

**Background:**

- **Federal Policy Issues** — TCDD Public Policy Staff will provide an overview of the status and implementation of federal legislative initiatives that could impact people with disabilities. Discussion topics include: **Workforce Investment Opportunity Act**
- **State Supported Living Centers Update** — The Committee will receive an update regarding SSLC Ombudsman Reports.
  1. **Lead in water at SSLCs**
  2. **DADS Draft Long Range Plan for State Supported Living Centers**
  3. **Austin State Hospital and Austin State Supported Living Center Location Feasibility Study**
- **State Policy Issues** — TCDD Staff will provide an update regarding recent public policy activities. Discussion topics include:
  1. **Proposed 4 percent budget cuts for 2018-2019**
  2. **Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions**

**Public Policy Committee — Agenda Item 8****Expected Action:**

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

**Council — Agenda Item 15. A.****Expected Action:**

The Council will receive a report on the Public Policy Committee discussion.



*promoting progressive public policy for Texans with disabilities*

May 17, 2016

Office of the Governor  
P.O. Box 12428  
Austin, Texas 78711-2428

Re: Lead Levels in State Supported Living Center Drinking Water

Dear Governor Abbott:

Texas has 13 State Supported Living Centers (SSLC) that house individuals with disabilities. This week during a quarterly test for lead we became aware that the Brenham, El Paso and San Angelo SSLCs had toxic levels of lead in their drinking water. The Brenham facility alone contained 18 times the amount of lead that is considered unsafe for human consumption. Unfortunately, we do not know how long these residents have been drinking poisonous water and the Disability Policy Consortium feels strongly that greater efforts need to be made to ensure the health and safety of the residents at these SSLC facilities.

Texas Disability Policy Consortium (DPC)<sup>1</sup> is an independent group of disability advocacy organizations committed to promoting the rights, inclusion, integration and independence of Texans with disabilities. DPC is made up of 21 members of statewide and local disability organizations. The Consortium provides an ongoing forum for analysis and discussion on important disability issues in Texas including the health and safety of Texans with disabilities. We are particularly concerned with the recent findings of lead in the three SSLCs facilities and are asking that you take appropriate steps to ensure the health and safety of the Texans that reside at the Brenham, El Paso and San Angelo SSLCs. Please consider the following measures:

1. Every resident in the Brenham, El Paso, and San Angelo SSLCs should be offered an opportunity to transition into the community or to move to another SSLC that did not test positive for toxic lead levels. These individuals and their loved ones deserve to have the peace of mind that they are not drinking poisonous water.
2. We appreciate the efforts of the SSLCs to train their staff to recognize symptoms of lead poisoning. The DPC, however feels strongly that every current and recent resident should also receive a blood test. The effects of lead consumption range from permanent intellectual disability to headaches, poor appetite to vomiting, loss of balance and seizures. Many of these effects are conditions that the current population already have or exhibit, and because a large portion of the population cannot communicate changes in their conditions, allowing staff

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<sup>1</sup> <http://www.disabilitytx.org/>

to wait and observe side effects is not sufficient. We are unsure for how long there have been toxic lead levels in the water at these facilities and know that this population presents unique health conditions that can put them at greater risk. If an individual has lead poisoning, they deserve to be diagnosed, treated, and moved to safety immediately.

3. The taxpayers cannot afford to pay for more infrastructure band aides for these crumbling facilities. Each year the state allocates millions of dollars in deferred maintenance for the 13 SSLCs and still, they cannot provide basic health and safety conditions, like safe drinking water. In 2014, the Austin SSLC also had toxic lead levels in its water. Please take the longer view regarding alternatives to spending precious state dollars to repair these facilities that continue to drain Texas resources. Instead, we urge the state to seize the opportunity to increase capacity to provide support services for individuals with disabilities with complex needs in their local communities. Imagine how far those resources could go toward high quality community services if the SSLC daily rate of \$856.00 were available to support SSLC residents in the community, including pay for highly skilled direct support professional wages commensurate with extra training and competencies to provide more complex medical and behavior supports.

Thank you for your attention to this very important health and safety scare. The DPC looks forward to working with you on solutions so this does not happen to Texans with disabilities in the future regardless of where they live. Despite the significant decline in residents, the cost to fund this system continues to increase. It is time for Texas to use its limited resources wisely and not continue to sink funds into a system that cannot even provide safe drinking water. We urge responsible use of limited funds by closing and consolidating archaic SSLCs and reinvesting the cost savings into a sustainable system that allows real choice of high quality community-based services for all, including those with significant disabilities. We ask that you and the Texas Legislature prioritize integration, quality of life and wellbeing of all Texans by reforming the system of care for Texans with disabilities.

