86R2426 JG-D

By:  Kolkhorst S.B. No. 1408

A BILL TO BE ENTITLED

AN ACT

relating to the authority of the office of independent ombudsman for state supported living centers to oversee community-based services provided to individuals with an intellectual or developmental disability.

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

SECTION 1.  The heading to Chapter 555, Health and Safety Code, is amended to read as follows:

CHAPTER 555. STATE SUPPORTED LIVING CENTERS AND COMMUNITY SERVICE PROVIDERS

SECTION 2.  Section 555.001, Health and Safety Code, is amended by adding Subdivision (5) and amending Subdivisions (11) and (14) to read as follows:

(5)  "Community service provider" means a service provider that contracts to provide community-based services to individuals with an intellectual or developmental disability through a local intellectual and developmental disability authority under Subchapter B-1, Chapter 534.

(11)  "Independent ombudsman" means the individual who has been appointed to the office of independent ombudsman for state supported living centers and community service providers.

(14)  "Office" means the office of independent ombudsman for state supported living centers and community service providers established under Subchapter C.

SECTION 3.  Subchapter C, Chapter 555, Health and Safety Code, is amended to read as follows:

SUBCHAPTER C. OFFICE OF INDEPENDENT OMBUDSMAN FOR STATE SUPPORTED LIVING CENTERS AND COMMUNITY SERVICE PROVIDERS

Sec. 555.051.  ESTABLISHMENT; PURPOSE. (a) The office of independent ombudsman is established for the purpose of investigating, evaluating, and securing the rights of:

(1)  residents and clients of state supported living centers and the ICF-IID component of the Rio Grande State Center; and

(2)  individuals with an intellectual or developmental disability receiving community services through a local intellectual and developmental disability authority, including through a community service provider.

(b)  The office is administratively attached to the commission [~~department~~]. The commission [~~department~~] shall provide administrative support and resources to the office as necessary for the office to perform its duties.

Sec. 555.052.  INDEPENDENCE. The independent ombudsman in the performance of the ombudsman's duties and powers under this subchapter acts independently of the commission [~~department~~].

Sec. 555.053.  APPOINTMENT OF INDEPENDENT OMBUDSMAN. (a) The governor shall appoint the independent ombudsman for a term of two years expiring February 1 of odd-numbered years.

(b)  The governor may appoint as independent ombudsman only an individual with at least five years of experience managing and ensuring the quality of care and services provided to individuals with an intellectual or developmental disability.

(c)  A person appointed as independent ombudsman may be reappointed.

Sec. 555.054.  ASSISTANT OMBUDSMEN. (a) The independent ombudsman shall:

(1)  hire assistant ombudsmen to perform, under the direction of the independent ombudsman, the same duties and exercise the same powers as the independent ombudsman; [~~and~~]

(2)  station an assistant ombudsman at each center; and

(3)  station an assistant ombudsman at each local intellectual and developmental disability authority in this state.

(b)  The independent ombudsman may hire as assistant ombudsmen only individuals with at least five years of experience ensuring the quality of care and services provided to individuals with an intellectual or developmental disability.

Sec. 555.055.  CONFLICT OF INTEREST. A person may not serve as independent ombudsman or as an assistant ombudsman if the person or the person's spouse:

(1)  is employed by or participates in the management of a business entity or other organization receiving funds from the commission [~~department~~];

(2)  owns or controls, directly or indirectly, any interest in a business entity or other organization receiving funds from the commission [~~department~~]; or

(3)  is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities or compensation on behalf of a profession related to the operation of the commission [~~department~~].

Sec. 555.056.  REPORT. (a) The independent ombudsman shall submit on a biannual basis to the governor, the lieutenant governor, the speaker of the house of representatives, [~~and~~] the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over state supported living centers, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over intellectual and developmental disability issues a report that is both aggregated and disaggregated by individual center or community service provider and describes:

(1)  the work of the independent ombudsman;

(2)  the results of any review or investigation undertaken by the independent ombudsman, including a review or investigation of services contracted by the commission [~~department~~];

(3)  any recommendations that the independent ombudsman has in relation to the duties of the independent ombudsman; and

(4)  any recommendations that the independent ombudsman has for systemic improvements needed to decrease incidents of abuse, neglect, or exploitation [~~at an individual center or at all centers~~].

