



Promoting Independence Advisory Committee 2008 Stakeholder Report

Submitted to Albert Hawkins, Executive Commissioner,
Texas Health and Human Services Commission
by the Promoting Independence Advisory Committee

October 2008

Website:

<http://www.dads.state.tx.us/providers/pi/index.html>

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ACKNOWLEDGEMENTS

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. In addition, the Committee recognizes the contributions of the 80th Legislature and the Governor's Office for supporting additional funding for community-based programs.

The Committee would like to thank Albert Hawkins, Executive Commissioner, Health and Human Services Commission (HHSC), for his leadership and commitment, both during the current Legislative Appropriations Request (LAR) process and during the past legislative session (2007), in advocating for additional funding to increase community options and provider reimbursement. The Committee is appreciative of the inclusion of Exceptional Item 8 to HHSC's Legislative Appropriations Request (LAR), which requests \$474 million (All Funds) to increase capacity of the health and human services-funded community services across the system. The Committee would also like to recognize the efforts made by Adelaide Horn, Commissioner, Department of Aging and Disability Services, for all of her work in support of the Promoting Independence Initiative and her inclusion of Exceptional Items 2, 3, 4, and 7 to DADS' LAR, which support community services and supports.

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 HHSC's 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.

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 via the Health and Human Services Commission (HHSC) and the Texas Department of Aging and Disability Services (DADS) websites.²

Please reference the December **2006 Revised Texas Promoting Independence Plan: Introduction**, page 6; and **Background**, pages 9-12, 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://texinfo.library.unt.edu/texasregister/html/2000/Mar-03/GOVERNOR/GOVERNOR.html>

- The 77th Legislature (2001) passed a significant piece of legislation, Senate Bill 367, which codified many of the efforts and direction of the original Promoting Independence Advisory Board and their report:

<http://www.capitol.state.tx.us/BillLookup/History.aspx?LegSess=77R&Bill=SB367>

- In April 2002, Governor Rick Perry issued his own Executive Order (RP-13) to further the state's efforts regarding the PI 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.

- Money Follows the Person Demonstration Grant information may be found at <http://www.dads.state.tx.us/providers/pi/index.html>.

The two Governor Executive Orders, GWB 99-2 and RP-13, may be found in Appendix B.

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

PREFACE

The Promoting Independence Advisory Committee's (PIAC) *2008 Stakeholder Report (Report)* is a combination of: (1) recommendations for Texas' *2008 Promoting Independence Plan (Plan)* for complying with the U.S. Supreme Court's *Olmstead v. L.C.* decision (June 1999), (2) information on how Texas is meeting the goals of both its own Plan and the requirements under *Olmstead*, and (3) a statement of the values and principles that underlie all the activities encompassed by the *Promoting Independence Initiative (Initiative)*. The basis for *Olmstead* and the *Initiative* is Title II of the Americans with Disabilities Act (ADA) requirement that individuals must have the opportunity to live in the "most integrated setting" (28 Code of Federal Regulations §35.130 [d]), the principles of person centered planning and self-determination, and the independent living philosophy.

Even though there has been progress toward a more community-based long term services and supports system in Texas, a number of fundamental problems remain and must be addressed to be in true compliance with *Olmstead* and the Plan. As Texas' population continues to grow, so does the number of individuals who are aging and/or with a disability. Texas must be prepared to meet this increasing demand for long term services and supports by developing an ongoing process to address these critical needs.

Of fundamental concern is that Texas does not seem to have an overarching vision or plan on how the various health and human services agencies' programs, services and supports complement each other. While there are a number of interesting initiatives being implemented, there appears to be a lack of planning on how they all support a larger vision. This lack of a cohesive plan prevents true reform from occurring and obscures the necessary knowledge of what is required to meet the challenge of delivering an effective community-based long term services and supports system. Committee members may not always agree on all of the issues or proposed solutions; however, they do agree that a fragmented, under-funded, unplanned system does not benefit Texans who are aging, those with disabilities, caregivers, families, providers, or the state.

The Committee recognizes that Texas' overall fiscal resources are always limited and in demand by many competing priorities and interest groups. Texas must plan and choose these priorities carefully in order to meet the demands of the future. The Committee believes strongly that funding a viable and flexible long term services and supports system must be one of those top priorities.

The goal of the *Initiative* is to provide sufficient community options in order that every Texan has a choice in where they want to live to receive their long term services and supports. Individuals must be able to have the opportunity to remain or return to their communities versus having to enter the institutional system by default. This individual choice, as required by *Olmstead*, is undermined by a system that under-funds community long term services and supports and appropriates the majority of long term services and supports funding to institutional services; this is contrary to the fact that the majority of individuals want community-based services. This institutional bias is established in federal Medicaid law (Social Security Act) and supported by historical state funding, both in total spending and on a per capita basis. This ongoing bias is the major barrier in rebalancing our long term service and support system.

The need for the Governor's Office and the Legislature to focus their budget attention on the growing need for community-based long term services and supports are highlighted by the following key issues:

- As of June 30, 2008, there remained 100,192 individuals (duplicated count) on the official interest list for the Department of Aging and Disability Services (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.³
- Low and inequitable rates for providers cause concern that our delivery system will not meet the growing demand for support services for all individuals, regardless of age or disability.
- There is a crisis in finding and retaining community direct service workers who provide the hands-on support to individuals who are aging and/or with a disability; this has been a problem for over a decade and continues to get worse. There can not be a viable community-based system without a robust direct service workers pool.
- A fragmented long term services and supports system as demonstrated by the current administration of managed care services at the Health and Human Services Commission versus the fee-for-service system at DADS. This fragmentation directly impacts the future policy and programmatic direction for services and supports for individuals who are aging and/or with disabilities.

Texas still faces major challenges in addressing the role of its state mental retardation facilities (state schools), private intermediate care facilities for persons with mental retardation (ICFs/MR), as well as the role of nursing facilities. *The House Select Committee on Services for Individuals Eligible for Intermediate Care Facility Services* has been meeting during the current legislative interim, soliciting input from all stakeholders regarding how Texas should proceed in developing its policy and funding priorities for individuals with intellectual and developmental disabilities (IDD). A final report of its findings should occur prior to the beginning of the 81st Legislature; this report will impact all major legislative initiatives and appropriations regarding individuals with IDD through the next biennium (September 1, 2009 through August 31, 2011).

Because the state is currently under a United States Department of Justice investigation of all of its state schools, the policy direction resulting from this *Select Committee* is crucial for the future direction of the overall public policy for individuals with IDD. There are many impassioned points of view on how to proceed; however, it is vital that the 81st Legislature not avoid this controversial issue and ensure that all individuals have the opportunity to remain in their communities, and for those current residents of state schools to relocate as soon as possible back into a residence of their choice.

The "Money Follows the Person" (MFP) policy allows for individuals residing in nursing facilities (NF) to relocate back into a community setting and receive community-based services; primarily the Community-based Alternatives (CBA), STAR+PLUS, and the Integrated Care Management waivers. This policy began with the 77th Legislature

³ See DADS website at: <http://www.dads.state.tx.us/services/interestlist/index.html> for the most recent information.

attaching Rider 37 to the 2002-2003 General Appropriations Act (Title II, Department of Human Services [DHS], Senate Bill 1, Regular Session, 2001). Though MFP has been extremely successful for individuals residing in NFs, the discussion continues on who should be served in these facilities. In addition, MFP is currently not available in ICFs/MR because of a number of stated reasons made by governmental officials. While it is true that the original funding mechanism for MFP has changed since the original Rider, and “money” does not actually follow the person but rather is drawn from a specific budget strategy, the concept of immediate access to community services should be applied to all populations in all settings.

The Texas MFP Demonstration (Demonstration), as awarded by the Centers for Medicare and Medicaid Services (CMS) through the Deficit Reduction Act of 2005, does include individuals with IDD who are residing in nine or more bed community ICFs/MR and state schools by providing expedited access to community waivers and promoting the voluntary closure of nine or more bed community ICFs/MR. However, the Texas Demonstration does not specifically include a provision of the MFP concept for individuals in all ICF/MR settings. MFP should be addressed for all institutionalized populations as a public policy in all of its programs. The consequence of not having a consistent policy gives the appearance of discrimination and pitting one disabled population against another.

The Committee has determined that implementing the recommendations in this Report will continue the progress made since the passage of Senate Bill 367 (77th Legislature, Regular Session, 2001). Texas can be and must be a leader in providing individuals who are aging and/or with disabilities the necessary long term services and supports in the most integrated setting, thus ensuring true community integration, inclusion, and independence.

While this Report is prepared by the non-agency members of the Promoting Independence Advisory Committee, not all members may agree on every issue. The statements in this Report are based on a consensus opinion of a majority of the membership. Any one member may not support or disagree with a policy position made in this Report.

INTRODUCTION AND PURPOSE

Introduction

The United States Supreme Court *Olmstead v. L.C.* decision (119 S. Ct. 2176 [1999]) has had a significant impact on Texas' long term services and supports system since the June 1999 ruling. Texans with disabilities or who are aging have more community-based options in where they choose to live and receive necessary services and supports. Equally important, the philosophy of the *Promoting Independence Initiative* is now part of public policy discussions and legislative and executive budget considerations. Nevertheless, the Promoting Independence Advisory Committee (Committee) does not believe that the state is yet in full compliance with the *Olmstead* decision or its own Promoting Independence Plan (Plan).

The issues that continue to prevent Texas from meeting the goals of its Plan are wide-ranging and crucial to ensuring that every Texan has the opportunity for self-determination. Certainly the lack of adequate funding for community-based programming is fundamental to offering individual choice. However, as stated in the *Preface*, other critical issues prevent the overall system in meeting the goals of *Olmstead* and the Plan. Those issues, other than funding, include:

- *Length of time on an interest list* -- an individual may have to wait on an interest list for community services up to nine years for certain Medicaid (c) waiver programs.
- *Workforce* -- there is a crisis in recruiting and retaining quality individuals to enter the direct services workforce; without a robust direct services workforce, it will be impossible to have a quality community-based long term services and supports system.
- *Reimbursement for providers* -- Texas' long term services and supports providers have been not adequately reimbursed for several years. Providers are not being reimbursed according to promulgated rate-setting methodologies.
- *Fragmentation of system* – The long term services and supports system is divided primarily across two different agencies with different funding structures. One of the purposes of House Bill 2292 (78th Legislature, Regular Session, 2003) was to create a single long term services and supports operating agency (Department of Aging and Disability Services [DADS]). However, with the roll-out of STAR+PLUS and the Integrated Care Management model (long term services and supports managed care systems), which are located at the Health and Human Services Commission (HHSC), and the fee-for-service system at DADS, the overall long term services and supports system is not being driven by a single management or philosophy.
- *Medicaid Waiver Programs* – there are now eleven long term services and supports waivers with others being proposed. There are inequities in available services across waivers and reimbursement rates for similar services. In addition, there is a lack of flexibility within any one program to provide an individual with the services that he/she made need versus a pre-packaged service array.
- *Children being admitted to institutions* – there are not adequate community-based services in order to keep children with their family or in an alternative family setting, and the current waiver service arrays do not provide the necessary

supports (e.g. behavioral health) to be sufficiently effective to keep the child at home or to relocate from an institutional setting.

Even with the additional appropriations made by the 80th Legislature (2007), 100,192 individuals (duplicated count) remain on the DADS' and HHSC's waiver interest lists.⁴ These are individuals who want to live in an integrated community setting and have chosen to be on an interest list for community-based services. Some of the individuals on the interest list are currently living in the community but others are waiting for community services while they remain in an institutional setting. As of June 30, 2008, 68,944 Texans are being served in an institution⁵ as compared to 69,032 reported in the *2006 Revised Texas Promoting Independence Plan*. While not all of these individuals may choose to leave, many of them do not want to be institutionalized and would prefer community-based services and living in a more integrated setting.

Individuals in nursing facilities (NF) may access the "money follows the person" (MFP) policy to receive community-based services and individuals in large (fourteen or more beds) community intermediate care facilities for persons with mental retardation (ICFs/MR) and state mental retardation facilities (state schools) may receive expedited access to the home and community-based services (HCS) program (see section on Community Transition Policy). However, expedited access for the HCS program (which may be a six to twelve month wait for services) is not the same policy as MFP in NFs where individuals may receive a community placement as soon as they meet all eligibility criteria. Individuals residing in all other institutional settings, and for those who are in the community but are at risk of institutionalization, must wait for an appropriate "slot" to receive community-based services.

The lack of funding continues to be the major barrier of accomplishing the ultimate goal of the Committee, which is to ensure that all individuals have a choice on where to receive their long term services and supports. The recommendations in this report are intended to address the specific areas needing additional funding or major systems change to increase those choices and opportunities.

The Committee submitted five major categories of funding recommendations to Executive Commissioner Hawkins in April 2008 prior to HHSC' submittal of its LAR. The Committee's top priorities for the 2010-2011 biennium are:

Interest List Reduction

- The Committee recommends that the 81st Legislature appropriately fund long-term services and supports' community-based based programs in order to eliminate the interest list with an eight-year initiative.

⁴ Source: DADS' website as of June 30, 2008. See DADS website for the most current information regarding interest lists at: <http://www.dads.state.tx.us/services/interestlist/index.html>

⁵ See Appendix C for a detailed report. For purposes of this report, "institutions" are defined as: Nursing Facilities (not Skilled Nursing Facilities), State Mental Retardation Facilities (SMRF), Intermediate Care Facilities for Persons with Mental Retardation (ICF/MR), and the DFPS programs: licensed institutions for persons with Mental Retardation, Residential Treatment Centers, Basic Care Facilities, and Foster Group Homes. The data are derived from both the DADS and DFPS submittal of their "Individuals Participating in Long Term Care Programs" report as required by Senate Bill 367, 77th Legislative Session (2001) and Health and Human Services Commission Rule Texas Administrative Code §351.15 (d).

Workforce and Provider Network Stabilization

- Fully-fund the 2006 Consolidated Budget's 2008-2009 rate methodology requests.
- Increase provider rates to address inflation.
- Fund the full impact of the minimum wage increase.
- Fund community direct services and supports workers.

Even though the Committee is underscoring its two top priorities, all recommendations are important. Overall the Committee proposes twenty-eight recommendations for inclusion in the 2008 Plan which are listed in *Recommendations for Systems Change*.

Purpose

The 2008 Promoting Independence Advisory Committee (Committee) Stakeholders Report is submitted to the Executive Commissioner of the Health and Human Services Commission (HHSC) as required by section 532.02441(i), Government Code.⁶ This report provides a status update to the 2006 Promoting Independence Plan (Plan), and policy recommendations for HHSC to consider in its 2008 revised Plan to be submitted to the Governor and the 81st Legislature prior to the convening of the session.

The Committee has met on a quarterly basis during FY 2008 to:

- continue the work of the Promoting Independence Initiative (Initiative).
- coordinate and oversee the implementation of the Promoting Independence Plan.
- provide ongoing policy discussions on issues pertaining to community integration.
- recommend policy initiatives for the updated Promoting Independence Plan (December 2008).

Section 532.02441 directs the Committee to:

- study and make recommendations on developing a comprehensive, effective working plan to ensure appropriate care settings for persons with disabilities by submitting annually a report to HHSC.
- advise HHSC giving primary consideration to methods to identify and assess each person who resides in an institution but chooses to live in the community and for whom a transfer from an institution to the community is appropriate, as determined by the person's treating professionals.
- advise HHSC on determining the health and human services agencies' availability of community care and support options and identifying, addressing, and monitoring barriers to implementation of the plan.
- advise HHSC on identifying funding options for the plan.

This report is submitted by the Committee with assistance provided by the Texas Department of Aging and Disability Services (DADS). Even though the Initiative

⁶ This report reflects the views and opinions of a consensus of the members of the Promoting Independence Advisory Committee (PIAC). PIAC, for purposes of this report, refers only to those members named to the Committee by HHSC's 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.

continues to be a HHSC project, daily management of the Initiative was delegated to DADS in October 2004.⁷

Health and Human Services Circular C-002 directs and authorizes DADS to act on behalf of, and in consultation with, HHSC in all matters relating to the Promoting Independence Initiative. In addition, the specific directives of the Circular include:

- preparation of the revised Texas Promoting Independence Plan, submitted to the Governor and Legislature every two years.
- monitoring and oversight of implementation of all agency-specific Promoting Independence Plan recommendations across the enterprise.
- nomination, for HHSC Executive Commissioner review and approval, of appointments to the Promoting Independence Advisory Committee.
- staff support for the Committee, including assistance in developing its annual report to HHSC, which will be presented directly to the HHSC Executive Commissioner.
- coordination and oversight of any other activities related to the Promoting Independence Initiative and Plan, as a direct report for this purpose to the HHSC Executive Commissioner.

See Appendix A for a listing of the current Committee Membership.

⁷ See Appendix D or access the Circular at <http://www.hhs.state.tx.us/news/circulars/C-002.shtml>).

COMMUNITY SERVICES 2008-2009 PROJECTED FUNDS AND 2010-2011 REQUESTED FUNDS AND AVERAGE MONTHLY CASELOADS

The Promoting Independence Advisory Committee (Committee) supports the following exceptional items that support community services and supports requested in the following health and human services Legislative Appropriations Requests (LARs):

Health and Human Services Commission (HHSC) Exceptional Items

- **Item 1:** This item will restore base funding for non-entitlement programs. The LAR instructions for Fiscal Years (FY) 2010-2011 only allow the agency to request for non-entitlement services (e.g., STAR+PLUS) base funding the amount of General Revenue-related funds expended in FY 2008 and budgeted in FY 2009. In addition, this item would fund an enhancement to the current Medicaid Buy-In Program for Adults and increased outreach.
- **Item 8:** This item requests funding to continue the effort to reduce/eliminate waiting/interest lists in programs at: the Department of Aging and Disability Services (DADS); the Department of Assistive and Rehabilitative Services (DARS); and the Department of State Health Services (DSHS). Specifically the programs affected are:
 - DADS - Home and community waivers, non-Medicaid services, and the In-Home and Family Support (IHFS) programs. The home and community services waivers include: Community-based Alternatives (CBA); Community Living Assistance and Support Services (CLASS); Medically Dependent Children's Program (MDCP); Consolidated Waiver Program (CWP); Deaf-Blind with Multiple Disabilities (DBMD); Home and Community-based Services (HCS); and Texas Home Living (TxHL).
 - DARS - Comprehensive Rehabilitation Services and Independent Living Services.
 - DSHS - Child and Adolescent Community Mental Health, and Children with Special Health Care Needs (CSHCN).

Department of Aging and Disability Services (DADS) Exceptional Items

- **Item 1:** This item will restore base funding for non-entitlement programs. The LAR instructions for Fiscal Years (FY) 2010-2011 only allow the agency to request for non-entitlement services (e.g. waivers, General Revenue programs) base funding the amount of General Revenue-related funds expended in FY 2008 and budgeted in FY 2009. Because interest list enrollments will be ramped-up over the biennium, the base funding level will not be sufficient to maintain services for the number of individuals receiving waiver services at the end of FY 2009. Similarly, funding will be insufficient to maintain services for the non-Medicaid, non waiver services. Finally, the Federal share of Medicaid (FMAP) will decrease in FYs 2010 and 2011, which will further reduce the number of individuals that can be served in the waivers at base funding.
- **Item 2:** This item will increase Home and Community-based Services (HCS) waiver capacity for individuals choosing to relocate from nine or more bed community Intermediate Care Facilities for Persons with Mental Retardation

(ICFs/MR), allow children who are aging out of the foster care program to access HCS, and increases the capacity of the relocation support activity. This exceptional item requests funding to move 500 persons from nine or more bed community ICFs/MR and to serve 120 youth aging out of the foster care program at the Department of Family and Protective Services (DFPS) into the HCS waiver program by the end of FY 2011. Additionally, this item includes funds to assist 250 additional individuals to relocate from nursing facilities to community settings each year.

- **Item 3:** This item will restore the funding reductions made in FY 2003 for general revenue (GR) services provided by Mental Retardation Authorities (MRAs). These GR services provide much needed, albeit limited, services while individuals wait on various interest lists, or for those individuals who do not qualify for Medicaid but are in need for services such as respite and In Home and Family Support. These services help an individual who has an intensive need or who is in crisis to protect the individual's health and safety.
- **Item 4:** This item requests additional funding to provide HCS waiver services to 196 children and adults. There are two initiatives associated with this exceptional item – (1) to reduce the number of children admitted to institutions and (2) to continue to serve individuals in the community who would be at imminent risk of institutionalization in the event of emergencies or crisis situations. This item addresses the increase of children being admitted to state mental retardation facilities (state schools). In FY 2007, 152 children (0- 21 years of age) were admitted into state schools. In order to provide less restrictive environments for these individuals, this item seeks to prevent future placements of children into state schools, as well as allow those already residing in these settings to relocate into the community. This item also seeks to prevent institutionalization, specifically for those on the interest list with imminent risk associated with their disability. It seeks to provide less restrictive environments through waiver services for these individuals in response to caregivers aging out, in poor health, or passing away.
- **Item 7:** This item will create a new Medicaid waiver for individuals with high cost functional and/or medical needs. There are currently individuals in the DADS 1915(c) waivers who have complex medical conditions that are difficult to treat outside of a hospital setting and in existing programs. With extensive skilled nursing care and medical intervention, these individuals could remain in a home environment. The development of this new waiver would allow the state to provide in the community a high level of nursing services to Medicaid recipients 21 years of age and older who have complex medical needs while maintaining cost neutrality.

Department of State Health Services (DSHS) LAR Exceptional Items

- **Item 1:** This item requests supplemental funds to continue at FY 2009 levels the Mental Health Crisis Services Redesign initiative and Personal Care Service among other acute services.

- **Item 9:** This item requests additional funds to support substance abuse prevention and treatment. The substance abuse prevention and treatment block grant and general revenue dollars fund substance abuse prevention, intervention and treatment service providers across Texas. Current funding levels do not support adequate treatment provider rates and is insufficient to provide needed access to treatment and prevention services; this includes persons with mental health diagnoses who need intensive substance abuse treatment. Adding to the situation, the current Texas Medicaid Program covers very limited treatment services. The funding requested will expand prevention services, increase rates for treatment providers, expand detoxification services, provide recovery support funds and service coordination, expand Outreach, Screening, Assessment and Referral Provider services, expand the availability of detoxification and residential treatment for persons with co-occurring mental health diagnoses, and increase the availability of medication assisted treatment. It will also expand the adult Medicaid substance abuse benefit to include outpatient detoxification and outpatient counseling.
- **Item 10:** This item will enhance community based mental health service delivery in Texas. The additional dollars will: continue the crisis redesign implementation begun in FY 2006; help provide an intensive package of engagement and transition services for 4,163 adults and 630 children; and expand the availability of intensive adult and child packages of ongoing services- targeting recipients of the transition services.

