

1-1 By: Nelson, et al. S.B. No. 643
1-2 (In the Senate - Filed February 3, 2009; February 10, 2009,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; March 2, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0, 1
1-6 present not voting; March 2, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 643 By: Nelson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the protection and care of individuals with mental
1-11 retardation who reside in a state developmental center or the
1-12 ICF-MR component of the Rio Grande State Center.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subchapter A, Chapter 46B, Code of Criminal
1-15 Procedure, is amended by adding Article 46B.014 to read as follows:

1-16 Art. 46B.014. COMMITMENT TO CERTAIN RESIDENTIAL CARE
1-17 FACILITIES. A court may not commit an individual with mental
1-18 retardation to a residential care facility operated by the
1-19 Department of Aging and Disability Services unless the court finds
1-20 that the individual meets the criteria for commitment to a
1-21 residential care facility as provided by Section 593.052(a-1),
1-22 Health and Safety Code.

1-23 SECTION 2. Subchapter A, Chapter 46C, Code of Criminal
1-24 Procedure, is amended by adding Article 46C.003 to read as follows:

1-25 Art. 46C.003. COMMITMENT TO CERTAIN RESIDENTIAL CARE
1-26 FACILITIES. A court may not commit an individual with mental
1-27 retardation to a residential care facility operated by the
1-28 Department of Aging and Disability Services unless the court finds
1-29 that the individual meets the criteria for commitment to a
1-30 residential care facility as provided by Section 593.052(a-1),
1-31 Health and Safety Code.

1-32 SECTION 3. Subchapter A, Chapter 55, Family Code, is
1-33 amended by adding Section 55.04 to read as follows:

1-34 Sec. 55.04. COMMITMENT TO CERTAIN RESIDENTIAL CARE
1-35 FACILITIES. A juvenile court may not commit a child with mental
1-36 retardation to a residential care facility operated by the
1-37 Department of Aging and Disability Services unless the juvenile
1-38 court finds that the child meets the criteria for commitment to a
1-39 residential care facility as provided by Section 593.052(a-1),
1-40 Health and Safety Code.

1-41 SECTION 4. Section 261.404, Family Code, is amended by
1-42 adding Subsection (b-1) to read as follows:

1-43 (b-1) If an investigation under this section reveals
1-44 evidence of abuse, neglect, or exploitation of a resident or client
1-45 of a state developmental center as defined by Section 531.002,
1-46 Health and Safety Code, or the ICF-MR component of the Rio Grande
1-47 State Center, and a caseworker of the department or a supervisor of
1-48 a caseworker believes that the abuse, neglect, or exploitation is a
1-49 criminal offense, the caseworker or supervisor shall immediately
1-50 notify the Health and Human Services Commission's office of
1-51 inspector general and promptly provide the Health and Human
1-52 Services Commission's office of inspector general with a copy of
1-53 the department's investigation report.

1-54 SECTION 5. Subchapter F, Chapter 411, Government Code, is
1-55 amended by adding Section 411.1144 to read as follows:

1-56 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
1-57 INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE
1-58 DEVELOPMENTAL CENTERS. (a) The Department of State Health
1-59 Services and the Department of Aging and Disability Services are
1-60 entitled to obtain from the department criminal history record
1-61 information maintained by the department that relates to a person:

1-62 (1) who is:

1-63 (A) an applicant for employment with the agency;

2-1 (B) an employee of the agency;
 2-2 (C) a volunteer with the agency; or
 2-3 (D) an applicant for a volunteer position with
 2-4 the agency; and
 2-5 (2) who would be placed in direct contact with a
 2-6 resident or client of a state developmental center or the ICF-MR
 2-7 component of the Rio Grande State Center.
 2-8 (b) Criminal history record information obtained by an
 2-9 agency under Subsection (a) may not be released or disclosed to any
 2-10 person except:
 2-11 (1) on court order;
 2-12 (2) with the consent of the person who is the subject
 2-13 of the criminal history record information;
 2-14 (3) for purposes of an administrative hearing held by
 2-15 the agency concerning the person who is the subject of the criminal
 2-16 history record information; or
 2-17 (4) as provided by Subsection (c).
 2-18 (c) An agency is not prohibited from releasing criminal
 2-19 history record information obtained under Subsection (a) or (d) to
 2-20 the person who is the subject of the criminal history record
 2-21 information.
 2-22 (d) Subject to Section 411.087, the Department of State
 2-23 Health Services and the Department of Aging and Disability Services
 2-24 are entitled to:
 2-25 (1) obtain through the Federal Bureau of Investigation
 2-26 criminal history record information maintained or indexed by that
 2-27 bureau that pertains to a person described by Subsection (a); and
 2-28 (2) obtain from any other criminal justice agency in
 2-29 this state criminal history record information maintained by that
 2-30 criminal justice agency that relates to a person described by
 2-31 Subsection (a).
 2-32 (e) This section does not prohibit an agency from obtaining
 2-33 and using criminal history record information as provided by other
 2-34 law.
 2-35 SECTION 6. Subchapter C, Chapter 531, Government Code, is
 2-36 amended by adding Section 531.1022 to read as follows:
 2-37 Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW
 2-38 ENFORCEMENT. (a) The office of inspector general shall employ and
 2-39 commission peace officers for the sole purpose of assisting a state
 2-40 or local law enforcement agency in the investigation of an alleged
 2-41 criminal offense involving a resident or client of a state
 2-42 developmental center as defined by Section 531.002, Health and
 2-43 Safety Code, or the ICF-MR component of the Rio Grande State Center.
 2-44 (b) The office of inspector general shall prepare a final
 2-45 report for each investigation conducted under this section. The
 2-46 office shall ensure that the report does not contain identifying
 2-47 information of an individual mentioned in the report. The final
 2-48 report must include:
 2-49 (1) a summary of the activities performed by the
 2-50 office of inspector general in conducting the investigation;
 2-51 (2) a statement regarding whether the investigation
 2-52 resulted in a finding that an alleged criminal offense was
 2-53 committed; and
 2-54 (3) a description of the alleged criminal offense that
 2-55 was committed.
 2-56 (c) The office of inspector general shall deliver the final
 2-57 report to the:
 2-58 (1) executive commissioner;
 2-59 (2) commissioner of the Department of Aging and
 2-60 Disability Services;
 2-61 (3) commissioner of the Department of Family and
 2-62 Protective Services;
 2-63 (4) Aging and Disability Services Council;
 2-64 (5) governor;
 2-65 (6) lieutenant governor;
 2-66 (7) speaker of the house of representatives;
 2-67 (8) standing committees of the senate and house of
 2-68 representatives with primary jurisdiction over state developmental
 2-69 centers;

