



Physicians Caring for Texans

October 17, 2014

The Honorable Jane Nelson, Chair
Texas Sunset Advisory Commission
P.O. Box 13066
Austin, TX 78711
sunset@sunset.state.tx.us

RE: *Comments Relating to the Texas Health and Human Services Commission Sunset Staff Report—Office of Inspector General (Issue 10) and Credible Allegations of Fraud (Issue 11)*

Dear Chairman Nelson:

The Texas Medical Association (TMA) is a private, voluntary, nonprofit association of more than 47,000 member physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Our foundational principle is the same today: “Physicians Caring for Texans.”

TMA appreciates the opportunity to submit written comments to the Sunset Advisory Commission (Commission) in response to the Sunset Staff’s Report (Report). This letter relates to the Report’s discussion and recommendations concerning the investigation of fraud, waste, and abuse in Texas Medicaid and implementation of credible allegation of fraud (CAF) holds. TMA offers the following summary comments for the Commission’s consideration.

As stated in the Report, the Texas Health and Human Services Commission Office of Inspector General (OIG) has the difficult and crucial job of protecting the integrity of the Health and Human Services (HHS) system. TMA acknowledges this responsibility and supports recommendations to improve the efficiency and effectiveness of OIG’s administrative and investigative processes. Specifically related to payment holds, TMA supports the Report’s recommendations to clarify OIG’s payment hold authority and streamline the CAF hold hearing process.

Texas physicians that choose to participate in Medicaid must dedicate significant resources in order to adhere to various program compliance obligations (e.g., provider manuals, state law, federal statutes and related regulations). If physicians fail to strictly comply with applicable requirements they could face stiff fines, penalties, sanctions, or other enforcement actions. Accordingly, as an initial matter, TMA believes that Medicaid rules and regulations should be clear so that physicians that voluntarily enroll to provide care to Medicaid beneficiaries can dedicate their time, talent, and staff resources to patient care, as opposed to administrative hassles, burdensome audits, and fear of fraud and abuse accusations.

TMA also believes the best way to promote compliance and prevent administrative errors and improper payments is through education and outreach designed to reduce, if not eliminate, errors before they occur. TMA appreciates the Report’s discussion regarding the need to not only detect fraud, waste, and abuse after they occur, but also “promote compliance and help prevent fraud, waste, and abuse, and certainly errors,

by educating providers on Medicaid policies and procedures” and related changes, clarifications, and common areas for mistakes.¹ TMA agrees that prevention and education efforts could enhance understanding and clarity among providers and HHS staff regarding applicable standards and requirements, promote cooperation and compliance, and prevent errors before they occur.

Allegations of potential fraud, abuse, violations and/or any overpayments should be supported by reliable evidence.² TMA supports the Report’s recommendations to implement quality assurance reviews and consistency in investigations and believes that investigations concerning the practice of medicine must include the expertise of medical practitioners with appropriate training and experience — particularly for questions of whether a service or treatment was medically necessary.

TMA appreciates the Report’s discussion regarding accuracy and consistency in the identification of violations and enforcement actions in response to the same.³ TMA supports a fair administrative process designed to define, detect, and prevent fraudulent and abusive conduct that wastes taxpayer funds. When compliance concerns are accurately identified, they should be resolved in a timely manner—especially when the concerns are based on non-fraudulent violations. Prompt resolution of non-fraudulent violations allow physicians to correct identified errors and focus on patient care without the distraction of extensive litigation, looming demands, or nonpayment. TMA supports the Report’s recommendations to improve the efficiency of the investigation process, reserve CAF holds for serious situations to mitigate ongoing financial risk to the state, and streamline the administrative appeal hearing process.⁴

Physicians must be afforded adequate notice of the alleged issues or violations, calculation of overpayments (including extrapolation methodology), and proposed sanctions or penalties, and the right to offer a meaningful response.⁵ If issues cannot be settled informally, physicians must have the ability to timely appeal—both the alleged violations and the amount of money in question—to an independent third party without unreasonable barriers.⁶ TMA supports the recommendation to require OIG to pay the full hearing costs and for CAF hold appeals at SOAH and encourages the Commission to align the process for overpayment appeal hearings with standard practice of requiring the agency to pay for SOAH hearings.⁷

¹ See Sunset Staff Report, pg. 139-40 (OIG’s methods of communicating and sharing information need improvement); Recommendation 10.5 (Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violations, including penalties.), 10.11 (Direct OIG to actively take steps to improve training for its staff and communication with HHS system programs and providers).

