

## **BILL ANALYSIS**

Senate Research Center

S.B. 152  
By: Nelson; West  
Health & Human Services  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

S.B. 152 expands protections for patients at state hospitals by increasing oversight, increasing employee training, and strengthening abuse and neglect reporting requirements.

Specifically, S.B. 152 requires specialized training for state hospital employees on patient caregiving and how to recognize and report abuse; authorizes the Health and Human Service Commission's office of inspector general to investigate criminal offenses at state hospitals; allows the Department of State Health Services to require state hospital direct care workers to undergo federal background checks based on risk assessments; and requires professional boards to report cases of abuse, neglect, or exploitation.

S.B. 152 amends current law relating to the protection and care of persons who are elderly or disabled or who are children.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 3 (Section 552.052, Health and Safety Code) and SECTION 8 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 532.001(b), Health and Safety Code, to provide that the Department of Aging and Disability Services and the Department of State Health Services (DSHS) also include community services operated by those departments and certain facilities, including the El Paso Psychiatric Center.

SECTION 2. Amends Subchapter A, Chapter 552, Health and Safety Code, by adding Section 552.0011, as follows:

Sec. 552.0011. DEFINITIONS. Defines "commission," "department," "direct care employee," "direct supervision," "executive commissioner," "inspector general," "patient," and "state hospital" in this chapter.

SECTION 3. Amends Chapter 552, Health and Safety Code, by adding Subchapters C and D, as follows:

#### **SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE HOSPITALS**

Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. Requires the executive commissioner of the Health and Human Services Commission (executive commissioner) to adopt a policy requiring a state hospital employee who knows or reasonably suspects that another state hospital employee is illegally using or under the influence of a controlled substance, as defined by Section 481.002 (Definitions), to report that knowledge or reasonable suspicion to the superintendent of the state hospital.

Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING. (a) Requires DSHS, before a state hospital employee begins to perform the employee's duties without direct supervision, to provide the employee with competency training and a course of instruction about the general duties of a state hospital employee. Requires DSHS, upon completion of such training and instruction, to evaluate the employee for competency. Requires DSHS to ensure the basic state hospital employee competency course focuses on certain material.

(b) Requires DSHS to ensure the training required by Subsection (a) provides instruction and information regarding certain topics relevant to providing care for individuals with mental illness.

(c) Requires DSHS, in addition to the training required by Subsection (a) and before a direct care employee begins to perform the direct care employee's duties without direct supervision, to provide the direct care employee with training and instructional information regarding implementation of the interdisciplinary treatment program for each patient for whom the direct care employee will provide direct care, including certain topics.

(d) Requires DSHS, in addition to the training required by Subsection (c), to provide, in accordance with the specialized needs of the population being served, a direct care employee with training and instructional information as necessary regarding certain topics.

(e) Requires the executive commissioner to adopt rules that require a state hospital to provide refresher training courses to employees at least annually, unless DSHS determines in good faith and with good reason a particular employee's performance will not be adversely affected in the absence of such refresher training.

Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND TRACKING SYSTEM. Requires DSHS to develop an information management, reporting, and tracking system for each state hospital to provide DSHS with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

Sec. 552.054. RISK ASSESSMENT PROTOCOLS. Requires DSHS to develop risk assessment protocols for state hospital employees for use in identifying and assessing possible instances of abuse or neglect.

#### SUBCHAPTER D. INSPECTOR GENERAL DUTIES

Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH CERTAIN INVESTIGATIONS. Requires the Health and Human Services Commission's office of inspector general (OIG) to employ and commission peace officers for the purpose of assisting a state or local law enforcement agency in the investigation of an alleged criminal offense involving a patient of a state hospital. Provides that a peace officer employed and commissioned by OIG is a peace officer for purposes of Article 2.12 (Who Are Peace Officers), Code of Criminal Procedure.

Sec. 552.102. SUMMARY REPORT. (a) Requires OIG to prepare a summary report for each investigation conducted with the assistance of OIG under this subchapter. Requires OIG to ensure that the report does not contain personally identifiable information of an individual mentioned in the report.

(b) Requires that the summary report include:

(1) a summary of the activities performed during an investigation for which OIG provided assistance;

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

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

(c) Requires OIG to deliver the summary report to certain persons and state agencies.

(d) Provides that a summary report regarding an investigation is subject to required disclosure under Chapter 552 (Public Information), Government Code. Provides that all information and materials compiled by OIG in connection with an investigation are confidential, not subject to disclosure under Chapter 552, Government Code, and not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release to anyone other than OIG or OIG's employees or agents involved in the investigation, except that this information is authorized to be disclosed to the Department of Family and Protective Services (DFPS), the office of the attorney general, the state auditor's office, and law enforcement agencies.

