82nd Regular and 1st Called 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 during the Regular Session with significant impact on the Department of Aging and Disability Services (DADS), our consumers, or our providers.

HB 1481 by Truitt
Relating to the use of person first respectful language in reference to individuals with disabilities.

- Directs the legislature and the Texas Legislative Council to avoid using certain terms and phrases in any new statute or resolution and to change those terms and phrases used in any existing statute or resolution as sections including those terms and phrases are otherwise amended by law.
- Directs the legislature and the Texas Legislative Council to replace certain terms and phrases with person-first variations of those phrases and terms.
- Requires the Sunset Advisory Commission, as part of its review of the health and human services agencies, to consider and make recommendations regarding the statutory revisions necessary to use the phrase "intellectual disability" instead of "mental retardation" and to use the phrase "person with intellectual disability" instead of "person with mental retardation."
- Requires the Sunset Advisory Commission, as part of its review of an agency, to consider and recommend statutory revisions in accordance with the person first respectful language initiative under Chapter 392.
- Requires the HHSC Executive Commissioner to ensure that the commission and each health and human services agency use the terms and phrases listed as preferred under the person first respectful language initiative in Chapter 392 when proposing, adopting, or amending the commission's or agency's rules, reference materials, publications, and electronic media.

HB 2109 by Truitt
Relating to authorizing certain actions against an assisted living facility for the inappropriate placement of a resident and prohibiting retaliation against a facility.

- An Assisted Living Facility (ALF) is not required to move a resident if, within ten business days after a facility determines or the department determines that the resident is inappropriately placed at the facility, the facility obtains the necessary statements and waiver required to retain the resident.
- Requires a facility to discharge a resident if the facility has not obtained the required statements and waiver.
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- Authorizes DADS to exercise the following remedies if a facility fails to obtain the required statements and waiver, or if DADS denies the waiver: a) assess an administrative penalty for intentional or repeated disregard of DADS criteria for inappropriate placement; b) seek an emergency suspension or closing order if DADS determines that there is a significant risk to the residents of the facility and an immediate threat to the health and safety of residents; or c) seek other sanctions in lieu of an emergency suspension or closing order if DADS determines that there is a significant risk to a resident and an immediate threat to the health and safety of residents.
- Requires the Health and Human Services Commission Executive Commissioner, by rule, to develop criteria to determine when a facility has intentionally or repeatedly disregarded the waiver process.
- Requires DADS and facilities to develop effective training regarding aging in place and retaliation; requires surveyors, facility supervisors and other staff to complete training annually.

HB 2609 by Guillen
Relating to employment at or by certain facilities serving the elderly or persons with disabilities.

- Adds obstruction and retaliation to the list of offenses which bar a person from employment at nursing facilities, assisted living facilities, adult day care centers, Intermediate Care Facilities for Persons with MR, and home health agencies.
- Clarifies that both cruelty to livestock animals and non-livestock animals, i.e., domesticated animals, are included in the list.

HB 2903 by Zerwas
Relating to the program of all-inclusive care for the elderly.

- Requires Health and Human Services Commission (HHSC) to ensure that participation in the program of all-inclusive care for the elderly (PACE) is available as an alternative to enrollment in a Medicaid managed care plan.
- Requires managed care organizations consider the availability of PACE when considering whether to refer a recipient to a nursing home or other long-term care facility.
- Requires DADS to consider PACE as a community-based service option under any Money Follows the Person initiative.
- Requires HHSC to adopt a standard reimbursement methodology for all service providers under PACE to encourage a natural increase in the number of PACE sites throughout the state.
- Requires DADS to create a "PACE Program Team" responsible for:
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o increasing public attention and awareness of availability of PACE sites;
o increasing the number of PACE sites in Texas;
o serving as a liaison with state and federal agencies, participants, and the PACE sites; and
o conducting a study to evaluate the feasibility of implementing a statewide standard reimbursement rate for all PACE organizations and submitting a written report to HHSC by September 1, 2012.

HB 3197 by Coleman
Relating to creating a pilot program to implement the culture change model of care at certain state supported living centers.

- Requires implementation of a pilot program to implement the culture change model of care at one State Supported Living Center (SSLC).
- DADS shall implement processes, policies and practices designed to shift decision-making to the individual with the disability, implement continuous quality improvement processes that use objective data to improve practices and services, and improve the workforce.
- DADS must select the SSLC that is most representative of the SSLC system to participate in the pilot program.
- DADS may hire a consultant to assist in the implementation of the pilot program.
- DADS must enter into a MOU with the Texas Long Term Care Institute at Texas State University to assist DADS by providing training, assessment, technical assistance, and assistance in other areas that will enable DADS to implement the culture change model of care.
- Not later than September 1, 2012, DADS must submit a report to the governor and the LBB on the pilot program.

SB 37 by Zaffirini
Relating to the duration of the interagency task force on ensuring appropriate care settings for persons with disabilities.

