October 12, 2017

Ms. Jami Snyder
Associate Commissioner, Medicaid and CHIP Services
Health and Human Services Commission
P.O. Box 13247
Austin, Texas 78711-3247

Dear Ms. Snyder:

We represent a coalition of diverse stakeholders with a strong interest in the well-being of Texans with intellectual and developmental disabilities (IDD). Collectively, we urge HHSC to adhere to the requirements of law and move with deliberate care in implementing the significant redesign of long-term services and supports (LTSS) for individuals with IDD.

In this letter, we reflect on two significant expectations of Senate Bill 7 (83rd Legislature, Regular Session) (SB 7): first, the careful, evaluative process required by law and second, the protective provisions Senator Nelson amended into SB 7, with deliberate action, when she laid the bill out to the full Senate on March 25, 2013. Additionally, we describe our concerns about the haste with which the agency is currently pursuing a potential transition of IDD LTSS to a managed care model and how this haste may place the Health and Human Services Commission (HHSC) out of compliance with statute and its own procurement and contracting protocols. Finally, we offer our recommendation for a path forward that affords an opportunity to redesign our system in a way that ensures quality and cost-effective services for Texans with IDD.

STATUTORY REQUIREMENTS

SB 7 directs HHSC to implement a system of acute care services and LTSS for individuals with IDD "in the manner and in the stages" described in statute.[1] The manner and stages of implementation require:

- measured, incremental change;
- evaluations and analyses of system changes;
- determinations by HHSC regarding certain transitions;
- substantial stakeholder involvement;
- protective provisions designed to acknowledge distinct, lifelong needs of people with IDD.

Generally, the system change directed by SB 7 is separated into two stages:

- **Stage One: Programs to Improve Service Delivery Models**
- **Stage Two: Transition of Long-term Care Medicaid Waiver Recipients to Integrated Managed Care System**

[1] Government Code Sec. 534.052.

The stages and required actions are described below, along with current status of each action. A more detailed summary, including requirements of each action and statutory citations, is included in Appendix 1.

STAGE ONE: PROGRAMS TO IMPROVE SERVICE DELIVERY MODELS

1. Develop and Implement Pilot Programs to Test Managed Care Strategies: **Cancelled**[2]
2. Deliver Acute Care Services for Individuals with IDD through Managed Care: **Implemented**
3. Analyze Acute Care Outcomes: **Incomplete**
4. Implement Attendant and Habilitation Services [Community First Choice]: **Implemented**

STAGE TWO: TRANSITION OF LONG-TERM CARE MEDICAID WAIVER RECIPIENTS TO INTEGRATED MANAGED CARE SYSTEM

REQUIRED BEFORE POTENTIAL TRANSITION OF TXHML:

1. Evaluate Cost-effectiveness of Potential TxHmL Transition: **Status unknown**
2. Evaluate Experience of Providing Community First Choice: **Status unknown**
3. Determine Whether to Provide All or a Portion of TxHmL LTSS through Managed Care: **Status unknown**
4. Determine Whether the STAR+PLUS Medicaid Managed Care Program Delivery Model or a Different Integrated, Capitated Managed Care Delivery Model is Most Appropriate (based on 1 and 2 above) **Status unknown**

REQUIRED UPON POTENTIAL TRANSITION OF TXHML:

5. Develop Stakeholder Process re: Implementation of TxHmL Transition: **Status unknown**
6. Develop TxHmL Transition Plan to Ensure Continuity of Care: **Status unknown**
7. Develop MCO Contract Requirements: **Started**

REQUIRED PRIOR TO TRANSITION OF CLASS, DBMD, AND HCS WAIVER PROGRAMS AND ICF-IID PROGRAM

8. Evaluate Cost-effectiveness of Potential Transition of CLASS, DBMD, and HCS Waiver Programs and ICF-IID Program: **Status unknown**
9. Analyze TxHmL Transition: **Status unknown**
10. Evaluate MCO Provider Network Experience and Expertise: Children's Services: **Status unknown**
11. Evaluate MCO Provider Network Experience and Expertise: Adult Services: **Status unknown**
12. Determine Whether to Transition Services: **Status unknown**
13. Determine Whether to Provider All or a Portion of Services in Managed Care: **Status unknown**
14. Determine Whether the STAR+PLUS Medicaid Managed Care Program Delivery Model or a Different Integrated, Capitated Managed Care Delivery Model is Most Appropriate (based on 8 and 9 above) **Status unknown**

REQUIRED UPON TRANSITION OF CLASS, DBMD, AND HCS WAIVER PROGRAMS AND ICF-IID PROGRAM

15. Develop Stakeholder Process re: Implementation of CLASS, DBMD, HCS, and ICF-IID Transition: **Status unknown**
16. Develop Transition Plan to Ensure Continuity of Care: **Status unknown**
17. Establish Process for Voluntary Enrollment: **Status unknown**
18. Develop MCO Contract Requirements: **Started**

[2] Implementation of the pilots described by SB 7 was permissive, not mandatory. Government Code Sec. 534.102. All other actions outlined here are mandatory.

