

Background:

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

82nd Texas Legislature:

Approximately 5,800 bills were filed during the Regular Session of the 82nd Texas Legislature which adjourned on May 30, 2011. Of these, Gov. Perry signed **1,458** bills, vetoed **24**, and allowed **27** to become law without his signature. TCDD Public Policy staff tracked a total of **591** bills that affect persons with disabilities during the regular session; of those, **112** passed and **three** were vetoed. On May 31st, the Governor called legislators into a Special Session immediately following adjournment of the Regular Session to consider a school finance plan, Medicaid reform and cost savings, Congressional redistricting and other issues. The Special Session ended on Wednesday, June 29, sending a variety of additional bills to the governor for his consideration.

A summary of key legislation that impacts people with developmental disabilities is provided in this packet along with a synopsis of budget appropriations for key programs serving people with disabilities.

DADS Utilization Review Process:

During the May 2011 Public Policy Committee Meeting, members received information about cost-containment strategies including "Utilization Review" (UR) now initiated by DADS. Members asked for additional information which is included in the Council materials. Council member Jeff Kauffman, DADS, has coordinated with DADS staff to provide an overview of DADS UR activities.

The goals for the DADS utilization management and review are to:

- Ensure DADS consumers receive the services they need - no more, no less.
- Comply with the legislative mandate to ensure the appropriate level and scope of services are provided to individuals receiving waiver services; and
- Ensure DADS policies and procedures are consistent with the intent of the program.

DADS also sends communications to consumers to notify and explain the expanded UR activities which will result in face-to-face visits for a random sample of individuals in the CLASS, HCS and TxHmL waiver programs. DADS has developed a power point presentation that outlines information about the UR activities. An archived webinar on UR activities is online at

http://www.dads.state.tx.us/providers/communications/alerts/index.cfm?PageNum_alist=2&ftype=HCS

State Supported Living Center Monitoring Activities:

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

Council Meeting

Agenda Item 10.

Expected Action:

The Council will discuss various policy issues and may provide guidance to staff for possible activities.

Texas Council for Developmental Disabilities
82nd Texas Legislature - 2011
Bills Passed

Fiscal Matters Bills

Bill	Author	Caption	Bill Summary
HB 1	Pitts Ogden	General Appropriations Act.	"The Budget", officially the General Appropriations Act (GAA) for the FY 2012-2013 biennium. Total \$175 billion all funds. \$9 billion cuts in general revenue. \$5 billion in Medicaid appropriations left unfunded.
HB 4	Pitts Ogden	Relating to making supplemental appropriations and giving direction and adjustment authority regarding appropriations.	Prior to the Session, State leadership required state agencies to make cuts in their FY 2010-2011 budgets. HB 4 reduces appropriations to agencies to "assume" those funding reductions already in place.
HB 275	Pitts Ogden	Relating to making an appropriation of money from the economic stabilization fund for expenditure during the current state fiscal biennium.	Appropriates funds from the state's Economic Stabilization Fund ("Rainy Day Fund") to cover budget shortfalls in the 2010-2011 biennium. This bill plus HB 4 resulted in a balanced budget for FY 10-11.
SB 1 S	Duncan Shapiro Duell	Relating to certain state fiscal matters; providing penalties.	School finance bill includes \$4 billion in reductions to districts statewide, several payment deferrals and tax collection "accelerations". Expected to generate \$3.5 billion in revenue. Requires online retailers, such as Amazon.com to collect sales taxes.
SB 2 S	Ogden	Relating to appropriating money for the support of state government for the period beginning September 1, 2011, and ending August 31, 2013; and authorizing and prescribing conditions, limitations, rules, and procedures for allocating and expending the appropriated funds; and declaring an emergency.	A "clean-up" bill that includes appropriations items in HB1(R) that were contingent upon legislation that did not pass in the regular session.

Key: **R** = Regular Session **S** = Special Session

Note: All bills in the first column on the right are bills passed in the regular session unless the bill number is followed by an S.

Access

Bill	Author	Caption	Bill Summary
HB 1075	Anderson, R. Truitt Aliseda Johnson Zedler Davis Zaffarini	Relating to the consolidation of certain alert systems into a single statewide alert system and to the addition of other factors that will prompt an alert under the consolidated system.	Amends the “AMBER” Alert system to include adults with an intellectual disability or pervasive developmental disability who are reported missing or abducted.
SB 14	Fraser 110 co-sponsors	Relating to requirements to vote, including presenting proof of identification; providing criminal penalties.	Voter identification bill - amended to provide an exemption for people with disabilities who receive SSI and veterans with 60% disability from ID requirements. When voting, the person with a disability must provide written documentation from the U.S. Social Security Administration verifying the disability (SSI and/or SSDI).

Administrative

Bill	Author	Caption	Bill Summary
SB652	Hegar Bonnen	Relating to governmental and certain quasi-governmental entities subject to the sunset review process.	Determines Sunset review dates. Texas Council for Developmental Disabilities, along with HHSC, DARS, DADS, DSHS, Regional Education Services Centers, and others will be reviewed in 2015. Review dates for each bi-ennium through 2023 were assigned for around 60 entities.

Children and Families

Bill	Author	Caption	Bill Summary
HB 434	Parker Gonzalez, N. Laubenberg Davis, John Zerwas	Relating to the minimum standards for licensed child-care facilities and registered family homes.	Requires minimum standards to ensure that child care facilities and registered family homes follow the directions of a child's health care provider related to specialized medical assistance required by the child. Also requires that the standards ensure that such directions be maintained by facilities for a reasonable amount of time.
HB 452	Lucio, III Raymond	Relating to temporary housing between academic terms for certain postsecondary students who have been under the conservatorship of DFPS.	Seeks to ensure that former foster youths have living arrangements both during and between academic semesters. This bill requires institutions of higher education to help students find housing options to better support their education and social abilities.

