Despite significant gains in some areas, decisions made by the 85th Texas Legislature destabilized fundamental community services and supports.

The Coalition of Texans with Disabilities
2017 Legislative Report
What kind of future can we build on the Legislature’s blueprint?

It’s no secret that the Texas Legislature plays a big role in where our state is going. But are they simply reacting? At CTD, we don’t think so. Patterns emerged clearly this year that lead our state in a definite direction—the Texas blueprint if you will.

The most alarming trend is the Legislature’s role in managing state revenues. We heard plenty about how this was just a low revenue year and, so sorry, Texas just didn’t have the money to address critical needs in disability services. Often, this was combined with a solemn comment on a downturn in the oil and gas business. Yet the biggest hole in the budget this year was a direct result of the Legislature’s own actions in 2015 to eliminate or divert revenue streams. Plus, they remain unwilling to meaningfully tap the $12 billion Rainy Day Fund, citing bogus reasons like it was needed for the state’s bond rating (not funding programs is actually hurting the state’s credit, according to the S&P) or as a reserve for disasters. The money was there, the legislators just refused to use it. Finally, there was a strong, though unsuccessful, effort to make things even worse by phasing out the franchise tax. The franchise, or margin, tax is paid solely by businesses and, despite a major tax cut in 2015, is still an important source of state tax revenue.

Our 2017 advocacy team, from left, Policy Intern Jordan Fogle, Executive Director Dennis Borel, Policy Specialist Chris Masey, Director of Advocacy Chase Bearden, and Director of Communications Laura Perna.
Another alarming trend: there seems to be a real desire to **govern by lawsuit**. Voter ID, foster care reform, sanctuary cities laws, and more all were driven by and/or will immediately cause court actions. Is this state government or a law firm mentality? And what cost to taxpayers is this approach incurring?

Third, **substance took a real backseat to politics.** We expect egos, party politics, personal agendas, and drama in the Legislature, but we also expect meaningful policy. For instance, it shouldn’t be about the tiny fraction of kids with disabilities who might be able to use a voucher; it should be about special education for the 99% in public schools. Battles over local control are missing the forest for the trees (sometimes, literally). The Governor has made an issue of who protects historic trees, for example, but will this really have an impact on the lives of Texans the way that, say, the budget will? Let’s not lose sight of the larger, often scarier picture, like moves to reduce state and federal funding for key services like education and health care. Per capita caps in Medicaid would reduce federal and likely state public health expenditures, but it’s false to call those savings. The health care costs don’t go away, they just get paid by others (read: local taxpayers, families, and individuals).

Perhaps our greatest policy frustration has been the tendency of decision makers to **ignore cost-effective community care programs** for Texans with disabilities. The Legislature extended the nation’s longest wait list for Medicaid community waivers from 12 to 14 years while failing to right size the country’s largest and costliest network of state institutions. Meanwhile, the economic and demographic forces detailed in CTD’s *Crushing the Workforce* report were acknowledged by policymakers, but they still chose to leave the floor wage for community attendants at a poverty-level $8 per hour. But wait—haven’t we just seen the results of chronic low wages in direct care workers in the Child Protective Services (CPS) program? Results like huge turnover, lawsuits, and unnecessary human suffering. Make no mistake, community care is poised to be the next CPS crisis.

It’s not about parties or philosophies. Many good things we have been part of have been accomplished with the help of both Democrats and Republicans. Most CTD core beliefs, like access to employment, education and local businesses, self-direction, and participation in the faith community and other community activities, align strongly with conservative values.

This Texas blueprint—one of limited support, governing by lawsuit, choosing institutions over community, repeating mistakes—is that really what Texans want?
2017 was the year for addressing the reasonable requests of the disability community for services.

CTD focused on three main targets:
• increasing the floor wage of $8 per hour for attendants in community care programs
• restoring the disastrous Medicaid therapy cuts for children enacted in 2015
• reducing the Medicaid community waivers wait list that stood at 12 years and 132,000 individuals.

The Legislature’s answer? “Forget about it.”

As we documented in our Crushing the Workforce report early this year, a “perfect storm” is brewing to create a catastrophe in attendant care. Factors include long-term systemic reduction of attendant wages, an increasing demand from seniors and younger people with disabilities preferring cost-effective community services, and the Texas Workforce Commission’s ranking of community attendants as by far the highest-growth occupation in the state. Legislators have long ignored these undeniable demographic and economic forces, and addressed attendant wages with a few pennies each session. However, this year was worse, with zero increase in the floor wage.