As you can see, in passing SB 7 the Legislature included comprehensive requirements to ensure a deliberate decision-making approach to the potential transition, of part or all of IDD waiver services and the ICF-IID program, to managed care.

HHSC must, in consultation and collaboration with the IDD SRAC, develop a realistic timeline for completing each required element of the two stages identified in law.

LEGISLATIVE HISTORY

When SB 7 was filed and initially heard in the Senate Health and Human Services Committee, there was an intensive backlash from individuals, families, providers, and other stakeholders. The backlash was driven primarily by fear of what could happen if insurance companies, without experience in providing LTSS for people with IDD, were legislatively mandated to control funds and manage services designed to improve quality of life and diminish risk of institutional care for people with IDD.

On March 25, 2013, from the floor of the Texas Senate, Senator Jane Nelson, as author of SB 7, introduced a Committee Substitute and a substantial amendment to SB 7. Senator Nelson stated that countless hours and endless meetings were held with stakeholders to reach agreement on the proposed amendment. The agreement captured by the amending language substantially alleviated fears of losing valued services in an uncertain managed care environment and ensured the agency would take deliberate steps in making decisions about any future transition into managed care.

The amendment was endorsed unanimously by the Senate and ultimately became law. Among other things, the statutory provisions of the amendment:

- allow individuals with IDD receiving LTSS through the Community Living Assistance and Support Services (CLASS), Deaf Blind with Multiple Disabilities (DBMD), and Home and Community-based Services (HCS) Waiver Programs and the Intermediate Care Facility for Individuals with Intellectual Disabilities (ICF-IID) program to remain in their waiver or ICF-IID program or transition to a managed care model *if* IDD LTSS services are carved-in to managed care;
- clarify that IDD system redesign goals include promotion of independent case management and prevention of inappropriate institutionalization; and
- clarify that HCS and TxHmL Waiver providers may provide Community First Choice (CFC) services through STAR+PLUS.

The provisions of the amendment underscore common principles of the IDD system redesign and remind us of specific legislative action taken to honor these principles: choice, conflict-free case management, community integration, and continuity of care from quality service providers with experience and expertise in IDD services.

CONCERNS

Substantial stakeholder concerns about recent developments in the IDD system redesign implementation can be summarized as: (1) divergence from the measured, incremental change and evaluation points mandated by SB 7, and (2) undue, detrimental haste in attempting to assess system readiness through the STAR+PLUS reprocurement RFP that is already underway.

On September 17, 2017 informal reports from individual stakeholders indicated the agency was planning to cancel a keystone of the IDD system redesign directed by SB 7, the pilot program to test one or more service delivery models involving a managed care strategy to deliver LTSS to individuals with IDD (the IDD Managed Care Pilot).

The first known official announcement of the decision to cancel the pilot was released on September 18, 2017 in a written statement to the IDD System Redesign Advisory Committee (IDD SRAC). Subsequently, the Texas Medicaid Director personally announced the decision to cancel the pilot to a new workgroup comprised of former members of the Promoting Independence Advisory Committee (PIAC) and other stakeholders.

The IDD Managed Care Pilot was anticipated to allow for meaningful evaluation of the merits of a transition of IDD LTSS from a traditional Medicaid model to a managed care model through comparisons of the following measurable data points:

- average monthly cost per person for acute care and LTSS;
- utilization of non-residential settings and non-provider-owned housing (community integration and prevention of institutionalization);
- average total Medicaid cost, by level of need, in various residential settings;
- percentage of individuals employed in meaningful, integrated settings;
- impact on behavioral, medical, life-activity and other personal outcomes; and
- overall client satisfaction.[3]

