

Background:

Staff will provide an update of recent Public Policy activities of interest including:

- Ongoing financial support for public members agency advisory committee
- Update on federal Healthcare Reform
- Input on the Department of Aging and Disability Services Legislative Appropriations Request
- Input on the Department of Assistive and Rehabilitative Services Legislative Appropriations Request
- Sunset Recommendations for the Texas Department of Housing and Community Affairs
- Testimony to the Senate Health and Human Services Committee
- Input to the Health and Human Services Commission on Proposed Boarding Home Standards

Public Policy Committee

Agenda Item 6.

Expected Action:

The Committee will receive an update regarding recent public policy activities. No action is anticipated.

Council

Agenda Item 12.

Expected Action:

The Council will receive an update from the Committee on public policy activities. No action is anticipated.



TEXAS COUNCIL *for*
DEVELOPMENTAL
DISABILITIES

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Brenda Coleman-Beattie, Chair
Mary Durham, Vice Chair
Roger A. Webb, Executive Director

April 8, 2010

Tom Suehs, Executive Commissioner
Health and Human Services Commission
Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, TX 78751-2316

Commissioner Suehs:

As you may be aware, the Texas Council for Developmental Disabilities (TCDD) provides support for travel expenses of public members who are members of advisory bodies of various state agencies when those individuals do not otherwise have organizational sponsorship. The Council first offered this assistance in 1999 recognizing that the Legislature did not authorize travel expenses for some advisory bodies supported by health and human services agencies. The Council believes it important for individuals with developmental disabilities and their families to have opportunities to advocate for changes in public policy that affects their lives, and to serve on policy decision-making entities when possible. However, public members without support of a sponsoring organization, such as the agency or at times a state association or employer, are often unable to accept an appointment due to financial constraints, or only if they are from central Texas.

TCDD is currently providing support for travel expenses for some public members of each of the following HHSC advisory committees:

- ✓ Children's Policy Council
- ✓ Consumer Directed Workgroup
- ✓ Council on Children and Families
- ✓ Task Force for Children with Special Needs
- ✓ Texas Integrated Funding Initiative
- ✓ Traumatic Brain Injury Advisory Council

While it has not been the Council's intent to provide funding for this support for a long-term basis, we have provided funding for travel expenses for some of these advisory groups for nearly a decade. TCDD therefore asks that HHSC request authorization for travel expenses of public members of these advisory committees in your Legislative Appropriations Request for FY 2012-2013. We think it an important policy matter that at times those best situated to provide advice and input concerning services and supports that impact their lives daily may not have the personal resources to finance that involvement. TCDD will be happy to support that request during the appropriations process and will encourage other advocates to do so as well.

Thanks for your understanding of this situation, and please contact us if you would like any additional information.

Sincerely,

A handwritten signature in black ink that reads "Roger Webb".

Roger A. Webb
Executive Director

cc: Terry Beattie
Betty Beckworth
Larry Swift



Health Care Reform Update

The Patient Protection and Affordable Care Act

On March 23, 2010, President Obama signed the Patient Protection and Affordable Care Act (PPACA) into law to help bring affordable healthcare to American citizens. This summary compares the new law with the TCDD principles of non-discrimination, comprehensiveness, choice, effectiveness and efficiency that are included in the *Council's Position Statement on Access to Health Care*.

Non-Discrimination – *TCDD believes all people must be able to fully participate in all health care systems generally available to citizens of Texas.*

With PPACA, insurance companies can no longer (1) deny insurance because of a pre-existing disability or other health conditions, (2) put a maximum limit on what insurance will pay, or (3) discontinue your insurance because you use it too much. An estimated 2.1 million very low income Texans could be added to Texas Medicaid and CHIP, according to the Texas Health and Human Services Commission. Certain employers with more than 50 employees will be required to offer health insurance or pay a penalty. States can set-up state-based American Health Benefit Exchanges as a resource for individuals to buy health insurance.

Comprehensiveness - *TCDD believes all people must have access to affordable and available health care that includes health, mental health, rehabilitation, personal, and support services where and when it is needed.*

PPACA increases options for long-term services and supports, contains options for a medical home and has incentives for shifting services from institutions to community.

- Community Living Assistance Services and Supports (CLASS) will be a new program to help adults who need long-term care. CLASS will be available to part-time and full-time workers with or without disabilities. After employees "pay in" with a payroll deduction for 5 years, they will be eligible for get cash benefits of \$75 per day (adjusted for inflation) for individual needs such as home health care with no lifetime limit.
- Community First Choice Option – States that chose to participate in this Option must offer community-based Medicaid long-term services and supports for anyone who qualifies for institutional care (i.e. services and supports only available in waiver programs now).
- Medical Home - The PPACA provides a Medicaid state plan option to permit Medicaid enrollees with at least two chronic conditions, one condition and risk of developing another, or at least one serious and persistent mental health diagnosis to designate one provider as their "medical home."

- Removing Barriers and Balancing – The PPACA makes it easier for states to be flexible with Medicaid services and supports that are necessary to help keep people out of institutions and provide Medicaid home and community services to more people. The law extends the Money Follows the Person program until 2016 which helps states comply with the Supreme Court Olmstead decision that says unnecessary segregation is discrimination under the Americans with Disabilities Act. PPACA expands funding for Aging and Disability Resource Centers and establishes a federal office to improve coordination for people who are eligible for both Medicare and Medicaid.

Choice – TCDD believes all people must be assured that comprehensive health, rehabilitation, personal and support services are provided on the basis of individual need, preference and choice.

The PPACA requires a health benefits package that provides a comprehensive set of services; increases payments to Medicaid primary care doctors; and increases funding for federal community health centers. New programs for school-based health centers, nurse-managed health clinics and training of health professionals through scholarships and loans are also planned. A Community-based Collaborative Care Network Program will support health care providers to coordinate and integrate health care services. A non-profit Patient-Centered Outcomes Research Institute will look at how healthcare reforms improve the health and well-being of citizens.

Equity and Efficiency – TCDD believes that all people must be ensured equitable participation in all available health care systems and not be burdened with disproportionate costs. And, all people must have access to a comprehensive health care system that provides appropriate, effective, quality services and which minimizes administrative waste.

PPACA will prevent health insurers from denying coverage to people for any reason, including people with mental illness, and from charging higher premiums based on health status and gender. The PPACA will provide funding and cost-sharing subsidies for families with incomes between 133-400% of the federal poverty level.

How much the law will cost Texas is highly debated. The Health and Human Services Commission has estimated it will likely cost the state more than \$27 billion between 2014 and 2024. The Congressional Budget Office estimated that between 2010 and 2019 the reforms will cost Texas \$1.4 billion. The Austin-based Center for Public Policy Priorities estimated the federal reform would add up to 1 million adults to the state's insurance rolls but cost Texas next to nothing until 2017. CPPP points out that the federal government will fully pay for the expansion of Medicaid for the first four years (2014-2017), and then the state will pick up five percent of the cost in 2018 and 2019 and 10 percent thereafter.

A summary of the bill is published by Kaiser Family Foundation at <http://healthreform.kff.org/>

Prepared April 12, 2010 by Belinda Carlton, TCDD Public Policy Specialist who can be reached at (512) 437-5414 or belinda.carlton@tcdd.state.tx.us.

