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Consumer Direction of Certain Services for Persons with Disabilities and Elderly Persons

Government Code 531.051

Texas Government Code [Sec. 531.051](#). CONSUMER DIRECTION OF CERTAIN SERVICES FOR PERSONS WITH DISABILITIES AND ELDERLY PERSONS.

(a) In this section:

(1) "Consumer" means a person who receives services through a consumer direction model established by the commission under this section.

(2) "Consumer direction" or "consumer direction model" means a service delivery model under which a consumer or the consumer's legally authorized representative exercises control over the development and implementation of the consumer's individual service plan or over the persons delivering the services directly to the consumer. The term includes the consumer-directed service option, the service responsibility option, and other types of service delivery models developed by the commission under this section.

(3) "Consumer-directed service option" means a type of consumer direction model in which:

(A) a consumer or the consumer's legally authorized representative, as the employer, exercises control over:

(i) the recruitment, hiring, management, or dismissal of persons providing services directly to the consumer; or

(ii) the retention of contractors or vendors for other authorized program services; and

(B) the consumer-directed services agency serves as fiscal agent and performs employer-related administrative functions for the consumer or the consumer's legally authorized representative, including payroll and the filing of tax and related reports.

(4) "Designated representative" means an adult volunteer appointed by a consumer or the consumer's legally authorized representative, as an employer, to perform all or part of the consumer's or the representative's duties as employer as approved by the consumer or the representative.

(5) "Legally authorized representative":

(A) means:

(i) a parent or legal guardian if the person is a minor;

(ii) a legal guardian if the person has been adjudicated as incapacitated to manage the person's personal affairs; or

(iii) any other person authorized or required by law to act on behalf of the person with regard to the person's care; and

(B) does not include a designated representative.

(6) "Service responsibility option" means a type of consumer direction model in which:

(A) a consumer or the consumer's legally authorized representative participates in the selection of, trains, and manages persons providing services directly to the consumer; and

(B) the provider agency, as the employer, performs employer-related administrative functions for the consumer or the consumer's legally authorized representative, including the hiring and dismissal of persons providing services directly to the consumer.

(b) The commission shall develop and oversee the implementation of consumer direction models under which a person with a disability or an elderly person who is receiving certain state-funded or Medicaid-funded services, or the person's legally authorized representative, exercises control over the development and implementation of the person's individual service plan or over the persons who directly deliver the services.

(c) In adopting rules for the consumer direction models, the executive commissioner shall:

(1) determine which services are appropriate and suitable for delivery through consumer direction;

(2) ensure that each consumer direction model is designed to comply with applicable federal and state laws;

(3) maintain procedures to ensure that a potential consumer or the consumer's legally authorized representative has adequate and appropriate information, including the responsibilities of a consumer or representative under each service delivery option, to make an informed choice among the types of consumer direction models;

(4) require each consumer or the consumer's legally authorized representative to sign a statement acknowledging receipt of the information required by Subdivision (3);

(5) maintain procedures to monitor delivery of services through consumer direction to ensure:

(A) adherence to existing applicable program standards;

(B) appropriate use of funds; and

(C) consumer satisfaction with the delivery of services;

(6) ensure that authorized program services that are not being delivered to a consumer through consumer direction are provided by a provider agency chosen by the consumer or the consumer's legally authorized representative; and

(7) set a timetable to complete the implementation of the consumer direction models.

(d) The consumer direction models established under this section may be implemented in appropriate and suitable programs of the commission or a health and human services agency.

(e) Section [301.251](#)(a), Occupations Code, does not apply to delivery of a service for which payment is provided under the consumer-directed service option developed under this section if:

(1) the person who delivers the service:

(A) has not been denied a license under Chapter [301](#), Occupations Code;

(B) has not been issued a license under Chapter [301](#), Occupations Code, that is revoked or suspended; and

(C) performs a service that is not expressly prohibited from delegation by the Texas Board of Nursing; and

(2) the consumer who receives the service:

(A) has a disability and the service would have been performed by the consumer or the consumer's legally authorized representative except for that disability; and

(B) if:

(i) the consumer is capable of training the person in the proper performance of the service, the consumer directs the person to deliver the service; or

(ii) the consumer is not capable of training the person in the proper performance of the service, the consumer's legally authorized representative is capable of training the person in the proper performance of the service and directs the person to deliver the service.

