

**PROMOTING
INDEPENDENCE
ADVISORY COMMITTEE
2006 STAKEHOLDER REPORT**

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

The 2006 Promoting Independence Advisory Committee (PIAC) Stakeholders Report is submitted to the Executive Commissioner of the Health and Human Services Commission (HHSC) as required by section 532.02441(i), Government Code¹. This report provides a status update to the 2004 Promoting Independence Plan (Plan), and policy recommendations for HHSC to consider in its 2006 revised Plan to be submitted to the Governor and the 80th Legislature in December.

The Promoting Independence Advisory Committee (Committee) has met on a quarterly basis during FY 2006 to:

- continue the work of the Promoting Independence Initiative (Initiative);
- coordinate and oversee the implementation of the Promoting Independence Plan;
- provide on-going policy discussions on issues pertaining to community integration; and
- recommend policy initiatives for the updated Promoting Independence Plan (December 2006).

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; and
- 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 continues to be a HHSC project, daily management of the Initiative was delegated to DADS in October 2004.²

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;

¹ 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.

² Health and Human Services Circular (see Appendix A or access the Circular at <http://www.hhs.state.tx.us/news/circulars/C-002.shtml>).

- 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.

The Committee was very encouraged by the action of the 79th Legislative Session (2005) in its appropriations to significantly reduce interest lists for community-based programs. However, the Committee is concerned about the Legislative Budget Board's (LBB) 2006 legislative appropriations request (LAR) instructions which require a 10% reduction in the baseline for all non-entitlement programs. This 10% reduction would impact the 1915(c) waiver programs and eliminate any gains made by the 79th Legislature's action to reduce interest lists. The LBB's action constitutes a barrier to the state's current Plan and to recommendations made in this report by the current Committee.

The Committee believes that the state is not yet in full compliance with the *Olmstead* decision or its own Promoting Independence Plan. Even with the additional appropriations made by the 79th Legislature, 100,931 individuals remain on the Texas Department of Aging and Disabilities' waiver interest lists³. 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 services in an institutional setting. As of June 30, 2006, 69,654 Texans are being served in an institution⁴ as compared to 73,246 in 2004 (see Appendix B). 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 may access the "money follows the person" policy to receive community-based services and individuals in large (14 or more beds) intermediate care facilities for persons with mental retardation (ICFs/MR) and state schools may receive expedited access to the home and community-based services (HCS) program (see section on Community Transition Policy). However, for individuals residing in all other institutional settings, and for those who are in the community but are at risk of institutionalization, they 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.

³ Source: DADS' website as of June 30, 2006. See Section on Interest List Reduction.

⁴ 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 Persons with 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.

The Committee submitted seven major funding recommendations to Executive Commissioner Hawkins on July 3, 2006 prior to HHSC' submittal of its LAR. The Committee's top priorities for the 2008-2009 biennium are:

Interest List Reduction

- The Committee recommends that the 80th Legislature appropriately fund long-term services and supports' community-based based programs in order to eliminate the interest list with a 10-year initiative.

Workforce and Provider Network Stabilization

- fully fund non-governmental provider rates according to established methodologies, recognizing inflation factors affecting services providers such as high gasoline prices, as well as the growing nursing shortage and tightening labor markets; and fund the specialized nursing rate established by rule in 2003 for 1915(c) programs;
- equalize wage and benefits for non-governmental direct support staff with appropriate state employee pay grade (wage parity); and
- 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.

Even though the Committee is underscoring its two top priorities, all recommendations are important. Overall the Committee proposes 24 recommendations for inclusion in the 2006 Plan which are listed in *Recommendations for Systems Change*.

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

BACKGROUND

The background and history of the Promoting Independence Initiative is well-documented in previous Promoting Independence reports and plans. These documents may be accessed on both the Health and Human Services Commission (HHSC) and the Texas Department of Aging and Disability Services (DADS) websites.⁵

Please reference the December 2004 **Revised Texas Promoting Independence Plan: Introduction**, page 14; and **Background**, pages 15-18, 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 Legislative Session (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>
- 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.

⁵ http://www.hhsc.state.tx.us/about_hhsc/reports/search/search_LTC.asp; <http://www.dads.state.tx.us/business/pi/index.html>.

COMMUNITY SERVICES 2006-2007 APPROPRIATIONS AND 2008-2009 LEGISLATIVE APPROPRIATIONS REQUEST (LAR)

The Committee supports the two exceptional items requested in the Health and Human Services Commission's (HHSC) LAR regarding:

- **Item Priority 2: restoration of the base funding.** This exceptional item would restore the ten percent reduction from the base funding request required by the Legislative Budget Board's (LBB) legislative appropriations request (LAR) instructions. Per HHSC's Description/Justification: funding reductions would reduce the ability to maintain program accountability and oversight. This 10% reduction would negatively impact the state's ability to meet its Plan goals.
- **Item Priority 5: reduce Health and Human Services waiting/interest lists for demographic growth.** This exceptional 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 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 - Adult Community Mental Health, Child and Adolescent Community Mental Health, and Children with Special Health Care Needs (CSHCN).

The Committee supports all the health and human services agencies' requests for restoration of the base funding.

The Committee supports the Texas Department of Assistive and Rehabilitation Services' (DARS) exceptional items pertaining to:

- **Item Priority 3: establish two new centers for independent living in un-served areas, each at \$250,000 per year.** Statewide, there are gaps in the service areas covered by Centers for Independent Living (CIL), and
- **Item Priority 4: bring all 21CILs up to \$250,000 per year.** There are 21 current CILs, of these, ten fall below the nationally-recognized operating minimum of \$250,000 per year.

The Committee requested that appropriation comparisons of the past biennium and DADS' 2008-2009 LAR regarding community services and supports be included in this report. It is noted that according to DADS' LAR, the FY 08-09 "baseline" appropriations request will serve an estimated 279,300 individuals in Texas with 195,000 (or 70 percent) of these individuals being served in community settings. The "baseline" request takes into account the 10% reduction in non-entitlement Medicaid program as directed by the LBB.

TABLE 1

DADS Waiver and Attendant Care Appropriations and Requested Funds

	FY06 Appropriated All Funds	FY07 Appropriated All Funds	FY08 Requested All Funds	FY09 Requested All Funds
CBA	\$454,026,989	\$503,106,651	\$405,445,007	\$343,351,767
HCS	\$413,386,000	\$471,256,202	\$516,839,273	\$437,442,411
CLASS	\$79,964,580	\$98,654,722	\$137,562,784	\$117,097,680
Deaf-Blind	\$6,680,603	\$7,352,976	\$7,333,264	\$7,333,264
MDCP	\$22,057,753	\$32,583,755	\$39,180,068	\$39,180,068
CWP	\$3,804,701	\$3,910,130	\$3,931,699	\$3,931,699
Money Follows the Person	\$65,538,125	\$78,684,029	\$97,416,070	\$88,353,996
TxHomeLiving	\$20,136,474	\$20,391,206	\$11,992,865	\$11,992,865
Total Waivers	\$1,065,595,225	\$1,215,939,671	\$1,219,701,030	\$1,048,683,750
Primary Home Care	\$533,324,657	\$589,969,366	\$421,718,642	\$365,716,526
Community Attendant Services	\$372,475,886	\$410,860,003	\$404,015,598	\$370,686,037

Notes

1. FY 08-09 LAR reflects expansion of STAR+Plus and implementation of Integrated Care Management by HHSC; programs impacted are CBA and PHC
2. FY 07 covers an 11 month period; FY 08 a 13 month period; and FY 09 an 11 month period.

Source Documents:

- FY 06-07 Appropriated – ABEST printout for 06-07 appropriated.
- FY 08-09 Requested – DADS Legislative Appropriations Request (Base request plus Exceptional-Items #1 and #2)

TABLE 2

DADS Waiver and Attendant Care Average Monthly Caseload Appropriate/Requested

	FY 06 Avg. #/month appropriated	FY 07 Avg. #/month appropriated	FY08 Avg.#/month requested	FY 09 Avg. #/ month requested
CBA	26,867	28,401	28,705	28,705
HCS	8,970	8,970	12,301	12,301
CLASS	2,228	3,049	3,460	3,460
Deaf-Blind	148	156	156	156
MDCP	1,320	1,993	2,330	2,330
CWP	194	199	199	199
Money Follows the Person	4,098	4,756	6,027	6,448
TxHomeLiving	2,811	2,823	2,163	2,163
Total Waivers	46,636	50,347	55,341	55,762
Primary Home Care	68,904	74,749	52,418	53,668
Community Attendant Services	49,206	53,156	49,849	53,555

Note: See Table 1

Source Documents: See Table 1

TABLE 3

**DADS Waiver and Attendant Care Expenditures
Expended/Projected/Requested Funds**

	FY05 Expended All Funds	FY06 Projected All Funds	FY07 Requested All Funds
CBA	\$398,015,503	\$405,242,151	\$369,050,191
HCS	\$345,605,948	\$397,245,158	\$419,411,093
CLASS	\$64,414,206	\$72,499,482	\$110,143,160
Deaf-Blind	\$6,057,134	\$6,092,418	\$7,240,326
MDCP	\$16,118,257	\$16,768,587	\$37,902,093
CWP	\$3,545,567	\$3,249,085	\$3,931,700
Money Follows the Person	\$54,148,642	\$76,044,106	\$75,158,532
TxHomeLiving	\$5,893,064	\$10,450,442	\$12,113,469
Total Waivers	\$893,798,321	\$987,591,429	\$1,034,950,564
Primary Home Care	\$459,641,627	\$481,608,537	\$384,800,570
Community Attendant Services	\$324,019,248	\$329,932,359	\$317,365,979

Note: See Table 1.

Source Documents

- FY 05-07 – DADS 08-09 LAR
- FY 06 Budgeted caseload is an annual average
- FY 07 Projected is an End-Of-Year Total

TABLE 4

**DADS Waiver and Attendant Care Average Monthly Caseload
Actual/Projected/Budgeted/End-Of-Year**

	FY05 Avg. # per month Actual	FY06 Avg. # per month Projected	FY07 Budgeted EOY Total
CBA	25,308	27,634	24,745
HCS	9,262	10,915	12,301
CLASS	1,795	2,639	3,460
Deaf-Blind	134	152	156
MDCP	1,023	1,657	2,330
CWP	170	196	199
Money Follows the Person	3,467	4,927	5,417
TxHomeLiving	1,869	2,160	2,160
Total Waivers	43,028	50,280	50,768
Primary Home Care	62,069	64,373	55,957
Community Attendant Services	44,928	44,747	46,663

Note: See Table 1

Source Documents: See Table 3.

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 a ten-year plan to eliminate the current interest lists plus any projected demographic growth.

The 79th Texas Legislature (2005) made important progress in serving additional persons from the Medicaid waiver and non-Medicaid community services interest lists. Senate Bill 1 provides \$97.9 million in general revenue funds (\$18.4 million for demographic growth and \$79.5 million for interest list reduction) to address the interest lists at DADS. Nevertheless, Tables 5 and 6 below demonstrate the on-going need for significant funding to give individuals a choice in receiving services in a community setting.

Interest lists for community-based programs are managed either locally or statewide, depending on the program. The 1915(c) programs accounted for in this report are:

- Community-based Alternatives (CBA);
- Community Living Assistance and Support Services (CLASS);
- Deaf/Blind with Multiple Disabilities (DBMD);
- Home and Community Services (HCS); and
- Medically Dependent Children's Program (MDCP).

DADS was appropriated funds in the 2006-2007 biennium to authorize enrollment for 8,891 individuals in these Medicaid waiver program services. 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.

The following tables are from DADS' website and reflect data through June 30, 2006.

TABLE 5

Interest List (IL) Reduction Summary Fiscal Years 2006-2007 (Data through June 30, 2006)						
	CBA	CLASS	DBMD	MDCP	HCS	Total
Number of Clients on Interest List — Legislative Appropriations Request (LAR) submission (November 2004)	66,787	13,453	18	8,604	26,698	115,560
Total Released/Removed from Interest List						
<i>Enrolled (in program)</i>	<i>5,977</i>	<i>327</i>	<i>4</i>	<i>92</i>	<i>1,205</i>	<i>7,605</i>
<i>In the Pipeline (being processed)</i>	<i>6,852</i>	<i>1,969</i>	<i>21</i>	<i>751</i>	<i>287</i>	<i>9,880</i>
<i>Denied/Declined (to be enrolled)</i>	<i>21,457</i>	<i>557</i>	<i>9</i>	<i>717</i>	<i>532</i>	<i>23,272</i>
Net Remaining from LAR submission (November 2004)						
	32,501	10,600	-16	7,044	24,674	74,803
Percent reduction from 2004 LAR submission	51.3%	21.2%	188.9%	18.1%	7.6%	35.3%
Added to IL since 2004 LAR submission	12,817	4,491	29	3,067	5,724	26,128
Current Interest List — June 30, 2006						
	45,318	15,091	13	10,111	30,398	100,931*
* Count is duplicated. The unduplicated individual count is 88,864						

Table 6 reflects the amount of time an individual has been on an interest list prior to being offered a “slot” in a specific 1915(c) waiver program.

TABLE 6

Time on Interest List by Program Percentage of overall population (Data through June 30, 2006)					
TIME	CBA	CLASS	DBMD	MDCP	HCS
0 to 1 year	51.0%	20.8%	69.2%	24.1%	17.8%
1-2 Years	26.3%	18.7%	30.8%	23.6%	15.1%
2-3 years	13.4%	18.8%	0.0%	24.0%	14.3%
3-4 years	9.3%	18.6%	0.0%	20.6%	13.4%
4-5 years	0.0%	10.9%	0.0%	7.7%	12.6%
5 years +	0.0%	12.4%	0.0%	0.0%	26.8%

RECOMMENDATIONS FOR SYSTEMS CHANGE: Fiscal Years 2008-2009 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 significant 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 D) and Senate Bill 367 (77th Legislative Session, Regular, 2001). 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) 2008-2009. *Interest List Reduction* and *Workforce and Provider Network Stabilization* are the top priorities.

For the 2006 Report, recommendations are grouped in seven general categories in contrast to previous reports that made recommendations to specific state agencies. It is the expectation that the Health and Human Services Commission (HHSC) will make agency assignments. Within each category, the major fiscal initiatives are listed first with more extensive background information. The remaining categorical recommendations are made in no specific order of importance. All Committee members have agreed to the following recommendations except where noted.

