

PROMOTING INDEPENDENCE
ADVISORY COMMITTEE



Promoting Independence

Advisory Committee

Stakeholder Report

2009

Submitted to

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Texas Health and Human Services Commission

by the

Promoting Independence Advisory Committee

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ACKNOWLEDGEMENTS AND DISCLAIMER

The current Promoting Independence Advisory Committee¹ (Committee) is very appreciative of the groundwork established by the previous Committees, and of the various advocate, consumer and provider communities supporting community-based services and supports. In addition, the Committee recognizes the contributions of the 81st Legislature and the Governor's Office for supporting additional funding for community-based programs, especially during a very difficult period of economic downturn both on the national and state levels.

The Committee recognizes there are many competing interests during a legislative session requesting needed appropriations. Therefore, the Committee is grateful that while many other state legislatures have been in the process of downsizing programs and budgets, the state of Texas significantly increased its community-based funding for the 2010-11 biennium. The Committee acknowledges the difficulties that will be facing the 82nd Legislature (2011) and will be providing recommendations for the health and human services agencies' 2012-2013 Legislative Appropriations Requests in order to keep Texas on the trajectory of meeting its original and subsequent Promoting Independence Plans and the requirements under the United States Supreme Court's *Olmstead* decision (June 1999).

This report reflects the views and opinions of a consensus of the members of the Promoting Independence Advisory Committee (Committee); see Appendix A for information regarding the full membership of the Committee. When a member expresses a desire to abstain from any part of the report, that individual's name and organization will be noted.

¹ This report reflects the views and opinions of a consensus of the members of the Promoting Independence Advisory Committee (Committee). 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 this report do not necessarily reflect the policy of HHSC, the Texas Department of Aging and Disability Services, or any state agency represented on the Committee. See Appendix A for information regarding the full membership of the Committee.

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PREFACE²

Fiscal Year 2009 was a lesson in extremes. On the positive side, the Texas Legislature appropriated significant funding to increase the community-based services offered to individuals with intellectual and other developmental disabilities. Additionally, directives were given to promote reduction of the state supported living center census (formerly known as state schools) and to work toward allowing individuals a real choice in their residential settings. It is also expected that the number of individuals entering state supported living centers will be reduced as a result of the availability of funding for Home and Community-based Services (HCS) diversion services and activities specified under the 2010-11 General Appropriations Act (Article II, Special Provisions, Section 48, S.B. 1, 81st Legislature, Regular Session, 2009). The slots created through the diversion funding will be used specifically to prevent institutionalization in a state supported living center. All of these provisions support the goals of the Promoting Independence Advisory Committee (Committee).

At the same time, however, only minimal increases to support those with non-developmental disability services were approved, leaving individuals with other types of disabilities to question when and how the system will meet their needs. Exacerbating the issue was the recent announcement by the Department of Aging and Disability Services (DADS) that as a result of the 2010-11 General Appropriations Act (Article II, Special Provisions, Section 48, S.B. 1, 81st Legislature, Regular Session, 2009) not funding increased acuity for current waiver participants, the funds appropriated for *new* slots will be used to fund current waiver participants. The Community-based Alternatives (CBA) waiver program will be especially affected as DADS projects that no *new* slots will be made available. The number of new Community Living Assistance and Support Services (CLASS) and Medically Dependent Children Program (MDCP) slots will also be negatively affected while the HCS slots are expected to remain as originally projected.

While significant efforts were made during the 81st Legislature, Regular Session, 2009, to plan for reforming/redesigning the system of services for individuals with disabilities across populations and across programs, those efforts were not successful. Consequently, the fragmentation, the inequity in funding, and the confusion for the individuals trying to access services in the current system will continue. This will undoubtedly have a direct impact on the state's ability to meet the goals of the Promoting Independence Plan (Plan).

Also affecting the state's ability to meet the commitments of the Plan is the expected shortage of HCS slots for individuals requesting waiver services so that they may relocate from state supported living centers to HCS. DADS has indicated that current referrals from the state centers (as of August 2009 – before the biennium even begins) already exceed the number of slots targeted for state supported living center residents.

² The *Preface* is a statement made by a consensus of the membership of the Promoting Independence Advisory Committee. Each member may not agree to all statements and comments, however, in principle they agree to the overall content. Susan Payne, PART, Inc is on record in abstaining her support for the *Preface* as written.

Additionally, efforts to provide *meaningful* wage increases for direct service and support providers were not successful, which will likely result in increased difficulty finding individuals to provide the needed services, putting the entire community system at risk. Compounding the problem is the reality that significant inequity continues to exist in the pay and benefits for community direct service and support workers compared to those working in state supported living centers, nursing facilities and other institutions. Rate discrepancies also continue to exist across community-based programs.

There is a significant concern in the lack of implementation of many of the recommendations developed by the Children in State Schools Workgroup, which was created by Executive Commissioner Hawkins in Calendar Year 2007; the final report was submitted in August 2008. From the beginning, reducing the number of children in the state supported living centers, and preventing new admissions of children, has been a key concern of the Committee. The Committee's position continues to be that children with disabilities should have the opportunity to grow up in families with the supports and services they need.

Consequently, much work remains to be done and the work of the Committee is far from complete. The Committee recognizes the need to prioritize many of the issues that impact opportunities for individuals to access the services and supports needed in order for every Texan with disabilities to have a real choice on where they want to live to receive services. The Committee also recognizes that resources are limited and that the priorities of various interest groups often compete, creating the need to remain diligent in our efforts to ensure that every individual with a disability, who desires to do so, has the opportunity to live in their community. Until community-based services are as equally available as institutional services, the work of the Committee must focus on equalizing the system.

Again, significant work remains. As a result of the unmet needs of Texans with disabilities, the Committee strongly urges the governor, legislative leadership, and the leadership of the Texas health and human services enterprise to address the following priorities:

- The need to develop a vision for a coordinated system of services and supports and a comprehensive strategic plan, with meaningful performance targets, to move the state towards the goals of the Plan. This vision and strategic plan should aim to eliminate all barriers to choice.
- The number of individuals on the waiting lists for *all* home and community-based services as of July 31, 2009 was 97,366 (unduplicated). Efforts must continue to fund community-based services for all individuals who prefer them as alternatives to institutional programs.
- HCS services must be made available to all those referred for community-based services from the state supported living centers. Referrals should not be reduced or delayed because of a shortage of targeted waiver slots.
- While progress has been made in reducing the number of children residing in institutions, significant work remains to ensure that all children with disabilities have the opportunity to grow up in families. Efforts to address the causes of institutionalization of children must

accompany access to needed services prior to a child being institutionalized. Of particular concern is the lack of positive behavioral supports in community settings.

- The recommendations of the Children in State Schools Workgroup should be implemented as soon as possible.³
- Direct service workers are the backbone of long-term services and support programs. Although the positions require minimal training and qualifications, they are difficult to fill with qualified applicants. Across all service settings, direct service workers are likely to be compensated at or slightly above minimum wage, placing the positions at a competitive disadvantage. Once recruited, direct service workers have higher turnover rates than normal, given minimal or no benefits, hazardous working conditions, inadequate training, a lack of control over their jobs, and absence of a defined career ladder.
- Community-based direct service workers are doubly affected by such issues since their compensation is lower, on average, than institutional workers. Individuals and families can wait years to be offered waiver services only to find out that there is no one available to provide the services. Nursing facilities and other institutions continually suffer from significant staff turnover. Increased wages for direct service workers is the key component and should be addressed along with the need for other benefits and work incentives (see Workforce section for more detailed information).
- The Department of Justice Settlement Agreement was developed and approved without input from individuals, families, or other stakeholders. Disability advocates have expressed significant concern with respect to the changes to be made as a result of the agreement and the accountability for implementation, especially as the agreement relates to the *Olmstead* decision and “the most integrated setting.”
- The need to expand affordable, integrated, and accessible housing remains a significant barrier for those who want to relocate from an institutional setting. The Texas Department of Housing and Community Affairs recently expanded the number of vouchers through its Project Access program, but the limited number of vouchers (60) is inadequate to support all qualified applicants. In addition, the vouchers are restricted to applicants who are under the age of 62, placing older individuals at a disadvantage. Nursing facility residents, who are awaiting appropriate housing, are having their nursing facility stay significantly extended even after it’s been determined that they can receive adequate and less costly care in the community.

As new leadership arrives at both HHSC and DADS, the Promoting Independence Advisory Committee is hopeful that the Promoting Independence Plan receives the priority attention needed to ensure that Texas effectively complies with the *Olmstead* decision. Many recommendations have been developed that should be considered as part of a strategic planning process to ensure that Texas is ready for the needs of Texans with disabilities in both the near and long-term future.

³ *The Children in State Schools Report* (August 2008) may be found in its entirety in the *2008 Promoting Independence Advisory Committee Stakeholder Report- Appendix G* which may be found at: http://www.dads.state.tx.us/providers/pi/piac_reports/PIAC-2008.pdf

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BACKGROUND

The background and history of the Promoting Independence Initiative is well-documented in previous Promoting Independence reports and plans. These documents may be accessed on both the Health and Human Services Commission (HHSC) and the Texas Department of Aging and Disability Services (DADS) websites.⁴

Please reference the *2008 Revised Texas Promoting Independence Plan: Introduction and Purpose*, page 10-11; and *Background*, pages 12-15, for the comprehensive review of the Promoting Independence Initiative's history.

The DADS' Promoting Independence website also provides an extensive array of information regarding Promoting Independence and related activities.

The following information provides specific historical website reference material:

- The impetus of the Promoting Independence Initiative was the *Olmstead v. L.C.* 1999 Supreme Court ruling which can be found at:
<http://straylight.law.cornell.edu/supct/html/98-536.ZS.html>
- *Olmstead v. L.C.* was followed by then Governor George W. Bush's Executive Order GWB 99-2 which directed HHSC to initiate the Promoting Independence Initiative and appointed the original Promoting Independence Advisory Board:
<http://www.lrl.state.tx.us/scanned/govdocs/George%20W%20Bush/1999/GWB99-2.pdf>
- S.B. 367, 77th Legislature, Regular Session, 2001, codified many of the efforts and direction of the original Promoting Independence Advisory Board and their report:
<http://www.capitol.state.tx.us>
- In April 2002, Governor Rick Perry issued his own Executive Order (RP-13) to further the state's efforts regarding the Promoting Independence Initiative:
<http://www.governor.state.tx.us/divisions/press/exorders/rp13>

RP-13 not only requires coordination among the health and human services agencies but also the Texas Workforce Commission and the Texas Department of Housing and Community Affairs.

⁴ http://www.hhsc.state.tx.us/about_hhsc/reports/search/search_title.asp; <http://www.dads.state.tx.us/providers/pi/index.html>.

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INTEREST LIST FUNDING

In order to fully fund the appropriate waiver programs to serve eligible individuals on the current waiver interest lists (September 2009), without taking in consideration demographic growth nor appropriations made during the 81st Texas Legislature, the state would have to appropriate \$1,059,266,034 in additional general revenue (\$2,538,241,212 all funds).

Applicants for DADS' community-based services may be placed on an interest list because the demand for community-based services and supports often outweighs available resources. Since the original Promoting Independence Plan, the Committee's ongoing top priority has been full-funding for community-based services and elimination of all interest lists. The Committee will be making a recommendation to eliminate current interest lists for the 2012-13 Legislative Appropriations Request.

The 81st Legislature, through the 2010-11 General Appropriations Act (Article II, S.B.1, 81st Legislature, Regular Session, 2009), significantly increased the number of individuals who may access 1915(c) Medicaid waivers and other community-based program. The 81st Legislature provided \$190.9 million in additional general revenue funds to provide community placement for an additional 10,794 individuals on interest lists at HHSC, DADS, DSHS and DARS (see section on Overview of 81st Texas Legislative Session for more specific information).

However, as of September 2009, there remained 125,018 individuals (duplicated count) on the official interest list for DADS waivers and the non-mandatory managed care waivers; the duplicated count without STAR+PLUS is 121,444 individuals. Caution: these numbers reflect only a specific timeframe and for the most current information, please visit the DADS website at:

<http://www.dads.state.tx.us/services/interestlist/index.html>

It is to be reminded that these numbers reflect individuals who have demonstrated an interest in a 1915(c) waiver; they may not necessarily be eligible for the program after submitting to the program criteria. Table 1 gives the percentage of individuals on a specific interest list and their ability to qualify for the program (Percent Eligible):

TABLE 1

Program	Interest List September 2009	Percent Eligible⁵
Community Based Alternatives	36,206	30 percent
Community Living Assistance and Support Services	27,715	45 percent
Medically Dependent Children Program	14,587	30 percent
Deaf-Blind with Multiple Disabilities	187	60 percent
Home and Community-Based Services	42,749	70 percent
STAR+PLUS (MAO)	3,574	30 percent

When the percent estimated to be eligible is taken in consideration, the number of likely eligible individuals waiting for 1915 (c) waiver programs is 58,818 (duplicated count). In order to fully fund the appropriate waiver programs to serve likely eligible individuals on the current interest lists (September 2009), without taking into consideration demographic growth or appropriations made during the 81st Legislature, Regular Session, 2009, the state would have to appropriate \$1,059,266,034 (general revenue; \$2,538,241,212 all funds) in additional funds. These funds include projections for the acute care portion and pharmaceuticals as well as additional staffing/administration.

⁵ Information is derived from experience of individuals being offered a waiver slot from the interest list.

OVERVIEW OF 81st TEXAS LEGISLATIVE SESSION

In a continuation of the efforts made by the 80th Legislature, Regular Session, 2007, the 81st Legislature, Regular Session, 2009, increased funding for health and human services. Overall, the 81st Legislature appropriated \$59.2 billion (all funds) for the state's five health and human services agencies for the biennium 2010-11, a 6.7 percent increase over current funding levels as required by the 2010-2011 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009). An additional \$3.2 million (general revenue) was included in H.B. 4586, 81st Legislature, Regular Session, 2009 for the purpose of complying with the United States Department of Justice (DOJ) State School Settlement Agreement. Funding provides for the increase in Adult Protective Services (APS) staff for more efficient state school investigations and lower span of control for supervisors.

TABLE 2

Health and Human Services Agencies 2010-2011 General Appropriations Act Impact

Agency	FY 2010-11 Funding	Increase From Last Biennium
HHSC	\$35.86 billion all funds (\$14.57 billion general revenue)	4.6 percent all funds compared to FY 2008-09
DADS	\$13.40 billion all funds (\$5.61 billion general revenue)	13.2 percent all funds compared to FY 2008-09
DSHS	\$5.87 billion all funds (\$3.03 billion general revenue)	4.1 percent all funds compared to FY 2008-09
DFPS	\$2.73 billion all funds (\$1.11 billion general revenue)	8.7 percent all funds compared to FY 2008-09
DARS	\$1.34 billion all funds (\$255 million general revenue)	12.8 percent all funds compared to FY 2008-09

The 2010-11 General Appropriations Act (81st Legislature, Article II, S.B. 1, Regular Session, 2009) provided \$190.9 million in additional general revenue to reduce interest lists at HHSC, DADS, DSHS and DARS during the 2010-11 biennium. The additional funding will cover:

HHSC

- STAR+PLUS (Medical Assistance Only) 84 individuals

DADS

- Home and Community-Based Services (HCS): 5,936 individuals -- Total*
- Community Based Alternatives (CBA): 861 individuals
- In-Home and Family Support: 651 individuals
- Non-Medicaid Services: 498 individuals
- Community Living Assistance and Support Services (CLASS): 1,890 individuals
- Medically Dependent Children Program (MDCP): 348 children
- Deaf-Blind Multiple Disabilities (DBMD): 6 individuals

DSHS

- Children with Special Health Needs: 87 children
- Child and Adolescent Community Mental Health 412 children/youth

DARS

- Comprehensive Rehabilitative Services: 13 individuals
- Independent Living Services: 8 individuals

*HCS slots through Section 48, Special Provisions:	5,120
Funding for Promoting Independence – nine+ private ICFs/MR:	250
Funding for Promoting Independence – State Supported Living Centers:	250
Children Aging out of Foster Care	120
Prevention of Institutionalization	196

In addition, the 81st Legislature included additional funding to expand the Program of All-inclusive Care for the Elderly (PACE) in the current locations and to add a new site in Lubbock.

It should be noted that not all programs were provided a proportionate increase in funding to reduce interest lists. Issues pertaining to acuity and increased costs may result in zero gain for some programs.

Appropriations/directives to increase community-based services and supports

Section 52 (2010-11 General Appropriations Act, Article II, Special Provisions, Section 52, S.B. 1, 81st Legislature, Regular Session, 2009) summarizes appropriations made throughout S.B. 1 and specifies stringent reporting requirements.

