



OCT 17 2014

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

KYLE L. JANEK, M.D.
EXECUTIVE COMMISSIONER

October 17, 2014

Mr. Ken Levine
Director, Sunset Advisory Commission
1501 N. Congress
Austin, Texas 78701

Dear Mr. Levine:

On behalf of the health and human services system, I welcome this opportunity to respond to the *Sunset Staff Report on the Health and Human Services Commission and System Issues*. We appreciate Sunset staff's diligence and professionalism as they conducted a thorough review of the health and human services system during the last year. Their hard work and understanding of complex issues is nothing short of remarkable, and I applaud staff on a job well done.

Enclosed is the Health and Human Services Commission's response to the Sunset staff report. The report captures the challenges the system faces in providing vital services to Texans in the most effective and cost efficient way possible. As the Executive Commissioner of the health and human services system, I support the intent and direction of the recommendations laid out in the report.

The report notes that we have not fully consolidated many of the administrative services directed by House Bill 2292. We are working on initiatives to implement the Legislature's vision of an efficient and coordinated system, and I stand ready to follow the Sunset Commission's recommendations.

I look forward to discussing these recommendations with the Sunset Commission during the November 12-13 hearing and to working with the Legislature as the Sunset process continues.

Sincerely,

A handwritten signature in blue ink, appearing to read "Kyle Janek".

Kyle L. Janek, M.D.

Health and Human Services Commission and System Issues

Response to Issue 1

The Vision for Achieving Better, More Efficiently Run Services Through Consolidation of Health and Human Services Agencies Is Not Yet Complete.

Change in Statute

- 1.1 Consolidate the five HHS system agencies into one agency called the Health and Human Services Commission, with divisions established along functional lines and other features as described below.**

As the Executive Commissioner of the Texas Health and Human Services System, I believe this recommendation takes the needed steps toward completing the vision contemplated in the landmark legislation of House Bill 2292. This would reduce fragmentation between programs, increase accountability to our elected leadership, and reduce the bureaucracy met by families in today's structure. Under the new structure, families would have one place to go to receive needed services without having to navigate multiple agencies and programs. We strive to make it easier on the families we serve – and others who rely on this system – to get the help they need.

In addition, while efficiencies will undoubtedly be gained, better service delivery and greater transparency will be the greatest outcomes of restructuring the health and human services system. If adopted by the Legislature, HHSC will work with executive and legislative leadership to ensure a sound transition with minimal programmatic impact during that effort.

- 1.2 Require development of a transition structure, including formation of a transition legislative oversight committee, and development of a broad transition plan and detailed work plan to guide HHSC in setting up the new structure.**

HHSC agrees with the recommendation and believes sufficient time is provided to develop a transition plan that details the process for restructuring the health and human services system.

- 1.3 Continue the basic functions of the health and human services agencies in the single, reconstituted Health and Human Services Commission for 12 years.**

The agency agrees that Texas has a continuing need to perform the vital functions carried out by the Department of Aging and Disability Services, Department of Assistive and Rehabilitative Services, Department of Family and Protective Services, Department of State Health Services, and the Health and Human Services Commission.

Incomplete Centralization of Support Services Deprives the State of Benefits Envisioned in Consolidating the Health and Human Services System.

Management Action

2.1 Direct HHSC to further consolidate administrative support services.

The agency supports the recommendation to further consolidate administrative support services at HHSC. The agency is already taking steps to improve coordination and consolidate some administrative functions from the other four health and human services agencies, including facility management and space planning, financial management, communication, legal, external relations, and IT. The agency believes consolidating these support services will result in increased efficiencies, streamlined and standardized processes, reduced administrative costs, and better support for the programs that serve Texans.

Statutorily authorize HHSC to establish a centralized internal audit staff under HHSC's control for all HHS agencies.

The agency supports this recommendation.

2.2 Direct HHSC to take the following steps to improve accountability for, as well as planning and integration of, information technology and information security in the HHS system.

The agency supports the recommendation. As discussed in the agency's response to Recommendation 2.1, HHSC is in the process of consolidating some IT functions from the other HHS agencies. Fully consolidating IT at HHSC will provide clearer authority for overseeing IT and create an integrated process for approving new IT projects.

