



Consumer Direction Workgroup

***Biennial Report
to the Texas Legislature***

September 2014

*Prepared by the public members of the Consumer Direction Workgroup
in accordance with Texas Government Code Section 531.052*

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CONSUMER DIRECTION WORKGROUP
2013-14 Membership

<u>Consumers</u>		<u>Advocates</u>	
Nancy Crowther, Chair	Austin	Flora Brewer	Arlington
Ricky Broussard	Houston	Janet Brown	Fort Worth
Jackie Mason	Austin	Colleen Horton	Austin
Randell Resneder	Lubbock	Linda Litzinger	Austin
Emily Wolinsky	Austin	Linda Parrish	College Station
Terri Stellar	Leander		
<u>Family Members</u>		<u>Providers</u>	
Farhat Chishty	McKinney	Helen Baker	San Antonio
Leslie Curtis	Midland	Joshua Oyeniya	Houston
Shelley Dumas	Dripping Springs	Ramona Salomons	Austin
Linda Levine	Bee Cave	Jetre (Jet) Schuler	Tyler
Karen Silos	New Braunfels		

STATE AGENCY REPRESENTATIVES - (non-voting members)

Health and Human Services Commission

Kay Lambert, Presiding Officer

Allison Moss

Vivian LaFuente

Dept. of Aging and Disability Services

Elizabeth Jones

Laurie Hernandez

Dept. of Assistive and Rehabilitative Services

Sara Kendall

Dept. of State Health Services

Ivy Goldstein

Sam Shore

Texas Workforce Commission

Dina Testoni

Consumer Direction Workgroup Biennial Report to the Texas Legislature September 2014

EXECUTIVE SUMMARY

Consumer direction, or a consumer-direction model, is a method of service delivery in which individuals with a disability, parents of a child with a disability, and elderly persons who are receiving long-term services and supports through Medicaid or other state funding sources can choose to control the recruitment, hiring, management, or dismissal of persons providing their direct care services. It is an increasingly popular choice in Texas and around the country.

Since 2007, the Consumer Direction Workgroup (CDW) has served as the Texas Legislature's designated source of recommendations to the Health and Human Services Commission (HHSC) on how to both expand and improve consumer-directed services in Texas. For more information about the history of consumer direction in Texas, and about the history of the Consumer Direction Workgroup, see "The History on Consumer Direction in Texas" on page 5.

This report covering the 2013-2014 biennium includes a review of the major activities undertaken by the workgroup during this time and indicates when there was a successful outcome for each one. Much of the work was done through its four standing committees. The issues assigned to each committee correspond to those on which the CDW is directed to make recommendations. The CDW's standing committees are: Service Expansion; Employer Support; Quality Improvement; and Education and Outreach. In addition, there is an ad hoc Committee on Nursing Issues. Committees bring back recommendations to the full Workgroup as needed for further discussion and review. Because most of the consumer-directed services are provided through Medicaid Waiver programs, a majority of the CDW activities and recommendations were directed at DADS since that department currently operates those programs. Having two DADS representatives as active members on the CDW helped that process work smoothly.

Another section of this report is the recommendations section (page 12), which lists nine recommendations. Each represents a step CDW members think should be taken in Texas to both expand and improve consumer-directed services in Texas. The recommendations are not specifically directed to any agency, program, or individual. The intent is for anyone who reads the report and identifies recommendations they agree would help expand and improve consumer-directed services in Texas may be interested in helping move them forward. The recommendations are:

1. Permanently exempt persons using the CDS option from being required to use an Electronic Visit Verification (EVV) system.
2. Provide more opportunities for persons using public mental health (MH) services to self-direct some of their services.
3. Add the CDS option to all services available through a Medicaid waiver or managed care program administered by an HHSC agency.

