

81st Regular Session Legislative Summary – Department of Aging and Disability Services

Please note: The information below is a high level summary of some, but not all, of the legislation passed with significant impact on the Department of Aging and Disability Services (DADS), our consumers, or our providers.

HB 216, Menendez

Relating to the regulation of certain boarding home facilities and assisted living facilities; providing penalties.

- Allows cities and counties to regulate boarding homes at the local level.
- Defines boarding home facilities as establishments that furnish lodging to three or more persons with disabilities or elderly persons and provide community meals, housework, meal preparation, transportation, grocery shopping, money management, laundry services, or assistance with self-administration of medication.
- Other regulated and certified facilities and locations like hotels, monasteries and child care facilities are excluded from the definition.
- Requires Health and Human Services Commission (HHSC) to develop and publish model standards, which the local authorities have the option of using.
- Requires cities and counties that choose to regulate boarding homes to report annually to HHSC data related to boarding homes in their jurisdiction.
- Requires HHSC to compile and report information from cities and counties to the legislature each January prior to a regular legislative session.
- Eliminates Type E assisted living facilities by repealing language requiring a classification and license for a facility that provides only medication supervision.
- Refines the definition of assisted living facilities in Health and Safety Code Chapter 247 to clarify that if a facility provides personal care services or administers medication (or both), it is an assisted living facility. An assisted living facility may also provide assistance with or supervision of medication, but those services are not the defining factor. Administration of medication is deleted from the definition of personal care services, since it stands on its own in the definition of assisted living facility.

81st Regular Session Legislative Summary – DADS

HB 610, Naishtat

Relating to the establishment of the Legislative Committee on Aging and other initiatives relating to the aging population of this state.

- Establishes a legislative committee on aging to study and make recommendations on issues relating to the aging population of Texas, including issues related to the health care, income, transportation, housing, education, and employment needs of that population.
- Sets forth the composition of the committee to include two house members, two senators, and two public members and establishes the powers and duties of the committee.
- Requires the committee to report the summary results and findings of the committee to the legislature by November 15 of each even-numbered year.
- Authorizes the executive commissioner of HHSC to contract with an entity to conduct local forums throughout this state to solicit input on and discuss policies regarding aging-related issues, including issues that are affected by the demographic and geographic diversity of the aging population in this state; provide analysis, education, and research services with respect to aging-related issues; and identify problems encountered by the aging population in this state and develop and recommend to the executive commissioner and the legislature solutions to those problems.
- Establishes the “Chris Kyker Endowment for Seniors Fund” to be used to pay for a contract described above with money appropriated, granted, or given to the fund.

HB 703, Rose

Relating to fall prevention awareness.

- Establishes “Fall Prevention Awareness Week” in the state beginning the first Sunday after the Autumnal Equinox.
- Authorizes DADS to raise public awareness about fall prevention; educate older adults and individuals who care for older adults about best practices to reduce the incidence and risk of falls among older adults; encourage state and local governments and the private sector to promote policies and programs that help reduce the incidence and risk of falls among older adults; encourage area agencies on aging to include fall prevention education in their services; develop a system for reporting falls to improve available information on falls; and incorporate fall prevention guidelines into state and local planning documents that affect housing, transportation, parks, recreational facilities, and other public facilities.

81st Regular Session Legislative Summary – DADS

HB 748, Darby

Relating to the provision of services to certain individuals with developmental disabilities by a state school or state center.

- Allows providers to contract with state schools and centers for the state school or state center to provide services and resources to persons with developmental disabilities, including persons with a dual diagnosis.
- Allows a state school or state center to provide nonresidential services to support an individual if the individual is receiving services in a program funded by the department; meets the eligibility criteria for the intermediate care facility for persons with mental retardation program; and resides in the area in which the state school or state center is located; and if the provision of services to the individual does not interfere with services to a resident of the state school or state center.

HB 802, John Davis

Relating to the creation of the lifespan respite services program.

