Interim 2012 Promoting Independence Advisory Committee Stakeholder Report

Recommendations for the 2012 Promoting Independence Plan and for Agency Legislative Appropriations Request

June 2012
This Interim 2012 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. DADS only provides staff support as directed by Health and Human Services Circular-002.

This report and the Committee’s recommendations for the 2012 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 Committee makes the following recommendations to HHSC Executive Commissioner Suehs, as required by Section 531.02441, Subchapter B, Chapter 531, Government Code, to be considered for inclusion in the 2012 Promoting Independence Plan. This report includes 43 recommendations organized into seven categories with no specific order of priority. The categories include:

- Section I Workforce and Provider Network Stabilization
- Section II Community Based Services
- Section III Housing Initiatives
- Section IV Mental and Behavioral Health
- Section V Children’s Long Term Services and Supports
- Section VI Reducing Institutional Services
- Section VII Miscellaneous
SECTION I: WORKFORCE AND PROVIDER NETWORK STABILIZATION

Recommendation 1: Develop a tiered training program for professionals and unlicensed para-professionals and family members providing in home care to support individuals with challenging behaviors.

*Vote: 13-0-0*

Recommendation 2: Direct HHSC to collect data on the attendant workforce, including age, gender, race, ethnicity, full/part-time employment status, employment benefits, receipt of public benefits, and access to transportation (e.g., car, bus).

*Vote: 13-0-0*

Recommendation 3: Direct HHSC and the Board of Nursing to: (1) develop an education process for individuals and families as youth transition from children’s services in the Comprehensive Care Program to adult services and (2) educate registered nurses about nurse delegation.

*Vote 13-0-0*

Recommendation 4: HHSC, DADS and the Department of State Health Services (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.

In 2009, HHSC Executive Commissioner Suehs directed his staff and DADS staff to establish a Home and Community-based Services Workforce Advisory Council (Council) to:

- identify and study direct-support workforce issues, including wages and benefits, turnover, recruitment, training and skill development, and retention of DSWs;
- review current and anticipated need in Texas for HCBS and workforce available to meet this need; and
- complete a final report due to the HHSC Executive Commissioner by Nov. 1, 2010, to include policy and funding recommendations.

The Council found 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.

**Vote 13-0-0**

**Recommendation 5:** HHSC, DADS and DSHS should seek an increase in legislative
appropriations in an amount necessary to ensure that wages are preserved when
DSWs and provider agencies are required to purchase health insurance after
implementation of the Affordable Care Act.

**Vote 13-0-0**

**Recommendation 6:** Direct HHSC and DSHS to identify, develop and promote
ways to increase the employment of peer specialists for the provision of mental
health services in a variety of settings/programs (e.g., nursing facilities, mental
health, vocational rehabilitation, criminal justice). This should include
identification and removal of barriers to employment of peer specialists,
opportunities for reimbursement for services provided by peer specialists, and
education and outreach.

Certified peer specialists are individuals diagnosed with a mental illness who are living
recovery and who use their life experiences to assist others to pursue their own recovery.
They typically provide peer support as an employee of, or contractor to, a mental health
services provider.

The Texas Administrative Code\(^2\) provides guidelines for the certification of peer
specialists. For example, an individual must have at least one cumulative year of
receiving mental health services for a disorder and must have received specialized
training on how to work with others to further their recovery.

DSHS has provided funding for Via Hope to train and certify peer specialists in Texas. A
Via Hope Certified Peer Specialist (CPS) is an individual in recovery who has been
trained to effectively use their recovery story to help others with their recovery. The CPS
course is an intensive 40 hour training followed by a written certification exam.

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\(^2\) Texas Administrative Code Title 25, Part 1, Chapter 419, Subchapter L establishes the qualifications and
allowable activities of Peer Providers under the Texas Medicaid Program.
Participants must successfully complete both to become certified. Once certified, a peer specialist must earn at least 20 continuing education units every two years to maintain the certification. The program is administered according to policies in the Via Hope Certified Peer Specialist Policy and Procedure Manual.

*Vote: 13-0-0*

**Recommendation 7: Preserve individuals’ access to medical supplies and durable medical equipment (DME).**

The independent living of individuals with disabilities depends on available and accessible supports and services. Among these are medical supplies and DME that are often part of the daily experience of an individual with a disability. In 2010, the Comptroller’s Office proposed to competitively procure incontinence supplies in the Medicaid program to reduce costs, reduce fraud and waste, ensure product quality and maintain/expand access for consumers. The proposed procurement would have dramatically cut the number of approved suppliers. As a result of an effective stakeholder input process, the Comptroller’s Office determined its goals would be met without the competitive procurement. Stakeholders further noted that a reduction of providers of medical supplies would cause many to go out of business, severely curtailing access to DME sales and service.

