Testimony before the Senate Commerce and Labor Committee Study Committee on SB 0992
November 16, 2015

Good morning, Mr. Chairman and members of the committee. My name is Mike Dietrich. I am the Executive Director of the Tennessee Hospice Organization (THO), the state hospice association. With me is Rod Robinson, who is the Executive Director of Home Care and Hospice for the Baptist Memorial Health Care Corporation in Memphis. Rod also serves as the current chair of the THO board of directors.

We are here today to urge this committee to help maintain the certificate of need (CON) program for hospice services in Tennessee. As we will demonstrate in the information which follows, CON for hospice is a necessary and vital program that protects patients, hospice providers and the taxpayer.

By way of background, Congress created the Medicare hospice benefit in the Tax Equity and Fiscal Responsibility Act of 1982. Considered the model for quality compassionate care for people facing a life-limiting illness, hospice provides expert medical care, pain management, and emotional and spiritual support expressly tailored to the patient's needs and wishes. Support is provided to the patient's loved ones as well.

The hospice team consists of the patient's personal physician, hospice physician or medical director, nurses, hospice aides, social workers, bereavement counselors, clergy or other spiritual counselors, trained volunteers, and speech, physical, and occupational therapists. In 2014, 58 Tennessee hospice providers served over 34,000 patients and their families and loved ones.

The key issue we bring before you today is this: hospices in areas with too many competitors may inappropriately stretch the hospice admission criteria and bring patients on to service who are not terminally ill, ultimately caring for them longer than the benefit was designed for. There are a finite number of hospice patients, nurses, volunteers, financial donors, etc, in any given area which necessitates a controlled growth of providers. Unnecessarily diluting the current system by removing CON has the very real potential to actually decrease access to services, lower the quality of care provided, and increase overall costs.

Attached to these comments is a chart based on data from the Medicare Administrative Contractor (MAC), Palmetto Government Benefits Administrator (PGBA), which serves Tennessee and 15 other states. The chart compares the 16 PGBA states relative to those with and without hospice CON.

Please note there are two versions of the chart: one which includes Alabama as a CON state and one which includes it as a non-CON state. Alabama instituted CON in 2014 because of excessive growth in the number of hospices. Both versions tell the same story, but we'll refer today to the one with Alabama as a *non*-CON state since the change is so recent and, as the association there told me when researching this issue, "the damage had already been done."

We will address two primary areas from the data: access to services and overutilization of services.

Access to hospice services. As you will see in the columns titled "Access to hospice services" there is virtually no difference in the per capita utilization of hospice services in CON and non-CON states, despite the fact that there are 2.6 times more hospices per capita in the non-CON states. In absolute terms, there are six times as many hospices in these states serving only twice as many people. This validates the CON model in that larger, more stable providers are better able to provide effective education and outreach into the communities they serve. Clearly more hospices does NOT equate to greater access.

Overutilization of services. For the past few years PGBA has provided state-level data to THO and its members focused on two specific indicators:

1. NCLOS Rate. The Non Cancer Length Of Stay (NCLOS) rate measures the number of non-cancer patients with a length of stay in hospice longer than 210 days. The Medicare hospice benefit was designed around a "six months or less" (180 days) terminal diagnosis so the NCLOS rate has been used for years by Medicare auditors as a way to identify hospices that may be inappropriately enrolling patients in order to maintain financial stability. The chart shows the NCLOS rate has been between 24% and 29% higher in the states without hospice CON over the last two years. Tennessee's average NCLOS rate is among the very lowest in the country, in large part due, we believe, to the strength of the state's CON process.

2. Hospice Cap. The overall, aggregate Medicare payment made to each hospice is subject to a cap amount based on the total number of patients served times a per patient amount set by Medicare. Any payments made by Medicare in excess of the aggregate cap amount must be refunded by the hospice at the end of the year.

   The last columns of the chart show a total of $3 million in 2013 cap overpayments in CON states compared to $78 million in the non-CON states. 2.5% of hospices in the CON states exceeded the cap compared to 14% in the non-CON states. As noted above, many hospices in the non-CON states appear to be admitting patients who do not meet Medicare guidelines. Simply, there are too many hospices there competing for a finite number of patients.

Also attached is a 2013 position statement from the Louisiana and Mississippi Hospice and Palliative Care Organization outlining similar concerns with too many hospices in Mississippi serving a relatively finite number of patients.

I would like to read a highlight from the statement:

> "Mississippi's Cap issue has interrupted good patient care and forced many agencies to discharge patients, adding undue burdens on an already overstressed healthcare system in the state. Hospice agencies with Cap issues operate tenuously and in many instances have to cut back on the services they provide in order to maintain financial viability. When a hospice is unable to repay these overpayments, the hospice is forced into bankruptcy and terminally ill patients and their families have been swept into yet another crisis; left without the benefit of hospice and the support of important end of life care and services.
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> **It is our opinion that stricter controls on the number of hospices agencies operating in the state will continue to significantly curb this problem and greatly improve the integrity and stability of hospice services in the state."**

The Mississippi state legislature recently approved a new moratorium on hospice services due to the myriad hospice provider problems they have experienced in their state.

In closing, we ask you to consider the current state of hospice in Tennessee as healthy and well-prepared to deal with the ever-increasing scope and pace of changes in the healthcare industry and we urge you to protect it from unnecessary and detrimental provider growth. The Tennessee hospice community continues to get stronger year after as a direct result of the CON process, but even today many of our very rural hospices often struggle to maintain critical masses of patients. Without CON, they most certainly would not be able to maintain their presence in those communities. We hope we have shown today CON serves a necessary and vital role in protecting the people of Tennessee through orderly development of healthcare services, where they are needed, when they are needed.

Thank you.

Respectfully submitted,

Mike Dietrich

Executive Director, THO