

Interim 2010 Promoting Independence Advisory Committee Stakeholder Report

Recommendations for the 2010 Promoting Independence
Plan and for
Agency Legislative Appropriations Request

March 2010

DISCLAIMER

This *Interim 2010 Promoting Independence Advisory Committee (Committee) Stakeholder Report* reflects the views and opinions of a majority of the Committee's membership.¹ The Committee for purposes of this report refers only to those members named to the Committee by the Health and Human Services Commission's (HHSC) Executive Commissioner and does not include agency representatives. Unless otherwise noted, the views and opinions expressed in these recommendations do not necessarily reflect the policy of HHSC, Department of Aging and Disability Services (DADS), or any state agency represented on the Committee. DADS only provides staff support as directed by Health and Human Services Circular-002.

This report and its recommendations for the *2010 Promoting Independence Plan* and agency legislative appropriations request (LAR) exceptional items, reflects the positions of a majority of the members of the Committee. There are many different perspectives and policy concerns represented by the Committee's membership and not all statements made in this report reflect each member's official position. Contents of this report were discussed by the Committee and every member voted on each recommendation independently. Recommendations were passed by a simple majority and each vote is detailed by those who voted nay and those who abstained. The first number of the detailed votes is the ayes; the second number the nays; and the third number is the abstentions.

¹ See Appendix A for a detailed listing of the Committee membership.

**PROMOTING INDEPENDENCE ADVISORY COMMITTEE
FISCAL YEARS 2012-2013 BIENNIUM FUNDING/POLICY RECOMMENDATIONS**

The non-agency stakeholders of the Promoting Independence Advisory Committee (Committee) respectfully submit this statement of funding priorities that will precede the more extensive 2010 annual report as required by Section 1. Subchapter B, Chapter 531, Government Code, Section 531.02441.² The 2010 annual report is the stakeholders representation of the status of activities for the Promoting Independence Initiative and the Promoting Independence Plan that serve as the state's response to the U.S. Supreme Court's *Olmstead* decision (June 1999). The Committee feels that with budget priorities being currently discussed, they wanted to share their top interests for the 2012-13 biennium prior to the completion of the final report.

The Committee does recognize the fiscal pressures on the State of Texas during the current 2010-11 biennium and the upcoming 2012-13 biennium and understands the need to set a priority among the state's fiscal obligations. **However, from a financial perspective, it costs the state, on average, significantly less to serve an individual in the community than in an institutional setting.** Therefore, it is appropriate for the state and the Committee to look at the broader vision for the future of long-term services and supports in relationship to an overall strategy than just an immediate reaction to the current economic constraints. The Texas economy will rebound and it would be a mistake to lose valuable programs in the interim. Texas values regarding individual choice and community-based options have been explicitly stated in two Governors Executive Orders (GWB 99-2 and RP-13), and S.B. 367 and S.B. 368, 77th Legislature, Regular Session, 2001. It is important that the progress made during the last ten years is not lost and important policy decisions retracted.

The subsequent report is divided into three major Sections and then subdivided into topic areas. The three Sections are:

- Section I. Do No Harm
- Section II. Efficiencies in the Existing System
- Section III. Increased Community Options

Under Increased Community Options the recommendations to increase the appropriations for Medicaid community-based 1915 (c) waiver slots, behavioral health supports, and workforce stabilization are the top priorities of the Committee; the remaining recommendations are made in no specific order of importance.

All recommendations will be included in the comprehensive *2010 Stakeholder Report* which will make recommendations for the *Texas Revised 2010 Promoting Independence*

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Plan. These recommendations have been approved by a majority of the Committee's membership, any vote against or abstention is noted for each specific recommendation. The Committee's recommendations to Executive Commissioner Suehs are:

SECTION I. DO NO HARM

Texas has made great strides during the last three Legislative Sessions (2005, 2007, and 2009) in meeting its obligations to the United States Supreme Court's *Olmstead v. L.C.* decision (1999) and its own Promoting Independence Plan. It is extremely important that those achievements be safeguarded from any proposed budget cuts or service-related reductions. The 1915 (c) waiver programs must be considered protected from budget reductions in the same manner as are entitlement programs which are primarily the institutional model. Any restrictions in waiver funding will result in fewer individuals having opportunities to choose community-based services.

While the 2010-11 General Appropriations Act (Article II, S.B.1, 81st Legislature, Regular Session, 2009) had significant overall increases in funding for 1915 (c) waivers and for many of the waivers the increase was minimal and not even large enough to address issues in the increase in acuity levels. The net result for some waivers is actually fewer slots available to serve individuals in the community (e.g. Community Based Alternatives [CBA] and Community Living Assistance and Support Services [CLASS]).

