

**THE PROMOTING INDEPENDENCE ADVISORY COMMITTEE
2004 REPORT**



**SUBMITTED TO EXECUTIVE COMMISSIONER ALBERT HAWKINS
HEALTH AND HUMAN SERVICES COMMISSION
SEPTEMBER 2004
BY THE STAKEHOLDER MEMBERS OF THE PROMOTING INDEPENDENCE
ADVISORY COMMITTEE**

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This report reflects the views and opinions of a consensus of the consumer and advocate stakeholder members of the Promoting Independence Advisory Committee. Unless otherwise noted, the views and opinions expressed in this report do not necessarily reflect the policy of the Health and Human Services Commission or any state agency represented on the Committee.

INTRODUCTION AND PURPOSE

The Promoting Independence Advisory Committee (PIAC), formerly the SB 367 Task Force on Appropriate Care Settings for Persons with Disabilities, has met on a regular basis during 2004 to continue the work of the Promoting Independence Initiative and the state's development and implementation of the Promoting Independence Plan. The PIAC was given specific charges by the Texas Legislature. These charges include:

- To study and make recommendations on developing a comprehensive, effectively working plan to ensure appropriate care settings for persons with disabilities by submitting annually a report to the Health and Human Services Commission (HHSC);
- To advise the 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;
- To advise the 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;
- To advise the HHSC on identifying funding options for the plan.

This report is submitted to the HHSC from the consumer and advocate stakeholders on the PIAC as the annual report required by SB 367 of the 77th Legislative Session¹. This report will help to inform the Commission during the interim years of the Promoting Independence Plan revision.

The 78th Session of the Texas Legislature faced serious challenges to fund the state's health and human service system. Based on the actions from the 78th Legislative Session and the extensive reorganization required to the health and human service system by HB 2292, the consumer and advocate stakeholders of the PIAC would like to express concern for the continued future of the Promoting Independence Plan and Initiative.

The consumer and advocate stakeholders of the PIAC views the lack of funding for community services, the absence of any funding for new Home and Community Based Services (HCBS) waiver programs waiver slots, the reduction in the base of CBA (Community Based Alternatives Waiver) community service slots, the changes to Texas Department of Human Services (TDHS) Rider 7b, and changes made to Rider 37 of the 77th Legislative Session (which will no longer allow money following the consumer to expand the base number of waiver slots), as extreme barriers to the continued implementation of the state's Olmstead response and implementation of the Promoting Independence Plan, with specific regard to the mandate for the state to provide services in the "most integrated setting" and with reasonable pace. In light of this, the consumer and advocate stakeholders of the PIAC passed the following resolution:

RESOLUTION: The consumer and advocate stakeholders of the PIAC, as authorized by Senate Bill 367 of the 77th Legislative Session, recommend that the 79th Legislature appropriate sufficient funds for the Health and Human Services system that will result in assuring that people with disabilities and older Texans have a choice to live and receive services in the most integrated setting through the 2006 and 2007 biennium.

¹ The full text of SB 367 may be found at: <http://www.capitol.state.tx.us/>

The consumer and advocate stakeholders of the PIAC believes that policies related to services within the health and human service agencies should be measured against a set of principles that reflect the “most integrated setting” option as defined in Title II of the American with Disabilities Act (ADA).

Additional concerns of the consumer and advocate stakeholders of the PIAC include the consolidation of health and human service agencies and the ability of stakeholders to continue to have input into the policy development process. Stakeholders on the committee are concerned by the elimination of public policy boards. It is imperative that the administration of services and the leadership of the state recognize that policy should be a public exercise and that input on an ongoing basis from those who are the recipients of the state’s services is critical to the efficient and effective design of the system.

BACKGROUND

In June of 1999 the Supreme Court of the United States affirmed a judgment in the Olmstead vs. L.C. and E.W. lawsuit, which has had far reaching effects with states regarding services for individuals with disabilities. The Olmstead Decision upheld Title II of the ADA and applied it to access to services in the most integrated setting for the two plaintiffs in the case. Title II of the ADA proscribes discrimination in the provision of public services, specifies, *inter alia*, that no qualified individual with a disability shall, “by reason of such disability”, be excluded from participation in, or be denied the benefits of, a public entity’s services, programs, or activities. Congress instructed the Attorney General to issue regulations implementing Title II’s discrimination proscriptions, and one such regulation, known as the “integration regulation”, requires a “public entity to administer programs in the most integrated setting appropriate to the needs of qualified individuals with disabilities”.

The Court went further in their opinion to state that it acknowledged that Congress found that discrimination against people with disabilities includes segregation, isolation, and institutionalization and that under the ADA an individual with disabilities has a legal right to be served in the most integrated setting. The court stated that the reasonable modifications standard for the ADA would be met if the state has a comprehensive effectively working plan for persons and a waiting list that moved at a reasonable pace, not controlled by the state’s endeavors to keep institutions fully populated. The Court stated, “Confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, education advancement, and cultural enrichment.”

With the advent of the Olmstead Decision, the HHSC initiated the Promoting Independence Initiative and appointed The Promoting Independence Advisory Board, as directed by then Governor George Bush’s Executive Order GWB 99-2. (See Appendix A). The Promoting Independence Advisory Board met during Fiscal Years (FY) 1999 and 2000 and assisted the HHSC in crafting the states response to the Olmstead Decision. This was accomplished by the development and implementation of the Promoting Independence Plan. This plan highlights the states efforts to assist those individuals desirous of community placement, appropriate for community placement as determined by the state’s treatment professionals, and who do not constitute a fundamental alteration in the state’s services, to live in the community.

During the 77th Session of the Texas Legislature, SB 367 was passed which re-named the Promoting Independence Advisory Board to the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities. The Commissioner of Health and Human Services appoints the members of the Task Force and its presiding officer. The HHSC Commissioner determines the number of members who include representatives of appropriate health and human service agencies, related work groups, consumer and family advocacy groups and providers of services. Many members of the original Promoting Independence Advisory Board continued in their appointments in order to provide continuity within the initiative.

This report also fulfills Governor Rick Perry's Executive Order of April of 2002. Executive Order RP-13 (See Appendix B) highlights the areas of housing, employment, children's services, and community waiver services. The Executive Order includes coordination with the Texas Department of Housing and Community Affairs (TDHCA), the Texas Rehabilitation Commission (TRC), and the Texas Commission for the Blind (TCB), and the Texas Workforce Commission (TWC). As a result of this order in 2003, the PIAC was expanded to include the appointments of a representative from the TDHCA and the TWC. (TRC became a member of the PIAC in July of 2002 as the result of its promoting independence initiatives.)

During the 78th Session of the Texas Legislature HB 2292 was passed. This bill has had, and will continue to have, far reaching implications for all of health and human services as it consolidates the twelve health and human services agencies into five agencies reporting directly to the Executive Commissioner of HHSC. As of September 1, 2004, the five agencies are:

- Health and Human Services Commission (HHSC)
- Department of Aging and Disability Services (DADS), 9-1-04
- Department of State Health Services (DSHS), 9-1-04
- Department of Assistive and Rehabilitative Services (DARS), 3-1-04
- Department of Family and Protective Services (DFPS), 2-1-04

In this report, when referencing activities and/or accomplishments that occurred prior to consolidation dates noted above, the legacy agencies will be cited: Texas Department of Human Services (TDHS), Texas Department of Mental Health and Mental Retardation (TDMHMR), Texas Department on Aging (TDoA); Texas Department of Protective and Regulatory Services (TDPRS) and Texas Rehabilitation Commission (TRC).

Within HB 2292, 78th Legislative Session, there was language requiring the HHSC to certify as exempt from abolition various advisory committees. The SB 367 Task Force was certified as exempt from abolition by the Executive Commissioner of the HHSC, Mr. Albert Hawkins. The HHSC and stakeholders agreed to simplify its name. The SB 367 Task Force is now referred to as the Promoting Independence Advisory Committee (PIAC). The PIAC appreciates the recognition by Executive Commissioner Hawkins regarding its need to continue to be the forum to provide input related to the state's Promoting Independence Plan and Initiative. Effective September 1, 2004, Executive Commissioner Hawkins has directed and authorized DADS to act on behalf of and in consultation with the HHSC in all matters relating to the Promoting Independence initiative. In this capacity, DADS will be responsible for:

- Preparation of the Revised Texas Promoting Independence Plan, submitted to the Governor and Legislature on a biannual basis;
- 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 PIAC;
- Staff support for the PIAC, including assistance in the development of its annual report to the HHSC, with the report to 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 Executive Commissioner of the Health and Human Services Commission.

MEMBERSHIP OF THE PROMOTING INDEPENDENCE ADVISORY COMMITTEE FY 2004

Mr. Bob Kafka
ADAPT

Ms. Colleen Horton
Texas Center for Disabilities Studies
University of Texas, Austin

Ms. Ann Denton
Advocates for Human Potential

Ms. Candice Carter
AARP

Dr. Richard Garnett
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Ms. Catherine Gorham
Texas Workforce Commission Commissioner
Designee

Ms. Terry Durkin Wilkinson
Texas Department of Human Services
Board Representative

Ms. Marilyn Eaton
Texas Department of Human Services
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Mr. Dick O'Connor
Texas Department of Mental Health and
Mental Retardation, Board Representative

Mr. Barry Waller
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Ms. Sara Dale Anderson
Texas Department of Housing and
Affairs Representative

Ms. Martha Bagley
Texas Rehabilitation Commission Community
Commissioner Designee

Ms. Adelaide Horn
Health and Human Services Commission
Commissioner Representative
Presiding Officer

Mr. Terry Childress
Health and Human Services Commission
Long-term Care Services and Supports
Program Administrator

THE PROMOTING INDEPENDENCE INITIATIVE CURRENT STATUS

The PIAC met at least quarterly during FY 03 and FY 04. During this time the task force has: monitored the agencies' implementation of recommendations from the 2002 Promoting Independence Plan; formed necessary sub-workgroups to assist with the overall continued development of the Plan; and made further advisory recommendations to ensure the comprehensiveness and effectiveness of the Plan. Specific examples of agency activities monitored by the PIAC include, but are not limited to:

- oversight of the five Real Choice Systems Change federal grants and the Texas Independent Living Partnership grant;
- the renewal and statewide expansion of TDHS relocation specialists contracts;
- permanency planning being assumed by TDHS Medically Dependent Children Program (MDCP) staff; and
- assistance in the development of the application and distribution process of TDHCA funding set aside for people affected by the Olmstead Decision.

All of these activities and others will be reported in a revised Promoting Independence Plan to be submitted to the Governor and the Legislature in December 2004.

Many of the accomplishments this past year have resulted in system changes, including but not limited to: people are better informed of their service options; some people who live in nursing facilities are receiving relocation assistance statewide; the addition of Transition Assistance Services and Support Family Services to certain TDHS waivers; the development of the new Texas Home Living (TxHML) waiver program; the continuation of the Family Based Alternatives (FBA) project; and other significant policy and program initiatives that have begun to change the way the state approaches service delivery for people with disabilities and their families.

In FY 04, the HHSC Executive Commissioner, through the authority of Rider 13(c), 78th Legislative Session, transferred \$1.5 million to fund Promoting Independence activities. Subsequently, HHSC transferred \$1.2 million to TDHS to continue and expand relocation services, \$160,000 to the TDHCA to assist in the distribution of HOME funds, and \$140,000 to the Family Based Alternatives project. The PIAC is appreciative of this action and encourages the HHSC Executive Commissioner to take similar action for FY 05.

As a part of the Promoting Independence Initiative, as of June 30, 2004, over 5,000 individuals have moved from nursing facilities into a less restrictive community setting utilizing the "money follows the person" mechanism. Additionally, although not facilitated by the "money follows the person" mechanism, over 900 individuals with mental retardation have moved from large institutions to community settings as of June 30, 2004.

However, many challenges remain. Currently, over 73,000 individuals are served in institutions² in Texas (see Appendix C). While not all individuals choose to leave, many of these individuals do not want to be institutionalized and would prefer community based services. Some individuals can access the Rider 28 “Money Follows the Person” mechanism, however, some cannot because this mechanism only applies to individuals leaving nursing facilities and accessing TDHS community care services. For individuals residing in institutions other than nursing facilities, many have chosen to be placed on an interest/waiting list for community services. Over 136,400 Texans currently are on the combined interest/waiting lists for community services. Some are currently living in the community and some are receiving services in institutions at this time. The lack of funding continues to be the major barrier to implementing the Plan and accomplishing the stakeholder goals of the Promoting Independence Initiative. The recommendations in this report are intended to address the specific areas needing additional funding or major systems change to increase the opportunities for individuals to live in their communities with the needed services and supports.

