

Texas Governor's Committee on People with Disabilities



2024-2025 Policy Recommendations

Report to the 88th Texas Legislature

February 2023

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About the Texas Governor's Committee on People with Disabilities

The Texas Governor's Committee on Employment of the Handicap was created by Governor Allan Shivers in September 1950. The committee was enshrined in statute in 1991 and officially named the Texas Governor's Committee on People with Disabilities (GCPD). GCPD's mission is to further opportunities for persons with disabilities to enjoy full and equal access to lives of independence, productivity, and self-determination. The Governor appoints [12 members](#) to serve on the committee, seven of whom must be people with disabilities. The committee includes representatives from six state agencies who serve as ex-officio or advisory members.

GCPD makes recommendations to the Governor and the Texas Legislature on disability issues; promotes compliance with disability-related laws; supports a network of local committees doing similar work; and recognizes employers for hiring and retaining employees with disabilities, and media professionals and students for positively depicting Texans with disabilities. GCPD staff also provide technical assistance, information, and referral services to citizens on issues affecting Texans with disabilities. Members of GCPD work on issues related to access, communications, education, emergency management, employment, health, housing, recreation, transportation, and veterans. GCPD's enabling statute is outlined in [Human Resources Code, Chapter 115](#).

Executive Summary

The Texas Governor's Committee on People with Disabilities (GCPD) submits this report to the Governor and the 88th Texas Legislature on recommended changes in state laws and policies relating to people with disabilities. This report offers guidance on issues and challenges facing Texans with disabilities and recommendations to best address these challenges. The GCPD's enabling statute in Human Resources Code Sec. 115.009 requires that:

The committee serve as a central source of information and education on the abilities, rights, problems, and needs of persons with disabilities and, as necessary, issue reports; provide information to and advise the governor and the governor's staff on matters relating to the full participation of persons with disabilities in all aspects of life; and before the end of each even-numbered year, submit to the governor and to the legislature a report that includes any recommended changes in state laws relating to persons with disabilities.

In this report, the GCPD organizes the recommendations and challenges into targeted policy issue areas related to access, communications, education, emergency management, employment, health, housing, recreation, and transportation. These policy recommendations, with the support of all committee members, focus on vital issues important to Texans with disabilities, including:

- providing affordable, appropriate, and accessible housing;
- ensuring individuals with functional and access needs are included in local and state emergency management planning;
- increasing equal access to work, volunteer, and education opportunities;
- ensuring access to key health and long-term care services;
- ensuring accessible, affordable, reliable, and safe transportation; and
- fostering participation in civic, cultural, and social activities.

The GCPD strives to identify and support the unmet needs of individuals with disabilities that are often overlooked due to the low incidence rates of a specific disability population. In doing so, we encourage the Texas Legislature to invest in programs that will make the maximum impact in improving the lives of Texans with disabilities. We recommend a broad, coordinated approach to policy adoption and implementation, as issues and challenges are often interrelated.

One of the most important facets of the GCPD's work is identifying and amplifying the voices of Texans with disabilities. In doing so, we gathered policy input from public hearings at the GCPD's quarterly meetings, listening

sessions with disability stakeholder groups, staff research, and input from committee-directed interagency workgroups on service animals, educational interpreters for Deaf students and guardianship reform. The recommendations in this report represent the collective efforts of GCPD committee members and staff who held nine quarterly meetings across the state and dozens of subcommittee meetings on specific issue areas with input from six state agency ex-officio members. Over one-thousand hours of committee research and deliberation yielded the recommendations in this report.

With the potential for more state resources available in the next biennium, the GCPD has identified vital investments in programs and services that can make the most significant impact on the future of Texans with disabilities. These recommendations offer an opportunity for our state to assess and plan for unmet challenges. The GCPD highlights the biggest need for more investment in long-term care services for Texans with disabilities by recommending funding a substantial increase in community attendant care wages and benefits competitive with prevailing market wages to attract and retain personal care attendants covered by state Medicaid waiver programs while facilitating consumer-directed care. The GCPD also encourages our state to invest in the establishment and funding of a support service provider/co-navigator (SSP/CN) program to assist Texans who are DeafBlind who have significant challenges and lack any public program to assist them in accessing their community.

Some of the committee's greatest efforts have identified education reforms and proposed changes to Texas Education Code to protect vulnerable students, increase literacy support for students who are blind and students with dyslexia, and ensure that every student with a disability receives transition planning services to ensure a successful transition to work and/or post-secondary education.

The GCPD encourages members of the Texas Legislature to support the many policy recommendations within this report that will help people with disabilities best lead more independent and productive lives. As noted in Governor Abbott's 2022 ADA Proclamation: *Through continued commitment to fairness and equality of opportunity, we can ensure a better, brighter future for all residents of the Lone Star State and together, we can work to create a state that is accessible and inclusive for all Texans.*

Respectfully submitted,

Ron Lucey
Executive Director

Policy Recommendations by Issue Areas

Access

Broadly speaking, access refers to ensuring people with disabilities can enter and use the same places and services as people without disabilities. GCPD monitors issues related to physical and programmatic accessibility—including things like accessible voting, parking, and service animals. The Americans with Disabilities Act (ADA) highlights the importance of eliminating structural and architectural barriers to ensure buildings and other facilities are readily accessible to people with disabilities. To that end, buildings and other facilities in Texas are subject to compliance with [Texas Accessibility Standards \(TAS\)](#). These standards are governed by the Texas Department of Licensing and Regulation (TDLR), and mirror those required by the ADA and the 2010 ADA Standards for Accessible Design.

Policy Recommendations

Service Animal Issues and Proposed Solutions

People are used to encountering service animals in public places. However, state, and federal laws and regulations on service and assistance animals are often misunderstood by businesses and the public. For example, the terms “service animal,” “assistance animal,” “emotional support animal” and “comfort animal” are used interchangeably. GCPD receives questions from both businesses and individuals concerning service animals, such as how to distinguish between a service animal, an assistance animal, and a pet. Certification and licensing for service animals is not required by law and only two questions can be asked of service animal owners: 1) Is the animal a service animal required because of a disability? and 2) What work or task has the animal been trained to perform? When a disability is not evident, the person may be challenged with inappropriate questions and be asked to leave an establishment. GCPD recommends that the Texas Legislature clarify terminology in Human Resources Code Chapter 121 to align with applicable federal laws regarding service animals and emotional support animals and reduce confusion among members of the public, business owners and housing providers regarding the different rights and responsibilities of service animal handlers and emotional support animal owners. Appendix A of this report offers improved language to HRC Chapter 121.

The public is skeptical toward service animals due to the ease with which an individual can purchase dog vests and accessories identifying an animal as a service animal. Websites, including eBay and Amazon, sell certificates, badges, ID cards, vests, leashes, collars, dog tags and other accessories that can be used to indicate any dog is a “service dog,” and “emotional support

dog,” or a “seizure alert dog” with no proof of an animal’s training or abilities. Online “registries” will certify a pet as a “service dog” or “therapy dog” or “emotional support animal.” When these instances of fraud occur, it is harder for someone with a genuine need who is accompanied by a trained service animal to be acknowledged as using a legitimate and lawful accommodation.

To help address a lack of public awareness about the rights of individuals with service animals and applicable laws the Texas Legislature enacted a requirement in [Human Resources Code 121.008\(b\)](#) to provide for mailings of educational materials on service animals once a year to public facilities and businesses. To ensure this mandate is fulfilled, responsibility was assigned to a cooperative effort between “state agencies responsible for the rehabilitation of persons with disabilities”¹ and “[t]he comptroller, the secretary of state, and other state agencies that regularly mail forms or information to significant numbers of public facilities and businesses operating within the state.”

Recommendation 1.1: Designate the Governor’s Committee on People with Disabilities with the lead coordination responsibility among state agencies with the annual distribution of service animal education materials to public facilities and businesses operating within the state.

Recommendation 1.2: Clarify the difference in state law between the terms “service animal” and “assistance animal” in the Human Resources Code Sec. 121.002. Remove “approved” from the term “approved trainer” in the Human Resources Code Sec. 121.003(i) as the U.S. Department of Justice confirmed that individuals may train their own service animal under the Americans with Disabilities Act and no state agency is designated to approve service animal training. See Appendix A of this report.

Recommendation 1.3: Ensure effective training of law enforcement regarding service or assistance animals and their legitimacy.

Recommendation 1.4: Increase the penalty of fraudulent representation of service or assistance animals and include additional penalty options such as community service and taking a court-ordered disability public awareness class.

Recommendation 1.5: Designate a state agency to work in collaboration to create public awareness training/classes (i.e., Texas Workforce Commission-Vocational Rehabilitation Services, GCPD) and support a robust public education campaign regarding service and assistance animals.

¹ 121 Tex. Human Resources Code 121.008(b). Accessed on November 12, 2020: <http://www.statutes.legis.state.tx.us/docs/HR/htm/HR.121.htm>

Recommendation 1.6: Adopt criteria to reduce fraud for healthcare practitioners issuing a letter for an emotional support animal. Healthcare practitioners must be prohibited from providing documentation relating to an individual's need for an emotional support dog unless they:

- hold a valid, active, license to provide professional services within the scope of the license in the jurisdiction where the documentation is provided;
- establish a client-provider relationship with the individual for at least 30 days prior to providing the documentation;
- complete a clinical evaluation of the individual regarding the need for an emotional support dog; and
- provide notice to the individual that knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor. Violating these requirements subjects the healthcare practitioner to discipline from the licensing board.

Recommendation 1.7: Require that a person or business that sells or provides a certificate, identification, tag, vest, leash, or harness for an emotional support animal must provide a written notice to the buyer or recipient on applicable laws and penalties for misrepresenting the animal as a service animal.

Recommendation 1.8: To tackle ESA fraud a person or business that sells or provides a dog for use as an emotional support dog will have to provide a written notice – in at least 12-point bold type, on the receipt or a separate paper – to the buyer or recipient of the dog stating that:

- the dog does not have the special training required to qualify as a guide, signal, or service dog;
- the handler of the dog is not entitled to the rights and privileges accorded by law to the handler of a guide, signal, or service dog; and
- knowingly and fraudulently representing oneself to be the owner or trainer of any canine licensed as, to be qualified as, or identified as, a guide, signal, or service dog is a misdemeanor.

Lead On! Transit Amenity at the Capitol Complex

Words cannot describe the contributions of Justin Dart to Texans with disabilities and the national disability rights movement. Dart was born on August 29, 1930, in Chicago, Illinois, went to college at the University of Houston and made Texas his permanent home in 1974, where he immersed himself in local disability activism. He served on the GCPD from 1980 to

1985 including serving as the first chairperson of the Committee. Dart's disability rights work in Texas became a pattern for what was to follow nationally, the empowerment of people with disabilities.

In 1981, when President Reagan appointed Dart to be the vice-chair of the National Council on Disabilities, the Council drafted a policy that called for national civil rights legislation to end the centuries old discrimination of people with disabilities. For 30 years, Dart was a leader of the international disability rights movement and a renowned human rights activist, widely recognized as "the "father of the Americans with Disabilities Act (ADA)." Dart was on the podium on the White House lawn when President George H.W. Bush signed the ADA into law on July 26, 1990.

Dart is widely known for his call to action, "Lead On!" His final wishes were to not have a building or facility named in his honor. However, Dart's family agrees his story and the state's contribution to the passage of the ADA is important and must be shared with future generations of Texans. The 88th Texas Legislature should pay homage to the life and memory of Justin Dart and name the new transit amenity center at 207 W. 14th Street in the Capitol Complex, the "Lead On! Transit Amenity," in his honor.

Recommendation 1.9: Work with the State Preservation Board, the Texas Facilities Commission, and the 88th Texas Legislature to pass a concurrent resolution that describes the life and contributions of Justin Dart leading to the passage of the ADA and resolves to name the capitol complex transit amenity the "Lead On!" Transit Amenity in his honor.

Universal Changing Places

People who are non-ambulatory or who have self-care issues such as catheters, colostomies, or incontinence issues, need a safe and clean place to change or be changed. No one should have to be lain on a public restroom floor. A change in state law is needed so that large, new construction projects include a minimum of one Universal Changing Place at venues of public accommodations. Examples include:²

- places of exhibition, entertainment, or gathering – movie theaters, performance theaters, concert halls, auditoriums, convention centers, sports arenas, and stadiums;
- shopping centers, shopping malls or stores of at least 40,000 square feet;
- places of public display or collection – museums, libraries, and galleries;
- places of recreation – parks, zoos, and amusement parks;

² Universal Changing Places, (2019). "Universal Changing Places: Our Campaign." Retrieved January 2020 from <https://www.universalchangingplaces.com/>

- places of education – elementary, secondary, undergraduate, and postgraduate private or public schools;
- social service centers – senior centers and homeless shelters;
- public buildings or facilities – state and local government buildings, rest areas, and state parks;
- stations used for public transportation – airports, depots, and bus stations; and
- professional offices of healthcare providers – hospitals and rehabilitation centers.

Recommendation 1.10: Amend Chapter 469 of the Government Code, Elimination of Architectural Barriers, to adopt the Texas Accessibility Standards (TAS) to effectuate changes for Universal Changing Places. The Texas Department of Licensing and Regulation (TDLR) may develop rules to implement accessibility standards for adult changing.

Adult Changing Table at the Texas Capitol

People who are non-ambulatory or who have self-care issues such as catheters, colostomies or incontinence issues need a safe, clean place to change or be changed. No one should have to be lain on a public restroom floor. According to the State Preservation Board, the Texas Capitol building receives over one million visitors a year, including many who would benefit from the availability of an adult changing table. The Texas Capitol is referred to as belonging to all Texans and everyone should feel welcome. With additional funding, the State Preservation Board may install one adult changing table in an existing family restroom to meet the toileting needs of people with disabilities.

Recommendation 1.11: Work with the State Preservation Board to install an adult changing table within the Texas Capitol building.

Communications

Communications encompasses a broad range of topics, from ensuring web accessibility of state websites and documents to ensuring American Sign Language interpreters are present at press conferences. While there is interplay between all the GCPD's issue areas, communications are arguably the foundation upon which all others are built. Without effective communication things like access and emergency management are impossible. Applying for a job, attending a public meeting, speaking with a doctor – all of these require communication in the medium most accessible to the person with a disability.

U.S. Department of Justice further defines [effective communication](#), noting state and local governments are required to ensure "whatever is written or

spoken [is as] clear and understandable to people with disabilities as it is for people who do not have disabilities.”³ Effective communication techniques will vary depending on the person, their disability, and the environment. While advances in digital technology play an ever-increasing role in mediating communication (such as being able to communicate via text if an American Sign Language interpreter is not immediately available), we must make sure these new technologies themselves are accessible.

Policy Recommendations

Support Service Providers/Co-Navigators

Several years ago, Deaf advocacy groups approached GCPD to express concerns over DeafBlind Texans being unable to independently access their community due to a lack of available support services. In response, GCPD prepared a report on the status of Support Service Providers/Co-Navigators (SSPs/CNs) in Texas. Issues on SSP/CN services for the DeafBlind community can crossover between communication and health. After an extensive review of these services in Texas and across the country, GCPD prepared eight recommendations for establishing a program that funds SSP/CN services in Texas. The full [report](#) and discussion on each recommendation can be found on GCPD’s website. Policy recommendations were extracted from the SSP/CN report and are provided as follows:

Recommendation 2.1.1: Establish a formalized SSP/CN program within HHSC, including training for providers. This will ensure services are provided in a standard, consistent manner.

Recommendation 2.1.2: Establish the following eligibility criteria for the program:

- individuals who meet the definition of DeafBlind as defined by HHSC; and
- individuals who meet the financial criteria required for the Deaf Blind with Multiple Disabilities Waiver of a monthly income not greater than 300 percent of the federal poverty level.

