

# DISABILITIES & PUBLIC POLICY: RECOMMENDATIONS FOR THE 86<sup>TH</sup> TEXAS LEGISLATURE



# CONTENTS

<b>ABOUT DPC</b>	1
<b>EXECUTIVE SUMMARY</b>	2
<b>POLICY ISSUES AND RECOMMENDATIONS BY TOPIC</b>	
<b>I. Civil Rights &amp; Justice</b>	3
Alternatives to Guardianship	4
Criminal Justice	6
Survivors of Sexual Assault Under Guardianship	8
Voting in Elections	10
<b>II. Education</b>	12
Behavior Intervention	13
Evaluations for Special Education	15
Mental Health Services & Supports	17
English Learners in Special Education	19
<b>III. Employment</b>	21
Employment First Initiatives	22
Occupational Skills Training	25
Subminimum Wage in the Purchasing from People with Disabilities Program	27
<b>IV. Housing</b>	29
504 Design Standards	30
Affordable Housing	32
Medicaid Benefit for Housing Supports	34
<b>V. Inclusion</b>	35
Disaster Planning & Recovery	36
Participation in Governmental Activities	37
Public Transportation	39
Service & Assistance Animals	40
<b>VI. Long-Term Services &amp; Supports</b>	42
Community-Based Waivers	44
Day Habilitation Compliance	46
Dental Care for Adults	48
Medicaid Managed Care	50
Relocation Services to Community	53
State Supported Living Centers	54
<b>DPC MEMBERS</b>	56
<b>ENDNOTES</b>	57

# ABOUT DPC

The Disability Policy Consortium of Texas (DPC) was established in 1990 with the goal of maintaining an effective cross-disability network of disability advocacy organizations to unite in advocating for high-quality, accessible services and supports. Today, DPC consists of over twenty-member organizations from throughout the state and is highly-regarded as a reputable, balanced, and knowledgeable source for disability-related policy matters. DPC continues to strive for the development of policies that promote and support the rights, inclusion, and independence of Texans with disabilities. We reaffirm the principles that unite us towards a common purpose of promoting the rights, inclusion, and independence of Texans with disabilities.

- We believe people with disabilities possess the dignity and worth innate to every human being.
- We believe individuals with disabilities, like all other people, have unique abilities, preferences, needs, desires, goals, and dreams.
- We believe people with disabilities have the right to full access and inclusion in all aspects of community life.
- We believe children with disabilities have the right to grow up in a family.
- We believe individuals with disabilities have the right to act on their own behalf, to direct their own future, to represent their own interests, and to make decisions and take risks based on their own goals and values.
- We believe people with disabilities have the right to accurate and timely information, presented in a manner they can use, in order to have options and make informed choices.
- We believe individuals with disabilities and their families have the right to full participation in the making of policies that will affect their lives.
- We believe people with disabilities and their families have the right to accessible services and supports customized to their needs, flexible to changing circumstances, and provided in their home communities.
- We believe people with disabilities are entitled to the same civil rights protections as any American citizen.
- We believe people with disabilities have the right to freedom from abuse and neglect.

# EXECUTIVE SUMMARY

The Disability Policy Consortium (DPC) is the only cross-disability coalition in Texas who share common goals for system change that can increase efficiencies in the delivery of state services and supports, and improve the lives of Texans with disabilities and their families. The DPC partners collaborate to identify opportunities and barriers in the state system related to long term services and supports, community living, education, criminal justice, and employment, and unite to educate decision makers about possible solutions. These issues and solutions are generated not only from data, research, and disability literature, but primarily from the real-life experiences of individuals with disabilities and their families as they navigate the system of services and supports in Texas with— or without—success.

The following document is compendium of primary topics that impact the wellness and safety of individuals with disabilities, and recommended state actions agreed on by the membership of the DPC. While all of the policy issues and recommendations included in this resources have been supported by the full DPC, individual member organizations may elect to take further independent positions on specific state policies.

This document is organized by issue area. Each section contain an overview of the system, any related federal and state laws, and specific policy recommendations and actions that Texas could take. Each educational policy document also includes contact information of individual DPC members who can provide more information about the issue or connect with experts on a specific topic.

Many people made significant contributions to the content provided here. We are grateful to the individual staff members from the representative organizations of the Disability Policy Consortium which include Texans with disabilities, their parents and family members, allies, policy and budget analysts, governmental affairs, public health experts, social workers, teachers, and disability rights attorneys. Most of all, we are indebted to the Texans with disabilities and their families who come forward to share their experiences and knowledge with us.

# I. CIVIL RIGHTS & JUSTICE

The Disability Policy Consortium believes that the civil rights of people with disabilities must be honored, protected, and enforced. Historically, the rights of people with disabilities have been unjustifiably limited or denied based on a lack of understanding of their disability, support needs, or even their humanity. These rights include the right to autonomy, dignity, family, justice, liberty, equality, self-determination, community participation, health, access to voting, freedom from unwarranted and unjustifiably extensive guardianship, and other rights recognized by federal or state law.

Despite significant progress, many individuals, businesses, federal, state, and local government agencies and other entities remain unaware of or ignore the civil rights of people with disabilities. As a result, many individuals with disabilities face unique challenges, including discrimination and exclusion from meaningful choice and participation in employment, housing, voting, transportation, and other programs, activities, and services provided by the public and private sectors of society.

Additionally, when individuals with disabilities, especially individuals with intellectual and developmental disabilities (IDD), become involved in the criminal justice system as victims, witnesses, suspects, defendants, or incarcerated individuals, they face fear, prejudice, and lack of understanding. Criminal justice professionals, first responders, victim advocates, criminal justice policy-makers, jurors, and others may lack accurate and appropriate knowledge to apply standards of due process in a manner that provides justice for individuals with disabilities.

The following recommendations from the Disability Policy Consortium encourage policy makers to continue to advance the protection, enforcement, and awareness of the civil and legal rights of Texans with disabilities.

## Key Policies That Impact Civil Rights & Justice

- The National Voter Registration Act (NVRA) of 1993
- The Help America Vote Act
- The Crime Victims with Disabilities Awareness Act of 1998
- The Developmental Disabilities Assistance and Bill of Rights Act of 2000
- Rosa's Law of 2010
- The Americans with Disabilities Act (ADA)
- Senate Bill 1881 (84R) (Supported Decision-Making Agreement Act)

# ALTERNATIVES TO GUARDIANSHIP

Support changes to the guardianship system in Texas that promote the self-determination, well-being, and rights of individuals with disabilities.

## RECOMMENDATIONS

- Require that a person should not be presumed to need a guardian because of advanced age or the presence of a physical or mental disability.
  - Revise the definition of incapacity in state law to consider the person’s everyday functioning, values, preferences and cognition rather than their medical diagnosis.
  - Require that the physical examination and documentation for incapacity be based on functional abilities with or without services and supports.
- Prohibit guardianship based solely on the diagnosis of intellectual disability.
- Require courts to explain the bill of rights for persons under guardianship in a manner accessible to the individual.
- Change the term “ward” to “individual under guardianship.”
- Require guardians to meet with the person and their physician before consenting to the administration of psychoactive medication for that individual except in a medication-related emergency as defined by the Texas Health and Safety Code.
- Implement and develop statewide monitoring and accessible and useable information, training and technical assistance provided to individuals with disabilities, families, courts, attorneys, guardians, educators, medical providers and state and local providers of services and supports.

## BACKGROUND

Guardianship is a legal proceeding that removes the civil rights and privileges of a person by assigning control of his or her life to someone else. The broad definition of incapacity in the Texas Estates Code has a discriminatory impact by enabling a court to appoint a guardian if an adult has a physical or mental condition and is substantially unable to provide food, clothing, or shelter, to care for their physical health, or manage their own financial affairs.

Recent legislative changes promoting alternatives to guardianship, including supported decision-making and a bill of rights for individuals under guardianship, provide the opportunity to significantly advance the rights and protections for individuals with disabilities.

## CONCLUSION

The vast majority of people with disabilities, including those with intellectual and developmental disabilities, are able to make important decisions independently or with support, without the need for a guardian. Even though individuals with a disability may need supports and services or assistance from others to provide for such needs, they should still be able to maintain the right to make choices about these aspects of their lives.

## CONTACT

- Jeff Miller | Disability Rights Texas | (512) 454-4816 | [jmiller@disabilityrightstx.org](mailto:jmiller@disabilityrightstx.org)
- Ginger Mayeaux | The Arc of Texas | (512) 454-6694 | [gmayeaux@thearcoftexas.org](mailto:gmayeaux@thearcoftexas.org)

# CRIMINAL JUSTICE

Ensure that people with intellectual, developmental, and/or mental/behavioral health disabilities who are victims, suspects, or witnesses of a crime have the right to impartial justice and fair treatment in all areas of the criminal justice system, including reasonable accommodations.

## RECOMMENDATIONS

- Require comprehensive officer training in booking and intake procedures of individuals with intellectual, developmental, and/or mental/behavioral health disabilities.
- Require prompt intervention and provide a valid and clinically appropriate disability screening prior to, during, and following arrest.
- Ensure that competency restoration is provided in appropriate therapeutic settings that facilitate recovery.
- Require entities to reduce reliance on non-medically necessary outpatient treatment.
- Reduce the amount of time the criminal court retains jurisdiction over an alleged offender.
- Require ongoing training of criminal justice professionals on Code of Criminal Procedure, Article 46B, with special emphasis on post-incompetency legal requirements.
- Ensure reasonable accommodations are provided at all stages of criminal proceedings to assist the individual in understanding and participating in the proceedings and their defense.

## BACKGROUND

While people with intellectual disabilities comprise 2% to 3% of the total population, they make up 4% to 10% of people in prison, with even more in juvenile facilities and jails. They also make up a significant portion of State Supported Living Center (SSLC) admissions as “alleged offenders”.<sup>i</sup> An “alleged offender resident” of an SSLC is a “person with an intellectual disability who (a) was committed to or transferred to an SSLC under Chapter 46B or 46C, Code of Criminal Procedure, as a result of being charged with or convicted of a criminal offense; or (b) is a child committed to or transferred to an SSLC under Chapter 55, Family Code, as a result of being alleged by petition or having been found to have engaged in delinquent conduct constituting a criminal offense.”<sup>ii</sup>

Having a disability does not necessarily mean a person is incompetent to stand trial; however, it is the responsibility of counsel and the court to raise competency as an issue in appropriate cases and at any point in the proceedings when the defendant’s competency is in question. Attorneys and judges often lack adequate knowledge of due process protections available for people with disabilities prior to, during, and after being found incompetent to stand trial. Additionally, with increased pressure to privatize services, there is a need to ensure that the individual’s competency is assessed and access to needed mental/behavioral health treatment is not compromised at any point in the criminal justice process.



## The Competency Assessment Process

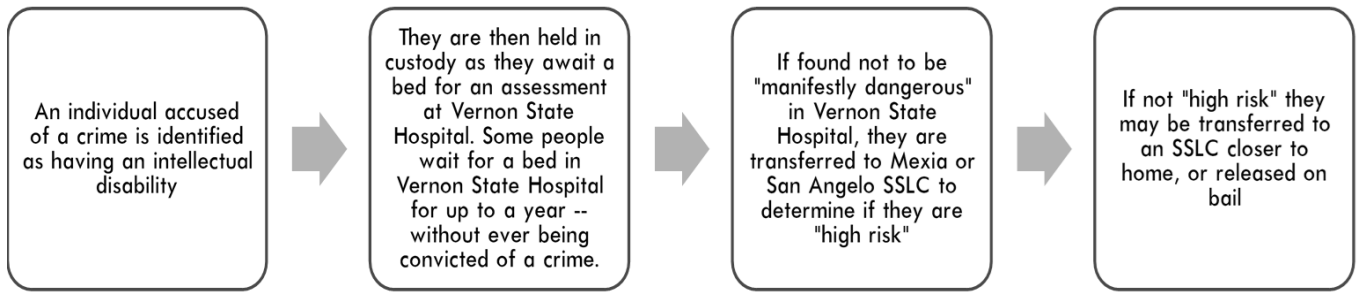


Figure 1: The Competency Assessment Process

## CONCLUSION

Early intervention, due process protections, and assistance and reasonable accommodations to participate in legal proceedings are necessary overlapping components of a system responsive to the needs of people with disabilities. These components must be available to victims, suspects, or witnesses at all stages of the individual's involvement in the criminal justice system.

## CONTACT

- Lauren Gerken | Texas Council for Developmental Disabilities | (512) 437-5415 | [Lauren.Gerken@tcdd.texas.gov](mailto:Lauren.Gerken@tcdd.texas.gov)
- Kyle Piccola | The Arc of Texas | (512) 454-6694 | [kpiccola@thearcoftexas.org](mailto:kpiccola@thearcoftexas.org)

# SURVIVORS OF SEXUAL ASSAULT UNDER GUARDIANSHIP

Given that medical and forensic evidence collection and release is paramount in the prosecution of sexual assault cases, especially in cases involving victims with intellectual disabilities, legal consent for medical and forensic evidence collection and release given by adult survivors of sexual assault under guardianship should be accepted.

## RECOMMENDATIONS

- Provide that “protective services” furnished by Adult Protective Services (APS) explicitly include forensic medical examination and treatment.
- Clarify that a person, including a guardian and notwithstanding Section 1151.001, Estates Code, may not interfere with consent for forensic medical examination and treatment if the person under guardianship consents.
- Allow a confidential communication, a record, or evidence to remain undisclosed to a legal guardian of an adult survivor under guardianship if an advocate or a sexual assault program knows or has reason to believe that the legal guardian of the survivor is a suspect in the sexual assault of the survivor.
- Allow consent for the release of confidential information other than evidence contained in an evidence collection kit to be signed by the adult survivor, regardless of whether the survivor is under guardianship.

## BACKGROUND

People with intellectual disabilities are sexually assaulted at a rate seven times higher than those without disabilities. It is estimated that 97 percent to 99 percent of perpetrators are known to the victim. Most of these crimes rarely result in prosecution. Victims may face challenges in accessing services and supports to make a report. They may also be concerned about losing their independence if they do report.

The Adult Protective Services (APS) division, within the Department of Family and Protective Services (DFPS), is responsible for protecting people with disabilities from abuse, neglect, and exploitation. When a sexual abuse report is made, APS notifies local law enforcement immediately and begins their own investigation. Data published by DFPS reveals that while sexual abuse is more frequently reported in provider settings, reports of sexual abuse in provider settings are rarely confirmed.<sup>iii</sup> Confirmed and/or validated means that, based on a preponderance of the evidence, it is more likely than not that abuse, neglect, or exploitation occurred.

