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associates

June 6, 2014

The Honorable Jane Nelson, Chair
Texas Sunset Advisory Commission
1501 North Congress Avenue
Robert E. Johnson Building, 6th Floor
Austin, TX 78701

RE: Texas Department of State Health Services

Dear Madam Chair:

Congratulations on the tremendous work the Sunset staff did on their review of the Texas Department of State Health Services (DSHS). Having worked in and with various healthcare industries and providers throughout the United States, I am acutely aware of the broad scope and complexity of functions currently housed within Texas' public health care agency. I applaud the findings and recommendations of the Sunset staff regarding DSHS and appreciate the opportunity to submit comments on behalf of American Renal Associates (ARA), one of the largest providers of outpatient dialysis services in the United States.

As such, ARA's primary function is providing life-sustaining outpatient dialysis services to patients in critical need, or those with End Stage Renal Disease (ESRD). In order to provide these services in Texas, a license is required and to receive payments from Medicare, certification is mandatory. DSHS is responsible for conducting both the licensure and the Medicare certification surveys. Even though these are usually conducted by the same individuals, they are typically not conducted at the same time. Medicare certification surveys are often delayed. Since approximately 85% of dialysis patients receive primary benefits through Medicare, this leaves them very little choice in dialysis providers and having to travel great distances for treatment.

Currently there are 561 ESRD Facilities in Texas, but with a growing, aging population, that number continues to increase. The licensing process in Texas requires a provider to be fully functional (building and equipment leased, staff hired and at least one patient receiving dialysis). However, once licensed, wait times to receive Medicaid certification range from 265 days to over 800. That is an expensive proposition if operating at 15% of capacity.

We have been told that this is dictated by CMS, yet in other large states where we operate, the process is much faster. For example, in Florida, it takes an average of 90 days. In California, Medicare certification averages two to four months.

In Issue 3 of the DSHS Staff Report, Sunset staff provided an excellent analysis of the challenges DSHS faces with the scope and diversity of their regulatory functions. While we leave it to your judgment to decide what action to take on their recommendations, we would respectfully ask you to consider

applying the statutory criteria for Sunset reviews of licensing programs to the ESRD Facility licensure program to determine if a more efficient approach is possible.

Consider the following:

Does the occupational licensing program ...provide the least restrictive form of regulation needed to protect the public interest?

As mentioned, the same surveyors are responsible for state licensure and Medicare certification. Although there are some differences in standards, there are more that are identical or very similar. Would it not be more efficient to identify the common standards, survey those once rather than conducting duplicative efforts and follow that immediately by a review of the unique state and federal standards? With both state and federal funding involved, time involved in conducting the surveys could be allocated to the appropriate cost center just as it is done in many joint state/federal programs.

Another Sunset Question for Occupational Licensing is:

What is the impact of the regulation on competition, consumer choice, and the cost of services?

By delaying Medicare certification, neither state nor federal tax dollars are saved. Unlike some health care facilities, Medicare does not pay a facility fee to ESRD Facilities. The fee is tied to the patient so the cost of services does not change if the number of facilities increases or remains stagnant. The question is whether patients have convenient access to care and consumer choice. Competition certainly improves both, but it is difficult to decide to invest in Texas in the current regulatory environment.

In some cases the current survey process may actually increase the cost of services. An increase in home modality dialysis, known as peritoneal dialysis and/or home hemodialysis, a patient is able to provide self dialysis care at home, at work or while traveling. The patient may be able to use fewer medications and eat a less restrictive diet than with traditional in-center hemodialysis. This improves compliance which reduces hospitalizations and saves Medicare and other payors approximately \$18,000/year. Unfortunately providers who want to add this service have to be certified to be able to serve Medicare patients. These surveys are given a low priority just as new facilities are.

Delayed surveys result in an access to care issue for patients, a lack of treatment choice (a patient's right), a failure to use the best technology to improve care and reduce costs, and an increase in costs for providers. By working with DSHS to streamline the regulatory process for licensing of ESRD facilities, ARA and other dialysis providers can and will continue to work hard to ensure Texans have access to state of the art care.

Thank you for consideration of this recommendation. Please contact me if you have questions.

Respectfully,


Joe Carlucci
CEO and Co-Founder

cc: Kathy Hutto