The inclusion of Section 48 (2010-11 General Appropriations Act, Article II, Special Provisions, Section 48, S.B. 1, 81st Legislature, Regular Session, 2009). Section 48 appropriates \$207.9 million general revenue (\$464.5 million all funds) to fund an initiative that reshapes the system for providing services and supports to individuals with intellectual and developmental disabilities (IDD). These funds are to reduce interest lists by 7,832 for individuals with IDD by August 2011. In addition, DADS is required to develop a process for census management of state supported living centers and the transference of case management from HCS providers to local mental retardation authorities (MRAs). Also, Section 48 requires a plan to implement a capitated or non-capitated pilot to serve individuals with IDD.

The inclusion of the following riders in the 2010-11 General Appropriations Act (Article II, DADS, S.B. 1, 81st Legislature, Regular Session, 2009):

- Rider 32 (formerly Rider 41): allows an individual under 22 leaving a nursing facility under “money follows the person” to access any 1915 (c) waiver upon conditions of eligibility.
- Rider 33 (formerly Rider 42): allows for an individual under 22 years, seeking to leave an intermediate care facility for persons with mental retardation (ICF/MR), and is ineligible for services under the home and community-based services (HCS) program, to be offered services under another 1915 (c) waiver, as long as they meet those eligibility criteria.
- Rider 34 (formerly Rider 43): continues Rider 46 (2006-07 General Appropriations Act, Article II, DADS, S.B. 1, 79th Legislature, Regular Session, 2005). This rider establishes a pilot program for 50 individuals under the age of 22 to leave an ICF/MR and have expedited access to community programs.
- Rider 36 (formerly Rider 45): increases individual cost caps to 200 percent for Community Based Alternatives (CBA); Consolidated Waiver Program (CWP); Community Living Assistance and Support Services (CLASS); Deaf-Blind with Multiple Disabilities (DBMD), and Home and Community-Based Services Programs (HCS); and at 50 percent for the Medically Dependent Children Program (MDCP).
- Rider 40: Waivers and PACE program may not exceed appropriated amounts without the prior written approval of the Legislative Budget Board and the governor.

Rider 65 (2010-11 General Appropriations Act Article II, DSHS, S.B. 1, 81st Legislature, Regular Session, 2009) allocates \$109,368,602 (general revenue) for Community Mental Health Crisis Services for enhanced services; and \$55 million (general revenue) for transitional and ongoing services.

Rider 37 (2010-11 General Appropriations Act Article II, DARS, S.B. 1, 81st Legislature, Regular Session, 2009) directs \$2 million (general revenue) from Independent Living Services and Independent Living Services – Blind for the purpose of providing assistive technologies, devices, and related training to Texans with the most significant disabilities. In addition, DARS was appropriated \$1.5 million (general revenue) to add three new Centers for Independent Living.

Appropriations for provider reimbursement

The 81st Legislature (2009) did provide selected rate enhancements depending on the program type. Overall, the 2010-11 General Appropriations Act (81st Legislature, Article II, S.B. 1, Regular Session, 2009) includes \$186 million (general revenue -- \$427.1 million all funds) for rate increases; this includes both nursing facility and intermediate care facilities for persons with mental retardation (ICF/MR) as well as community enhancements. However, the legislature continues not to fund reimbursement rates according to published methodologies and the community care programs for the aging/physically disabled received the least amount of enhancements. On average, the following programs received increased additional funding to increase reimbursement rates:

- Nursing Facility: 2.79 percent increase
- Hospice: 2.79 percent increase
- TxHmL: Home and Community-based Services (HCS) rate equalization
- ICF/MR: 1.50 percent increase
- HCS: 3.0 percent increase
- Community Care: \$0.80 per hour for minimum wage plus \$19.2 million (general revenue) for 2010-11 biennium for enhancements

Legislation

Several legislative bills signed by the governor will impact the Promoting Independence Initiative in its management of human services programs; go to each agency's website for a description of all legislation impacting a specific state agency. These bills include:

Section 46

Special Provisions: Requires HHSC to implement the most cost-effective integrated managed care model for aged, blind, and disabled clients in the Dallas and Tarrant Service Areas.

S.B.187: Medicaid Buy-In Program for Disabled Children which allows families whose income does not exceed 300 percent of federal

poverty level to buy-in to the Medicaid program for their child with a disability.

- S.B. 643: This is an omnibus bill impacting the state supported living centers (formerly known as state mental retardation facilities or state schools). Impacts the functions of HHSC, DADS, DSHS, DFPS and the Department of Public Safety in relating to the protection and care of individuals with mental retardation who reside in certain state-operated facilities, specifically state supported living centers and the ICF/MR component of the Rio Grande State Center, as well as privately-operated ICFs/MR, and Home and Community-Based Services (HCS) waiver providers.
- S.B. 705: Abolition of the Consolidated Waiver Program.
- S.B. 806: Requires State employees working at residential facilities (State Supported Living Centers, State Centers, and State Hospitals) subject to the Employee Misconduct Registry (EMR).
- S.B. 983: Requires DFPS to provide a personal identification certificate, social security card, and proof of Medicaid enrollment (if appropriate) to a youth aging out of foster care no more than 30 days before the youth leaves care. DFPS is currently developing the implementation plan.
- S.B. 1878: Establishes the Housing and Health Services Coordination Council under the Texas Department of Housing and Community Affairs (TDHCA). HHSC will appoint a member to the council, as will DARS, DADS, DSHS, and the Promoting Independence Advisory Committee. Among the council's responsibilities is the requirement to develop and implement policies to coordinate and increase state efforts to offer service-enriched housing.
- S.B. 1924: Interagency Task Force for Children with Special Needs. This requires HHSC to establish an Interagency Task Force for Children with Special Needs, to improve the coordination, quality and efficiency of services for children with special needs.
- Senate Concurrent
Resolution 77: Provides legislative approval to the settlement agreement between the Department of Justice and the State of Texas.
- H.B. 216: Creates a new category of licensure and regulatory requirements for facilities serving three or more elderly or disabled individuals unrelated to the owner, and gives the authority to regulate

boarding houses to local government entities. This authority is permissive.

- H.B. 610: Legislative Committee on Aging. Establishes a legislative committee on aging to study issues related to aging Texans that include health care, transportation, housing, education, and employment needs and the Chris Kyker Endowment for Seniors Fund.
- H.B. 704: Provides the courts the option to extend continuing jurisdiction over a foster youth who ages out of care, if requested by the young adult.
- H.B. 1151: Implements the federal Fostering Connections to Success and Increasing Adoptions Act of 2008 by creating a guardianship assistance program entitled Permanency Care Assistance Program (PCA). PCA is a new payment that provides funds when a relative assumes permanent managing conservatorship from DFPS of a child unable to return home or be adopted; extended adoption assistance and permanency care assistance up to age 21 for eligible youth; and extended foster care up to age 21 for eligible youth.
- H.B. 1454: Amy Young's Law. This legislation requires HHSC to create a volunteer-supported decision-making advocacy pilot program to assist individuals in making life decisions such as where to live, work, etc.
- H.B. 1574: Creates an autism resource center to coordinate resources for individuals with autism.
- H.B. 1912: Requires DFPS to expand transition planning to youth age 14 in permanent managing conservatorship, including enrolling them in Preparation for Adult Living services before they turn 16. It also makes youth over the age of 18 eligible for transitional living allowance benefits.
- H.B. 2196: Health and Behavioral Health Integration Workgroup. This legislation requires HHSC to establish a workgroup to recommend best practices in policy, training, and service delivery to promote the integration of health and behavioral health services in Texas.

FISCAL YEARS 2010-2011 PROJECTED FUNDS AND AVERAGE MONTHLY

The Promoting Independence Advisory Committee (Committee) requested that appropriation comparisons of the past biennium and the 81st Session's newly appropriated budget for fiscal years 2010 and 2011 regarding community services and supports be included in this report. The following programs reflected in Tables 1 and 2 include: Community Based Alternatives (CBA); Home and Community-Based Services (HCS); Community Living Assistance and Support Services (CLASS); Deaf-Blind with Multiple Disabilities (DBMD); Medically Dependent Children Program (MDCP); Consolidated Waiver Program (CWP); Texas Home Living (TxHmL); Money Follows the Person (MFP); STAR+PLUS/Managed Care - Waiver (MC: [Waiver]); STAR+PLUS Managed Care - Entitlement (MC: [Entitlement]); Primary Home Care (PHC); and Community Attendant Services (CAS).

TABLE 3

**DADS Waiver and Attendant Care Appropriations Expended and Projected
HHSC STAR+PLUS Appropriations Expended and Projected**

	FY 08 Expended All Funds	FY 09 Projected All Funds	FY 10 Appropriated All Funds	FY 11 Appropriated All Funds
CBA	\$412,851,834.00	\$427,527,279.00	\$483,896,360.00	\$492,463,523.00
HCS	548,865,194.00	603,392,041.00	704,444,465.00	833,201,931.00
CLASS	136,781,990.00	145,337,548.00	192,090,654.00	230,258,588.00
DBMD	7,359,086.00	7,902,374.00	7,347,798.00	7,498,275.00
MDCP	38,152,000.00	40,609,405.00	49,159,848.00	52,214,333.00
CWP	3,977,958.00	3,821,522.00	3,623,609.00	3,629,529.00
TxHmL	8,712,231.00	8,271,725.00	10,946,151.00	11,001,177.00
MFP	78,548,730.00	90,781,861.00	103,326,498.00	111,058,987.00
Managed Care: Waiver	180,888,670.00	221,792,039.00	210,302,859.00	215,696,619.00
TOTAL:Waivers	\$1,416,137,693.00	\$1,549,435,794.00	\$1,765,138,242.00	\$1,957,022,962.00
PHC	\$423,618,605.00	\$476,123,535.00	\$517,844,767.00	\$529,228,332.00
CAS	331,718,065.00	364,395,777.00	383,803,513.00	381,531,375.00
Managed Care: Entitlement	300,638,269.00	357,486,170.00	344,196,097.00	353,023,895.00
TOTAL: Attendant Programs	\$1,055,974,939.00	\$1,198,005,482.00	\$1,245,844,377.00	\$1,263,783,602.00
GRAND TOTAL	\$2,472,112,632.00	\$2,747,441,276.00	\$3,010,982,620.00	\$3,220,806,564.00

Source Documents:

- FY 08 Expended from ABEST version of FY 2010-2011 General Appropriations Act
- FY 09 Project from ABEST version of FY 2010-2011 General Appropriations Act
- FY 10 Appropriated from ABEST version of FY 2010-2011 General Appropriations Act
- FY 11 Appropriated from ABEST version of FY 2010-2011 General Appropriations Act

Footnotes:

- Reductions in PHC and CBA are a result of STAR+PLUS
- STAR+PLUS funds do not include administration or PCCM

TABLE 4

**DADS Waiver and Attendant Average Monthly Caseload Expended and Projected
HHSC STAR+PLUS Waiver and Attendant Average Monthly Caseload Expended
and Projected**

	FY 08 Expended Avg. #/month	FY 09 Projected Avg. #/month	FY 10 Appropriated Avg.#/month	FY 11 Appropriated Avg. #/month
CBA	25,007	25,027	26,302	26,732
HCS	13,386	14,717	17,017	19,985
CLASS	3,837	4,077	4,671	5,616
DBMD	149	160	155	158
MDCP	2,453	2,611	2,832	3,006
CWP	178	171	160	160
TxHmL	1,246	1,183	994	994
MFP	4,745	5,363	5,702	6,140
Managed Care: Waiver	8,207	10,983	10,904	11,162
TOTAL: Waivers	59,208	64,292	68,737	73,953
PHC	51,882	53,504	52,277	52,599
CAS	42,055	41,921	40,925	40,341
Managed Care: Entitlement	24,284	24,698	25,618	26,398
TOTAL: Attendant Programs	118,221	120,123	118,820	119,338
GRAND TOTAL	177,429	184,415	187,557	193,291

Source Documents: See above.

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RESOLUTIONS

The Promoting Independence Advisory Committee (Committee) makes formal recommendations to the Executive Commissioner of the Health and Human Services Commission in September of even-numbered years to be included in the revisions of the Promoting Independence Plan (Plan). However, during the Committee's quarterly meetings during the fiscal year, the Committee discusses many policy issues that are occurring in real-time that require the attention of the executive commissioner. Therefore, the Committee may make formal resolutions to address specific policy issues during their quarterly meeting. A full description of each resolution and the Committee vote can be found in Appendix B. The following are a summary of the resolutions passed during fiscal year 2009:

- The 1915 (c) cost cap formulation and whether it should be revised to consider costs in the aggregate versus individual cost cap.
- A request for the Texas Department of Housing and Community Affairs to apply for a United States Housing and Urban Development (HUD) Notice of Funding Availability which will provide additional housing vouchers for individuals wanting to relocate from institutional setting through Money Follows the Person.
- Services for individuals in the Community Based Alternatives (CBA) and STAR+PLUS waivers who exceed their cost caps.
- Input to the Centers for Medicare and Medicaid Services' (CMS) Notice of Public Rulemaking (NPRM) regarding the state's ability to develop a 1915 (c) waiver not linked to a specific diagnosis.
- Attendant programs administered by DADS and HHSC vis a vis doctor/nurse delgation/assignment.
- Health care reform issues being considered by the state and ongoing input.
- Issues pertaining to Section 48 (2010-11 General Appropriations Act, Article II, Special Provisions, Section 48, S.B. 1, 81st Legislature, Regular Session, 2009) moving case management component of the Home and Community-Based Services (HCS) waiver from the provider to the mental retardation authority and a request for ongoing monitoring of the process. The Committee also requests a consumer/family and provider satisfaction survey.
- Expanding the "Money Follows the Person" policy as it pertains to nursing facilities to all instituional settings.
- Allowing adults with intellectual and developmental disabilities who reside in nursing facilities to access the HCS waiver through the "Money Follows the Person" policy.

- To ensure there are adequate services to support children to live in the community versus an institutional setting.
- Development of a statewide Positive Behavioral Support Training and Technical Assistance Project.

COMMUNITY RELOCATION POLICY: MONEY FOLLOWS THE PERSON AND PROMOTING INDEPENDENCE PRIORITY POPULATIONS

There are two major policies regarding the expedited access to Medicaid 1915 (c) waiver programs for individuals residing in nursing facilities (NF) or intermediate care facilities for persons with mental retardation (ICF/MR). While both of these programs provide expedited access to community-based services they do not operate exactly the same. Individuals in NFs may have immediate access upon meeting all eligibility criteria, locating a community residence, and securing either a managed care organization or a home agency provider. Individuals residing in state supported living centers or nine or more bed private ICFs/MR may wait up to six months or twelve months respectively upon referral of the request to relocate by the interdisciplinary team (IDT).

Nursing Facilities

The State of Texas was one of the originators of the “money follows the person” (MFP) concept. This policy allows for individuals residing in nursing facilities to relocate back into a community setting to receive community-based services; primarily the Community-based Alternatives (CBA), or STAR+PLUS waivers.

The Department of Aging and Disability Services tracks data from the period September 1, 2001 through August 31, 2003, and September 1, 2003 through the present separately. Data from September 1, 2003 through the present are more detailed and provide information on living arrangements, service groups, age, gender, and ethnicity.

As of September 2009, 18,948 individuals have relocated back to the community. Of that number, 7,939 continue to receive their long-term services support in a community-based setting. In fiscal year 2009 1,641 relocated to the community. Overall, 57 percent of the total population that relocates back into the community are 65 years of age or older; 43 percent are under 65 years of age. Among the remarkable statistics are the numbers of individuals who are over 85 years of age who have chosen to relocate back to a community setting.

Intermediate Care Facilities for Persons with Mental Retardation

While MFP has proven successful for individuals residing in nursing facilities, individuals residing in intermediate care facilities for persons with mental retardation (ICFs/MR) are not afforded the same mechanism. The state must continue to expand opportunities for individuals residing in ICFs/MR to exercise the same option as those in nursing facilities.