HB 753	Raymond Zaffarini	Relating to the recruitment and retention of certain caseworkers employed by the DFPS.	Directs DFPS to use special assessment tools in screening applicants for employment and give hiring preference to applicants applying for entry level caseworker positions with a master's degree or bachelor's degree in social work when other skills are comparable.
HB 1615	Brown Ogden Nelson	Relating to the administering of medications to children in certain facilities.	Prohibits certain employees and volunteers of certain child-care facilities from administering a medication to a child without permission from the child's parent or guardian, providing penalties for violating this prohibition.
HB 3531	Strama Marquez Dukes Naishtat Nelson	Relating to the provision of certain prescription medications to a foster child.	As a result of increased exposure to emotional and psychological stress, some foster children are at risk of being placed on multiple medications and could be overmedicated. H.B. 3531 requires the HHSC to monitor the prescribing of psychotropic drugs for certain children in DFPS conservatorship.
SB 218	Nelson Dukes	Relating to procedures in certain suits affecting the parent-child relationship and the operation of the child protective services and foster care systems.	Foster care redesign bill for Department of Family and Protective Services (DFPS) to keep kids in their home communities. Directs DFPS to contract with providers who can individualize continuums of care and limits children being placed outside of the home.
SB 219	Nelson Van de Putte Gonzalez, N	Relating to health and mental health services for children in foster and kinship care.	Supports more effective health and mental health services for children in foster and kinship care by requiring trauma-informed training.
SB 221	Nelson Gonzalez, N.	Relating to DFPS protective services and investigations of abuse, neglect, or exploitation of elderly or disabled adults.	Definition of “exploitation” now includes attempted exploitation and using a client’s personal information for personal or monetary gain.
SB 260	West Shapiro Raymond	Relating to minimum training standards for employees of certain child-care facilities.	Increases from 15 to 24 the hours the annual training required for each employee and from 20-30 hours the required annual training for a director of a day-care or group day-care home.
SB 264	Zaffarini Guillen	Relating to certain information provided by local workforce development boards regarding certain child-care providers.	Seeks to help families and other caregivers make informed choices by requiring local workforce development boards to provide such information. Local workforce development boards are not currently required to include certain quality child-care indicators for subsidized child-care providers in the materials provided to parents, families, and other caregivers of infants and young children.
SB 265	Zaffarini Carter	Relating to training for employees and operators of certain child-care facilities.	Seeks to ensure that child-care employees and operators receive training from knowledgeable individuals with relevant expertise by establishing requirements for persons providing that training.

Education

Bill	Author	Caption	Bill Summary
HB 692	Farias	Relating to high school graduation requirements for a student who is unable to participate in physical activity due to disability or illness.	Provides that a student who because of a disability is unable to participate in physical education may substitute a course and still be eligible for distinguished credit.
HB 861	Patrick, Diane Davis	Relating to membership of the state continuing advisory committee for special education services.	Requires one member of Special Education Advisory Committee to be a special education educator.
HB 1130	Huberty Seliger	Relating to information provided by the Texas Education Agency to school districts regarding placement of students receiving special education services.	Deletes the requirement that TEA publish a list of campuses that have a larger-than-average percentage of students with disabilities receiving the majority of their education in special education classrooms. This list was redundant to existing federal reporting requirements, and the information will still be publicly available.
HB 1335	Allen Reynolds Van de Putte	Relating to certain resources available to teachers of a public school student with a disability.	Requires school districts to adopt a policy to allow regular education teachers to request a review of the student’s IEP if they believe there is a problem.
SB 1788	Patrick, Dan Huberty	Relating to planning for students enrolled in public school special education programs.	Requires Texas Education Agency to develop a model Individual Education Plan (IEP) that may be used by independent school districts. Language in SB 596 by Shapiro and West that requires transition to begin at age 14 was amended to this bill.

Education – Discipline

Bill	Author	Caption	Bill Summary
HB 359	Allen Nash Patrick, Diane Shelton Torres Lucio	Relating to discipline in public schools, including the use of certain disciplinary methods and the prosecution of certain children for school-related offenses.	School districts statewide must allow parents to refuse permission for the school to use corporal punishment as a discipline method with their children. SB 536 by Davis was amended to this bill requiring school resource officers to report restraints.
HB 968	Strama Watson	Relating to expulsion from school or placement in a disciplinary alternative education program.	Allows a school to expel and place in alternative education any student who has committed a felony offense. HB 622 by Hochberg amended to this bill that prevents children from being expelled from alternative education for non-serious behaviors, such as chewing gum; defines

			serious behaviors and adds that a student can only be expelled for serious behavior if appropriate interventions have not succeeded. HB 3758 by Walle also amended to HB 968 and prohibits giving tickets to children younger than 13 (sixth grade) for minor misbehaviors in school.
HB 1942	Patrick Van De Putte 26 co-sponsors	Relating to bullying in public schools.	A comprehensive bullying bill that allows for the transfer of students involved with bullying. Requires the ARD committee to make change of placement decisions and discipline decisions in compliance with the Individuals with Disabilities Education Act (IDEA).
SB 49	Zaffirini West Guillen	Relating to school district requirements regarding parental notification and documentation in connection with disciplinary alternative education.	Requires schools to notify parents when certain disciplinary actions are taken against students who are placed in disciplinary alternative education programs.

Guardianship

Bill	Author	Caption	Bill Summary
SB 220	Nelson Naishtat	Relating to guardianships, including the assessment of prospective wards for, and the provision of, guardianship services by the Department of Aging and Disability Services (DADS).	Makes changes to DADS guardianship program with the intent of making it easier for families to navigate the system, increase due process and protect the assets of a ward. Did not include provisions to address or promote alternatives to guardianship.
SB 481		Relating to the removal of a guardian of an incapacitated person ordered by a court.	Seeks to ensure that any removed guardian will have notice of the removal and time to file for reinstatement. Requires notice to be personally served on a removed guardian not later than the seventh day after the court signs the order of removal. Extends time removed guardian may file for reinstatement from 10 to 30 days.
SB 1196	Rodriguez Hartnett	Relating to guardianships and alternatives to guardianship for persons who have physical disabilities or who are incapacitated.	Makes several needed changes to the probate code advocated by the State Bar of Texas, including allowing a guardianship hearing to be held in any suitable location that is not harmful to the ward. This could include a state supported living facility, for example.