Department of Family and Protective Services (DFPS) Exceptional Items

- **Item 7:** This item will increase funding in the Relative and Other Designated Caregiver Placement Program, also known as the Kinship Program. This program was authorized in Senate Bill 6, 79th Legislature (2005), and provides monetary assistance as well as day care and other support services to relatives and other designated caregivers for children in DFPS conservatorship who are placed in their care. This program is designed to promote continuity and stability for these children by placing them with a relative or other person who has a longstanding and significant relationship with the child.
- **Item 9:** This item will provide funds for a pilot to evaluate the effectiveness of a capped caseload for Child Protective Services substitute care workers, targeting youth who have been in care for two or more years, who have major behavioral health needs, and have had multiple placements. The pilot would be conducted in the Harris County/Region 6 area and would allow caseworkers to spend more time working with each youth. This pilot would identify whether these intensive services help to stabilize these youth and ultimately result in better outcomes for them. Region 6 was chosen for this pilot due to the concentration of Residential Treatment Centers in Harris County.

Department of Assistive and Rehabilitative Services (DARS) Exceptional Item

- **Item Priority 3:** This item will establish three new centers for independent living in un-served areas.

2008-2009 Expended Funds Compared to 2010-2011 Requested Funds

The Committee requested that appropriation comparisons of the 2008-2009 biennium and 2010-2011 LAR regarding community services and supports be included in this report. It is noted that according to DADS' LAR, the "baseline" appropriations request will serve an estimated 296,000 individuals in Texas with 214,000 (or 72.2 percent) of these individuals being served in the community settings. Even with the increase in the DADS budget for FY 2010-11, the Baseline request does not fully serve the number of individuals who will be receiving services at the end of FY 2009 or those eligible to receive DADS services. In accordance with the Baseline request instructions, the DADS Baseline request does not include funds to serve 5,772 individuals who are expected to be receiving services in FY 2009.

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 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 1

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

| | FY08 Projected All Funds | FY09 Projected All Funds | FY10 Requested All Funds | FY11 Requested All Funds |
|--|-------------------------------------|-------------------------------------|---|---|
| CBA | \$414,803,125 | \$447,333,277 | \$457,961,849 | \$464,688,626 |
| HCS | \$552,540,965 | \$611,513,646 | \$659,442,354 | \$687,145,324 |
| CLASS | \$139,211,679 | \$146,996,108 | \$151,829,745 | \$153,348,007 |
| DBMD | \$6,500,437 | \$7,445,599 | \$8,178,038 | \$8,258,988 |
| MDCP | \$37,791,112 | \$45,662,420 | \$47,790,999 | \$48,268,958 |
| CWP | \$4,138,377 | \$4,481,487 | \$4,691,322 | \$4,738,246 |
| TxHmL | \$8,903,657 | \$9,587,043 | \$10,094,678 | \$10,195,485 |
| MFP | \$78,638,683 | \$90,206,229 | \$97,666,843 | \$105,744,359 |
| DADS Total Waivers | \$1,242,528,035 | \$1,363,225,809 | \$1,437,655,828 | \$1,482,157,323 |
| | | | | |
| STAR+(Waiver) | \$177,266,034 | \$184,367,946 | \$198,894,295 | \$215,761,834 |
| | | | | |
| TOTAL:Waivers | \$1,419,794,069 | \$1,547,593,755 | \$1,636,550,123 | \$1,698,149,827 |
| | | | | |
| PHC | \$427,444,456 | \$487,574,077 | \$523,041,858 | \$560,450,676 |
| CAS | \$333,149,198 | \$358,059,542 | \$367,586,937 | \$379,839,515 |
| DADS Total Attendant | \$760,593,654 | \$845,633,619 | \$890,628,795 | \$940,290,191 |
| | | | | |
| STAR+ Entitlement | \$300,601,262 | \$371,138,368 | \$401,697,360 | \$436,504,046 |
| | | | | |
| TOTAL: ATTENDANT PROGRAMS | \$1,061,194,916 | \$1,216,771,987 | \$1,292,326,155 | \$1,376,794,237 |
| | | | | |
| GRAND TOTAL | \$2,480,988,985 | \$2,764,365,742 | \$2,928,876,278 | \$3,074,944,064 |

Source Documents:

- FY08 Projected from DADS FY 2010 - 2011 Legislative Appropriations Request
- FY09 Projected from DADS FY 2010 - 2011 Legislative Appropriations Request
- FY10 Requested from DADS FY 2010 - 2011 Legislative Appropriations Request
- STAR+ information from HHS System Forecasting, FY 2010-2011 Legislative Appropriation Request Forecast
- Reductions in PHC and CBA programs are a result of STAR+; concomitantly, increases in the STAR+ budget/caseloads are the result of the STAR+ expansion in February 2007

TABLE 2

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

| | FY08 Projected Avg. #/month | FY09 Projected Avg. #/month | FY10 Requested Avg.#/month | FY11 Requested Avg. #/ month |
|--|--------------------------------|--------------------------------|----------------------------------|------------------------------------|
| CBA | 25,208 | 26,420 | 26,780 | 26,904 |
| HCS | 13,349 | 14,781 | 15,720 | 16,128 |
| CLASS | 3,901 | 4,106 | 4,199 | 4,199 |
| DBMD | 138 | 158 | 172 | 172 |
| MDCP | 2,392 | 2,649 | 2,745 | 2,745 |
| CWP | 181 | 192 | 199 | 199 |
| TxHmL | 1,279 | 1,377 | 1,436 | 1,436 |
| MFP | 4,751 | 5,298 | 5,679 | 6,088 |
| DADS Total Waivers | 51,199 | 54,981 | 56,930 | 57,871 |
| | | | | |
| STAR+ Waiver | 8,047 | 9,023 | 9,245 | 9,528 |
| | | | | |
| TOTAL:Waivers | 59,246 | 64,004 | 66,175 | 67,399 |
| | | | | |
| PHC | 52,177 | 54,434 | 57,614 | 60,921 |
| CAS | 42,219 | 41,991 | 42,962 | 44,244 |
| DADS Total Attendant | 94,396 | 96,425 | 100,576 | 105,165 |
| | | | | |
| STAR+ Entitlement | 24,277 | 25,012 | 25,791 | 26,665 |
| | | | | |
| TOTAL: Attendant Programs | 118,673 | 121,437 | 126,367 | 131,830 |
| | | | | |
| GRAND TOTAL | 177,919 | 185,441 | 192,542 | 199,169 |

Source Documents: See above.

INTEREST LIST REDUCTION

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. Ever since the original Promoting Independence Plan, The Committee's top priority has been full-funding for community-based services and elimination of all interest lists. Again, this year's top priority is interest list reduction. The Committee is recommending an eight year plan to eliminate the current interest lists plus any projected demographic growth.

The 80th Legislature, through the 2008-2009 General Appropriations Act (Article II, DADS, House Bill [H.B.] 1, Regular Session, 2007), significantly increased the number of individuals who may access 1915(c) Medicaid waivers. H.B. 1 provides \$71.4 million in General Revenue funds, \$173.2 million All Funds additional funding for DADS, serving an estimated additional caseload of 8,598 by the end of FY 2008-09 biennium.

The following DADS' waiver programs were impacted:

- Community-based Alternatives
- Community Living Assistance and Support Services
- Medically Dependent Children's Program
- Deaf-blind with Multiple Disabilities
- Home and Community-based Services

In addition, the Health and Human Services Commission received \$19 million General Revenue, \$47.8 million All Funds to fund the acute portion of DADS' increased appropriation for its 1915(c) waiver programs and to fund 304 additional 1915(c) Medicaid waiver slots for STAR+PLUS. Therefore, in total to HHSC and DADS, the 80th Legislature appropriated an additional \$90.5 million General Revenue, \$221 million All Funds, for increased community choice.

The Texas Home Living (TxHmL) program and the Consolidated Waiver program, which is in Bexar County only, do not have independent interest lists. TXHmL offers are made from the HCS interest list; CWP offers are only made when a CWP vacancy is available.

However, as of June 30, 2008, there remained 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.⁸

⁸ See DADS website at: <http://www.dads.state.tx.us/services/interestlist/index.html> for the most recent information.

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 (FY), the Committee discusses many policy issues that are occurring in real-time that require the attention of the Executive Commissioner or other agency Chief Executive Officers (CEOs). Therefore, the Committee may make formal resolutions to address specific policy issues during their quarterly meeting. The following resolutions were passed during FY 2008:

October 2007

The Committee recommends that the HHSC Executive Commissioner, Mr. Hawkins, increase the Committee membership by appointing individuals with disabilities who represent different types of disabilities. The resolution passed 11-0.

January 2008

The Committee requests that the Texas Department of Housing and Community Affairs (TDHCA) expedite the contract process as it relates to the dollars awarded at its September 2007 Board meeting, for tenant-based rental assistance (TBRA) program. Nursing facility residents are not able to exercise their choice of community-based long term services and supports and their statutory right to utilize the "money follows the person" policy because of the delay in the release of TBRA funding. The Committee further recommends that TDHCA's contracting process be reviewed in order to streamline the process in order to expedite future funding awards. The resolution passed 7-0-1 (Tim Graves with the Texas Health Care Association abstained). The following Members were not present: Bob Kafka, Mike Bright, and Chris Kyker.

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 Legislature, Regular Session, 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) 2010-2011.⁹ *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 be 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;¹⁰ any vote against or those abstaining are noted for each specific recommendation. The Committee's recommendations to Executive Commissioner Hawkins are:

⁹ 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.

¹⁰ See Appendix A for a listing of the current committee membership

PROGRAM FUNDING

▪ **INCREASE IN MEDICAID 1915(C) SLOTS – EIGHT YEAR PLAN FOR ELIMINATION OF CURRENT INTEREST LISTS¹¹.**

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 decrease in the community-based services interest list.

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.¹²

Therefore, the Committee recommends that the 81st Legislature increase funding for community-based based programs in order to eliminate all interest lists within an eight year period; this would include sufficient funding to actualize a cumulative one hundred 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 no new applicant for community-based services having to wait more than six months to receive services by the end of FY 2017.

▪ **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:

¹¹ Vote: 9-0-2: Tim Graves, the Texas Health Care Association (THCA) and Jean L. Freeman, Ph.D., DADS Council abstaining.

¹² 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).¹³

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.¹⁴ 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 individuals being discharged from the state hospital into a nursing facility. The state then works with those individuals 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 be 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.¹⁵ The current 1915(c) service arrays do not adequately cover behavioral health services and supports. Therefore, community options are limited for those individuals with behavioral health needs and 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

¹³ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

¹⁴ Vote 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.

service option may increase the individual service plan cost, this could be a short-term activity until the individual stabilizes or may offset other service costs as a result of a reduction in 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.**¹⁶

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.**¹⁷

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.**¹⁸

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.

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 individuals who are aging and/or with a disability 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.

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

¹⁷ Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

¹⁸ Vote 8-0-1-1: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining; Ann Denton not voting.

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.¹⁹ 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 state fiscal year 2007 was \$667,²⁰ 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 those Texans who are aging and/or disabled during the 2010-2011 biennium.

Recommendation 1: Fully fund the 2007 Consolidated Budget's 2008-2009 rate methodology requests.²¹ Prior to the 80th Legislature, the 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.

¹⁹ 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.

²⁰ Department of Aging and Disability Services, Access & Intake – Area Agencies on Aging SFY 2007 data for Caregivers Respite Care.

²¹ Vote 10-0-1: Jean L. Freeman, Ph.D., DADS Council, abstaining.

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 (2009) 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.²² Between 1997 and 2007 the Consumer Price Index (CPI) increased by 26 percent. While the rate adjustments provided by the 80th Legislature (2007) provided some relief, the adjustments did not meet 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 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.²³ 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.

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.

Recommendation 4: Fund community direct services and supports workers. ²⁴

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 Appropriations Requests (LARs) of the Health and Human Services operating agencies.

CHILDREN'S SUPPORTS

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

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

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

While the number of children living in 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 – a thirty-eight percent increase from August 2005 through August 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. ²⁵ This recommendation is consistent with the Center for Disease Control and Prevention's *Healthy People 2010 Objectives for People with Disabilities*.²⁶ 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

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

²⁵ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

²⁶ *Healthy People 2010*, Chapter 6, Disability and Secondary Conditions, Objective 6-7b: http://www.healthypeople.gov/document/HTML/Volume1/06Disability.htm#_Toc486927305

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.²⁷ 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 and fund a Permanency Planning/Promoting Independence unit for children at DADS.²⁸ 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.

Recommendation 4: Develop a pilot to create emergency shelters for children with disabilities needing out-of-home placement.²⁹ This is intended 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.³⁰ 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 percent to 300 percent of the federal poverty level (FPL) as stipulated in the Deficit Reduction Act of 2005.³¹ 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.

²⁷ Vote 9-0-2: Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

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.

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.

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 Populations” policy for individuals with intellectual and developmental disabilities who reside in intermediate care facilities for the mentally retarded (ICFs/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 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 ICFs/MR. 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 ICFs/MR 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 2: Expand the opportunity for expedited access to HCS for all individuals residing in ICFs/MR regardless of the size of the ICF/MR.³² 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 3: Eliminate the time period requirement for expedited access.³³ The Committee recommends full funding for the “Promoting Independence Priority Populations” (those with intellectual and developmental disabilities) that will result in individuals residing in community ICFs/MR or in state schools having immediate access to HCS slots.

Recommendation 4: Fund DARS in order to add an additional three Centers for Independent Living (CILs).³⁴ The federal Rehabilitation Act, which is overseen by the Rehabilitation Services Administration, created the development of Centers for

³² Vote 9-1-2: Carole Smith, Private Providers Association of Texas, against; Tim Graves, THCA, and Jean L. Freeman, Ph.D., DADS Council, abstaining.

³³ Vote 9-0-2: 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.

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.

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 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.

Recommendation 5: Provide increased funding for the relocation activity that assists individuals in nursing facilities to relocate back into their community.³⁵

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; this makes it even more imperative for the state to increase its GR funding. 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.³⁶ 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.***

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

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

Recommendation 7: Remove barriers to relocation from a State School and expedite the overall process.³⁷ Individuals residing in state schools are currently provided a Home and Community-based Services (HCS) waiver slot upon six months of request and referral by 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.

HOUSING INITIATIVES

Affordable, accessible and integrated housing is an essential 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, intermediate care facilities for persons with mental retardation, 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.³⁸ 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. 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.³⁹ 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.

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.

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

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.⁴⁰

Recommendation 4: The 81st Legislature (2009) 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 and who want to relocate from an institutional setting or remain in the community.⁴¹

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.

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

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), STAR+PLUS, and the Integrated Care Management waivers. The 77th Legislature attached Rider 37 to the 2002-2003 General Appropriations Act 2001 (Title II, Department of Human Services [DHS], Senate Bill 1, Regular Session, 2001), which created the MFP policy. The Rider stated: “... it is the intent of the legislature that as clients relocate from nursing facilities to community care services, funds will be transferred from Nursing Facilities to Community Care Services to cover the cost of the shift in services.” DHS implemented the program on September 1, 2001.

The 78th Legislative Session attached Rider 28 to the 2004-2005 General Appropriations Act (Article II, DHS, House Bill 1, Regular Session, 2003), which continued MFP for the next biennium. However, the Legislature made a slight variance by not allowing for the expansion of the base number of appropriated waiver slots through Rider 28 transfers. An additional rider was added which required that individuals utilizing Rider 28 remain funded separately through transfers from the nursing facility strategy and that those slots not count against the total appropriated community care slots.

The 79th Legislature codified the rider policy into law as Texas Government Code, section 531.082. This policy has been highly successful in the relocation of individuals to the most integrated setting. Texas is a national leader on this policy and continues to provide consultation to many other states. The Council of State Governments, Southern Region, awarded Texas its *2006 Innovation Award* for MFP.

DADS 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 August 31, 2008, 16,306 individuals have transitioned back to the community. Of that number, 7,190 continue to receive their long term services support in a community-based setting.⁴² Overall, 57 percent of the total population that relocates back into the community are 65 or older; 43 percent are 64 or younger. 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.

⁴² See Appendix E for more detailed information regarding those individuals who have utilized MFP since September 2003.

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 (14 beds or more) and state mental retardation facilities (state schools) and who desire a living arrangement other than the institution. The state created separate target groups within the Home and Community-based Services (HCS) waiver, which provides expedited access to HCS waiver slots; expedited access is contingent on available funds. 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 schools may access an HCS slot with six months of referral while those residing in a large (fourteen or more bed) community ICFs/MR may access an HCS slot with 12 months of referral.

This process is effective in meeting the demand as long as there is new funding and attrition slots. Individuals in state schools have had expedited access to HCS since August 1999; as of August 31, 2008, 1,233 individuals have moved from the state school system. For those in large community ICFs/MR, 949 have moved into HCS during the period of September 1, 2001 through August 31, 2008.

Individuals in other settings, such as small (0-8 bed) and medium (9-13 bed) ICFs/MR, do not have the same opportunities.

STATUS REPORTS FOR FISCALYEAR 2008

The following six sections contain status reports on:

- The 80th Legislative Session (2007) selected riders and appropriations.
- *Revised 2006 Promoting Independence Plan.*
- Children's Issues.
- 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

2006 PROMOTING INDEPENDENCE PLAN RECOMMENDATIONS UPDATE

The 2006 Promoting Independence Plan (Plan) includes 25 recommendations to the Governor and the Legislature. The state agencies have made significant progress in the current biennium to comply with these recommendations.

Appendix F provides a status report on each recommendation. All 25 recommendations are listed as in the 2006 Plan and placed into one of five categories: *no legislative direction or appropriations*, *completed*, *partially completed*, *ongoing*, or *not done*. Of the 25 recommendations, twelve did not receive the necessary legislative direction or appropriation; five were completed; three are partially completed; four are ongoing; and one was not done.

The Committee will continue to monitor those recommendations categorized as *partially completed* or *ongoing*.

80th LEGISLATIVE UPDATE – SELECTED RIDERS AND APPROPRIATIONS

The following are updates to selected riders and appropriations attached to the 2008-2009 General Appropriations Act (Article II, House Bill 1, 80th Legislature, Regular Session, 2007).

Department of Aging and Disability Services (DADS)

- Rider 41: allows an individual under 22 leaving a nursing facility under “money follows the person” to access any 1915(c) waiver upon condition of eligibility. *As of May 31, 2008, 13 individuals (0-21 years of age) who resided in a nursing facility were discharged and enrolled in the Home and Community-based Services (HCS) waiver program.*
- Rider 42: allows for an individual (0-21 years of age), seeking to leave an intermediate care facility for persons with mental retardation (ICF/MR), and is ineligible for services under HCS, to be offered services under another 1915(c) waiver, as long as they meet those eligibility criteria. *DADS has developed a process that allows an individual who is found to be ineligible for HCS services, to be referred to another 1915(c) waiver for an eligibility determination; no one has accessed this policy as of August 31, 2008.*
- Rider 43: continues Rider 46 (2006-07 General Appropriations Act, Article II, DADS, Senate Bill [S.B.] 1, 79th Legislature, Regular Session, 2005). This Rider establishes a pilot program for fifty individuals under the age of 22 to leave an ICF/MR and have expedited access to community programs. *As of October 17, 2008, 24 individuals (0-21 years of age) have been discharged from community ICF/MR facilities and enrolled in the HCS program.*
- 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 Multiple Disabilities (DBMD), and Home and Community-based Services Programs (HCS); and to 50 percent for the Medically Dependent Children’s Program (MDCP). *A process has been developed and implemented to evaluate individuals who exceed the 200 percent cost ceiling to determine if they are eligible to receive General Revenue funding.*
- DADS was budgeted for 2,497 additional slots in Fiscal Year 2008 for its Medicaid waiver programs. As of August 2008, 2,394 of these slots have been filled.