HEALTH CARE REFORM TIMELINE

(By Willis Group – Courtesy of Rick Tisch)

MARCH 23, 2010

- Date of enactment
- Plans in effect on this date are grandfathered plans,” which get some exemptions from compliance

WITHIN 90 DAYS

- Availability of reimbursement for large claims under early retiree coverage

SEPTEMBER 23, 2010

- Group health plans – including, for most items, self-insured plans – start becoming subject to “insurance” reforms (see items listed for January 1, 2011) as of the dates their plan years begin

JANUARY 1, 2011

- Group health plans – including most self-insured plans – become subject to “insurance” reforms:
 - Lifetime dollar limits on essential benefits prohibited
 - Annual dollar limits on essential benefits prohibited (subject to exceptions defined by HHS)
 - Rescissions prohibited except in cases of fraud or intentional misrepresentation
 - Pre-existing condition exclusions prohibited for children under age 19
 - Coverage for dependent children must remain available until age 26 (until 2014, grandfathered plans may exclude children who are eligible for other employment-based coverage)
 - Benefits provided to children under age 26 for whom plans are required to make coverage available are nontaxable regardless of dependent status
 - Cost sharing on preventive care expenses prohibited (grandfathered plans exempt)
 - Insured plans become subject to nondiscrimination rules that currently apply only to self-insured plans (grandfathered plans exempt)
 - Plans must allow participants to choose any primary care provider available to accept them (grandfathered plans exempt)
 - Choice of pediatrician as primary care provider must be allowed (grandfathered plans exempt)
 - Access to emergency services must be provided (grandfathered plans exempt)
 - Access to obstetrical and gynecological care must be provided (grandfathered plans exempt)
 - Internal and external appeals procedures must be implemented (grandfathered plans exempt)
- Health insurers must report medical loss ratios to HHS and provide rebates to enrollees if medical loss ratio is less than 85% (80% for small groups)
- Unless prescribed by a provider, over-the-counter medications are not qualifying medical expenses for purposes of health flexible spending accounts (FSAs), health reimbursement arrangements and health savings accounts (HSAs)
- Penalty for using HSA or Archer MSA funds for items other than qualifying medical expenses increases to 20%
- Employers with fewer than 25 employees may qualify for a tax credit if they provide health insurance. Qualifying small employers may establish “simple cafeteria plans”

MARCH 23, 2011

- Deadline for HHS to establish standards for uniform explanations of coverage

JANUARY 31, 2012

- W-2s issued for 2011 earnings must report value of health coverage

MARCH 23, 2012

- Deadline for group health plans to provide uniform explanations of coverage
- Group plans must notify enrollees of material changes no less than 60 days before effective date
- Deadline for HHS to develop standards for annual reports to enrollees and HHS on plan benefits that improve health

SEPTEMBER 30, 2012

- For policy years ending after this date, a fee of \$1 times the average number of covered lives is required for both insured and self-insured coverage

SEPTEMBER 30, 2013

- For policy years ending after this date, the fee noted at September 30, 2012 increases to \$2 times the average number of covered lives

JANUARY 1, 2013

- Annual salary reduction contributions to a health FSA may not exceed \$2,500
- Subsidy for employers that provide certain retirees with coverage equivalent to Medicare Part D is no longer deductible
- 1.45% Medicare tax increases to 2.35% on wages over \$200,000 (\$250,000 for joint return filers)

JANUARY 1, 2014

- Employers with 50 or more full-time employees may incur “free rider” penalties if they offer no coverage or coverage that is unaffordable or insufficient
- Employers must offer free choice vouchers to certain employees
- Individuals who do not have qualifying coverage must pay an excise tax (coverage under any grandfathered plan satisfies requirement)
- Plans must report coverage information to enrollees and the IRS
- Group health plans – including, for most items, self-insured plans – become subject to additional “insurance” reforms when their 2014 plan year begins:
 - Preexisting condition exclusions prohibited for all enrollees
 - All annual dollar limits on essential benefits prohibited
 - Grandfathered plans lose the ability to deny coverage to employees’ children who are under age 26 based on eligibility for other employment based coverage
 - Plans must cover routine patient costs for care in connection with clinical trials (grandfathered plans exempt)
 - Discrimination against providers prohibited as long as they act within the scope of their licenses (grandfathered plans exempt)
 - Out-of-pocket maximum can be no greater than that allowed for a high deductible health plan offered in connection with a health savings account (grandfathered plans exempt)
 - Deductibles can be no greater than \$2,000 for single coverage and \$4,000 for family coverage (grandfathered plans exempt)
- Wellness incentives up to 30% of individual COBRA rate permitted (federal agencies may allow additional increases up to 50%)
- Employers with 200 or more full-time employees become subject to enrollment requirements
- Employers subject to notification requirements regarding insurance exchanges and subsidies
- State health insurance exchanges begin operation for individuals and small employers
- Employers offering coverage through an exchange may permit pre-tax contributions through their cafeteria plans

JANUARY 1, 2016

- State health insurance exchanges must be available for employers with up to 100 employees

JANUARY 1, 2017

- States may allow employers of any size to access coverage through health insurance exchange

JANUARY 1, 2018

- Excise tax applies to high-cost coverage

JANUARY 1, 2020

- Fee noted at September 30, 2012 and September 30, 2013 sunsets

http://www.willis.com/documents/publications/Services/Employee_Benefits/ALERTS_2010/EB_Alert_Vol_3_No_1_HC_Reform_Timeline.pdf



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Brenda Coleman-Beattie, Chair
Mary Durham, Vice Chair
Roger A. Webb, Executive Director

Input Submitted by E-Mail

Date: March 17, 2010

From: Texas Council for Developmental Disabilities
Angela Lello, Public Policy Director

To: Texas Department of Aging and Disability Services
GovtRelations@dads.state.tx.us

TCDD Input for DADS LAR

To whom it may concern:

Thank you for the opportunity to provide input on the development of DADS' 2012-2013 Legislative Appropriations Request. Attached are five completed input forms for your review.

Thank you,

Angela Lello

Public Policy Director,
Texas Council for Developmental Disabilities
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Austin, Texas 78741
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**Texas Department of Aging and Disability Services
Input for Fiscal Year 2012-13
Legislative Appropriations Request (LAR)**

Individual/organization: Texas Council for Developmental Disabilities
Contact person: Angela Lello
Phone number:
(please include area code) 512-437-5417
E-mail address: angela.lello@tcdd.state.tx.us

Description of initiative/issue: Community Waiver Expansion

Is this issue/initiative: New Expansion Restoration

Proposed solution:

TCDD recommends that DADS request funding to expand the capacity of HCBS Waivers for individuals with intellectual and developmental disabilities by allocating an additional 4,604 additional waiver slots each year.

In order to eliminate most, if not all, of the interest lists for HCBS Waivers for individuals with intellectual and developmental disabilities by 2018, DADS will have to expand community services at this rate. Requesting 4,604 new HCBS Waiver slots for individuals with intellectual and developmental disabilities for each year of the biennium will enable DADS to eventually eliminate the 8-9 year wait for these services.

Please complete this template and return it no later than **5 p.m. on Wednesday, March 17, 2010**. See instructions on Page 2 for information on submittal.



**Texas Department of Aging and Disability Services
Input for Fiscal Year 2012-13
Legislative Appropriations Request (LAR)**

Individual/organization: Texas Council for Developmental Disabilities
Contact person: Angela Lello
Phone number:
(please include area code) 512-437-5417
E-mail address: angela.lello@tcdd.state.tx.us

Description of initiative/issue: Provider Reimbursements

Is this issue/initiative: New Expansion Restoration

Proposed solution:

TCDD recommends that DADS request funding to address insufficiencies in provider reimbursements that impact the availability and quality of community support services. Specifically, TCDD recommends that DADS:

Increase rates and expand rate enhancements for community service providers to ensure that providers can recruit, train, and retain quality direct care staff and compete with other employers in the workplace;

Create a hierarchical structure of reimbursement rates that recognizes case mix, complexity of care, family supports, and individual needs; and

Adjust reimbursement mechanisms to provide incentives for providers to implement innovative approaches to service delivery to improve quality and cost effectiveness.