The *Olmstead v. L.C.* decision requires the state to ensure that individuals residing in an institution have a choice in residential setting and the opportunity to access community-based services. The state has accomplished this for individuals in nursing facilities through Money Follows the Person (MFP), individuals have immediate access to nursing facility waiver programs upon meeting the appropriate eligibility criteria. In addition, MFP has its own budgetary strategy (A.6.4) in the 2010-11 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009).

Individuals with intellectual and developmental disabilities do not have the same policy or appropriations. Their ability to relocate is dependent on limited appropriations and the number of waiver slots that become available through attrition; in addition, individuals may have to wait six to twelve months for relocation. To satisfy *Olmstead* requirements and to abide by the Department of Justice (DOJ) Settlement Agreement, any individual in a nine or more bed private intermediate care facility for persons with mental retardation (ICF/MR) or in a state supported living center who requests relocation to the community should have access to community-based services and his/her relocation should not be delayed due to an insufficient number of waiver slots.

SECTION II. REALIZE EFFICIENCIES IN THE CURRENT SYSTEM

The Committee recommends that HHSC continues the streamlining of the health and human services system envisioned with the passage of H.B. 2292, 78th Legislature, Regular Session, 2003. One of the goals of H.B. 2292 is for an efficient and effective long-term services and supports system.

The Committee believes the current system continues to be too complex, difficult to navigate, and in many ways inefficient for both the individual and the provider. The recording of the votes is detailed with the first number the ayes, the second the nays, and the third the abstentions. The following recommendations are made to realize greater efficiencies:

Recommendation 1: Match the current general revenue allocation for the Relocation Activity with Medicaid administrative match.

Texas currently funds its successful relocation activity with general funds. These funds come primarily to DADS and a transfer from HHSC, the total amount is approximately \$4 million (general revenue). The relocation activity funds relocation specialists to assist nursing facility residents with complex medical/functional needs to relocate to the community if that is their choice. Texas has administered this activity since calendar year 2002 and has the utilization history to predict future costs. Many states have similar activities and use Medicaid administrative match to enhance state general revenue dollars. Using Medicaid match can effectively double the state general revenue appropriation and increase the number of relocation specialists.

Vote: 8-0-1: (Tim Graves, Texas Health Care Association, abstains.)

Recommendation 2: Establish Primary Home Care (PHC) and Community Attendant Services (CAS) as the core program for community-based long-term services and supports and use waiver services to “wrap around” state plan services.

Attendant care is one of the most cost-effective and basic long-term services needed and is currently a Medicaid state plan service. Many people on the CBA and CLASS waiting lists are receiving PHC or CAS services.

The state should deliver attendant services through PHC or CAS rather than through the waiver, allowing other waiver services to “wrap around” the state plan service. This approach meets federal requirements to utilize state plan services before waiver services are used and could release waiver slots for those who need the full service array.

Using PHC or CAS first also fits in with the current Consumer Directed Services model whereby personal assistance services (PAS) services are delivered independently of the agency administering the remaining waiver services. The STAR+PLUS program has organized its services in a similar way with PAS being the core service and other services added as needed. **This recommendation is made contingent upon the implementation of Recommendations 4.** This should not affect an individual’s ability to access state plan services through a waiver.

Vote: 5-2-2: (Mike Bright, ARC of Texas, and Susan Payne, Parents Association for the Retarded of Texas, Inc., voting nay; Carole Smith, Private Providers Association, of Texas and Tim Graves, Texas Health Care Association, abstains).

Recommendation 3: Correct administrative and policy issues within the Personal Care Services (PCS) program.

As a result of the Alberto N. settlement, the state plan was amended in calendar year 2007 to create the PCS program for children with disabilities. While these services are similar to those available for adults in PHC, they differ in that the PCS are available to children with behavioral, psychological, and cognitive disabilities. PHC is only available to adults with medical/physical disabilities. While the intent of adding these services is good and can help to prevent institutionalization, the implementation has been problematic causing children who need PCS not being able to access them.

The major policy/administrative issues that need to be addressed include the lack of:

- Adequate rates.
- Nurse delegation in PCS.
- An appropriate assessment tool.
- An understanding about disability by the case managers.

PCS is an efficient and effective way to provide needed services when they are available to those who need them. Prior to mandating any waiver changes requiring clients to access PCS services before accessing waiver services, the state must correct the existing barriers that are preventing children from getting the services they need through PCS.

Vote: 9-0-0

Recommendation 4: Create a reimbursement system that reflects individual need.

The reimbursement rates for community care services should recognize case mix, complexity of services, and other caregiver supports available based upon an assessment tool. The 81st Legislature took a very important step towards this goal by authorizing a higher nursing rate for the individual with ventilators and/or tracheotomies, but similar distinctions need to be made for other services as well, particularly attendant care and behavioral supports. PCS currently has a higher attendant rate for behavioral supports, and the Medically Dependant Children Program (MDCP) has a higher rate for nurse delegation. This model should be carried through to the other waivers. Equal service delivery requires equal reimbursement.