Statutorily exempt HHS system agencies from the general state requirement that each state agency's information resource manager report to the executive head of the agency.

The agency agrees with the recommendation. The agency believes allowing information resource managers to report directly to HHSC, instead of the commissioner of each HHS agency, would strengthen HHSC's efforts to consolidate and create a single process for overseeing IT.

2.3 Require HHSC to take the following actions to better define and strengthen its role in both procurement and contract monitoring.

The agency agrees with the recommendation and is currently developing a contract management handbook. HHSC looks forward to continuing to improve its procurement and contract monitoring functions so the agency can easily identify and quickly resolve any potential problems.

2.4 Direct HHSC's procurement and contract office to improve assistance to and communications with system agencies as follows.

The agency supports this recommendation and is committed to strengthening technical assistance to system agencies, designating points of contact within each agency, and taking a more active role in training.

2.5 Direct HHSC to develop ways to apply focused, high-level attention to system contracting.

The agency agrees with the recommendation.

2.6 Consolidate rate setting for the HHS system at HHSC.

The agency agrees with the recommendation.

2.7 Improve transparency in setting capitated rates.

The agency agrees with the recommendation. HHSC is currently looking at ways to share information in a timelier manner that can be used by managed care organizations in the rate setting process. The agency looks forward to continuing to partner with managed care organizations and come to a mutually beneficial solution.

Fragmented Administration of Medicaid Leads to Uncoordinated Policies and Duplicative Services and Could Place Future Transitions to Managed Care at Risk.

Change in Statute

3.1 Consolidate administration of Medicaid at HHSC.

The agency supports the recommendation. HHSC believes consolidating Medicaid administration will strengthen the Legislature's recent efforts, such as Senate Bill 7, to create a seamless transition for the impending move of the fee-for-service Medicaid population into managed care. Furthermore, this recommendation would ensure the agency has sufficient oversight of all Medicaid programs, as required by federal regulation.

HHSC Has Not Fully Adapted Its Processes to Managed Care, Limiting the Agency's Ability to Evaluate the Medicaid Program and Provide Sufficient Oversight.

Management Action

- 4.1 Direct HHSC to comprehensively evaluate data and trends for the Medicaid program on an ongoing basis.**

The agency agrees with the recommendation that additional data analysis would help inform staff of trends, utilization patterns, and other issues in the Medicaid program and allow HHSC leadership to adjust policies as necessary.

Change in Statute

- 4.2 Require HHSC to regularly evaluate the appropriateness of requested performance data and develop a dashboard that identifies key performance data for agency leadership.**

HHSC concurs with the recommendation and is currently developing a dashboard to monitor performance data for the Medicaid program, including data related to managed care and pharmaceutical drug benefits, using existing tools.

Management Action

- 4.3 HHSC should develop a system to automate data entry.**

The agency supports the recommendation to automate data entry. HHSC is finalizing a plan to update its automated data entry tool, the Delivery Tracking System, which would streamline the process for managed care organizations to report data to the agency, and create efficiencies for both HHSC and managed care organizations. The agency is also in the process of automating data entry for managed care organizations' pharmaceutical drug benefits.

Change in Statute

- 4.4 Require OIG and HHSC to define, in rule, the respective roles and purpose of managed care audits and to coordinate all audit activities.**

The agency agrees with the recommendation to coordinate audits and minimize potential duplication of work.

Management Action

- 4.5 Direct HHSC to redefine the role of its prescription drug program to provide better oversight of drug benefits in managed care.**

HHSC agrees with the recommendation and has already begun repurposing some positions at its pharmacy call center to other parts of the agency to provide oversight of managed care organizations. The agency has also started to develop a process to track data related to managed care organizations' pharmaceutical drug benefits, including tracking whether these organizations implement clinical restrictions on drug access.

Change in Statute

- 4.6 Eliminate the Pharmaceutical and Therapeutics Committee, transfer its functions to the Drug Utilization Review Board, and expand the repurposed board's membership to include managed care representation.**

While HHSC generally agrees with the concept of this recommendation, the agency believes the work and scope of these two advisory committees is too much for one committee. Instead, HHSC recommends requiring one member to serve on both committees, which would provide the continuity sought by this proposed recommendation. If the agency's modification to this recommendation is not taken, HHSC suggests adding five additional members to the repurposed Drug Utilization Review Board, increasing the board's membership to 17 members.