Recommendation 2.1.3: Establish a pay rate for SSP/CN providers by rule. Pay should be based on SSP-level training requirements and ASL fluency. GCPD recommends a starting wage of \$20 per hour based on the national average. This is comparable to the 2019-2020 State of Texas Salary Schedule for an Interpreter I position.

³ U.S. Department of Justice, Civil Rights Division (September 14, 2009). *Chapter 3, General Effective Communication Requirements Under Title II of the ADA*. Accessed on November 1, 2020: <https://www.ada.gov/pcatoolkit/toolkitmain.htm>

Recommendation 2.1.4: Establish a voucher program to pay for SSP/CN services administered by HHSC.

Recommendation 2.1.5.: Appropriate ongoing funding for the SSP/CN program.

Recommendation 2.1.6: Establish an initial proposed annual budget of \$584,400. This cost is derived as follows:

- Estimated maximum number of hours per month for services to one individual (e.g., grocery shopping, attendance at a community event): 5 hours per week or 20 hours per month equals 240 service hours per year per person.
- 5 percent of the estimated 2,000 people who are DeafBlind, and not receiving services through Medicaid, will use SSP/CN services equates to 100 individuals served.
- Calculation for annual cost of program is \$528,000.
- Administrative costs for the program (approximately 10 percent) are \$56,400.

Recommendation 2.1.7: Establish the fee for service by rule to facilitate future changes.

Recommendation 2.1.8: Develop an initial advisory committee to create the program, including individuals who are DeafBlind, SSPs/CNs, GCPD, and other organizations that serve individuals who are DeafBlind.

Resource Specialists for Deaf and Hard of Hearing Texans

Following the sunset of the Texas Department of Assistive and Rehabilitative Services (DARS) and merger of the Office for Deaf and Hard of Hearing Services (ODHHS) into HHSC, ODHHS had its 34 Resource Specialists reduced to 18. Communities such as Beaumont, Wichita Falls, Abilene, Odessa, Midland, and others now go without the services provided by these specialists. The Resource Specialists Program provides services for people who are Deaf or Hard of Hearing, as well as to government agencies, service providers, employers, and private entities. Regional service providers offer services statewide at no cost to individuals through contracts with HHSC ODHHS. More information about the Resource Specialist program can be found at [Deaf and Hard of Hearing \(DHH\) Technology Specialists](#) and the [DHH Access Specialists](#).

Examples of work performed by the specialists include helping Texans who are Deaf or Hard of Hearing to:

- receive effective communication in hospital settings by helping hospitals understand the benefits and limitations of video remote interpreting and how to obtain qualified interpreters;
- work with an attorney to ensure equal access to the justice system;

- respond and recover from disasters by establishing social media communications, uploading information in sign language so people who are Deaf and Hard of Hearing know where to go during an emergency and how to obtain recovery information (e.g., Harris County’s Hurricane Harvey [Deaf Emergency Response Team](#));
- ensure their public safety by training law enforcement how to interact with people who are Deaf or Hard of Hearing;
- maintain independence by providing classes on self-advocacy for individuals who are Deaf or Hard of Hearing;
- access state agency programs and services by serving as a resource to state agencies, for example, assisting Early Childhood Intervention (ECI) with connecting parents to sign language classes, and working with TWC vocational rehabilitation (VR) counselors to assess technology needs of VR customers to ensure appropriate assistive technology services are provided; and
- age in place in the community by working with senior citizens who are Deaf to meet their in-home communication needs such as knowing when someone is at the door, the phone is ringing, or how they communicate with family members through assistive technology.

As the population of individuals who are Deaf or Hard of Hearing in Texas grows, so does the demand for services. ODHHS services were cut completely in HHSC Regions 2, 5 and 9, a 75-county area.

Recommendation 2.2: Restore the number of contracted Resource Specialists from 18 to 34 specialists through full funding of the HHSC Office of Deaf and Hard of Hearing Services Resource Specialist Program. Explore collaborative funding between HHSC and Texas Workforce Solutions Vocational Rehabilitation Services where contracted resource specialists could support vocational rehabilitation services for Deaf customers and transition-age youth.

Strengthening Certified Sign Language Interpreter Interagency Contracts

The Health and Human Services Commission, Office of Deaf and Hard of Hearing Services (ODHHS) contracts with interpreter and Communication Access Realtime Translation (CART) referral agencies around the state to provide communication access services for persons who are Deaf or Hard of Hearing to state agencies that contract with ODHHS. By doing so, state agencies have access to the rate HHSC has negotiated with referral agencies statewide. This can result in administrative efficiencies and cost savings for participating state agencies. Noncertified or unqualified interpreters have

been used for assignments, which can result in miscommunication (See: [Communication Services for State Agencies](#)). While ODHHS provides a list of recommendations for the qualifications of interpreters in various settings, there is no requirement to follow the recommendation. Thus, interpreter agencies who contract with HHSC/ODHHS are allowed to use uncertified and/or unqualified interpreters.

Recommendation 2.3: GCPD recommends the HHSC ODHHS amend its sign language contracts used to provide interpreters for state agencies to require that interpreter agencies only provide a certified interpreter at a level appropriate to the job assignment. Failure to provide a certified interpreter may result in cancellation of the contract with a provider for a repeated violation.

Ensuring Appropriate Placement of Children - Placement of Children Who Are Deaf in Foster/Adoption Care Settings with Language Access

Children who are Deaf in the foster care system are not a frequent occurrence, but the need for placement in homes that offer communication access is vital. The GCPD knows from constituent testimony children are not always identified early in the DFPS conservatorship process as a child who is Deaf or Hard of Hearing and early identification is critical. The use of interpreters qualified to interpret for DFPS situations are paramount. GCPD recognizes the improvements DFPS has made to policies and training regarding Deaf children in conservatorship. DFPS has worked collaboratively with GCPD for the past four years on these issues. To build on these successes and ensure a brighter future for Deaf children in conservatorship, we recommend the following policies.

Recommendation 2.4.1: DFPS should designate a statewide single point of contact and subject matter expert on Deafness who has fluent sign language skills (ASL, SEE, etc.) to work with CPS caseworkers on cases involving children who are Deaf or Hard of Hearing. The DFPS staff resource should:

- help identify appropriate communication resources;
- help identify the needs of the child including ability to identify additional disabilities or challenges;
- serve as a training resource; and
- serve as a resource to review policies and their potential impact on Deaf or Hard of Hearing children and their families.

Recommendation 2.4.2: Work with the Texas Legislature to restore funding to FY 2015 levels for the Deaf and Hard of Hearing Resource

Specialist contracts at HHSC to establish statewide coverage as an additional resource for DFPS families and caseworkers. Explore cost sharing with HHSC to support restoration of this state-wide resource to 2015 funding and coverage levels.

Recommendation 2.4.3: Require all DFPS interpreter service coordination be coordinated by HHSC’s Office for Deaf and Hard of Hearing Services (ODHHS) to ensure quality interpreter services are provided. Based on input from DFPS, ODHHS shall determine the qualifications to work as a DFPS interpreter.

Recommendation 2.4.4: Require HHSC to work in partnership with DFPS to monitor, monthly, the number of children identified by DFPS as Deaf or Hard of Hearing and compare this number with the Managed Care Organization database on DFPS children identified during their first 30-day Medicaid appointment as a child with hearing loss.

Establishing Requirements for Certified Medical Sign Language Interpreters

Effective communication is critical to the successful delivery of healthcare services. The Joint Commission on Accreditation of Healthcare Organizations—the nation’s oldest and largest standards-setting and accrediting body in healthcare—notes the importance of working to improve communication between healthcare professionals and patients.⁴ Successful communication with patients involves a strong interpersonal relationship, recognizing language needs, and an understanding of cultural issues. Effective communication happens when there is a joint understanding of meaning where patients and healthcare providers exchange information, and patients can participate actively in their care, ensuring the responsibilities of both patients and providers are clear. Successful communication takes place only when providers understand their patients, and patients receive accurate, timely, complete, and unambiguous messages from providers in enabling them to participate in their care.⁵

Communication can become difficult for Deaf individuals requiring sign language interpreters. Federal guidance prohibits practices from requiring patients to bring their own interpreters to a healthcare setting, meaning these

⁴ The Joint Commission (2011) *R3 Report Issue 1: Patient-Centered Communication*. Accessed November 13, 2020: <https://www.jointcommission.org/standards/r3-report/r3-report-issue-1---patient-centered-communication/>

⁵ The Joint Commission (2010). *Advancing Effective Communication, Cultural Competence, and Patient- and Family-Centered Care: A Roadmap for Hospitals*. Accessed on November 13, 2020: <https://www.jointcommission.org/-/media/tjc/documents/fact-sheets/patient-centered-communications-1-24-20.pdf?db=web&hash=2ACF2A285B1DAEA84089A74B448E8205>

facilities must be able to provide patients qualified interpreters. It is important interpreters in all settings be proficient, but it is most crucial in a healthcare setting as any misunderstandings may have a direct impact on medical decision making and outcomes. Any sign language interpreters assisting a person who is Deaf or Hard of Hearing must be able to demonstrate essential knowledge, skills, and abilities so that communication is accurate, effective, and impartial. It is also important that specialized vocabulary or terminology or phrases are interpreted correctly to the patient. While [Texas Government Code Chapter 57](#) provides that court interpreters be certified in the legal field, there is currently no such requirement for interpreters in a medical setting. Establishing such a requirement would ensure better healthcare outcomes for people who are Deaf or Hard of Hearing.

Recommendation 2.5: Establish requirements for certified medical interpreters that are like those for certified court interpreters.

Conveying Timely and Critical Public Health Information in American Sign Language

The recent COVID-19 pandemic revealed opportunities to strengthen the delivery of timely and critical public health information in American Sign Language (ASL). Deaf Texans often encounter cultural and language barriers to accessing complex information in a text format rather than ASL, their native language. As a result of these barriers, Deaf Texans could not always obtain equal access to vaccination and public health information. Although federal and state accessibility laws governing information and communication technology (ICT) may not require that public entities translate their text communications to an equivalent ASL video format, this approach is among the most effective communication methods for ensuring the delivery of critical and time-sensitive public health and emergency information to quickly reach the greatest number of Deaf Texans. According to the [October 2018 Health Promotion International Journal](#), *Health literacy is a key determinant of health outcomes and is influenced by health communication. Health communication is a key public health issue that impacts low-literate patients, including Deaf people who use sign language. Access to health communication allows Deaf individuals to effectively use health information to engage in preventative healthcare techniques, seek appropriate medical attention when symptoms arise, and participate in physical activities to reduce or avoid significant health risks.* During the pandemic many people who rely upon American Sign Language (ASL), visual or tactile users (DeafBlind), could not get access to information on vaccine availability, how to make informed decisions about getting vaccinated, and how to sign up for the vaccine and understanding the need to return for the

follow up booster. Much of this information was being coordinated through the Department of State Health Services (DSHS).

Recommendation 2.6: The Department of State Health Services (DSHS) with the HHSC Office for Deaf and Hard of Hearing Services should continue to formalize and strengthen processes to improve the coordination and timeliness of critical public health information disseminated in ASL.

Education

Texas schools provide for the free, appropriate public education of students with disabilities determined eligible for special education services. Students with disabilities receive special education services and supports under the [Individuals with Disabilities Education Act \(IDEA\)](#) and [Section 504 of the Rehabilitation Act of 1973](#) administered by the Texas Education Agency (TEA) and reflected in Texas law.

In 2004 the reauthorization of IDEA placed emphasis on transition services for students with disabilities, raising expectations for students through accountability standards in preparing for further education, employment, and independent living.⁶ In partnering with the education system to ensure proper implementation of the transition process, students with disabilities can succeed in gaining the knowledge and skills they need to become an adult and pursue post-secondary education or vocational training, employment and independent living.

GCPD's focus on equal access to education for students with disabilities aligns with Governor Abbott's Tri-Agency Workforce Initiative for improved outcomes for students to enter post-secondary education or training and be better prepared for the Texas workforce. Ensuring such outcomes requires closer coordination and planning between K-12 local education agencies, local Texas Workforce Solutions vocational rehabilitation providers and post-secondary education institutions.

The challenge for the education system is to provide services to students with disabilities based on their needs, considering their preferences and interests, providing for annual plan updates, and identifying goals that are appropriate based on needs assessments. As students with disabilities prepare for post-secondary education and the workforce, they must have equal access to the standard curriculum used by their non-disabled peers including access to digital learning platforms and e-learning tools.

⁶ 34 US-C. Education, Section 300.1. Accessed on November 13, 2020: http://www.ecfr.gov/cgi-bin/textidx?SID=0f7bfa2f3d55b0e16b50c93a422d5b9e&mc=true&node=se34.2.300_11&rgn=div8

Policy Recommendations

Expanding Testing Options for Teachers of the Deaf Working with Students Who Use Sign Language

If a teacher of the Deaf or Hard of Hearing (TODHH) is assigned to a class made up predominantly of students who use sign language, that teacher must pass a credentialing test. Currently, these testing options are limited to either the Texas Assessment of Sign Communication (TASC) or the Texas Assessment of Sign Communication- American Sign Language (TASC-ASL).

There are few opportunities for teachers to take the TASC/TASC ASL test during the year. Adding additional psychometrically valid credentialing options may allow teachers more options to obtain an appropriate credential to validate their sign language competency and work with students who only use sign language. A teacher could also complete certification requirements through an SBEC-approved educator preparation program, provided the program assesses proficiency in the communication method and verifies it to be at an appropriate level.

Passage of the TASC or TASC-ASL exam is required for teachers working with students in K-12 who use sign language, but some itinerant teachers holding TODHH certification have not taken these exams. All teachers should follow the TEA rule on credentialing.

Recommendation 3.1: TEA should allow teachers who want to teach children who use sign language to get their credentials by passing one of the following tests:

- The Texas Assessment of Sign Communications (TASC);
- The TASC American Sign Language (TASC-ASL);
- HHSC's Texas Board for Evaluation of Interpreter certification at Basic, Advanced, Master, Level II, III, IV or V; or
- Sign Communication Proficiency Inventory, Advanced level or higher.

Recommendation 3.2: TEA should require itinerant teachers of the Deaf who work with students who use sign language to pass the TASC, TASC-ASL, or another test recognized by the agency. For teachers who are not credentialed, TEA should create a staff development plan with the State Board of Educator Certification.

Monitoring of Teachers of the Deaf TASC/TASC-ASL Credential

There are teachers who hold Teacher of the Deaf certification who have not passed the TASC or TASC-ASL exam and are working with students who rely on sign language to communicate. Based on Texas Administrative Code Chapter 231, each school district determines if the TASC or TASC/ASL is

required when moving a teacher to a class of Deaf, signing students. By conducting a routine audit of teachers with Teacher of the Deaf certification currently working with students who use sign language, TEA can ensure teachers have passed the TASC, TASC-ASL, or another test recognized by the agency.

Recommendation 3.3: Require a routine audit of teachers with Teacher of the Deaf certification currently working with students who use sign language to ensure teachers have passed the TASC, TASC-ASL, or other test recognized by TEA.

Use of Certified Sign Language Interpreters in K-12 Public Schools

For Texas Deaf students attending K-12 public schools their education is not only dependent on the quality of their teacher's instruction but also the quality of their sign language interpreter. A lesson given by the best math or science teacher in the district will not have the same educational impact for a Deaf student who has been assigned an unqualified sign language interpreter. Interpreters are required to hold certification if certification exists in the mode of communication used by the student. Adding this requirement to [Chapter 231.645 of the Texas Administrative Code](#) will help protect a Deaf student's right to a free and appropriate public education. This Chapter covers requirements for Public School Personnel Assignments, Subchapter G. Paraprofessional Personnel, Administrators, and Other Instructional and Professional Support Assignments, stating, "A person may not be employed by a school district to perform services within the following professions unless the person holds the appropriate credential or license from the appropriate state agency for that profession. Educator certification is not required for a school district assignment to provide services that are within the scope of that profession." Adding sign language interpreters to this rule reinforces the statutory requirement found in [Texas Education Code Chapter 29.304](#).

