

# Actionline

*A bi-monthly newsletter of The Arc of Texas Governmental Affairs Department*

July 2005

In this issue:

[Advocacy Efforts During the 79th Legislative Session](#)  
[79th Legislative Highlights:](#)  
[Upcoming Advocacy Trainings](#)  
[Advocacy Teams](#)

## [Advocacy Efforts During the 79<sup>th</sup> Legislative Session](#)

Advocates had a tremendous impact this legislative session! While the session had its challenges, advocates rose to the occasion and helped turn the tide for many issues. As a result of our weekly 'Advocacy Days', we documented an unprecedented 167 legislative visits made this session by families and self-advocates. In addition, including Capitol Day visits in February, those who testified at various hearings, and other activities at the Capitol, we estimate that over 400 legislative visits were made to legislators regarding important bills and issues this session. As a result of our advocacy efforts, we were able to connect with legislative offices, promote awareness, and have our voices heard down at the Capitol.

A big 'thank you' goes out to everyone who made calls, wrote letters, and walked the halls of the Capitol. We appreciate all of your efforts and your dedication to advocate on behalf of people with mental retardation and developmental disabilities. Stay tuned as advocacy opportunities continue to arise throughout the interim.

## [79<sup>th</sup> Legislative Highlights:](#)

### **BUDGET**

#### **Promoting Independence**

SB 1 provides \$2.5 million GR for the movement of 95 persons from large ICFs/MR to HCS Waivers

#### **Quality Supports & Services**

DADS Budget Rider 52 ("Contingent Appropriations for HCS and CLASS Waiver Services Program") would establish a quality assurance fee (QAF) for the HCS and CLASS Waiver programs that could then be used to enhance the quality of supports and services provided to individuals in those programs. The resulting revenues would restore rates to FY 2003 levels (\$8.44 million in General Revenue-Dedicated) and would allow provider rate increases (\$17.75 million in

GR-Dedicated) for all Community ICF/MRs, HCS and CLASS providers. NOTE: This is a contingent appropriation. The HHSC and DADS are currently awaiting federal approval of this item.

### Waiting Lists

SB 1 provides a total of \$97.9 million in General Revenue funds to address the DADS waiting lists. This figure includes \$18.4 million GR for Demographic Growth and \$79.5 million for Reducing the Waiting Lists. Please note that of the total funds appropriated to the HCS Medicaid Waiver program, a total of \$1.2 million in General Revenue per year of the biennium is dedicated to provide waiver supports and services to individuals aging out of the foster care system (DADS Budget Rider 54). For program specific information, see the table below.

Medicaid Waiver Program	Population	Texans Waiting (As of 11/30/2004)	Earliest Reque Date on Fil (As of 11/30/20
<i>Home and Community Services, HCS (for people with mental retardation)</i>	Mental Retardation, primary diagnosis	26,698	6/28/1993
<i>Texas Home Living Waiver, TxHML</i>	Mental Retardation, primary diagnosis—no residential supports	<i>Not applicable</i>	<i>Not applicab</i>
<i>Community Living and Support Services, CLASS</i>	Developmental Disability, mental retardation is not the primary diagnosis	13,453	10/27/1993
<i>Deaf/Blind-Multiple Disabilities, DB-MD</i>	Persons over age 18 who are deaf, blind, and have a third developmental disability	18	10/15/2001
<i>Medically Dependent Children Program, MDCP</i>	Children who are medically dependent	8,604	5/8/1998
<i>Consolidated Waiver Pilot Program, CWP</i>	Pilot was supposed to consolidate all waivers. At this time, the CBA and DB-MD Waiver programs are excluded	<i>Not applicable</i>	<i>Not applicab</i>
<i>Community Based Alternatives Program, CBA</i>	Persons age 21 and over who qualify for nursing facility care	66,728	8/5/1999

## 79<sup>th</sup> Legislative Highlights: LONG TERM CARE

**BILL: HB 315 Author: Olivo**

*Relating to criteria for voluntary admission to state schools for persons with mental retardation.*

Points of Interest:

- Changes current state school admissions criteria so that any person with mental retardation who requires staff intervention in the community is automatically eligible for state school admission.
- Expands eligibility for state school admissions.

