

BILL ANALYSIS

Senate Research Center
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S.B. 1064
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Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Current law allows the Child Protective Services (CPS) division of the Department of Family and Protective Services investigating a report of child abuse or neglect to access medical records regarding the abuse or neglect of the child, but not to medical records that do not relate specifically to the abuse or neglect. Adult Protective Services (APS) has express authority to access protected health information for investigative purposes regardless of who made the report to APS. Texas law contains no analogous provision for CPS.

As proposed, S.B. 1064 grants DFPS express authority to access a child's medical or mental health records when it is conducting an investigation into possible abuse or neglect. S.B. 1064 authorizes DFPS to obtain the records on an ex parte basis so that CPS can act quickly to protect the child.

RULEMAKING AUTHORITY

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

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 261, Family Code, by adding Section 261.3051, as follows:

Sec. 261.3051. ACCESS TO CHILD'S MEDICAL OR MENTAL HEALTH RECORDS. (a) Requires the Department of Family and Protective Services (DFPS) or designated agency investigating a report of child abuse or neglect (agency) to have access to any records or documents relating to the child who is the subject of the report as necessary to perform DFPS's or the agency's duties under this chapter to investigate the report of child abuse or neglect, including client-identifying information and medical and mental health records. Requires a person or agency that has a record or document that DFPS or the designated agency needs to perform its duties under this chapter to, without unnecessary delay, make the record or document available to DFPS or the agency.

(b) Authorizes DFPS or the agency, if DFPS or the agency cannot obtain access to a record or document that is necessary to properly conduct an investigation or to perform another duty under this chapter, to petition the court having family law jurisdiction for access to the record or document.

(c) Entitles the following persons to notice and a hearing on a petition under this section for access to a record or document: the person denying access to the record or document and the parent or person responsible for the child's care.

(d) Requires the court, on good cause shown, to order the person who denied access to a record or document to allow DFPS or agency to have access to the record or document under terms prescribed by the court.

(e) Provides that access to a confidential record under this section does not constitute a waiver of confidentiality.

SECTION 2. Effective date: upon passage or September 1, 2009.