Please complete this template and return it no later than **5 p.m. on Wednesday, March 17, 2010**. See instructions on Page 2 for information on submittal.



**Texas Department of Aging and Disability Services
Input for Fiscal Year 2012-13
Legislative Appropriations Request (LAR)**

Individual/organization: Texas Council for Developmental Disabilities
Contact person: Angela Lello
Phone number:
(please include area code) 512-437-5417
E-mail address: angela.lello@tcdd.state.tx.us

Description of initiative/issue: Promoting Independence waiver slots

Is this issue/initiative: New Expansion Restoration

Proposed solution:

TCDD recommends that DADS request funding to increase the number of "Promoting Independence" waiver slots, including dedicated waiver slots for adults and children living in public or private ICFs/MR of any size.

Please complete this template and return it no later than **5 p.m. on Wednesday, March 17, 2010**. See instructions on Page 2 for information on submittal.



**Texas Department of Aging and Disability Services
Input for Fiscal Year 2012-13
Legislative Appropriations Request (LAR)**

Individual/organization: Texas Council for Developmental Disabilities
Contact person: Angela Lello
Phone number:
(please include area code) 512-437-5417
E-mail address: angela.lello@tcdd.state.tx.us

Description of initiative/issue: Community Behavioral Support Services

Is this issue/initiative: New Expansion Restoration

Proposed solution:

TCDD recommends that DADS request funding to furnish specialized behavioral services for individuals living at home on an as-needed basis for defined geographic regions.

Texas presently lacks a well-structured capacity in the community to respond to the needs of individuals with complex needs, particularly individuals with a dual diagnosis of mental illness and developmental disability. So long as the capacity is not present in the community to address the needs of people with challenging conditions, the state will face ongoing pressures to serve this population in more expensive settings.

Please complete this template and return it no later than **5 p.m. on Wednesday, March 17, 2010**. See instructions on Page 2 for information on submittal.



**Texas Department of Aging and Disability Services
Input for Fiscal Year 2012-13
Legislative Appropriations Request (LAR)**

Individual/organization: Texas Council for Developmental Disabilities
Contact person: Angela Lello
Phone number:
(please include area code) 512-437-5417
E-mail address: angela.lello@tcdd.state.tx.us

Description of initiative/issue: MR Community Services

Is this issue/initiative: New Expansion Restoration

Proposed solution:

TCDD recommends that DADS request funding to maintain current services levels for MR Community Services.

Local MR Authorities provide "MR Community Services" to individuals with intellectual and developmental disabilities. These services are flexible, responsive to consumer and family needs and often enable a person to remain independent in the community while they wait for an HCBS waiver slot.

Maintaining the current level of services will enable local MRAs to meet the challenging needs of individuals on lengthy interest lists for other DADS services. This will enable DADS to avoid other costly services if an individual is institutionalized while waiting for services.

Please complete this template and return it no later than **5 p.m. on Wednesday, March 17, 2010**. See instructions on Page 2 for information on submittal.



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Brenda Coleman-Beattie, Chair
Mary Durham, Vice Chair
Roger A. Webb, Executive Director

Input Submitted by E-Mail

Date: March 26, 2010

From: Texas Council for Developmental Disabilities
Angela Lello, Public Policy Director

To: Texas Department of Assistive and Rehabilitative Services
Terry Murphy, Commissioner

TCDD supports DARS requesting funding from the Legislature to:

- Fully maximize the Federal VR dollars available and improve VR services for individuals with developmental disabilities;
- Expand and improve Early Childhood Intervention Services;
- Eliminate the waiting lists for the Comprehensive Rehabilitation Services and Independent Living Services programs;
- Expand and improve Transition Services for youth; and
- Continue funding Independent Living Centers as recommended in the most current State Plan for Independent Living.

I'd appreciate you considering these comments along with the other public comments you receive as DARS builds its LAR. If you have any questions or need more information, please don't hesitate to contact myself or Cassie.

Thank you,

Angela Lello

Public Policy Director,
Texas Council for Developmental Disabilities
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Austin, Texas 78741
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(512) 913-7498 mobile
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Input Submitted by E-Mail

March 25, 2010

Leah C. Daly
Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711
Leah.Daly@sunset.state.tx.us

Ms. Daly,

A group of stakeholders in the activities of the Texas Department of Housing and Community Affairs (TDHCA) have adopted the attached recommendations for consideration by the Sunset Commission during TDHCA's sunset review. Each recommendation lists the groups endorsing that recommendation.

I am available to answer any questions regarding these recommendations. My contact information is below.

Sincerely,

Kevin Jewell
Consultant
Texas Low Income Housing Information Service
508 Powell St
Austin, TX 78703-5122
512-743-7633 (Phone)
Kevin@texashousing.org

On behalf of Stakeholders:

- Advocacy, Inc.
- Texas Association of Local Housing Finance
- Association of Rural Communities in Texas Agencies
- Center on Disability and Development -Texas
- Texas Council for Developmental Disabilities
- A&M University
- Texas Center for Disability Studies-UT
- Easter Seals Central Texas
- Texas Low Income Housing Information
- Habitat Texas Service
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations

Issue:

TDHCA's activities fail to reach Texans living on fixed income programs

Background:

TDHCA presently tracks three categories of low income households: Low Income: those earning 80% AMFI or below; Very Low Income: those earning 50% AMFI or below; and Extremely Low Income: those earning 30% AMFI or below. These categories are used to evaluate the housing needs of households within different income strata. These categories are also used for program targeting. When used for targeting, the income thresholds chosen for the categories are crucial to the actual allocation, as funds targeted at a given income group are typically claimed by the highest income household within a group.

The 2009 Comprehensive Housing Affordability Strategy data from HUD demonstrates that there is significant unmet housing need in households making below 30% AMFI. Many of these households have incomes too low to qualify for or access the TDHCA programs targeted at households close to the 30% threshold. Specifically, those living on Supplemental Security Income (SSI), Social Security Disability Insurance (SSDI), or other government-funded programs may not qualify for housing programs targeted at 30% AMFI households. While AMFI varies by area, federal SSI benefits are often 15% of AMFI or less.

Those Texans living on SSI can be more difficult to locate, contact, and market to than their higher income counterparts, and programs for such fixed income households must be structured differently than those designed for higher income households. For these reasons, money earmarked for below 30% AMFI largely goes to the population nearest the 30% threshold, leaving a large portion of the state's lowest income housing need unmet.

Recommendation: *Create a program category for Texans earning between 0 and 110% of SSI.*

The State should recognize the distinct needs of those living on fixed incomes. We propose that the Texas Department of Housing and Community Affairs, along with other State agencies, develop a target income category of between 0 and 110% of the level of SSI. Setting a threshold below "Extremely Low" will allow the State to monitor, plan for, and allocate resources to a group that is currently slipping through the cracks of our housing and human service programs.

This Recommendation is Endorsed By:

- Advocacy, Inc.
- Texas Association of Local Housing Finance
- Association of Rural Communities in Texas Agencies
- Center on Disability and Development -Texas
- Texas Council for Developmental Disabilities
- A&M University
- Texas Center for Disability Studies-UT
- Easter Seals Central Texas
- Texas Low Income Housing Information
- Habitat Texas Service
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations

Issue:

Information regarding the events at TDHCA Board meetings is not quickly available to those not physically present at the meetings.

