HOUSE COMMITTEE ON HUMAN SERVICES
TEXAS HOUSE OF REPRESENTATIVES
INTERIM REPORT 2002

A REPORT TO THE
HOUSE OF REPRESENTATIVES
78TH TEXAS LEGISLATURE

ELLIOTT NAISHTAT
CHAIRMAN

COMMITTEE CLERK
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Committee On
Human Services

November 21, 2002

Elliott Naishtat
Chairman

P.O. Box 2910
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The Honorable James E. "Pete" Laney
Speaker, Texas House of Representatives
Members of the Texas House of Representatives
Texas State Capitol, Rm. 2W.13
Austin, Texas 78701

Dear Mr. Speaker and Fellow Members:

The Committee on Human Services of the Seventy-Seventh Legislature hereby submits its interim report including recommendations for consideration by the Seventy-Eighth Legislature.

Respectfully submitted,

Elliott Naishtat, Chairman

Norma Chavez

Richard Raymond

John E. Davis

Barry Telford

Harryette Ehrhardt

Michael Villarreal

Rick Noriega

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INTRODUCTION

At the beginning of the 77th Legislature, the Honorable James E. "Pete" Laney, Speaker of the Texas House of Representatives, appointed nine members to the House Committee on Human Services. The committee membership included the following: Elliott Naishtat, Chairman; Norma Chavez, Vice-Chair; John E. Davis; Harryette Ehrhardt; Rick Noriega; Richard Raymond; Barry Telford; Michael Villarreal; and Arlene Wohlgemuth.

During the interim, the committee was assigned six charges by the Speaker: 1) Monitor congressional reauthorization of the Temporary Assistance to Needy Families Program, the Food Stamp Program, and the Child Care Development Fund Block Grant. 2) Consider ways the state and local governments can promote asset development in low-income households and facilitate increased independence from public assistance. Examine any difficulties public assistance clients may encounter because of asset test standards. 3) Review the organization and administration of the Texas Rehabilitation Commission, including but not limited to eligibility determinations for social security disability benefits. 4) Study the extent and causes of suicide and consider whether Texas should implement a suicide prevention program. 5) Evaluate the adequacy of staffing levels at the Department of Human Services. Examine staff workloads and responsibilities in light of new and altered responsibilities in the department, including implementation of CHIP, eligibility policy changes and welfare reform. Explore options that might increase efficiency of staff, including enhanced technology and public-private partnerships for application and recertification of benefits. 6) Actively monitor agencies and institutions under the committee's oversight jurisdiction, including compliance with the legislative direction on "Olmstead" issues.

The committee has completed its hearings and research and has filed its report. The committee wishes to express appreciation to all the people who contributed to the development of this report, including the following members of Chairman Naishtat's and the committee's staff: Mike Lucas, Dorothy Browne, Nancy Walker, Nichole Saunders, Judith Dale, Jean Cornelius, and Laurie Cook Heffron. Thanks to the speakers and citizens who provided testimony at hearings, to the leadership and staff of the Texas Health and Human Services Commission, Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation, Texas Rehabilitation Commission, Texas Department of Health, Texas Department on Aging, Texas Department of Protective and Regulatory Services, Texas Department of Housing and Community Affairs, Texas Workforce Commission, Office of the Attorney General, Legislative Budget Board, and to the staff of the Texas House of Representatives for their time and efforts on behalf of the committee.

HOUSE COMMITTEE ON HUMAN SERVICES

INTERIM STUDY CHARGES

CHARGE Monitor congressional reauthorization of the Temporary Assistance to Needy Families Program, the Food Stamp Program, and the Child Care Development Fund Block Grant.

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CHARGE Evaluate the adequacy of staffing levels at the Department of Human Services. Examine staff workloads and responsibilities in light of new and altered responsibilities in the department, including implementation of CHIP, eligibility policy changes and welfare reform. Explore options that might increase efficiency of staff, including enhanced technology and public-private partnerships for application and recertification of benefits.

CHARGE Actively monitor agencies and institutions under the committee's oversight jurisdiction, including compliance with the legislative direction on "Olmstead" issues.

CHARGE 1: Monitor congressional reauthorization of the Temporary Assistance to Needy Families Program, the Food Stamp Program, and the Child Care Development Fund Block Grant.

Introduction

The Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the welfare reform measure passed by Congress in August of 1996, dramatically changed one of the nation's largest safety-net programs for low-income individuals. With the passage of welfare reform, Aid to Families with Dependent Children (AFDC) became Temporary Assistance to Needy Families (TANF). No longer was cash assistance an entitlement. Instead money for assistance was given to states through block grants, work requirements were instituted, and life-time limits on assistance were established. Welfare reform in 1996 also incorporated the Child Care and Development Fund Block Grant, now the primary source of subsidized child care in Texas. Six years have passed since PRWORA went into effect and Congress must now, by law, reauthorize these programs by the end of 2002.

The Food Stamp Program, which provides over 17 million Americans with vital nutritional assistance, also faced reauthorization in 2002.[1] The Congress and President George W. Bush have already completed this important work. In May, through the Farm Security and Rural Investment Act of 2002, Congress reauthorized the Food Stamp Program. President Bush signed the bill on May 13, 2002.

> "This bill is also a compassionate bill. This law means that legal immigrants can now receive help and food stamps after being here five years. It means that you can have an elderly farm worker, somebody here legally in America who's worked hard to make a living and who falls on hard times, that person can receive help from a compassionate government."
>
> *President Bush on the signing of the Farm Bill,*

Recognizing that the Legislature must be fully apprised of the impacts of reauthorization on Texas and prepared to respond accordingly in the 78th Session, Speaker James E. "Pete" Laney charged the House Committee on Human Services to "monitor congressional reauthorization of the Temporary Assistance to Needy Families Program, the Food Stamp Program, and the Child Care Development Fund Block Grant.

Temporary Assistance for Needy Families and Child Care

Texas Background for Reauthorization

Before presenting key issues of reauthorization, it is important to review the background in this state leading to reauthorization. In 1995, the 74th Texas Legislature passed House Bill (HB) 1863, initiating welfare reform in Texas. The legislation made cash assistance a time-limited benefit, and recipients were required to work or prepare for the workplace. HB 1863, enacted prior to PRWORA, was similar, in many ways, to provisions in the federal law. Policy changes led to dramatic reductions in the welfare rolls in Texas and nationwide. The number of welfare, or TANF,

recipients declined from 746,343 (monthly average) in Fiscal Year (FY) 1995 to a low in FY 2000 of 341,396, a decline of 54 percent. However, 2001 saw a slight increase to 349,854 recipients, and a similar upward trend is appearing for 2002, where the number of recipients is increasing by about 2.5 percent, to 358,723.[2]

What caseload figures do not reveal is the status of welfare reform efforts in Texas compared to other states. Texas' welfare-to-work system performs well in getting recipients off the rolls and into the workforce. However, the state is less successful in terms of levels of earnings for those who leave TANF. High recidivism rates show the state's weakness in helping families attain the self-sufficiency necessary to remain off public assistance.

Other Findings of the TFIT Study

Thirty-seven percent of leavers returned to welfare within the year; thirty-three percent of leavers reported problems with child care; twenty-three percent reported employment-related problems caused by poor transportation; leavers reported health problems that caused loss of employment (18 percent) and a return to TANF (15 percent); thirty-eight percent reported being unable to afford housing at certain times over the preceding six months; thirty-seven percent of leavers reported at least one occasion over the preceding six months when they needed food but could not afford it.

Source: Texas Department of Human Services, Texas Families in Transition, 2002

A recent state-funded study on clients who have left welfare, the Texas Families in Transition (TFIT) study, found that while 70 percent of leavers were employed at some time in the first year after exiting TANF, only one-third of former recipients were employed during all four quarters after leaving the rolls.[3] The average leaver's earnings level over six-quarters after leaving TANF was $7.20 an hour, representing annual earnings of roughly $10,800, only 75 percent of the federal poverty level for a family of three. According to advocates, the poverty level represents only half of what it actually takes to survive.[4] Additionally, over 70 percent of those working received no employee benefits with their jobs. Perhaps related to the poor employment outcomes of Texas' leavers, welfare recidivism rates are high. Twenty-eight percent return to the rolls within six months and 41 percent return within 18 months.

It is not only the quality of life of welfare recipients and leavers that is suffering. The fiscal health of the state's welfare-to-work and child-care programs, as well as the performance of those programs, are also suffering.

Poverty in Texas

- Over 3 million Texans, or 14.9 percent of all Texans, live in poverty.
- Over 1.3 million Texas children, or 21.1 percent of all Texas children, live in poverty.

Source: Census Bureau, Current Population Survey, 2002

Without an inflationary increase to the TANF block grant or a reduction in TANF spending, Texas will face a $78.3 million TANF deficit by 2007.[5] This is due, in part, to the extent that TANF funding is spread across multiple programs in Texas. In FY 2002 and FY 2003, federal TANF funds are paying for cash assistance, the Choices (employment services) Program for adult public assistance recipients, foster care/adoption programs, Child Protective Services (CPS) investigations and related services, eligibility determination for cash assistance, at-risk prevention programs, and other programs at eight different state agencies. Additionally, at

current funding levels, Texas has approximately 40,000 children on waiting lists for child care and is only serving 107,000 of the 1,236,800 low-income children potentially eligible for child care.[6]

Texas is required by the federal government and the Legislative Budget Board to meet certain work participation rates. Under current definitions of work, the actual work participation rate for Texas in 2003 is projected to be only 26 percent. Other federal provisions that give states credit toward work participation rates allow Texas to remain in compliance, despite its low achieved rate; however, reauthorization may complicate this situation and make the projected low performance a liability. This will be discussed in greater detail later in this report.

Another important factor to keep in mind is that much of the progress Texas has made over the years in placing recipients into jobs can be attributed to the strong economy during that time period. Unfortunately, the economic climate has been changing for the worse. Coupled with the fact that many of those who remain on welfare have multiple complex barriers to employment, the economic shift may make Texas' task of moving individuals into the workforce more difficult.

Finally, Texas has an ever-growing immigrant population. Texas is now home to more than two million residents who are not U.S. citizens, but make up about ten percent of the state's total population.[7] Twenty-two percent of these non-citizen residents live in poverty.[8] Despite high levels of need, only 6,468 legal immigrants receive TANF assistance.[9] Federal restrictions on immigrants' access to public benefits have resulted in increasing hardships among immigrant families. The costs of serving these families have shifted to local service providers, who are already overwhelmed.

Legal Immigrants in Texas

- Two million legal and undocumented immigrants live in Texas.
- The Immigration and Naturalization Services suggests that about half of these residents have legal residency status.
- Non-citizens make up ten percent of the Texas population, and 11 percent of all non-citizens in the U.S.
- In Texas, non-citizens had a poverty rate of 22 percent in 2000, compared to the state's overall poverty rate of 15 percent. This compares to a national non-citizen poverty rate of 20 percent and an overall U.S. poverty rate of 11 percent.

Source: Center for Public Policy Priorities, 2002

Keys Issues for Reauthorization

Reauthorization of these programs offers an opportunity for Congress and interest groups to address issues related to the administration of the programs. From the beginning of congressional debate, several key issues emerged and were identified as areas around which congressional activity would be focused. These include funding levels for both TANF and child care, official purposes of the program, work requirements, allowable work activities, marriage promotion strategies, child support, and benefits to legal immigrants.

On May16, 2002, the U.S. House of Representatives, in a 229 to 197 vote that was largely along party lines, approved House Resolution (H.R.) 4737, The Personal Responsibility, Work and Family Promotion Act of 2002, sponsored by Representative Wally Herger (R-California). The major bill

in the Senate was approved by the Senate Finance Committee, on a 13-8 vote, on June 26, 2002. On September 30, 2002, President Bush signed P.L. 107-229, extending authorization of the TANF Program through December 31, 2002, thus delaying reauthorization for three months.

Funding

Funding was a concern for both TANF and child care. In reference to reauthorization, the funding debate focused on, but was not limited to, four major areas. First, funding levels for the TANF Block Grant was an issue. The block grant approach entitles states to fixed block grants ($16.5 billion annually for all states; $486 million for Texas) to operate programs of their own design. Most of the debate centered around whether or not reductions to the block grant were justified by caseload declines. In addition, many argued for an increase to the block grant in order to meet the challenge of those remaining on welfare, combined with more stringent proposed federal standards and inflation. Both H.R.4737 and the Senate Finance bill would freeze the TANF Block Grant at $16.5 billion through FY 2007. As mentioned above, this lack of increased funding for TANF would burden a system that is already stretched across multiple state programs. Without an inflationary increase, the buying power of the TANF Block Grant to Texas decreases steadily, with a 22 percent loss by 2007.[10]

Second, high population-growth, high-poverty states, such as Texas, received supplemental grants in addition to the fixed grant. Texas received $52.7 million in 2001 from this source.[11] Immediately before TANF reauthorization, the supplemental grants were at risk of being eliminated, but were reauthorized for 2001. During TANF reauthorization, this funding source drew less debate, but at issue was whether to continue the grants at all and, if so, whether to continue them as originally intended, which included an annual 2.5 percent increase. H.R. 4737 maintains current law regarding supplemental grants, while the Senate Finance bill increases funding and expands the number of qualifying states. For Texas, a shift away from the 2.5 percent annual increase would mean a cumulative loss of $306.9 million by 2007.[12]

The third area of funding, and the one that received the most debate, was child-care funding through the Child Care Development Block Grant, the primary source of subsidized child care in Texas. The debate centered on the severe levels of unmet need in the states and the increased demand for child care that many of the TANF reauthorization proposals would generate. H.R. 4737 provides for a $1

> In 1996, child-care subsidy spending in Texas totaled $179.9 million, with state funds accounting for $22.6 million of the total, or 12.5 percent. In 2000, total child-care spending was $398.4 million, with state funds accounting for $68.4 million of the total, or 17 percent. By 2003, total child-care spending will increase to $441.4 million, with state funds accounting for $75 million of the total, remaining at 17 percent.
>
> *Center for Public Policy Priorities, The Texas Child Care Experience Since 1996, 2002*

billion increase in child-care funds over five years. The Senate bill, on the other hand, proposes a $5.5 billion increase in child-care funds over five years. These proposed increases are not expected to fully address the child-care crisis for low-income children eligible for subsidies.[13] In order to meet child-care demands for TANF recipients, the state may have to reduce child-care assistance to the working poor, which will place low-income families in danger of turning, or returning, to the TANF rolls.[14]

Four Original Purposes of TANF

- Provide assistance to needy families so that children may be cared for in their own homes or in the homes of relatives;
- End the dependence of needy parents on government benefits by promoting job preparation, work and marriage;
- Prevent and reduce the incidence of out-of-wedlock pregnancies and establish annual numerical goals for preventing and reducing the incidence of these pregnancies; and
- Encourage the formation and maintenance of two-parent families.

Source: Personal Responsibility and Work Opportunity Reconciliation Act of 1996

Finally, all states can receive bonuses for various areas of performance, such as reducing out-of-wedlock births and achieving high levels of employment among recipients. The continuation of and funding levels for these bonuses was an area of debate, as well as the possible creation of new bonuses, e.g., for reducing child poverty and/or enhancing opportunities and services for persons with disabilities and substance abuse problems. Both H.R. 4737 and the Senate Finance bill eliminate the non-marital birth reduction bonus. While H.R. 4737 reduces the high performance bonus from $200 million annually to $100 million per year, the Senate Finance bill eliminates it altogether. Texas received $24.3 million through the high performance bonus and $19.8 million for reducing out-of-wedlock births in 2002.[15]

Purposes of the Program

Reauthorization was also an opportunity to evaluate the four original purposes of the TANF Program and to consider modifications or additions. The debate ranged from a push to add a purpose related to the reduction of child poverty, to modifying the fourth purpose to specifically reference *married* two-parent families. Whereas the Senate Finance bill maintains the current language regarding TANF purposes, H.R. 4737 adds "improving child well-being" as an overall purpose. In addition, the House bill revises the second purpose to include "reducing poverty." Finally, the fourth purpose in the House bill is changed to read "encourage the formation and maintenance of healthy, two-parent married families and encourage responsible fatherhood."

Work Requirements and Participation Rates

Work requirements, or work participation rates imposed on states, as well as hours of work required by each recipient in order for the state to get credit towards its participation rate, represented the most contentious potential change in the program. Currently, states must meet a 50 percent work participation rate for single-parent families, and a 90 percent rate for two-parent families. In other words, 50 percent of the single-parent families on TANF, with the exclusion of a few categories, must be engaged in work-related activities that the state is allowed to count towards its participation

rate. Both the House and Senate proposals require states to increase the work participation rate from the current 50 percent to 70 percent over five years. Rates would increase from the current 50 percent to 55 percent in 2004, 60 percent in 2005, 65 percent in 2006 and 70 percent in 2007. In addition, both bills eliminate the separate two-parent rate.

States are aided in achieving this standard by the caseload reduction credit, which gives states a one percentage point credit for every percent of its caseload reduction since the inception of TANF. Texas receives approximately a 50 percent credit, making the federal participation rate easy to meet. The Senate Finance bill replaces the caseload reduction credit with an employment credit, based on the number of families employed after leaving TANF. Credit would be larger for families with higher earnings. There would also be a credit for states that use TANF funds directly for child care and transportation subsidies to working families. This bill gives states the option in 2003 to choose the caseload reduction credit or employment credit.

Congress' ultimate decision on this credit has considerable impact on states' abilities to meet work participation rates. Limiting or phasing out the caseload reduction credit is troublesome, since the credit has been vital in helping Texas meet current participation rate requirements. An employment credit, on the other hand, more appropriately emphasizes work placement over simple caseload reduction. Given the Texas Families in Transition study findings on Texas welfare leavers, it is important that the state work towards meaningful, long-term outcomes for clients, namely entry-level wages, job retention and wage advancement.

The Congressional Budget Office (CBO) estimates that nationally, the work provisions of H.R. 4737 will require $11 billion in additional state spending by 2007.[16] Cost implications for Texas are also significant. The Center for Public Policy Priorities estimates that achieving a 50 percent participation rate will have a one year cost of $65.1 million over current spending, and the 70 percent participation rate will have a one year cost of $166 million over current spending.[17]

Work Hours and Allowable Work Activities

Currently, in order to be counted toward the participation rate, Texas clients must be engaged in allowable activities for at least 30 hours per week. This includes 20 hours of primary work activities and 10 hours of a more flexible set of activities. States have broad discretion in what they can count as work. Job-search (up to six weeks), vocational education (up to one year), an actual job, subsidized employment, community-service, and on-the-job training all count toward the 20 hours of primary work required of recipients. Further, states have additional flexibility to count basic education and job skills training, as well as activities that help people address substance abuse problems and other barriers to work for the remaining 10 required hours.

Work hours are revised in both of the bills currently under consideration. H.R. 4737 requires 40 total hours per week of participation. Primary activities are increased from 20 to 24 hours and limited from current law to paid or unpaid work. This includes on-the-job training, supervised work experience, and supervised community service. States may substitute other activities for no more than three months in a 24-month period. Secondary activities, which count towards the remaining 16 hours, may be determined by states.

The Senate Finance bill maintains current law for 30 hours of overall work requirements. The Senate bill also increases the hours required for primary activities to 24, but provides a broader range of allowable activities. For example, job search activities may count for eight weeks, as opposed to the current six weeks. The bill also expands allowable work activities to include rehabilitative activities, vocational education and adult basic education.

Changes in the hours of participation required of each client and the narrow definition of activities would significantly reduce the state's ability to work effectively with clients and to achieve meaningful outcomes. A "one-size-fits-all" approach is not considered effective with the diverse client population in this state. Flexibility allows clients with barriers such as domestic violence, substance abuse or limited English proficiency to fully address those barriers before taking on and maintaining full employment. It is short-sighted to assume that placing clients into work without first addressing these barriers will result in long-term employment, self-sufficiency and independence from public assistance.

Marriage Promotion

Much ideological debate occurred over marriage promotion. One of the original purposes of TANF in the 1996 welfare reform act was "to encourage the formation and maintenance of two-parent families." Some interest groups and legislators, dissatisfied with many states' lack of attention to the promotion of marriage, sought to make marriage promotion the new focus of TANF. Debate topics included whether this was an appropriate area for government involvement, allowable marriage promotion activities, how prescriptive Congress should be in this area, and the amount and source of funding for marriage promotion activities.

Both the Senate and House bills establish two funds to promote marriage and family formation. First, a $100 million competitive grant program is proposed to develop programs to encourage healthy marriages. The House bill lists specific activities which would be funded with these grants, including advertising campaigns, marital and pre-marital counseling, marriage mentoring, divorce reduction activities, and marriage skills training. Under the Senate Finance bill, grants could be used for a wider range of activities than those proposed in the House version. Secondly, both bills propose a $100 million annual fund to conduct research and demonstration projects and to provide technical assistance related to healthy marriage promotion activities. The Senate bill allows funds to be used for teen pregnancy prevention programs and requires that the needs of domestic violence victims be addressed in healthy marriage programs.

Child Support

The role of child support payments has also been a topic of discussion during reauthorization debates. Currently, states may retain or pass through child support payments to TANF families. States must also pay a share of the collections to the federal government. The amount that is passed through to the family may be counted as income or may be disregarded in determining TANF assistance. Through the Office of the Attorney General, Texas collects child support payments for families receiving TANF benefits. Custodial parents in TANF families receive up to $50 of the amount collected as a supplemental TANF payment while child support is being paid. While child support has traditionally served as a welfare cost-recovery program, the emphasis in many states has

shifted to the role of supporting family self-sufficiency. Both the House and the Senate proposals increase states' flexibility to pass through more child support to TANF families.

Legal Immigrants

Welfare reform in 1996 extended eligibility restrictions, previously only applied to illegal immigrants, to legal immigrants who work, pay taxes and generally have the same responsibilities as citizens. Under these current restrictions, states may not use TANF funds, either cash assistance or work supports and services, for legal immigrants until they have been in the U.S. for at least five years. After five years, eligibility is a state option. Both the National Conference of State Legislatures and the National Governors Association recommended that states be given the option to serve this population with federal TANF funds regardless of time spent in the U.S.[18] The elimination of current restrictions generated much debate, including the issue of whether eliminating the restriction would encourage welfare dependency among this population, even though stringent time limits are already in place to safeguard against dependency of anyone on TANF.

H.R. 4737 maintains current law, which prohibits federally-funded TANF, CHIP and Medicaid benefits for legal immigrants during their first five years in the U.S. The Senate Finance bill, however, includes a state option to provide TANF benefits to legal immigrants and Medicaid and CHIP benefits to pregnant women and children who are legal immigrants. These are critical provisions for Texas' legal immigrants and citizen children of immigrant parents who often fall through the state's safety net. Legal immigrants pay taxes that support public assistance programs, yet are denied access to such programs in times of need. Work requirements and time limits already restrict utilization of TANF by all clients. There is no compelling reason to maintain the separate and unfair restrictions imposed on the relatively few immigrants in Texas who might use these benefits.

Food Stamp Program

Texas Background for Reauthorization

It is important to review the background in Texas related to hunger and the Food Stamp Program before discussing reauthorization of the program. Similar to Texas' experience with the TANF Program, Food Stamp enrollment in Texas dropped 42 percent, from over 2.4 million recipients in 1996 to less than 1.4 million in 2001, despite little change in the number of poor in Texas.[19] "State of the States: A Profile of Food and Nutrition Programs Across the Nation," published by the Food Research and Action Center (FRAC), found that in comparison to other states, Texas' Food Stamp Program performed poorly.[20] The study found that the

Food Insecurity and Hunger in Texas

Five percent of the Texas population experiences hunger, the second highest hunger rate in the nation.
Source: USDA, Measuring Food Insecurity in the United States, 1999

Thirty-seven percent of welfare "leavers" reported at least one occasion over the preceding six months when they needed food but could not afford it.
Source: Texas Families in Transition, DHS, 2002

Food Stamp Program Overview

Food Stamp benefits are distributed monthly to eligible beneficiaries so they can buy food at grocery stores and other food retailers. The benefits in most cases are 100 percent federally funded. Administration for the program is paid for with 50 percent state and 50 percent federal funds. In 2002 and 2003, the state expects to provide Food Stamp benefits to 1.3 million individuals annually. The average monthly benefit is $73 per recipient.

Source: Center for Public Policy Priorities

Food Stamp Program is reaching over one million fewer low-income, eligible people than it did several years ago, despite little change in the number of Texans who qualify for these benefits. In this category, Texas is among the ten worst states, serving less than 54 percent of the eligible population.

The recent poor economy has resulted in some increase in caseloads, but the program remains severely underutilized. Not only are there serious negative implications for low-income Texans, but Texas communities have lost significant amounts of federal funds that could have contributed to the state and local economy. The enrollment decline from 1996 to 2001 represents a loss to the Texas economy of $3.9 billion.[21]

This caseload decline, combined with the high prevalence of hunger, has placed considerable stress on local non-profit food assistance providers and food banks. A study by America's Second Harvest, the nation's largest hunger-relief network and the umbrella organization for Texas food banks, found that approximately 23 million people utilized its network for emergency assistance in 2001, about half of them seniors and children.[22] This represents a nine percent increase in the number of people served, in comparison to 1997. Unfortunately, many of those seeking help are turned away because emergency relief agencies do not have the resources to assist everyone who needs their services. Food banks and social service agencies report that they cannot make up for declining government assistance.

How many food stamps do recipients get?

A household's Food Stamp allotment depends on the number of people in the household, the household's gross income, and deductions for expenses (such as housing costs that exceed half of the household's income) that can significantly affect a household's ability to purchase a nutritionally adequate diet. The maximum a family of four can receive is $434 per month, but the overwhelming majority of Food Stamp households receive less than the maximum and are expected to spend some of their own incomes to supplement their Food Stamp allotments. The average Food Stamp benefit during the first half of FY 2001 is less than $75 per person per month, or 81 cents per person per meal.

Source: Center on Budget and Policy Priorities

Legal immigrants' access to nutritional assistance is also a major issue for Texas. Data suggests that Texas is home to more than two million legal immigrants; the poverty rate among this population is around 22 percent.[23] Hardships among immigrant families are significant and are exacerbated by the current federal restrictions on Food Stamp Program eligibility.

In an effort to address the levels of hunger in Texas and low levels of Food Stamp utilization, the 77th Legislature took actions that should improve access to the program. Senate Bill (SB) 184, by Senator Judith Zaffirini and Representative Elliott Naishtat, as well as provisions in SB 1, the General Appropriations Act, significantly increased access to vital nutritional assistance. SB 184 directed DHS to grant exemptions to Food Stamp Program applicants and recipients who have a specific hardship so they can be interviewed by telephone instead of in person, and directed DHS to take advantage of federal flexibility to allow

non-TANF families to acquire more assets before they lose their federally funded Food Stamp benefits. Through SB 1, the vehicle limit for the entire Food Stamp Program was made more consistent with the needs of working families by excluding up to $15,000 in value of the first vehicle, as opposed to $4,650 under previous limits.

New Resource Limit

The new Food Stamp Program resource limit disregards all *non-liquid* resources, e.g., stocks, property, owned by the applicant. The only exception is excess vehicle value. Applicants will be allowed to have up to $5,000 in *liquid* resources, e.g., money in savings or checking accounts. Under the old policy, families could not have more than $2,000 in combined liquid and non-liquid resources ($3,000 if any family member is aged 60 or older).

New Vehicle Limit

Under the new rules, $15,000 of the fair market value of the applicant's first car is exempt. Any additional value will be counted toward the $5,000 resource limit. If an applicant owns more than one car, $4,650 of the fair market value of each additional vehicle is excluded, with any additional value counted toward the $5,000 limit. The old policy on cars exempted $4,650 of each car's fair market value.

Example: A family applying for food stamps owns two cars and has $1,000 in a checking account. The first car is worth $16,500, and the second car is worth $6,650. For the first car, $1,500—the excess value above the allowed $15,000—is counted. For the second car, $2,000—the excess value above $4,650—is counted. The family qualifies for food stamps with total countable resources of $4,500 ($3,500 in excess car value plus $1,000 in the bank).

Source: Texas Department of Human Services

Additionally, HB 101 by Representative Glen Maxey mitigated the negative effects of the state's finger imaging policy for Food Stamp recipients. Currently, adult applicants for food stamps are electronically finger imaged as a condition of receiving benefits. Under the new rules, seniors aged 60 or above and people with disabilities may request an exemption from this requirement if it poses an "undue burden." In addition, if an applicant requests and is granted a phone interview in place of an office interview, there is an automatic exemption from the finger imaging requirement, regardless of age or disability.

Key Provisions of the Farm Bill of 2002

Reauthorization of the Food Stamp Program was an opportunity for Congress and interest groups to address issues related to the administration of the program. In reauthorizing the Food Stamp Program, the key issues were funding, benefit improvement, simplified enrollment and eligibility procedures, quality-control reform, employment and training provisions, and immigrant benefit restorations.

In May, through the Farm Security and Rural Investment Act of 2002 (the Farm Bill), Congress reauthorized the Food Stamp Program. President Bush signed the bill on May 13, 2002. While the Farm Bill as a whole received criticism, the Food Stamp provisions were hailed by advocates as a victory. Importantly, the Farm Bill extends the authorization of the Food Stamp Program through 2007.

The Food Stamp Program is an entitlement program. There is no block grant to the states; if an individual is eligible, he or she is guaranteed the benefit. While the amount of funding did not generate as much debate as TANF reauthorization, proposals for funding increases in the Food Stamp Program ranged from $3.6 billion to $8.9 billion. The final Farm Bill authorized an increase of $6.4 billion over the next ten years.

In addition to reauthorizing and refunding the program, the Farm Bill included mandated benefit improvements, quality-control reforms and legal immigrant benefit restoration.

Benefit Improvement

In an effort to address large federal deficits, the maximum Food Stamp benefit was cut by three percent in 1996. Many of the inflation adjustments in the Food Stamp eligibility and benefit calculations were eliminated. Benefits were cut for a broad range of households, including nearly all working households, through a cut in the standard deduction, an amount of income that is excluded when determining Food Stamp benefits. Advocates have expressed concern about the inadequacy and erosion of many of the deductions in the benefit calculation, including the standard deduction. Specifically, the current standard deduction does not account for the increased costs of larger households and does not keep pace with inflation.

> The current standard deduction, which is fixed at $134 for all households, is intended to recognize that households have many expenses that must come before food, including rent.
>
> *Source: Center on Budget and Policy Priorities*

Effective October 1, 2002, the Farm Bill increases the standard deduction and recognizes that larger families have greater expenses than smaller families. Specifically, the legislation sets the standard deduction at 8.31 percent of each year's (inflation adjusted) poverty level for each household size, but not less than the current standard deduction of $134. Under these changes, households with more than six members will receive the standard deduction of $168 for a six-person household.

Quality-Control Reform

Pressure from the federal government to reduce error rates has resulted in states imposing stringent and burdensome requirements on families. Researchers and advocates point to these error-rate reduction efforts as one of the main causes of underutilization of the program and emphasize that the requirements, especially the frequent, lengthy eligibility interviews, are inconsistent with demands on working families. Many of the requirements on families to produce copious documentation of their circumstances and attend frequent appointments with caseworkers stem from problems in the Food Stamp Quality-Control (QC) System. The current QC system measures differences between the amount of benefits a household should have received and the amount actually provided, and if the allotment a state provides is off by more than $25, the state is charged with an error. If a state’s error rate is above the national average, it receives a substantial financial penalty. Conversely, if a state has exceptionally high payment accuracy rates, it can receive large, enhanced funding awards from the federal government.

Proposals in the quality-control arena allow states time to address problems before being subject to automatic fiscal sanctions, ensuring that only states with serious, persistent problems will be subject to sanctions, rather than states with error rates just slightly above the national average. Provisions

limit the imposition of penalties to states whose error rates have been above the error-rate threshold for two consecutive years.

Texas has performed extremely well in the area of quality control. While the Texas Food Stamp Program struggled in this area prior to 1998, the state received $19.7 million for 1998, $27.9 million for 1999, $28.6 million for 2000, and $29. 8 million for 2001 in awards for payment accuracy.

Source: Legislative Budget Board, Report to the House Committee on Human Services, 2002

The legislation also significantly modifies the U.S. Department of Agriculture's (USDA) authority to impose penalties. Specifically, when a state is subject to a penalty, the USDA may require the state to reinvest up to 50 percent of the penalty in the program or designate up to 50 percent of the penalty as "at risk," to be paid the following year if the state continues to exceed the threshold. The USDA may also waive any or all of the penalty or enter into a settlement with the state.

The current rules for enhancing funding will apply to FY 2002 error rates. The USDA will issue guidance for new performance measures for FY 2003 and FY 2004. The USDA will also issue regulations for new performance measures to be effective for performance in FY 2005 and subsequent years.

Additionally, and upon enactment, the bill extends from late April to June 30 of each year the USDA's deadline for resolving disputes over states' quality-control error rates and announcing state and national error rates.

Source: Center on Budget and Policy Priorities

Changes were also made in the areas of incentive payments and enhanced funding. The new bonus provisions replace the current system of enhanced funding with $48 million each year for new performance bonuses to states. These bonuses will be provided to states with the best or most improved performance on measures relating to actions taken to correct errors, reduce rates of error, and improve eligibility determinations, as well as other indicators of effective administration determined by the USDA.

Changes in the quality-control system should have a significant impact on Texas. Reducing the chance the state will be penalized for error rates may facilitate efforts to ease error-reduction pressures on eligibility workers and clients and to take advantage of some of the simplified reporting requirement options discussed below. It is important to note, however, that the state must maintain its efforts to deliver benefits accurately.

Legal Immigrant Benefit Restoration

The restoration of benefits to legal immigrants, an important issue for Texas, was a major topic in Food Stamp reauthorization. The history of legal immigrant Food Stamp eligibility over the last seven years merits comment. Prior to federal welfare reform in 1996, all legal immigrants were eligible for food stamps; undocumented immigrants have never been eligible. Federal welfare reform restricted immigrants' eligibility for food stamps.

In 1996, 168,517 immigrants received food stamps - 8.7 percent of all recipients. By 2001, this number had dropped to 49,274, or 4.5 percent of the caseload, a 70.8 percent decline.

