TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

MEMORANDUM

TO: Office of the Governor
Legislative Budget Board
Senate Committee on Health and Human Services
House Committee on Human Services
House Committee on Public Health

FROM: External Relations Division, Health and Human Services Commission

DATE: March 25, 2008

SUBJECT: Amendment to the Texas Home Living Waiver

Pursuant to the 2008-2009 General Appropriations Act (Article II, Health and Human Services Commission, Rider 31(a), H.B. 1, 80th Legislature, Regular Session, 2007), this memo serves as notification that the Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services an amendment to the Texas Home Living (TxHmL) waiver under the authority of section 1915(c) of the Social Security Act.

The current section 1915(c) waiver is approved from March 1, 2007 to February 29, 2012. The waiver serves individuals in the community who would otherwise require care in an Intermediate Care Facility for the Mentally Retarded (ICF/MR).

The purpose of this waiver amendment is to revise reimbursement rates and adjust the annual cost limit to be consistent with the 2008 – 2009 General Appropriations Act, which directed the Department of Aging and Disability Services (DADS) to increase the rates for two service categories provided under this program: Community Living and Professional and Technical Supports. The revision ensures individuals are able to receive services at the same level authorized prior to the rate increase.

The amendment also revises the previously stated implementation date of January 1, 2008, for the Consumer Directed Service (CDS) option to February 1, 2008. The Consumer Directed Services Agencies providing financial management services will be reimbursed according to the revised rate methodology upon implementation of the CDS option.

HHSC is requesting a proposed effective date of September 1, 2007, for this the waiver amendment. The amendment maintains cost neutrality for each year in the remaining five-year waiver period covering 2008 through 2012.

Should you require additional information, please contact Kay Ghahremani, Deputy Director for Medicaid and CHIP Policy Development, by telephone at (512) 491-1339 or by e-mail at Kay.Ghahremani@hhsc.state.tx.us.

Texas Home Living Program (HCBSW # 0403.90)
State of Texas
Amendment #1

Page Changes

Appendix B-2: Individual Cost Limit

a. Individual Cost Limit. The following individual cost limit applies when determining whether to deny home and community-based services or entrance to the waiver to an otherwise eligible individual *(select one)*:

O	**No Cost Limit**. The State does not apply an individual cost limit. *Do not complete Item B-2-b or Item B-2-c.*
O	**Cost Limit in Excess of Institutional Costs.** The State refuses entrance to the waiver to any otherwise eligible individual when the State reasonably expects that the cost of the home and community-based services furnished to that individual would exceed the cost of a level of care specified for the waiver up to an amount specified by the State. *Complete Items B-2-b and B-2-c.* The limit specified by the State is *(select one)*:
O	_____ %, a level higher than 100% of the institutional average
O	Other *(specify)*:
O	**Institutional Cost Limit**. Pursuant to 42 CFR 441.301(a)(3), the State refuses entrance to the waiver to any otherwise eligible individual when the State reasonably expects that the cost of the home and community-based services furnished to that individual would exceed 100% of the cost of the level of care specified for the waiver. *Complete Items B-2-b and B-2-c.*
X	**Cost Limit Lower Than Institutional Costs**. The State refuses entrance to the waiver to any otherwise qualified individual when the State reasonably expects that the cost of home and community-based services furnished to that individual would exceed the following amount specified by the State that is less than the cost of a level of care specified for the waiver. *Specify the basis of the limit, including evidence that the limit is sufficient to assure the health and welfare of waiver participants. Complete Items B-2-b and B-2-c.*
	This waiver is intended to serve persons who are currently eligible to receive Medicaid State Plan services and who can continue to live in their own or family homes if the supports of their informal networks are augmented with basic services and supports through the waiver. **The 80th Texas Legislature's 2008-2009 General Appropriations Act includes rate increases for services provided under this program. To accommodate these rate increases and to ensure individuals are able to receive services at the same level authorized prior to the rate increases, the annual cost limit is being adjusted.**
	The cost limit specified by the State is *(select one)*:
X	The following dollar amount: $ **13,000** annually
	The dollar amount *(select one)*:
O	Is adjusted each year that the waiver is in effect by applying the following formula:
X	May be adjusted during the period the waiver is in effect. The State will submit a waiver amendment to CMS to adjust the dollar amount.
O	The following percentage that is less than 100% of the institutional average: _____ %
O	Other – *Specify:*

