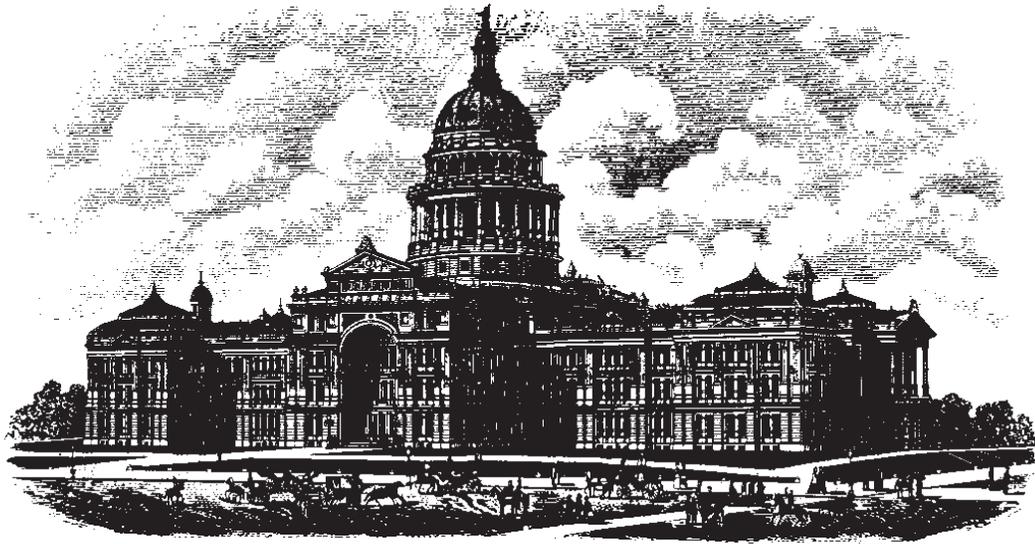


# Sunset Advisory Commission



## Texas Rehabilitation Commission

Texas Planning Council for Developmental Disabilities

Texas Governor's Committee on People with Disabilities

Texas Office for the Prevention of Developmental Disabilities



Staff Report

1998

## **SUNSET ADVISORY COMMISSION**

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In 1977, the Texas Legislature created the Sunset Advisory Commission to identify and eliminate waste, duplication, and inefficiency in government agencies. The 10-member Commission is a legislative body that reviews the policies and programs of more than 150 government agencies every 12 years. The Commission questions the need for each agency, looks for potential duplication of other public services or programs, and considers new and innovative changes to improve each agency's operations and activities. The Commission seeks public input through hearings on every agency under Sunset review and recommends actions on each agency to the full Legislature. In most cases, agencies under Sunset review are automatically abolished unless legislation is enacted to continue them.

**TEXAS REHABILITATION COMMISSION**

**TEXAS PLANNING COUNCIL FOR  
DEVELOPMENTAL DISABILITIES**

**TEXAS GOVERNOR'S COMMITTEE ON  
PEOPLE WITH DISABILITIES**

**TEXAS OFFICE FOR THE PREVENTION  
OF DEVELOPMENTAL DISABILITIES**

**SUNSET STAFF REPORT**

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**TEXAS REHABILITATION COMMISSION**

# **EXECUTIVE SUMMARY**

# Executive Summary

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The Texas Rehabilitation Commission (TRC) is the State's primary authority for the rehabilitation of people with disabilities. TRC serves individuals with a variety of disabilities, except for individuals with vision impairments, who are served by the Texas Commission for the Blind. TRC's primary emphasis is on vocational rehabilitation and helping persons with mental or physical disabilities prepare for, find, and maintain employment. In fiscal year 1997, TRC served almost 100,000 individuals in its Vocational Rehabilitation program. In addition, TRC operates smaller programs that assist persons with disabilities who need more intensive support to obtain or maintain employment. Other programs are not employment related and instead focus on increasing the ability of persons with severe disabilities to live more independently in their home or community. In fiscal year 1997, TRC served a combined total of 7,400 individuals in these specialized programs.

In addition to rehabilitation programs, TRC is responsible for determining initial eligibility for Social Security disability benefits. The agency's Disability Determination Services is wholly federally funded and operates under federal Social Security Administration regulations. Unlike vocational rehabilitation, which provides services to persons with disabilities to get them back to work, Social Security provides cash payments to those deemed unable to work.

The Sunset review of TRC focused on four major areas, increasing the effectiveness of the service delivery system, financial accountability, the policymaking role of the TRC Board, and the impact of TRC's Disability Determination Services. The following material summarizes the results of the review.

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## 1. Provide More Direction to Counselors and Increase Monitoring and Oversight of Their Decision Making.

Vocational rehabilitation counselors are responsible for helping persons with disabilities to become employed. Counselors are given great latitude to make decisions about how TRC funds will be spent to help clients obtain employment. TRC should ensure that it provides counselors with adequate direction to guide the rehabilitation planning process and the purchase of goods and services for their clients. In addition, TRC should ensure that clients are monitored for their participation and progress and counselors are following established guidelines.

Without clear direction and oversight of counselor decision making, TRC cannot ensure that clients are appropriately determined eligible for services, only necessary services are purchased, and the progress of clients is adequately measured. As a result, TRC cannot ensure that public funds are spent prudently.

***Recommendation:*** Require the Commission to establish and maintain a framework to guide provision of vocational rehabilitation services, including developing requirements for eligibility criteria, rehabilitation planning, service provision, counselor monitoring and oversight, use of benchmarks to measure client progress, and an annual assessment of the effectiveness of the State's vocational rehabilitation program.

## **2. Increase Emphasis on Agency Outreach and Further Focus Vocational Rehabilitation on Texans with Severe Disabilities.**

An estimated one million Texans are eligible for vocational rehabilitation services. The Texas Rehabilitation Commission currently serves approximately 10 percent of these individuals. TRC has successfully met federal and State measures for serving clients with severe disabilities. However, some advocates believe that the State's vocational rehabilitation system is designed in a way that impedes agency efforts to seek out and serve individuals with severe disabilities. Opportunities exist for the agency to address the growing need for VR services, improve documentation of services to people with severe disabilities, and improve outreach efforts to increase awareness of the State's VR services.

***Recommendation:*** As a management action, the agency should address the increasing need for VR services in the state, and improve outreach efforts, particularly to people with severe disabilities. TRC should work with the Legislative Budget Board and the Office of the State Auditor to accurately measure how well the agency serves people with severe disabilities in its Vocational Rehabilitation program. The agency should improve documentation of severity in case files. Finally, TRC should involve its Rehabilitation Advisory Council and advocates for people with disabilities to determine how the agency can continue to expand and improve vocational rehabilitation services to people with severe disabilities.

## **3. Improve Opportunities for Students With Disabilities to Move Successfully into Adult Life.**

Transition planning is a process that helps students with disabilities prepare for their life after leaving school, particularly the student's vocational future. TRC has assigned liaison counselors to each of the

1,050 independent school districts in Texas. Counselors are expected to educate school personnel and students about TRC services and develop a plan with eligible students of how TRC can assist them after they leave school. Current agency policy, however, does not sufficiently guide counselors in their role. TRC should ensure it has provided adequate direction and guidance to enable counselors to assist students with disabilities to the greatest extent possible.

***Recommendation:*** Require TRC to develop and implement a system that effectively emphasizes and provides transition planning services. TRC should better define and expand its current efforts in the area of transition planning by developing clear objectives for serving students with disabilities and methods by which to meet those objectives.

## **4. Require TRC to Strengthen its Standards for Approving Medical Services and Develop a Plan to Manage Potential Liability.**

TRC decision-making process regarding payment for medical services does not meet the standards followed by other purchasers of medical care. TRC policies do not require second opinions or functional assessments of the potential improvement from services, and the agency does not have a plan to manage the risks inherent in these procedures. Further, TRC's review process for approving medical services does not meet standards set for these types of reviews. As a result, clients may not achieve the outcomes they expect, TRC may pay for expensive but ineffective services, and medical services may create significant risks for the client and the State. Strengthening the decision-making process regarding medical services would reduce risks and bring the agency in line with commonly-used practices of the health care industry.

***Recommendation:*** Require TRC to meet health care industry standards in the approval of medical services for clients, including the use of second opinions.

TRC should conduct an analysis of the risk associated with funding medical procedures and develop a plan to manage the potential liability. The risk management plan should include utilization review standards similar to those applied to private insurers, and should require an assessment, where applicable, of whether the procedures will benefit the client's ability to return to work.

#### **5. Require That TRC Develop a Rate-Setting Methodology That Ensures Best Value Purchasing and Allows for Public Input.**

Each year, TRC vocational rehabilitation counselors buy over \$40 million worth of hospital and medical services for clients. Agency rules require that rates paid for vocational rehabilitation services “be instituted by TRC policy, in order to ensure that rates are cost effective” and “be designed to ensure best value and efficient and effective use of client service dollars.” TRC has not established a documented rate-setting methodology for its purchases of health care services, and consequently, the agency cannot document that best value is a consideration in TRC's rate setting, as required by law. In lieu of developing a rate schedule, TRC could use Medicare or Medicaid rates, or a mix of both, to reimburse providers.

Unlike other health and human services agencies, TRC does not use an open, public process to set rates. Rates are set by agency staff and are not formally adopted by the TRC Board. Public scrutiny would allow providers, clients, and other stakeholders to understand the process used to set rates and comment on their appropriateness.

***Recommendation:*** Require the TRC Board to establish its rate-setting methodology for all rates by agency rule. The TRC Board should encourage public comment regarding proposed rates and TRC's rate-setting methodology should be adopted in a public meeting. When adopting a rate schedule, the TRC Board should review a comparison of the proposed rate schedule to other cost-based rates for

medical services, including Medicaid and Medicare rates, and document why any rate must exceed the established rate for the service.

#### **6. TRC Should Promote Competition in its Purchases and Explore Other Options to Reduce Costs.**

TRC rules state that the Commission must “consider the best interests of persons served, the public and the State of Texas at all times” and must “use competitive procurement methodologies as the primary procurement methodology whenever possible, to secure best value and to provide an opportunity for all qualified organizations or persons to do business with the Commission.” Even though TRC rules state that the agency will use competitive purchasing methods whenever possible, TRC counselors do not comply with best-value requirements to obtain competitive bids when buying services for clients. Other components of best-value purchasing, including an overall assessment of the quality of the service, are not consistently used by TRC.

***Recommendation:*** Require TRC to implement agency-wide procurement procedures to comply with best-value purchasing requirements, negotiate price discounts with high-volume vendors, consolidate purchases with other agencies, and document the reason for selecting a vendor.

#### **7. Extend Rehabilitation Services to More Clients by Ensuring that TRC Funds are the Last Used to Pay for Rehabilitation Services.**

TRC clients receive a variety of services, including major surgeries and hospitalization, that are intended to allow a client to keep a job or return to work. To ensure that TRC funds are the last to pay for services, agency rules require each vocational rehabilitation counselor to seek other sources of payment for “comparable benefits” before TRC pays for a service. At present, TRC does not verify if a client has the

ability to pay for services or that the client has sought services from other providers.

***Recommendation:*** TRC should implement the following actions to bring the agency into compliance with State and federal requirements that TRC exhaust all other sources of funding before paying for rehabilitation services. Require TRC clients, under penalty of law, to attest in writing that their statements regarding their financial assets are complete and accurate. TRC should establish counselor performance objectives related to documenting that clients have sought comparable benefits. TRC should also limit the dollar amount of services that may be authorized by a counselor without documentation of client income and documentation that the client has sought comparable services.

#### **8. Improve Policymaking at TRC by Clarifying the Board's Role.**

The Texas Rehabilitation Commission's statute, unlike the statute for most health and human services agencies, does not clearly define the powers and duties of the TRC Board. In addition, the statute does not clearly define the Board's authority in the rulemaking process and gives the TRC Commissioner the responsibility to establish the agency's policies. This limits public involvement in the agency's policymaking.

***Recommendation:*** The TRC statute should be amended to clarify the powers and duties of the TRC Board, including clarifying the authority to adopt rules. In addition, the Board should be required to re-adopt rules on its advisory committees to ensure that the advisory committees report directly to the Board. Finally, require the advisory committees to report periodically to the Board, in a public meeting.

#### **9. Seek to Bring Texas' Denial Rate for Social Security Disability Determination In Line with the National Average.**

For adults with severe disabilities who are unable to work or children whose parents must give up their jobs to take care of them, Social Security benefits can be a lifeline to meet daily living needs such as housing, utilities, and meals. Without these benefits, the burden is often placed on the State to provide assistance through other state and federal programs. Texas' denial rates, and that of its federal Social Security region, are higher than the average for the rest of the country. Some individuals in Texas may not be receiving the same treatment in their application for Social Security disability benefits as individuals in other states. This situation needs further investigation and possible correction, which must occur at the federal level.

***Recommendation:*** The Sunset Commission should ask the State's Leadership — the Governor, Lieutenant Governor, and the Speaker — to intervene at the federal level to protect the interests of the State's citizens with regard to Social Security disability benefits. The Office of State-Federal Relations (OSFR) in Washington D.C. is in a position to help with an inquiry as to why Texas' denial rate for disability determinations exceeds the national average and what steps may be taken to ensure that Texas citizens receive the disability benefits to which they are entitled.

#### **10. Decide on Continuation of the Texas Rehabilitation Commission as a Separate Agency after Completion of Sunset Reviews of all Health and Human Service Agencies**

Most of the State's health and human service agencies are currently under Sunset review. While these agencies serve many unique purposes they also have many similarities that should be studied as areas for possible improvement through organizational change. This analysis should occur before decisions are made to continue the HHS agencies as separate entities, including the Texas Rehabilitation Commission.

***Recommendation:*** Decide on continuation of the Texas Rehabilitation Commission as a separate agency upon completion of the Sunset reviews of all health and human service agencies.

## **Fiscal Impact Summary**

The recommendations contained in this report are intended to enable the Texas Rehabilitation Commission to better perform its functions within existing resources. The recommended utilization review, second medical opinions, and functional assessments will result in over \$2 million in savings to state and federal funds. The recommendations to improve TRC's rate-setting process will result in approximately \$3,000,000 in savings each year to state and federal funds. Other recommendations to improve TRC's business practices and the guidance given to counselors will result in additional savings. However, the amount of these savings could not be estimated. The recommendation to increase TRC's involvement with the number of students with disabilities through the transition planning program may result in a small cost of between \$40,000 and \$100,000.

In total, the recommendations relating to TRC contained in this report will save the State \$5 million per year.

<b>Fiscal Year</b>	<b>Savings to General Revenue</b>	<b>Savings to Federal Funds</b>	<b>Total Savings</b>
2000	\$750,000	\$2,250,000	\$3,000,000
2001	\$1,150,000	\$3,850,000	\$5,000,000
2002	\$1,150,000	\$3,850,000	\$5,000,000
2003	\$1,150,000	\$3,850,000	\$5,000,000
2004	\$1,150,000	\$3,850,000	\$5,000,000



## **APPROACH AND RESULTS**

# Approach and Results

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## Approach

The goal of the Texas Rehabilitation Commission (TRC) is to ensure that a person is not prevented from working because of a disability. TRC was established in 1969 and designated as the State's primary agency for rehabilitation of people with disabilities, except for people with visual impairments who are served by the Texas Commission for the Blind. Although TRC is a relatively young agency, federal vocational rehabilitation (VR) programs have been administered by various agencies of the state since 1929.

Nationally, TRC is a leader in both returning clients to work and serving clients with severe disabilities. The agency's success has been based on a management philosophy that is outcome driven and focused on successfully meeting client needs. TRC's management philosophy and approach have been implemented through stable executive leadership. Both the current Chairman of the agency's Board and the Commissioner have held their positions for over fifteen years.

TRC operates two large programs, its vocational rehabilitation (VR) program and the Disability Determination Service (DDS) program. The Sunset review focused primarily on the agency's federally funded vocational rehabilitation program that serves more than 98,000 clients. In addition to its two larger programs, the agency operates six other programs that provide various extended employment support, comprehensive rehabilitation and independent living services to about 7,500 clients. Approximately 80 percent, or \$195 million, of the agency's total budget comes from federal funding.

The federal Rehabilitation Act of 1973, and its subsequent amendments, direct much of TRC's day-to-day operations. In fact, the federal law has shaped TRC's overall culture and values in more ways than is typically evident in most other state agencies. The influence of federal law is particularly evident in the client-oriented approach to the delivery of services. The Act requires that clients actively participate in developing their individual rehabilitation plan, and that clients be given a broad range of choices regarding future employment and in selecting the services needed to remove a vocational impediment.

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Federal law shapes TRC's activities more than is typical in most state agencies.

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Given some latitude, the Sunset review sought changes in TRC's approach that met the basic tenets of the federal system.

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In developing its approach to the review, Sunset staff took into consideration that TRC has been a relatively stable agency over time because of the consistency of the federal Act, availability of adequate federal funding, and the longevity of the Board Chairman and Commissioner. The VR system in Texas has been reviewed by federal auditors numerous times and generally found to meet or exceed federal requirements. In general, both the federal rehabilitation requirements and State law are not prescriptive and allow the State considerable latitude in delivering services. Sunset staff worked considerably with TRC to see where the agency might change its approaches to place limits on who receives services, how they receive them, and how they are purchased, and still meet the basic tenets of the federal system.

Because TRC has considerable latitude in delivering services, the Sunset review focused on reviewing the structure and oversight of the agency. The review considered the agency's ability to effectively follow through on and monitor implementation of administrative policies that focus on meeting client needs. This concern required a detailed look at how the agency manages the way rehabilitation services are delivered to clients, builds safeguards to protect financial resources available to the agency, and involves the public and its constituencies in developing rehabilitation policy.

In forming the approach to the review, staff focused on four areas that touch on all aspects of TRC operations. (See the text box, *Components of the Sunset Review*.) Each of these areas has been significantly affected by federal law and is of substantial concern to

#### **Components of the Sunset Review**

- I. Service Delivery
  - Rehabilitation Counselor Performance
  - School-to-Work Transition Program
  - Outreach to Individuals with Severe Disabilities
- II. Financial Accountability
- III. Policymaking by the TRC Board
- IV. Disability Determination Services

advocates and interest groups participating in the Sunset process.

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The strong client-oriented direction set in federal law puts TRC in a difficult position.

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The first area, service delivery, is influenced by broad federal authority that allows TRC staff counselors to conduct rehabilitation service planning with notable independence and freedom. This flexibility permits counselors to choose from a truly vast, and often expensive, array of services to address a client's needs. The strong client-oriented direction set in federal law puts TRC in a difficult position. The agency must attempt to reasonably conserve resources for the broadest benefit of Texans, yet respond to highly personal preferences of individual clients. Because federal and state guidelines give VR counselors very limited ability to deny services or to direct client decisions, Sunset staff explored ways that TRC could balance this client power with the need to spend tax dollars wisely, be they state or federal. As

detailed later in this section of the report, Sunset staff found several ways TRC could improve on this balance and meet federal requirements.

The review looked more carefully into one specific area of vocational rehabilitation counseling called transition planning. This process assists students with disabilities in the public schools who need assistance in finding employment opportunities upon leaving the structured school environment. The review found that TRC faces challenges posed by working with numerous local independent school districts and because of the sometimes difficult nature of the caseload. Transition planning is particularly important because of the high unemployment among young persons with disabilities and the related need for public services.

TRC's financial accountability practices constituted the second area of the review. TRC spends more than \$100 million annually to buy goods and services for clients. TRC's key business practices required close evaluation, particularly those relating to procurement of complex medical services. Although TRC's fiscal practices have evolved, advanced medical procedures, increased need for risk management, and need for improved fiscal accountability make this area an important part of improving agency operations.

The Sunset review process always considers the degree to which the public participates in an agency's policymaking process. In some ways, TRC's constituency differs from those of other health and human service agencies. TRC has a short-term relationship with most clients, typically for a period of 12 months. Also, the client is basically entitled to receive services he or she chooses. Another difference is that clients who are eligible for vocational rehabilitation services are not put on a waiting list. These factors contribute to overall client satisfaction. Although positive and beneficial to the State, these factors may affect the way the Board develops policy and handles its relationship with the public.

The last area of the Sunset review focused on the agency's role in federal disability determination process. This involves applications to the Social Security Administration for disability benefits. This area proved to be a difficult and complex area to assess because the federal government sets all the parameters used by TRC to make these decisions. Throughout the review, Sunset staff received numerous questions and concerns on this topic. Because the program is federally driven, concerns were often beyond what Sunset could adequately assess, yet were clearly critical questions that affect the needs of Texans with disabilities. Staff was particularly concerned about regional and state-to-state differences for the number of individuals receiving approval for benefits. Normally, justified concerns can be addressed through

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Sunset staff explored ways to balance client power with spending tax dollars wisely.

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changes in State law. In this case, Sunset staff found TRC's ability to make changes in this process very limited. However, the review still looked for ways that could increase benefits to Texans with disabilities.

## **Review Activities**

In conducting the review of TRC, the Sunset staff:

- worked extensively with agency staff and management;
- attended TRC Board meetings;
- attended advisory committee meetings;
- conducted field work at: the Deaf-Blind with Multiple Disabilities program operated by the Houston Lighthouse for the Blind; the Houston Center for Independent Living; the Nightingale Rehabilitation Center in Houston, which provides extended rehabilitation services; and two comprehensive rehabilitation facilities, Transitional Learning Community, in Galveston, and the Institute for Rehabilitation and Research in Houston;
- met with the TRC staff at Regional Offices in Houston and Austin;
- met with the TRC staff at field offices in Austin, Round Rock, Houston and Galveston;
- met with TRC regional purchasing staff in San Antonio;
- reviewed 50 case files selected at random from TRC's central files;
- observed meetings between vocational rehabilitation counselors and clients;
- attended the annual meeting of the Coalition of Texans with Disabilities;
- reviewed agency documents and reports including the agency's Self-Evaluation Report, strategic plans, operating plans, internal audits of the the State Vocational Rehabilitation Plan;
- reviewed State Auditor reports and past legislative committee reports;
- met with and interviewed state advocacy and interest groups;
- met with legislative staff; and
- contacted federal officials at the Rehabilitation Services Administration and Social Security Administration.

## Results

The TRC Sunset review attempted to answer the basic question of whether the agency is generally effective in serving its clients. The first area that Sunset staff evaluated was the effectiveness of the Vocational Rehabilitation (VR) program. Because VR is by far TRC's largest program, many of the staff recommendations directly involve vocational rehabilitation. The Sunset staff also made recommendations in the following three review areas: financial accountability and agency policies regarding the purchase of medical services for clients, the policymaking role of the TRC Board, and the impact of Social Security disability determination services.

**Service Delivery** — The Sunset review looked at whether the service delivery system, especially the work of VR counselors and transition planning staff, effectively meets clients' needs. Sunset staff found that TRC furnishes guidelines for counselors to use in rehabilitation planning, but some key weaknesses exist in the direction and criteria provided by the agency. The rationale used by counselors to purchase services was often not clear and in many cases appeared to have little relationship to the client's impediment to employment. **Issue 1** would strengthen guidelines for the provision of services and prevent waste of limited resources by ensuring that counselors purchase only those services necessary for the achievement of the employment objective. More specific guidelines should assist counselors in determining when clients should be denied services for non-participation or what to do when a client has unreasonable job expectations. In addition, improved documentation of counselor decisions would enable TRC to identify counselors who are not meeting agency standards as well as general agency practices that may not be effective.

**Issue 2** looks at TRC's efforts to provide vocational rehabilitation services to persons with severe disabilities. Sunset staff found that broad federal definitions of disabilities and lack of clear documentation make it difficult to accurately assess how well the agency serves people with severe disabilities. Additionally, the agency's informal outreach system needs greater emphasis and attention. As a management action, TRC should work further on its outreach efforts, seek the assistance of the Legislative Budget Board and the State Auditor to better measure how well the agency serves people with severe disabilities, and improve documentation in case files.

The Sunset review examined TRC's efforts to assist students with disabilities in their transition from school to adult life. Although the public school is ultimately responsible for initiating and guiding the transition process, TRC is the lead agency on vocational rehabilitation, and can play a key role in transition. In **Issue 3**, Sunset staff looked at agency policy on transition

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VR counselors need more guidance in providing cost effective, necessary services to clients.

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Better assessment and more formal outreach would improve services to people with severe disabilities.

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TRC could take a more active role in transition planning for young people.

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planning to determine whether it offered counselors sufficient encouragement and guidance in working with school personnel and students preparing to leave the school system. Despite the documented benefit of transition planning for young people moving from school to work, TRC counselors do not receive clear direction in agency policy regarding their transition planning responsibilities. Issue 3 would help TRC to strengthen policies surrounding transition planning and maximize benefits to both students with disabilities and the State.

**Financial Accountability** — The Sunset review examined the processes that TRC uses when purchasing close to \$50 million each year for medical and hospital services for its clients. Most TRC clients have significant medical problems, and many clients require medical or hospital care as part of their vocational rehabilitation. Sunset staff examined the TRC policies regarding the review and approval of medical services and found that they do not conform to industry standards followed by health care providers. TRC policies do not require second opinions or functional assessments of the potential improvement from services, and the agency does not have a plan to manage the risks inherent with these procedures. **Issue 4** recommends that TRC review and strengthen its utilization review process to ensure that clients achieve the outcomes they expect when they undergo medical treatment and that TRC minimize its risks when clients receive medical services.

Sunset staff also found that the agency has not established a documented rate-setting methodology that ensures that rates are rationally based, equitable, and clearly tied to the cost of providing a service. Consequently, the agency cannot document that best value is a consideration in TRC's rate setting, as required by law. TRC has not developed a true cost-based system that justifies the amounts that the agency pays for medical services. Also, Sunset staff found that unlike other health and human services agencies, TRC does not use an open, public process to set rates. Rates are set by agency staff and not formally adopted by the TRC Board. **Issue 5** looks at TRC's rate-setting process and recommends that TRC develop a rate-setting methodology that ensures best value and public input.

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Review and approval of medical services should conform to standards followed by health care providers.

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TRC rules require that competitive procurement methods be used to buy goods and services for clients. However, Sunset staff found that TRC routinely makes non-competitive procurement involving large expenditures. The review found that TRC could reduce costs by negotiating discounts with its high-volume vendors. **Issue 6** examines whether TRC has complied with statutory requirements related to best-value procurement and competition in its procurement process. The recommendation will help to improve TRC

purchasing and reduces the potential for biased decision making and wasteful spending.

Finally, federal law and TRC rules require that TRC funds be the last funds used to pay for vocational rehabilitation services. Other local, state and federal programs and TRC clients, when possible, are expected to pay for services before TRC spends its dollars. Sunset staff found that approximately 30 percent of TRC clients are employed when they receive TRC services. The review examined TRC's practices surrounding payment for services and client copayment. Staff discovered that TRC does not verify if a client has the ability to pay for services or that the client has sought services from other providers. **Issue 7** would require TRC counselors to document potential client's income and resources, and to document that clients have sought services from other agencies. Implementing this recommendation would protect the system from fraud and abuse and allow TRC to extend services to more clients.

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TRC should ensure that VR dollars are the last used to pay for services.

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***Policymaking Role of the TRC Board*** — The TRC statute does not clearly define the powers and duties of the TRC Board. In addition, the Board does not have clear authority to initiate rulemaking. Sunset staff found that the present statute gives considerable authority to agency staff and the Commissioner to set the agency's policies. The statute does not describe how the Board is to establish operational policies for the agency. Because the statute gives significant specific authority to the Commissioner, Sunset found that public involvement in policymaking at Board meetings is diminished. **Issue 8** recommends that the statute be clarified to increase public participation in the Board's policymaking.

***Disability Determination*** — To qualify for social security disability benefits, an individual must have a medically determinable physical or mental impairment that results in being unable to work, that can be expected to result in death, or has lasted or be expected to last at least 12 months. Children must have a medically determinable physical or mental impairment that results in marked and severe functional limitations that can be expected to result in death, or has lasted or is expected to last for at least 12 months. Although the same eligibility criteria are used by all states to determine eligibility, the denial rates across the country are not consistent. Comparison of denial rates across states and regions shows that Texas, and its region, have higher denial rates for initial claims than the rest of the country. **Issue 9** recommends that Texas' Leadership work with the federal government to determine the cause of these regional differences, and whether changes would allow Texans with disabilities to receive equal benefit from this federal assistance program.

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The TRC Board should be the primary policy-maker for the agency.

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The Leadership should work to ensure that Texas is receiving its share of disability benefits.

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## Recommendations

1. Provide More Direction to Counselors and Increase Monitoring and Oversight of Their Decision Making.
2. Increase Emphasis on Agency Outreach and Further Focus Vocational Rehabilitation on Texans With Severe Disabilities.
3. Improve Opportunities for Student's with Disabilities to Move Successfully into Adult Life.
4. Require TRC to Strengthen its Standards for Approving Medical Services and Develop a Plan to Manage Potential Liability.
5. Require That TRC Develop a Rate-Setting Methodology That Ensures Best Value Purchasing and Allows for Public Input.
6. TRC Should Promote Competition in its Purchases and Explore Other Options to Reduce Costs.
7. Extend Rehabilitation Services to More Clients by Ensuring that TRC Funds are the Last Used to Pay for Services.
8. Improve Policymaking at TRC by Clarifying the Board's Role.
9. Seek to Bring Texas' Denial Rate for Social Security Disability Determination In Line with the National Average.
10. Decide on Continuation of the Texas Rehabilitation Commission as a Separate Agency after Completion of Sunset Reviews of all Health and Human Service Agencies.

## Fiscal Impact

The Sunset report contains several recommendations that will have a fiscal impact to the State. Two recommendations that require TRC to improve its business practices will result in substantial savings. Several other recommendations requiring TRC to improve direction and guidance to its counselors and to make further improvements in its purchasing and policies on client copayment will also result in savings. However these savings cannot be estimated. The issue addressing the school-to-work transition program could result in a small additional cost to the State.

TRC spent approximately \$50 million on physician and hospital services during fiscal year 1998. The recommended utilization review, second medical opinions, and functional assessments could reduce TRC costs by five percent or more. Assuming a five percent savings, beginning in the second year of implementation, TRC should realize a savings of \$2.5 million per year. Such

savings would be partially offset by any additional costs for physician second opinions and other case review services. Total savings are estimated to be \$2 million per year.

TRC has recently decreased many of the fees that it pays for medical services. However, Medicare rates are still considerably lower than TRC's schedule and are widely accepted. If TRC uses the Medicare rates as recommended, Sunset estimates that TRC use of even the highest Medicare fee would reduce TRC costs for medical services by 10 percent, or approximately \$3 million per year.

Recommendations to improve TRC's purchasing processes, and to strengthen the enforcement of policies and procedures relating to who pays for services, would result in a positive fiscal impact to the State, but exact savings cannot be estimated. Documentation of purchasing decisions would create some additional work for counselors. However, since the recommendation would only affect purchases over \$2,000, costs would be minimal. Also, the recommendation will result in reduced agency costs for goods and services purchased from high-volume vendors

Requiring that clients with significant resources contribute an appropriate and modest amount toward their rehabilitation services would also result in savings. In addition, clients would be diverted to other funding sources, including Medicaid and Medicare, that could help to remove vocational impediments. As a result, vocational rehabilitation funding would be protected for clients who have no other resources. The extent of these savings cannot be estimated.

The recommendation to provide more direction to counselors and increase monitoring and oversight of their decision making will enhance TRC's service delivery system and should improve services to clients while reducing costs. Providing guidance to counselors on how to establish measures of client progress, and to provide services only when reasonable and necessary, will assist TRC in increasing counselor compliance. By appropriately limiting services to some clients, this recommendation may result in increased services to other clients, although this could not be estimated for this report.

Recommendations to increase the number of students with disabilities assisted through the transition planning program could result in a small cost to the agency. The counselor assistance provided in this program is funded through the vocational rehabilitation program, which currently has no waiting list. The agency currently receives \$400,000 in General Revenue to support the transition planning program. To ensure adequate training of counselors and

the establishment of quality relationships with school personnel and others involved in the transition planning process, the agency may need a funding increase of \$40,000 to \$100,000 in this program area.

<b>Fiscal Year</b>	<b>Savings to General Revenue</b>	<b>Savings to Federal Funds</b>	<b>Total Savings</b>
2000	\$750,000	\$2,250,000	\$3,000,000
2001	\$1,150,000	\$3,850,000	\$5,000,000
2002	\$1,150,000	\$3,850,000	\$5,000,000
2003	\$1,150,000	\$3,850,000	\$5,000,000
2004	\$1,150,000	\$3,850,000	\$5,000,000

# ISSUES

# Issue 1

## Provide More Direction to Counselors and Increase Monitoring and Oversight of Their Decision Making.



### Background

The vocational rehabilitation (VR) process used by the Texas Rehabilitation Commission (TRC) is designed to assist people with disabilities who are having difficulty preparing for, getting, and keeping employment. The key to service delivery is rehabilitation counselor staff who provide guidance and counseling to clients and purchase services to enable clients to reach their vocational goals. In fiscal year 1997, TRC employed more than 500 counselors in field offices throughout the State who served close to 100,000 clients. Total expenditures for the VR program in fiscal year 1997 came to almost \$150 million.

Counselors assist clients in reaching a vocational goal by meeting with them to assess their functional ability, choosing a mutually agreed upon vocational goal, devising a plan for services, and purchasing or providing services to the client (see chart, *Steps in the VR Process*). Each counselor manages an annual budget of up to approximately \$200,000 available to purchase goods and services for clients. Counselor practices are governed by the Rehabilitation Services Manual, an on-line, electronic policy compendium. Topics in the policy manual include intake, eligibility, planning, service provision, case closures, procurement, and caseload management.

