

**Outcome of the 78th Texas Legislative Session:
July 24, 2003**

I. Introduction

The purpose of this report is to provide a brief overview of the 78th Texas Legislative Session related to Appropriations and Riders. In reviewing the report it is important to know that many of the state agencies are still in the process of analyzing the impact of legislative action relevant to their operations and/or are developing rules to address the mandates assigned to them.

Concerning key bills pertinent to the health and human services system, in particular the mental retardation services system, please note the following:

- To view details and key provisions of HB 2292 go to www.ppat.com - Legislative News – HB 2292 Overview and/or Key Provisions of HB 2292.
- To view the status of bills PPAT monitored during the session; i.e., those that passed and those that did not, go to www.ppat.com - Legislative News – 78th Session – Bill Tracking.
- To view the implementation status of key Appropriations Riders and HB 2292, go to www.ppat.com - Legislative News – 78th Session – Implementation Status of Key Riders and Statutes.
- To obtain a copy of any bill, call the PPAT Office or go to www.house.state.tx.us or www.senate.state.tx.us under Bill Search.

II. Session Summary – Appropriations and Bills Filed

After 140 days of deliberations, at midnight, June 2, 2003, the 78th Texas Legislative Session ended. The Session began with the Comptroller's estimate that Texas was facing a \$9.9 billion budget shortfall (\$1.8 billion for FY'03 and \$8.1 for FYs 04' – '05) and Texas lawmakers vowing not to raise taxes. And they kept their pledge and developed a \$117.4 billion biennial budget for the state that does not raise taxes, but does reduce services, eliminates an estimated 10,000 state employee jobs, and allows for tuition deregulation in higher education. While there were many proposals (such as raising taxes on cigarettes and expanding corporate franchise taxes) debated to generate increased revenues to avoid any reductions in current services, such proposals died in committees.

During their 140 days of required business, the Texas Legislature filed a total of 5,754 bills and concurrent and joint resolutions (down from last session in which there were a total of 6,026 bills filed). Of these bills only 1,356 were sent to the Governor for signature of which 1,320 were signed into law and 48 were vetoed. *Note:* Of the 5,754 bills that were filed, PPAT monitored the status of 175 House Bills (to include HJRs and HCRs) and 121 Senate Bills (to include SJRs and SCRs).

It is important to remember that to address the budget shortfall previously mentioned, state agencies were directed to revise their budgets as follows: 1) FY 2003 Operating Budgets – Agencies were directed to reduce their budgets by 7% except for health and

human services which Commissioner Hawkins asked for a 10% reduction so he could adjust reductions as needed across all agencies), and 2) FYs 2004 – 2005 Legislative Appropriations Request (LAR) - the Governor, LT. Governor and Speaker called for a 12.5% reduction in current General Revenue (GR) funding levels with development of a revised LAR that created levels of funding requests. These levels are:

- **First Level - Relevant GR:** This level reflects what an agency could fund with the mandated reduction.
- **Second Level – Restoration of Budget:** This level reflects the funds an agency would need to “restore” each item it cut in the First level. The restoration of items is to be noted in priority order.
- **Third Level – Exceptional items List:** This level reflects those items an agency wants that are above and beyond items noted in the First and Second levels.

III. General Appropriations Bill

The state’s budget for FYs 2004 – 2005, as jointly passed by the House and the Senate, calls for \$117.4 billion in expenditures. Of these funds, approximately \$58.2 billion is GR. Of these allocations, health and human services received a 2.8% increase in spending (from \$38.7 billion in All Funds in FYs 2002 – 03 to \$39.8 billion in All Funds for FYs 2004 – 05), although such is resultant from the new federal relief funds recently approved by Congress rather than an increase in GR spending. The total amount anticipated from the federal relief is a little more than \$604 million, of which most will go to pay for soaring Medicaid costs. *See Section 11.28 under Article IX of this document for more details related to how these dollars will be sent.*

Constitutionally, the Comptroller must certify the availability of funds to cover the state’s budget. And while such certification was obtained, it is important to know that in the event the Comptroller had not been able to certify the budget, legislators had given her the authority to make across the board reductions. Critical to these cuts was the fact that 71% of the budget was exempt from any type “across the board cut” which had the potential to increase such cuts in areas such as public safety, prisons and higher education.

