Sec. 142A.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS.

6 (a) The department shall operate a telephone hotline to:

7 (1) receive reports of abuse, neglect, or exploitation
8 under this chapter; and

9 (2) assign investigators.

10 (b) A person shall make a report of abuse, neglect, or
11 exploitation to the department's telephone hotline or to a local or
12 state law enforcement agency. A report relating to abuse, neglect,
13 or exploitation or another complaint alleging conduct described in
14 Section 142A.007(c) must be made to the department's telephone
15 hotline and to the law enforcement agency described by Section
16 142A.016(a).

17 (c) Except as provided by Section 142A.016, a local or state
18 law enforcement agency that receives a report of abuse, neglect, or
19 exploitation shall refer the report to the department.

20 Sec. 142A.006. NOTICE. (a) Each person licensed under
21 Chapter 142 to provide a service shall prominently and
22 conspicuously post a sign for display in a public area of the
23 person's headquarters or office that is readily available to
24 employees and visitors.

25 (b) The sign must include the statement: "CASES OF
26 SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE
27 TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING

1 (insert telephone hotline number)."

2 (c) A person licensed under Chapter 142 to provide a service
3 shall provide the telephone hotline number to an immediate family
4 member of each recipient of services on provision of the first
5 service to the recipient.

6 Sec. 142A.007. INVESTIGATION AND REPORT OF DEPARTMENT. (a)
7 The department shall make a thorough investigation after receiving
8 an oral or written report of abuse, neglect, or exploitation under
9 Section 142A.002 or another complaint alleging abuse, neglect, or
10 exploitation.

11 (b) The primary purpose of the investigation is the
12 protection of the recipient.

13 (c) The department shall begin the investigation:

14 (1) within 24 hours after receipt of the report or
15 other allegation, if the report of abuse, neglect, or exploitation
16 or other complaint alleges that:

17 (A) a recipient's health or safety is in imminent
18 danger;

19 (B) a recipient has recently died because of
20 conduct alleged in the report of abuse, neglect, or exploitation or
21 other complaint;

22 (C) a recipient has been hospitalized or been
23 treated in an emergency room because of conduct alleged in the
24 report of abuse, neglect, or exploitation or other complaint;

25 (D) a recipient has been a victim of any act or
26 attempted act described by Section 21.02, 21.11, 22.011, or 22.021,
27 Penal Code; or

1 (E) a recipient has suffered bodily injury, as
2 defined by Section 1.07, Penal Code, because of conduct alleged in
3 the report of abuse, neglect, or exploitation or other complaint;
4 or

5 (2) before the end of the next working day after the
6 date of receipt of the report of abuse, neglect, or exploitation or
7 other complaint if the report or complaint alleges the existence of
8 circumstances that could result in abuse, neglect, or exploitation
9 and that could place a recipient's health or safety in imminent
10 danger.

11 (d) The executive commissioner shall adopt rules governing
12 the conduct of investigations, including procedures to ensure that
13 the complainant and the recipient, the recipient's next of kin, and
14 any person designated to receive information concerning the
15 recipient receive periodic information regarding the
16 investigation.

17 (e) In investigating the report of abuse, neglect, or
18 exploitation or other complaint, the investigator for the
19 department shall:

20 (1) make an unannounced visit to the place at which a
21 service is provided to the recipient to determine the nature and
22 cause of the alleged abuse, neglect, or exploitation of the
23 recipient;

24 (2) interview each available witness, including the
25 recipient who suffered the alleged abuse, neglect, or exploitation
26 if the recipient is able to communicate, or another recipient or
27 other witness identified by any source as having personal knowledge

1 relevant to the report of abuse, neglect, or exploitation or other
2 complaint;

3 (3) personally inspect any physical circumstance that
4 is relevant and material to the report of abuse, neglect, or
5 exploitation or other complaint and that may be objectively
6 observed;

7 (4) make a photographic record of any injury to a
8 recipient, subject to Subsection (m); and

9 (5) write an investigation report that includes:

10 (A) the investigator's personal observations;

11 (B) a review of relevant documents and records;

12 (C) a summary of each witness statement,
13 including the statement of the recipient who suffered the alleged
14 abuse, neglect, or exploitation and any other recipient interviewed
15 in the investigation; and

16 (D) a statement of the factual basis for the
17 findings for each incident or problem alleged in the report or other
18 allegation.

