

BILL ANALYSIS

Senate Research Center
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C.S.H.B. 4696
By: Noble (Miles)
Health & Human Services
5/18/2023
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The consolidation and transformation of the Health and Human Services system, as required by S.B. 200 in the 84th Legislative Session (2015), transferred responsibility for conducting investigations of abuse, neglect, and exploitation in long-term care settings to the Health and Human Services Commission (HHSC). However, the legislation only moved some of the authority to receive, prioritize, and assign allegations of abuse and neglect for investigation to HHSC, leaving this function at the Department of Family and Protective Services (DFPS) for some home and community-based services (HCS) waiver providers, home health and hospice providers, and intermediate care facilities for individuals with intellectual and developmental disabilities, including state supported living centers (SSLCs).

H.B. 4696 seeks to fully integrate investigations of regulatory non-compliance and investigations of abuse, neglect, and exploitation in all long-term care settings, which will increase efficiency, eliminate duplicative on-site visits to providers, and help address an unprecedented backlog of long-term care complaint and abuse/neglect investigations at HHSC.

(Original Author's/Sponsor's Statement of Intent)

[Note: While the statutory reference in this bill is to the Department of Aging and Disability Services, the following amendments affect the Health and Human Services Commission, as the successor agency to the Department of Aging and Disability Services.]

C.S.H.B. 4696 amends current law relating to the reporting and investigation of certain allegations of abuse, neglect, and exploitation, the making and investigation of complaints alleging violations of certain health facility licensing requirements, and the content of the employee misconduct registry.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the commissioner of the Department of Family and Protective Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 17 (Section 48.253, Human Resources Code), SECTION 18 (Section 48.254, Human Resources Code), SECTION 19 (Section 48.255, Human Resources Code), and SECTION 20 (Section 48.256, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 19 (Section 48.255, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 261.005, Family Code, as follows:

Sec. 261.005. REFERENCE TO EXECUTIVE COMMISSIONER OR COMMISSION. Provides that, unless otherwise provided by a provision of Chapter 261 (Investigation of Report of Child Abuse or Neglect) in Chapter 261, a reference to the executive commissioner of the Health and Human Services Commissioner (executive commissioner) or the executive commissioner means the commissioner of the

Department of Family and Protective Services (DFPS), and a reference to the Health and Human Services Commission (HHSC) means DFPS.

SECTION 2. Amends Section 261.105(c-1), Family Code, as follows:

(c-1) Requires DFPS, notwithstanding Subsections (b) (relating to requiring DFPS to immediately notify the appropriate state or local law enforcement agency of any report it receives that concerns the suspected abuse or neglect of a child or death of a child from abuse or neglect) and (c) (relating to requiring DFPS to refer the report to the agency for investigation if the report relates to a child in a facility operated, licensed, certified, or registered by a state agency), if a report under Section 261.105 (Referral of Report by Department or Law Enforcement) relates to a child with an intellectual disability receiving services in a state supported living center as defined by Section 531.002 (Definitions), Health and Safety Code, or the ICF-IID component of the Rio Grande State Center, to immediately notify HHSC and requires HHSC to proceed with the investigation of the report as provided by Section 261.404 (Investigations Regarding Certain Children Receiving Services From Certain Providers). Defines "commission."

SECTION 3. Amends Section 261.404, Family Code, by amending Subsections (a), (a-1), (a-2), (a-3), (b), (c), and (d) and adding Subsection (a-4), as follows:

(a) Defines "commission" and "executive commissioner."

(a-1) Creates this subsection from existing text. Requires HHSC, rather than DFPS, to 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 (Definitions), Human Resources Code, or as otherwise defined by rule. Makes a conforming change.

(a-2) through (a-4) Redesignates existing Subsections (a-1) through (a-3) as Subsections (a-2) through (a-4).

(b) Requires HHSC, rather than DFPS, to investigate a report under this section under rules developed by the executive commissioner.

