

The Good, Bad and Ugly Health Care Issues of the 88th Texas Legislature



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Elections Impact Policy

November 8 General Election:

- Following redistricting, **all 181 seats** in the Texas Legislature (150 House, 31 Senate) were up.
- Texas now has 40 Members of Congress (**38** + 2).
 - Texas only state to gain two MOC post-census.
- Texas remains a very **red** state.
- Legislative Majorities stay GOP in House and Senate.
- Abbott, Patrick, Phelan return.
- Looking ahead to 2024 Presidential Election?



Texas Legislature Overview

Texas Constitution determines:

- Biennial Regular Session for 140 Days
 - Special Session authority rests with Governor
 - Two special sessions SO FAR in 2023
- Second Tuesday of January of Odd Years
 - Bill filing began Nov. 14
 - 88th Texas Legislature began Jan. 10
 - Committee Appointments
 - Bill Filing through March 10
 - Sine Die (General) was May 29!
- Record number **8,520** bills filed this session
 - THA tracked 1,644 bills on health care / hospital budget and policy
 - 1,246 sent to Governor
 - Total Bills Vetoed: 76 bills



State Legislation Impacting Hospitals

- Hospital Licensure Requirements, Surveys, Inspections and Fees
- Physician, Nurse, Allied Health Provider Education, Training, Licensure
- COVID Visitations, Standards of Care, Vaccine Mandates
- Medical and Nursing Workforce, Education, Staffing
- Telemedicine Standards, Requirements
- Trauma and EMS Standards, Licensure, Requirements
- NICU Regulation, Certification
- Public Health – Vaccines, Car Seats, Texting While Driving, Cigarettes
- Insurance Network Adequacy
- Mental Health Care Delivery, Coverage, Workforce
- Life Cycle: Pregnant Women, Fetal Tissue, Placentas, End of Life, DNR Orders
- Compliance with Public Information Act
- Guns in Hospitals
- Licensed Freestanding Emergency Centers regulation and billing
- Medical Waste Disposal



88th Session Themes

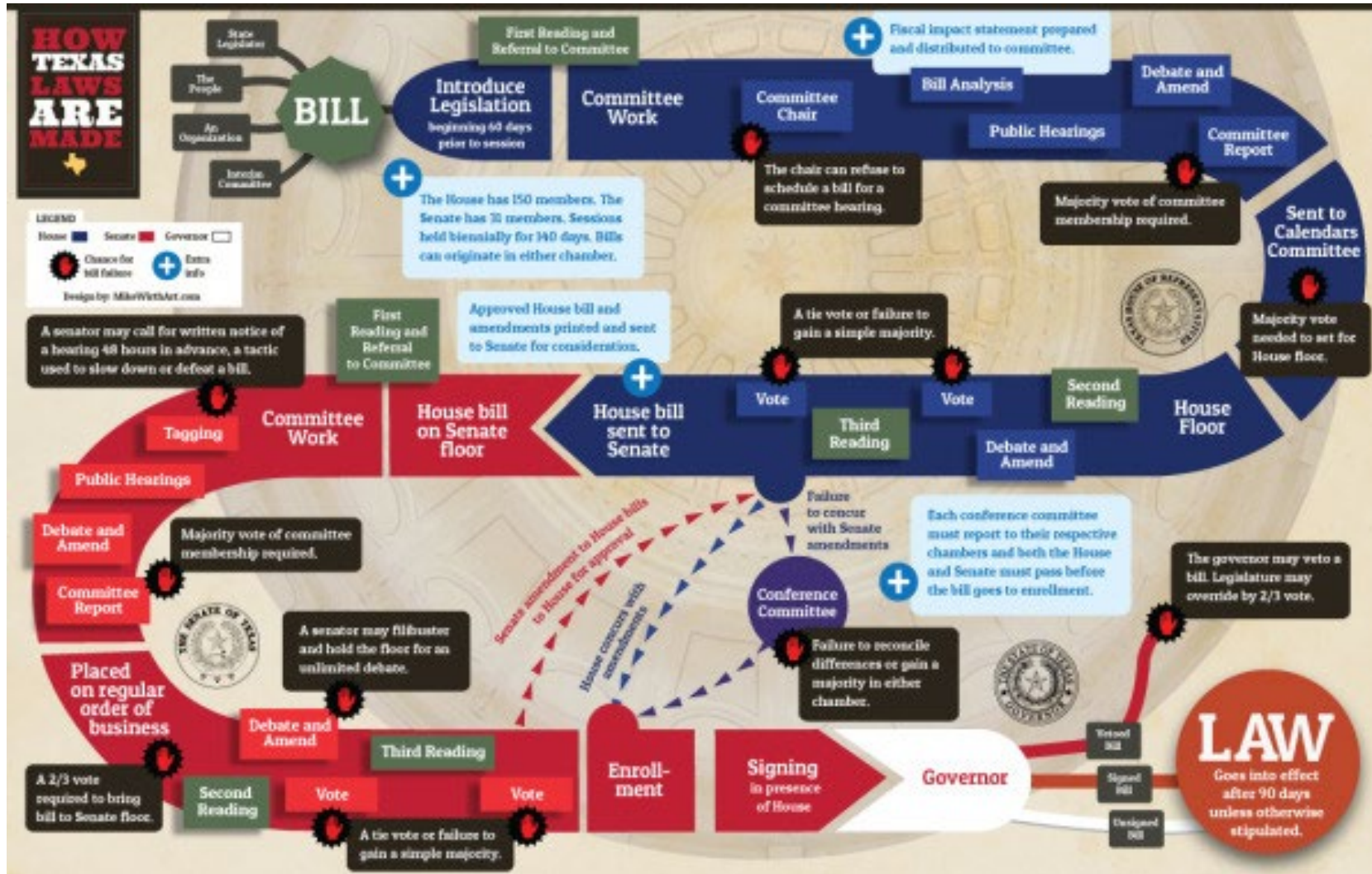
- Property Tax Relief (one job)
- Guns & Abortion
- AG Impeachment



