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June 30, 2014

Hon. Jane Nelson  
Hon. Four Price  
Texas Sunset Advisory Commission  
PO Box 13066  
Austin, Texas 78711

Re: Texas Department of State Health Services – Issue 7 and Recommendations 7.1 and 7.2

Position: Opposed to Recommendations 7.1 and 7.2

Dear Chair Nelson and Vice-Chair Price,

The Texas Ambulatory Surgery Center Society (TASCS) is a Texas non-profit representing over 430 licensed surgery centers in Texas. For over 10 years TASCS has been the voice of Texas ambulatory surgery centers (ASCs) on policy and regulatory issues before the legislature and regulatory agencies. As the Executive Director of TASCS I thank you for the opportunity to participate in the Sunset process and to provide these comments in addition to the testimony we provided at the hearing on June 25, 2014, regarding the Sunset staff report and testimony, and the Texas Department of State Health Services (DSHS) testimony on DSHS Issue 7 and Recommendations 7.1 and 7.2.

TASCS is opposed to DSHS Recommendations 7.1 and 7.2. TASCS has been part of a national effort advocating for the reporting of ASC quality data with the goal of assuring the highest quality of care and patient safety in ASCs. Unfortunately, the ASC data collection required by the Texas Health Care Information Council (THCIC), a program within DSHS, has repeatedly failed to meet the original statute's goals, purposes and self-policing standards, after 20 years. Accordingly, TASCS is opposed to Recommendations 7.1 and 7.2, and recommends that the THCIC program within DSHS be terminated for failure to meet its statutory requirements and because the information it seeks is being collected and provided for the consumer's use by other state and federal agencies.

**1. THCIC Failed to Meet Statutory Goals to Collect Claims and Quality Data, and Present the Data to the Public to Make Cost-Effective, Good Quality Health Care Choices**

THCIC was created in 1995, almost 20 years ago, during the 74<sup>th</sup> Legislature. The THCIC enabling legislation became effective September 1, 1995, with this stated goal:

Sec. 108.006. POWERS AND DUTIES OF COUNCIL. (a) The council shall develop a statewide health care data collection system to **collect health care charges, utilization data, provider quality data, and outcome data to facilitate the promotion and accessibility of cost-effective, good quality health care.** (emphasis added)

THCIC was required by the legislature to do two things: (1) collect **claims data** and put it in a consumer-friendly format, and (2) to collect **quality data** and put it in a consumer-friendly format, so consumers may use both types of information to make health care choices.

THCIC has failed to meet the statutory requirements of Health & Safety Code 108 by failing to collect “provider quality data, and outcome data to facilitate the promotion and accessibility of ... good quality health care.” THCIC does not collect any quality data from ASCs. Accordingly THCIC has not **and** cannot provide any information or reports to the general public or consumer about the quality of care in ASCs which consumers might use to make choices about “good quality health care.” The ASC data cannot be used for any type of quality analysis, as required by statute. No research or study based on the ASC collected data has been published, nor do we believe even initiated.

THCIC only collects data from ASCs that can be described as “claims data,” which includes the following information: ICD-9 code, CPT-4 code, **charge by CPT code, total charges**, procedure description, **surgeon, patient, social security number, facility**, facility type, race, ethnicity, sex, county, city, state, zip, and age.

## **2. THCIC Failed to Analyze or Provide Claims Data in a Consumer-Friendly Manner**

THCIC has also failed to meet the statutory requirements of Health & Safety Code 108 by failing to “collect health care charges, utilization data . . . to facilitate the promotion and accessibility of cost-effective, good quality health care.” With regards to the ASC charge data, THCIC was required to collect the ASC data **and place it in a format that consumers could use to shop for “cost-effective, good quality” health care/ASC. THCIC has failed to produce the ASC charge data in a useable format for the public/consumer to make “cost effective” health care choices.**

So with regards to the ASC claims data, THCIC has also failed to produce the collected ASC data in any format that a consumer could use to make a “cost-effective” choice about an ASC. Rather, THCIC has chosen to sell the ASC claims data, which is proprietary, to third parties who use it in a predatory manner against the very ASCs that are required to report it.