Agency Modifications

1. Require one member to serve on both the Pharmaceutical and Therapeutics Committee and the Drug Utilization Review Board.
2. Eliminate the Pharmaceutical and Therapeutics Committee, transfer its functions to the Drug Utilization Review Board, and expand its membership to include 17 members.

Change in Statute

- 4.7 Expand the Medical Care Advisory Committee's membership to include managed care representation.**

HHSC agrees with the recommendation.

Fiscal Implication

HHSC believes that automating its data entry processes would have a one-time cost and some ongoing maintenance costs.

Response to Issue 5

Fragmented Provider Enrollment and Credentialing Processes Are Administratively Burdensome and Could Discourage Participation in Medicaid.

Change in Statute

5.1 Require HHSC to streamline the Medicaid provider enrollment and credentialing processes by creating an enrollment portal and better linking data within the process.

HHSC agrees with the recommendation to simplify the enrollment and credentialing processes, improve information sharing, and enable providers to more easily participate in Medicaid. The agency is exploring options to create an enrollment portal that would create a “single door” for all provider types to enroll in Medicaid.

5.2 Provide that OIG no longer conduct criminal history checks for providers already reviewed by licensing boards.

While HHSC agrees the background check process should be streamlined and duplication should be avoided, the agency is concerned state licensing boards’ review of criminal history information may be limited and not include federally required checks, such as certain state and federal databases, that OIG performs as part of its review. The agency suggests all criminal history checks comply with requirements specified in federal law, 42 C.F.R. Section 455.410. In addition, HHSC and OIG are working together to create a process to check the federal revocation list as part of the provider enrollment process.

5.3 Require OIG to develop criminal history guidelines for provider types for which it conducts background checks.

HHSC agrees with the recommendation to create a transparent and consistent process to evaluate providers’ criminal history.

5.4 Require OIG to complete provider background checks within 10 business days.

HHSC agrees with the recommendation to speed-up the provider enrollment process so Medicaid providers can more quickly enroll in the program and begin serving clients.

The State Is Missing Opportunities to More Aggressively Promote Methods to Improve the Quality of Health Care.

Change in Statute

- 6.1 Require HHSC to develop a comprehensive, coordinated operational plan designed to ensure consistent approaches in its major initiatives for improving the quality of health care.**

The agency supports this recommendation while recognizing that a proposed plan for DSRIP projects should not limit local flexibility or innovation for improving health care.

- 6.2 Require HHSC to develop a pilot project to promote increased use of incentive-based payments by managed care organizations.**

The agency agrees with the recommendation. HHSC is also researching other potential incentive-based payment structures, such as contracting directly with Medicaid providers.

Management Action

- 6.3 Require HHSC to include a requirement for use of incentive-based payments in managed care requests for proposals and better define types of incentive-based payments.**

The agency supports this recommendation. HHSC believes the use of incentive-based payments is an important tool for improving healthcare quality and reducing costs.

HHSC Lacks a Comprehensive Approach to Managing Data, Limiting Effective Delivery of Complex and Interconnected Services.

Management Action

7.1 Direct HHSC to elevate oversight and management of data initiatives, including creation of a centralized office with clear authority to oversee strategic use of data.

The agency concurs with the recommendation and supports eliminating statutory barriers to sharing information among the health and human services agencies, which would improve efficiency, reduce administrative costs, and streamline data collection processes. As the first step in creating a system-wide data inventory, HHSC has contracted with a vendor to catalogue Medicaid-related data sets and systems.

Administration of Multiple Women’s Health Programs Wastes Resources and Is Unnecessarily Complicated for Providers and Clients.

Change in Statute

8.1 Require HHSC to establish a single women’s health and family planning program for the health and human services system.

The agency supports the concept of streamlining women’s health services. HHSC requests flexibility to allow HHSC to provide services for women either through a fee-for-service model or a managed care model.

Agency Modification:

1. Allow HHSC flexibility to implement either a fee-for-service or managed care model for the single women’s health and family planning program.

Management Action

8.2 Direct HHSC to study the feasibility of automatically transitioning new mothers in Medicaid to the new women’s health program.

The agency supports the recommendation, but acknowledges that potential confidentiality issues related to auto enrollment may exist. HHSC will examine this issue, along with other possible issues, during the course of the study.