Background:

The TDHCA board meetings are generally held in Austin. Transcripts of meetings are not generally made available until at least a week after the meetings are held. Stakeholders who are not in the Austin area or not able to attend meetings have historically had no way of monitoring the proceedings in real or near-real time.

TDHCA recently web broadcast the proceedings of the March 11, 2010 meeting, but the archive of the broadcast was not immediately made available to the public.

Recommendation:

Broadcast all meeting proceedings via webcast and make the archived webcasts immediately available to the public.

Other public entities such as TDI (<http://www.tdi.state.tx.us/webcast/audio10.html>) and the Sunset Commission (<http://www.sunset.state.tx.us/audioarchives.htm>) provide web broadcasts of their meetings to allow the public real-time access to the proceedings. TDHCA should do the same on a regular, ongoing basis, and make the archived webcasts immediately available to the public.

This Recommendation is Endorsed By:

- Advocacy, Inc.
- Association of Rural Communities in Texas
- Center on Disability and Development -Texas A&M University
- Easter Seals Central Texas
- Habitat Texas
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations
- Texas Association of Local Housing Finance Agencies
- Texas Council for Developmental Disabilities
- Texas Center for Disability Studies-UT
- Texas Low Income Housing Information Service

Issue:

The TDHCA Board is distracted from policy creation by its role acting as a court of appeals to staff decisions.

Background:

In addition to setting policy, the TDHCA board both finalizes adoption of staff recommendations regarding the allocation of program funds and oversees appeals of all departmental decisions.

For example, at the April 23, 2009 meeting the transcript¹ shows the board spent the majority of the meeting listening to appeals of staff decisions. One case dealt with enforcement of the application deadline (p. 137) for an applicant who claimed technical difficulties in the application process. An appeal of a missed application deadline is not the optimal use of board time and resources.

Another case that day (p. 116) involved second-guessing the staff's enforcement of the requirement of ceiling fans in tax credit properties and a request for an exemption from that requirement for a specific property. While re-consideration of the general requirement of ceiling fans in participating properties could be considered a policy matter, the specific exemption of a single property is not. Examining individual claims for exemption is not the optimal use of board time and resources.

Recommendation: *Separate the appeals process from the scheduled board meetings.*

We recommend the creation of a TDHCA appeals board. One member of the TDHCA board ("the appeals board liaison") would sit on the TDHCA appeals board. Each TDHCA board member other than the appeals board liaison would appoint one other member of the appeals board. The chair of the appeals board should be an appeals board member other than the appeals board liaison.

This board would provide a mechanism for oversight of staff decisions while allowing the TDHCA board to focus on setting policy for the department. The appeals board can meet on a regular basis, with additional meetings around important dates in the funding cycle of the department.

This Recommendation is Endorsed By:

- Advocacy, Inc.
- Association of Rural Communities in Texas
- Center on Disability and Development -Texas A&M University
- Easter Seals Central Texas
- Habitat Texas
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations
- Texas Association of Local Housing Finance Agencies
- Texas Council for Developmental Disabilities
- Texas Center for Disability Studies-UT
- Texas Low Income Housing Information Service

¹ <http://www.tdhca.state.tx.us/pdf/transcripts/090423-board.pdf>

Issue:

The composition of the TDHCA Board needs to be modified to include representation of particular constituent groups.

Background:

Representation of the needs of the very lowest income Texans are needed on the Department's Board. There is a need to have board representation to address the issues facing residents of small rural communities, people with disabilities and those receiving housing assistance in Texas. Texas local government codes governing housing authorities provides for the appointment of at least one board member who is a recipient of the public housing authority (as also required by federal laws governing public housing: the Quality Housing and Work Responsibility Act of 1998 act requires that the board of directors of a PHA include at least one member who is directly assisted by the PHA). The Texas Department of Housing and Community Affairs board operates as a public housing authority and consequently a position should be designated in the statute.

Recommendation:

Amend the government code to provide for specific board representation from the following categories:

- *Rural areas (defined as a city less than 10,000 in population not adjacent to a MSA or an unincorporated area of a county less than 20,000 in population)*
- *People with disabilities*
- *TDHCA public housing authority voucher recipients*

The perspectives of these constituencies would contribute to the board's discussion of TDHCA's programs.

This Recommendation is Endorsed By:

- Advocacy, Inc.
- Association of Rural Communities in Texas
- Center on Disability and Development -Texas A&M University
- Easter Seals Central Texas
- Motivation Education & Training, Inc.
- Texas Association of Local Housing Finance Agencies
- Texas Council for Developmental Disabilities
- Texas Center for Disability Studies-UT
- Texas Low Income Housing Information Service

Habitat Texas and the Texas Association of Community Development Corporations declined to endorse this recommendation, but both organizations support making TDHCA comply with all current legal requirements regarding board composition, which in this case includes filling the seventh board seat for a PHA resident.

Issue:

The Regional Allocation Formula (RAF), as it relates to the Housing Trust Fund (HTF), needs to be clarified to exempt HTF program funds of less than \$3 million from the RAF.

Background:

TDHCA does not interpret the Regional Allocation Formula statutory provisions for the Housing Trust Fund as intended. The statute excludes Housing Trust Fund funds less than \$3 million from the RAF and was intended to be interpreted on a program basis. The Agency is interpreting the \$3 million exemption as the total amount in the Housing Trust Fund. The net result is that funding is needlessly delayed in getting allocated.

Recommendation:

Amend the Housing Trust Fund in 2306 to clarify that Housing Trust Fund programs with less than \$3 million are exempt from the Regional Allocation Formula.

This Recommendation is Endorsed By:

- Advocacy, Inc.
- Association of Rural Communities in Texas
- Center on Disability and Development -Texas A&M University
- Easter Seals Central Texas
- Habitat Texas
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations
- Texas Association of Local Housing Finance Agencies
- Texas Council for Developmental Disabilities
- Texas Center for Disability Studies-UT
- Texas Low Income Housing Information Service

Issue:

The Manufactured Housing Division receives inadequate attention in the sunset process.

Background:

The Manufactured Housing Division of the Texas Department of Housing and Community Affairs in Texas administers the Texas Manufactured Housing Standards Act and acts as HUD's state supervisory agent to administer the National Manufactured Housing Construction and Safety Standards Act of 1974.

The Manufactured Housing Division is operated as an independent agency, with its own independent governing statute, governing board, and rulemaking process. It is physically located in offices separate from the rest of TDHCA, and does not report to the TDHCA executive director. Nevertheless, by statute the Manufactured Housing Division is nominally "administratively attached" to TDHCA and lacks its own statutory sunset clause. Because of this arrangement, it is not scheduled to receive a dedicated review in the sunset process.

With a \$6.1 Million budget (FY 2009) and a staff of 64, the manufactured housing division is comparable to many smaller agencies which do receive a dedicated review in the Sunset process. This agency performs an important regulatory function, overseeing an industry that affects many Texans. Nevertheless, the current review schedule suggests that the Manufactured Housing Division's regulatory functions could be overshadowed by the primary housing programs of TDHCA.

Recommendation:

Give the Manufactured Housing Division its own sunset clause and review.

The Sunset commission should recognize the functional reality of the Manufactured Housing Division's independence and recommend the Manufactured Division receive its own sunset clause. The Manufactured Housing Division deserves a dedicated sunset review.