Healthcare

Bill	Author	Caption	Bill Summary
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SB 293	Nelson Martinez, A. Davis, J.	Relating to telemedicine medical services, telehealth services, and home telemonitoring services provided to certain Medicaid recipients	Directs HHSC to establish and allow reimbursement under Medicaid for statewide in-home telemedicine medical services, telehealth services, and home telemonitoring services to certain Medicaid recipients. Expects to help address shortages of physicians, psychiatrists and lessen costs of healthcare through video consulting, diagnostics and remote monitoring of health care.
SB 7 S	Nelson Deuell Duncan Eltife Estes Patrick Seliger Shapiro Williams Zerwas	Relating to the administration, quality, and efficiency of health care, health and human services, and health benefits programs in this state.	<p>Combined SB 23, SB7, HB 32, HB 3537 and SB8 from Regular Session and HB 13 and SB 5 from Special Session.</p> <p><u>“Flexibility Waiver”</u> - Requires HHSC to seek a Section 1115 Medicaid waiver to provide flexibility in determining eligibility categories, income levels and benefits; consolidate funding streams; encourage personal responsibility through sliding scale, with fees paid at the point of service, and use of private insurance; and allows redesign of long-term care services and supports to increase access to patient-centered care in the most cost-effective manner.</p> <p><u>Individual and Provider Changes</u> - Requires co-pay for Medicaid and CHIP patients who make unnecessary emergency room visits; lets healthcare providers form collaborative to create a statewide system to quickly identify risk factors in individual patients; reward providers who reduce waste; restructures payment system for Medicaid and CHIP; and seeks repayment for health care of sponsored adult immigrants.</p> <p><u>“Block Grant”</u> – allows Texas to join an interstate compact to take on any and all federal health care programs including Medicare, Medicaid, CHIP, FQHCs and mental health block grants. Removes all federal rules for who is served and how they are served. Congress must approve.</p>

Housing

Bill	Author	Caption	Bill Summary
HB 1818	Harper-Brown, Hinojosa	Relating to the continuation and functions of the Texas State Affordable Housing Corporation (TSAHC)	Sunset bill continues TSAHC until 2023.

HB 1510	Hamilton Carona	Relating to the regulation of manufactured housing.	Addresses TCDD Sunset recommendations for consumer rights and protections in manufactured housing including right to statement of ownership and release of lien.
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Long-term Services and Supports

Bill	Author	Caption	Bill Summary
HB 1481	Truitt, King, Susan Naishtat Davis, John Raymond Menendez Zaffirini	Relating to the use of person first respectful language in reference to individuals with disabilities.	Initiates process to eliminate the R-word from state statutes, policies, and materials.
HB 3197	Coleman Duell	Relating to creating a pilot to implement the culture change model of care at certain state supported living centers.	Creates a pilot to implement the culture change model of care at one state supported living center to shift decision-making to about their daily and future lives to the individual with the disability.
SB41	Zaffarini, Davis, John	Relating to the use of restraints in state supported living centers.	Prohibits the use of mechanical or physical restraints in state supported living centers unless necessary to prevent physical injury to the resident or another. Directs staff to use least restrictive restraint and end restraint as soon as imminent risk ends. Bans the use of prone and supine holds and prohibits the use of strait jackets.
SB 37	Zaffarini, West, Naishtat Rodriguez	Relating to the duration of the interagency task force on ensuring appropriate care settings for persons with disabilities.	Continues Promoting Independence Advisory Committee (PIAC) until 2017.
SB 222	Nelson, Raymond	Relating to access to certain long-term care services and supports under the medical assistance program.	Directs DADS to increase utilization reviews of Medicaid waiver services and institute other cost-containment initiatives.
SB 1857	Zaffirini Truitt	Relating to the administration of medications for persons with intellectual and developmental disabilities	This extends to clients with intellectual and developmental disabilities the delegation by nurses to trained, unlicensed persons, the administration of medicine to individuals living in facilities or receiving certain home and community-based services.

Mental Health

Bill	Author	Caption	Bill Summary
HB 1386	Coleman Farrar Marquez Alvarado Walle, Ellis	Relating to the public health threat presented by youth suicide and the qualification of certain persons serving as marriage and family therapists in school districts.	Requires Texas Department of State Health Services in coordination with TEA to recommended best practice-based early mental health intervention and suicide prevention training programs to implement in public elementary, junior high, middle, and high schools within the general education setting.
HB 1829	Naishtat Nelson	Relating to an application for emergency detention and to the transfer to a mental hospital of a person admitted for emergency detention .	Allows hospital to approve transferring an individual admitted to an emergency room to an appropriate mental hospital. Also allows the electronic transfer of warrant for emergency detention.
SB 118	Uresti Menendez Naishtat	Relating to a court's authority to order a proposed patient to receive extended outpatient mental health services.	Changes from 60 consecutive to 60 total inpatient days for court to order extended outpatient treatment to enable a judge to assign lower-cost extended outpatient mental health services, when appropriate.
SB 219	Nelson Van de Putte Gonzales, N.	Relating to health and mental health services for children in foster care and kinship care.	Amends current law to ensure that children in foster care and kinship care receive needed mental health services, and that professionals understand the impact of trauma on a child's mental health and behaviors.
HB 35	Menendez Van de Putte	Relating to extending a local behavioral health intervention pilot project.	Two-year continuation of BexarCares, a local behavioral health care project that seeks to divert children at risk of alternative school placements, juvenile justice or CPS treatment centers.

Transportation

Bill	Author	Caption	Bill Summary
HB2651	Allen	Relating to the eligibility of visitors to use certain public transportation services for people with disabilities.	Requires transit authority to inform individuals who reside outside of a transportation provider's service area within two days of an application if they are eligible to use the provider's services while visiting.



TEXAS COUNCIL *for*
DEVELOPMENTAL
DISABILITIES

(512) 437-5432
(800) 262-0334
Fax (512) 437-5434

6201 E. Oltorf, Suite 600, Austin, TX 78741-7509
E-Mail: TCDD@tcdd.state.tx.us
Internet: <http://www.txddc.state.tx.us>

Brenda Coleman-Beattie, Chair
John C. Morris, Vice Chair
Roger A. Webb, Executive Director

**Impact on Texans with Developmental Disabilities
Of the
General Appropriations Act
2012-2013 Biennium**

Passed by the 82nd Texas Legislature

Appropriations for FY 2012-2013

This document includes a summary and comparison of funding levels for selected programs used by people with developmental disabilities. Funding for the current two-year budget fiscal years (FY) 2010-11 is compared to House Bill 1 (HB 1), the final budget passed by the 82nd Texas Legislature in 2011. The budget, or the General Appropriations Act (GAA) as it's officially known, provides \$175 billion in federal and state funds combined for the upcoming biennium, FY 2012-13. Those amounts include a reduction of \$9 billion in state (general revenue) funds compared to FY 2010-11. The Legislature also left an estimated \$5 billion in Medicaid entitlement programs unfunded until the beginning of the next legislative session in 2013. Expected caseloads are shown where applicable - some programs do not list caseloads and are reported as either an average daily*, monthly†, or yearly‡ caseload.

