

By: Coleman

H.B. No. 4691

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of individuals requiring long term care services and supports.

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

SECTION 1. The Legislature recognizes that the state has a responsibility to ensure that individuals requiring long term care have the highest quality of care available and must be kept safe from abuse, neglect and exploitation.

SECTION 2. The Legislature recognizes the importance of ensuring quality care for individual requiring long term care services in state developmental centers and other settings.

SECTION 3. Section 261.404, Family Code, is amended by adding Subsection (b-1) to read as follows:

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

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

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

9 (1) who is:

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

11 (B) an employee of the agency;

12 (C) a volunteer with the agency; or

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

15 (2) who would be placed in direct contact with a
16 resident or client of a state developmental center the ICF-MR
17 component of the Rio Grande State Center, or a non-state operated
18 ICF-MR's.

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

22 (1) on court order;

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

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

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

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

6 (d) Subject to Section 411.087, the Department of State
7 Health Services and the Department of Aging and Disability Services
8 are authorize to:

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

12 (2) obtain from any other criminal justice agency in
13 this state criminal history record information maintained by that
14 criminal justice agency that relates to a person described by
15 Subsection (a); and

16 (3) obtain from any licensing board in this state
17 disciplinary information maintained by that licensing board that
18 relates to a person described by section (a).

19 SECTION 5. Subchapter B, Chapter 531, Government Code, is
20 amended by adding Section 531.02446 to read as follows:

21 Sec. 531.02446. SAFETY NET FOR COMMUNITY SERVICES. (a) In
22 this section, "state developmental center" has the meaning assigned
23 by Section 531.002, Health and Safety Code.

24 (b) The executive commissioner by rule shall develop safety
25 net protocols to prevent individuals with mental retardation
26 receiving services in the community from being placed in a state
27 developmental center in an emergency situation who after receiving

1 emergency care expects to return to community care.

2 (c) The executive commissioner shall ensure that the safety
3 net protocols are designed to provide for temporary, emergency
4 living arrangements for individuals at immediate risk of commitment
5 to a state developmental center.

6 SECTION 6. Subchapter C, Chapter 531, Government Code, is
7 amended by adding Section 531.1022 to read as follows:

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

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

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

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

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

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

5 (1) executive commissioner;

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

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

10 (4) Aging and Disability Services Council;

11 (5) governor;

12 (6) lieutenant governor;

13 (7) speaker of the house of representatives;

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

17 (9) state auditor.

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

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

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

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

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

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

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

20 (1) executive commissioner;

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

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

25 (4) Aging and Disability Services Council;

26 (5) Family and Protective Services Council;

27 (6) governor;

1 (7) lieutenant governor;

2 (8) speaker of the house of representatives;

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

6 (10) state auditor; and

7 (11) comptroller.

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

10 SECTION 7. Section 252.122(a), Health and Safety Code, is
11 amended to read as follows:

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

21 SECTION 8. Section 252.124(b), Health and Safety Code, is
22 amended to read as follows:

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

27 SECTION 9. Sections 252.125(a), (c), (d), (e), (f), and

1 (g), Health and Safety Code, are amended to read as follows:

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

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

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

11 (2) the identity of the person responsible for the
12 abuse [~~ex~~], neglect, or exploitation;

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

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

16 (5) the adequacy of the facility environment; and

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

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

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

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

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

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

17 SECTION 10. Section 252.126, Health and Safety Code, is
18 amended to read as follows:

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

25 SECTION 11. Section 252.129, Health and Safety Code, is
26 amended by adding Subsection (d) to read as follows:

27 (d) The department and the Department of Family and

1 Protective Services shall cooperate to ensure that the central
2 registry required by this section accurately includes reported
3 cases of resident abuse and neglect.

4 SECTION 12. Sections 252.134(a), (b), (c), (d), and (e),
5 Health and Safety Code, are amended to read as follows:

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

9 (1) a resident of the facility; and

10 (2) a former resident that occurs [~~24~~] 72 hours or less
11 after the former resident is transferred from the facility to a
12 hospital.

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

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

22 (1) name and age of the deceased;

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

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

26 (4) name and address of the facility in which the
27 deceased resided.

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

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

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

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

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

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

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

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

1 SECTION 15. Section 532.001(b), Health and Safety Code, is
2 amended to read as follows:

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

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

1 (20) the El Paso State Developmental Center;

2 (21) the Rio Grande State Center; and

3 (22) the Waco Center for Youth.

4 SECTION 16. Section 551.022, Health and Safety Code, is
5 amended by adding Subsection (e) to read as follows:

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

8 SECTION 17. Subchapter B, Chapter 551, Health and Safety
9 Code, is amended by adding Section 551.0225 to read as follows:

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

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

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

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

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

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

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

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

27 (6) keep a full record of the center's operations; and

1 (7) work to:

2 (i) reduce the turnover rate of the center
3 employees;

4 (ii) develop and implement a training and
5 continuing education program for the center employees; and

6 (iii) reduce incidences of abuse, neglect
7 and exploitation of residents and clients.

8 (d) In accordance with departmental rules and operating
9 procedures, the director of a state developmental center shall:

10 (1) establish policy to govern the state developmental
11 center that the director considers will best promote the residents'
12 interest and welfare;

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

15 (3) dismiss a subordinate officer, teacher, or
16 employee.

17 SECTION 18. Subtitle B, Title 7, Health and Safety Code, is
18 amended by adding Chapter 555 to read as follows:

19 CHAPTER 555. STATE DEVELOPMENTAL CENTERS

20 SUBCHAPTER A. GENERAL PROVISIONS

21 Sec. 555.001. DEFINITIONS. In this chapter:

22 (1) "Alleged offender resident" means a person who:

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

27 (B) is a child committed to or transferred to a

1 state developmental center under Chapter 55, Family Code, as a
2 result of being alleged by petition or having been found to have
3 engaged in delinquent conduct constituting an offense listed in
4 Paragraph (D);

5 (C) has inflicted, attempted to inflict, or made
6 a serious threat of inflicting substantial physical harm to the
7 resident's self or to another while committed to a state
8 developmental center; or

9 (D) has been convicted of or charged with any of
10 the following offenses:

11 (i) an offense under Chapter 19, Penal Code
12 (criminal homicide);

13 (ii) an offense under Chapter 20, Penal
14 Code (kidnapping and unlawful restraint);

15 (iii) an offense under Section 21.02, Penal
16 Code (continuous sexual abuse of young child or children);

17 (iv) an offense under Section 22.011, Penal
18 Code (sexual assault);

19 (v) an offense under Section 22.02, Penal
20 Code (aggravated assault);

21 (vi) an offense under Section 22.021, Penal
22 Code (aggravated sexual assault);

23 (vii) an offense under Section 22.04, Penal
24 Code (injury to a child, elderly individual, or disabled
25 individual);

26 (viii) an offense under Section 28.02,
27 Penal Code (arson);

1 (ix) an offense under Section 29.02, Penal
2 Code (robbery);

3 (x) an offense under Section 29.03, Penal
4 Code (aggravated robbery); or

5 (xi) a conviction under the laws of another
6 state, federal law, or the Uniform Code of Military Justice for an
7 offense containing elements that are substantially similar to the
8 elements of an offense listed by this paragraph.

9 (2) "Center employee" means an employee of a state
10 developmental center the ICF-MR component of the Rio Grande State
11 Center, or a non-state operated ICF-MR's.

12 (3) "Client" means a person with mental retardation
13 who receives ICF-MR services from a state developmental center the
14 ICF-MR component of the Rio Grande State Center, or a non-state
15 operated ICF-MR's.

16 (4) "Commission" means the Health and Human Services
17 Commission.

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

25 (6) "Department" means the Department of Aging and
26 Disability Services.

27 (7) "Direct care employee" means a center employee who

1 provides direct delivery of services to a resident or client.

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

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

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

8 (11) "Resident" means a person with mental retardation
9 who resides in a state developmental center the ICF-MR component of
10 the Rio Grande State Center, or a non-state operated ICF-MR's.

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

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

15 Sec. 555.002. STATE DEVELOPMENTAL CENTER FOR ALLEGED
16 OFFENDER RESIDENTS. (a) The department shall establish a separate
17 state developmental center for the care of alleged offender
18 residents apart from other clients and residents. The department
19 shall designate an existing state developmental center for this
20 purpose.

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

23 (1) transfer an alleged offender resident already
24 residing in a state developmental center to the designated state
25 developmental center;

26 (2) place alleged offender residents in separate homes
27 at the designated state developmental center based on whether the

1 alleged offender resident is:

2 (A) an adult or a person younger than 18 years of
3 age; or

4 (B) male or female;

5 (3) place all alleged offender residents committed to
6 or transferred to a state developmental center in the designated
7 state developmental center;

8 (4) divert future admissions of residents who are not
9 alleged offenders from the designated state developmental center;
10 and

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

14 (c) Notwithstanding Section 594.014, an alleged offender
15 resident who is transferred to the designated state developmental
16 center is not entitled to an administrative hearing regarding a
17 transfer of the resident.

