



**2012
Revised
Texas Promoting
Independence Plan**

In response to

**S.B. 367, 77th Legislative Session
Executive Order RP-13**

and the

Olmstead vs. L.C. Decision

Submitted to the Governor and the Texas Legislature

December 2012

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EXECUTIVE SUMMARY

PREFACE

The *2012 Revised Texas Promoting Independence Plan* (Plan) is the sixth revision of the original Plan submitted in January 2001 as required by Governor George W. Bush's Executive Order GWB 99-2. Texas' Plan is a direct response to the Supreme Court's *Olmstead* decision,¹ which requires states to provide individuals an opportunity to receive long-term services and supports in the most integrated setting.

INTRODUCTION

The Plan serves several purposes within the state. First, the Plan provides the comprehensive working plan called for as a response to the U.S. Supreme Court ruling in *Olmstead v. L.C.*, 119 S.Ct. 2176 (1999). Additionally, the Plan assists with the implementation efforts of the community-based alternatives Executive Order, RP-13, from Governor Rick Perry.² The revised Plan also meets the requirements of the report referenced in Senate Bill (S.B.) 367, 77th Legislature, Regular Session, 2001, which directs the Health and Human Services Commission (HHSC) to report the status of the implementation of a plan to ensure appropriate care settings for individuals with disabilities, as well as the provision of a system of services and supports that foster independence and productivity, including meaningful opportunities for an individual with a disability to live in the most appropriate care setting.³ Finally, the Plan serves as an analysis of the availability, application and efficacy of existing community-based supports for individuals with disabilities.

BACKGROUND

The purpose, comprehensive nature and implications of the Texas Promoting Independence Initiative (Initiative) must be understood within the context of the history of the Initiative and all relevant information related to the *Olmstead* decision. In June 1999, the United States Supreme Court affirmed a judgment in the *Olmstead* case, which continues to have far reaching effects for states regarding services for individuals with disabilities. This case was filed in Georgia, on behalf of two individuals with mental and cognitive disabilities living in state operated institutions. They claimed a right to care in an integrated setting based on the guarantees under Title II of the Americans with Disabilities Act of 1990 (ADA).⁴

Following the *Olmstead* decision, HHSC embarked on the Initiative and appointed the Promoting Independence Advisory Board (Board), as directed by Executive Order

¹ *Olmstead v. L.C.*, 527 U.S. 581 (1999).

² Executive Order RP-13 follows Executive Order GWB 99-2 as the second community-based alternatives Executive Order. These orders required the state to review all long-term care services and supports, make appropriate recommendations, and implement specific gubernatorial directives.

³ S.B. 367, 77th Legislature, Regular Session, 2001, Subchapter B, Chapter 531, Government Code.

⁴ 42 U.S.C § 12131 *et seq.*

GWB 99-2; the Board was renamed the Promoting Independence Advisory Committee in 2001. The Board met during fiscal years 1999 and 2000 and assisted HHSC in crafting the State's response to the *Olmstead* decision. This was accomplished by the development and ongoing implementation of the original Plan.⁵ The original Plan was submitted to the Governor and state leadership on January 9, 2001. The 77th Legislature, Regular Session, 2001, passed S.B. 367, which codified many of the recommendations made in the original Plan. Subsequently, in April 2002, Governor Rick Perry issued Executive Order RP-13 to further the state's efforts regarding its Promoting Independence Initiative and community-based alternatives for individuals with disabilities.

Effective September 1, 2004, Executive Commissioner Albert Hawkins, through Health and Human Services Circular – 002, directed and authorized the Department of Aging and Disability Services (DADS), in consultation with HHSC, to act on behalf of HHSC in all matters relating to the Initiative.

PROMOTING INDEPENDENCE ADVISORY COMMITTEE

The basis of this Plan is the result of recommendations made by the Promoting Independence Advisory Committee (Committee) in its *2012 Promoting Independence Advisory Committee Stakeholder Report*⁶ submitted to HHSC as required by section 531.02441(i), Government Code. The Committee met on a quarterly basis during the last biennium to:

- continue the work of the Initiative;
- coordinate and oversee the implementation of the Plan;
- provide ongoing policy discussions on issues pertaining to community integration; and
- recommend policy initiatives for this Plan.

EXPANSION OF PROMOTING INDEPENDENCE POPULATIONS

Since the beginning of the Initiative, several populations have been targeted to receive expedited access to Medicaid 1915 (c) community-based waiver services. One population not covered by the Plan is children and youth with intellectual and development disabilities residing in Department of Family and Protective Services (DFPS) licensed long-term care facilities known as General Residential Operations (GRO). With the submission of this Plan (and pending necessary legislative appropriations), this population is to be considered part of the Promoting Independence priority population. Accordingly, these children and youth should be afforded the same expedited access to community waiver services as children residing in other long term care facilities, such as state supported living centers and intermediate care facilities for individuals with intellectual disabilities.

⁵ The original Texas Promoting Independence Plan to HHSC may be found at:
http://www.hhsc.state.tx.us/pubs/tpip/tpip_index.html.

⁶ The *2012 Promoting Independence Advisory Committee Stakeholder Report* can be found at:
http://www.dads.state.tx.us/providers/pi/piac_reports/piac-2010-interim.pdf.

2012 PROMOTING INDEPENDENCE PLAN RECOMMENDATIONS

The 2012 Plan includes 27 recommendations grouped in the following 7 categories:

- Section A** Recommendations to increase community options and supports
- Section B** Recommendations to increase behavioral health services and supports
- Section C** Recommendations to support workforce and provider network stability
- Section D** Recommendations to support children living in the community
- Section E** Recommendations to increase affordable, accessible and integrated housing
- Section F** Recommendations to support community integration
- Section G** Recommendations to be considered for funding through the Money Follows the Person Demonstration or through the Balancing Incentive Program

In addition, see “Expansion of Promoting Independence Populations” requesting the inclusion of children residing in Department of Family and Protective Services (DFPS) General Residential Operations as part of the larger Plan. This inclusion would provide these children the same expedited access to community waiver services as children residing in other long term care facilities, such as state supported living centers and intermediate care facilities for individuals with intellectual disabilities.

