

**Private Providers Association of Texas Response to Request for Information:  
House Human Services Committee ~ September 25, 2020**

**IMPACTS OF COVID-19 ON LONG-TERM CARE FACILITIES: CONSIDER THE FOLLOWING ISSUES  
IN LIGHT OF THE COVID-19 PANDEMIC:**

- 1) Review the state's response to the pandemic, specifically as it relates to emergency regulations that prohibited visitation of residents of long-term care facilities by family members. Examine the physical and mental health impacts of the visitation policy on long-term care residents.

**Introduction**

On behalf of the Private Providers Association of Texas (PPAT), thank you for the opportunity to provide comment on the Committee's Interim Charges. A non-profit trade association, PPAT represents private providers of community-based services to persons with intellectual and developmental disabilities (IDD). Though these services are primarily provided through the Intermediate Care Facilities (ICF/IID) program and the Home and Community-based Services (HCS) and Texas Home Living (TxHmL) waivers, many of the Association's members provide other Medicaid and non-Medicaid (such as GR) funded services.

**General Comments related to Impact of COVID-19 on Provider Operations**

In reviewing the Association's comments on the impact of COVID-19 on LTC facilities, it is important to understand the basis for the comments. There is no doubt that the public health emergency created unprecedented challenges and required restraint and patience as, together, local, state, and national governments and citizens) began navigating uncharted and turbulent waters. That stated, and while it is not the intent of this testimony to criticize Texas' response to COVID-19, an examination of what worked and what did not is critical and should be initiated.

Management of the pandemic and associated responses and action plans were (and continue to be) taxing for all. Factors contributing to this are exacerbated by ill-timed circumstances at HHSC which, under non-pandemic conditions, may not have handicapped the commission's efforts. These circumstances include the change in leadership immediately prior to the emergency, vacancies in key leadership positions, and unfilled positions which left many already overburdened staff with additional responsibilities to meet agency and stakeholder demands. The result was lack of consistent timely support and decision-making to address critical needs of IDD providers and the persons they served.

**Note:** While frustrations were, and continue to be high, the Association would be remiss if it did not acknowledge that HHSC was as responsive as it could be given the circumstances. Like the rest of us, we know that they, too, have worked (and continue to work) many long hours. It is also important to note that initially HHSC held weekly meetings with the three IDD stakeholder organizations to discuss, identify and respond to our pressing questions and needs. In July (as the result of the agency switching from a reactive to a re-opening mode), however, HHSC reduced the frequency of these meetings to twice a month. This has slowed resolution to ongoing critical needs and effective and timely planning for full or partial re-opening.

**HHSC Guidance, Training and Emergency Rules**

Clear rules, guidance and training are critical to assist providers in implementation activities and ensure the health and safety of individuals they support. Though HHSC initially sought stakeholder review and input into guidance, Information and Provider Letters and other bulletins, recent feedback opportunities have been reduced to 'after the fact.' This includes the lack of opportunities to provide feedback on emergency visitation rules HHSC adopted at the end of August, and now the emergency visitation rules which became effective September 24, 2020.

This has resulted in rules which do not clearly define expectations, and, in some cases, contain conflicting requirements which only heighten provider stress in attempts to achieve compliance. The stress is exacerbated by training, which does not provide clear or definitive answers to provider questions and

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occurs after the rule effective date, leaving providers no time to make operational changes necessary to achieve compliance prior to any regulatory visit.

To complicate matters, while many IDD providers (as late as last week) were still trying to obtain clarification on expectations and educate the persons they serve and family members on the emergency rules effective the end of August, earlier this week providers were informed of new emergency rules which became effective September 24, 2020. While it is recognized HHSC was responding to the Governor's new orders on expanded visitation, providers are now faced with revising their policies, training staff and educating individuals and families, all, once again, without advance notice, training or clarifying guidance from HHSC.

### Visitation

Group homes in the HCS program and Intermediate Care Facilities (ICFs/IID) are small settings serving people with intellectual and developmental disabilities (IDD) in the community. These homes are three or four-bedroom homes with 3 or 4 persons in an HCS home; 6 persons in an ICF/IID home.