Department of State Health Services (DSHS)

- The Children with Special Health Care Needs Services Program (CSHCN) received an appropriation to remove 989 children from the waiting list. DSHS received \$2,484,666 (All Funds) in Fiscal Year (FY) 2008 to serve 343 individuals and \$4,969,322 (All Funds) in FY 2009 to serve 646 individuals. *In FY 2008, DSHS used this funding to remove 291 children from the waiting list and as of June 2008, 217 of the 291 children removed have received a service. This number is expected to increase as there is a 95 day filing deadline for services. For FY 2009, in September 2008, 120 clients were removed and in March 2009, an additional 112 children are projected to be removed from the waiting list.*
- The 80th Legislature appropriated \$82 million (General Revenue) for “Mental Health Crisis Redesign” for the FY 08-09 biennium. These funds allow the state to make significant progress toward improving the response to mental health and substance abuse crises. *The first phase of implementation will focus on ensuring statewide access to competent rapid response services, avoidance of hospitalization and reduction in the need for transportation. The emphasis during FY 2008 was crisis design training, hotline and hotline training, implemented Mobile Crisis Outreach Teams (MCOT,), implemented Outpatient Competency Restoration Programs in four sites, Psychiatric Emergency Service Centers and Crisis Service Projects to fifteen Local Mental Health, and implementation of Local Crisis Service Plans.*

Department of Assistive and Rehabilitative Services (DARS)

- Rider 29: provides funding for two new Centers for Independent Living to serve people with disabilities by providing peer counseling, independent living skills training, systems advocacy, information and referral services, relocation services for persons with disabilities who want to move from an institutional facility into a community setting, American Sign Language classes, and interpreting programs for consumers. *DARS awarded contracts to the following:*
 - South Texas Advocacy and Accessibility Resource Services (STAARS) – Laredo: *the Valley Associates for Independent Living (VAIL) from McAllen is the contractor for the South Texas Advocacy and Accessibility Resource Services (STAARS) in Laredo. STAARS proposes to provide independent living services for persons with significant disabilities in Dimmit, Duval, Jim Hogg, La Salle, Maverick, Webb, Zapata, and Zavala counties. Their headquarters is in Laredo.*
 - Not Without Us (NWU) – Abilene: *the Lubbock based LIFE/RUN is the contractor for Not Without Us in Abilene. Not Without Us will provide services for persons with significant disabilities in Callahan, Eastland, Jones, Shackelford, Stephens, and Taylor counties.*
- Section 51 (Article II, Special Provisions, 80th Legislature, Regular Session, 2007) directs DARS, DADS, and the Health and Human Services Commission to determine the feasibility of a new Medicaid program for individuals with traumatic brain injury and spinal cord injury. *A project team was formed to implement the legislation. The team has analyzed the information gathered and has completed the first draft of its report.*

- The 80th Legislature (2007) provided DARS with \$240,657 for FY 2008 and \$327,490 for FY 2009 to address the Independent Living Services (ILS) waiting list. *As a result, the ILS waiting list at the end of FY 2008 was 858. This is a reduction of 201 consumers waiting for ILS, when compared to the 1,059 consumers on the waiting list at the end of FY 2007.*
- The 80th Legislature (2007) also provided the Comprehensive Rehabilitative Services (CRS) program \$6.3M to eliminate wait list of 183 clients (which existed at the end of FY 2007). *These funds did not include money for the growth of the waiting list. The net result was that there were more applicants to the CRS program in FY 2008 than expected. At the end of FY 2008, there were 185 consumers waiting for funds. Another 60 consumers have already been served using FY2009 CRS Waiting List Funds. The current number, as of September 17, 2008, waiting for CRS funds is 130 consumers.*

CHILDREN'S ISSUES

Since the passage of Senate Bill (S.B.) 368 (77th Legislature, Regular Session, 2001), more than 2,000 children (0-21 years of age) have relocated from institutions to families or to a less restrictive setting. More than 1,140 of those children have left institutions and returned to their birth family or have moved to a support or alternate family. Additionally, more than 860 children have transitioned from nine or more bed community Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR) to less restrictive, smaller group homes⁴³. These opportunities have significantly improved the lives of children and their families.

While there has been incredible progress in the movement of children out of institutional settings, the total number of children who continue to reside in institutions remains high and there continues to be new admissions. A troubling trend is the significant increase in the number of children being admitted to state mental retardation facilities (state schools) during the last several years. In Fiscal Year (FY) 2007, 152 children/youth under the age of 21 were admitted to state schools; 111 of those children were 0-17 years of age. This admission rate is a thirty-eight percent increase from FY 2005 through a two year period ending in August 2007; and there was a fifty percent increase for those children 0-17 years of age. During the first six months of FY 2008, the total number of children in the state schools rose from 301 to 351, another seventeen percent increase in only six months⁴⁴.

Table 3 contrasts the number of children in the Department of Aging and Disability Services' (DADS) and the Department of Family and Protective Services' (DFPS) institutional settings from August 2002 to February 2008 and the percent decrease⁴⁵:

TABLE 3

Trends in Number of Children in Institutions by Type of Facility

| Institution Type | Baseline Number as of August 31, 2002 | Number as of February 29, 2008 | Percent Change since August 2002 |
|---------------------------------------|--|---------------------------------------|---|
| Small ICF/MR | 418 | 254 | -39% |
| Medium ICF/MR | 39 | 51 | 31% |
| Large ICF/MR | 264 | 52 | -80% |
| State MR Facilities | 241 | 331 | 37% |
| Nursing Facilities | 234 | 112 | -52% |
| DFPS Facilities | 167 | 220 | 32% |
| Total DADS Facilities | 1,196 | 800 | -33% |
| Total DADS and DFPS Facilities | 1,363 | 1,020 | -25% |

⁴³ *Permanency Planning Report. July 2008--*

http://www.hhsc.state.tx.us/reports/SB368_PermanencyPlanningReport_0708.pdf

⁴⁴ *Ibid.*

⁴⁵ *Ibid.*

As a result of this significant increase in the admissions of children to state owned and operated institutions both the Promoting Independence Advisory Committee (Committee) and the Children's Policy Council requested the appointment of a workgroup to review and analyze the data regarding children's admissions to state schools, identify barriers for having children remain in state schools or return to a community setting, and make recommendations for increasing the opportunities for children to remain/return to their families or move to a family-based alternative setting. Executive Commissioner Hawkins appointed a "Children in State Schools Workgroup (Workgroup)" in November 2007, and the Workgroup completed and submitted a final report to the Executive Commissioner in August 2008. The report and the Workgroup's recommendations have been endorsed by the Children's Policy Council and will go to the Committee for their endorsement in October 2008 (See Appendix G for the full report).

The primary reason for the continued placement of children in facilities is the lack of access to needed family and community-based supports. The major barriers to access include the availability of funding, the availability of providers with the needed expertise, and the ability to access the most appropriate services. Funding flexibility, capacity building, and waiver flexibility should be considered a high priority and addressed as such over the next biennium.

While institutionalization of children with disabilities remains an entitlement under Medicaid policy, family supports and community-based supports and services are dependent on legislative appropriations. Children and families may wait up to nine years on waiver interests lists to obtain needed community services. For some, the wait is too much and institutionalization is the only choice, but is often not the preferred choice.

Additionally, Texas has limited capacity to address significant behavioral health issues in children – a much needed service for many children that are admitted to institutions. Due to the inflexibility of the waiver programs, families who receive waiver services are not always able to obtain the services their child needs. Intensive positive behavioral supports⁴⁶ are extremely limited in the Medicaid waiver programs and are rarely available through the Mental Retardation Authorities (MRAs). Emergency funding to prevent the institutionalization of children should also be made available. The Committee supports the Department of Aging and Disabilities Services' Legislative Appropriations Request (LAR) Exceptional Items:

- Priority 3: This item will restore the funding reductions made in FY 2003 for General Revenue services provided by the MRAs; these services help an individual who has an intensive need or who is in crisis.
- Priority 4: This item requests funding, in part, to reduce the number of children admitted to institutions (see the "Community Services 2008-2009 Projected Funds and 2010-2011 Requested Funds and Average Monthly Caseloads" section for more detail on "Exceptional Items" across the health and human services system).

The purpose of the Committee is to develop recommendations to ensure that Texans with disabilities have the opportunity to receive community services in order to end or prevent their institutionalization as required by the *Olmstead* decision. This is of

⁴⁶ See Appendix F.

particular importance to children who are often forgotten in *Olmstead* discussions, whose developmental urgency is great. The research continues to emphasize the negative impact of institutionalization on a child's development.

As noted in the Children's Policy Council 2008 Legislative Report, the United States Department of Human Services, Center for Disease Control (CDC) recognized the importance of children growing up in families and included the following in their *Healthy People 2010*⁴⁷ objectives: *Chapter 6, Objective 6-7b: Reduce to zero the number of children with disabilities residing in congregate care settings by the year 2010.*

This federal goal should also be Texas' goal. Texas must take bold steps and invest in the future of our children with disabilities by providing the resources needed to create the services and supports necessary to keep our children in the community with their families.

⁴⁷ *Healthy People 2010*, Chapter 6, Disability and Secondary Conditions, Objective 6-7b:
http://www.healthypeople.gov/document/HTML/Volume1/06Disability.htm#_Toc486927305

HOUSING ISSUES

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 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 (\$637/month), and/or the lack of easy access to community-based supports and services. 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 severely 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. Nevertheless, TBRA vouchers are significantly 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 2008-2009 General Appropriations Act (Article VII, House Bill 1, 80th Legislature, Regular Session, 2007) provided TDHCA with approximately \$5 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. Based on feedback from the state's stakeholders, one activity that was included in the Housing Trust Fund Notice of Fund Availability (NOFA) is barrier removal; these funds were made available in Fiscal Year 2008.

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 August 31, 2008, over 94 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 in recognition of demand for these vouchers⁴⁸. TDHCA recently 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.

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 2008, TDHCA made available \$4 million for persons with disabilities, including \$2 million in direct housing assistance for individuals with disabilities, \$500,000 for rental development, and \$1.5 million for TBRA and Homebuyer Assistance (HBA) with optional rehabilitation. As of the date of the preparation of this report, the 2008 NOFA for the TBRA and HBA funds is still under development and the type of incentive for applications that include a preference for assisting people transitioning from institutions has not yet been finalized by TDHCA.

The Committee requested that TDHCA ask HUD to clarify its Fair Housing policy to allow preferences for individuals leaving institutional settings as the result of *Olmstead*, as indicated in a July 2000 HUD letter. The HUD Office of Fair Housing did confirm that TDHCA may allow a preference to offer TBRA funds on a non-competitive basis for applicants that intend to commit at least 50 percent of the TBRA funds for individuals relocating from institutions. The TDHCA draft NOFA includes a preference for the first 90 days from the opening date of the NOFA.

⁴⁸ The average annual amount of rental assistance is \$7843 per individual: TDHCA reported total HOME funds of \$9,032,466 used to assist 1153 families.

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 also 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), 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.

PI staff has met with thirteen PHAs in Fiscal Year (FY) 2008, and as a result of these meetings, the Fort Worth Housing Authority (FWHA) has committed to set-aside ten public housing units and ten housing vouchers for people who choose to relocate from a nursing facility into a community setting. PI staff is following up with two other PHAs that have verbally indicated an interest to set-aside public housing units under the Demonstration.

Unfortunately, HUD recently promulgated new regulations on how funding for vouchers is calculated. As a result of these new regulations, the FWHA has instituted a six month suspension of the ten housing vouchers set aside for the Demonstration. FWHA and many other PHAs have closed their housing voucher waiting lists due to new funding calculations.

Annual Review of Public Housing Agency Plans

A Public Housing Agency (PHA) 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:

- assesses 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; and
- 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

DADS is working in partnership with the Texas Low Income Housing Service and other private and government organizations to develop a housing inventory/registry, which will help people find affordable, accessible, and integrated housing.

The data base will assist individuals in locating housing by geographical area and the database will be updated regularly through information provided 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.

Housing Summit

DADS' Promoting Independence Office helped sponsor the 2008 Texas Housing Summit that was organized by the Texas Disability Policy Consortium. This two day event was attended by over 150 consumers, advocates, and housing professionals with the goal of increasing the stock of affordable, accessible and integrated housing for people with disabilities.

The first day of the summit was dedicated to educating consumers and advocates on housing issues such as:

- Housing programs and policies used to develop housing;
- Challenges in accessing affordable, accessible, and integrated housing; and
- Home adaptations and assistive technology.

The second day was devoted to discussion of innovative methods of developing affordable, accessible, and integrated housing. Housing experts from across the country were invited to present successful approaches to the development of housing for people with disabilities. The second half of the day was dedicated to a panel discussion about how these programs might be replicated in Texas.

The Texas Disability Policy Consortium will prepare a White Paper to help educate people about housing program and policy changes that will help increase the number of affordable, accessible, and integrated housing stock 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 supports TDHCA's Integrated Housing Rule and suggests that any changes contemplated result in an increase in integrated housing units.

The Committee wants to acknowledge the life and the work of Amy M. Young, with the Texas Council for Developmental Disabilities, who died un-expectantly and way too young. Ms. Young was an extremely effective advocate for individuals covered under the *Olmstead* decision and had a special focus on housing issues. Her work and passionate efforts will be missed on both a personal as well as on a professional basis.

WORKFORCE

The Promoting Independence Advisory Committee (Committee) is dedicated to making workforce issues a top priority for Fiscal Year 2009 and in the upcoming 2010-2011 biennium. The Committee has made *Workforce and Provider Network Stabilization* one of its two top priorities in this report (see section on *Recommendations for System Change*). Addressing workforce issues is critical to successful compliance with the *Olmstead* decision and to the Promoting Independence Initiative because a stable direct service workforce (DSW) is necessary for individuals who choose to live in the community.

The Committee supports the Health and Human Services Commission's (HHSC) Legislative Appropriations Request Exception Item 1 that requests more money to enhance the *Medicaid Buy-In* program. Medicaid Buy-In allows individuals with disabilities to continue working and still remain eligible to receive certain Medicaid services.

Also, the Committee wants to commend the Department of State Health Services (DSHS) in its development of the Texas Demonstration to Maintain Independence and Employment (Working Well) project in Harris County under a Centers for Medicare and Medicaid Services (CMS) and an in-kind match from the Harris County Hospital District (HCHD). Working Well serves working individuals with behavioral health conditions who are receiving HCHD-sponsored health benefits. The project will provide an enhanced benefit package, including additional behavioral health services, care coordination, and employment supports to an intervention group (See Grants section for more information).

In Fiscal Year (FY) 2006, the Department of Aging and Disability Services (DADS) and HHSC received a technical assistance workforce grant from the Centers for Medicare and Medicaid Services (CMS) National DSW Resource Center. Texas was one of five states to receive the first group of grants the National DSW Resource Center awarded. HHSC delegated daily management and completion of the DSW Initiative to DADS (see GRANTS section for more information).

Texas DSW Initiative

The National DSW Resource Center provided technical assistance to help DADS develop and complete the Texas DSW Initiative. The purpose of the initiative was to identify both barriers and potential solutions to improving turnover of the paraprofessional DSW in Texas. The Committee appointed its workforce subcommittee to serve as the DSW Advisory Committee (DSWAC) – to advise the DSW Initiative, and charged DSWAC to bring back to the Committee recommendations for reducing turnover and improving recruitment and retention. DSWAC committee members included Committee members, and expanded it to include a community group representative, and paraprofessional direct service workers.

DADS conducted a stakeholder forum and focus groups to obtain stakeholder input on DSW issues. DADS prepared a series of questions, assembled key stakeholders, and asked them to respond and comment on issues related to recruitment, training, retention, and the perceived status of paraprofessional direct service workers in Texas. DADS held a DSW Stakeholder Forum in Austin, Texas in November 2006. The DSW

Forum brought together national DSW experts, lead state agency representatives, service providers/employers, community groups, advocates, direct service workers, and consumers. In addition, DADS held four focus group discussions across the state in July 2007 – one each in El Paso, Houston, Progreso, and San Angelo.

Through the forum and the focus groups, DADS identified three broad themes stakeholders suggested to improve recruitment, retention, and the perceived paraprofessional status of the DSW in Texas: *compensation, opportunity, and support* for direct service workers. These themes were further categorized into fourteen overarching stakeholder recommendations:

Compensation

- Offer direct service workers a livable wage and adopt measures to ensure investment in the DSW.
- Offer direct service workers benefits.
- Offer direct service workers 40 hours work per week.

Opportunity

- Offer direct service workers training.
- Make training accessible to direct service workers.
- Employ effective recruitment strategies including involving direct service workers in the development of Best Practices and targeted recruitment.
- Improve stakeholder collaboration to address DSW issues.
- Offer direct service workers a career ladder.

Support

- Create networking and mentor opportunities for direct service workers.
- Establish direct service worker job standards.
- Provide realistic job preview for potential direct service workers.
- Recognize and reward the contributions of paraprofessional direct service workers.
- Improve direct service worker-consumer match.
- Improve oversight of the DSW.

DADS presented the stakeholder recommendations to the DSWAC in January 2008; DSWAC prioritized, selected, and then submitted six of the fourteen recommendations to the Committee for consideration. DSWAC's priority recommendations included the following: (1) offer direct service workers a livable wage and adopt measures to ensure investment in the DSW; (2) offer direct service workers benefits; (3) make training accessible to direct service workers; (4) employ effective recruitment strategies, including involving direct service workers in the development of Best Practices and targeted recruitment; (5) establish direct service worker job standards; and (6) recognize and reward the contributions of paraprofessional direct service workers.

With input from the National DSW Resource Center and the Paraprofessional Healthcare Institute⁴⁹ (PHI), DADS is examining additional information which support the recommendations made by the Texas DSW Initiative. The final DSW Initiative report was published June 2008⁵⁰.

⁴⁹ Paraprofessional Healthcare Institute and Catholic Health Association of the United States (2003). *Finding and keeping direct care staff*. <http://www.phinational.org/publications/findkeep.pdf>.

⁵⁰ http://www.dads.state.tx.us/news_info/publications/studies/DSW-june2008.pdf

The Committee is committed to the ongoing goals:

- HHSC and the Texas Workforce Commission (TWC) will continue to encourage local health and human service agencies to coordinate with local boards to identify workforce supports, resources, and strategies for individuals relocating into the community and want to work.
- HHSC and TWC will study “best practices” in recruitment, training, and retention in the United States and disseminate results.
- HHSC and TWC will continue to promote partnerships between hospitals, clinics, higher education institutions, local boards, area businesses, health care academies, and faith based community organizations to explore and promote the development of qualified caregivers and support staff.

AGENCY STATUS REPORTS FOR FISCAL YEAR 2008

In Fiscal Year (FY) 2008, the Health and Human Services Commission and its four operating agencies, the:

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

were focused on implementing legislation that resulted from the 80th Legislative Session (2007). The mission to serve the aged, and/or individuals with disabilities continued throughout this fiscal year, as did the oversight of the Promoting Independence Advisory Committee. Below are the major accomplishments of HHSC and its operating agencies during FY 2008 as they relate to the Promoting Independence Initiative.

In addition, the *2006 Revised Texas Promoting Independence Plan*, as submitted to the Governor and the Texas Legislature, contained over twenty-five specific recommendations for the health and human services enterprise as well as for the Texas Department of Housing and Community Affairs and the Texas Workforce Commission.⁵¹

HEALTH AND HUMAN SERVICES MAJOR ACCOMPLISHMENTS

HEALTH AND HUMAN SERVICES COMMISSION (HHSC)

HHSC's major Promoting Independence accomplishments during FY 2007 include the following activities:

- **Family-based Alternatives:** HHSC competitively re-bid its contract for the family-based alternatives project and re-awarded the contract to EveryChild, Inc. in September 2007. EveryChild, Inc. is contracted to develop and implement a system of family-based alternatives so children have the option to leave institutional care and live in families. The project primarily serves children residing in facilities in and around the metropolitan areas of Houston, San Antonio, Austin-Temple, Dallas, and Longview.
- **Permanency Planning:** HHSC continues to collect information for the Permanency Planning Reports and inform the Legislature of the progress of this deinstitutionalization effort. While the total number of children in institutions, as defined by Senate Bill (S.B.) 368, which includes Home and Community-based Services (HCS) supervised living and residential support, has remained around 1,600, there has been a significant shift in the distribution patterns. Sizable numbers of children are moving back to their families, to family-based alternatives, or to other smaller, less restrictive environments.

The data shows an overall increase in the number of individuals moving to families or smaller settings in the mid year 2007 to mid year 2008 period, with two notable exceptions, state mental retardation facilities and targeted DFPS

⁵¹ See Appendix G for the full text of the recommendations; see section on Status Reports: Promoting Independence Plan Recommendations.

licensed facilities, where in each the number of individuals has increased in the past year, and as compared to five years ago. However, the total number of children living in all DADS non-HCS facilities, which include community Intermediate Care Facilities for Persons with Mental Retardation (ICFs/MR), nursing facilities, and state mental retardation facilities, has declined by one-third in the past five and one-half years, and is down 12 percent in the past year. Meanwhile, the number of children in all targeted DFPS facilities and all non-HCS DADS facilities combined has declined by 8 percent in the past year, and 25 percent since August 2002.

- **Consumer Direction Workgroup:** HHSC continues to lead the Consumer Direction Workgroup. The workgroup adopted operating procedures and was expanded to include consumers and family members from outside Austin and an advocate for elder Texans. The workgroup prepared its first biennial report to the Legislature and provided input to HHSC in the development of the consumer direction effectiveness report submitted to the Legislature. The workgroup continues to provide support for the expansion of the Consumer Directed Services (CDS) and Service Responsibility Option (SRO) options. The workgroup provided support to DADS in making the CDS option available in the HCS and the Texas Home Living waiver programs, and in extending the CDS option to nursing and therapy services in the Community-based Alternatives waiver program. The workgroup continues to assist the health and human services agencies in identifying and developing strategies to overcome barriers to participation in consumer direction.
- **Medical Transportation Services:** Effective May 1, 2008, the Medical Transportation Program [MTP] transferred from the Texas Department of Transportation to HHSC. This transfer was a result of passage of S.B. 10, (80th Legislature, Regular Session, 2007), which required HHSC to directly supervise the administration and operation of the program. Working with HHSC Facilities and the Texas Facilities Commission, plans are underway to relocate MTP employees from TxDOT facilities into HHSC locations. MTP operations are located in Austin, San Antonio, McAllen, and Dallas. In addition, contract specialists are located throughout the state to focus on contract monitoring.

MTP will be increasing access to care by adding staff to the call centers to respond to the escalating calls requesting transportation services. Also, MTP will be conducting a business process review (BPR) this next year. The BPR is intended to provide an assessment of the current MTP environment with recommendations to enhance, modify and strengthen operations and processes to meet the inherent business risks and regulatory requirements. It is anticipated to be completed by the end of FY 2009.

- **Supported Employment:** In October 2006, the Children's Policy Council submitted a report to the Legislature that included recommendations regarding employment for transitioning youth with disabilities. House Bill (H.B.) 1230 (80th Legislature, Regular Session, 2007) codified some of the recommendations of the Children's Policy Council. The legislation focuses on improving the services provided to Texas youth with disabilities as they transition from school to adult living, with an emphasis on transition into successful employment. H.B. 1230 is comprised of three sections.

- *Section 1* requires the Health and Human Services Commission (HHSC) to monitor programs offered through Health and Human Services (HHS) agencies, to consider whether programs or services result in positive outcomes in employment, community integration, and quality of life, and to collect information regarding the outcomes of the transition process.
- *Section 2* requires the Department of Assistive and Rehabilitative Services (DARS) to provide specialized training to employees who provide transition services.
- *Section 3* requires the formation of a workgroup and development and implementation of a plan to improve the services and outcomes for Texas youth with disabilities and cooperation among agencies and community providers.

In response to *Section 1*, HHSC has developed a monitoring plan and is contracting to conduct focus groups for youth with disabilities and parents of youth with cognitive disabilities in the fall of 2008.

In response to *Section 2*, DARS has completed development of its curricula for training. Digital Versatile Disc (DVD) and support materials were distributed to Transition Vocational Rehabilitation Counselors (TVRCs) in June and July 2008, and all initial training has been completed. Quarterly forums are planned to build on the information sharing and to implement strategies for locating community supports and resources.