4. Increase the amount and frequency of required training of DADS service coordinators and case managers about the CDS option. As more programs move to managed care, the state should expand this training as needed to include more MCOs.
5. Give individuals using the CDS option more control over their own budgets through an individualized budget option.
6. Texas should create a CDS option that allows the participant to purchase “individual goods and services” that are within their budget.
7. Provide CDS employers the opportunity to buy an affordable worker’s compensation policy.
8. Raise the hourly rate paid to personal care attendants while also bringing equity to the rates attendants are paid across programs. The same tiered rate enhancement based on level of need for provider- based services should also be used for CDS. The CDW recommends a base wage level of \$10 per hour.
9. Finally, the CDW recommends that the infrastructure that supports consumer direction be strengthened to provide stronger supports to Financial Management Services Agencies (FMSAs) to better enable them to do their jobs efficiently and effectively. A multi-agency task force, led by DADS, should be created to identify solutions to key challenges facing FMSAs.

In the recommendations section (page 12), you will also find for each recommendation a rationale for its selection, as well as important background information.

Introduction to Report

The Consumer Direction Workgroup (CDW) respectfully submits the following report to the Texas Legislature as required by Government Code Section 531.052(g):

“Not later than September 1 of each even-numbered year, the workgroup shall report to the Legislature regarding the activities of the workgroup.”

The Consumer Direction Workgroup is created by statute at Government Code, Section 531.052. Its charge is to advise the Health and Human Services Commission (HHSC) on the delivery of services through consumer direction in all of the HHSC programs that offer long-term services and supports. The intent is to enhance the consumer’s ability to have freedom, control, and authority over their own choices.

Consumer direction, a model which can be used by persons with disabilities, parents of children with disabilities, and elderly persons, is defined in Government Code Section 531.051. There are currently two forms of consumer direction available in Texas, each with different levels of consumer control.

- (1) The “consumer direction services (CDS) option,” which is the most commonly used, allows the individual or the individual’s legally authorized representative (LAR) to be the employer of record of those providing their personal assistance and habilitation services. In some programs the CDS option also allows the consumer to also direct the services of some professional services such as occupational therapy, physical therapy and speech therapy. In the CDS option, the responsibilities of the individual or their LAR include hiring, training, supervising and, if necessary, terminating the employee. A financial management services agency (FMSA) provides financial management services including assistance with payroll and taxes.
- (2) The “service responsibility option (SRO) allows the consumer to choose who they want providing their personal assistance and habilitation services. In this option, neither the individual nor the LAR is *required* to be the employer.

This report focuses on the key activities and achievements of the CDW during the reporting period and makes recommendations to improve both the quality and the quantity of services delivered through a consumer-direction model. The public members of the workgroup, which include persons with disabilities, family members, advocates, and providers, developed the report and approved the recommendations. However, it should be pointed out that the non-voting members of the workgroup, who are appointed by their commissioner to represent their state agency, are valued members of the workgroup and their contributions are also reflected in the reported activities and achievements. The state agencies represented on the CDW, in addition to HHSC, are: the Texas Department of Aging and Disability Services (DADS), Texas Department of State Health Services (DSHS), Texas Department of Assistive and Rehabilitative Services (DARS), and the Texas Workforce Commission (TWC).

The number of Texans choosing the CDS option for at least some of their Medicaid services and supports increased from 11,914 in the first quarter of fiscal year 2013 to 12,337 in the third quarter of fiscal year 2014. This reflects an 8.7 percent participation rate by individuals in 11 fee-for-service (non-managed care) programs, an increase of 3 percent and 2.5 percent participation by individuals in two managed care programs. These numbers reflect a slight increase in both the number of participants, as well as the participation rates, reported for fiscal years 2011 and 2012 in our 2012 Biennial Report to the Texas Legislature.

