

SUBJECT: Implementing Sunset recommendations for DADS

COMMITTEE: Human Services — committee substitute recommended

VOTE: 5 ayes — Raymond, Rose, Keough, Klick, Price

3 nays — S. King, Naishtat, Peña

1 absent — Spitzer

SENATE VOTE: On final passage, April 13 — 26-5 (Fraser, Garcia, Kolkhorst, Nichols, Watson)

WITNESSES: (*On House companion bill, HB 2699*)

For — Ellen Bauman, Michelle Dooley, Cindi Paschall, and Joe Tate, Community Now; Chase Bearden and Dennis Borel, Coalition of Texans with Disabilities; Melanie Boyte, ADAPT; John Davidson, Texas Public Policy Foundation; (*Registered, but did not testify*: Nora Belcher, Texas e-Health Alliance; Ricky Broussard, the Arc of Texas; Ashley Butler, Julian Cordova, Jomel Crayton, Andy Noser, and Gwen Noser, Texas Advocates; Cate Carroll, Volunteers of America Texas; Troy Carter, Adult Day Care Association of Texas; Amanda Fredriksen, AARP; Allen Freeze, Gulf Coast Self-Advocates; Charlie Jurek, SALSA; Marissa Machado, Texas Association for Home Care and Hospice; Maxcine Tomlinson, Texas New Mexico Hospice Organization; Sarah Watkins, Community Now; Linda Litzinger)

Against — Susan Payne, PART; and 11 individuals; (*Registered, but did not testify*: Debra Coleman and David Veith, Texas State Employees Union; Jason Smith, Abilene Chamber of Commerce; and six individuals)

On — Kevin Barker, Texana Center; Christopher Edding, Bob Kafka, Jennifer McPhail, Heiwa Salovitz, Burrell Steele, ADAPT; Jeffrey Engelke, PACSTX; Rachel Hammon, Texas Association for Home Care and Hospice; Gary Hidalgo, the Arc of Texas; Colleen Horton, Hogg Foundation for Mental Health; Erin Lawler, Texas Council of Community

Centers; Ken Levine and Amy Trost, Sunset Advisory Commission; Diana Martinez, Texas Assisted Living Association; Jeff Miller, Disability Rights Texas; Kendal Nelson, Sagora Senior Living; Nelson Peet, ADAPT/PACT; Scott Schalchlin and Jon Weizenbaum, Department of Aging and Disability Services; Albert Metz; (*Registered, but did not testify*: Cathy Cranston, Personal Attendant Coalition of Texas; Kyle Janek, Health and Human Services Commission; Alyse Meyer, LeadingAge Texas; Lee Spiller, Citizens Commission on Human Rights; Kevin Warren, Texas Health Care Association; Loretta White, ADAPT)

BACKGROUND: The Department of Aging and Disability Services (DADS) manages the state's long-term care services for Texans with disabilities and the elderly. DADS also regulates providers serving these populations in facilities or home settings. The agency was created in 2003 through the consolidation of the Department of Human Services and Department on Aging, as well as certain programs from the Department of Health, Texas Rehabilitation Commission, and the Texas Department of Mental Health and Mental Retardation.

DADS operations are overseen by a commissioner who is appointed by the executive commissioner of the Health and Human Services Commission (HHSC). The commissioner receives assistance from a nine-member council appointed by the governor.

The agency employed about 16,000 staff in 2013, a majority of whom worked in state supported living centers. These centers provide facility-based residential services for Texans with intellectual and developmental disabilities. In fiscal 2013, DADS spent more than \$6.1 billion. About 60 percent of the agency's funding is federal, most of which is Medicaid. The majority of the agency's expenditures in 2013 were for nursing facilities (39 percent) and community-based services (36 percent). About 11 percent of the agency's expenditures in 2013 were for state supported living centers.

DADS is subject to abolition under the Sunset Act on September 1, 2015, unless continued by the Legislature. The Sunset commission did not

recommend continuing DADS as a separate agency and instead recommended reorganization of the system agencies into a functional structure under HHSC.

