Sunset Advisory Commission

Staff Report with Hearing Material

Department of Aging and Disability Services

June 2014

Sunset Advisory Commission

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Cover Photo: The Texas State Capitol was completed in 1888. With the Goddess of Liberty atop the dome, the Texas State Capitol Building is 19 feet taller than the U.S. Capitol Building in Washington, D.C. The photo shows the north facade of the Capitol. The gardens in the foreground sit atop a 667,000 square foot underground structure, the Capitol Extension, which houses many legislators’ offices and committee rooms. Photo Credit: Janet Wood

Department of Aging and Disability Services

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This document is intended to compile all recommendations and action taken by the Sunset Advisory Commission for an agency under Sunset review. The following explains how the document is expanded and reissued to include responses from agency staff and the public.

- *Sunset Staff Report, May 2014* – Sunset staff develops a separate report on each individual agency, or on a group of related agencies. Each report contains both statutory and management recommendations developed after the staff's extensive evaluation of the agency.

- *Sunset Staff Report with Hearing Material, June 2014* – Adds responses from agency staff and the public to Sunset staff recommendations, as well as new issues raised for consideration by the Sunset Commission at its public hearing.

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Summary

Summary

As one of Texas' largest state agencies, the Department of Aging and Disability Services (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.

Texas can no longer delay closing some of its most costly and problematic state supported living centers.

A critical and ongoing challenge facing DADS is the operation of 13 state supported living centers — 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 house about 3,650 people.

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. Despite transitioning many residents into the community, Texas has not closed a facility since the 1990s. With the costs to taxpayers growing unsustainably, the State must close some of the most problematic centers, while acknowledging the vulnerable nature of the residents and the emotions involved.

The steady expansion of managed care is significantly changing the role of DADS in overseeing facilities and community-based programs for the elderly and people with disabilities. As many of these programs transfer to the Health and Human Services Commission (HHSC), DADS' role in regulating these providers will take precedence over its administration of these services. However, the agency and its leadership remain in a reactive mode, awaiting outside direction rather than charting a course to deal with the changes that will impact its operations over the coming years.

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.

Contracting represents another major area in need of improvement. While DADS contracts for a substantial portion of its services, the management and monitoring of contracts is fragmented across hundreds of staff throughout the agency, often in silos tied back to the various pre-2003 legacy agencies. As HHSC strives to control contract expenditures and outcomes system-wide, DADS has yet to exert adequate control over its thousands of contracts involving billions of dollars each year.

The Sunset review of DADS aims to ensure much needed action on several fronts — from the support of people moving into the community to their protection in programs regulated by DADS, whether in a facility or the community. Recommendations in this report address the need for more consistent crisis support, adequate rates for people with more complex needs, ensuring the safety of DADS' clients in day habilitation facilities, strengthening DADS' authority to take action to address serious and repeat violations, centralizing contract functions, and more effectively providing information to consumers about long-term care options.

Texas clearly needs the long-term care services and regulatory oversight DADS provides. However, with the move to managed care and HHSC taking over many of DADS' programs, the future of DADS' organizational structure remains up in the air. The evaluation of this structure, along with other issues related to DADS' role in the health and human services system, must be considered as part of the Sunset review of the system, currently underway and scheduled for completion in the fall of 2014.

The following material highlights Sunset staff's key recommendations on the Department of Aging and Disability Services.

Issues and Recommendations

Issue 1

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

As discussed above, Texas spent $661.9 million in fiscal year 2013 to support 13 state supported living centers (SSLCs) that serve about 3,650 people with intellectual and developmental disabilities (IDD). Texas is one of the few remaining states that maintain a large system of public residential institutions for this population. Although the service delivery system for people with IDD has shifted to the community, Texas has only downsized the SSLCs, maintaining this costly infrastructure.

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.

Staff concluded that the State can no longer afford to support all 13 centers. Closing the Austin SSLC and five additional centers will allow DADS to focus its efforts on improving the remaining seven SSLCs and increase the capacity of programs for people with IDD living in the community.

Key Recommendations

- Require DADS to close the Austin SSLC by August 31, 2017.
- Establish the State Supported Living Center Closure Commission to evaluate the SSLCs and determine an additional five centers to close.
- Require DADS to close the five SSLCs determined by the SSLC Closure Commission no later than August 31, 2022.

Issue 2

To Transition From SSLCs to the Community, People With Higher Behavioral and Medical 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 Sunset review revealed two areas where funding saved from SSLC closures should be used to build community capacity to serve these higher need residents. Specifically, residents with complex behavioral issues benefit from the extra support of a crisis management team that is not available statewide. In addition, residents with high medical needs require additional staffing that is not included in the current reimbursement levels. The agency needs to also better use its existing resources in SSLCs, where experience with the IDD population should be leveraged to support people living in the community and private providers.

Key Recommendations

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

Issue 3

DADS Lacks Effective Means for Ensuring Its Clients Receive 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 programs. In fiscal year 2013, the State spent more than $96 million on day habilitation services. 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.

Despite rising use of these facilities, 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. Directing providers to include basic requirements in day habilitation contracts would improve services and better protect clients who attend the facilities. Tracking day habilitation information would allow the agency to identify trends and problems at these facilities and help its clients and providers choose a day habilitation facility.

Key Recommendations

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

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 who, by virtue of state licensure, participate in a multi-billion dollar long-term care industry. Licensure is Texas' primary means of ensuring that licensees providing medical and support services do not harm the health and safety of clients.

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 a deterrence since statutory penalty caps fall well below standard amounts for health-related violations. Removing these barriers and providing the agency with new regulatory tools would allow DADS to ensure that providers committing the most serious, repeated violations do not continue to place some of the state's most vulnerable residents in harm's way.

Key Recommendations

- Require DADS to develop, in rule, progressive sanctions for serious or repeated violations.
- Repeal "right to correct" provisions for long-term care providers from statute, and require DADS to define, in rule, criteria for their appropriate use.
- Authorize higher administrative penalties for home health agencies and assisted living facilities and repeal limits on penalties per inspection for intermediate care facilities.

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. One goal of the 2003 consolidation of the state's health and human services agencies was to increase the efficiency and effectiveness of contract management throughout all the agencies. While partially realized, 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.

Key Recommendations

- Direct DADS to strengthen and consolidate contract management under a new Contract Management Division.
- Direct the Contract Management Division to review and approve contract planning during the early stages of procurement.
- 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 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, the depth of information presented is not consistent among providers, and the site has not kept pace with the usability trends for current technology. Improving these aspects of the site is important to help consumers choose good providers, and to increase the quality of long-term care in Texas.

Key Recommendations

- Require DADS to maintain a consumer information site on the quality of long-term care providers in Texas.
- Direct DADS to improve the quality and consistency of information available on the Quality Reporting System for all providers.

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. Appendix D in this report lists 19 reports state law requires DADS to produce. Sunset staff identified one report for elimination.

Key Recommendation

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

Issue 8

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

DADS provides vital long-term care services that help older individuals and individuals with disabilities live as independently as possible, and ensure facilities for those not able to live independently are safe. DADS also serves two important roles for the federal government — implementing provisions of the Older Americans Act and conducting long-term care regulatory activities — which draw down about $120 million annually that Texas would lose without an agency like DADS. While the agency's services are needed, the appropriateness of its organizational structure must be evaluated in conjunction with the overall Sunset review of the health and human services system, scheduled for completion in fall 2014.

Key Recommendation

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

Fiscal Implication Summary

Overall, recommendations in two issues of this report would result in a substantial net positive fiscal impact to the State over the next five years from closing SSLCs and improving community supports for people transitioning out of SSLCs. The changes would culminate in annual savings of more than $87 million by 2020; one-time revenue gains of $50.3 million by FY 2020; and a reduction of FTEs of 4,404 by 2020. Savings would be split between state and federal funds, with about 43 percent accruing to state funds and 57 percent to federal funds. The fiscal implication of each recommendation is summarized below.

Issue 1 — Closing six state supported living centers would result in savings to state and federal funds that increase from $7.3 million in FY 2016 to $97.9 million by 2020 by eliminating SSLC operating costs. Sale of the Austin SSLC would result in an estimated revenue gain of $25.1 million in 2016. The average sales price of each remaining SSLC, $12.6 million, would be realized as one facility is sold in 2019 and another in 2020. These recommendations would also result in a reduction of SSLC employees of 406 in 2016 to 4,404 by 2020. Issue 1 details the full fiscal impact through 2023 when all six facilities would be closed.

Issue 2 — Expanding community crisis services and adding a higher reimbursement level for community programs that serve people with IDD who also have high medical needs would have estimated costs to the State of $3.6 million in 2016 and increasing to $10.5 million by 2020.

Department of Aging and Disability Services

Fiscal Year	Savings to State and Federal Funds*	Revenue Gain to State Funds	Change in Number of FTEs
2016	$3,655,000	$0	-406
2017	$3,580,000	$0	-616
2018	$39,415,000	$25,100,000	-2,292
2019	$63,420,000	$12,600,000	-3,348
2020	$87,425,000	$12,600,000	-4,404

* 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.

Agency at a Glance
May 2014

Agency at a Glance

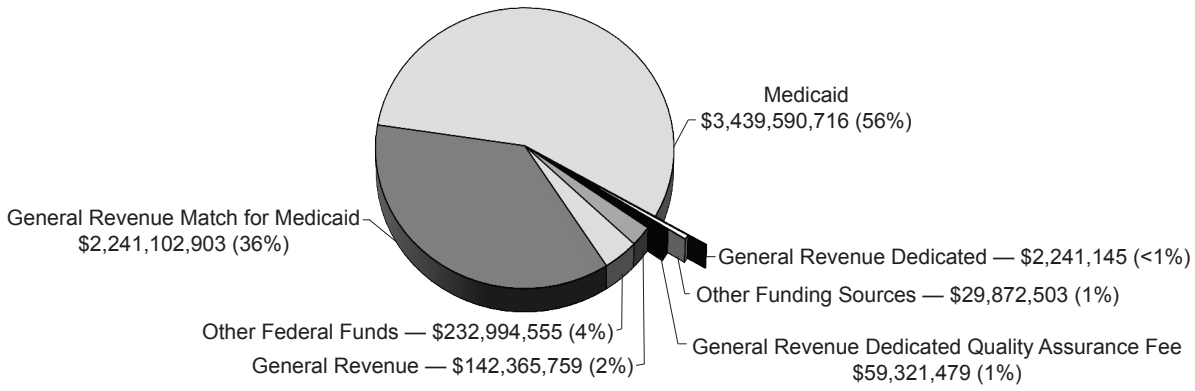
The Legislature created the Department of Aging and Disability Services (DADS) in 2003 as the State's single long-term care agency by consolidating the Department of Human Services and Department on Aging along with certain programs from the Department of Health, Texas Rehabilitation Commission, and the Texas Department of Mental Health and Mental Retardation.[1] 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; and
- regulating a range of providers serving these populations in facilities or home settings to ensure individuals' health and safety.

Key Facts

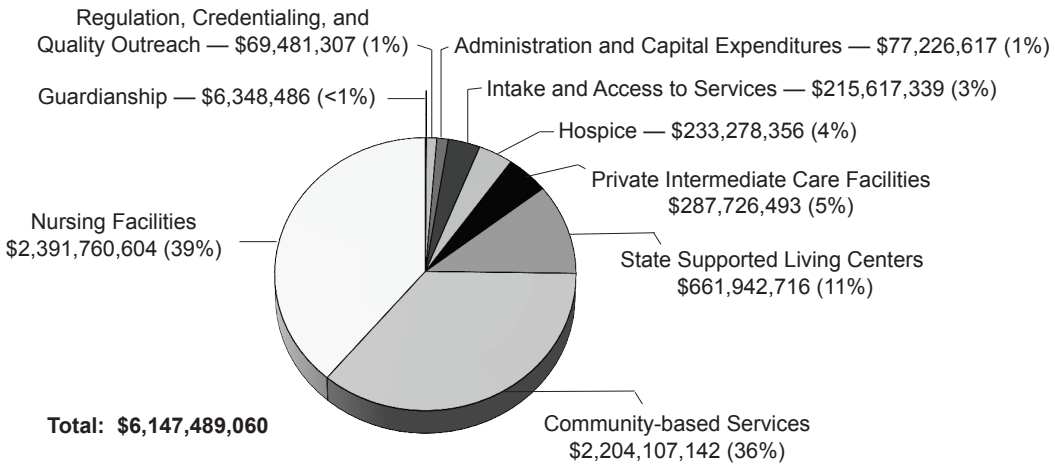
- **Agency Governance**. The executive commissioner of the Health and Human Services Commission appoints a commissioner to oversee the operations of DADS. The governor appoints the nine-member Aging and Disability Services Council that assists the agency's commissioner by providing input on the development of rules and policies. The Council is purely advisory and does not have decision-making authority. The executive commissioner ultimately adopts DADS' rules.
- **Funding**. In fiscal year 2013, DADS spent more than $6.1 billion. As shown in the pie chart *DADS Sources of Revenues*, about 60 percent of the agency's funding is federal, almost all of it Medicaid. Texas supplies about $2.2 billion in General Revenue matching funds to draw down the Medicaid dollars. The pie chart on the following page, *DADS Expenditures by Strategies* details the agency's key expenditures including about $2.4 billion on Medicaid nursing home payments and $2.2 billion on community-based services. DADS also spent almost $662 million for 13 state supported living centers (SSLCs), which provide facility-based residential services for people with intellectual and developmental disabilities (IDD).[2] As required by S.B. 7 from the 2013 legislative session, the Health and Human Services Commission will begin administering nursing home payments under managed care beginning March 2015.

DADS Sources of Revenues – FY 2013



Total: $6,147,489,060

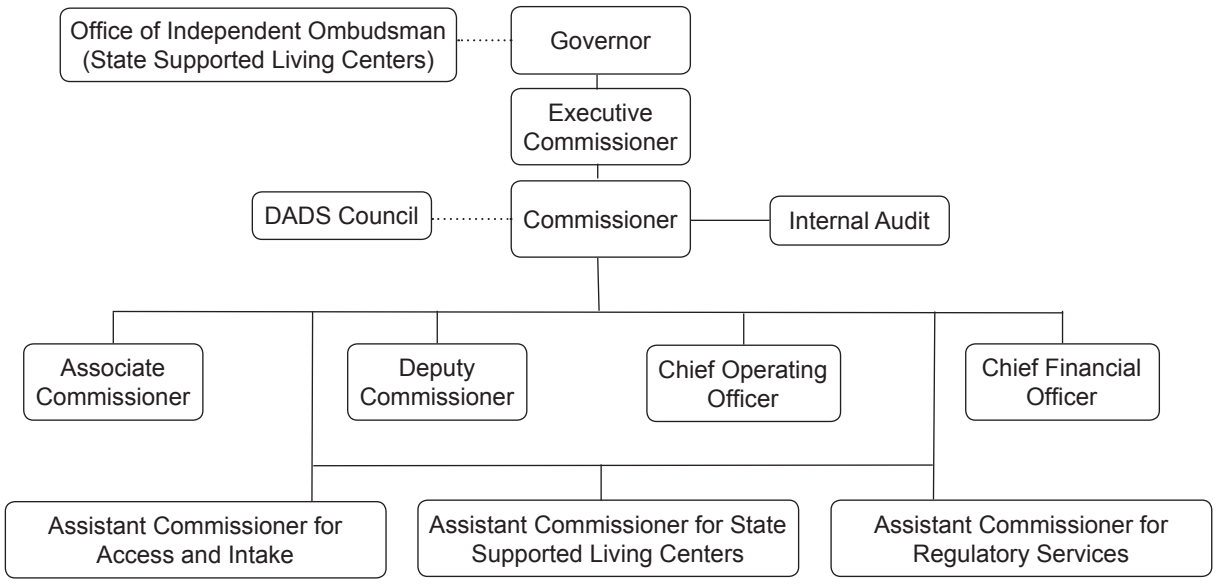
DADS Expenditures by Strategies – FY 2013



Appendix A describes DADS' use of historically underutilized businesses (HUBs) in purchasing goods and services for fiscal years 2011 to 2013. During the last three years, the agency has generally performed poorly, failing to meet statewide goals in any category of HUB expenditures except heavy construction.

- **Staffing**. In fiscal year 2013, DADS employed about 16,000 staff, 80 percent of whom worked in state supported living centers around the state, with the remainder primarily supporting community-based services, regulatory services, and administration. About 1,700 staff work in Austin, and the remaining non-SSLC staff work in 220 field offices across the state. The *Department of Aging and Disability Services Organizational Chart* provides detail on the agency's structure.

Department of Aging and Disability Services Organizational Chart



Appendix B compares the agency's workforce composition to the minority civilian labor force over the last three fiscal years. The agency has generally performed well though it fell below civilian workforce percentages for Hispanic workers in all but one employment category.

- **State Supported Living Centers**. DADS operates 12 state supported living centers throughout the state. In addition, DADS contracts with the Department of State Health Services (DSHS), which operates the Rio Grande State Center, to provide IDD services at the center in Harlingen. SSLCs serve people with IDD, many of whom also have significant medical or behavioral health needs. DADS also operates two group homes for people with IDD under the management of the Corpus Christi SSLC. In fiscal year 2013, SSLCs had about 3,650 residents.

- **Community-Based Services**. DADS helps people with disabilities and the elderly access a wide range of community-based services as an alternative to residing in institutions. DADS community-based programs offer services such as assistance with daily needs, nursing, specialized therapies, skills training, and minor home modifications. While DADS conducts functional eligibility determination and case management for some programs, the agency primarily relies on contracted providers to assess client needs and deliver services. The Health and Human Services Commission determines financial eligibility for all Medicaid programs. In fiscal year 2013, DADS spent about $2.2 billion on these programs serving about 145,000 people per month. Appendix C summarizes key information on these programs.

- **Guardianship**. In limited cases, DADS serves as the guardian of last resort for persons with diminished capacity. DADS must be appointed a person's guardian by the courts. Guardian services include ensuring appropriate living arrangements, managing estates, and making medical decisions for the person. In fiscal year 2013, DADS provided guardianship services either directly or through contracts to 1,366 persons. Texas has about 46,000 guardianships statewide. In fiscal year 2013, the DADS guardianship program had 99 staff and spent about $6.3 million.

- **Local Networks**. DADS contracts with both local authorities and area agencies on aging to provide local services for a range of programs to assist people with IDD and the elderly, respectively.[3]

  Local Authorities. DADS contracts with 39 local authorities, which are units of local government, that serve as the entry point for publicly funded programs for people with IDD. Local authority functions include assessing eligibility and enrolling individuals in certain Medicaid programs and serving as the safety net for individuals with IDD who are in crisis. Local authorities also provide services directly to consumers such as operating group homes. To avoid potential conflicts of interest, DADS requires local authorities to separate their authority and provider functions. In fiscal year 2013, local authorities served about 35,000 persons with IDD each month, spending $285 million on their functions and services.

  Area Agencies on Aging. DADS administers federal Older Americans Act programs through contracts with 28 area agencies on aging (AAA). These AAAs, mostly operated by regional councils of government, help persons 60 years of age or older access services that can help them live independently. AAA services include care coordination, legal assistance, transportation, and home-delivered meals. In fiscal year 2013, AAAs assisted about 480,000 elderly persons with services and spent almost $91.4 million through DADS contracts.

- **Long-Term Care Ombudsman**. Required by the federal Older Americans Act, the Long-Term Care Ombudsman provides services to protect the health, safety, welfare, and rights of persons residing in nursing and assisted living facilities. DADS administers the program through contracts with

AAAs. Ombudsmen regularly visit facilities, advocating for residents' interests, and assisting with resolving complaints. In fiscal year 2013, the program had five staff and spent about $3.6 million, while AAAs provided 810 certified ombudsmen for the program.

- **Regulatory Services**. DADS licenses and regulates long-term care facilities, home health agencies, and providers that house or assist almost 1.4 million Texans annually. In fiscal year 2013, a small portion of these people, about 137,000, resided in various types of facilities regulated by DADS — nursing homes, assisted living facilities, and intermediate care facilities for individuals with an intellectual disability. The remaining majority of people served received community services, primarily from home health agencies regulated by DADS. Most providers must be licensed to operate in Texas; however, nursing homes, assisted living facilities, and home health agencies may choose private accreditation in lieu of licensure. Home and Community-based Services and Texas Home Living waiver providers are not licensed, as DADS certifies their ability to operate in Texas through their contracts with DADS. In fiscal year 2013, DADS had 1,024 staff carrying out these regulatory activities and spent about $63.7 million. The table *DADS Regulated Providers* gives additional details on these entities.

DADS Regulated Providers – FY 2013

Type	Number of Providers	Number of People Served
Adult Day Care	479	21,43
Assisted Living Facility	1,792	37,546
Home and Community-based Services	737	20,781
Home Health Agency	6,296	1,200,000*
Nursing Home	1,218	93,764
Private Intermediate Care Facilities for Individuals with an Intellectual Disability(ICF/IID)	847	5,603
State-operated Intermediate Care Facilities for Individuals with an Intellectual Disability (ICF/IID)	15**	3,659
Texas Home Living	327	5,755
Total	**11,711**	**1,389,051**

* Home health agencies only report number of clients served upon biennial license renewal so this number is an approximation.

** Includes 12 state supported living centers, the ICF/IID component of the Rio Grande State Center operated by DSHS, and two DADS IFC/IID group homes.

Inspections. DADS conducts inspections and complaint investigations to ensure providers comply with state licensure requirements and federal certification requirements under the Social Security Act. In fiscal year 2013, DADS conducted more than 35,400 inspections and complaint investigations involving almost 11,700 regulated entities. Regulatory staff also inspects DADS-operated state supported living centers for compliance with Medicaid certification requirements. In addition, DADS investigated 287 unlicensed facilities in fiscal year 2013.

Occupational Licenses. DADS regulates certain staff employed by long-term care facilities and home health agencies. In fiscal year 2013, DADS licensed 2,194 nursing home administrators, credentialed 138,775 nurse aides, and permitted 10,565 medication aides. For each of these occupations, DADS investigates complaints and takes disciplinary actions as warranted. In fiscal year 2013, DADS dedicated about $1.2 million and 27 staff to carrying out these activities.

1 While part of the former agency's name, the term mental retardation has generally been replaced with intellectual disability.

2 Intellectual disabilities manifest by age 18 and are characterized by below average cognitive functioning and significant difficulty with adaptive behaviors such as managing money, schedules and routines, or social interactions. Developmental disabilities affect cognitive ability, physical functioning, or both, and appear before age 22. The term encompasses intellectual disability but also includes physical disabilities.

3 Often known as local mental health and mental retardation authorities, many of these entities have changed their names.

Issues

Issue 1

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

Background

Texas operates 13 large intermediate care facilities (ICFs) for people with intellectual and developmental disabilities (IDD) known as state supported living centers (SSLCs).[1] SSLCs provide 24-hour residential services, assessment, day habilitation, behavioral treatment, comprehensive medical care, and therapies for people with IDD. The map, *State Supported Living Center Locations,* identifies all SSLCs in the state.

Total funding for SSLCs in fiscal year 2013 was $661.9 million, providing services to 3,649 residents.[2] Although SSLC residents account for a very small portion of Department of Aging and Disability Services (DADS) clients, less than one percent, the agency spends about 10 percent of its budget on SSLCs. DADS staff working at SSLCs represent 80 percent of agency's total workforce. The table on the following page, *SSLC Residents, Staff, and Funding*, provides information for each center in fiscal year 2013. SSLC professional staff includes doctors, nurses, dentists, psychiatrists, physical and speech therapists, and behavior analysts, along with direct support professionals and administrative staff. As shown in the chart, staffing these facilities 24 hours a day, seven days a week requires significantly more staff than residents.

State Supported Living Center Locations

The Mexia and San Angelo SSLCs serve alleged offenders with IDD who are being evaluated, are not competent to stand trial, or are not fit to proceed due to their disability.[3] In fiscal year 2013, the Mexia SSLC served 196 male alleged offenders, and the San Angelo SSLC served 34 female alleged offenders. Both centers also house high-risk residents who have not been through the criminal court system but are at risk of inflicting substantial physical harm to another person. Most alleged offenders are adults, but 22 percent are under the age of 18. A small number of nonviolent alleged offenders who are not considered high risk live in other SSLCs across the state.[4]

SSLCs are certified by the federal Centers for Medicare and Medicaid Services as ICFs, and must maintain a certification to participate in the Medicaid program and receive federal reimbursement for services. Each facility undergoes an annual recertification inspection and must comply with federal program regulations to remain certified.[5] The Department of State Health Services (DSHS) operates the Rio Grande State Center, but the ICF portion of the center is subject to the same requirements as the SSLCs run by DADS.