History of Consumer Direction in Texas

<p>1997</p>	<p>H.B. 2084, 75th Legislature, Regular Session, directed the Department of Human Services (DHS) to establish a pilot project creating a voucher option in two existing long-term care programs: (1) DHS client-managed attendant services program and the (2) Texas Rehabilitation Commission (TRC) personal attendant services program. Clients in those programs were required to be given a choice of payment options, one of which allowed the clients to receive a lump sum payment and then directly pay their own attendant.</p>
<p>1999</p>	<p>Based on the success of the pilot, the 76th Legislature passed S.B.1586 directing the Health and Human Services Commission (HHSC) to develop and oversee implementation of a program for providing vouchers as a payment option for certain services to persons with disabilities. This was initially referred to as “the vendor fiscal intermediary” or VFI option. It was later changed to “consumer directed services option.”</p> <p>S.B. 1586 also created a Voucher Payment Workgroup to assist HHSC in the development of the voucher program. The Voucher Payment Workgroup was the forerunner of the Consumer Direction Workgroup.</p>
<p>2001</p>	<p>The Texas Department of Human Services (DHS) included the consumer direction option in two Medicaid waiver programs: (1) Community Living Assistance and Support Services (CLASS); and (2) Deaf Blind Multiple Disabilities (DBMD).</p>
<p>2007</p>	<p>The 80th Legislature, Regular Session, passed S.B. 1766, amending the Government Code to update provisions for the use of consumer direction in certain services to individuals with disabilities and individuals who are elderly who receive Medicaid. S.B. 1766 also created the Consumer Direction Workgroup and gave it responsibilities for developing recommendations to expand the array of services available through consumer direction.</p>
<p>Today</p>	<p>The Consumer Directed Services (CDS) option has been added to many other waiver services since 2001. CDS is currently available for at least some services in all of the DADS waiver programs, but not yet available in the Youth Empowerment Services (YES) waiver program at DSHS.</p> <p>The Consumer Direction Workgroup continues to work towards having all Medicaid waiver services include the CDS option.</p>

Key Activities

Most of the work of the Consumer Direction Workgroup is done through its committees. There are currently four standing committees, and one ad hoc committee. Issues are discussed by committees and recommendations brought back to the full workgroup for discussion and possible adoption.

The activities/achievements listed below are categorized by issue area. The name of the committee primarily responsible for each area is included above the name of each issue area.

Service Expansion Committee

Expanding Services Available through the Consumer Directed Services (CDS) Option

1. The Consumer Direction Workgroup (CDW) worked successfully with the Department of Aging and Disability Services (DADS) and the Health and Human Services Commission (HHSC) to:
 - Add the CDS option to supported employment services and supports in the Deaf-Blind with Multiple Disabilities (DBMD) waiver. **Implemented October 1, 2013**
 - Amend the CLASS waiver to make supported employment and employment assistance available through the CDS option. **Supported Employment implemented February 1, 2014**
 - Make cognitive rehabilitation therapy and employment assistance available through the CDS option. **To be implemented September 1, 2014, pending the Centers for Medicare and Medicaid Services (CMS) approval of CLASS waiver renewal**
 - Expand the CDS option to include employment assistance, cognitive rehabilitation therapy and supported employment in the Home and Community-based Services (HCS) program. **Implemented March 1, 2014**
 - Offer nursing through the CDS option in the Home and Community-based Services (HCS) program. **Implemented August 1, 2014**
2. CDW members supported efforts to expand the CDS option to include supported employment and employment assistance in **all** Medicaid waiver services, including managed care through HHSC. Several members who personally use the CDS option were sought out as resources by some legislators and their staffs for information about the importance of consumer direction as an option in employment services. The issues were successfully resolved in S.B. 45, 83rd Legislature Session, 2013. **Services available October 1, 2014**
3. The CDW began working with the Department of State Health Services (DSHS) to expand consumer direction to persons receiving mental health services. The CDW's Service Expansion Committee has added a DSHS representative to its committee to continue working together on this issue.

Education and Outreach Committee

Education and Outreach to Consumers and Providers

1. CDW members responded positively to requests from DADS to assist in training providers:

In **June 2013** a panel of representatives of FMSAs, organized by the chair of the CDW Quality Improvement Committee, talked to a group of providers about how their FMSAs provided supports to individuals using the CDS option. The panel also included an individual who uses the CDS option who talked about her experience using CDS and why being able to direct some of her own services is important to her.

