



PolicyPerspective

Privatize State Supported Living Centers

A Fiscal Necessity and Quality of Care Requirement

by The Honorable
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Key Points

- Maintenance costs for the 12 SSLC buildings are predicted to be \$475,000,000 over the next five years due primarily to the age of the structures.
- There is great disparity between rates for an SSLC and private providers. Often, rates are 25 to 33 percent of SSLC rates.
- SSLCs have a history of abuse and neglect that has not been cured by increased funding.

Introduction

State Supported Living Centers, originally referred to as state schools, are an increasingly inefficient and ineffective system of care for those with intellectual and developmental disabilities (IDD). The current state-run, institutional system is a Medicaid program that suffers from higher provider rates but lower quality care than privately-run facilities in the community. However, despite past efforts to address these issues, change has yet to be made. The issue takes on even more importance in light of the projected budget shortfall facing the next legislature. Now is an excellent time to fully address the problems with the system and improve the care Texas provides for this special population.

Background

Institutional care for persons with IDD in Texas is provided through State Supported Living Centers (SSLCs). These institutions were initially fully funded by the state and called state schools. In 1971, Congress authorized a new optional benefit to Medicaid—Intermediate Care Facilities for the Mentally Retarded (ICF/MRs)—that brought federal funding for institutional services, matched by state dollars.

The model for ICF/MR services changed over the years from large state institutions to more community based services operated by the state, local community centers, or those privately owned and operated. The most widely recognized component of privately owned community based services is the group home, but the programs range in size from in-home care, to small group homes, to large multi-bed facilities. These community programs operate at a much lower cost, and provide equal or better care than

the state-run institutions. Because of the preference for community care and various court rulings, there has been a declining population in the state facilities as more and more clients move to the private ICF/MRs.

Key Issues

Increasing Costs

The costs of SSLCs have consistently grown. Over the past four years, the total budgets of SSLCs have increased by 20 percent, totaling \$711 million in General Revenue and \$1.9 billion in All Funds. The Department of Aging and Disability Services reports an 8.3 percent increase between 2009 and 2011 in the SSLC budget.¹

The state operates thirteen different facilities in Abilene, Austin, Brenham, Corpus Christi, Denton, El Paso, Lubbock, Lufkin, Mexia, Richmond, San Angelo, and San Antonio, along with the ICF/MR portion of the Rio Grande State Center operated by the Department of State Health Services. For the 12 SSLC buildings, the Department of Aging and Disability Services (DADS) predicts maintenance costs to be \$475,000,000 over the next five years due primarily to the age of the structures.² It is also worth noting that the value of the public land for these facilities is estimated to be in excess of \$170,000,000.³

Historically, the argument for maintaining the costly state facilities is that they serve a client population with a higher level of need than clients served in the community. However, recent reports show that their relative level of need is actually decreasing rather than increasing, as more and more clients switch to the private facilities.⁴

