

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 81ST LEGISLATIVE REGULAR SESSION

May 20, 2009

TO: Honorable David Dewhurst, Lieutenant Governor, Senate

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; providing criminal penalties.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for SB643, As Passed 2nd House: a negative impact of (\$32,708,370) 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	(\$19,398,882)
2011	(\$13,309,488)
2012	(\$13,314,829)
2013	(\$13,320,354)
2014	(\$13,326,063)

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 from <i>General Revenue Fund 1</i>	Change in Number of State Employees from FY 2009
2010	(\$20,071,696)	(\$18,691,028)	\$672,814	216.7
2011	(\$13,504,790)	(\$12,275,671)	\$195,302	316.5
2012	(\$13,510,131)	(\$12,279,436)	\$195,302	316.5
2013	(\$13,515,656)	(\$12,283,331)	\$195,302	316.5
2014	(\$13,521,365)	(\$12,287,356)	\$195,302	316.5

Fiscal Analysis

SECTIONS 3-4 would require the Executive Commissioner of the Health and Human Services Commission (HHSC) to develop rules that govern investigations of reports of abuse, neglect, or exploitation of children with mental illness or mental retardation. The Department of Family and Protective Services (DFPS) would be required to investigate such reports related to a child receiving services in privately-operated ICF-MRs and Home and Community-Based Services (HCS) waiver providers. The bill would establish a process for DFPS to notify HHSC's Office of Inspector General (OIG) of suspected criminal abuse, neglect or exploitation of a child in a state supported living center or the ICF-MR component of the Rio Grande State Center (RGSC) and provide OIG with a copy of the investigation report and require OIG to determine which agency has investigational authority.

SECTION 5 would 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 specified employees and volunteers.

SECTION 6 would require the Executive Commissioner to establish an independent mortality review system, and contract with a patient safety organization (PSO) for reviews effective to review the death of a person who, at the time of death, resided in or received services from an ICF-MR operated or licensed by DADS or the ICF-MR component of RGSC, or individuals receiving residential services in three and four-bed group homes under the HCS waiver program. The PSO would be required to submit a report for each review and semiannual reports to specified entities.

SECTION 10 would require owners or employees of privately-operated ICF-MRs to report abuse, neglect, and exploitation of residents to DFPS and for DFPS to conduct investigations beginning by June 1, 2010, file petitions for temporary care and protection of the resident if needed, and complete a written report of the investigation. SECTION 13 would require DADS to forward a report that an employee of a privately-operated ICF-MR committed reportable conduct to DFPS for investigation.

SECTIONS 14-16 would amend the Health and Safety Code to redefine a "state school" as a "state supported living center" and a "state school superintendent" as a "director of a state supported living center," and rename existing state schools.

SECTION 18 would require a director of a state supported living center to ensure that residents' family members and legally authorized representatives are notified of serious events that may indicate problems in the care or treatment of residents.

SECTION 19 would add Chapter 555, State Supported Living Centers, to the Health and Safety Code. DADS would be required to establish a separate forensic state supported living center for the care of high-risk alleged offender residents apart from other clients and residents at the Mexia State Supported Living Center by September 1, 2011. Direct care employees would receive specialized training and DADS would be required to collect data regarding commitment of alleged offender residents. DADS would be required to ensure the center has additional employees to protect the safety of center employees, residents, and the community. The bill would entitle an alleged offender to an administrative hearing to contest the determination and classification of "high-risk" and to bring a suit to appeal the determination and classification in district court in Travis County.

DADS and DSHS would be required to request a state and federal criminal history background check on specified applicants, employees, and volunteers at state supported living centers and the ICF-MR component of RGSC, and require fingerprinting for use in the background check not later than September 1, 2010. The bill would also require privately-operated ICF-MRs to conduct a criminal history check on each employee.

The Executive Commissioner would be required to adopt rules regarding a policy of drug testing and required reporting of known or suspected drug use.

The bill would require DADS to develop basic state supported living center employee competency training materials by January 1, 2010 and provide training to all state supported living center employees by September 1, 2010. The Executive Commissioner would be required to adopt rules requiring refresher training courses. The bill would allow a center to provide training to an employee of a privately-operated ICF-MR or an employee of a person licensed or certified to provide Section 1915(c) waiver program services, and to charge an administrative fee.

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

The bill would create the office of independent ombudsman at DADS, hire and station an assistant ombudsman at each state supported living center, and require the office to submit a biannual report to

specified entities. The independent ombudsman would be required to conduct biennial and annual on-site audits at each center and issue an annual report. 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.

The bill would require OIG to employ commissioned peace officers by December 1, 2009 to assist state or local law enforcement agencies in the investigation of an alleged criminal offense involving a resident or client at a state supported living center or ICF-MR component of RGSC and prepare a final report for each investigation and an annual report.

SECTIONS 21 and 25 would require DFPS to notify OIG if a disabled person who is the subject of a report of abuse, neglect, and exploitation resides in a state supported living center or the ICF-MR component of RGSC and provide OIG with a copy of the investigation report.