Jeffrey Miller, Chair, Disability Policy Consortium  
Policy Specialist  
Disability Rights Texas  
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Kyle Piccola, Disability Policy Consortium LTSS Committee  
Chief Government and Community Relations Officer  
The Arc of Texas  
[kpiccola@thearcoftexas.org](mailto:kpiccola@thearcoftexas.org)

cc: Chris Traylor, Executive Commissioner Health and Human Services Commission  
Jon Weizenbaum, Commissioner Department of Aging and Disability Services



COMMISSIONER  
Jon Weizenbaum

June 6, 2016

Mr. Jeffrey Miller  
Chair, Disability Policy Consortium  
Policy Specialist  
Disability Rights Texas  
jmiller@disabilityrightstx.org

Mr. Kyle Piccola  
Disability Policy Consortium LTSS Committee  
Chief Government and Community Relations Officer  
The Arc of Texas  
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Dear Mr. Miller and Mr. Piccola:

The Office of the Governor asked me to respond to your letter of May 17, 2016, regarding the recent findings of elevated levels of lead in the water at the Brenham, El Paso, and San Angelo State Supported Living Centers (SSLCs). I first want to assure you that our paramount priority continues to be the health, safety, and well-being of SSLC residents.

In 2015, the Department of Aging and Disability Services (DADS) proactively instituted a plan to test the water at all of the SSLCs. Once the protocols were completed and staff members were trained on how to properly implement them, testing began early this year. As you are aware, 3 of the 12 SSLCs operated by DADS – Brenham, El Paso, and San Angelo – had results showing lead levels at or above what the Environmental Protection Agency (EPA) defines as actionable.

Many of the locations where lead was detected were in non-consumable water, such as water used for irrigation, bathrooms not accessible to residents, or in maintenance areas. Regardless of the location on campus where lead was found, SSLC staff took immediate action to ensure the health and safety of residents and staff by bringing in bottled water for consumption and following EPA protocols for running the water for three minutes prior to use. DADS is working closely with the Texas Commission on Environmental Quality to refine our testing protocols and conduct inspections at all SSLCs to ensure that the centers meet EPA standards as we do further testing and remediation.

After the elevated lead levels were detected, DADS also sought guidance from the Department of State Health Services (DSHS) on a plan to screen residents for potentially elevated levels of lead. DSHS experts recommended that the SSLCs conduct blood tests on any resident who may have consumed water from taps that contained lead levels above the EPA action level, and clinical staff members at the SSLCs have begun drawing blood samples from residents who meet these

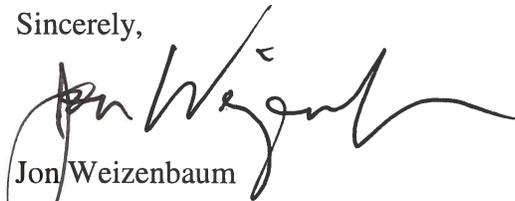
Mr. Jeffrey Miller and Mr. Kyle Piccola  
June 6, 2016  
Page 2

criteria. We will continue to consult with DSHS to determine what, if any, additional actions should be taken to protect residents based on these testing results.

I also want to emphasize that residents of the affected SSLCs are not being exposed to toxic or poisonous water. Additionally, every resident or guardian of a resident has the right and opportunity to request a discussion of living options if they or their loved one is dissatisfied with their living arrangement or would like to explore alternatives.

We appreciate your ongoing advocacy on behalf of the individuals we serve, and we will continue our efforts to ensure their health and safety. Please let me know if you have any questions or need additional information. Scott Schalchlin, assistant commissioner for SSLCs, serves as the lead staff on this matter and can be reached at (512) 438-3076 or at [scott.schalchlin@dads.state.tx.us](mailto:scott.schalchlin@dads.state.tx.us).

Sincerely,



Jon Weizenbaum

cc: Dede Keith, Office of the Governor

**Public Comment**  
**Department of Aging and Disability Services**  
**Draft Long Range Plan for State Supported Living Centers June 10, 2016**

Thank you for the opportunity to provide input regarding the Department of Aging and Disability Services (DADS) Long Range Planning (LRP) Report for State Supported Living Centers (SSLCs). 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% 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.