SECTION A: RECOMMENDATIONS TO INCREASE COMMUNITY OPTIONS AND SUPPORTS

1. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, increase Medicaid 1915(c) slots.

2. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, implement Community First Choice.

3. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, increase the number of “at-risk” slots for individuals at imminent risk for placement in a nursing facility (NF) or state supported living center.

4. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, include community integrated employment assistance and supported employment services in all 1915(c) waivers that do not currently include these activities in their waiver service arrays.

5. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, expand the Money Follows the Person program to allow adults with Intellectual and Developmental Disabilities access to Home and Community-based services (HCS).

6. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, make NF diversion slots available to individuals on the STAR+PLUS interest list who are at the medical assistance only level of income.

SECTION B: RECOMMENDATIONS TO INCREASE BEHAVIORAL HEALTH SERVICES AND SUPPORTS

There is increasing concern about the lack of behavioral health services and supports for individuals with a mental illness and/or a substance abuse. These issues, as either stand-alone concerns or coupled with a co-occurring disability, present a barrier to a fully integrated long-term services and supports system. It is difficult to be in full compliance with the *Olmstead* decision when removal of barriers to community integration and relocation from institutional settings are dependent on limited behavioral health funding. The following two behavioral health recommendations are:

7. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, the Department of State Health Services (DSHS) in conjunction with HHSC should develop a 1915 (i) waiver to support individuals with serious mental illness.

8. *Requires legislative direction and/or appropriations*

If directed and/or funded by the Legislature, DSHS in conjunction with HHSC should expand the Youth Empowerment Services waiver (YES).

SECTION C: RECOMMENDATIONS TO SUPPORT WORKFORCE AND PROVIDER NETWORK STABILIZATION

The opportunities for community living are limited without a functional, available and qualified work force and provider network. Significant turnover rates for direct services and supports staff result in an additional expense for recruiting and training new employees. Lack of sufficient funds to address these expense items may have an equally negative impact on the quality of services provided and the availability of a qualified provider base from which an individual may choose to receive services.

9. Requires legislative directions and/or appropriations.

If directed and/or funded by the Legislature, increase dedicated funding for community direct services and supports staff.

10. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, direct HHSC and DSHS to identify, develop and promote ways to increase the employment of peer specialists for the provision of mental health services in a variety of settings (NFs, mental health, vocational rehabilitation, criminal justice, etc.). This should include identification and removal of barriers to employment of peer specialists, opportunities for reimbursement for services provided by peer specialists, and education and outreach.

SECTION D: RECOMMENDATIONS TO SUPPORT CHILDREN LIVING IN THE COMMUNITY

The state must continue to address the number of children with disabilities who continue to reside in Texas institutions and support those children with disabilities who are at risk of institutionalization to remain with their families.

The following recommendations are aimed at decreasing the number of children with disabilities in Texas institutions, increasing access to quality permanency planning and family-based options, and preventing new admissions of children to these facilities.

11. Requires legislature direction and/or appropriations.

If directed and/or funded by the Legislature, include Family-Based Alternatives in all 1915(c) waivers serving children as an alternative to institutionalization for children needing out-of-home residential support.

12. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, adopt a Personal Care Services rate that supports registered nurse delegation.

SECTION E: RECOMMENDATIONS TO SUPPORT INCREASING AFFORDABLE, ACCESSIBLE AND INTEGRATED HOUSING

Affordable, accessible and integrated housing is an essential requirement for individuals who want to relocate back into their communities.

Individuals who are relocating from NFs or ICFs/IID, or individuals who are in the targeted *Olmstead* populations under the DSHS provisions, must have integrated and affordable community housing. However, there are two substantial barriers: the poverty of individuals who are living at the Supplemental Security Income (SSI) level of income (\$710/month starting in January 2013); and/or the lack of easy access to wrap-around supports and services.

- 13. Increase Project Access vouchers for individuals regardless of disability or age.*
- 14. When possible, Texas Department of Housing and Community Affairs should continue to increase the amount of set-asides for individuals with disabilities at the SSI level of income in all of its programs.*
- 15. Requires legislative directions and/or appropriations*

If directed and/or funded by the Legislature, increase funding for the Housing Trust Fund.

- 16. HHSC will request the Texas Department of Agriculture to use a portion of their Community Development Block Grant funding allocations to address the housing needs of individuals with disabilities who receive SSI in rural communities.*

SECTION F: ADDITIONAL RECOMMENDATIONS TO SUPPORT COMMUNITY INTEGRATION

- 17. HHSC will explore more specific “Community Integration Performance Indicators” in all STAR+PLUS contracts and monitor and enforce them.*
- 18. DADS will explore allowing consumer-directed services for adaptive aids and home modifications in all waivers, specialized therapies in Community Living Assistance and Support Services, nursing and professional therapies in HCS and Deaf-Blind Multiple Disabilities.*
- 19. Increase outreach and education efforts regarding nurse delegation. Work with the Board of Nursing to educate their membership on nurse delegation as it pertains to long-term services and supports.*
- 20. HHSC and DSHS, in conjunction with DADS, will put greater emphasis on hospital discharge planning services and standards with an emphasis on community-based planning.*

SECTION G: RECOMMENDATIONS TO BE CONSIDERED FOR FUNDING THROUGH EITHER THE MONEY FOLLOWS THE PERSON DEMONSTRATION OR THROUGH THE BALANCING INCENTIVE PROGRAM

1. Develop a tiered training program for professionals and unlicensed para-professionals and family members providing home care to support individuals with challenging behaviors.
2. Request HHSC to collect data on the attendant workforce, including age, gender, race/ethnicity, full/part-time status, benefits, whether they receive any public benefits and access to transportation (car, bus).
3. Establish clinical teams to provide behavioral intervention, consultation and preventative cross-systems crisis planning for referred individuals in urgent need due to behavioral challenges and/or where crisis is likely, given ongoing problems.
4. Develop and fund specialized intensive in-home training for families of individuals with challenging behaviors who are at risk of out of home placement.
5. Require all Aging and Disability Resource Centers to have expertise in the community long term services and supports system for individuals of all ages.
6. Contract for the provision of self-determination training for residents of public and private ICFs/IID to be conducted by experienced and qualified individuals, including self-advocates. Target individuals in transition and those whose facility is identified for downsizing.