3-1 (9) state auditor;
3-2 (10) alleged victim and the alleged victim's legally
3-3 authorized representative; and
3-4 (11) office of the independent ombudsman for state
3-5 developmental centers.

3-6 (d) A final report regarding an investigation is subject to
3-7 required disclosure under Chapter 552. All information and
3-8 materials compiled by the office of inspector general in connection
3-9 with an investigation are confidential, and not subject to
3-10 disclosure under Chapter 552, and not subject to disclosure,
3-11 discovery, subpoena, or other means of legal compulsion for their
3-12 release to anyone other than the office or its employees or agents
3-13 involved in the investigation conducted by the office, except that
3-14 this information may be disclosed to the office of the attorney
3-15 general, the state auditor's office, and law enforcement agencies.

3-16 (e) The office of inspector general shall prepare an annual
3-17 status report of its activities under this section. The annual
3-18 report may not contain identifying information of an individual
3-19 mentioned in the report. The annual status report must include
3-20 information that is aggregated and disaggregated by individual
3-21 state developmental center or the ICF-MR component of the Rio
3-22 Grande State Center regarding:

3-23 (1) the number and type of alleged offenses
3-24 investigated by the office;

3-25 (2) the number and type of alleged offenses involving
3-26 an employee of a state developmental center or the ICF-MR component
3-27 of the Rio Grande State Center;

3-28 (3) the relationship of an alleged victim to an
3-29 alleged perpetrator;

3-30 (4) the number of investigations conducted that
3-31 involve the suicide, death, or hospitalization of an alleged
3-32 victim; and

3-33 (5) the number of completed investigations in which
3-34 commission of the alleged offense was confirmed or unsubstantiated
3-35 or in which the investigation was inconclusive, and a description
3-36 of the reason that allegations were unsubstantiated or the
3-37 investigation was inconclusive.

3-38 (f) The office of inspector general shall:

3-39 (1) submit the annual status report to the:

3-40 (A) executive commissioner;

3-41 (B) commissioner of the Department of Aging and
3-42 Disability Services;

3-43 (C) commissioner of the Department of Family and
3-44 Protective Services;

3-45 (D) Aging and Disability Services Council;

3-46 (E) Family and Protective Services Council;

3-47 (F) governor;

3-48 (G) lieutenant governor;

3-49 (H) speaker of the house of representatives;

3-50 (I) standing committees of the senate and house
3-51 of representatives with primary jurisdiction over state
3-52 developmental centers;

3-53 (J) state auditor; and

3-54 (K) comptroller; and

3-55 (2) publish the report on the Internet website of the
3-56 office of inspector general.

3-57 (g) An annual status report submitted under this section is
3-58 public information under Chapter 552.

3-59 SECTION 7. Subdivision (17), Section 531.002, Health and
3-60 Safety Code, is amended to read as follows:

3-61 (17) "State developmental center [~~school~~]" means a
3-62 state-supported and structured residential facility operated by
3-63 the Department of Aging and Disability Services [~~department~~] to
3-64 provide to clients with mental retardation a variety of services,
3-65 including medical treatment, specialized therapy, and training in
3-66 the acquisition of personal, social, and vocational skills.

3-67 SECTION 8. Chapter 531, Health and Safety Code, is amended
3-68 by adding Section 531.0021 to read as follows:

3-69 Sec. 531.0021. REFERENCE TO STATE SCHOOL OR SUPERINTENDENT.

4-1 (a) A reference in law to a "state school" means a state
 4-2 developmental center.

4-3 (b) A reference in law to a "superintendent," to the extent
 4-4 the term is intended to refer to the person in charge of a state
 4-5 developmental center, means the director of a state developmental
 4-6 center.

