

**From:** [Sunset Advisory Commission](#)  
**To:** [Cecelia Hartley](#)  
**Subject:** FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)  
**Date:** Saturday, October 18, 2014 11:07:29 AM

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-----Original Message-----

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]  
Sent: Friday, October 17, 2014 7:14 PM  
To: Sunset Advisory Commission  
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Friday, October 17, 2014 - 19:14

Agency: HEALTH AND HUMAN SERVICES COMMISSION HHSC

First Name: Marina

Last Name: Hench

Title: Director of Public Policy

Organization you are affiliated with: Texas Association for Home Care and Hospice

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City: Austin

State: Texas

Your Comments About the Staff Report, Including Recommendations Supported or Opposed:

Thank you for the opportunity to provide feedback on the Texas Health and Human Services Commission (HHSC) Sunset staff report. TAHC&H represents over 1,400 licensed home and community supports services agencies in Texas that serve people of all ages.

Overall we were extremely impressed with the HHSC Sunset report. The findings echoed a great many longstanding concerns of the Association. We provide our positions and feedback below, along with additional recommendations for your consideration.

Issue 1

1.1 Consolidate the five HHS system agencies into one agency called the Health and Human Services Commission with divisions established along functional lines.

- Require the governor to appoint an executive commissioner, with Senate confirmation, to lead the new agency.
- Establish divisions along functional lines as the basic organizational framework for the consolidated agency.

Support with an Alternative Recommendation: Consider maintaining the separate but interrelated relationship between Department of State Health Services and HHSC, with clearly defined accountability structure. It is important to ensure the autonomy of Public Health Services for the purposes of appropriate funding and diligent, quick response to emergency situations and disease control that affects all citizens of Texas and not only the Medicaid population.

- Establish a Policy and Performance Office.
- Replace the five agency advisory councils with an executive council comprising the executive commissioner and division heads to obtain public input.

Oppose.

Note: TAHC&H holds that it is absolutely critical to maintain an adequate number of statutorily-mandated advisory and governing bodies, in order to provide HHSC with the expert knowledge and perspective necessary to guide the agency through a tumultuous time for health care. Consolidation and streamlining is necessary, yes, but not at the expense of insulating the Commission from its stakeholders.

Alternative Recommendation: Retain the HHSC Council, as a consolidated version of the five advisory councils, and remake as a governing body with evaluative authority over the Executive Commissioner and the new consolidated Health and Human Services Commission. The HHSC Council should be tasked to advise the Executive Commissioner and provide direct feedback to the Governor about the HHS enterprise. Many of the current functions of the HHSC Council would be maintained, including hearing public testimony. In addition, there should be a small number (a maximum of 5) “mid-level” advisory committees (Such as the Medical Care Advisory Committee) organized along the functional lines of the new HHSC and appointed by the Executive Commissioner. These mid-level advisory committees would be comprised of subject-matter experts and serve as a

forum to receive direct public input and feedback about rules, policies, and the direction of the agency. They would have the ability to elevate contentious rules and policies up to the HHSC Council. In addition to the 5 “mid level” advisory councils the Commission should look across the current advisory councils and consolidate those (such as the pediatric advisory committees mentioned in the report) into working “development and implementation” (D&I) advisory committees that would work with HHSC staff across functional lines to actually participate in the development phase of rule and policy making.

1.2 Require formation of a transition legislative oversight committee and the development of a transition plan and detailed work plan to guide HHSC and the committee in setting up the new structure.

Support.

1.3 Continue the basic functions of the health and human services agencies in the single, reconstituted Health and Human Services Commission.

Support with the alternative recommendation in 1.1.

## Issue 2

2.3 Require HHSC to take the following actions to better define and strengthen its role in both procurement and contract monitoring.

- Clarify and standardize HHSC’s role over enrollment contracts.
- Complete, maintain, and update the statutorily required contract management handbook, risk analysis procedure and central contract management database.
- Strengthen monitoring of contracts at HHSC.

Support.

2.5 Direct HHSC to develop ways to apply focused, high-level attention to system contracting.

Support.

2.6 Require HHSC to consolidate rate setting for the HHS system at HHSC.

Support with Additional Recommendation: Ensure communication and collaboration between Rate Setting and the new Policy and Performance Office to ensure that rates accurately reflect costs and savings associated with rules, policies, and quality performance requirements promulgated by the Policy and Performance Office.

