

# DEPARTMENT OF AGING AND DISABILITY SERVICES

*Amy Trost, Project Manager*

## Agency at a Glance

The Legislature created the Department of Aging and Disability Services (DADS) in 2003 as the State's single long-term care agency by consolidating the Department of Human Services and Department on Aging along with certain programs from the Department of Health, Texas Rehabilitation Commission, and the Texas Department of Mental Health and Mental Retardation. Today, DADS aims to ensure access to a comprehensive array of aging and disability services in local communities. To achieve its mission, DADS carries out the following activities.

- Directly providing or contracting for long-term care services for people with disabilities and the elderly.
- Regulating a range of providers serving these populations in facilities or home settings to ensure individuals' health and safety.

---

*Texas must seriously consider closing some of its most costly and problematic state supported living centers.*

---

### **Approach to Sunset Reviews of Health and Human Services Agencies**

The Sunset Commission reviewed the functions and duties of DADS 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 DADS 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 DADS continue to be needed to address the Sunset Commission's concerns about the agency and its programs whether they operate within DADS 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

DADS oversees long-term care services and supports that help more than a million of the state's most vulnerable residents — people with disabilities and the elderly — to live dignified, independent, and productive lives. Overseeing a maze of complex programs, facilities, and providers is a huge task, posing tremendous challenges during a time of change and uncertainty.

A critical and ongoing challenge facing DADS is the operation of 13 state supported living centers (SSLCs) — residential facilities for people with intellectual and developmental disabilities (IDD). Texas developed this system of centers over many years, housing as many as 13,700 residents when placing people with IDD in institutions was the norm. Today, the vast majority of people with IDD live in the community, and the 13 centers only housed about 3,650 people in fiscal year 2013.

Yet maintaining this large system of state-run facilities is costly, involving more than 13,900 employees and a budget of \$661.9 million a year. With the costs to taxpayers growing unsustainably, the State must seriously consider closing some of the most problematic centers, while acknowledging the vulnerable nature of the residents and the emotions involved.

Sunset also found that DADS needs to step up to the plate and more aggressively take on its role as a regulator. DADS oversees more than 10,000 providers serving the elderly and people with disabilities — ranging from 24-hour care in nursing homes to home health agencies serving people able to live more independently. However, DADS takes few enforcement actions, even when confronted with serious and repeat offenses. In the agency's defense, statutory provisions keep penalty caps low and prohibit the collection of fines for many violations later corrected by providers. DADS cannot effectively ensure the safety of these vulnerable populations while wearing statutory handcuffs and without effective enforcement tools. The following material summarizes the Sunset Commission's recommendations on DADS.

## Issues and Recommendations

### *Issue 1*

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

Texas spent \$661.9 million in fiscal year 2013 to support 13 SSLCs that served about 3,650 people with IDD. Texas is one of the few remaining states that maintain a large system of public residential institutions for this population.

SSLCs have been a hotbed of controversy over the last forty years, including the current U.S. Department of Justice oversight due to safety and quality of care issues. Meanwhile, the State spends a tremendous amount of money and effort trying to improve the quality of care at the centers. Delivering services to a person for a year in an SSLC costs about \$113,000 more than serving that person in an equivalent program in the community. Maintaining the centers' dilapidated infrastructure adds even more cost.

## Recommendations

### ***Change in Statute***

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

In transferring residents out of the Austin SSLC, DADS should transition as many people to the community as possible while still respecting resident choice in the decision. All net proceeds from the sale or lease of the Austin SSLC must be dedicated for services for people with IDD including those with a dual diagnosis of IDD and mental illness.

## **1.2 Establish the State Supported Living Center Restructuring Commission to develop recommendations for legislative action in 2017 to right-size the number of SSLCs required for the level of need in Texas.**

The eight-member Restructuring Commission would be composed of five individuals from the general public appointed by the governor by September 1, 2015 and three non-voting ex officio members. The head or designee of the HHSC, the Texas Facilities Commission, and the General Land Office would serve as non-voting members to provide relevant expertise.

The Restructuring Commission would be directed to evaluate SSLCs based on the following objective criteria and recommend how many SSLCs should be closed and specify which ones. The Restructuring Commission could also add its own criteria.

- Quality of services provided by the facility, including consideration of the SSLC's most recent certification inspections, and the center's ability to meet the minimum intermediate care facilities standards.
- Costs of operating SSLCs.
- Compliance with the Department of Justice settlement agreement.
- Availability of community service providers and resources in the area capable of delivering the quality and level of care each resident would require.
- Specialty services available at SSLCs, including the ability of an SSLC to serve alleged offenders or high-risk residents.
- Availability of employment opportunities for SSLC employees if the center closes.
- Infrastructure deficiency costs.
- Property values, market demand, and deed restrictions.
- Maintaining geographic distribution of SSLCs statewide.

