

Background:

A. State Policy Issues

TCDD Staff will provide an update regarding recent public policy activities, including the implementation of legislation and the budget adopted by the 83rd Texas Legislature.

Discussion topics include:

- Senate Bill 7 Implementation
- Legislative Appropriations Request (LAR) Recommendations Summary
- Employment First Task Force
- Standardized Testing for Students with Disabilities
- Guardianship and Supported Decision-making Update
- Texas Disability Issues Forum

B. Update on State Supported Living Center Activities

The committee will receive an update on recent advocacy activities involving State Supported Living Centers.

C. 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 the meeting materials regarding Texas and the Federal “Keeping All Students Safe Act”.

Important Terms

Legislative Appropriations Request (LAR): a document prepared by each state agency and institution which details the amount of funding each agency is seeking from the legislature.

Public Policy Committee

Agenda Item 7.

Expected Action:

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

Council

Agenda Item 13. B.

Expected Action:

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



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**Public Testimony
Senate Education Committee
STAAR-Alternate Test
April 14, 2014**

Good morning, my name is Erin Lawler. I am a public policy specialist with the Texas Council for Developmental Disabilities or TCDD. The Texas Council for Developmental Disabilities (TCDD) is established by federal law in the Developmental Disabilities Assistance and Bill of Rights Act and is governed by a 27 member board, appointed by the Governor, 60 percent of whom are individuals with developmental disabilities or family members of individuals with disabilities. TCDD's purpose in law is to encourage policy change so that people with disabilities have opportunities to be fully included in their communities and exercise control over their own lives.

TCDD appreciates the efforts of the Legislature and the Texas Education Agency to improve the STAAR-Alternate test. We have two strong recommendations related to the pending changes.

- **First, we recommend that TEA develop the redesigned STAAR-Alt in a manner that allows for appropriate testing accommodations for students.**
- **Second, we recommend that TEA include more stakeholder input in its process moving forward and revise its timeline if necessary to accommodate that input. Input from parents, special education teachers and administrators, and advocacy groups that represent people with disabilities is necessary.**

When we picture the population of students who take the STAAR-Alt test, it is helpful to keep in mind that federal law does not allow for any exemptions from this kind of test. This means that the students taking the STAAR-Alt include those with the most significant disabilities that affect learning. Students who take STAAR-Alt include children with IQs of 70 and below, students who are deaf-blind, students who are non-verbal, students who are Autistic, and students who experience some combination of these disabilities. Even though we are talking about 1% of the student population, that population contains remarkable diversity in learning styles.

Nothing about special education is “one-size-fits-all.” A one-size-fits-all standardized test, like the new STAAR-Alt, is unlikely to meet the diverse needs of students with significant disabilities unless a wide range of accommodations is available. The teachers who participated in the cognitive lab conducted by TEA as part of the redesign planning process asserted that accommodations, including the use of objects and sensory involvement, would be necessary to administer the test. Providing a wide range of appropriate accommodations is a fair way to measure both a student’s progress and a teacher’s success in teaching that student. We understand that TEA must follow House Bill 5’s stipulation that “an assessment instrument may not require a teacher to prepare tasks or materials for a student,” but we believe a common-sense reading of this requirement would allow for teachers to use materials and other accommodations already in use in the classroom.

The significance of the pending changes to the STAAR-Alt cannot be overstated and for this reason, more stakeholder input is needed. STAAR-Alt is going from a performance-based test to an item-based test, from a test created and customized by a teacher to meet each student’s learning needs to a standardized test created by an outside company that is identical for each student at a particular grade level. The current STAAR-Alt system allows for a student’s ARD committee to designate the appropriate complexity level for that student. Under the new system, the ARD committee does not play any role. Instead, each student will answer questions from all complexity levels. This means that a student who operates at complexity level one, the lowest level, will face questions from complexity levels one, two, three, and four throughout the test. These are seismic changes and will require explanation to those affected. Concerned parents are already contacting advocacy groups, seeking guidance on how the changes will affect their children. TEA should be working with parents, special education experts, and disability advocates about how best to inform parents and schools about these changes.