CONCLUSION

HHSC remains committed to a continuing relationship with the Committee and all of its stakeholders who participate on many health and human services workgroups and advisory committees.

HHSC is committed to meeting the spirit and goals of the Initiative, the Plan and the United States Supreme Court's *Olmstead* decision. The state is in an ongoing process to offer community options so individuals may choose to live in the most integrated setting. The primary philosophy of the Initiative is that each individual exercises the principles of self-determination in choosing where they want to receive their long-term services and supports.

Even with all the funding and policy commitments, a large number of individuals still do not have a community choice and remain on an interest list (IL) for Medicaid waiver services.⁷ HHSC is recommending in this *2012 Revised Plan* 27 new funding/policy directives (contingent upon legislative funding and/or policy direction). In addition, HHSC is requesting the inclusion of children residing in DFPS General Residential Operations as part of the larger Promoting Independence Plan. This inclusion would provide these children the same expedited access to community waiver services as children residing in other long term care facilities, such as SSLCs and ICFs/IID.

HHSC would like to thank the Governor's Office and the Legislature for their ongoing commitment to the Initiative. Their foresight and willingness to support long-term services and

⁷ As of September 2012, there are 107,498 individuals (unduplicated count) on the IL: IL data may be found on the DADS website at: <http://www.dads.state.tx.us/services/interestlist/index.html>.

supports systems change has made Texas' response to the *Olmstead* decision one of the leaders in the nation. HHSC would like to thank all members of the Committee and state agency staff who have dedicated their time, resources, knowledge, abilities and work in the development of this *2012 Revised Promoting Independence Plan* and the Promoting Independence Initiative. HHSC would also like to thank those members of the public who responded to its invitation for comment at each Committee meeting.

PREFACE

The *2012 Revised Texas Promoting Independence Plan (Plan)* is the sixth revision of the original Plan submitted in January 2001 as required by Governor George W. Bush's Executive Order GWB 99-2. Texas' Plan is a direct response to the Supreme Court's *Olmstead* decision⁸ which requires states to provide individuals an opportunity to receive long-term services and supports in the most integrated setting.⁹ The Plan is the state's working plan on how to provide greater community-based options within the long-term services and supports system.

Texas was one of the first states to develop a response to the *Olmstead* decision and has received national recognition for its proactive public policies and support of the Promoting Independence Initiative (Initiative). The Initiative includes the Plan; all policy, programs and activities in support of the Plan; and the oversight of the Promoting Independence Advisory Committee (Committee).¹⁰ Governor Rick Perry issued Executive Order RP-13 to reinforce and broaden the scope of the Initiative. The state's accomplishments in developing and providing community options for all Texans are significant. The long-term services and supports system continues to evolve and is very different than it was in 2001; the Legislature has significantly increased the number of community waiver "slots" throughout the past decade and has given other policy directives, such as the expansion of STAR+PLUS, a Texas Medicaid managed care program, which have also expanded community access. However, significant interest lists remain for community waivers, and there is also increased scrutiny by the United States Department of Justice (DOJ) regarding *Olmstead* compliance. The revised Plan includes recommendations to continue the state's compliance with the *Olmstead* requirements and simultaneously recognize the state's fiscal realities.

The *2012 Revised Plan* does not attempt to repeat information previously provided and available on state agencies' websites but rather builds upon the original Plan and the subsequent six revisions. While much has been accomplished, efforts must continue to ensure that all individuals have community-based options when considering their long-term services and support options. Demand for community-based services continues to exceed appropriations. The Health and Human Services Commission encourages all readers of the *2012 Revised Promoting Independence Plan* to review previous Plans to understand the full scope of Texas' efforts and successes.¹¹ The policies and statements made in previous Plans continue to be part of the larger Initiative. Both the previous Plans and the current directives made in the *2012 Plan* will be monitored by the Committee.

⁸ *Olmstead v. L.C.*, 527 U.S. 581 (1999)

⁹ For more information about the *Olmstead* decision, go to <http://www.dads.state.tx.us/providers/pi/index.html>.

¹⁰ See Appendix A for a list of the Promoting Independence Advisory Committee members.

¹¹ To access the original Plan and the subsequent revisions, please go to the DADS website at: http://www.dads.state.tx.us/providers/pi/independence_plan.html

INTRODUCTION

The Texas Promoting Independence Plan (Plan) serves several purposes. First, the Plan provides the comprehensive working plan called for as a response to the U.S. Supreme Court ruling in *Olmstead v. L.C.*, (1999). Additionally, the Plan assists with the implementation efforts of the community-based alternatives Executive Order RP-13, issued by Governor Rick Perry.¹² The Plan also meets the requirements of the report referenced in Senate Bill (S.B.) 367, 77th Legislature, Regular Session, 2001, which directs the Health and Human Services Commission (HHSC) to report the status of the implementation of a plan to ensure appropriate care settings for individuals with disabilities, as well as the provision of a system of services and supports that foster independence and productivity, including meaningful opportunities for an individual with a disability to live in the most appropriate care setting.¹³ Finally, the Plan analyzes the availability, application and efficacy of existing community-based supports for individuals with disabilities.¹⁴

The overarching Promoting Independence Initiative (Initiative) and the Plan are far-reaching in their scope and implementation efforts. The Initiative includes all long-term services and supports and the state's efforts to enhance its community-based services options. The goal is to ensure that the state's long-term services and supports system effectively fosters independence for all individuals who are aging and/or who have a disability and provides opportunities for individuals to have a quality life in the setting of their choice. The underlying theme of the Initiative is individual choice and the opportunity to live in the most integrated setting.

