

BILL ANALYSIS

Senate Research Center
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S.B. 70
By: Nelson
Health & Human Services
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This legislation is intended to ensure that allegations of abuse and neglect in private intermediate care facilities for the mentally retarded are investigated fairly and aggressively by an impartial entity and to eliminate any perceived conflict of interest resulting from a private facility conducting its own investigations and reporting its findings to the state.

As proposed, S.B. 70 directs the Texas Department of Family and Protective Services to investigate abuse and neglect at private intermediate care facilities for the mentally retarded.

[**Note:** While the statutory reference in this bill is to the Texas Department of Human Services (TDHS) and the Department of Protective and Regulatory Services (DPRS), the following amendments affect the Department of Aging and Disability Services and the Department of Family and Protective Services, as the successor agencies to TDHS and DPRS.]

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Board of Human Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 4 (Section 252.126, Health and Safety Code) and SECTION 6 (Section 252.134, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 7 (Section 48.3015, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 252.122(a), Health and Safety Code, as follows:

(a) Requires a person, including an owner or employee of a facility, who has cause to believe that the physical or mental health or welfare of a resident has been or may be adversely affected by abuse or neglect caused by another person to report the abuse or neglect to the Department of Family and Protective Services (DFPS), to a designated agency, or to both DFPS and the designated agency, as specified in rules adopted by DFPS. Deletes existing text requiring a person to report the abuse or neglect to the Texas Department of Human Services (TDHS).

SECTION 2. Amends Section 252.124(b), Health and Safety Code, to require a local or state law enforcement agency that receives a report of abuse or neglect to refer the report to DFPS, rather than TDHS, or the designated agency.

SECTION 3. Amends Sections 252.125(a), and (c)-(g), Health and Safety Code, as follows:

(a) Requires DFPS, rather than TDHS, or the designated agency to make a thorough investigation promptly after receiving either the oral or written report.

(c) through (g) Makes conforming changes.

SECTION 4. Amends Section 252.126, Health and Safety Code, as follows:

Sec. 252.126. CONFIDENTIALITY. Provides that a report, record, or working paper used or developed in an investigation made under this subchapter is confidential and authorizes the disclosure of such report, record, or working paper only for purposes consistent with the rules adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), rather than the Texas Board of Human Services (board), or the designated agency.

SECTION 5. Amends Section 252.129, Health and Safety Code, by adding Subsection (d), to require the Department of Aging and Disability Services (DADS) and DFPS to cooperate to ensure that the central registry required by this section accurately includes reported cases of resident abuse and neglect.

SECTION 6. Amends Sections 252.134(a)-(e), Health and Safety Code, as follows:

(a) Requires a facility licensed under this chapter to submit a report to DFPS, rather than TDHS, concerning the death of a resident of the facility or of a former resident that occurs 24 hours or less after the former resident is transferred from the facility to the hospital.

(b) and (c) Makes conforming changes.

(d) Provides that, unless specified by rules adopted by the executive commissioner, rather than board rule, a record under this section is confidential and not subject to the provisions of Chapter 552 (Public Information), Government Code.

(e) Makes a conforming change.

SECTION 7. Amends Subchapter G, Chapter 48, Human Resources Code, by adding Section 48.3015, as follows:

Sec. 48.3015. INVESTIGATION OF REPORTS IN ICF-MR. (a) Requires the Department of Protective and Regulatory Services (DPRS), notwithstanding Section 48.301 (Investigation of Reports in Other State Facilities), to receive and investigate reports of abuse, neglect, or exploitation of an individual with a disability receiving services in an intermediate care facility for the mentally retarded.

(b) Requires the executive commissioner to adopt rules governing investigations conducted under this section and the provision of services as necessary to alleviate abuse, neglect, or exploitation.

SECTION 8. Amends Section 161.071, Human Resources Code, as follows:

Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. Provides that the Department of Aging and Disability Services is responsible for administering human services programs for the aging and disabled, including performing all licensing and enforcement activities related to intermediate care facilities for persons with mental retardation under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code, other than investigations of reported abuse, neglect, or exploitation.

SECTION 9. Makes application of this Act prospective.

SECTION 10. Effective date: September 1, 2009.