²For 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 TDMHMR, 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 TDPRS; and any residential arrangement other than a foster home that provides care to four or more children who are unrelated to each other.

AT RISK OF INSTITUTIONALIZATION DISCUSSION

The consumer and advocate stakeholders of the PIAC voted to define the “at risk” population to include individuals at imminent risk of institutionalization as those presenting at the front door for institutional services, who without these services have no supports in the community or natural support network, and who have an immediate need for the level of care available only in an institution. Given this definition, in 2003, the consumer and advocate stakeholders of the PIAC adopted a resolution that the state has an obligation to fund appropriate community services for individuals who choose to live in the community, unless it becomes a fundamental alteration of the state’s services. Additionally, based on the results of the 78th Legislature and their inaction to fund any new slots for community based services and decrease the number of Community Based Alternatives (CBA) waiver slots, a major barrier to the Promoting Independence Initiative and Plan exists. Consumer and advocate stakeholders on the PIAC believe that the state’s ability to provide the option of community services to individuals in the community has been compromised.

Therefore, the consumer and advocate stakeholders of the PIAC want to highlight the number of individuals waiting for services and the length of time that individuals must wait to receive community waiver services. This continues to be a major barrier to implementing an effectively working comprehensive plan. Currently, the waiting/interest lists for community services are both long in number and length of time people must wait. Some individuals have waited over ten years for Home and Community Based (HCS) Waiver services from the TDMHMR.

The waiting/interest lists for community waiver services are as follows:

TDHS, as of May 31, 2003:

- CBA – 65,130
- CLASS – 11,976
- DB-MD – 17
- MDCP – 7,321

TDHS states that historically 40% to 70% of the individuals on these interest/waiting lists will be eligible for services.

General Revenue TDHS Services waiting/interest list information as of May 31, 2004:

Client Managed Assisted Services – 506

TDHS In-home and Family Support Program – 19,988

TDMHMR, as of May 31, 2004

- HCS – 25,543

TDMHMR states that based on prior surveys, over 99% of the individuals on this interest/waiting list will be eligible for services.

General Revenue TDMHMR interest list information as of May 31, 2004:

MR In-home and Family Support Program – 1,456

Respite – 4,469

Taking into account all programs, over 136,400 Texans currently wait to be determined eligible for and receive services. (Some individuals who are on the waiting/interest list receive services from other sources, while waiting for the preferred service program to become available.)

Below is a personal story of one individual living in the community waiting for services:

Maverick is 8 years young, and has developmental disabilities and mental retardation that are the result of being born with Angelman Syndrome. He needs assistance in almost all aspects of his daily life---feeding, dressing, and bathing. He needs regular therapies, many different types of adaptive equipment and home modifications. Because of Maverick's special needs our family looks different in some ways than other families in our neighborhood and community, but we are a family nonetheless. We value what it means to be part of this family. For support, our family members rely on each other. We also count on help from loved ones, such as my mother, and kind neighbors. Maverick has been on the CLASS interest/waiting list since October 1999 and still has many years to go. He is number 333 on the HCS waiting list. We still have many years to go to receive services and supports that we need now. We need your support to reduce the CLASS and HCS waiting lists for services. Being a member of a family is very important to all of us. We do not believe and will not allow our family to be split apart or segregated from our community because of Maverick's disabilities. Denise, Maverick's mom. (*Edited excerpt from public hearing testimony, 7/04*).

Waiting/interest lists include the names of individuals requesting services and the date services were requested. An individual whose name is on the list receives an offer of waiver services on a first come first serve basis. An exception to this policy may be made when an applicant is a member of a target group identified by TDMHMR in an approved waiver. In that case, the applicant may be offered a program vacancy even though his or her name is not the first one on the TDMHMR waiting list. Individual eligibility is not determined until such time as waiver funds are available for that individual. Waiting/interest lists fluctuate in that the name of individuals are added to and removed from the waiting/interest lists daily. Effective September 1, 2004, DADS is responsible for the monitoring and oversight of these lists. (NOTE: Some individuals may be on more than one waiting list.)

The consumer and advocate stakeholders of the PIAC recognize that Rider 28, formerly Rider 37, continues to assist in making community services available to individuals in nursing facilities at a reasonable pace. This rider allows for clients relocating from nursing facilities to have funds transferred from Nursing Facilities to Community Care Services to cover the cost of the shift in services. The implementation Rider 28, allows individuals currently residing in the nursing facilities who are in the Olmstead population to access community care without utilizing additional slots appropriated for the waiver during the Legislative Session. Therefore, the consumer and advocate stakeholders of the PIAC continue to strongly recommend that this method of financing community care options for individuals in nursing facilities be continued and expanded to include all agencies and programs that operate or administer institutional care. Currently, the type of disability a person has and thus the type of institution where a person lives restricts access to the "money follow the person" option for many people. The consumer and advocate stakeholders of the PIAC further recommends that the actions taken in the 78th Legislative Session (TDHS Rider 37) to allow the funding to revert back to the institutional funding strategy be reversed. The practice of holding the money separate from the community

funding strategy does not allow the state to rebalance its fiscal priorities and provide equitable funding for community options. Since TDMHMR was not provided additional community care slots, the consumer and advocate stakeholders of the PIAC requests that the Legislature and the HHSC strongly endorse the continuance of the Rider 28 without the changes included by the new Rider 37 (78th Legislative Session) and the application of this method of finance for all agencies. During the past year, the committee identified numerous issues related to the “at risk” population, the need for adequately funding community services and for systems change in service delivery and design. To address these issues, the consumer and advocate stakeholders of the PIAC make the following recommendations regarding the “at risk” population, as well as funding priorities.

At Risk of Institutionalization Recommendations:

- The PIAC recommends that any entity utilized to assist individuals in decision-making regarding their services will be knowledgeable in “Aging and Disability” specific information and the Promoting Independence Initiative, self-determination, community care services, and Title II of the ADA.
- The PIAC recommends that HHSA’s 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.
- The PIAC recommends that the aged and disabled community care Consumer Directed Services options be expanded (e.g. to accommodate a person with significant support needs, and/or those refused service by 2 provider agencies that they be allowed to utilize self-directed services).

Funding and Capacity Recommendations:

- The PIAC recommends that all HHSA’s should examine strategic planning, current budget and planned budgets for explicit inclusion of activities and funds related to Olmstead.
- The PIAC recommends that Section 18, Special Provisions Rider, relating to the use of funds appropriated for long-term care waiver slots to TDHS and MHMR 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, be made permanent.
- The PIAC recommends that the Legislature restore Rider 7b to its original wording from the 77th Legislative Session.
- The PIAC recommends that the TDHS Rider 28 be made permanent.

- The PIAC recommends that DADS re-integrate the Rider 28 “slots” into the base waiver numbers as was done prior to the 2004/5 biennium.
- The PIAC recommends that the Legislature expand Rider 28 to all institutional settings, including all ICF-MR funded entities.
- The PIAC recommends that all aged and disabled community care waiver participants’ individual plans of care be evaluated against the aggregate cost for cost neutrality.
- The PIAC recommends that the legislature make permanent the authority in HHSC Rider 13(c) to transfer funds for promoting independence activities including relocation activities, housing, and family based alternatives.
- The PIAC recommends that funds be appropriated to continue and expand the Family Based Alternatives options initiative.
- The PIAC recommends that funding be appropriated to continue the relocation specialist contracts beyond the current biennium.
- The PIAC recommends that the legislature develop a 6-year strategy and appropriate sufficient funding for community services in order that individuals on an interest/waiting list wait no more than 2 years for services.
- The PIAC recommends that all funds appropriated for community care services be utilized in that manner and not diverted to other programs.
- The PIAC recommends the application of annual inflationary rate increases for all LTC Medicaid providers to support the increased costs of providing quality services.
- The PIAC recommends that the state provide transitional funding to ICF/MR providers for voluntary downsizing for specific increased per capita costs incurred as individuals with disabilities and/or families exercise their right to choose to live in community settings.
- The PIAC recommends that service planning for individuals of all ages be performed by an independent entity separate from the provider of services to avoid a conflict of interest.
- The PIAC recommends that the Legislature appropriate funds to assist individuals to obtain accessible, affordable, integrated housing.
- The PIAC recommends that DADS restore funding for the In Home and Family Support, Respite and Alzheimer’s programs.

TDHS AND TDMHMR WAIVER APPROPRIATIONS, EXPENDITURES AND CASELOAD INFORMATION

The consumer and advocate stakeholders of the PIAC requested that appropriation comparisons of the past fiscal years and the 78th Legislative Session's appropriated budget for FY 04 and FY 05 regarding community care that was included in the 2003 Report be revised and included in this report. A general trend downward in the funding of community services is reflected in the following tables. Some increases in the HCS portion of community care funding were only realized due to refinancing of some individuals in the community whose care had previously been paid for out of pure state general revenue dollars.

TDHS & TDMHMR Waiver Appropriations and Average Monthly Caseload						
	FY03 Appropriated AF	FY04 Appropriated AF ³	FY05 Appropriated AF	FY 03 Avg. # per month appropri.	FY 04 Avg. # per month appropri.	FY 05 Avg. # per month appropri.
TDHS Waivers ¹ :						
CBA	\$413,102,430	\$429,782,526	\$399,358,432	29,250	29,284	27,211
CLASS	\$53,659,597	\$58,065,047	\$56,753,196	1,836	1,859	1,817
Deaf-Blind	\$5,820,039	\$5,995,635	\$5,995,635	145	143	143
MDCP	\$17,607,240	\$17,350,336	\$16,431,002	1,071	1,038	983
CWP ²	\$3,396,739	\$3,888,000	\$3,888,000	175	192	192
TDHS Waiver Total	\$493,586,045	\$515,081,545	\$482,426,265	32,477	32,516	30,346
TDMHMR Waiver ⁴ :						
HCS	\$282,053,272	\$292,287,761	\$292,288,681	6,667	6,823	6,823
Total TDHS and MHMR Waiver	\$775,639,317	\$807,369,306	\$774,714,946	39,144	39,339	37,169

NOTES:

¹ CBA waiver reductions are expected to be achieved through attrition. The figures for FY03 appropriated do not include individuals who transferred to waiver services through TDHS Rider 37 in the General Appropriations Act for FY02-03. Likewise, FY04 and FY05 appropriated figures do not include additional clients who will transfer to waiver services through TDHS Rider 28 in the General Appropriations Act for FY04-05.

² CWP is funded through funds appropriated to CBA, CLASS, MDCP, and the HCS waiver. Since CWP does not have a specific appropriation, the figures for FY04 and FY05 are TDHS estimated rather than appropriated.

³ FY 2004-2005 appropriated funding levels do not reflect the additional Fiscal Relief Funds made available after the Appropriations Act was passed.

⁴ HCS figures do not include individuals who were refinanced into the HCS waiver during FY03 or those expected to be refinanced during FY04 and FY05.

TDHS & TDMHMR Waiver Expenditures and Average Monthly Caseload

	FY03 Expended AF	FY04 Projected AF	FY05 Projected AF	FY 03 Avg.# per month actual	FY 04 Avg.# per month appropriated/estimated ⁴	FY 05 Avg.# per month appropriated/estimated ⁴
TDHS Waivers ¹ :						
CBA	\$456,601,264	\$426,302,281	\$398,186,820	30,279	27,664	26,100
CLASS	\$56,702,208	\$60,222,817	\$60,690,780	1,700	1,812	1,817
Deaf-Blind	\$5,614,013	\$6,223,605	\$6,223,505	130	143	143
MDCP	\$16,564,840	\$16,416,185	\$16,483,259	977	979	983
CWP ²	<u>\$3,437,511</u>	<u>\$3,729,946</u>	<u>\$3,729,946</u>	<u>175</u>	<u>192</u>	<u>192</u>
TDHS Waiver Total	\$538,919,836	\$512,894,534	\$485,314,310	33,261	30,790	29,235
TDMHMR Waivers ³ :						
HCS	\$294,589,000	\$315,418,523	\$341,076,070	7,280	8,243	8,860
TxHmL		<u>\$ 1,299,276</u>	<u>\$26,523,433</u>		<u>101</u>	<u>2,052</u>
TDMHMR Waiver Total		\$316,717,799	\$367,599,503	7,280	8,344	10,912
Total TDHS and TDMHMR WaiverTotal	\$833,508,836	\$829,612,333	\$852,913,813	40,541	39,134	40,147

NOTES:

¹ CBA waiver reductions are expected to be achieved through attrition. The figures for FY04 and FY05 do not include additional clients who will transfer to waiver services through TDHS Rider 28 in the General Appropriations Act for FY04-05.