*Vote: 13-0-0*

**SECTION II: COMMUNITY BASED SERVICES**

**Recommendation 8: Explore use of Community First Choice with the premise that the current institutional income eligibility level will be retained and services and supports including acquisition, maintenance and enhancement of skills necessary for individuals to accomplish activities of daily living (ADLs), instrumental ADLs, and health related tasks will be available to people who need the service as well as personal care.**

*Vote: 13-0-0*

**Recommendation 9: Make nursing facility diversion slots available to individuals on the STAR+PLUS interest list with incomes between 100-300% Supplemental Security Income (SSI).**

DADS’s nursing facility diversion program provides 100 Community Based Alternatives (CBA) waiver slots for individuals at high risk of nursing facility placement. However, this diversion program is not available to persons who live in STAR+PLUS service areas.

*Vote: 12-0-1 (Tim Graves, Texas Health Care Association, voting abstains)*
Recommendation 10: Direct HHSC to include “Community Integration Performance Indicators” in all STAR+PLUS contracts and monitor and enforce them.

Performance Indicators include:

- Number of people: entering and leaving nursing facilities and other institutions; receiving in person versus telephone based service coordination; offered and selecting consumer directed services; living in their own home, apartment, assisted living facility, adult foster care, or a group home;
- Availability/use of architectural barrier modifications;
- Length of time receiving services and keeping an attendant;
- System of back up for attendants;
- Hourly pay wages between $7.25-$8.00; $8.00-$9.00; and above $9.00;
- Access to DME and assistive technology (e.g., communication devices);
- Nurse delegation of health maintenance task to unlicensed direct care attendants;
- Advisory committee comprised of at least 50% of people using long term services and supports (LTSS); and
- Rehospitalizations.

Vote: 13-0-0

Recommendation 11: A new 1115 waiver should include: eligibility for individuals with incomes up to 300 percent of SSI; a person centered planning process; a single modular functional assessment process; a tiered menu of services and supports to meet people’s needs; a consumer directed, self-determined delivery option; uniform contracting; uniform rates for similar services; and workforce recruitment and retention.

Vote: 11-0-2 (Tim Graves, Texas Health Care Association and Susan Payne, Parents Association for the Retarded of Texas, Inc., voting abstains)

Recommendation 12: Expand the Cognitive Adaption Therapy (CAT) program to include at least three additional sites.

According to the Centers for Disease Control and Prevention, 66.7% of nursing facility residents have a mental disorder. Relocation contractors are asked to target persons needing behavioral health services but are often challenged to meet that need within or beyond the Medicaid waiver program. DADS and DSHS implemented a behavioral health pilot that makes CAT available to nursing facility residents with mental illness who are relocating to the community. Among program participants, 88% remained in the community one year post-relocation.

Vote: 13-0-0

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Recommendation 13: Direct HHSC, DADS and DSHS to ensure that individuals are aware of all available options in all HHS agency programs, including consumer directed services (CDS).

In CDS, recipients are empowered to take control of their services rather than be a passive recipient in an agency-model program. CDS can include becoming the employer of record of one’s own attendants with responsibilities of hiring, training, scheduling and terminating employees of the consumer’s choice. CDS is cost neutral with an agency-model but less reliance on a supporting agency means the attendant can be paid more. Better pay results in more reliable attendant care, better consumer health, more independence, less emergency room use and less unnecessary institutionalization.

The CDS participation rate is very low in most programs other than the Community Living Assistance and Supports Services waiver program. Individuals seeking LTSS need to be well informed about CDS in order to make an informed decision.

Vote: 13-0-0

Recommendation 14: Expand the CDS option to all services in waiver program service arrays.

Vote: 13-0-0

Recommendation 15: Direct HHSC to continue pulling individuals between 100-300 percent of SSI off the STAR+PLUS interest list at the same proportional number as HHSC has in the past.

Eligible individuals enrolled in SSI who reside in STAR+PLUS service areas automatically receive STAR+PLUS services. Those between SSI and 300 percent SSI register on the STAR+PLUS interest list. The Committee requests that HHSC continues its historic commitment of providing STAR+PLUS services to those at the Medical Assistance Only (MAO) level of income as in past biennia. Not providing individuals at the MAO level of income the same opportunities to receive STAR+PLUS would be in potential violation of the U.S. Supreme Court’s Olmstead decision.