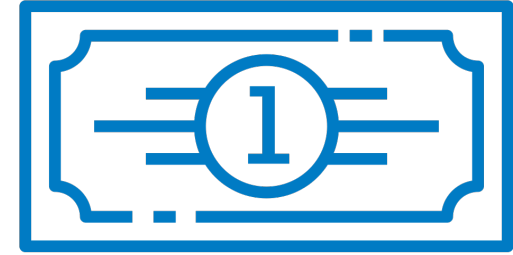
Legislative Process in Theory



Legislative Process in Reality



Setting the Scene for the 88th

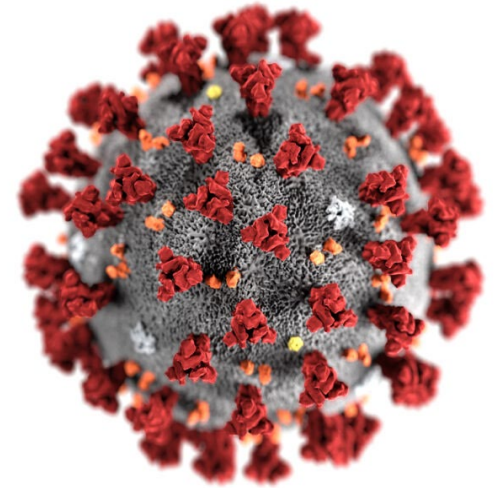


- Must-pass legislation – biennial budget
- Texas had record surplus of \$32.7 billion*, driven by inflation in sales tax revenues and oil and gas production taxes.
- Texas spending limits:
 - Balanced budget requirement as determined by Comptroller Hegar, and
 - Constitutional Spending Limits set by Legislative Budget Board (12.3% over current)
 - To “bust the cap” takes record vote of both houses
- Rainy Day Fund approaching \$27 billion
- Magic Questions:
 - How to spend record amounts of general revenue (HB 1)?
 - Will legislators vote to suspend limitations for property tax cut or infrastructure?
 - Remaining ARPA / Supplemental Needs Existing 2021-2022 Budget (SB 30)?