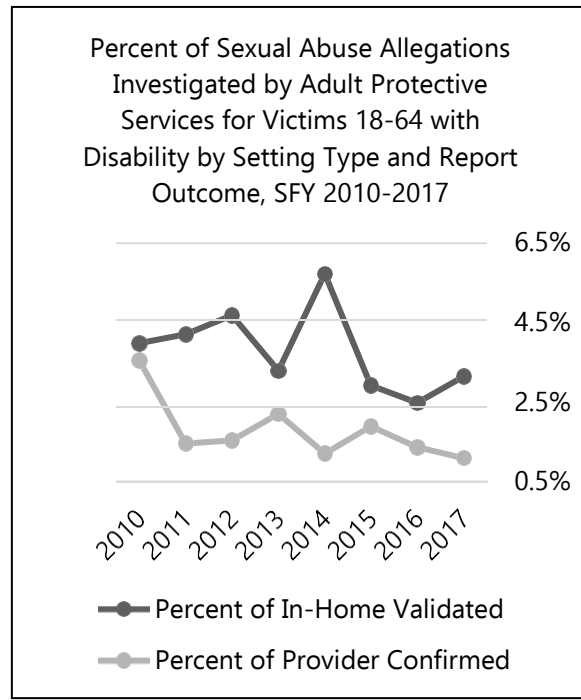
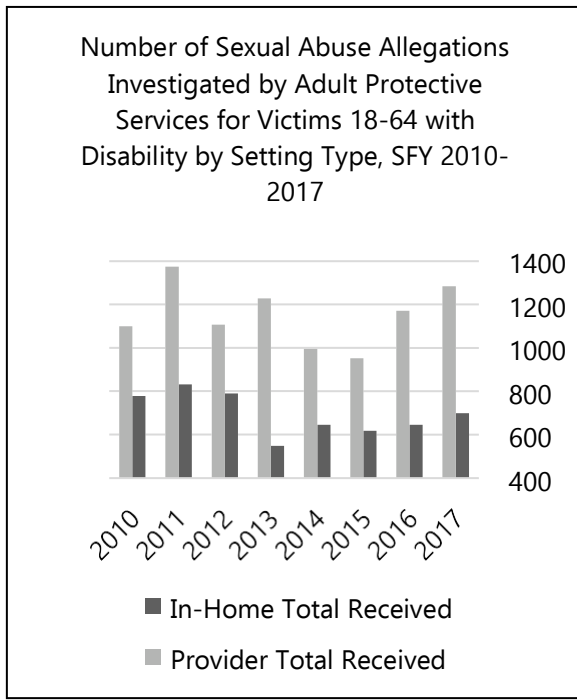


Figure 2: Number of Sexual Abuse Allegations Investigated by Adult Protective Services for Victims 18-64 with Disability by Setting Type, SFY 2010-2017

Figure 3: Percent of Sexual Abuse Allegations Investigated by Adult Protective Services for Victims 18-64 with Disability by Setting Type and Report Outcome, SFY 2010-2017

## CONCLUSION

It is time for Texas to be aware of, and to take action against, the sexual assault epidemic impacting the disability community. We should develop new expectations that Texans with intellectual and developmental disabilities have the same right as any other population to justice and fair treatment. Accepting consent for medical and forensic evidence collection and release given by adult survivors of sexual assault under guardianship is one way to begin shifting the scales of justice.

## CONTACT

- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | ashley.ford@tcdd.texas.gov
- Kyle Piccola | The Arc of Texas | (512) 454-6694 | kpiccola@thearcoftexas.org

# VOTING IN ELECTIONS

All eligible voters in Texas should be able to fully participate in the electoral process, from registering to vote, accessing polling places, and casting votes privately and independently.

## RECOMMENDATIONS

- Ensure that all required state agencies comply with the National Voter Registration Act.
- Continue to ensure the availability of proper poll worker training and accessible voting machines at each polling place, including those in small counties and jurisdictions.
- Protect the right of voters with disabilities to receive assistance by the person of their choice.
- Prevent more onerous voter ID requirements.

## BACKGROUND

Although the Help America Vote Act (HAVA) of 2002 has greatly increased access to voting for people with disabilities in federal elections, there are still substantial obstacles in registering to vote and applying for absentee ballots in Texas. While state agencies are obligated to assist eligible individuals with disabilities in registering to vote, many who receive state services are not registered or are wrongfully denied because of a lack of compliance with the National Voter Registration Act.

Counties have made progress with respect to the accessibility of polling locations and voting systems. However, there are questions as to the reliability of voting machines that are used to satisfy the accessible voting system requirement. Texas needs to ensure that all voting systems used by counties comply with federal and state requirements regarding accessible voting machines. Additionally, counties need to ensure that poll workers are trained to operate the accessible machines and to appropriately assist voters with disabilities. In an attempt to prevent individuals from wrongfully influencing voters' choices at the polls, some groups want to restrict how many people a person can assist in casting a ballot, an important right for individuals who need help voting. The right to assistance must not be further restricted in state law.

Texas currently does not count the selections of registered voters who inadvertently cast ballots at the wrong precinct. Because many people with disabilities can encounter difficulty utilizing accessible transportation to go to a



second polling place, it is especially important that they be able to have their vote counted when a polling place error occurs.

Fewer people with disabilities currently possess driver's licenses or state identification cards. Additionally, many people with disabilities have limited resources and access to transportation, so requiring special IDs for voting is, therefore, burdensome.

## CONCLUSION

Continued reforms to improve access to the electoral process for people with disabilities matters to all Texans because public confidence in our system of democracy is based on knowing that all eligible voters are able to participate and have their vote count.

## CONTACT

- Jeff Miller | Disability Rights Texas | (512) 454-4816 | [jmiller@disabilityrightstx.org](mailto:jmiller@disabilityrightstx.org)
- Bob Kafka | ADAPT of Texas | (512) 442-0252 | [bkafka@sbcglobal.net](mailto:bkafka@sbcglobal.net)

## II. EDUCATION

The Disability Policy Consortium believes that all students have the right to learn together with students their own age, with and without disabilities, in the same schools, classrooms, and other educational and extracurricular programs. People with disabilities, like all people, are life-long learners and require quality educational experiences in order to reach their life goals. Serving the individualized needs of each student starts with appropriate identification of all students who have disabilities that require special education services (Individuals with Disabilities Education Act [IDEA]) or services provided under Section 504 of the Rehabilitation Act. For this to be a reality for all students in Texas eligible for special education services, the Texas Education Agency (TEA) and school districts must fully implement and be held accountable for both IDEA and Every Student Succeeds Act (ESSA).

Special education is not a separate educational system, but a support service provided to students with specific needs within the general education system. Students with disabilities learn best in inclusive settings in their neighborhood schools. Inclusive education involves every student, regardless of the severity of a student's disability, participating and learning in the same school and with the same classmates as if they did not have a disability. Inclusive educational environments establish the foundation for society supporting the rights of all people to live in their own homes and be competitively employed as contributing and valued members of the community.

Too often, students with disabilities leave school without the skills, experiences, and supports they need to live, learn, work and play as valued citizens in their communities. The full, meaningful inclusion of Texas students with disabilities should be approached as a fundamental value and underlying principle by which we educate all students. The education policy recommendations of DPC should result in self-determination, lifelong learning, employment, and community engagement.

### Key Policies That Impact Education

- Individuals with Disabilities Education Act (IDEA)
- Every Student Succeeds Act (ESSA)
- The Workforce Innovation and Opportunity Act (WIOA)
- The Higher Education Opportunity Act of 2008
- The Teacher Jobs and State Fiscal Relief Act of 2010
- Rehabilitation Act of 1973
- Senate Bill 160 (85R)

# BEHAVIOR INTERVENTION

Ensure that students can be appropriately supported with an effective behavior intervention plan or behavioral improvement plan-also commonly referred to as a **BIP**-that is data driven. Provide guidance that the **BIP** should be reviewed as needed and no less than once per school year to measure effectiveness of the **BIP**.

## RECOMMENDATIONS

Texas schools should prioritize identifying and preventing instances of behavior to improve school safety, climate, and discipline. The recommendations below align with priorities put forth by the Senate Select Committee on School Safety, the House Committee on Public Education, and the Texas Education Agency's Legislative Appropriation Request related to school health and safety.

- Require the review of a student's **BIP**--created in conjunction with an **IEP** or a 504 plan--for effectiveness and determine if adjustments should be made to better support the student, at least once per school year or as the student's circumstances change, warranting revision.
- Ensure that any student that may have an identified need for a **BIP**, regardless if they've been identified for special education or 504 accommodations, has access to a Functional Behavioral Assessment and the development of a **BIP**.
- In addition to regular review of the **BIP**, the data collected for the **BIP** should support that the **BIP** is effective. If the data does not support that the **BIP** is effective, the **BIP** should be adjusted as needed to support the student's needs.
- Require that documentation and parent notification regarding suspensions, restraints, or other proposed disciplinary actions indicate if **BIP** revisions are recommended. If the student does not already have a **BIP**, the documentation and parent notification of the incident should indicate if a functional behavior assessment is recommended in order to create a **BIP**.

## BACKGROUND

It is common practice to carry out a functional behavior assessment (**FBA**) every three years prior to creating unique **BIPs** for students. Unfortunately, this has become the default time period for reviewing, updating and revising a student's **BIP**. **BIPs** help support schools in promoting desired behaviors, so every three years is not an effective or appropriate timeframe to evaluate the efficacy of a **BIP**. To adequately gauge the success of a **BIP** and promote positive behaviors, the Admission, Review, and Dismissal (**ARD**) Committee or 504 support teams need should review the **BIP** regularly. If a student does not have an effective **BIP**, behaviors may escalate or new behaviors may emerge, leading to more severe disciplinary actions like placements in

more restrictive settings, missed class time, or interactions with law enforcement. Compared to all students in Texas’ public schools, students receiving special education services have higher rates of disciplinary actions in terms of disciplinary alternative education programs, out-of-school suspensions, and in-school suspensions.<sup>iv</sup>

Following recent school violence tragedies in both Florida and Texas, Governor Greg Abbott convened a series of roundtable discussions, directed interim Senate and House committee hearings, and released a School Safety Action Plan. Current initiatives for school safety highlights the need for increasing student-

centered behavioral supports, implementing practices that maintain and review the efficacy of behavioral supports, as well as strengthening school climate tools, in Texas’ schools.

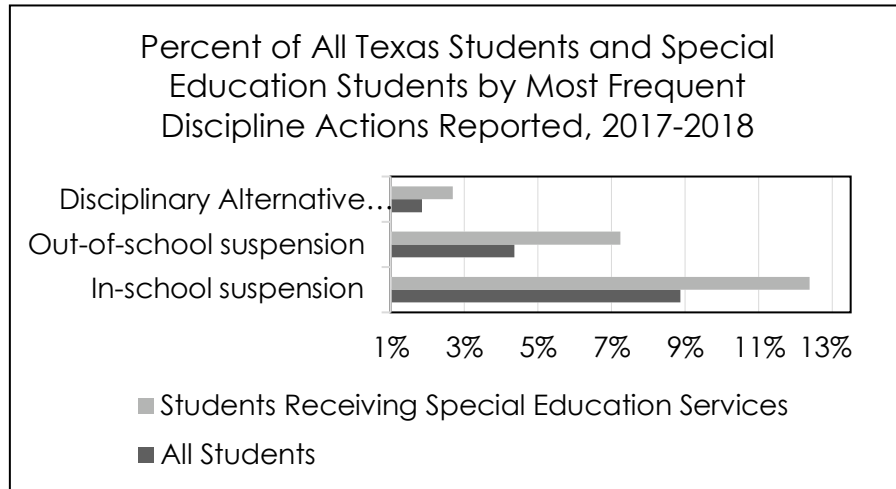


Figure 4: Percent of All Texas Students and Special Education Students by Most Frequent Discipline Actions Reported, SFY 2017-2018

### CONCLUSION

Texas should ensure that students who receive special education, use a 504 plan or have an identified need for behavior supports are fully supported to succeed in the classroom. Schools should implement best practices to review a

student’s **BIP** on a regular basis to monitor progress and determine its effectiveness. If the data collected for a student’s **BIP** does not support that the **BIP** is effective, that student is at risk for unnecessary disciplinary action. Requiring a regular review of the **BIP** will provide safeguards for students so they do not fall through the cracks, support teachers to implement effective best practices with their students, and shape a healthy learning environment in the classroom for all students.

### CONTACT

- Jolene Sanders | Easter Seals Central Texas | (512) 615-6872 | jsanders@eastersealstx.org
- Kyle Piccola | The Arc of Texas | (512) 454-6694 | kpiccola@thearcoftexas.org



# EVALUATIONS FOR SPECIAL EDUCATION

Ensure students with disabilities are identified and evaluated as quickly as possible to receive a Free and Appropriate Public Education (FAPE) that is entitled to them by the Individuals with Disabilities Act (IDEA).

## RECOMMENDATIONS

- Partner with Education Services Centers (ESCs) to share diagnostic staff outside of traditional school district boundaries
- Leverage qualified and experienced independent service providers such as Early Childhood Intervention (ECI) providers and private diagnosticians
- Expand consideration and increased acceptance of private Independent Education Evaluations (IEE)
- Explore alternative options for disability determinations and pathways to providing temporary school supports and services

## BACKGROUND

Many Texas school districts currently lack sufficient numbers of qualified staff to provide timely evaluations for special education services with the influx of students requiring evaluations after the removal of the Performance-Based Monitoring Analysis System (PBMAS) Indicator #10. In addition, the approximately 133,000 additional students who may qualify, but have still not been identified for special education services, will exacerbate the current bottleneck.

For a decade and a half Texas' special education enrollment percentage was artificially condensed towards a target enrollment of 8.5%. Hundreds of thousands of children each year were denied services and supports that would have helped them to be successful in school. After the removal of PBMAS monitoring system Indicator #10 and passage of SB 160 in May of 2017, Texas' special education enrollment has continued to languish well below the national special education enrollment average of 12-13%. At the beginning of the 2018-2019 school year Texas had only reached a 9.23% enrollment average (a net increase of only 35,000 students), leaving approximately 133,000 students still unidentified and needing crucial services and supports.

Even prior to the removal of Indicator #10, a reported 868 evaluations were delayed for special education services in Texas during fiscal year 2016. 56.5% were reportedly delayed due to scheduling and 34.3% were reportedly delayed to due a lack of available assessment personnel.<sup>v</sup>

Regardless, it is important to remember that while there are timeline requirements for school districts to approve and provide services and supports, it can take months from the initial disability determination to the commencement of services.

## CONCLUSION

Federal law requires that all children who need special education services and supports are identified and receive services in a timely manner. The Texas Education Agency (TEA) is responsible for enforcing this mandate.

