

By: Cortez

H.B. No. 1726

A BILL TO BE ENTITLED

AN ACT

relating to the abuse, neglect, and exploitation of recipients of home health services; providing penalties; creating an offense.

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

SECTION 1. Subtitle G, Title 2, Health and Safety Code, is amended by adding Chapter 142A to read as follows:

CHAPTER 142A. REPORTS OF ABUSE, NEGLECT, AND EXPLOITATION OF
RECIPIENTS OF CERTAIN SERVICES

Sec. 142A.001. DEFINITIONS. In this chapter:

(1) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a recipient by the recipient's caregiver, family member, or other individual who has an ongoing relationship with the recipient; or

(B) sexual abuse of a recipient, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (Indecent Exposure), or Chapter 22, Penal Code (Assaultive Offenses), committed by the recipient's caregiver, family member, or other individual who has an ongoing relationship with the recipient.

(2) "Exploitation" means the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the recipient using the resources

of a recipient for monetary or personal benefit, profit, or gain without the informed consent of the recipient.

(3) "Neglect" means the failure to provide for one's self the goods or services, including medical services, that are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide the goods or services.

(4) "Recipient" means an individual, including a patient, who receives a service.

(5) "Service" means a home health service as defined by Section 142.001.

Sec. 142A.002. REPORTING OF ABUSE, NEGLECT, AND EXPLOITATION. (a) A person, including an employee of a person licensed under Chapter 142 to provide a service, who has cause to believe that the physical or mental health or welfare of a recipient has been or may be adversely affected by abuse, neglect, or exploitation caused by another person shall report the abuse, neglect, or exploitation in accordance with this chapter.

(b) Each person licensed under Chapter 142 to provide a service shall require each employee providing a service, as a condition of employment with the person, to sign a statement acknowledging that the employee may be criminally liable for failure to report the abuse, neglect, or exploitation.

(c) A person shall make an oral report to the commission immediately on learning of the abuse, neglect, or exploitation and shall make a written report to the commission not later than the fifth day after the date the oral report is made.

Sec. 142A.003. CONTENTS OF REPORT. (a) A report of abuse,

1 neglect, or exploitation is nonaccusatory and reflects the
2 reporting person's belief that a recipient has been or will be
3 abused, neglected, or exploited or has died as a result of abuse or
4 neglect.

5 (b) The report must contain:

6 (1) the name and address of the recipient;

7 (2) the name and address of the person responsible for
8 the care of the recipient, if available; and

9 (3) other relevant information.

10 (c) Except for an anonymous report made under Section
11 142A.004, a report of abuse, neglect, or exploitation under Section
12 142A.002 must include the address or phone number of the person
13 making the report to enable an investigator to contact the person
14 for any necessary additional information. The phone number,
15 address, and name of the person making the report must be redacted
16 from any copy of the report or information from the report that is
17 released to the public, to the person licensed under Chapter 142 to
18 provide a service, or to an agent of the person licensed under
19 Chapter 142 to provide a service.

20 Sec. 142A.004. ANONYMOUS REPORTS OF ABUSE, NEGLECT, OR
21 EXPLOITATION. (a) The commission shall accept but discourage the
22 submission of an anonymous report of abuse, neglect, or
23 exploitation, and, subject to Subsection (b), act on the report in
24 the same manner as the commission acts on an acknowledged report.

25 (b) The commission is not required to investigate an
26 anonymous report that accuses a named individual of abuse, neglect,
27 or exploitation.

Sec. 142A.005. TELEPHONE HOTLINE; PROCESSING OF REPORTS.

(a) The commission shall operate a telephone hotline to:

(1) receive reports of abuse, neglect, or exploitation under this chapter; and

(2) assign investigators.

(b) A person shall make a report of abuse, neglect, or exploitation to the commission's telephone hotline or to a local or state law enforcement agency. A report relating to abuse, neglect, or exploitation or another complaint alleging conduct described in Section 142A.007(c) must be made to the commission's telephone hotline and to the law enforcement agency described by Section 142A.016(a).