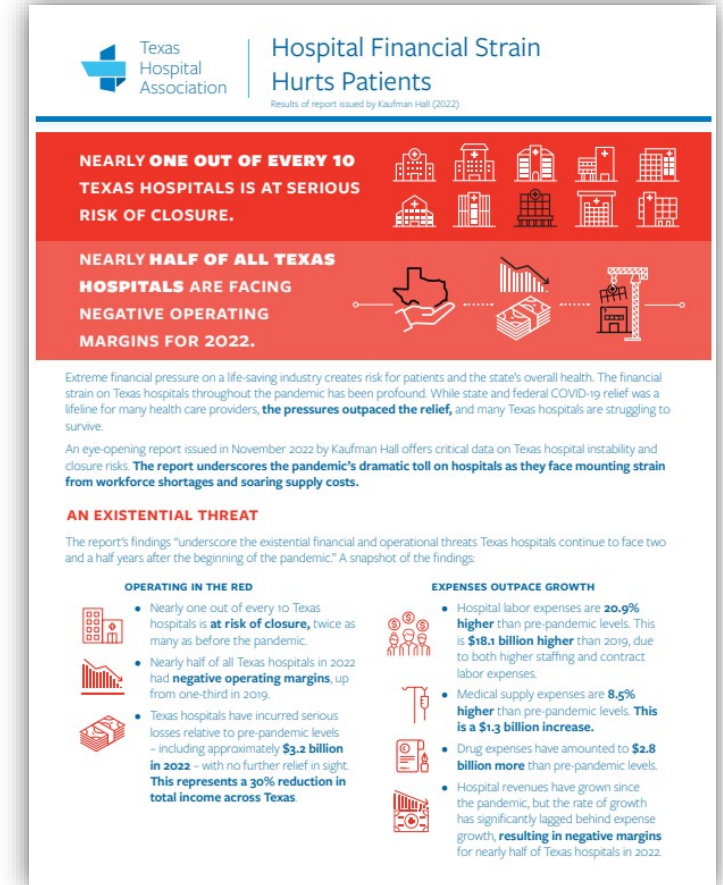
Shaping 2023: Impacts of COVID-19

- Hospitals were tested and strained like never before throughout the pandemic – testing, vaccinating and caring for millions while other establishments shuttered their doors.
 - Texas hospitals administered more than 7.5M vaccine doses (Oct. 2022)
 - Comptroller credits vaccine administration for driving state’s economic recovery (May 2021)
- Bed and ventilator capacity, stress and burnout, and workforce attrition hit hospitals hard, with many nurses and other health care professionals retiring or leaving the profession.
- Federal COVID relief funds were a major life raft for hospitals during the initial waves of COVID, keeping facilities afloat.
- Now, financial stability and an industrywide workforce shortage loom as profound problems for facilities everywhere.
- Meanwhile, allegations that hospitals were “enriched” by PRF and COVID reimbursement.



THA COVID and Finance Reports

- Texas [Kaufman Hall Report](#):
 - One in Nine Texas Hospital at Risk of Closure.
 - 26% of rural hospitals are at risk.
 - Labor Expenses are up 21% from pre-pandemic.
 - Labor expenses are \$18B higher than 2019.
 - Medical supplies are up 8.5%.
 - Hospital volumes remain below pre-pandemic.
 - But patient days and length of stay are up.
 - Hospital revenues have grown since the pandemic, but the rate of growth has significantly lagged expense growth.
 - Almost half of Texas hospitals (47%) finished 2022 with a negative margin.
 - THA's [COVID Report](#) tells the story of hospitals throughout the pandemic and the challenges still existing.



#1 Concern for Texas Hospitals: Workforce

Pipeline: Increase funding to increase the health care workforce = critical Texas infrastructure.