A. Article II: Health and Human Services

Article II of the Appropriations Bill reflects the dollars appropriated for funding the Texas health and Human services system over the upcoming biennium. Following is a preliminary overview of budget items critical to the mental retardation and other developmental disability programs.

TDMHMR Reimbursement Issues

- **State Schools:** No rate reduction was applied. State schools will now be subject to the Quality Assurance Fee (QAF).
- **ICF/MR:** A 3.5% rate reduction will go into effect on September 1, 2003. Conversion of the ICF/MR 6-bed to a HCS 6-bed was NOT Approved.
- **HCS/MRLA:** A 2.2% rate reduction will go into effect September 1, 2003 with a 3.5% rate reduction in Targeted Case Management/Service Coordination. Conversion of the 3

& 4-bed model to a 6-bed model was NOT approved. See Rider 70 on page 15 for more details.

Notes: 1) The implementation of Section 11.28 under Other Provisions as on page 15 of this report and Rider 54, on page 6 and related to use of excess funds of a QAF in the event approval for application of the QAF to the waiver program is obtained, provide mechanisms for restoration of all or a portion of these rate reductions. Providers are urged to plan for these reductions until further clarification on the implementation of these two Riders is obtained.

2) Information as to how the rate reductions are to be applied is still not available. Initially, legislators discussed that the reductions should be in administrative areas only. The only guidance at this time is noted in Rider 46 under HHSC on page 5 of this report.

3) The rate reductions for HCS/MRLA and ICF/MR parallel those made to community care and nursing home programs at TDHS with home health receiving both a rate reduction and a reduction by 15% in hours allowed and/or approved. Doctors and other Medicaid provider specialists received a 5% rate reduction.

IV. HB1 – Appropriations Riders

Following are riders, by agency, that are included in the Appropriations Bill. These riders direct agency expenditures either through mandated studies or policy directives. This document also includes a list of those riders pertinent to the industry that were eliminated during the Conference Committee process. These riders are noted at the end of the document and are being included in this report both for historical purposes as well as inquiries related to their status continue to be made.

HEALTH and HUMAN SERVICES COMMISSION (HHSC)

Rider 36. Rate Analysis and Reporting Requirements.

a. None of the funds appropriated by this act to HHSC may be expended or distributed by the Commission unless:

(1) the Commission submits to the LBB at least 60 days prior to the approval of any rate increase or program expansion for the Medicaid or CHIP programs:

- i. notification of the proposed rate increase or program expansion; and
- ii. a five-year cost impact analysis report using the most current caseload forecast.

(2) The cost impact analysis report shall be prepared in a format approved by the LBB.

b. Each report submitted to the LBB pursuant to this provision must contain a certification by the Chief Financial Officer (CFO) and HHSC that the information provided is true and correct based upon their belief together with supportive documentation. Additionally, the CFO and HHSC must either indicate that the proposed action is within biennial appropriations/available funding or estimate the amounts (including General Revenue and All Funds) by which the proposed action will exceed biennial appropriated/available funding.

c. The Office of the State Auditor shall review the Commission's documentation, supporting records, and justification, and report back to the LBB prior to the approval action.

d. The Comptroller of Public Accounts shall not allow the expenditure of funds appropriated by this Act to HHSC if the LBB certifies to the Comptroller of Public Accounts that HHSC is not in compliance with this provision.

Rider 44. *Evaluation of Mental Retardation Services.*

HHSC shall work with providers, advocates, appropriate agency staff, and other persons or entities deemed by the Commissioner to be necessary to accomplish the following:

a. Evaluate its current regulatory and administrative functions, and those of the agencies under its jurisdiction, relating to the provision of mental retardation services, and recommended ways to eliminate duplicative functions, while maintaining services and ensuring ongoing agency accountability; and

b. Reviews its current statutory authority and rules, regulations and procedures, and those of the agencies under its jurisdiction, relating to the provisions of mental retardation services, to identify those which exceed federal requirements, add no value to current programs, are duplicative, or are overly burdensome or costly, for the purpose of achieving an overall reduction in paperwork requirements imposed upon persons subject to its regulation of at least 10 percent by September 1, 2005 through:

(1) revision of its own rules, regulations and procedures;

(2) recommendations for revisions of rules, regulations and procedures of those agencies under its jurisdiction; and

(3) recommendations for statutory changes by the legislature.

c. The Commission shall report its findings, actions and recommendations to implement this directive to the LBB, the Senate Finance Committee, the House Appropriations Committee, and the Governor's Budget Office (GBO) no later than October 1, 2004.