X	Other safeguard(s) *(specify)*:

If an individual has an increased need for a covered service that would cause the cost of the individual's service plan to exceed the total service limit established by the state, DADS evaluates the individual's needs to ensure the individual's health and welfare by any one or combination of the following:

- Accessing additional assistance of family or local community organizations and other natural supports;
- Authorizing an exception to the service category limits established by the State for this waiver program; or
- Seeking funding through non-waiver resources such as State Medicaid Plan services, local Mental Retardation Authorities, or local community agencies.

To the extent that the above efforts are unsuccessful, and the State finds that the absence of sufficient service(s) prevents the State from assuring the individual's health and welfare in the community, the following will apply:

- The individual will be given an opportunity to request services through another existing home and community-based service program for which the individual may be eligible;
- The individual will be assisted in seeking admission to an ICF/MR, if appropriate; and
- The individual will be informed of and given the opportunity to request a fair hearing in accordance with 1 TAC Chapter 357, Subchapter A, if the State proposes to terminate the individual's waiver eligibility.

The service components included in this waiver are classified under two broad service categories—the Community Living Service Category and the Professional and Technical Supports Service Category.

The Community Living Service Category includes the following service components: Community Support, Day Habilitation, Employment Assistance, Supported Employment, and Respite. An individual's use of any service component or combination of components included in the Community Living Service Category is limited to **$10,400** per year per individual unless DADS approves an exception to the service limit.

The Professional and Technical Supports Service Category includes the following service components: Skilled Nursing, Behavioral Support, Physical Therapy, Occupational Therapy, Dietary, Speech and Language Pathology, Audiology, Minor Home Modifications, Adaptive Aids, and Dental Treatment. An individual's use of any service component or combination of components included in the Professional and Technical Supports Service Category is limited to **$2,600** per year per individual unless DADS approves an exception to the service limit.

As demonstrated in the two annual reports on this waiver, individuals in the TxHmL Program use those services included in the Community Living Service Category, particularly Community Support and Day Habilitation at a higher rate than those services included in the Professional and Technical Supports Category.

An individual's service coordinator is responsible for ensuring that individuals and their representatives are informed of the service category limits and the ability to request an exception to a category limit. The service coordinator is also responsible for ensuring that annual service limits are not exceeded and all service components included on the service plan are consistent with the individual's demonstrated needs. If the service planning team and service coordinator determine that an individual's need for services included under one of the two service categories exceeds the annual limit of that category, the service coordinator may request DADS to make an exception to a service category annual limit. DADS may approve such a request if the increased service limit is determined necessary to protect the individual's health and welfare or prevent the individual's admission to institutional services. In the event an exception to a service category limit is approved, the combination of service components included in the Community Living Service Category and the Professional and Technical Supports Service Category may not exceed **$13,000** per individual per year. Participants for whom service limit exceptions are denied will be offered an opportunity for a fair hearing in accordance with Appendix F of this request.

Appendix E: Participant Direction of Services

[NOTE: *Complete Appendix E only when the waiver provides for one or both of the participant direction opportunities specified below.*]

Applicability *(select one)*:

X	**Yes.** This waiver provides participant direction opportunities. Complete the remainder of the Appendix.
O	**No.** This waiver does not provide participant direction opportunities. Do not complete the remainder of the Appendix.

CMS urges states to afford all waiver participants the opportunity to direct their services. Participant direction of services includes the participant exercising decision-making authority over workers who provide services, a participant-managed budget or both. CMS will confer the Independence Plus designation when the waiver evidences a strong commitment to participant direction. Indicate whether Independence Plus designation is requested (select one):

O	**Yes.** The State requests that this waiver be considered for Independence Plus designation.
X	**No.** Independence Plus designation is not requested.