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

21 (e) The department shall ensure that the alleged offender
22 resident is re-evaluated annually to determine if there placement
23 in a separate section of a state developmental center is necessary
24 and appropriate with regards to the alleged offenders:

25 (i) rehabilitation;

26 (ii) danger to others; and

27 (iii) civil rights of the alleged offender.

1 (f) The department shall ensure that the alleged offender
2 population is provided enhanced security and monitoring to ensure
3 that each is kept safe from each other.

4 [Sections 555.003-555.020 reserved for expansion]

5 SUBCHAPTER B. POWERS AND DUTIES

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

10 (1) who is:

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

12 (B) an employee of the agency;

13 (C) a volunteer with the agency; or

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

16 (2) who would be placed in direct contact with a
17 resident or client of a state developmental center the ICF-MR
18 component of the Rio Grande State Center, or a non-state operated
19 ICF-MR's.

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

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

27 (1) for whom the agency performs a background check

1 under Subsection (a); and

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

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

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

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

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

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

26 Sec. 555.024. NURSING HOME EMPLOYEE TRAINING. (a) Before a
27 nursing home employee begins to perform the employee's duties

1 without direct supervision, the department shall provide the
2 employee with competency training and a course of instruction about
3 the general duties of a center employee. The department shall
4 ensure the basic center employee competency course focuses on:

5 (1) the uniqueness of the individuals the nursing home
6 serves including;

7 (a) the medically frail and elderly;

8 (b) individuals with mental retardation; and

9 (c) individuals with physical or mental
10 disabilities;

11 (2) techniques for improving quality of life for and
12 promoting the health and safety of the medically fragile and
13 elderly, individuals with mental retardation, and individuals with
14 physical or mental disabilities; and

15 (3) the conduct expected of nursing home employees.

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

19 (1) the general operation and layout of the nursing
20 home, including armed intruder lockdown procedures;

21 (2) an introduction to mental retardation, elderly
22 physical and mental disabilities, autism spectrum disorder, and
23 traumatic brain injury;

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

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

- 1 (5) respecting personal choices made by residents and
2 clients;
- 3 (6) the safe and proper use of restraints and
4 medications;
- 5 (7) recognizing and reporting:
- 6 (A) abuse, neglect, and exploitation of
7 residents;
- 8 (B) unusual incidents;
- 9 (C) reasonable suspicion of illegal drug use in
10 the workplace;
- 11 (D) workplace violence; or
- 12 (E) sexual harassment in the workplace;
- 13 (8) preventing and treating infection;
- 14 (9) first aid;
- 15 (10) cardiopulmonary resuscitation;
- 16 (11) the Health Insurance Portability and
17 Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.); and
- 18 (12) civil rights of center employees.
- 19 (c) In addition to the training required by Subsection (a)
20 and before a direct care employee begins to perform the direct care
21 employee's duties without direct supervision, the department shall
22 provide a direct care employee with 40 hours of training and
23 instructional information and 8 hours annually of continuing
24 education regarding the following topics:
- 25 (1) prevention and management of aggressive behavior;
- 26 (2) observing and reporting changes in behavior,
27 appearance, or health of residents and clients;

- 1 (3) positive behavior support;
- 2 (4) emergency response;
- 3 (5) person-directed plans and self-determination;
- 4 (6) seizure safety;
- 5 (7) techniques for:
 - 6 (A) lifting;
 - 7 (B) positioning; and
 - 8 (C) movement and mobility;
- 9 (8) working with aging residents and clients;
- 10 (9) assisting residents and clients:
 - 11 (A) who have a visual impairment;
 - 12 (B) who have a hearing deficit;
 - 13 (C) who require the use of adaptive devices and
 - 14 specialized equipment; or
 - 15 (D) who have a physical or mental disability;
 - 16 (10) communicating with residents and clients who use
 - 17 augmentative and alternative devices for communication;
 - 18 (11) assisting residents and clients with personal
 - 19 hygiene;
 - 20 (12) assisting residents and clients with dental
 - 21 hygiene;
 - 22 (13) recognizing appropriate food textures;
 - 23 (14) using proper feeding techniques to assist
 - 24 residents and clients with meals;
 - 25 (15) addressing issues of PICA; and
 - 26 (16) physical and nutritional management plans.

27 Sec. 555.026. MORTALITY REVIEW. (a) The executive

1 commissioner shall establish an independent mortality review
2 system to review the death of a person who, at the time of the
3 person's death, was a resident or client.

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

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

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

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

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

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

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

26 (e) The department may use information from a mortality
27 review report only to advance statewide practices regarding the

1 treatment and care of individuals with mental retardation or other
2 disabilities.

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

7 [Sections 555.027-555.050 reserved for expansion]

8 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

9 DEVELOPMENTAL CENTERS

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

17 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
18 the performance of the ombudsman's duties and powers under this
19 subchapter acts independently of the department.

20 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The
21 governor shall appoint the independent ombudsman.

22 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
23 ombudsman shall:

24 (1) hire assistant ombudsmen to perform, under the
25 direction of the independent ombudsman, the same duties and
26 exercise the same powers as the independent ombudsman; and

27 (2) station an assistant ombudsman at each state

1 developmental center.

2 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
3 as independent ombudsman or as an assistant ombudsman if the person
4 or the person's spouse:

5 (1) is employed by or participates in the management
6 of a business entity or other organization receiving funds from the
7 department;

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

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

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

20 (1) the work of the independent ombudsman;

21 (2) the results of any review or investigation
22 undertaken by the independent ombudsman, including reviews or
23 investigation of services contracted by the department; and

24 (3) any recommendations that the independent
25 ombudsman has in relation to the duties of the independent
26 ombudsman.

27 (b) The independent ombudsman shall ensure that information

1 submitted in a report under Subsection (a) does not permit the
2 identification of an individual.

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

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

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

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

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

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

21 (2) is confidential and privileged.

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

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

27 (2) share with the regulatory services division of the

1 department a communication that may involve a violation of an
2 ICF-MR standard or condition of participation; and

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

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

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

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

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

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

- 27 (1) evaluate the delivery of services to residents and

1 clients to ensure that the rights of residents and clients are fully
2 observed;

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

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

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

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

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

19 (B) a complaint raises the possibility of a
20 systemic issue in the state developmental center's provision of
21 services;

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

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

27 (B) the right to due process;

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

- 3 (A) executive commissioner;
4 (B) commissioner;
5 (C) Aging and Disability Services Council;
6 (D) governor;
7 (E) lieutenant governor;
8 (F) speaker of the house of representatives;
9 (G) standing committees of the senate and house
10 of representatives with primary jurisdiction over state
11 developmental centers; and

12 (H) state auditor;

13 (8) require a state developmental center to provide
14 access to all records, data, and other information under the
15 control of the center that the independent ombudsman determines is
16 necessary to investigate a complaint or to conduct an audit under
17 this section;

18 (9) review all final reports produced by the
19 Department of Family and Protective Services and the regulatory
20 services division of the department regarding a complaint referred
21 by the independent ombudsman;

22 (10) provide assistance to a resident, client,
23 authorized representative of a resident or client, or family member
24 of a resident or client who the independent ombudsman determines is
25 in need of assistance, including advocating with an agency,
26 provider, or other person in the best interests of the resident or
27 client; and

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

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

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

13 (d) Notwithstanding any other provision of this chapter,
14 the independent ombudsman may not investigate an alleged criminal
15 offense or the alleged abuse, neglect, or exploitation of a
16 resident or client. The independent ombudsman shall refer an
17 allegation of abuse, neglect, or exploitation of a resident or
18 client to the Department of Family and Protective Services.

19 Sec. 555.060. RETALIATION PROHIBITED. The department or a
20 state developmental center may not retaliate against a department
21 employee or state developmental center employee who in good faith
22 makes a complaint to the office of independent ombudsman or
23 cooperates with the office in an investigation.

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

1 (b) The office shall ensure that:

2 (1) the toll-free number is prominently displayed in
3 the main administration area of a state developmental center and in
4 each room in which a resident lives or a client receives services;
5 and

6 (2) a resident, a client, the authorized
7 representative of a resident, and a state developmental center
8 employee have confidential access to a telephone for the purpose of
9 calling the toll-free number.

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

12 (19-a) "State developmental center" has the meaning
13 provided by Section 531.002.

14 SECTION 20. Chapter 592, Health and Safety Code, is amended
15 by adding Subchapter E to read as follows:

16 SUBCHAPTER E. USE OF RESTRAINTS IN STATE DEVELOPMENTAL CENTER

17 Sec. 592.101. DEFINITION. In this subchapter, "executive
18 commissioner" means the executive commissioner of the Health and
19 Human Services Commission.

20 Sec. 592.102. USE OF RESTRAINTS. The executive
21 commissioner shall adopt rules to ensure that:

22 (1) a mechanical or physical restraint is not
23 administered to a resident of a state developmental center unless
24 the restraint is:

25 (A) necessary to prevent imminent physical
26 injury to the resident or another; and

27 (B) the least restrictive restraint effective to

1 prevent imminent physical injury;

2 (2) the administration of a mechanical or physical
3 restraint to a resident of a state developmental center ends
4 immediately once the imminent risk of physical injury abates; and

5 (3) a mechanical or physical restraint is not
6 administered to a resident of a state developmental center as
7 punishment or as part of a behavior plan.

