TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Providing leadership, direction, and innovation to achieve an efficient and effective health and human services system for Texans.

The Revised Texas Promoting Independence Plan

In Response to SB 367, Executive Order RP-13, and the Olmstead vs. L.C. Decision

Submitted to the Governor and the Texas Legislature

December 2, 2002

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EXECUTIVE SUMMARY

INTRODUCTION AND PURPOSE:

The Texas Promoting Independence Plan serves several purposes within the state. First the plan works to provide the comprehensive, effectively working plan called for as a response to the U.S. Supreme Court ruling in Olmstead v. L.C. Additionally, the Promoting Independence Plan assists with the implementation efforts of the community-based alternatives Executive Order, RP-13, from Governor Rick Perry.[1] The Promoting Independence Plan Revision also meets the requirements of the report referenced in SB 367, 77th Session of the Texas Legislature which asks the Health and Human Services Commission (HHSC) to report the status of the implementation of a plan to ensure appropriate care settings for persons with disabilities, and the provision of a system of services and supports that foster independence and productivity including meaningful opportunities for a person with a disability to live in the most appropriate care setting.[2] Finally, the Promoting Independence Plan serves as an analysis of the availability, application, and efficacy of existing community-based supports for people with disabilities.[3] The Promoting Independence Plan and the subsequent Promoting Independence Initiative are far reaching in their scope and implementation efforts. The Promoting Independence Initiative includes all long-term care services and supports and the state's efforts to improve the provision of community-based alternatives, ensuring that these programs in Texas effectively foster independence and acceptance of people with disabilities and provide opportunities for people to live productive lives in their home communities.

BACKGROUND:

To fully understand the implications, purpose, and comprehensive nature of the Promoting Independence Initiative within the state we must start with the history of the initiative and include relevant information related to the Olmstead Decision.

The Court ruled that states must provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when the:

1. State's treatment professionals determine that such placement is appropriate;
2. Affected persons do not oppose such treatment; and
3. 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 (119,S.Ct.2176, *2189).

The court further determined that nothing in the ADA condones the termination of institutional settings for persons unable to handle or benefit from community settings (119 S.Ct.2176, 2187)

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[1] RP-13 follows GWB 99-2 as the second community-based alternatives executive order. These orders required the state to review all LTC services and supports, make appropriate recommendations, and implement specific Gubernatorial directives. See Appendices A and B

[2] SB 367 – 77th Session of the Texas Legislature

[3] Executive Order GWB 99-2, see Appendix B

and that the state's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless (119.S.Ct.2176, *2188).

The Congress of the United States instructed the U.S. 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".

Under the ADA, states are obliged to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity." Fundamental alteration of a program takes into account three factors:

- The cost of providing services to the individual in the most integrated setting appropriate;
- The resources available to the state; and
- How the provision of services affects the ability of the state to meet the needs of others with disabilities. (119,S.Ct. 2176, *2188, *2189)

The court suggested that a state could establish compliance with Title II of the ADA if it demonstrates that it has:

> *A comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings, and a waiting list that moves at a reasonable pace not controlled by the state's endeavors to keep its institutions fully populated. In such circumstances, a court would have no warrant effectively to order a displacement of persons at the top of the community-based treatment waiting list by individuals lower down who commenced civil actions (119.S.Ct.2176, *2189, *2190).*

At the direction of then Governor George Bush, through his Executive Order GWB 99-2, and informed by the Olmstead Decision, the Health and Human Services Commission embarked on the Promoting Independence Initiative, and appointed The Promoting Independence Advisory Board, as directed by Executive Order GWB 99-2. The Promoting Independence Advisory Board met during FY'99 and FY'00 and assisted the HHSC in crafting the states response to the Olmstead Decision. This was accomplished by the development and on-going implementation of the original Promoting Independence Plan,[4] delivered to the 77th Texas Legislature in January of 2001.

A significant piece of legislation, which was passed during the 77th Session of the Texas Legislature, was SB 367. This bill re-named the Promoting Independence Advisory Board. The current name for this advisory body is the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities.

[4] http://www.hhsc.state.tx.us/tpip/tpip_index.html

THE PROMOTING INDEPENDENCE INITIATIVE STATUS, BUDGET REQUEST, AND REVISED IMPLEMENTATION STEPS:

The HHSC has coordinated the SB 367 Task Force efforts and they met at least quarterly during fiscal year '02. During this time the SB 367 Task Force monitored the implementation of recommendations from the Promoting Independence Plan, formed necessary workgroups to assist with the overall continued development of the Promoting Independence Plan, and made further advisory recommendations to ensure the comprehensiveness and effectiveness of the plan. Their efforts culminated in a legislatively mandated report[5] to the Commission, including all of their recommendations for the revision of the Promoting Independence Plan.[6]

Each health and human service agency involved in the Promoting Independence Initiative has worked diligently during the past two years to make the Promoting Independence Initiative a reality in Texas. The agencies' activities have spanned efforts that are vast in scope and varied in activity. The agencies have included such innovative implementation steps as: the Texas Department of Human Services (TDHS) relocation specialist pilots and the use of Rider 37 to allow funds to follow the individual from the nursing facility to purchase desired community-based services; the Texas Department of Mental Health and Mental Retardation's (TDMHMR) provision of waiver services to individuals within the ICF/MR program who have received referral through the Community Living Options process; the TDMHMR behavioral health services Promoting Independence Advisory Committee to develop strategies for individuals with three hospitalizations within 180 days at a state mental health facility; the Texas Department of Protection and Regulatory Services' (TDPRS) efforts related to permanency planning and children within the conservatorship of TDPRS; the Texas Rehabilitation Commission's (TRC) Independence Initiative Workgroup; the development of the Texas Home Living Waiver; the provision of housing vouchers to individuals transitioning from nursing facilities; and a variety of other activities including those undertaken by the Texas Department of Housing and Community Affairs (TDHCA), the Texas Department on Aging (TDoA), the Texas Workforce Commission (TWC), and the Texas Department of Health's (TDH) Children with Special Health Care Needs (CSHCN) Division. Within the body of this revised plan is a detailed account of each agency's activities related to the Texas Promoting Independence Initiative.

BUDGETARY INFORMATION:

The Health and Human Services Commission has once again emphasized the Promoting Independence Initiative through its consolidated budget and legislative appropriations request. The Commission has also recognized and emphasized the need to reduce waiting/interest lists for all individuals requesting community-based alternative services. The Commission has proposed a consolidated budget request of $86.5 million dollars in general revenue specific to Promoting Independence.[7]

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[5] The SB 367 Task Force Report to the Commission may be found on the HHSC website at: http://www.hhsc.state.tx.us/

[6] For a description of all recommendations and the HHSC response see Appendix C

[7] See Consolidated Budget Request PI Tier, Appendix E

IMPLEMENTATION STEPS OF REVISED PLAN:
The HHSC, based on SB 367 Task Force recommendations, has included the following implementation steps that are directed at addressing the barriers identified to providing community-based programs that effectively foster independence for people with disabilities. They have been organized by issues and agency to ensure specific agency responsibility for implementation.

Funding and Capacity Issues Implementation Steps:

- HHSC will continue to direct Health and Human Service Agencies (HHSAs) to address Olmstead related issues through their agency planning activities and through their LAR and budget development activities. HHSC continues to address Olmstead through the consolidated appropriations request and through the Enterprise Strategic plan.

- HHSC will work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to encourage further investment in community-based services, as additional resources are identified through the biennium.

- HHSC will request funding for continuation and expansion of the family based alternatives project in its exceptional items LAR request.

- *Requires legislative direction and appropriations.*
  HHSC would work with appropriate agencies to assist those individuals who transition from institutional care into the community with a "money follow the individual" mechanism, when funding is not cost neutral and the cost of community care must be supplemented in order for the service to be provided in the community.

- *Requires legislative direction.*
  TDHS would ensure the implementation of Rider 37 as a permanent funding mechanism, within the concept of budget neutrality in the aggregate as provided in federal regulations.

- *Requires legislative direction.*
  HHSC would assist TDMHMR and TDPRS in the redirection of institutional monies appropriated to follow the individual into the community, if the individual chooses. Building on the work of HB 966, the state would monitor the impact of any decision to implement the redirection of funds to allow the money to follow the individual for their choice of services and to assess the effects on providers, individuals, and state general revenue.

- *Requires legislative direction.*
  HHSC would implement changes to the Special Provisions of HHSC Rider 22 to allow HHSC to use funds appropriated for long-term care waiver slots to TDHS and MHMR for the following purposes: a) the establishment, maintenance, and development of capacity to expedite utilization 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, d) the development of capacity in community waiver services.

- HHSC will include an inflation adjustment in the LAR related to LTC Medicaid providers.

- *Requires legislative direction and appropriations.*
  HHSC would assist appropriate agencies in the implementation of funding appropriated for transitioning providers who voluntarily downsize their facilities. The funding would be used for specific increased per capita costs incurred as individuals with disabilities and/or families exercise their right to choose to live in community settings.

- *Requires legislative direction.*
  HHSC would assist agencies to implement a sliding fee for institutional and community services and support programs for families of children under 22 and adults with legal guardians, to the extent allowed by Federal regulation. HHSC would ensure that the sliding fee scale be developed with input from families, advocates, and other interested stakeholders.

Housing Issues Implementation Steps:

- HHSC has requested funding for Promoting Independence supports in housing and transportation assistance in the LAR in the amount of $5,100,000.

- HHSC, upon request, will assist TDHCA in the provision of staff training related to disability issues. The training should be developed with input from appropriate stakeholders and be provided to key staff, including the TDHCA Board members, as appropriate.

- HHSC will assist TDHCA and appropriate stakeholders efforts, in enhancing the stock of accessible, affordable, integrated housing in Texas, and work to remove the existing barriers to accessing housing.

- HHSC will work together with TDHCA and appropriate stakeholders, to give technical assistance to local public housing authorities so that they apply for and prioritize accessible, affordable, integrated housing for people with disabilities so that they can leave or be diverted from a nursing home or other institution.

Workforce Issues Implementation Steps:

- HHSC will assist the TWC and their efforts to assure optimal work opportunities for people with disabilities.

- HSSC will work with the SB 367 Task Force to review and identify workforce issues and concerns, while acknowledging that wages and benefit packages are set by the legislature.

- HHSC, with appropriate HHSAs, will coordinate convene a forum with providers on implementing the Olmstead decision, address workforce issues, and the implications to members of labor unions and other workers in relation to transitioning individuals from institutions to the community.

- HHSC in their Legislative Appropriations Request has requested legislative consideration for Medicaid rate increases as indicated by current rate methodology and cost reviews.

- HHSC will direct appropriate HHSAs to explore and develop employee recruitment and retention incentives for all providers of long-term care services.

Children's Issues Implementation Steps:

- HHSC has implemented permanency planning as provided by law, within the context of parental/Legally Authorized Representative choice.

- HHSC must study existing agency data collection mechanisms, available resources, and costs of this effort, before it could implement the SB 367 Task Force recommendation to collect data on individuals transitioning from MDCP, EPSDT/CCP for the purposes of developing recommendations on providing support services to meet their needs.

- *Requires legislative direction and appropriations.*
  HHSC would work with TDMHMR to target 20% of newly appropriated HCS/MRLA waiver slots (FY'04 and FY'05), for children placed on the waiver waiting/interest list as a result of SB368 permanency planning efforts and for those children living in institutions within the Family Based Alternatives Project.

- *Requires legislative direction and appropriations.*
  HHSC would work with TDHS, TDMHMR and TDPRS to study and implement, the use of appropriate waiver slots for children in CPS custody, particularly those placed in CPS licensed institutions for children with physical and cognitive disabilities.

- *Requires legislative direction and appropriations.*
  HHSC would assist TDMHMR and the role of the local mental retardation authority in the permanency planning function being removed from the ICF/MR provider.

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

Agency Specific Implementation Steps:
TRC:

- HSSC recognizes that Federal partners must agree to Vocational Rehabilitation and Independent Living service priorities. TRC should evaluate the potential of and implement accordingly those elements of the SB 367 Task Force recommendation that

the TRC, in response to the Olmstead decision and the Promoting Independence Initiative, do the following:

- Develop rules and regulations as soon as possible, or by June of 2002 that give priority to individuals in nursing homes and other institutions for vocational rehabilitation and independent living services when the individual chooses to leave the facility.

- 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.

- *Requires legislative direction and appropriations.*
  TRC would work with the State Independent Living Council (SILC) and other interested stakeholders in assuring that technical assistance would be provided to community organizations interested in or providing assistance to individuals transitioning from nursing facilities and other institutions into the community.

- TRC as directed in the Governor's Executive Order RP-13, will work with interested community organizations in developing training and orientation projects for people with disabilities who desire to be attendants.

- TRC will examine its rate structures in order to determine if a bias exists towards supporting vendors of sheltered workshops.

- TRC will examine its rate structures in order to create an incentive to employ individuals in supported employment and integrated settings and request additional funds in the agency's future Legislative Appropriations Request.

TDMHMR:

- TDMHMR will continue to give priority within their behavioral health benefits design to children and adults with 3 hospitalizations in a state mental health facility within 180 days for mental health services and consider them a high priority for the most intensive service package appropriate to meet their needs.

- TDMHMR will consider individuals transitioning from nursing facilities into the community with mental health needs be considered a high priority for the most intensive service package as appropriate to meet their needs for inclusion in the benefit design model. However, the need for services is based on need rather than the type of most recent residential assignment.

- *Requires legislative direction.*
  HHSC would assist TDMHMR, to use funds resulting from lapsed slot allocation for the LMRA's for enrolling individuals in the waiver services as soon as slots are allocated.

- TDMHMR will implement the requirements of rule HHSC 351.15 to ensure that individuals in state mental health facilities receive information about alternative services and supports prior to admission to nursing facilities.

- TDMHMR will work with DHS to identify individuals moving from a nursing facility who have specialized needs (i.e., MH or MR) as identified by the PASARR process.

- TDMHMR will examine and consider including in the behavioral benefit design model, the sub-group of individuals referred for services who are transitioning from nursing facilities. However, the need for services is based on need rather than the type of most recent residential assignment.

- TDMHMR will examine and consider including in the behavioral benefit design model, the sub-group of individuals identified through their PASARR's of nursing home residents with a diagnosis of mental illness who wish to transition into the community. However, the need for services is based on need vs. the type of most recent residential assignment.

- TDMHMR will examine and consider implementing a directive to the Mental Health Directors at the LMHA's, instructing them to identify a contact person for DHS and stipulate that the contact person will meet on site with the DHS regional staff to assess and secure services for nursing home residents with a mental illness who choose to transition for inclusion in the benefit design model. However, the need for services is based on need rather than the type of most recent residential assignment.

- HHSC, TDMHMR and TDHS will work to identify gaps in the current system that inappropriately fail to identify choices of individuals with mental illness from state hospitals or the community, considering nursing home placement.

TDHS:

- HHSC has included in its Consolidated Budget the TDHS efforts requesting that funding be appropriated to continue the relocation specialist contracts and the permanency planning contracts beyond the current biennium, including funding to expand to more geographic locations.

- HHSC will assist TDHS, TDPRS, and TDMHMR to achieve optimal coordination between TDHS relocation specialists and permanency-planning specialists with LMHMRA's and TDPRS.

- *Requires legislative direction and appropriations.*
  HHSC would direct TDHS study and replicate the successful aspects of the following relocation model statewide. The SB 367 Task Force, the Texas Independent Living Partnership and the DHS work with Advocacy Inc., COIL, and the DHS Region 8 staff to:
    a. Describe and disseminate the grassroots model that has been developed in San Antonio in relation to relocation efforts and;
    b. For DHS to replicate the successful aspects of this model statewide to provide assistance to individuals transitioning from nursing facilities and provide assistance to individuals wishing to divert from nursing facility placement choosing community services; and
    c. To develop methods to monitor successful practices and incorporate these practices into their models of relocation efforts. (Voted 8/31/02)

- TDHS will work to provide data, information, and a description of the process for approval and denial of referrals to community care services, (including definition of codes used for denial) to the DHS Board on a regular basis.

- TDHS will work to provide information to regional staff and relocation contractors regarding the value of increased coordination between TDMHMR, the LMHMRAs and regional TDHS staff related to services and supports in the community.

- TDHS will ensure the development of the cost analysis of TDHS Rider 7 and the reporting of that analysis to the legislature and Governor's office, as appropriate.

TDoA:

- TDOA will train Ombudsmen regarding the role of the relocation specialists, the provisions of Rider 37, and assistance in providing information related to community services to individuals in nursing facilities.

TDPRS:

- TDPRS will ensure that the Children's Protective Services (CPS) caseworker training include a specific component regarding children with developmental disabilities, and to include this training component into the certification program for caseworkers and supervisors.

OTHER IMPLMENTATION STEPS:

- HHSC will work with appropriate agencies to allow the SB 367 Task Force to review and provide input into all HHSA's related workgroup recommendations regarding the Promoting Independence Initiative before recommendations, strategies, policies, etc., are adopted or implemented by agencies and their Boards.

- In order to continue implementation of the SB 367, HHSC will direct HHSA's to include in their forums, systems, and mechanisms for public input throughout the state discussion of the "most appropriate care settings" and receive recommendations from stakeholders related to the "most appropriate care settings".

- HHSC will 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 within the guidelines of federal regulations, available funding, legislative direction, individual choice, and appropriateness of service plans.

- HHSC will direct the local access initiative to ensure that any information and referral assistance systems developed by HHSA's activities at the local level be linked to the existing 211 efforts.

- HHSC will include in the Promoting Independence Initiative, the following definition of 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 for this level of care.)

- HHSC will assist the SB367 Task Force to develop a sub-committee to review all materials and processes informing individuals of community-based alternatives and provide recommendations to the appropriate HHS agency to be included in the Promoting Independence Plan.

- HHSC will invite the Texas Hospital Association to attend future meetings of the SB367 Task Force and participate in discussions and effective solutions for discharge planning from a hospital setting into the community.

- HHSC will invite the Texas Board of Nurse Examiners (BNE) to attend future meetings of the SB367 task Force and participate in discussions about the nurse practice act and nurse delegated tasks in a community setting.

- HHSC will work with appropriate HHSA's to evaluate the BNE rule, related to nurse delegation of tasks in an independent living environment, to determine the policy and operational implications for LTC programs.

