

DEPARTMENT OF STATE HEALTH SERVICES

TEXAS HEALTH CARE INFORMATION COUNCIL

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Agency at a Glance

The Legislature created the Department of State Health Services (DSHS) in 2003 by consolidating the Texas Department of Health, Texas Commission on Alcohol and Drug Abuse, Texas Health Care Information Council, and mental health functions of the Texas Department of Mental Health and Mental Retardation. Broadly, DSHS aims to improve health and well-being in Texas and performs the following activities to achieve this mission.

- Preventing and preparing for public health threats, including controlling the spread of infectious disease through immunizations, early detection, outbreak response, and public education.
- Operating the state's public health laboratory, including the newborn screening program.
- Contracting with providers and funding local health departments to improve community health by ensuring Texans have access to health services, prevention, and treatment.
- Promoting recovery for people with substance use disorders, mental illness, and certain infectious diseases by funding services and providing inpatient hospitalization at the Texas Center for Infectious Disease, nine state mental health hospitals, the Waco Center for Youth, and the Rio Grande State Center.
- Protecting consumers by regulating a large array of healthcare professions and facilities, as well as consumer services and products such as food and drug manufacturers.
- Regulating and supporting development of the state's emergency medical services and trauma system.
- Collecting, analyzing, and disseminating public health data and information critical to health policy decision making, including maintaining the state's vital records such as birth and death certificates.

The vision of a truly integrated health services organization has not been realized at DSHS.

Approach to Sunset Reviews of Health and Human Services Agencies

The Sunset Commission reviewed the functions and duties of DSHS and other health and human services system agencies before evaluating the Health and Human Services Commission (HHSC) and matters relating to the overall system. This approach allowed the Sunset Commission to assess each agency as currently configured, with the understanding that the overall system configuration could change through the later review of HHSC and the accumulated knowledge gained from the reviews of all health and human services agencies.

Ultimately, the Sunset Commission did not continue DSHS as a separate agency, instead recommending reorganization of all of the system agencies into a functional structure under HHSC, as discussed in the HHSC section of this report. However, the specific recommendations affecting DSHS continue to be needed to address the Sunset Commission's concerns about the agency and its programs whether they operate within DSHS or within the reorganized system. These specific recommendations are presented here as the agency and its functions are currently organized, but the Legislature will ultimately determine their placement within the overall health and human services system.

Summary

When the Legislature created DSHS in 2003, it formed one of the most complex agencies in Texas government, with responsibility for more than 200 diverse programs and an ambitious mission to improve the health and well-being of all Texans. The Sunset Commission concluded that DSHS has not been able to successfully implement the original goals of consolidation due to its overly broad focus and tendency to operate in crisis management mode, rather than providing needed strategic leadership and planning. The Sunset Commission found DSHS still operates many of its programs in pre-consolidation silos, most obviously in its mental health and substance abuse programs, and has not become the truly integrated health services organization envisioned more than a decade ago.

As a result, several of the Sunset Commission's recommendations reflect a need for DSHS to simply do its job better, particularly in areas of longstanding legislative concern such as state mental health hospitals, community behavioral health programs, and oversight of the state's public health system. The Sunset Commission also paid special attention to DSHS' wide array of regulatory programs and identified many occupational programs that could be deregulated with little risk to the public, or that would be better placed at other regulatory agencies to allow DSHS to focus on its primary public health responsibilities. The following material summarizes the Sunset Commission's recommendations on DSHS.

Issues and Recommendations

Issue 1

Resolving the Current Crisis in the State Mental Health Hospital System Requires Action, Starting Now.

In fiscal year 2013, DSHS provided inpatient psychiatric services to more than 22,000 people with serious mental illness at the state's mental health hospitals and other facilities receiving state funding. The number of patients committed through criminal proceedings (forensic commitments) has increased substantially in recent years, creating significant pressure on the system to provide services to this new population with already scarce resources. This situation is compounded by the remote and outdated condition of

the state hospital facilities, critical shortages of clinical staff, and a lack of effective communication with the judicial system. As a result, individuals needing treatment are at risk of not getting timely services to best address their needs, presenting legal and financial risks to the State.