² CWP is funded through funds appropriated to CBA, CLASS, MDCP, and the HCS waiver.

³ HCS figures include individuals refinanced into the HCS waiver during FY03, FY04, and FY05. The average caseload per month includes 1,075 refinanced consumers in FY03. Fiscal year 04 includes annualization of the 1,075 from FY 03, 169 additional refinanced consumers who were phased in during early FY04, and 516 who are being phased in during late FY 04. FY 05 includes full annualization of all of these groups. For FY04 estimated expenditures, the rate restoration is included. TxHmL figures include 1,262 consumers refinanced into the waiver during FY 04-05 and 1,589 consumers entering the waiver from the waiting list during FY 05.

⁴ For TDHS, the average monthly number is the appropriated number. For TDMHMR, the average monthly number is the estimated number and includes individuals refinanced into the waiver as described in Footnote³ above.

KEY AREAS FOR SYSTEMS CHANGE

CHILDREN'S ISSUES:

The Promoting Independence efforts in Texas have helped to bring attention to the significant number of children with disabilities residing in long-term care institutions. It is important that this issue remain a priority as Texas continues to institutionalize more children with disabilities than any other state.

Over the past few years, however, significant policy and program initiatives have begun to change the way we approach service delivery for children with disabilities and their families. Enhanced permanency planning requirements in the TDHS has enabled case workers to work closely with families of institutionalized children to ensure that they are aware of the options for their child's care and the benefits of children growing up in families. To support permanency planning efforts, the Family-Based Alternatives Project is creating a system that provides opportunities for institutionalized children to transition to support families if their birth-families are not able to care for them. Additionally, developmental disabilities specialization is being developed in each agency and programmatic changes are being made to enable certain Medicaid waivers to more adequately provide the services children may need when transitioning from institutions. All of these changes are helping to promote a system of supports and services that provide better opportunities for children.

While Texas is moving in the right direction, there is still much work to be done to ensure that children with disabilities are not placed into institutions. Efforts must be made to continue to educate agency staff, service providers, legislators, and families of the importance of making family options available to children and the benefits to the child's development. Efforts must also be made to ensure that all children, in all types of long-term care institutions, have the opportunity for *comprehensive and effective* permanency planning – prior to placement and every six months after placement. To be comprehensive and effective, permanency planning should be performed by individuals or organizations separate and distinct from the institution where the child resides. Effective permanency planning must also include on-going efforts to implement the plan and not simply the development of a plan.

Funding limitations and lack of flexibility have prevented children from leaving institutions and accessing community services that would allow them to live in families. Lack of access to the appropriate supports and services as individuals age-out of children services can also be the cause of institutionalization. Texas must find ways to balance its resources and provide more opportunities for children to remain in family environments. The need to expand the “money follows the person” policy to other programs is evident and would increase opportunities for children to leave large congregate settings.

Finally, we must address the “front door” problem. While we are making significant efforts to move children out of institutions, we continue to admit children of all ages, even infants, into nursing homes and intermediate care facilities for the mentally retarded. Research has proven that institutionalization of children harms their development. Therefore, it is necessary to divert children from institutionalization by exhausting all efforts for community placement first.

Family-Based Alternatives Project Update: The HHSC has contracted with EveryChild, Inc. to develop and implement a system of family-based alternatives for children with disabilities residing in institutions. This initiative is intended to build a system of support for children with disabilities to give parents options to institutional care. The Family-Based Alternatives Project was authorized by SB 368 (77th Legislature) and supported by Governor Rick Perry in his Executive Order, RP-13 in order to operationalize the state's efforts to promote family life for children with disabilities. The Project is aimed at creating a system which assists institutionalized children and young adults to return home to their birth families with support; or when return home is not possible, to live with alternate families who are recruited, carefully matched, and supported by provider agencies.

The Project serves both children whose birth families voluntarily placed them in residential facility care, and children in state conservatorship through the child protective system. Use of a family-based alternative does not require parents to relinquish custody of their children and does not limit parental choice but enables and encourages family life for children.

In the twelve-county area of central Texas where the Project operates, approximately 300 children with disabilities reside in facilities. Project staff have developed relationships with the larger facilities including three nursing homes, two DFPS institutions, and two large ICFs/MR. As of August 1, 2004 Project staff have identified and/or screened 283 children. They have contacted families or guardians of 98 children who have consented to consider family-based alternatives. Recruitment efforts have resulted in 797 inquiries from individuals interested in caring for a child with disabilities. Project staff are actively developing 76 potential Support Families, 19 of whom have completed the verification process with a provider agency and are ready to be matched with a child.

Transition plans are being developed and children are beginning to leave institutions, one child at a time. As a direct result of this project, as of mid-August, 2004, 20 children have moved to support families or home with their birth families from institutional settings.

HHSC has initiated an amendment to the contract with Everychild, Inc., in the amount of \$277,000 (in combined state and federal funds), to expand its efforts to areas of the state outside the original twelve counties.

Sheldon, age 13, has Conradi's syndrome, a rare genetic disorder that affects his bones. In November, he moved to live with a support family from a large facility where he was placed by his mother when she was too ill to care for him. The new support family has agreed to provide a long-term family home for Sheldon, but because they are just five minutes from his birth mom, it means she can interact easily as her health permits. "Being with a family makes a difference because he looks like he's happier," his birth mother said. As Sheldon's support mother sees it, "He means a lot to me, I am concerned about his safety, his health. Everything I would about my own son." She adds, "This way, he's getting double the dose of love. And he's getting double care." (*Excerpt from a news story, used with permission from Everychild, Inc.*)

Children's recommendations:

- The PIAC recommends that Rider 7b be expanded to include children transferring from the Comprehensive Care Program (CCP).
- The PIAC recommends that permanency planning requirements 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. This would include continued discussion of options, relocation and transition support, and continued follow-up support.
- The PIAC recommends that DADS target at a minimum 20% of new appropriated HCS waiver slots (FY 06 and FY 07), for children who are placed on the waiver interest/waiting list and living in institutions within the Family Based Alternatives project.
- The PIAC recommends that DADS and DFPS collaborate and 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
- The PIAC recommends that the SB 367 MOU required for coordination of services for individuals transitioning from nursing facilities include the Early Childhood Intervention (ECI) / DARS to address those individuals from ages zero to two.
- The PIAC recommends that children who, at age 18, age out of any existing children's services (i.e. CCP, MDCP, EPSDT services) will have access to the most appropriate waiver services in the community.
- The PIAC recommends that children with disabilities aging out of CPS services have access to the most appropriate HHS waiver services in the community.
- The PIAC recommends that permanency planning be done by an independent entity from the provider or facility where the child resides to eliminate any conflict of interest.
- The PIAC recommends an independent permanency plan be completed prior to a child's placement in a Nursing Facility.
- The PIAC recommends that funds be appropriated to continue and expand the Family Based Alternatives Project.
- The PIAC recommends the expansion of Promoting Independence target population to include children living in community ICFs/MR smaller than 14 beds.
- The PIAC recommends that for children residing in Nursing Facilities, the parent/LAR be required to give consent for treatment at least annually.

- The PIAC recommends that for children in institutions whose parents cannot be located, a mechanism /provision be developed for making decisions about the plan of care, permanency planning, treatment, placement, etc.

HOUSING ISSUES:

Affordable, accessible, integrated housing remains an integral part of successfully transitioning individuals from institutional care into the community. SB 367 from the 77th Legislative Session and Governor's Executive Order, RP 13, highlighted this need and requested that HHSC, TDHCA, TDHS, and TDMHMR, subject to the availability of funds, develop a housing assistance program to assist persons with disabilities moving from institutions into community care. HHSC worked with TDHCA in order to obtain 35 HUD vouchers, directed at providing rental assistance to individuals in the Olmstead population. The PIAC instituted a Housing workgroup to address the necessary process in order to make these vouchers readily available to individuals in nursing facilities who wish to transition to the community and housing assistance is the last support needed. A process is now in place through a Memorandum of Understanding (MOU) among the agencies involved in order to continue the efforts related to these vouchers and future vouchers as they are recycled. Through this program, TDHS has referred a total of 107 individuals to TDHCA. TDHCA has approved all 35 vouchers and 34 individuals have moved as of July 6, 2004.

Transition Assistance Services: In 2002, TDHS developed \$2500.00 one-time only transitional grants to be used for set-up expenses for individuals transitioning from nursing facilities into the community. These funds may be used to pay for such items as security deposits, essential furnishings, moving expenses, utility deposits, etc. Effective September 1, 2004, Transition Assistance Services has been approved for inclusion in MDCP, CBA, CLASS and DBMD waivers and is pending approval for the CWP waiver. This addition will allow the state to receive matching federal funds while attempting to meet the initial transition needs of individuals accessing community services after institutionalization. These funds cover moving expenses as the transitional grants have in the past, however, may not be used for home modifications. The cost of this service is part of the client's cost cap.

HOME TBRA Funds: TDHCA designated \$4 million dollars in HOME funds for FY 03 and 04 for housing assistance for persons affected by the Olmstead Decision. Although identified as much needed, not all of these funds have been distributed, in part due to the administrative complexity of these federal funds. A specific impediment to some service providers to successfully utilize these funds was limited administrative funds that were originally 4% of the contract amount. Based on these comments, TDHCA increased the administrative funding available to applicants to 6%. Also, HHSC has transferred funds to TDHCA to allow for an additional 4% of funds for administrative costs. TDHCA staff and members of the Housing work group have been working to encourage qualified entities to apply for these funds and will continue to do so.

As of August 1, 2004 the following applications have been approved:

Valley Association for Independent Living	\$115,873
Lubbock Regional MHMR Center	\$199,680
Affordable Caring Housing, Inc.	\$59,700
Affordable Caring Housing, Inc.	\$67,428
ARCIL	\$103,194

Additionally, Texas Community Solutions (TCS) has been awarded a contract through TDMHMR to develop a process and then administer the TBRA funds for the Olmstead population through Community MHMR Centers. TCS began exploring this project with the Behavioral Health Directors Consortium in February and plan to work closely with them to design the training curriculum, policies and procedures and administrative support.

TCS has presented a proposal to the TDHCA and TDMHMR staff. In its broadest outline, the proposal is as follows: 1) TCS will prepare an application for TBRA funds to TDHCA; 2) TCS will prepare training for clinical and business staff of the centers that focuses on implementing the program for consumers and tracking these funds; 3) TCS will prepare Policies and Procedures that can be adopted at each center to support the program; 4) TCS will train center staff; 5) TCS will set up a client tracking system with TDMHMR to identify and alert centers concerning eligible consumers; and 6) TCS will award vouchers, aggregate reports and report to TDHCA.

TCS will be working with the Behavioral Health Directors to identify matching funds within the center budgets. It is expected those funds to be service dollars that will be used to assist consumers to access housing. It is also expected that TCS will reach out to the Centers for Independent Living as an additional provider base for these services.

Texas PHA Project: With a grant from the Texas Council on Developmental Disabilities, the Coalition of Texans with Disabilities (CTD), subcontracting with United Cerebral Palsy (UCP) of Texas, is further addressing the housing needs of persons with disabilities, by increasing the number of affordable, accessible, integrated housing for individuals affected by the Olmstead Decision. In addition to training Public Housing Authorities (PHAs) on how to best serve this growing population, CTD and UCP provide targeted technical assistance to PHAs and agencies on issues as diverse as disability etiquette and reasonable accommodation to providing consumer input to state agencies to ensure increased response rates to available HOME funds.

CTD and UCP have provided six presentations to PHAs across the state, including two at the Texas Chapter of the National Association of Housing and Redevelopment Officials (NAHRO) conference, with close to 500 PHA employees in attendance. Information on this timely and important three year project will also be provided to legislators and other policy makers as it relates to the state's Promoting Independence Plan to help Texans with disabilities move from institutions into the community.

Significant changes on the federal level in the way housing assistance funding is distributed to states and limited state funding continue to be major concerns. The PIAC is committed to working through the issues involved in locating accessible, affordable, and integrated housing for individuals with disabilities and will continue these efforts through its Housing workgroup.

Housing Recommendations:

- The PIAC recommends that the TDHCA's commitment of housing resources be maintained at the current level or increased.
- The PIAC recommends that TDHCA, as well as advocates and stakeholders at the local level, encourage Public Housing Authorities to identify and set aside a specific number of housing vouchers to be used for individuals in the Olmstead population.
- The PIAC recommends that TDHCA continue to improve intra-agency coordination regarding housing assistance funds through continuing education of TDHCA staff regarding affordability, accessibility, and integration.
- The PIAC recommends that TDHCA reanalyze the distribution of HOME funds designated to the Olmstead population, exploring alternatives to competitive bid procurements.