Source: Center on Public Policy Priorities, 2002

The "FY 1997 Supplemental Appropriations Act," signed into law in July 1997, granted states the authority to purchase food stamps from the federal government for those legal immigrants who lost their

benefits under the 1996 federal welfare reform law. Texas did not take advantage of this option. However, through the State Immigrant Food Assistance Program (SIFAP), established in March 1998 by DHS under the direction of the governor and legislative leadership, Texas instituted a stop-gap program. SIFAP provided food assistance to legal immigrants who were receiving food stamps prior to the cut-off under PRWORA, and were 65 years of age or were receiving Supplemental Security Income (SSI) during the last month of their participation in the Food Stamp Program.

In 1998, President Clinton signed the Agriculture Research Bill, restoring Food Stamp benefits to about 250,000 legal immigrants, or one-third of those who lost their eligibility under the 1996 federal welfare law.

Legal Immigrants Eligible for Benefits Prior to 2002 Reauthorization

Legal permanent residents who had worked in the U.S. for 10 years and paid Social Security taxes during that time (exemption in 1996 welfare reform law).

Veterans or active duty military personnel and their spouses and children (exemption in 1996 welfare reform law).

Refugees and asylees for the first seven years they were in the U.S.

Children under age 18 who were legally present, seniors who were already 65 and legally present, and persons with disabilities who were legally residing in the U.S. on August 22, 1996.

Certain Native Americans, and members of the Hmong or Highland Laotian tribes, when the tribe assisted the U.S. armed forces during the Vietnam War, or their spouses, unmarried dependent children, and unremarried surviving spouses.

Source: Center for Public Policy Priorities

Even with the 1998 restorations, many legal immigrants remained ineligible, despite working and paying taxes like any Texan. The implications of these benefit cuts were significant. Children of immigrants in Texas suffer significantly higher levels of hardship in the area of food, compared to children in other states.[24] According to an Urban Institute report released in March 2001, more than a third of Texas children of immigrants live in poverty, compared to less than a fourth of immigrant children nationwide.[25]

The Farm Bill restores eligibility to all legal immigrant children, regardless of date of entry to the U.S., effective October 1, 2003, and eliminates "sponsor deeming" with regard to children (see inset). Effective April 1, 2003, the legislation also provides for restoration of benefits for legal immigrants who have been in the U.S. for five years; however, "sponsor deeming" will apply. Finally, the Farm Bill restores eligibility to legal immigrants with disabilities who entered the U.S. after August 22, 1996, and receive a disability benefit such as SSI. However, the restoration of benefits to legal immigrants with disabilities does not apply to Texas, since the state does not offer a state-funded disability benefit.[26]

With high numbers of legal immigrants, the impacts of these benefit restorations on Texas are considerable. Texas is home to about 47,000 of the 390,000 legal immigrants nationwide who will be eligible for restored benefits.[27] The Congressional Budget Office estimates that Texas' legal immigrants may receive over $300 million in benefits over a ten-year period.

Sponsor deeming means that the income and resources of an immigrant's sponsor are added to those of the immigrant when determining eligibility for benefits.

Source: Center for Public Policy Priorities

Currently, approximately 252 clients remain on the SIFAP, the state food assistance program instituted to compensate for elderly and disabled legal immigrants' loss of federal benefits in 1996. Texas spends about $272,000 annually on this group, funding that can now be redirected as the federal government re-institutes coverage of legal immigrants.

Food Stamp Employment and Training

The Food Stamp Program requires all adult recipients to register for work unless they are elderly, disabled, caring for a child under age six, or otherwise not expected to work. States have broad discretion to require work registrants to look for jobs, to participate in employment and training activities, or to work off their benefits. Food Stamp recipients who do not receive cash assistance are typically already working. While the USDA provides minimal grant funds and unlimited federal matching funds, advocates and program administrators have expressed concern that the federal government doesn't provide sufficient Employment and Training (E&T) funding to serve all those subject to work requirements.

Repealed Under Food Stamp E&T Provisions

1) the 80 percent set-aside to serve individuals subject to the three-month time limit; 2) the maintenance of effort required to access new unmatched funds made available in 1997; 3) the reimbursement rate limits on the amount states can be reimbursed for each work slot offered; and 4) the federal cap of $25 per month on the amount states may reimburse participants for work expenses other than dependent care.

These provisions also reduce the amount of unmatched federal funding available to $90 million a year for 2002 through 2007 and rescind unobligated balances from prior years. The bill includes an additional $20 million a year of unmatched E&T funds for states that pledge to offer a work slot to every person who would otherwise be terminated under the three-month time limit.

Source: Center on Budget and Policy Priorities

While these issues did not receive as much attention as others, the Farm Bill makes modifications to the E&T components of the program. Specifically, the Farm Bill reduces total funding available for the Food Stamp E&T Program, but expands states' spending flexibility by repealing several onerous restrictions and requirements. Disappointing to advocates, the Farm Bill does not include any easing of the three-month time limit on participation of unemployed childless adults.

State Options in the Farm Bill of 2002

The Farm Bill of 2002 includes a number of state options regarding program simplification, deductions, eligibility determination, and reporting requirements. The following options represent the most significant opportunities for Texas in continuing to improve the Food Stamp Program.

Program Simplification Options

Strong pressure from the federal government on the states to reduce errors in the Food Stamp Program led many states, throughout the 1990's, to impose burdensome paperwork requirements, especially for working families. Families were often required to reapply every three months and, at times, every month. Food Stamp rules also require reporting of nearly every change in wage amounts, which often fluctuate substantially over short periods. Finally, verification rules require

recipients to approach their employers as often as monthly to complete paperwork certifying their employment and wage levels.

> Many employers are understandably rebelling at the increasing burden they, too, are enduring to keep up with the Food Stamp Program's requirements. States report that some employers are now assessing whether they are any longer willing to employ recipients because of the level of this activity.
>
> *Source: Food Research and Action Center, 2002*

In one of several deduction-related provisions, the Farm Bill gives states the option to adopt semi-annual reporting requirements for the entire caseload. Given this option, Food Stamp benefits may be frozen for six months at a time, and households are not required to report changes unless their income exceeds the program's gross income limit. A household may elect to report a change that is not required to be reported. For Texas, this option could mean reduced reporting requirements and decreased likelihood of error on the part of clients and eligibility workers.[28] Since eligibility workers devote considerable time to Food Stamp application processing and case management, this option would also allow eligibility workers more time to manage their non-Food Stamp workload.

While current law allows a three-month transitional Food Stamp benefit to families leaving TANF, the Farm Bill permits states to provide five months of transitional benefits, without additional paperwork or certification requirements. During this period, the household's Food Stamp benefit is frozen at the amount received prior to its TANF case closure and adjusted for the loss of TANF income. Households may report changes during the transitional period to have their benefits increased. Further, this provision allows recertification to be postponed until the end of the transitional period, thus making it easier for the state to administer the program. Food Stamp benefits provide critical support to families who are working for low wages and struggling to achieve permanent independence from welfare, and this provision ensures that families still eligible for Food Stamp benefits will continue to receive them.

If Texas takes advantage of these options, there could be meaningful simplification of the program for both DHS staff and Food Stamp recipients. Currently, about 50 percent of Texas' Food Stamp cases are reviewed every three months. This constitutes a considerable workload for DHS workers and a burden on working Food Stamp families. Some states have been reluctant to exercise similar options in the past due to intense pressure on error reduction and quality-control efforts. However, given the Farm Bill's quality-control reforms, simplified reporting requirements may be given greater consideration.

Other Options

The Farm Bill authorized a state option to exclude certain uncommon types of income if the state also does not count such income in its TANF cash assistance or Medicaid Programs. The legislation also allows states to exclude two specific obscure types of income, certain unusual educational benefits, and "complementary assistance" from states. In terms of countable resources, the Farm Bill raises the resource limit for households with a disabled member to $3,000, effective October 1, 2002, which conforms to the limit for households with an elderly member. In Texas, these provisions will not enhance the state's program because Texas has already exercised federal

flexibility to institute many of these simplified eligibility provisions. In the 77th Session, the Legislature authorized changes in resource and vehicle limits that go beyond the options newly authorized by Congress (see inset on page 12).

The Farm Bill gives the USDA discretion to select the most practicable method of issuing emergency food stamps to disaster victims. Upon enactment, the bill also eliminated the current requirement that states' Electronic Benefits Transfer (EBT) systems not cost the federal government more than the prior paper issuance systems did. Effective October 1, 2003, the bill requires states that have a website for the state agency that administers the Food Stamp Program to make the application available on the website in each language in which the state makes a printed application available. Another promising reform that becomes effective 18 months after enactment of the bill relates to improving access to benefits. The Farm Bill provides $5 million a year for the USDA to make grants to states and others to promote simplified application and eligibility determination systems and improved access to benefits.

State Options and Automation

Texas is currently in the process of implementing a new automated eligibility determination system for public assistance programs, including the Food Stamp Program. The Texas Integrated Eligibility Redesign System (TIERS) will replace the old mainframe system, SAVERR, and is designed to improve operational efficiencies and effectiveness. During multiple phases of statewide TIERS expansion, the SAVERR system will run simultaneously. Thus, the automation costs to both systems associated with implementing policy changes will have to be considered.[29]

Superwaiver and Block Grants in the Food Stamp Program

Changes to the Food Stamp Program in the Farm Bill were positive. However, subsequent to enactment of the bill, the TANF reauthorization process included proposals that could have negative effects on Food Stamp clients.

H.R. 4737, the House proposal for TANF reauthorization, contains a provision referred to as the superwaiver, which would allow states, with approval from the Secretary of Health and Human Services, to waive federal laws and regulations in several programs serving low-income individuals. Late in committee deliberations in the House, the Food Stamp Program was added to the superwaiver provision. Also at the last minute, a proposal to allow five states to receive food stamps as a block grant was added to the TANF reauthorization bill. This proposal received no public testimony or committee debate. There was concern from advocates that both of these proposals would have negative effects on recipients and could allow states to divert federal funds appropriated to help low-income families to other non-poverty related uses. Both proposals were still under consideration at the time this report was printed.

> In the 1997 and 1999 Legislative Sessions in Texas, budget writers used over $325 million of the state's TANF block grant to free up or "supplant" general revenue for other purposes.
>
> *Source: Center for Public Policy Priorities, 2002*

Under the superwaiver for the Food Stamp Program, states could submit waiver requests to the USDA to make program changes that could erode current client protections, such as instituting time limits or work requirements, similar to those in the TANF Program. In addition to instituting new client restrictions, states could also reduce benefit levels, or restrict eligibility for the program, thus freeing up funds to transfer into other superwaiver programs. This expanded transfer authority could further extend Texas' ability to engage in supplantation, or the use of federal funds intended for one purpose to replace limited state dollars in unrelated budget areas, a practice Texas has used to fill state budget holes. In light of the budget crisis expected to greet the 78th Legislature, transferring funds designated for anti-poverty and anti-hunger programs to supplant state funds in other areas may be even more tempting for budget writers.

Supplantation and the Block Grant

States must pay for 50 percent of the cost of administering the Food Stamp Program. For FY 2002, Texas budgeted approximately $96 million in general revenue for Food Stamp Program administration. Under a block grant, Texas could replace these state funds with federal funds (which would reduce the amount of federal funds available for food assistance benefits), thereby freeing up $110 million in general revenue for other, non-poverty related uses. It is also likely that states electing a block grant would use federal Food Stamp dollars to pay for general employment and training programs, as a means to finance additional work participation requirements that may materialize in the TANF Program as a result of welfare reauthorization.

Source: Center for Public Policy Priorities, 2002

The other, and perhaps even more troubling, last-minute proposal would allow five states to elect to receive food stamps as a block grant at any time during the 2003-2007 period. Similar to the funding mechanism in the TANF Program, states would receive a fixed amount of annual funding to provide Food Stamp benefits, representing a drastic shift from the entitlement system that ensures that each state receives as much funding as it needs to cover individuals who apply and are eligible for food stamps.[30]

A state that elects to receive food stamps as a block grant could find itself in the position of running out of benefits during an economic downturn, and might have to institute waiting lists or restrict eligibility for vital nutritional assistance. In addition, such states would be unable to expand access or take advantage of many of the positive options contained in the Farm Bill. As mentioned above with respect to the superwaiver provision, states could reduce benefit levels, cut or eliminate benefits for any population, or impose time limits and sanctions. While this option would be limited to five states, the greater concern is that this could be the first step toward block-granting the entire program. Neither the five states nor the USDA would be required to collect or examine data on the impact of the block grant on participation, benefit levels, food expenditures compared to administrative spending, or fraud. From the standpoint of addressing hunger, fixing the amount of Food Stamp funding through a block grant based on 2002 spending, with no adjustment for economic changes or population growth or increases in participation, would be a detrimental policy shift.[31]

Conclusion

Congressional revisions to the Food Stamp Program and potential changes in TANF are of utmost importance to Texas as the 78th Session approaches. Continued monitoring of TANF proposals and final reauthorization are necessary in preparing for the significant impact on program delivery and welfare recipients. Although TANF caseloads have decreased since welfare reform in 1996, many

Texas families still need intensive support in order to achieve self-sufficiency. Especially during this time of economic insecurity, Texas cannot afford to leave behind low-income families and recipients with considerable barriers to work. New work requirements and participation rates, combined with frozen levels of funding, raise serious concerns about the state's ability to provide needed services to the TANF population and to those at risk of returning to TANF. Other areas of focus in TANF reauthorization include legal immigrant benefit restoration, child support collection, and marriage promotion activities.

Changes in the Food Stamp Program, as a result of the Farm Security and Rural Investment Act of 2002, are a mix of mandates to and options for the states. The ultimate effects of Food Stamp reauthorization on the states and low-income residents in need of nutritional assistance are yet to be determined. Many of the provisions that alleviate pressures on state agencies administering the program are mandatory. All states will benefit from the changes to the quality-control system beginning in FY 2003. Additionally, restoration of benefits to legal immigrants will have a positive impact on the health of legal immigrant families and the entire state. Many other provisions that could improve the program for low-income families are state options that will require administrative action by DHS.

Reauthorization of the Food Stamp Program and TANF generated reforms and proposed changes in these programs at the national level. The resulting mandates and state options offer Texas significant opportunities to fine-tune programs at the state and local levels, reduce the workload at DHS, boost state and local economies, and most importantly, improve the well-being of its residents.

Recommendations

1. Recommend that the Legislature ensure that the TANF system has the maximum funding available to meet increased work participation rates. This includes:

A. a thorough assessment of the current obligation of TANF funding across multiple programs and agencies by the Senate Finance Committee or the House Appropriations Committee;

B. consideration of the use of TANF funds for child care in order to prevent or reduce the loss of child care for working families; and

C. the development of a "TANF Spending Plan" to guide future expenditures of scarce TANF funds.

The Texas Workforce Commission (TWC) currently is appropriated only 17 percent of all TANF funds received, with the Texas Department of Protective and Regulatory Services (TDPRS) receiving 30 percent of Texas' TANF funds to provide unrelated services. This commitment of TANF funds, while helping to fund other vital services, will significantly hinder Texas' ability to meet proposed increased work participation rates. Without additional funding, proposed increased work participation rates and the prioritization of Choices clients for child care will result in the loss of child care for the working poor population, potentially causing many to return to the welfare rolls. With proposed increased work participation rates and no additional TANF funding, the need for a comprehensive TANF spending plan is even more vital to strategic and efficient spending of these funds.

2. Recommend that the Legislature fund the continuation and expansion of the Texas Department of Human Services and local workforce development boards' Employment, Retention, and Advancement (ERA) Program.

Early evidence suggests that the ERA Program has been successful in its efforts related to addressing the retention and advancement of individuals moving from welfare to work.

3. Recommend that the Legislature establish and fund a separate state program for certain TANF populations. Examples include individuals whose employment plan includes activities not counted under new federal law, individuals with state exemptions from work requirements that are not recognized under federal law, and families residing in areas with few or no employment opportunities, such as rural areas and areas along the Texas-Mexico border.

Under proposed federal definitions of work and limited federal recognition of exemptions, there will be clients in need of aid and services who would be better served under a separate state program free of federal restrictions. For individuals with service needs beyond what is counted as work, this approach should be used to enable the state to effectively work with clients without being penalized by the federal government for doing so.

4. Recommend that the Legislature establish and fund a program under which Texas stops

the clock for recipients who are working a certain threshold number of hours.

This would affect TANF recipients receiving the earned income disregard. Texas could accomplish this with respect to the state time clock via a simple rule change. This could be done with respect to the federal clock either by taking advantage of a proposed federal option or by instituting a budgeting system that operates like a separate state program.

5. Recommend that the Legislature build upon the wage, retention, and advancement performance bonus system established under HB 476 by increasing funding and expanding this approach.

Successful approaches that increase leavers' wages, increase job retention and help new workers advance will be more important under increased work participation rate pressures. Such approaches will increase long-term caseload reduction by reducing recidivism.

6. Recommend that the Legislature direct TWC to broaden the definition of core work activities. This could include counting education, vocational education, job training, English as a Second Language, and other barrier removal activities as core work activities.

While the reauthorization proposals may not count these activities toward the core hours beyond three months, adequate addressing of employment barriers is crucial for many clients in Texas and desired by many employers. If reauthorization allows a broader definition of work activities as a state option, Texas should take advantage of this. If reauthorization does not allow for a broader definition of work activities, the state could utilize a separate state program approach.

7. Recommend that the Legislature authorize and fund a policy that disregards the income of a new stepfather for up to six months when a current TANF recipient gets married.

When a TANF recipient marries while receiving benefits, the family often immediately loses benefits due to the increased earnings provided by the stepfather. This may serve as a deterrent to getting married. The proposed policy would support couples who desire to get married without discriminating against single-parent families. This proposal is included as an exceptional item in DHS' LAR.

8. Recommend that the Legislature take advantage of the proposed state option to pass through more of the child support collected to families on welfare.

The current minimal pass through not only denies TANF families valuable income that could help move them to self-sufficiency, but also hinders collection efforts.

9. Recommend that the Legislature direct TWC to provide technical assistance to local workforce development boards on employer-driven child-care resources by:

A. assisting working-poor subsidy recipients in establishing dependent care accounts, which are pre-tax payroll deductions for child-care costs; and

B. encouraging employers to provide increased child-care benefits to low-wage employees.

Assuming that some of the provisions in HR 4737 will be included in the final versions of welfare reauthorization, it is important to begin planning for steep declines in child-care subsidies for the working poor. The $1 billion increase in the Child Care and Development Fund (CCDF) will merely allow local authorities to increase vendor reimbursement rates in order to keep pace with inflation. Furthermore, the increased work participation and work hour requirements in the proposals will place an increased demand on available child-care funds, and a much larger portion of child-care funds will be "mandatory", or reserved for TANF clients, not the working poor. Texas will be unable to redirect TANF funds into child care in order to prevent reductions in "discretionary" child-care funds for the working poor, because current TANF funding patterns will lead to projected deficits during the next biennium. TWC and local workforce development boards should begin planning for large scale terminations of child-care subsidies for the working poor.

10. Recommend that the Legislature direct TWC to assist local workforce development boards in collaborating with other child-care resources, such as Head Start, Pre-Kindergarten, and locally funded after-school programs, by identifying children in state funded child care who may qualify for the above programs, and assisting local workforce development boards in developing collaboration agreements with these programs in order to facilitate program transfers when appropriate and desired by parents.

The Administration's plan also increases the percentage of CCDF dollars that must be expended on quality improvements. Local workforce development boards are no longer required to improve child-care quality with CCDF dollars. It is important to ensure that quality improvement obligations are fulfilled by local workforce development boards, child-care contractors, local organizations, and providers.

11. Recommend that the Legislature direct the Texas Education Agency (TEA) to develop a plan for a joint-funded program (Pre-Kindergarten and CCDF) that will allow pre-kindergarten programs to be established within Child Care Management Services (CCMS) vendors.

Assuming that some of the provisions in HR 4737 will be included in the final versions of welfare reauthorization, it is important to begin planning for steep declines in child-care subsidies for the working poor.

12. Recommend that DHS take advantage of the state option authorized in Section 4115, Title V of the Farm Bill, to institute a Transitional Food Stamp Benefit for five months after a recipient leaves TANF due to earnings, with no client action required.

Prior to passage of the Farm Bill, states could only opt to offer up to a three-month transitional benefit. This is an important work support. Providing such support without increased paperwork is crucial when the parent is beginning the transition to work. This would also simplify the process for the state as recertification could be postponed until the end of the transitional period.

13. Recommend that DHS take advantage of the state option authorized in Section 4109, Title

V of the Farm Bill, to adopt semi-annual reporting requirements for the entire caseload.

Prior to the Farm Bill, states could exercise this option only for families with earnings. This would be of benefit to all families in the Food Stamp Program by simplifying paperwork and reporting requirements.

CHARGE 2: Consider ways the state and local governments can promote asset development in low-income households and facilitate increased independence from public assistance. Examine any difficulties public assistance clients may encounter because of asset test standards.

Introduction

While Texas saw considerable economic growth over the past 20 years, this growth was not shared equally among the rich, the middle class and the poor. In fact, recent studies show that income inequality has increased in Texas since the 1970's.[32] Although upper- and middle-income Texans experienced increases in income, low-income Texans faced stagnating earnings. Moreover, wage inequality rose by a staggering 33 percent during the 1990's.[33] Despite the decade of prosperity experienced by the high-tech sector, over 21 percent of all Texas children still live in poverty.[34]

Given the fact that sustained economic growth in the 1990's failed to significantly reduce poverty and that Texas and the nation now face new economic pressures, there is cause for concern. There is no question that the burden of widespread economic uncertainty falls most heavily upon the shoulders of those Texans most in need. Given the predicted tight budget that will greet lawmakers in 2003, it is more important than ever to explore new, innovative and far-reaching ways to serve low-income Texans.

While there may be consensus on the need to address the three million Texans living in poverty, there exists a variety of appropriate strategies to help low-income families become independent of public assistance. Traditional methods involve providing cash assistance to families as they transition to work. Asset development, on the other hand, represents a supplemental approach to reducing poverty that enjoys bi-partisan support and projects long-term positive impacts on poverty. Introduced in the early 1990's, the asset-building movement quickly spread across the country. Texas is involved in a variety of asset development initiatives, including Individual Development Accounts, earned income disregard policies, and Earned Income Tax Credit outreach campaigns. Despite the fact that many of these initiatives have proven to be effective in reducing poverty, greater efficiency and effectiveness can be achieved through collaborative partnerships, integration of activities and increased awareness.

> "Poverty is more than simply a humanitarian or social justice issue. Poverty is a drain on the nation, a loss of human resources. Above all, for America, welfare policy should be about investment."
>
> *Michael Sherraden, Assets and the Poor, 1991*

In light of the growing interest in asset-building strategies and the asset development programs spreading across the country, Speaker James E. "Pete" Laney charged the House Committee on Human Services to "consider ways the state and local governments can promote asset development in low-income households and facilitate increased independence from public assistance." In addition, the Speaker charged the Committee to "examine any difficulties public assistance clients may encounter because of asset test standards."

Overview of the Asset Development Movement

While asset development strategies have been in existence for several decades, the coordinated effort to reduce poverty through asset development is relatively new. While contribution retirement plans, such as Individual Retirement Accounts (IRAs), created interest in asset development in general, programs targeting low-income households did not gain attention until the early 1990's. Michael Sherraden introduced the idea in his book, *Assets and the Poor*, and is widely recognized as having guided asset development, as an anti-poverty initiative, into the public eye.[35] In the past, policymakers have attempted to combat poverty by supplementing the income or increasing the earnings of low-income families. Asset development theorists, however, focus on building wealth as another way to promote self-sufficiency. Wealth, as opposed to income, is a more appropriate indicator of financial stability and more easily transferred from one generation to the next. According to Carl Rist of the Corporation for Enterprise Development, "in practical terms in our capitalist economy, assets typically equate with advantages, resources and property, as those with assets marshal these resources for employment, savings, investment and enterprise."[36]

> "The underlying vision is of an expanding economic pie, wherein all members of society can achieve greater personal wealth and contribute to greater economic productivity of the nation. The income-based welfare state assumes a finite pie, taking from one person for the consumption of another, with a resulting loss in economic growth. But the asset-based vision is that everyone saves and invests and becomes more productive. In other words, the asset-based vision seeks to integrate social policy and economic development."
>
> *Michael Sherraden, Assets and the Poor, 1991*

Asset ownership has shown significant positive impacts on individuals, families and communities. Addressing the wealth gap through asset accumulation promotes greater household stability, improves self-esteem, increases knowledge and experience in money management, fosters long-term thinking and planning, provides a foundation for risk-taking, increases social status and social connectedness, increases community involvement and civic participation, and enhances children's well-being and educational prospects.[37]

A comprehensive asset-building framework is based on individual assets and encompasses income, financial assets and human capital.[38] For the majority of households, income assets are the primary vehicle to attaining economic well-being. Strategies recognizing the importance of earned income are reflected in government policies and include minimum wage laws, "living wage" ordinances, unemployment compensation systems, the Earned Income Tax Credit (EITC), and earned income disregard policies. Building financial assets enables low-income families to supplement employment income and provide for retirement through supported savings accounts and housing assistance programs. These asset-building endeavors range from initial efforts to save, to buying a home or starting a business.

Asset policies attempt to:

- measure well-being in terms of income, but also in terms of building human capital and financial assets
- meet short term needs, but also build assets for the long term
- remedy deficiencies, but also build individual capacities
- make fewer judgements about who is "truly needy" and, rather, assure universal access to assets to promote self-reliance, initiative and growth.

Source: Asset Development Institute, Brandeis University

Finally, human capital is characterized by the skills, knowledge and experience acquired largely through education and training. Strategies that facilitate the acquisition of human capital include employment readiness programs, post-secondary education, and employee retention and advancement programs. Ideally, state asset development policies encompass strategies to enhance the income, financial assets and human capital of low-income families.

Overview of Asset Development Strategies

Effective asset-building policies must address the full continuum of asset accumulation. With this in mind, leaders in the movement suggest three broad strategies as the foundation to a comprehensive asset development framework.[39] These include facilitating and incentivizing asset formation, removing barriers to asset formation, and protecting existing assets.

Facilitating and Incentivizing Asset Formation

To a large degree, income and financial assets fall short of sustaining and enhancing economic well-being if they are not complemented with adequate skills, knowledge and experience. Strengthening financial education is essential to increasing earning capacity and economic mobility. Strategies to boost these skills include job readiness and skills training, employment retention and advancement initiatives, and general educational and training activities for recipients of Temporary Assistance for Needy Families (TANF). Welfare recipients who have been labeled "harder-to-employ" often have very low basic skills, limited English proficiency, little prior work experience, and require considerable training and educational services.

Various approaches have been developed to facilitate and incentivize the formation of assets. These activities offer direct incentives to building assets for low-income families, and are considered hallmarks of the asset development movement. They include Individual Development Accounts, the Earned Income Tax Credit, earned income disregard, and the Family Self-Sufficiency Program.

Individual Development Accounts

Individual Development Accounts, or IDAs, have historically been the prototype of the asset development movement. IDAs, which were introduced and pioneered in 1991 by Michael Sherraden, give moderate- and low-income families the opportunity and support to build financial assets.[40] Participants make monthly deposits into a dedicated savings account, and these deposits are matched, in a parallel account, by public and private funds. The traditional asset goals participants are allowed to pursue with these matched savings include post-secondary education, home ownership and small business capitalization. Given the fact that many low-income families are "unbanked," IDA programs also offer a wide range of financial education,

> "Many people who are now successful can remember how hard it was to save - but how important it was to start. And we can help many Americans make that start. As president, I will propose Individual Development Accounts."
>
> *President George W. Bush, 2000*

which includes general financial literacy, such as credit counseling and money management. In addition, IDA providers offer asset-specific training for home buyers and small business owners, depending on participants' asset goals.

> "Tens of millions of Americans live from paycheck to paycheck. As hard as they work, they still don't have the opportunity to save. We should do more to help working families save and accumulate wealth. That's the idea behind so-called Individual Development Accounts."
>
> *President Bill Clinton, State of the Union Address, 2000*

In addition to IDA programs for low-income adults, many organizations are beginning to offer IDA programs directed specifically at youth. Young people can use savings to help with expenses related to college, such as a computer, books and tuition, or to start a small business. More importantly, IDA programs provide young people a foundation in financial education and an introduction to savings.

The IDA concept was first introduced into federal legislation in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) of 1996. This welfare reform legislation gave states the option to use federal cash assistance funds to match savings in IDAs. Subsequently, the Assets for Independence Act (AFIA) of 1998 committed $125 million over five years to non-profit organizations for IDA demonstration projects. In 1999 and 2000, the U. S. Department of Health and Human Services' Office of Refugee Resettlement provided funds for states and non-profits to offer IDAs to low-income refugees. Currently, Congress is considering the Savings for Working Families Act (Title II of the CARE Act, S. 1924). This tax credit proposal is designed to extend IDAs to more low-income working persons. It is estimated to cost $1.7 billion over ten years and would set up 900,000 accounts. Although IDA programs often require substantial resources initially, greater efficiencies are expected to be achieved over time. The investment is considered wise and, according to Ray Boshara of the Corporation for Enterprise Development, every $1 saved in an IDA generates $5 in economic return through tax receipts, reduced welfare spending, new businesses, and stable families and communities.[41]

> Economic well-being does not come solely from income, spending and consumption, but also requires savings, investment and accumulations of assets because assets can improve economic stability, connect individuals with a viable and hopeful future, stimulate development of human and other capital, and enhance the welfare of offspring.
>
> *U.S. Congress in Assets for Independence Act*

Evaluation of IDA programs and research into the savings outcomes and long-term financial stability of IDA participants is of vital importance to the growing IDA movement. The American Dream Demonstration is the first comprehensive national policy demonstration of IDAs. The project began in 1997 with 14 IDA program sites (including Austin's Foundation Communities) and over 2,300 participants. Interim reports have shown that IDAs are effective in helping low-income families accumulate assets, and final reports are pending.[42]

While IDAs are the most common approach to supported savings accounts, there exist several variations on the concept. Modeled after IDAs, Individual Training Accounts, Individual Learning Accounts, and Lifelong Learning Accounts have been piloted in some states. These efforts aim to increase human capital through education and training. Another variation on the IDA concept is the Children's Savings Account, which targets children in an effort to decrease intergenerational

poverty by promoting saving early in life.

Earned Income Tax Credit

Administered by the Internal Revenue Service since 1975, the federal Earned Income Tax Credit (EITC) is the nation's largest cash income support program for low-income families.[43] The EITC attempts to create more equity in the tax system by supplementing the earnings of low-wage workers. Determined by earned income and family size, the EITC is a refundable tax credit benefitting those who owe little or no income tax, and can be worth up to $4,000. The EITC can be claimed as a lump sum payment or received throughout the year in each paycheck. Studies show that most families elect the lump sum payment and use it to meet child-related expenses, pay off debt, invest in education or buy or repair a car. In other words, the EITC enhances financial security and promotes economic opportunity. In most cases, the EITC is disregarded in determining eligibility for public assistance programs such as Food Stamps, Medicaid, SSI, TANF and public housing.

> Public housing authorities that have received new funding since 1993 for Section 8 or public housing development programs are required to implement the Family Self-Sufficiency Program.
>
> *Source: U.S. Department of Housing & Urban Development*

Tax cut legislation passed by Congress in 2001 created an additional opportunity for low-wage workers - the Child Tax Credit (CTC). Eligible families can receive up to a $600 credit for each child, and many families qualify for both the EITC and the CTC. Very little data is available on the utilization of the CTC thus far.

Many individuals, including legal immigrants and those who are currently unemployed, are not aware of the benefits available to them through the EITC and the CTC. Outreach efforts are therefore critical. In addition, the EITC and the CTC add complexity to an already complicated tax filing system, and thus services to help eligible families apply for these benefits are vital. The Internal Revenue Service and the American Association of Retired Persons work together to sponsor the Volunteer Income Tax Assistance (VITA) Program, which is designed to provide free assistance in preparing simple, current year, federal income tax returns. VITA targets low-income, elderly and non-English-speaking taxpayers as well as people with disabilities.

Earned Income Disregard

The first few months of work can be exciting yet stressful for TANF clients. Workers may incur new expenses, such as uniforms, work clothes, transportation and child-care, which can make the transition to work difficult. Additionally, an increase in earned income will decrease or eliminate TANF cash benefits. In an effort to facilitate this transition, augment low wages and reward work efforts, earned income disregard policies allow TANF recipients who enter the workforce to continue receiving TANF cash assistance for a short period of time. This policy began in the mid-1960's with the former welfare program, Aid to Families with Dependent Children (AFDC), and was revised with the passage of welfare reform in 1996. Currently, federal law gives states the option to determine the duration and amount of earned income that will be disregarded in determining benefit eligibility and level of assistance.

Family Self-Sufficiency Program

The Family Self-Sufficiency Program was created through the National Affordable Housing Act of 1990 and is administered by the U.S. Department of Housing and Urban Development (HUD). This program is designed to help low-income families, residents of public housing (Section 8, public housing and Indian housing programs), reduce dependence on public housing and welfare assistance. This legislation requires public housing authorities (PHAs) to develop Family Self-Sufficiency Programs to help families transition out of public housing by facilitating the accumulation of financial assets for home ownership or other purposes. The program places strong emphasis on employment, and as a resident becomes employed or receives a wage increase, the PHA diverts a percentage of the rent increase into an interest bearing escrow account for future use by the resident. HUD then reimburses the public housing authority for the resulting loss in rental income. In addition, the program must collaborate with local social service agencies to offer participants case management and a comprehensive array of education, job training, and other support services. If a family meets its program goals within five years and remains independent of welfare for a period of 12 months, the family will receive the funds in the account.