- Creates a lifespan respite services program for the primary caretaker of an individual who has a chronic serious health condition or a disability.
- Establishes eligibility for the program. To participate in the program, a caregiver must be the primary caregiver for an individual who: is related within the second degree of consanguinity or affinity; has a chronic serious health condition or disability; requires assistance with one or more activities of daily living; and is not eligible for or not able to participate in any other existing respite services program.
- Requires DADS to issue a request for proposals and award a contract to at least three eligible community-based organizations or local governmental entities to provide respite services and facilitate access to respite services. The bill also establishes criteria for participating community-based organizations or local governmental entities.
- Requires DADS to provide the contractor with technical assistance and policy and program development support. DADS must monitor a contractor's performance using clearly defined and measurable performance objectives.
- In addition, the contract must require a respite services coordinator (defined as a contractor to facilitate respite services) to provide vouchers, subject to available funds, to participating caregivers who are not eligible for respite through other programs and to connect participating caregivers with available respite services. A respite coordinator must: maintain information regarding respite providers; build partnerships with respite providers; and implement public awareness activities regarding respite.

81st Regular Session Legislative Summary – DADS

- Requires HHSC, in consultation with DADS, to report by November 1, 2010, to the governor and Legislative Budget Board (LBB) about the respite program, including an evaluation of the effect of the program on access to respite by primary caregivers and on Medicaid expenditures for long-term care services in institutional settings.

HB 1218, Donna Howard

Relating to programs to exchange certain health information between the Health and Human Services Commission and certain health care entities and facilities.

*Note: We have included only provisions of the bill that relate directly and specifically to long-term services and supports.

- Requires the executive commissioner, if feasible, to establish a quality of care health information exchange with certain nursing facilities that choose to participate in a program designed to improve the quality of care and services provided to medical assistance recipients.
- Authorizes the nursing facility health information exchange program to provide incentive payments if funds are available to encourage facilities to participate in the program.
- Sets forth requirements for the nursing facility health information exchange program, including requirements that performance measures that are part of the information to be exchanged be valid indicators of overall quality of care and designed to encourage and reward evidence-based practices.
- Authorizes the executive commissioner to enter into a contract with a qualified person for data collection, data analysis, and technical support for the program.

HB 1454, Naishtat

Relating to the establishment of a volunteer-supported decision-making advocate pilot program for persons with intellectual and developmental disabilities and persons with other cognitive disabilities.

- Requires HHSC to create a volunteer advocate pilot program to provide supported decision-making services to persons with intellectual and developmental disabilities and persons with other cognitive disabilities residing in the community (specifically prohibits volunteers from working with persons living in state schools).
- Requires HHSC to select at least one urban and one rural community to implement the program and convene a work group to develop rules for the program.

81st Regular Session Legislative Summary – DADS

- Requires HHSC to contract with one or more entities to administer the pilot program and to recruit and train volunteer advocates to provide supported decision-making services.
- Requires HHSC, before each regular legislative session, to publish a report that includes an evaluation of the effectiveness of the pilot program based on criteria in rule, recommendations for changes for improvement to the program and a recommendation to continue, expand, or eliminate the pilot program.

HB 1574, Thompson

Relating to services for persons with autism and other pervasive developmental disorders and their families.

- Requires HHSC to establish and administer an autism spectrum disorders resource center to coordinate resources for individuals with autism and other pervasive developmental disorders (PDDs) and their families. In doing so, HHSC must consult with the Texas Council on Autism and PDDs.
- Requires that the center be designed to collect and distribute information regarding autism and other PDDs, conduct training for persons involved with individuals with autism or a PDD in the course of their employment, coordinate with local entities that provide services to individuals with autism or a PDD, and provide support for families of such individuals.
- Requires HHSC to conduct a study to determine the costs and benefits to the state of initiating a pilot program to provide services to adult persons with autism and related disabilities with similar needs. The study will determine costs and benefits of a program designed to: encourage employment and community integration through specialized supports, case management, and vocational assessment and training; develop community-based activities for persons who do not have employment as a goal; promote individual development and self-determination; coordinate services and supports across all areas of need; and allow for flexible funding and a flexible array of services to meet individual needs.
- Requires HHSC to define the pilot program to provide: options for independent living and individualized supports; research best practices from other states; consult with key stakeholders; address barriers that prevent adults with autism and other disabilities from living in their local community; develop recommendations and costs associated with service gaps; and identify benefits to persons in the pilot program and potential sources of federal funding for the program.
- Requires HHSC to submit a report of the findings of the study to various governmental officials no later than September 1, 2010.