CONCLUSION:

In accordance with SB367, on December 1, of each even numbered year, HHSC will use the information gleaned from the SB 367 Task Force meetings and annual task force reports, agency reports and information, and continued public comment in order to revise the Texas Promoting Independence Plan.

This biennial revision allows for the state's efforts to stay vibrant and effective in meeting the changing needs of individuals with disabilities. The commission will continue to seek public input into its plan, including the tradition of stakeholder meetings around the state[8] in order to obtain a variety of stakeholders' opinions and views. HHSC would like to thank all members of the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities, and Enterprise agency staff, who have dedicated their time, resources, knowledge, abilities, and work in the development of this plan and initiative.

[8] See Appendix G for summary of stakeholder meetings

INTRODUCTION AND PURPOSE

The Texas Promoting Independence Plan serves several purposes within the state. First the plan works to provide the comprehensive, effectively working plan called for as a response to the U.S. Supreme Court ruling in Olmstead v. L.C. Additionally, the Promoting Independence Plan assists with the implementation efforts of the community-based alternatives Executive Order, RP-13, from Governor Rick Perry.[9] The Promoting Independence Plan Revision also meets the requirements of the report referenced in SB 367, 77th Session of the Texas Legislature which asks the Health and Human Services Commission (HHSC) to report the status of the implementation of a plan to ensure appropriate care settings for persons with disabilities, the provision of a system of services and supports that foster independence and productivity including meaningful opportunities for a person with a disability to live in the most appropriate care setting.[10] Finally, the Promoting Independence Plan serves as an analysis of the availability, application, and efficacy of existing community-based supports for people with disabilities.[11] The Promoting Independence Plan and the subsequent Promoting Independence Initiative are far reaching in their scope and implementation efforts. The Promoting Independence Initiative includes all long-term care services and supports and the state's efforts to improve the provision of community-based alternatives, ensuring that these programs in Texas effectively foster independence and acceptance of people with disabilities and provide opportunities for people to live productive lives in their home communities.

The Promoting Independence Plan articulates a value base that serves as the framework for future system improvements:

- People should be well informed about their program options, including community-based programs, and allowed the opportunity to make choices among affordable services and supports.
- Families' desire to care for their children with disabilities at home should be recognized and encouraged by the state.
- Services and supports should be built around a shared responsibility among families, state and local government, the private sector, and community-based organizations, including faith-based organizations.
- Programs should be flexible, designed to encourage and facilitate integration into the community, accommodating the needs of individuals.
- Programs should foster hope, dignity, respect and independence for the individual.[12]

[9] RP-13 follows GWB 99-2 as the second community-based alternatives executive order. These orders required the state to review all LTC services and supports, make appropriate recommendations, and implement specific Gubernatorial directives. See Appendices A and B

[10] SB 367 – 77th Session of the Texas Legislature

[11] Executive Order GWB 99-2, see Appendix B

[12] Texas Health and Human Services Consolidated Budget for Fiscal Years 2004-2005, pg. 120

BACKGROUND

To fully understand the implications, purpose, and comprehensive nature of the Promoting Independence Initiative within the state we must start with the history of the initiative and include relevant information related to the Olmstead Decision. In June of 1999, the Supreme Court of the United States affirmed a judgment in the Olmstead vs. LC and E.W. Suit, which has had far reaching effects with states regarding services for individuals with disabilities. This case was brought forward in Georgia, on behalf of two individuals with mental and cognitive disabilities living in state operated institutions. They claimed a right to care in an integrated setting based on the guarantees under Title II of the Americans With Disabilities Act (ADA).

The Court ruled that states must provide community-based services for persons with disabilities who would otherwise be entitled to institutional services when the:

1. State's treatment professionals determine that such placement is appropriate;
2. Affected persons do not oppose such treatment; and
3. 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 (119,S.Ct.2176, *2189).

The court further determined that nothing in the ADA condones the termination of institutional settings for persons unable to handle or benefit from community settings (119 S.Ct.2176, 2187) and that the state's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless (119.S.Ct.2176, *2188).

The principles set forth in the Supreme Court's decision apply to all individuals with disabilities protected from discrimination by Title II of the ADA. The ADA prohibits discrimination against "qualified individual(s) with a disability". The ADA defines "disability as: a) a physical or mental impairment that substantially limits one or more of an individual's major life activities; b) a record of such an impairment; or c) being regarded as having such an impairment. Examples of major life activities include caring for oneself, walking, seeing, hearing, speaking, breathing, working, performing manual tasks and learning, as well as basic activities as thinking, concentrating, interacting with others, and sleeping. Age alone is not equated with disability; however, if an elderly person has a physical or mental impairment that substantially limits one or more of his or her major life activities, has a record of such impairment, or is regarded as having such impairment, he or she would be protected under the ADA. To be a "qualified" individual with a disability, the person must meet the essential eligibility requirements for receipt of services or participation in a public entity's programs, activities, or services (119,S.Ct. 2176, *2188/ 42 U.S.C. Subchapter. 12132, Subchpt.12131 (2)). 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".

Under the ADA, states are obliged to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modification would fundamentally alter the nature of the service, program or activity." Fundamental alteration of a program takes into account three factors:

- The cost of providing services to the individual in the most integrated setting appropriate;
- The resources available to the state; and
- How the provision of services affects the ability of the state to meet the needs of others with disabilities. (119,S.Ct. 2176, *2188, *2189)

The court suggested that a state could establish compliance with Title II of the ADA if it demonstrates that it has:

> *A comprehensive, effectively working plan for placing qualified persons with disabilities in less restrictive settings, and a waiting list that moves at a reasonable pace not controlled by the state's endeavors to keep its institutions fully populated. In such circumstances, a court would have no warrant effectively to order a displacement of persons at the top of the community-based treatment waiting list by individuals lower down who commenced civil actions (119.S.Ct.2176, *2189, *2190).*

The Court went further in their opinion to state that it acknowledged that Congress found discrimination against people with disabilities includes segregation, isolation, and institutionalization and that under the ADA an individual with disabilities has the legal right to be served in the most integrated setting. 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."

At the direction of then Governor George Bush, through his Executive Order GWB 99-2, and informed by the Olmstead Decision, the Health and Human Services Commission embarked on the Promoting Independence Initiative, and appointed The Promoting Independence Advisory Board, as directed by Executive Order GWB 99-2. The Promoting Independence Advisory Board met during FY'99 and FY'00 and assisted the HHSC in crafting the states response to the Olmstead Decision. This was accomplished by the development and on-going implementation of the original Promoting Independence Plan,[13] delivered to the 77th Texas Legislature in January of 2001.

The first Promoting Independence Plan was submitted to the Governor and state leadership on January 9, 2001. The original Promoting Independence Plan provided the beginning framework for the state to review all services and support systems available to people with disabilities in Texas and make recommendations related to affected populations, improving the flow of

[13] http://www.hhsc.state.tx.us/tpip/tpip_index.html

information about supports in the community, and removing barriers that impede opportunities for community placement.[14] The plan highlighted the state's efforts to assist those individuals desirous of community placement, appropriate for community placement as determined by the state's treatment professionals, and who did not constitute a fundamental alteration in the state's services, to live in the community.

Additionally Governor Rick Perry, in April of 2002, created his own Executive Order to further the efforts of the state regarding its Promoting Independence Initiative and community-based alternatives for individuals with disabilities. Executive Order RP-13[15] 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 the SB 367 Task Force was expanded to include the appointments of a representative from the TDHCA, the TRC and the TWC.

During the last two years HHSC was able to identify and provide detailed accountability related to specific recommendations, sequencing of expansion and implementation phases, and agency responsibilities. The efforts of stakeholders resulted in the passage of related legislation to achieve the Promoting Independence Plan recommendations and to ensure the continued revision of the Promoting Independence Plan in order to facilitate timely and effective implementation.

A significant piece of legislation, which was passed during the 77th Session of the Texas Legislature, was SB367. This bill re-named the Promoting Independence Advisory Board. The current name for this advisory body is the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities. The Commissioner of Health and Human Services appoints the SB 367 Task Force and its presiding officer. The HHSC Commissioner determines the number of task force members who include representatives of appropriate health and human service agencies, related work groups, individual 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.
Current membership on the SB 367 Task Force is as follows:

Mr. Bob Kafka
ADAPT

Ms. Colleen Horton
Center For Disabilities Studies
EveryChild Coalition

Ms. Ann Denton
Enterprise Foundation

Ms. Candice Carter
AARP

Dr. Richard Garnett
ARC of Texas

Mr. Lee Bowers
Diamondback Management
Services LTD

[14] Executive Order GWB 99-2 – See Appendix B
[15] Executive Order RP-13 -See Appendix A

Ms. Terry Durkin Wilkinson
TDHS Board Representative

Ms. Becky Beechinor
TDHS Commissioner Designee
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Mr. Dick O'Connor
TDMHMR Board Representative

Mr. Barry Waller
TDMHMR Commissioner Designee

Ms. Sara Dale Anderson
TDHCA Representative

Ms. Martha Bagley
TRC Commissioner Designee

Ms. Adelaide Horn
HHSC Commission Representative
Presiding Officer

Mr. Roy Kimble
TWC Commissioner Designee

The SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities has met on a regular basis during the last two years to continue the work of the Promoting Independence Advisory Board, and the state's development and implementation of the Promoting Independence Plan.

The SB367 provided specific charges related to the recommendations of the original Promoting Independence Plan. The charges include:

- To study and make recommendations on developing the comprehensive, effectively working plan required by SB 367 to ensure appropriate care settings for persons with disabilities;
- To identify appropriate components of the pilot program established by SB 367 for coordination and integration among the Texas Department of Human Services (TDHS), the Texas Department of Mental Health and Mental Retardation (TDMHMR), and the Texas Department of Protective and Regulatory Services (TDPRS);
- To advise the Health and Human Services Commission (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 relating to all persons described in SB 367; and
- To advise HHSC on identifying funding options for the plan.

THE PROMOTING INDEPENDENCE INITIATIVE CURRENT STATUS AND RELATED ACTIVITIES

The HHSC has coordinated the SB 367 Task Force efforts and they met at least quarterly during fiscal year '01 and fiscal year '02. During this time the SB 367 Task Force monitored the implementation of the pilot sites referred to in SB 367, the agencies' implementation of recommendations from the Promoting Independence Plan, formed necessary workgroups to assist with the overall continued development of the Promoting Independence Plan, and made further advisory recommendations to ensure the comprehensiveness and effectiveness of the plan. Their efforts culminated in a legislatively mandated report[16] to the Commission, including all of their recommendations for the revision of the Promoting Independence Plan.[17]

A SUMMARY OF RELEVANT LEGISLATION PASSED IN THE 77TH SESSION

SB 367, the fundamental legislation related to the Promoting Independence Initiative, was passed during the 77th session of the Texas Legislature. SB 367 required that the HHSC and appropriate health and human services agencies implement a comprehensive, effectively working plan that provides a system of services and support that fosters independence and productivity and provides meaningful opportunities for a person with a disability to live in the most integrated setting. This bill established the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities. It required that the HHSC update the Promoting Independence Plan no later than December 1st, of each even-numbered year, and submit this plan to the Governor and the Legislature.

SB 367 expanded the state's efforts related to persons with mental illness to include not only those individuals who had been served in a state mental health facility for twelve months, but also those individuals who had three inpatient hospitalizations within a 180-day period to a TDMHMR facility (State hospital) to be presumed at imminent risk of institutionalization.

Additionally, SB 367 required that TDMHMR implement a community living options information process in each institution to inform persons with mental retardation who reside in the institution and their legally authorized representatives of alternative community living options, refer those individuals desirous of community placement to the local mental retardation authority, and place the person in an alternative community living option, subject to the availability of funds.

SB 367 required the HHSC to revise its rules to require each health and human services agency (HHSA) to provide to individuals and to at least one family member of the individual, if possible, information regarding all care and support options available, before the agency allows the person to be placed in a care setting.

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[16] The SB 367 Task Force Report to the Commission may be found on the HHSC website at: http://www.hhsc.state.tx.us/

[17] For a description of all recommendations and the HHSC response see Appendix C

Affordable, accessible and integrated housing is a necessity for those individuals wishing to transition to or remain in the community. SB 367 asked that the HHSC in coordination with the DHS, TDMHMR and the TDHCA, to develop a voucher program for transitional living assistance for persons with disabilities, subject to the availability of funds.

SB 367 also required that the TDHS in cooperation with the TDMHMR and the TDPRS develop and implement in at least three sites a pilot program to provide a system of services and support that fosters independence, subject to the availability of funds.

Other legislation, which is relevant to the Promoting Independence Initiative, includes the following:

SB368: Permanency Planning

- Defines "institutions", for the purposes of this bill, 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.
- That the HHSC and each appropriate HHSA develop procedures to ensure that permanency plan is developed for each child who resides in an institution.
- That an advocate be designated to assist in developing the permanency plan for the child if the parent or guardian requests and the institution cannot locate the parents or guardians.
- That upon notice of a child's placement in an institution, a state agency shall place the child's name on the appropriate waiting/interest list for waiver services.
- HHSC and appropriate HHSAs study the feasibility of bifurcating reimbursement provided for permanency planning.
- That each CEO of appropriate state agencies approves the placement of a child in an institution and any extension of placements every six months. Additionally, the HHSC commissioner must also develop procedures and conduct a semiannual review of data received from HHSAs in order to approve each additional six-month placement extension.
- That HHSC develop a family-based alternatives pilot for children residing in institutions, dependent upon the availability of funds.

HB966: Study ways to allow money to follow an individual

- Requires that HHSC quantify the amount of money appropriated by the legislature that is spent to care for a person who is receiving institutional care.
- Study the redirection of all or part of that amount to one or more community-based programs in the event the person leaves the institution.
- Consider ways in which the money may be redirected under existing law and/or changes in law.
- This report may be found on the HHSC website.

HB 1478: Children's Policy Council

- Renames the Children's Long-term Care Policy Council to the Children's Policy Council.
- Members appointed by HHSC, and defines membership.
- Defines scope of council and its duties.
- Requires a report from council no later than September 1st, of each even-numbered year.
- The CPC report required by this bill to be submitted to the Commission and the Legislature may be found on the HHSC website.

HB456: Delegation of health maintenance tasks in independent living environments

- Review and make recommendations regarding the provision of health maintenance tasks to persons with functional disabilities in independent living environments.
- Analyze when delegation and assignment of those tasks by registered nurses is appropriate and safe.
- Study the feasibility and desirability of separate regulations relating to delegation and assignment of those tasks.
- Study and develop procedures for resolving disagreements between individuals and registered nurses or home and community support service agencies about the appropriateness and safety of delegating and assigning tasks.
- As a result the Board of Nursing Examiners (BNE) proposed a separate delegation rule for individuals in independent living environments to their board in October 2002. This rule is expected to be adopted and implemented in early 2003.

TDHS Rider 37: Promoting independence

- As individuals relocate from nursing facilities to community care services, funds will be transferred from nursing facilities to community care services to cover the cost of the shift in services.

TDHS Rider 7b: Limitation of Per Day Cost of Alternative Care

- No funds shall be expended by the DHS for alternative care where the cost per patient per day exceeds the average Medicaid Nursing Facility rate or the patients nursing facility rate, whichever is greater, except for individual cases exempted by the Board of Human Services or by the Commissioner of TDHS.
- 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 and the exception complies with the federal CMS's cost-effectiveness requirements.

Special Provisions Rider 22/HHSC: Limitation on Appropriations for Long-term Care Waiver Slots

- Funds appropriated for long-term care waiver slots may be utilized for only these purposes: a) the establishment and maintenance of long-term care waivers slots; b) the provision of wraparound services that are related to transitional services, access to immediate housing, and transportation services; or c) development of family-based alternatives for children leaving institutions.

A SUMMARY OF RELATED AGENCY PROMOTING INDEPENDENCE PLAN ACTIVITIES

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 waiting/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.

Under Rider 37, implemented in September 2001, individuals in nursing facilities who wish community placement will not be placed on community care interests lists. The Medicaid funds used to pay for the individual's care in a nursing facility can be transferred to community care services.

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 children age 21 who are no longer eligible for the Medically Dependent Children's Program (MDCP) or the Texas Health Steps Program are allowed to bypass the CBA waiting/interest list.)

Notification of Long-Term Care Options to Children in Nursing Facilities
The Permanency Planning contractor, Texas Community Solutions, notifies children and their families of long-term care 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. Permanency plans for children in nursing facilities were completed in September of 2002. The permanency-planning contractor is working on semi-annual plan reviews and on initial plans for new admissions.

Computer Based Training
The Promoting Independence Computer Based Training (PICBT) for current DHS 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. DHS 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.

System Change Grants for Community Living Nursing Facility Transitions
DHS submitted a grant application to the Centers for Medicare and Medicaid Services (CMS) in July 2001 to support the transition of nursing facility residents into community living arrangements at selected sites. DHS was not awarded this grant.

Permanency Planning
In April 2001, DHS published a Request for Proposal (RFP) to procure a contractor(s) to provide permanency-planning services for all children residing in nursing facilities. DHS received one proposal, which was determined to be non-responsive to the RFP criteria. Under the Non-Competitive Procurement for Permanency Planning Services, DHS 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. Permanency planners completed the initial permanency plans, in September of 2002, for all children residing in nursing facilities. The Permanency Planning contractor will work on semi-annual plan reviews and initial plans for new admissions through the end of their contract. The contract expires in March of 2003. The Permanency Planning contractor and the Relocation Specialist contract staff have established a referral system for the children identified through permanency planning process and are working with the Health and Human Services Commission'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.

Relocation and Community Awareness Pilot Sites
DHS 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. The duration of the pilot is for one year, but may be extended if additional funding is available. CARS contractors reported the following community awareness and relocation activities as of September 30, 2002:

- Completed outreach material;
- Conducting outreach activities with nursing facility (NF) staff, residents, families, non-profit organizations, social workers, planners, physicians, hospitals and specialty clinics staff;
- Contacting and providing relocation information to pastoral communities, senior centers service centers, private businesses, community leaders, and other local state agencies such as the Department of Health Regional Offices and Local Workforce Development Boards;
- Coordinated relocation services with local home health agencies, and NF residents and family councils;
- A CARS contractor presented at the President's Summit and received National Media coverage;
- Identified 161 NF residents for transition;
- Completed 97 assessments;
- Providing relocation services to 76 NF residents; and
- Transitioned 12 NF residents from the NF to the community.