SSLC Residents, Staff, and Funding – FY 2013

Facility	Number of Residents*	Number of Staff	Funding
Abilene	398	1,472	$55,418,007
Austin	308	1,236	$53,465,523
Brenham	292	1,069	$40,457,792
Corpus Christi	248	936	$39,243,769
Denton	487	1,758	$75,264,218
El Paso	119	448	$19,274,287
Lubbock	211	884	$34,184,370
Lufkin	352	1,169	$44,953,546
Mexia	342	1,622	$63,680,777
Richmond	342	1,330	$53,006,940
Rio Grande**	66	254	$12,187,434
San Angelo	220	930	$38,083,020
San Antonio	264	798	$33,103,911
Total	**3,649**	**13,906**	**$562,323,594**

* Residents as of September 2013.

** The Rio Grande State Center in Harlingen is operated by DSHS and provides services through a contract with DADS. The 254 staff only include DSHS employees working in the ICF program at the center.

SSLCs receive a combination of state, federal, and other funds. Approximately 57 percent of the operating funds for SSLCs comes from the federal government, and 43 percent comes from state General Revenue as a match to draw down the federal funds.

Findings

Although the service delivery system for people with IDD has largely shifted to community settings, Texas maintains a system of large state-run institutions for people with IDD.

Texas has not closed an SSLC in almost 20 years.

Since the 1960s, service delivery for people with IDD has evolved from an institutional model to a community model. In the past, people with IDD were placed in facilities that were separated from the community. Now, the emphasis is on their inclusion and acceptance into wider society. From 1965 to 2011, the average daily populations of large state-operated IDD facilities across the country declined by 78 percent from 223,590 to 29,809 residents.[6]

In 1999, the U.S. Supreme Court issued the *Olmstead* decision which required, through the Americans with Disabilities Act, people with IDD to be served in the most integrated setting appropriate and required states to provide community-based options.[7] While Texas closed two institutions in 1995, since this decision in 1999, Texas has downsized but not closed any of its remaining 13 institutions.[8]

Over time, other states have closed many of their large public facilities for people with IDD. Now, most states operate three institutions on average, and the large states operate about seven. Texas operates more large public residential facilities than any other state, and houses more people in each institution than in most other states. The table, *Large State-Operated Institutions in Texas and Other States*, compares the number and size of large public institutions for people with IDD in the ten most populous states.[9,10]

Texas operates more large public facilities for people with IDD than any other state.

Large State-Operated Institutions in Texas and Other States

State	Operating Between 1960–2011	Closed Between 1960–2011	Operating in FY 2011	Average Number of Residents in Each Facility 2011
Texas	15	2	13	333
California	13	8	5	355
Florida	10	5	5	175
Georgia	11	7	4	202
Illinois	17	9	8	254
Michigan	13	13	0	0
New York	28	18	10	131
North Carolina	6	1	5	314
Ohio	23	13	10	123
Pennsylvania	23	18	5	235

In contrast, DADS has provided large *private* ICFs in Texas with financial incentives to close. As a result, 13 large private ICFs have closed since 2001, ranging in size from 13 to 167 residents. Yet Texas has not taken any similar steps to close its large public ICFs, focusing solely on efforts to downsize its SSLCs.

Texas entered into an agreement with the U.S. Department of Justice to resolve alleged civil rights violations at SSLCs.

Long a focus of lawsuits and controversy, SSLCs struggle to provide a consistent level of quality care across institutions.

Concerns with the quality of care provided in SSLCs have existed since the *Lelsz v. Kavanagh* lawsuit was filed in 1974.[11] The federal lawsuit sought to improve conditions at SSLCs, formerly called state schools, and transition more residents into community programs. The state schools remained under court monitoring until 1995 when the State agreed to close the Travis and Fort Worth State Schools as part of a settlement agreement.[12]

- **Non-compliance with DOJ requirements.** In 2009, the U.S. Department of Justice (DOJ) and the State of Texas entered into a settlement agreement in response to alleged civil rights violations including abuse, serious neglect,

and deaths at SSLCs. DOJ monitors conduct reviews every six months to ensure compliance with the elements of the settlement agreement. As part of the settlement with DOJ, the State agreed to make improvements to medical services, psychiatric care, nursing care, restraint use, training programs, and other services at all of the facilities. The agreement also required SSLC residents to receive the most appropriate level of care and be given a choice to transition into community programs.

Several SSLCs have made little progress meeting the requirements of the DOJ settlement case in five years.

The table, *DOJ Compliance Rates*, shows that after five years, several SSLCs have made close to no progress meeting the requirements of the settlement case, and even the most compliant centers still have far to go. SSLCs were expected to come into compliance with the agreement by June 2014, less than one month after publication of this report, but the centers are not likely to reach this goal for a number of years. As the SSLCs are clearly far from compliance, the agency is hoping to negotiate potential adjustments to the agreement with DOJ, but no decisions have been reached at the time of this report.

DOJ Compliance Rates April 2014

SSLC	Percentage of Settlement Requirements Met
Richmond	18%
Austin	20%
Corpus Christi	22%
Abilene	27%
Mexia	28%
San Antonio	28%
Rio Grande	29%
San Angelo	29%
Lufkin	30%
El Paso	31%
Brenham	34%
Denton	34%
Lubbock	40%

- **Major violations of federal ICF standards**. DADS regulatory staff inspect SSLCs annually and investigate complaints to ensure compliance with federal ICF standards. Between fiscal years 2009 and 2013, DADS regulatory staff threatened halting Medicaid money at different SSLCs 154 times unless violations were corrected. Staff cited SSLCs for not meeting the conditions of participation in the ICF program. Violations were related to client protections, client behavior, healthcare services, active treatment services, facility staffing, physical environment, and facility practices. The number of termination warnings vary greatly between the centers. Some SSLCs, like the Rio Grande State Center and the El Paso SSLC, have not had any warnings, whereas since 2009, the Brenham SSLC has received 27 warnings and the Austin SSLC has received 33. While most SSLCs correct violations, the high number and recurring pattern of violations are serious enough to threaten their federal certification and therefore federal funding.

Since 2009, DADS threatened halting Medicaid funds 154 times to get SSLCs to correct violations.

- **Abuse, neglect, and exploitation (ANE)**. One of the most persistent issues surrounding the quality of care at SSLCs is ANE of residents.[13] The Department of Family and Protective Services investigates allegations of ANE.[14] The table on the following page, *Abuse, Neglect, and Exploitation at SSLCs*, shows the number of confirmed allegations as well as a percent of the SSLC population between fiscal years 2010 and 2013. Although the number of confirmed allegations has decreased since 2011, the number

remains high and, as a percentage of the declining population, has remained relatively constant. While not shown in the chart, ANE rates do vary significantly between SSLCs. For example, in fiscal year 2013, the Denton and Brenham SSLCs had the lowest rate of confirmed ANE allegations at 4 percent whereas the El Paso and San Angelo SSLCs had the highest rate at around 37 percent.

Abuse, Neglect, and Exploitation at SSLCs
FYs 2010 to 2013

Fiscal Year	Confirmed Allegations	Population	Percentage Confirmed by Population
2010	699	4,730	15%
2011	824	4,353	19%
2012	639	4,162	15%
2013	572	3,915	15%

For people with IDD who want to live in a supervised setting in the community, DADS administers two residential group home options through the Home and Community-based Services (HCS) and ICF programs. The majority of people currently moving out of SSLCs move into HCS group homes. Both types of group homes offer 24-hour care and employ staff that are similar to SSLCs, but the group homes have a lower rate of confirmed allegations of ANE than SSLCs.

SSLCs have higher rates of confirmed abuse, neglect, and exploitation than community group homes.

The table, *Abuse, Neglect, and Exploitation in Residential Programs*, shows confirmed allegations and allegations relative to the population served. In fiscal year 2013, the HCS program had almost double the number of residents living in group homes than living in SSLCs, but the HCS group homes had a 10-percent rate of confirmed allegations of ANE compared to a 15-percent rate in SSLCs. Similarly, the ICF group homes served more people than SSLCs, but had a lower rate of confirmed ANE allegations at just 6 percent.

Abuse, Neglect, and Exploitation in
Residential Programs – FY 2013

Residential IDD Program	Confirmed Allegations	Population	Percent Confirmed by Population
HCS Group Homes	711	7,229	10%
Private ICF Group Homes	350	5,603	6%

- **Growing proportion of high-risk residents**. Another major concern for the system overall is that with most people with IDD opting for community settings, almost half of new admissions to the SSLC system are alleged offenders. These residents are generally higher functioning, younger, and have more complex behavioral issues compared to a typical SSLC resident. Alleged offenders need more clinical supports which require intense psychiatric, behavioral, and pharmacological services. The

Mexia and San Angelo SSLCs have higher resident-to-staff ratios than the other centers in order to protect the health and safety of all residents, alleged offenders and non-offenders, living on campus.[15]

Although the number of total SSLC residents is declining, the number of alleged offenders has increased every year for the last three fiscal years. Between fiscal years 2011 and 2013, the total number of alleged offenders committed to SSLCs increased by 41 percent. The most common offenses among the alleged offender population in SSLCs in fiscal year 2013 were assault and theft.

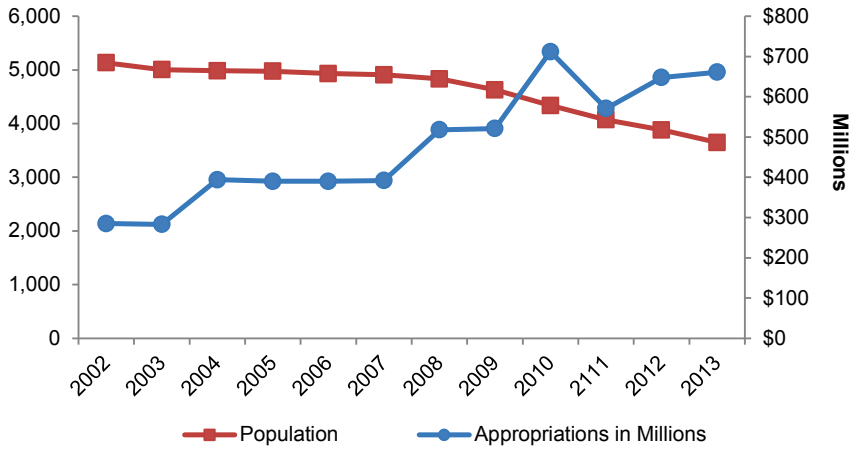
DADS faces unique challenges serving alleged offenders in SSLCs.

DADS faces unique challenges serving alleged offenders in the Mexia and San Angelo SSLCs because the facilities are held to the same standards as other SSLCs and private ICF group homes. Mexia and San Angelo SSLCs are not secure. Consistent with federal regulations, the centers do not have security fences, guards, or main gates. Despite being alleged offenders, because SSLCs are considered a resident's home, staff cannot search rooms for contraband because it would be a violation of privacy. Nonviolent residents who may be medically fragile and residents under the age of 18 are not typically separated from adult alleged offenders. As more of the general population decreases, the special needs and growth of this alleged offender population will require very different but ongoing attention.

With ever declining populations, the cost of maintaining 13 aging state-run institutions grows unsustainable.

As demand for institutional services has decreased and consumers want to be served in community settings, Texas has opted to downsize the population served at each center rather than close and consolidate centers. SSLC campuses were created to house significantly more people than are served now. In 1973, the SSLC system housed 13,700 people, but in 2013, that number was closer to 3,600, a 74 percent decrease in the resident population.[16] The line graph, *SSLC Population vs. Funding*, shows the number of people served decreasing, but the cost of operating the centers increasing between fiscal years 2002 and 2013.[17]

SSLC Population vs. Funding
FYs 2002–2013

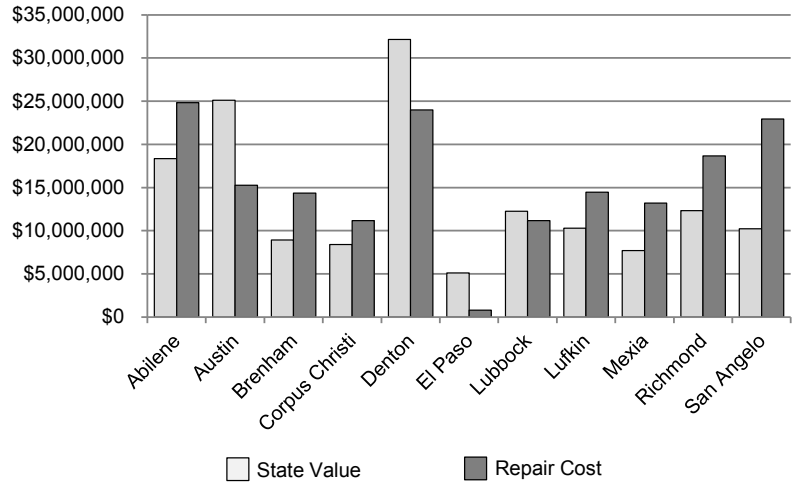


- **Costly infrastructure maintenance and repair**. A key factor contributing to rising costs is maintaining the extensive infrastructure at 13 large facilities. DADS spent $9.4 million on routine and preventive maintenance in fiscal year 2013. Buildings on SSLC campuses include homes and facilities for medical services, therapy, vocational programs, kitchens, religious services, recreation, and administrative services. Most of these buildings are over 35 years old and some are more than 100 years old. Several buildings on SSLC campuses are empty and unsafe to live in. The need for funding for capital improvements continues to grow increasingly critical as this infrastructure ages.

  In 2012, HHSC staff estimated it would cost the State $175.7 million to address critical deficiencies, and deficiency costs at seven centers were higher than their estimated value. The bar graph, *State Values and Repair Costs of 11 SSLCs*, shows the difference between the value and repair cost of the eleven centers DADS owns. These figures indicate the need for a serious evaluation of the soundness of ongoing costly investments in this outdated infrastructure. Beyond the costs, many of the living quarters have an institutional feel, housing people in large, outdated dorms. While some smaller cottages have been added, most of the designs have not kept up with the move to small, more homelike settings that are considered more appropriate for people with IDD who live long-term in these institutions.

Repairing deficiencies at seven SSLCs would cost more than their estimated value.

State Values and Repair Costs of 11 SSLCs – FY 2012*



* SSLC appraisals are value-in-use estimates based on how useful the property is in its current function to the State, not on the market value of the land and property which may be much higher. In addition, San Antonio and Rio Grande SSLCs are not included because DSHS owns the properties.

- **Costs associated with DOJ compliance**. Another factor in the rising costs of operating SSLCs is the funds DADS must spend to implement measures to comply with the DOJ settlement. For example, DADS has hired more staff, increased staff training, and installed cameras in SSLC

buildings to attempt to ensure resident safety. In fiscal years 2010-2011, the Legislature appropriated $112 million to DADS for DOJ settlement costs. This increased level of funding continued in the base appropriations in fiscal years 2012–13 and fiscal years 2014–2015.

- **Higher rates of injuries to employees**. Housing people with IDD in large institutions results in high rates of injuries to employees and increased costs to the State. Staff are required to limit use of physical restraints or medication to restrain residents with IDD. Data collected by the State Office of Risk Management in fiscal year 2013 indicates that DADS had an injury frequency rate of 9.34 percent. In comparison, the Department of State Health Services which operates state mental health hospitals, and the Texas Department of Criminal Justice which operates prisons house populations on a 24 hour, seven days a week basis, but have lower employee injury frequency rates of 6.49 percent and 4.68 percent, respectively. In fiscal year 2013, the State spent approximately $5.5 million paying claims for injuries DADS employees sustained on the job. DADS employees with the most claims were the direct support professionals, and the leading causes of worker's compensation claims were related to client aggression.

Serving a person in an SSLC costs about $113,000 more a year than in an HCS group home.

The State pays an inordinately high cost for care in its state-run institutions when viable and less expensive private-sector options exist in the community.

The State pays a substantially higher cost for care in SSLCs compared to programs for people with IDD in the community. The community IDD programs can offer a similar level of care as the SSLCs but at a much lower rate. Because Texas has not closed institutions, the State has not been able to redirect appropriations to community programs that can serve more people at a lower cost than the SSLCs.

DADS provides priority access to the HCS program for people transitioning from an SSLC into the community. Most people living in SSLCs who choose to live in the community move into group homes through the HCS program and, to a lesser extent, the ICF program. The State pays about $9,395 more a month to serve a client in an SSLC than to serve a client with similar needs in an HCS group home based on figures shown in the table, *Residential IDD Program Costs*. The chart compares the average monthly cost for people with a comparable level of need served in HCS group homes, small private ICF six-bed group homes, and SSLCs. Over the course of a year, the difference between an HCS group home and the SSLC would total about $113,000 a person. Clearly, these cost differences cannot be sustained and will only get worse if the State continues to downsize but not close any of these facilities.

Residential IDD Program Costs – FY 2013*

Program	Average Monthly Cost
Three or four-bed group home in HCS	$5,812
Private six-bed group home in ICF	$5,286
State Supported Living Center	$15,207

* The table includes acute care and residential costs.

While Texas has an ongoing need for maintaining several of its better-run SSLCs, the State can no longer afford to delay action on closing a large number of its seriously problematic and costly ones.

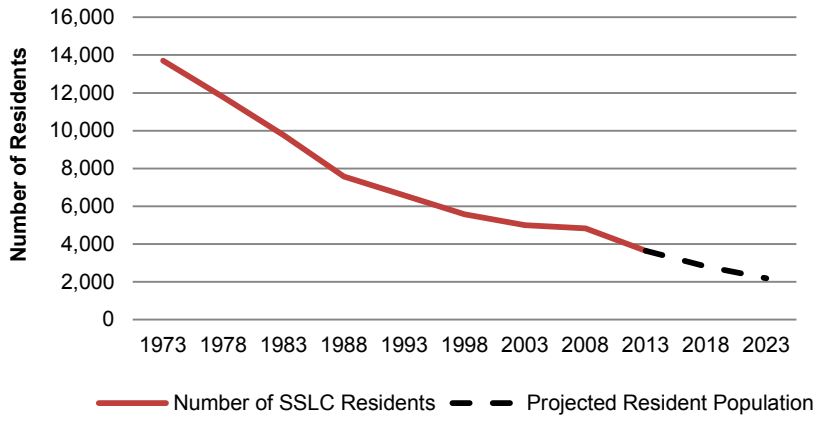
Some SSLCs are needed to continue serving the declining population of people, in particular, the medically fragile and behaviorally challenging, and the alleged offenders referred to SSLCs by the court, but the State cannot afford to keep investing money to maintain all 13 SSLCs. Even with expanded community resources, some members of these populations will continue to need the services of an SSLC for some time to come.

However, based on other states' experience with closures, Texas needs an independent entity to carefully consider the vast amount of data accumulated on SSLCs over the years and make some difficult decisions about which facilities are the most costly and poorly run and should close, and which facilities operate better and should remain open with further improvements. These decisions can no longer be delayed.

Texas needs an independent entity to decide which SSLCs should close.

Over the last five years, the SSLC population has declined more than five percent annually. If the centers continue to lose residents at the same rate, in 10 years they will hold fewer than 2,000 residents or 85 percent fewer than they were built for, as shown in the chart, *Projected Population of SSLCs.* The cost to maintain 100 residents in a facility built for 2,000, for example, is simply unsustainable. This decline, along with the many other factors laid out in this Issue, makes the State's operation of 13 large centers not sustainable.

Projected Population of SSLCs – FYs 1973-2023



Despite significant and ongoing oversight and investments, the Austin SSLC continues to demonstrate the most serious violations of any SSLC, threatening its federal certification and, more importantly, the safety of its residents.

The Austin SSLC has had more trouble complying with basic standards for safety and adequate care than any other SSLC. The Austin SSLC has made the least progress in meeting the DOJ settlement agreement requirements of all the centers except for one, only having come into compliance with 20 percent of the required improvements. The center had the highest number of termination warnings, 33, since fiscal year 2009 after DADS staff inspected and found major violations. During each of the five visits between March and June of 2013, DADS regulatory staff determined the Austin SSLC was out of compliance with several requirements of the ICF program and began a process for termination of the center's certification and federal funding.

Instead of being decertified, the SSLC Division at DADS entered into a system improvement agreement with DADS' Regulatory Division for the Austin SSLC. A system improvement agreement has never before been used in Texas, but requires the Austin SSLC to submit a monthly report and update DADS regulatory staff on how the center is solving the violations and making sustainable improvements. The center must meet the agreement requirements by June 30, 2014. DOJ agreed to abbreviate a 2013 monitoring visit because the Austin SSLC was too overwhelmed trying to meet its regulatory requirements.

The Austin SSLC has a history of immediate jeopardy findings for placing residents at serious risk of harm or death.

The Austin SSLC also has a history of immediate jeopardy findings. An immediate jeopardy finding occurs when an inspector discovers a facility is out of compliance with one or more program requirements that is likely to cause serious injury, harm, impairment, or death to a resident.[18] Between October 2010 and May 2013, the Austin SSLC received six immediate jeopardy findings, double the number of any other center during that time. The following incidents were some of the contributing factors to the findings.

- A resident died after staff ignored serious health concerns.
- A resident self-injured requiring surgery to remove an eye.
- A resident with a history of aggressive behavior moved into a unit with fragile residents and attacked the residents.
- A resident with a history of unauthorized departures ran away from the facility and was found near a highway.
- Staff did not follow a psychiatrist's recommendations to move a resident to a quiet environment, and the resident had to be admitted to a state psychiatric facility.
- Residents did not bathe or have clean clothes for a week after a gas line break.

The Austin SSLC stopped allowing new admissions in March of 2012 and is the only center with a moratorium. The center has difficulty recruiting and maintaining staff, especially in high-level positions. Over the last four years, the center has had four directors. From May 2013 to January 2014, the State spent $1.2 million on a contracted director and seven advisors because DADS elected to seek outside expertise to operate the troubled facility.[19] Also, the number of employee injuries was substantially higher at the Austin SSLC in fiscal year 2013 compared to the other centers.

DADS has not permitted any new admissions to the Austin SSLC since March 2012.

Established in 1917, the Austin SSLC is the oldest center and has a crumbling infrastructure. Several buildings on campus are boarded up because they are unsafe. In 2012, the General Land Office estimated that the Austin SSLC had a value-in-use of $25.1 million, but the amount of money budgeted to fix existing deficiencies was $14.8 million. However, the facility sits on 93 acres of prime real estate and in 2013, the General Land Office recommended selling the property for mixed-use or residential development.[20]

Recommendations

Change in Statute

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

This recommendation would require DADS to create a closure plan and 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. DADS should work closely with local authorities, units of local government that provide services to people with IDD, while planning the closure of the Austin SSLC so staff will understand the range of services available in the community.

To maintain key staff that are integral to client care at the Austin SSLC until it closes, this recommendation would authorize DADS to give one-time retention bonuses of up to $2,000 to direct support professionals, qualified intellectual disability professionals, social workers, and case managers that continue to work at the center until it closes. DADS can hire contracted professionals for other positions if staff leave before closure.

During this time, DADS should work with the General Land Office to reassess land values and obtain input on the highest and best use of the properties. DADS should work with the Texas Facilities Commission regarding potential marketing options and any infrastructure or environmental impediments to sale, lease, or other use of the properties. DADS should also consult with the Texas Historical Commission regarding any potential historical structures. The agency should also work in consultation with the Health and Human Services Commission on decisions regarding land sales.

DADS should consider the process of closing large private ICFs as a model of how to move people into the community and to make sure the residents make a smooth transition into their new environment. After closure, DADS should fully evaluate the closure process to determine how well the plan worked and how the process could be improved in the future.

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

This recommendation would establish the State Supported Living Center Closure Commission to evaluate and decide which five SSLCs should be closed. The eight-member 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 their designee of the Health and Human Services Commission, the Texas Facilities Commission, and the General Land Office would serve as non-voting members to provide relevant expertise.

Commission members must not have a real or potential conflict of interest by benefiting financially from SSLC closures. Members of the Commission should be eligible for travel reimbursement for serving on the Commission but would not receive compensation. The Commission would be administratively attached to and supported by DADS but would make its decisions independent of the agency. DADS must allow the Commission access to any DADS documents about SSLCs to help make a full evaluation.

The Closure Commission should use the following criteria for determining which centers to close but 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 ICF standards.
- Costs of operating SSLCs.
- Compliance with DOJ settlement agreement.
- Availability of community service providers in the area.
- 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.

The Closure Commission should use the State Supported Living Center Long-term Plan required by DADS' appropriations rider, to be completed by a contractor by December 2014. This plan will assess the current SSLC system's infrastructure and service needs, as well as anticipated future needs. The plan will define issues and concerns related to individuals residing in SSLCs and include extensive background information about the management and structure of SSLCs, demographic characteristics of individuals residing in SSLCs, deferred maintenance and bond indebtedness, and adequacy of the workforce.[21] The Commission should also hold public hearings to seek input on these closure decisions. This recommendation would also require the Closure Commission to submit a report of its decisions to the Health and Human Services Commission, DADS, and the governor by September 1, 2017, and then disband. At a minimum, the report should identify each SSLC the Commission determines should be closed and an explanation of the factors supporting closure.

