

BILL ANALYSIS

Senate Research Center
84R22970 GCB-F

C.S.S.B. 1880
By: Zaffirini
Health & Human Services
4/22/2015
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

As the state's Medicaid program has shifted to a managed care model, some oversight assurance has fallen through the cracks. While the Adult Protective Services (APS) program within the Department of Family and Protective Services is authorized to investigate abuse, neglect, and exploitation (ANE) of elder Texans and persons with intellectual and developmental disabilities in certain settings, APS does not have clear authority to investigate services delivered through a managed care organization (MC) or its providers. This is concerning, not only because cases of ANE may be perpetrated by providers receiving funding from state contracts, but also because this would make the state noncompliant with federal requirements from the Centers for Medicaid and Medicare Services.

C.S.S.B. 1880 gives the APS program the authority to regulate and oversee providers contracted with the state's MCOs that are not already subject to state oversight.

The committee substitute makes a number of technical changes to the filed version of the bill consistent the intent of the bill, including clarifying that APS would investigate all home and community-based services, not just waiver services; clarifying that certain provisions of the bill apply just to the Home and Community Based Services Waiver program, not to all home and community-based services; clarifying that the responsibility of a provider to give a copy of the investigation report to the managed care organization applies only to the MCO that has responsibility for the client investigated in the report; and correcting minor drafting errors.

C.S.S.B. 1880 amends current law relating to the authority of the Department of Family and Protective Services to investigate abuse, neglect, or exploitation of individuals receiving services from certain providers.

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

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 8 (Section 48.251, Human Resources Code) of this bill.

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is rescinded in SECTION 8 (Sections 48.252 and 48.255, Human Resources Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8 (Sections 48.253, 48.254, and 48.256, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Protective and Regulatory Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 8 (Sections 48.254, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Protective and Regulatory Services is rescinded in SECTION 8 (Section 48.254, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Protective and Regulatory Services, the Texas Department of Aging and Disability Services, and the Texas Department of State Health Services is transferred to the executive commissioner of the Health and Human Services Commission in SECTION 8 (Section 48.255, Human Resources Code) of this bill.

Rulemaking authority previously granted to the Texas Department of Protective and Regulatory Services, the Texas Department of Aging and Disability Services, and the Texas Department of State Health Services is rescinded in SECTION 8 (Section 48.255, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 48.002(a), Human Resources Code, by adding Subdivision (11), to define “home and community-based services.”

SECTION 2. Amends Section 48.002(b), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, to provide that the definitions of “abuse,” “neglect,” “exploitation,” and an “individual receiving services” adopted by the executive commissioner of the Health and Human Services Commission (executive commissioner), as prescribed by Section 48.251(b), rather than prescribed by Section 48.251 (Definitions), apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter F (Investigations in Certain Facilities, Community Centers, and Local Mental Health and Mental Retardation Authorities), rather than under Subchapter F or H (Investigations of Providers of Home and Community-Based Services Contracting with TDMHMR).

SECTION 3. Amends Section 48.003, Human Resources Code, as follows:

Sec. 48.003. New heading: INVESTIGATIONS IN NURSING FACILITIES, ASSISTED LIVING FACILITIES, AND SIMILAR FACILITIES. (a) Provides that this chapter, except as provided by Subsection (c), does not apply if the alleged or suspected abuse, neglect, or exploitation occurs in a facility licensed under Chapter 242 (Convalescent and Nursing Homes and Related Institutions) or 247 (Assisted Living Facilities), Health and Safety Code.

(b) Provides that alleged or suspected abuse, neglect, or exploitation that occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code, is governed by Chapter 260A (Reports of Abuse, Neglect, and Exploitation of Residents of Certain Facilities), Health and Safety Code, except as otherwise provided by Subsection (c).

(c) Provides that Subchapter F applies to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider of home and community-based services is or may be alleged to have committed the abuse, neglect, or exploitation, regardless of whether the facility in which those services were provided is licensed under Chapter 242 or 247, Health and Safety Code.

SECTION 4. Amends Sections 48.051(a) and (b), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

(a) Requires a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subchapter F is in the state of abuse, neglect, or exploitation, except as prescribed by Subsection (b), to report the information required by Subsection (d) immediately to DPRS, rather than requires a person having cause to believe that an elderly or person with a disability is in the state of abuse, neglect, or exploitation, including a person with a disability who is receiving services as described by Section 48.252 (Investigation of Reports in Certain

Facilities and in Community Centers), except as prescribed by Subsection (b), to report the information required by Subsection (d) immediately to DPRS.

