

Amend SB 760 (house committee printing) by adding the following appropriately numbered SECTIONS to the bill and renumbering subsequent SECTIONS of the bill accordingly:

SECTION _____. Section 48.002(a), Human Resources Code, is amended by adding Subdivision (11) to read as follows:

(11) "Home and community-based services" has the meaning assigned by Section 48.251.

SECTION _____. Section 48.002(b), Human Resources Code, as amended by SB 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(b) The definitions of "abuse," "neglect," ~~[and]~~ "exploitation," and "an individual receiving services" adopted by the executive commissioner as prescribed by Section 48.251(b) ~~[48.251]~~ apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter F ~~[or H]~~.

SECTION _____. Section 48.003, Human Resources Code, is amended to read as follows:

Sec. 48.003. INVESTIGATIONS IN NURSING FACILITIES ~~[HOMES]~~, ASSISTED LIVING FACILITIES, AND SIMILAR FACILITIES. (a) Except as provided by Subsection (c), this ~~[This]~~ chapter does not apply if the alleged or suspected abuse, neglect, or exploitation occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code.

(b) Alleged or suspected abuse, neglect, or exploitation that occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code, is governed by Chapter 260A, Health and Safety Code, except as otherwise provided by Subsection (c).

(c) Subchapter F applies to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider of home and community-based services is or may be alleged to have committed the abuse, neglect, or exploitation, regardless of whether the facility in which those services were provided is licensed under Chapter 242 or 247, Health and Safety Code.

SECTION _____. Sections 48.051(a) and (b), Human Resources Code, as amended by SB 219, Acts of the 84th Legislature, Regular Session, 2015, are amended to read as follows:

(a) Except as prescribed by Subsection (b), a person having

cause to believe that an elderly person, a ~~[or]~~ person with a disability, or an individual receiving services from a provider as described by Subchapter F is in the state of abuse, neglect, or exploitation~~[, including a person with a disability who is receiving services as described by Section 48.252,]~~ shall report the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly person or a person with a disability, other than an individual ~~[a person with a disability]~~ receiving services from a provider as described by Subchapter F ~~[Section 48.252]~~, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

SECTION _____. Section 48.103, Human Resources Code, is amended by amending Subsection (a), as amended by **SB 219**, Acts of the 84th Legislature, Regular Session, 2015, and adding Subsection (c) to read as follows:

(a) Except as otherwise provided by Subsection (c), on ~~[On]~~ determining after an investigation that an elderly person or a person with a disability has been abused, exploited, or neglected by an employee of a home and community support services agency licensed under Chapter 142, Health and Safety Code, the department shall:

(1) notify the state agency responsible for licensing the home and community support services agency of the department's determination;

(2) notify any health and human services agency, as defined by Section 531.001, Government Code, that contracts with the home and community support services agency for the delivery of health care services of the department's determination; and

(3) provide to the licensing state agency and any contracting health and human services agency access to the department's records or documents relating to the department's investigation.

(c) This section does not apply to an investigation of

alleged or suspected abuse, neglect, or exploitation in which a provider, as defined by Section 48.251, is or may be alleged to have committed the abuse, neglect, or exploitation. An investigation described by this subsection is governed by Subchapter F.

SECTION _____. Section 48.151(e), Human Resources Code, is amended to read as follows:

(e) This section does not apply to investigations conducted under Subchapter F [~~or H~~].

SECTION _____. Section 48.201, Human Resources Code, as amended by **SB 219**, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as otherwise provided, this subchapter does not apply to an investigation conducted under Subchapter F [~~or H~~].

SECTION _____. Subchapter F, Chapter 48, Human Resources Code, as amended by **SB 219**, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS [~~IN CERTAIN FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES~~]

Sec. 48.251. DEFINITIONS. (a) In this subchapter:

(1) "Behavioral health services" means:

(A) mental health services, as defined by Section 531.002, Health and Safety Code; and

(B) interventions provided to treat chemical dependency, as defined by Section 461A.002, Health and Safety Code.

(2) "Community center" has the meaning assigned by Section 531.002, Health and Safety Code.