PACT Respect for Community Attendants Rally, Mar. 8: Belinda Carlton is not happy about the wage gap between community attendants and convenience store workers.

MEDIA: THERE’S A HUGE IMBALANCE IN HOW TEXAS PROVIDES FOR ITS OLD PEOPLE (Jan. 27)

Executive Director Dennis Borel compares an impending shortage in community attendants to the recent CPS crisis.

More: Death of Community Services vigil in the Austin American-Statesman

Similarly, promises to address the controversial 2015 therapy cuts fell short. Despite disclosures of loss of access to care and the admission that the cuts were based on a flawed study, the budget restores only 25% of the cuts—about $89 million. The ones who will feel the brunt of these cuts are young children with disabilities.

For the first time in ten years, the Legislature provides no funds to take people off the Medicaid waivers wait list, extending the wait to up to 14 years.

These and other budget issues were a major CTD activity before and during the legislative session with office visits, testimonies, media, and rallies. Our messages—and many other Texas needs—were heard and understood, but ultimately, set aside as
the final budget represented a real decrease of 7.5% from the current budget.

CTD never stopped advocating, though, and achieved several positive outcomes. We consistently supported mental health peer support services, funded at $1.5 million, and the Clubhouse model at $1.7 million. We worked very hard on two critical programs gutted in the bills first passed by the House and Senate. Comprehensive Rehabilitation Services for post-acute care for traumatic brain and spinal cord injuries was restored with $47.8 million, and Promoting Independence slots for people to transition or be diverted from institutions went from zero to $47 million. At CTD’s request, a budget rider to study dental services for adult with disabilities in Medicaid was approved and two riders we supported, to promote consumer directed services and to study recruitment and retention of community attendants, made it as well. As strategic backup, all three studies passed in separate legislation as HB 3295 (Rep. Stephanie Klick).

Media: Lawmakers Pass Budget That Offers Clenched Fist, Aiding Few At-Risk Texans Other Than Abused Children (May 27)

Borel weighed in in the Dallas Morning News’ overview of state budget shortfalls.

Read at DallasNews.com

CTD Members in Action!

Our 2017 Raise Your Voice! Advocacy Training and Capitol Day took place April 6 in Austin. Over 50 invited Texans with disabilities and their parents, providers, and supporters came from all over the state to urge 38 legislators to support critical community services (above: CTD board members Judy Telge and Crystal Lyons with Melissa McNeely, Renee Lopez, Julie and Tracey Espinoza. Photo courtesy of Julie Espinoza). After a morning training, we joined up with 300 members of The Arc of Texas and Texas Advocates for the Don’t MYTH with Texas Rally for community services.

More: Susie’s story in the Texas Oral Health Coalition Newsletter

Senate Health and Human Services, Apr. 12: CTD’s Susie Angel with Sen. Lois Kolkhorst after giving testimony on dental services for adults with disabilities.
Some of our biggest gains this session came in an area where we usually are less involved—special education. With so many effective and passionate groups dedicated to this issue, we tend to step back here, but something happened last summer that roped us in: the discovery that thousands of Texas children have been denied special education services because of an arbitrary enrollment cap put into place by the Texas Education Agency (TEA). Our work in this area began last summer when we, represented by Disability Rights Texas (DRTX) and Winston & Strawn LLP, prepared to sue TEA over this 8.5% cap. While TEA did commit to removing the cap, the controversy had received enough attention that the legislature went a step further, passing SB 160 (Sen. Jose Rodriguez) and effectively banning TEA from ever implementing a similar cap again. CTD and DRTX took lead advocacy positions in pushing this bill.

In addition, we led and supported efforts to pass a number of other special education reforms. Of the other 44 special education bills that we supported in some way, 17 passed—a figure we are proud of. Of those 17, we were able to move one or more from each targeted reform category: accountability, punishment, stakeholder input, innovation, reforms, and data collection.

While we are pleased to report that we were able to pass so many bills, we are not going to call it a win for special education. As with so many areas, critical opportunities were missed that could have been really awesome for a lot of kids. Legislators once again let intra-party squabbles get in the way of making sensible decisions, for example, in the failure of school finance reform (HB 21, Rep. Dan Huberty), which could have done much more for students with disabilities. The Senate’s insistence on a voucher program—any voucher program—derailed meaningful and long overdue reform.

The Special Ed “dream team” between House and Senate hearings, Apr. 25: Disability Rights Texas’ Rachel Gandy and Steven Aleman, CTD’s Chris Masey and Policy Intern Jordan Fogle.