PROGRAM FUNDING: Recommendations to help fully-fund community services in order for individuals to have a choice in living in the most integrated setting.

Interest list reduction – Ten year plan for elimination

The 79th Legislature, through Senate Bill (SB) 1, Article II, significantly reduced the number of individuals who will be on DADS' interest lists. SB 1 provided \$ 97.9 million in General Revenue (GR) funds (\$18.4 million GR for demographic growth and \$79.5 million GR for reduced waiting lists) to address the interest lists at DADS, serving an estimated additional caseload of 9,360 by the end of Fiscal Year (FY) 2006-07 biennium. DADS' waiver programs and other community programs were impacted by the appropriation. This amount produced an approximate 10% reduction on the overall number of individuals on interest lists. The Promoting Independence Advisory Committee's top priority is that the emphasis on interest list reduction be continued and enhanced by the 80th Legislature.

As of June 30, 2006, there continued to be 100,931 individuals⁶ on the waiver interest lists. For purposes of this accounting, the waiver programs include: Community Based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Deaf-Blind-Multiple Disability Waiver (DBMD), Deaf Blind Multiple Disabilities (DBMD); Medically Dependent Children's Program (MDCP); and Home and Community-based Services (HCS).

The Committee recommends that the 80th Legislature appropriately fund all long-term services and supports' community-based based programs in order to eliminate the interest list with a 10-year initiative. The Committee emphasizes that no one particular program should be given preference over another and that programs should not be required to compete with each other for additional funding.

This overarching initiative must include individuals on the interest lists and projected demographic growth. Implementation of this recommendation will ensure that, by the end of the state fiscal year 2017, no new applicant for community-based services will have to wait more than 24 months to receive services.

Expansion of the “money follows the person” policy for individuals with intellectual disabilities (developmental disabilities/mental retardation) who reside in intermediate care facilities for persons with mental retardation (ICF/MR).

Texas originated of the “money follows the person” (MFP) policy, now codified as Texas Government Code, section 531.082. This state policy allows an individual who lives in a nursing facilities (NF) to relocate to the community in order to receive his or her long-term services and supports, predominately delivered through 1915(c) waiver programs. 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 persons who reside in intermediate care facilities for persons with mental retardation (ICFs/MR). The reasons for not having this comparable policy are complex. Individuals in state schools and large ICFs/MR (14+ beds) do have an opportunity to access the Home and Community-based Services (HCS) program within six months and twelve months respectively because of the Promoting Independence Plan, however the funding is not transferred.

The Committee recommends that the state expand the current MFP policy to include individuals who want to leave ICFs/MR. The state should pursue this both as a state policy and submit an application under the (DRA). Policy for this initiative should be developed with stakeholder input and the state should take into consideration ICF/MR occupancy rates, facility size, impact on provider networks and assessing how access to enhanced federal funding under the DRA affects the budget request.

Fund an initiative to establish transition funds that would allow ICFs/MR to downsize or to close.

⁶ This figure represents a duplicated count of individuals whose names appear on multiple interest lists. The unduplicated count is 88,864.

Current policy governing closure and/or downsizing of a large ICF/MR requires the process to be cost neutral. This limitation, in conjunction with other factors, such as funds to support the transition for both consumers and providers, has precluded more active consideration by facility operators.

In order to promote community integration and individual choice, the Committee recommends that the state develop a comprehensive plan to support the closure or downsizing of large ICFs/MR. The plan must address transition funds to support the initiative as well as funds to assure the ongoing cost of services for those individuals moving to the community and for those individuals who are still residing in the facility that is downsizing/closing. Any plan must involve affected stakeholders in its development, and include a review of the information in the October 26, 2002, House Bill 966 Report in addition to other factors and data critical to the successful achievement of the plan.

Fully fund the Resiliency and Disease Management (RDM) program administered through the Texas Department of State Health Services (DSHS).

DSHS has recognized the importance of Promoting Independence (PI) and those individuals who have been hospitalized for over a year as part of the PI population. DSHS has also acknowledged that its PI focus should incorporate those individuals who are at risk of hospitalization and those 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-day period. Nevertheless, the 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 program regardless of diagnosis and that generally adults are appropriate for service level 4 of RDM. The current appropriations are not adequate to meet the capacity of the state and a significant number of individuals are being recommended for level 4 but are actually enrolled into a less intensive and expensive level of services.

According to the DSHS strategic plan, an estimated 900,000 adults in Texas met the DSHS mental health priority population definition in 2005; approximately 450,000 are estimated to have the greatest need (targeted priority population). DSHS program service utilization data indicates that less than half of those with the greatest need received mental health services from the state authority (173,983) in 2005.

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

Increase funding for technology assistance in order that individuals may remain in the community.

The advent of technology has impacted all of our lives. Technology assistance is proving to be another tool in allowing individuals to live independently through simple monitoring through medical and functional supports.

Home technology assistance is an area of growing interest in home and community settings. The Quality Improvement Organizations (QIO) have been instructed by Centers for Medicare and Medicaid Services (CMS) to include technology assistance as part of their eighth scope of work in order to attain the goal of allowing homecare individuals to remain in their homes and foster individual self-care and independence. Studies show other benefits to include a reduction in unscheduled physician office visits; emergency room visits; fewer long-term care placements, and fewer hospitalizations.⁷

In Texas, Texas Tech University Health Science Services Center and the University of Texas Medical Branch have used telemedicine extensively in the correctional health care setting and have shown the technology to be medically efficacious. In January 2006, DADS initiated a Telemedicine Pilot project at Brenham and Richmond State Schools to determine the effectiveness of using technology with consumers at the state schools. The preliminary outcomes are positive.

The Committee recommends that the state pursue creative initiatives, with adequate funding, in the use of technology assistance that will increase the ability of an individual to remain in the community.

WORKFORCE AND PROVIDER NETWORK STABILIZATION: The ability of the state to fully achieve the objectives of the Plan is threatened by the on-going low reimbursement paid to providers of services and consequent low wages and lack of benefits offered to direct support staff. Ultimately, it is the direct support staff who assist individuals who are aging and/or with disabilities to live independently in the community.

Provide full funding of non-governmental provider rates according to established methodologies, recognizing inflation factors affecting service providers such as high gasoline prices, as well as the growing nursing shortage and tightening labor markets; and fund the specialized nursing rate established by rule in 2003 for 1915(c) waiver programs.

Across-the-board rate cuts in Fiscal Years (FY) 2004 and 2005, and no rate increase for several years, have made it difficult for providers to keep up with inflation, respond to wage pressures, or to make quality of service improvements. High staff turnover results in lower quality of service and in additional expenses because of the continuous recruiting, hiring and training.

Nursing rates are under-funded in the 1915(c) waiver programs and the specialty nursing rate established in a 2003 rule has never been funded. This has created difficulty in finding appropriate staff to assist clients with highly specialized needs.

Equalize wage and benefits for non-governmental direct support staff with appropriate state employee pay grade (wage parity).

There are large disparities in rates for direct support staff across community programs. Total base overall rate and the wage and benefit portion for each program is:

⁷ Kaiser Permanente Medical Center's pilot tele-home health project. *Telemedicine Today*, 4(7): 16-1,19

- *Primary Home Care (PHC) Priority*: overall hourly rate range = \$9.93 - \$10.93; attendant wage/benefit/payroll taxes portion of rate range = \$7.59 to \$8.59;
- *PHC Nonpriority*: hourly rate range = \$8.36 - \$9.36; attendant wage/benefit/payroll taxes portion of rate range = \$6.27 to \$7.27;
- *Community-based Alternatives (CBA)*: overall hourly rate range = \$9.93 - \$10.93; attendant wage/benefit/payroll taxes portion of rate range = \$7.17 - \$8.18;
- *Community Living Assistance and Support Services (CLASS)*: overall hourly rate range = \$12.02 - \$13.02; attendant wage/benefit/payroll taxes portion of rate range = \$8.90 - \$9.90;
- *Home and Community-based Services (HCS)*: overall hourly rate = \$15.49⁸; attendant wage/benefit/payroll taxes portion of rate = \$14.35;
- *Texas Home Living (TxHmL)*: rate = \$19.63; attendant wage/benefit/payroll taxes portion of rate = \$14.35⁹

The average starting hourly salary for direct care workers in state mental retardation facilities is \$9.44 per hour¹⁰. The state does not begin to provide health and other insurance benefits until the first day of the calendar month that begins after the 90th day after the date the employee performs services for a state agency. Therefore, the average hourly value of benefits for a full-time direct care worker is \$5.38 prior to meeting the 90-day eligibility criteria and after meeting eligibility it is \$7.63.¹¹ The total average starting attendant/benefit/payroll hourly salary for those workers prior to the 90 day eligibility criteria is \$14.82 and after meeting eligibility it equals \$17.07.

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.

The General Appropriations Act for the 2000-2001 state fiscal biennium authorized the Attendant Compensation Rate Enhancement to give community care providers an incentive to increase compensation for their attendants.¹²

The Attendant Compensation Rate Enhancement is an optional program wherein providers agree to maintain a certain level of attendant compensation spending in return for increased attendant compensation revenues.

The Attendant Compensation Rate Enhancement is available to providers in the following programs: PHC, CBA, CLASS, DBMD, Day Activity and Health Services (DAHS), Residential Care (RC) and Assisted Living/Residential Care (AL/RC). Due to limited funding, participation in the Attendant Compensation Rate Enhancement has been frozen since September 2002. Recent rule amendments limit enrollment in the enhancement for providers who have not met their spending requirements. It is anticipated that these amendments will free enough funding to allow the enrollment freeze to be lifted for FY 2007.

⁸ Some of the operations/administration costs for this service is contained in the case management rate that is separate from this rate.

⁹ Data provided by the Health and Human Services Commission's Rate Setting Division

¹⁰ Source: SAO State Classification Office, entry level starting salary

¹¹ Source: SAO Report No. 06-703

¹² Acts 1999, 76th Leg., R.S., ch. 1589, Art II, §37 (appropriation to Texas Department of Human Services).

SERVICE IMPROVEMENT: There are opportunities within current appropriations and legislation to improve the current service system.

Investigate the feasibility of consolidating DADS' seven 1915(c) waiver programs and their services along functional need lines with consideration of service rates appropriate to the level of need of the individuals served.¹³ The investigation should examine efficiencies in administration; service definitions; and appropriate rate level for services.¹⁴

The 1915(c) waivers were developed independently beginning in 1983 with the Home and Community-based Services (HCS) waiver. Development of the subsequent six other waiver programs were based on diagnostic criteria as specific advocate communities requested community-based programming. One of the reasons for this approach to community development was the organization of the health and human services agencies prior to consolidation pursuant to House Bill 2292, 78th Legislature (2003). Individuals with mental retardation were served by legacy Texas Department of Mental Health and Mental Retardation and all other populations were served by legacy Texas Department of Human Services.

This developmental approach of the seven 1915(c) waiver programs has resulted in mutually exclusive administrative and policy decisions. The unintended consequences are differences in service definitions, regulatory expectations, and monitoring and billing guidelines. This program design requires providers to operate each program separately foregoing any opportunities for administrative efficiency. One example of this disparity is in the provision of case management where there are three different models.

An individual needing long term services and supports may apply for multiple programs and be placed on more than one interest list. This process is often confusing in accessing services and creates multiple administrative functions.

The Committee recommends that the state use historical information learned through the Consolidated Waiver pilot to help guide this investigation.

Develop the policy of “negotiated service plans” which will help alleviate the liability burden for home health agencies in order that they may better serve persons with complex needs in the community.

One of the barriers to community relocation is the perceived liability of home and community support services agencies (HCSSA) to provide health and safety services on a continuous twenty-four hours-a-day/seven-day-a-week basis. The most common citation quoted by a HCSSA to deny service is a DADS administrative rule which reads:

¹³ The seven 1915(c) waivers 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.

¹⁴ This recommendation was approved by a majority of the PIAC by an 8-2-1 vote. The two organizations who voted against this recommendation are: ARC of Texas, and the Private Providers Association of Texas. The Texas Health Care Association did not vote.

The agency must accept a client for home health services based on a reasonable expectation that the client's medical, nursing, and social needs can be met adequately in the client's residence. An agency has made a reasonable expectation that it can meet a client's needs if, at the time of the agency's acceptance of the client, the client and the agency have agreed as to what needs the agency would meet; for instance, the agency and the client could agree that some needs would be met but not necessarily all needs.¹⁵

The policy allows for a “negotiation” between the HCSSA provider and the client. The Committee recommends that DADS work with all stakeholders to ensure appropriate training of DADS staff and HCSSA providers of this ability to negotiate a service plan based on individual choice.

Investigate a regional management structure to improve access and utilization of the consumer-directed services (CDS) option.

CDS is a service option that allows individuals more choice and control in how they receive services. This option provides an individual the opportunity to control the hiring, managing, and firing of individuals who provide direct services. In addition, the individual has the opportunity to set wages and work schedules. This service option is available in all of DADS’ 1915(c) waiver programs (Texas Home Living and the Home and Community-based Services program will become effective January 1, 2007), the two Medicaid state plan attendant programs and the STAR+PLUS managed care program. Currently, DADS holds individual contracts with any willing CDS agency that meets DADS’ criteria.

There has been a low utilization of the CDS option in both of its formats other than in the CLASS waiver program. The Committee believes that part of the problem is the lack of a central systematic outreach and education process and the lack of appropriate incentives.

The Committee wants the principles of Self Determination to be incorporated in all the programs administered by Texas health and human services agencies and the CDS option as part of that delivery system. This delivery system should build on the current system but explore economic and program incentives to allow a balanced choice among home and community service and support delivery system options.

EXPAND INDEPENDENT LIVING OPPORTUNITIES AND RELOCATION ACTIVITIES:

Texas originated the “money follows the person” institutional transition policy. In order to help make these transitions successful and to provide enhanced assistance for persons with complex needs, it is necessary to expand the current support system array.

Addition of targeted case management (TCM) to the state plan or another mechanism to match general revenue dollars.

