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# **CONSUMER DIRECTION WORKGROUP**

## **Second Biennial Report to the Texas Legislature**

**As Required by Texas Government Code, Section 531.052**

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**Prepared by the  
Consumer Direction Workgroup Public Members**

**September 2010**

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## **Executive Summary**

Consumer direction provides alternatives to the traditional model of service delivery for Texas long-term services and supports. The consumer directed services (CDS) option allows the individual or the individual's legally authorized representative to be the employer of service providers including personal assistance, habilitation, and respite care providers and, in some programs, professional services providers. The second option, the Service Responsibility Option (SRO), allows the individual or the legally authorized representative a choice in who provides services, but does not require the individual or legally authorized representative to be the employer of record.

During State Fiscal Years 2009-2010, the Consumer Direction Workgroup (workgroup) provided direction and input to the Health and Human Services Commission (HHSC), the Department of Aging and Disability Services (DADS), and the Texas Workforce Commission (TWC). Among the activities and accomplishments of the workgroup are: (1) acting on recommendations from its 2008 report, including significant expansion of the CDS option and preparing for expansion of the SRO option into all long-term services and supports; (2) identifying issues that represent barriers to consumer direction and providing guidance to state agencies to help remove or lessen these barriers; (3) assisting in education and outreach through improvement in web-based resources and participating in Town Hall meetings; and (4) improving the function of the workgroup through a new member orientation program and the election of a member to serve as the vice-chair.

Perhaps the most notable developments in consumer direction in Texas over the past two years are the expansion of the services that may be self-directed and the growth in participation, which has nearly tripled from just over 2,000 individuals at the end of February 2008 to over 6,000 at the end of February 2010.

The workgroup noted, discussed, and proposed strategies to address emerging issues in consumer direction that may create opportunities or pose difficulties. Access to criminal background checks, nursing services delivered through consumer direction, and differences in provider qualifications across programs are three prominent issues addressed over the past two years.

On the national level, new trends and opportunities continue to emerge. Some of the changes have been driven by the federal government through legislation or action of the Centers for Medicare and Medicaid Services (CMS). Overall, these changes have opened up opportunities for states to make consumer direction a more attractive option in home and community-based service delivery. CMS has also provided technical assistance to improve consumer direction service delivery. In addition, proposals by the Internal Revenue Service (IRS) may provide changes that will simplify how a participant in the CDS option may function as the employer.

Other states continue to demonstrate innovations in consumer direction with expanded models that provide greater degrees of self-determination while maintaining accountability and budget neutrality. The National Resource Center for Participant Direction in April 2010 issued a revised and updated guide, *Developing and Implementing Self-Direction Programs and Policies: A Handbook*.

## **Recommendations**

Finally, this report makes 16 specific recommendations adopted by the workgroup. These recommendations are intended to make consumer direction an option available to more Texans to help make their lives more independent and meaningful. The recommendations provide a path to increase effectiveness, efficiency, accountability, and freedom of choice through the coming biennium.

### **Research and Oversight**

1. Obtain consistent, comparable, quality utilization and expenditure data from all programs offering consumer direction, including managed care.
2. Research best practices in consumer direction to increase satisfaction, control, and ownership of long-term services and supports by individuals using the CDS option.
3. Study low utilization of the CDS option by consumers in selected programs and develop recommendations to increase participation.
4. Review support consultation in the CDS option and make recommendations on how this resource can be improved and expanded to meet the needs of consumer employers.
5. Monitor the impact on CDS utilization of transferring case management from the Home and Community-based Services (HCS) providers to service coordinators at the Local Authorities.
6. Explore developing a performance measure for individuals who are responsible for presenting the CDS option to consumers.

### **Service Delivery**

7. Develop and implement outreach activities across the state, including outlying and rural areas, to increase awareness and understanding of the benefits of the CDS option among individuals and families.
8. Establish a certification process for Consumer Directed Services Agencies (CDSAs) to improve quality of services and ensure cost-effective oversight of CDSAs.
9. Make workers' compensation insurance affordable for individuals who choose the CDS option.
10. Encourage the widest possible participation in workers' compensation as a protection for both CDS employers and their workers.
11. Enhance CDS employer training in areas such as recruitment, training, and supervision of employees to strengthen their effectiveness as employers.
12. Develop consistency across waivers regarding the family and household members who can be employees.
13. Continue to expand the availability of consumer directed services including implementation of the CDS option for supported employment and employment assistance services in all appropriate waivers.
14. Make the CDSA rate methodology consistent across Medicaid fee-for-service and managed care delivery systems.
15. Make it legal for CDSAs and/or consumer/employers to have access to the secure Texas Department of Public Safety (DPS) website to conduct criminal history checks on applicants and employees.

