



THE LONG-TERM CARE PLAN FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND RELATED CONDITIONS (FINAL)

Fiscal Years 2016–2017

Adjusted to Reflect Appropriated Funds

in the

General Appropriations Act, House Bill 1, 84th
Legislature, Regular Session, 2015 (Article II,
Department of Aging and Disability Services)

As Required by

Texas Health and Safety Code, Section 533A.062

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**Texas Health and Human Services
Commission**

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LONG-TERM CARE PLAN FOR INDIVIDUALS WITH INTELLECTUAL DISABILITIES AND RELATED CONDITIONS 2016-17

The Texas Health and Human Services Commission (HHSC), pursuant to Section 533A.062 of the Texas Health and Safety Code, approves this final Long-Term Care Plan for Individuals with Intellectual Disabilities and Related Conditions.¹ Section 533A.062 requires a proposed plan be developed biennially and adjusted following legislative action on appropriations for long-term care services for persons with an intellectual disability. Section 533A.062 also requires HHSC to approve the final plan and publish it in the Texas Register.²

There are seven tables in this report that reflect the targeted slots funded by the 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of Aging and Disability Services).

This plan includes information on the following:

- State supported living centers (SSLCs);
- Community-based intermediate care facilities for individuals with an intellectual disability or related condition (ICF/IIDs);
- Home and Community-based Services (HCS) waiver;
- Texas Home Living (TxHmL) waiver;
- Community Living Assistance and Support Services (CLASS) waiver; and
- Deaf Blind with Multiple Disabilities (DBMD) waiver.

The Texas Department of Aging and Disability Services (DADS) has operated state supported living centers and the programs included in this plan since the department's formation on September 1, 2004.

¹ See Appendices A and B for definitions of intellectual disability and related conditions and the statutory requirements related to this plan.

² No new capacity was authorized for the ICF/IID Program for the 2016-17 biennium.

INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IIDs)

This is a Medicaid-funded program that provides services and 24-hour supervision to individuals with an intellectual disability (ID) or related condition in residential settings with a capacity of four or more individuals. There are two residential settings: state supported living centers (SSLCs) and community-based facilities.

State Supported Living Centers

There are 12 SSLCs and the ID component of Rio Grande State Center, which are state-operated, campus-based ICF/IIDs located in Texas. The number of individuals varies, with the smallest center serving 65 individuals and the largest serving an average of 467 individuals during 2015. SSLCs serve individuals with a diagnosis of severe or profound ID, and individuals who have a diagnosis of ID and significant medical or behavioral health needs.

The 13 centers are located in Abilene, Austin, Brenham, Corpus Christi, Denton, El Paso, Harlingen, Lubbock, Lufkin, Mexia, Richmond, San Angelo, and San Antonio. Table 1 reflects the average number of individuals who can be served per month in SSLCs with appropriations.

Table 1. Average Number of Individuals Who Can be Served per Month in State Supported Living Centers with Appropriations

FY 2016	FY 2017
3,013	2,795

Community-based ICF/IIDs

Community-based ICF/IIDs are residential facilities in community settings serving four or more individuals with ID or a related condition. Both public and private entities, known as providers, contract with DADS to operate these ICF/IIDs. The public providers are local intellectual and developmental disability authorities. There are more than 800 ICF/IIDs, and all but 4 of them serve 12 or fewer individuals. The largest ICF/IID serves up to 160 individuals. Table 2 reflects the average number of individuals who can be served per month in community-based ICF/IIDs with appropriations.

Table 2. Average Number of Individuals Who Can be Served per Month in Community-based ICF/IIDs with Appropriations

FY 2016	FY 2017
5,247	5,247

WAIVER PROGRAMS

Section 1915(c) of the Social Security Act (42 U.S.C. §1396n(c)) allows states, with a waiver of certain requirements from the federal government, to provide support services in the community as a cost-effective alternative to institutional care. Medicaid expenses for individuals in waiver programs may not exceed, in the aggregate, Medicaid expenses for institutional services for individuals with similar needs. Texas provides four waiver programs as alternatives to ICF/IID services: HCS, TxHmL, CLASS, and DBMD.

The 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of Aging and Disability Services, Rider 31) provides detailed guidance on the use of new slots for the waiver programs (see Appendix C).

