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LeadingAge Texas Testimony
The Sunset Commission
Department of Aging and Disability Services

Members of the Sunset Commission:

Thank you for the opportunity to testify before this commission. My name is George Linial and I am the President/CEO of LeadingAge Texas. We represent over 250 not-for-profit retirement housing communities, assisted living communities, continuing care retirement communities, and nursing homes. LeadingAge Texas member communities are primarily sponsored by community-based non-profit, civic, religious, fraternal, and other quality groups and mission-driven organizations. Over 30,000 elderly Texans reside in our member communities.

Our members work closely with the Department of Aging and Disability Services on regulatory and licensing issues, improving quality, and other related matters.

While we agree with many of the recommendations developed by the Commission, there are some problems with the report that need to be addressed. Let me begin with the fact that nursing facilities are the most regulated health facilities in the state. More so than hospitals, physician's offices, ambulatory care centers, outpatient clinics, public health clinics, and many more. Because most nursing facilities accept Medicare and Medicaid, they are also regulated by CMS and therefore also subject to civil monetary penalties in addition to the state administrative penalties DADS focuses on in their report. DADS can recommend federal penalties and usually CMS follows their recommendations.

The Sunset Report stated that DADS recommended \$7 million in penalties in 2013. DADS says that "only" \$2.6 million was paid – implying that CMS didn't follow through. This does not cast a true picture. For example, if a facility forgoes their right to appeal, then they receive a 35% reduction in their penalty (in this case that could account for \$2,450,000). Many providers take this option instead of appealing. Of the rest of the DADS-recommended federal penalties, a lot is probably still in appeals or owed by nursing facilities that went out of business. If DADS is taking the position that CMS does not impose the penalties DADS recommends, a more valid measure would be to contrast the \$7 million in penalties that DADS recommended with the \$6 million imposed by CMS. In addition to these penalties, annual billing audits lead to many providers owing DADS tens of thousands of dollars, often because of clerical errors or a subjective second-guessing of health care needs. Texas providers face no shortage of penalties.

DADS says they are hindered because facilities have the right to correct certain deficiencies without being penalized. However, under current regulations there are significant exceptions to facilities' right to correct, and DADS has substantial discretion to withhold the right to correct option. Providers face seemingly arbitrary findings that they cannot correct, and we would welcome some clarity as to when the right to correct can legally be withheld by DADS. Consistent regulatory practices are a significant issue. A facility can be cited for a deficiency that had not been cited for years previously (with no change in personnel or practices). Regulatory consistency between the DADS regions is also an issue. The point is that long term care facilities want to know what is expected of them and do what they can to meet those expectations. But depending on the personnel of a given survey team or a region, those expectations change sometimes on a monthly basis.

One final note, as I mentioned, long term care and specifically nursing home care is highly regulated. Nursing facilities have numerous government agencies in and out of their facilities almost daily. They undergo annual surveys (both health and life safety), complaint surveys, OIG audits, RUG audits, to name a few. It is difficult to quantify, but tremendous amounts of staff time and effort are put into dealing with regulatory issues and away from time caring for residents. We are facing a looming challenge as the population continues to age (as do staff in facilities), and the number of administrators and nurses needed to replace those who will retire is not sufficient. Why are we facing this shortage? I believe one of the reasons is that someone interested in the health field would choose another venue to care for others because they are not subject to constant scrutiny by regulators with their licenses on the line. In hospitals for example, if a mistake occurs, the hospital uses it as a learning tool to improve care for others. In a nursing home, a mistake costs a facility thousands of dollars – all with minimal resources given the current Medicaid rate.

The current national average for Medicaid in nursing facilities is about \$50/day higher than in Texas. A recent AARP study cited Texas as having extraordinarily higher staff turnover – ranking us 49th in the country. We have stated for years that Texas ranks 49th in Medicaid reimbursement – the correlation is unmistakable.

Thank you for the opportunity to submit these comments and suggestions to the committee. We appreciate and support the continual oversight of these massive reforms by this committee. LeadingAge Texas members stand committed to working with all parties to make certain that we provide the most adequate system for improving the delivery of long-term care services to Texas seniors.

Testimony Presented by: George Linial, LeadingAge Texas President/CEO