The Plan articulates a value base that serves as the framework for future system improvements:

- Individuals should be informed about their program options, including community-based programs, and allowed the opportunity to make choices among affordable services and supports.
- Families' desire to care for their children with disabilities at home should be recognized and encouraged by the state.
- Services and supports should be built around a shared responsibility among families, state and local government, the private sector and community-based organizations, including faith-based organizations.
- Programs should be flexible, designed to encourage and facilitate integration into the community, and accommodate individual needs.
- Programs should foster hope, dignity, respect and independence for the individual.

Texas has made significant progress since the inception of the original Plan in January 2001. Texas' Plan is nationally recognized as one of the most proactive responses to *Olmstead*

¹² Executive Order RP-13 follows Executive Order GWB 99-2 as the second community-based alternatives Executive Order. These orders required the state to review all long-term care services and supports, make appropriate recommendations, and implement specific gubernatorial directives.

¹³ S.B. 367 (77th Legislature, Regular Session, 2001), Subchapter B, Chapter 531, Government Code.

¹⁴ Executive Order GWB 99-2.

throughout the United States,¹⁵ and Texas was awarded the Council of State Governments national 2006 Innovation Award for its “money follows the person” policy, as well as Harvard University Ash Center’s “Bright Ideas” designation in 2010. Within the state, the Promoting Independence Advisory Committee (Committee) is acknowledged as one of the leading forums in providing policy leadership and oversight of the long-term services and supports system.

Since 2001, Texas has made significant progress transforming its health and human services system from an institutional-based to a community-based system. This progress has been achieved through appropriations and policies instituted by past legislatures and through policy by the health and human services system.

The Initiative has achieved an equally important goal of increasing awareness about community-based options and ensuring that the directives made by the two Executive Orders and S.B. 367, 77th Legislature, Regular Session, 2001, are incorporated into overall policy development. The Initiative is more than just a philosophy; it is practiced in the reality of state policy and program development.

Recognizing the significant progress that has been achieved, the Initiative and Plan remain necessary and relevant components for maintaining an emphasis on community-based services, meeting the state’s statutes, and complying with the requirements under *Olmstead*. While more than 50 percent of all individuals are now being served in community settings, 107,498 individuals (unduplicated count) remain on the Department of Aging and Disabilities Services (DADS) and HHSC interest lists as of September 2012, a decrease of only 935 individuals since August 2010.¹⁶ These are individuals who have shown interest in community services; however, they have not been assessed for eligibility and may not meet all community financial/functional criteria. The Plan is dedicated to building upon previous achievements and advocating for the ultimate goal of individual self-determination and availability of community-based options.

¹⁵ As requested, Texas presented at several national conferences during the last two years including the National Academy of State Health Policy, National Association of State Units on Aging and Disabilities, and conferences sponsored by the Centers for Medicare and Medicaid Services.

¹⁶ See DADS website at: <http://www.dads.state.tx.us/services/interestlist/index.html>.

BACKGROUND

The purpose, comprehensive nature and implications of the Texas Promoting Independence Initiative (Initiative) must be understood within the context of the history of the Initiative and all relevant information related to the *Olmstead* decision. In June 1999, the United States Supreme Court affirmed a judgment in the *Olmstead* case, which has had far-reaching effects for states regarding services for individuals with disabilities. *Olmstead* was filed in Georgia, on behalf of two individuals with mental and cognitive disabilities living in state operated institutions. They claimed a right to care in an integrated setting based on the guarantees under Title II of the Americans with Disabilities Act of 1990 (ADA).¹⁷

The Court ruled in the *Olmstead* decision that unnecessary institutionalization of individuals with disabilities in state institutions constitutes unlawful discrimination under the ADA. The Court ruled that it is appropriate to place individuals with disabilities in community settings, rather than in institutions, when:

- The state's treatment professionals have determined that community placement is appropriate.
- The transfer from institutional care to a less restrictive setting is not opposed by the affected individual.
- The placement can be reasonably accommodated, taking into account the resources available to the state and the needs of others with disabilities.

The Court further determined that nothing in the ADA condones the termination of institutional settings for persons unable to benefit from community settings (119 S.Ct. 2176), and that the state's responsibility, once it provides community-based treatment to qualified persons with disabilities, is not boundless.

The history of the Initiative is well-documented in the *Background* sections of previous Promoting Independence Plans.¹⁸ The most significant additions to the history of the Initiative are Texas' participation in the federal Money Follows the Person Rebalancing Demonstration (Demonstration) and the Balancing Incentive Program (BIP). The Demonstration will provide approximately \$140 million in enhanced funding through calendar year 2016 to support individuals who want to relocate back into a community setting; the final total amount of the award is contingent upon the number of individuals who relocate from institutional settings. The BIP provides Texas \$301.5 million through September 30, 2015, to assist the state in rebalancing its Medicaid long-term services and supports system across the Health and Human Services enterprise.

¹⁷ 42 U.S.C § 12131 *et seq.*

¹⁸ See DADS website at: http://www.dads.state.tx.us/providers/pi/independence_plan.html

PROMOTING INDEPENDENCE ADVISORY COMMITTEE

The basis of this revised Promoting Independence Plan (Plan) is the result of recommendations made by the Promoting Independence Advisory Committee (Committee) in its *2012 Stakeholder Report* submitted to the Health and Human Services Commission (HHSC) as required by section 531.02441(i), Government Code.¹⁹ The Committee met on a quarterly basis during the last biennium to:

- Continue the work of the Promoting Independence Initiative.
- Coordinate and oversee the implementation of the Plan.
- Provide ongoing policy discussions on issues pertaining to community integration.
- Recommend policy initiatives for this Plan.

