

BILL ANALYSIS

C.S.H.B. 2134
By: Klick
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Concerns have been raised regarding the reporting of certain child abuse or neglect cases in which the child has an underlying medical condition that gives the appearance of physical injury. In many cases, the initial report of suspected abuse or neglect comes from a hospital or from a physician who may be tasked with assisting the investigation. These situations can present a conflict of interest wherein the individual who is being counted on to provide investigators with objective, expert analysis of whether a child's injuries were caused by abuse or neglect either made the initial report or is paid by the institution that made the initial report. C.S.H.B. 2134 seeks to mitigate these conflicts of interest by prohibiting a health care provider that makes a report to child protective services from providing expert consultation to the Department of Family and Protective Services in furtherance of the investigation.

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 this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2134 amends the Family Code to include an orthopedist among the physicians licensed to practice medicine in Texas and board certified in the relevant field or specialty who are eligible for consultation with the Forensic Assessment Center Network and the Texas Medical Child Abuse Resources and Education System (MEDCARES) under an agreement with the Department of Family and Protective Services (DFPS) to provide assistance in connection with abuse and neglect investigations conducted by DFPS. The bill specifies that the consultation is for the diagnosis and treatment of certain unique health conditions. The bill revises those conditions to include medical conditions that mimic child maltreatment or increase the risk of misdiagnosis of child maltreatment and to remove similar metabolic bone diseases or connective tissue disorders. The bill requires DFPS to refer a child's case to MEDCARES for a specialty consultation without regard to the system's capacity to take the case on determining that such a consultation is required, on the recommendation of the child's primary care physician or other primary health care provider who provided health care or treatment or otherwise evaluated the child, or at the request of the child's parent or legal guardian or the attorney of the parent or guardian.

C.S.H.B. 2134 requires DFPS, before making a referral, to provide to the child's parent or legal guardian or, if represented by an attorney, the attorney of the parent or legal guardian written notice of the name, contact information, and credentials of the specialist. The bill authorizes the

parent, legal guardian, or attorney, as applicable, to object to the proposed referral and request referral to another specialist and authorizes DFPS to object to the proposed specialist and to propose two alternative specialists. The bill requires DFPS and the parent, legal guardian, or attorney, as applicable, to collaborate in good faith to select an acceptable specialist from the proposed specialists. The bill prohibits its provisions from being construed to prohibit a child's parent or legal guardian or applicable attorney from otherwise obtaining an alternative opinion at the parent's, legal guardian's, or attorney's own initiative and expense, as applicable.

C.S.H.B. 2134 prohibits a health care practitioner who reports the suspected abuse or neglect of a child from providing forensic assessment services in connection with an investigation resulting from the report regardless of whether the practitioner is a member of the network or MEDCARES. The bill requires DFPS, when referring a case for forensic assessment, to refer the case to a physician authorized to practice medicine in Texas under the Medical Practice Act who was not involved with the report of suspected abuse or neglect. The bill prohibits its provisions from being construed to prohibit DFPS from interviewing the health care practitioner in the practitioner's capacity as a principal or collateral source or otherwise restrict the ability of DFPS to conduct an investigation of a report of child abuse or neglect.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2134 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute specifies that the physicians eligible for consultation with MEDCARES to provide assistance in connection with abuse and neglect investigations conducted by DFPS are those licensed to practice medicine in Texas and board certified in the relevant field or specialty to diagnose and treat certain unique health conditions. The substitute, with regard to those conditions, replaces certain metabolic bone diseases or connective tissue disorders with certain medical conditions that mimic child maltreatment or increase the risk of misdiagnosis of child maltreatment. The substitute removes the requirement for a physician in the network to refer the child's case for a specialty consultation under certain conditions.

The substitute revises certain provisions relating to the notice of certain identifying information regarding the specialist by:

- authorizing a parent, legal guardian, or attorney to object to the proposed referral and request referral to another specialist; and
- authorizing DFPS, if the applicable parent, legal guardian, or attorney objects to the proposed referral, to object to the proposed specialist and to propose alternative specialists.

The substitute redefines "consultation" as "forensic assessment" and "health care provider" as "health care practitioner" and revises the meaning of "forensic assessment" to include the service provided for the primary purpose of providing the department, law enforcement, or the court with expert advice, recommendations, or testimony on the case in question.

The substitute does not include provisions requiring the network and MEDCARES to provide consultations for DFPS on suspected child abuse or neglect cases through a blind peer review process or to select for those cases a health care provider who is located outside the geographic areas where the alleged abuse or neglect occurred and the reporting health care provider practices.

The substitute includes a provision prohibiting the bill's provisions from being construed to prohibit DFPS from interviewing an applicable practitioner in the practitioner's capacity as a principal or collateral source, or otherwise restrict the ability of DFPS to conduct an investigation of a report of child abuse or neglect.