The legislature made a further attempt at school finance reform during the special session, but again, progress was minimal. Funding was set aside for programs to help students with dyslexia and autism, but errors in the bill language could result in fewer students served than intended.
Going into this session, our goal was to make sure that accessibility was included in any discussions about legislation pertaining to Transportation Networking Companies (TNCs or ride shares, like Uber and Lyft) and that people with disabilities were included in key decisions about TNCs.

HB 100 (Rep. Chris Paddie, Sen. Charles Schwertner) creates statewide (rather than local) regulation of TNCs. Among its provisions was a hard-won amendment by Rep. Ron Simmons, requiring that any TNC in Texas must participate in an accessibility pilot program in one of the four largest markets in which they operate. The pilot specifically targets wheelchair accessibility.

The Texas Department of Licensing and Registration (TDLR) will be overseeing the rollout of HB 100, including the accessibility pilots. A lot of the details are still in the air, but we have already committed to TDLR that we will be involved in the process.

We see this as a win because it forces TNCs of all sizes to start thinking about—and taking action on—accessibility. We hope that the pilots will prove successful, achieve widespread implementation, and result in rules that can be codified in statute in the 86th Legislature.

Let’s not forget autonomous cars (like the one our William Greer is in, left)! For many with disabilities who aren’t able to drive, the independence to travel freely without reliance on others is akin to the first time any youth gets their driver’s license. Self-driving cars would also serve our aging population, allowing seniors the ability to stay safe and independent instead of turning over the keys to their car. SB 2205 (Sen. Kelly Hancock, Rep. Charlie Geren) takes us one step closer by creating the framework to allow autonomous vehicles to begin testing on Texas highways without a driver behind the wheel.

We’re also enthusiastic about the development of high-speed rail. As we move forward, CTD will continue to support an all-of-the-above approach to addressing transportation needs of all Texans.

Finally, we returned to a safety measure—texting while driving—for the fifth session. Pedestrians with some disabilities are at increased risk of being hit by a driver, because they are not as easily seen by drivers, may not be able to see or hear a car, or may not be able to quickly react to a turning or unseen car. If a driver is distracted by his or her phone, these risks become even greater.

HB 62 (Rep. Tom Craddick, Sen. Judith Zaffirini) was the result of years of effort to pass a statewide ban on cellular phone use while driving. CTD is proud to have contributed to the success of a bill that will save lives and make sidewalks, streets, bus stops, and crosswalks safer for Texans with disabilities.

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As we have done in the past few legislative sessions, CTD devoted significant time and energy to policy regarding access to medication, drug regulation and enforcement, and pharmaceutical research and development.

**Access to the right medication at the right time** is best decided between the patient and their doctor. This is the main guiding principle for CTD when working on our pharmaceutical policy issues.

With CTD as one of the lead disability advocacy voices, we worked with our partners on ensuring the passage of **HB 1917 (Rep. Richard Raymond, Sen. Charles Schwertner)** that would **extend the sunset date of the State of Texas’ Medicaid prescription Preferred Drug List (PDL) out to August 31, 2023.** By keeping the current PDL with the state, we ensure strong consumer protections and transparency and create the best access to the right medications, at the right time, with the fewest barriers.

The current PDL offers the most transparent formulary development process, with a place at the table for stakeholders, including consumers, physicians, pharmacists, and managed care organizations. HB 1917 also continues to provide **safeguards for patients who may be subject to prior authorizations and keeps step therapy limited, uniform, and applied equally across the state.**

Another effort CTD has supported over the years is **prescription medication synchronization.** This would enable consumers to synchronize the fill date of their prescription medications so that they could order and receive all of their prescriptions on the same day each month, instead of having to make multiple visits to the pharmacy. **HB 1296 (Rep. John Frullo, Sen. Dawn Buckingham)** allows physicians, working in conjunction with the consumer’s health plan and pharmacy, to determine which medications should be aligned in order to properly treat chronic diseases. It also eliminates barriers to medication synchronization: the bill requires health plans to prorate a consumer’s cost sharing amount in a recommended medication synchronization program, reducing upfront costs for consumers. Drug synchronization will help to improve medication adherence and keep Texans healthier in the long run.

Early on in the session, CTD joined a coalition to oppose **harmful step therapy protocols,** also known as “fail first” requirements. Health insurance companies use fail first requirements as a cost-containment measure: a consumer may be required to try and fail on lower-cost or older drugs selected by their health plan before coverage is granted for the drug prescribed by the patient’s healthcare provider.

