

# Compliance, Legal & Liability Issues

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# Agenda

- 88<sup>th</sup> Legislative Recap
- Spotlight on New Legislation
- Continued Compliance with Current Laws & Rules



# 88<sup>th</sup> Legislature - Recap

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# 88<sup>th</sup> Legislature - Background

- 88<sup>th</sup> Session Healthcare Leadership Priorities:
  - Speaker Phelan: On March 1<sup>st</sup>, announced 7 priority bills – health related were HB4 (personal data collection), HB 12 (Medicaid postpartum benefits), HB 300 (taxes for family care items)
  - Lt. Gov. Patrick – state support for investment in mental health facilities
  - While Medicaid expansion bills were filed, no bills were considered.
- Total Bills Filed: **8,520**.
- **4,063** passed the House and Senate by 5/29/23
- Total Bills Vetoed: **76** bills
  - HB 181 (sickle cell registry bill); HB 729 (Statewide IDD coordinating council); SB 1051 (uniform coordination of benefits questionnaire); SB 2016 (licensing of dietitians); SB 1467 (electronic disclosure of medical information); and SB 2474 (Civil and admin penalties for chemical dependency facilities).
- THA tracked **1,644** bills this session.



# 88<sup>Th</sup> Legislature Recap - Budget

- **SB 30** by Sen. Huffman, R – supplemental bill – current expenditures (including Medicaid shortfall 2.5B in GR)
- **HB 1** by Rep. Greg Bonnen, R – Budget
  - Includes \$447.2M in All Funds for women’s health programs, an increase of \$160.1M over current spending.
  - Workforce:
    - Graduate Medical Education - \$34M increase in GME slots
    - Loan Repayment- \$28M for Mental Health Loan Repayment Program – an increase of \$25.9M
    - \$7M for Nurse Faculty Loan Repayment Program, an increase of \$4.1M
    - Nursing – increase of \$27.9M for Shortage Reduction Program



# 88<sup>th</sup> Legislature Recap – Budget

- **TRS** must engage a 3<sup>rd</sup> party vendor to conduct a review of high hospital claims that exceeded \$100,000 in FY 2022 to determine potential cost savings.
- **Art. 9, Provision 17.34:** \$5M for HHSC to evaluate Hospital revenue and expenses, including charity care (\*\* in lieu of HB 5186 by Rep. Bonnen (R))
- Appropriated funds in Art 2 cannot be provided to entities that engage in activities in collaboration with, directed by, or financed by the **World Health Organization (WHO)**.
- **Behavioral Health Funding:** inpatient community psychiatric beds, funding for state hospital staff salaries, expansion of state contracted beds, step down housing expansion, state hospital EHR upgrades, state hospital cost study.



# 88<sup>th</sup> Legislature Recap

## Legislation Affecting Hospitals

- HB 49 (Rep. Klick, R) – Public access to Hospital Investigation Information
- HB 1890 (Rep. Jetton, R) – Hospital at Home
- SB 490 (Sen. Hughes, R and Rep. Caroline Harris, R) - (Itemized Billing before debt collection (also applies to other providers except individual physicians and FQHCs)
- HB 711 (Rep. Frank, R) – prohibited contracting clauses
- SB 760 (Sen. LaMantia, D)– Blood specimens of deceased persons
- SB 240 – (Sen. Campbell, R and Rep. Howard, D) - Workplace Violence Prevention Policy & Plan (applies to more than just hospitals)



# 88<sup>th</sup> Legislature Recap

## Legislation Affecting Physicians

- SB 415 by Sen. Paxton (R)– TMB continuing ed on human trafficking
- SB 14 by Sen. Campbell (R) – Prohibit gender transition care under 18 yrs.
- HB 755 by Rep. Julie Johnson (D) - Prior authorization for drugs for auto immune and blood disorders
- HB 3359 by Rep. Bonnen (R) – Network adequacy
- HB 1998 by Rep. Julie Johnson (D) – Dr. Death bill – patient safety bill
- HB 4500 by Rep. Caroline Harris (R) – ER verification of benefits
- HB 1647 by Rep. Cody Harris (R) – Prohibition on White Bagging
- HB 3058 by Rep. Ann Johnson (D) – Affirmative Defense for Treating Pregnancy Complications