Removing Barriers to Asset Formation

In addition to fortifying incentives to asset development, a comprehensive policy framework includes the elimination of disincentives, or obstacles, to asset formation. This relates directly to asset test standards and the difficulties they pose to recipients of public assistance. To be eligible for means-tested public assistance programs such as TANF, Medicaid or Supplemental Security Income, applicants must meet both an income test and an asset test. The purpose of these tests is to ensure that benefits do not go to families who have sufficient resources of their own. However, many argue that such tests result in a disincentive to saving, since low-income families run the risk of becoming ineligible to receive benefits. Furthermore, limits in many programs are not indexed to inflation and have not been adjusted for over a decade. Although research in the area is not extensive, existing literature and economic theory generally suggests that asset tests reduce saving by low-income families. Thus, current asset tests remain inconsistent with growing interest in boosting saving among low-income families. States do not have jurisdiction over all public assistance asset tests, yet states do have discretion with respect to both Food Stamp Program vehicle limits and TANF and Medicaid asset limits.

Protecting Existing Assets

Ideally, the effects of a serious illness, losing a job, or being injured at work are mitigated by asset ownership. However, negative life events and corrupt business practices can completely deplete hard-earned assets and dismantle a family's financial stability. While efforts to increase asset accumulation among low-income families are vital, these efforts are useless if assets are not protected. Strategies to safeguard assets include expanding health insurance to working families, reforming unemployment insurance and workers compensation systems, passing anti-predatory lending legislation, and creating anti-insurance redlining policies. Some of these strategies have not necessarily been the focus of the Committee's research or lie outside the Committee's jurisdiction. They are nonetheless important pieces of a comprehensive asset development framework.

Asset Development Strategies in Texas

Despite the relative infancy of asset development as an anti-poverty policy, a wide variety of asset development strategies are currently in place in Texas. These activities include Individual Development Accounts, Earned Income Tax Credit outreach campaigns, the earned income disregard, the Family Self-Sufficiency Program, the Texas Tomorrow Fund, the Employment Retention and Advancement Program, and recent asset test revisions.

State IDA Legislation

During the early stages of the national IDA movement, Texas passed legislation that created the state's first IDA pilot program. Senate Bill 781, 75th Legislature, directed the Texas Workforce Commission to adopt rules to establish and implement an IDA pilot program for recipients of public assistance. This pilot program was located in San Antonio and served ten participants. Building on this initiative, House Bill (HB) 2563, 76th Legislature, created a second IDA pilot project. This pilot project is designed to build on experience gained from the first project and to address the longer-term, self-sustainability needs of IDA participants. The Texas Workforce Commission published a Request for Proposals (RFP) in August, 2002. Approximately $550,000 is available to fund IDA services to TANF applicants, TANF recipients and former TANF recipients at risk of returning to TANF.

Foundation Communities - Austin, Texas

Foundation Communities, formerly Central Texas Mutual Housing Association, has been creating affordable housing in Austin and the North Texas area since 1984.

Foundation Communities' Individual Development Account (IDA) Program helps up to 300 low-income residents enter the economic mainstream through investments in home ownership, higher education and small business development. Account holders earn $2 in matching funds for every dollar they deposit in special savings accounts. Founded in 1997, Foundation Communities' IDA Program was among the first in the nation and the first in Texas. Through IDAs, families have invested over $500,000 to improve their lives.

Residents of Foundation Communities' housing program currently have 300 IDAs. Participant savings plus earned match money totals more than $400,000 (and growing!) that will help families improve their lives and pursue their dreams. To date, 15 account holders have graduated from the program by purchasing homes, four families have established or expanded small businesses, and 18 others have made qualifying withdrawals to cover college tuition.

Source: Foundation Communities

Community IDA Programs

With at least 15 community IDA programs across the state of Texas, most urban areas offer one or more programs. While these services are concentrated in urban areas, there are also programs in Amarillo and the border region. The types of organizations involved in IDA programs include community action agencies, microenterprise organizations, community development financial institutions, faith-based groups, low-income credit unions, affordable housing providers, and other non-profits. Programs receive funding from a variety of sources, including federal grants, local and county governments, financial institutions, private foundations, faith communities, and charitable donations. IDA programs place strong emphasis on collaborative partnerships, and

partners include local workforce development boards, financial institutions, city governments, educational institutions, faith-based organizations, foundations, and non-profit organizations.

Texas IDA Network

In order to move the Texas IDA field to the next level, several IDA providers decided in early 2002, after extensive conversations with community-based IDA groups around the state, to partner together and take the initiative in the creation of the Texas IDA Network. The network is comprised of 16 organizations from around the state that administer IDA programs and are in various stages of implementation. Some programs have had participants complete the program and purchase their assets, while others are in the process of recruiting program participants. Other organizations, beyond the current 16 members of the Texas IDA Network, are in the process of designing and seeking funding for IDA programs. The purpose of the Texas IDA Network is to support the work of new and established IDA programs, increase the capacity of IDA programs to serve a greater number of savers, and provide a vehicle for successful IDA programs in urban and rural areas of Texas to share their experiences and resources with each other.

Texas Individual Development Account Network
Member Organizations

ACCION Texas (Texas border region)
Alliance for Multicultural Community Services (Houston)
Bexar County Teachers Federal Credit Union (San Antonio)
Catholic Family Service (Amarillo)
City of San Antonio/Families SAVE Program (San Antonio)
Community Development Corporation of Brownsville (Brownsville)
Covenant Community Capital Corporation (Houston)
El Paso Collaborative for Community & Economic Development (El Paso)
Faith Covenant Support Services, Inc. (Waco)
Foundation Communities (Austin)
Gulf Coast Community Services Association (Houston)
McAllen Affordable Homes, Inc. (McAllen)
Neighborhood Housing Services of Ft. Worth & Tarrant County, Inc. (Ft. Worth)
Proyecto Azteca/Azteca Community Loan Fund (San Juan)
Student Alternatives Program, Inc. (San Antonio)
United Community Centers, Inc. (Ft. Worth)

Source: Texas IDA Network

Based on initial research of the 16 member organizations, all of the groups felt that this informal network was essential for them to grow and expand the scope of their activity. The top two activities requested of a statewide network were 1) to conduct training and provide technical assistance and educational information to non-profit organizations engaged in IDAs, and 2) to provide a way to increase funding for IDAs by the public, private and for-profit sector, as well

Currently, about 760 participants are enrolled in IDA programs across Texas. To date, about 450 participants have completed an IDA program and purchased an asset.

Source: Texas IDA Network, 2002

as foundations. In addition, other key requests of the Network included working on state legislation and public policy to expand existing IDA programs and create new ones, conducting research and providing information to support IDAs throughout Texas, developing a media campaign to publicize the success of IDAs, and working with financial institutions and the private sector to engage them in IDA programs.

Beyond these activities, the Texas IDA Network will look at potential models to increase IDAs for members and in areas of the state where little or no activity is occurring. The Network will discuss possible ways to support IDAs, especially in rural areas where the administrative costs may outweigh the benefits to an organization wishing to create an IDA program, and will look to partnership approaches and other mechanisms to bring IDAs to those areas of the state.

ERA Demonstration Project Summary

ERA is a pilot project designed to facilitate employment retention and job advancement of TANF recipients and combines two strategies: 1) team-based case management and 2) a post-employment stipend. The project is designed to increase job stability and wages among former welfare recipients. It is also expected to reduce reliance on cash assistance in Texas, lower the TANF recidivism rate, and produce strategies that can be replicated in other Texas communities.

ERA is a model for collaboration and coordination among multiple agencies at the state and local level. The Texas Department of Human Services (DHS) worked in conjunction with local workforce development boards (LWDB), local and regional DHS offices, other state agencies, and community partners to develop and implement the ERA model. The pilot is operational in four locations: Fort Worth, Corpus Christi, Houston and Abilene. Each site tailored its program to correspond to the local current service delivery system, the local labor market, and the needs of local employers. The following is the timeline of the project's development:

- 1998- DHS received a grant from the U.S. Department of Health and Human Services to develop employment retention and advancement strategies;
- 1999-2001- DHS was appropriated funding by the 76th Legislature to implement the ERA model on a pilot basis;
- 2000- Texas was one of 11 states selected to be part of a national five-year evaluation, funded by the Administration for Children and Families (ACF) and conducted by the Manpower Demonstration Research Corporation (MDRC); and
- 2001- DHS received funding from the 77th Legislature to continue the pilot projects for another two years.

While ERA was designed to augment existing services, the ERA Program model fills critical gaps in service delivery identified through collaborative discussions with LWDB staff, local DHS staff and staff from TWC and DHS. ERA provides additional resources to address these gaps, including:

- up-front linking of DHS eligibility services with workforce activities;
- long-term career planning;
- on-going assessment and support; and
- a post-employment stipend.

Source: Texas Department of Human Services

Employee Retention and Advancement

Another Texas strategy aimed at enhancing the human capital of low-income families is the Employment Retention and Advancement (ERA) Program, which is designed to facilitate self-sufficiency through long-term success in the work place for the TANF population. Created in 1998, ERA uses a two-fold approach which involves intensive team-based case management and a post-employment stipend. Based on a collaborative effort between local DHS offices and local workforce development boards, ERA is operational in four locations: Abilene, Corpus Christi, Fort Worth and Houston. Texas ERA sites are participating in a national evaluation conducted by the Manpower Demonstration and Research Corporation (MDRC) and funded by the U.S. Department of Health and Human Services (HHS) to determine its effectiveness. Increases are expected in the percentage of participants employed, those who received wage increases, and the amount of time employment is retained.

Earned Income Disregard

Since FY 2000, Texas' earned income disregard policy has included an increase in the standard work-related expense allowance and a temporary 90 percent disregard of earned income for TANF recipients who start working. For the first four months of employment, recipients receive a standard disregard of $120 and a variable disregard of 90 percent of earned income. These allowances help stabilize families during the first months of work, thereby increasing the likelihood of participants remaining employed and moving toward self-sufficiency.[44] The danger in the current earned income disregard policy is that it creates a "cliff effect" for TANF recipients who become employed. Some advocate a less abrupt transition or a tapering off of the earned income disregard, or an extended period of time to financially prepare for this "cliff." In fact, during the 77th Session, unsuccessful attempts were made to change this policy to allow 100 percent of earnings to be disregarded for up to six months.

Earned Income Tax Credit

Since its inception in 1975, states have been involved in efforts to increase awareness of the EITC and to assist low-income families in applying for the benefits. Currently, Texas promotes the EITC through the Comptroller of Public Accounts and the Texas Workforce Commission (TWC). The Comptroller's Office, for example, offers publications in English and Spanish regarding the EITC and encourages employers to distribute this information to employees. The Comptroller also publishes a listing of Volunteer Income Tax Assistance (VITA) sites throughout the state. In addition, employers are offered publications for publicizing the EITC, including an insert for payroll checks and a booklet listing local volunteer tax preparers.

TWC is also involved in EITC outreach efforts. By way of Rider 20, the Legislature requires TWC to facilitate EITC applications among TANF recipients by assisting employed TANF recipients and other low-income workers who may qualify for the EITC. TWC distributes outreach campaign kits produced by the Center on Budget and Policy Priorities to local workforce development boards and provides space within some workforce centers for VITA Programs.

Additionally, the Department of Human Services mails EITC information to clients every February, including over 800,000 in 2002, in addition to posting information on posters, handouts and their website. The Comptroller's office, DHS and TWC also hold annual meetings to help coordinate efforts. There are also considerable outreach efforts at the local level, coordinated by community organizations and local authorities, to increase participation in EITC benefits.

For tax years 2000 and 2001, Texas ranked first in the nation in the number of EITC returns and in the amount of EITC funds distributed. Over 1.4 million EITC returns were filed in 2001, totaling $2.9 billion.

Source: Internal Revenue Service

Efforts to build community-wide coalitions are afoot in several areas across the state. These efforts involve the coordination of non-profit organizations, local authorities, financial institutions, educational institutions and employers in increasing awareness of the EITC and VITA sites. Some communities have even developed mobile VITA sites that can travel to employers and other locations convenient to workers eligible for the EITC. Coalition efforts also work to include

community IDA programs and financial literacy opportunities in the EITC outreach initiatives.

Family Self-Sufficiency Programs in Texas

The Family Self-Sufficiency Program (FSS), created by HUD and administered by local public housing authorities (PHA), is active in Texas. Through Family Self-Sufficiency grants, funds of over $2 million were awarded to Texas PHAs during fiscal year 2001.[45] These funds are used to foster economic independence and self-sufficiency among residents of public housing and provide case management services and other assistance in finding and sustaining work that pays a livable wage. Meanwhile, a resident's rent increase, resulting from a rise in earned income, is deposited in an interest-bearing escrow account and reserved for use by the resident upon completion of the FSS Program.

*Texas Tomorrow Fund*s

The Texas Tomorrow Funds offer two plans, the Texas Guaranteed Tuition Plan and Tomorrow's College Investment Plan, to help families save for college education. The Texas Guaranteed Tuition Plan is a prepaid college tuition program that allows families to pay for tomorrow's college at today's prices. The Plan provides coverage for tuition and required fees, no matter how much they increase over time, and can be used at accredited in-state and out-of-state public and private colleges and universities. Families' payments are pooled with those of other Texas families and invested so that the Texas Guaranteed Tuition Plan's steady growth will keep pace with the rising cost of college tuition and required fees. More than 132,000 families have signed up for the Texas Guaranteed Tuition Plan since 1996.[46]

> Since 1985, the cost of college tuition and fees alone in Texas has increased a staggering 600 percent.
>
> *Source: Texas Tomorrow Funds*

Tomorrow's College Investment Plan is Texas' new college savings plan and was implemented in September 2002 as a complement to the Texas Guaranteed Tuition Plan.[47] Families can invest for their children's future education in an array of mutual funds, under the direction of the Texas Prepaid Higher Education Tuition Board, chaired by Comptroller Rylander. The state-sponsored program offers tax-free growth and tax-free withdrawals on earnings used for higher education expenses.

Landscape of Texas Asset Test Standards

Following the 1996 welfare reform law, PRWORA, states were given the option to eliminate asset tests altogether for the Medicaid Program. Many states have exercised this option and eliminated asset tests from Medicaid eligibility, yet attempts to do the same in Texas have been unsuccessful. Thus, Texas continues to maintain asset tests for various groups of Medicaid recipients.

In December 2001, the Texas Board of Human Services approved rule changes to the Food Stamp

Program resource tests. New rules raise the amount of liquid assets allowed for eligibility to $5,000 per family. Previously, resource tests allowed no more than $2,000 per family in combined liquid and non-liquid assets. In addition, all non-liquid assets are now exempt from resource tests. Vehicle limit rules were also changed to allow $15,000 of the fair market value of a family's first car and $4,650 of each additional car value to be exempt. Any excess value over these amounts is counted towards the family's liquid resource limit.

Asset Tests for Public Assistance Programs

TANF
Eligible families cannot have more than $2,000 in resources, or $3,000 if the household includes a relative who is at least age 60 or disabled. Exempt resources include home and surrounding property, burial plots, personal possessions, resources not legally available to the household, resources of SSI recipients, vehicles worth less than $4,650, and $15,000 of the fair market value of one vehicle owned by a two-parent household.

Food Stamp Program
Households in which all members are approved for TANF cash assistance or SSI meet categorical eligibility and are exempt from both the resource limits. All other households must have resources less than $5,000 in countable liquid assets. Additionally, the cash value up to $7,500 of a prepaid burial insurance policy, funeral plan, or funeral agreement for each certified household member is excluded. For a household's first vehicle, $15,000 of fair market value (FMV) is exempt, and any excess is counted toward the combined resource limit. For all other countable vehicles, $4,650 FMV is exempt, with excess counted toward the combined resource limit.

Medicaid for Families and Children
Resource limits vary by eligibility group. For all groups, the value of the family's home and personal property is exempt. The resource limit is $2,000 or $3,000 if a family household member is disabled or age 60 or older. For poverty level children, the value of the family's primary vehicle is exempt. Other vehicle values are determined according to Food Stamp vehicle policy, except for jointly owned vehicles, which follow the TANF vehicle policy. The vehicle exemption for Medically Needy and children who are not poverty level children is $4,650 of the fair market value of each of the family's vehicle(s), and any excess vehicle value is counted toward the resource limit. There is no resource eligibility requirement for poverty level pregnant women. The resource limit for youths in transition from foster care is $10,000, with one vehicle exempt.

Supplemental Security Income (SSI)
Resources must not exceed $2,000 for an individual or $3,000 for a couple (limit applies even if only one member is eligible). This excludes home, car (depending on use or value), burial plots, burial funds up to $1,500, and life insurance with face value of $1,500 or less.

Since their creation, IDA programs have generated considerable discussion around asset test policies for public assistance programs and the treatment of IDA savings, match and interest. Currently, the treatment of IDA funds when considering eligibility for benefits depends on the funding source for the IDA program. IDA programs funded by Assets for Independence Act (AFIA) grants or with TANF funds are exempt from asset test consideration. A family enrolled in one of these programs is able to build assets and complete the goals of the program without losing needed benefits. However, many IDA programs receive funds from sources other than AFIA and TANF, so potential participants in these programs will face a disincentive to save.

Significant misunderstanding about IDAs and asset tests exists from the perspectives of IDA participants, DHS eligibility workers and IDA service providers. In general, and aside from IDAs, asset test standards for the state's various public assistance programs are complex and vary considerably from program to program. Lists of liquid and non-liquid resources defined as "resources" are inconsistent and, for some programs, tests also differ based on the number of young, disabled or aged members of the family.

Obstacles to Asset Development

Challenges to IDA Programs

Scarce resources remain an issue for community-based IDA programs. Many grants that provide matching funds for IDAs allow a very small percentage for administrative costs. Providers find themselves strapped for resources in marketing the program, in recruiting participants and in appropriately evaluating outcomes. Moreover, the state's economic health will also affect the strength and sustainability of community IDA programs.

Many IDA participants are also clients of one or more public assistance programs. Each program has different and complex eligibility standards, including asset test standards. The treatment of IDA deposits, match and interest in determining eligibility for public assistance programs creates confusion and obstacles for IDA providers and participants alike. Eligibility determination regarding IDA funds depends largely on the source of those funds. While AFIA- and TANF-funded programs are exempt from these asset tests, other programs are not. Community IDA programs juggle multiple funding streams and thus face problems in meeting the demand for IDAs and informing participants of potential consequences concerning their eligibility status for public assistance programs. IDA participants and providers as well as those determining eligibility for public assistance programs find it difficult to maintain a clear and up-to-date understanding of policies and restrictions.

IDAs have proven useful in serving a variety of low-income families and young people throughout the state. People with disabilities, however, represent a segment of the population that could benefit from the program if it weren't for a unique set of obstacles. Most IDA programs require participants' deposits to come from earned income, which poses a problem for people with disabilities who face a barrier to employment. In addition, savings from IDA programs not funded by TANF funds or AFIA grants are not exempt from asset test standards for Supplemental Security Income or Social Security Disability Insurance. Thus, participation in an IDA program would likely make a recipient of these benefits ineligible.

Challenges to Asset Tests

Asset test standards continue to present barriers to asset formation for low-income families receiving public assistance. In general, low asset tests represent a conflict in the theory behind asset development. Building wealth is recognized as a viable route to becoming independent of public assistance; however, low-income families in public assistance programs face a disincentive to accumulating assets. This represents a disconnect between the desired anti-poverty outcome and the practices in place to facilitate that outcome.

Coordination Efforts

The range of governmental agencies and community organizations working on asset development policies is remarkable. From TWC and DHS to financial institutions, community IDA providers and micro-enterprise organizations, efforts to tackle poverty from an asset-based perspective are spread across the state. However, there exists little communication or coordination among the various groups.

Surveys of other states' experiences with successful asset-building policies have identified partnerships, statewide workgroups and other collaborative efforts as an essential determinant of their success. The recent creation of the Texas IDA Network is a meaningful step in the direction of a more organized effort. It represents an attempt to better coordinate existing and potential IDA programs across the state. Coordinated EITC outreach efforts under development in several areas are another attempt to build upon the variety of existing community resources. Nevertheless, the state still has a fragmented system and lacks a unified effort to integrate the full range of asset development strategies in use by state agencies, local governmental bodies, financial and educational institutions, non-profit organizations, employers and the private sector.

Conclusion

In exploring ways the state and local government can address independence from public assistance and promote asset development in low-income families, it is important to understand the background of the asset development movement and to recognize both current and potential initiatives. Initiatives to facilitate asset accumulation have long been in existence. For example, home mortgage tax deductions incentivize homeownership, and pre-tax retirement accounts help families prepare financially for the future. These practices are recognized and accepted methods of building assets, yet they have traditionally been directed at the middle and upper classes. It has only been since the early 1990's that asset development policies have begun to directly address low-income households, and thus the movement is still in a relative stage of infancy. Nonetheless, considerable work has been done to examine and evaluate new programs focused on building assets in low-income families and to expand existing efforts.

One third of all American households, and 60 percent of African-American households, have zero or negative net financial assets.

Forty percent of all white children and 73 percent of all black children grow up in households with zero or negative net financial assets.

Up to 20 percent of all American households are "unbanked," i.e., they do not have a checking or savings account.

Source: Corporation for Enterprise Development, 2001

One of the exciting new programs to be considered is the Individual Development Account, which is a matched savings account. Sixteen IDA programs are already in existence in Texas, and legislation has been passed in the 75th and 76th Legislatures to create an IDA program through TWC. In addition to IDA programs, other asset development strategies are in practice or are being

discussed in the state, including earned income disregard policies, the Employment Retention and Advancement Program, and EITC outreach campaigns. While these diverse efforts are in place in several parts of the state, they remain disconnected and are unavailable in many rural areas. Thus, there exists much room for expansion and coordination of policies and strategies to promote a more comprehensive and effective framework for asset accumulation among low-income families.

Another piece of the asset development puzzle is the practice of counting assets in eligibility determinations for public assistance programs. Asset test standards that prevent low-income families from building assets and working towards self-sufficiency are counterintuitive to asset development theory. These standards vary from one public assistance program to another and are revised from time to time. The complexity and lack of awareness about asset test standards in relation to IDAs, in particular, causes concern for those determining eligibility for public assistance programs and those applying for IDAs. Miscommunication causes potential participants to miss out on valuable asset-building opportunities in an attempt to retain public assistance benefits. Aside from the confusion and misinformation, a key concern for IDA providers and participants is the degree to which asset test standards prevent individuals from participating in IDA programs.

The asset development movement, in general, has offered a new and exciting direction in the struggle against poverty. Traditional methods of assisting families by providing minimal income assistance to help such families to barely make it from month-to-month offer no long-term benefit or move towards self-sufficiency. The practice of building wealth, which has historically been reserved for the middle and upper classes, is now thought to be a more long-term, positive approach.

In conclusion, Texas should be commended for its achievement in asset development. While these efforts have occurred in a relatively uncoordinated manner, many opportunities exist to improve awareness and participation in existing asset-building practices. Texas has the opportunity to expand asset-building practices and to cast a wider net to include more of the three million low-income Texans.

Recommendations

1. Recommend that the Texas Tomorrow Fund and the state's college savings plan be considered as a savings goal of the state's Individual Development Account (IDA) Program.

This would allow IDA participants to save for the post-secondary education of their children. Normally, the asset must be purchased at the end of an IDA program for the participant to utilize the match, limiting the use of savings to immediate tuition payment.

2. Recommend that the Higher Education Coordinating Board design a plan to connect community college (two-year or junior colleges) students to appropriate IDA programs.

This recommendation connects students with IDA programs so that they could save money to continue their education at a four-year college after completing a two-year program.

3. Recommend that the Texas Workforce Commission (TWC) continue to inform the Legislature of progress in the state's IDA Program.

The state's IDA Program was created by HB 2563 during the 76th Session. TWC released a Request for Proposals in August 2002.

4. Recommend that the Legislature exempt IDA savings, both deposits and match funds, from public assistance asset limits.

Family savings count against a family's liquid assets in eligibility tests for public assistance programs, and there is confusion about whether or not match funds also count against family resources. Deposits and match funds within IDA programs funded by TANF and the Assets for Independence Act (AFIA) are exempt from these asset limits. Deposits and match funds within IDA programs funded by other sources are not exempt from asset limits.

5. Recommend that the appropriate agencies create a clear, easy to read document on asset limits for each public assistance program, including details regarding exemptions in place for IDA participants; and recommend that this document be provided to clients, caseworkers and IDA providers.

Clients lack knowledge and understanding of asset limits of various programs, and clients perceive caseworkers as having limited or no knowledge of IDA programs.

6. Recommend that TWC consider expanding IDA saving goals to include assistive technology, wheelchairs, personal assistance services, accessible transportation, and housing rehabilitation.

People with disabilities have broader needs than those traditionally covered by IDA programs, which address home ownership, business capitalization and post-secondary education.

7. Recommend that the Committee encourage the Social Security Administration (SSA) to reform federal SSI eligibility requirements so that IDAs are excluded from resource consideration.

IDAs funded by TANF or AFIA are excluded from resource limits when determining SSI eligibility. SSI recipients who participate in IDAs (TANF or AFIA-funded IDAs) do not lose SSI benefits or Medicaid. IDAs funded by other sources, however, are currently not exempt from asset tests. IDA funds can be excluded from the SSI asset test if they are explicitly limited to carrying out a PASS (Plan for Achieving Self-Support) approved by the SSA. Home ownership, however, cannot be counted as a PASS.

8. Recommend that the Committee encourage Congress to reform IDA policy so that people with disabilities may apply SSI/SSDI funds to their IDA savings, as opposed to only allowing earned income.

IDA programs funded by TANF or AFIA require that deposits be made from earned income. Accordingly, SSI and SSDI beneficiaries who are not working are unable to participate.

9. Recommend that TWC expand financial education services for TANF recipients and recognize participation as an approved work activity.

The rate of "unbanked" households is much higher in certain populations, including the TANF population. Financial education services foster an understanding and use of basic financial services. An estimated 10-20 percent of U.S. households do not have access to savings or checking accounts and instead rely on non-traditional institutions that charge high fees and interest rates.

10. Recommend that the Legislature consider providing matching funds to low- and moderate-income families in the state's college savings plan.

Low- and moderate-income families may not be able to take full advantage of the college savings plan, either due to limited disposable income or limited tax liability. Michigan and Louisiana provide state matching grants (sliding scale) to low-income participants in their states' college

savings plans.

11. Recommend that DHS and TWC continue to develop asset development strategies targeting low-income families.

Asset development strategies seek to build the financial and human capital of low-income families in promoting increased independence from public assistance. Examples of asset development strategies include IDAs, the earned income disregard, Earned Income Tax Credit, and the Employment, Retention and Advancement (ERA) Program. These strategies increase low-income families' access to financial literacy training, vocational training, post-secondary education, small business development, and home ownership.

CHARGE 3: Review the organization and administration of the Texas Rehabilitation Commission, including but not limited to eligibility determinations for social security disability benefits.

Introduction

Texas is home to approximately four million people with disabilities.[48] Historically, people with disabilities have experienced higher rates of unemployment and poverty and lower levels of education than people without disabilities. Almost three-fourths of people with disabilities are either unemployed or underemployed.[49] Confronting barriers to employment and to independent living can be an extremely complex process or a relatively simple one. It may require an assistive device or a more intensive process of counseling, guidance and training. Regardless, addressing these barriers represents a crucial step towards equality, health, self-sufficiency, and choices for people with disabilities.

National efforts to address these issues began with President Woodrow Wilson's achievements in providing vocational rehabilitation services to soldiers returning from World War I. Since that time, rehabilitation policies and technology have grown to address a wide variety of issues facing people with disabilities and their quest for independence, self-sufficiency and economic security. The primary state agency charged with this task is the Texas Rehabilitation Commission (TRC), although the Texas Commission for the Blind provides vocational rehabilitation services to people who are blind or visually impaired.

Building upon an existing Vocational Rehabilitation Program, TRC was established in 1969 to provide services to Texans with disabilities. The agency seeks to assist people with disabilities in living independently, achieving employment of choice, and gaining access to high quality services. TRC is also responsible for performing the disability determination services associated with the Social Security Administration's benefit programs. TRC's Disability Determination Services (DDS) Division serves this function, and is funded entirely by the federal Social Security Administration (SSA).

Texas Rehabilitation Commission Mission Statement

The Texas Rehabilitation Commission exists to assist people with disabilities to participate in their communities by achieving employment of choice, living as independently as possible and accessing high quality services.

During the 77th Session and the following interim, TRC was the focus of considerable publicity. The process for determining eligibility for Social Security benefits came under scrutiny due to high denial rates, the backlog of pending cases and an internal system used to identify cases processed during overtime. At the federal level, the SSA has been piloting and evaluating a "prototype" disability process in ten states over the past two years, and

expansion would have significant impacts on disability determination in Texas. In addition to these issues, other concerns surfaced regarding the agency's turnover rates in the Vocational Rehabilitation Program and TRC's involvement in the promoting independence initiative.

In response to concerns about staff turnover and recent publicity, Speaker James E. "Pete" Laney charged the House Committee on Human Services to "review the organization and administration of the Texas Rehabilitation Commission, including but not limited to eligibility determination for social security disability benefits."

Administration and Organization of TRC

The Texas Rehabilitation Commission (TRC) was created in 1969 to function as the state's principal rehabilitation agency serving people with disabilities. Created in order to administer the state's federally funded vocational rehabilitation program, TRC has grown to fulfill a broader range of responsibilities, including independent living services, transition planning, and disability determination for social security benefits.

The agency is governed by a six-member board, which meets quarterly to establish agency policy, approve the budget, create advisory committees, and hire a commissioner. The governor appoints board members and designates the board chair. Currently, four members serve on the TRC Board, with two vacancies remaining. The TRC commissioner oversees implementation of board policies and the day-to-day operations of the agency. The commissioner is supported by five deputy commissioners with authority over Field Operations/External Affairs, Administrative Services, Financial Services, Disability Determination, and Automated Services.

Rehabilitation Council of Texas
Mission Statement

The Rehabilitation Council of Texas:

- works in partnership with TRC on the development, prioritization and review of the State Plan;
- works in partnership with TRC to evaluate effectiveness of vocational rehabilitation services;
- analyzes the effectiveness of, and consumer satisfaction with, vocational rehabilitation services and outcomes;
- advises TRC concerning its performance with regard to eligibility, extent, scope and effectiveness of services provided, and outcomes;
- coordinates with the State Independent Living Council, the Texas Education Agency, and the Texas Council on Workforce and Economic Competitiveness and other organizations to avoid duplication of efforts and enhance the number of individuals served;
- serves as a mechanism for bringing consumer concerns and advice to TRC.

Source: Rehabilitation Council of Texas

In an advisory role to the TRC Board, the Rehabilitation Council of Texas (RCT) is federally mandated by the Rehabilitation Act of 1973. The RCT reviews, analyzes and advises TRC on scope of policy, effectiveness of vocational rehabilitation services, and eligibility requirements. In addition, the RCT develops and reviews state goals and priorities. The 21 RCT members are appointed by the governor and serve three-year, staggered terms. One of the functions of the RCT is to serve as a conduit for

consumer concerns and advice to TRC. The RCT reports to the TRC Board twice a year.

Other advisory entities include the State Independent Living Council, the Comprehensive Rehabilitation Advisory Committee and the Community Rehabilitation Advisory Committee. Each of these groups reports to the TRC Board once a year and, along with the RCT, serve as opportunities for stakeholder involvement in TRC policy making.

Program Overview

Programs administered by TRC include the Vocational Rehabilitation Program, Independent Living Services and Centers, Comprehensive Rehabilitation Services, Extended Rehabilitation Services, Transition Planning, Disability Determination Services, and administrative support to the Texas Council on Developmental Disabilities.

Vocational Rehabilitation Program

In existence before the creation of TRC as it exists today, the Vocational Rehabilitation (VR) Program began operating as a state-federal partnership in 1929. The VR Program helps people with disabilities prepare for, locate and retain employment. Eligibility is based on the presence of a disability, physical or mental, that results in a substantial impediment to employment. In addition, individuals must be employable after receiving services.

What is Independent Living?

Independent Living means control over one's life based on the choice of acceptable options that minimize reliance on others in making decisions and in performing everyday activities. This includes managing one's affairs, participating in day-to-day activities in the community, fulfilling a range of social roles, and making decisions that lead to self-determination and the minimization of physical and psychological dependence on others.

Texas Association of Independent Living

Independent Living means empowerment of persons with disabilities to make their own decisions and life choices to the greatest extent possible and the ability to live in the least restrictive environment possible with the same rights and privileges as other people.

State Independent Living Council

The VR Program is administered through 133 field offices and employs almost 500 vocational rehabilitation counselors to implement a wide array of services. These services include medical, psychological and vocational evaluations, counseling and guidance, hearing examinations, interpreter services, medical treatment, assistive devices and rehabilitative technology, job skills training, and job placement assistance. In Fiscal Year (FY) 2001, TRC provided vocational rehabilitation services to 120,224 clients. The number of eligible clients rehabilitated and subsequently employed was 24,756.[50]

Independent Living Services and Centers

Independent living services promote increased

self-sufficiency for people with significant disabilities. Counselors and rehabilitation services technicians in the Independent Living Services (ILS) Program provide services intended to facilitate communication, mobility and self-direction. These services may include counseling and guidance, training, assistive technology, durable medical equipment, vehicle modification, communication aids, and/or prostheses. The ILS Program is supported by state and federal funding and provided services to 2,397 individuals in FY 2001.[51]

Independent Living Centers

The Rehabilitation Act of 1973 defines an Independent Living Center (ILC) as a consumer-controlled, non-residential, community-based, cross-disability, private non-profit agency that provides an array of independent living services. ILCs are required to provide four core services, including information and referral, independent living skills training, peer counseling, and advocacy skills training. In addition to these services, many ILCs provide other services that may not be available elsewhere in the community. There are ten state-supported ILCs in Texas, which served 5,300 individuals in FY 2001.[52]

Comprehensive Rehabilitation Services

The Comprehensive Rehabilitation Services (CRS) Program was established in 1991 by the 72nd Legislature. CRS was specifically created to serve people affected by traumatic spinal cord and brain injuries. In an effort to promote independence, CRS provides time-limited services, including inpatient comprehensive medical rehabilitation services, outpatient services, and post-acute brain injury services. Services also include assessment and evaluation, case management, and development of comparable benefits. The CRS Program served a total of 444 individuals in FY 2001. Funding is provided through a percentage of court costs collected from misdemeanor and felony convictions, as established during the 72nd Session.[53]

Extended Rehabilitation Services

The Extended Rehabilitation Services (ERS) Program is a state-funded program serving people with significant disabilities. For individuals who require intensive, ongoing support to become integrated into the community and workplace, ERS provides an array of employment support services. The primary goal of the program is to provide employment in the community; in FY 2001, 83.3 percent of ERS clients were served in this setting. However, ERS alternatively offers clients the opportunity to work in sheltered employment, which is not integrated into the community. In FY 2001 a total of 1,518 clients were served through ERS.[54]

Transition Planning

Transition planning is a collaborative effort of TRC's VR Program, the Texas Education Agency (TEA) and the Texas Department of Mental Health and Mental Retardation (TDMHMR) that assists in planning the move from school to work for students with disabilities. VR counselors provide consultative and technical assistance to public schools. Regional transitional specialists are located in each TRC region to support VR counselors in coordinating these services with schools, independent school districts and TEA's regional education service centers. In FY 2001, TRC received 6,258 referrals for transition planning.[55]

Social Security Disability Benefits

Social Security Disability Insurance (SSDI)
- Under Title II of the Social Security Act.
- Eligibility is based on the amount of work and money paid into the Social Security system.
- No income or resource limits.
- Waiting period - 5 months before first check.
- Beneficiaries receive Medicare coverage, beginning 24 months after the first check.
- Average monthly check in Texas is $780.

