



# The Long Term Care Plan for People with Mental Retardation and Related Conditions

Fiscal Years 2000-20001

Adjusted to Reflect  
The Appropriated Funding Amounts  
of the 76<sup>th</sup> Legislative Session

Texas Health and Human Services Commission

This Long Term Care Plan for People with Mental Retardation and Related Conditions was prepared by the Texas Department of Mental Health and Mental Retardation (TDMHMR) pursuant to Section 533.062, Texas Health and Safety Code (see page 5). Section 533.062 requires the plan to be developed biennially and adjusted to reflect appropriated funds following the legislative session. This updated version of the plan is published by the Health and Human Services Commission (HHSC) in the Texas Register to reflect the appropriated amounts for the FY2000/2001 biennium.

The chief purpose of the plan is to present information concerning the plan on long-term care for persons with mental retardation. The initial focus is on the Intermediate Care Facilities for the Mental Retardation and Related Conditions (ICF/MR-RC) and the three Medicaid waiver programs operated by TDMHMR. Following that material is information about two additional Medicaid waiver programs operated since 9-1-99 by the Texas Department of Human Services (DHS). These last two waiver programs are discussed in more detail on page 4.

**Intermediate Care Facilities for Mental Retardation and Related Conditions (ICF/MR-RC) - TDMHMR**

TDMHMR is the operating agency for the ICF/MR-RC program. This is a Medicaid funded program that provides services to people with mental retardation and related conditions in a residential setting with 24-hour supervision. These services are provided in two settings: state-operated campus facilities and non-state operated for profit and not-for-profit community facilities. More than 13,000 people currently receive ICF/MR-RC services in Texas.

**Campus Facilities**

Authorized Bed Capacity			
FY 1998	FY 1999	FY2000	FY2001
6,228	6,098	5,457 <sup>1</sup>	5,457 <sup>1</sup>

The number of authorized beds for FYs 1998/99 exceeds the number of budgeted beds to allow for such things as infirmary beds, emergency admissions, and renovations. Authorized bed capacity will decline slightly through FY2000/2001 as the population in state facilities declines.<sup>1</sup>

**Community Facilities**

Authorized Bed Capacity			
FY 1998	FY 1999	FY2000	FY2001
7,977	8,107	7,627 <sup>2</sup>	7,627 <sup>2</sup>

Growth will not occur during FYs 2000-2001. 136 ICF/MR-RC beds were refinanced from General Revenue to Medicaid funding in FY1999. The refinanced beds are located in the following HHSC regions:

Region 3 - 36	Region 7 - 24
Region 4 - 34	Region 8 - <u>6</u>
Region 6 - 36	<b>Total <u>136</u></b>

Additional Medicaid refinancing of TDMHMR General Revenue funded beds is occurring in FY2000/2001 as required by Article II, Rider 8 of the Appropriations Bill.<sup>2</sup>

## Waiver Programs

Section 1915(c) of the Social Security Act provides that upon federal approval states may "waive" some federal Medicaid regulations to provide an array of supportive services in the community as an alternative to institutional care. Medicaid expenses for people in waiver programs cannot exceed Medicaid expenses for institutional services for people with similar needs. Both TDMHMR and DHS operate Section 1915(c) waiver programs, as noted in the following.

### TDMHMR Operated Waiver Programs

More than 13,000 individuals are on the TDMHMR waiting list for waiver services. TDMHMR sought funding in its Legislative Appropriations Request (LAR) to serve an additional 800 individuals in FY2000 and 800 in FY2001. TDMHMR was appropriated funds to serve a total of 5,672 individuals in FY2000 and 5,812 in FY2001<sup>3</sup> as detailed in the following chart.

HCS Authorized Waiver Capacity				
	FY 1998	FY 1999	FY2000	FY2001
HCS	4,186	4,381	4,674 <sup>3</sup>	4,812 <sup>3</sup>
HCS-O	164	164	164	164
MRLA	813	813	834	836
Totals	5,163	5,358	5,672	5,812

### **Home and Community Based Services (HCS)**

HCS is a Medicaid program operated by TDMHMR which allows people who qualify for ICF/MR-RC levels of Care I, V, and VI the option of living in their own home, family home, or other residential settings. Examples of services provided in HCS include adaptive aids, case management, counseling and therapeutic services, homemaker services, habilitation services, minor home modification services, nursing services, respite services, dental services, and supported employment.

### **Home and Community Based Services - OBRA (HCS-O)**

The HCS-O targeted waiver is a separate waiver developed and administered by TDMHMR under a special provision of federal Medicaid Law as an option to nursing facility care for certain nursing facility residents with developmental disabilities in accordance with the requirements of the Omnibus Budget Reconciliation Act (OBRA) of 1987.

### **Mental Retardation Local Authority (MRLA)**

This pilot waiver creates a system in which resources are combined and managed by local mental retardation authorities. The local authority serves as the single point where consumers and families seek access to services that are or can be made available. A person directed planning process is used to determine each consumer's or family's desired outcomes. Available resources will be used to support them in achieving their desired outcomes. In the FY2000/2001 biennium, the MRLA waiver will expand beyond the original pilot sites to additional geographical areas using both the MRLA increase noted above as well as converting some of the current HCS and HCS-O waiver capacity.