Vote: 12-0-1 (Tim Graves, Texas Health Care Association, voting abstains)

Recommendation 16: Restore funding for Local Authority safety net services and the Family Support Program for individuals with intellectual and developmental disabilities.

Vote: 13-0-0
Recommendation 17: Increase funding to reduce waiver interest lists by 10 percent annually.

*Vote: 13-0-0*

Recommendation 18: Add adequately funded, community integrated employment assistance and supported employment to all Medicaid 1915(c) waiver programs that do not currently have these services available (e.g., CBA, Medically Dependent Children Program (MDCP), Home and Community-based Services (HCS)).

*Vote: 13-0-0*

Recommendation 19: Increase the number of individuals receiving HCS and CBA waiver services through Promoting Independence to prevent institutionalization.

*Vote: 11-2-0* (Tim Graves, Texas Health Care Association and Susan Payne, Parents Association for the Retarded of Texas, Inc., voting opposed)

Recommendation 20: Add family-based residential supports to all waivers similar in design and structure to HCS foster/companion care.

*Vote: 10-0-3* (Tim Graves, Texas Health Care Association, Susan Payne, Parents Association for the Retarded of Texas, Inc. and Bob Kafka, ADAPT, voting abstains)

Recommendation 21: Create a diversion program for MDCP and STAR+PLUS medical assistance only.

*Vote: 11-2-0* (Tim Graves, Texas Health Care Association, Susan Payne, Parents Association for the Retarded of Texas, Inc., voting opposed)

**SECTION III: HOUSING INITIATIVES**

Recommendation 22: Increase funding for Project Access vouchers and consider all eligible applicants, including individuals leaving the state hospital system, on a first-come, first-served basis.

The greatest barrier to independent living is lack of affordable, accessible housing. Although nursing facility residents can apply for subsidized housing through their local housing authorities, they often contend with programs that are frozen and/or have lengthy waiting lists of a year or longer. To provide more timely access to housing supports, the Texas Department of Housing and Community Affairs (TDHCA) administers the Project Access program, which sets aside Section 8 vouchers for individuals exiting institutions, including nursing facility residents. The Project Access program began with 35 vouchers in 2002 and has now expanded to 120 vouchers.

In 2011, the program began serving individuals age 62 and over and in 2012, the program expanded to include a pilot with DSHS for individuals leaving state hospitals. Despite
significant growth in the program, the current number of vouchers is inadequate to meet
the demand of nursing facility residents who could successfully relocate if given access
to housing. TDHCA maintains three waiting lists—one for applicants under age 62 one
for applicants age 62 and over, and one for individuals leaving state hospitals. At least 70
percent of the vouchers are designated for applicants under age 62, up to 20 percent are
designated for applicants age 62 and over, and up to 10 percent are reserved for the
DSHS pilot.

Vote: 13-0-0

Recommendation 23: Increase targeting in all TDHCA housing programs for
individuals with disabilities at the SSI level of income.
A number of TDHCA programs could focus on the SSI level of income. State law directs
that 95% of HOME Investment Partnerships Program (HOME) funds must be distributed
to communities, typically rural, that do not receive HOME funds from the U.S.
Department of Housing and Urban Development. The remaining 5% of HOME funds
must serve individuals with disabilities and is available statewide. The Housing Trust
Fund 2012-13 Plan does not provide set asides for rental housing funding for individuals
with disabilities. The 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, including the programs mentioned above.

Vote: 12-0-1 (Danette Castle, Texas Council of Community Centers, voting abstains)

Recommendation 24: Direct the Texas Department of Agriculture (TDA) to use a
portion of the Community Development Block Grant (CDBG) funding allocations to
address the housing needs of low-income people with disabilities in rural
communities.

The 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; TDA asserts this is the priority the
Council of Governments espouses (supporting local control). A portion of the annual
federal allocation can be used towards affordable housing development or to remove
architectural barriers to people with disabilities. Unfortunately, the state does not utilize
the funds in that way.

Vote: 11-0-2 (Danette Castle, Texas Council of Community Centers, Doni Green, Texas
Association of Area Agencies on Aging, voting abstains)
SECTION IV: MENTAL AND BEHAVIORAL HEALTH

Recommendation 25: Develop a 1915(i) waiver to support individuals with serious mental illness.