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

DADS should create a plan and timeline for closing the five SSLCs and use the evaluation of the Austin SSLC to guide the closure of the others. DADS should immediately place a moratorium on all new admissions to the SSLCs the Closure Commission decides to close. The recommendation necessitates repeal of the statutory provision preventing DADS from closing an SSLC without approval of the Legislature. DADS should work in consultation with HHSC on decisions regarding land sales.

Management Action

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

This recommendation would direct DADS to improve the remaining seven SSLCs. The shift to a smaller system would allow the agency to focus on providing higher quality care to people with IDD who have the highest needs. For example, SSLCs could work to improve relationships with colleges and universities so that students can receive more training with the IDD population; the residents would also benefit from the community engagement.

As funds permit, DADS should consider making infrastructure changes in the remaining SSLCs with the goal of achieving a more homelike environment and ensuring separation of high-risk offenders. DADS should explore alternative ways to serve the alleged offender population in SSLCs. To decrease staff injury, SSLCs should develop or improve existing accident review boards at each SSLC to learn more about the root causes of accidents and prevent recurrences.

Fiscal Implication

These recommendations, once fully implemented in fiscal year 2023, would have a positive fiscal impact to the State including annual savings of $148.1 million, revenue gains of $88.1 million, and a reduction of 6,516 FTEs. This impact results primarily from savings tied to serving people with IDD in the community for about a third of the cost of serving them in an SSLC; and from revenue gains tied to the sale of SSLC properties. Savings to state and federal funds would be based on approximately 43 percent state and 57 percent federal. While full implementation will take eight years, the following information and chart detail the impact in the first five years.

For Recommendation 1.1, the closure of the Austin SSLC would result in estimated annual savings of $22.6 million for operating costs once fully closed in August 2017. However, this would be phased in with savings of $7.4 million in FY 2016 based on a one-third reduction of operating costs, $11.3 million in FY 2017 based on a one-half reduction of operating costs, and the full $22.6 million in savings for all remaining years. While Sunset staff calculated savings to operations from closing the Austin SSLC based on a conservative assumption of 65 percent of the residents moving into the community at a savings of $113,000 per year, per resident, the agency should strive to move at least 80 percent of the residents to the community. The sale of the Austin SSLC property would result in a one-time revenue gain of at least $25.1 million in fiscal year 2018. No market value estimate is currently available.

The estimate assumed a gradual reduction of staff beginning with 408 FTEs in FY 2016, 618 FTEs in FY 2017, and the full 1,236 FTEs in each of the remaining years. Sunset staff estimates that 25 percent of the 760 staff that have a direct role in client care will still be employed until the SSLC's closure, and thus eligible to receive retention bonuses of $2,000 each at an estimated cost of $380,000 in fiscal year 2017.

For Recommendation 1.2, the SSLC Closure Commission would cost an estimated $150,000 over fiscal years 2016 and 2017 while the commission evaluates the centers and makes decisions on closures. This estimate is based on the cost of two FTEs to support the Commission's work and travel reimbursements for members.

For Recommendation 1.3, for this five-year estimate, the closure of three additional SSLCs would result in an estimated annual savings of $25.1 million in operating costs phased in as each facility is closed. Thus, the savings would be $25.1 million in FY 2018, $50.2 million in FY 2019, and $75.3 million in FY 2020. Assuming a year from closure to sale, two properties would be sold within this five-year period. An average of the remaining 10 SSLC property values, excluding any value for property owned by DSHS for the San Antonio and Rio Grande SSLCs and for the Austin SSLC, was calculated at $12.6 million. Thus, this estimate includes revenue gains of $12.6 million in FY 2019 and FY 2020 for each center sold. The estimate also assumes a reduction of 1,056 FTEs for each closure beginning in FY 2018, increasing to 2,112 in FY 2009 and 3,168 in FY 2020.

Department of Aging and Disability Services

Fiscal Year	Savings to State and Federal Funds*	Revenue Gain to State Funds	Change in Number of FTEs
2016	$7,250,000	$0	-406
2017	$10,770,000	$0	-616
2018	$47,700,000	$25,100,000	-2,292
2019	$72,800,000	$12,600,000	-3,348
2020	$97,900,000	$12,600,000	-4,404

* 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.

……..

[1] Sections 531.002(17) and 532.001(b)(9-21), Texas Health and Safety Code.

[2] Total funding includes funding for the individual centers, SSLC division at the state office, capital budget, quality assurance fee payment, cost pools, oversight bills, and non-SSLC divisions: Ombudsman, IT, Legal.

[3] Mexia SSLC is the only designated forensic center, but DADS sends female offenders to the San Angelo SSLC to separate them from the male population at Mexia. Section 555.002, Texas Health and Safety Code.

[4] Department of Aging and Disability Services, *Annual Report on Forensic Services in State Supported Living Centers*, accessed April 28, 2014, http://www.dads.state.tx.us/News_info/publications/legislative/forensic-FY2013/2013forensicreport.pdf.

[5] 42 C.F.R. Part 483, Subpart I, Sections 483.400 to 483.480.

[6] Sheryl Larson et al., *Residential Services for Persons with Intellectual and Developmental Disabilities: Status and Trends Through Fiscal Year 2011*, accessed April 16, 2014, http://rtc.umn.edu/risp/docs/risp2011.

[7] *Olmstead v. L.C.*, 527 U.S. 581 (1999).

[8] Linda H. Parrish et al., *Executive Report Texas Department of Mental Health and Mental Retardation Facility Review Task Force* (Austin: Texas Department of Mental Health and Mental Retardation, 1992), p. iii.

[9] Sheryl Larson et al., *Residential Services for Persons with Intellectual and Developmental Disabilities: Status and Trends Through Fiscal Year 2011*.

[10] David Braddock et al., *State of the States in Developmental Disabilities 2013: The Great Recession and Its Aftermath*, 9th ed., (Washington, D.C.: American Association on Intellectual and Developmental Disabilities, 2013), p. 24.

[11] *Lelsz v. Kavanagh*, 824 F. 2d 372 (5th Cir. 1987).

[12] Linda H. Parrish et al., *Executive Report Texas Department of Mental Health and Mental Retardation Facility Review Task Force*, pp. iii and 5.

[13] *Abuse* means the negligent or wilful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident. *Neglect* means the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services. *Exploitation* means the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident. Section 260A.001-.004, Texas Health and Safety Code.

[14] Section 40.0315, Texas Human Resources Code.

[15] Department of Aging and Disability Services, *Annual Report on Forensic Services in State Supported Living Centers*.

[16] Linda H. Parrish et al., *Executive Report Texas Department of Mental Health and Mental Retardation Facility Review Task Force*, p. 2.

[17] Legislative Budget Board, *Transform State Residential Services for Persons with Intellectual and Developmental Disabilities*, accessed April 16, 2014, ww.lbb.state.tx.us/Documents/Publications/Policy_Report/Transform%20 State%20Residential%20Services%20for%20Persons%20 with%20Intellectual%20and%20Developmental%20Disabilities.pdf.

[18] 42 C.F.R. Part 489.3.

[19] Andrea Ball, "$1.2 million spent on consultants, yet problems linger at Austin living center." *Austin American-Statesman*, April 13, 2013.

[20] General Land Office, *State Agency Property Recommended Transactions Report to the Governor*, February 2013, accessed April 25, 2014, http://www.glo.texas.gov/what-we-do/state-lands/_documents/state-land-reports/ Governors% 20Report%202013%20-%20Full%20 Report%20-.pdf.

[21] Rider 39, page II-19, Article II (S.B. 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act).

Responses to Issue 1

Recommendation 1.1

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

Agency Response to 1.1

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.

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. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 1.1

Clay Boatright, Plano

Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 1.1

The Honorable Myra Crownover, Lake Dallas

Marie Chandler, Austin

Rainbow Di Benedetto, Austin

Dawn Dyer, Austin

Marjorie Heaton, Austin

Mary M. Hedrick, Austin

Christine Hong, Austin

Jon Luckstead, Austin

Brenda McGahagin, Austin

Terry McKetta, Lakeway

Darlene Moore, Georgetown

Charleen Searight, Austin

Sarah Searight, Austin

Ora Shay, Austin

Melany Shearrer, Jourdanton

Judy Straughan, Austin

Lutishie Taylor, Conroe

Betty Waite, Brady

Leslie Wizner, Santa Fe, New Mexico

Group A (page 30i)

Modifications

1. Reinvest all monies saved from SSLC closure and consolidation in cost-effective community services. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

2. Require DADS to initiate a survey of available services in the community and identify any shortages, working closely with local authorities and providers. (John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin)

3. Employees at closing SSLCs should receive preferential consideration for transfer to other state jobs with portability of benefits. They should also have preferential consideration for community jobs. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

4. Proceeds from the sale of the Austin SSLC should be used to offset the cost of paying retention bonuses, moving residents into the community, and making infrastructure repairs to the remaining SSLCs. (John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin)

5. Build a new, smaller facility which includes an infirmary and workshop, as well as residences, on less valuable land in the Austin area. (Linda Benskin, Ph.D., Austin)

6. Rebuild Austin SSLC on another property in the area. (Louise Abt Clay, President – Richmond SSLC Family Association, Weston Lakes)

7. Do not close Austin SSLC and instead sell or lease part of the facility's land and invest the funds in improving SSLC caregiver salaries and training. (Maria Abernathy, Austin)

8. Do not close Austin SSLC and instead consolidate the campus and sell some of the land to bring down the cost of maintaining the facility. (Doris Kallina, Sugar Land)

9. Keep the Austin SSLC property under state ownership, lease it, and include in the plan for the tract a new medical home for the medically fragile residents of Austin SSLC and several highly regulated group homes, in addition to other development, if necessary. (Brenda McGahagin, Austin)

10. Do not close Austin SSLC and instead hire a director who can increase the census and bring operations up to excellent standards. (Michele Arnold, Bellaire)

11. Instead of closing the Austin SSLC, rebuild or remodel it, eliminate paperwork, cap upper management salaries, include new performance metrics, consolidate contracts, and provide more oversight for providers including fines for violations. (Martha Browning, Cedar Park)

12. Create a partnership between the state and the city of Austin to repurpose the closed buildings at the Austin SSLC to create an arts district, where artists with and without disabilities would have affordable live-work space. Within the new arts district, establish a community-based waiver program for a select number of Austin SSLC residents unable to transition by 2017. (Debbie Kizer, Executive Director – Imagine Art)

13. Open the Austin SSLC facilities and resources to the community while maintaining crucial residences in use, and use the grounds and buildings for neighbors' and children's sporting and music venues. (Tammie Parker, Austin)

14. Reduce the coverage area for the Austin SSLC to the nine counties immediately surrounding it and reassign the remaining 19 counties in its current coverage area to the SSLC closest to each, allowing needed infrastructure updates on a smaller facility to avoid closing it. (Edmund Snuggs, Dallas)

Recommendation 1.2

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

Agency Response to 1.2

The agency suggests the modifications below.

Agency Modifications

15. Specify that one member of the SSLC Closure Commission be the family member of an SSLC resident.

16. Give the SSLC Closure Commission the authority to determine the number of facilities to close, as well as the timeline for closures.

(Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 1.2

Clay Boatright, Plano

Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 1.2

The Honorable Myra Crownover, Lake Dallas

Daniel Carrell, Bullard

Elaine Elkins, Pearland

John Gibbens, San Antonio

Marlene Haak, Temple

Delia Herrera, San Angelo

Dianne Johnson, Burleson

Lois Lueg, Lake Charles, Louisiana

Christine Miller, Sellersburg, Indiana

Melanie Myers, Cypress

Stephen Pearce, Abilene

Steven Rosen, Richmond

Rozelle Teplitsky, Pacific Palisades, California

Steve Wheeler, N. Little Rock, Arkansas

Group A (page 30i)

Modifications

17. Continue the SSLC Closure Commission beyond September 1, 2017 to consider declining populations and other issues, and specify that the Closure Commission should not be limited to five closures, and instead be directed to recommend not less than five closures. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

18. Instead of establishing the SSLC Closure Commission, the Legislature should direct DADS in statute to close the Austin SSLC by August 31, 2017, and close at least five additional SSLCs by September 1, 2022. In addition, DADS should be directed to close as many SSLCs as possible, not just five. (John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin)

19. Direct DADS to conduct a thorough, results-driven evaluation of "community-based services" to ensure residents of the SSLCs being considered for closure will continue to receive the care and protection they need. (Forrest Novy, PhD., Austin)

Recommendation 1.3

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

Agency Response to 1.3

The agency believes that the SSLC Closure Commission should be authorized to determine, based on its in-depth research, the number of facilties 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 residents to other settings will be affected by a variety of factors such as the size of the facilities chosen, the medical and behavioral needs of the residents at those facilities, and the preferences of residents, families, and guardians. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 1.3

Clay Boatright, Plano

Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 1.3

The Honorable Myra Crownover, Lake Dallas

Daniel Carrell, Bullard

Elaine Elkins, Pearland

John Gibbens, San Antonio

Marlene Haak, Temple

Delia Herrera, San Angelo

Rebecca Jenkins, San Antonio

Dianne Johnson, Burleson

Lois Lueg, Lake Charles, Louisiana

Christine Miller, Sellersburg, Indiana

Melanie Myers, Cypress

Stephen Pearce, Abilene

Steven Rosen, Richmond

Rozelle Teplitsky, Pacific Palisades, California

Steve Wheeler, N. Little Rock, Arkansas

Group A on page 1i

Modifications

20. Reinvest all monies saved from SSLC closure and consolidation in cost-effective community services. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

21. Employees at closing SSLCs should receive preferential consideration for transfer to other state jobs with portability of benefits. They should also have preferential consideration for community jobs. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

22. Use funds from the closure and sales of SSLC facilities for capital improvements to facilities to be kept open. (Michael Danks, Dallas)

23. Do not close SSLCs and instead hire new directors at every SSLC and task them with increasing the census and bringing operations up to excellent standards. (Michele Arnold, Bellaire)

24. Do not close SSLCs and instead bring in new management to correct any problems found by the Department of Justice, and reduce the number of administrators and use the savings to hire more direct care staff and pay them better wages. (Abbie Gottlieb and Harold Gottleib, M.D., Chief Medical Officer – Memorial Hermann Hospital, Houston)

25. Do not close Denton SSLC and instead use some of the facility's land as a park for the public and charge entrance fees. (Karen Danks, Cornith)

26. SSLCs with significant outdoor acreage should be evaluated for potential revenue sources, such as use of park-like grounds for farmers markets, craft fairs, and community activities. (Michael Danks, Dallas)

27. Instead of closing the Richmond SSLC, reach out to local universities and colleges to provide research and hands-on education for students who are considering careers in fields related to the needs of the intellectually challenged. (Margo-Ellen Gillman, CEO – Ovation Orations, Houston)

28. Move any residents of the Mexia and San Angelo facilities who are not alleged offenders to other facilities and then sell or transfer the properties to the Texas Department of Criminal Justice. (Michael Danks, Dallas)

Recommendation 1.4

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

Agency Response to 1.4

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 1.4

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 1.4

None received.

Group A

Sharon Acevedo, Houston
Darlene Aldrige, San Antonio
Glenda Allen, Belmont, Michigan
Michele Arnold, Bellaire
Barry Barfield, Tomball
Carleen Beavers, Deer Park
Kathy Belcher, Denton
Jodi Bell, Deer Park
Linda Benskin, Ph.D., Austin
Pam Booher, Houston
Sharon Brener, Bellaire
Emma Brisbin, Austin
Martha Browning, Cedar Park
Mitchell Cameron, Fort Worth
Glynda Chaney, Houston
Louise Abt Clay, President – Richmond SSLC Family Association, Weston Lakes
Robert Comeaux, Seabrook
Carol Cook, Austin
Steven Croft, M.D., Houston
David L. and Jane D. Crookham, Schertz
Pamela Daine, Cypress
Karen Danks, Corinth
Rod De Llano, Houston
Rita Diaz, Houston
Thomas Diaz, M.D., Katy
Shelley Dill, Tulsa, Oklahoma
Lucy Dominguez, Houston
Dorothy Elsey, Southlake
Kim Elswick, Houston
Ruth and Bob Esgar, Dallas
Sherry Etie-Wukasch, Austin
Linda Falk, Porter

Lynette Fant, Austin

Sally Feutz, Austin

Mary Fitzgerald, Spring

Toni Gabriel, Lexington

Rachel Gallegos, Houston

LeAnn Garner, Katy

Ann George, San Antonio

Margo-Ellen Gillman, CEO – Ovation Orations, Houston

Joe Girdner, Bastrop

Patricia Glasser, San Diego, California

William Glover, Georgetown

David Goldstein, Rabbi – Houston

Deborah L. and James D. Gorman, Houston

Abbie Gottlieb and Harold Gottleib, M.D., Chief Medical Officer – Memorial Hermann Hospital, Houston

Kathy Hackett, Austin

Carol Harper, Andrews

Resa Harrison, Aubrey

William Hart, Spring

Kim Higgins-Carroll, Fort Worth

Harrison Hiner, Legislative Coordinator – Texas State Employees Union, Austin

Nancy Hrin, Austin

Rebecca Jenkins, San Antonio

Theresa Jud, Dallas

Doris Kallina, Sugar Land

Greg Kendrick, President – Parent Association Lufkin SSLC, Lufkin

Courtney King, San Antonio

Debbie King, Spring

Nancy Kircher, Richmond

William Kircher, Richmond

Luisa Kluger, Ph.D., Houston

Billy Knowles, Round Rock

Eirik Larkin, San Antonio

John S. Lind, Denver, Colorado

Karen Listi, Jersey Village

Bonnie Lugo, Houston
Judy Martin
Elizabeth Mauro, Houston
Nancy Beth McKinney
Brenda Miller, Carrollton
Gary Mosley, Houston
Cassie Myers, Houston
Joseph Myers, Cypress
Maureen Myers, Cypress
Edmund Nepveux, Missouri City
Forrest Novy, Ph.D., Austin
Pam Null, Seagoville
Delois Obermiller, Cameron
Lara Ogden, Bellaire
Tammie Parker, Austin
David Partridge, M.D., Richmond
Kathy Pemberton, Granbury
Marie Perry, Seagoville
Carroll Pimpler, Round Rock
Albert Ramirez, Spring
Brian Richison, Houston
Christina Richison, Houston
Terri Richison, Sargent
Ben Rogers, Austin
Nona Rogers, Austin
Barbara Rosenberg, Speech Pathologist – Sugar Land
Rhonda Runge, Houston
June Sadowsky, DDS, Houston
Todd Sanders, Houston
Lynda Schneck, League City
Barbara Sikes, Dallas
James Simmons, Spring
Mary Simmons, Spring
Rebati R. and Sujata Sinha, Sugar Land
Edmund Snuggs, Dallas

Nancy McBryde Snuggs
Mari Soulforce, Houston
James and Gloria Stoeckl
Barbara Lee Teas, Houston
Russ Thomason, Eastland
Barbara and Edward Triem, Brenham
Marcee Turnage, Katy
Caroline Volbrecht, Abilene
Kyla Welch, Denton
Jean Wilcox, Houston

Issue 2

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

Background

As a result of federal and state legislative mandates, the Department of Aging and Disability Services (DADS) continues to transition residents with intellectual and developmental disabilities (IDD) who choose to leave state supported living centers (SSLCs) into community programs. Texas' 13 SSLCs serve about 3,650 residents with a wide range of needs. Residents can have multiple issues that affect their service needs: behaviorally challenging residents make up 47 percent of the population; medically fragile residents make up 43 percent of the population; and residents with both an IDD and mental health diagnoses make up 63 percent of the population.

In response to the 1999 Supreme Court *Olmstead* decision requiring states to ensure that persons with disabilities receive services in the most integrated setting appropriate to their needs, Texas implemented the Promoting Independence Initiative.[1] Among the initiative's goals is the State's commitment to provide opportunities for SSLC residents to move to the community. In 2007, the Legislature directed DADS to delegate to local authorities, units of local government that provide services to people with IDD, the Community Living Options function which educates residents about the alternatives to living in an SSLC.[2] To further the goal of moving residents to the community, DADS employs 24 transition specialists who work at SSLCs to focus on transition logistics and address issues that slow down placements in the community.

Over the last three years, an average of 232 SSLC residents have transitioned to a community setting each year, as shown in the chart, *Transitions From SSLCs to the Community*. The table shows how many people transitioned each year and which type of program they selected.

Transitions From SSLCs to the Community
FYs 2011 to 2013

Program	FY 2011	FY 2012	FY 2013
HCS Group Home (3-4 person)	190	176	260
HCS Foster Care	10	24	21
HCS Own Home/Family Home	2	5	4
ICF-Small (4-16 person)	0	2	1
ICF-Large (17 or more person)	0	0	1
Total	**202**	**207**	**287**

The most popular residential service option for someone leaving an SSLC is the Home and Community-based Services (HCS) program. The HCS program offers services to someone with IDD in a variety of settings including three- to four-person group homes. Another option which is seldom used is the intermediate care facility (ICF) for people with intellectual and developmental disabilities (IDD). Similar to the HCS program, private ICFs can offer services in a four- to six-person group home.

Findings

People with high behavioral needs may require crisis supports in the community.

Many people with extreme behavioral issues are served in the HCS program in the community. In fact, in fiscal year 2013, 127 people with the highest level of need were in the HCS program compared to 16 in SSLCs. This statistic clearly indicates the capacity of the community to serve this population. However, an HCS group home is usually staffed by one or two direct care workers. If a resident in a group home has an acute psychiatric emergency or is behaviorally challenging, staff and the resident would benefit from additional support.

Two-thirds of local authorities lack crisis intervention teams.

In states where large public ICFs have closed, one of the essential elements reported to be important in building community capacity is community-based crisis management.[3] In the 83rd Legislative Session, Senate Bill 7 enacted a provision requiring DADS to establish at least one behavioral health intervention team to help people with IDD remain in the community; however, the Legislature did not provide DADS with funding for a team.

Although DADS could not develop a crisis team, 14 of the 39 local authorities have received funding under the 1115 demonstration waiver, a Medicaid program, for crisis intervention teams to assist individuals with IDD in the community. These teams cover about 60 percent of the state's population. Funding for this crisis assistance ends in 2016, unless the waiver is renewed. About two-thirds of the local authorities still do not have crisis intervention teams for people with IDD in the community. Without such supports, community providers resort to calling 911 in times of crisis, which is less effective and can result in failed community placements.

Current reimbursement levels are not adequate to meet staffing needs for people with complex medical issues.

Inadequate rates for medical care pose a major obstacle to community care.

Residents with complex medical needs have a hard time moving to the community due to a lack of providers who can meet their needs. As part of the 2009 settlement agreement between the U.S. Department of Justice and the State of Texas, DADS tracks the obstacles to community referrals and transitions from SSLCs. In FY 2013, 10 percent of residents were not referred to the community by their interdisciplinary team because the individual needed 24-hour nursing services and frequent physician monitoring, and the team felt that level of care was not available outside the SSLC. For the same time period, 22 percent of the referrals made were rescinded for medical reasons, and almost 10 percent of the transitions were delayed due to a lack of medical supports in the community.

Sunset has heard from many sources that provider reimbursement rates do not account for costly medical needs, creating a disincentive to care for the medically fragile population in the community. The current rate structure for the HCS and ICF programs is based on an assessment tool that is used to

determine a client's level of need. The five levels of need range from a client having relatively independent living skills to a client needing one-on-one staff supervision because the person exhibits life-threatening behaviors. The following chart, *Average Monthly Cost for Clients by Program and Level of Need*, illustrates the average cost to care for someone by need level in various HCS options and small ICFs, in comparison to the average cost in an SSLC, which DADS does not break down by level of need.

Average Monthly Cost for Clients by Program and Level of Need FY 2013*

Level of Need	3 or 4 Bed Home (HCS)	Foster or Companion Care (HCS)	Own home or Family home (HCS)	Small Private ICF	SSLC
Intermittent	$4,766	$2,601	$1,202	$4,047	$15,207
Limited	$5,252	$2,934	$2,119	$4,586	$15,207
Extensive	$5,812	$4,014	$4,169	$5,286	$15,207
Pervasive	$6,771	$5,479	$6,700	$6,564	$15,207
Pervasive Plus	$11,310	$8,279	$16,636	$11,726	$15,207

* This chart includes acute care and residential care costs.

The current reimbursement levels increase as a client's needs increase but are still not high enough to care for someone with complex medical issues who requires high staffing levels. However, even at the higher rates, community care is generally less expensive than care in SSLCs.

