

The Legislative and Regulatory Process

2022

Steve Wohleb, General Counsel &

Heather De La Garza, Assistant General Counsel

Texas Hospital Association

Topics

1. The Texas Legislature
2. State Rulemaking
3. Brief Overview of Federal Process



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The Texas Legislature

- 140-Day Legislative Sessions (Odd-Numbered Years)
 - Regular Sessions begin at noon on the second Tuesday in January of odd numbered years and can last no more than 140 days, ending during the last week of May or the first week of June.
- The House
 - 150 members represent the 254 counties in Texas.
 - One of these members is elected by the House members as Speaker of the House.
- The Senate
 - 31 members.
 - The Lieutenant Governor is elected through a statewide election and is the President of the Senate.



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The Players

Senate
Chamber

House
Chamber



Lt. Gov. Dan Patrick



Gov. Greg Abbott



Speaker Dade Phelan

The Process – Starting with the House

Bill drafted.

- Only a legislator may introduce a bill; although the idea for a bill may originate from a source other than the legislator, such as an advocacy group.

Bill introduced.

- The bill is numbered, read for the first time, and referred to a committee by the Speaker of the House

Committee studies bill.

- A committee holds formal public hearings or a formal meeting. Interested parties testify on for or against the bill.

The bill is reported favorably or unfavorably out of committee.

- The bill may be substituted or amended at this stage or pass out of committee as is. The bill may also be left pending after a hearing, which can effectively kill the bill.

If voted unfavorably, a bill can be revived based on the minority report upon a motion and vote by a majority of House members.

First Printing.

- Bill is printed on committee report and distributed.

Bill sent to Committee on Calendars .

- The Committee on Calendars sets a bill for a vote in front of the entire House on a certain day.

Second Reading.

- The author of the bill lays out the bill, there is debate, often amendments (2/3 vote required) & passage to third reading.

Third Reading.

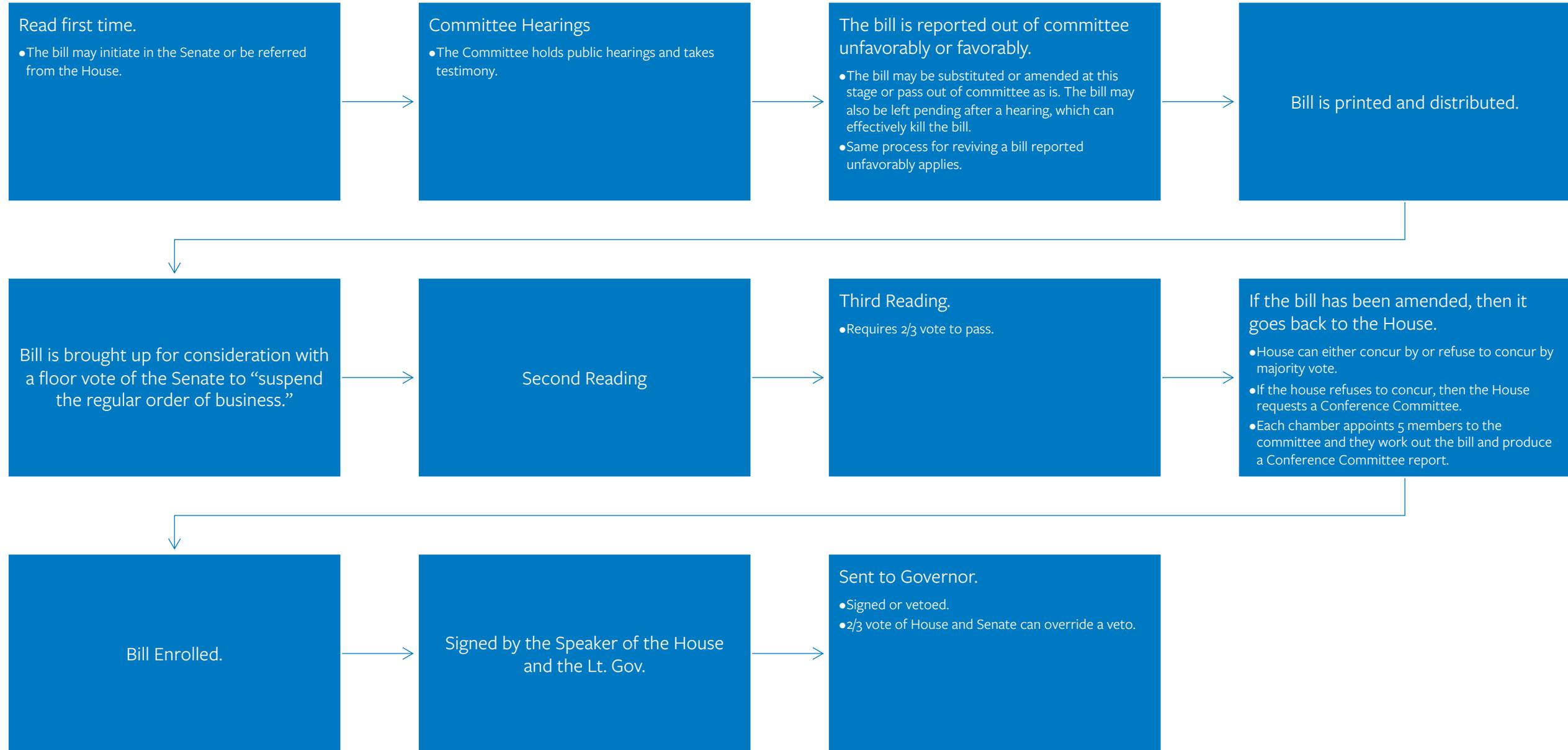
- Additional debate and opportunity for amendment. Ultimately, final passage of the bill (hopefully).