## CONTACT

- Chis Masey | Coalition of Texans with Disabilities | 512-478-3366 | [cmasey@txdisabilities.org](mailto:cmasey@txdisabilities.org)
- Steven Aleman | Disability Rights Texas | 512-407-2781 | [saleman@disabilityrightstx.org](mailto:saleman@disabilityrightstx.org)

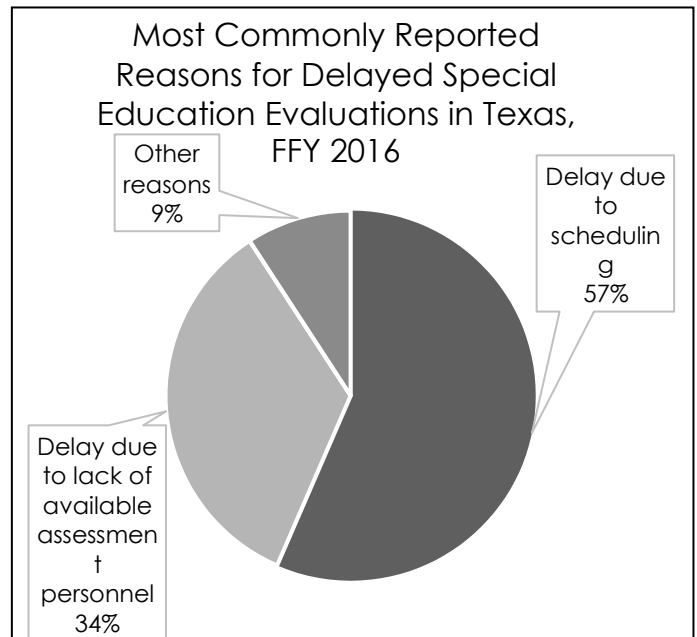


Figure 5: Most Commonly Reported Reasons for Delayed Special Education Evaluations in Texas, FFY 2016

# MENTAL HEALTH SERVICES & SUPPORTS

Improve student success by strengthening existing school-based and community mental health services, supports, and practices to identify and provide services to all students and ensure referrals for students with suspected or known disabilities.

## RECOMMENDATIONS

The legislature should direct the TEA and HHSC to address student mental health needs by providing multi-tiered systems of support that help schools promote positive behaviors and interventions. The Disability Policy Consortium supports strategies that foster safe and healthy schools for all students. The recommendations below align with priorities put forth by the Senate Select Committee on School Safety, the House Committee on Public Education, and the Texas Education Agency's Legislative Appropriation Request.

- Allocate funding from the TEA Safe and Healthy Schools Initiative to address the shortage of mental health professionals on school campuses.
- Expand mental health and disability training for educators. The State Board of Educator Certification (SBEC) should ensure that current and future teachers are adequately trained to help all students in their classroom reach their full potential regardless of disability or mental health concerns. SBEC would benefit by adding a special education representative to the board.
- Ensure that when schools implement evidence-based threat assessment models or mental health screening programs, they include a special education professional and create a documented referral protocol for voluntary services that meet the identification, evaluation, and service needs for students with suspected or known disabilities.
- Expand the number of school resource officers trained to work with and support students with disabilities by lowering the current district enrollment threshold, and develop best practice guidelines for new school safety initiatives, such as iWatch, that avoid targeting students with disabilities for disciplinary action.
- Assist schools in forming and strengthening effective partnerships with community-based mental health.

## BACKGROUND

Unaddressed mental health conditions can impede students' academic success and compound existing developmental delays. Students with mental health conditions are often unidentified and do not have adequate access to or receive treatment. School mental health personnel shortages, inappropriate discipline practices, and an uncoordinated effort between schools and mental health systems all contribute to the lack of identification and treatment for students.

In a survey conducted by Texas Council of Community Centers on its member centers regarding interactions with local school systems and regional Education Service Centers (ESCs), all member centers reported that they at least an informal training agreement with local schools to provide Mental Health First Aid.<sup>vi</sup> Despite this, survey results show other training and engagement improvement opportunities.

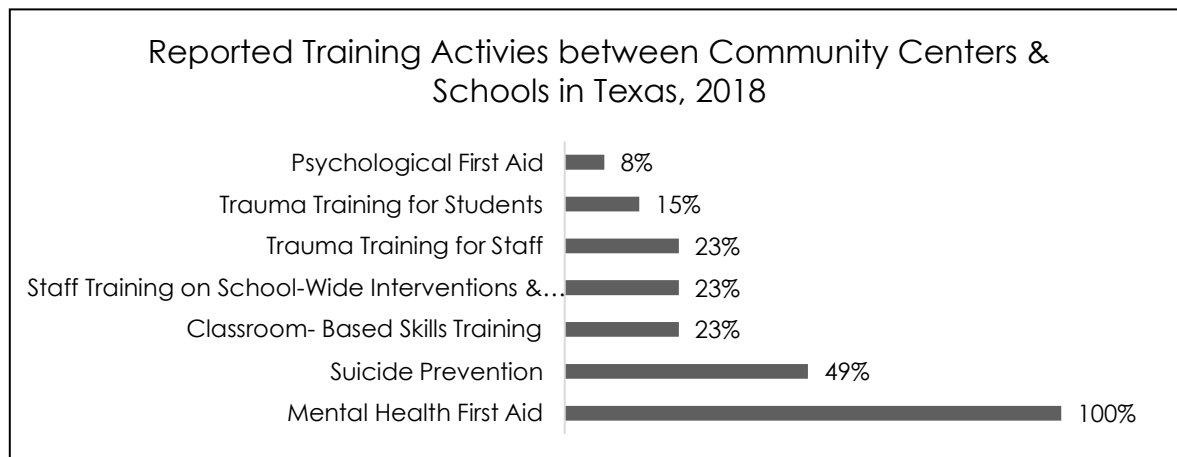


Figure 6: Reported Training Activities between Community Centers & Schools in Texas, 2018

The trauma of Hurricane Harvey provided impetus for the Legislature to address school mental health. Following recent school violence tragedies in both Florida and Texas, Governor Abbott convened a series of roundtable discussions and released a School Safety Action Plan. Subsequently, Senate and House committees held hearings and released interim reports on school safety. The theme of each directive and report highlights the need for increasing mental health supports and strengthening school climate tools in Texas' schools.

## CONCLUSION

Texas student success depends on the health and safety of our schools. Texas is poised to address the unmet mental health needs and improve the identification and evaluation structures for students with disabilities by increasing funding and strengthening systemic relationships.

## CONTACT

- Adrian Gaspar | Disability Rights Texas | (512) 454-4816 | [agaspar@drtx.org](mailto:agaspar@drtx.org)
- Tiffany Williams | Coalition of Texans with Disabilities | (512) 478-3366 | [twilliams@txdisabilities.org](mailto:twilliams@txdisabilities.org)

# ENGLISH LEARNERS IN SPECIAL EDUCATION

Since 1990, only two teacher shortage areas have been consistently designated every school year in Texas: bilingual or English as a second language (ESL) and special education. As two of the fastest growing subgroups of students served in Texas public schools, Texas must examine the current state of services needed by students who are in both subgroups.

## RECOMMENDATIONS

- Provide districts with targeted guidance, technical assistance, and resources to ensure English language learners (ELLs) are identified and provided appropriate services.
- Require TEA to monitor implementation of ELL/special education assessments/evaluation and services in school districts statewide within two years following United States Department of Education (USDE) acceptance of the Texas corrective action plan. Monitoring should be informed by previously cited federal regulations on disproportionality and disparities.
- Create incentives for bilingual/ESL special education teachers to obtain and maintain certification in inclusive general education and self-contained special education settings.
- Develop a separate and focused bilingual/ESL certification program option specifically for the purpose of teaching special education.
- Require that local education agencies (LEAs) submit special education program plans that detail their process for the referral, identification, assessment, and provision of services to ELLs with disabilities. These plans should include available personnel qualified to conduct each aspect of the process and the LEA's strategies for recruiting additional qualified personnel if local workforce supply is inadequate.
- Increase the allocation of resources provided to the Multicultural and Diverse Learners program housed in the Education Service Center (ESC) in Region 13. Examine ways to expand the accessibility and availability of the program to other ESC regions.
- Explore the creation of a tele-assessment system for assessments in languages other than English in school districts without personnel competent in a student's native tongue

## BACKGROUND

Students who are ELLs and those who also have intellectual and developmental disabilities (IDD) were disproportionately affected by the 8.5% special education target enrollment of the Texas Education Agency (TEA) investigated by the U.S. Department of Education. These students were not adequately identified by Child Find, evaluated for special education services in their native tongue, or provided a free appropriate public education (FAPE) under the Individuals with Disabilities Education Act (IDEA). Instead, students who

are ELL with IDD are often referred to English language classes only, and IDD educational needs are often neither evaluated nor addressed.

A major barrier for teachers, schools, and districts is determining whether an ELL is experiencing academic difficulties in school due to issues primarily related to language acquisition, or to disability. As a result, ELLs can be misidentified or under-identified in qualifying for special education services. A lack of adequate training in second language acquisition, cultural sensitivity, ESL instruction and bilingual education, and pre-referral interventions in both special and general education contribute to the prevalence of this issue. During the 2017-18 school year, 17.6 percent of all identified ELLs in Texas' public schools received special education services. 31.8 percent received bilingual services and 57.4 percent received ESL services.<sup>vi</sup> Unfortunately, almost 11 percent of ELLs receiving special education services were not provided any services through an ELL program. Reasons for this are unknown; however, language acquisition is a critical component of ensuring that all students with disabilities in Texas achieve their potential for independence, productivity, and full integration into the community.

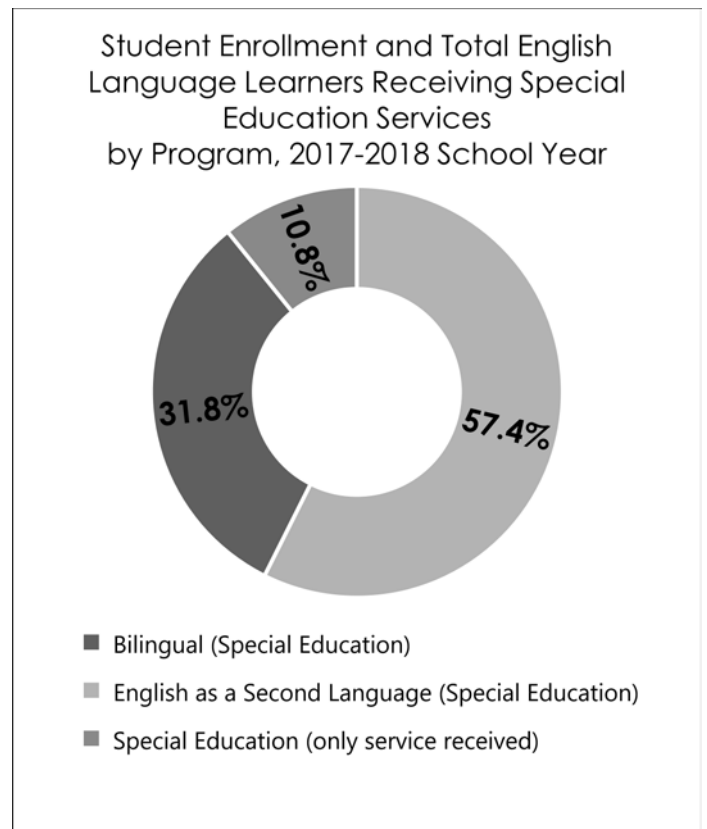


Figure 7: Student Enrollment and Total English Language Learners Receiving Special Education Services by Program, 2017-2018 School Year

## CONCLUSION

Meeting needs of English language learners with intellectual and developmental disabilities is a key aspect of Texas complying with federal law under IDEA. Texas must ensure that it complies and school districts should be provided assistance in developing appropriate evaluations for all students. The state should provide districts with targeted guidance, technical assistance, and resources to ensure ELLs are identified and provided appropriate services. Providing incentives for bilingual teachers who obtain special education services certification should be explored to help with the availability of bilingual/ESL educators available. Bilingual/ESL certification requirements should also be examined to see if any could be adjusted to meet the specific needs of existing primary and secondary classroom educators. In addition, a separate and focused ESL certification could be developed specifically for special education teachers.

## CONTACT

- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | ashley.ford@tcdd.texas.gov
- Chis Masey | Coalition of Texans with Disabilities | 512-478-3366 | cmasey@txdisabilities.org

# III. EMPLOYMENT

Work is a fundamental part of adult life, and for people with disabilities, taking part in working life is an essential condition to equal participation in society. Through employment, people with disabilities gain an important point of entry into their communities, a sense of being valued, earned wages, job benefits and an opportunity to make a meaningful contribution. With both tangible and intangible rewards from employment, people with disabilities achieve greater independence and freedom from public support service systems.

Far too frequently people with disabilities are steered into non-integrated settings instead of community-based employment. These segregated day activity programs and sheltered workshop environments pay sub-minimum wage and fail to cultivate a person’s potential. The advances in education and community living are not fully leveraged or realized when so few people with disabilities actually work in the community. Various factors—including low expectations, lack of training, inadequate transportation, and discrimination—can create barriers to employment among people with disabilities. Because employment is such a complex issue, it cannot be remedied by just one solution.

The Texas Legislature has created opportunities for Texas to be attractive to business, drawn, in part, by a workforce educated by our world-class university system. DPC’s goal is to ensure that those businesses also find an educated, prepared workforce that includes Texans with disabilities. Access to “real jobs with real wages” is essential if citizens with disabilities are to avoid lives of poverty, dependence, and isolation. The employment policy recommendations of DPC will ultimately reduce per-capita cost for services by assisting Texans with disabilities in preparing for, finding, and maintaining positions in the workforce.

## Key Policies That Impact Employment

- Home and Community-Based Settings (HCBS) Rule
- The Fair Labor Standards Act of 1938
- The Workforce Innovation and Opportunity Act (WIOA)
- The Employment Opportunities for Disabled Americans Act of 1986
- The Ticket to Work and Work Incentives Improvement Act of 1999
- The Americans with Disabilities Amendments Act (ADAAA) of 2008
- Achieving a Better Life Experience Act of 2014
- Senate Bill 1226 (83R) (Employment First Law)

# EMPLOYMENT FIRST INITIATIVES

Expand initiatives that align with the Texas Employment First law and Medicaid home and community-based settings (HCBS) rule for people with disabilities. Offer services and supports to help working age Texans with disabilities pursue their employment goals, beginning when they first obtain state services. Improve competitive and integrated employment outcomes for Texans with disabilities.

