HEALTH CARE AND THE 85TH TEXAS LEGISLATURE
Outcomes for Texas Hospitals

THA
Texas Hospital Association
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More than 1,000.

That's the number of bills THA tracked this legislative session. In the 85th Texas Legislature, there were more health care-related bills filed than in any previous session. These were bills that would change how we care for patients, serve our communities and run our businesses. Some we supported; many we did not.

The session opened with different priorities for the House and Senate. For House Speaker Joe Straus (R-San Antonio), priorities included improving children's protective services and foster care systems, reforming the financing of the state's public K-12 school system, and bolstering mental health services. On the Senate side, Lt. Gov. Dan Patrick's priorities centered around vouchers to allow school choice, increased border security, reduced property taxes and regulations to address bathroom use by transgender individuals.

The ultimate equalizer, however, was the state's fiscal situation. Despite Texas' wide tax base and diversified economy, the recent drop in oil prices brought a loss of tax revenue and about $10 billion less for budget writers to appropriate for state operations and programs. For the state's growing Medicaid program, this ultimately resulted in nearly $2 billion less in funding for 2018-19 than for 2016-17 – a situation that will come home to roost when the 86th Texas Legislature convenes in 2019.

With these tight financial circumstances, our wins are particularly notable:

- We preserved state funding to increase Medicaid rates for rural hospital outpatient services, trauma care and safety net hospitals.
- We maintained uncompensated trauma care funding.
- We secured additional funding for graduate medical education to increase the number of physicians practicing in Texas.

And in a legislative body not known for its widespread support of health care programs, our victories on the public health and behavioral health fronts also are noteworthy. These include a statewide ban on texting while driving and expanding the behavioral health professional loan repayment program to include licensed chemical dependency counselors.

Local provider participation fee bills passed for all the jurisdictions that filed them. As you recall, the THA board of trustees last December voted to support continuing local and regional approaches to developing provider fees rather than pursuing a statewide hospital assessment or a single, statewide bill to allow regions or cities to develop local assessments. Following the board's decision, THA created templated legislative language that hospitals could use in developing local bills, and we provided technical assistance to hospitals interested in filing a local provider fee bill. Assuming the governor signs these bills, eight more jurisdictions will have the ability to collect mandatory payments from nonprofit hospitals to fund enhanced Medicaid rates or provide the intergovernmental transfers the state uses to draw down federal funds under the Medicaid 1115 Transformation Waiver.

THA also succeeded at defeating or improving a number of bills that would have created unnecessary regulations or restrictions on our work or undue hardships for our patients. Legislation, for example, that would have undermined the process by which patients and families make clear their wishes for end-of-life care was stopped because time ran out on the House calendar. We also defeated a bill that would have increased the current limits on medical malpractice payments for non-economic damages. And we forged a hard-won compromise to maintain hospitals' current practice of allowing medical staffs to determine whether to require physicians to maintain their board specialty certification.

Of course, as you know, we are facing a special legislative session with an unprecedented 20 items on the agenda. Unfortunately, among the 20 are bills that we thought had been resolved, including caps on local property tax revenue, required reporting of abortion complications and changes to in-hospital “Do Not Resuscitate” Orders.

More information on the special session will be forthcoming in advance of its July 18 start date.

In the meantime, THA continues our work at the federal level to ensure the future of the Medicaid 1115 Transformation Waiver and guide reform efforts to protect coverage and hospital financing.

All of us at THA are honored to support your work to make Texas a healthier place to live and to be your voice in Austin.

Thank you for all you do,

Ted Shaw
Special Legislative Session to Begin July 18

Texas lawmakers will return to the Capitol for a special session on July 18 to address Gov. Greg Abbott’s 20-item list. At the top of that list is sunset legislation designed to prevent the Texas Medical Board from shutting down.

Additional items on the list that impact hospitals include property tax limits, changes to do-not-resuscitate orders and reporting of abortion complications.

STAY TUNED FOR MORE INFORMATION

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.

For more information, call 512/465-1000 or visit www.tha.org.
THA’s Advocacy and Legal Team

THA’s advocacy, legal and communications staff are here to help Texas Hospitals. Contact any member of the staff for resources or information that can help you advocate for your hospital.

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Preserving Enhanced Medicaid Reimbursement Rates

Medicaid reimbursement rates for Texas hospitals are well below cost. Most Texas hospitals are reimbursed at less than 60 percent of costs for providing inpatient health care to those in the Medicaid program. The result is increased reliance on a shrinking pool of hospital supplemental payments and a health care safety net straining to meet the needs of a growing population.

In the 85th Texas Legislature, THA prioritized maintaining the appropriations for increased Medicaid reimbursement rates for rural hospital outpatient services, trauma-designated hospitals and safety net hospitals. The 84th Texas Legislature, in 2015, appropriated $307 million in state funding for these rate enhancements, and budget writers during that session included the same amount in the base budget for the next biennium. These funds will be matched with federal Medicaid funds, ultimately providing nearly $715 million in all funds for Texas hospitals over the biennium.

Maintaining these rate enhancements took on particular urgency as negotiations were ongoing between the federal government and the Texas Health and Human Services Commission over the future of the Medicaid 1115 Transformation Waiver, and the Medicaid shortfall long has been a concern for the Centers for Medicare & Medicaid Services.

The $307 million in state funding for enhanced Medicaid rates is allocated accordingly:

- Trauma-designated hospitals: $153 million;
- Safety net hospitals: $129 million; and
- Rural hospitals: $25 million.

Late in the budget process, lawmakers changed the definition of “rural” for the purposes of determining which rural hospitals qualify for increased rates. According to the new definition, a rural hospital is:

1) located in a county with 60,000 or fewer residents;
2) a critical access hospital, sole community hospital or rural referral center that is not located in a metropolitan statistical area; or
3) a CAH, SCH or RRC with 100 or fewer beds that is located in a MSA. THA will work closely with impacted hospitals as THHSC implements these provisions.