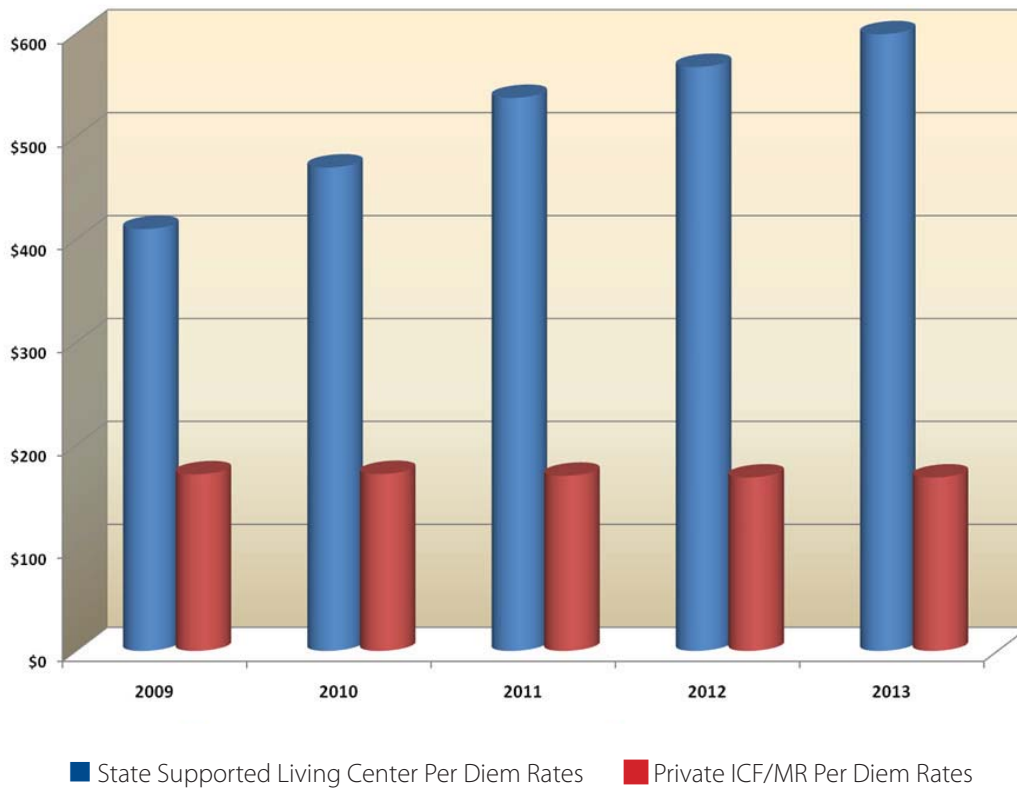
ICF/MRs are funded through Medicaid using a daily rate based on whether the provider of the service is a SSLC or a private provider. However, there is great disparity between the provider rates for each. The current rate for the state institutions is \$537.41 and \$603.64 per day for small facilities operated by the state.⁵ Comparable rates for the private sector range from \$148—\$228 per day for small facilities and \$115 to \$184 for large privately operated facilities—25 percent to 33 percent of the cost to deliver the same level of care in SSLCs—under the same federal and state regulations.⁶ And yet, according to the DADS Legislative Appropriations Request, rates for private sector providers will be reduced during the next biennium, while the costs for state-operated facilities will be increased 5.6 percent each year of the biennium (11.5% overall). This would result in a rate of \$600 per day for SSLCs,⁷ as observed in **Figure 1**.

Declining Populations

The number of residents at Texas SSLC facilities has decreased by 57.64 percent since 1981.⁸ The population of 4,300 is projected to continue declining to less than 3,700 by 2013.⁹ This population decline is not indicative of a lower overall caseload, as evidenced by increasing caseloads in the private sector, but of a shift to community care. As the population in the SSLCs declines, the cost of operation per resident has increased.

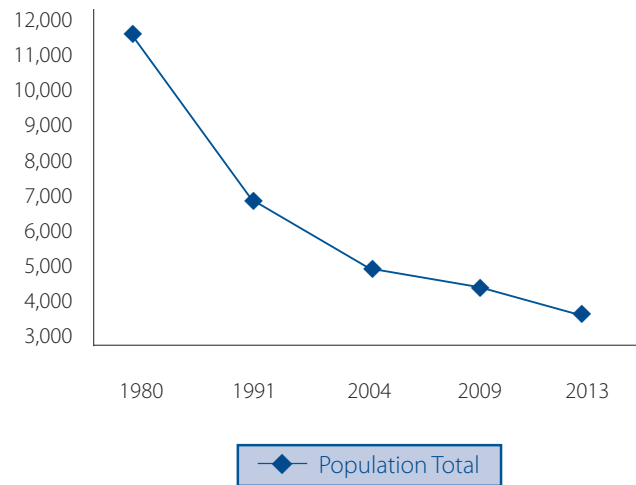
The two court cases that have most dramatically affected the move to community care are *Lelsz v. Kavanagh*¹⁰ and *Olmstead v. L.C.*¹¹ The *Lelsz* case was filed against the Texas Department of Mental Health and Mental Retardation in 1974. In 1983, the parties signed a resolution and settlement, which focused on services and conditions in three named schools (Austin, Denton, and Fort Worth State Schools) and emphasized the least restrictive residential services for class members.¹² During the Richards’ administration, two state schools, Travis and Fort Worth, were closed.