Engrossment

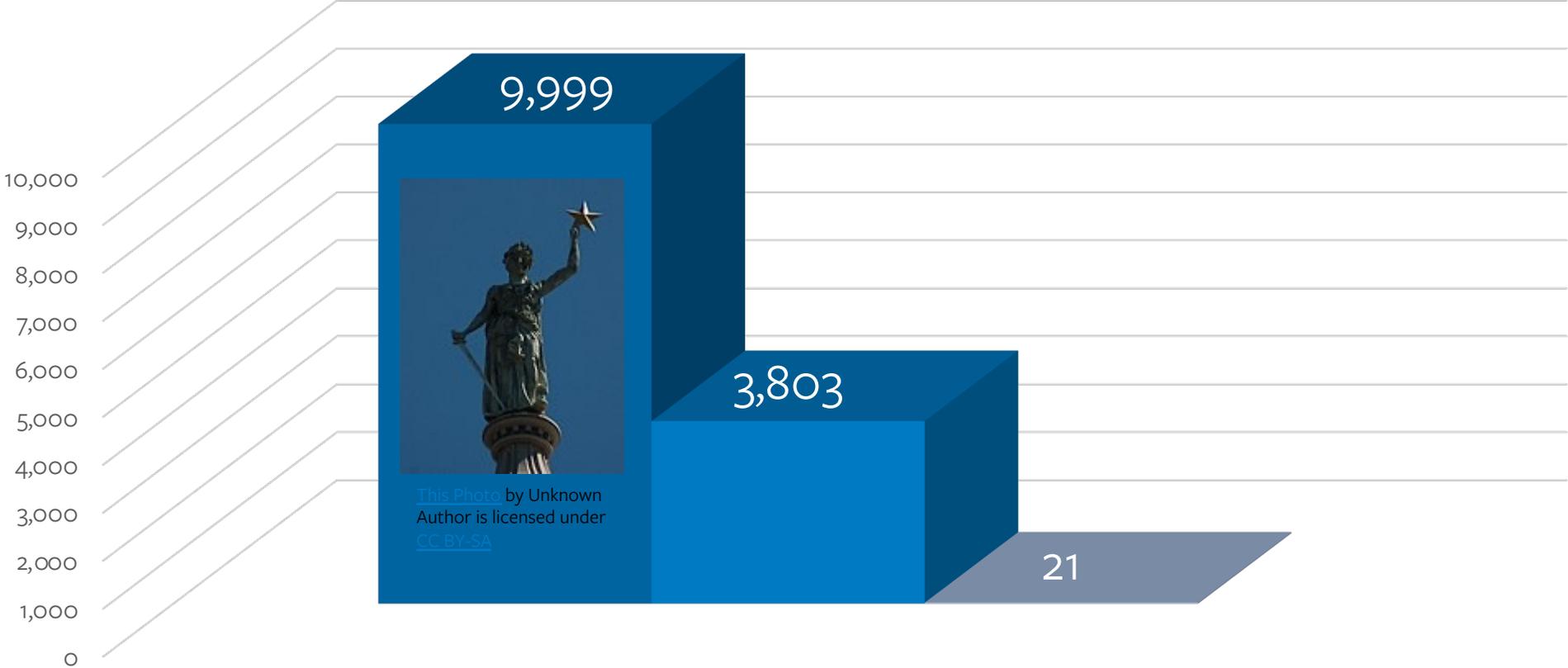
- The amendments are incorporated into the text of the bill.