About two-thirds of the appropriated funds for the increased Medicaid rates come from Account 5111, which is fed by fines and penalties from the Driver Responsibility Program. The other third comes from state general revenue. Despite THA’s significant efforts to replace the DRP with another more politically palatable and sustainable source of revenue, the actions of other interest groups undermined those efforts, with the result being the continuation of the much-maligned DRP and its funding. More information on the DRP is included in the section on uncompensated trauma care funding.
Maintaining Funding for the State’s Trauma Hospitals

With approximately 290 designated trauma hospitals that provide care in potentially life-threatening situations, such as car crashes, mass casualty events or industrial accidents, Texas has one of the strongest and most effective trauma care systems in the nation. Ensuring that the state’s trauma care network can continue to meet the needs of a rapidly growing population requires adequate funding.

Texas trauma facilities currently provide more than $250 million in unreimbursed trauma care, an amount that would be even larger if the state did not provide funding to offset some of these costs. As with the Medicaid rate enhancements, the 85th Texas Legislature maintained the same level of appropriations for uncompensated trauma care costs for 2018-2019 as for the current biennium ($29 million).

Since 2003, revenue for appropriations to offset some uncompensated trauma care costs has come almost exclusively from the Driver Responsibility Program. The DRP, however, is a frequent bipartisan target of repeal efforts. THA’s priority for the 85th Legislature was to preserve Texas trauma hospitals’ funding, whether it comes from the DRP or another source.

This legislative session, at least 14 bills were filed that would have eliminated the DRP or significantly diminished the amount of revenue it raises and therefore the amount available to be appropriated for Texas trauma hospitals. THA was instrumental in forming a coalition of trauma hospitals, county judges, law enforcement, the business community and advocates for criminal justice reform to support House Bill 2068 by Rep. Larry Phillips (R-Sherman) that, as filed, was a win-win for Texans, Texas trauma hospitals, Texas counties and those interested in fair criminal justice. HB 2068 would have eliminated the DRP but preserved Texas trauma hospital funding. It would have immediately freed thousands of Texans from the DRP’s revolving door of fines, surcharges and jail sentences and instead would have imposed an increased state traffic fine on all offenders and strengthened the fines and penalties for DWI offenders and those convicted of driving without auto insurance. It also would have given more discretion to local judges to adjudicate cases and consider individual circumstances when assessing penalties.

Ultimately, however, amendments to the bill in the last days of the session weakened it and split the coalition of supporters, and the bill died. The result is that the DRP continues to serve as the primary source of funding for Texas trauma hospitals.

Continued Funding for Physician, Nurse, Behavioral Health Professional and Allied Health Professional Education and Training

Texas has too few physicians to meet the health care needs of its growing population. Statewide, there is a severe shortage of primary care physicians, as well as specialists in a number of disciplines, including pediatrics and geriatrics. The number of psychiatrists and other behavioral health care professionals is insufficient to serve all Texans living with mental health or substance use issues. More than 80 percent of Texas counties are designated as mental health professional shortage areas; 70 percent of counties have no practicing psychiatrists. The state also has well-documented shortages of nurses and allied health professionals.

Texas hospitals support continued appropriations to address the state’s critical shortage of physicians, nurses and behavioral health care professionals. THA’s priority for the 85th Texas Legislature was to continue support for the Nursing Shortage Reduction Fund and the state’s graduate medical education programs.

In recent years, the state has invested heavily in graduate medical education programs to increase the number of physicians practicing in Texas. Lawmakers in the 85th Texas Legislature maintained this tradition by appropriating $90 million for health-related institutions to continue the same level of state funding for current graduate medical education programs and add funding for new GME programs at The University of Texas Austin and The University of Texas Rio Grande Valley. To address decreased formula rates at all institutions, the state budget includes an additional $35 million in hold harmless funding. To expand GME training opportunities, the state budget provides $97 million in all funds – an increase of $44 million over the prior biennium. These funds may be used for:

- GME planning and partnership grants to hospitals, medical schools and community-based ambulatory patient care centers;
- New or existing GME programs to increase the number of first-year residency positions;
- Unfilled first-year residency positions; and
- Grants to GME programs that received a grant for the New and Expanded GME Program in 2015.
Although not a budget item, Senate Bill 1066, passed by Sen. Schwertner, M.D. (R-Georgetown) with THA support, will require new medical schools to submit a plan to the Texas Higher Education Coordinating Board regarding the addition of first-year residency positions for the GME program to be offered in connection with the new degree program. Submitting this plan will be a prerequisite before THECB can approve any new medical school programs.

Lawmakers were not quite as generous in the state budget with other health care workforce-related funding, however. Slightly less funding is appropriated for the physician loan repayment program that provides loan repayment in exchange for physicians’ agreeing to practice in a health professional shortage area and provide care to Medicaid and CHIP enrollees. The state budget for 2018-19 appropriates $25 million – a decrease of more than $8 million – for the physician education loan repayment program.

The professional nursing shortage reduction program also will receive fewer funds. The state budget includes $20 million – a decrease of nearly $14 million – for the program, which provides funds to Texas nursing schools to increase the number of nursing graduates in the state. The state budget continues to allocate nearly $11 million in tobacco earnings for nursing school innovation grants focused on recruitment and retention of students and faculty.

**Strengthening the State’s Behavioral Health Care System**

Texas historically has ranked at the bottom of states in per capita mental health funding, although the Texas Legislature has invested in behavioral health services in recent sessions, including this one. Still, the state has too few inpatient beds for patients with severe behavioral health needs, and outpatient behavioral health care services are not sufficiently available to keep individuals out of behavioral health crisis or to manage chronic behavioral health needs.

This legislative session, THA’s priorities were:

- Increasing state funding to ensure timely and appropriate access to inpatient, outpatient and community-based services and supports for Texans with a behavioral health diagnosis;
- Growing the substance use workforce by adding licensed chemical dependency counselors to the existing Loan Repayment Program for Mental Health Professionals; and
- Increasing the Texas Department of Insurance’s authority to enforce the federal mental health parity law.

On the recommendations of the Select Committee on Mental Health that met in the interim leading up to the 2017 legislative session, the 85th Texas Legislature delivered potentially its most significant behavioral health investment yet. It appropriated more than $7.5 billion for behavioral health, including $3.6 billion for Medicaid and CHIP behavioral health services. Of the $4 billion appropriated for non-Medicaid behavioral health services, $63 million will be used to address the current and projected waitlists for community mental health services for adults and children, and $366 million will be used for construction and repairs at state hospitals and other inpatient mental health facilities. More information on the behavioral health appropriations in the state budget is available from the State Budget section on page 16.

