

BILL ANALYSIS

C.S.H.B. 2673
By: Price
Human Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Certain health and human services agencies are required to run criminal history checks for employees and volunteers who will be placed in direct contact with a resident or client of certain residential facilities providing services to persons with certain disabilities. However, this type of check is not required for contract employees who have direct contact with such a resident or client.

Current law requires the state to contract with a patient safety organization certified in accordance with certain federal regulations to conduct independent mortality reviews for certain persons with intellectual or developmental disabilities. While the law requires such a review for the death of a person with an intellectual disability who, at the time of the person's death, was in or received services from an intermediate care facility for individuals with intellectual or developmental disabilities (ICF/IID) or the ICF/IID component of the Rio Grande State Center or who received services from a provider that received residential assistance through a Section 1915(c) waiver program serving individuals who are eligible for ICF/IID services, interested parties assert that reviews are being conducted only at state supported living centers and that the current organization conducting the reviews does not intend to pursue renewal of its contract.

The parties contend that, although the legislation that created the mortality review system was intended to create a robust and useful process that encompasses all residential providers of services to individuals with intellectual and developmental disabilities that would allow lawmakers, agency staff, private providers, advocacy groups, and others to compare the mortality in all settings across the state and to assist in improving overall health care services in all settings, this intent is not being fulfilled because of federal statutory limitations on the roles and responsibilities of a patient safety organization. C.S.H.B. 2673 seeks to address these issues to improve the services provided to and further ensure the safety of persons with intellectual and developmental disabilities in Texas.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2673 amends the Government Code to entitle the Health and Human Services Commission (HHSC), in addition to the Department of State Health Services (DSHS) and the Department of Aging and Disability Services (DADS), to obtain from the Department of Public Safety, through the FBI, or from any other criminal justice agency in Texas criminal history record information that relates to an employee, job applicant, volunteer, or person applying to volunteer who would be placed in direct contact with a resident or client of certain residential facilities. The bill includes an applicant for a contract with the agency or a contractor of the agency among the persons for whom those agencies are entitled to obtain such criminal history record information.

C.S.H.B. 2673 makes provisions relating to the independent mortality review system for certain individuals with developmental disabilities applicable to individuals with intellectual or developmental disabilities and replaces references in those provisions to an intermediate care facility for persons with mental retardation (ICF-MR) with references to an intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) and references to individuals with mental retardation with references to individuals with intellectual or developmental disabilities.

C.S.H.B. 2673 expands the scope of the mortality review system established to review the death of a person with an intellectual or developmental disability who, at the time of the person's death, resided in or received services from certain ICF/IIDs or received certain services through a Section 1915(c) waiver program to include a review of the death of a person with an intellectual or developmental disability who resided in such a facility or received such services at any time during the 24-hour period before the person's death. The bill removes from the requirement that the death of certain persons receiving services through a Section 1915(c) waiver program be reviewed, the specification that the Section 1915(c) waiver program serve individuals who are eligible for ICF/IID services in a residence in which residential assistance is provided to three or more persons and in which the waiver program provider has a property interest.

C.S.H.B. 2673 requires the executive commissioner of HHSC to contract with an institution of higher education or a health care organization or association with experience in conducting research-based mortality studies, rather than with a patient safety organization certified in accordance with federal law, as effective on January 19, 2009, to conduct independent mortality reviews of persons with an intellectual or developmental disability. The bill's provisions do not apply to a contract entered into by the executive commissioner before June 1, 2013.

C.S.H.B. 2673 removes from the requirement that the organization with which the executive commissioner contracts to conduct independent mortality reviews submit certain reports to specified state agencies and offices, state officials, and legislative committees, the condition that the organization submit such reports only to the extent allowed by federal law. The bill includes the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers, and the HHSC's office of inspector general among the entities to which a contracted organization is required to semiannually submit a report containing aggregate information regarding the deaths for which the contracted organization performed an independent mortality review, trends in the causes of death identified by the contracted organization, and any suggestions for system-wide improvements to address conditions that contributed to deaths reviewed by the contracted organization.

C.S.H.B. 2673 adds to the conditions restricting HHSC's release of a summary of the data in the contracted organization's reports or statistical compilation of data reports for general publication the condition that the summary or statistical data not contain any information that is confidential or privileged under state or federal law and removes the condition that information not be the organization's work product. The bill establishes that a contracted organization's report of the findings of the independent mortality review conducted and any records developed by the contracted organization relating to the review are confidential and privileged, are not subject to discovery or subpoena, and may not be introduced into evidence in any civil, criminal, or administrative proceeding. The bill prohibits a member of the contracted organization's review team from testifying or being required to testify in a civil, criminal, or administrative proceeding as to observations, factual findings, or conclusions that were made in conducting a mortality review.

