

Background:

Staff will provide updates on the following policy areas of interest:

A. **State Policy Issues**

Staff will provide an update of recent public policy activities, including the implementation of legislation and the budget adopted by the 82nd Legislature.

B. **Update on State Supported Living Center Monitoring Activities**

The Committee will receive an update on recent Department of Justice monitoring team reports of State Supported Living Centers. Staff will also discuss with the Committee recent advocacy efforts and discussions in response to those reports. Materials are enclosed related to this item.

C. **Update on Federal Policy Issues**

TCDD Public Policy staff will provide an overview of the status and implementation of various federal legislative initiatives that impact people with developmental disabilities. Additional information is provided in meeting materials.

Public Policy Committee

Agenda Item 6.

Expected Action:

The Committee will receive updates on these items and may make recommendations for consideration by the Council.

Council

Agenda Item 12. A.

Expected Action:

The Council will receive a report from the Public Policy Committee and consider any recommendations offered from the Committee.

PUBLIC POLICY ACTIVITIES SUMMARY REPORT

November 2011 – February 2012

Long-term Services and Supports

- TCDD staff continue to participate in relevant DADS meetings, such as the Promoting Independence Advisory Committee, the Money Follows the Person Demonstration Advisory Committee and Community-based Services Interest List Stakeholders.
- Staff continue to participate in the Public-Private Provider Workgroup discussing current issues impacting the delivery of long-term services and supports for individuals with developmental disabilities.
- Staff continue to collaborate with colleague organizations regarding the implementation of the settlement with the Department of Justice concerning Texas State Supported Living Centers.
- Staff participated in meetings regarding the implementation of the Culture Change Initiative at Brenham State Supported Living Center required by HB 3197.
- Staff continue to participate as a member of the DADS Aging and Disability Resource Center Advisory Committee (ADRC), and the DADS Lifespan Respite Services Advisory Committee.
- Staff participated in round table work sessions hosted by DADS to address options to reduce administrative costs and requirements in the Home and Community-based Services (HCS), Texas Home Living (TxHmL) and Intermediate Care Facility (ICF) programs.
- Staff continue to collaborate with stakeholders to strengthen the role of service coordination in the HCS program by addressing issues associated with the service planning process and ensuring that consumers have meaningful input via planned focus groups.
- Staff participate as a member of the SB 1857 Advisory Committee to provide input to DADS and the Board of Nursing concerning revised protocols for medication management in the HCS, TxHmL and ICF programs.
- TCDD staff participated in DADS strategic planning meetings associated with ongoing activities relating to Disability History and Awareness.

Education

- TCDD staff continue to monitor meetings and activities related to Early Childhood Intervention Services in Texas.

Healthcare

- Staff continue to monitor implementation of cost containment directives, including expansion of Medicaid managed care through 1115 Medicaid Flexibility waivers and Medicare Equalization.
- Staff continue to monitor the impact of health care reform and Medicaid cost containment requirements of the 82nd Texas Legislature on services for people with development disabilities, including participation in the monthly My Medicaid Matters initiative and Cover Texas Now, an ad hoc healthcare advocacy coalition.

Housing

- Staff continue to work with TDHCA staff, attend board, stakeholder and monthly Disability Advisory Workgroup meetings.
- Staff continue to participate in housing advocate groups, including the Disability Policy Consortium and issue based ad hoc groups.

Mental Health

- Staff continue to participate on the DSHS Council for Advising and Planning (CAP) for the Prevention and Treatment of Mental and Substance Use Disorders.
- Staff continue to participate in the Texas Children's Mental Health Forums, developing a policy agenda to advance children's mental health in Texas.
- Staff continue to participate in adult mental health policy planning meetings organized by Mental Health America Texas.
- Staffs continue to monitor and attend agency meetings, research mental health policy and practice through attending forums and taskforce meetings, and build coalitions and collaborative relationships with different mental health stakeholders, advocates and self-advocates.