**DHS Operated Waiver Programs**

Prior to 9-1-99, the Texas Department of Human Services (DHS) and the Texas Rehabilitation Commission (TRC) each operated one program that waived ICF/MR-RC regulations. Effective 9-1-99, the TRC operated waiver program (Deaf-Blind with Multiple Disabilities) was transferred to DHS, which now operates both waiver programs.

**Community Living Assistance and Support Services (CLASS)**

CLASS provides home and community based services to people with related conditions as a cost-effective alternative to ICF/MR-RC institutional placement. The program offers people of all ages an opportunity to live, work and socialize in their community by offering attendant services, therapies and an array of adaptive aids and minor home modifications. The services aid in such activities as meal preparation, shopping in the community and prevocational services. Because of the CLASS program, many adults have been able to move into their own apartments and become more active citizens within their communities. CLASS is delivering services to participants in 75 of Texas' 254 counties. The waiting list for those 75 counties exceeds 4,500.

DHS sought exceptional funding within their Legislative Appropriations Request (LAR) to serve 608 additional individuals in FY2000 and another 5,195 in FY2001. DHS was appropriated funds to serve a total of 1,249 individuals in FY2000 and 1,449 in FY2001.

CLASS Projected Enrollment			
FY 1998	FY 1999	FY2000	FY2001
1,076	1,076	1,249	1,449

**Medicaid Waiver Program for People who are Deaf-Blind with Multiple Disabilities (DBMD)**

Since 9-1-99, DHS has administered this home and community based waiver program for people who are deaf-blind with multiple disabilities. As an alternative to institutional care, the program provides a number of habilitation and support services designed to meet the special needs of these individuals. Specialists provide assistance in such areas as orientation and mobility, behavior/communication, and intervenors who act as a bridge to the community. Services are provided in a variety of settings, including an individual's own home, home of a family member, or group home with up to five other individuals. The consumer chooses the living situation. The program sought funding increases in FY2000/2001 to support 15 additional participants each year. DHS received appropriations to serve a total of 115 individuals in FY2000 and 130 in FY2001.

DBMD Projected Enrollment at End of Fiscal Year			
FY1998	FY1999	FY2000	FY2001
100	100	115	130

Notes:

1. This is the **average budgeted enrollment** of MR Campus Residential Services. This figure does not include infirmary beds or bed capacity authorized by TDHS.
2. Additional capacity is anticipated from Rider 8 refinancing efforts.
3. The total includes Article XII and Equity of Access funded slots.

## **Definitions**

**Mental Retardation** is defined by 25 Texas Administrative Code (TAC) §406.202 as:

Significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and originating during the developmental period.

**Related Condition** is defined by 25 TAC §406.202 as:

"...a severe, chronic disability attributed to:

cerebral palsy or epilepsy; or any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of persons with mental retardation, and requires treatment or services similar to those required for persons with mental retardation; and is manifested before the person reaches the age 22; and is likely to continue indefinitely; and results in substantial functional limitation in at least three of the following areas of major life activity:

- self-care
- understanding and use of language
- learning
- mobility
- self-direction
- capacity for independent living

## **Health and Safety Code §533.062**

### **Plan on Long-Term Care Facilities for Persons with Mental Retardation**

The department shall biennially develop a proposed plan on long-term care for persons with mental retardation.

The proposed plan must specify the capacity of the HCS waiver program for persons with mental retardation and the number and levels of new ICF/MR beds to be authorized in each region. In developing the proposed plan, the department shall consider the needs of the population to be served; projected appropriation amounts for the biennium; and requirements of applicable federal law.

Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the Health and Human Services Commission for approval.

The Health and Human Services Commission may modify the proposed plan as necessary before its final approval. In determining the appropriate number of ICF/MR facilities for persons with a related condition, the department and the Health and Human Services Commission shall consult with the Texas Department of Human Services.

The Health and Human Services Commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 13, Article 4413(502)

After legislative action on the appropriation for long-term care for persons with mental retardation, the Health and Human Services Commission shall adjust the plan to ensure that the ICF/MR beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

After any necessary adjustments, the Health and Human Services Commission shall approve the final biennial plan and publish the plan in the Texas Register.

The department may submit proposed amendments to the plan to the Health and Human Services Commission.

In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with mental retardation adopted in accordance with 42 U.S.C. Section 1396n(c).

**Legislation relevant to Long-Term Care Programs within the plan includes:**

**75th Legislature**

HB 2377 -- Amended the MHMR Act to clarify the role of TDMHMR as the state mental health and mental retardation authority responsible for ensuring services are provided. Also defined the responsibilities of local mental health and mental retardation authorities and authorized pilot studies to test authority/provider models.

HB 460 - Required HHSC to report to the legislature by 1/15/99 on the feasibility and advisability of collapsing some or all long-term care services Medicaid waivers, including those administered by DHS (CBA, CLASS), TDMHMR (HCS, HCS-O), TDH (MDCP) and TRC (DBMD), into a single waiver.