The coalition successfully supported **SB 680 (Sen. Kelly Hancock and Rep. Greg Bonnen),** which **will improve the step therapy protocols** used by insurance companies and create safeguards. These

**MEDIA: INSURANCE-DRIVEN “FAIL FIRST” POLICY HURTS PATIENTS, UNDERMINES DOCTORS (MAR. 15)**

CDS Claims Analyst Erin Jones makes a strong case against step-therapy based on her own experience. **Read at TribTalk.org** or **watch Erin’s story on YouTube**
measures include access to a clear process to request a step therapy exemption when it is not medically appropriate. SB 680 ensures step therapy protocols are reasonable and transparent for Texans and their health care providers.

“Clawbacks” is a term you may have heard regarding high prescription drug costs, but it’s not simply the pharmacy overcharging. It’s a contemptible practice where health plans and pharmacy benefits managers (PBM), a third-party middleman for prescription drugs, charge pharmacies for drugs they already cover. Those costs are passed on to the consumer.

For many of us, our pharmacist is the first point of contact for our health care questions and someone we trust to tell us if we’re paying too much for our medications. Too often people put their own health at risk by foregoing medications when they get to the counter and find out their copay is more than they expected, even when it’s a generic. Clawbacks harm the consumer and put pharmacists in a difficult position. **SB 1076**

(Sen. Schwertner, Rep. G. Bonnen) will stop **clawbacks** by allowing the pharmacies the ability to charge a fair cost for a drug that is still less than the assigned copayment. This will not only save the consumer more money, but also improve adherence to prescribed medications and reduce health-care inflation.

For the second session, CTD supported Texas Mothers Advocating Medical Marijuana for Autism (Texas MAMMA) in their work of legally pursuing **medicinal cannabis** as a safe, effective, and therapeutic treatment option for children with disabilities. In 2015, medical marijuana made headway as a mainstream issue, and advocates passed a bill that legalized the prescription of low-THC cannabis (also known as CBD oil) for treatment of intractable epilepsy. We had hoped to build on last session’s success and expand access to medical marijuana to “patients with certain debilitating medical conditions” with **HB 2107** (Rep. Jason Issac). Unfortunately, the bill died. We will continue working on this issue next session.
MEDIA: TEXAS MAY EXPAND BALLOT ACCESS FOR ELDERLY AND VOTERS WITH DISABILITIES (Jun. 2)

Director of Advocacy Chase Bearden on a voter bill that would, among other things, give some voters with disabilities priority access at polls with long lines.

Read at TexasTribune.org
At CTD’s request, Rep. Ron Simmons refiled HB 1527 to give entrepreneurs with disabilities the ability to participate in Texas Historically Underutilized Business (HUB) program. HB 1527 was unanimously voted favorably out of committee on the House side, where it was hung up and missed the deadline to be heard on the House floor. We will continue to work with Rep. Simmons and other entrepreneurs over the interim to perfect the bill language to give it a better chance to pass next session.

HB 1463 (Rep. John Smithee, Sen. Kel Seliger) pitted disability advocates against some of the most powerful businesses in Texas. It arose from bad faith lawyers exploiting the Americans with Disabilities Act (ADA) to shake down businesses: filing suits, then demanding legal fees to drop the suits without correcting the violations. A group of advocates, including CTD, held a press conference in summer 2016 blasting this practice.

More: our press conference on frivolous ADA lawsuits.

The Legislature also failed to pass HB 2409 (Rep. John Raney) or its companion SB 2012 (Sen. Judith Zaffirini), which would have banned subminimum wages in rehabilitation programs and state-use programs. The practice of paying people with disabilities less than minimum wage is long outdated and harmful. We recognize The Arc of Texas for their leadership on this issue and hope that 2019 will yield a different result.

Prior to the legislative session, the State faced numerous reports and court orders related to its Child Protective Services (CPS) system. We’re not experts on the program, but we do know that the prevalence of disability—psychiatric, intellectual, developmental, and physical—is high among kids in CPS. We also knew that legislative leaders had given CPS reform (HB 5, Rep. James Frank) a high priority and that courts and strong children’s advocates would be engaged. CTD chose to focus our efforts on many other critical issues.

