

BILL ANALYSIS

Senate Research Center
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S.B. 1245
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Health & Human Services
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DIGEST AND PURPOSE

Currently, the direct care staff of home health agencies are not on the list of employees covered by the Texas Department of Human Services (DHS) Employee Misconduct Registry. This prevents home health agencies and other long-term care providers from discovering whether a potential employee who worked in the home health care field has a record of abuse or neglect against a client. As proposed, S.B. 1245 adds direct care staff employed by home health agencies to the list of employees covered by the DHS Employee Misconduct Registry (EMR). The bill also requires the Department of Protective and Regulatory Services to place findings from investigations of alleged misconduct in the EMR following due process proceedings.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Department of Protective and Regulatory Services in SECTION 1 (Sections 48.402 and 48.407, Human Resources Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 48, Human Resources Code, by adding Subchapter I, as follows:

SUBCHAPTER I. EMPLOYEE MISCONDUCT REGISTRY

Sec. 48.401. DEFINITIONS. Defines “agency,” “employee,” “employee misconduct registry,” “executive director,” and “reportable conduct.”

Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. Authorizes the Department of Protective and Regulatory Services (department) to adopt rules to further define reportable conduct.

Sec. 48.403. FINDING. Requires the department, after an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, to forward the finding to the Texas Department of Human Services to record the reportable conduct in the registry under Section 253.007 (Employee Misconduct Registry), Health and Safety Code.

Sec. 48.404. NOTICE OF FINDING. (a) Requires the department to give written notice of the department's findings under Section 48.403 to the employee. Requires the notice to include certain information.

(b) Authorizes the employee notified, not later than the 30th day after the date the notice is received, to accept the finding of the department made under this section or to make a written request for a hearing on that finding.

(c) Requires the executive director or the executive director's designee, if the employee notified of the violation accepts the finding of the department or fails to timely respond

to the notice, to issue an order approving the finding and ordering that the department's findings be forwarded to the Texas Department of Human Services to be recorded in the registry under Section 253.007, Health and Safety Code.

Sec. 48.405. HEARING; ORDER. (a) Requires the department, if the employee requests a hearing, to perform certain duties.

(b) Requires the hearings examiner to make findings of fact and conclusions of law and to promptly issue to the executive director or the executive director's designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Authorizes the executive director or the executive director's designee by order, based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, to find that the reportable conduct has occurred. Requires the executive director or the executive director's designee, if the executive director or the executive director's designee finds that reportable conduct has occurred, to issue an order approving the finding.

Sec. 48.406. NOTICE; JUDICIAL REVIEW. (a) Requires the department to give notice of the order under Section 48.405 to the employee alleged to have committed the reportable conduct. Requires the notice to include certain information.

(b) Authorizes the employee, not later than the 30th day after the date the decision becomes final as provided by Chapter 2001 (Administrative Procedure), Government Code, to file a petition for judicial review contesting the finding of the reportable conduct. Requires the department to send a record of the department's findings to the Texas Department of Human Services to record in the registry under Section 253.007, Health and Safety Code, if the employee does not request judicial review of the finding.

(c) Provides that judicial review of the order is instituted by filing a petition as provided by Chapter 2001G (Contested Cases: Judicial Review), Government Code, and is under the substantial evidence rule.

(d) Requires the department to forward the finding of reportable conduct to the Texas Department of Human Services to record the reportable conduct in the registry under Section 253.007, Health and Safety Code, if the court sustains the finding of the occurrence of the reportable conduct.

Sec. 48.407. INFORMAL PROCEEDINGS. Requires the department by rule to adopt procedures governing informal proceedings held in compliance with Section 2001.056 (Informal Disposition of Contested Case), Government Code.

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) Requires the department, when the department forwards a finding of reportable conduct to the Texas Department of Human Services for recording in the employee misconduct registry, to provide the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) Authorizes the department to send to the Texas Department of Human Services, for recording in the employee misconduct registry, the employee's name, the employee's address, the employee's social security number, if available, the name of the agency, the address of the agency, the date of the act, and a description of the act, if a governmental agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct.

SECTION 2. Amends Section 253.001, Health and Safety Code, by adding Subdivision (5), as follows:

(5) "Reportable conduct" includes:

- (A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility;
- (B) sexual abuse of a resident or consumer of a facility;
- (C) financial exploitation of a resident or consumer of a facility in an amount of \$25 or more; and
- (D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility.

SECTION 3. Amends Section 253.002, Health and Safety Code, to change a reference relating to an employee of a facility that has abused, neglected, or exploited a resident or consumer of a facility or misappropriated a resident's or consumer's property to an employee of a facility that committed reportable conduct. Makes conforming changes.

SECTION 4. Amends Sections 253.003(a) and (c), Health and Safety Code, to make conforming changes.

SECTION 5. Amends Sections 253.004(b) and (c), Health and Safety Code, to make conforming changes.

SECTION 6. Amends Sections 253.005(a), (b), and (d), Health and Safety Code, to make conforming changes.

SECTION 7. Amends Sections 253.007(a) and (b), Health and Safety Code, to make conforming changes.

SECTION 8. Amends Section 253.008, Health and Safety Code, to add language relating to an agency licensed under Chapter 142 hiring an employee and relating to an individual receiving services from an agency licensed under Chapter 1442. Makes conforming changes.

SECTION 9. Amends Section 253.009(a), Health and Safety Code, to make a conforming change.

SECTION 10. Amends Chapter 253, Health and Safety Code, by adding Sections 253.0075 and 253.010, as follows:

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. Requires the Texas Department of Human Services (department) to record the information in the employee misconduct registry, on receipt of a finding of reportable conduct by the Department of Protective and Regulatory Services under Chapter 48I, Human Resources Code.

Sec. 253.010. REMOVAL FROM REGISTRY. Authorizes the department to remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

SECTION 11. (a) Effective date: September 1, 2001.

(b) Makes application of this Act prospective.