Figure 1: Annual Provider Rates for ICF/MR Services



Source: Texas Department of Aging and Disability Services, Legislative Appropriations Request 2012-2013, DADS, (Aug. 9, 2010).

Figure 2: Enrollment Trend for State Supported Living Centers, 1981-2013



Source: Department of Aging and Disability Services, Report Update for State Supported Living Centers, DADS, (July 18, 2010).

Then, in June, 1999, the U.S. Supreme Court ruled in *Olmstead v. L.C.* that the states must “administer services, programs, and activities in the most integrated setting appropriate to the needs of qualified individuals with disabilities.” A comprehensive review of all services available for people with disabilities in Texas was conducted in order to find the affected populations, improve the flow of information to the community, and remove obstacles that keep community placement from occurring. The result of that review was the Texas Promoting Independence Plan, released in 2000.¹³

Aging Population

The average life expectancy of persons with IDD was around 19 when state schools were established. Today, as a Department of Aging and Disability Services report states, “With improved health care technology, the life expectancy for individuals with intellectual and developmental disabilities continues to increase.”¹⁴ Most sources consider the lifespan now to be close to the average normal lifespan of the general public, depending on the severity of the disability. While extending the lives of our disabled population is something to be celebrated, it does compound the costs of treatment as the clients’ disabilities along with health problems that come with age must now both be treated. Aging populations have been recognized as a significant cost contributor to Medicaid in the average population. The effects of aging are no different in the MR arena. Unfortunately, the medical advancements that have allowed for longer lives have not always been duplicated in the delivery of quality care.

Quality of Care

SSLCs have a history of abuse and neglect that has not been cured by increased funding. During the past decade a number of cases of abuse and neglect have come to light in the SSLCs. Some of the cases were of the same types of neglect that have plagued these centers for years. However, two of the most recent cases were an instance of physical abuse at the Lubbock SSLC and a horrendous case of staff members orchestrating fight clubs between residents at the Corpus Christi SSLC, in 2006 and 2009, respectively. Upon the revelation of such occurrences, the U.S. Department of Justice (DOJ) launched an investigation into the standards of all state facilities. The outcome was a May 20, 2009 ruling that resulted in a number of new standards. These standards included minimum staffing ratios, new training programs, and individualized care plans for clients.

Recommendation: Privatization

The fact that SSLC still exist in light of the high costs, poor quality of care, and recent cases of abuse is indicative of the problems of state-run facilities. The state can and does deal swiftly with a private facility’s inability to meet the minimum standards by imposing sanctions and then closure. Yet public facilities rarely meet this fate. Individual care givers guilty of abuse would sometimes be prosecuted or subject to civil suit, in the public sector. However, a *Texas Tribune* investigation revealed that, since 2000, 75 employees of Texas SSLCs were fired for Class 1 abuse, the most serious level of abuse. Of those 75 firings only 13 were charged with crimes, and

SIDEBAR: Survey Studies

Since its establishment in 1971, the ICF/MR Program has been required to meet certain federal standards to qualify for federal funding. According to an ICF/MR survey evaluation on state schools, researchers observed staff members providing “active treatment” to clients. The results showed that only if staff members were aware of being observed did the level of “active treatment” increase. When unaware of being observed however, “active treatment” to clients significantly declined.

Source: Dennis H. Reid, Evaluation of Components of Residential Treatment by Medicaid ICF-MR Surveys: A Validity Assessment, Journal of Applied Behavioral Analysis, (Aug. 25, 2010).

only two served any jail time.¹⁵ However, in the private sector, if such abuse occurred facilities would be shut down in response. Rather than allow SSLCs to continue providing inefficient and costly institutional care, Texas should move its current population to adequate private facilities. Despite this potential solution, roadblocks have been placed in front of addressing this problem.

One reason for this is resistance from state employee organizations representing the approximately 13,000 state employees* at the 12 SSLC facilities.¹⁶ Eliminating these positions from the state’s retirement program and other benefits would reduce significant strain on the state’s budget. Furthermore, if the current SSLC clients were transferred to the private sector there would be an increased demand from those providers for skilled caregivers, maintaining overall employment in the state.