### **Self-Determination**

16. Create a budget neutral, cross disability, self-determination pilot waiver that will operate in two or more areas of the state including at least one rural and one urban site.

## **Introduction**

### **Purpose**

This report provides information 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 activities of the workgroup.”

The Consumer Direction Workgroup is created by statute at Government Code Section 531.052 to advise the Health and Human Services Commission (HHSC) concerning the delivery of services through consumer direction in all programs offering long-term services and supports and to assist HHSC in developing and implementing consumer direction models. This report, prepared by the public members of the workgroup, outlines the activities of the Consumer Direction Workgroup, summarizes the guidance and recommendations provided to HHSC and the Department of Aging and Disability Services (DADS), and provides recommendations for improving and expanding consumer direction in Texas long-term services and supports.

### **Background**

Consumer direction is a service delivery option that allows individuals who receive long-term services and supports through Medicaid or other funding sources, such as general revenue and Title XX of the Social Security Act, to choose to expand their control in directing how, when, and by whom their care is delivered.

In Texas, consumer direction provides alternatives to the agency service delivery model. Currently, the state’s long term services and supports programs offer two forms of consumer direction with different levels of consumer control. The consumer directed services (CDS) option allows the individual or the individual’s legally authorized representative (LAR) to be the employer of record of the personal assistance or habilitation services provider, respite services provider, or, in some programs, professional services provider (nursing, physical therapy, occupational therapy, and speech therapy). The individual or LAR has responsibility for hiring, training, supervising, and, when necessary, terminating the employee. Under this option, a consumer directed services agency (CDSA) provides financial management services including assistance with payroll and taxes. The second option, the Services Responsibility Option (SRO), allows the individual choice in who provides personal assistance and habilitation services, but does not require the individual or the LAR to be the employer.

No one option of service delivery will be appropriate for all individuals, but for individuals who choose consumer direction, there is the potential to improve the quality of services and the quality of the individual’s life.

The table on the following page shows programs and services using consumer direction in Texas.

**TEXAS HEALTH AND HUMAN SERVICES PROGRAMS WITH THE  
CDS OR SRO OPTION**

**Medicaid Home and Community Services That Can Be Self-Directed**

| <b>Program</b>   | <b>Texas Health and Human Services Programs with the<br/>CDS or SRO Option</b>  | <b>CD<br/>Options</b> | <b>Funding<br/>Source</b> |
|--|---|-----------------------|---------------------------|
| <b><i>Medicaid Home and Community-Based Services Waiver Programs</i></b> |   |                       |                           |
| Community Based Alternatives (CBA)                                       | Personal Assistance Services, Respite, Physical Therapy, Occupational Therapy, Speech Therapy, Nursing and Support Consultation | CDS                   | 1915(c) Waiver            |
| Community Living Assistance and Support Services (CLASS)                 | Respite, Habilitation, Physical Therapy, Occupational Therapy, Speech Therapy, Nursing and Support Consultation                 | CDS                   | 1915(c) Waiver            |
| Consolidated Waiver Program (CWP)  | Personal Assistance Services, Habilitation, Respite, and Support Consultation   | CDS                   | 1915(c) Waiver            |
| Deaf Blind with Multiple Disabilities (DBMD) program                     | Respite, Habilitation, Intervener and Support Consultation  | CDS                   | 1915(c) Waiver            |
| Home and Community-based Services (HCS)                                  | Respite, Supported Home Living and Support Consultation   | CDS                   | 1915(c) Waiver            |
| Integrated Care Management (ICM)   | Personal Assistance Services, Respite, Physical Therapy, Occupational Therapy, Speech Therapy, Nursing and Support Consultation | CDS                   | 1915(c) Waiver            |
| Medically Dependent Children Program (MDCP)                              | Respite, Adjunct Support Services (provided by an attendant or provided by a nurse)   | CDS                   | 1915(c) Waiver            |
| Texas Home Living (TxHmL)  | All Services  | CDS                   | 1915(c) Waiver            |
| <b><i>Medicaid State Plan Services</i></b>                               |   |                       |                           |
| Community Attendant Services (CAS)                                       | Personal Assistance Services  | CDS and SRO           | State Plan Service        |
| Personal Care Service (PCS)  | Personal Assistance Services for children   | CDS                   | State Plan Service        |
| Primary Home Care (PHC)  | Personal Assistance Services for adults   | CDS and SRO           | State Plan Service        |
| <b><i>Medicaid Managed Care Programs</i></b>                             |   |                       |                           |
| STAR+PLUS  | Personal Assistant Services   | CDS and SRO           | 1915(b) waiver            |
| STAR+PLUS  | Personal Assistant Services, Respite  | CDS and SRO           | 1915(c) Waiver            |
| <b><i>Non-Medicaid Programs</i></b>                                      |   |                       |                           |
| Consumer Managed Personal Assistance Services (CMPAS)                    | Personal Assistance Services  | CDS                   | General Revenue           |
| Family Care (FC)   | Personal Assistance Services  | CDS and SRO           | Title XX                  |