Rider 45. *Mental Retardation Provider Cost Reporting.*

HHSC shall review and revise its mental retardation provider cost reporting rules, regulations and procedures for the purposes of simplifying the cost reporting process and reducing overall administrative costs to the state and providers while providing fair and accurate financial information to the state necessary to the proper planning and funding of mental retardation services. In so doing, HHSC shall seek to capture any and all costs, follow GAAP standards and to the extent possible, utilize financial statements similar to those prepared for banking, tax and other common business financial planning, evaluation, and reporting purposes. In implementing this directive, the Commission shall utilize a workgroup of providers, advocates, agency staff and private sector financial experts, and shall ensure a clear separation between the rate setting and analysis functions and from the audit functions.

Rider 46. *Medicaid Provider Reimbursement. – Application of FY 2004-2005 Reductions*

It is the intent of the Legislature that HHSC shall apply Medicaid reimbursement rate reductions,

required by FY 2004-05 appropriation levels as follows:

- a. Reductions related to any long term care budget strategy shall be calculated without rebasing of current reimbursement factors and shall be shared equally across all Medicaid providers funded by the strategy.
- b. Reductions related to physician reimbursement may vary based on Medicaid patient volume, access factors, or other similar factors. HHSC will seek input from the Physician Payment Advisory Committee prior to implementing any physician reimbursement changes.
- c. Reductions related to Medicaid hospital reimbursement shall be calculated without rebasing of current reimbursement factors and may vary based on Medicaid patient volume, access factors, or other similar factors. HHSC will seek input from the Hospital Payment Advisory Committee prior to implementing any hospital reimbursement changes.
- d. Capitation rates for Medicaid Managed Care plans shall be reduced across the board to gain administrative savings and program efficiencies assumed in the appropriations made above.
- e. HHSC may maximize the use of inter-governmental transfers to minimize the impact of provider rate reductions.

Rider 54. *Application of Quality Assurance Fees to Certain Waiver Programs.*

The Commission shall work collaboratively with TDMHMR to aggressively seek new ways to maximize the use of federal funds to pay for the cost of services provided through 1915(c) waivers operated by TDMHMR, including the possibility of assessing a Quality Assurance Fee on waiver services. Additional funds gained through this effort are hereby appropriated to the Department to be used to restore rate reductions in the HCS waiver, the MRLA waiver, and non-state operated ICF/MR programs. To the extent possible, the rate restoration shall be retroactive to the time of the initial reimbursement rate reduction. Any excess funds shall be used to reduce or eliminate the wage disparity between the wage component in the HCS and MRLA reimbursement model and the wages paid to comparable direct support professional services workers in state-operated programs for persons with mental retardation; and then, to reduce or eliminate the disparity between the wage component of the non-state operated ICF/MR program professional services workers in state-operated ICF/MR programs.

Rider 55. *Study of Facility Closure and Consolidations.*

It is the intent of the Legislature that, during the 2004-05 biennium, HHSC shall study the feasibility of closure and consolidation of facilities funded in TDMHMR Strategy B.1.1, State Hospitals, and Strategy D.11, State Schools. The Commission shall take into account information from clients, clients' representatives and families, service providers, advocates, and other interested parties in developing the recommendations. The criteria for identifying facilities for closure includes:

- a. Proximity to other facilities and geographical distribution of remaining facilities;
- b. Administrative cost of the facility;
- c. Availability of other employment opportunities in the area for employees displaced by the

closure;

d. Condition of existing facility structure;

e. Marketability of the property where the facility is located when considering possible sale of the property or alternative possibilities;

f. Ease of client transfer capability;

g. Capacity at remaining facilities to accommodate persons transferred from a facility identified for closure; and

h. Identification of specialty programs and services.

The Commission shall provide a report with site specific recommendations on closure and consolidations when the 2006-07 Legislative Appropriations Request is submitted to the Legislature.

DEPARTMENT of HUMAN SERVICES (TDHS)

Rider 28. Promoting Independence.

It is the intent of the Legislature that as clients relocate from nursing facilities to community care services, funds will be transferred from Nursing Facilities to Community Care Services to cover the cost of the shift services.

Rider 31. Community Care Assessment Tool.