¹⁵ 40 TAC §97.401(b)

The Department of Aging and Disability Services (DADS) currently is appropriated \$1.3 million for state fiscal years 2006 and 2007, under strategy A.4.5: Promoting Independence Plan, for relocation activities. This strategy funds the relocation activities involved in supporting the “money follows the person” policy, which is codified under Government Code section 531.082. These activities include outreach to current nursing facility residents in order to help identify individuals who want to relocate to the community. Once identified, relocation specialists assist in the facilitation of that relocation. The current relocation activity is administered by DADS through four contracts with Centers for Independent Living. DADS is initiating a new procurement and six regional contracts will become effective on January 1, 2007.

Currently, all funding for relocation is with state general revenue. The Committee recommends that the state fund these activities through a targeted case management state plan amendment (SPA) which would take advantage of the Federal Medicaid Assistance Percentage (FMAP). FMAP for Texas in federal fiscal year 2006 is 60.78 federal funds to 39.22% state match funding. The Committee believes the state plan amendment could be crafted as to limit Texas’ Medicaid exposure and concomitantly increase the number of relocation specialists to assist individuals with complex functional needs. If the state determines that targeted case management will risk current funding, it should at minimum pursue administrative match.

Increase the current number of relocation specialists’ budget from \$1.3 million/annum (General Revenue) to \$2.6 million/annum (GR).

The 79th Legislature (Senate Bill 1, Regular Session, 2005) allocated \$1.3 million per state fiscal year to DADS for purposes of supporting the Plan. DADS has chosen to use these dollars to fund its relocation specialist activity. Relocation specialists provide outreach, advocacy and case management for individuals with complex needs in their transition from nursing facilities to the community. The relocation specialists also provide on-going support once the person is transitioned to the community, resulting in a more successful transition.

Current funding only allows for a little more than twenty relocation specialists to support the statewide effort. Consequently, the current number of relocation specialists has only been able to serve a small percentage of the overall 17,000 plus individuals who have indicated their desire to relocate back into the community according to the Minimum Data Set’s (MDS) Question 1a. The MDS is a federally mandated care planning assessment tool used in NFs.

The state is only partially covered by Centers for Independent Living. Fund an additional 21 CILs in order to provide state-wide coverage.

The federal Rehabilitation Act which is overseen by the Rehabilitation Services Administration created the development of Centers for Independent Living (CILs). The purpose of the independent living programs is to maximize the leadership, empowerment, independence, and productivity of individuals with disabilities and to integrate these individuals into their communities. CILs provide services to individuals with significant disabilities that help them remain avoid long-term institutional settings. There are 21 CILs in Texas funded by federal and general revenue funds.

However, these 21 CILs only cover 145 counties. This results in many parts of the state, especially in the rural counties, to be without CIL supports (109 counties are without Title VII, Part C, CIL funding).

Fund community navigators to assist individuals in accessing community based services.

Texas recently concluded (September 2005) a three-year CMS Real Choice grant that pilot-tested the use of community navigators. The pilot had positive outcomes. It demonstrated that organizing community service organizations and/or providers through a coordinated “front-door” could help individuals get the necessary supports they required to remain in the community.

The community navigators assisted individuals in need of long term services and supports in more easily accessing the appropriate services to support on-going community living. These navigators were able to educate individuals on the usually less expensive community system versus institutional service.

DADS currently has a CMS Aging and Disability Resource Center (ADRC) grant to promote community coordination and build on the lessons learned from the community navigator grant (see Grants section).

Increase transportation supports for individuals who are aging and/or have disabilities.

The statewide network of nursing facility transition teams has identified the lack of reliable transportation as a major barrier to relocation of NF residents into the community. Overall, one in five Texans lack access to reliable vehicles. Individuals who are aging and/or with disabilities are disproportionately affected. Medicaid Medical Transportation Program services are offered only after meeting restrictive eligibility criteria and do not provide services for non-medical services.

CHILDREN’S SUPPORTS: Many of Texas’ children continue reside in institutional settings or are currently receiving community services that are threatened upon reaching an age that exceeds the maximum eligibility for the service.

Develop and implement a medicaid buy-in program for children with disabilities in families with income between 100% to 300% of the federal poverty level (FPL) as allowed in the Deficit Reduction Act of 2005.

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

through divorce or employment decisions simply to qualify for publicly funded health insurance for their child. In other cases, families are forced to make the difficult decision to institutionalize their child in order to obtain required services. Expanding Medicaid opportunities, on a sliding-fee basis, to families caring for children with disabilities will prevent families from remaining in or entering into poverty for the sole purpose to obtain medical care for their child, and will prevent institutional 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%-300% of FPL.

Continue and expand riders 46 and 54 (SB 1, Article II, 79th Legislature) initiatives to ensure funding is available for institutionalized children to have the opportunity to transition to families.

The 79th Legislature passed Riders 46 and 54 to the Department of Aging and Disability Services (DADS) Fiscal Years 2006-2007 appropriation to provide opportunities for children with disabilities to live with families and avoid institutionalization.

Rider 46 allows for up to 50 children residing in intermediate care facilities for persons with mental retardation (ICFs/MR) to transition to community-based services during the 2006-2007 biennium. The intent of this rider was to ensure that children be given the opportunity to relocate to the community when requested by the parent/guardian.

Rider 54 provides funding for 62 youth aging out of the Department of Family and Protective Services' Child Protective Services foster care program to obtain Home and Community-based Services (HCS) waiver slots to allow them remain in the community and avoid institutionalization.

The only real option available when CPS funding ceases for children with significant disabilities in the foster care system is transferring them to a long-term care facility because of the HCS interest list. All Rider 54 slots will be filled. Therefore, the Committee recommends expanding the number of HCS waiver slots available to youth aging out of the CPS system in order for them to remain in the community.

Fund additional Department of Assistive and Rehabilitative Services (DARS) transition specialist positions to more effectively facilitate meaningful transition from Independent School Districts' (ISD) secondary school system to appropriate adult supports and services.

The Committee strongly supports the new DARS initiative to create specialist positions to more comprehensively serve the needs of minors with disabilities. While DARS transition specialists are skilled at addressing employment issues, they currently have limited knowledge of the health and human services system and the supports and services that may be available for youth with disabilities to support their transition into adult services.

Additional transition specialists are needed to meet the demand in our high schools. Additionally, DARS transition specialists must receive the appropriate training to become familiar with the long term services and supports systems. This necessary training will

enable them to enhance the opportunities for those individuals who are transitioning into adult services to remain in their communities.

Increase funding for permanency planning activities. There is a legislative requirement for this activity but it was never fully funded.

Permanency planning for institutionalized children is a process of communication and planning with families. The purpose is to identify the supports and services needed to enable the child to leave an institution by returning to the birth family or transitioning to a support family. This is a labor-intensive task and must be approached with a specialized skill set. To meet the goals of the legislative mandate, there must be on-going communication with the family and a proactive effort to remove the systemic barriers that prevent a child from leaving the institution. Current funding does not cover the cost of generating the plans and does not allow permanency planners to actualize the plan by working to remove transitional barriers.

Additionally, the permanency planning process in Texas is a relatively new concept and the institutionalized skill is still being developed. Those individuals responsible for this process must have the training and skill to ensure that permanency planning becomes an acculturated part of the long term services and supports system.

HOUSING INITIATIVES: Without available, accessible and integrated housing there is no opportunity to remain in or relocate to the community.

There needs to be an increase in dedicated HOME (Tenant Based Rental Assistance - TBRA) funds for persons who are aging and/or have disabilities.

Individuals who are leaving nursing facilities or individuals who meet *Olmstead* criteria under the Department of State Health Services (DSHS) provisions must have a stable residence in which to reside. Given that many of the individuals will be living on Supplemental Security Income (SSI) which is \$603 per month, financial assistance is required. TBRA is an excellent strategy because it allows the individual to choose where they will live, provides true community integration, and fills the gap between income and fair market rents in our communities.

The state HOME program has been used historically to provide this rental assistance to people meeting *Olmstead* criteria. However, for several reasons, the Texas Department of Housing and Community Affairs (TDHCA) has withdrawn its commitment to provide these resources.

The Committee recommends restoring this commitment, along with accommodations by TDHCA to the specific conditions experienced by the Texas Department of Aging and Disability Services (DADS) contracted relocation specialists. Also, formal training must be provided to relocation specialist and other contractors to increase their performance in finding adequate housing. Finally, the Committee will continue to coordinate the relationship between the health and human service agencies and TDHCA at the state level.

There needs to be a system of local housing coordinators/navigators to assist individuals and the human services system to locate and develop housing resources.

The Committee recommends the use of local staff dedicated to: finding housing, assisting people in making community arrangements, and supporting individuals in the housing of their choice. This strategy has proven to be successful in increasing the number of individuals with disabilities to live in an integrated community setting.

The Committee proposes funding a full network of local housing coordinators/navigators working in conjunction with DADS' contracted relocation specialists and case managers across all systems.

Increase supportive housing opportunities

Community integration is very difficult without real, affordable, integrated housing opportunities. The Committee recommends that TDHCA and other agencies look seriously at housing options across the board and create a plan to increase the number of accessible, affordable and integrated housing units available for people with disabilities. Components of this plan should include:

- annual updates to TDHCA's inventory of accessible housing units;
- compliance training and support for accessibility provisions in funded programs;
- minimum requirements and incentives to improve builder and provider performance in the development and operation of housing for people with disabilities; and
- state level coordination of housing activities across agencies.

ENSURE THAT PROMOTING INDEPENDENCE PRINCIPLES ARE INCORPORATED IN ALL STATE INITIATIVES: There are a number of major state and federal initiatives that are currently being undertaken that will have a significant impact on the aging and/or persons with disabilities. The Committee recommends that HHSC ensure that the "Promoting Independence Initiative" principles are the underlying basis for all future policy development for long term services and supports. The Committee requests that any fundamental change to the state's long term services and supports' system includes external stakeholders in an advisory capacity.

Of special interest are the following initiatives:

Current State Considerations

- Implementation of the Deficit Reduction Act (DRA) of 2005 sections pertaining to: Consumer-Direction (CDS); Money Follows the Person (MFP); and State Plan Amendment options:

- The Committee wants any decision regarding the DRA CDS option to be considered carefully and only pursued if it will enhance the current system.
- The Committee wants the state to pursue the MFP grant and expansion opportunities for persons with mental retardation and for those with mental illness (see the Committee's recommendation regarding the expansion of Texas' MFP program).
- The Committee is does not want the DRA State Plan Amendment (SPA) option – the 1915 (i) waiver -- substituted for the current 1915(c) waiver or state plan amendment programs. The 1915 (i) option should only be considered for populations not yet served by the health and human services system.
- Expansion of the STAR+PLUS model to the Harris/Nueces/Travis/Bexar Service Delivery Areas and creation of the Integrated Care Model (ICM) in Dallas and Tarrant Counties. The Committee is concerned about the accessibility of community-based programs; implementation of Texas' MFP policy; the possible impact to the overall "slot" allocation for (c) waiver services for the Medicaid Assistance Only (MAO) population; and how the ICM implementation will impact DADS' waiver budget because of SSI entitlement to waiver services.
- Reconfiguration of the Medicaid long term services and supports system. The Committee is very concerned about any consideration about a possible 1115 waiver. The Committee is opposed to using an 1115 waiver for purposes of limiting accessibility or reducing services and requests to be consulted in any discussion on the subject.

Pending Federal Considerations

The Committee encourages HHSC and the state to support the proposed federal legislation:

- S 2409 (The Home and Community based Services Co-payment Equity Act of 2006). The Medicare Modernization Act of 2003 created the Part D drug program which is required of all dual eligible individuals. One aspect of the Part D program which was always considered to be counter to the *Olmstead* decision was the provision which waived the cost-sharing requirement for individuals residing in institutional settings but requiring a cost-share for those accessing community services. S 2409, if passed, would include individuals in (c) waiver programs both in-home and in assisted living/residential care facilities/group homes from cost-sharing requirements.
- S 3677 (Individual Living Act of 2006) eliminates the Medicare in-house restriction for those who need mobility assistance devices outside of their home in order to access work and other community activities.

PREVIOUS RESOLUTIONS AND DIRECTIVES: THE COMMITTEE' *2005 Stakeholders Report* listed several resolutions and policy directives that the Committee felt are at the core for full compliance with *Olmstead*. Many of these resolutions and directives are as relevant for fiscal year 2007 and the upcoming biennium (2008-2009) as they were a year ago and are listed in Appendix E.

COMMUNITY TRANSITION 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 and to utilize their entitlement dollars to receive community-based services; primarily community-based alternatives (CBA). The 77th Legislative Session’s 2002-2003 General Appropriations Act 2001 attached Rider 37 to legacy Texas Department of Human Services’ (DHS) appropriation. The language 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 continued the policy with Rider 28 in the 2004-2005 General Appropriations Act 2003. The basic concept was continued; 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.

11,651 individuals have transitioned back to the community as of August 31, 2006. Of that number, 5709 continue to receive their long term services support in a community-based setting. See Appendix F for more detailed information regarding those individuals who have utilized MFP since September 1, 2003. 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.

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. Please see recommendation under *Recommendations for Systems Change: Program Funding*.

Intermediate Care Facilities for Persons with Mental Retardation

The original Promoting Independence Plan (Plan) prioritized 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 HCS waiver, thereby ensuring these individuals expedited access to home and community-based services (HCS) waiver slots. 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 request while those residing in large ICFs/MR may access an HCS slot with 12 months of request.

This process is effective in meeting the demand as long as there is new funding and attrition slots. As of August 31, 2006, 913 individuals had moved from a state mental retardation facility under the Plan. For those in large ICFs/MR, the total was 662 individuals as of September 5, 2006.

Individuals in other settings, such as small and medium ICFs/MR, do not have the same opportunities.

STATUS REPORTS: INTRODUCTION

The following sections provide status updates on the state's progress during Fiscal Year 2006 in complying with its Promoting Independence Plan (Plan). The first report provides information regarding progress made in complying with the current Plan recommendations. The next four reports are each on a specific subject matter and provide a status update and directives for future work. The last five reports provide the top accomplishments made by each of the health and human services agencies. The reports are presented in the following order:

- 2004 Promoting Independence Plan Recommendations
- Children's Issues
- Housing
- Workforce
- Mental Health Planning Advisory Committee
- Health and Human Services Agencies
 - Health and Human Services Commission
 - Texas Department of Aging and Disability Services
 - Texas Department of Assistive and Rehabilitative Services
 - Texas Department of Family and Protective Services
 - Texas Department of State Health Services

2004 PROMOTING INDEPENDENCE PLAN RECOMMENDATIONS

The 2004 Promoting Independence Plan (Plan) includes 71 recommendations to the Governor and the Legislature. The state agencies have made significant progress in the current biennium to comply with these recommendations.