Vote: 7-1-1: (*Susan Payne, Parents Association for the Retarded of Texas, Inc., voting nay; Carole Smith, Private Providers Association of Texas, abstains.*)

Recommendation 5: Create an “at-risk” pool of slots for individuals at imminent risk for nursing facility placement.

The state should create an “at-risk” pool of nursing facility waiver slots for individuals at imminent risk of nursing facility placement. The 2010-11 General Appropriations Act (Article II, Special Provisions, Section 48, S.B. 1, 81st Legislature, Regular Session, 2009) funded 196 Home and Community-based Services (HCS) for individuals with intellectual and developmental disabilities (IDD) at-risk for placement in an ICF/MR as a result of emergency or crisis situations. The 82nd Legislature should create a similar provision for individuals at-risk for placement in a nursing facility as a result of emergency or crisis situations.

Vote 8-0-1: (*Tim Graves, Texas Health Care Association, abstains.*)

Recommendation 6: Eliminate duplicative program specific standards, contract administration, and reporting to caseworkers in all programs.

The system of caseworkers and contract monitoring was in place for PHC/family care programs when they were exempt from licensing in the 1980s. S.B. 1498, 78th Legislature, Regular Session, 1993, created the Home and Community Support Services Agency (HCSSA) licensure. The new HCSSA statute replaced the old Home Health Class A and Class B licenses, created a PAS category of license, and removed the exemption of PHC programs from licensure. Nevertheless, the entire contracting and case management system was retained and was never abolished.

DADS should set up a system similar that is utilized in the acute care side for licensed entities whereby the provider receives a Texas Provider Identifier number and can serve Medicaid patients under their license standards; providers are subject to their licensure regulations.

There is prior approval for home health and Comprehensive Care Program. By establishing provider types through the Texas Medicaid Health Partnership for PAS and Licensed Home Health, providers would be allowed to enroll to provide PHC and the applicable waivers under the appropriate provider type.

DADS should utilize HCSSA licensing standards to determine compliance, which includes coordination of care, internal quality assurance program, complaint mechanisms, and oversight as provided through DADS survey. This would eliminate conflicts and duplication of effort between contracting and licensing. This elimination of the duplication of effort was recently implemented when the PCS benefit for children (0-21 years of age) was created at HHSC in September 2007.

Currently, an agency must have a separate contract for each service in each region where the agency delivers services. For instance, an agency that provides CLASS, CBA, and PHC in portions of three DADS regions must have nine contracts. The agency is licensed with a service area and should be able to be monitored through the licensing survey.

Vote 8-1-0: (Susan Payne, Parents Association for the Retarded of Texas, Inc. voting nay.)

Recommendation 7: Reduce the Department's responsibilities to eligibility, prior approval, and other necessary case management functions.

Allow home health and personal assistance service providers to provide the day-to-day coordination of care, as required by their HCSSA license. PHC rule changes made in calendar year 2005 have made significant advances towards deferring to licensing regulations. The only remaining issue is the setting of arbitrary time frames and reporting between the HCSSA and the DADS caseworker. The system should focus on outcomes and whether the client's needs were satisfactorily met; this will allow the state to use its resources more efficiently by having state workers focus on issues of fraud, quality of care, and program operations. This has been done in the newly created PCS program.

Vote 7-1-1: (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting nay; Tim Graves, Texas Health Care Association, abstains.)

Recommendation 8: Aging and Disability Resource Centers and Interagency Collaboration

Individuals with disabilities and their advocates often experience difficulty accessing in-home services and supports because of the complexity of the human service network and lack of integration between federal, state, and locally-funded services. Texas has invested in model programs that better integrate services by providing seed funding for Aging and Disability Resource Centers (ADRCs), located in eight communities as of early 2010. Although local communities may design the Centers using a “single point of entry” or “no wrong door” system of accessing services, all ADRCs are intended to expedite consumers’ access to long-term services and supports.

HHSC should evaluate ADRCs effectiveness, relative to consumers and professional users’ satisfaction and ease in accessing services. As improvements in local access procedures are documented, the Committee supports the expansion of ADRCs through funding for additional communities and the dissemination of ADRCs best practices. Further, it supports the provision of comprehensive person-centered resource information that is available to individuals of all ages, incomes, and levels of ability.

Regardless of local communities participation in ADRCs, DADS should require that its “front door” agencies—i.e., DADS Regional Local Services, Mental Health Mental Retardation Centers, and area agencies on aging realize administrative efficiencies by sharing intake and assessment data with each other if consumers are presumptively eligible for other agencies’ services and consent to release of information.

Vote: 8-0-1: (Mike Bright, The ARC of Texas, abstains.)

Recommendation 9: Increase the number of nursing facility diversion programs.

MFP has provided real choice to individuals on Medicaid who live in nursing facilities by allowing them immediate access to CBA and STAR+PLUS waiver programs; however, with a large CBA interest list on which individuals are placed by referral date, with no consideration for their risk of institutionalization, the system does not provide targeted diversion prior to placement in an institution.

