

By: Nelson, et al.

S.B. No. 643

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the protection and care of individuals with mental
3 retardation who reside in a state developmental center or the
4 ICF-MR component of the Rio Grande State Center.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Subchapter A, Chapter 46B, Code of Criminal
7 Procedure, is amended by adding Article 46B.014 to read as follows:

8 Art. 46B.014. COMMITMENT TO CERTAIN RESIDENTIAL CARE
9 FACILITIES. Except as provided by Article 46B.073, a court may not
10 commit an individual with mental retardation to a residential care
11 facility operated by the Department of Aging and Disability
12 Services unless the court finds that the individual meets the
13 criteria for commitment to a residential care facility as provided
14 by Section 593.052(a-1), Health and Safety Code.

15 SECTION 2. Section 261.404, Family Code, is amended by
16 adding Subsection (b-1) to read as follows:

17 (b-1) If an investigation under this section reveals
18 evidence of abuse, neglect, or exploitation of a resident or client
19 of a state developmental center as defined by Section 531.002,
20 Health and Safety Code, or the ICF-MR component of the Rio Grande
21 State Center, and a caseworker of the department or a supervisor of
22 a caseworker believes that the abuse, neglect, or exploitation is a
23 criminal offense, the caseworker or supervisor shall immediately
24 notify the Health and Human Services Commission's office of

1 inspector general and promptly provide the Health and Human
2 Services Commission's office of inspector general with a copy of
3 the department's investigation report.

4 SECTION 3. Subchapter F, Chapter 411, Government Code, is
5 amended by adding Section 411.1144 to read as follows:

6 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
7 INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE
8 DEVELOPMENTAL CENTERS. (a) The Department of State Health
9 Services and the Department of Aging and Disability Services are
10 entitled to obtain from the department criminal history record
11 information maintained by the department that relates to a person:

12 (1) who is:
13 (A) an applicant for employment with the agency;
14 (B) an employee of the agency;
15 (C) a volunteer with the agency; or
16 (D) an applicant for a volunteer position with
17 the agency; and

18 (2) who would be placed in direct contact with a
19 resident or client of a state developmental center or the ICF-MR
20 component of the Rio Grande State Center.

21 (b) Criminal history record information obtained by an
22 agency under Subsection (a) may not be released or disclosed to any
23 person except:

24 (1) on court order;
25 (2) with the consent of the person who is the subject
26 of the criminal history record information;
27 (3) for purposes of an administrative hearing held by

1 the agency concerning the person who is the subject of the criminal
2 history record information; or

3 (4) as provided by Subsection (c).

4 (c) An agency is not prohibited from releasing criminal
5 history record information obtained under Subsection (a) or (d) to
6 the person who is the subject of the criminal history record
7 information.

8 (d) Subject to Section 411.087, the Department of State
9 Health Services and the Department of Aging and Disability Services
10 are entitled to:

11 (1) obtain through the Federal Bureau of Investigation
12 criminal history record information maintained or indexed by that
13 bureau that pertains to a person described by Subsection (a); and

14 (2) obtain from any other criminal justice agency in
15 this state criminal history record information maintained by that
16 criminal justice agency that relates to a person described by
17 Subsection (a).

18 (e) This section does not prohibit an agency from obtaining
19 and using criminal history record information as provided by other
20 law.

21 SECTION 4. Subchapter C, Chapter 531, Government Code, is
22 amended by adding Section 531.1022 to read as follows:

23 Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW
24 ENFORCEMENT. (a) The office of inspector general shall employ and
25 commission peace officers for the sole purpose of assisting a state
26 or local law enforcement agency in the investigation of an alleged
27 criminal offense involving a resident or client of a state

1 developmental center as defined by Section 531.002, Health and
2 Safety Code, or the ICF-MR component of the Rio Grande State Center.

3 (b) The office of inspector general shall prepare a final
4 report for each investigation conducted under this section. The
5 office shall ensure that the report does not contain identifying
6 information of an individual mentioned in the report. The final
7 report must include:

8 (1) a summary of the activities performed by the
9 office of inspector general in conducting the investigation;

10 (2) a statement regarding whether the investigation
11 resulted in a finding that an alleged criminal offense was
12 committed; and

13 (3) a description of the alleged criminal offense that
14 was committed.

15 (c) The office of inspector general shall deliver the final
16 report to the:

17 (1) executive commissioner;

18 (2) commissioner of the Department of Aging and
19 Disability Services;

20 (3) commissioner of the Department of Family and
21 Protective Services;

22 (4) Aging and Disability Services Council;

23 (5) governor;

24 (6) lieutenant governor;

25 (7) speaker of the house of representatives;

26 (8) standing committees of the senate and house of
27 representatives with primary jurisdiction over state developmental

1 centers;

2 (9) state auditor;

3 (10) alleged victim and the alleged victim's legally
4 authorized representative; and

5 (11) office of the independent ombudsman for state
6 developmental centers.

