

By: Rose

H.B. No. 1317

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of individuals with mental retardation.

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

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

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

SECTION 2. Subchapter F, Chapter 411, Government Code, is amended by adding Section 411.1144 to read as follows:

Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT STATE DEVELOPMENTAL CENTERS. (a) The Department of State Health Services and the Department of Aging and Disability Services are entitled to obtain from the department criminal history record

information maintained by the department that relates to a person:

(1) who is:

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(C) a volunteer with the agency; or

(D) an applicant for a volunteer position with the agency; and

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

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

(1) on court order;

(2) with the consent of the person who is the subject of the criminal history record information;

(3) for purposes of an administrative hearing held by the agency concerning the person who is the subject of the criminal history record information; or

(4) as provided by Subsection (c).

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

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

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

4           (2) obtain from any other criminal justice agency in  
5 this state criminal history record information maintained by that  
6 criminal justice agency that relates to a person described by  
7 Subsection (a).

8           SECTION 3. Subchapter C, Chapter 531, Government Code, is  
9 amended by adding Section 531.1022 to read as follows:

10          Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW  
11 ENFORCEMENT. (a) The office of inspector general shall employ and  
12 commission peace officers for the sole purpose of assisting a state  
13 or local law enforcement agency in the investigation of an alleged  
14 criminal offense involving a resident or client of a state  
15 developmental center as defined by Section 531.002, Health and  
16 Safety Code, or the ICF-MR component of the Rio Grande State Center.  
17 A peace officer employed and commissioned by the office is a peace  
18 officer for purposes of Article 2.12, Code of Criminal Procedure.

19          (b) The office of inspector general shall prepare a final  
20 report for each investigation conducted under this section. The  
21 office shall ensure that the report does not contain identifying  
22 information of an individual mentioned in the report. The final  
23 report must include:

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

26           (2) a statement regarding whether the investigation  
27 resulted in a finding that an alleged criminal offense was

1 committed; and

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

4 (c) The office of inspector general shall deliver the final  
5 report to the:

6 (1) executive commissioner;

7 (2) commissioner of the Department of Aging and  
8 Disability Services;

9 (3) commissioner of the Department of Family and  
10 Protective Services;

11 (4) Aging and Disability Services Council;

12 (5) governor;

13 (6) lieutenant governor;

14 (7) speaker of the house of representatives;

15 (8) standing committees of the senate and house of  
16 representatives with primary jurisdiction over state developmental  
17 centers; and

18 (9) state auditor.

19 (d) A final report regarding an investigation is subject to  
20 required disclosure under Chapter 552. All information and  
21 materials compiled by the office of inspector general in connection  
22 with an investigation are confidential, and not subject to  
23 disclosure under Chapter 552, and not subject to disclosure,  
24 discovery, subpoena, or other means of legal compulsion for their  
25 release to anyone other than the office or its employees or agents  
26 involved in the investigation conducted by the office, except that  
27 this information may be disclosed to the office of the attorney

1 general, the state auditor's office, and law enforcement agencies.

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

9 (1) the number and type of alleged offenses  
10 investigated by the office;

11 (2) the number and type of alleged offenses involving  
12 an employee of a state developmental center or the ICF-MR component  
13 of the Rio Grande State Center;

14 (3) the relationship of an alleged victim to an  
15 alleged perpetrator; and

16 (4) the number of investigations conducted that  
17 involve the suicide, death, or hospitalization of an alleged  
18 victim.

19 (f) The office of inspector general shall submit the annual  
20 status report to the:

21 (1) executive commissioner;

22 (2) commissioner of the Department of Aging and  
23 Disability Services;

24 (3) commissioner of the Department of Family and  
25 Protective Services;

26 (4) Aging and Disability Services Council;

27 (5) Family and Protective Services Council;

1           (6) governor;

2           (7) lieutenant governor;

3           (8) speaker of the house of representatives;

4           (9) standing committees of the senate and house of  
5 representatives with primary jurisdiction over state developmental  
6 centers;

7           (10) state auditor; and

8           (11) comptroller.

