

SUBJECT: Reporting and investigating abuse and neglect in nursing homes

COMMITTEE: Human Services — committee substitute recommended

VOTE: 7 ayes — Uresti, Naishtat, Wohlgemuth, Christian, Miller, Olivo, Reyna
0 nays
2 absent — McCall, Villarreal

SENATE VOTE: On final passage, April 25 — voice vote

WITNESSES: *(On companion bill, HB 2325:)*
For — Aaryce Hayes, Advocacy, Inc.; Carlos Higgins, Texas Silver Haired Legislature; James Sylvester, Combined Law Enforcement Associations of Texas; David Thomason, Texas Association of Homes and Services for the Aging; Norma Wood, AARP; *(Registered, but did not testify:)* Beth Ferris, Texas Advocates for Nursing Homes Residents; George Linial, Texas Association of Homes and Services for the Aging

Against — None

On — Evelyn Delgado, Texas Department of Human Services; Gavin Gadberry, Texas Health Care Association; *(Registered, but did not testify:)* John Willis, Texas Department on Aging

BACKGROUND: Nursing homes are regulated by the Department of Human Services (DHS). A nursing home owner or employee must report abuse, neglect, or other circumstances that threaten the health and safety of residents to DHS or to a local or state law enforcement agency. DHS or the designated agency then must investigate the complaint within 24 hours if it involved imminent danger, or by the end of the next working day. The investigating agency must make an unannounced visit, interview each available witness, inspect the scene, and write an investigation report.

Information in a report, including the name, address, and phone number of the person making the report, are confidential.

DIGEST: CSSB 1074 would require a nursing home that reports abuse, neglect, or another complaint of imminent danger to DHS also to report to an appropriate law enforcement agency.

An investigation would be required within 24 hours if the complaint involved imminent danger or if it involved indecency with a child, sexual assault, aggravated sexual assault, or bodily injury. The interview would have to include the resident, if the resident were able to communicate, and any interview would have to be included in the investigation report.

The investigator also would have to make a photographic record of any injury to the resident, which would not be included in any public documents. If state or federal law required the resident's consent to make the photographic record, the department would have to obtain it before taking the photograph. By January 1, 2004, DHS would have to adopt any rules needed to comply with state or federal law regarding consent.

DHS would have to alert municipal law enforcement or the county sheriff's department within 24 hours of receiving a report of abuse, neglect, or complaint of imminent danger. Information on the person making the report would be confidential but would have to be disclosed to law enforcement if needed for investigative purposes. The law enforcement entity would have to investigate the complaint within 24 hours of receiving the report.

DHS would have to cooperate with law enforcement but would not be prohibited from investigating a report because of law enforcement's unwillingness to conduct an investigation. DHS would have to document any instances when law enforcement was unable or unwilling to conduct an investigation. A DHS representative would not have to be physically present during each stage of an investigation, and each entity would not have to participate equally in the investigation.

The bill would take effect September 1, 2003.

SUPPORTERS SAY: CSSB 1074 would help protect Texas' most vulnerable citizens — those who live in nursing homes. The state has strong laws requiring reports of suspected abuse or neglect, but because DHS is the primary responder to such reports, the investigation can lack the weight of one conducted by law enforcement.

DHS is a regulatory and policy agency, and its investigations do not focus on criminal aspects. When law enforcement agencies are involved, DHS generally defers to them to ensure that evidence is not missed or compromised and that the investigation's activities can support possible criminal charges. This bill would ensure that law enforcement was involved in the most serious reports that are most likely to result in criminal charges.

Because current law only requires a report of abuse or neglect to either DHS or the police, a significant delay can occur before the police are called in. Nursing-home personnel are familiar and comfortable with DHS and often call the agency first, after which DHS may notify the police if their presence is needed. SB 1074 would streamline the notification process by requiring reporting personnel to notify the police in serious cases.

The bill would require police involvement only in the cases where their skills are needed. It would ensure that the police respond quickly by requiring a prompt investigation into complaints that involve indecency with a child, sexual assault, aggravated sexual assault, or bodily injury.

**OPPONENTS
SAY:**

CSSB 1074 would not go far enough in protecting vulnerable Texans. Serious abuse and neglect occur in all health-care settings and are more prevalent in the community than in nursing homes. The bill also should apply to home health care, hospitals, and other facility or community settings that serve frail, elderly, or disabled Texans.

NOTES:

The committee substitute made a nonsubstantive technical change to one section of the Senate engrossed version.

The companion bill, HB 2325 by Naishtat, was reported favorably, as substituted, by the House Public Health Committee on April 10.