

BILL ANALYSIS

C.S.H.B. 2656
By: Raymond
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The state protects older Texans and individuals with disabilities through investigations of abuse, neglect, and exploitation conducted by the adult protective services program within the Department of Family and Protective Services. The goal of these investigations is to alleviate and prevent future abuse, neglect, and exploitation. There is concern that the state's current system of investigation has gaps and inconsistencies that have developed as service delivery systems have evolved beyond statutory regulation, particularly in regard to investigations of services delivered through a managed care organization or its providers. C.S.H.B. 2656 seeks to ensure the state's compliance with federal requirements related to investigations of abuse, neglect, or exploitation for the health and welfare of recipients of home and community-based services.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 8 of this bill.

ANALYSIS

C.S.H.B. 2656 repeals provisions of the Human Resources Code governing investigations of providers of home and community-based services under contract with a health and human services agency. The bill amends the Human Resources Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to set out provisions governing investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers and to define "provider" as a facility; a community center, local mental health authority, and local intellectual and developmental disability authority; a person who contracts with a health and human services agency or managed care organization to provide home and community-based services; a person who contracts with a Medicaid managed care organization to provide behavioral health services; a managed care organization; an officer, employee, agent, contractor, or subcontractor of such a person or entity; and an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option. The bill requires the executive commissioner of the Health and Human Services Commission by rule to adopt the definition of "an individual receiving services" for the purposes of such an investigation.

C.S.H.B. 2656 removes from the requirement that the Department of Family and Protective Services (DFPS) receive and investigate reports of the abuse, neglect, or exploitation of certain individuals the specification that an individual have a disability and be receiving services in

certain facilities or through certain programs. The bill instead requires DFPS to receive and investigate 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. The bill prohibits DFPS from investigating reports of the 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 to investigate reports of abuse, neglect, or exploitation of an individual by the provider and requires DFPS to forward any such report to the appropriate state agency for investigation. The bill requires DFPS to receive and investigate 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 the home and community-based services waiver program, regardless of whether the individual is receiving services under that waiver program from the provider.

C.S.H.B. 2656 includes assessing the need for emergency protective services among the actions DFPS is required to take on receiving a report of alleged 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. The bill requires DFPS, 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. The bill requires the provider identified in a report to cooperate completely with the investigation and to provide DFPS complete access during the investigation to all sites owned, operated, or controlled by the provider and to clients and client records. The bill requires the executive commissioner to adopt rules governing such investigations of 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.

C.S.H.B. 2656 requires the executive commissioner by rule to establish procedures for DFPS to use to forward a copy of the initial intake report and a copy of the completed provider investigation report relating to the alleged or suspected abuse, neglect, or exploitation to the appropriate provider and health and human services agency. The bill requires DFPS to redact from the initial intake report and from the copy of the completed provider investigation report any identifying information relating to the person who reported the alleged or suspected abuse, neglect, or exploitation. The bill requires a provider that receives a completed investigation report to forward the report to the managed care organization with which the provider contracts for services for the alleged victim.

C.S.H.B. 2656 includes among the rules required to be adopted by the executive commissioner rules to prioritize investigations, 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, and rules to provide for an appeals process by DFPS for the alleged victim of abuse, neglect, or exploitation. The bill clarifies that a confirmed investigation finding by DFPS is prohibited 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.

C.S.H.B. 2656 requires the executive commissioner to adopt rules that prescribe the appropriate manner in which health and human services agencies and managed care organizations provide DFPS with information necessary to facilitate identification of individuals receiving services from providers and to facilitate notification of providers by DFPS. The bill 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 DFPS of individuals receiving services from providers and to facilitate notification of providers by DFPS. The bill requires a provider of home and community-based services under the home and community-based services waiver program 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 the name, address, and telephone number of the provider, the effective

date of the provider's contract with the applicable health and human services agency to provide home and community-based services, and the name of the legal entity that contracted with the applicable health and human services agency to provide those services. The bill 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. The bill establishes that this prohibition does not prohibit a provider of home and community-based services from terminating an employee for a reason other than retaliation.