Title I of the federal Rehabilitation Act sets forth the requirements for VR services, including the general provisions for state plans, the client services plan, scope of vocational rehabilitation services, evaluation standards and performance indicators, and monitoring and review of programs. The Act directs State VR agencies to establish and maintain standards to ensure that VR personnel are appropriately and adequately prepared and trained. In addition, states are required to adopt provisions that ensure reasonable costs for VR services and reasonable amounts of time for service delivery.

#### Steps in the VR Process

Counselors are responsible for the following:

- determining eligibility for services based on the established physical or mental disability, impediments to retaining or securing employment, and need for VR services;
- performing a comprehensive assessment of clients' strengths, resources, priorities, interests, and abilities;
- establishing with the client a vocational objective from among a broad range of employment outcomes;
- creating a rehabilitation plan for each client that lists the agreed upon array of services to be purchased and/or provided for each client; and
- monitoring each client's progress and determining when to close the case.

The Sunset review focused on the process through which eligibility for services is determined, a plan for the delivery of services and achievement of outcomes is established, and services are purchased or provided to clients. In particular, the review examined if counselors are given the appropriate level of direction to guide them in the best use of resources.

## Findings

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Counselors exercise autonomous judgment many times in the VR process.

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### ▼ Counselors must use extensive, independent judgment when making rehabilitation decisions.

- ▶ A counselor is required to exercise autonomous judgment many times throughout the VR process. Counselors determine eligibility for services, identify impediments to employment, and establish need for a wide range of VR services. Counselors are responsible for conducting a comprehensive assessment to determine the nature and extent of the disability, the client's functional assets and limitations, and the client's rehabilitation needs.
- ▶ Once the nature and limitations of the disability are established, counselors work with the client to choose a vocational objective from a broad range of possible employment outcomes. Counselors assess any career interests of the client, as well as the client's expectations for salary and benefits, and determine which employment outcomes are consistent with the client's abilities, strengths, resources, priorities, and concerns.

Throughout this process, client choice must be considered. (See textbox, *Client Choice in the VR Program*.) The federal Rehabilitation Act requires counselors to present clients with alternatives for vocational objectives, services, and service providers. If alternatives developed by TRC counselors are not acceptable to a client, or if preferences expressed by a client are not included in the options presented to the client, negotiations are conducted until a decision can be made that is acceptable to both TRC and the client. For example, if the client has a preference for a certain brand name or specific product, the counselor is required to present lower cost options to the client. Ultimately, however, clients must agree to the services to be provided by the agency.

#### **Client Choice in the VR Program**

When presenting clients with alternatives, the Council of State Administrators of Vocational Rehabilitation has taken the position that state agencies must retain responsibility to establish and maintain reasonable criteria, including costs, for the selection of services and providers leading to an employment outcome. The Council also determined that state policies should consider the responsibility of the State to support sound professional judgment on the part of the counselor.

- The decisions reached by the client and the counselor are recorded in the client’s rehabilitation plan. The plan describes the desired employment outcome for the client and shows the type, and amount, of services needed for the client to prepare for or retain gainful employment. Counselors are also required to establish criteria in the plan that measure client progress toward the objectives of the plan.

TRC does not effectively document a client’s progress toward a vocational goal.

▼ **TRC has not established benchmarks for counselors to use in measuring client progress.**

- Vocational rehabilitation usually requires the client and the counselor to develop and implement a complex plan of services. Successful closure of TRC cases relies, in large part, on clients taking personal responsibility for active, appropriate participation in their rehabilitation plan. Counselors need check points to verify that the client is following the rehabilitation plan and that the services received by the client are effectively overcoming the impediment to employment.

- Currently, agency policies require TRC counselors to define intermediate objectives for the client and evaluate the client’s progress toward the objectives. However, the agency has not provided criteria that specifically guide counselors in how to define or evaluate whether these objectives are achieved. See textbox, *TRC Policies Guiding Counselor Decisions*, for criteria currently provided to counselors. Recent changes in federal law delete the requirement for intermediate objectives. However, this does not prevent TRC from continuing this very important step in the VR process.

TRC Policies Guiding Counselor Decisions	
Counselor Decision	TRC Policy
What are the intermediate objectives the client should achieve to obtain employment?	Intermediate objectives include those <b>levels of skills, competence or physical abilities</b> necessary to attain the employment goal, and are those things the client must achieve in order to overcome impediments to employment.
How should the client’s progress be evaluated?	Include the objective criteria, and an evaluation procedure and schedule for determining whether the employment goal and intermediate objectives are being achieved.

- In a review of case files, Sunset staff found that TRC does not effectively document a client’s progress toward the vocational goal. Most of the TRC rehabilitation plans reviewed by Sunset staff contained a description of the final goal of the services, such as completion of four years of college or use of medical assistive devices, rather than a description of the specific levels of skill, competence or physical ability necessary for the client to obtain or retain employment.

### Examples of Counselor Decisions\*

Counselor determined that college was not a good option for a client due to her academic deficits and evaluation results, but agreed to sponsor tuition/fees as client requested. The client finished the semester with a GPA of less than 1.5.

Counselor provided \$1,500 in services to an employed client with dental problems that negatively affected his appearance and caused foul mouth odor. Client's case was successfully closed at the completion of services.

Counselor sponsored tuition, fees, and books for an employed client suffering from depression and stress management problems. Client wouldn't take medication to control the symptoms of depression, and finished the semester with a .5 GPA.

Counselor spent almost \$6,000 to assist a client with mental illness to obtain her undergraduate degree and is now sponsoring the client's graduate education to be a social worker.

Counselor spent \$7,000 to train a 68 year-old client with degenerative arthritis and diabetes in three different trades before losing contact with the client.

Counselor determined that an employed applicant with a history of alcoholism and drug use was eligible for services due to the stigma associated with her past drug use.

*\*Examples found in a random sample of 50 case files.*

- ▶ Review of TRC files also showed that clients generally were not required to maintain periodic contact with their counselor. Clients sometimes went for long periods without an assessment of their progress in meeting their employment objectives.
- ▶ Infrequent contact with a client coupled with the absence of adequate measures of client change make it difficult to accurately monitor and evaluate client participation and progress. Deficiency in client contact and development of progress measures may result in continued services to clients who give indications through their behavior that they are not committed to the rehabilitation plan or whose employment plans have changed.

### ▼ Although TRC furnishes guidelines for counselors to use in rehabilitation planning, some weaknesses exist in the direction and criteria provided by the agency.

- ▶ While counselors must document the client's disability, they are not currently required to document the client's impediment to employment, or why the disability prevents the individual from working. Establishing a client's impediment to employment is an essential part of determining eligibility for services. Though federal regulations require documentation supporting the eligibility determination, the only evidence currently in the case file is the applicant's perspective on why the impediment exists.

Furthermore, counselors are not routinely required to document how rehabilitation services are intended to overcome the client's impediment to employment. TRC's policies require that the employment goal, and the services leading to the employment goal, must assist the client in overcoming the impediment to employment. A review of client case files revealed that the rationale used by counselors to purchase services was often not clear and in many cases appeared to have little relationship to the client's impediment to employment.

- ▶ Another area in which counselors need more direction is in documenting the assessment of those applying for services who are already employed. Employed applicants are eligible for services if they report that they are in imminent danger of

losing employment or consider themselves substantially underemployed. Sunset staff found that criteria for identifying imminent danger or substantial underemployment are not sufficiently detailed for counselors. Close to one-quarter of the total clients served by TRC in fiscal year 1997 were employed when determined eligible for services. Again, the review of case files found no documentation related to the assessment of either imminent danger of losing employment or substantial underemployment.

▼ **Without better decision-making guidelines, TRC may be vulnerable to imprudent use of resources.**

- ▶ Current TRC guidelines do not provide clear direction regarding when to curtail services. TRC cases generally show expenditures of \$4,000-\$6,000, and slightly more than half are closed in 12 months or less. However, selected instances of large expenditures and lengthy case processing raise cause for concern. For example, the greatest amount spent on a single case at closure in fiscal year 1997 was \$95,000 for a successful closure and \$75,000 for an unsuccessful closure. Of cases closed in fiscal year 1997, the oldest successful case had been open for 14 years while the oldest unsuccessful case had been open for 16 years. Without sufficient guidelines, counselors may provide an unreasonable amount of services for an unjustified period of time.
- ▶ Although TRC is required by the Rehabilitation Act to implement procedures that assure the cost of services are reasonable and prevent fraud, waste, and abuse, Sunset staff did not find sufficient criteria in TRC's policy manual that directs counselors in how to accomplish this. (See Appendix A, *Overview of TRC Counselor Decisions and Related Policies*.) In addition, in the review of client cases, Sunset staff noted decisions that did not appear to constitute a prudent expenditure of public funds. (See text boxes, *Examples of Counselor Decisions*.)

▼ **Other state agencies effectively guide decisions through established criteria.**

**Examples of Counselor Decisions\***

Counselor spent almost \$4,000 on tuition, fees, books, room, board, counseling and job training on a client with mental illness who had been hospitalized twice. Client withdrew from school and quit a succession of jobs.

Counselor sponsored airfare, room, board, and tuition to send a client with a back impairment to Iowa to attend auctioneering college. Case was unsuccessfully closed when counselor was unable to locate the client.

Counselor agreed to help cover the cost of eight semesters at a private college after advising the client that a state-funded school would be preferable.

Counselor sponsored 300 hours of training in massage therapy and purchased a massage table for a client with mental illness. Case was successfully closed after client obtained job.

Counselor sponsored eight years of undergraduate education for a client with depression. Case was successfully closed after client graduated and obtained job.

Counselor spent \$20,000 in a four-year period to assist a client working part-time to obtain full-time employment. The client was provided with vocational training, job training/placement, job coach, tutoring, books/supplies, assistive devices, transportation, interpreter services, and counseling. This case is still open.

*\*Examples found in a random sample of 50 case files.*

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Counselors need better guidance on how to deal with a client's unreasonable requests or non-participation.

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- ▶ The statute for the Department of Mental Health and Mental Retardation (MHMR) guides the agency in the adoption of rules necessary to ensure the adequate provision of community-based mental health and mental retardation services. MHMR is required through statute to adopt rules, procedures, guidelines, and standards to determine eligibility criteria for selecting clients, conduct a periodic review of clients, and determine when assistance duplicates other support programs or results in excessive support to a client. MHMR is also directed to review a client's needs when the circumstances that were considered in determining eligibility have subsequently changed.
- ▶ The Interagency Council on Early Childhood Intervention (ECI) has adopted by rule procedures for the development, review, and evaluation of the client services plan and assessment and evaluation criteria. The plan is required to include the major strategies and outcomes expected to be achieved, the frequency, intensity, location, and method of delivering services, and the projected dates and expected duration of services. The plan also includes the criteria used to determine the degree to which progress toward achieving the outcomes is being made and whether modifications or revisions of the outcomes or services are necessary.

▼ **Improved guidelines and documentation requirements for providing vocational services would improve counselor decision making.**

- ▶ Strengthening guidelines for the provision of services would prevent the potential waste of limited resources by ensuring that counselors purchase only those services necessary for the achievement of the employment objective. More specific guidelines should assist counselors in deciding when clients should be denied services for non-participation or what to do when a client has unreasonable job expectations. In addition, counselors need guidance in how to deny requested services that are not reasonably related to the employment goal and when to deny unreasonably expensive services.

TRC requires counselors to apply good judgment in presenting reasonable alternatives to clients and conserving funds for the agency. Establishing guidelines that promote appropriate

decision making by its 500 counselors throughout the State would allow TRC to meet federal and state mandates to be accountable for the prudent expenditure of public funds. Clearer decision-making criteria would also help ensure that services are provided in an equitable manner, as required in agency rules. Client choice does not prevent TRC from improving this decision process.

- Establishing clearer decision-making criteria provides TRC management with the necessary structure to evaluate and assess whether the agency is meeting its quality standards. In addition, improved documentation requirements would enable TRC to identify counselors who are not meeting agency standards or practices that may not be effective. Improved documentation would also allow TRC to better monitor counselors to ensure that quality services are provided.

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Clear guidance,  
oversight, and  
documentation will  
improve VR service  
delivery.

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## Conclusion

While TRC has done a notable job of rehabilitating and placing persons with disabilities into employment, the agency needs to increase the level of direction and guidance provided to counselors as they assist clients and the documentation of the decisions made that lead to the services provided. TRC provides counselors with the necessary latitude to exercise decision making in partnership with the client. Without clearer guidelines and increased oversight of counselor decision making, however, TRC cannot ensure that persons are appropriately determined eligible for services, only necessary services are provided, and the progress of clients is adequately measured. As a result, TRC cannot ensure that available resources are used effectively and that quality services are delivered.

## Recommendation

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### Change in Statute

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- Require the Commission to maintain, by rule, a framework to guide provision of vocational rehabilitation services, including, but not limited to:**
  - **how the service delivery system is organized;**
  - **requirements for determining eligibility;**
  - **requirements for rehabilitation planning;**

- **the types of services provided through vocational rehabilitation;**
  - **requirements for client participation and comparable benefits; and**
  - **an annual assessment of the effectiveness of the State's vocational rehabilitation program.**
- **Require the Commission to establish, by rule, requirements for agency monitoring and oversight of vocational rehabilitation counselor performance and decision making.**
- **Require the Commission to provide guidance in key areas related to counselor performance, including:**
- **guidelines for selecting vocational objectives according to the client's skills, experience, and knowledge;**
  - **methods to ensure documentation of each client's impediment to employment;**
  - **guidelines for selecting rehabilitation services that are reasonable and necessary to achieve the vocational objective;**
  - **benchmarks for measuring client progress toward the employment outcome; and**
  - **criteria for determining eligibility for employed applicants.**

This recommendation would enhance TRC's service delivery system by providing statutory guidance as to how TRC should oversee its VR program. This approach would ensure that TRC provides counselors with guidance in determining eligibility, conducting rehabilitation planning, providing services, and monitoring client progress.

TRC has already adopted rules that address the provision of VR services. This recommendation does not require that a new framework be established. TRC can retain the current rules, however, the recommendation ensures long-term, continued oversight of critical elements of the VR process through administrative rulemaking. The Board would be required to adopt new rules concerning the monitoring and oversight of counselors. Clearer direction to oversee counselors will further focus TRC on the prudent expenditure of public funds. Additional rules will also further the opportunity for public participation in VR service delivery. New rules should include a time frame for evaluating client progress and participation.

Requiring TRC to guide counselors on selecting vocational objectives, and strengthening substantiation of obstacles to employment, will demonstrate the importance of these functions and provide full deliberation of them. Alternatives for vocational objectives should be limited to those that are reasonably based on the client's skills, experience, and knowledge.

Establishing the client's impediment to employment is a key element in determining eligibility, and counselors should be required to clearly document the impediment in the rehabilitation plan. Other eligibility criteria that should be more clearly defined for counselors include determining when employed applicants are in imminent danger of losing employment or are substantially underemployed. In addition, counselors should be provided guidance on how to establish measures of client progress, and provide only those services that are reasonable and necessary. This will assist TRC in increasing counselor compliance and providing more detailed oversight of the VR process.

Clearly written policy direction and decision-making criteria can be incorporated in client orientation material, and should be used to set client expectations. In particular, clients should be informed that TRC counselors may deny certain requests made by clients, and that services are limited to those services that are reasonable and necessary for the attainment of the client's vocational objective. Sunset staff concluded that these improvements can be made without compromising the basic tenets of the federal program, such as a client's access to services and the client's ability to choose the types of services provided.

## Management Action

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- **TRC should develop and implement a reassessment plan to improve guidance, monitoring, and oversight of counselors. The plan should address:**
  - revision of agency manuals and a plan for retraining of counselor staff, and
  - a schedule for implementing improvements.
  
- **TRC should submit the initial plan to the TRC Board by December 1, 1999.**
  
- **TRC should report, on a quarterly basis, to the TRC Board on:**
  - exceptional expenditures, including number of clients who have received complex physical restoration services, out-of-state services, college and graduate education, and other expensive services, and the number of cases successfully closed; and
  - the impact of increased oversight and monitoring of the vocational rehabilitation process.

TRC should complete a planning process that includes the active involvement of its Board and the Texas Rehabilitation Advisory Council. The planning process should include a schedule for implementation of improvements resulting from reassessment of service delivery policies. To meet the objectives of this recommendation, TRC should revise the

Rehabilitation Services Manual and develop commensurate training for counselors. Requiring the agency to report to the Board by December 1, 1999, on the initial planning effort, a schedule for implementation, and actions taken to date, will ensure that these changes remain a priority for the agency until improvements have been implemented.

TRC should be required to report quarterly to the Board on those expenditures that represent exceptional costs in the VR program. Services that result in exceptional costs include, but are not limited to, complex physical restoration services, college and graduate education, and out-of-state services. In addition, the Board should be periodically informed of the number of clients who, after receiving these services, were successfully rehabilitated.

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## **Fiscal Impact**

The requirements in this recommendation can be met with existing resources. The changes may also result in increased services to clients although precise numbers could not be estimated for this report.

## Issue 2

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### Increase Emphasis on Agency Outreach and Further Focus Vocational Rehabilitation on Texans With Severe Disabilities.



#### Background

The Federal Rehabilitation Act guides the provision of vocational rehabilitation (VR) services to enable people with disabilities to pursue meaningful employment. The Act requires states to promote services to people with the most severe disabilities.<sup>1</sup> Federal regulations require state VR agencies to conduct outreach to identify unserved and underserved individuals to ensure that all potentially eligible individuals are aware of the services available to them.<sup>2</sup>

Today, an estimated one million Texans are eligible for vocational rehabilitation services to obtain or maintain employment. The Texas Rehabilitation Commission (TRC) is able to serve approximately 10 percent of those individuals.<sup>3</sup>

Vocational rehabilitation counselors are the key component in TRC's service delivery system, forming the agency's direct link to its clients. TRC assesses counselor performance by monitoring case closures. According to the Rehabilitation Act, a case is considered successfully closed when a client becomes employed and maintains employment for 90 days. Besides relying on counselors to meet production goals, the agency depends on counselors to conduct outreach and establish referral relationships, provide counseling and guidance, determine eligibility, assess client need, develop a plan for services, and coordinate delivery of those services.

The Sunset review of vocational rehabilitation services included an analysis of federal requirements to serve individuals with severe disabilities. The review focused on factors in the Texas system that impede agency efforts to seek out and serve those individuals.

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TRC is able to serve  
10 percent of the one  
million eligible for VR  
services.

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## Findings

### ▼ **The Commission has recognized the importance of serving individuals with severe disabilities.**

- ▶ One of the agency's performance measures in the General Appropriations Act is the percentage of clients with severe disabilities. In fiscal year 1997, almost 70 percent of the clients rehabilitated were individuals with severe disabilities.<sup>4</sup> The agency reports that 74 percent of the clients served in the VR program are people with severe disabilities.

By definition, a person with a more severe disability is harder, costlier, and takes longer to serve than a person with a less severe disability. According to TRC, "severe disabilities typically present more complex problems which require a longer time to rehabilitate and need a more varied array of services."<sup>5</sup>

- ▶ The Rehabilitation Services Administration (RSA), the federal agency that oversees state programs, conducts annual reviews of state VR agencies. In 1997, the RSA found that TRC had more successful case closures for people with severe disabilities with earnings above minimum wage than any other VR agency.<sup>6</sup>

### ▼ **Advocates are concerned that the current system does not promote services to enough individuals with severe disabilities.**

- ▶ Sunset staff found a perception among advocates for people with disabilities that pressure to meet case closure goals affects services to individuals with severe disabilities. Advocates point out that TRC measures its success by closing cases and placing people in employment, and that serving the most severely disabled population directly conflicts with the agency's performance goals.<sup>7</sup>

Members of the Disability Policy Consortium, an alliance representing 21 Texas organizations, believe that "the employment preparation system for people with disabilities currently is structured in favor of individuals who have short-term service needs."<sup>8</sup> According to these advocates, consumer

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Although recognized for service to person with severe disabilities, advocates feel TRC's system favors short-term clients.

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input in the creation of public policy is necessary to address this concern.

- Agency staff report that closing cases and putting people back to work is the primary measure of the agency’s success. This emphasis on meeting case closure goals may add to the perception that the system deters counselors from seeking out clients with severe disabilities. In the past, the agency attempted to address this potential conflict by using a system that took into account the difficulty of each case.<sup>9</sup> TRC piloted a “weighted case closure” system that allowed the agency to maintain an emphasis on production, while promoting services to people with more difficult cases. According to TRC, this approach had mixed results and was discontinued.

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Most people who  
apply to TRC for  
vocational  
rehabilitation services  
are considered  
severely disabled.

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▼ **Sunset staff found it difficult to accurately measure how well TRC serves people with severe disabilities.**

- Most people who apply to TRC for vocational rehabilitation services are considered severely disabled. The federal law provides a broad definition that focuses on one or more functional limitations and the need for services over an extended period of time. The text box, *Under Federal Law...*, provides a list of some of the diseases and conditions that may be the cause of a severe disability.

In fiscal year 1997, of the 99,214 people determined eligible for services, 74 percent were counted as individuals with severe disabilities. Within this group, the extent of disabling conditions is extremely wide-ranging, including clients with severe chronic conditions who need long-term supports, clients with depression who may require medication and continuing supervision, and clients with a history of alcoholism who have repeated conflicts with the law or problems holding a job.

**Under Federal Law...**

An individual with a *disability* is a person with any physical or mental impairment which, for that individual, constitutes an impediment to employment.

An individual has a *severe disability* if:

- the impairment limits one or more functional capacities;
- rehabilitation is expected to require multiple VR services over an extended period of time; and
- the disabilities result from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculo-skeletal disorders, neurological disorders (including stroke and epilepsy), spinal cord conditions (including paraplegia and quadriplegia), sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities that cause comparable functional limitation.

Sample of Clients with Severe Disabilities		
Profile	Disability	Services
45 year-old male with limited and unstable work history; interested in becoming a truck driver or massage therapist	Depression	Psychological evaluations; Truck driver training
27 year-old female with past experience as a dental assistant; referred to TRC by correctional facility pending her upcoming release	Drug dependency	Resume writing
24 year-old male with poor work history; currently on probation for aggravated assault	Drug dependency; alcoholism	Bus passes; Job Quest training
25 year-old female having trouble with college exams; seeks services because she believes that she has a learning disability in math	Psychoneurosis	Psychological evaluations; College tuition
26 year-old female currently employed; her disability may cause safety issues at her job	Deafness	Vocational counseling; Hearing aid

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With accuracy in question, assessing TRC's success in serving clients with severe disabilities was difficult.

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The chart, *Sample of Clients with Severe Disabilities*, depicts severe clients randomly selected from TRC case files.<sup>10</sup> The samples show the wide differences in what TRC qualifies as a person with a severe disability.

- ▶ The review of case files also showed that documentation of the severity of a client's disability was not clearly developed. Without better documentation and support, Sunset staff could not determine the accuracy of TRC's classification of the cases as severe. This made assessing TRC's success in serving individuals with severe disabilities difficult.
- ▼ **With an estimated one million Texans eligible for VR services and TRC able to serve only 10 percent of this population, some unmet need for services is likely to exist.**

  - ▶ TRC currently serves 10 percent of the population potentially eligible for VR services. The agency indicates it has no waiting list and serves all persons who apply and are determined eligible.

- Not every potentially eligible person needs state-sponsored VR services. Agency staff indicated that many people not receiving services through TRC have private insurance, Workers' Compensation benefits, or other forms of support. However, the agency reports that the need for VR services will grow at the same rate as the general population, and the agency expects to experience a significant increase in need from 1997 to 2001.<sup>11</sup>
- TRC has 137 field offices throughout the State. In urban areas, TRC may be one of many agencies equipped to provide services to people with severe disabilities. In rural and other traditionally underserved areas, however, the scarcity of resources makes it critical that TRC make every effort to identify and serve individuals who need VR services.

▼ **Since the agency relies on an informal outreach system, it could make improvements to increase public awareness of VR services.**

- The agency lacks a consistent, centrally-driven approach to outreach. A review of area monitoring plans showed that the emphasis on outreach differs from area to area. Thus, the agency relies on counselors to informally network with referral sources in their communities. VR counselors interact with various organizations and agencies, both public and private, to educate their communities about TRC services and to be aware of potential resources for clients. Sunset staff found that, though many counselors work hard to build and maintain informal relations with appropriate referral sources in their communities, varying levels of effort contribute to an inconsistent approach to outreach across the state.
- Even though counselors' duties include building referral relationships in their communities, most VR clients are self-referred. A review of all referrals to the VR program for fiscal year 1997 showed that of 40 documented referral sources, most applicants, almost 14,000 individuals, fell into the category *Self-referred Person*. The second most frequent referral source was *Other Individual, Not Elsewhere Classified*.
- With a documented and growing need for VR services in Texas, the agency would benefit from a more formal outreach system

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Despite current outreach efforts, most clients are self-referred.

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by ensuring that the emphasis on outreach is consistent throughout the state. Individuals with disabilities need to know about the services available to them. Individuals with disabilities, including those people with severe disabilities, would benefit from improved outreach. With a well-defined, centrally-driven approach to outreach, TRC will be better able to measure need and monitor its compliance with federal requirements to conduct outreach and to improve services to people with severe disabilities.

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More outreach is needed to meet the growing need for VR services.

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### **Conclusion**

An estimated one million Texans are eligible for vocational rehabilitation services to obtain or maintain employment. The Texas Rehabilitation Commission is able to serve approximately 10 percent of these individuals. TRC has successfully met federal and State measures for serving clients with severe disabilities. However, advocates believe that the State's vocational rehabilitation system is designed in a way that impedes agency efforts to seek out and serve individuals with severe disabilities. Opportunities exist for the agency to address the growing unmet need for VR services, improve documentation of services to people with severe disabilities, and improve outreach efforts to increase awareness of the State's VR services.

## **Recommendation**

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### **Management Action**

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- **TRC should work to address the increasing need for VR services in the State; and improve outreach efforts, particularly to people with severe disabilities.**
  
- **TRC should work with the Legislative Budget Board and the Office of the State Auditor to accurately measure how well the agency serves people with severe disabilities in its Vocational Rehabilitation program.**
  
- **TRC should take steps to improve documentation and coding of case files for clients with severe disabilities.**
  
- **TRC should involve its Rehabilitation Advisory Council and advocates for people with disabilities to determine how the agency can continue to expand and improve vocational rehabilitation services to people with severe disabilities.**

These recommendations would allow TRC to continue its successful record of serving all eligible vocational rehabilitation clients while addressing the perception that the system does not promote services to people with severe disabilities. Improved documentation and a more formal, structured outreach program are suggested as ways to improve the agency's current efforts. The LBB and the State Auditor's office can help the agency strengthen its performance measurement process if it is determined that the current measure of how well the agency serves people with severe disabilities needs refinement.

The agency should be encouraged to be innovative in developing and implementing ways to address advocates' concerns that the current system may lead some counselors to seek out "easier" cases. The Texas Rehabilitation Advisory Council (TRAC), a 20-member advisory group made up mostly of people with disabilities, is established under federal law to advise the agency on the effectiveness and quality of its services. This committee, and other advocates, should play an ongoing and active part in the agency's efforts to promote services to people with severe disabilities.

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## Fiscal Impact

These recommendations would have no fiscal impact to the State. The management actions can be done by existing staff with existing resources.

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<sup>1</sup> Rehabilitation Act of 1973, Section 101(a)5(A)

<sup>2</sup> Federal regulation 34 CFR 361.36(a)(2) requires state VR agencies to make "referral forms widely available throughout the State" and "conduct outreach efforts to identify and serve individuals who have been unserved or underserved by the vocational rehabilitation system."

<sup>3</sup> Texas Rehabilitation Commission, *Strategic Plan for the 1997-2001 Period*, Austin, Texas, June 15, 1996 (first submission), p. 101.

<sup>4</sup> Texas Rehabilitation Commission, *1997 Annual Report*, Austin, Texas, p. 10.

<sup>5</sup> Texas Rehabilitation Commission, *Definitions of Performance Measures*, Austin, Texas, June 15, 1998, p. 2.

<sup>6</sup> U.S. Department of Education, Rehabilitation Services Administration, *FY 1997 Annual Review of Section 107 Requirements of the Rehabilitation Act of 1973 for the Texas Rehabilitation Commission* (Dallas, Texas, July, 23 1997), pp.7-8.

<sup>7</sup> Responses to Sunset staff questionnaire sent to 37 statewide organizations, and meetings between Sunset staff and advocates for people with disabilities held May - August 1998.

<sup>8</sup> Memorandum from Kaye Beneke, Interim Director, Disability Policy Consortium, to Larry Graham, Sunset Advisory Commission, May 4, 1998.

<sup>9</sup> A. James Schwab, Diana M. DiNitto, Joellen Flores Simmons, and Terry W. Smith, "Evolution of the Texas Rehabilitation Commission System for Measuring Quality Rehabilitation," *Journal of Rehabilitation Administration*, vol. 20, no. 1 (February 1996), p. 26.

<sup>10</sup> Drawn from review of 50 case files randomly selected for analysis by Sunset staff.

<sup>11</sup> Texas Rehabilitation Commission, *Strategic Plan for the 1997-2001 Period*, Austin, Texas, June 15, 1996 (first submission), p. 41.



## Issue 3

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### Improve Opportunities for Students With Disabilities to Move Successfully into Adult Life.



#### Background

The Individuals with Disabilities Education Act (IDEA) requires that all youth with disabilities have access to a free and appropriate public education that is determined on an individual basis and is designed to meet their unique needs. As a result, schools often serve as a central resource for services and supports to students with disabilities and their families. However, after age 22 students are no longer entitled to services from the school system and no longer have an entity to help plan their daily lives. Students with disabilities and their families are often unprepared for this and are left to find new services in a fragmented and decentralized adult service system.

Transition planning is a process that helps prepare students for their life after leaving school. Depending on the student's needs, the process could involve learning about and preparing for postsecondary education, vocational training, integrated employment, continuing and adult education, adult services, independent living, community participation, and recreation and leisure opportunities.

The responsibility for initiating and guiding the transition process rests with the student's school. Schools are required to develop and annually update an Individualized Education Plan (IEP) for each special education student. The IEP details the student's individual educational needs and goals. When a student turns 16, the IEP must also include a statement on needed transition services. In addition to this federal requirement, Texas also requires schools to prepare a separate Individualized Transition Plan (ITP) for each special education student. The ITP focuses specifically on what the student will do after leaving school and what services may be needed to enable a successful move into adulthood.

Several entities may participate in the development of a student's ITP, including state agency representatives. As the primary agency responsible for vocational rehabilitation, the Texas Rehabilitation Commission (TRC) plays an integral role in the transition planning process. TRC has assigned a liaison counselor to each of the 1,050 school districts in the State. These

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Transition planning helps students prepare for life after leaving school.

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counselors provide the schools information on TRC's services and begin to work with students who may be eligible for vocational rehabilitation services once they leave school. In fiscal year 1997, TRC served 3,570 students through its transition planning program.

The Sunset review examined the agency's transition planning efforts to determine whether current agency policy and the agency's policy benefits the maximum number of students with disabilities in making a smooth transition from school into their adult life.

## Findings

### ▼ The need for and benefits of effective transition planning has been well documented.

#### Federal Transition Laws

##### *Individuals with Disabilities Education Act (IDEA)*

In 1990, IDEA began emphasizing transition services. Beginning at age 16, a student's Individualized Education Plan (IEP) must include a statement of needed transition services, including, when appropriate, a statement of interagency responsibilities or needed linkages.

##### *The Rehabilitation Act*

In 1992, the Rehabilitation Act added transition services that promote or facilitate the accomplishment of long-term rehabilitation goals and intermediate rehabilitation objectives to the scope of rehabilitation services. In addition, states are required to develop policies to ensure coordination between rehabilitation agencies and education agencies.

##### *The School-to-Work Opportunities Act*

This 1994 Act was designed to build state and local partnerships to create school to work options that prepare students for high-skill, high-wage jobs or further education and training. The Act requires that all students be included, including students with disabilities.

- ▶ Several studies have documented the difficulties youth with disabilities experience after leaving school. These studies report high levels of unemployment, economic instability, social isolation, and low levels of participation in postsecondary education and training programs.<sup>1</sup>

These findings are demonstrated by a recent survey which found a significant gap in the employment rates of people with disabilities versus people without disabilities. Only 29 percent of working age (18-64) people with disabilities work full- or part- time, compared with 79 percent of the population without disabilities.<sup>2</sup> In line with such figures, the U.S. Census reports that a large proportion of those who participate in means-tested assistance programs have disabilities. Among the 13 million people age 22 to 64 who received means-tested cash, food, or rent assistance, half had either a severe or non-severe disability.<sup>3</sup>

- ▶ Studies have also shown the benefit of transition planning. In response to such outcomes, the federal government has focused significant attention on the transition of youth with disabilities from the school system to the adult system. The textbox, *Federal Transition Laws*, describes just a few of the federal requirements established to improve outcomes for youth with disabilities after they leave the school system. In addition, the federal government has supported a number of research and demonstration projects to assist both the state and local level in building effective transition planning systems.

▼ **The Legislature has recognized the need for transition planning and directed state agencies to develop an effective system for assisting students with disabilities as they move into their adult life.**

- ▶ The Legislature first addressed the issue of transition planning over a decade ago. The textbox, *Legislative History of Transition Planning*, details these efforts. Much of the legislation has stressed the importance of adult service agency involvement and collaboration with the school system to create a successful transition planning process.

- ▶ SCR 123 created the Transition Task Force which addressed the State's challenge of ensuring that students with disabilities receive transition planning and services that will allow them to successfully move into their adult life. Among several areas, the task force noted the importance of addressing a student's future vocational options. As the primary agency responsible for the vocational rehabilitation of persons with disabilities, TRC's participation in the transition process is essential.