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

11           SECTION 4. Section 252.122(a), Health and Safety Code, is  
12 amended to read as follows:

13           (a) A person, including an owner or employee of a facility,  
14 who has cause to believe that the physical or mental health or  
15 welfare of a resident has been or may be adversely affected by abuse  
16 or neglect caused by another person shall report the abuse or  
17 neglect to the Department of Family and Protective Services  
18 ~~[department]~~, to a designated agency, or to both the Department of  
19 Family and Protective Services ~~[department]~~ and the designated  
20 agency, as specified in ~~[department]~~ rules adopted by the  
21 Department of Family and Protective Services.

22           SECTION 5. Section 252.124(b), Health and Safety Code, is  
23 amended to read as follows:

24           (b) A local or state law enforcement agency that receives a  
25 report of abuse or neglect shall refer the report to the Department  
26 of Family and Protective Services ~~[department]~~ or the designated  
27 agency.

SECTION 6. Sections 252.125(a), (c), (d), (e), (f), and (g), Health and Safety Code, are amended to read as follows:

(a) The Department of Family and Protective Services ~~[department]~~ or the designated agency shall make a thorough investigation promptly after receiving either the oral or written report.

(c) In the investigation, the Department of Family and Protective Services ~~[department]~~ or the designated agency shall determine:

(1) the nature, extent, and cause of the abuse or neglect;

(2) the identity of the person responsible for the abuse or neglect;

(3) the names and conditions of the other residents;

(4) an evaluation of the persons responsible for the care of the residents;

(5) the adequacy of the facility environment; and

(6) any other information required by the Department of Family and Protective Services ~~[department]~~.

(d) The investigation may include a visit to the resident's facility and an interview with the resident, if considered appropriate by the Department of Family and Protective Services ~~[department]~~.

(e) If the Department of Family and Protective Services ~~[department]~~ attempts to carry out an on-site investigation and it is shown that admission to the facility or any place where a resident is located cannot be obtained, a probate or county court

1 shall order the person responsible for the care of the resident or  
2 the person in charge of a place where the resident is located to  
3 allow admission for the investigation and any interview with the  
4 resident.

5 (f) Before the completion of the investigation, the  
6 Department of Family and Protective Services [~~department~~] shall  
7 file a petition for temporary care and protection of the resident if  
8 the Department of Family and Protective Services [~~department~~]  
9 determines that immediate removal is necessary to protect the  
10 resident from further abuse or neglect.

11 (g) The Department of Family and Protective Services  
12 [~~department~~] or the designated agency shall make a complete written  
13 report of the investigation and submit the report and its  
14 recommendations to the district attorney and the appropriate law  
15 enforcement agency and, if necessary, to the Department of Family  
16 and Protective Services [~~department~~] on the Department of Family  
17 and Protective Services' [~~department's~~] request.

18 SECTION 7. Section 252.126, Health and Safety Code, is  
19 amended to read as follows:

20 Sec. 252.126. CONFIDENTIALITY. A report, record, or  
21 working paper used or developed in an investigation made under this  
22 subchapter is confidential and may be disclosed only for purposes  
23 consistent with the rules adopted by the executive commissioner of  
24 the Health and Human Services Commission [~~board~~] or the designated  
25 agency.

26 SECTION 8. Section 252.129, Health and Safety Code, is  
27 amended by adding Subsection (d) to read as follows:



1        (d) The department and the Department of Family and  
2 Protective Services shall cooperate to ensure that the central  
3 registry required by this section accurately includes reported  
4 cases of resident abuse and neglect.

5        SECTION 9. Sections 252.134(a) through (e), Health and  
6 Safety Code, are amended to read as follows:

7        (a) A facility licensed under this chapter shall submit a  
8 report to the Department of Family and Protective Services  
9 ~~[department]~~ concerning the death of:

10            (1) a resident of the facility; and

11            (2) a former resident that occurs 24 hours or less  
12 after the former resident is transferred from the facility to a  
13 hospital.

14        (b) The report must be submitted not later than the 10th  
15 working day after the last day of each month in which a resident of  
16 the facility dies. The facility must make the report on a form  
17 prescribed by the Department of Family and Protective Services  
18 ~~[department]~~. The report must contain the name and social security  
19 number of the deceased.