Thank you for the opportunity to provide these comments.

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Guardianship

Texas Council for Developmental Disabilities (TCDD) is engaged in a number of advocacy efforts to advance the Council's position on guardianship and supported decision-making. As part of those efforts, TCDD staff have been collaborating with the Guardianship and Supported Decision Making Group (GSDM), an ad hoc cross section of stakeholders, to develop seven public policy proposals to improve guardianships and promote alternatives to guardianship.

- **Bill of Rights for Persons under Guardianship** - would list the rights that individuals under guardianship get to keep, such as the right to live, work and play in the most integrated setting, visit with people of their choice, and appear before the court to express their preferences or concerns.
- **Supported Decision-Making Agreement** - would establish an informal alternative to guardianship where individuals could choose people they trust to help them understand the decisions they need to make and to communicate their decisions to others.
- **Alternatives to Guardianship** - would list the alternatives to guardianship scattered throughout code immediately following the purpose statement with a directive to the court to determine whether alternatives could meet the needs of the person in lieu of guardianship.
- **Duties of Guardians** - would improve protections for individuals committed to institutional settings. This proposal calls for guardians to visit a person under a guardianship and living in an institution every month and provide timely response to calls, emails or letters about the person.
- **Change Term from “Ward” to “Person”** - would change the impersonal term “ward” to “person under guardianship.”
- **Limits of Guardianship with Services and Supports** – would require the court to determine if formal and informal supports are in place or available to enable the person to meet their need for food, clothing, or shelter, care for their physical or mental health, manage financial affairs and/or make decisions so that guardianship may be averted or limited.
- **Guardianship and Decisions about Residence** – would require that people under guardianship should, if possible, be able to make decisions about where they reside.



September 24, 2014

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The Texas Disability Issues Forum is hosted by a coalition of Texas disability advocacy groups to educate voters and bring the electorate and candidates together on the issues. Do your part and join the conversation! Mark the date and tell your friends!

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\$600,000 for interim leadership at Austin facility is latest in long line of fix-it efforts

By Andrea Ball - American-Statesman Staff

The state nearly paid \$600,000 over five months this year for consultants to supervise and overhaul Austin's long-troubled institution for people with disabilities, but continuing problems there raise concern that this was yet another improvement effort that fell short.

Between May and September, the state shelled out almost \$585,000 for a team of advisers from the Columbus Organization to improve the Austin State Supported Living Center, a state-run institution for 300 residents with intellectual disabilities. About \$105,000 of that price tag was for the consultants' food, hotels, rental cars and flights to their homes across the country.

Still, the facility faces the same problems it did before. In July, a patient died of a brain injury after being allowed to repeatedly hit himself in the head for more than three hours. In October, a state-commissioned report said the facility still has leadership, treatment, training and staff turnover problems.

The consultant work is the most recent in a long line of fix-it efforts since 2009 when the state agreed to make \$112 million in improvements to the 13 living centers. Yet all of the centers continued to be flagged for subpar care.

Officials with the state Department of Aging and Disability Services, which oversees the living centers, say they knew it would take years to repair the troubles that have afflicted the centers for decades. But Austin's facility has been particularly problematic, and the state never expected that Matt McCue — the center's lead consultant — would transform the institution in a few months, said agency spokeswoman Cecilia Cavuto.

"It takes time to make such systemic changes," she said. "Mr. McCue has initiated many needed changes, and the facility has made strides under his leadership."

The state is satisfied that it got its money's worth from Columbus. McCue ushered in changes such as more activities and outings for residents, better staff training and a streamlined process for transitioning into other homes in the community, Cavuto said.

Disability rights groups, who advocate the closure or consolidation of state living centers, say the cost for the interim leadership was too high and that the effort hasn't made a dent in the Austin center's problems.

"I didn't realize it was that much," said Joe Tate of Community Now. "That's insane."

Other critics of the system point out that the \$585,000 could have covered the annual pay of 18-24 direct care staffers, employees who work most closely with residents and are often forced to work double shifts because of employee shortages. Those staffers are generally paid between \$24,000 and \$31,000 per year.