Legislators also took steps to increase the number of providers available to treat Texans with substance use issues. Licensed chemical dependency counselors will now be eligible for educational loan repayment assistance as other behavioral health professionals currently are through the Loan Repayment Program for Mental Health Professionals. To be eligible for financial assistance, LCDCs must serve indigent and low-income populations.

Finally, the Texas Department of Insurance will have more authority to fully enforce the existing mental health parity law as a result of House Bill 10, passed by Rep. Four Price (R-Amarillo) and Sen. Judith Zaffirini (D-Laredo). HB 10 will allow Texans with depression, for example, to be treated the same, in terms of benefits or provider access, as someone with a physical health condition such as diabetes or a heart condition. The bill also creates an ombudsman position to help consumers and providers navigate the state behavioral health system and requires a study of insurance company’s denial rates for behavioral health care services.
Other Key Issues Impacting Texas Hospitals

In addition to the four priorities discussed in the previous section, THA tracked more than 1,000 bills throughout the 85th Texas Legislature. A discussion of some of the most significant follows. For additional bill information, contact the staff listed at the end of each section.

End-of-Life Care

As a hot-button social issue, end-of-life care has the potential each legislative session to become contentious. This session, bills to revise Texas’ current law on advance directives, do-not-resuscitate orders and other practices around the end of life were kept to a minimum, but the Texas Hospital Association was heavily involved in stopping one bill that would have undermined physician and patient autonomy and significantly improving another.

Rep. Greg Bonnen, M.D. (R-Friendswood) filed a bill that would have undermined the in-hospital do-not-resuscitate order process by essentially mandating a standard of care and restricting the attending physicians’ practice of medicine. Initially, THA sought a compromise on the bill, participating in negotiations with the Texas Medical Association, the Texas Catholic Conference, Texas Alliance for Life, Disability Rights Texas and Texas Right to Life. With input from the Advance Directives Workgroup of member hospitals, THA eventually opposed the bill as it became clear that a compromise was not possible that would protect patients from treatment that could cause greater pain and suffering. The bill ultimately failed in the House because of time constraints as the end of session approached. However, the bill is included on the agenda for the special session. (House Bill 2063)

The probate section of the State Bar of Texas backed a bill by Rep. John Wray (R-Waxahachie), which would have made the medical power of attorney form described in statute prescriptive and diluted instructions related to consent agents. Before the legislative session began, THA communicated hospitals’ concerns with the proposed form changes but could not come to an agreement with the State Bar of Texas. Negotiations between THA and the bill’s author, however, yielded positive changes to the bill so that the medical power of attorney form continues to exist and modified the form’s instructions to clarify that only one agent can provide consent on behalf of another individual at any given time. (HB 995 and Senate Bill 512)

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Freestanding Emergency Centers

Texas has more freestanding emergency centers than any other state – 345. More than 60 percent of these facilities are not owned by or affiliated with a Texas hospital. This increasingly popular source of care was the subject of substantial legislative interest this session, as numerous bills were filed to require additional disclosure to consumers regarding the provider network participation of freestanding emergency centers. THA also established an informal workgroup to review and provide guidance on relevant legislation.

A bill by Rep. Dennis Paul (R-Houston) would have required FECs to post facility fees, physician fees and individual physician network status. A bill by Rep. Jessica Farrar (D-Houston) would have required FECs to post notice, in writing and online, about its network participation status, the locations of nearby urgent care centers and other information. A bill by Sen. Kirk Watson (D-Austin) would have required FECs to
increase the font size of existing notices to one inch and make the content available in Spanish. A bill by Sen. Larry Taylor (R-Friendswood) would have required signage on network status and the amount of facility fees. (House Bill 3099; HB 3122; Senate Bill 1352; SB 2240)

A bill by Rep. Tom Oliverson, M.D. (R-Cypress), as filed, would have required both independent and hospital-affiliated FECs to publicly post the list of health insurance companies with which the FEC does and does not contract. THA testified in committee hearings and communicated the administrative burden such regulations place on hospital-affiliated FECs and successfully negotiated language to require website disclosure of network participation, along with a restatement of an existing law requiring individual confirmation of network status at the time of service. The amended language gives consumers helpful, needed information while minimizing the burden for Texas hospitals. Rep. Oliverson’s bill passed. (HB 3276)

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Health Care Pricing and Disclosure
As in past legislative sessions, price transparency, eliminating balance billing and increasing the amount of billing and charges information provided to patients were priorities for the 85th Legislature.

Under a Texas Hospital Association-supported bill from Sen. Kelly Hancock (R-North Richland Hills) and Rep. John Frullo (R-Lubbock), the state’s existing law governing mediation of disputed health care bills will be expanded to include bills from all facility-based providers, including those practicing in freestanding emergency centers. Currently, disputed claims over $500 from certain facility-based physicians practicing in ambulatory surgical centers, birthing centers or hospitals, and who are not in the patient’s health plan network, are eligible for mediation. Sen. Hancock’s bill will open the mediation process up to claims from any facility-based or emergency care provider. (Senate Bill 507)

A second bill, by Sen. Kelly Hancock (R-North Richland Hills) and Rep. John Smithee (R-Amarillo), would have allowed the attorney general to bring suit under the deceptive trade practices act against hospitals and freestanding emergency centers for “unconscionable” billing for emergency care. The bill defined “unconscionable” as 150 percent of the average hospital billed charge. THA did not formally oppose the bill but raised concerns that it would have created a cause of action based on billed charges. The bill ultimately died in committee. (House Bill 3867) THA opposed a third pricing disclosure bill, by Rep. Dustin Burrows (R-Lubbock). His bill would have required a facility or practitioner to provide pricing information to patients receiving nonemergency medical services. The bill also would have required health benefit plans to provide notice to enrollees relating to cost-sharing payments, provide a binding estimate of payments to be made for any health care service or supply upon the request of an enrollee, and establish and operate a toll-free phone number and publicly accessible website for enrollees to request and obtain the average amount paid under the health benefit plan to a provider for a particular health care service or supply. A health benefit plan would have been required to pay to an enrollee the lesser of 50 percent of the difference between the average amount paid for a health care service or supply and the actual cost minus any applicable deductible, copayment or coinsurance, or $7,500. THA opposed the bill on the grounds that it would be administratively burdensome for hospitals and would duplicate many of the provisions of the existing statute related to pricing disclosure; the bill died in committee. (HB 307)

