

By: Zaffirini

S.B. No. 1880

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the Department of Family and Protective Services to investigate abuse, neglect, or exploitation of individuals receiving services from certain providers.

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

SECTION 1. Section 48.002(a), Human Resources Code, is amended by adding Subdivision (11) to read as follows:

(11) "Home and community-based services" has the meaning assigned by Section 48.251.

SECTION 2. Section 48.002(b), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(b) The definitions of "abuse," "neglect," ~~[and]~~ "exploitation," and "an individual receiving services" adopted by the executive commissioner as prescribed by Section 48.251(b) ~~[48.251]~~ apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter F ~~[or H]~~.

SECTION 3. Section 48.003, Human Resources Code, is amended to read as follows:

Sec. 48.003. INVESTIGATIONS IN NURSING FACILITIES ~~[HOMES]~~, ASSISTED LIVING FACILITIES, AND SIMILAR FACILITIES. (a) Except as provided by Subsection (c), this ~~[This]~~ chapter does not apply if the alleged or suspected abuse, neglect, or exploitation occurs in a facility licensed under Chapter 242 or 247, Health and Safety

Code.

(b) Alleged or suspected abuse, neglect, or exploitation that occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code, is governed by Chapter 260A, Health and Safety Code, except as otherwise provided by Subsection (c).

(c) Subchapter F applies to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider of home and community-based services is or may be alleged to have committed the abuse, neglect, or exploitation, regardless of whether the facility in which those services were provided is licensed under Chapter 242 or 247, Health and Safety Code.

SECTION 4. Sections 48.051(a) and (b), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, are amended to read as follows:

(a) Except as prescribed by Subsection (b), a person having cause to believe that an elderly person, a ~~or~~ person with a disability, or an individual receiving services from a provider as described by Subchapter F is in the state of abuse, neglect, or exploitation~~[, including a person with a disability who is receiving services as described by Section 48.252,~~] shall report the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly person or a person with a disability, other than an individual ~~[a person with a disability]~~ receiving services from a provider as described by Subchapter F ~~[Section 48.252]~~, has been abused, neglected, or exploited in a facility operated, licensed, certified, or

1 registered by a state agency, the person shall report the
2 information to the state agency that operates, licenses, certifies,
3 or registers the facility for investigation by that agency.

4 SECTION 5. Section 48.103, Human Resources Code, is amended
5 by amending Subsection (a), as amended by S.B. No. 219, Acts of the
6 84th Legislature, Regular Session, 2015, and adding Subsection (c)
7 to read as follows:

8 (a) Except as otherwise provided by Subsection (c), on [On]
9 determining after an investigation that an elderly person or a
10 person with a disability has been abused, exploited, or neglected
11 by an employee of a home and community support services agency
12 licensed under Chapter 142, Health and Safety Code, the department
13 shall:

14 (1) notify the state agency responsible for licensing
15 the home and community support services agency of the department's
16 determination;

17 (2) notify any health and human services agency, as
18 defined by Section 531.001, Government Code, that contracts with
19 the home and community support services agency for the delivery of
20 health care services of the department's determination; and

21 (3) provide to the licensing state agency and any
22 contracting health and human services agency access to the
23 department's records or documents relating to the department's
24 investigation.

25 (c) This section does not apply to an investigation of
26 alleged or suspected abuse, neglect, or exploitation in which a
27 provider, as defined by Section 48.251, is or may be alleged to have

1 committed the abuse, neglect, or exploitation. An investigation
2 described by this subsection is governed by Subchapter F.

3 SECTION 6. Section 48.151(e), Human Resources Code, is
4 amended to read as follows:

5 (e) This section does not apply to investigations conducted
6 under Subchapter F [~~or H~~].

7 SECTION 7. Section 48.201, Human Resources Code, as amended
8 by S.B. No. 219, Acts of the 84th Legislature, Regular Session,
9 2015, is amended to read as follows:

10 Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as
11 otherwise provided, this subchapter does not apply to an
12 investigation conducted under Subchapter F [~~or H~~].