Appendix E-1: Overview

a. Description of Participant Direction. In no more than two pages, provide an overview of the opportunities for participant direction in the waiver, including: (a) the nature of the opportunities afforded to participants; (b) how participants may take advantage of these opportunities; (c) the entities that support individuals who direct their services and the supports that they provide; and, (d) other relevant information about the waiver's approach to participant direction.

The State implemented a Consumer Directed Service (CDS) option on **February 1, 2008.**

Participation in the CDS option provides the individual, or the LAR, the opportunity to be the employer of persons providing waiver services chosen for self-direction. Each individual or LAR electing the CDS option must receive support from a Financial Management Service (FMS) provider referred to as a Consumer Directed Service Agency (CDSA), chosen by the individual or LAR. The individual or the LAR is the employer and may appoint a designated representative (DR) to assist with employer responsibilities. The individual or LAR may choose to receive Support Consultation provided by a Support Advisor.

An individual or the individual's LAR may choose to direct any service component provided through the waiver as listed in Appendix C except Extended State Plan Services: Prescriptions.

An alternate service delivery option, the current traditional agency model (provider-managed service delivery) is available to provide authorized services that the individual/LAR elects not to self-direct. Under the alternate method, individuals choose a certified and contracted TxHmL Program provider capable of delivering the full array of TxHmL Program service components.

When choosing to self-direct authorized waiver services, the individual receiving those services or his LAR is the common-law employer of service providers and has decision-making authority over providers of those services. Services delivered through providers not required by state or federal regulations to be employed are retained under an agreement with the employer for the delivery of authorized service components (e.g., support consultation, licensed therapy services, nursing). The employer or DR, with the assistance and final approval of the CDSA, budgets authorized funds for

APPENDIX I-2: Rates, Billing and Claims

a. Rate Determination Methods. In two pages or less, describe the methods that are employed to establish provider payment rates for waiver services and the entity or entities that are responsible for rate determination. Indicate any opportunity for public comment in the process. If different methods are employed for various types of services, the description may group services for which the same method is employed. State laws, regulations, and policies referenced in the description are available upon request to CMS through the Medicaid agency or the operating agency (if applicable).

The Texas Health and Human Services Commission (HHSC), the single state Medicaid agency, determines payment rates every two years. Payment rates are determined for each service and the rates for services are prospective and uniform statewide.

Rates are determined based on other Medicaid waiver programs providing similar services.

All program providers are required to submit annual cost reports. Providers are responsible for eliminating all unallowable expenses from the cost report prior to submission of the cost report. The annual cost report contains information on direct service costs, including direct service wages, benefits, contract services and staffing information.

The reimbursement rate for Financial Management Services is a flat monthly fee, determined by modeling the estimated cost to carry out the financial management responsibilities of the CDSA. The payment rate for the consumer-directed service is modeled based on the payment rate to the traditional agency less an adjustment for the traditional agency's indirect costs.

HHSC holds a public hearing on proposed reimbursement rates before HHSC approves rates. The purpose of the hearing is to give interested parties an opportunity to comment on the proposed rates. Notice of the hearing is provided to the public. The notice of the public hearing identifies the name, address, and telephone number of the staff member to contact for the materials pertinent to the proposed rates. At least ten working days before the public hearing takes place, materials pertinent to the proposed statewide uniform reimbursements are made available to the public.

b. Flow of Billings. Describe the flow of billings for waiver services, specifying whether provider billings flow directly from providers to the State's claims payment system or whether billings are routed through other intermediary entities. If billings flow through other intermediary entities, specify the entities:

TxHmL Program providers and CDSAs submit billing claims directly to DADS.

TxHmL Program providers and CDSAs enter individual service usage information (billing claims) into the DADS electronic billing system. TxHmL provider agencies and CDSAs submit appropriate receipts for adaptive aids, minor home modifications, and dental treatment that are authorized for payment by DADS staff. Following authorization, the TxHmL Program providers

e.