Below is a personal story from an individual who located accessible housing in the community.

Carlos, a 26-year old father of three, ended up in a nursing facility in San Antonio for 9 months following the amputation of both legs as a result of diabetes. In planning his transition from the nursing facility, Carlos's two main priorities were to have his own home and to live near his children and his large, extended family. He looked at four possible places to live; ultimately, he moved into his first choice. It is a completely accessible home, within a small complex of accessible homes built with Community Development funds. He is interested in working toward his GED and obtaining employment. For Carlos, perhaps the most important aspect of his move from the nursing facility into his own home is his improved relationship with his children. Although family members visited him frequently in the nursing home, it is very important to Carlos to be living back in the community. The move into his own home has given Carlos a sense of independence, privacy, and freedom. *(Excerpt from "Strategies and Challenges in Promoting Transitions from Nursing Facilities to the Community for Individuals with Disabilities: A Pilot Study of the Implementation of Rider 37 in Texas." Used with Permission from the Community Living Exchange Collaborative at ILRU: an ILRU/Rutgers CSHP National Technical Assistance Project. ILRU is a program of TIRR.).*

WORKFORCE ISSUES:

One of the greatest threats to the quality of life and quality of services for individuals with disabilities is the lack of professional, trained, qualified, and highly skilled direct care workers. This is a common problem that is becoming a serious national issue in relation to long-term care services and supports. Individuals with disabilities, providers, advocates for individuals with disabilities, and state agencies recognize the need for well-paid, trained, caring human service workers. In order to ensure that transition is successful from the institution into the community this workforce must exist. In order to ensure the comprehensiveness of the Promoting

Independence Initiative, the PIAC along with Governor Perry's Executive Order RP-13 have highlighted this area to be included in the continued plan development. What follows are recommendations to identify the scope of the problem and provide solutions that can be implemented.

Workforce recommendations:

- The PIAC recommends that HHSC should direct HHSA's to review wages, benefit packages, and other workforce issues in order to ascertain if any institutional bias exists; and upon completion of this review make recommendations to eliminate any bias.
- The PIAC recommends that the appropriate HHSA's coordinate with appropriate agencies, including the local workforce development boards, to explore and develop employee recruitment and retention incentives for all providers of long-term care services.
- The PIAC recommends that HHSC convene a forum of consumers, advocates, providers, workers and union representatives to address and make recommendations on workforce issues that effect the ability of people with disabilities and older Texans to receive services in the most integrated setting.
- The PIAC recommends that HHSC and TWC continue the plan of action that has been developed to increase opportunities to support people with disabilities and older Texans living and working in the most integrated setting.
- The PIAC recommends that the DADS Administration on Aging Family Caregiver and Education Program coordinate with Promoting Independence initiatives to insure maximum utilization of resources to support family caregivers providing care and support for elderly Texans.
- The PIAC recommends that DADS investigate/fund a benefits pool, including Health benefits and Workers Compensation that attendants/direct support professionals can access easily.
- The PIAC recommends that individuals receiving AFDC be allowed to work as attendants/direct support professionals without losing benefits for a period of two years.
- The PIAC recommends that the Medicaid Buy-in program that will allow individuals to work without losing Medicaid benefits be pursued by HHSC and DARS (supports efforts of the current HB 3484 Workgroup and associated grant activities).
- The PIAC recommends that all HHSAs to work with Universities in recruiting students in the health and human services field, such as PT, OT, social work, etc. to be involved in direct support positions during internships, practicum's, etc.

- The PIAC recommends that HHSAs support and encourage self-determination efforts by expanding consumer directed services opportunities (e.g., consumers may hire friends, neighbors etc, to ease the direct support professional workforce shortfall).
- The PIAC recommends that the Attendant Network Project currently supported by the Texas Council for Developmental Disabilities be extended.
- The PIAC recommends DARS/DADS coordinate and expand training opportunities for direct support professionals/attendants statewide.

A SUMMARY OF AGENCY PROMOTING INDEPENDENCE PLAN ACTIVITIES

THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

HHSC Rider 13(c)

In FY 04, the HHSC Executive Commissioner, through the authority of Rider 13(c), 78th Legislative Session, transferred \$1.5 million to fund Promoting Independence activities. Subsequently, HHSC transferred \$1.2 million to TDHS to continue and expand relocation services, \$160,000 to the TDHCA to assist in the distribution of HOME funds, and \$140,000 to the Family Based Alternatives project. The Executive Commissioner has requested permission from the LBB to transfer similar funding for FY 05.

Real Choice Systems Change Grant

In 2002, HHSC received \$1.385 million from CMS to initiate system changes at the local level to improve consumer access to the state's system of long-term services and supports. Texas is testing the concept of *system navigation*, using two models: (1) system navigators located within a "single access point"; and, (2) system navigators located across multiple, but highly coordinated access points. HHSC defines system navigators as highly skilled individuals who can assist consumers of any age with any disability across the entire local system of health and human services. On behalf of the consumer, navigators also serve as liaisons to caseworkers and other access personnel who may be assisting the consumer with specific services or programs. Two communities were selected to pilot the models. The Texoma region (Sherman/Denison) is testing the first model, and the Heart of Central Texas (HOCT) Project (Waco-Belton) is a joint, two-region pilot, testing the second model. Key points of progress for Heart of Texas are: (1) eight system navigators are now fully trained and assigned; (2) the electronic intake/I&R software called ServicePoint is fully operational in all access points; and, (3) the project continues to add major "partners", both public and private, who've agreed to follow service referral protocols and work with the navigators. The Texoma model is testing the use of four system navigators within a single point of access and has made its intake software operational within its Area Information and Access Center. The project in Texoma is gaining regional notoriety for its state of the art durable equipment technology center—achieving significant contributions from companies who have help finance and stock the center. HHSC will be conducting a second year evaluation on both models at the conclusion of the fiscal year. This evaluation will focus on systems outcomes, i.e., comprehensiveness, responsiveness, visibility, outreach efforts, etc. of the two projects, overall.

Family Based Alternatives: HHSC continues to manage the contract with Everychild, Inc. to conduct and expand the Family Based Alternatives project.

THE TEXAS DEPARTMENT OF HUMAN SERVICES

Notification of Long-Term care Options to Current Medicaid Nursing Facility Residents

The TDHS has informed all Medical Assistance Only (MAO) and Supplemental Security Income (SSI) nursing facility residents of long-term care options and their eligibility to bypass the interest list for the Community Based Alternatives (CBA) Waiver program. To facilitate this process, the TDHS developed and deployed the Promoting Independence Procedural Guide in December 2000. All TDHS field staff involved in the Promoting Independence activities completed training by May 2001. Beginning in December 2000, Medicaid Eligibility (ME) staff mailed the Long Term Care Options Notices (LTCON) to current MAO nursing facility residents at the time of the Medicaid annual review. The notification included the ME Worker's telephone number and/or the region's customer service toll free number. This notification activity was completed in February 2002. Beginning in March 2001, TDHS State Office staff sent the LTCON to all current SSI nursing facility residents. The notification included the State Office toll free number. This notification activity was completed in May 2002.

Notification of Long-Term Care Options to New Nursing Facility Applicants

Beginning in December 2000, LTCONs are included with all nursing facility applications and ME staff are required to inform nursing facility applicants and/or their representatives, during the eligibility interview, of all long-term care options, the new CBA by-pass rule, and the benefits of Rider 37. (In compliance with the CBA by-pass rule, implemented in March 2002, only individuals age 21 who are no longer eligible for the Medically Dependent Children Program (MDCP) or the children in Texas Health Steps who are receiving Private Duty Nursing at the time that they are no longer eligible for THSteps are allowed to bypass the CBA interest list.

Notification of Long-Term Care Options to Children in Nursing Facilities

Effective December 1, 2003, MDCP staff are conducting Permanency Planning for children residing in nursing facilities and inform families of options. Major issues discussed with families include: the reason for the child's placement in the facility; the relationship the family has with the child; the strengths and limitations of the child, family and home environment; the benefits of community-based services; and available resources to enable the child to move home or to a family-based alternative.

Minimum Data Set (MDS) Q1a

The following chart is a summary of the regional distribution of nursing facility (NF) residents responding “yes” to MDS item Q1a, indicating their desire to return to the community. The data was drawn from non-Medicare MDS assessments during the interval from the beginning of August 2003 to the end of November 2003. Of the approximately 17,000 residents answering affirmatively, most were recent admissions according to the MDS data. (MDS assessment type = Admission.) Regional Map, see Appendix D.

Region	NF Residents
01	854
02	701
03	3,696
04	1,203
05	701
06	2,318
07	1,361
08	1,630
09	193
10	218
11	1,557
Unknown	2,589*
Total:	17,021

*The facility location (Region) for these 2,589 residents could not be determined due to errors in the MDS data.

Computer Based Training

The Promoting Independence Computer Based Training (PICBT) for current TDHS staff was implemented in November 2000 and completed in May 2001 to ensure their awareness of community based services, the Promoting Independence initiative, and sensitivity to persons with disabilities. New staff complete the training as a part of their Basic Jobs Skills Training. TDHS has expanded the training to include Permanency Planning and the Community Awareness and Relocation Pilot Program components. As of May 2002, the training is available on the Internet. The CTB training module will be revised in August 2004, to include new promoting independence initiatives.

Real Choice System Change Grants for Community Living

October 2, 2003, CMS awarded TDHS two Real Choice Systems Change grants: 1) Money Follows the Person Initiative to establish service coordination workgroups at a statewide level, and 2) Community-Integrated Personal Assistance Services and Supports (C-PASS) to conduct a research and demonstration grant to further extend support systems to individuals interested in hiring, training and managing their own attendants. The Money Follows the Person Initiative was awarded \$730,422 and C-PASS was awarded \$599,763. The funds may be expended over a 36 month period.

The goals of the Money Follows the Person Initiative include: 1) Ensure all programs are considered when an individual decides to make the transition by educating and informing TDHS staff and interested stakeholders and 2) Establish nursing facility transition workgroups at the local level to enable individuals to transition from the nursing facility to the community. Activities for this grant began by hiring the grant coordinator in January 2004. Other activities include: convened the Grants General Stakeholder meeting to inform about grant activities and identify Grant Task Force members; established the Money Follows the Person Task Force; published an RFP to procure the grant contractor; reviewed proposals and selected the Center on Independent Living (COIL), in San Antonio, as the grant contractor to establish transition workgroups in every region; completed the Community Care Options training curriculum and delivered the state office stakeholder Community Care Options training; posted the Community Care Options training material to the Promoting Independence web-page for public access <http://www.dhs.state.tx.us/providers/pi/index.html>; and held the second semi-annual stakeholder meeting to provide status of grant activities. Regional training on Community Care Options and establishment of transition workgroup activities began July 2004.

The goal of the C-PASS initiative is to develop a system that provides a full array of choice in the degree and control Primary Home Care consumers have in their personal attendant care. Activities for this grant began by hiring the grant coordinator in January 2004. Other activities include: the grant contract was awarded for curriculum development (and video) to explain the continuum of attendant management options for the Service Responsibility Option (SRO) pilot and to provide a 1-800 number for consumers; semi-annual stakeholder meeting was held to provide an update on SRO activities to all interested stakeholders; and the contractor held focus groups in the Lubbock/Amarillo area, with consumers, providers, and TDHS staff to obtain input for training material and handouts. Informational meetings were held in Lubbock and Amarillo to introduce the project to local stakeholders and to begin to recruit providers for the SRO option.

Permanency Planning

In April 2001, TDHS published a Request for Proposal (RFP) to procure a contractor(s) to provide permanency-planning services for all individuals under 22 years of age residing in nursing facilities. TDHS received one proposal, which was determined to be non-responsive to the RFP criteria. Under the Non-Competitive Procurement for Permanency Planning Services, TDHS awarded the Permanency Planning Contract in November 2001 and the contract with the provider was finalized in January 2002. The Permanency Planning contractor began training activities and the development of an automated reporting system in January 2002. Permanency planning activities began in March 2002, with 249 initial plans and 350 semi-annual reviews completed as of 8/31/03. The Permanency Planning contractor and the Relocation Specialist contract staff have established a referral system for the individuals identified through the permanency planning process and are working with the HHSC's contractor for Family Based Alternatives (FBA) to refer children residing in nursing facilities (located in the initial FBA catchment area) to support families, if returning to the natural family home is not possible. The permanency planning contract ended on November 30, 2003. Beginning December 1, 2003, TDHS Medically Dependent Children Program (MDCP) staff were assigned responsibility for permanency planning for children residing in nursing facilities. MDCP staff conducts these planning meetings using a team approach with social workers and a registered nurse. During the

reporting period of 9/1/03 through 2/28/04, there were 204 completed plans resulting in: 12 children have returned home, 1 child moved to a family-based alternative setting, and 3 children moved to a non-family based alternatives.

