

- SUBJECT:** Regulation and investigation of state hospitals
- COMMITTEE:** Human Services — favorable, without amendment
- VOTE:** 9 ayes — Raymond, N. Gonzalez, Fallon, Klick, Naishtat, Rose, Sanford, Scott Turner, Zerwas
- 0 nays
- SENATE VOTE:** On final passage, April 2 — 31 - 0
- WITNESSES:** For — (*Registered, but did not testify:* Miryam Bujanda, Methodist Healthcare Ministries; Melissa Davis, National Association of Social Workers, Texas Chapter; Heather Fazio, Texans for Accountable Government; Kelley Shannon, Freedom of Information Foundation of Texas; Lee Spiller, Citizens Commission on Human Rights; Gyl Switzer, Mental Health America of Texas)
- Against — (*Registered, but did not testify:* Kathy Hebert, North Texas Citizens Lobby)
- On — (*Registered, but did not testify:* Andy Abrams, Texas Health and Human Services Commission Office of Inspector General; Beth Engelking, Department of Family and Protective Services; Peggy Perry, Department of State Health Services; Darrel Spinks, Texas State Board of Examiners of Psychologists)
- BACKGROUND:** All direct care employees of state hospitals who are currently hired by the Department of State Health Services (DSHS) undergo two weeks of training.
- The Texas Health and Human Services Commission - Office of Inspector General (HHSC-OIG) works to prevent, detect, and pursue fraud, waste and abuse in the Texas Health and Human Services system, including conducting investigations of allegations of fraud, waste, and abuse.
- Health and Safety Code, sec. 552.011 defines "patient" to mean a person admitted to a state hospital under the management and control of the

Texas Department of Mental Health and Mental Retardation.

DIGEST: SB 152 would regulate state hospitals and their employees, add abuse and neglect reporting requirements, and allow the Health and Human Services Commission's Office of Inspector General to investigate an alleged criminal offense involving a state hospital patient.

The bill would change the statutory definition of "patient" to mean an individual who was receiving voluntary or involuntary mental health services at a state hospital and would add community services operated by the El Paso Psychiatric Center to the list of facilities operated by the Department of Aging and Disability Services and DSHS.

Regulation and training of state hospital employees. SB 152 would require the executive commissioner of the Health and Human Services Commission (HHSC) to:

- adopt a policy requiring a state hospital employee to report to the superintendent of the state hospital their knowledge or reasonable suspicion that another employee was illegally using or influenced by a controlled substance; and
- adopt rules requiring a state hospital to provide annual employee refresher training courses, unless the Department of State Health Services (DSHS) determined in good faith and with good reason that a particular employee's performance would not be adversely affected in the absence of such refresher training.

The bill would require DSHS to:

- provide state hospital employees with competency training and a course of instruction on the general duties of a state hospital employee, to include training on providing care for individuals with mental illness;
- evaluate the employee for competency post-training;
- provide direct care employees performing without direct supervision with additional training and instructional information, such as training on implementation of the interdisciplinary treatment program for each patient for whom the employee would provide care;
- provide all direct care employees additional training as necessary in accordance with the specialized needs of the population served; and

- develop risk assessment protocols for state hospital employees to use in identifying and assessing possible cases of abuse or neglect.

Investigations. The bill would require the inspector general to:

- employ and commission peace officers to assist state or local law enforcement in investigating an alleged criminal offense involving a state hospital patient;
- prepare an annual status report including certain information on conducted investigations, aggregated and disaggregated by individual state hospital;
- submit the annual status report to certain state officials and agencies;
- prepare a summary report, without personally identifiable information, for each investigation conducted with the assistance of the inspector general; and
- deliver the summary report to certain state officials, state agencies, and the alleged victim or the alleged victim's legally authorized representative.

Disclosure of investigation information. The annual status report would be public information, subject to law governing public information disclosure provisions.

All information and materials compiled by the inspector general for an investigation could be released to the inspector general or the inspector general's employees or agents involved in the investigation, and could be disclosed to the Department of Family and Protective Services, the Office of the Attorney General, the state auditor's office, and law enforcement agencies. Otherwise, information and materials compiled in connection with an investigation would be confidential, not subject to disclosure, discovery, subpoena, or other means of legal compulsion for their release. Summary reports regarding an investigation would be subject to public information disclosure requirements as governed by law.