(3) "Facility" means:

(A) a facility listed in Section 532.001(b) or 532A.001(b), Health and Safety Code, including community services operated by the Department of State Health Services or Department of Aging and Disability Services, as described by those sections, or a person contracting with a health and human services agency to provide inpatient mental health services; and

(B) a facility licensed under Chapter 252, Health

and Safety Code.

(4) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

(5) "Home and community-based services" means services provided in the home or community in accordance with 42 U.S.C. Section 1315, 42 U.S.C. Section 1315a, 42 U.S.C. Section 1396a, or 42 U.S.C. Section 1396n, and as otherwise provided by department rule.

(6) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(7) "Local mental health authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(8) "Managed care organization" has the meaning assigned by Section 533.001, Government Code.

(9) "Provider" means:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in Paragraphs (A)-(E); and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

(b) The executive commissioner by rule shall adopt definitions of "abuse," "neglect," "exploitation," and "an individual receiving services" for purposes of this subchapter and [~~"exploitation" to govern~~] investigations conducted under this

subchapter [~~and Subchapter H~~].

Sec. 48.252. INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION BY PROVIDER [~~IN CERTAIN FACILITIES AND IN COMMUNITY CENTERS~~]. (a) The department shall receive and, except as provided by Subsection (b), shall investigate under this subchapter reports of the abuse, neglect, or exploitation of an individual [~~with a disability~~] receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider [+

~~[(1) in:~~

~~[(A) a mental health facility operated by the Department of State Health Services; or~~

~~[(B) a facility licensed under Chapter 252, Health and Safety Code;~~

~~[(2) in or from a community center, a local mental health authority, or a local intellectual and developmental disability authority; or~~

~~[(3) through a program providing services to that person by contract with a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local intellectual and developmental disability authority].~~

(b) The department may not [~~shall receive and shall~~] investigate under this subchapter reports of [~~the~~] abuse, neglect, or exploitation alleged or suspected to have been committed by a provider that is operated, licensed, certified, or registered by a state agency that has authority under this chapter or other law to investigate reports of abuse, neglect, or exploitation of an individual by the provider. The department shall forward any report of abuse, neglect, or exploitation alleged or suspected to have been committed by a provider described by this subsection to the appropriate state agency for investigation [~~of an individual with a disability receiving services~~].

~~[(1) in a state supported living center or the ICF-IID component of the Rio Grande State Center; or~~

~~[(2) through a program providing services to that person by contract with a state supported living center or the~~

~~ICF-IID component of the Rio Grande State Center].~~

(c) The department shall receive and investigate under this subchapter reports of abuse, neglect, or exploitation of an individual who lives in a residence that is owned, operated, or controlled by a provider who provides home and community-based services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the individual is receiving services under that waiver program from the provider. ~~[The executive commissioner by rule shall define who is "an individual with a disability receiving services."~~

~~[(d) In this section, "community center," "local mental health authority," and "local intellectual and developmental disability authority" have the meanings assigned by Section 531.002, Health and Safety Code.]~~

Sec. 48.253. ACTION ON REPORT. (a) On receipt by the department of a report of alleged abuse, neglect, or exploitation under this subchapter, the department shall initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for emergency protective services, unless the department, in accordance with rules adopted under this subchapter, determines that the report:

- (1) is frivolous or patently without a factual basis;
- or
- (2) does not concern abuse, neglect, or exploitation.

(b) After receiving a report that alleges that a provider is or may be the person who committed the alleged abuse, neglect, or exploitation, the department shall notify the provider and the appropriate health and human services agency in accordance with rules adopted by the executive commissioner.

(c) The provider identified under Subsection (b) shall:

(1) cooperate completely with an investigation conducted under this subchapter; and

(2) provide the department complete access during an investigation to:

(A) all sites owned, operated, or controlled by the provider; and

(B) clients and client records.

(d) The executive commissioner shall adopt rules governing investigations conducted under this subchapter.