- ▶ The task force's recommendations influenced the development of provisions in SB 417, under which TRC began to strengthen its transition planning program. TRC's intention was to build a program where counselors carried only transition cases, allowing them to focus all their efforts on assisting students with disabilities in preparing for their vocational life after leaving high school. When the Legislature decreased TRC's funding for transition planning, TRC changed its course and returned to its previous approach of having vocational rehabilitation counselors carry transition cases in addition to other vocational rehabilitation cases. The agency also created regional transition specialists who work with school districts and educational service centers to build relationships between schools and TRC.

**Legislative History of  
Transition Planning**

**SCR 129** (69th Legislature, 1985) directed the Texas Department of Mental Health and Mental Retardation, the Texas Education Agency, and the Texas Rehabilitation Commission to improve coordination of their services and to work collaboratively to initiate joint agreements to facilitate transition for students with mental retardation.

**SCR 135** (70th Legislature, 1987) reaffirmed SCR 129 and expanded it to include all students with disabilities.

**SCR 123** (70th Legislature, 1987) established the Transition Services Task Force with a charge of assessing the effectiveness of existing transition services and recommending a model for the delivery of those services.

**SB 417** (71st Legislature, 1989) required the Central Education Agency, the Texas Department of Mental Health and Mental Retardation, and the Texas Rehabilitation Commission to adopt by rule a memorandum of understanding establishing the respective responsibilities of each agency for the provision of transition services. It also required each school district to develop and annually review and individual transition plan for each student at least 16 years of age enrolled in special education.



### TRC's current policy guiding transition planning does not ensure the effectiveness of the agency's role in transition planning.

#### MOU on Transition Planning

- The Texas Rehabilitation Commission acknowledges its role in providing transition services for students receiving special education services.
- Students currently receiving TRC services are defined as those who have applied and been determined eligible for services.
- Students attending the Texas School for the Deaf who have been determined eligible for services shall be served by TRC.
- Students may be referred to TRC at any time.
- A TRC representative shall provide follow-up services for eligible students after they exit from the public school to complete vocational rehabilitation services.
- The MOU may be reviewed and revised at least every two years. TRC has recently requested TEA to begin the review process.

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TRC policy neither requires nor encourages a relationship between counselors and their assigned school district.

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- TRC's Board has not adopted rules concerning the agency's transition planning program. Although the agency has detailed other programs in rule, nothing describes the objective of transition planning or the methods used by the agency to achieve that objective.

The only way the agency has addressed transition planning through rulemaking is the adoption of a Memorandum of Understanding (MOU). The MOU is with six other state agencies and outlines the responsibilities of each agency to assist students with disabilities in making a successful transition. TRC's responsibilities are outlined in the textbox, *MOU on Transition Planning*. The responsibilities listed provide little detail about what assistance TRC provides in the area of transition planning. The only responsibility TRC appears to accept in the MOU is to provide students services after they leave school, which it would already do under its VR program.

- TRC's internal policy manual does offer more details on the agency's transition planning program. The textbox, *Internal Policy on Transition Planning*, lists some of the requirements established by the agency to guide counselors in fulfilling their role. For the most part, however, agency policy is permissive and does not provide counselors with solid direction. Policy neither requires nor encourages TRC liaison counselors to have a relationship with their assigned school district. It does not detail how counselors are to identify potentially eligible students, what school personnel they should interact with and in what capacity, how counselors should follow up and work with students once referred or determined eligible, or how they follow up with students after graduation.
- Such vague policies leave room for a wide interpretation of counselor roles and responsibilities with respect to transition planning. For example, some counselors have regularly scheduled meeting times throughout the year with school personnel and are actively involved with students and their families. Others drop off brochures at the school at the beginning of the year and tell the school that students must

come to their office if they wish to pursue services. In some school districts, school personnel have well-developed relationships with their liaison TRC counselors. In others, school personnel do not know who their TRC counselors are.

Part of this variation may be due to the willingness of individual school districts to invite TRC to participate in the transition planning process. Ultimately, schools are responsible for initiating and directing the transition process. This designation, however, should not relieve TRC of the responsibility to provide adequate direction and guidance to enable counselors to assist students with disabilities to the greatest extent of their capabilities. While some school districts may not invite TRC into their school, opportunities may be missed in other districts if counselors are not actively attempting to reach students.

#### **Internal Policy on Transition Planning**

- “TRC counselors may provide information regarding TRC services and programs, evaluation of rehabilitation needs, and consultation concerning procedures for transition planning.”
- “Insofar as appropriate and practical, TRC develops the IWRP before the eligible students with a disability leave school.”
- “The VR counselor may find it appropriate to provide resource information to assist school personnel in preparing students for competitive employment and independent living outcomes.
- “When requested by district personnel, parent, or a guardian, VR counselors may participate in ITP development and/or review meetings as resources allow.”

- ▶ Although schools are required to begin transition planning at age 16, TRC counselors generally wait to work with students until their last year of school. This leaves little time for the students to explore potential vocational options, develop needed job skills, or tailor their educational program to the goals the counselor and student develop.

#### **▼ Transition planning cases may be affected by the agency’s emphasis on case closure.**

- ▶ A counselor’s performance is evaluated on the number of successful cases closed each year. Students receiving transition planning assistance usually do not begin receiving services until after they graduate or leave high school. As a result, transition cases have the potential to remain open on a counselor’s caseload for an extended period of time. Too many cases that remain open for an extended period may make it difficult for counselors to meet case closure expectations.

As a result, counselors may not actively pursue potential transition cases. In addition, the expectation to close a certain number of cases may prevent counselors from spending much

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Although schools direct transition, counselors should do all they can to assist the students.

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time counseling students and their families on their vocational options and potentials. Since the counselor cannot generally close a transition case until after the student leaves school, the counselor may concentrate efforts on cases that can be closed more quickly.

▼ **Strengthening the policy surrounding transition planning will maximize benefits to both students with disabilities and the State.**

- ▶ The earlier a person with disabilities can be assisted by the vocational rehabilitation system, the greater the benefit to both the student and the State. Catching students before they leave school allows them to tailor their educational program to their future plans and maximize their education and skills training while in school. It also allows students to immediately capitalize on their school experience rather than waiting to bring them into the system years later when their skills may have declined or no longer be relevant to the job market.
- ▶ According to TRC, an average client's earnings will increase by \$17 for every VR dollar invested in them over a 30-year work life. By retirement, the average rehabilitated client will have repaid the cost of services at least nine times through taxes paid and decreased public assistance. In addition to increased earnings, the client receiving VR services also benefits from increased independence and self-esteem.<sup>4</sup> Focusing assistance early on students with disabilities may prevent those who are most at risk from falling into social isolation and becoming dependent on the State for public assistance.

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With a 17 to 1 return on investment, the State should strengthen transition planning.

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## Conclusion

Studies have shown the need for and benefits of comprehensive transition planning. Students with disabilities tend to have poor outcomes after leaving school and many have difficulties adjusting to their adult life and accessing services in the fragmented adult service system. Transition planning can begin to prepare students before they leave school and help them move more successfully into their adult life. The Legislature has recognized the importance of transition planning and has taken several steps to increase and improve the involvement of state agencies in the transition process. Although TRC is among the more actively involved agencies, its process has room for

improvement. The Texas Education Agency estimates that more than 80,000 students are in need of transition planning.<sup>5</sup> Although not all these students may need or be eligible for TRC's services, TRC should step up its

## Recommendation

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### Change in Statute

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commitment and strengthen its process for those who can benefit.

- **Require TRC to develop and implement a system that effectively emphasizes and provides transition planning services. TRC's approach should:**
  - **assess the need for the agency's transition planning services statewide,**
  - **ensure that students with disabilities and the transition planning program receive an appropriate level of attention, and**
  - **develop strategies to assist counselors in identifying and reaching students with disabilities in need of transition planning services.**

This recommendation would direct TRC to better define and expand its current efforts in the area of transition planning by developing clear objectives for serving students with disabilities and methods by which to meet those objectives. In strengthening its program, the agency should clearly distinguish the importance of identifying and serving those students with disabilities who can benefit from TRC's services. Identifying potentially eligible students before they leave school will help students begin preparing for their future vocational life. Not only will this assist students in leading more independent lives, it will potentially save the State dollars that might otherwise be spent to support these students.

TRC should also develop methods to assist counselors in identifying and working with those students who may benefit from TRC's services. These strategies may include the suggestions included below in the *Management Action* recommendation. The agency may also consider the role of the Regional Transition Specialist, who is assigned to each region to support the counselor and assure quality transition services in their area. The specialists should ensure counselors are properly trained and are aware of effective techniques and practices. They should also ensure, to the extent possible, that collaborative relationships are established between TRC, the school districts, and the educational service centers in their area.

## Management Action

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- **TRC should work to improve its internal policies on transition planning by:**
  - **revising policy and training to increase consistency of counselor performance, and**
  - **exploring ways to accommodate transition cases when evaluating counselor performance.**

While still maintaining counselor flexibility to work with students and school districts, TRC should strengthen its internal policies surrounding transition planning. Agency policy should require counselors to perform certain duties, not just allow them. TRC should consider directives for regular interaction and relationship building with key school personnel. The agency should also consider requirements around when and how counselors should begin and continue meeting with students. Tightening these policies will improve the consistency of counselor performance across the State and increase access for students with disabilities to TRC services. It will also increase the quality of interaction that TRC has with school district personnel and with students with disabilities and their families. Ultimately, this should lead to more successful outcomes for the students after they leave school and enter their adult life.

In addition, TRC should ensure that the emphasis on closing cases does not prevent counselors from taking on or devoting adequate time to transition cases. The agency may consider evaluating counselors who carry transition cases by measures other than the number of cases successfully closed each year. It might also consider requiring fewer case closures for counselors who carry transition cases. These changes may increase counselors' willingness to seek and take on transition cases, to begin working with students before their last year of school, and to invest the time needed to adequately assist students in developing and preparing for their vocational goal.

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## Fiscal Impact

Increasing the extent of involvement with or the number of students with disabilities assisted through the transition planning program should have only a small cost. The counselor assistance provided in this program is funded through the vocational rehabilitation program, which currently has no waiting list. The agency currently receives \$400,000 in general revenue to support the transition planning program. This funding currently supports a program specialist and five regional transition specialists, who can be used to develop objectives and methods for effectively delivering transition assistance. To ensure adequate training of counselors and the establishment of quality relationships with school personnel and others involved in the transition planning process, the agency may potentially need a 10 to 25 percent increase in funding in this program area.

However, any additional funding to the transition planning program would be offset by the returns of helping more students with disabilities successfully move into their adult vocational life early on. TRC estimates that by retirement age the average rehabilitated client will repay the cost of services at least nine times through taxes paid and decreased public assistance. This estimate is based on an current average client age of 38 years old. So, the younger a person is able to move into the workforce, the greater the return on the services received.

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<sup>1</sup> David Johnson, Michael Sharpe, and Mary Fox Sinclair, "Report on the National Survey of the Implementation of the IDEA Transition Requirements," University of Minnesota, National Transition Network, July 1997, p. 1.

<sup>2</sup> <http://www.nod.org/presssurvey.html#survey>

<sup>3</sup> Ibid.

<sup>4</sup> Texas Rehabilitation Commission, "Strategic Plan for the 1999-2003 Period," June 15, 1998, p. 20.

<sup>5</sup> Ibid., p. 50.



## Issue 4

### Require TRC to Strengthen its Standards for Approving Medical Services and Develop a Plan to Manage Potential Liability.



#### Background

Most TRC clients have significant medical problems, and many clients require medical or hospital care as part of their vocational rehabilitation. Each year, TRC spends approximately \$50 million for medical and hospital services. TRC purchases commonly needed items such as eyeglasses, hearing aids and dentures for clients. Clients also receive numerous complex medical procedures, including back surgeries, abdominal and thoracic surgeries, cardiovascular surgeries, and knee and hip repair. Approximately 12,000 TRC clients have a back injury as a part of their disabling condition. TRC pays for about 200 back surgeries per year as well as extensive physical rehabilitation, work “hardening,” and other therapies related to back surgeries.

Decisions regarding purchase of medical services, including invasive medical procedures, are made by TRC’s vocational rehabilitation counselors. Counselors have considerable discretion in determining when surgeries and other complex medical procedures will be authorized for a client. Counselors’ decisions are guided by agency policies established in the Rehabilitation Services Manual. An example of the direction provided vocational rehabilitation counselors is shown in the text box, *Considerations for TRC Counselors When Selecting Services to Treat Back Disorders*.

The Sunset review focused on how agency counselors determine the medical services that a client should receive to remove a vocational impediment. The types of medical services purchased by TRC were reviewed as well as the steps in the counselors’ decision making process. Practices that other agencies follow in performing similar utilization review functions were identified and compared to TRC practices.

#### **Considerations for TRC Counselors When Selecting Services to Treat Back Disorders\***

- Obtain from the applicant’s treating physician radiographic evidence of an abnormality, or the medical history of back surgery.
- Clients with no radiographic evidence of back disorder will not be accepted for surgery.
- Obtain from the applicant how the disability impedes employment.
- If the client has not been treated by a specialist, an examination by a specialist may be necessary.
- Back surgery for a herniated nucleus pulposis requires approval of the TRC Medical Director and a documented first attempt at conservative treatment.

\* Source: TRC Rehabilitation Services Manual

## Findings

### ▼ **TRC purchases a broad range of medical services to ensure that clients are able to keep or obtain employment.**

- ▶ TRC purchases medical services for its clients to remove impediments to employment. In making decisions about medical services, TRC counselors review medical records, consult with the client and medical professionals, make decisions with the client about the services to be provided, and arrange for the delivery of services. Counselors are often assisted by staff whose job is to help identify the physicians and hospitals that will provide services to clients.
- ▶ TRC services help to ensure employability. To succeed within a vocational rehabilitation context, medical services must remove impediments that prevent work. Medical services that do not contribute to a client's on-the-job functioning are not appropriate components of a client's rehabilitation plan.

### ▼ **TRC policies regarding the review and approval of medical services do not conform to industry standards followed by health care providers.**

- ▶ Health care providers have adopted a number of safeguards that help to ensure that the necessity of medical services is clearly documented and that services are likely to result in positive client outcomes. Second opinions are often required for surgeries that are commonly performed but may not be clearly medically necessary, such as hysterectomies. Second opinions help to prevent overly aggressive treatment, improve client outcomes, and control costs. The source of a second opinion should be a practicing physician whose area of specialization is appropriately related to the type of surgery or treatment planned for the client.

State agencies that fund medical services follow the practice of obtaining second opinions. For example, the Texas Workers' Compensation Commission (TWCC) makes decisions daily about medical procedures for injured workers. TWCC staff state that the agency operates under standard insurance industry practice, which is to obtain a second medical opinion before approving complex surgeries.

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TRC does not require a second medical opinion before authorizing complex medical procedures.

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- TRC policy does not require a second, independent medical opinion before authorizing complex surgeries and other expensive therapies. Consequently, TRC may authorize medical services that would be viewed as unnecessary or inappropriate by some physicians and health care providers.
- TRC staff who review and approve medical services do not have medical training and do not work under the supervision of a physician. Only a few of the many possible treatment modalities purchased by a counselor must be reviewed by the TRC Medical Director, as shown in the text box, *Procedures Which Must be Approved by the TRC Medical Director*.

<b>Procedures Which Must be Approved by the TRC Medical Director</b>
Ankle Arthroplasty
Breast Implant Removal
Chemoneurolysis Injection - Herniated Disc
Cochlear Implant Surgery
Penile Implant
Surgery for Morbid Obesity
Weight Loss Program

Source: TRC Approval Table

**▼ TRC policies do not require an assessment of the functional, vocational benefit to the client of complex surgical procedures.**

- TRC’s decisions about treatment options, including surgery, are usually based on the recommendation of the client’s treating physician who, along with the client, may be appropriately concerned about the client’s health, but much less concerned about achieving a vocational objective. Consequently, medical services recommended by a client’s physician may not be consistent with TRC’s mission of improving the client’s functioning in the workplace.
- Medical services provided by TRC succeed when they improve the client’s functional ability and remove an impediment to work. TRC policies do not require a functional assessment that would determine if a surgery or other complex medical intervention might enhance the client’s ability to work. Even though not required, some TRC counselors do obtain a functional assessment of the anticipated improvement in client performance before approving services.
- Failure to require clear, objective documentation of the need for, and probable benefit of, complex medical procedures can contribute to inconsistent decision making by counselors and creates the risk that rehabilitation services will be provided arbitrarily and without a clear benefit. Services may not be

Approval of medical services may not be linked to helping a client return to work.

TRC could benefit from utilization review, a process that determines the necessity of a medical procedure.

medically necessary and may not remove a vocational impediment, and undocumented counselor decisions may appear to be biased and discriminatory.

- Many of the medical services purchased by TRC have not resulted in successful case closures. During the period from October 1997 to August 1998, TRC purchased 183 back surgeries that resulted in 18 successful case closures and two unsuccessful closures. One hundred and sixty-three cases are still in active status. TRC staff indicate that the least healthy clients require the most complex medical services, but are least likely to return to work.

When an initial TRC medical procedure is not successful, clients require expensive, ongoing health care and sometimes multiple surgeries. For example, a client whose knee was repaired by TRC experienced continuing infection in the knee, requiring two more surgeries and eventual removal of the infected leg.



**When conducting utilization reviews, TRC practices do not meet the standards that apply to private insurers.**

**Summary of Texas Insurance Code Provisions Relating to Utilization Review**

Utilization review is “a system for prospective or concurrent review of the medical necessity and appropriateness of health care services being provided or proposed to be provided to an individual within this state.” (V.A.T.S. Insurance code, Art. 21.58A)

Personnel employed to perform utilization review “shall be appropriately trained and qualified” and shall be “nurses, physician assistants or health care providers qualified to provide the service requested by the provider.”

Utilization agents shall use “medically acceptable screening criteria and review procedures developed with involvement of physicians, dentists and other health care providers. Screening criteria must be objective and clinically valid.”

“Denials must be referred to an appropriate physician, dentist or health care provider for review.”

- TRC does not insure the health of clients and does not function as an insurance company. However, TRC counselors do determine the necessity of health care services for their clients, and in doing so, they perform utilization reviews as defined in the Texas Insurance Code. Utilization review standards in the code apply to private insurers, not to TRC.
- The TRC utilization review process does not meet the standards set in the Insurance Code for private insurers. TRC counselors do not have the qualifications required of insurance agency employees who perform utilization reviews and the agency has not developed objective and clinically-valid utilization review screening criteria with the input of a physician.



**TRC does not have a formal process to manage the risk inherent in funding medical procedures.**

- Agencies that provide health care services experience risks of negative medical outcomes and resulting litigation. Most

health care providers deal with the risks inherent in the role of approving medical services by conducting a formal risk analysis and developing and implementing a risk management plan.

- TRC has not developed a risk management plan. Risk arises from the potential for litigation when TRC medical purchasing decisions result in negative outcomes and, though rarely, death, for clients. In 1998, one TRC client died after a TRC-funded surgery. A formal risk analysis could determine instances where second medical opinions, functional assessments, and other decision making safeguards should be used to protect the client and the agency. This analysis would form the basis for a plan to manage the risk that results from the medical procedures funded by the agency.

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TRC's decisions regarding payment for medical services should meet standards followed by other purchasers of these services.

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## Conclusion

Decisions regarding the treatment that can best help a client reach his vocational objectives are, at best, informed predictions. The prognosis for success of a surgery, number of prior surgeries, overall health of the client, the length and difficulty of recovery, and the likelihood that a surgery will actually permit a client to return to work, should be carefully considered before expensive and complex medical interventions are authorized.

TRC decisions regarding payment for medical services do not meet the standards followed by other purchasers of these services. TRC policies do not require second opinions or functional assessments of the potential improvement from services, and the agency does not have a plan to manage the risks inherent with these procedures. TRC's utilization review process does not meet the standards set for private insurers. As a result, clients may not achieve the outcomes they expect, TRC may pay for expensive but ineffective services, and medical services may create significant risks for the client and the State.

## Recommendation

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### Change in Statute

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- Require TRC to meet health care industry standards in the approval of medical services for clients, including the use of second opinions.**
- Require TRC, in conducting utilization reviews, to follow standards applied to private insurers, as outlined in the Texas Insurance Code.**

- **TRC should ensure that, where applicable, approval of medical services includes an assessment of whether the procedures will benefit the client's ability to return to work.**
  
- **TRC should conduct an analysis of the risk associated with funding medical procedures and develop a plan to manage the potential liability.**

These recommendations will require TRC to strengthen its decision process regarding the funding of medical services and complex and invasive medical procedures, and will bring the agency in line with common best practices used by the health care industry. Decisions to purchase complex medical services and procedures should include the use of second medical opinions, where appropriate; determination of whether the services will likely benefit the client's return to work; and a utilization review of medical necessity and appropriateness conducted by qualified individuals. TRC should consult with the Texas Workers' Compensation Commission, the Texas Department of Insurance, and other experts to assist in identifying and applying industry standards to each of the decision areas described above.

TRC also needs to manage the risk of liability that results from its medical services funding decisions. The agency needs to identify where it and the State could be held responsible when harm to a client results from actions authorized and paid for by the State. The agency should then develop a plan to minimize those risks and establish procedures to be followed when negative outcomes create risk. This plan should be communicated to counselors and other staff involved so that the agency is ready to respond, if needed.

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## **Fiscal Impact**

These recommendations will result in a positive fiscal impact. The recommended utilization review, second medical opinions, and functional assessments are all standard insurance industry practices that reduce costs. TRC will spend approximately \$50 million on physician and hospital services during fiscal year 1998. Staff of the Texas Workers' Compensation Commission indicate that effective utilization review plans have reduced the frequency of some surgical procedures, including back surgeries, by as much as 15 percent. Overall, an effective utilization review process could reduce TRC costs for health care services by five percent or more. Assuming a five percent savings, beginning in the second year of implementation, TRC should realize a savings of \$2.5 million per year. Such savings would be partially offset by any additional costs for physician second opinions and other case review services, estimated at \$500,000 per year.

An effective risk management plan reduces the agency's exposure to potential legal claims resulting from its medical services and helps direct counselor decisions toward appropriate, conservative treatment plans. A risk management plan would reduce actual and potential agency costs, but the savings from such a plan cannot be estimated.

<b>Fiscal Year</b>	<b>Savings to General Revenue</b>	<b>Savings to Federal Funds</b>	<b>Total Savings</b>
2000	0	0	0
2001	\$400,000	\$1,600,000	\$2,000,000
2002	\$400,000	\$1,600,000	\$2,000,000
2003	\$400,000	\$1,600,000	\$2,000,000
2004	\$400,000	\$1,600,000	\$2,000,000



# Issue 5

## Require that TRC Develop a Rate-Setting Methodology that Ensures Best Value Purchasing and Allows for Public Input.



### Background

Each year, TRC vocational rehabilitation counselors buy over \$40 million worth of hospital and medical services for clients, including complex surgeries such as hip and knee replacements, knee repair, coronary artery bypass, cardiac repair, thyroidectomy and lumbar laminectomy. The agency's Maximum Affordable Payment Schedule (MAPS) sets the maximum amounts that the agency will pay for medical services. The programs that purchase goods and services for clients are shown in the text box, *Amounts Spent by TRC Programs That Purchase Goods and Services For Clients*. Agency rules require that rates paid for vocational rehabilitation services "be instituted by TRC policy, in order to ensure that rates are cost effective" and "be designed to ensure best value and efficient and effective use of client service dollars."

Until recently TRC has relied on its Medical Consultation Committee to set the MAPS rates it pays for medical services. The Committee has 17 members who represent each medical or paramedical discipline that provides health care services to TRC clients. Members are appointed by the TRC Commissioner for a three-year term and report to the Commissioner. In addition, the agency employs a physician, the TRC Medical Director, who assists the Committee in setting rates.

The Medical Consultation Committee begins its rate review process each October when the TRC Medical Director makes general recommendations to the Committee members regarding the legislative appropriations outlook for the coming fiscal year. The Committee members then review current fees in their specialty area and make recommendations to the TRC Medical Director's Office by March 1. Once recommendations are received, the Committee as a whole may review the recommended changes and negotiate adjustments if fees seem out of balance or extreme. Final rates are approved

#### Amounts Spent by TRC Programs for Goods and Services for Clients

	<u>Expended*</u>
<i>Vocational Rehabilitation</i>	
Medical Services	\$19,382,895
Hospital Services	\$11,825,679
Other Goods and Services	\$48,882,901
<i>Comprehensive Rehabilitation</i>	
Medical Services	\$520,104
Hospital Services	\$3,638,307
Post-acute Brain Injury	\$3,648,656
<i>Medicaid Deaf/Blind Waiver</i>	\$3,013,672

\*For the period from 10/1/97 to 7/31/98

by the Medical Consultation Committee the summer before the start of the federal fiscal year, October 1st.

Some fees are set outside the MAPS rate-setting process. Fees for hospital services are negotiated with each hospital and are generally based on the ratio of cost to charges derived from Medicare cost reports. Fees for Orthotics/Prosthetics are taken from the current Medicare schedule, and the agency's Medicaid-funded Deaf/Blind program sets rates using a cost report process.

During the spring of 1998, TRC staff reviewed the agency's MAPS rates and recommended a new rate schedule to become effective October 1, 1998. The new recommended MAPS rates are often lower than prior rates and adjust the agency's payment schedule to conform to industry standard numerical codes used to describe medical procedures. This schedule did not go through the Medical Consultation Committee process described above, but the rates recommended by the staff were approved by the Committee.

The Sunset review looked at the rate-setting process used by TRC including recent changes, and the amounts paid by TRC for services compared to amounts paid by other agencies. In addition, Sunset staff explored the opportunities for public input in the rate-setting process.

## Findings

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The assumptions and processes that TRC uses to develop rates are undefined.

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- ▼ **TRC has not developed cost effective rate-setting policies as required in agency rules.**
  - TRC has not adopted policies that direct its rate-setting activities, even though agency rules require such policies. Consequently, the assumptions and processes that TRC uses to develop rates are undefined. TRC does not have policies that indicate who is responsible for setting rates, the methodology to be followed in setting rates, or how rates are reviewed and finally adopted.
  - In past years, TRC's Medical Consultation Committee developed the schedule (MAPS) that sets most TRC rates. Most recently, TRC staff itself developed recommended MAPS rates to become effective by October 1998. TRC policies do not indicate how rates might be set in the future, and the respective roles of agency staff and the Medical Consultation Committee are undefined.

- Unlike rate-setting methodologies used by other state agencies, TRC has not attempted to base rates on the actual costs of providing services. TRC records show that the primary consideration in rate-setting has been physician opinion and the availability of funding, not best value and efficient use of dollars, as required in agency rules. For example, a single physician who serves on the Medical Consultation Committee has been allowed to recommend rates for his or her specialty area of practice for a three-year period. Amounts paid for medical services have occasionally exceeded Medicare rates by as much as 100 percent, as shown in the text box, *TRC Maximum Rates for Medical Services Compared to Medicare Rates*.

TRC Maximum Rates for Medical Services Compared to Medicare Rates			
TRC Rates in Dollars			
Procedure	MAPS*	MAPS	Medicare
Mammaplasty	\$2,500	\$1,486	\$1,228
Septoplasty	\$1,400	\$582	\$477
Sinus Endoscopy	\$1,440	\$709	\$581
Knee X-Ray	\$47	\$31	\$29
Psych. Interview	\$120	\$157	\$125

\* Rate as of August 1998. TRC has proposed new rates, effective October 1998.

- In December 1996, a report by the State Auditor’s Office found that TRC “does not have a formalized cost-based methodology to set rates for client services” and that “rate or price analysis for services procured primarily by the Texas Rehabilitation Commission is not performed on a regular, recurring basis.”

In response to the State Auditor’s report, TRC began to revise its rate process. TRC recently revised its MAPS rates to “define a reliable rate setting methodology that is as cost neutral as possible; convert medical codes used by the agency to industry standard CPT codes, and make recommendations to the Commissioner so that new rates can be implemented for October 1, 1998.” TRC’s new MAPS amounts would reduce some clearly excessive payments, but TRC has not developed the “formalized cost-based methodology” recommended by the State Auditor.

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TRC’s new rates will reduce some excessive payments but are still not truly cost-based.

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- Instead of independently developing a new cost-based rate schedule, TRC could use existing cost-based schedules to help set the amounts it pays for medical services.**

- Development of cost-based rates is a complex task. Data must be collected from provider reports of costs or from detailed analysis of provider invoices. TRC’s development of a complete, cost-based rate schedule would be expensive, and a TRC-developed schedule is unlikely to be more equitable or accurate than existing cost-based rate schedules.
- TRC indicated that it considered Medicare’s rate-setting methodology in its recent rate process. Sunset staff could not determine what factors led TRC rates to deviate from established Medicare rates. TRC would be well served by taking a rate schedule, such as Medicare’s, as the base and deviating from the schedule where justified.

▼ **TRC’s rate-setting process does not provide for sufficient public input and consideration.**

- TRC’s Board does not use an open, public process to set rates. Rates are set by agency staff and are not discussed in a public meeting or formally adopted by the Board. A public discussion of rates would allow clients and service providers, including some who have indicated to Sunset staff that TRC rates may be unreasonably low, to participate in the rate-setting process.
- Use of Medicaid or Medicare rates as a starting point for development of MAPS rates would not preclude public participation in TRC rate setting. The adequacy of Medicaid or Medicare rates, justifications for exceeding the rates, and the availability of services could be considered in public meetings of the TRC Board.
- Most large human service agencies, including the Department of Health, Department of Human Services, and the Department of Protective and Regulatory Services, establish an open, public rate-setting process in agency rules, publish the amounts of their proposed rates, and allow public and provider input through Board hearings. A public rate-setting process allows providers, clients, advocacy groups and other stakeholders to understand and comment on the method through which rates are established as well as the amounts of the rates. Public scrutiny of rate setting and payment decisions helps to prevent biased decisions, errors and the appearance that rates were set improperly.

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TRC needs truly cost-based rates that justify payments for medical services.

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## Conclusion

TRC has not established a documented rate-setting methodology that ensures that amounts paid for medical services are rationally based, equitable, and clearly tied to the cost of providing a service. Consequently, the agency cannot document that best value is a consideration in TRC's rate setting, as required by law. The agency has begun to refine its rate process, and so newly proposed MAPS rates are now closer to Medicare rates. This resulted in decreasing many rates that were excessive, but TRC has not developed a true cost-based system that justifies the amounts that the agency pays for medical services. In lieu of developing its own schedule, TRC should use an established rate schedule, such as Medicare's, to set the amounts to reimburse providers.

Unlike other health and human services agencies, TRC does not use an open, public process to set rates. Rates are set by agency staff and not formally adopted by the TRC Board. Public scrutiny would allow providers, clients, and other stake holders to understand the process used to set rates and comment on their appropriateness.

## Recommendation

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### Change in Statute

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- **Require the TRC Board to establish its rate-setting methodology for all rates by agency rule.**
- **Require the TRC Board to solicit public comment regarding proposed rates and adopt all final rate setting methodologies in a public meeting.**
- **Require the TRC Board, when adopting a rate schedule to:**
  - **review a comparison of the proposed rate schedule to other cost-based rates for medical services, including Medicaid and Medicare rates; and**
  - **document why any rate must exceed the Medicare or Medicaid rate for the service to ensure best value in the use of dollars for clients.**

This recommendation requires TRC to fundamentally change its method for establishing rates paid for services. TRC has not established policies for setting the rates that it pays for medical services. Development of a complete schedule of rates for medical services is unnecessary because Medicare and Medicaid already develop cost-based rate schedules. TRC should rely on these established rates, which are generally lower than TRC rates, to

set a base for its own rates, and should vary from these rates only when services are not available at the lower rate. These adjustments should be approved by the TRC Board based on documentation that a higher or lower rate is justified.

As with other state agencies, TRC's rate-setting process should be open to the public and the methodology should be adopted in public meetings of the TRC Board. Rates should be adopted annually and the methods used to calculate rates should be based on the actual cost of providers to deliver services. Public testimony about rates would allow comment on the adequacy of rates and the willingness of providers to offer services at proposed rates.

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## Fiscal Impact

Both Medicaid and Medicare maintain complete cost-based medical fee schedules that could be used as a basis for paying TRC providers. For purposes of estimating fiscal impact, Sunset staff chose Medicare. Medicare rates are adjusted annually based on provider costs and inflation. Because state Medicaid rates for comparable services have not been adjusted for costs or inflation for approximately six years, Medicare rates are higher than Medicaid rates. The Medicare rate schedule sets a rate, called the "limiting charge," that represents 95 percent of the average cost of providing a medical procedure. The limiting charge rate is the maximum amount that a health care provider can bill a Medicare recipient for a service. Medicare staff at the federal Department of Health and Human Services state that the limiting charge amount fully reimburses a provider for the costs of services.

On the average, Medicare "limiting charge" rates are approximately 10 percent lower than the rates set in TRC's Maximum Affordable Payment Schedule.<sup>1</sup> Consequently, use by TRC of even the highest Medicare fee would reduce TRC costs for medical services by 10 percent, or approximately \$3 million per year.

Fiscal Year	Savings to General Revenue	Savings to Federal Funds	Total Savings
2000	\$750,000	\$2,250,000	\$3,000,000
2001	\$750,000	\$2,250,000	\$3,000,000
2002	\$750,000	\$2,250,000	\$3,000,000
2003	\$750,000	\$2,250,000	\$3,000,000
2004	\$750,000	\$2,250,000	\$3,000,000

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<sup>1</sup> Based on a Sunset staff review of selected TRC rates compared to Medicare rates for the same service.