4-7 SECTION 9. Subsection (b), Section 532.001, Health and
 4-8 Safety Code, is amended to read as follows:

4-9 (b) The Department of Aging and Disability Services and the
 4-10 Department of State Health Services [~~department~~] also include
 4-11 [~~includes~~] community services operated by those departments [~~the~~
 4-12 ~~department~~] and the following facilities, as appropriate:

- 4-13 (1) the central office of the department;
- 4-14 (2) the Austin State Hospital;
- 4-15 (3) the Big Spring State Hospital;
- 4-16 (4) the Kerrville State Hospital;
- 4-17 (5) the Rusk State Hospital;
- 4-18 (6) the San Antonio State Hospital;
- 4-19 (7) the Terrell State Hospital;
- 4-20 (8) the North Texas State Hospital;
- 4-21 (9) the Abilene State Developmental Center [~~School~~];
- 4-22 (10) the Austin State Developmental Center [~~School~~];
- 4-23 (11) the Brenham State Developmental Center [~~School~~];
- 4-24 (12) the Corpus Christi State Developmental Center
 4-25 [~~School~~];
- 4-26 (13) the Denton State Developmental Center [~~School~~];
- 4-27 (14) the Lubbock State Developmental Center [~~School~~];
- 4-28 (15) the Lufkin State Developmental Center [~~School~~];
- 4-29 (16) the Mexia State Developmental Center [~~School~~];
- 4-30 (17) the Richmond State Developmental Center
 4-31 [~~School~~];
- 4-32 (18) the San Angelo State Developmental Center
 4-33 [~~School~~];
- 4-34 (19) the San Antonio State Developmental Center
 4-35 [~~School~~];
- 4-36 (20) the El Paso State Developmental Center;
- 4-37 (21) the Rio Grande State Center; and
- 4-38 (22) the Waco Center for Youth.

4-39 SECTION 10. Section 551.022, Health and Safety Code, is
 4-40 amended by adding Subsection (e) to read as follows:

4-41 (e) This section does not apply to a state developmental
 4-42 center or the director of a state developmental center.

4-43 SECTION 11. Subchapter B, Chapter 551, Health and Safety
 4-44 Code, is amended by adding Section 551.0225 to read as follows:

4-45 Sec. 551.0225. POWERS AND DUTIES OF STATE DEVELOPMENTAL
 4-46 CENTER DIRECTOR. (a) The director of a state developmental center
 4-47 is the administrative head of the center.

4-48 (b) The director of a state developmental center has the
 4-49 custody of and responsibility to care for the buildings, grounds,
 4-50 furniture, and other property relating to the center.

4-51 (c) The director of a state developmental center shall:

- 4-52 (1) oversee the admission and discharge of residents
 4-53 and clients;
- 4-54 (2) keep a register of all residents and clients
 4-55 admitted to or discharged from the center;
- 4-56 (3) supervise repairs and improvements to the center;
- 4-57 (4) ensure that center money is spent judiciously and
 4-58 economically;
- 4-59 (5) keep an accurate and detailed account of all money
 4-60 received and spent, stating the source of the money and on whom and
 4-61 the purpose for which the money is spent; and
- 4-62 (6) keep a full record of the center's operations.

4-63 (d) In accordance with departmental rules and operating
 4-64 procedures, the director of a state developmental center may:

- 4-65 (1) establish policy to govern the state developmental
 4-66 center that the director considers will best promote the residents'
 4-67 interest and welfare;
- 4-68 (2) hire subordinate employees and set their salaries,
 4-69 in the absence of other law; and

5-1 (3) dismiss a subordinate employee.

5-2 SECTION 12. Subtitle B, Title 7, Health and Safety Code, is
5-3 amended by adding Chapter 555 to read as follows:

5-4 CHAPTER 555. STATE DEVELOPMENTAL CENTERS

5-5 SUBCHAPTER A. GENERAL PROVISIONS

5-6 Sec. 555.001. DEFINITIONS. In this chapter:

5-7 (1) "Client" means a person with mental retardation
5-8 who receives ICF-MR services from a state developmental center or
5-9 the ICF-MR component of the Rio Grande State Center.

5-10 (2) "Commission" means the Health and Human Services
5-11 Commission.

5-12 (3) "Complaint" means information received by the
5-13 office of independent ombudsman regarding a possible violation of a
5-14 right of a resident or client of a state developmental center and
5-15 includes information received regarding a failure by a state
5-16 developmental center to comply with the department's policies and
5-17 procedures relating to the community living options information
5-18 process or related laws.

5-19 (4) "Department" means the Department of Aging and
5-20 Disability Services.

5-21 (5) "Developmental center employee" means an employee
5-22 of a state developmental center or the ICF-MR component of the Rio
5-23 Grande State Center.

5-24 (6) "Direct care employee" means a developmental
5-25 center employee who provides direct delivery of services to a
5-26 resident or client.

5-27 (7) "Executive commissioner" means the executive
5-28 commissioner of the Health and Human Services Commission.

5-29 (8) "Independent ombudsman" means the individual who
5-30 has been appointed to the office of independent ombudsman.

5-31 (9) "Office" means the office of independent ombudsman
5-32 established under Subchapter C.

5-33 (10) "Resident" means a person with mental retardation
5-34 who resides in a state developmental center or the ICF-MR component
5-35 of the Rio Grande State Center.

5-36 (11) "State developmental center" has the meaning
5-37 assigned by Section 531.002.

5-38 Sec. 555.002. STATE DEVELOPMENTAL CENTER FOR HIGH-RISK
5-39 RESIDENTS. (a) The department shall establish a separate state
5-40 developmental center for the care of residents who present a high
5-41 risk of dangerous or violent behavior as provided by Subsections
5-42 (b) and (c). The department shall designate an existing state
5-43 developmental center for those high-risk residents.

5-44 (b) A resident is a high-risk resident if the person:

5-45 (1) was committed to or transferred to a state
5-46 developmental center under Chapter 46B or 46C, Code of Criminal
5-47 Procedure, as a result of being charged with or convicted of an
5-48 offense listed in Subsection (c); or

5-49 (2) is a child committed to or transferred to a state
5-50 developmental center under Chapter 55, Family Code, as a result of
5-51 being alleged by petition or having been found to have engaged in
5-52 delinquent conduct constituting an offense listed in Subsection
5-53 (c).