Section 531.02441 also directs the Committee to:

- Study and make recommendations on developing a comprehensive, effective working plan to ensure appropriate care settings for persons with disabilities by submitting a report to HHSC on an annual basis.
- Advise HHSC on giving primary consideration to methods to identify and assess each person who resides in an institution but chooses to live in the community and for whom a transfer from an institution to the community is appropriate, as determined by the person's treating professionals.
- Advise HHSC on determining the health and human services agencies' availability of community care and support options and identifying, addressing and monitoring barriers to implementation of the Plan.
- Advise HHSC on identifying funding options for the Plan.

The Texas Department of Aging and Disability Services (DADS) provides support to the Committee.²⁰

¹⁹ 2012 PIAC Stakeholder Report can be found at: http://www.dads.state.tx.us/providers/pi/piac_reports/index.html.

²⁰ HHSC has responsibility for the Initiative, however, it formally delegated daily management of the Initiative's activities to DADS in an October 2004 Health and Human Services Circular C-002 (see Appendix C or access the Circular at <http://www.hhs.state.tx.us/news/circulars/C-002.shtml>).

EXPANSION OF PROMOTING INDEPENDENCE POPULATIONS

The original Promoting Independence populations were established by the first Promoting Independence Plan (Plan – January 2001), Senate Bill (S.B.) 367 (77th Legislature, Regular Session, 2001) and Rider 37 as required by the 2002-2003 General Appropriations Act (Article II, Department of Human Services, Rider 37, S.B. 1, 77th Legislature, Regular Session, 2001). These populations include: individuals residing in nursing facilities (NFs) or intermediate care facilities for individuals with intellectual disabilities (ICFs/IID), including state supported living centers (SSLCs), and individuals with mental illness who are admitted to a state mental health facility three or more times during a 180-day period.

Additional populations have been included in Plan since the original directives through legislative direction/appropriations. These populations include: expanding the Money Follows Person options to include home and community-based services (HCS) as an alternative for children residing in NFs; allowing children residing in small ICFs/IID (private 1-8 bed) to access HCS; allowing children aging out of the Department of Family and Protective Services (DFPS) foster care program to access HCS; allowing individuals at risk of admission to an SSLC to access HCS; and allowing individuals at risk of NF admission to access Community Based Alternatives or STAR+PLUS.

One population to date not covered by the Promoting Independence Plan is children and youth with intellectual and development disabilities residing in DFPS licensed long-term care facilities known as General Residential Operations. With the submission of this Plan (and pending corresponding legislative appropriations), this population is to be considered part of the Promoting Independence priority population. Accordingly, these children should be afforded the same expedited access to community waiver services as children residing in other long-term care facilities, such as SSLCs and ICF/IIDs.

2012 PROMOTING INDEPENDENCE PLAN RECOMMENDATIONS

The following recommendations are made for program funding and service system delivery and are designed to meet the intent of the *Olmstead* decision, two Executive Orders and S.B. 367 and S.B. 368, 77th Legislature, Regular Session, 2001. These recommendations for the *2012 Revised Promoting Independence Plan (2012 Plan)* continue the work of the original Plan and will help Texas reach its ultimate goal of individual choice and self-determination.

The proposed 2012 Plan recommendations are based on recommendations the Committee made in its *2012 Stakeholder Report*. However, not all Committee recommendations are being recommended for the 2012 Plan, and others may include language that was modified from the Committee's original language. The 2012 Plan includes many recommendations that are contingent on legislative direction and/or appropriations. The recommendations are numbered for ease of reference and do not reflect their level of importance in relation to the other recommendations.

The 2012 Plan includes 27 recommendations grouped in the following 7 categories:

Section A	Recommendations to increase community options and supports
Section B	Recommendations to increase behavioral health services and supports
Section C	Recommendations to support workforce and provider network stability
Section D	Recommendations to support children living in the community
Section E	Recommendations to increase affordable, accessible and integrated housing
Section F	Recommendations to support community integration
Section G	Recommendations to be considered for funding through the Money Follows the Person Demonstration or through the Balancing Incentive Program

In addition, see "Expansion of Promoting Independence Populations" requesting the inclusion of children residing in Department of Family and Protective Services (DFPS) General Residential Operations as part of the larger Plan. This inclusion would provide these children the same expedited access to community waiver services as children residing in other long-term care facilities, such as state supported living centers and intermediate care facilities for individuals with intellectual disabilities.

SECTION A: RECOMMENDATIONS TO INCREASE COMMUNITY OPTIONS AND SUPPORTS

1. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, increase Medicaid 1915(c) slots.

The Promoting Independence Advisory Committee's (Committee) number one priority is increasing community-based services. The DADS fiscal year (FY) 2014–2015 Legislative Appropriations Request (LAR) includes Exceptional Item #4 to increase DADS community

service capacity by providing an average monthly caseload increase of 3,755 in FY 2014 and 11,266 in FY 2015. For the HCS and Community Living Assistance and Support Services (CLASS) waiver programs, funding would serve 20 percent of the estimated number of eligible individuals on the interest lists who would likely accept services. Exceptional Item #4 also requests funding to increase service levels by ten percent over FY 2012-13 levels for the Community Based Alternatives (CBA) waiver program, the Medically Dependent Children Program (MDCP) waiver program, the Texas Home Living (TxHmL) waiver program and other community programs. In addition, Exceptional Item #4 requests funding for a new Community First Choice Program that would provide certain community-based services to all eligible individuals regardless of age or disability. The DADS LAR also included Exceptional Item #3, which requests an increase in the number of Promoting Independence waiver slots for individuals in crisis situations at imminent risk of institutionalization and for individuals with Intellectual and Development Disability (IDD) moving from a nursing facility. The Department of Assistive and Rehabilitative Services (DARS) LAR includes Exceptional Item #4.C to provide services for an additional 625 individuals in the Comprehensive Rehabilitation Services program and 1,760 individuals in the Independent Living Services program.

2. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, implement Community First Choice.

Community First Choice (CFC) is a Centers for Medicare and Medicaid (CMS) State Plan option that provides a permanent six percent enhanced federal medical assistance percentage (FMAP) for State Plan home and community-based attendant services, habilitation and personal emergency response services for all individuals, regardless of age or disability. The DADS LAR Exceptional Item #4 includes a request for CFC funding.

3. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, increase the number of “at-risk” slots for individuals at imminent risk for placement in a nursing facility (NF) or state supported living center (SSLC).

The 2012-13 General Appropriations Act (Article II, DADS, HB 1, 82nd Legislature, Regular Session, 2011) funded 240 HCS slots for individuals with IDD at risk for placement in a SSLC as a result of emergency or crisis and funded 100 CBA slots for individuals at imminent risk of NF admission. The DADS LAR Exceptional Item #3 requests funding to support 400 waiver slots for individuals at risk of institutionalization. This represents (1) an increase of 60 HCS slots (for a total of 300 HCS slots) and (2) 100 CBA slots for individuals at risk for NF admission, which now includes individuals eligible for medical assistance only (MAO), individuals between 100 percent to 300 percent of Social Security Income level of income for STAR+PLUS.

4. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, include community integrated employment assistance and supported employment services in all 1915(c) waivers that do not currently include these activities in their waiver service arrays.

It is important that all individuals have access to meaningful employment. Evidence-based practices demonstrate that individuals are better prepared for meaningful integrated employment when appropriate supports exist.

5. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, expand the Money Follows the Person (MFP) program to allow adults with IDD access to HCS.

MFP currently allows Medicaid-eligible NF residents to move into specified waiver programs without being on an interest list as long as they met all community-based eligibility criteria. Individuals may access CBA, STAR+PLUS, CLASS and MDCP. Children may also access HCS. However, current practice does not allow adults to access HCS. It is important for adults to be able to access HCS in order to be in full compliance with the state's Promoting Independence Initiative. DADS LAR Exceptional Item #3 includes a request to fund 360 HCS slots for adults with IDD who want to relocate from an NF.

6. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, make NF diversion slots available to individuals on the STAR+PLUS interest list who are at the medical assistance only (MAO) level of income.

The 82nd Legislature (2011) appropriated funding for 100 CBA slots for individuals at risk for NF admission. However, these slots were not available for the MAO population living in a STAR+PLUS catchment area. DADS LAR Exceptional Item #3 includes a request to fund 100 CBA slots for individuals at risk of NF admission. These slots are also intended for the MAO population living in a STAR+PLUS catchment area.

SECTION B: RECOMMENDATIONS TO INCREASE BEHAVIORAL HEALTH SERVICES AND SUPPORTS

There is increasing concern about the lack of behavioral health services and supports for individuals with a mental illness and/or a substance abuse. These issues, as either stand-alone concerns or coupled with a co-occurring disability, present a barrier to a fully integrated long-term services and supports system.

It is difficult to be in full compliance with the *Olmstead* decision when removal of many barriers to community integration and relocation from institutional settings is dependent on limited behavioral health funding. The following two behavioral health recommendations are:

7. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, the Department of State Health Services (DSHS) in conjunction with HHSC should develop a 1915 (i) waiver to support individuals with serious mental illness (SMI).

There are limited Medicaid services for individuals with SMI. For example, many individuals leaving the state hospital system have few of the required services to help them re-integrate back into community living. This lack of services results in a large number of individuals being discharged from the state hospital into a NF or being readmitted to the state hospital. This process is costly to the state and does not provide the highest quality of life to the individual.

8. *Requires legislative direction and/or appropriations.*

If directed and/or funded by the Legislature, DSHS in conjunction with HHSC should expand the Youth Empowerment Services waiver (YES).

HHSC and DSHS received approval by the federal government to implement the YES waiver, which allows more flexibility in the funding of intensive community-based services and supports for children with serious emotional disturbances and their families. Bexar and Travis Counties began as pilot sites in April, 2010. Tarrant County began providing YES waiver services in July 2012.

SECTION C: RECOMMENDATIONS TO SUPPORT WORKFORCE AND PROVIDER NETWORK STABILIZATION

The opportunities for community living are limited without a functional, available and qualified workforce and provider network. Significant turnover rates for direct services and supports staff result in an additional expense for recruiting and training new employees. Lack of sufficient funds to address these expense items may have an equally negative impact on the quality of services provided and the availability of a qualified provider base from which an individual may choose to receive services.

9. *Requires legislative directions and/or appropriations.*

If directed and/or funded by the Legislature, increase dedicated funding for community direct services and supports staff.

The ability to recruit and retain direct services staff is at a critical juncture in Texas. Without a stable direct service workforce, it will be difficult to have a quality community-based

system. DADS supports a workforce advisory sub-committee of the larger Committee to study and recommend how to better retain direct services workers. The number one recommendation continues to be to increase direct services wages, which are generally at or near minimum wage. The costs of various provider rate changes are included in HHSC's 2014-2015 Consolidated Budget, which includes attendant compensation increases as a per-unit cost increasing rates to support a \$1.00 per hour increase in attendant wages.

10. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, direct HHSC and DSHS to identify, develop and promote ways to increase the employment of peer specialists for the provision of mental health services in a variety of settings (NFs, mental health, vocational rehabilitation, criminal justice, etc.). This should include identification and removal of barriers to employment of peer specialists, opportunities for reimbursement for services provided by peer specialists and education and outreach.

There is evidence-based data that demonstrate that peer specialists can be very effective in communicating with an individual at risk for institutionalization or in helping an individual to relocate from an institutional setting. Peer supports can be more efficient and effective in certain circumstances than more expensive professional services.