C.S.H.B. 2656 specifies that statutory provisions relating to the requirement that DFPS refer a report of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability to the agency that operated, licensed, certified, or registered the facility do not apply to a report regarding an individual receiving services from a provider. The bill establishes that its provisions relating to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers apply 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 a licensed convalescent or nursing facility or a licensed assisted living facility. The bill specifies that provisions establishing notification requirements relating to an investigation of abuse, neglect, or exploitation by an employee of a licensed home and community support services agency do not apply to an investigation of alleged or suspected abuse, neglect, or exploitation in which a provider is or may be alleged to have committed the abuse, neglect, or exploitation and establishes that such an investigation is governed by the bill's provisions relating to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers.

C.S.H.B. 2656 amends the Family Code, including provisions amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, to require DFPS to investigate a report of abuse, neglect, or exploitation of a child receiving services from a provider as defined by the bill or as otherwise defined by rule. The bill removes from that requirement the specification that the child be receiving services in certain facilities or through certain programs. The bill requires DFPS to investigate a report of abuse, neglect, or exploitation of a child receiving services from an officer, employee, agent, contractor, or subcontractor of a licensed home and community support services agency if the officer, employee, agent, contractor, or subcontractor is or may be the person alleged to have committed the abuse, neglect, or exploitation. The bill authorizes 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, 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. The bill requires DFPS, for an investigation of a child living in such a residence and 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 Human Resources Code provisions. The bill establishes that statutory provisions relating to the provision of emergency protective services and to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers apply to an investigation of a child and to the provision of protective services to that child in the same manner those provisions apply to an investigation of an elderly person or person with a disability and the provision of protective services to that person. The bill removes a provision requiring the executive commissioner of the Health and Human Services Commission to develop the rules by which DFPS is required to investigate a report with the advice and assistance of DFPS, the Department of Aging and Disability Services (DADS), and the Department of State Health Services.

C.S.H.B. 2656 amends the Health and Safety Code to remove a specification that the duty of DADS to investigate complaints received regarding the provision of home health, hospice, or personal assistance services applies to any allegation of abuse, neglect, or exploitation of a child under the age of 18 and instead requires a report 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 to be investigated by DFPS in accordance with the bill's provisions relating to investigations of abuse, neglect, or exploitation of individuals receiving services from certain providers.

C.S.H.B. 2656 repeals the following provisions:

- Section 261.404(f), Family Code, as amended by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015
- Subchapter H, Chapter 48, Human Resources Code

EFFECTIVE DATE

September 1, 2015.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2656 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill and does not indicate differences relating to changes made by S.B. 219, Acts of the 84th Legislature, Regular Session, 2015, which became effective April 2, 2015.

INTRODUCED

SECTION 1. Section 48.002(a), Human Resources Code, is amended by adding Subdivisions (11) and (12) to read as follows:

(11) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission.

(12) "Home and community-based services" has the meaning assigned by Section 48.251.

SECTION 2. Section 48.002(b), Human Resources Code, is amended to read as follows:

(b) The definitions of "abuse," "neglect," and "exploitation" adopted by the executive commissioner [~~department~~] as prescribed by Section 48.251(b) [~~48.251~~] apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter [~~in a facility subject to Subchapters~~] F [~~and H~~].

SECTION 3. Section 48.003, Human Resources Code, is amended.

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 48.002(a), Human Resources Code, is amended by adding Subdivision (11) to read as follows:

(11) "Home and community-based services" has the meaning assigned by Section 48.251.

SECTION 2. Section 48.002(b), Human Resources Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

(b) The definitions of "abuse," "neglect," [~~and~~] "exploitation," and "an individual receiving services" adopted by the executive commissioner as prescribed by Section 48.251(b) [~~48.251~~] apply to an investigation of abuse, neglect, or exploitation conducted under Subchapter F [~~or H~~].

SECTION 3. Substantially the same as introduced version.

SECTION 4. Sections 48.051(a) and (b), Human Resources Code, are amended.

SECTION 5. Section 48.103, Human Resources Code, is amended by amending Subsection (a) and adding Subsection (c) to read as follows:

(a) Except as otherwise provided by Subsection (c), on [On] determining after an investigation that an elderly ~~[or disabled]~~ 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, Health and Safety Code, the department shall:

(1) notify the state agency responsible for licensing the home and community support services agency of the department's determination;

(2) notify any health and human services agency, as defined by Section 531.001, Government Code, that contracts with the home and community support services agency for the delivery of health care services of the department's determination; and

(3) provide to the licensing state agency and any contracting health and human services agency access to the department's records or documents relating to the department's investigation.

