

Promoting Independence

Advisory Committee Stakeholder Report 2014

Submitted to
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Texas Health and Human Services Commission

by the
Promoting Independence Advisory Committee

September 2014

DISCLAIMER

This *2014 Promoting Independence Advisory Committee (Committee) Stakeholder Report* reflects the views and opinions of a majority of the Committee's membership.¹ The Committee for purposes of this report refers only to those members named to the Committee by the Health and Human Services Commission's (HHSC) Executive Commissioner and does not include agency representatives. Unless otherwise noted, the views and opinions expressed in these recommendations do not necessarily reflect the policy of HHSC, the Department of Aging and Disability Services (DADS), or any state agency represented on the Committee.

This report and the Committee's recommendations for the *2014 Promoting Independence Plan* and agency legislative appropriations request (LAR) exceptional items, reflect the positions of a majority of Committee members. Committee membership represents a number of different perspectives and policy interests and not all statements in this report reflect each member's official position. The Committee discussed the contents of this report and all members voted on each recommendation independently.

Recommendations were passed by a simple majority and each vote is illustrated in the report in order of members who voted yay, members who voted nay and members who abstained.

¹ See Appendix A for a detailed listing of the Committee membership.

INTRODUCTION

The non-agency stakeholders of the Promoting Independence Advisory Committee (Committee) respectfully submit the following recommendations to HHSC Executive Commissioner, as required by Section 531.02441, Subchapter B, Chapter 531, Government Code, to be considered for inclusion in the 2014 Promoting Independence Plan.

Texas has made significant strides and investments to ensure that individuals have the ability and right to live in the most integrated setting as required by the Americans with Disabilities Act and upheld by the U.S. Supreme Court's Olmstead decision in June 1999. Through Executive Orders GWB 99-2 and RP-13, Texas made a strong commitment to provide community-based services to individuals and ordered the development of a Texas Olmstead plan. Since the development of the Texas Promoting Independence Plan in 2001, over 41,000 Texans with disabilities, both old and young, have moved from institutions to the community, where services on average cost significantly less than in institutions.

While Texas has achieved remarkable progress implementing the Texas Promoting Independence Plan and rebalancing the long-term service and supports (LTSS) system, significant challenges persist for those remaining in facilities and those at risk of institutionalization who wish to remain in the community. Legislative appropriations have consistently provided resources for expansion of home and community-based services; however, extensive interest lists remain for these programs.

The Committee understands that significant promising opportunities exist for Texas to continue to rebalance the LTSS system and assist people to move into the community. Texas was awarded a Balancing Incentive Program grant from the Centers for Medicare and Medicaid Services that is assisting the state in developing the structural changes necessary to support people to live in the community. The grant allows the state to receive a two percent increase in the Federal Medical Assistance Percentage (FMAP) on community services through 2015. Texas also continues to participate in the Money Follows the Person Demonstration awarded in 2008 that provides enhanced match for eligible populations transitioned from nursing facilities (NF) and large and medium sized intermediate care facilities for individuals with an intellectual disability or related conditions (ICFs/IID). In addition, Texas is developing the Community First Choice option in the Medicaid State Plan and will receive a six percent increase in FMAP for services that support people in their homes once the option is implemented.

This report includes 27 recommendations organized into 9 categories with no specific order of priority. The categories include:

- Section I Community-Based Services
- Section II Children's Initiatives
- Section III Managed Care Initiatives
- Section IV Mental and Behavioral Health
- Section V Relocation Services
- Section VI Housing
- Section VII Employment
- Section VIII Workforce and Provider Stabilization
- Section IX Miscellaneous

RECOMMENDATIONS

SECTION I: COMMUNITY-BASED SERVICES

Recommendation 1: Increase funding to reduce waiver interest lists by ten percent annually.

