



TEXAS HOSPITAL ASSOCIATION

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# Key Issues for Texas Hospitals

## *2011 Legislative Agenda*

*Eliminating the Medicaid program could help solve the state's budget shortfall, but what would replace it?*

Texans rely on the state's hospitals to meet their health care needs, from responding to disasters and trauma to caring for newborns as well as dying loved ones. Texas hospitals face many challenges in caring for a fast-growing population, of which more than 26 percent is uninsured. Health status and poverty level also create unique challenges for Texas health care providers.

This brochure provides an overview of the Texas Hospital Association's state legislative agenda for 2011. THA's website, [www.tha.org](http://www.tha.org), provides more information and progress reports throughout the legislative session.

### Medicaid/CHIP

Some lawmakers are proposing that Texas withdraw from the Medicaid program. Other officials have suggested "reinventing" the program – an idea THA fully supports.

Eliminating the Medicaid program could help solve the state's budget shortfall, but what would replace it? The challenge is for the state to come up with a better, more effective program. Reducing eligibility and/or covered services could solve budget problems but would not eliminate the need for health care, and low-income Texans would seek health care in hospital emergency rooms. Eliminating Medicaid would cost Texas \$15 billion in matching federal funds, shifting a tremendous financial burden to counties and local government entities, such as hospital districts. Those with private insurance would see higher premiums and co-pays as a greater percentage of uncompensated care would be shifted to paying patients.

The federal government currently pays for 60 percent of the state's Medicaid program, about \$30 billion per biennium. The Disproportionate Share Hospital and Upper Payment Limit programs provide additional federal funds to help compensate many hospitals for inadequate state reimbursement for services. Preserving UPL programs is critical. While the state intends to expand Medicaid managed care, it must be done in a way that does not reduce UPL payments to hospitals.

Texas lawmakers have legitimate concerns about the costs of expanding Medicaid under the new health care reform law. THA urges state leaders and legislators to work with the Texas Congressional delegation to re-focus on expanding coverage through subsidies in the private-market insurance exchanges rather than Medicaid expansion.

Medicaid expansion.

Especially with the budget shortfall, every health care dollar must be used effectively, and that should include maximizing federal matching funds. County governments and large public hospitals provide local tax dollars through intergovernmental transfers that the state uses to finance its

portion of the DSH and UPL programs. Drawing down federal Medicaid funds is an important way for Texans to benefit from the federal taxes they pay.

Currently, Medicaid reimburses most Texas hospitals about 60 percent of their costs to deliver inpatient care. Further reductions in reimbursement will drive more physicians and hospitals to drop their participation in Medicaid, limiting access to providers for low-income pregnant women and children. Inadequate funding should not jeopardize prenatal care. Medicaid and the Children's Health Insurance Program save money long-term by ensuring that low-income children have access to preventive and primary care services, helping them to remain in school.

In a 2005 study, economist Ray Perryman estimated that federal funding for Medicaid accounted for 337,000 permanent jobs in Texas. The federal government finances about 60 percent of the state's Medicaid program. An estimated 2 million uninsured residents, including 600,000 children, will be covered by health care reform's expansion of Medicaid, and the federal government will pay for most of it. For the 10-year period of 2014-23, the Texas Health and Human

Services Commission estimates that it will spend approximately \$27 billion in state general revenue due to health care reform. That spending will result in a gain of \$164 billion in additional federal funds.

Expanding health care coverage will require more doctors, nurses and facilities to handle the larger case-load. Medicaid expansion also will require outreach workers to encourage enrollment as well as information technology specialists to develop and run computer systems to process more claims.

Potential savings can be achieved if the state develops alternative Medicaid payment methods that are consistent with Medicare, such as bundled payments, shared savings for accountable care organizations and pay-for-performance.