Home and Community-based Services (HCS) Program

The HCS program provides community-based services for individuals with an intellectual disability who qualify for a level of care I. Individuals who qualify for level of care VIII who are leaving a nursing facility or at imminent risk of entering a nursing facility may also qualify for HCS. These levels of care are defined in 40 Texas Administrative Code (TAC), Chapter 9, Subchapter E, §9.238 and §9.239 (see Appendix D).

The HCS program provides individualized services and supports for individuals living in their family home, their own home, in a host home, or in a residence with no more than four individuals who receive similar services. Table 3 reflects the number of individuals served in the HCS program and includes slots designated in appropriations.

Table 3. Number of Individuals Who Can be Served in HCS with Appropriations

Measure	FY 2016	FY 2017
Average per Month	24,472	26,850
End of the Fiscal Year	25,387	28,091

Consistent with the 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015 (Article II, Department of Aging and Disability Services, Rider 31), Table 4 specifies the HCS slots for the targeted groups and reflects the cumulative target for the biennium.

Table 4. HCS Slots for Target Groups

Target Group	FY 2016	FY 2017
Community Expansion (Interest List reduction)	711	2,134
Promoting Independence		
Persons moving out of ICF/IIDs	250	500
Children Aging out of Foster Care	108	216
Prevent institutionalization in crisis	200	400
Persons moving out of State Hospitals	60	120
Children moving out of DFPS residential operations	12	25

Table 4. HCS Slots for Target Groups--continued

Complying with Preadmission Screening and Resident Review requirements		
Persons moving from nursing facilities	350	700
Persons diverted from nursing facility admission	300	600

Texas Home Living (TxHmL) Program

The TxHmL program provides community-based services for individuals with an intellectual disability or related conditions who qualify for level of care I. Individuals who qualify for level of care I or VIII who are leaving a nursing facility or are at imminent risk of entering a nursing facility may also qualify for TxHmL. Selected essential services and supports are provided to individuals so they can continue living with their families or in their own homes. Table 5 specifies the number of individuals who can be served in the TxHmL Program with appropriations. There were no targeted slots identified for the TxHmL program in appropriations.

Table 5. Number of Individuals Who Can be Served in TxHmL with Appropriations

Measure	FY 2016	FY 2017
Average per Month	6,059	6,467
End of the Fiscal Year	6,246	6,654

Community Living Assistance and Support Services (CLASS) Program

The CLASS program provides community-based services for adults and children with a diagnosis of a condition related to an intellectual disability (see Appendix E). Eligible individuals must qualify for a Level of Care VIII. Services are provided in the individual’s own home or family home. Table 6 specifies the number of individuals who can be served in the CLASS program.

Table 6. Number of Individuals Who Can be Served in CLASS with Appropriations

Measure	FY 2016	FY 2017
Average per Month	5,522	5,946
End of the Fiscal Year	5,743	6,119
Targeted Slots for CLASS		
Community Expansion (Interest List reduction)	376	752

Deaf Blind with Multiple Disabilities (DBMD) Program

The DBMD program provides community-based services for individuals who are deaf and blind and have a third disability that impairs independent functioning. Individuals live with their families, in their own homes, or in residences with no more than six individuals who receive similar services. The program

focuses on increasing opportunities for individuals to communicate and interact with their environment. Table 7 specifies the number of individuals who can be served in the DBMD program with appropriations.

Table 7. Appropriated Number of Individuals Who Can be Served in DBMD with Appropriations

Measure	FY 2016	FY 2017
Average per Month	268	293
End of the Fiscal Year	280	305
Targeted Slots for DBMD		
Community Expansion (Interest List reduction)	25	50

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APPENDIX A: DEFINITIONS

NOTE: Some of the legislation referenced in this plan uses the term “mental retardation,” which has acquired negative connotations. This plan follows the current DADS practice of substituting the term “intellectual disability” when possible.

Intellectual Disability is defined in 40 Texas Administrative Code (TAC) §5.153 as:

“Consistent with Texas Health Safety Code, §591.033, significantly sub-average general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period.”