Recommendations

Change in Statute

1.1 Require DSHS to work with the Court of Criminal Appeals to develop training to inform the judiciary about alternatives to inpatient mental health treatment.

This training curriculum would better inform the judiciary about the implications of and alternatives to civil versus forensic commitments to the state mental health hospital system. A better understanding of alternatives would help divert appropriate forensic patients from state hospitals to other, less costly treatment settings in the community, making more inpatient beds available for persons needing more intensive services.

Management Action – Nonstatutory

1.2 Direct DSHS to develop a guide for alternatives to inpatient mental health treatment in the state mental health hospital system.

Local mental health authorities and the Texas Council of Community Centers should assist DSHS in gathering information on alternatives in individual service areas, including state and locally funded facilities and other resources available in the private market. The information in the guide would include service type, targeted patient population, capacity, admissions process, and contact information for each alternative treatment setting. The guide was due by December 31, 2014.

1.3 Direct DSHS and HHSC to immediately review and streamline hiring processes and improve other personnel actions needed to ensure state mental health hospitals are appropriately staffed.

In response to this recommendation, the agencies provided a follow-up report in November 2014 detailing the initial steps that have been taken to begin to address hiring delays and other personnel actions at state hospitals, including establishing a workgroup that has proposed strategies to improve these processes.

1.4 Direct DSHS to continue expanding state mental health hospital system capacity for both forensic and civil patients by contracting with mental health providers in local communities whenever possible.

This recommendation supports continued efforts to contract for community-based alternatives to inpatient psychiatric care, as well as with community, private, local, and university hospitals to increase capacity of the state mental health hospital system and provide needed services more effectively and efficiently.

Issue 2

DSHS Has Struggled to Deliver Integrated, Outcomes-Focused Community Mental Health and Substance Abuse Services.

The Sunset Commission found that 12 years after consolidation, DSHS has still not integrated basic “front door” assessment, screening, and referral services for mental health and substance abuse, allowing

people with complex, co-occurring issues to more easily fall through the cracks. DSHS has also struggled to develop an effective approach to funding and delivering behavioral health services that encourages local involvement, best practices, and clear outcomes-based information on which to base critical system decisions.

Recommendations

Change in Statute

2.1 Require DSHS to integrate mental health and substance abuse hotline, screening, assessment, and referral functions.

This recommendation would limit eligibility for administration of substance abuse outreach, screening, assessment, and referral functions to a local mental health authority or a behavioral health authority. DSHS would be required to encourage regional collaboration and statewide coverage of these services including consolidated hotlines for both mental health and substance abuse issues following national best practices.

2.2 Require an updated, locally driven process for allocating state mental health hospital beds among regions.

This recommendation requires local mental health authorities to develop, with HHSC approval, a new, regional methodology for allocating state hospital beds, to replace the current State Hospital Allocation Methodology managed by DSHS. Regions should be determined by HHSC with input from the local authorities. HHSC must determine a daily use fee for each bed day a local authority goes over its allocation, which would be distributed to local authorities who underuse their bed allocation.

As a related nonstatutory management directive, DSHS should review current methods for allocating regional mental health funding and determine whether allocations match the prevalence of mental illness in associated regional populations.

2.3 Require HHSC to conduct a strategic review to evaluate and improve performance measurement and contracting processes across all DSHS contractors of behavioral health services.

HHSC would use third-party expert assistance in the area of health purchasing to conduct the review, which would occur in three phases. Phase 1 would identify performance measures that are not required by state statute or federal requirement, and evaluate and refine the 10 percent withhold for local mental health authorities. Phase 2 would include developing outcome measures based on best practices in performance measures and contracting. In Phase 3, HHSC must develop a web-based dashboard available to the public to allow for comparisons across behavioral health providers.