Support Family Services

Effective September 1, 2004, TDHS has begun providing families a choice of family-based alternatives to institutional care for their children with disabilities. The addition of a new service to the Community Living Assistance and Support Services (CLASS) waiver will allow the CLASS waiver to provide Support Family Services (SFS). The service will provide options to families who are seeking a family-based alternative for their child receiving CLASS services. This service will be available to CLASS participants, under the age of 18, who are at risk of institutionalization or who are residing in a nursing facility and are requesting CLASS services. TDHS is recruiting Child Placing Agencies (CPAs) licensed by the Texas Department of Family and Protective Services (DFPS) and CLASS Direct Service Agencies (DSAs) to provide this new service. CPAs may choose to contract with TDHS to become a SFS provider in one or more of the CLASS service areas. CLASS DSAs may contract with TDHS to provide this service through an independent foster family contracted with the DSA and licensed by DFPS. They must provide services in their contracted catchment area. CPAs will be contracted as support family agencies to recruit, train and monitor families who provide a home for CLASS participants.

Relocation and Community Awareness

TDHS published an RFP in August 2001 to procure provider(s) for Community Awareness and Relocation Services (CARS). The providers were selected in April 2002 and the contracts finalized in May 2002. The contractors are providing relocation services, including identification and assessment services, to 100 nursing facility residents at selected pilot sites. The three pilot sites include counties in the Austin, Houston, Crockett, Temple and Corpus Christi areas. The contractors are also conducting Community Awareness Services in the same locations. As of August 31, 2003, the project identified 451 nursing facility residents for relocation services and assisted 124 individuals to relocate into community-based settings appropriate to their needs and choice. The duration of the pilot was for one year, but TDHS extended the contracts through 11/30/03 to ensure continuity of relocation services to clients already identified and assessed by the CARS project. The extension allowed TDHS time to plan and implement a permanent and sustainable system to support the efforts of nursing facility residents seeking to transition into community placements.

TDHS published another RFP for Relocation Services in December 2003. The providers were selected in February 2004 and the contracts were finalized March 1, 2004. TDHS contracted with four Independent Living Centers to transition 115 individuals statewide March 1, 2004 through August 31, 2004. Additional funding has been approved and the contracts will be renegotiated and extended beginning in July 2004.

TDHS Rider 28

During the 77th Legislative Session Rider 37 was passed for TDHS appropriations, which allowed the general revenue used to purchase nursing facility services, to follow the individual into the community and purchase community services. During the 78th Legislative Session,

Rider 28 replaced the former Rider 37 from the 77th Legislative Session and continues to allow nursing facility funding to be used to purchase community services.

Accessing Rider 37, as of August 31, 2003, and ending September 1, 2004: 2,007 individuals accessed the CBA waiver, 8 individuals accessed the CLASS waiver, 3 individuals accessed the Community Care Program, 3 individuals accessed the Medically Dependent Children's Program, and 1 individual accessed the Consolidated Waiver program, for a total of 2,022 individuals.

Accessing Rider 28, beginning September 1, 2004, as of May 31, 2004, 1,776 individuals accessed the CBA waiver, 12 individuals accessed the CLASS waiver, 2 individuals accessed the Community Care Program, and 10 individual accessed the MDCP, for a total of 1,800 individuals.

Below is the personal story of one individual accessing Rider 37/28 to move back into the community.

Martha, who is 85 years old, lived in her own home with her husband until she fell and hit her head, which resulted in the development of a blood clot. Following surgery, she moved into a nursing facility, where she spent the next 19 months. During this time, her husband passed away. The DHS case manager informed her granddaughter that there might be an opportunity for Martha to leave the nursing facility. Martha credits her granddaughter with doing most of the work to facilitate her move. She now lives in her own apartment, within a HUD-funded senior housing complex. While she feels this is a much better place to live than the nursing facility, she would have preferred to move back to her own home. However, according to Martha, her family members and the DHS worker were not supportive of this, as the house was not accessible and there was no emergency response system. Martha receives 12 hours of personal assistance service per week, and she obtained an electric wheelchair through the CBA waiver. The most difficult aspects of the transition for her were the amount of paperwork and the lengthy wait for CBA approval. She is frustrated by her immobility due to lack of a vehicle or other means of transportation. At the same time, Martha is happy to have her independence back, to be in her own place with her own things, and to be back in the community near her family and members of her church. *(Excerpt from "Strategies and Challenges in Promoting Transitions from Nursing Facilities to the Community for Individuals with Disabilities: A Pilot Study of the Implementation of Rider 37 in Texas." Used with Permission from the Community Living Exchange Collaborative at ILRU: an ILRU/Rutgers CSHP National Technical Assistance Project. ILRU is a program of TIRR.).*

TDHS Rider 37

The new Rider 37, 78th Legislative Session, states that funding through the nursing facility strategy be maintained for those clients as long as the individual client remains in the transferred slot. When a Rider 28 client leaves the waiver program, any remaining funding for the biennium shall remain in the nursing facility strategy.

TDHS Rider 7

TDHS Rider 7 was passed during the 77th Legislative Session, and was continued by the 78th Session, with some significant changes to section (b) as indicated below:

- a. Nursing Home Income Eligibility Cap. It is the intent of the legislature that the income eligibility cap for nursing home care shall be maintained at the federal

- maximum level of 300 percent of Supplemental Security Income (SSI). Further, it is the intent of the legislature that any cost-of-living increase in social security or other benefits sponsored by the federal government or that any increase in other pension plans should not result in the termination of Title XIX benefits for persons already eligible for services. TDHS is hereby authorized to expend general revenue funds to the extent necessary to insure the continuation of benefits to persons eligible.
- b. Limitation of Per Day Cost of Alternate Care.
 - 1) Subject to the exception in (2), no funds shall be expended by the TDHS for alternate care where the cost per patient per day exceeds the average Medicaid Nursing Facility rate or ICF/MR Facility rate or the patient's nursing or ICF/MR facility rate, whichever, is greater, except for cases individually exempted by the Board of TDHS or by the Commissioner of HHSC.
 - 2) TDHS may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers if those services are required for that individual to live in the most integrated setting, the reimbursement rate paid for the needed services does not exceed 133.3 percent of the reimbursement rate that would have been paid for that same individual to receive comparable services in an institution over a six month period, the department continues to comply with the cost-effectiveness requirements from the CMS. The department shall "grandfather" on September 1, 2003, those individuals receiving services in a medical assistance waiver program, under authority granted in the department's budget rider 7 from the 77th Legislature when continuation of these services is necessary for the individual to live in the most integrated setting appropriate to his/her needs and the department continues to comply with the cost-effectiveness requirements from the CMS.
 - c. Establishment of a Swing-bed Program. Out of the funds appropriated above for nursing home vendor payments, TDHS shall maintain a "swing-bed" program, in accordance with federal regulations, to provide reimbursement for skilled nursing patients who are served in hospital settings in counties with a population of 100,000 or less. If the swing beds are used for more than one 30-day length of stay per year per patient, the hospital must comply with the regulations and standards required for nursing home facilities.
 - d. Nursing Home Bed Capacity Planning. It is the intent of the Legislature that TDHS shall establish by rule procedures for controlling the number of Medicaid beds and for the decertification of unused Medicaid beds and for reallocating some or all of the decertified Medicaid beds. The procedures shall take into account a facility's occupancy rate.
 - e. Nursing Facility Competition. It is the intent of the Legislature that the TDHS encourage competition among contracted nursing facilities.

Rider 7 Data:

TDHS has included the following data related to consumers who have utilized Rider 7, which provides information related to costs of services and costs to TDHS because of implementation of Rider 7. As of 6/30/04 the data is as follows:

CBA Waiver:

193 individuals accessed Rider 7, with an overall average of \$11,564 over the cost ceiling. This is based on an estimated annual plan of care. The breakdown of these 193 consumers is as follows:

159 individuals had estimated yearly plans, which exceeded the cost ceiling by less than \$10,000.00

23 individuals had estimated yearly plans, which exceeded the cost ceiling by between \$10,000.00 and \$49,999.99

5 individuals had estimated yearly plans, which exceeded the cost ceiling by between \$50,000.00 and \$99,999.99

5 individuals had estimated yearly plans, which exceeded the cost ceiling by between \$100,000.00 and \$199,999.99

1 consumer had an estimated yearly plan, which exceeded the cost ceiling at over \$200,000.00

CLASS Waiver:

There were 61 individuals who accessed Rider 7, with an overall average of \$8,367 over the annual cost ceiling of \$63,369.00 (All CLASS participants have the same cost ceiling.)

These 61 individuals cost breakdown is as follows:

45 individuals had estimated yearly plans, which exceeded the cost ceiling by less than \$10,000.00

15 individuals had estimated yearly plans, which exceeded the cost ceiling by between \$10,000.00 and \$49,999.99

1 individual had estimated yearly plans, which exceeded the cost ceiling by between \$100,000.00 and \$199,999.99

Deaf/Blind Waiver:

There were 5 individuals who accessed Rider 7, with an overall average of \$25,171 over the annual cost ceiling of \$59,750.00

These 5 individuals cost breakdown is as follows:

1 individual had estimated yearly plans, which exceeded the cost ceiling by less than \$10,000.00

4 individuals had estimated yearly plans, which exceeded the cost ceiling by between \$10,000.00 and \$49,999.99

Transitional Funding

Beginning in 2002, TDHS implemented a statewide service, Transition to Living in the Community (TLC), to specifically target individuals moving from nursing facilities into the community. The TLC Program allows TDHS to provide one-time assistance of up to \$2,500 to individuals who are establishing a community residence. Transitional costs include items such as utility deposits, essential furnishings, etc. Last year, as of August 31, 2003, 91 grants were approved for a total amount of \$178,560.73. The average grant amount was \$1,962.21. In March 2004, TDHS contracted with Relocation Services providers to administer the TLC services. As of June 30, 2004, 47 grants have been approved totaling \$88,791. The average grant amount was \$1,889.

Effective September 1, 2004, TDHS has included Transitional Assistance Services (TAS) in its waiver renewals and for MDCP, CBA, CLASS, and DBMD. (Approval is pending for the CWP). TAS provides for household items necessary to establish community residence, some minor home modifications, utility deposits, and other one time purchases to enable an individual to move from the nursing facility back to the community. The cost of this service will be part of the client's cost cap.

Evaluation of Promoting Independence Initiatives

In October 2002, TDHS contracted with the University of Texas to begin evaluating Promoting Independence activities. Staff and stakeholders are currently meeting with the university representatives in order to develop the evaluation tool, which will identify outcomes achieved through the TDHS Promoting Independence efforts. TDHS received the Promoting Independence Evaluation report in September 2003. TDHS and HHSC will evaluate the report to identify barriers and success factors to the transition process. The evaluation findings will be used to further enhance current and future Promoting Independence activities.

Community Awareness

TDHS has expanded the Promoting Independence Computer Based Training to include the Permanency Planning and Community Awareness and Relocation Pilot Program components and is available via the Internet to TDHS staff, other agencies, and the general public.

TDHS Regional and State Office staff inform a variety of individuals and entities about Long – term Care Options and Promoting Independence activities through presentations at conferences, public forums, meetings and by request to other TDHS program areas, other agencies, community organizations, and interest groups. Community Awareness activities performed by relocation contractors include, but are not limited to: Ombudsman Volunteer training; meetings with providers and the Long-term Care Association; started a housing project with Home of the Free; mailed community alternatives information letter to all nursing facilities in the pilot sites; and conducted outreach activities with Council of Governments, school administrators, MHMR Centers, adult caregiver groups, and over 68 nursing facilities.

Data Collection

TDHS developed and implemented a data collection system to include data from current Promoting Independence activities. The data is used to identify successful factors and barriers to transitioning of individuals from nursing facilities to community-based settings. The system is

being restructured to provide more specific information regarding the relocation process. Definitions describing the numerous data codes are being developed to provide clarity and additional information. Also, data from the relocation contractor's reports will be added to the database to build upon the consumers' profiles and success factors and barriers. Due to limited resources, the only data being captured via an automated system is Rider 37/28 data. This includes data related to individuals transitioning from nursing facilities to the community.