Waiver interest lists mean that individuals who need community services are not receiving them. Waiting for services can result in ongoing deterioration of medical and functional well-being and being institutionalized. Community services, on average, are significantly less expensive than institutional services. While there is progress in reducing interest lists for individuals who would otherwise enter nursing facilities any wait time is not acceptable. Individuals with intellectual and developmental disabilities (IDD) continue to wait as long as 12 years for services.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 2: Texas should amend the Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), and Medically Dependent Children Program (MDCP) waivers to include diversion slots for individuals who are at imminent risk for institutionalization due to a crisis.

Texas currently has diversion slots for individuals at imminent risk of institutionalization in the Community Based Alternatives/ STAR+PLUS, and Home and Community-based Services waivers. There is no equivalent diversion protocol for individuals at imminent risk of institutionalization in CLASS, DBMD, and MDCP waivers.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 3: Texas needs to eliminate Special Provision 43 subsection (b)(1)(iii)(b) of the 2014-15 General Appropriations Act (Article II, Special Provision, Section 43, Senate Bill 1, 83rd Legislature, Regular Session, 2013).

Section 43 states that general revenue can be used to support an individual to exceed a waiver cost cap if the person's health and safety cannot be met under the individual cost limit. Section 43(b)(1)(iii)(b) however, denies the ability of the individual to use the general revenue if the state determines that there is another living arrangement, like a nursing facility, that can meet the individual's needs.

Vote 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 4: Implement Community First Choice (CFC) and officially name the Promoting Independence Advisory Committee as the CFC Development and Implementation Council. HHSC must implement CFC as soon as possible.

CFC is a necessary program for helping all individuals with disabilities, regardless of age, to remain in the community. While CFC will help all individuals, regardless of disability, it is significantly important to individuals with IDD who have no state plan program currently available to them. One of the federal requirements for CFC is the establishment of an advisory group (the Development and Implementation Council), consisting primarily of consumer, family and advocate members. The purpose of the CFC Council is to provide important input and guidance to the State regarding analysis and feasibility of the Community First Choice option.

Vote 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

SECTION II: CHILDREN'S INITIATIVES

Recommendation 5: Allow all Social Security Income (SSI) children and young adults under the age of 21 who meet the medically necessary level of care for nursing facility and are at the SSI level of income to automatically receive the MDCP waiver level of services in StarKids without being on an interest list.

This recommendation mirrors the current STAR+PLUS policy. Individuals who meet the medically necessary criteria for nursing facility placement and are at the SSI level of income automatically receive STAR+PLUS waiver services without being on an interest list. This precedent should be equivalent for children served through StarKids.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

SECTION III: MANAGED CARE INITIATIVES

Recommendation 6: Invest in community care ombudsman.

This proposal creates an independent Medicaid community care ombudsman, who will be charged with the following responsibilities:

- Assist consumers who have lost Medicaid benefits in getting them reinstated, as indicated.
- Assist consumers who have complaints or concerns in resolving such issues through in-plan grievance procedures, as needed.
- Educate consumers about their rights and explain process of appealing care decision at the state level, as needed.
- Assist consumers in requesting hearings, as needed.
- Assist consumers in preparing for hearings, as needed.
- Provide disenrollment counseling, as needed.

To ensure effective advocacy and coordination of services, the Medicaid community care ombudsman must have access to the HHSC Contract Management, Managed Care Organization (MCO) leadership, and the Centers for Medicare and Medicaid Services (CMS). CMS is providing states the opportunity to apply for federal funding to support the creation of a managed care ombudsman. HHSC has indicated that it has no plans to apply for the funds. It is recommended that HHSC take advantage of all reasonably available resources to create an independent ombudsman.

Vote: 9-0-4 (Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., Carole Smith, Private Providers Association of Texas, and Danette Castle, Texas Council of Community Centers, abstaining)

Recommendation 7: HHSC needs to establish more accountability and measurable objectives as it expands its managed care delivery system for long-term services and supports (LTSS).

Given the increase in the number of individuals with cognitive disabilities entering the managed care delivery system, HHSC needs to increase accountability for LTSS services in STAR+PLUS, specifically for service coordinators. This accountability covers: readiness review; ongoing reporting of performance measures and benchmarks; and adequacy of its provider network.