Initially, policy allowed individuals in these settings to leave and return from their homes at will and prohibited IDD providers from preventing individuals either from leaving or returning, even if the person returns positive for coronavirus. This initial policy also permitted indoor visits from 'essential' staff while restricting family and friend visits to outdoors providing appropriate infection control measures were met. Though the importance of these limitations was (and remains) recognized, the policy created havoc for providers who are charged with maintaining the health and safety of the persons they serve and, more importantly for families. In many cases, this policy served to only intensify frustrations and harm provider and family relationships. Newly adopted visitation requirements (which allow providers to choose the extent to which they are safely able to support family visits) are thus greatly appreciated, but still leave providers vulnerable to COVID-19 outbreaks due to lack of access to COVID-19 testing for the persons they serve and subject to criticism if providers determine they cannot ensure the health and safety of those in the home.

### Recommendations

Provide priority testing to IDD providers and direct support staff to increase their confidence in implementing the newly adopted visitation rules.

Allow a reasonable grace period for providers before enforcement measures are implemented, allowing IDD providers to achieve full compliance with the September 24, 2020 emergency rules, particularly since training has yet to occur.

In collaboration with stakeholders, examine what worked well and what did not (i.e., lessons learned) during the pandemic, implementing policy and protocol to address barriers encountered for future use. See parallel recommendation on page 3.

### **IMPACTS OF COVID-19 ON LONG-TERM CARE FACILITIES: CONSIDER THE FOLLOWING ISSUES IN LIGHT OF THE COVID-19 PANDEMIC:**

- 2) Review emergency waivers of regulations of long-term care facilities during the pandemic and make recommendations on whether regulations should be permanently waived or removed.

### Emergency Waivers

Though challenges in executing a timely response to the Governor's order to waive regulations of long-term care facilities were encountered, HHSC did apply modifications and flexibilities to many regulations which eased provider workload and ensured individuals continued to receive needed services. Several

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flexibilities stakeholders are seeking, however, remain outstanding. Modifications applied include, but are not limited to the following: allowing certain services to be provided in a person's home, such as Day Habilitation and CFC PAS/HAB; auto-renewal of Individual Plans of Care (IPC); extending Determinations of Intellectual Disability (DID) requiring reassessment for individuals receiving Community First Choice (CFC); elimination of the requirement for a doctor's signature on the Intellectual Disability and Related Condition (ID/RC) Assessment; and changes to the regulatory survey process, including allowing for certain components of a survey to be conducted virtually.

### **Recommendations**

Regardless of the continuation of COVID-19, all temporary policy changes and flexibilities should be applied on a permanent basis. Doing so will help ease agency staff and provider administrative burdens and reduce costs without jeopardizing health and safety of the persons receiving services.

Though briefly alluded to above, consideration needs to be given to applying modifications to other policies which, to date, decisions to move forward with remain uncertain. This includes the ability to use and bill for virtual day habilitation services. Currently many providers are providing day habilitation virtually to offer a variety of activities and learning opportunities while persons remain in their homes to work towards each person's goals.

To complement the first recommendation under this section, examine what worked well and what did not work well (lessons learned) during the pandemic, seeking stakeholder input and, as feasible, implementing policy and protocol to not only address barriers encountered for future use, but to also implement changes to current policy and regulations to serve Medicaid recipients more efficiently.

Additionally, planning to ensure a smooth transition in returning to Day Habilitation services provided at Day Habilitation sites needs to be considered and discussed promptly. Though some Day Habilitation sites have reopened on a significantly scaled back basis, many have either remained closed or shuttered completely. Many individuals or their legally authorized representatives (LARs) remain cautious about returning until a vaccine is available. Unless the State contemplates continuing to offer and pay for the option to receive Day Habilitation services either in the home or an off-site facility indefinitely, should the State determine the temporary policy change allowing in-home day habilitation is no longer necessary, providers will need significant advance notice to prepare for a re-opening of their day habilitation programs.