

HEALTH & SAFETY CODE

CHAPTER 253. EMPLOYEE MISCONDUCT REGISTRY

Sec. 253.001. DEFINITIONS. In this chapter:

- (1) "Commissioner" means the commissioner of human services.
- (2) "Department" means the Texas Department of Human Services.
- (3) "Employee" means a person who:
 - (A) works at a facility;
 - (B) is an individual who provides personal care services, active treatment, or any other personal services to a resident or consumer of the facility;
 - (C) is not licensed by an agency of the state to perform the services the employee performs at the facility; and
 - (D) is not a nurse aide employed by a nursing facility.
- (4) "Facility" means:
 - (A) a facility licensed by the department; or
 - (B) an adult foster care provider that contracts with the department.
- (5) "Reportable conduct" includes:
 - (A) abuse or neglect that causes or may cause death or harm to a resident or consumer of a facility;
 - (B) sexual abuse of a resident or consumer of a facility;
 - (C) financial exploitation of a resident or consumer of a facility in an amount of \$25 or more; and
 - (D) emotional, verbal, or psychological abuse that causes harm to a resident or consumer of a facility.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 6, eff. Sept. 1, 2001.

Sec. 253.002. INVESTIGATION BY DEPARTMENT. If the department receives a report that an employee of a facility committed reportable conduct, the department shall investigate the report to determine whether the employee has committed the reportable conduct.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 7, eff. Sept. 1, 2001.

Sec. 253.003. DETERMINATION; NOTICE. (a) If, after an investigation, the department determines that the reportable conduct occurred, the department shall give written notice of the department's findings. The notice must include:

- (1) a brief summary of the department's findings; and
- (2) a statement of the person's right to a hearing on the occurrence of the reportable conduct.

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

(c) If the employee notified of the violation accepts the determination of the department or fails to timely respond to the notice, the commissioner or the commissioner's designee shall issue an order approving the determination and ordering that the reportable conduct be recorded in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 8, eff. Sept. 1, 2001.

Sec. 253.004. HEARING; ORDER. (a) If the employee requests a hearing, the department shall:

- (1) set a hearing;
- (2) give written notice of the hearing to the employee; and
- (3) designate a hearings examiner to conduct the hearing.

(b) The hearings examiner shall make findings of fact and conclusions of law and shall promptly issue to the commissioner or the commissioner's designee a proposal for decision as to the occurrence of the reportable conduct.

(c) Based on the findings of fact and conclusions of law and the recommendations of the hearings examiner, the commissioner or the commissioner's designee by order may find that the reportable conduct has occurred. If the commissioner or the commissioner's

designee finds that the reportable conduct has occurred, the commissioner or the commissioner's designee shall issue an order approving the determination.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 9, eff. Sept. 1, 2001.

Sec. 253.005. NOTICE; JUDICIAL REVIEW. (a) The department shall give notice of the order under Section 253.004 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 registry under Section 253.007 if:

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

(B) the determination is sustained by the court.

(b) Not later than the 30th day after the date on which 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 determination, the department shall record the reportable conduct in the registry under Section 253.007.

(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 record the reportable conduct in the registry under Section 253.007.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 10, eff. Sept. 1, 2001.

Sec. 253.006. INFORMAL PROCEEDINGS. The department by rule shall adopt procedures governing informal proceedings held in compliance with Section 2001.056, Government Code.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999.

Sec. 253.007. EMPLOYEE MISCONDUCT REGISTRY. (a) If an employee commits reportable conduct, the department shall make a record of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date the reportable conduct occurred, and a description of the reportable conduct.

(b) If an agency of another state or the federal government finds that an employee has committed an act that constitutes reportable conduct, the department may make a record in the employee misconduct registry of the employee's name, the employee's address, the employee's social security number, the name of the facility, the address of the facility, the date of the act, and a description of the act.

(c) The department shall make the registry available to the public.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 11, eff. Sept. 1, 2001.

Sec. 253.0075. RECORDING REPORTABLE CONDUCT REPORTED BY DEPARTMENT OF PROTECTIVE AND REGULATORY SERVICES. On receipt of a finding of reportable conduct by the Department of Protective and Regulatory Services under Subchapter I, Chapter 48, Human Resources Code, the department shall record the information in the employee misconduct registry.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.

Sec. 253.008. VERIFICATION OF EMPLOYABILITY. (a) Before a facility, an agency licensed under Chapter 142, or a person exempt from licensing under Section 142.003(a)(19) may hire an employee, the facility, agency, or person shall search the employee misconduct registry under this chapter and the nurse aide registry maintained under the Omnibus Budget Reconciliation Act of 1987 (Pub. L. No. 100-203) to determine whether the applicant for employment is designated in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an

individual receiving services from an agency licensed under Chapter 142 or from a person exempt from licensing under Section 142.003(a)(19).

(b) A facility, agency licensed under Chapter 142, or a person exempt from licensing under Section 142.003(a)(19) may not employ a person who is listed in either registry as having abused, neglected, or exploited a resident or consumer of a facility or an individual receiving services from an agency licensed under Chapter 142 or from a person exempt from licensing under Section 142.003(a)(19).

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 12, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.68, eff. Sept. 1, 2003.

Sec. 253.009. NOTIFICATION. (a) Each facility, each agency licensed under Chapter 142, and each person exempt from licensing under Section 142.003(a)(19) shall notify its employees in a manner prescribed by the department:

(1) about the employee misconduct registry; and

(2) that an employee may not be employed if the employee is listed in the registry.

(b) The department shall adopt rules to implement this section.

Added by Acts 1999, 76th Leg., ch. 629, Sec. 2, eff. Sept. 1, 1999. Amended by Acts 2001, 77th Leg., ch. 1267, Sec. 13, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 198, Sec. 2.69, eff. Sept. 1, 2003.

Sec. 253.010. REMOVAL FROM REGISTRY. The department may remove a person from the employee misconduct registry if, after receiving a written request from the person, the department determines that the person does not meet the requirements for inclusion in the employee misconduct registry.

Added by Acts 2001, 77th Leg., ch. 1267, Sec. 14, eff. Sept. 1, 2001.