

By: Kolkhorst

S.B. No. 1408

A BILL TO BE ENTITLED

1 AN ACT

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

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

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

9 CHAPTER 555. STATE SUPPORTED LIVING CENTERS AND COMMUNITY SERVICE
10 PROVIDERS

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

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

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

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

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

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

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

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

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

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

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

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

25 (b) The governor may appoint as independent ombudsman only
26 an individual with at least five years of experience managing and
27 ensuring the quality of care and services provided to individuals

1 with an intellectual or developmental disability.

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

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

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

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

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

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

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

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

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

25 (3) is required to register as a lobbyist under
26 Chapter 305, Government Code, because of the person's activities or
27 compensation on behalf of a profession related to the operation of

1 the commission [~~department~~].

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

12 (1) the work of the independent ombudsman;

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

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

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

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

27 (c) The independent ombudsman shall immediately report to

1 the governor, the lieutenant governor, the speaker of the house of
2 representatives, ~~and~~ the chairs of the standing committees of the
3 senate and the house of representatives having primary jurisdiction
4 over state supported living centers, and the chairs of the standing
5 committees of the senate and the house of representatives with
6 primary jurisdiction over intellectual and developmental
7 disability issues ~~[the Department of Aging and Disability Services]~~
8 any particularly serious or flagrant:

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

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

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

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

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

1 and

2 (2) is confidential and privileged.

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

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

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

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

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

16 (c) The independent ombudsman may make reports relating to
17 an investigation by the independent ombudsman public after the
18 investigation is complete but only if the name and any other
19 personally identifiable information of a resident, ~~or~~ or
20 individual with an intellectual or developmental disability,
21 legally authorized representative of a resident, ~~or~~ or
22 individual, family member of a resident, ~~or~~ or
23 individual, center, center employee, community service provider,
24 community service provider employee, or other individual are
25 redacted from the report and remain confidential. The independent
26 ombudsman may provide an unredacted report to the center or
27 community service provider involved in the investigation, the

1 commission [~~department~~], the Department of Family and Protective
2 Services, and the inspector general.

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

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

- 15 (1) how the office may be contacted;
16 (2) the purpose of the office; and
17 (3) the services the office provides.

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

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

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

27 (3) immediately refer a complaint alleging the abuse,

1 neglect, or exploitation of a resident or client to the Department
2 of Family and Protective Services;

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

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

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

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

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

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

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

21 (B) the provision and adequacy of training to:

22 (i) center employees; and

23 (ii) direct care employees; and

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

27 (8) conduct an annual audit of each center's policies,

1 practices, and procedures to ensure that each resident and client
2 is encouraged to exercise the resident's or client's rights,
3 including:

4 (A) the right to file a complaint; and

5 (B) the right to due process;

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

8 (A) executive commissioner;

9 (B) ~~commissioner;~~

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

11 ~~[(D)]~~ governor;

12 (C) ~~[(E)]~~ lieutenant governor;

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

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

18 (F) ~~[(H)]~~ state auditor;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (12) monitor and evaluate the commission's actions
26 relating to any problem identified or recommendation included in a
27 report received from the adult protective services division of the

1 Department of Family and Protective Services relating to an
2 investigation of alleged abuse, neglect, or exploitation of an
3 individual with an intellectual or developmental disability.

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

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

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

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

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

1 developmental disability.

2 (b) The office shall ensure that:

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

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

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

14 Sec. 531.853. MORTALITY REVIEW REPORT. Subject to Section
15 531.854, a contracted organization shall submit:

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

22 (2) semiannually to the governor, the lieutenant
23 governor, the speaker of the house of representatives, and the
24 standing committees of the senate and house of representatives with
25 primary jurisdiction over the Department of Aging and Disability
26 Services, the Department of Family and Protective Services, the
27 office of independent ombudsman for state supported living centers

1 and community service providers, and the commission's office of
2 inspector general a report that contains:

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

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

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

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

13 Sec. 48.007. MEMORANDUM OF UNDERSTANDING REGARDING CERTAIN
14 ABUSE, NEGLECT, OR EXPLOITATION INVESTIGATIONS. The commission,
15 the department, the Department of Aging and Disability Services,
16 the office of independent ombudsman for state supported living
17 centers and community service providers, and the commission's
18 office of inspector general shall enter into a memorandum of
19 understanding regarding investigations of alleged abuse, neglect,
20 or exploitation of residents or clients of state supported living
21 centers or the ICF-IID component of the Rio Grande State Center that
22 delineates the responsibilities of each agency and office under
23 this chapter, Chapter 261, Family Code, and Chapter 555, Health and
24 Safety Code, and amend the memorandum of understanding as necessary
25 to reflect changes in those responsibilities. During the
26 negotiation of the memorandum of understanding, the agencies and
27 offices shall jointly determine whether the forensic training

1 received by relevant staff of the Department of Family and
2 Protective Services is adequate. Specifically, the agencies and
3 offices shall assess and, if necessary, develop a plan to enhance
4 the ability of department staff to identify and report incidences
5 that constitute a potential criminal offense. The commission is
6 the final arbiter of any dispute regarding the memorandum of
7 understanding under this section.

8 SECTION 6. This Act takes effect immediately if it receives
9 a vote of two-thirds of all the members elected to each house, as
10 provided by Section 39, Article III, Texas Constitution. If this
11 Act does not receive the vote necessary for immediate effect, this
12 Act takes effect September 1, 2019.