**POSTION: AGAINST**

**STATUS: Died in Committee**

**BILL: HB 470 Author: Davis, John**

*Relating to local delivery or aging, disability, behavioral health, and mental retardation services.*

Points of Interest:

- Eliminates the role of the “Mental Retardation Authority” at the local level
- Abolishes 41 local authorities and creates 10 regional authorities
- Moves Intake and Access functions to a new “Aging and Disability Authority” (regional authority)
- Limits MHMR Community Center role in provision of assessment and service coordination
- Sets the stage for a Managed Care company to manage mental retardation, and other disability and aging, services

**POSTION: AGAINST**

**STATUS: Died on House Floor**

**BILL: HB 1867 Author: Naishtat Sponsor: Zaffirini**

*Relating to the transfer of money appropriated to provide care for certain persons in nursing facilities to provide community-based services to those persons.*

Points of Interest:

- Codifies Budget Rider 28 (78<sup>th</sup> Legislature); makes “Money Follow the Person” for individuals leaving nursing homes permanent

**POSITION: FOR**

**STATUS: Signed by the Governor on June 18, 2005; Effective September 1, 2005**

**BILL: HB 2449 Author: Naishtat**

*Relating to a pilot program for transferring money appropriated to provide institutional care for certain persons to provide community-based services to those persons.*

Points of Interest:

- Allows a “Money Follow the Person” pilot for individuals with mental retardation and related conditions who currently reside in ICFs/MR
- Directs HHSC and DADS to establish criteria (size and number of provider facilities; history of quality of care, geographic area, etc.) for selecting 1 to 5 ICF/MR providers to participate in the pilot
- Directs HHSC to decertify an appropriate “bed” for every person that leaves the ICF/MR facility under this pilot

**POSITION: FOR**

**STATUS: Died in Calendars Committee**

**BILL: HB 2572 Author: Truitt Sponsor: Janek**

*Relating to the functions of local mental health and mental retardation authorities.*

Points of Interest:

- Sets in law the agreement between the Private Providers Association in Texas and Texas Council of Community MHMR Centers allowing an entity to manage funds and provide services with certain limitations
- Sets the number of authorities at no less than 41, unless there are voluntary mergers of substantial contract compliance problems
- Ensures that state schools are offered as one of the choices for residential options
- Requires DADS local service providers further DADS goals including community integration

- Establishes a joint committee of 5 House and 5 Senate members to study the local MHMR service delivery system and make recommendations for improving services, increasing accountability, and integrating other disability and aging services

**POSITION: FOR**

**STATUS: Vetoed by the Governor on June 17, 2005**

**BILL: SB 40 Author: Zaffirini Sponsor: Dukes**

*Relating to permanency planning procedures for children residing in state institutions.*

- Ensures that permanency planning efforts for children with disabilities in Texas institutions are conducted free of conflict of interest
- Transfers the responsibility for permanency planning to an entity other than the facility where the child resides

**POSITION: FOR**

**STATUS: Signed by the Governor on June 17, 2005; Effective September 1, 2005**

**BILL: SB 361 Author: Carona Sponsor: Olivo**

*Relating to criteria for voluntary admission to state schools for persons with mental retardation.*

Points of Interest Regarding the Committee Substitute to SB 361:

- Ensures that an individual's legally authorized representative or guardian receives a clear explanation of all programs and services for which the individual is eligible
- Sets in law that the determination of "the least restrictive environment" is made on an individual basis
- Mandates that DADS document in the appropriate records the programs and services that were discussed with the individual's legally authorized representative or guardian

**POSITION: FOR**

**STATUS: Died on House Floor**

**BILL: SB 627 Author: Zaffirini**

*Relating to a pilot program for the transfer of money appropriated for certain institutional care for children to provide community-based services to those children.*

Points of Interest:

- Allows a “Money Follow the Person” pilot for children with mental retardation and related conditions who currently reside in ICFs/MR
- Directs DADS and HHSC to move not more than 50 children per year of the biennium under this pilot
- Allows HHSC to decertify a appropriate “bed” for children that leave ICFs/MR under this pilot, after taking into consideration the entire Texas ICF/MR bed plan in order to maintain the viability of small and medium ICF/MR providers

**POSITION: FOR**

**STATUS: Died in Calendars Committee**

## **79<sup>th</sup> Legislative Highlights: STUDENTS WITH DISABILITIES**

Prepared by: Kay Lambert, Advocacy, Inc.

**“AFTER ALL IS SAID AND DONE, AND LOT MORE WILL BE SAID THAN DONE.”**  
(Anonymous)

There were many bills filed this session that would have impacted the education of students with disabilities. However, most met the same fate as the majority of the other public education bills. That is, they died.

When the Texas legislature failed to pass either a school finance bill or a bill reauthorizing the Texas Education Agency (referred to as “the TEA Sunset bill”), the many other provisions in those bills also failed. Many education issues that started out as separate bills eventually became additions to either the school finance bill or the bill reauthorizing TEA.

Following is a brief summary of what did happen this session. The summaries below cover only issues of specific interest, and are not summaries of the entire bill. To see the complete text of any bill, go to: [www.capitol.state.tx.us](http://www.capitol.state.tx.us).

