

From: [Sunset Advisory Commission](#)
To: [Janet Wood](#)
Subject: FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)
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From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
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Agency: DEPARTMENT STATE HEALTH SERVICES DSHS

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

Disability Rights Texas (DRTx) could not agree more that the state hospital system is in crisis and we commend Sunset staff for recognizing the immediate need to remedy the system's deeply engrained challenges. Overall, the staff analysis and recommendations present an accurate picture of a troubled system. While we support each of the staff recommendations, we suggest a few modifications that would make the recommendations stronger.

Judicial education and guide on alternatives to inpatient care (Recommendations 1.1 and 1.2):

We agree with recommendations 1.1 and 1.2 related to judicial education and a compilation of resources on alternatives to inpatient care. However, these recommendations could be modified and made stronger in a few ways. First, recommendation 1.1 appears to be limited to the judiciary. While judicial education is important so judges can develop an understanding of and confidence in alternatives to inpatient care, we should also require the same training for prosecutors and defense attorneys. This is consistent with Rider 11 for the Court of Criminal Appeals referenced in the report. In our experience, while judicial reluctance to order a less restrictive method of treatment is a significant issue, counsel on both sides are likewise unfamiliar with the alternatives and thus may not be advocating for the most appropriate setting. This recommendation would be significantly strengthened by including all parties who handle forensic cases.

Second, training and an inventory will not, by themselves, go far enough to relieve pressure on the state hospital system. We would propose a modification to these recommendations to prohibit certain forensic patients that do not present a public safety risk, such as Class A and Class B misdemeanants, from being committed to an inpatient setting for restorative treatment under Article 46B of the Code of Criminal Procedure. Of course any such prohibition must be made consistent with maintaining public safety.

However, when looking at ways to relieve pressure on the system and save General Revenue funds, diversion of individuals who do not need the most restrictive and expensive form of care offered in state hospitals, misdemeanants are a logical place to start.

Staffing issues (Recommendation 1.3):

As the staff report indicates, maintaining appropriate staffing levels for both clinical and non-clinical staff is a major issue and DRTx favors all strategies to appropriately staff the facilities. While we do not propose a specific modification to this recommendation, there may be opportunities to address the staffing crisis in combination with other current initiatives, such as the 10 year plan and Rider 87, which directed the Department to study and report on state hospital staffing levels prior to the 2015 legislative session.

We would also urge that any strategy to address the current staffing crisis contextualize the issue by also looking at the structural flaws the system faces, one of the major ones being taking patients to remote areas of the state for treatment. We are not advocating for fewer beds in the system, but an examination of whether the need for beds would be better met through smaller facilities in communities that can better support the needed workforce. While recommendation 1.3 is a good starting point, it must be coupled with existing initiatives and a strategic plan to truly address the existing staffing crisis.

Continued expansion of private bed contracting (Recommendation 1.4):

The move towards increased private bed contracting was at least in part spurred by DRTx's lawsuit against the Department on behalf of individuals found incompetent to stand trial who were waiting for weeks or months for a state hospital bed. Contracting for beds has been a major strategy in reducing wait times and we commend the Department for their efforts on this front. The report correctly states that the 21 day ruling was recently overturned on appeal. However, it was overturned for technical reasons and the court indicated that keeping certain patients in jail waiting for restorative treatment for too long would be unconstitutional. To avoid future liability, the Department must continue the current trend of transferring patients to a state hospital in a timely manner.

We therefore agree with recommendation 1.4 related to expanding capacity by contracting with community providers as a means of enhancing capacity and keeping people closer to home. However, as the report points out, more data is needed so that patient safety and outcomes in the different settings can be compared. We were very pleased to see restraint and seclusion among the recommended minimum data points and we would add the use of other behavioral interventions, including emergency medication, to the list. In addition, the Department should also be directed to track outcomes by committing offense and offense classification, if applicable, and not just commitment type. This would allow for a better assessment of the individuals utilizing inpatient beds.

Any Alternative or New Recommendations on This Agency: Strengthened Rulemaking Process (New recommendation):

While not specific to mental health, the report spoke of the Department's struggles related to its vast and unmanageable regulatory functions. The regulation of mental health facilities is no exception. The Department continues to be delinquent in its mental health rule promulgation. Texas Government Code §2001.039(a) requires that state agencies periodically review and consider for re-adoption each of its rules. Specifically, state agencies must review a rule not later than the fourth anniversary of the date on which the rule takes effect and every four years thereafter and must readopt, readopt with amendments or repeal a rule as a result of this review. The Department is not meeting these timelines and in certain cases, a rule should have been reviewed several times already. Texas is not only failing to keep up with best practices, but statutory changes are not reflected in regulations given the delays in implementation.

Key rules applicable to inpatient psychiatric settings have not been reviewed for almost two decades. To illustrate, the rule governing Deaths of the Persons Served (405K) was last updated in 1993 and the Patient Rights rule (404E) has not been updated since 1996. The Admissions, Discharge and Continuity of Care rule (412D) and the Abuse and Neglect rule (417K) were last updated in 2003 and 2004, respectively. As another example, the Behavioral Interventions rule (415F) is being updated to reflect the changes required by SB 1842 (83rd session) to also include the required provisions of SB 325 from the 2005 session. This issue speaks directly to the government

efficiency analysis undertaken as part of the Sunset process and additional oversight and direction are needed to ensure that the Department fulfills its rulemaking obligations related to mental health.

My Comment Will Be Made Public: I agree