(b) Requires a person, if a person has cause to believe that an elderly person or a person with a disability, other than an individual receiving services from a provider as described by Subchapter F, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, to report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency, rather than requires a person, if a person has cause to believe that an elderly or a person with a disability, other than a person with a disability receiving services as described by Section 48.252, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, to report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

SECTION 5. Amends Section 48.103, Human Resources Code, by amending Subsection (a), as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, and adding Subsection (c), as follows:

(a) Requires DPRS, except as otherwise provided by Subsection (c), on determining after an investigation that an elderly person or a person with a disability has been abused, exploited, or neglected by an employee of a home and community support services agency licensed under Chapter 142 (Home and Community Support Services), Health and Safety Code, to:

(1)-(3) Makes no change to these subdivisions.

(c) Provides that this section does not apply to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider, as defined by Section 48.251, is or may be alleged to have committed the abuse, neglect, or exploitation. Provides that an investigation described by this subsection is governed by Subchapter F.

SECTION 6. Amends Section 48.151(e), Human Resources Code, to provide that this section does not apply to investigations conducted under Subchapter F, rather than under Subchapter F or H.

SECTION 7. Amends Section 48.201, Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, to provide that this subchapter, except as otherwise provided, does not apply to an investigation conducted under Subchapter F, rather than under Subchapter F or H.

SECTION 8. Amends Subchapter F, Chapter 48, Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, as follows:

SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

Sec. 48.251. DEFINITIONS. (a) Provides that in this subchapter:

- (1) Defines “behavioral health services.”
- (2) Defines “community center.”
- (3) Defines “facility.”
- (4) Defines “health and human services agency.”
- (5) Defines “home and community-based services.”
- (6) Defines “local intellectual and developmental disability authority.”

(7) Defines “local mental health authority.”

(8) Defines “managed care organization.”

(9) Defines “provider.”

(b) Creates this subsection from existing text. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) by rule to adopt definitions of “abuse,” “neglect,” “exploitation,” and “an individual receiving services” for purposes of this subchapter and investigations conducted under this subchapter, rather than requires the executive commissioner by rule to adopt definitions of "abuse," "neglect," and "exploitation" to govern investigations under this subchapter and Subchapter H.

Sec. 48.252. New heading: INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION BY PROVIDER. (a) Requires DPRS to receive and, except as provided by Subsection (b), to investigate under this subchapter reports of the abuse, neglect, or exploitation of an individual receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider. Deletes existing text requiring DPRS to receive and investigate reports of abuse, neglect, or exploitation of an individual with a disability receiving services in a mental health facility operated by the Department of State Health Services (DSHS), or a facility licensed under Chapter 252 (Intermediate Care Facilities for the Mentally Retarded), Health and Safety Code, in or from a community center, a local mental health authority, or a local intellectual and developmental disability authority, or through a program providing services to that person by contract with a mental health facility operated by DSHS, a community center, a local mental health authority, or a local intellectual and developmental disability authority.

(b) Prohibits DPRS from investigating under this subchapter reports of abuse, neglect, or exploitation alleged or suspected to have been committed by a provider that is operated, licensed, certified, or registered by a state agency that has authority under this chapter or other law to to investigate reports of abuse, neglect, or exploitation of an individual by the provider. Requires DPRS to forward any report of abuse, neglect, or exploitation alleged or suspected to have been committed by a provider described by this subsection to the appropriate state agency for investigation. Deletes existing text requiring DPRS to receive and to investigate reports of the abuse, neglect, or exploitation of an individual with a disability receiving services in a state supported living center or the ICF-IID component of the Rio Grande State Center, or through a program providing services to that person by contract with a state supported living center or the ICF-IID component of the Rio Grande State Center.

(c) Requires DPRS to receive and investigate under this subchapter reports of abuse, neglect, or exploitation of an individual who lives in a residence that is owned, operated, or controlled by a provider who provides home and community-based services under a home and community-based services waiver program described by Section 534.001(11)(B) (relating to the definition of “Medicaid waiver program”), Government Code, regardless of whether the individual is receiving services under the waiver program from the provider. Deletes existing text requiring the executive commissioner by rule to define who is "an individual with a disability receiving services."

Deletes existing Subsection (d) defining “community center,” “local mental health authority,” and “local intellectual and developmental disability authority.”

Sec. 48.253. ACTION ON REPORT. (a) Creates this subsection from existing text. Requires DPRS, on receipt by DPRS of a report of alleged abuse, neglect, or exploitation under this subchapter, to initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for emergency protective

services, unless DPRS, in accordance with rules adopted under this subchapter, determines that the report:

(1) and (2) Makes no change to these subdivisions.

(b) Requires DPRS, after receiving a report that alleges that a provider is or may be the person who committed the alleged abuse, neglect, or exploitation, to notify the provider and the appropriate health and human services agency, in accordance with rules adopted by the executive commissioner.

(c) Requires the provider identified under Subsection (b) to:

(1) cooperate completely with an investigation conducted under this subchapter; and

(2) provide DPRS complete access during an investigation to:

(A) all sites owned, operated, or controlled by the provider; and

(B) clients and client records.