Appendix G provides a status report on each recommendation. All 71 recommendations are listed as in the 2004 Plan and placed into one of four categories: *done*; *partially done*; *on-going*; or *no legislative direction or appropriations received*. Of the 71 recommendations, 21 did not receive the necessary legislative direction or appropriation.

The Committee will continue to monitor those recommendations categorized as *partially done* or *on-going*.

CHILDREN'S ISSUES

The Committee wants the health and human services system to 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 remain with families. The Committee will monitor the health and human services system for progress on these issues.

Texas has made significant progress in reducing the number of institutionalized children in large congregate care facilities. Many of the children have returned to birth families, transitioned to support families, or in some cases, transitioned to smaller institutions such as group homes. The progress made to date is primarily due to the state's recognition that children should grow up in families and that institutionalization of children should be avoided if at all possible. Through improved permanency planning, increased availability of waiver slots, and the activities of the family-based alternatives project, family life has become the reality for many children formally institutionalized or at risk of institutionalization.

While the number of children in large institutions has decreased, the total number of institutionalized children continues to remain high because the front door to institutions has not closed. Some families are still forced to seek institutional placement due to the lack of community services and family supports. The fragmentation in the current system and the inability for many families to access the appropriate, needed services based on their child's functional needs, cause many children and families to encounter first-hand the gaps in the system. When children and families are not able to obtain critical support, the only available service that exists is institutional placement.

The fragmentation and confusion about programs in the current long term services and supports system require many families to wait years for services. Even after the long wait, a family may discover when offered a community-based slot that they have been on the wrong waiver interest list. Children and their families then must start the process over again without consideration of the time spent on other interest lists.

The Committee recommends supporting waiver consolidation, money-follows-the person, and continuation of Riders 46 and 54 (targeting waiver slots to children in intermediate care facilities for persons with mental retardation and children aging out of the foster care system). All these initiatives support the efforts to reduce the number of children with disabilities in institutions.

In addition, the state must continue to build on House Bill (HB) 2579 (79th Legislature, Regular Session, 2005) and address the issue of children even able to enter institutions in the first place. HB 2579 appropriately addressed the rights and responsibilities of parents placing children in institutions, as well as the responsibilities of the facility and the state to continually focus on permanency planning and returning the child to the community. Permanency planning statutes require that any institutionalization of a child should be considered temporary. The Committee supports efforts to make this statute the reality for Texas.

HOUSING

People who are leaving nursing facilities or individuals who are in the targeted *Olmstead* populations under the Department of State Health Services' (DSHS) provisions must have a stable community placement where to reside. Given that many of the individuals will be living on Supplemental Security Income (SSI) which is \$603 per month, financial assistance for housing is required. Tenant-based rental assistance is an excellent strategy because it allows the individual to choose where they will live, provides true community integration, and fills the gap between income and fair market rents in our communities.

This financial assistance is available through public housing authorities (the Section 8 -- Housing Choice Voucher program), some local governments through the HOME program, and through the state HOME program. Texas continues to use an allocation of Access vouchers made available by the United States Department of Housing and Urban Development (HUD) in 2002 that supports *Olmstead*. Through this program, nearly 70 households have been assisted through an original allocation of 35 vouchers. This outstanding performance is due to the generosity of local public housing authorities in maintaining assistance to households and returning the previously used Access voucher to the state for re-allocation.

In addition to the Access program, the state HOME program has been used historically to provide rental assistance to people meeting *Olmstead* criteria. As of 2006, there are less than ten contractors providing \$3 million in assistance to this group. While a number of people are being assisted at this time, this resource will end within the next year and a renewed commitment is needed, if these individuals are to remain in the community.

The use of state HOME funds for the purpose of providing housing to people with disabilities was more complicated than anticipated. Some Independent Living Centers and other small contractors needed training and support to begin and maintain the operation of the program. A large contractor, holder of \$1 million in resources, went out of business before more than twenty people could be assisted. The two contractors recruited to take over these resources have varied widely in performance – one contractor is meeting expectations while the other has not secured any housing. This varied performance is one factor in the Texas Department of Housing and Community Affairs' (TDHCA) decision to withdraw their commitment to provide these resources. The Promoting Independence Advisory Committee (Committee) is concerned that the issue is not about need but about contractor performance and TDHCA's performance measures.

The Committee recommends: increased support for selected contractors, modifications to how TDHCA measures performance for HOME contractors in this category, a renewed commitment from TDHCA to people meeting *Olmstead* criteria, and the reconvening of TDHCA's Disability Advisory Committee.

WORKFORCE

The Promoting Independence Advisory Committee (Committee) is dedicated to making workforce issues a top priority for Fiscal Year 2007 and in the upcoming 2008-2009 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*).

The Committee wants to commend the Legislature for passing Senate Bill 566 (79th Legislature, Regular Session, 2005) which authorizes the *Medicaid Buy-In* program. Medicaid buy-in allows individuals with disabilities to continue working and still remain eligible to receive certain Medicaid services.

Similarly, the Committee wants to commend the Department of State Health Services (DSHS) in its development of the Texas Demonstration to Maintain Independence and Employment (DMIE) project in Harris County under an \$18.6 million grant from the federal Centers for Medicare and Medicaid Services (CMS) and a \$7.5 million in-kind match from the Harris County Hospital District (HCHD). Texas DMIE will serve working people 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. A control group will receive the regular HCHD benefit package. The three year project is designed test whether providing the additional benefits will forestall or prevent loss of employment, prevent future dependence on federal assistance programs like SSI, improve quality of life and/or reduce health care costs. If successful, the project could influence changes in national policy regarding insurance for people with disabilities.

The Committee wants to acknowledge the Department of Aging and Disability Services' (DADS) and the Health and Human Services Commission (HHSC) for submitting and receiving a technical assistance workforce grant from the Centers for Medicare and Medicaid Services (CMS). This grant will help DADS, HHSC, the Texas Workforce Commission (TWC), and the Department of Assistive and Rehabilitation Services (DARS) to convene a workforce forum to develop recommendations on how to prepare for the tremendous need of a stable, trained, and available long-term services and supports workforce.

The Committee is committed to the following goals:

- HHSC and 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 coordinate and execute a *Workforce Task Force* in late 2006 to develop realistic solutions to the on-going problem of the availability of a competent workforce. The Workforce Task Force may include representatives of the Committee, local boards and workforce centers, partner agencies and

organizations, chambers of commerce, advocacy groups, individuals with disabilities, and employers.

- HHSC and TWC will study “best practices” in recruitment, training and retention in the United States and disseminate results.
- HHSC and TWC will generate a *Speakers Index* to present “best practices” and “promising approaches” to recruitment, training and retention of a competent workforce. Speakers may include federal, state and local agencies, members of local boards/workforce centers, businesses, chambers of commerce, advocacy groups.
- HHSC and TWC will identify *High Growth Job Training Initiatives* that may be replicated and other work incentives that address barriers contributing to the workforce shortages. The *High Growth Job Training Initiative* is designed to build partnerships and share information between the public workforce system and employers, high-growth industry leaders, business associations, educators, trainers, and community/technical colleges. Planning efforts may include visits to local boards funded by the Department of Labor to implement High Growth Initiatives, and explore small business ownership efforts and other self-employment options.
- 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.

MENTAL HEALTH PLANNING ADVISORY COMMITTEE

The Mental Health Planning Advisory Committee (MHPAC) is mandated by the federal government as a requirement to receive mental health block grant dollars. As a subcommittee to MHPAC, the Promoting Independence Subcommittee brings a specific focus on issues related to persons with mental illness who are targeted as *Olmstead* priority populations by the state. Although this subcommittee is not an official working group as part of the Promoting Independence Advisory Committee (Committee), members of the Committee and its staff support attend the subcommittee meetings. A representative of the subcommittee reports to the full Committee at its quarterly meetings as public comment. MHPAC serves an important function in monitoring the state's progress in meeting its Promoting Independence Plan (Plan) and *Olmstead* mandates as it relates to individuals diagnosed with a mental illness.

DSHS has primary responsibility of meeting the service needs of persons with mental illness and administering the state hospital system and overseeing the Mental Health Authorities (see DSHS Status Report). DSHS has developed a specific level of service to address the needs of individuals residing in hospitals for over a year or those at risk of institutionalization due to multiple hospitalizations. MHPAC is closely monitoring DSHS for compliance with the Plan and *Olmstead*:

The populations that are a top priority for this subcommittee include:

- adults and children diagnosed with a mental illness who have resided in state and state funded community hospitals over a year;
- adults and children diagnosed with a mental illness who have been hospitalized more than three times in six months; and
- adults and children diagnosed with a mental illness who reside in nursing facilities and want to transition to the community.

HEALTH AND HUMAN SERVICES AGENCIES

Each of the health and human services agencies major Promoting Independence (PI) accomplishments are listed below:

HEALTH AND HUMAN SERVICES COMMISSION (HHSC)

HHSC's major Promoting Independence accomplishments during FY2006 include:

- HHSC has the overall policy and budget lead for the entire health and human services enterprise. Because of their leadership, health and human services programs realized a stabilization in funding over the 2004-2005 General Appropriations Act, Article II, for fiscal years 2006-2007, as well as a real increase in service dollars;
- A major effort to be recognized is the significant increase in funding to address community services interest lists. This initiative resulted in new appropriations to serve an additional 9,360 individuals who receive services through the Texas Department of Aging and Disability Services' 1915(c) waiver and non-waiver programs;
- HHSC expanded its family-based alternatives contract with EveryChild, Inc. from 12 counties in central Texas to the Houston area and the Dallas/Longview area. 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;
- HHSC continues to collect information for the Permanency Planning Reports and inform the legislature of the progress of this deinstitutionalization effort. During the first six months of FY 2006, 60 children moved to less restrictive settings other than family-based settings, and 123 children moved from institutional settings to family-based settings. The overall trend over the past few years shows that children across Texas are moving from large institutional settings to smaller settings, including Home and Community based Services (HCS) supervised living or residential support homes and to family homes. The number of children residing in large Intermediate Care Facilities for Persons with Mental Retardation or Related Conditions (ICF-MR/RC's) has decreased by 58% since August 31st, 2002. The number of children in HCS settings has increased by 62% during that same time frame;
- HHSC continues to lead the Consumer Directed Services (CDS) workgroup. This workgroup and subcommittees provide support for the expansion of the CDS option; and
- Senate Bill 566 directed HHSC to implement a Medicaid buy-in program to allow people with disabilities who work to increase their income and qualify for Medicaid coverage. HHSC has led this effort with input by enterprise agencies

particularly in the outreach phase of this project. Implementation of the Medicaid buy-in program occurred on September 1, 2006.

TEXAS DEPARTMENT OF AGING AND DISABILITY SERVICES (DADS)

DADS major Promoting Independence accomplishments during FY2006 include:

- Relocation efforts continued for individuals in:
 - *Nursing facilities*, through the use of “Money Follows the Person” funding. From September 1, 2005 through June 30, 2006, 587 additional individuals moved to community-based waiver services;
 - *State mental retardation facilities*, through the use of recycled Home and Community-based (HCS) slots. From September 1, 2005 through June 20, 2006, 91 additional individuals moved to community-based waiver services; and
 - *Large community Intermediate Care Facilities for the Mentally Retarded (ICFs/MR)*, through the combined use of new HCS appropriations and lapsed funds. From September 1, 2005 through August 29, 2006, 87 additional individuals moved to community-based waiver services;
- HCS waiver slots were targeted in accordance with:
 - *Rider 46*: 50 slots for children residing in community ICFs/MR; and
 - *Rider 54 “Child Protective Services (CPS) Reform Plan”*, approximately 62 slots for individuals aging out of Department of Family and Protective Services (DFPS) CPS services;
- Nursing Facility Transition Workgroups continued working to remove barriers facing people wanting 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 Independent Living Center relocation specialists and other stakeholders such as Advocacy Inc, transportation specialists, program providers, Area Agencies on Aging (AAA) staff, Adult Protective Services, and local housing authorities;
- On behalf of the Committee, staff facilitated a subcommittee whose purpose is to assist the Committee review all materials and processes informing individuals of community-based alternatives. Membership consists of representatives of all Health and Human Services agencies, consumers, families, advocates, providers and other interested stakeholders. The subcommittee’s primary focus is on consumers living in institutional settings and how they are informed of community-based alternatives; their secondary focus is front door activities for individuals seeking services;
- As part of ongoing training efforts, DADS Ombudsman program conducted two training events on Promoting Independence for AAA Staff Ombudsman.
- Rules were developed in response to:

- House Bill (HB) 626 (79th Legislature) regarding legacy TDHS Rider 7b (133% of waiver cost-cap) and were effective June 1, 2006; and
- HB 2579 (79th Legislature) regarding procedures to ensure the involvement of parents or legally authorized representatives (LARs) of children placed in institutions. Implementation started on September 1, 2006.

THE DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES (DARS)

DARS major Promoting Independence accomplishments during FY2006 include:

- One hundred Transition Vocational Rehabilitation Counselors (TVRC) will move into the public schools and communities to work with eligible students who have disabilities to assist them in working toward a plan for independence once they graduate from high school. Transition counselors will take the lead in developing all the necessary connections for students wanting to work and be independent. These counselors will have only transition students on their caseload. They will develop these relationships within the community to connect with students and parents. Most TVRCs will be on campuses all day and seldom in a field office. This will be the first full academic school year where all transition counselors are in place and can serve students with disabilities;
- DARS is a member of the State Self Determination Team. In that role, it helps the team understand how DARS can assist an individual in achieving their goals and live as independently as possible in the community. The planned goal for this fiscal year was to coordinate and develop training on Self-Determination for DARS field staff in the Division for Rehabilitation Services and the Division for Blind Services. Although the Department was not able to meet this goal during fiscal year 2006, training is scheduled for the blind children's program in the Division for Blind Services the week of April 30, 2007 at the Statewide Blind Children's Program Staff Training; and
- The Institution to Community Coordination (ICC) is a relocation program to assist people with disabilities in moving from an institution setting back to the community. A pilot program has been conducted in the Dallas-Fort Worth area. DARS partnered with REACH Resource Center on Independent Living to conduct this pilot. Twenty individuals participated in the pilot and of those one successfully transitioned to the community. The remaining nineteen individuals determined that they wanted to transition to the community, but were not ready to think about an employment component. Due to a variety of circumstances, some individuals determined that they wanted to stay in the facility. A complete report is available through the Department of Assistive and Rehabilitative Services. DARS has determined to make ICC permanent and will be available statewide on December 1, 2006.

TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES (DFPS)

DFPS major Promoting Independence accomplishments during FY2006 include:

- DFPS began converting the part-time regional Developmental Disability staff to full-time positions in every region of the state;
- Youth aging out and leaving services had their Medicaid switched to Transitional Medicaid, to be renewed annually without disruption until they turn 21 years old;
- Child Protective Services (CPS) coordinated efforts with Department of Aging and Disability Services (DADS) Guardianship Program regarding transition of youth with disabilities;
- DFPS Staff met with Casey Family Programs of Texas regarding how to implement a Texas-based Powerful Families project;
- Adult Protective Services (APS) in FY 06, implemented a stipend program to provide tuition and fee assistance for any APS field staff that is actively pursuing degrees in the areas of social work, gerontology, and other related professional programs;
- Implementation of Rider 54 which was included in DADS' appropriation by 79th Legislature and in the CPS reform plan. \$1,182,270 in General Revenue Funds and the associated federal funds were set-aside each fiscal year for children aging out of Foster Care so they can access HCS and not have to be institutionalized;
- DFPS launched the Transitional Living Services Initiative to address Senate Bill 6 (79th Legislature, Regular Session, 2005) and CPS Renewal mandates. Recommendations have been made to: expand and improve services to prepare youth in foster care for adult living, expand and improve supportive services to foster youth during the young adult years, and implement a systemic approach in transition/discharge planning and services affecting youth aging out of DFPS foster care;
- The Protective Services Training Institute in coordination with the Center for Disability Studies at the University of Texas developed a one-day workshop on "Best Practices with Children with Developmental Disabilities." The decision was made to carry this workshop into 2006 and is scheduled to be delivered seven times (with other offerings possible, if needed);
- Mandatory caseworker training was implemented on transition/discharge planning, resources, and services for youth leaving foster care;
- Policy changes were made to allow sharing of abuse/neglect related information;

- The State Parent Collaboration Group (PCG) continued to meet. The three pilot sites in Regions 3, 7, and 9 were in various stages of starting up their respective parent-led orientation groups for families new to the CPS System;
- DFPS developed educational passports effective March 1, 2006. The form and content of the Educational Portfolio was developed in a collaborative effort between the Texas Education Agency (TEA), Health and Human Services Commission (HHSC), and DFPS;
- CPS implemented a new kinship policy, which includes certain financial supports when applicable, on March 1, 2006. This is part of the Department's revised Kinship Program that is designed to assist more relatives and fictive kin in caring for children in the Department's custody. Services to kinship caregivers include: a one-time integration payment of \$1,000 to a qualified caregiver upon placement to be used to purchase beds, bedding, furniture, clothing and other items needed to support the placement; supportive services to the qualified caregiver, such as training and case management services as long as DFPS maintains managing conservatorship; supportive family counseling services not covered by Medicaid; daycare services to qualified children and kinship care-giving families; reimbursement for flexible expenses incurred by the kinship family up to a maximum of \$500 per year; and referral/coordination to determine eligibility for additional public assistance;
- DFPS finalized recommendations related to Preparation for Adult Living (PAL) services expansion and improvement, discharge/transition planning, circles of support, the caring adult initiative and extended care services for older youth in state foster care and those preparing to age out of care. This information is to be incorporated into the child's plan of service;
- DFPS established a new process in which Developmental Disability specialists present profiles of children in institutions to child placing agencies (CPAs) and EveryChild Inc. at quarterly meetings. If CPAs identify a family for the child, the Developmental Disability specialist and EveryChild will work with the institution and the CPA/family to develop a transition plan;
- DFPS' Council recommended rules for extending care to foster youth up to the age of 22 in order to complete high school education, and to extend care to youth up to the age of 21 in order to complete vocational/technical programs;
- The Family Group Decision Making (FDGM) Program has expanded into 11 regions as of May 31, 2006. The FDGM specialists have coordinated at least one conference in over 100 counties;
- DFPS has nine signed contracts for the Intense Foster Family Initiative; and
- CPS has 21 foster homes that have been approved to accept children with intense needs and one additional home is in the process of being approved; six children are currently authorized for intense services.

TEXAS DEPARTMENT OF STATE HEALTH SERVICES (DSHS)

DSHS major Promoting Independence accomplishments during FY2006 for individuals with mental health issues include:

- Monitored the number of individuals in State Mental Health Hospitals (SMHHs), with an average daily census of 2285 as of May 31, 2006, and 19,392 projected total admissions during FY2006;
- Monitored the number of individuals hospitalized in SMHHs for more than one year, with 417 patients as of May 31, 2006. Of these, 374 need continued hospitalization, 9 have been accepted for placement, 29 have a barrier to placement, and 5 have court involvement. Four adolescents at Waco Center for Youth have been there over one year as of May 31, 2006, with two discharged on June 8, 2006;
- Completed a system for monitoring deaf and hard-of-hearing in electronic medical record at SMHHs;
- Monitored individuals in SMHHs who are deaf and hard-of-hearing, there have been no more than three patients who are deaf or hard-of-hearing in an SMHH over one year as of May 31, 2006;
- Monitored the number of individuals admitted to psychiatric hospitals (both SMHHs and Community Hospitals) three or more times in 180 days. As of May 31, 2006 there were 193 individuals admitted three or more times during the past six months (State funded community hospitals were added to the data this year);
- Conducted an analysis showing that of the 1,644 persons who had three or more SMHH admissions in 180 days since 2001, where the third admission was in FY2002, FY2003, or FY2004, only 13% (216) had 3 or more SMHH admissions in 180 days that occurred in multiple years (State hospitals only);
- Deployed the Assertive Community Treatment to individuals with two or more psychiatric hospitalizations in 180 days or four or more psychiatric hospitalizations in two years. In addition, implementation of Intensive Outpatient services to children occurred in order to decrease the rate of psychiatric hospitalization among children and to prevent more restrictive or out-home-placement. Recommendations for community mental health services are now based on a new uniform assessment process known as the Texas Recommended Assessment Guidelines (TRAG). TRAG is part of DSHS' Resiliency and Disease Management (RDM) initiative for community mental health (House Bill 2292, 78th Legislature, Regular Session, 2004) and implemented statewide in FY2005;
- Developed a quarterly report for the Committee titled *Adults and Children Readmitted to a State or Community Psychiatric Hospital Three or More Times in 180 Days Since FY2001: Where Are They Now In the Community Mental Health System?* As of May 31, 2006, there were 2,429 adults readmitted 3 or more

times in 180 days since FY2001 with 1,162 receiving RDM services, of which 88% received the same service package as that recommended by the TRAG. Also as of May 31, 2006, there were 207 children readmitted 3 or more times in 180 days since FY2001 with 45 receiving RDM services, of which 94% received the same service package as that recommended by the TRAG (state and community hospitals; this is for almost six years – FY 01 – FY 05 and the first three quarters of FY 06);

- Conducted an analysis showing that the number of individuals admitted to a SMHH 3 or more times in 180 days appears to have declined (FY2005 = 556), while the percentage of these individuals who have been served at a Texas Local Mental Health Authority has risen dramatically from Fiscal Year 2001 (81%) to 2005 (94%). These results are consistent with SB 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 3 or more times in 180 days to a psychiatric hospital and to consider them for community-based services;
- Received a final report from Texas Community Solutions, Inc. (TCS) with regard to a project funded through a federal *Olmstead* technical assistance grant. The report described efforts of TCS to provide technical assistance, support and training for 23 organizations seeking to apply to the Texas Department of Housing and Community Affairs (TDHCA) for HOME Tenant-based Rental Assistance (HOME-TBRA) housing vouchers. These vouchers were a TDHCA set-aside for persons falling within the *Olmstead* population and are intended to assist persons in relocating from their present setting to a setting that was less restrictive. Additionally, a curriculum was created and used for training Primary Housing Providers;
- Co-applied successfully with 12 organizations, with TCS, Inc as the lead applicant, for \$1 million dollars in HOME Tenant-Based Rental Assistance funds from TDHCA. These funds are being used to assist 100 Texans who have a serious mental illness to obtain and maintain stable housing for 24 months; and
- Continued coordination efforts between nursing facilities, LMHAs, and home healthcare providers to further promote independence among individuals in nursing homes who have a mental illness and who may benefit from community mental health services.

GRANTS

REAL CHOICE SYSTEM CHANGE GRANTS

In February 2001, President Bush announced his New Freedom Initiative, which is a nationwide effort to remove barriers to community living for people of all ages with disabilities and long-term illnesses. One result of the New Freedom Initiative is a series of Real Choice System Change Grants which are aimed at building local infrastructure that will result in effective and enduring improvements in community long-term support systems. Texas received five Real Choice grants over a four-year period. All of the grants have to come to an end. The following is a status report on four of the grants that ended this year:

Creating a More Accessible System for Real Choices in Long-Term Care Services:

This grant was initiated to help all individuals navigate the maze of long-term services in their communities, regardless of their age or type of disability. The concept utilized “system navigators” whose first priority was to help a person or his family members cut through the red tape (across agencies and organizations) and get to the benefits, services and supports an individual needs, enabling that person to live and integrate into their own community. The demonstration occurred in the:

- Heart of Central Texas (thirteen counties in and around Belton, Killeen and Waco),
- Texoma (three counties in and around Sherman/Denison), and
- Area Agency on Aging (AAA) regions.

The project concluded on September 30, 2005, and successfully implemented a navigator system. DADS conducted a Navigator Forum to discuss lessons learned in March 2006, and will use the information as it develops its Aging and Disability Resource Centers (ADRC)s that are being funded by a new CMS grant (see below for more information on the ADRC grant).

Money Follows the Person

The goals of the “money follows the person” (MFP) grant was to (1) educate agency staff and stakeholders about community-based options to ensure that all programs are considered when an individual transitions from the institution to a community setting; and (2) establish local nursing facility transition teams in every region to enable individuals with significant transition needs to return to the community.

The project was successful and accomplished the following:

- Community–based Options Stakeholder trainings were held in every region of the state;
- Nursing facility transition teams have been established in each region of the state;

- Identification and the development of solutions to systematic barriers to NF transitions; and
- A state-wide conference held in April 2006.

DADS has committed to continue providing support to the NF Transition Teams and will provide regional liaisons to the monthly team meetings.

Service Responsibility Option

In 2003, DADS received a Real Choice Systems Change Grant, from the Centers for Medicare and Medicaid Services (CMS) to add an alternative process for individuals to direct their own services, called the *Service Responsibility Option (SRO)*. The SRO empowers people to manage the day-to-day work of their attendants, but leaves the business and employment processes to the provider agency they choose. The project focuses on providing people with the information needed for them to make an informed choice regarding how much involvement they want to have in managing their attendant services. It also provides training for DADS staff and home health provider agency staff on how to talk with individuals about service management options and on how the SRO works.

Over the course of the SRO pilot in the Lubbock/Amarillo region and in Bexar County, two barriers to sustainability and statewide expansion emerged. The project needed a funding mechanism to provide the consumer the education and support necessary to be successful with self-direction as well as an entity to provide this time limited support. The original grant period concluded on September 30, 2006, however, DADS requested a one-year no cost extension to spend unexpended dollars.

DADS staff are working closely with the Health and Human Services Commission (HHSC) to calculate a rate for the SRO support. It is anticipated that Consumer Directed Services Agencies (CDSA) along with home health agencies will be offered the opportunity to provide this support. The individual would choose who they want to provide their SRO training and on-going support. DADS plans to expand the SRO statewide, exclusively to those receiving Medicaid State Plan or Title XX personal assistance services, including the Medicaid managed care personal care services, in early 2007.

Quality Assurance and Quality Improvement

Texas received a three-year grant to study and recommend ways to redesign and improve the quality assurance and quality improvement system in its Medicaid waiver programs. All activities have been conducted in partnership with a Quality Assurance and Quality Improvement Task Force that has met on a monthly or bi-monthly basis since December 2003. The task force is comprised of self-advocates and representatives of advocacy groups as well as public and private providers.

The project is in its final year and concludes September 2006. The following major activities were conducted this past year:

- Joined the National Core Indicators (co-sponsored by the Human Services Research Institute and the National Association of Directors of Developmental Disabilities Services) project and conducted approximately 2000 face-to-face and 2000 mail surveys of participants in DADS' Medicaid waiver and ICF/MR programs.
- Conducted a mail survey of children 17 years of age and younger in DADS waiver programs and all families in the Medically Dependent Children Program. The report was published August 2006.
- Published the "Measuring Quality Using Experience Surveys" report.

DADS will incorporate the information learned through this grant and will continue the work begun by this pilot.

In addition to the Real Choice Grants, the state has received the following:

AGING AND DISABILITY RESOURCE CENTER GRANT

DADS successfully submitted an application for funding to the Administration on Aging (AoA) for their Aging and Disability Resource Center Grant Program. The state was awarded an \$800,000 three-year grant that began in 2005.

The Aging and Disability Resource Centers funded by AoA and the Centers for Medicare and Medicaid Services provide citizen-centered, "one-stop" entry points into the long-term support system and are based in local communities accessible to individuals and their families who may require long-term support. Bexar County is the pilot site for the first year. The second and third year will add two additional sites through a competitive selection process that was completed in September 2006. Activities will include: advocacy, assistance with obtaining public benefits, liaison among the stakeholders, benefits options counseling, and coordination with Medicaid program and financial eligibility staff. ADRC services will be available to persons who are older, persons with physical and cognitive disabilities, persons with mental retardation, and their families and caregivers.

ALZHEIMER'S DISEASE DEMONSTRATION GRANTS TO STATES (ADDGS) PROGRAM

The Alzheimer's Disease Demonstration Grants to States (ADDGS) program is a grant through the Administration on Aging (AoA). ADDGS allows for the demonstration of innovative practices and services to serve persons with Alzheimer's disease and their caregivers. DADS was awarded a \$225,000 grant for the first year of the three-year project period that began in 2006. Texas' pilot will use system navigators to assist clients and informal caregivers with accessing available public and private home and community-based long-term services and supports. The pilot site for 2007 and 2008 is the Harris County Area Agency on Aging.