To build community capacity, a number of states including Texas have HCS waiver plans that allow a select number of individual's cost to be greater than the average cost of state institutions under certain circumstances.[4] However, Texas' HCS waiver only uses the higher reimbursement category for people with serious *behavioral* issues. DADS has recently initiated a workgroup that is studying how a rate increase could help providers serve clients with more costly *medical* needs, but currently providers lack the necessary funding level that would encourage the development of additional small group homes to serve people with high medical needs.

DADS allows higher rates for complex behavioral needs, but not for complex medical needs.

SSLCs have experience that could be leveraged to support people living in the community.

SSLCs specialize in serving residents who have severe or profound IDD and who are medically fragile or have behavioral problems. To address those needs, SSLCs employ professional staff to provide comprehensive behavioral treatment and healthcare services. Though many SSLCs have trouble hiring and retaining these professionals, others do so successfully. Additionally, SSLCs offer skills training; occupational, physical and speech therapies; wheelchair fabrication and repair services; and vocational programs and employment.

SSLCs have statutory authority to provide services to people living in the community who are in a DADS program and meet the eligibility criteria required for the ICF program. However, DADS seldom uses this option, in part because the agency is not authorized to retain funds received from community clients in the agency's operating budget to cover the cost of providing the service.

Despite increased efforts, the transition of SSLC residents statewide to the community remains slower than planned.

Transitioning an SSLC resident into the community took more than nine months on average in fiscal year 2013.

A goal of the Promoting Independence Initiative is to move residents of SSLCs to the community within 180 days of their request to relocate, but the average relocation time for fiscal year 2013 was 284 days, or more than nine months. For some residents, the process can take several years. Some delays are health related or due to a lack of adequate community supports, but others are related to logistics and planning that could be overcome with improved communication and coordination among all the responsible parties. Clearly much care must go into relocating someone from an SSLC to the community; however, the current delays are too long.

As part of the U.S. Department of Justice settlement agreement, SSLCs are documenting their efforts to increase the number and speed of transitions to comply with the 180-day goal. Statewide, SSLCs are increasing initiatives to improve transition numbers and speed. One of the most intensive efforts is in the Austin area, where the Austin SSLC and three local authorities partnered to increase the support to clients transitioning to the community. Their pilot, funded by a federal grant, increases education about community options, enhances the planning and service coordination process, and provides increased support both during and after the move. Additionally, Travis County Integral Care provides behavioral crisis intervention services during transitions to the Austin community. However, such coordination between local authorities and SSLCs does not exist across the state.

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. The model evaluation and selection process should take six months. 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 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.

DADS and the Health and Human Services Commission (HHSC) should evaluate a reimbursement level for community-based group homes that will incentivize private providers to open small group homes for clients with high medical needs, similar to the level that DADS uses to enhance funding for people with high behavioral needs. The public and the provider community would have the opportunity to comment on the proposed reimbursement level through the rulemaking process. This recommendation would allow the agency to enhance community capacity for residents of SSLCs with higher medical needs, especially in those areas where SSLCs may close under recommendations in Issue 1.

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.

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. The fee schedule should be based on established Medicaid rates with a justification for any variations. 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

2.4 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.

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

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

SSLC professional staff such as dentists and behavior analysts should host provider workshops to share their expertise with private providers in the community. Additionally, SSLCs should create an open line of communication to community providers to assist them with specific issues related to serving clients with IDD. This recommendation would allow the agency to leverage the expertise of existing SSLC staff to support people with IDD in the community.

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

This recommendation would build upon the agency's current transition policies and processes. The agency should examine the partnerships between local authorities and DADS staff at SSLCs to identify successful working relationships and innovative strategies that improve the number and speed of transitions. With the information DADS obtains, the agency should develop and implement a statewide process that will improve the transition rate from SSLCs to the community.

Fiscal Implication

The recommendations in Issue 1 to shrink the SSLC system along with continuing efforts to provide SSLC residents noninstitutional options will continue to strain community-based support systems. The recommendations in this Issue are intended to strengthen community supports. However, transitioning SSLC residents with greater behavioral and medical needs to community-based care cannot happen without investing in community supports. DADS would invest a portion of savings generated from SSLC closures into the development of necessary community services.

Two of these recommendations would have estimated costs to state and federal funds, starting at approximately $3.6 million in 2016 and increasing to $10.48 million by 2020. These costs are expected to be offset by savings from the closing of the Austin SSLC and other SSLCs as described in Issue 1.

For the expansion of crisis services in Recommendation 2.1, teams are estimated to cost about $500,000 a year. Assuming 10 local authorities need crisis teams, the estimated cost would be $5 million a year. DADS would need six months to evaluate and select the models, and implement new crisis teams, so funding would be half, or $2.5 million, for fiscal year 2016.

For the new reimbursement level in Recommendation 2.2, the cost would be approximately $100 per day, per client for a yearly cost of $36,500 per client. To arrive at the number of clients qualifying for the rate each year, Sunset looked at current SSLC residents whose health status is classified as "severe," which means they need a higher level of nursing support. As of May 2014, 329 SSLC residents have a "severe" health status, but not all those residents will choose to move to the community. Assuming 30 new qualified clients are served in the community each year, the add-on would cost an estimated $1,095,000 in 2016 and increase to $5,475,000 by fiscal year 2020.

Amending statute and adding a rider to allow SSLCs to retain fees for services in their operating budget should have a small positive fiscal impact, but insufficient information is available to estimate an amount.

Department of Aging and Disability Services

Fiscal Year	Cost to State and Federal Funds*
2016	$3,595,000
2017	$7,190,000
2018	$8,285,000
2019	$9,380,000
2020	$10,475,000

* Costs would be offset by the closure of SSLCs recommended in Issue 1.

1 Tex. Gov. Exec. Order No RP-13, April 18, 2002 (200202445); Section 531.0244, Texas Government Code.

2 Section 531.02443, Texas Government Code.

3 Department of Aging and Disability Services, *Physical and Behavioral Health Services in the Home and Community-Based Services and Community Living Assistance and Support Services Medicaid Waiver Programs: Exploring the Capacity to Serve Individuals with Complex Needs in the Community* (Austin: Department of Aging and Disability Services, 2012), p. 48.

4 Ibid., p. 74.

Responses to Issue 2

Recommendation 2.1

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

Agency Response to 2.1

The agency supports this recommendation. 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. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 2.1

Michele Arnold, Bellaire

Clay Boatright, Plano

Carol Cook, Austin

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 2.1

None received.

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.

Agency Response to 2.2

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 2.2

Carol Cook, Austin

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Edmund Snuggs, Dallas

Against 2.2

Michele Arnold, Bellaire

Modifications

1. Provide a higher reimbursement rate for community providers of services to people with high needs, whether relocating from an SSLC or already in the community, including vent-assisted individuals. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

2. Ensure this new reimbursement level is also available for individuals with high medical needs entering the program off of the interest list, through SSLC diversion slots, or from nursing homes. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

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.

Agency Response to 2.3

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 2.3

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Nona Rogers, Austin

Edmund Snuggs, Dallas

Against 2.3

Michele Arnold, Bellaire

Modification

3. DADS should conduct a cost comparison to determine if SSLC services to people with disabilities living in the community cost more than community-based resources, and if so, the SSLC should not be used. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

Recommendation 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.

Agency Response to 2.4

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 2.4

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 2.4

None received.

Recommendation 2.5

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

Agency Response to 2.5

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 2.5

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Nona Rogers, Austin

Against 2.5

None received.

Recommendation 2.6

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

Agency Response to 2.6

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 2.6

John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 2.6

None received.

Issue 3

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

Background

Several Department of Aging and Disability Services (DADS) community-based programs for people with intellectual and development disabilities (IDD) include day habilitation services. These services are offered as part of the person's residential or in-home program and are paid for by Medicaid through DADS. Day habilitation facilities provide services in a group setting during weekday work hours, assisting people with personal-care needs, medication administration, and tasks delegated by a registered nurse.[1]

Day habilitation activities should be consistent with a person's plan of service, which focuses on improving skills to help the person remain independent and live successfully in the community. Services should reinforce the techniques the person learns from other service providers, like behavior analysts or group home staff. Services vary, but may include recreational activity, specialized therapy, and life skills training.

Community-based IDD waiver and intermediate care facilities (ICF) program providers can care for their clients during the day or subcontract for the service with day habilitation facilities. The table, *DADS Community-based IDD and ICF Programs and Number Served*, provides information on the IDD programs that offer day habilitation services as a benefit, the living options for people in that program, and the average number of people served per month in fiscal year 2013.[2] The ICF program provides institutional care to people with IDD. HCS, TxHmL, CLASS, and DBMD, also known as waiver programs, provide alternatives to institutional care. Sending clients to a day habilitation facility is not a requirement of any DADS program, but allows people with IDD to work on socialization skills and become more independent. Day habilitation is typically less expensive than a provider serving the person at home because several people are supervised in one location.

DADS Community-based IDD and ICF Programs and Number Served*

Program	Where Person Resides	Number of People Served in FY 13**
Home and Community-based Services (HCS)	Group Home, Foster Home, Own Home	20,159
Intermediate Care Facility (ICF)	Group Home	6,603
Texas Home Living (TxHmL)	Own Home	4,611
Community Living Assistance and Support Services (CLASS)[3]	Own Home	4,671
Deaf Blind and Multiple Disabilities (DBMD)	Own Home	150

* These programs may offer day habilitation services as part of an overall plan of service.

** These are number of people served in the program overall, not the number receiving day habilitation services.

The agency does not track overall expenditures on day habilitation services through these programs, as providers subcontract for these services as part of their overall care. However, staff does track these costs for two of the programs — HCS and TxHmL — with annual expenditures for just these two programs increasing from $84.9 million in fiscal year 2011 to $96.2 million in fiscal year 2013.

Throughout the Sunset staff review of DADS, advocates, providers, legislators, and other stakeholders expressed concerns about the inconsistent quality of care provided in day habilitation facilities. Legislation filed last session would have required DADS to regulate day habilitation facilities, but providers testified day habilitation owners would increase prices to meet the new life and safety code standards proposed in the bill.[4] The bill did not pass, but the legislative effort illustrates the concern about ensuring the safe and appropriate care of people served in these facilities.

Sunset staff visited several day habilitation facilities and found tremendous variation in the quality of programming and environment, many good but others quite poor. As part of Sunset's review of DADS, staff explored options that could help ensure basic safety of DADS clients, while avoiding significant expansion of state regulation and the higher costs tied to broader licensure of day habilitation facilities.

Findings

DADS relies on community-based IDD waiver and ICF providers to ensure the safety of the clients they place in day habilitation facilities, but provides little assistance or information to help providers in this task.

As access to DADS' community-based programs for people with IDD increases, the number of people attending day habilitation facilities will likely increase as well. However, day habilitation facilities are not licensed by any federal, state, or local government entity. Instead, DADS relies on the program providers that place their clients into such care for ensuring that these facilities provide safe and adequate services. The program providers are responsible for all services and the overall safety of their clients with IDD.

Day habilitation facilities are not licensed by any federal, state, or local entity.

DADS staff only visit day habilitation facilities to monitor an individual client's care as part of an annual inspection of a program provider. If DADS staff observe a day habilitation facility not properly serving a client or failing to provide services that meet the client's plan, DADS holds the program provider accountable. However, DADS has no overall regulatory authority over these facilities and cannot take any action against the day habilitation provider itself.

People with IDD have the right to choose their own day habilitation facility, but generally rely on the advice and assistance of their program provider. Most providers find day habilitation facilities through word of mouth and do not have data to judge the quality and safety of facilities, and must rely on their own judgment.

In fact, Sunset staff had considerable difficulty finding any broad-based information on day habilitation facilities statewide. The agency does not track the violations or deficiencies found at day habilitation facilities during an inspection of providers and thus cannot identify problematic programs. The Department of Family and Protective Services (DFPS) investigates

abuse, neglect, and exploitation at day habilitation facilities, but the agency reports allegations by a client's primary program and does not keep data by day habilitation facility.

DADS rules vary across programs and do not require providers to include any basic quality and safety measures in contracts with day habilitation facilities.

Day habilitation clients are at high risk of abuse if not appropriately protected.

The agency does require providers that use day habilitation services to do so by contract, but does not have required contract provisions that providers must use. A contract must state that the day habilitation owner will provide day habilitation services to the client, but DADS does not require the contracts to include any basic standards related to safety or quality of care. Day habilitation facilities serve clients with IDD that may have complex medical or behavioral needs and may have difficulty communicating. These clients are at a high risk of injury, abuse, neglect, and exploitation if not appropriately protected.

Each of the community-based programs have rules governing the responsibilities of providers when subcontracting for services from other entities, including day habilitation facilities. Most rules elaborate on responsibilities of the provider in ensuring the provision of certain services and requirements for ensuring qualified staff, but these requirements vary across programs. HCS providers, for example, must ensure day habilitation staff have a name-based criminal background check, and verification that the owner has done annual checks of the Nurse Aide Registry and the Employee Misconduct Registry for each staff person. Other program rules hold the provider responsible, but may not specify each of these checks. This inconsistency can create a complex array of requirements for day habilitation facilities, depending on the client's program.

In addition, all of the program providers that administer group homes and services for these clients must meet strict requirements for safety and quality. Before hiring staff, programs must check an applicant's criminal history, Nurse Aide Registry status, and Employee Misconduct Registry status.[5] If the potential employee has been convicted of certain crimes (e.g., sexual assault, aggravated assault, Medicaid fraud, or injury to a child, elderly individual, or disabled individual) or is listed in either registry as having committed an act of abuse, neglect, exploitation, misappropriation, or misconduct against a client, the person cannot be employed by the facility.

Many group home protections may not extend to clients in day habilitation care.

Group home providers also hold fire drills several times a year and post the Texas Abuse and Neglect Hotline number and instructions for reporting abuse, and follow an individual's plan of service. Clients in day habilitation facilities spend several hours a day at the facility, yet such standards do not always extend to these facilities.

During tours of day habilitation facilities, Sunset staff observed several safety concerns. In one facility, staff observed a large number of clients with very few workers supervising clients. To safely evacuate people with IDD who may have difficulty exiting a building, the staff and clients at day habilitation facilities

must practice fire drills; however, DBMD is the only program that requires an emergency response plan of its subcontractors. In addition, DFPS' abuse hotline number and instructions were not posted in the facilities Sunset staff visited. This information should be accessible, so clients and staff can easily report incidents at day habilitation facilities.

Recommendations

Change in Statute

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 would require DADS to specify, in rule, minimum standard requirements for providers across all of its community-based IDD programs to include in any contract with day habilitation facilities, as follows.

- **Run Background Checks**. Contracts should specify that the day habilitation owner run a name-based criminal background check on each potential and existing unlicensed employee and maintain documentation on-site at the facility that those checks were completed. Owners would be required to conduct annual criminal background and registry checks of employees and volunteers with the Department of Public Safety, Nurse Aide Registry, and Employee Misconduct Registry. DADS would determine, in rule, the criminal offenses that would not be acceptable — such as a record of abuse, neglect, or fraud — for day habilitation facility employment if they wish to accept clients in DADS programs.

- **Conduct Fire Drills**. Contracts should require day habilitation owners to have an emergency response plan and conduct regular fire drills to ensure their staff can quickly and safely evacuate all clients from the building. Require DADS to determine, in rule, how many times the facility should hold fire drills each year and how to document the drills.

- **Post Abuse Hotline**. Contracts should specify that day habilitation owners prominently post the 24-hour, toll-free DFPS number and instructions for reporting abuse, neglect, and exploitation in multiple locations in every facility. The information should ensure that both staff and clients have easy access to the number and a clear reminder of the requirement to report any suspected problems for outside investigation.

- **Follow Client Plan**. Contracts should specify that day habilitation facilities provide services that follow and support a client's plan with their program provider. The owner should keep the plan on file in the facility, so staff can easily refer to it when planning services for the client.

These changes aim to ensure the basic safety and adequacy of day habilitation services paid for by DADS as part of a community-based waiver or ICF program. Under this recommendation, DADS would continue to hold providers responsible for ensuring that a day habilitation facility in which they place a client is providing safe and quality services. However, specifying these requirements in contract would ensure providers clearly and consistently communicate basic expectations to day habilitation facilities and enable providers to hold facilities accountable for providing appropriate care.

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.

DADS staff would continue to visit day habilitation facilities only to check on the services provided to individual clients as part of an inspection of the person's community-based waiver or ICF program. However, this recommendation would require DADS staff to review the related day habilitation contract to ensure the provider included the minimum requirements, and to check the facility's compliance with the contract. DADS staff already review several documents during the inspection process, so requiring them to check the contracts would not significantly increase the amount of time and effort they put into the existing process.

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.

This recommendation would require 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 separate the data from other programs and allow DFPS and DADS to identify trends and problems at day habilitation facilities. DADS could also use this information to educate providers on common problems to look out for when contracting with a day habilitation facility.

3.3 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.

As part of this recommendation, DADS should 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. DADS should require program providers to report this day habilitation information to the agency once a year. DADS should also track any violations and deficiencies found at a day habilitation facility during a DADS inspection tied to a provider. In addition, DADS should 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, but this recommendation would allow the agency to separate the data from other programs and identify trends and problems at day habilitation facilities. The data would be available to program providers, to assist them in advising their clients in making an informed decision about a day habilitation facility. DADS would also use the data to educate providers about how to contract with and monitor a day habilitation owner as part of the regular training sessions DADS holds for providers.

Fiscal Implication

None of these recommendations would have a fiscal impact to the State. Any additional data tracking requirements on DFPS and DADS would be incorporated into existing data sets and collection processes. In addition, these requirements should not represent any significant costs to providers or day habilitation facilities, as DADS already holds providers responsible for the safety of these clients — this simply places those requirements into a contract for more consistent application. These recommendations do not place any new requirements on day habilitation facilities overall, and only reinforce basic safety requirements for those who choose to contract with DADS providers.

1 "Services and supports provided through DADS," Department of Aging and Disability Services, last modified May 22, 2012, http://www.dads.state.tx.us/providers/MRA/explanation/dads-ss.html.

2 40 T.A.C. Section 9.154(c)(6), 40 T.A.C. Section 9.554(d)(B), 40 T.A.C. Section 42.104(6), 40 T.A.C. Section 45.104(7), 40 T.A.C Section 90.42(b), and 42 CFR Section 483.410(d).

3 CLASS does not offer day habilitation services; however, CLASS allows prevocational services to be provided in day habilitation settings, and the services are billed as habilitation services, instead of day habilitation.

4 H.B. 1005, 83rd Texas Legislature, Regular Session, 2013.

5 Chapters 250 and 253, Texas Health and Safety Code.

Responses to Issue 3

Recommendation 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.

Agency Response to 3.1

The agency supports this recommendation.

Agency Modification

1. Require day habilitation providers to conduct annual criminal background and registry checks of employees and volunteers.

(Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

Staff Comment: The recommendation already requires annual background and registry checks of employees and volunteers.

For 3.1

Clay Boatright, Plano

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Edmund Snuggs, Dallas

Against 3.1

None received.

Modifications

2. Require any day habilitation programs that are not a direct service offered by a waiver provider to be contracted by or licensed by DADS, rather than placing this duty on providers. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

3. Direct DADS to consider using technology to standardize functions such as training for staff given the high turnover at day habilitation facilities. (Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance)

Recommendation 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.

Agency Response to 3.2

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 3.2

Clay Boatright, Plano

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Edmund Snuggs, Dallas

Against 3.2

None received.

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.

Agency Response to 3.3

The agency agrees that compiling basic information about day habilitation facilities will be important in evaluating the services received by DADS clients. 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.

Agency Modification

4. Require DADS to capture the day habilitation provider's name, location, and services by creating a registry of day habilitation providers. The contact between DADS and the service provider would direct the service provider to only subcontract with day habilitation providers listed on the registry.

(Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 3.3

Michele Arnold, Bellaire

Clay Boatright, Plano

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 3.3

None received.

Issue 4

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

Background

The Department of Aging and Disability Services (DADS) licenses long-term care providers to ensure delivery of quality services and to protect the health and safety of Texans. DADS inspects providers, investigates complaints, determines violations, and carries out enforcement proceedings when warranted. As shown in the chart, *DADS Licensed Providers and People Served*, the agency regulates about 10,600 providers serving 1.3 million of Texas' most vulnerable citizens, primarily the elderly and persons with disabilities.

DADS Licensed Providers and People Served FY 2013

Type	Number of Providers	Number of People Served
Nursing Home	1,218	93,764
Home Health Agency	6,296	1,200,000
Intermediate Care Facility	847	5,603
Assisted Living Facility	1,792	37,546
Adult Day Care	479	21,943
Total	**10,632**	**1,358,856**

Long-term care providers that opt to participate in Medicare or Medicaid, including nursing homes, home health agencies, and intermediate care facilities for individuals with an intellectual disability, must maintain a state license to participate in these programs. Assisted living facilities and adult day cares are state-licensed only and not federally regulated.

Nursing homes, intermediate care facilities, and assisted living facilities offer 24-hour residential services, including medical care. For people living in their own or family home, home health agencies act as an extension of a doctor's office, providing in-home services and medical care. Adult day care facilities provide daytime activities including health, social, and supportive services to help people living in the community to maintain their independence.

In fiscal year 2013, DADS had 1,024 staff carrying out state and federal regulatory activities, including about 600 inspectors, spending $63.7 million on these activities.

- **State regulation**. Statute authorizes DADS to sanction long-term care providers that violate their respective licensing acts. These sanctions range from administrative penalties to license suspension or revocation. On DADS' approval, nursing homes, assisted living facilities, and intermediate care facilities may ameliorate state administrative penalties in lieu of enforcement by using these funds to improve services.[1] In fiscal year 2013, DADS approved $106,250 penalty ameliorations. Otherwise, DADS must deposit administrative penalties to General Revenue.

- **Federal regulation**. The agency carries out regulatory functions on behalf of the Centers for Medicare and Medicaid Services (CMS). Nursing homes may opt into Medicare and/or Medicaid, intermediate care facilities must be Medicaid certified, and home health agencies may opt into Medicare. The agency certifies to CMS that providers opting into federal programs meet regulatory standards by conducting inspections and complaint investigations. If DADS finds violations as a result of these activities, the agency recommends sanctions to the federal agency. The Centers for Medicare

and Medicaid Services retains authority to make Medicare enforcement decisions but ultimately delegates authority for Medicaid enforcement decisions to DADS. DADS receives a portion of federal monetary penalties, reserved for projects that benefit nursing home residents.[2] In fiscal year 2013, DADS had about $3 million in federal penalty revenues available for projects.

- **Medicaid contracts**. Separate from its authority to enforce state licensure requirements, DADS also administers nursing home and intermediate care facility Medicaid contracts to ensure providers comply with terms for receiving federal funds. For nursing homes participating in both Medicare and Medicaid, which includes most homes in Texas, CMS retains authority over contract termination decisions. Home health agencies contract directly with DADS to provide Medicaid entitlement and waiver services.

Findings

DADS issues few sanctions for violations, including many serious and repeated violations, leaving people receiving care in nursing homes and from other licensed providers in harm's way.

Because long-term care providers must comply with DADS licensure requirements to participate in federally funded programs, state law is the primary vehicle to ensure meaningful protection of vulnerable Texans. However, in fiscal year 2013, DADS took enforcement action in response to less than one percent, or 225, of the almost 38,000 state violations confirmed by its staff, as shown in the chart, *DADS State Enforcement Actions*.[3] While one enforcement action may cover multiple violations, the agency could not account for the number of violations tied to these 225 enforcement actions. That same year, DADS assessed 47 administrative penalties, collecting only $1 million across all provider types.

DADS State Enforcement Actions – FY 2013*

Provider Type	Number of Violations	Penalties Paid	Number of Penalties	Civil Actions	License Suspension	License Revocation	License Denial	Total Enforcement Actions
Nursing Home	18,735	$399,930	5	6	0	0	0	11
Home Health Agency	6,538	$569,353	31	0	0	43	69**	143
Intermediate Care Facility	3,537	$32,750	2	1	1	0	0	4
Assisted Living Facility	6,955	$23,500	9	6	1	0	39	55
Adult Day Care	2,154	N/A	0	0	0	0	12	12
Totals	**37,919**	**$1,025,533**	**47**	**13**	**2**	**43**	**120**	**225**

* Includes penalties recommended in previous fiscal years but not paid until FY 2013.

** Includes surrender of license in lieu of enforcement.

Compared to the approximately $5.4 billion in revenues taken in by the Texas nursing home industry alone, $400,000 in state penalties is insignificant.[4] Further, of the 10,632 licensees, only 1.5 percent had an action taken against their license, with actions limited largely to home health agency and adult day care providers. Altogether, these figures reflect a negligible level of state enforcement in comparison to the thousands of violations uncovered. While nursing homes also pay federal monetary penalties, they negotiate substantial reductions in these penalties. In fiscal year 2013, Texas nursing homes paid $2.6 million in federal penalties, representing only 36 percent of the $7 million recommended to CMS by the agency.