Out of funds appropriated above, TDHS shall develop a new functional needs assessment tool for eligibility for community care programs for the aged and disabled clients, which takes into consideration any other evaluation/assessment tools utilized by other state agencies and other states. The tool shall take into consideration innovations in technology with assistive devices. The assessment tool shall be evaluated for validity by an independent third party as an assessment tool for ensuring the clients with the greatest functional needs are identified for services. The assessment tool shall ensure that a client's family resources, monetary, community resources and otherwise, are taken in consideration in calculation of hours of assistance needed. The scoring instrument will be used in conjunction with program services to ensure that clients with scores identifying the greatest needs are prioritized for services. It is the intent of the Legislature that the department provide a status report on progress in developing the tool to the LBB and the Governor by September 1, 2004 and that the tool be fully implemented by January 1, 2005.

Rider 36 Payment of August 2005 Nursing Home Payment.

Funds appropriated above include a reduction of \$142,500,000 in All Funds, including \$56,686,500 in General Revenue Match for Medicaid in Strategy A.1.6, Nursing Facility and Hospice Payments, for the August 2005 nursing home payment. TDHS is authorized to defer payment of the August 2005 payment until September of 2005.

Rider 37. Community Care Waiver Slots.

It is the intent of the Legislature that TDHS will not expand the base number of appropriated waiver slots through Rider 28 transfers. Clients utilizing Rider 28 shall remain funded separately through transfers from the Nursing Facility strategy, and those slots shall not count against the total appropriated community care slots. Rider 28 funding through the nursing facility strategy shall be maintained for those clients as long as the individual client remains in the transferred slot. When a Rider 28 client leaves a waiver program, any remaining funding for the biennium shall remain in the nursing facility strategy.

If the department determines available revenue within community care strategies requires a reduction in the base number of slots for waiver programs, the department shall utilize attrition to meet appropriated levels.

Rider 38. *Community Care Services.*

It is the intent of the Legislature that TDHS shall implement a community care assessment tool that focuses primarily on a client's ability to perform functional tasks. Any resulting savings shall be utilized to maintain services to the most vulnerable clients, and also minimize reductions in service levels for all clients.

Rider 40. *Maximization of Community Care Services.*

TDHS shall maximize services utilizing the most efficient and effective combination of functional needs score and hours of service to best meet the needs of community care clients. It is the intent of the Legislature that the department utilize all available flexibility to ensure the maximization of community care resources.

DEPARTMENT of MENTAL HEALTH and MENTAL RETARDATION (TDMHMR)

Rider 5. *Funds for the Medicaid Program.*

For the purpose of this section and appropriation authority for the Medicaid Program responsibilities of TDMHMR, the following subsections provide governance relating to appropriate use, classification and expenditure of funds.

- a. General Revenue Match for Medicaid. ABEST Method of Financing Code 758 – GR Match for Medicaid shall be used to report general revenue expenditures and request general revenue appropriations for the state's share of Medicaid payments for the following Medicaid services:
- b. General Revenue Certified as Match for Medicaid. TDMHMR shall use ABEST Method of Financing code 8032 – General Revenue Certified Match for Medicaid to identify general revenue funds requested and reported as expended for the purpose of drawing federal funds and to document that State funds have been spent for Medicaid services and administrative expenditures for the following services:
 - 1) ICF/MR that are operated by the State and known as "state schools";
 - 2) Services delivered in hospitals operated by TDMHMR including inpatient services for clients under the age of 21 and services that qualify under the federally approved Institutions for Mental Diseases (IMD) option for clients over the age of 65;

3) Rehabilitation Services as approved in the State Medicaid Plan which are provided by MHMR Authorities;

4) Service Coordination Services as approved in the State Medicaid Plan provided by MHMR Authorities; and

5) Medicaid Administrative Claims as approved in the State Medicaid Plan which are based on certain activities of MHMR Authorities.

Rider 9. *State School Medicaid Revenues.*

TDMHMR shall report quarterly to the LBB and the Governor on the distribution of ICF/MR state school revenues to other state agencies. This report shall be submitted no later than 25 days after the close of each quarter. The format and content of the report shall be prescribed by the LBB.

