

AN ACT

relating to the use of opinions from medical professionals in making certain determinations relating to the abuse or neglect of a child.

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

SECTION 1. Section 261.3017, Family Code, is amended by amending Subsections (b) and (c) and adding Subsections (c-1), (c-2), and (e) to read as follows:

(b) Any agreement between the department and the network or between the Department of State Health Services and the system to provide assistance in connection with abuse and neglect investigations conducted by the department must require the network and the system to have the ability to obtain consultations with physicians licensed to practice medicine in this state and board certified in the relevant field or specialty, including radiologists, geneticists, orthopedists, and endocrinologists, to diagnose and treat certain ~~[who specialize in identifying]~~ unique health conditions, including:

- (1) rickets;
- (2) Ehlers-Danlos Syndrome;
- (3) osteogenesis imperfecta;
- (4) vitamin D deficiency; and
- (5) other medical conditions that mimic child

maltreatment or increase the risk of misdiagnosis of child

1 maltreatment [~~similar metabolic bone diseases or connective tissue~~
2 ~~disorders~~].

3 (c) During [~~If, during~~] an abuse or neglect investigation
4 authorized by this subchapter or an assessment provided under
5 Subsection (b), the department [~~or a physician in the network~~
6 ~~determines that a child requires a specialty consultation with a~~
7 ~~physician, the department or the physician~~] shall refer the child's
8 case [~~to the system~~] for a specialty [~~the~~] consultation^[7] if:

9 (1) the department determines the child requires a
10 specialty consultation with a physician;

11 (2) the child's primary care physician or other
12 primary health care provider who provided health care or treatment
13 or otherwise evaluated the child recommends a specialty
14 consultation; or

15 (3) the child's parent or legal guardian or, if
16 represented by an attorney, the attorney of the parent or legal
17 guardian requests a specialty consultation [~~the system has~~
18 ~~available capacity to take the child's case~~].

19 (c-1) For a case in which a specialty consultation is
20 required by Subsection (c), the department shall refer the case to a
21 physician who:

22 (1) is licensed to practice medicine in this state
23 under Subtitle B, Title 3, Occupations Code;

24 (2) is board certified in a field or specialty
25 relevant to diagnosing and treating the conditions described by
26 Subsection (b); and

27 (3) was not involved with the report of suspected

1 abuse or neglect.

2 (c-2) Before referring a child's case under Subsection (c),
3 the department shall provide to the child's parent or legal
4 guardian or, if represented by an attorney, the attorney of the
5 parent or legal guardian written notice of the name, contact
6 information, and credentials of the specialist. The parent, legal
7 guardian, or attorney, as applicable, may object to the proposed
8 referral and request referral to another specialist. The
9 department and the parent, legal guardian, or attorney, as
10 applicable, shall collaborate in good faith to select an acceptable
11 specialist from the proposed specialists; however the department
12 may refer the child's case to a specialist over the objection of the
13 parent, legal guardian, or attorney.

14 (e) This section may not be construed to prohibit a child's
15 parent or legal guardian or, if represented by an attorney, the
16 attorney of the parent or legal guardian from otherwise obtaining
17 an alternative opinion at the parent's, legal guardian's, or
18 attorney's, as applicable, own initiative and expense. The
19 department shall accept and consider an alternative opinion
20 obtained and provided under this section and shall document its
21 analysis and determinations regarding the opinion.

22 SECTION 2. Subchapter D, Chapter 261, Family Code, is
23 amended by adding Section 261.30171 to read as follows:

24 Sec. 261.30171. FORENSIC ASSESSMENT CENTER NETWORK
25 EVALUATION. (a) In this section, "network" means the Forensic
26 Assessment Center Network.

27 (b) The department, with the assistance of the Supreme Court

1 of Texas Children's Commission, shall:

2 (1) evaluate the department's use of the network; and

3 (2) develop joint recommendations to improve:

4 (A) the evaluation of agreements between the
5 department and the network; and

6 (B) the best practices for using assessments
7 provided by the network in connection with abuse and neglect
8 investigations conducted by the department.

