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Thomas Kirk

Testimony of Tom Kirk, CEO of American Surgical Professionals, Houston, Texas

**Summary of Issue for Sunset Commission:** clarify language in surgical assistant licensing statute regulated by the TMB to provide Medicaid reimbursement for surgical assistants in order to enhance patient safety and lower Texas Medicaid costs

### **History, Background and Purpose of HB 1183 – Surgical Assistant License**

I would like to thank the committee for the opportunity to provide testimony on the history and the current conditions impacting the provision of critical surgical assisting services, its impact on the quality of care and the cost of these services on the citizens of Texas.

In May 2001, the state of Texas passed the House Bill 1183 into law under Title 3, Subtitle 3, Chapter 206 of the Occupation Code. This legislation created the conditions for and the management of licensure for surgical assistants. In addition, the bill amended certain portions of the insurance code, which added surgical assistants as qualified suppliers of surgical assisting services. This landmark legislation demonstrated the vision of Texas in anticipating the growing patient demand and the decreasing number of surgeons that would be available to service the citizens over the coming decades. To mitigate this predicated shortage, a way had to be found to extend the capacity of shrinking pool of surgeons. This mechanism was to encourage individuals to pursue the profession of surgical assisting in our state. Under this law the standards are established and the qualifications are defined by education and proficiency as well as, annual continuing education.

Entry into the profession requires at least an associate's degree and the passing of a certifying examination. Today's assistants have prior medical experience in the military, physicians training or successful course curriculums and a minimum number of hours of hands on participation in surgeries. The surgical assistant is highly skilled and focused on autonomy and the etiologies requiring surgery and most importantly the procedures to effectively remediate those conditions. They are dedicated to surgery and do not have the distraction of other types of clinical duties. Surgical Assistants prepare and position the patient for surgery, assist in visualization of the operating field, provide hemostasis, perform closure of incisions, and apply various wound dressings; all under the direction and supervision of the surgeon.

There are other professions that can provide assisting service, such as registered nurse first assists, nurse practitioners, physician assistants, and other surgeons. Each of these professions is in short supply due to the changing demand and supply demographics. The need for nurses in clinics and hospitals has been growing at double digits, nurse practitioners are the preferred clinician for the popular networks of distributed clinics, physician assistants are recruited as



clinical extenders to physicians and the surgeons are required to handle the surgical needs of an aging population. Each of these other titles can be more flexible and have the skill sets, education and license to perform other medical duties. The surgical assistant is specifically trained and targeted to perform the job description of surgical assisting.

**Best Value Option for Texas Medicaid:** In addition, they are the best value option. Each of the other professions, if available, command higher salaries; for example the surgical assistant receives approximately 13% of the surgeon fees. Even when the surgeon is assisting another surgeon, the surgical assistant still receives about 75% of the surgeon reimbursement. Appropriate allocation represents both an economical and best practice outcome for the payers. It makes sense to apply the resources according to their skills and costs. This allows the other professions to handle the more challenging aspects of their profession and the patient population.

**The Problem to be addressed by Sunset:** The law provided for reimbursement from all payers for these services, hence the amendment to the insurance code. The Legislature intended to make certain the payment for medically necessary and physician approved services. Unfortunately, in practice this did not occur. It is impossible to file a claim for reimbursement under Texas Medicaid, as no category has been included on the reimbursement form for surgical assistants. Further, no provision is available to add the category on the form at the time of filing. This means that each case that is performed under Texas Medicaid does not compensate the assistant for their critical contribution. Clearly contrary to the intent of the legislators. It is estimated that to provide reimbursement would cost the state approximately \$100,000 annually.

The reimbursements from commercial payers on all medical procedures are being compressed and surgical assisting is no exception. This means the assistants will have to apply their time and talents to those cases that generate revenues in order to provide for their families. No longer can the state expect the commercial side of the business to subsidize the state's patients. Each case must be judged on its own clinical, relationship and economic merits.

Examples can be seen where a surgical assistant was not available for a case. A less than adequately trained individual may be pressed into service in the OR to accommodate the surgeon's directives. This is not a desirable situation, especially if an unexpected event occurs during the surgery. Or alternatively, a more widely trained higher skilled practitioner such as a surgeon may be utilized. This is an inefficient use of a crucial resource at a much higher price. This situation, left unchecked will jeopardize the care of some of our citizens. Selective exclusion under our reimbursement laws will only produce slower case times, lower quality outcomes, higher costs in terms of direct medical attention and capital expenditures. In addition, it will lead to sub-optimal utilization of our clinical professionals.

Another area of disappointment with the current reimbursement interpretation is that it is closing off or severely restricting a viable profession for our veterans returning from their

service. History has shown how valuable this path is in finding qualified candidates to enter this field. How ironic, at a time when our citizen's needs for surgical services are increasing, we are not taking advantage of a viable flow of candidates. Also what a sad condition for our veterans.

**Conclusion:** I urge the committee to clarify the Texas law so that licensed surgical assistants may be reimbursed for serving Medicaid patients. The original legislation was visionary in taking a leadership approach to a real problem and in ensuring the financial reimbursement structure would be in place to adequately service the state's needs. Compromising the solution, will end up costing more, providing lower levels of care, wasting valuable resources, blocking professional opportunities for our veterans and worst of all, jeopardizing the care of our citizens.

Thank you