Rider 12. *Home and Community-Based Services (HCS) Waiver Program.*

The department shall ensure the cost-effectiveness of the HCS program by limiting the average annual HCS expenditure per client to 80 percent of the average annual per client ICF/MR expenditure. Expenditures for individual clients may exceed this cap as long as the overall average expenditure for HCS clients remains below 80 percent of the ICF/MR annual average. Furthermore, it is the intent of the Legislature that, in order to increase the number of clients served, the overall average monthly expenditure per client may not exceed \$3,389 per month in fiscal year 2004 and 2005. TDMHMR and HHSC shall report to the LBB and the Governor by October 1 of each year of the biennium, on the measures taken to decrease the average cost per person and to increase the number of clients served in the HCS program.

Rider 13. *Residential Services Funded by General Revenue.*

TDMHMR shall refinance, with Medicaid funding, residential services to Medicaid eligible clients that are currently funded with general revenue. This refinancing effort shall include both public and private general revenue-funded programs. The department shall accomplish this refinancing through the use of Medicaid waiver programs, or, if necessary, the ICF/MR program. The department shall submit a report by October 1 of each year of the biennium to the LBB and the Governor that documents the number of persons and residential sites converted to Medicaid funding. The format of this report shall be prescribed by the LBB.

Rider 15. *Equity Among Local Mental Health and Mental Retardation Authorities.*

It is the intent of the Legislature that TDMHMR shall develop and implement a long-term plan to achieve equity in state funding allocations among local mental health and mental retardation authorities. The plan shall be implemented from fiscal years 2006-2001. The goal of the plan shall be to achieve equity to the greatest extent possible by fiscal year 2011, however, any funding reductions to a local authority for the purpose of achieving equity may not exceed 5 percent of 11 allocated general revenue in a fiscal year. The plan shall also provide for improving funding equity to be a priority in distributing any new state or federal funds that may become available for allocation to community centers.

In assessing the equity of funding the Department may use alternatives other than basing equity calculations solely on the total population served by each local authority. Additional factors,

such as incidence of poverty, may be considered if they help to provide a better estimate of the need for state funded mental health and mental retardation services in the areas served by each local authority. The Department shall submit its long-term equity plan to the Office of the Governor and the LBB by December 31, 2003. The Department shall include in its legislative appropriations request a table showing how implementation of the equity plan will affect projected allocations to community centers at the baseline current services funding level.

Rider 16. *State School Funding.*

It is the intent of the Legislature that the department implement a single funding methodology for state schools which funds all state schools equitably and at a level which is adequate to maintain compliance with applicable federal standards.

The methodology should be based on the number of residents in each school and the needs of those residents.

Rider 17. *Report on Local Authorities.*

To ensure that the Legislature and Governor are kept informed of the effects of delegating to a local mental health or local mental retardation authority (local authority) the responsibility of planning, coordination, and oversight of mental health and/or mental retardation services in that area, the department shall submit a report by January 15 of each year to the LBB and the Governor. **This report shall describe both beneficial and detrimental client outcomes and shall be presented in a format to be prescribed by the LBB.**

Rider 32. *Pilot Project for Persons with Developmental Disabilities.*

TDMHMR is required to continue a project in Midland County which identified and served 16 individuals who required long-term care settings in the past and/or are still in need of and eligible for placement in long-term Medicaid group homes. For purposes of continuing this project, TDMHMR shall expend, out of funds appropriated, for fiscal year 2004 and 2005, an amount sufficient to continue

TDMHMR waiver program services to an individual participating in this project as long as that individual meets programmatic eligibility criteria. These 16 individuals, or their authorized representatives, were provided an opportunity to direct their own level of care, such that their service plans include only necessary and requested services. The original pilot was intended to demonstrate that provision of only necessary and requested services in a manner prescribed by persons with developmental disabilities will produce less dependent, more productive citizens in a most cost efficient model.

Rider 49. *Residential Providers.*

It is the intent of the Legislature that individuals seeking residential services for a person with mental retardation have a choice of available providers. To ensure choice, the agency shall inform individuals seeking residential services of all the service options available, including large and small congregate living arrangements and waiver services.

Rider 50. *Placement Options.*

An individual with mental retardation or an individual's legally authorized representative seeking residential services shall receive a clear explanation of programs and services for which the

individual is determined to be eligible, including state schools, community ICF's-MR, 1915(c) waiver services or other services. The programs and services that are explained shall be documented in the individual's record and acknowledged in writing by the individual or the individual's legally authorized representative. If the chosen programs or services are not available, the individual or individual's legally authorized representative shall be given assistance in gaining access to alternative services and the selected waiting lists.