Supplemental Security Income (SSI)
- Under Title XVI of the Social Security Act.
- Eligibility is based on financial need, and claimant must be either aged, blind or disabled.
- Beneficiaries receive Medicaid, beginning with first SSI check.
- Average monthly check is $350 (nationally).

Disability Determination Services

The Disability Determination Services (DDS) is a state-federal partnership between the Social Security Administration (SSA) and TRC and is responsible for disability determinations in social security disability benefit claims filed in Texas. The Social Security Program provides cash assistance and medical benefits through Supplemental Security Income (SSI) and Social Security Disability Insurance (SSDI). Medical and vocational eligibility for these benefits are determined by the DDS, in accordance with federal SSA criteria. The DDS is funded entirely by the SSA and is responsible for only a portion of the entire disability claims process. This includes the initial disability determination, periodic reviews, and the first stage of the administrative review process, or reconsideration.

SSI and SSDI applications are presented to local SSA field offices and subsequently forwarded to the DDS. Cases are then assigned to disability examiners (DEs), who work in conjunction with medical consultants to determine eligibility. The DE develops a case by obtaining medical reports from a claimant's treating physicians and sometimes orders further medical examinations. In addition, the DE uses information about a claimant's prior work history, education and skill level to assess vocational capacity. A final decision is made by both the DE and medical consultant, based on the Social Security Act, the Code of Federal Regulations, federal court-mandated Social Security Rulings, and policies developed by the SSA. The SSA then notifies the claimant of the final decision and, if eligible, proceeds with the calculation and distribution of benefits.

What is meant by disability?

Disability is defined as the inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months.

Source: Texas Rehabilitation Commission

Following an initial determination, cases are reviewed in order to continue or discontinue benefit eligibility. These Continuing Disability Reviews (CDRs) are performed periodically, depending on the claimant's disability and potential medical improvement since the initial determination or most recent CDR. The first opportunity for claimants to appeal a disability determination decision is called the reconsideration phase and is facilitated by the DDS. Subsequent appeals are heard at the federal level by the SSA. During FY 2001, the DDS determined disability for 232,465 claimants and brought about $337 million in federal disability benefits to Texas each month.[56]

Identified Issues and Areas for Concern

Staff Turnover and Personnel Development

Staff turnover is a considerable concern for TRC's various programs. The agency has many staff members, particularly vocational rehabilitation counselors and disability examiners, who have significant experience and tenure with the agency. As these employees reach retirement age, the agency will suffer a considerable loss of veteran staff. Already, the VR Program has lost many seasoned staff members, and some field offices are left with an entire staff of new employees.[57]

Turnover rates in the state's VR Program doubled between FY 1998 and FY 2000, from 15 percent to 31 percent, and then dropped slightly by FY 2001 to 27.5 percent.[58] This rate is still considerably higher than the statewide average, which was 17.6 percent in 2001, as reported by the State Auditor's Office.[59] While turnover rates in the Disability Determination Services (DDS) Division are still under the statewide average, rates have increased from 9.6 percent to 16.1 percent since 1998.[60]

These rates of turnover not only create increased costs in staff recruitment, hiring and training, but cause significant turmoil for remaining staff. Both the VR Program and the DDS rely heavily on experienced staff to serve as mentors to new employees during training. Both entities also require considerable training periods before these staff are considered fully functioning. Thus, high turnover rates impact both newly hired staff members as well as the Texans who depend on these programs for rehabilitation

TRC Turnover Rates

Vocational Rehabilitation Program

	FY 1998	FY 1999	FY 2000	FY 2001
TRC Area Managers	8.1%	15.9%	22.5%	12.2%
VR Counselors	15.0%	22.0%	31.0%	27.5%

Disability Determination Services

DDS Unit Supervisors	8.2%	7.9%	0.0%	12.0%
DDS Disability Examiners	9.6%	13.2%	13.0%	16.1%

Source: Texas Rehabilitation Commission, 2002

services and social security benefit disability determination.

Texas' demographic changes, including the aging of the population and shrinking of the workforce, are reasons given for such high turnover rates. As noted above, many of the seasoned VR counselors and disability examiners are reaching retirement age. In addition, the State Auditor's Office reports changing workforce trends that involve more frequent job changes for younger workers. Aside from these trends, community advocates also point to burdensome caseloads and pressure to achieve case closures as sources of turnover in the VR Program. In the VR Program, counselors are expected to achieve 100 percent case closures, and advocates suggest that the pressure to close cases can sometimes have a harmful effect on job satisfaction, in addition to overshadowing the focus on quality of services provided to clients.

In addition to the difficulty in retaining and training a full TRC workforce, these changes also reflect the growing number of Texans who will begin needing the services provided by TRC. As the population ages, more Texans will be faced with disabilities, will require rehabilitation services, and will seek SSI and SSDI benefits. As the number of cases grows and as medical complexity increases, a fully-trained and possibly expanded TRC staff will become increasingly important.

Personnel development is also an issue that has raised concern in the VR Program. As part of the Rehabilitation Act's Comprehensive System of Personnel Development (CSPD), each state VR Program is required to devise and implement plans for developing human resources, including new degree standards for VR counselors. Counselors will now be required to hold Master's degrees and will have seven years to comply with these requirements. The support of TRC will be critical to counselors pursuing graduate degrees, especially with regard to caseload management. The current VR workforce situation will make this difficult and, consequently, these regulations will have a potentially negative impact on current staff of the VR Program, the turnover rate and, ultimately, those served by the program.

Promoting Independence Initiative

Since the 1999 Supreme Court ruling in *L.C. and E.W. v. Olmstead,* various state agencies have become involved in what has come to be known as the promoting independence initiative. This effort seeks to more fully integrate people with disabilities into the community, when appropriate and desired by the individual. In striving to assist people with disabilities to live as independently as possible, the mission of TRC is closely related to the promoting independence initiative, and the agency's response to the *Olmstead* ruling and involvement in the state's activities are crucial.

Early in 2002, TRC formed an internal workgroup called the Independence Initiatives Workgroup. Representatives of TRC, the State Independent Living Council, HHSC, Texas Commission for the Blind, and the Disability Policy Consortium are represented in the workgroup. Charges to the group include identifying issues related to the *Olmstead* decision and subsequent federal and state

initiatives that may impact how TRC serves people with disabilities; identifying possible ways to address those issues; and formulating working definitions for terminology that reflect TRC's mandate and guiding principles.

Public input has been the hallmark of the promoting independence initiative from the beginning and should play an integral role in the activities of the TRC Independence Initiatives Workgroup. Time has been reserved for public comment during this group's meetings, and this practice is an important aspect of the workgroup's future activities. Another strength of the promoting independence initiative has been coordination, specifically, coordination provided by HHSC. In addition to maximizing public input, it is important that TRC continue to coordinate the agency's activities with those of HHSC, and specifically with the Senate Bill (SB) 367 Task Force. The SB 367 Task Force was established by SB 367, 77th Session, to assist HHSC and appropriate health and human services agencies in developing a comprehensive, effective working plan to ensure appropriate care settings for persons with disabilities. The revised Promoting Independence Plan developed with help from the SB 367 Task Force will be submitted to the 78th Legislature.

For a more detailed account of current activities related to the *Olmstead* decision, see Charge 6 on page 92.

SSI and SSDI Denial Rates

Allowance rates for SSI and SSDI determinations by the DDS have been under scrutiny for several years. In 1998, the Sunset Advisory Commission identified the issue and recommended that TRC "determine why Texas' denial rate for social security disability determination is higher than the national average."[61] Subsequent attention in the press and by the Legislature spurred the agency to investigate and monitor denial rates and to compare them to regional and national rates.

In response to the Legislature's concern about the state's SSI and SSDI denial rates, Rider 7 of the General Appropriations Act, 77th Session, required TRC to report rates on a quarterly basis. This report is submitted to the Legislative Budget Board and the governor, and compares TRC's rate and number of denials for initial claims for SSI and SSDI to regional and national rates of

Initial Disability Determination Allowance Rates (quarterly)

Month	Texas	Regional	National
October 2000	36.7%	36.3%	39.4%
January 2001	31.5%	33.5%	39.1%
April 2001	40.9%	38.1%	41.4%
July 2001	41.8%	38.0%	40.5%
October 2001	34.7%	34.8%	39.2%
January 2002	36.9%	36.1%	37.7%
April 2002	42.6%	39.4%	39.2%
July 2002	43.2%	37.6%	36.5%

Source: Texas Rehabilitation Commission

denials. In addition, the report includes the rate and numbers of initial denials overturned on appeal, in comparison to regional and national rates.

During this time of public attention to the state's denial rates, additional concerns surfaced about the disability determinations of claimants with mental illness. The 77th Legislature responded to this concern regarding the mental health population through Rider 8 of the General Appropriations Act. Rider 8 provides for on-site eligibility reviews for mental health and mental retardation referrals, and directs TDMHMR and TRC to develop a memorandum of understanding that provides for TRC staff to conduct SSI and SSDI eligibility reviews. These reviews are conducted on the site of TDMHMR community centers for those who have been referred by the centers. This process establishes a formalized structure to training activities on mental illness and social security disability benefits, which were previously addressed by the two agencies on an informal basis.

Disability Determination Decisions Processing Time

January	109.2 days
February	108.5 days
March	99.3 days
April	90.4 days
May	86.8 days
June	85.5 days

Source: TRC/DDS FY 2002 Monthly Data Report for Legislative Budget Board

In addition, TRC has looked into three major programmatic changes in the SSI and SSDI programs since 2000, and the extent to which they have impacted denial rates. First, new mental impairment regulations went into effect in September 2000. These revisions redefined the criteria by which mental impairments are evaluated, added new criteria to three medical listings, and added emphasis to functional limitations that affect the ability to work. The implementation of these revised regulations has increased the allowance rate for mental impairments. Secondly, childhood regulations were finalized in January 2001. Emphasis was placed on the "whole child" in determining the child's capabilities in comparison to other children of the same age. These regulations have simplified the disability adjudication process for children and, subsequently, resulted in increased allowance rates for children. Third, regulations were revised regarding muscoloskeletal impairments. New procedures went into effect in February 2002, requiring increased evaluation of functional limitations. Additionally, medical listings criteria have been expanded for the evaluation of back impairments, which will likely increase allowance rates.

Processing Time

Another major concern regarding disability benefits is the amount of time claimants must wait for a disability determination to be made, and then for their benefits to begin. While processing time has improved slightly over the past several months, claimants routinely wait three or more months before a determination decision is made. Furthermore, claimants may wait additional time before seeing the first benefit check or having access to medical benefits. This situation is critical for many recipients of SSI and SSDI, and reflects the far-reaching consequences of the large backlog of cases discussed below.

Pending Disability Determination Cases

The DDS receives about 1,000 claims from the SSA each day.[62] Currently, over 52,000 cases are pending at the DDS.[63] Pending cases reflect the total number of disability determination cases, both SSI and SSDI, including those assigned to a disability examiner (DE), those assigned as overtime cases, and those "staged," i.e., not yet assigned to a DE.

Pending Disability Determination Cases 2002

	January	February	March	April	May	June	July	August
Regular	41,688	40,245	42,236	41,537	38,946	39,223	39,419	41,762
Overtime	3,018	3,110	3,206	3,245	3,129	3,459	3,544	4,189
Staged	12,586	12,701	10,616	11,321	11,785	11,368	11,002	6,541
TOTAL	**57,292**	**56,065**	**56,058**	**56,103**	**53,860**	**54,050**	**53,965**	**52,492**

Source: TRC FY 2002 Monthly Data Report for Legislative Budget Board

This large backlog of unassigned work is the result of resources provided by the Social Security Administration (SSA) that do not consistently match required workloads. In other words, the DDS continues to receive more cases from the SSA than can be processed in a timely manner, or for which there exists funding. The current situation is directly tied to funding and workload expectations placed on the DDS by the SSA in federal FY 2000. The state received over 252,000 disability cases, yet the SSA only funded the processing of 237,000 cases. In addition, the DDS was under a federally-mandated hiring freeze for part of that year. Accordingly, when the DDS lost disability examiners, the agency was unable to replace them. Consequently, the staged pending caseload grew to over 24,000 by May of 2001. Halfway through federal FY 2001, the SSA provided additional funding to the DDS to increase the size of DDS staff, primarily disability examiners. As a result of increased staff, the number of staged pending cases has been significantly reduced. However, there remain over 6,000 cases in staged pending.[64]

SSA Budget Process

As noted above, the DDS is funded entirely by the SSA, and maintains continual communication with the SSA Regional Office regarding performance expectations and the necessary resources to fulfill these expectations. In addition to challenges faced by the DDS in not always receiving funding for the work they are scheduled to receive, the

Disability Determination Cases - Staged Pending

May 1998	May 1999	May 2000	May 2001	May 2002
4,999	6,093	10,852	24,085	11,785

Source: Texas Rehabilitation Commission

continuity of funds also presents a problem. This has been an issue within the SSA for decades. If Congress does not enact a new appropriations bill, a continuing resolution is usually passed in order to maintain vital government operations. At times, the DDS goes an entire year without a budget, temporarily funded by one or more continuing resolutions until the annual appropriations bill is passed and signed by the president. This contributes to creating a sometimes chaotic and inefficient system of processing disability determination cases, as the DDS strives to manage resources at the mercy of the SSA's budget constraints.[65]

SSA Prototype and Other Policies

In a continual effort to increase efficiencies and accuracy in the disability determination process, the Social Security Administration instituted pilots for a prototype process of determining disability. The prototype has four main components: the elimination of an appeals procedure known as the reconsideration step, the addition of a claimant conference, expanded documentation of decision rationale, and the use of a single decision maker (i.e., the elimination of the requirement that a medical consultant sign off on a disability examiner's determination decision). Currently, this process is being piloted in ten states (not including Texas), and the results are being evaluated by the SSA. Based on the initial experience of pilot states, there is a great deal of concern, particularly in relation to additional workloads and subsequent increases in costs resulting from the new process. This may be cause for a delay in expansion to all states.[66] However, a revised prototype model is expected to be rolled out to all states by early 2003. TRC has been monitoring the progress of the implementation and evaluation of the prototype and will continue to do so.

In addition to the prototype process, TRC has been monitoring the SSA's progress towards a more automated disability determination process. Currently, all cases are developed and maintained with paper documents. The physical storage of files makes the transfer of cases difficult for quality assurance checks, continuing disability reviews, reconsideration, and other appeals processes. For several years, the SSA has entertained the idea of automating its filing system; however, action is hindered by the high cost of doing so. These efforts to increase efficiency in a backlogged system will become increasingly important as caseloads grow in number and complexity, and as qualified staff retire.

Conclusion

Over four million people with disabilities live in Texas, a number larger than the entire population of Oklahoma.[67] The state's ability to serve Texans with disabilities and to promote independence and self-sufficiency to the greatest extent possible is critical. Given the growing number of elderly Texans and the increasing complexity of medical and rehabilitative services for people with disabilities, TRC faces an exceptionally challenging task ahead. This task is further complicated by staff turnover rates and required compliance with federal regulations and policies.

Given its daunting responsibilities, it is crucial that TRC take advantage of every resource available. The network of advocates and stakeholders engaged in issues that impact people with disabilities is wide and active. In the interest of continually improving services and responding to the changing needs of people with disabilities, it is important that TRC continue to develop relationships with advocacy groups, community organizations and other agencies serving people with disabilities,

In addition, the agency's two largest programs, the VR Program and the Disability Determination Services, are federally funded and mandated. Thus, TRC must also continue to develop relationships with federal partners and to closely monitor program changes, predict impacts on Texas, and prepare for implementation of these changes. In light of expected revisions in the disability determination process as a result of prototype pilots, in particular, it is important that TRC continue to keep the Legislature informed of changes in federal policies and the impact they will have on the state's services.

It is crucial that the Texas Rehabilitation Commission approach its mission in an atmosphere of openness and flexibility. The agency must strengthen its ability to respond to federal policy changes and demographic trends while maintaining a high level of quality in the services it provides to Texans with disabilities. Given the demographic changes facing Texas and the growing numbers of individuals in need of rehabilitation services, TRC must continue to view quality of services, efficiency and effectiveness, as well as an atmosphere of openness to public input, as priorities for TRC in the years to come.

Recommendations

1. Recommend that the Texas Rehabilitation Commission (TRC) revise the qualifications associated with the disability examiner position and recruit more highly qualified disability examiners.

Hiring more highly skilled disability examiners may cut down on turnover and, in turn, increase the quality and efficiency of disability determinations. This recommendation is dependent on allocation of federal funds.

2. Recommend that the Committee encourage the Social Security Administration (SSA) to consider allocating more resources for TRC Disability Determination Services (DDS).

DDS is unable to process disability claims at the same rate that these claims are received, producing the publicized backlog of cases. In addition, rising medical costs and demographic changes are expected to affect the number and complexity of SSI/SSDI claims. TRC expects an increase in claims as baby boomers and experienced disability examiners retire.

3. Recommend that TRC examine and improve the performance evaluation process of disability examiners in DDS.

The large numbers of cases processed and pending at TRC/DDS promote an atmosphere of urgency, which may interfere with an examiner's ability to focus on the quality of a decision.

4. Recommend that TRC/DDS and the Committee continue to monitor the implementation and evaluative data of the SSA Prototype.

The Prototype process involves several significant changes to the initial disability determination process. The SSA's testing of the Prototype has occurred over the past several years and is still under examination. Texas is not currently a Prototype state.

5. Recommend that TRC/DDS continue to utilize a team approach to disability determination, involving both medical consultants and vocational specialists.

Currently, the disability determination process involves a disability examiner as well as a medical consultant. In the event that the single decision-maker process of the Prototype is implemented, the availability and involvement of medical consultants continues to be an important part of the disability determination process.

6. **Recommend that the Legislature continue to monitor disability determination allowance/denial rates, in comparison with national rates and rates of other states in the region.**

Rider 7 of SB 1, 77th Session, requires TRC to provide quarterly reports to the Legislative Budget Board and the Governor's office on allowance/denial rates. There are concerns that the recent rise in allowance rates is arbitrary and a response to negative press, as opposed to higher quality determinations.

7. Recommend that TRC improve its rulemaking process and other decision-making processes through establishment of a better system for public input and stakeholder involvement.

There are concerns about TRC's utilization of the rulemaking process. It is important that TRC adhere to the rulemaking process and use the Rehabilitation Council of Texas as a venue for receiving public input.

8. Recommend that TRC continue to improve public notification of Board meetings and other open/public meetings, including expanded accessibility to meeting schedules, Board briefing materials, and other agency documents through the TRC website.

There are concerns about TRC's public notification process for public and open meetings.

9. Recommend that TRC continue to focus on improved training about agency policies and procedures for newly hired counselors in the Vocational Rehabilitation (VR) Program and Independent Living Services (ILS).

There are concerns about new counselors' understanding of policy and the dissemination of incorrect information to clients.

10. Recommend that TRC study turnover rates of counselors in the VR Program and develop a plan to reduce turnover.

Consumers are adversely affected by VR counselor turnover, which is impacted by caseload demands. The study should include former employee data in addition to exit interview results.

11. Recommend that the Legislature continue to monitor turnover rates in the VR Program at TRC.

VR counselor turnover rates are high and will be impacted in the future by revised degree requirements and the retirement of experienced VR counselors. High rates of turnover adversely affect consumers.

12. Recommend that TRC study current caseload closure expectations and their impact on VR counselor turnover, including a review of caseload expectations in other states and the impact of reducing caseload expectations.

VR counselors have goals for the number of cases to be resolved per month as indicated in their job performance statements. There is pressure on counselors to close cases; many advocates believe that this adversely affects those clients who may be more difficult to serve.

13. Recommend that the Legislature require involvement from TRC in the promoting independence initiative, including formal reporting of related activities, continuation of the Independence Initiative Workgroup, and coordination with the SB 367 Task Force.

TRC has recently become involved in inter-agency and intra-agency efforts to respond to the *Olmstead* decision. Since TRC's mission is closely related to the independence of persons with disabilities, the agency should play an integral role in the promoting independence initiative. This includes Vocational Rehabilitation training and employment for individuals supporting themselves in the community. TRC has created an Independence Initiatives Workgroup to look at agency-specific issues related to the Promoting Independence Plan and serves on the SB 367 Task Force.

CHARGE 4: Study the extent and causes of suicide and consider whether Texas should implement a suicide prevention program.

Introduction

Widely recognized as a serious problem from both a mental health perspective and a public health perspective, suicide takes the lives of about 30,000 Americans each year.[68] Every 18 minutes another life is lost to suicide, and more people die from suicide than from homicide or HIV/AIDS.[69] Although some populations may have higher rates than others, suicide affects people of every age, gender, social status, race and ethnicity. Texas does not have the highest rate of suicide in the nation, and yet the state loses over 2,000 Texans to suicide each year.[70] The aftermath of suicide for surviving family and friends is devastating.

> Suicide exacts an enormous toll from the American people. Our nation loses 30,000 lives to this tragedy each year; another 650,000 receive emergency care after attempting to take their own lives. The devastating trauma, loss and suffering is multiplied in the lives of family members and friends.
>
> *Former Surgeon General David Satcher, MD, PhD*
> *National Strategy for Suicide Prevention*

Exacerbated by the reluctance to openly discuss mental illness issues in general, the topic of suicide has long been veiled in stigma and silence. Only recently has suicide gained national attention and recognition as a serious problem. In 1998, leading experts in the field met in Nevada to hold a conference on suicide prevention strategies. As a result of this meeting, the office of Surgeon General David Satcher issued the "Call to Action to Prevent Suicide" the following year. This report outlined a strategy for suicide prevention that included three goals: awareness, intervention and methodology. These goals were subsequently expanded in 2001 in the National Strategy for Suicide Prevention (National Strategy). Spearheaded by the U.S. Department of Health and Human Services, the National Strategy detailed a comprehensive blueprint of goals and objectives for states to follow in adopting and developing statewide suicide prevention plans. Several states have developed and implemented such plans or are in the process of designing them.

While Texas has not adopted a comprehensive statewide suicide prevention plan, there have been various efforts to address the issue. During the 71st Session, several bills were passed to implement youth suicide prevention activities in Texas, but there has been no legislative action since that time. In addition to educational institutions, mental health care providers, medical professionals, law enforcement, and the faith community have long been involved in dealing with mental illness and suicidal behaviors, and in serving and supporting people at risk for suicide.

In recognition of suicide survivors and mental health advocates across the state and in response to the Surgeon General's Call to Action and the national effort to address suicide, Speaker James E. "Pete" Laney charged the House Committee on Human Services to "study the extent and causes of

suicide and whether Texas should implement a suicide prevention program."

Extent of Suicide in Texas

Suicide in Texas

The most recent statistics available on suicide in Texas are for the year 2000.[71] Suicide was the ninth leading cause of death in the state that year and was responsible for 2,093 deaths. There were 50 percent more deaths from suicide than from homicide, and twice as many Texans died from suicide as died from HIV/AIDS. Rates of suicide in Texas are comparable to national rates, with about ten Texans per 100,000 dying by suicide each year. While Texas' rates of suicide have remained fairly stable over the past 20 years, little headway has been made in reducing the rate in comparison to other causes of death. For example, while motor vehicle deaths outnumber those caused by suicide, their rate has dropped significantly in the last 20 years due to prevention efforts.

Suicide affects people of every region, age, gender and culture. However, rates do differ among some notable populations, including age, gender, ethnicity, and sexual identity. For example, men are far more vulnerable to suicide than women. In fact, Texas men are four times more likely to die from suicide than women.[72] Suicide also presents a considerably higher risk to Anglo-Americans than to other races. Almost three-quarters of all suicides nationwide are completed by white men.[73]

With regard to age, suicide poses an increased threat to adolescents and to the elderly. Suicide is the third leading cause of death for youth ages 15 to 24 in Texas, and about 18 percent of all suicide deaths in Texas are accounted for by those under age 25. Suicide rates increase with age and are highest among Texans 75 years and older.[74]

In addition, there exists considerable concern about the relationship between suicide and sexual identity. While data are not available for Texas, national studies show that lesbian, gay and bisexual youth may be at higher risk for suicide. A sense of self-acceptance or self-worth and a positive view of sexual orientation are considered critical to the mental health of young people.[75] In general, lesbian, gay and bisexual youths are more likely to consider and to attempt suicide.[76]

Suicide and Youth

More teenagers and young adults die from suicide than from cancer, heart disease, AIDS, birth defects, stroke, pneumonia, influenza, and chronic lung disease, combined.

Source: Centers for Disease Control & Prevention

Suicide deaths are usually caused by firearms, hanging/suffocation, or poisoning, yet most suicide deaths in all age groups are by firearms. About three out of every five suicide deaths is completed with a firearm.[77]

This page contains graphics that are not available on the internet. Please contact the House Committee on Human Services at 512.463.0786 to obtain a paper copy.

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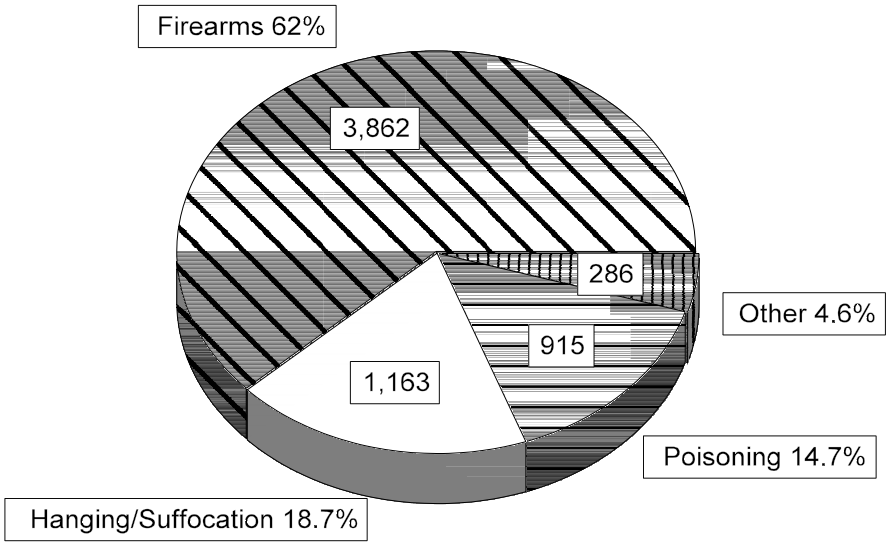
Methods of Suicide

1998 to 2000



Source: Texas Department of Health, Bureau of Vital Statistics

Reporting and Data Collection

Any discussion of rates or numbers of suicide deaths or suicide attempts must be tempered with an understanding of current systems of data collection. The majority of information about suicide comes from death certificates, which do not specify circumstances and precipitating factors. Not all suicide deaths are reported as suicides, and studies suggest that the true rate of suicide is considerably higher than records show.

The Texas Department of Health (TDH) has identified several unanswered questions in an attempt to obtain high quality data.[78] These are:

- How many Texans are treated in an emergency room or hospitalized once or more for an attempt? Do they persist until they kill themselves, or do they pass through a crisis episode?
- How many Texans are treated for self-inflicted injuries in other settings or not treated at all?
- What percentage of high school students in Texas report having attempted suicide in the past 12 months?
- What methods are Texas youth utilizing to cause self-harm?
- What are the economic costs of suicidal behavior in Texas?

Suicide attempts, in particular, are difficult to quantify. The number of Texans attempting suicide each year can only be estimated based on national figures. The Texas Department of Health estimates that there are about 53,000 suicide attempts each year in Texas.[79] Among Texans under age 20, an estimated 5,000 attempts are medically treated every year.[80]

Causes of Suicide

Risk Factors and Protective Factors

Those who study suicide and prevention strategies refer to protective factors and risk factors in discussions of an individual's vulnerability to suicidal behavior. Protective factors are those aspects that reduce the likelihood of suicide. Risk factors, on the other hand, are characteristics leading to or associated with suicide. Those who possess risk factors are at greater risk for suicide.

> "Mental disorders and substance abuse disorders - alone and co-occurring - are the major risk factors for allowing human beings to overcome one of nature's most compelling instincts--the urge to survive. Why do people kill themselves? We urgently need to know more."
>
> *Steven Hyman, MD - Former Director, National Institute of Mental Health*

According to the National Strategy for Suicide Prevention, protective factors for suicide

include the following:

- effective clinical care for mental, physical and substance use disorders;
- easy access to a variety of clinical interventions and support for those seeking help;
- restricted access to highly lethal means of suicide;
- strong connections to family and community support;
- support through ongoing medical and mental health care relationships;
- skills in problem-solving, conflict resolution, and non-violent handling of disputes; and
- cultural and religious beliefs that discourage suicide and support self-preservation.[81]

In general, mental illness and substance abuse disorders are considered the major risk factors associated with suicide. However, suicide is a complex issue, and vulnerability to suicidal behaviors may include a variety of factors and circumstances. A broader range of risk factors for suicide can be divided among three areas: biopsychosocial, environmental and sociocultural.[82] Biopsychosocial risks include mental disorders, substance abuse disorders, hopelessness, impulsive or aggressive tendencies, history of trauma or abuse, major physical illnesses, previous suicide attempt(s), and a family history of suicide. Environmental risk factors are understood as job or financial loss, relational or social loss, easy access to lethal means, and local clusters of suicide. A lack of social support, isolation, stigma associated with seeking help, barriers to accessing mental health and substance abuse treatment, cultural and religious beliefs, and media exposure to others who have died by suicide are risks defined as sociocultural.

Myths About Suicide and Mental Illness

Suicide is not a serious problem.
Mental health is not as important as physical health.
Suicide is not preventable.
People who are suicidal don't seek help.
People who are suicidal are intent on dying.
Suicide is a taboo subject.
Suicide is the "unforgivable sin."
Children do not think about or attempt suicide.

Studies on the interaction between risk factors and protective factors are limited. However, activities or interventions that limit the impact of risk factors and enhance protective factors are thought to play an essential role in preventing suicide.

Lack of Awareness and Stigma

Two of the most problematic barriers to effective suicide prevention and to treatment of mental illness in general are a lack of awareness regarding, and the social stigma surrounding, the issues. The public lacks information about the risk factors and the extent of mental illness and suicide, as well as the availability of services, programs and treatment options. The stigma surrounding these issues contributes to this lack of information and to the reluctance of those in need to seek services.

People contemplating suicide as well as survivors of suicide are often alienated by this silence and stigma surrounding mental illness and suicide.

Consequences of Suicide

Survivors of Suicide

Survivors of suicide are those who have lost a relative, a friend or a co-worker to suicide. More than 12,000 Texans are affected each year by the suicide of someone close to them.[83] This is based on an estimation that one suicide intimately affects six other people. Survivors experience a wide range of pain as a result of this loss, from grief to confusion to guilt. As noted above, one of the risk factors for suicide includes having a family history of suicide. Thus, survivors face the potential increased risk, in addition to the grief, social stigma and lack of information on prevention and treatment options.

> "Suicide is a particularly awful way to die: the mental suffering leading up to it is usually prolonged, intense and unpalliated. There is no morphine equivalent to ease the acute pain, and death not uncommonly is violent and grisly. The suffering of the suicidal is private and inexpressible, leaving family members, friends and colleagues to deal with an almost unfathomable kind of loss, as well as guilt. Suicide carries in its aftermath a level of confusion and devastation that is, for the most part, beyond description."
>
> *Kay Redfield Jamison, author of Night Falls East: Understanding Suicide, 1999*

Cost of Suicide in Texas

The cost of suicide is difficult to measure, given the incomplete data on suicide deaths and attempts and the unquantifiable pain and suffering experienced by survivors. According to the Children's Safety Network, the estimated annual medical cost for completed and medically-treated youth suicide in Texas is $82 million.[84] Thus, engaging in effective suicide prevention activities has the potential to save medical costs associated with suicide attempts, to alleviate the impact of untreated mental illness and to protect the emotional and social well-being of Texans.

Texas' Approach to Suicide Prevention

Efforts to prevent suicide are diverse and scattered across the state. Community and state-level initiatives include general mental health services, youth-focused activities, crisis hotlines and a statewide steering committee committed to the issue. Without a coordinated approach to suicide prevention, it is difficult to identify all the prevention-related activities in existence throughout the state.

School-Based Suicide Prevention Programs

During the 71st Session, the Texas Education Agency (TEA), through House Bill (HB) 2321 and HB 2322, was directed to address youth suicide prevention. These bills required the agency to create an advisory committee on suicide prevention for school-aged children, and to develop and distribute guidelines regarding policies and procedures on suicide prevention, intervention and response. The advisory committee was formed with representatives from the Texas Department of Mental Health and Mental Retardation (TDMHMR), TEA, the Parent Teacher Organization, the Association of Secondary School Principals, suicide and crisis centers, and school guidance counselors. Guidelines on youth suicide were published and distributed by TEA in 1991, and the agency is currently working on a new version of the guidelines to be distributed to school districts.