20        (c) The Department of Family and Protective Services  
21 ~~[department]~~ shall correlate reports under this section with death  
22 certificate information to develop data relating to the:

23            (1) name and age of the deceased;

24            (2) official cause of death listed on the death  
25 certificate;

26            (3) date, time, and place of death; and

27            (4) name and address of the facility in which the

1 deceased resided.

2 (d) Unless specified by rules adopted by the executive  
3 commissioner of the Health and Human Services Commission [~~board~~  
4 ~~rule~~], a record under this section is confidential and not subject  
5 to the provisions of Chapter 552, Government Code.

6 (e) The Department of Family and Protective Services  
7 [~~department~~] shall develop statistical information on official  
8 causes of death to determine patterns and trends of incidents of  
9 death among persons with mental retardation and related conditions  
10 and in specific facilities. Information developed under this  
11 subsection is not confidential.

12 SECTION 10. Section 531.002(17), Health and Safety Code, is  
13 amended to read as follows:

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

20 SECTION 11. Chapter 531, Health and Safety Code, is amended  
21 by adding Section 531.0021 to read as follows:

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

23 (a) A reference in law to a "state school" means a state  
24 developmental center.

25 (b) A reference in law to a "superintendent," to the extent  
26 the term is intended to refer to the person in charge of a state  
27 developmental center, means the director of a state developmental

1 center.

2 SECTION 12. Section 532.001(b), Health and Safety Code, is  
3 amended to read as follows:

4 (b) The department also includes community services  
5 operated by the department and the following facilities:

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

1 ~~[School]~~;

2 (20) the El Paso State Developmental Center;

3 (21) the Rio Grande State Center; and

4 (22) the Waco Center for Youth.

5 SECTION 13. Section 551.022, Health and Safety Code, is  
6 amended by adding Subsection (e) to read as follows:

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

9 SECTION 14. Subchapter B, Chapter 551, Health and Safety  
10 Code, is amended by adding Section 551.0225 to read as follows:

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

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

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

18 (1) oversee the admission and discharge of residents  
19 and clients;

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

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

23 (4) ensure that center money is spent judiciously and  
24 economically;

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

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

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

4           (1) establish policy to govern the state developmental  
5 center that the director considers will best promote the residents'  
6 interest and welfare;

7           (2) hire subordinate officers, teachers, and other  
8 employees and set their salaries, in the absence of other law; and

9           (3) dismiss a subordinate officer, teacher, or  
10 employee.

11           SECTION 15. Subtitle B, Title 7, Health and Safety Code, is  
12 amended by adding Chapter 555 to read as follows:

13           CHAPTER 555. STATE DEVELOPMENTAL CENTERS

14           SUBCHAPTER A. GENERAL PROVISIONS

15           Sec. 555.001. DEFINITIONS. In this chapter:

16           (1) "Alleged offender resident" means a person with  
17 mental retardation who has been committed to or transferred to a  
18 state developmental center under Chapter 55, Family Code, or  
19 Chapter 46B or 46C, Code of Criminal Procedure.

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

23           (3) "Client" means a person with mental retardation  
24 who receives ICF-MR services from a state developmental center or  
25 the ICF-MR component of the Rio Grande State Center.

26           (4) "Commission" means the Health and Human Services  
27 Commission.

1           (5) "Complaint" means information received by the  
2 office of independent ombudsman regarding a possible violation of a  
3 right of a resident or client of a state developmental center and  
4 includes information received regarding a failure by a state  
5 developmental center to comply with the department's policies and  
6 procedures relating to the community living options information  
7 process.

8           (6) "Department" means the Department of Aging and  
9 Disability Services.

10           (7) "Direct care employee" means a center employee who  
11 provides direct delivery of services to a resident or client.

12           (8) "Executive commissioner" means the executive  
13 commissioner of the Health and Human Services Commission.

14           (9) "Independent ombudsman" means the individual who  
15 has been appointed to the office of independent ombudsman.

16           (10) "Office" means the office of independent  
17 ombudsman established under Subchapter C.

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

21           (12) "State developmental center" has the meaning  
22 assigned by Section 531.002.

23           (13) "State developmental center employee" means an  
24 employee of a state developmental center.

