

By: Herrero

H.B. No. 4688

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the protection and care of individuals with mental
3 retardation who reside in a state developmental center.

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

5 SECTION 27. Article 2.12, Code of Criminal Procedure, is
6 amended to read as follows:

7 Art. 2.12. WHO ARE PEACE OFFICERS. The following are peace
8 officers:

9 (1) sheriffs, their deputies, and those reserve
10 deputies who hold a permanent peace officer license issued under
11 Chapter 1701, Occupations Code;

12 (2) constables, deputy constables, and those reserve
13 deputy constables who hold a permanent peace officer license issued
14 under Chapter 1701, Occupations Code;

15 (3) marshals or police officers of an incorporated
16 city, town, or village, and those reserve municipal police officers
17 who hold a permanent peace officer license issued under Chapter
18 1701, Occupations Code;

19 (4) rangers and officers commissioned by the Public
20 Safety Commission and the Director of the Department of Public
21 Safety;

22 (5) investigators of the district attorneys', criminal
23 district attorneys', and county attorneys' offices;

24 (6) law enforcement agents of the Texas Alcoholic

1 Beverage Commission;

2 (7) each member of an arson investigating unit
3 commissioned by a city, a county, or the state;

4 (8) officers commissioned under Section 37.081,
5 Education Code, or Subchapter E, Chapter 51, Education Code;

6 (9) officers commissioned by the General Services
7 Commission;

8 (10) law enforcement officers commissioned by the
9 Parks and Wildlife Commission;

10 (11) airport police officers commissioned by a city
11 with a population of more than 1.18 million that operates an airport
12 that serves commercial air carriers;

13 (12) airport security personnel commissioned as peace
14 officers by the governing body of any political subdivision of this
15 state, other than a city described by Subdivision (11), that
16 operates an airport that serves commercial air carriers;

17 (13) municipal park and recreational patrolmen and
18 security officers;

19 (14) security officers and investigators commissioned
20 as peace officers by the comptroller;

21 (15) officers commissioned by a water control and
22 improvement district under Section 49.216, Water Code;

23 (16) officers commissioned by a board of trustees
24 under Chapter 54, Transportation Code;

25 (17) investigators commissioned by the Texas Medical
26 Board;

27 (18) officers commissioned by the board of managers of

1 the Dallas County Hospital District, the Tarrant County Hospital
2 District, or the Bexar County Hospital District under Section
3 281.057, Health and Safety Code;

4 (19) county park rangers commissioned under
5 Subchapter E, Chapter 351, Local Government Code;

6 (20) investigators employed by the Texas Racing
7 Commission;

8 (21) officers commissioned under Chapter 554,
9 Occupations Code;

10 (22) officers commissioned by the governing body of a
11 metropolitan rapid transit authority under Section 451.108,
12 Transportation Code, or by a regional transportation authority
13 under Section 452.110, Transportation Code;

14 (23) investigators commissioned by the attorney
15 general under Section 402.009, Government Code;

16 (24) security officers and investigators commissioned
17 as peace officers under Chapter 466, Government Code;

18 (25) an officer employed by the Department of State
19 Health Services under Section 431.2471, Health and Safety Code;

20 (26) officers appointed by an appellate court under
21 Subchapter F, Chapter 53, Government Code;

22 (27) officers commissioned by the state fire marshal
23 under Chapter 417, Government Code;

24 (28) an investigator commissioned by the commissioner
25 of insurance under Section 701.104, Insurance Code;

26 (29) apprehension specialists and inspectors general
27 commissioned by the Texas Youth Commission as officers under

1 Sections 61.0451 and 61.0931, Human Resources Code;

2 (30) officers appointed by the inspector general of
3 the Texas Department of Criminal Justice under Section 493.019,
4 Government Code;

5 (31) investigators commissioned by the Commission on
6 Law Enforcement Officer Standards and Education under Section
7 1701.160, Occupations Code;

8 (32) commission investigators commissioned by the
9 Texas Private Security Board under Section 1702.061(f),
10 Occupations Code;

11 (33) the fire marshal and any officers, inspectors, or
12 investigators commissioned by an emergency services district under
13 Chapter 775, Health and Safety Code;

14 (34) officers commissioned by the State Board of
15 Dental Examiners under Section 254.013, Occupations Code, subject
16 to the limitations imposed by that section; ~~and~~

17 (35) investigators commissioned by the Texas Juvenile
18 Probation Commission as officers under Section 141.055, Human
19 Resources Code; and

20 (36) officers commissioned by the office of inspector
21 general established under Subchapter R, Chapter 531, Government
22 Code.

23 SECTION 28. Sections 531.102 and 531.1021, Government Code,
24 are repealed.

25 SECTION 29. Section 411.086, Government Code, is amended to
26 read as follows:

27 Sec. 411.083. DISSEMINATION OF CRIMINAL HISTORY RECORD

1 INFORMATION. (a) Criminal history record information maintained
2 by the department is confidential information for the use of the
3 department and, except as provided by this subchapter, may not be
4 disseminated by the department.

5 (b) The department shall grant access to criminal history
6 record information to:

7 (1) criminal justice agencies;

8 (2) noncriminal justice agencies authorized by
9 federal statute or executive order or by state statute to receive
10 criminal history record information;

11 (3) the person who is the subject of the criminal
12 history record information;

13 (4) a person working on a research or statistical
14 project that:

15 (A) is funded in whole or in part by state funds;

16 or

17 (B) meets the requirements of Part 22, Title 28,
18 Code of Federal Regulations, and is approved by the department;

19 (5) an individual or an agency that has a specific
20 agreement with a criminal justice agency to provide services
21 required for the administration of criminal justice under that
22 agreement, if the agreement:

23 (A) specifically authorizes access to
24 information;

25 (B) limits the use of information to the purposes
26 for which it is given;

27 (C) ensures the security and confidentiality of

1 the information; and

2 (D) provides for sanctions if a requirement
3 imposed under Paragraph (A), (B), or (C) is violated;

4 (6) an individual or an agency that has a specific
5 agreement with a noncriminal justice agency to provide services
6 related to the use of criminal history record information
7 disseminated under this subchapter, if the agreement:

8 (A) specifically authorizes access to
9 information;

10 (B) limits the use of information to the purposes
11 for which it is given;

12 (C) ensures the security and confidentiality of
13 the information; and

14 (D) provides for sanctions if a requirement
15 imposed under Paragraph (A), (B), or (C) is violated;

16 (7) a county or district clerk's office; ~~and~~

17 (8) the Office of Court Administration of the Texas
18 Judicial System; and

19 (9) officers commissioned by the office of inspector
20 general established under Subchapter R, Chapter 531, Government
21 Code.

22 (c) The department may disseminate criminal history record
23 information under Subsection (b)(1) only for a criminal justice
24 purpose. The department may disseminate criminal history record
25 information under Subsection (b)(2) only for a purpose specified in
26 the statute or order. The department may disseminate criminal
27 history record information under Subsection (b)(4), (5), or (6)

1 only for a purpose approved by the department and only under rules
2 adopted by the department. The department may disseminate criminal
3 history record information under Subsection (b)(7) only to the
4 extent necessary for a county or district clerk to perform a duty
5 imposed by law to collect and report criminal court disposition
6 information. Criminal history record information disseminated to a
7 clerk under Subsection (b)(7) may be used by the clerk only to
8 ensure that information reported by the clerk to the department is
9 accurate and complete. The dissemination of information to a clerk
10 under Subsection (b)(7) does not affect the authority of the clerk
11 to disclose or use information submitted by the clerk to the
12 department. The department may disseminate criminal history record
13 information under Subsection (b)(8) only to the extent necessary
14 for the office of court administration to perform a duty imposed by
15 law to compile court statistics or prepare reports. The office of
16 court administration may disclose criminal history record
17 information obtained from the department under Subsection (b)(8) in
18 a statistic compiled by the office or a report prepared by the
19 office, but only in a manner that does not identify the person who
20 is the subject of the information.

21 (d) The department is not required to release or disclose
22 criminal history record information to any person that is not in
23 compliance with rules adopted by the department under this
24 subchapter or rules adopted by the Federal Bureau of Investigation
25 that relate to the dissemination or use of criminal history record
26 information.

27 SECTION 1. Section 261.404, Family Code, is amended by

1 adding Subsection (b-1) to read as follows:

2 (b-1) If an investigation under this section reveals
3 evidence of abuse, neglect, or exploitation of a resident or client
4 of a state developmental center as defined by Section 531.002,
5 Health and Safety Code and a caseworker of the department or a
6 supervisor of a caseworker believes that the abuse, neglect, or
7 exploitation is a criminal offense, the caseworker or supervisor
8 shall immediately notify the Health and Human Services Commission's
9 office of inspector general and promptly provide the Health and
10 Human Services Commission's office of inspector general with a copy
11 of the department's investigation report.

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

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

16 Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW
17 ENFORCEMENT. (a) The office of inspector general shall employ and
18 commission peace officers for the sole purpose of assisting a state
19 or local law enforcement agency in the investigation of an alleged
20 criminal offense involving a resident or client of a state
21 developmental center as defined by Section 531.002, Health and
22 Safety Code.

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

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

3 (2) a statement regarding whether the investigation
4 resulted in a finding that an alleged criminal offense was
5 committed; and

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

8 (c) The office of inspector general shall deliver the final
9 report to the:

10 (1) executive commissioner;

11 (2) commissioner of the Department of Aging and
12 Disability Services;

13 (3) commissioner of the Department of Family and
14 Protective Services;

15 (4) Aging and Disability Services Council;

16 (5) governor;

17 (6) lieutenant governor;

18 (7) speaker of the house of representatives;

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

22 (9) state auditor;

23 (10) alleged victim and the alleged victim's legally
24 authorized representative; and

25 (11) office of the independent ombudsman for state
26 developmental centers.

27 (d) A final report regarding an investigation is subject to

1 required disclosure under Chapter 552. All information and
2 materials compiled by the office of inspector general in connection
3 with an investigation are confidential, and not subject to
4 disclosure under Chapter 552, and not subject to disclosure,
5 discovery, subpoena, or other means of legal compulsion for their
6 release to anyone other than the office or its employees or agents
7 involved in the investigation conducted by the office, except that
8 this information may be disclosed to the office of the attorney
9 general, the state auditor's office, and law enforcement agencies.