While a certain number of SSLCs are not required or intended to be closed, an objective analysis from the Restructuring Commission may reveal that certain facilities need to be closed to address the declining enrollment, questionable quality of care, compliance violations, and significantly increasing costs associated with those specific SSLCs.

The Restructuring Commission would report its recommendations to the 85th Legislature by December 1, 2016. The 85th Legislature would either approve or disapprove the Restructuring Commission's recommendations through an up or down vote and prohibit amendments to the legislation containing the recommendations. If the Legislature approves the recommendations, the Restructuring Commission's decisions will take effect on September 1, 2017.

## **1.3 Require DADS to close any SSLCs designated by the SSLC Restructuring Commission and approved by the 85th Legislature no later than August 31, 2025.**

While the Restructuring Commission's recommendations would take effect September 1, 2017, this recommendation would give DADS up to eight years to fully implement the closures. This would help ensure DADS has sufficient time to effectively transition affected residents to an appropriate community setting or another SSLC.

## ***Management Action – Nonstatutory***

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

DADS should focus on decreasing compliance violations, decreasing instances of abuse, neglect and exploitation, and increasing quality of care and work staff retention while building community relationships. DADS must also ensure that those residents living at SSLCs who voluntarily wish to transition into the community through home and community-based services are given the proper information, guidance, support, and assistance for a successful transition.

## ***Issue 2***

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

Residents of Texas' 13 SSLCs have a wide range of needs, including complex medical and behavioral issues. Many of those residents can be successfully served in a community setting, at a cost savings to the State. However, the State must build community capacity to better serve these higher need residents. Specifically, residents with complex behavioral issues benefit from the extra support of a crisis management team, but such teams are not available statewide. The agency also lacks clear direction and support to better use its existing resources in SSLCs, where experience with the IDD population could be leveraged to support people living in the community and private providers.

## **Recommendations**

### ***Change in Statute***

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

This recommendation would require DADS to expand crisis intervention teams to areas of the state where none exist. To accomplish this goal, DADS should evaluate the effectiveness of the various crisis teams for people with IDD and mental health issues being funded by the 1115 demonstration waiver and select the models that best provide comprehensive, cost-effective support. This recommendation would help people with challenging behaviors live in the community by supporting them through crises that could put them at risk of re-institutionalization.

#### **2.2 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.**

SSLCs have the authority to provide medical, behavioral, and other SSLC services to people in the community who meet certain eligibility requirements. This recommendation amends statute to require DADS to establish the array of support services an SSLC can provide and create a fee schedule for those services in rule. These rules would require approval and adoption by HHSC's executive commissioner. This recommendation gives providers and the public a chance to comment on the services that will be offered and the fee schedule.

## ***Change in Appropriation***

### **2.3 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.**

This recommendation expresses the will of the Sunset Commission that these committees consider adding a rider authorizing SSLCs to retain fees collected for providing services to eligible community clients, and making other conforming changes to rider text as needed. The fees collected would be reflected as appropriated receipts that the SSLC would receive to cover the cost of the services delivered.

## ***Management Action – Nonstatutory***

### **2.4 DADS should leverage expertise at SSLCs to support providers in the community.**

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

## ***Issue 3***

### **Texas Lacks Effective Means for Ensuring Adequate Care in Day Habilitation Facilities.**

Day habilitation facilities provide services in a group setting during weekday work hours and are offered to DADS clients through community-based IDD waiver and intermediate care facility (ICF) programs. In fiscal year 2013, the State spent more than \$96 million on day habilitation services. While day habilitation facilities are not licensed by state or federal government, DADS requires program providers to ensure their subcontractors, including day habilitation facilities, provide safe and adequate services. However, these requirements vary across programs, and contracts between facility owners and providers are not required to include basic quality and safety measures. In addition, DADS does not have basic information on how many of its clients attend day habilitation, where the facilities are located, or problems at these facilities. Recent federal guidelines have also raised questions about how day habilitation services may best be provided.

## **Recommendations**

### ***Management Action – Nonstatutory***

#### **3.1 Require DADS to develop, in rule, 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.**

This recommendation requires DADS to specify minimum standard requirements that should include running background checks on employees and volunteers, conducting fire drills, posting abuse hotline information, and following client plans. Rules implementing the requirements must be adopted by September 1, 2016.

As most providers already require these basic standards to ensure the safety of their clients, this recommendation would ensure consistent protections for all DADS clients receiving day habilitation services. If a day habilitation facility cannot meet these expectations, the provider could more easily terminate the contract and move the client into a more appropriately safe environment.