8 Sec. 592.103. STRAITJACKETS PROHIBITED. A person may not
9 use a straitjacket to restrain a resident of a state developmental
10 center.

11 Sec. 592.104. CONFLICT WITH OTHER LAW. To the extent of a
12 conflict between this subchapter and Chapter 322, this subchapter
13 controls.

14 SECTION 21. Section 593.042, Health and Safety Code, is
15 amended by adding Subsection (c) to read as follows:

16 (c) An application for commitment of a person to a
17 residential care facility that is a state developmental center must
18 include a statement demonstrating that the proposed resident meets
19 the requirements for commitment to a state developmental center
20 under Section 593.052(a-1).

21 SECTION 22. Section 593.052, Health and Safety Code, is
22 amended by amending Subsections (a) and (b) and adding Subsections
23 (a-1) and (b-1) to read as follows:

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

26 (1) the proposed resident is a person with mental
27 retardation;

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

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

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

7 (3) the proposed resident cannot be adequately and
8 appropriately habilitated in an available, less restrictive
9 setting; and

10 (4) the residential care facility:

11 (A) provides habilitative services, care,
12 training, and treatment appropriate to the proposed resident's
13 needs; and

14 (B) is not a state developmental center.

15 (a-1) A proposed resident may not be committed to a
16 residential care facility that is a state developmental center
17 unless:

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

19 (A) severe or profound mental retardation; or

20 (B) mild or moderate mental retardation who:

21 (i) has extraordinary medical needs; or

22 (ii) exhibits dangerous behavior that
23 represents a substantial risk of physical impairment or injury to
24 self or others;

25 (2) evidence is presented showing that the proposed
26 resident:

27 (A) represents a substantial risk of physical

1 impairment or injury to self or others; or

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

4 (3) the proposed resident cannot be adequately and
5 appropriately habilitated in an available, less restrictive
6 setting; and

7 (4) the residential care facility is a state
8 developmental center that provides habilitative services, care,
9 training, and treatment appropriate to the proposed resident's
10 needs.

11 (b) If it is determined that the requirements of Subsection
12 (a) have been met and that long-term placement in a residential care
13 facility, other than a state developmental center, is appropriate,
14 the court shall commit the proposed resident for care, treatment,
15 and training to a community center or the Department of Aging and
16 Disability Services [~~department~~] when space is available in a
17 residential care facility, other than a state developmental center.

18 (b-1) If it is determined that the requirements of
19 Subsection (a-1) have been met and that long-term placement in a
20 residential care facility that is a state developmental center is
21 appropriate, the court shall commit the proposed resident for care,
22 treatment, and training to the Department of Aging and Disability
23 Services when space is available in a state developmental center.

24 SECTION 23. Section 48.252, Human Resources Code, is
25 amended by adding Subsection (d) to read as follows:

26 (d) If an investigation under this section reveals evidence
27 of the abuse, neglect, or exploitation of a resident or client of a

1 state developmental center as defined by Section 531.002, Health
2 and Safety Code, the ICF-MR component of the Rio Grande State
3 Center, or a non-state operated ICF-MR's, and a caseworker of the
4 department or a supervisor of a caseworker knows of the abuse,
5 neglect, or exploitation is a criminal offense, the caseworker or
6 supervisor shall immediately notify the Health and Human Services
7 Commission's office of inspector general and promptly provide the
8 Health and Human Services Commission's office of inspector general
9 with a copy of the department's investigation report.

10 SECTION 24. Subchapter G, Chapter 48, Human Resources Code,
11 is amended by adding Section 48.3015 to read as follows:

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

17 (b) The executive commissioner shall adopt rules governing
18 investigations conducted under this section and the provision of
19 services as necessary to alleviate abuse, neglect, or exploitation.

20 SECTION 25. Section 161.001, Human Resources Code, is
21 amended by adding Subdivision (6) to read as follows:

22 (6) "State developmental center" has the meaning
23 assigned by Section 531.002, Health and Safety Code.

24 SECTION 26. Section 161.052, Human Resources Code, is
25 amended by amending Subsection (b) and adding Subsection (e) to
26 read as follows:

27 (b) The executive commissioner shall prepare and by rule

1 adopt personnel standards. The executive commissioner shall adopt
2 personnel standards for direct care employees at state
3 developmental centers that are designed to ensure the safety of and
4 a high standard of care for residents of a state developmental
5 center.

6 (e) Subject to the availability of funds, the department
7 shall prescribe the number of direct care employees at state
8 developmental centers and the salaries for those employees
9 necessary to attract and maintain quality employees. The
10 commissioner shall ensure that policies regarding employees at
11 state developmental centers are designed to reduce turnover and
12 ensure continuity of care for residents.

13 SECTION 27. Subchapter B, Chapter 161, Human Resources
14 Code, is amended by adding Section 161.033 to read as follows:

15 Sec. 161.033. STATE DEVELOPMENTAL CENTER REQUIREMENTS FOR
16 LONG-RANGE PLAN. In developing the long-range plan required by
17 Section 533.032, Health and Safety Code, the department shall:

18 (1) include strategies for effectively serving the
19 increasing number of state developmental center residents
20 receiving community-based care;

21 (2) describe initiatives for effectively implementing
22 the strategies required by Subdivision (1), including enhancing
23 community services to assist residents through the development of:

24 (A) affordable housing options;

25 (B) alternatives for serving children;

26 (C) safety net and emergency services;

27 (D) specialized services for residents as the

1 residents age;

2 (E) support services for the aging caregiver
3 population; and

4 (F) improved monitoring of the health and safety
5 of recipients of community-based services; and

6 (3) estimate the fiscal impact of each strategy and
7 initiative, including the impact on department funding and the
8 number of full-time equivalent department employees and the cost
9 implications to other health and human services agencies.

10 SECTION 28. Subchapter D, Chapter 161, Human Resources
11 Code, is amended by adding Sections 161.076 and 161.077 to read as
12 follows:

13 Sec. 161.077. CHILDREN'S UNIT. (a) The department shall
14 establish a centralized unit at the department to oversee long-term
15 care and support for children with disabilities who receive
16 services from the department.

17 (b) The children's unit shall oversee the permanency
18 planning process required by Section 531.0245, Government Code, for
19 children with disabilities who reside in a facility operated or
20 licensed by the department.

21 SECTION 29. The Legislature recognizes the importance of
22 ensuring quality care for individual requiring long term care
23 services in nursing homes and other settings.

24 SECTION 30. Section 261.404, Family Code, is amended by
25 adding Subsection (b-1) to read as follows:

26 (b-1) If an investigation under this section reveals
27 evidence of abuse, neglect, or exploitation of a resident or client

1 of a nursing home, and a caseworker of the department or a
2 supervisor of a caseworker knows of the abuse, neglect, or
3 exploitation is a criminal offense, the caseworker or supervisor
4 shall immediately notify the Health and Human Services Commission's
5 office of inspector general and promptly provide the Health and
6 Human Services Commission's office of inspector general with a copy
7 of the department's investigation report.

8 SECTION 31. Subchapter F, Chapter 411, Government Code, is
9 amended by adding Section 411.1144 to read as follows:

10 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
11 INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS AT NURSING
12 HOMES. (a) The Department of State Health Services and the
13 Department of Aging and Disability Services are authorized to
14 obtain from the department criminal history record information
15 maintained by the department that relates to a person:

16 (1) who is:
17 (A) an applicant for employment with the agency;
18 (B) an employee of the agency;
19 (C) a volunteer with the agency; or
20 (D) an applicant for a volunteer position with
21 the agency; and

22 (2) who would be employed a nursing home.

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

26 (1) on court order;
27 (2) with the consent of the person who is the subject

1 of the criminal history record information;

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

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

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

10 (d) Subject to Section 411.087, the Department of State
11 Health Services and the Department of Aging and Disability Services
12 are authorized to:

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

16 (2) obtain from any other criminal justice agency in
17 this state criminal history record information maintained by that
18 criminal justice agency that relates to a person described by
19 Subsection (a); and

20 (3) obtain from any licensing board in this state
21 disciplinary information maintained by that licensing board that
22 relates to a person described by section (a).

23 SECTION 32. Subchapter B, Chapter 531, Government Code, is
24 amended by adding Section 531.02446 to read as follows:

25 Sec. 531.02446. SAFETY NET FOR COMMUNITY SERVICES. (a) In
26 this section, "state developmental center" has the meaning assigned
27 by Section 531.002, Health and Safety Code.

1 (b) The executive commissioner by rule shall develop safety
2 net protocols to prevent individuals with mental retardation
3 receiving services in the community from being placed in a nursing
4 home in an emergency situation.

5 (c) The executive commissioner shall ensure that the safety
6 net protocols are designed to provide for temporary, emergency
7 living arrangements for individuals at immediate risk of admittance
8 to a nursing home who after receiving emergency care expects to
9 return to community care.