Sec. 29.304. QUALIFICATIONS OF PERSONNEL. (a) A student who is Deaf or Hard of Hearing must have an education in which teachers, psychologists, speech therapists, progress assessors, administrators, and others involved in education understand the unique nature of Deafness and the hard-of-hearing condition. A teacher of students who are Deaf or Hard of Hearing either must be proficient in appropriate language modes or use an interpreter certified in appropriate language modes if certification is available.

Recommendation 3.4: Add language to the current rule: An assignment to provide sign language interpreters requires the interpreter hold certification per TAC Rule 89.1131(d) where certified interpreters are available.

Salary, Recruitment, and Retention of K-12 Qualified Educational Sign Language Interpreters

In Texas, the Regional Day School Programs for the Deaf (RDSPDs) struggle with recruitment and retention of qualified interpreters. In May 2022, over 90 sign language interpreter vacancies exist in 27 of 53 programs. This issue is not new, the RDSPD's have struggled to recruit and retain qualified interpreters for over 20 years. GCPD circulated a survey to ~1800 certified interpreters, plus the interpreter training programs. There were 674 responses received describing reasons for opting out of K-12 work, from simply no interest in the K-12 environment, to inadequate pay and poor working conditions. The RDSPS's are funded \$33,133,200 and this funding amount has not increased since 1996 ([LBB Report 75th Legislative Session](#)).

According to GCPD's survey data the most common reasons sign language interpreters did not choose to work in the educational field or left the profession are:

- lack of support from administration,
- low salaries – educational interpreter pay does not reflect industry standards,
- administration did not understand their role,
- interpreters are not treated as professionals,
- interpreters did not get needed breaks (interpreted classes back-to-back), and
- interpreters are asked to do other things than interpret – such as managing a student's behavior, and more.

GCPD Survey Results indicate that educational interpreter pay average \$27.62 per hour while interpreters working under agencies, freelance, or legal, salaries average \$37-\$72 per hour.

Recommendation 3.5: The legislature should increase the state allocation to Regional Day School Programs for the Deaf (RDSPDs) at a level to allow districts to compete with the interpreter market for educational interpreters. The current RDSPD state allocation of \$33,133,200 has not changed since 1995, despite the increase in expenses to run the programs and the increase in the number of students served.

Recommendation 3.6: Establish a pay rate for certified educational interpreters by rule. The region's cost of living should be considered when determining the minimum salary for certified deaf education interpreters.

Recommendation 3.7: Education Service Centers (ESCs) should promote the understanding of the complexity of sign language interpreting, the necessity of qualified interpreters for language acquisition, and the communication needs of students who are deaf or hard of hearing to school administrators.

Recommendation 3.8: School districts should develop effective recruitment strategies for interpreters that best fit the local community, which may include:

- incentive programs,
- stipends,
- training opportunities,
- mentoring opportunities,
- reimbursement for further education, and
- visiting ASL programs at local community colleges.

A more detailed description of GCPD's educational interpreter recommendations can be found on [the GCPD's webpage](#).

Educational Representative for Adult Students with Disabilities

In the 2018-2019 school year, there were 23,054 students with disabilities ages 18 to 21 attending Texas public schools. Texas does not collect data on how many of these adult students with disabilities need an educational representative.

Recommendation 3.9: Amend the Texas Education Code to create a procedure for school districts to determine whether an adult student with a disability can provide informed consent for their educational program.

Prohibited Use of Informal, Undocumented Suspensions, Early Pickups, or Shortened School Days for Students with Disabilities

According to a January 2022 [Report from the National Disability Rights Network](#), it is common practice for school personnel to contact parents when their child is having behavior issues at school or if teachers are unsure of how to support students with disabilities. When this communication occurs, the school often requests or encourages the parent to pick up their children before the end of the school day. These early pickups, which are not considered official out-of-school suspensions, disproportionately impact students with disabilities, excluding children from the classroom and from other important periods of academic and social interaction with teachers and peers. Students, parents, educators, and other advocates are increasingly concerned about this practice for several reasons:

- These school-initiated early pickups are often recorded as unexcused absences, resulting in truancy notices to parents.
- Parent employment is also put at risk from repeatedly taking off work to pick up their child.
- Unrecorded parent pick-ups may allow schools to circumvent federally required evaluations and services for students with disabilities, which are triggered after being removed from class for a certain number of days.
- Since out-of-school suspensions were eliminated for pre-k through 2nd grade students in 2017, parents report that schools are utilizing early pickups instead, which are not documented as official suspensions.
- Early pickups, or shortened school days, deny FAPE to students with disabilities.

Collectively these practices are known as “Shadow Discipline.” Their practice in Texas schools is described in the [February 2019 Texas Appleseed Report](#).

Recommendation 3.10: Amend Texas Education Code Sec.25.0875 to clarify the prohibited use of informal, undocumented suspensions and certain releases of students with disabilities to parents after school-initiated communication.

Prohibiting Use of Certain Restraints on Special Education Students Enrolled in Public Schools

Physical restraints are intended to be a last resort when responding to a student’s behavior to protect the student when there is risk of imminent harm to the student or others. However, there has been long-standing and growing reliance on restraints as a disciplinary tool. Moreover, prone and supine restraints restrict breathing and can cause serious bodily injury and death.

Recommendation 3.11: Amend Title 19 Texas Administrative Code §89.1053 to ban prone and supine restraints and prohibit restraint for property damage. Staff who have not been trained in restraints are not allowed to restrain any students, unless there is an emergency as defined by statute and with the following limitation:

- restraint must be limited to the use of such reasonable force as is necessary to address the emergency;
- restraint must be discontinued at the point at which the emergency no longer exists;
- restraint must be implemented in such a way as to protect the health and safety of the student and others; and

- restraint must not deprive the student of basic human necessities.

Reform and Expand Use of Cameras in Schools for Students with Disabilities

In 2015, the Texas Legislature expanded protection for students with disabilities in public schools by allowing video surveillance in certain special education classrooms. Video recordings have helped to document and verify inappropriate restraints and staff abuse of students with disabilities. Reform and expansion of the cameras in classrooms state law will further empower parents and protect students with disabilities. Improvements in the law are needed because harmful restraints continue to occur and arrests of school employees for attacks and injury of students with disabilities are increasing. According to data collected by the U.S. Department of Education for the 2017-18 school year, Texas public schools physically restrained 5,177 students with disabilities. In the 2017-18 school year, 486 students with disabilities in Texas schools were subjected to mechanical restraint.

Recommendation 3.12: Reform and expand the use of cameras in classrooms to further empower parents and protect students with disabilities to address harmful restraints and reduce injury of students with disabilities. Amend Texas Education Code Sec. 29.022 to:

- require schools to notify parents of cameras in classrooms law;
- extend retention period of camera footage; and
- ease restrictions/challenges many parents face when trying to access the recordings from the school and develop mandatory standards for placement of cameras in self-contained classrooms or isolated spaces on campus.

Reform and Expand the Texas Education Agency Do Not Hire Registry to Protect Students with Disabilities

In 2019, the Texas Legislature created the Do-Not-Hire Registry, an official state list of individuals who are ineligible for employment in Texas schools. The purpose of the Registry is to protect the safety and welfare of all students by preventing school districts from hiring teachers and other school employees after another district terminated them for abusing a student. Improvements are needed to the Registry because abusive restraints continue to occur and arrests of school employees for attacks and injury of students with disabilities continue. In 2021, the Texas Legislature expanded the Do-Not-Hire Registry to cover private schools. Additional improvements to the Registry should be implemented because abusive restraints and

arrests of school employees for attacks and injury of students with disabilities continue.

Recommendation 3.13: Expand the Texas Education Agency's Do Not Hire Registry by amending Tex. Educ. Code, Chapter 22.092, Subchapter C-1 to:

- expand mandatory listing on the Registry of educators who are convicted under Tex. Penal Code Sec. 22.04 (Injury to A Child, Elderly Individual, Or Disabled Individual);
- expand mandatory listing on the Registry of educators who engaged in a physical or mechanical restraint resulting in serious bodily injury or death of a student; and
- protect the safety and welfare of students with disabilities by preventing school districts from hiring teachers and other school employees after another district terminated them for abusing a student.

Special Education Finance Reform

Current State funding for special education is based upon a label of the classroom or placement assignment, which may or may not capture the true cost of serving each student. Special education is a service, not a place. However, the state special education funding system is based on a student's placement. Special education has evolved over the past quarter century and *where* a student is served is no longer indicative of *how* the student is served. Intensive – and costly – services and supports may just as well occur in a regular classroom as well as in a separate room. Funding should be allocated based on services the student receives, regardless of setting. The state special education allocation formula includes several complicated factors. The student's placement is only the starting point. Also problematic is that each setting, other than mainstream, is based on a contact hour multiplier. The contact hours are limited to 6 hours per day, or 30 hours per week, and are deducted from the student's proportionate adjusted basic allotment share. Removing contact hours from the calculations would be appropriate to make the system less complicated and easier to understand, and to get rid of the presumption that students with disabilities are only proportional pieces of a whole student since general education support and personnel are no less utilized when the student receives special education services and supports.

Special education has evolved dramatically since 1993. Most students with disabilities are now provided services in the general education classroom setting for most of their instructional day. This type of service, labeled as

mainstream, looks very different based on the individual student. Some students receive minimal supports in the mainstream setting while others receive very intensive services and supports such as modified instruction, co-teaching, assistive technology, and adult support. Special education weights must be revised to accommodate the types of services provided in today's settings.

Recommendation 3.14: Texas should transition special education funding from the current placement-based system of funding to a service intensity-based system, correlating funding to the number of services that the school district directly provides to a student with a disability. The premise is that if an LEA must do more for a student with a disability, then it is expending more resources on that student and the state financing system should recognize that and allocate state support accordingly.

Transition Planning for Students with Disabilities in the Public School System Served through Section 504 of the Rehabilitation Act

Students with disabilities in the public school system that are served through Section 504 of the Rehabilitation Act do not receive transition planning because they are excluded from the IDEA requirements that apply only to students in the special education program. According to the Texas Education Agency, there are currently 401,648 students covered under Section 504 of the Rehabilitation Act, but because the Texas Education Code does not address transition planning for students receiving services under Section 504, these students do not receive the necessary aid to successfully enter postsecondary education and the workforce. Adding an additional section to the Texas Education Code to include students covered under Section 504 of the Rehabilitation Act will ensure that all students with disabilities receive mandatory transition planning.

Recommendation 3.15.1: Establish adoption of a new section to the Texas Education Code Chapter 29 including mandatory transition planning for all students receiving services under Section 504 of the Rehabilitation Act to be implemented by the 2024-2025 school year. For each student with a disability, the Section 504 Committee must include:

- The parent or guardian of the student;
- A representative of the school system (Principal, Vice Principal, Counselor, District 504 Coordinator, Transition and Employment Designee (TED));
- Teacher(s) who are, or will be, working with the student;
- An individual who can interpret the meaning of evaluation data;

- A designated transition specialist;
- At the discretion of the parent, other individuals who have knowledge or special expertise regarding the student, including related services personnel as appropriate;
- A transition vocational rehabilitation counselor; and
- Whenever appropriate, the child with a disability.

Recommendation 3.15.2: The TEA commissioner shall by rule adopt procedures in consultation with the Tri-Agency Workforce Initiative and the Texas Workforce Solutions Vocational Rehabilitation program for compliance with federal requirements relating to transition services for students who are covered under Section 504 of this subchapter. The procedures must specify the way a student’s 504 committee must consider and, if appropriate, address the following issues in the student’s Transition Plan Process:

- appropriate student involvement in the student’s transition to life outside the public school system;
- if the student is younger than 18 years of age, appropriate involvement in the student’s transition by the student’s parents and other persons invited to participate by:
 - a) the student’s parents; or
 - b) the school district in which the student is enrolled.
- if the student is at least 18 years of age, involvement in the student’s transition to post-secondary education, vocational training or work by the student’s parents and other persons, if the parent or other person:
 - a) is invited to participate by the student or the school district in which the student is enrolled; or
 - b) has the student’s consent to participate pursuant to a supported decision-making agreement under Chapter 1357 (Supported Decision-making Agreement Act), Estates Code;
- appropriate postsecondary education options, including preparation for postsecondary-level coursework;
- an opportunity to apply for vocational rehabilitation beginning at the age of 14:
 - a) By age 14, the student and parents will be provided with information on Pre-Employment Transition Services (Pre-ETS) available for eligible and potentially eligible students through the Texas Workforce Commission Vocational Rehabilitation Services (TWC-VRS)
- an appropriate functional vocational evaluation;

- appropriate completion of necessary evaluations, including those required to receive accommodations for postsecondary education or the workforce;
- appropriate employment goals and objectives;
- an opportunity to participate in an appropriate work-based learning program and paid summer work experience before graduation;
- if the student is at least 18 years of age, the availability of age-appropriate instructional environments, including community settings or environments that prepare the student for postsecondary education or training, competitive integrated employment, or independent living, in coordination with the student’s transition goals and objectives;
- appropriate independent living goals and objectives;
- the use and availability of appropriate:
 - a) supplementary aids, services, curricula, and other opportunities to assist the student in developing decision-making skills; and
 - b) supports and services to foster the student’s independence and self-determination, including a supported decision-making agreement under Chapter 1357 (Supported Decision-making Agreement Act), Estates Code.

Recommendation 3.15.3: The commissioner shall require each school district to provide information on the pre-ETS available through the TWC-VRS to all potentially eligible students and parents/guardians on no less than a yearly basis the year the student with a disability becomes age 14.

Recommendation 3.15.4: The commissioner shall require each school district or shared services arrangement to designate at least one employee to serve as the district’s or shared services arrangement’s designee on transition and employment services for students covered under Section 504 under this subchapter. The commissioner shall develop minimum training guidelines for a district’s or shared services arrangement’s designee. An individual designated under this subsection must provide information and resources about effective transition planning and services, including each issue described by Subsection (a), and interagency coordination to ensure that local school staff communicate and collaborate with:

- students covered under section 504 of the Rehabilitation Act under this subchapter and the parents of those students; and
- appropriate local and regional staff of the:
 - Health and Human Services Commission;
 - Texas Workforce Commission;
 - Department of State Health Services; and

- Department of Family and Protective Services.

The commissioner shall review and, if necessary, update the minimum training guidelines developed under Subsection (b) at least once every four years. In reviewing and updating the guidelines, the commissioner shall solicit input from stakeholders.

Dyslexia Training and Intervention for Secondary Teachers

Struggling readers in secondary grades and upper elementary may not have access to teachers who can provide instruction to close the gaps by supporting and teaching foundational reading skills and strategies.⁷ Texas has taken great steps forward to identify and intervene for students with dyslexia and other reading difficulties. Screenings for dyslexia are required in kindergarten and first grades since 2018, and for 7th-grade students not passing the reading STAAR. A statewide Reading Academy passed in the 86th session requires all Kindergarten through third-grade general and special education teachers and principals to attend the teacher literacy achievement academy by 2023. Only special area teachers such as art, PE, and music are exempted. While screenings and elementary teacher training are important for current and future students, many students in Texas have not been identified with dyslexia or a reading disability and continue to struggle with reading in the secondary grade levels. Unfortunately, secondary teachers typically are not required to have pre-service training in foundational reading and reading interventions.⁸ Teachers in secondary focus predominantly on comprehension with less concentration on foundational reading skills and strategies.⁹

Policy Recommendation 3.16: Amend Texas Education Code Section 21.054 to expand the reading literacy academies to include additional educators in grade 4 and higher.