## ***Change in Statute***

### **3.2 Require DADS to create an advisory committee to address the redesign and potential licensure or certification of all day habilitation programs.**

DADS would appoint members to the committee representing community-based waiver providers, day habilitation facility owners, and advocates by September 1, 2015. The committee would examine potential changes to day habilitation services based on recent federal guidelines that define the settings in which states may provide services in home and community-based waivers for people with IDD. The committee would also consider appropriate funding for services; reimbursable settings and services; staffing ratio requirements; safety requirements; and other required standards for the provision of day habilitation services. The committee would make its recommendations for the appropriate regulation of day habilitation programs, including licensure or certification, to the Legislature no later than September 1, 2016 and then disband. These statutory requirements would expire December 31, 2016.

### **3.3 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.**

This recommendation would require the Department of Family and Protective Services (DFPS) to track and report to DADS on the number of confirmed, unconfirmed, inconclusive, and unfounded allegations of abuse, neglect, and exploitation at day habilitation facilities serving DADS clients at least once a year. Investigative staff at DFPS would continue to work with and hold the program provider accountable for any abuse, neglect, or exploitation of a person under the program's care. However, this recommendation would require data to be tracked by day habilitation facility, allowing DFPS and DADS to identify trends and problems at facilities. DADS could also use this information to educate providers on common problems to look out for when contracting with a day habilitation facility.

### **3.4 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.**

DADS would compile a list of day habilitation facilities that contract with DADS providers, their location and services, an estimate of the number of DADS clients served monthly, and an estimate of monthly expenditures on day habilitation services by each program. Program providers would be required to report this day habilitation information to the agency once a year. DADS would track any violations and deficiencies found at a day habilitation facility during a DADS inspection tied to a provider. In addition, DADS would incorporate information received from DFPS on abuse, neglect, or exploitation in day habilitation facilities into the data.

DADS would continue to hold the program provider accountable for the violations and deficiencies by day habilitation facilities, but this recommendation would require DADS to collect data by day habilitation facility to identify trends and problems at the facilities.

## ***Issue 4***

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

DADS licenses more than 10,600 long-term care providers serving more than 1.3 million of Texas' most vulnerable residents, primarily the elderly and persons with disabilities. These providers range from nursing homes to home health agencies that, by virtue of state licensure, participate in a multi-billion dollar long-term care industry.

However, statutes hamstring DADS' ability to effectively protect clients, creating a regulatory touch so light that the industry feels little consequence from committing repeated violations, including serious violations that can result in harm or even death. Statute prohibits DADS from applying penalties against most violations since providers get multiple opportunities to correct them before ever facing a penalty. In addition, DADS cannot assess adequate administrative penalties as deterrence since statutory penalty caps fall well below standard amounts for health-related violations.

## **Recommendations**

### ***Change in Statute***

#### **4.1 Require DADS to revoke the license of a nursing facility that is found to have a total of three or more Level 4 deficiencies in a 24-month period.**

This recommendation would require DADS to revoke nursing facility licenses for three or more deficiencies that cause, or are likely to cause, serious harm or death with each deficiency occurring on a separate day, in a 24-month period. DADS would consider seeking the appointment of a trustee to operate the nursing facility, obtaining a new operator for the nursing home, or assisting with the relocation of the residents to other licensed institutions in the event a license is revoked.

#### **4.2 Require DADS to develop, in rule, progressive sanctions for serious or repeated violations committed by long-term care providers.**

This recommendation would enable the agency to apply a full range of sanctions to long-term care providers for serious or repeated violations that jeopardize public health, life, and safety. DADS would develop rules regarding the type and frequency of serious violations to guide agency decisions for progressive sanctions up to and including license revocation. DADS should ensure that revocation authority appropriately targets only the severe cases of repeated noncompliance by providers that fail to respond to other progressive sanctions.

Rules would be adopted specific to each provider type to include: levels of violations subject to enhanced administrative penalties for repeated violations; serious violations that could result in suspension or revocation of a license; and timeframes for determining patterns of repeated violations that may warrant revocation, such as repeated violations found during consecutive regular inspections, or other timeframes as appropriate. These rules would require approval and adoption by HHSC's executive commissioner by September 1, 2016.

#### **4.3 Repeal “right to correct” provisions for long-term care providers from statute, and require DADS to define, in rule, criteria for their appropriate use.**

Under this recommendation, “right to correct” statutes would be repealed and instead would be set in rule, to include the types of minor violations providers could correct within specific timeframes. By setting these criteria, DADS could appropriately specify the types of violations that would qualify for right to correct and those that do not. DADS should work closely with provider stakeholders in developing these rules. These rules would require approval and adoption by HHSC’s executive commissioner by September 1, 2016.

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

Current penalty maximums for these provider types are not consistent with similar providers and may not provide effective deterrence for serious violations. The following changes aim to match penalty amounts to the potential harm that can result from violations of licensing regulations for licensees that provide healthcare-related services in community and residential settings.

