TEXAS SOCIETY OF ANESTHESIOLOGISTS
401 W. 15th, Ste. 990 - Austin, Texas 78701 – (512) 370-1659 – Fax (512) 370-1655
E-Mail: info@tsa.org – Website: www.tsa.org

September 22, 2023

The Honorable Greg Abbott
Governor of Texas
P.O. Box 12428
Austin, Texas 78711-2428

RE: Request to Defend Physician-led Anesthesia Care in Texas

Dear Governor Abbott,

The undersigned medical and specialty organizations represent physicians providing medical and surgical care for Texas patients every day. Our organizations write to strongly urge you to retain the Medicare physician supervision for anesthesia care provided by certified registered nurse anesthetists (CRNA) that is required by Medicare and currently followed by most states. A decision to fully remove or comprehensively "opt-out" of the supervision requirement would not be in the best interest of the residents and patients of Texas as it would jeopardize patient safety, not increase access to care, not save costs, and ignore patients' overwhelming preference for a physician to be responsible for their care.

The Medicare Conditions of Participation (CoP) are effectively a federal accreditation standard. These health and safety standards are a nationally accepted foundation for improving quality and protecting the health and safety of patients in America's acute care hospitals, critical access hospitals, and ambulatory surgery centers. They are intended to ensure that these facilities are providing Medicare beneficiaries an appropriate level of care. Since the inception of the Medicare program, hospitals seeking to participate in the Medicare program must meet the patient safety and quality requirements delineated within the CoP. Consistent with numerous other quality and patient safety standards, the CoP require physician supervision of nurse anesthetists administering anesthesia.

Pre-operative patient preparation and screening, administration of anesthesia, and management of potential complications is a complex medical process that requires physician supervision. Nurse anesthetists are important members of the anesthesia care team but do not have the medical education and training necessary to replace physician delegation and supervision. Compared to physicians, nurse anesthetists have about half the education and one-fifth the hours of clinical training.

Removing physician supervision from anesthesia in surgery lowers the standard of care and jeopardizes patients' lives. To date, there are no well-designed outcomes studies on the practice of unsupervised nurse anesthetists. Since 2016, five studies have been published in peer reviewed journals examining the relationship between opt-out and anesthesia access. All five published studies found that opt-out was not associated with an increase in access to anesthesia care.[1] [2] [3] [4] Most

[1] Sun EC, Miller TR, Halzack NM. In the United States, "Opt-Out" States Show No Increase in Access to Anesthesia Services for Medicare Beneficiaries Compared with Non-"Opt-Out" States. A&A Case Reports. 2016; 6(9):283-5
[2] Sun EC, Dexter F, Miller TR. The Effect of "Opt-Out" Regulation on Access to Surgical Care for Urgent Cases in the United States: Evidence from the National Inpatient Sample. Anesthesia & Analgesia. 2016; 122(6):1983-91.
[3] Sun EC, Dexter F, Miller TR, Baker LC. "Opt Out" and Access to Anesthesia Care for Elective and Urgent Surgeries among U.S. Medicare Beneficiaries. Anesthesiology. 2017; 126(3):461-71.
[4] Schneider JE, Ohsfeldt R, Li P, Miller TR, Scheibling C. Assessing the impact of state "opt-out" policy on access to and costs of surgeries and other procedures requiring anesthesia services. Health Econ Rev. 2017; 7(1):10.

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recently, a 2021 *Journal of Rural Health* article provided in part, "Given that we found no evidence that being in an opt-out state increases the odds of using CRNAs in hospitals, we contribute to the growing literature suggesting that states adopting the opt-out policy have not realized increased health care access or reduced health care costs."[5]

The TCCRI request is inconsistent with state law. In Texas, CRNAs do not practice independently. Texas law includes physician delegation and supervision requirements, which are codified in the Medical Practice Act at Tex. Occ. Code sections 157.001 and 157.058. Further, Attorney General Opinion No. JC-0117 (1999) reinforces the need for physician supervision consistent with sound medical judgement, and Attorney General Opinion KP-0353 (2021) reinforces delegation requirements under Tex. Occ. Code 157.058 and "the need to comply with all other applicable statutes, regulation, bylaws, ethical standards, and a physician's own professional judgement."