Studying Issues and Strategies to Strengthen Braille Literacy for Children Who Are Blind or Visually Impaired

According to January 2022 data from the Texas School for the Blind and Visually Impaired (TSBVI), the number of K-12 students who are identified as blind or visually impaired in Texas is 10,639. Among these students, the

⁷Camilla Magnusson et al. "To what extent and how are reading comprehension strategies part of language arts instruction? A study of lower secondary classrooms," *Reading Research Quarterly* 54 no. 2 (2018): 187-212, doi: <https://doi.org/10.1002/rrq.231>

⁸ Molly Ness "Increasing the inclusion of reading comprehension strategies in secondary content-area classrooms." *The Language and Literacy Spectrum*, no. 17 (2007): 3-13.

⁹ David Paige et al. "Reading fluency in the middle and secondary grades." *International Electronic Journal of Elementary Education* 7 no. 1 (2014): 83-96.

number of braille readers was only 460 students. More information can be found in the TSBVI report: [Registration of Students in TX with Visual Impairment & 504 Summary -2022 Statewide VI SPED Results](#). This annual data collection is prescribed by the American Printing House for the Blind and is tied to per student federal grant funding. Data limitations may not include students who access braille as a third medium. This survey only collects primary and secondary reading modes and many use braille as their third mode (after auditory and visual). In addition, some students receive braille instruction and materials, but because they may not be fluent, they aren't included in these numbers. "The vision of the Texas School for the Blind and Visually Impaired is that all students who are blind, low vision, or Deafblind will be empowered to lead productive and fulfilling lives. This is attainable through access to braille accommodations, materials, and instruction, which leads to academic success and future employment. Braille offers new perspectives, information, and inspiration as print does for others; allowing students to dream big and ensuring those dreams come true." More students need access to braille instruction and resources, and the teacher shortages across education are causing an even greater barrier to braille access. Nationally, for many years there has been a persistent decline in braille literacy among all age groups. Access to higher education and future career success for blind and visually impaired students depends upon literacy skills and a lack of braille literacy may be a barrier for many blind student's ability to access higher education and careers in the 21st century. Although other reading mediums are available for many of these students, STEM education success required to enter or complete post-secondary education may only be practical with braille math and literacy skills. The GCPD has held preliminary discussions with state agencies responsible for the health, education, and rehabilitation of blind students in Texas. This informal working group has identified the following goals for further study by the Texas Legislature to reverse the decline in braille literacy in Texas and thereby improve educational outcomes for blind students in Texas.

Recommendation 3.17.1: Establish a legislative Braille Literacy Study to include participation by the Texas Governor's Committee on People with Disabilities (GCPD), Texas Education Agency (TEA), Texas School for the Blind and Visually Impaired (TSBVI), Texas State Library Talking Book Program (TSL-TBP), Health and Human Services Commission Early Childhood Intervention Program (ECI) and the Blind Children's Vocational Discovery and Development Program (BCVDD) and other agencies and

organizations as necessary to carry out the purpose and functions of this study.

Recommendation 3.17.2: The study shall address:

- the evaluation of the Shortage of Teachers of the Visually Impaired (TVI) and the adequacy of TVI certification requirements, professional training and development and continuing education on braille literacy;
- the issue of TVI's not retaining Braille competency beyond test for certification and the requiring recertification after a certain number of years;
- the Braille course requirements for TVI's in the university curriculum;
- early identification of blind children ages birth – three;
- barriers to having the requirement that all doctor's refer kids to the State's Early Childhood Intervention Program (ECI) if identified as blind or visually impaired in the same way that Deaf or Hard of Hearing kids are referred;
- the adequacy of braille support for parents of blind children including braille information, resources, technology, children's books, and parental training;
- discussion of K-12 ARD committee requirements related to Braille and learning medium evaluations, including an analysis of IDEA requirements vs. Texas Education Code;
- optimal alignment and coordination of resources and strategies for braille education and literacy across all applicable state agencies and programs; and
- recommendations for changes to Texas laws, policies, or rules to optimize and increase the braille education for blind and visually impaired Texans.

Emergency Management

Texas is the second-largest state by geographic area and is the most disaster-prone state in the country. Over the last ten years, Texas has experienced thirteen [FEMA IA disasters](#). A total of 334 counties were impacted as a result. In 2017, Hurricane Harvey devastated the state, and it has been called the worst natural disaster in the state's history. Along with hurricanes, Texas also must contend with flooding, often caused by these tropical storms, as well as severe ice storms, tornadoes, wildfires, and drought.

The Governor's Committee on People with Disabilities (GCPD) works on all aspects of emergency management for people with disabilities, planning for

natural and man-made disasters. GCPD promotes the safety of people with disabilities by encouraging preparation for disability-related issues during a disaster. "Emergency preparedness" is a term used to describe a plan or the steps taken to get ready, before, during and after an emergency. Although the ADA does not specifically speak to these types of situations, its provisions apply to response by state and local government during an emergency. In planning for natural and man-made emergencies, people with disabilities have functional and access needs to consider that require additional assistance. The impact that a disability may have during a disaster must be considered by both the responder and the person with a disability. GCPD continues to work towards the identification and removal of physical and communication barriers that emerge before, during, and after an emergency.

Because of the frequency and severity of disasters, there is an imminent reality these forces will impede community lifelines which are necessary for human health and safety. Energy is not only a community lifeline, but it is also an emergency support function which requires interagency coordination for an effective response in disaster and emergencies according to FEMA Energy Annex¹⁰.

Texas' population continues to grow, as does the number of individuals who need backup power during an emergency. More people with life threatening health conditions are choosing to live in their homes, rather than facilities, because it is more cost effective and allows them to maintain as much independence as possible. As of December 2020, there were 10,530 utility customers on the utilities' critical care registries. Advances in technology and healthcare service delivery have better enabled these individuals to live independently in their personal homes. Millions of at-risk individuals, particularly older adults and those who are chronically ill, rely upon essential healthcare services and electricity dependent durable medical equipment (DME) and assistive technology devices, to do so. From local incidents, such as prolonged power outages, to large-scale public health emergencies, access to healthcare can be disrupted, rapidly putting these at-risk individuals into life-threatening situations within hours or days. Many may immediately seek assistance from emergency medical services (EMS), overwhelm hospitals and shelters, or both when seeking access to care in the event of prolonged power outages. Others may shelter in place, as they are unable to evacuate safely without assistance, putting them at risk. These situations lead to severe surges in healthcare demand and stress on public health, emergency management, first responder systems, and shelters; and

¹⁰ [Emergency Support Function #12 – Energy Annex \(fema.gov\)](#)

commonly lead to increases in adverse health outcomes for at-risk individuals impacted by the event.

After the February 2021 Winter Storm, a broad coalition of Texas cross-disability organizations came together to study the most effective ways to support people with critical power needs during a disaster who depend on electricity to power life-sustaining DME. This section of the report highlights the need for improved coordination and data sharing between all levels of government and local utility companies.

The Public Utility Commission (PUC) could instruct electric utilities to coordinate disaster response plans with the Texas Department of Emergency Management (TDEM). As part of its reforms, the 87th Legislature passed a mandate for TDEM to arrange for wellness checks on medically fragile individuals registered with the State of Texas Emergency Assistance Registry (STEAR). The PUC already has a working process for the electric industry to maintain a list of critical care and chronic condition customers who are dependent on electricity for life function¹¹. As a result, there is an intuitive efficiency in having the PUC and TDEM coordinate information exchange in the event of a disaster through a single database, for use in reaching those dependent on DME. The statutory authority to make a change in emergency preparedness by providing wellness checks on individuals dependent on electricity for serious health conditions already exists for those registered in STEAR ([SB 968](#)), of which only 84 STEAR data custodians have been identified in the state. The exchange of information during an emergency can be legally accomplished under existing privacy laws. There is an opportunity for coordination of local utility policies established at the PUC with the policies of local offices of emergency management and TDEM.

More comprehensive data integration and visualizations to support individuals with access and functional needs can also be achieved at the state and local level through coordinated planning and operations with local, state, and federal agencies and public utilities. Combining data sets from STEAR, utility critical care registries, and CMS emPOWER¹² data while implementing the option to expand the Texas emPOWER data set with HHSC Medicaid and CHIP data will provide an optimal data resource for planning and responding to the needs of individuals with life-sustaining DME power needs.

¹¹ Texas Admin. Code § 25.497 (2018).

¹²HHS.gov, "emPOWER in Action," Empower Program, accessed July 31, 2021, <https://empowerprogram.hhs.gov/in-action.html>

Integrating emPOWER Data is One Option for Mitigating the Risk.

In 2013, the Administration for Strategic Preparedness and Response with the Centers for Medicare and Medicaid Services (CMS) launched the HHS emPOWER Program to harness the power of Medicare Program claims data to protect health and save lives across the nation. The program initially included at-risk population data for those who relied on life-sustaining electricity-dependent DME and, in 2014, expanded to include chronically ill at-risk populations who relied on certain essential healthcare services, such as dialysis, as disaster-induced care disruptions led to surges in adverse health outcomes and stress on local EMS and hospitals. Since its inception, the program has continued to expand its at-risk population data and tools, training, and resources to help states and localities improve continuity of care and health outcomes for millions of at-risk individuals during all phases of an incident, emergency, or disaster. Currently, data from the HHS emPOWER Program Platform covers 4.2 million Medicare beneficiaries, of which 2.6 million have a claim for electricity-dependent DME, and 2.8 million have a claim for at least one of four healthcare services, that include outpatient facility-based dialysis, home oxygen tank services, home healthcare services, and home hospice care services.

The program provides data-driven tools that are readily meaningful, consumable, and actionable to support federal-to-community partners who have a broad array of roles or may volunteer to support emergency preparedness, response, recovery, and mitigation activities in their communities. Through continued partner engagement, the program has continued to deliver a diverse set of publicly available and restricted tools to provide the right data, in the right tool, to the right person, at the right time.

Building on these successes, the HHS emPOWER Program, in 2018, launched the voluntary “empowering State Medicaid and Children’s Health Insurance Program (CHIP) Data Pilot” to advance states’ understanding of pediatric and other adult at-risk populations in their communities. This pilot may be replicated in Texas to provide knowledge, tools, and technical assistance to help create complementary emPOWER datasets using data from HHSC’s Medicaid and CHIP data systems. Texas may then use these datasets, along with emPOWER Medicare data, to identify, plan for, and address the access and functional needs of at-risk pediatric, adult, and older adult populations in their communities.

According to CMS emPOWER, a statewide dataset costs \$2,000. Costs are unknown for integration of the Texas HHSC Medicaid and CHIP data, but

programming costs may be calculated by analyzing the costs incurred by other states that have already integrated their Medicaid data with emPOWER data. Other data cost factors are unknown.

Nationally, many state public health authorities use and share the HHS emPOWER Emergency Planning Dataset, as appropriate, to gain insight from more granular de-identified data on the number of electricity- and certain healthcare service-dependent Medicare beneficiaries in a geographic location to conduct targeted public health activities across the emergency management cycle. In the event of an incident, emergency, or disaster, an authorized state public health authority may submit an official request for the restricted and secure HHS emPOWER Emergency Response Outreach Dataset to conduct life-saving assistance and response outreach public health activities. County public health and local emergency managers must work through their state health department to access this data.

The ability to integrate STEAR and emPOWER data and share data between utility providers and emergency management will afford inclusive and comprehensive planning opportunities for the needs of Texas' disability community.

Policy Recommendations

Helping Texans with Disabilities Prepare for Disasters

HHSC is the state's designated agency for providing independent living services to Texans with disabilities. To be safe and prepared for all potential emergency situations, the Independent Living Centers must include emergency preparedness in their curriculum. Similarly, HHSC Medicaid managed care providers can serve an important role in helping individuals with disabilities receiving community-based services develop a personal preparedness plan, develop a customized emergency kit that addresses their specific disability needs and if appropriate help facilitate registering for the State of Texas Emergency Assistance Registry (STEAR) on an annual basis.

Recommendation 4.1: Ensure all state health and human service programs providing services to people with disabilities discuss and assist development of emergency preparedness and evacuation planning.

Enhancing Interagency Data Collection, Sharing, and Coordination to Protect Texans Who Are Medically Fragile

Recommendation 4.2: The PUC should continue to work in coordination with TDEM to identify all regulatory or legal barriers that limit information

sharing between utilities, local offices of emergency management and their representatives as it relates to conducting wellness checks during disasters on medically fragile customers. For example: Require electricity providers and local emergency management to develop inclusive plans for protecting individuals dependent on DME during unplanned power outages. t Local Emergency Management could consider providing and conducting training exercises with electric providers representatives to assure the safety of critical care and chronic condition individuals during power emergencies The local utility provider and local emergency management should also consider developing data use agreement templates. See DME Task Force [recommendations provided to the PUC on 07/06/2021](#).

Recommendation 4.3.1: The Texas Health and Human Services Commission (HHSC) should assign a state-level data custodian to work with CMS emPOWER Federal partners to access, format, analyze and deliver empower data to local offices of emergency management and/or local health departments before an impending disaster or upon a state or federal disaster declaration. The state data custodian must also respond to an emPOWER data request from a local health department or county office of emergency management by providing data to the jurisdiction in a timely manner upon request.

Recommendation 4.3.2: HHSC should work with CMS emPOWER federal partners to routinely integrate state Medicaid and CHIP data with existing Medicare emPOWER data to provide a more comprehensive data visualization.

Recommendation 4.3.3: HHSC and DSHS should work with the Texas Division of Emergency Management to study the technological, legal, regulatory, and cost feasibility of integrating emPOWER data with STEAR data sets and critical care registries from local power companies to identify individuals more quickly and accurately with life-sustaining power-dependent healthcare needs during a disaster.

Recommendation 4.3.4: State of Texas full-scale emergency exercises should include scenarios that involve the operational use of emPOWER data to respond to exercise participants with access and functional needs who use power dependent DME. Additionally, the state should facilitate the use of emPOWER data in local or regional exercises.

Recommendation 4.3.5: State Emergency Support Function (ESF) planning templates should be updated for inclusive local planning for the operational use of emPOWER data in all phases of emergency management.

Employment

People with disabilities represent a valuable labor force that can be overlooked by employers. GCPD promotes compliance with [Title I of the ADA](#), which prohibits discrimination against job applicants and employees with disabilities. GCPD supports integrating people with disabilities into the workforce by providing reasonable accommodations, assistive technology, and trainings on best practices. Meaningful work – being a contributing part of society – is essential to people’s economic self-sufficiency, as well as self-esteem and well-being. By providing full access to the workplace, employers tap a valuable source of talent.

Workforce participation is significantly lower for people with disabilities than people without disabilities. In 2019, the employment-population ratio¹³ for persons with disabilities was 19.3 percent, while the ratio for persons without disabilities was 66.3 percent.¹⁴

Reported barriers to employment for individuals with disabilities include:

- lack of education or training;
- discriminatory practices in the job application process;
- prejudices about certain disabilities that result in a refusal to hire;
- inaccurate understanding of cost of workplace accommodations resulting in a refusal to hire or failure to provide the requested accommodations; and
- lack of accessible transportation.

Policy Recommendations

Supported Employment Follow Along Services for Individuals with Intellectual and Developmental Disabilities

The Social Security Administration defines a sheltered workshop as “a private non-profit, state, or local government institution that provides employment opportunities for individuals who are developmentally, physically, or mentally impaired, to prepare for gainful work in the general economy.”¹⁵

¹³ Employment to population ratio is the proportion of a country's population that is employed.

¹⁴ U.S. Bureau of Labor Statistics (February 26, 2020), *Persons with a Disability: Labor Force Characteristics – 2019*. Retrieved on December 9, 2020 from: <https://www.bls.gov/news.release/disabl.nr0.htm>

¹⁵ Social Security Administration (January 6, 2017). *Program Operations Manual System (POMS)*. Accessed from ssa.gov website on February 2, 2017: <https://secure.ssa.gov/apps10/poms.nsf/lnx/0302101270>

The Employment First movement was initiated which “centered on the premise that all citizens, including individuals with significant disabilities, are capable of full participation in integrated employment and community life.”¹⁶ Passage of [Senate Bill 1226](#) (83R) established the Texas Employment First Policy and Task Force and called for “a living wage through competitive employment in the general workforce [as] the priority and preferred outcome for working-age individuals with disabilities who receive public benefits.”