On **September 7, 2013**, several CDW members participated on a panel at the Aging and Disability Resource Centers (ADRC) training for their options counselors in Austin. Options counselors provide person-centered/person-directed support to help individuals make informed choices about their long-term support services. Each panelist shared their personal experiences using the CDS option and talked about how CDS has helped give them more freedom and independence.

On **October 18, 2013**, CDW members participated in another DADS training for FMSAs. A CDW member who is also a CDS employer and advocate spoke about her personal experience using the CDS option. In addition, a panel of representatives of FMSAs, organized by the chair of CDW Quality Improvement Committee, talked about how their FMSA provided supports to individuals using the CDS option.

On **June 4, 2014**, CDW members participated in DADS training for individuals and companies interested in becoming FMSAs. A panel of representatives of current FMSAs, organized by the chair of the CDW Quality Improvement Committee, talked about both their challenges and the rewards of helping persons control their own lives. The organizer also arranged for a parent of a child with disabilities to talk about why she had chosen the CDS option.

2. **In 2013**, CDW members became increasingly concerned about the low numbers of persons who are elderly that use the CDS option. In response, the CDW established as a priority for its Education and Outreach Committee the development of strategies for outreach to the elderly population. A CDW member who works with persons who are elderly and their service providers will co-chair the Education and Outreach Committee as it focuses more intently on the elderly population in **2014-15**. At the same time, the committee will continue its education and outreach initiatives to all potentially eligible populations around the state.

Employer Support Committee

Support for CDS Employers.

Individuals who use the consumer-direction option, or their legally-authorized representatives, are the employers of those who provide their direct services. Therefore, “support for CDS employers” refers to providing needed supports to those individuals and family members who use the CDS option to employ and supervise their own personal attendants and other service providers.

The Employer Support Committee focused most of its work on three issues important to employers: (1) personal care attendants; (2) electronic visit verification (EVV) systems; and (3) minimizing the paperwork required of CDS employers.

1. Personal care attendants

Individuals and family members agree that the ability to live independently depends largely on their ability to recruit and retain good personal care attendants. The low wages and minimal benefits provided to personal care attendants makes this an ongoing problem and has been the focus of CDW’s recommendations for better supporting CDS employers for several years. In addition to improving wages and benefits to attract new workers, personal attendants must be adequately trained and supported during their employment.

You will see a recommendation about personal care attendants in the recommendations section of this report.

2. EVV

CDS employers also consider use of an Electronic Visit Verification (EVV) system as unnecessary, burdensome and another barrier to the CDS employer’s ability to attract and retain personal attendants. The CDW has worked hard to make the use of EVV an option, rather than a requirement, for CDS employers. Due in large part to their work, use of an EVV system has been an option for CDS employers since June of 2012. However, the committee remains vigilant about any attempts to expand the required use of EVV. There is a recommendation about the use of EVV in the recommendations section of this report, as there were in the CDW’s 2012 Biennial Report to the Texas Legislature.

Since there are some individuals using EVV, CDW has continued to push to make EVV as simple as possible to use, as well as to assure that the system is fully accessible to users with disabilities. During this biennium, CDW members have participated on several calls facilitated by DADS, with the current EVV vendor, Sandata, to discuss concerns about their system. As of this report, the EVV system is still not fully usable to individuals with certain disabilities.

3. Improving the CDS process for the CDS employer

Though much of the work on recommendations to improve the CDS process used by FMSAs and CDS employers is done by the Quality Improvement Committee, they often worked together with the Employer Support Committee on reviewing forms and rules. The chair of the Employer Support Committee is also an FMSA representative on the CDW and very knowledgeable about the process.

Quality Improvement Committee

Optimize the provider base for consumer direction by identifying barriers to the effective administration of the CDS option.