2.4 Require DSHS to overhaul regulations for community-based behavioral health treatment facilities, including creating new license types if necessary.

To provide the most effective and safe community-based treatment possible for people with mental health and substance abuse issues, DSHS would conduct a comprehensive review of current regulatory standards and contract requirements for treatment facilities, and develop updated rules for consideration by September 1, 2016. State funding would be prioritized for facilities that meet the new regulatory standards. DSHS' authority to create new crisis and treatment facility types would be limited to residential settings where the facility provides onsite mental health and/or substance abuse professional services.

2.5 Remove two DSHS advisory committees from statute.

This recommendation would remove the Local Authority Network Advisory Committee and the Drug Demand Reduction Advisory Committee from statute.

Management Action – Nonstatutory

2.6 Direct HHSC to establish an enterprise-wide behavioral health advisory committee to provide regular input and recommendations to the executive commissioner regarding behavioral health programs and issues across the health and human services system.

As part of this recommendation, the existing functions of the Council for Advising and Planning for the Prevention and Treatment of Mental and Substance Use Disorders will continue as a subcommittee to the new enterprise-wide committee and meet requirements for a mental health planning council under federal law. Existing duties of the Drug Demand Reduction Advisory Committee would also be incorporated into the new committee's duties. The executive commissioner would provide a written response to formal recommendations adopted by the committee.

2.7 DSHS should examine certain services for homeless individuals with mental illness.

DSHS should identify any barriers to providing medication services to homeless individuals with the goal of avoiding episodes of crisis and criminal justice involvement.

Issue 3

The Unmanageable Scope of DSHS' Regulatory Functions Reduces Needed Focus on Protecting Public Health.

DSHS administers more than 70 regulatory programs, licensing more than 360,000 individuals, facilities, and other entities in fiscal year 2014. State law requires the Sunset Commission to critically examine an agency's regulatory programs and in this instance, the Commission concluded DSHS' expansive regulatory responsibilities combined with shrinking resources have made its regulatory functions unmanageable. To streamline these regulatory responsibilities and allow the agency to better perform its public health functions, the Commission determined several regulatory programs could be safely eliminated, while others have no real connection to DSHS' public health mission and would be more effectively administered by other agencies.

Recommendations

Change in Statute

3.1 Discontinue 10 regulatory programs currently housed at DSHS.

This recommendation would deregulate the state licensure, certification, and registration related to bottled and vended water, certified food handler certification providers, contact lens dispensers, dyslexia therapists and practitioners, opticians, personal emergency response systems, bedding, indoor air quality in state buildings, rendering, and tanning bed facilities.¹ Prohibitions against the use of tanning beds by teenagers would be retained.

3.2 Transfer 12 regulatory programs from DSHS to the Texas Department of Licensing and Regulation, and reconstitute associated independent boards as advisory committees.

This recommendation would streamline DSHS' regulatory program by transferring regulation of athletic trainers, dietitians, fitters and dispensers of hearing instruments, midwives orthotists and prosthetists, and speech-language pathologists and audiologists to the Texas Department of Licensing and Regulation (TDLR) by August 31, 2017. The recommendation would transfer the regulation of code enforcement officers, laser hair removal, massage therapists, mold assessors and remediators, offender education providers, and sanitarians to TDLR by August 31, 2019.

Any related independent boards would become advisory committees, and TDLR and its commission would adopt all rules and make all final regulatory decisions currently requiring board action, including registering, certifying, licensing, taking enforcement action, and establishing fees.

3.3 Transfer four regulatory programs from DSHS to the Texas Medical Board, create associated advisory committees and boards, and require fingerprint-based background checks.

This recommendation would streamline DSHS' regulatory program by transferring regulation of respiratory care practitioners, medical radiologic technologists, medical physicists, and perfusionists to the Texas Medical Board (TMB) by August 31, 2017, where they can be more effectively managed.