Vote: 10-0-3 (Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., and Cindy Adams, Superior HealthPlan, abstaining)

SECTION IV: MENTAL AND BEHAVIORAL HEALTH

Recommendation 8: HHSC and DADS will develop and implement strategies to improve the mental health and wellness of people with IDD receiving publicly funded physical health, mental health and/or long-term services and supports.

Under this proposal, it is recommended that the strategies must include, but not be limited to:

- Expanding awareness and use of trauma-informed care and positive behavior support.
- Development of crisis behavior intervention for both children and adults with IDD.
- Addressing the workforce shortage of professionals with expertise and experience serving the mental health needs of this population.
- Identifying and promoting the use of state of the art mental health treatment for individuals with IDD including in-home modeling and mentoring.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 9: HHSC and the Department of State Health Services (DSHS) will identify and implement changes needed to expand the use of certified peer specialists in the provision of mental health services in Texas.

Under this proposal, it is recommended that the development of peer specialists as part of mental health services should include, but not be limited to:

- Expanding Medicaid reimbursement opportunities for peer support services
- Expanding opportunities for consumer operated service programs.
- Revising supervision requirements in order to expand the types of service settings able to provide peer support services.

Rules will be developed relating to peer certification and supervision requirements and other issues identified by the executive commissioner as necessary to promote health and safety in peer specialist services. Development of the rules will include input from certified peer specialists and other stakeholders.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 10: Develop relocation services for individuals with serious and persistent mental illness.

In order to increase opportunities for recovery, DSHS must develop and implement a program to provide relocation and transition for individuals leaving state psychiatric facilities and those with frequent hospital readmissions services (similar to those available to individuals leaving other institutions including nursing facilities and state supported living centers). DSHS needs to look at the lessons learned from other relocation/transition services programs as well as the unique needs of individuals experiencing serious mental illness when developing the design of the program.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

SECTION V: RELOCATION SERVICES

Recommendation 11: Increase the number of relocation/diversion specialists and establish a dashboard with specific metrics indicating the status of relocation/diversion specialist activities.

In order to increase the number of relocations back into the community and decrease admissions to institutional settings, the state of Texas should increase the number of relocation specialists. Additionally, relocation specialists should focus on diverting individuals from institutional settings.

Vote: 7-1-5 (Danette Castle opposing. Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., Carole Smith, Private Providers Association of Texas, and Doni Green, Texas Association of Area Agencies on Aging, abstaining)

Recommendation 12: Establish metrics to determine the degree of success that relocation/diversion specialists are having with relocation/diversion activities. The state needs to establish a public dashboard in order to be transparent and share this data.

Vote: 10-0-3 (Susan Payne, PART, Inc., Carole Smith, Private Providers Association of Texas, and Danette Castle, Texas Council of Community Centers, abstaining)

Recommendation 13: DADS needs to develop benchmarks/metrics for its state supported living center (SSLC) relocation specialists.

DADS currently does not have specific goals/benchmarks/performance measures for the number of individuals to relocate out of SSLCs into the community. DADS should increase the accountability of current relocation specialists in SSLCs and implement goals addressing the number of people to be relocated from SSLCs.

Vote: 12-0-1 (Susan Payne, PART, Inc., abstaining)

SECTION VI: HOUSING

Recommendation 14: Increase targeting in all housing programs for individuals with disabilities at the SSI level of income administered/funded through the Texas Department of Housing and Community Affairs (TDHCA).

A number of TDHCA programs could focus more on the SSI level of income. TDHCA's Low Income Housing Tax Credit is the largest production program at TDHCA but is one of the hardest to design to reach the lowest income without utilizing the other gap financing. With the demand for housing assistance for individuals with disabilities, it is critical that the maximum amount of resources be allocated for this assistance.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 15: Establish a set-aside for Tenant Based Rental Assistance (TBRA) to serve those households with an individual with a disability on the Project Access waitlist.