Appendix J-1: Composite Overview and Demonstration of Cost-Neutrality Formula

Composite Overview. Complete the following table for each year of the waiver.

Level(s) of Care *(specify)*:							
Col. 1	**Col. 2**	**Col. 3**	**Col. 4**	**Col. 5**	**Col. 6**	**Col. 7**	**Col. 8**
Year	**Factor D**	**Factor D′**	**Total: D+D′**	**Factor G**	**Factor G′**	**Total: G+G′**	**Difference (Column 7 less Column 4)**
1	**4,141.14**	5,330.57	**9,471.71**	41,583.59	4,028.65	45,612.24	**36,140.53**
2	**4,575.53**	5,419.60	**9,995.13**	42,278.04	4,095.93	46,373.97	**36,378.84**
3	**4,901.87**	5,509.03	**10,410.90**	42,975.63	4,163.52	47,139.15	**36,728.25**
4	**5,184.88**	5,599.93	**10,784.81**	43,684.73	4,232.22	47,916.95	**37,132.14**
5	**5,498.25**	5,692.33	**11,190.58**	44,405.53	4,302.06	48,707.59	**37,517.01**

d. Estimate of Factor D. *Select one:* Note: Selection below is new.

X	The waiver does not operate concurrently with a §1915(b) waiver. Complete Item J-2-d-i
O	The waiver operates concurrently with a §1915(b) waiver. Complete Item J-2-d-ii

i. Estimate of Factor D – Non-Concurrent Waiver. Complete the following table for each waiver year

Waiver Year: Year 1					
Waiver Service	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Unit	**# Users**	**Avg. Units Per User**	**Avg. Cost/ Unit**	**Total Cost**
Community Support	Hourly	1,789	89	**$22.56**	**$3,592,025.76**
Day Habilitation	Daily	1,361	118	**$21.60**	**$3,468,916.80**
Employment Assistance	Hourly	179	23	**$26.32**	**$108,359.44**
Supported Employment	Hourly	235	27	**$26.32**	**$167,000.40**
Respite	Hourly	860	20	**$13.21**	**$227,212.00**
Respite	Daily	241	19	**$129.36**	**$592,339.44**
Nursing	Hourly	618	2	**$57.98**	**$71,663.28**
Behavioral Support	Hourly	150	5	**$73.25**	**$54,937.50**
Occupational Therapy	Hourly	42	2	**$71.56**	**$6,011.04**
Physical therapy	Hourly	57	5	**$71.56**	**$20,394.60**
Speech and Language Path.	Hourly	55	6	**$71.56**	**$23,614.80**
Audiology	Hourly	10	1	**$71.56**	**$715.60**
Dietary	Hourly	53	2	**$49.03**	**$5,197.18**
Dental	Per Visit	806	1	**$497.48**	**$400,968.88**
Adaptive Aids	Per Item	167	1	**$230.83**	**$38,779.44**
Minor home Modifications	Per Item	7	1	**$3,207.67**	**$19,246.02**
Financial Management	Monthly	414	12	$160.00	$794,880.00
Support Consultation	Hourly	414	24	$19.05	$189,280.80
Extended State Plan: Prescriptions	Per Rx	1,585	10	$104.31	$1,653,313.50
GRAND TOTAL:					**$11,437,833.32**
TOTAL ESTIMATED UNDUPLICATED PARTICIPANTS (from Table J-2-a)					2,762
FACTOR D (Divide grand total by number of participants)					**$4,141.14**
AVERAGE LENGTH OF STAY ON THE WAIVER					278