Another difficulty in closing SSLCs is because many of the clients’ parents feel comfortable and secure with the perceived stability of a state run facility and have concerns about the stability of the private facilities in which their children would receive care. While the parents’ concern is understandable, it is unfounded. The underlying assumption that the client receives better care in the state institution disregards the positive outcomes demonstrated in moving from institutional care to community care including increased client satisfaction.

In a study performed with individuals transferred to community care from Oklahoma’s Hissom Memorial Center, it was reported that these individuals experienced positive life changes.¹⁷ They had greater family contact, increased skills, and they received more services. They were also better integrated into the general community. Furthermore, follow-up studies confirmed that levels of satisfaction were maintained over the long-term—evidence that supports the value of community placement.¹⁸

Declining populations, DOJ rulings, and industry studies show that the momentum for SSLCs is towards smaller community settings, but in the past, efforts in Texas Legislature have failed to bring about the resulting need for closures.

Studies in other states such as the longitudinal study of Pennsylvania, Nebraska and Connecticut programs yielded similar results. In the three-year survey of Pennsylvania’s Pennhurst Study, it was reported that “Thus far we have conducted prepost interviews with 65 families of relocated clients (this is the first prepost study in the field).¹⁹ These 65 families were initially neutral toward the idea of deinstitutionalization. After placement of their relatives in CLAs, the families were significantly more positive towards the non-institutional environment. Moreover, their initial expectations about CLA placement have been exceeded in nearly all areas.”²⁰ Recognizing that change is difficult and filled with fear for parents, the state should consider utilizing the services of the professionals best qualified to oversee the transition, called Relocation Specialists.

In 2003, the Comptroller’s office recommended that the state close at least two state schools in order to save money on maintenance and gain money on land sales. In the *Olmstead* case in Georgia the U.S. Supreme Court ruled that the SSLC clients had the right to receive care in the most integrated setting possible.²¹ This year, U.S. Assistant Attorney Thomas

* While the SSLC system has approximately 13,000 filled FTE positions, it is provided funding for over 14,000 FTE positions.

Perez announced that the *Olmstead* settlement will be used “as a template for our enforcement efforts across the country”.²² Declining populations, DOJ rulings, and industry studies show that the momentum for SSLCs is towards smaller community settings, but in the past, efforts in the Texas Legislature have failed to bring about closures. For instance, in 2003, an amendment attached to HB 2292 would have compelled the State to close these schools and move the remaining clients to the private community setting. But the amendment was not adopted.

The financial benefits of closing the SSLCs are significant. Not only would the state save \$475 million on maintenance, but the sale of these properties could net approximately \$170 million. This would represent a net positive impact of \$645 million on the state budget for capital costs in addition to the lower cost of providing care in the private provider system.

One facility that would require additional consideration is the Mexia facility. The Mexia SSLC is a forensic facility, housing and treating individuals with intellectual and developmental disabilities also involved in the criminal justice system. Due to the unique nature of the majority of clients at this facility, incorporating this population into the private sector would be more challenging. However, there are still ways to increase efficiencies and reduce costs to the state such as privatizing the management of the facility.

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Conclusion

The method that Texas employs to provide care for those with intellectual and developmental disability is costly, inefficient and outdated. Continued operation of the SSLCs will increase the burden on the state budget while failing to provide the quality of care that is expected in the least restrictive environment as required by federal law. The current budget crisis is a perfect opportunity for the state to address the many challenges with SSLCs. Texas should join a number of states across the U.S. that have already moved towards privatization. This is a simple and proven solution that would have positive impact of hundreds of millions of dollars on the budget while providing better care. Rarely does the state have the option of a win-win decision, but that is exactly what is available to Texas with the privatization of SSLCs. ★

SIDEBAR: Supreme Court Upholds ADA “Integration Mandate” in *Olmstead* decision

Washington, DC, June 22, 1999 -- In rejecting the state of Georgia’s appeal to enforce institutionalization of individuals with disabilities, the Supreme Court today affirmed the right of individuals with disabilities to live in their community in its 6-3 ruling against the state of Georgia in the case *Olmstead v. L.C. and E.W.*

Under Title II of the federal Americans with Disabilities Act, said Justice Ruth Bader Ginsburg, delivering the opinion of the court, “states are required to place persons with mental disabilities in community settings rather than in institutions when the State’s treatment professionals have determined that community placement is appropriate, the transfer from institutional care to a less restrictive setting is not opposed by the affected individual, and the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities.”