Texas Education Agency (TEA)

Public Education Funding: Public education programs will receive nearly \$4 billion less for FY 2012-13. These reductions are spread over two years with a 6 percent, across-the-board cut in FY 2012 and a \$2 billion reduction in FY 2013. In addition, a new school funding formula reduces funding for some schools more than others. Since more than 80% of education costs are personnel-related, districts across the state are expected to reduce the number of educators and result in larger class sizes. Many special programs will not be funded, and pre-kindergarten could be cut from full-day

classes to only half-day. The amount of funding available for public education is also dependent upon the amount of local revenue raised from property taxes.

Early Childhood School Readiness Program: This program provides an educational component for 45,000 students in public prekindergarten, Head Start, university early childhood programs, or private non-profit early childhood programs where there is an integrated program with a public school. Funding was reduced by more than 50%. Schools will compete for grants to implement early childhood readiness.

Prekindergarten Early Start Grant Programs: The Texas Education Code allows the Commissioner of Education to make grants to expand or implement Kindergarten and Prekindergarten programs. In FY 2010 - 11, 63,758 students attended public prekindergarten. HB 1 does not appropriate certain funds, but provides direction to the Texas Education

TEA	Funding	
Program	FY 10-11	FY 12-13
Public Education	\$22b	\$25b
Early Childhood School Readiness Program	\$15m	\$7m
Prekindergarten Early Start Grant Programs	\$25m	Not Known
Special Education FTEs	128,471	110,463
Percentage of Students with Disabilities who graduate HS	94.6%	77%

Agency (TEA) to use funds in the Foundation School Program Operations to certify each year of the biennium the maximum pre-kindergarten expenditures allowable under federal law as maintenance of effort for Temporary Assistance for Needy Families (TANF) and the state match for the Child Care Development Fund.

Additional Considerations: Each school district will determine how to respond to reductions in state revenue for the FY 2012-2013 biennium. Although special education services are not addressed specifically, any reductions to public education funding will likely impact students with disabilities in public schools.

Department of Aging and Disability Services (DADS)

Medicaid Waivers - When appropriations for the 13 community waivers are combined, appropriations for FY 12-13 are significantly reduced. However, the Legislature expects the number of people served in these programs to remain at August 2011 levels. DADS is expected to find ways to contain costs through utilization review, caps, and service limitations. Services considered non-essential are reduced to the 90th percentile in CBA, CLASS, HCS and MDCP waivers. CLASS specialized therapies are reduced to the 75th percentile. Provider rates were cut from 3% to 26.4% depending on the program. Currently over 130,000 individuals are on interest lists which are expected to continue to grow.

Intellectual Disabilities (ID) Community Services – These “safety net” services were cut significantly. Local authorities use these funds for a wide range of services to support individuals to live in the community while waiting for or ineligible for waiver services. When the Legislature cut funding in 2003 there was a 50% increase in admissions of children into State Supported Living Centers (SSLCs). The Legislature’s intent this session was for DADS to refinance many individuals into the Texas Home Living waiver program.

Texas Home Living Waiver – This waiver program supports people who live in their own homes or with their families. Funding was increased from \$21 to \$99 million to include many individuals previously receiving assistance from ID “safety net” community services. However, many individuals receiving safety net services are eligible not for this waiver.

In-Home Family Support (IHFS) – The IHFS program is level funded. IHFS provides support to families who would otherwise turn to institutional services.

ID In-Home and Family Support – Funding for IHFS services for individuals with intellectual disabilities was eliminated.

Promoting Independence Services – Funding for these services that allow children and adults to stay in the community or transition from institutions to community was reduced by one-third.

Intermediate Care Facility (ICF)/ID Services – The reduction in funding for this program is greater than the reduction in the number of people served. DADS will be required to reduce provider reimbursement rates, likely causing some providers to no longer participate in the program.

State Supported Living Centers (SSLC) – Funding increased to maintain all 13 Texas state-operated institutions, but there is a goal to reduce census of those facilities by approximately 740 individuals, to 3,595 by the end of FY 2013.

DADS Program	Funding	
	FY 10-11	FY 12-13
HCS Medicaid Waiver	\$1.55b	\$1.6b
	18,722†	20,539†
ID Community Services	\$204m	\$150m
	12,725†	9,955†
Texas Home Living Waiver	\$21.9m	\$99.2m
	994†	5,738†
In-Home Family Support	\$9.97m	\$9.97m
	5,491†	5,375†
ID In-Home and Family Services	\$11.4m	0
	3,060†	0
Promoting Independence Services	\$236m	\$156.9m
	6,301†	6,863†
ICF/ID Services	\$653m	\$594.1m
	6,063†	5,766†
State Supported Living Centers (SSLC)	\$1.13b	\$1.3b
	4,338†	3,713†

Additional considerations: The budget passed by the 82nd Texas legislature is short an expected \$4.8 billion that will be needed to fund Medicaid programs.

Department of Assistive and Rehabilitative Services (DARS)

Early Childhood Intervention Services (ECI) – ECI provides services to children with developmental delays that assist eligible children to gain skills or improve development. Funding was reduced by \$30 million from FY 2010-11. DARS is therefore changing from a “months-based” to the “percentage-based” calculation of a developmental delay and restructuring Family Cost Share. Children will continue to receive an average of two hours of direct service per month, which is below the level recommended by experts.

DARS Program	Funding	
	FY 10-11	FY 12-13
Early Childhood Intervention Services	\$373.9m	\$342.1m
	32,245+	26,052+
Autism Program	\$6.6m	\$6.6m
	180‡	180‡
Vocational Rehabilitation	\$456.3m	\$421.9m
	88,024‡	85,187‡
Independent Living Centers	\$5.4m	\$5.4m
	6,632‡	6,632‡
Independent Living Services	\$14.2m	\$13.4m
	1,785‡	1,890‡
Comprehensive Rehabilitation	\$34.4m	\$34.2m
	583‡	426‡

Autism Program – The DARS Autism Program provides intensive, evidence-based treatment to children age 3-8 with a diagnosis of Autism Spectrum Disorder. Autism Program funding was not cut, but this program serves only 180 children. The Texas Education Agency reports over 15,000 students with autism in public schools.