(c) This section does not apply 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. An investigation described by this subsection is governed by Subchapter F.

SECTION 6. Section 48.151(e), Human Resources Code, is amended.

SECTION 7. Section 48.201, Human Resources Code, is amended.

SECTION 8. Subchapter F, Chapter 48, Human Resources Code, is amended to read

SECTION 4. Substantially the same as introduced version.

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

(a) Except as otherwise provided by Subsection (c), on [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, Health and Safety Code, the department shall:

(1) notify the state agency responsible for licensing the home and community support services agency of the department's determination;

(2) notify any health and human services agency, as defined by Section 531.001, Government Code, that contracts with the home and community support services agency for the delivery of health care services of the department's determination; and

(3) provide to the licensing state agency and any contracting health and human services agency access to the department's records or documents relating to the department's investigation.

(c) 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. An investigation described by this subsection is governed by Subchapter F.

SECTION 6. Same as introduced version.

SECTION 7. Substantially the same as introduced version.

SECTION 8. Subchapter F, Chapter 48, Human Resources Code, as amended by

as follows:

SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS [IN CERTAIN FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND MENTAL RETARDATION AUTHORITIES]

Sec. 48.251. DEFINITIONS. (a) In this subchapter:

(1) "Behavioral health services" means:

(A) "mental health services," as defined by Section 531.002, Health and Safety Code; and

(B) interventions provided to treat "chemical dependency," as defined by Section 462.001, Health and Safety Code.

(2) "Community center" and "local mental health authority" have the meanings assigned by Section 531.002, Health and Safety Code.

(3) "Facility" means:

(A) a mental health facility or state supported living center listed in Section 532.001(b), Health and Safety Code, or a person contracting with a health and human services agency to provide inpatient mental health services; and

(B) a facility licensed under Chapter 252, Health and Safety Code.

(4) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

(5) "Home and community-based services" means services provided in the home or community under a waiver granted in accordance with 42 U.S.C. Section 1315, 42 U.S.C. Section 1315a, 42 U.S.C. Section 1396a, or 42 U.S.C. Section 1396n, and as otherwise provided by department rule.

(6) "Local intellectual and developmental disability authority" means an authority defined by Section 531.002(11), Health and Safety Code.

(See Paragraph (2) above.)

S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015, is amended to read as follows:

SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS [IN CERTAIN FACILITIES, COMMUNITY CENTERS, AND LOCAL MENTAL HEALTH AND INTELLECTUAL AND DEVELOPMENTAL DISABILITY AUTHORITIES]

Sec. 48.251. DEFINITIONS. (a) In this subchapter:

(1) "Behavioral health services" means:

(A) mental health services, as defined by Section 531.002, Health and Safety Code; and

(B) interventions provided to treat chemical dependency, as defined by Section 461A.002, Health and Safety Code.

(2) "Community center" has the meaning assigned by Section 531.002, Health and Safety Code.

(3) "Facility" means:

(A) a facility listed in Section 532.001(b) or 532A.001(b), Health and Safety Code, including community services operated by the Department of State Health Services or Department of Aging and Disability Services, as described by those sections, or a person contracting with a health and human services agency to provide inpatient mental health services; and

(B) a facility licensed under Chapter 252, Health and Safety Code.

(4) "Health and human services agency" has the meaning assigned by Section 531.001, Government Code.

(5) "Home and community-based services" means services provided in the home or community in accordance with 42 U.S.C. Section 1315, 42 U.S.C. Section 1315a, 42 U.S.C. Section 1396a, or 42 U.S.C. Section 1396n, and as otherwise provided by department rule.

(6) "Local intellectual and developmental disability authority" has the meaning assigned by Section 531.002, Health and Safety Code.

(7) "Local mental health authority" has the meaning assigned by Section 531.002,

(7) "Managed care organization" has the meaning assigned by Section 533.001, Government Code.

