

By: Nelson, et al.
(Kolchorst)

S.B. No. 152

A BILL TO BE ENTITLED

AN ACT

relating to the protection and care of persons who are elderly or disabled or who are children.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsection (b), Section 532.001, Health and Safety Code, is amended to read as follows:

(b) The Department of Aging and Disability Services and the Department of State Health Services also include community services operated by those departments and the following facilities, as appropriate:

- (1) the central office of each department;
- (2) the Austin State Hospital;
- (3) the Big Spring State Hospital;
- (4) the Kerrville State Hospital;
- (5) the Rusk State Hospital;
- (6) the San Antonio State Hospital;
- (7) the Terrell State Hospital;
- (8) the North Texas State Hospital;
- (9) the Abilene State Supported Living Center;
- (10) the Austin State Supported Living Center;
- (11) the Brenham State Supported Living Center;
- (12) the Corpus Christi State Supported Living Center;
- (13) the Denton State Supported Living Center;
- (14) the Lubbock State Supported Living Center;

- 1 (15) the Lufkin State Supported Living Center;
- 2 (16) the Mexia State Supported Living Center;
- 3 (17) the Richmond State Supported Living Center;
- 4 (18) the San Angelo State Supported Living Center;
- 5 (19) the San Antonio State Supported Living Center;
- 6 (20) the El Paso State Supported Living Center;
- 7 (21) the Rio Grande State Center; [~~and~~]
- 8 (22) the Waco Center for Youth; and
- 9 (23) the El Paso Psychiatric Center.

10 SECTION 2. Subchapter A, Chapter 552, Health and Safety
11 Code, is amended by adding Section 552.0011 to read as follows:

12 Sec. 552.0011. DEFINITIONS. In this chapter:

13 (1) "Commission" means the Health and Human Services
14 Commission.

15 (2) "Department" means the Department of State Health
16 Services.

17 (3) "Direct care employee" means a state hospital
18 employee who provides direct delivery of services to a patient.

19 (4) "Direct supervision" means supervision of the
20 employee by the employee's supervisor with the supervisor
21 physically present and providing the employee with direction and
22 assistance while the employee performs his or her duties.

23 (5) "Executive commissioner" means the executive
24 commissioner of the Health and Human Services Commission.

25 (6) "Inspector general" means the Health and Human
26 Services Commission's office of inspector general.

27 (7) "Patient" means an individual who is receiving

1 voluntary or involuntary mental health services at a state
2 hospital.

3 (8) "State hospital" means a hospital operated by the
4 department primarily to provide inpatient care and treatment for
5 persons with mental illness.

6 SECTION 3. Chapter 552, Health and Safety Code, is amended
7 by adding Subchapters C and D to read as follows:

8 SUBCHAPTER C. POWERS AND DUTIES OF DEPARTMENT RELATING TO STATE
9 HOSPITALS

10 Sec. 552.051. REPORTS OF ILLEGAL DRUG USE; POLICY. The
11 executive commissioner shall adopt a policy requiring a state
12 hospital employee who knows or reasonably suspects that another
13 state hospital employee is illegally using or under the influence
14 of a controlled substance, as defined by Section 481.002, to report
15 that knowledge or reasonable suspicion to the superintendent of the
16 state hospital.

17 Sec. 552.052. STATE HOSPITAL EMPLOYEE TRAINING.

18 (a) Before a state hospital employee begins to perform the
19 employee's duties without direct supervision, the department shall
20 provide the employee with competency training and a course of
21 instruction about the general duties of a state hospital employee.
22 Upon completion of such training and instruction, the department
23 shall evaluate the employee for competency. The department shall
24 ensure the basic state hospital employee competency course focuses
25 on:

26 (1) the uniqueness of the individuals the state
27 hospital employee serves;

1 (2) techniques for improving quality of life for and
2 promoting the health and safety of individuals with mental illness;
3 and

4 (3) the conduct expected of state hospital employees.