(f) If the person delivers the service under Subsection (e)(2)(B)(ii), the legally authorized representative must be present when the service is performed or be immediately accessible to the person who delivers the service. If the person will perform the service when the representative is not present, the representative must observe the person performing the service at least once to assure the representative that the person performing the service can competently perform that service.

(g) Repealed by Acts 2007, 80th Leg., R.S., Ch. 576, Sec. 5, eff. September 1, 2007.

(h) Repealed by Acts 2007, 80th Leg., R.S., Ch. 576, Sec. 5, eff. September 1, 2007.

Added by Acts 1999, 76th Leg., ch. 1288, Sec. 1, eff. June 18, 1999. Amended by Acts 2001, 77th Leg., ch. 1508, Sec. 1, eff. June 17, 2001; Acts 2003, 78th Leg., ch. 553, Sec. 2.006, eff. Feb. 1, 2004.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 576 (S.B. [1766](#)), Sec. 1, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 576 (S.B. [1766](#)), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 576 (S.B. [1766](#)), Sec. 5, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 229 (S.B. [1484](#)), Sec. 1, eff. May 27, 2009.

Acts 2015, 84th Leg., R.S., Ch. 1 (S.B. [219](#)), Sec. 2.091, eff. April 2, 2015.

Acts 2015, 84th Leg., R.S., Ch. 837 (S.B. [200](#)), Sec. 3.06, eff. January 1, 2016.

Acts 2015, 84th Leg., R.S., Ch. 946 (S.B. [277](#)), Sec. 2.06, eff. January 1, 2016.



TEXAS
Health and Human
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Advisory Committees: Texas Council on Consumer Direction

**Texas Administrative Code (TAC)
Rule 351.817**

Texas Administrative Code

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 351.COORDINATED PLANNING AND DELIVERY OF HEALTH AND HUMAN SERVICES

SUBCHAPTER B. ADVISORY COMMITTEES

DIVISION 1. COMMITTEES

(a) Statutory authority. The Texas Council on Consumer Direction (the Council) is established in accordance with Texas Government Code §531.012.

(b) Purpose. The Council advises HHSC on the development, implementation, expansion, and delivery of services through consumer direction in all programs offering long-term services and supports that enhance a consumer's ability to have freedom and exercise control and authority over the consumer's choices, regardless of age or disability.

(c) Tasks.

(1) The Council makes recommendations to HHSC to:

(A) expand the delivery of services through consumer direction to other programs serving persons with disabilities and elderly persons under Texas Government Code Chapter 531, Subchapter B;

(B) expand the array of services delivered through consumer direction.

(C) increase the use of consumer direction models by consumers.

(D) optimize consumer choice of Financial Management Services Agencies (FMSAs);

(E) expand access to support advisors for consumers receiving long-term care services and supports through consumer direction;

(F) monitor and analyze research for best practices in self-determination, consumer direction, and training;

(G) provide guidance and support to consumer outreach efforts; and

(H) increase informed choices, opportunities, and supports as a means to lead self-determined lives through the use of consumer direction models.

(2) The Council performs other tasks consistent with its purpose as requested by the Executive Commissioner.

(d) Reporting requirements. The Council files an annual written report to the Executive Commissioner no later than December 31 that covers the meetings and activities in the immediately preceding fiscal year. The report includes:

(1) a list of the meeting dates;

(2) the members' attendance records;

(3) a brief description of actions taken by the Council, including staff and member orientation, training, strategic planning, retention, and evaluation efforts;

(4) a description of how the Council accomplished its tasks;

(5) a summary of the status of any rules that the Council recommended to HHSC;

(6) a description of activities the Council anticipates undertaking in the next fiscal year;

(7) recommended amendments to this section; and

(8) the costs related to the Council, including the cost of HHSC staff time spent supporting the Council's activities and the source of funds used to support the Council's activities.

