

SUBJECT: Prohibiting retaliation for reports of abuse in community-based services

COMMITTEE: Human Services — favorable, without amendment

VOTE: 7 ayes — Rose, S. King, J. Davis, Eissler, Herrero, Hughes, Naishtat
0 nays
2 absent — Parker, Pierson

SENATE VOTE: On final passage, April 19 — 30-0

WITNESSES: For — (*Registered, but did not testify:* Pamela J. Bolton, Texas Watch; Dennis Borel, Coalition of Texans with Disabilities; Lora Butler, Mission Road Development Center; Richard Hernandez, Educare Community Living)
Against — None

BACKGROUND: Health and Safety Code, sec. 161.134 prohibits retaliation against employees of a hospital, mental health facility, or treatment facility for reporting a violation of law. Sec. 242.133 provides protection for nursing home employees from retaliation. Sec. 252.132 provides protection for employees working at an intermediate care facility for the mentally retarded.

DIGEST: SB 744 would amend Human Resources Code, ch. 48 to prohibit retaliation against an employee of a home- and community-based service provider for filing a report or providing information in good faith relating to the possible abuse, neglect, or exploitation of an individual receiving services from the provider or residing in a residence owned, operated, or controlled by the provider in which services were provided. The bill would not prohibit a provider from terminating an employee for a reason other than retaliation. SB 744 would apply to providers that contracted with the Department of Aging and Disability Services (DADS) to provide home- and community-based services.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2007.

**SUPPORTERS
SAY:**

Home- and community-based service (HCS) providers that contract with DADA currently are not prohibited from retaliating against their employees for whistleblowing, while hospitals, nursing homes, and intermediate care facilities for the mentally retarded specifically are covered by a retaliation prohibition. Because the general whistleblower statute in Government Code, sec. 554.002 covers only public employees, employees of privately owned home- and community-based service providers are not protected when they report, for example, exploitation of HCS provider funds. Judges have withheld protection for employees of HCS providers due to the lack of specific protection in the statute. SB 744 would fill this gap in the law by specifically including HCS employees under whistleblower protection to encourage them to report fraud, abuse, neglect or exploitation of clients or patients in their care.

**OPPONENTS
SAY:**

No apparent opposition.