The Quality Improvement Committee, chaired by one of the FMSA representatives on the CDW, devoted much time to reviewing the current state rules governing the operation of FMSAs as well as state requirements for CDS employers.

In addition, the committee gave input to DADS about forms they required for use in consumer-direction. DADS frequently approaches the Quality Improvement Committee for feedback on proposed forms DADS representatives on the CDW work closely with members of the Quality Improvement Committee.

During this reporting period, the CDW, through its Quality Improvement Committee made a series of recommendations to DADS, many of which were implemented. Below is a summary of those recommendations that were approved and what they achieved. These changes make the process easier and less of a burden for the individual CDS employer.

- Eliminated the need for the CDS employer to provide a signed receipt for background check information on a potential employee. The FMSA can now just notify them by phone or email.
- Eliminated the requirement that a newly-hired personal attendant begin work within 30 days of the criminal background check. Now CDS employers have the flexibility to hire back-up employees who work only when needed. Previously the back-up employees would be hired, but because they did not work immediately, became ineligible and left the employer responsible for payment for hours worked.
- Combined information about criminal history checks that previously required two forms for the CDS employer to complete, to only one form.
- Prevented the CDS employer from conducting their own criminal history check on potential hires. These were often not being done correctly causing the employer to hire someone later found not eligible to work when the FMSA verified the results. The FMSA now conducts those checks.
- Eliminated a rule that allowed an FMSA to require CDS employers to apply for their their own employer identification number. Now FMSAs will complete the forms, eliminating the burden to the CDS employer and reducing the risk of the employer making a mistake that could cause them to be out of compliance with IRS regulations.

The Quality Improvement Committee's work with DADS on both rules and forms impacting FMSAs and individuals using the CDS option has been a win-win for both.

Ad hoc Committee on Nursing Issues

Protecting and advancing the rights of individuals to be the primary decision-maker on their nursing services.

Background:

In 2012, the Texas Board of Nursing (BON) approached DADS with changes it wanted in 40 TAC, Chapter 41, governing nursing and nurse delegation in the CDS option. When CDW members learned about the BON's proposal, they invited BON representatives to a meeting to discuss their concerns. CDW members were worried that the proposed changes would unnecessarily limit the ability of an individual to be the primary decision-maker about their nursing needs. Some members also objected to what seemed to be requirements for an unneeded nursing assessment. The DADS rules on nurse delegation that were finally proposed included changes that were unacceptable to many CDW members. In response, several CDW members, one of whom is a nurse, organized an ad hoc Committee on Nursing Issues to try to prevent the proposed rules from moving forward.

Activities:

1. The committee became involved in the rulemaking process. As a result, the rules package containing the proposed nursing rules did not move forward for approval as scheduled. The CDW members were pleased to have delayed approval so they would have more time to discuss their concerns with both DADS and the BON.
2. In the process of working with DADS on nursing issues, the ad hoc Committee on Nursing Issues reported to DADS that employers who use the CDS option for nursing needed better preparation for directing some of the own nursing services, and that the material DADS had produced needed significant improvement. As DADS prepared to implement nursing through the CDS option in the HCS program, DADS worked with the ad hoc Committee on Nursing Issues to prepare a CDS nursing toolkit (including an assessment, nursing plan of care, physicians orders, nursing notes, medication logs), and roles and responsibilities summary, frequently asked questions for HCS CDS employers and a webinar for CDS employers.

The committee will continue to work on protecting the rights of individuals to make some of their own decisions about their nursing care and services, as well as on other nursing-related issues as identified by the workgroup.