(e) Open meetings. The Council complies with the requirements for open meetings under Texas Government Code Chapter 551 as if it were a governmental body.

(f) Membership.

(1) The Council consists of no more than 17 voting members and seven nonvoting members.

(2) Voting members.

(A) Each member is appointed by the Executive Commissioner.

(B) Council membership must include:

(i) three members to serve as consumers or potential consumers of the array of services provided through consumer direction;

(ii) two members to serve as advocates for elderly persons who are consumers of the array of services provided to elderly persons through consumer direction;

(iii) two members to serve as advocates for persons with disabilities who are consumers of the array of services provided to persons with disabilities through consumer direction;

(iv) three members to represent financial management services agencies providing services through consumer direction;

(v) one member to represent a STAR+PLUS managed care organization;

(vi) one member to represent a STAR Kids managed care organization;

(vii) one member who serves as a mental health services advocate for consumers who receive consumer-directed services;

(viii) one member who represents a Local Intellectual and Developmental Disability Authority (LIDDA) for consumers who receive consumer-directed services;

(ix) one member with experience providing personal care attendants for consumers who receive consumer-directed services;

(x) one member to serve as an advocate for pediatric consumers or potential consumers of the array of services provided through consumer direction;
and

(xi) one member to represent family members of pediatric consumers or potential consumers of the array of services provided through consumer direction.

(C) A majority of the members of the Council must be composed of consumers and advocates.

(D) Council membership must include, to the extent possible, individuals representing a range of ages and disabilities, including:

(i) individuals with an intellectual disability or related condition;

(ii) individuals with a physical disability;

(iii) individuals who are age 65 or older;

(iv) individuals with mental health needs; and

(v) individuals with children with high medical needs.

(3) Nonvoting members.

(A) Each nonvoting member is appointed by his or her respective agency as follows:

(i) two representatives with an expertise in consumer direction from HHSC or another state agency as considered necessary by the Executive Commissioner;

(ii) two representatives from the Texas Workforce Commission, one representing state unemployment and one representing employment services for individuals with disabilities;

(iii) one representative with expertise on managed care organizations from HHSC or another state agency as considered necessary by the Executive Commissioner;

(iv) one representative of the Texas Department of Family and Protective Services; and

(v) one representative with expertise in mental health from HHSC or another state agency as considered necessary by the Executive Commissioner.

(B) Additional nonvoting members may be added, as considered necessary by the Executive Commissioner and/or the Council, so long as the Council's total membership does not exceed 24.

(4) Except as necessary to stagger terms, each member is appointed to serve a term of four calendar years.

(g) Chairs.

(1) The Council selects a Chair and Vice-Chair from among its voting members.

(2) The Chair serves until December 31 of each even-numbered year. The Vice-Chair serves until December 31 of each odd-numbered year.

(3) A member serves no more than two consecutive terms as Chair or Vice-Chair.

(h) Required Training. Each member shall complete all training on relevant statutes and rules, including this section and §351.801 of this subchapter (relating to Authority and General Provisions) and Texas Government Code §531.012, and Texas Government Code Chapters 551 and 2110. HHSC will provide the training.

(i) Abolition. The Council is abolished, and this section expires, on July 31, 2024.

Source Note: The provisions of this §351.817 adopted to be effective July 1, 2016, 41 TexReg 4432; amended to be effective December 8, 2020, 45 TexReg 8769



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Consumer Directed Services (CDS) Overview

Eileen Murphy, CDS Policy Specialist

Philosophy of Consumer Direction (S)

- Consumer direction is also known as independent living, self-direction, or self-determination.
- Built on the belief that each person:
 - is unique and is the expert for knowing their needs;
 - is in the best position to plan and manage their own services; and
 - has a right to personal choice for how their services are delivered.
- Consumer direction is about personal choices.



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What is the CDS Option?

- Consumer direction is not a service or program. It refers to a way that individuals can choose to receive their Medicaid services.
- In Texas, the self-direction model is known as the Consumer Directed Services option, or CDS.
- It promotes personal choice and control over the delivery of waiver and state plan services, including who provides the services and how services are provided.



