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Texas Dentists for Medicaid Reform

October 17, 2014

Sunset Advisory Commission,
1501 North Congress Avenue,
6th Floor, Robert E. Johnson Building,
Austin, Texas 78701

ATTN: Ken Levine, Director

BY EMAIL

RE: COMMENTS RELATING TO SUNSET STAFF REPORT ON THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION

Dear Mr. Levine:

On behalf of Texas Dentists for Medicaid Reform, I would like to commend you and your staff for an excellent report on HHSC, particularly the operations of the Office of Inspector General. Our organization began in late 2012 in response to the exact issues your report addresses in relation to OIG. It has given credibility to our organization's complaints about lack of due process for Medicaid providers which initially were discounted by both the media and members of the Legislature.

Indeed, we fully agree with your report's statement "A lack of decision-making guidelines based on objective criteria, such as volume of billings, history of noncompliance, or identified fraud trends, fails to ensure a fair and consistent approach to opening or prioritizing cases, allowing for providers with similar cases to be treated differently. OIG staff expressed concern that setting guidelines to prioritize cases most likely to provide the highest return to the state would tie the hands of investigators, limiting their flexibility to proceed with cases based on gut feelings. Such an approach feeds public perception that OIG engages in witch hunts against Medicaid providers, offering no defense through use of a transparent, standard, and objective approach to making these decisions."

We do have the following comments to make:

1. The HHSC Office of the Inspector General should be an autonomous organization that is not under HHSC as recommended by the staff report. We recommend that it be under the Office of the State Comptroller so that it can act without influence of HHSC and therefore impartially into

both internal investigations within the Commission and external investigations of Medicaid providers and contractors.

We concur that the governor should not appoint the Inspector General but believe he should be appointed by the Senate Health and Human Services Committee or a House legislative body rather than the Executive Commissioner of HHSC.

2. Senator Jane Nelson has said that she wants to get to the bottom of the troubles at HHSC and OIG.

We believe you need to look at the top.

Your staff report states in its Summary: “Nor is the problem with the energetic, capable commissioners or the hard-working, dedicated employees at the agencies. The problem is with the nature of the system itself, and the incompleteness of its set up.”

While this is undoubtedly true in the majority of cases, we believe the majority of trouble within OIG the last two years can be traced from public records to agency executives –former director of enforcement Jack Stick (now HHSC Chief Counsel) and Inspector General Doug Wilson.

a. Mr. Stick per his own statements in a webinar on Medicaid fraud for the National Conference of State Legislatures in March 2012, talked about his reorganization of OIG investigations. The changes made to OIG’s methods of investigations were not some systemic problem but determined by Mr. Stick. (a copy of the transcript is attached)

b. Mr. Wilson and Mr. Stick testified numerous times before a number of legislative committees in 2013 about the extent of dental Medicaid fraud and the amount of money OIG was collecting. Their testimony was misleading and we published their testimony on our website. Mr. Wilson’s testimony to Senate Finance is attached and so is Mr. Stick’s to the House Appropriations.

c. Fread Houston, a former director of sanctions for OIG, testified before the House Committee on Human Services in 2013 about irregularities within OIG. A copy of his testimony is attached.

d. A former attorney with OIG, Michael McMillen, has filed a wrongful dismissal suit against OIG. He alleges he was fired for reporting alleged illegal activities within the agency. A copy of the lawsuit is also attached.

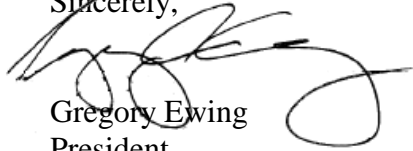
e. Dr. Paul Dunn, a dentist from Levelland, testified in 2013 that Mr. Stick had told him that he had not committed any fraud but wanted him to repay \$1.2 million to Medicaid to “make it go away.” Despite no fraud, a payment hold has been maintained on Dr. Dunn driving him towards bankruptcy. He has lost his life savings at 67-years of age. His testimony is attached.

But the bottom line is if leadership is good, you get a good agency. If leadership is bad, you don’t.

We believe these things above make a review of these executives' performance and qualifications mandatory.

Thank you for your time. If you would like more information, please do not hesitate to contact us.

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Ewing', with a large, stylized loop at the end.

Gregory Ewing
President
Texas Dentists for Medicaid Reform

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Attachments a-e

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Texas Dentists for Medicaid Reform

November 18, 2014

Sunset Advisory Commission,
1501 North Congress Avenue,
6th Floor, Robert E. Johnson Building,
Austin, Texas 78701

ATTN: Ken Levine, Director

BY EMAIL

RE: FURTHER COMMENTS RELATING TO SUNSET STAFF REPORT ON THE TEXAS HEALTH AND HUMAN SERVICES COMMISSION AND PUBLIC HEARINGS

Dear Mr. Levine:

In addition to our letter of October 17th, we wish to add the following for the consideration of Commission.

After hearing the testimony of Ms. Arlene Wohlgemuth and the attendant comments from Sen. Hinojosa and Rep. Raymond, we believe there should be an immediate stay on all OIG cases and their legal proceedings pending external review by another suitable agency. If the Commission cannot do this, it should recommend the appropriate agency to do so.

If OIG investigators have been pressured by their superiors to change their investigative reports to include non-factual allegations to “get something” on providers, per Rep. Raymond, this taints all provider investigations and should lead to criminal charges against the perpetrators.

Providers should not have to spend their resources to defend against trumped up allegations.

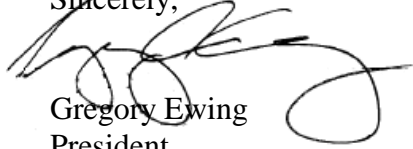
The wheat needs to be separated from the chaff. Those providers who have done nothing wrong need to be sorted out from those who possibly have. They should not be plowed into bankruptcy to defend against non-existent evidence.

These allegations of possible criminal conduct within OIG also calls into question settlements which OIG has pressured providers to make, such as in the case of Carousel Pediatrics, so they could continue their practices. So such an external review should also look at these settlements.

If the state does not take action now, providers may start clamoring for restitution for the loss of their businesses.

Thank you for your fine work

Sincerely,

A handwritten signature in black ink, appearing to read 'Gregory Ewing', with a large, stylized loop at the end.

Gregory Ewing
President
Texas Dentists for Medicaid Reform

GE:aa