This Recommendation is Endorsed By:

- Advocacy, Inc.
- Association of Rural Communities in Texas
- Center on Disability and Development -Texas A&M University
- Easter Seals Central Texas
- Habitat Texas
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations
- Texas Association of Local Housing Finance Agencies
- Texas Council for Developmental Disabilities
- Texas Center for Disability Studies-UT
- Texas Low Income Housing Information Service

¹ Texas Government Code 10.G §2306.6003

Issue:

The Manufactured Housing Division could better serve its mission to “improve the general welfare and safety of purchasers of manufactured housing in this state.”

Background: The Manufactured Housing Division of the Texas Department of Housing and Community Affairs in Texas administers the Texas Manufactured Housing Standards Act and acts as HUD’s state supervisory agent to administer the National Manufactured Housing Construction and Safety Standards Act of 1974.

Recommendations:

The Department should consider lease-purchase transactions to be sales at the time of the contract execution.

Sellers may structure a sale as a “lease purchase” to avoid the proof of ownership, departmental licensing, and disclosure requirements of a straight sale. Currently, the department does not provide oversight of lease-purchase transactions at the time the contract is initiated. Consumers may pay years on a home before they discover the seller does not have a Statement of Location (which functions similar to a title in conventional housing) clear of liens and eligible for transfer. At that point, sellers may use eviction under tenant statutes to avoid their obligations under the lease-purchase contract. The department should apply all licensing and disclosure requirements under the Manufactured Housing Standards Act to lease-purchase contracts at the time of execution, including licensing requirements, the use of standardized forms and sales disclosures, and proof of a clear statement of location held by the seller. The department should be given authority to review evictions on homes under lease-purchase contract to ensure landlord-tenant law is not being misused to void a valid sales contract.

Direct and fund the Manufactured Housing Division to inspect 100% of home installations in manufactured home parks and high wind areas.

All purchasers of a newly installed home pay a “Statement of Location” and “Notice of Installation” fee to the department, but only 25% of installations receive an inspection by the department. ¹ An improperly installed home can fail in a high-wind event such as a hurricane and endanger other homes, especially in high-density manufactured home parks. The National Hurricane Center reports: “debris from the damaged or destroyed homes will become missiles that have the potential to substantially damage other units...” ² Given this, the department should, at the minimum, inspect 100% of homes installed in manufactured home parks or in coastal areas listed as Wind Zone II or higher by HUD. These inspections should be in addition to its 25% base inspection rate in the rest of the state.

The Department should better use its licensee information to inform consumers about the marketplace.

The department should notify consumers in the promulgated consumer disclosure notice about the public availability of information regarding complaint and enforcement activity against licensees. The department should design its web interface for easier consumer reference by integrating complaint, violation, and enforcement information with the licensing database. This information should be kept current. As of February 2010, the department has not updated their “enforcement ratio” report since 2004 and information on enforcement actions is only available via a search separate from licensing information. A consumer searching to confirm the license status of a retailer should also be provided with any relevant enforcement, complaint, or code violation information held by the department.

These Recommendations are Endorsed By:

- Advocacy, Inc.
- Association of Rural Communities in Texas
- Center on Disability and Development -Texas A&M University
- Easter Seals Central Texas

- Habitat Texas
- Motivation Education & Training, Inc.
- Texas Association of Community Development Corporations
- Texas Association of Local Housing Finance Agencies
- Texas Council for Developmental Disabilities
- Texas Center for Disability Studies-UT
- Texas Low Income Housing Information Service

¹ A review of the installation records suggests that if an inspection is attempted but the department is unable to access the home, the unit is labeled as ‘inspected.’ If this is true, the actual rate of completed inspections may be less than the reported rate. ² <http://www.ihrc.fiu.edu/lwer/docs/DELIVERABLE7structural.pdf>



TEXAS COUNCIL *for*
DEVELOPMENTAL
DISABILITIES

Angela Lello

Public Policy Director

February 23, 2010

Texas Council for Developmental Disabilities

TCDD is a 27-member board dedicated to ensuring that all Texans with developmental disabilities, about 437,885 individuals, have the opportunity to be independent, productive and valued members of their communities. Using a variety of methods, the Council works to:

- Ensure that the service delivery system provides comprehensive services and supports that meet people's needs, are easy to access and are cost effective
- Improve people's understanding of disability issues

Council members include:

- individuals with developmental disabilities
- parents and guardians, as appointed by the governor
- representatives from each major state agency that serves people with developmental disabilities
- representatives from the state's protection and advocacy system and the two university centers for excellence in developmental disabilities
- local organizations

Cost Containment and Wait List Reduction

TIER WAIVER APPROACH

Tiered Services

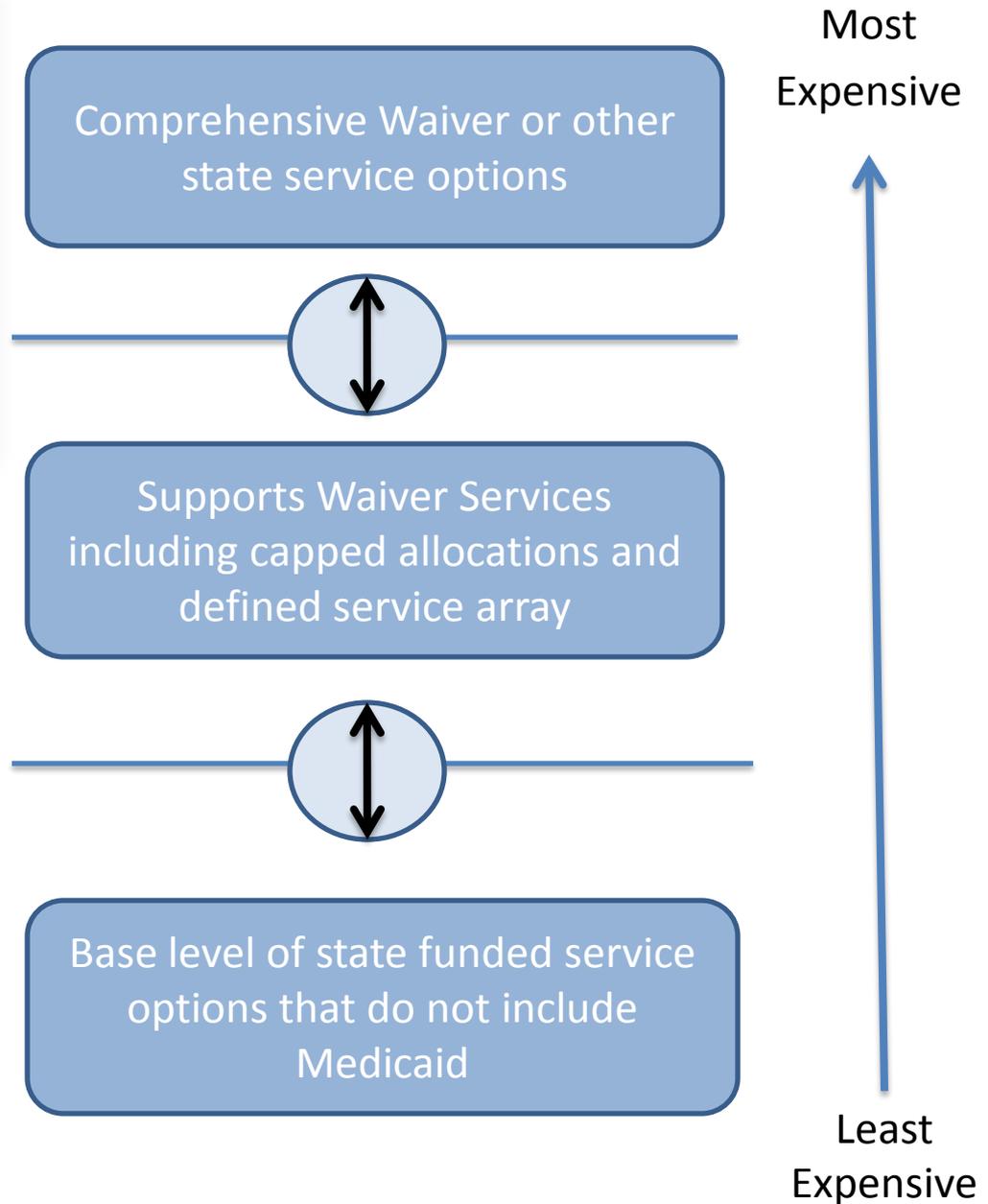
A system of long-term services and supports developed with different “tiers” of services, graduating from least intensity and lowest cost to greatest intensity and highest cost.