The state of Texas is committed to moving individuals from institutional settings. Affordable housing has been identified as the primary barrier to living in the community. Currently, there is a significant wait list for Project Access voucher due to a reduction in funding. Waiting for housing vouchers prevents individuals from relocating to a community setting although they could be assisted through the HOME TBRA Program. The funds for the HOME program set-aside for people with disabilities were exhausted in December 2013, so a set-aside to move individuals out of institutions is needed.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 16: Increase funding for DSHS housing voucher program to serve more individuals in the community to provide stable housing options for individuals experiencing mental illness. The current funding allocated by the 83rd legislative session will not address the number of individuals with mental illness who require housing assistance.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 17: Use a portion of the Texas Department of Agriculture (TDA) Community Development Block Grant (CDBG) funding allocation to address the housing needs of low-income people with disabilities in rural communities.

TDA's CDBG program's primary objective is to develop viable communities by providing decent housing and suitable living environments, and expanding economic opportunities principally for persons of low- to moderate-income. The state has traditionally used CDBG funding for infrastructure improvements; currently the state does not use a portion of its annual federal allocation (CDBG funding) for affordable housing development or to remove architectural barriers to people with disabilities even though this is an acceptable and desired way of allocating CDBG funds.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 18: Reclassify TDHCA's Amy Young Barrier Removal Program as a separate category of 'home modification' program that would be exempt from the Single Family Umbrella Rules rather than its current status as a 'rehabilitation' activity.

The current classification results in a refocus of the program away from barrier removal and has eliminated manufactured housing as a type of housing that can have barriers removed. Affordable and accessible housing has been identified as an obstacle to living in the community and individuals with disabilities need home modifications to allow them to remain in their homes instead of institutions. The state of Texas has indicated a commitment to providing services to individuals with disabilities to remain in the community. The Amy Young Barrier Removal Program has been modified to require non-barrier removal items to be addressed focusing more of the funds away from the critical modifications needed and raising the funds available for each home. These changes have resulted in less households being assisted so many more individuals with disabilities are waiting for much needed assistance to live more independently. In addition, many low income individuals with disabilities reside in one of the approximately 750,000 manufactured homes in Texas that are now excluded from assistance leaving more facing barriers to living independently.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

SECTION VII: EMPLOYMENT

Recommendation 19: HHSC should develop specific guidance for service coordinators / case managers as to how to provide information on employment that includes information about how Employment First information is provided, when the information is provided and the frequency with which it is repeated.

In order to fully inform and support individuals with disabilities about their employment options and maintain consistency in services delivery, it is important that specific guidance be developed for service coordinators / case managers as to how to provide information on employment. The goal of the guidance should be to provide reliable and accurate information on employment and work supports to encourage waiver recipients who want to work to pursue their goal. Additionally, the guidance should provide that prevocational and supported employment service options, including career planning, be reviewed and considered as a component of an individual's person-centered services and supports plan no less than annually, more frequently as necessary or as requested by the individual. These services and supports should be designed to support successful employment outcomes consistent with the individual's goals.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 20: Texas should provide payments for customized or supported employment services on an individualized budget that reflects the needs of the person and where they are in the process of employment. The current rate setting codes and methodology do not provide the flexibility that is needed to implement sound employment services with sustainability. Incentives for obtaining quality outcomes in employment should be built into contracts for both MCOs and the direct support providers.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

SECTION VIII: WORKFORCE AND PROVIDER STABILIZATION

Recommendation 21: HHSC, DADS and DSHS should seek an increase in legislative appropriations in an amount necessary to raise the base wage for entry-level direct-support workers (DSWs) in home and community-based services (HCBS) programs.