In response to *Section 3*, HHSC convened a workgroup to develop a plan to:

- ensure that a youth with a disability who is transitioning into post-schooling activities, services for adults, or community living has choices about the individual's work and career, and has the opportunity with necessary supports, to seek individualized, competitive employment in the community;
- improve the collaboration between health and human services agencies, other state agencies, the community, and local service providers to maximize existing supported employment resources; and
- increase the quality and quantity of available supported employment services and opportunities.

This plan was issued by stakeholders who participated in the workgroup, including recognized experts in supported employment, advocates, family members, physicians, providers of 1915(c) Medicaid waiver services, employers currently offering supported employment opportunities, and others. State agency members of the workgroup provided technical assistance and program information to the stakeholder group that produced the plan and the recommendations.

- **Long-Term Care Partnership:** The Long-Term Care Partnership is a joint effort between private long-term care insurers and Texas state agencies. The partnership encourages people to plan for their long-term care needs, by purchasing Long-Term Care Insurance instead of relying on Medicaid. Through the Partnership program, the state offers individuals who purchase partnership qualified policies access to Medicaid (if they meet the eligibility criteria) without the need to impoverish themselves should additional long-term care coverage be needed, beyond what the policy provides. Individuals receive resource

protection at the time of Medicaid eligibility and estate recovery in the amount of benefits paid under the policy.

The Deficit Reduction Act of 2005 (DRA) authorized all states to establish Long-Term Care Partnership programs. The Legislature passed S.B. 22 (80th Legislature, Regular Session, 2007), which requires HHSC, TDI, and DADS to coordinate efforts to implement a Partnership in Texas. Requirements also include training for insurance agents and education for consumers, and an amount of inflation protection depending on consumer's age. Approximately 35 states have or are developing LTC Partnership programs as a result of the passage of the DRA.

In preparation for a fall 2008 implementation, the three state agencies have accomplished a great deal, including obtaining approval of a Medicaid State Plan Amendment, adoption of Medicaid rules, receipt of a Technical Assistance Grant from the Centers for Health Care Strategies, Strategic Communication training from the Robert Wood Johnson Foundation, development of agent training resource materials (posted at <http://www.ownyourfuturetexas.org/professionals.html>), training of Health Insurance Counseling and Advocacy Program benefits counselors, establishment of a steering committee, and publication of TDI rules, which are expected to be adopted in fall 2008. All three agencies are working on an outreach and awareness campaign and staff dedicated to the Partnership will be hired in fall 2008 and housed at HHSC.

- **Medicaid Reform:** Senate Bill 10, 80th Legislature, Regular Session, 2007, passed by the Legislature and signed by Gov. Rick Perry, sets the stage for a comprehensive package of Medicaid reforms designed to increase the percentage of Texans with health care coverage, focus on prevention and emphasize individual choice. The reforms will transform Texas' health care infrastructure, optimize health investments, and provide affordable coverage options for uninsured Texans.

HHSC submitted a waiver request to the Centers for Medicare and Medicaid Services on April 16, 2008. The waiver request outlines the state's plan to expand health coverage options in the state, reduce reliance on expensive emergency room visits for basic care, and make it easier for the working poor to buy into employer-sponsored coverage.

DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)

DADS' major Promoting Independence accomplishments during FY 2008 include the following activities:

- Implementation of dedicated Home and Community-based Services (HCS) waiver slots per the General Appropriations Act (Article II, H.B. 1, 80th Legislature, Regular Session, 2007) which included:
 - Rider 37, Promoting Independence, for individuals moving out of large (fourteen or more bed) intermediate care facilities for persons with mental retardation (ICFs/MR) facilities (240 slots for the biennium – however, this was not fully funded), and children aging out of foster care (120 slots for the biennium):
 - From September 1, 2007 to May 31, 2008, 117 individuals have relocated from large ICF/MR facilities and enrolled in the HCS program.
 - From September 1, 2007 to May 31, 2008, 44 individuals who are “aging out” of CPS foster care have enrolled in the HCS waiver program.
 - Rider 43, HCS services for individuals under 22 years of age living in community ICFs/MR to return to families (50 slots for the biennium): From Sept 1, 2007 to May 31, 2008, 19 individuals under age 22 years were discharged from small and medium community ICF/MR facilities and enrolled in the HCS program.
 - Appropriations for HCS services (250 slots for the biennium) for the Promoting Independence priority population of individuals residing in State Mental Retardation Facilities (SMRF – 144 individuals have moved from fourteen or more beds from September 1, 2007 through May 31, 2008).
- Relocation efforts from September 1, 2007 through May 31, 2008 resulted in:
 - 1,940 individuals moved from nursing facilities to community-based waiver services through “Money Follows the Person”;
 - 144 individuals moved from state mental retardation facilities to community settings; all moved to the Home and Community-based (HCS) waiver program using the 250 slots allocated for the biennium or attrition slots;
 - 117 individuals moved from large (14 beds or more) community ICFs/MR to HCS;
 - 1,284 relocation services assessments conducted;
 - 664 transitions to the community completed by relocation contractors;
 - 424 individuals used Transition to Life in Community grants; and
 - 363 individuals used Transition Assistance Services.
- Section 1, Senate Bill 27, 80th Legislature, Regular Session, 2007, directs DADS to delegate to local mental retardation authorities (MRAs) the implementation of a Community Living Options Information Process (CLOIP) for adult residents at state mental retardation (MR) facilities (state schools). In response, DADS, with the advice and assistance of a CLOIP Workgroup, created a process to be implemented through contracts with the 13 Mental Retardation Authorities (MRAs) with a state school in their service area. DADS 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. Through the month of May 2008, MRAs

initiated the CLOIP for 1,455 adult residents, with 4,622 contacts by CLOIP Service Coordinators.

- Community Transition Teams (formerly Nursing Facility Transition Workgroups) continued their work in addressing barriers for individuals who want to return to the community from a nursing facility. Ongoing support and training of DADS regional staff has facilitated staff in becoming better acquainted with the relocation specialists and other community-based organizations and stakeholders.
- Rules were developed in response to Rider 45, 2008-2009 General Appropriations Act (Article II, DADS, H.B. 1, 80th Legislature, Regular Session, 2007), which raises the individual cost caps of most waivers to 200 percent of the equivalent institutional costs (the Medically Dependent Children's Program cost cap is set at 50 percent) and requires DADS to develop utilization management and utilization review practices to ensure the appropriate level and scope of services are provided to individuals and to ensure compliance with federal cost-effectiveness requirements.
- The 2008-09 General Appropriations Act (Article II, Special Provisions, Section 48, H.B. 1, 80th Legislature, Regular Session, 2007) requires DADS, in coordination with the Consumer Direction Work Group (CDWG) and HHSC, submit a report on the barriers to use of CDS and the Service Responsibility Option (SRO) and strategies to overcome them by 11/1/07. DADS and HHSC completed the report. HHSC submitted the report to the Legislative Budget Board (LBB) and Governor's Office. DADS implemented the following strategies to address identified barriers:
 - Expansion of Consumer Directed Services option to Home and Community-based Services (HCS) and Texas Home Living (TxHmL): In February 2008, the Consumer Directed Services (CDS) option became available to individuals enrolled in HCS and TxHmL Programs. The CDS option allows individuals or their legally authorized representatives to recruit, hire, train, supervise and fire their service providers. Individuals who use CDS must work with a Consumer Directed Services Agency (CDSA) that will manage their payroll and taxes.
 - Introduction of Support Consultation: For those in TxHmL or HCS who use CDS, a new service, Support Consultation, became available in February 2008. Support Consultation, an optional service, allows the individual to have a Support Advisor who can provide skills training related to recruiting, screening, hiring workers, preparing job descriptions, verifying employment eligibility and qualifications, completion of documents required to employ an individual, managing workers, and development of effective back-up plans for services considered critical to the individual's health and welfare in the absence of the regular provider or in an emergency situation. The scope and duration of support consultation will vary depending on an individual's need for support consultation. DADS held Support Advisor Certification training on October 22 and 23 and November 1 and 2, 2007. A total of 96 Support Advisers were certified.
 - Expansion of Services that can be Self-directed in the Community-based Alternatives (CBA): Beginning August 2008, individuals in the CBA program

can self-direct their nursing, physical therapy, occupational therapy, and speech/hearing therapy.

- Consumer Direction Education Outreach: DADS hosted a series of town hall meetings across the state to provide an opportunity for individuals, service providers, and the general public to learn more about the Consumer Directed Services (CDS) service delivery option available in many DADS programs. At each meeting, a panel of consumers or family members shared their experiences with the CDS option. Consumer direction DVDs and brochures were distributed at all the meetings. Meetings were held in Weslaco, Houston, Fort Worth, Lubbock, El Paso and Austin. In addition to town hall meetings, DADS sent outreach letters to all individuals eligible to use the CSD Option in TxHmL and HCS and outreach letters to all individuals in CBA to announce the expansion of the CDS Option to nursing and professional therapies.
- Education about CDS: DADS held training on the CDS option for Mental Retardation Authority (MRA) service coordinators, HCS providers, MDCP case managers, CLASS direct service providers and case managers, DBMD providers, Personal Care Services (PCS case managers), STAR+PLUS service coordinators, and ICM service coordinators. All trainees received CDS DVDs and brochures.
- Service Responsibility Option (SRO): Senate Bill 1766 (80th Legislature, Regular Session, 2007) named the SRO as one of the types of Consumer Direction in Texas. DADS developed rules for the Service Responsibility Option, a new Chapter 43 (TAC, Title 40, Part 1) and submitted a State Plan Amendment (SPA) to the Centers for Medicare and Medicaid Services (CMS) to add Support Consultation as a state plan service.
- DADS continued its collaboration for a second year with the State Employment Leadership Network (SELN). Texas is one of 16 states participating in this national initiative, which is focused on expanding and improving employment outcomes for individuals with disabilities. As part of this effort, DADS has continued its efforts to evaluate and ultimately improve supported employment services, including revisions to the Memorandum of Agreement (MOA) between Department of Assistive and Rehabilitative Services (DARS) and DADS to improve coordination related to the provision of funding for employment support services at both agencies.
- Procedures for managing DADS Interest Lists were reviewed and several revisions have been made to streamline and standardize procedures among five of DADS waiver programs. Examples include, a standardized notification letter that provides verification of the date an individual's name was added to the interest list, and the programs for which their name was added, an official form listing all DADS Long Term Services and Supports programs, a listing of contact information by county of three areas within DADS Access and Intake, including Regional and Local Services, Area Agency on Aging, and Mental Retardation Authority. The Long Term Services and Supports form and the contact information is provided to individuals when their name is added to the interest list, and anytime an individual inquires about services. The information is also available on the DADS website.

- DADS implemented a process for transferring names to another waiver interest list when the individual was determined ineligible for the original waiver. The interest list date is transferred to the new interest list. The HCS and CLASS program staff have developed an information gathering tool to assist in determining when individuals contacting DADS about having their name added to a particular interest list may benefit from other DADS services as well, and to document referrals to other DADS services.
- DADS as an organization, or with its health and human services partners, received a number of grants and/or technical assistance opportunities to support DADS overall mission; these awards included:
 - Money Follows the Persons Rebalancing Demonstration Award;
 - Technical Assistance Grant for the Long-Term Care (LTC) Partnership Program;
 - Technical Assistance for Direct Services Workers; and
 - Aging and Disability Resource Center (ADRC).

Please see section on **GRANTS** for more detailed information.

- Aging and Disability Resource Centers: In FY 2008, DADS made the decision to continue funding the three original ADRC sites (Tarrant County, Bexar County, and five counties in Central Texas) for one more year and to expand ADRCs to five new local areas. A Request for Proposal was issued in June 2008 and the new ADRCs should be operational in FY 2009. The five new sites include: Harris County, Dallas County, Lubbock County, four counties in North Central Texas, and six counties in East Texas.

DEPARTMENT OF STATE HEALTH SERVICES (DSHS)

DSHS' major Promoting Independence accomplishments during FY 2008 for individuals with mental health issues include:

- Monitored the number of individuals in State Mental Health Hospitals (SMHHs), with an average daily census of 2,335 as of May 31, 2008, and 17,154 projected total admissions during FY 2008.
- Monitored the number of individuals hospitalized in SMHHs for more than one year, with 469 patients as of May 31, 2008. Of these, 422 need continued hospitalization, 13 have been accepted for placement, 16 have a barrier to placement, and 18 have court involvement. Two adolescents at Waco Center for Youth have been there over one year as of May 31, 2008, and three additional persons under the age of 18 have been hospitalized more than a year at other hospitals. There continues to be increases in the number of forensic patients hospitalized for more than one year from 242 (May 31, 2007) to 261 (May 31, 2008); on August 31, 2008, there were 265.
- 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 August 31, 2008.
- 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, 2007

there were 219 individuals admitted three or more times during the past six months (State funded community hospitals are included in the data). As of May 31, 2008 there were 171 individuals admitted three or more times.

- Conducted an analysis showing that of the 1,453 persons who had three or more SMHH admissions in 180 days since 2004, where the third admission was in FY 2005, FY 2006, or FY 2007, only 13 percent (193) had 3 or more SMHH admissions in 180 days that occurred in multiple years (State hospitals only).
- In FY 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:

| 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 | \$28,683,600 |
| 2005 | 3,729 | \$4,101,900 | \$49,222,800 |
| 2006 | 3,020 | \$3,322,000 | \$39,864,000 |
| 2007 | 3,124 | \$3,436,400 | \$41,236,800 |
| Totals | 12,046 | \$13,250,600 | \$159,007,200 |

- 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 House Bill 2292 (78th Legislature, Regular Session, 2003) and in accordance with the President's New Freedom Commission on Mental Health.

Adult outcomes for fiscal year 2007:

1. 80 percent of individuals served in full RDM service packages exhibited improved or stabilized functioning;
2. 83 percent of individuals served in full RDM service packages exhibited improved or stabilized housing;

3. 90 percent of individuals served in full RDM service packages exhibited improved or stabilized employment;
4. 91 percent of individuals served in full RDM service packages exhibited improved or stabilized criminal justice involvement; and
5. 92 percent of individuals served in full RDM service packages exhibited improved or stabilized co-occurring substance use.

Children and adolescent outcomes for FY 2007:

1. 80 percent of individuals served in full RDM service packages exhibited improved or stabilized functioning;
 2. 87 percent of individuals served in full RDM service packages exhibited improved or stabilized problem severity;
 3. 92 percent of individuals served in full RDM service packages exhibited improved or stabilized school behavior;
 4. 93 percent of individuals served in full RDM service packages exhibited improved or stabilized avoided re-arrest; and
 5. 92 percent of individuals served in full RDM service packages exhibited improved or stabilized co-occurring substance use.
- Continued to utilize the quarterly report developed for the 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 August 31, 2008, there were 3,186 adults readmitted three or more times in 180 days since FY 2001 with 1,375 receiving RDM services, of which 87 percent received the same service package as that recommended by the Texas Recommended Assessment Guidelines (TRAG). Also as of August 31, 2007, there were 250 children readmitted three or more times in 180 days since FY 2001 with 53 receiving RDM services, of which 92 percent received the same service package as that recommended by the TRAG (state and community hospitals; this is for almost eight years – FY 2001 to FY 2008).
 - Conducted an analysis showing that the number of individuals admitted to a SMHH three or more times in 180 days appears to have decreased slightly from FY 2001 (504) to FY 2008 (477); however, the percentage of these individuals who have been served at a Texas Local Mental Health Authority has risen substantially from FY 2001 (81 percent) to 2008 (88 percent). These results are consistent with S.B. 367 (77th Legislature, Regular Session, 2001) that directed the mental health part of legacy Texas Department of Mental Health and Mental Retardation, now DSHS, to target individuals with a mental illness admitted three or more times in 180 days to a psychiatric hospital and to consider them for community-based services (Year end data not available).
 - 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.

- DSHS and HHSC submitted a 1915(c) waiver request to CMS in June 2008. If approved, the Youth Empowerment Services (YES) waiver will provide community-based services to children with severe emotional disturbance to prevent/reduce inpatient psychiatric stays. 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.
- DSHS received a second grant from the Substance Abuse and Mental Health Services Administration (SAMHSA) for *Olmstead* activities for \$60,000 over three years (10/1/06 – 9/31/09): See **GRANTS**.
- DSHS received \$82 million appropriation by the 80th Legislature (2007) for the 2008-2009 biennium for Crisis Redesign. Guided by the Legislature and in response to Rider 69, these funds allow 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) Certified (Accredited) Hotlines: 26 out of 38 Local Mental Health Authorities (LMHAs) were in place as of May 31, 2008 (Quarter 3 of FY 2008). All remaining LMHAs have made application to AAS for an accreditation review and AAS accreditation reviews were scheduled for Quarter 4 and of those 3 more have been accredited as of June.
 - Mobile Outreach Team: 38 out of 38 (including NorthSTAR) as of May 31, 2008 (Quarter 3 of FY2008) are in place.
 - Outpatient Competency Restoration (OCR) Sites: 5 LMHAs as of April 3, 2008 were awarded funds for Outpatient Competency Restoration and amendments to the awardees' Performance Contract developed. OCR services have begun, and there has been one graduate as of September 30.
 - Psychiatric Emergency Service Centers (PESC): 15 LMHAs awarded funds for PESC and Projects as of May, 2008 (Quarter 3 of FY2008) for a total of 21 projects. Contract amendments are being executed.
- The external evaluation team from Texas A&M is finalizing their consumer and stakeholder surveys with plans to survey in fall 2008 and August 2009. The team has visited LMHAs they selected that are representative of urban and rural services.
- Year to date, almost 33,000 individuals have been served in Crisis Outpatient services as of May 31, 2008. This is above the expected target. Over 10,000 individuals have been served in Crisis Residential services. Since the PESC and Project sites were awarded funding in May 2008, the numbers served in Crisis Residential Services are expected to rise in the fourth quarter of FY 2008 and even more in FY 2009.
- SAMSHA 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; see **GRANTS**.

- 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 664 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 nearly 600 Children with Special Health Care Needs (CSHCN) and their families by ten CSHCN Services Program community-based contractors. CSHCN Services Program health care benefits paid for more than 10 family support services (including respite services and van and home modifications) for eligible clients. CSHCN Services Program developed articles on Medicaid Waiver programs for CSHCN were published in the July 2008 and October 2008 CSHCN Services Program Newsletter for Families.

DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES (DFPS)

DFPS' major accomplishments in FY 2008 related to Promoting Independence include the following:

- Child Protective Services (CPS) staff worked with Guardianship staff from the Department of Aging and Disability Services (DADS) on transitional living issues related to youth with disabilities.
- DFPS continues to staff 12 developmental disability specialists and 10 education specialists across the state.
- DFPS developmental disability specialists continue to present profiles of children in facilities to child-placing agencies (CPAs) and EveryChild, Inc. at quarterly meetings. If a CPA identifies a potential adoptive or foster family for a child, the developmental disability specialist and EveryChild, Inc. work with the facility and the CPA or family to develop a transition plan.
- CPS regional education specialists continue to make presentations to internal and external stakeholders to educate and promote services to children and youth in foster care. Education specialists recently implemented legislative mandates that expand eligibility for pre-kindergarten programs to children who are or were in DFPS conservatorship as the result of an adversary hearing, for children to be excused from school to make a court appearance, and for 21 to 25 year olds to return to public school to complete the requirements for a high school diploma.

- Implementation of an HCS Rider was included in DADS's appropriation by the 80th Legislature and in the CPS reform plan that calls for 120 slots for home and community-based services (HCS). General revenue funds and the associated federal funds were set aside each fiscal year for the following two years. The funds will be released at a rate of five referrals per month for youth who are aging out of foster care. The funds allow youth to receive HCS and avoid living in institutions.
- DFPS continued to expand and improve services to prepare youth in foster care for adult living and expand and improve support services to prepare youth in foster care during their young adult years. The improvements included building on implementation of S.B. 6 (79th Legislature, Regular Session, 2005) and S.B. 758 (80th Legislature, Regular Session, 2007) as the bills relate to transition-age foster youth, standardizing best practice service models statewide, and implementing an approach to transition and discharge planning and services for youth aging out of DFPS foster care that is based on out-comes and quality assurance.
- The Protective Services Training Institute (PSTI) continues to provide a one-day workshop, *Best Practices with Children with Developmental Disabilities*, to CPS staff across the state.
- DFPS revised policy to allow DFPS to share information on abuse and neglect with professionals and others who are legally allowed access to the information.
- The State Parent Collaboration Group (PCG) continued to meet quarterly. DFPS is committed to replicating the state model in each region. Additionally, the CPS parent program specialist in the DFPS state office has traveled to different areas of the state to provide hands-on technical assistance to increase the number of regional parent collaboration groups. The parent program specialist has instituted a quarterly scan call with the CPS liaisons across the state to discuss challenges to providing support and direction to increase parent participation.
- DFPS is in the final stages of establishing a stipend to pay parents for their work with local parent support groups, for speaking with DFPS staff at meetings, and for the other ways in which they contribute to the development of policy and practice. The PCG will increase the involvement of non-resident fathers and increase the involvement of incarcerated parents as well as develop a better understanding of the issues affecting incarcerated parents. The DFPS three pilot sites in Regions 3, 7, and 9 are in the process of implementing their parent-led orientation groups for families new to the CPS system.
- Youth who are aging out of foster care are eligible for transitional Medicaid, to be renewed annually without interruption until they turn 21 years of age. Beginning April 1, 2008, HHSC contracted with Superior HealthPlan Network to provide and coordinate health care services for current and former foster youth in Texas.
- DFPS continued to successfully engage young people in multiple aspects of DFPS work. DFPS employs a youth specialist in each region. Youth in DFPS conservatorship and conservatorship alumni participated as partners and

advisors in many DFPS efforts. They attended leadership training with CPS managers, participated on advisory committees, and conducted presentations with CPS staff. The Statewide Youth Leadership Council met on a quarterly basis to address issues and formulate recommendations for improving services to children and youth in foster care and youth preparing to age out of care. They also helped develop and implement DFPS practices.