A tiered model may incorporate pure state-funded programs as well as Medicaid entitlement programs and Medicaid HCBS waivers.

The use of two or more HCBS waivers with different cost caps is one approach to providing long-term services and supports to people with I/DD.

States have expressed various rationales for employing a tiered waiver configuration, including:

- Reducing the high per person costs of providing 24/7 residential support and focusing on delivering services in the home;
- Complementing “natural” supports;
- Expanding services to serve people with I/DD waiting for services, in a more cost efficient manner.



Federal Policy Context

- Historically, most states operated a single “comprehensive” HCBS waiver for people with I/DD.
- Capacity controls allow states to limit access to services in the comprehensive waiver.
- January 2001 policy guidance issued by HCFA, now CMS, (State Medicaid Director Letter #01-006) clarified that states are obliged to provide all needed services covered by the waiver to enrollees.

“Olmstead Letter #4” prevented states from operating a waiver that is internally partitioned to control the number of persons who can access certain types of waiver services.

Foundation of Tiered Systems

Supports Waivers

Characteristics of Supports Waivers:

- **Target Population** includes people with I/DD who require ICF/MR level of care but live in their own or family home.
- **Dollar Limits** cap the total service amount available to support waiver participants.
- **Services** include the provision of personal assistance, daytime services and other ancillary services. **Residential services are not included.**
- **Service Planning** includes the process that determines which services a participant may receive.

Eighteen states operate Supports Waivers:

AL	NE
CO	OH
CT	OK
FL	OR
GA	PA
IN	SD
LA	TN
MO	TX
MT	WA

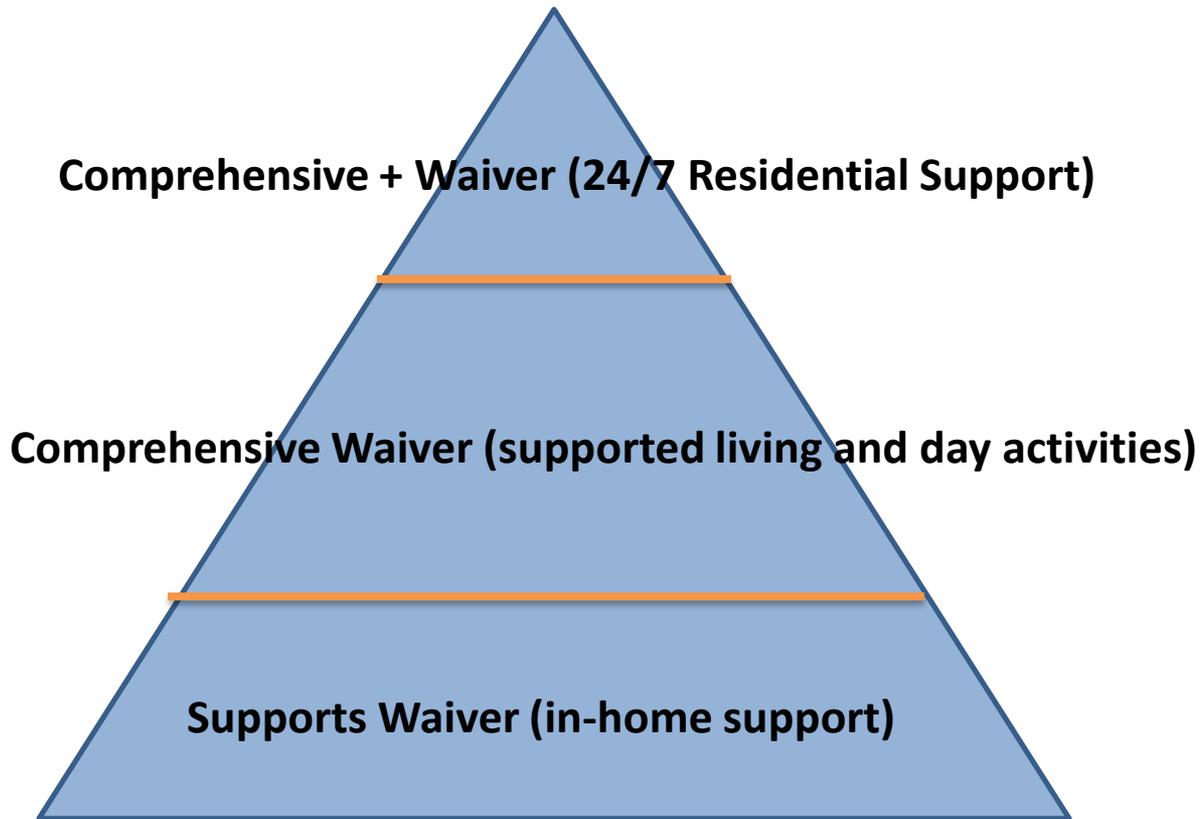
Several states operate Supports Waiver programs in tandem with three or more waivers

Colorado

Florida

Oklahoma

Washington



- In a tiered model, waiting lists may continue to exist for some services.
- The state develops a mechanism by which participants are assigned to a specific waiver, based on their level of need.
- Common eligibility criteria exists for all tiers, but additional criteria focusing on “service need” is used to determine which level of service is most appropriate.

Eligibility: An individual with a disability who is a client of the Division of Developmental Disabilities (DDD) and who meets ICF/MR level of care criteria and has a DDD Assessment and Individual Support Plan

Service array: Each waiver contains “Aggregate Service” array, but additional services (residential, behavioral) are added to upper tiers.

Cost Caps: Limits are imposed on specific *Services* in lieu of service plan cost caps.

Moving between tiers: Anyone can request a “higher” tier, but may be waitlisted (DDD gives 1st priority to current enrollees). DDD will terminate enrollees and move them to lower tiers if applicable.

Community Protection: individuals have been involved with the criminal justice system and exhibit sexually criminal behavior.

Core: individuals at immediate risk of out-of-home placement, or require more residential services.

CIIBS: children 8-21 y/o living at home, who have challenging behaviors.

Basic Plus: individuals at high risk of out-of-home placement or require some residential services.

Basic: individuals in their own or family home.

Eligibility: An individual with a developmental disability who is a client of the Agency for Persons with Disabilities (APD)*.

Service array: The waivers offer 28 supports and services, based on individual need. Some services (PD Nursing, Behavior Analyst) are not available in Tier 4. Services limits vary by tier. Children must access services via EPSDT.

Cost Caps: T1- no cap; T2 - \$55,000/ yr; T3 - \$35,000/ yr; T4 – 14,792/ yr.

Moving between tiers: APD keeps one waiting list for all 4 waivers. APD directed Service Coordinators (local entity) to use APD's protocol for developing service plans. APD assigns individuals to tiers.

