

SUBJECT: Protective services for the elderly and disabled

COMMITTEE: Human Services — committee substitute recommended

VOTE: 6 ayes — Hilderbran, Naishtat, Krusee, Maxey, Park Wohlgemuth
3 absent — Davila, Denny, J. Jones

WITNESSES: For — Shannon Noble, Texas Women’s Political Caucus, Austin; Mike Bright, ARC of Texas
Against — None
On — Howard Baldwin, Department of Protective and Regulatory Services

DIGEST: CSHB 1111 would specifically extend to the disabled certain protective-service statutes governing elderly persons and expand the authority of the Department of Protective and Regulatory Services (PRS) to investigate abuse, neglect or exploitation of the elderly and disabled. The bill also would authorize PRS to investigate allegations of abuse in Texas Department of Mental Health and Mental Retardation (TxMHMR) facilities.

Guardianships. CSHB 1111 would state that as a last resort PRS could apply to be appointed as guardian of elderly or disabled persons or their estate when these individuals, because of a mental or physical condition, would be substantially incapable to care for themselves or to manage their own financial affairs. A representative of the department would be required to take the oath of guardianship in such a case.

PRS could contract for guardianship services to a political subdivision of the state, a private agency or another state agency. A contractor would not be required to post a bond or pay any cost of fee that would normally be required by the Texas Probate Court. The state would not be obligated for any debts incurred for long term care or burial expenses of the ward.

Investigations. Within 24 hours after receiving a report of abuse, exploitation or neglect, PRS would have to initiate a prompt and thorough investigation to evaluate the accuracy of the report and to assess the need for protective services. PRS would be required to adopt rules for

conducting investigations. Investigations would have to include an interview with the subject of the report, instead of just a visit to the elderly or disabled person's place of residence. PRS could interview an alleged juvenile perpetrator who might have caused the alleged abuse, neglect or exploitation. A peace officer would be required to accompany and assist the person making a court-ordered entry. PRS would have to submit investigative reports to law enforcement if those reports indicated that the elderly or disabled person had been abused in a manner that constitutes a criminal offense.

Access to records. PRS or other state agencies could have access to records or documents including client-identifier information and medical and psychological records necessary to perform the department or state agency's duties in providing services to the elderly and disabled and in investigating allegations of abuse, exploitation or neglect. Persons or agencies that have copies of records or documents needed by the agency would have to turn them over promptly.

Immunity. The bill would create civil and criminal immunity for any authorized department volunteer, medical personnel, law enforcement officers, who at the request of PRS, participates in an investigation for any act or omission relating to that participation if the person acted in good faith and/or in the course and scope of employment. The term "volunteer" would apply to a person who renders services for the department under the supervision of department employees and who does not receive compensation that exceeds the authorized expenses the person incurs for rendering the service.

Protective services. PRS could provide needed protective services to an individual without consent if the person lacked the capacity to give consent. "Exploitation" and "physical safety" would constitute situations that could require PRS to petition for an emergency order for protective services on behalf of a elderly or disabled person. When PRS petitions the court for protective services, the petition could include evidence of exploitation or physical abuse.

A judge could order medical services, or the other available services, to remove the threat to physical safety, including the services of law

enforcement or emergency medical personnel. If PRS reasonably believed that there was an immediate danger to the health or safety of the elderly or disabled person and that there was not sufficient time to obtain the medical report of emergency order as required, PRS could remove the person and place the person in safer surroundings.

Investigations in TxMHMR facilities. PRS could investigate the abuse, neglect or exploitation of individuals receiving services in a facility operated by TxMHMR or who was being provided services through a program under contract with a facility operated by TxMHMR. PRS and TxMHMR could develop joint rules to facilitate investigations in state mental health and mental retardation facilities.

PRS would be authorized to receive and investigate a report of abuse, neglect or exploitation of an individual receiving services in a community center or from a program providing services under a contract with a community center.

PRS would have to forward to the facility or program provider any report to PRS regarding alleged abuse, neglect or exploitation of a individual receiving services from that facility or program and the results of the investigation, including its report and findings.

After completion of the appeals process, PRS would be required to refer a complaint relating to an investigation conducted by the department to its ombudsman for appropriate action.

If PRS concluded that an elderly or disabled person had been abused by another in a manner that constituted a criminal offense, a copy of the investigation would have to be submitted to the appropriate law enforcement agency.

