

BILL ANALYSIS

C.S.H.B. 4696
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Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2015, the 84th Legislature enacted S.B. 200, which initiated the transfer of responsibility for the investigation of abuse, neglect, and exploitation in long-term care settings from Adult Protective Services in the Department of Family and Protective Services (DFPS) to the Health and Human Services Commission (HHSC), but the legislation only transferred the intake, prioritization, and assignment of those investigations for some long-term care providers. Under current law, intakes for abuse and neglect in home and community-based services programs and intermediate care facilities for individuals with intellectual disabilities, among others, continue to come into DFPS's statewide intake and are then transferred to HHSC for investigation. This has resulted in an inefficient bifurcated system that slows down investigations and often results in multiple visits to a provider for a single allegation. C.S.H.B. 4696 seeks to complete the consolidation begun by S.B. 200 by transferring from DFPS to HHSC the authority and responsibility to receive and investigate reports of abuse, neglect, and exploitation in certain long-term care facilities, which will allow HHSC to more efficiently assign resources for streamlining investigations and to provide oversight of these facilities.

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. 4696 amends the Family Code, the Health and Safety Code, and the Human Resources Code to transfer from the Department of Family and Protective Services (DFPS) to the Health and Human Services Commission (HHSC) functions relating to investigations of a report of abuse, neglect, or exploitation of an individual receiving services from the following long-term care providers or, as applicable, an officer, employee, agent, contractor, or subcontractor of such a provider:

- certain facilities providing community services for persons with mental illness or an intellectual disability as specified in Health and Safety Code provisions or a person contracting with a health and human services agency to provide inpatient mental health services;
- a licensed intermediate care facility for individuals with an intellectual disability (ICF/IID);
- a community center, local mental health authority, and local intellectual and developmental disability authority;

- a person who contracts with a health and human services agency or managed care organization (MCO) to provide home and community-based services;
- a person who contracts with a Medicaid MCO to provide behavioral health services;
- an MCO; and
- an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in a consumer-directed service option for certain persons.

The bill repeals a provision requiring DFPS to receive and investigate reports of abuse, neglect, and exploitation of an individual receiving services from such providers. The bill additionally requires HHSC to receive and investigate reports of abuse, neglect, or exploitation of an elderly person or a person with a disability who lives in or is in the care of a residential child-care facility. The bill clarifies that the information a provider receives with respect to an investigation report and must forward to the MCO with which the provider contracts for services for the alleged victim is the findings of an investigation from the applicable HHSC report. The bill repeals the requirement for certain identifying information to be redacted from the initial intake report and from the copy of the completed provider investigation report.

C.S.H.B. 4696 specifies that HHSC is the agency to which reports of the abuse, neglect, or exploitation of an individual receiving services from a home and community support services agency, an ICF/IID, or a provider under the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program must be made.

C.S.H.B. 4696 requires DFPS to immediately notify HHSC of a report alleging abuse or neglect of a child with an intellectual disability receiving services in a state supported living center or the ICF-IID component of the Rio Grande State Center. The bill extends the deadline by which HHSC must provide notification of a report of abuse, neglect, or exploitation of such a child to the applicable facility in which the child is receiving services from one to 24 hours after HHSC receives the report.

C.S.H.B. 4696 replaces the requirement that HHSC conduct an on-site survey of a licensed home and community support services agency within 18 months after a survey for the initial license with an authorization for HHSC to conduct a survey of the agency within that period.

C.S.H.B. 4696 updates the definition of "facility" for purposes of provisions relating to the employee misconduct registry to clarify that the term includes the following facilities, in addition to certain other facilities already listed in the existing statute:

- a nursing facility licensed under statutory provisions relating to convalescent and nursing facilities and related institutions;
- a licensed ICF/IID or a facility that is exempt from licensure under provisions relating to ICF/IIDs;
- an assisted living facility licensed under the Assisted Living Facility Licensing Act;
- a day activity and health services facility licensed under the Day Activity and Health Services Act;
- a residential child-care facility at which an elderly person or a person with a disability resides or is in the facility's care; and
- a provider who provides home and community-based services under the HCS waiver program or the TxHmL waiver program.

C.S.H.B. 4696 authorizes a mandatory report of abuse, neglect, or exploitation of a resident of certain long-term care facilities to be made electronically, as an alternative to being made orally, and replaces the requirement that the person make a written report not later than the fifth day after the oral report is made with a requirement for an applicable facility or service provider to submit a provider investigation report to HHSC not later than the fifth day after the date the oral or electronic report is made. The bill removes the specification that the investigator investigating the report of abuse, neglect, exploitation, or other complaint concerning residents of certain long-term care facilities conducts the investigation on-site, but the bill requires HHSC to make

an unannounced visit to the facility to conduct an investigation of abuse or neglect in addition to the investigator's investigation duties.