The effective and fair use of penalties plays a key role in deterring violations and increasing compliance with regulations intended to protect the health and safety of the public. While some violations found by DADS may be minor, providers do commit violations that pose serious threats to the elderly and persons with disabilities, as described below, and warrant more aggressive action.

DADS assessed just $400,000 in state penalties against the $5.4 billion Texas nursing home industry in FY 2013.

- **Serious and repeated violations**. According to the website Nursing Home Inspect, Texas ranks 9th in the country for serious violations per nursing home.[5] Sunset staff examined the agency's enforcement data based on the level of severity of the violations, finding that DADS staff identified many providers committing serious violations. For example, in fiscal year 2013, DADS identified 378 nursing home violations at the highest level of severity placing residents in immediate jeopardy of serious harm or death, and another 266 violations at the next level of severity, actual harm. The chart, *Nursing Home State Violations by Level of Severity of Harm*, describes each of the four levels of harm and the number of violations identified by DADS staff in nursing homes in fiscal year 2013.

Nursing Home State Violations by Level of Severity of Harm FY 2013

Level of Severity	Harm	Number of Violations
4	Immediate jeopardy that causes, or is likely to cause, serious harm or death	378
3	Actual harm which affects, or limits, a person's ability to maintain their highest well-being	266
2	No actual harm, but with potential for more than minor harm	14,632
1	No actual harm, but with potential for minor negative impact	3,459

More than 90 nursing homes had repeated, serious violations over the last two years.

In addition, some providers regulated by DADS repeat serious violations. According to DADS, 92 nursing homes had repeated violations at the highest levels of severity — immediate jeopardy and actual harm — within fiscal years 2012–13. These violations include problems such as sexual abuse, resident-on-resident aggression, inadequate treatment of sores and infections, and medication errors. Despite receiving significant technical assistance from

DADS, these nursing homes continue to have the lowest quality ratings, commit the most violations, and remain at high risk of committing future violations.

Home health agencies also commit a significant number of serious violations. In fiscal year 2013, DADS ranked 63 percent of the 6,530 home health violations as serious, resulting in threats to health and safety, serious harm, or potentially death. These violations include failure to follow medical orders, failure to report abuse and neglect, and failure to conduct employee background checks. In addition, 19 intermediate care facilities had a history of repeated serious violations in fiscal years 2012–13.

DADS found 9,000 violations in assisted living and adult day care facilities, but does not track how many were serious.

In fiscal year 2013, DADS identified more than 9,000 violations in assisted living and adult day care facilities, including problems such as abuse and neglect in adult day cares and assisted living facilities keeping residents whose condition warranted transfer to a nursing home. However, the agency does not track the types of violations at these two types of facilities, just overall numbers. Therefore, DADS could not determine the number of serious or repeat violations among these providers. In addition, while the 82nd Legislature authorized DADS to assess administrative penalties against adult day care providers effective September 1, 2011, the agency did not finalize procedures for these penalties until May 1, 2014.

Less serious violations can also represent a concern, especially if widespread in a facility and not corrected. In fiscal year 2013, almost 80 percent, or 14,632, of nursing home state violations were Level 2 violations of no actual harm but with the potential for more than minor harm to residents.[6] In fiscal year 2013, virtually all nursing homes had repeated minor violations during their last two inspections.

DADS has not assessed administrative penalties against adult day cares, despite having this authority since 2011.

State administrative penalty statutes for licensed providers include standard elements for determining penalty amounts such as threat to public safety, seriousness of violations, and history of previous violations. However, only one DADS penalty matrix, for intermediate care facilities, ties increased penalty amounts to second and third offenses.[7] Without ratcheting up penalties tied to repeat offenses, providers lack incentive to come into long-term compliance by addressing more numerous and frequently occurring minor violations.

- **License revocation**. Statutes authorize DADS to revoke provider licenses for serious violations that may result in immediate harm to the health and safety of Texans.[8] However, in the last three fiscal years, DADS has revoked just three nursing home licenses, with no revocations in fiscal year 2013. Currently, the agency has proposed revoking two more nursing home licenses based on numerous repeated and serious violations, but these cases are still pending.

  The Legislature has expressed its intent that nursing homes with repeated, severe violations should not do business in Texas by requiring DADS to terminate a nursing home's Medicaid contract if the agency has imposed

serious penalties three times within two years.[9] However, CMS will not allow DADS to use this tool to terminate Medicaid contracts for homes that also take Medicare. As a result, the agency can only use this sanction against Medicaid-only nursing homes and just 33 of the 1,218 nursing homes in Texas fall into this category.[10] In 2011, the State Auditor's Office found that in a five-year period, 452 nursing homes with serious, repeated violations would have qualified for termination under this tool if it were applicable to all nursing homes.[11]

In contrast, in fiscal year 2013, the agency revoked the licenses of 43 home health agencies. While this does represent a larger number of revocations, this is still less than 1 percent of the 6,296 licensed agencies in Texas. For all other provider types, DADS did not revoke any licenses in fiscal year 2013.

"Right to correct" statutes prevent DADS from assessing penalties against 80 percent of nursing home violations.

Statutorily granting providers the right to correct most violations without penalty significantly limits DADS' ability to enforce regulations intended to protect public health and safety.

Statute grants all licensed providers the right to correct most violations within 45 to 60 days and prohibits DADS from using penalties to encourage compliance as long as the provider corrects the violation.[12] For all licensed providers, the right to correct extends to all violations, so long as it does not result in a serious threat to, harm to, or death of a resident or involve abuse or neglect of the resident.[13] For example, for nursing homes, only Level 4 violations of immediate jeopardy that cause or are likely to cause serious harm or death are exempt from the right to correct provision. Under this statutory protection, violators can repeatedly harm, or place residents at risk of harm, without facing financial penalties — as long as they correct each violation within 60 days.

The right to correct substantially hinders the agency's ability to implement its own enforcement guidelines. For nursing homes, these guidelines provide for penalties for all but Level 1 harm, with increasing amounts based on the level of severity of the violation and if the violation was isolated, a pattern, or widespread across the facility. For nursing homes, the right to correct language prevents DADS from assessing penalties against 80 percent of violations. While some violations may not result in significant harm, having these requirements set in statute limits DADS' ability to determine which circumstances best warrant this flexibility and when actual harm or even potentially harmful violations, especially if widespread, call for an administrative penalty to ensure a provider's ongoing compliance.

Allowing providers to repeatedly commit the same violations, by later coming into compliance, weakens the integrity of the regulatory process. The chart, *Sample of Providers With the Highest Number of Violations*, shows

Sample of Providers With the Highest Number of Violations – FY 2013

Provider	Number of Violations*	Recommended Penalty
Intermediate Care Facilities		
Facility A	96	None
Facility B	75	None
Facility C	59	$5,000
Facility D	55	$1,000
Home Health Agencies		
Agency A	80	$8,500
Agency B	79	$20,500
Agency C	58	None
Agency D	38	$4,500

*Includes 251 federal violations that are not subject to monetary penalties.

that even providers with the largest number of violations in the state often faced little or no fines in fiscal year 2013.

Right to correct laws for nursing homes, assisted living facilities, and adult day cares do authorize DADS to assess a penalty for violations that do not remain corrected for at least a year. If assessed, statute requires the penalty to be three times the original penalty. In fiscal year 2013, the agency used this enhanced penalty authority for 36 nursing home violations.

Many penalty caps are too low to deter serious or repeated violations.

Several factors further limit the effectiveness of DADS' penalties in deterring violations — low penalty caps, negotiated reductions, and appeal delays.

- **Low penalty caps**. An agency's administrative penalty authority should reflect the potential severity of the violation, and serve as a deterrent to such violations of law. The chart, *DADS State Administrative Penalty Authority*, shows the range of penalties authorized for each type of provider. While nursing home penalties go up to $10,000 per violation, per day, the caps and limitations on other providers raise concerns.

DADS State Administrative Penalty Authority

Provider	Statutory Range
Nursing Home	$100–$10,000 per violation, per day
Intermediate Care Facility	$100–$5,000 per violation, per day (Per inspection limit of $5,000 for small facilities and $25,000 for large facilities)
Home Health Agency	$100–$1,000 per violation, per day
Assisted Living Facility	$100–$1,000 per violation, no authority for per day penalty
Adult Day Care	$100–$500 per violation, per day

Caps on fines "per inspection" further limit DADS' authority.

For intermediate care facilities, an additional limitation exists. DADS cannot recommend more, *per inspection*, than $5,000 in penalties for a small intermediate care facility or $25,000 for a large facility, no matter the number of violations found during an inspection. This limitation does not exist for other provider types, and significantly hampers DADS' ability to appropriately link penalties to the number and severity of violations identified at these facilities.

For home health agencies and assisted living facilities, the upper limit of $1,000 fails to provide an adequate deterrent to potentially serious violations that can threaten the health and safety of elderly individuals and persons with disabilities. For example, home health agency providers come into a person's home, often one-on-one without supervision, and provide medical services that if incorrectly done can result in serious injury or death. In comparison, regulatory agencies for health-related professions such as doctors, nurses, dentists, and pharmacists commonly have administrative penalty authority of up to $5,000 per violation, per day.[14]

Assisted living facilities provide 24-hour residential care and, in some instances, could have a financial incentive to inappropriately retain a person whose condition warrants transfer to a nursing home. DADS also lacks authority to assess administrative penalties against assisted living facilities separately for each day a violation continues, yet has this per-day penalty authority for all other licensed providers. Adult day care facility penalties, while low, were recently added by the Legislature in 2011, and DADS just implemented procedures to impose these penalties as of May 1, 2014.

Low penalties can become a "cost of doing business" instead of deterring violations.

- **Negotiated reductions**. In fiscal year 2013, DADS only collected an average of 42 percent of penalties recommended by the agency, as shown in the chart, *State Administrative Penalties Recommended and Paid*. By disputing violations through numerous informal procedures, providers can significantly reduce penalties. Low penalties can become a "cost of doing business" instead of a deterrence against committing violations.

State Administrative Penalties Recommended and Paid FY 2013

Provider Type	Recommended Penalties	Paid Penalties*	Percent Paid
Nursing Home	$1,343,200	$399,930	30%
Home Health Agency	$999,850	$569,353	57%
Intermediate Care Facility	$54,000	$32,750	60%
Assisted Living Facility	$47,850	$23,500	49%
Adult Day Care	$0	N/A	N/A
Total	**$2,444,900**	**$1,025,533**	**42%**

* Includes penalties recommended in previous fiscal years but not paid until FY 2013.

- **Delayed appeals**. Despite a backlog of 622 pending appeals, of which 139 are four to seven years old, DADS and the State Office of Administrative Hearings held only 14 enforcement hearings in fiscal year 2013. This process is clearly broken. Agencies should complete enforcement cases reasonably swiftly, since delay reduces the deterrent effect of regulation. According to DADS, many of these appeals have been delayed due to a long-standing practice of not requesting a hearing until reaching agreement with the licensed provider on a hearing date. This practice gives providers little incentive to agree to a hearing date.

139 of 622 pending appeals are four to seven years old.

The Health and Human Services Commission (HHSC) conducts certain pre-hearing activities on behalf of DADS, and forwards hearing requests to the State Office of Administrative Hearings, further contributing to inefficiencies in the appeals process. Because providers also do not have to pay penalties while appealing, they often stall the process. For example, the agency's oldest enforcement case involves a home health provider with 10 separate causes of action, including falsification of criminal history information on license applications, where DADS is seeking license revocation. Since 2012, the provider has rejected 15 hearing dates proposed by DADS and the case remains unresolved.

Recommendations

Change in Statute

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

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. As part of this recommendation, 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.

Under this recommendation, DADS would be able to apply progressive sanctions based on multiple factors already in law, such as the nature and circumstances of violations, in addition to repeated violations.[15] Repeat violation and revocation rules could be modeled after statute governing termination of Medicaid contracts for nursing homes, but DADS would not be limited to this approach. As part of this recommendation, DADS should update penalty matrices, specific to each provider type, to ensure fair application of progressive sanctions for continuing lower-level violations, as well as serious violations. Adopting these criteria in rule would ensure that the public, providers, and other stakeholders have an opportunity to provide input and participate in development of these rules. These rules would require approval and adoption by HHSC's executive commissioner.

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.

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. As a result of this recommendation, DADS could assess penalties for numerous harmful violations, yet at the same time allow for reasonable corrections of small violations without a penalty.

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.

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. Caps on adult day care administrative penalties are not included in this recommendation because the agency has yet to implement these penalties.

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.

This recommendation would help ensure a more timely setting of hearings by establishing a timeframe for DADS to forward appeal requests and directing the State Office of Administrative Hearings to set a timely hearing date. The Health and Human Services Commission should no longer carry out pre-hearing and administrative functions for appeals. Instead, the State Office of Administrative Hearings would handle all aspects of the hearing as it routinely does for other state agencies. This change aims to facilitate the elimination of the backlog of provider appeals. As part of this recommendation, HHSC should revise its rules and memorandum of understanding regarding these hearings with the State Office of Administrative Hearings. DADS should set a goal of eliminating this backlog by October 1, 2016.

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.

Under this recommendation, the agency would be directed to improve tracking of violations overall, but specifically to address the lack of enforcement data on assisted living and adult day care facilities. This change aims to ensure the agency tracks violations across all providers as necessary to implement changes to enforcement policies, as well as to better identify regulatory trends.

Fiscal Implication

These recommendations could result in revenue gains and some minor cost to the State. Limiting the right to correct for some violations and increasing DADS' administrative penalty limits could increase revenues to the General Revenue Fund. However, the amounts generated would depend on the number and seriousness of future violations subject to increased enforcement penalties, and thus future revenue gains could not be determined.

While DADS is funded to cover costs associated with hearing appeals at the State Office of Administrative Hearings, eliminating its substantial backlog of cases could exceed funding allotted for appeals. However, these increased costs cannot be estimated since the exact number of cases going to the State Office of

Administrative Hearings is unknown due to many providers likely settling cases instead of going to a hearing. Also, cases vary widely in their complexity, and thus the costs associated with these hearings vary.

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1 Sections 242.071, 247.0457, and 252.071, Texas Health and Safety Code.

2 Memorandum from the Centers for Medicare and Medicaid Services, Office of Clinical Standards and Quality/Survey and Certification Group to State Survey Agency Directors, December 16, 2011.

3 Total violations include about 3,500 nursing home violations not subject to a penalty.

4 Texas Health Care Association, *Texas Nursing Home Profession, Analysis of the 2011 NF Medicaid Cost Report Database*, August 2013.

5 "Nursing Home Inspect," ProPublica, last modified February 4, 2014, http://projects.propublica.org/nursing-homes/.

6 Level 2 violations which may not result in actual harm, but have the potential for more than minimal harm. 40 T.A.C. Section 19.2112(f)(1).

7 40 T.A.C. Section 90.236(m).

8 Sections 242.061-62, 252.035 and 247.041-42, Texas Health and Safety Code, and Sections 103.008 and 0092, Texas Human Resources Code.

9 Section 32.021(m), Texas Human Resources Code.

10 Letter from Agency of Health and Human Services Health Care Financing Administration to Texas Department of Human Services, June 1, 2001.

11 State Auditor's Office, *Nursing Facility Complaint Processing at the Agency of Aging and Disability Services*, report no. 11-047 (Austin: State Auditor's Office, 2011), p. 16.

12 Sections 142.017(e), 242.0665, 247.0452, 252.065(e), Texas Health and Safety Code and 40 T.A.C. Section 97.527(g)(2)(D).

13 40 T.A.C. Sections 19.2114, 90.240, 92.551, 97.602, and 98.105.

14 Sunset Occupational Licensing/Regulation Model, January 2014, p. 28, accessed April 4, 2014, https://www.sunset.texas.gov/public/uploads/files/reports/Occupational%20Licensing%20Standards%20Publication1-20-14.pdf.

15 Such as Section 242.066(d) and (e), Texas Health and Safety Code.

Responses to Issue 4

Recommendation 4.1

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

Agency Response to 4.1

The agency supports this 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. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 4.1

Michele Arnold, Bellaire

Clay Boatright, Plano

Michael Danks, Dallas

Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin

Against 4.1

Kevin Warren, President/CEO – Texas Health Care Association, Austin

Recommendation 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.

Agency Response to 4.2

The agency supports this 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. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 4.2

Clay Boatright, Plano

Against 4.2

Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin

Kevin Warren, President/CEO – Texas Health Care Association, Austin

Modification

1. Statutorily prohibit the use of "right to correct" provisions for violations that involve level 3 (Actual Harm) and level 4 (Immediate Jeopardy) and direct DADS to use the rulemaking process to establish specifics on the "right to correct" for levels 1 and 2. (Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin)

Recommendation 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.

Agency Response to 4.3

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 4.3

Clay Boatright, Plano

Against 4.3

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin

Modification

2. Direct the agency to restructure Title 40, Section 97.602 of the Texas Administrative Code so that violations and citations reflect the true severity of the errors by breaking rules into three categories: A – administrative, minor errors; B – errors that could substantially limit the ability to provide care; and C – imminent threat of harm to health and safety or care that resulted in harm or death. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

Recommendation 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.

Agency Response to 4.4

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 4.4

Clay Boatright, Plano

Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin

Against 4.4

None received.

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.

Agency Response to 4.5

The agency supports this 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. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 4.5

Clay Boatright, Plano

Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin

Against 4.5.

None received.

Issue 5

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

Background

The Department of Aging and Disability Services (DADS) administers contracts related to long-term care services for the elderly and persons with disabilities, and that support agency operations. As shown in the chart, *Selected DADS Contracts and Expenditures*, in fiscal year 2013 the agency spent about $2.3 billion on these contracts, primarily on about 2,000 active community services contracts. In 2010, the agency placed nursing home and private intermediate care facility contracts under the Regulatory Services Division since these contracts are closely tied to the inspection process and certify compliance with Medicaid regulations, and thus are not addressed in this issue.

Selected DADS Contracts and Expenditures – FY 2013*

Program/Type of Contracts	Number	Expenditures
Community Services Programs	2,031	$2,023,432,661
Local Authorities	78	$136,027,495
Area Agencies on Aging	28	$91,442,860
State Supported Living Centers**	1,949	$59,664,669
Information Technology	68	$17,029,290
Other	96	$15,979,338
Professional Services	75	$7,110,148
Total	**4,325**	**$2,350,686,461**

* Does not include nursing home and private intermediate care facility contracts overseen by Regulatory Services.

** Includes contracts for professional services and operations.

DADS has about 365 staff involved in contract management activities throughout the agency. The Community Services Contracts Division has 96 staff monitoring about 7,300 open enrollment service contracts, of which 2,031 are active with expenditures in fiscal year 2013. Related program staff monitor contracts with 39 local authorities and interlocal agreements (contracts) with 28 area agencies on aging. State supported living center (SSLC) staff manage numerous professional services contracts, such as contracts for medical and therapy services. Numerous other agency staff manage different competitively procured contracts including staff in Information Technology, Claims Management, Strategic Operations and Grants, and the Center for Policy and Innovation.

The Contract Oversight and Support (COS) Section, with 35 staff, assists DADS staff with administration of noncompetitive open enrollment community services contracts by providing technical assistance, maintaining contracting policies, developing monitoring tools, and collecting contracting data. The COS Section also supports a Sanction Action Review Committee (Sanction Committee) which deliberates and imposes sanctions against noncompliant contracted community service providers. The Sanction Committee has five members, including staff from Regulatory Services, Community Services Contracts, and Policy Development. A staff member from COS chairs the Sanction Committee. The Sanction Committee meets bi-monthly and in fiscal year 2013 imposed 52 sanctions against providers such as vendor holds and termination, in addition to 67 referral holds.

The Health and Human Services Commission's (HHSC's) Procurement and Contracting Services Division assists DADS with competitive procurements, including drafting documents, coordinating evaluations, preparing awards, and maintaining files. HHSC's procurement staff also develop *HHS Administrative*

Contract Management Guidelines, which provide a framework for all health and human services agencies to use for contract management. DADS' role in competitive procurements is to determine contracting needs, develop statements of work, and provide staff for proposal evaluation and contract management.

HHSC's procurement staff leads the Contract Management Workgroup, composed of representatives from all health and human services agencies, including COS' director and equivalent staff from the other agencies. The Workgroup's charge is to develop a new enterprise-wide contract management guide and criteria for risk-based monitoring, as well as ensure that all agencies have certified contract managers as required by statute.[1]

Findings

DADS' contract management is fragmented, contributing to inefficiencies and poor oversight of the billions of contracted dollars it expends annually.

When evaluating an agency's contracting practices, Sunset uses the general framework established in the *State of Texas Contract Management Guide*, as well as documented standards and best practices compiled by Sunset. In evaluating DADS' contracting practices, Sunset recognized the individual circumstances and risks involved with different types of DADS' contracts, including open enrollment, sole source, interlocal agreements, and competitive procurements.

A goal of the 2003 consolidation of health and human service agencies in Texas was to strengthen contracting across the system.

A strong, centralized contracting function, especially in a large agency, can promote accountability and fairness in contracting, and ensure it can effectively manage its contracting needs and outcomes. One of the goals of the 2003 consolidation of Texas' health and human services agencies was to increase efficiency and effectiveness by strengthening contracting processes across all of the agencies.[2] As a result, HHSC's Procurement Division and DADS' Contract Oversight and Support were created to help improve contract management, communication, and use of best practices.

Despite these organizational changes resulting from the 2003 consolidation, HHSC still experiences some difficulty getting needed contract information and data due to contracting occurring within silos in the enterprise agencies. Currently, HHSC is still working on the goal of standardizing and streamlining reporting of contract information from enterprise agencies to ensure it has timely, accurate information on all health and human services agencies contracts.

However, DADS' approach to managing contracts results in a fragmented, split system that limits HHSC's ability to obtain a clear, comprehensive picture of DADS contracting and to ensure that DADS manages its contracts appropriately. While HHSC assists DADS with procuring competitive contracts, HHSC procurement staff must deal with numerous agency contracting staff whose primary obligations are to their own superiors, not HHSC. As a result, while HHSC procurement staff can assist DADS with competitive contracts, HHSC has no single clear point of accountability within DADS to ensure the agency implements best practices. Further, DADS solely manages community services contracts, isolating HHSC from fully understanding the potential

risks and problems that can arise from these contracts that pay out more than $2 billion annually.

- **Contracting silos**. DADS' numerous contracting functions still occur in program silos. Currently 11 agency divisions carry out contract management functions to some degree, as shown in the textbox, *DADS Cross-Agency Contracting Functions*. This fragmented approach to contracting contributes to a lack of clear accountability for the overall success of DADS' contracting efforts, contracting problems, and inefficiencies. A 2011 DADS Internal Audit found that having contracting functions spread between numerous operational areas leads to problems with monitoring and quality assurance, as well as communication and coordination between state office and regional staff.[3]

DADS Cross-Agency Contracting Functions

The agency has staff involved in contract management and monitoring activities in 11 areas which include:

- Community Services Contracts – 96 staff involved in managing about 7,300 contracts both from central office and regional offices;
- Local Authorities – 39 staff involved in overseeing 78 contracts and monitoring the financial stability of these local authorities;
- Area Agencies on Aging – five staff involved in managing 28 contracts and monitoring the financial stability of these local agencies;
- State Supported Living Centers – 125 staff with a portion of their job duties involving oversight of almost 2,000 contracts;
- Contract Oversight and Support – 35 staff providing contracting technical assistance and monitoring resident funds held by nursing homes and intermediate care facilities; and
- Numerous other staff within the Center for Policy and Innovation, Strategic Operations and Grants, Guardianship, Information Technology, Executive Operations, and under the Chief Financial Officer.

The agency has made efforts to streamline and consolidate some contracting activities. In 2010, DADS clarified the roles of Community Services and Regulatory Services in conducting their respective financial monitoring and inspections of Home and Community-based Services and Texas Home Living providers. In addition, 11 years after the transfer of these two programs to DADS from the former Texas Department of Mental Health and Mental Retardation, the agency is just now consolidating these contracts under a single set of rules due to be final on September 1, 2014.[4]

- **Poor use of existing contract oversight and support staff**. COS has significant expertise in providing technical assistance to staff and in developing contracting best practices. The staff plays a key role in developing contract monitoring protocols and tools based on program rules. Closely coordinating development of monitoring protocols and program rules is critical for effective contract oversight. For example, DADS suspended monitoring of some community services contracts for a period of time

because program rules did not sufficiently detail contractor responsibilities needed to support monitoring protocols.[5] DADS' Internal Auditor recognized the value of COS' contracting expertise by recommending that it develop contract management procedures for the Medicaid Estate Recovery contract and for Consumer Directed Services, all of which suffered from inadequate monitoring.[6]

DADS does not consistently terminate contracts of very low performing providers.