25           Sec. 555.002. STATE DEVELOPMENTAL CENTER FOR ALLEGED  
26 OFFENDER RESIDENTS. (a) The department shall establish a separate  
27 state developmental center for the care of alleged offender

1 residents apart from other clients and residents. The department  
2 shall designate an existing state developmental center for this  
3 purpose.

4 (b) In establishing a state developmental center designated  
5 for alleged offender residents, the department shall:

6 (1) transfer an alleged offender resident already  
7 residing in a state developmental center to the designated state  
8 developmental center;

9 (2) place alleged offender residents in separate homes  
10 at the designated state developmental center based on whether the  
11 alleged offender resident is:

12 (A) an adult or a person younger than 18 years of  
13 age; or

14 (B) male or female;

15 (3) place all alleged offender residents committed to  
16 or transferred to a state developmental center in the designated  
17 state developmental center;

18 (4) divert future admissions of residents who are not  
19 alleged offenders from the designated state developmental center;  
20 and

21 (5) provide training regarding the service delivery  
22 system for alleged offender residents to direct care employees of  
23 the designated state developmental center.

24 (c) Notwithstanding Section 594.014, an alleged offender  
25 resident who is transferred to the designated state developmental  
26 center is not entitled to an administrative hearing regarding a  
27 transfer of the resident.

1       (d) The department shall ensure that the designated state  
2 developmental center complies with the requirements for ICF-MR  
3 certification under the Medicaid program as appropriate.

4       [Sections 555.003-555.020 reserved for expansion]

5               SUBCHAPTER B. POWERS AND DUTIES

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

10           (1) who is:

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

12                   (B) an employee of the agency;

13                   (C) a volunteer with the agency; or

14                   (D) an applicant for a volunteer position with  
15 the agency; and

16           (2) who would be placed in direct contact with a  
17 resident or client.

18       (b) The executive commissioner shall adopt rules requiring  
19 a person described by Subsection (a) to submit fingerprints in a  
20 form and of a quality acceptable to the Department of Public Safety  
21 and the Federal Bureau of Investigation for use in conducting a  
22 criminal history background check.

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

25           (1) for whom the agency performs a background check  
26 under Subsection (a); and

27           (2) who remains an employee or volunteer of the agency



1 and continues to have direct contact with a resident or client.

2 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive  
3 commissioner by rule shall adopt a policy regarding random testing  
4 and reasonable suspicion testing for the illegal use of drugs by a  
5 state developmental center employee.

6 (b) The director of a state developmental center shall  
7 enforce the policy adopted under Subsection (a) by performing  
8 necessary drug testing of the state developmental center employees  
9 for the use of a controlled substance as defined by Section 481.002.

10 (c) Testing under this section may be performed on a random  
11 basis or on reasonable suspicion of the use of a controlled  
12 substance.

13 (d) For purposes of this section, a report made under  
14 Section 555.023 is considered reasonable suspicion of the use of a  
15 controlled substance.

16 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The  
17 executive commissioner by rule shall adopt a policy requiring a  
18 state developmental center employee who knows or reasonably  
19 suspects that another state developmental center employee is  
20 illegally using or under the influence of a controlled substance,  
21 as defined by Section 481.002, to report that knowledge or  
22 reasonable suspicion to the director of the state developmental  
23 center.

24 Sec. 555.024. CENTER EMPLOYEE TRAINING. (a) Before a  
25 center employee begins to perform the employee's duties without  
26 direct supervision, the department shall provide the employee with  
27 competency training and a course of instruction about the general

duties of a center employee. The department shall ensure the basic center employee competency course focuses on:

(1) the uniqueness of the individuals the center employee serves;

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

(3) the conduct expected of center employees.

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

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

(2) an introduction to mental retardation;

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

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

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

(6) the safe and proper use of restraints;

(7) recognizing and reporting:

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

(B) unusual incidents;

(C) reasonable suspicion of illegal drug use in

1 the workplace;

2 (D) workplace violence; or

3 (E) sexual harassment in the workplace;

4 (8) preventing and treating infection;

5 (9) first aid;

6 (10) cardiopulmonary resuscitation;

7 (11) the Health Insurance Portability and  
8 Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.); and

9 (12) civil rights of center employees.