However, the original Promoting Independence Plan (Plan) gave a priority to individuals living in large community ICFs/MR (fourteen beds or more) and state supported living centers and who desire a living arrangement other than the institution; the 81st Legislature, Regular Session, 2009, expanded the population to cover individuals residing in medium (nine-thirteen bed) ICFs/MR. This is not the same as the MFP process in nursing facilities. These individuals are funded by a special legislative appropriation and through “attrition” slots. Individuals in state supported

living centers may access an HCS slot with six months of referral while those residing in nine or more bed community ICFs/MR may access an HCS slot within twelve months of referral. This process is effective in meeting the demand as long as there is new funding and attrition slots. **252 individuals relocated from state supported living centers in fiscal year 2009; and 1,487 individuals have relocated from state supported living centers during the period of August 1999 through August 31, 2009. For those in large community ICFs/MR, 323 relocated in fiscal year 2009 and 1,139 have moved into HCS during the period of September 1, 2001 through September 2009.**

STATUS REPORTS FOR FISCALYEAR 2009

The following four sections contain status reports on:

- *Revised 2008 Promoting Independence Plan*
- Housing
- Workforce
- Health and Human Services Agencies:
 - Health and Human Services Commission
 - Department of Aging and Disability Services
 - Department of State Health Services
 - Department of Family and Protective Services
 - Department of Assistive and Rehabilitative Services

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STATUS UPDATE: 2008 REVISED TEXAS PROMOTING INDEPENDENCE PLAN RECOMMENDATIONS

The Health and Human Services Commission (HHSC), based on the Promoting Independence Advisory Committee's (Committee) recommendations made in its' *2008 Stakeholder Report*, included the following implementation directives in the *Revised 2006 Texas Promoting Independence Plan (Plan)*.⁶ The Plan categorized the recommendations into the following areas:

PROGRAM FUNDING: *These are directives to help fund community services and institute certain structural changes in order for individuals to have a choice in living in the most integrated setting.*

1. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, HHSC will work with the Department of Aging and Disability Services (DADS), the Department of State Health Services (DSHS), and the Department of Assistive and Rehabilitative Services (DARS) to reduce community-based interest/waiting lists.

Status

The 2010-11 General Appropriations Act (81st Legislature, Article II, S.B. 1, Regular Session, 2009) provided \$190.9 million in additional general revenue to reduce interest lists at HHSC, DADS, DSHS and DARS during the 2010-11 biennium. The additional funding will cover:

HHSC

- STAR+PLUS (Medical Assistance Only) 84 individuals

DADS

- Home and Community-Based Services (HCS): 5,936 individuals -- Total*
- Community Based Alternatives (CBA): 861 individuals
- In-Home and Family Support: 651 individuals
- Non-Medicaid Services: 498 individuals
- Community Living Assistance and Support Services (CLASS): 1,890 individuals
- Medically Dependent Children Program (MDCP): 348 children
- Deaf-Blind with Multiple Disabilities (DBMD): 6 individuals

⁶ For the full report see DADS' website at: <http://www.dads.state.tx.us/providers/pi/index.html>; see Appendix C for the Promoting Independence Advisory Committee's full text of its recommendations.

DSHS

- Children with Special Health Needs: 87 children
- Child and Adolescent Community Mental Health 412 children/youth

DARS

- Comprehensive Rehabilitative Services: 13 individuals
- Independent Living Services: 8 individuals

*HCS slots through Section 48, Special Provisions:	5,120
Funding for Promoting Independence – nine+ private ICFs/MR:	250
Funding for Promoting Independence – State Supported Living Centers:	250
Children Aging out of Foster Care	120
Prevention of Institutionalization	196

Behavioral Health Directives within Program Funding

2. *Requires legislative direction and/or appropriations*

If directed and/or funded by the legislature, HHSC will work with DSHS to implement a fully funded Assertive Community Treatment (ACT) service package as part of the Resiliency and Disease Management (RDM) program.

Status

Rider 65 (2010-11 General Appropriations Act, Article II, DSHS, S.B. 1, Regular Session, 2009) requires that DSHS allocate \$109,368,602 from its Community Mental Health Crisis Services in order to enhance the capacity of the community-based mental health services system by increasing the number of individuals receiving intensive community-based mental health service packages at community mental health centers, including ACT.

3. *Requires legislative direction and/or appropriations*

If directed and/or funded by the legislature, HHSC will work with Department of State Health Services (DSHS) to provide services and supports for individuals leaving the state mental health facility (state hospital) system.

Status

Rider 65 (2010-11 General Appropriations Act, Article II, DSHS, S.B. 1, 81st Legislature, Regular Session, 2009) provides funding to extend the post crisis/hospital benefit from thirty to ninety days.

4. *Requires legislative direction and/or appropriations*

If directed and/or funded by the legislature, HHSC will work with DADS to incorporate effective behavioral services and supports in their service arrays.

The current 1915(c) service arrays do not adequately cover intensive behavioral health services and supports. Therefore, community options are limited for those individuals with intense behavioral health needs and co-occurring aging and/or disability needs. The addition of these services will most likely increase the individual service plan cost.

Status

The 81st Legislature did not provide policy direction or appropriations.

5. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the legislature, HHSC will work with DADS to ensure flexibility in the service array.

1915(c) waiver programs have set service arrays to help manage utilization and overall costs. 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 intense behavioral health supports, services to support an individual with traumatic brain syndrome, services to support an individual with autism, and other supports.

Status

The 81st Legislature did not provide policy direction or appropriations.

6. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the legislature, HHSC will work with DADS to develop a fully 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.

Status

The 81st Legislature did not provide policy direction or appropriations.

7. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the legislature, HHSC will work with its operating agencies to expand respite care for family caregivers and increase the average benefit.

Respite for caregivers is an effective means of delaying and/or avoiding institutional care for consumers. In Texas, the National Family Caregiver Support Program, as authorized under the Older Americans Act, is administered by DADS and implemented by 28 area agencies on aging (AAAs). Education, information, and support services are provided to individuals, or caregivers of individuals, 60 years of age and over and other high-risk populations who provide assistance for their family members; caregivers may be of any age. This program enables individuals who are aging and/or with a disability to remain in a home environment and "age in place."

Although AAAs offer respite services, the intensity and duration of services are limited by funding constraints. AAAs' average respite benefit for state fiscal year 2007 was \$667⁷ which is helpful but inadequate to meet the needs of unpaid caregivers who provide on-going and intensive assistance.

Status

House Bill 802, 81st Legislature, Regular Session, 2009, directs DADS to implement a lifespan respite care program for individuals not eligible for respite services through any source. In addition, DADS applied for and received an Administration on Aging respite grant.

WORKFORCE AND PROVIDER NETWORK STABILIZATION: *These are directives to increase reimbursement rates in order to help stabilize the direct service workforce.*

The opportunities for community living are limited without a functional, available, and qualified workforce and provider network. Significant turnover rates for direct service staff result in a diminished quality of care and a significant additional expense for advertising for and training of new employees. Lack of sufficient funds to provide living wages for direct service workers has a 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.

⁷ Department of Aging and Disability Services, Access & Intake – Area Agencies on Aging SFY 2007 data for Caregivers Respite Care.

8. *Requires legislative direction and/or appropriations*

If directed and/or funded by the legislature, HHSC will increase private provider rates according to established methodologies, recognizing inflation factors.

Between 1997 and 2007 the Chained-Type Price Index for Personal Consumption Expenditures (PCE) increased by 23.69 percent. While the rate adjustments provided by the 80th Legislature (2007) provided some relief, the adjustments did not meet the increase in the Consumer Price Index (CPI). Current inflationary pressures include, but are not limited to, cost increases in gasoline, transportation (vehicles), food and utilities, which are all necessary for service delivery. The inability to adequately address these needs negatively impacts: the quality of services provided to individuals; a provider's ability to maintain compliance with regulations; and more importantly, the availability of an array of viable service providers from whom consumers may choose to receive services.

The 80th Legislature (2007) appropriated, on average, a five percent rate increase for providers of community services and supports (\$86.2 million general revenue, \$203.1 million all funds). In addition, the legislature provided for "Community Care Rate Enhancements" (\$15.8 million general revenue, \$38.2 million all funds) for direct service staff, and passed H.B. 15 (80th Legislature, Regular Session, 2007), which provided rate restoration for Community Living Assistance and Support Services (CLASS), Home and Community-based Services (HCS), and Texas Home Living providers to fiscal year 2003 amounts. However, these additional appropriations did not fully fund the cost of these programs. HHSC has detailed the implications of provider rate increases in its consolidated budget.

Status

The 81st Legislature, Regular Session, 2009, did provide selected rate enhancements depending on the program type. Overall, the 2010-2011 General Appropriations Act (Article II, S.B. 1, 81st Legislature, Regular Session, 2009) includes \$186 million (general revenue -- \$427.1 million all funds) for rate increases; this includes both nursing facility and intermediate care facilities for persons with mental retardation (ICF/MR) as well as community enhancements.

However, the legislature continues to not fund reimbursement rates according to published methodologies and the community care programs for the aging/the physically disabled received the least amount of enhancements. On average, the following programs received additional funding to increase reimbursement rates:

- Nursing Facility: 2.79 percent increase
- Hospice: 2.79 percent increase
- TxHmL: Home and Community-based Services (HCS) rate equalization

- ICF/MR: 1.50 percent increase
- HCS: 3.0 percent increase
- Community Care: \$0.80 per hour for minimum wage plus \$19.2 million (general revenue) for 2010-11 biennium for enhancements

9. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the legislature, HHSC will fund the full impact of the minimum wage increase, including the “ripple effect”.

The third \$0.70 increment in the federal minimum wage occurred on July 24, 2009 and required pro forma adjustments to the rates that would otherwise be reflected in HHSC’s rate methodology estimates for the 2010-11 biennium.

Status

HHSC received funding to increase the attendant-type rates by \$0.80 per attendant hour. The daily rates (CBA Assisted Living/Residential Care, Community Care for the Aging and Disability Residential Care and Day Activity and Health Services) included a factor for more than one attendant per unit so the actual increase for those services was more than the \$0.80 per unit.

10. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the legislature, HHSC will increase support for community direct services and supports workers.

The ability to recruit and retain direct service workers is at a critical juncture in Texas. It is difficult to have a quality community-based services and supports system without tenured and trained direct services workers. HHSC’s 2008 Consolidated Budget details cost implications for increasing direct service workers’ wages.

Status

The 81st Legislature did not provide policy direction or appropriations. However, Section 48 (2010-11 General Appropriations Act, Article II, Special Provisions, Section 48, S.B. 1, 81st Legislature, Regular Session, 2009) provides DADS \$10.2 million (general revenue) to train and hire case managers to provide targeted case management.

CHILDREN’S SUPPORTS: 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 reducing new admissions of children to these facilities.

Reducing the number of children with disabilities residing in large, congregate care facilities continues to be a priority for the health and human services system. 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.

11. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with DADS to provide the appropriate community-based services to those children (0-17 years of age) at imminent risk of institutionalization and to offer more community-based options to support individual choice.

Many families/guardians feel 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 at home, if that is their choice.

Status

The 2010-11 General Appropriations Act (81st Legislature, Article II, S.B. 1, 81st Legislature, Regular Session, 2009) provided \$190.9 million in additional general revenue to reduce interest lists at HHSC, DADS, DSHS and DARS during the 2010-11 biennium for all populations. In addition, there was funding included to prevent institutionalization with 196 HCS slots.

S.B. 37, 81st Legislature, Regular Session, 2009, requires the expansion of the deaf-blind with multiple disabilities waiver program to children under age 18.

12. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with the Department of Family and Protective Services (DFPS) to expand the Promoting Independence (PI) population to include children in DFPS conservatorship who have disabilities and are residing in select institutions licensed by DFPS.

Being designated as a PI population provides a child with expedited access to Medicaid 1915(c) waiver programs. Currently, the PI population includes only individuals in nursing facilities, state schools, and large (fourteen or more bed) community intermediate care facilities for persons with mental retardation (ICFs/MR). Some institutions licensed by DFPS provide services specifically to children in DFPS conservatorship who have intellectual and developmental disabilities. These facilities were previously licensed as “institutions for persons with mental retardation” and serve a population with needs similar to those who are placed in ICFs/MR.

Status

The 81st Legislature did not provide policy direction or appropriations.

13. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with the appropriate health and human services agencies to develop a pilot project to create emergency shelters for children with intellectual and developmental disabilities needing out-of-home placement.

This directive is intended to ensure adequate time to assess the child and develop an appropriate family-based alternative for children who are at risk of being institutionalized.

Status

The 81st Legislature did not provide policy direction or appropriations.

14. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with DADS and DFPS to develop adequate behavioral services to support children (0-21 years of age) coming out of institutions and to help provide them with community options in order to support individual choice.

Many children have an intensive co-occurring behavioral health need in addition to their intellectual and developmental disability. Because Texas' Medicaid waivers and other community programs have limited behavioral health services and supports, the ability to live in the community is often not a viable option. It is important that the service arrays in Medicaid waivers include the appropriate behavioral health supports to give parents/guardians the option to keep their child at home or with an alternative family.

Status

The 81st Legislature did not provide policy direction or appropriations.

15. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will develop and implement a Medicaid Buy-In (MBI) program for children with disabilities in families with income between 100 percent to 300 percent of the federal poverty level (FPL) as authorized in the Deficit Reduction Act of 2005.

Many children with disabilities are uninsured or underinsured. Often this is due to the fact that the cost to provide insurance for a child with significant disabilities may be

prohibitive for many families. Additionally, the limitations in many commercial insurance policies do not provide the services needed for a child with disabilities. Consequently, families of children with disabilities often purposely enter into poverty through divorce or employment decisions in order to qualify for publicly funded health insurance for their child.

In other cases, families are forced to make the difficult decision to institutionalize their child in order to obtain required services. Expanding Medicaid opportunities, on a sliding-fee basis, to families caring for children with disabilities will prevent families from remaining in or entering into poverty for the sole purpose of obtaining medical care for their child, and will prevent insitutional placements caused by the lack of needed community services.

Status

Senate Bill 187, 81st Legislature, Regular Session, 2009, creates the Medicaid Buy-In Program for Disabled Children which allows families whose income does not exceed 300 percent of federal poverty level to buy-in to the Medicaid program for their child with a disability.

INDEPENDENT LIVING OPPORTUNITIES AND RELOCATION ACTIVITIES:

These directives will expand opportunities to move into the community, will help make relocations to the community more successful, and will provide enhanced assistance for individuals with complex need.

16. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, HHSC will work with DADS to expand its “Promoting Independence Priority Populations” policy to include individuals residing in medium (nine to thirteen bed) community ICFs/MR.

The original Promoting Independence Plan (2001) made recommendations to allow individuals residing in state mental retardation facilities (state schools) and large (fourteen or more bed) community ICFs/MR to have expedited access to the HCS waiver program. Individuals in state schools may access HCS within six months of referral and those living in large community ICFs/MR within twelve months of referral. Currently, this option is not available for those living in medium community ICFs/MR.

Status

2010-11 General Appropriations Act (81st Legislature, Article II, DADS, S.B. 1, 81st Legislature, Regular Session, 2009) expanded the “Promoting Independence Priority Populations” to include nine – thirteen bed ICFs/MR. There are 250 “slots” available for individuals leaving private nine or more bed ICFs/MR.

17. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the legislature, DARS will add an additional three Centers for Independent Living (CILs).

The federal Vocational Rehabilitation Act of 1973, which is overseen by the Rehabilitation Services Administration, created the development of Centers for Independent Living (CILs). 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.

There are currently 23 CILs in Texas, funded by federal dollars and state general revenue which cover 161 counties. Nevertheless, this still results in many parts of the state, especially in rural counties, being without CIL coverage (93 counties are without Title VII, Part C, CIL funding).

Status

The 2010-11 General Appropriations Act (81st Legislature, Article II, DARS, S.B. 1, 81st Legislature, Regular Session, 2009) included \$1.5 million general revenue funds to fund three new CILs.

18. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with DADS to increase the relocation activity that assists individuals in nursing facilities to relocate back into their community.

DADS received \$1.3 million in GR to fund the relocation specialist activity and the support program “Transition to Life in the Community (TLC)” in the 2008-09 biennium; HHSC also provides additional dollars for these support services. These activities are crucial in: the identification of individuals who want to relocate; education; facilitation; and coordination of the relocation process. However, individuals with more complex functional and medical needs require intensive supports in their relocation. The number of individuals accessing the “Money Follows the Person” policy continues to grow, and there are an increasing number of those individuals who require this type of assistance.

Status

The 2010-11 General Appropriations Act (81st Legislature, Article II, DADS, S.B. 1, Regular Session, 2009) included funding to increase the relocation activity from \$1.3 million general revenue funds to \$3.4 million general revenue funds.

19. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with DADS to establish a pilot project, which would support institutional diversion activities in order to avoid initial institutionalization.

Individuals often seek institutionalization because they are in a crisis situation due to an acute episode or pending an immediate discharge from an acute care facility. The community-based services and supports are not in place to provide temporary assistance to avoid institutionalization. The State, subsequently, pays relocation contractors to work with the individual in order for them to relocate back into the community. This process is both cumbersome and expensive. Additionally, this process increases the risk that the individual will lose their community residence and informal support system.