But at the end of the session, Capitol contacts reached out to CTD on an amendment attached to HB 5, a change that would grant immunity and limited liability to a large CPS contractor. This seemed to say that harm to a child, if not due to gross negligence, was acceptable. CTD immediately sent a strong letter of objection to key House members. The “immunity amendment” was not confirmed and then stripped from the final bill. CTD’s ability to respond rapidly drew this comment from a well-known Capitol lobbyist: “I assure you, your letter was VERY helpful!”
### OTHER BILLS & PARTNERS

<table>
<thead>
<tr>
<th>Other Bills</th>
<th>Description</th>
<th>CTD Position</th>
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<tr>
<td>SB 602</td>
<td>SSLC Restructuring Commission</td>
<td>For</td>
<td>Failed</td>
</tr>
<tr>
<td>SB 2157</td>
<td>Accessible Parking enforcement</td>
<td>For</td>
<td>Failed</td>
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<tr>
<td>HB 3583</td>
<td>ID for law enforcement to check temporary placards</td>
<td></td>
<td>Failed</td>
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<tr>
<td>SB 377</td>
<td>Texas Achieving a Better Life Experience (ABLE) Program</td>
<td>For</td>
<td>Passed</td>
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<tr>
<td>SB 1764</td>
<td>ABLE “Clean Up” bill</td>
<td>For</td>
<td>Passed</td>
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<tr>
<td>SB 498</td>
<td>Person-first language in guardianship documents</td>
<td>For</td>
<td>Failed</td>
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<tr>
<td>HB 1593</td>
<td>Engagement strategies in a school district’s family engagement plan</td>
<td>For</td>
<td>Passed</td>
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<tr>
<td>HB 1608</td>
<td>Pilot program for summer internships for foster children</td>
<td>For</td>
<td>Passed</td>
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<tr>
<td>HB 2790</td>
<td>Funding for certain apprenticeship training programs</td>
<td>For</td>
<td>Passed</td>
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<tr>
<td>HB 2639</td>
<td>Alzheimer’s patients added to Silver Alert</td>
<td>For</td>
<td>Passed</td>
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<tr>
<td>HB 2882 / SB 1967</td>
<td>Non-Medical Drug Switching</td>
<td>For</td>
<td>Failed</td>
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<tr>
<td>HB 3438</td>
<td>Creation of a state financing program administered by the Texas Public Finance Authority to assist school districts with certain expenses</td>
<td>For</td>
<td>Failed</td>
</tr>
<tr>
<td>SB 1693</td>
<td>Seniors with a Visual Impairment Task Force</td>
<td>For</td>
<td>Passed</td>
</tr>
<tr>
<td>SB 1743 / HB 3842</td>
<td>Texas Office for the Prevention of Developmental Disabilities move to University of Texas</td>
<td>For</td>
<td>Passed, Vetoed</td>
</tr>
<tr>
<td>SB 2027</td>
<td>Study to evaluate by region training and employment opportunities in this state for individuals with ID</td>
<td>For</td>
<td>Passed</td>
</tr>
<tr>
<td>SB 296</td>
<td>Waive state sovereign immunity in ADA suits against the state</td>
<td>For</td>
<td>Failed</td>
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### Our 2017 Partners

AARP • ADAPT of Texas • American Cancer Society • American Council of the Blind of Texas • Austin Clubhouse • Autism Society of Central Texas • Center for Public Policy Priorities • Chatelle & Associates Children’s Defense Fund • Clarity • Community NOW! • Disability Rights Texas • Down Syndrome Association of Central Texas • Easter Seals of Central Texas • Healthy Texas Coalition • Hogg Foundation for Mental Health Mothers Advocating Medical Marijuana for Autism (MAMMA) • National Alliance for Mental Illness (NAMI-TX) • National Association of Social Workers-Texas Chapter • National Multiple Sclerosis Society-Lone Star Chapter • Protect Texas Fragile Kids • Providers Alliance for Community Services of Texas (PACSTX) • Personal Attendants Coalition of Texas (PACT) • Texas Council of Administrators of Special Education, Inc. (TCASE) • Texans Care for Children • Texas Advocates • Texas Alliance for Life • Texas Alliance of Brain Injury Providers Texas Association of Goodwills • Texas Association of Home Care and Hospice • Texas Catholic Conference Texas Centers for Independent Living Network (TEXCIL) • Texas Chapter of the Paralyzed Veterans of America • Texas Council for Developmental Disabilities • Texas Gun Sense • Texas Hospital Association Texas Medical Association • Texas Parent to Parent • Texas Pediatric Society • Texas Physical Therapy Association • Texas Public Policy Foundation • Texas State Teachers Association • The Arc of Texas

plus numerous businesses, lobby firms, legislators, aides, and state agency professionals.