2.7 Improve transparency in setting capitated rates [for MCOs].

Support with Additional Recommendation: In order to support transparency in rate setting, continue to collect data about utilization, workforce trends, and provider costs via the continued collection of cost reports.

### Issue 3

The report concludes that the division of Medicaid services among three agencies leads to a confusing and murky system that results in some clients receiving benefits they do not need. The following is highlighted as an example: "...some children end up receiving private duty nursing through HHSC and attendant care both through personal care services at DSHS and through DADS waiver programs, causing these children to receive more in benefits than may be medically necessary. Home health agencies, which both assess and provide services to children in DADS programs, have an incentive to over-allocate hours for benefits such as private duty nursing. These inflated benefits are not cost-effective for the state and can create difficulties as children transition to more restrictive adult programs in which such generous benefits will not be available. While these issues will likely be addressed by HHSC through the planned transition of these services into the STAR Kids managed care program in September 2016, the problems persist as a result of separate, uncoordinated delivery systems."

Note: Currently there is no standardized process to determine what the appropriate level of service is over a period of time. The solution to this concern, as recommended by TAHC&H in the past, is to implement a standardized, evidence-based and validated functional assessment tool, so that the services and hours assigned are based on an objective data driven assessment. See recommendation below.

#### 3.1 Consolidate administration of Medicaid functions at HHSC.

Support with Additional Recommendation: Streamline and consolidate regulatory oversight of home and community based services, via a robust stakeholder process, based on a person-centered service delivery model.

New Recommendation: Implement a standardized, validated comprehensive assessment tool for children to ensure that the services and number of hours assigned are medically necessary. A tool like the one proposed would ensure consistent, evidence-based assignment of service hours. A similar comprehensive, cross-disability assessment tool should be developed for adults receiving home and community based services.

### Issue 4

#### 4.1 Direct HHSC to comprehensively evaluate data and trends for the Medicaid program on an ongoing basis. (management action)

Support with Additional Recommendation: Ensure utilization review takes place along functional lines/service delivery areas.

#### 4.2 Require HHSC to regularly evaluate the appropriateness of requested performance data and develop a dashboard that identifies key performance data for agency leadership.

Support with Additional Recommendation: Make such a dashboard transparent and available to the public upon request.

#### 4.3 HHSC should develop a system to automate [managed care] data entry. (management action)

Support.

#### 4.7 Expand the Medical Care Advisory Committee's membership to include managed care representation.

Support.

### Issue 5

#### 5.1 Require HHSC to streamline the Medicaid provider enrollment and credentialing processes by creating an enrollment portal and better linking data within the process.

Support.

#### 5.2 Require that OIG no longer conduct criminal history checks for providers already reviewed by licensing boards.

Support.

- 5.4 Require OIG to complete background checks within 10 business days.  
Support.

#### Issue 6

Note: In order to begin paying for quality, HHSC must identify what quality even means for a given service or scope of services. Quality in a hospital means something vastly different than in personal care services in the community. The goals and objectives for these services and the way beneficiaries experience these services are different. Before new payment systems can be established, HHSC must begin to measure and establish “base-line” data to determine where we are now. We do not necessarily have the mechanism for collecting this data. When such a mechanism is established, for example in managed care, it must be consistent across all health plans. The following is required:

1. Define “quality”
2. Create a mechanism for collecting data, to report quality metrics
3. Collect starting-point, or base-line data
4. Identify benchmarks for progress
5. Construct achievable incentive-based payments

6.1 Require HHSC to develop a comprehensive, coordinated operational plan designed to ensure consistent approaches in its major initiatives for improving the quality of health care.  
Support with Alternative Recommendations: Leverage stakeholder input via a specialized workgroup appointed by the Executive Commissioner (utilizing experiential knowledge from the Texas Institute of Health Care Quality and Efficiency).

6.2 Require HHSC to develop a pilot project to promote increased use of incentive-based payments by managed care organizations with the input from a stakeholder workgroup that would do the following:

Support with Alternative Recommendations:

- Define quality objectives for each Medicaid scope-of-service (for example, Long Term Services and Supports) and identify the base-line data that should be collected to measure quality in each area.
- Identify a managed care service delivery area and managed care programs to be included and require all MCOs in the service delivery area to participate
- Determine which type of incentive-based payment structures to pilot and which services most appropriately fit within that payment structure
- Determine timelines for implementation of the pilot to begin on or before January 1, 2017.