(8) "Provider" means:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in Paragraphs (A)-(E); and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

(b) The executive commissioner [department] by rule shall adopt definitions of "abuse," "neglect," "exploitation," and "an individual receiving services" for purposes of this subchapter and ["exploitation" to govern] an investigation conducted under this subchapter [and Subchapter H].

Sec. 48.252. INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION BY PROVIDER [IN CERTAIN FACILITIES AND IN COMMUNITY CENTERS]. (a) The department shall receive and, except as provided by Subsection (b), shall 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 [with a disability receiving services]:

[(1) in:

[(A) a mental health facility operated by the Department of State Health Services; or

[(B) a facility licensed under Chapter 252, Health and Safety Code;

[(2) in or from a community center, a local mental health authority, or a local mental

Health and Safety Code.

(8) "Managed care organization" has the meaning assigned by Section 533.001, Government Code.

(9) "Provider" means:

(A) a facility;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in Paragraphs (A)-(E); and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

(b) The executive commissioner by rule shall adopt definitions of "abuse," "neglect," "exploitation," and "an individual receiving services" for purposes of this subchapter and ["exploitation" to govern] investigations conducted under this subchapter [and Subchapter H].

Sec. 48.252. INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION BY PROVIDER [IN CERTAIN FACILITIES AND IN COMMUNITY CENTERS]. (a) The department shall receive and, except as provided by Subsection (b), shall investigate under this subchapter reports of the abuse, neglect, or exploitation of an individual [with a disability] receiving services if the person alleged or suspected to have committed the abuse, neglect, or exploitation is a provider[:

[(1) in:

[(A) a mental health facility operated by the Department of State Health Services; or

[(B) a facility licensed under Chapter 252, Health and Safety Code;

[(2) in or from a community center, a local mental health authority, or a local

~~retardation authority; or~~

~~[(3) through a program providing services to that person by contract with a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local mental retardation authority].~~

(b) The department may not ~~[shall receive and shall]~~ investigate under this subchapter reports of the 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 to investigate reports of abuse, neglect, or exploitation of an individual by the provider under this chapter or other law. The department shall 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 ~~[of an individual with a disability receiving services:~~

~~[(1) in a state supported living center or the ICF-MR component of the Rio Grande State Center; or~~

~~[(2) through a program providing services to that person by contract with a state supported living center or the ICF-MR component of the Rio Grande State Center].~~

(c) The department shall 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, Government Code, regardless of whether the individual is receiving services under the waiver program from the provider. [The department by rule shall define who is "an individual with a disability receiving services."

~~[(d) In this section, "community center," "local mental health authority," and "local mental retardation authority" have the meanings assigned by Section 531.002, Health and Safety Code.]~~

Sec. 48.253. ACTION ON REPORT. (a) On receipt by the department of a report of alleged abuse, neglect, or exploitation under

~~intellectual and developmental disability authority; or~~

~~[(3) through a program providing services to that person by contract with a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local intellectual and developmental disability authority].~~

(b) The department may not ~~[shall receive and shall]~~ investigate under this subchapter reports of [the] 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 investigate reports of abuse, neglect, or exploitation of an individual by the provider. The department shall 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 ~~[of an individual with a disability receiving services:~~

~~[(1) in a state supported living center or the ICF-IID component of the Rio Grande State Center; or~~

~~[(2) 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) The department shall 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 the home and community-based services waiver program described by Section 534.001(11)(B), Government Code, regardless of whether the individual is receiving services under that waiver program from the provider. [The executive commissioner by rule shall define who is "an individual with a disability receiving services."

~~[(d) In this section, "community center," "local mental health authority," and "local intellectual and developmental disability authority" have the meanings assigned by Section 531.002, Health and Safety Code.]~~

Sec. 48.253. ACTION ON REPORT. (a) On receipt by the department of a report of alleged abuse, neglect, or exploitation under

this subchapter, the department shall 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 the department, in accordance with rules adopted under this subchapter, determines that the report:

- (1) is frivolous or patently without a factual basis; or
- (2) does not concern abuse, neglect, or exploitation.

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

(c) The provider identified under Subsection (b) shall:

- (1) cooperate completely with an investigation conducted under this subchapter; and
- (2) provide the department complete access during an investigation to:

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

(B) clients and client records.