Vocational Rehabilitation - The Vocational Rehabilitation (VR) Program helps people with disabilities prepare for, find or keep employment. HB 1 reduces funding for VR which will result in fewer people gaining successful employment. With fewer funds for the program there will be no funds for anticipated for caseload growth during the biennium. State funds provided are insufficient to “match”

all of the federal dollars available to Texas.

Independent Living Centers (ILCs) – The proposed budget for Independent Living Centers allows the current network of ILCs to maintain current levels of services, but does not expand the number of the centers. Funding was maintained at FY 2010-11 levels.

Independent Living Services – Although HB 1 does not fully fund the Independent Living Services program, DARS is expected to serve slightly more individuals in the two-year biennium by reducing the annual service budget for individuals in the program, resulting in fewer services provided.

Comprehensive Rehabilitation Services (CRS) – Individuals with a traumatic brain injury or spinal cord injury can receive post-acute rehabilitative services in the CRS program. HB 1 slightly reduces funding to the CRS program. However, separate legislation calls for CRS to receive 9.8% of the surcharges on felony and misdemeanors charges (up from 5.3218%). This is likely to provide an estimated \$19.47 million for each year of the biennium.

Additional considerations: DARS’s evaluation of the ECI program determined that the amount of direct service hours currently received by ECI children is not sufficient for desired outcomes. Children who do not receive adequate early intervention often require more costly services, provided through special education, Medicaid, etc.

Department of Family and Protective Services (DFPS)

Child Protective Services programs (CPS) – HB 1 fully funds foster care, adoption subsidy and permanency care assistance caseloads using 2010–11 rates. HB 1 also maintains FY 2010–11 funding levels for the relative and other designated caregiver program (Kinship Care). If caseloads grow more than what is appropriated, CPS staff will not be able to devote the necessary time and effort to ensure that all children on their caseloads are safe from abuse and neglect.

Prevention programs – Prevention programs are designed to provide assistance to families so that children are not removed and placed in conservatorship. Without adequate funding for prevention programs, more children will be removed from their families and placed in foster care. Although, HB 1 cut “Other At-Risk Prevention Programs,” an amendment was added to restore \$4.6m in general revenue to the program. Prevention programs include Family Strengthening Services, Youth Resiliency Services, Community-Based Child Abuse Prevention and Statewide Youth Services Network.

DFPS Program	Funding	
	FY 10-11	FY 12-13
Child Protective Services	\$2.3b	\$2.3b
Prevention Programs	\$88m	\$62.0m
Adult Protective Services	\$134.4m	\$135.1m
Child Care Regulations	\$68.7m	\$73.6m

Adult Protective Services programs (APS) – HB 1 provides an increase in funding due to increased federal funds. The overall funding increase will allow DFPS to improve the timeliness of due process cases and restore emergency client services. APS mental health and MR (ID) investigators have the ability to provide emergency services to persons receiving Home and Community-based Service Waiver (HCS) services to protect a client from serious harm or death. Services may include paying an electric bill or fixing a window so the client can remain in their own home.

Child Care Regulations – HB 1 includes an increase for child care regulations to assist in timely due process hearings.

Additional considerations: DFPS is charged with protecting *all* children and adults from abuse, neglect and exploitation, including individuals with disabilities. Therefore, the budget does not reduce the number of children or adults served through DFPS. With less funding to serve the same or more people, DFPS will be forced to increase caseloads of its employees, which may negatively impact the quality of services provided.

Department of State Health Services (DSHS)

Adult Community Mental Health (CMH) – Through the mental health block grant, DSHS contracts with 37 local community mental health centers (LMHA’s) to provide mental health services and new generation medications statewide. Funding is restored to FY 2010-11 levels, but appears to be 4% less because Texas received one-time federal stimulus funds in FY 2010-11 and an increased Federal share of funding. With restored funding Texas ranks 51st in mental health services with 10,000 individuals on waiting lists at the end of 2010.

DSHS Program	Funding	
	FY 10-11	FY 12-13
Adult Community Mental Health	\$578.9m 73,484†	\$553.1m 73,484†
Mental Health Crisis Services	\$164.8m 10,000†	\$164.9m 10,000†
Children’s Community Mental Health	\$132.9m 12,206†	\$153.5m 16,714†
NorthSTAR Behavioral Health	\$201.5m 27,169†	\$225.2m 27,169†
Mental Health Hospitals	\$839.1m 2,562*	\$890.8m 2,662*
Children with Special Health Care Needs	\$83.4m 1,251‡	\$71.3m 900‡

Mental Health Crisis Services – This program provides mental health crisis hotlines, emergency psychiatric stabilization, peer support services and mobile crisis outreach teams that help prevent suicides and hospitalization. The lack of MH crisis services forces local police departments to jail or transport people in crises to local emergency rooms. Funding is restored with outpatient competency restoration.

Children’s Community Mental Health - A child with an untreated mental health disorder may endure unnecessary time in a hospital, delay in accessing medical treatment, misdiagnoses,

difficulty in school, or removal from his/her family. This program received a \$20.6m increase over FY 2010-11 funding.

NorthSTAR Behavioral Health – NorthSTAR managed care provides both mental health and chemical dependency services for Medicaid and indigent eligible children and adults in Dallas, Ellis, Collin, Hunt, Navarro, Rockwall and Kaufman counties. DSHS notes that the number of individuals served is not comparable to adult and children’s CMH because of the different service models. NorthSTAR received an increase of \$23.7 million for expansion.

Mental Health Hospitals – The eight state-operated psychiatric hospitals, pediatric facility and Rio Grande Center will receive a 1% increase in funding to maintain current services and increase psychiatric salaries. Five community-based psychiatric hospitals operated in connection with LMHAs maintained FY 2010-11 funding. Montgomery County hospital received \$30 million to add 100 beds to the state hospital forensic capacity. And Harris County received \$9.9 million for a 20-bed competency restoration unit. A budget rider will privatize a state MH hospital if a 10% savings can be realized.

Children with Special Health Care Needs (CSHCN) – This program serves children with special health care needs and people of any age with cystic fibrosis. Funding was reduced by \$12.1m to \$71.3m. It is possible some children will lose services they are currently receiving. As of April 30, 2011, there were 982 children on the waiting list.