The Consumer Direction Workgroup advises the health and human services agencies on the development and implementation of consumer direction. The workgroup consists of voting members including individuals who use the CDS option, advocates, and providers; and non-voting members, including representatives from the health and human services agencies and the Texas Workforce Commission. The workgroup meets quarterly and the committees of the workgroup meet as needed.

All persons, regardless of age or disabilities, should have the right of self-determination – the ability to make choices in all aspects of life and to have those choices respected.

Expanding opportunities for self-determination for individuals who need long-term services and supports by offering options for self-direction is the primary focus of the Consumer Direction Workgroup.

### **Consumer Direction Workgroup Key Activities**

During the current reporting period (September 1, 2008 – August 31, 2010) the workgroup met quarterly. Between meetings, committees of the workgroup met to work on implementation of recommendations from the October 2008 report and to develop recommendations for the next biennium. At the quarterly meetings of the workgroup, the recommendations of the committees were considered (see section on Consumer Direction Workgroup Recommendations).

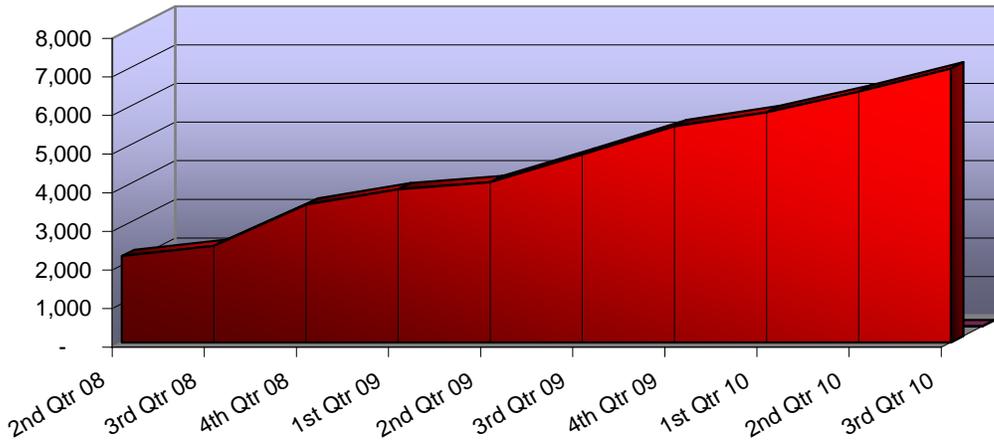
Among the accomplishments of the workgroup during the current reporting period are:

- Established three standing committees. Much of the ongoing work of the workgroup is accomplished through these committees.
- Created and implemented an orientation program for new members to familiarize them with the workgroup's charge, authorizing legislation, the history of consumer direction, and the current consumer direction service delivery array.
- Elected a consumer member to serve as the vice-chair along with the HHSC appointed chair.
- Provided guidance and assistance to DADS in providing outreach through town hall meetings held throughout the state.
- Revamped web-based resources such as the CDS employer manual and documents for helping individuals understand what is involved with using the CDS option before they begin.
- Identified the rate differential in the financial management fee across programs as a barrier to having a network of CDSAs for HCS and Texas Home Living. Rates were subsequently adjusted.
- Identified the need to obtain some types of liability insurance for CDS employers, especially for families in which the child is the consumer. A project was initiated with Texas Mutual Insurance Company to provide workers' compensation insurance that is both more affordable and more accessible.