C.S.H.B. 2673 amends the Health and Safety Code to require HHSC, in addition to DADS and DSHS, to perform a state and federal criminal history background check on an employee, job applicant, volunteer, or person applying to volunteer who would be placed in direct contact with a resident or client of certain residential facilities, and includes among those persons an applicant

for a contract with the agency or a contractor of the agency. The bill repeals a provision regarding reports relating to the deaths of residents of an intermediate care facility for the mentally retarded and data related to such deaths.

C.S.H.B. 2673 repeals Section 252.134, Health and Safety Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2673 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. The heading to Section 411.1144, Government Code, is amended.

SECTION 1. Same as introduced version.

SECTION 2. Sections 411.1144(a) and (d), Government Code, are amended to read as follows:

SECTION 2. Sections 411.1144(a) and (d), Government Code, are amended to read as follows:

(a) The Department of State Health Services, ~~and~~ the Department of Aging and Disability Services, and the Health and Human Services Commission are entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(a) The Department of State Health Services, ~~and~~ the Department of Aging and Disability Services, and the Health and Human Services Commission are entitled to obtain from the department criminal history record information maintained by the department that relates to a person:

(1) who is:

(1) who is:

(A) an applicant for employment with the agency;

(A) an applicant for employment with the agency;

(B) an employee of the agency;

(B) an employee of the agency;

(C) a volunteer with the agency; ~~or~~

(C) a volunteer with the agency; ~~or~~

(D) an applicant for a volunteer position with the agency; or

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

(E) a person who contracts or may contract to provide goods or services to the agency;

(E) an applicant for a contract with the agency; or

and

(F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client of a state supported living center, as defined by Section 531.002, Health and Safety Code ~~[or the ICF-MR component of the Rio Grande State Center].~~

(2) who would be placed in direct contact with a resident or client, as defined by Section 555.001, Health and Safety Code ~~[of a state supported living center or the ICF-MR component of the Rio Grande State Center].~~

(d) Subject to Section 411.087, the Department of State Health Services, ~~and~~ the Department of Aging and Disability Services, and the Health and Human Services Commission are entitled to:

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(1) obtain through the Federal Bureau of Investigation criminal history record

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information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

SECTION 3. The heading to Subchapter U, Chapter 531, Government Code, is amended.

SECTION 4. Subchapter U, Chapter 531, Government Code, is amended.

SECTION 5. Sections 531.851(a), (c), (d), and (e), Government Code, are amended.

SECTION 6. Section 531.852, Government Code, is amended.

SECTION 7. Section 531.853, Government Code, is amended.

SECTION 8. Section 531.854, Government Code, is amended.

SECTION 9. Section 531.855, Government Code, is amended.

SECTION 10. Section 555.021, Health and Safety Code, is amended to read as follows: Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS [~~OF CENTERS~~]. (a) The department, ~~and~~ the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

- (1) who is:
 - (A) an applicant for employment with the agency;
 - (B) an employee of the agency;
 - (C) a volunteer with the agency; [~~or~~]

information maintained or indexed by that bureau that pertains to a person described by Subsection (a); and

(2) obtain from any other criminal justice agency in this state criminal history record information maintained by that criminal justice agency that relates to a person described by Subsection (a).

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Section 555.021, Health and Safety Code, is amended to read as follows: Sec. 555.021. REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS [~~OF CENTERS~~]. (a) The department, ~~and~~ the Department of State Health Services, and the Health and Human Services Commission shall perform a state and federal criminal history background check on a person:

- (1) who is:
 - (A) an applicant for employment with the agency;
 - (B) an employee of the agency;
 - (C) a volunteer with the agency; [~~or~~]

(D) an applicant for a volunteer position with the agency; or

~~(E) a person who contracts or may contract to provide goods or services to the agency;~~

and

(2) who would be placed in direct contact with a resident or client.

(b) The department, ~~and~~ the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

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

(1) for whom the agency performs a background check under Subsection (a); and

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

SECTION 11. Section 252.134, Health and Safety Code, is repealed.

SECTION 12. Section 531.851, Government Code, as amended by this Act, does not apply to a contract entered into by the executive commissioner of the Health and Human Services Commission before June 1, 2013. A contract entered into before June 1, 2013, is governed by the law in effect on the date the contract was entered into, and that law is continued in effect for that purpose.

SECTION 13. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

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

~~(E) an applicant for a contract with the agency; or~~

~~(F) a contractor of the agency;~~ and

(2) who would be placed in direct contact with a resident or client.

(b) The department, ~~and~~ the Department of State Health Services, and the Health and Human Services Commission shall require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to the Department of Public Safety and the Federal Bureau of Investigation for use in conducting a criminal history background check.

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

(1) for whom the agency performs a background check under Subsection (a); and

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

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.