Retaliation related to an investigation. DSHS or a state hospital could not retaliate against one of its employees or any other person who had cooperated in good faith with the inspector general under the provisions of the bill.

Reporting abuse or neglect. The bill would require DSHS to develop an

information management, reporting, and tracking system for each state hospital to provide the department with information necessary to monitor serious allegations of abuse, neglect, or exploitation.

A person or professional would have to make a report if they had cause to believe that an adult was a victim of abuse or neglect as a child and that disclosure of that information was necessary to protect the health and safety of a child or an elderly or disabled person. The person or professional would have to report to a law enforcement agency, the Department of Family or Protective Services, the state agency that regulated the facility in which the alleged abuse or neglect occurred, or another appropriate agency. The bill would add an employee or member of a board that licensed or certified a professional to the list of individuals — whose personal communications may otherwise be privileged — to make a report regarding abuse or neglect.

Criminal history information. Under the bill, DSHS would be entitled to obtain criminal history record information maintained by the Department of Public Safety, the Federal Bureau of Investigation, or any other criminal justice agency for persons working or volunteering at a state hospital, including:

- an applicant for employment at a state hospital;
- an employee of a state hospital;
- a contractor or potential contractor who provided goods or services to DSHS at a state hospital;
- a contractor's employees or those applying to work with a contractor; and
- a volunteer or those applying to volunteer with a state hospital who would be in direct contact with a state hospital patient.

Under the bill, DSHS could release criminal history records to the person who was the subject of the criminal history. The bill would not prohibit DSHS from obtaining and using criminal history record information as provided by other law.

Deadlines and effective date. The bill would require the executive commissioner of HHSC to adopt rules necessary to implement Subchapter C, Chapter 552, Health and Safety Code, governing state hospital employee training and regulation, by December 1, 2013.

DSHS would have to develop the state hospital employee training required by Section 552.052, Health and Safety Code, as added by the bill, by January 1, 2014. DSHS would have to ensure that each state hospital employee received training specified by the bill by September 1, 2014.

The HHSC Office of Inspector General would begin employing and commissioning peace officers to investigate an alleged criminal offenses involving a state hospital patient as required by Section 552.101, Health and Safety Code, as added by the bill, by May 1, 2014.

If a state agency determined that a waiver or authorization from a federal agency was necessary to implement a provision of the bill, the state agency could delay implementing that provision until the federal agency granted the waiver or authorization.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2013.

**SUPPORTERS
SAY:**

SB 152 would add needed protection for patients at state hospitals by increasing oversight, employee training, and abuse and neglect reporting requirements. The small fiscal note would be a small price to pay for meeting the state's responsibility to ensure the safety and best possible care for vulnerable patients at state hospitals. The bill is necessary to prevent future abuse and misconduct by state hospital direct care providers.

The bill would increase the quality of care for patients at state hospitals by requiring state hospital employees to undergo thorough competency training and additional specialized training on care for patients with mental illness and other diagnoses. The bill would ensure direct care providers were able to provide the best quality of care by requiring state hospital employees to undergo background checks and to report cases of an employee using an illegal controlled substance.

The bill would also strengthen investigations into alleged criminal offenses committed by an employee of a state hospital by allowing the HHSC-OIG to commission peace officers to assist with investigations by local and state law enforcement. The reports required of the investigator general would increase transparency for state hospital operations.

Adding professionals to the state's employee misconduct registry is not necessary, as they are already regulated by their licensing boards and by DSHS.

OPPONENTS
SAY:

The bill would increase costs to the state for criminal history background checks and drug testing that would invade the privacy of state hospital direct care providers.

OTHER
OPPONENTS
SAY:

The bill could be strengthened by adding a provision requiring state hospital employees who seriously harm patients be added to the state's employee misconduct registry or by creating a central database of reportable misconduct and related investigations. As evidenced by recent abuse cases, the state board licensing system is not enough to screen out bad actors.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$782,740 to general revenue related funds through the biennium ending August 31, 2015. The money would pay to implement random drug testing, background checks, and hire four Investigator VI employees at HHSC-OIG.