10 (c) In addition to the training required by Subsection (a)  
11 and before a direct care employee begins to perform the direct care  
12 employee's duties without direct supervision, the department shall  
13 provide a direct care employee with training and instructional  
14 information regarding the following topics:

15 (1) prevention and management of aggressive behavior;

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

18 (3) positive behavior support;

19 (4) emergency response;

20 (5) person-directed plans;

21 (6) seizure safety;

22 (7) techniques for:

23 (A) lifting;

24 (B) positioning; and

25 (C) movement and mobility;

26 (8) working with aging residents and clients;

27 (9) assisting residents and clients:

1           (A) who have a visual impairment;

2           (B) who have a hearing deficit; or

3           (C) who require the use of adaptive devices and  
4 specialized equipment;

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

7           (11) assisting residents and clients with personal  
8 hygiene;

9           (12) recognizing appropriate food textures;

10          (13) using proper feeding techniques to assist  
11 residents and clients with meals; and

12          (14) physical and nutritional management plans.

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

17           (1) a bedroom;

18           (2) a bathroom;

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

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

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

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

1 detecting and preventing the exploitation or abuse of residents and  
2 clients.

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

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

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

14 (b) A review under this section shall be conducted in  
15 addition to any review conducted by the state developmental center  
16 or the Rio Grande State Center.

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

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

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

27 (3) a clinician or other professional with expertise

1 in the delivery of services and supports for individuals with  
2 mental retardation; and

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

5 (d) A patient safety organization that performs an  
6 independent mortality review shall submit to the department, the  
7 office of independent ombudsman, and the commission's office of  
8 inspector general a report of the findings of the mortality review.

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

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

17 [Sections 555.027-555.050 reserved for expansion]

18 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

19 DEVELOPMENTAL CENTERS

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

27 Sec. 555.052. INDEPENDENCE. The independent ombudsman in

1 the performance of the ombudsman's duties and powers under this  
2 subchapter acts independently of the department.

3 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The  
4 governor shall appoint the independent ombudsman.

5 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent  
6 ombudsman shall:

7 (1) hire assistant ombudsmen to perform, under the  
8 direction of the independent ombudsman, the same duties and  
9 exercise the same powers as the independent ombudsman; and

10 (2) station an assistant ombudsman at each state  
11 developmental center.

12 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve  
13 as independent ombudsman or as an assistant ombudsman if the person  
14 or the person's spouse:

15 (1) is employed by or participates in the management  
16 of a business entity or other organization receiving funds from the  
17 department;

18 (2) owns or controls, directly or indirectly, any  
19 interest in a business entity or other organization receiving funds  
20 from the department; or

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

25 Sec. 555.056. REPORT. (a) The independent ombudsman shall  
26 submit on a biannual basis to the governor, the lieutenant  
27 governor, and the speaker of the house of representatives a report

1 that is both aggregated and disaggregated by individual state  
2 developmental center and describes:

- 3 (1) the work of the independent ombudsman;  
4 (2) the results of any review or investigation  
5 undertaken by the independent ombudsman, including reviews or  
6 investigation of services contracted by the department; and  
7 (3) any recommendations that the independent  
8 ombudsman has in relation to the duties of the independent  
9 ombudsman.

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

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

- 16 (1) case of abuse or injury of a resident or client  
17 about which the independent ombudsman is made aware;  
18 (2) problem concerning the administration of a state  
19 developmental center program or operation; or  
20 (3) interference by a state developmental center, the  
21 department, or the commission with an investigation conducted by  
22 the independent ombudsman.

23 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The  
24 department shall allow any resident or client, authorized  
25 representative of a resident or client, family member of a resident  
26 or client, or other interested party to communicate with the  
27 independent ombudsman or an assistant ombudsman. The



1 communication:

2 (1) may be in person, by mail, or by any other means;

3 and

4 (2) is confidential and privileged.