SECTION 22 would require HHSC, DFPS, DADS, OIG, and the office of independent ombudsman to enter into a memorandum of understanding by December 1, 2009, regarding investigations of alleged abuse, neglect, or exploitation of residents of state supported living centers or RGSC that delineates responsibilities of each agency. The agencies would be required to jointly determine whether the forensic training received by relevant staff of DFPS is adequate, and assess, and if necessary develop a plan, to enhance the ability of department staff to identify and report incidences that constitute a potential criminal offense.

SECTIONS 26-28 would require DFPS to investigate reports of abuse, neglect, and exploitation in privately-operated ICF-MRs.

SECTION 29 would require the Executive Commissioner to adopt rules regarding investigations in privately-operated ICF-MR facilities.

SECTION 30 would require DFPS, DADS, and DSHS to jointly develop and implement a single tracking system, for reports and investigations of abuse, neglect, and exploitation, and would require each state agency that may receive reports to adopt rules relating to the investigation and resolution of reports received.

SECTION 33 would require DADS to employ an assistant commissioner of state supported living centers. SECTION 41 would require elimination of the position of section director.

SECTION 34 would require DADS to conduct an annual unannounced on-site survey in each group home, other than a foster home, at which a HCS provider provides services. DADS would be required to develop and maintain an electronic database to collect and analyze information regarding abuse, neglect, and exploitation investigations and prevention.

SECTION 38 would establish the Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation and to complete a report.

SECTION 39 would require DADS to provide a report to specified entities by December 1, 2010, regarding the types of training an owner or employee of a privately-operated ICF-MR and 1915(c) waiver provider require and whether training is available.

2nd House Reading, Amendment 6 would create a new section to require a school district to provide educational services to each eligible alleged offender resident who is under 22 years of age. The bill would require the resident's admission, review, and dismissal committee to determine the educational placement and educational services to be provided. A school district in which alleged offender residents are enrolled would be required to employ one or more behavioral support specialists to perform specified duties.

The bill would require a school district in which alleged offender residents are enrolled to enter into a MOU with the forensic state supported living center, and would require a disagreement between the parties to be referred to the commissioner of education and the commissioner of DADS. If agreement cannot be reached, the bill would require the commissioners to submit a written request to the attorney

general to appoint a neutral third party to resolve the issue.

In addition to other funding to which a school district is entitled, the bill would entitle each district to an annual allotment of \$5,100 for each alleged offender resident in average daily attendance or a different amount for any year provided by appropriation. A school district that receives an allotment would be required to submit a report to specified parties by December 1 of each year. The bill would allow the commissioner of education to adopt related rules.

Methodology

This analysis assumes all rulemaking can be accomplished within existing resources.

SECTION 6: DADS estimates 426 mortality reviews would occur annually. The total cost would be \$3,854,000 per year, assuming a three-day review cost of \$9,000 and \$20,000 annually for report production.

SECTIONS 10, 26-28: Investigations in Private ICF-MRs

DFPS reports it would require 23.5 staff members, including support staff, to complete the investigations in privately-operated ICF-MRs at a cost of \$965,275 in fiscal year 2010 and approximately \$1,268,514 for 2011 and each subsequent year. 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.

SECTIONS 14-16: DADS indicates a one-time total cost \$650,000 would be required due to the change in nomenclature from “state school” to “state supported living center.”

SECTION 18: DADS indicates that in order to satisfy the notification requirement, it will require 26 new staff members (2 per facility including the RGSC). DADS assumes it will notify family members and legally authorized representatives when an incident occurs and upon resolution. The total costs for salaries, benefits, and other operating expenses would be \$1,200,722 in fiscal year 2010 and approximately \$1,514,971 in fiscal year 2011 and each additional year. This analysis assumes the FTEs are phased-in for fiscal year 2010. There could be additional postage costs but they cannot be estimated at this time and are not included in this analysis.

SECTION 19:

Forensic State Supported Living Center

It is assumed the agency can absorb the costs of transporting alleged offenders to Mexia and current residents requesting a transfer from Mexia within existing resources, and the costs of training staff. DADS indicates it would require \$88,000 to move records and personal belongings of alleged offender residents. HHSC assumes 50 administrative hearing will occur and that it can absorb costs within existing resources. It is possible that the creation of a state supported living 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

Based on DADS and DSHS estimates, initial background checks would be required for 12,992 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 percent 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 \$20,379 for fiscal year 2010 and \$6,522 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. \$338,862 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

DADS assumes drug testing 25 percent of the 12,687 state supported living center staff with direct contact with residents or clients per year and a cost of \$30 per test. This analysis also assumes testing 25 percent of the 305 RGSC employees with direct contact with residents or clients. The total cost would be \$97,440 each fiscal year.

Training

DADS would need to develop new training materials for state supported living center employees and it is assumed these costs could be absorbed within existing resources. DADS assumes training would be made available to staff from privately-operated ICF-MRs and HCS providers as space is available at no cost.