HB 663 - Required HHSC to pilot a functional needs assessment process for populations served by long-term care services/programs, contingent upon receipt of gifts or grants to do so. HHSC directed to develop the pilot in consultation with advocacy groups, providers, representatives of state agencies, and other appropriate individuals and entities. Required a report on the preliminary results of the pilot by Nov. 1, 1998 and report to the legislature on the feasibility of implementation by Nov. 1, 2000.

SB 1248 - Created a new Chapter 252 in the Health and Safety Code to govern licensure of ICFs-MR, which separated it from the standards for nursing facilities found in Chapter 242 of the H&S Code.

HB 2084 - Required DHS to develop a pilot voucher payment model for DHS client-managed attendant service programs, in conjunction with TRC's personal attendant services. Under the pilot, consumers retain control over selection, management, and dismissal of personal assistants, while a private entity or local government entity serves as an IRS-designated fiscal intermediary to act on behalf of consumers for the purposes of handling employment taxes and distribution of payments to providers. Required DHS to report by March 1, 1999, on the feasibility of extending the pilot statewide to Medicaid funded long-term care facilities and community-based services programs.

**76th Legislature**

HB 0143 – Authorizes an increase in the personal needs allowance for residents in long-term care facilities (including ICFs/MR) above the minimum of \$30 per month subject to the availability of funding.

HB 1396 – Requires the ICF/MR licensing model to be evaluated by DHS in cooperation with TDMHMR.

HB 2148 - This follows up to HB 460 (75<sup>th</sup> Legislature) by directing HHSC to implement a 1915(c) pilot consolidated waiver program along with other miscellaneous provisions. Also directs HHSC to submit a report on the pilot project's evaluation to the legislature not later than January 1, 2004. Rider 17 (GAA, Section II, Special Provisions) provides the pilot program's biennium funding via transfers from DHS, TDMHMR and TDH capped at \$2,500,000. This funding shift may impact some of the data presented in this report, particularly in FY 2001, but that impact is undeterminable at the current time.

HB 2170 - Makes changes to Chapter 48, Human Resources Code, procedures regarding abuse, neglect and exploitation investigations. Allows PRS to develop definitions of abuse and neglect that may vary from the statutorily defined provision. Eliminates the possibility that a person who "turns in" their own abuse could thereafter claim immunity from civil or criminal liability. MHMR facility and center investigations are reordered in Subchapter F and explicitly exclude PRS from responsibility for providing protective services in these settings. Creates new Subchapter H governing investigations of A/N/E by employees of HCS providers.

HB 2873 - Requires permanency planning for children younger than age 23 who are receiving services under a 1915(c) waiver. It also contains other provisions ensuring permanency planning is implemented to identify and establish family support to maintain a child's permanent living arrangement with a family; providing a broad array of cost neutral waiver and non-waiver non-duplicative service options and a reasonable choice of service providers including those under Texas Health Steps; and preventing gaps in services that result from changes in the delivery system serving the child or the child's life changes. Also establishes an advisory committee to review the Medicaid waiver programs delivering services to children.

SB 358 - TDMHMR Sunset bill; continues the agency until 2011. Establishes a committee to evaluate the impact and feasibility of consolidating ICF/MR licensing, survey, and certification under TDMHMR. Report to the leadership due by 10/1/2000.

SB 374 - Requires HHSC, DHS, and TDOA to assist communities in developing a comprehensive community-based service delivery system for long term care services. Creates a work group to study long-term care planning and service coordination between DHS and TDMHMR, the development of consistent and standardized regulation; rate-setting processes; monitoring of subcontractors; intake, assessment, referral, and coordinated case management procedures; and administration of IHFS services. Also creates a workgroup to report by 9/1/2000 on children's long-term care and health programs through HHSC, TDH and DHS.

SB 1586 - Creates a voucher payment workgroup to assist HHSC implementation of voucher payment options for appropriate services at TDMHMR, TDHS, TDH, and TRC. HHSC shall develop outcome measures for cost-effectiveness of the program and submit recommendations by 9/1/2002.

Article II, Rider 7 - Home and Community-Based Services Waiver Program. Describes the legislative intent regarding the HCS program; establishes a cap on average annual HCS expenditures per client not to exceed 80% of average annual ICF/MR expenditure per client; requires the agency to implement measures to decrease the average monthly cost to \$3,706 in FY00 and \$3,511 in FY01.

Article II, Rider 8 - Residential Services Funded by General Revenue. Directs MHMR to refinance with Medicaid funding residential services to Medicaid eligible clients that are currently funded through general revenue using the HSC program, other waiver programs, or if necessary the ICF/MR program. Annual Report to LBB required.

Article II, Rider 30 – Directs implementation of a single funding methodology for state schools that funds all state schools equitably and at a level that is adequate to maintain compliance with federal standards.

Article II, Rider 40 – State school funding is contingent upon each facility's staffing levels at the beginning of each fiscal year of the biennium. Staffing levels will not be decreased unless population declines.

**Refer also to** Special Provisions 18 and 19, Article II, for all HHS Agencies and Article XII – Tobacco Settlement Receipts, Rider 7 regarding HCS Waiver services for people on waiting list for HCS Services.