Sec. 552.103. ANNUAL STATUS REPORT. (a) Requires OIG to prepare an annual status report of OIG's activities under this subchapter. Prohibits the annual report from containing personally identifiable information of an individual mentioned in the report.

(b) Requires that the annual status report include certain investigation information that is aggregated and disaggregated by individual state hospitals.

(c) Requires OIG to submit the annual status report to certain persons and state agencies.

(d) Provides that an annual status report submitted under this section is public information under Chapter 552, Government Code.

Sec. 552.104. RETALIATION PROHIBITED. Prohibits DSHS or a state hospital from retaliating against a DSHS employee, a state hospital employee, or any other person who in good faith cooperates with OIG under this subchapter.

SECTION 4. Amends Section 261.101, Family Code, by adding Subsection (b-1) and amending Subsection (c), as follows:

(b-1) Requires a person or professional, in addition to the duty to make a report under Subsection (a) (relating to requiring a person to make a report on a suspicion of child abuse or neglect) or (b) (relating to requiring a professional to make a report on a suspicion of child abuse or neglect), to make a report in the manner required by Subsection (a) or (b), as applicable, if the person or professional has cause to believe that an adult was a victim of abuse or neglect as a child and the person or professional determines in good faith that disclosure of the information is necessary to protect the health and safety of another child, or an elderly or disabled person as defined by Section 48.002 (Definitions), Human Resources Code.

(c) Provides that the requirement to report under this section applies without exception to certain individuals whose personal communications may otherwise be privileged, including an employee or member of a board that licenses or certifies a professional.

SECTION 5. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1103, as follows:

Sec. 411.1103. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES. (a) Entitles DSHS to obtain from the Department of Public Safety of the State of Texas (DPS) criminal history record information maintained by DPS that relates to a person:

(1) who is:

(A) an applicant for employment at a state hospital;

(B) an employee of a state hospital;

(C) a person who contracts or may contract to provide goods or services to DSHS at a state hospital or an employee of or applicant for employment with that person;

(D) a volunteer with a state hospital; or

(E) an applicant for a volunteer position with a state hospital; and

(2) who would be placed in direct contact with a patient at a state hospital.

(b) Prohibits criminal history record information obtained by DSHS under this section from being released or disclosed to any person except under certain circumstances.

(c) Provides that DSHS is not prohibited from releasing criminal history record information obtained under this section to the person who is the subject of the criminal history record information.

(d) Entitles DSHS, subject to Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), to:

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

(e) Provides that this section does not prohibit DSHS from obtaining and using criminal history record information as provided by other law.

SECTION 6. Amends Section 48.051(c), Human Resources Code, to provide that the duty imposed by Subsections (a) (relating to requiring a person to make a report to DFPS on a suspicion of abuse or neglect of an elderly or disabled person) and (b) (relating to requiring a person to make a report to the state agency that operates, licenses, certifies, or registers a facility on a suspicion of abuse or neglect of an elderly or disabled person at that facility) applies without exception to certain persons whose knowledge concerning possible abuse, neglect, or exploitation is obtained during the scope of the person's employment or whose professional communications are generally confidential, including an employee or member of a board that licenses or certifies a professional.

SECTION 7. Repealer: Section 552.011 (Definition), Health and Safety Code.

SECTION 8. Requires the executive commissioner, not later than December 1, 2013, to adopt rules necessary to implement Subchapter C, Chapter 552, Health and Safety Code, as added by this Act.

SECTION 9. (a) Requires OIG, not later than May 1, 2014, to begin employing and commissioning peace officers as required by Section 552.101, Health and Safety Code, as added by this Act.

(b) Requires DSHS, not later than January 1, 2014, to develop the training required by Section 552.052, Health and Safety Code, as added by this Act.

(c) Requires DSHS to ensure that each state hospital employee receives the training required by Section 552.052, Health and Safety Code, as added by this Act, regardless of when the employee was hired, not later than September 1, 2014.

SECTION 10. Provides that Section 411.1103, Government Code, as added by this Act, applies only to background and criminal history checks performed on or after the effective date of this Act.

SECTION 11. Requires a state agency, if necessary for implementation of a provision of this Act, to request a waiver or authorization from a federal agency, and authorizes a delay of implementation until such a waiver or authorization is granted.

SECTION 12. Effective date: upon passage or September 1, 2013.