What is the CDS Option? (cont.)

- Consumer Directed Services (CDS) is the self-direction option for Medicaid recipients in Texas which:
 - allows individuals the decision-making authority to recruit, hire, train and supervise the individuals who provide their services; and
 - is available in programs for those receiving long term services and supports who live in their own home, family home, or community-based settings.
- Currently 21,230 individuals across all programs in TX are utilizing services under the CDS option.



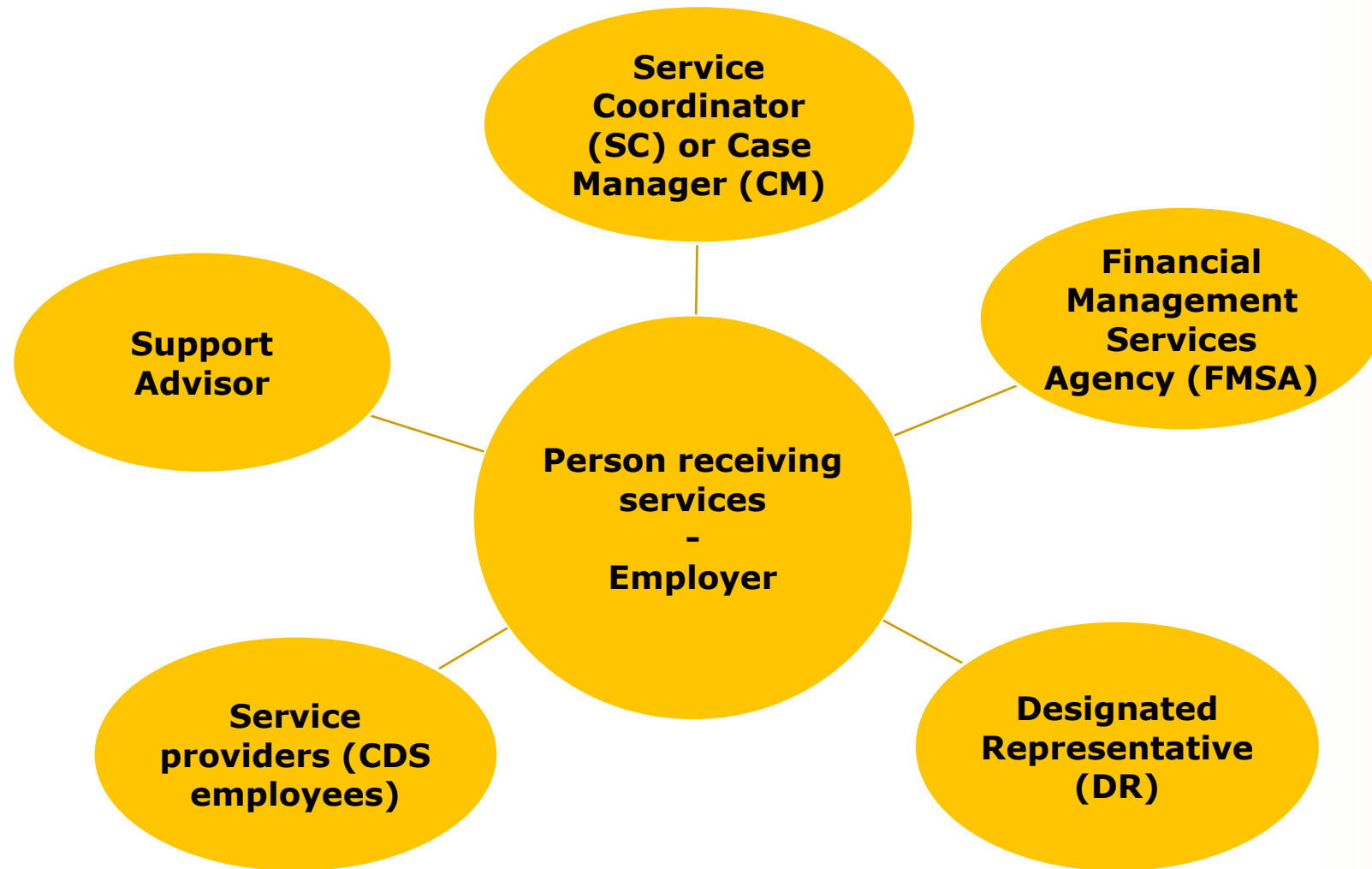
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Enrollment in the CDS Option