- Transition centers continued to expand across the state. Centers now operate in seven of DFPS's 11 regions. The centers provide a central clearinghouse for many partners to serve the diverse needs of older youth, ages 15 ½ to 25, who are in the process of aging out or have aged out of foster care. Funded and supported by a partnership between DFPS, the Texas Workforce Commission, and the Casey Family Programs Foundation, the centers serve as locations for DFPS services such as Preparation for Adult Living (PAL), employment readiness, job search classes and assistance, and mentoring. Other partners also provide services at the centers, including substance abuse counseling, housing assistance, and leadership training. The centers are located in Austin, Beaumont, central Texas (Belton, Killeen, and Temple), Corpus Christi, Dallas, El Paso, Houston, Kerrville, and San Antonio.
- DFPS signed 12 contracts for the Intense Foster Family Initiative. Through the initiative, child-placing agencies verify foster family homes that accept children with intense service levels of care, such as children with primary medical needs. Child-placing agencies participating in the Intense Foster Family initiative are Jameson Center, Pressley Ridge, Grace Manor Incorporated, DePelchin, The Children's Center Inc., A World for Children Inc., Kids at the Crossroads, Inc., Child Placement Center, Lutheran Social Services of the South, Inc., Arrow Project, Caring Family Network, and Alliance/Texas Mentor.
- CPS increased the number of foster homes that accept children with intense needs from 21 to 67. Placement staff are in the process of approving four additional homes, and regional education specialists and developmental disability specialists have been attending admissions, review, and dismissal (ARD) meetings for children in DFPS conservatorship to ensure that ancillary services have been identified and provided for each child. The education specialists and developmental disability specialists have been especially active this year in Circles of Support and PAL activities, which promote planning for independence and adult living.
- CPS coordinates a workgroup to increase services to children in the foster care system who are deaf or hard of hearing. The workgroup met four times in the last year. CPS and DARS developed a brochure to recruit foster parents who can effectively communicate with children who are deaf and hard of hearing. Foster home recruitment efforts began the year by presenting information at conferences and organizational meetings and submitting information for organizational newsletters.
- APS and DADS started a cross-agency population study of DADS consumers who were APS clients before or subsequent to transition under the initiative Promoting Independence: Money Follows the Person. The study will enable

DADS to help consumers live independently and will enable APS to ensure the protection of clients by coordinating more effectively with DADS.

- DFPS and DSHS are conducting a study of client characteristics and types of services received among people who receive both APS and DSHS mental health services.
- APS held the 24th Annual APS Conference in November 2007, in San Antonio. The conference offered three general sessions and 39 workshops on a variety of topics to assist APS staff in working with people who are elderly or have disabilities.

DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES (DARS)

DARS' major Promoting Independent accomplishments during FY 2008 included the following activities:

- With funding provided through the 2008-2009 General Appropriations Act (Article II, House Bill 1, DARS, Rider 29, Regular Session, 2007), DARS established two new Centers for Independent Living (CILs). The two new CILs are:
 - *Not Without Us* based in Abilene serving six counties; and
 - *South Texas Advocacy & Accessibility Resource Services* based in Laredo serving eight counties.
- 2008-2009 General Appropriations Act (Article II, House Bill 1, DARS, Rider 30, Regular Session, 2007) provided funds to serve consumers at-risk of institutionalization and needing assistive technology to avoid such placement during the 2008-2009 biennium. During SFY 2008, Division of Rehabilitative Services and the Division of Blind Services helped 252 Texans with significant disabilities using these funds.
- A number of presentations were held to exchange information within the service network:
 - Regina Blye, Executive Director of Texas State Independent Living Council and DARS Independent (IL) staff provided a joint presentation at Conference on Aging.
 - Regina Blye, Executive Director of Texas State Independent Living Council and DARS Independent (IL) staff met with DADS Regional Directors, providing information regarding services available from the IL service network in Texas.
 - Emphasis on relocation and the Promoting Independence Initiative as part of the agenda for DARS IL Coordinators meetings (presentations regarding relocation, services from Aging, updates on initiative).
- DARS collaborated with Rehabilitation Continuing Education Program, the State Independent Living Council (SILC) and the Texas CILs to develop community based initiatives targeted to assist youth with disabilities make the transition from school to adult services. These initiatives were developed as a part of the

Centers Hatching Initiative for Realizing Potential (CHIRP) project. This project has made strong inroads in promoting dialogue among education, rehabilitation and community provider professions in serving this target population. CHIRP recently received a national Rehabilitation Services Administration award acknowledging innovative programming. The CHIRP project is a pilot scheduled to be taken nationwide. The CHIRP project was awarded the RSA Commissioner's Award for Excellence in Rehabilitation Education and Training.

GRANTS

Money Follows the Person (MFP) Rebalancing Demonstration (Demonstration)

In January 2007, Texas obtained Centers for Medicare and Medicaid Services (CMS) approval to participate in a MFP Demonstration that is designed to build on existing MFP and Promoting Independence Priority Population initiatives. This project will assist in the relocation of 2,999 individuals from institutional settings through Calendar Year 2011 (1,400) who are aging and/or with a physical disability and/or with behavioral health needs in nursing facilities, and 1,599 individuals in nine or more bed institutions serving individuals with intellectual and developmental disabilities).

The Demonstration will include:

- Individuals mentioned in the previous paragraph.
- Two new specialized supports services (Cognitive Adaptation Training and Substance Abuse Services) for individuals with co-occurring behavioral health needs who live in the San Antonio service delivery area.
- An “overnight support service,” which will allow an individual with complex medical/functional needs to hire an attendant during normal sleeping hours; this service will be limited to Cameron, Hildago, and Willacy counties.
- Assistance to providers of nine or more bed community intermediate care for persons with mental retardation (ICF/MR) who want to voluntarily close their facilities and take those beds off-line.
- Post-relocation services, which are ongoing contacts with individuals once they have left a nursing facility to help ensure a successful transition to the community.
- Housing initiatives to develop linkages between the long-term services and supports system with the housing system to result in increased dedicated housing vouchers for the *Olmstead* population and the development of more integrated, accessible, and affordable housing.

The operational protocol, which authorizes implementation of the MFP Demonstration, was approved in January 2008. The MFP Demonstration began enrolling participants on February 1, 2008; the Voluntary Closure process began in May 2008, the Behavioral Health pilot began in April 2008, and the Overnight Support Service pilot began in June 2008⁵².

Aging and Disability Resource Center (ADRC) Grant

The ADRC grant is jointly funded by the Administration on Aging (AoA) and CMS to provide communities financial support to develop and implement streamlined access to publicly funded long term services and supports. In Texas, there are three projects which are located in: (1) Bexar County, (2) Tarrant County, and (3) five counties in Central Texas. All three have established partnership agreements with local agencies that provide access services, including advocacy, to the target populations of individuals who are aging and/or with disabilities and their caregivers. These local agencies include: Medicaid eligibility regional offices; DADS regional offices; Centers for

⁵² See the MFP Demonstration website at: <http://www.dads.state.tx.us/providers/pi/index.html>

Independent Living; Mental Retardation Authorities (MRA); local United Way agencies, and other aging and disability organizations.

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.

All three ADRC sites became functional in 2007. One of the major differences among the three sites is where staff is housed. The Bexar location uses a “virtual” co-location model; Central Texas uses a co-location model in offices adjacent to the Central Texas Area Agency on Aging; and Tarrant County uses a combination of both the Bexar and Central Texas models with virtual co-location achieved through the development of a data warehouse of client information and other telecommunication innovations.

In FY 2009, DADS will provide funding for up to five additional ADRC projects. The funding to support this expansion will be derived through unexpended FY 2008 State Unit on Aging administrative funds from the Administration on Aging. The additional projects will be funded for one year, with an option to continue for a second year. Eligible applicants included non-profit, public, or private organizations providing or capable of providing services to persons with disabilities and/or older persons. The projects are required to develop strong community partnerships to implement the mission and goals of the national ADRC initiative. The new ADRC sites will include:

- City of Houston, Area Agency on Aging of Harris County; Harris County.
- Community Healthcore; Gregg, Harrison, Marion, Panola, Rusk, and Upshur Counties.
- Lubbock Mental Health Mental Retardation Center; Lubbock County.
- Metrocare Services; Dallas County.
- North Central Texas Council of Governments, Area Agency on Aging of North Central Texas; Collin, Denton, Hood, and Somervell Counties.

Additionally, DADS will provide continuation funding for one year to the three existing projects. Continuation funding will support the current ADRC projects in providing cross-training for staff of the ADRC and its partners; implementing marketing and outreach strategies; and enhancing and refining automated information systems that support the integration and streamlining of access to services. Twenty counties will be covered under ADRCs in FY 2009.

Technical Assistance for Long Term Care Insurance

DADS, HHSC, and the Texas Department of Insurance (TDI), were awarded a technical assistance grant from the Center for Health Care Strategies to assist with the design and implementation of a long-term care (LTC) partnership program in Texas. LTC partnerships are public-private partnerships, authorized by the Deficit Reduction Act (DRA) of 2005, to offer affordable, high quality LTC insurance to individuals of moderate incomes, and to reduce Medicaid expenditures by delaying or eliminating the need for some individuals to rely on Medicaid to pay for LTC services. The grant is part of an

initiative to promote expansion of the LTC partnership model, and provides extensive technical assistance, as well as funding up to \$50,000 over an 18-month period (plus a 12 month measurement and reporting period).

Acceptance of the grant was made contingent upon the enactment of state legislation authorizing a partnership program in Texas. Senate Bill (S. B.) 22 (80th Legislature, Regular Session, 2007), authorizes a LTC partnership to be developed by HHSC, DADS, and TDI, was signed into law by Governor Rick Perry on June 15, 2007. S.B. 22 requires the adoption of rules and implementation of a partnership program consistent with the provisions of the DRA. It also provides for a few permanent and temporary full-time equivalents (FTEs) for development and administration of the partnership.

A partnership plan was developed, a steering committee was formed for monthly meetings, and the following tasks were accomplished:

- A technical assistance grant was applied for and won from the Robert Wood Johnson Foundation to support the design of a communications plan;
- A Medicaid State Plan Amendment was approved effective March 1, 2008;
- The State of Texas Medicaid Eligibility rules were amended to incorporate the Long-term Care Partnership;
- Insurance agent training resource material was developed and posted at <http://www.ownyourfuturetexas.org/professionals.html>;
- A statewide training was held for Health Information Counseling and Advocacy Program benefits counselors located in all 28 Area Agencies on Aging; and
- Several sets of rules were developed by the Texas Department of Insurance regarding agent training, certification and licensing, as well as continuing education and marketing.

Technical Assistance for Direct Services Workers

Texas received an intensive technical assistance (TA) grant from CMS-sponsored Direct Service Workforce Center in FY 2006 and 2007. The purpose of this effort was to identify barriers and potential solutions to improve recruitment, retention, and the perceived status of paraprofessional direct service workers in Texas; this grant did not provide funding only technical assistance. The Texas project focused on non-monetary recommendations.

Direct service workers (DSW) include nursing assistants, home health aides, personal and home care aides, and personal attendants who provide services to enable individuals who are aging and/or with disabilities who choose to live in the community. By improving the supply of and access to direct service workers, individuals will have more opportunities to choose consumer-directed options, which is a priority of CMS in this project.

As the State Medicaid Agency, HHSC received the award and designated DADS to lead the project. DADS relied on expertise of existing advisory groups, primarily the workforce subcommittee of the Promoting Independence Advisory Committee, in developing and implementing the project.

DADS undertook two major data collection activities to obtain stakeholder input on DSW issues. The first activity was a DSW Forum, which was held in November 2006. They included national DSW experts, lead state agency representatives, service providers/employers, community groups, advocates, direct service workers, and consumers. The second activity was a series of small focus groups, which were held in July 2007. A single focus group was held in each of these cities: El Paso, Houston, Progreso, and San Angelo

Analysis of stakeholder input resulted in three major themes for enhancing the position of direct service workers: (1) compensation, (2) opportunity, and (3) support. These broad themes were further categorized into fourteen overarching recommendations to improve turnover and the perceived status of the DSW. All the stakeholder recommendations focused on improving job quality for paraprofessional direct service workers.

The final report, *Stakeholder Recommendations to Improve Recruitment, Retention, and the Perceived Status of Paraprofessional Direct Service Workers in Texas* is on the DADS website at: http://www.dads.state.tx.us/news_info/publications/studies/DSW-june2008.pdf.

Substance Abuse and Mental Health Services Administration (SMAHSA) Grant

The Department of State Health Services (DSHS) received a second SAMHSA grant for *Olmstead* for \$60,000 over a three-year period from October 1, 2006 through September 31, 2009. DSHS is contracting with the Coastal Bend Independent Living Center for the development and implementation of a program that will: identify individuals who reside in nursing facilities; have a history of a behavioral health issue (mental illness and/or substance abuse); and are considering relocating to a community-based setting. The funds are to facilitate a “Community Integration” specialist in the identification, assessment, service plan for transition and community integration, housing services, and technical assistance to community-based providers.

Demonstration to Maintain Independence and Employment (Working Well)

“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). 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. 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 are randomly assigned into one of two groups. The control group receives services normally available through HCHD. The intervention group receives case management, employment services, and has access to additional medical, dental, vision, mental health, and substance abuse treatment services. Both groups are studied to determine the effects of the additional health and employment supports.

There are currently over 1,600 participants in the study and already, the data obtained from Working Well has yielded positive results and promises to further advance the field of knowledge of working individuals with health problems.

The grant will operate through September 2009, although CMS has provided verbal confirmation that funding will continue for the evaluation component in order to complete all planned data collection. The evaluation team (UT Austin Addiction Research Institute), in conjunction with DSHS, will continue the process of analyzing and disseminating the results of Working Well.

DSHS is in the process of creating a website for Working Well. This site will be used to communicate study information and findings to the general public as well as policy makers and will focus on the study's potential for informing state and national health policy. In addition to the website, DSHS has created issue briefs that will discuss study participants and study outcomes.

Mental Health Transformation Grant

SAMHSA awarded a *Mental Health Transformation State Incentive Grant* (Transformation Grant) to Texas in 2005, which began October 1, 2005. The Transformation Grant is designed to assist states in transforming their mental health service systems to create a single effective, transparent and easily navigated system for consumers. This Transformation Grant requires states to engage in focused leadership activities of planning and building infrastructure across all agencies that provide, fund, administer and purchase mental health services.

The Grant was in the amount of \$2,730,000 per year for the first three years. The grant program extends for up to 5 years. The grant is in its third year of operation and has two years remaining. Year 1 was spent conducting an in depth needs assessment and resource inventory across all Transformation Work Group (TWG) agencies, and then developing a Comprehensive Mental Health Plan (CMHP) for the State to attain the goals described in the President's New Freedom Commission report. Years 2 and 3 have been spent implementing the CMHP by forming state level workgroups, and working with the Texas Health Institute (the State's contractor) to select seven Community Collaboratives.

Governor Rick Perry designated DSHS as the lead coordinating agency for the Texas Transformation Grant. An interagency TWG, paralleling activities at the federal level, was formed to produce the main deliverables of the grant including a thorough statewide Needs Assessment, Resource Inventory, and a Comprehensive State Mental Health Plan. The Texas TWG, which is comprised of 14 agencies, 4 consumer and family organizations/individuals representatives, 2 legislators and a representative of the Governor's Office, signed a Memorandum of Understanding (MOU) reflecting their initial agreement of the Texas partners to engage in the intensive planning process required to carry out the deliverables of the grant and achieve this system-wide transformation effort. Six of the TWG members were mandatory partners.

On behalf of the TWG, the Texas Health Institute competitively selected eight communities that all have a track record of collaboration, to become learning laboratories for local level mental health transformation. These Community Collaboratives (CCs), that represent urban, suburban, rural, and frontier communities,

have been in a planning and implementing transformation initiatives (descriptions are available at www.mhtransformation.org).

Using grant resources, this initiative is intended to make significant progress in three main areas: (1) MHT will have built an infrastructure for clients and family members to have a voice in how the system supports recovery and resilience; (2) the workforce will include clients as providers of services and supports, and it will be equipped to provide the best services science has to offer; and (3) information systems will support access to state-of-the-art services through telemedicine and telehealth, and data, critical to the delivery of excellent services, will be available with the proper informed consent of clients and family members.

CONCLUSION

The *Olmstead* decision and the Promoting Independence Initiative are about planning and systems change. It is the responsibility of the Promoting Independence Advisory Committee (Committee) to advise and assist the Health and Human Services Commission (HHSC) with the continued development and implementation of its planning process as a response to the *Olmstead* decision. Therefore, the Committee strongly encourages the HHSC and related enterprise agencies to implement the recommendations in this report that identify key areas for system improvement, resulting in a more accessible, responsive and efficient service system that will allow more individuals to receive services in the setting of their choice.

The Committee values the commitment demonstrated by the executive staff of the Health and Human Services system for community-based long term services and supports. It strongly recommends that the HHSC request and continue to encourage the 81st Legislature (2009) to appropriate sufficient funds for the Health and Human Services system that will result in assuring that individuals who are aging and/or with disabilities have a choice as to where they want to live and receive services through the 2010-2011 biennium.

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MEMBERSHIP OF THE PROMOTING INDEPENDENCE ADVISORY COMMITTEE

Appointed Members

Ms. Anita Bradbury
Texas Association for Home Care
Represents home care service providers

Ms. Colleen Horton
University of Texas
Center for Disability Studies
Represents children with disabilities and families

Mr. Dennis Borel
Coalition for Texans with Disabilities
Represents individuals with disabilities

Mr. Bob Kafka
ADAPT of Texas
Represents individuals with physical disabilities

Mr. Mike Bright
Association of Retarded Citizens
Represents advocates for individuals with intellectual and developmental disabilities

Ms. Chris Kyker
Texas Silver-Haired Legislature
Represents individuals who are aging

Ms. Ann Denton
Advocates for Human Potential
Represents advocates for individuals with behavioral health needs and housing

Ms. Carole Smith
Private Providers Association of Texas
Represents intellectual and developmental disability service providers

Dr. Jean L. Freeman
DADS Advisory Council
Represents aging and disability services

Ms. Doni Van Ryswyk
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Represents people who are aging

Mr. Tim Graves
Texas Health Care Association
Represents nursing facility service providers

Agency Representatives

Ms. Catherine Gorham
Texas Workforce Commission

Ms. Peggy Perry
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Ms. Audrey Deckinga
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Mr. Glenn Neal
Texas Department of Assistive and Rehabilitative Services

Ms. Donna Stephans
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Mr. Barry Waller
Texas Department of Aging and Disability Services

Ms. Brenda Hull
Texas Department of Housing and Community Affairs

DADS Staff Support: Mr. Marc S. Gold, Director, Promoting Independence Initiative

APPENDIX B

THE STATE OF TEXAS EXECUTIVE DEPARTMENT, OFFICE OF THE GOVERNOR-
AUSTIN, TEXAS EXECUTIVE ORDER GWB 99-2

RELATING TO COMMUNITY-BASED ALTERNATIVES FOR PEOPLE WITH DISABILITIES

WHEREAS, The State of Texas Is committed to providing community-based alternatives for people with disabilities and recognizes that such services advance the best interests of all Texans and

WHEREAS, Texas seeks to ensure that Texas' community-based programs effectively foster independence and acceptance of people with disabilities; and

WHEREAS, programs such as Community Based Alternatives and Home and Community Services provide the opportunity for people to live productive lives in their home communities; and

WHEREAS, as Governor, I have been a consistent advocate for increasing funds to expand community-based services for the elderly and people with disabilities and, working with the Legislature, have increased funding for such programs by more than \$1.7 billion, a 72 percent increase, since taking office; and

WHEREAS, the 76th Legislature has provided funding to allow an additional 15,000 Texans to live outside of institutional settings through our Medicaid waiver and non-waiver community services; and

WHEREAS, Texas must build upon its success and undertake a broader review of our programs for people with disabilities and ensure services offered are in the most appropriate setting.

NOW, THEREFORE, I, GEORGE W. BUSH, GOVERNOR OF TEXAS, by virtue of the power vested in me, do hereby order the following directives:

1. The Texas Health and Human Services Commission (HHSC) shall conduct a comprehensive review of all services and support systems available to people with disabilities in Texas. This review shall analyze the availability, application, and efficacy of existing community-based alternative for people with disabilities. The review shall focus on identifying affected populations, improving the flow of information about supports in the community, and removing barriers that impede opportunities for community placement. The review shall examine these issues in light of the recent United States Supreme Court decision in *Olmstead v. Zimring*.
2. HHSC shall ensure the involvement of consumers, advocates, providers and relevant agency representatives in this review.
3. HHSC shall submit a comprehensive written report of its findings to the Governor, the Lieutenant Governor, the Speaker of the House, and the appropriate committees of the 77th Legislature no later than January 9, 2001. The report will include specific recommendations on

how Texas can improve its community-based programs for people with disabilities by legislative or administrative action.

4. All affected agencies and other public entities shall cooperate fully with HHSC's research, analysis, and production of the report. This report should be made available electronically.

5. As opportunities for system improvements are identified, HHSC shall use its statutory authority to effect appropriate changes.

George W. Bush, Governor of Texas

Filed: September 28, 1999

Executive Order RP13 - April 18, 2002

by the
GOVERNOR OF THE STATE OF TEXAS
Executive Department
Austin, Texas
April 18, 2002

WHEREAS, The State of Texas is committed to providing community-based alternatives for people with disabilities and recognizes that such services and supports advance the best interests of all Texans; and

WHEREAS, it is imperative that consumers and their families have a choice from among the broadest range of supports to most effectively meet their needs in their homes, community settings, state facilities or other residential settings; and

WHEREAS, as Governor, I am committed to ensuring that people with disabilities have the opportunity to enjoy full lives of independence, productivity and self-determination; and

WHEREAS, working with the Texas Legislature last session as Governor, I signed legislation totaling \$101.5 million dollars in general revenue to expand community waiver services; and

WHEREAS, also last session, I signed legislation promoting independence for people with disabilities and directing agencies to redesign service delivery to better support people with disabilities; and

WHEREAS, programs such as Community Based Alternatives, Home and Community-based Services, and other community support programs provide opportunities for people to live productive lives in their home communities; and

WHEREAS, accessible, affordable and integrated housing is an integral component of independence for people with disabilities; and

WHEREAS, Texas recognizes the importance of keeping children in families, regardless of a child's disability, and support services allow families to care for their children in home environments;

NOW, THEREFORE, I, Rick Perry, Governor of Texas, by virtue of the power and authority vested in me by the Constitution and laws of the State of Texas, do hereby order the following:

Review of State Policy. The Texas Health and Human Services Commission ("HHSC") shall review and amend state policies that impede moving children and adults from institutions when the individual desires the move, when the state's treatment professionals determine that such placement is appropriate, and when such placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others who are receiving state-supported disability services.

