

JUN 06 2014



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

KYLE L. JANEK, M.D.
EXECUTIVE COMMISSIONER

June 6, 2014

Mr. Ken Levine
Director
Sunset Advisory Commission
1501 North Congress, 6th Floor
Austin, Texas 78701

Dear Mr. Levine:

We would like to take this opportunity to thank you and your staff for the tremendous job they have done during this review process. Sunset staff were thorough in their efforts to conduct a comprehensive assessment of the Department of Aging and Disability Services (DADS), and we appreciate their diligence.

Attached you will find our response to the Sunset Staff Report for DADS. The report captures the challenges we face in caring for some of our most vulnerable citizens, both in state facilities and community settings. We understand and support the need for major change, and we stand ready to work with the Sunset Commission and Legislature to do so.

We look forward to discussing these recommendations with the Sunset Commission during the hearing later this month and to working with you throughout the continued review of the health and human services system as a whole.

Sincerely,

Handwritten signature of Kyle L. Janek in blue ink.

Kyle L. Janek, M.D.
Executive Commissioner, HHSC

Handwritten signature of Jon Weizenbaum in blue ink.
Jon Weizenbaum
Commissioner, DADS

Texas Department of Aging and Disability Services

Response to Issue 1

Despite Declining Enrollment, Skyrocketing Costs and Questionable Quality of Care, Texas Continues to Operate 13 SSLCs.

Change in Statute

1.1 Require DADS to close the Austin SSLC by August 31, 2017.

DADS supports the goal of serving people with intellectual disabilities in the most integrated setting, consistent with the choices of those individuals and their guardians. Recognizing that permanently closing a center would be a difficult decision, DADS is committed to providing timely, accurate information to the Legislature as it considers this issue.

1.2 Establish the State Supported Living Center Closure Commission to evaluate the SSLCs and determine an additional five centers to close.

The agency recommends specifying that one member of the commission be the family member of an SSLC resident. DADS also recommends giving the SSLC Closure Commission the authority to determine the number of facilities to close, as well as the timeline for closures.

1.3 Require DADS to close the five SSLCs determined by the SSLC Closure Commission no later than August 31, 2022.

The agency believes that the SSLC Closure Commission should be authorized to determine, based on its in-depth research, the number of facilities to be closed and an optimal timeline for closure.

DADS will work to meet any deadlines set by the Legislature or the SSLC Closure Commission. However, the time needed to close a center and successfully transition the residents to other settings will be affected by a variety of factors such as the size of the facilities chosen and the medical and behavioral needs of the residents at those facilities, as well as the consideration of resident, family and guardian preferences.

Management Action

1.4 Direct DADS to focus on improving the quality of life for residents and staff at the remaining SSLCs.

The agency supports the recommendation.

Fiscal Implication

Budget savings identified by the Sunset Commission staff might not be realized in the short term due to the costs associated with closure, such as the costs of overtime and contract staffing, incentives to retain employees during the closure process, and building the capacity to serve residents in the community. These costs will vary depending on the complexity of the needs of transitioning residents, as well as the availability of community resources to meet those needs.

Response to Issue 2

To Transition From SSLCs to the Community, People With Higher Behavioral and Medical Needs Require Extra Support.

Change in Statute

- 2.1 Require DADS to expand crisis intervention teams to provide increased supports to people with IDD in the community.**

The agency supports the recommendation.

- 2.2 Require DADS and HHSC, in rule, to add a reimbursement level that incentivizes providers to open small specialized group homes for people with high medical needs.**

The agency supports the recommendation.

- 2.3 Amend statute to require DADS to establish, in rule, the array of services an SSLC can provide to community clients and the fees for those services.**

The agency supports the recommendation.

Change in Appropriation

- 2.4 The House Appropriations and Senate Finance Committees should consider adding a rider to DADS' bill pattern authorizing SSLCs to retain fees received for providing services to DADS community clients to cover the cost of these services.**

The agency supports the recommendation.

Management Action

- 2.5 DADS should leverage expertise at SSLCs to support providers in the community.**

The agency supports the recommendation.

- 2.6 DADS should strengthen partnerships with local authorities statewide to improve the number and speed of transitions to the community.**

The agency supports the recommendation.

Fiscal Implication

Sufficient medical and behavioral services must be in place in the community to safely transition residents. Due to the costs of closure identified in the agency's response to Issue 1, savings are not likely to be available to offset the costs of these community services in the short term.

Response to Issue 3

DADS Lacks Effective Means for Ensuring Its Clients Receive Adequate Care in Day Habilitation Facilities.

Change in Statute

3.1 Require DADS to develop, in rules, requirements for contract provisions regarding basic safety and service requirements that its community-based IDD waiver and ICF providers should include in their contracts with day habilitation facilities.

