

## **BILL ANALYSIS**

Senate Research Center

H.B. 2170  
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Human Services  
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Engrossed

### **DIGEST**

The 72nd Legislature created the Department of Protective and Regulatory Services (DPRS) and gave it the authority to conduct investigations of maltreatment in Texas Department of Mental Health and Mental Retardation (MHMR) facilities. With constant changes in MHMR service delivery, DPRS's responsibilities continue to evolve and it must continually adjust its response to reports of abuse and neglect. H.B. 2170 clarifies and modifies regulations regarding investigations and protective services for elderly and disabled individuals.

### **PURPOSE**

As proposed, H.B. 2170 clarifies and modifies regulations regarding investigations and protective services for elderly and disabled individuals.

### **RULEMAKING AUTHORITY**

Rulemaking authority is granted to the Department of Protective and Regulatory Services in SECTION 12 (Section 48.102(d), Human Services Code), SECTION 31 (Section 48.251, Human Resources Code), SECTION 32 (Section 48.252(b), Human Resources Code), SECTION 33 (Sections 48.255(e) and (f), Human Resources Code), SECTION 37 (Section 48.353(d), Human Resources Code); to the Department of Protective and Regulatory Services and the Texas Department of Mental Health and Mental Retardation in SECTION 33 (Sections 48.255(a) and (c), Human Resources Code), SECTION 37 (Section 48.355(c), Human Resources Code); and to each state agency, other than the Texas Department of Mental Health and Mental Retardation, that takes certain actions, in SECTION 34 (Section 48.301(c), Human Resources Code), of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the chapter heading of Chapter 48, Human Resources Code, as follows:

#### **CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY AND DISABLED PERSONS**

SECTION 2. Amends Sections 48.001 and 48.002, Human Resources Code, to define "volunteer," and provide an exception for definitions as provided under Section 48.251, Human Resources Code. Provides that the definitions of "abuse," "neglect," and "exploitation" apply to an investigation of these matters in a facility subject to Subchapters F and H, Human Resources Code. Makes nonsubstantive changes.

SECTION 3. Redesignates and amends Section 48.085, Human Resources Code, to Section 48.003, to limit the application of this chapter, rather than subchapter.

SECTION 4. Amends the heading to Chapter 48B, Human Resources Code, as follows:

#### **SUBCHAPTER B. REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION: IMMUNITIES**

SECTION 5. Redesignates and amends Section 48.036, Human Resources Code, to Section 48.051, as follows:

Sec. 48.051. REPORT. Requires a person who suspects that an elderly or disabled person has been subject to certain treatment in a certain facility, to report the information to a certain state agency. Authorizes the report to be made orally or in writing, and sets forth information required

to be in the report. Deletes text regarding required report information. Makes conforming and nonsubstantive changes.

SECTION 6. Redesignates and amends Section 48.0361, Human Resources Code, to Section 48.052, to delete a reference to Section 48.036 or Chapter 48E, Human Resources Code, and make nonsubstantive changes.

SECTION 7. Redesignates Section 48.0362, Human Resources Code, to Section 48.053.

SECTION 8. Redesignates and amends Section 48.039, Human Resources Code, to Section 48.054, as follows:

Sec. 48.054. IMMUNITY. Specifies that a person who makes certain reports in bad faith or with malicious purpose is not immune from civil or criminal liability. Deletes a definition for “volunteer.”

SECTION 9. Amends the heading to Chapter 48C, Human Resources Code, as follows:

#### SUBCHAPTER C. CONFIDENTIALITY

SECTION 10. Transfers and amends Section 48.101, Human Resources Code, to Chapter 48C, Human Resources Code, to authorize certain entities to adopt rules relating to the release of information about a person to whom the Department of Protective and Regulatory Services (DPRS) has provided protective services.

SECTION 11. Redesignates Section 48.102, Human Resources Code, to Section 48.207.

SECTION 12. Amends Chapter 48C, Human Resources Code, by adding Section 48.102, as follows:

Sec. 48.102. REPORTS OF INVESTIGATIONS IN SCHOOLS. Requires certain procedures for the written report of investigation by DPRS. Requires the entity to which the report is sent to take appropriate action. Requires DPRS to provide a copy of the report to certain individuals who make a request. Requires editing of the report to protect the identity of the person who made the report. Requires DPRS to adopt rules necessary to implement this section.

SECTION 13. Amends the heading to Chapter 48D, Human Resources Code, as follows:

#### SUBCHAPTER D. INVESTIGATIONS BY ALL AGENCIES

SECTION 14. Redesignates and amends Section 48.037, Human Resources Code, to Section 48.151, to require DPRS to take certain action within a certain deadline after receipt of a report of an allegation of abuse, neglect, or exploitation, rather than suspected need for protective services, under Section 48.051, rather than 48.036 or 48.081. Requires DPRS to prepare and keep on file a report of each investigation it conducts. Provides that this section, rather than subsection, does not apply to investigations conducted under Subchapter F or H, rather than E. Deletes text regarding an investigation.