Consumer-directed Services (CDS) as of September 1, 2014

PROGRAM	SERVICES AVAILABLE THROUGH THE CDS OPTION
Community Living Assistance and Support Services (CLASS)	habilitation services • respite services • nursing • physical therapy • occupational therapy • speech/hearing therapy • support consultation • supported employment • cognitive rehabilitation therapy
Consumer Managed Personal Attendant Services (CMPAS)	personal assistance services
Deaf-Blind with Multiple Disabilities (DBMD)	residential habilitation (less than 24 hours) • intervener • respite • support consultation • supported employment • employment assistance
Home and Community-based Services (HCS)	supported home living • respite • supported employment • employment assistance • cognitive rehabilitation therapy • nursing
Medically Dependent Children Program (MDCP)	respite • flexible family support services provided by an attendant or a nurse • supported employment • employment assistance
Primary Home Care (PHC), Family Care (FC), Community Attendant Service (CAS)	personal assistance services
Texas Home Living (TxHmL)	all services and support consultation
Personal Care Services (PCS)	personal assistance services
STAR+PLUS Program	primary home care
Home and Community Based Service (HCBS) STAR+PLUS Waiver	personal assistance services • nursing • physical therapy • occupational therapy • speech therapy • employment assistance • supported employment • cognitive rehabilitation therapy

Recommendations for Expanding and Improving Consumer Directed Services (CDS) in Texas

The following recommendations, with an accompanying rationale for each, were generated by the work of the Consumer Direction Workgroup Committee and approved by its voting members at its July 25, 2014, meeting: They are NOT listed by priority.

- 1. Raise the hourly rate paid to personal care attendants while also bringing equity to the rates attendants are paid across programs. No attendant should be paid less than \$10 per hour.***

Rationale:

A major barrier to the expansion of CDS is the difficulty finding, and then retaining, qualified and appropriately trained personal care attendants. The work is hard and the wages are low. There are few benefits. Other sources, such as private pay and long-term care insurance, pay higher wages for personal attendants than the \$7.86 per hour in Texas Medicaid.

The difference in rates paid to personal attendants working in different programs creates an unintended disincentive for attendants to work in some programs. For example in the community-based alternatives (CBA) program, attendants are paid \$8.90 per hour for performing essentially the same services as attendants in the Community Living Assistance and Support Services (CLASS) program who are paid \$10.64 per hour.

Rate enhancements are one way to begin to address this inequity. CDS employers and home health agencies should have access to a comparable rate enhancement system for paying personal care attendants.

* Note: This recommendation was the number one priority in the Home and Community-based Services Workforce Advisory Council's report of its "Final Recommendations" submitted in 2010 to the Executive Commissioner of HHSC. The CDW also recommends that these recommendations be reviewed and those not adopted should be reconsidered.

- 2. Permanently exempt persons using the CDS option from being required to use an Electronic Visit Verification (EVV) system.**

Rationale:

CDS employers are *not* currently required to use EVV. DADS and HHSC rules leave participation of CDS employers in EVV optional. CDS employers can choose between "full participation", "partial participation," or "no participation" in an EVV system. However, that choice could be taken away by a change in rule or policy by either agency. It is important to CDW that the use of EVV remains a choice for CDS employers rather than a requirement.

Therefore, the CDW would like to make this a *permanent exemption* for CDS employers.

The workgroup sees EVV as incompatible with the intent of consumer direction to offer flexibility and control to individuals to manage their own services and supports. The CDW also sees it as a barrier to attracting and retaining personal attendant, and to attracting more persons to choose the CDS option.

For those who choose to use EVV, or are required to use it because they aren't using the CDS option, the state should assure that it contracts only with EVV systems that are in full compliance with the requirements for technology that is accessible to persons with disabilities in both the Americans with Disabilities Act (ADA) and Section 508 of the Rehabilitation Act. There should be no expansion of EVV for anyone until these federal requirements for fully accessible technology are met.

3. Provide more opportunities for persons using public mental health (MH) services to self-direct some of their services.

Rationale:

Texas should build on the successful self-directed care (SDC) pilot conducted in 2009-2012 by the Department of State Health Services (DSHS) to expand self-directed services options in mental health (MH) services. The evaluation of the pilot found superior client outcomes with no greater delivery costs in self-direction than the costs of traditional treatment.

