TEXAS MEDICAL ASSOCIATION

Physicians Caring for Texans

John Holcomb, MD

Testimony to the Sunset Advisory Commission
Staff Report on Health and Human Services Commission and System Issues
Thursday, Nov. 13, 2014
John Holcomb, MD

Madame Chair and commission members, thank you for the opportunity to testify regarding the staff report on the Health and Human Services Commission (HHSC) and System Issues. I am John Holcomb, MD, a practicing pulmonologist in San Antonio, testifying on behalf of the Texas Medical Association, Texas Pediatric Society, Texas Academy of Family Physicians, Texas Association of Obstetricians and Gynecologists, and American Congress of Obstetricians and Gynecologists-District XI (Texas Chapter). Together our organizations represent more than 50,000 Texas physicians and medical students.

The staff report is extremely thorough, and we commend you and the Sunset staff for producing such a comprehensive and thoughtful review of HHSC. I am testifying in favor of five of the 13 recommendations and asking for amendments to two others. On the remaining recommendations, we takes no position, though our organizations will be submitting separate testimony on women's health programs as part of the Texas Women's Health Coalition.

WE SUPPORT

- Recommendation 4 — *HHSC Has Not Fully Adapted Its Processes to Managed Care, Limiting the Agency's Ability to Evaluate the Medicaid Program and Provide Sufficient Oversight.*

- Recommendation 5 — *Fragmented Provider Enrollment and Credentialing Processes Are Administratively Burdensome and Could Discourage Participation in Medicaid.*

- Recommendation 6 — *The State is Missing Opportunities to More Aggressively Promote Methods to Improve the Quality of Health Care.*

- Recommendation 10* — *Poor Management Threatens the Office of Inspector General's Effective Execution of Its Fraud, Waste, and Abuse Mission.*

- Recommendation 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.*

Recommendations 4 and 5 align closely with recommendations within *TMA's Healthy Vision 2020: Caring for Patients in a Time of Change,* Second Edition (*HV2020*) calling upon the legislature to further strengthen oversight of Medicaid HMOs and streamline and simplify Medicaid HMO paperwork requirements. Medicaid managed care covers 85 percent of Texas Medicaid patients and will expand to cover more populations within the next two years. The expansion of Medicaid HMOs over the past decade corresponds to a simultaneous decline in physician Medicaid participation. When TMA surveys physicians about why they are limiting or

leaving Medicaid, the second and third most-cited reasons — after inadequate payments — are mountainous paperwork and convoluted prior authorization requirements, which together are a stranglehold on physicians' willingness to see Medicaid patients. To attract and retain Medicaid participating physicians, Texas must reduce what it costs physicians to participate. These recommendations, if adopted, are an important part of Medicaid reform.

As you contemplate Recommendation 4, we ask that you also consider the following enhancements:

- Establish new Medicaid HMO network adequacy standards to better reflect Texas' geographic diversity and physician workforce, intensify oversight of HMO network adequacy to ensure patients can obtain timely services within their community, and apply stiffer penalties for plans that fail to maintain adequate networks.
- Establish an ombudsman within HHSC dedicated to overseeing Medicaid HMO network adequacy, responding to patient and physician complaints, and enacting physician recruitment initiatives.
- Direct the HHSC Vendor Drug Program to enact more transparent processes regarding the development of proposed restrictions (clinical edits) on prescription drugs, including:

    - Require Medicaid HMOs to abide by the same clinical edits applied to Medicaid fee-for-service. The legislature deliberately established a single, statewide Medicaid Preferred Drug List (PDL) and formulary for Medicaid HMO and traditional Medicaid patients. However, a loophole allows the Medicaid HMOs to voluntarily adopt most of the clinical edits, creating variation across plans, which was not the legislature's intent.
    - Provide stakeholders a copy of proposed prescription drug restrictions (clinical edits) at least 10 days prior to a Drug Utilization Review (DUR) Board meeting and include with the notice the rationale and data supporting the proposed restriction.

- Specify that the reconstituted DUR Board include a mix of primary care and specialty physicians, including a child and adolescent psychiatrist and adult psychiatrist.

Recommendation 6 corresponds with our recommendations to align Medicaid HMO quality-improvement initiatives, to the extent possible, with similar initiatives underway as part of the 1115 transformation waiver. Local health care delivery systems are stretched thin trying to provide appropriate care for growing Medicaid and uninsured populations. If the waiver's performing providers and Medicaid HMOs each adopt different quality-improvement activities, we do not believe it will be possible for physicians, hospitals, and providers to implement them all given the finite human and financial resources needed to successfully launch and maintain quality-improvement projects. Further, different ways of measuring whether patient outcomes have improved muddle the ability to determine how well quality-improvement initiatives are working.