# Issue 6

## TRC Should Promote Competition in its Purchases and Explore Other Options to Reduce Costs.



### Background

State law requires health and human services agencies to use a system of procuring goods and services that leads to the purchase of quality goods and services at the lowest possible price. TRC rules state that the Commission must “consider the best interests of persons served, the public and the State of Texas at all times” and must “use competitive procurement methodologies as the primary procurement methodology whenever possible, to secure best value and to provide an opportunity for all qualified organizations or persons to do business with the Commission.” TRC procurement policies are shown in the text box, *TRC Policies for Best Value Purchasing and Competitive Procurement*.

TRC counselors exercise considerable judgment in making purchasing decisions. A vocational rehabilitation counselor initiates the purchase of a good or service that a client needs to achieve the objective of the client’s rehabilitation plan. The goods and services that counselors are permitted to buy are described in the agency’s Rehabilitation Services Manual and summarized in the text box, *Services Purchased for TRC Clients*.

The policies that counselors follow when buying goods are different from those followed in buying services. When goods such as tools and equipment are purchased for clients, counselors follow the General Services Commission’s standards emphasizing competition and best value purchasing. TRC counselors must obtain competitive bids from at least three vendors before buying goods that cost over \$2,000, and must obtain three written bids when costs exceed \$5,000. TRC counselors are not required to obtain competitive bids when procuring services for a client (TRC’s purchase of medical services is discussed in Issue 5 of this report.).

#### TRC Policies for Best Value Purchasing and Competitive Procurement

**Competitive Procurement** - Promotes competition to the extent appropriate and allowable by state and federal laws and policies. Techniques of competitive procurement include:

*Invitations to Bid* - Solicits offers when specifications of the good or service are known.

*Request For Offers* - Solicits information regarding the qualifications of providers or the technical requirements of goods or services.

*Request for Proposals* - Used in soliciting grant proposals when only broadly defined program objectives have been established.

**Best Value** - Buyers may consider relevant factors in addition to purchase price when evaluating the value of a client good or service, including quality and reliability, indicators of probable contractor performance, local service availability after delivery, and effect of a purchase on productivity.

**Services Purchased for TRC Clients\***

**Training Services** - includes worker development training, work setting training, academic, vocational and technical training, and community rehabilitation services.

**Rehabilitation Technology Services** - includes vehicle, job and home modifications and technology devices, and services.

**Employment Services** - includes job development and placement, and services leading to self-employment, supported employment, and occupational licenses.

**Other Support Services** - includes tools, equipment, transportation, interpreters, personal attendant services, and translator services.

\* TRC also purchases Restorative/Medical services for clients.

Source: Rules of the Texas Rehabilitation Commission

The TRC counselor and the client decide what services to purchase.

Purchases made for clients must be “consistent with the clients’s rehabilitation plan and informed client choice.” Costs of services, other than medical services, are controlled in two ways. First, each counselor is allocated a total amount that may be spent for clients, and secondly, agency policy often caps the per-client amount that may be spent on a particular type of service. For example, a counselor may not spend more than \$3,000 to pay for the costs of proprietary school training for a client.

TRC’s approach to selecting service providers, other than medical services, most closely resembles an enrollment method. Vendors apply to be placed on the agency’s approved vendor list, then counselors work with clients to select a vendor from the approved list. Vendors who provide services for clients are not required to compete, either in terms of

performance or price, for TRC’s business. In areas of the state with a limited service delivery network, competition among vendors for some services may not be possible.

Sunset staff looked at agency rules and practices related to the purchase of non-medical services for clients as well as the methods used by the agency to document purchasing decisions and promote competition and public participation in the purchasing process.

## Findings

### ▼ TRC does not ensure best value purchasing when buying services for clients.

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TRC does not document why particular vendors are chosen to provide a service.

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- ▶ Even though TRC rules state that the agency will use competitive purchasing methods whenever possible, TRC counselors do not comply with best value requirements to obtain competitive bids when buying services for clients. Other components of best value purchasing, including an overall assessment of the quality of the service, are not used by TRC.
- ▶ Because TRC does not solicit competitive bids for services, and does not conduct a formal assessment of bids, the agency generally has no documentation of why a particular vendor is

selected. Sunset review of agency records found little documentation of why a particular vendor was chosen to provide a service. When documentation was found, it was limited to instances where vendors already serving the client were selected to continue to provide services.

- ▶ Sunset review found a number of non-competitive procurements involving large expenditures. (See the text box, *TRC Non-Competitive Procurements from Selected Vendors*.) TRC rules establish competitive procurement methods that should have been used to buy these services.
- ▶ In most situations, as TRC rules anticipate, purchases made for clients can incorporate competition among vendors. Sometimes the best value for the State and the client can only be achieved by limiting competition among vendors. While the specific needs of individual clients should always be considered in determining best value, the importance of meeting client needs and providing reasonable choices should not serve as an excuse for extensive non-competitive purchasing.

<b>TRC Non-Competitive Procurements from Selected Vendors</b>	
<b>Vendor</b>	<b>Amount Spent*</b>
Driver Education Service, Fort Worth	\$391,168
Psychologist, Houston	\$303,621
Driver's Training School, Middletown, Ohio	\$466,991
Provider of Rehabilitation Services, Longview	\$685,254
Psychologist, Euless	\$129,746
Provider of Rehabilitation and Employment Services, Bryan	\$254,104
Dentist, Huntsville	\$150,586
Provider of Tools and Equipment, Illinois	\$180,329

\*Expenditures made during the 10 months from October 1997 through July 1998.

▼ **TRC has not followed-through on State Auditor recommendations to implement competitive procurement standards.**

- ▶ In December 1996, the State Auditor's Office recommended that TRC's Buyer Support Services Unit should develop a process to assure that provider performance results are provided to all individuals involved in the provider-selection process and that the results of vendor performance analysis are included in the provider data base. Other recommendations made by the State Auditor are shown in the text box, *Recommendations of the State Auditor Regarding TRC Purchasing*.

<b>Recommendations of the State Auditor Regarding TRC Purchasing</b>
<p>“Continue efforts to implement procurement standards throughout the agency.</p> <p>Continue development of a formal competitive procurement process for goods and services.</p> <p>Develop goals, objectives and action plans for implementing agency wide competitive procurement procedures.”</p>

Source: State Auditor, *Follow-up Audit Report*, December 1996

- TRC staff indicate that they have worked on addressing the State Auditor’s recommendations<sup>1</sup> to “develop goals, objectives and action plans for implementing agency wide competitive procurement procedures” and have developed draft material that addresses the issues identified. However, the agency has not implemented competitive procurement procedures recommended by the State Auditor.
- TRC initiated two small pilot programs that competitively purchased cosmetology services in Arlington and San Antonio. Assessment of the pilots by TRC concluded that the pilots did not reduce the costs of services, and no further competitive procurement pilots have been implemented.

**TRC could improve its best value purchasing by negotiating high-volume discounts, pooling purchases with other agencies and using state contract vendors.**

- During 1997, TRC successfully reduced its cost for durable medical equipment by effectively negotiating a statewide discount of 25 percent. TRC informed providers that a 25 percent reduction would occur and requested providers to contract with TRC at the new, lower rate. All of TRC’s durable medical equipment providers agreed to accept the lower rate of reimbursement.
- TRC could further reduce costs by negotiating discounts with its high-volume vendors. TRC makes high-volume purchases from a number of providers, including Sears-Roebuck (\$900,000), Bookstop (\$300,000), as well as the providers identified in the text box, *TRC Non-Competitive Procurements From Selected Vendors*. TRC has not attempted to negotiate discounts with these companies and vendors.
- TRC purchases approximately \$700,000 in prescription drugs each year, but has not explored the possibility of consolidating its purchases with those of the Department of Health’s Vendor Drug Program. TDH staff indicate that the administrative component of the vendor drug program is designed to allow for use by multiple state agencies and that consolidation of purchases could lead to savings.

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TRC has buying power that could lead to high-volume discounts.

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- D At present, TRC counselors buy computers and related equipment for clients from local vendors. TRC counselors could use the General Services Commission's statewide catalog of Qualified Information Systems Vendors to buy computer equipment at the rate offered the State by the vendor when the State cost is lower than the local cost.

▼ **TRC's purchasing process does not encourage vendor participation.**

- D Government purchasing guidelines emphasize the importance of a public, open vendor-selection process that encourages the participation of a broad range of vendors.
- D TRC does not consistently notify the vendor community of the type and amounts of its planned purchases. Consequently, vendors who might provide the best value for the agency may be excluded from providing services to the agency.
- D Other state agencies have developed methods of notifying the vendor community of planned purchases. The Department of Health (TDH) uses an internet application, the Department of Economic Development's *Electronic Business Daily*, to notify vendors of planned purchases throughout the State. Agencies such as DHS and the TDH often solicit vendors through notification in local newspapers and the Texas Register. The General Services Commission indicates that human services agencies that buy goods and services can use its Master Bid List as a means of identifying and notifying vendors of planned purchases.

## Conclusion

TRC has not complied with statutory requirements related to best value procurement and has not effectively promoted competition in its procurement process as required in TRC's statute. Basic purchasing practices followed by other human services agencies, including competitive procurement, solicitation of vendors, and documentation of the basis for selecting vendors are not followed by TRC for purchases of services. TRC has not implemented recommendations of the State Auditor to develop competitive procurement procedures. As a result, TRC procurement practices create the potential for biased decision making and wasteful spending.

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TRC should use competition, volume discounts, and other available methods to reduce costs in its purchases.

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## Recommendation

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### Change in Statute

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- **Require TRC to implement agency-wide procurement procedures to:**
  - **comply with statutory requirements for best value purchasing of services bought for clients;**
  - **document that a best value review of vendors has occurred and document the reason for selecting a vendor;**
  - **negotiate price discounts with high-volume vendors;**
  - **consolidate purchases with other agencies, including the TDH and General Services Commission, to achieve best value; and**
  - **provide effective public notification to potential vendors of planned TRC purchases.**

Implementation of these recommendations would create consistency between TRC rules and the actual purchasing processes followed by the agency. The approach to, and schedule for, implementing the recommendations should be reviewed and approved by the TRC Board to ensure that effective compliance with agency rules is not postponed. A best value approach to purchasing would require the agency to document why vendors are selected, but would still permit client choice to influence the decision.

The review identified a number of ways that TRC could reduce the amounts that it pays for frequently purchased goods and services. Sunset staff anticipate that exploring these options and developing purchasing strategies could take place over a fiscal year, with priority given to options with the greatest potential benefit. Recommendations to notify the vendor community of planned purchases could be implemented through the Department of Economic Development's *Electronic Business Daily*. The Health and Human Services Commission is also working on strategies to be used by state agencies to provide broad public notice of agency procurements. These management actions on the part of TRC should bring the agency into compliance with recommendations of the State Auditor and result in a competitive, formal, documented, and auditable process for choosing vendors that creates a trail of accountability.

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## **Fiscal Impact**

Documentation of purchasing decisions would create some additional work for agency counselors. However, because documentation is not required for small purchases, those under the agency's \$2,000 small purchase limit, costs would be minimal. Also, the recommendations will result in reduced agency costs for goods and services purchased from high-volume vendors. This amount cannot be estimated, but would more than offset the cost of conducting competitive procurements and providing documentation.

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<sup>1</sup> The State Auditor recommended that TRC, "Develop goals, objectives, and action plans for implementing agencywide competitive procurement procedures."



# Issue 7

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## Extend Rehabilitation Services to More Clients by Ensuring that TRC Funds are the Last Used to Pay for Services.



### Background

Federal law and TRC rules require that TRC funds should be the last funds used to pay for vocational rehabilitation services. Before TRC spends its dollars, other local, state and federal programs and TRC clients, when possible, are expected to pay for services. TRC clients receive a variety of services, including health care, major surgeries and hospitalization that are intended to allow a client to keep a job or return to work. To ensure that TRC funds are the last to pay for services, agency rules require each vocational rehabilitation counselor to seek other sources of payment for “comparable benefits” before TRC pays for a service. Sources of comparable benefits include Medicaid, community-based services, and programs for indigent health care.

Approximately 30 percent of TRC clients (almost 27,000 people) are employed when they receive TRC services. TRC policies recognize that some clients have personal income, private insurance or other resources that can be used to pay for some of the costs of rehabilitative services. Staff of TRC state that clients are more likely to participate in and complete their rehabilitation plan when they share in the cost. TRC policies require that rehabilitation counselors question each client about their income and expenses, determine if the client has resources to meet basic living needs, and then set the amount that a client is expected to pay for services based on the client’s income and resources on hand. At the lowest income level, clients with monthly income of \$1,100, net of living expenses, are required to pay \$12 per month toward their services. A client and spouse with net income exceeding \$3,000 per month are expected to pay the full costs of TRC services. Clients may pay for their services either by buying some of the goods or services themselves or by reimbursing the agency for a part of the cost. According to agency policies, the client’s written rehabilitation plan must show the amount that the client pays for rehabilitation services.

The Sunset review sought to determine if TRC effectively complies with requirements that would conserve TRC funds when other sources of funding

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TRC funds are supposed to be used last to pay for rehabilitation services.

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are available. In particular, the review focused on the impact of the requirements on agency resources and the use of comparable benefits to conserve federal funding.

## Findings

### ▼ TRC does not verify client financial information before purchasing rehabilitation services.

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Clients are on the “honor system” when asked about their ability to pay for services.

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- ▶ During the client intake process, TRC counselors ask clients about their living expenses and income and record the information in the case file. TRC policies permit the counselor to ask for documentation of the clients’ income and expenses, but TRC managers state that clients are on the “honor system” and that clients would come to view TRC as a “welfare program” if asked to document their financial need.<sup>1</sup> Consequently, TRC does not obtain documentation of a client’s income and resources before buying services for the client.
- ▶ TRC does not notify clients that falsification of financial information is a criminal act (Penal Code Sec. 32.46, VTCA), and clients are not required to sign a statement attesting to the accuracy and truthfulness of the financial information that they provide to counselors. Consequently, clients who could pay for some TRC services may not be deterred from hiding their assets. State-administered programs such as food stamps and the Temporary Assistance to Needy Families (TANF) program notify clients of the penalties for providing false or incomplete information to obtain a benefit.
- ▶ Other state agencies require that clients provide documentation of their income and living expenses before receiving publicly-funded services. Such documentation is easily obtained from paycheck stubs, IRS forms, and canceled rent checks. For example, the TANF Program at the Department of Human Services requires extensive documentation of income before authorizing a payment of less than \$190 per month. In contrast, TRC pays for tuition, glasses, medical care, training, clothes and equipment, often with an aggregate value of over \$20,000 per client, without any documentation that the client needs financial assistance.

▼ **Although TRC has adopted policies that require clients to participate in the cost of their services, clients rarely share any of the costs.**

- ▶ TRC has established policies that require a client whose income or liquid assets exceed basic living requirements to participate in the costs of services. However, review of client files did not identify any instance where clients actually shared in the costs of services, and agency executives state that none of the 90,000 TRC clients actually reimburse TRC for any of the costs of rehabilitation services. TRC staff expressed the view that clients with vocational impairments may not have sufficient resources to support themselves for the rest of their life, so they should not be expected to help pay for services.<sup>2</sup>
- ▶ Like TRC, policies of many other agencies require some client financial participation in paying for goods and services, and most health and human service agencies deliver some services on a sliding fee schedule. Some public agencies, such as publicly-funded emergency rooms, charge a small fixed fee of five dollars before clients may obtain services.
- ▶ The Sunset review found some instances where TRC counselors negotiated a voluntary agreement with clients so that the client paid a vendor for part of the cost of equipment or for small, recurring costs such as prescription drugs. Such agreements between TRC and the client are generally voluntary and not based on the client's ability to pay. For example, TRC paid for a client to attend school to become a massage therapist. Once training was completed and the client was employed, TRC purchased a \$600 massage table for the client, and the client agreed to purchase a \$190 portable massage chair.<sup>3</sup>

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Although rare, when clients do pay, participation is not based on ability to pay.

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▼ **Clients are not required to seek services from other payers before receiving TRC services.**

- ▶ TRC policies state that counselors must “use available comparable services and benefits to pay in whole or in part for services before using TRC funds.” Counselors must search for comparable benefits and “determine whether comparable benefits and services are available under any other program, and determine if such services and benefits are available to the respective client.” In addition, a counselor must document

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Case files do not document that possible comparable benefits were explored in lieu of TRC-funded services.

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in the written rehabilitation plan, the “comparable services that the client is committing” to the plan in the form of money or in-kind participation.

- ▶ Many TRC clients appear to qualify for services and benefits provided by other agencies. For example, 70 percent of TRC clients are unemployed when they apply for services and many have dependent children, conditions that would appear to qualify clients for Medicaid. Over 20,000 clients have a mental illness disability and could be eligible for services provided by the Department of Mental Health and Mental Retardation.
  
- ▶ TRC policies state that use of comparable benefits must be identified in the client’s plan, but the agency could not identify the number of cases in which comparable benefits were used in lieu of TRC-funded services. Consequently, TRC has no record that services were provided only when comparable services were exhausted or unavailable.
  
- ▶ Despite the likelihood that many TRC clients are jointly eligible for services, Sunset review of TRC files showed that TRC counselors generally do not document that they have referred clients for comparable services, that the client actually applied for or sought the service, and that the request for the comparable service was denied. TRC managers state that clients are on the “honor system” in applying for comparable benefits.

## Conclusion

Federal law targets TRC funding at clients with severe disabilities. TRC services are not an entitlement; funding for the federal program is capped and TRC staff indicate that funding is not sufficient to meet all of the need for services. Clients often must wait for services until funding is available, delaying their rehabilitation and return to work. At present, TRC does not verify if a client has the ability to pay for services or that the client has sought services from other providers. Requiring that potential TRC clients document their income and resources, as well as their attempts to obtain services from other agencies, would allow TRC to extend services to more clients who must rely on TRC for rehabilitation.

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TRC should exhaust all other options before using its limited resources to pay for services.

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## Recommendation

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### Management Action

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- **TRC should implement the following actions to ensure compliance with state and federal requirements that TRC exhaust all other sources of funding before paying for rehabilitation services.**
  - **Require TRC clients to attest in writing that their statements regarding financial assets, income, and expenses are complete and accurate.**
  - **Inform clients that failure to provide complete and accurate financial information is a violation of Texas law.**
  - **TRC should establish and monitor counselor performance objectives related to documenting, in the clients' individual written rehabilitation plan, that clients have sought comparable benefits.**
  - **TRC should limit the dollar amount of services that may be authorized by a counselor without documentation of client income and expenses, and documentation that the client has sought comparable services from other programs for which the client appears to be eligible.**

TRC has not effectively implemented policies that would conserve the agency's limited funding for rehabilitation services. Failure to document a client's financial inability to pay for services, and failure to refer clients to other programs for which they are eligible, create incentives for clients to misrepresent their ability to help pay for services and can cause rehabilitation dollars to be wasted. Even though TRC policies state that the agency should seek comparable services, and TRC has an effective automated information system that could track its efforts in this area, TRC cannot document that these policies are followed.

The corrective actions contained in this recommendation can be designed so as to not delay services to the client. The potential benefit of co-payment for services does not represent a significant source of income, but TRC staff indicate that client participation helps to motivate clients to complete their rehabilitation plan.

The recommendation that TRC notify clients that providing a false statement regarding their ability to pay can be a criminal act would help to reduce frivolous claims for services by individuals who could afford to pay for eye glasses, hearing aids and other items available through TRC. Notification can be added to the agency's automated client plan document with no additional costs to TRC. Verification of client income would help to deter clients who might seek to abuse the rehabilitation system to obtain free goods, services and benefits at no cost.

TRC's current policies require counselors to seek comparable benefits for clients, and the agency's automated client record system is designed to record such information. TRC clients who may be eligible for Medicaid should receive health care services through the Medicaid system, at considerable savings to TRC. Staff of the Health and Human Services Commission (HHSC) indicate that TRC and HHSC could use a list of TRC client names to electronically determine if TRC clients are eligible for Medicaid. Should TRC clients be eligible for Medicaid, the State has the potential to recover the amounts spent for services that should have been paid for by Medicaid.

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## **Fiscal Impact**

This recommendation to strengthen the enforcement of agency policies and procedures relating to who pays for services would result in a positive fiscal impact for the State. Benefits would be realized in several ways. First, clients who have significant resources, and could pay for private rehabilitation services, would be required to contribute an appropriate, and relatively modest, amount toward their rehabilitation services. Second, clients would be diverted to other funding sources, including Medicaid and Medicare, that could help to remove vocational impediments. As a result, vocational rehabilitation funding would be protected for clients who have no other resources. The automated capability to verify Medicaid eligibility, coupled with the requirement that potentially eligible clients seek Medicaid services before receiving TRC services, could significantly reduce the medical services purchased by TRC. However, the extent that costs could be reduced cannot be estimated for this report.

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<sup>1</sup> Interview with TRC Area Manager, July 1998.

<sup>2</sup> Sunset staff interview with TRC Buyer Support Services staff, August 10, 1998.

<sup>3</sup> Review of casenotes contained in TRC counselors files, September 1998.

# Issue 8

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## Improve Policymaking at TRC by Clarifying the Board's Role.

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### Background

With few exceptions, executive branch state agencies in Texas are governed by boards composed of members who are appointed by the Governor and confirmed by the Senate. Texas statutes generally establish the responsibilities of board members in considerable detail. For example, most Boards are required by law to post notice of meetings and meet a certain number of times a year, to conduct their business in open, public meetings, and to direct their agency through a rulemaking process that allows for public participation. Taken together, the many statutes that control board activities ensure that Boards make their decisions in open, public meetings, and guarantee that the public has the opportunity to observe and participate in Board deliberations.

Boards of state agencies are generally authorized in statute to employ staff, including an Executive Director, who serves as the administrator of the agency. The enabling legislation of most health and human services agencies is similar in that boards are given policymaking authority and authorized to employ a Commissioner, who employs staff. For example, the Board of the Department of Human Services (DHS) is authorized to appoint a Commissioner who is the executive and administrative officer of the Department. The Board exercises all powers and duties imposed or conferred by law on the Department unless the power or duty is specifically delegated by the Board to the Commissioner. The DHS statute further requires that the Board shall adopt policies that clearly define the respective responsibilities of the Board and the staff of the Department.

The Sunset review of TRC included a comparison of its policymaking activities with other state agencies, particularly those involved in health and human services. Specifically, Sunset staff reviewed the statutory division of responsibilities between the TRC Board and Commissioner and focused on the impact of the agency's statute in ensuring public participation in Board policymaking.

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The Sunset review assessed the division of responsibility between TRC's Board and its Commissioner.

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## Findings

### ▼ **The TRC statute does not clearly define the powers and duties of the TRC Board and gives the TRC Commissioner the responsibility to establish the agency's policies.**

Other than administrative details primarily governing the conduct of Board meetings, the TRC statute does not clearly define the powers and duties of the Board. The statute provides for the Board to appoint the Commissioner, who serves as secretary to the Board and chief administrative officer of the agency. It also provides for the Board to establish operational policies under which the Commissioner administers the statute. Finally, it requires the Board to develop and implement policies that clearly separate the respective responsibilities of the Board, the Commissioner, and the agency's staff.

In contrast, the Commissioner is given responsibility to, subject to Board approval, make regulations governing all the major activities of the agency. The statute requires the Commissioner to:

- plan for the scope and development of the programs and allocate resources in carrying out these plans;
- make regulations governing eligibility, investigation, and determination for rehabilitation and other services;
- prepare and report estimates of funds required to carry out the purposes of this chapter; and
- determine eligibility for vocational rehabilitation and extended rehabilitation services programs.

Sharing responsibility for policy direction of the agency between the Board and the Commissioner blurs the line between setting policy and administration. The Board does not initiate rule adoption but approves the regulations proposed by the Commissioner. The statute does not describe how the Board is to approve the Commissioner's actions or how it is to establish operational policies for administering the statute. Because the authority to initiate policymaking rests with the Commissioner, the Board's role is limited.

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Sharing responsibility for rulemaking blurs the line between setting policy and administration.

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▼ **The current approach to setting the agency's policies limits public involvement in decision making.**

- ▶ As discussed previously, the TRC Commissioner has much of the responsibility to set policy guiding the agency's operations. In performing its duties, staff is, by its nature, less open to public involvement than work by boards and commissions. The public and advocates may have the opportunity to work directly with TRC staff, but nothing requires this interaction. Actions by boards and commissions must occur under the strict requirements of the Open Meetings Act regarding notice and access. Although the Commissioner receives approval of policies from the TRC Board, in a public meeting, this occurs after the fact. The State's standard rulemaking process requires more structured input during the development of policy. With most state agencies, this occurs at the board level.
- ▶ Four of TRC's advisory committees do not have any direct interaction with the TRC Board, and one, the federally-mandated Texas Rehabilitation Advisory Council (TRAC), has limited interaction. Two advisory committees, whose purpose in rule is to advise the Board, report directly to the Commissioner, not the Board, as is more typical of other agencies. Two other advisory committees are supposed to advise the agency, which includes the Board, but only report to the Commissioner. Having advisory committees work with staff and not the Board limits the public access to the policymaking body. The advisory committees should also provide input to the TRC Board.
- ▶ In general, advisory committee involvement at Board meetings is limited. A review of minutes from TRC Board meetings revealed that, in the past three years, only the Texas Rehabilitation Advisory Council has addressed the Board at a Board meeting.
- ▶ Public involvement from advocates at the Board meetings is also diminished. The minutes also revealed that the Board received no public comment at four of its past 12 meetings. At another seven meetings, only one or two members of the public gave testimony. Several advocates and members of advisory committees have told Sunset staff that they feel that the Commissioner and staff are responsible for making policy,

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Setting policy at the staff level is, by its nature, less open to public involvement.

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and therefore believe that their input at Board meetings is not useful.<sup>1</sup> In addition, The Texas Rehabilitation Advisory Council has requested an “on-going specified relationship between the Board and the Council” to further a public discussion of issues important to the Council.<sup>2</sup>

▼ **Specifying the TRC Board’s responsibility to set policy would clarify the Board’s role as the agency’s policymaker and increase public involvement.**

- ▶ The TRC Board provides a forum for public participation through its meetings. By having six members, the Board provides a broad perspective reflecting the geographic and cultural diversity of the State. Having the Board more directly involved in setting policy also provides the opportunity for public deliberation that can be missing when agency staff has responsibility for making policy.
- ▶ Advocates and advisory committee members would benefit from a clearer separation of authority between the TRC Board and staff. The separation of authority will help to build clearer lines of communication between the public and the TRC Board. As a result, advocates and advisory committee members would be heard through an established method for providing input at public meetings, which is the standard for state government.

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Clarifying Board and staff duties would foster public involvement in TRC’s policymaking.

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## Conclusion

The statute of the Texas Rehabilitation Commission does not clearly define the powers and duties of the TRC Board. In addition, the statute gives considerable authority for making policy to the staff. As a result of having staff perform many policymaking functions, public involvement in decision making has been diminished. Clarifying the role of the Board in statute will help the Board and staff understand their respective roles and foster public involvement in the agency’s policymaking functions.

## Recommendation

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### Change in Statute

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- **Clarify the powers and duties of the TRC Board, including clarifying authority to adopt rules.**

TRC's statute should more clearly define the respective responsibilities of the TRC Board, the Commissioner, and the staff. The statute should specify the Board has the responsibility to adopt rules that guide each of the agency's major responsibilities. The statute should be reviewed and clarified to ensure that the powers and duties assigned to the Commissioner are subject to Board approval. Any delegation of the Board's authority should be adopted by the Board in a public meeting.

- **Require that the TRC board re-adopt rules on its advisory committees to ensure that the advisory committees report to the Board.**

By January 2000, the TRC Board should re-adopt its rules to ensure that the Medical Consultation, Community Rehabilitation Programs, Comprehensive Rehabilitation and Deaf-Blind Advisory Committees report to the Board. This change will ensure that the advisory committees have a direct link to the TRC Board. The advisory committees would continue to work with the Commissioner and staff as appropriate.

### Management Action

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- **Require TRC's advisory committees to report to the Board, in a public meeting, on their activities at least once each year. Require the Texas Rehabilitation Advisory Council to appear before and report to the Board at least twice a year.**

Because the work of the advisory committees is so critical, the advisory committees should report to the Board at least once a year on their activities. The Texas Rehabilitation Advisory Council is required by federal law to review, analyze, and advise TRC on the scope, eligibility, and effectiveness of services provided by TRC. To successfully fulfill its purpose, the Council should appear and report to the Board at least twice a year.

- **The TRC Board should adopt rules that clearly define the roles and responsibilities of the Board, the Commissioner, and the staff.**

These rules are currently required by TRC's statute. The Board should review its rules on this subject to ensure their adequacy. The rules should confirm the Board's authority to govern the Commission, assign responsibilities to the Commissioner, set forth when actions

require Board approval, and how the Board gives approval. Further, the Board's policies should be reviewed annually by the Board and re-adopted in a public meeting.

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## **Fiscal Impact**

This recommendation would have no fiscal impact to the State.

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<sup>1</sup> From Sunset staff meetings with advocates.

<sup>2</sup> Letter from Susan Juneke, Chairperson, Texas Rehabilitation Advisory Council, to Joey Longley, Director, Sunset Advisory Commission, June 26, 1998.

## Issue 9

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### Seek to Bring Texas' Denial Rate for Social Security Disability Determination in Line With the National Average.



#### Background

The federal Social Security Administration (SSA) operates two programs that provide direct income assistance to persons with severe disabilities. Social Security Disability Insurance (SSDI) provides cash benefits to severely disabled workers and their dependants. Supplemental Security Income (SSI) provides financial assistance to disabled persons who do not have enough Social Security payroll deductions to qualify for SSDI, and whose income and resources fall below a certain level. In a typical month, over half a million Texans receive approximately \$280 million in federal cash assistance through the SSDI and SSI programs.<sup>1</sup> In addition, persons eligible for SSDI also qualify for Medicare and persons eligible for SSI receive Medicaid.

Under federal law, each state has a Disability Determination Services (DDS) unit to determine eligibility for SSI and SSDI. In Texas, the Texas Rehabilitation Commission operates the State's DDS Unit. Each state's DDS is directly overseen by one of ten regional Social Security offices. Texas is a part of Region VI, which also includes Arkansas, Louisiana, New Mexico, and Oklahoma.

Individuals who believe they are eligible for Social Security disability benefits begin by filing an initial claim with their local Social Security office. This local office then forwards the claim to the DDS Unit. A disability examiner and a medical consultant determine whether the claimant meets the definition of disability according to the guidelines established by the Social Security Administration. After DDS makes a determination awarding eligibility, the claim is sent back to the Social Security office, which establishes the award amount.

In addition to the initial claim, DDS also conducts continuing disability reviews for individuals currently receiving benefits to determine whether they are still disabled according to the SSA's criteria. If either the initial or the continuing review claim is denied, the claimant may appeal and DDS reviews the appeal. If denied again, the claimant may appeal to an administrative law judge in the SSA's Office of Hearing and Appeals and ultimately to the federal courts.

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TRC determines initial eligibility for federal disability income assistance.

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Since DDS is under federal control, the review focused on how Texas compares to the rest of the country.

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The regional office reviews a sample of the DDS decisions for accuracy. If the regional office determines an error has been made in the award or denial of a claim, the claim is returned to the DDS with an explanation of what the regional office believes to be inaccurate. DDS may be directed to change the decision or to get additional medical information and reconsider the decision. If DDS stands by its determination, it can rebut the decision with the regional office. Ultimately, however, the regional office can assume jurisdiction and make the final decision.

The Sunset review attempted to look at the effectiveness of TRC's Disability Determination Services Unit to ensure that Texans applying for disability benefits are receiving a fair and accurate adjudication of their claim. The review was complicated by several factors. First, the State DDS performs merely one piece of the overall process. Unlike other federal programs which the State actually operates, DDS's one responsibility is to determine eligibility according to the criteria established by the SSA. Ultimately, control rests with the federal agency. Second, although the SSA dictates the eligibility criteria, interpretation in each SSA region and each state can affect determination decisions. A great deal of judgment is involved in the decision making process. Some regions and states may interpret the criteria more loosely, while others may interpret them more narrowly. Third, each state's eligibility decisions may be influenced by its regional office. Regional offices sample the State's decisions for accuracy. When a regional office returns a claim to the State saying that a determination was inaccurate, DDS examiners learn from that information as to what the regional office believes is an appropriate interpretation. Finally, the demographics of a state or region may also influence the rate of acceptance or denial.

Given these constraints, the Sunset review focused on how the eligibility determination in Texas, and its Social Security region, compares to other states and regions; specifically initial denial rates and the outcome of appeals. The review also assessed TRC's efforts to administer the DDS program within federal requirements and whether the agency could improve its efforts to help claimants through the process.

## Findings

- ▼ **Texas' denial rate, and those of its region, are not consistent with other regions of the country and the national average.**
  - ▶ To qualify for social security disability benefits, an individual must have a medically determinable physical or mental

impairment that results in being unable to work, that can be expected to result in death, or has lasted or be expected to last at least 12 months. Children must have a medically determinable physical or mental impairment that results in marked and severe functional limitations that can be expected to result in death, or has lasted or is expected to last for at least 12 months.