(b)  The independent ombudsman shall ensure that information submitted in a report under Subsection (a) does not permit the identification of an individual.

(c)  The independent ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, [~~and~~] the chairs of the standing committees of the senate and the house of representatives having primary jurisdiction over state supported living centers, and the chairs of the standing committees of the senate and the house of representatives with primary jurisdiction over intellectual and developmental disability issues [~~the Department of Aging and Disability Services~~] any particularly serious or flagrant:

(1)  case of abuse or injury of a resident, [~~or~~] client, or individual with an intellectual or developmental disability about which the independent ombudsman is made aware;

(2)  problem concerning the administration of a center or community service provider program or operation; or

(3)  interference by a center, community service provider, [~~the department,~~] or the commission, other than actions by the commission's office of inspector general in accordance with the office's duties, with an investigation conducted by the independent ombudsman.

Sec. 555.057.  COMMUNICATION AND CONFIDENTIALITY. (a) The commission [~~department~~] shall allow any resident, [~~or~~] client, or individual with an intellectual or developmental disability, authorized representative of a resident, [~~or~~] client, or individual, family member of a resident, [~~or~~] client, or individual, or other interested party to communicate with the independent ombudsman or an assistant ombudsman. The communication:

(1)  may be in person, by mail, or by any other means; and

(2)  is confidential and privileged.

(b)  The records of the independent ombudsman are confidential, except that the independent ombudsman shall:

(1)  share with the Department of Family and Protective Services a communication that may involve the abuse, neglect, or exploitation of a resident, [~~or~~] client, or individual with an intellectual or developmental disability;

(2)  share with the inspector general a communication that may involve an alleged criminal offense;

(3)  share with the regulatory services division of the commission [~~department~~] a communication that may involve a violation of an ICF-IID standard or condition of participation; and

(4)  disclose the ombudsman's nonprivileged records if required by a court order on a showing of good cause.

(c)  The independent ombudsman may make reports relating to an investigation by the independent ombudsman public after the investigation is complete but only if the name and any other personally identifiable information of a resident, [~~or~~] client, or individual with an intellectual or developmental disability, legally authorized representative of a resident, [~~or~~] client, or individual, family member of a resident, [~~or~~] client, or individual, center, center employee, community service provider, community service provider employee, or other individual are redacted from the report and remain confidential. The independent ombudsman may provide an unredacted report to the center or community service provider involved in the investigation, the commission [~~department~~], the Department of Family and Protective Services, and the inspector general.

(d)  The name, address, or other personally identifiable information of a person who files a complaint with the office of independent ombudsman, information generated by the office of independent ombudsman in the course of an investigation, and confidential records obtained by the office of independent ombudsman are confidential and not subject to disclosure under Chapter 552, Government Code, except as provided by this section.

Sec. 555.058.  PROMOTION OF AWARENESS OF OFFICE. The independent ombudsman shall promote awareness among the public, residents, clients, individuals with an intellectual or developmental disability receiving community services, [~~and~~] center employees, and community service provider employees of:

(1)  how the office may be contacted;

(2)  the purpose of the office; and

(3)  the services the office provides.

Sec. 555.059.  DUTIES AND POWERS RELATING TO CENTERS AND RESIDENTS OR CLIENTS. (a) The independent ombudsman shall:

(1)  evaluate the process by which a center investigates, reviews, and reports an injury to a resident or client or an unusual incident;

(2)  evaluate the delivery of services to residents and clients to ensure that the rights of residents and clients are fully observed, including ensuring that each center conducts sufficient unannounced patrols;

(3)  immediately refer a complaint alleging the abuse, neglect, or exploitation of a resident or client to the Department of Family and Protective Services;

(4)  refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation or a possible violation of an ICF-IID standard or condition of participation to the regulatory services division of the commission [~~department~~];