CMS TECHNICAL ASSISTANCE WORKFORCE GRANT

Texas has been chosen to receive intensive technical assistance (TA) from the Centers for Medicare and Medicaid Services (CMS)-sponsored Direct Service Workforce Center over the course of the next year.

The TA will provide national experts to help identify ways to reduce turnover, enhance consumer-directed service options and improve the professional status of direct service workers and personal attendants in the community. A major focus of this project will be to improve how individuals and providers are able to recruit, manage, train and retain direct service workers, i.e., attendants. Also, barriers to becoming an attendant and how to overcome these barriers will be identified and discussed. 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, the Health and Human Services Commissioner (HHSC) received the award and designated DADS to lead the project. DADS will use a partnership of consumers, attendants/direct services workers and their employers, community based organizations, educators and policymakers to plan and accomplish the project. DADS will lean heavily on the expertise of existing advisory groups, primarily the workforce subcommittee of the Committee, in developing and implementing the project. DADS will ensure the project is coordinated with other state efforts to improve workforce retention and recruitment.

MENTAL HEALTH TRANSFORMATION GRANT

The Substance Abuse and Mental Health Services Administration (SAMHSA) awarded Mental Health Transformation State 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. Texas and six other states were awarded these grants. These grants were awarded to the Chief Executive Offices and require states to engage in focused leadership activities of planning and building infrastructure across all agencies that provide, fund, administer and purchase mental health services.

Governor Rick Perry designated the Department of State Health Services (DSHS) as the lead coordinating agency for the Texas MHT SIG. An interagency transformation work group (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 on 13 state 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.

This grant opportunity will assist DSHS, as the lead coordinating agency, in focusing its leadership efforts to facilitate and sustain fundamental system-wide changes necessary to achieve a transformed mental health system. Costs associated with facilitating, supporting and sustaining a transformed state mental health system will include convening meetings

with stakeholders, travel, technology development and enhancement (reconfiguring and enhancing/modernizing information systems), and dedicated staff committed to the transformation. The grant provides the capacity needed to begin the intensive planning and implementation process for achieving this system-wide transformation.

Grant funds in the amount of \$2,730,000 for the first year was made available to Texas. The grant program extends for up to 5 years, and the award period began October 1, 2005.

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 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 80th Legislature 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 to live and receive services in the most integrated setting through the 2008-2009 biennium.



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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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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Inquiries

Inquiries regarding the content of this circular should be directed to Terry Childress, Program Administrator, Department of Aging and Disability Services, at (512) 438-2260 or terry.childress@dads.state.tx.us.

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Issued: 10-20-04
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APPENDIX B

INDIVIDUALS SERVED IN INSTITUTIONS * (As of June 30, 2006):

Type of Institution	Individuals age 65 and over
Nursing facilities	50,669
State MR Facilities	375
Community ICF/MR Facilities (14 + beds)	147
State MH Facilities	71 (12 continuous months)
Other Group Settings /DFPS	3
SUB-TOTAL	51,265
Type of Institution	Individuals age 22 to 64
Nursing facilities	10,003
State MR Facilities	4,238
Community ICF/MR Facilities (14 + beds)	1,280
State MH Facilities	342 (12 continuous months)
Residential Treatment Center/DFPS	2
Other Group Settings/DFPS	1
SUB-TOTAL	15,866
Type of Institution (Per SB 368)	Individuals age 22 and under
Nursing Facilities	181
State MR Facilities	266
Community ICF/MR Facilities (14 + beds)	110
Community ICF/MR Facilities (under 14 beds)	353
HCS Waiver Program Group Home	978
State MH Facilities	13 (12 continuous months)
SUB-TOTAL	1901
DFPS:	
Institutions for Persons with MR	74
Foster Group Home	114
Basic Care	12

Residential Treatment Center	86
Other group settings	25
SUB- TOTAL	622
TOTAL:	69,654

-
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.

MEMBERSHIP OF THE PROMOTING INDEPENDENCE ADVISORY COMMITTEE

Appointed Members

Mr. Bob Kafka
ADAPT of Texas
Represents people with disabilities

Ms. Carole Smith
Private Providers Association of Texas
Represents mental retardation service providers

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

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

Ms. Ann Denton
Advocates for Human Potential
Represents mental health services advocates
and housing

Ms. Glenda Rogers
President, Texas Association of Area Agencies
on Aging
Represents people who are aging

Agency Representatives

Ms. Adelaide Horn
Texas Department of Aging and Disability
Services
Presiding Officer

Ms. Catherine Gorham
Texas Workforce Commission

Ms. Audrey Decking
Health and Human Services
Commission

Ms. Donna Jackson
Texas Department of Family and
Protective Services

DADS Staff Support

Mr. Marc S. Gold
Manager, Promoting Independence Initiative

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

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

Mr. Mike Bright
Association of Retarded Citizens
Represents mental retardation services
advocates

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

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

Mr. Michael Lyttle
Texas Department of Housing and
Community Affairs

Ms. Peggy Perry
Texas Department of State Health Services

Mr. Jonas Schwartz
Texas Department of Assistive and
Rehabilitative Services

Mr. Barry Waller
Texas Department of Aging and Disability
Services

APPENDIX D

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

2005 Stakeholder Resolutions and Policy Directives

RESOLUTIONS:

Resolution 1: Continue resolve to reduce and eventually eliminate interest lists

PIAC supports the Health and Human Services Commission's (HHSC) original Legislative Appropriation's Request (LAR) to eliminate the waiting/interest list for Medicaid Waiver Services within 10 years. However, in preparing future LARs to achieve this goal, HHSC must also effectively plan for the number of individuals who will be added to the interest lists during 2007-2016.

Projections for demographic growth (expected growth in the eligible population for each waiver) do not reflect the actual rate of interest list growth over the last several biennia.

While Senate Bill 1 begins the process of interest list reduction from current numbers, the increase of growth and demand for services during the past several biennia outmatch the interest list reduction appropriations. Similar growth can be expected in coming biennia.

Failure to address the needs of the thousands of individuals that will likely be added to waiver interest lists over the next ten years, will result in a significant interest list growth a decade from now.

Resolution 2: Ensure that Promoting Independence principles and philosophy are incorporated into any discussion of Medicaid reform.

The PIAC is fully aware of both national and state discussion on reforming the Medicaid (Title XIX) program. The federal fiscal year 2006 budget resolution calls on the Senate Finance Committee to find \$10 billion in savings over five years from entitlement programs under its jurisdiction. It has been stated that the Committee had hoped to secure most of the \$10 billion in cuts from the Medicaid program. In the aftermath of Hurricane Katrina and President Bush's statements regarding program cutbacks, PIAC hopes that any consideration of Medicaid reductions will be permanently delayed.

The PIAC wants assurance of the inclusion of PI principles and philosophy in any discussion of Medicaid reform as it impacts Texas. The PIAC also requests that a statewide work group be established to advise in the development of any Medicaid reform strategy the state considers as a response to the impact of a federal Medicaid reform initiative.

Resolution 3: Ensure that Promoting Independence principles and philosophy are incorporated into the Integrate Care Management/Administrative Services Organization Model.

House Bill 1771 (79th Regular Session) and Rider 49 to the 2006-2007 General Appropriations Act 2005 (Article II, HHSC) require HHSC to implement an Integrated Care Management (ICM) health care management program. Rider 49 directs that the model be implemented for the

elderly and disabled Medicaid population in the Dallas services delivery area. A hospital carve-out model, which is a variation STAR+PLUS, will continue in Harris County.

The legislation and Rider also direct that HHSC to utilize cost-effective models, which may include either the ICM, STAR+PLUS carve-out, or the primary care case management (PCCM) model in Bexar, El Paso, Lubbock, Nueces, Tarrant and Travis counties, to better manage the care of this population.

PIAC want assurances that the PI principles and philosophy are included in the discussion of the development of the ICM model and in the implementation of future roll-out of either ICM/STAR+PLUS carve-out, or PCCM as it impacts the care and services to the aged/blind/disabled Medicaid populations (see Appendix C for Senator Zaffirini's legislative intent).

Resolution 4: Continue the discussion regarding the future of State Schools with closure or consolidation as an outcome, and community placement as a realistic alternative for Texas' persons with mental retardation/development disabilities.

Rider 55 to the 2004-2005 General Appropriations Act 2003 (Article II, HHSC) requires the Health and Human Services Commission (HHSC) to study the feasibility of closure and consolidation of state schools.

Though the report did not recommend closing or consolidating state schools at this time, numerous findings lead to a different interpretation and the PIAC believes that closure or consolidation should remain a very real alternative for Texas.

PIAC believes that the Rider 55 Feasibility Study was flawed by the limitations of the variables included in the analysis. Consequently, the report did not present an accurate evaluation of closure/consolidation feasibility. The report stated that, "Decisions that affect the future of the facilities must be made in the context of the whole service system, the people it serves, and its total costs." However, PIAC believes that the study failed to meet this requirement and was not performed in this context.

The report stated:

- many states experience decreases in their net costs when selected institutional services are relocated to community settings
- enrollment in state schools has decreased overall
- it is clear from the decreasing utilization of the service combined with the number of additional certified beds that many of the facilities have space that is not being used for active residential or treatment purposes
- The utilization decline also presents an opportunity to "right size" facilities with declining censuses--
restructuring facility usage to accommodate reduced censuses in an efficient manner while developing the capacity to provide needed community services.

The PIAC notes the direction of the report was principally a statistical analysis of the state school system. Little or no reference is given to rebalancing the system design, or moving funds from institutional care to community care. There is also no discussion of the

accompanying benefits of promoting the independence of people with disabilities and transforming the state budget to be in line with the concepts of the Olmstead decision and executive orders from Governors Bush (GWB 99-2) and Perry (RP-13).

Authors of the report acknowledged, in the Conclusion section on page 45, that "statistical data cannot truly approximate the feasibility of closure or consolidation of any facility".

Resolution 5: Direct health and human resources to develop and promote the availability of a competent and adequately compensated workforce who will be able to deliver services to an aging; and/or disabled population and to children.

The exploding demographic growth of children, young adults and older Texans with disabilities, needing community long term services and supports, will require the development of a work force competent to do the hands-on work necessary that allows every individual to remain in their community. There is a current work force crisis in the health and human services system which will continue if aggressive action to alleviate the problem is not undertaken. Individuals may not have access to quality and stable supports if action is not taken immediately.

The PIAC recommends that HHSC create a Work Force Task Group to develop realistic solutions to this on-going problem of the availability of a competent work force. The following issues need to be included in the Task Force's scope of work:

- Increased funding targeted to enhance wage rates and to eliminate the disparity which currently exists between state-paid direct support professionals and what it allocates to community-based providers to perform the same service;
- Creative ways to provide health benefits such as benefit pools;
- Enhancing consumer directed/self-determined options to allow flexibility in selection options (this impacts the local community by increasing options families and individuals have to select direct care workers);
- Expansion of the Attendant Registry;
- Ways to expand allowable persons to provide paid services such as spouses and other family members by working with the Centers for Medicare and Medicaid Services;
- Expansion and exploration of non-market strategies to enhance the pool of hands on workers;
- A study on "best practices" in recruitment, training and retention in the United States.

Resolution 6: Ensure that Promoting Independence principles and philosophy are incorporated into any discussion regarding the development of a redesigned "front-door" and local access system.

PIAC requests ongoing and meaningful participation in the development of any changes to the local access system. Families and individuals are confused when accessing services. Additionally, some children have multiple caseworkers. This requires families to provide the same information multiple times, which is further complicated by the lack of communication between caseworkers and services not being coordinated.

The 76th Texas Legislature (1999) recognized this on-going problem and passed Senate Bill 374 with attention to access and assistance. In addition, House Bill 2292, 78th Session,

addressed the issue by reorganizing the twelve human and human service agencies. While the operating agencies have made great progress in organizing their infrastructure at the state level during the past fiscal year, it is important that this same focus occur at the local level.

The PIAC believes that the goal of any system redesign should focused on:

- improving access to services for aging Texans and people with disabilities,
- improving the quality of the services available, and
- reducing existing duplication and fragmentation in the current system to maximize resources.

Resolution 7: PIAC urges the Health and Human Services Commission to include the Promoting Independence philosophy and principles in all of its' policy decisions as it plans for a long-term strategy in the aftermath of any emergency. Ultimately, any strategy for an aged and disabled population depends on a coordinated social support system including community-based services and supports delivered in accessible, affordable, and integrated housing.

POLICY DIRECTIVES

The Promoting Independence Advisory Committee (PIAC) would like to focus attention on the following:

- ***Barriers to Relocation:*** continue the identification of all the barriers for an individual to remain in the community or for an individual who wants to relocate into the community. Those barriers that are an obstacle to living in the most integrated setting include, but are not limited to:
 - **housing** (also see section on Housing) that is affordable, accessible and integrated;
 - **lack of community support/resources** with an emphasis on an effort to build capacity for resources to address the needs of individuals transitioning into the community (i.e. money management; resources to repair medically needed equipment);
 - **lack of staffing**, such as personal attendants in all areas of the state (see section on Workforce);
 - **lack of family and/or informal supports** that may create unsafe living environments, which puts health and safety at risk;
 - **service coordination** because of the current lack of adequate relocation specialists and resources; and
 - **individuals with high services and support needs** who may have on-going medical/functional support requirements that exceed the “cost cap” and/or the reimbursement structure for home health agencies to meet their needs, or **who** require specialized staff.
- ***Expansion of managed care and integrated care management models:*** House Bill 1771 and Rider 49 to the 2006-2007 General Appropriations Act (Article II) 2005 requires the major urban areas to incorporate either a managed care (hospital carve-out) model, an integrated care management (ICM) model, or a primary care case management (PCCM) model for service delivery to its' aged, blind, and/or disabled

populations (the managed care hospital carve-out model must be used in Harris County while the ICM model must be used in Dallas County). Either one of these models will have a significant impact on service delivery to these populations. PIAC will monitor this expansion closely to ensure the incorporation of the Promoting Independence philosophy and principles.