The consultants will soon be leaving, however. The state has hired Laura Cazabon Braly, director of the El Paso State Supported Living Center, to head up the Austin facility in the new year. She will be the institution's fifth leader since 2010.



The Austin State Supported Living Center serves approximately 300 developmentally disabled people whose medical needs become more acute each year.

Former leader questions expense

McCue was hired in May to help transform the Austin living center after the state forced the resignation of its former director, Charles Bratcher.

Bratcher was the third director removed since 2010. The state said he wasn't improving the Austin center fast enough. Bratcher said his work was hampered by crumbling infrastructure, staffing shortages and a lack of guidance from high-level state bureaucrats.

So McCue — who has provided technical assistance for similar centers in Arkansas, Georgia, Missouri and other states — became the Austin center's fourth leader in three years. He is with the Columbus Organization, a consulting group that has worked with Texas' Department of Aging and Disability Services to improve the living centers since 2005.

Between May and September, the state paid Columbus \$217,000 for McCue's work. Of that, \$190,000 was for 98.5 days of work at a daily rate of \$1,925. An additional \$28,000 went toward the short-term leader's travel expenses, which includes trips to his home in New Mexico.

He flew coach on American Airlines, stayed at the Residence Inn and rented his vehicles from National or Avis, Cavuto said.

McCue's five-month tab was more than double the \$95,000 that former superintendent Charles Bratcher earned in a year. Their jobs differed in that while McCue was essentially the interim director, he focused on developing rules and processes to improve the center. Bratcher was responsible for all the daily operations and implementing changes required by state regulators and other monitors.

Bratcher criticized the state for using expensive consultants, saying it would have been better to spend the \$585,000 fixing the building's aging infrastructure and hiring more employees.

"Austin SSLC continues to languish from the indecision and questionable management practices in state office," Bratcher said.

The \$585,000 isn't the final word on the consulting costs. The state couldn't immediately provide information on the total cost of the effort, including the bills for October and November.

Columbus declined to comment on its work.

Four years of fixes

The Columbus Organization has a long history with the department. In 2005 — the year that the U.S. Department of Justice began investigating conditions at the state living centers — Aging and Disability Services hired the company to help improve conditions at the 13 centers across Texas

In 2009, under the threat of a federal lawsuit, Texas agreed to a \$112 million, five-year plan requiring the state to overhaul treatment at the centers in almost every area, such as medical care, dental services, physical rehabilitation, record keeping and dietary plans. It had to find ways to keep the residents safe from abuse and neglect. It also had to transition as many residents as possible into community settings such as group homes or private apartments.

Columbus was hired to help the state do it. Since 2009, the company has won more than \$5 million in state contracts for its consulting services at the centers. About 60 percent of that bill was funded by the federal government.

Dennis Borel, director of the Coalition of Texans with Disabilities, has long maintained that the living centers are terminally broken. The state is using consultants to abdicate its responsibility to fix its problems, he said.

“The state has given up trying to figure out how to make this work,” he said.

The consultants are the experts, Cavuto said, and they have used their skills to do things such as train staffers to give residents therapeutic activities that keep them engaged.

“That training occurred at Austin as well, but, unfortunately, it did not sustain,” she said. “Systemic issues at the Austin facility have made it challenging for the center to make and maintain needed improvements, but we do not think it is related to the quality of Columbus’ services.”

According to its settlement with the Justice Department, all of the state’s facilities were supposed to have made scores of specific changes by June 2012. None of the centers has finished, but independent monitors overseeing the agreement have given the agency more time. One of the failures continually cited is a lack of active treatment at all the centers, though the monitors say they are seeing progress at some facilities.

Meanwhile, the living centers have been cited multiple times by state regulators for deaths, serious injuries and bad medical care. Austin has had a particularly tough time lately.

This spring, before McCue was hired, regulators threatened to pull the center’s \$29 million in Medicaid money after a string of incidents left one resident dead and two severely injured. It was the third time in 14 months such a threat had been made.

To keep that money, the state agreed to develop an improvement plan that addresses systemic problems, not just immediate deficiencies.

