



# HB 2134

## Ensuring Accuracy and Accountability in Child Abuse Medical Consultations

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*Director*

### Purpose

HB 2134 would improve the accuracy and accountability of medical consultations provided to the Department of Family and Protective Services (DFPS) by a health care provider in connection with an investigation into suspected abuse or neglect.

### Background

Chapter 1001, Subchapter F of the Texas Health and Safety Code established the MEDCARES grant program, which provides state funds to selected hospitals for the purpose of developing and supporting programs focused on the assessment, diagnosis, and treatment of child abuse. Through this program and the associated Forensic Assessment Center Network (FACN), the Department of Family and Protective Services has access to a group of Child Abuse Pediatricians (CAPs) for consultation on investigations into suspected abuse or neglect.

Child Abuse Pediatrics is a relatively new subspecialty of medicine, having only been approved by the American Board of Pediatrics and the American Board of Medical Specialties in 2006. The first board certification exam for the subspecialty was held in 2009.

Medical research has identified a number of examples of both common and uncommon conditions that mimic the signs of abuse and have been misdiagnosed as such, causing irreversible harm to children and families who were unjustly separated by the child protective system. The diagnosis of many of these conditions requires consultation with a specialist, such as an orthopedist or neurologist, who has the requisite expertise to accurately identify and treat the condition.

Due to the work of a group of Texas families who were unjustly separated by DFPS because their child's pre-existing medical condition was misdiagnosed as abuse, the 85th Legislature attempted to address this problem by passing

HB 2848 with unanimous support. HB 2848 created Texas Family Code Section 261.3017, which required that a specialty consultation be obtained in certain DFPS investigations to determine if a child's injury or illness is the result of an underlying medical condition. It further required that a blind peer-review process be used in cases where there is disagreement among physicians consulted on the case.

Unfortunately, the intent of the legislation has not been realized due, in part, to an unintended loophole in the language that effectively made the required specialty consultation optional based solely on the judgment of DFPS or the consulting child abuse pediatrician. HB 2134 seeks to close this loophole and ensure that medical reviews provided to DFPS are accurate and peer-reviewed by a neutral, third party.

### Analysis

HB 2134 guarantees the right of families to obtain consultations from medical specialists who are knowledgeable about complex and underdiagnosed conditions that mimic child abuse and ensures the objectivity of medical consultations provided to DFPS in connection with abuse investigations.

Section 1 requires DFPS to obtain a consultation from a physician who specializes in identifying certain enumerated health conditions that mimic abuse at the request or recommendation of:

1. The department investigator or child abuse pediatrician;
2. The child's primary care physician or other physician who has treated the child; or
3. The child's parent or legal guardian or their attorney.

By adding language that allows the specialty consultation to be obtained at the request of the child's primary care physician, another physician who has treated the child, the child's parent, or the family's attorney, HB 2134 ensures that all relevant medical information about the child is given full consideration. This not only protects families against false

accusations of abuse, it improves the quality of the medical information provided to DFPS in connection with an investigation. This section also outlines a process for identifying a specialist with the appropriate credentials to conduct the consultation in the event of a disagreement between the department and the child's parent over the original specialist proposed.

Section 2 ensures the objectivity of medical consultations provided to DFPS in connection with abuse investigations by mitigating potential conflicts of interest. In many cases, the initial report of a suspected abuse or neglect comes from a contracted hospital or a child abuse pediatric team that receives funding through the MEDCARES grant program. These situations present an inherent conflict of interest wherein the individual who is being counted on to provide objective, expert analysis as to whether a child's injuries were caused by abuse either made the initial report of suspected abuse or is paid by the institution that made the initial report.

Section 2 seeks to mitigate these conflicts of interest by requiring that the consultation provided to DFPS in connection with an ongoing investigation be performed by a health care provider that was not involved in making the initial report of suspected abuse or neglect. Consultations are to be provided through a blind peer-review process to protect the privacy of those involved and ensure objectivity in the analysis of medical records.

## Recommendations

The changes implemented in HB 2134 would significantly increase the accuracy of child abuse medical consultations, reducing the risk of false accusations and unnecessary removals. The more accurate and transparent process for conducting medical reviews created by HB 2134 would also serve to strengthen evidence in cases where injuries to a child were the result of abuse or neglect. Finally, and perhaps most importantly, this bill would improve outcomes for children by preventing the trauma associated with unnecessary removal into foster care and allowing children who are found to have one of the medical conditions enumerated in the bill to more quickly receive treatment. ★

## ABOUT THE AUTHOR



**Andrew C. Brown, J.D.**, is the director of the Center for Families & Children at the Texas Public Policy Foundation.

Andrew has dedicated his career to serving vulnerable children and strengthening families through community-focused, liberty-minded solutions. As an attorney, he has represented children in the child welfare system, advocated for the rights of parents, and helped build families through domestic and international adoption.

Andrew earned his B.A. *magna cum laude* in political science from Baylor University and his J.D. from Southern Methodist University Dedman School of Law. He is licensed to practice law in Texas and Virginia. His work on international adoption law and other child welfare issues has been published in leading legal journals and respected media outlets.

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