The 1915(i) waiver provides federal matching funds for services for individuals with serious mental illness. It could be one way to address the problem of people with mental illness being inappropriately placed in the criminal justice system and could help reduce the demand for state psychiatric hospital beds. Some states have used the 1915(i) waiver to help provide supported housing for individuals with serious mental illness.

Vote: 13-0-0

Recommendation 26: Expand Youth Empowerment Services (YES) waiver to provide needed comprehensive mental health services to children and youth under age 19.

Vote: 13-0-0

Recommendation 27: Allocate $10 million to continue existing Outpatient Competency Restoration (OCR) pilots to provide an alternative to state psychiatric hospital placement for individuals needing competency restoration for non-violent crimes.

DSHS Rider 78 (82nd Legislature, Regular Session, 2011) directs DSHS to allocate $8 million in general revenue funds over the biennium to support the four OCR pilot programs in Travis, Bexar, Tarrant and Dallas counties and develop five new pilots. The cost of development is phased in as sites ready themselves to provide the services.

This initiative will likely cost more this session because all the sites will be up and running from the beginning of the session. OCR is an effective way to reduce the length of time individuals in city and county jails wait for a psychiatric hospital bed in order to receive restoration services. It also saves the cost of placement in the psychiatric hospital. The cost comparison is about $400 per day for a hospital stay to about $140 per day for outpatient restoration.

Vote: 13-0-0

Recommendation 28: Develop and fund relocation assistance for individuals who have been in state psychiatric facilities for more than one year and for individuals who have had three or more state psychiatric facility admissions in the past year.

Relocation contractors assist individuals leaving nursing facilities and the community living options information process assists state supported living center (SSLC) residents interested in relocating to the community. In addition, DADS is hiring 24 relocation specialists to assist SSLC residents to relocate to the community using Money Follows the Person (MFP) funding. Aside from some assistance from the local mental health
authority, no specialists or entities provide similar intensive transition support for individuals leaving mental health facilities.

Vote: 13-0-0

Recommendation 29: Establish clinical teams to provide behavioral intervention, consultation and preventative cross-systems crisis planning for referred individuals in urgent need due to behavioral challenges and/or where crisis is likely, given ongoing problems.

Vote: 13-0-0

Recommendation 30: Develop and fund specialized intensive in-home training for families of individuals with challenging behaviors who are at risk of out of home placement.

Vote: 13-0-0

SECTION V: CHILDREN’S LONG-TERM SERVICES AND SUPPORTS

Recommendation 31: Require all Aging and Disability Resource Centers to have expertise in the community LTSS system for individuals of all ages.

Vote: 13-0-0

Recommendation 32: Include Family-Based Alternatives in all Medicaid 1915(c) waiver programs serving children as an alternative to institutionalization for children needing out of home residential support.

Family-based alternatives are defined as “…a family setting in which the family provider or providers are specially trained to provide support and in-home care for children with disabilities or children who are medically fragile.” This benefit would look very similar to the HCS Foster/Companion Care benefit. Currently, children in the MDCP program needing an out of home placement, for example, either must be admitted to a nursing facility or must try to access an HCS SSLC diversion waiver.

Vote: 13-0-0

Recommendation 33: Adopt a Personal Care Service (PCS) rate that supports delegation by a registered nurse.

An adequate and effectively working PCS rate will decrease the need for more costly professional services (e.g., nursing).

Vote: 13-0-0
Recommendation 34: Expand the Promoting Independence population to include children with intellectual and developmental disabilities in the Department of Family and Protective Services’s (DFPS) conservatorship residing in institutions licensed by DFPS.

DADS and DFPS are collaborating to move 10 children under age 17 from DFPS licensed residential treatment centers (RTCs) into HCS. Children in these facilities are the only institutionalized population of children with intellectual and developmental disabilities not included in the Promoting Independence plan.

*Vote: 13-0-0*

**SECTION VI: REDUCING INSTITUTIONAL CARE**

Recommendation 35: Direct HHSC to work with the Texas Hospital Association, DSHS and Texas Health Care Association to develop a process to monitor the discharge planning procedures that may result in unnecessary institutionalization.

*Vote: 13-0-0*

Recommendation 36: Contract for the provision of self-determination training for residents of public and private Intermediate Care Facilities (ICFs) to be conducted by experienced and qualified individuals, including self advocates. Target individuals in transition and those whose ICF is identified for downsizing.

*Vote: 12-1-0 (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting opposed)*

Recommendation 37: Expand the Local Authority Community Living Options Information Process activities to small, medium and large ICFs and for people with intellectual and developmental disabilities living in nursing facilities.