Pilot Site Memorandum of Understanding

SB 367 requires that the TDHS, the Texas Department of Mental Health and Mental Retardation (TDMHMR) and the Texas Department of Protective and Regulatory Services (TDPRS) to enter into a Memorandum of Understanding (MOU) to facilitate the coordination and implementation of a pilot program to provide a system of services and supports that fosters independence and productivity and provides meaningful opportunities for persons with disabilities to live in the community. The MOU was completed by involved agencies and the pilot program was implemented in June 2002. The MOU was adopted by rule by the respective agencies in February 2003. Due to the consolidation of agencies required by HB 2292, the MOU will no longer be necessary between TDHS and TDMHMR.

Project Access Housing Vouchers

In 2002, TDHCA was selected to receive 35 housing vouchers from the US Department of Housing and Urban Development (HUD). Through a Memorandum of Understanding (MOU), TDHCA and TDHS implemented a system to distribute the vouchers statewide to eligible individuals with disabilities under 62 years of age who are moving from nursing facilities to the community. TDHS created a housing voucher interest list and communicate the information to the TDHCA. TDHCA qualifies the individual and forwards the information to the appropriate Public Housing Authority (PHA) to issue the voucher. The appointment of a Housing workgroup, with representatives from the involved agencies, the PIAC and other interested stakeholders facilitated the timely issuance of the vouchers and assist in building a system infrastructure to issue future vouchers if they become available and as they are recycled.

TDHS referred a total of 107 individuals to TDHCA since June 1, 2003. TDHCA has awarded all 35 vouchers and 34 individuals have moved into housing, as of July 1, 2004.

Impact of 78th Legislature on the Texas Department of Human Services

Prior to the 78th Legislative Session, the TDHS submitted an Initial General Revenue (IGR) appropriation request for FY 04 – 05, which represented a 12.5% reduction from the FY 02 - 03 TDHS budget. While the TDHS's initial budget request attempted to minimize the impact on clients, 119,710 clients receiving services would have lost eligibility. However, legislative action restored services to many clients for FY 04 who would have lost services under the initial budget submission.

Primary Home Care Services & Community Attendant Services (formerly called Frail Elderly):
Under the department's IGR, a total of 63,151 clients would have lost personal assistance services (attendant care) in their homes. Services to 38,218 clients in the Community Attendant Services (formerly called Frail Elderly) would have been eliminated, and another 24,933 clients in the Primary Home Care Program would have lost services due to an increase in the functional

score required in order to be eligible for the program. Final legislative direction required a 15% reduction in the number of authorized services hours to non priority clients. Priority clients are those individuals most at risk if daily assistance is not provided. However, federal relief funds restored these hour reductions in August 2003 for FY 04, and no service hours were reduced for current clients.

Community Care Waivers:

Although the number of clients served in the CBA Waiver program is reduced from FY '03 levels, no current client will be removed from service due to this reduction. Intake to the CBA waiver will be closed temporarily until the CBA census reaches appropriated levels. TDHS regions will closely monitor CBA to ensure that intake is reopened as soon as practical. Based on previous attrition rates, it is anticipated that CBA intake will reopen in approximately ninety (90) days. CBA enrollment was reopened in June 2004. Other waiver programs will not experience a reduced number of clients being served from actual FY'03 levels. The Legislature mandated that the consumer directed services model extend to waiver services.

Clients moving to the community from nursing facilities, under Rider 28, will not be counted in the appropriated CBA waiver levels. Their funding will be returned to the nursing facility strategy when they leave CBA services. Additional requirements were placed on long term care waiver clients living in the community under rider 7b authority. The cost of care for these individuals cannot exceed the cost ceiling for their waiver services beyond 133.3% for a period of six (6) months. Agency rules implementing this process were approved by the TDHS Board in August 2004, with a proposed effective date of August 31, 2004. Clients in waivers prior to 9/1/04 (proposed effective date of the rule) whose costs exceed the 133.3% threshold are not affected and essentially are 'grandfathered' under this rider. Clients whose waiver costs exceed the threshold have the option of requesting an exemption from the TDHS Commissioner or Board.

Community Care – State:

Under the IGR proposal, 3,765 clients would not be eligible for the Community Care –State program. Although the legislature partially restored funding to minimize the service reductions, two GR funded programs, Respite and Residential Care were eliminated. TDHS was able to maintain approximately 900 individuals in assisted living facilities in the Residential Care program through Title XX funds and changing how clients pay a portion of costs for their care through a copayment.

The department will restructure the Community Care-State to better 'match' client need to a broader service array under authority granted in Riders 38 and 40. TDHS will work with consumers and advocates to design the services and increase consumer choice. The consumer directed services model will be an option for these services.

In Home and Family Support Program:

The department's initial budget request eliminated the biennial funding of \$18 million for the In Home and Family Support Services (IHFS) program. The Legislature funded the program at \$8 million for the biennium. TDHS will reduce the grant subsidy amount to \$100/month for current clients rather than eliminate any current IHFS recipient. All existing clients will be served at

this reduced level for the biennium. Clients may choose a capital expenditure of up to \$1200/year instead of the monthly grant amount or a combination of a capital and subsidy assistance up to the \$1200 annual cap.

Personal Needs Allowance in Nursing and ICF/MR Facilities and Institutions for Mental Diseases:

The Personal Needs Allowance (PNA) was reduced from \$60/month to \$45/month for Medicaid clients living in nursing and ICF/MR facilities and Institutions for Mental Diseases for FY 04-05.

Provider Rate Reductions:

The department's IGR request reduced reimbursement rates by 3.5% to nursing facilities, and 2.2% to community care providers. Federal relief funds reduced these reductions to 1.75% for nursing facilities and 1.1% to community care providers for FY 04.

Rider 31:

The 78th Legislative Session attached Rider 31 to TDHS's appropriation. This rider requires the development of a new functional needs assessment tool for community care eligibility. TDHS will contract with a third party to assist in the development and validation of that process. The new assessment tool is to be fully implemented by January 1, 2005.

THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

MENTAL RETARDATION SERVICES

Community Living Options Process

State Mental Retardation Facilities (SMRFs) formally implemented the Community Living Options process in March 2000. Revisions to rules governing Continuity of Services – State Mental Retardation Facilities, that became effective March 2002, require that the Living Options review be conducted annually for children and adults, consistent with SB 367. The ICF/MR State Standards of Participation were revised to reference the rules also, with an effective date of January 1, 2002. As a result, TDHS surveys of SMRFs include this element also as of January 1, 2002. As of June 26, 2004, Client Assignment and Registration System (CARE) information indicated that of 4,997 persons residing in SMRFs, over 99% have a current Living Options review date entered into the CARE system and approximately 28% included Mental Retardation Authority (MRA) participation in the process.

In Community ICF/MR, the annual Living Options process was implemented by rule December 3, 2000. The ICF/MR provider notifies the local Mental Retardation Authority (MRA) when the individual or the legally authorized representative (LAR) prefers an alternative living option. This process is monitored by the TDHS survey process and citation data regarding Living Options is reviewed monthly, with action taken as needed, to determine trends, training needs, etc. As of June 26, 2004, CARE information indicated that of 7,508 persons residing in Community ICFs/MR, approximately 92% have a current Living Options review date entered into the CARE system and approximately 18% have a continued or new referral to the MRA.

The Community Living Options Instrument was revised November 2000 prior to statewide implementation in December 2000 to include additional items specifically related to children and families.

State Mental Retardation Facilities (SMRFs)

As of August 19, 1999, there were approximately 409 individuals residing in SMRFs who were recommended for and expressed an interest in community placement. TDMHMR had committed to make community placement options available to these individuals by August 31, 2001. A tracking system was established for the purpose of monitoring all individuals in this group. Additional tracking systems were in place for persons who did not move by August 31, 2001, and continued to have a referral for a community alternative. Closure was obtained for all individuals in this group as of March 22, 2002. For most of the individuals, the community alternative placement was achieved or the individual's referral was withdrawn per an IDT decision or the individual/LAR request.

Another group of 236 individuals was designated by TDMHMR to move to a community placement by February 28, 2002. As of June 26, 2004, of these individuals: 150 moved to the HCS/MRLA waiver program; 2 moved to a small community ICF/MR; 1 moved to a medium community ICF/MR; 1 moved to the family home, with services/supports provided by the local authority; 1 moved to a private pay group home; 1 died; 79 had their referral withdrawn; and 1 is still currently referred.

For individuals referred September 1, 2001 or later, TDMHMR has committed to provide opportunities for community alternatives within 180 days of the individual's or LAR's request and recommendation for community placement. For FY 02 and FY 03, the budget assumption was for 12 new referrals per month. As of June 26, 2004, the number of additional referrals was 342. Of these individuals: 242 moved to the HCS waiver program; 4 moved to a small community ICF/MR; 1 moved to the Deaf-Blind Waiver program; 4 moved to the family home, with services/supports provided by the local authority; 63 had their referral withdrawn; and 28 are currently referred. Movement continues at the current time through the use of recycled waiver slots that become available through attrition.

Below is the personal story of one individual moving from a state institution to community services:

By age 11, **Riley** and his siblings were orphaned due to the death of both parents from complications associated with HIV. Riley's grandmother became their primary caretaker for several years and when her health failed, an aunt assumed care for Riley and his siblings. Riley's medical and personal care needs far exceeded his aunt's resources and with no appointed guardian for Riley, she sought the support of Child Protective Services (CPS) and of the local MRA for long term placement. Riley was under CPS conservatorship when he was admitted to a state MR facility the day before his 16th birthday. Upon admission, he was a fragile, underweight young man with profound mental retardation, cortical blindness, cerebral palsy and positive for HIV. Riley's aunt and family members regularly made the 3-hour drive to visit him at the facility and they became involved with his care and treatment and celebrated his achievements. Within a year of Riley's state school admission, he was able to move to the community through the HCS Waiver Program. With the assistance of the MRA and HCS waiver program provider, Riley's aunt became his foster care provider. She is now also his managing conservator and Riley lives with the people most important to him. *(Provided by TDMHMR).*

Monitoring the Transition of Individuals from SMRFs

The TDMHMR Performance Contract with Community MHMR Centers includes the 180 days timeframe for community placement. In order to ensure movement within 180 days from referral, oversight is accomplished by TDMHMR through SMRF and Community Systems Management staff. A CARE report is available to the MRA staff regarding individuals in SMRFs with a recommendation for an alternate living option. SMRF staff enter a new referral in CARE within 72 hours of the Interdisciplinary Team (IDT) decision and provide written notification to the LMRA within 5 working days of the decision.

Monitoring the Process for Referrals of Individuals in SMRFs

A Special Review Team (SRT) process was implemented for individuals who have their referral withdrawn by the Interdisciplinary Team (IDT). The SRT meets within ten working days of an IDT decision to remove an individual's name from the waiting list in order to review the determination and the IDT decision-making process. The process then requires the SMRF Continuity of Services (COS) Steering Group to review the SRT documentation, providing feedback to the facility. In 2001, the SMRF COS Steering Group completed a baseline review of Living Options documentation for a 1% sample of SMRF residents. Based on issues identified through that review, facility-wide training was conducted in January 2002. Currently, facilities complete a quarterly self-assessment regarding the Living Options process to include a review of a sample of Living Options documentation. The facility self-assessment process is reviewed as part of the annual Quality Enhancement review that is coordinated by the TDMHMR SMRF Office.

Community ICF/MR Facilities (14 Beds or Larger):

As of August 31, 2001, there were 227 persons on the HCS waiting list who resided in large ICF/MR facilities. TDMHMR committed to enroll these individuals in waiver services by August 31, 2002. As of August 31, 2003, of these 227 individuals only 3 individuals' names remained on the waiting list. Although offered an opportunity to enroll in the waiver program, these individuals, or the legally authorized representative (LAR) deferred making a choice of the waiver program or of a waiver provider.

Based on FY 02 information, TDMHMR projected that the names of 10 individuals would be added each month to the waiver waiting list. As of June 26, 2004, an additional 479 names had been added to the waiver waiting list since September 1, 2001. About one-third of the 435 names were added to the waiver waiting list in August 2002 per Senate Bill 368, with the majority assigned a waiting list begin date of September 1, 2001. Of the 479, about 61% have a referral date more than twelve months old. On a regular basis the department reviews the number of recycled slots that become available through attrition, some of which may be authorized for individuals in large community ICFs/MR waiting for waiver services. During FY 2003, TDMHMR authorized MRA's to offer a total of 14 recycled slots to persons in this group and in FY 04, 73 recycled slots. In late May 2004 the department received approval to begin transferring services for 396 persons from large ICFs/MR into the HSC waiver program. These slots will be released at a minimum of 55 per month beginning in June 2004.