## RECOMMENDATIONS

- Require the Texas Workforce Commission (TWC) and the Health and Human Services Commission (HHSC) to expand and enhance the Money Follows the Person (MFP) Employment First Pilot. The pilot should be made available to at least three organizations to restructure and implement employment services for current and future clients.
- Require that all grants through the Skills Development Fund at TWC are made available to organizations that can improve the competitive, integrated employment outcomes for Texans with disabilities.
- Explore the possibility of outcome-based reimbursement methodologies for day habilitation and employment services within Medicaid waivers to support efforts to fully comply with HCBS settings rules and ensure that individuals with disabilities have access to the general community.
- Require all local intellectual and developmental disability authorities (LIDDAs) to have an in-house certified benefits counselor.
- Improve the availability of information regarding work incentives and benefits planning for people with disabilities who receive Medicaid services and transition-age students in receiving special education services.
- Reestablish the Employment First Taskforce.
- Have Texas lead by example by requiring state agencies to hire a certain percentage of people with disabilities each year.

## BACKGROUND

Through employment, people with disabilities gain an important point of entry into their communities, a sense of being valued, earned wages, job benefits and an opportunity to make a meaningful contribution. With both tangible and intangible rewards from employment, people with disabilities achieve greater independence and freedom from public support service systems.

Texas passed the Employment First law in 2013 (SB 1226, 83R). It states that earning a living wage through competitive, integrated employment in the general workforce is the priority and preferred outcome for working-age individuals with disabilities who receive public benefits.



From January 2014 to July 2016, an Employment First pilot program using funds from MFP to help community employers become employment first providers was conducted. This pilot was extremely successful in helping Texans with disabilities secure competitive, integrated employment. Results indicated that 50% of the participants tracked were successfully placed in competitive employment in integrated settings. There was also a significant difference in the rate of competitive employment between individuals in the employed group (70.6%) who received Vocational Rehabilitation services and those in the unemployed group (23.1%).<sup>viii</sup>

The 2014 Final Rule, CMS 2249-F and CMS 2296-F, or Community-Based Settings Rule, creates the expectation that Medicaid-funded services will support competitive integrated employment and other community life engagement activities, and that agencies will shift away from service settings that isolate or segregate people with disabilities from the general population (CMS, 2014).<sup>ix</sup> In Texas, community-based employment assistance and supported employment services funded by Medicaid waivers are extremely underutilized while day habilitation services are heavily utilized. Data suggests that the low amount of funding for integrated employment services in Texas has contributed to a high percentage of people with disabilities spending their time in facility-based non-work settings, or day habilitation. For example, outcome-based reimbursement methodologies for day and employment services - as developed in Oklahoma, Wisconsin and Oregon.<sup>x</sup>

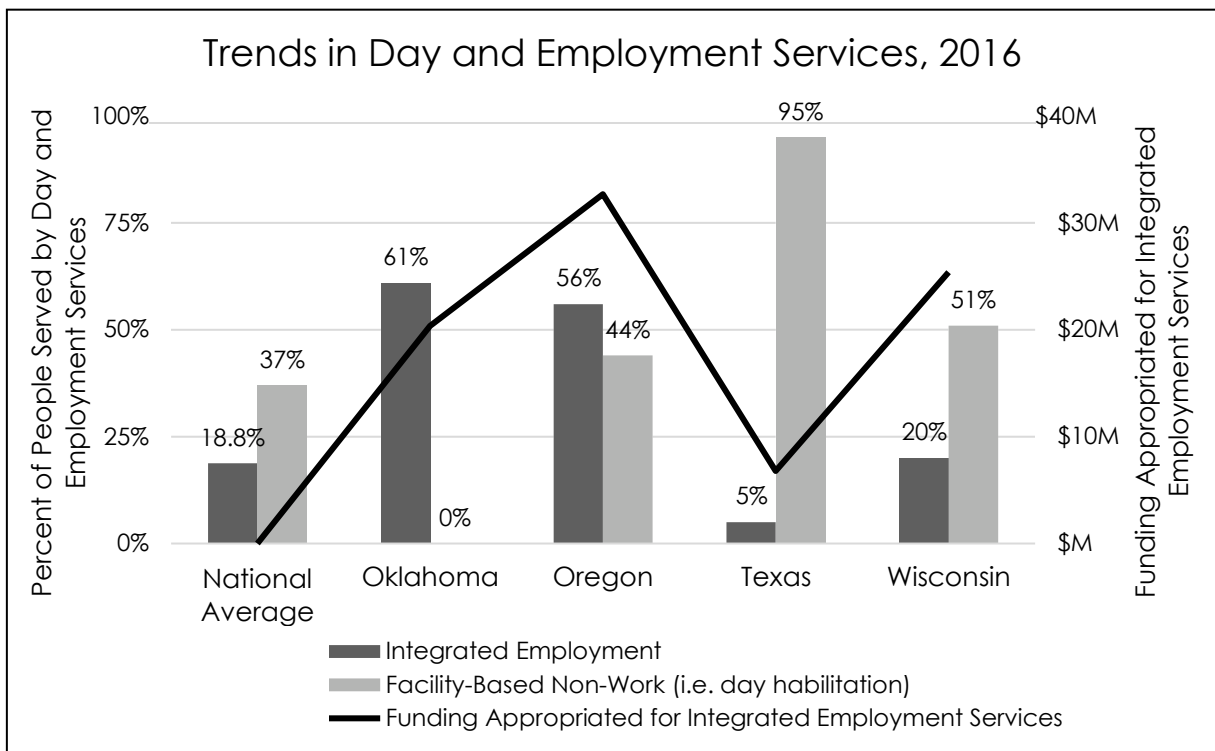


Figure 8: Trends in Day and Employment Services, 2016

Individuals with disabilities receiving both residential and nonresidential services through Medicaid community services have reported not receiving the employment-related assistance and support they want and need to obtain employment.<sup>xi</sup> Entities involved in statewide employment initiatives should disseminate quality information to providers, employers, and the business community to overcome the negative perceptions and fears of people with disabilities being employed, and to promote the benefits and incentives available for employees with, and employers of, people with disabilities.

## CONCLUSION

Work is a fundamental part of adult life, and for people with disabilities, taking part in working life is an essential condition to equal participation in society. Texas' Employment First policy was established to promote the position that all Texans with disabilities are valued members of the workforce and can meet the same employment standards, responsibilities, and expectations as other working-age adults. DPC was highly involved in advocating for the adoption of Employment First and continues to be a resource for state agencies, legislators, and others interested in improving the participation of people with disabilities in the workforce.

## CONTACT

- Lauren Gerken | The Arc of Texas | (512) 454-6694 | lgerken@thearcoftexas.org
- Brooke Hohfeld | Texas Advocates | (940) 704-9116 | bhohfeld@gmail.com
- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | ashley.ford@tcdd.texas.gov

# OCCUPATIONAL SKILLS TRAINING

Promote Employment First initiatives and utilize Texans with disabilities in the workforce by expanding the access to and availability of occupational skills training programs in the state. Improve job preparedness and increase opportunities for gained experience among people with disabilities to foster economic competitiveness and development in Texas.

## RECOMMENDATIONS

- Provide funding for the expansion or improvement of existing occupational skills training programs, including Project SEARCH®, for Texans with disabilities as described in the SB 2027 (85R) report by the Texas Health and Human Services Commission (HHSC) and the Texas Workforce Commission (TWC).
- Require TWC to produce a report outlining:
  - all possible funding sources for occupational skills training programs for people with disabilities, and
  - specific occupations of in-demand industries that require a certificate in occupational skills necessary to obtain and maintain competitive integrated employment, and that could be reasonable occupations for people with disabilities.
- Revise the definition of a formal occupational skills training program to include the training needs of people with disabilities.
- Establish a network of regional job coaches to be responsible for providing extended supports and services to assist people with disabilities in maintaining and advancing in competitive integrated employment as a result of participating in an occupational skills training program.
- Establish performance measures for the number of people with disabilities who have:
  - participated in occupational skills training programs;
  - obtained competitive integrated employment;
  - maintained competitive integrated employment; and
  - advanced in their chosen occupation.

## BACKGROUND

Employment First, or the policy in Texas that affirms that earning a living wage through competitive integrated employment is the first and preferred outcome for adults with disabilities who receive public benefits, was adopted by the Texas Legislature in 2013. Despite the passage of Employment First, 92% of Texans with IDD still work in segregated settings. This means that they do not work in typical businesses in which people with disabilities work side-by-side without disabilities, encounter members of the public, and are not eligible for the same advancement opportunities as workers without disabilities.

In alignment with Employment First, the SB 2027 (85R) report inventoried and studied the occupational skills training programs in Texas for people with intellectual and developmental disabilities (IDD). The purpose of the report was to determine where programs need improvement or expansion and to develop strategies to place trainees in fulfilling competitive integrated employment. SB 2027 study results suggest that there is a high-demand for - yet low supply of - occupational skills training programs throughout Texas available to people with IDD. For example, 84 percent of SB 2027 respondents stated that they would attend an occupational skills training program that would help them get a better job.<sup>xii</sup> Expanding occupational skills programs will increase competitive integrated employment for Texans with IDD and further the aims of Employment First.

## CONCLUSION

By expanding occupational skills training programs that improve job preparedness and increase opportunities for gained experience, people previously considered “unemployable” can work and be productive and can achieve independence.

## CONTACT

- Kyle Piccola | The Arc of Texas | (512) 454-6694 | [kpiccola@thearcoftexas.org](mailto:kpiccola@thearcoftexas.org)
- Ashley Ford | Texas Council for Developmental Disabilities | [ashley.ford@tcdd.texas.gov](mailto:ashley.ford@tcdd.texas.gov)
- Jeff Miller | Disability Rights Texas | (512) 454-4816 | [jmiller@disabilityrightstx.org](mailto:jmiller@disabilityrightstx.org)

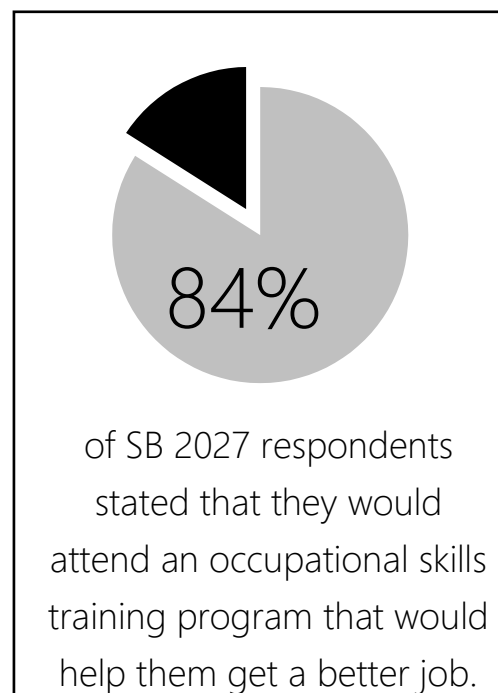


Figure 9: Percent of SB 2027 respondents who would attend an occupational skills training program that would help them get a better job.

# SUBMINIMUM WAGE IN THE PURCHASING FROM PEOPLE WITH DISABILITIES PROGRAM

Demonstrate a commitment to Texas' Employment First law by requiring all employers of the Texas Purchasing from People with Disabilities Program (TPPWDP) to pay all of their employees at least minimum wage.

## RECOMMENDATIONS

- Prohibit Texas state agencies from contracting with organizations that do not align with the principles of the Employment First law, including organizations that pay subminimum wage.
- Require the Texas Workforce Commission (TWC) and subminimum wage employers of the TPPWDP to work together to transition subminimum wage earners into at least minimum wage earners with TWC to transition towards paying their employees at least minimum wage within a defined timeline.
- Reinvest revenue generated from TPPWDP to fund the creation of new competitive integrated employment opportunities and the provision of individualized, employment supports and services to transition employees with disabilities earning less than minimum wage in segregated settings into competitive integrated employment.
- Require that TPPWDP provide high-quality benefits counseling to all employees with disabilities who have concerns about maintaining eligibility for benefits while working and earning at least minimum wage.
- Limit contracting by TIBH to only organizations that have community-based employment opportunities that pay workers at least the minimum wage and should prohibit the co-location of segregated sheltered workshops at day habilitation sites. This would be a first step in eliminating the inequity of paying subminimum wages to more than 5,000 individuals with disabilities in Texas.

## BACKGROUND

It is legal to pay someone with a disability less than minimum wage - employers can pay less than minimum wage by applying for a Federal 14(c) waiver, which is a special wage certificate created in 1938. The Texas Purchasing from People with Disabilities Program (TPPWDP), also known as the State Use or WorksWonders Program, within TWC gives preferential state contracts and millions of taxpayer dollars to 107 organizations to hire Texans with disabilities. Nine of these organizations pay subminimum wages to their 222 employees with disabilities.<sup>xiii</sup> These employees can earn as little as \$.02 an hour.<sup>xiv</sup> Three of these nine organizations pay 100% of all their employees subminimum wage.

Individuals are often kept in subminimum wage employment due to widespread misinformation regarding work and benefit eligibility for programs and services vital to their well-being. There is a statewide shortage of well-trained benefits counselors to advise Texans with disabilities and their families.

Not earning competitive wages keeps Texans with disabilities in poverty. The federal government put an end to the practice of using taxpayer funds to pay subminimum wages for goods and services through in its former version of the TPPWDP.

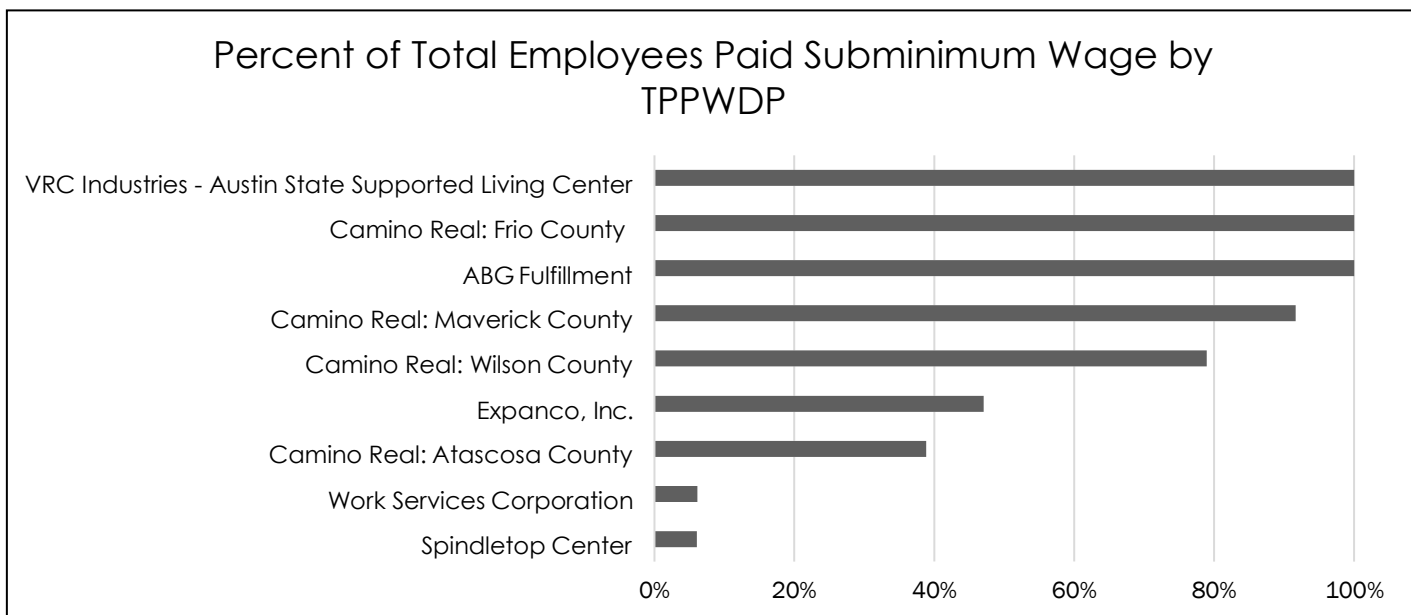


Figure 10: Percent of Total Employees Paid Subminimum Wage by TPPWDP

## CONCLUSION

Texans with disabilities want to work and earn a wage that supports a meaningful life. They deserve the dignity to bring home a paycheck that allows them to contribute to society like everyone else. It's time to demonstrate Texas' commitment to Employment First and the rights, inclusion, and independence of Texans with disabilities.