(c) Except as provided by Section 142A.016, a local or state law enforcement agency that receives a report of abuse, neglect, or exploitation shall refer the report to the commission.

Sec. 142A.006. NOTICE. (a) Each person licensed under Chapter 142 to provide a service shall prominently and conspicuously post a sign for display in a public area of the person's headquarters or office that is readily available to employees and visitors.

(b) The sign must include the statement: "CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION BY CALLING (insert telephone hotline number)."

(c) A person licensed under Chapter 142 to provide a service shall provide the telephone hotline number to an immediate family member of each recipient of services on provision of the first

1 service to the recipient.

2 Sec. 142A.007. INVESTIGATION AND REPORT OF COMMISSION. (a)
3 The commission shall make a thorough investigation after receiving
4 an oral or written report of abuse, neglect, or exploitation under
5 Section 142A.002 or another complaint alleging abuse, neglect, or
6 exploitation.

7 (b) The primary purpose of the investigation is the
8 protection of the recipient.

9 (c) The commission shall begin the investigation:

10 (1) within 24 hours after receipt of a report or other
11 complaint of abuse, neglect, or exploitation alleging that:

12 (A) a recipient's health or safety is in imminent
13 danger;

14 (B) a recipient has recently died because of
15 conduct alleged in the report of abuse, neglect, or exploitation or
16 other complaint;

17 (C) a recipient has been hospitalized or been
18 treated in an emergency room because of conduct alleged in the
19 report of abuse, neglect, or exploitation or other complaint;

20 (D) a recipient has been a victim of any act or
21 attempted act described by Section 21.02, 21.11, 22.011, or 22.021,
22 Penal Code; or

23 (E) a recipient has suffered bodily injury, as
24 defined by Section 1.07, Penal Code, because of conduct alleged in
25 the report of abuse, neglect, or exploitation or other complaint;
26 or

27 (2) before the end of the next working day after the

1 date of receipt of the report of abuse, neglect, or exploitation or
2 other complaint if the report or complaint alleges the existence of
3 circumstances that could result in abuse, neglect, or exploitation
4 and that could place a recipient's health or safety in imminent
5 danger.

6 (d) The executive commissioner shall adopt rules governing
7 the conduct of investigations, including procedures to ensure the
8 complainant and the recipient, the recipient's next of kin, and any
9 person designated to receive information concerning the recipient
10 receive periodic information regarding the investigation.

11 (e) In investigating a report of abuse, neglect, or
12 exploitation or other complaint, the investigator for the
13 commission shall:

14 (1) make an unannounced visit to the place at which a
15 service is provided to the recipient to determine the nature and
16 cause of the alleged abuse, neglect, or exploitation of the
17 recipient;

18 (2) interview each available witness, including the
19 recipient who suffered the alleged abuse, neglect, or exploitation
20 if the recipient is able to communicate, or another recipient or
21 other witness identified by any source as having personal knowledge
22 relevant to the report of abuse, neglect, or exploitation or other
23 complaint;

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

1 (4) make a photographic record of any injury to a
2 recipient, subject to Subsection (m); and

3 (5) write an investigation report that includes:

4 (A) the investigator's personal observations;

5 (B) a review of relevant documents and records;

6 (C) a summary of each witness statement,
7 including the statement of the recipient who suffered the alleged
8 abuse, neglect, or exploitation and any other recipient interviewed
9 in the investigation; and

10 (D) a statement of the factual basis for the
11 findings for each incident or problem alleged in the report or other
12 allegation.

13 (f) An investigator shall conduct an interview under
14 Subsection (e) in private unless the witness expressly requests
15 that the interview not be private.