DADS has received grants from the Administration on Aging to create nursing facility diversion projects in Central Texas and Tarrant County. The projects are characterized by the pooling of Title III and general revenue funds, along with cost sharing, to create intensive supports for individuals who are at greatest risk of nursing facility placement. The Committee supports the expansion of such diversion projects, through funding for additional sites and dissemination of best practices.

Vote: 8-0-1: (Tim Graves, Texas Health Care Association, abstains.)

Recommendation 10: Change the eligibility status for individuals to access Project Access.

Project Access was created as a Section 8 voucher program funded through the United States Department of Housing and Urban Development (HUD) and administered through the Texas Department of Housing and Community Affairs (TDHCA). It provides permanent housing vouchers versus the more common two-year voucher (Tenant-based Rental Assistance). The only limiting factor for Project Access was that they could only be used by individuals 0-62 years of age.

The federal program ended calendar year 2003 however, TDHCA chose to continue the program with permission from HUD. TDHCA is funding the program through its HOME program allocation and has chosen to continue the 62 age limitation. 57 percent of the nursing facility population that chooses to relocate back into the community is over the age of 60. Therefore, a large percentage of the population does not have availability to this program. The Committee is requesting that TDHCA asks HUDs permission to open the program to all individuals regardless of age.

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstains.)

Recommendation 11: Increase outreach and education efforts regarding nurse delegation. Work with the Board of Nurse Examiners to educate their membership on nurse delegation as it pertains to long-term services and supports.

Nurse delegation is an important option to promote independence and to make possible community-based living. Many licensed nurses are reluctant to use this option for individuals with complex medical/functional needs even though this has proven successful for similar individuals. This recommendation is to enhance outreach and education efforts with the Board of Nurse Examiners and their constituency.

Vote: 9-0-0

Recommendation 12: Eliminate unannounced annual HCS survey visits to Foster Companion Care family residences.

Unannounced survey visits to all HCS settings, including Foster Companion Care providers, were authorized in S.B.643, 81st Legislature, Regular Session, 2009, and a letter of Legislative Intent by Rep. Patrick Rose. More specifically, the 2010-11 General Appropriations Act (Article II, Special Provisions, Section 48, 81st Legislature, Regular Session, 2009) funded 30 full time equivalent positions to DADS to conduct the HCS residential reviews which began on September 1, 2009. Often Foster Companion Care providers are parents or other family members of the individual receiving HCS. Significant issues have arisen over the appropriateness, timeliness, quality and cost-effectiveness of the surveys that have been conducted.

The state is spending hundreds of thousands of dollars on an activity with little expectation of significant quality outcome. The Legislature should amend the statute to eliminate unannounced annual inspections of Foster Companion Care providers who are

family members of the HCS participant and, instead, conduct survey visits on an exceptions visit.

Vote: 6-3-0 (Anita Bradbury, Texas Association for Home Care and Hospice, Susan Payne, Parents Association for the Retarded of Texas, Inc., and Tim Graves, Texas Health Care Association, voting nay.)

Recommendation 13: Consolidate state supported living centers and use cost savings to support community-based options.

Texas maintains an expensive network of 13 state supported living centers, formerly state schools, for individuals with intellectual and developmental disabilities. This has been protected since the early 1990s although there has been a significant reduction in the number of residents in the last decade who have chosen to remain in the state supported living centers due to increased community options as a result of Promoting Independence and the increase in HCS community waiver slots; further reductions are projected. By maintaining all 13 institutions, Texas is failing to take advantage of economies of scale and elimination of duplicative administrative and operational functions. Capacity of the institutions would allow for consolidation while all residents who choose to live in a state supported living center may continue to do so.

While recognizing that the State of Texas is operating under a settlement agreement with the DOJ in response to a lawsuit for abuse, neglect, and exploitation of its residents, the state should enter into discussions with DOJ on consolidation within the parameters of the settlement. Texas should consolidate its number of institutions to an appropriate and necessary level and use the direct savings for cost-effective community services.

Vote: 5-3-1 (Carole Smith, Private Providers Association of Texas, Susan Payne, Parents Association for the Retarded of Texas, Inc., and Tim Graves, Texas Health Care Association, voting nay; Anita Bradbury, Texas Association for Home Care and Hospice, abstains.)

Recommendation 14: Remove implementation obstacles and barriers for the Youth Empowerment Services (YES) waiver and begin providing the necessary intense behavioral supports to these children (0-21 years of age) with serious emotional disturbances.

Community mental health services currently available for children and youth with serious emotional disturbance who are at risk of institutionalization are inadequate often resulting in hospitalization, institutionalization, or relinquishment of custody to Child Protective Services. The YES waiver is designed to provide the intense behavior supports that these children and their families need to prevent these outcomes. Implementation of the YES waiver is initially limited to two counties and has been delayed multiple times.