- When an individual enrolls in a program that offers the CDS option, and at least annually thereafter, a service coordinator (SC) or case manager (CM) must present the CDS option to the individual or legally authorized representative (LAR).
- SC/CM provides written materials and explains the CDS option specific to the individual's program.
- SC/CM reviews and completes required forms including the Consumer Directed Services Option Overview and the Consumer Participation Choice.



CDS Option – Key Players



The CDS Employer

- An individual or legally authorized representative (LAR) who chooses to participate in the CDS option becomes the employer of their service providers (employees) and is referred to as the CDS employer.
- CDS employer assumes responsibility for managing both the day-to-day activities of service providers and business activities.
- The CDS employer *must* select and use a financial management services agency (FMSA) to provide financial management services (FMS).



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The CDS Employer (cont.)

The CDS employer (member or LAR) is responsible for ensuring services provided through the CDS option:

- are included on the authorized service plan;
- are budgeted in the employer budget;
- are provided only to the individual;
- are not provided if the individual becomes ineligible for program services; and
- meet requirements for payment in accordance with program rules and CDS rules in the Texas Administrative Code (TAC).



Key Player: The FMMSA

- FMMSA responsibilities include:
 - Orienting the new employer to requirements of the CDS option;
 - conducting payroll;
 - filing and paying employer federal and state taxes on behalf of the CDS employer;
 - screening potential service providers for employment eligibility;
 - training the CDS employer to perform required tasks such as electronic visit verification (EVV) responsibilities; and
 - providing ongoing support on how to fulfill the role of CDS employer.



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Key Player: The SC or CM

- Assesses the individual for program eligibility and services in their program
- Offers the CDS option at program enrollment, at the annual review, and at the individual's request
- Develops the service plan and obtains authorization for services to be delivered through the CDS option
- Presents a current list of available FMSAs that serve the individual's county and program for employer to choose from



Key Player: The DR

- The CDS employer can appoint a designated representative (DR) to perform specific tasks to help with employer responsibilities.
- The CDS employer maintains responsibility and accountability for decisions taken by the DR.
- The DR must be a volunteer and cannot be paid to perform employer responsibilities or provide program services.
- The DR must not sign or represent himself as the employer.



TEXAS
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Key Player: The CDS Employee (service provider)

- The employee is the person hired by the CDS employer to provide certain program services as authorized on the service plan/plan of care; for example, personal attendant care.
- They must be able and willing to meet the needs of the individual receiving services.
- A service provider applicant must pass a criminal background check and other registry checks as required before being hired as the employee.
- The employee must meet and maintain provider qualifications as required by the program and by state or federal law.



Key Player: The CDS Employee (cont.)

- An employer or DR must obtain written notice from the FMSA that an applicant, employee, or contractor is eligible to be hired, retained, or maintained for service delivery before services are delivered.
- The employee must not be:
 - the spouse of the individual receiving services;
 - the individual's LAR or the LAR's spouse; or
 - the DR or the DR's spouse.
- The employee must meet the requirements of the CDS option and the individual's program as outlined in TAC rules or program policies.



Key Player: The Support Advisor

- Support advisors provide support consultation which may be available to the individual for additional practical skills training. Examples include:
 - recruiting, screening, and hiring workers;
 - communicating effectively, solving problems, and documenting employer responsibilities in the CDS option;
 - developing ongoing decision-making skills for employment-related situations
- Support consultation must not duplicate or replace services delivered by a case manager or service coordinator, an FMSEA, or other provider.