Waiver Year: Year 2					
Waiver Service	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Unit	**# Users**	**Avg. Units Per User**	**Avg. Cost/ Unit**	**Total Cost**
Community Support	Hourly	1,991	89	**$25.49**	**$4,516,802.51**
Day Habilitation	Daily	1,515	118	**$24.22**	**$4,329,809.40**
Employment Assistance	Hourly	199	23	**$28.21**	**$129,117.17**
Supported Employment	Hourly	261	27	**$28.21**	**$198,795.87**
Respite	Hourly	957	20	**$15.52**	**$297,052.80**
Respite	Daily	268	19	**$146.24**	**$744,654.08**
Nursing	Hourly	688	2	**$58.69**	**$80,757.44**
Behavioral Support	Hourly	167	5	**$77.58**	**$64,779.30**
Occupational Therapy	Hourly	47	2	**$74.12**	**$6,967.28**
Physical therapy	Hourly	64	5	**$74.12**	**$23,718.40**
Speech and Language Path.	Hourly	61	6	**$74.12**	**$27,127.92**
Audiology	Hourly	10	1	**$74.12**	**$741.20**
Dietary	Hourly	59	2	**$49.70**	**$5,864.60**
Dental	Per visit	806	1	**$562.37**	**$453,270.22**
Adaptive Aids	Per item	111	1	**$260.94**	**$28,964.34**
Minor home Modifications	Per item	6	1	**$3,626.06**	**$21,756.36**
Financial Management	Monthly	615	12	$162.67	$1,200,504.60
Support Consultation	Hourly	615	24	$19.05	$281,178.00
Extended State Plan: Prescriptions	Per Rx	1,585	10	**$104.31**	**$1,653,313.50**
GRAND TOTAL:					**$14,065,174.99**
TOTAL ESTIMATED UNDUPLICATED PARTICIPANTS (from Table J-2-a)					3,074
FACTOR D (Divide grand total by number of participants)					**$4,575.53**
AVERAGE LENGTH OF STAY ON THE WAIVER					287

Waiver Year: Year 3					
Waiver Service	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Unit	# Users	Avg. Units Per User	Avg. Cost/ Unit	Total Cost
Community Support	Hourly	2,203	89	**$27.15**	**$5,323,219.05**
Day Habilitation	Daily	1,676	118	**$25.79**	**$5,100,436.72**
Employment Assistance	Hourly	220	23	**$30.04**	**$152,002.40**
Supported Employment	Hourly	289	27	**$30.04**	**$234,402.12**
Respite	Hourly	1,059	20	**$16.53**	**$350,105.40**
Respite	Daily	297	19	**$155.74**	**$878,840.82**
Nursing	Hourly	761	2	**$62.50**	**$95,125.00**
Behavioral Support	Hourly	184	5	**$82.62**	**$76,010.40**
Occupational Therapy	Hourly	52	2	**$78.94**	**$8,209.76**
Physical therapy	Hourly	70	5	**$78.94**	**$27,629.00**
Speech and Language Path.	Hourly	67	6	**$78.94**	**$31,733.88**
Audiology	Hourly	10	1	**$78.94**	**$789.40**
Dietary	Hourly	66	2	**$52.93**	**$6,986.76**
Dental	**Per visit**	806	1	**$598.92**	**$482,729.52**
Adaptive Aids	Per item	111	1	**$277.90**	**$30,846.90**
Minor home Modifications	Per item	6	1	**$3,861.76**	**$23,170.56**
Financial Management	Monthly	850	12	$165.35	$1,686,570.00
Support Consultation	Hourly	850	24	$19.69	$401,676.00
Extended State Plan: Prescriptions	Per Rx	1,585	10	**$111.09**	**$1,760,776.50**
GRAND TOTAL:					**$16,671,260.19**
TOTAL ESTIMATED UNDUPLICATED PARTICIPANTS (from Table J-2-a)					3,401
FACTOR D (Divide grand total by number of participants)					**$4,901.87**
AVERAGE LENGTH OF STAY ON THE WAIVER					293