13 SECTION 8. Subchapter F, Chapter 48, Human Resources Code,
14 as amended by S.B. No. 219, Acts of the 84th Legislature, Regular
15 Session, 2015, is amended to read as follows:

16 SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION
17 OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS [~~IN~~
18 ~~CERTAIN FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND~~
19 ~~INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES]~~

20 Sec. 48.251. DEFINITIONS. (a) In this subchapter:

21 (1) "Behavioral health services" means:

22 (A) mental health services, as defined by Section
23 531.002, Health and Safety Code; and

24 (B) interventions provided to treat chemical
25 dependency, as defined by Section 461A.002, Health and Safety Code.

26 (2) "Community center" has the meaning assigned by
27 Section 531.002, Health and Safety Code.

1 (3) "Facility" means:

2 (A) a facility listed in Section 532.001(b) or
3 532A.001(b), Health and Safety Code, including community services
4 operated by the Department of State Health Services or Department
5 of Aging and Disability Services, as described by those sections,
6 or a person contracting with a health and human services agency to
7 provide inpatient mental health services; and

8 (B) a facility licensed under Chapter 252, Health
9 and Safety Code.

10 (4) "Health and human services agency" has the meaning
11 assigned by Section 531.001, Government Code.

12 (5) "Home and community-based services" means
13 services provided in the home or community in accordance with 42
14 U.S.C. Section 1315, 42 U.S.C. Section 1315a, 42 U.S.C. Section
15 1396a, or 42 U.S.C. Section 1396n, and as otherwise provided by
16 department rule.

17 (6) "Local intellectual and developmental disability
18 authority" has the meaning assigned by Section 531.002, Health and
19 Safety Code.

20 (7) "Local mental health authority" has the meaning
21 assigned by Section 531.002, Health and Safety Code.

22 (8) "Managed care organization" has the meaning
23 assigned by Section 533.001, Government Code.

24 (9) "Provider" means:

25 (A) a facility;

26 (B) a community center, local mental health
27 authority, and local intellectual and developmental disability

1 authority;

2 (C) a person who contracts with a health and
3 human services agency or managed care organization to provide home
4 and community-based services;

5 (D) a person who contracts with a Medicaid
6 managed care organization to provide behavioral health services;

7 (E) a managed care organization;

8 (F) an officer, employee, agent, contractor, or
9 subcontractor of a person or entity listed in Paragraphs (A)-(E);
10 and

11 (G) an employee, fiscal agent, case manager, or
12 service coordinator of an individual employer participating in the
13 consumer-directed service option, as defined by Section [531.051](#),
14 Government Code.

15 (b) The executive commissioner by rule shall adopt
16 definitions of "abuse," "neglect," "exploitation," and "an
17 individual receiving services" for purposes of this subchapter and
18 ["exploitation" to govern] investigations conducted under this
19 subchapter [and Subchapter H].

20 Sec. 48.252. INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR
21 EXPLOITATION BY PROVIDER ~~[IN CERTAIN FACILITIES AND IN COMMUNITY~~
22 ~~CENTERS]~~. (a) The department shall receive and, except as
23 provided by Subsection (b), shall investigate under this subchapter
24 reports of the abuse, neglect, or exploitation of an individual
25 [with a disability] receiving services if the person alleged or
26 suspected to have committed the abuse, neglect, or exploitation is
27 a provider [+]

1 ~~[(1) in:~~

2 ~~[(A) a mental health facility operated by the~~
3 ~~Department of State Health Services; or~~

4 ~~[(B) a facility licensed under Chapter 252,~~
5 ~~Health and Safety Code;~~

6 ~~[(2) in or from a community center, a local mental~~
7 ~~health authority, or a local intellectual and developmental~~
8 ~~disability authority; or~~

9 ~~[(3) through a program providing services to that~~
10 ~~person by contract with a mental health facility operated by the~~
11 ~~Department of State Health Services, a community center, a local~~
12 ~~mental health authority, or a local intellectual and developmental~~
13 ~~disability authority].~~

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

25 ~~[(1) in a state supported living center or the ICF-IID~~
26 ~~component of the Rio Grande State Center; or~~

27 ~~[(2) through a program providing services to that~~

1 ~~person by contract with a state supported living center or the~~
2 ~~ICF-IID component of the Rio Grande State Center].~~