19 (f) An investigator shall conduct an interview under
20 Subsection (e) in private unless the witness expressly requests
21 that the interview not be private.

22 (g) Not later than the 30th day after the date the
23 investigation is complete, the investigator shall prepare the
24 written report required by Subsection (e). The department shall
25 make the investigation report available to the public on request
26 after the date the department's letter of determination is
27 complete. The department shall delete from any copy made available

1 to the public:

2 (1) the name of:

3 (A) any recipient, unless the department
4 receives written authorization from a recipient or the recipient's
5 legal representative requesting that the recipient's name be left
6 in the report;

7 (B) the person making the report of abuse,
8 neglect, or exploitation or other complaint; and

9 (C) a person interviewed in the investigation;
10 and

11 (2) photographs of any injury to the recipient.

12 (h) In the investigation, the department shall determine:

13 (1) the nature, extent, and cause of the abuse,
14 neglect, or exploitation;

15 (2) the identity of the person responsible for the
16 abuse, neglect, or exploitation;

17 (3) the names and conditions of the other recipients;

18 (4) an evaluation of the persons responsible for the
19 care of the recipients;

20 (5) the adequacy of the environment in which a service
21 is provided; and

22 (6) any other information required by the department.

23 (i) Before the completion of the investigation, the
24 department shall file a petition for temporary care and protection
25 of the recipient if the department determines that the action is
26 necessary to protect the recipient from further abuse, neglect, or
27 exploitation.

1 (j) The department shall make a complete final written
2 report of the investigation and submit the report and its
3 recommendations to the district attorney and, if a law enforcement
4 agency has not investigated the report of abuse, neglect, or
5 exploitation or other complaint, to the appropriate law enforcement
6 agency.

7 (k) Within 24 hours after receipt of a report of abuse,
8 neglect, or exploitation or other complaint described by Subsection
9 (c)(1), the department shall report the report or complaint to the
10 law enforcement agency described by Section 142A.016(a). The
11 department shall cooperate with that law enforcement agency in the
12 investigation of the report or complaint as described by Section
13 142A.016.

14 (l) The inability or unwillingness of a local law
15 enforcement agency to conduct a joint investigation under Section
16 142A.016 does not constitute grounds to prevent or prohibit the
17 department from performing its duties under this chapter. The
18 department shall document any instance in which a law enforcement
19 agency is unable or unwilling to conduct a joint investigation
20 under Section 142A.016.

21 (m) If the department determines that, before a
22 photographic record of an injury to a recipient may be made under
23 Subsection (e), consent is required under state or federal law, the
24 investigator:

25 (1) shall seek to obtain any required consent; and

26 (2) may not make the photographic record unless the
27 consent is obtained.

1 Sec. 142A.008. CONFIDENTIALITY. A report, record, or
2 working paper used or developed in an investigation made under this
3 chapter and the name, address, and phone number of any person making
4 a report under this chapter are confidential and may be disclosed
5 only for purposes consistent with rules adopted by the executive
6 commissioner. The report, record, or working paper and the name,
7 address, and phone number of the person making the report shall be
8 disclosed to a law enforcement agency as necessary to permit the law
9 enforcement agency to investigate a report of abuse, neglect, or
10 exploitation or other complaint in accordance with Section
11 142A.016.

12 Sec. 142A.009. IMMUNITY. (a) A person who makes a report
13 as provided by this chapter is immune from civil or criminal
14 liability that, in the absence of the immunity, might result from
15 making the report.

16 (b) The immunity provided by this section extends to
17 participation in any judicial proceeding that results from the
18 report.

19 (c) This section does not apply to a person who makes a
20 report in bad faith or with malice.

21 Sec. 142A.010. PRIVILEGED COMMUNICATIONS. In a proceeding
22 regarding the abuse, neglect, or exploitation of a recipient or the
23 cause of any abuse, neglect, or exploitation, evidence may not be
24 excluded on the ground of privileged communication except in the
25 case of a communication between an attorney and client.

26 Sec. 142A.011. CENTRAL REGISTRY. (a) The department shall
27 maintain in the city of Austin a central registry of reported cases

1 of recipient abuse, neglect, or exploitation.

2 (b) The executive commissioner may adopt rules necessary to
3 carry out this section.

