HUMAN RESOURCES CODE

TITLE 2. HUMAN SERVICES AND PROTECTIVE SERVICES IN GENERAL

SUBTITLE D. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES; CHILD WELFARE AND PROTECTIVE SERVICES

CHAPTER 48. INVESTIGATIONS AND PROTECTIVE SERVICES FOR ELDERLY PERSONS AND PERSONS WITH DISABILITIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 48.001. PURPOSE. The purpose of this chapter is to provide for the authority to investigate the abuse, neglect, or exploitation of an elderly person or person with a disability and to provide protective services to that person.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 2, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.254, eff. April 2, 2015.

Sec. 48.002. DEFINITIONS. (a) Except as otherwise provided under Section 48.251, in this chapter:

(1) "Elderly person" means a person 65 years of age or older.

(2) "Abuse" means:

(A) the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to an elderly person or person with a disability by the person's caretaker, family member, or other individual who has an ongoing relationship with the person; or

(B) sexual abuse of an elderly person or person with a disability, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure) or Chapter 22, Penal Code

(assaultive offenses), committed by the person's caretaker, family member, or other individual who has an ongoing relationship with the person.

(3) "Exploitation" means the illegal or improper act or process of a caretaker, family member, or other individual who has an ongoing relationship with an elderly person or person with a disability that involves using, or attempting to use, the resources of the elderly person or person with a disability, including the person's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the person.

(4) "Neglect" means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caretaker to provide such goods or services.

(5) "Protective services" means the services furnished by the department or by another protective services agency to an elderly person or person with a disability who has been determined to be in a state of abuse, neglect, or exploitation or to a relative or caretaker of an elderly person or person with a disability if the department determines the services are necessary to prevent the elderly person or person with a disability from returning to a state of abuse, neglect, or exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with this chapter. The term does not include the services of the department or another protective services agency in conducting an investigation regarding alleged abuse, neglect, or exploitation of an elderly person or person with a disability.

(6) "Protective services agency" means a public or private agency, corporation, board, or organization that provides protective services to elderly persons or persons with disabilities in the state of abuse, neglect, or exploitation.

(7) Repealed by Acts 2015, 84th Leg., R.S., Ch. 1, Sec. 4.465(a)(55), eff. April 2, 2015.

(8) "Person with a disability" means a person with a mental, physical, or intellectual or developmental disability that substantially impairs the person's ability to provide adequately for the person's care or protection and who is:

(A) 18 years of age or older; or

(B) under 18 years of age and who has had the disabilities of minority removed.

(9) "Legal holiday" means a state holiday listed in Subchapter B, Chapter 662, Government Code, or an officially declared county holiday.

(10) "Volunteer" means a person who:

(A) performs services for or on behalf of the department under the supervision of a department employee; and

(B) does not receive compensation that exceeds the authorized expenses the person incurs in performing those services.

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

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

(c) Except as provided by Subsection (b), the executive commissioner by rule may adopt definitions of "abuse," "neglect," and "exploitation," as an alternative to the definitions of those terms under Subsection (a), for purposes of conducting an investigation under this chapter or Chapter 142, Health and Safety Code.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 274, ch. 51, Sec. 1, eff. Aug. 29, 1983; Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1985, 69th Leg., ch. 264, Sec. 16, eff. Aug. 26, 1985; Acts 1987, 70th Leg., ch. 568, Sec. 1, eff. Sept. 1, 1987; Acts 1991, 72nd Leg., ch. 213, Sec. 1, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(15), 8.041, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 303, Sec. 3, eff. Sept. 1, 1995;

Acts 1997, 75th Leg., ch. 1022, Sec. 51, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 907, Sec. 2, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 6, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.255, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.256, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.465(a)(55), eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 1, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 2, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 9, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 10, eff. September 1, 2015.

Sec. 48.0021. REFERENCE TO COMMISSION OR EXECUTIVE COMMISSIONER. Unless otherwise provided by a provision of this chapter, in this chapter:

(1) a reference to the Health and Human Services Commission means the Department of Family and Protective Services; and

(2) a reference to the executive commissioner means the commissioner of the Department of Family and Protective Services.

Added by Acts 2017, 85th Leg., R.S., Ch. 316 (H.B. 5), Sec. 35, eff. September 1, 2017.

Amended by:

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 13, eff. September 1, 2023.

Sec. 48.003. INVESTIGATIONS IN NURSING FACILITIES, ASSISTED LIVING FACILITIES, AND SIMILAR FACILITIES. (a) Except as provided by Subsection (c), this chapter does not apply if the alleged or suspected abuse, neglect, or exploitation occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code.

(b) Alleged or suspected abuse, neglect, or exploitation that occurs in a facility licensed under Chapter 242 or 247, Health and Safety Code, is governed by Chapter 260A, Health and Safety Code, except as otherwise provided by Subsection (c).

(c) Subchapter F applies 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 licensed under Chapter 242 or 247, Health and Safety Code.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Renumbered from Sec. 48.085 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 3, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., 1st C.S., Ch. 7 (S.B. 7), Sec. 1.05(l), eff. September 28, 2011.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 3, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 11, eff. September 1, 2015.

Sec. 48.004. RISK ASSESSMENT. The executive commissioner by rule shall develop and maintain risk assessment criteria for use by department personnel in determining whether an elderly person or person with a disability is in imminent risk of abuse, neglect, or exploitation or in a state of abuse, neglect, or exploitation and needs protective services. The criteria must:

(1) provide for a comprehensive assessment of the person's:

(A) environmental, physical, medical, mental health, and financial condition;

(B) social interaction and support; and

(C) need for legal intervention; and

(2) specify the circumstances under which a caseworker must consult with a supervisor regarding a case.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.06, eff. September 1, 2005.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.257, eff. April 2, 2015.

Sec. 48.005. MAINTENANCE OF RECORDS. Notwithstanding Chapter 441, Government Code, or any other law, and subject to the availability of funds, the department shall maintain in an electronic format a summary of all records related to investigations of reports made under Section 48.051 that includes only critical information with respect to those investigations that will enable the department to research the history of a person's involvement in the investigated cases.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.07, eff. September 1, 2005.

Sec. 48.006. COMMUNITY SATISFACTION SURVEY. (a) Subject to the availability of funds, the department shall develop a community satisfaction survey that solicits information regarding the department's performance with respect to providing investigative and adult protective services. In each region, the department shall send the survey at least biennially to:

(1) stakeholders in the adult protective services system, including local law enforcement agencies and prosecutors' offices;

(2) protective services agencies, including nonprofit agencies; and

(3) courts with jurisdiction over probate matters.

(b) The department shall send the results of each region's survey to:

(1) the region for evaluation by regional and program administrators and implementation of changes necessary to address community concerns;

(2) the presiding judge of the statutory probate courts in that region; and

(3) courts with jurisdiction over probate matters in that region.

(c) The department may not include any confidential information in the results of the survey provided under Subsection (b)(2) or (3) unless ordered by a court.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.07, eff. September 1, 2005.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 7, eff. September 1, 2011.

Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission, the department, the Department of Aging and Disability Services, the office of independent ombudsman for state supported living centers, and the commission's office of inspector general shall enter into a memorandum of understanding regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the ICF-IID component of the Rio Grande State Center that delineates the responsibilities of each agency and office under this chapter, Chapter 261, Family Code, and Chapter 555, Health and Safety Code, and amend the memorandum of understanding as necessary to reflect changes in those responsibilities. During the negotiation of the memorandum of understanding, the agencies and offices shall jointly determine whether the forensic training received by relevant staff of the Department of Family and Protective Services is adequate. Specifically, the agencies and offices shall assess and, if necessary, develop a plan to enhance the ability of department staff to identify and report incidences that constitute a potential criminal offense. The commission is the final arbiter of any dispute regarding the memorandum of understanding under this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 25, eff. June 11, 2009.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.258, eff. April 2, 2015.

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

Sec. 48.051. REPORT. (a) Except as prescribed by Subsection (b), a person having cause to believe that an elderly person, a person with a disability, or an individual receiving services from a provider as described by Subchapter F is in the state of abuse, neglect, or exploitation shall report the information required by Subsection (d) immediately to the department.

(b) If a person has cause to believe that an elderly person or a person with a disability, other than an individual receiving services from a provider as described by Subchapter F, has been abused, neglected, or exploited in a facility operated, licensed, certified, or registered by a state agency, the person shall report the information to the state agency that operates, licenses, certifies, or registers the facility for investigation by that agency.

(b-1) This subsection applies only to a provider under the home and community-based services (HCS) waiver program or the Texas home living (TxHmL) waiver program, an intermediate care facility licensed under Chapter 252, Health and Safety Code, a state supported living center as defined by Section 531.002, Health and Safety Code, or a home and community support services agency licensed under Chapter 142, Health and Safety Code. Except as provided by Subsections (a) and (b), a person, including an officer, employee, agent, contractor, or subcontractor of a facility or provider subject to this subsection, having cause to believe that an individual receiving services from the facility or provider is in the state of abuse, neglect, or exploitation shall immediately report to the commission the information required by Subsection (d). Notwithstanding Section 48.0021, in this subsection "commission" means the Health and Human Services

Commission.

(c) The duty imposed by Subsections (a), (b), and (b-1) applies without exception to a person whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an attorney, clergy member, medical practitioner, social worker, employee or member of a board that licenses or certifies a professional, and mental health professional.

(d) The report may be made orally or in writing. It shall include:

(1) the name, age, and address of the elderly person or person with a disability;

(2) the name and address of any person responsible for the care of the elderly person or person with a disability;

(3) the nature and extent of the condition of the elderly person or person with a disability;

(4) the basis of the reporter's knowledge; and

(5) any other relevant information.

(e) If a person who makes a report under this section chooses to give self-identifying information, the caseworker who investigates the report shall contact the person if necessary to obtain any additional information required to assist the person who is the subject of the report.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 5.02, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 247, Sec. 16, eff. June 14, 1989. Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 5.02, eff. Sept. 1, 1987; Acts 1989, 71st Leg., ch. 247, Sec. 16, eff. June 14, 1989; Acts 1991, 72nd Leg., ch. 14, Sec. 284(22), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 8.043, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 303, Sec. 6, 15(1), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 54, eff. Sept. 1, 1997. Renumbered from Sec. 48.036 and amended by Acts 1999, 76th

Leg., ch. 907, Sec. 5, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 205, Sec. 1, eff. May 21, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.08, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 26, eff. June 11, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 395 (S.B. 152), Sec. 6, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.259, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 4, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 12, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 14, eff. September 1, 2023.

Sec. 48.052. FAILURE TO REPORT; PENALTY. (a) A person commits an offense if the person has cause to believe that an elderly person or person with a disability has been abused, neglected, or exploited or is in the state of abuse, neglect, or exploitation and knowingly fails to report in accordance with this chapter. An offense under this subsection is a Class A misdemeanor, except that the offense is a state jail felony if it is shown on the trial of the offense that the abused, neglected, or exploited person is a person with an intellectual disability who resided in a state supported living center, the ICF-IID component of the Rio Grande State Center, or a facility licensed under Chapter 252, Health and Safety Code, and the actor knew that the person had suffered serious bodily injury as a result of the abuse, neglect, or exploitation.

(b) This section does not apply if the alleged abuse, neglect, or exploitation occurred in a facility licensed under Chapter 242, Health and Safety Code. Failure to report abuse, neglect, or exploitation that occurs in a facility licensed under that chapter is governed by that chapter.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 5.03, eff. Sept. 1, 1987. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 284(21), eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 303, Sec. 7, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1278, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 48.0361 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 6, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 27, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.260, eff. April 2, 2015.

Sec. 48.053. FALSE REPORT; PENALTY. (a) A person commits an offense if the person knowingly or intentionally reports information as provided in this chapter that the person knows is false or lacks factual foundation.

(b) An offense under this section is a Class A misdemeanor.

Added by Acts 1997, 75th Leg., ch. 1022, Sec. 55, eff. Sept. 1, 1997. Renumbered from Sec. 48.0362 by Acts 1999, 76th Leg., ch. 907, Sec. 7, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 8, eff. September 1, 2011.

Sec. 48.054. IMMUNITY. (a) A person filing a report under this chapter or testifying or otherwise participating in any judicial proceeding arising from a petition, report, or investigation is immune from civil or criminal liability on account of his or her petition, report, testimony, or participation, unless the person acted in bad faith or with a malicious purpose.

(b) A person, including an authorized department volunteer, medical personnel, or law enforcement officer, who at the request of the department participates in an investigation required by this chapter or in an action that results from that investigation is immune from civil or criminal liability for any act or omission relating to that participation if the person acted in good faith and, if applicable, in the course and scope of the person's assigned

responsibilities or duties.

(c) A person who reports the person's own abuse, neglect, or exploitation of another person or who acts in bad faith or with malicious purpose in reporting alleged abuse, neglect, or exploitation is not immune from civil or criminal liability.

(d) An employer whose employee acts under Subsection (a) or (b) is immune from civil or criminal liability on account of an employee's report, testimony, or participation in any judicial proceedings arising from a petition, report, or investigation. This subsection does not apply to an employer who is the subject of an investigation.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 10, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 8, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 205, Sec. 2, eff. May 21, 2001.

SUBCHAPTER C. CONFIDENTIALITY

Sec. 48.101. CONFIDENTIALITY AND DISCLOSURE OF INFORMATION; AGENCY EXCHANGE OF INFORMATION. (a) The following information is confidential and not subject to disclosure under Chapter 552, Government Code:

(1) a report of abuse, neglect, or exploitation made under this chapter;

(2) the identity of the person making the report; and

(3) except as provided by this section, all files, reports, records, communications, and working papers used or developed in an investigation made under this chapter or in providing services as a result of an investigation.

(b) Confidential information may be disclosed only for a purpose consistent with this chapter and as provided by department or investigating state agency rule and applicable federal law.

(c) A court may order disclosure of confidential information only if:

(1) a motion is filed with the court requesting release of the information and a hearing on that request;

(2) notice of that hearing is served on the department or investigating state agency and each interested party; and

(3) the court determines after the hearing and an in camera review of the information that disclosure is essential to the administration of justice and will not endanger the life or safety of any individual who:

(A) is the subject of a report of abuse, neglect, or exploitation;

(B) makes a report of abuse, neglect, or exploitation; or

(C) participates in an investigation of reported abuse, neglect, or exploitation.

(d) The executive commissioner shall adopt rules providing for the release, on request, to a person who is the subject of a report of abuse, neglect, or exploitation or to that person's legal representative of otherwise confidential information relating to that report. The department or investigating state agency shall edit the information before release to protect the confidentiality of information relating to the reporter's identity and to protect any other individual whose safety or welfare may be endangered by disclosure.