SECTION D: RECOMMENDATIONS TO SUPPORT CHILDREN LIVING IN THE COMMUNITY

The state must continue to address the number of children with disabilities who continue to reside in Texas institutions and support those children with disabilities at risk of institutionalization to remain with their families.

The following recommendations are aimed at decreasing the number of children with disabilities in Texas institutions, increasing access to quality permanency planning and family-based options, and preventing new admissions of children to these facilities.

11. Requires legislature direction and/or appropriations.

If directed and/or funded by the Legislature, include Family-Based Alternatives (FBA) in all 1915(c) waivers serving children as an alternative to institutionalization for children needing out-of-home residential support.

Families of children with complex medical, behavioral, emotional and developmental disabilities often need support to care for their children. Most frequently, the support is provided to the child in the home, but sometimes circumstances lead families of children with disabilities to need out-of-home placement for their children. Texas developed FBA to congregate care funded through 1915(c) Medicaid waivers. Payment is made to a provider to recruit, assess, develop and match children to an unrelated caregiver family. Stipends and

other supports are given to the family to care for the child in their homes. These family based alternatives allow a child to live with a family in a developmentally appropriate and cost effective manner without breaking the ties to the biological family. Currently, the only available waiver is HCS.

12. Requires legislative direction and/or appropriations.

If directed and/or funded by the Legislature, adopt a Personal Care Services (PCS) rate that supports registered nurse delegation.

PCS provides attendant services to children. Families who need a nursing task for their child must choose between PCS or private duty nursing (PDN), which provides services delivered by a registered nurse. PDN is expensive and there is no rate that addresses nurse-delegated tasks. Currently, there is only one rate for regular PCS and an enhanced rate for behavioral health, if a behavioral health issue is identified. There is no rate associated for delegated tasks to a non-licensed employee. Providing a nurse delegate rate within PCS will offer a less expensive service than forcing families to choose PDN for registered nursing.

SECTION E: RECOMMENDATIONS TO SUPPORT INCREASING AFFORDABLE, ACCESSIBLE AND INTEGRATED HOUSING

Affordable, accessible and integrated housing is an essential requirement for individuals who want to relocate back into their communities.

Individuals who are relocating from NFs or ICFs/IID, or individuals who are in the targeted *Olmstead* populations, under the DSHS provisions must have integrated and affordable community housing. There are two substantial barriers: the poverty of individuals who are living at the Supplemental Security Income (SSI) level of income (\$710/month starting in January 2013); and/or the lack of easy access to wrap-around supports and services.

13. Increase Project Access vouchers for individuals regardless of disability or age.

HHSC will request the Texas Department of Housing and Community Affairs (TDHCA) to continue to increase the number of vouchers under its Project Access program and make them available to all individuals with disabilities regardless of age. Project Access was created as a Section 8 voucher program funded through the United States Department of Housing and Urban Development (HUD) and administered through TDHCA. It provides permanent housing vouchers versus the more common two-year voucher (Tenant-based Rental Assistance). Project Access vouchers are dedicated Section 8 vouchers for individuals leaving institutional settings.

The federal program ended in 2003; however, TDHCA chose to continue the program with permission from HUD.

TDHCA is funding the program through its HOME program allocation and until 2011 had a 62 years of age limitation. This was changed in fiscal year 2011 when TDHCA dedicated 20 percent of the Project Access vouchers for individuals who are 63 and older. In calendar year 2012, TDHCA began a pilot program dedicating ten percent of the vouchers for individuals leaving state mental health facilities. There is increasing demand for affordable, accessible and integrated housing. TDHCA has been increasing the number of vouchers since 2002, when it was allotted 35 vouchers; currently there are 140 vouchers. Yet, the interest list for a Project Access voucher continues to grow.

14. When possible, TDHCA should continue to increase the amount of set-asides for individuals with disabilities at the SSI level of income in all of its programs.

TDHCA administers HOME vouchers that provide temporary (two year Tenant Based Rental Assistance) vouchers for individuals who are relocating from institutional settings, Low-Income tax Credits and block grant funding. There is always an increasing need for accessible, affordable and integrated housing for individuals who are at the SSI level of income (16-20 percent of average median income).

15. Requires legislative directions and/or appropriations.

If directed and/or funded by the Legislature, increase funding for the Housing Trust Fund (Fund).

Texas has a Fund (GR) to provide discretionary funding for specific housing supports to the general public. The Fund is the only source of GR for funding various supportive housing issues, including for individuals with disabilities (e.g., the Amy Young Barriers Removal Program).

16. HHSC will request the Texas Department of Agriculture (TDA) to use a portion of its Community Development Block Grant (CDBG) funding to address the housing needs of individuals with disabilities who receive SSI in rural communities.

HHSC will work with TDA to help it understand the functional needs of individuals with disabilities who live in rural areas. HHSC will request TDA to consider addressing these housing needs with some portion of its CDBG funding.

SECTION F: ADDITIONAL RECOMMENDATIONS TO SUPPORT COMMUNITY INTEGRATION

17. HHSC will explore more specific “Community Integration Performance Indicators” in all STAR+PLUS contracts and monitor and enforce them.

HHSC has two high level “community integration indicators” in its STAR+PLUS contracts. With the increasing coverage of STAR+PLUS as indicated by HHSC Exceptional Items #11

and #28, it important to strengthen all contracts to provide additional assurance that managed care organizations are providing the necessary interventions and services to keep individuals in the community or are actively assisting an individual's relocation in the community.

18. *DADS will explore allowing consumer-directed services (CDS) for adaptive aids and home modifications in all waivers, specialized therapies in CLASS and nursing and professional therapies in HCS and Deaf-Blind Multiple Disabilities.*

Since 2001, CDS has been an option for individuals accessing community LTSS. The CDS option began in the Primary Home Care program and has increased in scope throughout the last decade. This recommendation requires DADS to explore making CDS an option for all services and supports across all waivers.