## CONTACT

- Kyle Piccola | The Arc of Texas | (512) 454-6694 | [kpiccola@thearcoftexas.org](mailto:kpiccola@thearcoftexas.org)
- Jeff Miller | Disability Rights Texas | (512) 454-4816 | [jmiller@disabilityrightstx.org](mailto:jmiller@disabilityrightstx.org)

# IV. HOUSING

The Disability Policy Consortium believes that Texans with disabilities, like everyone else, have a right to live in their own homes, in their communities and should not be forced to live congregate, segregated communities or institutions. Additionally, adults with disabilities should control where and with whom they live, including having opportunities to rent or buy their own homes. Yet, there remains a tremendous lack of affordable, accessible, and integrated housing in Texas and disability-related housing discrimination exists.

Outdated policies and programs and a lack of coordination among funding systems can unnecessarily segregate people with disabilities and pose major barriers to living in the community. Many people with disabilities are among the state's poorest citizens. For many, Social Security and Supplemental Security Income benefits are their primary or sole source of income. These benefits are far lower than typical rents, which results in these individuals being priced out of rental markets across the state. State and federal affordable housing programs are underfunded, with long waiting lists. Additionally, Medicaid, the principal source of funding for services and supports for many individuals with disabilities, does not typically allow funds to be used for rent or other community-based housing-related costs. There must be adequate funding of services to support people to live in the community.

The following recommendations will support policy makers to make positive changes in Texas public policy that promote, integrated, affordable, accessible living situations for people with disabilities and allow them greater opportunities to control where and with whom they live, including having opportunities to rent or buy their own homes.

## Key Policies That Impact Housing

- Fair Housing Act of 1988
- The Housing and Community Development Act
- The National Affordable Housing Trust Fund Act of 2008
- The Frank Melville Supportive Housing Investment Act of 2010
- Section 504 of the Rehabilitation Act of 1973
- Senate Bill 623 (76R)

# 504 DESIGN STANDARDS

Ensure the protection of Section 504 design standards in multifamily Housing Tax Credit deals and protect “visitability” in new single-family homes.

## RECOMMENDATION

Support efforts to ensure that current state fair housing laws, Section 504 accessibility standards in tax credit developments and state visitability laws are not weakened or eliminated.

## BACKGROUND

Although the Housing Tax Credit (HTC) program is designed to expand the supply of affordable housing by encouraging private investment in housing, it falls short of addressing the housing needs of people with disabilities. Current state law provides for “basic access” design for new single-family housing constructed with funds provided through the state, but the need for visitability is still questioned. With Section 504 design standards, tax credit projects that are developed using Housing Trust, HOME, CDBG, or other federal funding supports.

Because many Texans with disabilities have some of the lowest incomes and worst-case housing needs, publicly-subsidized housing programs are the best way to obtain decent housing. The design standards outlined in Section 504 of the Rehabilitation Act of 1973 for housing developed through the Housing Tax Credit program were meant to increase the actual accessible and usable units and more effectively address the needs of people with disabilities. With the passage of SB623 in May 1999, Texas became the first state to have legislation to promote features that include a step-free entrance from a driveway or sidewalk for access to the home; widened doorways throughout the house to allow for easy passage from room to room and bathrooms that can be accessed by all. Since that time, Texas’ legislation has been used as a model for similar legislation passed in other states.

With design standards for visitability in the construction of new homes, people with disabilities have the opportunity to visit their neighbors. The basic access features also assure less cost if future accessibility modifications are needed. Section 504 design standards eliminate discriminatory practices towards persons with disabilities and provide for physical access in all programs or activities receiving federal funds.

Of the  
291,181  
tax credit units developed  
since 2001,  
24,060 (8.26%)  
have been created as  
accessible units because of a  
past legislative initiative.



## CONCLUSION

Inaccessibility makes friendships harder to create and cuts people off from meetings where information is exchanged and decisions made; it causes people with disabilities and their families not to be invited places, or to have to turn down invitations. If they have low incomes, as many disabled people do, inaccessibility often forces them to live in a house where they may literally have to crawl every time they use the bathroom, or stay inside all day because of the steps. And lack of access can force many older people into nursing homes.

4,280  
single family homes have  
been developed since 1999  
as *visitable* due to a past  
legislative initiative.

## CONTACT

- Christa Walikonis | Disability Rights Texas | (512) 454-4816 | [cwalikonis@disabilityrightstx.org](mailto:cwalikonis@disabilityrightstx.org)
- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | [ashley.ford@tcdd.texas.gov](mailto:ashley.ford@tcdd.texas.gov)

# AFFORDABLE HOUSING

Support affordable housing opportunities to ensure Texans with disabilities who have limited incomes can access to accessible and integrated housing.

## RECOMMENDATIONS

- Amend legislation to lift the cap on the use of State HOME Funds so people with disabilities can access this funding regardless of location.
- Increase funding for the Housing Trust Fund to support more programs aimed at addressing the need for integrated, accessible and affordable housing for people with disabilities.

## BACKGROUND

Like other Texans with limited incomes, Texans with disabilities face few housing options and lengthy waiting lists for most rental assistance programs. When low-income Texans with disabilities are unable to find affordable housing, their risk of institutionalization or homelessness increases, resulting in costs that far exceed affordable housing rent subsidies.

The main source of income for many Texans with disabilities is Supplemental Security Income (SSI). Persons with disabilities, who receive SSI as their only income, pay a disproportionately higher percentage of their income for housing. It is estimated that Texans with disabilities pay twice the percentage of their income in rent compared to the average Texan.<sup>xv</sup> Most federal, state, and local funding for housing goes to the development of housing at rental rates above the affordability standard for people at this income level. The current waiting list for most rental assistance programs is over three years.

SSI Monthly Payment	SSI as Percentage of Median Income	Average Rent for a 1 Bedroom Apartment	Percentage of SSI for Average Cost to Rent a 1 Bedroom Apartment
\$733	20%	\$755	103%

Figure 11: Supplemental Security Income, Texas Median Income, and Rental Costs in Texas, 2016

In addition, approximately 588,078 Texans age 16 and over who live below the poverty level (\$25,100 or less annual income for a family of four in 2018) and experience one or more disabilities compete for the approximately 531,388 affordable housing units in the entire state.<sup>xvi</sup>

## CONCLUSION

Access to affordable, accessible, and integrated housing is one of the biggest hurdles for people with disabilities who want to live in the community. By supporting affordable housing opportunities, Texans with disabilities will have greater choice and control regarding where they live.

## CONTACT

- Christa Walikonis | Disability Rights Texas | (512) 454-4816 | [cwalikonis@disabilityrightstx.org](mailto:cwalikonis@disabilityrightstx.org)
- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | [ashley.ford@tcdd.texas.gov](mailto:ashley.ford@tcdd.texas.gov)

# MEDICAID BENEFIT FOR HOUSING SUPPORTS

Create and fund a Medicaid benefit for housing transition/tenancy services. Assist low-income Texans with disabilities prepare for and transition to housing, including supports for being successful tenants.

## RECOMMENDATIONS

- Fund assistance for people with disabilities to transition to the most integrated, appropriate housing for the individual.
- Approve and fund a Medicaid benefit for housing-related services and assistance.
- Address barriers for individuals with high needs that results in difficulty accessing housing.

## BACKGROUND

Services through Medicaid can provide an opportunity for individuals with disabilities who are low income to live independently—in the community, rather than in segregated settings. Statewide, there is a lack of affordable housing options and no assistance for individuals with disabilities to help them find the best housing solution.

Assistance to find appropriate housing should be funded as a Medicaid benefit in Texas. Funding for housing related services would assist low income individuals with disabilities prepare for and transition to housing and support the individual in being a successful tenant.

## CONCLUSION

Texans with disabilities want the opportunity to live in their communities—in integrated and inclusive communities. With the proper supports, like those that could be provided by a Medicaid benefit, they can achieve the original American dream of independent living.

## CONTACT

- Christa Walikonis | Disability Rights Texas | (512) 454-4816 | [cwalikonis@disabilityrightstx.org](mailto:cwalikonis@disabilityrightstx.org)
- Susan Murphree | Disability Rights Texas | (512) 407-2754 | [smuphree@disabilityrightstexas.org](mailto:smuphree@disabilityrightstexas.org)
- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | [ashley.ford@tcdd.texas.gov](mailto:ashley.ford@tcdd.texas.gov)

# V. INCLUSION

Including people with disabilities in everyday life in the same way as people without disabilities is the starting point in achieving social justice and equality in access to the responsibilities and benefits that all Texans should enjoy.

Barriers to full participation and inclusion in community life can be difficult to remove. Often physical barriers, such as stairs, are easier to overcome than barriers in communications and attitudes. Nevertheless, gains have been made in the past 50 years with the passage of broad federal laws such as the Americans with Disabilities Act (ADA) and Section 504 of the Rehabilitation Act of 1973, and their implementation, support, and expansion at the state level.

We see now some of the results of inclusion when people with disabilities receive fair treatment from others (nondiscrimination) in education, employment, housing, transportation, and other aspects of community living; in the development of products, processes, communications, and systems that are usable by as many people as possible and to the maximum extent possible; and in the growing elimination of false ideas that people with disabilities are unhealthy or less capable than other people. Perhaps of greatest importance to continuing and future progress toward inclusion is that government is beginning to ask people with disabilities what they think and then using that feedback to shape policies and practices affecting them.

Recommendations in this section address participation in government activities; improvements that can be made in policies governing transportation and service animals; and disaster planning and recovery, one area of Texas living that requires advance preparation to effectively respond to emergency needs on a large scale, including the needs of people with disabilities.

## Key Policies That Impact Inclusion

- The Americans with Disabilities Act (ADA)
- Rehabilitation Act of 1973
- Post Katrina Emergency Management Reform Act of 2006
- The Twenty-First Century Communications and Video Accessibility Act of 2010

# DISASTER PLANNING & RECOVERY

Disaster planning and recovery services should exist for the needs of people with disabilities, in a manner that is appropriate, accessible, integrated, and equivalent to that received by others.

## RECOMMENDATIONS

- Appoint a state-wide disability integration coordinator to focus on disaster preparedness and recovery.
- Develop new policies to ensure that appropriate and accessible short- and long-term emergency and recovery services, supports, shelter, and housing exist for people with disabilities in the most integrated setting possible.
- Enforce existing laws related to accessibility, education, employment, healthcare, and mental healthcare so that individuals with disabilities receive meaningful, appropriate, and nondiscriminatory disaster recovery services.

## BACKGROUND

During Hurricane Harvey, people with disabilities endured additional challenges. Some were turned away from emergency shelters because of their service animals. Others, whose auto-immune disease put them at risk by staying in a moldy environment, had to find elsewhere to live without assistance because FEMA declared their home habitable. Based on experiences like these, it is clear there has neither been adequate planning nor recovery services put in place to serve individuals with disabilities.



## CONCLUSION

Many individuals with disabilities, and families of people with disabilities, need assistance navigating the emergency management system, housing and home repair, mental health support and other services.

## CONTACT

- Christa Walikonis | Disability Rights Texas | (512) 454-4816 | [cwalikonis@disabilityrightstx.org](mailto:cwalikonis@disabilityrightstx.org)
- Kyle Piccola | The Arc of Texas | (512) 454-6694 | [kpiccola@thearcoftexas.org](mailto:kpiccola@thearcoftexas.org)
- Linda Litzinger | Texas Parent to Parent | (512) 458-8600 | [linda.litzinger@txp2p.org](mailto:linda.litzinger@txp2p.org)

# PARTICIPATION IN GOVERNMENTAL ACTIVITIES

Governmental bodies that are inclusive of individuals who are personally impacted improves the quality and outcomes of programs and services. Practices that promote inclusive civic engagement are typically universally beneficial, resulting in more productive and meaningful interactions for all involved.

## RECOMMENDATIONS

- Require sustained and adequate representation of people with disabilities and their families on all governmental bodies established by the Texas Legislature.
  - Appropriate funds to state agencies for funding for travel and related expenses as well as stipends or honoraria for time. All policies should allow for flexibility for individuals who may need a travel advance instead of reimbursement. Expert advice is worth the investment.
  - Review recruitment processes, including dissemination of opportunities to apply for appointment and applications for appointment, of governmental bodies. All recruitment processes should be highly-visible, accessible, and allow flexibility for people with disabilities who may require accommodations for locating and/or completing applications.
- Review representation of public members with disabilities in governmental bodies to ensure there is an adequate number of people with disabilities involved in all policy and planning decisions. All governmental bodies have something to gain from including people with disabilities in their decision-making activities, even if the governmental body isn't a disability specific body.
  - Allow witnesses with disabilities and their families (if their loved one's disability creates a barrier to public participation) submit written and/or remote testimony to legislative committees.

## BACKGROUND

The voices of people with disabilities and their families are being stifled when it comes to setting priorities and advising on programs and services at the Texas Legislature and Texas state agencies. Numerous governmental bodies that depended upon input from people with disabilities and their families to guide their work have been abolished in recent years. The remaining governmental bodies may not have adequate funds to cover the cost of travel and related expenses for members with disabilities and their families. This causes a financial barrier to inclusive participation for many who reside outside of Austin and/or require additional supports to attend in-person. The impact of a disability on the financial resources of an individual and their family members should be recognized as a barrier that can limit their participation.

