

BILL ANALYSIS

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S.B. 1197
By: Hall
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a child appears at a hospital with injuries or health issues that may be indicative of child abuse or neglect, a report is made to the Department of Family and Protective Services (DFPS). Unfortunately, sometimes the reporting physician does not have sufficient knowledge of the situation and causes the family unnecessary hardship by involving CPS. This is especially prevalent in cases involving medically fragile children.

The Pardo case is one such example. In 2019, after filing a complaint against a doctor who was treating their medically fragile son and seeking a second opinion, Ashley and Daniel Pardo were surprised when CPS showed up at their doorstep with law enforcement and forcibly removed their 4-year-old son, Drake.

After a nearly six-month court battle, during which time Drake was placed in foster care, the Texas Supreme Court ordered Drake returned to his family stating that DFPS did not have enough evidence to remove him.

Parents have the legal right to seek a second opinion for medical treatments, yet when CPS rushes in and removes the child before they can do so, it impedes the parents' legitimate right to obtain a second opinion. This bill seeks to make changes so that children are not wrongfully removed from their parents.

This Bill:

Would require a hospital to submit a report to the Health and Human Services Commission (HHSC) each month with the total number of reports made to DFPS and whether the parent was informed of their right to obtain a second opinion.

Would outline a penalty fee structure for failure to comply with the reporting requirement.

Would require HHSC to submit a quarterly report to the legislature summarizing the monthly reports made by the hospitals.

A committee substitute will add the following: Each report submitted by the hospital to HHSC must include a signed affidavit from each physician or hospital administrator who either directly, or indirectly through their delegated authority, made a report of abuse or neglect to DFPS, including a summary of their concern.

As proposed, S.B. 1197 amends current law relating to hospital reporting requirements regarding suspected child abuse, exploitation, or neglect and authorizes an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 1 (Section 241.404, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 241, Health and Safety Code by adding Subchapter M, as follows:

SUBCHAPTER M. CHILD ABUSE, EXPLOITATION, OR NEGLECT REPORTING REQUIREMENTS

Sec. 241.401. SUSPECTED CHILD ABUSE, EXPLOITATION, OR NEGLECT REPORTS. (a) Defines "abuse," "exploitation," and "neglect."

(b) Requires a hospital, not later than the fifth day of each month, to submit a report to the Health and Human Services Commission (HHSC) containing the following information:

(1) the number of reports made during the preceding month by the hospital or an agent or employee of the hospital to the Department of Family and Protective Services (DFPS) under Chapter 261 (Investigation of Report of Child Abuse or Neglect), Family Code, regarding alleged or suspected abuse, exploitation, or neglect of a child;

(2) whether the hospital informed the parent, legal guardian, managing conservator, or possessory conservator of a child that is the subject of a report described by Subdivision (1) that the parent, legal guardian, managing conservator, or possessory conservator is authorized to obtain an alternative opinion regarding the alleged or suspected abuse, exploitation, or neglect of the child; and

(3) any code the hospital used for purposes of diagnosing or treating a child that is the subject of a report described by Subdivision (1), including, as applicable, the Current Procedural Terminology (CPT) code, the Diagnosis Related Group (DRG) code, the International Classification of Diseases (ICD) code, or another common identifier.

(c) Requires a hospital to submit the report required under Subsection (b) in the form and manner prescribed by HHSC rule.

Sec. 241.402. ADMINISTRATIVE PENALTY. (a) Authorizes HHSC to impose an administrative penalty on a hospital that violates Section 241.401.

(b) Requires HHSC, before imposing an administrative penalty on a hospital under Subsection (a), to provide written notice to the hospital that:

(1) the hospital is in violation of Section 241.401 because the hospital has failed to timely submit a report required under that section;

(2) the hospital has 15 days to submit the required report; and

(3) if the hospital does not submit the required report within 15 days of receiving notice of the violation, the hospital will be subject to an administrative penalty for each day the violation continues.

(c) Requires HHSC to set an administrative penalty imposed under this section in an amount sufficient to ensure compliance by hospitals with Section 241.401, subject to the limitations prescribed by Subsection (d).

(d) Prohibits the penalty imposed by HHSC, for a hospital with one of the following total gross revenues as reported to the Centers for Medicare and Medicaid Services or to another entity designated by HHSC rule in the year preceding the year in which an administrative penalty is imposed under this section, from exceeding:

(1) \$10 for each day the hospital violates Section 241.401, beginning on the 16th day after the date the hospital received notice from HHSC, if the hospital's total gross revenue is less than \$10,000,000;

(2) \$100 for each day the hospital violates Section 241.401, beginning on the 16th day after the date the hospital received notice from HHSC, if the hospital's total gross revenue is \$10,000,000 or more and less than \$100,000,000; and

(3) \$1,000 for each day the hospital violates Section 241.401, beginning on the 16th day after the date the hospital received notice from HHSC, if the hospital's total gross revenue is \$100,000,000 or more.

(e) Provides that each day a violation continues is considered a separate violation.

(f) Provides that an administrative penalty ceases to be incurred on the date a violation is corrected, notwithstanding any other provision of this section.

(g) Requires HHSC, in determining the amount of an administrative penalty to impose on a hospital under this section, to consider:

(1) previous violations by the hospital;

(2) the seriousness of the violation;

(3) the demonstrated good faith of the hospital; and

(4) any other matters as justice may require.

(h) Requires that an administrative penalty collected under this section be deposited to the credit of an account in the general revenue fund administered by HHSC. Authorizes money in the account to be appropriated only to HHSC.

Sec. 241.403. SUMMARY REPORT. Requires HHSC to submit a written quarterly report to the legislature summarizing the reports submitted to HHSC under Section 241.401 during the preceding quarter.

Sec. 241.404. RULES. Requires the executive commissioner of HHSC to adopt rules necessary to implement this subchapter.

SECTION 2. Effective date: September 1, 2023.