

By: Miles

S.B. No. 2103

A BILL TO BE ENTITLED

AN ACT

relating to transferring certain investigations of abuse, neglect,
and exploitation to the Health and Human Services Commission.

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

SECTION 1. Section 142.018(b), Health and Safety Code, is
amended to read as follows:

(b) 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 shall report the information to[+

~~[(1)] the commission [~~department~~; and~~
~~[(2)] the Department of Family and Protective Services~~
~~or other appropriate state agency as required by Section 48.051,~~
~~Human Resources Code].~~

SECTION 2. Section 253.001(4), Health and Safety Code, is
amended to read as follows:

(4) "Facility" means:

(A) a facility:

(i) licensed by the Health and Human
Services Commission [~~department~~]; or

(ii) licensed under Chapter 252;

(B) an adult foster care provider that contracts
with the Health and Human Services Commission [~~department~~];

(C) a home and community support services agency

1 licensed by the Health and Human Services Commission [~~department~~]
2 under Chapter 142; [~~or~~]

3 (D) a prescribed pediatric extended care center
4 licensed under Chapter 248A; or

5 (E) a residential child-care operation regulated
6 under 26 T.A.C. Chapter 748 or 749.

7 SECTION 3. Section 260A.002(a-1), Health and Safety Code,
8 is amended to read as follows:

9 (a-1) Notwithstanding any other provision of this chapter,
10 a report made under this section that a provider is or may be
11 alleged to have committed abuse, neglect, or exploitation of a
12 resident of a facility other than a prescribed pediatric extended
13 care center shall be investigated by the Health and Human Services
14 Commission [~~Department of Family and Protective Services~~] in
15 accordance with Subchapter F, Chapter 48, Human Resources Code, and
16 this chapter does not apply to that investigation. In this
17 subsection, "facility" and "provider" have the meanings assigned by
18 Section 48.251, Human Resources Code.

19 SECTION 4. Section 48.251(a)(3), Human Resources Code, is
20 amended to read as follows:

21 (3) "Facility" means:

22 (A) a facility listed in Section 532.001(b) or
23 532A.001(b), Health and Safety Code, [~~including community services~~
24 ~~operated by the Department of State Health Services or Department~~
25 ~~of Aging and Disability Services,~~] as described by those sections,
26 or a person contracting with a health and human services agency to
27 provide inpatient mental health services; [~~and~~]

1 (B) a facility licensed under Chapter 252, Health
2 and Safety Code; and

3 (C) a residential child-care operation regulated
4 under 26 T.A.C. Chapter 748 or 749.

5 SECTION 5. Sections 48.252(a), (b), and (c), Human
6 Resources Code, are amended to read as follows:

7 (a) The commission [~~department~~] shall receive and, except
8 as provided by Subsection (b), shall investigate under this
9 subchapter reports of the abuse, neglect, or exploitation of an
10 individual receiving services if the person alleged or suspected to
11 have committed the abuse, neglect, or exploitation is a provider.

12 (b) The department may not investigate under this
13 subchapter reports of abuse, neglect, or exploitation alleged or
14 suspected to have been committed by a provider that is operated,
15 licensed, certified, or registered by a state agency that has
16 authority under this chapter or other law to investigate reports of
17 abuse, neglect, or exploitation of an individual by the provider.
18 The department shall forward any report of abuse, neglect, or
19 exploitation alleged or suspected to have been committed by a
20 provider described by this subsection to the commission
21 [~~appropriate state agency~~] for investigation.

22 (c) The commission [~~department~~] shall receive and
23 investigate under this subchapter reports of abuse, neglect, or
24 exploitation of:

25 (1) an individual who lives in a residence that is
26 owned, operated, or controlled by a provider who provides home and
27 community-based services under the home and community-based

1 services waiver program described by Section 534.001(11)(B),
2 Government Code, regardless of whether the individual is receiving
3 services under that waiver program from the provider; and

4 (2) an elderly person or a person with a disability who
5 lives in a residential child-care operation regulated under 26
6 T.A.C. Chapter 748 or 749.

7 SECTION 6. Sections 48.253(a), (b), and (c), Human
8 Resources Code, are amended to read as follows:

9 (a) On receipt by the commission [~~department~~] of a report of
10 alleged abuse, neglect, or exploitation under this subchapter, the
11 commission [~~department~~] shall initiate a prompt and thorough
12 investigation as needed to evaluate the accuracy of the report and
13 to assess the need for emergency protective services, unless the
14 commission [~~department~~], in accordance with rules adopted under
15 this subchapter, determines that the report:

16 (1) is frivolous or patently without a factual basis;
17 or

18 (2) does not concern abuse, neglect, or exploitation.