On to the Senate!

The Senate



Statistics from the 87th Regular Session



Bills

■ Filed ■ Passed ■ Vetoed

Let's Look at a Real-World Example

- [Senate Bill 1264, 87th R.S. Text](#)
- [Senate Bill 1264, 87th R.S. Actions](#)
- [Senate Introduction of SB 1264 at 3:03:15](#)



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Rulemaking

- A bill passed, but it includes the phrase:
 - “A regulatory agency described by Subsection(a) or the commissioner may adopt rules as necessary to implement this section.”
- Now we enter the wonderful world of rulemaking.
- Notices are published in the [Texas Register](#) by a state agency.
- Stakeholders are given 30 days to comment.
- The agency responds.
- The rule becomes final and published in the Texas Administrative Code.



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Key State Agencies

- Texas Health and Human Service Commission
 - Texas Department of State Health Services
- Texas Medical Board
- Texas Board of Nursing
- Texas State Board of Pharmacy
- Texas Department of Insurance
- Texas Comptroller of Public Accounts
- Texas Attorney General
- Texas Commission on Environmental Quality
- Texas Department of Public Safety
- Texas Higher Education Coordinating Board
- Texas Secretary of State

Texas Health & Human Services Commission

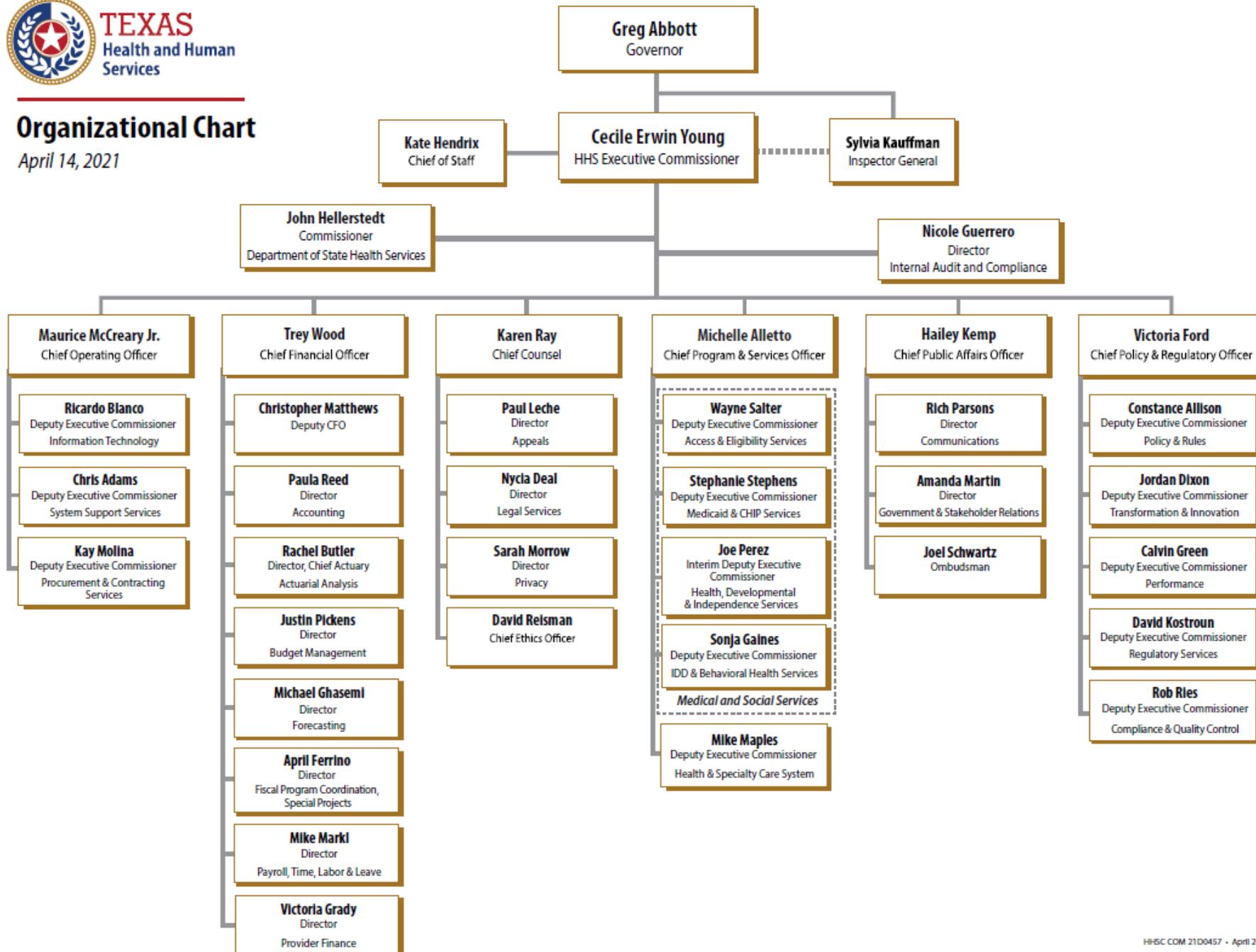
More than 36 thousand employees in Texas