3 (c) The department shall receive and investigate under this
4 subchapter reports of abuse, neglect, or exploitation of an
5 individual who lives in a residence that is owned, operated, or
6 controlled by a provider who provides home and community-based
7 services under the home and community-based services waiver program
8 described by Section 534.001(11)(B), Government Code, regardless
9 of whether the individual is receiving services under that waiver
10 program from the provider. ~~[The executive commissioner by rule~~
11 ~~shall define who is "an individual with a disability receiving~~
12 ~~services."~~

13 ~~[(d) In this section, "community center," "local mental~~
14 ~~health authority," and "local intellectual and developmental~~
15 ~~disability authority" have the meanings assigned by Section~~
16 ~~531.002, Health and Safety Code.]~~

17 Sec. 48.253. ACTION ON REPORT. (a) On receipt by the
18 department of a report of alleged abuse, neglect, or exploitation
19 under this subchapter, the department shall initiate a prompt and
20 thorough investigation as needed to evaluate the accuracy of the
21 report and to assess the need for emergency protective services,
22 unless the department, in accordance with rules adopted under this
23 subchapter, determines that the report:

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

25 or

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

27 (b) After receiving a report that alleges that a provider is

1 or may be the person who committed the alleged abuse, neglect, or
2 exploitation, the department shall notify the provider and the
3 appropriate health and human services agency in accordance with
4 rules adopted by the executive commissioner.

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

6 (1) cooperate completely with an investigation
7 conducted under this subchapter; and

8 (2) provide the department complete access during an
9 investigation to:

10 (A) all sites owned, operated, or controlled by
11 the provider; and

12 (B) clients and client records.

13 (d) The executive commissioner shall adopt rules governing
14 investigations conducted under this subchapter.

15 Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The
16 executive commissioner by rule shall establish procedures for the
17 department to use to ~~[In accordance with department rules, the~~
18 ~~department shall]~~ forward a copy of the initial intake report and a
19 copy of the completed provider investigation report relating to
20 alleged or suspected abuse, neglect, or exploitation to the
21 appropriate provider and health and human services agency
22 ~~[facility, community center, local mental health authority, local~~
23 ~~intellectual and developmental disability authority, or program~~
24 ~~providing mental health or intellectual disability services under~~
25 ~~contract with the facility, community center, or authority]~~.

26 (b) The department shall redact from an initial intake
27 report and from the copy of the completed provider investigation

1 report any identifying information contained in the report relating
2 to the person who reported the alleged or suspected abuse, neglect,
3 or exploitation under Section 48.051.

4 (c) A provider that receives a completed investigation
5 report under Subsection (a) shall forward the report to the managed
6 care organization with which the provider contracts for services
7 for the alleged victim.

8 Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS
9 SUBCHAPTER. (a) The executive commissioner [~~department, the~~
10 ~~Department of Aging and Disability Services, and the Department of~~
11 ~~State Health Services~~] shall adopt [~~develop~~] rules to:

12 (1) prioritize investigations conducted under this
13 subchapter with the primary criterion being whether there is a risk
14 that a delay in the investigation will impede the collection of
15 evidence in that investigation;

16 (2) [facilitate investigations in state mental health
17 facilities and state supported living centers.

18 [~~(b) The executive commissioner by rule shall~~] establish
19 procedures for resolving disagreements between the department and
20 health and human services agencies [~~the Department of Aging and~~
21 ~~Disability Services or the Department of State Health Services~~]
22 concerning the department's investigation findings; and

23 (3) provide for an appeals process by the department
24 for the alleged victim of abuse, neglect, or exploitation.

25 (b) [~~(c) The department, the Department of Aging and~~
26 ~~Disability Services, and the Department of State Health Services~~
27 ~~shall develop and propose to the executive commissioner rules to~~

1 ~~facilitate investigations in community centers, local mental~~
2 ~~health authorities, and local intellectual and developmental~~
3 ~~disability authorities.~~

4 ~~[(c-1) The executive commissioner shall adopt rules~~
5 ~~regarding investigations in a facility licensed under Chapter 252,~~
6 ~~Health and Safety Code, to ensure that those investigations are as~~
7 ~~consistent as practicable with other investigations conducted~~
8 ~~under this subchapter.~~

9 ~~[(d)]~~ A confirmed investigation finding by the department
10 may not be changed by the administrator ~~[a superintendent]~~ of a
11 ~~[state mental health] facility, [by a director of a state supported~~
12 ~~living center, by a director of]~~ a community center, ~~[or by]~~ a local
13 mental health authority, or a local intellectual and developmental
14 disability authority.

