

TEXAS STATE REPORT

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Recent History/Overview: (2013-2019)

Texas, like other states in our country, has become a battleground for the rights and safety of the severely disabled. Protection and Advocacy groups have attempted to distort the Olmstead decision, and have persuaded legislators to close facilities in the past. As recently as 2014 the Texas Legislative Sunset Committee recommended that the Austin State Supported Living Center would close first and a legislative committee would determine which five out of the thirteen facilities would close later. Parents and guardians responded immediately with testimonies before the 2015 legislature and began reaching out to radio, television, and newspaper reporters, circulating electronic petitions, using social media, video, letters, phone calls and personal visits with legislators on through the entire 2015 legislative session. Guardians received additional support from PART, Parent Association for the Retarded of Texas, and the Texas Employees Union. Although the families lost soundly on the closure bill in the Texas Senate, the Texas House voted overwhelmingly to support the families and SSLCs.

Stephen Wallace filed a lawsuit in federal court on behalf of his severely autistic son. Forrest Novy filed in state court on behalf of his severely disabled brother, who also lives at the SSLC. The suit by Novy was dismissed. The suit by Wallace remained active and, although the judge stated that a guardian could not represent his child in court, he did assign a pro bono attorney for Justin and his family. This case was abated without prejudice, when officials declared that Justin would not be moved. The facility would remain open and evictions would cease. Eventually the head of HHSC, Kyle Janek, was replaced.

The 2017 legislative session brought another siege, as some of the same senators who spearheaded an attempt to close the SSLCs in the past renewed their efforts. A bill was introduced to establish a committee that would look at consolidating some of the facilities. The Protection and Advocacy groups were in attendance at every testimony and visiting offices, requesting that the all facilities be closed. Guardians fought with every tool available, as before. The bill passed the Senate, but the House responded by not taking up the bill. There was a move to reform guardianship, with a number of bills. Included in those bills were multiple attempts to allow for advocate or peer review and intervention in the guardianship relationship. Attempts at peer intervention were eliminated, but advocates may still intervene in limited circumstances. Advocates continue to poach residents from the SSLCs to move them into privatized community placement.

Recently, parents at some SSLCs received a letter from the Disabilities Rights Texas advocates, informing parents that they had been alerted to possible incidents of neglect or abuse in the facility in which their loved one lived. Stephen Wallace issued a bar complaint against the attorney involved for solicitation with misinformation. The Bar Association of Texas quickly kicked it back, with no explanation. HHSC responded by asking Disability Rights Texas to cease.

Texas Health and Human Services has issued a long-range plan for the State Supported Living Centers, with public commentary received through June 7. While some facts are correct, others are clearly misleading. There are sections of this plan that I will address directly.

<https://hhs.texas.gov/sites/default/files//documents/laws-regulations/reports-presentations/2018/may2018-sslc-long-range-planning.pdf>

Section 1.

Texas currently operates 13 State Supported Living Centers (ICF/IDD), which are strategically placed to grant guardians better access to their loved ones, thus supporting the guardianship role and facilitating least restrictive environment. Guardians have had to contend with repeated attempts by ARC, CTD, and DRTx to persuade the legislature to close all facilities. One of these facilities, Mexia SSLC, is used as a forensic unit for males, while San Angelo SSLC is used as a forensic unit for females.

Section 2.

Due to a moratorium on admissions that has been in place for years, enrollment in the SSLCs dropped. In 2013, the Sunset Commission of the Texas legislature heard testimony from guardians and community advocates on a long-range plan to close the SSLCs and ruled that facilities would begin closures. Letters of eviction were sent to some guardians, telling them that their loved ones would be moved into a group home, or another SSLC that was not being closed. During this period, some residents were moved to group homes and perished. At this time, we are not aware of how many souls were lost, as group homes are not held to the same standard as SSLCs. Austin SSLC's population declined during that period due to 60 residents being evicted that HHSC referred to as "downsizing".

Trends reported are not authentic in the plan. A trend is equivalent to a flow and the state is the force that created that flow/trend. This is reflected in the fact that the population of the SSLCs is primarily 45 years of age or older or 64.46 percent of the SSLC population. This demonstrates not that there is less need, but that fewer admissions are occurring. Out of 28 million Texans, approximately 2-3 percent of the population, 840,000, is disabled. Out of that subgroup, an estimated 5 percent, 42,000 individuals are considered severely disabled. If only half of these individuals are adults, and 3,000 are being served in the SSLCs, where are the remaining 18,000? Also, how can there be a downward trend, when the number of autistic children being born increases each year? Not all of those children are going to function high enough to live in the community as adults. The projected trend in SSLCs by HHSC is nothing more than a self-fulfilling prophecy, as there remains an incredible need for that population that is not being met.

Section 3

Staffing shortages exist, but were used as an excuse to attempt to close the Austin SSLC in 2014.