- Although these same eligibility criteria are used by all states to determine eligibility, the denial rates across the country are not consistent. The chart, *Initial Claim Denial Rates*, compares the denial rates for Texas, Region VI, and the country. The

<b>Initial Claim Denial Rates</b>					
<b>Federal Fiscal Years</b>					
	<b>1993</b>	<b>1994</b>	<b>1995</b>	<b>1996</b>	<b>1997</b>
Nation	61.2%	66.3%	69.1%	69.2%	67.6%
Region I Boston	53.3%	57.7%	59.9%	62.1%	60.4%
Region II New York	54.8%	63.6%	67.4%	66.7%	65.0%
Region III Philadelphia	63.6%	65.3%	68.6%	70.1%	69.0%
Region IV Atlanta	63.7%	67.9%	70.1%	70.6%	69.7%
Region V Chicago	59.2%	65.4%	69.0%	67.6%	64.4%
Region VI Dallas	65.5%	72.6%	75.5%	76.3%	74.6%
Arkansas	66.1%	73.5%	76.7%	76.9%	76.2%
Louisiana	71.2%	76.3%	80.2%	80.0%	76.8%
New Mexico	69.1%	74.2%	76.2%	79.2%	73.3%
Oklahoma	66.0%	72.0%	74.2%	75.7%	71.6%
Texas	65.6%	70.4%	73.5%	74.5%	74.2%
Region VII Kansas City	63.0%	68.1%	68.6%	68.7%	69.6%
Region VIII Denver	56.0%	60.0%	62.6%	65.6%	65.9%
Region IX San Francisco	61.8%	66.6%	69.0%	68.7%	66.2%
Region X Seattle	54.5%	58.9%	62.9%	63.5%	61.7%

Source: TRC's DDS unit

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Texas' denial rate, and that of its region, are above the national average.

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Texas' denial rate may be caused by regional interpretation of federal rules and guidelines.

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chart shows that Texas, and its region, have higher denial rates for initial claims than the rest of the country. Region VI, in fact, has the highest denial rate among the 10 federal regions. While the national denial average has risen six percent in the last five years, Texas' rate, and that of its region, has climbed by almost nine percent.

- TRC indicated that Texas, and Region VI as a whole, may have a higher denial rate because regional staff interpret federal rules and guidelines more narrowly than other federal regions. Other factors, such as the State's or region's demographics, may also influence the denial rate.<sup>2</sup>

▼ **Initial denials are often overturned on appeal, which may raise questions as to whether the determination process needs improvement.**

- As was described earlier, claimants may again appeal to an administrative law judge (ALJ) in the SSA's Office of Hearing and Appeals if their first appeal is denied by DDS. ALJs often overturn the decisions of disability examiners upon appeal. Nationally, disability examiners award benefits in approximately 30 percent of all cases. On appeal, ALJs, award benefits in approximately 77 percent of the cases.<sup>3</sup>
- Several factors may influence the discrepancy between DDS and ALJ decisions. As part of a large-scale review of its process, the SSA is currently looking at ways to minimize adjudicative differences between DDS disability examiners and ALJs. The results of this review could be considered in adjusting the determination process and reducing the need for ALJs to overturn DDS decisions.

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Texas citizens are not receiving benefits at the same rate as the rest of the country.

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▼ **Texas' higher denial rate potentially translates into a large amount of lost dollars for Texas citizens.**

- Sunset staff could not analyze whether the initial denials by DDS staff were appropriate and why Texas' rate is out of line with the national average. However, the bottom line is that Texas citizens are not receiving benefits at the same rate as the rest of the country. The State is thus often providing for these individuals through other assistance programs using State and federal resources.

- ▶ The national denial rate in fiscal year 1997 for social security disability claims was 67.6 percent. In Texas, the rate was 74.2 percent. The 6.6 percent difference represents an approximate 9,000 claims that were denied in comparison to the national average.<sup>4</sup> Assuming these claims were approved, persons with disabilities would have received an additional \$32 to \$74 million dollars.<sup>5</sup>

## Conclusion

Given the complexities of the disability determination process, and its ultimate control by the federal government, the Sunset review did not include a full analysis of the process. However, the review did find that some individuals in Texas may not be receiving the same treatment in their application for Social Security disability benefits as individuals in other states. Texas' denial rates, and that of its federal Social Security region, are higher than the average for the rest of the country. Also, many of the initial denials are overturned upon appeal. While both differences in denial rates and the large number of overturns may be justified, the result is that Texas citizens are not receiving benefits at the same level as claimants in the rest of the nation. This situation needs further investigation and possible correction, which must occur at the federal level.

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Texas should inquire  
at the federal level as  
to what can be done  
to ensure that its  
citizens receive  
benefits fairly.

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For adults with severe disabilities who are unable to work or children whose parents must give up their jobs to take care of them, Social Security benefits can be a lifeline to meet daily living needs such as housing, utilities, and meals. Without these benefits, the burden is often placed on the State to provide assistance through other state and federal programs. The State must do all it can to ensure that all persons who are qualified for Social Security disability benefits are awarded them.

## Recommendation

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- **The Sunset Commission should request that the State's Leadership, through the Office of State-Federal Relations, inquire of the Social Security Administration:**
  - reasons why Texas' current denial rate for disability determinations, and that of its Social Security region, exceeds the national average;
  - reasons why many of the initial denials are subsequently overturned upon appeal; and
  - what steps may be taken to ensure that Texas citizens receive the disability benefits to which they are entitled.

This recommendation is an unusual one for the Sunset staff to recommend, but one which is justified in this case. The Social Security Administration is responsible for disability determination and paying of benefits. Staff recommends that the Commission ask the State's Leadership—the Governor, Lieutenant Governor, and the Speaker—to intervene at the federal level to protect the interests of the State's citizens. The Office of State-Federal Relations (OSFR) in Washington D.C. represents the State at the federal level and is in a position to help with this inquiry. Texas deserves answers to these questions, which could ultimately lead to changes in the determination process. TRC would need to play a role as well, providing the State Leadership and OSFR with the information necessary to carry out this request.

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## Fiscal Impact

These recommendations will not result in an immediate impact to the State. If successful at the federal level, the State could cause more claimants to be approved for disability benefits. The amount of increased benefits cannot be accurately estimated for this report.

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<sup>1</sup> Based on data provided by DDS for December 1997, 235,340 disabled workers received \$188 million in SSDI, and 285,252 disabled and blind individuals received \$103.6 million in SSI benefits.

<sup>2</sup> Interview with Disability Determination Services staff, Texas Rehabilitation Commission, Austin, Texas, September 3, 1998

<sup>3</sup> U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, "SSA Actions to Reduce Backlog and Achieve More Consistent Decisions Deserve High Priority," testimony by Jane L. Ross, Health, Education, and Human Services Division, U.S. General Accounting Office, April 24, 1997, p. 4.

<sup>4</sup> Cases and claims are not always interchangeable terms. The denial rates presented are based on initial claims. DDS, however, tracks the number of cases reviewed, which in fiscal year 1997 was 133, 882. A case could include one claim. However, some individuals file claims under both SSI and SSDI. In this instance, a case would include two claims. The number of claims that DDS would need to approve to come into line with the national average is, therefore, an estimate based on the number of cases DDS reviewed in fiscal year 1997.

<sup>5</sup> The additional number of cases is based on a denial rate that includes both SSI and SSDI claims, which could not be split. The dollar figures represent the two extremes of all cases being SSI claims or all as SSDI cases. In fiscal year 1996, the average SSI payment in Texas was \$302 and the average SSDI payment was \$706.

# Issue 10

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## Decide on Continuation of the Texas Rehabilitation Commission as a Separate Agency After Completion of Sunset Reviews of All Health and Human Service Agencies.



### Background

The Legislature scheduled most of the State's health and human service agencies for Sunset review in 1999. Health and human services (HHS) is the second largest function of State government. With a combined appropriation of \$26.1 billion for the 1998-99 biennium, these agencies account for almost 30 percent of State government's budget.

With most HHS agencies under review together, the Sunset Commission has an unprecedented opportunity to study how the State has organized this area of government. Currently, 13 separate agencies have primary responsibility to carry out the numerous state and federal programs, services, assistance, and regulations designed to maintain and improve the health and welfare of the citizens of Texas. Reviewing these agencies together will enable a look across agency lines — at types of services provided, types of clients served, and funding sources used. Assuming any organization changes are needed, this information will prove valuable in the analysis of how best to make those changes.

Central to the Sunset review of any agency is determining the continuing need for the functions it performs and whether the current agency structure is the most appropriate to carry out those functions. Continuation of an agency and its functions depends on certain conditions being met, as required by the Sunset Act. First, a current and continuing need should exist for the State to provide the functions or services. In addition, the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits of maintaining a separate agency must outweigh any advantages of transferring the agency's functions or services to another agency.

The Sunset staff evaluated the continuing need for the Texas Rehabilitation Commission (TRC) and its functions in light of the conditions described above. This approach led to the following findings.

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TRC is one of 13 HHS agencies currently under Sunset review.

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## Findings

### ▼ Texas has a continuing need for the services provided by TRC.

- 1 TRC is the State's main authority on the rehabilitation of persons with disabilities. The agency's primary focus is on vocational rehabilitation and helping persons with mental and physical disabilities prepare for, find, and maintain employment. TRC counselors work one-on-one with clients to assess their needs and abilities, develop a vocational goal, and devise a plan of services to meet that goal. TRC is able to provide a variety of services, including counseling and guidance, vocational training, physical restoration, assistive technology devices, and many others. In fiscal year 1997, TRC received nearly \$115 million in federal funds to serve close to 100,000 individuals in its Vocational Rehabilitation program, and successfully helped 23,000 obtain employment.

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The Commission's functions, rehabilitation and assisting persons with disabilities, should be continued.

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In addition, TRC also operates smaller programs that assist persons with disabilities who require more intensive support to achieve or maintain employment. These programs provide services such as job coaches who work with the individual at their job site or personal attendants who assist clients in areas of personal care, home management, or transportation. Other programs, not related to employment, focus on increasing the ability of persons with severe disabilities to live more independently in their home or community. These programs provide assistance such as communication devices, a variety of therapies, mobility training, and intensive inpatient rehabilitation services.

- 2 In addition to providing a variety of rehabilitation services, TRC is also responsible for determining eligibility for Social Security disability benefits. The agency's Disability Determination Service receives its entire \$65 million budget from the federal government and operates under federal Social Security Administration regulations. Unlike vocational rehabilitation, which provides services to disabled individuals to get them back to work, Social Security provides cash payments to those deemed unable to work.

▼ **While the agency's current functions should continue, organizational alternatives exist that should be explored.**

- ▶ TRC is one of 13 separate agencies that perform the State's health and human service functions. These agencies' responsibilities are generally unique, but the types of services offered, clients served, and funding sources used are sometimes very similar. For example, responsibility for providing vocational rehabilitation services funded under the federal Rehabilitation Act is split between TRC and the Commission for the Blind (TCB). TCB is responsible for providing rehabilitation services to persons with visual impairments. In addition, the Department of Mental Health and Mental Retardation (TDMHMR) also provides vocational rehabilitation services. Almost 21 percent of TRC's vocational rehabilitation clients have a mental illness and four percent are persons with mental retardation. Some of these clients may also be eligible for services from TDMHMR. Finally, 13 percent of TRC's clients have a disability related to drug or alcohol abuse. Many of these persons may be eligible for services from the Texas Commission on Alcohol and Drug Abuse.
- ▶ Because of these similarities, many options to the current system have been and should continue to be considered. For example, the interim work of the Legislature during the past four years has yielded more than 550 recommendations for change in HHS policies and operations. Many of these recommendations have not been implemented and should be considered in the Sunset process.
- ▶ Continuation of an agency through the Sunset process hinges on answering basic questions about whether duplication of functions exists between agencies and whether benefits would result from consolidation or transfer of those functions. The Sunset staff has identified several instances where organizational change may be warranted. Examples include consolidation of core administrative functions, collocation of field offices, collapsing of contracting functions, better alignment of similar services to similar clients, and a close look at how planning and budgeting could be improved. These changes should be looked at before the Sunset Commission makes decisions to continue an HHS agency under review.

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Similarities in the types of services offered and clients served should be explored before continuing TRC as a separate agency.

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- ▼ **Continuation of TRC as a separate agency should be decided after completion of all HHS agency Sunset reviews.**
  - ▶ The Sunset reviews of the HHS agencies are scheduled for completion at various times before the end of 1998. The Sunset staff will use the results of this work in its review of the Health and Human Services Commission, the umbrella agency for HHS. The staff will also study the overall organizational structure of this area of government. Finally, the staff will evaluate issues that cut across agency lines, such as the need for a single agency for long-term care, consolidation of services to persons with disabilities, the need for a single agency to administer Medicaid services, and streamlining regulatory functions.
  - ▶ The Sunset Commission's schedule sets the review of the Health and Human Services Commission and HHS organizational and cross issues for the Fall of 1998. Delaying decisions on continuation of all HHS agencies, including TRC, until that time allows the Sunset staff to finish its work on all the agencies and base its recommendations on the most complete information.

## Conclusion

Most of the State's health and human service agencies are currently under Sunset review. While these agencies serve many unique purposes, they also have many similarities that should be studied as areas for possible improvement through organizational change. This analysis should occur before decisions are made to continue the HHS agencies as separate entities, including the Texas Rehabilitation Commission.

## Recommendation

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- **Decide on continuation of TRC as a separate agency upon completion of Sunset reviews of all health and service agencies.**

Sunset review of several other HHS agencies are ongoing. Sunset staff recommends that the Sunset Commission delay its decision on continuation of TRC as a separate agency until those reviews are completed. The results of each agency review should be used to determine whether changes are needed in the overall organization of health and human services.

The staff will issue a report to the Commission in the Fall of 1998 that will include recommendations for each HHS agency — to continue, abolish and transfer functions, or consolidate specific programs between agencies. This report will also include, for possible action, three agencies under the HHS umbrella not scheduled for specific review this cycle, the Department of Protective and Regulatory Services, the Texas Commission on Alcohol and Drug Abuse, and the Texas Juvenile Probation Commission. These agencies were reviewed by the Sunset Commission in 1996 and continued by the Legislature in 1997. Possible reorganization of health and human services may affect the continuation of these agencies as independent entities.



# **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Rehabilitation Commission</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Update	2. Require specific provisions relating to conflicts of interest.
Update	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Update	5. Specify grounds for removal of a member of the policymaking body.
Already in Statute	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Update*	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Already in Statute	9. Provide for public testimony at meetings of the policymaking body.
Update	10. Require information to be maintained on complaints.
Update	11. Require development of an equal employment opportunity policy.

\*This recommendation is more fully discussed in issue 8.



# **BACKGROUND**

# Background

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## AGENCY HISTORY

In 1969, the Texas Legislature created the Commission for Rehabilitation, later renamed the Texas Rehabilitation Commission (TRC). TRC was designated as the State's primary authority for rehabilitation of people with disabilities, except for individuals with vision impairments who are served by the Texas Commission for the Blind.

Although TRC is a relatively young agency, its roots trace back to 1929 when, with the passage of the Texas Vocational Rehabilitation Act and an appropriation of \$12,500, Texas began participating in the federal Vocational Rehabilitation program. The federal program provided services to persons injured in industrial accidents, with the goal of returning these individuals to work. To administer the program, the Vocational Rehabilitation Division was created as part of the Texas State Department of Education, later renamed the Texas Education Agency.

Over the years, state and federal law has gradually expanded TRC's responsibilities. The textbox, *Key Events in the Evolution of TRC*, details this expansion. Changes in federal law in the 1940's expanded coverage to persons with mental disabilities, and also allowed a wider array of vocational services such as transportation and occupational licenses. In 1973, Congress made major changes to the federal Vocational Rehabilitation program. The Rehabilitation Act of 1973 contained provisions designed to safeguard the rights of people with disabilities and required an Individualized Written Rehabilitation Program (IWRP) for all clients. The federal Act, and its subsequent amendments, remains the driving force behind much of TRC's day-to-day operations.

With vocational rehabilitation as the centerpiece, TRC offers a broad range of services to Texans with disabilities. Extended rehabilitation, comprehensive rehabilitation, independent living, and personal attendant services provide support to individuals who are not eligible for vocational rehabilitation services. Additionally, the agency provides longer term, ongoing support for persons with the most severe disabilities through extended rehabilitation, personal attendant, and deaf-blind with multiple disabilities programs.

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As the State's primary agency for rehabilitation, TRC offers a broad range of services to Texans with disabilities.

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<b>Key Events in the Evolution of TRC</b>	
1929	Texas Legislature authorized participation in a federal program to promote the rehabilitation of injured workers by creating the Vocational Rehabilitation Division within the Texas State Department of Education.
1943	Federal legislation extended vocational rehabilitation services to persons with mental disabilities, and expanded services to include physical restoration, transportation, and occupational tools.
1954	Texas Legislature created the Disability Determination Division within the Texas Education Agency to evaluate claims for Social Security Disability Insurance (SSDI).
1969	Texas Legislature created the Commission for Rehabilitation, later renamed the Texas Rehabilitation Commission.
1973	The federal Rehabilitation Act of 1973 supercedes all previous vocational rehabilitation laws and requires an Individualized Written Rehabilitation Program (IWRP) for all clients.
1974	Disability Determination Division began processing claims under Supplemental Security Income (SSI).
1977	Texas Legislature appropriated funds for Extended Rehabilitation Services.
1978	Federal legislation authorized comprehensive services for people with severe disabilities to live and function independently.
1980	Federal grant to start Independent Living Centers.
1985	Texas Legislature transferred Deaf-Blind Multi-handicapped program to TRC from Texas Commission for the Deaf.
1989	Texas Legislature authorized Personal Attendant Services and Transitional Planning Services.
1992	Federal Rehabilitation Act amendments required informed client choice, modified eligibility requirements, and required state agencies to have a consumer advisory council.

In addition to administering rehabilitation services, TRC is responsible for determining eligibility for Social Security disability benefits. The agency's Disability Determination Service is wholly federally funded and operates under federal Social Security Administration regulations. In 1954, the Disability Determination Division was created as part of the Texas Education Agency to evaluate disability claims for Social Security Disability Insurance (SSDI), and later for Social Security Insurance (SSI). Unlike vocational rehabilitation, which provides services to individuals with disabilities to get them back to work, Social Security provides cash payments to those deemed unable to work.

## POLICYMAKING BODY

The Texas Rehabilitation Commission is governed by a six-member Board appointed by the Governor with the advice and consent of the Senate. Board members serve for staggered six-year terms with the terms of two members expiring every two years. The Governor designates the Board's Chair.

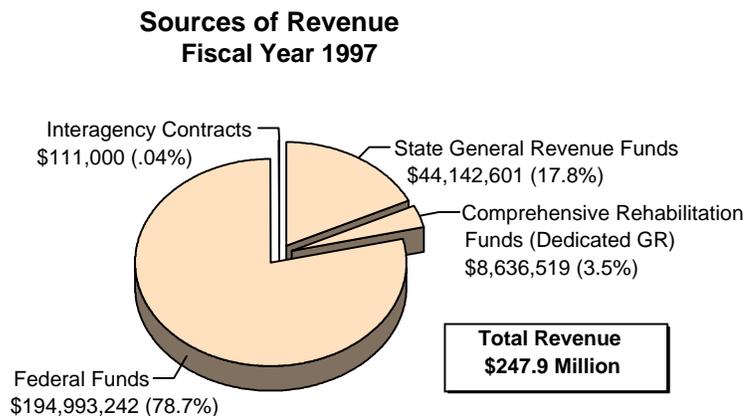
The Human Resources Code, Chapter 111 sets out the duties of the Board. The Board's principal powers include establishing policies for the agency, approving the Legislative Appropriation Request and operating budget, creating advisory committees, and hiring a Commissioner. The Commissioner is responsible for the day-to-day operations of the agency and for implementing the Board's policies. The Board relies on input from seven committees and councils in making policy decisions. The Board meets quarterly in regular session and on call of the Chair, when necessary. The Board met four times in both fiscal years 1996 and 1997.

Board Members	First Appointed
Jerry Kane, Chair (Corpus Christi)	1/22/82
Ray Wilkerson, Vice Chair (Austin)	8/19/88
Kent Waldrep, Jr., Secretary (Dallas)	12/13/89
Diane Novy, Ph.D. (Houston)	5/18/92
Dora Gonzalez, M.D.* (San Antonio)	7/29/92
Mathew Doyle (Texas City)	7/14/94
*Resigned	
Advisory Committees and Councils	
Texas Rehabilitation Advisory Council*	
State Independent Living Council*	
Medical Consultation Committee	
Deaf-Blind Advisory Committee	
Comprehensive Rehabilitation Advisory Committee	
Community Rehabilitation Programs Advisory Committee	
Traumatic Brain Injury Advisory Committee*	
* Mandated by federal law	

## FUNDING

### Sources of Funding

The Texas Rehabilitation Commission is state and federally funded, with the majority of funds coming from federal sources. In fiscal year 1997, 79 percent, or \$195 million, of TRC's total funding of \$247.9 million came from federal sources. The State provided \$52.8 million, with general revenue funds accounting for \$44.1 million. The remaining State share of \$8.6 million came from a portion of court fees collected for certain traffic violations, dedicated to assisting persons with traumatic brain and spinal cord injuries.



## Expenditures

TRC spent \$247.9 million in fiscal year 1997 on three strategic goals — service delivery, disability determination, and administration. A fourth strategic goal, *Texas Planning Council for Developmental Disabilities*,

TRC Expenditures by Strategy Fiscal Year 1997	
<b>Goal A: Service Delivery System</b>	\$164,239,795
Rehabilitation Services	\$142,770,945
Extended Rehabilitation	\$3,610,606
Personal Attendant	\$1,520,200
Independent Living Centers	\$1,440,283
Independent Living Services	2,713,822
Comprehensive Rehabilitation	\$8,391,468
Deaf-Blind with Multiple Disabilities	\$3,416,273
Transitional Planning	\$376,198
<b>Goal B: Disability Determination Services</b>	\$61,469,006
<b>Goal C: Texas Planning Council for Developmental Disabilities</b>	\$3,877,097
<b>Goal D: Administration</b>	\$18,297,464
<b>Grand Total, Texas Rehabilitation Commission</b>	\$247,883,362

reflects TRC's role as the Governor-appointed agency to provide administrative support to the Planning Council. The chart, *TRC Expenditures by Strategy—Fiscal Year 1997*, details the agency's spending within each goal.

The agency's two largest programs, Vocational Rehabilitation (reflected in the strategy *Rehabilitation Services*) and Disability Determination account for 82.4 percent of the agency's budget. Vocational Rehabilitation is 80 percent federally funded, while Disability Determination is 100 percent federally funded.

## HUB Expenditures

The Legislature encourages agencies to increase their use of Historically Underutilized Businesses (HUBs) in purchasing goods and services, and requires the Sunset Commission to consider agencies' compliance with laws and rules regarding HUB use in its reviews. The chart, *Purchases from HUBs—Fiscal Year 1997*, provides detail on HUB spending by type of contract and compares these purchases with the statewide goal for each spending category. As shown in the chart, TRC

fell well below the statewide goals in all applicable categories.

Purchases from HUBs Fiscal Year 1997				
Category	Total \$ Spent	Total HUB \$ Spent	Percent	Statewide Goal
Heavy Construction	N/A	N/A	N/A	N/A
Building Construction	N/A	N/A	N/A	N/A
Special Trade	\$840,885	\$58,386	6.9%	47.0%
Professional Services	\$3,955,283	\$33,572	0.8%	18.1%
Other Services	\$4,735,133	\$277,365	5.9%	33.0%
Commodities	\$8,903,604	\$868,135	9.8%	11.5%
<b>TOTAL</b>	\$18,434,905	\$1,237,458	6.7%	

In response to its fiscal year 1997 HUB performance, the agency implemented several initiatives to improve the amount of business conducted with HUB vendors. These initiatives include appointment of central and regional HUB coordinators, staff training, and a vendor

recruitment pilot project. TRC’s HUB statistics through June 1998 show a three percent overall increase for total HUB expenditures.

**ORGANIZATION**

The table, *TRC Employees by Location*, details the location and number of employees at the agency’s main offices. The Texas Rehabilitation Commission was budgeted for 2,527.8 full-time equivalent (FTEs) employees and as of May 31, 1998,

Region	Location	Budgeted FTEs	Actual FTEs
Central Headquarters	Austin	374.8	347.8
Region I	Lubbock	207.5	201.5
Region II	Arlington	328	316
Region III	Austin	255.5	239.5
Region IV	Houston	270.5	259.5
Region V	San Antonio	244.5	238.5
Disability Determination	Austin	847	808
<b>TOTAL</b>		2,527.8	2,410.8

actually employed 2,410.8 individuals. Approximately half of TRC’s workforce is headquartered in five regional and 137 field offices throughout the state. Approximately 350 employees work at the Austin headquarters, and 847 work in the Disability Determination office, also located in Austin.

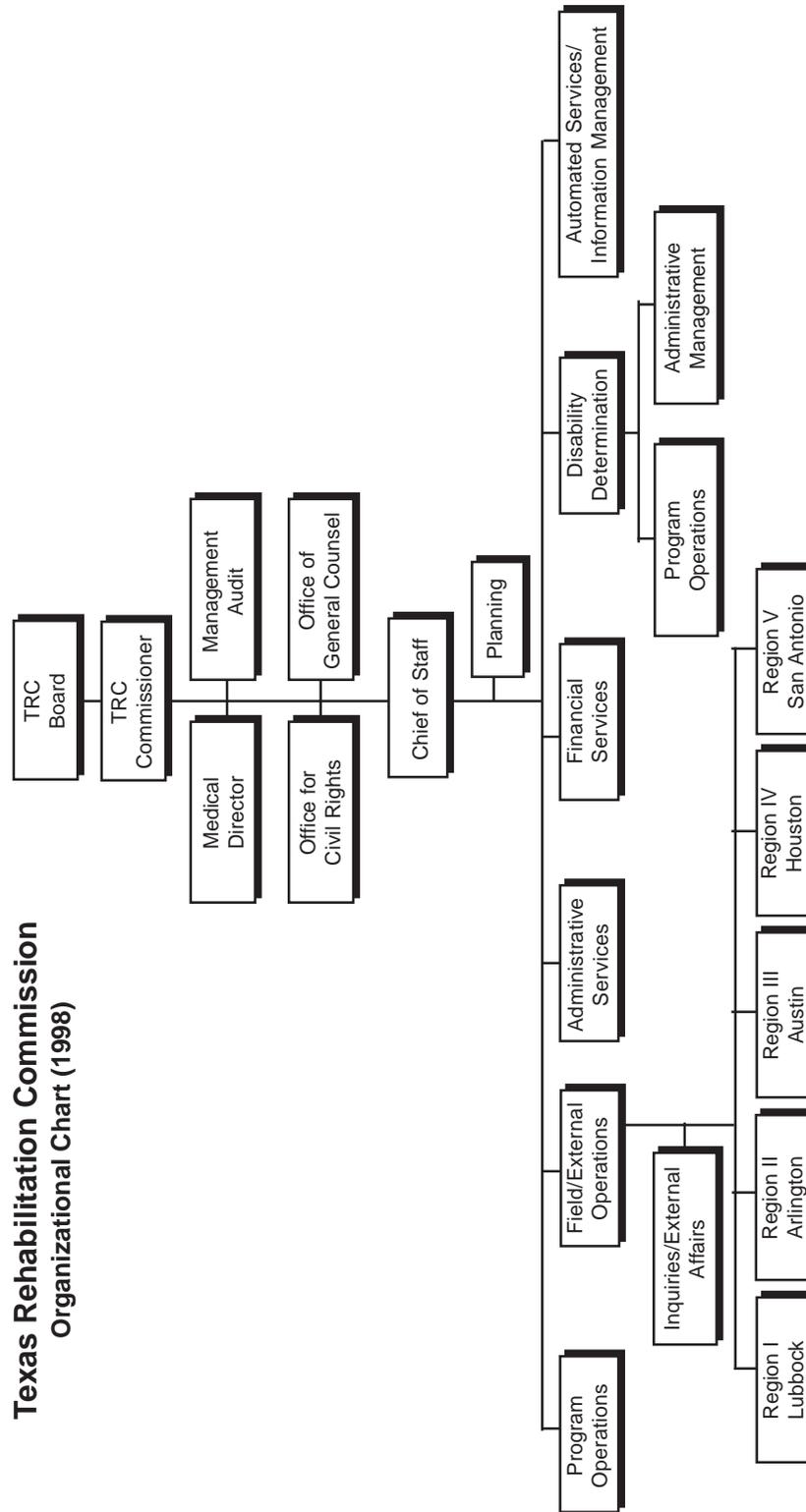
The *TRC Organizational Chart* illustrates the agency’s overall organizational structure.

TRC is subject to the General Appropriations Act, including provisions that set employment goals for minorities and women by specific job category. These goals are a useful measure of diversity and an agency’s commitment to developing a diverse workforce.

The chart, *TRC Equal Employment Opportunity Statistics—Fiscal Year 1997*, compares the agency’s minority workforce percentages to the state goals. TRC workforce percentages exceed state goals in most of the agency’s job categories.

Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force	Agency	Civilian Labor Force	Agency	Civilian Labor Force
Officials/Administration	75	7	5%	13%	8%	32%	26%
Professional	1,212	15%	7%	16%	7%	56%	44%
Technical	330	15%	13%	28%	14%	81%	41%
Para-Professionals	552	15%	25%	28%	30%	98%	55%
Administrative Support	3	0%	11%	0%	20%	100%	8%
Service/Maintenance	1	0%	19%	0%	32%	0%	27%

**Texas Rehabilitation Commission  
Organizational Chart (1998)**



## AGENCY OPERATIONS

TRC is the principal authority in the State on the rehabilitation of persons with disabilities. TRC serves individuals with a variety of disabilities except for those with visual disabilities, who are served by the Texas Commission for the Blind. The agency typically serves clients with disabilities that prevent them from performing their jobs. TRC focuses on assessing these clients, developing strategies for returning these individuals to the workforce, providing and procuring training and other services, assisting with job placement, and working with potential employers to help TRC clients obtain jobs. In addition to this type of vocational rehabilitation, TRC also serves some clients with severe disabilities who have varied needs other than employment. TRC has developed services that increase these individuals' ability to carry out daily independent living activities and move them closer to possibly achieving some type of employment.

In addition to providing rehabilitation services, TRC is also responsible for processing claims for federal Social Security disability benefits. Through its Disability Determination Services, TRC determines whether individuals are eligible for Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). This function is separate from the rehabilitation services described above and is performed primarily in Austin. Disability determination activities are discussed in detail beginning on page\_\_\_\_\_.

### Rehabilitation Services

#### SERVICE DELIVERY NETWORK

TRC's rehabilitation services are provided through a comprehensive statewide service delivery network. The network is divided into five regions with 137 field offices scattered across the regions. Regional offices are located in Austin, San Antonio, Lubbock, Houston, and Arlington. The map, *TRC Regions and Field Offices*, details the regional divisions and the field office locations.

#### Regional Offices

Each of the five regional offices serves as a point of support and oversight to the field offices where services are provided by TRC counselors. The regional office monitors counselors to ensure that eligibility is properly determined, clients' needs are being served, and successful client outcomes occur.

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TRC uses a statewide  
delivery network to  
provide services.

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### Texas Rehabilitation Commission Regions and Field Offices



Regional office staff is also responsible for overseeing counselor procurement practices and monitoring service providers under contract with TRC. The regional office works with the various service providers in its region by establishing business relationships, negotiating rates and contracts, and monitoring performance. Finally, the regional office serves as an information and training resource for the field offices. Counselors may consult with the regional office in areas such as strategies for assisting clients with specific disabilities, working with schools and students who are entering the TRC system, or building relationships with employers in their area.

### **Field Offices and Counselor Staff**

Each TRC region has 24 to 30 field offices. A field office may be a free-standing office with as many as 10 counselors or it may be a single counselor located in a rehabilitation facility with which TRC works. Overall, TRC maintains a counselor staff of more than 500 counselors. One counselor typically manages a caseload of about 150 clients. Most counselors are vocational rehabilitation counselors and work with all disabilities. However, some counselors work with more specialized programs or with specific disabilities.

Counselors are responsible for determining client eligibility, assessing client need, working with the client to identify a desired outcome, developing a plan for services to achieve that outcome, and coordinating the delivery of those services.

Counselors directly provide services such as counseling and guidance. Other services, however, are purchased from a variety of providers. Each counselor is given, and must manage, their own budget from which to purchase services for their clients. Counselors must issue purchase orders, monitor that clients are actually receiving the purchased services, and ensure that services are paid for. In addition to managing their individual cases, counselors are also responsible for developing relationships with their community. Counselors interact with various organizations and agencies to both educate their community about TRC's services and to be aware of potential resources for clients.

With counselors serving as the key component to the agency's service delivery, TRC has devoted significant resources to oversee counselor performance and to provide technical support to counselors. To provide direct oversight of counselor staff, TRC has area managers, located in the field offices, who supervise the counselors. Area managers monitor counselors' compliance with agency policy and procedures, and help monitor service providers to assure that quality services are being delivered to TRC clients. Counselors

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Counselors determine a client's eligibility and needs, and see that services are provided to meet those needs.