However, the agency does not take best advantage of COS expertise and experience to ensure effective management of all DADS contracts. While COS develops monitoring protocols and tools for community services contracts, COS has no involvement in ensuring that monitoring policies and protocols are adequate and appropriate for the numerous local authority, area agency on aging, professional services, and other competitively procured contracts.

Further, COS lacks authority to ensure that program staff consistently use monitoring protocols and tools to hold providers accountable. For example, because regional program staff have wide discretion in recommending sanctions against community services contractors, the agency does not consistently terminate contracts of very low performing community services providers, some of which have monitoring scores as low as 25 out of 100.

Local authority contracts demonstrate an area of risk outside of any centralized oversight by COS. Local authority contracts have been overseen within their own program area since being transferred to DADS during the 2003 consolidation of health and human services agencies. In fiscal year 2013, the state's 39 local authorities received more than $285 million in DADS funding through numerous contracts, as shown in the chart, *DADS Funding to Local Authorities*.

DADS Funding to Local Authorities – FY 2013

Contract Type	Expenditures
Home and Community-based Services	$98,024,555
Performance of Local Authority Functions	$77,341,213
Service Coordination	$58,292,491
Private Intermediate Care Facilities	$31,567,053
Texas Home Living	$19,554,080
Preadmission Screening and Resident Review	$248,446
Total	**$285, 027,838**

As sole source contracts, local authority contracts pose more risk to the State.

Local authority contracts have a heightened level of risk to the State, because as statutorily required sole source contracts, DADS has no other contracting options for ensuring that 35,000 Texans per month receive needed services. The agency has further invested in these local authorities by recently contracting with them to carry out federally required Preadmission Screening and Resident Reviews for nursing home residents, and these

contracts were rushed due to problems with DADS implementing needed information systems changes as discussed further in this Issue.

Maintaining oversight of local authorities in a separate program area creates risks that problems with their financial viability may not be communicated promptly and at a high enough level to ensure that problems are resolved before they worsen. The ability of local authorities to carry out contract requirements can be compromised when they become financially unsound, placing the State at significant risk of loss of funds and service delivery capacity. In fiscal year 2013, DADS designated five local authorities as being at high risk of financial insolvency, placing them under more extensive financial reporting. One of them experienced $7.8 million in losses in a four-year period, including two years when expenses exceeded revenues by $4.2 million. Another local authority experienced $4.1 million in losses over a three-year period, maintaining operating reserves of only 24 days, far below the 60–90 days of reserves required by the agency. Ultimately, DADS could be faced with taking over conservatorship of a failing local authority as it did in 2004.[7]

- **Inconsistent use of centralized sanction review committee**. While COS provides staff support for the Sanction Committee, COS' director is not a voting member of the Committee despite having significant knowledge of contract best practices and an independent perspective.[8] The Committee's placement under the chief operating officer gives it independence and impartiality from agency programs, and not having COS' director as a voting member deprives the Committee of this expertise and impartiality.

DADS program staff may lack the independence needed to impose sanctions.

DADS does not take advantage of the Sanction Committee process to ensure fair and independent application of sanctions against all contracted providers. The Sanction Committee makes recommendations on more than 20 types of contracts, yet it plays no role in recommending sanctions for area agencies on aging, guardianships, and competitive procurements. Relying on staff within program areas to impose sanctions raises concerns about the independence of this important monitoring function. The Sanction Committee offers expertise from legal, contracting, policy, and program sections that can deliberate and ensure fair application of appropriate contract sanctions.

Relying on other program areas to deliberate and impose contract sanctions also duplicates the Sanction Committee's function, resulting in inefficiencies. For example, in fiscal year 2013, the Local Authorities Section required local authorities to carry out 44 plans of correction and pay $24,000 in penalties related to contract noncompliance. Local authority program staff meet monthly to review local authority performance and determine if sanctions or closer monitoring by staff are required due to contracting and performance problems. While the Sanction Committee plays a role in resolving sanctions disputed by a local authority, program staff still decide what sanctions and additional oversight are warranted without the benefit of the Sanction Committee's expertise and independence.

- **Lack of clear contract management roles and responsibilities**. Contract managers help ensure the overall success of an agency's contracting efforts, and this function should be independent of program staff that develop policy and implement programs. However, contract managers still maintain close communication with program staff to ensure timely communication of contracting needs and problems that may arise. The textbox, *What is a Contract Manager?,* outlines key contract management duties.

> ***What is a Contract Manager?***
>
> A contract manager oversees the success of most contracting stages, including planning, monitoring, and close out. Key contract management duties include:
>
> - helping ensure the contract's statement of work and deliverables are clear and measurable;
> - reviewing contract amendments and changes;
> - overseeing and determining contractor performance, and managing the sanction process;
> - creating and maintaining the contract file and documentation; and
> - analyzing and reporting contracting information to management.

DADS has not clearly defined the responsibilities of a contract manager, nor what staff specifically serve this role. Under DADS' current approach, a contract manager can include any staff with "significant" contracting duties, including contract specialists, contract support staff, program managers, program policy staff, and regional directors.[9] As a result, DADS has a dizzying array of about 365 staff involved to some degree in contract management. However most of these staff are not clearly responsible for carrying out contract management duties and also serve as program staff. Of those 365 staff, 140 are fully devoted to contract administration, primarily community services contract specialists that monitor contracts and report to the Community Services Contracts Division. Other staff involved in contract management also report to their respective program directors, and are not unified under a single division that can ensure accountability for consistent, quality management of contracts.

While 365 DADS staff are involved in managing contracts, only two are certified contract managers.

Contract managers play a critical role in ensuring the overall success of an agency's contracting efforts, and should receive training to prepare them for the proper use and potential pitfalls of contracting. Out of 365 DADS staff with contract management as part of their job duties, only two are Texas certified contract managers. While the Comptroller's Office offers contract management training to state agency staff, DADS has not taken best advantage of this resource to ensure staff are prepared to manage and oversee contracts.[10] To DADS' credit, the agency provides training to these community services staff. However, DADS' training focuses on job requirements and is narrower than the Comptroller's contract management training, which by statute must be completed for contract managers by September 1, 2015.[11]

In fiscal year 2013, DADS had about 2,000 contracts that support SSLC operations with expenditures of about $59.7 million. Of these contracts, about 740 are for professional services such as medical, nursing, or therapy services. Yet of 125 state supported living center staff involved to some degree in contract management, only one is classified as a contract manager but is not certified by the Comptroller. In some SSLCs, staff oversee 40-60 different types of contracts, yet lack any qualifications to do so. The chart, *State Supported Living Center Contract Management Responsibilities*, shows how little time some SSLC staff devote to contract management. The agency places the State's financial interest at risk by allocating contract management responsibilities to staff with little expertise in this area, and who oversee numerous contracts as only a minor part of their job duties.

Numerous SSLC staff spend just a fraction of their time overseeing millions of dollars in contracts.

State Supported Living Center Contract Management Responsibilities

Job Description	Percent of Time Spent on Contracts	Number of Contracts Overseen
Medical Director	5%	24
Plant Manager	5%	47
Contract Manager	5%	1
Therapy Manager	5%	22
Administrative Assistant	10%	77

In comparison, the Department of Assistive and Rehabilitative Services (DARS) recognized that assigning contract management responsibilities across numerous program areas creates risks that, according to the agency, are unsustainable. In December 2013, DARS began a process of consolidating contract management, for client services and administrative contracts, under a new Contract Oversight and Support director. The agency's goals are to ensure standardization, efficiency, and effectiveness in contract management activities. The agency anticipates improvements in contract administration, risk assessment, monitoring, dispute resolution, and close out. While DARS does not have contracts of the scale and amount of DADS, the agencies face similar problems related to contract management.

Certain DADS projects have run into significant delays and cost overruns that better contract planning, management, and oversight could have averted.

While much of the agency's contracting efforts focus on consumer services contracts, the agency also has significant contracts critical to supporting agency operations. These contracts include information technology-intensive projects DADS relies on to meet federal program requirements, track client services, and process provider payments. The agency has experienced significant problems with some of these projects due to its lack of a centralized approach towards contract development and management, which allows different divisions to

pursue projects without fully adhering to best practices. For example, for both of the projects below, the agency did not take advantage of Information Technology Section staff expertise and standard procedures for developing and managing these projects, contributing to problems and cost overruns.

Costs for the Single Service Authorization System ballooned from $8.5 milllion to $15.2 million before cancellation.

- **Single Service Authorization System (SSAS).** In June 2010, DADS began working to merge two long-term care legacy payment information systems into a single more effective system, SSAS. However, DADS failed to fully implement and contain costs of this project. Key risks that contributed to problems included lack of a clear project owner with the "big picture," lack of communication between project participants, lack of timely approval of deliverables, and duplication of project tracking. These problems indicate a lack of adequate project management, including development, monitoring, and risk mitigation.[12] DADS and HHSC halted the project in July 2013 after costs increased from $8.5 million to $15.2 million. With only one phase of SSAS completed, the agency was not able to incorporate numerous programs originally intended to benefit from the new system.[13]

- **Preadmission Screening and Resident Review (PASRR) Redesign.** The agency failed to timely implement and contain costs of this information system redesign project. This project brings Texas into compliance with federal regulations for ensuring proper placement of persons with disabilities or mental illness into nursing homes, and allows local authorities to directly bill for services. While DADS completed phase one on time in May 2013, phase two was canceled in August 2013 as the budget ballooned from $2.3 million to $6.3 million.[14] The agency expects to comply with federal requirements, at a total cost of $3.7 million. However, finishing the project required DADS to spend $1.9 million in funding intended to support other system improvements. While this project was technology intensive, DADS did not get required Quality Assurance Team approval until nine months after starting the project.[15]

DADS lacks a risk-based approach to monitoring contracts to make the most effective use of limited monitoring resources and protect the State's financial interest.

The agency does not have a comprehensive approach to monitoring all contracts — including open enrollment contracts and competitive contracts — based on risk factors that can indicate increased risk to the State's financial interest and delivery of quality services to clients. According to DADS, in 2012 the agency planned implementation of risk-based monitoring for community services contracts, but discontinued this initiative due to concerns that some low-risk providers may not receive needed monitoring. However, assessing contracting risks is an essential contract management process necessary to allocate limited resources to overseeing contracts with the greatest risk potential.[16] Risk factors can include contract complexity, number of contracts held by a provider, total dollar amounts of contracts, level of direct client services, history of noncompliance, audit history, and others.

The agency uses a "one size fits all" approach towards monitoring community services contracts, one of DADS' largest risk areas with more than 2,000 contracts and $2 billion in annual expenditures. DADS' Internal Audit found that in an attempt to provide monitoring coverage in all areas, DADS spreads its resources across all contracts resulting in inadequate monitoring, rather than targeting limited resources to high-risk programs. For example, one of the agency's contracted programs, Consumer Directed Services, has grown dramatically from 1,204 to 6,213 participants between fiscal years 2006–13, and suffered from inadequate monitoring.[17] DADS' Internal Audit found that the agency failed to conduct a required risk assessment for monitoring its Medicaid Estate Recovery Program contractor, especially important because DADS pays the contractor on a contingency basis, depending on the amount of Medicaid payments recovered from the estates of deceased persons. In addition, DADS' Internal Audit also found that the agency lacked adequate contract management and monitoring controls to ensure this contractor was meeting contract requirements.[18]

DADS' Internal Audit found the agency does not target monitoring to high-risk programs.

DADS monitors community services contracts once every two years, after an initial monitoring visit, and may place a contractor on a shortened schedule depending on its monitoring score. However, the agency uses this monitoring schedule for all community service contracts, even for relatively low-risk contracts of only $100,000, which does not result in the best use of agency resources.

The agency does not significantly target its monitoring efforts in cases where providers hold numerous contracts that draw down significant funds, up to $85.7 million a year as shown in the chart *Selected DADS Community Services Providers*. Also, providers may present significant risks based on low contract monitoring scores, yet DADS does not increase monitoring based on this risk factor. For example, one provider had monitoring scores of zero out of 100 on two contracts, which were appropriately terminated. However, this provider still had 22 other contracts with payments of $15.7 million in fiscal year 2013, and was not subject to increased monitoring under DADS' current approach.

Selected DADS Community Services Providers – FY 2013

Provider	Number of Contracts	Expenditures in Millions
Girling Health Care	27	$85.7
Consumer Directed Services in Texas	10	$45.8
Caregivers Home Health Texas	9	$44.9
JHC Operations	2	$42.1

While DADS does use risk-based approaches to monitoring local authority and area agency on aging contracts, these contracts are not integrated into a larger, agencywide approach towards evaluating risk areas, and adjusting staffing resources and monitoring efforts to address these risks.

Recommendations

Management Action

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

Under this recommendation, a new Contract Management Division incorporating existing COS staff and functions should be responsible for management, monitoring, and tracking of all DADS' contracts, with the exception of nursing and intermediate care facility contracts which should remain under the Regulatory Services Division. For Home and Community-based Services and Texas Home Living contracts, Regulatory Services should continue to conduct inspections, and the new Division would conduct contract fiscal monitoring.

The new Division should have authority over contract management functions currently carried out by community services, area agencies on aging, and local authorities; as well as DADS' role in competitive procurements managed by state supported living centers, guardianship, information technology, the Chief Financial Officer, and other areas. In addition to carrying out current functions such as providing contracting technical support and developing contracting policies, the Division should carry out the following functions:

- serve as the single point of contact with HHSC's Procurement Division;
- review and approve contracts;
- develop contract manager roles and duties;
- track contract manager training and certification;
- develop risk-based monitoring criteria;
- monitor contracts;
- oversee the financial stability of area agencies on aging and local authorities;
- manage corrective action plans and contract sanctions;
- close out contracts; and
- evaluate contracting results and lessons learned.

As part of this recommendation, DADS should define the roles and responsibilities between contract management and program functions. The agency's program staff should remain responsible for setting program policies and handling administrative aspects of contracting such as determining contracting needs, evaluating proposals, conducting enrollment, and interacting daily with contractors. Program staff would report contracting problems and issues to the Contract Management Division. In turn, the Division would carry out contract management and monitoring functions, including on-site monitoring of providers.

The new Division should also develop and recommend all sanctions for consideration by the Sanction Committee, including additional provider oversight as warranted. The composition of the Sanction Committee should be adjusted to include appropriate program staff with expertise on the type of provider that may be sanctioned. The Contract Management Division director should sit as chair and a voting member of the Sanction Committee.

The new Division should serve as a centralized location for all DADS' contracting information and data. The Division should collect and evaluate contracting data and information and report trends to program staff, and as warranted to the Commissioner.

The new Division would continue to develop and maintain DADS' contract administration guide and contracting policies to ensure consistency with the guide currently being drafted by HHSC. The Division should accommodate the specific policy needs of programs as appropriate.

To implement this recommendation, the Contract Management Division, in coordination with HHSC, should review and evaluate all contract-related positions to determine contract management staffing needs for DADS' central office and regional offices. Based on this review, select Contract Management Division staff should serve as certified contract managers as appropriate and statutorily required. As a result of this review, the Division should develop a transition plan that includes, at a minimum, identifying staff positions to transfer to the Division, timeframes for transitioning staff and resources, organizational structure, and the Division's contracting responsibilities compared to the responsibilities of DADS' program and operational areas. In conducting this review, the Contract Management Division should carefully consider the best approach for managing SSLC contracts including placing a contract manager at a facility, basing management from regional offices, or other approaches.

Senate Bill 7, 83rd Session, moves many agency programs to managed care under the oversight of HHSC. As a result of these changes, DADS will experience significant shifts in its monitoring workloads, presenting an ideal time for the agency to evaluate its overall approach to contract management and allocation of staffing resources. 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.

The new Division should review and approve all pre-solicitation documents and plans, ensuring early involvement of needed expertise, such as Information Technology Division staff in developing statements of work. While DADS recently adopted a policy to ensure IT involvement with information technology-intensive projects, the Division should ensure that this works well. In coordination with HHSC, the Division should review and approve the composition of contract development, evaluation, and administration teams to ensure these teams include needed expertise, including a certified contract manager.

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

Under this recommendation, DADS should take a strategic approach to agencywide monitoring of contracts based on risk to the State and clients served by these programs. This recommendation would apply to all DADS contracts, except nursing and intermediate care facility contracts overseen by Regulatory Services. The Division should ensure that providers such as area agencies on aging and local authorities which are at high risk of financial problems receive additional financial monitoring as warranted. In developing this risk-based approach, the Division should coordinate with HHSC to ensure the risk analysis developed in the new enterprise-wide contract management guide is followed. This risk-based approach would not mean that some contracts and providers would go without monitoring, but that higher risk contracts would be monitored more frequently and thoroughly than lower risk contracts.

Fiscal Implication

These recommendations would not have a direct fiscal impact to the State. However, streamlining the agency's overall approach to contracting, including consolidation of contract management functions and elimination of duplicative policies and procedures, would result in efficiencies both for the agency and HHSC.

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1 Section 2262.053, Texas Government Code.

2 Texas Health and Human Services Commission, *Benefits of Consolidation Four Year Report*, (Austin: Texas Health and Human Services Commission, 2009), pp. 22-23.

3 Department of Aging and Disability Services (DADS), *Client Services Contracting Processes Audit*, Audit # 2011-101 (Austin: Department of Aging and Disability Services, 2011), p. 1.

4 Proposed changes to TAC Title 40, Chapter 49, Contracting for Community Services, *http://www.dads.state.tx.us/providers/communications/alerts/alerts.cfm?alertid=1296*.

5 Day Activity and Health Services contracts.

6 DADS, *Medicaid Estate Recovery Program Contract Management Controls*, Audit # 2011-012 (Austin: Texas Department of Aging and Disability Services, 2012), p. 7 and *Consumer Directed Services*, Audit # 2011-011 (Austin: Texas Department of Aging and Disability Services, 2012), p. 14.

7 Section 534.038, Texas Health and Safety Code.

8 DADS, *Contract Administration Handbook, Contract Actions and Sanctions, Section 9210, Appointment to SARC*, (Austin: Texas Department of Aging and Disability Services, June, 2013) un-numbered page.

9 Ibid., *Section 7000-A*, un-numbered page.

10 "Contract Manager Training and Certification," Texas Comptroller's Office, http://www.window.state.tx.us/procurement/prog/training-cert/cmt/.

11 S.B. 1681, 83rd Texas Legislature, Regular Session, 2013.

12 DADS, *Single Service Authorization System QAT/LBB Presentation*, (Austin: Texas Department of Aging and Disability Services, 2013), September 10, 2013, p. 8.

13 State Auditor's Office (SAO), *Report on Analysis of Quality Assurance Team Projects*, Audit No. 14-020 (Austin: State Auditor's Office, 2014), p. 4.

14 SAO, *Report on Analysis of Quality Assurance Team Projects*, p. 3.

15 Ibid., p. 2.

16 DADS, *Medicaid Estate Recovery Program Contract Management Controls*, p. 5.

17 DADS, *Consumer Directed Services*, p. 11.

18 DADS, *Medicaid Estate Recovery Program Contract Management Controls*, p. 6.

Responses to Issue 5

Recommendation 5.1

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

Agency Response to 5.1

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 5.1

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austsin

Against 5.1

None received.

Recommendation 5.2

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

Agency Response to 5.2

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 5.2

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 5.2

None received.

Recommendation 5.3

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

Agency Response to 5.3

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 5.3

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 5.3

None received.

Issue 6

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

Background

The Department of Aging and Disability Services (DADS) operates the Quality Reporting System (QRS) website to help the public evaluate the quality of long-term care providers. First made public in 2000, QRS contains information on 13 different provider types listed in the chart *Long-Term Care Providers in QRS*. The public accesses the QRS website 9,000 times per month.[1]

QRS has a rating system for four of the 13 types of providers: free-standing nursing homes accepting Medicare or Medicaid, hospital-based nursing homes, intermediate care facilities (ICF) for individuals with an intellectual disability, and state supported living centers. QRS scores these providers by showing an overall score, an investigations score, and an inspections score. Other information available on QRS varies by provider type, but includes information such as owner name, bed count, number of state and/or federal violations, severity of violation, provider history, and regulatory compliance history. Statute does not require DADS to operate a system like QRS, but does require Internet posting of detailed compliance information.[2] Staff in DADS' Center for Policy and Innovation has primary responsibility for oversight and maintenance of QRS and its data.

Long-Term Care Providers in QRS

Nursing Homes

- Free-standing nursing homes
- Hospital-based nursing homes

Assisted Living Facilities

Facilities for Persons with Intellectual and Developmental Disabilities

- Private Intermediate Care Facilities
- State Supported Living Centers

Home Health Care Agencies

Adult Day Cares

Home and Community-based Programs

- Community Based Alternatives
- Community Living Assistance and Support Services
- Deaf Blind Multiple Disabilities
- Medically Dependent Children Program
- Home and Community-based Services
- Texas Home Living

The federal websites Nursing Home Compare and Home Health Compare, which are operated by the Centers for Medicare and Medicaid Services (CMS), provide some of the same information that QRS does for those two types of providers. CMS made Nursing Home Compare widely available in 2002.[3] In 2003, CMS began posting information on quality measures for each nursing home, such as percent of residents with bed sores, or how many residents fell one or more times. In 2008, CMS began rating nursing homes based on a five-star rating system.[4] Home Health Compare displays numerous quality of patient care measures, such as how often a patient's wounds improved after an operation, how often patients got better at walking or moving around, and how often patients had to be admitted to the hospital.

Findings

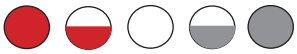
DADS' Quality Reporting System ratings and information are confusing.

People often need to find a long-term care facility quickly, making easily accessible information important.

Throughout the Sunset review, multiple advocates and providers have asserted that QRS is confusing and not very useful for consumer decision making. Sunset staff also found numerous data problems and usability issues. The modern, mobile information environment demands easy to use technology with simple presentation of information. Those capabilities are of even greater importance to the elderly and people with disabilities who are served by DADS. Also, people searching for long-term care often need to find a facility quickly, after a loved one has been unexpectedly hospitalized. This urgency makes easily accessible information even more important.

QRS provider ratings are confusing and poorly presented. The chart, *Rating Systems on QRS*, shows the rating system used for the four types of providers DADS rates. Ratings for complaint investigations and licensing inspections use a confusing colored circle system, in which the highest rating (most favorable) is a solid red circle, and the lowest rating (least favorable) is a solid gray circle. Profile pages for individual providers do not display the symbol legend, requiring the user to click away from the results to find the symbol's meaning.

Rating Systems on QRS

Overall Score	**0–100**
Complaint Investigation Rating	Most – Least Favorable
Licensing Inspection Rating	

The color red denotes the best regulatory score, but also designates the most harmful regulatory violations listed in an adjacent section of QRS. Moreover, the best and worst ratings may not be clearly distinguishable to users with visual disabilities, particularly when printed. In comparison, CMS and some other states have transitioned to a five-star rating because its widespread use makes it more familiar to consumers.[5]

Stakeholders reported that regulatory data and information could be presented more effectively. For the few providers with an available compliance history, the summary is so brief it is almost useless. Citation descriptions such as "this facility was found to be out of compliance with regulations" are broad and of little use without specific examples of the failures and an assessment of their severity.

QRS does not display any type of rating or score for three-quarters of provider types.

DADS' Quality Reporting System lacks important information for evaluating the quality of a provider's care and services.

Information availability and level of detail vary considerably from one type of provider to another. Some information, such as severity level of violations, is unavailable for 11 of the 13 provider types because it is not tracked by DADS' systems. Ratings and scores of providers are crucial indicators of performance, but QRS does not display any type of rating or score for three-quarters of the provider types listed on the website. While certain data is not collected for

the unrated provider types, no effort is made to rate these providers based on the data that is collected.

QRS also lacks several types of information that consumers would find useful in making provider selections. Some of this information is already publicly available, but DADS does not make the public aware of its existence. For example, DADS does not post or prominently link to the quality measures that appear on the federal Nursing Home Compare website, despite these measures being very important information for consumers.

QRS lacks several types of information that consumers would find useful.

In addition, DADS does not provide reports already produced by DADS' staff detailing how well nursing homes follow selected best practices, even though the reports are publicly available. DADS' Quality Monitoring Program nurses and other professionals produce these reports on nursing homes about once a year, focusing staff efforts on facilities experiencing the greatest regulatory compliance challenges. Without such data on quality of care, QRS cannot effectively assist the public. Information about quality of care is also important since studies show making that information public can prompt providers to make improvements to their patient care.[6]

In the 1998 Sunset review of DADS' predecessor, the Department of Human Services, the staff report noted that easily accessed public information should include "available quality data such as facility staff turnover, staff-to-resident ratios, and dollars spent on direct patient care."[7] Although the recommendations on quality data stalled when the DHS Sunset bill failed to pass in 1999, such staff-related data continues to receive support from academic studies that conclude "staffing stability is one of the most important factors to assure high quality."[8]

QRS offers basic descriptions of investigation and inspection findings, but lacks consumer-friendly information about the outcomes of those processes. For example, QRS does not show the resulting enforcement actions, such as fines paid by providers, while Nursing Home Compare and consumer advocate sites do.[9] DADS has all of this information, but does not provide it to the public in a straight forward, electronic format.