7 (d) A final report regarding an investigation is subject to
8 required disclosure under Chapter 552. All information and
9 materials compiled by the office of inspector general in connection
10 with an investigation are confidential, and not subject to
11 disclosure under Chapter 552, and not subject to disclosure,
12 discovery, subpoena, or other means of legal compulsion for their
13 release to anyone other than the office or its employees or agents
14 involved in the investigation conducted by the office, except that
15 this information may be disclosed to the office of the attorney
16 general, the state auditor's office, and law enforcement agencies.

17 (e) The office of inspector general shall prepare an annual
18 status report of its activities under this section. The annual
19 report may not contain identifying information of an individual
20 mentioned in the report. The annual status report must include
21 information that is aggregated and disaggregated by individual
22 state developmental center or the ICF-MR component of the Rio
23 Grande State Center regarding:

24 (1) the number and type of alleged offenses
25 investigated by the office;

26 (2) the number and type of alleged offenses involving
27 an employee of a state developmental center or the ICF-MR component

1 of the Rio Grande State Center;

2 (3) the relationship of an alleged victim to an
3 alleged perpetrator;

4 (4) the number of investigations conducted that
5 involve the suicide, death, or hospitalization of an alleged
6 victim; and

7 (5) the number of completed investigations in which
8 commission of the alleged offense was confirmed or unsubstantiated
9 or in which the investigation was inconclusive, and a description
10 of the reason that allegations were unsubstantiated or the
11 investigation was inconclusive.

12 (f) The office of inspector general shall:

13 (1) submit the annual status report to the:

14 (A) executive commissioner;

15 (B) commissioner of the Department of Aging and
16 Disability Services;

17 (C) commissioner of the Department of Family and
18 Protective Services;

19 (D) Aging and Disability Services Council;

20 (E) Family and Protective Services Council;

21 (F) governor;

22 (G) lieutenant governor;

23 (H) speaker of the house of representatives;

24 (I) standing committees of the senate and house
25 of representatives with primary jurisdiction over state
26 developmental centers;

27 (J) state auditor; and

1 (K) comptroller; and

2 (2) publish the report on the Internet website of the
3 office of inspector general.

4 (g) An annual status report submitted under this section is
5 public information under Chapter 552.

6 SECTION 5. Subdivision (17), Section 531.002, Health and
7 Safety Code, is amended to read as follows:

8 (17) "State developmental center [~~school~~]" means a
9 state-supported and structured residential facility operated by
10 the Department of Aging and Disability Services [~~department~~] to
11 provide to clients with mental retardation a variety of services,
12 including medical treatment, specialized therapy, and training in
13 the acquisition of personal, social, and vocational skills.

14 SECTION 6. Chapter 531, Health and Safety Code, is amended
15 by adding Section 531.0021 to read as follows:

16 Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT.

17 (a) A reference in law to a "state school" means a state
18 developmental center.

19 (b) A reference in law to a "superintendent," to the extent
20 the term is intended to refer to the person in charge of a state
21 developmental center, means the director of a state developmental
22 center.

23 SECTION 7. Subsection (b), Section 532.001, Health and
24 Safety Code, is amended to read as follows:

25 (b) The Department of Aging and Disability Services and the
26 Department of State Health Services [~~department~~] also include
27 [~~includes~~] community services operated by those departments [~~the~~

- 1 ~~department]~~ and the following facilities, as appropriate:
- 2 (1) the central office of the department;
 - 3 (2) the Austin State Hospital;
 - 4 (3) the Big Spring State Hospital;
 - 5 (4) the Kerrville State Hospital;
 - 6 (5) the Rusk State Hospital;
 - 7 (6) the San Antonio State Hospital;
 - 8 (7) the Terrell State Hospital;
 - 9 (8) the North Texas State Hospital;
 - 10 (9) the Abilene State Developmental Center [~~School~~];
 - 11 (10) the Austin State Developmental Center [~~School~~];
 - 12 (11) the Brenham State Developmental Center [~~School~~];
 - 13 (12) the Corpus Christi State Developmental Center
 - 14 [~~School~~];
 - 15 (13) the Denton State Developmental Center [~~School~~];
 - 16 (14) the Lubbock State Developmental Center [~~School~~];
 - 17 (15) the Lufkin State Developmental Center [~~School~~];
 - 18 (16) the Mexia State Developmental Center [~~School~~];
 - 19 (17) the Richmond State Developmental Center
 - 20 [~~School~~];
 - 21 (18) the San Angelo State Developmental Center
 - 22 [~~School~~];
 - 23 (19) the San Antonio State Developmental Center
 - 24 [~~School~~];
 - 25 (20) the El Paso State Developmental Center;
 - 26 (21) the Rio Grande State Center; and
 - 27 (22) the Waco Center for Youth.

1 SECTION 8. Section 551.022, Health and Safety Code, is
2 amended by adding Subsection (e) to read as follows:

3 (e) This section does not apply to a state developmental
4 center or the director of a state developmental center.