Additionally, several components in the design of the waiver are preventing providers from participating also hindering implementation. The Committee recommends that Department of State Health Services (DSHS) make whatever changes are necessary to allow this program to be implemented effectively and on a timely basis.

Vote: 9-0-0

SECTION III. INCREASE COMMUNITY OPTIONS

PROGRAM FUNDING

Part A: Recommendations for change and funding for the 1915(c) waivers (please also see Recommendation 21).

Recommendation 15: INCREASE IN MEDICAID 1915 (C) SLOTS – EIGHT YEAR PLAN FOR ELIMINATION OF CURRENT INTEREST LISTS

The Committee's number one priority is that the emphasis on increasing community-based services be continued and enhanced by the 82nd Legislature. As of December 31, 2009, there continued to be 99,252 individuals (unduplicated)/126,695 (duplicated) on waiver interest lists (these numbers include individuals on the STAR+PLUS interest list). Therefore, the Committee recommends that the 82nd Legislature increase funding for community-based programs in order to eliminate all interest lists within an eight year period, this would include sufficient funding to actualize a cumulative 100 percent decrease in the overall interest lists through the 84th Legislative Session (2017). This overarching initiative will include both individuals on the interest list, projected demographic growth, and acuity. Implementation of this recommendation will result in that by the end of the fiscal year 2017, no new applicant for community-based services will have to wait more than six months to receive services.

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstains.)

Recommendation 16: Increase funding to all the existing 1915 (c) waiver programs in order to ensure flexibility in the service array.

1915 (c) waiver programs have set service arrays to help manage utilization and overall costs. Many of these programs currently exist with the same service arrays that were established in the 1980s and 1990s when the programs were first created. Through experience, there are many other support services that could be offered that would enhance success in community living and an individual's quality of life. Examples of services currently not offered are behavioral health supports, services to support an individual with traumatic brain syndrome, services to support an individual with autism, and other specific supports. These additional services and supports would not increase the overall cost cap but rather provide increased flexibility and opportunity for an individual's self-determination.

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstaining.)

Recommendation 17: Calculated waiver cost caps on the aggregate versus the current individual cost cap based on service needs.

Many individuals with significant disabilities cannot be served through CBA and STAR+PLUS waivers because of the individual cost caps. The Promoting Independence Advisory Committee is requesting the state and the Committee to review and make

recommendations on how CBA and STAR+PLUS can provide services to individuals with significant disabilities who are above the individual cost cap but need these services to relocate or continue living in the community.

Vote: 9-0-0

Recommendation 18: Establish a Hospital Level of Care Waiver.

The Committee recommends the enactment of legislation to establish a 1915 (c) waiver to provide the state with the flexibility to provide medical assistance services outside the scope, amount, or duration of non-waiver services available to medically fragile individuals who are at least 21 years of age and who require a hospital level of care under the medical assistance program. The waiver would include the following services: case management, attendant care, rehabilitation, respite and companion care services, private duty nursing, medical equipment and supplies, home health care and in-home support services.

Vote: 7-0-2 (*Bob Kafka, ADAPT of Texas, and Tim Graves, Texas Health Care Association, abstains.*)

Part B: Fund behavioral health services and supports for health and human services enterprise programs. There is an increasing concern for the lack of behavioral health services and supports for individuals with a mental illness and/or a substance abuse. These issues, as either stand-alone concerns, or coupled with a co-occurring other disability presents a barrier for a fully-integrated long-term services and supports system. It is difficult to be in full compliance with the *Olmstead* decision when many of the barriers to community integration and relocation from institutional settings are dependent on limited behavioral health funding. The Committee makes the following three recommendations:

Recommendation 19: Fully Fund The Assertive Community Treatment (ACT) Service Packages As Part Of The Resiliency And Disease Management (RDM) Program Administered Through DSHS.

DSHS has recognized the importance of Promoting Independence (PI) and those individuals who have been hospitalized for over a year as part of the PI population. DSHS has also acknowledged that the focus should incorporate those individuals who are at risk of hospitalization and for individuals who have been hospitalized two or more times in 180 days. The PI Plan formally targets individuals with three or more hospitalizations within the 180 day period. However, DSHS' RDM allows for services to persons with the two or more hospitalizations in order to help prevent a third hospitalization.

DSHS has determined that the at-risk population should be incorporated into the RDM System regardless of diagnosis, and that generally adults are appropriate for service level 4 of ACT. The current appropriations are not adequate to meet the capacity of the state and a significant number of individuals are being recommended for ACT level 4 but are actually enrolled into a less intensive and expensive level of services. According to the DSHS strategic plan, an estimated 970,393 adults in Texas met the DSHS mental health

priority population definition in fiscal year 2009, approximately 467,226 are estimated to have the greatest need (targeted priority population). DSHS program service utilization data indicates that an approximate one fourth of those with the greatest need received mental health services from the state authority in 2009.