10 (e) The office of inspector general shall prepare an annual
11 status report of its activities under this section. The annual
12 report may not contain identifying information of an individual
13 mentioned in the report. The annual status report must include
14 information that is aggregated and disaggregated by individual
15 state developmental center.

16 (1) the number and type of alleged offenses
17 investigated by the office;

18 (2) the number and type of alleged offenses involving
19 an employee of a state developmental center;

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

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

25 (5) the number of completed investigations in which
26 commission of the alleged offense was confirmed or unsubstantiated
27 or in which the investigation was inconclusive, and a description

1 of the reason that allegations were unsubstantiated or the
2 investigation was inconclusive.

3 (f) The office of inspector general shall:

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

5 (A) executive commissioner;

6 (B) commissioner of the Department of Aging and
7 Disability Services;

8 (C) commissioner of the Department of Family and
9 Protective Services;

10 (D) Aging and Disability Services Council;

11 (E) Family and Protective Services Council;

12 (F) governor;

13 (G) lieutenant governor;

14 (H) speaker of the house of representatives;

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

18 (J) state auditor; and

19 (K) comptroller; and

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

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

24 SECTION 4. Chapter 531, Government Code, is amended by
25 adding Subchapter R to read as follows:

26 SUBCHAPTER R. INSPECTOR GENERAL

27 Sec. 531.701. DEFINITIONS. In this subchapter:

1 (1) "Fraud" has the meaning assigned by Section
2 531.1011.

3 (2) "Inspector general" means the inspector general
4 appointed under this subchapter.

5 (3) "Office" means the Office of Inspector General.

6 (4) "Provider" has the meaning assigned by Section
7 531.1011.

8 (5) "Review" includes an inspection, investigation,
9 audit, or similar activity.

10 (6) "State funds" or "state money" includes federal
11 funds or money received and appropriated by the state or for which
12 the state has oversight responsibility.

13 Sec. 531.702. REFERENCE IN OTHER LAW. Notwithstanding any
14 other provision of law, a reference in law or rule to the
15 commission's office of inspector general or the commission's office
16 of investigations and enforcement means the Office of Inspector
17 General.

18 Sec. 531.703. OFFICE OF INSPECTOR GENERAL; ADMINISTRATIVE
19 ATTACHMENT. (a) The office of inspector general is responsible
20 for:

21 (1) the investigation of fraud, waste, and abuse in
22 the provision or funding of health or human services by this state;

23 (2) the enforcement of state law relating to the
24 provision of those services to protect the public; and

25 (3) the investigation, prevention and detection of
26 crime relating to the provision of those services.

27 (b) The office is part of the single state Medicaid agency

1 and is administratively attached to the commission. The commission
2 shall provide to the office administrative support services from
3 the commission and from health and human services agencies.

4 Sec. 531.704. SERVICE LEVEL AGREEMENT; FUNDS. (a) The
5 commission and the office shall enter into a service level
6 agreement that establishes the performance standards and
7 deliverables with regard to administrative support by the
8 commission.

9 (b) The service level agreement must be reviewed at least
10 annually to ensure that services and deliverables are provided in
11 accordance with the agreement.

12 (c) The commission shall request, apply for, and receive for
13 the office any appropriations or other money from this state or the
14 federal government, and shall disburse all such funds to the office
15 as appropriated.

16 (d) The commission shall provide to the office for the state
17 fiscal biennium beginning September 1, 2009, the same level of
18 administrative support the commission provided to the office
19 established under former Section 531.102 for the state fiscal
20 biennium beginning September 1, 2007. This subsection expires
21 January 1, 2012.

22 Sec. 531.705. DUTIES OF COMMISSION. (a) The commission
23 shall:

24 (1) provide administrative assistance to the office;
25 and

26 (2) coordinate administrative responsibilities with
27 the office to avoid unnecessary duplication of duties.

1 (b) The commission may not take an action that affects or
2 relates to the validity, status, or terms of an interagency
3 agreement or a contract to which the office is a party without the
4 office's approval.

5 Sec. 531.706. INDEPENDENCE OF OFFICE. (a) Except as
6 otherwise provided by this chapter, the office and inspector
7 general operate independently of the commission.

8 (b) The inspector general, not the executive commissioner,
9 supervises the office staff and manages the operations of the
10 office.

11 (c) The inspector general shall have operational authority
12 over and responsibility for the:

13 (1) management of the daily operations of the office,
14 including the organization and management of the office and office
15 operating procedures;

16 (2) allocation of resources within the office;

17 (3) personnel and employment policies;

18 (4) contracting, purchasing, and related policies,
19 subject to other laws relating to state agency contracting and
20 purchasing;

21 (5) information resources systems used by the office;

22 (6) location of office facilities;

23 (7) coordination of office activities with activities
24 of other state agencies, including other health and human services
25 agencies.

26 Sec. 531.707. INSPECTOR GENERAL: APPOINTMENT AND TERM. (a)
27 The governor shall appoint an inspector general to serve as

1 director of the office.

2 (b) The inspector general reports to the governor and serves
3 a two-year term that expires on February 1 of each odd-numbered
4 year.

5 (c) The inspector general is a state officer.

6 Section 531.708. CONFLICT OF INTEREST. (a) The inspector
7 general may not serve as an ex officio member on the governing body
8 of a governmental entity.

9 (b) The inspector general may not have a financial interest
10 in the transactions of the office, a health and human services
11 agency, or a health or human services provider.

12 Section 531.709. RULEMAKING BY INSPECTOR GENERAL. (a)
13 Notwithstanding Section 531.0055 (e) and any other law, the
14 inspector general shall adopt the rules necessary to administer the
15 functions of the office, including rules to address the imposition
16 of sanctions and penalties for violations and due process
17 requirements for imposing sanctions and penalties, as well as rules
18 relating to the eligibility of providers and contractors to
19 participate in health and human services programs.

20 (b) A rule, standard, or form adopted by the executive
21 commissioner, the commission, or a health and human services agency
22 that is necessary to accomplish the duties of the office is
23 considered to also be a rule, standard, or form of the office and
24 remains in effect as a rule, standard, or form of the office until
25 changed by the inspector general.

26 (c) The office may submit proposed rules and adopted rules
27 to the commission for publication. The executive commissioner or

1 commission may not amend or modify a rule submitted by the office.

2 (d) The rules must include standards for the office that
3 emphasize:

4 (1) coordinating investigative efforts to
5 aggressively recover money;

6 (2) allocating resources to cases that have the
7 strongest supportive evidence and the greatest potential for
8 recovery of money; and

9 (3) maximizing opportunities for referral of cases to
10 the office of the attorney general.

11 Sec. 531.710. EMPLOYEES; MEDICAL REVIEW OFFICER; TRAINING.

12 (a) The inspector general may employ personnel as necessary
13 to implement the duties of the office.

14 (b) The inspector general shall employ a physician as the
15 medical review officer to perform reviews and provide information
16 and consultation as appropriate when the matter at issue involves
17 or requires medical expertise.

18 (c) The inspector general shall train office personnel to
19 pursue priority Medicaid and other health and human services fraud,
20 waste, and abuse cases efficiently and as necessary.

21 (d) The inspector general may contract with certified
22 public accountants, management consultants, or other professional
23 experts necessary to enable the inspector general and office
24 personnel to independently perform the functions of the inspector
25 general's office.

26 (e) The inspector general may require employees of health
27 and human services agencies to provide assistance to the office in

1 connection with the office's duties relating to the investigation
2 of fraud, waste, and abuse in the provision of health and human
3 services.

4 Sec. 531.711. REVIEW AUTHORITY. (a) The inspector general
5 may any activity or operation of a health and human services agency,
6 health or human services provider, or person in this state that is
7 related to the investigation, detection, or prevention of fraud,
8 waste, abuse or employee misconduct in a state or state-funded
9 health or human services program. A review may include an
10 inspection, investigation, audit, or other similar activity [~~or~~
11 ~~other~~] inquiring[y] into a specific act or allegation of, or a
12 specific financial transaction or practice that may involve,
13 impropriety, malfeasance, or nonfeasance in the obligation,
14 spending, receipt, or other use of state money.

15 (b) The executive commissioner, the commission, or a health
16 and human services agency of this state may not impair, prohibit, or
17 attempt to influence the inspector general in initiating,
18 conducting, or completing a review.

19 (c) The inspector general may conduct reviews, including
20 financial or performance audits regarding the use and effectiveness
21 of state funds, including contract and grant funds, administered by
22 a person or state agency receiving the funds in connection with a
23 state or state-funded health or human services program.

24 Sec. 531.712. INITIATION OF REVIEW. The inspector general
25 may initiate a review:

- 26 (1) on the inspector general's own initiative;
27 (2) at the request of the commission or executive

1 commissioner; or

2 (3) based on a complaint from any source concerning a
3 matter described by Section 531.711.

4 Sec. 531.713. INTEGRITY REVIEW. (a) The office shall
5 conduct an integrity review to determine whether there is
6 sufficient basis to warrant a full investigation on receipt of any
7 complaint of fraud, waste, or abuse of funds in the state Medicaid
8 program from any source.

9 (b) An integrity review must begin not later than the 30th
10 day after the date the office receives a complaint or has reason to
11 believe that Medicaid fraud, waste, or abuse has occurred. An
12 integrity review shall be completed not later than the 90th day
13 after the date the review began.

14 (c) If the findings of an integrity review give the office
15 reason to believe that an incident of fraud involving possible
16 criminal conduct has occurred in the state Medicaid program, the
17 office must take the following action, as appropriate, not later
18 than the 30th day after the completion of the integrity review:

19 (1) if a provider is suspected of fraud involving
20 criminal conduct, the office must refer the case to the state's
21 Medicaid fraud control unit, provided that the criminal referral
22 does not preclude the office from continuing its investigation of
23 the provider or preclude the imposition of appropriate
24 administrative or civil sanctions; or

25 (2) if there is reason to believe that a recipient of
26 funds has defrauded the Medicaid program, the office may conduct a
27 full investigation of the suspected fraud.

1 Sec. 531.714. ACCESS TO INFORMATION. (a) To further a
2 review conducted by the office, the inspector general is entitled
3 to full and unrestricted access to all offices, limited-access or
4 restricted areas, employees, books, papers, records, documents,
5 equipment, computers, databases, systems, accounts, reports,
6 vouchers, or other information, including confidential
7 information, electronic data, and internal records relevant to the
8 functions of the office, maintained by a person, health and human
9 services agency, or health or human services provider in connection
10 with a state or state-funded health or human services program.