- 64% of hospital have reduced services due to staff shortages
- 15,709 qualified applicants turned away from the state's nursing schools in 2021, per Texas Center for Nursing Workforce Studies
- Funding in HB 1:
 - Professional Nursing Shortage Reduction Program for Texas nursing school faculty supplements and clinicals = \$46.8M biennium (+\$27.9M).
 - Nursing Scholarships = new \$25M biennium (tied to SB 25).
 - Nurse Faculty Loan Repayment Program = \$7M biennium (+\$4M).
 - Behavioral Health Loan Repayment Program = \$28M (+\$26M).
 - Maintain GME funds for physicians at 1.1 to 1 ratio = \$233M (+\$34M)
 - Physician Education Loan Repayment Program = \$35.5M (+\$6M)
 - Family Practice Residency Program = \$16.5M (+\$7M)
 - Rural Residency Physician Program created with new \$3M

Texas Hospital Association | A Workforce in Peril: Shortages Threaten Patient Care

Two years of COVID-19 pandemic care have strained hospital resources and capacity like never before. These extraordinary challenges have acutely impacted the people who provide care inside the walls of hospitals. Burnout and fatigue have plagued the frontlines, and many health care workers have left the field altogether. While health care workforce shortages existed long before COVID-19, staffing costs and other pandemic-related challenges have led to an unsustainable situation that threatens hospitals' ability to care for patients.

Texas hospitals report **nursing vacancies** in non-COVID-19 units are about **double** pre-pandemic levels.

Fewer Staff. Less Care
Hospitals are able to provide high-quality patient care because of their skilled and sufficient health care workforce. The existing significant shortage of hospital care providers has forced hospitals to compete for contract labor. These skyrocketing labor costs have profoundly impacted hospital finances, pushing many providers toward a financial cliff. As the challenges to find, procure and maintain staff continue, the impacts on hospitals' ability to provide care will continue.

Pervasive workforce shortages on Texas' health care system could:

- Reduce essential service lines, like labor and delivery, surgery, oncology and psychiatric units;
- Force rural and smaller hospitals unable to afford increasing labor costs to close; and
- Limit the guaranteed next-level specialized care for patients.

26,000
Over the course of the pandemic, THA advocated for much-needed state staffing to help hospitals combat COVID-19 surges. The state of Texas provided more than 26,000 staffed positions to health care facilities over the duration of the pandemic.



Workforce Retention and Safety

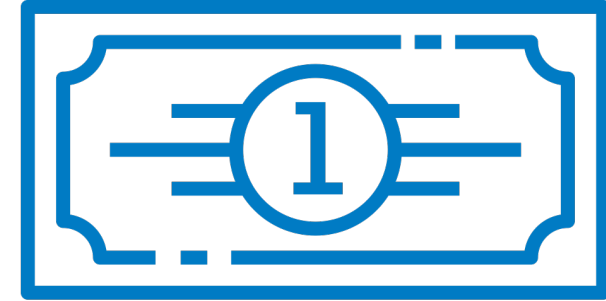
Continued health care workplace safety, retention and violence reduction strategies needed to maintain a strong workforce.

- SB 240 requiring all providers to develop workplace safety plans and prevention policies, committee, unified definitions and reporting mechanism. *First bill to pass this year, signed by the Governor on May 15, effective on Sept. 1!*
- SB 840 enhances to a third-degree felony an assault on hospital personnel while the person is on hospital property (beyond the ED). *Effective Sept. 1*
- SB 25 is framework for enhanced workforce funding, part-time and full-time faculty loan repayment, nursing scholarships and preceptor engagement. *Effective June 18.*