## **3. THCIC Does NOT Use or Analyze the ASC Claims Data, Instead THCIC Sells the Identifiable Proprietary Data to Third-Parties for Predatory Purposes**

THCIC contracts with an out-of-state vendor to collect the ASC claims data. THCIC, through the out-of-state vendor, then sells the ASC claims data to third-parties. The ASC claims data contains each ASC’s proprietary data, indicating the types of surgeries, the volume of surgeries, the physician/surgeon performing the surgeries, the charge for the surgeries, and the total charges. THCIC then sells this proprietary claims data to third-parties, who purchase the ASC claims data for competitive purposes only. This data provides competitors the proprietary

financial information of each ASC, giving the competitor an economic advantage as well as identifying the physicians/surgeons with successful practices to target.

TASCS is strongly opposed to THCIC collecting ASC claims data and then selling it to third parties who use it for their own financial benefit against the reporting ASC. How is the State's or public's interest served by THCIC forcing ASCs to report their proprietary information and then the State sells it to their competitors just to continue to fund a program which fails to meet its statutory goals?

THCIC is NOT using the ASC claims data for any purpose other than to raise revenue and to pay for their continued existence.

#### **4. THCIC Failed to Discontinue its ASC Claims Data Collection after TDI Began Collecting the ASC Claims Data and Producing it in a Consumer-Friendly Manner, Violating THCIC's Statutory Directive Not to Duplicate Data Collection**

The enabling legislation also specifically required THCIC to "NOT duplicate" other data collection and to "consolidate" collection too; obviously to avoid overburdening our health care providers. THCIC has not eliminated data collections which are duplicative in accordance with its statutory directive:

Sec. 108.006. POWERS AND DUTIES OF COUNCIL. (a)(4) build on ***and NOT DUPLICATE other data collection required by state or federal law***, by an accreditation organization, or by board rule. . . . (emphasis added)

Nor has THCIC recommended any "consolidation" pursuant to their statutory directive:

Sec. 108.006. POWERS AND DUTIES OF COUNCIL. (a)(5) ***working with appropriate agencies, review public health data collection programs in this state and recommend, where appropriate, consolidation of the programs and any legislation necessary to effect the consolidation.*** . . . (emphasis added)

Texas Health & Safety Code Chapter 108.006(4) requires DSHS/THCIC to "*not duplicate other data collection required by state or federal law, by an accredited organization, or by board rule.*" The Texas Department of Insurance (TDI) has begun, under statutory authority, claims data collection, and production of the data on a consumer-friendly website. The TDI website allows consumers to compare average charges for surgeries/procedures, including ASCs. The TDI website gives consumers the information necessary to "estimate costs before you have a procedure," "understand cost variations across regions," and "help you make informed decisions when you are able to plan for medical services."

TDI has compiled this data by collecting the claims data from the health plans. This is important to note, because it does not require the individual ASC to file its proprietary claims data to be purchased by a competitor to be used in a predatory manner against the reporting ASC.

TDI is collecting and compiling the ASC claims data that THCIC is collecting, and also formatting and producing it on a consumer-friendly website.

## **5. THCIC Should Not Begin to Collect Quality Data from ASCs because it would be Duplicative**

THCIC is not collecting quality data from ASCs, and should not begin collecting quality data from ASCs. CMS (federal) requires ASCs to report quality data including the type of data that will lead to identification and improvement of quality and patient safety issues. The CMS quality data collected from ASCs includes: patient burn, patient fall, wrong site, hospital transfer/admission, prophylactic IV antibiotic timing, safe surgery checklist, etc. TASCs has fully participated and encouraged the reporting of quality data from ASCs to encourage quality transparency for the consumer.

In addition, DSHS will be collecting Health Care-Associated Infections and Preventable Adverse Events (HAI/PAE) data from ASCs beginning January 1, 2015. This data is similar to the CMS data already being collected.