**SSLC Peer Support Program**

TCDD recommends the development and implementation of an SSLC Peer Support Program for SSLC residents by SSLC residents. In its 2015 report, the Office of the Independent Ombudsman (OIO) for SSLCs states that, since 2011, there has been a steady decline in residents able to identify their rights. Only 46% of residents were able to do so in their last report. The OIO reports that the most common violation of residents' rights are staff-imposed restrictions to residents' money, diet, movement and dental procedures.

An SSLC Peer Support Program would:

- Make SSLC residents more aware of the types and rates of restrictions that limit a resident's quality and control of their life;
- Lead a renewed effort to educate and communicate to:
  - Families and guardians:
    - The basics of rights for their loved ones and,
    - Their application to a person centered life; and
  - Direct support staff the fundamentals and importance of residents' rights; and
- Provide accountability and aid in protecting resident rights.

A peer support program would build on the positive outcomes achieved at SSLCs by the Texas Advocates' project, Self Advocate Voices are Engaged (SAVE), and provide SSLC residents with greater control over their own lives.

### **Data Representation**

As the statewide SSLC census declines, it is important to clearly represent data to avoid confusion – especially for the public who may not be familiar with historic trends and trajectories. For example, the Draft LRP Report for SSLCs notes that the percentage of all SSLC residents with a mental health need increased from 59% in FY 2008 to 62% in FY 2016. The claim seems to indicate that there has been an increase in the number of people with a mental health need. Without the raw data, it is not clear to the public that the number of SSLC residents with a mental health need has actually decreased by more than 900 people, as a result of an overall census reduction of about 30%.

Presumably, a majority of the 900 people and their mental health needs are currently being supported in the community based long-term services and supports system. This finding is significant to the layperson concerned with balancing the needs of all people with intellectual and developmental disabilities (IDD) and the fiscal implications of propping up a system that becomes less desirable and less relevant to stakeholders with each budget cycle. From our perspective, the data is also indicative of a system that has appropriately transitioned people with mental health needs to more integrated settings where community services are meeting their needs. Thus, the raw data is needed to better communicate such findings.

TCDD urges caution, as sometimes the data is presented in a way that suggests people can only be supported in large institutions when there are exponentially more people with complex medical and behavioral health needs being successfully supported in community based settings. Thus, when reporting SSLC data, the raw numbers and community comparison are requested for context.

### **SSLC Business Plan Expansion**

The Draft LRP Report for SSLCs identifies a plan to expand to a new, untested business model where people who have clearly chosen to receive community based services would spend their Medicaid acute and home and community based services waiver dollars at SSLCs to receive services that DADS and the Department of Justice (DOJ) report do not meet the agreed upon standard of care.

With recent directives by the Texas Legislature, evidence-based downsizing and rebalancing recommendations, as well as critical (and growing) staffing challenges have been ignored in favor of prioritizing unwarranted institutional expansion. The Draft LRP

Report for SSLCs should address staffing issues in this new service delivery model. In the past, DADS has had to hire professional staff (e.g., occupational therapists, physical therapists, and BCBAs) on a contract basis, which is significantly more expensive than hiring for these positions using full-time equivalents.

This new business model should not be based on hiring contract employees. To do so would increase staff turnover rates, further contributing to inconsistent service delivery for SSLC residents who are already receiving questionable care.

There is no evidence to suggest that this new business model will create a significant revenue stream to support continued SSLC operations or be welcomed by people with IDD as an appropriate addition to the community based long-term services and supports system. Network adequacy and other difficulties experienced by people using community based services under the state's acute managed care expansion do not justify using the institutional system as a replacement when well-documented substandard quality and limited community inclusion remain critical factors.

The expansion plan is shortsighted and seems likely to exacerbate current challenges. The services identified for expansion:

- Have either been routinely cited as deficient (active treatment and specialized day programs),
- Have not yet been piloted (crisis stabilization services), or
- Are plagued by high turnover (psychology, dental).

TCDD recommends that a plan to expand institutional services be informed by substantial market research so that people with IDD have control over the defined demand and service offerings. If Texas moves forward with this expansion, TCDD recommends that:

- These new services should be physically located at the Local Intellectual and Developmental Disability Authorities (LIDDAs);
- SSLC staff should only be diverted to provide services to people in the community when the specific SSLC has achieved;
- A 95% fill rate for the specialty professional being made available, and
- Substantial compliance under the DOJ agreement for the service being made available; [it should be noted that the system would be better served by having any facility coming into substantial compliance provide technical support to noncompliant SSLCs];

- Managed care organizations should receive monetary sanctions for not providing access to community based acute services to their members when a member can only receive such services at an institution;
- An independent review comparing community and institutional services should be provided for each SSLC service sold so that consumers of IDD services may make informed decisions about where to purchase services;
- The sections of the facility being used for community services should be required to meet accessibility standards under Americans with Disabilities Act; and
- Clinics located at SSLCs should be required to meet the same clinical, regulatory and building standards required for any new community based facility.