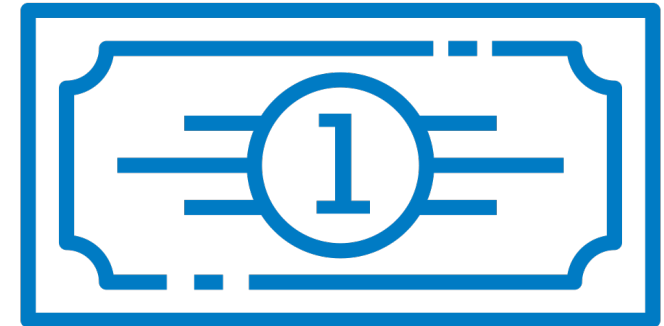
Hospital Funding in the State Budget

- Increased state funding of Medicaid:
 - All Medicaid funding \$12B increase over previous biennium
 - Trauma, safety net and rural (increased) hospitals add-ons
- Trauma Fund Maintained
 - + \$3.3M AF more for RACS
 - Rider 37 directs HHSC to report on uncompensated trauma care
- Medicaid Community Attendant Wage Increase
 - \$1.9B AF biennially for increased reimbursement for Medicaid services provided by community attendants, raising the base wage to \$10.60/hour.
- Inpatient Community Psychiatric Beds
 - \$100.1 million over biennium to contract for 170 competency restoration beds
 - \$206.3 million over biennium to maintain existing capacity and 193 additional state purchased beds (70 rural;123 urban)
 - \$13.7 million for beds in Uvalde
 - Prioritizes 20 beds for DFPS conservatorship.
 - **Total: \$306.4 million over biennium allocated to additional beds.**
- \$2 Billion for construction and improvements at Texas State Hospitals



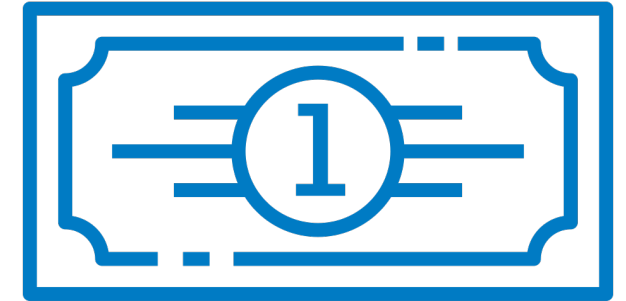
Hospital Funding in the State Budget cont.

- Rural Hospital Funding:
 - Inflation adjustment increase of \$213M AF biennium
 - L&D add-on increased to \$1500 from \$500 (\$47M AF)
 - \$50M for rural financial stabilization grants
 - \$7.4M GR for rural telepsychiatry consultations (HHSC Rider 56)
 - Definition of “Rural” updated post-census
- Medicaid Wellness Visits for Children and Women’s Health Related Surgeries
 - \$126M AF biennially in rate increases for pediatric services to improve access to wellness visits for children by 6%.
 - \$15M AF biennially to increase rates for birth and women’s health related surgeries by 3%.
 - Rider 31(e) directs HHSC to evaluate and report to the legislature whether there are distinctions in the level of access to care for clients age 0-4 compared with children ages 5-10.



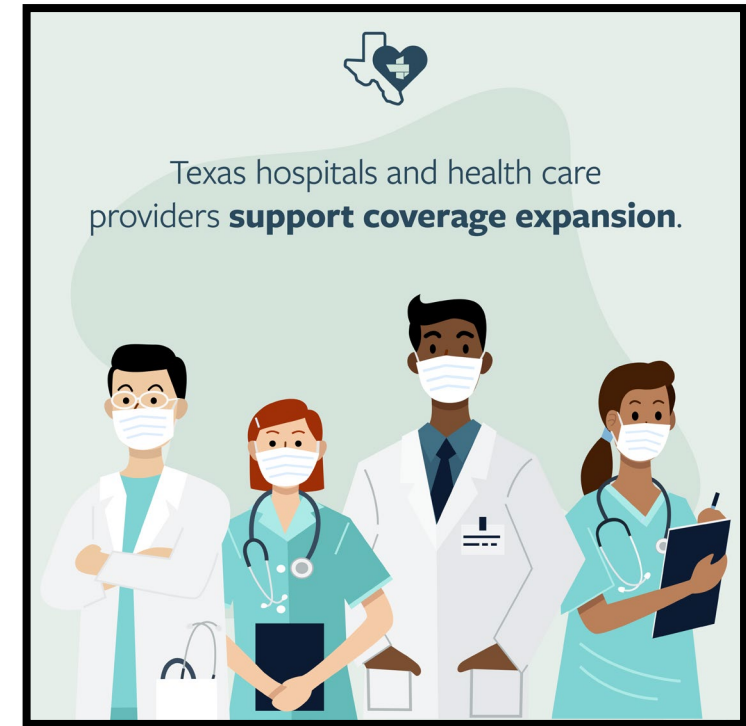
Hospital Riders in the State Budget

- Hospital and Charity Care Study (\$5M to HHSC) to evaluate:
 - Hospital reporting and transparency
 - Supplemental payments, medical debt, tax revenue
 - Value of charity care, bad debt, unreimbursed costs
 - Nonprofit properties, market values, tax benefits
 - Compliance with charity care requirements
 - (Art. 9, Provision 17.34)
- TRS to engage a 3rd party vendor to conduct a review of high hospital claims that exceeded \$100,000 in FY 2022 to determine cost savings.
- State agencies or higher ed institutions receiving state funds in the budget are required to report to HHSC on activities in collaboration with, directed by, or financed by the World Health Organization (Article IX Sec. 7.15).
- COVID-19 Hospital and Nursing Home monthly reporting requirement to HHSC maintained in Rider 150.