Promoting Independence Plan. The Health and Human Services Commission shall ensure the Promoting Independence Plan is a comprehensive and effective working plan and

thorough guide for increasing community services. HHSC shall regularly update the plan and shall evaluate and report on its implementation.

In the Promoting Independence Plan, HHSC shall report on the status of community-based services. In the plan, HHSC shall:

1. update the analysis of the availability of community-based services as a part of the continuum of care;
2. explore ways to increase the community care workforce;
3. promote the safety and integration of people receiving services in the community; and
4. review options to expand the availability of affordable, accessible and integrated housing.

Housing. The Health and Human Services Commission shall incorporate the efforts of the Texas Department of Housing and Community Affairs ("TDHCA") to assure accessible, affordable, and integrated housing in the recommendations of the Texas Promoting Independence Plan.

The Texas Department of Housing and Community Affairs shall provide in-house training of key staff on disability issues and technical assistance to local public housing authorities in order to prioritize accessible, affordable, and integrated housing for people with disabilities.

The Texas Department of Housing and Community Affairs and HHSC shall maximize federal funds for accessible, affordable, and integrated housing for people with disabilities. These agencies, along with appropriate health and human services agencies, shall identify, within existing resources, innovative funding mechanisms to develop additional housing assistance for people with disabilities.

Employment. The Health and Human Services Commission shall direct the Texas Rehabilitation Commission and the Texas Commission for the Blind to explore ways to employ people with disabilities as attendants and review agency policies so they promote the independence of people with disabilities in community settings.

The Health and Human Services Commission shall coordinate efforts with the Texas Workforce Commission to increase the pool of available community-based service workers and to promote the new franchise tax exemption for employers who hire certain people with disabilities.

Families. The Health and Human Services Commission shall work with health and human services agencies to ensure that permanency planning for children results in children receiving support services in the community when such a placement is determined to be desirable, appropriate, and services are available.

The Health and Human Services Commission shall move forward with a pilot to develop and implement a system of family-based options to expand the continuum of care for families of children with disabilities.

Selected Essential Services Waiver. Dependent on its feasibility, HHSC shall direct the Texas Department of Mental Health and Mental Retardation to implement a selected essential services waiver, using existing general revenue, in order to provide community services for people who are waiting for the Home and Community-based Services waiver.

Submission of Plan. The Health and Human Services Commission shall submit the updated Texas Promoting Independence Plan to the Governor, the Lieutenant Governor, the Speaker of the House, and the appropriate legislative committees no later than December 1st each even numbered year, beginning with December 1, 2002.

All affected agencies and other public entities shall cooperate fully with the Health and Human Services Commission during the research, analysis, and production of this plan. The plan should be made available electronically.

This executive order complements GWB 99-2 and supersedes all previous executive orders on community-based alternatives for people with disabilities. This order shall remain in effect until modified, amended, rescinded, or superseded by me or by a succeeding Governor.

Given under my hand this the
18th day of April, 2002.

RICK PERRY (signature)
Governor

GWYNN SHEA (signature)
Secretary of State

APPENDIX C

INDIVIDUALS SERVED IN INSTITUTIONS * (As of June 30, 2008):

| Type of Institution | Individuals age 65 and over |
|----------------------------------|------------------------------|
| Nursing facilities | 46,484 |
| State MR Facilities | 409 |
| Community ICF/MR (14 + beds) | 166 |
| Community ICF/MR (0 – 13 beds) | 360 |
| State MH Facilities | 71 |
| SUB-TOTAL | 47,490 |
| | |
| Type of Institution | Individuals age 21 to 64 |
| Nursing facilities | 9,985 |
| State MR Facilities | 4,129 |
| Community ICF/MR (14 + beds) | 1,072 |
| Community ICF/MR (0 – 13 beds) | 4,414 |
| State MH Facilities | 342 |
| SUB-TOTAL | 19,942 |
| | |
| Type of Institution (Per SB 368) | Individuals age 21 and under |
| Nursing Facilities | 114 |
| State MR Facilities | 305 |
| Community ICF/MR (14 + beds) | 74 |
| Community ICF/MR (0 – 13 beds) | 326 |
| HCS Waiver Program Group Home | 333 |
| State MH Facilities | 13 |
| SUB-TOTAL | 1,165 |
| | |
| DFPS: | |
| Institutions for Persons with MR | 86 |
| Foster Group Home | 118 |
| Basic Care | 15 |
| Residential Treatment Center | 91 |
| Other group settings | 37 |

| | |
|---------------|---------------|
| SUB- TOTAL | 347 |
| TOTAL: | 68,944 |

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1. The full text of SB 367 may be found at: <http://www.capitol.state.tx.us/>
 2. For purposes of this report, "institutions" are defined as: Nursing Facilities, State Mental Retardation Facilities (SMRF), State Mental Health Facilities (SMHF), Intermediate Care Facilities for Mental Retardation (ICF/MR), 14 beds and larger, and facilities operated by DFPS for person with mental retardation. Additionally, regarding children's services, Senate Bill 368, 77th Session, related to Permanency Planning, defines "institutions", to include: any group home operated under the authority of DADS, including waiver homes; a foster group home or an agency foster group home; any size ICF/MR; nursing facilities; any institution for the mentally retarded licensed by DFPS; and any residential arrangement other than a foster home that provides care to four or more children who are unrelated to each other.



HHS Circular C-002

The Promoting Independence Initiative and Plan

Purpose

To direct and authorize the Department of Aging and Disability Services (DADS) to act on behalf of and in consultation with the Health and Human Services Commission (HHSC) in all matters relating to the Promoting Independence Initiative.

Directive

In this capacity, DADS will be responsible for:

- preparation of the revised Texas Promoting Independence Plan, submitted to the Governor and Legislature every two years;
- monitoring and oversight of implementation of all agency-specific Promoting Independence Plan recommendations across the enterprise;
- nomination, for HHSC Executive Commissioner review and approval, of appointments to the Promoting Independence Advisory Committee;
- staff support for the Promoting Independence Advisory Committee, including assistance in developing its annual report to HHSC, which will be presented directly to the HHSC Executive Commissioner; and
- coordination and oversight of any other activities related to the Promoting Independence Initiative and Plan, as a direct report for this purpose to the HHSC Executive Commissioner.

Background

The Texas Promoting Independence Initiative and Plan is in response to several key laws, decisions, and state actions related to services for individuals with disabilities. In chronological order, they are:

The Americans with Disabilities Act

Congress passed the Americans with Disabilities Act (ADA) in 1990. Key provisions in Title II of the ADA and the federal regulations implementing it require a public entity to:

- provide services “in the most integrated setting appropriate to the needs” of the person; and
- “make reasonable modifications in policies, practices or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can

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Issued: 10-20-04
Revised: 01-27-05



demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity.”

The *Olmstead* Decision

On June 22, 1999, the United States Supreme Court ruled in *Olmstead v. L.C.*, 527 U.S. 581, that unnecessary institutionalization of persons with disabilities in state institutions would constitute unlawful discrimination under the ADA. The Court ruled that unnecessary institutionalization occurs when the:

- state’s treatment professionals have determined that community placement is appropriate;
- transfer from institutional care to a less restrictive setting is not opposed by the affected individual; and
- placement can reasonably be accommodated, taking into account the resources available to the state and the needs of others with disabilities.

The decision did not require states to abolish institutions and allowed some flexibility for states to maintain a waiting list for community services if the list moves “at a reasonable pace not controlled by the state’s endeavors to keep its institutions fully populated.”

GWB-99

Texas Governor George W. Bush issued Executive Order GWB-99 on September 28, 1999, directing HHSC to:

- conduct a comprehensive review of all services and support systems available to persons with disabilities in Texas, in light of the *Olmstead* decision;
- ensure the involvement of consumers, advocates, providers, and relevant agency representatives in the review; and
- submit a written report of its findings to the Governor and Legislature, including specific recommendations on how Texas can improve its community-based programs for persons with disabilities by legislative or administrative action.

Senate Bill 367

The Seventy-seventh Legislature passed Senate Bill 367 in 2001, requiring that HHSC and appropriate agencies implement a comprehensive, effectively working plan that:

- provides a system of services and supports;
- fosters independence and productivity; and

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- provides meaningful opportunities for a person with a disability to live in the most integrated setting.

S.B. 367 established the S.B. 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities, which carried on the work of the Promoting Independence Advisory Board. The bill also required that HHSC update the Promoting Independence Plan no later than December 1 of each even-numbered year, and submit this plan to the Governor and the Legislature.

RP-13

In April 2002, Governor Rick Perry issued Executive Order RP-13 to further the efforts of the state regarding its Promoting Independence Initiative and community-based alternatives for individuals with disabilities. The order highlighted the areas of housing, employment, children's services, and community waiver services.

Summary

The Texas Promoting Independence Plan now serves several purposes within the state. The plan:

- works to provide the comprehensive, effectively working plan called for as a response to the U.S. Supreme Court ruling in *Olmstead v. L.C.*;
- assists with the implementation efforts of the community-based alternatives Executive Order RP-13, issued by Governor Rick Perry;
- meets the requirements of the report referenced in S.B. 367, Seventy-seventh Legislature, which asks HHSC to report the status of the implementation of a plan to ensure appropriate care settings for persons with disabilities, and the provision of a system of services and supports that fosters independence and productivity, including meaningful opportunities for a person with a disability to live in the most appropriate care setting; and
- serves as an analysis of the availability, application, and efficacy of existing community-based supports for people with disabilities.

The Promoting Independence Plan and the subsequent Promoting Independence Initiative are far-reaching in their scope and implementation efforts. The Promoting Independence Initiative includes all long-term care services and supports and the state's efforts to improve the provision of community-based alternatives, ensuring that these Texas programs effectively foster independence and acceptance of people with disabilities and provide opportunities for people to live productive lives in their home communities.

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Issued: 10-20-04
Revised: 01-27-05

Description: Demographic information about currently active Rider 28 Clients. Rider 28 clients are those individuals who have an 'Enrolled From' code 12 entered in SAS on or after September 1, 2003, AND who has not previously been identified as a Rider 37 client.

| Living Arrangement | Client Count |
|---|--------------|
| COMMUNITY - ADULT FOSTER CARE | 40 |
| COMMUNITY - ALONE | 1,509 |
| COMMUNITY - ALTERNATIVE. LIVING/RES. CARE | 1,385 |
| COMMUNITY - W/FAMILY | 3,023 |
| COMMUNITY - W/OTHER WAIVER PARTICIPANTS | 147 |
| ICF/MR - COMMUNITY | 1 |
| OTHER | 40 |
| Total | 6,145 |

Note: The "OTHER" category includes those clients with a null living arrangement or a living arrangement of Nursing Facility.

| Service Group | Client Count |
|--|--------------|
| CBA | 4,168 |
| CLASS | 51 |
| COMMUNITY CARE | 5 |
| MEDICALLY DEPENDENT CHILDREN PROGRAM (| 832 |
| NURSING FACILITY | 1 |
| STAR+PLUS | 1,088 |
| Total | 6,145 |

| Age Group | Client Count |
|--------------|--------------|
| 0 - 9 | 606 |
| 10 - 17 | 204 |
| 100 + | 16 |
| 18 - 20 | 35 |
| 21 | 2 |
| 22 - 44 | 446 |
| 45 - 64 | 1,702 |
| 65 - 69 | 529 |
| 70 - 74 | 528 |
| 75 - 79 | 603 |
| 80 - 84 | 653 |
| 85 - 89 | 461 |
| 90 - 94 | 267 |
| 95 - 99 | 93 |
| Total | 6,145 |

| Region | Client Count |
|--------------|--------------|
| 00 | 11 |
| 01 | 280 |
| 02 | 369 |
| 03 | 1,703 |
| 04 | 743 |
| 05 | 354 |
| 06 | 442 |
| 07 | 569 |
| 08 | 648 |
| 09 | 173 |
| 10 | 114 |
| 11 | 739 |
| Total | 6,145 |

| Gender | Client Count |
|--------------|--------------|
| FEMALE | 3,673 |
| MALE | 2,472 |
| Total | 6,145 |

| Ethnicity | Client Count |
|-----------------------------------|--------------|
| AMERICAN INDIAN OR ALASKAN NATIVE | 23 |
| ASIAN OR PACIFIC ISLANDER | 50 |
| BLACK- NOT OF HISP. ORIGIN | 873 |
| HISPANIC | 1,270 |
| UNKNOWN | 288 |
| WHITE- NOT OF HISP. ORIGIN | 3,641 |
| Total | 6,145 |

UPDATE: 2006 PROMOTING INDEPENDENCE PLAN RECOMMENDATIONS

The Health and Human Services Commission (HHSC), based on the Promoting Independence Advisory Committee's (Committee) recommendations made in its' 2006 *Stakeholder Report*, included the following implementation directives in the *Revised 2006 Texas Promoting Independence Plan (Plan)*.⁵³ The Plan categorized the recommendations into the following areas:

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

THE FOLLOWING RECOMMENDATIONS RECEIVED NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

Required legislative direction and/or appropriations

If directed and/or funded by the Legislature, HHSC will work with DADS to expand "money follows the person" for individuals with intellectual and developmental disabilities living in intermediate care facilities for persons with mental retardation (ICFs/MR).

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

Even though there is was not direction to create a MFP process for individuals residing in ICFs/MR, there are related activities which will help promote individual choice and movement into community-based services. The state included as part of their MFP Demonstration proposal an initiative to work with providers of nine or more bed community ICFs/MR who want to change their business model and take those current beds off-line; see status on the following recommendation for more detail. Individuals will be given a choice to remain in an ICF/MR or move into the Home and Community-based Services (HCS) program.

In addition, Senate Bill 27 (80th Legislature, 2007) amends and strengthens the community living options process which is now known as the "Community Living Options Information Process (CLOIP)". The legislation requires that DADS transfer the administration of the CLOIP process from state school staff and delegate that function to the local mental retardation authority (MRA) to help ensure a more independent information process; CLOIP is only for adults residing in the state school system and became effective January 1, 2008. The anticipated effect is that more individuals will choose the HCS program.

⁵³ For the full report see DADS' website at: <http://www.dads.state.tx.us/business/pi>; see Appendix C for the Promoting Independence Advisory Committee's full text of its recommendations.

Required legislative direction and/or appropriations

If directed and/or funded by the Legislature, HHSC will work with DADS to establish a transition plan for ICFs/MR with nine or more beds to downsize or close.

The 80th Legislature (2007) did not provide policy direction or appropriations.

However, the 80th Legislature was supportive of HHSC's and DADS' submission of the *Money Follows the Person Rebalancing Demonstration's (Demonstration) Operational Protocol (OP)*. As part of the OP, HHSC and DADS proposed a limited program to test the concept of "voluntary closure" of nine or more bed ICFs/MR. The 80th Legislature attached Section 7(a) to the 2008-2009 General Appropriations Act (Article II, Special Provisions, Regular Session, 2007), which allows HHSC to utilize the enhanced funding resulting from the Demonstration in order to support the Demonstration's activities.

Required 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

The 80th Legislature (2007) did not provide policy direction or appropriations.

However, the 80th Legislature did provide \$82 million General Revenue to fund (Mental Health) Crisis Redesign (2008-2009 General Appropriations Act, Title II, DSHS, H.B. 1, Regular Session, 2007).

THE FOLLOWING RECOMMENDATION IS COMPLETED

Required 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 80th Legislature provided \$71.4 million General Revenue for DADS community-based Medicaid (c) waiver programs which results in 8,598 new community "slots". In addition, the Health and Human Services Commission received \$19 million General Revenue, \$47.8 million All Funds to fund the acute portion of DADS' increased appropriation for its 1915(c) waiver programs and to fund 304 additional 1915(c) Medicaid waiver slots for STAR+PLUS.

DARS was appropriated funds to serve everyone on the Comprehensive Rehabilitation Services Program waiting list; currently there is no one waiting. DARS also received \$.6

million to reduce the waiting list for the Independent Living Services Program; a waiting list still remains.

DSHS did not receive any funds to reduce the adult waiting list; however, it was given a special appropriation to reduce the children's community mental health waiting list. The Legislature appropriated \$2,188,994 General Revenue for this program which will provide an additional 432 "slots" over the biennium. The 80th Legislature also appropriated funds to DSHS for the Children with Special Health Care Needs Services Program. The 2008-2009 General Appropriations Act (Article II, DARS, Special Provisions, H.B. 1, 80th Legislature, Regular Session, 2007) provided \$2,484,666 General Revenue in Fiscal year (FY) 2008 to serve 343 individuals and \$4,969,332 General Revenue in FY 2009 to serve 646 individuals in the Children with Special Health Care Needs Services Program.

THE FOLLOWING RECOMMENDATION IS PARTIALLY COMPLETED

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will increase telemedicine and other technology assistance in order for individuals to remain in the community and be independent.

Status

The 80th Legislature (2007) did not provide appropriations. However, HHSC received legislative direction to work on both issues. HHSC is planning to revise its Medicaid telemedicine rules/policies. In addition, HHSC received a Medicaid transformation grant (\$4 million) to enhance the health passport for children in foster care.

In addition, the 80th Legislature attached Rider 30 to the 2008-2009 General Appropriation Act (Title II, DARS, House Bill 1, Regular Session, 2007). Rider 30 directs \$2 million over the biennium to be spent for the purpose of providing assistive technologies, devices, and related training to those with significant disabilities to remain in the community.

WORKFORCE AND PROVIDER NETWORK STABILIZATION: these are directives to increase reimbursement rates in order to help stabilize the direct services and supports professional workforce.

THE FOLLOWING RECOMMENDATIONS RECEIVED NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will work with DADS to equalize wage and benefits for non-governmental direct support staff with appropriate state employee pay grade (wage parity).

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will increase the number of levels available through the wage enhancement option, expand the enhancement option to all Medicaid attendant programs, and fund the ability of all long-term services and support providers to participate in the attendant enhancement option to the highest level.

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

THE FOLLOWING RECOMMENDATION IS COMPLETED

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will work with DADS to fund the specialized nursing rates established by rule in 2003 for 1915(c) waiver programs.

Status

Legislative direction was not required. HHSC has approved these rates. The nursing rates in general were increased above what was initially funded to align them with other HHSC nursing rates.

THE FOLLOWING RECOMMENDATION IS PARTIALLY COMPLETED

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will work with DADS to increase non-governmental provider rates according to established methodologies, recognizing inflation factors.

Status

The 80th Legislature appropriated dollars for an approximate five percent increase for providers of community-based services.

SERVICE IMPROVEMENT: these are directives to improve the current services system.

THE FOLLOWING RECOMMENDATION IS COMPLETED

DADS will educate providers and consumers regarding the policy of “negotiated service plans” which will help better serve persons with complex needs in the community.

Status

DADS conducted a “complex needs initiative” during most of Fiscal Year 2007. One of the products from that initiative was the development of the “individual responsibility agreement” (IRA). DADS conducted formal training with providers and DADS staff regarding how to work with individuals with complex needs who want to relocate; part of that training focused on the IRA.

THE FOLLOWING RECOMMENDATION IS ONGOING

HHSC will direct DADS to investigate the feasibility of consolidating DADS’ seven 1915(c) waiver programs and their services along functional lines with consideration of service rates appropriate to the level of need of the individuals served.⁵⁴ The investigation should examine efficiencies in administration, service definitions, and appropriate rate level for services.

Status

DADS has an ongoing initiative to review its waiver programs.

THE FOLLOWING RECOMMENDATION WAS NOT DONE

HHSC and DADS will investigate different management structures to improve access and utilization of the consumer-directed services (CDS) option.

Status

There has been no directive at this time to investigate different management structures. However, Senate Bill 1766 (80th Legislature, 2007) reinforces current CDS initiatives and continued the statewide CDS Workgroup. In addition, HHSC and DADS worked through FY 2007 to include the CDS option in the Home and Community-based Services (HCS) and the Texas Home Living waivers. In addition, HHSC and DADS and working towards a statewide expansion of the “service responsibility option” (SRO).

EXPAND INDEPENDENT LIVING OPPORTUNITIES AND RELOCATION ACTIVITIES: Texas is an originator of the “money follows the person” institutional transition policy.

⁵⁴ The seven 1915(c) waiver programs operated by DADS are: Community-based Alternatives; Medically Dependent Children’s Program; Community Living Assistance and Support Services; Deaf-Blind with Multiple Disabilities; Home and Community-based Services; Texas Home Living; and Consolidated Waiver Program.

These directives will to help make these transitions successful and to provide enhanced assistance for persons with complex needs.

THE FOLLOWING RECOMMENDATIONS RECEIVED NO LEGISLATIVE DIRECTION AND/OR APPROPRIATION

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, DADS will increase the current relocation specialists' budget from \$1.3 million/annum (General Revenue) to \$2.6 million/annum (General Revenue).

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, DADS will develop a community navigator program to assist individuals in accessing community based services.

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

However, DADS is administering the Aging and Disability Resource Center (ADRC) grant which is currently testing three models of "one-stop shopping" and community collaboration, which includes community navigators; see section on Grants in this report for more information. DADS will be expanding the ADRC program to five additional sites in Fiscal Year (FY) 2009 for one year and continue the three original sites during FY 2009.

Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will work with the Texas Department of Transportation to increase non-medical transportation supports for individuals who are aging and/or have disabilities.

Status

The 80th Legislature (2007) did not provide policy direction or appropriations; however, Medicaid transportation was transferred from the Texas Department of Transportation to HHSC.

THE FOLLOWING RECOMMENDATION IS ONGOING

HHSC will explore matching dedicated dollars for relocation with Medicaid administrative dollars.

Status

HHSC and DADS began researching how to match the General Revenue dollars that fund the relocation activity. However, the final interim rules from the Centers for Medicare and Medicaid Services (CMS) regarding targeted case management/case management would make this activity administratively burdensome. However, through the Money Follows the Person Demonstration, relocation dollars are being matched at the enhanced federal medical assistance percentage.