MENTAL HEALTH SERVICES

Extended Hospitalizations (of One Year or More)

As of May 31, 2004, the eight State Mental Health Facilities (SMHFs) averaged a daily census of 2,172 with a projected 18,024 total admissions during FY 04. For most individuals, inpatient psychiatric care lasts no more than a few weeks. However, for some individuals with severe treatment needs, longer lengths of stay are needed. TDMHMR monitors patients' lengths of stay for identification of barriers that may delay community placement. Quarterly, the TDMHMR generates a report that identifies all patients who have been hospitalized for more than one year. The report is sent to the respective facilities, which verify the status of each patient and any barriers that may exist impeding the discharge of the individual. The SMHF and the local Mental Health Authority (MHA) prepare a revised Continuity of Care Plan for persons with identified barriers.

As of May 31, 2004, 369 persons were hospitalized in SMHFs for a period of more than one year. Of these patients: 228 need continued hospitalization; 7 are accepted for community placement; 19 have a barrier to placement; and 115 have court involvement.

Mental Health - Community

TDMHMR convened the Promoting Independence Mental Health Advisory Committee to address the issues of individuals who have been hospitalized for twelve months or more and those who have had three inpatient hospitalizations within a 180-day period. This committee continued the intense study and identification of the issues around repetitive hospitalizations and the population involved. One recommendation previously made by the committee, TDMHMR now recognizes the population of individuals who have 3 hospitalizations within 180 days, as at imminent risk. As a result, these individuals will be given a priority in the new behavioral health benefit design project when implemented. Implementation of the TDMHMR behavioral health benefit design project began September 1, 2003, in designated areas of the state through four MHAs. Statewide implementation is projected to occur in FY 05. TDMHMR continues to gather and analyze data on individuals identified as meeting this criterion in order to determine what services and supports they are receiving. For the adult population, the Center for Disability Studies (CDS) has completed a report on a study they conducted in FY 02. The study was based on interviews with adults identified as receiving community services along with having a history of multiple hospitalizations. For children, TDMHMR contracted with a local advocacy group to conduct a survey of the children and adolescents that were part of the identified population. The survey and the report have both been completed. Results of that survey have been shared with the Mental Health Public Advisory Committee (MHPAC) to formulate recommendations for serving the identified population. MHPAC recommendations are pending at this time.

Effective February 2002, the CARE system was updated to identify persons who meet the criteria and monthly reports are generated for tracking purposes. Upon the third admission of an individual, the SMHF and the MHA are notified by CARE in order to ensure the person is assessed for intensive community services upon discharge from the facility. The MH Continuity of Care rule was revised to include provisions that address the service needs of these individuals. Adoption by the TDMHMR Board of rules governing Mental Health Services – Admission, Continuity, and Discharge occurred in October 2003.

Effective September 1, 2003, the Mental Health Promoting Independence Advisory Committee was abolished per HB 2292 (78th Legislative Session). At this time the issues of the committee will continue to be addressed through the Mental Health Planning and Advisory Committee (MHPAC).

Other TDMHMR Initiatives

Real Choice Systems Change Grant - TDMHMR submitted a grant application to CMS in July 2003, in response to the "Real Choice Systems Change Grants for Community Living" request for proposals. Grant funds in the amount of \$500,000 were awarded to TDMHMR October 2, 2003, for "Quality Assurance and Quality Improvement in Home and Community-Based Services". TDMHMR will use the grant funds to address processes for quality improvement across all TDMHMR waiver programs. The project will enhance Texas' Promoting Independence Plan and initiative by ensuring that quality long-term services and supports are received by individuals who transition from institutions to the community. The funds may be expended over a 36 month period. QA/QI Task Force members have reviewed eight survey tools that were identified by task force members and chose the Core Indicators developed by Human Services Research Institute (HSRI), as the tool that will be recommended that the department use to measure participants' experiences in MR waiver programs. They also recommended that the department work with HSRI and others to develop additional questions regarding self-determination that will be added to the National Core Indicators tool. Additionally, a business analyst was contracted with to begin designing the centralized information-gathering system. The QA/QI Task Force has begun work on reviewing the current interim critical incident reporting process and making recommendations to the department to fully automate, modify and expand the system.

Another Real Choice Grant received in 2003, as a joint effort between HHSC, TDMHMR and TDPRS, HHSC was awarded \$93,600 in grant funds for "Community-Based Treatment Alternatives for Children" in order to determine the feasibility of and the most appropriate plan for using a 1915(c) Medicaid waiver with the express desire to (1) provide quality, evidenced-based treatment to children with severe emotional disturbances (SED) children in their homes and communities; and (2) serve more eligible children than is feasible without intensive home and community-based services. The RFP to select the consultant resulted, a vendor, Community Ties of America (CTA) being selected. CTA is based in Tennessee and has substantial experience in crafting 1915 waivers. A draft of the feasibility study on community-based alternatives for children with SED is complete. The feasibility study found that the historical expenses for this population make a waiver feasible. CTA will begin work on the implementation section, including building the provider base, identifying the area(s) for a potential waiver, and looking at what type of services should be included in the waiver benefit. (Only 3 other states – VT, NY and KS use 1915c waivers to serve kids with mental health disorders).

Development of a New Waiver – In response to Executive Order RP 13, TDMHMR developed a new Medicaid waiver, the Texas Home Living Program (TxHML), to cover essential services in order to provide community services for people who are waiting for the TDMHMR HCS waiver. The waiver was approved by CMS and TDMHMR received final state approval on May 21, 2004.

Refinance – In FY 03 and early FY 04, over 1,200 persons served with general revenue dollars were authorized for refinancing to existing HCS waiver program services. In the Spring of 2004, an additional 500 persons served with general revenue dollars were authorized for refinancing to HCS waiver program services and approximately 1,300 persons were authorized for refinancing to the new TxHML waiver program services.

Permanency Planning – TDMHMR developed and refined data reporting systems to assist in monitoring compliance with permanency planning requirements. Data collection requirements have improved consistency and accuracy of the data reported. Over 97% of persons under 22 years of age and residing in an “institution” (as defined by SB 368, 77th Legislative Session) have a permanency plan. TDMHMR worked with HHSC, DFPS, and TDHS to develop instruments that will be used across the agencies to guide the permanency planning process. In addition, TDMHMR developed a Technical Assistance Guide, to further assist staff conducting permanency planning with the new instruments, which has been shared and used by other HHS agencies.

Impact of 78th Legislature on Mental Retardation Services

TDMHMR submitted an appropriations request for the FY 04 - 05 biennium that would have enabled the department to serve an additional 1,155 individuals waiting for waiver services in community ICF/MR facilities and state MR facilities or ready for discharge from a state mental health facility (i.e., persons dually diagnosed with MI/MR). Funds were also requested to serve an additional 2,544 persons in the community waiting for TDMHMR waiver services. This request was not funded.

The budget approved by the legislature included an initial 2.2% reduction for Medicaid Waiver Services and a 3.5% reduction for other Medicaid reimbursed services including ICF/MR and service coordination. These reductions were subsequently halved because the state received more Federal Financial Participation.

HB 2292, Section 2.74 states that "Local Authorities may serve as a provider of services only as a provider of last resort." The performance contract with centers currently contains a provision requiring local authorities to await further instructions from the department regarding implementation of this provision.

As a result of HB 2292 the MRLA and HCS-O waiver programs were converted to the Home and Community-Based Service (HCS) waiver program effective September 1, 2003. The service coordination service definition was amended to reflect this change. As a result, waiver program providers are now responsible for case management (previously provided by local authorities under the rubric "service coordination").

TDMHMR Rider 70, Feasibility Study for Six Bed Waiver Settings, stated that in order to make TDMHMR waiver services more cost effective and maximize the number of persons served, the department shall study the feasibility, cost, and benefits of converting waiver residential services to six bed settings, beginning in FY 06. The study shall consider required provider rates, the transition costs to providers, and the impact on consumers. The study shall be developed with

the assistance of a workgroup that shall include members of the staff of the department, representatives of public providers, private providers, and advocates. The department has completed the study and has submitted its findings to the legislature, August 2004.

THE TEXAS DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

On February 1, 2004 the Texas Department of Protective and Regulatory Services (PRS) became the Texas Department of Family and Protective Services (DFPS).

Developmental Disability Specialists

The Department continued funding for a Developmental Disability Specialist position in each of the 11 regions, with the Arlington and Houston Regions having two each. In some of the smaller regions, the position is a half-time position. The Developmental Disability specialists have assisted regional CPS staff in addressing the various disability needs of children and families served by the Department.

The Developmental Disability Specialists have helped review the appropriateness of requests by staff for placement of children in nursing homes, MHMR placements (ICF-MRs, including state schools and state hospitals), and DFPS licensed facilities for children with mental retardation (Casa Esperanza and Mission Roads). They have reviewed the permanency planning information submitted twice a year by staff as part of the SB 368 reporting/approval process for the appropriateness of the plans and appropriateness of the continued placement in the current institutional settings. They have then forwarded the information to state office for further review, approval, and submissions to HHSC.

The Developmental Disability Specialists have staffed cases with workers to ensure that the child's needs have been appropriately identified and that appropriate services have been sought. They have attended various Permanency Planning Team (PPT) staffings. They have assisted staff in getting children with disabilities on the appropriate Medicaid Waiver Program lists. They have assisted workers in working with their Placement units and in making referrals to EveryChild, Inc. to find families for the Department children placed in institutional settings.

Change in Automation Software

On September 1, 2003 the Department rolled out a new, web-based, software application, IMPACT, to replace CAPS. IMPACT contained improvements in documenting CPS children's characteristics and in completing CPS family and children's service plans. It also contained improvements for APS in documenting developmental disability and placement information and in completing service plans.

New Levels of Service

In August of 2003, the Department Board approved the switch from the six-tier Level of Care (LOC) system to the four-tier service level system (Basic, Moderate, Specialized, and Intense levels), effective September 1, 2003. LOCs 1 and 2 were switched to Basic; LOC 3 and part of LOC 4 were switched to Moderate; Part of LOC 4 and LOC 5 were switched to Specialized; and LOC 6 was switched to Intense. A rate structure was approved to support the new levels. A family rate was approved for the Basic, Moderate, and Specialized levels. Children at the

Specialized level, who previously did not have a family rate approved for their level (LOC 5), could now be served in appropriate, licensed family placements, if available. A rate for family placements at the Intense Level was not set at the August meeting.

Family Rate at Intense Level

In September 2003, the LOC 5 and 6 Pilot Project concerning family placements changed to the Intensive Foster Family Pilot Project due to the change from the LOC system to the Level of Service system. This effort focused on placing some CPS children at the Intense Level in family homes. The Department contracted with Alliance Adolescent and Children Services, a Child-Placing Agency (CPA), previously known as Texas Mentor Clinical Care, for this service.

In January 2004 pilot ended when the Department Board approved a family rate for the Intense Level of Service. This allowed CPS children with Intense service needs to be able to be served in a family setting if appropriate and if such family placements are available through a child-placing agency.

The Department rules for all of the LOC changes to the Levels of Service system were updated and went into effect on March 1, 2004.

Permanency Planning Rule and Policy Changes

Though the Department has met federal and Texas Family Code requirements concerning permanency planning, the Department updated its CPS permanency rules and handbook policy, at HHSC's request, to be consistent with the definition and requirements concerning permanency planning in the Texas Government Code §531.151—159 and in HHSC determinations. The changes to the rules and handbook policy took effect on January 1, 2004. Training was presented to staff on these changes between January and April 2004.

Disability Training for Staff Certification

In early 2003 the Department added discussion of issues concerning children with developmental disabilities to the initial worker Basic Skills Development (BSD) program that all CPS workers take soon after initially being hired into the program.

In the fall of 2003, the Department arranged for the Protective Services Training Institute (PSTI), which coordinates the Department's worker and supervisor certification programs, to present a training on Wrap Around Services concerning children with developmental disabilities that staff could use to count towards their certification programs.

DEPARTMENT FOR ASSISTIVE AND REHABILITATIVE SERVICES – DIVISION FOR REHABILITATION SERVICES (DRS) (Formerly Texas Rehabilitation Commission)

During the summer of 2002, the Texas Rehabilitation Commission (TRC) initiated its own Independence Initiatives Workgroup (IIW) to assist in the continued development and implementation of the Promoting Independence Initiative. The IIW identified the following seven major issues : 1) most integrated setting, 2) policies, 3) redirection/commitment of funding, 4) personal attendant employment, 5) assistive technology, 6) staff role in relocation,

and 7) staff issues. The IIW also developed over thirty recommendations addressing these areas. The TRC commissioner reviewed these recommendations and proceeded with those adopted by the agency. After providing a liaison to the PIAC, a TRC representative was officially appointed to the PIAC in the summer of 2002 to ensure coordination among the agencies exists in implementation efforts.