DIGEST:

CSSB 204 would discontinue the Department of Aging and Disability Services (DADS) as an independent agency and transfer its administrative functions to the Health and Human Services Commission (HHSC).

The bill would implement numerous other changes related to the functions of the department, which would include:

- establishing a state supported living center (SSLC) restructuring commission and requiring that the department develop a closure plan for the Austin SSLC;
- imposing stronger sanctions for certain violations issued under the Health and Safety Code and the Human Resources Code and requiring graduated penalties; and
- establishing a crisis intervention team within the department and amending the informal dispute resolution process for nursing homes and assisted living facilities.

CSSB 204 also would make changes to day habilitation services and add requirements to long-term care consumer information provided online.

Transfer of DADS to HHSC. CSSB 204 would establish a procedure for the transfers of certain powers, duties, programs, and activities from DADS to HHSC.

By September 1, 2016, certain DADS administrative support service functions, client services functions, and council functions would be transferred to HHSC. By September 1, 2017, all remaining functions of DADS would be transferred to HHSC. Included in the transfer would be obligations and contracts, property and records, legislative appropriations and other funds, cases that are pending before the agency, and necessary personnel. A rule or policy adopted by DADS related to a transferred function would become a rule or policy of HHSC.

The bill also would repeal numerous sections of code to conform with the transfer.

State-supported living centers. CSSB 204 would establish a restructuring commission whose purpose would be to evaluate each SSLC to determine if closure was recommended to maintain only the number of centers necessary to meet the needs of the state. Commission members could not have financial interest in or other connection with the SSLCs. In evaluating the centers, the restructuring committee would consider:

- the quality of services provided by the center and operation costs;
- compliance with the 2009 settlement agreement between the department and the U.S. Department of Justice;
- the availability of community service providers in the area;
- specialty services provided at the center;
- the availability of employment opportunities for center employees if the center closed;
- any infrastructure deficiency costs relating to the center;
- property value of, market demand for, and any deed restrictions applicable to property and facilities of the center;
- whether closure of the center would adversely affect the geographic distribution of centers in the state;
- the ability of the community to deliver the quality of care required by residents following the center's closure; and
- any other criteria the restructuring commission considered appropriate

By December 1, 2016, the restructuring committee would be required to submit to the governor, lieutenant governor, speaker of the House, and presiding officers of relevant House and Senate committees a report detailing the evaluation of each SSLC and, if applicable, proposing the closure of certain centers.

If the restructuring commission recommended the closure of one or more

SSLCs, the 85th Legislature would be required to consider legislation proposing the closures; however, members could not to propose amendments to the legislation. If an SSLC was approved for closure, it would have to be closed on or before August 31, 2025.

CSSB 204 would require the department to establish a closure plan for the Austin SSLC that provided for a closure date that was not later than August 31, 2017. On or before August 31, 2018, the department would evaluate the closure process, including how well it worked, and, if appropriate, would establish policies for improving the process for other future closures.

The executive commissioner of HHSC would have authority to establish by rule a list of services an SSLC could provide under a contract, as well as a schedule of fees to be charged for those services. In establishing the fee schedule, the executive commissioner would use the reimbursement rate for applicable services under Medicaid.

Nursing homes and related institutions. CSSB 204 would allow the department to revoke the license of a facility that had committed three violations constituting an immediate threat to health and safety related to the abuse or neglect of a resident on three separate days within a 24-month period. “Immediate threat to health and safety” would mean a situation in which immediate corrective action was necessary because the institution’s noncompliance with one or more requirements had caused, or was likely to cause, serious injury, harm, impairment, or death to a resident.

Progressive sanctions and penalties. CSSB 204 would require the executive commissioner of HHSC to establish progressive sanctions by rule for violations issued under the Health and Safety Code for home and community support services, convalescent and nursing homes and related institutions, assisted living facilities, and intermediate care facilities, and adult day services.