11 (b) The inspector general may not access data or other
12 information the release of which is restricted under federal law
13 unless the office is in compliance with all applicable federal
14 regulations governing such access.

15 Sec. 531.715. COOPERATION REQUIRED. To further a review
16 conducted by the inspector general's office, the inspector general
17 may require medical or other professional assistance from the
18 executive commissioner, the commission, a health and human services
19 agency, or an auditor, accountant, or other employee of the
20 commission or agency.

21 Sec. 531.716. REFERRAL TO STATE MEDICAID FRAUD CONTROL
22 UNIT. (a) At the time the office learns or has reason to suspect
23 that a health or human services provider 's records related to
24 participation in the state Medicaid program are being withheld,
25 concealed, destroyed, fabricated, or in any way falsified, the
26 office shall immediately refer the case to the state's Medicaid
27 fraud control unit.

1 (b) A criminal referral under Subsection (a) does not
2 preclude the office from continuing its investigation of a health
3 or human services provider or the imposition of appropriate
4 administrative or civil sanctions.

5 Sec. 531.717. HOLD ON CLAIM REIMBURSEMENT PAYMENT;
6 EXCLUSION FROM PROGRAMS. (a) In addition to other instances
7 authorized under state or federal law, the office shall impose
8 without prior notice a hold on payment of claims for reimbursement
9 submitted by a health or human services provider to compel
10 production of records related to participation in the state
11 Medicaid program or on request of the state's Medicaid fraud
12 control unit, as applicable.

13 (b) The office must notify the health or human services
14 provider of the hold on payment not later than the fifth working day
15 after the date the payment hold is imposed.

16 (c) The office shall, in consultation with the state's
17 Medicaid fraud control unit, establish guidelines under which holds
18 on payment or exclusions from a state or state-funded program:

19 (1) may permissively be imposed on a health or human
20 services provider; or

21 (2) shall automatically be imposed on a provider.

22 (d) A health or human services provider subject to a hold on
23 payment or excluded from a program under this section is entitled to
24 a hearing on the hold or exclusion. A hearing under this subsection
25 is a contested case hearing under Chapter 2001. The State Office of
26 Administrative Hearings shall conduct the hearing. After the
27 hearing, the office, subject to judicial review, shall make a final

1 determination. The commission, a health and human services agency,
2 and the office of the attorney general are entitled to intervene as
3 parties in the contested case.

4 Sec. 531.718. REQUEST FOR EXPEDITED HEARING. (a) On timely
5 written request by a health or human services provider subject to a
6 hold on payment under Section 531.717, other than a hold requested
7 by the state's Medicaid fraud control unit, the office shall file a
8 request with the State Office of Administrative Hearings for an
9 expedited administrative hearing regarding the hold.

10 (b) The health or human services provider must request an
11 expedited hearing not later than the 10th day after the date the
12 provider receives notice from the office under Section 531.717(b).

13 (c) The office may enter into a memorandum of understanding
14 with the State Office of Administrative Hearings to facilitate the
15 docketing and hearing of contested case hearings.

16 Sec. 531.719. INFORMAL RESOLUTION. (a) The inspector
17 general shall adopt rules that allow a health or human services
18 provider subject to a hold on payment under Section 531.717, other
19 than a hold requested by the state's Medicaid fraud control unit, to
20 seek an informal resolution of the issues identified by the office
21 in the notice provided under that section.

22 (b) A health or human services provider must seek an
23 informal resolution not later than the 10th day after the date the
24 provider receives notice from the office under Section 531.717(b).

25 (c) A health or human services provider's decision to seek
26 an informal resolution does not extend the time by which the
27 provider must request an expedited administrative hearing under

1 Section 531.718.

2 (d) A hearing initiated under Section 531.717 shall be
3 stayed at the office's request until the informal resolution
4 process is completed.

5 Sec. 531.720. EMPLOYEE REPORTS. The inspector general may
6 require employees at the commission or a health and human services
7 agency to report to the office information regarding fraud, waste,
8 misuse or abuse of funds or resources, corruption, or illegal acts.

9 Sec. 531.721. SUBPOENAS. (a) The inspector general may
10 issue a subpoena to compel the attendance of a relevant witness or
11 the production, for inspection or copying, of relevant evidence in
12 connection with a review conducted under this subchapter.

13 (b) A subpoena may be served personally or by certified
14 mail.

15 (c) If a person fails to comply with a subpoena, the
16 inspector general, acting through the attorney general, may file
17 suit to enforce the subpoena in a district court in this state.

18 (d) On finding that good cause exists for issuing the
19 subpoena, the court shall order the person to comply with the
20 subpoena. The court may hold in contempt a person who fails to obey
21 the court order.

22 (e) The reimbursement of the expenses of a witness whose
23 attendance is compelled under this section is governed by Section
24 2001.103.

25 Sec. 531.722. INTERNAL AUDITOR. (a) In this section,
26 "internal auditor" means a person appointed under Section 2102.006.

27 (b) The internal auditor for a health and human services

1 agency shall provide the inspector general with a copy of the
2 agency's internal audit plan to:

3 (1) assist in the coordination of efforts between the
4 inspector general and the internal auditor; and

5 (2) limit duplication of effort regarding reviews by
6 the inspector general and internal auditor.

7 (c) The internal auditor shall provide to the inspector
8 general all final audit reports concerning audits of any:

9 (1) part or division of the agency;

10 (2) contract, procurement, or grant; and

11 (3) program conducted by the agency.

12 Sec. 531.723. COOPERATION WITH LAW ENFORCEMENT OFFICIALS
13 AND OTHER ENTITIES. (a) The inspector general may provide
14 information and evidence relating to criminal acts to the state
15 auditor's office and appropriate law enforcement officials.

16 (b) The inspector general may refer matters for further
17 civil, criminal, and administrative action to appropriate
18 administrative and prosecutorial agencies, including the attorney
19 general.

20 (c) The inspector general may enter into a memorandum of
21 understanding with a law enforcement or prosecutorial agency,
22 including the office of the attorney general, to assist in
23 conducting a review under this subchapter.

24 Sec. 531.724. COOPERATION AND COORDINATION WITH STATE
25 AUDITOR.

26 (a) The state auditor may, on request of the inspector
27 general, provide appropriate information or other assistance to the

1 inspector general or office, as determined by the state auditor.

2 (b) The inspector general may meet with the state auditor's
3 office to coordinate a review conducted under this subchapter,
4 share information, or schedule work plans.

5 (c) The state auditor is entitled to access all information
6 maintained by the inspector general, including vouchers,
7 electronic data, internal records, and information obtained under
8 Section 531.714 or subject to Section 531.731.

9 (d) Any information obtained or provided by the state
10 auditor under this section is confidential and not subject to
11 disclosure under Chapter 552.

12 Sec. 531.725. PREVENTION. (a) The inspector general may
13 recommend to the commission and executive commissioner policies on:

14 (1) promoting economical and efficient administration
15 of state funds administered by an individual or entity that
16 received the funds from a health and human services agency; and

17 (2) preventing and detecting fraud, waste, and abuse
18 in the administration of those funds.

19 (b) The inspector general may provide training or other
20 education regarding the prevention of fraud, waste, or abuse to
21 employees of a health and human services agency. The training or
22 education provided must be approved by the presiding officer of the
23 agency.

24 Sec. 531.726. RULEMAKING BY EXECUTIVE COMMISSIONER. The
25 executive commissioner may adopt rules governing a health and human
26 services agency's response to reports and referrals from the
27 inspector general on issues identified by the inspector general

1 related to the agency or a contractor of the agency.

2 Sec. 531.727. ALLEGATIONS OF MISCONDUCT AGAINST PRESIDING
3 OFFICER. If a review by the inspector general involves allegations
4 that a presiding officer of a health and human services agency has
5 engaged in misconduct, the inspector general shall report to the
6 governor during the review until the report is completed or the
7 review is closed without a finding.

8 Sec. 531.728. PERIODIC REPORTING TO STATE AUDITOR AND
9 EXECUTIVE COMMISSIONER REQUIRED. The inspector general shall
10 timely inform the state auditor and the executive commissioner of
11 the initiation of a review of a health and human services agency
12 program and the ongoing status of each review.

13 Sec. 531.729. REPORTING OFFICE FINDINGS. The inspector
14 general shall report the findings of any review or investigation
15 conducted by the office to:

- 16 (1) the executive commissioner;
17 (2) the governor;
18 (3) the lieutenant governor;
19 (4) the speaker of the house of representatives;
20 (5) the state auditor's office; and
21 (6) appropriate law enforcement and prosecutorial
22 agencies, including the office of the attorney general, if the
23 findings suggest the probability of criminal conduct.

24 Sec. 531.730. FLAGRANT VIOLATIONS; IMMEDIATE REPORT. The
25 inspector general shall immediately report to the executive
26 commissioner, the governor 's general counsel, and the state
27 auditor a problem deemed by the inspector general to be

1 particularly serious or flagrant, and relating to the
2 administration of a program, operation of a health and human
3 services agency, or interference with an inspector general review.

4 Sec. 531.731. INFORMATION CONFIDENTIAL. (a) Except as
5 provided by this section, Sections 531.103 531.729, and 531.733,
6 all information and material compiled or maintained by the
7 inspector general during a review under this subchapter is:

8 (1) confidential and not subject to disclosure under
9 Chapter 552; and

10 (2) not subject to disclosure, discovery, subpoena, or
11 other means of legal compulsion for release to anyone other than the
12 state auditor's office, the commission, or the office or its agents
13 involved in the review related to that information or material.

14 (b) Subsection (a) applies to information the inspector
15 general is required to disclose under Sections 531.727, 531.728,
16 531.730, and 531.732.

17 (c) As the inspector general determines appropriate based
18 on evidence sufficient to support an allegation, information
19 relating to a review may be disclosed to:

20 (1) a law enforcement agency;

21 (2) the attorney general's office;

22 (3) the state auditor's office; or

23 (4) the commission; or

24 (5) a licensing or regulatory agency.

25 (d) A person that receives information under Subsections
26 (b) and (c) may not disclose the information except to the extent
27 that disclosure is consistent with the authorized purpose for which

1 the person first obtained the information.

2 Sec. 531.732. DRAFT OF FINAL REPORT; AGENCY RESPONSE.

3 (a) Except in cases in which the office has determined that
4 potential fraud, waste, or abuse exists, or a criminal violation
5 has occurred, the office shall provide a draft of the final report
6 of any review of the operations of a health and human services
7 agency to the presiding officer of the agency before publishing the
8 office's final report.