10 SECTION 33. Subchapter C, Chapter 531, Government Code, is
11 amended by adding Section 531.1022 to read as follows:

12 Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW
13 ENFORCEMENT. (a) The office of inspector general shall employ and
14 commission peace officers for the sole purpose of assisting a state
15 or local law enforcement agency in the investigation of an alleged
16 criminal offense involving a resident or client of a nursing home. A
17 peace officer employed and commissioned by the office is a peace
18 officer for purposes of Article 2.12, Code of Criminal Procedure.

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

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

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

1 committed; and

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

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

6 (1) executive commissioner;

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

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

11 (4) Aging and Disability Services Council;

12 (5) governor;

13 (6) lieutenant governor;

14 (7) speaker of the house of representatives;

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

18 (9) state auditor.

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

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

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

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

11 (2) the number and type of alleged offenses involving
12 an employee of nursing home;

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

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

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

20 (1) executive commissioner;

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

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

25 (4) Aging and Disability Services Council;

26 (5) Family and Protective Services Council;

27 (6) governor;

1 (7) lieutenant governor;

2 (8) speaker of the house of representatives;

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

6 (10) state auditor; and

7 (11) comptroller.

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

10 SECTION 34. Section 252.122(a), Health and Safety Code, is
11 amended to read as follows:

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

21 SECTION 35. Section 252.124(b), Health and Safety Code, is
22 amended to read as follows:

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

27 SECTION 36. Sections 252.125(a), (c), (d), (e), (f), and

1 (g), Health and Safety Code, are amended to read as follows:

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

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

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

11 (2) the identity of the person responsible for the
12 abuse [~~ex~~], neglect, or exploitation;

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

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

16 (5) the adequacy of the facility environment; and

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

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

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

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

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

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

17 SECTION 37. Section 252.126, Health and Safety Code, is
18 amended to read as follows:

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

25 SECTION 38. Section 252.129, Health and Safety Code, is
26 amended by adding Subsection (d) to read as follows:

27 (d) The department and the Department of Family and

1 Protective Services shall cooperate to ensure that the central
2 registry required by this section accurately includes reported
3 cases of resident abuse and neglect.

4 SECTION 39. Sections 252.134(a), (b), (c), (d), and (e),
5 Health and Safety Code, are amended to read as follows:

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

9 (1) a resident of the facility; and

10 (2) a former resident that occurs [~~24~~] 72 hours or less
11 after the former resident is transferred from the facility to a
12 hospital.

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

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

22 (1) name and age of the deceased;

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

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

26 (4) name and address of the facility in which the
27 deceased resided.

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

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

12 SECTION 40. 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 NURSING HOME DIRECTOR.

15 (a) The director of nursing home is the administrative head of the
16 center.

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

20 (c) The director of a nursing home 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 nursing home;

25 (3) supervise repairs and improvements to the nursing
26 home;

27 (4) ensure that nursing home money is spent

1 judiciously and economically;

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

5 (6) keep a full record of the nursing home's
6 operations; and

7 (7) work to:

8 (i) reduce the turnover rate of the nursing
9 home employees;

10 (ii) develop and implement a training and
11 continuing education program for the nursing home employees; and

12 (iii) reduce incidences of abuse, neglect
13 and exploitation of residents and clients.

14 (d) In accordance with departmental rules and operating
15 procedures, the director of a nursing home shall:

16 (1) establish policy to govern the nursing home that
17 the director considers will best promote the residents' interest
18 and welfare;

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

21 (3) dismiss a subordinate officer, teacher, or
22 employee.

23 SECTION 41. Subtitle B, Title 7, Health and Safety Code, is
24 amended by adding Chapter 555 to read as follows:

25 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
26 commissioner by rule shall adopt a policy regarding random testing
27 and reasonable suspicion testing for the illegal use of drugs by a

1 nursing home employee.

2 (b) The director of a nursing home shall enforce the policy
3 adopted under Subsection (a) by performing necessary drug testing
4 of the nursing home employees for the use of a controlled substance
5 as defined by Section 481.002.

6 (c) Testing under this section may be performed on a random
7 basis or on reasonable suspicion of the use of a controlled
8 substance.

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

12 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
13 executive commissioner by rule shall adopt a policy requiring a
14 nursing home employee who knows or reasonably suspects that another
15 nursing home employee is illegally using or under the influence of a
16 controlled substance, as defined by Section 481.002, to report that
17 knowledge or reasonable suspicion to the director of the nursing
18 home.

19 Sec. 555.024. NURSING HOME EMPLOYEE TRAINING. (a) Before a
20 nursing home employee begins to perform the employee's duties
21 without direct supervision, the department shall provide the
22 employee with competency training and a course of instruction about
23 the general duties of a center employee. The department shall
24 ensure the basic center employee competency course focuses on:

25 (1) the uniqueness of the individuals the nursing home
26 serves including;

27 (a) the medically frail and elderly;

1 (b) individuals with mental retardation; and

2 (c) individuals with physical or mental
3 disabilities;

4 (2) techniques for improving quality of life for and
5 promoting the health and safety of the medically fragile and
6 elderly, individuals with mental retardation, and individuals with
7 physical or mental disabilities; and

8 (3) the conduct expected of nursing home employees.

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

12 (1) the general operation and layout of the nursing
13 home, including armed intruder lockdown procedures;

14 (2) an introduction to mental retardation, elderly
15 physical and mental disabilities, autism spectrum disorder, and
16 traumatic brain injury;

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

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

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

23 (6) the safe and proper use of restraints and
24 medications;

25 (7) recognizing and reporting:

26 (A) abuse, neglect, and exploitation of
27 residents;

- 1 (B) unusual incidents;
2 (C) reasonable suspicion of illegal drug use in
3 the workplace;
4 (D) workplace violence; or
5 (E) sexual harassment in the workplace;
6 (8) preventing and treating infection;
7 (9) first aid;
8 (10) cardiopulmonary resuscitation;
9 (11) the Health Insurance Portability and
10 Accountability Act of 1996 (29 U.S.C. Section 1181 et seq.); and
11 (12) civil rights of center employees.
12 (c) In addition to the training required by Subsection (a)
13 and before a direct care employee begins to perform the direct care
14 employee's duties without direct supervision, the department shall
15 provide a direct care employee with 40 hours of training and
16 instructional information and 8 hours annually of continuing
17 education regarding the following topics:
18 (1) prevention and management of aggressive behavior;
19 (2) observing and reporting changes in behavior,
20 appearance, or health of residents and clients;
21 (3) positive behavior support;
22 (4) emergency response;
23 (5) person-directed plans and self-determination;
24 (6) seizure safety;
25 (7) techniques for:
26 (A) lifting;
27 (B) positioning; and

- 1 (C) movement and mobility;
2 (8) working with aging residents and clients;
3 (9) assisting residents and clients:
4 (A) who have a visual impairment;
5 (B) who have a hearing deficit;
6 (C) who require the use of adaptive devices and
7 specialized equipment; or
8 (D) who have a physical or mental disability;
9 (10) communicating with residents and clients who use
10 augmentative and alternative devices for communication;
11 (11) assisting residents and clients with personal
12 hygiene;
13 (12) assisting residents and clients with dental
14 hygiene;
15 (13) recognizing appropriate food textures;
16 (14) using proper feeding techniques to assist
17 residents and clients with meals;
18 (15) addressing issues of PICA; and
19 (16) physical and nutritional management plans.

20 Sec. 555.026. MORTALITY REVIEW. (a) The executive
21 commissioner shall establish an independent mortality review
22 system to review the death of a person who, at the time of the
23 person's death, was a resident or client of a nursing home.

24 (b) A review under this section shall be conducted in
25 addition to any review conducted by the nursing home.

26 (c) The executive commissioner shall contract with a
27 patient safety organization certified in accordance with 42 C.F.R.

1 Part 3, as effective on January 20, 2009, to conduct independent
2 mortality reviews required by this section. The contract must
3 require the patient safety organization to conduct an independent
4 mortality review using a team consisting of:

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

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

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

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

14 (d) A patient safety organization that performs an
15 independent mortality review shall submit to the department and the
16 commission's office of inspector general a report of the findings
17 of the mortality review.

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

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

26 Sec. 555.027. MINIMUM EDUCATION REQUIREMENTS.

27 (1) a nursing home employee providing services to an

1 individual requiring long term care services must have a high
2 school diploma or GED equivalent.

3 (2) this does not apply to employees with advanced
4 degrees or licensed by a state board.

5 [Sections 555.027-555.050 reserved for expansion]

6 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

7 DEVELOPMENTAL CENTERS

8 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
9 independent ombudsman is established for the purpose of
10 investigating, evaluating, and securing the rights of the residents
11 and clients of nursing homes. The office is administratively
12 attached to the department. The department shall provide
13 administrative support and resources to the office as necessary for
14 the office to perform its duties.

15 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
16 the performance of the ombudsman's duties and powers under this
17 subchapter acts independently of the department.

18 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The
19 governor shall appoint the independent ombudsman.

20 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
21 ombudsman shall:

22 (1) hire assistant ombudsmen to perform, under the
23 direction of the independent ombudsman, the same duties and
24 exercise the same powers as the independent ombudsman; and

25 (2) station an assistant ombudsman at each state
26 developmental center.