Related Condition is defined in 40 TAC §5.153 as:

“As defined in the Code of Federal Regulations (CFR), Title 42, 435.1009, a severe and chronic disability that:

- (1) is attributable to:
 - (i) cerebral palsy or epilepsy; or
 - (ii) any other conditions, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;
- (2) is manifested before the person reaches the age of 22;
- (3) is likely to continue indefinitely; and
- (4) results in substantial functional limitation in three or more of the following areas of major life activity:
 - (iii) self-care;
 - (iv) understanding and use of language;
 - (v) learning;
 - (vi) mobility;
 - (vii) self-direction; and
 - (viii) capacity for independent living.”

APPENDIX B: HEALTH AND SAFETY CODE, SECTION 533A.062

Plan on Long-Term Care for Persons with an Intellectual Disability

(a) The department shall biennially develop a proposed plan on long-term care for persons with an intellectual disability.

(b) The proposed plan must specify the capacity of the HCS waiver program for persons with an intellectual disability and the number and levels of new ICF-IID beds to be authorized in each region.³ In developing the proposed plan, the department shall consider:

- (1) the needs of the population to be served;
- (2) projected appropriation amounts for the biennium; and
- (3) the requirements of applicable federal law.

(c) Each proposed plan shall cover the subsequent fiscal biennium. The department shall conduct a public hearing on the proposed plan. Not later than July 1 of each even-numbered year, the department shall submit the plan to the commission for approval.

(d) The commission may modify the proposed plan as necessary before its final approval.

(e) The commission shall submit the proposed plan as part of the consolidated health and human services budget recommendation required under Section 531.026, Government Code.

(f) After legislative action on the appropriation for long-term care services for persons with an intellectual disability, the commission shall adjust the plan to ensure that the number of ICF-IID beds licensed or approved as meeting license requirements and the capacity of the HCS waiver program are within appropriated funding amounts.

(g) After any necessary adjustments, the commission shall approve the final biennial plan and publish the plan in the Texas Register.

(h) The department may submit proposed amendments to the plan to the commission.

(i) In this section, "HCS waiver program" means services under the state Medicaid home and community-based services waiver program for persons with an intellectual disability adopted in accordance with 42 U.S.C. Section 1396n(c).

³ No new capacity was authorized for the ICF/IID Program for the 2016-17 biennium.

APPENDIX C: DADS RIDER 31

From 2016-17 General Appropriations Act House Bill 1, 84th Legislative, Regular Session, 2015 (Article II, Department of Aging and Disability Services, Rider 31)

Informational Listing: Expansion of Community-based Services. Appropriations made in this Act related to expansion of community-based services include:

- a. Appropriations for the Promoting Independence Initiative include \$29,736,677 in General Revenue Funds (\$81,820,439 in All Funds) for the following additional waiver slots:
 - (1) 500 Home and Community-based Services (HCS) slots for persons moving out of large and medium Intermediate Care Facilities for Individuals with Intellectual Disabilities;
 - (2) 216 HCS slots for children aging out of foster care;
 - (3) 400 HCS slots to prevent institutionalization/crisis;
 - (4) 120 HCS slots for persons moving out of State Hospitals; and
 - (5) 25 HCS slots for children moving out of Department of Family and Protective Services general residential operations.
- b. Appropriations for the purpose of reducing interest lists include \$51,134,419 in General Revenue Funds (\$122,192,763 in All Funds) for the following additional waiver slots:
 - (1) 104 Medically Dependent Children Program slots;
 - (2) 752 Community Living Assistance and Support Services slots;
 - (3) 2,134 HCS slots; and
 - (4) 50 Deaf Blind with Multiple Disabilities slots.
- c. Appropriations for the purpose of complying with federal Preadmission Screening and Resident Review requirements include \$29,140,339 in General Revenue Funds (\$84,541,298 in All Funds) for the following additional waiver slots:
 - (1) 700 HCS slots for persons with an intellectual or developmental disability (IDD) moving from nursing facilities; and
 - (2) 600 HCS slots for persons with IDD diverted from nursing facility admission.
- d. All waiver slots identified in subsections (a), (b), and (c) are end-of-year targets for fiscal year 2017. Appropriations assume equal rollout throughout the 2016-17 biennium except for subsection (b)(3) where appropriations assume enrollment of 711 persons by the end of fiscal year 2016 with the remainder enrolled in fiscal year 2017. The Department of Aging and Disability Services (DADS) shall take any action necessary to ensure that persons are enrolled in waiver services as intended by appropriations and shall provide a plan for achieving this goal. The plan shall be submitted by September 1, 2015 and progress reports related to achieving enrollment goals shall be submitted on