The Committee recommends the Legislature adequately fund ACT as part of RDM to ensure that individuals who are hospitalized two or more times in 180 days are able to access service level 4 of RDM.

Vote: 9-0-0

Recommendation 20: Provide services and supports for individuals leaving the state mental health facility (state hospital) system.

Many individuals leaving the state hospital system have no community residence or the required services to help them re-integrate back into community living. This lack of services and housing options result in a large percentage of individuals being discharged from the state hospital into a nursing facility. The state then works with that individual through the “money follows the person” policy to have him/her return to the community. This process is costly to the state and does not provide the highest level of a quality of life to the individual. The Committee recommends that DSHS is provided sufficient funding to provide the necessary community services and supports, such as Cognitive Adaptation Training and Substance Abuse Services, to optimize the individual’s opportunity for a successful relocation and lower the risk for recidivism.

Vote: 9-0-0

Recommendation 21: Include behavioral health services and supports as service options within all Medicaid 1915(c) waiver programs.

The current 1915(c) service arrays do not adequately cover behavioral health services and supports. Therefore, community options are limited for those individuals with a co-occurring physical, intellectual, or developmental disability. The Committee recommends that all Medicaid 1915 (c) waiver programs provide behavioral health services and supports as a service option under the service array. While the addition of this service option may initially increase the individual service plan cost, this could be a short-term activity until the individual stabilizes or eventually offset other service costs as a result of a reduction for the need for other available services. Through the MFP Demonstration, the state is conducting a pilot project in Bexar County. This pilot is providing two behavioral health services (Cognitive Adaptation Training and Substance Abuse Services) in addition to the STAR+PLUS service array. Preliminary data indicate that the need of certain STAR+PLUS services actually decrease with the delivery of these two behavioral health services.

Vote: 9-0-0

Part C: Other funding recommendations.

Recommendation 22: Fund an integrated data warehouse.

The long-term services and supports system crosses several health and human services operating agencies. DADS, the lead operating agency for long-term services and supports, is in the process of enhancing its “data warehouse” which provides individual service level information for purposes of providing data to make evidence-based policy decisions. However the managed care system, which has expanded into all of the major urban service delivery areas and is administered by HHSC, maintains its own data collection process. It is important to create a single “data warehouse” which will integrate both the fee-for-service and managed care data. There is a significant need to characterize the entire long-term services and supports systems within a single system, and discuss in an evidence-based manner, the commonalities and differences of the two funding systems.

Vote: 9-0-0

Recommendation 23: Create an expedited access program for individuals seeking community-based state plan amendment programs.

Individuals who want community-based entitlement programs must wait for their eligibility to be processed. It can take several weeks to determine eligibility during which the individual will go without service. It is not uncommon when the need is acute that the individual can not wait for community services to begin and becomes admitted to the nursing facility. The Committee recommends that the state establish a short preliminary assessment tool that can establish a temporary eligibility for the community entitlement program while the permanent eligibility is being established. The assessment tool should be exact enough to limit the state’s fiscal liability in case the individual does not meet the permanent eligibility criteria.

Vote: 9-0-0

WORKFORCE AND PROVIDER NETWORK STABILIZATION

The opportunities for community living are limited without a functional, available, and qualified work force and provider network. Significant turnover rates for direct services and supports staff result in a diminished quality of care and a significant additional expense for recruiting and training new employees. Other additional costs include overtime wages for employees who must cover vacant positions. Providers must have adequate funds to address these workforce challenges and costs. In addition, providers are also faced with other operational demands. Lack of sufficient funds to address these expense items have an equally negative impact on the quality of services provided and the availability of a qualified provider base from which an individual may choose to receive services.

The Committee recommends the following workforce and provider measures to stabilize the current workforce, ensure a viable provider base and meet the needs of Texans with disabilities during the 2012-13 biennium.

Recommendation 24: Fully-fund the 2010 Consolidated Budget’s 2012-2013 rate methodology requests.

HHSC will publish its *2010 Consolidated Budget* in October 2010. HHSC, in the past, lays out the cost implications for increasing provider rates by certain intervals. The state has published rate methodologies in the Texas Administrative Code but does not fully fund those formulas. The following Table indicates the amount requested in the *2008 Consolidated Budget* and the amount appropriated:

TABLE 1

Program	Percent Increase Requested in Consolidated Budget	Percent Increase Appropriated by 81st Legislature
PHC	8.08%	7.61%
CBA	9.96%	5.16%
CLASS	10.07%	4.46%
MDCP	5.11%	4.13%
HCS	4.11%	4.25%
Day Activity and Health Services	3.42%	2.09%

Vote: 9-0-0

Recommendation 25: Increase provider rates to address inflation.