## **Outsourcing**

In response to the DOJ Settlement Agreement monitor recommendations, the Draft LRP Report for SSLCs includes plans for a variety of outsourcing contracts. Unfortunately, none of the outsourcing contracts are specific to developing an acceptable community living discharge planning process, as recommended by the DOJ Settlement Agreement monitors in their Four Year Report. The monitors affirmed that some transitions were significantly delayed and that some people who should have been recommended for transition were not. They further questioned the system's capacity to adequately address the community living discharge planning process without outside consultants.

The SSLC system lacks the expertise associated with developing Quality Improvement (QI) programs, as DADS has had to enter into outsourcing contracts in order to provide them. While it can be helpful to bring in outside observers, we are concerned that the SSLC division has contracted with entities that may be lacking in subject-matter expertise. The long-term plan highlights a contract with the University of Florida's Institute for Child Health Policy (ICHP) to develop a QI program — we fully support developing a QI program, but question whether ICHP is a good fit when only 2.5% of SSLC residents are children. Contracting with an institution that specializes in IDD services would likely result in a more applicable, appropriate QI design.

The apparent need to outsource behavioral health care is also a concern. The draft makes no other mention of concrete steps for improving access to such care beyond an outsourcing contract with Axis Point Health for coordinated care management. The Draft LRP Report for SSLCs mentions creating a crisis hotline, but there is not enough detail given. We recommend the registered nurses responsible for answering calls have demonstrated expertise in mental health services for people with IDD in order to assure appropriate, applicable information is provided.

## **Lead Levels**

Reported SSLC lead levels are alarming and we are concerned that DADS officials represent levels as “not that high.” We are pleased that the state has chosen to update their response beyond staff training as originally proposed to include SSLC resident blood testing.

However, since there appears to be a dispute about whether the levels are “high” and where the high lead levels are located at each of the facilities, we recommend a color coded map indicating the locations and levels of lead for each SSLC so that SSLC residents may make more informed decisions about whether to request transfer to another facility or less restrictive setting. We further recommend that because all institutional placements for children are to be considered temporary, that children’s Permanency Plans should be immediately reviewed and transfers to family based alternatives be prioritized.

The Draft LRP Report for SSLCs acknowledges many buildings are quite old and in a state of severe disrepair. Maintenance costs remain an area of concern. Considering reports of high lead levels at some SSLCs, it would be appropriate for this report to include background and corrective action plans specific to this important issue.

## **Staff Turnover**

The Draft LRP Report for SSLCs acknowledges staff turnover remains a significant challenge. High turnover levels impact continuity of care and the ability to make improvements in all areas of SSLC operations. Increasing the caseload of professionals in high turnover areas is likely to contribute to further turnover, which negatively affects quality of care. Critical staffing challenges must be addressed and expanding caseloads with a business plan expansion is not the way to do it. The current hiring approach is also fragmented and outdated, and is likely contributing to hiring difficulties. Focus should be put on retaining current high-caliber employees, as it is more cost-effective and leads to higher quality of care.

## **Aging Texans**

The Draft LRP Report for SSLCs both anticipates continued census declines and a future need for beds due to an aging IDD population. While people with IDD are living longer, they and their families continue to work desperately to ensure the ability to age in place. The SSLC system should engage in other statewide efforts within DADS and the Health and Human Services Commission to address aging. Specifically, SSLCs could support the needs of aging Texans with IDD and their families by providing technical support regarding how to modify plans of care and developing resources and technical guidance for aging in place. The options are varied; once substantial compliance with the standard of

care is achieved, behavioral health staff at SSLCs could provide training in positive behavior support for the community-based workforce, as well as for families. By focusing on helping people with IDD age in place in the community, SSLCs could also have the opportunity to become part of the community and foster inclusion. This could be achieved through innovations in community support, and realigning the system to act as a medium for community engagement rather than institutionalization.

A focus on promoting and maintaining independence and preparing for transition to the community does not detract from the ability to provide care for older individuals in the future — indeed, promoting community living will help to better prepare providers in the community to care for aging Texans with IDD in the future.