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Hospital Licensing and Regulation
A bill by Sen. Charles Schwertner, M.D. (R-Georgetown) would have expanded the regulatory and enforcement authority of the Texas Department of State Health Services governing hospital licenses and surveys. The bill would have required a non-accredited hospital to be surveyed at least once every three years and increased the administrative penalty for violations from $1,000 to up to $10,000 for rural hospitals with 75 or fewer beds and up to $25,000 for all other hospitals. A $5 million appropriation was secured to provide initial funding to TDSHS, and the agency would have been authorized to increase hospital licensing fees in order to raise an additional $5 million needed to facilitate hospital operations by a conservator should one be appointed. The legislation passed the Senate but never made it out of the House Calendars Committee. (Senate Bill 267)

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Hospital Operations

This session, numerous bills were proposed that would have changed how hospitals manage and run their facilities and operations. The Texas Hospital Association successfully opposed and improved several of these bills, and the most onerous failed to pass, including subjecting private hospitals to the requirements of the Public Information Act and creating new causes of action for physicians to sue their 501(a) physician groups. However, it is important to note that the special legislative session called by Gov. Greg Abbott (R) to handle the sunsetting of the Texas Medical Board could allow the 501(a) issue to reemerge as it is physician related and could be considered germane to the TMB discussion.

The proposed application of the Public Information Act to private entities became a contentious issue for hospitals during the legislative session. After a 2015 Texas Supreme Court ruling overturned almost 30 years of case law governing when certain private companies that receive public money are required to produce records to the public, Sen. Kirk Watson (D-Austin) and Rep. Giovanni Capriglione (R-Southlake) received strong support from freedom of information groups for their bills that sought to restore the previous attorney general test that was more likely to subject private organizations to the Public Information Act. THA and its member hospitals expressed serious concern that reinstating this test could inappropriately classify private hospitals, their health plans and subcontractors of public hospitals as governmental bodies under the Public Information Act.

THA worked closely with House and Senate workgroups and engaged member hospitals to develop a HIPAA-based exclusion that would apply to both hospitals and health plans. After the bill with the hospital exemption died in the House, Sen. Watson tried to amend a bill by Rep. Eddie Lucio, III (D-Brownsville) with language that did not include the hospital exemption. It also failed. (Senate Bill 408 and House Bill 793; HB 2328)

Companion bills filed by Sen. Bryan Hughes (R-Mineola) and Rep. Morgan Meyer (R-Dallas) sought to increase the oversight of certain nonprofit hospital-owned health care entities, commonly referred to as 501(a) physician groups, by subjecting them to Texas Medical Board penalties and attorney general reporting for interfering with the professional judgment of their employed physicians. The Texas Medical Association supported the legislation and put forth an even stronger version of the bill, creating two new causes of action for physicians against 501(a) physician practices, which would have caused significant conflict between individual physicians and physician leaders in 501(a) physician groups and increased regulation of physician-led practices. THA strongly opposed the TMA version of the bill. While negotiations with TMA were unsuccessful, THA successfully brokered a compromise with Sen. Hughes to revise the legislation according to THA's recommendations and removed the controversial provisions creating new cause of action claims against 501(a) physician practices and mandatory imposition of excessive fines and penalties by the Texas Medical Board. However, some individual hospitals continued to have concerns with the final version of the legislation, which ultimately passed the Senate but died in the House. (SB 833 and HB 752)

THA worked closely with Sen. Eddie Lucio, Jr. (D-Brownsville) to exclude hospitals from his bill that, as filed, would have required state agencies and hospitals to amend application forms for any assistance program, private or public, such as Medicaid, offered to adult women to include a question about veteran status and a notice that other veterans' assistance programs may be available. This bill would have added burdensome regulations for Texas hospitals and could have created HIPAA violations from such disclosures. The bill ultimately passed with the hospital exemption. (SB 1677)

THA collaborated with its Quality and Patient Safety Committee and Hospital Physician Executive group on a bill by Rep. Tom Oliversen, M.D. (R-Cypress), which would have prohibited hospital administrators from consenting to procuring organs from an unidentified “John Doe” patient who died in the hospital. Opposed by organ procurement entities, the bill also would have restricted such entities from petitioning the court to become a decedent’s guardian or otherwise be authorized to make an anatomical gift on the behalf of a decedent. Even though many hospitals currently have policies in place restricting administrators from serving as agents of consent, THA supported the legislation, which died in the House Calendars Committee. (HB 1092 and SB 1074)
Ocular prophylaxis for *opthalmia neonatorum*—topical medication to prevent neonatal eye infection that could result in blindness—was a surprising topic at the Capitol, as several bills were filed to reform the process by which such treatment is administered to newborns. Bills ranged from creating an opt-out process for families to decriminalizing providers' offense for not administering the prophylaxis. THA collaborated with the Texas Medical Association and certified midwives on a bill that **Rep. Stephanie Klick** (R-Fort Worth) passed to clarify that a person present at childbirth is not liable for failing to administer prophylaxis if the infant's parent or guardian objects to treatment and the objection is retained in the child's medical record. THA, in consultation with its Hospital Physician Executive group and Quality and Patient Safety Committee, supported the bill although maintained strong opposition to allowing the prophylaxis treatment to be waived. *(HB 2886 and SB 1081)*

In collaboration with the AARP, THA supported a bill by **Rep. Four Price** (R-Amarillo), which closely aligns with Medicare Conditions of Participation requiring hospitals to provide patients 18 years-old or older the opportunity to designate a caregiver who will be notified when the patient is to be transferred or discharged. The caregiver also may receive a written discharge plan and instruction and training from the hospital to perform after-care tasks. **Gov. Greg Abbott** (R) signed the bill, which takes immediate effect, and makes Texas one of 36 states with similar laws. *(HB 2425 and SB 1417)*

THA worked with member hospitals in **Sen. Borris Miles’** (D-Houston) district on his bill that would have required Comprehensive and Primary (Level I & II) Stroke Facilities to report stroke data to the Texas Department of State Health Services in an effort to analyze data and improve stroke outcomes statewide. Because stroke hospitals already report data to Regional Advisory Councils, THA worked to amend the bill to reduce redundancies for hospitals but also improve statewide stroke outcomes. Ultimately, an agreement could not be reached, and the bill never received a committee hearing. *(SB 1224)*

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**Liability**

The Texas Hospital Association worked with the Texas Alliance for Patient Access, of which THA is a member, on two bills this session related to medical malpractice claims.