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March 1, 2016; September 1, 2016; and March 1, 2017. Each progress report shall identify the number of persons enrolled in each type of slot and for each purpose identified in subsections (a), (b), and (c); planned enrollment for the remainder of the 2016-17 biennium; any issues with enrollment identified by the agency; and how the agency plans to address those issues to achieve the targets by the end of fiscal year 2017. The plan and subsequent progress reports shall be submitted to the Legislative Budget Board, the Governor, the Senate Finance Committee, and the House Appropriations Committee.

APPENDIX D: 40 TEXAS ADMINISTRATIVE CODE, CHAPTER 9, SUBCHAPTER E, DIVISION 5

Section 9.238 (concerning ICF/MR Level of Care I Criteria)

To meet the level of care (LOC) I criteria, a person must:

- (1) meet the following criteria:
 - (A) have a full scale intelligence quotient (IQ) score of 69 or below, obtained by administering a standardized individual intelligence test; or
 - (B) have a full scale IQ score of 75 or below, obtained by administering a standardized individual intelligence test, and have a primary diagnosis by a licensed physician of a related condition that is included on the list of diagnostic codes for persons with related conditions that are approved by DADS and posted on its website at www.dads.state.tx.us; and
- (2) have an adaptive behavior level of I, II, III, or IV (i.e., mild to extreme deficits in adaptive behavior) obtained by administering a standardized assessment of adaptive behavior.
 - (A) If a person has a sensory or motor deficit for which a specially standardized intelligence test or a certain portion of a standardized intelligence test is appropriate, the appropriate test or portion thereof and the resultant score should be used.
 - (B) If a full scale IQ score cannot be obtained from a standardized intelligence test due to age, functioning level, or other severe limitations, an estimate of a person's intellectual functioning should be documented with clinical justification.

Section 9.239 (concerning ICF/MR Level of Care VIII Criteria)

To meet the LOC VIII criteria, a person must:

- (1) have a primary diagnosis by a licensed physician of a related condition that is included on the list of diagnostic codes for persons with related conditions that are approved by DADS and posted on its website at www.dads.state.tx.us; and
- (2) have an adaptive behavior level of II, III, or IV (i.e., moderate to extreme deficits in adaptive behavior) obtained by administering a standardized assessment of adaptive behavior.

APPENDIX E: RELATED CONDITION, DEFINITION AND DADS APPROVED DIAGNOSTIC CODES

Federal Definition

In accordance with the Code of Federal Regulations, Title 42, Part 4, Section 435.1010 (concerning Definitions relating to institutional status), a related condition is a severe and chronic disability that:

A. is attributed to:

i. cerebral palsy or epilepsy; or

ii. any other condition, other than mental illness, found to be closely related to mental retardation because the condition results in impairment of general intellectual functioning or adaptive behavior similar to that of individuals with mental retardation, and requires treatment or services similar to those required for individuals with mental retardation;

B. is manifested before the individual reaches age 22;

C. is likely to continue indefinitely; and

D. results in substantial functional limitation in at least three of the following areas of major life activity:

i. self-care;

ii. understanding and use of language;

iii. learning;

iv. mobility;

v. self-direction; and

vi. capacity for independent living.

A primary diagnosis by a licensed physician (or designee as defined in program rules) of a related condition may be required to meet eligibility for the following Medicaid programs:

- Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID);
- Community Living Assistance and Support Services (CLASS);
- Home and Community-based Services (HCS);
- Texas Home Living (TxHmL); and
- Deaf Blind with Multiple Disabilities (DBMD).

Please refer to the applicable rules governing those programs for complete information regarding eligibility.

Approved Diagnostic Codes

The DADS approved diagnostic codes are found in the *International Classification of Diseases, Tenth Revision, Clinical Modification (ICD-10-CM), 2015*, and are recognized by the Department of Aging and Disability Services (DADS) as conditions which may qualify an individual as having a related condition as described in federal and state law, and are available on line at:
<https://www.dads.state.tx.us/providers/guidelines/icd10-codes.pdf>