

LEGISLATIVE BUDGET BOARD  
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

March 11, 2009

**TO:** Honorable Patrick M. Rose, Chair, House Committee on Human Services

**FROM:** John S. O'Brien, Director, Legislative Budget Board

**IN RE: HB1317** by Rose (Relating to the protection and care of individuals with mental retardation.),  
**As Introduced**

**Estimated Two-year Net Impact to General Revenue Related Funds** for HB1317, As Introduced: a negative impact of (\$19,262,288) through the biennium ending August 31, 2011.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$8,203,622)
2011	(\$11,058,666)
2012	(\$8,731,996)
2013	(\$8,736,109)
2014	(\$8,740,359)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from General Revenue Fund 1	Probable Savings/ (Cost) from GR Match For Medicaid 758	Probable Revenue Gain/(Loss) from General Revenue Fund 1	Probable (Cost) from Federal Funds 555
2010	(\$1,490,759)	(\$7,385,471)	\$672,608	(\$7,770,636)
2011	(\$1,250,118)	(\$10,003,850)	\$195,302	(\$10,348,585)
2012	(\$1,250,118)	(\$7,677,180)	\$195,302	(\$8,023,434)
2013	(\$1,250,118)	(\$7,681,293)	\$195,302	(\$8,028,321)
2014	(\$1,250,118)	(\$7,685,543)	\$195,302	(\$8,033,371)

Fiscal Year	Change in Number of State Employees from FY 2009
2010	132.3
2011	275.0
2012	275.0
2013	275.0
2014	275.0

## Fiscal Analysis

**SECTIONS 1 and 19** would amend the Family Code and Human Resources Code, respectively, to require the Department of Family and Protective Services (DFPS) to notify the Health and Human Services Commission's (HHSC) office of inspector general (herein referred to as OIG) if an investigation reveals evidence of abuse, neglect, or exploitation of a child or adult resident or client of a state developmental center, and the DFPS employee believes the abuse, neglect, or exploitation is a criminal offense. DFPS would provide a copy of each investigation report to OIG.

**SECTION 2** would add a section to the Government Code to allow the Department of State Health Services (DSHS) and Department of Aging and Disability Services (DADS) to obtain criminal history record information from the Department of Public Safety (DPS), the Federal Bureau of Investigation (FBI), and any other Texas criminal justice agency for employee and volunteer applicants and current employees and volunteers who would be placed in direct contact with a resident or client of a state developmental center or the Intermediate Care Facility for Persons with Mental Retardation (ICF-MR) component of the Rio Grande State Center.

**SECTION 3** would amend the Government Code to require OIG to employ commissioned peace officers to assist state or local law enforcement agencies in the investigation of an alleged criminal offense involving a resident or client at a state developmental center or the Rio Grande State Center and to prepare a final report for each investigation and an annual report. **SECTION 23** requires the peace officers to be hired by December 1, 2009.

**SECTIONS 6 and 20** would require DFPS to conduct investigations after receiving reports of abuse, neglect, and exploitation of residents in ICF-MRs that are not operated by the state, file petitions for temporary care and protection of the resident if needed, and complete a written report of the investigation. The Executive Commissioner would be required to adopt rules governing these investigations and provision of services as necessary to alleviate abuse, neglect, or exploitation. **SECTION 21** would exclude investigations of abuse, neglect, and exploitation in ICF-MRs not operated by the state from DADS' licensing and enforcement responsibilities.

**SECTION 8** would amend the Health and Safety code to require DFPS and DADS to work together to ensure the central registry accurately includes reported cases of abuse and neglect.

**SECTION 9** would require an ICF-MR to submit a report to DFPS concerning the death of a resident and certain former residents of the facility. DFPS would be required to correlate these reports with death certificate information and develop statistical information on official causes of death.

**SECTIONS 10-12** would amend the Health and Safety Code to redefine a "state school" as a "state developmental center" and a "state school superintendent" as a "director of a state developmental center," and rename existing state schools.

**SECTION 15** would add Chapter 555, State Developmental Centers, to the Health and Safety Code. DADS would be required to establish a separate state developmental center for the care of alleged offenders apart from other clients and residents, designating an existing state developmental center for this purpose by September 1, 2014 as specified in **SECTION 23**. Alleged offenders residing in other state developmental centers would be transferred to the designated center, and non-alleged offenders could not be admitted to the designated center in the future. Direct care employees would receive training regarding service delivery for alleged offender residents.