One, a bill by **Rep. Gene Wu** (D-Houston), would have tied non-economic damages awarded in a health care liability claim to the consumer price index – and done so retroactively to the law’s enactment in 2003. The bill initially would have raised the cap for non-economic damages from $250,000 to $326,482 each for physicians, the first hospital/health care facility and any additional facilities. THA and TAPA opposed the bill, and it died in committee. *(House Bill 719)*

A second bill, passed by **Rep. John Smithee** (R-Amarillo), amends the original statutory medical authorization form that is required to release protected health information in a health care liability claim so that it complies with current HIPPA requirements. *(HB 2891 and Senate Bill 1872)*

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Local Provider Participation Fees

Local provider participation fee bills passed for all eight of the jurisdictions that filed them. Under these bills, local jurisdictions will have the ability to collect agreed-upon payments from private hospitals to fund enhanced Medicaid rates or provide the intergovernmental transfers the state uses to draw down federal funds under the Medicaid 1115 Transformation Waiver. These jurisdictions will join a number of other counties and cities already using this method of finance.

Last December, The Texas Hospital Association’s board of trustees voted to support continuing local and regional approaches to developing provider fees rather than pursuing a statewide hospital assessment or a single, statewide bill to allow regions or cities to develop local assessments. THA strongly supported the LPPF legislation, including providing templated legislative language that hospitals could use in developing local bills and technical assistance to hospitals interested in filing a local provider fee bill.

The passed bills cover:
- Grayson County (Sherman); (House Bill 2062)
- Angelina County (Lufkin) and Smith County (Tyler); (HB 2995)
- Tom Green County (San Angelo); (HB 3398)
- Williamson County (Georgetown/Round Rock); (HB 3954)
- Dallas County (Dallas); (HB 4300)
- Tarrant County (Arlington/Ft. Worth); (Senate Bill 1462) and
- Amarillo Hospital District (SB 2117).

SB 1462 includes the Tarrant County LPPF also cleans up existing LPPF-related regulations in South Texas.

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Managed Care

The 85th Texas Legislature considered very few bills to regulate managed care plans.

One wide-ranging bill, by Rep. Richard Raymond (D-Laredo), included numerous provisions that would have benefited providers related to audit recoupments, network adequacy reporting, reimbursement rate reductions, prior authorizations, medical necessity, and length of stay requirements. The bill never made it to a full floor vote. However, a rider included

in the final budget bill includes language from Rep. Raymond’s bill that will prohibit managed care service policies from classifying hospital services, including behavioral health services, as either inpatient or outpatient for the purposes of reimbursement based solely on length of stay. (House Bill 3892)

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Medicaid Policy

The Texas Hospital Association tracked two bills this session that dealt with Medicaid eligibility and covered benefits for new mothers.

A bill by Rep. Phillip Cortez (D-San Antonio) would have extended the period under which a child’s Medicaid eligibility can be reviewed from six to 12 months after initial eligibility was established. The legislation would have aligned state law with the federal Affordable Care Act, which established a 12-month certification period for children enrolled in Medicaid. The bill never left the House Human Services Committee. (House Bill 1408 and Senate Bill 53)

THA supported a bill passed by Rep. Sarah Davis (R-West University Place) that requires the Texas Health and Human Services Commission to cover maternal depression screening for the mothers of enrollees in Medicaid and CHIP, up to the enrollee’s first birthday. Rules and an updated application form will be developed based on clinical and empirical evidence, along with information provided by relevant physician and behavioral health organizations. (HB 2466 and SB 1257)

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Medicaid Reform
Unlike past sessions where Medicaid was a particularly contentious topic, in large part because of radically different opinions about whether to expand coverage, legislators were largely quiet during the 85th Legislature on the Medicaid program.

However, two bills were filed that, had they passed, would have dramatically changed the state’s Medicaid 1115 Transformation Waiver and current Medicaid operations. Both bills failed to make it to the House floor.

The first bill, by Rep. Dennis Bonnen (R-Galveston), would have required the Texas Health and Human Services Commission to amend the Medicaid 1115 Transformation Waiver to reverse many of the eligibility changes required by the Affordable Care Act, such as discontinuing the use of the modified adjusted gross income eligibility methodology and prohibiting use of asset tests. The bill also would have converted Medicaid from an open-ended entitlement to a block grant. (House Bill 3634)

The second bill, by Rep. Garnet Coleman (D-Houston), would have required any continuation of the Medicaid 1115 Transformation Waiver to allocate funding to hospitals and other safety net providers to ensure financial viability; provide incentives for local and regional health care systems and recipients; provide a continuum of health care services; allow for variation in service delivery models; and use any additional federal matching funds to provide local and regional health care services to the uninsured. (HB 4212)

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Nurse Licensure and Practice
Following the successful passage of legislation last session to review workplace violence against nurses, the Texas Hospital Association worked closely with Rep. Donna Howard (D-Austin) and the Texas Nurses Association to pass her bill that establishes a Workplace Violence Grant Program within the Texas Center for Nursing Workforce Studies at the Texas Department of State Health Services to fund innovative approaches to reducing workplace violence against nurses. The bill requires TCNWS to publish an annual report on the grants awarded. (House Bill 280)

Two bills to expand the scope of practice for advanced practice registered nurses failed under pressure from the physician community. THA worked closely with TNA on one of the bills by Rep. Garnet Coleman (D-Houston), which would have allowed physicians to delegate to APRNs the prescribing of Schedule II controlled substances in a hospital and given patients the ability to fill the prescription in any pharmacy. THA, on the recommendation of its Council on Policy Development, chose not to take a position on a second APRN bill, by Rep. Stephanie Klick (R-Fort Worth), which would have allowed APRNs to practice as independent licensed practitioners, as TMA strongly opposed it. (HB 1846 and Senate Bill 433; HB 1415 and SB 271)