### **Consolidation and Closure**

The Draft LRP Report for SSLCs should identify that Texas does not require 13 facilities for the number of people who choose to use them and plan for consolidation and closure accordingly. The report is careful to stress availability of a spectrum of care as a strength rather than the quality of said care. TCDD continues to support a moratorium on admissions and the Sunset Advisory Commission recommendations to reduce the SSLC infrastructure and rebalance the long-term services and supports system.

The failure of Senate Bill 204 and inaction on the part of the Texas Legislature to address this unsustainable system belies substantial evidence that Texas must act to modernize the IDD service system and improve conditions at SSLCs.

Seven years into the DOJ Settlement Agreement, the system still lacks substantial compliance with about 70% of the provisions. The assumption that SSLC services will “continue to improve” is unfounded, as DOJ monitoring reports have continually illustrated a failure to reach or maintain compliance in nearly every domain of service delivery. Improving service delivery in order to promote independence and prepare residents for successful transitions to more independent and less restrictive living options should remain the priority. This plan seems to continue the practice of Texas living beyond its means; forgoing its responsibility to improve institutional services; and prioritizing an unwarranted institutional expansion when alternatives do exist.

Thank you for the opportunity to provide input on behalf of the Texas Council for Developmental Disabilities.

Respectfully submitted,

Jessica Ramos,  
Public Policy Director



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**Public Comment**  
**Austin State Hospital and Austin State Supported Living Center**  
**Location Feasibility Study**  
**June 30, 2016**

Thank you for the opportunity to provide input regarding the Austin State Hospital (ASH) and Austin State Supported Living Center (AuSSLC) location feasibility study. TCDD is established by federal law and is governed by 27 board members, appointed by the Governor, 60% 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.

Senate Bill (SB) 200 requires the Health and Human Services Commission (HHSC) to conduct a study to determine the feasibility, costs, and benefits of transferring operation of ASH from its current facilities to a new facility at a new location. Recognizing the need for action regarding state supported living centers (SSLCs), Rep. Workman requested the inclusion of AuSSLC in the study. The two facilities are located in nearby locations. AuSSLC in particular struggled with serious deficiencies, and the high cost of replacing the facility is documented in the Department of Aging and Disability Services' (DADS) own reporting. While it is clear the infrastructure at our state facilities is crumbling, ASH provides services for which there is great need and no other source, while AuSSLC represents an outmoded and expensive way of serving individuals with intellectual and developmental disabilities-- especially because community based services are available to provide higher quality services. While TCDD supports evidence informed ways to expand mental health service system capacity, the evidence shows declining demand for the SSLC system.

**Different Services, Different Needs**

Despite concerted investment in mental health by the Texas Legislature, availability simply has not kept pace with growing need. Nearly 400 people were on waiting lists for state hospitals as of April 1. ASH covers 30 counties, has 299 beds, and admits about 1600 people a year. The facility focuses on helping people return to the community following treatment, and provides peer support programs as well as other recovery-based initiatives.

Renovation, relocation, and reconstruction of ASH may serve to provide more beds and better facilities to a system that desperately needs it.

By contrast, the demand for SSLC beds has continued to decrease. There is no need for increased capacity — indeed, the time, effort, and funding put into studying relocation options for AuSSLC would be better spent on promoting transitions to more independent and less restrictive living options for AuSSLC residents. The AuSSLC census has decreased from 361 in 2011 to 185 as of April 2016, or roughly 49%, and enrollment is projected to further decrease. The evidence does not support investment in the AuSSLC institutional capacity, particularly allocating state funds toward relocating and rebuilding an unneeded institution when there are still 78,034 people waiting to receive Home and Community-based Services (HCS). DADS' own analysis indicates the cost of replacement is more than four times the total market value of the facility — nearly \$104,000,000 for replacement, with total market value at just over \$25,000,000<sup>1</sup>. That's nearly \$79,000,000 to support less than 200 individuals that would be better spent elsewhere.

The needs of people admitted to AuSSLC and ASH are not necessarily the same. AuSSLC is a long-term residential facility, where residents often live for many years. This is not the case with ASH, where many admissions are forensic in nature and the average length of stay is 50 days<sup>2</sup>. ASH is comprised of multiple locked and contained units and is designed to address the needs of people experiencing serious behavioral health crises; by contrast, AuSSLC is part of the broader Long-term Services and Supports (LTSS) system, which aims to support people in the activities of daily life in the least restrictive living environment of their choosing. The working culture on a locked ward is very different from the working culture in a residential environment. Co-location of the two facilities would require staff, who already fall below standards of care, to be cross-trained in different treatment modalities and ways of interacting with residents. Given that ASH and AuSSLC are both plagued by high turnover, it seems likely increasing staff workload and scope of care would only lead to more turnover.