Tier 1: Participants have intensive medical or adaptive needs or exceptional behavioral problems, which cannot be met in the other tiers.

Tier 2: Individuals in a licensed residential facility or receiving a higher level of in-home support services.

Tier 3: Participants who are not eligible for T1 or T2 in a licensed residential facility or receive a lower level of in-home support.

Tier 4: Individuals who are not eligible for T1, T2, or T3 and children (who do not require certain behavioral services).

Will a tiered approach work in Texas?

TEXAS HCBS WAIVERS

<i>Comparison of 2006 data</i>	Spending per capita on I/DD services	Total enrollment in I/DD waivers	Total spending on I/DD services
Texas	\$2.02	14,455	\$1.63 Billion
Florida	\$2.19	30,242	\$1.4 Billion
Washington	\$3.33	9,874	\$779.8 Million

Washington has much higher per capita spending on I/DD services, coupled with a much lower population than either Florida or Texas.

Florida spends more per capita on I/DD services than Texas and serves more people in its system than Texas.

Texas utilizes a higher percentage of Medicaid to finance its I/DD services; Texas has a smaller proportion of state funding available for I/DD services than either Florida or Washington.

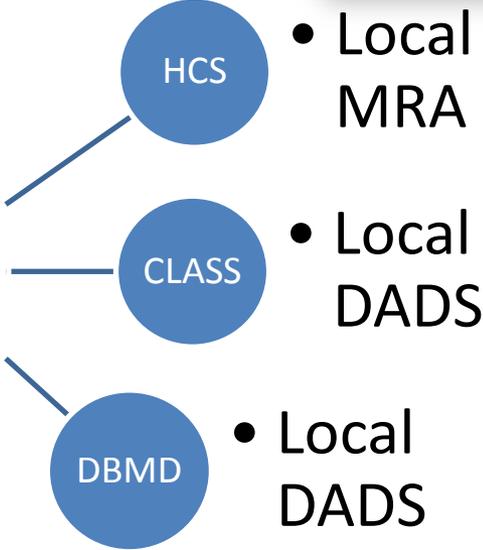
Texas’s waiting list is far longer than either Washington or Florida. Washington prioritizes who is offered waiver services ; Texas offers services largely on a first-come, first-serve basis.

Washington recently added a component to their tiers; Florida appears to be moving away from this system. Texas recently appropriated some HCS waiver “slots” for crisis intervention/diversion but it is too early to see if this is a sufficient mechanism to address inherent issues.

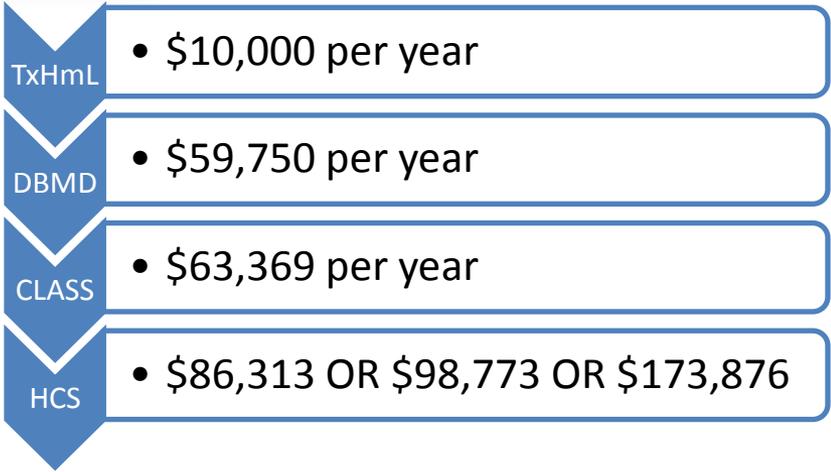
Washington developed their model in 2004; Florida’s model was developed in 2007 as a result of legislation that directed APD to reduce their budget by significantly restructuring the waiver system as well as imposing service limits, provider rate cuts, and service elimination.

Texas

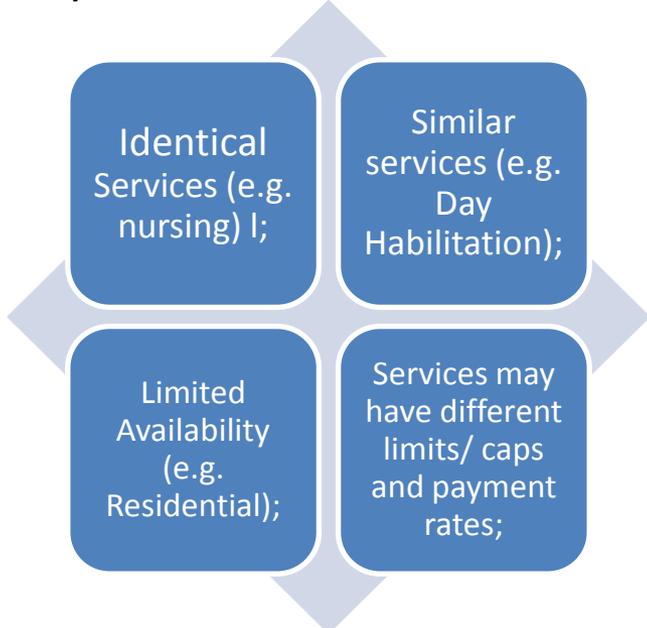
Access to Waivers



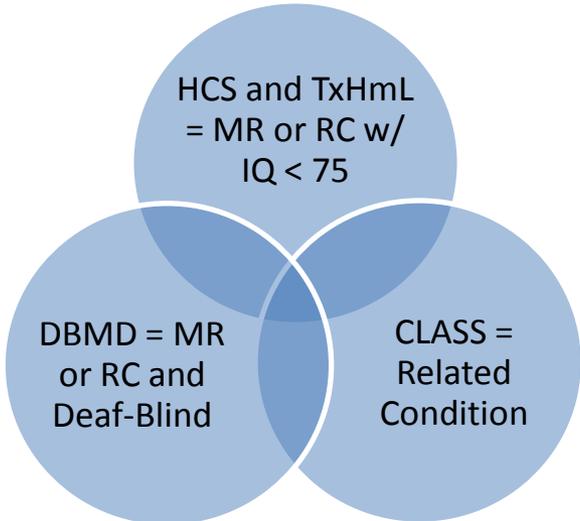
Cost Caps



Service Array



Eligibility



Other Considerations

Texas' Current state of change in HCS

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graph TD; A[Texas' Current state of change in HCS] --> B[Ability of ICAP to accurately capture service needs/ individual budget consideration]; B --> C[Uncertainty regarding the needs of individuals waiting for HCBS services]; C --> D[Payment rates for services vary greatly across programs and are not always adequate]; D --> E[Some populations (e.g. offenders, children with behavioral needs, individuals with multiple, complex needs) require specialty services]; E --> F[If service plan assignments are too low, participants will appeal in large numbers, potentially offsetting any cost savings];
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Ability of ICAP to accurately capture service needs/ individual budget consideration

Uncertainty regarding the needs of individuals waiting for HCBS services

Payment rates for services vary greatly across programs and are not always adequate

Some populations (e.g. offenders, children with behavioral needs, individuals with multiple, complex needs) require specialty services

If service plan assignments are too low, participants will appeal in large numbers, potentially offsetting any cost savings

Standard 1. Construction/Remodeling

Requiring each facility to meet all applicable codes and regulations is essential in new construction and remodeling. However, the intent of Standard 1 seems to and should include minimum requirements for existing boarding houses. If the goal is to provide appropriate safeguards for at risk individuals and ensure that boarding houses are not a nuisance or a safety risk for the local communities then all facilities should be required to meet some minimum standards.