5 SECTION 9. Subchapter B, Chapter 551, Health and Safety
6 Code, is amended by adding Section 551.0225 to read as follows:

7 Sec. 551.0225. POWERS AND DUTIES OF STATE DEVELOPMENTAL
8 CENTER DIRECTOR. (a) The director of a state developmental center
9 is the administrative head of the center.

10 (b) The director of a state developmental center has the
11 custody of and responsibility to care for the buildings, grounds,
12 furniture, and other property relating to the center.

13 (c) The director of a state developmental center shall:

14 (1) oversee the admission and discharge of residents
15 and clients;

16 (2) keep a register of all residents and clients
17 admitted to or discharged from the center;

18 (3) supervise repairs and improvements to the center;

19 (4) ensure that center money is spent judiciously and
20 economically;

21 (5) keep an accurate and detailed account of all money
22 received and spent, stating the source of the money and on whom and
23 the purpose for which the money is spent; and

24 (6) keep a full record of the center's operations.

25 (d) In accordance with departmental rules and operating
26 procedures, the director of a state developmental center may:

27 (1) establish policy to govern the state developmental

1 center that the director considers will best promote the residents'
2 interest and welfare;

3 (2) hire subordinate employees and set their salaries,
4 in the absence of other law; and

5 (3) dismiss a subordinate employee.

6 SECTION 10. Subtitle B, Title 7, Health and Safety Code, is
7 amended by adding Chapter 555 to read as follows:

8 CHAPTER 555. STATE DEVELOPMENTAL CENTERS

9 SUBCHAPTER A. GENERAL PROVISIONS

10 Sec. 555.001. DEFINITIONS. In this chapter:

11 (1) "Client" means a person with mental retardation
12 who receives ICF-MR services from a state developmental center or
13 the ICF-MR component of the Rio Grande State Center.

14 (2) "Commission" means the Health and Human Services
15 Commission.

16 (3) "Complaint" means information received by the
17 office of independent ombudsman regarding a possible violation of a
18 right of a resident or client of a state developmental center and
19 includes information received regarding a failure by a state
20 developmental center to comply with the department's policies and
21 procedures relating to the community living options information
22 process or related laws.

23 (4) "Department" means the Department of Aging and
24 Disability Services.

25 (5) "Developmental center employee" means an employee
26 of a state developmental center or the ICF-MR component of the Rio
27 Grande State Center.

1 (6) "Direct care employee" means a developmental
2 center employee who provides direct delivery of services to a
3 resident or client.

4 (7) "Executive commissioner" means the executive
5 commissioner of the Health and Human Services Commission.

6 (8) "Independent ombudsman" means the individual who
7 has been appointed to the office of independent ombudsman.

8 (9) "Office" means the office of independent ombudsman
9 established under Subchapter C.

10 (10) "Resident" means a person with mental retardation
11 who resides in a state developmental center or the ICF-MR component
12 of the Rio Grande State Center.

13 (11) "State developmental center" has the meaning
14 assigned by Section 531.002.

15 Sec. 555.002. STATE DEVELOPMENTAL CENTER FOR HIGH-RISK
16 RESIDENTS. (a) The department shall establish a separate state
17 developmental center for the care and supervision of residents who
18 present a high risk of dangerous or violent behavior as provided by
19 Subsections (b) and (c). The department shall designate an
20 existing state developmental center for those high-risk residents.

21 (b) A resident is a high-risk resident if the person:

22 (1) was committed to or transferred to a state
23 developmental center under Chapter 46B or 46C, Code of Criminal
24 Procedure, as a result of being charged with or convicted of an
25 offense listed in Subsection (c);

26 (2) is a child committed to or transferred to a state
27 developmental center under Chapter 55, Family Code, as a result of

1 being alleged by petition or having been found to have engaged in
2 delinquent conduct constituting an offense listed in Subsection
3 (c); or

4 (3) was committed to or transferred to a state
5 developmental center and has at any time been committed for
6 outpatient treatment and supervision as a sexually violent predator
7 under Chapter 841.

8 (c) A resident may be considered a high-risk resident if the
9 person:

10 (1) has intentionally inflicted or attempted to
11 inflict substantial physical harm to another while committed to a
12 state developmental center; or

13 (2) has been convicted of or charged with any of the
14 following offenses:

15 (A) an offense under Chapter 19, Penal Code
16 (criminal homicide);

17 (B) an offense under Chapter 20, Penal Code
18 (kidnapping and unlawful restraint);

19 (C) an offense under Section 21.02, Penal Code
20 (continuous sexual abuse of young child or children);

21 (D) an offense under Section 22.011, Penal Code
22 (sexual assault);

23 (E) an offense under Section 22.02, Penal Code
24 (aggravated assault);

25 (F) an offense under Section 22.021, Penal Code
26 (aggravated sexual assault);

27 (G) an offense under Section 22.04, Penal Code

1 (injury to a child, elderly individual, or disabled
2 individual);

3 (H) an offense under Section 28.02, Penal Code
4 (arson);

5 (I) an offense under Section 29.02, Penal Code
6 (robbery);

7 (J) an offense under Section 29.03, Penal Code
8 (aggravated robbery); or

9 (K) a conviction under the laws of another state,
10 federal law, or the Uniform Code of Military Justice for an offense
11 containing elements that are substantially similar to the elements
12 of an offense listed by this subdivision.