(d) Requires the executive commissioner to adopt rules governing investigations conducted under this subchapter.

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) Creates this subsection from existing text. Requires the executive commissioner by rule to establish procedures for DPRS to use to forward a copy of the initial intake report and a copy of the completed provider investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate provider and health and human services agency. Deletes existing text requiring DPRS, in accordance with DPRS rules, to forward a copy of the initial intake report and a copy of the completed investigation report relating to alleged or suspected abuse, neglect, or exploitation to the appropriate facility, community center, local mental health authority, local intellectual and developmental authority, or program providing mental health or intellectual disability services under contract with the facility, community center, or authority.

(b) Requires DPRS to redact from an initial intake report and from the copy of the completed provider investigation report any identifying information contained in the report relating to the person who reported the alleged or suspected abuse, neglect, or exploitation under Section 48.051.

(c) Requires a provider that receives a completed investigation report under Subsection (a) to forward the report to the managed care organization with which the provider contracts for services for the alleged victim.

Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS SUBCHAPTER. (a) Requires the executive commissioner to adopt rules to:

(1) prioritize investigations conducted under this subchapter with the primary criterion being whether there is a risk that a delay in the investigation will impede the collection of evidence in that investigation;

(2) establish procedures for resolving disagreements between DPRS and health and human services agencies concerning DPRS's investigation findings; and

(3) provide for an appeals process by DPRS for the alleged victim of abuse, neglect, or exploitation.

Deletes existing text requiring DPRS, the Texas Department of Aging and Disability Services (DADS), and DSHS to develop rules to facilitate investigations in state mental health facilities and state supported living centers.

(b) Prohibits a confirmed investigation finding by DPRS from being changed by the administrator of a facility, a community center, a local mental health authority, or a local intellectual and developmental disability authority, rather than prohibits a confirmed investigation finding by DPRS from being changed by a superintendent of a state mental health facility, by a director of a state supported living center, by a director of a community center, or by a local mental health authority or local intellectual and developmental authority.

Deletes existing text requiring the executive commissioner by rule to establish procedures for resolving disagreements between DPRS and DADS or DSHS concerning DPRS' investigation findings. Deletes existing text requiring DPRS, DADS, and DSHS to develop and propose to the executive commissioner rules to facilitate investigations in community centers, local mental health authorities, and local intellectual and developmental disability authorities. Deletes existing text requiring the executive commissioner to adopt rules regarding investigations in a facility licensed under Chapter 252, Health and Safety Code, to ensure that those investigations are as consistent as practicable with other investigations conducted under this subchapter.

Deletes existing text requiring the executive commissioner to provide by rule for an appeals process by the alleged victim of abuse, neglect, or exploitation under this section. Deletes existing text authorizing the executive commissioner by rule to assign priorities to an investigation conducted by DPRS under this section, and providing that the primary criterion used by the executive commissioner in assigning a priority must be the risk that a delay in the investigation will impede the collection of evidence.

Makes nonsubstantive changes.

Sec. 48.256. SHARING PROVIDER INFORMATION. (a) Requires the executive commissioner to adopt rules that prescribe the appropriate manner in which health and human services agencies and managed care organizations provide DPRS with information necessary to facilitate identification of individuals receiving services from providers and to facilitate notification of providers by DPRS.

(b) Requires the executive commissioner to adopt rules requiring a provider to provide information to the administering health and human services agency necessary to facilitate identification by DPRS of individuals receiving services from providers and to facilitate notification of providers by DPRS.

(c) Requires a provider of home and community-based services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, to post in a conspicuous location inside any residence owned, operated, or controlled by the provider in which home and community-based waiver services are provided, a sign that states:

- (1) the name, address, and telephone number of the provider;
- (2) the effective date of the provider's contract with the applicable health and human services agency to provide home and community-based services; and
- (3) the name of the legal entity that contracted with the applicable health and human services agency to provide those services.

Sec. 48.257. RETALIATION PROHIBITED. (a) Prohibits a provider of home and community-based services from retaliating against a person for filing a report or providing information in good faith relating to the possible abuse, neglect, or exploitation of an individual receiving services.

(b) Provides that this section does not prohibit a provider of home and community-based services from terminating an employee for a reason other than retaliation.

Sec. 48.258. New heading: TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) Requires the health and human services agencies to, at the direction of the executive commissioner, jointly develop and implement a system to track reports and investigations under this subchapter, rather than requires DPRS, DADS, and DSHS to, at the direction of the executive commissioner, jointly develop and implement a single system to track reports and investigations under this subchapter.

(b) Requires the health and human services agencies, to facilitate implementation of the system, to use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter, rather than requires DPRS, DADS, and DSHS, to facilitate implementation of the system, to use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter.