81st Regular Session Legislative Summary – DADS

HB 2191, Veasey

Relating to prohibiting contact between an employee of a facility that serves the elderly or disabled persons, whose criminal history has not been verified, and a patient or resident of the facility.

- Prohibits employees of DADS' regulated facilities and agencies and DADS' contractors from having direct contact with a consumer until the facility or agency obtains the person's criminal history record information and verifies employability.

HB 2559, Truitt

Relating to the powers and duties of the Employees Retirement System of Texas.

- Prohibits persons who retire on or after May 31, 2009 from returning to work for 90 days.
- Requires an agency that employs a person who is retired and is rehired on or after September 1, 2009 to pay the Employees Retirement System a re-employment surcharge equal to the state's contribution for each month the person is employed.
- Limits the use of sick and annual leave to meet service requirements to persons who are members on August 31, 2009 or employed before September 1, 2009. Otherwise, sick and annual leave may be used only for calculating an annuity.
- Changes the eligibility age from 60 to 65 (with 10 years service credit) for certain persons hired on or after September 1, 2009 or to 5 years service credit for such persons who meet the rule of 80.
- Changes the method of computing the annuity of persons hired on or after September 1, 2009 from the highest 36 months salary to the highest 48 months and reduces the annuity by 5% for each year the person retires earlier than age 60 (with a maximum reduction of 25%).
- Increases the contribution of each non-legislative employee to 6.5% or the state's contribution, whichever is less (with a 6% minimum).

HB 2972, Coleman

Relating to licensing of certain health facilities.

- Defines controlling person for nursing facilities and assisted living facilities as an officer or director of the corporation. Clarifies that a shareholder or lender of a publicly traded corporation is not a controlling person.

81st Regular Session Legislative Summary – DADS

- Requires DADS to implement an expedited inspection process for life safety code inspections at nursing facilities and assisted living facilities. The process must allow the applicant to obtain a life safety code and physical plant inspection not later than 15 days after the date of the request for the inspection.
- Requires DADS to issue a provisional license to a newly constructed assisted living facility if certain requirements are met:
 - the facility is in compliance with resident care standards;
 - all local approvals have been obtained;
 - a complete license application is submitted within 30 days of receipt of all local approvals and the license fee has been paid;
 - the applicant has submitted working drawings and specifications to DADS for review; and
 - the applicant has constructed another facility in Texas that complies with life safety requirements.
- Establishes that a provisional assisted living facility license expires the earlier of 180 days after the effective date of the provisional license or the date a standard license is issued. Requires DADS to conduct a life safety code inspection as soon as possible after the provisional license is issued.
- Allows DADS to charge a fee to recover the cost of the expedited life safety code inspections for assisted living facilities and to collect an additional fee if more than two such inspections are conducted at the facility.
- Requires the rules related to fees for expedited life safety code inspections to permit DADS to set different fee amounts based on the size and type of institution.
- Requires DADS to annually report the number of times the department first visits a facility for a life safety code survey more than 60 days after the applicant has notified the department of readiness. Allows DADS to report other data related to the timeliness of life safety code surveys or the processing time of license applications.
- Allows the approval of organizations to satisfy inspection requirements in addition to the Commission on Accreditation of Rehabilitation Facilities and the Joint Commission on Accreditation of Healthcare Organizations.

SB 37, Zaffirini

Relating to providing home-based and community-based support services under the Medicaid program to persons who are deaf-blind with multiple disabilities.

- Requires the expansion of the deaf-blind with multiple disabilities waiver program to children under age 18.

81st Regular Session Legislative Summary – DADS

SB 271, Harris

Relating to informal caregiver support services and to the appointment of a successor guardian for certain wards adjudicated as totally incapacitated.