# Spotlight on New Legislation

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# HB 49 Hospital Investigation Information

Affects the information publicly available related to hospital investigations and enforcement actions. It requires the Health and Human Services Commission to publicly post additional information resulting from hospital investigations on HHSC's website from what is currently required. This information will be posted for a minimum of two years and includes:

- The notice of the hospital's alleged violation, which must include the provisions of law the hospital allegedly violated and a general statement of the nature of the alleged violation.
- The name of the hospital.
- The geographic location of the hospital.
- The date HHSC issued the final decision, investigative report, or order.
- The outcome of HHSC's investigation of the hospital, which may include:
  - Issuance of a reprimand.
  - Denial or revocation of a license.
  - Adoption of a corrective action plan.
  - Imposition of an administrative penalty and the penalty amount.



# HB 1890 – Hospital at Home

CMS waiver program established November, 2020 to allow hospitals to increase their inpatient capacity during the COVID-19 pandemic. Hospitals apply to CMS to be included in the program and are able to treat acute inpatient patients in their own home. At the end of 2022, Congress authorized the continuation of the Hospital at Home waiver program through December 31, 2024. At the state level, hospitals needed to obtain approval from the Health and Human Services Commission to operate a Hospital at Home program, granting compliance with state regulatory requirements. Authority for the HHSC waiver has been operationalized through an ongoing state emergency rule. To continue the program at HHSC, legislative authority was necessary. HB 1890 gives that legislative authority to HHSC.

The bill establishes the Acute Hospital Care at Home Waiver Program in the Texas hospital licensing law and grants HHSC the authority to establish standards for the program that are at least as stringent as the CMS rules. HHSC is required to adopt agency rules outlining minimum standards, procedures and criteria for the program. **To operate the program, a hospital must be both CMS-approved and HHSC-approved.** A hospital must submit an application to HHSC in the required form and pay any required application fee. The bill allows HHSC to waive or modify hospital state licensing requirements to facilitate a hospital at home program in the best interest of patients.



# Workplace Violence & Workforce



# SB 240 – Workplace Violence Prevention Policy & Plan

- Intent was to craft a law that would allow use of current policies and procedures – ease the burden of transition and compliance.
- Applies to hospitals, mental health hospitals, home health, nursing homes, ambulatory surgical centers and freestanding ERs.
- Hospital must establish a workplace violence committee OR authorize an existing committee to handle workplace violence prevention requirements.
- Committee must establish a workplace violence prevention plan.
- Hospital (governing board) must adopt and implement the plan no later than September 1, 2024.
  - A plan can satisfy the requirements listed in the next slide by referencing other internal facility policies and documents. (i.e. you don't have to create new policies if current ones will suffice).
- Hospitals (governing board) must adopt, implement, and enforce a workplace violence prevention policy. This policy must be *adopted* by September 1, 2024.



# SB 240 – Workplace Violence Prevention Policy & Plan

- What must be included in the plan?
  1. Purpose: to protect health care providers and employees from violent behavior and threats of violent behavior occurring at the hospital.
  2. Must be based on the practice setting;
  3. Must define workplace violence and the definition must include:
    - “an act or threat of physical force against a health care provider or employee that results in, or is likely to result in, physical injury or psychological trauma; and an incident involving the use of a firearm or other dangerous weapon, regardless of whether a health care provider or employee is injured by the weapon.”
  4. Must require at least annual workplace violence prevention training & education.
    - Can be included with other required training or education that is provided to providers and employees who provide direct patient care.



# SB 240 – Workplace Violence Prevention Policy & Plan

- What must be included in the plan (continued)?
  5. Prescribe a system for responding to and investigating violent incidents or potentially violent incidents that occur at your hospital.
  6. Address physical security and safety.
  7. Must solicit information and feedback from hospital providers and employees when developing and implementing the plan.
  8. Allow providers and employees to report workplace violence incidents through an existing occurrence reporting system (or a new system if there is not one in place).
  9. Require the hospital to adjust patient care assignments, as practicable, to prevent a provider or employee from treating or caring for a patient who has intentionally physically abused or threatened them.