Additional Considerations: DSHS, in coordination with TEA, will develop a Comprehensive Suicide Prevention Program for public school students in middle and high school.

Department of Housing and Community Affairs (TDHCA)

TDHCA is our state public housing authority, with 98% of its funding coming from the U.S. Department of Housing and Urban Development (HUD) to address the needs for low-income and unique housing needs. Funding goes to communities, low-income housing developers and individuals for new construction, renovation or rehabilitation of single and multi-family affordable housing. The TDHCA FY 2012-13 overall budget returns to \$379 million, the FY 2008-09 level prior to federal stimulus funds. TDHCA provides programs that address unique housing needs, including the needs of people with developmental disabilities.

Housing Trust Fund - The Housing Trust Fund (HTF) was established by the 72nd Legislature to address affordable housing needs that cannot be produced solely with existing federal resources. This program grew to \$22 million in FY 2010-11. The budget for FY 2012-13 is cut by 60% after \$1.2 million was transferred to the Veterans Commission for veteran's housing needs leaving \$10m for the HTF programs that currently include rural capacity building, homebuyer assistance, bootstrap loan, disaster recovery gap assistance, affordable housing match, HTF homeownership and the Amy Young Architectural Barrier Program, named after a TCDD staff member who advocated for its creation. The Amy Young program provides one-time grants for up to \$15,000 in home or rental unit modifications specifically needed for accessibility, and up to an additional \$5,000 in other rehabilitation costs correlated with the barrier removal project. Last year, the first for the program, \$1.9 million was awarded to nonprofit and local government entities to assist persons with disabilities with removal of barriers in their homes.

TDHCA Program	Funding	
	FY 10-11	FY 12-13
Housing Trust Fund	\$22m	\$11.3m
Homeless Housing and Services Program (HHSP)	\$20m	\$0

Homeless Housing - Studies show that people with disabilities are over-represented within the homeless population. They are more likely to have repeated episodes of homelessness and remain homeless for longer periods of time. The TDHCA Homeless Housing and Services Program request for a second year of \$20 million to be distributed among Texas' eight largest urban areas to help address homelessness was deleted although the budget authorizes the Governor's Enterprise Fund to transfer up to \$10 million from unused funds.

Additional Considerations - The Bootstrap Loan program is a self-help construction program, such as Habitat for Humanity, that is designed to provide very low-income families an opportunity to help themselves through the form of sweat equity. Texas state law requires \$3 million per year be available for this program, however HB 1 provides only \$3m for the biennium.

Expansion of Utilization Management and Review Activities

Questions and Answers from

Webinars Conducted November 18-22, 2010

DADS recently conducted five webinars on Expansion of Utilization Management and Review Activities. Following the webinars, DADS compiled the questions submitted by participants, and is providing responses below based on what is known as of this date regarding expansion activities. As explained in the webinars, the information was not intended at this time to be about **specific** programs, activities, or provider communities, but rather to provide an overview of general information about the objectives, methods, and other planned expansion activities. Additional information will be forthcoming as is available, and stakeholder input will be sought. Please note - if a question was submitted which related to program-specific policy, it will not be included in these responses related to utilization review (UR). Finally, DADS would like to address comments received about the webinar format used without a live exchange for questions and answers. Due to the space limitations for webinars, we were not able to include all providers and stakeholder groups at one time. The goal was to ensure everyone had the same information, including the questions/answers. Therefore, the webinar format was selected. DADS appreciates your patience and willingness to participate in this format. DADS looks forward to working with the provider and stakeholder communities as processes are developed.

Question 1: Will providers be given results of reviews whether positive or negative?

Response: As a result of utilization review (UR), outcomes are determined in part by the specific program, and the type of review - either prospective or concurrent. UR outcomes could include plan changes or no plan changes. As program-specific operational details are available, information will be shared which will include how results of UR are shared with providers.

Question 2: Is the appeal process for consumers on service plan changes the same?

Response: The appeal processes will remain the same in accordance with program specific procedures.

Question 3: Will there be additional responsibilities for providers (e.g. forms, reporting requirements, additional visits, new guidelines)?

Response: As program-specific operational details are available, information will be shared.

Question 4: If the potential outcome for example recommendations by UR is to decrease a service will DADS provide the recommendation to the consumer or CMA responsible to decrease service based on the outcome.

Response: As program-specific operational details are available, information will be shared.

Question 5: Will UR include consumers who use the CDS option?

Response: Consumers who use the CDS option are not treated differently and could be included in UR. Consumers enrolled in any of DADS programs may be selected for UR, regardless of their choice of service delivery option.

Question 6: Will we receive any certificates or documentation showing that we have attended this training?

Response: These webinars were not designed for continuing education credits. You may print your registration confirmation as proof of registration for the webinar.

Question 7: Why is the ARC of Texas training DADS staff on UR?

Response: Stakeholder participation to assist with training is one way organizations that have expertise working with individuals with developmental disabilities, such as the ARC of Texas, can partner with DADS to assist the agency with training curriculum regarding characteristics unique to individuals with developmental disabilities that may be important considerations during utilization review. Utilization review is not a medical activity, but rather an activity to ensure the needs of individuals are being met.

DADS Utilization Review

DADS Utilization Review

- Requirements for utilization review (UR)
- Objectives of UR
- Expansion
- Methods
- Outcomes
- Current activities

Requirements for UR

1. Centers for Medicare and Medicaid (CMS) Services

CMS requires services provided in waiver programs remain cost neutral. In order to maintain cost neutrality, the average cost of services cannot exceed 100 percent of the average cost of services provided in a hospital, nursing facility, or ICF/MR.

CMS requires measures are taken to protect the health and welfare of consumers.

Requirements for UR, Continued

2. Legislative

2010-2011 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 36, S.B. 1, 81st Legislature, Regular Session, 2009)
Rider 36, paragraph c, **Use of Utilization Management and Utilization Review Practices**, states:

“The department shall employ utilization management and utilization review practices as necessary to ensure that the appropriate scope and level of services are provided to individuals receiving services in Medicaid 1915(c) waivers administered by the department and to ensure compliance with the cost-effectiveness requirement of the Centers for Medicare and Medicaid Services.”