Status

The 81st Legislature, Regular Session, 2009, did not provide policy direction or appropriations. However, DADS received an Administration on Aging community living program grant in 2008 to create an institutional diversion program in central Texas and recently received funding in 2009 to create a program a second pilot in Tarrant County.

HOUSING INITIATIVES: These directives will help individuals remain in the community or assist them in their relocation from an institutional placement into the community. Without available, accessible, and integrated housing, there is no opportunity for self-determination and choice.

Affordable, accessible and integrated housing is an essential requirement for individuals who want to relocate back into their communities. Individuals who are relocating from nursing facilities, ICFs/MR, or individuals who are in the targeted *Olmstead* populations under the DSHS provisions, must have accessible, 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 effective January 2009) which severely limits housing choices, and/or the lack of easy access to wrap-around supports and services.

20. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, the Texas Department of Housing and Community Affairs (TDHCA) will increase the baseline funding for the Texas Housing Trust Fund.

Texas does not provide a significant amount of discretionary general revenue funding for housing. The Housing Trust Fund is one of those limited funding sources and is allocated to TDHCA. During the 80th Legislature, Regular Session, 2009, TDHCA received \$5 million in general revenue funds for the Housing Trust Fund (2008-09 General Appropriations Act, Article VII, TDHCA, H.B. 1, 80th Legislature, Regular Session, 2007). However, this amount is not adequate to provide housing voucher incentives or

increase the overall housing inventory for individuals who receive Supplemental Security Income (SSI) level and with disabilities.

Status

The 2010-11 General Appropriations Act (81st Legislature, Article VII, TDHCA, S.B. 1, 81st Legislature, Regular Session, 2009) increased the Housing Trust Fund from \$5 million general revenue funds to \$10 million general revenue funds. However, this funding is not necessarily dedicated to individuals on Medicaid who are trying to relocate to the community. TDHCA will be determining through the public process on how to allocate the additional appropriations.

21. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, HHSC will work with TDHCA to 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 United States Department of Housing and Urban Development. This limited amount for administrative activities is a barrier in getting qualified contractors willing to administer the program.

Housing and Urban Development will only provide a four percent administrative fee which is supplemented with an additional two percent from TDHCA. 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. The lack of appropriations caused HHSC to discontinue providing the additional four percent in funding.

Status

The 81st Legislature did not provide policy direction or appropriations.

22. Requires legislative direction and/or federal/state appropriations.

If directed and/or funded by the legislature or the United States Department of Housing and Urban Development, TDHCA should increase the amount of dedicated HOME vouchers for individuals relocating from institutional settings.

These vouchers include Section 8 permanent housing vouchers and TBRA two-year vouchers.

Status

The 81st Legislature, Regular Session, 2009 did not provide policy direction or appropriations. However, TDHCA increased the number of Project Access vouchers from fifty to sixty.

23. Requires legislative direction and/or appropriations.

If directed and/or funded by the legislature, TDHCA should establish a separate general revenue program to provide affordable housing to individuals whose income is up to 300 percent of the SSI level and who want to relocate from an institutional setting or remain in the community.

Often, even with a voucher, individuals who are very poor cannot find affordable, accessible, and integrated housing. Supplemental funds are necessary to help increase the overall housing inventory that is available and provide “bridge funds” to supplement HOME vouchers.

Status

The 81st Legislature, Regular Session, 2009 did not provide policy direction or appropriations.

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CHILDREN'S ISSUES

The movement to reduce the number of children residing in large institutions in Texas began more than ten years ago and continues today. A number of initiatives have been implemented with the intent of reducing both the number of children being admitted to facilities and the number of children remaining in facilities. Some of these include:

- Improved permanency planning requirements for children residing in institutions
- Family-Based Alternatives Project
- Budget riders allowing institutionalized children to access the appropriate waiver services
- Emphasis that the institutionalization of children is to be considered temporary

More recently, the 81st Legislature included diversion funding in the appropriations bill which will provide funding for community services for 98 children at imminent risk of institutionalization. Additionally, the state has been directed by the legislature to develop and implement a Medicaid Buy-In Program for Children with Disabilities. This will help families with incomes below 300 percent of the federal poverty level to obtain medical, nursing, and personal care services that can prevent institutionalization of children.

However, while recognizing the progress, as long as children continue to reside in large congregate settings such as nursing facilities, ICFsMR, and state supported living centers, the PIAC should continue to address the barriers and gaps in the system that cause continued placement of children.

TABLE 5

Children in Institutional Settings⁸

Type of Institution	Number of Children Residing in Facility as of August 31st, 2008	Number of Children Residing in Facility as of February 28th, 2009
Nursing Facilities	109	98
State Supported Living Centers	345	328
ICFsMR	368	355
DFPS Licensed Facilities	232	225
Total	1054	1,006

In 2007, at the request of the Promoting Independence Advisory Committee and the

⁸ Texas Health and Human Services Commission, Permanency Planning and Family-Based Alternatives Report, January 2009:

http://www.hhsc.state.tx.us/reports/SB368PermanencyPlanningReport_January2009.pdf

Children’s Policy Council, HHSC Executive Commissioner Albert Hawkins, appointed a special workgroup to address the concerns over the increasing number of children being placed in Texas state schools (now referred to as state supported living centers). The Children in State Schools Workgroup submitted their report in August 2008 with recommendations to reverse this trend. While only a few of the recommendations have been approved and implemented thus far, the attention brought to the issue has helped to refocus efforts on alternatives to the institutionalization of children. Consequently, the number of children admitted to state supported living centers dropped significantly in 2009.

TABLE 6
Children in State Supported Living Centers⁹

Year	Number of Admissions of Children to State Supported Living Centers	Children 0-17 Years of Age	Children 18 – 21 Years of Age	Total Percent Increase/ Decrease
2005	110	74	36	
2006	126	77	49	+15
2007	152	111	41	+21
2008	152			0
2009	88	65	23	-42

The reduction in admissions is good news, but the work is not done. Texas must continue to evaluate the reasons for institutionalization of children and make reducing the number of institutionalized children a priority. Currently, EveryChild, Inc. (state contractor for the Family-Based Alternatives Project) is conducting an analysis of the permanency plan for every child residing in long-term care settings. The information garnered from this study should be used to develop and implement further systems changes that would allow children to grow up in safe and healthy family settings.

The Center for Disease Control (CDC-U.S. Department of Health and Human Services) *Healthy People 2010* objectives included an objective specific to the current practice of institutionalizing children. Objective 6-7b, Chapter 6 stated: *Reduce to zero the number of children with disabilities residing in congregate care settings by the year 2010.* Texas still has a long way to go in meeting that goal. Texas should continue to evaluate why children are institutionalized and what can be done to prevent children from being admitted to, and remaining in, facilities. Until the CDC *Healthy People 2010* goal is met, the work is not done.

⁹ http://www.dads.state.tx.us/providers/pi/piac_reports/2008/appendixg/purpose.html and updated information provided by DADS.

HOUSING

Affordable, accessible and integrated housing is an essential base requirement for individuals who want to relocate back into their communities. The Promoting Independence Advisory Committee (Committee) continues to advocate for the creation of housing units for individuals designated as Texas' *Olmstead* population. Individuals who are relocating from nursing facilities, intermediate care facilities for persons with mental retardation (ICFs/MR), or individuals who are in the targeted *Olmstead* populations under the Department of State Health Services' (DSHS) provisions must have affordable, accessible and integrated community housing.

There are two substantial barriers to housing – the poverty of individuals who are living at the Supplemental Security Income (SSI) level (\$674/month in fiscal year 2009) which limits the ability to even pay subsidized rental payments, and/or the lack of easy access to community-based services and supports. In addition, Texas has approximately 475 public housing authorities (PHAs), which get their funding directly from the United States Department of Housing and Urban Development (HUD). The state housing financing agency (Texas Department of Housing and Community Affairs [TDHCA]) has no jurisdiction over the PHAs, which makes the development of an overall housing plan difficult; TDHCA is also a PHA. This organizational structure limits the state from making statewide policy.

Efforts to expand housing choices for people with disabilities fall within one of three strategies:

- Development of new housing units.
- Affordability of existing housing units.
- Changes to public policy that facilitate development and/or access to housing.

The Committee has focused its efforts on: providing access to existing housing units, making changes to allocation plans, and the development of public policy that will lead to more available and accessible housing. The lack of Section 8 funds (permanent rental assistance) has forced the Committee to focus on the less-desirable tenant-based rental assistance (TBRA) program. TBRA does not provide permanent housing; it only provides two years of rental assistance and is meant to be a bridge toward a more permanent solution. Also, vouchers are not available in all parts of the state. Nevertheless, TBRA vouchers are generally more available than Section 8 vouchers, and make it possible for individuals to return to a community setting. In addition, TBRA provides true community integration, and fills the gap between income and fair market rents in our communities. The TBRA administrative process is a relatively fast and easy to use.

The Committee has concentrated its efforts in the following areas:

- Implementation and monitoring of *Project Access* vouchers from the Texas Department of Housing and Community Affairs (TDHCA).
- Advocacy, planning, training, and implementation of TDHCA's HOME funds.

- Collaborations with the local Public Housing Authorities.
- Annual review of PHA plans:
 - Five-Year Action Plan.
 - One-Year Action Plan.
 - Low-Income Qualified Action Plan.
- Development of a Housing Inventory/Registry.

Housing Trust Fund Update

The 2010-11 General Appropriations Act provided TDHCA with approximately \$22 million over the biennium for the Housing Trust Fund (Fund); these are much needed but limited general revenue dollars to fund state initiated housing programs.

The Texas Department of Housing and Community Affairs *2010-2011 Biennial Plan for the Housing Trust Fund* includes \$1,500,000 of funding for the Home Free Barrier Removal Program, a new program. This program will provide financial assistance in the form of grants to low income (80 percent Average Median Family Income [AMFI]) individuals with disabilities to make their homes (rental or owner) more accessible. This program is designed to provide one time grants for up to \$15,000 in home modifications specifically needed for accessibility, and up to an additional \$5,000 in other rehabilitation costs correlated with the barrier removal project. These funds will be targeted to allow for reasonable accommodation or modification for rental tenants or existing homeowners with disabilities no longer able to fully access their home. Funds will be provided in the form of a grant and no lien will be placed on the home of the disabled recipient. Construction standards and other criteria will be in compliance with the Texas State Architectural Barriers Act as further detailed in the Notice of Funding Availability (NOFA). Eligible modifications for accessibility will include, but not be limited to, the following:

- Handrails
- Door widening
- Counter adjustments
- Ramps
- Buzzing or flashing devices (for people with visual/hearing impairment)
- Accessible door and faucet handles
- Shower grab bars and shower wands
- Accessible showers, toilets and sinks

Project Access

Texas continues to have Project Access vouchers made available by TDHCA. When HUD, in 2003, ceased funding of this valuable voucher program for the *Olmstead* population, TDHCA utilized vouchers from their Section 8 program to keep this housing assistance available for individuals with disabilities who reside in institutions. As of September 30, 2009, 228 households have been assisted through an original allocation of

35 vouchers, with vouchers currently reserved for an additional 20 households as they complete the application process and locate a home.

This outstanding performance is due to the generosity of local public housing authorities in maintaining assistance to households and returning the previously used *Project Access* voucher to the state for re-allocation. In 2008, TDHCA expanded the number of vouchers from 35 to 50 and in 2009 from 50 to 60 in recognition of demand for these vouchers. TDHCA also amended its Project Access rules to allow those vouchers to become available to individuals with disabilities who are currently using TDHCA's TBRA vouchers that are within 90 days of expiration.

The Texas Department of Housing and Community Affairs intends to apply for additional vouchers through a Notice of Funding Availability (NOFA) for HUD's fiscal year 2009 Rental Assistance for Non-Elderly Persons With Disabilities. On June 22, 2009, HUD announced a draft NOFA that, when finalized, will make available approximately 4,000 additional Housing Choice Vouchers for non-elderly individuals with disabilities. Approximately 1,000 of these vouchers will be made available to non-elderly individuals transitioning from nursing homes into non-institutional housing; the balance does not have a de-institutionalization requirement. To increase resources in Texas for low income individuals with disabilities, TDHCA is eager to apply for the maximum number of vouchers permitted under this NOFA.

A barrier to access regarding the Project Access vouchers and the new NOFA is that they are only eligible for individuals who are 62 years of age or younger.

HOME Funds

In addition to the *Project Access* program, the state HOME program has been used historically to provide rental assistance to individuals meeting *Olmstead* criteria, as well as the general disabled population. In 2009, TDHCA made available approximately \$2.2 million for persons with disabilities including \$1 million for rental development, and the remainder for TBRA and Homebuyer Assistance (HBA) with optional rehabilitation.

- Another barrier to access regarding all HOME funds and Project Access vouchers is if an individual is not eligible for a voucher as a result of a criminal history.

Housing and Health Services Coordinating Council (Council)

The 81st Texas Legislature created the "Housing and Health Services Coordinating Council." The objective of the Council is to increase the availability of service-enriched affordable housing for seniors and people with disabilities. Service-enriched housing is broadly defined as living arrangements that include health and/or social services in an accessible, supportive environment. TDHCA is the lead agency and provides staff support.

The Council is charged with improving inter-agency understanding of the confluence of housing and health services and increasing the number of staff in state housing and state health services agencies that are conversant in both housing and health care policies. The Council will achieve this goal by developing and implementing policies that coordinate and increase state efforts to offer service-enriched housing; identify barriers preventing or slowing service-enriched housing; develop a system to cross-educate staff in state housing and health services agencies as well as training and technical assistance to local housing and health services entities; and develop suggested performance measures. The Council shall also develop a biennial plan to implement the goals above as well as provide a report prior to every regular legislative session.

Furthermore, the legislation mandates research, evaluation and training activities aimed at increasing funding opportunities for service-enriched housing in the state of Texas. These activities include researching private and public funding opportunities and the requirements and guidelines for such funds and coordinating the communication between funding sources and state agencies and service providers; provide training materials and offer trainings that assist the development and funding of service enriched housing. TDHCA staff shall also create financial feasibility models of service-enriched housing that determine the financial viability of proposed projects. A database will be created to track all service-enriched housing developments that are funded by state or federal funds. An evaluation of these activities will be included in the biennial report to the governor and Legislative Budget Board.

Finally, to increase consistency in housing regulations, the Council will recommend changes to Medicaid waivers that are up for renewal; research best practices with respect to service-enriched housing and create and maintain a clearinghouse of information containing tools and resources for entities seeking to develop or fund service-enriched housing projects.

Collaboration with local Public Housing Authorities

Public Housing Authorities (PHAs) receive direct funding from HUD for the development, maintenance, and operation of rental housing and/or receive funding for housing rental vouchers. The rental vouchers provide financial assistance for individuals living in privately owned housing.

As part of the Money Follows the Person Demonstration (Demonstration), the U.S. Secretary for Housing and Urban Affairs (HUD) sent two letters to all PHA Executive Directors. These letters reminded the PHAs of their obligations under the *Olmstead* decision, encouraged them to join with state Medicaid offices on the Demonstration so that services can be provided in the most integrated settings, and to work with state Medicaid offices to set local preferences for the use of housing units and housing rental vouchers and report back to HUD on these activities.

Promoting Independence (PI) staff has been working to help PHAs understand the long-term services and supports system and obtain support for providing housing opportunities for individuals wanting to move out of institutional care settings.

Promoting Independence staff has met with 25 PHAs in fiscal year 2009. The Fort Worth PHA has set aside ten public housing units and ten housing rental vouchers for people relocating from a nursing facility. The New Braunfels Housing Authority has received funding from TDHCA for approximately 28 TBRA vouchers and, after working with PI staff, was approved by TDHCA to allow a TBRA waiting list preference for people participating in the MFP Demonstration. PI staff is currently working with five other PHAs that have shown an interest in setting aside vouchers or public housing units or housing units for people participating in the MFP Demonstration.

The Department of Aging and Disability Services responded to a Proposed NOFA for HUD's fiscal year 2009 Rental Assistance for Non-Elderly Persons with Disabilities; Request for Comments. The NOFA, once finalized, will make available 4,000 Section 8 Vouchers for people under the age of 62. One-thousand of the vouchers will be available for people relocating from an institution. PI staff have met with fifteen PHAs regarding the NOFA and will increase outreach to PHAs once the NOFA is issued.

Annual Review of Public Housing Agency Plans

A Public Housing Agency Plan is a comprehensive guide to a PHAs policies, programs, operations, and strategies for meeting local housing needs and goals. There are two parts to the plan: the Five Year Plan and an Annual Plan. It is through the Annual Plan that a PHA receives its funding and prioritizes its activities.