(5)  refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of a resident or client, to the inspector general;

(6)  conduct investigations of complaints, other than complaints alleging criminal offenses or the abuse, neglect, or exploitation of a resident or client, if the office determines that:

(A)  a resident or client or the resident's or client's family may be in need of assistance from the office; or

(B)  a complaint raises the possibility of a systemic issue in the center's provision of services;

(7)  conduct biennial on-site audits at each center of:

(A)  the ratio of direct care employees to residents;

(B)  the provision and adequacy of training to:

(i)  center employees; and

(ii)  direct care employees; and

(C)  if the center serves alleged offender residents, the provision of specialized training to direct care employees;

(8)  conduct an annual audit of each center's policies, practices, and procedures to ensure that each resident and client is encouraged to exercise the resident's or client's rights, including:

(A)  the right to file a complaint; and

(B)  the right to due process;

(9)  prepare and deliver an annual report regarding the findings of each audit to the:

(A)  executive commissioner;

(B)  [~~commissioner;~~

[~~(C)  Aging and Disability Services Council;~~

[~~(D)~~]  governor;

(C) [~~(E)~~]  lieutenant governor;

(D) [~~(F)~~]  speaker of the house of representatives;

(E) [~~(G)~~]  standing committees of the senate and house of representatives with primary jurisdiction over state supported living centers; and

(F) [~~(H)~~]  state auditor;

(10)  require a center to provide access to all records, data, and other information under the control of the center that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(11)  review all final reports produced by the Department of Family and Protective Services, the regulatory services division of the commission [~~department~~], and the inspector general regarding a complaint referred by the independent ombudsman;

(12)  provide assistance to a resident, client, authorized representative of a resident or client, or family member of a resident or client who the independent ombudsman determines is in need of assistance, including advocating with an agency, provider, or other person in the best interests of the resident or client;

(13)  make appropriate referrals under any of the duties and powers listed in this subsection; and

(14)  monitor and evaluate the commission's [~~department's~~] actions relating to any problem identified or recommendation included in a report received from the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of a resident or client.

(b)  The independent ombudsman may apprise a person who is interested in a resident's or client's welfare of the rights of the resident or client.

(c)  To assess whether a resident's or client's rights have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of a resident or client, contact or consult with an administrator, employee, resident, client, family member of a resident or client, expert, or other individual in the course of the investigation or to secure information.

(d)  Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of a resident or client.

Sec. 555.0595.  DUTIES AND POWERS RELATING TO DELIVERY OF SERVICES TO INDIVIDUALS WITH INTELLECTUAL OR DEVELOPMENTAL DISABILITY. (a) The independent ombudsman shall:

(1)  evaluate the process by which a community service provider investigates, reviews, and reports an injury or unusual incident involving an individual with an intellectual or developmental disability;

(2)  evaluate the delivery of services to individuals with an intellectual or developmental disability to ensure that the rights of the individuals are fully observed;

(3)  immediately refer a complaint alleging the abuse, neglect, or exploitation of an individual with an intellectual or developmental disability to the adult protective services division of the Department of Family and Protective Services;

(4)  refer a complaint alleging employee misconduct that does not involve abuse, neglect, or exploitation to the regulatory division of the commission;

(5)  refer a complaint alleging a criminal offense, other than an allegation of abuse, neglect, or exploitation of an individual with an intellectual or developmental disability, to the inspector general;

(6)  conduct investigations of complaints, other than complaints alleging a criminal offense or the abuse, neglect, or exploitation of an individual with an intellectual or developmental disability, if the office determines that:

(A)  an individual or the individual's family may be in need of assistance from the office; or

(B)  a complaint raises the possibility of a systemic issue in the community service provider's provision of services;

(7)  require a community service provider to provide access to all records, data, and other information under the control of the authority or provider that the independent ombudsman determines is necessary to investigate a complaint or to conduct an audit under this section;

(8)  request aid from the attorney general, as necessary, to subpoena any records, data, or other information under Subdivision (7);