Increase Health Care Coverage

- Efforts to increase the number of Texans with comprehensive health insurance: *No Medicaid Expansion legislation moved.*
- Extending postpartum Medicaid coverage for new mothers from 2 months to 12 months: *HB 12 passed, will require CMS approval.*
- Increasing the inpatient psychiatric adult Medicaid stay limit beyond 15 days (with an “Institutions of Mental Disease” IMD CMS waiver): *Not in budget.*
- Ensure a strong process to end the PHE and ensure eligible Texans that remain eligible for Medicaid or other coverage remain enrolled: *Eligibility redeterminations began on Apr. 1.*





Behavioral Health Access and Coverage

THA supports improving the continuum of care in all behavioral health care settings

- Increasing the reimbursement rate and number of state contracted beds in communities - *included in budget*
- Increase funding for Mental Health Loan Repayment Program - *included in budget*
- Medicaid coverage for Partial Hospitalization Services and Intensive Outpatient Therapy to prevent hospitalization - *did not pass*
- Obtaining an electronic means of requesting an Emergency Detention Order - *passed*



 Texas Hospital Association | Texas Hospitals Strongly Support Behavioral Health Priorities






 Demand for behavioral health care surged during the pandemic. And the after-effects continue to unfold with increases in anxiety, depression and suicidal ideation among children and adults. While Texas has recognized the critical importance of a strong behavioral health infrastructure, behavioral health services unfortunately remain difficult to access for many Texans.

Like never before, behavioral health concerns have been pushed front and center - and the time is now to make additional investments in behavioral health policies, hospitals, programs and workforce.

The consequences of untreated mental health conditions are significant, ranging from drug overdoses, increases in violence, lost jobs, and poor physical health. According to the National Alliance on Mental Illness, 3,900 Texans died from suicide and 750,000 adults had suicidal thoughts in 2020. Mental health conditions affect one in five Texans every year. And over two-thirds of people with a behavioral health condition get no treatment for that condition.

The Texas Hospital Association is committed to ensuring behavioral health is at the forefront of the agenda in local communities, statewide and in Washington, D.C. THA will continue to lay the groundwork for sound behavioral health care policy in the Texas Legislature.

Here are THA's top behavioral health priorities for the 88th Texas legislative session:

-  Secure a federal waiver from the Institutions for Mental Diseases (IMD) exclusion rule, which would allow Texans aged 21-64 to be covered for Medicaid inpatient behavioral health stays longer than 15 days.
-  Increase in general reimbursements for adults and pediatric inpatient psychiatric beds under Medicaid.
-  Increase behavioral health hospital capacity by increasing contract beds and rates for state-contracted beds, both adult and pediatric.
-  Mandate coverage in Medicaid for intensive outpatient therapy and partial hospitalization.
-  Improve and increase hospital workforce by increasing funding to the Mental Health Loan Repayment Program.
- Streamline the detention warrant acquisition process through electronic warrant applications.
- Create a grant program for behavioral health providers who lack access to electronic medical records and interoperability technology.