SECTION 15. Amends Chapter 48D, Human Resources Code, by adding Sections 48.152 and 48.153, as follows:

Sec. 48.152. INVESTIGATION. Requires an investigation to include certain interviews. Authorizes an investigation to include an interview with an alleged juvenile perpetrator. Authorizes DPRS to conduct the interview in private or may include any person DPRS deems necessary.

Sec. 48.153. ACCESS TO INVESTIGATION. Authorizes certain courts to authorize entry of the place of residence of the elderly or disabled person to implement certain investigations. Requires the accompaniment of a peace officer to the person making a court-ordered entry, if necessary.

SECTION 16. Redesignates and amends Section 48.0385, Human Resources Code, to Section 48.154, to exempt DPRS from paying a fee to obtain certain medical information in the course of an investigation.

Makes conforming changes.

SECTION 17. Redesignates Section 48.103, Human Resources Code, to Section 48.155.

SECTION 18. Redesignates Section 48.057, Human Resources Code, to Section 48.156.

SECTION 19. Amends Chapter 48D, Human Resources Code, by adding Section 48.157, as follows:

Sec. 48.157. **REPORT TO LAW ENFORCEMENT AGENCY.** Requires the submission of a certain investigation to the appropriate law enforcement agency if the investigation reveals certain actions which constitute a criminal offense.

SECTION 20. Amends the heading to Chapter 48E, Human Resources Code, as follows:

**SUBCHAPTER E. PROVISION OF SERVICES; GUARDIANSHIP SERVICES; EMERGENCY PROTECTION**

SECTION 21. Amends Chapter 48E, Human Resources Code, by adding Sections 48.201 and 48.202, as follows:

Sec. 48.201. **APPLICATION OF SUBCHAPTER.** Provides that this subchapter does not apply to a Texas Department of Mental Health and Mental Retardation investigation.

Sec. 48.202. **SERVICES DETERMINATION BY DEPARTMENT OR AGENCY.** Requires certain determinations by DPRS or state agency investigations.

SECTION 22. Redesignates Section 48.059, Human Resources Code, to Section 48.203.

SECTION 23. Redesignates Section 48.056, Human Resources Code, to Section 48.204.

SECTION 24. Redesignates and amends Section 48.021, Human Resources Code, to Section 48.205, to provide that responsibilities are prescribed by, rather than set forth in, this chapter, rather than this Act. Makes nonsubstantive changes.

SECTION 25. Redesignates Section 48.058, Human Resources Code, to Section 48.206.

SECTION 26. Redesignates and amends Section 48.061, Human Resources Code, to Section 48.208, to make nonsubstantive changes.

SECTION 27. Redesignates and amends Section 48.0215, Human Resources Code, to Section 48.209, to require DPRS to file an application with the court to name a successor guardian if DPRS becomes aware of certain guardian-entities in the area where the ward is located.

SECTION 28. Redesignates Section 48.040, Human Resources Code, to Section 48.210.

SECTION 29. Amends Chapter 48E, Human Resources Code, by adding Section 48.211, as follows:

Sec. 48.211. **REPORT TO GUARDIANSHIP COURT.** Requires the findings of an investigation to be sent to the court to which the guardian of an elderly or disabled person is accountable, if applicable.

SECTION 30. Amends the heading to Chapter 48F, Human Resources Code, as follows:

**SUBCHAPTER F. INVESTIGATIONS IN TDMHMR FACILITIES, COMMUNITY CENTERS, AND MHMR AUTHORITIES**

SECTION 31. Amends Chapter 48F, Human Resources Code, by adding Section 48.251, as follows:

Sec. 48.251. **DEFINITIONS.** Requires DPRS, by rule, to adopt definitions of “abuse,” “neglect,” and “exploitation” to govern an investigation under this subchapter and Subchapter H.

SECTION 32. Redesignates and amends Section 48.081, Human Resources Code, to Section 48.252, to require DPRS to investigate reports of abuse, neglect, or exploitation of an individual with a disability who receives services from: a community center, a local mental health authority, or a local mental retardation authority, or from a program providing services to that individual through certain contracts. Requires DPRS, by rule, to define “an individual with a disability receiving services.” Defines “local mental health authority,” and “local mental retardation authority.” Deletes text regarding the Texas Department of Mental Health and Mental Retardation, investigations, joint rules, complaints, criminal offenses, and priorities. Makes conforming and nonsubstantive changes.

SECTION 33. Amends Chapter 48F, Human Resources Code, by adding Sections 48.253-48.256, as follows:

Sec. 48.253. ACTION ON REPORT. Requires DPRS to initiate a prompt and thorough investigation to evaluate the accuracy of a certain report.

Sec. 48.254. FORWARDING OF COMPLETED INVESTIGATION REPORT. Requires DPRS to forward certain copies to certain entities

Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS SUBCHAPTER. Requires certain entities to develop joint rules to facilitate investigations in state mental health and mental retardation facilities. Requires certain entities to establish procedures for resolving disagreements related to investigation findings. Requires certain entities to develop joint rules to facilitate investigations in community centers, mental health authorities, and mental retardation authorities. Authorizes the changing of a confirmed investigation by certain entities. Requires DPRS, by rule, to provide for an appeals process by the alleged victim of abuse, neglect, or exploitation. Authorizes DPRS, by rule, to assign priorities to an investigation it conducts. Requires the primary criterion of the prioritization to be that a delay in the investigation will impede the collection of evidence.