Fiscal Implication

These recommendations would have an associated cost from re-training staff on the new women’s health program’s policies; making required changes to the agency’s client eligibility system (TIERS) and provider claim system; increasing the workload for eligibility staff; modifying the program’s application; and developing a system to track provider referrals.

NorthSTAR's Outdated Approach Stifles More Innovative Delivery of Behavioral Health Services in the Dallas Region.

Management Action

9.1 Transition provision of behavioral health services in the Dallas area from NorthSTAR to an updated model.

While the agencies agree behavioral health services provided through NorthSTAR should be integrated into primary care like the rest of the state, concerns remain that the number of indigent clients potentially affected could be higher than what is anticipated by this recommendation. In developing a transition plan for indigent clients, HHSC suggests the new entity serving these clients be allowed to subcontract for services so providers could continue to serve their existing patients and ensure continuity of care.

Modification

1. Allow a new entity that serves indigent clients to subcontract for services as needed.

Change in Appropriations

9.2 The Sunset Commission should recommend that the Legislature include a rider to transition NorthSTAR funds to DSHS behavioral health funding strategies.

The agencies agree with the recommendation. Transitioning NorthSTAR funds to DSHS' behavioral health funding strategy would allow the agency to collect and track performance metrics for the budget.

Change in Statute

9.3 Require the state to assist with maintenance of Medicaid eligibility statewide.

The agencies support the recommendation and agree that maintaining Medicaid eligibility is important to clients' continuity of care. For its STAR+PLUS program, HHSC encourages managed care organizations, by contract, to provide outreach to their members to renew their Medicaid eligibility.

9.4 Require HHSC to ensure behavioral health services are integrated into managed care organizations statewide.

The agencies support this recommendation and all efforts to fully integrate behavioral health services into primary care coordination.

Fiscal Implication

The agencies believe these recommendations would have a small caseload impact, but a potentially high-dollar cost because clients' acuity levels could be significantly higher. Additional information is needed to accurately estimate the cost of these recommendations.

Poor Management Threatens the Office of Inspector General’s Effective Execution of Its Fraud, Waste, and Abuse Mission.

HHSC believes a strong OIG is critical to operating the system’s vital health and human services programs and protecting the state against fraud, waste, and abuse. In response to Sunset staff’s findings, HHSC has taken steps to identify and resolve deficiencies outlined in the report. The Executive Commissioner recently established an audit team to conduct a management review of OIG to ensure its policies and processes are fair, effective, and clearly communicated to providers. It is the agency’s belief that this special review of OIG will correct many of the issues identified by Sunset staff and reinforce the state’s efforts to eliminate fraud, waste, and abuse in the health and human services system.

Change in Statute

10.1 Remove the gubernatorial appointment of the inspector general and require the executive commissioner to appoint and directly supervise the inspector general.

The agency supports efforts to clarify roles and increase accountability. Ultimately, the legislature and the Governor will make a decision regarding the reporting structure that serves the best interest of Texans.

10.2 Require OIG to undergo special review by Sunset in six years.

The agency supports the recommendation.

10.3 Require OIG, by rule, to establish prioritization and other criteria to guide its investigation processes.

The agency supports the recommendation.

10.4 Require OIG to complete Medicaid provider preliminary investigations within 45 days and full investigations within 180 days.

The agency supports the recommendation.

10.5 Require OIG, by rule, to establish criteria for scaling its enforcement actions for Medicaid provider investigations to the nature of the violation, including penalties.

The agency supports the recommendation.

- 10.6 Require OIG to conduct quality assurance reviews and request a peer review of sampling methodology used in its investigative process.**

The agency supports the recommendation.

- 10.7 Define OIG's role in managed care, including strengthened oversight of special investigative units.**

The agency supports the recommendation.

- 10.8 Remove the prohibition on participation in both the Health Insurance Premium Payment program and Medicaid managed care.**

The agency supports the recommendation.

- 10.9 Allow OIG to share confidential drafts of investigative reports concerning child fatalities with DFPS.**

The agency supports the recommendation.

Management Action

- 10.10 Direct OIG to narrow its employee investigations to focus on high priority allegations, such as those at state institutions and related to program integrity, and develop guidelines for investigations of child fatalities.**

The agency supports the recommendation.