Section 4

The HHSC projection of a falling SSLC population is again, inaccurate and disingenuous. These numbers are created by the reluctance of the HHSC to refer families for placement. Reports from staff at the SSLC states that families in need are being diverted away from SSLCs and into group homes. As previously stated, the sheer number of IDD Texans not being served is staggering. Families are in crisis and are unable to get SSLC placement.

Section 5

The Texas SSLCs have suffered under state mismanagement and planned obsolescence. Section 5 correctly reports that some buildings are deteriorating. Many of those buildings are no longer in active use; however, one state architect did find that these buildings could be reutilized and not razed. The residents reside in cottages and newer buildings on the Austin SSLC campus.

Section 6

We are hopeful that the expansion of community services on the SSLC campuses will benefit both residential and community individuals. This was a recommendation by parents and guardians to HHSC and the legislature.

TEXAS – 2019 UPDATE

The HHSC Long Range Plan remains as is, and HHSC released its IDD Redesign Committee report this year. Concerns about the redesign plan were expressed during testimony at a recent redesign meeting.

The team positions are loaded with Managed Care and Health Care providers, and potential independent facility providers (day hab and/or residential). Managed care organizations have an ever-growing presence in Texas IDD care, and are getting support from the legislature and HHSC. HHSC is diverting people who could live in SSLCs to nursing homes. In fact, a lawsuit was filed in 2010 by Disability Rights to move approximately 4,000 individuals with IDD to the community from nursing homes. The case is still pending as of June 1, 2019. Stephen Wallace submitted an Amicus brief to the court in October of 2018, to inform the court that there was the option of the SSLC available to many of those souls, who could never survive in a community group and would benefit from a less restrictive environment than a nursing home. This option, of course, was never mentioned by neither the plaintiff nor the defendant.

We are witnessing an attack in Texas on all three provisions of Olmstead. In the holding of Olmstead, the majority opinion stated:

“Specifically, we confront the question whether the proscription of discrimination may require placement of persons with mental disabilities in community settings rather than in institutions. The answer, we hold, is a qualified yes. Such action is in order 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 attack on the holdings are as follows:

Holding 1) “...the State’s treatment professionals have determined that community placement is appropriate...”

The state of Texas has now adopted the Community First initiative and families are reporting that professionals and staff are stating at the annual ISP (Individual Service Plan) meeting that residents who are severely autistic, have life threatening seizure disorders, or other serious IDD issues are suddenly able to live in the community. Staff has told some guardians privately that they are being pressured by HHSC to state that the individual is miraculously capable of living in the community, unlike years past.

Additionally, to facilitate the movement of more SSLC residents to the community, the state is now revamping client evaluations. Families are unaware of how the new evaluation will affect our loved ones.

Holding 2) "...the transfer from institutional care to a less restrictive setting is not opposed by the affected individual..."

There has been a relentless attack on guardianships by one specific legislator who has a strong affiliation with the guardianship industry in Texas and the Protection and Advocacy groups funded by monies from Washington. One organization, Coalition of Texans with Disabilities, has a representative who testifies and lobbies for the closure of SSLCs. Mr. Dennis Borel was recently caught on video, testifying before the Texas Senate Committee on State Affairs that sunseting guardianships should be looked at or even making them temporary. VOR members, as well as members of PART were able to stop the most damaging legislation this session.

Additionally, a group has been funded by the Texas Council for the Developmentally Disabled and ARC called Peer Advocates. The group consists of high functioning IDD individuals who live successfully in the community and visit the Austin and San Antonio State Supported Living Centers on a monthly basis to recruit residents to live in the community, as well. Residents who are severely involved, most likely with no guardians, are often taken to the meetings and helplessly sit and listen to things they cannot relate to such as, "What are your dreams and hopes?" During the meeting, guardians are labeled as being the enemy at the gates, preventing residents from living a great life in their Utopian community. The grant writer of the program was witnessed advising the "advocates" that they can use the blink of an eye to get "assent which can be interpreted as consent to go around the guardians". This is really happening.

Holding 3) "...the placement can be reasonably accommodated, taking into account the resources available to the State and the needs of others with mental disabilities."

The federal funds from Money Follows the Person initiative have been used to finance the removal of residents from the SSLCs. In Texas, residents from the Austin SSLC were moved in 2014 and at least twenty percent of them died. Any request for morbidity rates of residents who have been moved from facilities has been circumvented by the legal department of HHSC. This is a direct violation of the requirement of MFP.

Also, in Texas, the use of MCOs is expanding and there is no doubt that legislators are looking to them to save funds. There is growing concern about the utilizing of MCOs to cut the cost of care for the medically fragile, but so far, concerns seem to be disregarded.

<https://interactives.dallasnews.com/2018/pain-and-profit>