TCDD recommends that there be standards for new construction and remodeling, as well as minimum standards for existing facilities. The current standards 1.E through 1.S. are not compatible with existing federal and state standards in new construction or remodeling of boarding houses (Americans with Disabilities Act <http://www.access-board.gov/adaag/html/adaag.htm#tran> and Texas Architectural Barriers Act <http://www.license.state.tx.us/ab/abtas.htm>.)

Therefore, TCDD recommends that these proposed rules separate the requirements into those that will apply with new construction and remodeling and those that will be minimum standards for existing boarding houses. This could be accomplished with the following changes and additions:

1. Shorten **Standard 1: Construction/Remodeling** to include 1.A. - 1.D.
2. Insert new **Standard 2: Existing Boarding Home Facilities** with current 1.E. – 1.S. renumbered as 2.B. – 2.P.
 - a. Insert new 2.A. that reads: *Existing facilities must meet local zoning and building codes, state and local fire, sanitary and safety recommendations.*
 - b. Change language of current 1.K.6., new 2.F.6. to read: *At least one bedroom on the first floor shall be accessible or adaptable for use by individuals with mobility and/or sensory disabilities with an accessible path of travel between all common areas and the entrance to the structure.*
3. Change numbering of current **Standard 2. - 7.** to read **Standard 3. - 8.**

Standard 2. Sanitary and Related Conditions, new Standard 3.

R. After other animals insert, *unless a service animal required because of disability,*

Standard 3. Reporting and Investigation, new Standard 4.

The model standards do not refer to or incorporate a mechanism to protect residents overall such as required contract to be signed between the resident and the operator of the boarding home and a related/incorporated tenant bill of rights. All residents should be treated with dignity and respect.

For a representative payee there should be more stringent rules, such as requiring an accounting of all expenditures and assuring the resident receives a monthly stipend or the balance of unexpended funds for personal expenditures.

1. **D.3.** Insert *all* between “for” and “expenditures” and strike “over \$50.00”
2. Add **D.5.** *Provide the beneficiary with a minimum \$50.00 per month or the balance of funds after monthly expenditures, whichever is greater, for personal expenditures.*

Standard 4. Assistance with Self-Administration of Medication, new Standard 5.

The proposed rules in Standard 5 appear to conflict with standards administered by the Texas Board of Nursing for the delegation of nursing tasks. An unlicensed boarding house employee reminding a resident to take medication is a task that must be delegate by a nurse <http://www.bon.state.tx.us/practice/delegationresources.html>.

Standard 7. Assessment and period monitoring of residents, new Standard 8.

A. Replace “completing” with *maintaining*

This language change is recommended for two reasons. First, a person may be able to complete personal care tasks, but fail to do so. Second, a resident may be unable to complete certain personal care tasks because of functional limitations of a disability, but able to maintain personal care with the support of a personal care attendant. This change would not put any liability for personal assistance on the operator of a facility.

B.2. Providing a reason for the medication, if this requirement stands after review of Texas Nurse Delegation, must not require the disclosure disability or health condition.

C. HHSC needs to reconsider these elements for assessing a resident’s ability to maintain self-care. As stated in A., above, someone with a functional disability may not e able to do these tasks, but able to maintain personal care. Second, how does the operator affirm that a person bathes without assistance without intruding upon the resident’s right to privacy?

E. How will the operator know to whom the resident needs to be referred to for health and human services? HHSC needs to clarify how the operator will be informed or trained regarding appropriate referral for services.

Thank you.



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Brenda Coleman-Beattie, Chair
Mary Durham, Vice Chair
Roger A. Webb, Executive Director

Input Submitted by E-Mail

Date: February 12, 2010

From: Texas Council for Developmental Disabilities
Angela Lello, Public Policy Director

To: Texas Health and Human Services Commission
hhs.communications@hhsc.state.tx.us

Draft Health and Human Services Budget Reduction Options

The Texas Council for Developmental Disabilities (TCDD) supports the allocation of state funds to allow individuals with intellectual and developmental disabilities to fully participate in health-related services and community supports that allow them to best grow, develop, and thrive. TCDD appreciates the efforts of Texas Health and Human Services (HHSC) leadership to balance the 5% reduction so that the negative impact on all Texans will be as temperate as possible. We note, with great appreciation that all 2010-11 funds appropriated for community long-term services and supports for individuals with intellectual and/or mental health disabilities are excluded from HHSC proposed budget reduction. On the other hand, we are concerned with the detrimental impact on Texans with and without disabilities that will result from the following proposed reductions.

1. Children with Special Healthcare Needs (CSHCN) program proposes not funding 285 children waiting. These are children with a chronic physical, developmental, behavioral, or emotional condition and who require certain health and related services. According to the U.S. Health and Human Resources Commission (HHRC), just over half of CSHCN need the care of medical specialists, such as cardiologists or pulmonologists; 47 percent need specialized therapies such as physical, occupational, or speech therapy; 42 percent need mental health services, and 63 percent need specialty medical care. Families turn to CSHCN because they do not have any other options. They do not have health insurance or health insurance that will provide for these health and health-related services for their children. Surely, there is another option for budget cutting than the health and development of 285 children with special health care needs.
2. Rate reduction of 1% for acute care Medicaid providers, which could result in even less physician providers, put individuals with developmental disabilities at risk who are not able to locate Medicaid providers in the community. Doctors in Texas Medicaid are getting paid around 65 percent of what Medicare pays. Doctors in our state taking new Medicaid patients dropped from 75% in 1996 to 39% in 2006. After 2007 investments this downward trend was reversing. The proposed provider rate reduction will be especially detrimental to people with chronic health disabilities that rely on Medicaid and need consistent and timely care by a primary care physician and specialists. Without a primary care physician and/or healthcare specialist people with developmental disabilities and/or co-

occurring mental health disabilities find themselves relying on emergency rooms for care. This method of healthcare delivery is not appropriate or effective and puts these individuals at risk for health decline. Further, it only shifts taxpayer costs to local hospitals.

3. Taking 200 beds off line and eliminating 420 full-time employees at state psychiatric hospitals also shifts the costs to local communities. Among the four hospitals, the option would result in an estimated 1,447 fewer patients receiving services through fiscal year 2011. Some individuals with developmental disabilities have co-occurring mental health disabilities. Although community services help keep these individuals safe and well, hospitalization is necessary sometimes, just like any other illness. Without treatment, the consequences for the individual and society include substance abuse, homelessness, incarceration, suicide and wasted lives. Of the suicides carried out, 90% are related to untreated or under-treated mental illness, according the Mental Health America.
4. Delaying implementing the Medicaid Buy-In for Children causes further harm to children with health-related disabilities and their families. The Medicaid Buy-in, approved by the 81st Texas Legislature was recognition that children with disabilities and their parents should never be forced to delay and forego care, spend down their assets to qualify for Medicaid in order to secure care for their child or be forced to place their child in an institution because services in an institution are an entitlement. HHRC estimated in 2006 that Texas had 806,746 children with special health care needs and over 100,000 with no health insurance. The children's Medicaid Buy-In may also help provide much-needed services to children who are on the lengthy waiting lists for Medicaid Home and Community Based Waiver services. These children with special needs cannot wait.

In closing, TCDD appreciates that HHSC was faced with a difficult situation in order to propose a plan to reduce 5% from a budget that is 97% purchased services for people in need.

Sincerely,

Angela Lello

Public Policy Director

Texas Council for Developmental Disabilities