Nationally, nearly 85 percent of adults with IDD are not employed even though many people with IDD report wanting to work.¹⁷ Texas community-based employment assistance and supported employment services through the 1915(c) Medicaid waivers are extremely underutilized compared to day habilitation services. Texas conducted interviews of individuals with IDD receiving both residential and nonresidential services through Texas community-based Medicaid waivers and found individuals with IDD were not receiving the employment related assistance and support they wanted and needed to obtain competitive, integrated employment.

Efforts were made to eliminate the practice of paying individuals with disabilities a subminimum wage through a transition into integrated employment. However, if an individual with IDD does not have a 1915(c) Medicaid waiver, and they have exhausted their supported employment services through vocational rehabilitation through Texas Workforce Solutions, services currently do not exist to continue supported employment—even if the individual still requires the services to maintain competitive, integrated employment. This poses a significant barrier to long-term employment for individuals that require continued support while on the job.

A pilot program should prioritize data collection to gather and identify evidence-based practices, evaluate opportunities to strengthen the network of community providers and ensure sustainability of long-term supported employment throughout the state.

Exploring administrative and other options to increase funding and access to services for supported employment for persons with IDD who require long-term services to continue competitive, integrated employment will help ensure they are employed long-term, leading to self-directed lives, and breaking the cycle of poverty.

¹⁶ U.S. Department of Labor, Office of Disability Employment Policy (n.d.). *Employment First*. Accessed from DOL-ODEP website on February 3, 2017:

<https://www.dol.gov/odep/topics/EmploymentFirst.htm>

¹⁷ John Butterworth et al. “National Core Indicators©: Data on the current state of employments of adults with IDD and suggestions for policy development,” *Journal of Vocational Rehabilitation* 42, (2015): 209-220, doi: 10.3233/JVR-150741

Recommendation 5.1: Ensure that at the point an individual with a disability is moved from a sheltered workshop environment to integrated community-based employment, the integrated employment will be considered work-based learning to provide the necessary long-term support, to include job coaching, to safeguard and allow for a successful integrated community employment outcome. Within available funding sources, continue to expand long-term supported employment services in other regions based on the model pilot program from the Gulf Coast Workforce Region.

Policy Solutions for Building a Stronger, More Inclusive State Workforce

In 2016, the State Exchange on Employment and Disability convened a joint National Task Force on Workforce Development and People with Disabilities. The task force, led by the Council of State Governments and the National Conference of State Legislators, was formed to address barriers to employment and identify state-level policy solutions for building stronger, more inclusive workforces. The task force included 60 state policymakers, subject matter experts, and advisors and staff from the Department of Labor's Office of Disability Employment Policy. Three representatives from Texas were members of the national task force, including the past Chairs of the Texas Governor's Committee on People with Disabilities and Texas Council for Developmental Disabilities and the former EIR Accessibility Program Director with the Texas Department of Information Resources.

In December 2016, the national task force issued a report titled [Work Matters: A Framework for States on Workforce Development for People with Disabilities](#) (Work Matters). This report "serves as a guide on each of the policy areas the task force explored . . . to assist states in improving the ways the public sector serves people with disabilities and provides state examples of innovative programs and policies." The four policy areas covered included: Career Readiness and Employability; Hiring, Retention and Reentry; Entrepreneurship, Tax Incentives and Procurement; and Transportation, Technology and Other Employment Supports.

The GCPD analysis of the recommendations of the Work Matters Report led the committee to focus on a section of the report that recommends that state agencies become model employers and support model employers in the private sector. The Work Matters report became the catalyst for GCPD to recommend how Texas state agencies can more successfully address disability inclusiveness within each organization's workplace culture. It was determined that this could best be demonstrated by the presence and implementation of agency accessibility and disability employment policies and practices.

The GCPD finds that opportunities exist to improve ways in which Texas state agencies serve people with disabilities. Suggested improvements will benefit not only those Texans with disabilities who are currently employed in our state workforce or are potential applicants for employment, they may also address the high statewide turnover rate among state classified employees and improve disability employment rates for the state. Therefore, the GCPD offers seven recommendations that we believe are practical solutions to workforce challenges in Texas.

Recommendation 5.2: Implement recommended best practices to strengthen disability-related accessibility and employment practices that can lead to increased hiring and retention of employees with disabilities as follows:

- State agencies should continue to recruit qualified job applicants with disabilities and consider setting aside a centralized agency job accommodation fund for employees with disabilities who need accommodations.
- State agencies should partner with Texas Workforce Commission's Vocational Rehabilitation program if job retention services are needed.
- State agencies should have a written reasonable accommodation policy and procedure that includes the interactive process.
- All State agencies should designate a Title II ADA Coordinator and comply with notice requirements.
- State agencies should ensure they have a process in place for handling general disability-related complaints and disability discrimination complaints.
- Develop and share common training resources on disability awareness, etiquette, and effective communications in state government.

Addressing State Agencies' Staffing Needs

There is currently a staffing crisis within Texas state agencies (as there is with nearly all employers.) In FY 2022, state agencies were seeing [average turnover and vacancy rate of 21.5%](#). The state of Texas could benefit from additional options to enlist services to help with recruitment and hiring. Adding "direct hire" services to the state use contract is one of the most efficient and cost-effective ways to do this.

WorkQuest, a private, nonprofit corporation links Texans with disabilities to meaningful employment opportunities, improving quality of life for thousands of individuals across the state. In 1978, the Texas State Use Program was implemented by WorkQuest, formerly TIBH Industries, to increase employment, wages and, ultimately, enhance the lives of Texans

with disabilities. This initiative resulted from the efforts of the Texas Legislature, which created the State Use Program under Chapter 122 of the Human Resources Code. WorkQuest was established to implement the [Works Wonders Program](#) legislation mandating a State Use Program to promote vocational rehabilitation through special work contracts for Texans with disabilities. These contracts typically provide temporary staffing services to state agencies. In the past year, more than \$39 million in wages were paid to these employees for work on state and local government contracts., Approximately 120 community rehabilitation programs (CRPs) across Texas partner with WorkQuest to provide employment opportunities for individuals with disabilities.

While temporary staffing can help fill some vacancies, this is an insufficient solution when the skills are extremely specific, are at a leadership level, require relocation, and/or require ideal candidates to leave a full-time job they're already in. Direct hire staffing is a recruitment service where the client employs a staffing agency to find and submit qualified applicants for their open jobs. The staffing agency oversees finding talent, doing the initial screening interviews, submitting qualified personnel, and arranging interviews. Additionally, the agency often assists with relocation coordination and offer negotiations. Instead of an hourly bill rate, as with temporary staffing services, the agency charges a one-time fee for the services rendered. This is a variable amount based on the selected candidate's first year's annual compensation. In the case of unsuccessful searches, the client is not charged.

Direct hire staffing is most often used for competitive and hard-to-fill positions that may have been vacant for a long time. Offering direct hire services to the State of Texas would be an opportunity to seek out professionals with disabilities to place directly into state agencies. This would further optimize opportunities for Texas vocational rehabilitation (VR) customers since placement in temporary jobs is not a valid VR outcome. Additionally, the recruitment work would be done by staffing professionals with disabilities—a twofold employment win! Finally, this would have a positive impact on the optics of jobs for people with disabilities. The roles filled in these circumstances are likely to be predominately high paying professional positions.

Demand for direct hire services increases in a tight labor market. The state agencies do not currently have a purchasing vehicle for this service and are disadvantaged in tight labor market conditions. Multiple state agency purchasers and leaders have approached Work Quest providers seeking

direct hire services. The current process calls for them to request these services position by position and amounts to inefficiencies of government hiring and procurement. The alignment of this market need gives WorkQuest a unique opportunity to get people with disabilities hired on directly by the state.

Recommendation 5.3: The GCPD recommends an expansion of direct hire staffing services under the State Use Program to be offered to state agency customers. WorkQuest should open this new line of service with the approval of the Texas Workforce Commission. Pursuant to [Texas Government Code Sec. 656.024](#), WorkQuest direct hire providers will ensure that jobs have been posted and advertised with the state agencies for at least 10 working days prior to servicing job orders for internal positions. The nonprofit service provider would also be responsible for ensuring that the candidates apply through the agency's hiring portals to ensure a consistent and fair hiring process for the State of Texas government agency. The GCPD recommends adding a purchasing provision that directs agencies to first inquire about "direct hire" services from a WorkQuest CRP before going to the open market. In purchasing, these services are often found under commodity code "961-30." Executive-level hiring may be exempt from this requirement.

Promoting Greater Use of the State Use Purchasing Program for Temporary Staffing Services by State Agencies

Texas has the most robust state use purchasing program of all states within the State Use Programs Association ([SUPRA](#)) network, but it is still underutilized compared with what it could be. Texas has an opportunity to lead the nation in hiring people with disabilities. As an example of past success, [Peak Performers](#), a community nonprofit service provider in the program, put about 1,200 professionals with a disability to work last year. GCPD believe that there is an opportunity for administrative policy change to drive utilization of this program even more and employ more people with disabilities.

Most state agencies lack training and accountability for usage of the program. Often, they are seeking to procure things quickly or may have inaccurate assumptions about what kinds of professionals can be hired through the temporary staffing contract. Purchasers may not realize the legal requirements to use this contract, when possible, the economic advantages for doing so (already pre-negotiated market rates), and the range of staffing options available through it: administrative assistants, accountants, attorneys, help desk support, financial analysts, customer

service representatives, business analysts, and more (over 900 classifications).

Recommendation 5.4: Enhance accountability for program usage and better training to ensure state agencies are informed at all levels about the State Use Temporary Staffing Services Program through WorkQuest and how to utilize the program and then account for each time a staffing project falls within scope and is not utilized.

- A portion of funds collected by TWC from the State Use program should be invested to better market the State Use Temporary Staffing Program and WorkQuest.
- On an annual basis, all state agencies should report their utilization of WorkQuest temporary staffing services relative to their use of other temporary staffing agencies to the Texas Workforce Commission.

Health

People with disabilities experience considerable disparities in access to healthcare, which is in turn reflected in disproportionately poor health outcomes. While it can be challenging to reflect these poor outcomes in literature- the Office of Disease Prevention and Health Promotion notes that people with disabilities are underrepresented in health surveys, data analyses, and health reports—existing research from organizations like United Cerebral Palsy’s (UCP) *2020 Case for Inclusion* report indicates much work remains to be done.^{18,19} According to UCP, Texans with intellectual and developmental disabilities (IDD) in particular contend with significant unmet healthcare needs. In addition to the IDD population, aging Texans also require specialized healthcare services. An estimated 5.9 million—or nearly 20 percent—of the state’s total population will be over the age of 64 by 2030.²⁰ This so-called Silver Tsunami will require a rethinking of the ways in which senior Texans access healthcare.

When addressing the “Health Issue Area,” GCPD provides analysis and guidance on access to the healthcare system, health insurance, public benefit programs (e.g., Medicaid and Medicare), as well as the physical accessibility of medical facilities. Health also encompasses mental health, as

¹⁸ Office of Disease Prevention and Health Promotion (January 17, 2017). *Why is Disability and Health Important?* Accessed January 18, 2017:

<https://www.healthypeople.gov/2020/topics-objectives/topic/disability-and-health>

¹⁹ Bragdon, Tarren (September 2020). United Cerebral Palsy. *The Case for Inclusion 2020*. Accessed November 10, 2020: <https://caseforinclusion.org/about>

²⁰ Texas Demographic Center (June 2016). *Aging in Texas: Introduction*. Accessed January 17, 2017:

http://demographics.texas.gov/Resources/publications/2016/2016_06_07_Aging.pdf

it is well understood that physical and mental health often go together. Finally, we work to propose solutions that allow Texans to age-in-place- which provides for better health outcomes for seniors, reduces cost burdens on the public benefit system, and is overall more effective.²¹

Policy Recommendations

Increasing Funding for the DeafBlind with Multiple Disabilities Medicaid Waiver Interest List

The DeafBlind with Multiple Disabilities (DBMD) Waiver serves approximately 350 individuals, with an additional 300 individuals on an interest list waiting for services.²² DeafBlindness is a low incident disability, defined as a combination of sight and hearing impairment that significantly impacts how an individual communicates and accesses information. It is marked by significant specialized communication, developmental, and educational needs that cannot be accommodated in special education programs for children with Deafness or children with blindness.

For individuals to qualify for the DBMD Waiver program, they must have a diagnosis of DeafBlindness (or a related condition that will result in DeafBlindness) and an additional diagnosis of a related condition that presents before age 22, meet the eligibility criteria for placement in an intermediate care facility for individuals with disabilities (ICF/IDD), and have substantial functional limitations in at least three of the following areas:²³

- learning,
- mobility,
- self-care,
- language,
- self-direction (age 10 and over), or
- independent living (age 10 and over).

Recommendation 6.1: Increase the number of slots available to be served by the Deaf Blind with Multiple Disabilities (DBMD) Waiver by 200 for the next biennium.

²¹ <https://www.nia.nih.gov/health/aging-place-growing-older-home>

²² Texas Health and Human Services, *Interest List and Waiver Caseload Summary Archive*. Accessed May 18, 2018: <https://hhs.texas.gov/about-hhs/records-statistics/interest-list-reduction/interest-list-waiver-caseload-summary-archive>

²³ 42 Tex. Admin. Code, RULE §42.201. Accessed on November 13, 2020 from [https://texreg.sos.state.tx.us/public/readtac\\$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=42&rl=201](https://texreg.sos.state.tx.us/public/readtac$ext.TacPage?sl=R&app=9&p_dir=&p_rloc=&p_tloc=&p_ploc=&pg=1&p_tac=&ti=40&pt=1&ch=42&rl=201)

Attracting and Retaining Personal Care Attendants Covered by State Medicaid Waiver Programs

Community attendants—particularly those funded by Medicaid waiver programs—provide vital services to aging Texans and those with disabilities in home and community-based programs. These skilled community attendants build close relationships with the people they support, enhancing their independence while assisting with intimate needs such as personal hygiene, cleaning, cognitive assistance, and routine medication administration. Community attendants are foundational to the supports that allow people with disabilities to live in the community. However, as the aging and disability populations grow, Texas continues to face a shortage in the community attendant labor force. This critical, difficult role sees high turnover due to low wages and a lack of benefits. Increasing community attendant wages and providing benefits should help attract and retain quality personal care attendants.

Recommendation 6.2: Fund a substantial increase in community attendant care wages and benefits competitive with prevailing market wages at a level necessary to attract and retain personal care attendants covered by state Medicaid waiver programs while facilitating consumer-directed care. The legislature should develop a methodology for periodic rate increases based on increased cost of living.

Eligibility Processes for the Medically Dependent Children Program

The Medically Dependent Children Program (MDCP) provides support to families caring for children and young adults who are medically dependent. MDCP is designed to help recipients remain at home rather than be served in a nursing facility.²⁴

Under Texas Administrative Code, Rule 19.2401, to meet medical necessity, the child or young adult must:

- have a medical condition of sufficient seriousness that exceeds the routine care which may be given by an untrained person; and
- require licensed nurses' supervision, assessment, planning, and intervention that are available only in an institution.

Although MDCP and nursing facility admissions have the same eligibility and medical necessity criteria, the nursing facility population is not reassessed annually and permanent medical necessity for admission is deemed after six months. Most children and young adults on MDCP who have chronic

²⁴ Texas Health and Human Services, *Medically Dependent Children Program (MDCP)*. Accessed on February 24, 2019: <https://hhs.texas.gov/doing-business-hhs/provider-portals/long-term-care-providers/medically-dependent-children-program-mdcp>

disabilities and health conditions are assessed annually for continued eligibility for MDCP.