**Developments and Trends in Texas Consumer Direction**

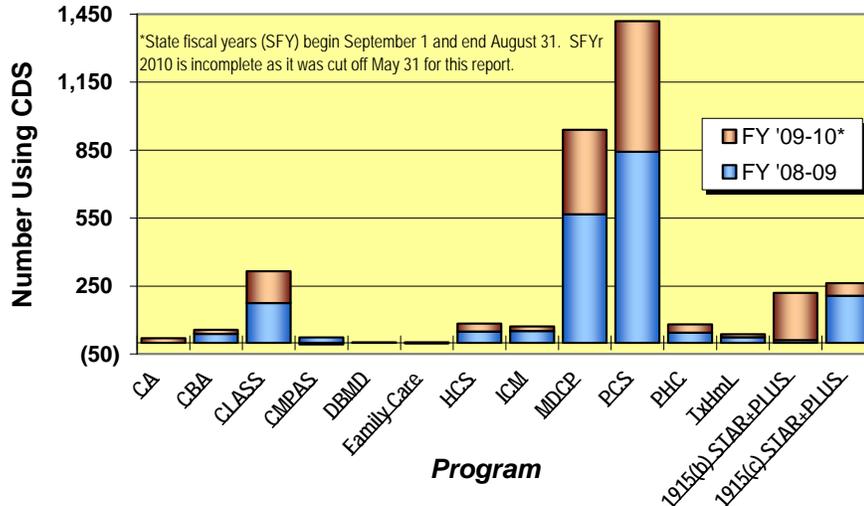
In the two years since the previous Report to the Legislature by the Consumer Direction Workgroup, consumer direction has expanded in the programs in which it is offered, the types of services that may be consumer directed, and the numbers of individuals who choose consumer directed services. As the graph below shows, nearly three times as many consumers were using the CDS option in February 2010 than in February 2008. The CDS option is now available in virtually all of Texas' community-based long-term services and supports programs, including managed care and Personal Care Services (PCS) for children.

**Total Number of CDS Users In Texas by Quarter**



The greatest increase in utilization is in programs serving children. These include Community Living Assistance and Support Services (CLASS), Home and Community-based Services (HCS), Medically Dependent Children Program (MDCP), and PCS. The Consolidated Waiver Program (CWP) and the Deaf Blind with Multiple Disabilities (DBMD) program also serve children but have fewer than 200 consumers each.

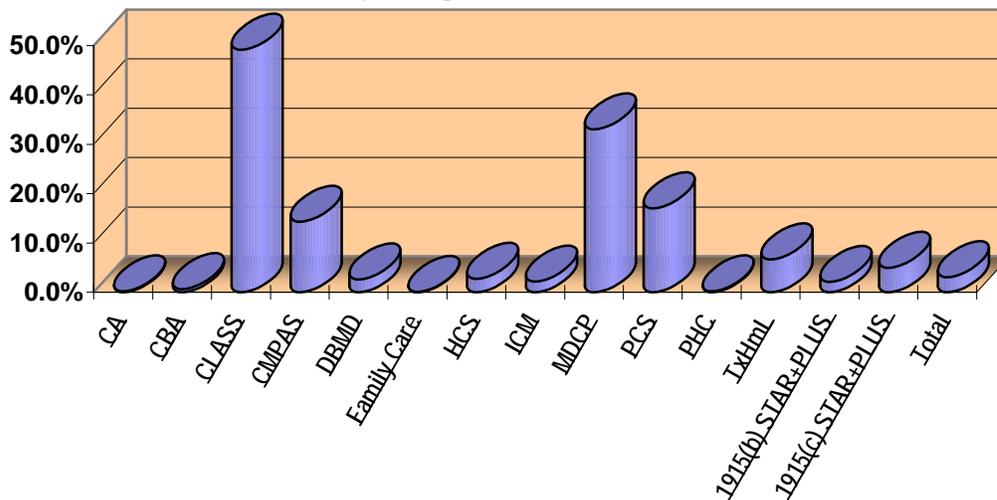
**Change in Consumer Directed Services (CDS) Use By Program from SFY 2008 to SFY 2010**



## Emerging Issues

Over the past two years several issues were brought to the attention of the Consumer Direction Workgroup by members of the workgroup or by members of the public. Some have been resolved; others will continue to be addressed in the next biennium.

