

BILL ANALYSIS

Senate Research Center
81R2210 UM-F

S.B. 277
By: Nelson
Health & Human Services
3/10/2009
As Filed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, the law relating to adult protective services varies. S.B. 277 amends provisions relating to adult protective services that were added by S.B. 6, 79th Legislature, Regular Session, 2005, with the goal of better protecting the elderly and disabled population by strengthening adult protective services.

As proposed, S.B. 277 amends certain provisions related to an investigation of abuse, neglect, or exploitation of an elderly or disabled person and changes references to the Department of Protective and Regulatory Services to the Department of Family and Protective Services (DFPS) in the Government Code. The bill provides that DFPS is not prohibited from releasing certain criminal history information under certain circumstances to an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation. S.B. 277 amends the definition of "protective services" to include services furnished to a relative or caretaker of an elderly or disabled person to prevent abuse, neglect, or exploitation of the elderly or disabled person. The bill adds a medical professional to the list of members who are required to be included in a special task unit to monitor cases to assess the need for protective services in a county of a certain size. Finally, the bill extends the duration of an emergency order for protective services and adds the option of a second extension of an emergency order.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Board of Protective and Regulatory Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 411.114, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 59.006(a), Finance Code, as follows:

(a) Provides that this section does not apply to and does not require or authorize a financial institution to give a customer certain notices, including a notice of the investigation of alleged abuse, neglect, or exploitation of an elderly or disabled person in accordance with Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code.

SECTION 2. Amends Section 411.114, Government Code, to read as follows:

Sec. 411.114. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES.

(a)(1) Deletes existing definition of "ward."

(2) Requires the Department of Family and Protective Services (DFPS) to obtain from DFPS criminal history record information maintained by DFPS that relates to a person who is an alleged perpetrator in, rather than a person who is the subject of, a report DFPS receives alleging that the person has abused, neglected, or exploited a child, an elderly person, or person with a disability. Makes conforming and nonsubstantive changes.

(3) Entitles DFPS, rather than the Department of Protective and Regulatory Services (DPRS), to obtain from DPRS criminal history record

information maintained by DPRS that relates to certain persons, including a person, other than an alleged perpetrator in, rather than the subject of, a report described by Subdivision (2)(I), living in the residence in which the alleged victim of the report resides or an employee of, an applicant for employment with, or a volunteer or an applicant volunteer with an entity or person that contracts with DFPS and has access to confidential information in DFPS' records, if the employee, applicant, volunteer, or applicant volunteer has or will have access to that confidential information. Deletes existing text that entitles DFPS to obtain from DPRS criminal history information maintained by DPRS that relates to a person who is a contractor or an employee of a contractor who delivers services to a ward of DPRS under a contract with the estate of the ward and a person who seeks unsupervised visits with a ward of DPRS, including a relating of the ward. Makes conforming and nonsubstantive changes.

(4) Makes conforming changes.

(5) Requires the executive commissioner of the Health and Human Services Commission (commissioner), rather than the Board of Protective and Regulatory Services, to adopt rules to prevent the harassment of an employee or volunteer through the request and use of criminal records. Makes conforming changes.

(6) Makes conforming changes.

(7) Provides that DFPS is not prohibited from releasing criminal history record information obtained under this subsection to an elderly or disabled person who is an alleged victim of abuse, neglect, or exploitation, or an adult who resides with the alleged victim, and who also resides with the alleged perpetrator of that abuse, neglect, or exploitation if the alleged perpetrator is the subject of the criminal history record information and DFPS determines that the release of information to the elderly or disabled person or adult is necessary to ensure the safety or welfare of the elderly or disabled person. Makes conforming changes.

(b) Makes conforming changes.

(c) Makes conforming changes.

SECTION 3. Amends Section 48.002(a)(5), Human Resources Code, to redefine "protective services."

SECTION 4. Amends Section 48.006(a), Human Resources Code, to require DFPS to send a community satisfaction survey at least biennially, rather than annually, to certain entities and stakeholders.

SECTION 5. Amends Section 48.053, Human Resources Code, as follows:

Sec. 48.053. FALSE REPORT; PENALTY. (a) Creates this subsection from existing text. Makes no changes to this subsection.

(b) Creates this subsection from existing text. Provides that an offense under this section is a Class A, rather than a Class B, misdemeanor.