Rider 37

During the 77th Session of the Texas Legislature Rider 37 was passed for TDHS appropriations which allowed the general revenue used to purchase NF services to follow the individual into the community and purchase community services. One thousand one hundred eighty seven (1,187) CBA and five (5) CLASS individuals are identified as meeting the Rider 37 criteria and were receiving those services on November 1, 2002.

The TDHS Rider 37 and the HHSC Promoting Independence Plan have garnered national recognition and interest. Therefore, the department has included some detailed information related to how the agency implements this rider. TDHS periodically transfers funds (on a retrospective basis) from the Nursing Facility funding strategy to the Community Care strategy. The amount transferred is equal to the actual amount expended on the individual for Community Care services he/she receives after he/she leaves the facility, rather than the amount that was being spent on the individual when he/she was in the facility. Funds are monitored, analyzed, and transferred on a global basis; i.e., the agency looks at expenditure levels for Rider 37 individuals as a group, rather than on an individual-by-individual basis.

While Texas limits the number of "regular" 1915(c) waiver slots based upon the number of slots funded by the State Legislature, the waiver slots funded through Rider 37 are allowed to increase based upon demand.

It is important to note that the occupancy rate for Texas nursing homes is low (approximately 75%). Therefore, the potential for "backfilling" is lower than it would be in states that have high occupancy levels and/or waiting/interest lists. The fact that the agency transfers only the amount expended for services in the community-setting—which is less than the amount expended on the individuals when they were in a nursing facility—gives the agency a cushion to at least partially offset the cost of "backfilling".

Currently the agency is working on capturing the demographics of the population that is accessing community-based services through Rider 37. Studying this information will assist the state and relocation specialist efforts in refining the system that is being implemented for transitioning persons from institutions.
This data is as follows:

- 69.22% of individuals are between 65 and 99 years of age.
- .37% of individuals are children under 21 years of age.
- 30.41% of individuals are between 22 and 64 years of age.
- Approximately 65% of individuals are female.
- The majority of Rider 37 individuals are in the Dallas Region (280), Tyler (148), Abilene (140), Austin (113), San Antonio and the Valley (110 each). Other distribution of Rider 37 individuals include Beaumont (76), Houston (43), Lubbock (24), El Paso (10) and 3 regions are not identified.
- Data related to the length of stay in the institution before accessing Rider 37 and what services the individual is accessing in the community is currently being collected.

Rider 7

The TDHS Rider 7 was also passed during the 77th Session of the legislature. This rider has several elements as follows:

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. The 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 the patient's nursing facility rate, whichever, is greater, except for cases individually exempted by the Board of DHS or by the Commissioner of HHSC.
    2) The 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 and the exemption complies with the federal CMS's cost-effectiveness requirements.
c. Establishment of a Swing-bed Program. Out of the funds appropriated above for nursing home vendor payments, the 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 de-certification 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.

TDHS has included the following data related to individuals 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 11/01/02 the data is as follows:

CBA WAIVER:
293 individuals accessed Rider 7, with an overall average of $15,970.00 over the cost ceiling. This is based on an estimated annual plan of care. The breakdown of these 293 individuals is as follows:
255 individuals had estimated yearly plans, which exceeded the cost ceiling by less than $10,000.00

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

4 individuals had estimated yearly plans, which exceeded the cost ceiling by between $50,000.00 and $99,999.00

14 individuals had estimated yearly plans, which exceeded the cost ceiling by between $100,000.00 and $199,999.00

4 individuals had an estimated yearly plan, which exceeded the cost ceiling at over $200,000.00

Age and gender breakdown of the 293 individuals is as follows:
116 adults aged 21 to 64, of whom 63 are female and 53 are male
177 adults aged 65 and over, of whom 136 are female, 38 are male, and 3 have gender unknown

CLASS WAIVER:
There were 51 individuals who accessed Rider 7, with an overall average of $10,604.53 over the annual cost ceiling of $63,360.00 (All CLASS participants have the same cost ceiling.)

These 51 individuals cost breakdown is as follows:

33 individuals exceeded the cost ceiling by less than 10%

14 individuals exceeded the cost ceiling by between 10% and 25%

2 individuals exceeded the cost ceiling by between 26% and 50%

1 individual exceeded the cost ceiling by between 51%-75%

1 individual exceeded the cost ceiling by more than 75%

Age and gender breakdown of the 51 individuals is as follows:
38 adults aged 21 to 64, of whom 18 are female and 20 are male
1 adult, female aged 65 or over
12 children aged 0 to 20, of whom 2 are female and 10 are male

DEAF/BLIND WAIVER:
There were 5 individuals who accessed Rider 7, with an overall average of $27,829.61 over the annual cost ceiling of $59,750.00

These 5 individuals cost breakdown is as follows:

1 individual exceeded the cost ceiling by 11%

1 individual exceeded the cost ceiling by 46%

1 individual exceeded the cost ceiling by 52%

1 individual exceeded the cost ceiling by 560%

1 individual exceeded the cost ceiling by 600%

Age and gender breakdown of the 5 individuals is as follows:
5 individuals aged 21 to 64, of whom 1 person is female, 4 are male

Transitional Funding
The TDHS provides one-time transitional funds of up to $2,500 per individual for up to 100 individuals leaving nursing facilities in the Relocation and Community Awareness pilot sites to assist with costs associated with moving and establishing a community residence.

For individuals not located in the pilot sites, the TDHS has implemented a statewide service, Transition to Living in the Community (TLC), within the In Home and Family Support Program to specifically target individuals moving from nursing facilities into the community. The TLC Program allows the 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.

Evaluation of Promoting Independence Initiatives
In October of 2002, the 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.

Community Awareness
The 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 the TDHS staff, other agencies, and the general public.

The 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; starting a housing project with Home of the Free; mailing community alternatives information letter to all nursing facilities in the pilot sites; and conducting outreach activities with Council of Governments, school administrators, MHMR Centers, adult caregiver groups, and over 68 nursing facilities. Additional community awareness activities reported in the September 2002 report include:

- Completed outreach material;
- Conducting outreach activities with nursing facility (NF) staff, residents, families, non-profit organizations, social workers, planners, physicians, hospitals and specialty clinics staff;
- Contacting and providing relocation information to pastoral communities, senior centers service centers, private businesses, community leaders, and other local state agencies such as the Department of Health and Workforce Development;
- Coordinated relocation services with local home health agencies, and NF residents and family councils; and
- A CARS contractor presented at the President's Summit and received National Media coverage.

Data Collection
The 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 individuals' profiles and success factors and barriers.

Pilot Site Memorandum of Understanding
SB 367 requires that the TDHS, the TDMHMR and the TDPRS 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. It is anticipated that the MOU will be adopted through rule by all involved agencies by December 2002.

Housing Memorandum of Understanding

SB367 requires that the HHSC coordinate with TDHS, TDMHMR, and TDHCA to develop a housing assistance program to assist persons with disabilities in moving from institutional housing to integrated housing. The roles, responsibilities and activities of each agency are described in the MOU. The commissioners of all involved agencies signed the MOU in May of 2002.

The TDHCA was selected to receive 35 housing vouchers from the US Department of Housing and Urban Development (HUD). The TDHCA and the TDHS have 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. The TDHS created a housing voucher waiting list and communicate the information to the TDHCA. The TDHCA qualifies the individual and forwards the information to the appropriate Public Housing Authority (PHA) to issue the voucher. A Housing Workgroup was formed with representatives from the involved agencies and the SB 367 Task Force and other interested stakeholders to facilitate the timely issuance of the vouchers and assist in building a system infrastructure to issue future vouchers if they become available.

The TDHS has referred a total of 52 individuals to the TDHCA. The TDHCA has approved 9 vouchers as of November 2002. Training regarding accessible, affordable, integrated housing options is scheduled for November 21-22, 2002. Technical assistance is being provided by the Department of Housing and Urban Development.

THE TEXAS DEPARTMENT OF MENTAL HEALTH AND MENTAL RETARDATION

MENTAL RETARDATION SERVICES

Community Living Options Process

State Mental Retardation Facilities (SMRF) formally implemented the Community Living Options process in March 2000. Revisions to the MR Continuity of Services rule, that became effective March 2002, requires 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 MR Continuity of Services rule, effective January 1, 2002. The TDHS surveys of SMRFs include this element as of January 1, 2002. As of November 2, 2002, Client Assignment and Registration System (CARE) information indicated that of 5,036 persons residing in SMRFs, 99.6% have a current Living Options review date entered into the CARE system, indicating that living options have been discussed with almost all individuals and legally authorized representatives. The remainder is attributed to individuals recently admitted to a

SMRF and for whom the living options discussion will occur within 30 days of admission. Approximately 20% of alternate living options discussions included Local Mental Retardation Authority (LMRA) participation in the process.

In Community ICF's/MR the annual Living Options process was implemented by rule December 3, 2000. The ICF/MR provider notifies the LMRA when the individual or their legally authorized representative 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. In addition, if the number of a particular citation reaches a pre-determined threshold, the TDMHMR will require the facility to develop a Directed Plan of Correction, in accordance with the TDMHMR rule regarding ICF/MR Programs (25 TAC §419.266).

As of November 2, 2002, CARE information indicated that of 7,434 persons residing in community ICFs/MR, almost 94% have a current Living Options review date entered into the CARE system, indicating that living options have been discussed with most individuals and LARs. Approximately 14% of individuals have a continued or new referral to the LMRA.

The Community Living Options Instrument was revised November of 2000, prior to statewide implementation in December of 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. The 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 Inter-Disciplinary Team (IDT) decision or the individual/LAR request.

Another group of 236 individuals was referred for an alternate living arrangement, as of September 1, 2001, with a projected move date no later than February 28, 2002. As of November 2, 2002, of these individuals: 150 have moved to the HCS/MRLA waiver program; 2 have moved to a small ICF/MR; 1 has moved to a medium ICF/MR; 1 has moved home to live with family, with supports/services provided by the local authority; 1 has moved to a private pay group home; 1 individual died; 79 have had their referral withdrawn; and 1 individual is currently referred.

For individuals referred September 1, 2001 or later, the TDMHMR has committed to provide opportunities for community alternatives within 180 days of the request and recommendation for community placement. The FY '02 budget assumption was for 12 new referrals per month. As of November 2, 2202, the number of additional referrals was 187 (approximately 13 per month). Of these individuals: 98 have moved to the HCS/MRLA waiver program; 3 have moved to a

small ICF/MR; 1 has moved to the Deaf-Blind Waiver program; 1 moved home to live with family with supports/services being provided by the LMRA; 25 have had their referral withdrawn; and 59 are currently referred, (6 of the 59 have a scheduled move date).

Monitoring the Transition of Individuals from SMRFs
The TDMHMR Performance Contract with Local Community Mental Health and Mental Retardation Centers now includes the 180 days timeframe for community placement. In order to ensure movement within 180 days from referral, oversight will be accomplished by the TDMHMR through SMRF and Community Systems Management staff and a cross divisional Management Team. A CARE report is available to the Local Mental Retardation Authority (LMRA) 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 has been developed and implemented for individuals who have had their referral withdrawn by the IDT. The SRT meets within 10 working days of an IDT decision to remove an individual from the referral list to review the determination and the IDT decision-making process. The SMRF Continuity of Services (COS) Steering Committee reviews the SRT documentation, providing feedback to the facility. A baseline review of Living Options documentation was accomplished for a 1% sample of SMRF residents and facility-wide Living Options training (including permanency planning, when applicable) was conducted in January of 2002. Effective September 1, 2002, the SMRF division implemented a facility self-assessment process, which involves the use of a standardized monitoring instrument in reviewing a sample of Living Options summaries, per quarter. The COS steering committee will review a sample of the facility's self–assessments and provide feedback to each facility, as appropriate.

Community ICF/MR Facilities (14 Beds or Larger):
As of August 31, 2001, there were 227 persons on the HCS/MRLA waiting/interest list who resided in large ICF/MR facilities. The TDMHMR had committed to enrolling these individuals in waiver services by August 31, 2002. As of November 2, 2002, the targeted group of 227 had increased to 240. This increase of 13 is attributed to persons who currently reside in large community ICF/MR facilities and recently were changed from "inactive" status on the waiver waiting/interest list to "active." Of these 240 individuals: 140 are enrolled in waiver programs; 13 are pending enrollment in waiver programs; 20 remain on the waiting/interest list (i.e., not enrolled or pending enrollment); and 67 are no longer part of the targeted waiver group (e.g., the individual or LAR declined the offer of waiver services, the individual moved to a smaller facility, or the individual is deceased).

The TDMHMR projected that 10 individuals each month would be added to the waiver waiting/interest list during FY '02. As of November 2, 2002, there were 377 additional individuals added to the waiver waiting/interest list. A significant number of these additions occurred in August of 2002, when the names of persons under 22 years of age were added to the waiver waiting/interest list per SB 368. No waiver slots are available for these individuals at this time.

TDMHMR Operating FY 2001-02 Budget Summary
Of the total of 665 new waiver slots allocated for FY 2002, the following distributions were made: 271 for individuals residing in SMRFs; 135 for individuals residing in large ICFs/MR; and 259 for individuals on the community waiver waiting/interest list.

Equity of Access
The TDMHMR targeted 259 equity slots to be filled by February 28, 2002. As of November 2, 2002, 257 individuals from the community waiting/interest list were enrolled in waiver programs and 2 are pending enrollment.

Additional Waiver Slots Released
The TDMHMR released a total of 71 additional waiver slots in 2002 (49 in February and 22 in March). These slots were accumulated as the result of attrition in the program (e.g., a participant leaves the waiver program). As of November 4, 2002, 69 individuals from the waiting/interest list have been enrolled.

Enrollment into Waiver Services
The LMRA responsibilities and the related timelines for enrollment into waiver services are defined in the performance contract for the Promoting Independence groups, as identified above: 1) persons in SMRFs; 2) residents in large, community ICF/MR facilities, and 3) persons on the waiver waiting/interest list. MRAs that do not meet the applicable timeframes are subject to penalties, as described in their current performance contract with TDMHMR.

In July 2002, the department issued a memo to the LMRAs with instructions to inform an individual, in either a large ICF/MR facility or whose name is on the waiting/interest list, about timeframes in which the individual should 1) accept or decline the offer of a waiver slot; and 2) if waiver is accepted, select a waiver provider. These timeframes were developed to further expedite the provision of waiver services. These timelines have been incorporated into draft waiver program rules and adoption by the TDMHMR Board is anticipated in December 2002.

Choice
In accordance with SB 367, 77th Texas Legislature, 2001, the TDMHMR revised Texas Government Code, §531.042 to require at least one family member of an individual must be informed of all care and support options available before the individual is placed in a care setting. If individual has an LAR, information is to be provided to the LAR. Previously, statute required only that the individual and his or her guardian be provided with this information. Rules that were impacted include the TDMHMR's three waiver rules (i.e., HCS, MRLA, HCS-O), Continuity of Services for SMRFs, and Diagnostic Eligibility For Services and Supports – MR Priority Population and Related Conditions.

Permanency Planning
In accordance with Senate Bill 368, 77th Texas Legislature, 2001. The TDMHMR revised the three waiver program rules (i.e., MRLA, HCS, and HCS-O), the ICF/MR Programs rule, and the rule for Continuity of Services – State MR Facilities

Revisions to these rules accomplished:

- An expanded definition of "institution" to encompass waiver program services when the individual resides in a setting other than the family or foster home – 3-4 bed homes;
- An expanded definition of child to include individuals with developmental disabilities under 22 years of age;
- Provisions that require an admission to an "institution" as temporary (i.e., six months). (In order to assist with implementation of this provision, the TDMHMR developed an oversight review and monitoring process, utilizing a combination of existing staff resources and the CARE system);
- No later than the third day after admission to services, the program provider must notify following certain entities of the initiation of services (i.e., the LMRA, community resource coordination group (CRCG) for the county in which the individual's legally authorized representative (LAR) resides; and the local school district, if the individual is at least three years of age, or the local early childhood intervention (ECI) program, if the individual is under three years of age);
- An LMRA, upon receiving notification that an individual under 22 years of age has been admitted to an institution, may contact the individual's parent or guardian to ensure that the parent or guardian is aware of: 1) services and supports that could provide alternatives to the institution; 2) available alternative living arrangements; and 3) opportunities for permanency planning;
- The designation of a volunteer advocate to assist in developing a permanency plan for an individual admitted to an institution in a program administered by the department if: 1) the parent or guardian requests the assistance; or 2) the institution is unable to locate the parent or guardian of an individual; and
- Individual's name is placed on waiting/interest list for waiver services.

The TDMHMR, in coordination with the HHSC and other HHSA's, has identified critical data elements on which regular reports will be provided to the HHSC. This information will be used to inform the system and assist in the identification of resources needed for persons under 22 years of age.

Promoting Independence Web Site
The TDMHMR created a web site that is intended to be a user-friendly source of information to individuals, families of individuals, LMRAs, and the general public. Features of the web site include general information about the Promoting Independence Initiative, and the TDMHMR services and supports (both Medicaid funded and General Revenue funded). There are also links to other agency program information.

A search function on the web site allows the user to locate the appropriate LMRA by entering a county or city. For information about ICF/MR facilities, a search function allows the user to

select specific elements (e.g., gender of persons served by the facility, zip code), which are then used to locate ICF/MR programs with vacancies.

MENTAL HEALTH SERVICES

State Mental Health Facilities:

Extended Hospitalizations (of one year or more)

At the end of Fiscal Year (FY) 2002, the eight State Mental Health Facilities averaged a daily census of 2,281 with approximately 17,680 total admissions during the year. For most individuals, inpatient psychiatric care last no more than a few weeks. However, for some individuals with severe treatment needs, longer lengths of stay are needed. The 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 (LMHA) prepare a revised Continuity of Care Plan for persons with identified barriers that are not resolved within 90 days of being placed in the report.

As of November 1, 2002, 397 persons were hospitalized in State Mental Health Facilities (SMHF) for a period of more than one year. Of these patients: 208 need continued hospitalization; 14 are accepted for community placement; 41 have a barrier to placement; and 134 have court involvement.

Community Services Behavioral Health Promoting Independence:

In February of 2001, the Substance Abuse and Mental Health Services Administration (SAMHSA) informed state mental health and mental retardation commissioners that grant money would be made available to support state activities related to Olmstead for the mental health population.

