



Texas Council on Long- Term Care Facilities

As Required by Senate Bill 1519

86th Legislature, Regular

Session, 2019

January 2025

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1. Council Members

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2. Executive Summary

Senate Bill 1519 (S.B. 1519), 86th Legislature, Regular Session, 2019, established the Long-Term Care Facilities Council (LTCFC) as a permanent advisory council to the Texas Health and Human Services Commission (HHSC) to study and make recommendations for nursing facilities (NFs), assisted living facilities (ALFs), and intermediate care facilities for individuals with an intellectual disability or related condition (ICF-IIDs) regarding:

1. A consistent survey and informal dispute resolution (IDR) process with regard to best practices and protocols to make the survey, inspection, and IDR processes more efficient and less burdensome, as well as to recommend uniform standards for those processes;
2. Medicaid quality-based payment systems with regards to the systems and a rate-setting methodology; and
3. The allocation of and need for Medicaid beds with regards to the effectiveness of rules adopted by the HHSC executive commissioner relating to the procedures for certifying and decertifying Medicaid beds and the need for modifications to those rules to better control the procedures for certifying and decertifying Medicaid beds.

The executive commissioner of HHSC appointed regulatory staff, IDR staff, and long-term care providers to the council. A key council objective is to submit a report no later than January 1, 2025, outlining its recommendations to the executive commissioner, the governor, the lieutenant governor, the speaker of the House of Representatives, and the chairs of the appropriate legislative committees.

The council has met 8 times since our 2023 report and has established 4 subcommittees that further study and develop individual recommendations for legislative action. The subcommittees are: Licensing, Regulatory, Reimbursement, Intellectual Developmental Disability and Intermediate Care Facilities. The subcommittees also met via conference call as needed to discuss preliminary recommendations. Public comment was accepted at the outset of each scheduled meeting, and written comment was accepted on an ongoing basis.

The council requested information from HHSC as part of its information gathering and discovery phase. The council asked agency representatives numerous questions about processes and regulations and used this information to form preliminary recommendations within the scope of S.B. 1519.

This report was prepared by members of the LTCFC. The opinions and recommendations expressed in this report are the members' own and do not reflect the views of the HHSC Executive Council or HHSC.

3. Background

According to the July 2023 U.S. Census Bureau estimates, there were 3.94 million people in Texas age 65 and older; they made up approximately 13% of the total Texas population of 30.5 million. The Texas Demographic Center (TDC) projects that by 2030, Texas' older population will reach 5.6 million (16% of the population) and 8.3 million by 2050 (18% of the population).

In addition, 37% of the population age 65 and older have one or more disabilities. Certain population groups are more likely to experience disability than others:

- Disability is more common among women than among men age 75 and older. This might reflect the fact that many more women than men live to be this age.

In Texas, the growth of the aging population and increased longevity will mean a marked increase in the number of people age 85 and older. In 2022, the population age 85 and older was 442,000; by 2050, it is expected to increase to 1.5 million, an increase of greater than 300%. Rates of disability and serious chronic illness tend to increase with age. This rapid increase in the number of the oldest people is expected to increase the need for long-term services and support.

Growth of Long-term Services and Supports for an Aging Population

Along with the aging population, the state has seen a steady and continuing need for NF and ALF beds, as well as ICF/IID-type residential settings.

Medicaid NF beds in Texas are highly regulated and HHSC controls their allocation. The number of licensed nursing homes in Texas has decreased from 1,248 (2019 data) to 1,183 as of 2023. Occupancy rates are below capacity; however, data from the Centers for Medicare & Medicaid Services (CMS) indicates an increase in occupancy of licensed skilled nursing facility beds to 62% from a pandemic low of 57% in 2021.

The number of ALFs in Texas continues to grow. In 2015 the number of licensed ALFs was 1,829; that grew to 2,008 in 2023.

A survey of HCS and ICF providers throughout the state has shown a closing of 179 HCS homes and 50 ICF Facilities between February 2023 and February 2024. The primary indicator for these closing was listed as the inability to recruit and retain staff. Both federal and state initiatives, such as Money Follows the Person (MFP) funding, have led to a reduction of individuals residing in large private and state-operated ICFs/IID in Texas. In the early 1990s the Legislature put a moratorium on new ICFs/IID and implemented three-person group homes under the Home and Community-based Services (HCS) waiver program. In the mid-90’s, the Legislature allowed HCS programs to serve 4 individuals, in part due to an impending 27% rate reduction per individual per day. In 2015, 8,401 individuals lived in ICFs/IID; in 2019 that number had declined to 7,464 (Source: HHSC Annual Report Regarding Long-term Care Regulatory, 2019). Many thousands of Texans remain on waitlists for HCS programs that are declining in numbers. There are 13 State Supported Living Centers (SSLCs) in Texas dedicated to serve persons with intellectual and developmental disabilities (IDD) who are medically fragile or have severe behavioral problems.