5-54 (c) A resident may be considered a high-risk resident if the
5-55 person:

5-56 (1) has inflicted, attempted to inflict, or made a
5-57 serious threat of inflicting substantial physical harm to the
5-58 resident's self or to another while committed to a state
5-59 developmental center; or

5-60 (2) has been convicted of or charged with any of the
5-61 following offenses:

5-62 (A) an offense under Chapter 19, Penal Code
5-63 (criminal homicide);

5-64 (B) an offense under Chapter 20, Penal Code
5-65 (kidnapping and unlawful restraint);

5-66 (C) an offense under Section 21.02, Penal Code
5-67 (continuous sexual abuse of young child or children);

5-68 (D) an offense under Section 22.011, Penal Code
5-69 (sexual assault);

6-1 (E) an offense under Section 22.02, Penal Code
6-2 (aggravated assault);
6-3 (F) an offense under Section 22.021, Penal Code
6-4 (aggravated sexual assault);
6-5 (G) an offense under Section 22.04, Penal Code
6-6 (injury to a child, elderly individual, or disabled individual);
6-7 (H) an offense under Section 28.02, Penal Code
6-8 (arson);
6-9 (I) an offense under Section 29.02, Penal Code
6-10 (robbery);
6-11 (J) an offense under Section 29.03, Penal Code
6-12 (aggravated robbery); or
6-13 (K) a conviction under the laws of another state,
6-14 federal law, or the Uniform Code of Military Justice for an offense
6-15 containing elements that are substantially similar to the elements
6-16 of an offense listed by this subdivision.

6-17 (d) In establishing a state developmental center designated
6-18 for high-risk residents, the department shall:

6-19 (1) transfer a high-risk resident already residing in
6-20 a state developmental center to the designated state developmental
6-21 center;

6-22 (2) place high-risk residents in separate homes at the
6-23 designated state developmental center based on whether the
6-24 high-risk resident is:

6-25 (A) an adult or a person younger than 18 years of
6-26 age; or

6-27 (B) male or female;

6-28 (3) place all high-risk residents committed to or
6-29 transferred to a state developmental center in the designated state
6-30 developmental center; and

6-31 (4) provide training regarding the service delivery
6-32 system for high-risk residents to direct care employees of the
6-33 designated state developmental center.

6-34 (e) A resident who is transferred to the designated state
6-35 developmental center is entitled to an administrative hearing
6-36 regarding a transfer of the resident as provided by Section
6-37 594.014.

6-38 (f) The department shall ensure that the designated state
6-39 developmental center complies with the requirements for ICF-MR
6-40 certification under the Medicaid program as appropriate.

6-41 [Sections 555.003-555.020 reserved for expansion]

6-42 SUBCHAPTER B. POWERS AND DUTIES

6-43 Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR
6-44 EMPLOYEES AND VOLUNTEERS. (a) The department and the Department
6-45 of State Health Services shall perform a state and federal criminal
6-46 history background check on a person:

6-47 (1) who is:

6-48 (A) an applicant for employment with the agency;

6-49 (B) an employee of the agency;

6-50 (C) a volunteer with the agency; or

6-51 (D) an applicant for a volunteer position with
6-52 the agency; and

6-53 (2) who would be placed in direct contact with a
6-54 resident or client at a state developmental center or the ICF-MR
6-55 component of the Rio Grande State Center.

6-56 (b) The department and the Department of State Health
6-57 Services shall require a person described by Subsection (a) to
6-58 submit fingerprints in a form and of a quality acceptable to the
6-59 Department of Public Safety and the Federal Bureau of Investigation
6-60 for use in conducting a criminal history background check.

6-61 (c) Each agency shall obtain electronic updates from the
6-62 Department of Public Safety of arrests and convictions of a person:

6-63 (1) for whom the agency performs a background check
6-64 under Subsection (a); and

6-65 (2) who remains an employee or volunteer of the agency
6-66 and continues to have direct contact with a resident or client.

6-67 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
6-68 commissioner shall adopt a policy regarding random testing and
6-69 reasonable suspicion testing for the illegal use of drugs by an