The CDW believes the ability to choose consumer direction (also known as self-direction) for MH services should be and be a component of other initiatives to expand MH services across the state. The CDW is pleased that DSHS has been awarded a consumer-direction planning grant from the Substance Abuse and Health Services Administration (SAMSHA) to continue this initiative. The CDW will continue to work with DSHS representatives on the CDW expansion of consumer direction to include more mental health services. More information about the progress being made in expanding consumer direction to mental health services can be found at the Texas self-directed care website (www.texasdc.org)

4. Add the CDS option to all services available through a Medicaid waiver or managed care program administered by an HHSC agency.

Rationale:

There is currently only one Medicaid waiver program, Texas Home Living (TxHmL) that makes *all* of its services available through consumer direction. Though DADS has increased the number of services available through consumer direction, the CDW believes more services could be provided through consumer direction and that adding more services to the CDS option should be a priority for DADS and HHSC.

The September 2014 transfer of additional Medicaid programs and services from fee-for-service Medicaid to managed care could present additional opportunities to further expand the number of services available through consumer direction. The CDW will continue to look for those opportunities and make recommendations as appropriate.

A chart of services available through consumer direction as of September 1, 2014, appears on page 11.

5. Increase the amount and frequency of required training for staff, especially service coordinators and case managers, working in programs with the CDS option. As programs move into managed care, the same training requirements should apply.

Rationale:

Not all service coordinators and case managers can effectively explain the consumer direction model to potential users. CDW believes usage of the CDS option would be higher if more people received comprehensive information about how CDS would work for them and how directing some of their own services might help them live more independently.

The training should be standardized so that it is applicable for staff in all programs with the CDS option. The CDW is an excellent resource and should be actively involved in developing and assisting with the training.

6. Give individuals using the CDS option more control over their own budgets through an individualized budget option.

Rationale:

Texas has the option to allow persons using the consumer-directed services option to also partially manage their own budgets. Under what CMS calls the "individualized budget option," individuals decide for themselves how to spend the money allocated to them to cover the costs of those services and supports over which they have decision-making authority. With the assistance of their FMSA, they develop a detailed spending plan for a certain time period, usually a month.

Though this has been permitted by CMS since 2008, Texas has never adopted the individualized budget option for the Texas Medicaid program. Being able to develop and manage a budget is an important step towards independence. Many Texans would like this option to be available to them.

States have flexibility in how they set up and operate an individualized budget option. However, each participating state must clearly describe how it calculates the amount that can be budgeted. For example, a state gets to choose whether or not it wants to limit the services and supports in an individualized budget only to those over which the participant has decision-making authority. This is not a federal requirement

Note: The DSHS project referenced in Recommendation 2 required use of an individualized budget option for participants. DSHS' new SAMSHA grant has the same requirement. . Since the CDW is working with DSHS on this project to expand consumer direction into mental health services, this recommendation is even more important.

In addition to its use in mental health, the individualized budget option is required by S.B. 7 for use in some programs and services for individuals with an intellectual or developmental disability (IDD).

7. Give individuals using CDS option the ability to purchase “individual goods and services” that are within their budget.

Rationale:

In 2008, CMS gave states the option of allowing program participants to purchase “goods and services” that increase their independence or substitute for human assistance.” To be considered a “substitute for human assistance,” the expenditure would otherwise have to be made for a person to do the task. Common examples include purchases of: remote devices to control lighting and to lock and unlock door; bus passes to get around in the community; and home delivery of groceries. In a November 19, 2009, letter (SMD #09-007) from CMS to state Medicaid directors, CMS referred to studies of two programs that found that “when participants were given the option to purchase items that increased their independence or substituted for human assistance, they exercised that option prudently and efficiently.”

The ability of an individual to purchase goods and services is commonly implemented through use of the individualized budget option. The ability to control and managed one’s own budget and to identify and purchase goods and services to meet individual needs are key components of successful independent living. Since living independently is a long-term goal for consumer direction, the CDW would like to see recommendations 5 and 6 planned for, and implemented, simultaneously.