4 (c) The rules shall provide for cooperation with hospitals
5 and clinics in the exchange of reports of recipient abuse, neglect,
6 or exploitation.

7 Sec. 142A.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A
8 person commits an offense if the person has cause to believe that a
9 recipient's physical or mental health or welfare has been or may be
10 further adversely affected by abuse, neglect, or exploitation and
11 knowingly fails to report in accordance with Section 142A.002.

12 (b) An offense under this section is a Class A misdemeanor.

13 Sec. 142A.013. MALICIOUS, RECKLESS, OR BAD FAITH REPORTING;
14 CRIMINAL PENALTY. (a) A person commits an offense if the person
15 makes a report under this chapter maliciously, recklessly, or in
16 bad faith.

17 (b) An offense under this section is a Class A misdemeanor.

18 (c) The criminal penalty provided by this section is in
19 addition to any civil penalties for which the person may be liable.

20 Sec. 142A.014. RETALIATION AGAINST EMPLOYEES PROHIBITED.

21 (a) In this section, "employee" means a person who is an employee
22 of a person licensed under Chapter 142 to provide a service or any
23 other person who provides services for compensation, including a
24 contract laborer for the person licensed under Chapter 142 to
25 provide a service.

26 (b) An employee has a cause of action against a person
27 licensed under Chapter 142 to provide a service, or another

1 employee of the person licensed under Chapter 142 to provide a
2 service, that suspends or terminates the employment of the employee
3 or otherwise disciplines, discriminates, or retaliates against the
4 employee for reporting to the employee's supervisor, an
5 administrator of the person licensed under Chapter 142 to provide a
6 service, the department, or a law enforcement agency a violation of
7 law or for initiating or cooperating in any investigation or
8 proceeding of a governmental entity relating to the provision of
9 the service.

10 (c) The petitioner may recover:

11 (1) the greater of \$1,000 or actual damages, including
12 damages for mental anguish even if an injury other than mental
13 anguish is not shown, and damages for lost wages if the petitioner's
14 employment was suspended or terminated;

15 (2) exemplary damages;

16 (3) court costs; and

17 (4) reasonable attorney's fees.

18 (d) In addition to the amounts that may be recovered under
19 Subsection (c), a person whose employment is suspended or
20 terminated is entitled to appropriate injunctive relief,
21 including, if applicable:

22 (1) reinstatement in the person's former position; and

23 (2) reinstatement of lost fringe benefits or seniority
24 rights.

25 (e) The petitioner, not later than the 90th day after the
26 date on which the person's employment is suspended or terminated,
27 must bring suit or notify the Texas Workforce Commission of the

1 petitioner's intent to sue under this section. A petitioner who
2 notifies the Texas Workforce Commission under this subsection must
3 bring suit not later than the 90th day after the date of delivery of
4 the notice to the commission. On receipt of the notice, the
5 commission shall notify the service of the petitioner's intent to
6 bring suit under this section.

7 (f) The petitioner has the burden of proof, except that
8 there is a rebuttable presumption that the person's employment was
9 suspended or terminated for reporting abuse, neglect, or
10 exploitation if the person is suspended or terminated within 60
11 days after the date on which the person reported in good faith.

12 (g) A suit under this section may be brought in the district
13 court of the county in which:

14 (1) the plaintiff resides;

15 (2) the plaintiff was employed by the defendant; or

16 (3) the defendant conducts business.

17 (h) Each person licensed under Chapter 142 to provide a
18 service shall require each employee of the person, as a condition of
19 employment, to sign a statement that the employee understands the
20 employee's rights under this section. The statement must be part of
21 the statement required under Section 142A.002. If a person
22 licensed under Chapter 142 to provide a service does not require an
23 employee to read and sign the statement, the periods under
24 Subsection (e) do not apply, and the petitioner must bring suit not
25 later than the second anniversary of the date on which the
26 petitioner's employment is suspended or terminated.

27 Sec. 142A.015. RETALIATION AGAINST VOLUNTEERS, RECIPIENTS,

1 OR FAMILY MEMBERS OR GUARDIANS OF RECIPIENTS. (a) A person
2 licensed under Chapter 142 to provide a service may not retaliate or
3 discriminate against a volunteer, recipient, or family member or
4 guardian of a recipient because the volunteer, recipient, family
5 member or guardian of a recipient, or any other person:

6 (1) makes a complaint or files a grievance concerning
7 the person;

8 (2) reports a violation of law; or

9 (3) initiates or cooperates in an investigation or
10 proceeding of a governmental entity relating to the provision of
11 the service.