5 (b) The department shall ensure the training required by
6 Subsection (a) provides instruction and information regarding
7 topics relevant to providing care for individuals with mental
8 illness, including:

9 (1) the general operation and layout of the state
10 hospital at which the person is employed, including armed intruder
11 lockdown procedures;

12 (2) an introduction to mental illness;

13 (3) an introduction to substance abuse;

14 (4) an introduction to dual diagnosis;

15 (5) the rights of individuals with mental illness who
16 receive services from the department;

17 (6) respecting personal choices made by patients;

18 (7) the safe and proper use of restraints;

19 (8) recognizing and reporting:

20 (A) evidence of abuse, neglect, and exploitation
21 of individuals with mental illness;

22 (B) unusual incidents;

23 (C) reasonable suspicion of illegal drug use in
24 the workplace;

25 (D) workplace violence; or

26 (E) sexual harassment in the workplace;

27 (9) preventing and treating infection;

1 (10) first aid;

2 (11) cardiopulmonary resuscitation;

3 (12) the Health Insurance Portability and
4 Accountability Act of 1996 (Pub. L. No. 104-191); and

5 (13) the rights of state hospital employees.

6 (c) In addition to the training required by Subsection (a)
7 and before a direct care employee begins to perform the direct care
8 employee's duties without direct supervision, the department shall
9 provide the direct care employee with training and instructional
10 information regarding implementation of the interdisciplinary
11 treatment program for each patient for whom the direct care
12 employee will provide direct care, including the following topics:

13 (1) prevention and management of aggressive or violent
14 behavior;

15 (2) observing and reporting changes in behavior,
16 appearance, or health of patients;

17 (3) positive behavior support;

18 (4) emergency response;

19 (5) person-directed plans;

20 (6) self-determination; and

21 (7) trauma-informed care.

22 (d) In addition to the training required by Subsection (c),
23 the department shall provide, in accordance with the specialized
24 needs of the population being served, a direct care employee with
25 training and instructional information as necessary regarding:

26 (1) seizure safety;

27 (2) techniques for:

1 (A) lifting;
2 (B) positioning; and
3 (C) movement and mobility;
4 (3) working with aging patients;
5 (4) assisting patients:
6 (A) who have a visual impairment;
7 (B) who have a hearing deficit; or
8 (C) who require the use of adaptive devices and
9 specialized equipment;
10 (5) communicating with patients who use augmentative
11 and alternative devices for communication;
12 (6) assisting patients with personal hygiene;
13 (7) recognizing appropriate food textures;
14 (8) using proper feeding techniques to assist patients
15 with meals; and
16 (9) physical and nutritional management plans.
17 (e) The executive commissioner shall adopt rules that
18 require a state hospital to provide refresher training courses to
19 employees at least annually, unless the department determines in
20 good faith and with good reason a particular employee's performance
21 will not be adversely affected in the absence of such refresher
22 training.
23 Sec. 552.053. INFORMATION MANAGEMENT, REPORTING, AND
24 TRACKING SYSTEM. The department shall develop an information
25 management, reporting, and tracking system for each state hospital
26 to provide the department with information necessary to monitor
27 serious allegations of abuse, neglect, or exploitation.

1 Sec. 552.054. RISK ASSESSMENT PROTOCOLS. The department
2 shall develop risk assessment protocols for state hospital
3 employees for use in identifying and assessing possible instances
4 of abuse or neglect.

5 SUBCHAPTER D. INSPECTOR GENERAL DUTIES

6 Sec. 552.101. ASSISTING LAW ENFORCEMENT AGENCIES WITH
7 CERTAIN INVESTIGATIONS. The inspector general shall employ and
8 commission peace officers for the purpose of assisting a state or
9 local law enforcement agency in the investigation of an alleged
10 criminal offense involving a patient of a state hospital. A peace
11 officer employed and commissioned by the inspector general is a
12 peace officer for purposes of Article 2.12, Code of Criminal
13 Procedure.

