

SPECIAL SESSION



Outcomes for Texas Hospitals

FROM THE 85TH TEXAS LEGISLATURE - **SPECIAL SESSION**



THA
Texas Hospital Association

Special Legislative Session: Outcomes for Texas Hospitals

After 140 days of lawmaking for the 85th Texas Legislature, **Gov. Greg Abbott (R)** called lawmakers back to the Texas Capitol in July to revisit legislation that did not pass during the regular legislative session. The 20-item special session agenda included six affecting Texas hospitals:

- Continuing the Texas Medical Board;
- Limiting hospital districts' and other taxing entities' ability to raise property tax revenue;
- Limiting state and county spending;
- Restricting use of in-hospital Do-Not-Attempt-Resuscitation Orders;
- Increasing reporting of complications resulting from abortions; and
- Continuing the Maternal Mortality and Morbidity Task Force.

During a special session, lawmakers may consider only bills related to the governor's agenda. There are many fewer bills and, therefore, many fewer opportunities to defeat bills than in the regular session. In addition, unlike the 140-day regular session, a special session can last no more than 30 days. Given these constraints and the heightened politics of a special session, our successes are particularly notable, particularly the defeat of the property tax revenue and spending caps. While we opposed the bill that ultimately became law to restrict use of in-hospital DNR orders, we successfully amended the bill to improve it and protect patient care.

At this writing, it does not appear that the governor will call lawmakers back for a second special session even though not all 20 items passed. However, the ongoing uncertainty over redrawing Congressional district maps could compel a second special session at some point before the 2018 primary elections.

Continuing the Texas Medical Board

Continuing the Texas Medical Board, the agency that licenses physicians and regulates the practice of medicine, was the first item on the governor's special session agenda. **Gov. Greg Abbott (R)** required the Senate to pass legislation to extend TMB's sunset date of Sept. 1 before moving on to the 19 other items on the agenda. Both the Texas House and Senate quickly passed a bill to extend the agency through September 2019. THA monitored the bill to ensure that it did not get encumbered with other physician-related items, such as creating new cause of action claims against 501 (a)

physician practices, or restrictions on access to women's health care. (*Senate Bill 20 and House Bill 1*)

Contact:

Jennifer Banda, J.D.: jbanda@tha.org

Sara Gonzalez: sgonzalez@tha.org

Carrie Kroll: ckroll@tha.org

Julie Chicoine, J.D.: jchicoine@tha.org

Cameron Duncan, III, J.D.: cduncan@tha.org

Limiting Property Tax Revenue Collections and State and Local Spending

With the support of the Texas Hospital Association, Texas cities and counties led the effort to defeat bills that would have curtailed hospital districts' and other local taxing entities' ability to increase property tax collections without voter approval. THA's advocacy focused on reminding lawmakers that property tax revenue is the critical funding source used to draw down federal Medicaid funds to offset Texas hospitals' uncompensated care costs and fund delivery innovation projects. Local property tax revenue provides the state share for uncompensated care, disproportionate share hospital and delivery system reform incentive program payments. Two-thirds of all Medicaid hospital payments in Texas are fed by local property tax revenue so any attempt to limit that revenue would threaten the already fragile health care safety net.

Under current state law, voters may petition to have a property tax rate rolled back if revenue collection would be 8 percent greater than that of the previous year. A bill introduced in the Senate by **Sen. Paul Bettencourt (R-Houston)** would have required an automatic election before taxing entities that collect more than \$25 million annually could increase property tax collections by 4 percent or more over that of the previous year. As in the regular session, the House sponsor of the bill, **Rep. Dennis Bonnen (R-Anglewood)** opposed the 4 percent rollback rate and increased it to 6 percent. While an attempt to exempt hospital districts failed during the House floor debate, the House passed the bill with the higher threshold, which ultimately was a nonstarter for the Senate and resulted in a breakdown in negotiations and the bill's failure. (*Senate Bill 1*) Amid the property tax debate, THA also closely monitored

proposed legislation to cap state and local spending. Local governments fought to preserve the spending powers they have long exercised and opposed **Sen. Craig Estes' (R-Wichita Falls)** bill that would have required cities and counties to get voter approval if they planned to spend a certain amount more than in a previous year. The bill would have linked local governments' spending cap—the election trigger—to inflation and statewide population growth.