Programs Administered by HHSC:

- Medicaid for families and children
- Facility licensing and enforcement
- Long-term care for people who are older or who have disabilities
- SNAP food benefits and TANF cash assistance for families
- Behavioral health services
- Services to help keep people who are older or who have disabilities in their homes and communities
- Services for women and other people with special health needs
- Licensing childcare providers
- Managing the day-to-day operations of state supported living centers and state hospitals

Organizational Chart

April 14, 2021



Texas Department of State Health Services

Texas Department of State Health Services

Functions are Regulatory and Public Health

Today, >3,000 employees

- Responsible for administration of broad range of health care regulatory functions, including:
 - Infectious Disease Control
 - Division of Local and Regional Health Care Services
 - Emergency Preparedness and Response
 - Health and Wellness
 - Consumer Protection
 - Birth, Death, Marriage, and Divorce Records

Rulemaking

- Regulatory agencies are responsible for implementation and enforcement of laws (generally after a legislative session).
- No authority to develop or enforce laws without legislative action/approval.
 - If rulemaking goes to far, stakeholders can sue the agency for acting *ultra vires*.
- Legislation can grant general or more specific authority to regulatory agencies; legislative history can influence content of agency rules.
- Legislation may require regulatory agency to seek input on rules from an advisory committee.



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Example of a Comment Letter

PUBLIC COMMENT LETTER

Re: Texas Department of Insurance Rules Implementing Senate Bill 1264

Dear Commissioner Sullivan:

On behalf of our more than 470 member hospitals and health systems, including rural, urban, children's, teaching and specialty hospitals, the Texas Hospital Association appreciates the opportunity to provide comments on the Texas Department of Insurance's proposed rules implementing Senate Bill 1264, 86th Legislature. Texas hospitals remain committed to carrying out SB 1264's intent, which—for facilities—is to prohibit surprise balance billing of patients for out-of-network emergency care. The vast majority of Texas hospitals are "in-network" with all major payors at any given time. Hospitals find themselves out-of-network for usually brief periods of time due to an inability to contract with a payor on terms that both sides determine to be fair. Health plan enrollees should not have to absorb the cost of these disputes. In addition to the comments below, THA would like to point TDI to THA's comments provided to TDI on July 15, which are largely not addressed by the proposed rules.

Rulemaking Process – Keeping Track



Health Care **Advocate**
A weekly update on state and federal legislative/regulatory issues.

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[Click here](#) to read this email in a browser.

Rulemaking Process – Keeping Track

Texas Register Highlights

The **Texas Health and Human Services Commission** proposes rules concerning nursing facility administrators. The rules address:

