



Comments on the Sunset Commission Staff Report Health and Human Services Commission

October 17, 2014

The Texas State Long-term Care Ombudsman is directed by the Older Americans Act to comment on and make recommendations on policy that impacts Texans living in nursing homes and assisted living facilities. The Office of the Texas State Long-term Care Ombudsman is independent of DADS and HHSC. Comments provided below are made on behalf of residents and the long-term care ombudsman program, not DADS.

Issue 1: The Long-term care ombudsman program acknowledges that coordination of human services is incomplete and implementation of managed care is shifting agency functions. However, the consolidation of five agencies into one creates numerous conflicts of interest.

- **Recommendation 1.1 would create more conflicts of interest.** A conflict such as one agency serving as both operator and regulator of the same facility creates public mistrust of the agency's ability to serve people without compromise of competing interests. Examples within the current human services system include operating and regulating state supported living centers and state hospitals. These conflicts would continue to exist and with a single agency, new conflicts would emerge such as the state-appointed guardianship program in conflict with adult protective services decisions, and regulatory functions with informal dispute resolution decisions. As an example, a complaint about abuse of a person needs to be investigated by an agency different than the agency with the employee who is the subject of the allegation. Separation is necessary to ensure an investigation is not negatively influenced by broad agency interests.

Another conflict pertains to Medicaid functions. HHSC contracts with many providers and to fulfill contracting requirements (including network adequacy), the agency needs to incentivize providers to join the managed care system. Such contract requirements are an important part of creating a robust managed care system that offers choice and access to consumers across the state. These requirements, however, also create a conflict of interest when combined with the regulatory oversight responsibilities – as would be the case under a single agency. For example, nursing homes will be carved into the managed care system on March 1, 2015. HHSC has a responsibility to ensure that nursing facilities contract with all available managed care organizations so residents have choice and access to care. If all health and human services agencies were combined, the same agency responsible for incentivizing provider participation

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will be responsible for regulating those providers. The requirement to maintain provider participation and cooperation may hinder strong regulatory oversight and enforcement. As outlined in the DADS Sunset Staff Report, regulatory enforcement needs repair. That requires clear separation and independence from operations and managed care contracting functions.

Recommendation 1.1 appears to create additional conflicts for the long-term care ombudsman program with Medicaid functions and adult protective services. Concerns about the program's existing conflicts were outlined in issue eight of the DADS Self Evaluation Report, but not addressed in the DADS Staff Report. While not directly addressed in the HHSC Staff Report, generally ombudsman services are recommended as a centralized service in the functional organizational chart of the report. If ombudsman services of all types were combined, the office of the long-term care ombudsman might be lumped in with other ombudsman functions, though the long-term care ombudsman program is specialized and must maintain its federal requirement to be an independent office. See related comments in Issue 12 below.

- **Recommendation 1.1 to consolidate agency councils would reduce opportunities for public input and may delay rulemaking.** HHSC enterprise agencies serve some of the most vulnerable Texans, many of whom rely on someone else to be a voice for the person's needs and struggles within the system. Consumers and consumer advocates need to have equal voice with provider stakeholders in policy planning and development, and quality improvement. Residents living in nursing homes and assisted living facilities already face challenges getting their concerns heard by state agencies. Consolidation of councils and the councils' corresponding opportunities for public input will be hindered by a single council approach for the system. Instead of consolidation of councils, the ombudsman program recommends specialized councils be continued or formed to inform the human services agencies about the impact of services and policies on the public.

Issue 12: The Long-term care ombudsman program agrees some websites and phone lines lack coordination. Access to information must be user friendly and engaging so Texans know where and how to get help, but one phone number or website cannot tackle the complexity of human services inquiries.

- **Recommendations 12.1 and 12.2 do not take into account the specialized nature of human service programming.** The health and human services agencies serve a large and varied consumer population. These consumers have complex needs, including communication needs. While the current communication system could be improved upon and coordinated more efficiently, combining all systems – websites and consumer intake lines – may not achieve the stated desired outcome. It is impractical to train and retain professionals in a single call center to manage all human service inquiries, particularly in a state as diverse and vast as Texas. Further, having a single intake line may violate confidentiality requirements of programs like the office of the state long-term care ombudsman. While the idea of agency-wide information

sharing sounds ideal for efficiency's sake, the public's trust is in our hands and confidentiality and privacy concerns should limit information exchange.



- **Recommendation 12.3 addresses some important issues, but should also address the public's need for independent ombudsman services.** The public needs effective ombudsman services to help people overcome bureaucratic barriers and inform executives to shape consumer-oriented policies that make sense. Solidifying the independence of ombudsman functions should be part of any changes to its authority. Ensuring independence of the ombudsman functions is essential for the ombudsman to be an effective voice for consumers of health and human services.

The Sunset staff report outlines the need for the HHSC Ombudsman to have authority to collect and report standard complaint information. The long-term care ombudsman program supports this recommendation because data analysis is essential to inform a program about consumer interests and informs the system about problems from a consumer perspective. All ombudsmen need authority to fully represent the interests of consumers, such as Medicaid recipients in fair hearings. This can only be achieved through ombudsman functions that are independent and expected to give voice to consumer interests above all else.

Finally, an independent, adequately staffed Medicaid managed care ombudsman program is needed to represent the interests of thousands of managed care consumers who must navigate managed care enrollment and address problems within these dynamic systems.

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