13 (d) In establishing a state developmental center designated
14 for high-risk residents, the department shall:

15 (1) transfer a high-risk resident already residing in
16 a state developmental center to the designated state developmental
17 center;

18 (2) place high-risk residents in separate homes at the
19 designated state developmental center based on whether the
20 high-risk resident is:

21 (A) an adult or a person younger than 18 years of
22 age; or

23 (B) male or female;

24 (3) place all high-risk residents committed to or
25 transferred to a state developmental center in the designated state
26 developmental center; and

27 (4) provide training regarding the service delivery

1 system for high-risk residents to direct care employees of the
2 designated state developmental center.

3 (e) A resident who is transferred to the designated state
4 developmental center is entitled to an administrative hearing
5 regarding a transfer of the resident as provided by Section
6 594.014. In making a determination that a resident should be
7 transferred to the state developmental center for high-risk
8 residents in accordance with Subsection (c)(1), the director of a
9 state developmental center shall document and collect evidence
10 regarding the conduct engaged in by the resident that meets that
11 criteria. The director shall provide the documentation and
12 evidence collected under this section to the department, the
13 independent ombudsman, and the resident or the resident's legally
14 authorized representative before a hearing is held under Section
15 594.014 regarding whether the resident's proposed transfer is
16 appropriate.

17 (f) The department shall ensure that the designated state
18 developmental center complies with the requirements for ICF-MR
19 certification under the Medicaid program as appropriate.

20 [Sections 555.003-555.020 reserved for expansion]

21 SUBCHAPTER B. POWERS AND DUTIES

22 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
23 EMPLOYEES AND VOLUNTEERS. (a) The department and the Department
24 of State Health Services shall perform a state and federal criminal
25 history background check on a person:

26 (1) who is:

27 (A) an applicant for employment with the agency;

1 (B) an employee of the agency;
2 (C) a volunteer with the agency; or
3 (D) an applicant for a volunteer position with
4 the agency; and

5 (2) who would be placed in direct contact with a
6 resident or client at a state developmental center or the ICF-MR
7 component of the Rio Grande State Center.

8 (b) The department and the Department of State Health
9 Services shall require a person described by Subsection (a) to
10 submit fingerprints in a form and of a quality acceptable to the
11 Department of Public Safety and the Federal Bureau of Investigation
12 for use in conducting a criminal history background check.

13 (c) Each agency shall obtain electronic updates from the
14 Department of Public Safety of arrests and convictions of a person:

15 (1) for whom the agency performs a background check
16 under Subsection (a); and

17 (2) who remains an employee or volunteer of the agency
18 and continues to have direct contact with a resident or client.

19 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
20 commissioner shall adopt a policy regarding random testing and
21 reasonable suspicion testing for the illegal use of drugs by an
22 employee of a state developmental center.

23 (b) The director of a state developmental center shall
24 enforce the policy adopted under Subsection (a) by performing
25 necessary drug testing of employees of the state developmental
26 center for the use of a controlled substance as defined by Section
27 481.002.

1 (c) Testing under this section may be performed on a random
2 basis or on reasonable suspicion of the use of a controlled
3 substance.

4 (d) For purposes of this section, a report made under
5 Section 555.023 may be considered a factor in determining whether
6 there is reasonable suspicion of the use of a controlled substance.

7 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
8 executive commissioner shall adopt a policy requiring an employee
9 of a state developmental center who knows or reasonably suspects
10 that another employee of the state developmental center is
11 illegally using or under the influence of a controlled substance,
12 as defined by Section 481.002, to report that knowledge or
13 reasonable suspicion to the director of the state developmental
14 center.

15 Sec. 555.024. DEVELOPMENTAL CENTER EMPLOYEE TRAINING.

16 (a) Before a developmental center employee begins to perform the
17 employee's duties without direct supervision, the department shall
18 provide the employee with competency training and a course of
19 instruction about the general duties of a developmental center
20 employee. The department shall ensure the basic developmental
21 center employee competency course focuses on:

22 (1) the uniqueness of the individuals the
23 developmental center employee serves;

24 (2) techniques for improving quality of life for and
25 promoting the health and safety of individuals with mental
26 retardation; and

27 (3) the conduct expected of developmental center

1 employees.