7-1 employee of a state developmental center.
 7-2 (b) The director of a state developmental center shall
 7-3 enforce the policy adopted under Subsection (a) by performing
 7-4 necessary drug testing of employees of the state developmental
 7-5 center for the use of a controlled substance as defined by Section
 7-6 481.002.
 7-7 (c) Testing under this section may be performed on a random
 7-8 basis or on reasonable suspicion of the use of a controlled
 7-9 substance.
 7-10 (d) For purposes of this section, a report made under
 7-11 Section 555.023 may be considered a factor in determining whether
 7-12 there is reasonable suspicion of the use of a controlled substance.
 7-13 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
 7-14 executive commissioner shall adopt a policy requiring an employee
 7-15 of a state developmental center who knows or reasonably suspects
 7-16 that another employee of the state developmental center is
 7-17 illegally using or under the influence of a controlled substance,
 7-18 as defined by Section 481.002, to report that knowledge or
 7-19 reasonable suspicion to the director of the state developmental
 7-20 center.
 7-21 Sec. 555.024. DEVELOPMENTAL CENTER EMPLOYEE TRAINING.
 7-22 (a) Before a developmental center employee begins to perform the
 7-23 employee's duties without direct supervision, the department shall
 7-24 provide the employee with competency training and a course of
 7-25 instruction about the general duties of a developmental center
 7-26 employee. The department shall ensure the basic developmental
 7-27 center employee competency course focuses on:
 7-28 (1) the uniqueness of the individuals the
 7-29 developmental center employee serves;
 7-30 (2) techniques for improving quality of life for and
 7-31 promoting the health and safety of individuals with mental
 7-32 retardation; and
 7-33 (3) the conduct expected of developmental center
 7-34 employees.
 7-35 (b) The department shall ensure the training required by
 7-36 Subsection (a) provides instruction and information regarding the
 7-37 following topics:
 7-38 (1) the general operation and layout of the state
 7-39 developmental center, including armed intruder lockdown
 7-40 procedures;
 7-41 (2) an introduction to mental retardation;
 7-42 (3) an introduction to mental illness and dual
 7-43 diagnosis;
 7-44 (4) the rights of individuals with mental retardation
 7-45 who receive services from the department;
 7-46 (5) respecting personal choices made by residents and
 7-47 clients;
 7-48 (6) the safe and proper use of restraints;
 7-49 (7) recognizing and reporting:
 7-50 (A) abuse, neglect, and exploitation of
 7-51 individuals with mental retardation;
 7-52 (B) unusual incidents;
 7-53 (C) reasonable suspicion of illegal drug use in
 7-54 the workplace;
 7-55 (D) workplace violence; and
 7-56 (E) sexual harassment in the workplace;
 7-57 (8) preventing and treating infection;
 7-58 (9) first aid;
 7-59 (10) cardiopulmonary resuscitation;
 7-60 (11) the Health Insurance Portability and
 7-61 Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.); and
 7-62 (12) the rights of developmental center employees.
 7-63 (c) In addition to the training required by Subsection (a)
 7-64 and before a direct care employee begins to perform the direct care
 7-65 employee's duties without direct supervision, the department shall
 7-66 provide a direct care employee with training and instructional
 7-67 information regarding the following topics:
 7-68 (1) prevention and management of aggressive or
 7-69 high-risk behavior;

- 8-1 (2) observing and reporting changes in behavior,
8-2 appearance, or health of residents and clients;
8-3 (3) positive behavior support;
8-4 (4) emergency response;
8-5 (5) person-directed plans;
8-6 (6) seizure safety;
8-7 (7) techniques for:
8-8 (A) lifting;
8-9 (B) positioning; and
8-10 (C) movement and mobility;
8-11 (8) working with aging residents and clients;
8-12 (9) assisting residents and clients:
8-13 (A) who have a visual impairment;
8-14 (B) who have a hearing deficit; or
8-15 (C) who require the use of adaptive devices and
8-16 specialized equipment;
8-17 (10) communicating with residents and clients who use
8-18 augmentative and alternative devices for communication;
8-19 (11) assisting residents and clients with personal
8-20 hygiene;
8-21 (12) recognizing appropriate food textures;
8-22 (13) using proper feeding techniques to assist
8-23 residents and clients with meals; and
8-24 (14) physical and nutritional management plans.
- 8-25 Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,
8-26 "private space" means a place in a state developmental center or the
8-27 ICF-MR component of the Rio Grande State Center in which a resident
8-28 or client has a reasonable expectation of privacy, including:
8-29 (1) a bedroom;
8-30 (2) a bathroom;
8-31 (3) a place in which a resident or client receives
8-32 medical or nursing services;
8-33 (4) a place in which a resident or client meets
8-34 privately with visitors; or
8-35 (5) a place in which a resident or client privately
8-36 makes phone calls.
- 8-37 (b) The department shall install and operate video
8-38 surveillance equipment in a state developmental center and the
8-39 ICF-MR component of the Rio Grande State Center for the purpose of
8-40 detecting and preventing the exploitation or abuse of residents and
8-41 clients.
- 8-42 (c) The department may not install or operate video
8-43 surveillance equipment in a private space or in a location in which
8-44 video surveillance equipment can capture images within a private
8-45 space.
- 8-46 (d) The department shall ensure the use of video
8-47 surveillance equipment under this section complies with federal
8-48 requirements for ICF-MR certification.
- 8-49 Sec. 555.026. MORTALITY REVIEW. (a) The executive
8-50 commissioner shall establish an independent mortality review
8-51 system to review the death of a person who, at the time of the
8-52 person's death, was a resident or client.
- 8-53 (b) A review under this section shall be conducted in
8-54 addition to any review conducted by the state developmental center
8-55 or the Rio Grande State Center.
- 8-56 (c) The executive commissioner shall contract with a
8-57 patient safety organization certified in accordance with 42 C.F.R.
8-58 Part 3, as effective on January 20, 2009, to conduct independent
8-59 mortality reviews required by this section. The contract must
8-60 require the patient safety organization to conduct an independent
8-61 mortality review using a team consisting of:
8-62 (1) a physician with expertise regarding the medical
8-63 treatment of individuals with mental retardation;
8-64 (2) a registered nurse with expertise regarding the
8-65 medical treatment of individuals with mental retardation;
8-66 (3) a clinician or other professional with expertise
8-67 in the delivery of services and supports for individuals with
8-68 mental retardation; and
8-69 (4) any other appropriate person as provided by the

9-1 executive commissioner.

9-2 (d) A patient safety organization that performs an
 9-3 independent mortality review shall, to the extent allowed by
 9-4 federal law, submit to the department, the office of independent
 9-5 ombudsman, and the commission's office of inspector general a
 9-6 report of the findings of the mortality review.

9-7 (e) The department may use information from a mortality
 9-8 review report only to advance statewide practices regarding the
 9-9 treatment and care of individuals with mental retardation or other
 9-10 disabilities.