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The executive commissioner by rule shall establish procedures for the department to use to [~~In accordance with department rules, the department shall~~] forward a copy of the initial intake report and a copy of the completed provider investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate provider and health and human services agency [~~facility, community center, local mental health authority, local intellectual and developmental disability authority, or program providing mental health or intellectual disability services under contract with the facility, community center, or authority~~].

(b) The department shall redact from an initial intake report and from the copy of the completed provider investigation report any identifying information contained in the report relating to the person who reported the alleged or suspected abuse, neglect, or exploitation under Section 48.051.

(c) A provider that receives a completed investigation report under Subsection (a) shall forward the report to the managed care organization with which the provider contracts for services for the alleged victim.

Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS SUBCHAPTER. (a) The executive commissioner [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall adopt [~~develop~~] rules to:

(1) prioritize investigations conducted under this subchapter with the primary criterion being whether there is a risk that a delay in the investigation will impede the collection of evidence in that investigation;

(2) [facilitate investigations in state mental health facilities and state supported living centers.

~~[(b) The executive commissioner by rule shall] establish procedures for resolving disagreements between the department and health and human services agencies [~~the Department of Aging and Disability Services or the Department of State Health Services~~]~~

concerning the department's investigation findings; and

(3) provide for an appeals process by the department for the alleged victim of abuse, neglect, or exploitation.

~~(b) [(c) The department, the Department of Aging and Disability Services, and the Department of State Health Services shall develop and propose to the executive commissioner rules to facilitate investigations in community centers, local mental health authorities, and local intellectual and developmental disability authorities.~~

~~[(c-1) The executive commissioner shall adopt rules regarding investigations in a facility licensed under Chapter 252, Health and Safety Code, to ensure that those investigations are as consistent as practicable with other investigations conducted under this subchapter.~~

~~[(d)] A confirmed investigation finding by the department may not be changed by the administrator [a superintendent] of a [state mental health] facility, [by a director of a state supported living center, by a director of] a community center, [or by] a local mental health authority, or a local intellectual and developmental disability authority.~~

~~[(e) The executive commissioner shall provide by rule for an appeals process by the alleged victim of abuse, neglect, or exploitation under this section.~~

~~[(f) The executive commissioner by rule may assign priorities to an investigation conducted by the department under this section. The primary criterion used by the executive commissioner in assigning a priority must be the risk that a delay in the investigation will impede the collection of evidence.]~~

Sec. 48.256. SHARING PROVIDER INFORMATION. (a) The executive commissioner shall adopt rules that prescribe the appropriate manner in which health and human services agencies and managed care organizations provide the department with information necessary to facilitate identification of individuals receiving services from providers and to facilitate notification of providers by the department.

(b) The executive commissioner shall adopt rules requiring a provider to provide information to the administering health and

human services agency necessary to facilitate identification by the department of individuals receiving services from providers and to facilitate notification of providers by the department.

(c) A provider of home and community-based services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, shall post in a conspicuous location inside any residence owned, operated, or controlled by the provider in which home and community-based waiver services are provided, a sign that states:

(1) the name, address, and telephone number of the provider;

(2) the effective date of the provider's contract with the applicable health and human services agency to provide home and community-based services; and

(3) the name of the legal entity that contracted with the applicable health and human services agency to provide those services.

Sec. 48.257. RETALIATION PROHIBITED. (a) A provider of home and community-based services may not retaliate against a person for filing a report or providing information in good faith relating to the possible abuse, neglect, or exploitation of an individual receiving services.

(b) This section does not prohibit a provider of home and community-based services from terminating an employee for a reason other than retaliation.

Sec. 48.258. [SINGLE] TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) The health and human services agencies [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall, at the direction of the executive commissioner, jointly develop and implement a [~~single~~] system to track reports and investigations under this subchapter.

(b) To facilitate implementation of the system, the health and human services agencies [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter.

SECTION _____. Section 48.301, Human Resources Code, is amended by amending Subsection (a), as amended by SB 219, Acts of the 84th Legislature, Regular Session, 2015, and adding Subsection (a-1) to read as follows:

(a) If the department receives a report of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability~~[, other than a person with a disability who is]~~ receiving services ~~[as described by Section 48.252,]~~ in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to that agency.