Lawmakers from both chambers carried legislation that would have applied similar restrictive principles to state spending. Bills by **Sen.**

Kelly Hancock (R-North Richland Hills) and **Rep. Tan Parker (R-Flower Mound)** sought to limit the growth of state spending to no more than the growth of population and inflation—two measures that would replace the current spending cap formula that relies on personal income projections. Neither the state nor local spending cap bills passed. (*Senate Bill 18, Senate Bill 9 and House Bill 208*)

Contact:

John Hawkins: jhawkins@tha.org

End-of-Life Care

The most challenging item for Texas hospitals involved a bill to regulate physicians' use of in-hospital do-not-attempt-resuscitation orders. As in the regular session, THA opposed legislation sponsored by **Sen. Charles Perry (R-Lubbock)** and **Rep. Greg Bonnen (R-Friendswood)** and a priority for Texas Right to Life, which will, for the first time, put into state statute when a medical order, in this case a physician-issued DNR order, is valid. THA testified against the bill several times, arguing that it could undermine patient autonomy, create unnecessary confusion and uncertainty at an already fraught and challenging time and cause undue pain and suffering for patients.

After the bill passed the Senate, THA participated in challenging and oftentimes contentious negotiations led by Rep. Bonnen

and that included the Texas Medical Association, Texas Right to Life, Texas Catholic Conference of Bishops and other stakeholder groups. THA opposed the bill throughout but sought to amend it to protect patients' autonomy and minimize hospital liability. THA offered amendments that included liability protections for hospitals and physicians and clearer consent and notification language to reduce potential confusion and uncertainty. The bill ultimately passed with some of THA's amendments and becomes effective April 1, 2018. (*Senate Bill 11*)

Contacts:

Carrie Kroll: ckroll@tha.org

Cesar Lopez, J.D.: clopez@tha.org

Women's Health

The governor's special session agenda included several items related to women's health, primarily related to abortion services. Chief among them was increasing abortion reporting requirements and restricting funding for health care facilities that perform abortions.

In the waning days of the regular legislative session, a bill from **Rep. Giovanni Capriglione (R-Southlake)** failed that would have increased the requirements for hospitals to report abortion complications. His bill, filed in response to the U.S. Supreme Court's overruling of Texas' abortion restrictions passed in 2013, would have required every health care facility, including hospitals, to file a quarterly report regardless of whether an abortion-related complication actually occurred and was treated.

Gov. Abbott put the issue back on lawmakers' agenda, and during the special session, they passed a revised version of Capriglione's original reporting bill. THA worked with bill authors to minimize the administrative burden for hospitals by requiring reporting within 30 days only of complications actually treated and diagnosed. No report is required if no complications are diagnosed or treated. This requirement mirrors that currently in place at the Texas Department of State Health Services for abortion complications reporting. (*House Bill 13*)

In addition, as lawmakers debated a bill that would have prohibited all health care facilities, including hospitals, from receiving state

funds if they perform abortions, THA worked with bill authors to exempt hospitals. State funding would have included Medicaid. Although the bill ultimately failed, the issue likely will reemerge, and preserving the hospital exemption will be of utmost importance. (*House Bill 14 and Senate Bill 4*)

THA also worked with stakeholders and bill authors to reauthorize and continue the work of the state's maternal mortality and morbidity task force. During the regular session, **Sen. Lois Kolkhorst's (R-Brenham)** bill to continue the task force failed because it got wrapped up in the politics surrounding the continuation of the Texas Medical Board.

The volunteer task force operates within the Texas Department of State Health Services and is charged with studying and reviewing cases of pregnancy-related deaths and trends in severe maternal morbidity. THA worked with bill authors to protect the confidential and privileged nature of the task force's work. With the passage of SB 17, the task force will continue through August 2023. (*Senate Bill 17*)

Contacts:

Jennifer Banda, J.D.: jbanda@tha.org

Sara Gonzalez: sgonzalez@tha.org

Carrie Kroll: ckroll@tha.org

Julie Chicoine, J.D.: jchicoine@tha.org



New Health Care Laws: A Report on the 85th Texas Legislature

Written by THA's legal and advocacy staff, this comprehensive reference guide summarizes new legislation that impacts Texas hospitals and provides insights into how hospitals will be affected.

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