C.S.H.B. 4696 replaces the requirement that HHSC perform an on-site inspection of a facility under the Day Activity and Health Services Act as soon as feasible but no later than 30 days after receiving a complaint of an alleged violation of a licensing requirement, unless after an investigation the complaint is found to be frivolous, with the following requirements:

- if the complaint alleges abuse, neglect, or exploitation, perform an inspection as soon as feasible but not later than the 14th day after the date HHSC receives the complaint, unless after an investigation the complaint is found to be frivolous; and
- if the complaint does not allege abuse, neglect, or exploitation, investigate the complaint not later than the 45th day after the date HHSC receives the complaint.

C.S.H.B. 4696 requires the commissioner of DFPS, as soon as practicable after the bill's effective date and not later than December 1, 2024, to transfer to HHSC any DFPS funds and resources, including information technology, documents, and personnel allocated for the investigation of reports of abuse, neglect, or exploitation of elderly individuals and individuals with disabilities receiving services from certain providers under Human Resources Code provisions to allow HHSC to perform the functions under those provisions as amended by the bill. Until that transfer is complete, HHSC is expressly not required to comply with the bill's provisions.

C.S.H.B. 4696 provides for the delayed implementation of any provision for which an applicable state agency determines a federal waiver or authorization is necessary for implementation until the waiver or authorization is requested and granted.

C.S.H.B. 4696 repeals the following provisions:

- Section 252.121(b), Health and Safety Code;
- Section 252.126(b), Health and Safety Code;
- Section 48.252(a), Human Resources Code; and
- Section 48.254(b), Human Resources Code.

EFFECTIVE DATE

September 1, 2023.

COMPARISON OF INTRODUCED AND SUBSTITUTE

While C.S.H.B. 4696 may differ from the introduced in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

Both the introduced and the substitute transfer from DFPS to HHSC functions relating to investigations of a report of abuse, neglect, or exploitation of an individual receiving services from certain long-term care providers. However, the introduced only provided for such a transfer in Human Resources Code provisions relating to those investigations. The substitute also provides for the transfer of investigation functions in Family Code provisions applicable to reports concerning children receiving services from such providers and in Health and Safety Code provisions applicable to reports concerning individuals receiving services from an ICF/IID.

The substitute repeals a provision requiring DFPS to receive and investigate reports of abuse, neglect, and exploitation of an individual receiving services from certain providers, whereas the introduced replaced the reference to DFPS in that requirement with a reference to HHSC.

The introduced included certain changes specifying HHSC as the entity that receives reports of abuse, neglect, or exploitation of individuals receiving home and community-based services. The substitute retains those changes but also revises certain other provisions to make HHSC the agency to which reports of the abuse, neglect, or exploitation of an individual receiving services from a home and community support services agency, an ICF/IID, or a provider under the HCS waiver program or the TxHmL waiver program must be made.

Whereas the introduced required HHSC to receive and investigate reports of abuse, neglect, or exploitation of an elderly person or a person with a disability who lives in a residential child-care operation regulated under certain Texas Administrative Code provisions, the substitute requires HHSC to do so for such a person who lives in or is in the care of a residential child-care facility.

The substitute includes provisions not in the introduced that change the deadline for notifying a state supported living center or the ICF-IID component of the Rio Grande State Center of a report of abuse, neglect, or exploitation of a child receiving services from the facility and provide for DFPS's duty to notify HHSC of such a report.

The substitute replaces the requirement that HHSC conduct an on-site survey of a licensed home and community support services agency within 18 months after a survey for the initial license with an authorization for HHSC to conduct a survey of the agency within that period, whereas the introduced extended that mandatory on-site survey period from 18 to 36 months after the survey for the initial license.

Both the introduced and the substitute update the definition of "facility" for purposes of statutory provisions relating to the employee misconduct registry. However, the substitute revises the introduced version's provisions in the following ways:

- clarifies the facilities licensed by HHSC that are included in the definition;
- includes in the definition a provider who provides home and community-based services under the HCS waiver program or the TxHmL waiver program and a facility that is exempt from licensure under provisions relating to intermediate care facilities for individuals living with an intellectual disability, neither of which was included in the introduced; and
- changes the type of child-care facility included in the definition from a residential child-care operation regulated under certain Texas Administrative Code provisions, as in the introduced, to a residential child-care facility at which an elderly person or a person with a disability resides or is in the facility's care.

The substitute makes the following changes that were not in the introduced:

- authorizes a mandatory report of abuse, neglect, or exploitation of a resident of certain long-term care facilities to be made electronically, as an alternative to being made orally; and
- replaces the requirement that the person make a written report not later than the fifth day after the oral report is made with a requirement for an applicable facility or service provider to submit a provider investigation report to HHSC not later than the fifth day after the date the oral or electronic report is made.

Whereas the introduced transferred from DFPS to HHSC the requirement to redact certain identifying information from an initial intake report and from the copy of the completed provider investigation report, the substitute repeals that requirement altogether and clarifies that the information a provider receives with respect to an investigation report and must forward to the MCO with which the provider contracts for services for the alleged victim is the findings of an investigation from the applicable HHSC report.

The substitute changes the bill's deadline for the commissioner of DFPS to transfer to HHSC any DFPS funds and resources, including information technology, documents, and personnel allocated for investigations of abuse, neglect, and exploitation of certain individuals from December 1, 2023, as in the introduced, to December 1, 2024.