15 ~~[(e) The executive commissioner shall provide by rule for an~~
16 ~~appeals process by the alleged victim of abuse, neglect, or~~
17 ~~exploitation under this section.~~

18 ~~[(f) The executive commissioner by rule may assign~~
19 ~~priorities to an investigation conducted by the department under~~
20 ~~this section. The primary criterion used by the executive~~
21 ~~commissioner in assigning a priority must be the risk that a delay~~
22 ~~in the investigation will impede the collection of evidence.]~~

23 Sec. 48.256. SHARING PROVIDER INFORMATION. (a) The
24 executive commissioner shall adopt rules that prescribe the
25 appropriate manner in which health and human services agencies and
26 managed care organizations provide the department with information
27 necessary to facilitate identification of individuals receiving

1 services from providers and to facilitate notification of providers
2 by the department.

3 (b) The executive commissioner shall adopt rules requiring
4 a provider to provide information to the administering health and
5 human services agency necessary to facilitate identification by the
6 department of individuals receiving services from providers and to
7 facilitate notification of providers by the department.

8 (c) A provider of home and community-based services under
9 the home and community-based services waiver program described by
10 Section 534.001(11)(B), Government Code, shall post in a
11 conspicuous location inside any residence owned, operated, or
12 controlled by the provider in which home and community-based waiver
13 services are provided, a sign that states:

14 (1) the name, address, and telephone number of the
15 provider;

16 (2) the effective date of the provider's contract with
17 the applicable health and human services agency to provide home and
18 community-based services; and

19 (3) the name of the legal entity that contracted with
20 the applicable health and human services agency to provide those
21 services.

22 Sec. 48.257. RETALIATION PROHIBITED. (a) A provider of
23 home and community-based services may not retaliate against a
24 person for filing a report or providing information in good faith
25 relating to the possible abuse, neglect, or exploitation of an
26 individual receiving services.

27 (b) This section does not prohibit a provider of home and

1 community-based services from terminating an employee for a reason
2 other than retaliation.

3 Sec. 48.258. [~~SINGLE~~] TRACKING SYSTEM FOR REPORTS AND
4 INVESTIGATIONS. (a) The health and human services agencies
5 [~~department, the Department of Aging and Disability Services, and~~
6 ~~the Department of State Health Services~~] shall, at the direction of
7 the executive commissioner, jointly develop and implement a
8 [~~single~~] system to track reports and investigations under this
9 subchapter.

10 (b) To facilitate implementation of the system, the health
11 and human services agencies [~~department, the Department of Aging~~
12 ~~and Disability Services, and the Department of State Health~~
13 ~~Services~~] shall use appropriate methods of measuring the number and
14 outcome of reports and investigations under this subchapter.

15 SECTION 9. Section 48.301, Human Resources Code, is amended
16 by amending Subsection (a), as amended by S.B. No. 219, Acts of the
17 84th Legislature, Regular Session, 2015, and adding Subsection
18 (a-1) to read as follows:

19 (a) If the department receives a report of suspected abuse,
20 neglect, or exploitation of an elderly person or a person with a
21 disability[, ~~other than a person with a disability who is~~]
22 receiving services [~~as described by Section 48.252,~~] in a facility
23 operated, licensed, certified, or registered by a state agency, the
24 department shall refer the report to that agency.

25 (a-1) This subchapter does not apply to a report of
26 suspected abuse, neglect, or exploitation of an individual
27 receiving services from a provider as described by Subchapter F.

SECTION 10. Sections 48.401(1) and (3), Human Resources Code, are amended to read as follows:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code;

(B) a person exempt from licensing under Section 142.003(a)(19), Health and Safety Code;

(C) a facility licensed under Chapter 252, Health and Safety Code; or

(D) a provider [~~an entity~~] investigated by the department under Subchapter F or under Section 261.404, Family Code.

(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code;

(B) provides personal care services, active treatment, or any other [~~personal~~] services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code, or an individual receiving services through the consumer-directed service option, as defined by Section 531.051, Government Code; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as

defined by Section 531.051, Government Code.

SECTION 11. The heading to Section 261.404, Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN RECEIVING SERVICES FROM CERTAIN PROVIDERS ~~[WITH MENTAL ILLNESS OR AN INTELLECTUAL DISABILITY]~~.

SECTION 12. Section 261.404, Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), and (a-3) to read as follows:

(a) The department shall 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, Human Resources Code, or as otherwise defined by rule. The department shall also investigate, under Subchapter F, Chapter 48, Human Resources Code, a report of abuse, neglect, or exploitation of a child receiving services from an officer, employee, agent, contractor, or subcontractor of a home and community support services agency licensed under Chapter 142, Health and Safety Code, if the officer, employee, agent, contractor, or subcontractor is or may be the person alleged to have committed the abuse, neglect, or exploitation~~+~~

~~[(1) in a facility operated by the Department of Aging and Disability Services or a mental health facility operated by the Department of State Health Services,~~

~~[(2) in or from a community center, a local mental~~

~~health authority, or a local intellectual and developmental disability authority,~~

~~[(3) through a program providing services to that child by contract with a facility operated by the Department of Aging and Disability Services, a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local intellectual and developmental disability authority,~~

~~[(4) from a provider of home and community-based services who contracts with the Department of Aging and Disability Services; or~~

~~[(5) in a facility licensed under Chapter 252, Health and Safety Code].~~

(a-1) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, the department, in accordance with Subchapter E, Chapter 48, Human Resources Code, may provide emergency protective services necessary to immediately protect the child from serious physical harm or death and, if necessary, obtain an emergency order for protective services under Section 48.208, Human Resources Code.

(a-2) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the child is receiving services under that waiver program from the

1 provider, the department shall provide protective services to the
2 child in accordance with Subchapter E, Chapter 48, Human Resources
3 Code.

4 (a-3) For purposes of this section, Subchapters E and F,
5 Chapter 48, Human Resources Code, apply to an investigation of a
6 child and to the provision of protective services to that child in
7 the same manner those subchapters apply to an investigation of an
8 elderly person or person with a disability and the provision of
9 protective services to that person.

10 (b) The department shall investigate the report under rules
11 developed by the executive commissioner [~~with the advice and~~
12 ~~assistance of the department, the Department of Aging and~~
13 ~~Disability Services, and the Department of State Health Services~~].

14 SECTION 13. Section 142.009(c), Health and Safety Code, is
15 amended to read as follows:

16 (c) The department or its authorized representative shall
17 investigate each complaint received regarding the provision of home
18 health, hospice, or personal assistance services[~~, including any~~
19 ~~allegation of abuse, neglect, or exploitation of a child under the~~
20 ~~age of 18,~~] and may, as a part of the investigation:

21 (1) conduct an unannounced survey of a place of
22 business, including an inspection of medical and personnel records,
23 if the department has reasonable cause to believe that the place of
24 business is in violation of this chapter or a rule adopted under
25 this chapter;

26 (2) conduct an interview with a recipient of home
27 health, hospice, or personal assistance services, which may be

1 conducted in the recipient's home if the recipient consents;

2 (3) conduct an interview with a family member of a
3 recipient of home health, hospice, or personal assistance services
4 who is deceased or other person who may have knowledge of the care
5 received by the deceased recipient of the home health, hospice, or
6 personal assistance services; or

7 (4) interview a physician or other health care
8 practitioner, including a member of the personnel of a home and
9 community support services agency, who cares for a recipient of
10 home health, hospice, or personal assistance services.

11 SECTION 14. Section 260A.002, Health and Safety Code, is
12 amended by adding Subsection (a-1) to read as follows:

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

22 SECTION 15. The following are repealed:

23 (1) Section 261.404(f), Family Code, as amended by
24 S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015;
25 and

26 (2) Subchapter H, Chapter 48, Human Resources Code.

27 SECTION 16. This Act takes effect September 1, 2015.