# SB 240 – Workplace Violence Prevention Policy & Plan

- What must be included in the plan (continued)?
  5. Prescribe a system for responding to and investigating violent incidents or potentially violent incidents that occur at your hospital.
  6. Address physical security and safety.
  7. Must solicit information and feedback from hospital providers and employees when developing and implementing the plan.
  8. Allow providers and employees to report workplace violence incidents through an existing occurrence reporting system (or a new system if there is not one in place).
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# SB 240 – Workplace Violence Prevention Policy & Plan

- What must be included in the policy?
  - Must require the hospital to provide significant consideration of violence prevention plan recommended by the facility's committee;
  - Must require the hospital to evaluate any existing hospital violence prevention plan;
  - Encourage hospital providers and employees to provide confidential information on workplace violence to the committee; and
  - Include a process to protect hospital providers and employees from retaliation who provide information (confidential or otherwise) to the committee.



# SB 240 – Workplace Violence Prevention Policy & Plan

- The law requires hospitals, at a minimum, to offer immediate post-incident services, including any necessary acute medical treatment for each provider or employee directly involved in the incident.
- Cannot discourage a provider or employee from exercising their right to contact or file a report with law enforcement regarding a workplace violence incident.
- Any discipline (including suspension or termination of employment), discrimination, retaliation, against a person who makes a good faith report or who helps a victim report a workplace violence incident is strictly prohibited.



# SB 240 – Workplace Violence Prevention Policy & Plan

- HHSC will be able to take disciplinary action against a hospital who fails to meet any of the requirements listed, similar to any other disciplinary action taken for licensing violations.
  - Administrative penalties and fines
  - Civil penalties and fines
  - License suspension and termination
- Expect rulemaking to add these requirements to hospital licensing rules located in the Administrative Code (25 TAC Part 133).



# Other New Laws Related to Workplace Violence

- **HB 915** – applies to ALL employers and requires posting of a notice (sign) in conspicuous place and in sufficient locations to reach all employees. The notice must have the contact information for reporting workplace violence or suspicious activity to DPS. The Workforce Commission must work with DPS to develop rules for what must be included in the notice and the rules must be adopted by March 1, 2024. Effective Sept. 1, 2023.
- **SB 840** – increases the criminal penalty for assault committed against hospital personnel while on property owned or operated by a hospital to a third-degree felony. Effective Sept. 1, 2023.



# Payment & Billing



# HB 711 – Prohibited Contract Terms with Payors

- Prohibits hospitals from offering and payors from including the following contract clauses in their contracts:
  - Anti-tiering
  - Anti-steering
  - Gag Clauses
  - Most Favored Nations
- Effective 9/1/23; however, if you have anti-tiering and anti-steering in your contracts you have until 12/31/23 to renegotiate with your payors to get more balanced terms.
- Governor did not sign the legislation but because it passed with more than majority support in both houses it was able to become law without his signature.



# Senate Bill 490 – Itemized Billing

- Background
  - Sen. Bryan Hughes (R-Mineola) and Rep. Caroline Harris (R-Round Rock)
  - Repeat legislation that was originally filed last session but did not pass.
  - Bill had overwhelming support – with over 111 co-sponsors in the House.
  - Easily passed both chambers.
  - THA attempted to work with both authors – however our attempts to make reasonable changes to the bill were repeatedly rejected.



# Senate Bill 490 – Itemized Billing

- Background
  - Bad facts make bad law.
  - Law was born out of frustration with hospitals not complying with laws already in place that require hospitals to provide itemized bills upon request.
  - Issue received media attention, particularly in Central Texas.

 KXAN  
www.kxan.com

**Medical billing transparency legislation passed, heads to governor**

May 16, 2023 — AUSTIN (KXAN) — Legislation that will increase medical billing transparency – by requiring hospitals to provide an itemized receipt to ...




 KXAN  
www.kxan.com

**Legislation to itemize medical bills meets opposition**


Apr 3, 2023 — The itemized bill would have to include the amount the provider would accept as full payment for each service or supply, a plain language ...



 KXAN  
www.kxan.com

**Texas lawmakers push for more transparent medical billing: What it ...**

Feb 26, 2023 — The “Medical Debt Lawsuits” project launched on Sept. 12, 2022, produced by Catalyst – a ...