Texas submitted an application and was awarded a grant of $20,000 per year for three years to support "the activities of State-wide coalitions to promote community-based care." The application process was designed to provide State Mental Health Authorities with the flexibility to collaborate with other state agencies and coalitions.

The original intent of the Texas grant was to provide training and education to individuals and family members and build coalitions around these groups related to mental health and Olmstead. State legislation from the 77th session changed the focus of grant activities when laws were passed requiring the mental health population to be addressed in the Promoting Independence Initiative.

The Mental Health Promoting Independence Advisory Committee was formed during the summer of 2001 and had the first formal meeting on August 13, 2001. The group has met monthly since it was formed. The purpose of this committee is to advise the TDMHMR on issues related to Promoting Independence for the mental health population. The group also provides recommendations for the expenditure of grant funds. The group is composed of state agency staff

from the TDMHMR, the TDHS, the HHSC and the TPRS, advocacy organization staff, and Local Community MHMR Center staff, as well as other interested stakeholders.

Committee Activities - Research

The committee has worked actively with the agency throughout the course of research examining the population addressed by SB 367, i.e.- individuals who are admitted to state facilities three or more times in 180 days. This research is occurring in three phases, with phase one and phase two complete.

In phase one, the TDMHMR staff collected and analyzed Client Assignment and Registration System (CARE) data for FY 2001. This analysis provided information regarding service assignments, locations and Medicaid eligibility. Analysis examining state hospital admissions only (Not including community hospitals) indicated that there were 509 individuals in this population. Subsequent analysis focused on the adult only population and did not include services individuals in the NorthStar project region. This population totaled 439 individuals. Not surprisingly this analysis illustrated that most multiple admission are in urban areas where state hospitals are located. It confirmed that high hospital utilizers were receiving significantly more intensive community-based mental health services than the non-multiple admission population. Also data suggested that community services are provided to both Medicaid eligible population and non-medicate eligible in approximately equal numbers.

A recent analysis of the multiple admission state hospital population identified 545 adults (age 18 and over) and 34 children (age 0 – 17) statewide. This analysis examines individuals who were admitted three times in 180 days and their last admission occurred between October 2001 and September 2002. Again, urban areas with state hospitals located in them are the highest utilizers of state hospital care. In the adult population, slightly more (56.8% with Medicaid, 43.1% without) individuals with Medicaid are being served. In the children's population, significantly more individuals with Medicaid are being served (88.2% with Medicaid, 11.7% without). In the adult population, 262 individuals had Schizophrenia, followed by Bi-polar disorder (100 individuals) and then Major Depression (71 individuals). In the children's population, the major diagnosis was Bi-polar Disorder in 12 individuals.

In phase two, the agency used grant funds to contract with Texas Community Solutions to collect and analyze encounter data for the multiple admission population for FY 2001.
This analysis examined the actual delivery of community-based services to the multiple admission population to reveal the frequency the services were delivered.

The third phase of the research will be a qualitative study on this same population. With guidance and participation from committee members the agency applied to the Hogg Foundation for funding and received a grant for $10,000 to help support the costs of this study. These funds, in addition to some of the federal Olmstead mental health funds will be used to contract with the Center for Disability Studies at the University of Texas to perform interviews of members of this population. Researchers will interview members of the population to determine reasons for hospitalization and barriers to community tenure. This study will be completed during the early months of calendar year 2003.

Similar analysis is being conducted on the children's mental health population. In the FY 2001 analysis, 31 children were identified statewide as members of the multiple state hospital admission population as well as 16 children placed at the Waco Center for Youth that had identified barriers to community placement after completion of treatment.

The TDMHMR Children's Services Unit is contracting with the Texas Federation for Families to conduct surveys of the key informants, the families and their children who are members of this population. This survey will focus on the identification of resources that could have prevented multiple hospitalizations or longer than appropriate stays in the state facility.

Findings from all of these research activities will be used to support our request to the legislature for additional funding to expand intensive community-based services to at risk individuals.

Committee activities – Other
Also the committee is provided updates by the TDHS staff regarding implementation of Promoting Independence activities in nursing facilities. Subjects discussed related to nursing facilities includes the TDMHMR's role in providing care to individuals with mental illness who are transitioning from nursing home and the difficulty encountered attempting to access home health services for this population.

CARE Information and TDMHMR Rule
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 LMHA are notified by CARE in order to ensure the person is assessed for intensive community services upon discharge from the facility. Currently, the MH Continuity of Care rule is being revised and will include provisions to address the service needs of these individuals. Implementation of the revised rule is anticipated for spring 2003.

Benefit Design Update
The TDMHMR Behavioral Health Services will roll out the benefit design initiative at four implementation sites beginning September 1, 2003. These sites include the Texas Panhandle MHMR Center, the Lubbock Regional MHMR Center, the Hill Country Community MHMR Center and the MHMR Authority of Tarrant County. Currently five workgroups are meeting to address special issues. These groups include data, utilization management, local authority functions, costs, and service package content.

Individuals who have been admitted to state hospitals three or more times in 180 days will qualify for level three and level four services in the benefit design package. These levels provide for the most intensive services offered in this package.

THE TEXAS DEPARTMENT OF PROTECTION AND REGULATORY SERVICES

In March 2002, PRS had 14,715 children in foster care placements. Less than 130 children were placed in SMRFs; Community ICFs/MR; nursing facilities; Home and Community-Based Service (HCS) placements; or TDPRS licensed Institutions for Persons with Mental Retardation

(Casa Esperanza and Mission Road Development Center). Less than 70 of the young adults for whom the TDPRS has been appointed as guardian were in such placements.

The TDPRS (and prior to 1992, as part of the TDHS) has been required by federal legislation to address permanency-planning activities and to place children in its care in least restrictive placements since the early 1980s in order to receive Social Security Title IV-E foster care payments. Moreover, in Texas, the 75th Legislature passed laws setting up a series of permanency and placement court reviews and requiring legal resolution of the TDPRS conservatorship cases in a 12-month time frame with the possibility of a one-time extension for up to an additional 6 months.

For the TDPRS the term permanency planning includes but is not limited to an effort to move children from institutional placements to family settings. The term is used in the TDPRS to refer to finding a permanent placement for a child with the appropriate legal resolution of the case. For most youth who will age out of foster care, permanency also includes helping them prepare for independent living as they turn 18 or finish their school or vocational program with appropriate supports and resources in place for them.

The TDPRS permanency plan is incorporated in the Child's Initial Service Plan and in the Child Service Plan Reviews, which identify all the child's needs and the services that will be in place to address those needs. The reviews also address the progress to date in meeting those needs and in providing the identified services.

The TDPRS efforts are also reviewed by the courts in the permanency hearings held after a child has been in care (temporary managing conservatorship) for six months and every four months thereafter while the case stays in temporary legal status. Once permanent orders are issued, which are required by the 12th month of the temporary order or up to a one-time extension of no more than an additional six months, placement reviews are held every six months.

The TDPRS children have a guardian/attorney ad litem appointed for them while the case is in temporary status. This person (or persons) may continue to be assigned to the case if the TDPRS is named as the permanent managing conservator. In addition, a number of the TDPRS children have Court Appointed Special Advocates (CASA) workers assigned, who make independent recommendations to the court.

The TDPRS has a Child Protective Service (CPS) Program and an Adult Protective Service (APS) Program. The APS staff assist the CPS staff with information about community resources as requested. When a CPS youth will age out of foster care at 18 (when PRS conservatorship ends) and needs a guardian, the CPS staff begins the process of obtaining a guardian once the youth turns 16. If there is no appropriate person to assume guardianship, the CPS staff make a referral to APS. The APS staff review the efforts to find a guardian and make recommendations. If it is necessary and appropriate and if no other options for a guardian exist, APS recommends the TDPRS be named as the guardian for the young adult, who then becomes a ward of the state.

New Programs/ Initiatives
The CPS has revised policy and sent memos to its staff regarding:

- Signing eligible CPS children for Medicaid Waiver services or for Medicaid Waiver waiting/interest lists;
- Using community resources for children and wards with disabilities;
- Educating staff about the term and concept of developmental disability (DD) and HHSC permanency planning requirements;
- Recording the developmental disability characteristic for children in the case record;
- Documenting efforts to find placements for children who have developmental disabilities;
- Obtaining state office approval before placing CPS children with DD in identified institutional settings; and
- Reviewing policies and procedures concerning CPS children and APS wards with DD.

Policy / Rule
The CPS is currently revising its permanency policy to include HHSC's definitions. These will be incorporated into rule when the review and comment period is completed.

For the APS wards under 22 years, policy now requires:

- Permanency Planning every six months and completion of Review Screens for young adult wards in the CPS group homes and the TDPRS institutions for MR;
- Placement on Medicaid Waiver lists;
- Approval of the APS director to keep a young adult ward in an institution when a Medicaid Waiver slot becomes available but will not likely meet the ward's needs (exceptional situation).

For wards 22 years and older, policy now requires:

- Placement on the waiting/interest list of a Medicaid Waiver program unless an exemption is granted by a team consisting of state office and regional guardianship staff. Exemptions are granted when a community placement would not likely meet the ward's needs or be in his or her best interest.

The APS state office staff have held scan calls with all levels of regional guardianship staff to review new policies related to SB 367 and SB 368 and the Texas Promoting Independence Initiative.

The TDPRS Executive Director and the TDHS Commissioner have signed the MOU being developed by the TDHS for the TDHS, the TDPRS, and the TDMHMR. The TDHS and the TDMHMR have submitted the MOU to the Texas Register for comment and then for adoption in their rules. The TDPRS had planned to wait until the TDHS MOU was adopted and then proceed to adopt the TDHS MOU in rule by reference. However, the TDHS is now having to make a change in the MOU in response to a concern raised by the TDMHMR and will have to re-submit the revised MOU to the Texas Register for adoption. Consequently, the TDPRS will ask its Board in January to adopt the revised TDHS MOU in rule by reference and will submit the item to the Texas Register for comment and then for adoption if no objections are raised (to be effective sometime in March, 2003).

Developmental Disability (DD) Specialists
Beginning 9/1/02, the CPS has started hiring Developmental Disabilities (DD) Specialists in each of the 11 regions in Texas to assist staff with disability issues. The CPS state office DD Specialist who has been handling these issues to date will provide the regional DD Specialists with technical support and direction.

The DD Specialists will

- Serve as a coordinator of resources for children with developmental disabilities (DD) in conjunction with the child's worker;
- Develop and maintain effective working relationships with community agencies and other professionals who serve children with DD;
- Provide consultation and assistance to staff regarding children with DD needs and resources to meet those needs;
- Provide assistance to staff in finding specialized placements for children with DD;
- Provide training to staff and foster parents regarding DD issues;
- Assist in case planning for children with DD (including de-institutionalization efforts);
- Maintain regional log of children with DD; and
- Maintain necessary documentation as required to provide complete and accurate records for children with DD (including the HHSC Review Screen forms).

PRS Approval Process
For the CPS, the approval process for placing the TDPRS children with DD in state facilities for persons with mental retardation, Community ICFs/MR, the TDPRS Institutions for Persons with Mental Retardation, and nursing facilities has been strengthened so that there are adequate efforts and documentation of efforts to consider less restrictive, family settings. The CPS state office staff review these efforts. The CPS Director must approve placement into any of these facilities.

The APS staff may place a ward in an institution, but only temporarily until a community or family placement becomes available, if appropriate. The APS director must approve keeping a young adult ward in an institution when a Medicaid Waiver slot becomes available but will not likely meet the ward's needs (exceptional situation).

TDPRS Plans to Address HHSC Permanency Planning Requirements
The TDPRS staff address legal and placement aspects of permanency planning in their initial and subsequent service plans. Those service plans identify all the various needs of a child or ward and plans to address those needs, including medical, social, emotional, educational, physical, and therapeutic needs.

In order to help staff better identify specific needs of children with DD at Mission Road and Casa Esperanza, PRS has met with the TDH to set up a system that would allow PRS staff to use the TDH medical case managers to assist with the completion of the HHSC Permanency Planning Review Screens for the TDPRS children at Mission Road and Casa Esperanza.

For the TDPRS children with DD placed in foster group homes, the CPS DD Specialists will help complete the HHSC Permanency Planning Review Screens. The APS Guardian Specialists will complete the HHSC Review Screens for APS wards placed in foster group homes.

The CPS regional and state office DD Specialists and the state office APS Guardianship staff will enter the information from the HHSC Permanency Planning Review Screens into an ACCESS database. This database has been developed to pre-fill with required information from Child and Adult Protective System (CAPS) and to allow staff to data enter information required by SB 368 to be reported to the HHSC. This database became operational October 2002. Information obtained will be sent to the HHSC on a monthly basis. Meetings have been held with the data staff at the TDMHMR and the TDHS to ensure that our three agencies are reporting the HHSC Permanency Planning Review Screen information in the same format.

DePelchin / Mentor Child-Placing Agency (CPA) Pilot Project
The TDPRS entered into contracts with DePelchin CPA and Mentor CPA to provide Level of Care (LOC) 5 and 6 services to PRS children in a less restrictive environment than the traditional residential setting. DePelchin has voluntarily non-renewed their contract for this pilot project.

There are currently a limited number of beds available for this pilot project, although more homes are being recruited. The CPS state office staff ensures that the pilot serves those children who could benefit from the program. The child must have a current Level of Care 5 or 6, authorized by a third-party contractor, currently Youth For Tomorrow. The child's clinical records must support that the child is amenable to services from a therapeutic foster home.

Work with EveryChild, Inc.
The TDPRS will be working with EveryChild, Inc. to support the effort to recruit families willing to care for TDPRS children with DD with sufficient supportive services. The DePelchin/Mentor CPA Pilot Project will be expanded to allow participation by the CPAs under contract with EveryChild, if the CPAs meet the terms of the PRS contract for this project. The TDPRS will inform staff about EveryChild, Inc. and will allow EveryChild, Inc. access to information about the TDPRS children to assist in recruitment efforts.

West Texas Children With Disabilities Project
Region 01 (Amarillo/Lubbock region) has contracted with West Texas A&M University, School of Nursing, to provide services relating to children with disabilities for staff, birth parents, and foster parents.

The University faculty and advanced students

- Meet with staff to participate in the permanency planning teams;
- Provide training to staff and foster parents who have children with disabilities;
- Assist with locating resources; and
- Provide specialized nursing assessments that evaluate bonding and attachment status between parents and children.

This project will serve as a pilot project to develop a relationship with nursing schools across Texas to be replicated in other regions to provide the health-related component to the planning for children in the CPS consevatorship.

Educational (ED) Specialists
The TDPRS is developing Educational (ED) Specialist positions in each of the 11 regions in Texas, which will go into effect 9-1-02 as core positions. The region, with technical support and direction from the State Office Educational Specialist, will supervise this position.

The ED Specialist will

- Become knowledgeable about educational resources available within the region;
- Seek and establish a network of local services and resources that provide for educational needs and services to children in the TDPRS managing conservatorship;
- Provide training to the CPS staff on meeting the special education or other educational needs of children; and
- Assist the CPS staff at Admission, Review, and Dismissal (ARD) meetings as required under special education statutes, giving input on Individual Educational Plans (IEP) and Individual Transition Plans (ITP).

Coordination Within the TDPRS
The TDPRS has made efforts to ensure that all the TDPRS programs--CPS, APS, Licensing, and PEI (Prevention and Early Intervention)--are coordinating efforts to maximize the services and resources that PRS can offer its children and wards with DD.

Funding
The TDPRS did not receive any additional funds to work on the Promoting Independence Initiative.

The TDPRS will use federal Child Abuse, Prevention and Treatment Act (CAPTA) Innovations funds to pay for the DD and ED Specialists in each of the 11 regions in Texas and for the West Texas Children With Disabilities Project.

The TDPRS is using IV-E foster care and state general revenue funds to pay the LOC 5 and 6 rates to DePelchin, Mentor, and other child-placing agencies (CPAs) associated with EveryChild, Inc., when children move from residential placements into therapeutic foster homes.

Specific Interagency Collaboration
The TDPRS has met with the TDHS, the TDMHMR, and the HHSC to discuss barriers to accessing Medicaid Waiver services for PRS children in the CPS program and wards in APS Guardianship.

The TDPRS children assigned a Billing Level of Care (LOC) 3 and above are not eligible for Medicaid Waiver services according to the TDHS and the TDMHMR rules. The TDHS has begun to eliminate this requirement in certain situations. Both the TDPRS and the HHSC are working to eliminate this barrier with good progress occurring recently.

The APS staff have met with the TDHS staff to explore avenues for TDHS funding to maintain young adult wards who have aged out of CPS conservatorship in the their foster homes, once the CPS extended foster care expires. Some foster parents for CPS children with DD who age out of foster care would be willing to have the young adults continue to live with them if there were a

way for the young adult to receive Medicaid Waiver services, if appropriate, that included adult foster care payments. In some cases these young adults have had to move to an institutional placement before they could qualify for this assistance.

The APS is planning a similar initiative with the TDMHMR mental retardation services. The APS staff participate in monthly Mental Health Promoting Independence Advisory Committee meetings and are exploring community alternatives for adult wards with mental illness.

The TDPRS has met with the TDH to enhance ways that the TDPRS can use Medical Case Management services.

Other Additional Efforts

Computer enhancements

- Living arrangement codes are being modified and a characteristic code for developmental disability has been added to the CAPS software program.

- Various internal reports are being developed to help track CPS children and APS wards with DD.

- Performance Measures are being developed to identify the number of CPS Children with DD and APS wards who have moved from institutions to community settings each six months.

Regional Placement Coordinators

Each region has a Regional Placement Coordinator (RPC) who assists staff in finding placements for children with many needs. The TDPRS state office staff provide information and direction to the RPCs in sharing resources and discussing options to resolve placement and service problems.

Pertinent Statistics[18]

As of September 30, 2002

Number of PRS Children and Young Adults in Selected HHSA Institutional Placements

CPS Children	121
CPS Youth 18-20	7
SPA Wards 18-22	57
Total:	185

As of September 30, 2002

Number of CPS Children and Youth at Mission Road:	57
Number of APS wards (18-22) at Mission Road:	0
Number of CPS Children and Youth at Casa Esperanza:	16
Number of APS wards (18-22) at Casa Esperanza:	0

[18] See Appendix D for DPS data

THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

The TDHCA joined the SB 367 Task Force 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, the TDHCA plays an integral role in the Promoting Independence Initiative.