## Uninsured/Health Care Reform

Regardless of what happens with health care reform legislation, Texas has the highest percentage of uninsured residents in the nation. One in every four Texans lacks health insurance coverage, and that number is one in every three in large cities like Houston and Dallas. Under current federal law, Texas hospitals have to treat and stabilize anyone who comes to the emergency department.

One component of expanding health coverage is the creation of state-based insurance exchanges through which individuals and businesses may purchase health insurance. Federal funds have been awarded for Texas to develop an insurance exchange to become operational by 2014. Texas would be wise to assume this responsibility rather than allow the federal government to control how insurance is sold in Texas.

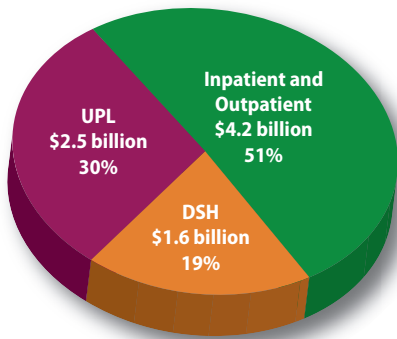
The state should create financial incentives to encourage businesses to provide health coverage. For example, a condition of receiving tax rebates or Texas Enterprise Fund monies should be a requirement that the business provide affordable health insurance coverage to its employees. More funding for the new Healthy Texas reinsurance program would allow its expansion to more

***“One in four Texans lacks health insurance coverage.”***

small businesses. Efforts to increase enrollment in the federal risk pool should be supported. Insurance reforms also are needed to remove barriers for those wanting to obtain coverage and to make coverage affordable.

### Medicaid Payments to Hospitals

(2009)

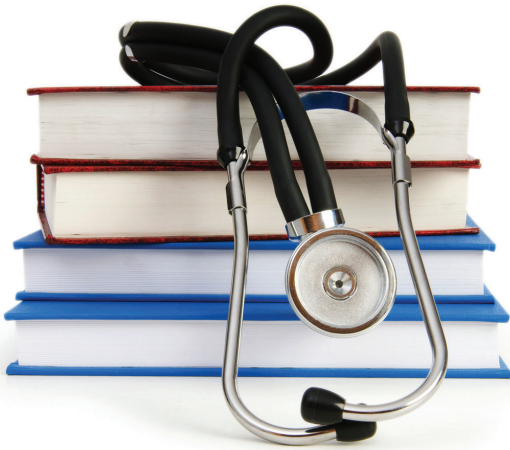


## Mental Health

Mental health services must be funded adequately. Due to a lack of alternatives, many mental health patients inappropriately use hospital ERs to obtain help. To avoid costly hospital ER visits, the state should at least maintain current funding and potentially expand community mental health services and public mental health beds, and reimburse private mental health providers closer to their costs.

## Workforce Shortages

Despite the Legislature's investment in nursing education, a nursing shortage still persists. Texas also has shortages of physicians, pharmacists, therapists and other allied health professionals. Health professions need to be priorities in terms of higher education funding. These are growth fields, with jobs waiting to be filled. One of the major barriers continues to be the lack of faculty. Lack of residency slots drives many Texas-educated physicians out of state for clinical training. More residency slots – and funding for graduate medical education – are needed to keep Texas-trained doctors



in the state where they will be more likely to set up practice. The state should not create any more medical schools until it funds residency programs for existing slots.

Many states allow hospitals to employ physicians, which is attractive to younger doctors entering practice. Texas' outdated prohibition on the corporate practice of medicine should be repealed to allow hospitals the option to employ doctors who want regular wages and benefits. The physician's independent medical judgment must be preserved.



## Insurance/Managed Care

The regulatory environment for insurance carriers should be reviewed and modified to make it more efficient for carriers to do business in Texas, and to provide appropriate incentives or requirements to encourage carriers to write a wide range of affordable policies.