(d-1) Subject to Subsection (e-1), the executive commissioner shall adopt rules providing for the release, on request, by the department or investigating state agency of otherwise confidential information relating to a person who is the subject of a report or investigation of abuse, neglect, or exploitation or to whom the department has provided protective services, to:

(1) a court that has a matter pending before it that involves the person;

(2) the attorney ad litem or any other legal representative, other than a guardian, appointed for the person; and

(3) the person's legal guardian.

(e) The executive commissioner may adopt rules relating to the release of information by the department or investigating state agency that is contained in the record of a deceased individual who

was the subject of an investigation conducted by the department or investigating state agency or to whom the department has provided protective services. The rules must be consistent with the purposes of this chapter and any applicable state or federal law. The executive commissioner shall adopt rules, subject to Subsection (e-1), that provide for the release, on request, of otherwise confidential information in the deceased person's record to the personal representative appointed for the person's estate.

(e-1) Information released by the department or an investigating state agency under Subsection (d-1) or to a personal representative under Subsection (e) may not include the identity of the person who made the report of abuse, neglect, or exploitation.

(f) The department or investigating state agency may establish procedures to exchange with another state agency or governmental entity information that is necessary for the department, state agency, or entity to properly execute its respective duties and responsibilities to provide services to elderly persons or persons with disabilities under this chapter or other law. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(g) The department may establish procedures to exchange with a community service provider or local governmental entity confidential information relating to a report made under Section 48.051(a) that is necessary for the department, provider, or entity to provide protective services, health care services, housing services, or social services to the person who is the subject of the report. An exchange of information under this subsection does not affect whether the information is subject to disclosure under Chapter 552, Government Code.

(g-1) The executive commissioner by rule shall provide policies and procedures that are designed to guard against the unauthorized release or dissemination of confidential information that is exchanged under Subsection (g).

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 58, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 907, Sec. 10, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.09, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.261, eff. April 2, 2015.

Sec. 48.102. REPORTS OF INVESTIGATIONS IN SCHOOLS. (a) The department shall send a written report of the department's investigation of alleged abuse, neglect, or exploitation of an adult with a disability at a school, as appropriate, to the Texas Education Agency, the agency responsible for teacher certification, the local school board or the school's governing body, and the school principal or director, unless the principal or director is alleged to have committed the abuse, neglect, or exploitation. The entity to which the report is sent shall take appropriate action.

(b) On request, the department shall provide a copy of the report of the investigation to the person who is alleged to have suffered the abuse, neglect, or exploitation, to the legal guardian of that person, and to the person alleged to have committed the abuse, neglect, or exploitation.

(c) The report of the investigation shall be edited to protect the identity of the person who made the report under Section 48.051.

(d) The executive commissioner shall adopt rules necessary to implement this section.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 12, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.262, eff. April 2, 2015.

Sec. 48.103. NOTIFICATION OF LICENSING OR CONTRACTING AGENCY.

Text of subsection effective until April 01, 2025

(a) Except as otherwise provided by Subsection (c), 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.

Text of subsection effective on April 01, 2025

(a) Except as otherwise provided by Subsection (c), 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 521.0001, 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.

(b) Providing access to a confidential record or document under this section does not constitute a waiver of confidentiality.

(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.

Added by Acts 1999, 76th Leg., ch. 276, Sec. 13, eff. Sept. 1, 1999. Renumbered from Sec. 48.0381 by Acts 2001, 77th Leg., ch. 75, Sec. 1, eff. May 14, 2001.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.263, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 5, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 13, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.94, eff. April 1, 2025.

SUBCHAPTER D. INVESTIGATIONS BY ALL AGENCIES

Sec. 48.151. ACTION ON REPORT. (a) Not later than 24 hours after the department receives a report of an allegation of abuse, neglect, or exploitation under Section 48.051, the department shall initiate a prompt and thorough investigation as needed to evaluate the accuracy of the report and to assess the need for protective services, unless the department determines that the report:

(1) is frivolous or patently without a factual basis; or

(2) does not concern abuse, neglect, or exploitation, as those terms are defined by rules adopted by the executive commissioner under Section 48.002(c), except that if the executive commissioner has not adopted applicable rules under that section, the statutory definitions of those terms under Section 48.002(a) shall be used.

(b) The executive commissioner shall adopt rules for conducting investigations under this chapter.

(c) The executive commissioner by rule may assign priorities and prescribe investigative procedures for conducting investigations according to the degree of severity and immediacy of the alleged harm to the individual. Notwithstanding Subsection

(a), the priorities and procedures may provide that an investigation is not required to be initiated within 24 hours in all cases.

(d) The department shall prepare and keep on file a report of each investigation conducted by the department.

(e) This section does not apply to investigations conducted under Subchapter F.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 1052, Sec. 5.04, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 303, Sec. 8, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 56, eff. Sept. 1, 1997. Renumbered from Sec. 48.037 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 14, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 9, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.264, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 6, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 14, eff. September 1, 2015.

Sec. 48.152. INVESTIGATION. (a) An investigation by the department or a state agency shall include an interview with the elderly person or person with a disability, if appropriate, and with persons thought to have knowledge of the circumstances. If the elderly person or person with a disability refuses to be interviewed or cannot be interviewed because of a physical or mental impairment, the department shall continue the investigation by interviewing other persons thought to have knowledge relevant to the investigation.

(b) The investigation may include an interview with an alleged juvenile perpetrator of the alleged abuse, neglect, or exploitation.

(c) The department or state agency may conduct an interview

under this section in private or may include any person the department or agency determines is necessary.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 15, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 10, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.265, eff. April 2, 2015.

Sec. 48.1521. INVESTIGATION OF COMPLEX CASES. (a) The department shall develop and implement a system to ensure that, to the greatest extent possible, investigations conducted by the department that involve especially complex issues of abuse, neglect, or exploitation, such as issues associated with identity theft and other forms of financial exploitation, are:

(1) assigned to personnel who have experience and training in those issues; and

(2) monitored by a special task unit for complex cases.

(b) Each county with a population of 250,000 or more shall appoint persons to serve as standing members of a special task unit to monitor cases that arise in the county and require monitoring as provided by Subsection (a). The standing members of each special task unit must include:

(1) a provider of mental health services or aging services or a representative of a nonprofit entity serving persons with disabilities;

(2) a representative of a law enforcement agency; and

(3) a legal expert.

(c) In addition to the standing members specified by Subsection (b), the special task unit:

(1) must include, for purposes of monitoring a particular case, the caseworker on the case and the caseworker's supervisor; and

(2) may include a financial forensics expert and any other person with expertise that would be useful in monitoring a particular case.

(d) The department shall develop and make available to each county described by Subsection (b) a manual to assist the county in establishing and operating the special task unit required by this section. The manual must describe:

(1) the purpose and potential benefits of the unit;

(2) a description of the monitoring process the unit is expected to follow and potential problems the unit may encounter;

(3) the composition and administration of the unit; and

(4) the department's criteria for selecting cases to be monitored by the unit.

(e) Before the special task unit makes a recommendation that a guardian be appointed for a person in a case being monitored by the unit, the unit shall thoroughly consider all less-restrictive alternatives for legal intervention in the case.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.10(a), eff. September 1, 2005.