(c) Requires HHSC, rather than DFPS, if a report under this section relates to 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, to, within 24 hours, rather than one hour, of receiving the report, notify the facility in which the child is receiving services of the allegations in the report.

(d) Makes conforming and nonsubstantive changes to this subsection.

SECTION 4. Amends Section 142.009(j), Health and Safety Code, as follows:

(j) Authorizes a survey to be conducted, rather than requires that an on-site survey be conducted, within 18 months after a survey for an initial license, except as provided by Subsections (h) (relating to providing that a home and community support services agency licensed by DFPS is not subject to additional surveys relating to home health, hospice, or personal assistance services while the agency maintains certain accreditation) and (l) (requires DFPS and other state agencies that contract with home and community support services agencies to deliver services for which a license is required to execute a memorandum of understanding that establishes certain procedures).

SECTION 5. Amends Section 142.018(b), Health and Safety Code, to require a home and community support services agency that has cause to believe that a person receiving services from the agency has been abused, exploited, or neglected by an employee of the agency to report the information to HHSC, rather than to the Department of Aging and Disability Services (DADS) and to DFPS or other appropriate state agency as required by Section 48.051 (Report), Human Resources Code.

SECTION 6. Amends Section 252.039, Health and Safety Code, as follows:

Sec. 252.039. POSTING. Requires each facility to prominently and conspicuously post for display in a public area of the facility that is readily available to residents, employees, and visitors:

- (1) makes no changes to this subdivision;
- (2) a sign prescribed by HHSC, rather than DADS, that specifies complaint procedures established under Chapter 252 (Intermediate Care Facilities for Individuals With an Intellectual Disability) or rules adopted under this chapter and that specifies how complaints are authorized to be registered with HHSC. Makes a conforming change;
- (3) makes conforming changes to this subdivision;
- (4) makes no changes to this subdivision;
- (5) a notice providing instructions for reporting an allegation of abuse, neglect, or exploitation to HHSC, rather than DFPS; and
- (6) makes no changes to this subdivision.

SECTION 7. Amends Section 252.121(a), Health and Safety Code, as follows:

(a) Requires a person, including an owner or employee of a facility, who has cause to believe that a resident is being or has been subjected to abuse, neglect, or exploitation to report the suspected abuse, neglect, or exploitation to HHSC, rather than to DFPS as required by Chapter 48 (Investigations and Protective Services for Elderly Persons and Persons With Disabilities), Human Resources Code, or Chapter 261, Family Code, as appropriate. Requires HHSC to investigate the allegation of abuse, neglect, or exploitation in the manner prescribed by HHSC, rather than in the manner provided by Chapter 48, Human Resources Code, or Section 261.404, Family Code, as applicable.

SECTION 8. Amends Section 252.125, Health and Safety Code, as follows:

Sec. 252.125. IMMEDIATE REMOVAL TO PROTECT RESIDENT. Requires HHSC, before the completion of the investigation by HHSC, to file a petition for temporary care and protection of a resident if HHSC determines that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation. Deletes existing text requiring DADS, before the completion of the investigation by DFPS, to file a petition for temporary care and protection of a resident if DADS determines, based on information provided to DADS by DFPS, that immediate removal is necessary to protect the resident from further abuse, neglect, or exploitation.

SECTION 9. Amends Sections 253.001(1) and (4), Health and Safety Code, to redefine "commission" and "facility." Deletes existing definition of "commissioner."

SECTION 10. Amends Section 260A.001, Health and Safety Code, by adding Subdivision (1-a) to define "commission."

SECTION 11. Amends Section 260A.002, Health and Safety Code, by amending Subsections (a-1) and (c) and adding Subsection (d), as follows:

(a-1) Requires that a report made under Section 260A.002 (Reporting of Abuse, Neglect, and Exploitation) 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, notwithstanding any other provision of Chapter 260A (Reports of Abuse, Neglect, and Exploitation of Residents of Certain Facilities), be investigated by HHSC, rather than DFPS, in accordance with Subchapter F (Investigations of Abuse, Neglect, or Exploitation of Individuals Receiving Services from Certain Providers), Chapter 48,

Human Resources Code, and this chapter does not apply to that investigation. Defines "facility" and "provider."

