

BILL ANALYSIS

S.B. 1880
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Human Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The state protects older Texans and individuals with disabilities through investigations of abuse, neglect, and exploitation conducted by the adult protective services program within the Department of Family and Protective Services. The goal of these investigations is to alleviate and prevent future abuse, neglect, and exploitation. There is concern that the state's current system of investigation has gaps and inconsistencies that have developed as service delivery systems have evolved beyond statutory regulation, particularly in regard to investigations of services delivered through a managed care organization or its providers. S.B. 1880 seeks to ensure the state's compliance with federal requirements related to investigations of abuse, neglect, or exploitation for the health and welfare of recipients of home and community-based services.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8 of this bill.

ANALYSIS

S.B. 1880 repeals provisions of the Human Resources Code governing investigations of providers of home and community-based services under contract with a health and human services agency. The bill amends the Human Resources Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to set out provisions governing investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers and to define "provider" as a facility; a community center, local mental health authority, and local intellectual and developmental disability authority; a person who contracts with a health and human services agency or managed care organization to provide home and community-based services; a person who contracts with a Medicaid managed care organization to provide behavioral health services; a managed care organization; an officer, employee, agent, contractor, or subcontractor of such a person or entity; and an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option. The bill requires the executive commissioner of the Health and Human Services Commission by rule to adopt the definition of "an individual receiving services" for the purposes of such an investigation.

S.B. 1880 removes from the requirement that the Department of Family and Protective Services (DFPS) receive and investigate reports of the abuse, neglect, or exploitation of certain individuals the specification that an individual have a disability and be receiving services in

certain facilities or through certain programs. The bill instead requires DFPS to receive and investigate reports of the abuse, neglect, or exploitation of an individual receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider. The bill prohibits DFPS from investigating reports of the abuse, neglect, or exploitation alleged or suspected to have been committed by a provider that is operated, licensed, certified, or registered by a state agency that has authority to investigate reports of abuse, neglect, or exploitation of an individual by the provider and requires DFPS to forward any such report to the appropriate state agency for investigation. The bill requires DFPS to receive and investigate reports of abuse, neglect, or exploitation of an individual who lives in a residence that is owned, operated, or controlled by a provider who provides home and community-based services under the home and community-based services waiver program, regardless of whether the individual is receiving services under that waiver program from the provider.

S.B. 1880 includes assessing the need for emergency protective services among the actions DFPS is required to take on receiving a report of alleged abuse, neglect, or exploitation of an individual receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider. The bill requires DFPS, after receiving a report that alleges that a provider is or may be the person who committed the alleged abuse, neglect, or exploitation, to notify the provider and the appropriate health and human services agency in accordance with rules adopted by the executive commissioner. The bill requires the provider identified in a report to cooperate completely with the investigation and to provide DFPS complete access during the investigation to all sites owned, operated, or controlled by the provider and to clients and client records. The bill requires the executive commissioner to adopt rules governing such investigations of abuse, neglect, or exploitation of an individual receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider.

S.B. 1880 requires the executive commissioner by rule to establish procedures for DFPS to use to forward a copy of the initial intake report and a copy of the completed provider investigation report relating to the alleged or suspected abuse, neglect, or exploitation to the appropriate provider and health and human services agency. The bill requires DFPS to redact from the initial intake report and from the copy of the completed provider investigation report any identifying information relating to the person who reported the alleged or suspected abuse, neglect, or exploitation. The bill requires a provider that receives a completed investigation report to forward the report to the managed care organization with which the provider contracts for services for the alleged victim.

S.B. 1880 includes among the rules required to be adopted by the executive commissioner rules to prioritize investigations, with the primary criterion being whether there is a risk that a delay in the investigation will impede the collection of evidence in that investigation, and rules to provide for an appeals process by DFPS for the alleged victim of abuse, neglect, or exploitation. The bill clarifies that a confirmed investigation finding by DFPS is prohibited from being changed by the administrator of a facility, a community center, a local mental health authority, or a local intellectual and developmental disability authority.

S.B. 1880 requires the executive commissioner to adopt rules that prescribe the appropriate manner in which health and human services agencies and managed care organizations provide DFPS with information necessary to facilitate identification of individuals receiving services from providers and to facilitate notification of providers by DFPS. The bill requires the executive commissioner to adopt rules requiring a provider to provide information to the administering health and human services agency necessary to facilitate identification by DFPS of individuals receiving services from providers and to facilitate notification of providers by DFPS. The bill requires a provider of home and community-based services under the home and community-based services waiver program to post in a conspicuous location inside any residence owned, operated, or controlled by the provider in which home and community-based waiver services are provided a sign that states the name, address, and telephone number of the provider, the effective

date of the provider's contract with the applicable health and human services agency to provide home and community-based services, and the name of the legal entity that contracted with the applicable health and human services agency to provide those services. The bill prohibits a provider of home and community-based services from retaliating against a person for filing a report or providing information in good faith relating to the possible abuse, neglect, or exploitation of an individual receiving services. The bill establishes that this prohibition does not prohibit a provider of home and community-based services from terminating an employee for a reason other than retaliation.

S.B. 1880 specifies that statutory provisions relating to the requirement that DFPS refer a report of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability to the agency that operated, licensed, certified, or registered the facility do not apply to a report regarding an individual receiving services from a provider. The bill establishes that its provisions relating to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers 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, regardless of whether the facility in which those services were provided is a licensed convalescent or nursing facility or a licensed assisted living facility. The bill specifies that provisions establishing notification requirements relating to an investigation of abuse, neglect, or exploitation by an employee of a licensed home and community support services agency do not apply to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider is or may be alleged to have committed the abuse, neglect, or exploitation and establishes that such an investigation is governed by the bill's provisions relating to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers.

S.B. 1880 amends the Family Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require DFPS to investigate a report of abuse, neglect, or exploitation of a child receiving services from a provider as defined by the bill or as otherwise defined by rule. The bill removes from that requirement the specification that the child be receiving services in certain facilities or through certain programs. The bill requires DFPS to investigate a report of abuse, neglect, or exploitation of a child receiving services from an officer, employee, agent, contractor, or subcontractor of a licensed home and community support services agency if the officer, employee, agent, contractor, or subcontractor is or may be the person alleged to have committed the abuse, neglect, or exploitation. The bill authorizes DFPS, 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, to 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. The bill requires DFPS, for an investigation of a child living in such a residence and regardless of whether the child is receiving services under that waiver program from the provider, to provide protective services to the child in accordance with Human Resources Code provisions. The bill establishes that statutory provisions relating to the provision of emergency protective services and to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers apply to an investigation of a child and to the provision of protective services to that child in the same manner those provisions apply to an investigation of an elderly person or person with a disability and the provision of protective services to that person. The bill removes a provision requiring the executive commissioner of the Health and Human Services Commission to develop the rules by which DFPS is required to investigate a report with the advice and assistance of DFPS, the Department of Aging and Disability Services (DADS), and the Department of State Health Services.

S.B. 1880 amends the Health and Safety Code to remove a specification that the duty of DADS to investigate complaints received regarding the provision of home health, hospice, or personal assistance services applies to any allegation of abuse, neglect, or exploitation of a child under the age of 18 and instead requires a report that a provider is or may be alleged to have committed

abuse, neglect, or exploitation of a resident of a facility other than a prescribed pediatric extended care center to be investigated by DFPS in accordance with the bill's provisions relating to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers.

S.B. 1880 repeals the following provisions:

- Section 261.404(f), Family Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015
- Subchapter H, Chapter 48, Human Resources Code

EFFECTIVE DATE

September 1, 2015.