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

7 (1) share with the Department of Family and Protective  
8 Services a communication that may involve the abuse, neglect, or  
9 exploitation of a resident or client;

10 (2) share with the regulatory services division of the  
11 department a communication that may involve a violation of an  
12 ICF-MR standard or condition of participation; and

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

15 (c) The independent ombudsman may make reports relating to  
16 an investigation public after the investigation is complete but  
17 only if the name and any other personally identifiable information  
18 of a resident or client, authorized representative of a resident or  
19 client, family member of a resident or client, state developmental  
20 center, and state developmental center employee are redacted from  
21 the report and remain confidential.

22 (d) The name, address, or other personally identifiable  
23 information of a person who files a complaint with the office of  
24 independent ombudsman, information generated by the office of  
25 independent ombudsman in the course of an investigation, and  
26 confidential records obtained by the office of independent  
27 ombudsman are confidential and not subject to disclosure under

Chapter 552, Government Code, except as provided by this section.

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

- (1) how the office may be contacted;
- (2) the purpose of the office; and
- (3) the services the office provides.

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

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

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

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

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

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

(A) a resident or client or the resident's or

1 client's family may be in need of assistance from the office; or

2 (B) a complaint raises the possibility of a  
3 systemic issue in the state developmental center's provision of  
4 services;

5 (6) conduct an annual audit of each state  
6 developmental center's policies, practices, and procedures to  
7 ensure that each resident and client is encouraged to exercise the  
8 resident's or client's rights, including:

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

10 (B) the right to due process;

11 (7) prepare and deliver an annual report regarding the  
12 findings of each audit to the:

13 (A) executive commissioner;

14 (B) commissioner;

15 (C) Aging and Disability Services Council;

16 (D) governor;

17 (E) lieutenant governor;

18 (F) speaker of the house of representatives;

19 (G) standing committees of the senate and house  
20 of representatives with primary jurisdiction over state  
21 developmental centers; and

22 (H) state auditor;

23 (8) require a state developmental center to provide  
24 access to all records, data, and other information under the  
25 control of the center that the independent ombudsman determines is  
26 necessary to investigate a complaint or to conduct an audit under  
27 this section;

1           (9) review all final reports produced by the  
2 Department of Family and Protective Services and the regulatory  
3 services division of the department regarding a complaint referred  
4 by the independent ombudsman;

5           (10) provide assistance to a resident, client,  
6 authorized representative of a resident or client, or family member  
7 of a resident or client who the independent ombudsman determines is  
8 in need of assistance, including advocating with an agency,  
9 provider, or other person in the best interests of the resident or  
10 client; and

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

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

16           (c) To assess whether a resident's or client's rights have  
17 been violated, the independent ombudsman may, in any matter that  
18 does not involve an alleged criminal offense or the abuse, neglect,  
19 or exploitation of a resident or client, contact or consult with an  
20 administrator, employee, resident, client, family member of a  
21 resident or client, expert, or other individual in the course of the  
22 investigation or to secure information.

23           (d) Notwithstanding any other provision of this chapter,  
24 the independent ombudsman may not investigate an alleged criminal  
25 offense or the alleged abuse, neglect, or exploitation of a  
26 resident or client. The independent ombudsman shall refer an  
27 allegation of abuse, neglect, or exploitation of a resident or

1 client to the Department of Family and Protective Services.

2 Sec. 555.060. RETALIATION PROHIBITED. The department or a  
3 state developmental center may not retaliate against a department  
4 employee or state developmental center employee who in good faith  
5 makes a complaint to the office of independent ombudsman or  
6 cooperates with the office in an investigation.

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

11 (b) The office shall ensure that:

12 (1) the toll-free number is prominently displayed in  
13 the main administration area of a state developmental center and in  
14 each room in which a resident lives or a client receives services;  
15 and

16 (2) a resident, a client, the authorized  
17 representative of a resident, and a state developmental center  
18 employee have confidential access to a telephone for the purpose of  
19 calling the toll-free number.

20 SECTION 16. Section 591.003, Health and Safety Code, is  
21 amended by adding Subdivision (19-a) to read as follows:

22 (19-a) "State developmental center" has the meaning  
23 provided by Section 531.002.

24 SECTION 17. Section 593.042, Health and Safety Code, is  
25 amended by adding Subsection (c) to read as follows:

26 (c) An application for commitment of a person to a  
27 residential care facility that is a state developmental center must

1 include a statement demonstrating that the proposed resident meets  
2 the requirements for commitment to a state developmental center  
3 under Section 593.052(a-1).

