



AARP Response to Sunset Staff Recommendations on The Department of Aging and Disability Services (DADS)

AARP's primary focus in the Sunset process is how effectively DADS regulates Texas nursing homes. The Sunset Commission staff's Issue 4 recommendations are a concise analysis of the seriously broken aspects of DADS' nursing home sanction system – a system that for too long has tolerated some nursing home operators who do not appear to be willing or able to operate safe facilities. It is critically important that the reforms laid out in Issue 4 relating to nursing facilities, be fully implemented.

Below please find AARP's response to the Sunset Staff recommendations regarding DADS.

Issue 4: Few Long Term Care Providers Face Enforcement Action for Violations

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

Establishing progressive sanctions for serious and repeated violations supports AARP's position that the agency should focus on those facilities that have a history of repeated serious violations. Recent events at two Houston area nursing homes, Lexington Place Nursing and Rehabilitation and Park Manor at Cypress Station, resulted in the deaths of three residents. Both facilities can be found on a 2011 list of 74 facilities with 10 or more serious violations over a 24-month period. In the case of Lexington Place Nursing and Rehabilitation, the facility has 18 serious violations in 24 months, while Park Manor at Cypress Station had 13 serious violations in 24 months. Establishing progressive sanctions for facilities that have a long track record of repeat violations will hopefully encourage the facility to invest more resources toward improving quality of care or force DADS to find a more suitable operator for the facility.

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. AARP supports the goals outlined in this recommendation but would prefer to see the statute revised (rather than repealed) to **prohibit** the "right to correct" for level 3 (Actual Harm) and level 4 (Immediate Jeopardy) and use the rule making process to establish specifics on the "right to correct" for levels 1 and 2. For DADS to be able to assess penalties for numerous harmful violations, yet at the same time allow for reasonable corrections of small violations without a penalty, we believe level 3 (Actual harm) and level 4 (Immediate Jeopardy) violations are the most harmful and therefore should not be subject to the right to correct and this is best handled by changing the statute, rather than rule.

4.4 Directs DADS to refer appeals of enforcement action to the State Office of Administrative hearings within 60 days. AARP supports the recommendations to refer the appeals of enforcement action to the State Office of Administrative Hearings within in 60 days because this should shorten the amount of time between when a penalty is assessed and when it is collected. The current process allows the facilities to negotiate a hearing date which results in long delays. The current process likely also contributes to the small percentage of the assessed fines actually being collected by DADS. According to the Sunset staff report there is a backlog of 622 pending appeals, with 139 being between four and seven years old. Also, the report found that there were only 14 enforcement hearings held in fiscal year 2013.

4.5 Direct DADS to improve tracking of provider violations. AARP supports this recommendation because it encourages the agency to collect important data for purposes of tracking trends and developing policy recommendations.

Additional Recommendations related to Issue 4

AARP would also encourage the Sunset Advisory Commission to recommend the repeal of Texas Health and Safety Code Sec 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. This provision hampers the agency's ability to assess a fine on a licensing violation if the violation can also be cited under the federal certification. Because the time frames for the federal decision-making are substantially longer than the timeframe for determining if a penalty will be assessed for a state licensing violation, DADS misses the opportunity to assess a monetary penalty for a state licensing violation. If Section 242.070 of the health and safety code were repealed, the agency could assess the penalty they feel appropriate for the licensing violation without regard to any action the Federal agency takes for Medicare/Medicaid certification.

Issue 6: DADS' Consumer Information Website Lacks Clear and Consistent Information For Helping the Public Select Long-Term Care Providers.

6.1 Require DADS to maintain a consumer information site on the quality of long-term care providers in Texas. AARP generally supports this recommendation as it is important for consumers to have access to information that will help in their selection of a quality long term care facility.

In the case of nursing facility quality data, AARP supports directing consumers to the Medicare compare website. However, the data on the Medicare compare site is dependent on the state providing updated survey information in a timely manner. There should be an expectation that DADS provide the most recent survey information in a timely manner. Also, neither Medicare Compare nor QRS currently provide timely notification of when a facility has lost its Medicaid certification. It is significant for a facility to lose Medicaid certification (aka Medicaid funding). These facilities have not lost their license, but they have had enough violations that the state agency and the federal CMS have agreed that removing all Medicaid funding is the most

appropriate action. This information is particularly important for private-pay consumers who would not otherwise be diverted from a facility currently prohibited from accepting Medicaid clients. The state should have a mechanism for immediately notating this significant change on the DADS site so that consumers who are shopping for a facility know there are problems at this facility. Notating this information on the DADS site adjacent to the link to the Medicare Compare would help consumers access important quality of care information.

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

AARP supports this recommendation as it is important for consumers to have access to information that will help in their selection of a quality long term care facility. AARP also supports DADS making the Quality Monitoring Reports more easily accessible on the DADS website.