Co-location and staffing shortages would be further complicated by DADS' plan to offer SSLC services to people living in the community. This is a plan where people who have clearly chosen to receive community based services would spend their Medicaid acute and home and community based services waiver dollars coming to AuSSLC (or other SSLCs) to receive services that DADS and the Department of Justice (DOJ) report do not meet the

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<sup>1</sup>Department of Aging and Disability Services, State Supported Living Centers Long-term Plan, Rider 39 Report. January 2015. [https://www.dads.state.tx.us/news\\_info/publications/legislative/Rider39/rider39-1-15.pdf](https://www.dads.state.tx.us/news_info/publications/legislative/Rider39/rider39-1-15.pdf)

<sup>2</sup>Legislative Budget Board, State Hospitals: Mental Health Facilities in Texas Legislative Primer. April 2016. [http://www.lbb.state.tx.us/Documents/Publications/Primer/3144\\_State\\_Hospitals-Mental\\_Health\\_Facilities\\_in\\_Texas\\_Diehl.pdf](http://www.lbb.state.tx.us/Documents/Publications/Primer/3144_State_Hospitals-Mental_Health_Facilities_in_Texas_Diehl.pdf)

agreed upon integrated standard of care. With recent directives by the Texas Legislature, evidenced-based downsizing and rebalancing recommendations, as well as critical (and growing) staffing challenges have been ignored in favor of prioritizing unwarranted institutional expansion. Efforts to expand SSLC services while also attempting to co-locate with a facility that serves a disparate population risks further eroding already questionable care.

### **SSLC Systems Change**

Finally, replacing or relocating AuSSLC will not address some of its most pressing problems. Seven years into the DOJ settlement, the system still lacks substantial compliance with about 70% of the provisions. Barriers to compliance are not limited to the physical plant. It is not clear how the \$79 million investment in construction of a new AuSSLC facility would give rise to an acceptable community living discharge process, fill perpetually empty behavior analyst positions, or reduce unnecessary restraints. Given these concerns and the substantial work necessary to meet agreed upon standards of care we believe it is unnecessary to divert attention and resources to options that would involve the renovation, relocation, or co-location of AuSSLC with ASH. HHSC, DADS, and DSHS must prioritize the treatment needs of the individuals served at ASH and the long-term support needs of residents at AuSSLC, and co-location or relocation does not meet this goal.

Thank you for the opportunity to provide input on behalf of the Texas Council for Developmental Disabilities.

Respectfully submitted,

Jessica Ramos,  
Public Policy Director



## Don't blame oil prices for budget woes



Governor Greg Abbott, Lieutenant Governor Dan Patrick and Speaker Joe Straus have directed state agencies to craft budgets for 2018-2019 that will propose 4 percent cuts from 2016–2017 levels for many state services.

Four percent may not seem like much to the casual observer, but for a state that already underinvests in critical public services like education and health care, it represents potentially significant cuts to services that help Texans compete and succeed in life.

The policy letter issued by the leaders also mentions that zero-based budget information will be requested from state agencies. Not mentioned in the policy letter — but included in more detailed budget documents that accompany it — are instructions to state agency heads to identify program cuts that could achieve another 10 percent reduction (on top of the 4 percent) in expenditures from state funding known as general revenue.

State leaders listed several areas that will get exceptions from the 4 percent cut requirement. For public schools and child welfare services, for instance, funding can be "maintained." If you add up all the exceptions, you get about 60 percent of the general revenue-related budget. These exceptions mean that proposed overall state budget cuts should not exceed \$2 billion, but will concentrate the burden on areas like higher

education (at least \$580 million in cuts) and public safety and criminal justice (\$430 million).

What's more, merely “maintaining” current levels of investment in things like public education is not good enough for Texas. When population and inflation rise but funding levels remain the same, that is a reduction in all but name. The Texas Supreme Court, even in its most recent ruling, reinforced this point with the repeated acknowledgement of the serious flaws in how we support public education and urged the Legislature to make meaningful investments.

Going into the budget process, many people will blame low oil and natural gas prices or other external economic factors for the grim budget outlook. But the amount of state funds available to write the next budget will be severely limited primarily by shortsighted tax cuts and diversions made by the Texas Legislature over the past two sessions, not by oil prices and their effect on the Texas economy.