2 (b) The department shall ensure the training required by
3 Subsection (a) provides instruction and information regarding the
4 following topics:

5 (1) the general operation and layout of the state
6 developmental center, including armed intruder lockdown
7 procedures;

8 (2) an introduction to mental retardation;

9 (3) an introduction to mental illness and dual
10 diagnosis;

11 (4) the rights of individuals with mental retardation
12 who receive services from the department;

13 (5) respecting personal choices made by residents and
14 clients;

15 (6) the safe and proper use of restraints;

16 (7) recognizing and reporting:

17 (A) abuse, neglect, and exploitation of
18 individuals with mental retardation;

19 (B) unusual incidents;

20 (C) reasonable suspicion of illegal drug use in
21 the workplace;

22 (D) workplace violence; and

23 (E) sexual harassment in the workplace;

24 (8) preventing and treating infection;

25 (9) first aid;

26 (10) cardiopulmonary resuscitation;

27 (11) the Health Insurance Portability and

1 Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.); and

2 (12) the rights of developmental center employees.

3 (c) In addition to the training required by Subsection (a)
4 and before a direct care employee begins to perform the direct care
5 employee's duties without direct supervision, the department shall
6 provide a direct care employee with training and instructional
7 information regarding implementation of the interdisciplinary
8 treatment program for each client for whom the direct care employee
9 will provide direct care, which shall include the following topics:

10 (1) prevention and management of aggressive or
11 high-risk behavior;

12 (2) observing and reporting changes in behavior,
13 appearance, or health of residents and clients;

14 (3) positive behavior support;

15 (4) emergency response;

16 (5) person-directed plans;

17 (6) seizure safety;

18 (7) techniques for:

19 (A) lifting;

20 (B) positioning; and

21 (C) movement and mobility;

22 (8) working with aging residents and clients;

23 (9) assisting residents and clients:

24 (A) who have a visual impairment;

25 (B) who have a hearing deficit; or

26 (C) who require the use of adaptive devices and
27 specialized equipment;

1 (10) communicating with residents and clients who use
2 augmentative and alternative devices for communication;

3 (11) assisting residents and clients with personal
4 hygiene;

5 (12) recognizing appropriate food textures;

6 (13) using proper feeding techniques to assist
7 residents and clients with meals;

8 (14) physical and nutritional management plans; and

9 (15) home and community-based services (HCS),
10 including the principles of community inclusion and participation
11 and the community living options information process.

12 Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,
13 "private space" means a place in a state developmental center or the
14 ICF-MR component of the Rio Grande State Center in which a resident
15 or client has a reasonable expectation of privacy, including:

16 (1) a bedroom;

17 (2) a bathroom;

18 (3) a place in which a resident or client receives
19 medical or nursing services;

20 (4) a place in which a resident or client meets
21 privately with visitors; or

22 (5) a place in which a resident or client privately
23 makes phone calls.

24 (b) The department shall install and operate video
25 surveillance equipment in a state developmental center and the
26 ICF-MR component of the Rio Grande State Center for the purpose of
27 detecting and preventing the exploitation or abuse of residents and

1 clients.

2 (c) The department may not install or operate video
3 surveillance equipment in a private space or in a location in which
4 video surveillance equipment can capture images within a private
5 space.

6 (d) The department shall ensure the use of video
7 surveillance equipment under this section complies with federal
8 requirements for ICF-MR certification.

9 Sec. 555.026. MORTALITY REVIEW. (a) The executive
10 commissioner shall establish an independent mortality review
11 system to review the death of a person who, at the time of the
12 person's death, was a resident or client.

13 (b) A review under this section shall be conducted in
14 addition to any review conducted by the state developmental center
15 or the Rio Grande State Center. To ensure consistency across
16 mortality review systems, a review under this section must collect
17 information consistent with the information required to be
18 collected by any other independent mortality review process
19 established specifically for persons with mental retardation.

20 (c) The executive commissioner shall contract with a
21 patient safety organization certified in accordance with 42 C.F.R.
22 Part 3, as effective on January 20, 2009, to conduct independent
23 mortality reviews required by this section. The contract must
24 require the patient safety organization to conduct an independent
25 mortality review using a team consisting of:

26 (1) a physician with expertise regarding the medical
27 treatment of individuals with mental retardation;

1 (2) a registered nurse with expertise regarding the
2 medical treatment of individuals with mental retardation;

3 (3) a clinician or other professional with expertise
4 in the delivery of services and supports for individuals with
5 mental retardation; and

6 (4) any other appropriate person as provided by the
7 executive commissioner.

8 (d) A patient safety organization that performs an
9 independent mortality review shall, to the extent allowed by
10 federal law, submit:

11 (1) to the department, the office of independent
12 ombudsman, this state's federally authorized protection and
13 advocacy system for individuals with developmental disabilities,
14 and the commission's office of inspector general a report of the
15 findings of the mortality review; and

16 (2) semiannually to the lieutenant governor, the
17 speaker of the house of representatives, and the standing
18 committees of the senate and house of representatives with primary
19 jurisdiction over state developmental centers a report that
20 contains:

21 (A) aggregate information regarding the deaths
22 for which the patient safety organization performed an independent
23 mortality review;

24 (B) trends in the causes of death identified by
25 the patient safety organization; and

26 (C) any suggestions for system-wide improvements
27 to address conditions that contributed to deaths reviewed by the

1 patient safety organization.