- **Transportation:** A true comprehensive transportation system does not exist for the Promoting Independence population. Medicaid transportation is available to individuals in the community but only for medical reasons. It also means a very long day, from pick-up to drop-off, at the individual's home. There is little or no transportation for going to the grocery store, shopping, picking up medications, paying bills, etc.
- **Aging population with Cognitive and/or Physical Disabilities:** As with the entire population, individuals with cognitive and/or physical disabilities continue to live longer. It is important that the state be prepared, and has a plan to provide services for this specific aging population with their different needs. All individuals should have a choice to receive their long term services and supports in the most integrated setting.
- **Telehealth Technology:** While there are a number of technology initiatives occurring throughout the state, there is not any systematic exchange of information or information-sharing regarding the Promoting Independence population. Payment for telehealth/telemonitoring services provided to the PI population is needed to reduce the dependence on skilled "hands-on" care to promote further independence to allow an individual to remain at home or assist them to relocate back to the community. Issues include ensuring that technological supports are available and that low-income individuals may have access to a "wired" residence for possible broad-band technological assistance.
- **Older American's Act funding:** Increased focus on coordination of Older American's Act policy and dollars with other funding streams for support services.
- **Data Coordination:** It is time to review available data regarding individuals who are transitioning to the community. It is important to know what data are needed to help us in designing the changing long-term services and support delivery system. Coordination of the current available data is essential. Data coordination should include at a minimum: the Q1a data collected through the Minimum Data Set (MDS), Relocation Specialists' information, the Real Choice "Money Follows the Person" projects, and STAR+PLUS. PIAC wants to ensure that these disparate data points are comprehensive and meaningful.



Rider 28 Client Demographics

Data Effective Date: August 31, 2006

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	41
COMMUNITY - ALONE	1,130
COMMUNITY - ALTERNATIVE LIVING/RES. CARE	1,440
COMMUNITY - W/FAMILY	2,287
COMMUNITY - W/OTHER WAIVER PARTICIPANTS	157
ICF/MR - COMMUNITY	2
OTHER	33
Total	5,090

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

Service Group	Client Count
CBA	4,801
CLASS	43
COMMUNITY CARE	3
MEDICALLY DEPENDENT CHILDREN PROGRAM	190
PACE	1
STAR+PLUS	52
Total	5,090

Age Group	Client Count
0 - 9	140
10 - 17	53
100 +	11
18 - 20	13
21	8
22 - 44	368
45 - 64	1,368
65 - 69	468
70 - 74	521
75 - 79	817
80 - 84	653
85 - 89	517
90 - 94	271
95 - 99	82
Total	5,090

Region	Client Count
00	2
01	212
02	387
03	1,515
04	651
05	272
06	194
07	375
08	606
09	167
10	50
11	659
Total	5,090

Gender	Client Count
FEMALE	3,300
MALE	1,789
UNKNOWN	1
Total	5,090

Ethnicity	Client Count
AMERICAN INDIAN OR ALASKAN NATIVE	17
ASIAN OR PACIFIC ISLANDER	19
BLACK- NOT OF HISP. ORIGIN	640
HISPANIC	1,004
UNKNOWN	160
WHITE- NOT OF HISP. ORIGIN	3,260
Total	5,090

STATUS REPORT: 2004 PROMOTING INDEPENDENCE PLAN

AT RISK OF INSTITUTIONALIZATION

DONE

- HHSC will continue to support the expansion of Consumer Directed Services (CDS) options and work with its CDS workgroup to accomplish this goal.

Status

The CDS workgroup meets quarterly and is monitoring the expansion of CDS in the Home and Community Based Services (HCS) and Texas Home Living waivers (January 1, 2007); and the expansion of coverage of more services such as occupational, physical and speech therapies. Service Responsibility Option has been expanded to Bexar County. The Medically Dependent Children's Program (MDCP) has included CDS as an option for respite. CLASS services options (nursing and therapies) are being considered.

PARTIALLY DONE

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSAs would develop mechanisms to ensure continuity of services for individuals who "age out" of children's services in order for them to remain in the community, including persons between the ages of 18-22 in the Adult Protective Services system.

Status

The 79th Legislature did not provide appropriations to fund all aspects of this recommendation. Rider 54 (DADS) carves out \$1,182,270 in General Revenue (plus matching dollars) from Strategy A.3.2 Home and Community Based Services, to be set aside annually for services for children aging out of foster care.

ON-GOING

- HHSC will direct Health and Human Service Agencies (HHSAs) to ensure that any entity utilized to assist individuals in decision-making regarding their services will be knowledgeable in aging and disability specific information, the Promoting Independence Initiative, self-determination, community care services, and Title II of the ADA.

Status

HHSC is notifying the health and human service agencies in writing that staff or subcontractors assisting aged and disabled individuals be knowledgeable about their issues and programs.

FUNDING AND CAPACITY ISSUES

DONE

- HHSC will continue to direct all HHSAs to examine strategic planning, current budgets and planned budgets for explicit inclusion of activities and funds related to *Olmstead*.

Status

HHSC directed the HHSAs to examine strategic planning, current budgets and planned budgets for explicit inclusion of activities and funds related to *Olmstead*. All HHSAs included activities during the current biennium and have included *Olmstead* principles in their 2007-2011 strategic plans and legislative appropriations requests (LARs).

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, DADS would implement legacy TDHS Rider 7b in its original wording from the 77th Legislature, Regular Session, 2001.

Status

The 79th Legislature codified Rider 7b with Senate Bill 626 which had the original language from the 77th Legislative Session. SB 626 allows for certain individuals in 1915 (c) waiver programs to receive services in the community up to a cost of 133.3% of the cost of services in an institution. DADS is implementing the legislation.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, DADS would ensure the implementation of legacy TDHS Rider 28 as a permanent funding mechanism.

Status

The 79th Legislative Session codified Rider 28 with House Bill 1867, which allows for the “money follows the person” policy in nursing facilities.

- **Requires legislative direction and/or appropriations.**
If made permanent by the Legislature, HHSC would implement the provisions in HHSC Rider 13(c) to transfer funds for promoting independence activities including relocation activities, housing, and family-based alternatives.

Status

This has been completed.

- DADS will request funding to continue the current nursing facility relocation services beyond the current biennium in its FY 2006 and FY 2007 Legislative Appropriation Request (LAR).

Status

This has been completed

- HHSC will request funding in two exceptional items in its FY 2006 and FY 2007 LAR to address the waiting/interest lists in all HHSAs based on a ten-year interest/wait list elimination strategy.

Status

This was accomplished. While the entire amount requested was not appropriated, the 79th Legislature did include funding for DADS for an additional 9360 waiver "slots".

- DADS will include in its FY 2006 and FY 2007 LAR funding to maintain current services in the In Home and Family Support Program.

Status

This was completed.

PARTIALLY DONE

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

If made permanent by the Legislature, HHSC would implement Section 18, Special Provisions Rider, to allow the use of funds appropriated for long-term care waiver slots to DADS for: a) the establishment and maintenance of long-term care waiver slots; b) the provision of wraparound services that are specifically associated with such slots and that relate to transitional services, access to immediate housing, and transportation services; or c) the development of family-based alternatives for children leaving institutions.

Status

This rider was permanent. HHSC expanded the contract with EveryChild, Inc from 12 counties in central Texas to the Houston and Dallas/Longview areas. DADS is working on other issues.

- DADS will include an exceptional item in its FY 2006 and FY 2007 LAR that would increase rates by rebasing rates and by providing inflation adjustments.

Status

This recommendation was in DADS' LAR. Rate increases for HCS, CLASS, and ICF/MR Community were funded, contingent upon approval of the Quality Assurance Fee for HCS and CLASS. DADS also requested the restoration of rates to FY 2003 levels. This restoration was funded with the following exceptions: (1) nursing facility; (2) HCS/CLASS and ICF/MR Community were funded contingent on approval of the quality assurance fee for HCS and CLASS.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

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

If directed and/or funded by the Legislature, DADS would re-integrate the legacy TDHS Rider 28 "slots" into the base waiver numbers as was done prior to the 2004-08 biennium.

Status

The 79th Legislature did not include this provision in House Bill 1867 as the 77th Legislative Session had done with Rider 37.

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

If directed and/or funded by the Legislature, HHSC would expand legacy TDHS Rider 28 to all institutional settings, including all ICF/MR funded entities.

Status

The 79th Legislative Session did not expand Rider 28, now codified as House Bill 1867, to beyond the nursing facility setting. Rider 46 directs DADS to conduct a pilot to move up to 50 children from an intermediate care facility for the mentally retarded (ICF/MR) to a community setting.

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

If directed and/or funded by the Legislature, HHSC would work with DADS in the implementation of appropriated funds for transitioning providers who voluntarily downsize their facilities.

Status

There was no legislative direction or appropriations. Rider 46 allows for a limited movement of children from ICFs/MR to the community.

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

If directed and/or funded by the Legislature, HHSC would support further study of service planning approaches for individuals of all ages, including those being performed by an independent entity separate from the provider.

Status

There was no legislative direction or appropriations. Senate Bill 40 added additional restrictions to permanency planning activities to prevent conflict of interest.

- HHSC will support TDHCA's request for funding to assist individuals in obtaining accessible, affordable integrated housing to be maintained at the current level or increased.

Status

HHSC has worked collaboratively with TDHCA on the Housing Voucher Program and continuation of efforts to assist individuals in obtaining accessible, affordable integrated housing. No specific request for assistance was made by TDHCA.

CHILDREN'S ISSUES

DONE

- **Requires legislative direction and/or appropriation.**
If directed and/or funded by the Legislature, HHSC would ensure that the permanency planning be performed by an independent entity from the provider or facility where the child resides.

Status

Accomplished through Senate Bill 40.

- HHSC will request funding for continuation of the family-based alternatives project in its FY 2006-07 budget.

Status

Accomplished through SB 1. Funds for the core project were appropriated through the Health and Human Services budget. Funds to expand efforts to other parts of the state with high concentrations of institutionalized children were obtained through the Promoting Independence funding.

- HHSC, with DADS, will explore the implications and feasibility that, for children residing in nursing facilities, the parent/legally appointed representative be required to give consent for treatment annually.

Status

House Bill 2579 requires parents placing children in institutions to sign a "Parental Responsibility Acknowledgement." This acknowledgement requires parents to keep their contact information up-to-date at the facility where their child resides, and make every effort to participate in the planning and decision-making for their child. Additionally, it requires facilities to make reasonable accommodations to allow parents to participate in both annual planning and permanency planning. Rules implement on September 1, 2006.

- HHSC, with DADS, will examine the implications and feasibility of developing a mechanism for making decisions about the plan of care, permanency planning, treatment, and placement for children in institutions whose parents cannot be located.

Status

Accomplished through House Bill 2579.

PARTIALLY DONE

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

If directed and/or funded by the Legislature, HHSC would implement permanency planning requirements that go beyond preparation of a written plan to include on-going activities that keep parents informed of family-based options and assist in promoting activities that will result in children growing up in families.

Status

The 79th Legislature did strengthen permanency planning requirements through Senate Bill 40 but did not to the full measure of the recommendation. HB 2579 requires DADS to ensure community and family-based options are provided to families during intake process.

- HHSC will work with DADS and DFPS to examine all funding options including, but not limited to, allowing for appropriate waiver slots to be made available for children in Child Protective Services (CPS) custody, particularly for those placed in CPS licensed institutions for children with physical and cognitive disabilities.

Status

Rider 54 has been implemented. Rider 54 provided for \$1.8 million in funding identified for children with disabilities aging out of foster care will be available for any child aging out of CPS conservatorship or aging out of secondary school services from DADS appropriation; Strategy A.3.2

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

If directed and/or funded by the Legislature, HHSC will ensure that children with disabilities aging out of CPS services will have access to the most appropriate HHS waiver services in the community.

Status

The 79th Legislature attached Rider 54 to DADS appropriation under Strategy A..3.2 for approximately \$1.8 million to provide Home and Community-based Services (HCS) to children aging out of foster care. It is anticipated that these funds will provide services for approximately 62 children. There are significantly more children who will be aging out of CPS conservatorship during this biennium that will need these services.

- **Requires legislative direction and/or appropriation.**

If directed and/or funded by the Legislature, HHSC would ensure an independent permanency plan be completed prior to a child's placement in a nursing facility.

Status

House Bill 2579 requires comprehensive information on alternatives to institutionalization be provided to parents/families prior to the placement of a child in an institution. This information must be presented by an independent party unaffiliated with the institution.

ON-GOING

- HHSC will work with appropriate health and human services agencies in order that the Senate Bill 367 MOU required for coordination of services for individuals transitioning from nursing facilities include the Early Childhood Intervention (ECI) agency to address those individuals from ages zero to two.

Status

This MOU will be updated during the next cycle of review. ECI continues to serve those children.

- HHSC will study the feasibility and costs of allowing individuals who age out of any existing children's services (i.e. Comprehensive Care Program {CCP}), Medically Dependent Children's Program (MDCP), TexasHealthSteps access to the most appropriate waiver services in the community.

Status

Pending; HHSC is compiling data. Children aging out of children's programs who are eligible for adult services only have access to the Community Based Alternatives waiver which is often not the most appropriate waiver.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, DADS would expand legacy TDHS Rider 7b to include children transferring from the Comprehensive Care Program (CCP).

Status

While Rider 7b was amended during the 79th Legislative Session, those changes did not include expansion of the provisions to children transitioning from CCP to adult services. Rider 7b was amended and codified by SB 626.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC would work with DADS to target 20% of newly appropriated Home and Community-Based Services (HCS) waiver slots (FY 06 and FY 07) for children who are placed on the waiver interest/waiting list as a result of Senate Bill 368, 77th Legislative Session's permanency planning efforts, and for those children living in institutions within the Family Based Alternatives project.

Status

Funds for waiver services for children in the family-based alternative project area were not appropriated. However, the Legislature did provide funding for up to 50 children residing in ICFs/MR to transition to community services (Rider 46) and \$1.8 million for community services for children with disabilities aging out of foster care (Rider 54). While these funds are not limited to children in the project area, some children in the project area will be eligible for this funding.

HOUSING ISSUES

PARTIALLY DONE

- Texas Department of Housing and Community Affairs (TDHCA) will seek to increase the amount of rental assistance that will be available for entities to apply for and will add a scoring incentive for those entities serving persons with disabilities (prioritizing the *Olmstead* population).

Status

For FY 2006, TDHCA's HOME Program has actually decreased the Tenant Based Rental Assistance allocation from 20 percent to 15 percent of the total of HOME funds. Furthermore, there is no special scoring incentive for the *Olmstead* population — there is, however, a scoring preference for persons with disabilities.