Sec. 48.1522. REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT AGENCY. (a) Except as provided by Subsection (b), if during the course of the department's or another state agency's investigation of reported abuse, neglect, or exploitation, including an investigation of reported abuse, neglect, or exploitation under Subchapter F, a caseworker of the department or other state agency, as applicable, or the caseworker's supervisor has cause to believe that the elderly person or person with a disability has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Sections 22.04 and 32.55, Penal Code, the caseworker or supervisor shall:

(1) immediately notify an appropriate law enforcement agency, unless the law enforcement agency reported the alleged abuse, neglect, or exploitation to the department; and

(2) provide the law enforcement agency with a copy of the investigation report of the department or other state agency, as applicable, in a timely manner.

(b) If during the course of the department's investigation of reported abuse, neglect, or exploitation a caseworker of the department or the caseworker's supervisor has cause to believe that a person with a disability who is a resident or client of a state supported living center or the ICF-IID component of the Rio Grande State Center has been abused, neglected, or exploited by another person in a manner that constitutes a criminal offense under any law, including Section 22.04, Penal Code, in addition to the report to the appropriate law enforcement agency required by Subsection (a), the caseworker shall immediately notify the commission's office of inspector general and promptly provide the commission's office of inspector general with a copy of the department's investigation report.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.11, eff. September 1, 2005.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 28, eff. June 11, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 11, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.266, eff. April 2, 2015.

Acts 2023, 88th Leg., R.S., Ch. 1076 (S.B. 576), Sec. 1, eff. September 1, 2023.

Sec. 48.1523. MANAGEMENT REVIEW FOLLOWING CERTAIN INVESTIGATIONS. If the department receives and investigates a report made under Section 48.051, the subject of which is a person with respect to whom the department received and investigated two previous reports under that section and closed those investigations, an adult protective services supervisor shall:

(1) classify the case as a recidivist case;

(2) review the reports and investigation files concerning that person; and

(3) assist the caseworker and supervisor investigating the third report in developing a long-term plan for resolving the issues involved in the case.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.12, eff. September 1, 2005.

Sec. 48.153. ACCESS TO INVESTIGATION. (a) To implement an investigation of reported abuse, neglect, or exploitation, the probate court, or the county court when no probate court exists, may authorize entry of the place of residence of the elderly person or person with a disability.

(b) A peace officer shall accompany and assist the person making a court-ordered entry under this section, if in the opinion of the court such action is necessary.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 15, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.267, eff. April 2, 2015.

Sec. 48.154. ACCESS TO RECORDS OR DOCUMENTS. (a) The department or another state agency, as appropriate, shall have access to any records or documents, including client-identifying information, financial records, and medical and psychological records, necessary to the performance of the department's or state agency's duties under this chapter. The duties include but are not limited to the investigation of abuse, neglect, or exploitation or the provisions of services to an elderly person or person with a disability. A person, agency, or institution that has a record or document that the department or state agency needs to perform its duties under this chapter shall, without unnecessary delay, make the record or document available to the department or state agency that requested the record or document.

(b) The department is exempt from the payment of a fee otherwise required or authorized by law to obtain a financial record from a person, agency, or institution or a medical record, including a mental health record, from a hospital or health care provider if the request for a record is made in the course of an investigation by the department.

(c) If the department or another state agency cannot obtain access to a record or document that is necessary to properly conduct

an investigation or to perform another duty under this chapter, the department or state agency may petition the probate court or the statutory or constitutional county court having probate jurisdiction for access to the record or document.

(d) On good cause shown, the court shall order the person, agency, or institution who has a requested record or document to allow the department or state agency to have access to that record or document under the terms and conditions prescribed by the court.

(e) A person, agency, or institution who has a requested record or document is entitled to notice and a hearing on a petition filed under this section.

(f) Access to a confidential record under this section does not constitute a waiver of confidentiality.

Added by Acts 1993, 73rd Leg., ch. 651, Sec. 1, eff. Aug. 30, 1993. Amended by Acts 1995, 74th Leg., ch. 303, Sec. 10, eff. Sept. 1, 1995. Renumbered from Sec. 48.0385 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 16, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 12, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.268, eff. April 2, 2015.

Sec. 48.155. INTERFERENCE WITH INVESTIGATION OR SERVICES PROHIBITED. (a) A person, including a guardian and notwithstanding Section 1151.001, Estates Code, may not interfere with:

(1) an investigation by the department or by another protective services agency of alleged abuse, neglect, or exploitation of an elderly person or person with a disability; or

(2) the provision of protective services to an elderly person or person with a disability.

(b) The department or another protective services agency may petition the appropriate court to enjoin any interference with:

(1) an investigation of alleged abuse, neglect, or exploitation; or

(2) the provision of protective services such as

removal of the elderly person or person with a disability to safer surroundings or safeguarding the person's resources from exploitation.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 59, eff. Sept. 1, 1997. Renumbered from Sec. 48.103 by Acts 1999, 76th Leg., ch. 907, Sec. 17, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.269, eff. April 2, 2015.

Sec. 48.156. AGENCY REPORTS. A protective services agency shall make reports relating to its provision of protective services as the department or a court may require.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Renumbered from Sec. 48.057 by Acts 1999, 76th Leg., ch. 907, Sec. 18, eff. Sept. 1, 1999.

Sec. 48.159. INTERNAL REVIEW OF DEPARTMENT INVESTIGATION. The department shall establish procedures for conducting an internal review of completed investigations conducted by the department under this chapter to:

(1) determine whether information obtained during the intake process was sufficient and accurate;

(2) assess whether telephone calls were appropriately routed;

(3) assess whether investigations were appropriately classified and prioritized;

(4) evaluate the case reports for any special issues or requirements;

(5) assess whether appropriate law enforcement agencies were notified of any suspected criminal conduct; and

(6) identify other relevant information to enable the department to take any corrective action necessary to improve the process of conducting investigations under this chapter.

Added by Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.13, eff.

September 1, 2005.

SUBCHAPTER E. PROVISION OF SERVICES; EMERGENCY PROTECTION

Sec. 48.201. APPLICATION OF SUBCHAPTER. Except as otherwise provided, this subchapter does not apply to an investigation conducted under Subchapter F.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 21, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.270, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 7, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 15, eff. September 1, 2015.

Sec. 48.202. SERVICE DETERMINATION BY DEPARTMENT OR AGENCY. (a) In an investigation the department or state agency, as appropriate, shall determine:

(1) whether the person needs protective services from the department;

(2) what services are needed;

(3) whether services are available from the department, from the state agency, or in the community and how they can be provided;

(4) whether the person, acting alone, would be capable of obtaining needed services and could bear the cost or would be eligible for services from the department or state agency;

(5) whether a caretaker would be willing to provide services or would agree to their provision;

(6) whether the elderly person or person with a disability desires the services;

(7) whether the person needs legal intervention to resolve the person's abuse, neglect, or exploitation and, if so, what type of intervention is needed; and

(8) other pertinent data.

(b) If the department or state agency, as appropriate,

determines under Subsection (a)(1) that a person needs protective services, the department or agency shall, in determining how those services can be provided as required by Subsection (a)(3), determine whether the person may be eligible for community-based long-term services and supports and whether those services and supports are available. If the person is eligible for those services and supports, but the services and supports are not immediately available, the department or state agency shall ensure that the person is placed on an appropriate waiting list for the services and supports and that the person's abuse, neglect, or exploitation is resolved before the department closes the case.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 21, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.14, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.271, eff. April 2, 2015.