Cost inflation is inevitable for even the most efficient providers. In fact, between 2005 and 2009 the Consumer Price Index (CPI) has increased by 10.98 percent. While the rate adjustments provided by the 81st Legislature provided some relief for the attendant component of rates, there were no increases made for necessary service support/operational costs. There have been no increases to this component since September 1, 2000: no change in CBA; -1.83 percent in CLASS; -.48 percent in Primary Home Care.

Vote: 9-0-0

Recommendation 26: Fund community direct services and supports workers.

The ability to recruit and retain direct services workers is at a critical juncture in Texas. Without a stable direct service workforce, it will be difficult to have a quality community-based system. In the development of the *2010 Consolidated Budget*, the level of funding for wages and benefits for community direct services workers, must be sufficient to effectively recruit and retain community workers in order to meet the needs of individuals who require long-term services and supports, as identified in the LAR of

the HHSC Consolidated Budget. Many direct service workers are being reimbursed at minimum wage. It is imperative that direct service workers be paid a competitive wage.
Vote: 9-0-0

CHILDREN'S SUPPORTS

- **FULLY-FUND LONG-TERM SERVICES AND SUPPORTS SUFFICIENTLY IN ORDER TO AVOID THE INSTITUTIONALIZATION OF ANY CHILD.**

The Committee believes that the health and human services system must address the number of children with disabilities who continue to remain in Texas institutions. Equally important to the Committee is to ensure that children with disabilities at risk of institutionalization may remain with families. The Committee will make recommendations and monitor the health and human services system for progress on these issues.

Reducing the number of children with disabilities residing in large, congregate care facilities continues to be a top priority for Committee as well as for other disability advocates throughout Texas. This goal can only be accomplished by addressing the barriers that prevent children from leaving these facilities, and ensuring that the appropriate community supports and services are available that prevent the initial placement of a child in a facility.

While the number of children living in institutional settings (not including HCS Residential)³ has declined by 26 percent from August 2002 through August 2009, the number children in state supported living centers has increased 32 percent over the same period. However, the Committee does recognize there was an eight percent decline from fiscal year 2008 (345 children) to fiscal year 2009 (318 children), and a 79 percent decline of children in large (14+ bed) ICFs/MR.⁴ Nevertheless, until every parent or legal guardian has the opportunity to choose community-based services versus institutional then the Committee will advocate for additional community-based services and supports and more effective service arrays.

The following recommendations are aimed at decreasing the number of children with disabilities in Texas institutions, increasing access to quality permanency planning and family-based options, and preventing new admissions of children to these facilities.

Recommendation 27: Provide the appropriate community-based services to those at imminent risk of institutionalization and prevent the placement of children/youth 17 years and younger in institutional settings.

This recommendation is consistent with the Center for Disease Control and Prevention's *Healthy People 2010 Objectives for People with Disabilities*. Many families/guardians feel

³ The baseline for DFPS facilities is August 31, 2003 versus 2002 for all other facilities.

⁴ S.B. 368 Report: Permanency Planning and Family-based Alternatives Report (February 2010): http://www.hhsc.state.tx.us/si/C-LTC/SB368_Rep_012010.pdf

as though they have no option during a crisis situation other than institutionalization.

Funding of “crisis services” to provide intervention, stabilize the current situation, and the provision of behavioral training to the family/guardian would have a significant impact on the ability of the family/guardian to continue to support the child/youth at home.

Vote: 7-1-1 (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting nay; Tim Graves, Texas Health Care Association, abstains.)

Recommendation 28: Expand the Promoting Independence (PI) population to include children in institutions licensed by DFPS (for children in state conservatorship).

Being designated as a PI population provides a child/youth with immediate or expedited access to Medicaid 1915 (c) waiver programs. Currently, the PI population only includes individuals in nursing facilities, state supported living centers, and nine or more bed community ICFs/MR. DFPS administers three facilities that serve children with developmental disabilities in their conservatorship. These children must wait for a foster family or be on the HCS interest list which may result in several years.

Vote: 8-1-0 (Susan Payne, Parents Association for the Retarded of Texas, Inc. voting nay.)

Recommendation 29: Create a Permanency Planning/Promoting Independence Unit for Children at DADS.

S. B. 368, 77th Legislature, Regular Session, 2001, created permanency planning as a public policy in 2001, subsequent legislation reinforced and strengthened the policy. However, the function was never fully funded and staff assigned can not fully actualize this activity as intended. A permanency planning unit would have responsibility for:

- Developing the infrastructure and the expertise needed to address the institutionalization of a child in a crisis situation;
- providing technical assistance to mental retardation authorities (MRAs) who have responsibility for permanency planning by developing increased expertise at local MRAs (ongoing training and support);
- developing meaningful accountability for quality permanency planning and crisis intervention; and
- increasing efforts to relocate children currently placed in state schools to less restrictive, family-based alternatives.

Vote: 8-1-0 (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting nay.)

Recommendation 30: Develop a pilot to create emergency shelters for children with disabilities needing out-of-home placement.