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Rules Governing CDS

- CDS is a service delivery option that allows more control over services provided under your program; it is not a separate, stand-alone program.
- FMSAs and employers must follow individual program rules and policies related to the CDS option for services within their program.
- [Texas Administrative Code: Title 40, Part 1, Chapter 49,](#) relating to Contracting for Community Services
- [Texas Administrative Code: Title 40, Part 1, Chapter 41,](#) relating to Consumer Directed Services



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Video: The Consumer Directed Services Option

About CDS | Texas Health and Human Services



<https://www.youtube.com/watch?v=I3w1iN8X2AY>



Programs that offer the CDS Option	Services that can be self-directed through the CDS option
Community First Choice (CFC)	<ul style="list-style-type: none"> ● Personal Assistance Services (PAS)/Habilitation (HAB)
Community Living Assistance and Support Services (CLASS)	<ul style="list-style-type: none"> ● Cognitive rehabilitation therapy ● Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) ● Employment assistance ● Nursing ● Occupational, physical, hearing, speech, and language therapies ● Respite ● Support consultation ● Supported employment ● Transportation (habilitation)
Consumer Managed Personal Attendant Services (CMPAS)	<ul style="list-style-type: none"> ● Personal attendant services
Deaf Blind with Multiple Disabilities (DBMD)	<ul style="list-style-type: none"> ● Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) ● Employment assistance ● Intervener ● Respite ● Support consultation ● Supported employment ● Transportation (habilitation)

Programs that offer the CDS Option	Services that can be self-directed through the CDS option
Home and Community-based Services (HCS)	<ul style="list-style-type: none"> ● Cognitive rehabilitation therapy ● Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) ● Employment assistance ● Nursing ● Respite ● Support consultation ● Supported employment ● Transportation (Supported Home Living)
Primary Home Care (PHC); Family Care (FC); Community Attendant Services (CAS)	<ul style="list-style-type: none"> ● Personal assistance services ● Support consultation
Medically Dependent Children Program (MDCP)	<ul style="list-style-type: none"> ● Adaptive Aids ● Employment Assistance ● Flexible Family Support ● Minor Home Modifications ● Respite ● Supported Employment
STAR Kids	<ul style="list-style-type: none"> ● Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) ● Personal Care Services (PCS)

Programs that offer the CDS Option	Services that can be self-directed through the CDS option
STAR Kids Medically Dependent Children Program (MDCP)	<ul style="list-style-type: none"> • Adaptive Aids • Employment Assistance • Flexible Family Support • Minor Home Modifications • Respite • Support Consultation • Supported Employment
STAR+PLUS	<ul style="list-style-type: none"> • Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) • Personal assistance services
STAR+PLUS Home and Community Based Services (HCBS)	<ul style="list-style-type: none"> • Cognitive rehabilitation therapy • Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB) • Employment assistance • Nursing • Occupational, Physical, Speech and Language therapies • Personal assistance services • Protective supervision • Respite • Supported employment

Programs that offer the CDS Option	Services that can be self-directed through the CDS option
Texas Home Living (TxHmL)	<ul style="list-style-type: none"> • Adaptive aids • Audiology • Behavioral support • Dental • Dietary services • Employment assistance • Individual Skills and Socialization • Minor home modifications • Nursing • Occupational, Physical therapies • Respite • Speech/language pathology • Support consultation • Supported employment • Transportation (Community Supports) • Community First Choice Personal Assistance Services/Habilitation (CFC PAS/HAB)



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TCCD Highlights

TCCD Initiatives

Key initiatives and topics the TCCD continues to focus on:

- Staying up to date on EVV implementation activities
- Increasing utilization of the CDS option
- Working with HHSC to expand and retain pool of direct service workers
- Revising informational and training materials
- Revising the structure of the CDS budget workbooks



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TCCD Subcommittees

TCCD has established subcommittees for purposes of studying and making recommendations on issues of importance to the Council:

- Joint Subcommittee for Processes and Expansion and Training & Outreach
- Quality Assessment & Performance Improvement (QAPI) subcommittee



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CDS Team

The CDS Policy & Operations team has been focused on the following efforts:

- Supporting TCCD on key initiatives
- Conducting regularly scheduled FMSEA trainings and webinars
- Updating required CDS forms
- Making permanent the option for conducting FMSEA new employer orientations either in person or using an audio-visual platform
- Working to streamline training materials for potential computer-based training (CBT) options



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Thank you

CDS@hhs.Texas.gov



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TCCD Bylaws

Bylaws

- TCCD's bylaws were revised and adopted in December of 2020. They are based on the Texas Administrative Code.
- Some areas addressed by the bylaws include:
 - the role of the council,
 - council composition,
 - member terms,
 - council operations and;
 - meetings, and responsibilities of members.