AARP would also like to see more visibility on the DADS website given to the Medicare.gov Nursing Home Compare site and Home Health Compare. These are easy to use websites that reflect information on those providers that are Medicare and Medicaid certified. However, simply providing a link to these sites would not fully address the recommendations outlined in the Sunset staff report. An important component of the recommendation is establishing some mechanism for clearly labeling violations for which providers are repeatedly cited. The Medicare Compare websites do not include this information. However AARP believes this information is important for consumers to access and should be easily accessible from the DADS website.

6.3 Direct QRS staff to coordinate with the Communications office and other divisions as need to ensure QRS more effectively meets consumer needs and is more visible on the internet.

AARP supports this recommendation because it reflects the importance of providing consumers with easy to understand information on the quality of long term care service providers.

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Testimony before Sunset Advisory Commission on the Department of Aging and Disability Services

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Issue 4. The Sunset Commission staff's recommendations are a concise analysis of the seriously broken aspects of DADS' nursing home sanction system – a system that for too long has tolerated some nursing home operators who do not appear to be willing or able to operate safe facilities. It is critically important that the reforms laid out in Issue 4 be fully implemented with the amendments noted below.

Issue 6. The Sunset Commission staff's recommendations provide a thorough analysis of the limitations and short comings associated with the existing web based consumer information. Having reliable, up-to-date information on the web is essential for helping older Texans and their families choose a long term care provider that provides high quality care. AARP supports the recommendations outlined in Issue 6 with the amendments noted below.

AARP Response to Sunset Staff recommendations

Additional Recommendation Related to Issue 4

Repeal Texas Health and Safety Code 242.070 because it restricts DADS ability to enforce state licensing requirements.

This section 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. If Section 242.070 of the health and safety code were repealed, the agency could assess the penalty they feel appropriate for the licensing violation without regard to any action the federal agency takes for Medicare/Medicaid certification.

Issue 4: Few Long Term Care Providers Face Enforcement Action for Violations

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

AARP supports this recommendation. Establishing progressive sanctions for facilities that have a track record of repeat violations will encourage the facility to invest more resources toward improving quality of care or force DADS to find a more suitable operator for the facility.

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.

AARP supports the goals outlined in this recommendation but believes the statute should be revised (rather than repealed) to prohibit the “right to correct” for level 3 (Actual Harm) and level 4 (Immediate Jeopardy). The rule making process should be used to establish specifics on the “right to correct” for levels 1 and 2. Level 3 (Actual harm) and level 4 (Immediate Jeopardy) violations are the most harmful and should not be subject to the “right to correct.”

4.4. Direct DADS to refer appeals of enforcement action to the State Office of Administrative hearings within 60 days.

AARP supports this recommendation because this would significantly shorten the amount of time between when a penalty is assessed and when it is collected. The current process allows facilities to negotiate a hearing date which results in extremely long delays. The current process also contributes to the small percentage of assessed fines actually collected (30 percent). According to the Sunset staff report there is a backlog of 622 pending appeals, with 139 being between four and seven years old. Also, the report found that there were only 14 enforcement hearings held in fiscal year 2013.

4.5. Direct DADS to improve tracking of provider violations.

AARP supports this recommendation because it requires the agency to collect important data for purposes of tracking trends and developing policy recommendations. DADS does not currently track or report complaint information for the 1,792 Texas assisted living facilities or the 479 adult day care providers. This information should be collected and made available to the public because it would help consumers select a quality provider. These two provider types combined, serve nearly 60,000 Texans.

Issue 6: DADS' Consumer Information Website Lacks Clear and Consistent Information For Helping the Public Select Long-Term Care Providers.

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

AARP supports this recommendation, with the modifications below. In the case of nursing facility quality data, AARP supports directing consumers to the Medicare compare website. However, the data on the Medicare compare site is dependent on the state providing updated survey information in a timely manner. There should be an expectation that DADS provide the most recent survey information in a timely manner. Also, neither Medicare Compare nor QRS currently provide timely notification of when a facility has lost its Medicaid certification. It is significant for a facility to lose Medicaid certification (aka Medicaid funding). These facilities have not lost their license, but they have had enough violations that the state agency and the federal CMS agree that removing all Medicaid funding is the most appropriate action. This information is particularly important for private-pay consumers who would not otherwise be diverted from a facility currently prohibited from accepting Medicaid clients. The state should have a mechanism for immediately notating this significant change on the DADS site so that consumers who are shopping for a facility know there are problems at this facility.

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

AARP supports this recommendation with some modification. An important component of the recommendation is establishing some mechanism for clearly labeling violations for which providers are repeatedly cited. The Medicare Compare websites do not include this information. However AARP believes this information is important for consumers to access and should be easily accessible from the DADS website.

6.3 Direct QRS staff to coordinate with the Communications office and other divisions as need to ensure QRS more effectively meets consumer needs and is more visible on the internet.

AARP supports this recommendation because it reflects the importance of providing consumers with easy to understand information on the quality of long term care service providers.

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