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Testimony Before the Texas Sunset Commission
Sunset Review of HHSC

Commission Members,

We wanted to share our thoughts on how best to address current issues with the Texas Health and Human Services Commission. In general we are concerned about further consolidation of this agency. While the initial reasons for consolidation had to do with financial savings it is unclear how much we've saved. Instead, we've created a "mega agency" and the recommendation to further consolidate HHSC threatens to make HHSC more "mega" if there is such a word.

While not all changes have been bad, there are several opportunities for improvement that could help HHSC perform better, be more transparent, and be more accountable.

Issue 1.1-Recommendations

- **Carve OIG out of HHSC.**
- **Require Governor to Appoint an Executive Board, not a Council for HHSC. The current council model vests too much power in too few people; and lacks the conflict of interest protections of a Board model.**
- **Keep individual agency councils.**

Issue 2.1 Recommendation: Contract Management either needs to be central, or it needs to be pulled out of HHSC. The current system of contract management has inadequate protection on several fronts as illustrated by the several problems with TMHP. Similar contracting problems date back to at least 2004.

Issue 4.6- It is unclear what the advantages and disadvantages of moving from a P&T Committee to a DUR Board would be.

- **Recommendation: If we move to a DUR Board, this should be a true Board, complete with required filings with the Texas Ethics Commission. No conflicts of interest should be allowed. No exceptions.**

Issue 5- While streamlining the provider credentialing process may be needed, we cannot depend on licensing agencies or the managed care providers to keep bad actors out of the system. We are aware of cases where providers were allowed to return to participation in Medicaid even after completing prison sentences for health care fraud. Further, the OIG online searchable database is not up to date. One provider convicted of Medicare fraud in March is still not showing up as excluded, although he is at large and awaiting sentencing. This leaves providers at risk and leaves the public unaware.

Issue 7- Record sharing between service providers may improve care, but not without explicit controls on what may be shared and with whom.

- **Recommendation- More must be done in statute to define who is considered to be a health care provider.**
- **Consumers must be statutorily placed in the driver's seat, indicating who may or may not access their records.**

Issue 10- OIG's Management Issues are Largely By Design

The creation of the OIG office was supposed to be an improvement over the system that existed at that time. At that time, there were several state officials who were receiving money from drug companies and then promoting a psychotropic drug protocol that favored the newest, most expensive drugs. This later became the subject of the largest Medicaid Fraud settlement in Texas history. Unfortunately, lack of an independent OIG limited the ability of the OIG to combat this problem. There are actual examples of investigations being interfered with. For example: In 2006, the Inspector General reported that an investigation into Texas DSHS grant recipients lobbying on state funds was interfered with, and that documents were altered.¹ In the end, he did conclude that lobbying had occurred using grant funds.

- **Recommendation: OIG should be independent from HHSC even if it must remain administratively attached. Either an independent OIG office or the Comptroller's Office might work. Using the Comptroller's Office would avoid duplicating administrative roles.**

10.7- Comment: Failure to conduct adequate fraud control in managed care is not unique to OIG. Both State and Federal Agencies are having to play catch up.

10.10- We disagree with this recommendation. The OIG must retain the flexibility to pursue those internal investigations that are likely to result in recoupment or conviction.

10.11- Recommendations:

- **Require OIG to develop a Medicaid Fraud Dashboard and make it public. This has informative as well as deterrent value.**
- **All Medicaid beneficiaries should receive monthly statements. This creates an opportunity for beneficiaries to note charges for services they did not receive and report Medicaid Fraud.**

Issue 13- Eliminate advisory committee that are not absolutely crucial to rulemaking or other legitimate activities. Agency advisory committees should be subject to conflict of interest rules, and HHSC itself should have a Board, not an Executive Advisory Committee. This prevents consolidation of power under one individual, and also, Boards have historically been required to file Ethics Commission reports as a protection against Conflict of Interest.

¹ December 2006, HHSC Office of Inspector General, Final Report on the Review/Investigation of Department of State Health Services Grant Recipient Lobbying Activities.