The agency supports the recommendation. DADS-regulated providers are currently required to conduct criminal background and registry checks on an annual basis, rather than the one-time basis specified in this recommendation, and to do so for volunteers, as well as employees. DADS proposes modifying the recommendation to be consistent with its expectations for other service providers.

Agency Modification

1. Amend Recommendation 3.1 to require day habilitation providers to conduct annual criminal background and registry checks of employees and volunteers.

3.2 Require the Department of Family and Protective Services to track data on abuse, neglect, and exploitation in day habilitation facilities and report the findings to DADS on at least an annual basis.

The agency supports the recommendation.

3.3 Require DADS to compile basic information and data on day habilitation facilities providing services to persons in DADS programs, including data on violations and deficiencies found during inspections.

The agency agrees that compiling basic information about day habilitation facilities will be important in evaluating the services received by DADS clients. The recommendation requires data to be collected annually. To provide more current and useful data, DADS believes it could capture the day habilitation provider's name, location, and services by creating a registry of day habilitation providers. The contract between DADS and the service provider would direct the service provider to only subcontract with day habilitation providers listed on the registry.

Fiscal Implication

DADS can compile data on the facilities, their location, and services provided; however, maintaining current and accurate information on numbers of clients served, expenditures, violations, and deficiencies occurring at the day habilitation will require additional staffing and information technology resources to fully implement.

Few Long-Term Care Providers Face Enforcement Action for Violations.

Change in Statute

4.1 Require DADS to develop, in rule, progressive sanctions for serious or repeated violations.

The agency supports the recommendation. Developing progressive sanctions would be a useful tool in strengthening DADS enforcement efforts, and a provider's violation history does provide valuable information in the determination of sanctions.

4.2 Repeal "right to correct" provisions for long-term care providers from statute, and require DADS to define, in rule, criteria for their appropriate use.

The agency supports the recommendation. Allowing DADS greater control over limiting right-to-correct provisions related to serious or recurring violations would allow the agency to tailor its response to the circumstances of the violation.

4.3 Authorize higher administrative penalties for home health agencies and assisted living facilities and repeal limits on penalties per inspection for intermediate care facilities.

The agency supports the recommendation.

Management Action

4.4 Direct DADS to refer appeals of enforcement actions to the State Office of Administrative Hearings within 60 days of receiving a request for a hearing, directing the Office to set a timely hearing date.

DADS supports the recommendation.

4.5 Direct DADS to improve tracking of all provider violations to ensure the agency can appropriately apply progressive sanctions for repeated and serious violations and to identify enforcement trends.

The agency supports the recommendation. Improved tracking of violations will help DADS appropriately apply progressive sanctions and identify enforcement trends. However, DADS computer systems do not currently have a mechanism for capturing the severity or repetition of violations. Fully implementing this recommendation will require system modifications.

Response to Issue 5

DADS Lacks a Comprehensive, Effective Approach to Contract Management, Which Increases Financial Risks to the State.

Management Action

5.1 Direct DADS to strengthen and consolidate contract management under a new Contract Management Division.

The agency supports the recommendation.

5.2 Direct the Contract Management Division to review and approve contract planning during the early stages of procurement.

The agency supports the recommendation.

5.3 Direct the Contract Management Division to develop policies for risk-based monitoring of contracts.

The agency supports the recommendation.

DADS' Consumer Information Website Lacks Clear and Consistent Information For Helping the Public Select Long-Term Care Providers.

Change in Statute

- 6.1 Require DADS to maintain a consumer information site on the quality of long-term care providers in Texas.**

The agency supports the recommendation.

Management Action

- 6.2 Direct DADS to improve the quality and consistency of information available on QRS for all providers.**

The agency supports the recommendation to improve the quality and consistency of information available on QRS through a phased approach that begins with existing data and builds upon this framework as the agency's capabilities for identifying and tracking relevant data expand. DADS agrees that clear explanations of the broad categories of violations are needed and will develop the required help text.

- 6.3 Direct QRS staff to coordinate with the Communications Office, and other divisions as needed, to ensure QRS more effectively meets consumer needs and is more visible on the Internet.**

The agency supports the recommendation.

- 6.4 Direct DADS to ensure compliance with person-first respectful language requirements on the QRS website.**

The agency agrees with the recommendation and is undertaking a thorough review of the website.

Response to Issue 7

One DADS Reporting Requirement Is No Longer Necessary.

Change in Statute

7.1 Abolish DADS' reporting requirement on the Options for Independent Living program, and continue all other reporting requirements.

The agency supports the recommendation.

Response to Issue 8

Texas Has a Continuing Need for DADS' Services, but Decisions on Its Structure Await Sunset's Analysis of the HHS System Overall.

Recommendation

8.1 Postpone decisions on continuation of DADS' functions and structure until completion of the Sunset review of the health and human services system.

The agency agrees that caring for Texas' most vulnerable citizens, both in facilities and community settings, is a necessary function.