27 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve

1 as independent ombudsman or as an assistant ombudsman if the person
2 or the person's spouse:

3 (1) is employed by or participates in the management
4 of a business entity or other organization receiving funds from the
5 department;

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

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

13 Sec. 555.056. REPORT. (a) The independent ombudsman shall
14 submit on a biannual basis to the governor, the lieutenant
15 governor, and the speaker of the house of representatives a report
16 that is both aggregated and disaggregated by individual state
17 developmental center and describes:

18 (1) the work of the independent ombudsman;

19 (2) the results of any review or investigation
20 undertaken by the independent ombudsman, including reviews or
21 investigation of services contracted by the department; and

22 (3) any recommendations that the independent
23 ombudsman has in relation to the duties of the independent
24 ombudsman.

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

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

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

6 (2) problem concerning the administration of a nursing
7 home program or operation; or

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

11 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
12 department shall allow any resident or client, authorized
13 representative of a resident or client, family member of a resident
14 or client, or other interested party to communicate with the
15 independent ombudsman or an assistant ombudsman. The
16 communication:

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

19 (2) is confidential and privileged.

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

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

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

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

3 (c) The independent ombudsman may make reports relating to
4 an investigation public after the investigation is complete but
5 only if the name and any other personally identifiable information
6 of a resident or client, authorized representative of a resident or
7 client, family member of a resident or client, state developmental
8 center, and state developmental center employee are redacted from
9 the report and remain confidential.

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

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

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

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

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

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

4 (3) refer a complaint alleging a possible violation of
5 a nursing home standard or condition of participation to the
6 regulatory services division of the department;

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

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

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

17 (B) a complaint raises the possibility of a
18 systemic issue in the nursing home's provision of services;

19 (6) conduct an annual audit of each nursing homes 's
20 policies, practices, and procedures to ensure that each resident
21 and client is encouraged to exercise the resident's or client's
22 rights, 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 nursing home to provide access to all
11 records, data, and other information under the control of the
12 center that the independent ombudsman determines is necessary to
13 investigate a complaint or to conduct an audit under this section;
14 (9) review all final reports produced by the
15 Department of Family and Protective Services and the regulatory
16 services division of the department regarding a complaint referred
17 by the independent ombudsman;
18 (10) provide assistance to a resident, client,
19 authorized representative of a resident or client, or family member
20 of a resident or client who the independent ombudsman determines is
21 in need of assistance, including advocating with an agency,
22 provider, or other person in the best interests of the resident or
23 client; and
24 (11) make appropriate referrals under any of the
25 duties and powers listed in this subsection.
26 (b) The independent ombudsman may apprise a person who is
27 interested in a resident's or client's welfare of the rights of the

1 resident or client.

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

9 (d) Notwithstanding any other provision of this chapter,
10 the independent ombudsman may not investigate an alleged criminal
11 offense or the alleged abuse, neglect, or exploitation of a
12 resident or client. The independent ombudsman shall refer an
13 allegation of abuse, neglect, or exploitation of a resident or
14 client to the Department of Family and Protective Services.

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

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

24 (b) The office shall ensure that:

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

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

5 SECTION 42. Section 591.003, Health and Safety Code, is
6 amended by adding Subdivision (19-a) to read as follows:

7 (19-a) "State developmental center" has the meaning
8 provided by Section 531.002.

9 SECTION 43. Chapter 592, Health and Safety Code, is amended
10 by adding Subchapter E to read as follows:

11 SUBCHAPTER E. USE OF RESTRAINTS IN STATE DEVELOPMENTAL CENTER

12 Sec. 592.101. DEFINITION. In this subchapter, "executive
13 commissioner" means the executive commissioner of the Health and
14 Human Services Commission.

15 Sec. 592.102. USE OF RESTRAINTS. The executive
16 commissioner shall adopt rules to ensure that:

17 (1) a mechanical or physical restraint is not
18 administered to a resident of a nursing home unless the restraint
19 is:

20 (A) necessary to prevent imminent physical
21 injury to the resident or another; and

22 (B) the least restrictive restraint effective to
23 prevent imminent physical injury;

24 (2) the administration of a mechanical or physical
25 restraint to a resident of a nursing home ends immediately once the
26 imminent risk of physical injury abates; and

27 (3) a mechanical or physical restraint is not

1 administered to a resident of a nursing home as punishment or as
2 part of a behavior plan.

3 Sec. 592.103. STRAITJACKETS PROHIBITED. A person may not
4 use a straitjacket to restrain a resident of a nursing home.

5 Sec. 592.104. CONFLICT WITH OTHER LAW. To the extent of a
6 conflict between this subchapter and Chapter 322, this subchapter
7 controls.

8 SECTION 44. Section 48.252, Human Resources Code, is
9 amended by adding Subsection (d) to read as follows:

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

21 SECTION 45. Subchapter G, Chapter 48, Human Resources Code,
22 is amended by adding Section 48.3015 to read as follows:

23 Sec. 48.3015. INVESTIGATION OF REPORTS IN A NURSING HOME.

24 (a) Notwithstanding Section 48.301, the department shall receive
25 and investigate reports of abuse, neglect, or exploitation of an
26 individual receiving services in nursing home.

27 (b) The executive commissioner shall adopt rules governing

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

3 SECTION 46. Section 161.052, Human Resources Code, is
4 amended by amending Subsection (b) and adding Subsection (e) to
5 read as follows:

6 (b) The executive commissioner shall prepare and by rule
7 adopt personnel standards. The executive commissioner shall adopt
8 personnel standards for direct care employees at nursing homes that
9 are designed to ensure the safety of and a high standard of care for
10 residents of a nursing home.

11 (e) Subject to the availability of funds, the department
12 shall prescribe the minimum salaries for employees at a nursing
13 home necessary to attract and maintain quality employees. The
14 commissioner shall ensure that policies regarding employees at
15 nursing homes are designed to reduce turnover and ensure continuity
16 of care for residents.

17 SECTION 47. Subchapter B, Chapter 161, Human Resources
18 Code, is amended by adding Section 161.033 to read as follows:

19 Sec. 161.033. REQUIREMENTS FOR LONG-RANGE PLAN. In
20 developing the long-range plan required by Section 533.032, Health
21 and Safety Code, the department shall:

22 (1) include strategies for effectively serving the
23 increasing number of state developmental center residents
24 receiving community-based care;

25 (2) describe initiatives for effectively implementing
26 the strategies required by Subdivision (1), including enhancing
27 community services to assist residents through the development of:

- 1 (A) affordable housing options;
2 (B) safety net and emergency services;
3 (C) specialized services for residents as the
4 residents age;
5 (D) support services for the aging caregiver
6 population; and
7 (E) improved monitoring of the health and safety
8 of recipients of community-based services;
9 (F) the shortage of nurses;
10 (G) prevention of acute care hospitalizations
11 for the medically frail, elderly, and mentally retarded;
12 (H) reduced turnover and ensure continuity of
13 care for residents; and
14 (I) increased wages to attract and maintain
15 quality personnel; and
16 (3) estimate the fiscal impact of each strategy and
17 initiative, including the impact on department funding and the
18 number of full-time equivalent department employees and the cost
19 implications to other health and human services agencies.

20 SECTION 48. Section 161.071, Human Resources Code, is
21 amended to read as follows:

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

- 25 (1) administering and coordinating programs to
26 provide community-based care and support services to promote
27 independent living for populations that would otherwise be

1 institutionalized;

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

5 (3) providing and coordinating programs and services
6 for persons with disabilities, including programs for the
7 treatment, rehabilitation, or benefit of persons with
8 developmental disabilities or mental retardation;

9 (4) operating state facilities for the housing,
10 treatment, rehabilitation, or benefit of persons with
11 disabilities, including state schools for persons with mental
12 retardation;

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

17 (A) implementation of the federal Older
18 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
19 subsequent amendments, including implementation of services and
20 volunteer opportunities under that Act for older residents of this
21 state through area agencies on aging;

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

24 (C) fostering of the state and community
25 infrastructure and capacity to serve older residents of this state;
26 and

27 (D) availability of a comprehensive resource for

1 state government and the public on trends related to and services
2 and programs for an aging population;

3 (6) performing all licensing and enforcement
4 activities and functions related to long-term care facilities,
5 including licensing and enforcement activities related to
6 convalescent and nursing homes and related institutions under
7 Chapter 242, Health and Safety Code;

8 (7) performing all licensing and enforcement
9 activities related to assisted living facilities under Chapter 247,
10 Health and Safety Code;

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

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

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

21 SECTION 49. Subchapter D, Chapter 161, Human Resources
22 Code, is amended by adding Sections 161.076 and 161.077 to read as
23 follows:

24 Sec. 161.076. ON-SITE SURVEYS OF CERTAIN PROVIDERS. The
25 department may conduct an on-site survey in each nursing home. The
26 department shall conduct the survey in a manner consistent with
27 surveys conducted by the department under Section 142.009, Health

1 and Safety Code.