- Statutorily extends the Promoting Independence Advisory Council (PIAC) through September 1, 2017. The PIAC was previously set to expire on August 31, 2011.
SB 41 by Zaffirini

*Relating to the use of restraints in state supported living centers.*

- Requires the Health and Human Services Commission Executive Commissioner to adopt rules addressing the use of restraints and prohibiting the use of prone and supine holds on State Supported Living Center (SSLC) residents except as transitional holds.
- Prohibits the issuance of a standing order for restraints on SSLC residents on an as-needed basis, and further prohibits the administration of a restraint pursuant to such a standing order. Also, prohibits the use of straitjackets to restrain SSLC residents.

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SB 78 by Nelson

*Relating to adverse licensing, listing, or registration decisions by certain health and human services agencies.*

- This law applies to the following regulated facilities: youth camps, home and community support services agencies, hospitals, nursing facilities, assisted living facilities, special care facilities, Intermediate Care Facilities for Persons with MR, chemical dependency facilities, mental hospitals or mental health facilities, child-care or child-placing facilities, and adult daycares.
- Health and Human Service (HHS) agencies must keep a record of all applications for an initial or renewed license, listing, or registration that are denied, revoked, suspended, or terminated by the individual agency for ten years after the denial, revocation, suspension, or termination date.
- HHS agencies must provide a monthly copy of these records to one another so that agencies may deny an initial or renewal application for a license, listing, or registration if one of the above entity's previously revoked, suspended, or terminated the license of a person listed in the records above and that revocation, suspension, or termination was based on the person doing any of the following: bringing physical or mental harm, threatening the safety or well being of, or exploiting a person in the applicant's care.
- Requires the Health and Human Services Commission Executive Commissioner to adopt rules implementing these changes by March 1, 2012.

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SB 220 by Nelson

*Relating to guardianships, including the assessment of prospective wards for, and the provision of guardianship services by the Department of Aging and Disability Services.*

- Authorizes DADS to obtain the financial records of a person during a guardianship assessment at no cost.
Clarifies that DADS is authorized to obtain all medical, mental health and financial records of a person during the course of a guardianship.

Expressly authorizes DADS to release confidential information on a person who was assessed for guardianship services or is a former ward to the following: the individual, the individual’s guardian, or an executor or administrator of the individual’s estate.

Requires DADS to encourage the use of volunteers to provide certain life enrichment services to individuals who are wards of the department.

Exempts volunteers providing life enrichment services for the DADS guardianship program from the requirement to be certified by the Guardianship Certification Board.

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**SB 222 by Nelson**

*Relating to access to certain long-term care services and supports under the medical assistance program.*

Requires Health and Human Services Commission (HHSC) to consider developing risk management criteria under home and community-based services waiver programs designed to allow individuals to receive services under the programs to assume greater choice and responsibility over the services and supports the individuals receive.

Requires DADS to ensure that Local Authorities are informing and counseling individuals and their legally authorized representatives about all program and service options for which the individuals are eligible.

Requires DADS to educate the public on the availability of home and community-based services under a Medicaid state plan program and under a Section 1915(c) waiver program and the various delivery options available under the Medicaid program.

Requires DADS to post data related to interest lists on the DADS website.

Requires HHSC, in cooperation with DADS, to prepare a written report regarding individuals who receive long-term services in nursing facilities under the medical assistance program. The report must be submitted not later than September 1, 2012.

Requires the HHSC Executive Commissioner to apply for and actively pursue amendments from the Centers for Medicare and Medicaid Services to the community living assistance and support services and home and community-based services waivers to authorize the provision of personal attendant services through programs operated under those waivers.
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SB 223 by Nelson
Relating to certain facilities and care providers, including providers under the state Medicaid program.

- Allows the Health and Human Services Commission (HHSC) Executive Commissioner to adopt rules governing the duties and responsibilities of a Home and Community Support Services Agency (HCSSA) administrator.
- Makes changes to the regulation of HCSSA providers, including:
  - If a licensee is in the process of becoming certified by the US Department of Health and Human Services, DADS may issue a temporary HCSSA license authorizing the licensee to provide certified home health services.
  - DADS may not renew an initial HCSSA license unless DADS has conducted an initial on-site survey of the agency.
  - An applicant or licensee must provide the surveyor with a reasonable and safe workspace at the premises that allows the person to conduct the survey in private.
  - If after an application is submitted, the information changes, the licensee must submit to DADS a fee not to exceed $50 along with the changes to the application. The HHSC Executive Commissioner, by rule, will specify which information must be reported if there is a change.
  - After a survey, DADS must provide to the HCSSA administrator (instead of the chief executive officer): 1) specific and timely written notice of the official findings of the survey, 2) information on the identity, including the name (instead of signature) of each department representative conducting or reviewing (instead of approving) the results of the survey and the date on which the department representative acted on the matter; and 3) if requested by the HCSSA, copies of all non-confidential documents relating to the survey DADS maintains or provides to any other state or federal agency.
- DADS must provide, at least annually, joint training for HCSSAs and surveyors on subjects that address at least one of the ten most common violations of federal or state law by HCSSAs - DADS may charge a fee of not more than $50 per person for the training.
- Authorizes DADS to consider an applicant or licensee’s compliance history in each state or other jurisdiction where the person operated a nursing facility at any time (not just five years) before the application is filed.
- Extends the maximum amount of time DADS may exclude a person from eligibility for a license from ten years to the person’s lifetime.
- Authorizes DADS to assess an administrative penalty against an adult day care.
- Allows a financial management services agency, on behalf of an individual employer, to obtain criminal history information from the Department of Public Safety about facility applicants or employees. Also, adds an applicant or employee of an individual employer as a person about whom a facility may obtain criminal history information.
SB 795 by Nelson