Sec. 48.256. SINGLE TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. Requires certain entities to jointly develop and implement a single tracking system to track reports and investigations. Requires the use of appropriate methods of measuring the number and outcome of reports and investigations.

SECTION 34. Amends Chapter 48, Human Resources Code, by adding Subchapter G, as follows:

#### SUBCHAPTER G. INVESTIGATIONS IN CERTAIN FACILITIES

Sec. 48.301. INVESTIGATION OF REPORTS IN OTHER STATE FACILITIES. Requires DPRS to refer a certain report to agencies which are a subject of the report. Requires a state agency which receives a report to make a thorough and prompt investigation whose primary purpose is the protection of the elderly or disabled persons. Requires certain state agencies, excluding the Texas Department of Mental Health and Mental Retardation, to adopt rules relating to the investigation and resolution of reports. Requires the state agency to prepare and keep on file a written report of each investigation it conducts. Requires a state agency which receives an investigation-related complaint to refer the complaint to certain entities for review and appropriate action.

Sec. 48.302. APPROVAL OF RULES. Requires the Health and Human Services Commission to review and approve the investigation rules to ensure the existence of certain standards and uniformity.

SECTION 35. Redesignates and amends Section 48.022, Human Resources Code, to Section 48.303, to delete rulemaking authority.

SECTION 36. Redesignates Section 48.084, Human Resources Code, to Section 48.304.

SECTION 37. Amends Chapter 48, Human Resources Code, by adding Subchapter H, as follows:

#### SUBCHAPTER H. INVESTIGATIONS OF PROVIDERS OF HOME AND COMMUNITY-BASED SERVICES CONTRACTING WITH TDMHMR

Sec. 48.351. DEFINITIONS. Defines “community center,” “department facility,” “home and community-based services,” “local mental health authority,” “local mental retardation authority,” and “provider.”

Sec. 48.352. INVESTIGATION OF REPORTS RELATING TO HOME AND COMMUNITY-BASED SERVICES. Requires DPRS to receive and investigate certain reports from a provider who is an alleged abuser, neglecter, or exploiter. Provides that Subchapter F applies to a provider that is a department facility, a local mental health or mental retardation authority, or a community center.

Sec. 48.353. ACTION ON REPORT. Requires DPRS to initiate a prompt and thorough investigation to evaluate the accuracy of a certain report it receives, in order to assess the need for emergency protective services. Requires DPRS to notify certain individuals about the initiation of an investigation. Sets forth requirements for the provider. Requires DPRS to adopt rules for conducting investigations.

Sec. 48.354. FORWARDING OF COMPLETED INVESTIGATION REPORT. Requires DPRS to forward certain copies to certain entities. Requires the editing of the investigation report to protect the identity of the person who made the report.

Sec. 48.355. PROVISION OF SERVICES TO RECIPIENT OF HOME AND COMMUNITY-BASED SERVICES. Establishes the responsibility of the Texas Department of Mental Health and Mental Retardation to providing services to alleviate certain conditions if the provider fails to furnish contracted services. Authorizes DPRS to provide necessary emergency services to protect an individual from serious physical harm or death. Requires DPRS and the Texas Department of Mental Health and Mental Retardation to develop joint rules governing the provision of services under this section.

Sec. 48.356. PROVISION OF SERVICES TO INDIVIDUAL NOT RECEIVING HOME AND COMMUNITY-BASED SERVICES. Requires DPRS to provide services to certain individuals who do not receive home and community-based services, but who live in a residence owned, operated, or controlled by a provider in which home and community-based services are provided.

Sec. 48.357. RESPONSIBILITIES OF TDMHMR. Requires the Texas Department of Mental Health and Mental Retardation to provide DPRS with certain information at least once each calendar quarter. Requires TDMHMR to make certain information to DPRS. Requires THMHMR to require each provider to provide certain information and post certain information.

SECTION 38. Amends Section 261.3019(g), Family Code, to delete a reference to Section 48.081, Human Resources Code.

SECTION 39. Amends Section 261.404, Family Code, to require DPRS to investigate a report of exploitation of a child receiving services from certain entities and through certain programs. Requires DPRS to investigate the report under certain rules. Specifies that the definitions of “abuse” and “neglect” prescribed by Section 261.001 do not apply to an investigation under this section. Defines “community center,” “local mental health authority,” and “local mental retardation authority.”

SECTION 40. Repealers:

- (1) Section 48.038, Human Resources Code (Implementation of Investigation).
- (2) Section 48.042, Human Resources Code (Rules Concerning Facilities of Texas Department of Mental Health and Mental Retardation).
- (3) Section 48.082, Human Resources Code (Investigation of Reports in Other State Facilities).
- (4) Section 48.083, Human Resources Code (Rules).

SECTION 41. Effective date: September 1, 1999.

SECTION 42. Emergency clause.