THE FOLLOWING RECOMMENDATION IS PARTIALLY DONE

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, DARS will add an additional 21 Centers for Independent Living (CIL)s in order to provide state-wide coverage.

The 80th Legislature included Rider 29 to the 2008-2009 General Appropriation Act (Title II, DARS, H.B. 1, Regular Session, 2007) which directs DARS to use \$1 million General Revenue to be used to establish two new CILs.

The new Independent Living Centers funded during the 80th Legislative Session, H.B. 1, Rider 29, continue to develop. South Texas Advocacy and Accessibility Resource Services (STAARS) and Not Without Us (NWU) will serve people with disabilities by providing peer counseling, independent living skills training, systems advocacy, and information and referral services. Both will offer relocation services for persons with disabilities who want to move from an institutional facility into a community setting, American Sign Language classes, and interpreting programs for consumers.

South Texas Advocacy and Accessibility Resource Services (STAARS) -- Laredo

The Valley Associates for Independent Living (VAIL) from McAllen is the contractor for the South Texas Advocacy and Accessibility Resource Services (STAARS) in Laredo. STAARS proposes to provide independent living services for persons with significant disabilities in Dimmit, Duval, Jim Hogg, La Salle, Maverick, Webb, Zapata and Zavala counties. Their headquarters is in Laredo.

VAIL is still in the process of beginning STAARS operations. After issues with a number of potential locations, STAARS secured office space in two buildings virtually across the street from one another. One will be the administrative building and the other will be used for consumer services. The consumer services building needs some modifications to make classroom and meeting rooms accessible. STAARS is currently working to get utilities activated in the buildings and furniture currently in storage at VAIL will be delivered this week.

The website name and e-mail address have been reserved and will be staarscil.org.

Not Without Us (NWU) -- Abilene

The Lubbock based LIFE/RUN is the contractor for Not Without Us in Abilene. Not Without Us will provide services for persons with significant disabilities in Callahan, Eastland, Jones, Shackelford, Stephens, and Taylor counties. LIFE/RUN has been serving Abilene and the surrounding area since March of 2004, under a relocation contract with the Texas Department of Aging and Disability Services (DADS). As a result, LIFE/RUN already had an established office located in the service area at 3303 N. 3rd St., Suite B, Abilene, TX 79603.

NWU is almost fully staffed and is in the process of forming the advisory board; four individuals have expressed interest and became operational on April 1, 2008.

CHILDREN'S SUPPORTS: these directives will help many of Texas' children to reside in community settings.

THE FOLLOWING RECOMMENDATIONS RECEIVED NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

Requires legislative direction and/or appropriations.

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

Status

The 80th Legislature (2007) did not provide policy direction or appropriations; however, the Health and Human Services Commission did add an Exceptional Item to its 2010-2011 Legislative Appropriations Request to fund this program during the next biennium.

Required legislative direction and/or appropriations

If directed and/or funded by the Legislature, DARS will fund additional transition specialist positions to more effectively facilitate meaningful transition from Independent School Districts' (ISD) secondary school system to appropriate adult supports and services.

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, DADS will increase funding for permanency planning activities.

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

THE FOLLOWING RECOMMENDATION IS COMPLETED

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC and DADS will continue initiatives to ensure funding is available for institutionalized children to have the opportunity to transition to families.

The 80th Legislature included the following riders in the 2008-2009 General Appropriations Act (Article II, DADS, H.B. 1, Regular Session, 2007):

- 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 42: allows for an individual 21 years or younger, 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 43: continues Rider 46 (2006-07 General Appropriations Act, Article II, Department of Aging and Disability Services, S.B. 1, Article II, 79th Legislature, Regular Session, 2005) that was attached to DADS’ General Appropriation for FY 2006-2007. This Rider establishes a pilot program for 50 individuals under the age of 22 to leave an intermediate care facility for persons with mental retardation (ICF/MR) and have expedited access to community programs.

The 80th Legislature also appropriated \$6.6 million General Revenue, \$16.6 million All Funds, for 300 additional dedicated HCS slots for individuals leaving fourteen or more bed ICFs/MR (180 slots) and children aging out of foster care (120 slots).

HOUSING INITIATIVES: these directives will help individuals to remain in the community or assist them in their transition from an institutional placement into the community. Without available, accessible, and integrated housing there is no opportunity to remain in or relocate to the community.

THE FOLLOWING RECOMMENDATION RECEIVED NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

Required legislative direction and/or appropriations.

If directed and/or funded by the Legislature, HHSC will develop a program of local housing coordinators/navigators to assist individuals and the human services system to locate and develop housing resources.

Status

The 80th Legislature (2007) did not provide policy direction or appropriations.

THE FOLLOWING RECOMMENDATION IS COMPLETED

HHSC will work with the Texas Department of Home and Community Affairs (TDHCA) and the Public Housing Authorities to increase the number of dedicated HOME (Section 8 and Tenant Based Rental Assistance - TBRA) funds for persons who are aging and/or have disabilities.

Status

See **HOUSING** section of this 2008 Stakeholder Report.

THE FOLLOWING RECOMMENDATION IS ONGOING

HHSC will work with its operating agencies, TDHCA, and the Public Housing Authorities to develop a housing plan for persons with very low income and/or have disabilities.

Status

The plan has not been developed. The state agencies were working on the Demonstration's OP during most of FY 2007 and included a significant section on housing where the state commits to having a plan.

PROMOTING INDEPENDENCE PRINCIPLES: this directive reinforces HHSC's commitment to the Promoting Independence Initiative.

THE FOLLOWING RECOMMENDATION IS ONGOING

HHSC will ensure that the Promoting Independence Initiative's (Initiative) principles are incorporated in all state initiatives and that all stakeholders are included in the development of any health and human services long-term services and supports policy and/or program.

Status

This recommendation is ongoing. HHSC is very supportive of the Promoting Independence Initiative philosophy and has instructed its operating agencies to include the Initiative's principles in all of its activities.

CHILDREN IN STATE SCHOOLS WORKGROUP REPORT

*A report prepared by invited members of the Intellectual and Developmental
Disabilities community as requested by:
The Promoting Independence Advisory Committee
Children's Policy Council*

August 2008

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PREFACE

The Promoting Independence Advisory Committee (Committee) and the Children's Policy Council both requested Executive Commissioner Albert Hawkins, Health and Human Services Commission (HHSC), to convene a workgroup to study the reasons for the increasing number of children (0-17 years of age) being admitted to state mental retardation facilities (state schools) in Fiscal Year (FY) 2007 as compared to FY 2005 and to identify the barriers to community choice and reintegration. Mr. Hawkins delegated the responsibility for convening a stakeholder-based workgroup to the Department of Aging and Disability Services (DADS).

DADS invited stakeholders who were represented various groups regarding individuals with intellectual and developmental disabilities. The workgroup was composed of the following community members:

| <u>Representative</u> | <u>Organization/Self</u> |
|-----------------------|---|
| Mike Bright | The Arc of Texas |
| Ken Collins | MHMR Authority of Harris County |
| Susanne Elrod | Texas Council of Community MHMR Centers, Inc. |
| Colleen Horton | University of Texas, Center for Disability Studies |
| Louise Lynch | Austin-Travis County MHMR Center |
| Susan Payne | Parent Association for the Retarded of Texas, Inc. (PART) |
| Sandra Reeves | PART |
| Nancy Rosenau | EveryChild, Incorporated |
| Carole Smith | Private Providers Association of Texas (PPAT) |
| Karen Yeaman | Parent |

The workgroup studied the reasons for admissions, barriers to community integration, and made recommendations to: (1) enhance community options to remain in the community or relocate back into the community, and (2) promote individual choice.

This workgroup was convened and facilitated by DADS as requested by HHSC. However, the report reflects the views and opinions of the non-agency stakeholders of the Children in State Schools Workgroup. The statements made in this document do not necessarily reflect the positions or policy of either HHSC or DADS, nor, is this an endorsement of HHSC or DADS of any of the statements or recommendations.

CHILDREN IN STATE SCHOOLS WORKGROUP REPORT¹

Purpose

The purpose of this report is to examine factors related to the admission of children into state schools and to make recommendations to eliminate barriers to community living and integration. These recommendations are made to enhance individual and guardian choice in terms of residential options and is not a statement regarding state school closure or consolidation.

Background

There was a significant increase in the number of children (0-21 years of age) admitted into state schools during Fiscal Year (FY) 2007 as compared to FY 2005. Admissions of children to state schools increased 38 percent from FY 2005 through a two year period ending in August 2007; and there was a fifty percent increase for those children 0-17 years of age.

TABLE 1

Admissions of Children to State Mental Retardation Facilities FY 2005-2007

| FY | Total Children (0-21 years of age) | Children 0-17 years of age | Children 18-21 years of age |
|-----------|---|-----------------------------------|------------------------------------|
| 2005 | 110 | 74 | 36 |
| 2006 | 126 | 77 | 49 |
| 2007 | 152 | 111 | 41 |

This increase led the Promoting Independence Advisory Committee (Committee) on August 24, 2007, and the Children's Policy Council (CPC) on September 10, 2007 to issue similar resolutions requesting the Executive Commissioner of the Health and Human Services Commission (HHSC – Albert Hawkins) to convene a workgroup to identify and develop a plan to address:

- (1) systems/program issues that result in admission of children to state schools; and
- (2) barriers that prevent children admitted to state schools from returning to their families/communities².

¹ This document reflects the views and opinions of non-agency stakeholders of the Children in State Schools Workgroup. This workgroup is the result of a resolution passed by both the Promoting Independence Advisory Committee and the Children's Policy Council and is convened by the Department of Aging and Disability Services as requested by the Health and Human Services Commission. The statements made in this document do not necessarily reflect the positions or policy of any state agency, nor, is this an endorsement of any of the statements or recommendations.

² See Appendix A for both the Committee's and the Council's resolutions.

Both the Committee and the CPC have long-standing mission and policy positions that all children should have the opportunity to live in a family setting: either with their biological parents, or in a family-based alternative arrangement. Parents and guardians must have a choice in making long term service and supports decisions for their children.

Executive Commissioner Hawkins stated in an October 2, 2007 letter to Colleen Horton, Chair of the Children's Policy Council, his directive to DADS and HHSC staff to convene the requested workgroup, and to include the objectives as detailed in both the Committee's and Council's resolutions³. DADS convened a workgroup of selected providers, advocates, and parents of children with intellectual and developmental disabilities⁴ on November 15, 2007. The workgroup met several times to discuss the data requests and analysis and to make policy and funding recommendations.

Workgroup Findings

The following sections present the data provided during the meetings and recommendations made by workgroup members. DADS staff had responsibility for convening and facilitating the meetings, providing the data, and organizing the final report⁵.

Data

DADS provided data in response to the original request made in the Committee and Children's Policy Council resolutions and subsequent additional requests regarding admissions. The original requests were:

- Number of children (0-21 years of age) currently residing in state schools.
- Length of stay for all children residing in state schools.
- Method of placement used for admission of children to state schools.
- Status of the permanency plans for all children residing in state schools.
- Status of plans to transition children from state schools into communities.

³ See Appendix B for HHSC's Response to the Children's Policy Council.

⁴ See Appendix C for workgroup membership.

⁵ See Footnote number 1.

The following are a summary of the requested data:

Residents as of August 31, 2007⁶

- 301 children are between the ages of 0-21; 154 children were 0-17 years of age:
 - 14 children out of the 154 were 0-12 years of age.
 - 24 out of the 154 children were in Department of Family and Protective Services (DFPS) conservatorship.
 - 104 of the 154 children were committed under the *Persons with Mental Retardation Act* and 50 were committed under the “Family Code”.
 - The average length of stay at a state school for these 154 children was 1.3 years and the median average length of stay was 0.9 years.
 - Over 99 percent of the 154 children had a current permanency plan completed by the Mental Retardation Authority (MRA).

Admissions during FY 2007⁷:

- 152 children (0-21 years of age) were admitted during FY 2007; 111 children were 0-17 years of age.

Discharges during FY 2007

- 12 individuals (0-17 years of age) moved from a state school to a community setting using the home and community-based services (HCS) 1915 (c) waiver program.
- The average length of stay at a state school for these 12 individuals was 1.0 years.

In addition, the following information may be found in attached appendices:

- Diagnostic Data⁸.
- Permanency Planning⁹.
- Age of Individuals Served¹⁰.
- County of Residence and MRA¹¹.
- Education Status¹².
- Length of Stay¹³

⁶ These data are a “snapshot” in time – data as of this date.

⁷ These are the total number of children admitted during FY 2007 and do not reflect the current census at any point in time.

⁸ See Appendix D

⁹ See Appendix E

¹⁰ See Appendix F

¹¹ See Appendix G

¹² See Appendix H

¹³ See Appendix I

Systems/program issues that result in admission of children/youth to state schools

Admissions policy is dictated by state statute found in Chapter 593, Health and Safety Code, Subtitle D, Persons with Mental Retardation Act, Subchapter C, Section 593.052¹⁴ and the Department of Aging and Disability Services' (DADS) regulation at 40 Texas Administrative Code (TAC), Part 1, Continuity of Services – State Mental Retardation Facilities, Chapter 2, Subchapter F, Section 2.257¹⁵. Policy regarding continued institutional admission is dictated in Subchapter D, Chapter 531, Government Code as amended by Senate Bill 368, 77th Legislature, Regular Session, 2001, also known as the Permanency Planning statute.

Factors contributing to the admission of children admitted to state mental retardation facilities (state schools) are multiple and complex, but five major contributing factors are:

- Previous reductions in community-based services due to cuts in General Revenue (GR) to Mental Retardation Authorities.
- Continued lack of timely available appropriate alternatives due to long waiver interest lists.
- Lack of comprehensive and readily available supports for families of children with challenging behavior or co-occurring mental health diagnoses, sometimes leading to court involvement.
- Forensic/court-ordered placement.
- Parental choice.

Of note, the issue of institutional care for children with disabilities has been the subject of national attention of health care experts. The Center for Disease Control and Prevention, in Healthy People 2010, established a public health objective for the elimination of institutionalization of children (0-17 years of age)¹⁶.

Early identification of children at-risk of institutionalization is critical. Once identified as being at risk, children and families should be offered services such as respite, parent training and specialized supports. The provision of these services would not only allow children to remain in the community and in a family-setting, but would also preserve families and prevent the need for more costly institutional interventions in the future.

Barriers that prevent children from returning to their families/communities

Four major barriers to children returning to their communities were identified during the workgroup sessions:

- Lack of available community options.
- Lack of funding for existing community services and supports.
- Lack of effective planning to achieve alternatives for children currently living in state schools
- Lack of adequate services and supports for children with intense challenging behavior

¹⁴ See Appendix J for complete citation.

¹⁵ See Appendix K for complete rule language.

¹⁶ *Healthy People 2010*, Chapter 6, Disability and Secondary Conditions, Objective 6-7b:
http://www.healthypeople.gov/document/HTML/Volume1/06Disability.htm#_Toc486927305

The inability to obtain sufficient and appropriate supports and services in children's homes creates situations where families have limited alternatives. Families/guardians may seek out-of-home placement (state schools) they may not want for their children because: (1) there are not adequate in-home supports, or (2) they have limited options to family-based out-of-home placements. Once admitted, lack of appropriate and adequate services and supports has meant children are unable to return home or move to a family-based alternative.

Many children admitted to state schools have co-occurring developmental disabilities, a mental health diagnoses, and/or other challenging behaviors. There is a need to build a more comprehensive system offering intense "add-on" services that will enable families of children with developmental disabilities and intense behavior support needs to remain at home. There is an additional need to create opportunities for those children, currently institutionalized, to relocate back home or to a support family with the appropriate and necessary supports, specifically, positive behavior support services.

Positive Behavior Support (PBS) is an evidence-based approach to supporting children with challenging behavior. PBS utilizes strategies based on behavioral science research and an understanding of underlying physiological and mental health conditions. PBS seeks to decrease problem behavior, and increase quality of life for both the child and caregiver by teaching new skills and making changes in the child's environment. The addition of intense services not currently available will provide alternatives to state school admission that will allow children to grow up in healthy family environments.

Recommendations

The following recommendations are intended to increase the options available to children and families. The recommendations represent a comprehensive package of elements that would work in concert to reduce the need for state school admission and allow children who are current residents to return to a home setting.

For purposes of this report, recommendations are made for children defined as being 0-17 years of age, unless otherwise stated. While there is a recognition that individuals, 18-21 years of age, should have similar residential opportunities and long term services and supports options, the recommendations specifically target children from 0-17 years of age for two reasons: (1) rules governing state school admission treat minors (children 0-17 years of age) differently than those 18 and older, and (2) when resources are limited, those resources should be prioritized for individuals in the most critical developmental period. The issue regarding forensic/court-ordered placement will not be addressed in the recommendations because of their direct legislative and court involvement.

There was a majority vote for inclusion of all the recommendations from the overall committee. All recommendations were passed unanimously (10-0 by the membership) except for Recommendations A.3 and B.3. The exact vote for A.3 and B.3 are listed below and the stated reason by the members for voting nay.

A. Recommendations to provide alternative community options to state school admission of children

- A.1 Create appropriate community alternatives that meet the state’s policy preference for family-based living arrangements as articulated in Permanency Planning legislation (Senate Bill 368, 77th Legislature, Regular Session, 2001).
- A.2 Ensure adequate priority funding for family based alternatives to state school placement for children at imminent risk of institutionalization.
- A.3 Create mechanisms so that funding used to pay for institutional services for children can be used more flexibly to assure alternatives to institutionalization, such as redirecting funding to family-based support that would otherwise be used to pay for an institutional placement. (*Vote: 8-2 – the two members of the Parent Association for the Retarded of Texas [PART] voted against the recommendation. PART members stated that they support obtaining funding for the recommendation, but cannot support the verbiage “redirecting funding”.*)
- A.4 Ensure compliance with Chapter 593, Health and Safety Code, Section 593.052 -- Order For Commitment which outlines the conditions that must be met prior to a court commitment including 593.052 (3) which states the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting.
- A.5 Develop emergency living arrangements for children of families who are in crisis. Time allowed in an emergency living arrangement must be adequate to assess the child, and find or develop appropriate supports in order for the child to return home or move to another family-based alternative. In addition, the emergency living arrangement must be adequately staffed, in a setting which is age and developmentally appropriate. The number of children with similar needs should be limited in this setting (serving not more than six others).

B. Recommendations to reduce the number of children currently residing in state schools.

- B. 1 Ensure adequate priority funding for alternatives to state school placement for children already residing in state schools.
- B.2 Enforce the following existing rules and statutes:
 - Chapter 593 (Admission and Commitment to Mental Retardation Services), Health and Safety Code, Section 593.052 (3) which states...a proposed resident may not be committed to a residential

care facility unless...the proposed resident cannot be adequately habilitated in an available, less restricted setting.

- 40 Texas Administrative Code, Part, §2.257 (Criteria for Commitment of a Minor to a State MR Facility under the Persons with Mental Retardation Act (a)(3) which states...that a minor may be committed to a state MR facility for residential services only if: the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting...
- Chapter 531, Government Code, Section 531.159 (b) which states...The chief executive officer of each appropriate health and human services agency or the officer's designee must approve the placement of a child in an institution. The initial placement of the child in the institution is temporary and may not exceed six months unless the appropriate chief executive officer or the officer's designee approves an extension of an additional six months after conducting a review of documented permanency planning efforts to unite the child with a family in a permanent living arrangement...
- 40 Texas Administrative Code, Part 1, §9.244 (Applicant Enrollment in the ICF/MR Program) (d) (1) (B) which also states...that the placement of the applicant is considered temporary....¹⁷.

B.3 Adopt policy that establishes that the criteria for admission are also the criteria for continued placement. Make sure the parents and/or the LAR are aware of the admission and discharge criteria when an appropriate alternative is available that meets the specific needs of the child. (*Vote: 8-2 – the two members PART voted against the recommendation. PART members stated that they do not support the elimination of choice for families wanting permanent placement in a state school.*)

B.4 Improve permanency planning for children 0-17 years of age.

- Adequately fund and support the permanency planning function conducted by the Mental Retardation Authorities (MRA) to assure an ongoing and proactive process rather than a six-month review.
- Include the MRA permanency planner as a member of the child's Interdisciplinary Team.
- Develop at DADS a system for ongoing review of the permanency plans for quality assurance.
- Provide ongoing training opportunities for current and new MRA permanency planners to ensure consistency and quality in the process.

B.5 Create a centralized Children's Unit at DADS with responsibilities for overseeing the long term services and supports needs of children with developmental disabilities. Duties should include, but are not limited to:

- Development of the expertise and human resources to address the permanency planning needs of children with developmental disabilities within the long term services and supports system.

¹⁷ See TexasOnline website for SB 368 and TAC language at: www.sos.state.tx.us

- Development of a statewide plan with protocols to assist children to move from state schools to families, if that is the choice of the guardian.
- Provision of technical assistance to the MRAs, state school staff, and providers regarding alternatives for children from state schools.
- Oversight of permanency planning and implementation of the plans for children in state schools.
- Oversight of training and ongoing technical assistance to the MRAs, state school staff and providers.
- Analysis of trends and systemic barriers to living in the community as identified by the aggregate data derived from the permanency plans.
- Communication between the Community Living Options Information Process (CLOIP) staff with the MRA permanency planning staff in order that each knows each other's processes to assist in a smooth transition when the child becomes an adult.
- Coordination with other enterprise agencies, especially the Department of State Health Services and the Department of Family and Protective Services.

C. Recommendations to address support needs of children with significant behavior challenges residing in state schools or at-risk of institutional placement.

C.1 Develop, fully fund and provide supplemental add-on services for children with intense behavior support needs. Services must include, but should not be limited to:¹⁸

1. **Positive Behavior Support Specialists** to develop a plan to address challenging behavior and provide ongoing support and supervision of the behavior plan implementation.
2. **In-home Behavior Mentors/Aides** that provide one-on-one in-home support to the child and family.
3. **Flexible Community Supports** that pay for items and services directly related to the child's challenging behaviors. These services might include payment for repairs to household damage, sturdy or adapted furnishings, and materials needed for activities with the child.
4. **Additional 30 days of respite per year** for birth families and foster/companion care providers to ensure the health, well-being and sustainability of the family.
5. **Crisis Support** including payment for emergency in-home and out of home respite or emergency in-home intervention to diffuse crisis situations.
6. **Therapeutic Treatment Foster Care** provided by specially trained and experienced families.
7. **Specialized Case Management/Service Coordination** that is provided by service coordinators at the local MRA who have limited case loads and experience with positive behavioral support for children with challenging behaviors.