(c) Requires a person to make an oral or electronic report immediately on learning of the abuse, neglect, or exploitation. Deletes existing text requiring a person to make an oral report immediately on learning of the abuse, neglect, or exploitation and to make a written report to DADS not later than the fifth day after the oral report is made.

(d) Requires a facility or provider to submit a provider investigation report to HHSC not later than the fifth day after the date the facility or provider makes the oral or electronic report under Subsection (c).

SECTION 12. Amends Section 260A.007, Health and Safety Code, by amending Subsection (e) and adding Subsection (e-1), as follows:

(e) Requires the investigator for HHSC, rather than the investigator for DADS, in investigating the report of abuse, neglect, exploitation, or other complaint, to:

(1) conduct an unannounced investigation, rather than make an unannounced visit to the facility, to determine the nature and cause of the alleged abuse, neglect, or exploitation of the resident;

(2) makes no changes to this subdivision;

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

(4) if an on-site investigation is conducted, make a photographic record of any injury to a resident, subject to Subsection (n) (relating to providing that an investigator meet certain criteria if DADS determines that, before a photographic record of an injury to a resident may be made, consent is required under state or federal law); and

(6) makes no changes to this subdivision.

(e-1) Requires HHSC, in addition to the requirements under Subsection (e), to make an unannounced visit to a facility to conduct an investigation of abuse or neglect.

SECTION 13. Amends Section 48.0021, Human Resources Code, as follows:

Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE COMMISSIONER. Provides that, unless otherwise provided by a provision of this chapter, in this chapter a reference to HHSC means DFPS and a reference to the executive commissioner means the commissioner of DFPS.

SECTION 14. Amends Section 48.051, Human Resources Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Provides that this subsection applies only to a provider under the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program, an intermediate care facility licensed under Chapter 252, Health and Safety Code, a state supported living center as defined by Section 531.002, Health and Safety Code, or a home and community support services agency licensed under Chapter 142 (Home and Community Support Services), Health and Safety Code. Requires a person, including an officer, employee, agent, contractor, or subcontractor of a facility or provider subject to this subsection, having cause to believe that an individual receiving services from the facility or provider is in the state of abuse, neglect, or exploitation, except as provided by Subsections (a) (relating to requiring a person having cause to believe that certain persons are in the state of abuse, neglect, or exploitation to report the

information required immediately to DFPS) and (b) (relating to requiring a person with cause to believe that an elderly person or a person with a disability has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency to report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation), to immediately report to HHSC the information required by Subsection (d) (relating to authorizing the report to be made orally or in writing and requiring that the report include certain information). Defines "commission."

(c) Provides that the duty imposed by Subsections (a), (b), and (b-1), rather than by Subsections (a) and (b), applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, employee or member of a board that licenses or certifies a professional, and mental health professional.

SECTION 15. Amends Section 48.251(a), Human Resources Code, by adding Subdivisions (1-a) and (2-a) and amending Subdivision (3) to define "commission" and "executive commissioner" and redefine "facility."

SECTION 16. Amends Sections 48.252(b) and (c), Human Resources Code, as follows:

(b) Requires DFPS to forward any report of abuse, neglect, or exploitation alleged or suspected to have been committed by a provider described by this subsection to HHSC rather than the appropriate state agency, for investigation.

(c) Requires HHSC, rather than DFPS, to receive and investigate under this subchapter reports of abuse, neglect, or exploitation of:

(1) creates this subdivision from existing text; and

(2) an elderly person or an adult with a disability who lives in or is in the care of a residential child-care facility as defined by Section 42.002 (Definitions).