So with Columbus consultant McCue already at the center’s helm, the state then hired a different set of Columbus consultants to analyze conditions at the Austin institution and craft a correction plan. So far, the company has been paid almost \$214,000 for that work.

Next leader starts Jan. 1

In late October, Columbus issued its report on the Austin living center.

It praised McCue for having taken steps to “rectify problems, change what is not working and develop the foundations” needed for systemic change. McCue, for example, was instrumental in reducing the number of times residents are restrained, the report states.

But the report also concluded the living center remains plagued with the same problems it faced before McCue took the helm: poor leadership across the facility, high turnover, a lack of accountability, inaccurate data and inadequate services to residents.

State officials say they’re confident that Cazabon Braly will get the institution on track. The new hire’s experience includes work at the Texas Juvenile Justice Department, Corsicana Residential Treatment Center and the El Paso living center.

Cazabon Braly will begin her new job on Jan. 1. She will be paid \$103,000 a year.

Texas and the “Keeping all Students Safe Act”

Texas is a national leader in promoting the safety of students with disabilities in schools. Recently proposed federal legislation, known as the Keeping All Students Safe Act (S. 2036 and H.R.1893), would require all states to adhere to principles already found in Texas law relating to protecting students with disabilities from restraint and seclusion.

What is Texas law on restraint and seclusion?

Disability advocates generally consider restraint and seclusion to be dangerous practices that should be reserved for emergencies that pose a serious threat to physical safety. Some practices, such as restraints that interfere with a person’s ability to breathe, are so dangerous that they should never be used. Training should be of the highest quality and parents should be notified of any incidents.

Fortunately, Texas law already contains many of these principles, which are also found in the Keeping All Students Safe Act. Texas law:

- prohibits the seclusion of students with disabilities
- limits the use of restraint to emergency situations
- requires parental notification of the use of restraint
- requires training for school personnel, including in prevention and de-escalation techniques
- requires schools to collect and make public data on the use of restraint

How can Texas law be improved?

To bring Texas law in line with all of the principles found in the Keeping all Students Safe Act, Texas should:

- expand protections for students with disabilities to include all students
- require a debriefing session for the student, parent, and school personnel after an incident of restraint
- explicitly ban the use of restraints that obstruct breathing (currently only implicit)
- require that school personnel attempt a less restrictive intervention or determine that a less restrictive intervention would be ineffective before using a restraint

For more information:

A state-by-state analysis of laws and rules related to restraint and seclusion for school children was recently released by Jessica Butler. The report, entitled “[How Safe is the School House?](#),” is available online.

Restraint & Seclusion in Texas Schools

Restraint of students with disabilities in Texas

Restraint refers to physical force to restrict a student's movement. Restraint may only be used by school personnel in an emergency.

What is restraint?

Restraint is the use of physical force or a mechanical device to significantly restrict the free movement of all or a portion of a student's body.

What is not restraint?

Restraint does not include:

- physical contact or prescribed adaptive equipment to promote body positioning or physical functioning,
 - example: proper use of equipment prescribed by a physical or occupational therapist
- limited physical contact to promote safety,
 - example: holding a student's hand when crossing the street
- physical contact to prevent a student from harming himself,
 - example: preventing a student from running into traffic
- physical contact to teach a skill, redirect attention, provide guidance to a location, or provide comfort,
 - examples: guiding a student's hand to teach him how to hold a pencil, tapping a student's arm to redirect attention, turning a student to point him toward the drinking fountain, giving a hug to comfort a crying student
- limited physical contact or prescribed adaptive equipment to prevent a student from engaging in on-going, repetitive self-injurious behaviors, when used in conjunction with student learning to reduce or prevent the need for ongoing intervention, or
- seat belts and other safety equipment used to secure students during transportation.

When can restraint be used?

Restraint on a student with a disability may only be used in an emergency in which the student's behavior poses a threat of:

- imminent, serious physical harm to himself,
- imminent, serious physical harm to others,
- imminent, serious property destruction, or
- some combination of the above.

The restraint must end when the emergency no longer exists.

What kind of training is required for school personnel?