16 (g) Not later than the 30th day after the date the
17 investigation is complete, the investigator shall prepare the
18 written report required by Subsection (e). The commission shall
19 make the investigation report available to the public on request
20 after the date the commission's letter of determination is
21 complete. The commission shall delete from any copy made available
22 to the public:

23 (1) the name of:

24 (A) any recipient, unless the commission
25 receives written authorization from a recipient or the recipient's
26 legal representative requesting that the recipient's name be left
27 in the report;

1 (B) the person making the report of abuse,
2 neglect, or exploitation or other complaint; and

3 (C) a person interviewed in the investigation;
4 and

5 (2) photographs of any injury to the recipient.

6 (h) In the investigation, the commission shall determine:

7 (1) the nature, extent, and cause of the abuse,
8 neglect, or exploitation;

9 (2) the identity of the person responsible for the
10 abuse, neglect, or exploitation;

11 (3) the names and conditions of the other recipients;

12 (4) an evaluation of the persons responsible for the
13 care of the recipients;

14 (5) the adequacy of the environment in which a service
15 is provided; and

16 (6) any other information required by the commission.

17 (i) Before the completion of the investigation, the
18 commission shall file a petition for temporary care and protection
19 of the recipient if the commission determines the action is
20 necessary to protect the recipient from further abuse, neglect, or
21 exploitation.

22 (j) The commission shall make a complete final written
23 report of the investigation and submit the report and its
24 recommendations to the district attorney and, if a law enforcement
25 agency has not investigated the report of abuse, neglect, or
26 exploitation or other complaint, to the appropriate law enforcement
27 agency.

1 (k) Within 24 hours after receipt of a report of abuse,
2 neglect, or exploitation or other complaint described by Subsection
3 (c)(1), the commission shall report the report or complaint to the
4 law enforcement agency described by Section 142A.016(a). The
5 commission shall cooperate with that law enforcement agency in the
6 investigation of the report or complaint as described by Section
7 142A.016.

8 (l) The inability or unwillingness of a local law
9 enforcement agency to conduct a joint investigation under Section
10 142A.016 does not constitute grounds to prevent or prohibit the
11 commission from performing its duties under this chapter. The
12 commission shall document any instance in which a law enforcement
13 agency is unable or unwilling to conduct a joint investigation
14 under Section 142A.016.

15 (m) If the commission determines that, before a
16 photographic record of an injury to a recipient may be made under
17 Subsection (e), consent is required under state or federal law, the
18 investigator:

19 (1) shall seek to obtain any required consent; and
20 (2) may not make the photographic record unless the
21 consent is obtained.

22 Sec. 142A.008. CONFIDENTIALITY. A report, record, or
23 working paper used or developed in an investigation made under this
24 chapter and the name, address, and phone number of any person making
25 a report under this chapter are confidential and may be disclosed
26 only for purposes consistent with rules adopted by the executive
27 commissioner. The report, record, or working paper and the name,

1 address, and phone number of the person making the report shall be
2 disclosed to a law enforcement agency as necessary to allow the law
3 enforcement agency to investigate a report of abuse, neglect, or
4 exploitation or other complaint in accordance with Section
5 142A.016.

6 Sec. 142A.009. IMMUNITY. (a) A person who makes a report
7 as provided by this chapter is immune from civil or criminal
8 liability that, in the absence of the immunity, might result from
9 making the report.

10 (b) The immunity provided by this section extends to
11 participation in any judicial proceeding that results from the
12 report.

13 (c) This section does not apply to a person who makes a
14 report in bad faith or with malice.

15 Sec. 142A.010. PRIVILEGED COMMUNICATIONS. In a proceeding
16 regarding the abuse, neglect, or exploitation of a recipient or the
17 cause of any abuse, neglect, or exploitation, evidence may not be
18 excluded on the ground of privileged communication other than a
19 communication between an attorney and client.

20 Sec. 142A.011. CENTRAL REGISTRY. (a) The commission shall
21 maintain in the city of Austin a central registry of reported cases
22 of recipient abuse, neglect, or exploitation.

23 (b) The executive commissioner may adopt rules necessary to
24 carry out this section.