2 SECTION 50. The Legislature recognizes the importance of
3 ensuring quality care for individual requiring long term care
4 services in community based settings and other settings.

5 SECTION 51. DEFINITIONS. Section 261.404, Family Code;
6 Subchapter F, Chapter 411, Government Code; Section 252.122(a),
7 Health and Safety Code; Subtitle B, Title 7, Health and Safety Code;
8 Chapter 592, Health and Safety Code; Section 48.252, Human
9 Resources Code; Section 161.052, Human Resources Code; and
10 Subchapter B, Chapter 161, Human Resources Code are amended by
11 adding the definition as follows:

12 (1) "Individual requiring long term care services"
13 means an individual who is a person receiving services through a
14 Medicaid waiver.

15 (2) "Medicaid waiver" means a Medicaid wavier or
16 demonstration program authorized the Centers for Medicare and
17 Medicaid Services or in federal law including 1915(b) and 1915(c)
18 waivers.

19 (3) "Community based setting" means a location where
20 an individual requiring long term care services receives services
21 under a Medicaid waiver.

22 SECTION 52. Section 261.404, Family Code, is amended by
23 adding Subsection (b-1) to read as follow

24 (b-1) If an investigation under this section reveals
25 evidence of abuse, neglect, or exploitation of an individual
26 requiring long term care services, and a caseworker of the
27 department or a supervisor of a caseworker knows of the abuse,

1 neglect, or exploitation is a criminal offense, the caseworker or
2 supervisor shall immediately notify the Health and Human Services
3 Commission's office of inspector general and promptly provide the
4 Health and Human Services Commission's office of inspector general
5 with a copy of the department's investigation report.

6 SECTION 53. Subchapter F, Chapter 411, Government Code, is
7 amended by adding Section 411.1144 to read as follows:

8 Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD
9 INFORMATION: AGENCIES WITH EMPLOYEES OR VOLUNTEERS PROVIDING
10 SERVICES TO PERSONS REQUIRING LONG TERM CARE SERVICES. (a) The
11 Department of State Health Services and the Department of Aging and
12 Disability Services are authorized to obtain from the department
13 criminal history record information maintained by the department
14 that relates to a person:

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

21 (2) who would be employed to provide services under a
22 Medicaid waiver.

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

26 (1) on court order;
27 (2) with the consent of the person who is the subject

1 of the criminal history record information;

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

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

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

10 (d) Subject to Section 411.087, the Department of State
11 Health Services and the Department of Aging and Disability Services
12 are authorized to:

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

16 (2) obtain from any other criminal justice agency in
17 this state criminal history record information maintained by that
18 criminal justice agency that relates to a person described by
19 Subsection (a); and

20 (3) obtain from any licensing board in this state
21 disciplinary information maintained by that licensing board that
22 relates to a person described by section (a).

23 SECTION 54. Subchapter B, Chapter 531, Government Code, is
24 amended by adding Section 531.02446 to read as follows:

25 Sec. 531.02446. SAFETY NET FOR COMMUNITY SERVICES. (a) In
26 this section, "state developmental center" has the meaning assigned
27 by Section 531.002, Health and Safety Code.

1 (b) The executive commissioner by rule shall develop safety
2 net protocols to prevent individuals with mental retardation
3 receiving services in the community from being placed in a nursing
4 home or state developmental center in an emergency situation.

5 (c) The executive commissioner shall ensure that the safety
6 net protocols are designed to provide for temporary, emergency
7 living arrangements for individuals at immediate risk of admittance
8 to a nursing home or state developmental center who after receiving
9 emergency care expects to return to community care.

10 SECTION 55. Subchapter C, Chapter 531, Government Code, is
11 amended by adding Section 531.1022 to read as follows:

12 Sec. 531.1022. ASSISTING CERTAIN INVESTIGATIONS BY LAW
13 ENFORCEMENT. (a) The office of inspector general shall employ and
14 commission peace officers for the sole purpose of assisting a state
15 or local law enforcement agency in the investigation of an alleged
16 criminal offense involving an individual requiring long term care
17 services. A peace officer employed and commissioned by the office
18 is a peace officer for purposes of Article 2.12, Code of Criminal
19 Procedure.

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

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

27 (2) a statement regarding whether the investigation

1 resulted in a finding that an alleged criminal offense was
2 committed; and

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

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

7 (1) executive commissioner;

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

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

12 (4) Aging and Disability Services Council;

13 (5) governor;

14 (6) lieutenant governor;

15 (7) speaker of the house of representatives;

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

19 (9) state auditor.

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

1 this information may be disclosed to the office of the attorney
2 general, the state auditor's office, and law enforcement agencies.

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

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

12 (2) the number and type of alleged offenses involving
13 an person providing services under a Medicaid waiver;

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

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

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

21 (1) executive commissioner;

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

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

26 (4) Aging and Disability Services Council;

27 (5) Family and Protective Services Council;

1 (6) governor;

2 (7) lieutenant governor;

3 (8) speaker of the house of representatives;

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

7 (10) state auditor; and

8 (11) comptroller.

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

11 SECTION 56. Section 252.122(a), Health and Safety Code, is
12 amended to read as follows:

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

22 SECTION 57. Section 252.124(b), Health and Safety Code, is
23 amended to read as follows:

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

1 SECTION 58. Sections 252.125(a), (c), (d), (e), (f), and
2 (g), Health and Safety Code, are amended to read as follows:

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

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

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

12 (2) the identity of the person responsible for the
13 abuse [~~ex~~], neglect, or exploitation;

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

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

17 (5) the adequacy of the facility environment; and

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

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

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

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

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

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

18 SECTION 59. Section 252.126, Health and Safety Code, is
19 amended to read as follows:

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

26 SECTION 60. Section 252.129, Health and Safety Code, is
27 amended by adding Subsection (d) to read as follows:

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

5 SECTION 61. Sections 252.134(a), (b), (c), (d), and (e),
6 Health and Safety Code, are amended to read as follows:

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

10 (1) a resident of the facility; and

11 (2) a former resident that occurs [~~24~~] 72 hours or less
12 after the former resident is transferred from the facility to a
13 hospital.

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

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

23 (1) name and age of the deceased;

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

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

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

1 deceased resided.

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

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

13 SECTION 62. Subchapter B, Chapter 551, Health and Safety
14 Code, is amended by adding Section 551.0225 to read as follows:

15 Sec. 551.0225. POWERS AND DUTIES OF PROVIDERS OF SERVICES
16 UNDER MEDICAID WAIVER. (a) The director of a provider of services
17 under a Medicaid waiver is the administrative head of the community
18 based services.

19 (b) The director of provider of services under a Medicaid
20 waiver has the custody of and responsibility to care for the
21 buildings, grounds, furniture, and other property relating to the
22 community based services.

23 (c) The director of a provider of services under a Medicaid
24 waiver:

25 (1) oversee the admission and discharge of individuals
26 requiring long term care services;

27 (2) keep a register of all individuals requiring long

1 term care services admitted to or discharged from the community
2 based setting;

3 (3) supervise repairs and improvements to the
4 community based setting;

5 (4) ensure that community based setting money is spent
6 judiciously and economically;

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

10 (6) keep a full record of the community based setting's
11 operations; and

12 (7) work to:

13 (i) reduce the turnover rate of the
14 providers of services under Medicaid waivers;

15 (ii) develop and implement a training and
16 continuing education program for the providers of services under
17 Medicaid waivers; and

18 (iii) reduce incidences of abuse, neglect
19 and exploitation of individuals requiring long term care services.

20 (d) In accordance with departmental rules and operating
21 procedures, the director of a provider of services under a Medicaid
22 waiver:

23 (1) establish policy to govern the a provider of
24 services under a Medicaid waiver that the director considers will
25 best promote the residents' interest and welfare;

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

1 (3) dismiss a subordinate officer, teacher, or
2 employee.

3 SECTION 63. Subtitle B, Title 7, Health and Safety Code, is
4 amended by adding Chapter 555 to read as follows:

5 Sec. 555.022. DRUG TESTING; POLICY. (a) The executive
6 commissioner by rule shall adopt a policy regarding random testing
7 and reasonable suspicion testing for the illegal use of drugs by a
8 provider of services under a Medicaid waiver.

9 (b) The director of a provider of services under a Medicaid
10 waiver shall enforce the policy adopted under Subsection (a) by
11 performing necessary drug testing of the nursing home employees for
12 the use of a controlled substance as defined by Section 481.002.

13 (c) Testing under this section may be performed on a random
14 basis or on reasonable suspicion of the use of a controlled
15 substance.

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

19 Sec. 555.023. REPORTS OF ILLEGAL DRUG USE; POLICY. The
20 executive commissioner by rule shall adopt a policy requiring a
21 provider of services under a Medicaid waiver who knows or
22 reasonably suspects that another a provider of services under a
23 Medicaid waiver is illegally using or under the influence of a
24 controlled substance, as defined by Section 481.002, to report that
25 knowledge or reasonable suspicion to the director of a provider of
26 services under a Medicaid waiver.