For example:

- In 2015 the Texas Legislature cut the franchise tax — the state’s main business tax — by 25 percent, reducing that tax’s ability to support public education in the 2018-2019 budget by \$2.6 billion.
- A constitutional amendment approved by voters in November 2015 increased the homestead exemption from school property taxes from \$15,000 to \$25,000. This exemption, more noticeable for owners of lower-value homes, helps reduce the unfairness of Texas’s tax system but also requires the state to replace \$1.3 billion in lower local school taxes with state dollars.
- Another constitutional amendment dedicated up to \$5 billion in sales taxes to fund highways, rather than to support the wide array of services previously funded with the sales tax. This means that sales tax revenue would have to grow by more than 8 percent in the next biennium from its current levels before the revenue becomes available to support any public services other than roads.
- Tax cuts passed by the 2013 Legislature will reduce the amount available to write the 2018-2019 budget by another \$1 billion, including franchise and sales tax breaks for certain industries, such as cable TV, data centers and research and development.

These measures, combined with other changes to state and local revenue, mean legislators have reduced the amount of general revenue available in 2018-2019 by at least \$10.5 billion — independent of the drop in oil and gas prices.

The good news is that there is still adequate state revenue to cover the 2016-2017 budget. In addition, there should be a balance of \$10 billion in the “Rainy Day” fund by 2017,

which could also maintain investments in education, health care and other state services going forward. It's up to lawmakers to tap the Rainy Day Fund if needed to maintain investments that address the state's needs.

Like our state's leaders, we want "employers empowered to create more jobs that benefit hardworking Texans." Those employers will need a skilled workforce, which will require investments in education and job training. Those employees will need health care coverage for themselves and their families, so they can work effectively and avoid medical bankruptcy.

We look forward to working with state leaders to ensure that Texas can make smart investments in our people today so our great state can continue to thrive tomorrow.

Work originally published in "TribTalk," a publication of The Texas Tribune by Eva DeLuna Castro at: <https://www.tribtalk.org/2016/07/05/dont-blame-oil-prices-for-budget-woes/>

Published date: July 5, 2016

**Public Comment**  
**Long-Term Care Plan for Individuals with**  
**Intellectual Disabilities and Related Conditions**  
**June 30, 2016**

Thank you for the opportunity to provide input regarding the proposed Long-Term Care Plan (LTCP) for Individuals with Intellectual Disabilities and Related Conditions (IDD). TCDD is established by federal law and is governed by 27 board members, appointed by the Governor, 60% 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. Without anything of substance to respond to, our input is limited a short list of items we would expect to see in both the plan and the upcoming Legislative Appropriations Request.

**Interest List Reduction**

The interest list reduction should continue to be prioritized. 109,413 unduplicated people are waiting for long-term services and supports. The Health and Human Services Commission (HHSC) must request interest list funds to ensure adequate progress, and truly fosters people's ability to live in the least restrictive environment of their choice.

**Community First Choice Outreach**

HHSC must develop and implement an outreach strategy for Community First Choice (CFC), particularly when the interest lists for 1915 (c) waivers remain long. In contrast to the waivers, CFC is immediately available to anyone who meets the eligibility requirements. An outreach strategy that educates people on the content of the program, and reassures them that they will not lose their spot on the interest lists would result in eligible and interested individuals presenting themselves at the front door of the service system.

**Expand Provider Qualifications**

An inequity exists with regard to provider qualifications among people who use CFC. With the exception of people using Texas Home Living (TxHmL) and Home and Community-based Services (HCS), adult waiver participants are able to pay a member of their household to be their attendant.

Expanding provider qualifications to allow adults equitable choice in who they want to employ as their attendant would make qualifications uniform across systems, as intended in the federal regulations.

### **Attendant Wages**

Despite strong effort from advocacy and stakeholder groups last session, attendant wages remained unacceptably low. Groups campaigned for a \$10 per hour minimum wage for community attendants, but the legislature only approved a 14¢ per hour increase — from \$7.86 to \$8.00. Rates should be increased to support a living wage for all direct support professionals. While we are speaking specifically to the system of services for persons with intellectual and developmental disabilities, the state must recognize that the broader system cannot be maintained without a strong direct support workforce. An adequate living wage is essential in combating turnover and attracting quality employees.

### **Meaningful Day Activities**

The LTCP should prioritize supporting meaningful days for waiver participants that is not predicated on segregated day habilitation programs. Without question, day habilitation programs are segregated and facility-based. For too many people, these programs are a de facto waiver requirement.