14 Sec. 552.102. SUMMARY REPORT. (a) The inspector general
15 shall prepare a summary report for each investigation conducted
16 with the assistance of the inspector general under this subchapter.
17 The inspector general shall ensure that the report does not contain
18 personally identifiable information of an individual mentioned in
19 the report.

20 (b) The summary report must include:

21 (1) a summary of the activities performed during an
22 investigation for which the inspector general provided assistance;

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

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

1 (c) The inspector general shall deliver the summary report
2 to the:

- 3 (1) executive commissioner;
4 (2) commissioner of state health services;
5 (3) commissioner of the Department of Family and
6 Protective Services;
7 (4) State Health Services Council;
8 (5) governor;
9 (6) lieutenant governor;
10 (7) speaker of the house of representatives;
11 (8) standing committees of the senate and house of
12 representatives with primary jurisdiction over state hospitals;
13 (9) state auditor; and
14 (10) alleged victim or the alleged victim's legally
15 authorized representative.

16 (d) A summary report regarding an investigation is subject
17 to required disclosure under Chapter 552, Government Code. All
18 information and materials compiled by the inspector general in
19 connection with an investigation are confidential, not subject to
20 disclosure under Chapter 552, Government Code, and not subject to
21 disclosure, discovery, subpoena, or other means of legal compulsion
22 for their release to anyone other than the inspector general or the
23 inspector general's employees or agents involved in the
24 investigation, except that this information may be disclosed to the
25 Department of Family and Protective Services, the office of the
26 attorney general, the state auditor's office, and law enforcement
27 agencies.

1 Sec. 552.103. ANNUAL STATUS REPORT. (a) The inspector
2 general shall prepare an annual status report of the inspector
3 general's activities under this subchapter. The annual report may
4 not contain personally identifiable information of an individual
5 mentioned in the report.

6 (b) The annual status report must include information that
7 is aggregated and disaggregated by individual state hospital
8 regarding:

9 (1) the number and type of investigations conducted
10 with the assistance of the inspector general;

11 (2) the number and type of investigations involving a
12 state hospital employee;

13 (3) the relationship of an alleged victim to an
14 alleged perpetrator, if any;

15 (4) the number of investigations conducted that
16 involve the suicide, death, or hospitalization of an alleged
17 victim; and

18 (5) the number of completed investigations in which
19 commission of an alleged offense was confirmed or unsubstantiated
20 or in which the investigation was inconclusive, and a description
21 of the reason that allegations were unsubstantiated or the
22 investigation was inconclusive.

23 (c) The inspector general shall submit the annual status
24 report to the:

25 (1) executive commissioner;

26 (2) commissioner of state health services;

27 (3) commissioner of the Department of Family and

1 Protective Services;

2 (4) State Health Services Council;

3 (5) Family and Protective Services Council;

4 (6) governor;

5 (7) lieutenant governor;

6 (8) speaker of the house of representatives;

7 (9) standing committees of the senate and house of
8 representatives with primary jurisdiction over state hospitals;

9 (10) state auditor; and

10 (11) comptroller.

11 (d) An annual status report submitted under this section is
12 public information under Chapter 552, Government Code.

13 Sec. 552.104. RETALIATION PROHIBITED. The department or a
14 state hospital may not retaliate against a department employee, a
15 state hospital employee, or any other person who in good faith
16 cooperates with the inspector general under this subchapter.

17 SECTION 4. Section 261.101, Family Code, is amended by
18 adding Subsection (b-1) and amending Subsection (c) to read as
19 follows:

20 (b-1) In addition to the duty to make a report under
21 Subsection (a) or (b), a person or professional shall make a report
22 in the manner required by Subsection (a) or (b), as applicable, if
23 the person or professional has cause to believe that an adult was a
24 victim of abuse or neglect as a child and the person or professional
25 determines in good faith that disclosure of the information is
26 necessary to protect the health and safety of:

27 (1) another child; or

1 (2) an elderly or disabled person as defined by
2 Section 48.002, Human Resources Code.