Visit www.tha.org/behavioralhealth for additional information | 1108 Lavaca, Austin TX, 78701-2180

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Patient Access to Care

- Payer policies that reduce red tape and improve patient access to care, including limits on prior authorizations and care location policies.
 - Support scrutiny of Medicare Advantage processes at the federal level.
 - Improve Network Adequacy Requirements at TDI (*HB 3359 effective 9/1*)
- Removing overly burdensome utilization review policies, robust insurance networks and strengthening access to and payment of emergency room care.
 - Require “prudent layperson standard” be used for ED reimbursement (*HB 1236 failed*).
 - Prohibit “white bagging” policies that require drugs to be dispensed at off-site pharmacies (*HB 1647 passed only for physicians’ offices, specifically excluding hospitals and hospital outpatient infusion centers*).
- Patient access to price transparency and quality data for all health care providers.
 - Include all providers in state transparency requirements (*bill failed*).
- Ensure continuation of CMS Hospital-At-Home waiver program.
 - Bill requires HHSC to adopt procedure for state compliance (*HB 1890 effective 5/27*).



Politicization of Public Health and Vaccines

THA policy was to let the hospital determine what is best for their community and staff.

- Hospitals were required by CMS to have COVID-vaccinated or approved-exempted staff (throughout months of session).
- Many bills filed to restrict or limit masking (even in a hospital) and vaccines, including public and higher education vaccine requirements.
 - Legislation prohibits governmental entities from requiring masks for COVID-19 or COVID-19 vaccines (hospitals exempted if existing CMS requirement). *SB 29 effective 9/1.*
 - Legislation prohibits compelling or coercing an employee to receive a COVID-19 vaccine, with exemption for current CMS rule. *SB 177 died.*
 - Legislation prohibits a Medicaid or CHIP provider from restricting care based solely on immunization status, has exemption for oncology and organ transplant. *HB 44 effective 9/1.*



HB 3191 - Governing Boards

- New provision for 3-year terms for district boards
- Board members terminated after 5 absences in 12 months
- Brings district legislation into compliance with Election Code
- Effective 9/1/23



Itemized Bills for Hospitals & ASCs

- SB 490 by Sen. Hughes and Rep. Harris + 111 house co-sponsors
 - Filed in 2021 but failed. Enormous media coverage in Austin.
 - Bad facts make bad laws.
 - Attempts to make reasonable changes to the bill were repeatedly rejected.
 - Physicians were exempted by a physician legislator amendment.
- 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 30th 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.
 - 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



Other Operational Issues

- Bring Your Own Blood (SB 1584) - *did not pass*
- Bring Your Own Physician (SB 299) - *did not pass*
- Podiatry Privilege Parity (SB 730) - *did not pass*
- Monthly Reporting of Child Abuse Reports (SB 1197) - *did not pass*
- Onsite Physician Requirement (SB 1193) - *did not pass*
- Newborn Screening Procedures (HB 3212) - *did not pass*
- Physician Noncompete Limits (SB 1534) - *did not pass*
- Mandatory Surgical Smoke Evacuation System (HB 4365) - *did not pass*
- Increased Oversight of Physicians by the TMB (HB 1998) - *sent to the Governor*



Other Bills of Note

- Mental Health
- Broadband
- Definition of “Rural”
- Physician Residency
- Loan Repayment
- COVID Reporting



Legislative Challenges

House Select Committee on Health Care, charged with looking at “excessive health care costs”:

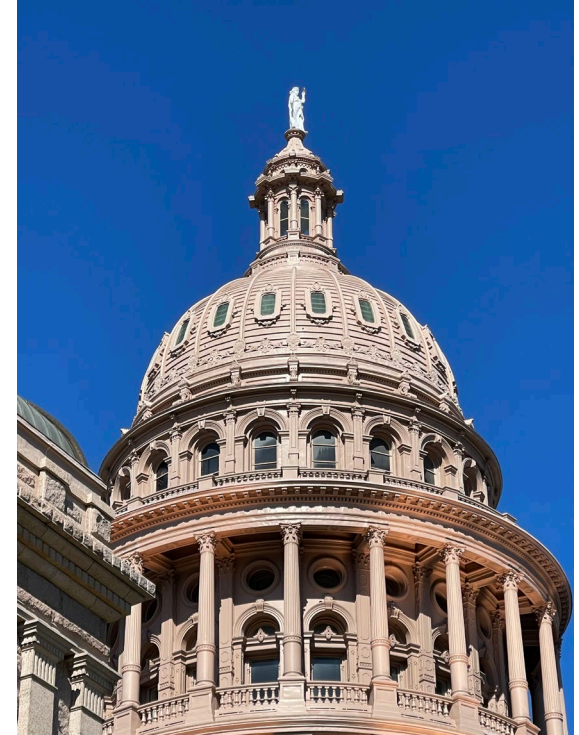
- Legislation banning all hospital outpayment payments, defined as “facility fees”, **died**. Health insurance backed bill. (HB 1692 and SB 1275)
- Legislation forcing hospitals to accept a government-set rate for services provided outside of insurance, despite charity care requirements, **died**. The rate would be set at the lowest commercial contracted rate. (HB 633)
- Legislation requiring a 10-person legislative committee to establish government-set hospital rates for ERS, TRS, UT and A&M plans **died**. This would have superseded existing private market negotiations with health plans for one of 11 Texans with private insurance. (HB 5186 by Bonnen)
- Legislation allowing health insurance companies to sell deregulated insurance-like products free from consumer protections codified in law **died**. The bill would have created more uncompensated care. (HB 1001)
- Legislation to create a health insurance think tank to review all health insurance requirements and would put the health insurance companies in the driver’s seat of determining regulations and coverage **died**. (HB 2403 / SB 1581)