*Vote: 12-1-0 (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting opposed)*

Recommendation 38: Use MFP to fund SSLC, community ICF and nursing facility transitions for people with intellectual and developmental disabilities.

*Vote: 12-0-1 (Susan Payne, Parents Association for the Retarded of Texas, Inc., voting abstains)*

Recommendation 39: Include within the Promoting Independence Plan individuals with intellectual and developmental disabilities in nursing facilities.

*Vote: 13-0-0*
Recommendation 40: Close and consolidate at least two SSLCs and develop a state plan for LTSS. Allocate savings to cost effective community services.

Despite a plummeting census, there remain 13 SSLCs, the same number deemed sufficient in the mid-1990s when the census was at least 60% higher than in March 2012. Additionally, federal monitoring as part of the state’s settlement of the Department of Justice lawsuit reveals that all SSLCs remain largely out of compliance with the settlement goals. These are contributing factors resulting in annual costs over $210,000 per resident per year. Meanwhile, individuals seeking HCS placement must register on the interest list and wait on average ten years to begin receiving HCS services. The state has no plan for providing additional HCS slots or closing a SSLC.

The Legislature should direct the closure of at least two SSLCs. Individuals meeting the Olmstead criteria should be assisted in relocating to the most integrated community setting of their choice. Residents and/or families choosing to continue receiving services in a SSLC should be transferred to the most appropriate of the remaining SSLCs of their choice. Finally, the Legislature should direct that savings in current and future biennia resulting from the SSLC closures be transferred to cost-effective community services and that HHSC be directed to develop a state plan for LTSS that includes strategies for continuing right sizing of the remaining SSLC system.

Vote: 8-4-1 (Tim Graves, Texas Health Care Association, Danette Castle, Texas Council of Community Centers, Susan Payne, Parents Association for the Retarded of Texas, Inc., Carol Smith, Private Providers Association of Texas, voting opposed and Anita Bradberry, Texas Association for Home Care, Inc., voting abstains)

SECTION VII: MISCELLANEOUS

Recommendation 41: Exempt CDS from electronic visit verification (EVV).

Under legislative direction, the state is expanding EVV in DADS programs to reduce fraud and waste. At this point, it is not known if EVV will justify the extra costs. Consumers are concerned that EVV will prove impractical and detrimental to community integration. The state should not extend EVV into CDS and STAR+PLUS attendant programs. CDS currently has a two-step procedure to pay attendants that would be replaced by a five-step EVV procedure, which would be more difficult for consumers who meet attendants outside of the home and require significant training. CDS participants already have a vested interest in ensuring their employees are paid correctly. EVV would likely deter some consumers from participating in CDS, in conflict with the state’s goals. In STAR+PLUS, service coordinators monitor and manage attendant utilization. The CDS and STAR+PLUS populations could also serve as control groups for the study of EVV’s effectiveness.

EVV may result in attendants experiencing payment delays and/or losing pay for work performed. With the community direct care workforce already an identified concern,
EVV may reduce the pool of available attendants because potential attendants will not want to work within an EVV structure.

**Vote:** 7-1-5 *(Anita Bradberry, Texas Association for Home Care, Inc., voting opposed; Carole Smith, Private Providers Association of Texas, Danette Castle, Texas Council of Community Centers, Susan Payne, Parents Association for the Retarded of Texas, Inc., Doni Green, Texas Association of Area Agencies on Aging and Tim Graves, Texas Health Care Association, voting abstains)*

**Recommendation 42:** Restrict pilots and expansion of EVV to services beginning and ending in the home, allow for flexible schedules, and do not expand EVV to managed care.

**Vote:** 13-0-0

**Recommendation 43:** Provide required cost sharing for AmeriCorps*VISTA placements for individual with disabilities.

AmeriCorps*VISTA community service placements are a proven gateway to unsubsidized employment for people with disabilities. Federal funds pay for most of the modest living allowance and other supporting costs. These funds are administered by the Texas State Office of the Corporation for National and Community Service, which is working to expand these community service opportunities for individuals with disabilities. For these individuals, AmeriCorps*VISTA provides real job experiences in a workplace, a modest living allowance, training opportunities and resume-building work experience. The placements also benefit the communities and non-profit and faith-based organizations in which they serve.

**Vote:** 12-0-1 *(Anita Bradberry, Texas Association for Home Care, Inc. voting abstains)*
Appendix A

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