It should also be recognized that people with disabilities and their families are impacted by decisions made by all state agencies - not just the Texas Health and Human Services Commission (HHSC). While the majority

of governmental bodies with numerated requirements of public members with disabilities and their families have historically been within HHSC, there are immense possibilities for more disability representation in other agency bodies. This includes, but is not limited to: the Texas Department of Transportation, the Texas Education Agency, the Texas Department of Housing and Community Affairs, and the Texas Department of Criminal Justice. Furthermore, governmental bodies under the Governor's appointment responsibility and with explicit requirements for public members with disabilities and their families should be reviewed for prolonged vacancies. When members with disabilities resign or their term expires, there should be an expedited appointment process. The work of these important bodies should not be unduly impacted by delayed recruitment processes.

Technology has in many ways increased our independence and autonomy in our professional and personal lives. The same is true for Texans with disabilities, who make up at least 1 in 5 constituents in all legislative districts. Legislative committees should consider gathering the input of witnesses with disabilities despite the barriers - or hazards - of travel to Austin by allowing the submission of written and/or remote testimony. All constituents should be empowered and welcome to share their knowledge and experiences with elected officials to improve public policies that could impact their lives.

## CONCLUSION

It is one thing to convene a body to comply with a regulation. It is another to develop inclusive partnerships with individuals with disabilities and their family members to welcome their expertise and lived experiences. With the passage of the Americans with Disabilities Act (ADA) in 1990, the federal government proclaimed that the disability community should be included in mainstream society. An important aspect of full participation in society is advising and driving the development of policy and planning. In order to realize the goals of the Americans with Disabilities Act and ensure that people with disabilities are full participants in society, they must be represented in the workings of the state government.

## CONTACT

- Ashley Ford | Texas Council for Developmental Disabilities | (512) 437-5412 | [ashley.ford@tcdd.texas.gov](mailto:ashley.ford@tcdd.texas.gov)
- Ginger Mayeaux | The Arc of Texas | (512) 454-6694 | [gmayeaux@thearcoftexas.org](mailto:gmayeaux@thearcoftexas.org)



# PUBLIC TRANSPORTATION

Public transportation systems must meet the needs of individuals with disabilities in a safe, reliable, convenient, affordable, timely and accessible manner. Transportation is essential for helping ensure all individuals can live as independently as they choose, and to be an active participant in their communities.

## RECOMMENDATIONS

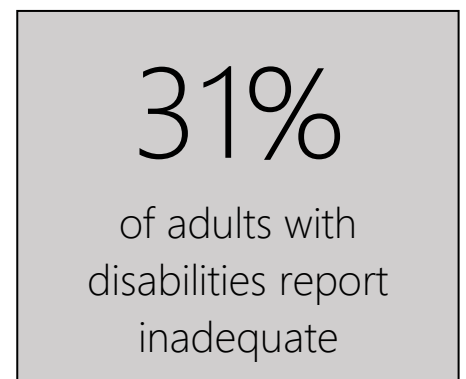
- Coordinate and computerize dispatch at state, federal and local levels among all modes of transportation.
- Expand capacity in suburban, urban, rural, and unincorporated areas to connect places people live with places they work, shop, socialize, worship, attend school, access health care, etc.
- Require alternative routes for people with disabilities and specifically those who use wheelchairs, during construction.
- Be fully accessible and available to all people with disabilities at varying times of the day, including private transportation companies so all are in full compliance with anti-discrimination laws and policies.
- Include individuals with disabilities on boards and advisory groups that oversee or provide transportation services.

## BACKGROUND

Almost one-third, 31%, of adults with disabilities report inadequate transportation access, double the rate of the general population, 13%.<sup>xvii</sup> People with disabilities cannot enjoy the basic right to freedom of movement when access to transportation is not available or systems are limited, do not exist, are unsafe, or the transportation and walkways are not interconnected or accessible.

## CONCLUSION

Everyone must have access to safe, reliable, affordable, and accessible transportation to connect individuals where they live, where they need to be, when they need to get there for the promise of full community integration to be real for people with disabilities.



## CONTACT

- Bob Kafka | ADAPT of Texas | (512) 442- 0252 | bkafka@sbcglobal.net
- Christa Walikonis | Disability Rights Texas | (512) 454-4816 | cwalikonis@disabilityrightstx.org

# SERVICE & ASSISTANCE ANIMALS

Clearly defined policies and practices are needed to guarantee people with disabilities using service and assistance animals receive necessary accommodation, and to discourage those who misuse service and assistance animals.

## RECOMMENDATIONS

- Define clearly in the Human Resources Code the difference between service animal and assistance animal and where they are allowed.
- Include taking a court-ordered disability awareness class as an alternative penalty for denying the access of a service or assistance animal, or for fraudulent representation of a service or assistance animal.
- Support more robust public and law enforcement education about the use of service and assistance animals.

## BACKGROUND

A service animal is any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability, and is protected under the ADA. An assistance animal, however, provides therapeutic comfort and is not protected under the ADA, but is covered under the Fair Housing Act (FHA). The Texas Human Resources Code does not provide this clarification.

Abusing service animal law in Texas is punishable by a fine of up to \$300. This fine could create financial hardship for some, and would not necessarily enhance an offender's understanding of the policies and practices surrounding service and assistance animals.

Service and assistance animals are vital for many people with disabilities in order to fully participate in everyday life, but not all disabilities are obvious. Ignorance about the varied use of service and assistance animals can lead to unnecessary disputes between people with disabilities and the public, sometimes leading to law enforcement intervention.



## CONCLUSION

Due to the misunderstood laws and obligations regarding service and assistance animals, business owners and landlords often refuse to provide accommodation, and some pet owners are able to fraudulently pass off their pets as service or assistance animals. These misunderstandings ultimately make life more difficult for legitimate users of service and assistance animals.

## CONTACT

- Christa Walikonis | Disability Rights Texas | (512) 454-4816 | [cwalikonis@disabilityrightstx.org](mailto:cwalikonis@disabilityrightstx.org)
- Linda Logan | Texas Council for Developmental Disabilities | (512) 437-5432 | [linda.logan@tcdd.texas.gov](mailto:linda.logan@tcdd.texas.gov)

# VI. LONG-TERM SERVICES & SUPPORTS

The Disability Policy Consortium of Texas believes that all Texans with disabilities deserve the right to choose life in their community. Long term services and supports (LTSS) are critical in ensuring Texans with disabilities can live in their own home, work, get to their doctors, and participate in many more daily life activities. Perhaps, most importantly, LTSS helps to shift views away from the disability and onto the person, who wants to be an included, valued, member of society.

The phrasing “long term services” is based on the understanding that daily living is not necessarily an acute or medical need. LTSS provides assistance for eating, bathing, dressing, managing money, socializing, learning independent living and decision-making skills, and much more. These needs continue as long as a disability exists, which for many, means life-long. Individualized supports include things like, personal assistance services/attendant care, transportation, and supported employment. Since private insurance rarely covers LTSS costs, Medicaid is the primary payor of these important services.

Until the 1980s, Medicaid LTSS was only provided in institutions, such as nursing facilities or intermediate care facilities. Over the past couple decades, society has made strides towards more inclusive community-based services for people with disabilities. The creation of Home and Community-Based Services (HCBS) Medicaid waivers (1915(c) of the Social Security Act), The Americans with Disabilities Act (ADA) and the U.S. Supreme Court’s Olmstead decision prompted a shift in how and where people with disabilities receive long term services and supports.

Texas continues to have an institutional bias when providing LTSS. Cuts to Medicaid reimbursement rates, changes to the system’s infrastructure, and inadequate funding continue to create significant barriers for individuals and their families to receive long-term services and supports in their community. The focus must be on the equality and community inclusion of people with disabilities. To accomplish this, timely access to a flexible array of services that meet the individual’s needs must improve.

Areas in need of improvement include responsiveness, accountability, consumer involvement, and quality outcomes. As laws and access to services and supports change, so do people’s attitudes and understanding of disability. Despite a continued trend towards individualized, person centered, inclusive, integrated services; policies are struggling to keep up with the shift from outdated congregate, segregated, services and supports. The following recommendations from the DPC will support policy makers to move Texas forward in its treatment and community inclusion of Texans with disabilities by way of robust long-term services and supports.

## Key Policies That Impact Long-Term Services & Supports

- Home and Community-Based Services (HCBS) Settings Rule
- The Americans with Disabilities Act (ADA) of 1990
  - The *Olmstead* Integration Mandate of 1999
- The Social Security Act
- Omnibus Budget Reconciliation Act
- Money Follows the Person Rebalancing Demonstration of 2006
- The Autism Collaboration, Accountability, Research, Education, and Support (CARES) Act
- The Affordable Care Act (ACA)
- Senate Bill 7 (83R)

# COMMUNITY-BASED WAIVERS

Support Texans who choose to live in their community over living in an institution. Embrace the numerous and cost-effective opportunities for promoting independence among Texans with disabilities by adequately investing in community-based waivers.

## RECOMMENDATIONS

- Provide funding to reduce the Medicaid Home and Community Based Services (HCBS) waiver interest lists (HCS, TxHmL, MDCP, CLASS, DBMD, and STAR+PLUS Waiver).
- Recommit to Texas' Promoting Independence Plan by enrolling at least 20% each biennium.
- Allow automatic access to individuals on SSI who meet eligibility, in all existing and future managed care models, as done with STAR+PLUS Waiver.
- Adequately fund Promoting Independence waiver initiatives that prevent unnecessary institutionalization through transition and, diversion waivers.
- Expand Promoting Independence initiatives to other waivers (MDCP, CLASS, DBMD, and STAR+PLUS Waiver), so individual's unique needs are met appropriately.
- Provide funding for, and access to, the appropriate waiver when a waiver participant is found to be ineligible for their current waiver (i.e. MDCP to HCS) but meets eligibility for a different waiver.
- Fund and implement, targeted modifications to the HCS program so individuals with high medical, physical, and behavioral support needs can be fully supported in their communities.

## BACKGROUND

Medicaid HCBS waivers are a lifeline for Texans with disabilities. Medicaid HCBS waivers provide cost-effective long-term services and supports such as, personal attendant services, nursing, and employment support. Private insurance does not cover these critical services. When individuals are provided the appropriate waiver services, the state achieves positive outcomes. Outcomes such as decreased hospitalization, increased employment, and overall higher quality of life among HCBS waiver recipients makes waivers the most efficient service option for the state and the most desired by Texans with intellectual and developmental disabilities (IDD) and their families. Texas provides two methods for individuals to access critical LTSS services: Promoting Independence and interest list sign up.

Promoting Independence initiatives provide HCS waivers 1) to allow individuals in institutions to access the services needed to move back into the community, and 2) to prevent individuals from going into an institution who are in crisis or at imminent risk of entering an institution. Currently, Promoting Independence funding is only for HCS waivers even though some individual's needs could be more appropriately met through one of the other HCBS waiver options. Promoting Independence initiatives also fund services through reducing the number of Texans on the interest list for an HCBS waiver.

Zero appropriations were provided to reduce the interest list during the 2018-2019 biennium. The “interest list” refers to the list Texans with IDD can choose to put their names on when demand for Medicaid HCBS waivers outweighs available resources. Interest list applicants are placed on a first-come, first-serve basis and are contacted once services become available. Most will wait over 10 years before they get comprehensive waiver services; some will wait over 13 years. Service availability is dependent on legislative appropriations to include more individuals in a waiver or when an existing waiver recipient vacates services.

## CONCLUSION

The longer individuals wait for services, the more likely they are to experience negative health outcomes, crisis, and institutionalization. With over 140,000 Texans currently seeking HCBS waivers, the state should align with the choice of the majority of Texans with disabilities and prioritize investing in home and community-based services.

## CONTACT

- Ginger Mayeaux | The Arc of Texas | (512) 454-6694 | [gmayeaux@thearcoftexas.org](mailto:gmayeaux@thearcoftexas.org)
- Annessa Lewis | Texas Advocates | (512) 522-6591 | [annessa.lewis@texadvocates.org](mailto:annessa.lewis@texadvocates.org)
- Susan Murphree | Disability Rights Texas | (512) 407-2754 | [smurphree@disabilityrightstexas.org](mailto:smurphree@disabilityrightstexas.org)

Over  
140,000  
unduplicated Texans are  
waiting for a HCBS waiver.  
Some will wait up to  
13 years  
before receiving  
comprehensive Medicaid  
waiver services.

# DAY HABILITATION COMPLIANCE

Fully implement a robust set of modifications to programs and services in order to comply with Home and Community Based Services (HCBS) settings, person centered planning, and service rules and guidelines from Centers for Medicare and Medicaid Services (CMS) to transition into fully integrated day habilitation services.

## RECOMMENDATIONS

The following recommendations align with the Texas Health and Human Services (HHSC) LAR Exceptional Item Request - Comply with Federal Requirements for Community Integration. Support Texas to a transition into fully integrated day habilitation services by:

- Prioritizing funding for Community Integration (CI) and Community Integration Support (CIS) services for all waivers so that Texas can transition effectively and fully into compliance with the HCBS settings rule.
- Providing funding to include additional transportation costs that includes everyone in activities regardless of level of support needs, appropriate additional staffing (reduced ratios), and additional supports for individuals with complex medical and behavioral needs.
- Developing a process for registration to ensure day habilitation services are regulated and monitored to provide appropriate quality services. Fully implement a robust set of modifications to programs and services in order to comply with the HCBS settings rule, person centered planning, and services rules and guidelines from CMS.
- Ensuring provider capacity and choice of provider as required by state and federal law in all community-based services and programs.

## BACKGROUND

Texas needs to significantly improve services to individuals with disabilities to fully comply with HCBS settings and ensure that individuals with disabilities have access to the general community. Without appropriate funding, compliance will be limited, and the number of day habilitation providers will dramatically decrease, reducing choice and negatively impacting individuals in the program. Currently, it is common that not all participants are included in integrated community activities due to the lack of appropriate transportation, staffing, or behavioral supports.

The new services of Community Integration (CI) and Community Integration Support (CIS) are critical components for state compliance with federal HCBS regulations. Currently, day habilitation programs in Texas are facility-based and not directly regulated for program accessibility or inspected for physical accessibility or physical environment. Sheltered workshops which only offer segregated employment are often co-located at the day habilitation facility.<sup>viii</sup> The 2014 Final Rule, CMS 2249-F and CMS 2296-F, or



Community-Based Settings Rule, also creates the expectation that Medicaid-funded services will support competitive, integrated employment and other community life engagement activities, and that agencies will shift away from service settings that isolate or segregate people with disabilities from the general population (CMS, 2014).<sup>six</sup>

## CONCLUSION

Texas needs to significantly improve services to individuals with disabilities to fully comply with HCBS settings and ensure that individuals with disabilities have access to the general community. Without appropriate funding and regulations, compliance will be limited and individuals will not have adequate supports to fully access the community for meaningful day activities.