Sec. 48.203. VOLUNTARY PROTECTIVE SERVICES. (a) An elderly person or person with a disability may receive voluntary protective services if the person requests or consents to receive those services.

(b) The elderly person or person with a disability who receives protective services shall participate in all decisions regarding the person's welfare, if able to do so.

(c) The least restrictive alternatives should be made available to the elderly person or person with a disability who receives protective services.

(d) Except as provided by Section 48.208, if an elderly person or person with a disability withdraws from or refuses consent to voluntary protective services, the services may not be provided.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Renumbered from Sec. 48.059 by Acts 1999, 76th Leg., ch. 907, Sec. 22, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 13, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.272, eff. April 2, 2015.

Sec. 48.204. AGENCY POWERS. A protective services agency may furnish protective services to an elderly person or person with a disability with the person's consent or to a relative or caretaker of the person on behalf of the person with the relative's or caregiver's consent or, if the elderly person or person with a disability lacks the capacity to consent, without that person's consent as provided by this chapter.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 12, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 23, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 14, eff. September 1, 2011.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.273, eff. April 2, 2015.

Sec. 48.205. PROVISION OF SERVICES. (a) Subject to the availability of funds, the department shall provide direct protective services or contract with protective services agencies for the provision of those services.

(b) The department shall use existing resources and services of public and private agencies in providing protective services. If the department does not have existing resources to provide direct protective services to elderly persons or persons with disabilities, the department, subject to the availability of funds, shall contract with protective services agencies for the provision of those services, especially to persons residing in rural or remote areas of this state or not previously served by the department.

(c) The department and law enforcement officials, courts,

and agencies shall cooperate when providing protective services.

(d) The responsibilities prescribed by this chapter are exclusive of those designated to other state or federal agencies authorized or required by law to provide protective services to elderly persons or persons with disabilities determined to be in the state of abuse, neglect, or exploitation.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1993, 73rd Leg., ch. 905, Sec. 5, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 303, Sec. 4, eff. Sept. 1, 1995. Renumbered from Sec. 48.021 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 24, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.15, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.274, eff. April 2, 2015.

Sec. 48.206. COST OF SERVICES. If the elderly person or person with a disability receiving the protective services is determined to be financially able to contribute to the payments for those services, the provider shall receive a reasonable reimbursement from the person's assets.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983. Renumbered from Sec. 48.058 by Acts 1999, 76th Leg., ch. 907, Sec. 25, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.275, eff. April 2, 2015.

Sec. 48.207. OBJECTION TO MEDICAL TREATMENT. This chapter does not authorize or require any medical treatment of a person who objects on the grounds that he is an adherent or member of a recognized church or religious denomination the tenets and practice

of which may include reliance solely upon spiritual means through prayer for healing.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995. Renumbered from Sec. 48.102 by Acts 1999, 76th Leg., ch. 907, Sec. 11, eff. Sept. 1, 1999.

Sec. 48.208. EMERGENCY ORDER FOR PROTECTIVE SERVICES. (a) For purposes of this section, a person lacks the capacity to consent to receive protective services if, because of mental or physical impairment, the person is incapable of understanding the nature of the services offered and agreeing to receive or rejecting protective services.

(b) If the department determines that an elderly person or person with a disability is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety, that the person lacks capacity to consent to receive protective services, and that no consent can be obtained, the department may petition the probate or statutory or constitutional county court that has probate jurisdiction in the county in which the person resides for an emergency order authorizing protective services.

(c) The petition shall be verified and shall include:

(1) the name, age, and address of the elderly person or person with a disability who needs protective services;

(2) the nature of the abuse, neglect, or exploitation;

(3) the services needed; and

(4) a medical report signed by a physician stating that the person is suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety and stating that the person is physically or mentally incapable of consenting to services unless the court finds that an immediate danger to the person's health or safety exists and there is not sufficient time to obtain the medical report.

(c-1) Notwithstanding Subsection (c)(4), in lieu of a medical report described by Subsection (c)(4), the petition may include an assessment of the health status of the elderly person or person with a disability as described by Subsection (c-2) or psychological status as described by Subsection (c-3), or a medical

opinion of the person's health status as described by Subsection (c-4), if the department determines, after making a good faith effort, that a physician from whom the department may obtain the medical report is unavailable. The department shall ensure that the person who performs an assessment of the health or psychological status of the elderly person or person with a disability has training and experience in performing the applicable assessment.

(c-2) Except as provided by Subsection (c-4), an assessment of the health status of the elderly person or person with a disability must be performed by a physician assistant or advanced practice nurse. The person performing the assessment shall sign a report stating:

(1) that the elderly person or person with a disability is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety;

(2) whether the elderly person or person with a disability has provided the person's medical history to the physician assistant or advanced practice nurse, as applicable; and

(3) that in the professional opinion of the physician assistant or advanced practice nurse, as applicable, the issuance of an emergency order authorizing protective services without the consent of the elderly person or person with a disability is necessary under the circumstances.

(c-3) An assessment of the psychological status of the elderly person or person with a disability must be performed by a licensed professional counselor, licensed psychologist, or master social worker who has training and expertise in issues related to abuse, neglect, and exploitation. The person performing the assessment shall sign a report stating:

(1) that the elderly person or person with a disability is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) that in the professional opinion of the licensed professional counselor, licensed psychologist, or master social

worker, as applicable, the issuance of an emergency order authorizing protective services without the consent of the elderly person or person with a disability is necessary under the circumstances.

(c-4) A registered nurse may perform a nursing assessment of the health status of the elderly person or person with a disability. If the registered nurse, based on the registered nurse's professional nursing judgment, determines that the person is likely to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety, the registered nurse shall report that assessment to a physician. After the registered nurse reports the assessment, the physician shall sign a written opinion stating whether:

(1) the elderly person or person with a disability is reported to be suffering from abuse, neglect, or exploitation, which may present a threat to the person's life or physical safety; and

(2) the issuance of an emergency order authorizing protective services without the consent of the elderly person or person with a disability is necessary under the circumstances.

(c-5) The physician may use the registered nurse's assessment of the health status of the elderly person or person with a disability as the basis of the physician's professional opinion under Subsection (c-4).

(d) On finding that there is reasonable cause to believe that abuse, neglect, or exploitation presents a threat to life or physical safety for the elderly person or person with a disability and that the person lacks capacity to consent to services, the court may:

(1) order removal of the person to safer surroundings;

(2) order medical services; and

(3) order other available services necessary to remove conditions creating the threat to life or physical safety, including the services of law enforcement officers or emergency medical services personnel.

(d-1) If the court renders an order that is based on a petition including an assessment under Subsection (c-2) or (c-3) or

a medical opinion under Subsection (c-4), the court shall order that the elderly person or person with a disability be examined by a physician not later than 72 hours after the time the provision of protective services begins. After performing the examination, the physician shall sign and submit to the court a medical report stating the physician's opinion whether the person is:

(1) suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety; and

(2) physically or mentally incapable of consenting to services.

