

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

April 16, 2009

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

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

IN RE: SB643 by Nelson (Relating to the protection and care of individuals with mental retardation who reside in a state developmental center or the ICF-MR component of the Rio Grande State Center.), **As Engrossed**

Estimated Two-year Net Impact to General Revenue Related Funds for SB643, As Engrossed: a negative impact of (\$20,974,995) through the biennium ending August 31, 2011.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2010	(\$13,332,841)
2011	(\$7,642,154)
2012	(\$7,642,792)
2013	(\$7,643,452)
2014	(\$7,644,134)

All Funds, Five-Year Impact:

Fiscal Year	Probable Savings/ (Cost) from <i>GR Match For Medicaid 758</i>	Probable Savings/ (Cost) from <i>Federal Funds 555</i>	Probable Revenue Gain/(Loss) from <i>General Revenue Fund 1</i>	Change in Number of State Employees from FY 2009
2010	(\$14,005,449)	(\$12,514,690)	\$672,608	183.8
2011	(\$7,837,456)	(\$6,587,338)	\$195,302	245.0
2012	(\$7,838,094)	(\$6,587,976)	\$195,302	245.0
2013	(\$7,838,754)	(\$6,588,636)	\$195,302	245.0
2014	(\$7,839,436)	(\$6,589,318)	\$195,302	245.0

Fiscal Analysis

SECTION 1 would amend Chapters 46B of the Code of Criminal Procedure, respectively, to prohibit the commitment of an individual with mental retardation to a residential care facility operated by the Department of Aging and Disability Services (DADS) unless the court finds the individual meets the criteria for commitment to a residential care facility as defined in **SECTION 10** of the bill.

SECTIONS 2 and 13 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 3 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 ICF/MR component of the Rio Grande State Center.

SECTION 4 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. Findings are to be published on the OIG's Internet website. **SECTION 14** requires the peace officers to be hired by December 1, 2009.

SECTIONS 5-7 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 10 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 and supervision of residents at high risk of dangerous or violent behavior as defined in the bill. DADS would be required to designate an existing state developmental center for this purpose by September 1, 2014 as specified in **SECTION 14**. High-risk residents who reside in other state developmental centers would be transferred to the designated center. DADS would be required to place high-risk residents in separate homes based on age and sex. DADS would be required to provide training regarding the service delivery for high-risk residents to direct care employees of the designated state developmental center. State developmental center directors would be required to collect and document information regarding resident transfers. A resident who is transferred to the designated center is entitled to an administrative hearing.

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 HHSC Executive Commissioner would be required to adopt 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.

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 14**.

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 14**, 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 federally-authorized protection and advocacy system for individuals with developmental disabilities, the office of independent ombudsman, and OIG. The patient safety organization would be required to prepare semiannual reports for specified legislative entities.

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. The independent ombudsman would immediately report to legislative leadership serious or flagrant cases, problems concerning the administration of a state developmental center or interference of an investigation being conducted by the independent ombudsman. The independent ombudsman would be required to evaluate the delivery of services to residents to ensure their rights are observed; promote awareness among the public, residents, clients and employees; refer possible standards violations to the regulatory division of DADS; refer possible criminal offenses to OIG; conduct investigations of complaints; conduct semi-annual on-site audits of each state developmental center's policies and practices; and prepare and deliver the annual report on each audit to commissioners and legislative leadership. The independent ombudsman would also be required to review all final reports of DFPS and DADS regarding complaints referred by the independent ombudsman; provide assistance to a resident, family or authorized representative; and make appropriate referrals. 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 18 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 2 and 13. 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 4. 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 salaries, benefits, and travel expenses, and \$8,000 in annual certification expenses for fiscal year 2010, and an estimated \$532,754 in salaries, benefits, and travel expenses, and \$8,000 in annual certification expenses for fiscal year 2011 and each subsequent year. The FTEs would be phased-in in fiscal year 2010. It is assumed the cost to post reports on the OIG website could be accomplished within existing resources.

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 5-7. 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 10.

High-Risk Residents

DADS would be required to establish a separate state developmental center for high-risk residents apart from other clients and residents. DADS has identified Mexia as the site based on the number of residents currently residing there that have been committed under Chapters 46B and 46C of the Court of Criminal Procedure and Chapter 55 of the Family Code. High-risk residents who have been committed to other state developmental centers and future high-risk residents would need to be transferred or assigned to the Mexia State Developmental Center. DADS would also be required to

provide staff training relating to working with high-risk 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 high-risk 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.

The bill would provide residents that are transferred to the designated state developmental center for high-risk residents with an administrative hearing to be conducted by HHSC. Assuming 50 requests for administrative hearings, HHSC indicates it could absorb these costs within existing resources.

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. The 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

DADS assumes there would be one-time costs associated with purchase of cameras and related technology including drop cables and servers, and ongoing costs for data storage and the cost of maintaining and replacing the cameras. Based on DADS' assumption that 10,178 cameras and 234 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, the total cost would be \$22,176,923 in fiscal year 2010, \$10,687,288 in fiscal year 2011 and each subsequent year. Of this amount, the cost for employee salaries, benefits, and other expenses would be \$6,904,373 in fiscal year 2010, and approximately \$8,926,033 in fiscal year 2011 and each subsequent year. The FTEs would be phased-in in fiscal year 2010. This estimate reflects updated assumptions about the cost and timing of the camera implementation and related staffing costs.

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. HHSC estimates the semiannual report will cost \$20,000 per year. The total cost for mortality reviews would be \$1,172,000 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. DADS indicates 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 includes salaries, benefits, and travel for fiscal year 2010, and approximately \$203,063 includes salaries, benefits, and travel for each subsequent year. 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.

Enterprise Support Services

The fiscal impact includes \$734,575 and 2.2 FTEs in fiscal year 2010 and approximately \$1,429,516 and 2.6 FTEs in fiscal year 2011 and subsequent years based on increased FTEs at HHSC and DADS.

Technology

Technology costs associated with video surveillance equipment and operation of a toll-free number 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.

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

LBB Staff: JOB, JI, LL, JRO, BM