Employment

- TCDD has submitted comments and recommendations to the National Association of Council on Developmental Disabilities (NACDD) concerning proposed rules to set a "utilization goal" for federal contractors that seven percent of their employees be individuals with disabilities.
- Staff collaborated on submitting a Request for Qualifications (RFQ) to contract with a technical writer for the 2012 Biennial Disability Report.
- Staff met with the Texas Office for the Prevention of Developmental Disabilities (TOPDD) to discuss the 2012 Biennial Disability Report and strategies to improve coordination.
- TCDD worked with agency staff to collect data on employment for the 2012 Biennial Disability Report.
- Staff provided feedback on NACDD's Legislative Agenda for the 112th Congress.
- Staff participated in the State Employment Leadership Network (SELN) teleconference on Employment First.
- Staff collaborated and updated TCDD's fact sheet for NACDD with the focus on employment accomplishments in Texas.

Transportation

- TCDD continues to monitor Capital Metro/Metro Access and various changes in services for people with disabilities. TCDD assisted Capital Metro in publicizing information regarding services for people who lost their transportation in various withdrawn districts.
- TCDD continues to monitor various metropolitan planning organizations and review changes to the long-range transportation plan.
- Staff has continued participation on the Texas Disability Task Force on Emergency Management.

Children and Families

- TCDD continues to participate in various child protective services meetings and work with stakeholders, advocates and self advocates.
- TCDD continues to collaborate with agency staff on child protective services issues.
- TCDD continues to monitor implementation of the foster care redesign.



Texas Health and Human Services

NEWS RELEASE

THOMAS M. SUEHS
EXECUTIVE COMMISSIONER

Date: Dec. 12, 2011

Contact: Stephanie Goodman, 512-424-6951

AUSTIN – Texas today received approval from the Centers for Medicare and Medicaid Services (CMS) for a waiver that allows the state to expand Medicaid managed care while preserving hospital funding, provides incentive payments for health care improvements and directs more funding to hospitals that serve large numbers of uninsured patients.

“This waiver will allow us to replace an archaic federal Medicaid funding system with one built around local solutions that rewards hospitals for patient care and innovation,” said Texas Health and Human Services Executive Commissioner Tom Suehs. “These reforms will allow us to ensure the best, most efficient use of Medicaid funding and improve services for Texans.”

HHSC applied for the waiver earlier this year, at the direction of Gov. Rick Perry and the Texas Legislature, to identify innovative, state-based solutions to Texas’ health care needs. Under the waiver, communities and hospitals will form regional health partnerships that support more localized health care solutions. The partnerships will identify ways to improve health services that address the specific needs of their region in order to qualify for incentive payments. These projects will be monitored and measured to ensure the funding is used efficiently and effectively.

Under managed care, the state pays a set fee each month to a health plan to provide care for a Medicaid client, who selects a primary doctor from the plan’s network to coordinate his or her care. This emphasizes more coordinated and efficient patient treatment. Federal rules generally mean that states that expand managed care will see a reduction in funding to hospitals under the Medicaid Upper Payment Limit program. This five-year waiver will allow for both, enabling Texas to continue receiving these federal funds while allowing for an expansion of managed care.

News Release: Texas Gets Approval for Cost-Saving Medicaid Improvements

"It was critical we maintain those payments for our hospitals, but we also want to make sure we know how those tax dollars are being spent; our reform plan does both," Suehs said. "Our plan ensures hospitals serving the most uninsured patients and providing the best services will get the most funding."

Suehs thanked CMS for working with the state on the waiver and approving a solution that would help meet the unique health care needs of different regions of Texas.

Hospitals providing care to uninsured patients will continue to receive funding to care for them, as well as physician, clinic and other services, and traditional inpatient costs. The waiver does not change who is eligible to get Medicaid or the services they can receive.