#### Issue 10

10.1 Remove the gubernatorial appointment of the inspector general and require the executive commissioner to appoint and directly supervise the inspector general.  
Support.

10.2 Require OIG to undergo special review by Sunset in six years.  
Support.

10.3 Require OIG, by rule, to establish prioritization and other criteria to guide its investigation processes.  
Support.

10.4 Require OIG to complete Medicaid provider preliminary investigations within 45 days and full investigations within 180 days.

Support.

10.5 Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violation, including penalties.

Support.

10.6 Require OIG to conduct quality assurance reviews and request a peer review of its sampling methodology used in the investigative process.

Support.

10.11 Direct OIG to actively take steps to improve training for its staff and communication with HHS system programs and providers. (management action)

Support.

10.12 Direct HHSC and OIG to work together to transfer certain OIG functions to other areas of the HHS system where they would fit more appropriately.

(management action)

Support.

10.13 OIG should track basic performance measures needed to monitor the efficiency and effectiveness of its investigative processes. (management

action)

Support.

10.14 OIG should establish a formal plan for reducing its backlog and improving inefficiencies in the process.

(management action)

Support.

#### Issue 11

11.1 Streamline the CAF hold hearing process to more quickly mitigate state financial risks.

Support.

11.2 Clarify good cause exceptions for OIG's application of a credible allegation of fraud payment hold.

Support.

11.3 Clarify OIG's authority to place payment holds only in serious circumstances.

These circumstances would be limited to:

- Credible allegations of fraud
- Situations in which OIG needs to compel the production of records from a provider
- At the request of the attorney general

Support.

11.4 Require OIG to pay all costs of CAF hold hearings at SOAH.

Support.

#### Issue 12

New Recommendation: Create an online portal, or public interchange, for the rulemaking process. Any rule would be assigned a project identifier number at the very beginning of the process and could be viewed and tracked through the interchange. Any public comments would be aggregated and made available to the public on the interchange in a timely manner. HHSC staff contact information and any comments made to the proposed rules could be found on the interchange.

#### Issue 13

13.1 Remove advisory committees from statute, including those with Sunset dates, and allow the executive commissioner to re-establish needed advisory committees in rule.

Oppose.

Note: TAHC&H maintains that it is absolutely critical to maintain an adequate number of statutorily-mandated advisory and governing bodies, in order to provide HHSC with the expert knowledge and perspective necessary to guide the agency through a tumultuous time for health care. Consolidation and streamlining is necessary, yes, but not at the expense of insulating the Commission from its stakeholders.

Alternative Recommendation: Retain the HHSC Council, as a consolidated version of the five advisory councils, and remake as a governing body with evaluative authority over the Executive Commissioner and the new consolidated Health and Human Services Commission. The HHSC Council should be tasked to advise the Executive Commissioner and provide direct feedback to the Governor about the HHS enterprise. Many of the current functions of the HHSC Council would be maintained, including hearing public testimony. In addition, there should be a small number (a maximum of 5) "mid-level" advisory committees (Such as the Medical Care Advisory Committee) organized along the functional lines of the new HHSC and appointed by the Executive Commissioner. These mid-level advisory committees would be comprised of subject-matter experts and serve as a forum to receive direct public input and feedback about rules, policies, and the direction of the agency. They would have the ability to elevate contentious rules and policies up to the HHSC Council. In addition to the 5 "mid level" advisory councils the commission should look across the current advisory councils and consolidate those (such as the pediatric advisory committees mentioned in the report) into working "development and implementation" (D&I) advisory committees that would work with HHSC staff across functional lines to actually participate in the development phase of rule and policy making.

New Recommendation: Ensure a more transparent process for rulemaking. Create an online portal, or public interchange, for the rulemaking process. Any rule would be assigned a project identifier number at the very beginning of the process and could be viewed and tracked through the interchange. Any public comments would be aggregated and made available to the public on the interchange in a timely manner. HHSC staff contact information and any comments made to the proposed rules could be found on the interchange.