Studies show making information public can prompt providers to make improvements to their patient care.

DADS fails to devote adequate attention to QRS.

Lack of important data, inconsistent information, and poor usability reflects a low prioritization of QRS by DADS. The Communications Office at DADS oversees content and layout on all websites except QRS. As a result, the Communications Office has never been asked for input on the QRS site and did not evaluate QRS in planning the redesign of all other DADS website pages. The current design of QRS is almost identical to the original, now 14 years old, despite dramatic changes in web design and technology.

DADS has not evaluated the usability of QRS by the public and persons with disabilities since 2005. That year, DADS conducted a limited usability study asking a pool of participants to perform various tasks on QRS, such as helping

a friend find information comparing nursing homes. Several participants had difficulty performing the task; however, DADS only implemented some of the modifications recommended to enhance the site's effectiveness.

QRS fails to fully comply with Texas' person-first, respectful language statute.

DADS staff is unaware of any efforts to maximize the site's visibility on search engines, an essential practice for modern websites. Attempts by Sunset staff to find QRS through Google resulted in Nursing Home Compare, news reports, and advocate websites being listed more prominently than QRS. Websites on page one of Google search results get as much as 91 percent of the traffic.[10] Results on page two only get around 5 percent of traffic. Finding QRS sometimes required going to the third page of results.

DADS' lack of attention to QRS is also apparent in its failure to fully comply with Texas' person-first, respectful language statute. The title pages for comparing ICF providers still use the term "mental retardation" despite statutory direction to replace the term with "intellectual disability." In addition, the QRS help page still refers to the Department of Human Services, an agency that ceased to exist more than 10 years ago.

Recommendations

Change in Statute

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

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. For providers already rated by an established federal website, DADS should be authorized to link to those ratings rather than expending resources to duplicate that effort. Additionally, statute should require DADS to periodically solicit public input regarding the content, usability, and accessibility for persons with disabilities of QRS. In soliciting public input, DADS should include participation from the general public, service recipients, advocates, and providers.

Management Action

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

DADS should make more consistent information available as outlined below for all provider types. Information not currently available due to data tracking limitations should be posted as DADS' capabilities expand.

QRS should give every provider an overall rating using a five-star system, accompanied by a clear explanation of how DADS calculated the ratings for that provider type, except for providers DADS links to for established ratings. DADS should use the following criteria, as the relevant data is available, for calculating a provider's overall rating:

- regulatory performance based on licensing inspections, complaint investigations, and enforcement actions; and
- quality of care performance based on quality measures and implementation of best practices.

QRS should contain current and historical enforcement data on individual providers. Consumers should be able to easily view fines paid; the number, type, and severity of violations; clear explanations of what violations mean for residents; and final disposition of violations. DADS should also clearly label violations for which providers are repeatedly cited.

QRS should display or link to the quality measures currently available on Nursing Home Compare and Home Health Compare using the same simple format used by those sites. QRS should also display or link to the already publicly available Quality Monitoring Reports which contain valuable information about a provider's commitment to delivering quality care to residents. These categories of information should be expanded to all provider types when available. DADS should also include staffing information such as turnover and staff-to-resident ratios for each provider, as available.

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.

This change would allow the Communications Office at DADS to be engaged in improving the QRS website to ensure it effectively communicates needed information to the public, and that DADS considers the needs of QRS as it redesigns the agency's website. In addition, in coordination with the Information Technology Division, DADS should annually assess and maximize the ability of popular Internet search engines to recognize QRS as a prominent information source for long-term care in Texas. Performing this assessment would help ensure that consumers have access to critical provider information as easily as possible.

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

DADS should examine all web pages and documents available on QRS to ensure compliance with person-first, respectful language requirements in law.

Fiscal Implication

These recommendations would have no fiscal impact as DADS can make these changes using existing technology and devoting appropriate staff resources. These recommendations require better decision making, planning, and attention to existing systems.

[1] Department of Aging and Disability Services, *Self-Evaluation Report* (Austin: Department of Aging and Disability Service, 2013), p. 182.

[2] Section 242.042(e), Texas Health and Safety Code.

[3] Dana Mukamel et al., "Publication of Quality Report Cards and Trends in Reported Quality Measures in Nursing Homes," *Health Services Research 43(4)* (August 2008): pp. 1244-1262, doi: 10.1111/j.1475-6773.2007.00829.x, http://www.ncbi.nlm.nih.gov/pmc/articles/PMC2517273/.

[4] United States Government Accountability Office, "Appendix III: Comments from the Department of Health and Human Services," p. 33 in *CMS Needs Milestones to Ensure Goals for the Five-Star Quality Rating System Are Met*, accessed April 2, 2014, http://www.gao.gov/assets/590/589563.pdf.

[5] "Nursing Home Compare," Centers for Medicare and Medicaid Services, http://www.medicare.gov/nursinghomecompare/search.html, accessed frequently.

[6] Dana Mukamel et al., "Changes in clinical and hotel expenditures following publication of the nursing home compare report card," *Medical Care* 48(10) (October 2010): pp. 869–874; Agency for Healthcare Research and Quality, "Public report cards prompt nursing homes to spend more on clinical services," *Research Activities Newsletter*, January 2011, No. 365, accessed March 24, 2014, http://www.ahrq.gov/news/newsletters/research-activities/jan11/0111RA18.html.

[7] Texas Sunset Advisory Commission, *Department of Human Services Sunset Staff Report, 1998*, (Austin: Texas Sunset Advisory Commission, August 1998), pp. 54–55.

[8] American Health Care Association, *2011 Staffing Survey Report*, accessed April 6, 2014, http://www.ahcancal.org/research_data/staffing/Documents/2011%20Staffing%20Survey%20Report.pdf, p. 20.

[9] "Nursing Home Inspect," ProPublica, http://projects.propublica.org/nursing-homes/, accessed November 11, 2013.

[10] "No. 1 Position in Google Gets 33% of Search Traffic [Study]," Searchengingewatch.com, accessed April 3, 2014, http://searchenginewatch.com/article/2276184/No.-1-Position-in-Google-Gets-33-of-Search-Traffic-Study.

Responses to Issue 6

Recommendation 6.1

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

Agency Response to 6.1

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 6.1

Michele Arnold, Bellaire

Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 6.1

None received.

Modification

1. Require DADS to immediately note on its Quality Reporting System website that a facility has lost its Medicaid certification. (Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin)

Recommendation 6.2

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

Agency Response to 6.2

The agency supports this 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 expands its capabilities for identifying and tracking relevant data. DADS agrees that clear explanations of the broad categories of violations are needed and will develop the required help text. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 6.2

Michele Arnold, Bellaire

Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin

Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 6.2

None received.

Recommendation 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.

Agency Response to 6.3

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 6.3

Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 6.3

None received.

Recommendation 6.4

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

Agency Response to 6.4

The agency supports this recommendation and is undertaking a thorough review of the website. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 6.4

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 6.4

None received.

Issue 7

One DADS Reporting Requirement Is No Longer Necessary.

Background

Over the years, Sunset reviews have come to encompass an increasing number of standard elements either from direction traditionally provided by the Sunset Commission, from statutory requirements added by the Legislature to the Criteria for Review in the Sunset Act, or from general law provisions typically imposed on state agencies. The following material addresses the Sunset Commission's mandate to recommend the abolition or continuation of the reporting requirements for the Department of Aging and Disability Services (DADS).

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.[1] The Sunset Commission has interpreted these provisions as applying to reports that are specific to the agency and not general reporting requirements that extend well beyond the scope of the agency under review. Reporting requirements with deadlines or that have expiration dates are not included, nor are routine notifications or notices, posting requirements, or federally mandated reports. Reports required by rider in the General Appropriations Act are also omitted under the presumption that the appropriations committees vet these requirements each biennium.

Finding

DADS has one reporting requirement that is no longer necessary.

Appendix D lists the 19 reports state law requires DADS to produce determined to be subject to the reporting provisions of the Sunset Act. The appendix also includes Sunset staff's analysis of their need. Many of these requirements continue to be useful; however, one of these mandatory reporting requirements should be eliminated.

- **Options for Independent Living Annual Report**. This report requires the legacy Department on Aging to report on the manner in which the Options for Independent Living program provided services to the elderly by area agencies on aging.[2] However, DADS asserts that the Options for Independent Living program was a pilot project for case management and no longer exists. The Department on Aging no longer exists since the Legislature consolidated its functions with DADS in 2003. Area agencies on aging currently perform case management as part of their routine functions. DADS issues a Report on Unit Costs for Services to show the performance of area agencies on aging, and the report includes information on case management. Because the information from the Options for Independent Living Annual Report is both specific to an outdated program and is accounted for in the Report on Unit Costs for Services, DADS no longer needs this requirement to produce a separate report.

The Options for Independent Living program was a pilot project and no longer exists.

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 the Options for Independent Living Annual Report and continue all other DADS reporting requirements. Sunset staff's analysis determined that the other 18 reports provide useful information and should be continued.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

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[1] Sections 325.0075, 325.011(13), and 325.012(a)(4), Texas Government Code.

[2] Area agencies on aging are mostly operated by regional councils of government and help persons 60 years of age and older access services to live independently.

Responses to Issue 7

Recommendation 7.1

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

Agency Response to 7.1

The agency supports this recommendation. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 7.1

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 7.1

None received.

Issue 8

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

Background

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, Rehabilitation Commission, and Department of Mental Health and Mental Retardation.[1] Establishment of the agency completed the Sunset Commission's 1999 recommendation to phase-in the creation of a long-term care agency.

Today, DADS aims to ensure access to a comprehensive array of aging and disability services in local communities. The agency carries out the following functions to try to achieve that mission:

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

Findings

Texas has a continuing need for the long-term care services and regulatory oversight DADS provides.

DADS provides long-term care services for older individuals and individuals with disabilities to help ensure their health and safety and to facilitate their maximum independence. The textbox W*hat Are Long-Term Care Services?* provides examples of these services.

Texas is home to an estimated 3.2 million people with disabilities, and more than 2.8 million adults older than 65.[2] The population of Texans age 65 and older is projected to increase to 7.5 million by 2040. Since the prevalence of disability increases with age, the number of Texans with disabilities is also expected to increase significantly. Many of these individuals live independently in their local communities with the help of services provided by DADS and its contractors, avoiding the substantially higher costs of living in a facility.

What Are Long-Term Care Services?

Long-term care services meet an individual's health or personal care needs over an extended period of time and may include assistance with bathing, toileting, dressing, and eating; home modification and repairs; adaptive aids such as wheelchairs; relief for caregivers; nutrition services such as home-delivered meals or meals at senior centers; transportation; and services at licensed facilities.

In FY 2013, DADS helped provide services for about 660,000 individuals in the community. For individuals requiring the level of support provided by nursing homes or other facilities, regulatory oversight is crucial to ensuring their safety. DADS regulatory staff conducted more than 35,400 inspections and complaint investigations in FY 2013.

DADS serves two important roles for the federal government that Texas continues to need. As Texas' state unit on aging, DADS receives about $87 million annually to implement provisions of the federal Older Americans Act. Without an agency to provide this function, Texas would forfeit this funding. DADS also acts as the state inspection agency to ensure long-term care providers comply with Medicaid and Medicare requirements to receive federal funding. Texas would lose about $33 million annually in federal funds without an agency to carry out federal regulatory activities such as inspections and investigations. Though federal staff could theoretically step in to conduct these activities, this shift would likely cause delays, potentially resulting in less oversight of the health and safety of the individuals receiving services.

While the agency's functions should continue, its organizational structure must be evaluated in conjunction with the HHS system overall.

DADS operates under the oversight of the Health and Human Services Commission (HHSC) and is part of the larger health and human services system. The placement of DADS' functions and overall structure are best evaluated as part of a broader analysis of all five health and human services agencies. The Sunset reviews of HHSC and the system are scheduled for completion in fall 2014. Sunset staff will study the overall organizational structure of this area of government and evaluate issues that cross agency lines. As a result, this report does not include findings regarding the appropriateness of DADS' current structure within the health and human services system.

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 Sunset review of HHSC and the health and human services system is ongoing. As a result, Sunset staff recommends that the Sunset Commission delay its decisions on continuation of DADS and the structure of the services it provides until those reviews are completed in fall 2014. The overall system review will inform recommendations on how best to structure DADS' array of services.

Fiscal Implication

This recommendation would not have a fiscal impact to the State.

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[1] While part of the former agency's name, the term mental retardation has generally been replaced with intellectual disability.

[2] Health and Human Services Commission, *HHS System Strategic Plan 2013-2017* (Austin: Health and Human Services Commission, 2012), p. 108.

Responses to Issue 8

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.

Agency Response to 8.1

The agency agrees that caring for Texas' most vulnerable citizens, both in facilities and community settings, is a necessary function. (Kyle L. Janek, M.D., Executive Commissioner – Health and Human Services Commission and Jon Weizenbaum, Commissioner – Department of Aging and Disability Services)

For 8.1

Michele Arnold, Bellaire

Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance, Austin

Against 8.1

None received.

New Issues

New Issues

The following issues were raised in addition to the issues in the staff report. These issues are numbered sequentially to follow the staff's recommendations.

SSLCs

9. DADS should create a means-based travel stipend fund to help families visit a member moved to a more distant SSLC who otherwise would not be able to visit. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

10. DADS should consider alleged offenders for placement in Outpatient Community Restoration programs, rather than SSLCs, similar to alleged offenders with mental health competency issues. (Dennis Borel, Executive Director – Coalition of Texans with Disabilities, Austin)

11. DADS should examine the possible causes for the growing number of alleged offenders committed to SSLCs in recent years and make recommendations on how to respond to this trend. (John Davidson, Senior Policy Analyst – Center for Health Care Policy/Texas Public Policy Foundation, Austin)

12. Require DADS to contract with a private, independent third-party vendor — separate from its regulatory and operational duties — to audit conditions at SSLCs and report regularly to HHSC and DADS. (John Davidson, Senior Policy Analyst – Center for Health Care Policy/ Texas Public Policy Foundation, Austin)

13. Require DADS to ensure community providers receive the full spectrum of information necessary to serve an SSLC resident prior to the placement, detailing medical and behavioral needs as well as any criminal history. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

14. Authorize and fund DADS to provide additional short-term or intermittent staff following a transition from an SSLC, as needed, since not all individuals newly transitioning into the community will immediately show signs of behavioral issues. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

15. Direct DADS to change the reimbursement methodology to allow providers to use their professional staff (such as nurses and psychologists) to train direct support professionals on more general topics related to support for people with complex behavioral and medical needs, rather than limiting providers to only billing for training to meet the needs of a particular individual. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

16. Recommend that the Legislature properly fund SSLC direct care staff. (Leroy Haverlah, Austin)

17. Direct DADS to systematically evaluate how implementing health IT components can enhance care in SSLCs, including not only the current planned lifetime medical record but how care is coordinated with external entities, including telemedicine providers and health information exchanges. (Cindy Hielscher, President and Ken Pool, M.D., Vice-President – Texas e-Health Alliance)

18. Direct DADS to provide all direct care workers at SSLCs and state-run homes and facilities with training in how to handle stress. (Nancy Kircher, Richmond)

19. Direct DADS to increase the pay of SSLC caregivers and ancillary staff to adequately and fairly compensate them for the unique and demanding care they provide. (Brenda McGahagin, Austin and Terry McKetta, Lakeway)

20. Establish in Austin a hospital for the intellectually disabled and have the Texas Medical Association in conjunction with the Mayo Clinic conduct oversight. (David Partridge, M.D., Richmond)

21. Direct DADS to increase volunteers at SSLCs to assist in taking residents to and from therapies. (Barbara Rosenberg, Speech Pathologist – Sugar Land)

22. Require DADS to provide better oral hygiene and preventive medical care to SSLC residents to reduce medical cost spending per resident. (Abbie Gottlieb and Harold Gottleib, M.D., Chief Medical Officer – Memorial Hermann Hospital, Houston)

Other New Issues

23. Restore the Texas Department on Aging as a small state agency with a board and commissioner with authority to adopt appropriate policies, rules, and procedures for comprehensive and coordinated services that focus on our rapidly growing senior population. (Chris Kyker, Speaker Emeritus – Texas Silver-Haired Legislature)

24. Require DADS to develop a plan for evaluating the risks and advantages of moving the Medicaid entitlement from institutions to community-based services to lower costs and serve more people before they get to the point of needing institutional care. (Clay Boatright, Plano)

25. Repeal Texas Health and Safety Code Section 242.070 which prohibits DADS from assessing a monetary penalty for a licensing violation if DADS has referred the same violation to the federal government for citation under the Medicare/Medicaid certification. (Amanda Fredriksen, Associate State Director-Advocacy – AARP Texas State Office, Austin)

26. Direct DADS to reduce, consolidate, or eliminate administrative requirements of IDD community-based providers that are not required by federal or state law and are not related to the quality of care of those receiving services. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

27. Direct DADS to consolidate the number of oversight visits by DADS staff where possible to limit the number of interruptions throughout the year to the delivery of services. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

28. Require DADS to reduce the number of information letters produced for IDD community-based providers and enter the letters that create policy into a centralized manual. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

29. Require DADS and HHSC to ensure that staff taking provider and consumer inquiries receive appropriate education on these programs, know where to find necessary information, and know how to refer phone calls to when information is not easily obtainable. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

30. Require that DADS generate new policies and rules only based on stakeholder input or state or federal requirements. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

31. Require DADS and HHSC to report on stakeholder input and response to proposed rules, rather than which stakeholder groups were approached. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

32. Require DADS and HHSC, on matters of program policy, to add them to the Texas Administrative Code so they can be properly vetted. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

33. Require HHSC, on any DADS' rule or policy requirements that add costs, to include an appropriate rate "add-on" determined by HHSC. (Sandra Frizzell, Director of Policy Development – Providers Alliance for Community Services of Texas, Austin)

34. Dedicate adequate funding to DADS' survey and enforcement activities. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

35. Require DADS to follow up on enforcement actions to see that issues are corrected. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

36. Dedicate monies from administrative penalties back to survey and certification activities of licensed Home and Community Support Services Agencies (HCSSAs), instead of directing them to the General Revenue Fund, so that DADS or its successor agency has the resources to enforce regulations. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

37. Require DADS to identify and define same services across home and community-based services waiver programs; standardize names and definitions for these services; and standardize minimum provider qualifications. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

38. Require licensure of all home and community-based services waiver providers to eliminate contracting standards that are duplicative of licensure. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

39. Direct DADS to ensure better qualified individuals serve on the Sanction Action Review Committee, with a process that gives a provider the opportunity to refute a case. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

40. Direct DADS to change its Sanction Action Review Committee into a first-level appeal to free the State Office of Administrative Hearings to hear more meaningful cases. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

41. Transfer DADS' Sanction Action Review Committee to the Health and Human Services Commission or an agency independent from DADS and long-term care services. (Marina Hench, Director of Public Policy – Texas Association for Home Care and Hospice, Austin)

42. Direct DADS to clearly identify the correct contact person to answer questions from the public and ensure employees are prepared to answer questions. (Sid Rich – Texas Association of Residential Care Communities, Austin)

43. Direct DADS to ensure more than one employee has knowledge of an issue and implement a general orientation program that equips all employees with general knowledge of DADS' responsibilities and functions and who to contact. (Sid Rich – Texas Association of Residential Care Communities, Austin)

44. HHSC, DADS, Department of Assistive and Rehabilitative Services, Department of State Health Services, and Department of Family and Protective Services should no longer hire anyone who smokes, and the agencies should not allow any of their contractors to allow smoking. (Ileene Robinson, Houston)

45. Direct DADS to not allow its staff to notify nursing homes about upcoming complaint investigations. (Raquel Swayze, McAllen)

46. Require group home workers to go through state-provided training courses and then be individually licensed with annual license renewal. (Joe Girdner, Bastrop and Rachel Gallegos, Houston)

APPENDICES

Appendix A

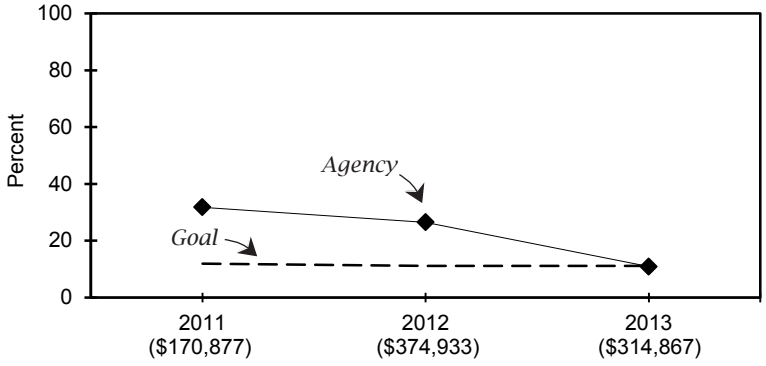
Historically Underutilized Businesses Statistics 2011 to 2013

The Legislature has encouraged state agencies to increase their use of historically underutilized businesses (HUBs) to promote full and equal opportunities for all businesses in state procurement. The Legislature also requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews.[1]

The following material shows trend information for the Department of Aging and Disability Services' (DADS) use of HUBs in purchasing goods and services. The agency maintains and reports this information under guidelines in statute.[2] In the charts, the dashed lines represent the goal for HUB purchasing in each category, as established by the comptroller's office. The diamond lines represent the percentage of agency spending with HUBs in each purchasing category from 2011 to 2013. Finally, the number in parentheses under each year shows the total amount the agency spent in each purchasing category.

The agency generally performed poorly and failed to meet the State's HUB purchasing goals in all categories except heavy construction. While DADS did not meet state purchasing goals for building construction, the agency spent very little in this category. Though the agency failed to meet state special trade purchasing goals, the agency spent a majority of these expenditures on maintenance and repair of state supported living centers, many of which are in rural areas with a limited number of HUB vendors. Almost all of the agency's spending in the professional services category went toward medical services provided by doctors, nurses, hospitals, and other providers which typically have no incentive to become HUB certified. The agency met other HUB-related requirements, such as appointing a HUB coordinator, establishing a HUB policy, and developing a mentor-protégé program.

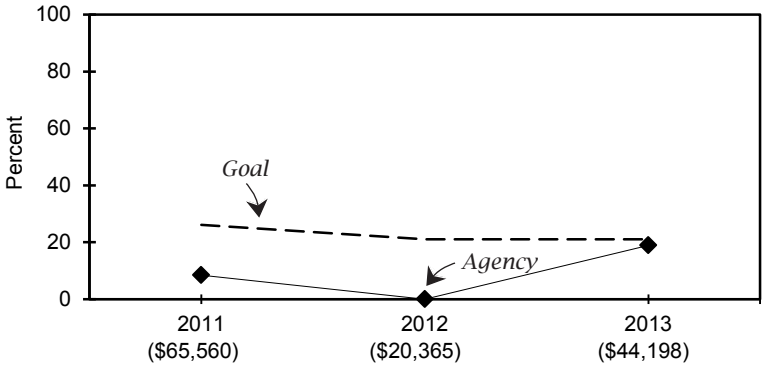
Heavy Construction



The agency's purchases for this category exceeded state purchasing goals in 2011 and 2012 but fell slightly below in 2013.

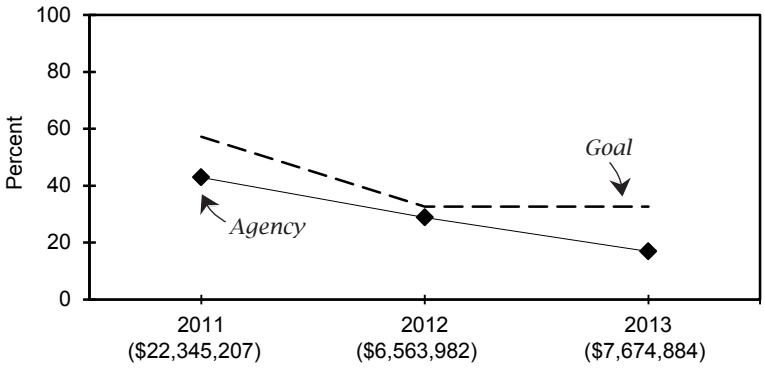
Appendix A

Building Construction



While DADS failed to meet any state purchasing goals for building construction, the agency spent very little in this category.

