

Gavin Gadberry



**Testimony of Gavin J. Gadberry, THCA General Counsel
Sunset Advisory Commission, Thursday, November 13, 2014**

My name is Gavin Gadberry. I serve as general counsel to the Texas Health Care Association (THCA). THCA is the State's largest long-term care association representing nursing facilities, specialized rehabilitation facilities, and assisted living facilities across the State.

On behalf of THCA, I would like to thank the Commission and its staff for the opportunity to testify and for the efforts of the Commission to develop efficiencies within the Health and Human Services Commission (HHSC) system.

Following the THCA's membership review of the Sunset Advisory Commission Staff Report concerning HHSC, we respectfully provide the following comments:

1. Consolidate administration of Medicaid at HHSC recommendation (paragraph 3.1) – THCA supports the recommendation of the Commission's staff to consolidate the administration of Medicaid at HHSC. As part of that recommendation the staff concluded that with regard to long-term care facilities, there would not be a transfer of any of the responsibilities. THCA concurs with this recommendation. The Department of Aging and Disability Services (DADS) has long served and provided a dual licensing and certification function with regard to the administration of the Medicaid program in Texas. Except for a few issues with regard to duplication of effort, THCA believes that most of the long term care facilities regulatory and oversight functions in the State should be retained at DADS.
2. Efficiencies from managed care (paragraph 4.4) – Commission staff recommended that the OIG and HHSC define their respective roles for managed care purposes and to coordinate all audit activities. THCA recommended in its initial comments that because of the transition of nursing facilities to the Star+Plus Managed Care Program, many of the HHSC and OIG audit functions could be assumed by Managed Care Organizations (MCO). Under the current system, the OIG conducts utilization reviews of nursing facility's Medicaid reimbursement system. This is fundamentally a contract function that most insurance and managed care companies are in the business of performing. THCA's membership wants to ensure that there is not a duplication of the utilization review function. THCA would recommend that the MCOs conduct utilization reviews, with oversight from either HHSC or OIG with regard to the MCOs performance of those utilization reviews.

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3. Streamline Medicaid enrollment (paragraph 5) – The Commission staff report recommended that HHSC streamline Medicaid provider enrollment and credentialing processes by creating an enrollment portal and better link data with the process. This is found in recommendation 5.1 of the staff report. It is unclear whether this was intended to apply to long-term care facilities. Under the current process, nursing facilities licenses and Medicaid applications are all within the same document. THCA’s membership wishes to ensure that there is no modification in the initial or renewal which would have unintended consequences of splitting the licensing and Medicaid enrollment process for nursing facility providers.
4. OIG recommendations (paragraph 10) – THCA’s membership supports the recommendations contained in section 10 of the staff report.

With regard to the OIG’s role in managed care, as we indicated previously, the OIG or HHSC should provide an oversight function of the performance of managed care organizations’ utilization reviews. The OIG should continue to focus on enforcement actions as opposed to contract compliance requirements which are better suited for the contracting MCOs. This is in response to staff recommendation 10.7

As we pointed out in our initial comments, there are clearly efficiencies to be gained in regard to nursing facility cost reports. Staff recommendation paragraph 10.12 contemplates that cost report reviews should be consolidated entirely within HHSC’s financial services division rate analysis department. We believe that this is a good first step. As we had previously commented, the cost reports are rarely used by the Legislature or HHSC to set rates. As such, it would seem more appropriate for cost report data to be collected every other year and a simpler cost report tool developed to collect data necessary for HHSC to comply with its rate analysis requirements under the Medicaid program.

Finally, consideration should be given to authorizing the individual appointed as Inspector General to delegate some of the responsibilities and decision-making. This should help ease the “bottlenecks or backlogs” identified in the staff report.

5. Credible allegation of fraud hearings – THCA supports the recommendations of the staff report found in paragraph 11. Holds on payments for any provider should be reserved only for the most serious circumstances. The time frames developed by Legislature in 2013 should be fully implemented with an eye towards protecting provider’s rights while, at the same time, providing appropriate enforcement tools to deter fraud and abuse in the State.

Again, THCA appreciates the opportunity to submit these comments to the Sunset Advisory Commission. We continue to believe that HHSC should focus on meeting the central needs and assuring the well-being of aging and disabled Texans. We look forward to continuing our work with you, HHSC and its agencies to strive to meet these goals. Thank you very much for the opportunity to provide this testimony, and I am happy to answer any questions.

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