Any Alternative or New Recommendations on This Agency: See above.

My Comment Will Be Made Public: I agree



**Texas Association for  
Home Care & Hospice**  
*Leading ★ Advancing ★ Advocating*

## M E M O R A N D U M

**Date:** October 17, 2014  
**To:** Sunset Commission, Attn: Sarah Kirkle  
**From:** Marina Hench, Director of Public Policy  
**Subject:** Response to HHSC Sunset Staff Report

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1.2 Require formation of a transition legislative oversight committee and the development of a transition plan and detailed work plan to guide HHSC and the committee in setting up the new structure.

*Support.*

1.3 Continue the basic functions of the health and human services agencies in the single, reconstituted Health and Human Services Commission.

*Support with the alternative recommendation in 1.1.*

## **Issue 2**

2.3 Require HHSC to take the following actions to better define and strengthen its role in both procurement and contract monitoring.

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*Support.*

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## **Issue 3**

The report concludes that the division of Medicaid services among three agencies leads to a confusing and murky system that results in some clients receiving benefits they do not need. The following is highlighted as an example: “...some children end up receiving private duty nursing through HHSC and attendant care both through personal care services at DSHS and through DADS waiver programs, causing these children to receive more in benefits than may be medically necessary. Home health agencies, which both, assess and provide services to children in DADS programs, have an incentive to over-allocate hours for benefits such as private duty nursing. These inflated benefits are not cost-effective for the state and can create difficulties as children transition to more restrictive adult programs in which such generous benefits will not be available. While these issues will likely be

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4.3 HHSC should develop a system to automate [managed care] data entry. (management action)  
*Support.*

4.7 Expand the Medical Care Advisory Committee’s membership to include managed care representation.  
*Support.*

## **Issue 5**

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*Support.*

5.2 Require that OIG no longer conduct criminal history checks for providers already reviewed by licensing boards.

*Support.*

5.4 Require OIG to complete background checks within 10 business days.

*Support.*

## **Issue 6**

*Note: In order to begin paying for quality, HHSC must identify what quality even means for a given service or scope of services. Quality in a hospital means something vastly different than personal care services in the community. The goals and objectives for these services and the way beneficiaries experience these services are different. Before new payment systems can be established, HHSC must begin to measure and establish “base-line” data to determine where we are now. We do not necessarily have the mechanism for collecting this data. When such a mechanism is established, for example in managed care, it must be consistent across all health plans. The following is required:*

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*Support with Alternative Recommendations: Leverage stakeholder input via a specialized workgroup appointed by the Executive Commissioner (utilizing experiential knowledge from the Texas Institute of Health Care Quality and Efficiency).*

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10.1 Remove the gubernatorial appointment of the inspector general and require the executive commissioner to appoint and directly supervise the inspector general.

*Support.*

10.2 Require OIG to undergo special review by Sunset in six years.

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10.3 Require OIG, by rule, to establish prioritization and other criteria to guide its investigation processes.

*Support.*

10.4 Require OIG to complete Medicaid provider preliminary investigations within 45 days and full investigations within 180 days.

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10.5 Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violation, including penalties.

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*Support.*

10.11 Direct OIG to actively take steps to improve training for its staff and communication with HHS system programs and providers. (management action)

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10.12 Direct HHSC and OIG to work together to transfer certain OIG functions to other areas of the HHS system where they would fit more appropriately. (management action)

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10.13 OIG should track basic performance measures needed to monitor the efficiency and effectiveness of its investigative processes. (management action)

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10.14 OIG should establish a formal plan for reducing its backlog and improving inefficiencies in the process. (management action)

*Support.*

## **Issue 11**

11.1 Streamline the CAF hold hearing process to more quickly mitigate state financial risks.

*Support.*

11.2 Clarify good cause exceptions for OIG's application of a credible allegation of fraud payment hold.

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11.3 Clarify OIG's authority to place payment holds only in serious circumstances.

These circumstances would be limited to:

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*Support.*

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*Support.*

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*New Recommendation: Create an online portal, or public interchange, for the rulemaking process. Any rule would be assigned a project identifier number at the very beginning of the process and could be viewed and tracked through the interchange. Any public comments would be aggregated and made available to the public on*

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#### Oppose.

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