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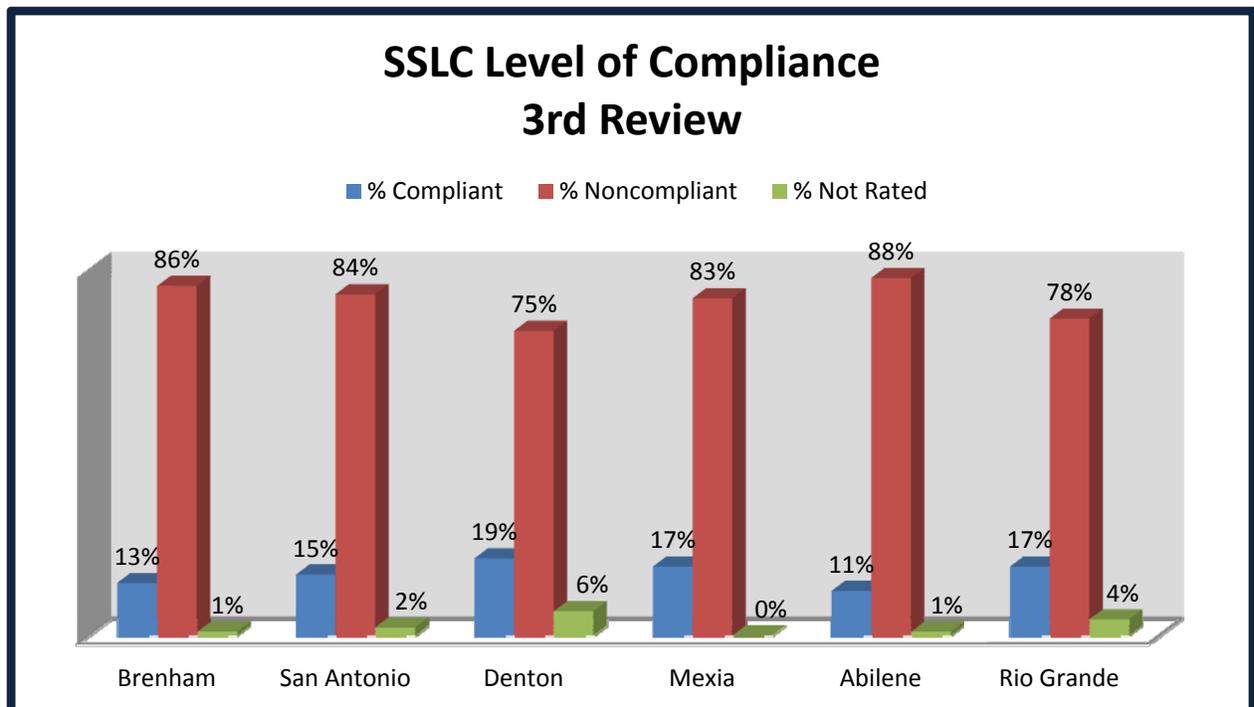
	CBA		CLASS		HCS		MDCP		Totals
	Data current through 12/5/11		Data current through 12/8/11		Data current through 12/8/11		Data current through 12/2/11		
	Count	Percentage	Count	Percentage	Count	Percentage	Count	Percentage	
Decisions									
Exception Granted	2553	97.37%	1458	100.00%	1146	99.91%	914	98.60%	6,071
Exception not Granted	69	2.63%	0		1	0.09%	13	1.40%	83
Service Delivered Prior to 12/1/2011	355		10		4		9		378
Service Reduced – Reqst from individual	58		1067		463		51		1,639
Service Terminated – Reqst from individual	3		0		9		0		12
Total	3,038		2,535		1,623		987		8,183
Total Unduplicated Number of Individuals	2,702		2,044		1,427		984		7,157

NOTE: Data shown was calculated directly from raw data that has not yet been validated in the QAI Data Mart

State Supported Living Centers Monitoring Update

In June 2009, the State of Texas/Department of Aging and Disability Services (DADS) and the U.S. Department of Justice (DOJ) entered into a Settlement Agreement (SA) that covers the 12 State Supported Living Centers (SSLC) and the ICF component of Rio Grande State Center. As determined by the Settlement Agreement, three monitors are responsible for monitoring the facilities' compliance with the SA and related Health Care Guidelines. The monitoring teams examine activities in 20 different aspects of care provided to residents in each facility to determine the status of each facility's compliance with provisions of the U.S. DOJ Settlement Agreement. Within each section, there are a varying number of more specific provisions. Each provision is rated as in substantial compliance or noncompliance with the terms of the Settlement Agreement. There are also provisions that are not rated if the monitoring team had insufficient information to rate a provision.