DADS and DSHS would be required to request a state and federal criminal history background check on an applicant for employment or volunteer position and current employees and volunteers at state development centers and the ICF-MR component of the Rio Grande State Center, and require fingerprinting for use in the background check. The Executive Commissioner would be required to establish rules related to background checks by September 1, 2009 as specified in **SECTION 24**.

The HHSC Executive Commissioner would be required to adopt rules regarding a policy of random and reasonable suspicion testing for the illegal use of drugs by an employee of a state developmental center. The director of a state developmental center would be required to enforce this policy. The

Executive Commissioner would be required to adopt a policy requiring an employee of a state developmental center who knows or reasonably suspects another employee of the center to be illegally using or under the influence of a controlled substance to report that knowledge to the director of the state developmental center. **SECTION 23** requires implementation by December 1, 2009.

The bill would require DADS to develop basic state developmental center employee competency training materials by January 1, 2010 and provide training to all state developmental center employees by September 1, 2010 as specified in **SECTION 23**.

The bill would require DADS and DSHS to install and operate video surveillance equipment in state developmental centers, and the ICF-MR component of the Rio Grande State Center excluding areas defined as private space for residents.

The bill would require the Executive Commissioner to establish, by December 1, 2009 as required by **SECTION 23**, an independent mortality review system, and contract with a patient safety organization to review the death of a person who, at the time of the person's death, was a resident or client of a state developmental center. The patient safety organization shall submit a report of findings for each review to DADS, the office of independent ombudsman, and OIG.

The bill would create the office of independent ombudsman at DADS, hire and station an assistant ombudsman at each state developmental center, and require the office to submit a biannual report to the Governor, Lieutenant Governor, and the Speaker of the House of Representatives. The Governor would be required to appoint the independent ombudsman by December 1, 2009, as required by **SECTION 23**. The bill would require the office of the independent ombudsman to establish a toll-free number to receive information concerning the violation of a right of a resident or client.

**SECTION 22** would require DADS to conduct an annual on-site survey in each group or foster home at which a home and community-based services provider provides services to a person with mental retardation.

**SECTION 30** would require the act to take effect immediately unless otherwise specified, if it receives a vote of two-thirds of the members of each house.

## Methodology

**SECTIONS 1 and 19.** DFPS would need to develop rules to govern interactions with OIG. DFPS reports the notification and report sharing requirements could be accomplished within existing resources.

**SECTION 3.** HHSC indicates 8 additional FTEs would be needed as peace officers to assist state and local law enforcement in the investigations of alleged criminal offenses involving residents or clients of state developmental centers. The estimate is based on the assumption that these peace officers would assist with 600 cases per year and that each officer would complete 75 investigations per year. The total cost would be \$427,409 in fiscal year 2010 and an estimated \$540,754 in fiscal year 2011 and each subsequent year. This includes \$419,409 in fiscal year 2010 and \$532,754 in fiscal year 2011 and each subsequent year for salaries, benefits, and travel expenses, and \$8,000 in annual certification expenses for every fiscal year. The FTEs would be phased-in during fiscal year 2010.

OIG would provide a copy of each investigation report and an annual report to several entities prescribed in the bill including the State Auditor's Office (SAO). Pending approval of the Legislative Audit Committee, the SAO estimates it would review 350 reports for a total of 100 hours, at a cost of \$9,000 (\$90 per hour X 100 hours). Based on HHSC's estimate, it is possible the SAO would have additional reports to review, but it is assumed the SAO could review the reports with existing resources.

**SECTIONS 6, 9, and 20.** DFPS estimates APS would conduct 1,261 investigations per year in 744 licensed ICF-MR facilities, and that the duration of each investigation would be 30 hours. DFPS assumes investigations would be completed in 5 days as per existing federal Medicaid requirements and DADS' rules. DFPS reports it would require 24 FTEs to complete the investigations, and based

on current staffing ratios of 6:1, 4 additional supervisors and administrative assistants would be required. DFPS indicates 2 FTEs would be needed in fiscal year 2010 to develop the new training curriculum and cross-train employees. This analysis assumes after 2010, 1 FTE would be required for this purpose.

DFPS indicates the IMPACT system would need to be updated to include the ICF-MR facilities and the one-time cost of the update would be \$105,370 in fiscal year 2010. DFPS indicates it would require creation of a death registry database to collect death reports from ICF-MR providers and the total cost would be \$486,331. DFPS reports it would require 1 FTE for ongoing maintenance and modification of the death registry database and to perform other responsibilities regarding the IMPACT database changes.