Recommendation 6 also encompasses a recommendation to pilot incentive-based payments to providers, which TMA also supports.

Recommendations 10[*] and 11 also correspond with TMA *HV2020* recommendations to ensure fair, accurate, and balanced Medicaid fraud and abuse investigations. In 2013, the legislature enacted measures to enhance due process protections for physicians and providers accused of waste, fraud, or abuse. But despite those improvements, physicians still fear that inadvertent billing or coding mistakes could result in an accusation of Medicaid fraud, jeopardizing their entire practice. TMA submitted detailed comments on Recommendations 10 and 11 (attached),

but suffice it to say the Sunset staff recommendations build on the positive changes the legislature enacted in 2013 to direct the Office of Inspector General to establish fairer investigations.

WE RECOMMEND AMENDING:

- Recommendation 1 — *The Vision for Achieving Better, More Efficiently Run Services Through Consolidation of Health and Human Services Agencies Is Not Yet Complete.*

- Recommendation 13 — *HHSC's Advisory Committees, Including the Interagency Task Force for Children With Special Needs, Could be Combined and Better Managed Free of Statutory Restrictions.*

TMA does not outright oppose Recommendations 1 and 13 but urges amendments to address potential unintended consequences if these are adopted as originally drafted.

We ask that Recommendation 1 be amended to ensure Texas maintains:

1. **The ability of the state's chief public health officer to act swiftly in the event of a public health emergency or a disaster; and**
2. **A strong, visible structure for public health.**

Recent infectious disease outbreaks illustrate the need for clearly defined public health authorities. It is important to recognize that public health response is an intersection of services, data surveillance, communications, and legal action across both local and state entities. In a consolidated agency, we fear the state's critical public health services will be lost in the larger bureaucracy, impeding Texas' ability to protect public health, particularly when the state must act expeditiously. Complicating this issue is the fact that many counties and municipalities do not have a local public health department, and services of existing local health public health systems vary greatly across the state.

We recognize the primary role of local government in supporting population health, but in a large and diverse state, it makes coordination and a visible authority that much more critical to protect public health at a statewide level. The state should be a strong partner with our local health leaders. One way to strengthen and secure that role is to ensure an adequate number of public health and medicine experts serve as leaders within a state health agency.

As to Recommendation 13, our organizations ask you to amend 13.1, which calls for abolishing most statutory advisory committees and recreating them via rule, to retain some statutorily-created committees. Undoubtedly, there are too many committees, stretching agency resources and staff thin. There is also considerable overlap among many of the committees' roles and responsibilities. Sunset should evaluate opportunities for consolidating or redefining committees. At the same time, the legislature established these committees for a reason — to ensure systematic, ongoing, and diverse stakeholder input into programs and services administered within HHSC. Medicaid provides vital services to millions of vulnerable, low-income Texans. The proliferation of managed care and testing of new delivery models adds complexity for patients, physicians, and providers. **The committees give voice to the challenges facing patients and providers in navigating these systems and a mechanism to resolve them effectively and efficiently. These committees also provide an important feedback mechanism to the legislature regarding how programmatic changes benefit — or negatively impact — HHSC clients**.

In particular, we strongly recommend statutory reauthorization and retention of the Statewide Medicaid Managed Care Advisory and the Quality-Based Payment Advisory committees, both of which provide stakeholders and HHSC opportunities for thoughtful, interactive deliberations on ways to improve patient care within managed care.

If Sunset adopts the recommendation to abolition committees and reestablish them in rule, we urge you to develop clear criteria specifying when and how HHSC will establish committees, ensure active stakeholder input on the process to create or abolition committees, and mechanisms for ensuring that the new committees retain their authority to share recommendations with the HHSC leadership and the legislature.

Lastly, as you consider the recommendation to consolidate agencies, we respectfully request that the recommendation carry with it language ensuring the agencies receive sufficient appropriations to establish dedicated transition management teams to manage and coordinate the process. Consolidating large agencies with vastly different cultures and responsibilities is no easy task, as noted in the Sunset report. We worry that allocating existing agency staff to the task will not be sufficient to complete the process while also ensuring the agencies continue to meet their core responsibilities — to ensure needy Texans timely receive the medical care, long-term care, and social services they need to thrive.

Thank you for your consideration.

****TMA is neutral on Sunset staff recommendation 10.1 calling for the HHSC executive commissioner, rather than the governor, to appoint the inspector general.***