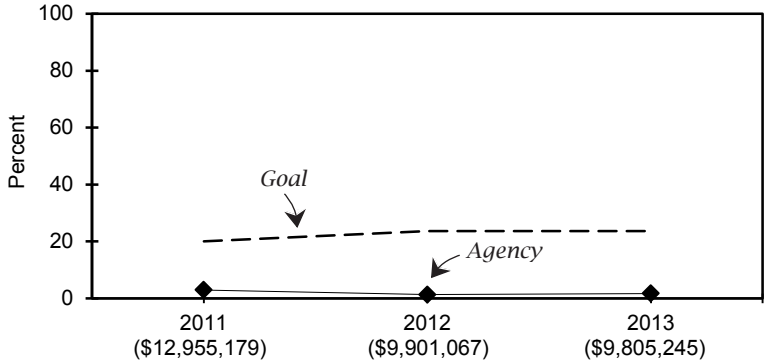
Special Trade



The agency failed to meet state purchasing goals for this category all three years. The majority of DADS' expenditures went toward maintenance and repair of state supported living centers, and many of these facilities are in rural areas with a limited number of HUB vendors.

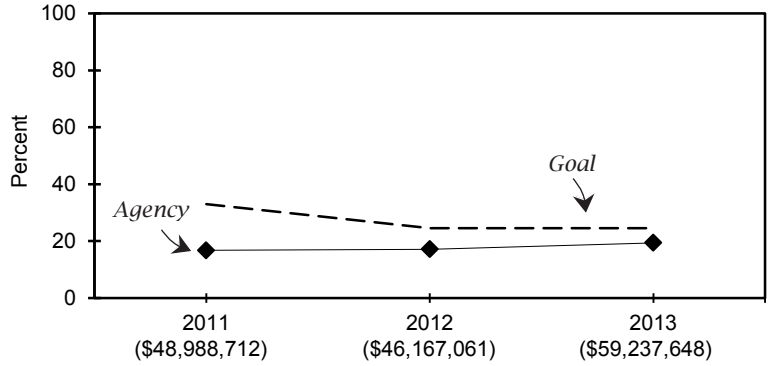
Appendix A

Professional Services



While DADS failed to meet state purchasing goals for professional services, almost all of the expenditures went toward medical services provided by doctors, nurses, hospitals, and other providers which typically have no incentive to become HUB certified.

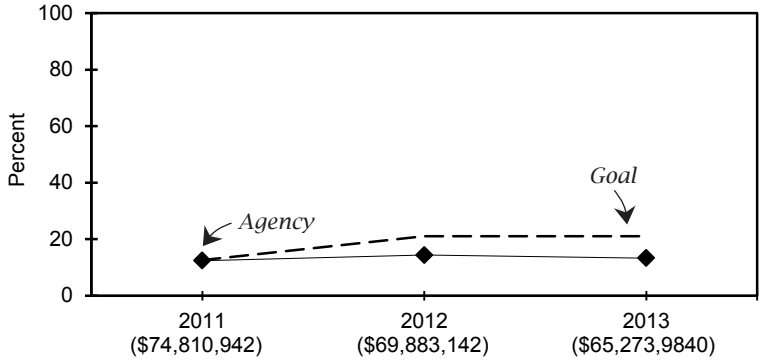
Other Services



DADS came closer by 2013 but failed to meet state purchasing goals in this category for all three years.

Appendix A

Commodities



The agency failed to meet state purchasing goals in this category for all three years.

1 Section 325.011(9)(B), Texas Government Code.

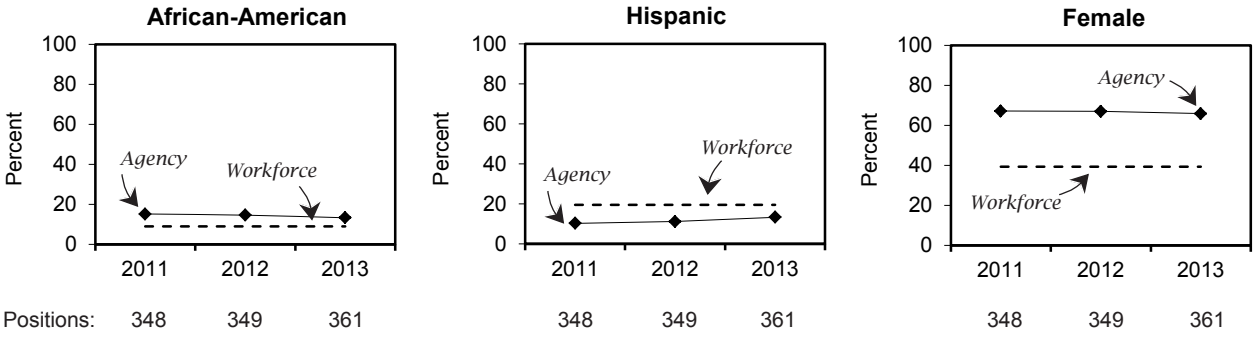
2 Chapter 2161, Texas Government Code.

Appendix B

Equal Employment Opportunity Statistics 2011 to 2013

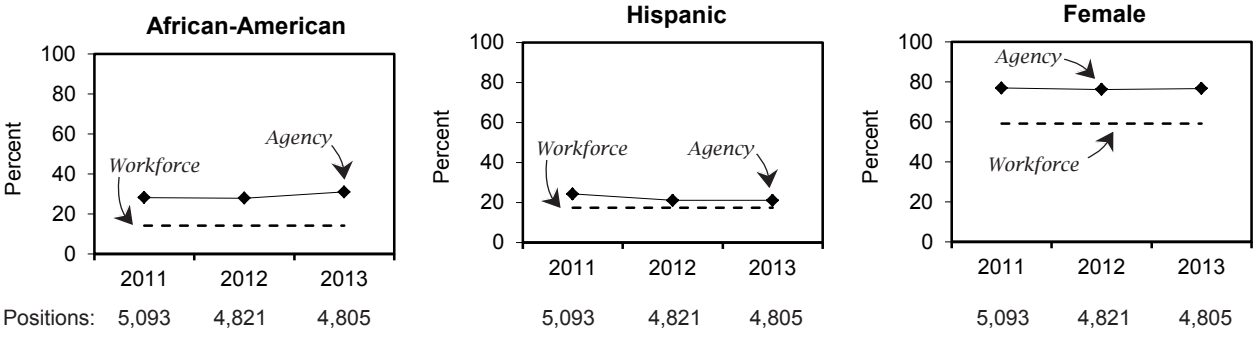
In accordance with the requirements of the Sunset Act, the following material shows trend information for the employment of minorities and females in all applicable categories by the Department of Aging and Disability Services.[1] The agency maintains and reports this information under guidelines established by the Texas Workforce Commission.[2] In the charts, the dashed lines represent the percentages of the statewide civilian workforce for African-Americans, Hispanics, and females in each job category.[3] These percentages provide a yardstick for measuring agencies' performance in employing persons in each of these groups. The diamond lines represent the agency's actual employment percentages in each job category from 2011 to 2013. The agency has generally performed well though it fell below civilian workforce percentages for Hispanic workers in all but one employment category for all three years.

Administration



The agency exceeded civilian workforce percentages for African-Americans and females for all three years, but fell below for Hispanics.

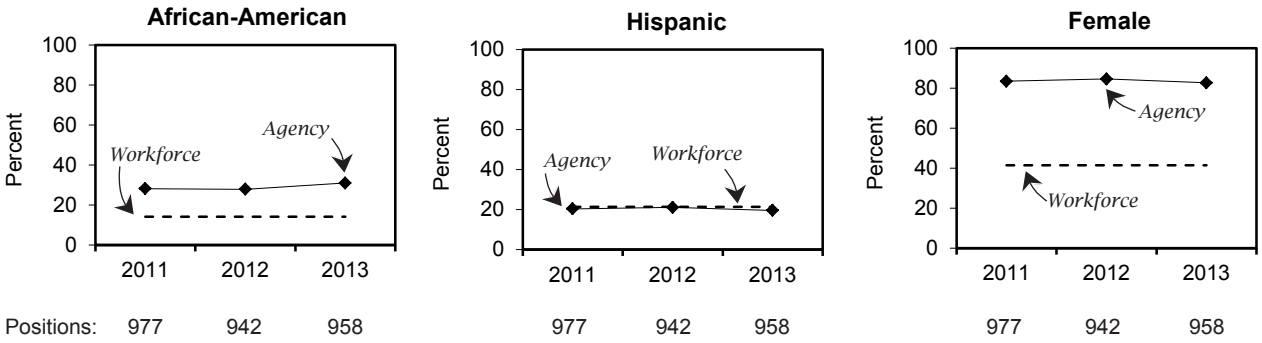
Professional



The agency exceeded civilian workforce percentages for minorities and females in all three years.

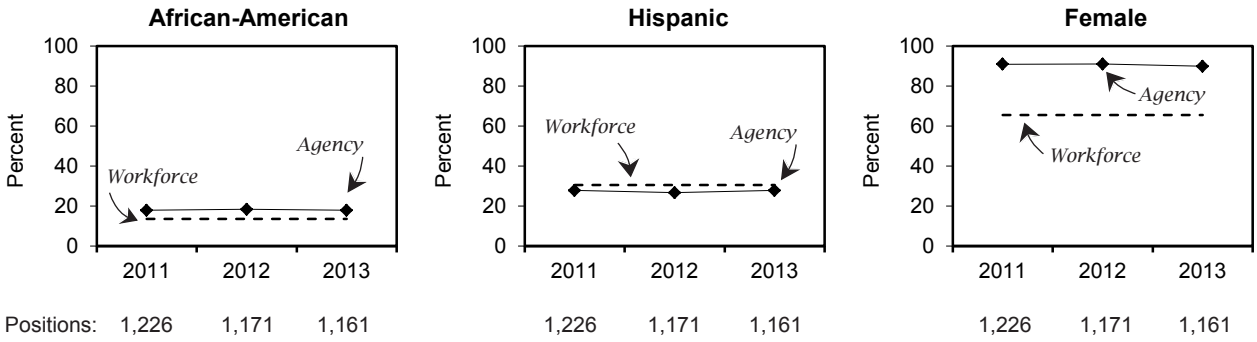
Appendix B

Technical



The agency exceeded civilian workforce percentages for African-American and female employees for all three years and almost met percentages for Hispanic employees.

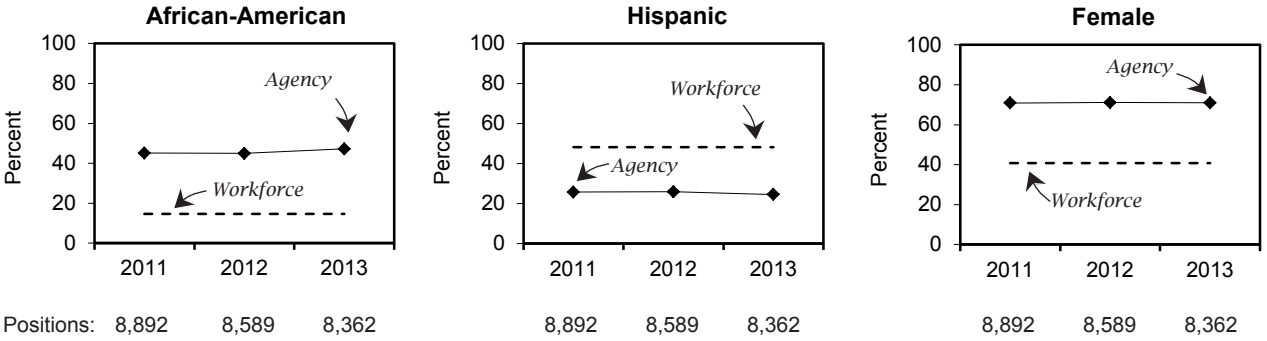
Administrative Support



The agency exceeded civilian workforce percentages for African-Americans and females in administrative support for three years, but fell just below for Hispanics.

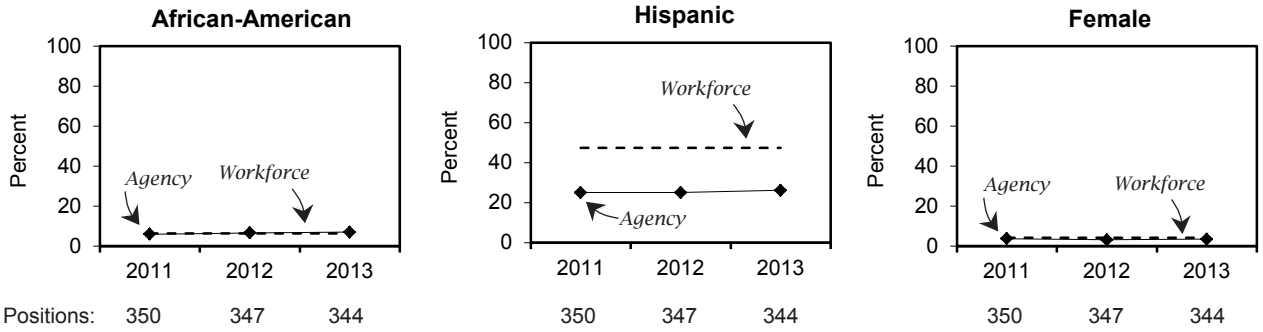
Appendix B

Service/Maintenance[4]



The agency exceeded civilian workforce percentages for African-American and female employees in all three years, but fell well below for Hispanic employees.

Skilled Craft



The agency fell just below civilian workforce percentages for African-Americans in 2011 and females in all years, and far below for Hispanics in all three years.

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1 Section 325.011(9)(A), Texas Government Code.

2 Section 21.501,Texas Labor Code.

3 Because the Texas Workforce Commission has not released statewide civilian workforce percentages for fiscal years 2012 and 2013, this analysis uses fiscal year 2011 percentages for those two years.

4 The service/maintenance category includes three distinct occupational categories: service/maintenance, para-professionals, and protective services. Protective service workers and para-professionals used to be reported as separate groups.

Appendix C

*DADS Community-Based Services and Programs – FY 2013**

Program	Population Served	Average Number Persons Served Per Month	Monthly Cost Per Person	Annual Expenditures
Medicaid Waiver				
Community Based Alternatives	Age 21 and over with need for nursing home level of care	9,553	$1,265	$146,496,512
Community Living Assistance and Support Services	All ages with related condition such as cerebral palsy or epilepsy and eligibility for ICF/IID admission**	4,671	$3,610	$202,977,068
Deaf Blind with Multiple Disabilities	All ages with deaf-blindness and eligibility for ICF/IID admission	150	$4,257	$7,728,434
Home and Community-based Services	All ages with intellectual disability or related condition with IQ of 75 or below, and eligibility for ICF/IID admission	20,159	$3,489	$846,609,878
Medically Dependent Children Program	Under age 21 with need for nursing home level of care	2,291	$1,444	$39,818,738
Texas Home Living	All ages with intellectual disability or related condition with IQ of 75 or below, and eligibility for ICF/IID admission	4,611	$870	$48,308,518
Medicaid Entitlement				
Community Attendant Services	Persons of any age with approved medical need for help with personal care tasks	48,029	$865	$502,079,730
Day Activity and Health Services (Title XIX)	Age 18 or older with medical diagnosis requiring care or supervision by a licensed nurse and need for help with personal care tasks	1,891	$493	$11,222,177
Primary Home Care	Age 21 and over with approved medical need for help with personal care tasks	11,111	$676	$90,580,195
Program of All-Inclusive Care for the Elderly	Age 55 or older who qualify for nursing home level of care but desire to live in the community	1,046	$2,861	$36,017,730
Non-Medicaid				
Adult Foster Care	Age 18 or older with functional impairment	32	$442	$170,684
Consumer Managed Personal Attendant Services	Age 18 or older with medical need for assistance with a personal care task	398	$1,108	$5,319,949

Appendix C

Program	Population Served	Average Number Persons Served Per Month	Monthly Cost Per Person	Annual Expenditures
Day Activity and Health Services (Title XX)	Age 18 or older with medical diagnosis requiring care or supervision by a licensed nurse and help with one or more personal care tasks	2,341	$512	$14,379,896
Emergency Response Services	Age 18 or older with functional impairment and alone routinely for eight or more hours per day or live with an incapacitated person who could not call for help	12,419	$23	$3,465,153
Family Care	Age 18 or older with functional impairment	5,104	$558	$34,017,838
Home Delivered Meals	Age 18 or older with functional impairment	14,556	$102	$17,759,779
In-Home and Family Support	Age 4 or older with physical disability limiting a major life activity	6,155	$64	$4,989,907
Residential Care	Age 18 or older with functional impairment	425	$745	$3,801,100
Special Services to Persons with Disabilities	Age 18 or older with functional impairment	75	$986	$941,533

* Does not include services provided by area agencies on aging or local authorities.

** ICF/IID–Intermediate care facility for individuals with an intellectual disability.

Appendix D

DADS Reporting Requirements

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
1. Interagency Taskforce on Ensuring Appropriate Care Setting for Persons with Disabilities	Government Code 531.02441(g)	DADS supports the taskforce, which makes recommendations on development and implementation of the working plan that provides a system of services and support that fosters meaningful opportunities for living in the most appropriate care setting.	DADS prepares this report for the Health and Human Services Commission (HHSC)	Continue
2. Permanency Planning	Government Code 531.162(b)	DADS contributes to this HHSC report that monitors child placements and ensures ongoing permanency plans for each child with a developmental disability residing in an institution.	Governor, Senate Health and Human Services Committee, House Human Services Committee	Continue
3. Identification of Medicaid Under- and Overpayments and Recovery	Government Code 531.024161	DADS contributes to an HHSC report on cost recovery efforts and amounts recovered.	DADS submits data to the Health and Human Service Commission	Continue
4. Delivery of Health and Human Services to Young Texans	Government Code 531.02492(a)	Each health and human service agency contributes information on its efforts to deliver services to children under the age of six in this HHSC report.	Governor, Lieutenant Governor, Speaker of the House of Representatives, Comptroller, Legislative Budget Board, appropriate legislative committees	Continue
5. Faith and Community-Based Partnerships	Government Code 535.054	The Interagency Coordinating Group for Faith and Community-Based Initiatives reports on the activities, goals, and progress of the group. DADS contributes to this report but does not submit it.	Legislature and the public, via Governor's Office website	Continue
6. Boarding Home Facilities	Health and Safety Code 260.010(b)	DADS reports information on the number of boarding homes permitted, the number of residents in the state, and the number of inspections conducted.	Health and Human Services Commission	Continue
7. State Supported Living Centers Use and Management	Health and Safety Code 533.032(c)	DADS reports on several projected needs and requirements of state supported living centers, as well as strategies for maximizing use of institutional facilities.	Governor, Lieutenant Governor, Speaker of the House of Representatives, Legislative Budget Board, Health and Human Services Commission	Continue

Appendix D

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
8. Alleged Offender Resident Commitment to State Supported Living Centers	Health and Safety Code 555.002(e)	DADS reports information on individuals committed to a state supported living center by a court for alleged felony offenses.	Governor, Lieutenant Governor, Speaker of the House, Senate Health and Human Services Committee, House Human Services Committee	Continue
9. Use of Restraints in State Supported Living Centers	Health and Safety Code 592.105	State supported living centers must report each incident of a physical or mechanical restraint to the HHSC executive commissioner.	Health and Human Services Commission Executive Commissioner	Continue
10. Nursing and Convalescent Homes	Health and Safety Code 242.005(a), (b), and (c)	DADS reports on operation and administration relating to convalescent and nursing homes and related institutions, and makes recommendations and suggestions.	Governor, Senate, House of Representatives	Continue
11. Quality Assurance Early Warning System	Health and Safety Code 255.005	Requires DADS to report on the effectiveness of the quality assurance early warning system to detect potential health, safety, and welfare risks to long-term care residents.	Governor, Lieutenant Governor, Speaker of the House	Continue
12. Local Retardation Authority Audit[1]	Health and Safety Code 534.068(a) and (f)	DADS collects financial compliance audits from local authorities and then reports a summary of significant findings from those audits.	Governor, Legislative Budget Board, Legislative Audit Committee	Continue
13. State Supported Living Center Independent Ombudsman Annual Report	Health and Safety Code 555.059(a)(9)	The state supported living center independent ombudsman annually reports findings of each audit conducted.	Governor, Lieutenant Governor, Speaker of the House, State Auditor, Health and Human Services Commission, Senate Health and Human Services Committee, House Human Services Committee	Continue
14. Long-term Care Ombudsman Annual Report	Human Resources Code 101.062	The long-term care ombudsman annually reports information relating to the problems and complaints of nursing home and assisted living facility residents.	Governor, Lieutenant Governor, Speaker of the House	Continue
15. Caregiver Assessment	Human Resources Code 161.079(g), (g-1), and (h)	DADS partners with area agencies on aging to report on caregiver requirements, effectiveness, and evaluate the needs of assessed informal caregivers.	Governor, Legislative Budget Board	Continue
16. Unit Costs for Services	Human Resources Code 101.0252	DADS reports per unit costs for services provided by area agencies on aging.	Legislative Budget Board, Governor's Office of Budget and Planning	Continue

Appendix D

Report Title	Legal Authority	Description	Recipient	Sunset Evaluation
17. Options for Independent Living Annual Report	Human Resources Code 101.049	Report from the Department on Aging on the manner in which services are being provided to the elderly by the Options for Independent Living program.	Governor, Lieutenant Governor, Speaker of the House	Eliminate – See Recommendation 7.1
18. Pervasive Developmental Disorders	Human Resources Code 114.008	The Council on Autism reports on requirements identified by members of the council that will provide additional or improved services to persons with autism or other pervasive developmental disorders.	Governor, Lieutenant Governor, Speaker of the House, Health and Human Services Commission Executive Commissioner	Continue
19. Deviation from the Resource Allocation Plan for Genetic Services	Human Resources Code 134.0041(g)	Interagency Council members who disagree with the Interagency Council Resource Allocation Plan submit this report as an explanation for deviations in its legislative appropriations request.	Governor, Legislative Budget Board, Interagency Council for Genetic Services	Continue

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[1] DADS has requested this report title to be changed, as part of the health and human services statutory revision project, to use person-first, respectful language.

Appendix E

Staff Review Activities

During the review of the Department of Aging and Disability Services (DADS), Sunset staff engaged in the following activities that are standard to all Sunset reviews. Sunset staff worked extensively with agency personnel; attended advisory council meetings; met with staff from key legislative offices; conducted interviews and solicited written comments from stakeholders and the public; reviewed agency documents and reports, state and federal statutes, legislative reports, previous legislation, and literature; and performed background and comparative research.

In addition, Sunset staff performed the following activities unique to this agency.

- Met with members of the Aging and Disability Services Council.
- Toured residential and community-based facilities including nursing homes, private intermediate care facilities, assisted living facilities, adult day cares, group homes, and day habilitation facilities.
- Toured state supported living centers in Austin, Denton, El Paso, Harlingen, Lubbock, Mexia, and San Antonio, and toured state hospitals in Austin, El Paso, Harlingen, and San Antonio.
- Observed entrance and exit conferences conducted by a U.S. Department of Justice monitoring team for state supported living centers.
- Attended the 37th Annual State Supported Living Center Music Festival in Austin.
- Observed inspections of a nursing home, private intermediate care facility, assisted living facility, and a review of a home and community-based services provider.
- Observed quality monitoring visits conducted by a registered nurse in nursing homes.
- Observed a hearing at the State Office of Administrative Hearings regarding a home health agency enforcement case.
- Visited regional DADS offices and interviewed staff in Arlington, Austin, El Paso, San Antonio, and San Benito.
- Visited and interviewed staff of local authorities in Austin, Dallas, Denton, Edinburg, and Waco. Also visited and interviewed staff of the area agency on aging in Arlington.
- Interviewed by phone staff from the Centers for Medicare and Medicaid Services Dallas regional office.
- Met, or spoke, with staff at other state agencies such as the Department of Family and Protective Services, Department of Assistive and Rehabilitative Services, Department of State Health Services, Health and Human Services Commission, Legislative Budget Board, State Auditor's Office, State Office of Risk Management, State Office of Administrative Hearings, Texas Facilities Commission, and the General Land Office.

Appendix E

- Attended meetings of the Promoting Independence Advisory Committee, Regional Long-Term Care Ombudsman, Texas Council on Autism and Pervasive Developmental Disorders, IDD System Redesign Advisory Committee, Nursing Facility Administrators Advisory Committee, and Aging Texas Well Advisory Committee.
- Attended the DADS Intermediate Care Facilities Provider and Surveyor Conference and the DADS and Department of State Health Services Consumer Rights Conference, both in Austin.
- Attended a Balancing Incentive Program stakeholder meeting and a Quarterly Interest List stakeholder meeting.
- Attended health and human services legislative committee meetings, quarterly health and human services legislative briefings, and monthly leadership briefings.

Sunset Staff Review of the *Department of Aging and Disability Services*

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