A core team of personnel on each school campus must be trained in the use of restraint. The team must include any special education personnel likely to use restraint. Training on the use of restraint must

Restraint & Seclusion in Texas Schools

include prevention and de-escalation techniques and provide alternatives to the use of restraint. If a staff member performs a restraint without previously receiving training, then that staff person must receive training within 30 days of the first use of restraint.

What other protections are there?

During a restraint: The restraint must be limited to the reasonable force necessary to address the emergency. The restraint must not deprive the student of basic human necessities, such as the ability to breathe.

After a restraint: Parents or guardians must receive detailed notification of the use of restraint. The Texas Education Agency has a sample [written summary of restraint use](#) available on its website. Documentation must also be placed in the student's special education eligibility folder so that the information will be available to the student's ARD committee. Schools must also report to the Texas Education Agency.

Seclusion of students with disabilities in Texas.

Texas' law on seclusion of students with disabilities is straight and to the point: don't do it. A student with a disability who receives special education services may not be placed in seclusion as either a discipline management practice or a behavior management technique. The only exception to this rule involves the rare situation where an armed student must be confined to prevent bodily harm to the student or others.

What is seclusion?

Seclusion is a behavior management technique in which a student is confined in a locked space that is designed solely to exclude a person and contains less than 50 square feet of space.

What is not seclusion?

Seclusion is distinguished from the use of "time-out" which involves separating a student from other students to allow the student to regain self-control in a setting where the student is not locked or blocked in. Texas rules address when time-out may be used as well, and require that time-out only be used in conjunction with positive behavior intervention strategies.

When can seclusion be used?

Seclusion may almost never be used in a school. It may be used in an emergency where a student possesses a weapon and confinement is necessary to prevent the student from causing bodily harm to the student or another person and school district personnel are awaiting the arrival of law enforcement.

Seclusion may also be used in certain court-ordered placements and does not apply to juvenile probation, detention, or corrections personnel.

Medicaid Waiver Foster Payments Become Tax Exempt

March 6, 2014



The IRS has now exempted Medicaid waiver payments for foster care from federal taxes, even if the care is provided by a parent to an adult child.

Under a recent decision by the Internal Revenue Service, Medicaid waiver payments for foster care may now be exempt from federal taxes, even if the care is provided by a parent to an adult child. The new IRS guidance treats qualified Medicaid waiver payments as difficulty-of-care payments under Section 131 of IRS code regarding foster care payments, making them exempt.

This decision was based on the concept that parents are saving taxpayers' money by providing nonmedical support and preventing institutionalization of individuals with physical, mental or emotional disabilities. This reverses a previous IRS position that denied the federal tax exemption for parents providing long-term services and supports foster care. In the past, only foster care providers who were unrelated to the individual receiving care qualified for the exemption.

The new guidance applies to payments received on or after Jan. 3, 2014; however, the IRS also said that the guidance may be applied in tax years for which the period of limitations on some claims for a credit or refund has not expired.

When asked for clarification about how the notice affects parents who provided Home and Community-based Services (HCS) Foster/Companion or Host Home services to adult sons or daughters who lived at home in 2013, staff in the IRS Office of Associate Chief Counsel expressed the opinion that parents do

not need to submit IRS Form 1099 regarding Miscellaneous Income because of the statute of limitations stipulation.

Parents are encouraged to seek the advice of a tax consultant regarding 1099 forms, amending past tax returns and other clarifications regarding the new guidance, IRS Notice 2014-7.

For More Information

See Notice 2014-7 on foster care payment and Medicaid waivers, in the Internal Revenue Bulletin 2014-4, at irs.gov/irb/2014-4_IRB/ar06.html.

Other Tax Resources for People with Disabilities

[Tax Highlights for Persons with Disabilities](http://irs.gov/pub/irs-pdf/p907.pdf) and irs.gov/pub/irs-pdf/p907.pdf (PDF)

[Tax Assistance for Individuals with Disabilities and the Hearing Impaired](#)

[More Information for People with Disabilities](#)

[Tax Strategies for Parents of Kids with Special Needs](#)

[Accessible IRS Forms and Publications](#)

http://tcdd.texas.gov/medicaid-foster-payments_taxexempt/