From: Sunset Advisory Commission
To: Cecelia Hartley
Subject: FW: Sunset Meeting on November 12 - 13, 2014
Date: Wednesday, October 15, 2014 2:06:03 PM

From: DBLeflore@SavaSC.com [mailto:DBLeflore@SavaSC.com]
Sent: Wednesday, October 15, 2014 12:37 PM
To: Sunset Advisory Commission
Subject: Sunset Meeting on November 12 - 13, 2014

Subject line: New issues, notincluded, in the Sunset Staff Report on the Health and Human Services Commission.

On behalf of the Texas Medicaid Coalition (TMC) and its membership, I am respectfully requesting that the following issues and recommendations be reviewed during the Sunset Commission Meeting on November 12 through November 13, 2014. These are responses to Issues 10 and 11 that are included in the Sunset Staff report, and have serious implications to Long Term Care providers in Texas.

TMC ISSUES:

Issue #10: **Poor Management Threatens the Office of Inspector General's Effective Execution of Its Fraud, Waste, and Abuse Mission.**

10 A - Last year (2013), the OIG said that they are required to complete a Utilization Review on all Nursing facilities in the State of Texas that receive Medicaid funds once a year. As of today (October 2014), the OIG says they are auditing a random sample of Nursing Facilities, but will not provide criteria for how Nursing Facilities are selected. Several Nursing Facilities that have VERY low error rates, from previous audits, continue to be put through these intense and sometime grueling audits.

10 B - The current TAC was specifically written for documentation requirements and guidance related to coding MDS 2.0. CMS updated the MDS to version 3.0 in October 2010, which impacted the guidance on coding the entire MDS. Therefore, TAC rule 371.212 needs to be updated to reflect current CMS RAI 3.0 guidance.

10 C – Nursing Facilities are being audited on "issues" that the OIG deem important without first notifying the provider community. The audits could have a look-back of a year and sometimes more.

10 D - Utilization Review Reconsideration (TAC 371.212) and subsequent ALJ appeal (TAC 357.484) processes and timelines are not sufficient in allowing providers a fair due process.

10 E - Little oversight of sampling and extrapolation methodology causes inconsistent and unfair processes for providers.

10 F - Provider's are unaware of the OIG's new fraud identification software tool (TORCH).

10 G - The OIG is unable to explain their role in the Texas Medicaid Managed Care auditing process. As it stands now, Nursing Facilities will be subject to auditing by Medicaid Managed Care companies and the OIG. The OIG states they have not been given any guidance on their role.

10 H - Sunset Commission special review of the OIG proposed timeframe of 6 years

TMC Recommendation to issue #10:

10 A - Require the OIG to develop and post the criteria for being selected for a Utilization Review audit. The OIG should also decrease the frequency of audits for Nursing Facilities that have low error rates. The OIG should be focusing on Nursing Facilities that have high error rates to prevent the fraud and abuse, which is at the core of the OIG's mission.

10 B - HHSC-OIG should stop all MDS 3.0 Utilization Reviews until TAC 371.212 is updated to reflect CMS RAI 3.0 Manual coding and documentation guidance. Additionally, once the TAC is updated, HHSC OIG will conduct Utilization Reviews on MDS 3.0 assessments completed on or after the date the TAC is updated.

10 C – Require the OIG to notify and educate the Nursing Facility providers regarding upcoming issues and begin the audit of those "issues" after the training date. This practice would enable providers ample time to identify non-compliance and implement systems to become compliant. Additionally, cross training between the OIG and Providers would benefit both entities. Cross training facilitates standardized practices and review processes for nursing facilities.

10 D - TAC requirements for responding to unfavorable Utilization Reviews and subsequent appeal processes/timelines should be updated to reflect CMS's appeal process, which can be located at: https://www.cms.gov/Medicare/Appeals-and-Grievances/OrgMedFFSAppeals/index.html?redirect=/OrgMedFFSAppeals/

10 E - The OIG should develop and publish to Nursing Providers criteria for the sampling process. TMC supports the continued elimination of the extrapolation process as this process assigns penalties over assessments not reviewed during the UR. "Certainly, trends or patterns of clerical errors can be an indicator of fraud". This statement from the Sunshine Commission Report states "can be an indicator of fraud". Providers have proven this to not be the case during utilization reviews. This is evident when errors are identified for a RUG level in the UR sample and another exact RUG is validated within the same sample. Nursing Facilities experienced huge financial penalties for extrapolations during the MDS 2.0 utilization reviews. This extrapolation process threatened the financial ability for Nursing Facilities to continue providing services. The financial hardship placed on providers was based on the "potential" for errors in non-sampled assessments. The extrapolations were not "actual" errors identified during UR for sampled assessments. Nursing facilities with errors related to sampled assessments fully understand that "actual" error amounts will be recouped and TMC supports the recoupment for these errors.

10 F - OIG should provide information to Providers regarding the OIG's new fraud identification tool called TORCH. Provider's are currently unaware of the development of this software and purpose it will serve as well as the content that will be collected and analyzed to detect fraud.

10 G – Require the Medicaid Managed Care Companies and the OIG present a formalized plan for auditing purposes to the Nursing Facility Providers and communities. Prevent a duplication of auditing services. Develop an error rate threshold, so that providers who are below the set threshold will have fewer reviews than other providers with high error rates.

10 H - Require OIG to undergo special review by the Sunset Commission in 3 years as opposed to the proposed 6 year timeframe.

Issue #11: Credible Allegation of Fraud Payment Hold Hearings Do Not Achieve the Law's Intent to Act Quickly to Protect the State Against Significant Cases of Fraud.

11 A - TMC supports the issue in general' however, is unfamiliar with the process of identifying a "Credible

Allegation". TMC supports the idea of transparency and due process that is outlined in Senate Bill 1803.

TMC Recommendation to issue #11:

11 A - Increase the awareness of providers understanding of CAF holds via training and increased communication between providers and the OIG. Providers desire and strive to be in compliance; however, there are many different, and sometimes, contradicting rules.

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From:	Sunset Advisory Commission
To:	Cecelia Hartley
Subject:	FW: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)
Date:	Wednesday, October 15, 2014 2:06:12 PM

-----Original Message-----
From: sundrupal@capitol.local [mailto:sundrupal@capitol.local]
Sent: Wednesday, October 15, 2014 12:35 PM
To: Sunset Advisory Commission
Subject: Form submission from: Public Input Form for Agencies Under Review (Public/After Publication)

Submitted on Wednesday, October 15, 2014 - 12:35

Agency: HEALTH AND HUMAN SERVICES COMMISSION HHSC

First Name: Dirk

Last Name: Le Flore

Title: Board Member

Organization you are affiliated with: Texas Medicaid Coalition

Email: dbleflore@savasc.com

City: Atlanta

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: see above

My Comment Will Be Made Public: I agree