Other Suicide Prevention Programs

While suicide prevention activities and programs exist across the state, not all are specifically referred to as such. For example, TDMHMR is responsible for the mental health treatment of over 150,000 Texans every year. Many TDMHMR clients have severe problems due to depression or psychotic illnesses, which present a high risk for suicide. State hospitals have risk assessment protocols and suicide prevention techniques to enable staff to prevent deaths in most cases.

TDH is involved in suicide prevention in several ways.[85] First of all, the Bureau of Epidemiology collects, analyzes and disseminates data on suicide deaths to other agencies and responds to inquiries about suicide epidemiology and prevention efforts. TDH is also involved in the Child Fatality Review Team system, providing information to the team about suicide issues. Specific suicide prevention efforts include the distribution of "Mental Health CPR," a prevention curriculum targeting adolescents. Education on suicidal behavior is also included in family and sexual violence training curriculum for women's health care providers. Finally, TDH is involved in interagency efforts to address suicide, such as the Suicide Prevention Steering Committee discussed below.

One of the most widespread suicide prevention activities is the telephone help line. A variety of suicide hotlines and crisis hotlines exist across the state. In addition, all community mental health centers are required to maintain a 24-hour crisis hotline. These phone resources vary in terms of quality, staff and services. For example, some hotlines provide crisis counseling while others refer callers to local service providers. Furthermore, the Texas Information and Referral Network, or the "2-1-1" telephone system, is a Health and Human Services Commission program designed to provide a source for statewide information and referrals on health and human services issues. Structured through area information centers, the network provides a link between those who need assistance and service providers. Community-based resources accessed through the network cover a wide range of issues, including mental health services, substance abuse treatment and suicide prevention activities. When the phone system is fully implemented, Texans will be able to dial 2-1-1, free of charge, and be connected to an area information center, where they will be assisted by a

trained information and referral specialist. Until the 2-1-1 number is fully functional, each area information center is accessible through a 1-800 number.

Suicide Prevention Steering Committee

The Texas Suicide Prevention Steering Committee was formed in 2001 out of a grassroots coalition of public health professionals, trauma service providers, suicide survivors, educators, and mental health clinicians. The committee was created due to the lack of a coordinated suicide prevention effort in Texas and in response to the Surgeon General's Call to Action. The goal of this committee is "to reduce the risk for suicide and increase protective factors across the lifespan" and to advocate for a statewide, comprehensive, coordinated suicide prevention plan.[86]

Suicide Prevention Plan Steering Committee Membership Affiliation

Texas Department on Aging
Texas Department on Alcohol and Drug Abuse
Texas Department of Health
Texas Department of Mental Health & Mental Retardation
Texas Education Agency
Governor's Emergency and Trauma Advisory Committee
Ben Taub Hospital
San Antonio Metropolitan Health District
UT Health Sciences Center
Southwestern School of Medicine
Southwest Texas State University
Texas Tech University
Crisis Intervention of Houston
Juvenile Correctional Treatment Center of Bexar County
Cypress Fairbanks Independent School District
Irving Independent School District
American Association of Suicidology
American Federation of Suicide Prevention
National Organization of People of Color Against Suicide
Mental Health Association of Texas
Texas Medical Association
Texas Nurses Association
Private practice psychotherapist
Child and adolescent psychiatrist
Survivors of suicide

Source: Texas Suicide Prevention Steering Committee, Testimony to the House Committee on Human Services, April 2002

Statewide Suicide Prevention Plan

The National Strategy for Suicide Prevention, developed by a multidisciplinary team at the national level, provides a blueprint for states to follow in designing statewide suicide prevention plans.[87] Designed as a catalyst for social change, this strategy is the first coordinated approach by both the public and private sectors to prevent suicide in the United States. This national effort focuses on three main areas: awareness, intervention and methodology, which are further outlined and specified as goals and objectives. The awareness component aims to educate the public that suicide is a problem that is preventable, to develop broad-based support for suicide prevention, and to create and implement strategies to reduce the stigma associated with mental illness, substance abuse and suicide. The intervention element of the strategy involves the development and implementation of community-based suicide prevention programs, addressing barriers to mental health and substance abuse services, and providing training and education on suicide prevention and at-risk behavior. The final area focuses on methodology and calls for the improvement of systematic collection and analysis of suicide data, and the promotion of research on suicide and suicide prevention. Further information on the National Strategy for Suicide Prevention can be found at http://www.mentalhealth.org/suicideprevention/strategy.asp.

The Texas Suicide Prevention Steering Committee has also developed a proposed statewide plan that includes strategies necessary to accomplish 11 goals based on the Surgeon General's framework for awareness, intervention and methodology. This Texas-specific plan can be found on the website of the Texas Department of Health, at http://www.tdh.state.tx.us/injury/reports/tspp.

National Strategy for Suicide Prevention Goals

Awareness:
- Promote awareness that suicide is a public health problem that is preventable.
- Develop broad-based support for suicide prevention.
- Develop and implement strategies to reduce the stigma associated with being a consumer of mental health, substance abuse and suicide prevention services.

Intervention:
- Develop and implement suicide prevention programs
- Promote efforts to reduce access to lethal means and methods of self-harm.
- Implement training for recognition of at-risk behavior and delivery of effective treatment.
- Develop and promote effective clinical and professional practices.
- Increase access to and community linkages with mental health and substance abuse services.
- Improve reporting and portrayals of suicidal behavior, mental illness and substance abuse in the entertainment and news media.

Methodology:
- Promote and support research on suicide and suicide prevention.
- Improve and expand surveillance systems.

Source: U.S. Department of Health and Human Services, 2001

Other State Suicide Prevention Plans

Several states have responded to the Surgeon General's call to address suicide through statewide suicide prevention plans. While the approaches differ in scope and structure, at least 17 states have developed plans that are in the process of implementation. These plans range from legislation establishing a statewide suicide awareness week to a more comprehensive and coordinated community-based approach. This interim charge to the House Committee on Human Services is the first discussion, at the state level, of the development of a statewide plan to address suicide prevention in Texas.

Conclusion

While discussions regarding suicide prevention generally follow the public health model, it is important to also consider suicide in the context of overarching mental health issues. According to the Surgeon General, half of all Americans will experience a mental disorder at some point in their lives. Mental illness affects an estimated 2.8 million Texans.[88] Due to the stigma associated with the identification of and treatment for mental illness, many Texans are left undiagnosed, untreated and at an even greater risk for suicidal behavior.

Given the increased risk for suicide associated with mental illness, access to mental health treatment is another key issue in the discussion of suicide prevention planning. Rural areas, in particular, often have too few mental healthcare providers to adequately serve the community. Another barrier to accessing treatment for mental illness is partial coverage for mental health treatment under health insurance plans. Only when mental health is viewed on a par with physical health will this financial obstacle to care begin to be addressed.

Opening up the discussion of suicide to include access to and availability of mental health care is an essential component of the planning process. Designing a statewide plan provides Texas the opportunity to bolster the safety net for those alienated by the stigma and silence surrounding mental illness and suicide. A coordinated approach has the potential to save thousands of Texans from the trauma, loss and suffering associated with suicidal behavior.

Recommendations

1. Recommend that the Legislature establish a comprehensive statewide suicide prevention plan.

The planning process should encompass a range of agencies, such as the Texas Education Agency (TEA), Texas Department on Aging (TDoA), Texas Department of Health (TDH), Texas Department of Mental Health and Mental Retardation (TDMHMR), and the Texas Commission on Alcohol Drug and Abuse (TCADA). In addition, it is important that the plan be community-based and include law enforcement agencies, medical and mental health care providers, and the faith community. The plan should address suicide across the lifespan, given that suicide is a greater risk to youth and to the elderly. The Texas Suicide Prevention Steering Committee has proposed a plan based on the National Strategy for Suicide Prevention (2001) published by the U.S. Department of Health & Human Services in cooperation with the Centers for Disease Control and Prevention, the National Institutes of Health, and others.

The plan should include the following goals:

A. to promote awareness that suicide is a problem that is preventable;

B. to develop broad-based support for suicide prevention;

C. to develop and implement strategies to reduce the stigma associated with being a consumer of mental health, substance abuse and/or suicide prevention services;

D. to improve reporting and portrayals of suicidal behavior, mental illness and substance abuse in the entertainment arena and news media;

E. to develop and implement community-based suicide prevention programs;

F. to promote efforts to enhance safety measures for those at risk of suicide;

G. to implement training for recognition of at-risk behavior and delivery of effective treatment;

H. to develop and promote effective clinical and professional practices;

I. to increase and improve access to community linkages with mental health and substance abuse services;

J. to promote and support research on suicide and suicide prevention; and

K. to improve and expand surveillance systems.

2. Recommend that the Legislature establish a Suicide Prevention Council to design and implement a statewide suicide prevention plan.

Representation on a Suicide Prevention Council should include appropriate state agencies, such as TEA, TDoA, TDH, TCADA, and TDMHMR, in addition to private and community-based

organizations**.**

3. Recommend that the Legislature mandate that health insurance policies cover mental, emotional and behavioral disorders, with coverage substantially equivalent to that provided for other medical conditions. This includes expanding mental health parity to include children under the age of 19.

Texas has partial parity legislation. Legislative intent is unclear about children under the age of 19, because childhood diseases are not covered.

4. Recommend that the Legislature direct the Department of Insurance (TDI) and TDH to explore ways to provide oversight, including accountability data, for the provision of mental health care benefits/resources.

This includes the monitoring of access to, and coordination of, quality mental health care services.

CHARGE 5: Evaluate the adequacy of staffing levels at the Department of Human Services. Examine staff workloads and responsibilities in light of new and altered responsibilities at the department, including implementation of CHIP, eligibility policy changes and welfare reform. Explore options that might increase efficiency of staff, including enhanced technology and public-private partnerships for application and recertification of benefits.

Introduction

The State of Texas requires state agencies to carry out their mission and conduct day-to-day business with a legislatively mandated number of staff, which is often fewer than agencies maintain is needed. This is especially true in the area of health and human services. Authorization and funding for additional staff is granted by the Legislature only after thorough review, deliberation, and only in the most compelling of circumstances. When those compelling circumstances present themselves, the Legislature has answered the call. For example, after much publicity and a coordinated appeal from State District Court Judge Scott McCowan, the Legislature approved staff increases for the Child Protective Services Program during the 76th and 77th Sessions.

In light of the Comptroller's current revenue projections for the coming biennium, additional staff reductions are a likely scenario for state agencies during the appropriations process. Agencies are often given new responsibilities and increased workloads with no increase in staff. The increased workload that follows the new responsibilities can exacerbate the problem of staff turnover. The Department of Human Services (DHS) has faced the challenge of reduced staff and increased responsibilities for several years.

Turnover at the Department of Human Services

In its fiscal year 2002-2003 budget request, DHS reported turnover rates that range from 32 to 38 percent in metropolitan areas, with Austin and Houston among the highest.

Source: Center for Public Policy Priorities, Testimony to the House Committee on Human Services, 2002

Many factors and legislative actions have contributed to the current state of affairs at DHS. Additional staff cuts by the 77th Legislature for the 2002-2003 biennium have caused the problem to be even more pressing for DHS clients, who often represent the most vulnerable Texans served by state government.

In recognition of the seriousness of the issue and to ensure appropriate legislative attention to the matter, Speaker James E. "Pete" Laney charged the House Committee on Human Services to "evaluate the adequacy of staffing levels at the Department of Human Services," and to "examine staff workloads and responsibilities in light of new and altered responsibilities at the department, including implementation of CHIP, eligibility policy changes and welfare reform." In addition, the Speaker charged the Committee to "explore options that might increase efficiency of staff, including enhanced technology and public-private partnerships for application and recertification of benefits."

Staffing Levels Over Time

In order to answer the Speaker's charge, the Committee reviewed the staffing levels of the DHS Client Self-Support (CSS) Division over recent years. CSS staff interview clients for eligibility to participate in the Temporary Assistance for Needy Families (TANF), Food Stamp, and Medicaid Programs. The data alone provide an illustration of the depth of staffing cuts since 1996 (see inset). In 1996, CSS eligibility staff totaled 11,211 full-time equivalents (FTEs), but the estimated 2003 FTE level is 8,481, a reduction of 2,730 over seven years.[89]

Department of Human Services
CSS Eligibility FTEs: 1996-2003

Actual 1996	11,211
Actual 1997	11,100
Actual 1998	9,859
Actual 1999	9,830
Actual 2000	9,095
Actual 2001	9,208
Affordable 2002	8,832
Estimated 2003	8,481

Source: Texas Department of Human Services, Report to the House Committee on Human Services, 2002

The Department of Human Services' Legislative Appropriation Request (LAR) for the 2002-2003 biennium requested 921 additional workers.[90] Instead of granting any increase, Special Provisions Rider 32 in Article II and Rider 10.51 in Article IX of the General Appropriations Act, combined with the fiscal note assumptions of Senate Bill (SB) 43, formed the basis for the reduction of approximately 450 FTEs in 2002 and another 275 FTEs in 2003. Thus, DHS faces an additional loss of 725 CSS eligibility staff over the biennium.

Workload vs. Caseload

Staffing level data alone do not suggest that a problem necessarily exists. In order to place the FTE reduction figures in context, the issues of applications processed and DHS workload must be examined.

Applications Processed

Our review of CSS eligibility staff, who conduct eligibility reviews for TANF, TANF-related Medicaid under the Texas Works Program, and the Food Stamp Program, found that the number of workers available to process CSS applications decreased by 17 percent from 1996 to 2001. During the same period, the number of applications processed increased by 13 percent.[91]

While TANF and the Food Stamp Program application levels have remained fairly stable from 1996 to 2001, Medicaid application levels have seen an increase of over 30,000 applications over that period of time. Processing applications is a complex process, because eligibility guidelines for these programs are almost constantly changing. The processing of applications is CSS eligibility workers' primary function, and regardless of whether an applicant ultimately becomes a recipient, the work involved is the same. While the analysis of the 1996 to 2001 figures is sufficiently illustrative of the problem, reports from DHS suggest that the 2002 and projected 2003 application levels will

Average Monthly Applications Processed - 1996 to 2001

Program	1996	1997	1998	1999	2000	2001
TANF	28,609	26,445	22,519	21,997	22,506	24,622
Food Stamps	76,548	70,185	66,635	70,078	69,020	75,035
Medicaid	82,260	84,025	86,957	96,599	103,933	112,348
Total Applications	187,416	180,655	176,110	188,674	195,458	212,005
percent change (previous year)		-3.6%	-2.5%	7.1%	3.6%	8.5% **(13.1%)**

Source: Center for Public Policy Priorities, Testimony to the House Committee on Human Services, 2002

further exacerbate the problem. For FY 2002, DHS is already seeing an increase of 8.1 percent over FY 2001. DHS is also projecting application increases of 3.1 percent for FY 2003.[92]

Comparison of Workload to Total Staff: CSS Eligibility/Texas Works Staff

DHS did experience a decrease in caseloads in the TANF, Food Stamp, and TANF-related Medicaid Programs over the 1996 to 2001 period. Admittedly, these caseload decreases were significant, with the TANF rolls cut nearly in half and the Food Stamp Program experiencing historic reductions in caseload of approximately 42 percent.[93] Unfortunately for DHS workers, these reduced caseloads did not equal a reduction in applications in need of processing (see inset). Beyond evaluating applications processed, quantification and analysis of the actual demonstrated workload of the CSS eligibility staff over time clearly show the problems at DHS. (Medicaid applications in this analysis are for TANF-related Medicaid only, and exclude applications for Medicaid long-term care programs and SSI-related Medicaid).

Beginning in 2000, total workload in the Texas Works Program, the program under which CSS eligibility staff work, started to outpace staffing levels (see pages 74 and 75).[94] In 2000, total CSS FTEs numbered 8,759 (not including hospital-based Medicaid workers), approximately 1,000 FTEs short of the staffing level necessary to meet the calculated case equivalent workload level. In 2001, staffing levels fell further behind workload. In 2001, total CSS FTEs numbered 8,832, approximately 2,000 FTEs short of the staffing level necessary to meet the calculated case equivalent workload level. In 2002 and 2003, the situation becomes more unbalanced. For 2002, the affordable, or funded FTE level is 8,391 (again, not including hospital-based Medicaid workers), approximately 2,600 short of the staffing level necessary to meet the calculated case equivalent workload level. For 2003, the affordable FTE level is 8,039, nearly 4,000 FTEs short of the staffing level necessary to meet the calculated case equivalent workload level.[95]

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What does workload mean?

The workload figures in this report are based on a DHS standard definition: To measure "workload", DHS weights cases by program, e.g., Food Stamps, TANF or Medicaid, according to the amount of time needed to complete a program-specific transaction and the number of transactions per case. For Texas Works, the "standard" workload unit is the average monthly amount of worker time that was involved in processing a Food Stamp case in FY 1997, based upon the times per transaction and the ratios of transactions per case that were in effect in FY 1997. Through periodic (basically annual) time studies, DHS is able to update the times per transaction over time.

Source: Texas Department of Human Services, 2002

The same gradual understaffing has occurred with the Medicaid eligibility staff that process the non-TANF-related Medicaid applications.[96] Medicaid applications in this category include applications for nursing facilities, Medicare savings programs, long-term care community-care programs, and SSI-related Medicaid. Beginning in 2000, total workload for these Medicaid eligibility workers also began to outpace the staffing levels. In 2000, the eligibility staffing levels for these programs was 968, a little over 100 FTEs short of the staffing level necessary to meet the workload. In 2001, this eligibility program had 932 FTEs, a little over 200 fewer than would have been necessary to meet workload levels. Starting in 2002 and 2003, the same phenomenon occurred in this eligibility area as was experienced in CSS eligibility. DHS calculated and requested a needed FTE level of 974 for 2002, and 1,024 for 2003. This request was based on increasing workload projections, but, in making a conservative request, DHS still fell short of the actual projected workload by approximately 226 FTEs and 236 FTEs respectively. Therefore, even if the 77th Legislature had funded the requested level of FTEs, this division would still face inadequate resources. Affordable FTEs under the 77th Legislature's General Appropriations Act were 932 for 2002, approximately 268 fewer than required by the workload, and 932 for 2003, approximately 328 fewer than required to meet the workload projections.[97]

The level of understaffing that will be reached in 2003 has many negative implications for the clients of the agency, the quality of services provided, the working conditions at the agency, and the overall health of Texas' primary safety-net provider.

History and Causes of Staff Cuts and Workload Increases

Many justifications or explanations exist for DHS staffing levels falling so far behind workload levels. In some cases, caseload, but not workload, declines suggested that staff cuts were prudent. In other cases, legislative changes to DHS' role in various programs were used to justify staff cuts or to necessitate additional staff that simply were not funded. Understanding the stories behind seven years of staff cuts does not mitigate the present day effects of those cuts, but it does help put DHS' current situation in perspective.

Welfare Caseload Decreases vs. Welfare Workload

Welfare Caseloads in Texas

Texans served in 1996:
690,251 individuals (monthly average)

Texans served in 2000:
341,396 individuals (monthly average)

Source: Texas Department of Human Services

In 1995, the 74th Texas Legislature passed House Bill (HB) 1863, and welfare reform was initiated in Texas. The legislation made cash assistance a time-limited benefit, and recipients were required to work or prepare for the workplace. HB 1863 was similar, in many ways, to provisions in the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA), the federal welfare reform measure passed by Congress in August, 1996. Policy changes led to dramatic reductions in the welfare rolls nationwide, and Texas was considered a leader. Welfare, or TANF caseloads dropped more than 50 percent, from 746,343 Texans served in 1995 (monthly average) to a low of 341,396 Texans served in 2000 (monthly average). In 2001, Texas saw a slight increase to 349,854 (monthly average), and a similar upward trend is appearing for 2002, where the number of recipients is increasing by about 2.5 percent.[98]

At first glance, such dramatic reductions in caseload would seem to justify significant reductions in program staff that process eligibility for TANF. In fact, those reductions were one of the factors the Legislature began to consider when allocating staff to DHS. However, a closer look at the TANF-related workload at DHS would suggest that significant staffing cuts were not justified. In addition to relatively minor reductions in TANF applications over the same period of time, it is important to note that the staff that process TANF applications also process Food Stamp and TANF-related Medicaid applications, programs that saw little or no decrease in applications over that same period of time. Further, workload began to increase from 1999 forward. The complexity of the work with TANF applicants and clients increased significantly over that period, as responsibilities such as encouraging and diverting clients toward work, were added and repeated legislative changes to the TANF Program were mandated.

Why didn't workload follow the caseload decreases?

Workers are spending more time assuring families get Medicaid and food stamps when leaving or denied TANF.

Work-First philosophy requires workers to spend more time discussing value of work and work requirements of program.

Workers must now explain the multiple provisions of TANF's Personal Responsibility Agreement, including possible sanctions.

New programs, such as the TANF one-time diversion payment and grandparent payment, require more time with clients.

New time limit policies in TANF and the Food Stamp Program require more time to explain to clients.

Changes to immigration policy require more paper work.

Food Stamp Program error reduction efforts require frequent client interviews in order to review cases.

DHS workers must now register applicants to vote.

Source: Texas Department of Human Services, 2002

While a strict consideration of only TANF caseload may have justified some cuts in staffing at DHS, the actual experience of CSS workers in the TANF Program demonstrated that such cuts were not justified by caseload decline.

Senate Bill 445 Fiscal Note and DHS' Role in CHIP

Another major policy change in the last six years has had a considerable impact on the current staffing situation at DHS. In 1999, the Legislature passed SB 445, which established the federally authorized State Children's Health Insurance Program (CHIP). While the Legislature chose to contract with a third party to administer the program and designated the Health and Human Services Commission as the lead oversight agency, there were significant workload increases for DHS associated with the implementation of CHIP.

In the official SB 445 fiscal note, the Legislative Budget Board (LBB) calculated the increased DHS CSS eligibility workload to require 35 additional FTEs in FY 2000, 129 additional FTEs in FY 2001, and 219 FTEs in FY 2002. Unfortunately, no corresponding FTE increase for DHS was funded. In fact, CSS staff have seen a decrease of approximately 100 FTEs from FY 1999 to FY 2002, with a loss of another 350 expected in FY 2003.

Since the SB 445 fiscal note was basically ignored, the effects of the CHIP Program on DHS CSS staff have been far reaching. First, there was an increase in child Medicaid enrollment that was stimulated by aggressive CHIP outreach efforts. Early CHIP outreach efforts were uncovering as many Medicaid applicants as CHIP applicants. As of April 29, 2002, the CHIP Program referred 320,726 individuals to DHS as potentially Medicaid-eligible individuals.[99] While these referrals only resulted in 101,278 new Medicaid-enrolled individuals, every referral generated work for CSS staff, regardless of the final outcome.[100] Secondly, DHS' CSS staff have experienced increased workloads through the screening and referral of children who are ultimately enrolled in CHIP. As of May 1, 2002, 308,912, or 58 percent, of the 529,143 total CHIP-enrolled children initiated their application with a DHS worker.[101]

While the third party administrator receives approximately $25.6 million annually to administer the program, and another contractor receives approximately $5.6 million annually for media/marketing services, DHS has received no increased staff for the agency's significant role in the CHIP Program.[102]

Medicaid Simplification and Related Cuts

Further health insurance-related improvements passed by the 77th Legislature, although unintended by the principal authors, exacerbated the CSS staffing crisis. Through SB 43, the Children's Medicaid Simplification Act, the Legislature eased access to Medicaid by removing or lessening historic barriers. SB 43 eliminated the requirement for a face-to-face interview, thus allowing mail-in and phone-in applications. SB 43 also allowed for self-declaration of assets, simplifying an aspect of the eligibility procedure often noted as a source of frustration and complication. Finally, SB 43 authorized six-month continuous eligibility that may eventually be increased to 12-month eligibility, as opposed to month-to-month eligibility.

Assumed Recipient Increases and Actual Experience (monthly averages)

Program	2001	Assumed '02 / '03	Projection for '02	% change from '01
TANF	349,854	361,225 / 364,476	358,723	2.5%
Food Stamps	1,394,384	1,314,410 / 1,291,640	1,640,271	17.6%
*Non-TANF Medicaid	762,204	790,491 / 806,952	1,083,026	42.1%

*(every TANF case is an additional Medicaid case also, above the Non-TANF figures)

Source: Texas Department of Human Services, SB 1, 77th Session

These reforms had been advocated for years, and the passage of SB 43 was celebrated as one of the biggest accomplishments of the 77th Legislature. Throughout the legislative process, the primary authors and sponsors of the legislation stressed, as did community advocates, that passage of SB 43 should not be used to justify corresponding DHS CSS staff cuts. Opponents stated that the elimination of the face-to-face requirement and the move to six-month continuous eligibility would reduce the workload of the DHS CSS Division. Ultimately, that opinion prevailed, ignoring the significant projected caseload increases that simplification would generate, and the fact that DHS staff would still have to process the applications, regardless of how they were received, e.g., by mail or phone. Projected caseload increases assumed in the General Appropriations Act for two CSS eligibility programs, TANF and Medicaid, did not result in any funding for increased FTEs. In fact, the passage of SB 43 resulted in DHS CSS staffing cuts of approximately 725 FTEs for FY 2002 and FY 2003, the savings from which were used to fund the increased Medicaid costs in the bill. Since the passage of SB 43 and other legislation that similarly simplified access to the Food Stamp Program, caseloads are now growing to rates higher than FY 2001 for all three CSS programs, and even higher than projected during the 77th Session for the Food Stamp Program and Medicaid (see inset).[103]

Senate Bill 1839 and Nursing Home Resident Safety

A look at the effects of SB 1839, 77th Session, on DHS staffing levels demonstrates that the problem of staffing cuts is not limited to the CSS Eligibility Division. One of the provisions of SB 1839, the Omnibus Nursing Home Bill, created a new function for the state in terms of nursing home regulation.

In light of the financial crisis faced by the nursing home industry during the last few years, some in the Legislature believed it was time to develop new initiatives that were more consultative in nature to help the industry improve operations and quality of care. This new function was focused on a more cooperative, less adversarial relationship between the state and the nursing home industry. Creation of "Rapid Response Teams" and "Quality Monitors" under SB 1839 was achieved by the

reallocation of 50 of the 82 FTEs reduced in the Long-Term Care Regulatory Division. This change occurred at a time when nursing home conditions are still unstable and resident safety must still be closely monitored. This loss represents an 8.4 percent reduction in all staff in the division.[104]

Out-Stationed DHS Eligibility Workers

Another issue indirectly affecting the workload levels of CSS eligibility workers is the state's underutilization of out-stationed DHS eligibility workers. Under the out-stationed hospital Medicaid worker option, participating hospitals and clinics that have an interest in getting patients enrolled in Medicaid pay the state's portion of state/federal cost-sharing. With the hospital or clinic contributing ten percent, and the federal government contributing 90 percent, DHS could, at no cost, increase out-stationed Medicaid eligibility workers and reduce the workload of the regular CSS eligibility staff. With or without out-stationed eligibility workers, hospitals and clinics will be aggressive in helping people apply for Medicaid, but without out-stationed workers, outreach will increase the workload at DHS offices.

In FY 2001, DHS embarked on an aggressive outreach effort to inform hospitals and clinics of the availability of these out-stationed DHS eligibility workers. DHS received more requests for these workers than was available under the local-federal FTE ceiling. In an effort to meet the demand, the DHS Board approved a proposal, in 2002, to increase the cap for these eligibility workers. This proposal, which recommends an increase in the local/federal FTE ceiling of 100 FTEs, was forwarded to the governor's office and the LBB and awaits a decision.

Consequences of Staff Cuts

If staff cuts are justified, or the effects on staff, clients and state services are minimal, successive FTE reductions might not be a problem. However, in the case of continued reductions of DHS staff, there are several negative consequences.

Field Office Closures and Consolidation

Successive FTE cuts often lead to office closures and office consolidations as staffing levels become inadequate to sustain an office. DHS has already consolidated offices in selected cities due to staff reductions. If all staff cuts for 2002 and projected staff cuts for 2003 are realized, additional closures and consolidations may be necessary. DHS is

DHS Office Closures and Consolidations

20 (actual) from January 2000 to August 2002

27 (proposed) from September 2002 to August 2003

14 (proposed) from September 2003 to August 2005

Total proposed closures: 41
(excludes closures due to replacement leases and consolidations)

Source: Texas Department of Human Services

committed to avoiding as many closures as possible, but some may be unavoidable. The closure of a DHS field office, conveniently located near the clients it serves, can have a negative effect on DHS' most vulnerable clients. Transportation barriers, inflexible work schedules, disabilities, caring for young children, and other demands of making ends meet in a low-paying job can pose a serious burden for DHS' low-income clients who have to travel increased distances to a new DHS office.

Staff Turnover

Increased and excessive workloads cause high turnover rates, which in turn increase the workloads of remaining staff. In DHS' FY 2002-2003 LAR, DHS reported turnover rates from 32 to 38 percent in metropolitan areas, with Austin and Houston among the worst.[105]

DHS has made progress in addressing high turnover rates in CSS eligibility staff, but current turnover rates, ranging from 3.6 percent in Regions Two and Nine (Abilene) to 14.2 percent in Region Three (Metroplex), are still problematic.[106] Further, in order to achieve the legislatively-mandated CSS staff cuts, regional offices have been under a DHS-issued soft hiring freeze. Under this hiring freeze, vacated CSS positions are left unfilled. As a consequence, regional offices with the highest turnover shoulder a disproportionate share of recent FTE cuts, causing greater hardship on those regions experiencing increased workload levels.

Impact on Clients

Understaffing at DHS is worthy of legislative concern primarily because staffing levels are inexorably tied to the quality of services provided to Texans in need. The continued understaffing of CSS eligibility workers has had a negative impact on clients in several areas.

The negative impact on clients when field offices are closed or consolidated has already been discussed. Also troubling is the effect understaffing can have on the quality of services and clients' experiences in the field offices that remain open. Over the last few years, evidence of poor customer service and clients' overall negative experiences in DHS field offices has been documented. The Texas Families in Transition (TFIT) study funded by DHS, as well as reports from the Center for Public Policy Priorities, and testimony from welfare recipients and community advocates alike, confirm negative experiences in regional welfare offices, ranging from excessive waiting times that interfere with employment, to negative attitudes of caseworkers.

> "Not everybody that comes through the welfare doors, it's not like everybody has never worked. We have had jobs. Situations have just happened or whatever circumstances. And it's like when you go in there, all of the workers are like robots. They are programed to look down on you."
>
> "...and the hardest thing about it is the amount of time that you have to take off in order to get in. And I mean even if you have an appointment, it still takes about five hours."
>
> *Source: Texas Department of Human Services, Interviewees of Texas Families in Transition Study, 2002*

To be fair, many of the TFIT study's respondents and witnesses stressed that many DHS workers are helpful, friendly, and concerned for clients' well-being. Nevertheless, poor customer service is an issue that has been recognized and proactively addressed by former Commissioner Eric Bost and current Commissioner Jim Hine.

Significantly, the negative experiences of clients in DHS field offices, both in terms of long waits and poor treatment, is much more a reflection of heavy workloads and understaffing than of the quality or nature of DHS staff. That understaffing is the driving force behind clients' negative experiences is a fact recognized and acknowledged by advocacy groups as well. At the Center for Public Policy Priorities' (CPPP) listening sessions in San Antonio, Houston, Lubbock, and El Paso (conducted from September 2001 to January 2002), representatives of local agencies that work directly with low-income families reported concerns about understaffing at DHS offices and their relation to poor service at the offices.[107] In reporting these comments, CPPP staff stated, "many complaints about customer service issues which we heard, and which echo those cited in the new study Texas Families in Transition (lost documents, long waits, phone calls not returned, duplicative document requests, perceived discourtesy), may be a direct result of inadequate staffing levels and excessive workloads."[108]

Timely and accurate processing of clients' applications for vital benefits is another area that suffers under inadequate staffing. Out of the 320,726 potentially Medicaid-eligible referrals made to DHS from the CHIP Program, 22,815 are presently pending DHS review.[109] Since CHIP's inception, the number of pending DHS referrals and the length of time referrals are left pending has been a problem, although DHS has worked hard to reduce these times. The same issues apply to the processing of all program applications by CSS staff. With too few staff to handle the number of applications, processing times are delayed and clients suffer prolonged waits for vital benefits. Further, the demands caused by excessive workloads often lead to inaccurate processing of applications, possibly denying clients benefits to which they are entitled, or granting scarce resources to ineligible clients.

The potential effects of understaffing on clients is also apparent in other areas of the agency, including Long-Term Care Regulatory. The loss of 82 FTEs in this division has resulted in delayed internal investigations, difficulties or failures in meeting federal survey time lines, inaccurate and delayed entry of data into the federal data system, and a reduction in the time spent in facilities during surveys.[110] DHS is committed to ensuring that the loss of staff in this division does not jeopardize the health and safety of Texas nursing home residents, but the resultant changes in policy raise legitimate concerns about the potential effects on residents.

Lawsuits

In 2000 and 2001, DHS entered into settlement agreements on two lawsuits concerned with customer service issues at eligibility offices. *Diaz v. Bost* was related to problems with Food Stamp Program eligibility processing, and the more recent *Guevara v. Bost* addressed shortcomings in access to translation and interpreter services. The issues raised in the lawsuits, such as high turnover, are at least partly the result of under-staffing. Further intensifying the problem, DHS agreed to new performance standards in the *Diaz v. Bost* and *Guevara v. Bost* settlements, which represent additional workload for eligibility staff and new training needs. However, DHS was not given any additional staff to meet the new standards. Until the staffing problems at DHS are addressed, there is an increasing potential for additional lawsuits.

Current and Future Challenges

Increased Complexity

The complex and ever-changing nature of the programs for which DHS workers must determine eligibility has been discussed. However, it should be noted that there is no end in sight in terms of increasing complexity. Whether it is increased fraud control measures or the continued adding of information that must, by law, be discussed with clients, it is more likely than not that the complexity of eligibility workers' jobs will increase.