The SB 367 Task Force created a Housing Workgroup to initially address the issues of the development of a housing assistance voucher program. The TDHCA and the HHSC made requests to Housing and Urban Development Department (HUD) and received 35 rental vouchers as part of a national pilot program called "Project Access". These vouchers allowed the HHSC, the TDHS, and the TDHCA to implement a pilot, referenced in SB 367, for providing housing assistance to individuals within the Olmstead population transitioning to community services from nursing facilities. The TDHCA, the TDHS, and the 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 the TDHCA, the TDHS, and their regional staff, as well as relocation specialists providing assistance to individuals transitioning from nursing homes. In the fall of 2002 the TDHCA applied for additional vouchers from the HUD's Mainstream Voucher program and committed $4,000,000 in rental assistance from the HOME Program for the FY03-94 biennium.

Additionally in 2003, the TDHCA will continue working with the state's Public Housing Authorities, encouraging integrated housing issues including serving individuals within the Olmstead population and all individuals with disabilities.

THE TEXAS REHABILITIATION COMMISSION

In June the TRC staff and stakeholders met together as the TRC Independence Initiatives Workgroup (IIW) to:

- Identify issues related to the Olmstead Supreme Court decision and subsequent federal and state initiatives that may impact how TRC serves people with disabilities;
- Identify possible ways to address those issues; and
- Formulate working definitions for terminology that reflect TRC's mandate and guiding principles.

The IIW included stakeholders representing the following organizations:

- The State Independent Living Council
- The Rehabilitation Council of Texas
- The Disability Policy Consortium
- The Health and Human Services Commission
- The Texas Commission for the Blind

The workgroup met four more times between June and the end of August. During these meetings public comment was accepted. Seven issues were identified that related to the Olmstead decision and subsequent federal and state initiatives. These issues were:

- Supporting the most integrated setting;
- Policies that promote the Independence of People with Disabilities in Community Settings;
- Redirection or commitment of funding in support of diverting or relocating individuals from institutions into the community;
- Employment of people with disabilities as personal attendants;
- Assistive technology, durable medical equipment and home modification that support the independence of people with disabilities in community settings;
- The role of TRC staff in relocation of people with disabilities to community settings; and
- Issues related to rehabilitation staff providing wrap around services to the Olmstead population.

Thirty-two recommendations were proposed addressing these issues. The workgroup developed pros and cons for each of the recommendations identified through analyzing the positive and negative effects of the actions proposed to address the identified issues. The draft Issues Document was reviewed and the workgroup made clarifications and changes that it felt were necessary in order to make sure the document was clear and understandable. After a final review by the workgroup in September the Issues Docket was transmitted to the TRC Executive Management. The TRC's responses to the recommendations were then conveyed back to the workgroup and the SB 367 Task Force on September 30, 2002.

Status of Recommendations: The TRC agreed with 19 of the recommendations and is developing action plans for implementation. For five additional recommendations, the TRC agreed and proposed specific actions. The TRC is currently developing action plans for implementation of these recommendations. The TRC identified 8 recommendations that will require additional research. Some of the research will require responses from the TRC Office for General Counsel and the TRC's federal partner, the Rehabilitation Services Administration, before an implementation decision can be made. The TRC has begun this research by developing questions and action plans.

Executive Order RP-13: Governor Perry's Executive Order (RP-13) requires the TRC "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 TRC is addressing RP-13 through the implementation of the following IIW recommendations:

> "The Independence Initiatives Workgroup recommends that the Texas Rehabilitation Commission and Texas Commission for the Blind explore and implement ways to recruit and teach people with disabilities to become attendant care workers, for example development of informational materials and supports or creation of training opportunities."
>
> "The Independence Initiatives Workgroup recommends that the Texas Rehabilitation Commission and Texas Commission for the Blind review policies, using existing processes for policy reviews including a mechanism for stakeholder input and feedback, to ensure that policies promote the independence of people with disabilities in community settings."

Action plans are being developed for implementation of these recommendations. Implementation will proceed according to the steps and time lines developed within these action plans.

Coordination with the SB 367 Task Force: The TRC has, in the past participated through a liaison to the SB 367 Task Force, in order to keep apprised of implementation of the Promoting Independence Plan. In July of 2002, a TRC representative was appointed to the SB 367 Task Force by the HHS Commissioner to ensure implementation and coordination of TRC's Promoting Independence activities and implementation of efforts related to the Executive Order RP-13.

IL Purchased Services: The TRC maintains an internal tracking system for Independent Living Services that are purchased. All ILS individuals receive non-purchased services such as guidance and counseling, information and referral and benefits counseling. An example of purchased services might include assistive technology, durable medical goods, etc.

The ILS individuals are placed in the tracking system when they make the initial contact with the TRC. If, after completion of the application and eligibility process they do not require any purchased services to achieve their goals they are removed from the tracking system. The TRC has requested funding in its 2004-2005 LAR that will allow it to provide purchased services in a timelier manner to individuals. On November 1, 2002 there were 411 individuals in the ILS tracking system who have completed an application, been determined eligible for services, have an Individualized Written Rehabilitation Plan (IWRHP), are active and are waiting for purchased services.

THE TEXAS WORKFORCE COMMISSION

The Texas Workforce Commission (TWC) recently designated a staff person to serve on the SB 367 Task Force to assist in coordinating workforce related efforts in support of the Texas Promoting Independence Initiative and the Governor's Executive Order RP-13. Several SB 367 Task Force recommendations call for information that the TWC may be able to provide through its Labor Market Information System. Additionally, the TWC will be instrumental in the exploration of training programs that may be of assistance to people with disabilities and allied health and attendant care professions.

THE TEXAS DEPARTMENT ON AGING

The Area Agencies on Aging of the TDoA service delivery system have all been actively involved in local access planning and discussions. Most of these area agencies have developed formal arrangements with independent living centers within their service areas. Additionally, the TDoA Ombudsman Program has conducted two trainings on the Promoting Independence Initiative to acquaint local staff with the relocation process and the role of other agencies and organizations in placing nursing home residents in community settings. At least two of the area agencies have formal contracts with contractors from the TDHS developing resources for people to move from nursing facilities to other alternatives. The Ombudsman Program also works with independent advocacy organizations such as Advocacy Inc. on a case by case basis when

individuals are identified who can benefit from community-based alternative or more integrated settings.

THE TEXAS DEPARTMENT OF HEALTH

The Texas Department of Health (TDH) has provided ongoing technical assistance to the SB 367 Task Force at the request of the HHSC relating to children's issues. The TDH also participates in an ex-officio capacity on the Children's Policy Council.

The TDH is the administering agency for the Children with Special Health Care Needs (CSHCN) Program. The mission of the CSHCN Program is to support family-centered, community-based strategies for improving the quality of life for children with special health care needs and their families.

The CSHCN Program provides funding for health care benefits (medical and family support services) to children who meet program eligibility criteria:

- Have a chronic physical or developmental condition as defined in program rules.
- Are under age 21 (except for individuals with cystic fibrosis of any age).
- Are bona fide residents of the state of Texas and attach proof of residency.
- Have family income under 200% of the federal poverty level or can meet that criteria through spend down.

The program pays for direct treatment and services from community-based providers across the state of Texas. In addition, families may be funded for meals, transportation and lodging when the child must travel to obtain needed services and treatment.

In FY '02 (as of 9/30/02) the program provided funding for health care benefits to 4,097 children. Due to a budget shortfall situation in FY '02, the CSHCN Program has established waiting/interest lists for medical services and family supports services. As of November 1, 2002, there were 1,526 children on the medical services waiting/interest list and 322 children on the family supports waiting/interest list. There are a total of 66 children who are duplicated on both waiting/interest lists. The CSHCN Program is not an entitlement program. It is supported by federal Title V funding and a general revenue appropriation from the Texas Legislature.

Families with children with special health care needs may access case management services statewide from the CSHCN regional case management system, which is composed of regional CSHCN social work staff and case management contractors.

Additionally, the CSHCN Program provides technical assistance and consultation to state and local agencies who provide direct services to children with special health care needs and for the purposes of planning and assisting in the implementation of new services for children with special health care needs and their families.

THE HEALTH AND HUMAN SERVICES COMMISSION

The mission of the Health and Human Services Commission is to provide leadership and direction, and foster the spirit of innovation needed to achieve an efficient and effective health and human services system for Texans. The HHSC directs and supports collaboration and partnerships of agencies with individuals and local communities to establish systems that support individual choices and personal responsibility. The HHSC has oversight responsibilities for designated health and human services agencies; and administers certain health and human services programs including the Texas Medicaid Program, Children's Health Insurance Program (CHIP), and Medicaid waste, fraud, and abuse investigations.

The HHSC is the agency identified as the lead agency related to the Texas Promoting Independence Initiative. The HHSC is responsible for coordinating the activities of those participating HHSA's that are under the Commission's umbrella of services and also for those agencies outside the purview of health and human services such as the Texas Education Department, the Texas Department of Housing and Community Affairs, the Nursing Board of Examiners, which may have programs, services, and policies that affect the Promoting Independence Initiative. The Commission directly supports the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities, the Children's Policy Council, the Housing Workgroup, and participates with other agencies on such stakeholder groups as the TRC Independent Initiatives Workgroup, the TDMHMR MH Promoting Independence Advisory Committee, the Board of Nursing Examiners (BNE) HB 456 Workgroup, etc.

Since the development of the original Promoting Independence Plan, the HHSC has been charged with the responsibility of monitoring and coordinating the implementation of the plan. As well as assisting and providing leadership related to innovations in the area of community-based long-term services and supports. One new initiative is the Texas Real Choice Systems Change Grant. The HHSC Systems Operations Division together with the HHSC Planning and Evaluation Division are in the process of administering the recently awarded Texas Real Choice Systems Change Grant, which includes $1,385,000 dollars of funding for a three-year period. This grant is built on the recommendations presented to the state through the SB 367 Interagency Task Force and a specific Consumer Task Force for the grant purposes. These recommendations centered on piloting infra-structure changes to the state's delivery system of long-term care which would assist people with disabilities and people who are aging access community-based services in order to prevent unnecessary institutionalization and facilitate self-determination and community inclusion. The main goal of the grant is to develop and pilot implementation of a "system navigator function" at the community level, which will assist individuals in accessing the appropriate services. This system navigator will help to overcome the fragmentation, varying eligibility criteria for services, duplicate intake and service administration barriers. The system navigator should be a person who can assist the individual to interface with the system of services, provide a liaison with local agencies, organization, and service providers, assist in the development of the individuals transition plans and arrangement of appropriate services. The HHSC is currently evaluating proposals to develop and pilot "system navigators" in up to two pilot sites within the state, over the three-year period of the grant funding.

The SB 367 Task Force also functions as the advisory stakeholder panel for the federal Systems Change Grant that was awarded to the Austin Resource Center for Independent Living (ARCIL), in 2002. It is important to include information related to this grant's efforts, as it is part of the national systems change effort directed by CMS, and within our state. The title of the grant effort is the "Texas Independent Living Partnership". The ARCIL Texas Independent Living Partnership is a cooperative effort of the member organizations of the Texas Association of Centers for Independent Living (TACIL), the HHSC, and the TDHS. Texas' Centers for Independent Living (CILs) and state agencies assist people with disabilities to move from nursing facilities to their own homes in the community. The project works with state agencies, community organizations and advocacy groups who serve children, adults and elderly individuals with all types of disabilities.
Project goals:

- Outreach to people with disabilities of all ages in nursing facilities who want to move to the community;
- Training for state agency staff, individuals, volunteers, advocates and service providers; and
- Changing the state's long-term care system.

The ARCIL administers and coordinates project activities under a grant from the federal Centers for Medicare and Medicaid Services (CMS). TACIL member organizations operate CILs in communities throughout Texas. Organizations serving children with disabilities, individuals with specific disabilities, and elderly individuals have agreed to help with outreach materials, training activities, and recommendations for changes to the long-term care system.

During fiscal year '02 and '03 the HHSC directed and coordinated the development of a new waiver to serve individuals with mental retardation and related conditions. Together with the TDMHMR the HHSC hopes to be able to preserve the individual's natural support network, while providing a much-needed package of essential services to individuals in the community who are currently eligible for Medicaid. It is hoped that the provision of these services will allow individuals to remain in the community, in their homes, with their families, and therefore possibly prevent institutionalization. This waiver, entitled " The Texas Home Living Waiver (TXHmL)" is currently under consideration by CMS for approval. The waiver will allow the state to provide an increased number of service slots directed at the TDMHMR community waiting/interest list, in the TXHmL. The addition of this waiver increases the array of community-based services for Texans and provides much needed relief to many individuals living at home who have been waiting for services from the state. The waiver includes a new innovative service option entitled community inclusion, and also goes further to provide supported employment services and respite services to more individuals.

The HHSC is responsible for coordinating specific budget requests related to the Promoting Independence Initiative and for the second consecutive session has submitted a consolidated budget reflecting the need for additional funding to support the Promoting Independence Initiative and fund Promoting Independence Plan activities and recommendations. The HHSC Consolidated Budget has developed a separate Tier in the budget request to highlight the importance of the initiative.[19] This budget request totals $342.4 million in general revenue in

[19] HHSC Consolidated Budge PI Tier Appendix E

order to accomplish two critical goals: supporting community services for people with disabilities and reducing waiting/interest lists for services and avoiding the creation of waiting/interest lists in some instances. Features of the Promoting Independence/Waiting List Reduction and Avoidance Tier include funding to continue: relocation specialist activities, family-based alternatives, permanency planning efforts, transitional supports funding such as housing and transportation, reduction of waiting and interest lists, and money specifically targeted at providing community services to children in institutions.

THE HHSC CHILDREN'S LONG-TERM CARE SERVICES AND SUPPORTS

Children's Policy Council

The Children's Policy Council assists the HHSC Commissioner and health and human services agencies in developing, implementing, and administering family support policies and related long-term care and health programs for children. The council studies and makes recommendations for policies in the areas of funding, transition, collaboration, permanency planning, enforcement of regulations, services and supports to families, and the provision of services under the Medical Assistance program. The council has been examining issues relating to promoting opportunities for children with disabilities to grow up in families. The most recent recommendations were reported in the September 2002 report "And How Are the Children?"

Senate Bill 36

To increase case worker knowledge and awareness of the services available to children at each health and human services agency, the HHSC has led an interagency effort to improve the information and training available to case workers and case managers whose individuals are children. The HHSC is hosting a resource page for caseworkers on the commission's web site, which enables caseworkers to readily search for specific services and programs for children they serve. HHS agencies have developed implementation plans to incorporate information on HHS-wide services and supports for children into their current training efforts.

Senate Bill 368

The HHSC, the TDMHMR, the TDPRS and the TDHS have worked cooperatively to strengthen permanency-planning efforts for children in institutions. Uniform permanency planning standards and reporting guidelines were adopted and implemented across agencies, including rule and policy changes to ensure active and continuing efforts to promote opportunities for children to live in family settings. The HHSC received a grant to provide training and technical assistance for providers and staff across agencies and is in the process of implementing a monitoring system to oversee, track and report permanency planning activity for children in all types of long-term institutional placements throughout the state.

Family Based Alternatives Initiative

Most children who are placed in institutions do not return to their birth families. To promote opportunities for children to live in families the HHSC has contracted for the development and implementation of a system under which a child with a disability who resides in an institution may instead receive necessary services in a family-based alternative. The TDHS, the TDMHMR, and the TDPRS contributed funding to launch such a system in the Central Texas area. This system will create family-based options by recruiting, developing, and training support families to care for these children on a full-time basis or through a shared parenting

relationship with the birth family. The system values birth parents as an integral part of the process, and encourages parents who are participating in this program to participate in all decisions affecting their children.

Rule Changes in progress

The HHSC is working with the TDPRS, the TDMHMR and the TDHS to revise rules that have prohibited children in the TDPRS system, above Level of Care II, access to Medicaid waivers. Agency staff analyzed rules and rate setting methodology that led to the creation of these rules in the early 1990s. The HHSC determined the potential for duplication of federal payment has been effectively eliminated with new rate setting methodology, and new rules and policies can now be established allowing TDPRS children with disabilities access to waiver slots without the concern for duplication of payment. The HHSC is also working with the TDHS to address changes in the TDHS waiver programs for children to allow for family-based alternatives as an option in the service array.

BUDGETARY INFORMATION

In the 77th session of the Texas Legislature, the Promoting Independence Initiative was highlighted through the Health and Human Services Commission's Consolidated Budget. In FY '02 –'03, for the purposes of the Promoting Independence Initiative as it related to community care funding, health and human service agencies requested a total of $109.7 million dollars in general revenue and received a total of $86.7 million in general revenue in new funding allocations.[20]

The HHSC has once again emphasized the Promoting Independence Initiative through its consolidated budget. The HHSC has also recognized and emphasized the need to reduce waiting/interest lists for all individuals requesting community-based alternative services. The commission has proposed a consolidated budget request of $86.5 million dollars in general revenue specific to Promoting Independence.[21] The request includes funding for continuation of the TDHS Relocations Specialist activities; the Family-Based Alternatives Pilot; Promoting Independence Supports – rental assistance, start-up living necessities and transportation; Permanency Planning activities; children's services, and waiver expansion for individuals leaving ICF/MR services. Regarding waiting/interest list reduction the HHSC has requested $256 million for expansion of waiver services, therapeutic foster care services for children with mental illness, foster care and day care for individuals served in the TDPRS system, and a variety of other community services aimed at reducing the waiting/interest list.

[20] See Excel Side By Side comparison of funding requests/allocations and waiver slot requests and allocations. Appendix E

[21] See Consolidated Budge Request PI Tier, Appendix E

FUNDING AND CAPACITY ISSUES

The HHSC recognizes the state's desire to provide community-based alternatives for individuals desirous of this choice. The state, in its Promoting Independence Initiative, is making transition to community services a reality for individuals in institutions. Yet, community services waiting/interest lists grow daily. Therefore, in the Texas Health and Human Services Consolidated Budget, the HHSC included requests for waiting list reduction/avoidance and strongly supports funding for waiver slots in all community-based service's programs.