9 (b) The health and human services agency may provide a
10 response to the office 's draft report in the manner prescribed by
11 the office not later than the 10th day after the date the draft
12 report is received by the agency. The inspector general by rule
13 shall specify the format and requirements of the agency response.

14 (c) Notwithstanding Subsection (a), the office may not
15 provide a draft report to the presiding officer of the agency if in
16 the inspector general's opinion providing the draft report could
17 negatively affect any anticipated civil or criminal proceedings.

18 (d) The office may include any portion of the agency's
19 response in the office's final report.

20 Sec. 531.733. FINAL REVIEW REPORTS; AGENCY RESPONSE. (a)
21 The inspector general shall prepare a final report for each review
22 conducted under this subchapter. The final report must include:

23 (1) a summary of the activities performed by the
24 inspector general in conducting the review;

25 (2) a determination of whether wrongdoing was found;
26 and

27 (3) a description of any findings of wrongdoing.

1 (b) The inspector general's final review reports are
2 subject to disclosure under Chapter 552.

3 (c) All working papers and other documents related to
4 compiling the final review reports remain confidential and are not
5 subject to disclosure under Chapter 552.

6 (d) Not later than the 60th day after the date the office
7 issues a final report that identifies deficiencies or
8 inefficiencies in, or recommends corrective measures in the
9 operations of, a health and human services agency, the agency shall
10 file a response that includes:

11 (1) an implementation plan and timeline for
12 implementing corrective measures; or

13 (2) the agency's rationale for declining to implement
14 corrective measures for the identified deficiencies or
15 inefficiencies or the office's recommended corrective measures, as
16 applicable.

17 Sec. 531.734. STATE AUDITOR AUDITS, INVESTIGATIONS, AND
18 ACCESS TO INFORMATION NOT IMPAIRED. This subchapter or other law
19 related to the operation of the inspector general does not prohibit
20 the state auditor from conducting an audit, investigation, or other
21 review or from having full and complete access to all records and
22 other information including witnesses and electronic data, that the
23 state auditor considers necessary for the audit, investigation, or
24 other review.

25 Sec. 531.735. AUTHORITY OF STATE AUDITOR TO CONDUCT TIMELY
26 AUDITS NOT IMPAIRED. This chapter or other law related to the
27 operation of the inspector general does not take precedence over

1 the authority of the state auditor to conduct an audit under Chapter
2 321 or other law.

3 Sec. 531.736. BUDGET. (a) The inspector general shall
4 submit a budget in accordance with the reporting requirements of
5 the General Appropriations Act.

6 (b) The inspector general shall submit to the commission a
7 legislative appropriations request and an operating budget in
8 accordance with the service level agreement entered into under
9 Section 531.704 and applicable law.

10 (c) The commission shall submit the office's appropriations
11 request and, if required by or under law, operating budget to the
12 legislature. The request or budget is not subject to review,
13 alteration, or modification by the commission or executive
14 commissioner before submission to the legislature.

15 Sec. 531.737. COSTS. (a) The inspector general shall
16 maintain information regarding the cost of reviews.

17 (b) The inspector general may cooperate with appropriate
18 administrative and prosecutorial agencies, including the office of
19 the attorney general, in recovering costs incurred under this
20 subchapter from nongovernmental entities, including contractors or
21 individuals involved in:

22 (1) violations of applicable state or federal rules or
23 statutes;

24 (2) abusive or willful misconduct; or

25 (3) violations of a provider contract or program
26 policy.

27 (c) In criminal cases the inspector general and the Office

1 of Attorney General shall cooperate to ensure that all appropriate
2 evidence is submitted to the court in all criminal prosecutions
3 towards ensuring that restitution is ordered, to include the
4 overpayment and the costs incurred under this subchapter, as a
5 condition of probation or as a condition of parole.

6 Sec. 531.738. ADMINISTRATIVE OR CIVIL PENALTY; INJUNCTION.

7 (a) The office may:

8 (1) act for a health and human services agency in the
9 assessment by the office of administrative or civil penalties the
10 agency is authorized to assess under applicable law; and

11 (2) request that the attorney general obtain an
12 injunction to prevent a person from disposing of an asset
13 identified by the office as potentially subject to recovery by the
14 office due to the person's fraud, waste, or abuse.

15 (b) If the office imposes an administrative or civil penalty
16 under Subsection (a) for a health and human services agency:

17 (1) the health and human services agency may not
18 impose an administrative or civil penalty against the same person
19 for the same violation; and

20 (2) the office shall impose the penalty under
21 applicable rules of the office, this subchapter, and applicable
22 laws and rules governing the imposition of a penalty by the health
23 and human services agency.

24 Sec. 531.739. PEACE OFFICER INVESTIGATORS. (a) An
25 investigator assigned to conduct investigations for the office may
26 be a commissioned peace officer. The number of commissioned peace
27 officers assigned to conduct investigations may not exceed 15

1 percent of the office's full-time equivalent positions.

2 (b) A commissioned peace officer or otherwise designated
3 law enforcement officer employed by the office is not entitled to
4 supplemental benefits from the law enforcement and custodial
5 officer supplemental retirement fund unless the officer transfers
6 from a position, without a break in service, that qualifies for
7 supplemental retirement benefits from the fund.

8 SECTION 2. Section 531.001, Government Code, is amended by
9 adding Subdivision (4-a) to read as follows:

10 (4-a) "Office of inspector general" means the office
11 of inspector general established under Subchapter R.

12 SECTION 3. Section 531.008(c), Government Code, is amended
13 to read as follows:

14 (c) The executive commissioner shall establish the
15 following divisions and offices within the commission:

16 (1) the eligibility services division to make
17 eligibility determinations for services provided through the
18 commission or a health and human services agency related to:

19 (A) the child health plan program;

20 (B) the financial assistance program under
21 Chapter 31, Human Resources Code;

22 (C) the medical assistance program under Chapter
23 32, Human Resources Code;

24 (D) the nutritional assistance programs under
25 Chapter 33, Human Resources Code;

26 (E) long-term care services, as defined by
27 Section 22.0011, Human Resources Code;

1 (F) community-based support services identified
2 or provided in accordance with Section 531.02481; and

3 (G) other health and human services programs, as
4 appropriate;

5 (2) ~~[the office of inspector general to perform fraud
6 and abuse investigation and enforcement functions as provided by
7 Subchapter C and other law;~~

8 ~~[(3)]~~ the office of the ombudsman to:

9 (A) provide dispute resolution services for the
10 commission and the health and human services agencies; and

11 (B) perform consumer protection functions
12 related to health and human services;

13 (3) ~~[(4)]~~ a purchasing division as provided by Section
14 531.017; and

15 (4) ~~[(5)]~~ an internal audit division to conduct a
16 program of internal auditing in accordance with ~~[Government Code,~~
17 Chapter 2102.

18 SECTION 4. Sections 531.103(a), (c), and (d), Government
19 Code, are amended to read as follows:

20 (a) The ~~[commission, acting through the commission's]~~
21 office of inspector general~~[,]~~ and the office of the attorney
22 general shall enter into a memorandum of understanding to develop
23 and implement joint written procedures for processing cases of
24 suspected fraud, waste, or abuse, as those terms are defined by
25 state or federal law, or other violations of state or federal law
26 under the state Medicaid program or other program administered by
27 the commission or a health and human services agency, including the

1 financial assistance program under Chapter 31, Human Resources
2 Code, a nutritional assistance program under Chapter 33, Human
3 Resources Code, and the child health plan program. The memorandum
4 of understanding shall require:

5 (1) the office of inspector general and the office of
6 the attorney general to set priorities and guidelines for referring
7 cases to appropriate state agencies for investigation,
8 prosecution, or other disposition to enhance deterrence of fraud,
9 waste, abuse, or other violations of state or federal law,
10 including a violation of Chapter 102, Occupations Code, in the
11 programs and maximize the imposition of penalties, the recovery of
12 money, and the successful prosecution of cases;

13 (1-a) the office of inspector general to refer each
14 case of suspected provider fraud, waste, or abuse to the office of
15 the attorney general not later than the 20th business day after the
16 date the office of inspector general determines that the existence
17 of fraud, waste, or abuse is reasonably indicated;

18 (1-b) the office of the attorney general to take
19 appropriate action in response to each case referred to the
20 attorney general, which action may include direct initiation of
21 prosecution, with the consent of the appropriate local district or
22 county attorney, direct initiation of civil litigation, referral to
23 an appropriate United States attorney, a district attorney, or a
24 county attorney, or referral to a collections agency for initiation
25 of civil litigation or other appropriate action;

26 (2) the office of inspector general to keep detailed
27 records for cases processed by that office or the office of the

1 attorney general, including information on the total number of
2 cases processed and, for each case:

3 (A) the agency and division to which the case is
4 referred for investigation;

5 (B) the date on which the case is referred; and

6 (C) the nature of the suspected fraud, waste, or
7 abuse;

8 (3) the office of inspector general to notify each
9 appropriate division of the office of the attorney general of each
10 case referred by the office of inspector general;

11 (4) the office of the attorney general to ensure that
12 information relating to each case investigated by that office is
13 available to each division of the office with responsibility for
14 investigating suspected fraud, waste, or abuse;

15 (5) the office of the attorney general to notify the
16 office of inspector general of each case the attorney general
17 declines to prosecute or prosecutes unsuccessfully;

18 (6) representatives of the office of inspector general
19 and of the office of the attorney general to meet not less than
20 quarterly to share case information and determine the appropriate
21 agency and division to investigate each case; and

22 (7) the office of inspector general and the office of
23 the attorney general to submit information requested by the
24 comptroller about each resolved case for the comptroller's use in
25 improving fraud detection.

26 (c) The office of inspector general [~~commission~~] and the
27 office of the attorney general shall jointly prepare and submit a

1 semiannual report to the governor, lieutenant governor, speaker of
2 the house of representatives, and comptroller concerning the
3 activities of the office of the attorney general and the office of
4 inspector general [~~those agencies~~] in detecting and preventing
5 fraud, waste, and abuse under the state Medicaid program or other
6 program administered by the commission or a health and human
7 services agency. The report may be consolidated with any other
8 report relating to the same subject matter the office of inspector
9 general [~~commission~~] or office of the attorney general is required
10 to submit under other law.