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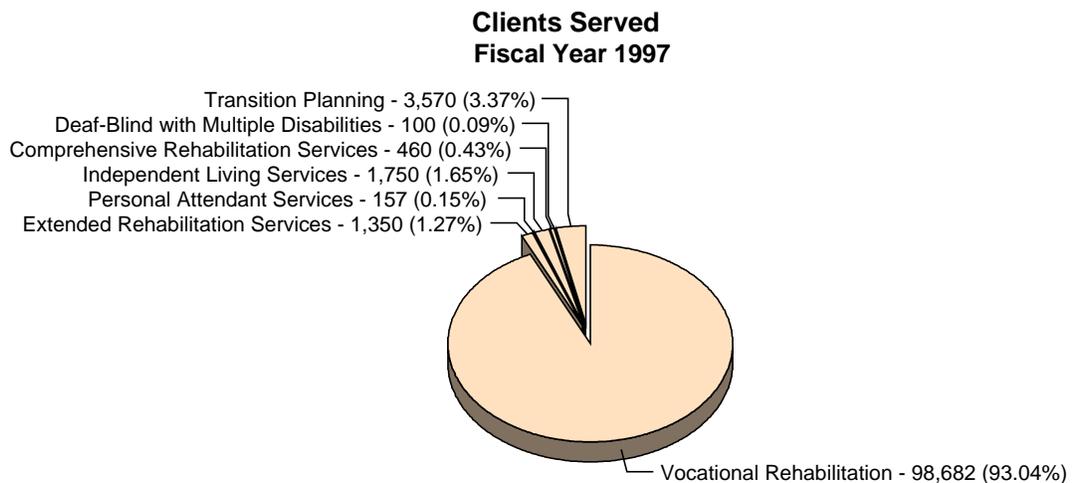


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also have a rehabilitation services technician assigned to them to assist in managing their caseload. The technician assists with the initial screening of clients, preparing and managing client records, correspondence, purchasing, and budget management.

### REHABILITATION PROGRAMS

TRC’s services are divided into seven program areas. The vast majority of clients, more than 98,000, are served through the Vocational Rehabilitation (VR) program, which focuses on returning clients to and maintaining clients in competitive employment. The remaining clients, about 7,300, are served through programs that focus on specialized client needs such as extended employment support or living more independently in the community. The chart, *Clients Served—Fiscal Year 1997*, details the agency’s programs with the number of individuals served by each.




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Vocational rehabilitation helps persons with mental and physical disabilities prepare for, find, and keep employment.

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### Vocational Rehabilitation Services

The Vocational Rehabilitation (VR) program helps persons with mental and physical disabilities prepare for, find, and keep employment. To be eligible for services, a VR counselor must determine the presence of a disability, the existence of a substantial impediment to employment resulting from the disability, and that the individual requires VR services to obtain and maintain employment. The table, *Clients Served in Vocational Rehabilitation*, provides a breakdown of the disabilities of clients served in the VR program.

<b>Clients Served in Vocational Rehabilitation Federal Fiscal Year 1997</b>		
<b>Disability Group</b>	<b>Number Served</b>	<b>Percentage of Client Population Served</b>
Musculo-Skeletal Disabilities	31,558	32%
Mental Illness	20,527	21%
Alcoholism and Drug Abuse	13,291	13%
Learning Disabilities	5,552	6%
Deaf/Hearing Impaired	5,292	5%
Borderline Intellectual Functioning	4,939	5%
Digestive Disorders	5,536	5%
Mental Retardation	3,528	4%
Cardiac/Respiratory/Circulatory	3,295	3%
Traumatic Brain Injury	2,142	2%
Other Impairments	2,076	2%
Epilepsy	1,478	2%
<b>TOTAL Clients Served</b>	<b>99,214</b>	<b>100%</b>

Source: Texas Rehabilitation Commission

The VR program offers a wide array of services. Counselors may directly provide or procure any goods or services necessary to help an individual with a disability find a job. The chart, *Vocational Rehabilitation Services—Federal Fiscal Year 1997*, provides examples of the services available to clients.

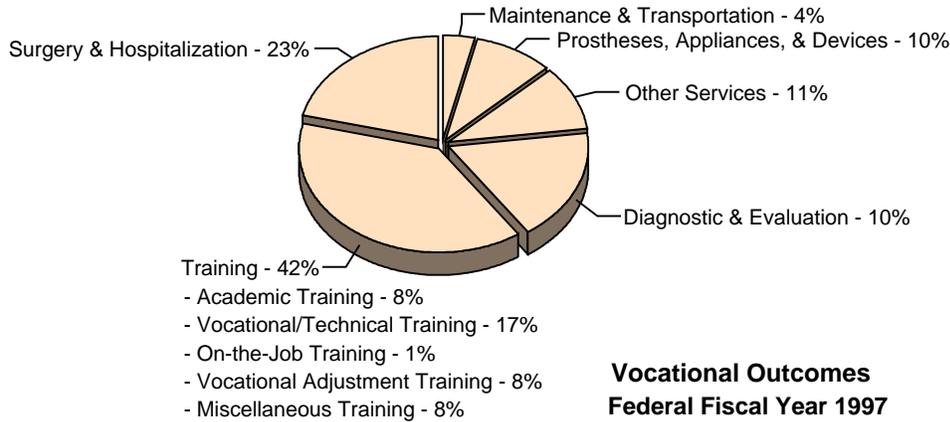
A breakdown of the purchased services provided in fiscal year 1997 is detailed in the chart, *Services Bought for VR Clients—Federal Fiscal Year 1997*.

The goal of all VR clients is to maintain or obtain employment. Clients are considered to be successfully rehabilitated and their case “closed” when the services received had a discernable impact on the client’s employment outcome and the client has achieved and maintained suitable employment for at least 90 days. Under this definition, in fiscal year 1997, more than 23,000 VR clients were successfully rehabilitated. The chart, *Vocational Outcomes—Federal Fiscal Year 1997*, details the type of employment outcomes obtained by these clients.

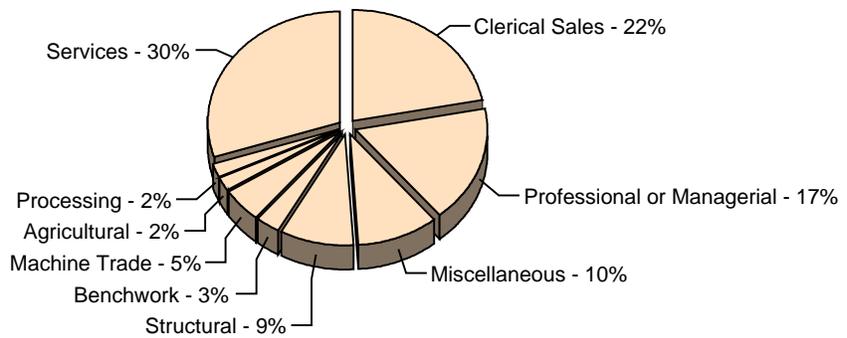
#### **Vocational Rehabilitation Services**

- Comprehensive assessment of rehabilitation needs
- Job placement assistance
- Vocational training and other training services
- Telecommunications and other technological devices
- Transportation to other VR services
- Transition services that plan for employment
- Counseling and guidance
- Physical or mental restoration
- Interpreter services for individuals who are deaf
- Rehabilitation technology devices and services
- Occupational licenses, tools, and equipment
- Referral to other agencies
- Personal assistance services
- Services leading to supported employment

**Services Bought for VR Clients  
Federal Fiscal Year 1997**



**Vocational Outcomes  
Federal Fiscal Year 1997**




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In 1997, clients' earnings increased more than four times after receiving services.

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Clients who were successfully rehabilitated in federal fiscal year 1997 earned a combined total of \$6.6 million per month before receiving vocational rehabilitation services. After services, these clients earned a combined total of \$27.5 million per month — more than four times higher than before receiving services.<sup>1</sup>

Some clients in the VR program need additional support to achieve and maintain competitive employment. Because of the nature and severity of their disabilities, these clients need intensive services leading to supported employment, followed by ongoing support services to maintain employment. Supported employment services that may be provided include consumer and family orientations, supplemental assessment, transportation training, and placement and job skills training. Any other VR service that is needed to support the individual in employment may also be provided.

TRC's services leading to supported employment are time limited. Counselors work with public or private organizations or other resources to

find continued supported employment services once TRC's services end. Employers, family members, and other consumer organizations such as local MHMR authorities, cerebral palsy associations, and epilepsy organizations may be called upon to assist this effort.

**Other Rehabilitation Services**

In addition to the Vocational Rehabilitation program, TRC operates six smaller rehabilitation programs that provide a variety of services to persons with disabilities. Some programs, such as the Extended Rehabilitation Services and the Personal Attendant Services program, assist individuals who require more intensive support to achieve or maintain employment. Other programs, such as Independent Living Services and Deaf-Blind with Multiple Disabilities, are not directly related to employment. Instead, these programs focus on increasing the ability of persons with disabilities to live more independently in their community. More detailed information on these programs follows.

The *Extended Rehabilitation Services* program serves people with severe disabilities who need long-term, on-going job support. Some clients of this program are placed in an alternative, sheltered employment environment, while others are placed in an integrated community setting. Clients receive support services that assist them in maintaining their job.

TRC also provides on-going support to individuals with severe disabilities through the *Personal Attendant Services* program. Attendants provide services in the individual's home or workplace that assist and enable the client to remain in their job. The majority of clients served in the program have a spinal cord injury or cerebral palsy and have become employed through the VR program. The average client in the program receives approximately 30 hours of attendant services per week. TRC contracts with four private providers that refer attendants to clients who then interview and pick their own attendant. Personal attendant services are only available in 30 counties.

<b>Extended Rehabilitation Services</b>	
Eligibility Criteria	<ul style="list-style-type: none"> <li>- severe disability</li> <li>- can achieve employment</li> <li>- 16 years or older</li> <li>- can earn 15% of minimum age</li> </ul>
Services Available	<ul style="list-style-type: none"> <li>- individual assessment</li> <li>- job development/placement</li> <li>- job coaching</li> <li>- transportation</li> </ul>
Clients Served	<ul style="list-style-type: none"> <li>- 1,350 clients served in fiscal year 1997</li> <li>- 812 worked in community-integrated employment</li> <li>- 468 worked in alternative, sheltered employment</li> <li>- waiting list for services</li> </ul>

<b>Personal Attendant Services</b>	
Eligibility Criteria	<ul style="list-style-type: none"> <li>- one or more severe disabilities</li> <li>- demonstrated need for personal attendant services due to disability</li> <li>- working 20 hours or more per week</li> <li>- net income of at least \$300 per month</li> </ul>
Services Available	<ul style="list-style-type: none"> <li>- personal care, such as assistance with dressing, cooking, eating, bathing, hygiene, and grooming</li> <li>- home management, such as assistance with house cleaning, laundering, shopping, and washing dishes</li> <li>- assistance with transportation</li> </ul>
Clients Served	<ul style="list-style-type: none"> <li>- 157 clients served in fiscal year 1997</li> <li>- clients required to pay copayment based on individual monthly income</li> <li>- waiting list for services</li> </ul>

Independent Living Services	
Eligibility Criteria	- severe disability with expectation that independent living services will increase the individual's level of independence
Services Available	- communication services and devices - counseling, life skills, and non-vocational training - physical restoration, prostheses, and other appliances - assistive technology and rehabilitation technology therapy - personal assistance services, wheelchairs, and ramps - physical, occupational, or speech therapy
Clients Served	- 1,750 clients served in fiscal year 1997 - services only available where state-funded centers are located - waiting list for services

The agency's *Independent Living Services* program is designed to assist clients achieve a higher level of independence in their home or community. Individuals in this program usually do not have employment as a goal. TRC has 10 Independent Living Counselors located throughout the state in the same areas as the state-funded Independent Living Centers. (For an explanation of the Centers, see the text box, *Independent Living Centers*.) Many of TRC's clients are referred to the Independent Living Centers for services that TRC does not provide.

Independent Living Centers	
<p>Independent Living Centers (Centers) are nonresidential, community-based, consumer directed, non-profit agencies providing a broad array of independent living services to people with disabilities. Sixteen Centers are located throughout Texas. (See map below.) Some of the Centers are 100 percent federally funded directly from the federal Rehabilitation Services Administration, while others receive funding from TRC.</p>	
<p>Centers are required to provide peer counseling, advocacy, independent living skills training, and information and referral. Other services that may also be offered include housing, recreation, and transportation referral, as well as attendant services, and training, and health maintenance programs. Services provided by each Center vary according to the needs identified in the local community surrounding the Center.</p>	
<p>TRC counselors refer clients to Centers for services TRC does not provide. However, most consumers of the Centers are not TRC clients. In fiscal year 1997, the state-funded centers served 3,357 individuals.</p>	

The *Comprehensive Rehabilitation Services* program assists persons with traumatic spinal cord and/or brain injuries to re-enter their communities and live as independently as possible. Without such services, these individuals are more likely to develop medical complications requiring additional medical care, and be dependent upon an increased level of attendant services.

The *Deaf-Blind with Multiple Disabilities* program is a Medicaid waiver program for persons who are blind, deaf, and have an additional disability. The goal of this program is to maximize independence, communication, orientation and mobility. An emphasis is placed on the use of specialized communications systems that are independently developed for each client. This program provides residential support in apartments, group homes, or with a parent or guardian. Within each of these residential options, a variety of services are provided.

Finally, *Transition Planning Services* coordinates with public school personnel in assisting students with disabilities in making the move from the public school system to the work force and independence. A VR counselor is assigned as a liaison to each of the 1,050 independent school districts in the state. VR counselors begin working with students while they are in school. Counselors educate students about TRC services and develop a plan for how TRC can assist them after they leave school.

## Disability Determination Services

In addition to the Rehabilitation Services programs, TRC is also responsible for determining eligibility for two types of federal social security disability benefits — Social

Comprehensive Rehabilitation	
Eligibility Criteria	<ul style="list-style-type: none"> <li>- traumatic brain and/or spinal cord injury that results in a substantial impediment to functioning independently</li> <li>- must be a resident of Texas, at least 16 years of age, able to actively participate in the program of services, and be at a minimum functioning level</li> </ul>
Services Available	<ul style="list-style-type: none"> <li>- counseling, guidance, and plan for and coordinate services</li> <li>- inpatient comprehensive medical rehabilitation offering a variety of intensive therapies, medical care and other services focusing on independent living</li> <li>- outpatient services continuing the comprehensive medical rehabilitation services on an outpatient basis</li> <li>- post acute brain injury services dealing with injury-related cognitive difficulties such as memory loss and/or inappropriate behaviors</li> </ul>
Clients Served	<ul style="list-style-type: none"> <li>- 460 clients served in fiscal year 1997</li> <li>- waiting list for services</li> </ul>

Deaf-Blind with Multiple Disabilities	
Eligibility Criteria	<ul style="list-style-type: none"> <li>- 18 years or older, deaf-blind with a tertiary disability such as mental retardation</li> </ul>
Services Available	<ul style="list-style-type: none"> <li>- habilitation - assistance with daily living skills throughout the day and evening</li> <li>- intervenor - a bridge between the individual and the community</li> <li>- respite care - support to individuals who live with their families</li> <li>- case management - eligibility determination, plan of care development and service monitoring</li> <li>- specialist consultations - for physical therapy, occupational therapy, orientation and mobility, dietary, skilled nursing, and behavior/communication</li> <li>- environmental accessibility - modifications to the home or apartment</li> </ul>
Clients Served	<ul style="list-style-type: none"> <li>- 100 clients served in fiscal year 1997</li> <li>- waiting list for services</li> </ul>

Transition Planning Services	
Eligibility Criteria	<ul style="list-style-type: none"> <li>- students age 16 or older enrolled in special education</li> </ul>
Services Available	<ul style="list-style-type: none"> <li>- counseling</li> <li>- establish eligibility for TRC's programs</li> <li>- prepare a rehabilitation plan</li> </ul>
Clients Served	<ul style="list-style-type: none"> <li>- 3,570 clients served in fiscal year 1997</li> </ul>

Security Disability Insurance (SSDI) and Supplemental Security Income (SSI). TRC, through its Disability Determination Services, determines whether individuals are eligible for either program based on criteria established by the federal Social Security Administration.

SSDI provides cash payments to severely disabled workers and their dependents. Persons receiving SSDI also qualify for Medicare. SSI provides financial assistance to people with severe disabilities who have not historically

<b>Social Security for People with Disabilities Typical Monthly Awards</b>		
	<b>SSDI Awards</b>	<b>SSI Awards</b>
Number of beneficiaries	235,340	285,252
Total amount received by by beneficiaries	\$188 million/month	\$103.6 million/month

paid in enough to qualify for the Social Security Administration's disability insurance program, and whose income resources fall below a certain level. Persons eligible for SSI payments also qualify for Medicaid. The table, *Social Security for People with Disabilities*, details the typical

number of Texans receiving benefits on a monthly basis and the total amount of benefits they receive.

### **Disability Claim Filing**

To qualify for social security benefits, an individual must have a medically determinable physical or mental impairment that makes them unable to work, and that can be expected to result in death or has lasted, or be expected to last, at least 12 months. Children must have a medically determinable physical or mental impairment that results in marked and severe functional limitations that can be expected to result in death or has lasted, or is expected to last, for at least 12 months.

An individual initiates a disability claim by filing with a local Social Security Administration (SSA) office. SSA personnel assist the claimant in completing the necessary forms. The claimant describes the disability, explains past work activity, lists sources of medical treatment, and signs authorizations for release of information. The claim is then forwarded to TRC's Disability Determination Services office in Austin. When the claim is received by TRC, it is assigned to a disability examiner who, along with a medical consultant, determines the claimant's eligibility.

TRC processes two types of claims, initial claims for disability benefits, and periodic reviews of individuals currently receiving benefits. Additionally, TRC adjudicates the first appeal when either of these claims are denied. The Social Security Administration, and ultimately the federal courts, handle subsequent appeals. The chart, *Disability Benefit Claim Activity—Fiscal*

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In a typical month, SSDI & SSI beneficiaries in Texas receive approximately \$292 million in direct federal cash assistance.

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Year 1997, describes these types of claims in more detail. Once an individual's eligibility is determined, the claim is returned to the Social Security Administration, which notifies the claimant of the outcome. TRC only determines whether an individual is eligible for benefits, but not the award amount.

<b>TRC Disability Benefit Claim Activity Fiscal Year 1997</b>		
<p><b>Initial Claim</b> An individual files to apply for SSI or SSDI disability benefits.</p> <p>169,871 determinations 76% denied</p>		<p><b>Reconsideration Claim</b> The first appeal when an initial claim is denied.</p> <p>59,305 determinations 91% denied</p>
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<p><b>Continuing Disability Review</b> A periodic review of an individual currently receiving benefits to determine if the disability still exists.</p> <p>33,327 reviews 47% denied*</p>		<p><b>Disability Hearing</b> A face-to-face appeal for an individual whose benefits are terminated by the continuing disability review.</p> <p>1,779 hearings 77% denied</p>

\*This rate is high due to Welfare Reform cessation during fiscal year 1997. Typically, the cessation rates run lower. In fiscal year 1996, the rate was 26.1 percent.

<sup>1</sup> Texas Rehabilitation Commission, "Strategic Plan for the 1999 - 2003 Period," June 15, 1998, p. 20.



# APPENDIX

**APPENDIX A**  
**Overview of TRC Counselor Decisions and Related Policies**

<b>Counselor Decision</b>	<b>TRC Policies Guiding the Counselor's Decision</b>
<p>1. <u>Does the client have a disability?</u></p> <p>A disability is a physical or mental condition that materially limits, or if not treated is expected to materially limit, mental or physical functioning.</p>	<p>Use information obtained from the client and/or available medical and other reports. For observable impairments, medical reports are not necessary. In most cases, additional examinations and/or evaluations may be necessary only after the determination of eligibility. Illnesses and injuries requiring emergency medical care and those that are not expected to result in functional limitations are not disabilities. Do not purchase evaluations if neither the applicant or the referral source alleges a disability and there is no evidence of disability in the initial interview.</p>
<p>2. <u>Is the disability a substantial impediment to employment?</u></p> <p>A “substantial impediment” is a physical or mental impairment that impedes an individual’s occupational performance by preventing the obtaining, retaining, or preparing for employment consistent with the individual’s capacities and abilities.</p>	<p>Ascertain from the applicant how the disability interferes with obtaining and retaining employment. An <u>unemployed</u> applicant may have a substantial impediment if the disability:</p> <ul style="list-style-type: none"> <li>● causes loss of employment;</li> <li>● interferes with preparation for employment;</li> <li>● prevents obtaining employment; or</li> <li>● causes the applicant to require special assistance in performing job duties.</li> </ul> <p>An <u>employed</u> applicant may have a substantial impediment if:</p> <ul style="list-style-type: none"> <li>● loss of employment is imminent due to functional limitations imposed by the disability; or</li> <li>● substantial underemployment (that which is not consistent with the applicant’s abilities) has resulted because of the disability.</li> </ul>
<p>3. <u>Can the individual attain an employment outcome?</u></p>	<p>The individual is assumed capable of attaining an employment outcome unless it is demonstrated otherwise by clear and convincing evidence. If reason is “Disability Too Severe”, clear and convincing evidence is demonstrated in an extended evaluation.</p>
<p>4. <u>Does the individual require vocational rehabilitation services?</u></p> <p>Services must be required for individuals to prepare for, enter, engage in, or retain an employment outcome consistent with their strengths, resources, priorities, concerns, abilities, capabilities, and informed choice.</p>	<p>Services must be required to enable the individual to participate in:</p> <ul style="list-style-type: none"> <li>● the competitive labor market (without supports);</li> <li>● supported employment;</li> <li>● sheltered employment; or</li> <li>● unpaid family work (e.g. homemaker).</li> </ul> <p>The applicant requires services when services are needed to reduce or correct the disability or to lessen the impediment to employment. VR services are not required when the applicant can obtain or retain employment without VR services, the services are available from other sources without VR providing the services, VR cannot provide the services needed for employment, the requested services are not VR services, the needed services are mandated of another agency, or the applicant is already receiving the services needed for employment.</p>

**APPENDIX A**  
**Overview of TRC Counselor Decisions and Related Policies**

<b>Counselor Decision</b>	<b>TRC Policies Guiding the Counselor's Decision</b>
<p>5. <u>What are the client's strengths, resources, priorities, interests, abilities, and capabilities?</u></p> <p>The purpose of this comprehensive assessment is to explore alternatives for the goals, objectives, services and service providers to be included in the client's rehabilitation plan.</p>	<p>Actively involve the client. To the degree needed, assess the pertinent medical, psychiatric, psychological, vocational, educational, cultural, social, recreational, and environmental factors that affect the employment and rehabilitation service needs of the individual. A vocational evaluation provided by a Community Rehabilitation Program can assist in identifying alternative employment goals and needed services.</p> <p>Consider a wide range of possible employment outcomes and include an assessment of any career interests of the individual and expectations for salary and benefits. Develop alternative employment outcomes that are consistent with the client's abilities, and that would enable the client to overcome the impediment(s) to employment.</p>
<p>6. <u>What are the intermediate steps the client should take?</u></p>	<p>Intermediate objectives include those levels of skills, competence or physical abilities necessary to attain the employment goal, and are those things the client must achieve in order to overcome impediments to employment. Select intermediate steps that the client has agreed to achieve in reaching the employment goal.</p>
<p>7. <u>How should the client's progress be evaluated?</u></p>	<p>Include the objective criteria, and an evaluation procedure and schedule for determining whether the employment goal and intermediate objectives are being achieved. Enter the objective criteria to be used to evaluate the client's progress toward IWRP objectives.</p>
<p>8. <u>How often should contact be made with the client?</u></p>	<p>The frequency of client contact varies according to the overall rehabilitation needs and preferences of the client and the VR counselor. Jointly plan the frequency of contact and document on the IWRP so that client and counselor know responsibilities of each, and succeeding counselors understand the client's needs.</p>
<p>9. <u>When should the client's case be closed?</u></p> <p>The case file must contain documentation specifying the extent to which each of these requirements was met. In those cases where there is not an obvious relationship between the services provided and the occupation at case closure, document in the case notes.</p>	<p>A client is considered to have met the minimum requirements for being rehabilitated when services have had a discernable impact on employment, employment is consistent with the client's strengths, abilities, interests, and informed choice and is in the most integrated setting possible, the client has achieved and maintained satisfactory employment for at least 90 days, and the client is employed at closure.</p> <p>Unsuccessful case closure is considered when suitable employment will not be achieved for the following reasons - unfavorable medical prognosis, unable to locate/client moved, disability too severe, refused services, death, institutionalized, transferred to another agency, lack of transportation, and failure to cooperate.</p>

Source: TRC Rehabilitation Services Manual

**TEXAS PLANNING COUNCIL FOR  
DEVELOPMENTAL DISABILITIES**

# Review Summary

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The Texas Planning Council for Developmental Disabilities (the Council) is federally funded through the DD Act to advocate for individuals with developmental disabilities. The goal of the Council is to create change so that all people with developmental disabilities are fully included in their communities and exercise control over their own lives. The Council has an annual budget of approximately \$4 million in federal funding and initiates most of its activities through grants to state and local organizations. Other activities of the Council include developing a state plan, sponsoring training for individuals with disabilities and their family members, and educating the public and policymakers about disability issues.

The Council is composed of 30 governor-appointed members, half of whom are required by federal law to be individuals with disabilities, their family members, or guardians. Federal law requires the Governor to designate an agency to provide administrative support and fiscal management services to a council. The agency designated by the Governor is the Texas Rehabilitation Commission (TRC). Current federal law recognizes that a potential for conflict of interest exists if a council is attached to an agency that provides services to people with developmental disabilities and now requires it to be independent of the service delivery system. The relationship between the Council and TRC predated this federal requirement and was authorized through a “grandfather” provision in federal law.

Sunset staff received input from several advocacy groups, TRC, and the Council regarding its role and current administrative location. Both TRC and the Council identified the potential for conflict due to internal and external misperceptions of the Council as a TRC program, and Council staff as lobbying rather than carrying out their advocacy responsibilities under federal law. For these reasons, both agencies recommended that the Council become independent of TRC’s administrative support. From the perspective of the disability advocacy community, many of whom want to see the Council’s advocacy role for all people with disabilities strengthened, removing the Council from TRC’s administrative umbrella would be viewed positively.

Designating an agency to provide administrative support to the Council is the Governor's decision. The Sunset review then focused on whether a more autonomous relationship is needed between the Council and its supporting

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The main issue of the review, the Council's location, is the Governor's decision.

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agency to meet federal mandates. In its review, Sunset staff found that the state statute did not reflect substantive changes made in the federal law, including provisions regarding the relationship between the Council and the administering agency. Federal law has strengthened the independence of the Council and given it more responsibility than is currently reflected in state law. The lack of clarity in statute regarding the independent nature of the Council is problematic, particularly given the Council's present attachment to a service delivery agency.

Given these factors, the Sunset review examined the relationship between the Council and its supporting agency and the Council's current statutory responsibilities to evaluate whether the spirit of the federal law was reflected. In conducting the review of the Council, Sunset staff:

- worked extensively with agency staff at the Council;
- received input from Council members;
- reviewed state and federal statutes, past legislative reports, and studies;
- attended public meetings of the Texas Planning Council for Developmental Disabilities and the Council's Executive Committee;
- worked with staff of the Legislative Budget Board and Governor's Office;
- interviewed staff of the Administration on Developmental Disabilities;
- met with staff of TRC;
- spoke with and received input from advocacy groups;
- examined the structure of Developmental Disabilities Councils in other states; and
- reviewed a variety of Council reports and documents.

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The Council should be continued and allowed to fulfill the role supported by federal dollars.

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The Sunset review found a continuing need for the purposes of the Council. The Council plays an important role in planning, advocating, and demonstrating innovative ways to provide services and supports for persons with developmental disabilities. The Sunset review recognized the need to update the Council's statute to conform to current federal law. The staff recommends clarifying the responsibilities of both the Council and the designated state agency to ensure that the Council fulfills its needed role while being held accountable for the funds it receives. In addition, Sunset staff recommends that the options for placement that exist in federal law should be available to the Governor through statute to avoid the potential for conflict in future placement opportunities.

**ISSUE**

# Issue 1

## Continue the Texas Planning Council for Developmental Disabilities and Update State Law to Reflect Changes in the Federal Law.



### Background

In 1993, Congress found that almost three million individuals in the United States had developmental disabilities, and that a substantial portion of these individuals and their families did not have access to appropriate support and services. The Developmental Disabilities Act (DD Act), which was first passed in 1970, establishes and funds state Developmental Disabilities Councils and authorizes Councils to advocate for individuals with developmental disabilities.

The Texas Planning Council for Developmental Disabilities (the Council) was created in 1971. The Council is directed by federal law to change systems, build capacity and advocate so that people with developmental disabilities receive the comprehensive services and supports they need to be fully included in their communities. The 30-member Council is composed primarily of individuals with disabilities, their families, or guardians. The Council's primary activities include developing a State Plan, granting funds to state and local organizations throughout the state, sponsoring training for individuals with disabilities and their family members, and educating the public and policymakers about disability issues. The Council's State Plan focuses on Council activities that increase the capability of the service delivery system to provide employment, community living, and system coordination and community education resources to people with developmental disabilities in Texas.

**Developmental disabilities, when applied to individuals 5 years of age or older, are a severe, chronic disability that:**

- is attributable to a mental or physical impairment or combination of mental and physical impairments;
- is manifested before the individual attains age 22;
- is likely to continue indefinitely; and
- results in substantial functional limitations in three or more life activities, including selfcare, receptive and expressive language, learning, mobility, self-direction, capacity of independent living, and economic self-sufficiency.

**When applied to children from birth to age five, developmental disabilities include:**

- a substantial developmental delay or specific congenital or acquired conditions with a high probability of resulting in developmental disabilities if services are not provided.

Federal law requires that the Governor designate an agency to provide administrative support and fiscal management services to a council. In 1983, Governor Clements designated the Texas Rehabilitation Commission (TRC) to provide these services to the Council. TRC receives, disburses and accounts for federal funds, maintains financial records, assists the Council in ensuring the State Plan and its activities are consistent with state law, and provides

other assurances and support services as requested by the Council. The Council is responsible for hiring an Executive Director and ensuring that Council staff are responsible solely for assisting the Council to carry out its duties.

Central to the Sunset review of any agency is determining the continuing need for the functions it performs and whether the current agency structure is the most appropriate to carry out those functions. Continuation of an agency and its functions depends on certain conditions being met, as required by the Sunset Act. First, a current and continuing need should exist for the State to provide the functions or services. In addition, the functions should not duplicate those currently provided by any other agency. Finally, the potential benefits of maintaining a separate state agency must outweigh any advantages of transferring the agency's functions or services to another agency. The evaluation of the need to continue the Council and its current functions led to several findings that are discussed in the following material.

## Findings

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The State needs a Council to comply with federal law and receive DD Act funds.

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- ▼ **The functions of the Texas Planning Council for Developmental Disabilities continue to be needed to ensure that the needs of persons with developmental disabilities are being met.**
  - ▶ A state Council is needed to comply with federal law and receive the funds provided for through the DD Act. Texas received over \$4 million dollars in fiscal year 1997 to promote a coordinated and comprehensive array of services and supports that is both consumer-oriented and family-centered.
  - ▶ Between 200,000 and 470,000 Texans are estimated to have developmental disabilities. These individuals frequently have severe disabilities that are likely to continue indefinitely and often require lifelong, specialized services and assistance. As the number of Texans with chronic and multiple impairments continues to increase, appropriate support of these individuals in their communities is a significant concern. The existing service delivery system lacks the capacity to provide a basic level of services to all families who need assistance.
  - ▶ The Council submits a state plan that analyzes the need for, and availability of, services for individuals with developmental

disabilities and their families. The plan contains a description of the broad range of services and resources available to this population. It compiles information on eligibility criteria, barriers to services, and existing and projected fiscal resources. This information plays an important role in determining if the needs of persons with developmental disabilities are being met. The plan also includes the Council's goals, objectives, and activities planned with its federal funds.

- ▶ The Council invests more than 80 percent of its funds in grant and staff-directed projects that benefit communities around the State. These projects have made it possible for more individuals to be active, contributing members of their community who can live in their own homes, work in regular jobs, and participate in community activities. The Council currently funds 20 grant projects in areas of employment, community living, and system coordination and community education. Benefits of the Council's grant funded activities can be seen in the chart, *Benefits of Council Activities*. Grant projects represented approximately 75 percent, or \$3.2 million dollars, of the Council's total funding in fiscal year 1997.

#### **Benefits of Council Activities**

Although the Council does not provide direct services, its grant-funded activities benefit many people with disabilities throughout the State. Council-funded activities in federal fiscal year 1997 benefited:

- 374 people through Personal Assistance Services;
- 500 families through family support;
- 2,000 students through inclusion practices at school;
- 1,000 teachers through an inclusive education initiative;
- 300 parents who were trained regarding their children's educational rights;
- 650 children who were assisted in the transition from school to work;
- 50 adults who obtained integrated supported employment;
- 100 people who moved from congregate living facilities to homes in the community; and
- 133 people with disabilities who now rent or own their own homes.

#### ▼ **The Council's statutory language does not reflect substantive changes made in federal law that allow the Council to operate more independently.**

- ▶ Efforts to strengthen the independence of councils have led to amendments to the DD Act over the past two decades. Under current federal law, councils are considered a separate entity, and are responsible to determine their own priorities and activities and approve the use of funds provided under the Act.
- ▶ In addition, the role of the administering agency has evolved from that of administration to one of providing support. In

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The role of the administering agency has evolved into one of support rather than control.

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line with the revised responsibilities of the Council and the agency providing administrative support, the DD Act now refers to a “designated state agency” rather than an administering agency.

- ▶ Although the federal law now reflects a more autonomous relationship between the Council and its supporting agency, the Council’s statute remains unchanged. State law still refers to the administering agency, in this case TRC, and vests in it the authority to make the final decision regarding the award of grants, administer the developmental disabilities program, and assign staff to the Council. The statute also directs the administering agency to take part in developing the state plan for persons with developmental disabilities.

Federal law now directs that these responsibilities be fulfilled by the Council. However, current state statute continues to grant more authority to the administering agency than federal law envisions.