During the past year the SB 367 Task Force discussed issues related to the Olmstead population, as well as those at risk for institutionalization, waiting for community-based services. The SB 367 Task Force, with concurrence from the HHSC, defined the "at risk population" to mean those 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, have no natural support network, and who have an immediate need of this level of care. The SB 367 Task Force desired to highlight the need for adequate funding of community-based services. The SB 367 Task Force did this through adopting a resolution recommending that the state acknowledge 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 program.

The HHSC, in encouraging support of community-based services, must bring into focus the fact that individuals in the community waiting for services face a waiting/interest list that is both long in number and length of time. The waiting/interest lists for community waiver services are as follows:

TDHS: as of November 1, 2002

- CBA – 45,979
- CLASS – 8,187
- DB-MD – 28
- MDCP 3,613

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

TDMHMR: as of November 1, 2002

- HCS/MRLA - 19,813

* Based on prior TDMHMR waiting/interest list surveys, over 99 %of the individuals on the waiting/interest list are usually determined to be eligible for services.

Waiting/interest lists contain the names and dates services were requested for each waiver. An individual whose name is on the list receives an offer of waiver services on a first come first serve basis. Individual eligibility is not determined until such time as waiver funds are available for that individual. Waiting/interest lists fluctuate frequently as names of individuals are added to and removed from the waiting/interest lists daily. The TDHS and the TDMHMR are responsible for the monitoring and oversight of these lists.

The HHSC included in its Consolidated Budget request, funding for waiting list reduction and avoidance so that the state may make meaningful progress in the provision of community-based services for individuals requesting this choice.

The SB 367 Task Force continued to identify various barriers to sufficient capacity and funding of community-based services to include length of waiting/interest lists; lack of flexibility in use of funds allocated – (currently funds are allocated by specific services and programs/need for the money to follow the individual's choice of services); lack of blended funding; the existence of federal prohibitions that continue the community-based services waiving off of institutional care; federal cost neutrality requirements in waiver services and the state's requirement that the TDMHMR waivers be at eighty percent that of institutional care; and the CLASS waiver programming not being instituted statewide.

During the last session, the legislature passed the innovative Rider 37 in relation to the TDHS appropriations. As previously stated, this rider allows for individuals 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 of Rider 37 has allowed individuals currently residing in the nursing facilities who are in the state's identified Olmstead Population to access community care at a reasonable pace, without utilizing additional slots appropriated for the waiver during session. This allows all appropriated slots to be directed to the waiting/interest list. The SB 367 Task Force, recognizing the success of this rider, recommended to the HHSC that this method of financing community care options for individuals in institutions be continued and expanded to include all agencies with institutional care. The HHSC completed the HB 966 required study related to this methodology and submitted this study to the legislature in October of 2002.[22] Implications for the implementation of the money following the individual from institutional care into the community are discussed and recommendations related to this type of funding mechanism are included in the report.

Given the court's interpretation of the ADA and the state's desire to provide community services for individuals, the SB 367 Task Force made recommendations related to funding the need for community services, for service delivery and design. Based on these recommendations the HHSC has developed the following implementation steps:

Funding and Capacity Implementation Steps:

- HHSC will continue to direct Health and Human Service Agencies (HHSAs) to address Olmstead related issues through their agency planning activities and through their LAR and budget development activities. HHSC continues to address Olmstead through the consolidated appropriations request and through the Enterprise Strategic plan.

- HHSC will work with the Legislative Budget Board and the Governor's Office of Budget, Planning and Policy to encourage further investment in community-based services, as additional resources are identified through the biennium.

[22] The HB 966 report can be found on the HHSC website at http://www.hhsc.state.tx.us/about_hhsc/reports/search/Search_Reports.asp

- HHSC will request funding for continuation and expansion of the family based alternatives project in its exceptional items LAR request.

- *Requires legislative direction and appropriations.*
  HHSC would work with appropriate agencies to assist those individuals who transition from institutional care into the community with a "money follow the individual" mechanism, when funding is not cost neutral and the cost of community care must be supplemented in order for the service to be provided in the community.

- *Requires legislative direction.*
  TDHS would ensure the implementation of Rider 37 as a permanent funding mechanism, within the concept of budget neutrality in the aggregate as provided in federal regulations.

- *Requires legislative direction.*
  HHSC would assist TDMHMR and TDPRS in the redirection of institutional monies appropriated to follow the individual into the community, if the individual chooses. Building on the work of HB 966, the state would monitor the impact of any decision to implement the redirection of funds to allow the money to follow the individual for their choice of services and to assess the effects on providers, individuals, and state general revenue.

- *Requires legislative direction.*
  HHSC would implement changes to the Special Provisions of HHSC Rider 22 to allow HHSC to use funds appropriated for long-term care waiver slots to TDHS and MHMR for the following purposes: a) the establishment, maintenance, and development of capacity to expedite utilization 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, d) the development of capacity in community waiver services.

- HHSC will include an inflation adjustment in the LAR related to LTC Medicaid providers.

- *Requires legislative direction and appropriations.*
  HHSC would assist appropriate agencies in the implementation of funding appropriated for transitioning providers who voluntarily downsize their facilities. The funding would be used for specific increased per capita costs incurred as individuals with disabilities and/or families exercise their right to choose to live in community settings.

- *Requires legislative direction.*
  HHSC would assist agencies to implement a sliding fee for institutional and community services and support programs for families of children under 22 and adults with legal guardians, to the extent allowed by Federal regulation. HHSC would ensure that the

sliding fee scale be developed with input from families, advocates, and other interested stakeholders.

HOUSING ISSUES

Affordable, accessible, integrated housing remains an integral part of successfully transitioning individuals from institutional care into the community. The SB 367 Task Force identified barriers to obtaining affordable, accessible, integrated housing to include such items as current federal regulations on housing vouchers that are available only to individuals sixty-two years of age an under; the long waiting list for Section Eight vouchers; TDHCA having no control over local public housing authorities; and existing architectural problems in public housing rental units. These barriers would require advocates on a national level to continue to work to change existing federal regulations to avoid discrimination of individuals with disabilities in the housing market accessing public housing made available through HUD programs.

SB 367 from the 77th session highlighted the need for affordable, accessible, and integrated housing by requesting the HHSC, the TDHCA, the TDHS, and the 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 the TDHCA in order to obtain 35 HUD vouchers, directed at providing rental assistance to individuals in the Olmstead population. The SB 367 Task Force instituted a Housing Workgroup to address the necessary process required to make these vouchers readily available to individuals in nursing facilities who are in need of housing assistance as the last support necessary in order for them to transition into the community. 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 request further vouchers from the federal government. Additionally, the TDHS has developed $2500.00 one-time only transitional grants to be used for individuals transitioning from nursing facilities into the community. This program was funded by shifting dollars from the existing in-home family support program in order to meet this need. The TDHCA has also applied for additional vouchers from HUD's Mainstream voucher program and committed $4,000,000 in rental assistance from the HOME Program for the FY 2003-2004 biennium.

Since the initial development of the Promoting Independence Plan, the Centers for Medicaid and Medicare Services (CMS), as part of the President's "New Freedom Initiative", has issued a letter to all states allowing for the addition of community transition services into waiver programs. These one time set-up expenses for individuals who make the transition from an institution to their own home or apartment in the community may be used to pay for such items as security deposits, essential furnishings, moving expenses, utility deposits, etc. The HHSC, as the single state Medicaid agency, recognizing the severity of need related to housing and housing assistance, will work with agencies to include the definition of these transitional services in the appropriate community-based waivers. 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.

The HHSC is committed to working through the issues involved in finding accessible, affordable, and integrated housing for individuals with disabilities and will continue these efforts through it SB 367 Task Force Housing workgroup. Based on recommendations received from the

SB 367 Task Force, HHSC has developed the following implementation steps related to housing issues:

Housing Issues Implementation Steps:

- HHSC has requested funding for Promoting Independence supports in housing and transportation assistance in the LAR in the amount of $5,100,000.

- HHSC, upon request, will assist TDHCA in the provision of staff training related to disability issues. The training should be developed with input from appropriate stakeholders and be provided to key staff, including the TDHCA Board members, as appropriate.

- HHSC will assist TDHCA and appropriate stakeholders efforts, in enhancing the stock of accessible, affordable, integrated housing in Texas, and work to remove the existing barriers to accessing housing.

- HHSC will work together with TDHCA and appropriate stakeholders, to give technical assistance to local public housing authorities so that they apply for and prioritize accessible, affordable, integrated housing for people with disabilities so that they can leave or be diverted from a nursing home or other institution.

WORKFORCE ISSUES

The HHSC recognizes that 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 national epidemic in relation to long-term care services and supports. Individuals with disabilities, providers, advocates, and state agencies recognize the need for well-paid, trained, caring human service workers. In order to ensure that transition is successful from the nursing facility into the community this workforce must exist. The SB 367 Task Force identified the massive shortage of hands-on assistants throughout the long-term care system of services; the low wages, lack of benefits, and absence of career ladders for this workforce; the prohibition by the CMS of allowing family members to be paid to provide these services; and the turnover of nursing and direct care staff as barriers to providing quality care to individuals with disabilities.

Therefore, in order to ensure the comprehensiveness of the Promoting Independence Initiative, the HHSC including direction through Governor Perry's Executive Order RP-13, and building on recommendations from the SB 367 Task force has highlighted this area to be included in the continued plan development. What follows are implementation steps to begin to identify the scope of the problem and provide solutions:

Workforce Issues Implementation Steps:

- HHSC will assist the TWC and their efforts to assure optimal work opportunities for people with disabilities.

- HSSC will work with the SB 367 Task Force to review and identify workforce issues and concerns, while acknowledging that wages and benefit packages are set by the legislature.

- HHSC, with appropriate HHSAs, will coordinate convene a forum with providers on implementing the Olmstead decision, address workforce issues, and the implications to members of labor unions and other workers in relation to transitioning individuals from institutions to the community.

- HHSC in their Legislative Appropriations Request has requested legislative consideration for Medicaid rate increases as indicated by current rate methodology and cost reviews.

- HHSC will direct appropriate HHSAs to explore and develop employee recruitment and retention incentives for all providers of long-term care services.

CHILDREN'S ISSUES

The HHSC recognizes that children receiving long-term care services and supports have different needs than those of adults in the service system. In an attempt to meet those needs the HHSC established the Children's Long-term Care Services and Supports Director position, within the HHSC Long-term Care Services and Supports Office of the Systems Operations Division. This office has been responsible for the coordination of the Children's Policy Council, and various efforts related to community-based services for children required by the last legislative session. The monitoring of permanency planning and the development of uniform permanency planning standards and reporting guidelines; coordination of the Family Based Alternatives Project; efforts related to increasing case worker knowledge and awareness of the services available to children; innovative family support grants; and assistance to appropriate HHSAs regarding legislative directions, rule and operational procedural changes coordinated through the HHSC children's office.

The SB 367 Task Force identified numerous barriers to a coordinated system of long-term care for children to include: current waiver rules that eliminate various elements of a complete array of services – such as foster care; children with higher levels of services being eliminated from eligibility for some waivers (e.g. CPS children who are above Level II); need for expansion of existing waivers with targeted slots to serve children leaving institutional care; the need for better transitioning to adult services when the child ages out of children's programming; the need for increased individual caps for children in waiver services who have received services through EPSDT; and the lack of available foster families.

Aware of these barriers and based on the SB 367 Task Force recommendations the HHSC has identified the following implementation steps to continue its Promoting Independence Initiative in relation to children's services:

Children's Issues Implementation Steps:

- HHSC has implemented permanency planning as provided by law, within the context of parental/Legally Authorized Representative choice.

- HHSC must study existing agency data collection mechanisms, available resources, and costs of this effort, before it could implement the SB 367 Task Force recommendation to collect data on individuals transitioning from MDCP, EPSDT/CCP for the purposes of developing recommendations on providing support services to meet their needs.

- *Requires legislative direction and appropriations.*
  HHSC would work with TDMHMR to target 20% of newly appropriated HCS/MRLA waiver slots (FY'04 and FY'05), for children placed on the waiver waiting/interest list as a result of SB368 permanency planning efforts and for those children living in institutions within the Family Based Alternatives Project.

- *Requires legislative direction and appropriations.*
  HHSC would work with TDHS, TDMHMR and TDPRS to study and implement, the use of appropriate waiver slots for children in CPS custody, particularly those placed in CPS licensed institutions for children with physical and cognitive disabilities.

- *Requires legislative direction and appropriations.*
  HHSC would assist TDMHMR and the role of the local mental retardation authority in the permanency planning function being removed from the ICF/MR provider.

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

TRANSITIONING EFFORTS ADDITIONAL IMPLEMENTATION STEPS

The HHSC together with the SB 367 Task Force has worked to emphasize other areas of effort and agency actions in order to ensure the comprehensiveness of the Promoting Independence Plan and Initiative. The SB 367 Task Force identified general barriers to accessing community services and to the transitioning of individuals from institutional care to the community to include: the need for timelines for all agencies to address implementation steps; the need for the effort of relocation specialists to be statewide; coordination at a local level among agencies involved in transitioning individuals; the need to address the specific population of individuals with mental illness and their issues in transitioning; the need for adequate training and on-going technical assistance for relocations specialists, permanency planning, and all staff transitioning individuals; the lack of training for the provider industry and agency staff related to community-based services and how individuals with disabilities can and do live in the community; the need for industry wide provider training on risk management; and the provider two denial system used by the TDHS as it relates to individuals seeking community-based care.

The HHSC, based on SB 367 Task Force recommendations, has included the following implementation steps that are directed towards addressing the barriers identified in providing community-based programs that effectively foster independence for people with disabilities. They have been organized in an agency specific manner in order to ensure specific responsibility for implementation.

AGENCY SPECIFIC IMPLEMENTATION STEPS:

TRC:

- HSSC recognizes that Federal partners must agree to Vocational Rehabilitation and Independent Living service priorities. TRC should evaluate the potential of and implement accordingly those elements of the SB 367 Task Force recommendation that the TRC, in response to the Olmstead decision and the Promoting Independence Initiative, do the following:

    - Develop rules and regulations as soon as possible, or by June of 2002 that give priority to individuals in nursing homes and other institutions for vocational rehabilitation and independent living services when the individual chooses to leave the facility.

    - 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.

- *Requires legislative direction and appropriations.*
  TRC would work with the State Independent Living Council (SILC) and other interested stakeholders in assuring that technical assistance would be provided to community

organizations interested in or providing assistance to individuals transitioning from nursing facilities and other institutions into the community.

- TRC as directed in the Governor's Executive Order RP-13, will work with interested community organizations in developing training and orientation projects for people with disabilities who desire to be attendants.

- TRC will examine its rate structures in order to determine if a bias exists towards supporting vendors of sheltered workshops.

- TRC will examine its rate structures in order to create an incentive to employ individuals in supported employment and integrated settings and request additional funds in the agency's future Legislative Appropriations Request.

TDMHMR:

- TDMHMR will continue to give priority within their behavioral health benefits design to children and adults with 3 hospitalizations in a state mental health facility within 180 days for mental health services and consider them a high priority for the most intensive service package appropriate to meet their needs.

- TDMHMR will consider individuals transitioning from nursing facilities into the community with mental health needs be considered a high priority for the most intensive service package as appropriate to meet their needs for inclusion in the benefit design model. However, the need for services is based on need rather than the type of most recent residential assignment.

- *Requires legislative direction.*
  HHSC would assist TDMHMR, to use funds resulting from lapsed slot allocation for the LMRA's for enrolling individuals in the waiver services as soon as slots are allocated.

- TDMHMR will implement the requirements of rule HHSC 351.15 to ensure that individuals in state mental health facilities receive information about alternative services and supports prior to admission to nursing facilities.

- TDMHMR will work with DHS to identify individuals moving from a nursing facility who have specialized needs (i.e., MH or MR) as identified by the PASARR process.

- TDMHMR will examine and consider including in the behavioral benefit design model, the sub-group of individuals referred for services who are transitioning from nursing facilities. However, the need for services is based on need rather than the type of most recent residential assignment.

- TDMHMR will examine and consider including in the behavioral benefit design model, the sub-group of individuals identified through their PASARR's of nursing home residents with a diagnosis of mental illness who wish to transition into the community.

However, the need for services is based on need vs. the type of most recent residential assignment.

- TDMHMR will examine and consider implementing a directive to the Mental Health Directors at the LMHA's, instructing them to identify a contact person for DHS and stipulate that the contact person will meet on site with the DHS regional staff to assess and secure services for nursing home residents with a mental illness who choose to transition for inclusion in the benefit design model. However, the need for services is based on need rather than the type of most recent residential assignment.

- HHSC, TDMHMR and TDHS will work to identify gaps in the current system that inappropriately fail to identify choices of individuals with mental illness from state hospitals or the community, considering nursing home placement.

TDHS:

- HHSC has included in its Consolidated Budget the TDHS efforts requesting that funding be appropriated to continue the relocation specialist contracts and the permanency planning contracts beyond the current biennium, including funding to expand to more geographic locations.

- HHSC will assist TDHS, TDPRS, and TDMHMR to achieve optimal coordination between TDHS relocation specialists and permanency-planning specialists with LMHMRA's and TDPRS.

- *Requires legislative direction and appropriations.*
  HHSC would direct TDHS study and replicate the successful aspects of the following relocation model statewide. The SB 367 Task Force, the Texas Independent Living Partnership and the DHS work with Advocacy Inc., COIL, and the DHS Region 8 staff to:
    a. Describe and disseminate the grassroots model that has been developed in San Antonio in relation to relocation efforts and;
    b. For DHS to replicate the successful aspects of this model statewide to provide assistance to individuals transitioning from nursing facilities and provide assistance to individuals wishing to divert from nursing facility placement choosing community services; and
    c. To develop methods to monitor successful practices and incorporate these practices into their models of relocation efforts.

- TDHS will work to provide data, information, and a description of the process for approval and denial of referrals to community care services, (including definition of codes used for denial) to the DHS Board on a regular basis.

- TDHS will work to provide information to regional staff and relocation contractors regarding the value of increased coordination between TDMHMR, the LMHMRAs and regional TDHS staff related to services and supports in the community.

- TDHS will ensure the development of the cost analysis of TDHS Rider 7 and the reporting of that analysis to the legislature and Governor's office, as appropriate.

TDoA:

- TDOA will train Ombudsmen regarding the role of the relocation specialists, the provisions of Rider 37, and assistance in providing information related to community services to individuals in nursing facilities.