2 (e) The department may use information from a mortality
3 review report only to advance statewide practices regarding the
4 treatment and care of individuals with mental retardation or other
5 disabilities.

6 (f) The department may release a summary or a statistical
7 compilation of data drawn from reports submitted under this section
8 only if the summary or statistical compilation does not contain
9 information that would permit the identification of an individual.

10 [Sections 555.027-555.050 reserved for expansion]

11 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

12 DEVELOPMENTAL CENTERS

13 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
14 independent ombudsman is established for the purpose of
15 investigating, evaluating, and securing the rights of the residents
16 and clients of state developmental centers. The office is
17 administratively attached to the department. The department shall
18 provide administrative support and resources to the office as
19 necessary for the office to perform its duties.

20 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
21 the performance of the ombudsman's duties and powers under this
22 subchapter acts independently of the department.

23 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The
24 governor shall appoint the independent ombudsman.

25 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
26 ombudsman shall:

27 (1) hire assistant ombudsmen to perform, under the

1 direction of the independent ombudsman, the same duties and
2 exercise the same powers as the independent ombudsman; and

3 (2) station an assistant ombudsman at each state
4 developmental center.

5 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
6 as independent ombudsman or as an assistant ombudsman if the person
7 or the person's spouse:

8 (1) is employed by or participates in the management
9 of a business entity or other organization receiving funds from the
10 department;

11 (2) owns or controls, directly or indirectly, any
12 interest in a business entity or other organization receiving funds
13 from the department; or

14 (3) is required to register as a lobbyist under
15 Chapter 305, Government Code, because of the person's activities or
16 compensation on behalf of a profession related to the operation of
17 the department.

18 Sec. 555.056. REPORT. (a) The independent ombudsman shall
19 submit on a biannual basis to the governor, the lieutenant
20 governor, and the speaker of the house of representatives a report
21 that is both aggregated and disaggregated by individual state
22 developmental center and describes:

23 (1) the work of the independent ombudsman;

24 (2) the results of any review or investigation
25 undertaken by the independent ombudsman, including reviews or
26 investigation of services contracted by the department; and

27 (3) any recommendations that the independent

1 ombudsman has in relation to the duties of the independent
2 ombudsman.

3 (b) The independent ombudsman shall ensure that information
4 submitted in a report under Subsection (a) does not permit the
5 identification of an individual.

6 (c) The independent ombudsman shall immediately report to
7 the governor, lieutenant governor, and speaker of the house of
8 representatives any particularly serious or flagrant:

9 (1) case of abuse or injury of a resident or client
10 about which the independent ombudsman is made aware;

11 (2) problem concerning the administration of a state
12 developmental center program or operation; or

13 (3) interference by a state developmental center, the
14 department, or the commission with an investigation conducted by
15 the independent ombudsman.

16 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
17 department shall allow any resident or client, authorized
18 representative of a resident or client, family member of a resident
19 or client, or other interested party to communicate with the
20 independent ombudsman or an assistant ombudsman. The
21 communication:

22 (1) may be in person, by mail, or by any other means;
23 and

24 (2) is confidential and privileged.

25 (b) The records of the independent ombudsman are
26 confidential, except that the independent ombudsman shall:

27 (1) report to the Department of Family and Protective

1 Services regarding a communication that may involve the abuse,
2 neglect, or exploitation of a resident or client;

3 (2) report to the regulatory services division of the
4 department regarding a communication that may involve a violation
5 of an ICF-MR standard or condition of participation; and

6 (3) disclose the ombudsman's nonprivileged records if
7 required by a court order on a showing of good cause.

8 (c) The independent ombudsman may make reports relating to
9 an investigation conducted by the ombudsman public after the
10 investigation is complete but only if the name and any other
11 personally identifiable information of a resident or client,
12 authorized representative of a resident or client, family member of
13 a resident or client, state developmental center, and employee of a
14 state developmental center are redacted from the report and remain
15 confidential.

16 (d) The name, address, or other personally identifiable
17 information of a person who files a complaint with the office of
18 independent ombudsman, information generated by the office of
19 independent ombudsman in the course of an investigation, and
20 confidential records obtained by the office of independent
21 ombudsman are confidential and not subject to disclosure under
22 Chapter 552, Government Code, except as provided by this section.

23 Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The
24 independent ombudsman shall promote awareness among the public,
25 residents, clients, and employees of state developmental centers
26 of:

27 (1) how the office may be contacted;

1 (2) the purpose of the office; and

2 (3) the services the office provides.