Initial efforts should focus on programs with the lowest paid DSWs. Additional requests should fund increased wages to DSWs on a graduated scale based on scope of work. The PIAC subcommittee on DSWs continues to find that the state faces serious challenges meeting current and future needs for a stable and adequate direct-support workforce. The demand for DSWs in Texas is expected to increase substantially over the next decade due to numerous factors, including the aging baby boom generation, aging family caregivers, and the increasing prevalence of disabilities. Meanwhile, retaining DSWs has long been a challenge and job turnover rates are high statewide. Low pay is a significant factor in recruitment and retention. Evidence indicates that increased wages positively influence recruitment and retention. DSWs are the foundation of the community-based long-term services and supports system. Higher wages contribute to a more stable workforce and improved service quality. A significant decline in recruitment and retention will likely lead to a shortage of available community services, resulting in increased hospitalization and institutionalization. The 83rd Legislature did increase wages to establish a floor for DSWs at \$7.86/hour. This amount is barely above minimum wage and significantly below the standard for a living wage.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 22: Increase provider and managed care reimbursement in order to attract and sustain provider capacity and network readiness.

Increasingly, the state is losing providers of direct services, direct service workers, physicians, licensed nurses and other professional who provide long-terms services and supports to all individuals regardless of disability or age. Serving individuals with complex needs including co-occurring and multiple occurring needs is becoming very challenging as the state does not have sufficient contracts with specialists and providers who can serve these individuals. It is critical for the provider base and managed care systems to have an adequate direct service worker and network system in place to serve all in individuals in a community-based setting.

Vote: 10-0-3(Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., and Danette Castle, Texas Council of Community Centers, abstaining)

Recommendation 23: Require Community Living Options and Information Process (CLOIP) for all individuals residing in private ICFs/IID.

Currently, individuals residing in private ICFs/IID are not required to have a full CLOIP process. By having the Local Authority provide the CLOIP process for all individuals, the state ensures consistency and accuracy across programs and all individuals with IDD given a full measure of their possible residential options.

Vote: 9-0-4 (Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., Carole Smith, Private Providers Association of Texas, and Rachel Hammon, Texas Association for Home Care, Inc., abstaining)

Recommendation 24: Decrease the amount of time an individual in a private nine or more bed ICF/IID has to wait for an HCS slot. Currently, individuals residing in a nine or more bed private ICF/IID may have to wait up to twelve months for an HCS Promoting Independence Priority slot.

Vote: 9-0-4 (Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., Carole Smith, Private Providers Association of Texas, and Rachel Hammon, Texas Association for Home Care, Inc., abstaining)

Recommendation 25: Implement recommendations developed as a result of developing the SSLC Long-Term Plan as required by the 2014-15 General Appropriations Act (Article II, Department of Aging and Disability Services, Rider 39, Senate Bill 1, 83rd Legislature, Regular Session, 2013). Rider 39 requires a ten-year SSLC Long-Term Plan.

Vote: 9-0-4 (Kevin Warren, Texas Health Care Association, Susan Payne, PART, Inc., Danette Castle, Texas Council of Community Centers, and Rachel Hammon, Texas Association for Home Care, Inc., abstaining)

SECTION IX: MISCELLANEOUS

Recommendation 26: The State of Texas should tie employment opportunities for individuals with disabilities to its economic development programs, including businesses that receive incentives.

Any business receiving state assistance and/or incentives as part of economic development should be required to learn of and explore possibilities of hiring people with disabilities. This shall include training in the business case for employing people with disabilities and required engagement with the Texas Department of Assistive and Rehabilitative Services and other placement programs.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Recommendation 27: Create reciprocity of paratransit approvals among Texas communities. Remove the 21 day cap for use of paratransit in community visited. Make a paratransit approval valid statewide and remove limit on the use in the visited community. Encourage the use of mainline transportations systems when possible and the development of mainline systems everywhere. Individuals with disabilities require pre-approval to use paratransit in their home community.

When traveling to another community, documents establishing eligibility must be submitted. The visited community limits the number of days per year that paratransit may be used to 21. This can be inadequate for individuals conducting ongoing business, health care treatments or advocating to the Legislature. House Bill 1545 (83rd Legislature, Regular Session, 2013) authorizes a study of this issue. In addition, when possible, the state should encourage the use of mainline transportation and work to make mainline transportation accessible and available everywhere.

Vote: 11-0-2 (Kevin Warren, Texas Health Care Association, and Susan Payne, PART, Inc., abstaining)

Appendix A

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