# Senate Bill 490 – Itemized Billing

- Summary of the New Law
  - Creates a new Ch. 185 in the Health & Safety Code.
  - Effective September 1, 2023
  - Compliance is expected by effective date.
  - THA expects HHSC to issue rules on SB 490 – but will not be issued before 9/1. HHSC expects to issue a guidance letter to assist hospitals and other impacted providers on interpretation of vague and ambiguous terms.
  - Applies to hospitals, ambulatory surgical centers, birthing centers, freestanding ERs, and any other facility that is required to have a license to provide health care services.



# Senate Bill 490 – Itemized Billing

- Summary of the New Law
  - Does not apply to individual physicians who have their own practice. They were exempted from the legislation through a floor amendment. It would apply to a facility that is owned by physicians, if that facility is required to be licensed.
  - Does not apply to FQHCs.



# Senate Bill 490 – Itemized Billing

## • Requirements

- Must provide an itemized bill when requesting payment *after* services have been provided.
- For patients with insurance or services paid by other third party: Itemized bill must be provided no later than the 30<sup>th</sup> day from the date the hospital receives final payment from a third party (i.e., insurance or other payer).
- For patients without insurance: when the hospital is requesting payment.
- Not required for every single patient.
  - However, hospitals are also required, under a separate law already in place, to provide patients with an itemized statement upon patient request. Hospitals are also required to notify patients of their right to request the itemized statement upon discharge Tex. Health & Safety Code §311.002.
- Does not apply to payment requests for co-pays or cost-share amounts collected prior to or day-of service.



# Senate Bill 490 – Itemized Billing

- Requirements

- An itemized bill must include:
  - A plain-language description of each distinct health care service or supply the hospital provided to the patient;
  - The billing codes the hospital submitted to a third-party payer for any payment, if applicable;
  - The amounts billed to and paid by a third-party payer, if applicable; and
  - The amount the hospital is seeking from the patient for each service and supply provided.
- Other information can be included such as information to help patients. Any additional information must be complete and accurate.
- Can consider combining the requirements for an itemized statement.
- Can be provided electronically.



# Senate Bill 490 – Itemized Billing

- Requirements

- SB 490 also gives patients the right to provide additional copies upon request but does not specify for how long hospitals are required to make the information available. Unless HHSC says otherwise, presume you keep records for as long as currently required by any applicable record retention laws.
- Ch. 311 requires that patients not be charged for the first two copies of the itemized statement. SB 490 is silent on whether you can charge for providing additional copies. Current law allows a reasonable charge for any copies after the first two are provided and that amount cannot exceed the cost to copy and deliver to the patient.



# Senate Bill 490 –Itemized Billing

## Itemized Bill

- A plain-language description of each distinct health care service or supply the hospital provided to the patient;
- The billing codes the hospital submitted to a third-party payer for any payment, if applicable;
- The amounts billed to and paid by a third-party payer, if applicable; and
- The amount the hospital is seeking from the patient for each service and supply provided.

## Itemized Statement

- Must be written in a conspicuous manner ;
- The date services and supplies were provided;
- Whether a claim has been submitted to a third-party payer and whether the third-party payer has paid the claim;
- If payment is not required, state that payment is not required in a typeface that is bold-faced, capitalized, underlined or otherwise set out from surrounding written material or by other reasonable means so as to be conspicuous that payment is not required;
- The telephone number of the facility to call for explanation of acronyms, abbreviations and numbers used to describe the services provided or supplies used, or any other questions regarding the bill.



# Senate Bill 490 – Itemized Billing

- Itemized Bill v. Itemized Statement
- Current law requires the itemized statement be provided not later than the 30<sup>th</sup> *business* date from the discharge date, if requested by the patient upon discharge. Patients then are entitled to receive a statement not later than one year from the date of discharge and hospitals must provide the statement within 10 *calendar* days from the date of the patient’s request.
- On a case-specific basis, it’s possible a hospital could be required to provide an itemized statement before it is required to provide the itemized bill because patients are currently allowed to request an itemized statement upon discharge. Hospitals likely won’t be seeking payment from patients before that date.
- If a hospital complies with the itemized statement it does not mean the hospital has complied with SB 490.