Most people with disabilities report they would like to work. While employment assistance (aid in finding a job) and supported employment (support in keeping it) are available to all HCBS waiver participants, they are not being used. Fiscal Year 2015 billing data suggests less than 3% of the more than 30,000 people using HCS and Community Living Assistance and Support Services (CLASS) waiver programs had either of these services authorized in their individual plans of care. Texas is an Employment First state, and TCDD believes funding must be adjusted to reflect this.

If a person declines to be employed or requires employment assistance for an extended period of time, we suggest they be able to direct their day habilitation funds as follows:

- Up to four participants should have the opportunity to combine / pool their resources — including staff — to plan their own support for a meaningful day;
- HHSC should consider public-private partnerships to develop cross-system collaborations and innovative funding options so that people with disabilities have meaningful access to the same opportunities as their peers without disabilities including:
  - Access to recreation and community centers,
  - Adult learning,
  - And volunteer opportunities that are truly based on individuals' interest.

### **Moving Community Living Options (CLO) from Providers to LIDDAs**

Currently, the personnel of private medium and large intermediate care facilities (ICFs) are responsible for implementing the Community Living Options (CLO) process annually with residents age 22 years or older. There is a subset of individuals living in large private ICFs who repeatedly have been offered HCS, and have continually declined. Given that community living options are presented by the provider, it is unclear whether residents' decisions are a function of who is offering the information or if it is a genuine preference. Moving the CLO process from the providers to the LIDDAs would standardize it across private and state-operated ICFs, control for conflict of interest, and could lead to more informed community living decisions. What's more, as more people transition from ICFs to community based settings, the ICF beds should be taken offline to fund moving the function to the LIDDAs.

The large, state-operated ICFs had extensively documented struggles with successfully implementing the CLO process prior to moving it to the LIDDAs. It is reasonable to believe large, private ICFs may be experiencing similar difficulties. Standardizing CLO process requirements for people in medium and large ICFs may help create a more robust, successful community living options process for ICF residents.

### **Level of Need (LON) Improvements**

Recent reports of discrepancies between LON assessments conducted by providers and the LON assigned by DADS indicates the need for a serious examination of the LON system. Improvements must be made in order to eliminate the uncertainty experienced by program participants and providers when conducting these assessments. DADS should take immediate action to address recently identified concerns as well as those listed in the LON Review Workgroup Stakeholder Report 2007 to guarantee the integrity of assessments.

Beyond discrepancy in assessments, there is a need for parity between medical and behavioral LON. Currently, people with complex behavioral health needs are able to get a designation of LON 9 (the highest) while individuals with high physical support needs are not. Steps must also be taken to make it easier for people with complex behavior support needs to get higher LONs, particularly when they first enter the program and may not have supporting history or documentation. Allowing people to receive more behavior support services through a higher LON after a major transition would be a major system improvement. At a time when parity between physical and behavioral health is becoming standard, the state should update and improve the LON system to reflect the most modern standard.

### **Data Representation**

Before the final LTCP is completed, we would like to reiterate how important it is to clearly represent data to avoid confusion — especially for the public, who may not be familiar with historical trends and trajectories.

For example, the Draft Long-range Plan Report for State Supported Living Centers (SSLCs) notes that the percentage of all SSLC residents with a mental health need increased from 59% in FY 2008 to 62% in FY 2016. The claim seems to indicate that there has been an increase in the number of people with a mental health need. Without the raw data, it is not clear to the public that the number of SSLC residents with a mental health need has actually decreased by more than 900 people, as a result of an overall census reduction of about 30%.

TCDD urges caution, as sometimes the data is presented in a way that can be misleading or confusing. Thus, when reporting any data the raw numbers (and institutional/community comparison, when applicable) are requested for context. From our perspective, the data is also indicative of a system that has appropriately transitioned people with mental health needs to more integrated settings where community services are meeting their needs. Thus, the raw data is needed to better communicate such findings.

Finally, the system overall continues to be severely underfunded. Texas ranks 49<sup>th</sup> in statewide per person community spending. The institutional and community-based systems exist together within the wider IDD system. We must continue to focus on building community capacity and the true cost of service provision in order to make serious system-wide improvements. Efforts to streamline and improve institutional services must be made in concert with investments to build community capacity.

Thank you for the opportunity to provide input on behalf of the Texas Council for Developmental Disabilities.

Respectfully submitted,

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