Investigation of reports in other state facilities. If a person had reason to believe that an elderly or disabled person had been abused, exploited or neglected in a facility operated, licensed, certified or registered by a state agency other than TxMHMR, the person would be required to report the information to the state agency that operates, licenses, certifies or registers the facility for investigation by that agency.

If the department receives a report relating to the alleged abuse, neglect or exploitation in a facility operated, licensed, certified or registered by a state agency other than the TxMHMR, PRS would be required to refer the report to that agency. A state agency receiving such a report would be required to make a prompt and thorough investigation after receiving a report of the alleged abuse. The state agency would be required to keep a complete report of each investigation, submit to law enforcement a report of any possible criminal offense and refer to its governing board or other entity designated to receive complaints any complaints regarding abuse investigations.

Rule adoption. Each state agency other than TxMHMR that operates, licenses, certifies or registers a facility in which elderly or disabled persons are located would be required to adopt rules relating to the investigation and resolution of reports received alleging abuse, neglect or exploitation.

The Health and Human Services Commission would have to review and approve the rules to ensure that all agencies implement appropriate standards for conducting investigations and that uniformity existed among agencies in the investigation and resolution of reports.

Other provisions. Statistics on the incidence of abuse, neglect or exploitation of elderly or disabled persons would be compiled by all agencies, except TxMHMR, that operate, license, certify or register a facility in which elderly or disabled persons are located.

CSHB 1111 specifically would not apply to the alleged or suspected abuse, neglect or exploitation that occurs in nursing homes.

Information regarding abuse, neglect or exploitation, identity of persons making reports and all files, records, communications and working papers used to develop investigations would not be subject to the Open Records Act. Disclosure of confidential information would be permitted only for a purpose consistent with HB 1111 and as provided by PRS rule and applicable federal law. Courts could order disclosure only under certain circumstances and after meeting notice requirements and certain procedures for the conduct of a hearing. PRS could release information concerning an otherwise confidential report to a person who is the subject of the report or

to the person's legal representative, subject to the editing of the information to remove the identity of the reported or any other person whose identity should be protected. PRS could adopt rules relating to the release of information contained in the record of a deceased individual to whom the department has provided protective services.

PRS could establish procedures in order to exchange information with other state agencies that is necessary for the agency to properly execute its respective duties to provide services to elderly or disabled persons. An exchange of information under this provision would not be subject to the Open Records Law.

The bill would prohibit the interference with an investigation by PRS or by another protective agency investigating the alleged abuse, neglect or exploitation of an elderly or disabled persons. PRS could seek injunctive relief to prevent interference with an investigation.

HB 1111 would repeal Human Resources Code sec. 48.036 (c)-(f) dealing with reporting of suspected abuse, and sec. 48.060, dealing with the prohibition of interference with voluntary services.

The bill would clarify that PRS and law enforcement are to cooperate when providing protective services and eliminate legal assistance as a service authorized to be provided by PRS.

Definitions. CSHB 1111 would define "abuse" as the negligent infliction of injury, unreasonable confinement, intimidation or cruel punishment or sexual abuse, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code sec. 21.08 Penal Code, (indecent exposure), and Penal Code Chapter 22, Penal Code (assaultive offenses).

HB 1111 would expand definitions of exploitation, neglect and protective services. The definition of disabled person would include a person with a mental, physical or developmental disability that substantially impairs the person's ability to provide adequately for the person's care and protection.

The bill would take effect September 1, 1995.

SUPPORTERS
SAY:

CSHB 1111 would strengthen the ability of PRS to protect elderly and disabled citizens and clarify current law. It would establish clear investigatory guidelines in order that PRS can successfully investigate all allegations of abuse, neglect or exploitation.

CSHB 1111 addresses issues raised in *Lelsz v. Cavanaugh* (807 Fed. 2nd 1243) regarding the need for a separate entity to investigate allegations of abuse in the TxMHMR system. CSHB 1111 would make necessary changes to Human Resources Code Chapter 48 to reflect that PRS is the agency charged with investigating such allegations along with allegations that take place in community centers.

Chapter 48 of the Human Resources Code needs to be modernized and clarified to more clearly address protective services for the elderly and disabled. CSHB 1111 would provided needed amendments in a critical area of the law.

OPPONENTS
SAY:

No apparent opposition

NOTES:

The committee substitute for HB 1111 clarified two sections of the original bill, Sections 8 and 13, by eliminating the system of priorities in investigations initially permitted; and clarifying in which facilities PRS could investigate reports of abuse and neglect with respect to TxMHMR facilities, community centers and contracted programs.