#### Conflict of Interest

Recognizing that the potential for conflict of interest exists if a Council continues to be administratively supported by an agency that provides or pays for services to individuals with developmental disabilities, current federal law requires that the Council of each state be independent of the service delivery system. The DD Act now allows the agency designated by the State to be the Council itself, a state agency that does not provide or pay for services to individuals with developmental disabilities, or a state office, including the Governor’s Office or a state planning office. The relationship between the Council and TRC predated this federal requirement and was authorized through a “grandfather” provision in federal law.

#### ▼ Failure to clarify the independent nature of the Council in statute has been problematic in part because the Council is currently attached to a service delivery agency.

- ▶ The state requirement for the administering agency to be involved in the awarding of grants and assist in the development of the state plan provides the opportunity for the administering agency to impose its own philosophy and priorities on the Council’s activities. The Council could also appear to be influenced in its review and analysis of services for persons with developmental disabilities (see text box, *Conflict of Interest*). Because the current administering agency, TRC, serves persons with developmental disabilities, its services are reviewed and analyzed by the Council and it may be the targeted recipient of the Council’s advocacy efforts.
- ▶ If the Council continues to be part of an administering agency that is providing or paying for services to persons with developmental disabilities without clarifying the more independent nature of the Council in statute, its ability to advocate for this population is limited in several ways. In this case, the public may incorrectly perceive the Council to be a TRC program and not understand that the Council’s activities

and functions are independent of TRC. The public may also misunderstand the ways in which the Council's positions on issues affecting persons with developmental disabilities are divergent from those of TRC.

In addition, when the Council receives support from an agency that provides services, its ability to advocate at that agency may be limited. Staff of the Council are considered TRC employees, and may be perceived as lobbying rather than carrying out their advocacy responsibilities under federal law. Council staff also may be hesitant to direct their advocacy efforts toward the agency that administratively supports them.

▼ **Clarifying the Council's relationship with the agency designated by the State would not compromise the fiscal efficiency and accountability provided by that relationship.**

- ▶ Through the DD Act, responsibility is vested in an agency designated by the State for fiscal controls and other supports requested by the Council. The agency designated by the State is directed by the DD Act to receive, account for, and disburse funds for the Council and provide for fiscal controls and fund accounting procedures to assure the proper disbursement of, and accounting for funds. Statutory responsibilities of the agency designated by the State assure that this accountability would be preserved.

## Conclusion

The Council plays an important role in planning, advocating, and demonstrating innovative ways to provide services and supports for persons with developmental disabilities, and should thus be continued. Updating the statute to conform to current federal law would further clarify the relationship between the Council and the designated state agency and reduce the potential for conflict in the future. Clarifying the responsibilities of both the Council and the designated state agency would ensure that the Council fulfills its needed role while ensuring accountability for the funds it receives. In addition, the options for placement that exist in federal law should be available to the Governor through statute.

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Adjusting the  
Council's  
administrative  
relationship will help  
it fulfill its advocacy  
role.

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## Recommendation

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### Change in Statute

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- **Continue the Texas Planning Council for Developmental Disabilities for 12 years and update state statute to conform to changes in the federal law by:**
  - **clarifying the relationship between the Council and the designated state agency, and**
  - **further defining the responsibilities of the Council.**

Updating statutory language regarding the relationship between the Council and the “designated state agency” would clarify the roles and responsibilities of each entity. Language in statute regarding “administering agency” should be updated to the current federal language which refers to the “designated state agency.” The new role of the “designated state agency” under federal law, that of supporting the Council consistent with the requirements of federal law, should replace language currently in statute concerning responsibilities of the administering agency.

Statutory responsibilities of the “designated state agency” should be limited to receiving, accounting for, and disbursing funds, and providing for necessary fiscal control and fund accounting procedures. In addition, statutory language that currently allows the administering agency to adopt rules for the operation of the Council should be changed to show that the Council may adopt rules to implement its responsibilities under applicable federal developmental disabilities laws.

With regard to developing the state plan for developmental disabilities, statute should show that the Council shall develop and submit the plan after consultation with the “designated state agency.” Statute should specify that such consultation is only to be for the purposes of obtaining state assurances and ensuring consistency of the plan with state law.

Statute should specify the responsibilities of the Council to include approving and executing an annual budget, hiring and supervising an Executive Director and other employees as necessary, and providing grants to agencies, organizations or individuals to improve the way services are provided to persons with developmental disabilities. Statute should show that the Executive Director is responsible for carrying out the policies and activities established by the Council and that staff of the Council are responsible solely for carrying out activities designated by the Council.

To clarify the relationship between the Council and its “designated state agency,” the Governor should be given the same options for placement that exist in federal law. These options include a state agency that does not provide direct services or supports to individuals

with developmental disabilities, the Council itself, or a state office, including the Governor's Office or a state planning office. This would ensure that future options for providing administrative services to the Council extend beyond agencies that provide or pay for services or supports to persons with developmental disabilities.

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## **Fiscal Impact**

If the Legislature continued the current functions of the Council, using the existing organizational structure, the Council's annual appropriation of approximately \$4 million in federal funds in fiscal year 1997 would continue to be required for the operation of the agency.



# **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Planning Council for Developmental Disabilities</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Already in Statute	1. Require at least one-third public membership on state agency policymaking bodies.
Modify	2. Require specific provisions relating to conflicts of interest.
Modify	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Apply	10. Require information to be maintained on complaints.
Apply	11. Require development of an equal employment opportunity policy.



# **BACKGROUND**

# Background

## AGENCY HISTORY

The Texas Planning Council for Developmental Disabilities (the Council) is responsible for promoting independence, productivity, integration, and inclusion into the community for individuals with developmental disabilities. State planning and advisory councils came into existence through the federal Developmental Disabilities Services and Facilities Construction Act of 1970. The original purpose of the Council was to submit an annual plan, review the plan periodically, and evaluate the implementation of the plan. Governor Preston Smith appointed the first members to the Texas Developmental Disabilities Planning and Advisory Council in 1971. In 1983, the 68th Legislature renamed and gave statutory authority to the Texas Planning Council for Developmental Disabilities. The Council was administratively supported by the Texas Department of Mental Health and Mental Retardation from 1971 to 1983. In 1983, the Texas Rehabilitation Commission (TRC) became the agency responsible for administratively supporting the Council.

In 1975, the Developmental Disabilities Assistance and Bill of Rights Act (DD Act) changed the role of the Council from advisory to one of planning and advocacy. A series of federal amendments to the DD Act over the past two decades has changed the definition of “developmental disabilities,” as well as the focus and responsibilities of the Council. The Council is now responsible for developing a state plan for the use of federal funds available under the DD Act (see text box, *Content and Objectives of the Council’s State Plan*). In addition to developing the State Plan, federal law requires the Council to:

- serve as an advocate for individuals with developmental disabilities;
- conduct programs, projects, and activities that implement the goals and objectives of the State Plan, including: demonstration of new approaches; outreach; training for consumers, families and personnel; interagency collaboration; barrier elimination, system design, and citizen participation; public

A series of federal amendments to the DD Act has changed the focus and responsibilities of the Council.

### Content and Objectives of the Council’s State Plan

The Federal Developmental Disabilities Act requires the Council to develop a three-year state plan. Each state is allowed to design a plan that meets local and regional needs. The plan describes the goals, objectives and strategies that the Council will implement during the planning period, and identifies the federal priority areas to be addressed. The Council’s plan for Texas focuses on enhancing employment, community living, and system coordination/community education resources. The plan also analyzes the need for, and availability of, services for individuals with developmental disabilities and their families and contains a description of the broad range of available services and other resources. Finally, the plan looks at eligibility criteria, barriers to services, service provision, and existing and projected fiscal resources.

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Federal law requires the Council to serve as an advocate for individuals with developmental disabilities.

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education and coalition development; informing policymakers; and prevention;

- monitor the State Plan; and
- prepare, approve, and implement a budget with developmental disabilities funds.

## POLICYMAKING BODY

The Texas Planning Council is a 30-member board appointed by the Governor in accordance with applicable federal developmental disability laws. Provisions of the DD Act require that at least 50 percent of the Council membership consist of individuals with developmental disabilities, their parents, or guardians. At least one Council member must be an immediate relative or guardian of a formerly or currently institutionalized individual

with a developmental disability. Representatives of each major state agency that serve people with developmental disabilities are also included, as well as a representative from the University Affiliated Program at UT-Austin and the State's protection and advocacy system (Advocacy, Inc).

### Required Agency Representation on Council

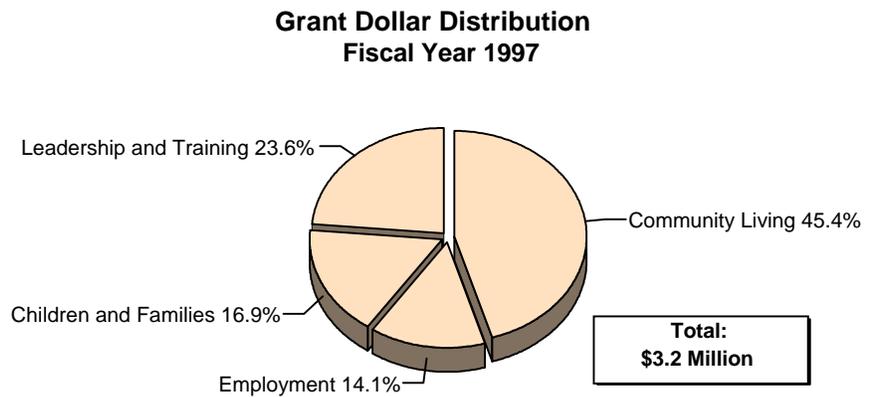
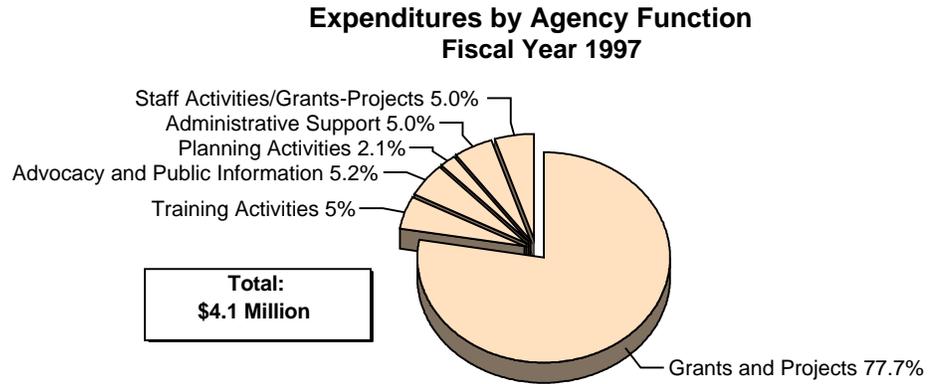
- The Texas Commission for the Blind
- The Texas Commission for the Deaf and Hard of Hearing
- The Texas Department on Aging
- The Texas Department on Health
- The Texas Department on Human Services
- The Texas Department of Mental Health and Mental Retardation
- The Texas Education Agency
- The Texas Health and Human Services Commission
- The Texas Rehabilitation Commission

State law requires that the Governor designate the Chair of the Council and prohibits a representative of a state agency from serving as either Chair or Vice-Chair. Council members serve staggered six-year terms. A Council member may not serve more than two consecutive six-year terms. State law specifies that the Council meet quarterly on dates set by the Chair. Special meetings may be called by the Chair, the Executive Committee, or through the written request of five or more Council members.

## FUNDING

In fiscal year 1997, total revenue for the Texas Planning Council for Developmental Disabilities was \$4,106,187. The Council is 100 percent federally funded through the Administration on Developmental Disabilities. The annual allocation of federal funds to the Council is based on a formula that includes the population of the state, the extent of need for services for persons with developmental disabilities, and financial need. These federal funds are appropriated to the Texas Rehabilitation Commission to support the functions of the Council. The Council appears as a strategy in the TRC budget.

The chart, *Expenditures by Agency Function-Fiscal Year 1997*, shows the amounts the Council expended in its primary agency functions. The Council initiates most of its activities through competitive grants to local organizations throughout the state. The chart, *Grant Dollar Distribution*, shows this funding data in more detail.



The DD Act limits the federal share of all Council activities to 75 percent, except in the case of projects that target individuals with developmental disabilities who live in urban or rural poverty areas, for which the federal share may not exceed 90 percent. The remainder is obtained through matching grantee funds and in-kind contributions.

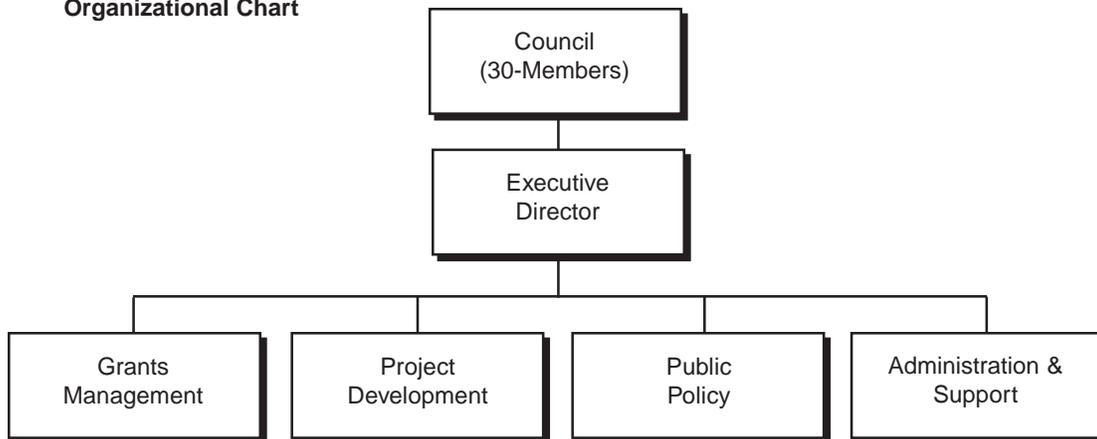
**ORGANIZATION**

Federal law requires that the Governor designate an agency to provide administrative support and fiscal management services to a Council. In 1983, Governor Clements designated the Texas Rehabilitation Commission (TRC) as the designated state agency. TRC receives, disburses and accounts for federal funds, maintains financial records, assists the Council in ensuring the State Plan and its activities are consistent with State law, and provides other assurances and support services as requested by the Council. Consistent with the DD Act, TRC has a management agreement with the Council delineating the roles and responsibilities of TRC and the Council.

Federal law requires that the Governor designate an agency to provide administrative support and fiscal management services for the Council.

The Council had eleven full-time equivalent employees as of July, 1, 1998. The organizational structure is illustrated in the chart, *Texas Planning Council for Developmental Disabilities Organizational Chart*. A comparison of the

**Texas Planning Council for Developmental Disabilities**  
Organizational Chart



Council’s workforce composition to the minority civilian labor force is shown in the chart, *Texas Planning Council for Developmental Disabilities Equal Employment Opportunity Statistics— July 1, 1998*.

Texas Planning Council for Developmental Disabilities Equal Employment Opportunity Statistics July 1, 1998							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force	Agency	Civilian Labor Force	Agency	Civilian Labor Force
Officials/Administration	1	0%	5%	0%	8%	0%	26%
Professional	4	25%	7%	0%	7%	75%	44%
Technical	N/A						
Protective Services	N/A						
Para-Professionals	1	0%	25%	100%	30%	100%	55%
Administrative Support	5	0%	16%	0%	17%	60%	84%
Service/Maintenance	N/A						

The Council is responsible for recruiting and hiring a Director and other staff who are responsible solely for assisting the Council to carry out its duties. The Council also must periodically review the designation of the designated state agency. Current federal law requires that the Council of each state must be independent of the state agencies that provide services to people with developmental disabilities. The relationship between

the Council and TRC predated this federal requirement and was authorized through a “grandfather” provision in federal law.

**AGENCY OPERATIONS**

The Council’s mission is to create change so that all people are fully included in their communities and exercise control over their own lives. Each state DD Council is required by federal law to select priority areas. The Council’s current priorities include employment, community living, and system

coordination and community education. (see text box, *Council Priority Areas*).

Council staff carry out specific programs and activities that help to achieve the objectives related to the Council's priority areas. A brief description of each program area follows.

## PLANNING

As noted above, the Council develops a three-year state plan consistent with requirements in federal law. The Council determines which projects and activities to initiate, continue or discontinue, given available funds. See text box on page 1, *Content and Objectives of the Council's State Plan*, for further detail.

## GRANTS MANAGEMENT

The Council initiates most of its activities through competitive grants to state and local organizations throughout the state (see text box, *Council Funded Projects*). The Council currently funds approximately 20 grant projects in its priority areas of employment, community living, and system coordination and community education. Staff solicit grant proposals, provide support to grant projects, and monitor grantee program and fiscal compliance.

### Council Priority Areas

*Employment activities* are designed to increase the independence, productivity, integration and inclusion into the community of individuals with developmental disabilities in the work setting.

*Community living activities* assist individuals with developmental disabilities to obtain and receive the supports needed to live in their family home or a home of their own with individuals of their choice and to develop supports in the community.

*System coordination and community education activities* are intended to (a) eliminate barriers to access and eligibility for services, supports, and other assistance; (b) enhance system design, redesign and integration including the encouragement of the creation of local service coordination and information and referral statewide systems; (c) enhance individual, family, and citizen participation and involvement; and (d) develop and support coalitions and individuals through training in self-advocacy, educating policymakers, and citizen leadership skills.

Council Funded Projects Fiscal Year 1997			
Category	Source	Grant Recipients	Grant Activity
<b>Employment Projects</b>	Federal: \$465,713 Match: \$193,939	Austin Travis County MHMR; UT-Austin; Imagine Enterprises	Supported employment and social security work incentives training
<b>Community Living Projects</b>	Federal: \$468,489 Match: \$233,459	Coalition of Texans with Disabilities; HHSC; United Cerebral Palsy of Texas; Arc of Texas; Enterprise Foundation; Santa Rosa Health Care	Inclusive education projects, respite services, consumer-controlled housing, individual and family support services, and supported living
<b>System Coordination/Community Education Projects</b>	Federal: \$532,899 Match: \$657,028	HHSC; Walsh Company; Children's Habilitation Center; Advocacy Inc.; TDoA; Family to Family; Conference and Meeting Planners; Southwest Institute	Information and referral projects, transportation, managed care, aging and developmental disabilities coordination, local advocate network, leadership training, and state conferences

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The Council initiates most of its activities through grants to state and local organizations.

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## **TRAINING ACTIVITIES**

The Council sponsors conferences and workshops to train individuals with disabilities and families on disability issues. Training also seeks to empower individuals to be self-advocates to obtain needed supports and influence the service delivery system. The largest training activity that the Council sponsors is Partners in Policymaking, a leadership program for people with disabilities and parents of young children with disabilities. Through Partners in Policymaking, participants address disability issues in the areas of education, employment, recreation, transportation, housing and independent living, inclusion, and accessibility. Participants address these issues on regional, state and national levels through individual advocacy, participation in local and state organizations, and service on boards, committees, and task forces.

## **ADVOCACY AND PUBLIC INFORMATION**

The Council monitors and analyzes state and federal policies and informs policymakers about disability issues and how proposals affect people with disabilities and their families. It develops policy positions that guide Council and staff advocacy efforts, provides input to state agencies and the Legislature, and makes recommendations regarding policy to policymakers. In addition, the Council works to increase public awareness by designing and disseminating public information.

**TEXAS GOVERNOR'S COMMITTEE ON  
PEOPLE WITH DISABILITIES**

# Review Summary

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The goal of the Governor's Committee on People with Disabilities (Governor's Committee) is to further opportunities for the full participation of persons with disabilities in all aspects of life. The Governor's Committee accomplishes this goal through 13 statutorily defined functions. These functions focus on four primary areas, including promoting implementation of the Americans with Disabilities Act (ADA); making policy recommendations to improve opportunities for persons with disabilities; supporting a network of local volunteer committees doing similar work; and recognizing organizations and individuals who empower people with disabilities.

The Governor's Committee is established within the Office of the Governor and carries out its mission with six employees and an annual budget of approximately \$291,000. Staff are guided by a Committee composed of 12 members plus four ex officio members from agencies that serve people with disabilities.

In looking at the Governor's Committee, Sunset staff focused on a few key aspects of the Committee's role. First, discussions with advocacy groups raised the issue of the appropriate role of the Committee as an advocate versus its role as a technical resource on disability-related matters. Because the Committee is located within the Office of the Governor, the Committee's ability to advocate and take strong policy positions, especially on issues of controversy, may be limited. In addition, the Committee works with a wide range of organizations and entities to increase awareness of the abilities and needs of persons with disabilities. This includes working with private sector businesses and associations where the Committee is the voice of education, assisting all entities to become aware of disability-related issues. Although these considerations do not preclude the Governor's Committee from including advocacy as a part of its role, the Sunset review concluded that the Committee does not need to increase its role as an advocate.

Second, Sunset reviewed the range of issues that the Governor's Committee addresses. The Committee broadly defines the areas in which it works. While many disability-related issues are in the realm of health and human services, many other areas are also important, as they affect the lives of people with disabilities. For example, the Committee looks at issues such as accessibility

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The Sunset review focused on the key functions of the Committee, which should continue.

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in hotels, parking programs, increasing awareness of the abilities of people with disabilities among the business community, and representation of people with disabilities in the media. In addition, the Governor's Committee tries not to duplicate the work of other advocacy interest groups and instead tries to look at other areas that may need attention.

In addition, the review focused on similar areas addressed by other agencies under Sunset review. For example, the Texas Commission on Human Rights (TCHR) also collects data on employment by state agencies. However, TCHR focuses on race, ethnicity, and gender. Sunset staff will consider, during its review of TCHR, whether that agency should also be examining data on employment of persons with disabilities by state agencies.

Overall, the Sunset review examined the statutory functions of the Committee to evaluate whether they are necessary, appropriate, and clearly and reasonably guide the Committee's efforts. In conducting the review, Sunset staff:

- worked with staff of the Governor's Committee and the Office of the Governor;
- attended a quarterly Governor's Committee meeting and reviewed minutes from other meetings ;
- reviewed a variety of Governor's Committee reports and documents;
- spoke with Committee ex officio members;
- received input from Committee members;
- received input from local mayor and county volunteer committees;
- interviewed previous Governor's Committee staff;
- spoke with and received input from advocacy groups;
- reviewed material about the Council on Disabilities and the transfer of its functions to the Governor's Committee; and
- researched agencies in other states with common functions.

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The Sunset staff concluded that the Committee should continue, within the Governor's Office.

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The review found a continuing need for the Governor's Committee. While several laws have been passed to protect the rights and opportunities of persons with disabilities, gaps still exist between outcomes for persons with disabilities and persons without disabilities. The Governor's Committee works to address these gaps and improve opportunities for the full participation of persons with disabilities in Texas communities. The Sunset review found most of the Committee's functions to be effective tools in

assisting the Committee in achieving the mission. However, the review identified functions that are either beyond the Committee's current capacity, are duplicative and result in an inefficient use of the Committee's resources, or do not clearly describe the Committee's activities. The Sunset recommendation focuses on refining the Committee's statutory functions to allow it to concentrate its efforts and resources on those functions that have proven successful and will help the Committee have an even greater impact on the lives of people with disabilities.

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Refine the  
Committee's functions  
to focus on those  
proven most  
successful.

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**ISSUE**

# Issue 1

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## Continue the Governor's Committee on People with Disabilities and Focus Its Charge on Key Functions to Improving Opportunities for People with Disabilities



### Background

According to the 1995 U.S. Census, one in five Americans reported some level of disability and one in 10 described their disability as severe. Applying these percentages to Texas, an estimated 3.9 million Texans have some form of disability and 1.9 million have a severe disability. Texas has long focused on the needs of people with disabilities. The Governor's Committee on People with Disabilities was first created in 1949 to focus specifically on the employment needs of persons with disabilities. Throughout most of its history, increasing employment opportunities for, and awareness of the abilities of, people with disabilities remained the Committee's focus. The Committee accomplished this through its own efforts and through its support of a network of local volunteer committees that did work similar to the Committee.

In 1991, however, two factors led to an expansion in the functions and responsibilities of the Governor's Committee. First, the Council on Disabilities was abolished through the Sunset process and its functions were transferred to the Governor's Committee. These functions included monitoring and updating the long-range state plan for Texans with disabilities, promoting the development and coordination of statewide public and private policies, programs, and services for people with disabilities; promote the compilation of all laws relating to people with disabilities; and promoting a demographic survey of people with disabilities.

Second, the Governor's Committee was given the responsibility to guide and assist the State and other entities in effectively implementing the Americans with Disabilities Act (ADA). The ADA was passed in 1990 and had a far reaching affect on the lives of persons with disabilities. These new functions expanded the scope of the Governor's Committee to include the promotion of rights and opportunities for people with disabilities in all areas of life.

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The Governor's Committee has a long history of focusing on the needs of people with disabilities.

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The Sunset review focused on evaluating the continuing need for the Governor's Committee and whether it is effectively fulfilling its statutory charges. The review considered whether the Committee's functions are duplicated by any other agency and the benefit of maintaining the Governor's Committee in its current location. The evaluation of the need to continue the Committee and its current functions led to the findings discussed below.

## Findings

### ▼ **The mission of the Governor's Committee, furthering the opportunities and full participation of people with disabilities, provides a needed service to the State.**

- ▶ Although many laws and policies have been established to protect and promote the rights of persons with disabilities, people with disabilities continue to experience barriers to full participation. According to one recent survey, only 29 percent of working-aged persons with disabilities work full- or part-time, compared to 79 percent of working-aged persons without disabilities. Approximately one in five adults with disabilities have not completed high school, compared to one in 10 adults without disabilities. While 17 percent of non-disabled adults consider daily transportation a problem, 30 percent of adults with disabilities do.<sup>1</sup>
- ▶ Such figures indicate that a need continues to promote and educate the public regarding the rights, needs, and abilities of persons with disabilities. Regardless of their type of disability, the lives of people with disabilities are affected by all areas of life, ranging from technology to education, employment, housing, transportation, recreation, and parking. The Governor's Committee broadly examines the policies established in many areas and works to promote full participation for all persons with disabilities.

### ▼ **The Governor's Committee serves as a central source of information and increases awareness of the rights, needs, and abilities of people with disabilities.**

- ▶ The Governor's Committee collects and disseminates information on disability-related issues. Committee staff track federal, state, and local laws, policies, and activities that affect people with disabilities. Multiple entities access the

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The State needs a focal point for promoting the rights, needs, and abilities of persons with disabilities.

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Governor's Committee for information and technical assistance in these areas, including individuals, advocacy groups, non-profit organizations, and private businesses.

In addition, the Committee educates the public on disability-related issues through its annual report. In 1997, the Committee distributed over 4,000 reports to legislative entities, state agencies, disability organizations, local workforce development boards, education service centers, independent school districts, colleges and universities, city and county ADA coordinators, and others.

- ▶ The Governor's Committee provides information, education, and technical assistance on the Americans with Disabilities Act. The ADA is a complex, comprehensive law that affects many entities. Individuals, and public and private agencies and businesses have found it valuable to have an entity that has in-depth knowledge of the ADA.

Although other state agencies work with the ADA, their scope is limited to certain areas. For example, The Texas Department of Licensing and Regulation is responsible for reviewing and inspecting all new business construction or alterations over \$50,000 compliance with state standards equivalent to the ADA. The General Services Commission is responsible for ensuring that all facilities leased by state agencies comply with the state standards. The Texas Commission on Human Rights enforces the employment provisions of the ADA. The Governor's Committee, on the other hand, provides information and assistance across all ADA-related areas.

- ▶ The Governor's Committee considers a broad range of issues that affect persons with disabilities. For example, the Committee has looked at architectural licensing and what architects are tested on, has worked with the motel/hotel association on increasing accessibility, and worked with the State's 1995 telecommunications bill to assure that access for persons with disabilities was addressed.
- ▶ The Governor's Committee networks with a variety of entities and focuses on reaching out to new audiences that have not traditionally been involved with disability-related issues. For example, the Committee focuses on building partnerships with

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Individuals, agencies,  
 and businesses have  
 benefitted from the  
 Committee's  
 knowledge of ADA.

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The Committee  
 focuses on reaching  
 new audiences not  
 traditionally involved  
 with disability-related  
 issues.

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private businesses to increase the business community's awareness of the abilities of people with disabilities and open up opportunities for employment. The Committee also works with various media sources to improve their portrayal of persons with disabilities.

▼ **The Governor's Committee supports a network of local committees that broadens the Committee's audience and increases its ability to impact the lives of people with disabilities.**

- ▶ Through its support of a network of local mayor and county committees, the Governor's Committee is able to disperse information throughout the State and reach a range of people

and organizations. Many of the local committees have been effective at addressing disability-related issues at the local level. Through grass-roots efforts, local committees raise awareness of the needs and abilities of persons with disabilities and work to address those needs specifically identified in their community. The textbox, *Examples of Local Mayor and County Committee Accomplishments*, details some of the recent activities of the 29 local committees. Like the Governor's Committee, these local groups address a wide range of areas, including housing, transportation, employment, education, and access. They also bring a wide-range of entities together, including individuals, local public agencies and officials, non-profit organizations, and private businesses.

**Examples of Local Mayor  
and County Committee  
Accomplishments**

- Facilitated Texas A&M University's provision of interpreter services for students with hearing impairments during classes.
- Held and participated in career fairs and seminars with an estimated 114 employers and 1,240 job applicants with disabilities.
- Improved access at parks and reviewed plans for zoo expansion and a community playground.
- Built an accessible fishing pier at Lake Nacogdoches.
- Joined with Bank of America to provide low-interest loans to people with disabilities, primarily to finance van purchases.
- Conducted educational or monitoring programs on accessible parking.

▼ **The Governor's Committee serves as an advisor to the Office of the Governor, providing information and recommendations when issues arise that may affect people with disabilities.**

- ▶ Its location within the Office of the Governor provides the Governor's Committee with informal access to the Governor and his or her staff. The Committee is available as a resource when the Governor's Office has questions about disability-related issues or policies. The Committee is also able to bring issues to the Governor's attention. In general, the presence

and daily interaction of the Committee staff with the Governor's Office raises the Governor's awareness of the needs and abilities of people with disabilities.

- ▶ The Governor's Committee formally advises the Governor, and the Legislature, and several other entities through a set of recommendations presented in the Committee's annual report. The Committee identifies areas that need further attention through their work with the local committees, public forums, a survey, and the requests for information and assistance it receives throughout the year. Based on the feedback from these sources, the Committee identifies areas where persons with disabilities continue to face difficulties and makes recommendations for improvement.

▼ **The Governor's Committee's current scope of responsibilities may prevent it from maximizing its efforts to further opportunities for persons with disabilities.**

- ▶ The Governor's Committee's statute does not detail the purpose of the Committee's activities, which is to further opportunities for the full participation of persons with disabilities. The statute also does not reflect the role the Committee serves as a central source of information and education on the problems, needs, abilities, and rights of persons with disabilities.

The Governor's Committee statute does list 13 statutory functions. Several of these functions extend beyond what the Committee can realistically accomplish given its current and anticipated future resources. These functions include responsibilities that are also assigned to other state agencies or are comparable to the functions of other agencies. Some functions include redundant requirements that are an inefficient use of the Committee's efforts. Other functions may not clearly define the Committee's activities or may lead to unclear expectations of what it can accomplish. The following chart lists the Committee's current statutory functions and difficulties those functions may pose for the Committee in effectively pursuing its mission.

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Too many duties limit the Committee in performing its most critical functions.

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<b>Review of the Governor's Committee Statutory Functions</b>	
<b>Current Statutory Functions</b>	<b>Problems Identified With Functions</b>
1. Coordinate and monitor the State's compliance with the ADA and other statutes relating to rights and opportunities for persons with disabilities.	Expansive statutory charge beyond Committee's current capacity. "Monitor" compliance implies strong Committee role in overseeing and ensuring compliance with federal requirements.
2. Provide information and technical assistance to promote and facilitate implementation of the ADA and other federal and state statutes.	No problem identified.
3. Submit annual report to state leadership on the State's compliance with laws pertaining to rights and opportunities for persons with disabilities and make recommendations to achieve compliance	Multiple and redundant requirements to produce reports and recommendations duplicates staff efforts and is an inefficient use of the Committee's time and funding.
4. Monitor and promote the implementation of the long-range state plan for Texans with disabilities and submit biennial plan to state leadership, legislative committees, LBB, and state agencies.	
5. Promote the compilation of state laws relating to persons with disabilities and make recommendations about appropriate changes in state laws relating to those persons.	
6. Serve as state's liaison to the President's Committee on Employment of People with Disabilities and other groups promoting or providing services for persons with disabilities.	Current provision limits liaison activities to organizations focusing on services and is not reflective of Committee's broader interaction with businesses and business associations.
7. Develop and work with a statewide network of volunteer community-level committees.	No problem identified.
8. Promote the development of efficient and effective coordination of services for persons with disabilities.	Expansive statutory charge focusing on service delivery and overlapping with statutory charge of the Health and Human Services Commission (HHSC).
9. Make recommendations to the Governor on programs, policies, and funding that promote the independence for persons with disabilities.	Current language does not reflect the Committee's relationship to the Governor, particularly the role of Committee staff who serve as a significant resource to the Governor's staff.
10. Collect and monitor data on employment of persons with disabilities by state agencies.	"Monitor" does not clearly reflect what the Committee is capable of or equipped to do with this data.
11. Work with legislative committees and state agencies on the development of laws and policies that affect persons with disabilities.	No problem identified.
12. Promote a demographic survey for the accurate identification of persons with disabilities and the effective use of the survey results in establishing service priorities.	Expansive statutory charge beyond Committee's current capacity and overlapping with statutory charge of HHSC.
13. Issue awards and other forms of recognition to persons and organizations making outstanding contributions to the employment of persons with disabilities and to public awareness of issues impacting persons with disabilities.	No problem identified.