Facility Counts by Program Type

Program	Count	% of all Facilities
Assisted Living	2,008	50%
ICF/IID	733	20%
Nursing	1,183	30%
Total	3,924	100%

Source: HHSC

Regulation of Nursing Facilities, Assisted Living Facilities, and ICF/IID Facilities

HHSC oversees long-term care services and supports that help more than a million older Texans and those with disabilities to lead dignified, independent, and productive lives. HHSC oversees multiple complex programs, facilities, and provider types with multiple funding streams and reporting/accountability requirements. HHSC regulates more than 10,000 providers that serve these populations. For long-term care, HHSC regulates the following facilities, agencies, and programs:

- Day activity and health services facilities;
- ALFs;
- Home and community support services agencies, including home health agencies and hospices;

- NFs and skilled NFs;
- Publicly and privately-operated HCS waiver providers;
- Publicly and privately-operated Texas Home Living (TxHmL) waiver providers; and
- Publicly and privately-operated ICFs/IID, including those operating as SSLCs.

In addition, HHSC operates 12 SSLCs and the ICF unit at the Rio Grande State Center. These centers housed about 2,600 individuals at the end of 2023 (State Supported Living Center Long Range Planning report 2024), which is significantly lower than in decades past, and many of them have complex medical and behavioral needs. (Note: The Regulatory Services division of HHSC, which regulates and certifies the SSLCs, is intentionally separated from the facility operations division within the HHSC organizational structure.)

HHSC Regulatory Services also licenses and surveys all NFs, ALFs, and ICF/IID providers in Texas. HHSC also certifies NFs on behalf of the Centers for Medicare and Medicaid Services (CMS) for participation in the Medicaid and Medicare programs.

Informal Dispute Resolution

The HHSC IDR unit acts as a neutral third party in cases where NFs, ALFs, and ICFs/IID decide to informally dispute survey findings cited by HHSC Regulatory Services.

Senate Bill 304, 84th Legislature, Regular Session, 2015, requires HHSC to contract with an appropriate, disinterested organization to perform IDRs for NFs. Although it was specific only to NF providers, HHSC released a Request for Proposal (RFP) to include all three facility types. Michigan Peer Review Organization (MPRO) was awarded the contract and is the current entity conducting IDRs in Texas.

4. Bill Requirements and Report Development Process

S.B. 1519 created the LTCFC to make recommendations regarding the development of more consistent survey and IDR processes for long-term care facilities, Medicaid quality-based payment systems and rate-setting methodology, and the allocation of Medicaid beds. The council has 11 members, including HHSC Regulatory Services staff, HHSC IDR staff, and long-term care facility providers, and must submit a report to the Legislature by January 1 of each odd-numbered year, beginning in 2021.

An open application process was developed and posted to the HHSC website to receive applications for external members to the council. The initial application period ended November 29, 2019. Staff from HHSC reviewed both the external and internal (state agency) applicants and made recommendations to then-Executive Commissioner Courtney Phillips. She then appointed members to the council, which held its first meeting on March 3, 2020, in Austin, Texas. HHSC Regulatory Services staff provide administrative support to the council. Opening that have occurred since the first meeting have followed a similar process with a posting to the HHSC website, HHSC staff review of the applicants, and recommendations made to the current Executive Commissioner.

Duties of the Council

The more specific duties of the LTCFC are as follows:

1. Study and make recommendations regarding best practices and protocols to make survey, inspection, and informal dispute resolution processes more efficient and less burdensome on long-term care facilities;
2. Recommend uniform standards for those processes;
3. Study and make recommendations regarding Medicaid quality-based payment systems and a rate-setting methodology for long-term facilities; and
4. Study and make recommendations relating to the allocation of and need for Medicaid beds in long-term care facilities, including studying and making recommendations relating to:
 - a. The effectiveness of rules adopted by the executive commissioner relating to the procedures for certifying and decertifying Medicaid beds in long-term care facilities; and
 - b. The need for modifications to those rules to better control the procedures for certifying and decertifying Medicaid beds in long-term care facilities.

The LTCFC is further provided the authority to receive informational updates from the ex-officio member of the Nursing Facility Payment Methodology Advisory Committee established under Texas Government Code, §531.012.

5. Recommendations

The following policy recommendations were approved by the council for consideration by the Legislature and HHSC. They are grouped by those that would require legislative action and by those that would require state agency action, based on preliminary research.