SECTION 9. Amends Section 48.301, Human Resources Code, by amending Subsection (a), as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, and adding Subsection (a-1), as follows:

(a) Requires DPRS, if DPRS receives a report of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability receiving services in a facility operated, licensed, certified, or registered by a state agency, to refer the report to that agency, rather than requires DPRS, if DPRS receives a report of suspected abuse, neglect or exploitation of an elderly or person with a disability, other than a person with a disability who is receiving services as described by Section 48.252, in a facility operated, licensed, certified, or registered by a state agency, to refer the report to that agency.

(a-1) Provides that this subchapter does not apply to a report of suspected abuse, neglect, or exploitation of an individual receiving services from a provider as described by Subchapter F.

SECTION 10. Amends Sections 48.401(1) and (3), Human Resources Code, to redefine “agency” and “employee.”

SECTION 11. Amends the heading to Section 261.404, Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, to read as follows:

Sec. 261.404. INVESTIGATIONS REGARDING CERTAIN CHILDREN RECEIVING SERVICES FROM CERTAIN PROVIDERS.

SECTION 12. Amends Section 261.404, Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, by amending Subsections (a) and (b) and adding Subsections (a-1), (a-2), and (a-3), as follows:

(a) Requires the Texas Department of Family and Protective Services (DFPS) to investigate a report of abuse, neglect, or exploitation of a child receiving services from a provider, as those terms are defined by Section 48.251, Human Resources Code, or as otherwise defined by rule. Requires DFPS to also investigate, under Subchapter F, Chapter 48, Human Resources Code, a report of abuse, neglect, or exploitation of a child receiving services from an officer, employee, agent, contractor, or subcontractor of a home and community support services agency licensed under Chapter 142, Health and

Safety Code, if the officer, employee, agent, contractor, or subcontractor is or may be the person alleged to have committed the abuse, neglect, or exploitation.

Deletes existing text requiring DFPS to investigate a report of abuse, neglect, or exploitation of a child receiving services in a facility operated by DADS or a mental health facility operated by DSHS; in or from a community center, a local mental health authority, or a local intellectual and developmental disability authority; through a program providing services to that child by contract with a facility operated by DADS, a mental health facility operated by DSHS, a community center, a local mental health authority, or a local intellectual and developmental disability authority; from a provider of home and community-based services who contracts with DADS; or in a facility licensed under Chapter 252, Health and Safety Code.

(a-1) Authorizes DFPS, in accordance with Subchapter E, Chapter 48, Human Resources Code, for an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, to provide emergency protective services necessary to immediately protect the child from serious physical harm or death and, if necessary, obtain an emergency order for protective services under Section 48.208 (Emergency Order for Protective Services), Human Resources Code.

(a-2) Requires DFPS, for an investigation of a child living in a residence owned, operated, or controlled by a provider of services under the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the child is receiving services under that waiver program from the provider, to provide protective services to the child in accordance with Subchapter E, Chapter 48, Human Resources Code.

(a-3) Provides that Subchapters E and F, Human Resources Code, for purposes of this section, apply to an investigation of a child and to the provision of protective services to that child in the same manner those subchapters apply to an investigation of an elderly person or person with a disability and the provision of protective services to that person.

(b) Requires DFPS to investigate the report under rules developed by the executive commissioner, rather than requires DFPS to investigate the report under rules developed by the executive commissioner with the advice and assistance of DFPS, DADS, and DSHS.

SECTION 13. Amends Section 142.009(c), Health and Safety Code, as follows:

(c) Requires DADS or its authorized representative to investigate each complaint received regarding the provision of home health, hospice, or personal assistance services and may, as a part of the investigation, rather than requires DADS or its authorized representative shall investigate each complaint received regarding the provision of home health, hospice, or personal assistance services, including any allegation of abuse, neglect, or exploitation of a child under the age of 18, and may, as a part of the investigation:

(1)-(4) Makes no change to these subdivisions.

SECTION 14. Amends Section 260A.002, Health and Safety Code, by adding Subsection (a-1), as follows:

(a-1) Requires that a report made under this section that a provider is or may be alleged to have committed abuse, neglect, or exploitation of a resident of a facility other than a prescribed pediatric extended care center, notwithstanding any other provision of this chapter, be investigated by DFPS in accordance with Subchapter F, Chapter 48, Human Resources Code, and this chapter does not apply to that investigation. Provides that in this subsection, "facility" and "provider" have the meanings assigned by Section 48.251, Human Resources Code.

SECTION 15. Repealer: Section 261.404(f) (defining “community center,” “local mental health authority,” “local mental retardation authority,” “state supported living center,” and “provider”), Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015.

Repealer: Subchapter H (Investigations of Providers of Home and Community-Based Services Contracting with TDMHMR), Chapter 48 (Investigations and Protective Services for Elderly and Disabled Persons), Human Resources Code.

SECTION 16. Effective date: September 1, 2015.