25 (c) The rules shall provide for cooperation with hospitals
26 and clinics in the exchange of reports of recipient abuse, neglect,
27 or exploitation.

1 Sec. 142A.012. FAILURE TO REPORT; CRIMINAL PENALTY. (a) A
2 person commits an offense if the person has cause to believe that a
3 recipient's physical or mental health or welfare has been or may be
4 further adversely affected by abuse, neglect, or exploitation and
5 knowingly fails to report in accordance with Section 142A.002.

6 (b) An offense under this section is a Class A misdemeanor.

7 Sec. 142A.013. MALICIOUS, RECKLESS, OR BAD FAITH REPORTING;
8 CRIMINAL PENALTY. (a) A person commits an offense if the person
9 makes a report under this chapter maliciously, recklessly, or in
10 bad faith.

11 (b) An offense under this section is a Class A misdemeanor.

12 (c) The criminal penalty provided by this section is in
13 addition to any civil penalties for which the person may be liable.

14 Sec. 142A.014. RETALIATION AGAINST EMPLOYEES PROHIBITED.

15 (a) In this section, "employee" means an individual who is an
16 employee of a person licensed under Chapter 142 to provide a service
17 or any other individual who provides services for compensation,
18 including a contract laborer for the person.

19 (b) An employee has a cause of action against a person
20 licensed under Chapter 142 to provide a service, or another
21 employee of the person, who suspends or terminates the employment
22 of the employee or otherwise disciplines, discriminates, or
23 retaliates against the employee for reporting to the employee's
24 supervisor, an administrator of the person, the commission, or a
25 law enforcement agency a violation of law or for initiating or
26 cooperating in any investigation or proceeding of a governmental
27 entity relating to the provision of the service.

1 (c) The petitioner may recover:

2 (1) the greater of \$1,000 or actual damages, including
3 damages for mental anguish even if an injury other than mental
4 anguish is not shown, and damages for lost wages for a petitioner
5 whose employment was suspended or terminated;

6 (2) exemplary damages;

7 (3) court costs; and

8 (4) reasonable attorney's fees.

9 (d) In addition to the amounts that may be recovered under
10 Subsection (c), a person whose employment is suspended or
11 terminated is entitled to appropriate injunctive relief,
12 including, if applicable:

13 (1) reinstatement in the person's former position; and

14 (2) reinstatement of lost fringe benefits or seniority
15 rights.

16 (e) The petitioner, not later than the 90th day after the
17 date on which the person's employment is suspended or terminated,
18 must bring suit or notify the Texas Workforce Commission of the
19 petitioner's intent to sue under this section. A petitioner who
20 notifies the Texas Workforce Commission under this subsection must
21 bring suit not later than the 90th day after the date notice is
22 delivered to the commission. On receipt of the notice, the
23 commission shall notify the service of the petitioner's intent to
24 bring suit under this section.

25 (f) The petitioner has the burden of proof, except there is
26 a rebuttable presumption that the person's employment was suspended
27 or terminated for reporting abuse, neglect, or exploitation if the

1 person is suspended or terminated within 60 days after the date the
2 person reported the abuse, neglect, or exploitation in good faith.

3 (g) A suit under this section may be brought in the district
4 court of the county in which:

5 (1) the plaintiff resides;

6 (2) the plaintiff was employed by the defendant; or

7 (3) the defendant conducts business.

8 (h) Each person licensed under Chapter 142 to provide a
9 service shall require each employee of the person, as a condition of
10 employment, to sign a statement that the employee understands the
11 employee's rights under this section. The statement must be part of
12 the statement required under Section 142A.002. If a person
13 licensed under Chapter 142 to provide a service does not require an
14 employee to read and sign the statement, the periods under
15 Subsection (e) do not apply, and the petitioner must bring suit not
16 later than the second anniversary of the date on which the
17 petitioner's employment is suspended or terminated.