(d) The executive commissioner shall adopt rules governing investigations conducted under this subchapter.

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The executive commissioner by rule shall establish procedures for the department to use to [~~in accordance with department rules, the department shall~~] 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 [~~facility, community center, mental health authority, mental retardation authority, or program providing mental health or mental retardation services under contract with the facility, community center, or authority~~].

(b) The department shall 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

this subchapter, the department shall 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 the department, in accordance with rules adopted under this subchapter, determines that the report:

- (1) is frivolous or patently without a factual basis; or
- (2) does not concern abuse, neglect, or exploitation.

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

(c) The provider identified under Subsection (b) shall:

- (1) cooperate completely with an investigation conducted under this subchapter; and
- (2) provide the department complete access during an investigation to:

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

(B) clients and client records.

(d) The executive commissioner shall adopt rules governing investigations conducted under this subchapter.

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The executive commissioner by rule shall establish procedures for the department to use to [~~in accordance with department rules, the department shall~~] 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 [~~facility, community center, local mental health authority, local intellectual and developmental disability authority, or program providing mental health or intellectual disability services under contract with the facility, community center, or authority~~].

(b) The department shall 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) A provider that receives a completed investigation report under Subsection (a) shall forward the report to any managed care organization with which the provider contracts.

Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS SUBCHAPTER. (a) The executive commissioner [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall adopt [~~develop~~] joint 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) [facilitate investigations in state mental health facilities and state supported living centers.

[~~(b) The department, the Department of Aging and Disability Services, and the Department of State Health Services by joint rules shall~~] establish procedures for resolving disagreements between the department and health and human services agencies [~~the Department of Aging and Disability Services or the Department of State Health Services~~] concerning the department's investigation findings; and

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

[~~(b) [(c) The department, the Department of Aging and Disability Services, and the Department of State Health Services shall develop joint rules to facilitate investigations in community centers, mental health authorities, and mental retardation authorities.~~

[~~(c-1) The executive commissioner shall 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.~~

[~~(d)~~] A confirmed investigation finding by the department may not be changed by the administrator [~~a superintendent~~] of a [~~state mental health~~] facility, [~~by a director of a~~

the alleged or suspected abuse, neglect, or exploitation under Section 48.051.

(c) A provider that receives a completed investigation report under Subsection (a) shall 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) The executive commissioner [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall adopt [~~develop~~] 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) [facilitate investigations in state mental health facilities and state supported living centers.

[~~(b) The executive commissioner by rule shall~~] establish procedures for resolving disagreements between the department and health and human services agencies [~~the Department of Aging and Disability Services or the Department of State Health Services~~] concerning the department's investigation findings; and

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

[~~(b) [(c) The department, the Department of Aging and Disability Services, and the Department of State Health Services shall 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.~~

[~~(c-1) The executive commissioner shall 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.~~

[~~(d)~~] A confirmed investigation finding by the department may not be changed by the administrator [~~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 a local intellectual and developmental disability [mental retardation] authority.~~

~~[(e) The department shall provide by rule for an appeals process by the alleged victim of abuse, neglect, or exploitation under this section.~~

~~[(f) The department by rule may assign priorities to an investigation conducted by the department under this section. The primary criterion used by the department in assigning a priority must be the risk that a delay in the investigation will impede the collection of evidence.]~~

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

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

(c) A provider of home and community-based services under a home and community-based services waiver program described by Section 534.001, Government Code, shall post in a conspicuous location inside any residence owned, operated, or controlled by the provider in which home and community-based 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

~~state supported living center, by a director of] a community center, [~~or by~~] a local mental health authority, or a local intellectual and developmental disability authority.~~

~~[(e) The executive commissioner shall provide by rule for an appeals process by the alleged victim of abuse, neglect, or exploitation under this section.~~

~~[(f) The executive commissioner by rule may assign priorities to an investigation conducted by the department under this section. 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.]~~

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

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

(c) 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, shall 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) A provider of home and community-based services may not retaliate 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) 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. [SINGLE] TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) The health and human services agencies [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall jointly develop and implement a [single] system to track reports and investigations under this subchapter.