(e) The emergency order expires on the earlier of the end of the 10th day after the date the order is rendered or the end of the 10th day after the date the person was removed to safer surroundings if the emergency order was rendered subsequent to the removal of the person to safer surroundings in accordance with Subsection (h), unless:

(1) the emergency order terminates as provided by Subsection (e-1);

(2) the 10-day period ends on a Saturday, Sunday, or legal holiday in which event the order is automatically extended to 4 p.m. on the first succeeding business day; or

(3) the court extends the order as provided by Subsection (e-2).

(e-1) An emergency order that was rendered based on a petition that included an assessment under Subsection (c-2) or (c-3) or a medical opinion under Subsection (c-4) immediately terminates if the medical report issued under Subsection (d-1) states the physician's opinion that the elderly person or person with a disability:

(1) is not suffering from abuse, neglect, or exploitation presenting a threat to life or physical safety; or

(2) is physically or mentally capable of consenting to services.

(e-2) The court, after notice and a hearing, may extend an emergency order issued under this section, other than an emergency order that terminated as provided under Subsection (e-1), for a period of not more than 30 days after the date the original

emergency order for protective services would have expired under Subsection (e). The court, after notice and a hearing and for good cause shown, may grant a second extension of an emergency order of not more than an additional 30 days. The court may not grant more than two extensions of the original emergency order. An extension order that ends on a Saturday, Sunday, or legal holiday is automatically extended to 4 p.m. on the first succeeding business day. The court may modify or terminate the emergency order on petition of the department, the incapacitated person, or any person interested in the person's welfare.

(f) Any medical facility, emergency medical services provider, or physician who provides treatment to or who transports an elderly person or person with a disability pursuant to an emergency order under Subsection (d) or an emergency authorization under Subsection (h) is not liable for any damages arising from the treatment or transportation, except those damages resulting from the negligence of the facility, provider, or physician.

(g) The court shall appoint an attorney ad litem to represent the elderly person or person with a disability in any proceeding brought by the department under this section. A reasonable fee, as determined by the court, shall be paid to the attorney ad litem from the general fund of the county.

(h) If the department cannot obtain an emergency order under this section because the court is closed on a Saturday, Sunday, or legal holiday or after 5 p.m., the department may remove or authorize an appropriate transportation service, including an emergency medical services provider, to remove the elderly person or person with a disability to safer surroundings, authorize medical treatment, or authorize or provide other available services necessary to remove conditions creating the threat to life or physical safety. The department must obtain an emergency order under this section not later than 4 p.m. on the first succeeding business day after the date on which protective services are provided. If the department does not obtain an emergency order, the department shall cease providing protective services and, if necessary, make arrangements for the immediate return of the person to the place from which the person was removed, to the person's

place of residence in the state, or to another suitable place.

(i) If the department's removal of a person from the person's place of residence under this section results in that residence being vacant, the department shall notify the appropriate law enforcement agency of the vacancy to facilitate the law enforcement agency's monitoring of the residence.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 568, Sec. 4, eff. Sept. 1, 1987; Acts 1987, 70th Leg., ch. 569, Sec. 1, eff. June 18, 1987; Acts 1991, 72nd Leg., ch. 213, Sec. 2 to 4, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 303, Sec. 13, eff. Sept. 1, 1995. Renumbered from Sec. 48.061 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 26, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 75, Sec. 2, eff. May 14, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 2.16, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 15, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 116 (S.B. 1236), Sec. 1, eff. May 18, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 887 (H.B. 908), Sec. 1, eff. June 14, 2013.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.276, eff. April 2, 2015.

Sec. 48.209. REFERRAL FOR GUARDIANSHIP SERVICES. (a) The department shall refer an individual to the Department of Aging and Disability Services for guardianship services under Subchapter E, Chapter 161, if the individual is:

(1) a minor in the conservatorship of the department who:

(A) is 16 years of age or older; and

(B) the department has reason to believe will, because of a physical or mental condition, be substantially unable to provide for the individual's own food, clothing, or shelter, to

care for the individual's own physical health, or to manage the individual's own financial affairs when the individual becomes an adult; or

(2) an elderly person or person with a disability who:

(A) has been found by the department to be in a state of abuse, neglect, or exploitation; and

(B) the department has reason to believe is an incapacitated person as defined by Section 1002.017(2), Estates Code.

(b) Notwithstanding Subsection (a), if a less restrictive alternative to guardianship is appropriate and available for the individual, the department shall pursue that alternative instead of making a referral to the Department of Aging and Disability Services for guardianship services.

(c) The department and the Department of Aging and Disability Services shall enter into a memorandum of understanding that sets forth in detail the roles and duties of each agency regarding the referral for guardianship services under Subsection (a) and the provision of guardianship services to individuals under Subchapter E, Chapter 161.

(d) Nothing in this section shall prohibit the department from also making a referral of an individual to a court having probate jurisdiction in the county where the individual is domiciled or found, if the court has requested the department to notify the court of any individuals who may be appropriate for a court-initiated guardianship proceeding under Chapter 1102, Estates Code. In making a referral under this subsection and if requested by the court, the department shall, to the extent allowed by law, provide the court with all relevant information in the department's records relating to the individual. The court, as part of this process, may not require the department to:

(1) perform the duties of a guardian ad litem or court investigator as prescribed by Chapter 1102, Estates Code; or

(2) gather additional information not contained in the department's records.

(e) The department may not be appointed to serve as temporary or permanent guardian for any individual.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 4, eff. Sept. 1, 1995. Amended by Acts 1995, 74th Leg., ch. 76, Sec. 8.042, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 1039, Sec. 2, eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 1022, Sec. 52, 53, eff. Sept. 1, 1997. Renumbered from Sec. 48.0215 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 27, eff. Sept. 1, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 268 (S.B. 6), Sec. 3.02, eff. September 1, 2005.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.277, eff. April 2, 2015.

Sec. 48.210. REPRESENTATION. (a) Except as provided by Subsection (b), the prosecuting attorney representing the state in criminal cases in the county court shall represent the department in any proceeding under this chapter unless the representation would be a conflict of interest.

(b) In a county having a population of more than 2.8 million, the prosecuting attorney representing the state in civil cases in the county court shall represent the department in any proceeding under this chapter unless the representation would be a conflict of interest.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1987, 70th Leg., ch. 568, Sec. 3, eff. Sept. 1, 1987; Acts 1995, 74th Leg., ch. 303, Sec. 11, eff. Sept. 1, 1995. Renumbered from Sec. 48.040 by Acts 1999, 76th Leg., ch. 907, Sec. 28, eff. Sept. 1, 1999.

Sec. 48.211. REPORT TO GUARDIANSHIP COURT. If the elderly person or person with a disability has a guardian, a written notification of the findings of the investigation shall be sent to the court to which the guardian is accountable.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 29, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.278, eff. April 2, 2015.

SUBCHAPTER F. INVESTIGATIONS OF ABUSE, NEGLECT, OR EXPLOITATION OF INDIVIDUALS RECEIVING SERVICES FROM CERTAIN PROVIDERS

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.

(1-a) "Commission" means the Health and Human Services Commission, notwithstanding Section 48.0021.

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

(2-a) "Executive commissioner" means the executive commissioner of the Health and Human Services Commission, notwithstanding Section 48.0021.

(3) "Facility" means:

(A) a facility listed in Section 532.001(b) or 532A.001(b), Health and Safety Code, as described by those sections, or a person contracting with a health and human services agency to provide inpatient mental health services;

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

(C) a residential child-care facility as defined by Section 42.002 at which an elderly person or an adult with a disability resides or is in the facility's care; and

(D) a home and community support services agency licensed under Chapter 142, Health and Safety Code.