11 (d) The office of inspector general [~~commission~~] and the
12 office of the attorney general may not assess or collect
13 investigation and attorney's fees on behalf of any state agency
14 unless the office of inspector general, the office of the attorney
15 general, or another [~~other~~] state agency collects a penalty,
16 restitution, or other reimbursement payment to the state.

17 SECTION 5. Section 531.1031(a)(2), Government Code, is
18 amended o read as follows:

19 (2) "Participating agency" means:

20 (A) the Medicaid fraud enforcement divisions of
21 the office of the attorney general; [~~and~~]

22 (B) each board or agency with authority to
23 license, register, regulate, or certify a health care professional
24 or managed care organization that may participate in the state
25 Medicaid program; and

26 (C) the office of inspector general.

27 SECTION 6. Section 531.104(a), Government Code, is amended

1 to read as follows:

2 (a) The office of inspector general [~~commission~~] and the
3 attorney general shall execute a memorandum of understanding under
4 which the office [~~commission~~] shall provide investigative support
5 as required to the attorney general in connection with cases under
6 Subchapter B, Chapter 36, Human Resources Code. Under the
7 memorandum of understanding, the office [~~commission~~] shall assist
8 in performing preliminary investigations and ongoing
9 investigations for actions prosecuted by the attorney general under
10 Subchapter C, Chapter 36, Human Resources Code.

11 SECTION 7. Section 531.105, Government Code, is amended to
12 read as follows:

13 Sec. 531.105. FRAUD DETECTION TRAINING. [~~(a)~~] The office
14 of inspector general [~~commission~~] shall develop and implement a
15 program to provide annual training to contractors who process
16 Medicaid claims and appropriate staff of the health and human
17 services agencies [~~Texas Department of Health and the Texas~~
18 ~~Department of Human Services~~] in identifying potential cases of
19 fraud, waste, or abuse under the state Medicaid program. The
20 training provided to the contractors and staff must include clear
21 criteria that specify:

22 (1) the circumstances under which a person should
23 refer a potential case to the office [~~commission~~]; and

24 (2) the time by which a referral should be made.

25 [~~(b) The Texas Department of Health and the Texas Department~~
26 ~~of Human Services, in cooperation with the commission, shall~~
27 ~~periodically set a goal of the number of potential cases of fraud,~~

1 ~~waste, or abuse under the state Medicaid program that each agency~~
2 ~~will attempt to identify and refer to the commission. The~~
3 ~~commission shall include information on the agencies' goals and the~~
4 ~~success of each agency in meeting the agency's goal in the report~~
5 ~~required by Section 531.103(e).]~~

6 SECTION 8. Sections 531.106(f) and (g), Government Code,
7 are amended to read as follows:

8 (f) Cases [~~The commission shall refer cases~~] identified by
9 the technology shall be referred to the [~~commission's~~] office of
10 inspector general [~~investigations and enforcement~~] or the office of
11 the attorney general, as appropriate.

12 (g) Each month, the learning or neural network technology
13 implemented under this section must match bureau of vital
14 statistics death records with Medicaid claims filed by a provider.
15 If the commission or the office of inspector general determines
16 that a provider has filed a claim for services provided to a person
17 after the person's date of death, as determined by the bureau of
18 vital statistics death records, [~~the commission shall refer~~] the
19 case shall be referred for investigation to the office of inspector
20 general or the office of the attorney general, as appropriate [~~to~~
21 ~~the commission's office of investigations and enforcement~~].

22 SECTION 9. Section 531.1061, Government Code, is amended to
23 read as follows:

24 Sec. 531.1061. FRAUD INVESTIGATION TRACKING SYSTEM. (a)
25 The office of inspector general [~~commission~~] shall use an automated
26 fraud investigation tracking system [~~through the commission's~~
27 office of investigations and enforcement] to monitor the progress

1 of an investigation of suspected fraud, waste, abuse, or
2 insufficient quality of care under the state Medicaid program.

3 (b) For each case of suspected fraud, waste, abuse, or
4 insufficient quality of care identified by the learning or neural
5 network technology required under Section 531.106, the automated
6 fraud investigation tracking system must:

7 (1) receive electronically transferred records
8 relating to the identified case from the learning or neural network
9 technology;

10 (2) record the details and monitor the status of an
11 investigation of the identified case, including maintaining a
12 record of the beginning and completion dates for each phase of the
13 case investigation;

14 (3) generate documents and reports related to the
15 status of the case investigation; and

16 (4) generate standard letters to a provider regarding
17 the status or outcome of an investigation.

18 (c) Each [~~The commission shall require each~~] health and
19 human services agency that performs any aspect of the state
20 Medicaid program shall [~~to~~] participate in the implementation and
21 use of the automated fraud investigation tracking system as
22 directed by the office.

23 SECTION 10. Section 531.1062(a), Government Code, is
24 amended to read as follows:

25 (a) The office of inspector general [~~commission~~] shall use
26 an automated recovery monitoring system to monitor the collections
27 process for a settled case of fraud, waste, abuse, or insufficient

1 quality of care under the state Medicaid program.

2 SECTION 11. Sections 531.107(a) and (f), Government Code,
3 are amended to read as follows:

4 (a) The Medicaid and Public Assistance Fraud Oversight Task
5 Force advises and assists the [~~commission and the commission's~~]
6 office of inspector general [~~investigations and enforcement~~] in
7 improving the efficiency of fraud investigations and collections.

8 (f) At least once each fiscal quarter, the [~~commission's~~]
9 office of inspector general [~~investigations and enforcement~~] shall
10 provide to the task force:

11 (1) information detailing:

12 (A) the number of fraud referrals made to the
13 office and the origin of each referral;

14 (B) the time spent investigating each case;

15 (C) the number of cases investigated each month,
16 by program and region;

17 (D) the dollar value of each fraud case that
18 results in a criminal conviction; and

19 (E) the number of cases the office rejects and
20 the reason for rejection, by region; and

21 (2) any additional information the task force
22 requires.

23 SECTION 12. Sections 531.108 and 531.109, Government Code,
24 are amended to read as follows:

25 Sec. 531.108. FRAUD PREVENTION. (a) The [~~commission's~~]
26 office of inspector general [~~investigations and enforcement~~] shall
27 compile and disseminate accurate information and statistics

1 relating to:

2 (1) fraud prevention; and

3 (2) post-fraud referrals received and accepted or
4 rejected from the office's [~~commission's~~] case management system or
5 the case management system of a health and human services agency.

6 (b) The office of inspector general [~~commission~~] shall[+]

7 [~~(1)~~] aggressively publicize successful fraud
8 prosecutions and fraud-prevention programs through all available
9 means, including the use of statewide press releases [~~issued in~~
10 ~~coordination with the Texas Department of Human Services, and~~

11 [~~(2) ensure that a toll-free hotline for reporting~~
12 ~~suspected fraud in programs administered by the commission or a~~
13 ~~health and human services agency is maintained and promoted, either~~
14 ~~by the commission or by a health and human services agency].~~

15 (c) The office of inspector general [~~commission~~] shall
16 develop a cost-effective method of identifying applicants for
17 public assistance in counties bordering other states and in
18 metropolitan areas selected by the office [~~commission~~] who are
19 already receiving benefits in other states. If economically
20 feasible, the office [~~commission~~] may develop a computerized
21 matching system.

22 (d) The office of inspector general [~~commission~~] shall:

23 (1) verify automobile information that is used as
24 criteria for eligibility; and

25 (2) establish a computerized matching system with the
26 Texas Department of Criminal Justice to prevent an incarcerated
27 individual from illegally receiving public assistance benefits

1 administered by the commission.

2 (e) The office of inspector general [~~commission~~] shall
3 submit to the governor and Legislative Budget Board a semiannual
4 report on the results of computerized matching of office and
5 commission information with information from neighboring states,
6 if any, and information from the Texas Department of Criminal
7 Justice. The report may be consolidated with any other report
8 relating to the same subject matter the office [~~commission~~] is
9 required to submit under other law.

10 Sec. 531.109. SELECTION AND REVIEW OF CLAIMS. (a) The
11 office of inspector general [~~commission~~] shall annually select and
12 review a random, statistically valid sample of all claims for
13 reimbursement under the state Medicaid program, including the
14 vendor drug program, for potential cases of fraud, waste, or abuse.

15 (b) In conducting the annual review of claims under
16 Subsection (a), the office of inspector general [~~commission~~] may
17 directly contact a recipient by telephone or in person, or both, to
18 verify that the services for which a claim for reimbursement was
19 submitted by a provider were actually provided to the recipient.

20 (c) Based on the results of the annual review of claims, the
21 office of inspector general and the commission shall determine the
22 types of claims at which office and commission resources for fraud,
23 waste, and abuse detection should be primarily directed.

24 SECTION 13. Sections 531.110(a), (c), (d), (e), and (f),
25 Government Code, are amended to read as follows:

26 (a) The office of inspector general [~~commission~~] shall
27 conduct electronic data matches for a recipient of assistance under

1 the state Medicaid program at least quarterly to verify the
2 identity, income, employment status, and other factors that affect
3 the eligibility of the recipient.

4 (c) The commission and other health and human services
5 agencies [~~Texas Department of Human Services~~] shall cooperate with
6 the office of inspector general [~~commission~~] by providing data or
7 any other assistance necessary to conduct the electronic data
8 matches required by this section.

9 (d) The office of inspector general [~~commission~~] may
10 contract with a public or private entity to conduct the electronic
11 data matches required by this section.

12 (e) The office of inspector general [~~commission~~], or a
13 health and human services agency designated by the office
14 [~~commission~~], by rule shall establish procedures to verify the
15 electronic data matches conducted by the office [~~commission~~] under
16 this section. Not later than the 20th day after the date the
17 electronic data match is verified, the commission and other health
18 and human services agencies [~~Texas Department of Human Services~~]
19 shall remove from eligibility a recipient who is determined to be
20 ineligible for assistance under the state Medicaid program.

21 (f) The office of inspector general [~~commission~~] shall
22 report biennially to the legislature the results of the electronic
23 data matching program. The report must include a summary of the
24 number of applicants who were removed from eligibility for
25 assistance under the state Medicaid program as a result of an
26 electronic data match conducted under this section.

27 SECTION 14. Section 531.1112, Government Code, is amended

1 to read as follows:

2 Sec. 531.1112. STUDY CONCERNING INCREASED USE OF TECHNOLOGY
3 TO STRENGTHEN FRAUD DETECTION AND DETERRENCE; IMPLEMENTATION. (a)
4 The commission and the [~~commission's~~] office of inspector general
5 shall jointly study the feasibility of increasing the use of
6 technology to strengthen the detection and deterrence of fraud in
7 the state Medicaid program. The study must include the
8 determination of the feasibility of using technology to verify a
9 person's citizenship and eligibility for coverage.