Baseline reviews of the facilities were conducted from January through May 2010. The first round of compliance reviews were completed from July 2010 to January 2011 to report on each facility's compliance with the SA. The second compliance reviews of each facility began in February 2011 and concluded in mid-July 2011. The monitors released the third reviews of Corpus Christi and El Paso in September 2011, which were covered in last quarter's Council meeting. This report covers the reports issued in the third round of compliance reviews for Brenham, San Antonio, Denton, Mexia & Abilene SSLCs as well as Rio Grande State Center. Some aggregate information is available on the second compliance reviews of all SSLCs. In addition, information is provided about the third compliance reviews conducted thus far.



Brenham State Supported Living Center (BSSLC)

BSSLC was rated as substantially compliant on 13 percent of provisions assessed by the monitoring team, with 86 percent of provisions rated as noncompliant, and one percent not rated. The monitoring

team noted significant improvement in management of restraints, although at the time of the review, the use of restraint for crisis intervention was trending upward. Allegations of abuse and neglect were on the rise, but according to monitors, this could be due to additional training and cameras monitoring activity in public areas since the number of unusual incidents and injuries were on the decline. Although BSSLC had implemented a new risk assessment process, most risk assessments were not completed in a timely manner. Although there were improvements in skill acquisition programs, overall implementation of those programs was viewed as inadequate, and individuals were often observed in situations that lacked functional activity. 12 individuals transitioned to community placement in the past six months, which was a high pace, according to monitors. Monitors also note that BSSLC was not in compliance with most of the provisions of this section and needs improvement in various key areas.

San Antonio State Supported Living Center (SASSLC)

SASSLC was rated as in substantial compliance in 15 percent of the provisions assessed by the monitoring team. 84 percent of provisions were noncompliant. 14 of the 20 areas evaluated had zero percent compliance with the SA. The monitoring team noted little progress toward substantial compliance in psychological care and services. The monitoring team also expressed concern that 10 percent of the population had standing do not resuscitate orders, even though the diagnoses were not considered terminal. SASSLC made progress in reducing the use of restraint, focusing in particular on the individuals with the highest number of restraints at the facility. As a result, the individual who had the greatest number of restraints in the six months prior to the last monitoring visit had received no restraints in the six months leading up to the most recent monitoring visit. From February 1 through July 27, 2011, the Department of Family and Protective Services (DFPS) confirmed 10 allegations of physical abuse, one allegation of emotional/verbal abuse, and 16 allegations of neglect. There were also 32 serious incidents at the facility, including five deaths and 23 serious injuries, which did not involve allegations of abuse or neglect. Little progress was seen related to quality assurance, and the facility is considering how to implement the person centered planning process. Positive efforts were noted in integrated clinical care, psychiatric care, nursing care and pharmacy services while concerns were also noted in most of these areas. Some residents have not received a communications assessment in more than 10 years. The monitoring team noted slow progress in meeting requirements for providing services in the most integrated setting and recommended that a coordinated effort be made to refer more individuals for community placement, since few individuals were referred and placed during the review period. Obstacles to referral and placement were not adequately identified or addressed, and monitors recommend that staff need to consider each individual's preferences, support needs and safety concerns, and be more involved helping individuals select providers and learn how to make good choices.

Denton State Supported Living Center (DSSLC)

The monitoring team rated DSSLC as compliant in 33 of 161 provisions assessed, which comprised 19 percent compliance. This is an improvement from 13 percent compliance in the second review. Although progress was noted in the area of restraint, no provisions in this area were rated as in compliance. The primary obstacles to achieving compliance in this area were cited as deficient practices and documentation associated with medical restraint, specifically pre-treatment sedation. Though the monitoring team noted progress in the area of abuse, neglect, and incident management, there were continued problems associated with timely investigations by DFPS, as initial investigatory activity often exceeded the 24-hour mandate, sometimes by several days. The monitoring team found two allegations of abuse that were not referred to law enforcement. Quality Assurance activities, designed to measure compliance with the settlement agreement, consisted of the identification of administrative steps rather than the implementation of a broader strategic plan to correct identified systemic problems. Although