To extend nursing peer review protections to more nurses, TNA-backed legislation by Rep. Stephanie Klick (R-Fort Worth) passed that will lower the threshold for the required establishment of nursing peer review entities with nurses from 10 to eight. (HB 3296)

Many THA-member hospitals engaged with their local community colleges to support legislation passed by Sen. Kel Seliger (R-Amarillo) that will address the ongoing nursing shortage by allowing the Texas Higher Education Coordinating Board to authorize baccalaureate degree programs in specified fields, including applied nursing, at public junior colleges that previously participated in a pilot project. (SB 2118 and HB 4092)

Unlike the Texas Medical Board bill discussed below, the Texas Board of Nursing sunset legislation did not get tangled up in politicking to force a special session, and it passed with little fanfare. THA supported Rep. Cindy Burkett’s (R-Sunnyvale) bill that continues the TBN until September 2029. In order to increase mobility and safety among the national nursing workforce, the bill also enacts the Nurse Licensure Compact that allows nurses to have one multistate license with the ability to practice in their home state and other compact states. (HB 2950).

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Physician Licensure and Practice

**MAINTENANCE OF SPECIALTY BOARD CERTIFICATION**

One of the most challenging issues of the legislative session was whether hospitals’ medical staffs would be able to continue requiring their physician workforce to maintain specialty board certification. Early in the session, Sen. Dawn Buckingham, M.D. (R-Lakeway) filed a bill that would prevent hospitals and health plans from using maintenance of board certification as a condition of credentialing, employment or payment. The Texas Hospital Association sought to forge a compromise with the senator to exempt hospitals from the bill, but with the full support of the Texas Medical Association, Sen. Buckingham was unwavering and rejected the hospital exemption.

Buckingham’s bill passed the Senate, but THA worked with lawmakers on both sides of the aisle in the House and successfully amended the legislation to exempt all Texas hospitals. As the House- and Senate-passed versions of the bill differed, a conference committee was named in the waning days of the session. THA worked with House conferees to include language that allows medical staffs of hospitals and 501(a) physician groups to differentiate among physicians based on upkeep of their specialty certification:

- if the entity’s designation or certification is contingent upon a specialty physician’s certification; or
- if the entity’s medical staff’s physician members vote to authorize its use, which may include allowance of grandfathering provisions and variance of requirements by medical specialties.

Because hospitals already engage their medical staffs in making these determinations, the final language of the bill will allow hospitals’ current practices to continue. (Senate Bill 1148 and House Bill 3216)

**DIRECT EMPLOYMENT OF PSYCHIATRISTS**

To address the severe shortage of psychiatrists in both rural and urban regions of the state, Rep. Garnet Coleman (D-Houston) filed a bill that would allow private psychiatric, specialty and general acute care hospitals in health professional shortage areas or underserved areas to directly employ up to five psychiatrists for no more than 10 years if the hospitals have tried but were unsuccessful to recruit psychiatrists. While THA supported the bill and testified in favor, it ultimately died as a result of the House hearing deadline. (HB 3885)

**TEXAS MEDICAL BOARD SUNSET**

One of the more strangely political bills this session dealt with the sunsetting of the Texas Medical Board. Texas law requires state agencies to undergo a sunset review process that evaluates whether an agency should be continued in existence. The Sunset Commission recently performed an extensive review of the TMB and made recommendations to maximize efficiency and government spending. Some of those recommendations, including one to continue the agency functions with modifications until 2029, were proposed to the Legislature in the form of a bill by Sen. Juan “Chuy” Hinojosa (D-McAllen). Because of the addition of several broad amendments, the bill ultimately was whittled down significantly to only include language to strengthen TMB’s oversight of opioids and passed without a date continuing the agency. Without this date, the TMB could cease to exist at the end of the fiscal year in August. Several legislators attempted to add language extending the agency’s life to other bills. Aware of the importance of this language, Lt. Gov. Dan Patrick (R) killed the bills to which the extension date language was attached in order to compel Gov. Greg Abbott (R) to call a special session. The TMB sunset bill is priority number one on the list of items to be discussed during the special session. (SB 315 and HB 3040)

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Public Health

VACCINATIONS
Vaccines for school-age children was a contentious issue this session, with anti-vaccination groups having a larger, more organized presence than in years past.

A bill by Rep. Matt Krause (R-Fort Worth) would have simplified the process for families to obtain exemptions from vaccinations required for school attendance. Instead of the current affidavit process, parents would be able to download an exemption form from the Texas Department of State Health Services or from public school websites. The legislation failed to make it out of the House Public Health Committee. (House Bill 1124 and Senate Bill 2008)

A bill by Rep. J.D. Sheffield, D.O. (R-Gatesville) would have allowed parents interested in the vaccine status of children at their child’s school to access de-identified campus-specific vaccine exemption information from the TDSHS website. The bill, supported by the Texas Public Health Coalition, of which THA is a member, also would have required TDSHS to submit biennial reports on vaccine-preventable disease outbreaks and de-identified vaccine exemption data for the state. Time ran out before the bill’s scheduled floor debate could occur in the House. (HB 2249 and SB 1010)

REAR-FACING CAR SEATS
Supported by THA, a bill by Sen. Judith Zaffirini (D-Laredo), would have required children under the age of two to travel in a rear-facing car seat to reduce the likelihood of injury in a motor vehicle crash. The bill would have aligned Texas with national recommendations from the American Academy of Pediatrics but it was never brought to the Senate floor for debate. (SB 278 and HB 519)

INFECTIOUS DISEASE
With the burgeoning Zika virus threat, Rep. Bobby Guerra (D-Mission) passed a bill to allow broader medical and epidemiological information to be shared with federal partners such as the Centers for Disease Control and Prevention. Shared information will include information linking a person suspected of having been exposed to a high consequence communicable disease. (HB 3576)