The powers and duties of the existing related boards and committees would be replaced with new boards and committees established under the authority of TMB, and following TMB's existing model of regulation. The recommendation would establish two governor-appointed boards, the Texas Board of Medical Radiologic Technology and the Texas Board of Respiratory Care, generally following standard powers and duties for the regulation of physician's assistants. The recommendation would establish two advisory committees appointed by the President of the Medical Board, the Medical Physicist Licensure Advisory Committee and Perfusionist Licensure Advisory Committee, generally following standard powers and duties for the regulation of surgical assistants.

For all four transferred professions, the recommendation would require TMB to conduct fingerprint-based criminal background checks, through the Department of Public Safety, on all applicants and licensees.

Issue 4

DSHS Needs Additional Tools to Better Combat Fraud in the EMS Industry.

DSHS regulates the EMS industry, including about 1,500 private and public 911 and non-emergency ambulance entities; designates levels of trauma care for the state's 686 hospitals; and provides grant funds to help develop local trauma systems. These recommendations build on recent efforts by the 83rd Legislature to address Medicaid billing fraud in the EMS industry and ensure EMS providers and personnel are aware of requirements to protect public safety and comply with legitimate healthcare business practices.

Recommendations

Change in Statute

4.1 Require an EMS provider to have a physical location for its business establishment to obtain a license.

The physical location of the business establishment could be owned or leased, as long as the provider maintains the location for the duration of the licensure period as its primary place of business. Only one EMS provider would be allowed to be licensed to operate from each location. Requiring a physical location would assist regulators and law enforcement in monitoring and investigating any fraudulent or other unlawful activity.

4.2 Require an EMS provider to provide proof of ownership or a long-term lease agreement for all equipment necessary for safe operation of an EMS company, such as ambulances, stretchers, and defibrillators.

Proof of ownership would ensure providers actually possess the equipment needed to administer any medically necessary service expected of an EMS provider and help prevent fraudulent businesses from entry into the EMS industry.

4.3 Authorize DSHS to require jurisprudence examinations for all EMS licensees.

This recommendation would ensure providers have familiarity with laws and regulations relating to the EMS industry in Texas.

4.4 Clearly authorize DSHS to take disciplinary action against EMS providers or personnel based on findings by a governmental entity with delegated authority to conduct inspections.

To make the enforcement process easier, faster, and more effective, this recommendation would give DSHS explicit authority to take enforcement action based on findings from local inspections or investigations delegated by DSHS.

4.5 Require DSHS to develop a formal process to refer nonjurisdictional complaints relating to EMS to appropriate organizations.

DSHS would be required to track and formally refer EMS-related complaints outside of the agency's jurisdiction to the appropriate organization, including separately tracking billing fraud complaints.

4.6 Require DSHS to collect, maintain, and make publicly available detailed statistical information on complaints regarding EMS licensees.

DSHS would be required to track and report the information according to specific criteria such as the number, source, and types of EMS complaints received, the reason behind the complaint, the average time to resolve the case, outcomes of investigations, and other factors.

Issue 5

DSHS Has Not Provided the Leadership Needed to Best Manage the State's Public Health System.

Texas has a complex and fragmented public health system with responsibility for providing services falling on DSHS and its eight Health Service Regions, as well as local health departments governed by cities and counties. Texas' decentralized approach to delivering public health services, while providing local control and flexibility, has long presented challenges in coordinating public health efforts. The roles and responsibilities of DSHS and local health departments operating in the same areas are not clearly defined, leading to inefficiency and at times, confusion over who is doing what. Without a clear plan of action, DSHS cannot provide expected leadership and target limited resources to help build local capacity.

Recommendations

Change in Statute

5.1 Require DSHS to develop a comprehensive inventory of the current roles, responsibilities, and capacity of DSHS central office, DSHS Health Service Regions, and each local health department, district, and authority in the state.

DSHS would comprehensively document the division of labor and create an inventory of services and programs each entity currently provides, including the level of service provided. DSHS should identify areas where significant gaps or overlap exists. DSHS should solicit input from its Public Health Funding and Policy Committee and local health departments before commencing the effort.