DRS (TRC) engaged in the following Promoting Independence Initiatives during the past year:

- Provided intranet materials to inform and assist field staff as they work with individuals relocating from institutions to the community.
- Worked closely with the State Independent Living Council and other entities to provide relocation training opportunities for Center for Independent Living staff.
- Included Independence Initiatives issues in discussions regarding development of the 2005-2009 Strategic Plan and 2006-07 Legislative Appropriations Request (LAR).
- Supported, through active involvement, development of the Attendant Network project funded by the DD Planning Council.
- Expanded the Rehabilitation Technology Lab through the purchase of new and updated equipment.
- Initiated policy changes to ensure that DRS counselors inform consumers of their community care options for services in the most integrated before care decisions are made.
- DRS filed staff participated in training related to promoting independence, relocation services and housing opportunities for consumers relocating from institutions to the community.
- Initiated development of Institution to Community Coordination (ICC) service that can be purchased for VR or ILS consumers. The ICC will begin as a pilot project in DRS Region II (Dallas/Ft. Worth Metroplex) on 9/1/04.

THE TEXAS DEPARTMENT ON AGING

The Office of the State Long-term Care Ombudsman and the Area Agencies on Aging (AAAs) continued to be involved in local planning and coordination of the Promoting Independence movement in Texas during 2004. All area agencies received specialized training on relocation procedures, techniques and resources. Two separate trainings were conducted for Managing local Ombudsmen representing the 28 AAAs during this period. Program coordination was continued with independent advocacy organizations such as Advocacy Incorporated to identify resources to assist individuals who could benefit from community based services/arrangements. The department is continuing its emphasis to assist individuals seeking the least restrictive care environment. The State Ombudsman served on two TDHS state level advisory committees supporting the PI initiative during 2004.

THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

TDHCA joined the PIAC at the request of the Health and Human Services Commission during FY 01. Due to the need to address affordable, accessible, integrated housing, the Governor's Executive Order RP-13, and the legislative mandates related to coordinating services, TDHCA plays an integral role in the Promoting Independence Initiative.

The PIAC created a Housing workgroup to initially address the issues of the development of a housing assistance voucher program. TDHCA and HHSC made requests to HUD and received 35 public housing vouchers from the HUD Project Access program in order to implement a pilot providing housing assistance vouchers to individuals within the Olmstead population transitioning to community services from nursing facilities. TDHCA, TDHS, and HHSC entered into an MOU in order to coordinate the implementation of this voucher assistance program. This program is currently operating within the state through the assistance of the central office of TDHCA, TDHS, and their regional staff, as well as relocation specialists providing assistance to individuals transitioning from nursing homes. TDHS referred a total of 107 individuals to TDHCA since June 1, 2003. TDHCA has awarded all 35 vouchers and 34 individuals have moved into Section 8 housing, as of July 1, 2004. Several of the original 35 vouchers have been absorbed by local Public Housing Authorities (the PHA chose to use one of its own existing vouchers), thus enabling TDHCA to re-issue those vouchers to applicants on the waiting list. These vouchers will continue to be “recycled” by TDHCA without the age 62 limitation placed on the original 35 vouchers.

TDHCA has dedicated 4 million dollars for FY 03 and 04 of “HOME” funds to be utilized to assist the Olmstead population to secure affordable, accessible, and integrated housing in the community and provided training to applicants. Due to concerns regarding the limited amount of funds allowed for administrative support, TDHCA increased the amount allowed from 4% to 6%, and received an additional 4% of funding from HHSC to allow contractors to spend up to 10% of the award on administrative activities.

Additionally, TDHCA has made various policy statements related to the need for accessible, affordable, and integrated housing for persons with disabilities in their state plan. TDHCA currently has a rule published for public comment regarding the definition of “integrated housing” and how it relates to the development funds.

AGENCY SPECIFIC RECOMMENDATIONS

Health and Human Services Commission (HHSC)

- The PIAC recommends that the Promoting Independence Initiative remain an HHSC initiative to be operated, coordinated and staffed through DADS.
- The PIAC recommends that HHSC continue to include in the Promoting Independence Initiative individuals at imminent risk of institutionalization. (“Imminent Risk” is defined as those individuals presenting at the front door for institutional services, who without these services have no supports in the community, have no natural support network, and who have an immediate need of this level of care.)
- The PIAC recommends that HHSC direct HHSA’s to review all policies and procedures and rules regarding services to individuals that would assist them in transitioning from institutions, and revise policies, procedures, and rules accordingly to make transition a reality.

- The PIAC recommends HHSC Executive Commissioner delay the expansion of STAR PLUS for 6 months to consider the following:
 - 1) the effect the expansion will have on those needing the nursing home waiver in rural areas of Texas;
 - 2) the effect the expansion will have on those above the SSI level and below 3 times the SSI level (MAO - Medical Assistance Only)
 - 3) the effect the expansion will have on those using Rider 28;
 - 4) the fact that STAR PLUS currently and in its proposed expansion only serves those with physical disabilities and older Texans leaving the delivery of waiver services to people with developmental disabilities in a different service delivery system;
 - 5) the effect the administration of STAR PLUS at HHSC will have on the efficient administration of long term services and supports to all people with disabilities and older Texans at DADS.
- The PIAC recommends that any expansion of Star Plus must not negatively affect the ability of Medical Assistance Only (MAO) individuals or those in non-STAR-PLUS areas from receiving services because of those persons on SSI being automatically eligible for Community Based Alternatives (CBA). The cap on CBA slots must be able to expand to meet this need.
- The PIAC recommends that any expansion of Star Plus include all persons with disabilities and older Texans to assure uniformity of the future delivery system of long-term care services and supports.
- The PIAC recommends that HHSC adjust Medicaid rates to achieve wage and benefit parity in institutions and community-based services.
- The PIAC recommends that any future rate development be done in a manner that provides incentives to attract and retain competent direct support professionals/attendants.
- The PIAC recommends that Medicaid State Plan be amended to include Durable Medical Equipment (DME).
- The PIAC recommends that the Medicaid State Plan be amended to utilize Targeted Case Management to fund relocation assistance for individuals who choose to leave nursing homes.

Department of Aging and Disability Services (DADS)

- The PIAC recommends that the PIAC and DADS develop a sub-committee to review all materials and processes informing individuals of community based alternatives and provide recommendations to the appropriate HHS agencies.

- The PIAC recommends that DADS continue the contract requirement that relocation specialists provide cross-agency coordination with the LMHMRAs 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.
- The PIAC recommends that DADS require the LMRA's to track activity regarding: a) the number of referrals received of individuals transitioning from nursing facilities; b) a description of the disposition of those referrals accepted for services, (e.g. placed on a waiting list, denied services, reasons for denial, etc.)
- The PIAC recommends that DADS provide information to regional staff and relocation contractors regarding coordination between LMHMRAs and regional DADS staff related to services and supports in the community.
- The PIAC recommends that all identification, assessment, and service coordination processes and services be provided through organizations knowledgeable of community services, housed at the local level, and independent of provider functions.
- The PIAC recommends that for persons of any age residing in Nursing Facilities who have a guardian/LAR, consent for treatment be given at least annually.
- The PIAC recommends that DADS expand the task of Nurse/Doctor delegation/assignments into the Primary Home Care program.
- The PIAC recommends in order to facilitate the relocation of individuals who choose to move from nursing facilities that DADS: 1) update the Minimum Data Set (MDS) instructions to require that all persons receive information on home and community program options; and 2) establish a process to forward a person's name and information from Question Q1a, if consent is given, to the Center for Independent Living (CIL) and/or the Area Agency on Aging (AAA).
- The PIAC recommends that DADS allow the MDS information Q1a, if consent is given, to be made publicly available: 1) the name, address, phone, etc. of the facility where the individual resides, 2) the age range of the individual; and 3) the length of time the individual has resided in the facility.
- The PIAC recommends that DADS: 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; 3) identify potential barriers to community transition for this population, i.e., lack of interpreter services, etc.; and 4) if identified, take action to address the barriers.
- The PIAC recommends that for adults that APS places in nursing facilities, including those for whom the state becomes the guardian, DADS 1) identify their length of stay in

the facility; 2) identify any potential barriers to community transition; and 3) if identified, take action to address the barriers.

- The PIAC recommends that DADS and DSHS investigate and resolve the barriers to transitioning residents of nursing facilities who have physical disabilities and a mental health diagnosis.
- The PIAC recommends that the DADS Office of the State Long Term care Ombudsman continue to provide input into DADS Planning and Advisory activities to ensure that the Ombudsman involvement is appropriately included in PI activities.
- The PIAC recommends that the DADS Office of the State Long Term care Ombudsman continue to provide PI related training to ensure Area Agency on Aging ongoing support and involvement in Olmstead related initiatives.

Department of State Health Services (DSHS)

- The PIAC recommends 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.
- The PIAC recommends that DSHS require 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, expedited assignment to services).
- The PIAC recommends that DSHS require the LMHA's to track activity regarding: 1) the number of referrals received of individuals with a mental health diagnosis transitioning from nursing facilities; and 2) a description of the disposition of those referrals accepted for services, (e.g. placed on a waiting list, denied services, reasons for denial, etc.)
- The PIAC recommends that DSHS: 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; 3) identify potential barriers to community transition for this population, i.e., lack of interpreter services, etc.; and 4) if identified, take action to the address barriers.

Department of Assistive and Rehabilitative Services (DARS)

- The PIAC recommends that DARS develop an LAR funding request that reflects the funding levels needed to assist individuals in nursing homes and other institutions to transition into the community.

- The PIAC recommends that DARS work with the SILC 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.

Department of Family and Protective Services (DFPS)

- The PIAC recommends that the Children's Protective Services (CPS) caseworker training curriculum continue to be revised and improved as needed with respect to disability issues, and any revision of disability training be coordinated with DADS.
- The PIAC recommends that DFPS: 1) identify the number of individuals that APS places in nursing facilities; and 2) identify barriers for APS in finding less restrictive placements.

CONCLUSION

The Olmstead Decision and the Promoting Independence Initiative is about planning and systems change. It is the responsibility of the PIAC to advise and assist the HHSC with the continued development and implementation of its planning process as a response to the Olmstead Decision. Therefore, the consumer and advocate stakeholder members of the PIAC strongly encourage 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.

Considering the lack of funding in the 78th Legislative Session and the impact of such, the consumer and advocate stakeholders of the PIAC again strongly recommends that the HHSC request and continue to encourage the 79th Legislature to appropriate sufficient funds for the Health and Human Services system that will result in assuring that people with disabilities and older Texans have a choice to live and receive services in the most integrated setting through the 2006 and 2007 biennium.

EXECUTIVE ORDER

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 interest 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 alternatives 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.

Given under my hand this the 28th day of
September 1999.

GEORGE W. BUSH
GOVERNOR

ATTEST:

ELTON BOMER
Secretary of State

EXECUTIVE ORDER

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

**EXECUTIVE ORDER
RP 13**

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 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

INDIVIDUALS SERVED IN INSTITUTIONS * (As of June 30, 2004):

Type of Institution	Individuals age 65 and over
Nursing facilities	55,175
State MR Facilities	387
Community ICF/MR Facilities (14 + beds)	154
State MH Facilities	69 (12 continuous months)
Other Group Settings /DFPS	3
SUB-TOTAL	55,788

Type of Institution	Individuals age 22 to 64
Nursing facilities	9,561
State MR Facilities	4,360
Community ICF/MR Facilities (14 + beds)	1,503
State MH Facilities	292 (12 continuous months)
Residential Treatment Center/DFPS	2
Other Group Settings/DFPS	1
SUB-TOTAL	15,719

Type of Institution (Per SB 368)	Individuals age 22 and under
Nursing Facilities	209
State MR Facilities	250
Community ICF/MR Facilities (14 + beds)	232
Community ICF/MR Facilities (under 14 beds)	395
HCS Waiver Program Group Home	316
State MH Facilities	8 (12 continuous months)
DFPS:	
Institutions for Persons with MR	78
Foster Group Home	129
Basic Care	6
Residential Treatment Center	101
Other group settings	15
SUB- TOTAL	1,739
TOTAL:	73,246

- 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 persons 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 TDMHMR, 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 TDPRS; and any residential arrangement other than a foster home that provides care to four or more children who are unrelated to each other.