Requirements for UR, Continued

3. Texas Administrative Code (TAC)

TAC, Title 40, Social Services and Assistance, Part I, Department of Aging and Disability Services:

[http://info.sos.state.tx.us/pls/pub/readtac\\$ext.ViewTAC?tacview=3&ti=40&pt=1](http://info.sos.state.tx.us/pls/pub/readtac$ext.ViewTAC?tacview=3&ti=40&pt=1)

Objectives of UR

Information gathered through the utilization review process is used by DADS management to:

- Help ensure consumers are getting the services and supports that they need, no more and no less
- Comply with requirements for cost effectiveness
- Ensure DADS policies and procedures are consistent with the intent of the program.

UR Expansion

Current activities underway at DADS to expand UR will include changes in utilization management and review activities for its Medicaid community entitlement and waiver programs. The following programs are part of this expansion plan:

- Primary Home Care/ Community Attendant Services (PHC/ CAS)
- Day Activity and Health Services (DAHS)
- Community Based Alternatives (CBA)
- Community Living Assistance and Support Services (CLASS)
- Deaf Blind with Multiple Disabilities (DBMD)
- Home and Community-Based Services (HCS)
- Medically Dependent Children Program (MDCP)
- Texas Home Living (TxHmL)

UR Expansion, Continued

Expanded UR for the various programs will use some standardized processes; because of significant variance in number of consumers served and the intent of the programs, some variation in sampling and review methods will occur.

UR Methods

- Sampling
- Types of reviews
- Review activities
- UR staff
- Tools

Methods: Sampling

- Statistically valid random sample
- Non-random sample; based on specific program criteria

Review Types

- **Concurrent Review** (Post-Authorization)
The random sample selected for concurrent reviews includes consumers currently enrolled in the program.
- **Prospective Review** (Pre-Authorization)
Review of the requested services of selected consumers based on specific program criteria prior to authorization.

Review Activities

UR will include the following review methods:

- Desk reviews
- Scheduled face-to-face visits with consumer
- Combinations

UR Staff

Staff conducting reviews could include:

- Registered nurses
- Psychologists
- Program specialists
- Qualified MR professionals

DADS Utilization Management and Review Workgroup

- DADS has convened an internal workgroup dedicated to the development of UR expansion plans and functions.
- The workgroup is addressing three main areas of expansion:
 - Assessment tool development;
 - Data collection and management; and
 - Communication and training needs.

UR Assessment Tools

- Some programs already use assessment tools for UR, while others do not.
- The workgroup is working to develop UR assessment tools that will provide a framework for consistency in gathering information across DADS administered programs.
- At a minimum these tools will focus on the appropriate scope and level of service, and cost-effectiveness of services.
- DADS will share all draft tools with stakeholders and staff for feedback.

New Concurrent UR Reviews

As part of the expansion, DADS will begin to conduct concurrent, sampled face-to-face reviews in the following programs:

- Community Living Assistance and Support Services (CLASS);
- Home and Community-based Services (HCS); and
- Texas Home Living (TxHmL)

New Concurrent UR Reviews, Continued

- Prior to initiating this new activity, DADS will:
 - Share plans for concurrent reviews with individuals, families and stakeholders;
 - Share the draft assessment tool with stakeholders and staff;
 - Train UR staff on the tool, including procedures regarding implementation of the tool; and
 - Pilot the draft assessment tool.
- DADS hopes to accomplish these goals during the 2011 summer months.

UR Outcomes

What are the anticipated outcomes of UR for the individual receiving program services?

For providers?

For DADS?

Outcomes: Individual

- Services may increase, decrease or stay the same.
- UR findings may provide the opportunity to educate an individual or family regarding program services.
- Findings may identify the need to refer an individual for additional resources.

Outcomes: Providers

- Assessment results may necessitate service plan changes.
- No service plan changes.
- Results may provide the opportunity to educate a provider regarding program standards or related topics.

Outcomes: DADS

Findings from UR will inform DADS regarding the need for:

- New policy development and/or revisions
- Policy clarifications
- Overall process improvement

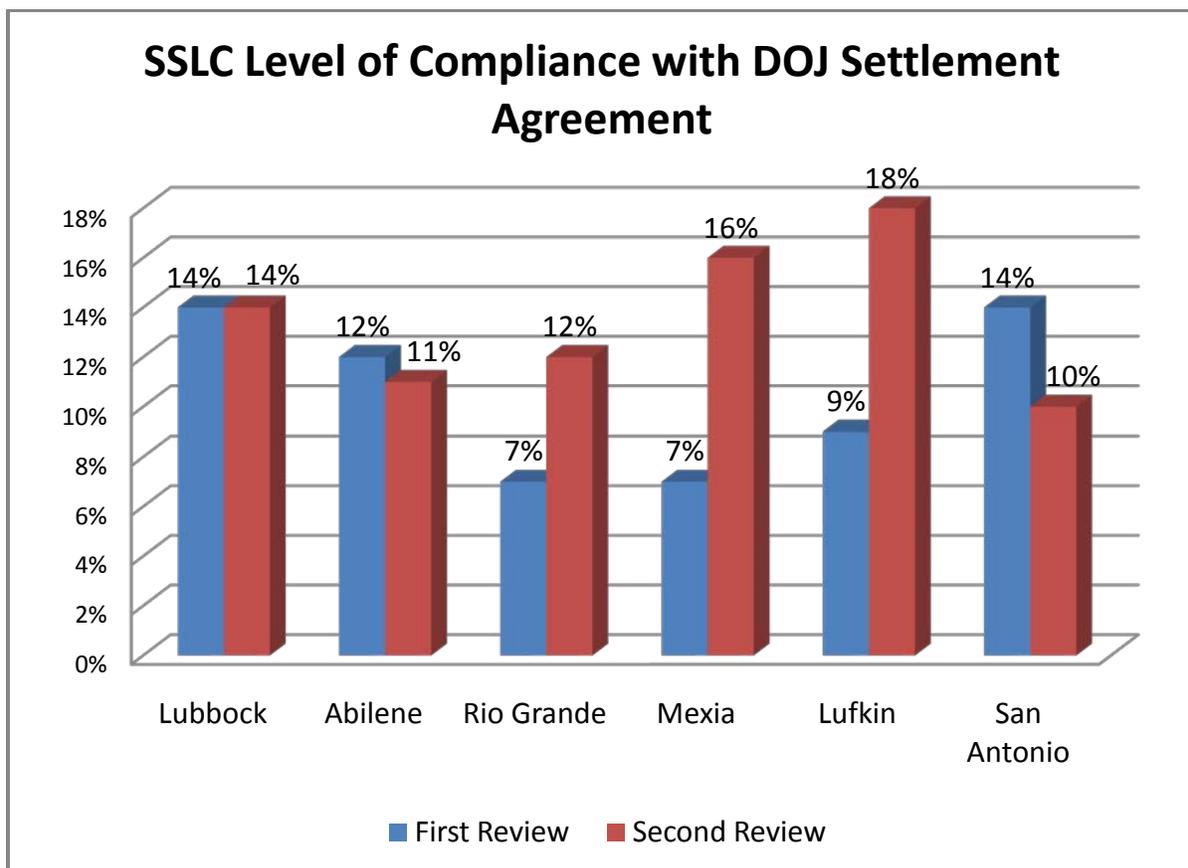
Current Activities

- Training of recently hired staff
- Development and refinement of UR tools and processes
- Development of data collection and management procedures
- Communication with individuals receiving program services, families and stakeholders