Text of subdivision effective until April 01, 2025

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

Text of subdivision effective on April 01, 2025

(4) "Health and human services agency" has the meaning assigned by Section 521.0001, 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, Health and Safety Code.

Text of subdivision effective until April 01, 2025

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

Text of subdivision effective on April 01, 2025

(8) "Managed care organization" has the meaning assigned by Section 540.0001, Government Code.

Text of subdivision effective until April 01, 2025

(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.

Text of subdivision effective on April 01, 2025

(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 546.0101, 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 investigations conducted under this subchapter.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 31, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.280, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.95, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 15, eff. September 1, 2023.

Sec. 48.252. INVESTIGATION OF REPORTS OF ABUSE, NEGLECT, OR EXPLOITATION BY PROVIDER. (a) Repealed by Acts 2023, 88th Leg.,

R.S., Ch. 887 (H.B. 4696), Sec. 23(3), eff. September 1, 2023.

(b) The department may not investigate under this subchapter reports of 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 commission for investigation.

Text of subsection effective until April 01, 2025

(c) The commission shall receive and investigate under this subchapter reports of abuse, neglect, or exploitation of:

(1) 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; and

(2) an elderly person or an adult with a disability who lives in or is in the care of a residential child-care facility as defined by Section 42.002.

Text of subsection effective on April 01, 2025

(c) The commission shall receive and investigate under this subchapter reports of abuse, neglect, or exploitation of:

(1) 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 542.0001(11)(B), Government Code, regardless of whether the individual is receiving services under that waiver program from the provider; and

(2) an elderly person or an adult with a disability who lives in or is in the care of a residential child-care facility as defined by Section 42.002.

Added by Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995.

Amended by Acts 1997, 75th Leg., ch. 1022, Sec. 57, eff. Sept. 1, 1997; Acts 1997, 75th Leg., ch. 1281, Sec. 1, eff. Sept. 1, 1997. Renumbered from Sec. 48.081 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 32, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 30, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.281, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.96, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 16, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(3), eff. September 1, 2023.

Sec. 48.253. ACTION ON REPORT. (a) On receipt by the commission of a report of alleged abuse, neglect, or exploitation under this subchapter, the commission 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 commission, 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 commission shall notify the provider 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 commission 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.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 17, eff. September 1, 2023.

Sec. 48.2535. FORWARDING CERTAIN REPORTS OF CRIMINAL CONDUCT TO LAW ENFORCEMENT. On receipt by the department of a report of alleged abuse or exploitation under this subchapter that the department believes constitutes an offense under Section 32.55, Penal Code, the department shall immediately notify an appropriate law enforcement agency, regardless of whether the report alleges conduct that constitutes abuse or exploitation for purposes of this subchapter.

Added by Acts 2023, 88th Leg., R.S., Ch. 1076 (S.B. 576), Sec. 2, eff. September 1, 2023.

Sec. 48.254. FORWARDING OF CERTAIN REPORTS. (a) The executive commissioner by rule shall establish procedures for the commission to use to 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.

(b) Repealed by Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(4), eff. September 1, 2023.

(c) A provider that receives the findings of an investigation from the commission report under Subsection (a) shall

forward the findings to the managed care organization with which the provider contracts for services for the alleged victim.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 31, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.282, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 18, eff. September 1, 2023.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 23(4), eff. September 1, 2023.

Sec. 48.255. RULES FOR INVESTIGATIONS UNDER THIS SUBCHAPTER.

(a) The executive commissioner shall adopt 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; and

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

(b) A confirmed investigation finding by the commission may not be changed by the administrator of a facility, a community center, a local mental health authority, or a local intellectual and developmental disability authority.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 32, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.283, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff.

September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 19, eff. September 1, 2023.

Sec. 48.256. SHARING PROVIDER INFORMATION. (a) The executive commissioner shall adopt rules that prescribe the appropriate manner in which managed care organizations provide the commission with information necessary to facilitate the:

(1) identification of individuals receiving services from providers; and

(2) notification of providers by the commission.

(b) The executive commissioner shall adopt rules requiring a provider to provide information necessary to facilitate the:

(1) identification by the commission of individuals receiving services from providers; and

(2) notification of providers by the commission.

Text of subsection effective until April 01, 2025

(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 commission to provide home and community-based services; and

(3) the name of the legal entity that contracted with the commission to provide those services.

Text of subsection effective on April 01, 2025

(c) A provider of home and community-based services under the home and community-based services waiver program described by Section 542.0001(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 commission to provide home and community-based services; and

(3) the name of the legal entity that contracted with the commission to provide those services.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 33, eff. Sept. 1, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 33, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.284, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.97, eff. April 1, 2025.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 20, eff. September 1, 2023.

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.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Sec. 48.258. TRACKING SYSTEM FOR REPORTS AND INVESTIGATIONS. (a) The commission shall develop and implement a system to track reports and investigations under this subchapter.

(b) To facilitate implementation of the system, the commission shall use appropriate methods of measuring the number and outcome of reports and investigations under this subchapter.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 8, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 16, eff. September 1, 2015.

Acts 2023, 88th Leg., R.S., Ch. 887 (H.B. 4696), Sec. 21, eff. September 1, 2023.

SUBCHAPTER G. INVESTIGATIONS IN CERTAIN FACILITIES

Sec. 48.301. INVESTIGATION OF REPORTS IN OTHER STATE FACILITIES. (a) If the department receives a report of suspected abuse, neglect, or exploitation of an elderly person or a person with a disability receiving services in a facility operated, licensed, certified, or registered by a state agency, the department shall refer the report to that agency.

(a-1) This subchapter does not apply to a report of suspected abuse, neglect, or exploitation of an individual receiving services from a provider as described by Subchapter F.

(b) A state agency that receives a report under this section shall make a thorough investigation promptly after receiving a report that an elderly person or person with a disability has been or may be abused, neglected, or exploited in a facility operated, licensed, certified, or registered by the agency. The primary purpose of the investigation is the protection of the elderly person or person with a disability.

(c) Each state agency that may receive reports under this section, or the person responsible for adopting rules for that state agency, shall adopt rules relating to the investigation and resolution of reports received under this section.

(d) The state agency shall prepare and keep on file a

complete written report of each investigation conducted by the state agency under this section.

(e) A state agency that receives a complaint relating to an investigation conducted under this section shall refer the complaint to its governing board, if applicable, or other person or entity designated to receive such complaints for review and appropriate action.

(f) The executive commissioner by rule shall adopt minimum standards for the investigation of suspected abuse, neglect, or exploitation of an elderly person or person with a disability under this section.

(g) A rule or policy adopted by or for a state agency under Subsection (c) must be consistent with the minimum standards adopted by the executive commissioner.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 34, eff. Sept. 1, 1999.

Amended by Acts 2001, 77th Leg., ch. 355, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 284 (S.B. 643), Sec. 34, eff. June 11, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.285, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 9, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 17, eff. September 1, 2015.

Sec. 48.302. APPROVAL OF RULES. The executive commissioner shall review and approve the rules required by Section 48.301(c) to ensure that all agencies implement appropriate standards for the conduct of investigations and that uniformity exists among agencies in the investigation and resolution of reports.

Added by Acts 1999, 76th Leg., ch. 907, Sec. 34, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.286, eff. April 2, 2015.