19 (b) After receiving a report that alleges that a provider is
20 or may be the person who committed the alleged abuse, neglect, or
21 exploitation, the commission [~~department~~] shall notify the
22 provider [~~and the appropriate health and human services agency~~] in
23 accordance with rules adopted by the executive commissioner.

24 (c) The provider identified under Subsection (b) shall:

25 (1) cooperate completely with an investigation
26 conducted under this subchapter; and

27 (2) provide the commission [~~department~~] complete

1 access during an investigation to:

2 (A) all sites owned, operated, or controlled by
3 the provider; and

4 (B) clients and client records.

5 SECTION 7. Sections [48.254](#)(a) and (b), Human Resources
6 Code, are amended to read as follows:

7 (a) The executive commissioner by rule shall establish
8 procedures for the commission [~~department~~] to use to forward a copy
9 of the initial intake report and a copy of the completed provider
10 investigation report relating to alleged or suspected abuse,
11 neglect, or exploitation to the appropriate provider [~~and health~~
12 ~~and human services agency~~].

13 (b) The commission [~~department~~] shall redact from an
14 initial intake report and from the copy of the completed provider
15 investigation report any identifying information contained in the
16 report relating to the person who reported the alleged or suspected
17 abuse, neglect, or exploitation under this subchapter [~~Section~~
18 [48.051](#)].

19 SECTION 8. Sections [48.255](#)(a) and (b), Human Resources
20 Code, are amended to read as follows:

21 (a) The executive commissioner shall adopt rules to:

22 (1) prioritize investigations conducted under this
23 subchapter with the primary criterion being whether there is a risk
24 that a delay in the investigation will impede the collection of
25 evidence in that investigation; and

26 (2) [~~establish procedures for resolving disagreements~~
27 ~~between the department and health and human services agencies~~

1 ~~concerning the department's investigation findings; and~~

2 ~~[(3)]~~ provide for an appeals process by the commission
3 ~~[department]~~ for the alleged victim of abuse, neglect, or
4 exploitation.

5 (b) A confirmed investigation finding by the commission
6 ~~[department]~~ may not be changed by the administrator of a facility,
7 a community center, a local mental health authority, or a local
8 intellectual and developmental disability authority.

9 SECTION 9. Sections 48.256(a), (b), and (c), Human
10 Resources Code, are amended to read as follows:

11 (a) The executive commissioner shall adopt rules that
12 prescribe the appropriate manner in which ~~[health and human~~
13 ~~services agencies and]~~ managed care organizations provide the
14 commission ~~[department]~~ with information necessary to facilitate
15 the:

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

18 (2) ~~[to facilitate]~~ notification of providers by the
19 commission ~~[department]~~.

20 (b) The executive commissioner shall adopt rules requiring
21 a provider to provide information ~~[to the administering health and~~
22 ~~human services agency]~~ necessary to facilitate the:

23 (1) identification by the commission ~~[department]~~ of
24 individuals receiving services from providers; and

25 (2) ~~[to facilitate]~~ notification of providers by the
26 commission ~~[department]~~.

27 (c) A provider of home and community-based services under

1 the home and community-based services waiver program described by
2 Section 534.001(11)(B), Government Code, shall post in a
3 conspicuous location inside any residence owned, operated, or
4 controlled by the provider in which home and community-based waiver
5 services are provided, a sign that states:

6 (1) the name, address, and telephone number of the
7 provider;

8 (2) the effective date of the provider's contract with
9 the commission [~~applicable health and human services agency~~] to
10 provide home and community-based services; and

11 (3) the name of the legal entity that contracted with
12 the commission [~~applicable health and human services agency~~] to
13 provide those services.

14 SECTION 10. Sections 48.258(a) and (b), Human Resources
15 Code, are amended to read as follows:

16 (a) The commission [~~health and human services agencies~~]
17 shall[, ~~at the direction of the executive commissioner, jointly~~]
18 develop and implement a system to track reports and investigations
19 under this subchapter.

20 (b) To facilitate implementation of the system, the
21 commission [~~health and human services agencies~~] shall use
22 appropriate methods of measuring the number and outcome of reports
23 and investigations under this subchapter.

24 SECTION 11. (a) As soon as practicable after the effective
25 date of this Act, but not later than December 1, 2023, the
26 commissioner of the Department of Family and Protective Services
27 shall transfer any department funds and resources, including

1 information technology, documents, and personnel allocated for the
2 investigation of reports under Subchapter F, Chapter 48, Human
3 Resources Code, to the Health and Human Services Commission to
4 allow the commission to perform the functions described under
5 Subchapter F, Chapter 48, Human Resources Code, as amended by this
6 Act.

7 (b) Notwithstanding the effective date of this Act, the
8 Health and Human Services Commission is not required to comply with
9 changes in law made by this Act until the transfer required by
10 Subsection (a) of this section is completed.

11 SECTION 12. This Act takes effect September 1, 2023.