## CONTACT

- Kyle Piccola | The Arc of Texas | (512) 454-6694 | [kpiccola@thearcoftexas.org](mailto:kpiccola@thearcoftexas.org)
- Jeff Miller | Disability Rights Texas | (512) 454-4816 | [jmiller@disabilityrightstx.org](mailto:jmiller@disabilityrightstx.org)
- Brooke Hohfeld | Texas Advocates | (940) 704-9116 | [bhohfeld@gmail.com](mailto:bhohfeld@gmail.com)

# DENTAL CARE FOR ADULTS

Fund preventative dental care for all adult Texans with a disability receiving Medicaid.

## RECOMMENDATIONS

- Cover regular cleanings, simple restorations, and other dental procedures in all Texas Medicaid programs for adults with disabilities.
- Include general anesthesia coverage in adult dental care Medicaid services.
- Prevent unnecessary emergency room visits for dental care that could be provided in a dental office.

## BACKGROUND

Currently there are 250,000 to 300,000 adults with disabilities in Medicaid who receive little to no dental services. Dental care ends on the 21st birthday of adults in Medicaid. While preventive dentistry is partially covered in some Medicaid programs, it is not covered in many.

Oral infection can begin with surface caries, but it can be prevented and corrected with simple fillings. Left unchecked, a minor infection can be catastrophic and lead to additional health issues. Many individuals can only receive dental care through emergency room visits, which often fail to address the root cause. Ultimately, inadequate dental coverage can lead to the state to incurring higher costs.

Data from the Texas Health Institute suggests that the lapse in preventative dental coverage among adults at age 21 results in a spike in emergency room visits (rate of 299 for Medicaid enrollees 19 and under compared to 1821 for enrollees 20 and older, per 100,000 of Medicaid enrolled population).<sup>xx</sup>

People with disabilities face additional barriers to oral health, including inaccessible dentist offices or reliance on another person to perform daily hygiene.

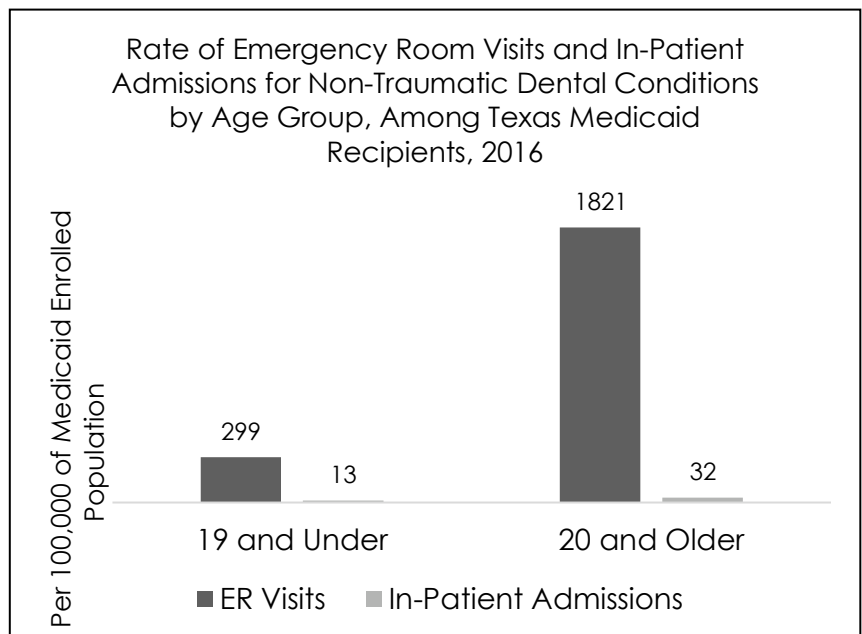


Figure 12: Rate of Emergency Room Visits and In-Patient Admissions for Non-Traumatic Dental Conditions by Age Group, Among Texas Medicaid Recipients, 2016

## CONCLUSION

Texans with disabilities cannot maintain a healthy body with if there is poor oral health. A dental benefit would be cost-effective by reducing emergency room and hospital visits, reducing acute care needs for heart disease, diabetes, stroke, and other conditions co-indicated with poor oral health. Furthermore, adequate dental care can ensure adults maintain a healthy, balanced diet and do not have a need to be prescribed opioids.

## CONTACT

- Dennis Borel | Coalition of Texas with Disabilities | (512) 478-3366 | dborel@txdisabilities.org
- Linda Litzinger | Texas Parent to Parent | (512) 922 3810 | linda.litzinger@txp2p.org
- Annessa Lewis | Texas Advocates | (512) 522-6591 | annessa.lewis@texadvocates.org

# MEDICAID MANAGED CARE

Increase transparency and improve consumer experience and protections for Texans with disabilities in Texas Medicaid Managed Care.

## RECOMMENDATIONS

- Texas must hold contractors accountable in their role in service delivery.
  - Disallow or discontinue purchasing practices that result in reduced, delayed or restricted access to care and ensure choice of providers and suppliers.
  - Ensure individuals have access to and are provided high quality services and supports in the most appropriate, least restrictive setting,
  - Provide person-centered services based on a comprehensive assessment by qualified assessors that identifies unique individual preferences, strengths, and needs.
  - Provide guidance to improve access to medically necessary services for children and adults, such as therapy, private duty nursing, durable medical equipment and community attendant services and prohibit MCOs from using State Supported Living Centers to provide benefits covered through managed care contracts.
  - Improve and standardize prior authorization processes.
  - Provide additional standardization, guidance and training to health plans, members and care coordinators, about internal appeals and fair hearings, including federal law regarding continuation of services pending when timely (within 10 days) requested.
  - Require a higher level of training for care coordinators who need more skills to perform their functions effectively, review care coordination and pay for quality and ensure an appropriate caseload for complex care coordination. Require MCOs to develop service coordinator retention plans.
  - Create more efficient service delivery areas and ease of access to specialists, clinics and hospitals that are out of network or in a different service delivery area.
- Require MCOs to expand provider networks to allow greater access to care closer to home.
  - Develop, track, and publically report data and address performance measures for community long term supports and services (LTSS), such as timely, continuing access to and satisfaction with high quality, well trained attendant/direct support staff and services authorized and utilized per MCO and contract area.
  - Ensure appointment availability and transportation assistance, when needed, to emergency, routine and specialty care, regardless of type or intensity of disability and in accordance with the provider's treatment plan.
  - Determine and publically report type, frequency and cost of potentially preventable events related to lack of access to attendant/direct support staff and related community supports and services.
  - Require contracting, indefinitely and not just three years, with significant traditional providers that meet standards of care.

- Set attendant recruitment and retention standards and ensure rates that support an adequate workforce for acute and LTSS services.
- Improve information about and access to consumer directed/self-directed services with required targets for utilization of consumer directed services.
- Increase transparency and respond quickly, accurately and completely to issues generated through inquiries, complaints, conducting investigations, inspections and other contract compliance regulatory actions.
  - Consolidate and streamline the complaints process and increase public awareness and outreach to MCO members about where to go for help and how to make a complaint. Require state agencies and MCOs to track all instances of access to care issues as a complaint.
  - Improve timely access to qualified, conflict free service coordination/case management that assists with removing barriers to care and coordinates with other care coordinators and providers across programs and settings. Incentivize care coordination at the physician or clinic practice rather than the payor level.
  - Require Ombudsman and Consumer Rights Services to keep individuals informed of agency action and findings about complaints regarding programs and services and elevate systemic issues with recommendations for improvement to HHSC leadership and the legislature.
  - Improve data integration and transparency by providing online information available to the public across systems relating to inquiries, complaints, informal MCO appeals, Medicaid Fair Hearings, and MCO plans of correction.
  - Improve and coordinate MCO informal appeals and HHSC Fair Hearings, by providing consumer information that explains and assists with both processes and meets all state and federal due process requirements, such as proper notices and packets with complete and relevant information used to deny, suspend, or reduce services.
  - Delay inclusion of additional LTSS services into managed care unless and until related evaluations are completed and access to and quality of care are resolved in current managed care programs and operational systems and providers are in place for a successful transition.
  - Consistent with 42 C.F.R. 438.56 (d) (2), facilitate information about and assistance with disenrollment of managed care members experiencing access to and quality of care barriers impacting health, safety and quality of life.
  - Provide an opt-in or opt-out mechanism for MDCP Star Kids and Star Health members rather than mandatory enrollment. Create an alternative MDCP fee for service (FSS) option and/or transition to a different waiver program including HCS, CLASS or DBMD.

## BACKGROUND

Over the past 20 years, Texas Medicaid has shifted gradually from a fully Fee for Service (FFS) model that pays providers for each service delivered to an extensive managed care service delivery model that pays a fixed fee per member per month, called capitation. Texas managed care includes CHIP, STAR, STAR+PLUS, STAR Kids, STAR Health, Dual Eligible Integrated Care Demonstration and dental for children and youth. HHSC develops and oversees Medicaid managed care contracts.

Texans with disabilities need reliable access to person-centered, high quality health and Long Term Supports and Services (LTSS) services in the most integrated setting, but are experiencing barriers to remain safe,

healthy, and independent in their communities. While we encourage implementing crucial improvements, such as improving network adequacy, enhancing care coordination, oversight, grievances, appeals and transparency, some individuals may not be successful in a managed care model and may require other options when warranted. Currently, Managed Care Organization (MCO) members are not made aware of the disenrollment option and are not assisted in pursuing disenrollment for cause, including for poor quality of care, lack of access to services, lack of access to providers experienced in serving certain populations or meeting members complex care needs.

According to data from the National Healthcare Quality and Disparities Report by the U.S. Department of Health and Human Services, there are many Medicaid Managed Care healthcare quality benchmarks that Texas is far from meeting compared to other top-performing states.<sup>xxi</sup> The table below details selected quality measures in Texas Medicaid Managed Care that are far away from achievable benchmarks.

Medicaid Managed Care Measures	Distance to Benchmark
Adults who had a doctor's office or clinic visit in the last 12 months whose health providers sometimes or never explained things in a way they could understand	244%
Adults who had a doctor's office or clinic visit in the last 12 months whose health providers sometimes or never showed respect for what they had to say	208%
Adults who needed care right away for an illness, injury, or condition in the last 12 months who sometimes or never got care as soon as wanted	201%
Adults who had a doctor's office or clinic visit in the last 12 months whose health providers sometimes or never spent enough time with them	172%
Adults who had a doctor's office or clinic visit in the last 12 months whose health providers sometimes or never listened carefully to them	150%
Adults who had a doctor's office or clinic visit in the last 12 months and needed care, tests, or treatment who sometimes or never found it easy to get the care, tests, or treatment	109%

Figure 13: Quality Measures Compared to Achievable Benchmarks, FFY 2016

## CONCLUSION

Without sufficient health care access, improved care/service coordination and community supports, individuals with disabilities are at risk of costly hospitalizations, poor health or long term, unnecessary institutionalization.

## CONTACT

- Kyle Piccola | The Arc of Texas | (512) 454-6694 | kpiccola@thearcoftexas.org
- Susan Murphree | Disability Rights Texas | (512) 407-2754 | smurphree@disabilityrightstexas.org
- Chis Masey | Coalition of Texans with Disabilities | 512-478-3366 | cmasey@txdisabilities.org
- Bob Kafka | ADAPT of Texas | (512) 442- 0252 | bkafka@sbcglobal.net

# RELOCATION SERVICES TO COMMUNITY

Improve Medicaid relocation services for people with disabilities moving from institutions to the community.

## RECOMMENDATIONS

Require a comprehensive, third-party review of the managed care Medicaid relocation services. This review should:

- Determine whether resources for relocation are adequate and effectively providing desired outcomes.
- Determine the adequacy of funding established through managed care organizations to support relocation personnel and transition assistance services and the solvency of a strong and high-performing consumer-centered long-term care system.
- Survey relocation contractors, consumers, and other stakeholders in the managed care process to identify barriers to consumer relocation or avoidance of institutionalization, as well as creative uses of partnerships and leveraged opportunities.

## BACKGROUND

In Texas, relocation from institutions to the community is cost-effective and preferred by individuals with disabilities. In previous years, fee-for-service contracts between community-based organizations and the Texas Health and Human Services Commission (HHSC) formed a highly successful model recognized nationwide to provide assistance for individuals eligible for Medicaid to leave nursing facilities. However, since September 1, 2017, the model changed from a community-based model to Texas' Medicaid Managed Care program.

## CONCLUSION

Texas should ensure that steps are taken to implement appropriate measures that will achieve preferred person-centered relocation and transition assistance services and supports.

## CONTACT

- Judy Telge | Coastal Bend Center for Independent Living | [judyt@cbcil.org](mailto:judyt@cbcil.org)
- Dennis Borel | Coalition of Texas with Disabilities | (512) 478-3366 | [dborel@txdisabilities.org](mailto:dborel@txdisabilities.org)

# STATE SUPPORTED LIVING CENTERS

Long community-based services wait lists and inadequate funding for some community supports leave some individuals and families with no viable alternative except institutional care. It is time for Texas to rebalance the way it prioritizes Medicaid services and allocate taxpayer dollars more efficiently.

## RECOMMENDATIONS

- Set the expectation of fewer institutions while also bringing services up to accepted professional standards of care for those remaining in state supported living centers (SSLCs). Consider implementing a moratorium on SSLC admissions, with sufficient, high-quality, community capacity.
- Develop and implement an SSLC peer support program for individuals with intellectual and developmental disabilities (IDD) to foster supported decision-making, informed choice, and encourage self-determination.
- Expand access and quality of Medicaid home and community-based services (HCBS) waivers to address the increased demands for services in our state. Prevent individuals from being unnecessarily segregated in an institution due to inadequate funding.

## BACKGROUND

Despite a national trend to reduce institutionalization and expand community options for individuals with IDD, Texas continues to have the highest institutionalized population of individuals with IDD in the nation. HCBS waivers are not only the preferred choice of most Texans with IDD but are often the less expensive option, yet 50% of the state budget for individuals with IDD went to SSLCs this past biennium. Most people with IDD live safer, healthier, happier lives when more fully integrated into the community, living among family and friends. Texas prioritizes institutional funding for 13 SSLCs, undermining access to community living. SSLCs are state run residential institutions for about 3,000 Texans with IDD. These expensive institutions are currently under a U.S. Department of Justice (DOJ) settlement agreement as a result of systemic abuse, neglect, and exploitation.