We acknowledge that a pilot to test one or more service delivery models involving a managed care strategy was a permissive, not mandatory, element of IDD system redesign under SB 7 and we recognize that the opportunity for a pilot was foreclosed by the implementation risks and barriers HHSC encountered. The absence of a pilot creates a need for alternate mechanisms for a meaningful evaluation of the merits of a transition of IDD LTSS to managed care before a determination on the TxHmL transition can be made, including the statutorily required analysis of the acute care carve-in, evaluation of cost-effectiveness, and evaluation of the CFC experience. During the meeting with former PIAC members and other stakeholders on September 19, 2017, HHSC officials described intent to embark on a fast-paced effort to include questions in the final version of the STAR+PLUS reprocurement RFP that would allow the agency to move forward with the "required transition" of TxHmL Waiver services to managed care on September 1, 2020 and other waiver services and ICF-IID on September 1, 2021 without a subsequent procurement.

The convened stakeholder workgroup expressed substantial concern about the reference to "required transition" and a rushed process to include IDD elements in the procurement already well underway, with public comments due October 14, 2017, and a tight timeline for final release on November 17, 2017 (estimated). Various members of the stakeholder workgroup pointed out the obligations of the agency to evaluate cost-effectiveness and determine whether to provide all or a portion of IDD waiver services in managed care, prior to any transition. HHSC representatives present expressed they were not aware of these statutory obligations.

We believe the rush to include questions assessing MCO readiness for an IDD LTSS carve-in during the term of the upcoming STAR+PLUS contract places HHSC at risk of not complying with its own contracting protocols. The draft RFP does not include requirements specific to the CLASS, DBMD, HCS, ICF-IID, and TxHmL populations or their home and community-based services (HCBS). More specifically, the RFP lacks requirements for HCBS network development and adequacy, use of a functional assessment tool, care coordination, member and provider education, claims processing, and other critical components needed to care for these members. HHSC will not have a complete picture when awarding contracts, and risks selecting vendors that do not offer best value to the state for these vulnerable populations. Requiring selected MCOs to complete readiness reviews before placing these populations in STAR+PLUS does not address this concern, and does not meet the requirements of SB 7.

[3] Government Code Sec. 534.108(a)(1)-(7).

GOING FORWARD

If HHSC does not adhere to the provisions set forth in law, high numbers of individuals and families currently in CLASS, DBMD, HCS, and ICF-IID programs will undoubtedly choose to remain in current services rather than choose a managed care environment that they are fearful will result in a loss of vital community-based services. This path will not only fail to yield an effective transition to managed care, but will set the stage for a substantial lack of trust in HHSC and lost opportunity to redesign a system in a way that ensures the highest quality and most cost-effective service system for Texans with IDD.

At this time, individuals, families, service providers, advocates, and other stakeholders speak with one voice in raising substantial concerns about the impact of managed care on access to acute care services. The united voice is heard at the Capitol, at HHSC rate hearings, and in stakeholder forums. Until an assessment of acute care services delivered through a managed care model is complete, as required by SB 7, stakeholders will be highly concerned about any further managed care carve-ins.

Additionally, since June 2015, the IDD system in Texas has tested the provision of LTSS through a managed care model in the Community First Choice benefit. Stakeholders describe, and we believe data will bear out, that the CFC implementation has many rough edges, including insufficient reimbursement rates for providers, provider network adequacy issues, and lack of communication among involved parties, including the agency.

For these reasons, we urge HHSC to halt use of the STAR+PLUS reprocurement RFP as a vehicle for assessing MCO readiness for a potential transition of IDD LTSS, re-commit itself to the measured changes, evaluations, and determinations required by law, and continue to involve IDD stakeholders in the evaluative process.

CLOSING

Ms. Snyder, we are grateful to you and your team for your commitment to IDD system redesign in Texas. We look forward to continuing our work with HHSC to ensure individuals with IDD benefit from quality acute care services and LTSS that promote independence, community integration, and quality of life.

SIGNATORIES:

DISABILITY RIGHTS TEXAS
PRIVATE PROVIDER ASSOCIATION OF TEXAS
PROVIDERS ALLIANCE FOR COMMUNITY SERVICES OF TEXAS
TEXAS ADVOCATES
TEXAS COUNCIL OF COMMUNITY CENTERS
THE ARC OF TEXAS

cc: Charles Smith, Executive Commissioner, HHSC
Enrique Marquez, Deputy Executive Commissioner for Medical and Social Services, HHSC
Sonja Gaines, Associate Commissioner for IDD and Behavioral Health Services, HHSC