Waiver Year: Year 4 *(renewal only)*					
Waiver Service	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Unit	**# Users**	**Avg. Units Per User**	**Avg. Cost/ Unit**	**Total Cost**
Community Support	Hourly	2,203	89	**$28.91**	**$5,668,296.97**
Day Habilitation	Daily	1,676	118	**$27.47**	**$5,432,686.96**
Employment Assistance	Hourly	220	23	**$32.00**	**$161,920.00**
Supported Employment	Hourly	289	27	**$32.00**	**$249,696.00**
Respite	Hourly	1,059	20	**$17.60**	**$372,768.00**
Respite	Daily	297	19	**$165.87**	**$936,004.41**
Nursing	Hourly	761	2	**$66.57**	**$101,319.54**
Behavioral Support	Hourly	184	5	**$87.99**	**$80,950.80**
Occupational Therapy	Hourly	52	2	**$84.07**	**$8,743.28**
Physical therapy	Hourly	70	5	**$84.07**	**$29,424.50**
Speech and Language Path.	Hourly	67	6	**$84.07**	**$33,796.14**
Audiology	Hourly	10	1	**$84.07**	**$840.70**
Dietary	Hourly	66	2	**$56.37**	**$7,440.84**
Dental	Per visit	806	1	**$637.85**	**$514,107.10**
Adaptive Aids	Per item	111	1	**$295.96**	**$32,851.56**
Minor home Modifications	Per item	6	1	**$4,112.77**	**$24,676.62**
Financial Management	Monthly	850	12	$168.08	$1,714,416.00
Support Consultation	Hourly	850	24	$19.05	$388,620.00
Extended State Plan: Prescriptions	Per Rx	1,585	10	**$118.31**	**$1,875,213.50**
GRAND TOTAL:					**$17,633,772.92**
TOTAL ESTIMATED UNDUPLICATED PARTICIPANTS (from Table J-2-a)					3,401
FACTOR D (Divide grand total by number of participants)					**$5,184.88**
AVERAGE LENGTH OF STAY ON THE WAIVER					309

Waiver Year: Year 5 (*renewal only*)					
Waiver Service	Col. 1	Col. 2	Col. 3	Col. 4	Col. 5
	Unit	**# Users**	**Avg. Units Per User**	**Avg. Cost/ Unit**	**Total Cost**
Community Support	Hourly	2,203	89	**$30.79**	**$6,036,902.93**
Day Habilitation	Daily	1,676	118	**$29.26**	**$5,786,691.68**
Employment Assistance	Hourly	220	23	**$34.08**	**$172,444.80**
Supported Employment	Hourly	289	27	**$34.08**	**$265,926.24**
Respite	Hourly	1,059	20	**$18.75**	**$397,125.00**
Respite	Daily	297	19	**$176.75**	**$997,400.25**
Nursing	Hourly	761	2	**$70.89**	**$107,894.58**
Behavioral Support	Hourly	184	5	**$93.71**	**$86,213.20**
Occupational Therapy	Hourly	52	2	**$89.53**	**$9,311.12**
Physical therapy	Hourly	70	5	**$89.53**	**$31,335.50**
Speech and Language Path.	Hourly	67	6	**$89.53**	**$35,991.06**
Audiology	Hourly	10	1	**$89.53**	**$895.30**
Dietary	Hourly	66	2	**$60.04**	**$7,925.28**
Dental	**Per visit**	806	1	**$679.31**	**$547,523.86**
Adaptive Aids	Per item	111	1	**$315.20**	**$34,987.20**
Minor home Modifications	Per item	6	1	**$4,380.10**	**$26,280.60**
Financial Management	Monthly	850	12	$170.85	$1,742,670.00
Support Consultation	Hourly	850	24	$20.34	$414,936.00
Extended State Plan: Prescriptions	Per Rx	1,585	10	**$126.00**	**$1,997,100.00**
GRAND TOTAL:					**$18,699,554.60**
TOTAL ESTIMATED UNDUPLICATED PARTICIPANTS (from Table J-2-a)					3,401
FACTOR D (Divide grand total by number of participants)					**$5,498.25**
AVERAGE LENGTH OF STAY ON THE WAIVER					309