### **DISCIPLINE**

#### **HB 283 (Hope/Zaffirini):**

- ◆ Allows a parent to request that his child who is being bullied be transferred to another classroom or campus. The district’s board of trustees or designee must verify the student has been a victim of bullying;
- ◆ Requires student codes of conduct to prohibit bullying, harassment and “making hit lists”; and
- ◆ Requires an ARD meeting before disciplining a special education student for “bullying, harassment and making hit lists.”

#### **HB 308 (Hope/Staples):**

- ◆ Requires school districts to allow transfer of a student who has been the victim of a sexual assault to a campus other than the one attended by the perpetrator. If the student does not wish to transfer, the perpetrator will be transferred to another campus, the DAEP or the JJAEP.

#### **HB 603 (Eissler/Lindsay):**

- ◆ Student codes of conduct must specify whether consideration is given as a factor in a decision to order suspension, removal to a DAEP or expulsion to:

- Self-defense;
  - Intent or lack of intent at the time the student engaged in the conduct;
  - A student's disciplinary history; or
  - *A disability that substantially impairs the student's capacity to appreciate the wrongfulness of the student's conduct.*
- ◆ Student codes of conduct are no longer *required* to specify a minimum term of removal under Sec. 37.006 or an expulsion under Section 37.007 [except for 37.007 (e) which deals with students who bring firearms to school].
  - ◆ Students who have engaged in certain offenses, and have been removed by a teacher from the classroom, cannot be returned to that classroom without the teacher's consent.
  - ◆ Educators who are assigned students who have committed certain offenses must be informed by the principal or principal's designee of those offenses. Educators must keep this information confidential.

**HB 1687 (Dutton):**

- ◆ Prohibits juvenile justice alternative education programs (JJAEPs) from requiring a student, parent or guardian to pay any fee to attend a JJAEP.

*Advocacy, Inc. Note: A rider on TEA's budget also requires JJAEPs to be provided free textbooks.*

**SB 1473 (Lindsay)**

Requires education and training programs for law enforcement officers on de-escalation and crisis intervention technique to facilitate appropriate interaction with persons with mental impairments. Specifically, the Bill Blackwood Law Enforcement Management Institute of Texas (LEMITE) will develop and provide this training as part of both the initial and continuing education requirements of police chiefs. The training must be made available by January 1, 2006.

*Advocacy, Inc. Note: The persons required to get this training include those police chiefs working in school districts. Other police officers, including school district SROs, will receive this training when they apply for immediate or advance proficiency certificates.*

**OTHER EDUCATION BILLS/ISSUES**

**HB 1116 (Solomons/Hamric/Truitt/Dunnam):**

- ◆ Reauthorizes several state agencies, including the Texas Education Agency. TEA's inclusion in this bill was necessary because the bills containing the recommendations of the Sunset Commission's review of TEA (SB 422 and HB 2576), and its recommendation to reauthorize the Agency, did not pass. TEA will have to be reviewed again by the Sunset Commission prior to the 80<sup>th</sup> Legislative session (2007).
- ◆ Limits the upcoming Sunset review to a review of those recommendations made by the Sunset Commission to the 79<sup>th</sup> Legislature. However, the Commission can add other recommendations it considers important.

*Advocacy, Inc. Note: The recommendation by the Sunset Commission to move the special education due process hearing system from TEA to the State Office of Administrative Hearings (SOAH) will automatically be considered again next session.*

### **SB 882 (Lucio):**

- ◆ Updates language authorizing the Interagency Council on Autism and Pervasive Developmental Disorders, including changing its name to the Texas Council on Autism and Pervasive Developmental Disorders.
- ◆ Directs TEA to establish a committee to review the current Commissioner's rule requiring ARD committees to make additional considerations when developing the IEP of a student with autism or PDD. The committee will look at whether other considerations, such as "applied behavior analysis, communication training, or the use of inclusive settings" should be included in the rule. The committee will make recommendations to the Commissioner of Education by July 1, 2006. The Commissioner can propose any additional IEP requirements that are necessary to ensure a student with autism or PDD receives a free appropriate public education.
- ◆ The committee must include parents, teachers and administrators. However, employees, consultants or contractors with school districts can not make up more than 50% of the committee.

*Advocacy, Inc. Note: SB 882 contains the recommendations originally in SB 124 by Shapiro. They were added to SB 882 in the last few days of the session.*

### **VOUCHERS**

No voucher bill passed, but it was very close in the House. An amendment to the TEA Sunset bill that created a public school voucher program in 4 urban school districts was defeated by only two votes. The voucher amendment did include students with disabilities in the pool of students eligible for vouchers.

The Senate never voted on vouchers. It seems safe to predict that voucher proponents will try again next session.