The executive commissioner would create a matrix of progressive sanctions that the department would use to assess penalty amounts and

impose disciplinary actions as appropriate. The matrix would provide for increases in the amounts of administrative penalties based on type, frequency, and seriousness of violations. It also would provide guidance for determining appropriate and graduated administrative penalties to deter future violations, including guidance on considering factors for determining penalty amounts.

CSSB 204 would increase the maximum penalty for each violation from \$1,000 to \$5,000 for home and community support services and assisted living facilities. For assisted living facilities, each day a violation occurred or continued would be a separate violation for purposes of imposing a penalty, which is already the case for intermediate care facilities under current law. For intermediate care facilities, the bill would remove the ceiling on penalties for violations continuing or occurring on separate days.

The executive commissioner would be required to define types of minor violations that could be corrected by home and community support services, nursing homes and related institutions, assisted living facilities, intermediate care facilities, and adult day services before the department assessed an administrative penalty. The executive commissioner would need to ensure that all other violations were not subject to a right to correct.

Crisis intervention teams. CSSB 204 would require the department to select a model for implementing a crisis intervention team. The team would consist of individuals specially trained to provide services and support to persons with an intellectual or developmental disability who have behavioral health needs or are at risk of institutionalization.

The department would evaluate the effectiveness of various models of federally funded crisis intervention teams. By March 1, 2016, the agency would select one or more models for these teams that it determined could best provide comprehensive, cost-effective support. The department would determine areas in the state where crisis intervention teams were not operated and, subject to available funding, would develop a statewide

system of locally managed crisis intervention teams.

Informal dispute resolution. The bill would add requirements to an existing informal dispute resolution process for certain long-term care facilities. HHSC would be required to contract with an appropriate disinterested, nonprofit organization as part of the informal dispute resolution process for convalescent and nursing homes and related institutions to adjudicate disputes. This resolution process would concern disputes regarding a statement of violations as prepared by the department in connection with a survey of the institution or facility.

Day habilitation services. CSSB 204 would require that every community-based intellectual and developmental disabilities services provider and intermediate care facility annually submit to the department a summary report. The department would maintain information obtained from inspections of day habilitation services providers regarding conduct or conditions constituting a violation of federal or state law or of applicable department rules.

By September 1, 2015, the department would be required to establish a day habilitation program advisory committee. The committee would consider and make recommendations about whether the provision of day habilitation services in the state should be redesigned and whether providers of these services should be subject to regulation. The committee also would examine whether day habilitation service providers currently comply with federal requirements. The committee would make recommendations on issues relating to day habilitation services, including the appropriate funding for services, reimbursable settings and services, staff-to-client ratio requirements, and safety requirements. By September 1, 2016, the committee would submit to the governor, lieutenant governor, speaker of the House, and presiding officers of relevant House and Senate committees a report with the committee's recommendations and the necessity for regulation, licensure, or certification of day habilitation services providers.

CSSB 204 would require the Department of Family and Protective

Services (DFPS) to prepare and submit to the department an annual report detailing the number of investigations arising from a report of abuse, neglect, or exploitation of a person with an intellectual and developmental disability (IDD) that was allegedly committed by or on the premises of a day habilitation services provider. DFPS would specify whether the report was confirmed, unconfirmed, inconclusive, or unfounded. This duty to prepare and submit a report would not affect the duty of DFPS to investigate and hold accountable a center for any abuse, neglect, or exploitation of a person who received day habilitation services from the provider.

Quality-of-care monitoring and rapid response teams. The bill would amend current law related to quality-of-care monitoring visits. Quality-of-care monitoring visits would be required for long-term care facilities identified as medium risk. Long-term care facilities also could request a monitoring visit. The department would have to schedule a follow-up visit not later than 45 days after the initial monitoring visit.

The bill would expand circumstances under which rapid response teams could visit long-term care facilities. The rapid response teams could visit a long-term care facility that was identified as high risk by the department through its early warning system or that had committed three violations within a 24-month period that constituted an immediate threat to health and safety related to the abuse or neglect of residents. Long-term care facilities would be required to cooperate with a rapid response team that was deployed to improve the quality of care they provided.