This is to ensure adequate time to assess the child and develop an appropriate family-based alternative.

Vote: 9-0-0

INDEPENDENT LIVING OPPORTUNITIES AND RELOCATION ACTIVITIES

Recommendation 31: Eliminate the time period requirement for expedited access for individuals with IDD who are residing in nine or more bed private ICFs/MR.

The Committee recommends full funding for the “Promoting Independence Priority Populations” that will result in individuals residing in community ICFs/MR or in state supported living centers having immediate access to HCS slots, upon meeting all the community eligibility criteria, and not waiting six-twelve months for a slot.

Vote: 8-1-1 (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting nay; Tim Graves, Texas Health Care Association, abstains.)

Recommendation 32: Fund Department of Assistive and Rehabilitative S in order to add three additional Centers for Independent Living (CILs).

The federal Rehabilitation Act which is overseen by the Rehabilitation Services Administration created the development of Centers for Independent Living (CIL). The purpose of the independent living programs is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities and to integrate these individuals into their communities. CILs provide services to individuals with significant disabilities that help them remain in the community and avoid long-term institutional settings.

Prior to the 81st Legislative Session, there were 23 CILs in Texas funded by federal and General Revenue funds which covered only 161 counties. The 81st Legislature added funding to the 2010-11 General Appropriations Act (Title II, DARS, S.B. 1, 81st Legislature, Regular Session, 2009) to create three new CILs covering Collin County, Galveston County and Tom Green County overall coverage by the 26 CILs includes 164 counties. Nevertheless, many parts of the state, especially in the rural counties, are without CIL coverage (90 counties are without Title VII, Part C, CIL funding).

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstains.)

HOUSING INITIATIVES

Affordable, accessible and integrated housing is an essential base requirement for individuals who want to relocate back into their communities. The Committee continues to advocate for the creation of housing units for individuals designated as Texas *Olmstead* population.

Individuals who are relocating from nursing facilities or individuals who are in the targeted *Olmstead* populations under the DSHS provisions must have integrated and affordable community housing. There are two substantial barriers – the poverty of individuals who are living at the Supplemental Security Income (SSI) level (\$674/month), and/or the lack of easy access to wrap-around supports and services. The Committee makes the following recommendations:

Recommendation 33: HHSC should supplement the administrative fee for HOME Vouchers.

The HOME vouchers which include Section 8 and Tenant-based Rental Assistance (TBRA) are expensive and difficult to administer. There is a minimal amount of administrative overhead allowed in the overall funding made by the HUD. This limited amount for administrative activities is a barrier in getting qualified contractors willing to administer the program.

HUD will only provide a four percent administrative fee which is supplemented by TDHCA with an additional two percent. In 2002, HHSC also provided funding (an additional four percent) to supplement the administrative fee to allow contractors to spend up to ten percent of the award on administrative activities. HHSC no longer provides the additional four percent in funding. The Committee recommends that HHSC's four percent additional support be reinstated.

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstains.)

Recommendation 34: TDHCA should continue to increase the amount of dedicated HOME vouchers for individuals relocating from institutional settings.

TDHCA administers HOME vouchers which provide both temporary (two year TBRA) and permanent (Section 8) vouchers for individuals who are relocating from institutional settings. There is always an increasing need for accessible, affordable, and integrated housing for individuals who are at the SSI level of income (16-20 percent of average median income).

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstains.)

Recommendation 35: The 82nd Legislature should increase the amount of funding to the Housing Trust Fund (Fund) and dedicate 25 percent of the Fund to support individuals whose income is no more than 300 percent of the SSI level who want to relocate from an institutional setting or remain in the community.

The State of Texas has a Housing Trust Fund (general revenue) to provide discretionary funding for specific housing supports to the general public. The 2010-11 General Appropriations Act (81st Legislature, Article VII, TDHCA, Senate Bill 1, Regular Session, 2009) increased the Housing Trust Fund from \$5 million (General Revenue) to \$10 million (General Revenue). However, this funding is not necessarily dedicated to individuals on Medicaid, or at least the SSI level of income, who are trying to relocate to the community.

The state provides limited housing supports for Medicaid beneficiaries who want to relocate through TBRA and Project Access vouchers. Yet these vouchers are not available to all applicants, because Project Access vouchers are age-restricted (individuals 0-62 years of age), and TBRA vouchers may not be available or may expire before the beneficiary qualifies for a permanent subsidy.

The Fund allows the state flexibility in establishing subsidy programs and currently benefits the general public. The Committee recommends designating at least 25 percent of the Fund to support individuals who are relocating from institutions and/or individuals who have relocated with TBRA vouchers that have subsequently expired. This would establish a “bridge-funding” from temporary to permanent housing supports for Medicaid beneficiaries at risk of institutionalization.

Vote: 8-0-1 (Tim Graves, Texas Health Care Association, abstains.)

Appendix A

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