Sec. 48.303. MEMORANDUM OF UNDERSTANDING. (a) The department shall enter into a memorandum of understanding with each state agency that operates, licenses, certifies, or registers a facility in which elderly persons or persons with disabilities are located that clarifies each agency's responsibility under this chapter.

(b) Not later than the last month of each state fiscal year, the department and the other agencies shall review and update the memorandum.

Added by Acts 1987, 70th Leg., ch. 1052, Sec. 5.01(a), eff. Sept. 1, 1987. Renumbered from Sec. 48.022 and amended by Acts 1999, 76th Leg., ch. 907, Sec. 35, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.287, eff. April 2, 2015.

Sec. 48.304. STATISTICS. (a) A state agency that operates, licenses, certifies, or registers a facility in which elderly persons or persons with disabilities are located shall compile and maintain statistics on the incidence of abuse, neglect, or exploitation of elderly persons or persons with disabilities that occurs in the facilities. A state agency is not required to compile and maintain statistics on the incidence of abuse, neglect, or exploitation of an individual with a disability described under Section 48.252.

(b) The agency shall make the statistics available to the commission on request.

Added by Acts 1981, 67th Leg., p. 2368, ch. 584, Sec. 1, eff. Sept. 1, 1981. Amended by Acts 1983, 68th Leg., p. 730, ch. 172, Sec. 1, eff. Sept. 1, 1983; Acts 1995, 74th Leg., ch. 303, Sec. 14, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 907, Sec. 36, eff. Sept. 1, 1999.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.288, eff. April 2, 2015.

SUBCHAPTER I. EMPLOYEE MISCONDUCT REGISTRY

Sec. 48.401. DEFINITIONS. In this subchapter:

(1) "Agency" means:

(A) an entity licensed under Chapter 142, Health and Safety Code;

(B) a person exempt from licensing under Section 142.003(a)(19) or (20), Health and Safety Code;

(C) a facility licensed under Chapter 252, Health and Safety Code; or

(D) a provider investigated by the department under Subchapter F or under Section 261.404, Family Code.

(2) "Commissioner" means the commissioner of the Department of Family and Protective Services.

Text of subdivision effective until April 01, 2025

(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code;

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code, or an individual receiving services through the consumer-directed service option, as defined by Section 531.051, Government Code; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Section 531.051, Government Code.

Text of subdivision effective on April 01, 2025

(3) "Employee" means a person who:

(A) works for:

(i) an agency; or

(ii) an individual employer participating in the consumer-directed service option, as defined by Section

546.0101, Government Code;

(B) provides personal care services, active treatment, or any other services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Section 261.404, Family Code, or an individual receiving services through the consumer-directed service option, as defined by Section 546.0101, Government Code; and

(C) is not licensed by the state to perform the services the person performs for the agency or the individual employer participating in the consumer-directed service option, as defined by Section 546.0101, Government Code.

(4) "Employee misconduct registry" means the employee misconduct registry established under Chapter 253, Health and Safety Code.

(5) "Reportable conduct" includes:

(A) abuse or neglect that causes or may cause death or harm to an individual receiving agency services;

(B) sexual abuse of an individual receiving agency services;

(C) financial exploitation of an individual receiving agency services in an amount of $25 or more; and

(D) emotional, verbal, or psychological abuse that causes harm to an individual receiving agency services.

Reenacted and amended by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 13.001, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 363 (H.B. 2683), Sec. 10, eff. January 1, 2014.

Acts 2015, 84th Leg., R.S., Ch. 860 (S.B. 1880), Sec. 10, eff. September 1, 2015.

Acts 2015, 84th Leg., R.S., Ch. 1272 (S.B. 760), Sec. 18, eff. September 1, 2015.

Acts 2021, 87th Leg., R.S., Ch. 958 (S.B. 1808), Sec. 4, eff. September 1, 2021.

Acts 2023, 88th Leg., R.S., Ch. 769 (H.B. 4611), Sec. 2.98, eff. April 1, 2025.

Sec. 48.402. RULES RELATING TO REPORTABLE CONDUCT. The executive commissioner may adopt rules to further define reportable conduct.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. 219), Sec. 4.289, eff. April 2, 2015.

Sec. 48.403. FINDING. After an investigation and following the procedures of this subchapter, if the department confirms or validates the occurrence of reportable conduct by an employee, the department shall immediately forward the finding to the Department of Aging and Disability Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 16, eff. June 19, 2009.

Sec. 48.404. NOTICE OF FINDING. (a) The department shall give written notice of the department's findings under Section 48.403 to the employee. The notice must include:

(1) a brief summary of the department's findings;

(2) a statement of the employee's right to a hearing on the department's findings; and

(3) a statement notifying the employee that if the employee fails to timely respond to the notice, the finding that the employee committed the reportable conduct will be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

(b) Not later than the 30th day after the date the notice is received, the employee notified may accept the finding of the department made under Section 48.403 or may make a written request for a hearing on that finding.

(c) If the employee notified of the violation accepts the finding of the department or fails to timely respond to the notice,

the commissioner or the commissioner's designee shall issue an order approving the finding and ordering that the department's findings be forwarded to the Department of Aging and Disability Services to be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 17, eff. June 19, 2009.

Sec. 48.405. HEARING; ORDER. (a) If the employee requests a hearing, the department or its designee shall:

(1) set a hearing;

(2) give written notice of the hearing to the employee; and

(3) designate an administrative law judge to conduct the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and shall promptly issue an order regarding the occurrence of the reportable conduct.

(c) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1056, Sec. 17, eff. September 1, 2011.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 18, eff. June 19, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 16, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1056 (S.B. 221), Sec. 17, eff. September 1, 2011.

Sec. 48.406. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 48.405 to the employee alleged to have committed the reportable conduct. The notice must include:

(1) separate statements of the findings of fact and conclusions of law;

(2) a statement of the right of the employee to judicial review of the order; and

(3) a statement that the reportable conduct will be recorded in the employee misconduct registry under Section 253.007, Health and Safety Code, if:

(A) the employee does not request judicial review of the finding; or

(B) the finding is sustained by the court.

(b) Not later than the 30th day after the date the decision becomes final as provided by Chapter 2001, Government Code, the employee may file a petition for judicial review contesting the finding of the reportable conduct. If the employee does not request judicial review of the finding, the department shall send a record of the department's findings to the Department of Aging and Disability Services to record in the employee misconduct registry under Section 253.007, Health and Safety Code.

(c) Judicial review of the order:

(1) is instituted by filing a petition as provided by Subchapter G, Chapter 2001, Government Code; and

(2) is under the substantial evidence rule.

(d) If the court sustains the finding of the occurrence of the reportable conduct, the department shall forward the finding of reportable conduct to the Department of Aging and Disability Services to record the reportable conduct in the employee misconduct registry under Section 253.007, Health and Safety Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 19, eff. June 19, 2009.

Sec. 48.407. INFORMAL PROCEEDINGS. The executive commissioner by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 20, eff.

June 19, 2009.

Sec. 48.408. INFORMATION FOR THE EMPLOYEE MISCONDUCT REGISTRY. (a) When the department forwards a finding of reportable conduct to the Department of Aging and Disability Services for recording in the employee misconduct registry, the department shall 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) If a governmental agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may send to the Department of Aging and Disability 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.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 1, eff. Jan. 1, 2002.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 763 (S.B. 806), Sec. 21, eff. June 19, 2009.