▼ **Refining the Governor's Committee statutory charge will allow the Committee to focus its efforts on those functions with which it can most benefit persons with disabilities.**

- ▶ The Committee has attempted to address all its statutory functions. However, expending effort to address responsibilities which are beyond the abilities of the Committee is not an efficient use of the State's resources. The Committee's energy should be focused on those tasks with which it can have the greatest impact on the lives of persons with disabilities. Further, the Committee's statutory directives should provide a clear picture of what the Committee is expected to accomplish.

Sunset staff heard from several entities about the beneficial work of the Governor's Committee. Comments ranged from the valuable resource the Committee is on disability-related laws and policies, to the impact they have on increasing public awareness of persons with disabilities, to the effectiveness of the local committee network. Refining the Committee's statutory functions will allow it to concentrate its efforts on those responsibilities with which it can most effectively increase opportunities for people with disabilities.

## Conclusion

Although some opportunities for people with disabilities have increased, improvement is still called for. The Governor's Committee is one way for the State to continue advancing the full participation of persons with disabilities. The Committee has been a source of expertise and technical assistance on the implementation of the ADA and other disability-related laws. The Committee is also able to provide information and direction to the Governor and his or her staff on policies and programs that may impact persons with disabilities. In addition to its work at the State level, the Committee has been able to impact the local level through its support of a network of local committees. These committees use the expertise of the Governor's Committee to identify and address needs that are specific to their community. These groups, like the Governor's Committee, are able to bring a wide-range of entities together, including those that are not traditionally involved in disability-related issues. Through these and other activities, the Governor's Committee has been able to increase awareness of the needs and abilities of people with disabilities. Refining the Committee's

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The Governor's  
Committee, with a  
refined focus, should  
continue its work  
advancing  
opportunities for  
people with  
disabilities.

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statutory functions will allow it to focus its efforts on those functions that have been successful and have an even greater impact on the lives of people with disabilities.

## **Recommendation**

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### **Change in Statute**

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- **Continue the Governor's Committee on People with Disabilities for 12 years.**
  
- **Clarify that the Governor's Committee shall:**
  - **produce a biennial report that includes a disability vision, long-range goals, and short-term recommendations for increased participation of persons with disabilities; provide the report to the Governor and the Legislature; and promote the implementation of these goals and recommendations;**
  - **evaluate the State's compliance with the ADA and other statutes relating to rights and opportunities for persons with disabilities;**
  - **collect and evaluate data on employment of persons with disabilities by state agencies;**
  - **serve as a central source of information and education on the abilities, rights, problems, and needs of persons with disabilities and issue reports as necessary;**
  - **serve as a liaison to the President's Committee on the Employment of People with Disabilities and other entities involved in activities and concerns that affect persons with disabilities; and**
  - **provide information to and advise the Governor and the Governor's staff on matters relating to the full participation of persons with disabilities.**
  
- **Remove the responsibilities to:**
  - **promote the development of efficient and effective coordination of services, and**
  - **promote a demographic survey of persons with disabilities and the use of its results in establishing service priorities.**

The Sunset review found a continuing need for the purpose and functions of the Governor's Committee. While several laws have been passed to protect the rights and opportunities of persons with disabilities, gaps still exist between outcomes for persons with disabilities and

persons without. The Governor's Committee works to address this gap and improve opportunities for and the full participation of persons with disabilities in Texas communities.

Most of the Committee's functions are effective tools to assist the Committee in achieving this mission. However, the Sunset staff did identify functions that are either beyond the Committee's current capacity, are duplicative and result in an inefficient use of the Committee's resources, or do not clearly describe the Committee's activities. Refining the Governor's Committee statute through the methods detailed above will allow the Committee to focus its efforts and resources. Consolidating the multiple reporting and recommendation requirements into one document is a more efficient use of the Committee's funding and allows the entities receiving the report to focus their attention on one document. Removing requirements that are beyond the Committee's capabilities and are similar to duties performed by other agencies will eliminate unreasonable expectations of the Committee's accomplishments. Although better coordination of services and demographic data on persons with disabilities is needed, both tasks are beyond the capabilities of the Committee. Similarly, clarifying the functions to reflect the Committee's capabilities will also eliminate unreasonable expectations. While the Committee is capable of assessing or evaluating the State's compliance with the ADA or hiring of persons with disabilities, it has no power to take action on its findings. Other clarifications will more accurately depict the expanded role and mission of the Committee.

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## **Fiscal Impact**

If the Legislature continues the Governor's Committee, using the existing organizational structure, the Committee's annual appropriation of approximately \$291,000 in fiscal year 1997 would continue to be required for the Committee's operation.

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<sup>1</sup> <http://www.nod.org/presssurvey.html#survey>



# **ACROSS-THE-BOARD RECOMMENDATIONS**

<b>Texas Governor's Committee on People With Disabilities</b>	
<b>Recommendations</b>	<b>Across-the-Board Provisions</b>
	<b>A. GENERAL</b>
Do Not Apply	1. Require at least one-third public membership on state agency policymaking bodies.
Modify	2. Require specific provisions relating to conflicts of interest.
Modify	3. Require that appointment to the policymaking body be made without regard to the appointee's race, color, disability, sex, religion, age, or national origin.
Already in Statute	4. Provide for the Governor to designate the presiding officer of a state agency's policymaking body.
Modify	5. Specify grounds for removal of a member of the policymaking body.
Apply	6. Require that information on standards of conduct be provided to members of policymaking bodies and agency employees.
Apply	7. Require training for members of policymaking bodies.
Apply	8. Require the agency's policymaking body to develop and implement policies that clearly separate the functions of the policymaking body and the agency staff.
Apply	9. Provide for public testimony at meetings of the policymaking body.
Modify	10. Require information to be maintained on complaints.
Apply	11. Require development of an equal employment opportunity policy.



# **BACKGROUND**

# Background

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## AGENCY HISTORY

The Governor's Committee on People with Disabilities (Governor's Committee) was established in 1949 as the Governor's Committee on Employment of the Handicapped. From the beginning, the Governor's Committee operated with minimal staff support for the purpose of promoting employment opportunities for persons with disabilities. In 1983, it was recreated by executive order as the Texas Governor's Committee for Disabled Persons and continued to focus on promoting the employment and public awareness of persons with disabilities.

In 1991, SB 381 made several changes to the Governor's Committee. First, it established the committee in statute. Previously, the Governor's Committee had existed by executive order. Second, it relocated the Governor's Committee from the Texas Rehabilitation Commission to the Office of the Governor and renamed the committee as the Governor's Committee on People with Disabilities, to reflect people-first language.

Finally, SB 381 greatly expanded the focus of the Governor's Committee. The functions of the Council on Disabilities were transferred to the Governor's Committee. These functions included promoting the development and coordination of statewide public and private policies, programs, and service to persons with disabilities; overseeing and updating the long-range plan for Texans with disabilities; promoting a demographic survey of persons with disabilities; and promoting the compilation of laws related to persons with disabilities. The Governor's Committee was also given new responsibilities related to the Americans with Disabilities Act (ADA).

With the transfer of responsibilities from the Council on Disabilities and the passage of the ADA, the functions of the Governor's Committee expanded beyond the employment arena to include the promotion of rights and opportunities for people with disabilities in all areas of life.

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The Committee is charged with promoting the rights and opportunities for people with disabilities.

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## POLICYMAKING BODY

The Governor's Committee is composed of 12 members appointed by the Governor. The members are appointed for staggered two-year terms. At least seven of the appointed members must be persons with disabilities. In addition, four ex officio members also serve on the Committee. They include:

- the Commissioner of the Texas Rehabilitation Commission;
- the Executive Director of the Texas Commission for the Blind;
- the Executive Director of the Texas Commission for the Deaf and Hard of Hearing; and
- the Chair of the Texas Workforce Commission.

The Governor may also appoint additional ex officio members who represent other state agencies that provide services to persons with disabilities.

The Governor's Committee meets at least once each quarter. The Committee met four times in both fiscal years 1996 and 1997.

The Governor's Committee operates with two subcommittees, the Programs Subcommittee and the Long-Range Planning and Policy Subcommittee. The Programs Subcommittee focuses on local committee support, media and employment awards, publications, and promoting implementation of the Americans with Disabilities Act. The Long-Range Planning and Policy Subcommittee focuses on making policy recommendations, long-range planning, collecting data on employment of persons with disabilities in state agencies, and providing legislative summaries related to Texans with disabilities.

## FUNDING

<b>Annual Appropriations and Expenditures</b>		
<b>Fiscal Year</b>	<b>Appropriated</b>	<b>Expended</b>
1992	\$292,770	\$204,966
1993	\$286,076	\$288,036
1994	\$348,912	\$188,726
1995	\$346,372	\$283,893
1996*	\$291,556	\$308,449
1997	\$291,561	\$257,698

The Governor's Committee is established as a trustee program within the Office of the Governor, and is one of five programs assigned to the Governor. The Committee is funded entirely by General Revenue; however, it may also solicit and accept gifts, grants, and donations. In FY 1997, the Governor's Committee was appropriated \$291,561. The chart, *Annual Appropriations and Expenditures*, shows the amounts appropriated and expended for fiscal years 1992 to 1997.

\*In 1996, the Governor's Committee also received \$2,000 in donations.

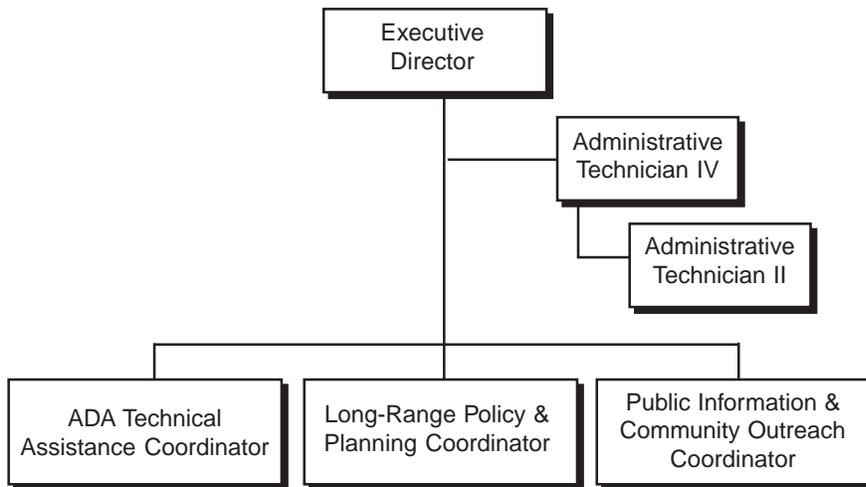
## HUB Expenditures

The Governor's Committee does not report HUB expenditures separately, they are included within information compiled by the Office of the Governor.

# ORGANIZATION

The Governor's Committee is supported by a staff of six. The Executive Director is employed by the Office of the Governor, subject to the approval of the Governor's Committee. The chart, *Governor's Committee on People with Disabilities Organizational Chart*, illustrates the organizational structure of the agency.

### Governor's Committee on People with Disabilities Organizational Chart



The chart, *Governor's Committee on People with Disabilities Equal Employment Opportunity Statistics*, shows a comparison of the agency's workforce composition to the State's minority civilian labor force.

<b>Governor's Committee on People With Disabilities Equal Employment Opportunity Statistics Fiscal Year 1997</b>							
Job Category	Total Positions	Minority Workforce Percentages					
		Black		Hispanic		Female	
		Agency	Civilian Labor Force	Agency	Civilian Labor Force	Agency	Civilian Labor Force
Officials/Administration	1	0%	5%	0%	8%	100%	26%
Professional	3	0%	7%	0%	7%	66%	44%
Technical	N/A						
Para-Professionals	N/A						
Administrative Support	2	0%	16%	50%	17%	100%	84%
Service/Maintenance	N/A						

## AGENCY OPERATIONS

The Governor's Committee promotes the rights and opportunities of people with disabilities in Texas. To do this, the Committee is statutorily assigned 13 responsibilities. These responsibilities are divided into four primary areas, including:

- promoting implementation of the Americans with Disabilities Act;
- conducting long-range planning and making policy recommendations regarding policies, programs and funding;
- supporting a network of local volunteer committees doing similar work; and
- recognizing organizations and individuals who empower people with disabilities.

### **ADA Implementation**

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Although it does not enforce the ADA, the Committee monitors the State's compliance with the federal Act.

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The ADA is a comprehensive federal civil rights law that protects persons with disabilities from discrimination in employment, communication and access to goods and services. The Act impacts 3.9 million Texans with disabilities, approximately 190,000 private businesses and employers, 5,000 cities and towns, 254 counties, 1,200 school districts, and other public entities.

The Governor's Committee coordinates and monitors the State's compliance with the ADA through activities such as training ADA coordinators, conducting surveys of state entities' implementation of ADA requirements, and collecting data on the employment of persons with disabilities by state agencies. The Governor's Committee has no authority to enforce ADA compliance; they are only authorized to determine whether entities are fulfilling their responsibilities under the ADA and make recommendations to the Governor and Legislature on increasing compliance.

The Governor's Committee also serves as a primary source for information and education to both public and private entities on the ADA. Committee staff track ADA related activities at the national, state, and local level in areas such as legislation and policy, legal actions, and resources for compliance. They distribute this information through roundtable discussions, creating and distributing materials on various ADA-related topics, and maintaining an extensive website. Staff also provide technical assistance on the ADA to public and private entities and persons with disabilities, upon request.

## PLANNING AND POLICY RECOMMENDATIONS

Through its *Long-Range Plan for Texans with Disabilities*, the Governor's Committee establishes long-range goals to improve rights and opportunities for persons with disabilities in Texas, and provides short-term recommendations to achieve those goals. In 1997, the Governor's Committee made recommendations to the Governor and the Legislature in the areas of education, employment, access, health, and independence. The chart, *Examples of Governor's Committee Recommendations*, shows the recommendations the Committee made in 1997 in the area of education.<sup>1</sup>

## LOCAL COMMITTEES

The Governor's Committee supports 29 local county or mayor volunteer committees. The volunteer committees are local public-private partnerships that attempt to shape policies for people with disabilities in their local areas. They address issues such as parking, employment, access, the ADA, transportation, housing, education, and health. Activities may include scholarship programs, parking monitoring programs, career fairs, health fairs, or recreational opportunities. Activities vary among committees and are based on local priorities. In fiscal year 1996, an estimated 1,302 local volunteers worked 49,048 volunteer hours. The value of their work is estimated at \$629,780.<sup>2</sup>

Along with these local committees, the Governor's Committee is part of a nationwide network that includes Governor's Committees in other states and is supported by the President's Committee on Employment of People with Disabilities. The President's Committee communicates, coordinates, and promotes public and private efforts to employ people with disabilities. The Governor's Committee also coordinates with the National Council on Disability and the National Organization on Disability.

## RECOGNITION

Since 1979, the Governor's Committee has been recognizing Texas employers and others who have made significant contributions to the employment and empowerment of Texans with Disabilities. Approximately 98 awards have been given to individuals, public employers, private employers, entrepreneurs,

### Examples of Governor's Committee Recommendations

- Promote compliance in all Texas schools with the Individuals with Disabilities Education Act, the ADA, Section 504 of the Rehabilitation Act, state and federal transition and school-to-work legislation, and integration of accountability into overall school evaluation systems.
- Implement campus and district accountability evaluation systems that incorporate appropriate accessible measuring tools for students with disabilities.
- Promote full participation of students with disabilities, to the extent that it meets their individual needs, by encouraging adequate support services provided by skilled personnel, timely training for regular classroom teachers, and on-going student and parent involvement.
- Improve skills of persons with disabilities by promoting full participation in public schools, post-secondary vocational programs, and colleges and universities.

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The Committee supports county or mayor committees that deal with disability issues at the local level.

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Through awards, the Committee recognizes those that contribute to the employment and empowerment of Texans with disabilities.

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and local committees. Past recipients include USLD Communications, Brinker International, NationsBank, Memorial Healthcare, the Alvin Police Department, and several individuals.

In 1983, the Governor's Committee also began recognizing communicators for accurately and progressively portraying people with disabilities. The awards are named for the late Barbara Jordan and are given in the fields of print, radio, photojournalism, television, advertising, and public relations. Approximately 123 recipients have received this award, including WFAA-TV, KENS-TV, KERA-TV, and reporters from the Austin American-Statesman and the Richardson News.

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<sup>1</sup> Texas Governor's Committee on People with Disabilities, "1997 Annual Report", p. 1.

<sup>2</sup> Ibid., p. 29.

**TEXAS OFFICE FOR THE PREVENTION  
OF DEVELOPMENTAL DISABILITIES**

# Review Summary

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The mission of the Texas Office for the Prevention of Developmental Disabilities (TOP) is to minimize the economic and human losses caused by preventable disabilities through the establishment of a joint private-public initiative. TOP is mandated to be a mechanism by which prevention activities can be coordinated and prevention programs initiated, evaluated, and promoted.

With the larger Sunset review of Texas' health and human services agencies as a backdrop, Sunset staff quickly came to the conclusion that the agency's mission and functions are important for the State to pursue. Practical considerations weighed heavily in our approach to this review. First, agency staffing was an issue throughout the review. TOP was without a Director for most of the review, leaving only a Program Secretary as the agency contact. Representative Bill Carter, the Chairman of the TOP Executive Committee, and his Capitol office staff acted as the primary contacts and provided invaluable assistance to the Sunset review. Second, funding has been and continues to be the single biggest hurdle in the agency's ability to meet its broad statutory mandate. Sunset staff considered the funding issues, particularly the agency's past reliance on a Centers for Disease Control grant through the Texas Department of Health, in developing its approach to the review.

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The Sunset review found that the State should continue pursuing the mission and functions of the Office.

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In conducting the review of the Texas Office for the Prevention of Developmental Disabilities, the Sunset staff:

- worked with current and former agency staff;
- reviewed agency documents, including reports to the Legislature, the Long-range State Plan, public awareness information, and grant applications and awards;
- reviewed current public health literature and interviewed State health and prevention experts;
- solicited comments from state and national advocacy and interest groups;
- interviewed Texas Department of Health staff; and
- researched prevention activities in other states.

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Although a separate agency is not needed, the Office's functions should remain at TDH.

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Once the determination was made that the functions of the agency continue to be important, the review turned to the question of whether a separate state agency is needed. The results of the review activities, coupled with the practical considerations of administering a small, inadequately funded agency to carry out such a broad mission, led Sunset staff to conclude that the agency should not be continued, but that its functions should remain at the Texas Department of Health.

The staff and Executive Committee of the Texas Office for the Prevention of Developmental Disabilities should be commended for the work they have done to promote prevention of disabilities in Texas. With limited resources, TOP has made significant contributions in the areas of Fetal Alcohol Syndrome awareness and bicycle helmet promotion.

Sunset staff wish to emphasize that the recommendation to abolish the agency and maintain its functions at the Texas Department of Health in no way diminishes the importance of prevention activities. TDH is well equipped to carry on the mission and functions of TOP, not only in promoting prevention activities, but also in seeking new grants and initiating public-private partnerships. Further, the recommendation encourages the continued use of the Executive Committee members in an advisory capacity to the TDH Board or staff of the Department of Health.

**ISSUE**

# Issue 1

## Abolish the Texas Office for the Prevention of Developmental Disabilities and Maintain its Functions at the Texas Department of Health.



### Background

In 1989, a legislative steering committee reported that while many state agencies and private organizations were involved in prevention activities, Texas lacked a comprehensive, coordinated approach. As a result, the Legislature created the Texas Office for the Prevention of Developmental Disabilities (TOP) and directed the office to focus initial prevention efforts on high-risk behavior among teenagers, specifically teenage substance abuse, teenage pregnancy, and teenage head injuries.

For the first two years of its existence the executive committee worked to find a funding source, because the office is prohibited from receiving general revenue funds. In 1991, the Texas Department of Health received a federal Centers for Disease Control (CDC) grant for disability prevention, and funded TOP with a portion of this grant from 1991 through 1997.

TOP's enabling statute directed the agency to focus on high-risk behavior among teens.

### POLICYMAKING BODY

The Texas Office for the Prevention of Developmental Disabilities is governed by a nine-member Executive Committee comprised of individuals who have expertise in the field of developmental disabilities. The Governor, Lieutenant Governor, and the Speaker of the House each appoint three members to staggered six-year terms. The Executive Committee annually elects one member to serve as presiding officer. State Representative Bill Carter, the original House sponsor of the bill that created TOP, has been the Chairman since January 1993. By statute, the Executive Committee meets quarterly, although it convened three times in 1997.

The Executive Committee is authorized to appoint a board of advisors made up of representatives of government agencies, consumer groups, private foundations, corporations, or other interested individuals. In 1993, TOP established this advisory

#### Executive Committee

##### *Governor's Appointments*

J.C. Montgomery, Jr. (Dallas) \*  
Dr. Jonathan Clark Race (Austin) \*  
Vacant

##### *Lieutenant Governor's Appointments*

Senator Judith Zaffirini (Laredo) \*  
Dr. Theresa Mulloy (Stephenville) \*  
Dr. Frank R. Brown III (Dallas)

##### *Speaker's Appointments*

Representative Bill Carter, Chair (Fort Worth)  
Billie Lindley McMahon (Cleveland) \*  
Eileen Curry Resnik (Addison) \*

\*Term has expired

board to develop a long-range plan, which was completed and submitted to the 74th Legislature.

The Executive Committee is also required to establish task forces to plan and implement prevention programs. In 1991 and 1992, TOP established initial task forces to focus on substance abuse, pregnancy, and head injuries among teen-agers, as directed by the enabling legislation.

## FUNDING

TOP is prohibited from submitting a legislative appropriation request for general revenue, but is authorized to apply for and distribute private, state, and federal funds to implement its policies. From 1991 to June 1997, the agency was funded through the Texas Department of Health by a federal CDC grant for disability prevention.

Currently, TOP is funded by TDH with federal Title V (Maternal and Child Health Block Grant) funds. The terms of the funding arrangement are set out in a memorandum of understanding (MOU) between TOP, TDH, and the Health and Human Services Commission. Under the MOU, which expires August 31, 1999, TOP's total annual budget is \$119,731.

## OPERATIONS

TOP employs two full-time staff, a Project Director and an Administrative Secretary. The Health and Human Services Commission provides office space in Austin to accommodate the agency's staff. Although TOP is an independent agency, it has formed an administrative attachment to the Department of Health based on the funding arrangement. TDH provides payroll, personnel, travel, and other support services.

TOP's purpose, as defined in statute, is to help minimize the human and economic losses in Texas caused by preventable disabilities. Unlike other disabilities agencies, such as the Texas Rehabilitation Commission and the Texas Department of Mental Health and Mental Retardation, which provide services to people with disabilities, TOP's mission is more closely tied to public health, specifically injury and disability *prevention*. Broadly stated, the agency's duties fall into four categories:

- coordinate the many state and local agencies, as well as private organizations, involved in prevention activities;
- raise awareness on the preventability of many disabilities;
- monitor and assess prevention programs; and

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TOP receives no general revenue funding. Its current funding source expires on August 31, 1999.

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- promote innovative prevention programs.

To accomplish these goals the Executive Committee chose two specific areas in which to focus the agency's limited resources:

- head and spinal cord injuries resulting from bicycle crashes; and
- Fetal Alcohol Syndrome.

### **Head and Spinal Cord Injuries from Bicycle Crashes**

In 1993, TOP contracted with The Institute for Rehabilitation and Research in Houston to conduct an evaluation of a national program, *Think First*, aimed at reducing high-risk behavior among teens. Based on the results of this study, TOP began concentrating its efforts on bicycle helmet awareness.

In 1994, TOP contracted with the U.T. School of Nursing to conduct a research project promoting helmet use of children. School nurses in nine rural Central Texas schools participated in the project, which included classroom instruction, bicycle helmet distribution, and discussions with students and parents.

In the 1993 and 1995 legislative sessions, legislative members of the Executive Committee filed bills requiring statewide use of bicycle helmets, the latter for children under 18. TOP staff served as legislative support for these initiatives.

### **Fetal Alcohol Syndrome**

At a retreat in October 1993, TOP members selected Fetal Alcohol Syndrome (FAS) as a main focus for the agency, with prevention efforts aimed at public awareness and education. TOP has conducted seminars, trained volunteers to become spokespersons on FAS, and developed FAS Fact Sheets for public distribution. TOP also collaborated with the Texas Restaurant Association to develop and distribute a table-tent which encourages pregnant women to select a non-alcoholic drink.

### **SUNSET REVIEW**

The Sunset staff evaluated the continuing need for the Texas Office for the Prevention of Developmental Disabilities. As required by the Sunset Act, to justify a continuing need for an agency, certain criteria must be met. An ongoing need for the agency's functions and services should exist; the functions should not duplicate those of another agency; and the potential benefits of maintaining a separate agency must outweigh the advantages of transferring its functions to any other State agency.

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TOP has made significant contributions in the areas of Fetal Alcohol Syndrome awareness and bicycle helmet promotion.

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## Findings

### ▼ The functions of the Texas Office for the Prevention of Developmental Disabilities continue to be important.

- ▶ Minimizing economic and human losses that result from developmental disabilities is an important pursuit for state government, especially when those disabilities are preventable. TOP reports that as much as half of all mental retardation could be prevented.<sup>1</sup>

TOP's statute defines *developmental disability* as a mental or physical impairment that manifests itself before a person reaches age 22, and is likely to result in the need for lifelong or extended services. The agency's activities, though, extend beyond the traditional notion of developmental disabilities, and include prevention of disabilities resulting from injuries, disabilities resulting from diseases, and secondary disabilities.<sup>2</sup>

- ▶ In 1989, the Legislature responded to a void in State government and created TOP to develop a comprehensive, coordinated approach to prevention of developmental disabilities. While the statutory mandate is broad, legislative directive narrowed the agency's focus areas to high-risk behavior among teenagers, specifically teenage substance abuse, teenage pregnancy, and teenage head injuries.

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Public Health has become prevention-oriented since TOP was created.

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- ▶ When TOP was created, "prevention" was still a new concept in public health. Historically, public health was viewed as reactive, responding to crises like disease outbreaks and epidemics. In recent years, federal, state, and local health agencies have shifted from reacting to health problems to preventing them before they occur. This trend mirrors the managed care approach for individuals from curative care to preventive care. Public health officials realize that limited resources are best spent on broad-based prevention before costly and debilitating conditions occur.<sup>3</sup>

### ▼ The Texas Department of Health is the State's primary agency for the prevention of disabilities.

- ▶ The Bureau of Epidemiology, with 77 FTEs and a \$13.6 million annual budget, is the centerpiece of TDH prevention efforts.

Epidemiology attempts to answer three basic questions — what causes disease, how is it spread, and how can we prevent it? The Bureau’s many programs not only support injury and disability prevention, but in some cases actually target the same developmental disabilities that TOP programs address. TDH Epidemiology programs include:

- the Injury Prevention and Control Program, which conducts investigations on the causes and methods of prevention of injuries, including head and spinal cord injuries;
- the Trauma Registry, which collects information from hospitals and ambulance firms across the state to support injury investigations;
- *Safe Riders*, which provides educational presentations on traffic safety, including bicycle helmets;
- Child Fatality Review Teams, which coordinate with State and local officials to identify risk factors in child deaths;
- the Poison Center Network, from which TDH collects information to prevent injuries from poison exposures; and
- the Birth Defects Monitoring Division, which is the primary State investigator of birth defects, and supports education of the public and health providers on causes and prevention of birth defects, including fetal alcohol syndrome.

- Many other TDH programs promote prevention of developmental disabilities. For example, the Office of Tobacco Prevention and Control targets tobacco use among teenagers. Tobacco use is a predictor of high-risk behavior, as well as a preventable cause of certain birth defects. Additionally, the Bureau of Children’s Health promotes prevention of developmental disabilities by counseling pregnant women on nutrition, child development, and injury prevention. Finally, the Immunization Division promotes prevention of developmental disabilities by tracking immunizations and distributing vaccines throughout the state.

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The TDH Bureau of  
Epidemiology is the  
centerpiece of the  
State’s prevention  
efforts.

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▼ **Continuing the Texas Office for the Prevention of Developmental Disabilities is unnecessary.**

- ▶ Abolishing TOP will avoid duplication of effort between the agency and the Texas Department of Health. TOP was created to fulfill an important mission. While much work has yet to be done, the Texas Department of Health has evolved as the lead agency for injury and disease prevention. TDH possesses the expertise and resources to carry out these activities.
- ▶ The TOP Executive Committee is composed of leaders in the field of children's health. Unfortunately, committee members have been forced to spend much of their time and energy overcoming the administrative hurdles of running a small, unfunded state agency.<sup>4</sup>
- ▶ The contributions that TOP Executive Committee members have made and will continue to make to disability prevention efforts in Texas are independent of, and in fact burdened by, TOP's status as an independent state agency. From 1991 to 1997 the Executive Committee played a key role in the disability prevention grant from the federal Centers for Disease Control and Prevention to TDH. A mutually beneficial arrangement existed between TOP, which needed funding, and TDH, which needed a disability prevention advisory committee as a condition of the grant. However, the current grant for the prevention of secondary disabilities precludes continued funding to TOP, but encourages continued involvement between TDH staff and members of the Executive Committee.<sup>5</sup>

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TDH could continue to benefit from the members of the Executive Committee.

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TDH could continue to benefit from the expertise provided by members of the Executive Committee. For example, the CDC grant focuses on building public-private partnerships. The grant is essentially seed money for "state capacity building" designed to attract private organizations, university-based programs, and national advocacy/voluntary organizations.<sup>6</sup> Members of the Executive Committee would serve TDH well in meeting this goal.

## Conclusion

The Executive Committee and staff of the Texas Office for the Prevention of Developmental Disabilities have worked hard to minimize the economic and human losses caused by preventable disabilities, especially raising awareness of Fetal Alcohol Syndrome and head injuries from bicycle crashes. When the agency was created in 1989, no State entity led a comprehensive prevention effort in Texas. Over the years, the Texas Department of Health has turned its attention to injury and disability prevention. Today, TDH is responsible for gathering data, planning, and implementing statewide prevention efforts. By abolishing the Texas Office for the Prevention of Developmental Disabilities, Texas would have a single prevention agency. The members of the TOP Executive Committee could continue to provide expertise and guidance to TDH staff without having to deal with the administrative burdens of maintaining a separate office.

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Prevention efforts are centered in the Department of Health, thus eliminating the need for the Office.

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## Recommendation

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### Change in Statute

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- **Abolish the Texas Office for the Prevention of Developmental Disabilities.**

This recommendation would abolish the separate Texas Office for the Prevention of Developmental Disabilities but would not diminish the State's prevention efforts. The Texas Department of Health is responsible for statewide prevention efforts, and would continue to raise awareness on the preventability of many disabilities and promote innovative prevention programs. TOP was created to promote a coordinated, comprehensive approach for the prevention of developmental disabilities. TDH is now positioned to continue that role.

### Management Action

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- **The Texas Department of Health should continue to promote public-private partnerships for disability prevention using the advice and expertise of the members of the TOP Executive Committee.**

Members of the Executive Committee are acknowledged experts in the field of children's health. TDH has a long-standing relationship with TOP, administering the federal grant that has funded TOP since 1991, and providing administrative support to the agency. TDH should continue its relationship with the members of the TOP Executive Committee under its current Centers for Disease Control grant for prevention of secondary disabilities. Further, TDH should use the expertise and guidance of the Committee members for future collaborative efforts between the State and other public or private organizations to promote disability prevention.

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## Fiscal Impact

This recommendation would have no fiscal impact to the State because the Texas Office for the Prevention of Developmental Disabilities receives no state funding.

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<sup>1</sup> Texas Office for the Prevention of Developmental Disabilities, *Report to the 75th Legislature*, (Austin, Texas, January 1997), p. 1.

<sup>2</sup> Texas Office for the Prevention of Developmental Disabilities, *Long Range State Plan for Disability Prevention*, (Austin, Texas, November 1994), p. iv.

<sup>3</sup> The Institute of Medicine, *The Future of Public Health* (Washington D.C.: National Academy Press, 1988).

<sup>4</sup> Texas Office for the Prevention of Developmental Disabilities, *Self Evaluation Report to the Sunset Advisory Commission*, (Austin, Texas, September 12, 1997), pp. 2-3.

<sup>5</sup> Memorandum from Joseph B. Smith, Senior Project Officer, U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, to Attendees of the Technical Assistance Workshop on State Capacity for Disability and Health, April 16, 1997.

<sup>6</sup> Interview by Sunset Staff with Dr. Lesa Walker, Division of Planning and Policy Development, Children with Special Health Care Needs, Texas Department of Health, August 4, 1998.

**TEXAS REHABILITATION COMMISSION**

**Report Prepared By:**

*Larry Graham - Project Manager*

Robert Morris  
Kristin Davis  
Ilan Levin  
Alisha Sanders  
Barbara Hunley

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**TEXAS PLANNING COUNCIL ON  
DEVELOPMENTAL DISABILITIES**

**Report Prepared By:**

*Kristin Davis - Project Manager*

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**TEXAS GOVERNOR'S COMMITTEE ON  
PEOPLE WITH DISABILITIES**

**Report Prepared By:**

*Alisha Sanders - Project Manager*

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**TEXAS OFFICE FOR THE PREVENTION OF  
DEVELOPMENTAL DISABILITIES**

**Report Prepared By:**

*Ilan Levin - Project Manager*

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**Charla Ann King - Senior Consultant**

**JOEY LONGLEY  
DIRECTOR**

Sunset Advisory Commission  
P.O. Box 13066  
Room E2.002, Capitol Extension  
Austin, Texas 78711  
<http://www.sunset.state.tx.us>

(512) 463-1300  
FAX (512) 463-0705