Long-term care consumer information. The bill would require that consumer information made available on the websites of HHSC and the department include for each provider of long-term care services quality-of-care ratings and information, staffing information, and the provider's regulatory performance. The department would have to periodically solicit from users input regarding the content of information and the usability and accessibility of the website.

Sunset provision. Under CSSB 204, DADS would be discontinued on

September 1, 2015. This section would take effect only if the agency was not continued in existence by any other legislation of the 84th Legislature.

The sections of the bill allowing the department to revoke the license of certain nursing homes with serious, repeated violations would take effect September 1, 2016. The remaining provisions of the bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, they would take effect September 1, 2015.

**SUPPORTERS
SAY:**

CSSB 204 would follow recommendations of the Sunset Advisory Commission to transfer the functions of the Department of Aging and Disability Services (DADS) to the Health and Human Services Commission (HHSC) and, in so doing, improve the health and safety of the vulnerable populations served by the agency.

State-supported living centers. The bill appropriately would close the Austin SSLC while authorizing a commission to recommend whether other centers should be closed. Although SSLC residents account for a small segment of the clients served by DADS, the agency spends about 10 percent of its budget on SSLCs. Maintaining this large system of state-run facilities is too expensive. It would be more cost effective to place individuals in these centers in comparable living situations in the community. With the cost to taxpayers growing unsustainably, the state should close the Austin center and consider closing some of the others that have proven most problematic.

CSSB 204 would improve services for those at the remaining SSLCs. The shift to a smaller system would allow the agency to focus on providing higher quality care to people with intellectual and developmental disabilities (IDDs) who have the greatest needs. For example, SSLCs could work to improve relationships with universities so that students could receive more training with the IDD population — and the increased community engagement also would benefit the residents. The bill also would help reduce waiting lists for community-based services by downsizing SSLCs and redirecting that money into home and community-

based services. Currently, there is no waiting list for the SSLCs, but there is a waiting list for community living options for those with disabilities.

CSSB 204 would be a step toward aligning Texas' practices with those of other states. Texas, which has 13 SSLCs, is one of the few remaining states maintaining a large system of public resident institutions for the IDD population. Most states operate with three institutions on average, and large states operate about seven.

The bill would not lead to the closure of every SSLC. It would create an SSLC restructuring commission to make recommendations to the Legislature, but decisions on closures would be made by elected officials. As a result, even if many centers were closed at the end of this process, certain centers inevitably would remain open to serve those who truly cannot function within the community.

Closure of the Austin SSLC would be a good start in the effort to downsize all SSLCs and expand community-based services. The Austin SSLC has had trouble with health and safety violations, including 33 termination warnings since 2009, which is more than any other SSLC. In closing the Austin SSLC, the bill would make residents' care the top priority. Residents would have the option of staying in Austin in a community environment, or if their level of care demanded it, they would be moved to another SSLC. Only residents deemed appropriate for community living would be moved to the community.

Nursing homes and related institutions. CSSB 204 would lead to safer convalescent and nursing homes by requiring that these facilities be subject to license revocation for having three major violations within 24 months. The bill would encourage facilities to implement safe practices to avoid license revocation. Such legislation is necessary for the protection of this vulnerable population.

CSSB 204 would affect only facilities that posed serious harm to Texas' elderly population. A recent Sunset Advisory Commission review of DADS found that in the last three fiscal years, the agency has revoked just

three nursing home licenses, with no revocations in fiscal 2013. License revocation is an action taken only as a last resort. This bill would create a strong state response to facilities with serious, repeated health and safety violations that would include revoking their licenses to operate, if warranted. At the same time, the bill would be fair to these institutions in that it would allow them to pursue corrective action after a first and even second set of violations before revoking the license.