5.2 Require DSHS to establish clear goals for the state's public health system and to develop an action plan with regional strategies and milestones to meet these goals.

DSHS, with input and advice from the Public Health Funding and Policy Committee, would be required to establish an overarching vision for DSHS central office, DSHS Health Service Regions, and local health departments, and statewide priorities for improving the public health delivery system. DSHS would develop region-by-region goals and strategies with milestones, dates, performance measures, and resources needed, and work with the committee to identify any changes to policies, procedures, funding formulas, or laws needed to achieve the goals and improve working relationships.

Management Action – Nonstatutory

5.3 Direct DSHS to develop a system to categorize different types of local health departments based on the services they provide.

These categories should help show how the responsibility for providing public health services is currently shared between the state and local jurisdictions, inform what improvements may be needed in each region, and provide goals for specific steps that could be taken to increase the scope or quality of local services.

Issue 6

DSHS Has Not Taken Needed Steps to Strengthen the Security of Vital Statistics.

Vital records are the official documents of every person's birth, death, marriage, or adoption in Texas. These important records are susceptible to fraudulent activity relating to personal identity theft, access to government benefits, and voting. Vulnerability is compounded by the fact that about 48,000 users have access to DSHS' electronic system for registering vital events and, as a dual registration state, vital record information is maintained centrally by DSHS and locally in 422 designated local registration jurisdictions. Despite a series of audit reports recommending needed improvements to the security and efficiency of the state's vital records system, DSHS has not yet fully implemented or prioritized needed changes to protect this critical information.

Recommendations

Change in Statute

6.1 Require all local registrars to submit a self-assessment report to DSHS annually.

Management Action – Nonstatutory

6.2 DSHS should develop a formal desk audit policy and increase the use of desk audits in monitoring local registrars' offices.

Change in Statute

6.3 Require identity verification through notarization for all mail-in vital records orders.

To decrease the likelihood of fraud, this recommendation would require individuals to prove their identity through third-party verification, or notarization, to receive vital records by mail from DSHS or a local registrar's office.

6.4 Expand DSHS' authority to require fingerprint-based criminal history background checks for anyone with access to the state's electronic registration system.

This recommendation would apply to all persons with access to vital records and the vital records electronic registration system, including DSHS employees, contractors, local registrars, medical professionals, funeral directors, and others.

Management Action – Nonstatutory

6.5 DSHS should prioritize and regularly report on its progress implementing the Texas Electronic Vital Events Registrar system.

The progress reports should include a specific description of current and future needs of this project along with target dates of completion for all steps in the process and DSHS' status in meeting them.

6.6 DSHS should conduct a feasibility study for creating a single registry for births, deaths, marriages and divorces in Texas.

DSHS should provide an analysis of current systems, and an estimate of cost and any statutory changes that would be required to implement such a system.

Issue 7

The State Has a Continuing Need for the Texas Health Care Information Collection Program.

Originally created as a separate state agency in 1995, the duties of the Texas Health Care Information Council (THCIC) were transferred to DSHS when the agency was created in 2003. Today, the health care information collection program within DSHS' Center for Health Statistics performs THCIC's former duties to collect data from hospitals and ambulatory surgical centers. This information summarizing inpatient and outpatient stays is used to produce data files available for public use and specialized research purposes. The 83rd Legislature specifically directed the Sunset Commission to examine the mission and purpose of the program in conjunction with its review of DSHS. The Sunset Commission found that DSHS appropriately collects and handles the data, and that the information serves a useful purpose. However, the program has not yet met expectations to put the data to best use, including providing information to consumers, and some requirements should be adjusted to reduce the reporting burden on small providers.

