

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 2673  
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Health & Human Services  
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Engrossed

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

Currently, the health and human services agencies are able to obtain criminal history information for employees, volunteers, and applicants for employment or volunteer opportunities in state supported living centers (SSLCs). H.B. 2673 increases the safety of SSLC residents by allowing the health and human services agencies to obtain criminal history information for contracted employees and applicants for contracted positions as well.

Current law requires the state to contract with a patient safety organization (PSO) to conduct independent mortality reviews for the death of an individual with an intellectual and development disability (IDD), who at the time of the individual's death, was in or received services from an Intermediate Care Facility for Individuals with Intellectual Disability or Related Conditions (ICF/IID) or the ICF/IID component of the Rio Grande State Center, or who received residential assistance from a provider through a Section 1915(c) waiver program serving individuals with IDD. However, federal law limits the ability of PSOs to collect information from facilities other than SSLCs, and as a result, the independent mortality reviews are currently only being conducted at SSLCs.

H.B. 2673 seeks to address this limitation by allowing the Health and Human Services Commission to contract with an institution of higher learning or a health care organization or association with experience in conducting research-based mortality studies to conduct the independent mortality reviews. These entities are not subject to the federal limitations as the PSOs are. H.B. 2673 also ensures that the mortality reviews will be completed across all settings in which individuals with IDD receive services.

H.B. 2673 amends current law relating to the protection and care of individuals with intellectual and developmental disabilities.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the executive commissioner of the Health and Human Services Commission is modified in SECTION 5 (Section 531.851, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends the heading to Section 411.1144, Government Code, to read as follows:

Sec. 411.1144. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION:  
AGENCIES WITH EMPLOYEES, CONTRACTORS, OR VOLUNTEERS AT STATE  
SUPPORTED LIVING CENTERS.

SECTION 2. Amends Sections 411.1144(a) and (d), Government Code, as follows:

(a) Entitles the Department of State Health Services (DSHS), the Department of Aging and Disability Services (DADS), and the Health and Human Services Commission (HHSC) 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 with the agency;
- (B) an employee of the agency;
- (C) a volunteer with the agency;
- (D) an applicant for a volunteer position with the agency;
- (E) an applicant for a contract with the agency; or
- (F) a contractor of the agency; and

(2) who would be placed in direct contact with a resident or client, as defined by Section 555.001 (Definitions), Health and Safety Code, rather than who would be placed in direct contact with a resident or client of a state supported living center of the ICF-MR component of the Rio Grande State Center.

(d) Entitles DSHS, DADS, and HHSC, subject to Section 411.087 (Access to Criminal History Record Information Maintained by Federal Bureau of Investigation or Local Criminal Justice Agency), to obtain certain information.

SECTION 3. Amends the heading to Subchapter U, Chapter 531, Government Code, to read as follows:

SUBCHAPTER U. MORTALITY REVIEW FOR CERTAIN INDIVIDUALS WITH  
INTELLECTUAL OR DEVELOPMENTAL DISABILITIES

SECTION 4. Amends Subchapter U, Chapter 531, Government Code, by adding Section 531.8501, as follows:

Sec. 531.8501. DEFINITION. Defines "contracted organization" for this subchapter.

SECTION 5. Amends Sections 531.851(a), (c), (d), and (e), Government Code, as follows:

(a) Requires the executive commissioner of HHSC (executive commissioner) to establish an independent mortality review system to review the death of a person with an intellectual or developmental disability who, at the time of the person's death or at any time during the 24-hour period before the person's death:

(1) resided in or received services from:

- (A) an intermediate care facility for persons with an intellectual or developmental disability (ICF/IID) operated or licensed by DADS or a community center, rather than an intermediate care facility for persons with mental retardation (IFC-MR) operated or licensed by DADS or a community center; or
- (B) the ICF-IID component, rather than the ICF-MR component, of the Rio Grande State Center; or

(2) received services through a Section 1915(c) waiver program for individuals who are eligible for ICF-IID services, rather than received residential assistance through a Section 1915(c) waiver program serving individuals who are eligible for ICF-MR services in a residence in which residential assistance is provided to three or more persons and in which the waiver program provider has a property interest.