10 (b) The commission shall implement any methods the
11 commission and the [~~commission's~~] office of inspector general
12 determine are effective at strengthening fraud detection and
13 deterrence.

14 SECTION 15. Section 531.113, Government Code, is amended to
15 read as follows:

16 Sec. 531.113. MANAGED CARE ORGANIZATIONS: SPECIAL
17 INVESTIGATIVE UNITS OR CONTRACTS. (a) Each managed care
18 organization that provides or arranges for the provision of health
19 care services to an individual under a government-funded program,
20 including the Medicaid program and the child health plan program,
21 shall:

22 (1) establish and maintain a special investigative
23 unit within the managed care organization to investigate fraudulent
24 claims and other types of program waste or abuse by recipients and
25 service providers; or

26 (2) contract with another entity for the investigation
27 of fraudulent claims and other types of program waste or abuse by

1 recipients and service providers.

2 (b) Each managed care organization subject to this section
3 shall adopt a plan to prevent and reduce fraud, waste, and abuse and
4 annually file that plan with the [~~commission's~~] office of inspector
5 general for approval. The plan must include:

6 (1) a description of the managed care organization's
7 procedures for detecting and investigating possible acts of fraud,
8 waste, or abuse;

9 (2) a description of the managed care organization's
10 procedures for the mandatory reporting of possible acts of fraud,
11 waste, or abuse to the [~~commission's~~] office of inspector general;

12 (3) a description of the managed care organization's
13 procedures for educating and training personnel to prevent fraud,
14 waste, and abuse;

15 (4) the name, address, telephone number, and fax
16 number of the individual responsible for carrying out the plan;

17 (5) a description or chart outlining the
18 organizational arrangement of the managed care organization's
19 personnel responsible for investigating and reporting possible
20 acts of fraud, waste, or abuse;

21 (6) a detailed description of the results of
22 investigations of fraud, waste, and abuse conducted by the managed
23 care organization's special investigative unit or the entity with
24 which the managed care organization contracts under Subsection
25 (a)(2); and

26 (7) provisions for maintaining the confidentiality of
27 any patient information relevant to an investigation of fraud,

1 waste, or abuse.

2 (c) If a managed care organization contracts for the
3 investigation of fraudulent claims and other types of program waste
4 or abuse by recipients and service providers under Subsection
5 (a)(2), the managed care organization shall file with the
6 [~~commission's~~] office of inspector general:

7 (1) a copy of the written contract;

8 (2) the names, addresses, telephone numbers, and fax
9 numbers of the principals of the entity with which the managed care
10 organization has contracted; and

11 (3) a description of the qualifications of the
12 principals of the entity with which the managed care organization
13 has contracted.

14 (d) The [~~commission's~~] office of inspector general may
15 review the records of a managed care organization to determine
16 compliance with this section.

17 (e) The inspector general [~~commissioner~~] shall adopt rules
18 as necessary to accomplish the purposes of this section.

19 SECTION 16. Sections 531.114(b) and (g), Government Code,
20 are amended to read as follows:

21 (b) If after an investigation the office of inspector
22 general [~~commission~~] determines that a person violated Subsection
23 (a), the office [~~commission~~] shall:

24 (1) notify the person of the alleged violation not
25 later than the 30th day after the date the office [~~commission~~]
26 completes the investigation and provide the person with an
27 opportunity for a hearing on the matter; or

1 (2) refer the matter to the appropriate prosecuting
2 attorney for prosecution.

3 (g) The inspector general [~~commission~~] shall adopt rules as
4 necessary to implement this section.

5 SECTION 17. Section 533.005(a), Government Code, is amended
6 to read as follows:

7 (a) A contract between a managed care organization and the
8 commission for the organization to provide health care services to
9 recipients must contain:

10 (1) procedures to ensure accountability to the state
11 for the provision of health care services, including procedures for
12 financial reporting, quality assurance, utilization review, and
13 assurance of contract and subcontract compliance;

14 (2) capitation rates that ensure the cost-effective
15 provision of quality health care;

16 (3) a requirement that the managed care organization
17 provide ready access to a person who assists recipients in
18 resolving issues relating to enrollment, plan administration,
19 education and training, access to services, and grievance
20 procedures;

21 (4) a requirement that the managed care organization
22 provide ready access to a person who assists providers in resolving
23 issues relating to payment, plan administration, education and
24 training, and grievance procedures;

25 (5) a requirement that the managed care organization
26 provide information and referral about the availability of
27 educational, social, and other community services that could

1 benefit a recipient;

2 (6) procedures for recipient outreach and education;

3 (7) a requirement that the managed care organization
4 make payment to a physician or provider for health care services
5 rendered to a recipient under a managed care plan not later than the
6 45th day after the date a claim for payment is received with
7 documentation reasonably necessary for the managed care
8 organization to process the claim, or within a period, not to exceed
9 60 days, specified by a written agreement between the physician or
10 provider and the managed care organization;

11 (8) a requirement that the commission, on the date of a
12 recipient's enrollment in a managed care plan issued by the managed
13 care organization, inform the organization of the recipient's
14 Medicaid certification date;

15 (9) a requirement that the managed care organization
16 comply with Section 533.006 as a condition of contract retention
17 and renewal;

18 (10) a requirement that the managed care organization
19 provide the information required by Section 533.012 and otherwise
20 comply and cooperate with the [~~commission's~~] office of inspector
21 general;

22 (11) a requirement that the managed care
23 organization's usages of out-of-network providers or groups of
24 out-of-network providers may not exceed limits for those usages
25 relating to total inpatient admissions, total outpatient services,
26 and emergency room admissions determined by the commission;

27 (12) if the commission finds that a managed care

1 organization has violated Subdivision (11), a requirement that the
2 managed care organization reimburse an out-of-network provider for
3 health care services at a rate that is equal to the allowable rate
4 for those services, as determined under Sections 32.028 and
5 32.0281, Human Resources Code;

6 (13) a requirement that the organization use advanced
7 practice nurses in addition to physicians as primary care providers
8 to increase the availability of primary care providers in the
9 organization's provider network;

10 (14) a requirement that the managed care organization
11 reimburse the state for any overpayments resulting from fraud,
12 waste or abuse in the Medicaid program, the child health plan
13 program, or another government funded program.

14 (15) a requirement that the managed care organization
15 reimburse a federally qualified health center or rural health
16 clinic for health care services provided to a recipient outside of
17 regular business hours, including on a weekend day or holiday, at a
18 rate that is equal to the allowable rate for those services as
19 determined under Section 32.028, Human Resources Code, if the
20 recipient does not have a referral from the recipient's primary
21 care physician; and

22 (16) a requirement that the managed care organization
23 develop, implement, and maintain a system for tracking and
24 resolving all provider appeals related to claims payment, including
25 a process that will require:

26 (A) a tracking mechanism to document the status
27 and final disposition of each provider's claims payment appeal;

1 (B) the contracting with physicians who are not
2 network providers and who are of the same or related specialty as
3 the appealing physician to resolve claims disputes related to
4 denial on the basis of medical necessity that remain unresolved
5 subsequent to a provider appeal; and

6 (C) the determination of the physician resolving
7 the dispute to be binding on the managed care organization and
8 provider.

9 SECTION 18. Section 533.012(c), Government Code, is amended
10 to read as follows:

11 (c) The [~~commission's~~] office of inspector general
12 [~~investigations and enforcement~~] shall review the information
13 submitted under this section as appropriate in the investigation of
14 fraud in the Medicaid managed care program.

15 SECTION 4. Section 531.002(17), Health and Safety Code, is
16 amended to read as follows:

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

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

24 (a) A reference in law to a "state school" means a state
25 development center.

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

1 developmental center, means the director of a state developmental
2 center.

3 SECTION 6. Section 532.001(b), Health and Safety Code, is
4 amended to read as follows:

5 (b) The Department of Aging and Disability Services and the
6 Department of State Health Services [~~department~~] also include
7 [~~includes~~] community services operated by those departments [~~the~~
8 ~~department~~] and the following facilities, appropriate:

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

- 1 (18) the San Angelo State Developmental Center
2 ~~[School]~~;
- 3 (19) the San Antonio State Developmental Center
4 ~~[School]~~;
- 5 (20) the El Paso State Developmental Center;
- 6 (21) the Rio Grande State Center; and
- 7 (22) the Waco Center for Youth.

8 SECTION 7. Section 551.022, Health and Safety Code, is
9 amended by adding Subsection (e) to read as follows:

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

12 SECTION 8. Subchapter B, Chapter 551, Health and Safety
13 Code, is amended by adding Section 551.0225 to read as follows:

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

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

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

21 (1) oversee the admission and discharge of residents
22 and clients;

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

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

26 (4) ensure that center money is spent judiciously and
27 economically;

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

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

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

7 (1) establish policy to govern the state developmental
8 center that the director considers will best promote the residents'
9 interest and welfare;

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

12 (3) dismiss a subordinate employee.

13 SECTION 9. Subtitle B, Title 7, Health and Safety Code, is
14 amended by adding Chapter 555 to read as follows:

15 SECTION 5. Chapter 531, Health and Safety Code, is amended
16 by adding Section 531.0021 to read as follows:

17 CHAPTER 555. STATE DEVELOPMENTAL CENTERS

18 SUBCHAPTER A. GENERAL PROVISIONS

19 Sec. 555.001. DEFINITIONS. In this chapter:

20 (1) "Client" means a person with mental retardation
21 who receives ICF-MR services from a state developmental center.

22 (2) "Commission" means the Health and Human Services
23 Commission.

24 (3) "Complaint" means information received by the
25 office of independent ombudsman regarding a possible violation of a
26 right of a resident or client of a state developmental center and
27 includes information received regarding a failure by a state

1 developmental center to comply with the department's policies and
2 procedures relating to the community living options information
3 process or related laws.

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

6 (5) "Developmental center employee" means an employee
7 of a state developmental center.

8 (6) "Direct care employee" means a developmental
9 center employee who provides direct delivery of services to a
10 resident or client.

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

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

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

17 (10) "Resident" means a person with mental retardation
18 who resides in a state developmental center.

19 (11) "State developmental center" has the meaning
20 assigned by Section 531.002.