The PHA Plan must include the following components:

- Assess the housing needs of the community.
- Identify the financial and other resources available to the PHA to help address those needs.
- Establish goals and strategies for addressing the needs identified.
- Translate the strategies into policies and programs.

All PHA plans must afford individuals interested in housing issues the opportunity to review and provide comments to the PHA Plan. As part of the Demonstration, the Committee will review TDHCA's housing plans, in its role as a PHA, to provide comments on the increasing need for affordable, accessible, and integrated housing opportunities for people with disabilities. The Committee will also review at least three other local PHA Plans each year to help prepare advocates for their own review and comments at public hearings of PHAs.

Development of a Housing Inventory/Registry

The Department of Aging and Disability Services is working in partnership with the Texas Low Income Housing Information Service and other private and government

organizations to develop a housing inventory/registry, which will help people find affordable, accessible, and integrated housing.

The inventory/registry, called the Texas Housing Counselor is now available at the TLIHIS website (www.texashousingcounselor.org) and uses housing information supplied by TDHCA, Texas State Affordable Housing Corporation (TSAHC), Texas Bond Review Board (BRB), HUD, United States Department of Agriculture, Rural Development Division, and the United Cerebral Palsy of Texas. With the Texas Housing Counselor, a person answers a few simple questions and this powerful resource will provides information about several affordable housing options located in the community of their choice.

Housing Summit

DADS' Promoting Independence Office is once again working with the Texas Disability Policy Consortium to help organize the 2010 Texas Housing and Transportation Summit. This two day event will educate consumers, advocates, housing and transportation professionals about current housing and transportation. The conference will also have presentations on innovative programs that may help improve or increase affordable housing opportunities and transportation services in Texas.

Integrated Housing

The Committee recognizes the need for affordable, accessible housing that is integrated. Integrated housing is defined as normal, ordinary living arrangements typical of the general population. Integration is achieved when individuals with disabilities choose ordinary, typical housing units that are located among individuals who do not have disabilities or other special needs.

The focus on integration is based on the Americans with Disabilities Act (ADA) and the *Olmstead* decision. Segregated housing restricts the ability of residents to interact with the community and offers support to "...unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life..." (*Olmstead v. L.C.*, 28 CFR, pt 35, App.A, p. 450). The ADA requires that public systems provide services to people with disabilities in "regular settings", even where the same services are available in segregated settings. In other words, separate but equal is as wrong for people with disabilities as it is for people in other protected classes.

PIAC will continue to support TDHCA's Integrated Housing Rule and any rule changes that would result in an increase in integrated housing units.

WORKFORCE

The Promoting Independence Advisory Committee (Committee) has made workforce issues a top priority in the upcoming 2010-11 biennium. The Committee made *Workforce and Provider Network Stabilization* one of its two top priorities in the *2008 Promoting Independence Plan*. Addressing workforce issues is critical to successful compliance with the *Olmstead* decision and to the Promoting Independence Initiative because a stable direct service workforce (Workforce) is necessary for individuals who choose to live in the community.

Direct Support Staff Turnover Survey for Providers of Community-based and Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR) Programs

The Department of Aging and Disability Services (DADS) surveyed providers of community-based programs and ICFs/MR to examine the stability and possible associations of benefits and incentives on Workforce turnover in Texas.

The *Direct Support Staff Turnover Survey* asked providers about the number of staff the provider employed in calendar year 2007, the number of staff who separated in 2007, the length of time employed at separation, and the number of vacant positions at the end of 2007. The survey also asked about the number of full versus part-time staff. Providers were also asked to provide salary, benefits, and incentives information for each of the following staff types: nurses, personal attendants, case managers, service coordinators, direct care staff, quality mental retardation professionals, therapists, and certified nurse aides. A report describing associations between benefits or incentives and turnover by discipline is expected to be completed in the first half of calendar year 2010. The report will inform DADS about current vacancy, turnover, and stability rates of community and ICF/MR direct service workers and will provide information about how specific benefits and incentives influence staff retention by discipline.

Realistic Job Preview

The Department of Aging and Disability Services is currently developing two 15-20 minute realistic job preview (Preview) videos of the Workforce position to be made available to agencies and individuals hiring direct service workers. Studies have shown Previews to positively affect employee retention rates. These videos will educate job applicants about the rewards and challenges of direct support work in order to help individuals decide if this is the type of work best suited for them.

One video will target applicants seeking to work with individuals with developmental disabilities; the other will target those interested in working with individuals with physical disabilities. The goal in producing these videos is to reduce turnover among direct service workers. The first video, presenting the rewards and challenges of direct support work with individuals with developmental disabilities, is in production; this video

will be completed in early 2010. The second video, focusing on working with individuals with physical disabilities, will be completed later in 2010.

Community-based Services Workforce Council (Council)

Senate Bill 1850, 81st Legislature, Regular Session, 2009, would have created a home and community-based services workforce council. It did not pass, but stakeholder interest remains strong in exploring this issue during the interim. The Health and Human Services Commission's (HHSC) Executive Commissioner has directed a Community-based Workforce Advisory Council be established composed of:

- one recipient of Medicaid home and community-based services;
- one family member of a child who is receiving Medicaid home and community-based services;
- two individuals who are currently providing attendant services to recipients of Medicaid home and community-based services;
- one representative of the Disability Policy Consortium;
- one representative of a local mental retardation authority;
- one representative of the Texas Association for Home Care;
- one representative of the Private Providers Association of Texas; and
- one representative of a non-profit working to increase access to services for older adults and their families.

The Department of Aging and Disability Services will support the council with assistance from HHSC; the Council will meet between November 2009 and November 2010.

The Council's duties are to:

- identify and study direct care workforce issues, including wages and benefits, turnover, recruitment, training and skill development, and retention of personal attendants; and
- review the current and anticipated need in Texas for home and community-based services and workforce available in this state to meet that need.

A preliminary report by the Council will be completed by May 1, 2010. The final report is due to the Executive Commissioner by November 1, 2010. The final report will include:

- an analysis of the current and anticipated funding needs for home and community-based services in the state in the workforce available to meet that need;
- identification of significant problems in the home and community-based services workforce; and
- policy and funding recommendations.

The Promoting Independence Advisory Committee will monitor the progress of the Council's work and any recommendations made in the final report. DADS staff will report quarterly to the Committee at its quarterly meetings.

Adding Medicaid Buy-In (Buy-In) eligibility to the waivers

The Buy-In program allows individuals with disabilities, who are working and earning more than the allowable limits for regular Medicaid, the opportunity to retain health care coverage through Medicaid, thus allowing them to earn more income without the risk of losing vital health care coverage. Buy-In provides Medicaid benefits to working individuals with disabilities, regardless of age, who apply for Medicaid and meet the requirements established by HHSC. An individual may be required to pay monthly premiums, based on the amount of the individual's earned and unearned income.

The Health and Human Services Commission approved adding Buy-In eligibility to the Medicaid 1915 (c) waivers and DADS has been working to implement this. DADS estimates that the Buy-In addition to the waivers will occur in early CY 2010.

Supported Employment Training and Technical Assistance Initiative

The Department of Aging and Disability Services collected input from providers, individuals, parents, and other stakeholders who have identified the need for information and training to successfully support individuals with intellectual and developmental disabilities to find and maintain competitive employment. DADS will continue to regularly solicit stakeholder input on a plan to improve employment outcomes for persons receiving DADS services. Staff has undertaken a variety of projects that include:

- An Employment First pilot for the Home and Community-based Services (HCS) waiver program and state supported living centers. This pilot is an effort to inform individuals with intellectual and developmental disabilities of the option to include work as a goal in their planning and assist them to plan towards that goal. This pilot is targeted for this biennium.
- A supported employment website.
- Monthly webinars to promote employment outcomes and best practices.
- Employment services presentations at provider and other stakeholder conferences.
- Regional employment conferences planned for the summer of 2010.
- Expansion of a facilitated referral process from the state supported living centers to the Department of Assistive and Rehabilitative Services (DARS).
- Coordination with the DARS Medicaid Infrastructure Grant, a five-year grant to increase Buy-In enrollment.

Demonstration to Maintain Independence and Employment (Working Well)

Working Well is a partnership between the State and the Harris County Hospital District (HCHD), the fourth largest hospital district in the nation, which serves over 500,000 people each year. Working Well is a research study that examines whether working

people with significant health/functional conditions can remain employed and independent if provided health benefits and employment services. This study provides an opportunity to intervene before working people with significant health/functional problems become permanently disabled and dependent on federal programs such as Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). Participants in Working Well are working adults under age 60 enrolled in HCHD's "Gold Card" program, which provides discounted access to health care for Harris County residents.

Participants were randomly assigned into one of two groups. The control group received services normally available through HCHD. The intervention group received case management (navigation of health and employment systems, empowerment), employment services, and has access to additional medical, dental, vision, mental health, and substance abuse treatment services. Both groups are being studied to determine the effects of the additional health and employment supports. There are over 1,600 participants in the study. The intervention phase of Working Well ended on September 30, 2009. The evaluation phase will continue until October 1, 2010. Preliminary findings from the first year of Working Well indicate that:

- The majority of the intervention group is receiving SSI/SSDI at a significantly lower rate than the control group.
- The intervention group has increased access to health care, including outpatient services, prescription drugs and specialty services (mental, dental and optical care)
- Intervention group participants report satisfaction with case management and improved access.
- Case management services are related to better outcomes such as:
 - Higher income and earnings (verified by TWC data)
 - More positive work impact, work goals and intention to continue working
 - Less reported need for emergency care and fewer emergency care visits
 - Fewer outpatient visits
 - Greater satisfaction with healthcare overall

Additional analysis will be performed in 2010 to determine if differences are trends and can be sustained.

Project reports and information can be found on the Working Well Website at: <http://www.dshs.state.tx.us/mhsa/workingwell/>.

AGENCY STATUS REPORTS FOR FISCAL YEAR 2009

The Promoting Independence Advisory Committee monitors the progress of the health and human services agencies in meeting the goals of the Promoting Independence Initiative. The information below details the major accomplishments of the Health and Human Services Commission (HHSC) and its four operating agencies, the:

- Texas Department of Aging and Disability Services (DADS)
- Texas Department of Assistive and Rehabilitative Services (DARS)
- Texas Department of Family and Protective Services (DFPS)
- Texas Department of State Health Services (DSHS)

in meeting those goals.

HEALTH AND HUMAN SERVICES MAJOR ACCOMPLISHMENTS

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

The Health and Human Services Commission's major Promoting Independence accomplishments during fiscal year 2009 include the following activities:

Texas Medicaid Funding

The Legislature approved a two-year budget of \$44.8 billion for Medicaid, which accounts for 29 percent of the state's total budget. The program provides health coverage for one out of every three children in Texas, pays for more than half of all births, and covers 44 percent of all nursing home care provided in the state. Children make up about two-thirds of the state's Medicaid caseload. However, services to individuals who are aging and/or have disabilities account for two-thirds of the program's costs.

The Legislature maintained all current Medicaid services, client categories and provider rates. Major legislative decisions about the state's Medicaid program include:

- Adding coverage for Legal Permanent Resident children up to age 19.
- Creating a Medicaid Buy-In Program for children with disabilities up to 300 percent of the federal poverty level. Families will pay monthly premiums based on their income.
- Adding substance abuse services as a benefit for adults.
- Adding \$500 million in general revenue for caseload growth. HHSC projects that Medicaid will serve 3.1 million Texans per month in fiscal year 2010, a monthly increase of almost 100,000 clients from current caseload levels.
- Increasing provider rates for long term services and supports, totaling \$75 million for community care providers and another \$28 million for nursing homes.

TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES

The Department of Aging and Disability Services' major Promoting Independence accomplishment during fiscal year 2009 include the following activities:

Highlights for fiscal year 2009

Relocation

- Relocation efforts from **September 1, 2008 through May 31, 2009:**
 - 517 individuals moved from nursing facilities to community-based waiver services through "Money Follows the Person";
 - 235 individuals moved from state supported living centers to HCS;
 - 138 individuals moved from large (14 beds or more) community ICFs/MR to HCS;
 - 1,286 relocation services assessments were conducted;
 - 653 transitions to the community were completed by relocation contractors;
 - 504 individuals used Transition to Life in Community grants; and
 - 120 individuals used Transition Assistance Services.

- Money Follows the Person (MFP) Demonstration
 - American Habilitation Services participated in the voluntary closure of a community-based ICF/MR of 9+ beds (Med – Large)
 - Closure of Green Acres Development Center in Bridge City was completed July 10, 2009.

Community Living Options Information Process (CLOIP)

Senate Bill 27 (80th Legislature, Regular Session, 2007) directed DADS to delegate to local mental retardation authorities (MRAs) the implementation of a Community Living Options Information Process (CLOIP) for adult residents at state supported living centers.

With the advice and assistance of a CLOIP Workgroup, DADS created a process to be implemented through contracts with the 13 mental retardation authorities (MRAs) with a state supported living center in their service area and developed a budget for the contract, ensured that CLOIP information materials were produced and trained staff. On January 2, 2008, CLOIP was fully operational in accordance with the provisions outlined in S.B. 27; and through May 2009, MRAs initiated CLOIP for 4,501 adult residents, with 25,756 contacts by CLOIP Service Coordinators.

Aging and Disability Resource Centers (ADRCs)

Aging and Disability Resource Centers (ADRCs) are jointly funded by the Administration on Aging (AoA) and Centers for Medicare and Medicaid Services to provide communities financial support to develop and implement streamlined access to publicly funded long-term services and supports. As of August 31, 2009 there were a total of eight projects. In 2007, projects were established in Bexar County, Tarrant County, and in a five-county region in Central Texas; five additional projects were funded in 2008. All projects have established partnership agreements with local agencies that provide services, including advocacy, to older persons and persons with disabilities and their caregivers. These local agencies include: Medicaid eligibility regional offices; DADS regional offices; Centers for Independent Living; Mental Retardation Authorities (MRA); local United Way agencies; Early Childhood Intervention (ECI) programs; mental health authorities (MHA); and other aging and disability organizations providing services to the target population.

These partners have agreed to work collaboratively to establish a “no-wrong door” approach to service delivery, by streamlining application procedures and referral protocols. All projects have: at least one system navigator to assist individuals and their caregivers with finding community services, and with benefits and options counseling; developed extensive cross-training for staff; established advisory councils; developed referral protocols; worked on streamlining application processes with their partners; and developed local marketing and outreach strategies. Some projects have established or plan to establish collocation for its partners while others will be using a “virtual” collocation of partners. ADRC projects serve the following communities:

- Alamo Service Connection, Bexar County
- Gulf Coast ADRC, Austin, Brazoria, Chambers, Colorado, Fort Bend, Galveston, Harris, Liberty, Matagorda, Montgomery, Walker, Waller, and Wharton Harris Counties,
- East Texas ADRC, Gregg, Harrison, Marion, Panola, Rusk, and Upshur Counties
- Lubbock County ADRC, Lubbock County
- Connect to Care (ADRC), Dallas County

Community Living Program (CLP)

Central Texas ADRC, in collaboration with Scott and White HealthCare systems, is operating a Community Living Program grant from the Administration on Aging to provide persons at risk for institutionalization and spend-down to Medicaid eligibility with options for remaining in the community by providing needed services and supports. This includes the traditional service procurement as well as client-directed service options. The Community Living Program in Central Texas ADRC is currently working with the Veterans Administration in Temple to expand its client-directed services to the veterans in central Texas. To expand this successful program, DADS received funding from the Administration on Aging for the Community Living Program in collaboration with the Tarrant County ADRC.

Department of Justice Settlement Agreement: Rider 37 (2010-11 General Appropriations Act, DADS, 81st Legislature, Regular Session, 2009), Senate Concurrent Resolution (SCR) 77 (81st Legislature, Regular Session, 2009); H.B. 4586 (81st Legislature, Regular Session, 2009).

Senate Concurrent Resolution 77 approves the system-wide settlement agreement with the United States Department of Justice resolving certain investigations of state mental retardation facilities. Rider 37 requires DADS to submit information to the Governor and Legislative Budget Board about the expenditure of settlement funds. H.B. 4586 provides the funding for the settlement agreement.

Legislative approval of the settlement agreement is required by Section 111.003, Civil Practice and Remedies Code, since the settlement entails a continuing increased expenditure of state funds over subsequent fiscal biennia.

The legislature funded \$112 million for DADS to implement the settlement. The agreement calls for, among other things, improving medical and nursing care, psychological care, physical and occupational therapy, pharmacy services, and safety. It also requires:

- Enhancing staff training on recognizing and reporting abuse and neglect.
- Reducing the time limits for abuse and neglect investigations from 14-21 days to 10 days. DFPS will be hiring more investigators to meet these reduced time limits.
- Reducing use of restraints.