For home health agencies, increase the maximum administrative penalty from \$1,000 to \$5,000 per violation, per day. For assisted living facilities, increase the maximum administrative penalty from \$1,000 to \$5,000 per violation, and authorize each day that a violation continues to be considered a separate violation. For intermediate care facilities, repeal limits on penalties per inspection of \$5,000 for small facilities and \$25,000 for large facilities, relying instead on the current range of penalties of \$100 to \$5,000 per violation, per day.

These recommendations would allow DADS to more effectively deter licensees from committing the most serious violations at the top of the penalty range and more appropriately hold accountable those who commit multiple violations.

### ***Management Action – Nonstatutory***

#### **4.5 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.**

This change aims to facilitate the elimination of the backlog of provider appeals by October 1, 2016.

#### **4.6 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.**

#### **4.7 Require DADS to identify inconsistencies across the state in the interpretation and application of statutes and regulations against long-term care facilities.**

This recommendation requires DADS to target specific training and resources to ensure the agency applies statutes and regulations consistently and objectively across DADS’ regions during inspections and surveys.

## *Issue 5*

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

DADS spends more than \$2.3 billion annually through more than 4,300 contracts of different types that provide community services and support agency operations. DADS has a fragmented approach to contracting, with many of these activities occurring within program silos. This decentralized approach limits HHSC's understanding of the full scope and financial risks associated with DADS contracts.

Further, DADS lacks needed contract management expertise, and contract management is not independent from program administration. As a result, DADS cannot ensure that contracts are adequately monitored and that contract sanctions are consistently and fairly applied throughout the agency.

## **Recommendations**

### ***Management Action – Nonstatutory***

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

As part of this recommendation, DADS should define the roles and responsibilities between contract management and program functions. The agency should set a goal of implementing the duties of the Contract Management Division and the new organizational structure by September 1, 2016.

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

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

## *Issue 6*

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

DADS operates a consumer information website called the Quality Reporting System (QRS) that displays some ratings for long-term care providers, as well as data on regulatory performance and general quality of care. Although Texas' site was one of the first of its kind, predating a similar, federal website, the site has not maintained its comprehensiveness, is difficult to understand, does not consistently present information among providers, and has not kept pace with the usability trends for current technology.

## Recommendations

### *Change in Statute*

- 6.1 Require DADS to maintain a consumer information site on the quality of long-term care providers in Texas, and require the site to immediately note that a facility has lost its Medicaid certification.**

While statute requires compliance information, this recommendation would require DADS to operate a long-term care information site for consumers, ensuring the agency provides this important information in the future. DADS should post an overall rating, along with regulatory performance and quality of care information for each provider, as available. Additionally, statute should require DADS to periodically solicit public input regarding the website's content, usability, and accessibility for persons with disabilities.

### *Management Action – Nonstatutory*

- 6.2 Direct DADS to improve the quality and consistency of information available on QRS for all providers.**
- 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.**
- 6.4 Direct DADS to ensure compliance with person-first, respectful language requirements on the QRS website.**

## *Issue 7*

### **One DADS Reporting Requirement Is No Longer Necessary.**

The Sunset Act establishes a process for the Sunset Commission to consider if reporting requirements of agencies under review need to be continued or abolished. Of the 19 reports state law requires DADS to produce, the Sunset Commission identified one for elimination.

## Recommendation

### *Change in Statute*

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

This recommendation would eliminate a report from a pilot project that no longer exists. The other 18 reports still provide useful information and should be continued.

## Fiscal Implication Summary

Overall, the recommendations would result in a substantial net positive fiscal impact to the State over the next five years from savings associated with closing the Austin State Supported Living Center and costs of improving community supports for people transitioning out of SSLCs, as described below.

**Issue 1** — Closing the Austin SSLC would result in savings to state and federal funds that increase from \$7.25 million in fiscal year 2016 to \$22.6 million in fiscal year 2018 in operating costs. Sale of the Austin SSLC would result in an estimated revenue gain of \$25.1 million in 2018. This recommendation would also result in a reduction of SSLC employees of 408 in 2016 to 1,236 in 2018. Establishing the Restructuring Commission would require two staff and an annual cost of \$150,000 for fiscal years 2016 and 2017.

**Issue 2** — Expanding community crisis services would have estimated costs to the State of \$2.5 million in fiscal year 2016 and increasing to \$5 million by fiscal year 2017.

**Department of Aging and Disability Services**

<b>Fiscal Year</b>	<b>Savings to State and Federal Funds*</b>	<b>Revenue Gain to State Funds</b>	<b>Change in FTEs From FY 2015</b>
2016	\$4,750,000	\$0	-406
2017	\$5,770,000	\$0	-616
2018	\$17,600,000	\$25,100,000	-1,236
2019	\$17,600,000	\$0	-1,236
2020	\$17,600,000	\$0	-1,236

\* To avoid the loss of federal funds, the Legislature should consider reinvesting these savings to reduce the waiting list for the Home and Community-based Services program.