SECTION 17. Amends Sections 48.253(a), (b), and (c), Human Resources Code, as follows:

(a) Requires HHSC, rather than DFPS, on receipt by HHSC of a report of alleged abuse, neglect, or exploitation under this subchapter, to 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 HHSC, in accordance with rules adopted under this subchapter, determines that the report meets certain criteria. Makes conforming changes.

(b) Requires HHSC, after receiving a report that alleges that a provider is or may be the person who committed the alleged abuse, neglect, or exploitation, to notify the provider, rather than the provider and the appropriate health and human services agency, in accordance with rules adopted by the executive commissioner. Makes a conforming change.

(c) Makes a conforming change to this subsection.

SECTION 18. Amends Sections 48.254(a) and (c), Human Resources Code, as follows:

(a) Makes conforming changes to this subsection.

(c) Requires a provider that receives the findings of an investigation from the HHSC report, rather than receives a completed investigation report, under Subsection (a) to forward the findings to the managed care organization with which the provider contracts for services for the alleged victim. Makes a conforming change.

SECTION 19. Amends Sections 48.255(a) and (b), Human Resources Code, as follows:

(a) Deletes existing text requiring the executive commissioner to adopt rules to establish procedures for resolving disagreements between DFPS and health and human services agencies concerning DFPS' investigation findings. Makes conforming changes.

(b) Makes a conforming change to this subsection.

SECTION 20. Amends Sections 48.256(a), (b), and (c), Human Resources Code, as follows:

(a) Requires the executive commissioner to adopt rules that prescribe the appropriate manner in which managed care organizations, rather than health and human services agencies and managed care organizations, provide HHSC with information necessary to facilitate the:

(1) identification of individuals receiving services from providers; and

(2) notification of providers by HHSC, rather than to facilitate notification of providers by DFPS.

Makes conforming changes.

(b)-(c) Makes conforming changes to these subsections.

SECTION 21. Amends Sections 48.258(a) and (b), Human Resources Code, as follows:

(a) Requires HHSC, rather than the health and human services agencies at the direction of the executive commissioner jointly, to develop and implement a system to track reports and investigations under this subchapter.

(b) Makes a conforming change to this subsection.

SECTION 22. Amends Section 103.008(b), Human Resources Code, as follows:

(b) Requires HHSC to:

(1) 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;

(2) 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;

(3) respond to a complainant in writing; and

(4) receive and investigate anonymous complaints.

Deletes existing text requiring HHSC to perform an on-site inspection as soon as feasible but no later than 30 days after receiving the complaint unless after an investigation the complaint is found to be frivolous. Deletes existing text requiring HHSC to respond to a complainant in writing. Deletes existing text requiring HHSC to also receive and investigate anonymous complaints.

SECTION 23. Repealers: Sections 252.121(b) (relating to requiring DADS, if DADS receives a report of suspected abuse, neglect, or exploitation of a resident of a facility licensed, to immediately refer the report to DFPS for investigation) and 252.126(b) (relating to requiring DFPS to provide a copy of a completed investigation report to DADS and authorizing DFPS to disclose information related to the investigation at any time to DADS as necessary to protect a resident of a facility from abuse, neglect, or exploitation), Health and Safety Code.

Repealers: Sections 48.252(a) (relating to requiring DFPS to receive and to investigate reports of the abuse, neglect, or exploitation of an individual receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider) and Section 48.254(b) (relating to requiring DFPS to 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), Human Resources Code.

SECTION 24. (a) Requires the commissioner of DFPS, as soon as practicable after the effective date of this Act, but not later than December 1, 2024, to transfer any DFPS funds and resources, including information technology, documents, and personnel allocated for the investigation of reports under Subchapter F, Chapter 48, Human Resources Code, to HHSC to allow HHSC to perform the functions described under Subchapter F, Chapter 48, Human Resources Code, as amended by this Act.

(b) Provides that HHSC, notwithstanding the effective date of this Act, is not required to comply with changes in law made by this Act until the transfer required by Subsection (a) of this section is completed.

SECTION 25. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 26. Effective date: September 1, 2023.