TDPRS:

- TDPRS will ensure that the Children's Protective Services (CPS) caseworker training include a specific component regarding children with developmental disabilities, and to include this training component into the certification program for caseworkers and supervisors.

OTHER IMPLMENTATION STEPS:

- HHSC will work with appropriate agencies to allow the SB 367 Task Force to review and provide input into all HHSA's related workgroup recommendations regarding the Promoting Independence Initiative before recommendations, strategies, policies, etc., are adopted or implemented by agencies and their Boards.

- In order to continue implementation of the SB 367, HHSC will direct HHSA's to include in their forums, systems, and mechanisms for public input throughout the state discussion of the "most appropriate care settings" and receive recommendations from stakeholders related to the "most appropriate care settings".

- HHSC will 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 within the guidelines of federal regulations, available funding, legislative direction, individual choice, and appropriateness of service plans.

- HHSC will direct the local access initiative to ensure that any information and referral assistance systems developed by HHSA's activities at the local level be linked to the existing 211 efforts.

- HHSC will include in the Promoting Independence Initiative, the following definition of 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 for this level of care.)

- HHSC will assist the SB367 Task Force to develop a sub-committee to review all materials and processes informing individuals of community-based alternatives and provide recommendations to the appropriate HHS agency to be included in the Promoting Independence Plan.

- HHSC will invite the Texas Hospital Association to attend future meetings of the SB367 Task Force and participate in discussions and effective solutions for discharge planning from a hospital setting into the community.

- HHSC will invite the Texas Board of Nurse Examiners (BNE) to attend future meetings of the SB367 task Force and participate in discussions about the nurse practice act and nurse delegated tasks in a community setting.

- HHSC will work with appropriate HHSA's to evaluate the BNE rule, related to nurse delegation of tasks in an independent living environment, to determine the policy and operational implications for LTC programs.

CONCLUSION

As in the original Promoting Independence Plan, the HHSC has committed to a continuing relationship with its stakeholders. Through the implementation of SB 367 this relationship has been formalized. The Commissioner of the HHSC will continue to determine the number of members of the task force and appoint such members as are representative of the appropriate HHSAs, individuals and family advocacy groups, related workgroups, and service providers. The Commissioner continues to designate the presiding officer of the task force, and each member serves at the will of the Commissioner. The SB 367 Task force shall study and make recommendations to the HHSC on the development of the comprehensive, effectively working plan in order to ensure appropriate care settings for persons with disabilities and advise the commission and appropriate HHSAs on the implementation of the plan. Not later than September 1 of each year the SB 367 Task Force shall submit a report to the Commissioner on its findings and recommendations related to the implementation of the Promoting Independence Plan, the 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, assisting the HHSAs in determining the availability of community care and support options related to individuals desirous of transferring into the community, and in identifying addressing, and monitoring barriers to implementation of the plan including identifying funding options.[23]

Implementation efforts of this plan include the updating of agency work tables that house the plans implementation steps based on the SB 367 Task Force recommendations. The HHSC will ensure the revision of these worktables, and coordinate the agencies' reporting of their activities to the HHSC. These worktables will assist the SB 367 Task Force in their monitoring activities of the plan's implementation. On December 1, of each even numbered year, the HHSC will use the information gleaned from the SB 367 Task Force meetings and annual task force reports, agency reports and information, and continued public comment in order to revise the Texas Promoting Independence Plan. This biennial revision allows for the state's efforts to stay vibrant and effective in meeting the changing needs of individuals with disabilities. The HHSC will continue to seek public input into its plan, including the tradition of stakeholder meetings around the state[24] in order to obtain a variety of stakeholders' opinions and views. The HHSC would like to thank all members of the SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities, and Enterprise agency staff, who have dedicated their time, resources, knowledge, abilities, and work in the development of this plan and initiative. The commission would also like to thank those members of the public who responded to its invitation for comment at each SB 367 Task Force meeting and in its statewide public forums.

The HHSC will continue to welcome the opportunity to further its work with individuals, advocates, providers, and agencies to improve the system of services and supports for individuals with disabilities. Together we continue to make a difference.

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[23] SB 367, 77th Session of the Texas Legislature

[24] See Appendix F for summary of stakeholder meetings

APPENDIX A

APPENDIX A

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

APPENDIX B

APPENDIX B

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 THERFORE, 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 it 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

APPENDIX C

APPENDIX C

SB367 INTERAGENCY TASK FORCE RECOMMENDATIONS

1. SB 367 Task Force recommends that the State Health and Human Service Agencies (HHSAs) should examine strategic planning, current budget and planned budgets for explicit inclusion of activity and funds related to Olmstead.

2. SB 367 Task Force recommends that the HHSC should instruct HHSAs to re-direct resources to community first priorities

3. SB 367 Task Force recommends that funds be appropriated to continue and expand funding the alternative family based options initiative in order to ensure adequate time for development and implementation of the project.

4. SB 367 Task Force recommends that a pool of money be developed to assist those individuals who transition from institutional care into the community with a money follow the individual mechanism; when the funding is not cost neutral and the cost of community care must be supplemented in order for the service to be provided in the community.

5. The SB 367 Task Force recommends that DHS Rider 37 be made permanent.

6. The SB 367 Task Force recommends the concept of re-directing institutional monies appropriated to follow the individual into the community if the individual chooses to move be expanded to TDMHMR and TDPRS. Building on the work of HB966, the Task Force includes in this recommendation that the state monitor the impact of any decision to implement the redirection of funds to allow the money to follow the individual for their choice of services and to assess the effects on providers, individuals, and state general revenue.

7. The SB367 Task Force recommends that Special Provisions HHSC Rider 22 be made permanent to allow HHSC to use funds appropriated for long-term care waiver slots to DHS and MHMR with the following wording related to purposes: a) the establishment, maintenance, and development of capacity to expedite utilization 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. The Task Force recommends that wording allowing the funds to be used for development of capacity be included in the rider language.

8. The SB367 Task Force supports the HHSC LAR and HHSC Consolidated LAR items related to the Promoting Independence Initiative. The SB 367 Task Force recommends full funding for these items.

9. The SB 367 Task Force recommends the application of annual inflationary rate increases for all LTC Medicaid providers to support the increased costs of providing quality services.

10. The SB 367 Task Force recommends that the state provide transitional funding to 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.

11. The SB 367 Task force adopts as 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 program. Given this resolution, the SB367 Task Force recommends that the HHSC work with the appropriate agencies to implement the Texas Promoting Independence Plan in response to the Olmstead Decision with the above statement included in the Plan

12. The SB 367 Task Force recommends that a sliding fee scale be implemented for institutional and community services and support programs for families of children under 21 and adults with legal guardians. The sliding fee scale should be developed with input from families, advocates, and other interested stakeholders

13. The SB 367 Task Force recommends that State Health and Human Service Agencies seek funding for housing activities under Olmstead. The Texas Legislature should appropriate specific funding for housing activities under Olmstead. Specifically, we request full funding of the $4 million in housing and support dollars requested during the 77th session.

14. The SB367 Task Force recommends speedy implementation of procedures to disperse the 35 housing vouchers received from HUD in support of Olmstead.

15. The SB 367 Task Force recommends that HHSC and the Health and Human Service Agencies develop a more formal, structured relationship with the TDHCA to promote affordable, accessible, and integrated housing. This relationship should promote housing services in the most integrated setting. This relationship should build on the work already done under the Promoting Independence Initiative as well as SB 367.

16. The SB 367 Task Force recommends that TDHCA, with input from appropriate stakeholders, shall provide in-house training of key staff, including their Board members on disability issues

17. The SB 367 Task Force recommends that TDHCA work with HHSC, the SB367 Task Force, and appropriate stakeholders to enhance the stock of accessible, affordable, integrated housing in Texas, and work to remove the existing barriers to accessing housing.

18. The SB 367 Task Force recommends that TDHCA, HHSC, and appropriate stakeholders, work together to give technical assistance to local public housing authorities so that they apply for and prioritize accessible, affordable, integrated housing for people with disabilities so that they can leave or be diverted from a nursing home or other institutions.

19. The SB 367 Task Force 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.

20. The SB 367 Task Force recommends that HHSC should research, investigate the role, and invite the participation of the Texas Workforce Commission in order to look at opportunities to enhance people living and working in the most integrated settings.

21. The SB 367 Task Force recommends that HHSC with appropriate HHSA's hold a forum with providers on implementing the Olmstead decision, address workforce issues, and the implications of Union and other workers in relation to transitioning individuals from institutions to the community.

22. The SB 367 Task Force recommends that HHSC adjust Medicaid rates to achieve wage and benefit parity in institutions and community-based services and a wage increases for direct care service workers.

23. The SB 367 Task Force recommends that the appropriate HHSA's explore and develop employee recruitment and retention incentives for all providers of long-term care services.

24. The SB367 Task Force recommends that permanency planning is intended to and should result in transitioning children from institutions as they are defined in SB368.

25. The SB 367 Task Force recommends that permanency-planning activities be performed by entities separate from that where the child resides.

26. The SB 367 Task Force recommends that data be collected on individuals transitioning from the MDCP, EPSDT/CCP and develop recommendations on providing support services to meet their needs.

27. The SB 367 Task Force recommends that Rider 7b be expanded to include children transferring from CCP.

28. The SB 367 Task Force recommends that TDMHMR target 20% of newly appropriated HCS/MRLA waiver slots (FY'04 and FY'05), for children placed on the waiver waiting/interest list as a result of SB368 permanency planning efforts and for those children living in institutions within the Alternative Family Based Project.

29. The SB 367 Task Force recommends that TDHS, TDMHMR and TDPRS examine and collaborate to allow for appropriate waiver slots to be used for children in CPS custody, particularly those placed in CPS licensed institutions for children with physical and cognitive disabilities.

30. That the SB367 Task Force recommends that the permanency planning function be removed from the ICF/MR provider and performed by the service coordinators at the Local Mental Retardation Authority (LMRA).

31. The SB367 Task Force recommends that the SB367 MOU required for coordination of services for individuals transitioning from nursing facilities include the Early Childhood Intervention (ECI) agency to address those individuals from ages zero to two.

32. The SB367 Task force recommends that children with disabilities who enter the TDPRS system be considered children at imminent risk of institutionalization under the Promoting Independence Plan and must be afforded community-based waiver slots when their name reaches the top of the waiting/interest list, that TDPRS be held accountable for providing community care until such time as a waiver slot is made available to the child, and that TDPRS be allowed to purchase a waiver slot using their general revenue.

33. The SB 367 Task Force recommends that the TRC, in response to the Olmstead decision and the Promoting Independence Initiative, do the following:

    a) Develop rules and regulations by October 2002 that give priority to individuals in nursing homes and other institutions for vocational rehabilitation and independent living services when the individual chooses to leave the facility.

    b) 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.

34. 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.

35. The SB 367 Task Force recommends that TRC work with interested community organizations in developing training and orientation projects for people with disabilities who desire to be attendants.

36. The SB 367 Task Force recommends that the TRC examine its rate structures in order to determine if a bias exists towards supporting vendors of sheltered workshops.

37. The SB 367 Task Force recommends that TRC examine its rate structures in order to create an incentive to employ individuals in supported employment and integrated settings, and if additional funds are needed request this in the agencies LAR.

38. The SB367 Task Force recommends that children and adults with 3 hospitalizations within 180 days for mental health services be considered a high priority for the most intensive service package as appropriate to meet their needs, within the new MHMR service benefits design model.

39. The SB 367 Task Force recommends that individuals transitioning from nursing facilities into the community with mental health needs be considered a high priority for the most intensive service package as appropriate to meet their needs, within the new MHMR service benefits design model.

40. SB 367 Task Force recommends that HHSC Rider 22, be expanded to include that TDMHMR funds resulting from lapsed slot allocation, be used to support the LMRA's in working with the /interest in order to enroll individuals in the waiver services as soon as slots are allocated.

41. The SB 367 Task Force recommends that TDMHMR implement the requirements of rule HHSC 351.15 to ensure that individuals in state mental health facilities receive information about alternative services and supports prior to admission to nursing facilities.

42. The SB 367 Task Force recommends that TDMHMR require the LMHMRA'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 /interest, denied services, reasons for denial, etc.)

43. The SB 367 Task Force recommends that TDMHMR require LMHA's to prioritize individuals referred for services who are transitioning from nursing facilities (i.e. prioritization might include expedited intake and assessment process, expedited assignment to services).

44. The SB 367 Task Force recommends that the TDMHMR MH Promoting Independence Advisory committee reconsider the original goals and work of the committee in order to appropriately design the research necessary to providing appropriate strategies and goals to address the population of individuals with mental illness who have been hospitalized three times in 180 days, including children. (. E.g. convene a meeting with all relevant IRB's and committee members to discuss the survey and data collection).

45. The SB 367 Task force recommends that TDMHMR develop incentives for community centers to provide outpatient services as identified through their PASAAR's to nursing home residents with a diagnosis of mental illness who wish to transition into the community.

46. The SB 367 Task force recommends that TDMHMR draft a directive to the Mental Health Directors at the community centers Instructing them to identify a contact person for DHS and stipulate that the contact person will meet on site with the DHS regional staff to assess and secure services for nursing home residents with a mental illness who choose to transition.

47. The SB 367 Task Force recommends that TDMHMR and TDHS develop a system to identify and prevent future unnecessary or inappropriate nursing home placement of individuals with mental illness from state hospitals or the community.

48. The SB 367 Task Force recommends that funding be appropriated to continue the relocation specialist contracts and the permanency planning contracts beyond the current biennium, including funding to expand to more geographic locations.

49. The SB 367 Task Force recommends that DHS require the relocation specialist and the permanency planning specialist to coordinate with the LMHMRAs and the TDPRS for

individuals (adults and children) transitioning into the community in need of accessing services provided by the Authorities and TDPRS specific to their disabilities.

50. The SB367 Task Force recommends that the Texas Independent Living Partnership and the DHS work with Advocacy Inc., COIL, and the DHS Region 8 staff to:
    a) Describe and disseminate the grassroots model that has been developed in San Antonio in relation to relocation efforts and;
    b) For DHS to replicate the successful aspects of this model statewide to provide assistance to individuals transitioning from nursing facilities and provide assistance to individuals wishing to divert from nursing facility placement choosing community services; and
51. To develop methods to monitor successful practices ad incorporate these practices into their models of relocation efforts.

52. The SB 367 Task Force recommends that DHS provide data, information, and a description of the process for approval and denial of referrals to community care services, (including definition of codes used for denial) to the DHS Board on a regular basis.

53. The SB 367 Task Force recommends that TDHS provide information to regional staff and relocation contractors regarding the value of increased coordination between TDMHMR, the LMHMRAs and regional TDHS staff related to services and supports in the community.

54. The SB 367 Task force recommends that the provisions of TDHS Rider 7 be revised such that projected service costs above individual cost caps will not result in automatic denial of services to individuals entering waiver programs, that TDHS implement an automatic review for individuals with service plans that reflect higher service needs, and that TDHS conduct a multi-year study of waiver program costs of serving people who relocate from nursing facilities.

55. The SB 367 Task Force recommends that Ombudsmen be trained regarding the role of the relocation specialists, the provisions of Rider 37, and assistance in providing information related to community services to individuals in nursing facilities.

56. The SB 367 Task Force recommends that the Children's Protective Services (CPS) caseworker training include a specific component regarding children with developmental disabilities, and to include this training component into the certification program for caseworkers and supervisors.

57. The SB 367 Task Force recommends that the SB 367 Task Force review and provide input into all HHSA's related workgroup recommendations regarding the Promoting Independence Initiative before recommendations; strategies, policies, etc. are adopted or implemented by agencies and their Boards

58. The SB 367 Task Force 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.

59. The SB 367 Task Force recommends that HHSC direct HHSA's to include in their forums, systems, and mechanisms for public input throughout the state regarding discussion of the "most appropriate care settings" and receive recommendations from stakeholders related to the "most appropriate care settings".

60. The SB 367 Task Force 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.

61. SB 367 Task Force recommends that any information and referral assistance systems developed by HHSA's activities at the local level be linked to the existing 211 efforts.

62. The SB 367 Task Force recommends that HHSC 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.)

63. The SB 367 Task Force recommends that the SB367 Task Force develop a sub-committee to review all materials and processes informing individuals of community-based alternatives and provide recommendations to the appropriate HHS agency to be included in the Promoting Independence Plan.

64. The SB367 Task Force recommends the HHSC invite the Texas Hospital Association to attend future meetings of the SB367 Task Force and participate in discussions and effective solutions for discharge planning from a hospital setting into the community.

65. The SB 367 Task Force recommends the HHSC invite the Texas Board of Nurse Examiners to attend future meetings of the SB367 task Force and participate in discussions about the nurse practice act and nurse delegated tasks in a community setting.

66. The SB 367 Task Force recommends that HHSC and appropriate HHSA's work to implement the rule adopted by the BNE regarding nurse delegation of tasks in an independent living environment. (I.e. revise standards of care in related programs, trains surveyors, coordinate and further provider training, etc.)

APPENDIX D

APPENDIX D

Texas Department of Protective and Regulatory Services PRS Children and Young Adults In Selected HHSC Institutional Placements Data for 9/30/02											
	PRS Institutions for MR	**HCS**	**ICF MR Small 1-6**	**ICF MR Medium 7-13**	**ICF MR Large 14+**	**MHMR State School**	**MHMR State Hospital**	**MHMR State Center**	**Nursing Home**	**Sub Total**	**Total**
CPS Children	71	6	4	6	6	2	20	1	5	121	
CPS Youth 18-20	3	0	2	0	1	0	0	0	1	7	128
APS Wards 18-22	0	11	20	1	8	6	3	0	8		57
Combined Total:											**185**

Texas Department of Protective and Regulatory Services CPS Children with Developmental Disability (DD) Characteristic And APS Guardianship Wards 18-22 In Selected Group Settings Data for 9/30/02							
	Foster Group Home	**Basic Care Facility**	**Residential Treatment Center**	**Assisted Living**	**Other Group Settings**	**Sub Total**	**Total**
CPS Children	28	3	5		14	50	
CPS Youth 18-20	0	0	1		0	1	
							51
APS Wards 18-22	4	0	2	0	8		14
Combined Total							**65**

APPENDIX E

APPENDIX E

HHS Priority Recommendations

The following includes Tier 3 of the HHSC prioritization of HHS agencies' exceptional item requests. HHSC submitted seven broad tiers focusing on preventing service reductions, increasing reimbursement rates for providers, promoting community service options for people with disabilities, supporting cross-agency initiatives and addressing critical staffing issues in HHS agencies. In total, HHSC recommendations include $5.4 billion of the HHS agencies' total exceptional item request of $5.8 billion.