4 SECTION 18. Section 593.052, Health and Safety Code, is  
5 amended by amending Subsections (a) and (b) and adding Subsections  
6 (a-1) and (b-1) to read as follows:

7 (a) A proposed resident may not be committed to a  
8 residential care facility unless:

9 (1) the proposed resident is a person with mental  
10 retardation;

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

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

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

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

20 (4) the residential care facility:

21 (A) provides habilitative services, care,  
22 training, and treatment appropriate to the proposed resident's  
23 needs; and

24 (B) is not a state developmental center.

25 (a-1) A proposed resident may not be committed to a  
26 residential care facility that is a state developmental center  
27 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 is a state  
18 developmental center that provides habilitative services, care,  
19 training, and treatment appropriate to the proposed resident's  
20 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, other than a state developmental center, is appropriate,  
24 the court shall commit the proposed resident for care, treatment,  
25 and training to a community center or the Department of Aging and  
26 Disability Services [~~department~~] when space is available in a  
27 residential care facility, other than a state developmental 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 that is a state developmental center is  
4 appropriate, the court shall commit the proposed resident for care,  
5 treatment, and training to the Department of Aging and Disability  
6 Services when space is available in a state developmental center.

7       SECTION 19. Section 48.252, Human Resources Code, is  
8 amended by adding Subsection (d) to read as follows:

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

20       SECTION 20. Subchapter G, Chapter 48, Human Resources Code,  
21 is amended by adding Section 48.3015 to read as follows:

22       Sec. 48.3015. INVESTIGATION OF REPORTS IN ICF-MR. (a)  
23 Notwithstanding Section 48.301, the department shall receive and  
24 investigate reports of abuse, neglect, or exploitation of an  
25 individual with a disability receiving services in an intermediate  
26 care facility for the mentally retarded.

27       (b) The executive commissioner shall adopt rules governing



1 investigations conducted under this section and the provision of  
2 services as necessary to alleviate abuse, neglect, or exploitation.

3 SECTION 21. Section 161.071, Human Resources Code, is  
4 amended to read as follows:

5 Sec. 161.071. GENERAL POWERS AND DUTIES OF DEPARTMENT. The  
6 department is responsible for administering human services  
7 programs for the aging and disabled, including:

8 (1) administering and coordinating programs to  
9 provide community-based care and support services to promote  
10 independent living for populations that would otherwise be  
11 institutionalized;

12 (2) providing institutional care services, including  
13 services through convalescent and nursing homes and related  
14 institutions under Chapter 242, Health and Safety Code;

15 (3) providing and coordinating programs and services  
16 for persons with disabilities, including programs for the  
17 treatment, rehabilitation, or benefit of persons with  
18 developmental disabilities or mental retardation;

19 (4) operating state facilities for the housing,  
20 treatment, rehabilitation, or benefit of persons with  
21 disabilities, including state schools for persons with mental  
22 retardation;

23 (5) serving as the state unit on aging required by the  
24 federal Older Americans Act of 1965 (42 U.S.C. Section 3001 et seq.)  
25 and its subsequent amendments, including performing the general  
26 functions under Section 101.022 to ensure:

27 (A) implementation of the federal Older

1 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its  
2 subsequent amendments, including implementation of services and  
3 volunteer opportunities under that Act for older residents of this  
4 state through area agencies on aging;

5 (B) advocacy for residents of nursing facilities  
6 through the office of the state long-term care ombudsman;

7 (C) fostering of the state and community  
8 infrastructure and capacity to serve older residents of this state;  
9 and

10 (D) availability of a comprehensive resource for  
11 state government and the public on trends related to and services  
12 and programs for an aging population;

13 (6) performing all licensing and enforcement  
14 activities and functions related to long-term care facilities,  
15 including licensing and enforcement activities related to  
16 convalescent and nursing homes and related institutions under  
17 Chapter 242, Health and Safety Code;

18 (7) performing all licensing and enforcement  
19 activities related to assisted living facilities under Chapter 247,  
20 Health and Safety Code;

21 (8) performing all licensing and enforcement  
22 activities related to intermediate care facilities for persons with  
23 mental retardation under Chapter 252, Health and Safety Code, other  
24 than investigations of reported abuse, neglect, or exploitation;

25 (9) performing all licensing and enforcement  
26 activities and functions related to home and community support  
27 services agencies under Chapter 142, Health and Safety Code; and

1           (10) serving as guardian of the person or estate, or  
2 both, for an incapacitated individual as provided by Subchapter E  
3 of this chapter and Chapter XIII, Texas Probate Code.