**Percent of Consumers Using CDS  
by Program as of 5/31/2010**



*Criminal History Checks for Potential CDS Employers:* Over the past year, the Texas Department of Public Safety (DPS) has enhanced enforcement of Texas Health and Safety Code §§250.007 and 250.008, and Government Code §411.085. These statutes prohibit providers from disclosing criminal history reports from the secure website to individuals who are not entitled to the information. Consumer Directed Services Agencies (CDSAs) with home health licenses are no longer able to access the secure DPS website to conduct criminal history checks on behalf of CDS employers. CDSAs had been using their home health accounts to conduct criminal history checks for a \$1.00 pass through fee. With the change in DPS procedure, CDSAs and CDS employers must rely on the public DPS website for criminal history checks. Each check of the public website costs \$4.00

DPS recommended that CDS employers and CDSAs use the fingerprint criminal history check. Currently, CDS employers are opting for the fingerprint approach as opposed to the DPS public information site. The fingerprint criminal history costs about \$44.00 compared to the \$1.00 it costs to use the DPS secure site. Funds from the consumer CDS service budget are used to pay for each criminal history check conducted. This added expense has a significant negative impact on consumers' CDS service budgets, especially for those hiring multiple providers. The Consumer Direction Workgroup will continue to work to find a solution that protects the consumer without undue burden on the consumer's budget.

*Nursing and Professional Therapies Delivered through the CDS Option:* DADS has expanded the CDS option from personal assistance, habilitation, and respite services to

nursing and professional therapies – physical therapy, occupational therapy and speech therapy. A task force comprised, in part, of Consumer Direction Workgroup members developed the process for incorporating nursing into the CBA program. That process has been replicated in the CLASS program. It was assumed that nurses hired by CDS employers would know that they needed to follow the Board of Nursing rules related to plans of care, licensed vocational nurse supervision, and practitioner’s statements. CDS employers are hiring nurses who have the qualifications to provide services but who have never worked in home health before. DADS, in consultation with the Board of Nursing, is in the process of ensuring that CDS employers understand that the nurses are required by Board of Nursing rules to have certain documentation. DADS is adding the required nursing information to the new hire packet used to hire CDS employers.

*Differences in CDS Provider Qualifications:* Consumers have raised questions about the different qualifications of service providers across programs. Provider requirements are determined by a particular program’s rules. The programs’ rules related to who can be hired remain in effect even though the person is using the CDS option. For example, in the CLASS program, the CDS employee can be a family member who resides in the same residence as the consumer. However, in HCS, individuals who live in the same home with consumer, related or not, are prohibited from being hired as a service provider. The CDW is recommending the State develop consistency across waivers regarding the family and household members who can be employees.

## **National Trends in Consumer Direction**

### **Federal Activity**

A number of changes at the federal level have considerably increased state flexibility in designing consumer directed options to allow greater autonomy and choice for those who choose CDS.

*Statutory changes: Section 6087 of the Deficit Reduction Act of 2005:* Actions in recent years at the federal level have streamlined the process for states to add consumer direction as an option to both state plan services and waiver services. The Deficit Reduction Act of 2005 created section 1915(j) of the Social Security Act to allow states to offer consumer direction for personal assistant services as a Medicaid state plan service.

When Texas submitted a state plan amendment to add Support Consultation as a support for those who use participant direction and to add the Service Responsibility Option (SRO) as an option for self-direction, CMS requested that Texas amend its state plan by adding the 1915(j). In August of 2009, CMS approved the 1915(j) state plan amendment to authorize support consultation for those using the consumer directed services and the SRO for all state plan personal care services in Primary Home Care (PHC), Community Attendant Services (CAS), Personal Care Services (PCS) for children, and Personal Assistance Services delivered through managed care (STAR+PLUS).