there is much more interdisciplinary discussion at Personal Support Planning meetings, it is still not evident that services, supports, and treatments are planned in an integrated manner. Team members attended meetings without an awareness of a person's current status and needs; and failed to conduct strengths based comprehensive assessments focused on individualized preferences and needs. Identified strategies also failed to reflect encouragement of meaningful community participation; and though barriers to living in the most integrated setting were identified goals, objectives or service strategies to overcome barriers were not consistently specified. Across multiple disciplines (risk, psychological, physical and nutritional, PT/OT, communication), assessments were found lacking, outdated or simply not integrated into the overall care plan. DSSLC still does not have a mechanism to ensure physician's clinical competency and the Quarterly Drug Regimen Review process does not meet standard of care. Although DSSLC has made a number of improvements in transitioning residents to the most integrated community setting, the pace of transferring residents, one percent of the population in the last six months, was well below that of most other SSLCs. Failure in assuring adequate and timely assessments is cited as a significant barrier to transition activities.

Mexia State Supported Living Center (MSSLC)

83 percent of the provisions assessed by the DOJ Monitoring Team were rated as noncompliant, with 17 of 20 sections assessed rated as 100 percent noncompliant. In the past six months, 103 individuals were restrained 499 times. Although this was not a notable improvement from the previous six months, the monitoring team observed that fewer individuals were experiencing repeated restraints. The vast majority (312) of these were physical restraints, although 150 were the use of mechanical restraints (mittens or helmets) and 37 were chemical restraints. The Department of Family and Protective Services (DFPS) confirmed 10 allegations of physical abuse, one allegation of emotional/verbal abuse, and 16 allegations of neglect in the last six months. A total of 1,590 injuries were reported during the monitoring period, which included 25 serious injuries that resulted in fractures or necessitated the use of sutures. The monitoring team noted that individuals were being referred and were transitioning to the community at an appropriate level. The monitoring team recommended better documentation of whether individuals transitioned to the community successfully or were subsequently jailed, admitted to a psychiatric facility, or returned to MSSLC. Due to significant rates of turnover in the medical staff that is expected to continue for the foreseeable future, the monitoring team recommended that MSSLC develop strategies for addressing continued staff turnover. Staff was not accurately identifying risk factors for individuals. In some cases when risk was identified, there was no plan in place to address it.

Abilene State Supported Living Center (ABSSLC)

ABSSLC was rated as in substantial compliance in 11 percent of the provisions that were evaluated. 15 of the 20 areas that were assessed were 100 percent noncompliant. The monitoring team pointed out ABSSLC's use of restraint has improved, particularly the monitoring, review, and documentation processes. However, the use of restraint increased in the month of July 2011. The monitoring team also expressed concern that restraint monitors did not arrive quickly enough after restraint was applied. In the area of abuse, neglect, and incident management, the monitoring team called for investigation of non-serious and peer-caused injuries, which is currently not being done. Moreover, there were 50 substantiated allegations of abuse between January 1 and June 30, 2011, which is the same number of abuse cases confirmed during the 2010 calendar year. In the first half of 2011, there were also 46 substantiated allegations of neglect. The monitoring team noted that the assessments for determining individual risk levels were inadequate in creating and completing action plans for addressing risk. The level of staffing of the psychiatric department was inadequate. Although 219 of the 433 individuals residing at ABSSLC were prescribed psychotropic medication, the facility had less than 1.5 full-time equivalent (FTE) psychiatrists. No progress was made in the nursing care in critical clinical areas. Little

improvement was noted since the previous review in the area of habilitation, training, and skill acquisition programs. The training available was limited and often not age appropriate or individualized, and overall engagement remained low. Transitioning individuals to the most integrated setting continued to be a problem area for ABSSLC. Although some improvements were made, staff assessments did not include recommendations about whether individuals should transition to the community.