## **SCHOOL FINANCE**

No school finance bill passed. Therefore, the current system of funding special education by a series of funding weights based on a student's "instructional arrangement" continues for now. This will likely be an issue again in the special session.

ADDITIONAL NOTE: On Saturday, June 18, the Governor vetoed the school funding portion of the appropriations bill (SB 1). Legislators are currently meeting on this issue in a special session that began on Tuesday, June 21<sup>st</sup>. Though the session is intended to resolve the issue of school finance, there may be attempts to address other education issues, such as vouchers, during the session. Persons interested in public schools should follow the special session closely. To see the special session proclamation, go to <http://www.governor.state.tx.us/divisions/press/proclamations/proclamation2.2005-06-18>

## **TRANSITION**

Section 10.04 of the state appropriation bill (SB 1) directs the Texas Education Agency, the Department of Assistive and Rehabilitative Services, and the Department of State Health Services to develop and adopt, with other appropriate agencies, a memorandum of understanding (MOU) establishing each agency's responsibilities for providing "transition services" necessary to prepare students with disabilities to successfully transition to life outside the public school system. The MOU must be completed and adopted by December 31, 2005.

*Advocacy, Inc. Note: When the Governor vetoed the section of the Appropriations Bill (SB 1) funding the Texas Education Agency, the above rider was also vetoed. It may or may not be added back to any school funding bill passed during the special session that began June 21<sup>st</sup>.*

## **Upcoming Advocacy Trainings**



# ***Attention Advocates!***

We are in the process of planning further legislative advocacy trainings for the coming months. We are planning on holding trainings in the following communities:

- Bryan/College Station
- Laredo
- Denton
- Houston/Woodlands
- Plano
- Waxahachie
- Corpus Christi
- Lubbock
- Tarrant County/Southlake
- El Paso
- Rio Grande Valley (Harlingen/Weslaco/McAllen)
- Central Texas:
  - Austin
  - Georgetown
  - Burnett
  - Temple
  - Waco
  - Killeen

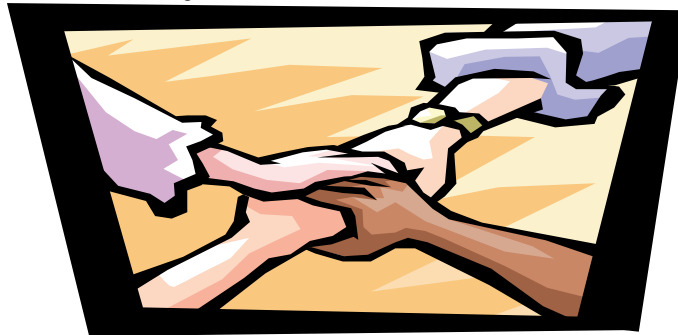
If you are interested in working with staff to organize a training in one of these communities, please contact Dee Dee Eberle at (800) 252-9729, ext. 110, or at [deberle@thearcotexas.org](mailto:deberle@thearcotexas.org).

**[Advocacy Teams](#)**

# Join an Advocacy Team!

These are tough times for disability advocates in Texas—Threatened cuts in services; continued growth of waiting lists for community supports; state policies that do not support community involvement for people with developmental disabilities. In the face of these challenges, The Arc of Texas and our members must become even more organized and active in defending the interests of Texans with developmental disabilities.

*To help fight back, The Arc invites you to be part of our new Advocacy Teams—or “A-Teams”!*



The **A-Team** mission is to:

- build close working relationships with key legislators and policy makers,
- educate them about the needs of Texans with developmental disabilities, and
- encourage them to support resources and supports needed to create opportunities for people with developmental disabilities to be fully included in their communities.

**A-Team** members will be the eyes, ears and VOICE of The Arc throughout the state. Each A-Team will be assigned to the legislators in a specific legislative district. Each team will select a Team Leader who will:

- coordinate activities that will not only support statewide disability policy, but local efforts as well
- liaise with The Arc of Texas staff, who will assist with advocacy efforts as needed
- meet with legislators at least twice each year, building relationships with key decision makers and their staff

To support **A-Team** advocacy efforts, The Arc will:

- provide contact information for assigned legislators, policy makers and reporters, as well as regular Advocacy Alerts, Strategy Memos and Talking Points

If YOU want to improve access to community supports for all Texans with developmental disabilities, if YOU want to help meet the support needs of families and individuals, if YOU want policymakers to listen for a change—join an **A-Team!** For more information, contact Dee Dee Eberle at The Arc of Texas at (800) 252-9729, ext. 110, or at [deberle@thearcoftexas.org](mailto:deberle@thearcoftexas.org) .

[Back to Actionline July 2005](#)