

- SUBJECT:** Claims of abuse, neglect, or exploitation of the disabled in state facilities
- COMMITTEE:** Human Services — committee substitute recommended
- VOTE:** 6 ayes — Rose, S. King, Herrero, Hughes, Naishtat, Parker
0 nays
3 absent — J. Davis, Eissler, Pierson
- WITNESSES:** (*On original version:*)
For — (*Registered, but did not testify:* Caroline O'Connor, Texas State Employees Union)

Against — (*Registered, but did not testify:* Ruby Ramos, Texans Care for Children)

On — (*Registered, but did not testify:* Ed Lackey, Department of State Health Services) (*On committee substitute:* Aaryce Hayes, Advocacy, Inc.)
- BACKGROUND:** The Department of State Health Services (DSHS) administers mental health services, and the Department of Aging and Disability Services (DADS) administers mental retardation services. These services are provided through Mental Health and Mental Retardation (MHMR) facilities.

If an employee of a MHMR facility is accused of abusing, neglecting, or exploiting a disabled person, the employee is placed on alternate duty in a capacity that does not serve patients of the facility. In extreme cases, employees are placed on paid, emergency leave. The Department of Family and Protective Services (DFPS) Adult Protective Services (APS) facility investigation unit conducts the investigations. The head of a facility may file an appeal on behalf of the accused employee to review the findings of an investigation. The employee may file a grievance in response to adverse personnel actions taken related to a confirmed allegation of misconduct.
- DIGEST:** CSHB 283 would require the executive commissioner of HHSC to adopt rules protecting the rights of an employee of a state mental health or

mental retardation facility who was accused of abusing, neglecting, or exploiting a disabled person. The employee would have the right to receive information regarding the following:

- the specific nature of the allegation against the employee;
- the date, time, and place of the alleged offense; and
- the opportunity for a hearing to contest the investigation findings.

DADS or DARS would inform the accused employee of his or her rights to:

- request a hearing on the findings of the investigation;
- present evidence during the hearing, such as live testimony or voluntary written statements of witnesses; and
- obtain legal assistance for the investigation or hearing.

If an investigation, hearing, or appeal determined the allegation against the employee was unfounded, unconfirmed, or inconclusive, the health and human services agencies would have to update all records pertaining to the allegation with the determination. Also, DADS and DARS would have to:

- compensate the employee for any lost wages;
- restore any lost benefits, including leave time, to the employee; and
- reinstate the employee to his or her original position or a comparable position if requested.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

An employee of an MHMR facility who is accused of abusing or neglecting a patient has no effective rights. Once an allegation is made, the employee is removed from his or her position and has no right to information regarding an investigation or to appeal a determination. CSHB 283 would inform an accused employee of the allegations against the employer and would provide the employee the opportunity directly to appeal a decision. The accused would have the right to seek legal counsel and, depending upon the outcome of an appeal or investigation, any wrongfully denied benefits or compensation would be restored to the employee. The employee's record also would be cleared by noting the determination of the allegation or appeal.

The right to appeal afforded by CSHB 283 would enhance an employee's ability to advocate on his or her own behalf, since the only appeal currently permissible must be initiated by the head of the facility. The head of an MHMR facility is far less likely to request an appeal than an accused party, because this administrator may feel it would not be politically expedient to review an accusation or an appeal could be too tedious for an administrator with other duties to undertake. An employee's best advocate is himself, and simply providing a grievance process to address personnel decisions would not address the larger issues of leaving an employee with no recourse to rectify false investigation findings. The fiscal note indicates any costs would be absorbed into DFPS's current resources.

OPPONENTS
SAY:

The current system in which only an administrator may appeal a case on behalf of an accused employee provides an effective check and balance to protect both employee rights and agency resources. This system affords the administrator the ability to screen cases for those most worthy of further review. Such screening prevents a strain on the already taxed APS facility investigation unit, which also is responsible for investigating allegations of in-home abuse and neglect. DFPS cannot continue to take on more responsibilities without additional resources.

In 2005, APS conducted over 8,000 investigations and confirmed 800 of these cases. Administrators only felt 47 cases merited appeal, yet this bill would have allowed employees to appeal all 800 cases. This high volume of appeals not only would threaten the quality of investigations, but it also would prolong the time that an MHMR facility had to either pay a temporary employee or pay employee overtime to fill an accused employee's position while an appeal was pending. In addition, appeals could prolong the time that an employee who did perpetrate abuse could remain on facility premises, and this could further endanger patients. The employee has other recourse through the grievance process in which the decisions of administrative law judges most often favor the employee with respect to changing imposed disciplinary actions.

NOTES:

The fiscal note indicates no significant impact to state general revenue, because DFPS indicated it could address the \$200,000 cost to fund 3.5 additional FTEs with existing resources.