

BILL ANALYSIS

Senate Research Center
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C.S.S.B. 1245
By: Moncrief
Health & Human Services
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Committee Report (Substituted)

DIGEST AND PURPOSE

Currently, the direct care staff of home health agencies are not on the list of employees covered by the Texas Department of Human Services (DHS) Employee Misconduct Registry. This prevents home health agencies and other long-term care providers from discovering whether a potential employee who worked in the home health care field has a record of abuse or neglect against a client. C.S.S.B. 1245 adds direct care staff employed by home health agencies to the list of employees covered by the DHS Employee Misconduct Registry (EMR). The bill authorizes a health care facility to obtain information directly from the Department of Public Safety concerning the criminal history of an employee or applicant for employment. The bill also requires the Department of Protective and Regulatory Services to place findings from investigations of alleged misconduct in the EMR following due process proceedings.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Protective and Regulatory Services in SECTION 1 (Sections 48.402 and 48.407, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 48, Human Resources Code, by adding Subchapter I, as follows:

SUBCHAPTER I. EMPLOYEE MISCONDUCT REGISTRY

Sec. 48.401. DEFINITIONS. Defines “agency,” “employee,” “employee misconduct registry,” “executive director,” and “reportable conduct.”

Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. Authorizes the Department of Protective and Regulatory Services (department) to adopt rules to further define reportable conduct.

Sec. 48.403. FINDING. Requires the department, after an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, to forward the finding to the Texas Department of Human Services to record the reportable conduct in the registry under Section 253.007 (Employee Misconduct Registry), Health and Safety Code.

Sec. 48.404. NOTICE OF FINDING. (a) Requires the department to give written notice of the department's findings under Section 48.403 to the employee. Requires the notice to include certain information.

(b) Authorizes the employee notified, not later than the 30th day after the date the notice is received, to accept the finding of the department made under this section or to make a written request for a hearing on that finding.

(c) Requires the executive director or the executive director's designee, if the employee

notified of the violation accepts the finding of the department or fails to timely respond to the notice, to issue an order approving the finding and ordering that the department's findings be forwarded to the Texas Department of Human Services to be recorded in the registry under Section 253.007, Health and Safety Code.

Sec. 48.405. HEARING; ORDER. (a) Requires the department, if the employee requests a hearing, to perform certain duties.

(b) Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the executive director or the executive director's designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Authorizes the executive director or the executive director's designee by order, based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, to find that the reportable conduct has occurred. Requires the executive director or the executive director's designee, if the executive director or the executive director's designee finds that reportable conduct has occurred, to issue an order approving the finding.

Sec. 48.406. NOTICE; JUDICIAL REVIEW. (a) Requires the department to give notice of the order under Section 48.405 to the employee alleged to have committed the reportable conduct. Requires the notice to include certain information.

(b) Authorizes the employee, not later than the 30th day after the date the decision becomes final as provided by Chapter 2001 (Administrative Procedure), Government Code, to file a petition for judicial review contesting the finding of the reportable conduct. Requires the department to send a record of the department's findings to the Texas Department of Human Services to record in the registry under Section 253.007, Health and Safety Code, if the employee does not request judicial review of the finding.

(c) Provides that judicial review of the order is instituted by filing a petition as provided by Chapter 2001G (Contested Cases: Judicial Review), Government Code, and is under the substantial evidence rule.

(d) Requires the department to forward the finding of reportable conduct to the Texas Department of Human Services to record the reportable conduct in the registry under Section 253.007, Health and Safety Code, if the court sustains the finding of the occurrence of the reportable conduct.

Sec. 48.407. INFORMAL PROCEEDINGS. Requires the department by rule to adopt procedures governing informal proceedings held in compliance with Section 2001.056 (Informal Disposition of Contested Case), Government Code.

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) Requires the department, when the department forwards a finding of reportable conduct to the Texas Department of Human Services for recording in the employee misconduct registry, to provide the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) Authorizes the department to send to the Texas Department of Human Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date of the act, and a description of the act, if a governmental agency of another state or the federal government finds that an employee

has committed an act that constitutes reportable conduct.