- Requires DADS to coordinate with Area Agencies on Aging (AAAs) and assist them in public awareness outreach efforts related to support for informal caregivers.
- Requires DADS to create or modify a form to be used in the functional eligibility determination process for long-term care benefits for older persons under the Medicaid program to identify informal caregivers and refer them to available support services.
- Requires DADS, in cooperation with AAAs, to develop and implement a protocol to evaluate the needs of certain informal caregivers who access services through a local entity.
- Requires DADS to require AAAs to use the protocol and assessment tool and to gather and report data to DADS.
- Requires DADS to analyze the data and submit a report summarizing the analyzed data to the governor and the Legislative Budget Board each even-numbered year not later than December 1. Requires the initial report be submitted by December 1, 2012.
- Requires DADS to use the analyzed data to evaluate the needs of assessed informal caregivers; measure the effectiveness of certain informal caregiver support interventions; improve existing programs; develop new services as necessary to sustain informal caregivers; and determine the effect of informal caregiving on employment and employers.
- Authorizes DADS, as is deemed feasible, to perform the activities described above for and with other entities (besides AAAs) that provide services and supports for aging persons and individuals with disabilities.
- Establishes that a probate court may appoint DADS as a successor guardian of the person or estate, or both, of a ward who has been adjudicated as totally incapacitated if:
 - there is no less restrictive alternative to the continuation of the guardianship;
 - there is no family member or other suitable person willing and able to serve as successor guardian;
 - the ward is located more than 100 miles from the court that created the guardianship;
 - the ward has private assets or access to government benefits to pay for the needs of the ward;
 - DADS is served with a citation and a hearing is held; and

81st Regular Session Legislative Summary – DADS

- the appointment does not make DADS exceed an annual limit of 55 new wards under this law.

SB 643, Nelson

Relating to the protection and care of individuals with mental retardation and to certain legal protections for individuals with disabilities; providing criminal penalties.

- Changes the name “state school” to “state supported living center” and lays out related definitions and the powers and duties of a director of a state supported living center.
- Grants DADS access to FBI criminal history record information for employees, applicants, volunteers, and volunteer applicants who would have direct contact with a resident of a state supported living center or the Intermediate Care Facility for Persons with Mental Retardation (ICF/MR) component of the Rio Grande State Center, and requires state and FBI fingerprint criminal history checks and electronic updates from the Department of Public Safety for these individuals.
- Requires a separate forensic state supported living center for high-risk alleged offender residents at Mexia. Requires DADS to transfer to the forensic state supported living center an alleged offender already residing in a state supported living center who is classified as high-risk (at risk of inflicting substantial physical harm to another). Alleged offenders who are charged with or convicted of a felony offense must initially be committed directly to the forensic state supported living center at Mexia.
- Requires the Mexia Independent School District to hire behavior support specialists to provide educational services to alleged offender residents of the Mexia Forensic State Supported Living Center. The qualifications for behavior support specialists and their role are defined, including coordination between the behavior support specialists and the center. Requires a Memoranda of Understanding between the school district and the center, and establishes that if the school district and the center fail to agree on the services required for residents or responsibility for those services, the agreement may be referred to the commissioners of the Texas Education Agency and DADS. If the commissioners are unable to bring the parties to agreement, the Office of the Attorney General will appoint a neutral third party to resolve the issues. Additional funding is provided to the Mexia Independent School District for each alleged offender resident who attends school.
- Requires HHSC to adopt a policy regarding random and reasonable suspicion drug testing of employees of state supported living centers.