The agreement does not require a specific number of additional staff, but it does require an average ratio of professional psychologists and psychology assistants to residents; however, to comply with the provisions of the agreement, DADS will be adding 1,160 new state supported living center staff (466 direct-care workers, 28 psychiatrists, 11 clinical pharmacists and eight dentists.)

TEXAS DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

The Department of Assistive and Rehabilitative Services' major Promoting Independence accomplishments during fiscal year 2009 include the following activities:

Assistive Technology

The Department of Assistive and Rehabilitative Services received \$2 million in general revenue funds for the biennium intended for a new program to provide consumers with assistive technology, devices and related training to help them remain in the community and out of institutional settings. Of the \$1M annual budget for fiscal year 2009:

- \$800,000 was allocated to the Division for Rehabilitation Services Independent Living (IL) program and
- \$200,000 to the Division of Blind Services IL program.

- In fiscal year 2009, 294 consumers were served who were at risk of entering nursing homes or similar institutions.

Services to Youth with Disabilities

House Bill 1230, 80th Legislature, Regular Session, 2007, established services to youth with disabilities transitioning from school-oriented living to post-schooling activities such as employment and adult services, and assistance with community living. Therefore, DARS developed specialized training provided to Transition Vocational Rehabilitation Counselors (TVRC) and Regional Transition Specialists (RTS) to assist students' transition from high school to the workplace or college.

In fiscal year 2009, all TVRC and RTS were trained on: (1) supports and services available from other HHS agencies for youth and adults with disabilities who are transitioning, (2) community resources available to improve their quality of life and (3) other resources to remove barriers to transitioning students. TVRC are involved in local forums across the state. These forums were established to develop a library of community resources and share information. The forums meet quarterly and will continue indefinitely.

The Department of Assistive and Rehabilitative Services (DARS) served 6,295 students in fiscal year 2009 throughout the State of Texas. Of these, eighty-three (one percent) were closed successfully. 3,946 (sixty-three percent) are currently receiving services and 1,477 (twenty-four percent) are in the eligibility stage. 788 (twelve percent) were closed unsuccessfully due to inability to locate consumer, failure to cooperate, at the consumer's request or approved for disability benefits.

Centers for Independent Living

Statewide, gaps in underserved areas covered by Centers for Independent Living (CILs) were identified. DARS, in collaboration with the Texas State Independent Living Council (TSILC), recommended the expansion of the network of CILs to achieve more coverage; this was also a recommendation made by the Promoting Independence Advisory Committee. In 2008 and 2009 DARS received \$1 million in general revenue funds to establish two new CILs.

- Not Without Us in Abilene and South Texas Advocacy and Accessibility Resource Services (STAARS) in Laredo were fully operational as of fiscal year 2009.
- DARS requested \$1.5 million in General Revenue for the biennium to add three new CILs in the following areas: Plano, San Angelo, Galveston, College Station and/or Sherman.
- DARS was appropriated \$1.5 million for the 2010-11 biennium to add three new CILs. DARS accepted applications for the purpose of establishing these centers until the deadline date of July 23, 2009. A team of stakeholders and DARS staff are currently reviewing the applications to select locations of new CILs.

Institution to Community Coordination

The Institution to Community Coordination (ICC) Program was conceived as an initiative within the Vocational Rehabilitation program to help individuals who have an employment goal relocate from institutions to the community. Individuals would have access to coordination services by a relocation provider that helps navigate through a service delivery system.

In fiscal year 2009 DARS surveyed several of the CILs who provide relocation services for DADS to identify how the ICC program can locate individuals in need of services. It also surveyed other knowledgeable representatives familiar with the relocation process. The results of the information gathered revealed that the initiative was not viewed as providing a useful service, since the case management activities related to relocation were being handled through the DADS contracts. DARS management has determined that the ICC program is not necessary in light of relocation services offered through DADS and, consequently, is terminating the program.

Medicaid Infrastructure Grant

The Department of Assistive and Rehabilitative Services' Medicaid Infrastructure Grant program, in collaboration with the Texas Health and Human Services Commission, is developing the infrastructure for a comprehensive system of competitive employment support for people with disabilities through education, outreach and training.

- In fiscal year 2009, a consumer survey was conducted to examine gaps in existing employment support services and identify ways to improve the system to better meet the needs of people with disabilities.
- The Employment and Disabilities Connection website was launched to provide information for job seekers, businesses and service providers.

The link is: <http://www.dars.state.tx.us/edc>

- Trainings were conducted throughout the State to increase awareness of Medicaid Buy-In.
- The Texas Employment & Disability Connections Conference was held joining people from across the state that impact lives of Texans with disabilities through employment supports, services and information to improve access to health insurance and employment outcomes.

Appropriations

- \$5.7 million was appropriated to match \$21 million of the federal Vocational Rehabilitation grant. Also, we received full stimulus funding of \$45 million. Total

funds of \$71 million to help Texans with disabilities find or maintain employment. The agency did not receive its request for 198 FTEs.

- \$4.3 million for Comprehensive Rehabilitation Services (CRS). This funding will serve 167 clients awaiting CRS services for traumatic brain and spinal cord injuries and cover projected growth for the 2010-11 biennium.
- \$0.4 million for the Independent Living Services (ILS) waiting list - to serve 10 percent of clients (approximately 110) on the waiting list for the 2010-11 biennium. Plus an additional \$0.8 million in Interest List stimulus funding for possible use on waiting list.
- \$2.5 million for the Independent Living Blind program, which assists adults who are blind or visually impaired to learn adaptive skills to continue to live independently with vision loss.
- \$39.4 million for Early Childhood Intervention (ECI) Services for fiscal years 2009-11 to cover projected caseload growth for children 0-3 with disabilities and delays.
- \$1.5 million for three new Independent Living Centers, non-residential consumer-controlled organizations that help people with significant disabilities live independently in their communities.
- \$1.6 million for the DARS Autism Program for children 3-8 to allows DARS to expand the program geographically beyond Dallas and Houston areas.
- \$1.8 million for the Blind Children's Program to add two caseloads and three FTEs to serve an additional 252 clients and maintain fiscal year 2009 funding levels in the 2010-11 biennium. This program assists children who are blind and visually impaired to develop their individual potential.

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

The Department of Family and Protective Services' (DFPS) major Promoting Independence accomplishments during fiscal year 2009 include the following:

Guardianship

Child Protective Services (CPS) worked with guardianship staff from the Department of Aging and Disability Services (DADS) on taking guardianship of a child who is aging out of foster care who, because of a physical or mental condition, is substantially unable to provide food, clothing, or shelter to himself or herself, to care for their own physical health, or to manage their own financial affairs.

Children Aging out of Foster Care

CPS worked with DADS to offer home and community-based services waiver slots to sixty (120 per biennium) children who are aging out of foster care and are in need of home and community-based services.

Strengthening Families through Enhanced In-Home Support

One program created as a result of legislation enacted in the 80th Legislative Session was Strengthening Families through Enhanced In-Home Support. DFPS started a pilot in fifteen counties in January 2008. The program has expanded to sixteen counties to date.

The intent of the program is to:

- reduce the number of cases in which children and youth are removed from their homes; and
- support reunification by offsetting poverty-related variables affecting families for whom services are appropriate.

The program focuses primarily on:

- child safety;
- stress reduction in the family; and
- enhancement of family functioning.

The goals are accomplished by empowering families through a program that is family-driven and family-focused.

Adult Protective Services (APS) and Money Follows the Person

Adult Protective Services (APS) and DADS completed a cross-agency population study of DADS consumers who were APS clients before or subsequent to transition under Money Follows the Person (MFP). Clients receiving services from both APS and DADS tended to have multiple cases with APS and have higher rates of recidivism (though no statistical relationship was identified). The analysis showed that MFP clients are not at greater risk of needing APS services than other DADS clients.

Adult Protective Services (APS) and Department of State Health Services Mental Health Services

The Department of Family and Protective Services (DFPS) and the Department of State Health Services (DSHS) concluded a study of client characteristics and types of services received among people who receive both APS and DSHS mental health services. Clients receiving services from APS and DSHS tend to have higher rates of recidivism; however, this is an at-risk population. One would expect these clients to have more complicated cases, become APS clients more often, and that this recidivism could be considered

positive. If a client's condition begins to deteriorate, returning to APS for services is appropriate and does not necessarily mean that DSHS mental health services were inadequate.

Appropriations

- Additional Family-Based Safety Services (FBSS) staff were appropriated to strengthen DFPS' ability to provide in-home services to families. FBSS caseloads have continued to rise and removals have steadily declined.
- The Strengthening Families Initiative (SFI) was approved to continue through the next biennium, receiving another \$9.2 million in Temporary Assistance for Needy Families (TANF) funds.
- An additional \$200,000 was approved to provide start up funds for additional youth transition centers. This allows DFPS to support transition center expansion to promote consistency of services for youth across the state without cutting funding for other services. The allocation process and timelines will be finalized by September fiscal year 2010.
- Additional Family Group Decision-Making (FGDM) staff were also allocated. CPS will be able to more consistently use the FGDM model within FBSS to ensure that families are involved in the case planning process, and determine actions needed to ensure the child's safety, permanency, and well being. This appropriation will:
 - enable more youth, including youth with developmental disabilities, to develop comprehensive, individualized transition plans which include youth-specific needs, strengths, and major life domains;
 - broaden the youth's support system, specifically identifying caring adults who will assist the youth after leaving foster care; and
 - funds additional Preparation for Adult Living (PAL) and Circles of Support (COS) staff to more effectively prepare and support youth aging out of foster care.

Texas Department of State Health Services

The Department of State Health Services' (DSHS) major Promoting Independence accomplishments during fiscal year 2009 for individuals with mental health issues include:

State Mental Health Hospitals

The Department of State Health Services conducted the following monitoring activities:

- Monitored the number of individuals in State Mental Health Hospitals (SMHHs), with an average daily census of 2,345 as of May 31, 2009, and 15,993 projected total admissions during fiscal year 2009.
- Monitored the number of individuals hospitalized in SMHHs for more than one year, with 546 patients as of May 31, 2009. Of these, 497 need continued hospitalization, 6

have been accepted for placement, 23 have a barrier to placement, and 20 have court involvement. There were no persons under the age of 18 that have been hospitalized more than a year. There continues to be increases in the number of forensic patients hospitalized for more than one year from 261 (May 31, 2008) to 311 (May 31, 2009).

- Monitored individuals in SMHHs who are deaf and hard-of-hearing. There have been no more than three patients who are deaf or hard-of-hearing in an SMHH over one year as of May 31, 2009. This data is not reported as part of the PIAC quarterly report but is maintained and is sent to Advocacy Inc. biannually.
- Monitored the number of individuals admitted to psychiatric hospitals (both SMHHs and community hospitals) three or more times in 180 days. As of August 31, 2008 there were 195 individuals admitted three or more times during the past six months (State funded community hospitals are included in the data). As of May 31, 2009 there were 160 individuals admitted three or more times. This decline is attributable to crisis redesign and resiliency and disease management.
- Conducted an analysis showing that of the 1,366 persons who had three or more SMHH admissions in 180 days since 2005, where the third admission was in fiscal year 2006, fiscal year 2007, or fiscal year 2008, only 15 percent (206) had three or more SMHH admissions in 180 days that occurred in multiple years (state hospitals only).

Assertive Community Treatment

In fiscal year 2007, the Assertive Community Treatment (ACT) program underwent some revisions in order to better align with the nationally recognized evidence based practice. The first set of changes consisted of making a distinction between the ACT teams in urban and rural settings due to the various differences between the two. Overall, both types of ACT teams have to provide the same amount of service hours to their clients but some of the other programmatic requirements have been changed.

The second part of this effort to improve ACT services across the state included:

- Increasing the number of contacts per week;
- Increasing the amount of team communication;
- Ensuring a housing and vocational specialist be a part of the team;
- Increasing the percentage of degreed or credentialed team members;
- Requiring that a licensed clinician be the team lead; and
- Requiring a psychiatrist be available for the ACT team consumers at all times.

Dollars expended on the ACT population since 2004 can be found in the following table:

TABLE 7

Assertive Community Treatment Funding

Fiscal year	# of consumers authorized for ACT services	Estimated dollar amount spent for consumers served in ACT per month	Estimated dollar amount spent for consumers in ACT per year
2004	2,173	\$2,390,300.00	\$28,683,600.00
2005	3,729	4,101,900.00	49,222,800.00
2006	3,020	3,322,000.00	39,864,000.00
2007	3,124	3,436,400.00	41,236,800.00
2008	2,828	3,121,927.00	37,463,127.00
Totals	14,874	\$16,372,527.00	\$196,470,327.00

Resiliency and Disease Management

The Resiliency and Disease Management (RDM) initiative is intended to promote the uniform provision of services based on clinical evidence and recognized best practices to advance the recovery of adults with serious mental illness and the resilience of children with severe emotional disturbance, as defined by Texas H.B. 2292, 78th Legislature, Regular Session, 2003, and in accordance with the President’s New Freedom Commission on Mental Health.

Adult outcomes for fiscal year 2008:

- 83 percent of individuals served in full RDM service packages exhibited improved or stabilized functioning;
- 84 percent of individuals served in full RDM service packages exhibited improved or stabilized housing;
- 89 percent of individuals served in full RDM service packages exhibited improved or stabilized employment;
- 92 percent of individuals served in full RDM service packages exhibited improved or stabilized criminal justice involvement; and
- 92 percent of individuals served in full RDM service packages exhibited improved or stabilized co-occurring substance use.

Children and adolescent outcomes for fiscal year 2008:

- 81 percent of individuals served in full RDM service packages exhibited improved or stabilized functioning;
- 88 percent of individuals served in full RDM service packages exhibited improved or stabilized problem severity;
- 93 percent of individuals served in full RDM service packages exhibited improved or stabilized school behavior;

- 93 percent of individuals served in full RDM service packages exhibited improved or stabilized avoided re-arrest; and
- 91 percent of individuals served in full RDM service packages exhibited improved or stabilized co-occurring substance use.

Reports

Continued to utilize the quarterly report developed for the Promoting Independence Advisory Committee titled *Adults and Children Readmitted to a State or Community Psychiatric Hospital Three or More Times in 180 Days Since FY 2001: Where Are They Now In the Community Mental Health System?* As of May 31, 2009, there were 3,397 adults readmitted three or more times in 180 days since fiscal year 2001 with 1,407 receiving RDM services, of which 85.5 percent received the same service package as that recommended by the Texas Recommended Assessment Guidelines (TRAG). Also as of May 31, 2009, there were 265 children readmitted three or more times in 180 days since fiscal year 2001 with 68 receiving RDM services, of which 89.5 percent received the same service package as that recommended by the TRAG (state and community hospitals; this is for almost nine years – fiscal year 2001 to fiscal year 2009).

Money Follows the Person

Texas is participating in the federal Money Follows the Person Demonstration. As part of this demonstration, Texas has implemented a Behavioral Health Pilot Program, which includes two special demonstration services including Cognitive Adaptation Training (CAT) and Substance Abuse (SA) which are designed to help adults with behavioral health issues leave the nursing home and successfully reintegrate into the community.

Youth Empowerment Services Waiver

The Department of State Health Services (DSHS) and the Health and Human Services Commission (HHSC) submitted a 1915(c) waiver request to the Centers for Medicare and Medicaid Services in June 2008 and was approved February 2009. The Youth Empowerment Services (YES) waiver submitted by HHSC and DSHS is now in the implementation phase and will provide community-based services to children with severe emotional disturbance to prevent/reduce impatient psychiatric stays and relinquishment to the state. The proposed waiver will be piloted in Bexar and Travis counties and will serve up to 300 children. If successful and cost neutral to Medicaid, the waiver will be expanded to serve more children in additional counties. The following steps have been completed as of July 1, 2009:

- Obtained waiver approval -- one of only 5 states to have ever been approved for a 1915(c) waiver for children with Serious Emotional Disturbance (SED).
- Executed 2009 Interagency Agreement between DSHS and HHSC
- 2010 Interagency Agreement (DSHS/HHSC) is in process of execution
- Hired DSHS waiver staff
- Launched YES website at: <http://www.dshs.state.tx.us/mhsa/yes>

- Developed and implemented waiver provider enrollment process (notice of open enrollment packet). Launched enrollment site at:
http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=82557
- Established communication process with waiver pilot sites (regular teleconferences; sharing of draft processes)

Substance Abuse and Mental Health Services Administration Grant

The Department of State Health Services received a second grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) for *Olmstead* activities for \$60,000 over three years (October 1, 2006 through September 31, 2009).