9-11 (f) The department may release a summary or a statistical
 9-12 compilation of data drawn from reports submitted under this section
 9-13 only if the summary or statistical compilation does not contain
 9-14 information that would permit the identification of an individual.

9-15 [Sections 555.027-555.050 reserved for expansion]

9-16 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

9-17 DEVELOPMENTAL CENTERS

9-18 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
 9-19 independent ombudsman is established for the purpose of
 9-20 investigating, evaluating, and securing the rights of the residents
 9-21 and clients of state developmental centers. The office is
 9-22 administratively attached to the department. The department shall
 9-23 provide administrative support and resources to the office as
 9-24 necessary for the office to perform its duties.

9-25 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
 9-26 the performance of the ombudsman's duties and powers under this
 9-27 subchapter acts independently of the department.

9-28 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The
 9-29 governor shall appoint the independent ombudsman.

9-30 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
 9-31 ombudsman shall:

9-32 (1) hire assistant ombudsmen to perform, under the
 9-33 direction of the independent ombudsman, the same duties and
 9-34 exercise the same powers as the independent ombudsman; and

9-35 (2) station an assistant ombudsman at each state
 9-36 developmental center.

9-37 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
 9-38 as independent ombudsman or as an assistant ombudsman if the person
 9-39 or the person's spouse:

9-40 (1) is employed by or participates in the management
 9-41 of a business entity or other organization receiving funds from the
 9-42 department;

9-43 (2) owns or controls, directly or indirectly, any
 9-44 interest in a business entity or other organization receiving funds
 9-45 from the department; or

9-46 (3) is required to register as a lobbyist under
 9-47 Chapter 305, Government Code, because of the person's activities or
 9-48 compensation on behalf of a profession related to the operation of
 9-49 the department.

9-50 Sec. 555.056. REPORT. (a) The independent ombudsman shall
 9-51 submit on a biannual basis to the governor, the lieutenant
 9-52 governor, and the speaker of the house of representatives a report
 9-53 that is both aggregated and disaggregated by individual state
 9-54 developmental center and describes:

9-55 (1) the work of the independent ombudsman;

9-56 (2) the results of any review or investigation
 9-57 undertaken by the independent ombudsman, including reviews or
 9-58 investigation of services contracted by the department; and

9-59 (3) any recommendations that the independent
 9-60 ombudsman has in relation to the duties of the independent
 9-61 ombudsman.

9-62 (b) The independent ombudsman shall ensure that information
 9-63 submitted in a report under Subsection (a) does not permit the
 9-64 identification of an individual.

9-65 (c) The independent ombudsman shall immediately report to
 9-66 the governor, lieutenant governor, and speaker of the house of
 9-67 representatives any particularly serious or flagrant:

9-68 (1) case of abuse or injury of a resident or client
 9-69 about which the independent ombudsman is made aware;

10-1 (2) problem concerning the administration of a state
 10-2 developmental center program or operation; or
 10-3 (3) interference by a state developmental center, the
 10-4 department, or the commission with an investigation conducted by
 10-5 the independent ombudsman.
 10-6 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY.
 10-7 (a) The department shall allow any resident or client, authorized
 10-8 representative of a resident or client, family member of a resident
 10-9 or client, or other interested party to communicate with the
 10-10 independent ombudsman or an assistant ombudsman. The
 10-11 communication:
 10-12 (1) may be in person, by mail, or by any other means;
 10-13 and
 10-14 (2) is confidential and privileged.
 10-15 (b) The records of the independent ombudsman are
 10-16 confidential, except that the independent ombudsman shall:
 10-17 (1) report to the Department of Family and Protective
 10-18 Services regarding a communication that may involve the abuse,
 10-19 neglect, or exploitation of a resident or client;
 10-20 (2) report to the regulatory services division of the
 10-21 department regarding a communication that may involve a violation
 10-22 of an ICF-MR standard or condition of participation; and
 10-23 (3) disclose the ombudsman's nonprivileged records if
 10-24 required by a court order on a showing of good cause.
 10-25 (c) The independent ombudsman may make reports relating to
 10-26 an investigation conducted by the ombudsman public after the
 10-27 investigation is complete but only if the name and any other
 10-28 personally identifiable information of a resident or client,
 10-29 authorized representative of a resident or client, family member of
 10-30 a resident or client, state developmental center, and employee of a
 10-31 state developmental center are redacted from the report and remain
 10-32 confidential.
 10-33 (d) The name, address, or other personally identifiable
 10-34 information of a person who files a complaint with the office of
 10-35 independent ombudsman, information generated by the office of
 10-36 independent ombudsman in the course of an investigation, and
 10-37 confidential records obtained by the office of independent
 10-38 ombudsman are confidential and not subject to disclosure under
 10-39 Chapter 552, Government Code, except as provided by this section.
 10-40 Sec. 555.058. PROMOTION OF AWARENESS OF OFFICE. The
 10-41 independent ombudsman shall promote awareness among the public,
 10-42 residents, clients, and employees of state developmental centers
 10-43 of:
 10-44 (1) how the office may be contacted;
 10-45 (2) the purpose of the office; and
 10-46 (3) the services the office provides.
 10-47 Sec. 555.059. DUTIES AND POWERS. (a) The independent
 10-48 ombudsman shall:
 10-49 (1) evaluate the delivery of services to residents and
 10-50 clients to ensure that the rights of residents and clients are fully
 10-51 observed;
 10-52 (2) refer a complaint alleging the abuse, neglect, or
 10-53 exploitation of a resident or client to the Department of Family and
 10-54 Protective Services for investigation;
 10-55 (3) refer a complaint alleging a possible violation of
 10-56 an ICF-MR standard or condition of participation to the regulatory
 10-57 services division of the department;
 10-58 (4) refer a complaint alleging a criminal offense,
 10-59 other than an allegation of abuse, neglect, or exploitation of a
 10-60 resident or client, to the commission's office of inspector
 10-61 general;
 10-62 (5) conduct investigations of complaints, other than
 10-63 complaints alleging criminal offenses or the abuse, neglect, or
 10-64 exploitation of a resident or client, if the office determines
 10-65 that:
 10-66 (A) a resident or client or the resident's or
 10-67 client's family may be in need of assistance from the office; or
 10-68 (B) a complaint raises the possibility of a
 10-69 systemic issue in the state developmental center's provision of