4           SECTION 22. Subchapter D, Chapter 161, Human Resources  
5 Code, is amended by adding Section 161.076 to read as follows:

6           Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. At  
7 least every 12 months, the department shall conduct an on-site  
8 survey in each group or foster home at which a home and  
9 community-based services provider provides services to a person  
10 with mental retardation. The department shall conduct the survey  
11 in a manner consistent with surveys conducted by the department  
12 under Section 142.009, Health and Safety Code.

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

17          (b) Not later than September 1, 2014, the Department of  
18 Aging and Disability Services shall designate a state developmental  
19 center for alleged offender residents as required by Section  
20 555.002, Health and Safety Code, as added by this Act.

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

24          (d) The Department of Aging and Disability Services shall  
25 ensure that all center employees and direct care employees receive  
26 the training required by Section 555.024, Health and Safety Code,  
27 as added by this Act, regardless of when the employee was hired, not

1 later than September 1, 2010.

2 (e) Not later than December 1, 2009, the executive  
3 commissioner of the Health and Human Services Commission shall  
4 adopt rules as required by Section 555.022, Health and Safety Code,  
5 as added by this Act.

6 (f) Not later than December 1, 2009, the executive  
7 commissioner shall contract for mortality review services as  
8 required by Section 555.026, Health and Safety Code, as added by  
9 this Act.

10 (g) Not later than December 1, 2009, the governor shall  
11 appoint the independent ombudsman as required by Section 555.053,  
12 Health and Safety Code, as added by this Act.

13 SECTION 24. (a) Section 411.1144, Government Code, as  
14 added by this Act, and Section 555.021, Health and Safety Code, as  
15 added by this Act, apply only to background and criminal history  
16 checks performed on or after the effective date of this Act.

17 (b) Not later than December 1, 2009, the executive  
18 commissioner of the Health and Human Services Commission shall  
19 adopt rules as required by Section 555.021, Health and Safety Code,  
20 as added by this Act.

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

27 (b) The dismissal of an officer, teacher, or other employee

1 of a state developmental center hired before the effective date of  
2 this Act is governed by the law in effect when the officer, teacher,  
3 or other employee was hired, and the former law is continued in  
4 effect for that purpose.

5 SECTION 26. (a) Sections 593.042 and 593.052, Health and  
6 Safety Code, as amended by this Act, apply only to an order for  
7 commitment to a residential care facility based on an application  
8 filed on or after the effective date of this Act.

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

13 SECTION 27. This Act applies only to a report of suspected  
14 abuse, neglect, or exploitation that is made on or after September  
15 1, 2009. A report of suspected abuse, neglect, or exploitation that  
16 is made before September 1, 2009, is governed by the law in effect  
17 on the date the report was made, and that law is continued in effect  
18 for that purpose.

19 SECTION 28. If before implementing any provision of this  
20 Act a state agency determines that a waiver or authorization from a  
21 federal agency is necessary for implementation of that provision,  
22 the agency affected by the provision shall request the waiver or  
23 authorization and may delay implementing that provision until the  
24 waiver or authorization is granted.

25 SECTION 29. The changes in law made by this Act in amending  
26 Chapter 252, Health and Safety Code, and Section 161.071, Human  
27 Resources Code, and adding Sections 48.3015 and 161.076, Human

1 Resources Code, take effect September 1, 2009.

2       SECTION 30. Except as provided by Section 29 of this Act,  
3 this Act takes effect immediately if it receives a vote of  
4 two-thirds of all the members elected to each house, as provided by  
5 Section 39, Article III, Texas Constitution. If this Act does not  
6 receive the vote necessary for immediate effect, this Act takes  
7 effect September 1, 2009.