3 (c) The requirement to report under this section applies
4 without exception to an individual whose personal communications
5 may otherwise be privileged, including an attorney, a member of the
6 clergy, a medical practitioner, a social worker, a mental health
7 professional, an employee or member of a board that licenses or
8 certifies a professional, and an employee of a clinic or health care
9 facility that provides reproductive services.

10 SECTION 5. Subchapter F, Chapter 411, Government Code, is
11 amended by adding Section 411.1103 to read as follows:

12 Sec. 411.1103. ACCESS TO CRIMINAL HISTORY RECORD
13 INFORMATION: DEPARTMENT OF STATE HEALTH SERVICES. (a) The
14 Department of State Health Services is entitled to obtain from the
15 department criminal history record information maintained by the
16 department that relates to a person:

17 (1) who is:

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

20 (B) an employee of a state hospital;

21 (C) a person who contracts or may contract to
22 provide goods or services to the Department of State Health
23 Services at a state hospital or an employee of or applicant for
24 employment with that person;

25 (D) a volunteer with a state hospital; or

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

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

3 (b) Criminal history record information obtained by the
4 Department of State Health Services under this section may not be
5 released or disclosed to any person except:

6 (1) on court order;

7 (2) with the consent of the person who is the subject
8 of the criminal history record information;

9 (3) for purposes of an administrative hearing held by
10 the Department of State Health Services concerning the person who
11 is the subject of the criminal history record information; or

12 (4) as provided by Subsection (c).

13 (c) The Department of State Health Services is not
14 prohibited from releasing criminal history record information
15 obtained under this section to the person who is the subject of the
16 criminal history record information.

17 (d) Subject to Section 411.087, the Department of State
18 Health Services is entitled to:

19 (1) obtain through the Federal Bureau of Investigation
20 criminal history record information maintained or indexed by that
21 bureau that pertains to a person described by Subsection (a); and

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

26 (e) This section does not prohibit the Department of State
27 Health Services from obtaining and using criminal history record

1 information as provided by other law.

2 SECTION 6. Subsection (c), Section 48.051, Human Resources
3 Code, is amended to read as follows:

4 (c) The duty imposed by Subsections (a) and (b) applies
5 without exception to a person whose knowledge concerning possible
6 abuse, neglect, or exploitation is obtained during the scope of the
7 person's employment or whose professional communications are
8 generally confidential, including an attorney, clergy member,
9 medical practitioner, social worker, employee or member of a board
10 that licenses or certifies a professional, and mental health
11 professional.

12 SECTION 7. Section 552.011, Health and Safety Code, is
13 repealed.

14 SECTION 8. Not later than December 1, 2013, the executive
15 commissioner of the Health and Human Services Commission shall
16 adopt rules necessary to implement Subchapter C, Chapter 552,
17 Health and Safety Code, as added by this Act.

18 SECTION 9. (a) Not later than May 1, 2014, the Health and
19 Human Services Commission's office of inspector general shall begin
20 employing and commissioning peace officers as required by Section
21 552.101, Health and Safety Code, as added by this Act.

22 (b) Not later than January 1, 2014, the Department of State
23 Health Services shall develop the training required by Section
24 552.052, Health and Safety Code, as added by this Act.

25 (c) The Department of State Health Services shall ensure
26 that each state hospital employee receives the training required by
27 Section 552.052, Health and Safety Code, as added by this Act,

1 regardless of when the employee was hired, not later than September
2 1, 2014.

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

6 SECTION 11. If before implementing any provision of this
7 Act a state agency determines that a waiver or authorization from a
8 federal agency is necessary for implementation of that provision,
9 the agency affected by the provision shall request the waiver or
10 authorization and may delay implementing that provision until the
11 waiver or authorization is granted.

12 SECTION 12. This Act takes effect immediately if it
13 receives a vote of two-thirds of all the members elected to each
14 house, as provided by Section 39, Article III, Texas Constitution.
15 If this Act does not receive the vote necessary for immediate
16 effect, this Act takes effect September 1, 2013.