Relating to regulation of nurse aides.

- Requires an applicant for a nurse aide certificate to complete a DADS training program to be included on the nurse aide registry (NAR). The training must include: at least 100 hours of course work and a competency evaluation at the end of the training program.
- A listing on the nurse aide registry expires on the second anniversary of the listing date and a nurse aide is required to complete at least 24 hours of in-service education every two years, including training in geriatrics and, if applicable, the care of Alzheimer's patients.
- The Health and Human Services Commission Executive Commissioner must adopt rules to implement the new section by May 1, 2013.

SB 1857 by Zaffirini

Relating to the administration of medications for persons with intellectual and developmental disabilities.

- Provides that an unlicensed person may administer medication to a client (person with intellectual and developmental disabilities) without a nurse delegating or overseeing each administration under the following circumstances:
  - the medication is an oral, topical medication or a metered dose inhaler;
  - the medication is administered to the client for a stable or predictable condition;
  - the client has been personally assessed by a registered nurse and they determine that the client's health status permits the administration of medication by an unlicensed person; and
  - the unlicensed person has been trained and determined to be competent by a registered nurse or licensed vocational nurse (LVN) regarding proper administration of medication.
- Applies to small and medium (no more than 13 beds) facilities and to the Home and Community-based Services and Texas Home Living waiver programs.
- Requires the Board of Nursing and DADS to conduct a pilot program to evaluate LVNs providing on-call services by telephone to clients who are under the care of the LVN and to submit a report detailing the findings to the legislature by December 1, 2012.
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**SB 7 by Nelson**

Relating to the administration, quality, efficiency, and funding of health care, health and human services, and health benefits programs in this state.

- States that a nursing facility (NF) license is renewable every three years, after DADS approves a report filed every three years.
- The Health and Human Services Commission (HHSC) Executive Commissioner is required to adopt rules allowing for NF licenses to expire on staggered dates over a three-year period and for prorating license fees as appropriate. These rules are to be adopted not later than December 1, 2012.
- Provides that an NF is not required to comply with the requirements for having an external automated defibrillator and a person trained until September 1, 2014.
- Adds a provision to the list of initiatives that DADS, in consultation with HHSC, may consider in relation to streamlining and uniformity in 1915(c) waiver programs. Specifically, it provides that, if feasible, DADS may concurrently conduct program certification and billing audit and review processes; streamline other billing and auditing requirements; eliminate duplicative responsibilities regarding individuals plans of care; and streamline cost reports and other cost reporting processes.
- Requires DADS and HHSC to jointly explore the development of uniform licensing and contracting standards that would apply to all 1915(c) programs, promote competition among providers, and integrate with other efforts to streamline and unify the administration and delivery of services.
- Requires DADS to implement an electronic visit verification system under appropriate Medicaid programs administered by DADS, if it is cost effective.
- Requires DADS to perform utilization review (UR) of services in all 1915(c) waiver programs. The UR program must include reviewing levels of care and plans of care that exceed thresholds established in the waiver program guidelines.
- Clarifies the exemption from Assisted Living Facility (ALF) licensure related to boarding homes. In addition, an exemption is added for a facility that provides personal care services only to persons enrolled in a program funded in whole or in part by Department of State Health Services (DSHS) and monitored by DSHS or its local Mental Health Authority.
- Clarifies that an ALF may provide skilled nursing services or hospice services to residents for a limited duration of time. Authorizes an ALF to employ a health care professional (presumably a nurse) to provide those skilled nursing or hospice services to facility residents.
• Requires DADS to conduct a study to evaluate the feasibility of expanding any incentive payment program established for nursing facilities under Section 531.912, Government Code. Not later than September 1, 2012, DADS must submit a written report containing their findings and recommendations to the legislature.

• Requires employees and owners of NFs and ALFs to report abuse, neglect or exploitation of residents to DADS. DADS must operate a telephone hotline to receive these reports and dispatch investigators. DADS is required to adopt rules governing the conduct of investigations. DADS must notify the appropriate law enforcement agency within 24 hours of receipt of the report or complaint.