Rio Grande State Center (RGSC)

The monitoring team rated 17 percent of the provisions evaluated as in substantial compliance. 78 percent were noncompliant, and four percent of provisions were not rated. Of the 20 areas of care assessed by the monitoring team, RGSC was 100 percent noncompliant in 15 areas. RGSC made progress in the use of restraint, particularly in the use of pre-treatment sedation for dental procedures; however, progress was still needed in the use of pre-treatment sedation and restraint for medical procedures. Half of the provisions regarding the use of restraint were not rated by the monitoring team due to insufficient documentation. Facility policies regarding abuse, neglect, and incident management were brought into compliance with the settlement agreement. The monitoring team recommended that RGSC improve response time to incidents and in commencing investigations. During the review period (February 1 – July 31, 2011), there were three incidents of abuse and three incidents of neglect. There was not significant progress made in the area of habilitation, training, education, and skill acquisition programs. The monitoring team noted that individuals were frequently observed to not be engaged in meaningful activity. Although only one person had transitioned into the community since the previous compliance visit, the monitoring team observed significant improvement in RGSC referring individuals for movement to a more integrated setting. However, individual support plans did not address obstacles adequately. Although obstacles may be identified, strategies to overcome those obstacles were often not addressed. Risk assessments were frequently missing and were often not sufficiently comprehensive to enable an accurate determination of individual risk. RGSC does not have a system in place to respond to side effects of psychotropic medications or to provide more frequent monitoring of medication side effects when clinically necessary.

Federal Policy Issues

FY 2012 Appropriations

The final appropriations package for fiscal year 2012, completed on December 17, provides a total of \$1.043 trillion for discretionary programs, \$7 billion less than FY 2011. This number reflects the overall discretionary figure Congress and the President agreed to when they passed the Budget Control Act (debt ceiling deal) in August. The bill provides \$156.3 billion in discretionary funding for Labor, Health and Human Services, and Education programs. This total is \$1.1 billion below last year's level and \$24.5 billion below the President's request. The Association of University Centers on Disabilities (AUCD) prepared a report on the final appropriations package that is available online:

<http://www.aucd.org/docs/policy/appropriations/Final%20FY%202012%20Budget%20Table%20and%20Analysis-%20FINAL%2012-27-11.pdf>.

This appropriations package includes funding for DD Councils and our sister programs (Protection & Advocacy Systems and University Centers) at FY 2011 levels except for an across-the-board reduction of 0.189 percent. We estimate funding for TCDD for the current year (FY 2012) to be approximately \$5,085,000, or \$10,000 below last year's funding. Funding for the Voting Access program and for ADD Projects of National Significance were both reduced significantly

The next step is for the President to submit his FY 2013 budget request to Congress, typically in the first week of February. Once the Administration's budget request is released, the Congress will then begin to develop a congressional budget resolution. The Budget Control Act (BCA) set a discretionary spending cap of \$1.047 trillion for FY 2013. We expect House Republican leaders to push for an even lower cap.

CLASS Act

On January 18, 2012, the House Ways and Means Committee is scheduled to markup a bill to repeal the Community Living Assistance Services and Supports (CLASS) Act, H.R. 1173. In October, 2011, the Administration announced that it was halting implementation of the CLASS program due to problems it believes must be resolved before implementation can move forward. Some Members of Congress are using the Administration's action to call for a full repeal of the CLASS Act rather than looking to make needed changes.

The CLASS program was created to help working adults prepare for their future in the event they need help maintaining independence in the community. It was also intended to take the pressure off Medicaid, so that Medicaid can better serve the needs of people with disabilities and low income communities. Without a program like CLASS, the Medicaid program will continue to take on the load of long term service needs for many Americans who will be forced into a lifetime of poverty to qualify for this assistance.

More information about the CLASS program is available here:

<http://www.advanceclass.org/background/class-act-basics>. AUCD signed onto a letter to Members of the Ways and Means Committee urging them oppose the legislation, which is available to view online: <http://www.aucd.org/docs/New%20Folder/Group%20Letter%20CLASS%20Repeal%20House%20Ways%20and%20Means%20Committee%201-17-12.pdf>.

Sources: The Arc of the U.S. and the Association of University Centers for Disability