- 10.11 Direct OIG to actively take steps to improve training for its staff and communication with HHS system programs and providers.**

The agency supports the recommendation and is currently working with OIG to provide additional training for staff on HHSC programs.

- 10.12 Direct HHSC and OIG to work together to transfer certain OIG functions to other areas of the HHS system where they would fit more appropriately.**

The agency supports the recommendation. The Health Insurance Premium Payment program is more closely related to other Medicaid programs and transferring this program to HHSC would better integrate services for clients. The agency also agrees that review of cost reports should be consolidated at HHSC; review of audit reports should be left to the health and human services agencies that run the programs; and review of residents' trust funds at intermediate care facilities should be performed by DADS.

10.13 **OIG should track basic performance measures needed to monitor the efficiency and effectiveness of its investigative processes.**

The agency supports the recommendation.

10.14 **OIG should establish a formal plan for reducing its backlog and improving inefficiencies in the process.**

The agency supports the recommendation.

Response to 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.

Change in Statute

11.1 Streamline the CAF hold hearing process to more quickly mitigate state financial risks.

While the agency takes no position on this recommendation, HHSC believes quickly resolving issues of potential fraud benefits both providers and the state.

11.2 Clarify good cause exceptions for OIG's application of a credible allegation of fraud payment hold.

The agency has no comment for this recommendation.

11.3 Clarify OIG's authority to place payment holds only in serious circumstances.

The agency has no comment for this recommendation.

11.4 Require OIG to pay all costs of CAF hold hearings at SOAH.

The agency has no comment for this recommendation.

HHSC's Uncoordinated Approach to Websites, Hotlines, and Complaints Reduces Effectiveness of the System's Interactions With the Public.

Change in Statute

12.1 Require HHSC to create an approval process and standard criteria for all system websites.

The agency supports the recommendation to standardize the website approval process for the health and human services system and to provide easy access for the public.

12.2 Require HHSC to create policies governing hotlines and call centers throughout the health and human services system.

HHSC supports the recommendation and will continue to work towards creating a seamless process for clients to contact the appropriate agency and receive needed services and timely answers to questions.

12.3 Clarify the role and authority of the HHSC ombudsman's office as a point of escalation for complaints throughout the system and to collect standard complaint information.

HHSC supports the recommendation. The ombudsman's office is currently exploring options to improve the collection, tracking, and resolution of complaints for some agency programs.

HHSC's Advisory Committees, Including the Interagency Task Force for Children With Special Needs, Could be Combined and Better Managed Free of Statutory Restrictions.

Change in Statute

- 13.1 Remove advisory committees from statute, including those with Sunset dates, and allow the executive commissioner to re-establish needed advisory committees in rule.**

HHSC accepts the recommendation and agrees that removing advisory committees from statute will give the Executive Commissioner needed flexibility to create venues for providing meaningful stakeholder input. If adopted by the Legislature, the Executive Commissioner will work to establish a process to continue to gain public input. The agency suggests consideration be given to establishing effective dates for these changes so HHSC may have sufficient time to inform stakeholders and receive feedback; streamline duplicative or unnecessary committees; and re-establish needed advisory committees in rule.

- 13.2 Remove the Task Force for Children With Special Needs, the Children's Policy Council, the Council on Children and Families, and the Texas System of Care Consortium from statute.**

The agency supports the recommendation to combine and reorganize these important committees so the new committee can take a holistic approach to improving service coordination and outcomes for children with special needs. As discussed in Recommendation 13.1, HHSC suggests effective dates be established so the agency may have sufficient time to receive feedback from stakeholders, combine the four committees into a single committee, and re-establish the new committee in rule.

- 13.3 Require HHSC to create a master advisory committee calendar, stream advisory committee meetings, and ensure access to online meeting materials.**

HHSC supports the recommendation to make participating in agency meetings more accessible and user-friendly for the public.

Response to Issue 14

HHSC Statutes Do Not Reflect Standard Elements of Sunset Reviews.

Change in Statute

14.1 Update two standard Sunset across-the-board recommendations for HHSC.

The agency supports the recommendation.

14.2 Eliminate four unnecessary reporting requirements, but continue others that serve a purpose.

The agency supports the recommendation.