# Senate Bill 490 – Itemized Billing

- Enforcement & Consequences for Non-compliance
- Inability to Collect
  - If a hospital does not comply with SB 490, the hospital is prohibited from engaging in debt collection. Both the Senate and House authors of SB 490 provided legislative intent that “debt collection” is intended to refer to third-party debt collection.
  - SB 490 uses the same definition for “debt collection” that is used in the Texas Debt Collection Practices Act found in Chapter 392 of the Texas Finance Code.
  - Chapter 392 defines “debt collection” as “an action, conduct, or practice in collecting, or in soliciting for collection, consumer debts that are due or alleged to be due to a creditor.”
- Disciplinary Action by HHSC or applicable licensing authority





# Senate Bill 490 – Itemized Billing

- What's Next?
  - Ambiguous and vague terms. THA hopes to work with HHSC to get these clarified – to the extent they can be.
  - Work to get compliant as quickly as possible by 9/1. If not possible, if you can show good faith effort to comply that will be meaningful and likely prevent egregious penalties.
  - Engage your counsel/attorneys to assess the legal impact that non-compliance can have on your facility so that you are better able to assess risk.



# End-of-Life

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# HB 3162 – Omnibus End-of-Life

## Changes to the TADA:

- Extending the statutory period for notice to a patient, or their appropriate decision-maker, in advance of a meeting held pursuant to the dispute resolution process set forth in Section 166.046, from 48 hours to 7 days, and specifying certain information that must be included in the notice.
- Requiring an ethics or medical committee to consider the patient’s well-being in conducting its review under Section 166.046 but prohibiting any judgment on the patient’s quality of life, and enumerating specific considerations the committee must make related to the continuation of life-sustaining treatment – such as whether the treatment will prolong the natural process of dying or hasten the patient’s death.
- Specifying and expanding the rights of persons participating in a committee meeting under Section 166.046, before, during, and after the meeting.
- Barring certain persons from participating in an executive session of a committee meeting.
- Clarifying language regarding patients with disabilities, as well as how such disabilities may affect the process and decisions made under the TADA. Specifically, during the review process under Section 166.046(b), an ethics or medical committee is prohibited from considering a patient’s disability that existed before the patient’s current admission unless the disability is relevant in determining whether the medical or surgical intervention is medically appropriate.



# HB 3162 – Omnibus End-of-Life

- Extending from 10 days to 25 days the statutory period for continued attempts to transfer a patient and the provision of care and interventions to a patient after the meeting held pursuant to the dispute resolution process set forth in Section 166.046 deems that ongoing care and interventions are medically inappropriate.
- Expanding and specifying new requirements related to attempts to transfer a patient.
- Clarifying that Section 166.046 applies only to care and treatment decisions for patients who are deemed incompetent or otherwise mentally or physically incapable of communication.
- Introducing a requirement for facilities to report certain data, within 180 days of initiating the dispute resolution process under Section 166.046 and requiring HHSC to publish aggregated data related to these reports.
- Adding language to statute concerning the transfer of patients and the potential for a patient to receive limited surgical interventions to help facilitate a transfer, when necessary.
- Amending language in Chapter 166, Subchapter E, Health and Safety Code (“In-Patient DNR Orders”) to clarify and correct issues of concern made apparent since implementation in 2017, including those related to potential liability protection.



# HB 3162 – Omnibus End-of-Life

Amends the Consent to Medical Treatment Act (Chapter 313, Health and Safety Code) to more closely align its decision-making hierarchy with the TADA (found at Section 166.039, Health and Safety Code). Chapter 313 governs treatment decisions made on behalf of an adult patient of a home and community support services agency or in a hospital or nursing home, or an adult inmate of a county or municipal jail who is comatose, incapacitated, or otherwise mentally or physically incapable of communication. HB 3162 indicates that Chapter 313 only applies if the patient does not have a legal guardian or an agent under a medical power of attorney who is reasonably available after a reasonably diligent inquiry.

Amends the surrogate decision-making hierarchy to, among other changes, remove the statutory ability for a member of the clergy to take part in the decision-making.

Finally, under a new subsection added to Section 313.004, if the patient does not have a legal guardian, an agent under a medical power of attorney, or a person listed in the hierarchy listed in Subsection (a) (i.e., spouse, adult children, parents, who is reasonably available after a reasonably diligent inquiry), another physician who is not involved in the medical treatment of the patient “may concur” with the proposed treatment.



# Continued Compliance with Current Laws

- Price Transparency
- Staffing Committee Required
- Mandatory Overtime Prohibited
- Patient Rights



# Questions ?

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