DFPS indicates it needs 2 FTEs to perform policy development, data reporting, and quality assurance relating to the investigations and death registry database.

The costs for salaries, benefits, travel, and other operating costs would be \$1,599,231 in fiscal year 2010 and approximately \$1,928,048 for 2011 and each subsequent year. The total costs for these sections would be \$2,190,931 in fiscal year 2010, and approximately \$1,928,048 for fiscal year 2011 and each subsequent year.

**SECTION 8.** The cost relating to this section cannot be determined because the registry is not specified.

**SECTIONS 10-12.** DADS indicates a one-time cost of \$50,000 for each of the twelve facilities and for the central office would be required due to the change in nomenclature from “state school” to “state developmental center.” The total cost would be \$650,000 in fiscal year 2010.

## **SECTION 15.**

### **Alleged Offenders**

DADS would be required to establish a separate state developmental center for alleged offenders apart from other clients and residents. DADS has identified Mexia as the site based on the number of alleged offenders currently residing there. Alleged offenders residing in other state developmental centers and future alleged offenders would need to be transferred or assigned to the Mexia State Developmental Center. New admissions of non-alleged offenders would need to be assigned to other state developmental centers. It is assumed the agency could absorb these costs within existing resources. DADS would also be required to provide staff training relating to working with alleged offender residents. It is assumed the agency could absorb the transportation of residents and training costs within existing resources, but DADS indicates it would require \$88,000 to move records and personal belongings of alleged-offender residents, assuming 88 persons would relocate and a cost per person of \$1,000.

It is possible that the creation of a state developmental center for alleged offenders apart from other clients could result in the loss of some Federal Funds for the operation of the facility. The related cost to the General Revenue Fund is not estimated at this time.

### **Background Checks**

DADS and DSHS would be required to request criminal history background information including federal criminal history with the use of fingerprinting from DPS for applicants for employment or volunteer positions and current employees and volunteers. The bill would also require that DPS provide electronic updates to DADS and DSHS for the individuals screened through the initial screenings.

Based on DADS and DSHS estimates, initial background checks would be required for 12,986 employees, 5,640 employee applicants, 964 volunteers, and 48 volunteer applicants. In subsequent years, background checks for 5,640 employee applicants and 48 new volunteers would be required. DPS indicates each initial check will cost the agencies \$34.25, and of this amount, \$17.25 be paid to the FBI. DPS estimates 3.5% of the initial screens will result in an electronic update and each update costs \$1.00.

The total fees assessed on DADS would be \$652,435 in fiscal year 2010 and \$188,781 in fiscal year 2011 and each following year. The total fees assessed on DSHS would be \$20,173 for fiscal year 2010 and \$6,521 for fiscal year 2011 and each following year. This analysis assumes DADS and DSHS would use General Revenue and Federal Funds to pay the fees to DPS. \$338,759 in fiscal year 2010 and \$98,118 in fiscal year 2011 and each following year would be paid out of the General Revenue Fund to the FBI for obtaining federal background checks.

### **Drug Testing**

HHSC would be required to adopt rules regarding a random and reasonable suspicion policy for drug testing of employees of state developmental centers, which can be accomplished within existing resources. Directors of the state developmental centers would be required to enforce this policy. DADS assumes testing 25% of the 12,687 staff with direct contact with residents or clients per year and a cost of \$30 per test. The total cost would be \$95,153 each fiscal year.

### **Training**

DADS would need to develop new training materials for state developmental center employees. It is assumed the agency could absorb these costs within existing resources.

### **Video Surveillance**

The bill allows DADS and DSHS to install video surveillance equipment in areas defined as non-private space for residents of state developmental centers and the ICF-MR component of the Rio Grande State Center. There would be one-time costs associated with purchase of cameras and related technology including drop cables and servers. DADS assumes a need for 10,178 cameras with a cost of \$1,000 (includes camera and drop cable) and 130 servers (10 per facility) with a cost of \$6,000 each. Ongoing costs include an annual data storage cost of \$260,000 and the cost of maintaining and replacing the cameras, estimated by the agency to be 10% of the camera cost. DADS indicates 200 FTEs would be required to implement the video surveillance program in order to monitor video across shifts to detect and prevent abuse and exploitation of residents and clients. Based on the assumption that the 10,178 cameras and 200 FTEs would be phased-in over the biennium, the total cost would be \$8,169,586 in fiscal year 2010, \$13,567,409 in fiscal year 2011, and \$8,906,888 in subsequent years. Of this amount, the cost for employee salaries, benefits, and other expenses would be \$2,950,586 in fiscal year 2010, and approximately \$7,709,509 in fiscal year 2011 and each subsequent year. The FTEs would be phased-in in fiscal year 2010.