¹⁸ See Appendix L for a more comprehensive model description.

- C.2 Develop functional eligibility criteria to target supplemental add-on services specifically to those children with significant behavioral/mental health challenges who are currently in institutions or whose needs would otherwise lead to their institutionalization. Services must be flexible to fit the level of need which may be episodic and fluctuating for some children.
- C.3 Fund, develop, and award a Request for Proposal (RFP) for a statewide Positive Behavior Support (PBS) Training and Technical Assistance Project to develop a system of quality positive behavioral support across the state.
- C.4 Research PBS training projects that have been developed in other states that have been reimbursed by Medicaid.

Summary

There is no simple, single solution for providing adequate community opportunities in order to support parents/guardians in keeping their child at home or to ensure family-based alternatives to institutional care, which will allow sufficient alternatives to assure full and available choices. The above recommendations will require continued work and should be considered in conjunction with other recommendations made by the Governor appointed Children's Policy Council, the Promoting Independence Advisory Committee, the Parent Association for the Retarded of Texas (PART), and other interested community-based organizations.

Appendices:

- Appendix A Promoting Independence Advisory Committee and the Children's Policy Council Resolution to the Health and Human Services Commission (HHSC)
- Appendix B Health and Human Services' (HHSC) Response to the Children's Policy Council
- Appendix C Children in State Schools Workgroup Membership
- Appendix D Diagnostic Information for Persons Under the Age of 22
- Appendix E Data from the Goals of Permanency Planning for Persons Under the Age of 22 in Residence as of August 31, 2007
- Appendix F Age Breakdown on Children (0-21 years of age) in State Schools as of August 31, 2007
- Appendix G County of Residence and MRA of Children in State Schools
- Appendix H Independent School District (ISD) Services – Whether Education Services are Provided on Campus or at the ISD
- Appendix I Length of Stay
- Appendix J *Order for Commitment Language*
- Appendix K *Criteria for Commitment of a Minor to State MR Facility under the PMRA Language*
- Appendix L Model for Supplemental Add-On Services for Children with Intense Behavioral Support Needs

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Promoting Independence Advisory Committee Resolution to HHSC

PROMOTING INDEPENDENCE ADVISORY COMMITTEE

*Constituted by Senate Bill 367
77th Texas Legislature – 2001*

*Denis Borel
Coalition of Texans with Disabilities*

*Anita Bradberry
Texas Association for Home Care*

*Mike Bright
The ARC of Texas*

*Ann Denton
Advocates for Human Potential, Inc*

*Jean Freeman, Ph.D.
Member, Texas Department of Aging and Disabilities Council*

*Tim Graves
Texas Health Care Association*

*Colleen Horton
University of Texas Center for Disability Studies*

*Bob Kafka
ADAPT*

*Chris Kyker
Silver-Haired Legislature*

*Carole Smith
Private Providers Association of Texas*

*Doni Van Ryswyk
T4A*

**Albert Hawkins
Executive Commissioner
Texas Health and Human Services Commission
4900 N. Lamar
Austin, TX 78757**

August 24, 2007

Dear Mr. Hawkins:

The Promoting Independence Advisory Committee (Committee) is concerned about the increasing number of children being admitted to Texas' state mental retardation facilities (state schools) over the past few years. Information provided by the Department of Aging and Disability Services (DADS) indicate that the number of children (0-17 years of age) admitted into state schools has increased from 110 in Fiscal Year 2005 to 150 as of July 31, 2007. Therefore, the Committee passed the following resolution at its August 24, 2007 quarterly meeting:

The Committee requests that Mr. Hawkins direct the Committee in collaboration with DADS to analyze existing data to determine:

- Number of children and youth under the age of 21 years currently residing in state schools,
- Length of stay for all children/youth residing in state schools;
- Method of placement used for admission to the state schools for children/youth,

- Status of the permanency plans for all children and youth residing in state schools; and
- Status of plans to transition children/youth out of state schools and into communities.

In addition, it is requested that Mr. Hawkins appoint a workgroup to identify and develop a plan to address:

- Systems/program issues that cause the admission of children/youth to state schools;
- Barriers that prevent children/youth admitted to state schools from returning to their families/communities.

The resolution passed 7-0:

Denis Borel
Bob Kafka
Ann Denton
Colleen Horton

Carole Smith
Jean Freeman
Doni Van Ryswyk

The following Members were not present: Glenda Rodgers, Anita Bradbury, Mike Bright, Chris Kyker

Children's Policy Council Resolution to HHSC

CHILDREN'S POLICY COUNCIL

Colleen Horton, Chair

September 10, 2007

Dr. Charles Bell
Deputy Executive Commissioner
Health and Human Services Commission
4900 N. Lamar
Austin, TX 78751

Dear Dr. Bell,

At the August 30th meeting of the Children's Policy Council, the members followed the lead of the Promoting Independence Advisory Committee and discussed the issue of the increasing number of children being admitted to Texas state schools over the past few years. Information presented at the meeting by DADS indicated that the number of children (under 18 years) in the state school system increased from 114 on August 31st, 2005 to 150 as of July 31, 2007. This represents a 31% increase in just under two years. This information was extremely troubling to CPC members as the Council has a long history of efforts aimed at reducing the number of institutionalized children in Texas.

CPC members voted to support the PIAC resolution of August 24th requesting the Executive Commissioner of HHSC to:

Direct the PIAC in collaboration with DADS to analyze existing data to determine:

- Number of children and youth under the age of 21 years currently residing in state schools,
- Length of stay for all children/youth residing in state schools;
- Method of placement used for admission to the state schools for children/youth,
- Status of the permanency plans for all children and youth residing in state schools; and
- Status of plans to transition children/youth out of state schools and into communities.

Appoint a workgroup to identify and develop a plan to address:

- Systems/program issues that cause the admission of children/youth to state schools;
- Barriers that prevent children/youth admitted to state schools from returning to their families/communities.

The Children's Policy Council respectfully requests the opportunity to participate in the workgroup with PIAC and DADS. We also request your assistance in ensuring that this workgroup begins its work quickly in hopes of reducing the number of admissions of children to our state schools.

Respectfully,

Colleen Horton

Copy to: Addie Horn, Commissioner, DADS
Marc Gold, Promoting Independence, DADS

HHSC's Response to the Children's Policy Council



TEXAS HEALTH AND HUMAN SERVICES COMMISSION

ALBERT HAWKINS
EXECUTIVE COMMISSIONER

October 2, 2007

Colleen Horton, Chair
Children's Policy Council
University of Texas at Austin
Texas Center for Disability Studies
10100 Burnet Road, Bldg. 137, Suite 1.154
Austin, TX. 78758

Dear Ms. Horton:

Thank you for your letter of September 10, 2007 requesting that the Children's Policy Council participate in a workgroup regarding children in state schools. As you are aware, at the Promoting Independence Advisory Committee Meeting on August 24, 2007, Commissioner Horn committed to having such a workgroup established. The Health and Human Services Commission (HHSC) agreed to participate in the workgroup and delegated the convening of the workgroup to the Department of Aging and Disability Services (DADS). Marc Gold, Promoting Independence staff at DADS, has made initial contacts with representatives from health and human services agencies, and consumer and advocacy groups, including the Children's Policy Council, requesting their participation. He is coordinating these activities with Audrey Deckinga, Senior Policy Advisor at HHSC.

Please let me know if you have any questions or need additional information. Audrey Deckinga, HHSC Senior Policy Advisor, is serving as the lead staff on this matter and can be reached at (512) 424-6556 or by e-mail at Audrey.Deckinga@hhsc.state.tx.us.

Sincerely,

Charles E. Bell, M.D.
Deputy Executive Commissioner for Health Services

cc: Commissioner Adelaide Horn
Marc Gold, Promoting Independence
Audrey Deckinga, Senior Policy Advisor

P. O. Box 13247 • Austin, Texas 78711 • 4900 North Lamar, Austin, Texas 78751

Children in State Schools Workgroup

Membership

| <u>Representative</u> | <u>Organization/Self</u> |
|-----------------------|---|
| Mike Bright | The Arc of Texas |
| Ken Collins | MHMR Authority of Harris County |
| Susanne Elrod | Texas Council of Community MHMR Centers, Inc. |
| Colleen Horton | University of Texas, Center for Disability Studies |
| Louise Lynch | Austin-Travis County MHMR Center |
| Susan Payne | Parent Association for the Retarded of Texas, Inc. (PART) |
| Sandra Reeves | PART |
| Nancy Rosenau | EveryChild, Incorporated |
| Carole Smith | Private Providers Association of Texas (PPAT) |
| Karen Yeaman | Parent |

Diagnostic Information for Persons Under the Age of 22

Of the 152 individuals under age 22 admitted during Fiscal Year 2007, 72 individuals, or 47%, had a diagnosis of mild mental retardation, 46 individuals, or 30%, had a diagnosis of moderate mental retardation, 23 individuals, or 15%, had a diagnosis of severe mental retardation, 7 individuals, or 5%, had a diagnosis of profound mental retardation, and 4 , or 3%, had a diagnosis of unspecified mental retardation.

These 152 individuals were determined eligible for admission by the MRA or by the court system under the Family Code or Code of Criminal Procedures. For admission under the PMRA, the individual was determined eligible based on complex medical needs or the frequency and intensity of behaviors or a combination of behaviors.

Of the 152 individuals, 24, or 16%, had a diagnosis of autism or pervasive developmental disorder and 86, or 57%, had a co-occurring diagnosis of mental illness. 73% of the 152 individuals had a diagnosis of autism/PDD or mental illness.

**Data from the Goals of Permanency Planning for Persons
Under the Age of 22 in Residence as of August 31, 2007**

Of the 154 individuals under the age of 18,

- 90 had a permanency planning goal of returning to the family home.
- 64 individuals had a permanency planning goal of living with an alternate family.

Of the 147 individuals ages 18 to 21,

- 93 had a goal of remaining in the current residence as determined by the individual and LAR
- 24 had a goal of moving to another living arrangement determined by the individual or LAR
- 21 had a permanency planning goal of returning to the family home
- 7 had a goal of living with an alternate family
- 2 individuals did not have a current permanency plan due to extended absence status from the facility.

**Age Breakdown on Children (0-21 years of age) in
State Schools as of August 31, 2007**

| Age | Number of Persons Served |
|-------|--------------------------|
| 8 | 2 |
| 9 | 2 |
| 10 | 3 |
| 11 | 2 |
| 12 | 5 |
| 13 | 10 |
| 14 | 18 |
| 15 | 32 |
| 16 | 41 |
| 17 | 39 |
| 18 | 33 |
| 19 | 34 |
| 20 | 43 |
| 21 | 37 |
| Total | 301 |

County of Residence and MRA of Children in State Schools

| County | Mental Retardation Authority | Under 18 | Age 18-21 | Total |
|-----------|--|----------|-----------|-------|
| ANDERSON | Anderson/Cherokee Community Enrichment Service | 2 | | 2 |
| ANGELINA | Burke Center | 1 | | 1 |
| ARANSAS | Coastal Plains Community MHMR Center | 1 | | 1 |
| ATASCOSA | Camino Real MHMR Center | 1 | | 1 |
| BELL | Central Counties Center for MHMR Services | 3 | | 3 |
| BEXAR | Bexar MRA | 5 | 7 | 12 |
| BOSQUE | Heart of Texas Region MHMR Center | | 1 | 1 |
| BOWIE | Community Healthcore | 1 | | 1 |
| BRAZOS | MHMR Authority of Brazos Valley | 5 | | 5 |
| BROWN | Center for Life Resources | | 1 | 1 |
| CAMP | Lakes Regional MHMR Center | 1 | | 1 |
| CASS | Community Healthcore | 2 | | 2 |
| CHEROKEE | Anderson/Cherokee Community Enrichment Service | 1 | | 1 |
| CHILDRESS | Helen Farabee Center | 1 | | 1 |
| COLEMAN | Center for Life Resources | 1 | | 1 |
| COLLIN | Life Path System | 1 | 1 | 2 |
| CROSBY | Lubbock Regional MHMR Center | | 1 | 1 |
| DALLAS | Dallas MetroCare | 10 | 2 | 12 |
| DENTON | Denton County MHMR Center | 2 | 1 | 3 |
| EL PASO | El Paso Community MHMR | 3 | 3 | 6 |
| ELLIS | Lakes Regional MHMR Center | 4 | 1 | 5 |
| FORT BEND | Texana Community MHMR Center | 2 | | 2 |
| GILLESPIE | Hill Country Community MHMR Center | 1 | | 1 |
| GRAY | Texas Panhandle MHMR Authority | 1 | | 1 |
| GRAYSON | MHMR Services of Texoma | 2 | 1 | 3 |
| GREGG | Community Healthcore | 2 | | 2 |
| HALE | Central Plains Center for MHMR & Substance Abuse | | 1 | 1 |
| HARDIN | Spindletop MHMR Services | 1 | | 1 |
| HARRIS | MHMR Authority of Harris County | 20 | 7 | 27 |
| HENDERSON | Andrews Center | | 1 | 1 |
| HIDALGO | Tropical Texas Center for MHMR | 1 | 2 | 3 |
| HOCKLEY | Lubbock Regional MHMR Center | | 1 | 1 |
| HOWARD | West Texas Centers for MHMR | | 1 | 1 |
| JEFFERSON | Spindletop MHMR Services | 4 | 1 | 5 |
| JOHNSON | Pecan Valley MHMR Region | 1 | | 1 |
| KAUFMAN | Lakes Regional MHMR Center | 2 | | 2 |
| LAMAR | Lakes Regional MHMR Center | 1 | | 1 |
| LIBERTY | Tri-County MHMR Services | 1 | | 1 |
| LUBBOCK | Lubbock Regional MHMR Center | 4 | | 4 |
| MCCULLOCH | Center for Life Resources | 1 | | 1 |
| MIDLAND | Permian Basin Community Center for MHMR | 1 | | 1 |

| County | Mental Retardation Authority | Under 18 | Age 18-21 | Total |
|-------------|-------------------------------------|----------|-----------|-------|
| MONTGOMERY | Tri-County MHMR Services | | 1 | 1 |
| NACOGDOCHES | Burke Center | 2 | | 2 |
| NAVARRO | Lakes Regional MHMR Center | 1 | 1 | 2 |
| NUECES | Nueces County MHMR Community Center | | 1 | 1 |
| PARKER | Pecan Valley MHMR Region | 1 | | 1 |
| RED RIVER | Northeast Texas MHMR Center | 1 | | 1 |
| ROCKWALL | Lakes Regional MHMR Center | 1 | | 1 |
| RUSK | Community Healthcore | 1 | | 1 |
| SAN JACINTO | Burke Center | 2 | | 2 |
| TARRANT | Tarrant County MHMR Services | 2 | 1 | 3 |
| TAYLOR | Betty Hardwick Center | 1 | 2 | 3 |
| TOM GREEN | MHMR Services for Concho Valley | 2 | | 2 |
| TRAVIS | Austin/Travis County MHMR Center | 1 | 1 | 2 |
| WALKER | Tri-County MHMR Services | 1 | | 1 |
| WALLER | Texana Community MHMR Center | 1 | | 1 |
| WASHINGTON | MHMR Authority of Brazos Valley | 1 | | 1 |
| WICHITA | Helen Farabee Center | 1 | | 1 |
| WISE | Helen Farabee Center | | 1 | 1 |
| | Total | 111 | 41 | 152 |

**Independent School District (ISD) Services
Whether Education Services are Provided on Campus or at the ISD**

Of the 301 individuals under the age of 22, served as of 8/31/07, 261 were receiving ISD education services. Of the 261 individuals, 196, or 75%, received services at the ISD and 65, or 25%, received those services on campus.

Length of Stay

- **Additional length of stay information for the 301 individuals under the age of 22 years residing in state schools, as of 8/31/07.**

The average length of stay for the 301 individuals was 1.7 years. The average length of stay for the 154 individuals under the age of 18 was 1.3 years and the average length of stay for the 147 individuals ages 18 to 21 was 2.2 years.

- **The median actual length of stay for the 301 individuals was 1.2 years. The median actual length of stay for the 154 individuals under the age of 18 was 0.9 years and the median actual length of stay for the 147 individuals ages 18 to 21 was 1.9 years.**

| Years | Age 0-17 | Age 18-21 | Total |
|----------------------|------------|------------|------------|
| Less than One Year | 84 | 40 | 124 |
| One to Three Years | 64 | 86 | 150 |
| Four to Six Years | 6 | 16 | 22 |
| Seven to Eight Years | 0 | 5 | 5 |
| Total | 154 | 147 | 301 |

Order for Commitment Language

ORDER FOR COMMITMENT

Sec. 593.052. (a) A proposed resident may not be committed to a residential care facility unless:

(1) the proposed resident is a person with mental retardation;
(2) evidence is presented showing that because of retardation, the proposed resident:

(A) represents a substantial risk of physical impairment or injury to himself or others; or

(B) is unable to provide for and is not providing for the proposed resident's most basic personal physical needs;

(3) the proposed resident cannot be adequately and appropriately habilitated in an available, less restrictive setting; and

(4) the residential care facility provides habilitative services, care, training, and treatment appropriate to the proposed resident's needs.

(b) If it is determined that the requirements of Subsection (a) have been met and that long-term placement in a residential care facility is appropriate, the court shall commit the proposed resident for care, treatment, and training to a community center or the department when space is available in a residential care facility.

(c) The court shall immediately send a copy of the commitment order to the department or community center.

Criteria for Commitment of a Minor to State MR Facility under the PMRA Language

§2.257. Criteria for Commitment of a Minor to a State MR Facility Under the PMRA.

Effective: January 1, 2001

(a) In accordance with THSC, §§593.003, 593.052, and 593.041, a minor may be committed to a state MR facility for residential services only if:

(1) the minor is determined to have mental retardation in accordance with §415.155 of this title (relating to Determination of Mental Retardation (DMR));

(2) the minor, because of mental retardation:

(A) represents a substantial risk of physical impairment or injury to self or others; or

(B) is unable to provide for and is not providing for the minor's most basic personal physical needs;

(3) the minor cannot be adequately and appropriately habilitated in an available, less restrictive setting;

(4) the state MR facility provides habilitative services, care, training, and treatment appropriate to the minor's needs; and

(5) a report by an MRA's IDT recommending the placement has been completed in accordance with §412.264 of this title (relating to IDT Recommendation Concerning the Commitment of an Adult or a Minor or the Regular Voluntary Admission of an Adult to a State MR Facility Under the PMRA) during the six months preceding the date of the commitment hearing.

(b) A minor represents a substantial risk of physical impairment or injury to self or others or is unable to provide for and is not providing for the minor's most basic personal physical needs, as referenced in subsection (a)(2) of this section, if:

(1) the minor's IQ is four or more standard deviations below the mean, (i.e., in the severe or profound range of mental retardation);

(2) the minor's ICAP service level equals:

(A) 1, 2, 3, or 4; or

(B) 5 or 6 and the minor:

(i) has extraordinary medical needs that would require direct nursing treatment for at least 180 minutes per week if the minor's caregiver were not providing such treatment; or

(ii) exhibits incidents of dangerous behavior that would require intensive staff intervention and resources to prevent serious physical injury to the minor or others if the minor's caregiver were not managing such incidents; or

(3) the minor meets other objective measures as determined by the department.

(c) A determination that a minor cannot be adequately and appropriately habilitated in an available, less restrictive setting, as referenced in subsection (a)(3) of this section, may not be made unless:

(1) a CRCG held a staffing concerning the minor and provided information to the minor's family about available community supports that could serve as an alternative to admission of the minor to a state MR facility;

(2) available community supports that could serve as an alternative to admission of the minor to a state MR facility were attempted; and

(3) if there are indications that the minor may have a serious emotional disturbance, the minor was assessed by a children's mental health professional to determine if a serious emotional disturbance exists and services to address the serious emotional disturbance were attempted.

**Model for Supplemental Add-On Services for Children
with Intense Behavioral Support Needs**

1. Positive Behavior Support Specialists:

- positive behavior support plan development.
- supervision and on-going support for plan implementation.
- supervision of positive behavior support mentor/aide
- training.

2. In-home Behavior Mentors/Aides

- provide one-on-one in-home support to child and family.
- intended to supplement services offered in HCS or other waivers.
- available to both birth and foster/companion care families (it is not a duplicative service).
- reimbursement rate higher than standard habilitation/attendant rates.
- supervision by the Positive Behavior Support Specialist.

3. Flexible Community Supports

- available to children and families leaving institutions as well as for preventing institutionalization.
- individualized services that children and families may need to ensure family stability and create a healthy environment for the child and family.
- may also include coverage for costs directly related to the challenging behavior exhibited or to its prevention (e.g., expenses for home and household damage, purchase of sturdy or adapted furnishings, activities or materials needed for activities).

4. Additional 30 days of respite per year

- sufficient respite opportunities are critical to the health, well-being, and sustainability of the family.
- must be made available to birth family or foster/companion care family caring for the child.

5. Crisis Support

- flexible use of funding that would otherwise be available for institutional care.
- emergency in-home intervention to diffuse crisis.
- available until the crisis subsides (may be a few hours, may be over-night).
- includes emergency in-home or out-of-home respite.

- offers the time needed for the family to re-group, recover, and access any additional training support they may need.
- emergency living arrangements for children with significant disabilities to avoid institutionalization while a family is being sought or services are being arranged.

6. Therapeutic Treatment Foster Care

- intense foster care service available at a higher reimbursement rate for those children identified with significant behavioral/mental health challenges that have resulted in or are likely to result in institutionalization.
- provided by specially trained, experienced families.
- higher reimbursement rate is intended to decrease as behavior improves.
- does not require the child to change placement as support needs decrease.

7. Specialized Case Management/Service Coordination

- specialized case management service provided by service coordinators at the MRA who have experience in permanency planning and positive behavioral supports.
- service coordinators providing this specialized case management would have limited caseloads that would allow them the time necessary to support the child and family.