SECTION 2. Amends Section 250.002, Health and Safety Code, as follows:

Sec. 250.002. New heading: INFORMATION OBTAINED BY FACILITY. REGULATORY AGENCY, OR PRIVATE AGENCY. (a) Adds a facility to the list of those entitled to obtain from the Department of Public Safety of the state of Texas criminal history record information maintained by the Department of Public Safety that relates to certain persons. Adds language relating to an exception to a facility licensed under Chapter 142 and adds a reference to an applicant for employment at or an employee of a facility licensed under Chapter 142.

(b) Adds language authorizing a facility to obtain the information directly from the Department of Public Safety and deletes language relating to obtaining the information from the regulatory agency that obtains the information from the Department of Public Safety. Makes a conforming change.

SECTION 3. Amends Section 250.003, Health and Safety Code, to delete language relating to a person in a position the duties of which involve direct contact with a consumer in the facility. Deletes language relating to a request being mailed, sent by telephonic facsimile machine, or by other means forwarded to the facility's regulatory agency by the facility or a private agency working with the facility. Makes a conforming change.

SECTION 4. Amends Section 250.004(a), Health and Safety Code, to add language to provide that the required identifying information of an employee in a covered facility may be submitted electronically or on disk rather than the typewritten form currently required. Makes a conforming change.

SECTION 5. Amends Section 250.006, Health and Safety Code, to add language prohibiting a person for whom the facility is entitled to obtain criminal history record information from being employed in a facility if the person has been convicted of an offense listed in this section. Makes a conforming change.

SECTION 6. Amends Section 253.001, Health and Safety Code, by adding Subdivision (5), as follows:

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility;

(B) sexual abuse of a resident or consumer of a facility;

(C) financial exploitation of a resident or consumer of a facility in an amount of \$25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility.

SECTION 7. Amends Section 253.002, Health and Safety Code, to change a reference relating to an employee of a facility that has abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property to an employee of a facility that committed reportable conduct. Makes conforming changes.

SECTION 8. Amends Sections 253.003(a) and (c), Health and Safety Code, to make conforming changes.

SECTION 9. Amends Sections 253.004(b) and (c), Health and Safety Code, to make conforming changes.

SECTION 10. Amends Sections 253.005(a), (b), and (d), Health and Safety Code, to make conforming changes.

SECTION 11. Amends Sections 253.007(a) and (b), Health and Safety Code, to make conforming changes.

SECTION 12. Amends Section 253.008, Health and Safety Code, to add language relating to an agency licensed under Chapter 142 hiring an employee and relating to an individual receiving services from an agency licensed under Chapter 1442. Makes conforming changes.

SECTION 13. Amends Section 253.009(a), Health and Safety Code, to make a conforming change.

SECTION 14. Amends Chapter 253, Health and Safety Code, by adding Sections 253.0075 and 253.010, as follows:

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. Requires the Texas Department of Human Services (department) to record the information in the employee misconduct registry, on receipt of a finding of reportable conduct by the Department of Protective and Regulatory Services under Chapter 48I, Human Resources Code.

Sec. 253.010. REMOVAL FROM REGISTRY. Authorizes the department to remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

SECTION 15. (a) Effective date: upon passage or September 1, 2001.

(b) Makes application of this Act prospective.

SUMMARY OF COMMITTEE CHANGES

Differs from original as follows:

- Adds a new SECTION 2 which amends Section 250.002, Health and Safety Code.
- Adds a new SECTION 3 which amends Section 250.003, Health and Safety Code.
- Adds a new SECTION 4 which amends Section 250.004(a), Health and Safety Code.
- Adds a new SECTION 5 which amends Section 250.006, Health and Safety Code.
- Redesignates original SECTIONS 2-11 as SECTIONS 6-15.
- States that the effective date is upon passage or September 1, 2001, rather than September 1, 2001, as in the original.