Crisis Redesign

The Department of State Health Services received an \$82 million appropriation from the 80th Legislature (2007) for the 2008-09 biennium for Crisis Redesign. Guided by the legislature and in response to Rider 69, these funds have allowed the state to make significant progress toward improving the response to mental health and substance abuse crises. This was a major and unprecedented appropriation specifically for a redesigned crisis service system. Services implemented include:

- The American Association of Suicidology (AAS) Accredited Hotlines: all thirty-seven local mental health authorities (LMHAs) and one local behavioral health authority (LBHA) were in place as of May 31, 2009 (third quarter of fiscal year 2009).
- Mobile Outreach Team: all thirty-seven LMHAs and one LBHA as of May 31, 2009 (third quarter of fiscal year 2009) are in place.
- Outpatient Competency Restoration (OCR) Sites: four LMHAs as of April 3, 2008 were awarded funds for OCR and amendments to the awardees' Performance Contract developed. OCR services have begun, and there have been approximately 180 people served in their communities through these pilots.
- Psychiatric Emergency Service Centers (PESC): Fifteen LMHAs awarded funds for PESC and Projects as of May 2009, (third quarter of fiscal year 2009) for a total of twenty-one projects.

The external evaluation team from Texas A&M University finalized their consumer and stakeholder surveys and completed the first phase of their evaluation in the fall 2008. The following is a summary of their findings:

- Crisis Redesign funds are being used as intended to improve local crisis infrastructure.
- Increased funding for crisis services alone is not sufficient. Parallel investment in ongoing routine services is also needed to prevent a crisis-driven mental health system.
- Clients of DSHS-funded community mental health crisis services are generally satisfied with services received.

- Community partners perceive some positive impacts of Crisis Redesign, but further improvements are needed.
- Communities with channels of routine communication between agencies seem to be implementing Crisis Redesign more effectively.
- Community partners must commit to resolve issues impacting the success of Crisis Redesign.

The team visited the LMHAs that they selected as a representative sample of both urban and rural services. The second round of the survey assessing individuals in crisis at LMHAs is currently being completed (July 2009) and will be submitted to the Governor and the Legislative Budget Board by January 2010.

Year to date (third Quarter of fiscal year 2009), almost 45,441,000 individuals have been served in Crisis Outpatient services. This is 175% over the third quarter target. As of May, 31, 2009, 12,147 individuals have been served in Crisis Residential services, which is 87% of the projected Q3 target. Since the PESC and Project sites were awarded funding in May 2008 and some sites could only begin construction once funding was awarded, the numbers served in Crisis Residential Services are expected to rise in the fourth quarter of fiscal year 2009 and even more in fiscal year 2010.

Mental Health Transformation Incentive Grant

The Substance Abuse and Mental Health Services Administration awarded Mental Health Transformation Incentive Grants (MHT SIG) designed to assist states in transforming their mental health service systems to create a single, effective, transparent and easily navigated system for consumers. As part of this grant, DSHS is developing an integrated web-based computer program called Clinical Management for Behavioral Health Services (CMBHS). This project is an integrated clinical management system for behavioral health care services that integrates mental health services and substance abuse services functionality. Through H.B. 2292, the governor and the legislature directed Texas health and human services agencies to consolidate organizational structures and functions, eliminate duplicative administrative systems, and streamline processes and procedures that guide the delivery of health and human services to Texans. There will be a phased deployment of the online web application over the next year to the substance abuse providers. Only substance abuse treatment providers and OSAR (Outreach, Screening, Assessment, and Referral) providers will be included in the first release. Providers of substance abuse intervention and prevention services will be included in a later release.

There will be a phased deployment of the mental health components of CMBHS. The first phase of CMBHS MH release will bring in services data from current MH system (CARE) keeping current data submission process as it is for the MH providers. In the second phase, MH providers will submit data to CMBHS using standard documents connecting through Nationwide Health Information Network (NHIN).

Children with Special Health Care Needs

In addition to accomplishments for individuals with behavioral health issues, DSHS also provided the following activities and services to avoid institutional placement for Children with Special Health Care Needs (CSHCN):

- Assisted over 1000 Children with Special Health Care Needs (CSHCN) and their families with permanency planning. DSHS regional staff and CSHCN Services Program contractors participated in permanency planning training provided by EveryChild, Inc. via conference call.
- Provided family support services for over 1000 Children with Special Health Care Needs (CSHCN) and their families by ten CSHCN Services Program community-based contractors.

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77th Texas Legislature – 2001*

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*Doni Van Ryswyk
T4A*

*Colleen Horton
University of Texas Center for Disability Studies*

Dear Executive Commissioner Suehs:

The Centers for Medicare and Medicaid Services (CMS) allows for 1915 (c) waivers to address the cost neutrality formula (as required on the Form 372) by allowing states to use the aggregate costs across the entire population served versus an individual cost cap accounting mechanism reflecting each individual's specific service plan. The Promoting Independence Advisory Committee (Committee) is requesting the state and the Committee to review the process, considering the implications of total number of slots, and determine if there needs to be recommendations on making all the 1915 (c) waivers cost neutrality formula based on the aggregate rather than individual by individual cost cap.

Unanimous support by the Committee

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Dear Executive Commissioner Suehs:

The 81st Legislature adopted a significant policy change redefining the Home and Community-based Services (HCS) case management services and the respective responsibilities of HCS providers and Mental Retardation Authorities (MRAs). Case management is an integral component of the system of supports and services for Texans with disabilities. The effective implementation of this significant policy change will depend on a variety of operational factors, not the least of which is the adequacy of funding designated by the Legislature for this purpose. The Promoting Independence Advisory Committee (Committee) requests that the Executive Commissioner of the Health and Human Services Commission (HHSC) conduct an ongoing review of the implementation of the new HCS case management procedures to identify policy and fiscal barriers, and that this review include a consumer/family and provider satisfaction survey. The results of this survey should be compiled and disseminated no later than December 1, 2010, and the findings reported to the Committee.

Unanimous support by the Committee

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University of Texas Center for Disability Studies

Dear Executive Commissioner Suehs:

The availability of both high quality, accessible, and affordable medical and other health related acute care and long-term services and supports is a major priority of Texans with disabilities. Policies that will shape the future health care system and define both acute care and long-term services and supports is now being debated in Congress. These policy decisions will have an immediate and far-reaching impact on Texans with disabilities who rely on publicly financed services. Federal policy decisions will likely present both policy and funding implications for consideration by the Texas Legislature and state governmental agencies. The Promoting Independence Advisory Committee (Committee) requests that the Executive Commissioner of the Health and Human Services Commission conduct an ongoing review of federal health care policy decisions and their actual and potential impact on individuals receiving services and supports for individuals with disabilities and the providers of those services, and inform the Committee on the state's position and initiatives resulting from any federal action.

Unanimous support by the Committee

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Dear Executive Commissioner Suehs:

The Money Follows the Person initiative in Texas allows individuals residing in nursing facilities to relocate to communities using the Community-based Alternatives, STAR+PLUS, or Community Living Assistance and Support Services (CLASS) waiver programs. The support needs of some individuals with intellectual disabilities (IDD) and/or autism residing in nursing facilities can not be met through the services offered in these waivers. Children with IDD residing in nursing facilities are able to access Home and Community-based Services (HCS) services if those services are needed to allow the relocation to the community. Adults with IDD resulting in nursing facilities should have the same opportunity to access HCS services if residential or other HCS services are needed in order for the individual to relocate to community services.

Resolution passed: 7-0-2

Voting in support: 7

Voting to abstain: 2 (Tim Graves, Texas Health Care Association; Susan Payne, PART, Inc.)

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Tim Graves
Texas Health Care Association

Doni Van Ryswyk
T4A

Colleen Horton
University of Texas Center for Disability Studies

Dear Executive Commissioner Suehs:

The Promoting Independence Advisory Committee believes that all children with disabilities should have the opportunity to grow-up in families. Far too many children continue to be institutionalized in Texas because of the lack of alternatives, the lack of needed positive behavioral supports, and the inability to timely access needed services. Texas must work to ensure that the needed services are available to prevent institutionalization of children and to ensure that already institutionalized children are able to relocate to families and communities as soon as possible.

Resolution passed: 7-0-2

Voting to abstain: 2 (Susan Payne, PART, Inc.; Tim Graves, Texas Health Care Association)

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Susan Payne
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Carole Smith
Private Providers Association of Texas

Doni Van Ryswyk
T4A

Dear Executive Commissioner Suehs:

In order to ensure true choice of services for all individuals with disabilities, Money Follows the Person should be available to all institutionalized Texans. An individual's ability to relocate from institutional settings, other than nursing facilities, should not be dependant on separate funding strategies. If we truly support the value of choice, then individuals should be able to decide where they want to receive the support services for which they are eligible.

Voting in support: 8

Voting to abstain: 1 (Susan Payne, PART, Inc.)

PROMOTING INDEPENDENCE ADVISORY COMMITTEE

Constituted by Senate Bill 367
77th Texas Legislature – 2001

Dennis Borel
Coalition of Texans with Disabilities

Anita Bradberry
Texas Association for Home Care

Mike Bright
The ARC of Texas

Tim Graves
Texas Health Care Association

Colleen Horton
University of Texas Center for Disability Studies

Bob Kafka
ADAPT

Susan Payne
PART, Inc.

Carole Smith
Private Providers Association of Texas

Doni Van Ryswyk
T4A

Dear Executive Commissioner Suehs:

The Promoting Independence Advisory Committee (Committee) recognizes that challenging behaviors are often the primary cause of institutionalization of both children and adults. Challenging behaviors are cited as one the reasons for individuals not being deemed “appropriate” to live in the community of their choice. Additionally, institutional staff and community care staff may lack the expertise needed to use positive behavior supports to decipher the cause of the behavior and how to support the individual in order to mitigate dangerous behaviors.

Therefore, Texas must design, develop and implement a statewide Positive Behavioral Support Training and Technical Assistance Project. This Project should offer tiered Positive Behavioral Support training designed to address the needs of providers of services and supports, direct care workers, families, and others who support individuals with challenging behaviors. This Project should also offer technical assistance to community providers, Mental Retardation Authorities, Intermediate Care Facilities for Persons with Mental Retardation, State Supported Living Centers, Nursing Facility providers, families and others who experience difficulty is supporting individuals with these behaviors. This is, in part, a recommendation made by a Health and Human Services Commission delegated “Children in State Schools” workgroup made in August 2008. This recommendation was fully supported by all representatives.

Resolution passed: 7-0-2

Voting in support: 7

Voting to abstain: 2 (Carole Smith, Private Providers of Texas; Susan Payne, PART, Inc.)

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Dear Executive Commissioner Suehs:

The Centers for Medicare and Medicaid Services (CMS) has recently published a notice of public rulemaking regarding additional provisions to the 1915 (c) waiver program. CMS requested general comments on the proposal to allow states to combine multiple populations in one waiver regardless of diagnosis; however, it does allow states to retain their current system. Texas has multiple 1915 (c) waivers serving single populations. The Promoting Independence Advisory Committee (Committee) requests that the state and the Committee should investigate and make recommendations on ways to eliminate unnecessary fragmentation, administrative duplication as well as benefits of serving multiple populations with similar needs in functionally based waivers. Development of an effective and inclusive definition of functional need is critical to this initiative. Issues to consider in developing a functionally based waiver include, but are not limited to: similar service needs/definitions, uniform rate setting for similar services, uniform licensing and contracting standards, and uniform assessment and quality indicators. Recommendations should offer assurances that individuals currently served in existing waiver programs receive all the necessary services in their current service plans to continue to live in the community successfully as a result of any new approach to the (c) waiver programs.

Resolution passed: 7-0-2

Voting in support: 7

Voting to abstain: 2 (Carole Smith, Private Providers of Texas; Susan Payne, PART, Inc.)

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Dear Executive Commissioner Suehs:

Currently under the attendant programs administered by the Department of Aging and Disability Services (DADS) and the Health and Human Services Commissioner's managed care programs certain health related tasks cannot be performed by attendants restricting the use of this cost effective program by many individuals who could use this program rather than the more expensive Community-based Alternatives (CBA) and STAR+PLUS waivers. The Promoting Independence Advisory Committee (Committee) is requesting the state and the Committee to review and make recommendations on including doctor/nurse delegation/assignment in these attendant programs.

Resolution passed: 8-0-1

Voting in support: 8

Voting to abstain: 1 (Tim Graves, Texas Health Care Association)

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Carole Smith
Private Providers Association of Texas

Doni Van Ryswyk
T4A

Dear Executive Commissioner Suehs:

Many individuals with significant disabilities cannot be served through the Community-based Alternatives (CBA) and STAR+PLUS waivers because of the individual cost caps. The Promoting Independence Advisory Committee (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.

Unanimous support by the Committee

**RECOMMENDATIONS FOR SYSTEMS CHANGE:
Fiscal Years 2010-2011 Funding and Policy Recommendations**

The Promoting Independence Advisory Committee (Committee) is very appreciative of the groundwork established by the previous Committees, of the various advocate, consumer and provider communities and of legislative, executive, and governmental officials. The Committee strongly believes that the state has made progress since the original Promoting Independence Plan in 2001.

However, the current Committee recognizes the importance for a continued focus on policy and funding initiatives before Texas can claim full compliance with the intent of the two Executive Orders (see Appendix B), Senate Bills 367 and 368 (77th Legislative Session, Regular, 2001), and Texas' Promoting Independence Initiative (Initiative). More than ever, the Committee recognizes the relevancy of its task to continue to provide advice and monitor the state's progress in its' *Olmstead* compliance.

Therefore, the Committee makes the following policy and budget recommendations for Fiscal Years (FY) 2010-2011 biennium.¹⁰ *Increase In Medicaid 1915 (c) Slots – Eight Year Plan For Elimination Of Current Interest Lists and Workforce and Provider Network Stabilization* are the top priorities. However, all recommendations are important to meeting the goals of *Olmstead* and the Texas Initiative. It is strongly urged that all the recommendations made in this report are included in the *2008 Revised Promoting Independence Plan* by the Health and Human Services Commission. Twenty-six of the recommendations were sent to you in April 2008 for your consideration during the Legislative Appropriations Request (LAR) process; two new recommendations are added.

For the 2008 Report, recommendations are grouped in five general categories. It is the expectation that HHSC will make agency assignments according to which agency is most appropriate for implementing the recommendation. Within each category, several recommendations are made with background information. These recommendations have been approved by a majority of the Committee's membership;¹¹ any vote against or those abstaining are noted for each specific recommendation. The Committee's recommendations to Executive Commissioner Hawkins are:

¹⁰ These recommendations reflect the views and opinions of a consensus of members of the Committee. The Committee for purposes of these recommendations 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 options expressed in these recommendations do not necessarily reflect the policy of HHSC, the Texas Department of Aging and Disability Services, or any state agency represented on the Committee.

¹¹ See Appendix A.

PROGRAM FUNDING

▪ INCREASE IN MEDICAID 1915 (C) SLOTS – EIGHT YEAR PLAN FOR ELIMINATION OF CURRENT INTEREST LISTS¹².

The 80th Legislature passed the 2008-2009 General Appropriations Act (Article II, Department of Aging and Disability Services [DADS], House Bill [H.B.] 1, 80th Legislature, Regular Session, 2007) which significantly increased the number of individuals receiving services in DADS' Medicaid waiver programs. H.B. 1 provides \$71.4 million in General Revenue (GR) funds (\$173.2 million in All Funds) which will allow an additional 8,598 individuals to be served in community-based programs by the end of 2008-09 biennium. All of DADS' waiver programs are impacted by this appropriation, which provides an approximate ten percent increase in community-based services.

The Committee's number one priority is that the emphasis on increasing community-based services be continued and enhanced by the 81st Legislature. Even with the increased funding for community "slots, as of June 30, 2008, there remains 100,192 individuals on the official interest list for DADS waivers and the non-mandatory managed care waivers; the unduplicated count is 82,050 individuals and the unduplicated count without STAR+PLUS is 79,925 individuals.¹³

Therefore, the Committee recommends that the 81st 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 and projected demographic growth. Implementation of this recommendation will result in that at the end of the FY 2017, no new applicant for community-based services will have to wait more than six months to receive services.

▪ 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 dual diagnoses (individuals who are aging and/or with a disability and a mental illness and/or substance abuse issue). These issues, as either stand-alone concerns, or coupled with co-occurring other disability issues 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:

¹² Vote: 9-0-2: Tim Graves, the Texas Health Care Association (THCA) and Jean L. Freeman, Ph.D., DADS Council abstaining.

¹³ See DADS website at: <http://www.dads.state.tx.us/services/interestlist/index.html> for the most recent information.