State Supported Living Center Compliance Reports, Round Two

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/MR 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 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 in 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. As of mid-July, reports have been issued from reviews of nine SSLCs, three of which were covered in the May 2011 meeting. The text below discusses some of the observations made by the monitoring teams on each SSLC's compliance with the Settlement Agreement.



This chart compares the proportion of compliance with the SA by each SSLC in the first compliance review with the second review based on the number of provisions that were rated as substantially compliant.

Lubbock State Supported Living Center (LBSSLC)

LBSSLC was compliant in 23 of 162 provisions rated by the monitoring team, which comprises 14 percent compliance with the DOJ Settlement Agreement. The monitoring team commended LBSSLC staff on positive practices in a variety of areas including reducing the use of restraint, committing to eliminating abuse, neglect, and exploitation, as well as psychiatric care and services. However, there were 14 sections where the facility was 100 percent noncompliant, including in the areas of integrated protections and supports, medical and nursing care, and habilitation, training, and skill acquisition programs. The monitors observed that LBSSLC was not identifying supports in the community that could help individuals move to the most integrated setting and was reducing the community integration of its skill acquisition programs.

Abilene State Supported Living Center (ABSSLC)

ABSSLC was compliant in 18 of the 163 provisions assessed by the monitoring team, or 11 percent compliance with the SA. There were 15 sections evaluated wherein the facility was 100 percent noncompliant in all provisions that were rated. These sections included use of restraint, clinical services, treatment of at-risk individuals, medical care, nursing care, and habilitation and skill acquisition programs. The monitoring team commented that a significant amount of staff training was completed since the last review in the areas of abuse, neglect and incident management as well as integrated protections and supports, and treatment of at-risk individuals. Psychology staff was also seeking certification in Applied Behavior Analysis. The monitoring team observed significant concerns with nursing care in the Infirmary, identifying this as a priority to be addressed in order to reduce the risk to individuals being treated there.

Rio Grande State Center (RGSC)

Only 12 of 163 provisions examined at RGSC were rated compliant, which constitutes seven percent of provisions. There were 16 sections that were 100 percent noncompliant, including clinical services and care, care of at-risk individuals, medical and nursing care, and habilitation and skill acquisition programs. The monitoring team noted improvements in a number of categories, including the use of restraint as well as abuse, neglect, and incident management. However, the team did document late reporting or lack of reporting on some incidents. Communication assessments were not sufficiently comprehensive to identify strengths or needs to develop appropriate action plans. Many individuals were not provided with services to improve communication. According to the report, RGSC routinely failed to provide formal and informal training to individuals on campus or integrated into the community. RGSC's policy on making sure that residents were in the most integrated setting was based on whether residents or legally appointed representatives approached RGSC staff about moving into the community.

Mexia State Supported Living Center (MSSLC)

Monitors rated 26 of 163 provisions assessed compliant at MSSLC, which comprises 16 percent compliance with the DOJ Settlement Agreement. Of the 20 areas covered in the monitoring report, 14 were compliant in 100 percent of the provisions assessed. Among the areas in complete noncompliance with the SA include clinical, medical, dental, and nursing care as well as skill acquisition programs and physical and occupational therapy. Although the use of restraint was in decline since the previous monitoring team visit, there was a significant spike at that time. DFPS confirmed that there were 28 confirmed cases of abuse, neglect, exploitation, and emotional or verbal abuse from September to December 2010. The monitoring team expressed great concern that individuals at MSSLC continued to be at risk for harm. The monitoring team noted improvement in habilitation, training, education, and skill acquisition programs in terms of tracking data and improving training of individuals in the community. The monitoring team documented some positive practices with moving individuals to the

most integrated community setting, though planning was found to lack individualization and there were some problem placements in the community.

Lufkin State Supported Living Center (LSSLC)

Of the 163 provisions evaluated by the monitoring team, 29 or 18 percent were rated as compliant. Fourteen of the sections evaluated were entirely noncompliant, including the areas of clinical, medical, nursing, and dental services as well as communication and skill acquisition programs. The monitoring team documented a slight increase in the use of restraint. Although there were 16 confirmed cases of abuse, neglect, or exploitation, this was a decrease from the previous quarter. In the communication provision, the monitoring team noted that only 10 evaluations were complete and not all individuals who needed communication supports received them. There was improvement in determining appropriate skill acquisition programs for individuals and establishing individual engagement goals. The number of individuals who were in the process of being referred and placed in the most integrated community setting was low. Of the nine individuals who were placed in the community since the last onsite review, two of them were readmitted to LSSLC due to failed community placements.

San Antonio State Supported Living Center (SASSLC)

Ten percent of the provisions assessed at SASSLC were rated compliant, although 15 of 20 sections were rated as 100 percent noncompliant. The monitors commended SASSLC for its support for new staff and retention and staff satisfaction. The number of restraints had increased since the previous monitoring visit, although available data was inadequate to determine the proportion of the increase. Between June 1 and November 31, 2010, DFPS confirmed 22 allegations of abuse, neglect, and exploitation. The number of injuries reported at the facility declined by seven percent since the previous review. Although new policy for addressing risk was established, staff was not yet trained on the tools for assessing risk. The monitoring team recommended that the SASSLC make staff training on crisis indicators a primary focus to ensure the safety of each individual.

Compliance Reports are online at <http://www.dads.state.tx.us/monitors/reports/index.html>. The Settlement Agreement is at <http://www.dads.state.tx.us/homepage/FinalSettlementAgreement.pdf>.