In 2015, the Texas Senate approved a Sunset Advisory Commission recommendation to close Austin SSLC and establish a closure commission to decide if five more SSLCs should also close. The measure failed to be passed by the Texas House of Representatives, thus no progress was made. The number of people in SSLCs continues to decline, but funding for SSLCs continues to rise, by about 25% per biennium. Meanwhile, the number of Texans with IDD waiting for community-based services, which are considerably less expensive, continues to grow.<sup>xiii</sup>

There is no wait for SSLCs, but Texans who prefer low-cost, community-based living sometimes must wait at least 13 years for services. While waiting for these necessary supports, thousands of Texans with IDD are at increased risk for negative health outcomes, crisis, and unnecessary institutionalization.



Despite common misconceptions, people with the most complex needs can be and are supported in the community. There are 10 times as many people with the highest level of need supported with waiver services in the community than there are in SSLCs.

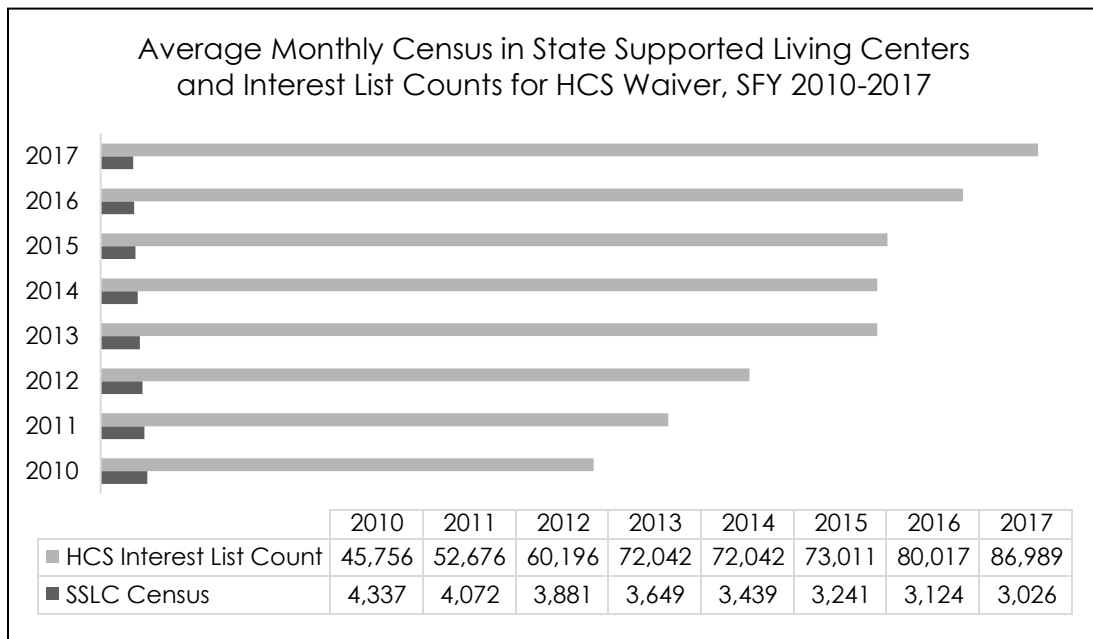


Figure 14: Average Monthly Census in State Supported Living Centers and Interest List Counts for HCS Waiver, SFY 2010-2017

## CONCLUSION

The over 140,000 Texans waiting for HCBS services proves the demand for community is higher than for institutional care. In addition, many SSLC residents have made their preferences known, choosing community-based options over institutions. Yet, SSLC residents face unnecessary barriers to community living before being released, perpetuating the Texas system of institutional care. Investing in the already established and preferred option of HCBS waivers for Texans, improves the lives of thousands in and out of institutions. The legislature should take the opportunity to reduce institutional bias and more efficiently allocate taxpayer dollars.

## CONTACT

- Ginger Mayeaux | The Arc of Texas | (512) 454-6694 | gmayeaux@thearcoftexas.org
- Annessa Lewis | Texas Advocates | (512) 522-6591 | annessa.lewis@texadvocates.org
- Dennis Borel | Coalition of Texas with Disabilities | (512) 478-3366 | dborel@txdisabilities.org

# DPC MEMBERS

ADAPT (The Institute for Disability Access)

(512) 442-0252 | [adaptoftexas.org](http://adaptoftexas.org)

Center on Disability and Development at Texas

A&M University

(979) 845-4612 | [cdd.tamu.edu](http://cdd.tamu.edu)

Coalition of Texans with Disabilities

(512) 478-3366 | [txdisabilities.org](http://txdisabilities.org)

Coastal Bend Center for Independent Living

(361) 883-8461 | [cbcil.org](http://cbcil.org)

Community Now!

(830) 305-0613 | [communitynowfreedom.org](http://communitynowfreedom.org)

Disability Connections (Life Inc.)

(325) 227-6624 | [dcciltx.org](http://dcciltx.org)

Disability Rights Texas

(512) 454-4816 | [disabilityrightstx.org](http://disabilityrightstx.org)

Down Syndrome Association of Central Texas

(512) 323-0808 | [dsact.org](http://dsact.org)

Easter Seals Central Texas

(512) 615-6800 | [easterseals.com/centraltx/](http://easterseals.com/centraltx/)

Epilepsy Foundation Central & South Texas

(210) 653-5353 | [efcst.org](http://efcst.org)

LIFE/RUN Center for Independent Living (Life Inc.)

(806) 795-5433 | [liferun.org](http://liferun.org)

National Alliance on Mental Illness of Texas

(512) 693-2000 | [namitexas.org](http://namitexas.org)

REACH Resource Centers on Independent Living

(214) 630-4796 | [reachcils.org](http://reachcils.org)

Texas Advocates

(512) 522-6591 | [texadvocates.org](http://texadvocates.org)

Texas Association of the Deaf

[deaftexas.org](http://deaftexas.org)

Texas Center for Disability Studies (TCDS)

(512) 232-0740 | [disabilitystudies.utexas.edu](http://disabilitystudies.utexas.edu)

Texas Council for Developmental Disabilities (TCDD)

(512) 437-5432 | [tcdd.texas.gov](http://tcdd.texas.gov)

Texans for Special Education Reform (TxSER)

(512) 554-9777 | [texans4spedreform.org](http://texans4spedreform.org)

Texas Legal Services Center

(512) 477-6000 | [tlsc.org](http://tlsc.org)

Texas Parent to Parent

(512) 458-8600 | [txp2p.org](http://txp2p.org)

Texas State Independent Living Council

(512) 371-7353 | [txsilc.org](http://txsilc.org)

The Arc of Texas

(512) 454-6694 | [thearcoftexas.org](http://thearcoftexas.org)

# ENDNOTES

<sup>i</sup>Texas Health and Human Services Commission. 2017 Annual Report on Forensic Services in State Supported Living Centers. Retrieved January 1, 2019 from <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2017/sslc-monitoring/fy17-annual-report-forensic-sslc.pdf>.

<sup>ii</sup>Health and Safety Code, Section 555.001(1)

<sup>iii</sup>DFPS Data Book. Retrieved January 1, 2019 from [https://www.dfps.state.tx.us/About\\_DFPS/Data\\_Book/Adult\\_Protective\\_Services/default.asp](https://www.dfps.state.tx.us/About_DFPS/Data_Book/Adult_Protective_Services/default.asp).

<sup>iv</sup>Texas Education Agency. PEIMS Discipline Data Report for 2017-2018 School Year. Retrieved January 1, 2019 from [https://rptsvr1.tea.texas.gov/adhocrpt/Disciplinary\\_Data\\_Products/DAG\\_Summaries/Download\\_State\\_DAG\\_Summaries.html](https://rptsvr1.tea.texas.gov/adhocrpt/Disciplinary_Data_Products/DAG_Summaries/Download_State_DAG_Summaries.html).

<sup>v</sup>Texas Education Agency. FFY2016 State Performance Plan - Annual Performance Report Texas. Retrieved January 1, 2019 from <https://tea.texas.gov/WorkArea/DownloadAsset.aspx?id=51539624027>.

<sup>vi</sup>Texas Council of Community Centers. Community Centers & Schools Across Texas: Summary of Survey Results. December 2018. Retrieved January 1, 2019 from <https://txcouncil.com/wp-content/uploads/2018/12/Community-Centers-and-Schools-Survey-Summary.pdf>.

<sup>vii</sup>Texas Education Agency. (2017). PEIMS Standard Reports: Total Enrollment Counts in Student Programs. Retrieved January 1, 2019 from <https://rptsvr1.tea.texas.gov/adhocrpt/adspr.html>.

<sup>viii</sup>Ahonle, Z. J., Amy, S., Seay, P. (2016). Texas Money Follows the Person Demonstration Employment Project: An evaluation of systems change efforts toward competitive integrated employment for individuals with intellectual and developmental disabilities in Texas. Retrieved January 1, 2019 from [https://disabilitystudies.utexas.edu/sites/default/files/DADS%20Report%20\\_FINAL.pdf](https://disabilitystudies.utexas.edu/sites/default/files/DADS%20Report%20_FINAL.pdf).

<sup>ix</sup>Winsor, J., Timmons, J., Butterworth, J., Migliore, A., Domin, D., Zalewska, A., & Shepard, J. (2018). StateData: The national report on employment services and outcomes. Boston, MA: University of Massachusetts Boston, Institute for Community Inclusion. [http://www.statedata.info/sites/statedata.info/files/files/statedata2018\\_web\\_F.pdf](http://www.statedata.info/sites/statedata.info/files/files/statedata2018_web_F.pdf).

<sup>x</sup>Bergman, Allan, I. and Lisa A. Mills. (2014). Funding System Re-Design for Ohio's Employment First Initiative: Review of Promising Models from Other States. Retrieved January 1, 2019 from [https://ohioemploymentfirst.org/up\\_doc/Ohio\\_DODD\\_Report\\_1\\_Funding\\_System\\_Re-Design.pdf](https://ohioemploymentfirst.org/up_doc/Ohio_DODD_Report_1_Funding_System_Re-Design.pdf).

<sup>xi</sup>Texas Employment First Policy and Texas Employment First Task Force Report, 2016 Biennial Report. Retrieved January 1, 2019 from <https://hhs.texas.gov/sites/default/files/employment-first-task-force-biennial-report.pdf>.

---

<sup>xiii</sup>Texas Health and Human Services Commission. Training and Employment Opportunities for Individuals with Intellectual Disabilities Report. Retrieved January 1, 2019 from <https://hhs.texas.gov/sites/default/files/documents/laws-regulations/reports-presentations/2018/sb-2027-training-employment-opps-iid-dec-2018.pdf>.

<sup>xiiii</sup>Texas Workforce Commission. 2018 Annual Report: Texas Purchasing from People with Disabilities WorksWonders Program. Retrieved January 1, 2019 from <https://twc.texas.gov/files/news/workswonders-annual-report-2018-twc.pdf>.

<sup>xv</sup>Disability Rights Texas. Living on a Dime and Left Behind: How a Depression-Era Labor Law Cheats Texas Workers with Disabilities. Retrieved November 30, 2018. [https://www.disabilityrightstx.org/uploads/Submin\\_Wage\\_Sheltered\\_Workshop\\_WHITE\\_PAPER\\_07\\_12\\_16\\_FINAL.pdf](https://www.disabilityrightstx.org/uploads/Submin_Wage_Sheltered_Workshop_WHITE_PAPER_07_12_16_FINAL.pdf)

<sup>xvi</sup>Schaak, G., et. al. (2017). Priced Out: The Housing Crisis for People with Disabilities. Retrieved January 1, 2019 from <http://www.tacinc.org/media/59493/priced-out-in-2016.pdf>.

<sup>xvii</sup>Texas Department of Housing and Community Affairs. 2018 State of Texas Low Income Housing Plan and Annual Report. Retrieved January 1, 2019 from <http://www.tdhca.state.tx.us/housing-center/docs/18-SLIHP.pdf>.

<sup>xviii</sup>Center for Disease Control. Promoting the Health of People with Disabilities, Department of Health and Human Services Webpage. Retrieved January 1, 2019 from <http://www.cdc.gov/ncbddd/disabilityandhealth/pdf/AboutDHPProgram508.pdf>.

<sup>xix</sup>See note XIV

<sup>xx</sup>See note X

<sup>xxi</sup>Texas Health Institute. (2018). Oral Health in Texas: Emergency Department and Inpatient Hospitalization for Non-Traumatic Dental Conditions in Texas. Retrieved January 1, 2019 from [https://www.texashealthinstitute.org/uploads/1/3/5/3/13535548/emergency\\_department\\_and\\_inpatient\\_hospitalization\\_for\\_dental\\_conditions\\_in\\_texas.pdf](https://www.texashealthinstitute.org/uploads/1/3/5/3/13535548/emergency_department_and_inpatient_hospitalization_for_dental_conditions_in_texas.pdf).

<sup>xxii</sup>Agency for Healthcare Research and Quality, Center for Quality Improvement and Patient Safety, National CAHPS Benchmarking Database, U.S. Department of Health and Human Services, [https://nhqrnet.ahrq.gov/inhqrdr/Texas/benchmark/table/All\\_Measures/All\\_Topics#far](https://nhqrnet.ahrq.gov/inhqrdr/Texas/benchmark/table/All_Measures/All_Topics#far).

<sup>xxiii</sup>Texas Health and Human Services Commission. Rider 5: Cost Comparison Report. August 2018. Retrieved January 1, 2019 from <https://hhs.texas.gov/es/reports/2018/09/2017-cost-comparison-report-rider-5>.

# DISABILITIES & PUBLIC POLICY: RECOMMENDATIONS FOR THE 86<sup>TH</sup> TEXAS LEGISLATURE

## PRESENTED BY

Disability Policy Consortium

Jeff Miller, J.D., Chair

## MEMBERS OF THE DISABILITY POLICY CONSORTIUM

ADAPT (The Institute for Disability Access)

Center on Disability and Development at Texas  
A&M University

Coalition of Texans with Disabilities

Coastal Bend Center for Independent Living

Community Now!

Disability Connections (Life Inc.)

Disability Rights Texas

Down Syndrome Association of Central Texas

Easter Seals Central Texas

Epilepsy Foundation Central & South Texas

LIFE/RUN Center for Independent Living (Life  
Inc.)

National Alliance on Mental Illness of Texas

REACH Resource Centers on Independent Living  
Texas Advocates

Texas Association of the Deaf

Texas Center for Disability Studies (TCDS)

Texas Council for Developmental Disabilities  
(TCDD)

Texans for Special Education Reform (TxSER)

Texas Legal Services Center

Texas Parent to Parent

Texas State Independent Living Council

The Arc of Texas

## WITH PREPARATION BY

Ashley Ford

## DISABILITY POLICY CONSORTIUM CONTACT INFORMATION

6201 E. Oltorf, Suite 600 | Austin, TX 78741-7509

(512) 437-5432 | [disabilitytx@gmail.com](mailto:disabilitytx@gmail.com) | [www.disabilitytx.org](http://www.disabilitytx.org)

JANUARY 2019