Recommendations for Legislative Action

- A. Medicaid should reimburse the Medicare copayment for residents approved under Long Term Care Medicaid, expanding coverage beyond just the Medicaid QMB program to ensure equitable access to services for dual-eligible residents and reduce financial burdens on long-term care facilities.
- B. Nursing facility providers should be fully funded for care provided to Medicaid residents based on median costs. The base Medicaid reimbursement rate in Texas currently ranks second lowest in the country. The expense of a Medicaid nursing home resident is approximately \$115.74 per day more than the average reimbursement rate based on the allowable cost in 1 TAC §355.307 Reimbursement Setting Methodology (Source: NF Cost Report data inflated to 2026-2027 biennium).
- C. Although the requirement for HHSC to set Medicaid rates under the managed care program was removed from Chapter 533 of the Texas Government Code effective September 1, 2021, HHSC continues to set rates, collect cost reports, and work towards PDPM LTC reimbursement. Statutory regulations should be reinstated to ensure that “the commission is responsible for setting the minimum reimbursement rate paid to nursing facilities under the managed care program.”
- D. HHSC has contracted with MPRO to perform IDR reviews for nursing facilities, assisted living facilities, intermediate care facilities, and Home and Community-based Service and Texas Home Living waiver providers. According to HHSC data, the majority of the immediate jeopardy citations that were recommended by MPRO to be modified or reversed were not accepted by HHSC, with HHSC relying on authority from interpretation of CMS guidance rather than Texas legislative authorization. Language should be added to §531.058 that provides an IDR decision favorable to a long-term care facility is binding on HHSC.
- E. Texas Health & Safety Code §242.070 (the “double-dipping statue”) should be modified to prevent HHSC from imposing an administrative penalty where the CMS has already assessed a fine or required a fine to be levied against a nursing home for the same act or failure to act.

Recommendations to HHSC

The following recommendations were agreed upon by the council during deliberations.

- F. HHSC should adopt rates for nursing facilities with proportional adjustments to all rate components, including but not limited to direct care, dietary, general & administrative, and fixed capital components of Medicaid reimbursement. These adjustments should occur biennially, utilizing the most recent annual cost report data to maintain fairness and adequacy in funding.
- G. In line with the current rule's intent, HHSC should clarify that a change of ownership between Non-State Government-Owned entities will not automatically result in the exclusion of the facility from the Quality Incentive Payment Program during the current year, provided all other qualifications are met.
- H. HHSC should seek a waiver from CMS to allow Qualified Nursing Facilities to make presumptive Medicaid eligibility determinations for elderly and disabled residents while their applications are being processed. This process, already allowed for Qualified Hospitals, would increase access for Texans pending Medicaid approval who are qualifying for nursing home stays, and would require HHSC to establish criteria for nursing facilities to apply for this designation.
- I. HHSC should adopt rates for ICF/HCS facilities to recognize the increased cost of staffing in HCS care environments. The increased costs with inflation for items such as groceries and transportation are unsustainable. Current staffing rates as low as \$10.60 per hour are unsustainable. This has resulted in high turnover, creating instability in care, straining already limited resources and appears to be the cause for closure of multiple homes throughout the state. HHSC should consider parity with staffing rates provided to State Supported Living Centers.
- J. HHSC should adopt rates to recognize the increased costs of care provided to residents in nursing facilities with behavioral support needs related to IDD/Autism. These costs of care are often not appropriately reflected in MDS data. This discrepancy could leave persons with IDD or Autism limited choices in places for care due to the unreimbursed costs of care for providers.
- K. HHSC should provide and encourage additional opportunities for training for front line staff for any long-term care providers offering care to persons with IDD. Currently there are limited training opportunities for DSP's, CNA's or nurses caring for persons with IDD.

- L. HHSC should implement a uniform timeline/time frame for complaint investigations to ensure complaint surveys are completed in a timely manner and the welfare of the residents addressed promptly.
- M. HHSC should implement a system where the Informal Dispute Resolution results and data will be published to the providers and the public on at least a quarterly basis, including a link to the data on the HHSC website.
- N. Certified Nursing Assistant (CNA) skills tests should be offered in Spanish in addition to English to address workforce shortages, promote equity, and enhance care quality in the long-term care industry. Texas has a significant Spanish-speaking population, and many potential CNAs face unnecessary barriers when tests are only available in English. Expanding access to Spanish speakers allows the state to tap into a larger, diverse talent pool while improving culturally and linguistically appropriate care for Spanish-speaking residents and caregivers.

6. Conclusion

The LTCFC provided a valuable platform for members, regulatory staff, industry providers, and IDR representatives to exchange information and gain deeper insights into their shared commitment to delivering high-quality care for Texas’s growing aging population and individuals with disabilities. These collaborative and productive discussions have culminated in a set of recommendations that the Council believes will meaningfully enhance the quality of care for these vulnerable Texans.

It is the hope of this Council that our state leadership will take these recommendations, review them fully, and implement them in a manner that will best serve the citizens of the State of Texas.

7. Appendix A – Subcommittee Participants

1. Regulatory
 - a. Allison Levee
 - b. Lisa Ridley
 - c. Obinna Ogundu
2. Licensing
 - a. Stephanie Allred
 - b. Michelle Dionne-Vahalik
 - c. Ryan Harrington
3. ICF/IID
 - a. Corey Kintzer
 - b. Maria Duncan
 - c. Patrick Duncan Murray
4. Reimbursement
 - a. Ryan Harrington
 - b. Liam Fry
 - c. Brooke Ellison