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ISSUES FOR THE CONSIDERATION OF THE DADS SUNSET COMMISSION

Issue 1: Can DADS both effectively operate and regulate state supported living centers (SSLCs)?

Discussion

Currently, DADS operates 13 state supported living centers for persons with disabilities and DADS Regulatory is charged with certifying that each facility meets certain health and welfare standards to continue operation. However, biannual monitoring reports mandated by the Department of Justice settlement agreement indicate that all 13 facilities continue to show alarming deficiencies in basic health and welfare standards. Additionally, data from the DADS Sunset Self-Evaluation indicates that DADS Regulatory has taken a greater proportion of enforcement and regulatory actions against HCBS providers than against ICF-IDD providers. All persons with disabilities have the right to receive services in a healthy, safe, and well-regulated setting of their choice. Allowing DADS to continue to regulate its own programs and services constitutes a significant conflict of interest that negatively impacts the health, safety and well-being of persons served by DADS.

Of additional concern is the use of the Immediate Jeopardy (IJ) designation by DADS Regulatory. While DADS Regulatory has placed SSLCs under IJ more than 50 times since 2009, and many facilities have received multiple designations for significant human rights violations, not once has any SSLC been decertified. The IJ designation is a last-resort indicator that individuals receiving services in Medicaid-funded facilities are in imminent danger of abuse, neglect, or exploitation. This raises questions about whether the operational side of DADS has undue influence over the outcome of the IJ process.

Possible Solutions and Impact

DADS Regulatory should be decoupled from DADS and administered by a separate agency. The impact of this change will ensure that DADS will not have any influence can be held accountable for operating all of its facilities and programs in a manner that consistently accounts for the health, safety and welfare of all the persons they serve. Decoupling operation of programs and services for persons with disabilities from their regulation has been successfully done by several states, and was the norm in Texas prior to legislative consolidation of agencies in 2003.

Issue 2: What can be done to meet current and future demand for home and community-based services (HCBS)?

Discussion

Persons on the interest lists for HCBS waivers now number around 100,000 and waiting times for services now exceed 10 years in many cases. Additionally, the current capacity of home and community-based services providers to serve persons with complex health and behavior needs is a well-acknowledged barrier to successful transition from SSLCs and other institutional facilities. Issues with provider capacity to adapt to changing health

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or behavioral needs can also cause persons currently being served in a community-based setting to enter an SSLC or other institution.

The use of federal Money Follows the Person (MFP) dollars in Texas and across the country has helped tens of thousands of people in nursing homes and private ICF-IDDs successfully transition to community-based settings. However, the use of MFP money to support the successful transition of persons from Texas SSLCs to community settings has been extremely limited and mechanisms to ensure that funds are used appropriately have not been established or enforced. From a recent DOJ monitoring report:

*“During the interview with staff from the Admissions Placement Department, staff indicated that some individuals had been removed from the referral list due to family members becoming guardians and rescinding the referrals. **Of concern, staff stated that the Admissions Placement Department had told teams to work on educating family members prior to making a referral to convince them to become guardian before the referrals were made.** As the State Office staff member observing the interview pointed out, other Facilities were approaching this differently, and having the Transition Specialists work with family member that were not guardians, but had concerns about transition. The Transition Specialists at other Facilities were, for example, identifying the family members’ concerns in more detail, and assisting in answering questions and identifying community providers that had a record of providing specific supports that family members might not think were available in community settings. As opposed to LBSSLC’s stated approach, this latter approach was consistent with the portion of this provision of the Settlement Agreement that required the State to: ‘take action to encourage and assist individuals to move to the most integrated settings...’.” - Lubbock SSLC DOJ Report Summary, 10/17/13*

Possible Solutions and Impact

DADS should place a much higher priority on addressing issues that impact the capacity of community providers to serve persons wishing to transition from institutional settings and persons currently waiting for services. DADS should recommend that the Texas Legislature provide ongoing funding for an enhanced match for providers committed to expanding community services for individuals with complex health and behavioral needs. Any short-term increases in cost will be offset by long-term savings from preventing unnecessary institutionalization. New incentives should be created to ensure that persons with complex health and behavioral needs have the same access to community supports as person with less complex disabilities.

The use of MFP funds to hire staff to coordinate community transitions from SSLCs has been developed with good intentions. However, DADS must establish benchmarks and metrics for transition specialists assigned to SSLCs to ensure that progress on successful transitions from SSLCs to community settings continues to occur.

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Steps also must be taken to ensure that these funds are used exclusively for the successful transition of individuals to the community.

Incentivizing transition to community placements will lower GR costs and improve quality of support services provided to individuals who transition. Additional investments should be made to the Promoting Independence Emergency Diversion program to prevent persons in crisis from having to enter an institutional setting in order to receive support services.

Issue 3: What are DADS' plans for the future of the SSLC system?

Discussion

At present, DADS has not developed any long-range plan for the future of the state supported living center system that has been shared with stakeholders. As the SSLC system census continues to decline, the overall costs of operating and maintaining facilities will continue to rise. It is imperative that DADS create a long-range plan to right-size the SSLC system in a way that has the least possible impact on current residents, their families, and community services providers. The responsible downsizing of such a large and complex state-operated system must be meticulously planned and carried out over a period of years. Texas risks further legal entanglements with the Department of Justice by waiting until the SSLC system becomes financially unsustainable to plan for facility closure and consolidation, something that will likely happen within the next decade. The Legislative Budget Board also concurs with this analysis:

"The number of state supported living centers operating in Texas is not supported by the demand for system services. Texas has opted to decrease the number of residents served at all institutions instead of closing institutions as demand has changed, which has committed the state to a significant outlay of resources." -Legislative Budget Board, 2011

Rider 39 in SB 1, passed during the 83rd Texas Legislature, directed DADS to develop a ten-year plan for services in the SSLCs. It is unclear to stakeholders if DADS has begun the planning process required by the rider.

Possible Solutions and Impacts

DADS must begin work on the ten-year plan for SSLC services as soon as possible and involve diverse stakeholders in the planning and implementation process. DADS must also develop a long-range plan, in conjunction with stakeholders, for the closure and consolidation of SSLCs. The consolidation process must respect the wishes of those choosing to receive services in state-operated facilities and ensure those who wish to transition to community settings have every opportunity to do so. All funding saved through consolidation and closure of SSLCs and other institutions should be used to build the capacities of HCBS providers and reduce the interest list for home and community-based services. Several pieces of legislation to rebalance the state supported living center system were introduced during the 83rd Texas legislature and include SB 729, SB 1045, SB 1766 and their House companion bills.

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