ON-GOING

- HHSC will, upon request, assist TDHCA to continue to improve intra-agency coordination regarding housing assistance funds through continuing education of TDHCA staff regarding affordability, accessibility, and integration.

Status

TDHCA welcomes any information that enables it to better serve persons with disabilities and all citizens of Texas in need of safe, quality, and accessible affordable housing.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

- TDHCA will restore the *Olmstead* set-aside or make an equivalent commitment of dollars in 2005 and beyond. TDHCA's Board has not made a policy decision on this recommendation.

Status

TDHCA's Board has not made a policy decision on this recommendation.

- HHSC will work together with TDHCA, as well as advocates and stakeholders at the local level, to encourage Public Housing Authorities to identify and set aside a specific number of housing vouchers to be used for individuals in the *Olmstead* population.

Status

TDHCA is willing and ready to work with all agencies who serve individuals in the Olmstead population. However, TDHCA does not advocate policy decisions aimed toward public housing authorities, or any public entity.

WORKFORCE ISSUES

DONE

- HHSC and TWC will continue the plan to enhance information exchange and explore coordination efforts to increase opportunities to support people with disabilities and older Texans living and working in the most integrated setting.

Status

Senate Bill 566 directed HHSC to implement a Medicaid Buy-In program to allow working people with disabilities to increase their income without losing Medicaid coverage (\$6 million in General Revenue appropriated). Medicaid Buy-In is effective September 1, 2006.

- HHSC and DARS will continue to pursue the Medicaid Buy-In as mandated by H.B. 3484, 78th Legislature, Regular Session, and associated grant activities.

Status

Senate Bill 566 establishes the Medicaid Buy-In program (see above).

- The HHSC will encourage the Texas Council for Developmental Disabilities to continue funding of the Attendant Network Project.

Status

HHSC has communicated support.

ON-GOING

- HHSC will work with the PIAC to review and identify workforce issues and concerns, while acknowledging that wages and benefit packages are set by the Legislature.

Status

A Workforce Forum is being planned for late Fall 2006.

- DADS Administration on Aging Family Caregiver and Education Program will coordinate with Promoting Independence Initiatives to insure maximum utilization of resources to support family caregivers providing care and support for elderly Texans.

Status

DADS will continue to recognize Caregiver Support as an integral part of the services provided by the Area Agencies on Aging and ensure that the Aging Family Caregiver Program is coordinated with the Promoting Independence Initiative. This effort is ongoing.

- HHSC will direct all HHSAs to work with universities in recruiting students into the health and human services field, such as Physical Therapy (PT), Occupational Therapy (OT) and social work, to be involved in direct support positions during internships and practice.

Status

HHSC will notify HHSAs in writing. DADS' State Schools will continue to work with universities and colleges in the placement of students for practicum and internship work. DADS determined that a provider's inventory is not necessary but a compiling of information about opportunities for university internships is posted to the DADS website effective September 1, 2006.

- HHSC will continue to direct HHSAs to support and encourage self-determination efforts through the work of the Consumer Directed Services (CDS) Workgroup and the expansion of consumer directed services.

Status

HHSC's Consumer Directed Services Advisory Work Group continues to meet on a quarterly basis to monitor the development of the self-determination philosophy and consumer directed services (CDS) option in DADS' programs. The work group worked with HHSC and DADS for the inclusion of the CDS option in the Home and Community-Based Services (HCS) and Texas Home Living waivers which become effective September 1, 2007. Additionally, it is working with both agencies for the expansion of CDS to cover other services such as therapies.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC would direct appropriate HHSAs to explore and develop employee recruitment and retention incentives for all providers of long-term care services.

Status

There was no legislative direction or appropriations.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, DADS would investigate and fund a benefits pool, including health benefits and workers compensation, that attendants/direct support professionals can access easily.

Status

There was no legislative direction or appropriations.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC would allow individuals receiving Temporary Assistance to Needy Families (TANF) to work as attendants/direct support professionals without losing benefits for a period of two years.

Status

There was no legislative direction or appropriations.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC would allow individuals receiving Temporary Assistance to Needy Families (TANF) to work as attendants/direct support professionals without losing benefits for a period of two years.

Status

There was no legislative direction or appropriations.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC would direct DADS to coordinate and expand training opportunities for direct support professionals/attendants statewide.

Status

There was no legislative direction or appropriations.

HEALTH AND HUMAN SERVICES COMMISSION

DONE

- HHSC directs and authorizes DADS, in consultation with the HHSC, to act on behalf of HHSC in all matters relating to the Promoting Independence Initiative.

Status

HHSC posted Health and Human Services (HHS) Circular C-002, October 20, 2004, which directs and authorizes 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.

- HHSC will direct HHSAs to: (1) review all policies, procedures, and rules regarding services to individuals that would assist them in transitioning from institutions; and (2) revise policies, procedures, and rules accordingly to make transition a reality within the guidelines of federal regulations, available funding, legislative direction, individual choice, and appropriateness of service plans.

Status

HHSC is drafting a letter to the operating health and human services agencies directing them to review all policies and procedures.

- HHSC supports the goal that all identification, assessment, and service coordination processes be provided through organizations knowledgeable of community services.

Status

HHSC continues to support this recommendation in all of its initiatives.

PARTIALLY DONE

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC will explore the implications and feasibility of requiring the guardian/legally appointed representative of a person of any age residing in a nursing facility to be required to give consent for treatment at least annually.

Status

House Bill 2579 was approved to ensure the involvement of parents/guardians of children placed in institutions. This legislation does not include adults.

ON-GOING

- **Requires legislative direction and/or appropriations**
HHSC will work with the identified responsible agency for guardianship to: (1) identify the number of individuals that APS places in nursing facilities; and (2) identify barriers in finding less restrictive placements.

Status

HHSC has assigned this to DADS and DFPS.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, HHSC would ensure that any future rate development be done in a manner that provides incentives to attract and retain competent direct support professionals/attendants.

Status

There was no specific appropriation on this recommendation. However, legacy Department of Human Services community care providers received a rate restoration in response to the rate cut enacted during the 78th Legislative Session (a 1.1% rate cut enacted for the 2004-2005 biennium was restored for 2006-2007).

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

If directed and/or funded by the Legislature, HHSC would amend the Medicaid State Plan to utilize Targeted Case Management to fund relocation assistance for individuals who choose to leave nursing homes.

Status

There was no legislative direction or appropriation.

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

If directed and/or funded by the Legislature, HHSC would explore the feasibility of expanding the task of nurse/doctor delegation/assignments into the Primary Home Care (PHC) program.

Status

There was no legislative direction. The PHC does not require a licensed nurse as part of its licensing requirement and therefore can not use nurse delegation.

DEPARTMENT OF AGING AND DISABILITY SERVICES

DONE

- DADS will assist PIAC to develop a subcommittee to review all materials and processes informing individuals of community-based alternatives and to provide recommendations to the appropriate HHS agencies.

Status

DADS convened the subcommittee which will provide recommendations to PIAC; HHSC and the other appropriate HHS agencies.

- DADS will continue the contract requirement that relocation specialists provide cross-agency coordination with the Local Mental Health and Mental Retardation Authorities (LMHMRA) and the DFPS for individuals (adults and children) transitioning into the community to ensure the appropriate expertise and services are available to support a successful transition.

Status

Contracts remain in effect.

- DADS will provide information to regional staff and relocation contractors regarding coordination between LMHMRA and regional DADS staff related to services and supports in the community.

Status

Material has been sent and is an on-going activity.

- For individuals living in nursing facilities who have expressed an interest in returning to the community, DADS will explore the feasibility of forwarding the person's name to the Center for Independent Living (CIL) or Area Agency on Aging (AAA), with the consent of the individual.

Status

DADS has received necessary CMS approval for sharing of MDS data in the aggregate by facility. Nursing facility (NF) Ombudsman and NF social workers and others can refer individuals.

- With approval from the Centers for Medicare and Medicaid Services (CMS), DADS will continue to publish a report on the website relating to the number of individuals living in nursing facilities who express an interest in returning to the community, which include the names and addresses of these facilities.

Status

DADS publishes information on a dedicated website:

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

- The DADS Office of the State Long Term Care Ombudsman will continue to provide input into DADS Planning and Advisory activities to ensure that the Ombudsman involvement is appropriately included in Promoting Independence activities.

Status

The State Ombudsman is on the Real Choice grant "Money Follows the Person" task force. The Area Agencies on Aging participate in the "Community Care Options" training.

- The DADS Office of the State Long Term Care Ombudsman will continue to provide Promoting Independence related training to ensure Area Agencies on Aging (AAA) ongoing support and involvement in *Olmstead* related initiatives.

Status

Program and statistical updates have been shared with the AAAs regarding the progress of statewide PI activities; "Community Care Options" training has been completed; and a PI update has been provided to the Ombudsman and new staff through their orientation.

PARTIALLY DONE

- Regarding individuals living at State Mental Retardation Facilities (SMRFs), DADS would: 1) review data regarding the length of stay, by facility, for persons with mental retardation who are diagnosed as deaf or have a hearing impairment; 2) compare this length of stay data to other individuals without these impairments; and 3) identify potential barriers to community transition for this population, i.e., lack of interpreter services.

Status

As of April 30, 2005, there were 210 individuals who have been diagnosed as deaf or as having a hearing impairment. These individuals have an average length of stay of 23.6 years, compared with 23.3 years for individuals in a comparable group (based on level of need and age but without a significant hearing impairment).

ON-GOING

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, DADS, in coordination with DSHS, will study the feasibility of investigating and resolving the barriers to transitioning residents of nursing facilities who have physical disabilities and a mental health diagnosis.

Status

Even though there was no legislative direction nor funding, DADS is working to identify barriers to transitioning populations with complex needs.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, regarding individuals with mental retardation who are diagnosed as deaf or have a hearing impairment living at SMRFs, if barriers to community transition for this population are identified, DADS will take action to address the barriers.

Status

No legislative direction or funding was received.

- **Requires legislative direction and/or appropriations.**
If directed and/or funded by the Legislature, for adults that Adult Protective Services places in nursing facilities, including those for whom the state becomes the guardian, DADS would: 1) identify any potential barriers to community transition; and 2) if barriers to community transition are identified, DADS would take action to address the barriers.

Status

No legislative direction or funding was received.

DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

DONE

- DARS will continue to work with the State Independent Living Centers (SILCs) and other interested stakeholders in assuring that technical assistance is funded and provided to community organizations interested in or providing assistance to individuals transitioning from nursing facilities and other institutions into the community.

Status

DARS' Division of Rehabilitative Services (DRS) and the SILC worked cooperatively to develop a State Independent Living (IL) Plan for 2005-07. Objectives regarding technical assistance for Centers for Independent Living and community integration are included in the proposed State Plan for Independent Living. In addition, DARS has provided to the SILC \$15,000 to provide technical assistance. Relocation was among the 2005 training priorities selected by the regional IL Training Council in August 2004. DRS worked with the Regional Rehabilitation Continuing Education Program to plan a regional IL conference in June 2005. DRS worked cooperatively with SILC on the 2005 state IL Conference which was held on March 7 & 8th and utilized the conference as training for staff.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

- DARS FY 2006 and FY 2007 LAR will include funding to increase the capacity of centers for independent living and the statewide network of centers for independent living, therefore increasing their capacity to assist individuals in nursing homes and other institutions to transition into the community.

Status

The legislature did not appropriate the additional dollars requested by DARS in their LAR.

- **DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES**

DONE

- DFPS will ensure that the Children's Protective Services' (CPS) caseworker training curriculum continue to be revised and improved as needed with respect to disability issues and that any revision of disability training be coordinated with DADS.

Status

This has been accomplished and training began February, 2005 and is presented by Texas Center for Disability Studies'(TCDS) trainers in each region of the state. All CPS staff are invited to these trainings. The Developmental Disability Specialists attend the trainings given in their local regions and will be a resource contact for staff when they

need assistance that involve children with disabilities. TCDS also developed a resource notebook that is given to CPS staff during the training session. DFPS collaborated with TCDS to update the resource notebook with current DFPS policy for working with children with disabilities.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

DEPARTMENT OF STATE HEALTH SERVICES

DONE

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

If directed and/or funded by the Legislature, DSHS would ensure that children and adults with 3 or more hospitalizations within 180 days or 12 continuous months for mental health services be considered a high priority for the most intensive service package as appropriate to meet their needs, within the new service benefits design model.

Status

No additional legislative direction or appropriation was given during the 79th session. However, DSHS has addressed this issue with on-going policy as a result of House Bill 2292, 78th Legislative Session. Adults with three or more hospitalizations within 180 days or 12 continuous months for mental health services are considered a high priority for the most intensive service package within the Resiliency and Disease Management (RDM) program.

DSHS also implemented services that decrease the rate of re-hospitalizations among children through RDM (Intensive Case Management, Multi-systemic Therapy and Treatment Foster Care).

ON-GOING

- DSHS, in coordination with DADS, will require Local Mental Health Authorities (LMHAs) to prioritize individuals referred for services who are transitioning from nursing facilities, and those hospitalized 3 times or more in 180 days and/or 12 or more continuous months (i.e. prioritization might include expedited intake and assessment process or expedited assignment to services).

Status

DSHS and DADS are coordinating information, resources and contacts to meet this recommendation. Efforts continue to meet this goal.

- DSHS will: 1) review data regarding the length of stay, by facility, for persons with mental illness who are diagnosed as deaf or have a hearing impairment; 2) compare this length of stay data to other individuals without these impairments; and 3) identify potential barriers to community transition for this population, i.e., lack of interpreter services.

Status

DSHS is determining the best methodology for capturing information regarding those who are deaf or have a hearing impairment and will compare that data to those individuals without hearing impairments. There are three individuals who have been identified on the Over 365 report who have been identified as being deaf or having a hearing impairment. No barriers have been identified.

NO LEGISLATIVE DIRECTION AND/OR APPROPRIATIONS

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

If directed and/or funded by the Legislature, if barriers to community transition are identified for persons with mental illness who are diagnosed as deaf or have a hearing impairment, DSHS will take action to address the barriers.

Status

No additional legislative direction or appropriation was given during the 79th session. However, DSHS has worked with Advocacy Incorporated and DARS to develop a standard definition for deaf and hard of hearing. In addition, barriers to placement are being dealt on a case-by-case basis given the very small numbers.