TIER 3: PROMOTING INDEPENDENCE/WAITING LIST REDUCTION AND AVOIDANCE

Tier 3 totals $342.4 million in General Revenue and accomplishes two critical goals:

- Supporting community services for people with disabilities (see Appendix G of the Consolidated Budget Document, for more detail)
- Reducing waiting lists for services and avoiding the creation of waiting lists in some instances

Promoting Independence

This recommendation totals $86.5 million in General Revenue and enhances community services that are administered through TDMHMR and DHS. The request includes:

- Community outreach, relocation and permanency planning for individuals leaving nursing homes and other institutional settings
- Additional waiver services for individuals leaving state schools and large ICFs/MR
- Implementation of several HHSC recommended initiatives to ensure successful transitioning of people in institutions to the community

Waiting List Reduction and Avoidance

This recommendation totals $256.0 million in General Revenue. Several agencies are currently forced to limit services to eligible individuals through imposition of waiting lists. For example, TDMHMR and DHS have longstanding waiting lists for community care services, and TDH has recently created a waiting list in the Children with Special Health Care Needs program. Requested funding in this tier would reduce these waiting lists. In addition, other programs, such as TDH's Kidney Health program and HIV Medication program, require additional funding to keep up with caseload demands without instituting waiting lists, limiting eligibility or reducing services to eligible individuals.

Tier 3: Promoting Independence/Waiting List Reduction and Avoidance

Exceptional Item (Agency LAR Priority)	FY04-05 Biennial totals GR	All Funds	Exceptional Item Description
A. Promoting Independence			
Relocation, Promoting Independence (DHS #8)	22,098,956	30,121,472	DHS must address promoting the independence of individuals residing in nursing facilities. State legislation also requires implementing permanency planning process for children residing in nursing facilities so they may transition to living with a family in the community. This item requests funding for community outreach/awareness, relocation, and permanency planning. The number of clients served each year are: Transitional Funding – 1,000; Transitional Housing Assistance – 500; and Permanency Planning – 225.
MR Promoting Independence Initiative (MHMR #8)	31,789,166	78,788,952	This item would fund waiver services for 1,155 additional persons: 240 state school residents, ($7.1 million GR) 765 persons in large ICFs/MR ($20.1 million GR), and 150 persons who are dually diagnosed with mental retardation and mental illness ($4.6 million GR) would move into waiver services. Funding placements for the 765 people in large ICFs/MR would also reduce the Medicaid waiver services waiting list.
Community MH - Children's Services (MHMR #9) – Promoting Independence Initiative for Children's Mental Health (1 of 2)	3,292,555	3,883,063	This item would provide services to approximately 126 children per year with an individualized wraparound approach, including intensive community-based treatment and supports as well as short-term inpatient/residential placement, if indicated. This request reflects only the promoting independence portion of the original exceptional item request. It meets the intent of SB368 to provide sufficient community support services to allow children to be served in the community, at home, in a family environment.
Community MH - Adult Services (MHMR #7) – MH Promoting Independence Initiative	18,642,233	25,202,558	The Assertive Community Treatment model and/or the Intensive Case Management approach would be used for 900 people identified as high recidivist state hospital users. This request reflects only the promoting independence portion of the original exceptional item request. This request is in accordance with SB367, which requires TDMHMR to develop strategies to address the needs of the Olmstead population of individuals who have had 3 or more hospitalizations within 180 days.
Family-Based Alternatives (MHMR #13)	5,029,443	12,412,501	This request would provide funding for waiver services recommended in permanency plans to approximately 300 persons under age 22 living in ICFs/MR of 13 beds or less.

Exceptional Item (Agency LAR Priority)	FY04-05 Biennial totals GR	All Funds	Exceptional Item Description
Promoting Independence Supports (HHSC #8)	5,100,000	5,100,000	Requested funding would provide transitional services such as rent, utility deposits, accessibility modifications and start-up living necessities for an estimated 400 clients. In addition, transportation assistance would be provided for individuals moving from institutions.
Continue Permanency Planning (HHSC #9)	118,334	236,667	Requested funding would provide salaries to continue two positions responsible for all aspects of permanency planning. These positions are currently funded by a grant from the Texas Council for Developmental Disabilities.
Family-Based Alternatives (HHSC #13)	411,250	762,500	This item would create family-based options for children with disabilities who reside in institutions by recruiting, developing, and training support families to care for these children. This funding would target recruitment efforts in an area with a large population of children in institutions.
Subtotal A: Promoting Independence	**$ 86,481,937**	**$ 156,507,713**	

Exceptional Item (Agency LAR Priority)	FY04-05 Biennial totals GR	All Funds	Exceptional Item Description
B. Waiting List Reduction and Avoidance			
Reduce LTC Interest Lists (DHS #6)	89,717,763	199,398,601	Over 60,000 people are currently on interest lists. Limited funding and increasing needs continue to add to the length of interest lists and to the time people must wait to receive services. The number of additional clients to be served are as follows: CBA – 2,000 for FY04 and 3,350 for FY05; CLASS – 250 for FY04 and 750 for FY05; DBMD – 5 for FY04 and 15 for FY05; MDCP – 75 for FY04 and 225 for FY05; Non-Medicaid Community Care – 600 for FY04 and 1,000 for FY05; IHFS – 750 for FY04 and 2,200 for FY05; PACE – 240 for FY04 and 320 for FY05.
Waiting List Reduction - Waiver programs (MHMR #10)	28,788,282	71,310,514	This item would provide MR waiver services to 1,200 persons who are now waiting for services. A phase-in of the new placements at a rate of 50 per month is assumed.
Equity Funding: MR waiver services (MHMR #4)	32,745,565	80,370,461	This request distributes resources to the local MR authorities who are below the mean in per capita funding by adding 1,344 MR waiver slots for individuals on the waiting list. It assumes that MHMR exceptional item No. 10, Waiting List Reduction for the Waiver Programs, is funded.
Community MH – Children's Services (MHMR #9) – Therapeutic Foster Care for High Need Children/Families (2 of 2)	8,685,071	9,117,285	Therapeutic foster care and intensive treatment/support for 112 families in FY04 and 196 families in FY05. These services would help prevent parental relinquishment of children and placement in TDPRS conservatorship in order to receive mental health services.
Tuberculosis Medications (TDH #5)	1,300,000	1,300,000	Requested funding is for the purchase of TB medications and testing supplies. The increased at-risk population has necessitated an increase in medications, diagnostic tests, medical evaluations, and laboratory tests. In addition, the cost of more advanced medications continues to increase.
HIV/STD Medications (TDH #6) (2 of 2)	6,782,478	6,782,478	Requested funding is for an increase in new clients needing HIV medications. 1,275 new clients would be treated with HIV medications.
Children with Special Health Care Needs (TDH #7)	56,081,690	56,081,690	Requested funding would allow CSHCN to meet the growing demand for services and eliminate the waiting list for the program. An additional 1,787clients would receive medical services in FY04 and 2,305 in FY05. An additional, 840 clients would receive family support services in FY04 and 1,080 in FY05.

Exceptional Item (Agency LAR Priority)	FY04-05 Biennial totals GR	All Funds	Exceptional Item Description
Maintain Kidney Health Care (TDH #8)	10,073,672	10,073,672	Requested funding would maintain the current level of services for Kidney Health Care clients and for a caseload increase of 7-10% during FY04-05. Funding would serve an additional 2,299 clients in FY04 and 4,816 in FY05. Without additional funding, TDH will have to reduce the level of services provided to eligible clients.
Restore CPS Purchased Services (PRS #3)	2,347,528	2,347,528	Projected earned federal funds for FY04-05 are expected to be less than appropriated in the current biennium. Funding for this item will avoid any reduction in the level of services provided to clients receiving Family-Based Safety Services, which are designed to prevent the removal of children from their own homes. Without this funding, there is a possibility that more children will be removed from their homes and placed into foster care.
Maintain Contracts for Adoption Placement (PRS #5)	1,000,000	1,000,000	Additional funding is requested to ensure that contracted agencies continue to recruit and place PRS children in need of adoptive homes. Federal funding (Adoption Incentive Grant Award) for this service has steadily decreased for Texas and will not be available for FY04-05.
Funding for Foster Care Day Care (PRS #6)	1,622,907	1,622,907	This initiative would fund the increased need for foster parent day care services for Non-IV-E eligible children. This additional funding would serve approximately 160 children in FY04 and 208 children in FY05.
Facility Based Youth Enrichment (PRS #8)	929,724	929,724	This funding will replace Title XX which was not appropriated in FY02-03. Contingent funding sources for this program did not materialize in the FY02-03 biennium. Keeping existing levels of services is critical for the agency to maintain a continuum of services designed to protect children, strengthen families, and support the partnerships PRS has with local communities.
Federally Qualified Health Centers (HHSC #6)	10,000,000	10,000,000	In order to address the shortage of health care services in many parts of the state, this item would assist local communities in establishing or expanding Federally Qualified Health Centers. These centers provide basic health care in medically underserved areas.

Exceptional Item (Agency LAR Priority)	FY04-05 Biennial totals GR	All Funds	Exceptional Item Description
Rehabilitate People with Disabilities (TRC #1)	5,888,587	26,897,026	This item funds GR match for projected 3% annual growth in VR federal grant. This is the primary service delivery system in TRC's continuum of services leading to employment. If TRC did not receive the VR exceptional request, TRC could be faced with implementing an order of selection in which an estimated 28,583 Texans with disabilities would not be served the first year of the biennium.
Subtotal B: Waiting List Reduction and Avoidance	**$ 255,963,267**	**$ 477,231,886**	
Total Tier 3	**$ 342,445,204**	**$ 633,739,599**	

APPENDIX F

APPENDIX F

FY02-03
Community Care Slots in Monthly Averages

From request to allocation

Agency	Waiver	Promoting Independence Plan *	FY02-03 LAR Increased Allocation Request	FY02-03 SB1 New Allocation		FY02-03 SB1 Total Allocation
DHS	CBA	3,380	10,336	2,675		29,250
	CLASS	429	1,554	492		1,836
	DBW	15	60	27		145
	MDCP	331	650	145		1,071
	IHFS	563	1,844	1,490		4,643
	non-XIX	363	1,450	820		17,093
Total DHS		5,081	15,894	5,649		54,038
Total MHMR	HCS**	2,339	4,429	665		6,667
Grand Total		**7,420**	**20,323**	**6,314**		**60,705**

* PI Plan mirrors the HHSC Consolidated Budget Recommendations.

** PI Plan includes 400 mid-range waiver slots, LAR includes mid-range waiver and equity slots, and SB1 does not specify mid-range waiver slots.

APPENDIX F

FY02-03
Community Care Funding

From request to allocation

IN MILLIONS

Agency	Waiver	Promoting Independence Plan *		FY02-03 LAR New Funding Request **		FY02-03 SB1 Total New Funding Allocation***	
			All funds	GR	All funds	GR	All funds
DHS	CBA	$ 25.6	$ 64.6	$ 108.4	$ 268.1	$ 30.0	$ 75.2
	CLASS	5.6	14.2	23.6	59.1	11.2	28.2
	DBW	0.4	1.0	1.6	4.0	0.9	2.2
	MDCP	2.0	5.0	8.4	20.9	1.9	4.9
	IHFS	2.1	2.1	9.0	9.0	5.0	5.0
	Non-XIX	4.4	4.4	18.6	18.6	10.4	10.4
	PI Plan****	28.3	50.8	28.3	50.8	0.0	0.0
Total DHS		**68.3**	**142.2**	**197.9**	**430.5**	**59.4**	**125.8**
Total MHMR	**HCS:**	**41.4**	**100.4**	**87.4**	**206.9**	**27.3**	**68.6**
Grand Total	-	**$ 109.7**	**$ 242.6**	**$ 285.3**	**$ 637.4**	**$ 86.7**	**$ 194.4**

*PI Plan mirrors the Consolidated Budget Recommendation

**LAR amounts may differ from original LARs if they include cost updates from February

***numbers derived from agencies. Does not include acute costs.

****DHS PI request includes identifying/assessment/assisting for clients and waiver slots (1061 CBA, 54 CLASS, 225 MDCP)

APPENDIX G

APPENDIX G

SUMMARY OF STAKEHOLDER INPUT RECEIVED IN THREE STATEWIDE PUBLIC FORUMS:

During the past year, through funding received from the CMS Starter Grant, the state was able to hold three public forums. Locations were selected through stakeholder input and three sites were selected that individuals felt would be accessible to the public, garner both rural and urban input, and provide a variety of information to the SB 367 Task Force. The sites selected included the Dallas-Fort Worth area, Houston, and Harlingen. At each site location, Ms. Addie Horn, Presiding Officer of the SB 367 Task Force presented an overview of the state's Promoting Independence Plan and Initiative. This overview included an explanation of the Olmstead vs. L.C. Supreme Court decision, the history of the Promoting Independence Initiative and the efforts of the state to implement the Promoting Independence Plan. A summary of relevant legislation that was passed during the 77th session of the Texas Legislature also reviewed activities mandated related to community-based alternatives for individuals with disabilities. At each location members of the SB 367 Task Force were present to hear public comment related to the Promoting Independence Initiative. What follows is a summary of input received at each forum:

Dallas/Fort Worth:
Twenty-three individuals came to provide the SB 367 Task Force with public comment related to the Promoting Independence Initiative and Plan. Those providing comment covered a wide variety of topics and viewpoints. Comments received included:

- emphasizing the need for affordable, accessible, integrated housing; use of the housing vouchers received from HUD Project Access;
- need to work with the community on education related to individuals desirous of living in the community and their struggles;
- need for inclusion in waiver services of transitioning services that would provide rental assistance, the purchase of household items and utility and rent deposits;
- efforts related to expansion of the CLASS program and a description of the "House of Matthew" services located in Garland, Texas;
- efforts of the LTC Ombudsman;
- need for emphasis on children and adults with mental illness, and the inclusion of their needs in the promoting independence plan – including the prison population;
- need to license congregate mental health residential services;
- request that their be only one application for all of the various Medicaid programs;
- dissatisfaction with individuals in institutional care being given priority for/or jumping existing waiting/interest lists;
- lack of funding in general to support elimination of waiting/interest lists and meet the capacity demands for community services;
- length of time individuals wait on community waiver services wait/interest lists;
- support for making Rider 37 permanent;
- support for the services provided at Lufkin State School;
- support for an array of services which includes all choices including state schools;

- request that TDMHMR address the length of time allowed for individuals within state schools to take leaves;
- desire that institutionalization of individuals with disabilities be discontinued in the state and that community services be made available to all individuals with disabilities.

Harlingen:
Twenty-eight individuals came to provide input to the SB 367 Task Force. The comments centered on the need for improvement of services in the local region, and general comments related to the Promoting Independence Initiative.
Comments received included:

- fear of loss of social security benefits when a person with disabilities returns to work;
- need for housing, respite care, and group home residential services for individuals with mental illness;
- better efforts to assist individuals with disabilities in obtaining employment services;
- frustration with the amount of red-tape in the service delivery system;
- criticism related to local agency cutting services in the area of mental health;
- desire that the state address the issue of individuals with mental illness in the correctional system;
- length of time you must wait for public housing;
- need for more services for the homeless;
- confusion in the existing local system of services provided by the LMHA;
- need for capacity in the community mental health services system in order to prevent state hospitalizations;
- need for transportation services that are non-medical to assist someone to stay in the community;
- AAA's need to now more about community options and community services in order to assist individuals;
- need for more foster homes with trained staff;
- need for comprehensive services received in the institution to be available in the community;
- desire for relocation specialist activities to be implemented in the Rio Grande Valley area;
- emphasis that the border regions of the state have unique problems related to high poverty, unemployment, and cultural issues;
- desire that the Valley region be considered for any new pilot initiative.

Houston:
The final public forum had sixty-eight individuals providing public input. The HHSC office of Long-term Care Services and Supports also received e-mail input from 12 more individuals. The majority of speakers at this forum delivered public comment in support of Richmond State School (RSS) and services within the ICFMR program. The 12 e-mails received were in support of community-based services.

Comments received included:

- description of religious and spiritual services provided at the RSS and how important these were to the individuals on campus and providing them with normalizing and enriching activities;
- need for continued services from RSS, and the feeling that the Promoting Independence Initiative was an attempt to close state schools;
- desire that any downsizing of state schools be prohibited, and that guardian and LAR wishes be recognized;
- parental description of how well the array of services offered by RSS meets their family members' needs;
- description of the Houston Symphony Outreach program provided to RSS, and how enriching this program is for all participants;
- description of the RSS music therapy program provided at RSS, and how gratifying and fulfilling this program is to all participants; as well as this program being inclusive of all residents;
- need for affordable, accessible housing to be made available for individuals transitioning out of institutions;
- need for statewide implementation of the relocation specialist activities of TDHS;
- concerns for community services and their quality, as well as their ability to meet serious medical health concerns;
- support for the continuance of RSS and description of how RSS meets all of the family members' needs – including safety on campus and freedom on campus;
- desire to stop any closure of a state school – allow open admission to state schools;
- desire that Texas prevent group homes from providing services to out of state residents;
- concern that the inspection of community group homes in this state is inadequate;
- feeling that private industry takes too much profit for community services;
- desire for a choice of services to be provided which includes state schools;
- comment that one-size of service does not fit everyone;
- need for community services for individuals with fragile medical conditions;
- desire for funding for ICFMR and community waiver services;
- need for Texas to address the DD population, and not separate out MR services;
- desire for sufficient funding to meet the capacity for all individuals desiring community care;
- description of vocational program at RSS and how it has met the demands of private industry;
- desire for elimination of pressures at staffings to discuss community care options;
- desire that the TDHS Rider 37 and Rider 7 be made permanent;
- need for inclusion of services for individuals with autism;
- need for HHSAs to work with school districts in the provision of services to individuals with disabilities;
- need for behavioral therapy training for staff in school districts;
- need for better coordination between TEA, TDMHMR, TDHS, and TDPRS in the provision of services to school age children.