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. DADS assumes 234 FTEs and 10,178 cameras would be required to implement the video surveillance program. This is based on a ratio of 1 person to 200 cameras, accounting for three shifts. If a smaller ratio were assumed, costs would increase. Based on DADS' assumption, the total cost including data storage and equipment replacement costs, would be \$25,296,923 in fiscal year 2010 and \$13,807,288 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.

Independent Ombudsman

This analysis assumes three staff members would be required to implement this provision including one independent ombudsman, one assistant ombudsman for RGSC, and one administrative assistant. It is assumed existing staff positions could be designated as the assistant ombudsman in the 12 state supported living 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. 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.

Peace Officers

HHSC indicates 13 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 recent investigation trends and an approximate caseload per employee of 4 cases per month. The total cost would be \$653,727 in fiscal year 2010 and an estimated \$846,225 in fiscal year 2011 and each subsequent year. The FTEs would be phased-in in 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 3-4, 21, 25: DFPS Referrals to OIG

DFPS indicates it will have to operationalize new rules for interaction with OIG which can be accomplished within existing resources.

SECTION 22: This analysis assumes costs for any responsibilities outlined in the MOU would be addressed in other sections of the bill.

SECTION 30: DFPS estimates the total cost of creating a tracking database will be \$767,257 in fiscal year 2010, and approximately \$255,937 in fiscal year 2011 and each subsequent year. This includes a one-time expenditure of \$577,282 for contractors, hardware and software in fiscal year 2010, and ongoing licensing and maintenance costs of \$8,781 in each additional year. DFPS indicates it will require three new employees. Total costs for salaries, benefits, and operating expenses would be \$189,975 in fiscal year 2010 and approximately \$247,156 in each subsequent year.

SECTION 33: This analysis assumes the new cost of the assistant commissioner position would be offset by the elimination of the section director position.

SECTION 34: DADS estimates a need for 7 new staff members to complete the reviews of existing HCS group homes, including 1 manager. The costs associated with these additional FTEs, including salaries, benefits, travel, and other operating expenses, would be \$454,267 in fiscal year 2010 and approximately \$565,985 for fiscal year 2011 and in each subsequent year. The FTEs are phased-in for fiscal year 2010.

DADS indicates that the one-time cost to build its database will be \$944,460 in fiscal year 2010, and DADS will require 3 FTEs to review reports including 1 administrative assistant and 2 program specialists. Ongoing annual data center services would be \$200,000 beginning in fiscal year 2010. Total costs for salaries, benefits, and operating expenses are \$1,092,873 in fiscal year 2010 and approximately \$387,962 in fiscal year 2011 and each additional year. The FTEs are phased-in in fiscal year 2010.

SECTION 38: The costs associated with creation of a new interim select committee are assumed not to have a significant fiscal impact.

SECTION 39: This analysis assumes DADS can absorb costs associated with producing a report on training requirements and availability within existing resources.

2nd House Reading, Amendment 6: Based on historical data provided by DADS, approximately 78 students statewide would be eligible to for the \$5,100 allotment, for an annual cost of \$397,000 in General Revenue Funds. The Texas Education Agency (TEA) indicates it would incur a one-time cost of \$10,000 to update the Public Education Information Management System to add new data elements. TEA also assumes the MOU and dispute resolution could be accomplished within existing resources.

Enterprise Support Services

The fiscal impact includes \$1,952,681 and 2.7 FTEs in fiscal year 2010 and approximately \$2,284,256 and 4.0 FTEs in fiscal year 2011 and subsequent years based on increased FTEs at HHSC, DADS, and DFPS.

Technology

Technology costs are included in the costs above.

DADS: To implement the video surveillance provision, DADS assumes a need for 10,178 cameras with a cost of \$1,475 (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 per facility and costs of replacing the cameras. The total cost is \$18,392,550 in fiscal year 2010 and \$4,881,255 in fiscal year 2012 and in subsequent years. To operate a toll-free number at the office of the independent ombudsman, DADS estimates an annual cost of \$3,600. To create a database for abuse, neglect, and exploitation, DADS indicates it would incur a one-time expense of \$944,460 in fiscal year 2010, with data center service costs of \$200,000 annually.

DFPS: DFPS indicates the IMPACT system would need to be updated to include the ICF-MR facilities which involve a one-time cost of \$105,370 in fiscal year 2010. To create the tracking database, DFPS estimates a one-time cost of \$577,282 would be required in fiscal year 2010 and ongoing licensing and maintenance costs of \$8,781 in fiscal year 2011 and in each subsequent year.

TEA: TEA indicates it would incur a one-time cost of \$10,000 to update the Public Education Information Management System to add new data elements.

Local Government Impact

Local school districts in which alleged offender residents are enrolled would be required to provide education services to each alleged offender resident who is under 22 years of age and is otherwise eligible to attend school in the district, employ one or more behavior support specialists, and would gain additional funding under the provisions of the bill.

Source Agencies: 529 Health and Human Services Commission, 530 Family and Protective Services, Department of, 539 Aging and Disability Services, Department of, 701 Central Education Agency

LBB Staff: JOB, CL, JI, LL