Managed Care Organizations (MCOs) assessing MDCP eligibility began using a new assessment instrument, the STAR-Kids Screening Assessment Instrument (SK-SAI) that includes a Nursing Care Assessment Module (NCAM) to identify a beneficiary's need for skilled nursing services. Once completed, the SK-SAI is sent to the Texas Medicaid Healthcare Partnership (TMHP) where nurse reviewers and medical directors use portions of the SK-SAI—primarily the NCAM—to determine eligibility for MDCP. If a medical director determines the beneficiary no longer meets eligibility for MDCP, TMHP notifies the beneficiary that they have 14 business days to submit additional information supporting continued eligibility. If no additional information is submitted, or TMHP deems that the additional information does not support continued eligibility, TMHP issues a notice denying eligibility for MDCP.

Prior to the transition to the use of the new assessment instrument (SK-SAI), renewal denial rates for children and young adults on MDCP during their annual reassessments was 2.6 percent (2014-2015) and 3.13 percent (2015-2016). Following the transition of MDCP beneficiaries to STAR-Kids in 2017, that same denial rate increased to 11.6 percent for February through May 2017, fluctuating as high as 14.1 percent in June 2017. This may indicate confusion regarding the assessment tool, a need for more training on administering the tool, or other issues.

The assessment process used by MCOs results in errors and omissions on the SK-SAI. The MCO assessor typically asks questions and gathers information from the beneficiary's parent or guardian, but the assessor often completes the SK-SAI later. Therefore, the parent or guardian is not directly involved in completing and reviewing the SK-SAI prior to its submission to TMHP and does not typically see the completed SK-SAI until eligibility is denied and a fair hearing is requested. This process was modified by HHSC in September 2018.

Recommendation 6.3.1: To ensure that the information captured on the STAR-Kids Screening Assessment Instrument (SK-SAI) is both accurate and complete, the beneficiary and his or her parents or guardians should be involved in completing and reviewing the assessment instrument together with the managed care organizations before it is submitted to Texas Medicaid Healthcare Partnership (TMHP).

Denial notice forms do not explain why the beneficiary does not need the level of care provided in a nursing facility or why the beneficiary is no longer eligible for MDCP, despite being eligible in the past, and no change in the medical necessity criteria. 42 CFR 431.210(b) requires that denial notices

explain the specific reason for the decision. Also, 42 CFR 431.210(c) requires denial notices include the “specific regulations that support, or the change in federal or state law, that requires the action.” TMHP’s notices failed to cite any regulations. Such non-specific denial notices encourage arbitrary denial decisions. This process was modified by HHSC on January 1, 2019.

Recommendation 6.3.2: HHSC should require TMHP to issue non-form letter denials that (1) provide specific reasons for the denial, including reasons why the beneficiary does not need the level of nursing care that would be provided in a nursing facility and why the individual beneficiary no longer meets medical necessity for Medically Dependent Children Program (MDCP); and (2) include the “specific regulations that support, or the change in federal or state law, that requires the action.”

Recommendation 6.3.3: HHSC should issue ascertainable standards (i.e., written guidance) on the meaning of the medical necessity criteria and train Texas Medicaid Healthcare Partnership (TMHP) reviewers on these standards.

Recommendation 6.3.4: HHSC should instruct Texas Medicaid Healthcare Partnership (TMHP) to follow the guidance on parents and guardians in assessing medical necessity and increase transparency on testing of SK-SAI.

Recommendation 6.3.5: HHSC should release all information, subject to any restrictions under state and federal law (such as HIPAA), related to how the STAR-Kids Screening Assessment Instrument (SK-SAI) was tested for inter-rater reliability and validity, and all statistics for the denial rate on renewals.

Establishing a Family Licensed Health Aide (FLHA) Program in Texas

The GCPD recommends Texas Medicaid establish a new home health option for Medicaid beneficiaries who are already qualified for Private Duty Nursing (PDN) services. The “Family Licensed Health Aide (FLHA) program” would create an additional cost-effective, patient-centered option for Private Duty Nursing patients to have consistent staffing by home care agencies through family caregivers. This program allows family members, parents, and legal guardians to become trained Certified Nursing Assistants (CNAs) to care for their medically fragile child. The continuing nursing shortage crisis has created an access-to-care barrier for this population. Allowing family members to be trained, certified caregivers for their loved ones helps solve the staffing crisis that often has families receiving partial care or experiencing extended facility/NICU stays pending arrangement of home nursing.

No one can bring the same level of passion and attention to caregiving as a parent or family member can for their own child. Parents, family members, and legal guardians not only provide the highest quality of support, but also ensure an on-going continuity of care. According to the American Academy of Pediatrics the current Private Duty Nursing model yields inconsistent care, due to recurring missed shifts, perpetual staff turnover, and increased re-hospitalizations which cost the state on average \$4,264 per day. The Family Licensed Health Aide (FLHA) program will add another nurse-staffing option to the existing Texas benefit structure. With Board of Nursing approved principles of delegation, home care agencies would allow a parent, family member or legal guardian to become paid Certified Nursing Assistants (CNAs). This allows these groups to provide skilled services for their loved one directed by a physician and operating under the supervision and guidance of a registered nurse.

Once decided, the parent or family member would go through the state and Board of Nursing mandated schooling required to become a clinically trained Certified Nursing Assistant (CNA), and when complete, would then be hired as an employee with a home health agency to provide physician-ordered, skilled care to their child or loved one. All facets of employment will adhere to state regulations, Board of Nursing rules, labor laws, accreditation standards, and agency policies and procedures.

In addition to the improved access and quality of care, and the reduction in costs to the state, this program provides a level of stability and empowerment to these families that often end up living on the edge of poverty. With inconsistent nursing care, family members are frequently tasked with taking on the duties of their child's unfulfilled care, which causes the need to constantly leave their job or call in with last-minute emergencies. This essentially makes these parents un-hirable or unemployable because they are viewed as unreliable workers. This forces families to become single-income-households or parents to leave the workforce altogether, which inevitably leads to these families requiring greater support from state programs. The inconsistent care, a lack of resources, and stress caused by instability in the household, results in greater adverse health impacts on these medically fragile children.

Team Select has a current census of almost 800 medically fragile children being cared for under this model in Colorado. This model is also currently active in New Hampshire and in Arizona. The unplanned hospitalization rate for the children being cared for under this model is 90% lower than the national average since medically fragile children authorized for home health

nursing are fragile, but they are stable. To keep a medically fragile child stable, they need their care plan executed every day by a qualified clinician. The data clearly shows that it's not the level of care these children receive that keeps them out of the hospital and their total cost of care low, it's the continuity of care by someone who is qualified and there every day to perform the steps necessary to keep these children stable. Parents and family members know their children better than anyone, never call in sick, never miss a shift, and know that continuity of care is so essential. This is enabled with this model. There are nowhere near enough nurses in Texas to be able to provide that level of continuous care. It's incumbent on Texas to find ways for lower acuity patients to be safely cared for by nursing aides, so that the limited number of nurses in Texas are available to treat higher acuity patients.

This model will not just save the state money on hours of nursing care replaced with a CNA, but Texas will also see tremendous reductions in the unplanned hospitalizations and total cost of care of these children. The model would save the state money by using a CNA for Private Duty Nursing instead of a nurse. A reimbursement for a nurse is higher than it is for a CNA. For example, a CNA visit rate is \$46.09 a visit or \$23.05 an hour. Private Duty Hourly Nursing rates depending on acuity of care and discipline range from \$33.16 an hour to \$52.12 an hour ([Fee For Service Fee Schedule \(riproviderportal.org\)](http://riproviderportal.org)).

For families with medically fragile children, 80% end in divorce. One of the parents ends up on government assistance since they must quit their job to care for their child, often due to lack of nurse staffing. By training the parent and employing the parent as a CNA, the parent can come off government assistance. The agency provides a livable wage and full benefits package to the parent as an employee. This model also adds more CNAs to the workforce in Texas. A CNA is an entry level nursing position, which also establishes a career ladder for these parents. In CO and NH, family CNAs pursue more advanced nurse and therapist degrees once they are introduced to the healthcare field. Also, the family CNAs can work for other facilities or homecare agencies. This program offers a solution for the nationwide aide and nursing shortage we are facing. It has been adopted by the legislature in Arizona and is currently pending legislative approval in New Jersey.

Recommendation 6.4: Support the establishment of a Family Licensed Health Aide (FLHA) program by removing the prohibitive language, permitting families/parents to become paid caregivers for their children under the Texas home health benefit. This would be supported through

legislative action. GCPD further recommends that legislation that include a statement that participation in this model is up to the family and the MCO cannot pressure a family to participate.

Medicaid Audiologist Reimbursement for Hearing Aid Fitting, Dispensing, and Evaluation

The reimbursement fee for audiologists enrolled in Medicaid includes all necessary follow-up appointments for clients for as long as they have hearing aids. Reports of difficulties with reimbursement for hearing aid reimbursement began in 2013. Audiologists also reported reduction in rates for other services, such as hearing aid fitting and evaluations. That same year the Texas Academy of Audiology (TAA) conducted a survey and found 73 percent of respondents accepting Medicaid were “unlikely or definitely not” going to remain Medicaid providers if reimbursement rates dropped below \$400.

The pre-approval process for receiving hearing aids through Medicaid is quite lengthy, involving an audiologist, otolaryngologist (colloquially known as an ENT), primary care physician, and other staff resources. TAA reports many are ultimately denied even after receiving prior authorization. Limited or no access to hearing aids can have significant consequences, especially for children in crucial developmental periods. According to TAA the current reimbursement rates cover barely half of the actual cost to providers.²⁵ Note that these figures do not include the cost of having staff conduct pre-authorization.

Recommendation 6.5: The HHSC Rate Analysis Division should proactively engage with audiologists and other stakeholders to review the Medicaid rates for hearing aid fitting and related procedures to ensure the rate is sufficient:

- evaluate the reimbursement process to implement timely payment and reimbursement to providers; and
- compare Medicaid rates to other state agency rates for hearing aid dispensing, fitting, maintenance, evaluation, etc. including Texas Workforce Commission Vocational Rehabilitation Services rates.

Recommendation 6.6: HHSC should evaluate the adequacy of its Medicaid provider network throughout the state to ensure sufficient geographical coverage and timeliness of audio logical services.

²⁵ Cost for three years of proper follow up and fitting for one child with hearing aids: \$3500. Medicaid reimbursement rates for same services: \$1750.

Inclusive Child Care

Parents of children with disabilities face barriers to obtaining and maintaining high quality, reliable, inclusive childcare which can result in parents dropping out of the workforce, family isolation, turning to unregulated care, and missed opportunities to connect with other programs like Early Childhood Intervention (ECI) services. Currently childcare providers only account for two percent of referrals to ECI, and many ECI providers across the state report challenges being able to serve children in their natural environment because they are denied opportunities to work with children who are in childcare settings during the day.

Babies and toddlers may miss out on the safe, inclusive, early opportunities that they deserve, largely because child caregivers are not aware of the requirements under the Americans with Disabilities Act (ADA) or how to support children with disabilities in care. Child caregivers would benefit from training on working with children with disabilities and supporting early childhood mental health. There is a wealth of free training opportunities available to child caregivers in Texas.

Families often report that their children with a disability have been suspended or expelled from childcare, however there is no reporting requirement for these discipline practices, making it difficult to articulate the true extent of the problem.

Finally, when utilizing the Search Texas Child Care online tool, parents are given options to filter their search by several items that the childcare providers have elected as part of their programs. For instance, parents can filter their search to find childcare that offers after school care, weekend care, by accreditation, if they serve meals, etc. One of those elections is "Children with Special Needs". This erroneously leads parents to believe that these are the only childcare providers they can access.

Recommendation 6.7: Form an advisory coalition with subject matter experts from HHSC's Early Childhood Intervention Program (ECI), the Texas Workforce Commission (TWC), and the Texas Education Agency (TEA) to study and make recommendations on pre-service and annual professional development opportunities for providers on supporting children with developmental delays and disabilities, supporting early childhood mental health, and other related topics.

Recommendation 6.8: Strengthen relationships between ECI and childcare providers to improve referrals to critical early interventions for babies and toddlers with disabilities.

Recommendation 6.9: Ensure child caregivers are aware of ECI services and know how to refer children for an ECI screening.

Recommendation 6.10: Require childcare providers to develop a discipline policy that is made available to all families.

Recommendation 6.11: Revise to the [Search Texas Child Care](#) website and the option for childcare providers to select if they take “children with special needs.” Per the ADA, all childcare centers must first assess if they can accommodate the child.

Adequate Medicaid Provider Networks

Despite Health and Human Services procedural safeguards there has been increased difficulty with Medicaid Managed Care Organizations (MCOs) providing an adequate provider base, especially for specialists and sub-specialists. Examples presented in public testimony to this committee include an adult with 70-degree spinal curvature not given a referral to a specialist that accepted Medicaid for over three years.

Recommendation 6.12 Amend HHSC Medicaid Managed Care contracts to require that should the MCO be unable to provide access to the appropriate specialist within 30 days, then the member will be allowed to go out of network with the MCO covering all costs incurred. If the primary care physician (PCP) cannot provide routine care in 14 days, then the member will be allowed to go out of network with the MCO covering all costs incurred. If the PCP cannot provide urgent care in 1 day, then the member will be allowed to go out of network with the MCO covering all costs incurred.

This would enhance the feasibility for the MCOs to provide timely and quality healthcare to Texans with Disabilities and provide relief to the already stressed provider network. No additional costs shall be incurred to the state, as TMPH would pay the physician and related hospital or DME costs, after which time TMHP would be reimbursed by the specific MCO. This would greatly improve working relationships with providers.

Evidence-Based Treatment for Post-Traumatic Stress Disorder (PTSD)

Evidence-based PTSD treatments such as Cognitive Processing therapy (CPT) and prolonged exposure therapy (PE) are covered by Medicaid but that has not been well-publicized. Additionally, there are very few providers in the state trained in providing PTSD treatment. The [STRONG STAR Training Initiative](#) has provided training in PE and CPT to community providers with

funding from HHSC TV+FA grants. This training program was well received and could be scaled to train across the state.

Texas is home to several populations who historically have high rates of PTSD—it ranks second in the nation for the number of human-trafficking victims; resettles more refugees than any other state; has a high population of unaccompanied child migrants; and has one of the largest populations of military service members and is the second most populated state of military veterans. These populations experience high rates of trauma, and in a state with an already critical shortage of mental health professionals, their ability to find appropriate treatment is low. Expanding the number of providers trained in evidence-based PTSD treatment will help more people access crucial, life-saving treatment.²⁶

Recommendation 6.13: Texas and HHSC should explore ways to enhance opportunities for mental health professionals to access training to increase the number of evidence-based practitioners in the state.

Guardianship Reform

Guardianship is a legal tool which allows a person to make decisions for another person. It removes the civil rights and privileges of a person by assigning control of their life to someone else. The need for guardianship may come from a person's age, disability, or injury. Guardianship provides for the person's care and management of their money while preserving, to the largest extent possible, that person's independence and right to make decisions affecting their life.

A guardianship should be only as restrictive as indicated by the person's actual mental or physical limitations and as necessary to promote and protect their well-being. For many individuals, guardianship may be an appropriate option, however, per changes in the law in 2015 and 2017, alternatives to guardianship, like supported decision-making agreements, are not only viable solutions but must be considered before guardianship is granted. School districts are required by state and federal law to provide information on all options and avoid bias.

Texas has an opportunity to improve guardianship proceedings including alternatives to guardianship (i.e., supportive decision-making agreements) focusing on the development or maintenance of maximum self-reliance and independence for individuals, including presuming they retain capacity to make personal decisions with supports and services. GCPD recommends the 88th Texas Legislature adopt the following policies:

²⁶ <https://www.dshs.state.tx.us/sunset/SectionVII-Mental-Health-Substance-Abuse.doc>

Recommendation 6.14: Ensure the physician completing the Certificate of Medical Evaluation (CME) is qualified to perform the capacity and functioning evaluation.