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Member terms

- Members serve for four years except if serving out an unexpired member term.
- Regardless of the term limit, members are asked to serve until their replacement is appointed.
- If a voting member wishes to resign, the member must contact, in writing, the current Chair and Advisory Committee Coordinator.
- If a member changes roles, the member must notify the current Chair and Advisory Committee Coordinator.



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Meetings

- The Council meets during regular business hours at least quarterly.
- The Council is subject to Texas Government Code Chapter 551 (the Texas Open Meetings Act) as if it were a governmental body.
- Nine voting members (one over 50 percent) constitutes a quorum for the purpose of transacting official business.



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Responsibilities of Members

- Attend meetings. Any member missing two quarterly meetings within a one-year period (calendar year) with or without notice to the Council Liaison may be removed from the Council.
- Participate in subcommittees as assigned.
- Review agendas and other information sent by staff prior to each meeting.
- Participate in discussions at meetings.



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Responsibilities of Members

- ■
 - Members must sign 'Statement by Members' document, Page 14.
 - Due June 30, 2023
 - Take the Open Meetings Act and Public Information Act Trainings online within 90 days of appointment.
 - Due June 30, 2023
 - <https://www.texasattorneygeneral.gov/open-government/governmental-bodies/pia-and-oma-training-resources>
 - Send a certificate of completion to Michelle.Thomas@hhs.Texas.gov





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Questions?

Michelle.Thomas@hhs.Texas.gov



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TCCD Membership

New TCCD Members

Advocates

- David Blackerby
- Tolu Opeloye

Consumers

- Karen Daly
- Amy Litzinger



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New TCCD Members (cont.)

Financial Management Services Agencies

- Chad Wooten

Local intellectual and developmental disability authority (LIDDA)

- Ashley Pfannenstiel



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New TCCD Members (cont.)

Managed Care Organizations (MCO)

- Stephanie Wagers

Service Providers

- Darla Hill



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Current TCCD Members

Advocates

- Ellen Bauman
- Carol Sloan

Financial Management Services

- Helen Baker
- Len Davis



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Ex-Officio Members

Department of Family and Protective Services

- Angela Medina

Health and Human Services Commission

- Demetria Alexander – Medicaid Managed Care
- Jacqueline Clark – Consumer Directed Services (CDS)
- Eileen Murphy - CDS
- Dena Stoner – Behavioral Health
- Apryl Rosas – Behavioral Health



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Ex-Officio Members

Texas Workforce Commission

- Lauren Chenoweth
- Shawn Cuffee



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Upcoming Meetings

Upcoming Meetings

- The next Texas Council for Consumer Direction (TCCD) full council meetings are scheduled for:
 - Thursday, June 15, 2023
 - Thursday, September 21, 2023
 - Monday, December 4, 2023



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TCCD staff list

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Program Policy

- Kate Layman – Director, Program Policy
- Jimmy Perez – Manager, Policy and Program Development (PPD)
- Eileen Murphy – CDS Specialist, PPD
- Jacqueline Clark – CDS Specialist, Program Policy

Legal

- Morgan Constantino, Attorney



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TCCD Staff List

Federal Coordination Rules and Committees (FCRC)

- Kathi Montalbano, Director
- Michelle Thomas – Advisory Committee Coordinator
- Beren Dutra – Advisory Committee Liaison,
- Rajani Kotamraju – Administrative Assistant

Advisory Committee Coordination Office (ACCO)

- Cassie Marx – Director
- Tessa Buck-Ragland – Project Manager
- John Chacon – Associate Director



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Questions?

Michelle.Thomas@hhs.texas.gov