

Thank you for allowing our organization the opportunity to provide comments on the Sunset Advisory Commission Staff Report regarding the Texas Department of Aging and Disability Services (DADS). DADS plays an enormous role in policy-making, oversight, contract management and referrals for providers of long-term care services for individuals with intellectual and developmental disabilities in long-term care waiver programs and intermediate care facilities.

To better address the recommendations from the Sunset Advisory Commission staff, some of the major recommendations are listed below with comments from PACSTX.

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

PACSTX supports the recommendation that individuals with complex needs transitioning from an SSLC into the community require additional supports including: expansion of crisis intervention services, utilization of SSLC expertise with psychiatric and other medical and dental services and training for community providers, and a new reimbursement level to incentivize community providers to open or keep open residential settings specifically for individuals with complex medical and behavioral needs.

- A. While expansion of crisis intervention teams and utilization of SSLC services is a very important start, there are other resources that should be leveraged and coordination should be provided through DADS. Mental health authorities and federally qualified health centers both offer services that could be leveraged for this population if additional resources were provided and individuals with IDD and a dual diagnosis were identified as priority populations for services.

Currently, even with the added incentive of allowing SSLCs to maintain funds for services provided to the community, allowing SSLCs to provide this service will not lead to improved outcomes unless these services are included within the core mission of SSLCs, particularly while under the scrutiny of the Department of Justice (DOJ). Likewise, the current transition process out of SSLCs into the community, for individuals with or without complex medical and behavioral needs, would be better supported in the community if:

- Community providers were able to leverage staff and clinician training from SSLC before the transition;

- Providers were given the full spectrum of information necessary to serve an individual prior to the placement (detailing medical and behavioral needs as well as any criminal history); and
  - Billing guidelines provided for flexibility in the use of short-term or intermittent additional staffing, including nurses. Not all individuals newly transitioning into the community will immediately show signs of behavioral issues. Allowing for funding of additional staff following a transition, as needed, will help with adjustment and potentially prevent the necessity of utilization of a crisis intervention team (if one is in the area) or the use of 9-1-1.
- B. While the Sunset Advisory Commission Staff report recognizes that incentives are necessary for individuals with higher medical needs for individuals transitioning out of an SSLC, these incentives are also necessary for individuals with these types of needs entering the program off of the interest list, through SSLC diversion slots, or from nursing facilities.
- a. Additional and adequate funding should be provided specifically for nursing costs for these individuals. The reimbursement level for nursing is a system-wide issue due to the historic reliance of HCS waiver providers on licensed vocational nurses (LVNs) rather than registered nurses (RNs), which is now the foundation for rates established for nursing in these programs, despite Board of Nursing regulatory requirements which require a higher utilization of RNs.
  - b. Currently, providers may only bill for staff training for the needs of a particular individual. Additional and adequate funding, or changes in the reimbursement methodology is recommended that will allow providers the ability for professional staff (nursing, psychologists, BCBAs) to train Direct Support Professional on more general topics related to the support for people with complex behavioral and medical needs, that is not specific to one individual. This will improve the knowledge of staff that directly provides services to all individuals in these programs, including those with consistent or intermittent complex medical and behavioral needs.
- C. PACSTX is concerned that the fiscal impact estimate contained in the report may be too low for individuals with complex medical needs leaving an SSLC and for the expansion of crisis intervention services. If more than 50 percent of the residents of the Austin SSLC have complex medical needs according to DADS, we believe that profile is fairly consistent statewide, which would make that number much higher. Furthermore, a more careful assessment of the cost components to serve the needs of individuals with complex medical and behavioral needs may cost more than an additional \$100 per day.

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

PACSTX was among the various groups that expressed concern regarding the quality of care provided in day habilitation facilities. While PACSTX agrees that better data collection regarding citations issued against providers using particular day habilitation facilities and reports from DFPS could assist individuals with the information necessary to make better choices for these programs, PACSTX is concerned with the recommendations for addressing the quality of services provided in these programs.

A. Day habilitation services have been underfunded for individuals with IDD in the HCS, TxHmL, DBMD, CLASS waiver programs and in ICF-IIDs.

a. Requiring additional contract provisions within HCS subcontracts with day habilitation facilities will not address the issue.

i. Individuals still have the option of choosing their own day habilitation provider. HCS providers may place certain protections in the contract; however it is very difficult to move an individual who is satisfied with a particular program, even with breach of contract provisions.

1. The staff report states, "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."

This statement needs to be clarified. Day habilitation services are part of the service array that must be offered to all individuals in these programs, and the individuals, not the provider, choose how to receive those services. The primary purpose of day habilitation is to provide an opportunity to be integrated into the community through participation in learning activities, community outings and/or employment training and assistance.

ii. Stronger contract provisions only provide enforcement actions limited to contract termination from a particular provider, and would allow bad actors to continue to offer services to other individuals served by other providers. There are individuals that would simply leave a program provider to stay in a particular day habilitation facility, whether it is "good" or "bad" simply to remain with their friends.