(c) Requires the executive commissioner to contract with an institution of higher education or a health care organization or association with experience in conducting research-based mortality studies to conduct independent mortality reviews of persons with an intellectual or developmental disability, rather than requires the executive commissioner to contract with a patient safety organization certified in accordance with 42 C.F.R. Part 3, as effective on January 19, 2009, to conduct independent mortality reviews required by this subchapter. Requires that the contract require the contracted organization to form a review team, rather than requires that a contract require the patient safety organization to conduct an independent mortality review using a team, consisting of:

(1) a physician with expertise regarding the medical treatment of individuals with intellectual or developmental disabilities, rather than with mental retardation;

(2) a registered nurse with expertise regarding the medical treatment of individuals with intellectual or developmental disabilities, rather than with mental retardation;

(3) a clinician or other professional with expertise in the delivery of services and supports for individuals with intellectual or developmental disabilities, rather than with mental retardation; and

(4) Makes no change to this subdivision.

(d) Requires the executive commissioner to adopt rules regarding the manner in which the death of a person described by Subsection (a) is required to be reported to the contracted organization, rather than patient safety organization, by a facility or waiver program described by that subsection.

(e) Requires that a review under this section, to ensure consistency across mortality review systems, collect information consistent with the information required to be collected by any other independent mortality review process established specifically for persons with intellectual or developmental disabilities, rather than with mental retardation.

SECTION 6. Amends Section 531.852, Government Code, to change references to a patient safety organization to a contracted organization.

SECTION 7. Amends Section 531.853, Government Code, as follows:

Sec. 531.853. MORTALITY REVIEW REPORT. Requires a contracted organization, subject to Section 531.854 (Use and Publication Restrictions; Confidentiality), rather than requires the patient safety organization, to the extent allowed by federal law, to submit:

(1) Makes no change to this subdivision; 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 DADS, the Department of Family and Protective Services, the office of independent ombudsman for state supported living centers, and HHSC's office of inspector general a report that contains:

(A) aggregate information regarding the deaths for which the contracted organization, rather than patient safety organization, performed an independent mortality review;

(B) trends in the causes of death identified by the contracted organization, rather than the patient safety organization; and

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

SECTION 8. Amends Section 531.854, Government Code, by amending Subsections (a), (b), and (e), and adding Subsections (f) and (g), as follows:

(a) Authorizes HHSC to use or publish information under this subchapter only to advance statewide practices regarding the treatment and care of individuals with intellectual and developmental disabilities. Authorizes a summary of the data in the contracted organization's reports, rather than the patient safety organization's reports, or a statistical compilation of data reports to be released by HHSC for general publication if the summary or statistical compilation does not contain any information that would permit the identification of an individual or that is confidential or privileged under this subchapter or other state or federal law, rather than or that is patient safety work product.

(b) Changes references to patient safety organization to contracted organization.

(e) Provides that reports, information, statements, memoranda, and other information furnished under this subchapter to the contracted organization and any findings or conclusions resulting from a review by the contracted organization, rather than the patient safety organization, are privileged.

(f) Provides that a contracted organization's report of the findings of the independent mortality review conducted under this subchapter and any records developed by the contracted organization relating to the review:

(1) are confidential and privileged;

(2) are not subject to discovery or subpoena; and

(3) are prohibited from being introduced into evidence in any civil, criminal, or administrative proceeding.

(g) Prohibits a member of the contracted organization's review team from testifying or being required to testify in a civil, criminal, or administrative proceeding as to observations, factual findings, or conclusions that were made in conducting a review under this subchapter.

SECTION 9. Amends Section 531.855, Government Code, to change references to patient safety organization to contracted organization.

SECTION 10. Amends Section 555.021, Health and Safety Code, as follows:

Sec. 555.021. New heading: **REQUIRED CRIMINAL HISTORY CHECKS FOR EMPLOYEES, CONTRACTORS, AND VOLUNTEERS.** (a) Requires DADS, DSHS, and HHSC to perform a state and federal criminal history background check on certain persons, including a person:

(1) who is an applicant for a contract with the agency or a contractor of the agency; and

(2) Makes no change to this subdivision.

(b) Requires DADS, DSHS, and HHSC to require a person described by Subsection (a) to submit fingerprints in a form and of a quality acceptable to DPS and the Federal Bureau of Investigation for use in conducting a criminal history background check.

(c) Requires each agency to obtain electronic updates from DPS of arrests and convictions of a person for whom the agency performs a background check under Subsection (a) and who remains an employee, contractor, or volunteer of the agency and continues to have direct contact with a resident or client.

SECTION 11. Repealer: Section 252.134 (Reports Relating to Resident Deaths; Statistical Information), Health and Safety Code.

SECTION 12. Provides that Section 531.851 (Mortality Review), Government Code, as amended by this Act, does not apply to a contract entered into by the executive commissioner before June 1, 2013. Provides that a contract entered into before June 1, 2013, is governed by the law in effect on the date the contract was entered into, and that law is continued in effect for that purpose.

SECTION 13. Effective date: upon passage or September 1, 2013.