3 Sec. 555.059. DUTIES AND POWERS. (a) The independent
4 ombudsman shall:

5 (1) evaluate the delivery of services to residents and
6 clients to ensure that the rights of residents and clients are fully
7 observed;

8 (2) refer a complaint alleging the abuse, neglect, or
9 exploitation of a resident or client to the Department of Family and
10 Protective Services for investigation;

11 (3) refer a complaint alleging a possible violation of
12 an ICF-MR standard or condition of participation to the regulatory
13 services division of the department;

14 (4) refer a complaint alleging a criminal offense,
15 other than an allegation of abuse, neglect, or exploitation of a
16 resident or client, to the commission's office of inspector
17 general;

18 (5) conduct investigations of complaints, other than
19 complaints alleging criminal offenses or the abuse, neglect, or
20 exploitation of a resident or client, if the office determines
21 that:

22 (A) a resident or client or the resident's or
23 client's family may be in need of assistance from the office; or

24 (B) a complaint raises the possibility of a
25 systemic issue in the state developmental center's provision of
26 services;

27 (6) conduct semiannual on-site audits, including

1 meetings with residents and employees of the state developmental
2 center, of each state developmental center's policies, practices,
3 and procedures to ensure that each resident and client is
4 encouraged to exercise the resident's or client's rights,
5 including:

6 (A) the right to file a complaint; and

7 (B) the right to due process;

8 (7) conduct biennial on-site audits at each state
9 developmental center and the ICF-MR component of the Rio Grande
10 State Center of:

11 (A) the ratio of direct care employees to
12 residents;

13 (B) the provision and adequacy of training to:

14 (i) developmental center employees; and

15 (ii) direct care employees; and

16 (C) if the state developmental center serves
17 high-risk residents, the provision of specialized training to
18 direct care employees;

19 (8) prepare and deliver an annual report regarding the
20 findings of each audit to the:

21 (A) executive commissioner;

22 (B) commissioner;

23 (C) Aging and Disability Services Council;

24 (D) governor;

25 (E) lieutenant governor;

26 (F) speaker of the house of representatives;

27 (G) standing committees of the senate and house

1 of representatives with primary jurisdiction over state
2 developmental centers; and

3 (H) state auditor;

4 (9) require a state developmental center to provide
5 access to all records, data, and other information under the
6 control of the center that the independent ombudsman determines is
7 necessary to investigate a complaint or to conduct an audit under
8 this section;

9 (10) review all final reports produced by the
10 Department of Family and Protective Services and the regulatory
11 services division of the department regarding a complaint referred
12 by the independent ombudsman;

13 (11) provide assistance to a resident, client,
14 authorized representative of a resident or client, or family member
15 of a resident or client who the independent ombudsman determines is
16 in need of assistance, including advocating with an agency,
17 provider, or other person in the best interests of the resident or
18 client; and

19 (12) make appropriate referrals under any of the
20 duties and powers listed in this subsection.

21 (b) The independent ombudsman may apprise a person who is
22 interested in a resident's or client's welfare of the rights of the
23 resident or client.

24 (c) To assess whether a resident's or client's rights have
25 been violated, the independent ombudsman may, in any matter that
26 does not involve an alleged criminal offense or the abuse, neglect,
27 or exploitation of a resident or client, contact or consult with an

1 administrator, employee, resident, client, family member of a
2 resident or client, expert, or other individual in the course of the
3 investigation or to secure information.

4 (d) Notwithstanding any other provision of this chapter,
5 the independent ombudsman may not investigate an alleged criminal
6 offense or the alleged abuse, neglect, or exploitation of a
7 resident or client.

8 Sec. 555.060. RETALIATION PROHIBITED. The department or a
9 state developmental center may not retaliate against a department
10 employee or employee of a state developmental center who in good
11 faith makes a complaint to the office of independent ombudsman or
12 cooperates with the office in an investigation.

13 Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall
14 establish a permanent, toll-free number for the purpose of
15 receiving any information concerning the violation of a right of a
16 resident or client.

17 (b) The office shall ensure that:

18 (1) the toll-free number is prominently displayed in
19 the main administration area of a state developmental center and in
20 each home in which a resident lives or a client receives services;
21 and

22 (2) a resident, a client, the authorized
23 representative of a resident, and an employee of a state
24 developmental center have confidential access to a telephone for
25 the purpose of calling the toll-free number.

26 SECTION 11. Section 593.042, Health and Safety Code, is
27 amended by adding Subsection (c) to read as follows:

1 (c) An application for commitment of a person to a
2 residential care facility operated by the Department of Aging and
3 Disability Services must include a statement demonstrating that the
4 proposed resident meets the requirements for commitment to a
5 residential care facility under Section 593.052(a-1).

6 SECTION 12. Section 593.052, Health and Safety Code, is
7 amended by amending Subsections (a) and (b) and adding Subsections
8 (a-1) and (b-1) to read as follows:

9 (a) A proposed resident may not be committed to a
10 residential care facility operated by a community center unless:

11 (1) the proposed resident is a person with mental
12 retardation;

13 (2) evidence is presented showing that because of
14 retardation, the proposed resident:

15 (A) represents a substantial risk of physical
16 impairment or injury to himself or others; or

17 (B) is unable to provide for and is not providing
18 for the proposed resident's most basic personal physical needs;

19 (3) the proposed resident cannot be adequately and
20 appropriately habilitated in an available, less restrictive
21 setting; and

22 (4) the residential care facility operated by the
23 community center provides habilitative services, care, training,
24 and treatment appropriate to the proposed resident's needs.