(9)  review all final reports produced by the adult protective services division of the Department of Family and Protective Services, the regulatory services division of the commission, and the inspector general regarding a complaint referred by the independent ombudsman;

(10)  provide assistance to an individual with an intellectual or developmental disability, authorized representative of an individual, or family member of an individual who the independent ombudsman determines is in need of assistance, including advocating with an agency, community service provider, or other person in the best interests of the individual;

(11)  make appropriate referrals under any of the duties and powers listed in this subsection; and

(12)  monitor and evaluate the commission's actions relating to any problem identified or recommendation included in a report received from the adult protective services division of the Department of Family and Protective Services relating to an investigation of alleged abuse, neglect, or exploitation of an individual with an intellectual or developmental disability.

(b)  The independent ombudsman may apprise a person who is interested in the welfare of an individual with an intellectual or developmental disability of the rights of the individual.

(c)  To assess whether the rights of an individual with an intellectual or developmental disability have been violated, the independent ombudsman may, in any matter that does not involve an alleged criminal offense or the abuse, neglect, or exploitation of an individual, contact or consult with an administrator, employee, individual, family member of an individual, expert, or other person in the course of the investigation or to secure information.

(d)  Notwithstanding any other provision of this chapter, the independent ombudsman may not investigate an alleged criminal offense or the alleged abuse, neglect, or exploitation of an individual with an intellectual or developmental disability.

Sec. 555.060.  RETALIATION PROHIBITED. The commission, [~~department or~~] a center, or a community service provider may not retaliate against a commission [~~department~~] employee, center employee, community service provider employee, or any other person who in good faith makes a complaint to the office of independent ombudsman or cooperates with the office in an investigation.

Sec. 555.061.  TOLL-FREE NUMBER. (a) The office shall establish a permanent, toll-free number for the purpose of receiving any information concerning the violation of a right of a resident, [~~or~~] client, or individual with an intellectual or developmental disability.

(b)  The office shall ensure that:

(1)  the toll-free number is prominently displayed in the main administration area and other appropriate common areas of a center or community service provider; and

(2)  a resident, [~~a~~] client, individual with an intellectual or developmental disability, the legally authorized representative of a resident, [~~or~~] client, or individual, [~~and~~] a center employee, and a community service provider employee have confidential access to a telephone for the purpose of calling the toll-free number.

SECTION 4.  Section 531.853, Government Code, is amended to read as follows:

Sec. 531.853.  MORTALITY REVIEW REPORT. Subject to Section 531.854, a contracted organization shall submit:

(1)  to the Department of Aging and Disability Services, the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers and community service providers, and the commission's office of inspector general a report of the findings of the mortality review; and

(2)  semiannually to the governor, the lieutenant governor, the speaker of the house of representatives, and the standing committees of the senate and house of representatives with primary jurisdiction over the Department of Aging and Disability Services, the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers and community service providers, and the commission's office of inspector general a report that contains:

(A)  aggregate information regarding the deaths for which the contracted organization performed an independent mortality review;

(B)  trends in the causes of death identified by the contracted organization; and

(C)  any suggestions for system-wide improvements to address conditions that contributed to deaths reviewed by the contracted organization.

SECTION 5.  Section 48.007, Human Resources Code, is amended to read as follows:

Sec. 48.007.  MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission, the department, the Department of Aging and Disability Services, the office of independent ombudsman for state supported living centers and community service providers, and the commission's office of inspector general shall enter into a memorandum of understanding regarding investigations of alleged abuse, neglect, or exploitation of residents or clients of state supported living centers or the ICF-IID component of the Rio Grande State Center that delineates the responsibilities of each agency and office under this chapter, Chapter 261, Family Code, and Chapter 555, Health and Safety Code, and amend the memorandum of understanding as necessary to reflect changes in those responsibilities. During the negotiation of the memorandum of understanding, the agencies and offices shall jointly determine whether the forensic training received by relevant staff of the Department of Family and Protective Services is adequate. Specifically, the agencies and offices shall 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. The commission is the final arbiter of any dispute regarding the memorandum of understanding under this section.

SECTION 6.  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, 2019.