Recommendation 6.15: Provide the option for the use of remote technology when conducting probate and guardianship proceedings.

Recommendation 6.16: Allow licensed psychologists the authority to offer evidence in restoration and/or modification hearings for individuals with intellectual and developmental disabilities (IDD).

Recommendation 6.17: Allow for the restoration of rights for individuals who are diagnosed with a mental condition but have sufficient capacity with supports and services.

A more detailed description of GCPD's guardianship recommendations can be found on [the GCPD's webpage](#).

Protecting Parental Rights for Texans with Disabilities

Despite notable achievements in disability rights, parents with disabilities continue to encounter discrimination. Parents with disabilities are more likely to have their children removed by the child welfare system, or have their parental rights terminated. Additionally, disabled parents are less likely to gain access to custody or visitation of their children. Approximately 4.8 million families in the United States (based on average 5-year 2010-14 estimates) have a parent or grandparent with a disability with children under the age of 18.

In the past few years, at least 20 states have successfully passed or sought to pass legislation protecting the rights of parents with disabilities and their families.

Recommendation 6.18.1: To protect the best interests of children parented by people with disabilities or children who could be parented by people with disabilities Texas must use procedural safeguards adhering to the ADA and respect the due process and equal protection rights of parents by ensuring:

1. a parent's disability is not a basis for denial or restriction of visitation or custody in family or dependency law cases when the visitation or custody is determined to be otherwise in the best interest of the child.

2. a prospective parent's disability is not a basis for the denial of participation in public or private adoption when the adoption is determined to be otherwise in the best interest of the child.
3. an individual's disability is not a basis for denial of foster care or guardianship when the appointment is determined to be otherwise in the best interest of the child.

Recommendation 6.18.2: Where a parent or prospective parent's disability is alleged to have a detrimental impact on a child, the party raising the allegation should bear the burden of proving by clear and convincing evidence that the behaviors are endangering or will likely endanger the health, safety, or welfare of the child. If this burden is met, the parent or prospective parent must have the opportunity to demonstrate how supportive parenting services can alleviate any concerns that have been raised. The court may require that such supportive parenting services be put in place, with an opportunity to review the need for continuation of such services within a reasonable period.

Recommendation 6.18.3: If a court determines that a disabled parent's right to custody, visitation, foster care, guardianship, or adoption is to be denied or limited, the court must make specific written findings stating the basis for such a determination and why the provision of supportive parenting services is not a reasonable accommodation that must be made to prevent such denial or limitation.

Addressing the Independent Living Needs for a Growing Population of Seniors with Vision Loss

Texas has not kept up with addressing the independent living needs for a growing population of seniors with vision loss. The growth in case workers for the TWC Independent Living Services for Older Individuals Who Are Blind (IL-OIB) Program has remained largely unchanged for the past 20 years. A growth in the number of caseworkers and delivering services in new and innovative ways is essential to ensure that older Texans experiencing vision loss can continue to live in their community and maintain their independence while avoiding costly institutionalization in a nursing home. The population of Texas, according to the 2020 US Census is now 29.1 million. 12.9% are people 65 years of age and older (approximately 3.8 million people). Due to the surge of the baby boom population, this number is expected to increase by 60% over the next 15 years. The prevalence of blindness and visual impairment among people 65 years of age and older, according to the U.S. Census, (American Community Survey), is estimated to be about 7.6%. This means that there are currently more than 288,000 Texans, aged 65 and

older, who experience some level of severe vision loss, and this number will increase by the same 60% over the next 15 years – to over 460,000 individuals by 2035.

The average annual cost for nursing home care is about \$47,000 for a semiprivate room, according to North Texas Aging and Disability Center and Genworth Financial Inc. By comparison, according to the Texas Workforce Commission, providing in-home independent living services and adaptive aids to an older adult losing their vision costs less than one tenth that amount.

The Texas Workforce Commission’s Independent Living Services for Older Individuals Who Are Blind (IL-OIB), under its present funding and with limited staff, was able to serve just 2,098 older Texans experiencing vision loss in 2021 statewide, approximately one percent of the target population. Through a proposed shift in funding realignment, the TWC will add 23 more independent living (IL) specialists to its OIB program by 2025. This expanded funding will make it possible for TWC to serve some 2500 additional older Texans each year who are experiencing vision loss. Even a staff of 39 IL specialists simply cannot provide needed direct service to a quarter million visually impaired older adults in 254 counties throughout the state.

The primary need is to increase staff and expand the OIB program to provide services to the growing number of older Texans with vision loss. However, proposing a new, innovative approach that would offer services to a greater number of older adults experiencing vision loss, and to do so in a more efficient manner, can result in a more efficient delivery of services.

Recommendation 6.19: Support the growth in independent living services for Texans with vision loss age 55 and older through targeted investments in caseworkers. To strengthen training through community providers for the blind, Texas should establish and fund five to six senior vision loss training center pilot programs in major cities throughout the state to offer day-time classes teaching independent living skills in an apartment-style setting to older adults diagnosed with severe vision loss. This program will allow them to travel each day from their homes to the classes, promoting their learning of how to live with vision loss. These programs’ curriculum content shall include:

- orientation and mobility – in and out of the home;
- personal care and grooming;
- cooking and house cleaning;
- communication skills: reading, writing, telephone, computer;

- home safety: lighting, organizing, labeling, and marking;
- shopping and managing money;
- library services; and
- adaptive aids.

Addressing the Mental Health Needs of People with Intellectual and Developmental Disabilities (IDD)

According to research, people with intellectual and developmental disabilities (IDD) are diagnosed with mental health conditions at a rate two-to-three times higher than the general population.²⁷ Incidence rates among children with IDD are likely also high, with approximately 30-50 percent estimated to have a mental health condition. The reasons for this are manifold – people with IDD experience higher levels of social isolation, may experience more stress related to social challenges, and limited language abilities may make it more difficult to express feelings and needs. Additionally, people with IDD are at a much higher risk of experiencing trauma, particularly physical, emotional, and sexual abuse, as well as neglect, bullying, and unnecessary restraint. These risk factors create a unique susceptibility for developing a mental health condition.²⁸

We are just beginning to understand the intersection of mental health and intellectual disability. Research is in its infancy, and this sparse data leads to difficulties in identifying signs of mental illness in people with IDD. However, it is generally recognized that mental health conditions manifest differently in people with IDD than in the general population. Organizations such as [the NADD](#) have led efforts to create a diagnostic manual of mental disorders specifically for people with IDD, but these efforts are in their relative infancy.²⁹ There is limited training available for mental health (MH) and IDD professionals with much of their work remaining siloed. This, in turn, leads to a significant workforce shortage of MH/IDD specialists—that is, mental health professionals specifically trained in recognizing and treating signs of mental health diagnoses in people with IDD. Unfortunately, this dearth of providers can lead to providers and caregivers attributing challenging behaviors to disability rather than as a manifestation of a mental health condition. Lack of cross-agency collaboration and training compounds the situation; without a solid effort to share information and expertise, people

²⁷ Navigate Life Texas. *Mental Health for Children with Intellectual and Developmental Disabilities*. Accessed December 18, 2020: <https://www.navigatelifetexas.org/en/diagnosis-healthcare/mental-health-for-children-with-intellectual-and-developmental-disabilities>

²⁸ Munir, K. M. (2016). *The co-occurrence of mental disorders in children and adolescents with intellectual disability/intellectual developmental disorder*. *Current Opinion in Psychiatry*, 29(2), 95-102. doi:10.1097/ycp.0000000000000236: <https://pubmed.ncbi.nlm.nih.gov/26779862/>

²⁹ <http://thenadd.org/>

with IDD will continue to be forced to pick between accessing either IDD or MH services, but never both.

Local mental health authorities (LMHA) and the local authorities for IDD (LIDDA) services are typically co-located, but service coordination and provision (that is, case management and access to treatment) are siloed. Local authority clients currently must choose between accessing LMHA or LIDDA services with I.Q. thresholds sometimes being used to preclude people with IDD from accessing mental health services.

Finally, it is imperative any effort to provide mental health treatment to people with IDD recognize the significance of trauma. Texas has done a commendable job of pioneering integrating trauma-informed care training in service delivery in the child welfare and juvenile justice systems. We must now prioritize trauma-informed care training for people with IDD, particularly those living in facilities.

Recommendation 6.20: HHSC should task the Statewide Behavioral Health Coordinating Task Force with studying ways to increase the availability and awareness of high-quality, comprehensive care for people with mental health (MH) diagnosis and IDD. This should include:

- examining how to increase workforce capacity through training and other incentives;
- increasing cross-agency collaboration and developing a more wholly integrated system of care for people with IDD;
- expanding trauma-informed care training; and
- evaluating the impact of using intelligence quotient (I.Q.) thresholds as exclusionary criteria for access to MH and/or IDD services.

Mental Health Crisis Care for People with Intellectual and Developmental Disabilities (IDD)

People with intellectual and developmental disabilities (IDD) experiencing mental health crises are extremely limited in terms of accessing psychiatric hospitalization and treatment. Integrating dedicated IDD Specialty Services Units into the statewide State Hospital Redesign would provide a strong start to creating a robust network of appropriate treatment options for people with IDD and mental health diagnoses.

There is a dearth of culturally competent treatment facilities available for people with IDD experiencing serious mental health crises. Anecdotally, law enforcement and other crisis mental health professionals report being unable to find private psychiatric hospitals that will accept people with IDD experiencing a mental health crisis. This means individuals often wind up remaining in emergency department beds or being transferred to jail—both inappropriate settings for an individual experiencing a mental health crisis.

Additionally, Austin State Hospital (ASH) and North Texas State Hospital (NTSH) appear to be the only two state hospitals out of ten that have a specialty services unit that mentions treating people with IDD.

HHSC should work to align the goals of the IDD strategic plan with the State Hospital System Redesign. Specifically, HHSC should work with the leads of each state hospital redesign to create a specialty services unit to divert people from hospital emergency departments and jails. By working with the state hospital system redesign team at ASH and elsewhere to create a world-class IDD crisis stabilization unit, Texas could lead the way in competent mental health treatment for people with IDD. This unit would enable people to receive appropriate services to help treat ongoing mental health diagnoses, restore competency, and return safely to the community while avoiding incarceration.

Recommendation 6.21: HHSC should work with the leads of each state hospital redesign to create a specialty services unit for people with intellectual and developmental disabilities (IDD) to divert people from hospital emergency departments and jails.

Housing

Affordable, accessible housing allows people with disabilities to live independently in their community. The Governor’s Committee on People with Disabilities (GCPD) promotes the availability of accessible housing, whether these homes are a multi-family complex or single family dwellings that comply with the [Fair Housing Act \(FHA\)](#) and local visitability³⁰ ordinances. GCPD provides information on anti-discrimination laws, home modifications, financial assistance for housing, and tax credits and exemptions.

The shortage in affordable and accessible housing for individuals with disabilities has reached a crisis point. The three biggest housing challenges for individuals with disabilities are:³¹

- **Affordability:** In 2014, the national average rent for a one-bedroom rental unit was equal to 104 percent of the national average monthly income of a one-person SSI household.
- **Physical accessibility:** Residences may require accommodations which come at additional cost.

³⁰ “Visitability” is defined as a measure of a place's ease of access for people with disabilities.

³¹ O’Byrne, Mary & Dale, Stephanie W. (June 13, 2020) *Through Crisis: People with Disabilities Face Housing Crisis*, *Special Needs Alliance*. Accessed on November 16, 2020: <https://www.specialneedsalliance.org/blog/tough-choices-people-with-disabilities-face-housing-crisis/>

- Discrimination: The majority of U.S. Department of Housing and Urban Development (HUD) discrimination charges filed in 2015–2016 have been disability discrimination charges.

Local affordable housing programs depend largely on availability of Section 8 housing programs from the Housing and Urban Development and local building incentives to include affordability in a housing developer’s neighborhood plans.

Policy Recommendations

Affordable and Accessible Housing Best Practices

Several Texas communities are leading the state in addressing accessible housing through the adoption of city ordinances for “visitable” single-family and duplex housing construction. The term “visitable” or “visitability” refers to single-family or owner-occupied housing designed in such a way that it can be lived in or visited by people who have trouble with steps, who use wheelchairs or walkers, or have a mobility impairment. A house is “visitable” when it meets three basic requirements:

- one no-step entrance;
- doors with 32 inches of clear passage space; and
- one bathroom on the main floor you can get into in a wheelchair.

Other “visitable” home features may include raised electrical outlets (24-inches) and lowered light switches and thermostats.

Recommendation 7.1: Promote adoption of accessible, affordable, and transit-oriented housing in Texas communities through the sharing of information on local visitability ordinances and best practices for the development of accessible single-family homes and duplexes.

Recommendation 7.2: GCPD will study strategies and “solutions that work” from other states or local communities that have expanded community-based housing options for people with disabilities and ensures long-term housing affordability.

Accessibility in Multi-Family Homes

The Fair Housing Act (FHA) provides Texan’s protection against discrimination in housing, rental, or sale, based on mental or physical disability. The law:

- requires multi-family homeowners permit a person with a disability to make reasonable modifications necessary for use and enjoyment at the person with the disability's own expense; and

- requires property owners make reasonable modifications to policies, rules, practices, and services that allow a person with a disability equal opportunity to use and enjoy a dwelling.

Multi-family homes that receive funding from the Texas Department of Housing and Community Affairs (TDHCA) must have five percent of units be accessible for people with disabilities, in compliance with the 2010 ADA standards. Additionally, two percent of units of TDHCA funded complexes must be accessible to people who are visually and hearing impaired. TDHCA has a [web tool](#) on their website where individuals can search for accessible units by city, county, or zip code. Even though both the FHA and TDHCA require multi-family complexes to meet accessibility standards, people with disabilities have difficulty finding units to meet their needs.

Recommendation 7.3: TDHCA should create a public awareness campaign to ensure people with disabilities looking for accessible housing are able to find what they need, including individuals that assist the public in locating housing (e.g., apartment locator services, real estate agents, etc.).

Recreation

Recreation has a positive impact on the physical, mental, and social health of all Texans. The Governor’s Committee on People with Disabilities supports accessible recreational opportunities for people with disabilities and provides information on access to recreational facilities, including parks, sports arenas, and arts and entertainment venues.

Studies have shown how access to recreational activities help individuals with disabilities decrease the risk of chronic disease, improve mental health, alleviate depression and stress, improve quality of life and experience personal and spiritual growth. Additionally, participation in recreational activities promotes and builds positive attitudes and sensitivity toward people with disabilities.

Texas Parks & Wildlife Department employs a full-time Americans with Disabilities (ADA) coordinator to bring parks into compliance with accessibility needs for all guests, and – given the broad geographic scope of the state - has engaged an outside consultant to provide site assessment, architectural drawings, and design plans for ADA compliance at all Texas state parks.

Some barriers still exist in accessing recreational activities for people with disabilities, including:

- lack of transportation to recreation locations;
- limited or unavailable programs;

- limited or unavailable accessible recreational equipment;
- architectural accessibility issues;
- lack of assistive technology;
- ineffective communication methods; and
- insufficiently trained staff.

Policy Recommendations

Inclusive Playgrounds

Outdoor play in playgrounds not only provides fun and games to a child, but it also “promotes social, intellectual, and oral skills by allowing the child to interact with their peers and environment.”³² Approximately 12.2 percent of the 8.4 million noninstitutionalized children under the age of 20 have been diagnosed with a disability in Texas.³³ It is likely that every county in the state is home to a child with a disability. To ensure equitable access to recreational play for all children within their community, local leaders in Harlingen developed partnerships to fund three all-inclusive playgrounds – the first of their kind in the Rio Grande Valley.³⁴ Nationally, New Jersey introduced [Assembly Bill No. 3612](#), known as Jake’s Law, to have every county build at least one ‘inclusive’ playground that is accessible to children with disabilities.