TEXTING WHILE DRIVING
Ordinances prohibiting texting while driving currently are in place in numerous Texas cities, but until this session, a statewide ban has been elusive. During the 85th legislative session, Rep. Tom Craddick (R-Midland) and Sen. Judith Zaffirini (D-Laredo) successfully passed a bill to ban texting while driving anywhere in Texas. THA supported the bill that makes texting while driving a misdemeanor, punishable with a fine of up to $99 on the first offense and $200 for additional infractions. (HB 62 and SB 31)

REGULATION OF HANDGUNS
This session, gun-related legislation was nowhere near as high-profile as in the past. However, several bills were filed to clarify policies governing the carrying of weapons in health-related settings. Because state-owned hospitals were not exempted from the open carry law passed last session, Rep. Andy Murr (R-Junction) filed a bill that would authorize state hospitals to prohibit handgun license holders from carrying on state hospital property upon the public posting of written notification of the prohibitions. While that bill died in the Senate, Rep. Ken King (R-Canadian) and Sen. Charles Perry (R-Lubbock) passed a bill that as amended prohibits license holders from carrying on state hospital property. The bill also allows volunteer EMS personnel to carry a handgun during the course of doing business assuming doing so is allowed by their local department chiefs. The bill also specifies that a governmental unit is not liable if a volunteer emergency services employee who is licensed to carry a concealed handgun discharges his or her weapon during volunteer duty. (HB 14 and SB 1146; HB 435)

A bill by Sen. Don Huffines (R-Dallas) would have allowed first responders with a concealed handgun license to carry while exercising their duties. The bill would have prohibited a governmental entity, including a public hospital that employs or otherwise supervises first responders, from adopting a rule or regulation to prohibit a first responder from carrying a concealed handgun. The bill died in the House Calendars Committee. (SB 1408)

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State Agency Operations

A bill by Rep. Greg Bonnen, M.D., (R-Friendswood) and Rep. Tom Oliverson, M.D., (R-Cypress) would have required the Texas Department of Insurance to examine an insurer’s network used by a preferred and exclusive provider benefit plan for quality and adequacy at least once every two years. Insurers would have been required to provide TDI with all complaints received regarding inaccurate network directories and listings at least once annually. If within a 30-day period, an issuer receives three or more reports of directory inaccuracy, TDI would have been required to investigate the insurer’s compliance with the provisions of the bill. The bill died in the House Calendars Committee. (House Bill 2760)

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State Budget for 2018-19

With a substantial decrease in available state revenue because of a drop in oil and gas prices, the 85th Legislature faced tough budget choices this session. Containing health care costs was a frequent topic of debate, and the resulting state budget for 2018-19 includes multiple cost containment provisions across health care programs.

As discussed earlier in the section on legislative priorities, it is particularly noteworthy in this tight budget environment that hospitals maintained funding for Medicaid rate enhancements and avoided more direct cost containment efforts. In addition, the state budget prioritizes behavioral services and maintains – and in some cases increases – funding for graduate medical education.

MEDICAID FUNDING AND COST CONTAINMENT

The state budget appropriates $62.4 billion in all funds for the Medicaid program for 2018-19 – a decrease of $1.9 billion compared to 2016-17. It is anticipated that a supplemental appropriation will be needed during the next legislative session in 2019 to provide additional retroactive funding for Medicaid.

The Medicaid budget includes a reduction of $1 billion in all funds for anticipated savings from containing program costs. The Texas Health and Human Services Commission must develop a plan to achieve $830 million in total Medicaid savings, which may include implementing options identified in the budget or by the agency. In addition, the state budget reduces Medicaid funding by nearly $194 million in all funds by decreasing the risk margins for Medicaid and CHIP premiums.

<table>
<thead>
<tr>
<th>2018-19 Funding</th>
<th>Purpose</th>
</tr>
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<tbody>
<tr>
<td>$876 million (AF)</td>
<td>State-operated mental health hospitals</td>
</tr>
<tr>
<td>$25 million (AF)</td>
<td>Maintain 2017 service levels</td>
</tr>
<tr>
<td>$10 million (AF)</td>
<td>Increase maximum security forensic bed capacity</td>
</tr>
<tr>
<td>$244 million (AF)</td>
<td>Community-based mental health hospital beds</td>
</tr>
<tr>
<td>$10 million (AF)</td>
<td>Maintain 2017 funding levels for purchased psychiatric hospital beds</td>
</tr>
<tr>
<td>$21 million (AF)</td>
<td>Purchase additional community psychiatric hospital beds</td>
</tr>
<tr>
<td>$3 million (AF)</td>
<td>Increase contracted rates</td>
</tr>
<tr>
<td>$869 million (AF)</td>
<td>Community mental health services for adults and children</td>
</tr>
<tr>
<td>$63 million (AF)</td>
<td>Reduce current and projected waitlists</td>
</tr>
<tr>
<td>$300 million (ESF)</td>
<td>New construction and repairs at state hospitals and other inpatient facilities</td>
</tr>
<tr>
<td>$160 million (ESF)</td>
<td>Support critical health and safety at state hospitals and state-supported living centers</td>
</tr>
</tbody>
</table>

AF=All Funds
ESF=Economic Stabilization Funds

The state budget also decreases funding for the Employees Retirement System by:

1) reducing use of out-of-network independent freestanding emergency centers ($42 million saved); and
2) reducing rates and implementing value-based plan design models with participating health-related institutions ($35 million saved).

BEHAVIORAL HEALTH

Funding for behavioral health services continued to be a priority for both the House and Senate this legislative session. As well as providing funding to implement specific behavioral health-related
legislation, the state budget includes funding to enhance the capacity of state mental health hospitals, community mental health hospitals and community mental health services.

In addition, the state budget uses Economic Stabilization Funds – also known as Rainy Day Funds – for construction and repair of the state hospitals. Throughout the session, the House and Senate took different positions on the use of Rainy Day Funds to fill budget gaps. In the final outcome, budget conferees compromised to appropriate nearly $989 million for one-time costs, including $300 million for new construction and repairs at state hospitals and other inpatient facilities and $160 million for critical health and safety needs at state hospitals and state supported living centers.