8. Provide CDS employers the opportunity to buy an affordable worker’s compensation policy.

Rationale:

CDS employers continue to be concerned about the possibility of being held liable for an injury to their employee while on the job. Some consumers do not choose to use the CDS option because of this concern. The cost of purchasing a private worker’s compensation policy is prohibitive to most. This is an issue the Consumer Direction Workgroup has brought forward for several years. CDW has previously worked with both DADS and the Texas Department of Insurance (TDI) on this. However, it has yet to be resolved. A solution may require legislative action as has been done in other states.

Note: Concerns about lack of access to worker’s compensation were previously raised by the CDW in its 2010 and 2012 Biennial Reports to the Texas Legislature.

9. Finally, the CDW recommends that the infrastructure that supports consumer direction be strengthened to provide stronger supports to financial management services agencies (FMSAs) to better enable them to do their jobs efficiently and effectively. A multi-agency task force, led by DADS, should be created to identify solutions to key challenges facing FMSAs.

Rationale:

For consumer-directed services to operate as intended, the supports the CDS employers get from their FMSAs must be effective and efficient. Currently, FMSAs operate under multiple sets of sometimes conflicting rules and billing requirements that hinder their efficiency. Addressing and resolving these problems are an essential part of moving consumer direction forward.

CONCLUSION

In 2013-14, the Consumer Direction Workgroup continued the role it has had since 2008 as the voice of stakeholder input and recommendations for expanding and improving the delivery of some Medicaid services and supports through consumer direction.

As HHSC enters a new biennium, there are new challenges to face. The CDW will need to follow developments closely so it can continue to fulfill its responsibilities for making recommendations on how to respond to these challenges so that consumer-directed services remain a viable option for the many Texans who want more opportunities to direct their own care.

These challenges include:

1. Effective January 1, 2015, new Department of Labor (DOL) rules go into effect that extend Fair Labor Standards Act (FLSA) requirements to most home care workers. The term “home care workers” includes personal care attendants that assist individuals with disabilities through the CDS option when DOL rules identify that the CDS employer (called the “consumer” in the DOL rules) is not the sole employer of the attendant, but that there is a “joint employer”. If there is a joint employer, the new requirements for paying for minimum wage, overtime and some comp time apply.

More specifically, the DOL has said that each public or private agency that administers or participates in a consumer-directed Medicaid-funded home care program will need to evaluate whether it is an employer under the FLSA. The definition of employer could possibly include FMSAs, MCOs, and state agencies. (http://www.dol.gov/whd/homecare/joint_employment.htm).

Even if the CDS employer is the sole employer, the criteria for using the exemption have been more narrowly defined by DOL. Under the new rule, the companionship exemption from paying overtime and minimum wage is not applicable when the employee:

- spends more than 20 percent of his or her work week assisting with activities of daily living (ADLs) or Instrumental Activities of Daily Living (IADLs); or
 - performs medically-related tasks.
2. The already documented difficulties in finding and retaining qualified personal care attendants for individuals with disabilities, and for some elderly persons, will be facing additional challenges. In addition to the DOL rules mentioned above, there are continuing concerns about the requirement in the Affordable Care Act (ACA) that makes an employee responsible for obtaining health insurance if the employer is not required to do so. The reimbursement rates for personal care services in Texas are too low to allow a CDS employer to help their attendant purchase health care.
 3. Finally, the continued move of more services and programs to managed care brings challenges and opportunities to the Consumer Direction Workgroup to provide input on any impact on the the CDS option, as well as look for new opportunities to expand the CDS option to include more services.

The Consumer Direction Workgroup looks forward to continuing its role in identifying and bringing forward stakeholder input and recommendations for further expanding and improving, the consumer directed services option in Texas. Workgroup members are on the CDW because they believe consumer direction is an important step towards independence and self-sufficiency for many Texans.