² See Sunset Staff Report, pg. 129-34; Recommendation 10.3 (Require OIG, by rule, to establish prioritization and other criteria to guide its investigation process), 10.5 (Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violations, including penalties.), and 10.6 (Require OIG to conduct quality assurance reviews and request a peer review of sampling methodology used in its investigative process).

³ See Sunset Staff Report, pg. 133-34 (Absence of criteria to scale OIG’s Medicaid payment recoupments to the nature of the violations contributes to large overpayment estimates and inconsistent results).

⁴ See Recommendation 10.3 (Require OIG, by rule, to establish prioritization and other criteria to guide its investigation process), 10.6 (Require OIG to conduct quality assurance reviews and request a peer review of sampling methodology used in its investigative process), 10.11 (Direct OIG to actively take steps to improve training for its staff and communication with HHS system programs and providers), 10.13 (OIG should track basic performance measures needed to monitor the efficiency and effectiveness of its investigative processes), 10.14 (OIG should establish a formal plan for reducing its backlog and improving inefficiencies in the process), 11.1 (Streamline the CAF hold hearing process to more quickly mitigate state financial risks), 11.2 (Clarify good cause exceptions for OIG’s application of a credible allegation of fraud payment hold), 11.3 (Clarify OIG’s authority to place payment holds only in serious circumstances), and 11.4 (Require OIG to pay all costs of CAF hold hearings at SOAH).

⁵ See Sunset Staff Report, pg. 133-34 (discussing extrapolation to large overpayments and the need for oversight of sampling and extrapolation methodology).

⁶ See Recommendation 11.4 (Require OIG to pay all costs of CAF hold hearings at SOAH).

⁷ See Recommendation 11.4 (Require OIG to pay all costs of CAF hold hearings at SOAH).

Finally, TMA supports the Report's recommendations to clarify organizational oversight and accountability in an effort to ensure OIG is efficiently and effectively accomplishing its mission to combat fraud, waste, and abuse.⁸ Similarly, in light of the growth of Medicaid managed care in Texas, TMA supports the recommendation to better clarify the roles and responsibilities among and between OIG, managed care organizations, and special investigative units.⁹

TMA appreciates the opportunity to submit these comments. Please feel free to contact us if you have questions or if we can otherwise be of assistance.

Sincerely,

John Holcomb, MD, Chair

TMA Select Committee on Medicaid, CHIP and the Uninsured

⁸ See Sunset Staff Report, pg. 134 (discussing oversight of sampling and extrapolation methodology) and pg. 141-42 (OIG's structure results in blurred accountability and little oversight of effectiveness in accomplishing its fraud, waste and abuse mission); Recommendation 10.2 (Require OIG to undergo special review by Sunset in six years).

⁹ See Sunset Staff Report, pg. 138-39 (discussing the need to better define OIG's role in managed care); Recommendation 10.7 (Define OIG's role in managed care, including strengthening oversight of special investigative units).

From: [Sunset Advisory Commission](#)
To: [Cecelia Hartley](#)
Subject: FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)
Date: Friday, October 17, 2014 4:10:56 PM

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

From: sundrupal@capitol.local [<mailto:sundrupal@capitol.local>]
Sent: Friday, October 17, 2014 4:05 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 - 16:05

Agency: HEALTH AND HUMAN SERVICES COMMISSION HHSC

First Name: John

Last Name: Holcomb, MD

Title: Chair, TMA Select Committee on Medicaid, CHIP and the Uninsured

Organization you are affiliated with: Texas Medical Association

Email: michael.smith@texmed.org

City: Austin

State: Texas

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

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Any Alternative or New Recommendations on This Agency: Please see comments above.

My Comment Will Be Made Public: I agree