27 Sec. 555.024. PROVIDER OF SERVICES UNDER A MEDICAID WAIVER

1 TRAINING. (a) Before a provider of services under a Medicaid
2 waiver begins to perform the employee's duties without direct
3 supervision, the department shall provide the employee with
4 competency training and a course of instruction about the general
5 duties of a provider of services under a Medicaid waiver. The
6 department shall ensure the basic provider competency course
7 focuses on:

8 (1) the uniqueness of the individuals the nursing home
9 serves including;

10 (a) the medically frail and elderly;

11 (b) individuals with mental retardation;

12 (c) individuals with physical or mental
13 disabilities; and

14 (c) children requiring long term care services;

15 (2) techniques for improving quality of life for and
16 promoting the health and safety of the medically fragile and
17 elderly, individuals with mental retardation, children requiring
18 long term care services, and individuals with physical or mental
19 disabilities; and

20 (3) the conduct expected of providers of services
21 under a Medicaid waiver.

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

25 (1) the general operation and layout of the community
26 based setting, including armed intruder lockdown procedures;

27 (2) an introduction to mental retardation, elderly

1 physical and mental disabilities, autism spectrum disorder, and
2 traumatic brain injury;

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

5 (4) the rights of individuals with disabilities who
6 receive services from the department;

7 (5) respecting personal choices made by individuals
8 requiring long term care services;

9 (6) the safe and proper use of restraints and
10 medications;

11 (7) recognizing and reporting:

12 (A) abuse, neglect, and exploitation of
13 individuals requiring long term care services;

14 (B) unusual incidents;

15 (C) reasonable suspicion of illegal drug use in
16 the workplace;

17 (D) workplace violence; or

18 (E) sexual harassment in the workplace;

19 (8) preventing and treating infection;

20 (9) first aid;

21 (10) cardiopulmonary resuscitation;

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

24 (12) civil rights of providers of services under a
25 Medicaid waiver.

26 (c) In addition to the training required by Subsection (a)
27 and before a direct care provider of services under a Medicaid

1 waiver begins to perform the direct care employee's duties without
2 direct supervision, the department shall provide a direct care
3 provider with 40 hours of training and instructional information
4 and 8 hours annually of continuing education regarding the
5 following topics:

6 (1) prevention and management of aggressive behavior;
7 (2) observing and reporting changes in behavior,
8 appearance, or health of residents and clients;

9 (3) positive behavior support;

10 (4) emergency response;

11 (5) person-directed plans and self-determination;

12 (6) seizure safety;

13 (7) techniques for:

14 (A) lifting;

15 (B) positioning; and

16 (C) movement and mobility;

17 (8) working with aging residents and clients;

18 (9) assisting residents and clients:

19 (A) who have a visual impairment;

20 (B) who have a hearing deficit;

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

23 (D) who have a physical or mental disability;

24 (10) communicating with individuals requiring long
25 term care services who use augmentative and alternative devices for
26 communication;

27 (11) assisting individuals requiring long term care

1 services with personal hygiene;

2 (12) assisting individuals requiring long term care
3 services with dental hygiene;

4 (13) recognizing appropriate food textures;

5 (14) using proper feeding techniques to assist
6 individuals requiring long term care services with meals;

7 (15) addressing issues of PICA; and

8 (16) physical and nutritional management plans.

9 Sec. 555.026. MORTALITY REVIEW. (a) The executive
10 commissioner shall establish an independent mortality review
11 system to review the death of a person who, at the time of the
12 person's death, was an individuals requiring long term care
13 services.

14 (b) A review under this section shall be conducted in
15 addition to any review conducted by the provider of services under a
16 Medicaid waiver.

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

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

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

27 (3) a clinician or other professional with expertise

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

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

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

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

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

17 Sec. 555.027. MINIMUM EDUCATION REQUIREMENTS.

18 (1) a provider of services under a Medicaid waiver
19 must have a high school diploma or GED equivalent.

20 (2) this does not apply to employees with advanced
21 degrees or licensed by a state board.

22 [Sections 555.027-555.050 reserved for expansion]

23 SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE

24 DEVELOPMENTAL CENTERS

25 Sec. 555.051. ESTABLISHMENT; PURPOSE. The office of
26 independent ombudsman is established for the purpose of
27 investigating, evaluating, and securing the rights of the

1 individuals requiring long term care services. The office is
2 administratively attached to the department. The department shall
3 provide administrative support and resources to the office as
4 necessary for the office to perform its duties.

5 Sec. 555.052. INDEPENDENCE. The independent ombudsman in
6 the performance of the ombudsman's duties and powers under this
7 subchapter acts independently of the department.

8 Sec. 555.053. APPOINTMENT OF INDEPENDENT OMBUDSMAN. The
9 governor shall appoint the independent ombudsman.

10 Sec. 555.054. ASSISTANT OMBUDSMEN. The independent
11 ombudsman shall:

12 (1) hire assistant ombudsmen to perform, under the
13 direction of the independent ombudsman, the same duties and
14 exercise the same powers as the independent ombudsman; and

15 (2) station an assistant ombudsman at each state
16 developmental center.

17 Sec. 555.055. CONFLICT OF INTEREST. A person may not serve
18 as independent ombudsman or as an assistant ombudsman if the person
19 or the person's spouse:

20 (1) is employed by or participates in the management
21 of a business entity or other organization receiving funds from the
22 department;

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

26 (3) is required to register as a lobbyist under
27 Chapter 305, Government Code, because of the person's activities or

1 compensation on behalf of a profession related to the operation of
2 the department.

3 Sec. 555.056. REPORT. (a) The independent ombudsman shall
4 submit on a biannual basis to the governor, the lieutenant
5 governor, and the speaker of the house of representatives a report
6 that is both aggregated and disaggregated by individual state
7 developmental center and describes:

8 (1) the work of the independent ombudsman;

9 (2) the results of any review or investigation
10 undertaken by the independent ombudsman, including reviews or
11 investigation of services contracted by the department; and

12 (3) any recommendations that the independent
13 ombudsman has in relation to the duties of the independent
14 ombudsman.

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

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

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

23 (2) problem concerning the administration of a nursing
24 home program or operation; or

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

1 Sec. 555.057. COMMUNICATION AND CONFIDENTIALITY. (a) The
2 department shall allow any resident or client, authorized
3 representative of a resident or client, family member of a resident
4 or client, or other interested party to communicate with the
5 independent ombudsman or an assistant ombudsman. The
6 communication:

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

9 (2) is confidential and privileged.

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

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

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

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

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

27 (d) The name, address, or other personally identifiable

1 information of a person who files a complaint with the office of
2 independent ombudsman, information generated by the office of
3 independent ombudsman in the course of an investigation, and
4 confidential records obtained by the office of independent
5 ombudsman are confidential and not subject to disclosure under
6 Chapter 552, Government Code, except as provided by this section.

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

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

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

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

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

21 (3) refer a complaint alleging a possible violation of
22 a community based setting standard or condition of participation to
23 the regulatory services division of the department;

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

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

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

7 (B) a complaint raises the possibility of a
8 systemic issue in the provider of services under a Medicaid
9 waiver's provision of services;

10 (6) conduct an annual audit of each provider of
11 services under a Medicaid waiver policies, practices, and
12 procedures to ensure that each individual requiring long term care
13 services is encouraged to exercise the individual's rights,
14 including:

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

16 (B) the right to due process;

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

19 (A) executive commissioner;

20 (B) commissioner;

21 (C) Aging and Disability Services Council;

22 (D) governor;

23 (E) lieutenant governor;

24 (F) speaker of the house of representatives;

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

1 (H) state auditor;

2 (8) require a provider of services under a Medicaid
3 waiver to provide access to all records, data, and other
4 information under the control of the center that the independent
5 ombudsman determines is necessary to investigate a complaint or to
6 conduct an audit under this section;

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

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

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

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

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

1 investigation or to secure information.

2 (d) Notwithstanding any other provision of this chapter,
3 the independent ombudsman may not investigate an alleged criminal
4 offense or the alleged abuse, neglect, or exploitation of a
5 resident or client. The independent ombudsman shall refer an
6 allegation of abuse, neglect, or exploitation of a resident or
7 client to the Department of Family and Protective Services.

8 Sec. 555.060. RETALIATION PROHIBITED. The department, or a
9 provider, or a person providing care to an individual requiring
10 long term care services against a that person who in good faith
11 makes a complaint to the office of independent ombudsman or
12 cooperates with the office in an investigation.

13 Sec. 555.061. TOLL-FREE NUMBER. (a) The office shall
14 establish a permanent, toll-free number for the purpose of
15 receiving any information concerning the violation of a right of an
16 individual requiring long term care services.

17 (b) The office shall ensure that:

18 (1) the toll-free number is prominently displayed in
19 each room in which an individual requiring long term care services
20 lives or receives services; and

21 (2) an individual requiring long term care services,
22 the authorized representative of an individual requiring long term
23 care services, and a provider of services under a Medicaid waiver
24 have confidential access to a telephone for the purpose of calling
25 the toll-free number.

26 SECTION 64. Section 591.003, Health and Safety Code, is
27 amended by adding Subdivision (19-a) to read as follows:

1 (19-a) "State developmental center" has the meaning
2 provided by Section 531.002.

