

## **BILL ANALYSIS**

C.S.H.B. 3820  
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Human Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Concerns have been raised regarding the reporting of certain child abuse or neglect cases in which the child has an underlying medical condition that gives the appearance of physical injury. In many cases, the initial report of suspected abuse or neglect comes from a hospital or from a physician who may be tasked with assisting the investigation. These situations can present a conflict of interest wherein the individual who is being counted on to provide investigators with objective, expert analysis of whether a child's injuries were caused by abuse or neglect either made the initial report or is paid by the institution that made the initial report. C.S.H.B. 3820 seeks to mitigate these conflicts of interest by prohibiting a health care provider that makes a report to child protective services from providing expert consultation to the Department of Family and Protective Services in furtherance of the investigation.

### **CRIMINAL JUSTICE IMPACT**

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

### **ANALYSIS**

C.S.H.B. 3820 amends the Family Code to include a licensed orthopedist board certified in a relevant field or specialty among the physicians who are eligible for consultation with the Forensic Assessment Center Network and the Texas Medical Child Abuse Resources and Education System (MEDCARES) under an agreement with the Department of Family and Protective Services (DFPS) to provide assistance in connection with abuse and neglect investigations conducted by DFPS. The bill specifies that the consultation is for the diagnosis and treatment of certain unique health conditions. The bill revises those conditions to include medical conditions that mimic child maltreatment or increase the risk of misdiagnosis of child maltreatment and to remove similar metabolic bone diseases or connective tissue disorders.

C.S.H.B. 3820 replaces a requirement for DFPS or a network physician to refer a child's case to MEDCARES for a consultation under certain circumstances with a requirement for DFPS to refer a child's case for a specialty consultation on determining that such a consultation is required, on the recommendation of the child's primary care physician or other primary health care provider who provided health care or treatment or otherwise evaluated the child, or at the request of the child's parent or legal guardian or the attorney of the parent or guardian. The case must be referred to a physician who is licensed to practice medicine in Texas under the Medical Practice Act, is board certified in a relevant field or specialty, and was not involved with the report of suspected abuse or neglect.

With respect to that referral, C.S.H.B. 3820 does the following:

- requires DFPS, before making the referral, to provide to the child's parent or legal guardian or, if represented by an attorney, the attorney of the parent or legal guardian written notice of the name, contact information, and credentials of the specialist;
- authorizes the parent, legal guardian, or attorney, as applicable, to object to the proposed referral and request referral to another specialist; and
- requires DFPS and the parent, legal guardian, or attorney, as applicable, to collaborate in good faith to select an acceptable specialist from the proposed specialists.

The bill prohibits these provisions from being construed to prohibit a child's parent, legal guardian, or an applicable attorney from otherwise obtaining an alternative opinion at the parent's, legal guardian's, or attorney's own initiative and expense. The bill requires DFPS to accept and consider an alternative opinion and to document its analysis and determinations regarding the opinion.

With respect to the mitigation of provider conflicts in investigation consultations, C.S.H.B. 3820 does the following:

- prohibits a health care practitioner who reports the suspected abuse or neglect of a child from providing forensic assessment services in connection with an investigation resulting from the report regardless of whether the practitioner is a member of the network or MEDCARES; and
- requires DFPS, when referring a case for forensic assessment, to refer the case to a physician authorized to practice medicine in Texas under the Medical Practice Act who was not involved with the report of suspected abuse or neglect.

The bill defines "forensic assessment" as a medical examination, psychosocial evaluation, medical case review, specialty evaluation, or other forensic evaluation service conducted by a physician in connection with any investigation of a suspected case of abuse or neglect for the primary purpose of providing the department, law enforcement, or the court with expert advice, recommendations, or testimony on the case. The bill defines "health care practitioner" as an individual licensed, certified, or otherwise authorized to administer health care services in the ordinary course of business or professional practice. The term includes a physician, medical student, resident physician, child abuse fellow, advanced practice registered nurse, nurse, and physician assistant. The bill defines "network" and "system" by reference.

C.S.H.B. 3820 prohibits these provisions from being construed to prohibit DFPS from interviewing the health care practitioner in the practitioner's capacity as a principal or collateral source or otherwise restrict the ability of DFPS to conduct an investigation of a report of child abuse or neglect.

### **EFFECTIVE DATE**

September 1, 2021.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 3820 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does not include the following provisions that were contained in the original:

- an authorization for DFPS, if a parent, legal guardian, or attorney requests referral to another specialist, to object to that proposed specialist and propose two alternative specialists;
- a requirement for DFPS to refer a case in which two physicians' opinions conflict concerning whether a child's injuries or symptoms were the result of abuse or neglect to the Department of State Health Services (DSHS) medical advisory board for independent evaluation; and

- a requirement for the DSHS medical advisory board to assist DFPS in reviewing suspected cases of abuse or neglect in which the conclusion of a forensic assessment conducted in connection with an investigation by DFPS conflicts with the opinion of another qualified medical professional who examined or treated the child concerning whether a child's injuries or symptoms were the result of abuse or neglect.

The substitute revises the definition of "forensic assessment" added by the original to specify that it only includes services conducted under provisions relating to specialty consultations for certain unique health conditions.