

## **BILL ANALYSIS**

Senate Research Center  
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S.B. 35  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The United States General Accounting Office (GAO) interviewed officials in 14 states (including Texas) where death among persons with developmental disabilities is included as a critical incident in their waiver programs. Texas, as well as the other states in the report, require waiver service providers to report such deaths to the appropriate agencies; however, all of the states in the report except Texas included most of the six basic mortality review components identified as important by experts. Texas included the least number of listed components. While Department of Aging and Disability Services (DADS) officials in Texas stated that state-level officials screened some standard information about deaths, the agency did not have a systematic process for reviewing deaths to identify and address quality-of-care issues. Instead, information was referred to investigative authorities, such as adult protective services, if the screening process revealed the death was suspicious. At the time of the investigations Texas did not aggregate mortality data.

The GAO report makes recommendations to the administrator of Centers for Medicare and Medicaid Services (CMS) to help states address quality concerns and provide additional oversight of the care provided to persons with intellectual disabilities. Overall, CMS agreed with all of the GAO's recommendations. Though the GAO specifically recommended to CMS that the independent reviewer should be the state's protection and advocacy agency, the CMS response stated only that the agency agreed that deaths should be reported to an independent third party. It seems that the states that actively are improving services work well will these programs. However, in Texas the relationship is more adversarial.

This bill establishes mortality reviews for persons with intellectual disabilities that include six basic mortality review components identified as important by experts. The mortality review requires that: standard information be collected about the person's death, and that this information be screened by developmental disabilities agency staff to determine whether further review of the death is needed; if it is determined that a mortality review is warranted, officials are authorized to conduct a more in-depth review to evaluate the cause and circumstances of the death and the person's medical condition; mortality reviews include medical professionals; the mortality review process is documented; the process may result in recommendations that address any quality-of-care concerns identified; mortality data for deaths among persons with developmental disabilities are aggregated to identify trends over time including patters by cause of death, age, services received, or other programmatic factors.

As proposed, S.B. 35 creates new law relating to mortality review for certain individuals who are developmentally disabled.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Chapter 161, Human Resources Code, by adding Subchapter F, as follows:

#### **SUBCHAPTER F. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WHO ARE DEVELOPMENTALLY DISABLED**

Sec. 161.201. DEFINITION. Defines "health care provider."

Sec. 161.202. APPLICABILITY. Provides that this subchapter applies to the death of a person with a developmental disability who, at the time of death, resided in or received services from a facility or agency operated or licensed by the Department of Aging and Disability Services (DADS).

Sec. 161.203. MORTALITY REVIEW TEAMS. (a) Requires DADS to establish a regional mortality review team in each local mental retardation authority service area.

(b) Requires the executive commissioner of the Health and Human Services Commission to appoint to each mortality review team at least three individuals, including a physician or registered nurse with expertise regarding the medical treatment of individuals with developmental disabilities. Authorizes the review team to also include certain other individuals.

(c) Requires the members of a mortality review team (members) to select a presiding officer for the mortality review team.

(d) Provides that members serve for staggered terms of three years, with the term of one member expiring February 1 each year.

(e) Requires that an appointment to a vacancy on the mortality review team be made in the same manner as the original appointment. Provides that a member is eligible for reappointment.

(f) Entitles a member to reimbursement for the member's travel expenses as provided in the General Appropriations Act. Provides that a member is not entitled to compensation for serving on the team. Requires reimbursement under this section to be paid from funds appropriated to DADS for that purpose.

Sec. 161.204. POWERS AND DUTIES OF MORTALITY REVIEW TEAM. (a) Authorizes a mortality review team to conduct a meeting by telephone conference call or other electronic medium.

(b) Provides that meetings of a mortality review team are closed to the public and are not subject to Chapter 551(Open Meetings), Government Code.

(c) Requires each mortality review team to initially review and investigate the circumstances and causes of each death of a person in the area to whom this subchapter applies to determine whether further review of that death is necessary.

(d) Requires the mortality review team to complete an in-depth review regarding the death of the person if the mortality review team finds, after an initial review, that the death of the person is unexpected or the result of an accident or that the death involves suspicious circumstances that may indicate possible abuse or neglect.

Sec. 161.205. ACCESS TO INFORMATION. (a) Authorizes a mortality review team to request information and records regarding a deceased person as necessary to carry out the mortality review team's duties. Sets forth certain records and information authorized to be requested under this section.

(b) Requires the custodian of the relevant information and records relating to a deceased person to provide those records to the mortality review team upon request of the team's presiding officer and at no charge.

Sec. 161.206. MORTALITY REVIEW REPORT. (a) Requires the mortality review team to submit a written report on its findings to DADS for each review and in-depth review of the death of a person to whom this subchapter applies.

(b) Authorizes the mortality review team to include suggestions for improving statewide practices relating to the care and treatment of individuals with developmental disabilities in the report.

Sec. 161.207. USE AND PUBLICATION RESTRICTIONS; CONFIDENTIALITY. (a) Authorizes DADS or the mortality review team to use or publish information under this subchapter only to advance statewide practices regarding treatment and care of individuals with mental, physical, or developmental disabilities. Authorizes DADS to release a summary of the data in mortality review team reports or statistical compilation of data reports for general publication, if the summary or statistical compilation does not contain information that would permit the identification of an individual.

(b) Provides that information and records acquired by a mortality review team are confidential and exempt from disclosure under the open records law, Chapter 552, (Public Information) Government Code, and is authorized only to be disclosed only as necessary to carry out the mortality review team's duties.

(c) Provides that the identity of a person whose death was reviewed is confidential and may not be revealed.

(d) Provides that the identity of a health care provider or the name of a facility or agency that provided services to or was the residence of a person whose death was reviewed, in accordance with this subchapter is confidential and may not be revealed.

(e) Provides that reports, information, statements memoranda, and other information furnished under this subchapter and any findings, or conclusions resulting from a review by a mortality review team are privileged.

Sec. 161.208. LIMITATION ON LIABILITY. (a) Provides that a health care provider or other person is not civilly or criminally liable for furnishing information to DADS for use by a mortality review team unless that person acted in bad faith or knowingly provided false information.

(b) Provides that a member of a mortality review team is not liable for damages to a person for a report or recommendation made by the mortality review team if the member acts in good faith and in the reasonable belief that the report is accurate and the recommendation is warranted by the facts known to the mortality review team.

SECTION 2. Requires a state agency to request any necessary waiver or authorization from a federal agency and authorizes delay of implementation until any necessary federal waivers or authorizations are obtained.

SECTION 3. Effective date: September 1, 2009.