19. *Increase outreach and education efforts regarding nurse delegation. Work with the Board of Nursing to educate its membership on nurse delegation as it pertains to long-term services and supports.*

Nurse delegation is an important option to promote independence and to make community-based living possible. Issues regarding nurse delegation as defined under the Texas Board of Nursing Rules and Regulations Relating to Nurse Education, Licensure and Practice, Chapter 225, impact all of DADS and HHSC's LTSS. It is important for registered nurses to understand all the issues in working with children who are aging out of the Comprehensive Care Program and entering adult programs that offer fewer nursing hours. This recommendation is to enhance outreach and educations efforts with the Board of Nursing and its constituency.

20. *HHSC, DSHS and DADS will put greater emphasis on hospital discharge planning services and standards, with an emphasis on community-based planning.*

Although hospitals are required to provide discharge planning services, they are not required to provide high-risk consumers with written discharge plans before they leave the hospital, and they do not need to obtain written documentation of consumers' agreement with such plans. As a result, some consumers return to the community without critical LTSS; some receive fewer supports than are necessary; and others are provided institutional services (e.g., NF care) that are not of their choosing and inconsistent with their preferences.

DSHS will review its standards for hospital discharge planners with a focus on high-risk consumers and will work with DADS to help discharge planners with: (1) comprehensive information about community-based services that allow the consumers to remain in the most integrated setting; (2) assistance accessing those services as needed; and (3) a written plan of care before being discharged from the hospital. HHSC and DSHS will work with the Texas Hospital Association to develop an improved process to monitor discharge planning procedures.

SECTION G: RECOMMENDATIONS TO BE CONSIDERED FOR FUNDING THROUGH EITHER THE MONEY FOLLOWS THE PERSON DEMONSTRATION OR THROUGH THE BALANCING INCENTIVE PROGRAM

1. Develop a tiered training program for professionals and unlicensed para-professionals and family members providing home care to support individuals with challenging behaviors.
2. Request HHSC to collect data on the attendant workforce, including age, gender, race/ethnicity, full/part-time status, benefits, whether they receive any public benefits and access to transportation (car, bus).
3. Establish clinical teams to provide behavioral intervention, consultation and preventative cross-systems crisis planning for referred individuals in urgent need due to behavioral challenges and/or where crisis is likely, given ongoing problems.
4. Develop and fund specialized intensive in-home training for families of individuals with challenging behaviors who are at risk of out-of-home placement.
5. Require all ADRCs to have expertise in the community long-term services and supports system for individuals of all ages.
6. Contract for the provision of self-determination training for residents of public and private ICFs/IID to be conducted by experienced and qualified individuals, including self-advocates. Target individuals in transition and those whose facility is identified for downsizing.

CONCLUSION

The Health and Human Services Commission (HHSC) remains committed to a continuing relationship with the Promoting Independence Advisory Committee (Committee) and all of its stakeholders who participate on many health and human services workgroups and advisory committees. HHSC Executive Commissioner Janek will continue to determine the number of members of the Committee and appoint members who represent the health and human services agencies, individual and family advocacy groups, related workgroups and service providers.

With the support of the Department of Aging and Disability Services (DADS), the Committee will continue to monitor the state's progress implementing the existing and previous Plans and make recommendations to HHSC in order to ensure community options for individuals with disabilities.

HHSC is committed to meeting the spirit and goals of the Promoting Independence Initiative (Initiative), the Plan and the United States Supreme Court's *Olmstead* decision. The state is in an ongoing process to offer community options so individuals may choose to live in the most integrated setting. The primary philosophy of the Initiative is that each individual exercise the principles of self-determination in choosing where he or she wants to receive long-term services and supports.

The state has made significant progress offering Texans community-based alternatives to institutional placement thanks to a significant increase in legislative appropriations during the past three legislative sessions. The challenge for the 83rd legislative session and those working in the area of long-term services and supports is how the state will meet its obligation under *Olmstead* and yet also meet the realities of sustaining community long-term services and supports programs for the future.

Even with all the funding and policy commitments, a large number of individuals still do not have a community choice and remain on an interest list for Medicaid waiver services.²¹ HHSC and DADS have included Exceptional Items with their Legislative Appropriations Requests for additional funding to meet the goals of the Initiative. In addition, HHSC has detailed the costs of increasing reimbursement to long-term services and supports providers and direct service employees in its *Health and Human Services System Consolidated Budget Fiscal Years 2014-2015*. HHSC is also recommending in this *2012 Revised Plan*, 27 new funding/policy directives (contingent upon legislative funding and/or policy direction).

In addition, HHSC is requesting that children residing in the DFPS General Residential Operations be included in the larger Plan. This inclusion would provide these children the same expedited access to community waiver services as children residing in other long-term care facilities, such as SSLCs and ICFs/IID.

²¹ As of September 2012, there are 107,498 individuals (unduplicated count) on the Interest List: Interest List data made by found on the DADS website at: <http://www.dads.state.tx.us/services/interestlist/index.html>.

HHSC would like to thank the Governor and the Legislature for their ongoing commitment to the Initiative. Their foresight and willingness to support long-term services and supports systems change has made Texas' response to the *Olmstead* decision one of the leaders in the nation.

HHSC would like to thank all members of the Committee and state agency staff who have dedicated their time, resources, knowledge, abilities and work in developing of this *2012 Revised Promoting Independence Plan* and the Promoting Independence Initiative. HHSC would also like to thank those members of the public who responded to its invitation for comment at each Committee meeting.

The health and human services agencies will continue to work with individuals, advocates, providers and agencies to improve the system of services and supports for individuals with disabilities. With everyone working toward the same goal, we will continue to make a difference, make the principles of self-determination a reality and provide individuals the choice to receive needed services in the most integrated setting.