An opt-out similarly fails to save patients' or taxpayers' money. Medicare pays the same for anesthesia care whether the service is provided by an anesthesiologist, an anesthesiologist medically directing a nurse anesthetist or certified anesthesiologist assistant, a nurse anesthetist supervised by the operating surgeon, or in those rare circumstances where it takes place, a nurse anesthetist practicing without physician supervision. The amount of the Medicare payment, no matter how it is allocated, is the same regardless of who provides the anesthesia care.

This is an issue which has been debated ad nauseam by the Texas Legislature. Just this past session, two separate bills were filed to allow nurse practitioners, including CRNAs, to practice independently. SB 1700 by Senator César Blanco and HB 4071 by Representative Stephanie Klick both would have allowed independent practice in Texas and neither bill was given a hearing in committee due to overwhelming opposition.

Finally, there is little support from the general public for opt-outs. Surveys repeatedly show patients want physicians in charge of their anesthesia care. In a recent American Medical Association survey, 91 percent of respondents said that a physician's years of medical education and training are vital to optimal patient care, especially in the event of a complication or medical emergency. Eighty-four percent said that they prefer a physician to have primary responsibility for the diagnosis and management of their health care.[6]

Opt-out is a failed policy experiment that counteracts Texas state law. It decreases patient safety in operating rooms and hospitals, it does not improve access to care, it does not save the state or patients money, and it ignores the public's preference for physician-led care. Beyond the critical factors, it is obvious that the standard for making such a sweeping change should be that there is clear and convincing evidence that it is safe to do so. No credible peer reviewed research can or has made that case.

[5] Feyereisen SL, Puro N, McConnell, W. Addressing provider shortages in rural America: The role of state opt-out policy adoptions in promoting hospital anesthesia provision. J Rural Health. 2021; 37(4):684-691.
[6] Baselice & Associates conducted a telephone survey on behalf of the AMA Scope of Practice Partnership between March 8–12, 2012. Baselice & Associates surveyed 801 adults nationwide. The overall margin of error is +/- 3.5 percent at the 95 percent level. Baselice & Associates conducted an internet survey of 802 adults on behalf of the AMA Scope of Practice Partnership, July 12-19, 2018. The overall margin of error is +/- 3.5 percent at the 95 percent confidence level.

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We strongly encourage you to continue the important Medicare supervision patient safety standard for the citizens of Texas by formally refusing to grant the "opt-out" request pending before you. If you have any questions, please contact me or Elizabeth Farley, TSA Director of Governmental Affairs at elizabeth@tsaga.org.

Sincerely,

Udaya Padakandla, MD
President, Texas Society of Anesthesiologists

Rick W. Snyder, II, MD
President, Texas Medical Association

Michael Champeau, MD
President
American Society of Anesthesiologists

Shelley Hall, MD, FACC, FHFSA, FAST
President
Texas Chapter American College of Cardiology

Jesse M. Ehrenfeld, MD, MPH
President
American Medical Association

Henry Ellis, Jr.,MD
President, Texas Orthopaedic Association

Adam J. Bruggeman, MD, FAAOS
Advocacy Council Chair
American Association of Orthopaedic Surgeons

Sandra Williams, DO, MPH, FACEP
President, Texas College of Emergency Physicians

Christopher Kang, MD, FACEP
President
American College of Emergency Physicians

Paul Weatherall, MD
President, Texas Radiological Society

American College of Radiology

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H. Miller Richert, MD
President, Texas Ophthalmological Association

American Academy of Ophthalmology

Ryan T. Higley, DDS
President
Texas Society of Oral & Maxillofacial Surgeons

Paul J. Schwartz, DMD
President, American Association of Oral & Maxillofacial Surgeons

Peter Kan, MD, MPH, FRCSC, FAANS
President, Texas Association of Neurological Surgeons

Chris Cantrill, MD
President, Texas Urological Society

Damon Schranz, DO, FACOFP
President, Texas Osteopathic Medical Association

Louis Appel, MD, MPH, FAAP
President, Texas Pediatric Society

Ralph Menard, MD
President, Texas Pain Society

C. Leilani Valdes, MD, MBA, FCAP
President, Texas Society of Pathologists

Alan Rivera, CAA
President
Texas Academy of Anesthesiologist Assistants