Progressive sanctions and penalties. The bill appropriately would provide for escalating sanctions and penalties for violations by certain long-term care providers. Current penalty maximums for these provider types are not consistent between similar providers and might not provide effective deterrence for serious violations. The changes in the bill would match penalty amounts to the potential harm that can result from violations of licensing regulations. These recommended changes would allow the state to more effectively deter licensees from committing the most serious violations and hold accountable those who commit multiple violations. Also, while the maximum limit for penalties would be raised, that does not mean that the maximum penalty would be imposed by default.

Crisis intervention teams. CSSB 204 would provide crisis support for IDD individuals in the community with high behavioral needs. One element reported to be essential in building community capacity is community crisis management. Implementation of crisis intervention teams would help people with challenging behaviors live in the community by supporting them through crises that could put them at risk for re-institutionalization.

OPPONENTS
SAY:

State supported living centers. CSSB 204 inappropriately would remove certain residents from SSLCs, some of whom simply could not survive outside of these centers. For example, there are residents at SSLCs who cannot talk, feed themselves, or bathe themselves. SSLCs are the least restrictive environment for residents who need constant care. Community centers would be an inappropriate solution for some members of the IDD community.

CSSB 204 could result in moving severely disabled individuals into group homes where there is little oversight and recourse for abuse and neglect. Many SSLC residents have highly complex needs, including behavioral issues and multiple disabilities, and some already have been expelled from group homes because their care was too complicated. SSLCs are the only publicly funded, comprehensive medical and psychological care facilities for some of the most vulnerable Texans, and these centers have served the severely disabled well for decades. The state's SSLCs must remain open to continue providing highly specialized care for current residents and for future generations of Texans with intensive special needs.

CSSB 204 should not involve formation of an SSLC restructuring commission. Closure proposals and decisions should be made by elected legislators, not appointed citizen commissions.

The bill would cause the closure of the Austin SSLC, which would involve moving many Austin residents away from their families to other SSLCs. This could make family visitation difficult for some. This closure also would remove some individuals from a home they have known most of their lives. There are problems at the center that need improvement, but those problems are not serious enough to merit closure.

Nursing homes and related institutions. While intending to help nursing home residents, CSSB 204 could lead to the closure of nursing homes or other long-term care facilities, which can be difficult for residents and their families. The goal should be to improve quality and maintain access to care, rather than shutting down facilities. This course of action could be particularly problematic in rural parts of Texas where there are not many nursing homes or other long-term care facilities. In some areas, these facilities are important employers. Shutting down a facility can punish residents, family members, and staff, when most of them have done no wrong.

Progressive sanctions and penalties. CSSB 204 unjustly would sanction and penalize assisted living facilities, for which the per-day penalty policy

is not currently in use. Assisted living facilities are not nursing homes, and skilled nursing is required for their residents. That specialized care equates to more regulation both at the state and federal levels. Many assisted living facilities are small, so a daily penalty really could be a significant burden for these providers.

The bill also would establish inappropriate penalties for home and community support services and assisted living facilities. The proposed fine increase from \$1,000 to \$5,000 would be disproportionate and harsh.

Crisis intervention teams. People with disabilities can experience abuse, neglect, isolation, abandonment, or bullying and consequently may struggle with mental illness, such as depression and anxiety. Efforts should be focused on the mental health needs of people with IDD, rather than establishing teams to wait for a crisis to happen.

OTHER
OPPONENTS
SAY:

While the changes suggested in the bill would benefit many elderly Texans and people with intellectual and physical disabilities who receive state services and supports, these measures could be undertaken without abolishing DADS and transferring its functions to HHSC. DADS is the agency best placed to oversee the reforms proposed in CSSB 204, and it should be extended beyond September 1, 2015.

NOTES:

According to the Legislative Budget Board's fiscal note, the bill would have an estimated negative impact of \$20.2 million to general revenue related funds through fiscal 2016-17.

CSSB 204 differs from the Senate engrossed version of the bill in various details and in that it would discontinue DADS and transfer its functions to HHSC.

The House companion bill, HB 2699 by Raymond, was considered in a public hearing of the House Human Services Committee on March 23 and left pending.