SECTION 6. Amends Section 48.152, Human Resources Code, as follows:

Sec. 48.152. INVESTIGATION. (a) Creates this subsection from existing text. Requires DFPS to continue the investigation, if the elderly or disabled person refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, by interviewing other persons thought to have knowledge relevant to the investigation.

(b) Creates this subsection from existing text. Makes no changes to this subsection.

(c) Creates this subsection from existing text. Makes no changes to this subsection.

SECTION 7. Amends Section 48.1521(b), Human Resources Code, to require that the standing members of each special task unit include a physician, nurse, or other medical professional. Makes nonsubstantive changes.

SECTION 8. Amends Sections 48.154(a)-(e), Human Resources Code, as follows:

(a) Requires DFPS or another state agency, as appropriate, to have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of DFPS's or state agency's duties under this chapter. Requires a person, agency, or institution that has a record or document that DFPS or state agency needs to perform its duties under this chapter to, without necessary delay, make the record or document available to DFPS or state agency that requested the record or document. Makes nonsubstantive changes.

(b) Provides that DFPS is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by DFPS.

(c) Makes conforming changes.

(d) Requires the court, on good cause shown, to order the person, agency, or institution who has a requested record or document to allow the department or state agency to have access to that record or document under the terms and conditions prescribed by the court. Deletes existing text that requires the court, on good cause shown, to order the person who denied access to a record or document to allow the department or agency to have access under the terms and conditions prescribed by the court.

(e) Entitles a person, agency, or institution who has a requested a record or document to notice and a hearing on a petition filed under this section. Makes nonsubstantive changes.

SECTION 9. Amends Section 48.203(d), Human Resources Code, as follows:

(d) Prohibits services from being provided, except as provided by Section 48.208, if an elderly or disabled person withdraws from or refuses consent to voluntary protective services. Makes nonsubstantive changes.

SECTION 10. Amends Section 48.204, Human Resources Code, as follows:

Sec. 48.204. AGENCY POWERS. Authorizes a protective services agency to furnish protective services to an elderly or disabled person with the person's consent or to a relative or caretaker of an elderly or disabled person on behalf of the elderly or disabled person with the relative's or caregiver's consent or, if the elderly or disabled person lacks the capacity to consent, without that person's consent as provided by this chapter.

SECTION 11. Amends Sections 48.208(c-3), (e), (e-2), (f), and (h), Human Resources Code, as follows:

(c-3) Requires that an assessment of the elderly or disabled person's psychological status be performed by a licensed psychologist, licensed professional counselor, or master social worker who has training and expertise in issues related to abuse, neglect, and exploitation. Makes a conforming change.

(e) Provides that the emergency order expires on the earlier of the end of the 10th day after the date the order is rendered or the end of the 10th day after the date the person was removed to safer surroundings if the emergency order was rendered subsequent to the removal of the person to safer surroundings in accordance with Subsection (h) unless certain circumstances arise. Deletes existing text providing that the emergency order expires at the end of 72 hours from the time the order is rendered. Makes conforming changes.

(e-2) Authorizes the court, after notice and a hearing, to extend an emergency order issued under this section for a period of not more than 30 days after the date the original emergency order for protective services was rendered. Authorizes the court, after notice and a hearing and for good cause shown, to grant a second extension of an emergency order of not more than an additional 30 days. Prohibits the court from granting more than two extensions of the original emergency order. Makes nonsubstantive changes.

(f) Provides that any medical facility, emergency medical services provider, or physician who provides treatment to or who transports an elderly or disabled person pursuant to an emergency order under Subsection (d) (regarding the actions a court may take on finding that there is reasonable cause to believe there is a threat to life or physical safety for the elderly or disabled person) or an emergency authorization under Subsection (h) is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician. Makes nonsubstantive changes.

(h) Authorizes DFPS, if DFPS cannot obtain an emergency order under this section because the court is closed on Saturday, Sunday, or legal holiday or after 5 p.m., to remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly or disabled person to safer surroundings, authorize medical treatment, or authorize, rather than order, or provide other available services necessary to remove conditions creating the threat to life or physical safety.

SECTION 12. Makes application of Section 48.053, Human Resources Code, of this Act prospective.

SECTION 13. Requires DFPS, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes delay of implementation until such waivers or authorizations are granted.

SECTION 14. Effective date: September 1, 2009.