Further, many of the recent program changes to simplify the process for Medicaid and Food Stamp Program clients actually bring new challenges and complexities to the CSS workers' jobs. As the eligibility system moves away from the face-to-face interview process and towards a mail-in and phone-in model, CSS staff will face a challenge ensuring the integrity of the programs under a different eligibility environment.

Reauthorization: TANF and Food Stamps

Perhaps the best, and most inevitable, example of future complexity in the jobs of DHS eligibility workers is the congressional reauthorization of public assistance programs (see Charge One for details). By the end of 2002, Congress must reauthorize both TANF and the Food Stamp Program. Reauthorization of these large programs is an opportunity for Congress and various interest groups to address a host of issues related to program administration and delivery.

Through the Farm Security and Rural Investment Act of 2002, (the Farm Bill), Congress reauthorized the Food Stamp Program in May, and President Bush signed the bill on May 13, 2002. There are state options in the legislation that, if taken advantage of by Texas, could reduce some of the complexity of the Food Stamp Program in the long term. However, interpreting, analyzing and implementing the multitude of policy changes in the bill will create a workload issue for DHS workers.

The complexity that accompanies the reauthorization of TANF may surpass that of the Food Stamp Program reauthorization. At the time of this report's printing, Congress had extended, but not reauthorized, TANF. However, proposals under consideration will likely have serious implications for the workloads of the Texas Workforce Commission and the local workforce development boards and will also bring complexity and increased workload to DHS staff. DHS staff may be responsible for additional training on new policies and informing TANF clients of many of the new requirements and responsibilities.

Further, DHS may be responsible for new programs that states will have to implement as a result of the reauthorization bill. For example, reauthorization proposals include an enhanced focus on family formation and marriage promotion activities. Texas has yet to determine how it will go about increasing its efforts in this area, but it is likely that DHS staff and DHS policy changes will be involved in this initiative. One possible marriage promotion effort Texas is considering involves DHS disregarding, for a period of six months, the new income that would be contributed by a new step-parent if a recipient got married. This concept would require program changes at DHS and would add to the complexity of eligibility workers' jobs.

If the final TANF reauthorization legislation reflects the proposals to date, new policies will increase pressure on states to achieve successful employment outcomes with TANF recipients. Texas will have to meet much higher work participation rates and clients will have to work more hours in order to be counted toward that participation rate. This increased pressure will demand that everyone involved in working with TANF clients remains focused on helping clients successfully transition into the workforce. As the bridge to the workforce system, DHS CSS workers will bear these increased responsibilities.

Recent Economic Shift and Recipient Increases

A recent challenge for DHS staff that may continue into 2003 and beyond is the downturn in the economy and resulting high unemployment rates. The statewide unemployment rate in 2002 hit a high of 6.8 percent in June, compared to lows of 3.5 percent in December of 2000 and 4.1 percent in April of 2001.[111] DHS clients are typically the first to lose their jobs when the economy slows. Since FY 2001, when many economic indicators suggested a slowing of the economy, DHS offices have seen an increase in applicant traffic and a 7.8 percent increase in applications. Further, as of May 2002, caseloads for TANF, Food Stamps and Medicaid have increased by 3.1, 12 and 17.7 percent, respectively, since FY 2001.[112]

> "...the human traffic has no doubt grown due to the mild recession this past two economic quarters and because our clients are typically the first fired at the start of a downturn and the last hired when good economic conditions return."
>
> *Source: CSS eligibility worker, Testimony to the House Committee on Human Services, 2002*

Hard economic times have a double-jeopardy effect on state services in general and DHS CSS workload specifically. When the economy slows, the state has less money to fund vital safety-net and social services. At the same time, more Texans

Forecasted Program Recipients

	FY 2003 recipients	% increase	FY 2004 recipients	% increase	FY 2005 recipients	% increase
TANF	370,160	2.10%	371,702	.42%	373,237	.41%
Food Stamp Program	1,695,669	8.09%	1,780,853	5.02%	1,839,355	3.29%
Medicaid	683,476	15.66%	781,625	14.36%	793,484	1.52%

Source: HHSC Caseload Forecasting Report (1st quarter FY'02)

will temporarily be in need of those services. DHS is consequently less likely to get additional staff to handle increased workload during a time when more Texans are being laid-off and finding themselves in need of temporary assistance. If the recent economic downturn continues and/or unemployment rates remain high, DHS CSS staff will continue to see increased workloads.

Texas Integrated Eligibility Redesign System (TIERS) Project Implementation

The fragmented automation system that supports DHS eligibility workers is complex, old and inflexible. The cornerstone of this is a 25-year-old mainframe system called SAVERR. It was developed as a state-of-the-art system to support four DHS services. Through the years, it has been expanded to support more than 50 DHS services and to share data with more than 20 state agencies.

As new programs were adopted, requirements added, and newer technology made available, the constraints on the system's capability and performance have become more problematic. Without modernization, DHS systems break down and are expensive to maintain and change. In working around the system's limitations, DHS staff have less time to work directly with clients. The 76th Legislature appropriated $54.8 million to DHS to begin implementing the Texas Integrated Eligibility Redesign System (TIERS) Project (see page 87 for history of the project). TIERS initially will support only DHS services, but will be flexible enough in its design to add other programs and agencies in the future. During the 2000-2001 biennium, DHS made significant progress in implementing the TIERS Project. Continuation of funding for the multi-year TIERS Project was approved by the 77th Legislature through an appropriation of $136.9 million.

Mission of the TIERS Project

To improve Texans' access to health and human services by replacing the current automated eligibility determination system, improving business efficiencies and effectiveness, and establishing the foundation for a comprehensive integrated eligibility determination process.

The State of Texas has invested over $190 million so far to develop and implement TIERS. DHS is responsible for the successful implementation of the project, and CSS staff are a vital part of that

Potential Benefits of TIERS

TIERS will provide DHS eligibility workers with a single, integrated system that will be used in delivering food, cash assistance, medical, and aged and disabled services to Texans in need. It also will support data-sharing with 20 state agencies.

It also will provide an internet-based tool (STARS) that will allow the public to find out what types of health and human services assistance may be available to them. This tool will screen people for potential eligibility, tell them what to expect from an eligibility interview and which documents to bring, and provide directions to local DHS offices.

TIERS is the first step in implementing the agency's comprehensive ten-year Strategic Automation Plan. TIERS builds on new information technology principles that large systems be incrementally developed, modular in their implementation, and flexible in their design to adjust for future demands, and that they promote the outsourcing of information technology services where appropriate.

Source: Texas Department of Human Services

effort. The final stage of TIERS implementation, a statewide rollout, is scheduled to take place from March 2003 to March 2004, and SAVERR will be retired in September 2005. Implementation of TIERS will cause a considerable increase in workload for the already inadequate numbers of staff in the CSS Eligibility Division. While a fully-implemented TIERS System will help mitigate the effects of increasing workloads and understaffing, the final push for implementation will create a challenge for DHS CSS staff.

There is also concern on the part of DHS officials that continued understaffing, especially the additional cuts DHS must make in FY 2003, could jeopardize the successful implementation of TIERS and the state's sizable investment. Commissioner Jim Hine testified to the House Committee on Human Services on April 2, 2002, that he had serious concerns about the effect reduced CSS staffing levels could have on TIERS.

Lawsuit Settlements and Lawsuit Potential

As mentioned previously, in 2000 and 2001, DHS entered into settlement agreements on two lawsuits related to customer service at eligibility offices. These settlement agreements included commitments by DHS to meet more aggressive performance standards in processing applications and commit more resources to providing interpretation services for non-English speaking clients. Complying with these settlement agreements will strain resources, especially with DHS continuing to absorb FTE cuts.

Not only will DHS' ability to comply with the agreements entered into from past lawsuits be jeopardized by understaffing, but continued staff reductions could lead to future lawsuits against DHS and the state. As caseloads and workloads increase due to FY 2003 staff cuts, processing times will inevitably slow and could potentially conflict with statutory requirements. The House Committee on Human Services heard testimony from one attorney who specializes in representing clients of DHS, warning that DHS may be liable for many more lawsuits and that potential suits could have far reaching effects for the agency and the state.[113] With already inadequate staffing and scarce state resources to address the problem, Texas can ill-afford court-imposed improvements, on court-mandated time lines, that could accompany such a lawsuit.

Privatization

The issue of privatization and the Department of Human Services has a long and interesting history. Many of the local workforce development boards that run Texas' welfare-to-work and other workforce programs contract with private, for-profit entities to manage the workforce centers that deliver services. In fact, some of the same corporations originally involved in HB 2777, 75th Session-privatization efforts operate much of our welfare-to-work system. Additionally, the administration of CHIP is contracted to a for-profit corporation, which is authorized to conduct the eligibility determination for that program.

Since the federal rejection of plans to privatize DHS eligibility determination in 1997, there has been little movement in trying to privatize DHS services. However, the issue has recently resurfaced, posing a potential problem for DHS staffing levels. In mid-2001, Affiliated Computer Services (ACS), which purchased the division of Lockheed Martin that held many government contracts, renewed an effort to privatize DHS' eligibility determination. Duplicating an approach ACS used in Florida, ACS proposed outsourcing eligibility determination in a single pilot site, possibly confined to a single county. Also, part of the proposal sought to integrate DHS and the workforce system's services in a single contract. ACS already has contracts to operate a significant portion of the state's workforce services through the local workforce development boards. ACS' proposal is being considered by the governor's office and DHS, with discussions centered around a pilot in the Dallas/Dallas County area. A workgroup has been formed in the Dallas area to discuss the details of the concept.

History of Privatization Efforts and TIERS

The original effort to privatize eligibility goes back to 1991. HB 7, which created the Health and Human Services Commission, contained language directing health and human service agencies to explore the purchasing of a new major software system to determine eligibility. Four years later, HB 1863, the major welfare reform legislation, contained a few paragraphs that were construed to authorize the privatization of the state's entire eligibility and enrollment system, a potential $2.8 billion contract.

The concept of placing responsibility for eligibility determination for Texas' safety-net programs in the hands of a large for-profit corporation received much criticism, but there was significant political will to make this privatization effort a reality. During the development of the Request for Offers, DHS and TWC announced that they would partner with different private sector companies and compete separately for the business of eligibility determination and enrollment functions. DHS partnered with Electronic Data Systems (EDS), and TWC partnered with Lockheed Martin.

Before moving forward with the full Request for Offers for creation of the privatized system, the Texas Integrated Enrollment Services (TIES) system, Texas sought federal approval for key components in the fall of 1996. However, in May 1997 the Clinton Administration rejected the plan, indicating that privatization of Food Stamp and Medicaid eligibility are not allowed under federal law.

Around the same time that the TIES initiative was halted, key Texas legislators filed new legislation, HB 2777, to scale back the proposal. The project was no longer about "privatization." HB 2777 gave new direction to the effort, required that agencies work together, as opposed to competing, but still sought to integrate the eligibility and enrollment functions of all health and human services agencies. As agencies worked together to develop the system, legislative leadership became increasingly concerned about the feasibility, cost and inter-agency politics that seemed to be jeopardizing the success of TIES.

In 1999, the 76th Legislature debated how much funding to appropriate to continue work on the TIES project. In light of growing concerns, as the session drew to a close, lawmakers opted to fund the least costly version: a proposal to build a single, integrated, automated system to replace the antiquated SAVERR computer system then used by DHS for Medicaid, the Food Stamp Program and TANF, and redesign the applications for Long-Term Care programs. The new project, subsequently called TIERS, lost many of the added benefits of the broader TIES project, such as improved client access to multiple services (beyond those provided by DHS) and less time and work to apply for benefits, but would make important improvements to DHS' computer system.

Source: Committee staff interviews, 2002

The merits and cost-benefits of privatization, especially in the area of eligibility determination, can and should be more thoroughly debated. However, putting aside the public policy questions about privatization, it is clear that doing so for DHS eligibility services, even in selected locations, could intensify current DHS workload problems. Privatization will undoubtedly siphon funding away from DHS staffing and into private contracts. While varying by the scope of the privatization plan, responsibilities and workload will likely remain in DHS offices, despite the loss of resources used to fund private contracts. Under such a scenario, there is a strong potential that remaining workload pressures on the DHS offices and staff will increase.

Further, as with the administration of the CHIP Program, the state could end up having to support two systems that are part of the same effort. Under CHIP, Texas is spending millions of dollars contracting with a private entity to handle eligibility and enrollment, while DHS also incurs a considerable percentage of the CHIP workload. There is reason to question the efficiency and cost-benefits of that model. The same situation could arise with the privatization of some of DHS' functions, whereby Texas spends significant tax dollars on private contracts, while still maintaining necessary DHS services.

Questions to ask about the efficiency / cost-benefit of privatizing eligibility of DHS services

What functions and workload would have to remain at DHS and what resources would be required to support those functions?

What additional costs would the state incur to establish and maintain a contract monitoring/management function to ensure performance and accuracy?

Would private contracts allow for the same flexibility in changing administrative procedures and program policies as DHS currently allows, and would such changes require increased contract negotiations and contracting costs?

Since we are dealing with eligibility for vital safety-net programs, some of which are entitlements, what safeguards could be put in place if contract disputes arise and/or the contractor goes out of business?

For example, depending on federal approval, DHS staff could still be required to formally approve eligibility for the Food Stamp Program and Medicaid, thus maintaining DHS workload and requiring the state to support both systems. Further, whenever the state outsources major responsibilities, it often must add and maintain a new layer to the process: contract monitoring and management. The necessity of re-engineering DHS' functions to perform strict contract management is especially likely in light of the intense federal accuracy and performance standards for which the state would continue to be responsible. Such a situation would not be efficient for the state, and would likely put DHS in the position of doing its job with even fewer staff resources.

Conclusion

While examining caseloads over time would suggest otherwise, consideration of application levels, actual workload, and the continued temporary needs of low-income Texans demonstrate that DHS is understaffed with respect to meeting the state's important responsibilities regarding the delivery of key services. The reasons for, and history of, this gradual understaffing is important to understand, but it is the consequences - current and future - that demand the most attention.

In many ways, client services suffer as a result of inadequate staffing at DHS. As the services that help Texans in becoming more self-sufficient and contributing members of our economy suffer, so suffers the overall health of the state. The seriousness of this problem demands that these issues continue to be examined.

The Legislature must take a closer look at the manner in which it makes appropriations decisions in terms of DHS staffing levels. In many cases, it appears the Legislature's own processes for making staffing decisions have been ignored. In other cases, it appears the allocation process may not accurately capture the workload involved with agency functions. The Legislature should also re-examine whether it is taking full advantage of opportunities to ease DHS workload without increasing costs to the state. Further, a re-examination of whether privatization of agency functions is a successful strategy that saves the state money and actually reduces workload would be prudent.

Falling welfare caseloads have not translated to fewer applications for assistance;

The number of applications for some public assistance programs has risen; and

Poverty, whether in relative or absolute terms, has not decreased significantly in Texas.

Source: Center for Public Policy Priorities

Perhaps most importantly, the state must closely evaluate the consequences of allowing DHS staffing levels to decline and providing inadequate resources for its statutorily mandated responsibilities. Poor quality of services, closure of offices, growing turnover, additional lawsuits, declining program integrity, loss of federal performance and accuracy bonuses, the imposition of new federal performance and accuracy penalties, and jeopardized substantial investments in programs like TIERS, are serious risks assumed by the state with regard to understaffing at DHS.

Recommendations

1. Recommend that in determining funding for the Department of Human Services (DHS), the Legislature take into consideration caseloads and workloads associated with Medicaid, CHIP, TANF, and the Food Stamp Program.

Taking into consideration workload increases and increasing FTEs accordingly, as opposed to only looking at caseload numbers, would better reflect staffing implications for DHS. For example, it is important to consider workload and caseload increases in Medicaid, TANF and the Food Stamp Program; workload increases associated with DHS involvement in the CHIP process; applications processed for Medicaid, TANF and the Food Stamp Program; and implementation of the Texas Integrated Eligibility Redesign System (TIERS).

2. Recommend that the Legislature fund the DHS LAR exceptional item to maintain FTEs at the FY 2003 level in Texas Works.

As a result of caseload declines, Texas Works staffing levels have been reduced by approximately 1,980 FTEs since FY 1997. Additional staffing reductions of approximately 400 FTEs in the 2002-2003 biennium are assumed as a result of Medicaid and Food Stamp Program simplification. Without additional funding, the estimated workload per worker in FY 2005 will be 25 percent higher than the FY 2000 level. High workload levels can result in poor customer service, increased errors and decreased timeliness. The rollout of TIERS creates additional complexity for staff.

3. Recommend that the Legislature direct DHS to implement new state options in the 2002 Farm Bill's reauthorization of the Food Stamp Program that are intended to simplify the program for caseworkers.

Congress authorized new state options as part of the Food Stamp Program reauthorization in an effort to make the program easier for states to administer. In exercising these options, DHS would simplify the enrollment and case management process, which would reduce the Food Stamp workload of DHS eligibility staff. DHS estimates that its eligibility staff currently spend 65 percent of their time on Food Stamp application processing and case management, which reduces the time available for other programs such as TANF and Medicaid.

4. Recommend that the Legislature maximize the number of out-stationed caseworkers in Texas hospitals and local communities funded through a partnership among the hospitals, the state, and the federal government. This includes raising the FTE ceiling for out-stationed DHS eligibility workers.

It is important that DHS continue to pursue public-private partnerships that maximize community

resources. Currently, Texas has taken some advantage of local hospitals' offers to pay the state's portion of providing out-stationed caseworkers to process Medicaid applications. This enables Texas to draw down federal match to pay eligibility workers without using GR. As a result, workload at DHS offices is reduced significantly. However, the state is unable to fulfill all hospital and clinic requests, due to the FTE ceiling for out-stationed DHS eligibility workers.

5. Recommend that the Legislature fund additional FTEs at DHS for translation services.

In addition to the civil rights and client treatment issues, there are reports of clients receiving more benefits than they should, or even requested, due to poor and/or nonexistent translation services.

6. Recommend that the Legislature authorize DHS to continue sharing the day-to-day administration of CHIP with the contracted private entity and continue determining eligibility for CHIP when cases come through DHS.

DHS already expends significant resources to assist with the CHIP process. Currently, 40 percent of CHIP enrollee eligibility is determined by DHS staff.

7. Recommend that the Legislature maintain the option of a face-to-face interview for all DHS programs.

In some cases, face-to-face interviews and caseworker-to-client interactions play an important role in ensuring that clients receive the benefits necessary to maintain family well-being and work toward self-sufficiency.

8. Recommend that DHS continue to consider expanded hours and days that DHS field offices are open.

The expansion of the days and hours that DHS offices are open, with modest related FTE increases, would better meet client needs, reduce workload pressures, and allow for more worker flexibility and job satisfaction.

9. Recommend that DHS seek legislative guidance and stakeholder input and perform a cost-benefit analysis before implementing or expanding privatization pilots.

All new privatization pilots and roll-outs of current efforts need to be better assessed before initiated or expanded.

CHARGE 6: Actively monitor agencies and institutions under the committee's oversight jurisdiction, including compliance with legislative direction on "Olmstead" issues.

Introduction

The U. S. Supreme Court in *L.C. and E.W. v. Olmstead* (1999) ruled that states must provide community-based services for people with disabilities if treatment professionals determine such services to be appropriate, the individual does not object to such placement, and the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.

> "Specifically, we confront the question whether the proscription of discrimination may require placement of persons with mental disabilities in community settings rather than in institutions. The answer, we hold, is a qualified yes."
>
> *Source: U.S. Supreme Court, Olmstead ruling*

In response, Governor George W. Bush affirmed that "...the State of Texas is committed to providing community-based alternatives for people with disabilities and recognizes that such services advance the best interests of all Texans."[114] Governor Bush's executive order on September 28, 1999, directed the Health and Human Services Commission (HHSC) to review "all services and support systems available to people with disabilities in Texas" and to "examine these issues in light" of the *Olmstead* decision.[115] HHSC's resulting initiative came to be known as the promoting independence initiative. In addition to the population addressed by the state's response to *Olmstead*, the promoting independence initiative goes further to address Texans at risk of turning to institutional care in the absence of adequate community-based alternatives.

Speaker James E. "Pete" Laney responded and charged the House Committee on Human Services to make an assessment of the state's responsibilities and policies regarding supports for individuals with disabilities in community-based settings, to identify areas of continued need, including proposed funding priorities, and to recommend legislation to the 77th Legislature.

The 77th Legislature focused much attention on the promoting independence initiative, both in terms of funding and proposed legislation. Several bills were passed that changed the state's system of long-term services and supports, all of which complemented Texas' efforts to respond to the *Olmstead* ruling.

Following the 77th Session, agencies, task forces, workgroups, stakeholders, and legislative offices were engaged in implementing new legislation, identifying available funding, and improving current initiatives to promote independence. Through an executive order, Governor Rick Perry reaffirmed Texas' commitment to provide community-based alternatives for people with disabilities.[116] In November 2001, Speaker Laney charged the House Committee on Human Services to "actively monitor agencies and institutions under the committee's oversight jurisdiction, including

compliance with legislative direction on *Olmstead* issues."

L.C. and E.W. v. Olmstead Supreme Court Ruling

The *Olmstead* case was brought by two Georgia women, L.C. and E.W., whose disabilities include both mental retardation and mental illness. The women were confined for treatment in a psychiatric unit of an Atlanta hospital, and treatment professionals concluded that both women could be cared for appropriately in a community-based program. The women were placed on a waiting list for community-based services, but remained institutionalized.

L.C. and E.W.
Lois Curtis and Elaine Wilson
v.
Olmstead
Tommy Olmstead, Commissioner,
Georgia Department of Human Resources

Seeking placement in community care, L.C. filed suit against the State of Georgia alleging that the state had violated her right to live in the most integrated setting, as provided for under Title II of the American with Disabilities Act (ADA). E.W. joined the suit, stating an identical claim. The district court ordered their placement in an appropriate community-based treatment program. The court concluded that, under the ADA, unnecessary institutional segregation constitutes discrimination per se, which cannot be justified by a lack of funding.

The U.S. Court of Appeals for the Eleventh Circuit affirmed the district court's judgment, but remanded the case for reassessment of the state's cost-based defense. Dissatisfied with the Eleventh Circuit's decision, the State of Georgia appealed the case to the U.S. Supreme Court.

The Supreme Court, in interpreting Title II of the ADA and its implementing regulations, answered the fundamental question of whether denying people with disabilities services in the most integrated setting appropriate constitutes discrimination. The Court stated that, "Unjustified isolation . . . is properly regarded as discrimination based on disability." It further observed that "institutional placement of persons who can handle and benefit from community settings perpetuates unwarranted assumptions that persons so isolated are incapable or unworthy of participating in community life" and "confinement in an institution severely diminishes the everyday life activities of individuals, including family relations, social contacts, work options, economic independence, educational advancement, and cultural enrichment."

Source: U.S. Supreme Court, Olmstead ruling

On June 22, 1999, in a 6-3 decision, the U.S. Supreme Court issued its ruling in the *L.C. and E.W. v. Olmstead* case. Justice Ginsburg wrote the opinion, concluding that, under Title II of the ADA, states are required to place persons with mental disabilities in community settings rather than in institutions when the state's treatment professionals determine that community placement is appropriate; the transfer from institutional care to a less restrictive setting is not opposed by the individual; and the placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with mental disabilities.[117]

Under the ADA, states are obligated to "make reasonable modifications in policies, practices, or procedures when the modifications are necessary to avoid discrimination on the basis of disability, unless the public entity can demonstrate that making the modifications would fundamentally alter the nature of the service, program or activity."[118] The Court indicated that the test must take into account three factors: the cost of providing services to the individual in the most integrated setting appropriate, the resources available to the state, and how the provision of services affects the ability of the state to meet the needs of others with disabilities.

The ruling also requires that states have a comprehensive, effective working plan for placing qualified individuals in less restrictive settings. States must make a good faith effort to move people on waiting lists to community-based programs. The Court cautioned, however, that nothing in the ADA condones termination of institutional settings for persons unable to successfully function in, or benefit from, community settings. Moreover, the state's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not unlimited.

Governor Bush's Executive Order and the Promoting Independence Plan

On September 28, 1999, Governor George W. Bush issued Executive Order GWB 99-2, initiating Texas' efforts to respond to the *Olmstead* ruling.[119] The executive order directed the Health and Human Services Commission (HHSC) to conduct "a comprehensive review of all services and support systems available to people with disabilities in Texas" and to "examine these issues in light of the recent United States Supreme Court decision in *Olmstead*."[120] The governor also directed HHSC to analyze the availability, application and efficacy of existing community-based alternatives for people with disabilities. All affected agencies and public entities were directed to cooperate fully with HHSC's research and production of its report.

An advisory board of advocates, parents, agency board members, and long-term care industry representatives was formed and played a central role in assisting HHSC in developing the Promoting Independence Plan. The Promoting Independence Advisory Board worked diligently during the interim preceding the 77th Session to meet Commissioner Don Gilbert's charge to "provide guidance to the HHSC in the evaluation of the system of services and supports for people with disabilities in order to assure that Texans with disabilities have access to alternatives to institutional care when community care is preferable."[121]

The House Committee on Human Services' Report to the 77th Legislature

In responding to Speaker Laney's charge on this issue, the House Committee on Human Services reviewed the state's responsibilities, including programs and services in this arena, and provided an account of the relevant activities of HHSC, the Texas Department of Mental Health and Mental Retardation (TDMHMR), and the Department of Human Services (DHS).[122] The Committee identified several issues, including barriers to reducing inappropriate institutionalizations (see inset

Barriers to Community Placement

- Individual's lack of awareness of options;
- Inadequate outreach and identification process;
- Hospital discharge planners' and doctors' lack of awareness of options;
- Community-based program eligibility procedures;
- Legitimate fear and anxiety;
- Lack of support in dealing with fear, anxiety and basic transition issues;
- Lack of affordable, accessible and integrated housing;
- Extensive waiting lists; and
- Individual cost-caps for community-based programs.

Source: Interim Report to the 77th Legislature, Committee on Human Services, 2000

on page 95).

The Committee also stressed that Texas' response should include a review of all programs for people with disabilities, ensuring that services are offered in the most appropriate setting. Overarching issues included coordination between review processes being planned at DHS and TDMHMR; lack of attention to the concerns of persons with mental illness; the institutionalization of children; and the need to place a higher degree of emphasis on reforms that minimize unnecessary institutionalizations before they occur.[123]

The House Committee on Human Services' findings and recommendations, coupled with the Texas Senate's similar work and HHSC's Promoting Independence Plan, became the blueprint for the actions of the 77th Legislature related to the state's *Olmstead* response.

The 77th Legislature

Funding

The research and planning leading up to the 77th Session culminated in significant funding requests to address the promoting independence initiative and to respond to the Supreme Court ruling. Approximately ten percent, or $627.1 million, of the $6.1 billion request of all health and human services agencies' exceptional items related to promoting independence and waiting lists. HHSC took the lead in prioritizing and organizing those requests into a consolidated promoting independence budget request. The total request by HHSC was $252.5 million, of which $119.5 million was General Revenue (GR). Other agencies had additional requests related to the promoting independence initiative.

Recommendations to the 77th Legislature

Recommend that the Legislature:

1. authorize and fund a comprehensive pilot and sequential "roll-out" that encompasses concepts presented to the committee and the Promoting Independence Advisory Board;
2. fund additional slots to significantly reduce the waiting lists for community-based waiver programs;
3. explore strengthening the mechanisms and adopting budgeting approaches that allow funds to "follow" the individual who leaves the institution for community-based programs;
4. direct DHS to incrementally raise the individual expenditure cap in the Community-Based Alternatives (CBA) Program annually and assess each increase's effect on waiver cost-effectiveness;
5. authorize prescription drug coverage for clients in the Frail and Elderly Program at DHS;
6. require the development of a notification system for DHS when a child's admission to a long-term care institution is approved;
7. clarify the requirement that permanency planning occurs for every child in an institution;
8. authorize children in the state's custody with severe long-term care needs to bypass the waiting lists for community-based waiver programs and fund dedicated waiver slots; and
9. establish safeguards to ensure the safety of individuals who are transferred to community-based programs.

Source: Interim Report to the 77th Legislature, House Committee on Human Services, 2000

HHSC requested funding for 2,529 new community care Medicaid waiver slots, of which 397 were reserved for children, at a cost of $64.8 million in GR. These slots were specifically requested for individuals residing in institutions. In addition to the funding for waiver slots for individuals in institutions, funding was requested to reduce the waiting lists of individuals in need of community services who were not residing in institutions. HHSC requested $45 million in GR to address these waiting lists, including 288 Home and Community-Based Services (HCS) slots at TDMHMR and 3,740 slots in one of six DHS community care programs. Significantly, the HHSC request represented approximately 25 percent of what TDMHMR and DHS requested in exceptional funding to address the waiting lists. The remaining 75 percent of the waiting list requests from DHS and TDMHMR totaled $122.5 million and $14.8 million in GR, respectively. Even if funded at the requested levels, the waiting lists would not have been entirely eliminated.

Additional funds were requested for 1) transitional funding for individuals leaving institutions for community care, 2) foster care needs of children coming out of institutions, 3) housing and transportation assistance, 4) increased community awareness of community-based services, and 5) other new initiatives. In the end, however, the 77th Legislature only appropriated funds to address community-based waiver slots and waiting lists, leaving many promoting independence requests unfunded.

Senate Bill 367

Senate Bill (SB) 367, by Senator Judith Zaffirini and Representative Elliott Naishtat, clarified the state's *Olmstead* responsibilities, assigned those responsibilities to relevant agencies, and established time lines for the state's response. This legislation authorized agencies to contract with community-based organizations for certain activities mandated under the bill, e.g., identification and outreach, to ensure that every resident in an institutional setting is aware of his or her options for community-based services. Subject to available funds, a housing assistance program was established to help individuals for whom housing (costs, accessibility and availability) is a barrier to transitioning to a community setting. This housing program would have provided temporary assistance to individuals with disabilities who are applying and waiting for federal housing assistance. Although no state funding was appropriated for this program, HHSC and the Texas Department of Housing and Community Affairs (TDHCA) secured 35 housing vouchers to assist individuals relocating from nursing facilities to the community.

SB 367 authorized the creation of a comprehensive pilot program to test changes in the long-term care system. The legislation directed DHS to develop and implement, in at least three sites, "a pilot program to provide a system of services and support that fosters independence and productivity and provides meaningful opportunities for persons with disabilities to live in the community." Subject to the availability of funds, the pilot program would address specific areas of concern identified by the Promoting Independence Advisory Board and the House Committee on Human Services.

DHS was directed to select sites in a rural area, an urban area and a mixed urban and rural area, giving preference to areas with the longest waiting lists for community-based services. DHS,

TDMHMR and the Department of Protective and Regulatory Services (DPRS) were required to enter into a Memorandum of Understanding that provides for interagency collaboration on components of the pilot that could affect populations served by each agency.

Principles of Original Permanency Planning Legislation (1997)

HB 885 defined permanency planning as "a philosophy and planning process that focuses on the outcome of family support by facilitating a permanent living arrangement with the primary feature of an enduring and nurturing parental relationship." HB 885 also stated that "it is the policy of the state to strive to ensure that the basic needs for safety, security and stability are met for each child in Texas. A successful family is the most efficient and effective way to meet those needs."

Source: HB 885, 75th Session

No funding was included in the General Appropriations Act for this pilot. However, progress has been made through the efforts of DHS and HHSC to identify alternative funding sources. DHS has contracted with three community entities to provide relocation services in three pilot areas of the state. A report on the effectiveness of the pilot is required no later than January 15, 2005. Finally, SB 367 reinstated the Promoting Independence Advisory Board as an interagency task force on appropriate care settings for persons with disabilities. This task force assists with ongoing implementation of the bill and advises HHSC on revisions of the Promoting Independence Plan.

Permanency Planning and SB 368

Directed the DPRS to develop a permanency plan for each child for whom DPRS has been appointed permanent managing conservator.

Authorized DHS, TDMHMR and DPRS to delegate the duty to develop a permanency plan to a local mental retardation authority or contract with a private entity, other than an entity that provides mental retardation services to such a child, to develop a permanency plan for that child.

Directed DHS or TDMHMR, as appropriate, to designate a person to serve as a volunteer advocate for a child residing in an institution to assist in developing a permanency plan for the child if the child's parent or guardian requests the assistance, or the institution in which the child is placed cannot locate the child's parent or guardian.

Directed a state agency that receives notice of a child's placement in an institution to ensure that the child is also placed on a waiting list for Medicaid-waiver program services on or before the third day after the date the agency is notified of the child's placement in the institution.

Significantly, the bill further stipulated that the commissioner or executive director of each agency, or the officer's designee, must approve the placement of a child in an institution and that the initial placement is temporary and may not exceed six months, unless the commissioner or executive director approves of another six-month extension.

Source: SB 368, 77th Session

Senate Bill 368

SB 368, by Senator Judith Zaffirini and Representatives Glen Maxey and Elliott Naishtat, strengthened the mandatory permanency planning procedures for children in state institutions and created a “family-based alternative” program to reduce the unnecessary institutionalization of children.

In regard to permanency planning, SB 368 directed HHSC and other appropriate health and human service agencies to develop uniform procedures to establish a permanency plan for each child under 22 years of age, with a developmental disability, residing in an institution in Texas. Permanency planning became law in Texas in 1997, when the Legislature, recognizing that children in institutions face the possibility of languishing in those facilities their entire lives, passed House Bill (HB) 885, by Rep. Maxey (see inset on page 97).

Since its passage, there has been general agreement among stakeholders in Texas, i.e., people with disabilities, advocates, private providers, state agencies, and some members of the Legislature, that institutions are not the most desirable settings for children to live and grow up in. Although the state has not been able to consistently implement the legislation, SB 368 sought to make the principles and mandates of HB 885 a reality (see inset on page 97).