Recommendations

Change in Statute

7.1 Continue the health care information collection program with changes to improve the reporting process for providers.

Under this recommendation, DSHS would continue to collect inpatient and outpatient discharge data, but would create a waiver process to exempt certain small facilities. DSHS should also replace the current data certification process with an optional data validation process that gives facilities 30 days to verify the accuracy of their data submissions. This recommendation would also clarify in law that providers are not liable for damages or penalties relating to inappropriate use or disclosure of data after submission to the State. Finally, the recommendation directs DSHS to provide the data to the State's current Medicaid External Quality Review Organization (EQRO), for inclusion in the EQRO database.

The Sunset Commission recommended several additional improvements to overall health and human services data collection and analytics, discussed in the HHSC section of this report.

Management Action – Nonstatutory

7.2 Direct DSHS to improve how healthcare data is used by the agency and displayed for consumers, particularly the outpatient data.

Issue 8

DSHS' Numerous Advisory Committees Lack Strategic Purpose, Limiting Their Effectiveness and Wasting Resources.

An agency as large and diverse as DSHS requires effective avenues for stakeholder input. However, the Sunset Commission found DSHS does not have a strategic approach to managing its more than 55 advisory committees, councils, and independent boards and that having so many statutorily created committees unnecessarily limits the agency's ability to meet evolving needs and changing conditions.

Recommendations

Change in Statute

8.1 Remove six of DSHS' advisory committees from statute and direct DSHS to re-establish active committee functions in rule as needed.

The recommendation would remove the inactive Arthritis, Texas Medical Child Abuse Resources and Education System (MEDCARES), Youth Camp Training, and Sickle Cell Advisory Committees from statute, as well as the Advisory Panel on Health Care Associated Infections and Preventable Adverse Events and Worksite Wellness Advisory Board. The recommendation would direct DSHS to use its existing authority to re-create any active advisory committees in rule as needed, seeking input from existing committee members and other stakeholders.

Management Action – Nonstatutory

8.2 Direct DSHS to review and revise its internal advisory committee policies and to regularly evaluate all of its advisory groups.

DSHS should revise policies to include clear, agencywide goals for the creation, use, and expiration of advisory committees and informal stakeholder groups.

Fiscal Implication Summary

Overall, these recommendations would result in the loss of approximately \$836,625 per year to the General Revenue Fund because of deregulating certain occupations.

Issue 1 — Developing training on alternatives to inpatient mental healthcare treatment would have a small cost, but the Legislature has already identified existing funding for judicial training through the Court of Criminal Appeals that could be used for this purpose.

Issue 2 — Any costs associated with using a third-party expert to assist in a strategic review of DSHS' behavioral health contracting could be absorbed within HHSC's existing budget for obtaining outside expertise.

Issue 3 — Discontinuing 10 regulatory programs would result in the loss of approximately \$836,625 per year to the General Revenue Fund and a reduction of 14 full-time DSHS staff positions, beginning in fiscal year 2016. The loss would result from deregulated programs no longer collecting excess fees that are currently deposited in the General Revenue Fund.

The fiscal impact of transferring 12 regulatory programs from DSHS to TDLR and four regulatory programs from DSHS to TMB should be cost neutral, with a straight transfer of related funds and staff from DSHS to the new agencies. TDLR or TMB may need to request additional appropriations and staffing to support the administration of the additional programs within their existing structures, such as additional legal counsel, information technology, or other support services. If approved by the Legislature, any one-time startup or ongoing additional costs would be recovered through fees.

Department of State Health Services

Fiscal Year	Loss to the General Revenue Fund	Change in FTEs From FY 2015
2016	(\$836,625)	-14
2017	(\$836,625)	-14
2018	(\$836,625)	-14
2019	(\$836,625)	-14
2020	(\$836,625)	-14

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¹ The Sunset Commission originally recommended that DSHS' role in approving food manager certification providers also be discontinued. However, the chair and vice chair subsequently directed, with notification to the full Sunset Commission, that the legislation be drafted in a way to ensure individuals seeking food manager certifications can continue to take required exams via the internet, as eliminating the online option was an unintended consequence of the original recommendation. Due to conflicts between state and private certification requirements, the State's role in approving food manager certification providers must be continued to meet this intent.