Recommendation 1: Fully Fund The Assertive Community Treatment (ACT) Service Packages As Part Of The Resiliency And Disease Management (RDM) Program Administered Through The Texas Department Of State Health Services (DSHS).¹⁴ 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 Promoting Independence Plan formally targets individuals with three or more hospitalizations within the 180 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 923,536 adults in Texas met the DSHS mental health priority population definition in 2007; approximately 444,655 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 (111,782) in 2007.

The Committee recommends that 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.

Recommendation 2: Provide services and supports for individuals leaving the state mental health facility (state hospital) system.¹⁵ 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 them return to his/her community setting of choice. 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.*

Recommendation 3: Increase funding for the current 1915 (c) waivers in order to incorporate behavioral services and support in their service arrays.¹⁶ The current

¹⁴Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

¹⁵ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

¹⁶ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

1915 (c) service arrays do not adequately cover behavioral health services and supports. Therefore, community options are limited for those individuals with co-occurring aging and/or disability needs. ***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 increase the individual service plan cost, this could be a short-term activity until the individual stabilizes or maybe offset other service costs as a result of a reduction for the need for other available services.

- **Increase funding to all the existing 1915 (c) waiver programs in order to ensure flexibility in the service array.**¹⁷

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.

- **Fund an integrated Data Warehouse.**¹⁸

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 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.

- **Expand respite care for family caregivers and increase the average benefit**¹⁹.

The Committee recommends that the family caregiver support program be expanded to provide more intensive and/or ongoing respite for the caregiver, with an average benefit of \$1,200 per annum. Respite is an effective means of delaying and/or avoiding institutional care.

¹⁷ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

¹⁸ Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

¹⁹ Vote 8-0-1-1: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining; Ann Denton not voting.

In Texas, the National Family Caregiver Support Program, as authorized under the Older Americans Act, is administered by DADS and implemented by 28 area agencies on aging (AAAs). Education, information, and support services are provided to caregivers 60 and over and other high-risk populations who provide assistance for their family members; caregivers may be of any age. This program enables frail elderly and disabled persons to remain in a home environment and "age in place." By receiving care in the home in a safe and secure environment, consumers retain dignity and choice. To the fullest extent possible they retain their independence.

Family members and friends who donate care are the backbone of the nation's long-term supports and services. According to 2004 data compiled by the National Family Caregiver Association, the economic value of informal care giving in the United States is \$306 billion.²⁰ This care is provided by 29 million caregivers providing 31 billion hours per year. This "free" care is not without cost, however. Caregivers are at risk of experiencing declines in their own physical and mental health as a direct result of their care giving responsibilities.

Although area agencies on aging offer respite services, the intensity and duration of services are limited by funding constraints. AAAs' average respite benefit for SFY 2007 was \$667²¹, which is helpful but inadequate to meet the needs of unpaid caregivers who provide on-going and intensive assistance.

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 advertising 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, such as transportation, food, insurance and other related operating needs. 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 aging and/or disabled Texans during the 2010-2011 biennium.

²⁰ National Family Caregivers Association & Family Caregiver Alliance (2006). Prevalence, Hours and Economic Value of Family Care giving, Updated State-by-State Analysis of 2004 National Estimates by: San Francisco, CA: FCA.

²¹ Department of Aging and Disability Services, Access & Intake – Area Agencies on Aging SFY 2007 data for Caregivers Respite Care.

Recommendation 1: Fully-fund the 2007 Consolidated Budget’s 2008-2009 rate methodology requests.²² Prior to the 80th Legislature, the Texas Legislature faced challenges in appropriating adequate funds to provide rate increases in accordance with promulgated reimbursement methodologies. These challenges were, in part, the result of limited resources and budgetary shortfalls within the state’s budget.

To address this issue, the 2007 Consolidated Budget presented to the 80th Legislature by the Health and Human Services Commission (HHSC) stated that the funding increases necessary to fully-fund HHSC’s rate methodologies for community-based programs in Fiscal Years (FY) 2008 and 2009 were: Primary Home Care (PHC), 15.33 percent; Community-based Alternatives (CBA) , 16.9 percent; Community Living and Assistive Support Services (CLASS) 11.3 percent; Medically Dependent Children’s Program (MDCP) 29.9 percent; Home and Community-based Services (HCS) 9.56 percent; and Day Activity and Health Services (DAHS) 5 percent.

However, the Legislature only appropriated, on average, a five percent rate increase for providers of community services and supports (\$86.2 million General Revenue, \$203.1 million All Funds). In addition, the Legislature provided for “Community Care Rate Enhancements” (\$15.8 million General Revenue, \$38.2 million All Funds) for direct service staff, and passed H.B. 15 (80th Legislature, Regular Session, 2007) which provided rate restoration for CLASS, HCS, and Texas Home Living providers to FY 2003 amounts. The funds restored rates for the last 8 months of FY 2007.

It is important to note that the appropriations did not include funds to address the minimum wage bill passed by Congress in May 2007. The 80th Legislature (2007) specified under Section 57 (Article II, Special Provisions, Regular Session, 2007) the funds appropriated for rate increases in H.B. 1 or H.B. 15. These funds were intended to provide a rate increase and, in part, to cover any required increases in hourly wages or salaries established under federal minimum wage laws or regulations. The intent of the appropriations was not accomplished and the lack of funding is serious; for example, Primary Home Care has the lowest rate and providers had to use almost the entire FY 2008-2009 increase to cover the minimum wage requirements.

In summary, although the 80th Legislature (2007) appropriated funds to provide rate adjustments, the funds were not appropriated at the levels requested and necessary to adequately address the complex challenges related to workforce issues and infrastructure and minimum wage. *Therefore, the Committee recommends that the 81st Legislature immediately address the FYs 2008-2009 shortfall, and to fully-fund all community-based programs in accordance with their respective promulgated methodologies.*

Recommendation 2: Increase provider rates to address inflation. Cost inflation is inevitable for even the most efficient providers.²³ Between 1997 and 2007 the Consumer Price Index (CPI) has increased by 26 percent. While the rate adjustments provided by the 80th Texas Legislature provided some relief, the adjustments did not meet

²² Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

²³ Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

the increase in the CPI. The current national economy is indicating that inflation rates are trending upward, and a conservative preliminary inflation estimate for providers during the FYs 2010-2011 biennium would be three percent per year. Current inflationary pressures include, but are not limited to, cost increases in gasoline, transportation (vehicles), food and utilities, all which are necessary for service delivery. The inability to adequately address these needs negatively impacts: the quality of services provided to individuals; a provider's ability to maintain compliance with regulations; and more importantly, the availability of an array of viable service providers from whom consumers may choose to receive services.

Recommendation 3: Fund the full impact of the minimum wage increase.²⁴ The third \$0.70 increment in the federal minimum wage will occur on July 24, 2009, and will require pro forma adjustments to the rates that would otherwise be reflected in HHSC's rate methodology estimates for FYs 2010-2011. The "ripple effect" of that third increment is an economic fact, and must be recognized in the 2010-2011 General Appropriations Act.

Recommendation 4: Fund community direct services and supports workers.²⁵ The ability to recruit and retain direct services and supports workers is at a critical juncture in Texas. In the development of the FYs 2010-2011 Consolidated Budget, the level of funding for wages and benefits for community direct services and supports workers, must be sufficient to effectively recruit and retain community workers in order to meet the needs of individuals who are aging and/or with a disability, as identified in the Legislative Appropriation Requests (LARs) of the Health and Human Services operating agencies.

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.

²⁴ Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

²⁵ Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

While the number of children living in large (fourteen or more bed) community ICFs/MR has significantly decreased over the past six years, the total number of children residing in institutional settings, as defined by Senate Bill 368 (78th Legislature, Regular Session, 2001), has remained fairly constant. Additionally, the number of children with intellectual and developmental disabilities being admitted to state schools has increased dramatically (152 admissions during FY 2007).

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 1: Provide the appropriate community-based services to those at imminent risk of institutionalization and prevent the placement of children/youth (0-17 years of age) in large community ICFs/MR and state schools.²⁶ This recommendation is consistent with the Center for Disease Control and Prevention's *Healthy People 2010 Objectives for People with Disabilities*²⁷. Many families/guardians feel 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. This recommendation will require both a statutory change and appropriations.

Recommendation 2: Expand the Promoting Independence (PI) population to include children in institutions licensed by the Department of Family and Protective Services (DFPS) for children in state conservatorship.²⁸ 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 schools, and large community ICFs/MR.

Recommendation 3: Create a Permanency Planning/Promoting Independence Unit for Children at DADS.²⁹ 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: (1) developing the infrastructure and the expertise needed to address the institutionalization of a child in a crisis situation; (2) providing technical assistance to mental retardation authorities (MRAs) who have responsibility for permanency planning by developing increased expertise at local MRAs (on-going training and support); (3) developing meaningful accountability for quality permanency planning and crisis intervention; and (4) increasing efforts to relocate children currently placed in state schools to less restrictive, family-based alternatives.

²⁶ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

²⁷ *Healthy People 2010*, Chapter 6, Disability and Secondary Conditions, Objective 6-7b:
http://www.healthypeople.gov/document/HTML/Volume1/06Disability.htm#_Toc486927305

²⁸ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

²⁹ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

Recommendation 4: Develop a pilot to create emergency shelters for children with disabilities needing out-of-home placement.³⁰ This is to ensure adequate time to assess the child and develop an appropriate family-based alternative.

Recommendation 5: Develop adequate behavioral services to support children/youth coming out of institutions and to help prevent them from having to be admitted.³¹

See recommendation under issues pertaining to “Fund Behavioral Health Services and Supports for Health And Human Services Enterprise Programs”.

Recommendation 6: Develop And implement A Medicaid Buy-In (MBI) program for children with disabilities in families with income between 100% to 300% of the federal poverty level (FPL) as stipulated in the Deficit Reduction Act Of 2005.³²

Many children with disabilities are uninsured or underinsured. Often this is due to the fact that the cost to provide insurance for a child with significant disabilities may be unattainable for many families. Additionally, the limitations in many commercial insurance policies do not provide the services needed for a child with disabilities. Consequently, families of children with disabilities often purposely enter into poverty through divorce or employment decisions simply to qualify for publicly funded health insurance for their child.

In other cases, families are forced to make the difficult decision to institutionalize their child in order to obtain required services. Expanding Medicaid opportunities, on a sliding-fee basis, to families caring for children with disabilities will prevent families from remaining in or entering into poverty for the sole purpose of obtaining medical care for their child, and will prevent insitutional placements caused by the lack of needed services. *The Committee recommends the development and implementation of a Medicaid Buy-In program for children with disabilities in families with income between 100 percent-300 percent of FPL.*

INDEPENDENT LIVING OPPORTUNITIES AND RELOCATION ACTIVITIES

Recommendation 1: Expansion of the “Promoting Independence Priority Population” policy for individuals with intellectual and developmental disabilities who reside in intermediate care facilities for the mentally retarded (ICF/MR).

Texas was the originator of the “money follows the person” (MFP) policy as codified under Subchapter B, Chapter 531, Government Code, 531.082 for individuals living in nursing facilities (NF). This state policy allows individuals in NFs to relocate to the community in order to receive their long-term services and supports predominately delivered through a 1915 (c) waiver program. In addition, NF residents do not have to be placed on an interest list for those services and may receive them as soon as they met all program eligibility criteria. Texas is recognized as a national leader in this movement

³⁰ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³¹ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³² Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

and its policy was the basis for the MFP provisions within the federal Deficit Reduction Act (DRA) of 2005.

A similar provision does not exist for individuals residing in ICF/MRs. The reasons for not having this comparable policy are complex. Individuals in state mental retardation facilities (state schools) and large (fourteen or more bed) community ICF/MRs do have an opportunity to access the HCS program within six months and twelve months respectively because of the Promoting Independence Plan; however, this is not a MFP policy.

Recommendation 3: Expand the opportunity for expedited access to HCS for all individuals residing in ICFs/MR regardless of the size of the ICF/MR.³³ The Committee recommends sufficient funding in order that all individuals residing in ICFs/MR have an opportunity for expedited HCS access. Currently, expedited access for HCS is limited to individuals residing in large community ICFs/MR or state schools.

Recommendation 4: Eliminate the time period requirement for expedited access.³⁴ The Committee recommends full funding for the “Promoting Independence Priority Populations” that will result in individuals residing in community ICFs/MR or in state schools having immediate access to HCS slots.

Recommendation 5: Fund DARS in order to add an additional three Centers for Independent Living (CILs).³⁵ The federal Rehabilitation Act which is overseen by the Rehabilitation Services Administration created the development of Centers for Independent Living (CIL)s. 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 80th Legislative Session (2007), there were 21 CILs in Texas funded by federal and General Revenue funds which covered only 145 counties. The 80th Legislature (2007) added funding to the 2008-2009 General Appropriations Act (Title II, DARS, H.B. 1, 80th Legislature, Regular Session, 2007) to create two new CILs which will be developed in Laredo and Abilene. These two new CILs cover an additional fourteen counties. Nevertheless, this still results in many parts of the state, especially in the rural counties, being without CIL coverage (93 counties are without Title VII, Part C, CIL funding).

The Committee recommends that the 81st Legislature (2009) fund the addition of three more CILs.

³³ Vote 9-1-2: Carole Smith, Private Providers Association of Texas, against; Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³⁴ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³⁵ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

Recommendation 5: Provide increased funding for the relocation activity that assists individuals in nursing facilities to relocate back into their community.³⁶

Currently, DADS receives \$1.3 million in General Revenue (GR) to fund the relocation specialist activity and the support program “Transition to Life in the Community (TLC)”; HHSC also provides additional dollars for these support services. These activities are crucial in: the identification of individuals who want to relocate; education; facilitation; and coordination of the relocation process. However, individuals with more complex functional and medical needs require intensive supports in their relocation and there are an increasing number of these individuals who require assistance. With the advent of the “Targeted Case Management” rules by the Centers for Medicare and Medicaid Services, proposals to match relocation GR dollars are now tentative. It has been demonstrated that it costs less to serve an individual in the community versus in a nursing facility. *The Committee recommends increased GR funding for relocation in order to assist more individuals back into the community, especially those with complex functional/medical needs.*

Recommendation 6: Funding should be provided to HHSC/DADS to establish a pilot project which would support institutional diversion activities in order to avoid initial institutionalization.³⁷ Individuals often seek institutionalization because they are in a crisis situation either due to an acute episode or a pending immediate discharge from an acute facility. The community-based services and supports are not in place to provide temporary assistance to avoid institutionalization. The state, subsequently, pays relocation contractors then to work with the individual in order for them to relocate back into the community. This process is expensive and there are many risks that the individual will lose their community residence and informal support system. *The Committee is recommending funding to support a pilot project that would work with hospital discharge planners to establish linkages with the long-term services and supports systems to provide the necessary community-based supports.*

Recommendation 7: Remove barriers to relocation from a State School and expedite the overall process.³⁸ Individuals residing in state schools are currently provided a Home and Community-based Services (HCS) waiver slot upon six months of request and referral to the Interdisciplinary Team (IDT). This requires an individual to remain in the state school during this six month period. The Committee recommends that the state remove barriers to community placement for individuals residing in the state school system. Barriers may include but are not limited to lack of housing and insufficient behavioral health supports. If barriers to community placement exist, the state school staff and Community Living Options Information Process (CLOIP) Mental Retardation Authority service coordinators must work to remove those barriers as soon as possible. Barrier ma

³⁶ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³⁷ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³⁸ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

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 Department of State Health Services' (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 (\$637/month), and/or the lack of easy access to wrap-around supports and services. The Committee makes the following recommendations:

Recommendation 1: Increase the baseline funding for the Texas Housing Trust Fund.³⁹ Texas does not provide significant amount of discretionary General Revenue funding for housing; the Housing Trust Fund is one of those limited funding sources. This funding is allocated to the Texas Department of Housing and Community Affairs (TDHCA,) and during the 80th Legislative Session, TDHCA received \$5 million in General Revenue for the Housing Trust Fund (2008-2009 General Appropriations Act, Article VII, H.B. 1, 80th Legislature, Regular Session, 2007). However, this amount is not adequate to provide housing voucher incentives or increase the overall housing inventory for individuals who exist at the Supplemental Security Income (SSI) level and are aging and/or with disabilities.

Recommendation 2: HHSC should supplement the administrative fee for HOME Vouchers.⁴⁰ 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 United States Department of Housing and Urban Development (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.*

Recommendation 3: TDHCA should continue to increase the amount of dedicated HOME vouchers for individuals relocating from institutional settings.⁴¹

³⁹ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

⁴⁰ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

⁴¹ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

Recommendation 4: The 81st Legislature should establish a separate General Fund program to support individuals whose income is only up to the 300 percent of the Supplemental Security Income level who want to relocate from an institutional setting or remain in the community.⁴²

⁴² Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.