11-1 services;
 11-2 (6) conduct semiannual on-site audits, including
 11-3 meetings with residents and employees of the state developmental
 11-4 center, of each state developmental center's policies, practices,
 11-5 and procedures to ensure that each resident and client is
 11-6 encouraged to exercise the resident's or client's rights,
 11-7 including:
 11-8 (A) the right to file a complaint; and
 11-9 (B) the right to due process;
 11-10 (7) prepare and deliver an annual report regarding the
 11-11 findings of each audit to the:
 11-12 (A) executive commissioner;
 11-13 (B) commissioner;
 11-14 (C) Aging and Disability Services Council;
 11-15 (D) governor;
 11-16 (E) lieutenant governor;
 11-17 (F) speaker of the house of representatives;
 11-18 (G) standing committees of the senate and house
 11-19 of representatives with primary jurisdiction over state
 11-20 developmental centers; and
 11-21 (H) state auditor;
 11-22 (8) require a state developmental center to provide
 11-23 access to all records, data, and other information under the
 11-24 control of the center that the independent ombudsman determines is
 11-25 necessary to investigate a complaint or to conduct an audit under
 11-26 this section;
 11-27 (9) review all final reports produced by the
 11-28 Department of Family and Protective Services and the regulatory
 11-29 services division of the department regarding a complaint referred
 11-30 by the independent ombudsman;
 11-31 (10) provide assistance to a resident, client,
 11-32 authorized representative of a resident or client, or family member
 11-33 of a resident or client who the independent ombudsman determines is
 11-34 in need of assistance, including advocating with an agency,
 11-35 provider, or other person in the best interests of the resident or
 11-36 client; and
 11-37 (11) make appropriate referrals under any of the
 11-38 duties and powers listed in this subsection.
 11-39 (b) The independent ombudsman may apprise a person who is
 11-40 interested in a resident's or client's welfare of the rights of the
 11-41 resident or client.
 11-42 (c) To assess whether a resident's or client's rights have
 11-43 been violated, the independent ombudsman may, in any matter that
 11-44 does not involve an alleged criminal offense or the abuse, neglect,
 11-45 or exploitation of a resident or client, contact or consult with an
 11-46 administrator, employee, resident, client, family member of a
 11-47 resident or client, expert, or other individual in the course of the
 11-48 investigation or to secure information.
 11-49 (d) Notwithstanding any other provision of this chapter,
 11-50 the independent ombudsman may not investigate an alleged criminal
 11-51 offense or the alleged abuse, neglect, or exploitation of a
 11-52 resident or client.
 11-53 Sec. 555.060. RETALIATION PROHIBITED. The department or a
 11-54 state developmental center may not retaliate against a department
 11-55 employee or employee of a state developmental center who in good
 11-56 faith makes a complaint to the office of independent ombudsman or
 11-57 cooperates with the office in an investigation.
 11-58 Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall
 11-59 establish a permanent, toll-free number for the purpose of
 11-60 receiving any information concerning the violation of a right of a
 11-61 resident or client.
 11-62 (b) The office shall ensure that:
 11-63 (1) the toll-free number is prominently displayed in
 11-64 the main administration area of a state developmental center and in
 11-65 each home in which a resident lives or a client receives services;
 11-66 and
 11-67 (2) a resident, a client, the authorized
 11-68 representative of a resident, and an employee of a state
 11-69 developmental center have confidential access to a telephone for

12-1 the purpose of calling the toll-free number.

12-2 SECTION 13. Section 593.042, Health and Safety Code, is
12-3 amended by adding Subsection (c) to read as follows:

12-4 (c) An application for commitment of a person to a
12-5 residential care facility operated by the Department of Aging and
12-6 Disability Services must include a statement demonstrating that the
12-7 proposed resident meets the requirements for commitment to a
12-8 residential care facility under Section 593.052(a-1).

12-9 SECTION 14. Section 593.052, Health and Safety Code, is
12-10 amended by amending Subsections (a) and (b) and adding Subsections
12-11 (a-1) and (b-1) to read as follows:

12-12 (a) A proposed resident may not be committed to a
12-13 residential care facility operated by a community center unless:

12-14 (1) the proposed resident is a person with mental
12-15 retardation;

12-16 (2) evidence is presented showing that because of
12-17 retardation, the proposed resident:

12-18 (A) represents a substantial risk of physical
12-19 impairment or injury to himself or others; or

12-20 (B) is unable to provide for and is not providing
12-21 for the proposed resident's most basic personal physical needs;

12-22 (3) the proposed resident cannot be adequately and
12-23 appropriately habilitated in an available, less restrictive
12-24 setting; and

12-25 (4) the residential care facility operated by the
12-26 community center provides habilitative services, care, training,
12-27 and treatment appropriate to the proposed resident's needs.