B. Day habilitation services should be adequately funded and stand-alone programs that are not a direct service offered by a waiver provider (and thus under the jurisdiction of

DADS via the waiver contract or ICF license) should be contracted by or licensed by DADS.

- a. This would limit the choice of individuals to programs that have been vetted by DADS and allow appropriate tracking of current day habilitation facilities and the quality of the programs. Under current conditions, if DADS finds an issue at a particular facility, all of the providers with individuals (even one) using that facility face enforcement action by DADS. Contract monitoring for these services could remain a component of normal review processes; however an issue identified at a particular facility would allow DADS to focus enforcement actions where the problem exists, at that particular facility, rather than penalizing the providers who contract with them.

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

With only 847 providers, Intermediate Care Facilities have fewer providers than any licensed long-term care service, except for Adult Day Care, and with 5,603 individuals receiving services the fewest clients of all the programs discussed in this section. Furthermore, the ICF program does not have a mechanism for enrollment growth, which is why it is a rarely utilized service. While PACSTX strongly supports the need for DADS to have the authority to enforce violations of licensure requirements in order to ensure the quality of services rendered, as noted in the Sunset Advisory Commission Staff Report, ICF-IIDs already have a penalty matrix that ties increased penalties to second and third offenses. Small intermediate care facilities are, in fact, small, with six or fewer individuals living in a home. The maximum penalties per violation per day of \$5000 are in place to allow these providers the ability to stay in business in instances where a violation would not or should not result in licensure suspension or termination. With few providers and individuals in this particular program, DADS should continue to appropriately monitor these services without potentially fining them out of existence.

Implementation of Sunset Staff Recommendation 6.2, *“Direct DADS to improve the quality and consistency of information available on QRS for all providers”* would have more of a profound positive impact in improving quality, than would the increasing of fines. Competition for enrollment of new participants based on quality outcomes made public, would be more effective in increasing quality than would the application of a potential deterrent to violations by arbitrary increased levels of fines.

### **Any Alternative or New Recommendations on This Agency**

#### **Consolidation of Duplicative Regulatory Processes**

While contract management consolidation is discussed as a recommendation for DADS, the Sunset Staff Report, PACSTX recommends taking the recommendation a step further to ensure that duplicative processes and reviews within DADS are also consolidated. In the HCS and TxHmL programs, providers are subjected to trust fund audits, utilization reviews,

residential reviews, annual survey and certification, annual life safety inspections by the local fire authority or State Fire Marshal, among others. These inspections are conducted on a regardless as to whether the provider has displayed reason for enhanced scrutiny. The vast number of regulatory visits absorbs substantial time by providers and DADS staff, diminishes time spent on direct care, and reviewers often focus on administrative errors rather than focusing on provider processes and individual outcomes.

- **PACSTX Recommendation:** PACSTX would recommend that administrative requirements of providers be reduced, consolidated or eliminated that are not required by federal or state law and are not related to the quality of care of those receiving services. PACSTX would also request that the number of oversight visits by DADS staff be consolidated where possible to limit the number of interruptions throughout the year to the delivery of services.

### **Communications/Rule-Making**

The Sunset Advisory Committee Staff Report discussed the need for improvements for distribution of consumer information. However, this is equally necessary for providers.

The publicly available phone-number for provider inquiries often lead to HHSC or DADS staff who have little or no understanding of IDD programs, and unfortunately, they often provide inaccurate answers to inquiries. A client or provider could call the same number multiple times with the same inquiry and receive a different answer each time. This is particularly problematic for providers relying on input from DADS to ensure compliance with regulatory requirements.

DADS also sends out a number of information letters that establish IDD program policy. While the letters are listed by date in the "Provider Resources" section of the DADS website, these letters are not divided by topic or placed in a provider manual that is current. When the manuals are updated, they often do not contain the level of detail that the information letter(s) contained. IDD providers are expected to monitor daily emails and communications from DADS, which is very burdensome. Information letters are also occasionally released without adequate input from providers as to the operational and fiscal impact to providers, requiring that the letter be rescinded and adding to the confusion of providers implementing new policies.

- **PACSTX Recommendations:** PACSTX would recommend that information letters be reduced, and those that create policy entered into a centralized manual. PACSTX would also recommend that DADS and HHSC staff taking provider and consumer inquiries receive appropriate education on these programs, where to find necessary information and who to refer phone calls to when information is not easily obtainable. Require that new policies or rules only be generated based upon stakeholder input or state or federal requirement. Require agencies to report on

stakeholder input and response to proposed rules (rather than which stakeholder groups were approached).

**Additional Recommendation:** DADS Provider/Information Letters frequently address new interpretations of rules, or often promulgate new requirements. These as well as revisions to Billing Guidelines, create new mandates (often costly and not reimbursed) that do not have to be subjected to statutory code revision requirements. Stakeholders have no formal input to the promulgation of these mandates which can also be subjectively applied by DADS surveyors. Matters of program policy should be required to be amended into Texas Administrative Code, so they can be properly vetted. Any requirements that add cost should be accompanied by an appropriate rate “add-on” to be determined by HHSC, also subject to public scrutiny.