The ‘integration mandate’ of the Americans with Disabilities Act requires public agencies to provide services “in the most integrated setting appropriate to the needs of qualified individuals with disabilities.”

Source: <http://www.accessiblesociety.org/topics/ada/olmsteadoverview.htm>

Endnotes

- ¹ Arlene Wohlgemuth. *Testimony to Senate Finance Committee*, Texas Public Policy Foundation (17 Aug. 2010).
- ² Department of Aging and Disability Services, *Report Update for State Supported Living Centers*, DADS (18 July 2010).
- ³ Arlene Wohlgemuth. *Testimony to Senate Finance Committee*, Texas Public Policy Foundation (17 Aug. 2010).
- ⁴ Department of Aging and Disability Services, *Report Update for State Supported Living Centers*, DADS (18 July 2010).
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- ⁶ Texas Department of Aging and Disability Services, *Legislative Appropriations Request 2012-2013*, DADS (9 Aug. 2010).
- ⁷ Texas Department of Aging and Disability Services, *Texas Promoting Independence Plan*, DADS (25 Aug. 2010).
- ⁸ Department of Aging and Disability Services, *Report Update for State Supported Living Centers*, DADS (18 July 2010).
- ⁹ *Ibid.*
- ¹⁰ *Lelsz v. Kavanagh*, 807 F. 2d 1243 - Court of Appeals, 5th Circuit 1987
- ¹¹ *Olmstead v. LC*, 527 US 581 - Supreme Court 1999.
- ¹² Texas Comptroller of Public Accounts, *Develop Objective Material for Determining When State Schools Should be Closed or Consolidated*.
- ¹³ Texas Department of Aging and Disability Services, *Texas Promoting Independence Plan*, DADS (25 Aug. 2010).
- ¹⁴ *Ibid.*
- ¹⁵ Emily Ramshaw, "Disability Workers Rarely Prosecuted for Violence," *The Texas Tribune* (20 Jan. 2010).
- ¹⁶ *Ibid.*
- ¹⁷ James W. Conroy, *The Hissom Outcome Study: 1998 Update*, BOTEC Analysis Corporation (25 Aug. 2010).
- ¹⁸ *Ibid.*
- ¹⁹ Valerie J. Bradley and James W. Conroy, *Third Year Comprehensive Report of the Pennhurst Longitudinal Study* (1983).
- ²⁰ *Ibid.*
- ²¹ *Olmstead v. LC*, 527 U.S. 581 - Supreme Court 1999.
- ²² Andy Miller, "Justice Dept. Pushes for Services to Move Patients Out of Mental Hospitals," *Kaiser Health News* (21 Oct. 2010).

About the Authors

Arlene Wohlgemuth is Executive Director and director of the Foundation's Center for Health Care Policy. She served 10 years as a state representative for district 58. During the 77th legislative session, she served as chairman of Appropriations Article II Subcommittee (Health and Human Services), vice-chairman of Calendars, CBO for Human Services, and member of the Select Committee for Health Care Expenditures. Wohlgemuth authored HB 2292, the sweeping reform of Health and Human Services which improved service delivery for the recipients, saving taxpayers more than \$3.7B during its first five years. The reforms consolidated 12 agencies into five and was the largest government reform bill ever passed in the state.

Spencer Harris joined Texas Public Policy Foundation in 2010 as a Health Care Policy Analyst. His research focuses on identifying patient-centered, free market solutions for our state's health care challenges. No stranger to Texas public policy, Harris worked in the House of Representatives for Rep. Warren Chisum where he covered health care issues, immigration issues, and the Licensing and Administrative Committee. Harris is a native Texan, born and raised in Houston. He graduated from Texas A&M University with a degree in History and Anthropology.

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