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Taxes
Even before the legislative session began, Lt. Gov. Dan Patrick (R) stated that property tax reform was among his top priorities. Fiscal hawks in the Senate quickly introduced legislation to require cities and counties to get voter approval for their property tax rates if revenues exceed 5 percent compared to what the entities collected the year before. The bill also would have required local governments to announce a “no-new-revenue” tax rate each year and compare it to the rate they are actually proposing. Taxpayers would get a copy of the proposed rate and could intervene before the rates are finally set. The Senate passed the bill, but the House amended it to leave intact the current “rollback” threshold of 8 percent and trigger a special election only if constituents successfully petition for a vote. The Texas Hospital Association supported cities and counties in opposing the revenue caps because hospital districts’ tax revenue support all Texas hospitals, including critical services such as trauma care and graduate medical education, and also offset general revenue costs within the Medicaid program. The House did not appoint conferees to resolve the differences between the two chambers’ versions of the bill, and the regular session ended without either bill’s passage. However, the Senate’s property tax bill, with its lower rollback provision, is on the agenda for the special session called by Gov. Abbott for July 18. (Senate Bill 2)

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Telemedicine and Telehealth
The governor already has signed into law two bills passed by the legislature to expand the use of telehealth in Texas.

One bill, by Rep. Four Price (R-Amarillo), will provide grants to rural hospitals meeting certain criteria to establish pediatric telemedicine services and to connect with pediatric specialists and subspecialists for needed services. Grants may be awarded for: purchasing telemedicine equipment, updating IT infrastructure or paying for pediatric telemedicine services and fees necessary for the provision of care. (House Bill 1697)

The second bill, by Sen. Charles Schwertner, M.D. (R-Georgetown) and Rep. Four Price (R-Amarillo), issues guidelines for the use of telemedicine, telehealth and “store and forward technology.” Amid an ongoing lawsuit between Teledoc and the Texas Medical Association over whether a face-to-face interaction with a health care provider is necessary, this bill deletes the existing face-to-face requirements which will increase the availability of telehealth services. It also allows for the tele-provider to require a new patient to receive follow-up care within 72 hours if a preexisting relationship was not present at the time of initial tele-services. It makes no changes to current law governing tele-mental health services, which are permitted even in the absence of a face-to-face interaction. As the bill made its way through the legislative process, the Texas Hospital Association successfully included language that prohibits payment discrimination because a service is not delivered face-to-face and directs the medical, nursing, physician assistant and pharmacy boards to develop rules for valid prescriptions related to telemedicine. Under this bill, covered services must be reimbursed, regardless of whether the service is provided face to face or though telemedicine. (Senate Bill 1107)

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Women’s Health

Amid widespread news reports that Texas has one of the highest maternal mortality rates in the nation, an ongoing lawsuit to block implementation of state regulations to require fetal remains from abortions and miscarriages occurring in health care facilities to be buried or cremated separately from medical waste, and a high-profile U.S. Supreme Court ruling overturning the state’s restrictions on abortions, the 85th Legislature considered and passed a number of bills relating to women’s health care.

MATERNAL MORTALITY

A THA-supported bill by Sen. Lois Kolkhorst (R-Brenham) would have continued the state’s Maternal Mortality Task Force through September 2023. 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. Without extension, it expires Sept. 1, 2019. Sen. Kolkhorst’s bill failed to pass because the sunset date amendment for the Texas Medical Board was added to it. Gov. Abbott added it to the agenda for the special session. (Senate Bill 1929)

Another bill, passed by Sen. Borris Miles (D-Houston), will require TDSHS to post on its website information about pregnancy-related death protocol and best practices for reporting pregnancy-related deaths to the medical examiner or justice of the peace. (SB 1599)

ABORTION AND FETAL TISSUE LEGISLATION

As anticipated, omnibus abortion and fetal tissue legislation was a priority item for the legislature. A bill passed by Sen. Charles Schwertner, M.D. (R-Georgetown) will put into statute the currently contested regulations governing disposal of fetal remains. The bill will require a health care facility, including a hospital, to dispose of all fetal tissue, at any gestational age, by interment, cremation or incineration followed by interment. Remains may not be placed in a landfill. The bill requires TDSHS to establish a registry of funeral homes and cemeteries willing to provide free common burial or low-cost private burial and make it available to the hospital.

Sen. Schwertner’s bill also restricts abortion procedures. It explicitly prohibits partial birth abortions, duplicating federal law, as well as “dilation and evacuation” abortions unless needed in a medical emergency, and creates a state jail felony for physicians performing this type of procedure.

The bill also clarifies and aligns the definition of abortion through the state’s health and safety code and clarifies that treatment of an ectopic pregnancy is not considered an abortion.

Finally, the bill prohibits medical research on fetal tissue resulting from abortions and makes it a state crime to sell or purchase fetal tissue, although such practice already is a federal crime. Also prohibited is the donation of fetal tissue resulting from an elective abortion. Donation of fetal tissue is allowed only from a hospital, birthing center or an ambulatory surgical center and only to an accredited institution of higher education for use in IRB-approved research. Consent of the mother must be obtained prior to donation of tissue. Facilities that donate tissue must submit an annual report to TDSHS. (SB 8)

A second bill, by Rep. Giovanni Capriglione (R-Southlake), would have strengthened the requirements for health care providers, including hospitals, to report complications stemming from abortions. The bill was filed in response to the U.S. Supreme Court’s overruling of Texas’ abortion restrictions passed in 2013. It would have required every health care facility, including hospitals, to file a quarterly report outlining any complications treated or diagnosed at the facility – meaning every hospital would have to file a report whether they treated a complication or not. THA worked to amend the bill so that a report would only be required within 30 days for complications treated and diagnosed – mirroring the requirement currently in place at TDSHS for abortion reporting. The bill ultimately failed in the last days of the session as it was amended with other abortion restrictions. (House Bill 2962)

FORENSIC MEDICAL EXAMS IN HOSPITALS

A bill, passed by Rep. Senfronia Thompson (D-Houston), will standardize information presented to victims of sexual assault who present to an emergency department, including a TDSHS-prepared informational handout and communication between a facility that transfers a victim and the receiving facility. Since 2013, all hospital emergency rooms have been required to be staffed and trained to perform forensic medical exams on a sexual assault victim. There are ongoing reports of confusion by victims who present to a hospital and are referred to a second facility for the exam. THA worked closely with victims’ rights groups to develop the bill and improve current practice. (HB 3152)

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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.

For more information, call 512/465-1000 or visit www.tha.org.