The department shall keep a central list of the number of openings available for each type of residential service. The department shall honor the program and services preference of the person or the person's legally authorized representative to the maximum extent openings are available in a residential program or service for which the individual meets program criteria.

Rider 53. *Home and Community-Based Services Mid-Range Waiver.*

TDMHMR, in conjunction with HHSC, is authorized to seek approval from the Centers for Medicare and Medicaid Services for a Home and Community-based Services 'mid-range' waiver to provide services and supports to persons with mental retardation who do not require out-of-home residential support. Services and supports in this waiver would be capped at \$25,000 per year. The LBB and the Governor must approve implementation of this waiver prior expenditure of any funds on waiver placements.

Rider 54. *Provision of Information About All Care Alternatives.*

TDMHMR shall comply with the requirements of §533.038 of the Health and Safety Code by specifically providing to a person with mental retardation seeking residential services, or the person's legally authorized representative, information regarding the full continuum of care alternatives that are available, as well as information regarding spaces available in all the care alternatives.

Rider 59. *Local Service Area Planning Pilot Project-Gulf Coast.*

TDMHMR may develop a pilot project, beginning in fiscal year 2004, negotiating a performance agreement with the Gulf Coast Center based on priorities identified by the community and expressed in a local service plan. The performance agreement shall specify outcomes as established in the

Appropriations Act for programs administered by the local authority, and financed by general revenue funds. Performance related to these outcomes must be verifiable by the Department. Measures relating to outputs and units of service delivered which may be included in the performance agreement shall be recorded in the local authority automated data systems. Copies of these reports shall be forwarded to the Department on a quarterly basis.

The Department shall develop criteria for evaluation of the pilot project and report on the effectiveness of the pilot project to the LBB and the Governor by December 31, 2004.

Rider 61. *Recoupment of Funds from Local Authorities.*

Notwithstanding other provisions of this Act, any state funds appropriated for fiscal year 2004 recouped by the department from a local mental health or mental retardation authority for failing to fulfill its performance contract with the state, are hereby reappropriated to the department to reallocate to other local mental health or mental retardation authorities to use for a related

purpose in fiscal year 2005. In conjunction with the reallocation of funds, the Department shall provide a report to the LBB and the Governor on the amount of funds, the reasons for the recoupment, the local authorities involved, any performance contract requirements that were not met, and the purposes of the reallocation.

Rider 66. Contingency Appropriation for HB 2292.

Contingent upon the enactment of HB 2292, or similar legislation related to imposing a Quality Assurance Fee on facilities owned by TDMHMR, by the Seventy-eighth Legislature, Regular Session, the amounts appropriated above from the Quality Assurance Account No. 5080 include an estimated \$27,779,438 in fiscal year 2004 and an estimated \$27,780,950 in fiscal year 2005 from fees collected pursuant to House Bill 2292.

Rider 67. Authorization of Deferred Payments to Community MHMR Centers.

a. TDMHMR is hereby authorized to defer payments to community MHMR centers for services in fiscal year 2005 until September 2005 and those deferred payments will be paid from fiscal year 2006 appropriations in an amount not to exceed \$5,500,000 in General Revenue.

b. However, after and contingent upon the Comptroller providing notice to the LBB and the Governor regarding a finding of fact by the Comptroller (at the time of certification or after certification of this Act) that sufficient revenue is estimated to be available, and following approval by the LLB and Governor, there is hereby appropriated to the TDMHMR such amounts as may be necessary for payment of the one month deferred payments (estimated to be \$5,500,000 General Revenue) by August 31, 2005.

Rider 68. Efficiencies at Local Mental Health and Mental Retardation Authorities.

It is the intent of the Legislature that the local mental health and mental retardation authorities that receive allocations from the funds appropriated above (in Goal 1, Community Mental Health Services and Goal 3, Community Mental Retardation Services) shall maximize the dollars available to provide services by minimizing overhead and administrative costs and achieving purchasing efficiencies.

Among the strategies that should be considered in achieving this objective are consolidations among local authorities and partnering among local authorities on administrative, purchasing, or service delivery functions where such partnering may eliminate redundancies or promote economies of scale. Local mental health and mental retardation authorities shall also maximize third party billing opportunities, including Medicare and Medicaid.