Hospitals agree with the Sunset Advisory Commission recommendation that preferred provider organizations be licensed and regulated, and that the state should increase the regulatory requirements and oversight of the business practices of health plans and their subcontractors (third-party administrators). State requirements and oversight for business operations should apply to insured and self-funded plans, and the Texas Department of Insurance's regulatory enforcement mechanisms should be strengthened.

To allow Texas providers to transform the way health care is delivered and reduce costs, Texas needs to authorize the establishment and operation of accountable care organizations. ACOs should be allowed to enter into contracts with governmental and private payers for the provision and reimbursement of health care services.

## Emergency Care/Trauma

Having a statewide trauma system benefits everyone, and the state should support this resource with funds intended for that purpose. A portion of the proceeds from the Driver Responsibility Program go to the Designated Trauma Facility and EMS Account to help offset uncompensated trauma care costs in designated trauma facilities. Only a portion of the funds collected are appropriated and distributed. These financial resources are important to Texas hospitals and the communities they serve. Since 2004, more than 60 hospitals have become designated trauma facilities, for a current total of 256. Still, 84 counties do not have a designated trauma facility.

The state should explore the feasibility of using trauma funds to obtain federal matching through the Medicaid program, contingent on the ability to direct funds to designated trauma facilities and to maintain the current appropriation of \$75 million per year from Account 5111 and its allocation to hospitals.

*Despite the Legislature's investment in nursing education, a nursing shortage still persists.*



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## Advance Directives/End-of-Life Care

While every state has laws regarding advance directives, Texas is one of a few states that have addressed end-of-life care comprehensively, including a structured dispute resolution process. In many other states without the protections in Texas law, a physician can make a unilateral decision to stop treatment of a terminally ill patient. Advance directives allow patients to indicate treatment preferences for a time in the future when they are unable to make their wishes known. Advance directives only apply when a patient is declared terminally or irreversibly ill and unable to participate in decision-making.

Texas law includes a process based on American Medical Association guidelines to address disagreements between patient surrogate decision-makers and physicians about medical treatment near the end of life. In those rare cases where the family wants to continue life support against medical advice, state law provides a mechanism to transfer the patient or remove life support and protect the patient from indefinite suffering. If transfer cannot be secured, the family has the right to pursue legal action against the hospital and treating physician to prevent the withdrawal of life support.

For several legislative sessions, attempts have been made to nullify the dispute resolution process by requiring "treatment until transfer," which in some cases is indefinitely. A "treat-until-transfer" provision would establish a government-mandated identical outcome for every case, damage the physician-patient relationship, compromise physicians' moral integrity, increase the risk of frivolous litigation with attendant costs, and create a government mandate superseding a patient's rights and the physician's responsibility to the patient.

Texas hospitals and physicians believe that there are revisions that could make a good law better, but "treat until transfer" is not one of those changes.

## Tort Reform

Texas hospitals strongly supported the medical liability reform measures passed in 2003. The law has produced results: patient access to physicians – particularly specialists – has improved. Liability insurance premiums have gone down, frivolous lawsuits have decreased and patients still have access to the courts. Tort reform has worked, and Texas hospitals oppose efforts to reverse the progress that has been made. ★



Modifications may be needed in the Driver Responsibility Program, but bad drivers – many of whom cause the accidents that result in victims being treated in hospital ERs – should be penalized. No one has to pay a state fine if he/she is obeying the law. The Texas Department of Public Safety should be given additional funds to educate the public about the program and enforce it, including enhanced collection efforts.

## Quality/Patient Safety

Hospitals routinely collect and use data to improve outcomes. The number of national quality initiatives is growing, and Texas already has several data reporting requirements. The Legislature should avoid duplication of national initiatives. Data should not be collected unless the state is willing to invest in the personnel and equipment to perform an appropriate analysis and make the information available publicly in a useful format.

Texas hospitals agree that payment based on performance is needed to improve patient outcomes. A consistent framework for determining when and how hospitals and other health care providers should be reimbursed under pay-for-performance programs is needed, and should be consistent with Medicare requirements.