21 Sec. 555.002. STATE DEVELOPMENTAL CENTER FOR HIGH-RISK
22 RESIDENTS. (a) The department shall establish a separate state
23 developmental center for the care of residents who present a high
24 risk of dangerous or violent behavior as provided by Subsections
25 (b) and (c). The department shall designate an existing state
26 developmental center for those high-risk residents.

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

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

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

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

12 (1) has inflicted, attempted to inflict, or made a
13 serious threat of inflicting substantial physical harm to the
14 resident's self or to another while committed to a state
15 developmental center; or

16 (2) has been convicted of or charged with any of the
17 following offenses:

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

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

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

24 (D) an offense under Section 22.011, Penal Code
25 (sexual assault);

26 (E) an offense under Section 22.02, Penal Code
27 (aggravated assault);

1 (F) an offense under Section 22.021, Penal Code
2 (aggravated sexual assault);

3 (G) an offense under Section 22.04, Penal Code
4 (injury to a child, elderly individual, or disabled individual);

5 (H) an offense under Section 28.02, Penal Code
6 (arson);

7 (I) an offense under Section 29.02, Penal Code
8 (robbery);

9 (J) an offense under Section 29.03, Penal Code
10 (aggravated robbery); or

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

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

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

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

23 (A) an adult or a person younger than 18 years of
24 age; or

25 (B) male or female;

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

1 developmental center; and

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

5 (e) A resident who is transferred to the designated state
6 developmental center is entitled to an administrative hearing
7 regarding a transfer of the resident as provided by Section
8 594.014.

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

12 [Sections 555.003-555.020 reserved for expansion]

13 Sec. 555.024. DEVELOPMENTAL CENTER EMPLOYEE TRAINING. (a)
14 Before a developmental center employee begins to perform the
15 employee's duties without direct supervision, the department shall
16 provide the employee with competency training and a course of
17 instruction about the general duties of a developmental center
18 employee. The department shall ensure the basic developmental
19 center employee competency course focuses on:

20 (1) the uniqueness of the individuals the
21 developmental center employee serves;

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

25 (3) the conduct expected of developmental center
26 employees.

27 (b) The department shall ensure the training required by

1 Subsection (a) provides instruction and information regarding the
2 following topics:

3 (1) the general operation and layout of the state
4 developmental center, including armed intruder lock down
5 procedures;

6 (2) an introduction to mental retardation;

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

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

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

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

14 (7) recognizing and reporting:

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

17 (B) unusual incidents;

18 (C) reasonable suspicion of illegal drug use in
19 the workplace;

20 (D) workplace violence; and

21 (E) sexual harassment in the workplace;

22 (8) preventing and treating infection;

23 (9) first aid;

24 (10) cardiopulmonary resuscitation;

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

27 (12) the rights of developmental center employees.

1 (c) In addition to the training required by Subsection (a)
2 and before a direct care employee begins to perform the direct care
3 employee's duties without direct supervision, the department shall
4 provide a direct care employee with training and instructional
5 information regarding the following topics:

6 (1) prevention and management of aggressive or
7 high-risk behavior;

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

10 (3) positive behavior support;

11 (4) emergency response;

12 (5) person-directed plans;

13 (6) seizure safety;

14 (7) techniques for:

15 (A) lifting;

16 (B) positioning; and

17 (C) movement and mobility;

18 (8) working with aging residents and clients;

19 (9) assisting residents and clients:

20 (A) who have a visual impairment;

21 (B) who have a hearing deficit; or

22 (C) who require the use of adaptive devices and
23 specialized equipment;

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

26 (11) assisting residents and clients with personal
27 hygiene;

1 (12) recognizing appropriate food textures;

2 (13) using proper feeding techniques to assist
3 residents and clients with meals; and

4 (14) physical and nutritional management plans.

5 Sec. 555.025. VIDEO SURVEILLANCE. (a) In this section,
6 "private space" means a place in a state developmental center in
7 which a resident or client has a reasonable expectation of privacy,
8 including:

9 (1) a bedroom;

10 (2) a bathroom;

11 (3) a place in which a resident or client receives
12 medical or nursing services;

13 (4) a place in which a resident or client meets
14 privately with visitors; or

15 (5) a place in which a resident or client privately
16 makes phone calls.

17 (b) The department shall install and operate video
18 surveillance equipment in a state developmental center for the
19 purpose of detecting and preventing the exploitation or abuse of
20 residents and clients.

21 (c) The department may not install or operate video
22 surveillance equipment in a private space or in a location in which
23 video surveillance equipment can capture images within a private
24 space.

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

1 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

2 DEVELOPMENTAL CENTERS

3 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
4 independent ombudsman is established for the purpose of
5 investigating, evaluating, and securing the rights of the residents
6 and clients of state developmental centers. The office is
7 administratively attached to the department. The department shall
8 provide administrative support and resources to the office as
9 necessary for the office to perform its duties.

10 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
11 the performance of the ombudsman's duties and powers under this
12 subchapter acts independently of the department.

13 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The
14 governor shall appoint the independent ombudsman.

15 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
16 ombudsman shall:

17 (1) hire assistant ombudsmen to perform, under the
18 direction of the independent ombudsman, the same duties and
19 exercise the same powers as the independent ombudsman; and

20 (2) station an assistant ombudsman at each state
21 developmental center.

22 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
23 as independent ombudsman or as an assistant ombudsman if the person
24 or the person's spouse:

25 (1) is employed by or participates in the management
26 of a business entity or other organization receiving funds from the
27 department;

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

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

8 Sec. 555.056. REPORT. (a) The independent ombudsman shall
9 submit on a biannual basis to the governor, the lieutenant
10 governor, and the speaker of the house of representatives a report
11 that is both aggregated and disaggregated by individual state
12 developmental center and describes:

13 (1) the work of the independent ombudsman;

14 (2) the results of any review or investigation
15 undertaken by the independent ombudsman, including reviews or
16 investigation of services contracted by the department; and

17 (3) any recommendations that the independent
18 ombudsman has in relation to the duties of the independent
19 ombudsman.

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

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

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

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

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

6 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
7 department shall allow any resident or client, authorized
8 representative of a resident or client, family member of a resident
9 or client, or other interested party to communicate with the
10 independent ombudsman or an assistant ombudsman. The
11 communication:

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

14 (2) is confidential and privileged.

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

17 (1) report to the Department of Family and Protective
18 Services regarding a communication that may involve the abuse,
19 neglect, or exploitation of a resident or client;

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

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

25 (c) The independent ombudsman may make reports relating to
26 an investigation conducted by the ombudsman public after the
27 investigation is complete but only if the name and any other

1 personally identifiable information of a resident or client,
2 authorized representative of a resident or client, family member of
3 a resident or client, state developmental center, and employee of a
4 state developmental center are redacted from the report and remain
5 confidential.

6 (d) The name, address, or other personally identifiable
7 information of a person who files a complaint with the office of
8 independent ombudsman, information generated by the office of
9 independent ombudsman in the course of an investigation, and
10 confidential records obtained by the office of independent
11 ombudsman are confidential and not subject to disclosure under
12 Chapter 552, Government Code, except as provided by this section.

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

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

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

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

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

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

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

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

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

14 (B) a complaint raises the possibility of a
15 systemic issue in the state developmental center's provision of
16 services;

17 (6) conduct semiannual on-site audits, including
18 meetings with residents and employees of the state developmental
19 center, of each state developmental center's policies, practices,
20 and procedures to ensure that each resident and client is
21 encouraged to exercise the resident's or client's rights,
22 including:

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

24 (B) the right to due process;

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

27 (A) executive commissioner;

- 1 (B) commissioner;
2 (C) Aging and Disability Services Council;
3 (D) governor;
4 (E) lieutenant governor;
5 (F) speaker of the house of representatives;
6 (G) standing committees of the senate and house
7 of representatives with primary jurisdiction over state
8 developmental centers; and
9 (H) state auditor;
10 (8) require a state developmental center to provide
11 access to all records, data, and other information under the
12 control of the center that the independent ombudsman determines is
13 necessary to investigate a complaint or to conduct an audit under
14 this section;
15 (9) review all final reports produced by the
16 Department of Family and Protective Services and the regulatory
17 services division of the department regarding a complaint referred
18 by the independent ombudsman;
19 (10) provide assistance to a resident, client,
20 authorized representative of a resident or client, or family member
21 of a resident or client who the independent ombudsman determines is
22 in need of assistance, including advocating with an agency,
23 provider, or other person in the best interests of the resident or
24 client; and
25 (11) make appropriate referrals under any of the
26 duties and powers listed in this subsection.
27 (b) The independent ombudsman may apprise a person who is

1 interested in a resident's or client's welfare of the rights of the
2 resident or client.

3 (c) To assess whether a resident's or client's rights have
4 been violated, the independent ombudsman may, in any matter that
5 does not involve an alleged criminal offense or the abuse, neglect,
6 or exploitation of a resident or client, contact or consult with an
7 administrator, employee, resident, client, family member of a
8 resident or client, expert, or other individual in the course of the
9 investigation or to secure information.

10 (d) Notwithstanding any other provision of this chapter,
11 the independent ombudsman may not investigate an alleged criminal
12 offense or the alleged abuse, neglect, or exploitation of a
13 resident or client.

14 Sec. 555.060. RETALIATION PROHIBITED. The department or a
15 state developmental center may not retaliate against a department
16 employee or employee of a state developmental center who in good
17 faith makes a complaint to the office of independent ombudsman or
18 cooperates with the office in an investigation.

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

23 (b) The office shall ensure that:

24 (1) the toll-free number is prominently displayed in
25 the main administration area of a state developmental center and in
26 each home in which a resident lives or a client receives services;
27 and

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

5 SECTION 19. Section 21.014(b), Human Resources Code, is
6 amended to read as follows:

7 (b) The [~~person employed by the department as~~] inspector
8 general appointed under Subchapter R, Chapter 531, Government Code,
9 shall make reports to and consult with the agency director
10 [~~chairman of the board~~] regarding:

- 11 (1) the selection of internal audit topics;
12 (2) the establishment of internal audit priorities;
13 and
14 (3) the findings of each regular or special internal
15 audit initiative.

16 SECTION 20. Section 32.003, Human Resources Code, is
17 amended by adding Subdivision (5) to read as follows:

18 (5) "Office of inspector general" means the office of
19 inspector general established under Subchapter R, Chapter 531,
20 Government Code.