(a-1) This subchapter does not apply to a report of suspected abuse, neglect, or exploitation of an individual receiving services from a provider as described by Subchapter F.

SECTION _____. Sections 48.401(1) and (3), Human Resources Code, are amended to read as follows:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code;

(B) a person exempt from licensing under Section 142.003(a)(19), Health and Safety Code;

(C) a facility licensed under Chapter 252, Health and Safety Code; or

(D) a provider ~~[an entity]~~ investigated by the department under Subchapter F or under Section 261.404, Family Code.

(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code;

(B) provides personal care services, active treatment, or any other ~~[personal]~~ services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code, or an individual receiving services through the consumer-directed service option, as defined by Section 531.051, Government Code; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

SECTION _____. The heading to Section 261.404, Family Code, as amended by **SB 219**, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN RECEIVING SERVICES FROM CERTAIN PROVIDERS [~~WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY~~].

SECTION _____. Section 261.404, Family Code, as amended by **SB 219**, Acts of the 84th Legislature, Regular Session, 2015, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) The department shall investigate a report of abuse, neglect, or exploitation of a child receiving services from a provider, as those terms are defined by Section 48.251, Human Resources Code, or as otherwise defined by rule. The department shall also investigate, under Subchapter F, Chapter 48, Human Resources Code, a report of abuse, neglect, or exploitation of a child receiving services from an officer, employee, agent, contractor, or subcontractor of a home and community support services agency licensed under Chapter 142, Health and Safety Code, if the officer, employee, agent, contractor, or subcontractor is or may be the person alleged to have committed the abuse, neglect, or exploitation[+]

~~[(1) in a facility operated by the Department of Aging and Disability Services or a mental health facility operated by the Department of State Health Services,~~

~~[(2) in or from a community center, a local mental health authority, or a local intellectual and developmental disability authority,~~

~~[(3) through a program providing services to that child by contract with a facility operated by the Department of Aging and Disability Services, a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local intellectual and~~

~~developmental disability authority;~~

~~[(4) from a provider of home and community-based services who contracts with the Department of Aging and Disability Services; or~~

~~[(5) in a facility licensed under Chapter 252, Health and Safety Code].~~

(a-1) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, the department, in accordance with Subchapter E, Chapter 48, Human Resources Code, may provide emergency protective services necessary to immediately protect the child from serious physical harm or death and, if necessary, obtain an emergency order for protective services under Section 48.208, Human Resources Code.

(a-2) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the child is receiving services under that waiver program from the provider, the department shall provide protective services to the child in accordance with Subchapter E, Chapter 48, Human Resources Code.

(a-3) For purposes of this section, Subchapters E and F, Chapter 48, Human Resources Code, apply to an investigation of a child and to the provision of protective services to that child in the same manner those subchapters apply to an investigation of an elderly person or person with a disability and the provision of protective services to that person.

(b) The department shall investigate the report under rules developed by the executive commissioner ~~[with the advice and assistance of the department, the Department of Aging and Disability Services, and the Department of State Health Services].~~

SECTION _____. Section 142.009(c), Health and Safety Code, is amended to read as follows:

(c) The department or its authorized representative shall investigate each complaint received regarding the provision of home

health, hospice, or personal assistance services [~~, including any allegation of abuse, neglect, or exploitation of a child under the age of 18,~~] and may, as a part of the investigation:

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

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

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

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

SECTION _____. Section 260A.002, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) Notwithstanding any other provision of this chapter, a report made under this section that a provider is or may be alleged to have committed abuse, neglect, or exploitation of a resident of a facility other than a prescribed pediatric extended care center shall be investigated by the Department of Family and Protective Services in accordance with Subchapter F, Chapter 48, Human Resources Code, and this chapter does not apply to that investigation. In this subsection, "facility" and "provider" have the meanings assigned by Section 48.251, Human Resources Code.

SECTION _____. The following are repealed:

(1) Section 261.404(f), Family Code, as amended by **SB 219**, Acts of the 84th Legislature, Regular Session, 2015; and

(2) Subchapter H, Chapter 48, Human Resources Code.