12-28 (a-1) A proposed resident may not be committed to a
12-29 residential care facility operated by the Department of Aging and
12-30 Disability Services unless:

12-31 (1) the proposed resident is a person with:

12-32 (A) severe or profound mental retardation; or

12-33 (B) mild or moderate mental retardation who:

12-34 (i) has extraordinary medical needs; or

12-35 (ii) exhibits dangerous behavior that
12-36 represents a substantial risk of physical impairment or injury to
12-37 self or others;

12-38 (2) evidence is presented showing that the proposed
12-39 resident:

12-40 (A) represents a substantial risk of physical
12-41 impairment or injury to self or others; or

12-42 (B) is unable to provide for and is not providing
12-43 for the proposed resident's most basic personal physical needs;

12-44 (3) the proposed resident cannot be adequately and
12-45 appropriately habilitated in an available, less restrictive
12-46 setting; and

12-47 (4) the residential care facility operated by the
12-48 Department of Aging and Disability Services provides habilitative
12-49 services, care, training, and treatment appropriate to the proposed
12-50 resident's needs.

12-51 (b) If it is determined that the requirements of Subsection
12-52 (a) have been met and that long-term placement in a residential care
12-53 facility operated by a community center is appropriate, the court
12-54 shall commit the proposed resident for care, treatment, and
12-55 training to a community center [~~or the department~~] when space is
12-56 available in a residential care facility operated by a community
12-57 center.

12-58 (b-1) If it is determined that the requirements of
12-59 Subsection (a-1) have been met and that long-term placement in a
12-60 residential care facility operated by the Department of Aging and
12-61 Disability Services is appropriate, the court shall commit the
12-62 proposed resident for care, treatment, and training to the
12-63 department when space is available in a residential care facility
12-64 operated by the department.

12-65 SECTION 15. Section 48.252, Human Resources Code, is
12-66 amended by adding Subsection (d) to read as follows:

12-67 (d) If an investigation under this section reveals evidence
12-68 of the abuse, neglect, or exploitation of a resident or client of a
12-69 state developmental center as defined by Section 531.002, Health

13-1 and Safety Code, or the ICF-MR component of the Rio Grande State
13-2 Center, and a caseworker of the department or a supervisor of a
13-3 caseworker believes that the abuse, neglect, or exploitation is a
13-4 criminal offense, the caseworker or supervisor shall immediately
13-5 notify the Health and Human Services Commission's office of
13-6 inspector general and promptly provide the Health and Human
13-7 Services Commission's office of inspector general with a copy of
13-8 the department's investigation report.

13-9 SECTION 16. (a) Not later than December 1, 2009, the
13-10 Health and Human Services Commission's office of inspector general
13-11 shall begin employing peace officers as required by Section
13-12 531.1022, Government Code, as added by this Act.

13-13 (b) Not later than September 1, 2014, the Department of
13-14 Aging and Disability Services shall designate a state developmental
13-15 center for high-risk residents as required by Section 555.002,
13-16 Health and Safety Code, as added by this Act.

13-17 (c) Not later than January 1, 2010, the Department of Aging
13-18 and Disability Services shall develop the training required by
13-19 Section 555.024, Health and Safety Code, as added by this Act.

13-20 (d) The Department of Aging and Disability Services shall
13-21 ensure that all developmental center employees and direct care
13-22 employees receive the training required by Section 555.024, Health
13-23 and Safety Code, as added by this Act, regardless of when the
13-24 employee was hired, not later than September 1, 2010.

13-25 (e) Not later than December 1, 2009, the executive
13-26 commissioner of the Health and Human Services Commission shall
13-27 contract for mortality review services as required by Section
13-28 555.026, Health and Safety Code, as added by this Act.

13-29 (f) Not later than December 1, 2009, the governor shall
13-30 appoint the independent ombudsman as required by Section 555.053,
13-31 Health and Safety Code, as added by this Act.

13-32 SECTION 17. Section 411.1144, Government Code, as added by
13-33 this Act, and Section 555.021, Health and Safety Code, as added by
13-34 this Act, apply only to background and criminal history checks
13-35 performed on or after the effective date of this Act.

13-36 SECTION 18. (a) The change in law made by Subsection (e),
13-37 Section 551.022, Health and Safety Code, as added by this Act, and
13-38 the change in law made by Section 551.0225, Health and Safety Code,
13-39 as added by this Act, apply to the dismissal of an employee of a
13-40 state developmental center hired on or after the effective date of
13-41 this Act.

13-42 (b) The dismissal of an employee of a state developmental
13-43 center hired before the effective date of this Act is governed by
13-44 the law in effect when the employee was hired, and the former law is
13-45 continued in effect for that purpose.

13-46 SECTION 19. (a) Sections 593.042 and 593.052, Health and
13-47 Safety Code, as amended by this Act, apply only to an order for
13-48 commitment to a residential care facility based on an application
13-49 filed on or after the effective date of this Act.

13-50 (b) An order for commitment to a residential care facility
13-51 based on an application filed before the effective date of this Act
13-52 is governed by the law in effect at the time the application was
13-53 filed, and the former law is continued in effect for that purpose.

13-54 SECTION 20. This Act takes effect immediately if it
13-55 receives a vote of two-thirds of all the members elected to each
13-56 house, as provided by Section 39, Article III, Texas Constitution.
13-57 If this Act does not receive the vote necessary for immediate
13-58 effect, this Act takes effect September 1, 2009.

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