12 (b) A volunteer, recipient, or family member or guardian of
13 a recipient who is retaliated or discriminated against in violation
14 of Subsection (a) is entitled to sue for:

15 (1) injunctive relief;

16 (2) the greater of \$1,000 or actual damages, including
17 damages for mental anguish even if an injury other than mental
18 anguish is not shown;

19 (3) exemplary damages;

20 (4) court costs; and

21 (5) reasonable attorney's fees.

22 (c) A volunteer, recipient, or family member or guardian of
23 a recipient who seeks relief under this section must report the
24 alleged violation not later than the 180th day after the date on
25 which the alleged violation of this section occurred or was
26 discovered by the volunteer, recipient, or family member or
27 guardian of the recipient through reasonable diligence.

1 (d) A suit under this section may be brought in the district
2 court of the county in which the service is located or in a district
3 court of Travis County.

4 Sec. 142A.016. DUTIES OF LAW ENFORCEMENT; JOINT
5 INVESTIGATION. (a) The department shall investigate a report of
6 abuse, neglect, or exploitation or other complaint described by
7 Section 142A.007(c)(1) jointly with:

8 (1) the municipal law enforcement agency, if the
9 service is provided at a location within the territorial boundaries
10 of a municipality; or

11 (2) the sheriff's department of the county in which the
12 service is provided, if the service is not provided at a location
13 within the territorial boundaries of a municipality.

14 (b) The law enforcement agency described by Subsection (a)
15 shall acknowledge the report of abuse, neglect, or exploitation or
16 other complaint and begin the joint investigation required by this
17 section within 24 hours after receipt of the report or complaint.
18 The law enforcement agency shall cooperate with the department and
19 report to the department the results of the investigation.

20 (c) The requirement that the law enforcement agency and the
21 department conduct a joint investigation under this section does
22 not require that a representative of each agency be physically
23 present during all phases of the investigation or that each agency
24 participate equally in each activity conducted in the course of the
25 investigation.

26 SECTION 2. Section 142.009, Health and Safety Code, is
27 amended by amending Subsection (c) and adding Subsection (c-1) to

1 read as follows:

2 (c) Except as provided by Subsection (c-1), the [~~The~~
3 department or its authorized representative shall investigate each
4 complaint received regarding the provision of home health, hospice,
5 or personal assistance services, including any allegation of abuse,
6 neglect, or exploitation of a child under the age of 18, and may, as
7 a part of the investigation:

8 (1) conduct an unannounced survey of a place of
9 business, including an inspection of medical and personnel records,
10 if the department has reasonable cause to believe that the place of
11 business is in violation of this chapter or a rule adopted under
12 this chapter;

13 (2) conduct an interview with a recipient of home
14 health, hospice, or personal assistance services, which may be
15 conducted in the recipient's home if the recipient consents;

16 (3) conduct an interview with a family member of a
17 recipient of home health, hospice, or personal assistance services
18 who is deceased or other person who may have knowledge of the care
19 received by the deceased recipient of the home health, hospice, or
20 personal assistance services; or

21 (4) interview a physician or other health care
22 practitioner, including a member of the personnel of a home and
23 community support services agency, who cares for a recipient of
24 home health, hospice, or personal assistance services.

25 (c-1) A complaint that constitutes a report of abuse,
26 neglect, or exploitation in connection with the provision of a home
27 health service is governed by Chapter 142A.

1 SECTION 3. Section 142.018, Health and Safety Code, is
2 repealed.

3 SECTION 4. The change in law made by this Act applies only
4 to a licensing action under Chapter 142, Health and Safety Code, for
5 conduct that occurs on or after the effective date of this Act.
6 Conduct that occurs before the effective date of this Act is
7 governed by the law as it existed on the date the conduct occurred,
8 and the former law is continued in effect for that purpose.

9 SECTION 5. This Act takes effect immediately if it receives
10 a vote of two-thirds of all the members elected to each house, as
11 provided by Section 39, Article III, Texas Constitution. If this
12 Act does not receive the vote necessary for immediate effect, this
13 Act takes effect September 1, 2013.