### **Mortality Review**

HHSC would be required to adopt rules on an independent mortality review system, which can be accomplished within existing resources. The bill would require HHSC to contract with a patient safety organization to conduct mortality reviews for each death of a person who, at the time of death, was a resident or client of a state developmental center. The estimate is based on a need for 128 mortality reviews annually and each review costing an average of \$9,000, based on a three-day review period. The total cost would be \$1,152,000 per year.

### **Independent Ombudsman**

The office of independent ombudsman would be housed at DADS, with a Governor-appointed independent ombudsman and an assistant ombudsman stationed at each state developmental center. This analysis assumes three FTEs would be required to implement this provision including one independent ombudsman, one assistant ombudsman for the Rio Grande State Center, and one administrative assistant. It is assumed existing staff positions could be designated as the assistant ombudsman in the 12 state developmental centers. The office of independent ombudsman would be required to establish a toll-free number at an annual cost of \$3,600. The total cost would be \$164,713 in fiscal year 2010 and approximately \$206,663 in fiscal year 2011 and each following year. Of these costs, \$161,113 in fiscal year 2010 and approximately \$203,063 in each subsequent year includes salaries, benefits, and travel. The FTEs are phased-in for fiscal year 2010.

The office of independent ombudsman would prepare and distribute an annual report to several entities proscribed in the bill, and it is assumed the costs associated with review of the report could be absorbed within existing resources.

**SECTION 22.** DADS estimates 7,673 home and community-based services residences would be reviewed annually with an average review time of 4.78 hours per residence ( $7,673 \times 4.78 = 36,677$  total hours). The agency estimated an annual amount of available time per reviewer to be 1,420 hours, resulting in the need for 26 additional FTEs to complete the reviews, and 2 manager FTEs. The costs associated with these additional FTEs would be \$1,586,700 in fiscal year 2010 and approximately \$1,952,684 for fiscal year 2011 and in each subsequent year. These costs include salaries, benefits, travel, and other operating expenses. The FTEs are phased-in for fiscal year 2010.

### **Enterprise Support Services**

The fiscal impact includes \$1,111,007 and 2.0 FTEs in fiscal year 2010 and approximately \$1,866,422 and 4.0 FTEs in fiscal year 2011 and subsequent years based on increased FTEs at HHSC, DADS, and DFPS. In enterprise support service costs for the biennium, HHSC would incur \$106,993, DADS would incur \$2,431,469, and DFPS would incur \$438,967.

### **Technology**

Technology costs are included in the costs above.

To implement the video surveillance provision, DADS assumes a need for 10,178 cameras with a cost of \$1,000 (includes camera and drop cable) and 130 servers (10 per facility) with a cost of \$6,000 each. Ongoing costs include an annual data storage cost of \$130,000 in fiscal year 2010 and \$260,000 in fiscal year 2011 and in subsequent years and the cost of maintaining and replacing the cameras of \$508,900 in fiscal year 2011 and \$1,017,800 in fiscal year 2012 and in subsequent years. These costs assume that half of the cameras and related equipment would be installed each year of the biennium.

To operate a toll-free number at the office of the independent ombudsman, DADS estimates an annual cost of \$3,600.

DFPS indicates the IMPACT system would need to be updated to include the ICF-MR facilities which would require 1,009 hours of analysis, development, and testing at a cost of \$104.43 per hour. The total cost of the system update would be a one-time cost of \$105,370 in fiscal year 2010.

DFPS indicates it would require creation of a death registry database to collect death reports from ICF-MR providers. The creation, implementation, and maintenance of this system would require 4,657 hours, at a cost of \$104.43 per hour. The total cost would be a one-time cost of \$486,331 in fiscal year 2010.

### **Local Government Impact**

No fiscal implication to units of local government is anticipated.

**Source Agencies:** 308 State Auditor's Office, 405 Department of Public Safety, 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 537 State Health Services, Department of, 539 Aging and Disability Services, Department of

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