

From: [Sunset Advisory Commission](#)
To: [Dawn Roberson](#)
Subject: FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Wednesday, June 25, 2014 4:35:49 PM

-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
Sent: Wednesday, June 25, 2014 1:08 PM
To: Sunset Advisory Commission
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Wednesday, June 25, 2014 - 13:07

Agency: DEPARTMENT AGING AND DISABILITY SERVICES DADS

First Name: Gail

Last Name: Harmon

Title: Executive Director

Organization you are affiliated with: Texas Assisted Living Association

Email: gail.harmon@tala.org

City: Austin

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Texas Assisted Living Association
Comments on Sunset Report

Thank you for the opportunity to comment on the Sunset Review Process. The Texas Assisted Living Association represents hundreds of assisted living communities providing a safe and secure home to thousands of seniors across Texas. Residents who live in assisted living live in your local community. They reside here because they need help with activities of daily living and choose to reside in professionally-managed, consumer-driven senior living communities.

Our owners and operators pride themselves on embracing the core principles of choice, independence, dignity, accessibility and quality of life for seniors.

To support these principles TALA advocates for public policy solutions that promote personal choice and allow seniors to retain their dignity while living in a homelike setting. Our elderly deserve a right to live in the setting of their choice and to gracefully age in place with the dignity and respect they've earned. As an advocacy organization, TALA works to educate state policymakers about the resident-centered philosophy of senior living and encourages grassroots involvement in the process by the executives, staff and residents of its member organizations.

Informed Choice: The cornerstone of the resident-centered philosophy of senior living, informed choice means consumers receive the information they need from providers so they can make an informed decision about where to live. Providers should share information disclosing , among other things, whether the provider is appropriately licensed, the programs and services provided, and the cost of the services.

Resident Rights: Residents in all senior living settings are entitled to the same rights of choice, independence, dignity and quality of life that they have enjoyed their entire lives. Every resident should have the right to age in their place of choice if their decision is supported by their family, the community and their physician.

Quality Staffing: Maintaining qualified staff is essential for assisted living communities to care for residents with varying needs and desires.

Maintaining qualified staff includes conducting criminal background checks, staffing to meet the needs of the residents, providing professionally competent staff, providing "awake" staff 24 hours a day and supporting continuing education.

Appropriate Infrastructure: Assisted living building design must not only be safe but also support the independent lifestyle of the residents. Fire sprinklers, smoke detectors, fire drills, disaster planning and training are essential to ensure resident safety. A residential community setting that provides all the comforts of home is essential to ensure quality of life.

Appropriate Oversight: Assisted living communities must be licensed. DADS should have the resources to hire, train and keep competent staff to conduct the survey visits that are essential in determining regulatory compliance.

Appropriate sanctions are supported provided there is due process for dispute resolution that is fair, transparent and consistent.

Zero Tolerance for Elder Abuse: Our seniors must be protected from financial, psychological and physical abuse, neglect and exploitation. DADS' oversight in this area is crucial. Communities must also educate family members, residents and staff, on how to identify, report and prevent elder abuse. Appropriate reporting and dismissal policies must be in place to ensure zero tolerance for elder abuse.

Sunset Staff Report – Department of Aging and Disability Services TALA wishes to comment specifically on Issue #4. While we appreciate the time and work that has gone into these recommendations, we believe that the data presented is not sufficient to support the recommended actions. The review lumps Adult Day Care and Assisted Living in the same category. We do not understand the logic behind this and don't believe the resulting data can be used to make broad based policy decisions related to assisted living.

The two entities are entirely different and are governed by separate regulations.

Modification – Current law provides the ability to do progressive violations for repeat offenders. The Sunset Report admits to a lack of credible data to correlate the trend in violations specific to assisted living, and offers no analysis to show that current enforcement has resulted in any reduction in the high quality of care provided to seniors.

Residents in assisted living are 85% private pay and in a recent survey reported satisfaction with their care at 95-99%, so why are we applying stronger government regulation, when we have no data to show that care has deteriorated, nor any credible evidence to indicate that greater regulation will produce a higher quality of care for seniors?

The number of licensed Assisted Living Facilities has increased in Texas over the last 10 years. The average occupancy of Assisted Living Facilities in Texas is 88%. This increase in facilities has not resulted in a decrease in care that needs to be regulated. Instead, this increase in facilities is because the consumers of Texas enjoy Assisted Living. As mentioned above, Assisted Living is mostly a private pay business. The increase in facilities has created increased competition with self-regulation. As a result, the industry has been successful in driving care and service to the elderly and their families, without additional government intervention.

We would suggest implementing the data collection issue cited in the improved tracking recommendation as a first step to giving legislators the facts on violations specific to assisted living, so they can make an informed decision. Interfering in the lives of seniors by making policy decisions to increase government enforcement on private pay seniors without credible data sets a bad precedent.

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.

TALA does not support this recommendation.

There are currently clear guidelines that limit the "right to correct" only to those circumstances where there is no serious harm that has occurred to a resident or for repeat violations. Maintaining the ability to correct puts the focus on compliance and helps ensure quality care for our seniors.

This recommendation assumes DADS survey findings are always correct, but history shows that both survey findings and provider compliance are not infallible. The system should be flexible enough to accommodate well-intended compliance where a mistake has been made, IF it does not impact care to

our seniors that result in serious harm. That requires due process for both survey findings and provider compliance, and the opportunity for a "right-to-correct".

We support providing DADS with adequate resources to actually follow-up to see if the issues are corrected. The State should provide adequate funding for survey and enforcement that permits DADS to conduct appropriate follow-up that protects the care of our seniors..

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.

TALA does not support this recommendation.

TALA doesn't believe that there is adequate data to support the conclusion that increasing penalties will result in more effective enforcement. Current enforcement of the penalty structure appears to be unevenly applied and this should be addressed before a new structure is put in place. There isn't enough evidence presented to support the idea that increasing penalties will result in improving health and safety conditions for seniors.

TALA also takes issue with the reasoning that the review staff outlined in the report:

"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."

Assisted living residents have a right to age-in-place in the home of their choice as long as certain conditions are met. This has been publicly debated and acted on by the legislature. It provides clear guidance that allows a resident to age-in-place so long as they desire to remain in assisted living, the caregiver agrees (if the resident lacks capacity to make the decision), the doctor agrees that appropriate care can be provided, and the assisted living management agrees they can provide the required care. It protects resident's rights to choose, provides adequate safeguards and complies with the federal law to permit aging in place.

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.

TALA supports this recommendation.

Modification – We support improved tracking specific for the purpose of gathering credible data that will allow legislators to make informed decisions on public policy related to assisted living as cited in our response to Issue 4.1. We do not support changing current enforcement until better data is gathered that correlates enforcement with protection and care to seniors.

Thank you again for this opportunity.

Gail A. Harmon

Executive Director

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Any Alternative or New Recommendations on This Agency: See above modifications.

My Comment Will Be Made Public: I agree

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