3 SECTION 65. Chapter 592, Health and Safety Code, is amended
4 by adding Subchapter E to read as follows:

5 SUBCHAPTER E. USE OF RESTRAINTS IN STATE DEVELOPMENTAL CENTER

6 Sec. 592.101. DEFINITION. In this subchapter, "executive
7 commissioner" means the executive commissioner of the Health and
8 Human Services Commission.

9 Sec. 592.102. USE OF RESTRAINTS. The executive
10 commissioner shall adopt rules to ensure that:

11 (1) a mechanical or physical restraint is not
12 administered to an individual requiring long term care services
13 unless the restraint is:

14 (A) necessary to prevent imminent physical
15 injury to the individual requiring long term care services or
16 another; and

17 (B) the least restrictive restraint effective to
18 prevent imminent physical injury;

19 (2) the administration of a mechanical or physical
20 restraint to an individual requiring long term care services ends
21 immediately once the imminent risk of physical injury abates; and

22 (3) a mechanical or physical restraint is not
23 administered to an individual requiring long term care services as
24 punishment or as part of a behavior plan.

25 Sec. 592.103. STRAITJACKETS PROHIBITED. A person may not
26 use a straitjacket to restrain an individual requiring long term
27 care services.

1 Sec. 592.104. CONFLICT WITH OTHER LAW. To the extent of a
2 conflict between this subchapter and Chapter 322, this subchapter
3 controls.

4 SECTION 66. 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 an individual requiring
8 long term care services, and a caseworker of the department or a
9 supervisor of a caseworker knows of the abuse, neglect, or
10 exploitation is a criminal offense, the caseworker or supervisor
11 shall immediately notify the Health and Human Services Commission's
12 office of inspector general and promptly provide the Health and
13 Human Services Commission's office of inspector general with a copy
14 of the department's investigation report.

15 SECTION 67. Subchapter G, Chapter 48, Human Resources Code,
16 is amended by adding Section 48.3015 to read as follows:

17 Sec. 48.3015. INVESTIGATION OF REPORTS IN A COMMUNITY BASED
18 SETTING. (a) Notwithstanding Section 48.301, the department shall
19 receive and investigate reports of abuse, neglect, or exploitation
20 of an individual requiring long term care services.

21 (b) The executive commissioner shall adopt rules governing
22 investigations conducted under this section and the provision of
23 services as necessary to alleviate abuse, neglect, or exploitation.

24 SECTION 68. Section 161.052, Human Resources Code, is
25 amended by amending Subsection (b) and adding Subsection (e) to
26 read as follows:

27 (b) The executive commissioner shall prepare and by rule

1 adopt personnel standards. The executive commissioner shall adopt
2 personnel standards for providers of services under a Medicaid
3 waiver that are designed to ensure the safety of and a high standard
4 of care for residents of a nursing home.

5 (e) Subject to the availability of funds, the department
6 shall prescribe the minimum salaries for providers of services
7 under a Medicaid waiver necessary to attract and maintain quality
8 employees. The commissioner shall ensure that policies regarding
9 providers of services under a Medicaid waiver are designed to
10 reduce turnover and ensure continuity of care for individuals
11 requiring long term care services.

12 SECTION 69. Subchapter B, Chapter 161, Human Resources
13 Code, is amended by adding Section 161.033 to read as follows:

14 Sec. 161.033. REQUIREMENTS FOR LONG-RANGE PLAN. In
15 developing the long-range plan required by Section 533.032, Health
16 and Safety Code, the department shall:

17 (1) include strategies for effectively serving the
18 increasing number of state developmental center residents
19 receiving community-based care;

20 (2) describe initiatives for effectively implementing
21 the strategies required by Subdivision (1), including enhancing
22 community services to assist residents through the development of:

23 (A) affordable housing options;

24 (B) alternatives for serving children;

25 (C) safety net and emergency services;

26 (D) specialized services for residents as the
27 residents age;

- 1 (E) support services for the aging caregiver
2 population; and
3 (F) improved monitoring of the health and safety
4 of recipients of community-based services;
5 (G) the shortage of nurses;
6 (H) prevention of acute care hospitalizations;
7 (I) reduced turnover and ensure continuity of
8 care for residents; and
9 (J) increased wages to attract and maintain
10 quality personnel; and
11 (3) estimate the fiscal impact of each strategy and
12 initiative, including the impact on department funding and the
13 number of full-time equivalent department employees and the cost
14 implications to other health and human services agencies.

15 SECTION 70. Section 161.071, Human Resources Code, is
16 amended to read as follows:

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

20 (1) administering and coordinating programs to
21 provide community-based care and support services to promote
22 independent living for populations that would otherwise be
23 institutionalized;

24 (2) providing institutional care services, including
25 services through convalescent and nursing homes and related
26 institutions under Chapter 242, Health and Safety Code;

27 (3) providing and coordinating programs and services

1 for persons with disabilities, including programs for the
2 treatment, rehabilitation, or benefit of persons with
3 developmental disabilities or mental retardation;

4 (4) operating state facilities for the housing,
5 treatment, rehabilitation, or benefit of persons with
6 disabilities, including state schools for persons with mental
7 retardation;

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

12 (A) implementation of the federal Older
13 Americans Act of 1965 (42 U.S.C. Section 3001 et seq.) and its
14 subsequent amendments, including implementation of services and
15 volunteer opportunities under that Act for older residents of this
16 state through area agencies on aging;

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

19 (C) fostering of the state and community
20 infrastructure and capacity to serve older residents of this state;
21 and

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

25 (6) performing all licensing and enforcement
26 activities and functions related to long-term care facilities,
27 including licensing and enforcement activities related to

1 convalescent and nursing homes and related institutions under
2 Chapter 242, Health and Safety Code;

3 (7) performing all licensing and enforcement
4 activities related to assisted living facilities under Chapter 247,
5 Health and Safety Code;

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

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

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

16 SECTION 71. Subchapter D, Chapter 161, Human Resources
17 Code, is amended by adding Sections 161.076 and 161.077 to read as
18 follows:

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

26 Sec. 161.077. CHILDREN'S UNIT. (a) The department shall
27 establish a centralized unit at the department to oversee long-term

1 care and support for children with disabilities who receive
2 services from the department.

3 (b) The children's unit shall oversee the permanency
4 planning process required by Section 531.0245, Government Code, for
5 children with disabilities who reside in a facility operated or
6 licensed by the department.

7 SECTION 72. (a) Not later than December 1, 2009, the
8 Health and Human Services Commission's office of inspector general
9 shall begin employing and commissioning peace officers as required
10 by Section 531.1022, Government Code, as added by this Act.

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

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

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

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

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 (h) Not later than January 1, 2010, the executive
4 commissioner of the Health and Human Services Commission shall
5 review the use of restraints in state developmental centers and
6 adopt the rules required under Section 592.102, Health and Safety
7 Code, as added by this Act.

8 SECTION 73. As soon as possible after the effective date of
9 this Act, and subject to the availability of funds, the Department
10 of Aging and Disability Services shall hire additional direct care
11 employees at state developmental centers and increase the salaries
12 for all direct care employees as necessary to attract and maintain
13 quality employees.

14 SECTION 74. (a) Section 411.1144, Government Code, as
15 added by this Act, and Section 555.021, Health and Safety Code, as
16 added by this Act, apply only to background and criminal history
17 checks performed on or after the effective date of this Act.

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

22 SECTION 75. (a) The change in law made by Section
23 551.022(e), Health and Safety Code, as added by this Act, and the
24 change in law made by Section 551.0225, Health and Safety Code, as
25 added by this Act, apply to the dismissal of an officer, teacher, or
26 other employee of a state developmental center hired on or after the
27 effective date of this Act.

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

6 SECTION 76. (a) Sections 593.042 and 593.052, Health and
7 Safety Code, as amended by this Act, apply only to an order for
8 commitment to a residential care facility based on an application
9 filed on or after the effective date of this Act.

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

14 SECTION 77. This Act applies only to a report of suspected
15 abuse, neglect, or exploitation that is made on or after September
16 1, 2009. A report of suspected abuse, neglect, or exploitation that
17 is made before September 1, 2009, is governed by the law in effect
18 on the date the report was made, and that law is continued in effect
19 for that purpose.

20 SECTION 78. If before implementing any provision of this
21 Act a state agency determines that a waiver or authorization from a
22 federal agency is necessary for implementation of that provision,
23 the agency affected by the provision shall request the waiver or
24 authorization and may delay implementing that provision until the
25 waiver or authorization is granted.

26 SECTION 79. The changes in law made by this Act in amending
27 Chapter 252, Health and Safety Code, and Section 161.071, Human

1 Resources Code, and adding Sections 48.3015 and 161.076, Human
2 Resources Code, take effect September 1, 2009.

3 SECTION 80. Except as provided by Section 79 of this Act,
4 this Act takes effect immediately if it receives a vote of
5 two-thirds of all the members elected to each house, as provided by
6 Section 39, Article III, Texas Constitution. If this Act does not
7 receive the vote necessary for immediate effect, this Act takes
8 effect September 1, 2009.