Effectively Addressing Cost Drivers

- Increase health care workforce across the state, especially nurses, to ensure providers can provide life-saving care, protect patient access to care, staff record numbers of vacant beds, and balance the increasing and continued workforce cost challenges;
- Ensure nurses and all health care providers are safe at work by developing strong plans to prevent workplace violence, which endangers patients and staff and increases staff turnover;
- Improve access to care and increase health care coverage, including post-partum care for mothers and access for inpatient behavioral health patients;
- Increase resources for behavioral health care with increased bed capacity statewide, more behavioral health care workforce, and increased access leading to less hospitalizations; and,
- Balance individual rights and the needs for safety within hospitals, ensuring a strengthened public health system.

Texas hospitals provided care on the frontlines of a pandemic while insurance companies collected record profits and made legislative roadmaps for more money

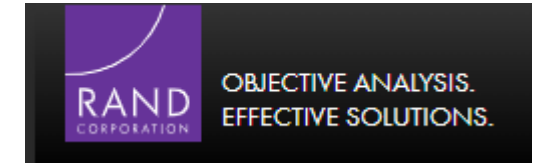


Interim Homework

Hospitals are under attack from Health Plans, Well-Funded “Think Tanks” and Employer Groups.

Take time during the interim to:

- Be attentive to hospital criticisms
- Review your compliance with required reporting and transparency laws (see the HHSC hospital and charity care study)
- Build relationships with legislators and local employers, chambers

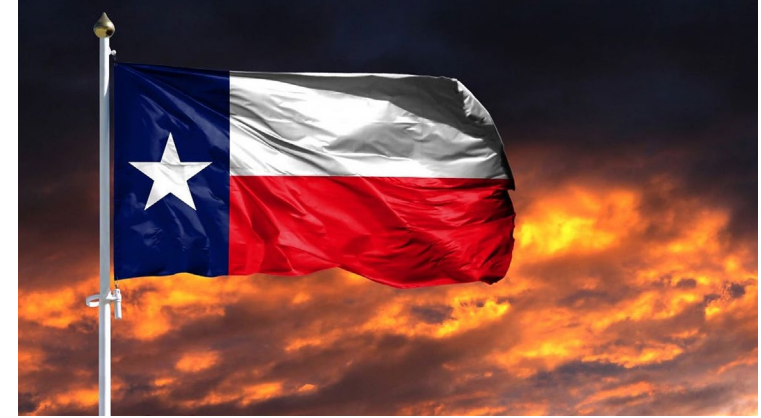


What Comes Next?

- General Paxton Impeachment Trials – Sept. 5
- Fall Special Session(s) on school vouchers
- Implementation of Bills that Passed
- House and Senate Interim Studies
- HHSC Hospital and Charity Care Study
- March and November 2024 elections....

AND U.S. Congress in Washington, D.C.

- DSH Cuts Effective on Oct. 1
- Site Neutral Payment Debate Ongoing
- CMS Efforts to Undermine Hospital Financing Processes



Thank you. Questions?

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