18 Sec. 142A.015. RETALIATION AGAINST VOLUNTEERS, RECIPIENTS,
19 OR FAMILY MEMBERS OR GUARDIANS OF RECIPIENTS. (a) A person
20 licensed under Chapter 142 to provide a service may not retaliate or
21 discriminate against a volunteer, recipient, or family member or
22 guardian of a recipient because the volunteer, recipient, family
23 member or guardian of a recipient, or any other person:

24 (1) makes a complaint or files a grievance concerning
25 the person;

26 (2) reports a violation of law; or

27 (3) initiates or cooperates in an investigation or

1 proceeding of a governmental entity relating to the provision of
2 the service.

3 (b) A volunteer, recipient, or family member or guardian of
4 a recipient who is retaliated or discriminated against in violation
5 of Subsection (a) is entitled to sue for:

6 (1) injunctive relief;

7 (2) the greater of \$1,000 or actual damages, including
8 damages for mental anguish even if an injury other than mental
9 anguish is not shown;

10 (3) exemplary damages;

11 (4) court costs; and

12 (5) reasonable attorney's fees.

13 (c) A volunteer, recipient, or family member or guardian of
14 a recipient who seeks relief under this section must report the
15 alleged violation not later than the 180th day after the date the
16 alleged violation of this section occurred or was discovered by the
17 volunteer, recipient, or family member or guardian of the recipient
18 through reasonable diligence.

19 (d) A suit under this section may be brought in the district
20 court of the county in which the service is located or in a district
21 court of Travis County.

22 Sec. 142A.016. DUTIES OF LAW ENFORCEMENT; JOINT
23 INVESTIGATION. (a) The commission shall investigate a report of
24 abuse, neglect, or exploitation or other complaint described by
25 Section 142A.007(c)(1) jointly with:

26 (1) the municipal law enforcement agency, if the
27 service is provided at a location within the territorial boundaries

1 of a municipality; or

2 (2) the sheriff's department of the county in which the
3 service is provided, if the service is not provided at a location
4 within the territorial boundaries of a municipality.

5 (b) The law enforcement agency described by Subsection (a)
6 shall acknowledge the report of abuse, neglect, or exploitation or
7 other complaint and begin the joint investigation required by this
8 section within 24 hours after receipt of the report or complaint.
9 The law enforcement agency shall cooperate with the commission and
10 report to the commission the results of the investigation.

11 (c) The requirement that the law enforcement agency and the
12 commission conduct a joint investigation under this section does
13 not require that a representative of each agency be physically
14 present during all phases of the investigation or that each agency
15 participate equally in each activity conducted in the course of the
16 investigation.

17 SECTION 2. Section 142.009, Health and Safety Code, is
18 amended by amending Subsection (c) and adding Subsection (c-1) to
19 read as follows:

20 (c) Except as provided by Subsection (c-1), the commission
21 [The—department] or its authorized representative shall
22 investigate each complaint received regarding the provision of home
23 health, hospice, habilitation, or personal assistance services and
24 may, as a part of the investigation:

25 (1) conduct an unannounced survey of a place of
26 business, including an inspection of medical and personnel records,
27 if the commission ~~[department]~~ has reasonable cause to believe that

1 the place of business is in violation of this chapter or a rule
2 adopted under this chapter;

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

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

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

17 (c-1) A complaint that constitutes a report of abuse,
18 neglect, or exploitation in connection with the provision of a home
19 health service is governed by Chapter 142A.

20 SECTION 3. Section [142.018](#), Health and Safety Code, is
21 repealed.

22 SECTION 4. The change in law made by this Act applies only
23 to a licensing action under Chapter [142](#), Health and Safety Code, for
24 conduct that occurs on or after the effective date of this Act.
25 Conduct that occurs before the effective date of this Act is
26 governed by the law as it existed on the date the conduct occurred,
27 and the former law is continued in effect for that purpose.

1 SECTION 5. This Act takes effect September 1, 2017.