One of the reasons permanency planning post-HB 885 has been difficult to implement is that moving children from institutions to family settings in the community can be a complicated and intensive process. SB 368 sought to address the lack of options for placing children with disabilities in a supportive family setting by creating a system of family-based alternatives to the institutionalization of children. A child with a physical or developmental disability who cannot reside with his or her birth family may receive necessary services in a family-based alternative instead of an institution. SB 368, dependent on funding, requested HHSC to contract with nonprofit or community organizations, including faith-based organizations, for the development and implementation of a family-based alternatives options project. The project must provide for 1) recruiting and training alternative families to provide services for children, and 2) identifying, assessing and addressing the service needs of each child and alternative family.

SB 368 also directed each affected health and human services agency to cooperate with contractors and take all action necessary to implement the system, providing that HHSC has final authority to make decisions and resolve disputes regarding the system. HHSC must ensure that the most appropriate home or community-based Medicaid services (waiver services) are available to each eligible child and begin to implement the system in areas of Texas with high numbers of children who reside in institutions.

Senate Bill 831

SB 831, by Senator Mike Moncrief, directed HHSC to pursue a Medicaid buy-in program, as authorized by Congress in 1999 through the Ticket-to-Work and Work Incentives Improvement Act. The legislation directed HHSC to establish three pilot projects, one rural, one urban and one in the Texas-Mexico border region, that will allow individuals with disabilities to maintain their Medicaid benefits when they go to work.

Children Growing up in Institutions

There are currently over 1,500 children with disabilities under the age of 22 residing in institutions in Texas. Data from other states as well as recent experience in Texas indicates that 80 to 90 percent of these children will not have the opportunity to return to their birth families. While Texas has permanency planning laws in effect that require that continued efforts be made to move children from institutions, often there are simply no families available to care for these children. Texas lacks an effective system to recruit and develop families to care for children with disabilities who cannot remain with their birth families. SB 368 sought to develop that system.

Source: Center on Disability Studies, 2002

House Bill 966

One of the barriers to making the transition from institutional care to community-based services is that funds budgeted for individuals

with disabilities do not follow those individuals into the community. For years, advocates and policymakers have focused attention on the need to establish agency authority and state budgeting approaches that would make the transfer of such funds feasible, i.e., that would allow "the funds to follow the person." HB 966, by Representative Elliott Naishtat, directed HHSC to consider ways to redirect these funds under existing law and to determine whether statutory changes would be required to do so. This legislation required a full accounting of stakeholders' concerns regarding any system that would allow funding to follow the person.

House Bill 2258

HB 2258, by Representative Maxey, required that individuals with mental illness and/or mental retardation who are being moved from a nursing facility to the community as part of the Promoting Independence Plan, be assessed so that they may receive proper treatment in the community. Many nursing home residents have multiple diagnoses, involving both cognitive and physical needs. Previously, DHS did not formally track nursing home residents with needs related to mental illness or mental retardation-related needs, not did the agency share pertinent client information with TDMHMR. To successfully transition into the community, residents with multiple diagnoses often need both TDMHMR and DHS services. HB 2258 laid the groundwork for better identification and assessment of and planning for these residents in need of comprehensive community services.

Rider 37

Rider 37, enacted by the 77th Legislature as part of the General Appropriations Act, states that "it is the intent of the Legislature that as Medicaid eligible clients relocate from nursing facilities (NF) to community care services, funds will be transferred from the nursing facilities' appropriation to community care services to cover the costs of the shift in services." Rider 37 operationalizes the concept of "the funds following the person," but only for the nursing home population.

Rider 7

Rider 7, also enacted by the 77th Legislature as part of the General Appropriations Act, addressed the issue of individuals who receive vital Medicaid-waiver services in the community but lose eligibility when their needs and associated program costs increase. Under the Community-Based Alternatives (CBA) Program, DHS adopted individual cost ceilings equal to the cost of serving an individual in a nursing home to ensure that the waiver program would be a cost-neutral alternative to the nursing home program. It is noteworthy that the federal government does not require individual

Rider 7: The department may not disallow or jeopardize community services for individuals currently receiving services under Medicaid waivers if those services are required for that individual to live in the most integrated setting and the exemption complies with the federal Health Care Financing Authority's cost-effectiveness requirements.

cost ceilings, only cost-neutrality on the aggregate for the entire program.

Individual cost ceilings resulted in negative outcomes for some clients. At the moment of increased need, clients who had been functioning well in the community would suddenly be denied services because their newly-budgeted needs exceeded their individual ceilings, at times only by a small amount. An individual's increased costs would not affect the overall cost-neutrality of the program, as these costs would be offset by many other clients whose needs were far below the cost ceiling. Nevertheless, vital services would often be denied and individuals forced to return to institutions. Rider 7 effectively eliminated individual cost ceilings and directed DHS to monitor and maintain cost-neutrality in the aggregate for CBA and all other Medicaid waiver programs at DHS. Rider 7 does not apply to new applicants for the waiver programs.

Interim Promoting Independence Activities

Workgroups, Committees and Task Forces

As a result of legislation passed during the 77th Session, and as part of ongoing agency efforts, several workgroups, task forces and committees have been meeting during the interim to implement, monitor, evaluate and enhance the state's promoting independence initiative.

SB 367 Interagency Task Force on Appropriate Care Settings for Persons with Disabilities: This task force, also known as the SB 367 Task Force, is the reformulation of the Promoting Independence Advisory Board, which developed recommendations adopted by the 77th Legislature. SB 367 delineated the Task Force's purpose: to assist HHSC and appropriate health and human services agencies in developing a comprehensive, effective working plan to ensure appropriate care settings for persons with disabilities. This revised Promoting Independence Plan, developed with guidance from the SB 367 Task Force, will be submitted to the 78th Legislature.

Two important subgroups of the SB 367 Task Force are the Housing Workgroup and the Mental Health Promoting Independence Advisory Committee. Membership in these subgroups includes SB 367 Task Force members and other interested stakeholders. Both groups make recommendations to the SB 367 Task Force for inclusion in the required report. The Housing Workgroup is

SB 367 Task Force Membership

Barry Waller	TDMHMR Commissioner Designee
Dick O'Connor	TDMHMR Board Representative
Becky Beechinor	DHS Commissioner Designee
Terry Wilkinson	DHS Board Representative
Sarah Anderson	TDHCA Agency Representative
Martha Bagley	Texas Rehabilitation Commission Designee
Bob Kafka	CEO/ADAPT Disability Representative
Colleen Horton	EveryChild, Inc., Representative
Candice Carter	AARP Representative
Richard Garnett	ARC of Texas Representative
Ann Denton	Enterprise Foundation Representative
Addie Horn	HHSC Commissioner Designee/Presiding Officer

Source: Texas Health and Human Services Commission

studying housing issues related to affordable, accessible, integrated housing for persons with disabilities. The Mental Health Promoting Independence Advisory Committee, facilitated by TDMHMR, is developing strategies related to determining a person's eligibility for intensive, community-based services and supports if admitted to an TDMHMR facility for inpatient mental health services three or more times during a 180-day period. Patients who meet the "three or more times" standard are presumed to be in imminent risk of being placed in an institution. The committee is also studying the appropriateness of such strategies.

HB 966 Inter-Agency Workgroup: The HB 966 Inter-Agency Workgroup is conducting a study regarding funds following an individual from institutional living to the community. This workgroup is studying ways in which health and human services agencies may quantify the amount of money spent to care for a person receiving institutional care and ways to redirect all or part of that amount to one or more community-based programs. The workgroup includes representatives from TDMHMR, TDHS, DPRS, and HHSC. In addition to meetings of the workgroup, stakeholder meetings were held to gather input from consumers, families, advocates, and other organizations. A report is expected to the Legislature by October 2002.

Rider 16 Workgroup: The Rider 16 Workgroup, led by HHSC, is examining the cost-effectiveness and feasibility of allowing Home and Community Services/Mental Health Local Authority (HCS/MRLA) consumers to receive services in a five-bed residence at the current applicable per-consumer level of need rate. The workgroup includes representatives from TDMHMR and HHSC. This workgroup will also receive input from consumers, providers and advocates. A report is due to the Legislature by December 31, 2002.

Real Choice Systems Change Grant Consumer Task Force: This group was organized per a requirement from the federal Centers for Medicaid and Medicare Services (CMS) to develop a proposal to compete for the Real Choice Systems Change Grant. Members of the task force include ADAPT, the ARC, the EveryChild Coalition, Austin Resource for Independent Living, Area Agencies on Aging representatives, and other representatives of the aging population. HHSC was not awarded the grant during the first round of the grant cycle, but was awarded $1.385 million, over three years, after resubmitting its proposal.

Texas Traumatic Brain Injury Advisory Council: This council is appointed by the commissioner of HHSC and advises the Texas Department of Health (TDH) and HHSC in reference to the ongoing operations of the Texas Traumatic Brain Injury Project (TBIP). The TBIP is working to identify people with traumatic brain injury, remove barriers to services, improve services and supports, and educate and inform people with traumatic brain injury and their families, service providers, policymakers and the public. The advisory council provides input and submits recommendations on policies and procedures to health and human services agencies regarding traumatic brain injury.

Children's Policy Council: Created in 1999 to study issues outlined in SB 374, 76th Session, the Children's Policy Council makes recommendations to the state in policy areas affecting the care of

children with disabilities. These policy areas include access for a child or child's family to effective case management services; the transition needs of children who reach an age at which they are no longer eligible for services at TDH, the Texas Education Agency and other state agencies; the blending of funds, including case management funding, for children needing long-term care and health services; collaboration and coordination of children's services among DHS, TDH, TDMHMR and other state agencies; budgeting and use of funds appropriated for children's long-term care and health services; services and supports for families providing care for children with disabilities; and effective permanency planning for children who reside in institutions or who are at risk of placement in an institution. The council must report its findings and recommendations to the Legislature and commissioner of HHSC not later than September 1 of each even-numbered year.

SB 1586 Voucher Workgroup: Created by SB 1586, 76th Session, this workgroup is charged with assisting HHSC to develop a voucher payment program as an alternative to the traditional provider agency option for various home and community-based services. This would allow program participants or guardians to be the employers of record and to hire, train and supervise personal assistants and respite providers. The initiative was formerly known as Vendor Fiscal Intermediary but has been renamed Consumer Directed Services. The workgroup includes representatives of all relevant agencies, with consumers, advocates and providers comprising a majority of its members. HHSC, with workgroup assistance, will measure the cost-effectiveness of the program and submit recommendations to the Legislature by September 1, 2002.

Case Worker Training Workgroup: This workgroup was created by HHSC as required by SB 36, 77th Session, by Senator Judith Zaffirini and Representative Richard Raymond. The purpose of this workgroup is to establish joint training for health and human services caseworkers to help increase their awareness and knowledge of services available to children at all relevant agencies. The workgroup consists of agency case management administrators from health and human services agencies that provide services to children, including HHSC, TDH, DHS, TDMHMR, DPRS, and Early Childhood Intervention (ECI).

Guardianship Advisory Committee: TDMHMR appointed the Guardianship Advisory Committee as a result of SB 367's directive to "develop a plan and make specific recommendations to the department regarding methods to facilitate the appointment of relatives of residents of institutions as guardians of those residents to make decisions regarding appropriate care settings for the residents." The committee is composed of nine members, five of whom must be parents of residents of institutions.

As demonstrated by the multitude of ongoing agency workgroups and task forces meeting during the interim preceding the 78th Session, there is a continued focus on complying with the *Olmstead* ruling and implementing the state's Promoting Independence Plan.

Health and Human Services Commission

The Texas Health and Human Services Commission (HHSC) has served as the lead agency for the state's response to the *Olmstead* ruling and the promoting independence initiative. The coordination, planning and leadership of HHSC and the personal commitment of Commissioner Don Gilbert have been invaluable to the progress Texas has made. In addition to its lead agency role for workgroups and task forces, HHSC is implementing legislation, pursuing additional funding sources, researching and planning new promoting independence initiatives, and holding all relevant health and human services agencies accountable for promoting independence activities.[124]

HHSC leadership of the SB 367 Task Force is central to Texas having an effective working plan, as required by the U.S. Supreme Court and SB 367. HHSC continues to monitor all relevant agencies' progress related to recommendations in the state's Promoting Independence Plan and will submit a revised Promoting Independence Plan by December 1, 2002, which will serve as a blueprint for much of the next phase of complying with the *Olmstead* ruling.

In implementing SB 368, HHSC has taken many steps to improve permanency planning for children. HHSC has developed, with stakeholder input, a comprehensive, computer-based system to allow the monitoring of placements of children in institutions every six months. This data will also demonstrate trend analyses and problem identification, and will guide future policymaking. With funding from the Texas Council for Developmental Disabilities, HHSC filled two positions to offer training to DHS surveyors and providers of services related to permanency planning. HHSC has worked with TDMHMR to develop rules related to the appointment of a volunteer advocate to participate in the permanency planning process at a client's request. Additionally, HHSC worked with appropriate human services agencies and stakeholders to develop and disseminate standard guidelines and principles for permanency planning throughout the state.

HHSC is also moving forward with the development of a family-based alternatives model, one of the more innovative aspects of SB 368. In February 2002, HHSC issued a Request for Proposals (RFP) for a community organization to develop and implement a system of family-based alternatives for children in institutions. Through a collaborative effort, EveryChild, Inc., partnered with six organizations to develop a plan for this system. The EveryChild, Inc., plan was accepted and a contract with HHSC was executed. This project is designed to identify and demonstrate best practices in: 1) identifying the support needs of children with disabilities in institutions; 2) developing a variety of family-based alternatives by finding caring, safe families to provide nurturing environments in which these children can grow; 3) preparing birth families and support families to work together for

EveryChild, Inc.

Vision:
Every child will have the opportunity to grow up with a safe, loving, nurturing family, with the family supports needed to ensure enduring relationships.

Mission:
The mission is to ensure the development of family-based alternatives for children residing in institutional settings or at risk of out-of-home placement; and to ensure the availability of the family supports needed so these children have the opportunity to grow up in a loving, nurturing, enduring relationship within a family allowing them to realize their potential. EveryChild, Inc., believes that every child deserves to grow up in a family; and, there is a family for every child.

Source: EveryChild, Inc., 2002

the benefit of the child; and 4) providing the ongoing supports needed to ensure quality long-term relationships for the child.[125] Children in the state's conservatorship are the priority population for this program, which is funded through August 2003. While it is encouraging that the state has the desire to move forward with this important initiative for children in institutions, it must be recognized that at the end of this initial 16-month period, the project will still be in its infancy.

In order to implement standardized case worker training, as required by SB 36, HHSC met with TDH, DHS, TDMHMR, DPRS and ECI. These agencies conducted a review of existing materials and data in order to develop a baseline from which to formulate a comprehensive and standardized training agenda across agencies for case managers and case workers. Since funds were not appropriated for this initiative, implementation of standardized training is limited. However, by September 2002, HHSC will establish an internet resource site available for case managers across the state. The site will enable case managers to search a database of children's services offered by relevant agencies and review agencies' electronic training curricula. HHSC plans to continue pursuing ways to improve coordination among these agencies in training current and future case managers.[126]

HHSC is also working to implement SB 831, 77th Session. Federal funds are newly available for states to create buy-in programs that allow disabled individuals to work, without losing their Medicaid benefits. With input from a stakeholder workgroup, the state applied for and received a Medicaid Infrastructure Grant to provide funds for the development and implementation of Medicaid buy-in pilot sites. Subsequently, HHSC applied for a federal waiver in order to proceed with the pilot project. However, progress was halted when this waiver application was rejected by the Centers for Medicare and Medicaid Services (CMS).[127] Future action on this project is important in relation to promoting independence because many persons with chronic illnesses or disabilities would like to work, but cannot afford to lose the Medicaid benefits they receive through SSI. The Medicaid buy-in option allows individuals to maintain Medicaid coverage by sharing in the costs of coverage on a sliding scale. The ability to work and have the adequate medical supports that Medicaid provides makes individuals more likely to maintain their independence in the community. Many disability advocates view the Medicaid buy-in option as the cornerstone of true independence in the community for people with disabilities.[128]

HHSC is promoting a new initiative through research and development of an Essential Services Waiver, also known as the Texas Home Living Waiver. A survey of individuals on the waiting list for TDMHMR's community waiver program, the Home and Community-Based Services (HCS) Program, resulted in a finding by TDMHMR that a significant number of people on the list could benefit from receiving one or a few selected services, as opposed to the extensive, more costly array of services offered in the HCS Program.[129] An Essential Services Waiver would maximize state spending for Medicaid-eligible clients, potentially reduce the HCS waiting list and prevent

Exploration of the Essential Services Waiver concept was part of Governor Rick Perry's Executive Order RP-13, issued April 18, 2002.

unnecessary institutionalizations.

Multi-Phase Approach to Promoting Independence at DHS

Phase I: training, client informing, community awareness of long-term care options, data collection and permanency planning.
Phase I Contingency Plan: relocation and intense community awareness activities at selected sites.
Phase II (contingent upon funding): statewide expansion of relocation/community awareness activities.
Phase III (contingent upon funding): strategies for prevention and diversion from institutionalization.

Source: Texas Department of Human Services

HHSC is developing its consolidated budget for all health and human services programs for the 78th Session. While each health and human services agency submits its own Legislative Appropriations Request (LAR), HHSC develops a consolidated request reflecting all health and human services requests. HHSC then attempts to organize and prioritize these requests, to assist the Legislature in its decision making. HHSC expects to release its consolidated budget request by October 2002.

Department of Human Services

The Department of Human Services has been implementing initiatives that move its long-term care programs toward a system in accordance with the state's promoting independence initiative and its response to the *Olmstead* ruling. DHS' Promoting Independence Plan proposes a multi-phased approach to maximize choice for nursing home residents.

Results of the Notification Effort to Nursing Home Residents

Of the 51,587 Long-Term Care Options Notices sent to nursing home residents, only 445 responded. Of the 445 promoting independence requests (to transfer to a community-based alternative), 429 were completed, resulting in 96 certifications for transfer and 333 denials (16 are pending). Reasons for denials include:

Died while waiting to be assigned to a worker:	10
Died while the application was being processed:	83
Needed 24 hour supervision:	227
Insufficient community support:	73
Lack of accessible, affordable housing:	7
Ended up refusing residential care:	32
Residential care was unavailable:	15
Had insufficient income:	5
Transition resources unavailable:	8
Inability to perform basic life skills:	41
Insufficient home-health provider capacity:	1
Provider was unable to meet client's needs:	27
Cost of serving in community exceeded cost cap:	4
Client and their authorized representative disagreed:	9
Insufficient capacity to address mental health issues:	12
Doctor would not authorize community alternative:	15

(more than one reason may apply to an individual client)

Source: Texas Department of Human Services

DHS initiated specialized training for relevant agency personnel on the *Olmstead* ruling, the Promoting Independence Plan, and the full array of long-term care options. To facilitate this training, the Promoting Independence Procedural Guide was disseminated in November 2000, followed by Promoting Independence Computer Based Training, for all DHS staff. This training emphasizes sensitivity to the needs of the elderly, children and people with disabilities; awareness of DHS community-based options; and awareness of statewide promoting independence activities. The computer training is available to providers, other agency staff and the public via the internet. In December 2000, DHS instituted the Promoting Independence Data Collection System, which allows the development of

a promoting independence client profile and identification of barriers and success factors for making the transition from institutions to community-based settings.[130]

DHS' initial promoting independence activities included a notification process to inform all nursing home residents of the full array of options for long-term care, including community-based alternatives (see inset on page 105). DHS also implemented a policy to inform nursing home applicants of all long-term care options for which they may be eligible. These activities were begun in 2000 with existing agency resources.[131]

In 2001, DHS published two Requests for Proposals (RFPs), using an enhanced federal funding bonus, to develop two new promoting independence activities. To meet children's permanency planning requirements, DHS contracted with Texas Community Solutions (TCS); permanency planning activities were started in January 2002. As the statewide program administrator, TCS ensures that all residents and their families are contacted about the permanency planning process, collects and tracks data on permanency planning activities and outcomes, and is held accountable for the development of quality permanency plans for all children in nursing homes. TCS utilizes the established network of local Mental Retardation Authorities (MRAs) to provide the staff that conduct the permanency planning.[132]

The second RFP issued by DHS covered implementation of the pilot program outlined in SB 367, 77th Session, and DHS' Community Awareness and Relocation Services (CARS) for adults and children in nursing facilities. This program is being conducted at several regional sites and has multiple components. The first component of the CARS initiative uses relocation specialists to facilitate a nursing home resident's transition into the community. Nursing home residents who desire to move, and are identified as appropriate candidates, are assigned a relocation specialist who is responsible for identifying and assessing the circumstances of the nursing home resident and carrying out the transition plan.[133]

Responsibilities of Relocation Specialists

- Identify and coordinate needed community resources
- Assist with eligibility and resource location
- Assist with technology support, home modifications, and medical and therapy services
- Provide advice and counseling to the client, family and friends
- Provide intervention with community service providers
- Maintain contact with transitioned person to ensure receipt of appropriate services and successful integration
- Administer transitional grants under the Transition to Life in the Community Program

Source: Texas Department of Human Services

The second component of the pilot consists of community awareness activities. The goals are to increase community awareness about the availability of community-based alternatives to institutionalization; to inform the public on all care and support options available to persons with disabilities; to provide information on how to access available services and resources; and to prevent unnecessary and premature institutionalization by diverting potential nursing facility residents into community-based services. These awareness activities will target two groups: 1) Medicaid-eligible nursing home residents of all ages and their families; and 2) persons at risk of nursing home placement and their family, friends and service providers.[134]

DHS Community-Based Waiver Programs

Community-Based Alternatives (CBA)
The CBA Program is a nursing home program waiver for people over 21 who qualify for nursing home care. CBA provides a variety of services, including case management, medical supplies, adult foster care, assisted living/residential care, emergency response services, home modifications, occupational and physical therapy, and respite care. The CBA Program has 29,250 appropriated slots for FY 2002; 30,040 clients receiving services; and an average monthly per client cost of $1,167. Currently 41,198 people are on the waiting list and have been waiting an average of 9.5 months.

Medically Dependant Children Program (MDCP)
MDCP provides a variety of services to support families caring for children who are medically dependent and to encourage deinstitutionalization of children in nursing homes. MDCP has 1,071 appropriated slots for FY 2002; 925 clients receiving services; and an average monthly per client cost of $1,393. Currently 3,470 people are on the waiting list and have been waiting an average of 2.5 years.

Community Living Assistance and Support Services (CLASS)
CLASS is an ICF/MR waiver program for people with developmental disabilities other than mental retardation. The CLASS Program has 1,836 appropriated slots for FY 2002; 1,492 clients receiving services; and an average monthly per client cost of $2,424. Currently 8,094 people are on the waiting list and have been waiting an average of 3.9 years.

Deaf Blind Multiple Disabilities (DB/MD)
The DB/MD Program helps meets the specific needs of people who are deaf, blind, and with multiple disabilities by providing an opportunity to increase independence and communication. The DB/MB Program has 145 appropriated slots for FY 2002; 118 clients receiving services; and an average monthly per client cost of $3,559. Currently 31 people are on the waiting list and have been waiting an average of two years.

In-Home and Family Support (IHFS)
This service provides direct grant benefits to individuals with physical disabilities to purchase services that enable them to live in the community. The individual must have a physical disability that substantially limits his or her ability to function independently. The IHFS Program has 4,369 appropriated slots for FY 2002; 3,199 clients receiving services; and an average monthly per client cost of $159. Currently 11,364 people are on the waiting list and have been waiting an average of 32 months.

Consolidated Waiver Program (CWP)
This program promotes independence by serving multiple populations in one waiver without regard to age or type of disability. The CWP has 200 appropriated slots, 156 of which have been filled.

Source: Texas Department of Human Services

Another aspect of the DHS effort is the Transition to Life in the Community Program (TLC), intended to specifically target individuals moving from nursing homes to community settings. One-time grants, up to $2,500 per individual, will be available to assist with basic transition expenses, such as rent and utility deposits, minimal housing accommodations, and other costs associated with moving after several years of institutionalization. These grants will be one of the tools available to relocation specialists to carry out the transition plan in the pilot, but will not be limited to pilot sites. Funding for these grants, totaling $250,000, was secured through DHS' In-Home and Family Support Program.[135]

DHS also implemented Rider 7 and Rider 37 of the General Appropriations Act (77th Session). DHS implemented Rider 7, which relates to individual cost ceilings of waiver program clients, through a policy directive in September 2001. DHS applies this rider to current clients, but not to applicants of the program. As a result of Rider 37 and the concept of funds following an individual from an

institutional setting to the community, 818 nursing home residents have transitioned into the community.[136] As an active member of the HB 966 Workgroup, DHS' experience with Rider 37 has been invaluable to HHSC in its development of the HB 966 report.[137]

Finally, DHS' operation of a variety of programs offering community-based options is central to the state's response to the *Olmstead* ruling. These options include Community-Based Alternatives (CBA), the Medically Dependent Children Program (MDCP), Community Living Assistance and Support Services (CLASS), Deaf Blind Multiple Disabilities (DB/MD), and In-Home and Family Support programs (see inset on page 107). In evaluating the state's response to *Olmstead*, many policymakers believe states can be partially judged, not just by the changes they make in their long-term care systems, but by the adequate funding of community-based programs and agencies' timely provision of community slots. The continuation of the majority of DHS' promoting independence initiatives depends on continued funding in the next biennium.

Texas Department of Mental Health and Mental Retardation

The Texas Department of Mental Health and Mental Retardation has largely been able to uphold its commitments in the Promoting Independence Plan and respond to the *Olmstead* ruling by making changes in its service delivery system. By building on existing infrastructure, TDMHMR has been able to meet the challenge of not receiving additional funds for these activities.

When the Promoting Independence Plan was developed in 2000, TDMHMR committed to providing alternative living arrangements for an initial group of 409 state mental retardation facility (SMRF), or state school, residents by August 31, 2001. Also, a commitment was made to provide alternative living arrangements for other SMRF residents by February 29, 2002, and for all others within 180 days of being referred for placement after September 1, 2001. Additionally, TDMHMR committed to providing opportunities in the Home and Community-Based Services (HCS) Program, the TDMHMR community-waiver program alternative to intermediate care facilities for the mentally retarded (ICF/MRs), for any resident of a large ICF/MR on the HCS waiting list as of August 31, 2002, within 12 months of determining such services are appropriate. A commitment was also made to continue an ongoing review and revision of the Community Living Options (CLO) instrument and process in relation to its

Community Living Options Process

The Community Living Options process identifies, explores and emphasizes the goals, desires and dreams of the person with a disability. The professionals participating in the planning process assist the individual in overcoming barriers to achieving his or her personal goals.

For SMRF (state school) residents, the Community Living Options process occurs at least annually by the SMRF's own Inter-Disciplinary Team (IDT), which is required to notify the local Mental Retardation Authority (MRA) to facilitate its involvement. The process must be completed within six months of admission and at least annually thereafter.

For residents of private ICF/MRs, the Community Living Options process is conducted annually by the facility's own treatment professionals. The ICF/MRs must notify the local MRA when the Community Living Options process results in a referral to an alternative living arrangement.

For either setting and upon request of the resident and/or his or her legally authorized representative, a third-party advocate can participate in the process.

Source: Texas Department of Mental Health & Mental Retardation

application to children and families.

The most significant component of TDMHMR's promoting independence initiative is the CLO process. This process, performed at least annually for residents of SMRFs, was extended to ensure that all community ICF/MR residents are informed of alternative living arrangements. The CLO process was strengthened to include special reviews when an individual in a SMRF is denied placement in the community, to ensure such determinations are accurate.

Transferring MR Clients to the Community

In total, 555 individuals have transferred from State Mental Retardation Facilities (SMRFs) to the community since August 1999. Of those, 390 individuals were part of the Promoting Independence Plan.

Source: Texas Department of Mental Health & Mental Retardation

TDMHMR is also working to meet self-imposed deadlines to accommodate placement requests for SMRF residents at an average rate of ten to twelve per month. Additionally, TDMHMR is working to streamline the community placement process for residents of SMRFs and large ICF/MRs, to ensure quality and efficient placements are made.[138]

Like HHSC and DHS, TDMHMR has worked to implement permanency planning for children, as directed by SB 368, 77th Session. TDMHMR has made all rule and procedural changes necessary to implement SB 368. Permanency planning for persons in ICF/MRs is conducted through the CLO process when possible and is done by the facility's Inter-Disciplinary Team (IDT). For persons in the MRLA Program, permanency planning is the responsibility of the Mental Retardation Authority. Upon request of the resident and/or a legally authorized representative, a third-party advocate is selected to participate in the process.[139]

Monitoring the quality of the CLO and permanency planning processes performed by SMRFs and private ICF/MRs is an important component of the promoting independence initiative. TDMHMR and the DHS Long-Term Care Regulatory Division are taking steps to monitor and evaluate SMRFs and private ICF/MRs in this area. Providers are required to document all CLO and permanency planning activities. Compliance with CLO and permanency planning requirements is reviewed by DHS regulatory teams, whose findings are also reviewed by TDMHMR in order to determine training needs, problem

Addressing the Promoting Independence Mental Health Population

TDMHMR is identifying quarterly all persons who have resided in state hospitals for more than one year. The following factors are assessed: need for continued hospitalization; barriers to discharge; legal issues preventing discharge; and whether the individual is accepted for community placement. As of May 31, 2002, 372 persons were identified as having been residing in state hospitals for more than 12 months: 16 have been accepted for community placement; 220 were determined to need continued hospitalization, 105 had court-mandated or court-influenced commitments; and 31 remain because of a barrier to placement, e.g., patient, parent or guardian refuses community-placement or funding is unavailable for community-placement.

TDMHMR has identified persons with three or more hospitalizations within 180 days and is assessing their characteristics and needs. In FY 2001, 509 persons were admitted to state hospitals three or more times.

Quarterly reports of the "one-year" population are developed and sent to the facilities for review and update of continuity of care plans. A report of the population with three or more hospitalizations within 180 days is generated monthly.

Source: Texas Department of Mental Health & Mental Retardation

locations, and trends. Active oversight of the transition of individuals identified in SMRFs is conducted at TDMHMR's headquarters through a Special Review Team (SRT). The SRT is initiated when an IDT decides to rescind an individual's referral to the community or when the individual chooses to have his or her referral canceled.

TDMHMR has been working to address the mental health/mental illness aspects of the Promoting Independence Plan, which requires TDMHMR to review all individuals residing in a state hospital for more than one year. TDMHMR and local mental health authorities must take appropriate actions and develop discharge plans when hospitalization is no longer necessary. As required by SB 367, TDMHMR will develop strategies for the population of individuals who have been hospitalized three times within 180 days. The Mental Health Promoting Independence Advisory Committee meets monthly to provide information and recommendations to TDMHMR related to mental health promoting independence initiatives. Additionally, a Memorandum of Understanding with DHS is being developed as a framework for interagency efforts to address the mental health or mental retardation needs of persons being discharged from nursing homes. TDMHMR plans to continue its review of agency rules related to persons with mental illness and to develop and implement strategies to address the needs of adults and children at imminent risk of institutionalization. Additionally, TDMHMR is committed to securing funding to expand mental health community services to avoid unnecessary admissions to institutions. To help achieve these goals, TDMHMR obtained a three-year grant for development and implementation of strategies to promote independence for persons with mental illness.[140]

Another related activity of TDMHMR is the facilitation of the Guardianship Advisory Committee, required by SB 367. The committee was appointed in September 2001 and submitted recommendations in May 2002. The recommendations relate to strategies that enable relatives of persons in state institutions to serve as their guardians and make decisions on appropriate care settings.

TDMHMR has also been an active participant in HHSC's work to develop the HB 966 report regarding the concept of funds following the individual from an institutional setting to the community. As previously discussed, Rider 37 mandates the concept for nursing homes. TDMHMR staff have contributed extensive time and effort in the development of this important report.

Finally, TDMHMR's operation of the Home and Community-Based (HCS) Program, in addition to other waiver programs, is a key component of Texas' promoting independence initiative and response to the *Olmstead* ruling. HCS is vital to promoting the independence of persons with disabilities. The HCS Program provides services to individuals with mental retardation who either live with their family, in their own home, in a foster/companion care setting, or in a residence with no more than four individuals who receive services. It is designed to meet individuals' needs in the community and to offer opportunities to participate as citizens to the maximum extent possible.[141]

The Home and Community-Based Services-OBRA (HCS-O) Program serves individuals who have been determined by the state to have mental retardation and/or a related condition, to need specialized services for mental retardation and/or a related condition, and to be inappropriately placed in a nursing home. These individuals desire to leave the nursing home in order to live with their family, in their own home, or in a residence with no more than four individuals who receive services. Although the HCS-O Program was not set up for this purpose, the program embodies the kind of initiative designed to address the *Olmstead* ruling. The eligible population for this program is small, and therefore the program serves a limited number of people.[142]

TDMHMR Community Waiver Services

Home and Community-Based Services (HCS)
The HCS Program has 4,146 clients receiving services and an average monthly per client cost of $3,440. Currently 12,618 people are on the waiting list and have been waiting an average of two to three years.

Home and Community-Based Services-OBRA (HCS-O)
The HCS-O Program has 71 clients receiving services and an average monthly per client cost of $3,821. HCS-O does not have a waiting list.

The Mental Retardation Local Authority Program (MRLA)
The MRLA Program has 2,307 clients receiving services and an average monthly per client cost of $3,709. Currently 5,327 people are on the waiting list and have been waiting an average of two to three years.

TDMHMR is moving toward consolidation of community waiver services and full statewide implementation of the MRLA Program by the end of FY 2003. Under MRLA, the local authority will serve as the single point of entry to community waiver services.

Source: Texas Department of Mental Health & Mental Retardation

Although not currently available statewide, the Mental Retardation Local Authority (MRLA) Program provides services to individuals with mental retardation who either live with their family, in their own home, in a foster/companion care setting, or in a residence with no more than four individuals who receive services. Similar to the HCS and HCS-O programs, individuals in the MRLA Program pay for their room and board either with their SSI check or other personal resources. These programs are specifically designed to help clients avoid institutionalization by offering community options for long term care services.[143]

In evaluating the state's response to *Olmstead* and the success of it's promoting independence initiative, the following should be considered: 1) changes made to the long-term care system, 2) adequate funding of community-based programs, and 3) the timely provision of community slots by its agencies. TDMHMR is committed to securing the funding necessary to expand community-based programs, to accommodate all promoting independence referrals. At current funding levels, many individuals must wait too long for services, and are often forced into inappropriate institutionalization.