21 SECTION 21. Section 32.0291, Human Resources Code, is
22 amended to read as follows:

23 Sec. 32.0291. PREPAYMENT REVIEWS AND POSTPAYMENT HOLDS.

24 (a) Notwithstanding any other law, the office of inspector
25 general or department may:

- 26 (1) perform a prepayment review of a claim for
27 reimbursement under the medical assistance program to determine

1 whether the claim involves fraud, waste, or abuse; and

2 (2) as necessary to perform that review, withhold
3 payment of the claim for not more than five working days without
4 notice to the person submitting the claim.

5 (b) Notwithstanding any other law, the office of inspector
6 general [~~department~~] may impose a postpayment hold on payment of
7 future claims submitted by a provider if the office [~~department~~]
8 has prima facie evidence that the provider has committed fraud,
9 waste, abuse, or wilful misrepresentation regarding a claim for
10 reimbursement or cost report under the medical assistance program.
11 The office [~~department~~] must notify the provider of the postpayment
12 hold not later than the fifth working day after the date the hold is
13 imposed.

14 (c) On timely written request by a provider subject to a
15 postpayment hold under Subsection (b), the office of inspector
16 general [~~department~~] shall file a request with the State Office of
17 Administrative Hearings for an expedited administrative hearing
18 regarding the hold. The provider must request an expedited hearing
19 under this subsection not later than the 10th day after the date the
20 provider receives notice from the office of inspector general
21 [~~department~~] under Subsection (b). The office of inspector general
22 [~~department~~] shall discontinue the hold unless the office
23 [~~department~~] makes a prima facie showing at the hearing that the
24 evidence relied on by the office of inspector general [~~department~~]
25 in imposing the hold is relevant, credible, and material to the
26 issue of fraud, waste, abuse, or wilful misrepresentation.

27 (d) The inspector general [~~department~~] shall adopt rules

1 that allow a provider subject to a postpayment hold under
2 Subsection (b) to seek an informal resolution of the issues
3 identified by the office of inspector general [~~department~~] in the
4 notice provided under that subsection. A provider must seek an
5 informal resolution under this subsection not later than the
6 deadline prescribed by Subsection (c). A provider's decision to
7 seek an informal resolution under this subsection does not extend
8 the time by which the provider must request an expedited
9 administrative hearing under Subsection (c). However, a hearing
10 initiated under Subsection (c) shall be stayed at the office's
11 [~~department's~~] request until the informal resolution process is
12 completed.

13 SECTION 22. Section 32.032, Human Resources Code, is
14 amended to read as follows:

15 Sec. 32.032. PREVENTION AND DETECTION OF FRAUD, WASTE, AND
16 ABUSE. The inspector general [~~department~~] shall adopt reasonable
17 rules for minimizing the opportunity for fraud, waste, and abuse,
18 for establishing and maintaining methods for detecting and
19 identifying situations in which a question of fraud, waste, or
20 abuse in the program may exist, and for referring cases where fraud,
21 waste, or abuse appears to exist to the appropriate law enforcement
22 agencies for prosecution.

23 SECTION 23. Sections 32.0321(a) through (d), Human
24 Resources Code, are amended to read as follows:

25 (a) The office of inspector general [~~department~~] by rule may
26 recommend to the department and the department by rule may require
27 that each provider of medical assistance in a provider type that has

1 demonstrated significant potential for fraud, waste, or abuse to
2 file with the department a surety bond in a reasonable amount. The
3 office and the department by rule shall each require a provider of
4 medical assistance to file with the department a surety bond in a
5 reasonable amount if the office [~~department~~] identifies a pattern
6 of suspected fraud, waste, or abuse involving criminal conduct
7 relating to the provider's services under the medical assistance
8 program that indicates the need for protection against potential
9 future acts of fraud, waste, or abuse.

10 (b) The bond under Subsection (a) must be payable to the
11 department to compensate the department for damages resulting from
12 or penalties or fines imposed in connection with an act of fraud,
13 waste, or abuse committed by the provider under the medical
14 assistance program.

15 (c) Subject to Subsection (d) or (e), the office of
16 inspector general and the department by rule may require each
17 provider of medical assistance that establishes a resident's trust
18 fund account to post a surety bond to secure the account. The bond
19 must be payable to the department to compensate residents of the
20 bonded provider for trust funds that are lost, stolen, or otherwise
21 unaccounted for if the provider does not repay any deficiency in a
22 resident's trust fund account to the person legally entitled to
23 receive the funds.

24 (d) The office of inspector general and the department may
25 not require the amount of a surety bond posted for a single facility
26 provider under Subsection (c) to exceed the average of the total
27 average monthly balance of all the provider's resident trust fund

1 accounts for the 12-month period preceding the bond issuance or
2 renewal date.

3 SECTION 24. Section 32.0322(a), Human Resources Code, is
4 amended to read as follows:

5 (a) The office of inspector general and the department may
6 obtain from any law enforcement or criminal justice agency the
7 criminal history record information that relates to a provider
8 under the medical assistance program or a person applying to enroll
9 as a provider under the medical assistance program.

10 SECTION 25. Section 32.070(d), Human Resources Code, is
11 amended to read as follows:

12 (d) This section does not apply to a computerized audit
13 conducted using the Medicaid Fraud Detection Audit System or an
14 audit or investigation of fraud, waste, and abuse conducted by the
15 Medicaid fraud control unit of the office of the attorney general,
16 the office of the state auditor, the office of [~~the~~] inspector
17 general, or the Office of Inspector General in the United States
18 Department of Health and Human Services.

19 SECTION 26. Section 33.015(e), Human Resources Code, is
20 amended to read as follows:

21 (e) The department shall require a person exempted under
22 this section from making a personal appearance at department
23 offices to provide verification of the person's entitlement to the
24 exemption on initial eligibility certification and on each
25 subsequent periodic eligibility recertification. If the person
26 does not provide verification and the department considers the
27 verification necessary to protect the integrity of the food stamp

1 program, the department shall initiate a fraud referral to the
2 [~~department's~~] office of inspector general established under
3 Subchapter R, Chapter 531, Government Code.

4 SECTION 10. Section 48.252, Human Resources Code, is
5 amended by adding Subsection (d) to read as follows:

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

16 SECTION 11. Section 161.052, Human Resources Code, is
17 amended by amending Subsection (b) and adding Subsection (e) to
18 read as follows:

19 (b) The executive commissioner shall prepare and by rule
20 adopt personnel standards. The executive commissioner shall adopt
21 personnel standards for direct care employees at state
22 developmental centers that are designed to ensure the safety of and
23 a high standard of care for residents of a state developmental
24 center.

25 (e) Subject to the availability of funds, the department
26 shall prescribe the number of direct care employees at state
27 developmental centers and the salaries for those employees

1 necessary to attract and maintain quality employees. The
2 commissioner shall ensure that policies regarding employees at
3 state developmental centers are designed to reduce turnover and
4 ensure continuity of care for residents.

5 SECTION 12. (a) As soon as possible after the effective
6 date of this Act, and subject to the availability of funds, the
7 Department of Aging and Disability Services shall hire additional
8 direct care employees at state developmental centers and increase
9 the salaries for all direct care employees as necessary to attract
10 and maintain quality employees.

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

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

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

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

27 (g) Not later than December 1, 2009, the governor shall

1 appoint the independent ombudsman as required by Section 555.053,
2 Health and Safety Code, as added by this Act.

3 SECTION 14. (a) The change in law made by Section
4 551.022(e), Health and Safety Code, as added by this Act, and the
5 change in law made by Section 551.0225, Health and Safety Code, as
6 added by this Act, apply to the dismissal of an employee of a state
7 developmental center hired on or after the effective date of this
8 Act.

9 (b) The dismissal of an employee of a state developmental
10 center hired before the effective date of this Act is governed by
11 the law in effect when the employee was hired, and the former law is
12 continued in effect for that purpose.

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

18 SECTION 30. (a) The repeal by this Act of Section 531.102,
19 Government Code, does not affect the validity of a complaint,
20 investigation, or other proceeding initiated under that section
21 before the effective date of this Act. A complaint, investigation,
22 or other proceeding initiated under that section is continued in
23 accordance with the changes in law made by this Act.

24 (b) The repeal by this Act of Section 531.1021, Government
25 Code, does not affect the validity of a subpoena issued under that
26 section before the effective date of this Act. A subpoena issued
27 under that section before the effective date of this Act is governed

1 by the law that existed when the subpoena was issued, and the former
2 law is continued in effect for that purpose.

3 SECTION ~~30~~31. (a) The person serving as inspector general
4 under Section 531.102(a-1), Government Code, on the effective date
5 of this Act shall serve as the inspector general appointed under
6 Subchapter R, Chapter 531, Government Code, as added by this Act,
7 until February 1, 2011, and may be reappointed under Subchapter R,
8 Chapter 531, if the person has the qualifications required under
9 that subchapter.

10 (b) Not later than February 1, 2011, the governor shall
11 appoint an inspector general for the Office of Inspector General
12 under Subchapter R, Chapter 531, Government Code, as added by this
13 Act, to a term expiring February 1, 2013.

14 SECTION 32. On the effective date of this Act:

15 (1) all functions, activities, employees, rules,
16 forms, money, property, contracts, memorandums of understanding,
17 records, and obligations of the office of inspector general under
18 Section 531.102(a-1), Government Code, become functions,
19 activities, employees, rules, forms, money, property, contracts,
20 memorandums of understanding, records, and obligations of the
21 Office of Inspector General established under Subchapter R, Chapter
22 531, Government Code, as added by this Act, without a change in
23 status; and

24 (2) all money appropriated or budgeted for the office
25 of inspector general under Section 531.102(a-1), Government Code,
26 including money for providing administrative support, is
27 considered appropriated for the use of the Office of Inspector

1 General established under Subchapter R, Chapter 531, Government
2 Code, as added by this Act.

3 SECTION 33. If before implementing any provision of this
4 Act a state office or agency determines that a waiver or
5 authorization from a federal agency is necessary for implementation
6 of that provision, the office or agency affected by the provision
7 shall request the waiver or authorization and may delay
8 implementing that provision until the waiver or authorization is
9 granted.

10 SECTION 34. This Act takes effect immediately if it
11 receives a vote of two-thirds of all the members elected to each
12 house, as provided by Section 39, Article III, Texas Constitution.
13 If this Act does not receive the vote necessary for immediate
14 effect, this Act takes effect September 1, 2009.