9 (c) Not later than September 1, 2022, the department shall
10 prepare and submit to the legislature a written report containing
11 the department's findings and recommendations under Subsection (b)
12 and any recommendations for legislative or other action.

13 (d) This section expires September 1, 2023.

14 SECTION 3. Subchapter D, Chapter 261, Family Code, is
15 amended by adding Section 261.30175 to read as follows:

16 Sec. 261.30175. MITIGATION OF PROVIDER CONFLICTS IN ABUSE
17 OR NEGLECT INVESTIGATION CONSULTATIONS. (a) In this section:

18 (1) "Forensic assessment" means a medical
19 examination, psychosocial evaluation, medical case review,
20 specialty evaluation, or other forensic evaluation service
21 conducted by a physician under Section 261.3017 in connection with
22 any investigation of a suspected case of abuse or neglect for the
23 primary purpose of providing the department, law enforcement, or
24 the court with expert advice, recommendations, or testimony on the
25 case.

26 (2) "Health care practitioner" means an individual
27 licensed, certified, or otherwise authorized to administer health

1 care services in the ordinary course of business or professional
2 practice. The term includes a physician, medical student, resident
3 physician, child abuse fellow, advanced practice registered nurse,
4 nurse, and physician assistant.

5 (3) "Network" has the meaning assigned by Section
6 261.3017.

7 (4) "System" has the meaning assigned by Section
8 261.3017.

9 (b) A health care practitioner who reports suspected abuse
10 or neglect of a child may not provide forensic assessment services
11 in connection with an investigation resulting from the report.
12 This subsection applies regardless of whether the practitioner is a
13 member of the network or system.

14 (c) When referring a case for forensic assessment, the
15 department shall refer the case to a physician authorized to
16 practice medicine in this state under Subtitle B, Title 3,
17 Occupations Code, who was not involved with the report of suspected
18 abuse or neglect.

19 (d) This section may not be construed to:

20 (1) prohibit the department from interviewing the
21 health care practitioner in the practitioner's capacity as a
22 principal or collateral source; or

23 (2) otherwise restrict the department's ability to
24 conduct an investigation as provided by this subchapter.

25 SECTION 4. Section 261.504, Family Code, is amended by
26 adding Subsection (a-1) to read as follows:

27 (a-1) In making a determination whether the child is or has

1 been a victim of abuse or neglect, the court shall consider the
2 opinion of a medical professional obtained by an individual against
3 whom a protective order is sought.

4 SECTION 5. Section 262.102, Family Code, is amended by
5 adding Subsection (b-1) to read as follows:

6 (b-1) A determination under this section that there is an
7 immediate danger to the physical health or safety of a child or that
8 the child has been a victim of neglect or sexual abuse may not be
9 based solely on the opinion of a medical professional under
10 contract with the Department of Family and Protective Services who
11 did not conduct a physical examination of the child.

12 SECTION 6. Section 262.104, Family Code, is amended by
13 adding Subsection (c) to read as follows:

14 (c) An authorized representative of the Department of
15 Family and Protective Services, a law enforcement officer, or a
16 juvenile probation officer may not take possession of a child under
17 Subsection (a) based solely on the opinion of a medical
18 professional under contract with the Department of Family and
19 Protective Services who did not conduct a physical examination of
20 the child.

21 SECTION 7. Section 262.201, Family Code, is amended by
22 adding Subsection (i-1) to read as follows:

23 (i-1) In making a determination whether there is an
24 immediate danger to the physical health or safety of a child, the
25 court shall consider the opinion of a medical professional obtained
26 by the child's parent, managing conservator, possessory
27 conservator, guardian, caretaker, or custodian.

1 SECTION 8. The changes in law made by this Act apply only to
2 a suit affecting the parent-child relationship filed on or after
3 the effective date of this Act. A suit affecting the parent-child
4 relationship filed before the effective date of this Act is
5 governed by the law in effect on the date the suit was filed, and the
6 former law is continued in effect for that purpose.

7 SECTION 9. This Act takes effect September 1, 2021.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1578 passed the Senate on April 19, 2021, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendments on May 27, 2021, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1578 passed the House, with amendments, on May 23, 2021, by the following vote: Yeas 144, Nays 2, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor