

By: Raymond

H.B. No. 2656

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 Subdivisions (11) and (12) to read as follows:

(11) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

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

SECTION 2. Section 48.002(b), Human Resources Code, is amended to read as follows:

(b) The definitions of "abuse," "neglect," and "exploitation" adopted by the executive commissioner ~~[department]~~ as prescribed by Section 48.251(b) ~~[48.251]~~ apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter ~~[in a facility subject to Subchapters]~~ F ~~[and H]~~.

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

Sec. 48.003. INVESTIGATIONS IN NURSING 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

1 licensed under Chapter 242 or 247, Health and Safety Code.

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

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

12 SECTION 4. Sections 48.051(a) and (b), Human Resources
13 Code, are amended to read as follows:

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

21 (b) If a person has cause to believe that an elderly ~~[or~~
22 ~~disabled]~~ person or a person with a disability, other than an
23 individual ~~[a disabled person]~~ receiving services from a provider
24 as described by Subchapter F ~~[Section 48.252]~~, has been abused,
25 neglected, or exploited in a facility operated, licensed,
26 certified, or registered by a state agency, the person shall report
27 the information to the state agency that operates, licenses,

certifies, or registers the facility for investigation by that agency.

SECTION 5. Section 48.103, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

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

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

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

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

(c) This section does not apply 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. An investigation described by this subsection is governed by

1 Subchapter F.

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

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

6 SECTION 7. Section 48.201, Human Resources Code, is amended
7 to read as follows:

8 Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as
9 otherwise provided, this subchapter does not apply to an [~~a Texas~~
10 ~~Department of Mental Health and Mental Retardation~~] investigation
11 conducted under Subchapter F [~~or H~~].

12 SECTION 8. Subchapter F, Chapter 48, Human Resources Code,
13 is amended to read as follows:

14 SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF
15 INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS [~~IN CERTAIN~~
16 ~~FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND MENTAL~~
17 ~~RETARDATION AUTHORITIES~~]

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

19 (1) "Behavioral health services" means:

20 (A) "mental health services," as defined by
21 Section 531.002, Health and Safety Code; and

22 (B) interventions provided to treat "chemical
23 dependency," as defined by Section 462.001, Health and Safety Code.

24 (2) "Community center" and "local mental health
25 authority" have the meanings assigned by Section 531.002, Health
26 and Safety Code.

27 (3) "Facility" means:

1 (A) a mental health facility or state supported
2 living center listed in Section 532.001(b), Health and Safety Code,
3 or a person contracting with a health and human services agency to
4 provide inpatient mental health services; and

5 (B) a facility licensed under Chapter 252, Health
6 and Safety Code.

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

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

14 (6) "Local intellectual and developmental disability
15 authority" means an authority defined by Section 531.002(11),
16 Health and Safety Code.

17 (7) "Managed care organization" has the meaning
18 assigned by Section 533.001, Government Code.

19 (8) "Provider" means:

20 (A) a facility;

21 (B) a community center, local mental health
22 authority, and local intellectual and developmental disability
23 authority;

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

27 (D) a person who contracts with a Medicaid

1 managed care organization to provide behavioral health services;

2 (E) a managed care organization;

3 (F) an officer, employee, agent, contractor, or
4 subcontractor of a person or entity listed in Paragraphs (A)-(E);
5 and

6 (G) an employee, fiscal agent, case manager, or
7 service coordinator of an individual employer participating in the
8 consumer-directed service option, as defined by Section 531.051,
9 Government Code.

10 (b) The executive commissioner [department] by rule shall
11 adopt definitions of "abuse," "neglect," "exploitation," and "an
12 individual receiving services" for purposes of this subchapter and
13 ["exploitation" to govern] an investigation conducted under this
14 subchapter [and Subchapter H].

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

23 ~~[(1) in:~~

24 ~~[(A) a mental health facility operated by the~~
25 ~~Department of State Health Services, or~~

26 ~~[(B) a facility licensed under Chapter 252,~~
27 ~~Health and Safety Code,~~

1 ~~[(2) in or from a community center, a local mental~~
 2 ~~health authority, or a local mental retardation authority, or~~
 3 ~~[(3) through a program providing services to that~~
 4 ~~person by contract with a mental health facility operated by the~~
 5 ~~Department of State Health Services, a community center, a local~~
 6 ~~mental health authority, or a local mental retardation authority].~~

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

18 ~~[(1) in a state supported living center or the ICF-MR~~
 19 ~~component of the Rio Grande State Center, or~~

20 ~~[(2) through a program providing services to that~~
 21 ~~person by contract with a state supported living center or the~~
 22 ~~ICF-MR component of the Rio Grande State Center].~~

23 (c) The department shall receive and investigate under this
 24 subchapter reports of abuse, neglect, or exploitation of an
 25 individual who lives in a residence that is owned, operated, or
 26 controlled by a provider who provides home and community-based
 27 services under a home and community-based services waiver program

1 described by Section 534.001, Government Code, regardless of
2 whether the individual is receiving services under the waiver
3 program from the provider. ~~[The department by rule shall define who~~
4 ~~is "an individual with a disability receiving services."~~

5 ~~[(d) In this section, "community center," "local mental~~
6 ~~health authority," and "local mental retardation authority" have~~
7 ~~the meanings assigned by Section 531.002, Health and Safety Code.]~~

8 Sec. 48.253. ACTION ON REPORT. (a) On receipt by the
9 department of a report of alleged abuse, neglect, or exploitation
10 under this subchapter, the department shall initiate a prompt and
11 thorough investigation as needed to evaluate the accuracy of the
12 report and to assess the need for emergency protective services,
13 unless the department, in accordance with rules adopted under this
14 subchapter, determines that the report:

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

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

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

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

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

26 (2) provide the department complete access during an
27 investigation to:

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

3 (B) clients and client records.

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

6 Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The
7 executive commissioner by rule shall establish procedures for the
8 department to use to [~~In accordance with department rules, the~~
9 ~~department shall~~] forward a copy of the initial intake report and a
10 copy of the completed provider investigation report relating to
11 alleged or suspected abuse, neglect, or exploitation to the
12 appropriate provider and health and human services agency
13 [~~facility, community center, mental health authority, mental~~
14 ~~retardation authority, or program providing mental health or mental~~
15 ~~retardation services under contract with the facility, community~~
16 ~~center, or authority~~].

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

22 (c) A provider that receives a completed investigation
23 report under Subsection (a) shall forward the report to any managed
24 care organization with which the provider contracts.

25 Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS
26 SUBCHAPTER. (a) The executive commissioner [~~department, the~~
27 ~~Department of Aging and Disability Services, and the Department of~~

1 ~~State Health Services]~~ shall adopt ~~[develop joint]~~ rules to:

2 (1) prioritize investigations conducted under this
3 subchapter with the primary criterion being whether there is a risk
4 that a delay in the investigation will impede the collection of
5 evidence in that investigation;

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

8 ~~[(b) The department, the Department of Aging and Disability~~
9 ~~Services, and the Department of State Health Services by joint~~
10 ~~rules shall]~~ establish procedures for resolving disagreements
11 between the department and health and human services agencies ~~[the~~
12 ~~Department of Aging and Disability Services or the Department of~~
13 ~~State Health Services]~~ concerning the department's investigation
14 findings; and

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

17 (b) [(c) The department, the Department of Aging and
18 Disability Services, and the Department of State Health Services
19 shall develop joint rules to facilitate investigations in community
20 centers, mental health authorities, and mental retardation
21 authorities.

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

27 ~~[(d)]~~ A confirmed investigation finding by the department

may not be changed by the administrator [~~a superintendent~~] of a
~~[state mental health] facility, [by a director of a state supported~~
~~living center, by a director of]~~ a community center, [~~or by~~] a local
mental health authority, or a local intellectual and developmental
disability [~~mental retardation~~] authority.

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

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

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

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

(c) A provider of home and community-based services under a
home and community-based services waiver program described by

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

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

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

10 (3) the name of the legal entity that contracted with
11 the applicable health and human services agency to provide those
12 services.

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

18 (b) This section does not prohibit a provider of home and
19 community-based services from terminating an employee for a reason
20 other than retaliation.

21 Sec. 48.258. [SINGLE] TRACKING SYSTEM FOR REPORTS AND
22 INVESTIGATIONS. (a) The health and human services agencies
23 [department, the Department of Aging and Disability Services, and
24 the Department of State Health Services] shall jointly develop and
25 implement a [single] system to track reports and investigations
26 under this subchapter.

27 (b) To facilitate implementation of the system, the health

1 and human services agencies [~~department, the Department of Aging~~
2 ~~and Disability Services, and the Department of State Health~~
3 ~~Services~~] shall use appropriate methods of measuring the number and
4 outcome of reports and investigations under this subchapter.

5 SECTION 9. Section 48.301, Human Resources Code, is amended
6 by amending Subsection (a) and adding Subsection (a-1) to read as
7 follows:

8 (a) If the department receives a report of suspected abuse,
9 neglect, or exploitation of an elderly [~~or disabled~~] person or a
10 person with a disability [~~, other than a disabled person~~] receiving
11 services [~~as described by Section 48.252,~~] in a facility operated,
12 licensed, certified, or registered by a state agency, the
13 department shall refer the report to that agency.

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

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

19 (1) "Agency" means:

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

22 (B) a person exempt from licensing under Section
23 142.003(a)(19), Health and Safety Code;

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

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

1 Code.

2 (3) "Employee" means a person who:

3 (A) works for:

4 (i) an agency; or

5 (ii) an individual employer participating
6 in the consumer-directed service option, as defined by Section
7 531.051, Government Code;

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

14 (C) is not licensed by the state to perform the
15 services the person performs for the agency or the individual
16 employer participating in the consumer-directed service option, as
17 defined by Section 531.051, Government Code.

18 SECTION 11. The heading to Section 261.404, Family Code, is
19 amended to read as follows:

20 Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN
21 RECEIVING SERVICES FROM CERTAIN PROVIDERS ~~[WITH MENTAL ILLNESS OR~~
22 ~~MENTAL RETARDATION]~~.

23 SECTION 12. Section 261.404, Family Code, is amended by
24 amending Subsections (a) and (b) and adding Subsections (a-1) and
25 (a-2) to read as follows:

26 (a) The department shall investigate a report of abuse,
27 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 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 mental retardation 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 mental retardation 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 a

home and community-based services waiver program described by Section 534.001, 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 a home and community-based services waiver program described by Section 534.001, Government Code, regardless of whether the child is receiving services under the program from the provider, the department shall provide protective services to the child in accordance with Subchapter E, Chapter 48, Human Resources Code.

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

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

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

(1) conduct an unannounced survey of a place of

1 business, including an inspection of medical and personnel records,
2 if the department has reasonable cause to believe that the place of
3 business is in violation of this chapter or a rule adopted under
4 this chapter;

5 (2) conduct an interview with a recipient of home
6 health, hospice, or personal assistance services, which may be
7 conducted in the recipient's home if the recipient consents;

8 (3) conduct an interview with a family member of a
9 recipient of home health, hospice, or personal assistance services
10 who is deceased or other person who may have knowledge of the care
11 received by the deceased recipient of the home health, hospice, or
12 personal assistance services; or

13 (4) interview a physician or other health care
14 practitioner, including a member of the personnel of a home and
15 community support services agency, who cares for a recipient of
16 home health, hospice, or personal assistance services.

17 SECTION 14. Section [260A.002](#), Health and Safety Code, is
18 amended by adding Subsection (a-1) to read as follows:

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

1 SECTION 15. The following are repealed:

2 (1) Section 261.404(f), Family Code; and

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

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