DSHS also collects incident reports from ASCs, a fourth data report required of ASCs. To summarize, ASCs report claims data to the THCIC out-of-state vendor, quality data to CMS, HAI/PAE data to DSHS beginning January 15, 2014, and incident reports to DSHS. Each of the reports to DSHS – THCIC, HAI/PAE and incident reports – are each reported to a different program within DSHS and require separate reporting formats as well!

## **6. THCIC Data Reporting is a Significant Financial and Personnel Burden to each ASC**

As noted above, ASCs have multiple reporting requirements: CMS quality data reporting, **DSHS** HAI/PAE reporting (beginning Jan. 2015), **DSHS** incident reporting and **DSHS/THCIC** claims data reporting. These reports are each separately reported, even the 3 sets of data collected by **DSHS**. Each of these reports have/had hardware and software requirements, plus required personnel training and personnel time to report. The THCIC reporting also requires manual input of data on every patient, as well as a manual verification of each report. Needless to state, the multiple reporting requirements are a significant burden to each ASC's overhead.

## **7. THCIC is an Unnecessary Cost to DSHS and the State Budget**

The ASC data collection function of THCIC is an unnecessary cost burden to the State budget. THCIC was created to collect health care claims data and quality data to then produce the data for consumers to use to make "cost-effective, good quality health care" decisions.

As noted above, THCIC does not collect ASC quality data and therefore has failed to meet this purpose. Although THCIC does collect ASC claims data, it does not and has not produced this data in a consumer-friendly format, and has therefore failed to meet this purpose as well.

Rather, THCIC has sold the ASC claims data (proprietary information) to third parties who use the data for their own competitive and predatory purposes against the reporting ASCs. The legislature appropriated approximately \$1.6 million for THCIC in the last budget. THCIC will collect more \$500,000 from the sale of the proprietary claims data.

THCIC is also violating its enabling legislation by continuing to duplicate data collection. TDI is now collecting, compiling and producing the ASC claims data in a consumer-friendly website, making THCIC's collection of ASC claims data duplicative and unnecessary

**8. THCIC Requires ASCs to Report the Claims Data including the Patient's Personal Data without regards to the Patient's Knowledge or Consent – THCIC Violates Each Patient's Right to Privacy**

THCIC's ASC data reporting requirements are not predicated on the patient's knowledge or consent. Even if a patient was to refuse to have their information reported to THCIC, an ASC would be fined by THCIC/DSHS for not reporting the patient's information.

The fact that the State does not use the collected ASC claims data for any legitimate state interest – health and welfare of the public – means that THCIC is violating individual patient rights to privacy for the sake of collecting ASC claims data to sell to third-parties to pay for its own existence. It is also confirmed that THCIC does NO analysis of the ASC claims data; THCIC simply collects it and sells it.

For all the reasons stated above, TASCs opposes Recommendations 7.1 and 7.2 and requests the Sunset Advisory Commission to “sunset” THCIC. In particular, the Sunset staff report incorrectly states “this valuable data aids in research and policy purposes that can help promote the accessibility of good quality, cost effective healthcare.” Sunset staff also fails to acknowledge the statutory requirement in Chapter 108 prohibiting THCIC from duplicating collection efforts and fails to acknowledge the claims data collection and posting of consumer-friendly data by TDI and the collection of quality data by CMS and other programs of DSHS, which should warrant a recommendation that THCIC be sunsetted since its collection efforts are now duplicative.

In reality, the ASC data collected by THCIC has **zero** value for “research or policy purposes that can help promote the accessibility of good quality, cost-effective healthcare.” More importantly, THCIC performs no analysis of the data; it only collects the ASC claims data and sells it to sustain its own existence, which is certainly not in the State's interest nor for the health and welfare of the public.

On behalf of TASCs and over 430 licensed ASCs providing care in Texas, thank you for the opportunity to comment on DSHS Issue 7 and oppose DSHS recommendations 7.1 and 7.2. Please do not hesitate to contact me at 512-535-2325, if you have any questions.

Sincerely,



Anthony German  
Executive Director