Recommendation 8.1: From funds appropriated for this purpose, the TEA Commissioner will distribute funds to each school district to provide at least one playground in the district that is inclusive and accessible for students with disabilities. School districts should be encouraged to access other funding for these projects, including through partnerships with municipal parks and recreation departments, private foundations, and state and federal grants. Local Education Agencies (LEAs) and the TEA can work with the Texas Department of Licensing and Regulation, Architectural Barriers Program for technical support on these projects.

³² Duerr Evaluation Resources (2002). *Research Paper: The Benefits of Playgrounds for Children Aged 0-5*. Accessed on January 31, 2017:

<http://www.imaginationplayground.com/images/content/2/9/2999/The-Benefits-of-Playgrounds-for-Children-Aged-0-5.pdf>

³³ Yang-Tan Institute on Employment and Disability at the Cornell University ILR School (2018). *2017 Disability Status Report Texas*. Accessed on November 16, 2020:

https://www.disabilitystatistics.org/StatusReports/2017-PDF/2017-StatusReport_US.pdf

³⁴ Del Valle, Fernando (January 11, 2017). *Playgrounds will have equipment for special needs children*. Accessed from The Brownsville Herald website on January 31, 2017:

http://www.brownsvilleherald.com/premium/article_c69dac62-d87b-11e6-bd02-27b1ecc48fbc.html

Transportation

Reliable, accessible transportation is necessary to actively participate in everyday life. The GCPD works on a variety of transportation issues, from accessible parking and paratransit services to business and recreational travel. Transportation provides a vital lifeline for people with disabilities to access employment, education, healthcare, and community life. Access to transportation services allows individuals with disabilities to live independently within their communities.³⁵ A shortage of accessible parking and limited options for accessible transportation services based on location, disability or age continue to create barriers for people with disabilities.

Policy Recommendations

Accessible Parking

During the [84th Legislative Session, House Bill 1317](#) charged GCPD to gather information and prepare a report on accessible parking issues in the state. After an extensive review of state and federal accessible parking laws and input from the public, GCPD prepared recommendations that are practical solutions to accessible parking challenges in Texas. The full report and discussion on each recommendation can be found [on GCPD's webpage](#). Progress has been made while more work remains to ensure equal access to parking and mobility. Policy recommendations were extracted from the accessible parking report and are provided below:

Recommendation 9.1: Strengthen enforcement of accessible parking laws as follows:

- Strengthen language in Texas Transportation Code, Title 7. Vehicles and Traffic, Subtitle H. Parking, Towing, and Storage of Vehicles - Chapter 681, Privileged Parking, Section 681.010 – Enforcement so that it is unequivocal in its mandate for all individuals with enforcement responsibilities to enforce accessible parking laws (i.e., change “may” to “shall” or “must”).
- Bolster language in enforcement responsibilities as they apply to accessible parking on private property or areas of public accommodation.

Recommendation 9.2: Control accessible parking placard fraud and abuse through administrative remedies, such as:

- coordinating with the Department of Motor Vehicles, county tax assessor collectors, and the Department of State Health Services

³⁵ The Arc (2016). *Transportation Issues for People with Disabilities*. Accessed on January 19, 2016: <http://www.thearc.org/what-we-do/public-policy/policy-issues/transportation>

- cross-checking of current disability placard holder lists against the state registry for death records and cancelling any placard for an individual identified as deceased and explore tracking of parking placards by the Department of Motor Vehicles with a unique identifier (Texas driver license or state identification number); and
- coordinating with local law enforcement to enforce accessible parking placard fraud and abuse.

Recommendation 9.3: In coordination with the Texas Department of Motor Vehicles and county tax assessor-collector offices, develop statewide public awareness on accessible parking and its impact on Texans with disabilities through public awareness campaigns.

Recommendation 9.4: Change the language in the Transportation Code from “Handicapped Parking” to “Accessible Parking” to align with the spirit of Texas Government Code, Chapter 392, Person First Respectful Language Initiative.

Recommendation 9.5: Amend [Transportation Code § 681.011 Offenses; Presumption](#) to permit alternative sentencing which includes:

- required education classes on disability awareness and accessible parking with a reduced fine upon completion of said education;
- community service/restitution requirements at a nonprofit organization that serves persons with disabilities or any other community restitution that may sensitize the violator to the needs and obstacles faced by persons with disabilities; and
- the development of standardized required education classes on disability awareness and accessible parking by the Texas Department of Motor Vehicles to fulfill the requirements of recommendation 9.5(a).

Recommendation 9.6: Redefine the van accessible requirements in the Texas Accessibility Standards (TAS) for medical and rehabilitation facilities to significantly increase the number of van accessible spaces.

- Optimal placement shall include a mix of van accessible and accessible spaces for equitable access to the closest accessible path of travel.
- Changes shall be implemented in the manner of the least cost.
- Pending approval of this recommendation TDLR shall add an ADVISORY MEMO into the 2022 TAS to update this requirement.

Recommendation 9.7: Consider expanded statutory authority in Human Resources Code, Title 7, Chapter 115.009 to grant additional authority to the GCPD to:

- provide education, training, and assistance to law enforcement agencies on accessible parking enforcement; and

- work with other state agencies to provide public education and awareness on accessible parking issues and compliance with accessible parking laws.

Issuing Accessible Parking Placards to Rehabilitation Facilities

Organizations that provide accessible transportation for individuals with disabilities to live independently and thrive in their community of choice do not have access to accessible parking placards. The Texas Transportation Code provides for accessible parking placards to:

- individuals with a disability (Driver License or Identification Card number required);
- individuals who are applying on behalf of an individual with a disability and who regularly assist individuals with a disability (Driver License or Identification Card number of assisting driver required); or
- the administrator or manager of an institution licensed to transport individuals with a disability defined under Section 681.0032 of the Transportation Code (which is a license for residential facilities).

The current law only allows for a van or bus operated by residential institutions, facilities, and residential retirement communities licensed under the Health and Safety Code where individuals with a disability or seniors live to obtain an accessible parking placard. Current law does not allow Centers for Independent Living or other nonprofits who regularly provide accessible transportation for individuals with a disability to obtain an accessible parking placard so that they may work, thrive, and play in the community independently. It is a third-degree felony for non-residential institutions or persons not authorized to use an accessible parking placard.

Recommendation 9.8: Amend Section 681.0032 of the Texas Transportation Code to include Texas Centers for Independent Living, day habilitation, and senior activity centers or other organizations that provide independent living services.

Transportation Network Companies and Wheelchair Accessible Vehicles

On-demand ride hailing services, such as those provided by Transportation Network Companies (TNCs), including businesses like Uber, Lyft, etc., help reduce transportation barriers that often limit access to jobs, healthcare, and community services for many people. However, these benefits have not been as fully accessible to people with disabilities who use fixed-frame wheelchairs, as wheelchair-accessible vehicles (WAVs) are not readily available.

Individuals with disabilities who use fixed-frame wheelchairs experience difficulty in accessing TNCs' services because the availability of WAVs is not guaranteed. In many transportation markets a TNC company will redirect their customers with disabilities to a third-party alternative provider to whom they have no business relationship and who may or may not provide accessible services to individuals in fixed-frame wheelchairs.

Prior to 2017, multiple cities across the state had local ordinances to address TNC service accessibility for customers with disabilities. In 2017, House Bill 100 (85th Texas Legislature, Regular Session) was passed, mandating that TNCs develop two-year pilot programs offering accessible services in one of their top four largest market share cities in the state. Additionally, HB 100 removed all local and municipal regulations and elevated regulatory authority to the state under the authority of TDLR without implementation of accessibility rules. After this, TNCs expanded rapidly throughout Texas without any accessibility standards for serving riders who use fixed-frame wheelchairs.

Anecdotal reports from customers with disabilities who use fixed frame wheelchairs reveal increased complaints regarding requesting a ride from transportation network companies. These complaints relate to greater wait times, no-shows, and higher trip costs. These same passengers' express concerns about an overall reduction in available WAVs from all types of transportation service providers. As a result, people with disabilities who use fixed-frame wheelchairs are not able to equitably access ride-hailing transportation services and are seeing a tremendous statewide decline in all private demand-response accessible transportation services. The accessibility pilot program required of TNC providers and the subsequent reports due to TDLR and the Legislative Committees of jurisdiction should be reviewed to see if further action should be taken to increase the availability of transportation options for fixed-frame wheelchair users.

Recommendation 9.9: Transportation Network Companies (TNCs) and the Texas Legislature should further study how public and private driver incentives can lower the cost of owning and operating a WAV to provide expanded access to passengers who use fixed-frame wheelchairs.

Appendix A: Proposed Edits for Texas Human Resources Code, Chapter 121

Sec. 121.002. DEFINITIONS. In this chapter:

(1) "Assistance animal" ~~and "service animal"~~ means ~~a canine-an animal~~ that ~~is specially trained or equipped to help provide assistance or emotional support for the benefit of~~ a person with a disability ~~and that is used by a person with a disability. The term includes a service animal.~~

(5) "Service animal" means a canine that is specially trained or equipped to do work or perform tasks to help a person with a disability and that is used by a person with a disability. These tasks may include, but are not limited to, guiding a person who is visually impaired or blind, alerting a person who is Deaf or Hard of Hearing, [predicting a diabetic episode], pulling a wheelchair, assisting with mobility or balance, alerting and protecting a person who is having a seizure, buffering against crowds, alert the handler to an incipient manic episode, anxiety or panic attack, interrupting flashbacks and nightmares, or performing other special tasks.

(5-A) "Emotional support animal" means an assistance animal that does not require or possess training to do work, perform tasks, provide assistance, or provide therapeutic emotional support to a person with a disability, but by virtue of its presence can alleviate one or more identified symptoms or effects of a person's disability.

(a) To the extent required by federal law, rule, or regulation, it is unlawful to discriminate in the provision of housing to a person with a disability or disability-related need for, and who has or at any time obtains, an emotional support animal.

(b) An emotional support animal is not a service animal and does not provide a person with a disability with the same rights regarding admittance to public facilities and transportation as a service animal.

(Z) "White cane" means a cane or walking stick that is metallic or white in color, or white tipped with a contrasting color, and that is carried by a blind person to assist the blind person in traveling from place to place.

Sec. 121.003. DISCRIMINATION PROHIBITED. (a) Persons with disabilities have the same right as persons without disabilities to the full use and enjoyment of any public facility in the state.

(b) No common carrier, railroad train, motor bus, streetcar, boat, or other public conveyance or mode of transportation operating within the state may refuse to accept as a passenger a person with a disability because of the person's disability, nor may a person with a disability be required to pay an additional fare because of his or her use of a service animal, wheelchair, crutches, or other device used to assist a person with a disability in travel.

(c) No person with a disability may be denied admittance to any public facility in the state because of the person's disability.

1. No person with a disability may be denied the use of a white cane, **assistance service** animal, wheelchair, crutches, or other device of assistance.

2. An emotional support animal does not provide the same rights regarding admittance to public facilities as a service animal.

(d) The discrimination prohibited by this section includes a refusal to allow a person with a disability to use or be admitted to any public facility, a ruse or subterfuge calculated to prevent or discourage a person with a disability from using or being admitted to a public facility, and a failure to:

(1) comply with Chapter [469, Government Code](#);

(2) make reasonable accommodations in policies, practices, and procedures; or

(3) provide auxiliary aids and services necessary to allow the full use and enjoyment of the public facility.

(e) Regulations relating to the use of public facilities by any designated class of persons from the general public may not prohibit the use of particular public facilities by persons with disabilities who, except for their disabilities or use of **assistance service** animals or other devices for assistance in travel, would fall within the designated class.

(f) It is the policy of the state that persons with disabilities be employed by the state, by political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the

same terms and conditions as persons without disabilities, unless it is shown that there is no reasonable accommodation that would enable a person with a disability to perform the essential elements of a job.

(g) Persons with disabilities shall be entitled to full and equal access, as other members of the general public, to all housing accommodations offered for rent, lease, or compensation in this state, subject to the conditions and limitations established by law and applicable alike to all persons.

(h) A person with a total or partial disability who has or obtains an **service assistance** animal is entitled to full and equal access to all housing accommodations provided for in this section, and may not be required to pay extra compensation or make a deposit for the animal but is liable for damages done to the premises by the animal except for reasonable wear and tear.

~~(a) (i) Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities and the same liability for damage, as is provided for a person with a disability accompanied by a service animal. The animal shall be under the control of its trainer. The facility may ask the trainer to remove the animal from the premises if the animal is out of control and the trainer does not take effective action to control it.~~

Any trainer of a service animal, while engaged in the training of such an animal, has the same rights and privileges with respect to access to public facilities and the same liability for damage, as is provided for a person with a disability accompanied by a service animal.

(j) A person may not assault, harass, interfere with, kill, or injure in any way, or attempt to assault, harass, interfere with, kill, or injure in any way, an assistance animal.

(k) Except as provided by Subsection (l), a person is not entitled to make demands or inquiries relating to the qualifications or certifications of a service animal for purposes of admittance to a public facility except to determine the basic type of assistance provided by the service animal to a person with a disability.

(l) If a person's disability is not readily apparent, for purposes of admittance to a public facility with a service animal, a staff member or manager of the facility may inquire about:

(1) whether the service animal is required because the person has a disability; and

(2) what type of work or task the service animal is trained to perform.

Sec. 121.005. RESPONSIBILITIES OF PERSONS WITH DISABILITIES. (a) A person with a disability who uses an assistance animal for assistance in travel is liable for any damages done to the premises or facilities by the animal.

(b) A person with a disability who uses an assistance animal for assistance in travel or auditory awareness shall keep the animal properly harnessed or leashed, and a person who is injured by the animal because of the failure of a person with a disability to properly harness or leash the animal is entitled to maintain a cause of action for damages in a court of competent jurisdiction under the same law applicable to other causes brought for the redress of injuries caused by animals.

(a) A person **commits an offense if the person:**

(1) claims an animal is a service animal when (i) the animal is not a service animal, (ii) the person knows that the animal is not a service animal, and (iii) the person claims it is a service animal for the purpose of obtaining any of the rights or privileges set forth in state law for an individual with a disability who has a service animal;

Sec. 121.006. PENALTIES FOR IMPROPER USE OF ASSISTANCE ANIMALS.

(a) A person **commits an offense if the person:**

(1) claims an animal is an assistance animal or service animal when (i) the animal is not an assistance animal or service animal, (ii) the person knows that the animal is not a service animal, and (iii) the person claims it is a service animal for the purpose of obtaining any of the rights or privileges set forth in state law for an individual with a disability who has a service animal; or

(2) fits an ~~who uses a service~~ animal with a harness, collar, vest, sign, tag, ~~or~~ leash, or other form of identification of the type commonly used by persons with disabilities who use ~~assistance animals or service~~ animals, so that the person may gain access, permission, or benefits

~~**provided to persons with disabilities who use assistance animals or service animals by requesting trained animals, in order to represent**~~ that ~~**the his or her**~~ animal is a specially trained ~~**assistance animal or**~~ service animal when training has not in fact been ~~**and is not being**~~ provided.

~~**(a-1) An offense under Subsection (a),**~~ is ~~**guilty of**~~ a misdemeanor ~~**punishable and on conviction shall be punished**~~ by:

- (1) a fine of not more than \$300; and
 - (2) 30 hours of community service to be performed for a governmental entity or nonprofit organization that primarily serves persons with visual impairments or other disabilities, or for another entity or organization at the discretion of the court, to be completed in not more than one year.
- (b) A person who habitually abuses or neglects to feed or otherwise neglects to properly care for his or her assistance animal is subject to seizure of the animal under [Subchapter B, Chapter 821, Health and Safety Code](#).