Department of Protective and Regulatory Services

While more focus has been placed on the activities of DHS and TDMHMR, the Department of Protective and Regulatory Services' (DPRS) involvement in the promoting independence effort is extremely important. Over 1,500 Texas children reside in institutions, and about 125 of those children are in the state's conservatorship. These children provide compelling stories in the promoting independence effort. In addition to complex medical needs, disabilities, and/or some

mental retardation or mental health issues, these children do not have a family in which to grow up. While an important principle in the promoting independence movement is not prioritizing and, thus, dividing populations, the state feels a heightened responsibility to move these children out of institutions since they are, in essence, the state's children.

Due to challenging medical or behavioral needs, the lack of capacity in the foster care and adoption community, the lack of adequate state support for birth families and foster or adoptive families who would like to care for these children, and the historical lack of state attention to avoiding institutional placement, the state's children end up spending much of their childhood in institutions. Such institutionalizations are especially unfortunate when a birth family is forced to give a child up to the state, despite a strong desire to care for the child, and without any findings of abuse or neglect.

DPRS, now involved in the promoting independence effort, is committed to finding family-based settings for these children. DPRS is a member of the SB 367 Task Force and is also involved in the workgroup developing the HB 966 report. In addition, DPRS is working on specific initiatives to minimize the number of children in the state's conservatorship who grow up in an institution.

Significantly, DPRS is participating in the HHSC-led Family-Based Alternatives Program being implemented by EveryChild, Inc. The involvement of DPRS is critical, as children in the state's conservatorship are the target population. DPRS staff is working with HHSC and EveryChild, Inc., to develop the program, one aspect of which is the recruitment and training of foster and adoptive families willing to care for these children. DPRS is working closely with EveryChild, Inc., to develop recruitment and training strategies, and is investigating ways to better support foster and adoptive families that wish to care for children with disabilities. Strategies include enhanced support and training, access to state Medicaid services and respite care.[144]

As a result of SB 368, DPRS also has enhanced permanency planning responsibilities. For example, DPRS has Permanency Planning Teams in place to ensure that every child has an advocate in the planning process. In order to strengthen data collection, DPRS' annual reviews of data regarding children in institutions will now be conducted semi-annually. DPRS amended all its contracts with institutions for the mentally retarded that house children in the state's conservatorship to ensure that each facility notifies DPRS within three days of a child's placement. DPRS also instituted a policy ensuring that all children placed in an institution are immediately signed up for Medicaid waiver services. Finally, DPRS' executive director must now review and approve the placement of any child under the state's conservatorship in an institution.

Texas Department of Housing and Community Affairs

SB 367 required, subject to available funds, the development of a Housing Voucher Program to provide interim housing assistance to individuals transferring from an institution to the community, while they wait for federal housing assistance. No appropriation was secured for this initiative, but

the state has been attempting to address the housing component of the promoting independence initiative with existing resources. The SB 367 Task Force's Housing Workgroup has been instrumental in addressing the need for housing availability for people in transition to the community.

Texas received 35 Section 8 housing vouchers for the *Olmstead* population from the U.S. Department of Housing and Urban Development's (HUD) Project Access. The Housing Workgroup of the SB 367 Task Force has worked with DHS, the Department of Housing and Community Affairs (TDHCA) and HHSC to create a pipeline that will allow these vouchers to be linked with people seeking transition from nursing homes. The requisite Memorandum of Understanding (MOU) between the agencies was completed in May 2002. With the MOU complete, and with extensive input from community organizations like the Enterprise Foundation and United Cerebral Palsy of Texas, progress has been made in establishing a system to identify individuals most in need of vouchers. Some of the vouchers may be used in DHS' four pilot sites that offer intensive relocation management services, but vouchers will not be limited to individuals in the pilot sites. It is important that the state monitor future opportunities to secure additional vouchers from HUD.

TDHCA has been an important partner in the housing aspect of the Promoting Independence Plan. In addition to being a valuable participant in the SB 367 Task Force, TDHCA has cooperated in developing procedures for administering the HUD vouchers and worked to make additional resources available through its tenant-based rental assistance program, the HOME Program. TDHCA has increased the special needs set-aside to 20 percent in the HOME Program. TDHCA has committed $4 million of HOME tenant-based rental assistance for the *Olmstead* population next biennium.[145]

> "Implementation of the *Olmstead* Supreme Court decision in Texas will require a commitment of resources to housing. If we do not have a supply of housing available for individuals leaving institutions, *Olmstead* has not been implemented."
>
> *Source: SB 367 Task Force Housing Workgroup*

The Housing Workgroup advocated for the creation of a state housing assistance program to assist individuals within the *Olmstead* population seeking community services. During the 77th Session, there was an appropriations request for $4 million to create such a program to provide housing and related services for 800 individuals transferring to the community until federal assistance could be secured. Unfortunately, this request was not funded, however HHSC has included the same request in its LAR. HHSC also intends to highlight this request in its consolidated budget request.[146]

With the promoting independence initiative underway, state agencies and stakeholders are striving to adequately address the housing needs of the *Olmstead* population. Full implementation of the promoting independence initiative and the state's response to the *Olmstead* ruling cannot be achieved without a meaningful commitment to increased housing resources.

Other Agency Involvement

The Health and Human Services Commission, the Department of Human Services, the Texas Department of Mental Health and Mental Retardation, and the Department of Protective and Regulatory Services have been the primary agencies involved in the promoting independence initiative. The Department of Housing and Community Affairs has also played a role in the planning and implementation of the state's response to the ruling. However, there are other state agencies that also play a role in the state's compliance with the *Olmstead* ruling.

The Texas Department on Aging and the 28 local Area Agencies on Aging have played an important role in the promoting independence effort. The State Long-Term Care Ombudsman has presented training sessions to local nursing home ombudsman staff regarding the *Olmstead* decision. With a regular presence in nursing homes and good working relationships with residents and staff, the ombudsman program is an excellent partner for state and local entities working to identify individuals in nursing homes interested in transferring to the community. In San Antonio, for example, the ombudsman program has worked closely with a non-profit coalition to identify and relocate individuals in nursing homes.

Texas Rehabilitation Commission Overview

The Texas Rehabilitation Commission (TRC), created in 1969, is designated as the state's principal authority on the vocational rehabilitation of Texans with disabilities, except persons with visual impairments and the legally blind. The Commission's main purpose is to assist people with disabilities to participate in their communities by achieving employment of choice, living as independently as possible and accessing high quality services.

Source: Texas Rehabilitation Commission

The Texas Rehabilitation Commission's (TRC) mission is directly related to the goals of the promoting independence initiative. TRC has recently developed an Independence Initiatives Workgroup to address ways in which TRC can contribute to the state's promoting independence efforts. A TRC representative has recently been added to the SB 367 Task Force, which will increase opportunities for TRC to collaborate with other participating agencies. With the resources TRC has available to assist individuals with disabilities to achieve independence through work, it is important that the agency becomes an integral part of the promoting independence initiative.

The Commission for the Deaf and Hard of Hearing (TCDHH) and the Commission for the Blind (TCB) also have resources available to assist individuals in maintaining independence in the community. Some of these resources are not restricted to the agencies' target population. For example, the Specialized Telecommunication Devices Assistance Program (STDAP) at TCDHH, which provides individuals with adaptive devices necessary to use phone service, is not limited to individuals who are deaf or hard of hearing. Any person with a disability can access this program, moving him or her closer to functioning independently in the community. Similarly, TCB offers comprehensive vocational rehabilitation services through its Vocational Rehabilitation Program for individuals whose visual impairment is a barrier to employment. It is important that TCB be involved in the promoting independence effort.

Private / Non-profit Initiatives

In addition to the legislative and executive branches' involvement, private non-profits and the disability advocacy community's participation in and commitment to the promoting independence effort have been vital to Texas' progress. The educational efforts of disability advocacy groups have been key to the development of every *Olmstead*-related initiative in Texas. Members of the disability advocacy community have served on, and contributed to, the work of every workgroup, committee, task force, and advisory council. Advocates have appropriately held the Legislature, the governor, and relevant agencies accountable for progress in complying with the ruling.

Texas Independent Living Partnership

Goals of the Texas Independent Living Partnership project include providing outreach to people with disabilities of all ages in nursing facilities who want to move to the community; providing training for state agency staff, consumers, volunteers, advocates and service providers; and changing the state's long term care system. Materials developed by the project provide information about community-based services.

Source: Texas Independent Living Partnership

In addition to these advocacy activities, non-profit groups have been directly involved in administering promoting independence activities. The Texas Association of Centers for Independent Living (TACIL) and the Austin Resource Center for Independent Living (ARCIL) are two such organizations. The Texas Independent Living Partnership is a cooperative effort of ARCIL, TACIL, HHSC and DHS, and is funded by a grant from the Centers for Medicare and Medicaid Services (CMS). This federal initiative helps states create meaningful opportunities for people with disabilities to receive long-term care services in their homes and communities. ARCIL is one of five centers for independent living nationally to receive grants in FY 2002. The Texas Independent Living Partnership is a three-year initiative that began in October 2001.[147]

EveryChild, Inc., received the contract from HHSC to develop the Family-Based Alternatives Program required by SB 368. Prior to receiving the HHSC grant, EveryChild, Inc., had done extensive work researching and promoting the concept of a family-based alternative model. Through two grants awarded by the Texas Department of Health (TDH) during the first quarter of 2001, EveryChild, Inc., is researching issues to develop a successful model of family-based alternatives for children with disabilities. The organization is developing a training curriculum targeted at recruitment, assessment and development of alternative families. EveryChild, Inc., expanded its research on best practices for developing a system of alternative families to care for children with disabilities through a grant from the Texas Council for Developmental Disabilities (TCDD). The primary goal of the TCDD-funded project is to develop a best practices model of family-based alternatives for children with disabilities. EveryChild, Inc., has also developed public awareness activities to bring statewide attention to children residing in Texas institutions.[148]

The Center for Disability Studies (formerly called the University Affiliated Program), Advocacy, Inc., and TCDD have a joint, hands-on project to assist individuals making the transition from an institution to the community. This project, the Texas Community Integration Collaborative, is

working with individuals in the San Antonio area to address barriers to successful integration into the community. The collaborative is also providing training to nursing home staff and the community-at-large regarding the community integration process. The collaborative also works with DHS in the San Antonio region to address barriers clients face when transferring from an institution to a community-based alternative. The Department on Aging's Long-Term Care Ombudsman Program has been an important partner in this project.[149]

In addition, the Texas Council for Developmental Disabilities (TCDD) provided funding for two staff members at HHSC to provide statewide training and technical assistance to groups performing permanency planning for children.[150]

Lastly, the Enterprise Foundation and United Cerebral Palsy of Texas (UCP) have done extensive work in the area of housing and promoting independence. The two organizations have led the state's efforts in this area and have been strong advocates for the development of housing assistance programs. Both entities have been directly involved in the development of the state's process for the distribution of 35 housing vouchers under HUD's Project Access.[151]

Governor Perry's Executive Order

The foundation has been laid for an increased commitment going into the 78th Session. Following the example set by Governor George W. Bush, Governor Rick Perry issued an Executive Order reiterating Texas' commitment to providing community-based alternatives to people with disabilities.[152]

Executive Order RP-13, issued on April 18, 2002, focused on several important components of the improvement and expansion of the state's promoting independence initiative. Among issues highlighted by the governor, special focus was directed to housing, employment, permanency planning, family-based alternatives, and the development of a new Essential Services Waiver.

> WHEREAS, as Governor, I am committed to ensuring that people with disabilities have the opportunity to enjoy full lives of independence, productivity and self-determination; and...
>
> WHEREAS, accessible, affordable and integrated housing is an integral component of independence for people with disabilities; and...
>
> WHEREAS, Texas recognizes the importance of keeping children in families, regardless of a child's disability, and support services allow families to care for their children in home environments; ...
>
> *Source: Governor Perry, Executive Order RP-13, April 18, 2002*

With respect to housing, Governor Perry directed HHSC to incorporate the efforts of TDHCA, i.e., to ensure accessible, affordable and integrated housing, into the recommendations of the Texas Promoting Independence Plan. The governor also directed TDHCA to provide in-house training of key staff on disability issues and technical assistance to local public housing authorities to prioritize accessible, affordable and integrated housing for people with disabilities. TDHCA and HHSC were

directed to maximize federal funds for accessible, affordable and integrated housing for people with disabilities and to identify, within existing resources, innovative funding mechanisms to develop additional housing assistance for people with disabilities.

In the area of employment, Governor Perry directed HHSC to instruct the Texas Rehabilitation Commission and the Texas Commission for the Blind to explore ways to employ people with disabilities as attendants and review agency policies to promote the independence of people with disabilities in community settings. HHSC was also directed to coordinate efforts with the Texas Workforce Commission to increase the pool of available community-based service workers and to promote the new franchise tax exemption for employers who hire certain people with disabilities.

The Executive Order also directed HHSC to work with health and human services agencies to ensure that permanency planning for children results in children receiving support services in the community when such placements are determined to be desirable and appropriate, and services are available. Additionally, the governor directed HHSC to move forward with a pilot to develop and implement a system of family-based options to expand the continuum of care for families of children with disabilities.

Finally, in support of an emerging innovation in promoting independence, Governor Perry directed HHSC to instruct TDMHMR to implement a Selected Essential Services Waiver, using existing GR, to provide community services for people who are waiting for the Home and Community-Based Services Program.

Significantly, Governor Perry stressed Texas' continued accountability for compliance with the *Olmstead* ruling by directing HHSC to regularly update the Promoting Independence Plan and to evaluate and report on its implementation. The governor directed HHSC, in updating the plan, to report on the status of community-based services, evaluate the availability of community-based services as a part of the continuum of care, explore ways to increase the community-care workforce, promote the safety and integration of people receiving services in the community, and review options to expand the availability of affordable, accessible and integrated housing.

Continued Issues and Barriers

While Texas is to be commended for its response to the *Olmstead* ruling and promoting independence efforts, there are several areas where the state's response may be inadequate, where timeliness of the response has been problematic, or where barriers impeding progress need to be addressed.

The largest issue regarding the state's promoting independence initiative is reflected in the numbers of Texans still on waiting lists for community-based services. While the state has done an excellent job in developing a full array of community-based waiver programs and other supports, funding for those options is severely out-paced by the need. As long as tens of thousands of individuals remain on waiting lists for community-based services, unnecessary institutionalization deemed discriminatory by the Supreme Court will continue to occur and individuals will have no alternative but to enter, or stay in, an institution.

Waiting Lists in Texas

Program	Number on List	Average Time on List
CBA	41,198	9.5 months
MDCP	3,470	2.5 years
CLASS	8,094	4 years
DB/MD	31	2 years
IHFS	11,364	2.6 years
MHMR programs	17,945	2 to 3 years

Source: Texas Department of Human Services, Texas Department of Mental Health and Mental Retardation

Sustainable funding of agencies' promoting independence efforts presents a serious problem in relation to the state's ability to fully implement this initiative and to respond to the *Olmstead* ruling. As noted previously, the Legislature appropriated only a modest increase in funding for community-based waiver program slots. No funding was appropriated for the multitude of activities underway that are detailed in this report. In most cases, agencies were able to identify one-time funding sources to begin these initiatives, either in the form of grants, federal bonuses, or funding contributed by different agencies. There is no guarantee, and it is unlikely, that these funding sources will be able to sustain these programs. It would be a mistake, and waste of previously expended resources, to not provide funding to continue current activities, much less to address the many additional needs. It would also be a miscalculation to evaluate these activities for future funding based on outcomes to date, as most of the programs are still in their infancy. While stakeholders, and potential litigants, are optimistic about the steps Texas has taken to change its long-term care system, if the current activities cease in the next year due to lack of funding, Texas' promoting independence initiative, and possibly its response to the *Olmstead* ruling, will be severely undermined.

Waiting List Lawsuit

On September 7, 2002, the Arc of Texas and Advocacy, Inc., filed a class action lawsuit in federal court in Beaumont against the Texas Department of Mental Health and Mental Retardation and the Texas Department of Human Services. The suit seeks to bring services to thousands of Texans who have been on waiting lists for Home and Community-Based Services (HCS) and Community Living Assistance and Support Services (CLASS). The groups claim the state is in violation of the federal Medicaid law that grants options to allow people with disabilities to remain in the community.

Source: "Class action demands services for disabled," Austin American Statesman, September 6, 2002

More effective outreach strategies are needed to identify individuals who wish to transition to the community. A look at the experience of DHS in attempting to contact nursing home residents is instructive. Of the 51,587 Long-Term Care Options Notices sent to nursing home residents, only 445 residents, less than one percent, responded.[153] With over 41,000 people on the waiting list for the community-based alternative to nursing homes, it is likely that more than one percent of the entire nursing home population in Texas would choose the community-based alternative. In

this regard, DHS will be focusing on developing more effective ways to outreach and notify clients.

The notification process for TDMHMR clients residing in facilities may also have shortcomings. The process in SMRFs (state schools) and private ICF/MRs for identifying residents who desire assessment for transfer to the community relies heavily, if not exclusively, on the staff of each facility. While most facilities can be expected to set aside self-interest in identifying "paying customers" for transfer, questions can be raised about an inherent conflict of interest. Safeguards include the following: 1) the facilities must notify the local mental retardation authorities about the Community Living Options process, 2) residents must be provided an advocate upon request, and 3) regulatory officials must at least minimally monitor compliance with permanency planning requirements. Nevertheless, an understandable bias toward the "appropriateness" of the facility for which one works is understandable, and contributes to the questionable appropriateness of this facility-based approach to identifying potential promoting independence candidates.

Barriers to Transfers Identified in Nursing Home Population

- Needed 24 hour supervision;
- Insufficient community support;
- Lack of accessible, affordable housing;
- Residential care was unavailable;
- Insufficient income;
- Transition resources unavailable;
- Inability to perform basic life skills;
- Insufficient home-health provider capacity;
- Provider was unable to meet client's needs; and
- Insufficient capacity to address mental health issues.

Source: Texas Department of Human Services

More effective strategies and resources to address barriers to transition are necessary. The state has taken positive steps to identify individuals and assess their appropriateness for transfer to the community. However, a disturbing percentage of those identified are precluded from transfer, not because they do not desire the transfer or could not function in the community, but because barriers exist that need to be addressed. As mentioned earlier, DHS sent out notices to all nursing home residents; out of the 445 promoting independence requests, 429 were completed, resulting in 96 certifications for transfer and 333 denials (16 are pending). A review of the assessment findings of the population with mental illness is also illustrative of the need for better and more creative strategies to address identified barriers. For example, some state hospital residents remain in such facilities only because of a barrier to discharge, not because hospitalization is still necessary.[154]

Of interest regarding TDMHMR's findings related to the population with multiple state hospital admissions is that this group receives more TDMHMR community-based services, compared to other TDMHMR mental health consumers. The agency has contact with, and is serving, these clients, but the strategies being employed are not preventing or reducing repeated hospitalizations. Data being collected about this population suggest that their more common diagnoses are known; as a result, better strategies can be planned.

The continued institutionalization of children is another area of concern. In general, no child, regardless of disability, should grow up in an institution. Texas has recognized this in principle and

is instituting programs and procedures to put this into practice. However, three years have passed since the *Olmstead* ruling, and little progress has been made in reducing the number of children in institutions. This reflects poorly on the state, especially when the child is in the state's conservatorship. While pointing out this problem area, it is important to note that many children in institutions have complex medical needs, often coupled with behavioral issues, that further complicate finding a family setting. Nevertheless, the challenge presented by these children only better informs the state about the needs that must be addressed and the system that must be developed to minimize the institutionalization of children. Hopefully, Senate Bill 368, enhanced permanency planning, and the Family-Based Alternative Program, will significantly contribute to addressing the problem.

A lack of attention to the housing needs of this population is another shortcoming of Texas' promoting independence initiative. There was consensus among stakeholders involved in the initial planning of the Promoting Independence Plan that housing is a necessary component. Today, only 35 Section-8 housing vouchers have been allotted to address housing needs. Those represent federal dollars, not state. With limited resources, TDHCA has been a valuable participant in the promoting independence planning process, but more attention must be given to housing in the future.[155]

Despite its central role in fostering independence, employment for persons with disabilities continues to receive too little attention as part of the promoting independence initiative. Efforts must be increased to encourage, facilitate and support work for people with disabilities. Exploring expansion of the state's efforts under the Medicaid buy-in option is one approach to increasing employment. A valuable resource, the Texas Rehabilitation Commission, has been underutilized in the promoting independence process. While TRC goes about the business of facilitating work among individuals with disabilities every day, only recently has the agency been formally included in other agencies' promoting independence efforts. By increasing work opportunities for the promoting independence population, an individual's chance of long-term success in the community is enhanced, thereby reducing the state's continued financial contribution.

Institutionalization in Texas

In its report to the 77th Legislature, the Committee on Human Services indicated that, as of September 1, 1999, there were approximately 98,000 people living in institutional settings in Texas, including:

> 66,500 in nursing homes; 3,100 in large Intermediate Care Facilities for the Mentally Retarded (ICF/MRs); 5,400 in state schools for people with mental retardation; and 2,400 receiving inpatient services in state hospitals for people with mental illness.

Despite progress, these figures have changed only slightly since the issuance of that report. As of June, 2002, there were:

> 61,363 in nursing homes; 2,102 in large ICF/MRs; 5,071 in state schools for people with mental retardation; and 2,302 receiving inpatient services in state hospitals for people with mental illness.

Source: Texas Health and Human Services Commission. Draft Promoting Independence Implementation Plan, July 18, 2000. Also, DHS, TDMHMR

Finally, while agencies have done a good job developing new processes and programs with few resources, excessive delays in implementation have frustrated stakeholders. MOUs and RFPs have

taken longer than expected to issue, and progress regarding community-waiver slot availability has not been forthcoming. Agencies should evaluate their timeliness as the process moves forward.

Conclusion

Texas has been recognized as having one of the best *Olmstead* planning processes in the nation, and one of the best plans, as embodied in the Promoting Independence Plan. Further, Texas has received recognition for having a greater-than-average number of community-based waiver programs as alternatives to institutional care. The Texas plan is comprehensive; state agencies have a variety of community-based alternatives, and agencies have responded to the call for developing new processes and programs in response to the *Olmstead* ruling and the promoting independence initiative. However, those evaluating the state's efforts have noted from the outset that the real test would come in funding and implementation of the plan. The measure of a comprehensive, effective plan will be how well the concepts developed by the agencies are implemented and, ultimately, how successful Texas is in correcting and preventing unnecessary institutionalization. It is still too early to completely judge Texas' response to the *Olmstead* ruling and the effectiveness of its promoting independence initiative in moving towards a better system of long term services and supports with community-based alternatives.

There is much progress for which the state should be commended. The Promoting Independence Plan is an excellent blueprint and the process involved in developing and continually improving the plan is a model in stakeholder participation. Further, relevant state agencies have performed well in developing new processes, programs and pilots, with little or no funding from the Legislature.

There are still areas of concern relative to the evaluation of Texas' efforts to promote independence and prevent inappropriate institutionalization. Due largely to a lack of funding, numbers on waiting lists and the length of time individuals are waiting for community-based services continue to be unacceptably high.

In *Olmstead*, the Supreme Court stated that, "Unjustified isolation, we hold, is properly regarded as discrimination based on disability."[156] According to state agencies' resident assessments and data, we have only begun to address the needs - and wishes - of significant numbers of individuals who are currently institutionalized and those awaiting community-based services.

Recommendations

1. Recommend that the Legislature fund the Department of Human Services (DHS) LAR exceptional item to reduce long-term care waiting lists.

This exceptional item requests funding to allow services to be provided to individuals currently on waiting (or "interest") lists who meet program criteria. Over 60,000 people are currently on DHS waiting lists. Successful implementation of the Promoting Independence Plan is directly related to the Department's ability to provide these services.

2. Recommend that the Legislature fund the DHS LAR exceptional item to continue funding for Relocation and Transition Services under the promoting independence initiative.

This exceptional item requests funding for relocation services to provide intensive case management to assist individuals in nursing facilities who choose to transition to community-based care. It includes funding for Transition to Living in the Community (TLC) services to cover locating and moving to a community residence. Specifically, this includes individual grants for transitional costs and funding of the pilot as mandated by SB 367, 77th Session.

3. Recommend that the Legislature fund the DHS LAR exceptional item to continue funding for permanency planning for children in nursing homes.

In the Spring of 2002, DHS entered into a contract with Texas Community Solutions (TCS) to coordinate permanency planning activities as mandated by SB 368, 77th Session.

4. Recommend that the Legislature fund the Texas Health and Human Services Commission (HHSC) LAR exceptional item to continue funding for the Family-Based Alternatives Program.

In the Spring of 2002, HHSC entered into a contract with EveryChild, Inc., to develop a Family-Based Alternatives Program to reduce and ultimately eliminate the need for placing children with complex needs in institutions. Development of this program was mandated by SB 368, 77th Session.

5. Recommend that the Legislature fund the Texas Department of Mental Health and Mental Retardation (TDMHMR) LAR exceptional item to continue permanency planning for children in institutional settings.

TDMHMR is providing permanency planning activities without entering into a contract for those services. However, funding is needed to continue these activities, as mandated by SB 368, 77th

Session. The TDMHMR exceptional item would fund ($5 million GR/biennium) permanency planning and subsequent Home and Community-Based Services (HCS) waiver services for 300 children (persons under age 22) who are living in small and medium Intermediate Care Facilities for the Mentally Retarded (ICF/MRs). Currently, there are over 1,500 persons with MR under age 22 living in institutional settings.

6. Recommend that the Legislature continue funding for the two FTEs, funded by the Texas Council on Developmental Disabilities, who provide technical assistance and training regarding permanency planning.

The Council funded two positions at HHSC to help the local entities that are conducting permanency planning. These two FTEs are the only source for training and technical assistance and for coordination of the state's permanency planning activities in a variety of settings.

7. Recommend that HHSC continue to pursue the Medicaid buy-in option mandated by SB 831, 77th Session.

The Medicaid buy-in option was passed by Congress as an option to states in 1999 and authorized as a pilot in Texas by SB 831, 77th Session. It allows individuals with disabilities, who would lose their SSI-associated Medicaid coverage by going to back to work, to maintain Medicaid coverage by sharing in the costs on a sliding scale. Texas received a federal Medicaid Infrastructure Grant to develop and implement the pilot but was not granted the federal waiver necessary to proceed. The project is currently on hold.

8**. Recommend that the Legislature direct the Texas Department of Protective and Regulatory Services (TDPRS) to improve its activities to identify and relocate children who are in the state's custody and live in institutional settings.**

While TDPRS has been involved in the promoting independence effort and has improved its commitment to identify and move these children, there are still over 100 children in the state's custody who reside in institutions.

9. Recommend that the Legislature require promoting independence involvement from the Texas Rehabilitation Commission (TRC), including formal reporting of related activities, continuation of the Independence Initiative Workgroup and coordination with the SB 367 Task Force.

TRC has been slow to get involved in inter-agency and intra-agency efforts to respond to the *Olmstead* decision. Since TRC's mission is closely related to the independence of persons with disabilities, TRC should play an integral role in the promoting independence initiative. This

includes Vocational Rehabilitation training and employment for individuals supporting themselves in the community. TRC has recently created an Independence Initiatives Workgroup to look at agency-specific issues related to the Promoting Independence Plan and serves on the SB 367 Task Force.

10. Recommend that the Legislature require increased training of staff of large ICF/MRs that are implementing the Community Living Options tool and increase the monitoring and assessment of the quality of use of that tool in developing care plans.

The promoting independence identification and assessment efforts for the ICF/MR population are primarily conducted by staff of the institutions. There are inadequate monitoring and assurances that staff are adequately trained and that the process is thorough. There is a need for increased monitoring if the process continues to be implemented by the institutions.

11. Recommend that the Legislature require TDMHMR to include third-party involvement in TDMHMR identification and assessment activities in public and private facilities related to promoting independence.

Currently, the identification and assessment process relies heavily on private providers who would lose a paying client if a resident is identified and assessed for transfer to the community. The DHS process, on the other hand, involves a third-party contractor.

12. Recommend that the Legislature codify and clarify Rider 7 from the 77th Session.

Rider 7 stipulates that, in calculating the budget of clients of the Community-Based Alternatives (CBA) Program at DHS, aggregate budget neutrality for the entire program is to be used. The Rider applies to current clients only. In addition to codification, revision is needed to ensure that the Rider applies to budget calculations for applicants entering the program as well.

Even if the standard of budget neutrality is calculated in the aggregate for incoming clients, there may be individuals whose needs are too high for admission to the program. However, the institutional care they would then have to resort to may cost more. Assuming these high-need cases are the exception, a provision should be explored that allows entrance to CBA, despite high level of needs. Targeted case-by-case special assistance and approval from the agency could be instituted under special circumstances.

13. Recommend that the Legislature address the at-risk mental health population by:

A. funding TDMHMR's exceptional item related to the mental health promoting

independence initiative to identify and serve children with multiple admissions or prolonged inpatient or residential treatment;

B. funding TDMHMR's exceptional item related to the adult mental health promoting independence initiative for adults with three or more mental health facility admissions within a 180-day period;

C. requiring shortened follow-up time frames after individuals in the promoting independence "at-risk" mental health population are discharged; and

D. requiring that TDMHMR develop a tracking system to better monitor the at-risk mental illness population after a second stay in a 180-day period.

Timely and adequate follow-up after discharge is crucial in helping reduce subsequent hospitalizations.

14. Recommend that, in order to facilitate choice, the Legislature explore strengthening the mechanisms and adopting budgeting approaches that allow funds to follow an individual who leaves an institution for community-based care across all institutional programs. This includes:

A. codification of Rider 37 from the 77th Session;

B. a rider or statutory mandate that "funds follow the person" for other programs and settings, namely public and private ICF/MRs;

C. authorization for TDMHMR to decertify a facility's bed once an individual transfers under this provision for publicly-funded ICF/MRs;

D. authorization and funding of a temporary rate-adjustment (to offset loss after bed decertification) for providers who choose to downsize or are downsized under the decertification recommended previously.

In many cases, agencies already have the ability to transfer funds from an institutional line-item to a community line-item. However, budgeting approaches that dedicate funds and performance measures to each program without explicit direction regarding the transfer of those funds are a barrier to the funds following the person when a transfer occurs.

Rider 37 stipulates that, for the nursing home population, the "funds follow the person." DHS has been successfully implementing this rider since the Fall of 2001. At this time, over 800 individuals have accessed community services through the rider. The nursing home low occupancy level makes such a system less problematic to manage.

Rider 37 works with respect to the nursing home population because of low occupancy, making backfill less of an issue. Increased costs to the state aren't automatically realized when a new nursing home resident moves into a previously vacated bed. However, since ICF/MRs have occupancy rates upwards of 90 percent, a new resident is more likely to fill the vacated bed, causing the state to incur extra costs. If the bed were decertified, however, that extra cost would be avoided.

If a bed is decertified, either voluntarily or under a system recommended above, there remains the issue of the facility becoming too expensive to operate with the loss of revenue that is based on a per/client formula. A temporary rate enhancement would alleviate some of the immediate loss of operating revenue.

15. Recommend that the Legislature fund additional slots to significantly reduce the waiting lists for community-based waiver programs by:

A. funding TDMHMR's exceptional items to fill community-waiver slots in order to meet the agency's promoting independence commitment; and

B. funding TDMHMR's exceptional item related to further reducing the Home and Community-Based Services (HCS) waiting list.

Any effort to reduce inappropriate institutional placements is hindered by the existence of significant waiting lists. Until community-based program waiting lists are reduced or eliminated, unnecessary institutional placements will continue due to lack of access to community options.

16. Recommend that the Legislature direct HHSC to explore the development of a state plan amendment for "Targeted Case Management" to be utilized for identification and assessment efforts for individuals in institutional settings (DHS and TDMHMR populations).

This would allow the state to draw down more favorable Medicaid match for the identification of individuals wishing to transfer to the community. Currently, these activities are being performed without match. In order to qualify for the match, an eventual community-transfer must occur within 180 days of the beginning of the case management.

17. Recommend that the Legislature address the housing needs of people with disabilities by:

A. supporting Governor Perry's order directing the Texas Department of Housing and Community Affairs (TDHCA) to provide in-house training of key staff on disability issues and technical assistance to local public housing authorities in order to facilitate awareness of the needs of people with disabilities and to prioritize accessible, affordable and integrated housing for people with disabilities;

B. supporting Governor Perry's order directing TDHCA and HHSC to maximize federal funds for accessible, affordable and integrated housing for people with disabilities;

C. requiring local Public Housing Authorities' (PHA) Consolidated Plans to address implementation of the states' response to the *Olmstead* ruling;

D. developing and funding a State Housing Assistance program to provide temporary assistance while individuals with disabilities apply and wait for federal housing assistance; and

E. requiring TDHCA to designate a staff person to deal specifically with disability and issues related to the *Olmstead* ruling.

Accessible, affordable and integrated housing is an essential component of the promoting independence initiative which has historically received inadequate attention. One of the major access points for housing assistance is the local PHA. The manner in which PHAs address disability issues is inconsistent across the state. There is a lack of expertise in this area within local Public Housing Authorities (PHAs) and TDHCA is in the position to help address this issue.

18. Recommend that the Legislature fund increased wages for personal attendants to address the disparity between wages in institutions and wages in community-based services.

Wage-disparity is one of the institutional biases that continues in the system of long-term care services and supports.

19. Recommend that the Legislature authorize prescription drug coverage for clients in the Frail and Elderly Program at DHS.

A major barrier to people with disabilities remaining in the community is the ability to pay for prescriptions. The Frail and Elderly Program at DHS only provides attendant services. A participant's high prescription drug costs can force him or her to access more costly, full Medicaid coverage through the nursing facility program or the Community-Based Alternatives Program. A DHS exceptional item in its LAR for 2002-2003 would have provided three prescriptions per month

to 25,000 clients and would have diverted clients from more expensive programs.

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