*Centers for Medicare & Medicaid Services (CMS):* Between 2003 and 2006, CMS funded multiple states through Real Choice Systems Grants to develop participant direction waivers that featured flexible funding similar to the Cash and Counseling demonstration projects funded by the Robert Wood Johnson Foundation. As a result of the Real Choice projects, CMS has incorporated participant direction into the template used to obtain a new waiver as well as to renew or amend an existing waiver. CMS takes a more directive role in shaping each state’s consumer direction options than in the past. CMS allows states to determine the amount of authority a consumer has over employment decisions and determining the budget.

*Self-Determination:* Some other states have implemented self-determination models, which provide more flexibility and greater control to the consumer than self-direction of services. In a self-determination model, the individuals control the use of the resources in their budgets, determining, with the assistance of chosen allies, which services and supports they will purchase, from whom, and under what circumstances. This process allows them to make meaningful choices in how they live their lives. A premise underlying self-determination is that the individual receiving the service is able to determine what he or she requires and can use good judgment in purchasing those services and overseeing delivery. The principles of self-determination are: Freedom, Authority, Support, Responsibility, and Confirmation.<sup>1</sup>

An important tool for moving toward self-determination in Medicaid is, “Consumer Directed Individual Goods and Services.” In November 2009, CMS issued a State Medicaid Directors (SMD) letter providing additional guidance on the implementation of the “Optional Choice of Self-Directed Personal Assistance Services (PAS) (Cash and

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<sup>1</sup> ***Freedom to choose a meaningful life in the community; Authority over a targeted amount of dollars; Support to organize resources in ways that are life enhancing and meaningful to the individual with a disability; Responsibility for the wise use of public dollars and recognition of the contribution individuals with disabilities can make to their communities; and Confirmation of the important leadership role that individuals with disabilities and their families must play in a newly re-designed system and support for the self-advocacy movement*** (Center for Self-Determination).

Counseling)” authorized by section 6087 of the Deficit Reduction Act of 2005 by creating a new subsection, 1915(j), of the Social Security Act (the Act).<sup>2</sup>

The letter addresses the optional feature in self-direction programs under sections 1915(c) and 1915(j) of the Act that allows states to permit participants to “save” or “accumulate” funds from their budgets for the purchase of goods, services, supports, equipment, supplies, or items that will increase independence or substitute for human assistance. The Act allows participants, at the State’s option, to use funds allocated in their budgets to acquire items that “increase their independence or substitute for human assistance, to the extent that expenditures would otherwise be made for that human assistance.” CMS has adopted the statutory provision for “permissible purchases.”

The final rule on the self-directed PAS State plan option indicates:

- “(a) Participants, or their representatives, if applicable, may, at the State’s option, use their service budgets to pay for items that increase a participant’s independence or substitute (such as a microwave oven or an accessibility ramp) for human assistance, to the extent that expenditures would otherwise be made for the human assistance.
- (b) The services, supports and items that are purchased with a service budget must be linked to an assessed participant need or goal established in the service plan.”

CMS also requires that the state set forth a procedure that governs how such items are to be included in the service budget.

*Internal Revenue Services (IRS) Changes:* The IRS made two significant changes related to consumer direction. The IRS released a Schedule R so that vendor fiscal/employer agents (in Texas a Consumer Directed Services Agency or CDSA) could file Federal Insurance Contributions Act (FICA) taxes on behalf of CDS employers in the aggregate and list each CDS employer’s employee FICA withholding separately on the Schedule R form. The IRS initiated this change to address situations in which the CDSA paid the FICA individually for each employer and the payment was not associated with the fiscal/employer agent. This mismatch resulted in consumers receiving past due notifications from the IRS.

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<sup>2</sup> The letter is available online at <http://www.cms.hhs.gov/SMDL/downloads/SMD111909.pdf>.

In addition, the IRS has proposed changes to the current Federal employment tax regulations under Section 3504 of the IRS Code to allow a vendor fiscal/employer agent (CDSA) to assume the employment tax obligations of an employer with respect to the Federal Unemployment Tax Act (FUTA). Currently, CDSAs may file income tax withholding and FICA taxes under a single employer identification number (EIN), but not for FUTA. This change, if adopted, would provide greater tax liability protection for consumers using the CDS option. The Texas Workforce Commission (TWC) raised concerns about potential mismatches with federal aggregate filings and state individual filings. Subsequent clarifications from the IRS regarding the use of Schedule R which lists all employees for whom FUTA is filed may help resolve this conflict. CDSAs would continue to file state unemployment taxes separately for each CDS employer as required by state law.