25 (a-1) A proposed resident may not be committed to a
26 residential care facility operated by the Department of Aging and
27 Disability Services unless:

1 (1) the proposed resident is a person with:

2 (A) severe or profound mental retardation; or

3 (B) mild or moderate mental retardation who:

4 (i) has extraordinary medical needs; or

5 (ii) exhibits dangerous behavior that

6 represents a substantial risk of physical impairment or injury to

7 self or others;

8 (2) evidence is presented showing that the proposed

9 resident:

10 (A) represents a substantial risk of physical
11 impairment or injury to self or others; or

12 (B) is unable to provide for and is not providing
13 for the proposed resident's most basic personal physical needs;

14 (3) the proposed resident cannot be adequately and
15 appropriately habilitated in an available, less restrictive
16 setting; and

17 (4) the residential care facility operated by the
18 Department of Aging and Disability Services provides habilitative
19 services, care, training, and treatment appropriate to the proposed
20 resident's needs.

21 (b) If it is determined that the requirements of Subsection
22 (a) have been met and that long-term placement in a residential care
23 facility operated by a community center is appropriate, the court
24 shall commit the proposed resident for care, treatment, and
25 training to a community center [~~or the department~~] when space is
26 available in a residential care facility operated by a community
27 center.

1 (b-1) If it is determined that the requirements of
2 Subsection (a-1) have been met and that long-term placement in a
3 residential care facility operated by the Department of Aging and
4 Disability Services is appropriate, the court shall commit the
5 proposed resident for care, treatment, and training to the
6 department when space is available in a residential care facility
7 operated by the department.

8 SECTION 13. Section 48.252, Human Resources Code, is
9 amended by adding Subsection (d) to read as follows:

10 (d) If an investigation under this section reveals evidence
11 of the abuse, neglect, or exploitation of a resident or client of a
12 state developmental center as defined by Section 531.002, Health
13 and Safety Code, or the ICF-MR component of the Rio Grande State
14 Center, and a caseworker of the department or a supervisor of a
15 caseworker believes that the abuse, neglect, or exploitation is a
16 criminal offense, the caseworker or supervisor shall immediately
17 notify the Health and Human Services Commission's office of
18 inspector general and promptly provide the Health and Human
19 Services Commission's office of inspector general with a copy of
20 the department's investigation report.

21 SECTION 14. (a) Not later than December 1, 2009, the
22 Health and Human Services Commission's office of inspector general
23 shall begin employing peace officers as required by Section
24 531.1022, Government Code, as added by this Act.

25 (b) Not later than September 1, 2014, the Department of
26 Aging and Disability Services shall designate a state developmental
27 center for high-risk residents as required by Section 555.002,

1 Health and Safety Code, as added by this Act.

2 (c) Not later than January 1, 2010, the Department of Aging
3 and Disability Services shall develop the training required by
4 Section 555.024, Health and Safety Code, as added by this Act.

5 (d) The Department of Aging and Disability Services shall
6 ensure that all developmental center employees and direct care
7 employees receive the training required by Section 555.024, Health
8 and Safety Code, as added by this Act, regardless of when the
9 employee was hired, not later than September 1, 2010.

10 (e) Not later than December 1, 2009, the executive
11 commissioner of the Health and Human Services Commission shall
12 contract for mortality review services as required by Section
13 555.026, Health and Safety Code, as added by this Act.

14 (f) Not later than December 1, 2009, the governor shall
15 appoint the independent ombudsman as required by Section 555.053,
16 Health and Safety Code, as added by this Act.

17 SECTION 15. Section 411.1144, Government Code, as added by
18 this Act, and Section 555.021, Health and Safety Code, as added by
19 this Act, apply only to background and criminal history checks
20 performed on or after the effective date of this Act.

21 SECTION 16. (a) The change in law made by Subsection (e),
22 Section 551.022, Health and Safety Code, as added by this Act, and
23 the change in law made by Section 551.0225, Health and Safety Code,
24 as added by this Act, apply to the dismissal of an employee of a
25 state developmental center hired on or after the effective date of
26 this Act.

27 (b) The dismissal of an employee of a state developmental

1 center hired before the effective date of this Act is governed by
2 the law in effect when the employee was hired, and the former law is
3 continued in effect for that purpose.

4 SECTION 17. (a) Sections 593.042 and 593.052, Health and
5 Safety Code, as amended by this Act, apply only to an order for
6 commitment to a residential care facility based on an application
7 filed on or after the effective date of this Act.

8 (b) An order for commitment to a residential care facility
9 based on an application filed before the effective date of this Act
10 is governed by the law in effect at the time the application was
11 filed, and the former law is continued in effect for that purpose.

12 SECTION 18. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2009.