By November 30, 2004 the State Auditor's Office shall report to the Legislature on the progress in achieving such efficiencies, and the opportunities for achieving further efficiencies, including structural efficiencies, in the local authority service delivery system. **It is the Legislature's intent that local authorities not expend funds appropriated in Strategy C.1.1 Mental Retardation Community Center Services to supplement the rate-based payments they receive to fund their costs as providers of waiver or ICF-MR services and that the State Auditor shall identify the amounts of any such supplementation occurring in fiscal year 2004 in its report to the Legislature.**

Rider 69. Expenditures on Bond Homes.

It is the intent of the Legislature that expenditures made for the provision of client services in bond homes operated by TDMHMR shall not exceed the approved reimbursement rates.

Rider 70. Feasibility Study of Six Bed Waiver Settings.

In order to make TDMHMR waiver services more cost effective and maximize the number of persons served, the Department shall study the feasibility, costs, and benefits of converting waiver residential services to six bed settings, with the intent that any feasible conversion begin in fiscal year 2006. The study shall consider required provider rates, the transition costs to providers, and the impact on consumers. The study shall be developed with the assistance of a workgroup which shall include a member of the staff of the department, representatives of public providers, private providers, and advocates. The Department will complete the study by March 31, 2004 and will report its findings to the Governor's Office of Budget and Planning, the House Appropriations Committee, the Senate Finance Committee, and the LBB.

SPECIAL PROVISIONS RELATING TO ALL HEALTH and HUMAN SERVICES AGENCIES

Sec. 14. Consolidated Waiver Pilot Project Authorization.

From funds appropriated in Article II for Medicaid waivers that serve people with disabilities, TDHS is authorized to utilize up to \$5,738,858 in Interagency Contracts and \$7,963,364 in matching federal funds for the biennium to continue implementation of a pilot waiver program that would consolidate waiver services provided to eligible clients. Waiver programs affected under this provision include Community Based Alternatives, Community Living Assistance Support Services, and Medically Dependent Children's Program at TDHS and the Home and Community Services waiver at TDMHMR.

Sec. 18. Limitation on Appropriations for Long-term Care Waiver Slots.

None of the funds appropriated to TDHS and TDMHMR for long-term care waiver slots may be utilized for purposes other than the following unless the alternative purpose was previously authorized by the LBB and the Governor:

- a. the establishment and maintenance of long-term care waiver slots;
- b. the provision of wrap-around services that are specifically associated with such slots and that relate to transitional services, access to immediate housing, and transportation services; or
- c. the development of family-based alternatives for children leaving institutions as authorized in Government Code §531.055, as added by Acts 2001, Seventy seventh Legislature, Chapter 590, §2.

The provision applies to funds appropriated for the Mental Retardation (MR) Medicaid Waiver program at TDMHMR and the following waiver programs at TDHS: Community-based Alternatives (CBA), Community Living Assistance and Support Services (CLASS), Medically Dependent Children's Program (MDCP) and Deaf-Blind with Multiple Disabilities Waiver.

Sec. 28. Contingency Appropriation for HB 2292.

Contingent upon enactment of House Bill 2292 or similar legislation by the 78th Legislature relating to the provision of health and human services, including the powers and duties of HHSC and other state agencies, reorganizing the structure of Health and Human Services agencies, changing program eligibility and service levels, and establishing client financial contributions, the following provisions shall be implemented on the effective date or dates specified in that Act, only for the purpose of implementing the provisions of House Bill 2292 or similar legislation:

- a. **Transfers.** All powers, duties, obligations, rights, contracts, leases, records, personnel, property, full-time-equivalents (FTE's), appropriations, and other funds of health and human services agencies to be abolished by House Bill 2292 are transferred to HHSC or the appropriate agency or agencies established by House Bill 2292.
- b. Appropriations to Article II Agencies.
 - 1) Appropriations to HHSC for the 2004-05 biennium are hereby reduced by \$180.1 million in General Revenue and by the appropriated amount of matching or related Federal Funds. The number of authorized FTE positions for HHSC is reduced by 985.6 for FY 2004 and by 2,116.5 for FY 2005. HHSC shall allocate funding and FTE reductions to the appropriate health and human services agencies and strategies.
- c. Appropriations to the End of Article II for Employee Benefits.
- d. Appropriations to Office of the Attorney General.
- e. Appropriations to the End of Article I for Employee Benefits.
- f. e-Texas Recommendations.