### **Activities in Other States**

Individual states continue to expand their design and implementation of consumer directed services models. The trend overall is clearly toward greater autonomy and control. More states are allowing greater flexibility in how an individual may act as an employer and increasing budget authority as well. The Consumer Direction Workgroup and agency staff will continue to follow these trends and evaluate the effectiveness of various approaches to consumer direction.

### **Consumer Direction Workgroup Recommendations**

The recommendations that follow were initiated by the workgroup committees and approved by the full Consumer Direction Workgroup at its meeting on July 30, 2010.

#### **Research and Oversight**

1. Obtain consistent, comparable, quality utilization and expenditure data from all programs offering consumer direction, including managed care.
2. Research best practices in consumer direction to increase satisfaction, control, and ownership of long-term services and supports by individuals using the CDS option.
3. Study low utilization of the CDS option by consumers in selected programs and develop recommendations to increase participation.
4. Review support consultation in the CDS option and make recommendations on how this resource can be improved and expanded to meet the needs of consumer employers.
5. Monitor the impact on CDS utilization of transferring case management from the Home and Community-based Services (HCS) providers to service coordinators at the Local Authorities.
6. Explore developing performance measures for individuals who are responsible for presenting the CDS option to consumers.

**Service Delivery**

7. Develop and implement outreach activities across the state, including outlying and rural areas, to increase awareness and understanding of the benefits of the CDS option among individuals and families.
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11. Enhance CDS employer training in areas such as recruitment, training, and supervision of employees to strengthen their effectiveness as employers.
12. Develop consistency across waivers regarding the family and household members who can be employees.
13. Continue to expand the availability of consumer directed services including implementation of the CDS option for supported employment and employment assistance services in all appropriate waivers.
14. Make the CDSA rate methodology consistent across Medicaid fee-for-service and managed care delivery systems.
15. Make it legal for CDSAs and/or consumer/employers to have access to the secure Texas Department of Public Safety (DPS) website to conduct criminal history checks on applicants and employees.

**Self Determination**

16. Create a budget neutral, cross disability, self-determination pilot waiver that will operate in two or more areas of the state including at least one rural and one urban site.

**Consumer Direction Workgroup Members – 2010**

***Consumer and Family Members***

*Kathryn Alvarez*----- San Antonio  
*Farhat Chishty* ----- McKinney  
*Leslie Curtis* ----- Midland  
*Leah Rummel* ----- Austin  
*Debby Salinas-Valdez* ----- San Antonio  
*Karen Silos* ----- New Braunfels  
*Terri Stellar* ----- Austin  
*Carol Thompson* ----- Shallowater

***Advocates for Individuals with Disabilities and Elders***

*Lynda Ender* ----- The Senior Source----- Dallas  
*Mike Halligan*----- Georgetown  
*Angela Lello*----- Texas Council for Developmental Disabilities ----- Austin  
*James Meadours* ----- Advocacy, Inc.----- Austin  
*John Morris* ----- Texas Center for Disability Studies----- Austin  
*Loyd Wayde Shipman* - Arc of Texas ----- League City

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*Helen M. Baker* ----- Disability Services of the Southwest----- San Antonio  
*Bill Eaton*----- Southern Concepts, Inc. ----- Granbury  
*Louise Lynch* ----- Austin Travis County Integral Care----- Austin  
*Joshua Oyeniyi*----- Segnik Group, Inc. ----- Houston

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*Cindy Eilertson* ----- Health and Human Services Commission (HHSC) ----- Austin  
*Matthew Ferrara* ----- Department of State Health Services (DSHS) ----- Austin  
*Larry Gardner* ----- Department of Assistive and Rehabilitative Services (DARS) - Austin  
*Ivy Goldstein* ----- Department of State Health Services (DSHS) ----- Austin  
*DJ Johnson* ----- Health and Human Services Commission (HHSC) ----- Austin  
*Elizabeth Jones* ----- Department of Aging and Disability Services (DADS) ----- Austin  
*Ryan Keyser*----- Health and Human Services Commission (HHSC) ----- Austin  
*David Latimer*----- Department of Aging and Disability Services (DADS) ----- Austin  
*Dina Testoni*----- Texas Workforce Commission (TWC) ----- Austin