81st Regular Session Legislative Summary – DADS

- Establishes requirements for training of state supported living center employees.
- Creates an Assistant Commissioner for State Supported Living Centers at DADS state office.
- Requires DADS to install and operate video surveillance equipment in a state supported living center and the ICF/MR component of the Rio Grande State Center. Defines “private space” and prohibits the use of video surveillance equipment in a private space.
- Establishes the Office of Independent Ombudsman for State Supported Living Centers and lays out the responsibilities of the ombudsman and assistant ombudsmen.
- Requires the Office of Inspector General at HHSC to employ and commission peace officers to assist local law enforcement agencies in the investigation of alleged criminal offenses involving residents or clients of state supported living centers.
- Requires an independent mortality review process for deaths of residents or clients who at the time of death resided in or received services from an ICF/MR operated by or licensed by DADS or a community center, the ICF/MR component of the Rio Grande State Center, a three- or four-bed group home in the Home and Community-based Services (HCS) waiver program or an assisted living facility in the Deaf Blind with Multiple Disabilities (DBMD) waiver program.
- Requires annual inspections of HCS waiver program group homes.
- Makes the Department of Family and Protective Services responsible for investigating allegations of abuse, neglect or exploitation at licensed ICFs/MR.
- Establishes an investigation database capable of being sorted by home, provider and facility, to collect and analyze information regarding the investigation and prevention of abuse, neglect, and exploitation of individuals with mental retardation who reside in an ICF/MR, including a state supported living center, or an HCS group home other than a foster home, and the results of regulatory investigations
- Establishes an Interim Select Committee on Criminal Commitments of Individuals with Mental Retardation.

SB 705, Nelson

Relating to long-term care consumer information and Medicaid waiver programs.

- Requires DADS and HHSC to streamline the administration of and delivery of services through Section 1915 (c) waivers.

81st Regular Session Legislative Summary – DADS

- Eliminates the Consolidated Waiver Program (CWP). Requires DADS and HHSC to determine eligibility of CWP participants for other waiver programs and transfer those persons to the other waiver without a break in services.
- Requires certain information pertaining to long-term care services to be displayed on the internet site maintained by HHSC and requires the internet site maintained by DADS to contain or provide a link to the information. The information must also be available in print form for any consumer that requests it, for a reasonable fee. The required information includes:
 - An explanation of the manner in which long-term care services are administered in various counties.
 - Detailed information on participants in the Medicaid STAR+PLUS pilot program, including by-county enrollment, services provided, financial statistics, complaint and sanction information, consumer satisfaction, and other data including reports from external quality review organizations.
- Provides that before implementing any provision of this Act, if a state agency determines that the implementation of the provision could result in a reduction or elimination of federal funding, the agency affected by the provision may delay implementing that provision, including by continuing to operate the consolidated waiver program otherwise eliminated by this Act, until the agency is notified by the federal government that the implementation will not result in a reduction or elimination of federal funding.

SB 806, Nelson

Relating to certain employee misconduct registries and to the imposition of a disciplinary action on a licensed nursing facility administrator; providing a penalty.

- Adds additional convictions to the list of offenses for which DADS may revoke, suspend, or refuse to renew a Nursing Facility Administrator's (NFAs) license or assess an administrative penalty. The additional convictions are those listed in Health and Safety Code Section (HSC) 250.006 – the same list of offenses that are bars to employment for other nursing facility employees.
- Requires DADS to conduct a formal hearing for administrative penalties only if the license holder requests a formal hearing.
- Requires nursing facilities, assisted living facilities, home and community support services agencies (HCSSAs), adult day care facilities, ICFs/MR, adult foster care providers, state schools, state hospitals, and HCS providers to check the employee misconduct registry and nurse aide registry before hiring an employee and annually to determine whether the applicant/employee is designated in either registry as having abused, neglected, or exploited a resident or consumer.

81st Regular Session Legislative Summary – DADS

- Expands the employee misconduct registry (EMR) administered by DADS to include nurse aides and employees of state schools, state hospitals, and Community Mental Health/Mental Retardation Center employees confirmed of abuse, neglect or exploitation.

SCR 77, Nelson

Approving the system-wide settlement agreement with the United States Department of Justice resolving certain investigations of state mental retardation facilities.

- Approves the System-wide Settlement Agreement entered into between the State of Texas and the Department of Justice (DOJ) to resolve DOJ's investigations of the 13 state mental retardation facilities in the state.
- Legislative approval of the settlement agreement is required by Section 111.003, Civil Practice and Remedies Code, since the settlement entails a continuing increased expenditure of state funds over subsequent fiscal biennia.