Other Provisions – Article IX

Sec. 11.28. Appropriation of State Fiscal Relief Federal Fund

- a. Notwithstanding other provisions of this Act, based upon the passage of federal legislation that provides federal funds for the purpose of state fiscal relief, such funds are appropriated, after the implementation of Section 11.15, Contingency Appropriations Reduction and Continuation Appropriation, to the Comptroller of Public Accounts in the fiscal year in which the funds are received for the purpose of transferring funds to state agencies for state fiscal relief, as provided by subsection (b) of this section.
- b. The LBB and the Governor shall develop a plan that outlines the transfers of these funds, by the fiscal year, agency, and strategy for the purpose of state fiscal relief. It is a priority of the Legislature that the plan of transfers will provide funding as follows:
 - 1) **One-quarter of the amounts received for state fiscal relief may be used for partial restoration of reimbursement rates assumed in Article II of this Act to fiscal year 2003 levels.**
 - 2) Restoration of the hours assumed in Community Care Programs at the TDHS to fiscal year 2003.
 - 3) Such funds shall also be used for the items shown below in bill pattern order:

Texas Department of Health:

A.3.1, HIV &STD Education & Services

D.2.1, Community Health Services

Health and Human Services Commission:

B.2.3, Premiums: Pregnant Women (from 158% of the Federal Poverty Level to 185% of the Federal Poverty Level)

B.2.4, Premiums: Children/Medically Needy (for Medically Needy)

B.2.7, Cost Reimbursed Services (for Graduate Medical Education)

Department of Human Services:

A.1.1, Community Care – State Department of MHMR

Department of Mental Health and Mental Retardation

C.1.1, MR Community Services

Department of Protective and Regulatory Services:

A.1.7, At-Risk Prevention Services

4) Texas B-On-Time Loan Program

V. Riders Considered But Not Approved

Authorization of Deferred Payments to Contracted Service Providers:

This rider would have authorized payment delays for HCS/MRLA and ICF/MR providers in the last month of FY '05 to the first month of FY '06. **Notes:** Nursing homes and MHMR community centers will be subject to this payment delay – See Rider 36 under TDHS and Rider 76 under TDMHMR. **As a reminder no payment delay will occur in August 2003 for ICF/MR and HCS/MRLA.**

Future of Mental Health and Mental Retardation Service Delivery:

The proposed rider would have authorized the establishment of a Task Force to develop a long range plan for the MR services system.

Local Authority Consolidation:

The proposed rider would have required a pilot project to restructure and consolidate two or more of the current 42 local mental health and mental retardation authorities. **Note:** See Rider 68 under TDMHMR related to efficiencies of the local authorities.

Savings at State Schools:

The proposed rider would have required TDMHMR to implement cost saving mechanisms to reduce overall costs of state school operations by 1% effective September 1, 2004 and an additional 1% effective September 1, 2005.

Staff Recruitment and Retention:

The proposed rider would have required HHSC to develop a plan to address recruitment and retention of health and human services staff in the Texas system that includes incentives to facilitate a stable and competent work force and to recommend solutions to the problem of high turnover, the pursuant costs of staff training and diminished quality care for consumers.

Reimbursement Rates for Large Facilities:

The proposed rider would have required HHSC to conduct an independent study of state school operations and costs in order to clearly identify reasons for the cost differences between state school rates and the rates paid to providers of large ICF/MR in the community. It further would

have required that costs be compared among cost categories delineated in the rate methodology used for calculating the reimbursement rates for large facilities and that HHSC utilize an advisory panel of private providers, TDMHMR staff and advocates with operational and financial expertise to assist in the study.

Glossary

SB = Senate Bill

SJR = Senate Joint Resolution

SR = Senate Resolution

HB = House Bill

HJR = House Joint Resolution

HCR = House Concurrent Resolution

HR = House Resolution

HHSC = Health and Human Services Commission

TDHS = Texas Department of Human Services

TDH = Texas Department of Health

TDMHMR = Texas Department of Mental Health and Mental Retardation

LBB = Legislative Budget Board

ICF/MR = Intermediate Care Facilities for the Mentally Retarded

HCS = Home and Community-Based Services

CFO = Chief Financial Officer

GBO = Governor's Budget Office

Please contact the PPAT Office if you have any questions.