(b) To facilitate implementation of the system, the health and human services agencies [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter.

SECTION 9. Section 48.301, Human Resources Code, is amended.

SECTION 10. Sections 48.401(1) and (3), Human Resources Code, are amended.

SECTION 11. The heading to Section 261.404, Family Code, is amended.

SECTION 12. Section 261.404, Family Code, is amended by amending Subsections (a) and (b) and adding Subsections (a-1) and (a-2) to read as follows:

(a) The department shall 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

services.

Sec. 48.257. RETALIATION PROHIBITED. (a) A provider of home and community-based services may not retaliate 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) 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. [SINGLE] TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) The health and human services agencies [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall, at the direction of the executive commissioner, jointly develop and implement a [single] system to track reports and investigations under this subchapter.

(b) To facilitate implementation of the system, the health and human services agencies [~~department, the Department of Aging and Disability Services, and the Department of State Health Services~~] shall use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter.

SECTION 9. Substantially the same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Substantially the same as introduced version.

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

(a) The department shall 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. The department shall also investigate 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[:

~~[(1) in a facility operated by the Department of Aging and Disability Services or a mental health facility operated by the Department of State Health Services;~~

~~[(2) in or from a community center, a local mental health authority, or a local mental retardation authority;~~

~~[(3) through a program providing services to that child by contract with a facility operated by the Department of Aging and Disability Services, a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local mental retardation authority;~~

~~[(4) from a provider of home and community based services who contracts with the Department of Aging and Disability Services; or~~

~~[(5) in a facility licensed under Chapter 252, Health and Safety Code].~~

(a-1) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under a home and community-based services waiver program described by Section 534.001, Government Code, the department, in accordance with Subchapter E, Chapter 48, Human Resources Code, may 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, Human Resources Code.

(a-2) For an investigation of a child living in a residence owned, operated, or controlled by a provider of services under a home and community-based services waiver program described by Section 534.001, Government Code, regardless of whether the child is receiving services under the

defined by rule. The department shall 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[:

~~[(1) in a facility operated by the Department of Aging and Disability Services or a mental health facility operated by the Department of State Health Services;~~

~~[(2) in or from a community center, a local mental health authority, or a local intellectual and developmental disability authority;~~

~~[(3) through a program providing services to that child by contract with a facility operated by the Department of Aging and Disability Services, a mental health facility operated by the Department of State Health Services, a community center, a local mental health authority, or a local intellectual and developmental disability authority;~~

~~[(4) from a provider of home and community based services who contracts with the Department of Aging and Disability Services; or~~

~~[(5) in a facility licensed under Chapter 252, Health and Safety Code].~~

(a-1) 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, the department, in accordance with Subchapter E, Chapter 48, Human Resources Code, may 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, Human Resources Code.

(a-2) 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

program from the provider, the department shall provide protective services to the child in accordance with Subchapter E, Chapter 48, Human Resources Code.

(b) The department shall investigate the report under rules developed by the executive commissioner of the Health and Human Services Commission [~~with the advice and assistance of the department, the Department of Aging and Disability Services, and the Department of State Health Services~~].

SECTION 13. Section 142.009(c), Health and Safety Code, is amended.

SECTION 14. Section 260A.002, Health and Safety Code, is amended.

SECTION 15. The following are repealed:
(1) Section 261.404(f), Family Code; and

(2) Subchapter H, Chapter 48, Human Resources Code.

SECTION 16. This Act takes effect September 1, 2015.

services under that waiver program from the provider, the department shall provide protective services to the child in accordance with Subchapter E, Chapter 48, Human Resources Code.

(a-3) For purposes of this section, Subchapters E and F, Human Resources Code, 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) The department shall investigate the report under rules developed by the executive commissioner [~~with the advice and assistance of the department, the Department of Aging and Disability Services, and the Department of State Health Services~~].

SECTION 13. Same as introduced version.

SECTION 14. Same as introduced version.

SECTION 15. The following are repealed:
(1) Section 261.404(f), Family Code, as amended by S.B. No. 219, Acts of the 84th Legislature, Regular Session, 2015; and
(2) Subchapter H, Chapter 48, Human Resources Code.

SECTION 16. Same as introduced version.