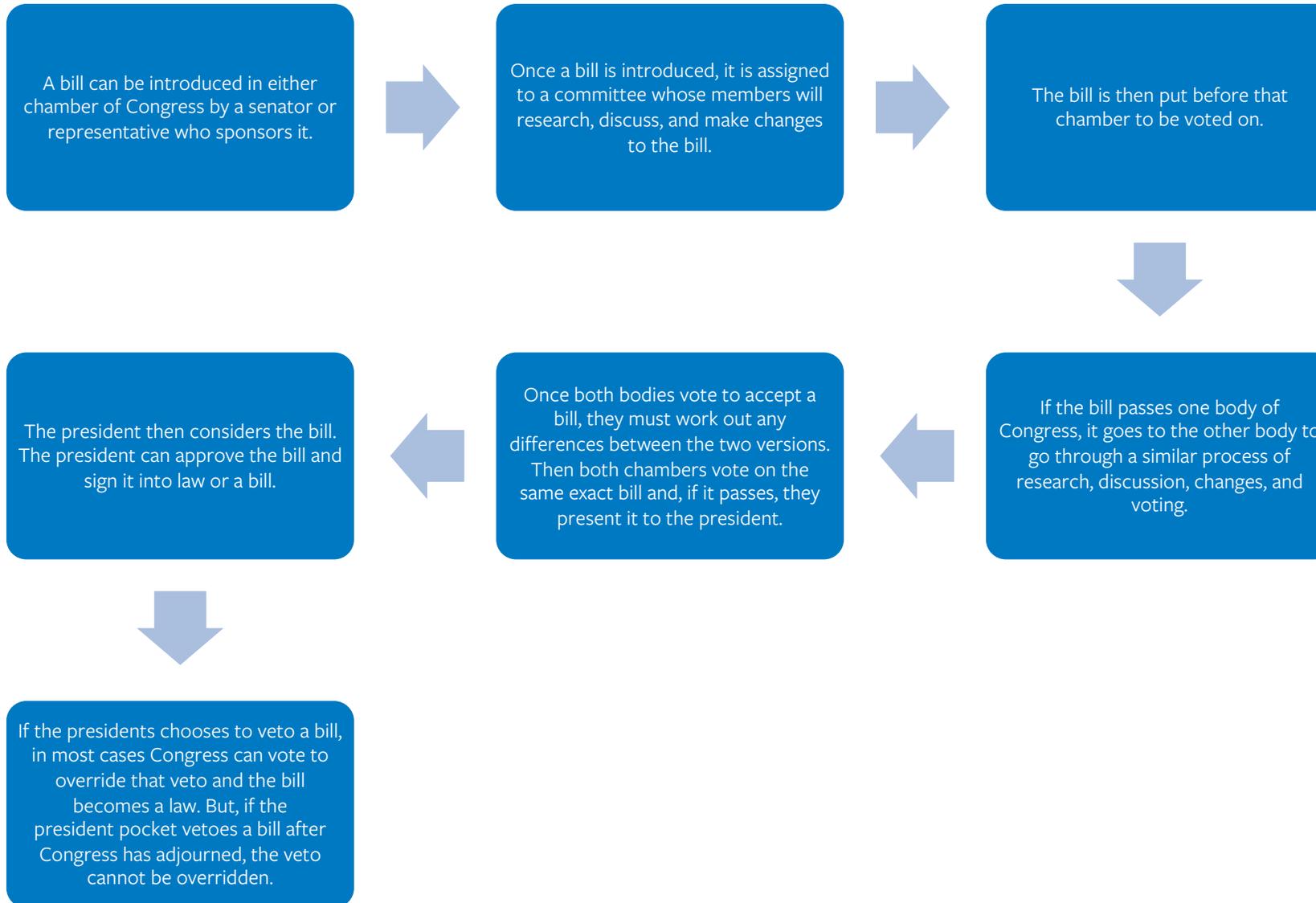
- Purpose.
- Definitions.
- Schedule of fees.
- Application requirements.

Federal Register Highlights

The **Centers for Medicare & Medicaid Services** issues a proposed rule to:

- Revise the Medicare hospital inpatient prospective payment systems for operating and capital-related costs of acute care hospitals for fiscal year 2022.
- Rebase and revise the hospital market baskets for acute care hospitals, update the labor-related share, and provide the market basket update that would apply to the rate-of-increase limits for certain hospitals excluded from the IPPS that are paid on a reasonable cost basis, subject to these limits for FY 2022.
- Issue policies relating to Medicare graduate medical education for teaching hospitals to

Federal Legislative Process



Federal Rulemaking Parameters

- Regulatory agencies must comply with certain administrative procedures when developing rules
- Public notice of proposed rule
- Opportunity to provide comment (usually 60 days)
- Fiscal impact of rule
- Response to comments
- Rationale or justification for adopted rules

Federal Agency Rulemaking Process

- Proposed rules published in the [*Federal Register*](#)



25070

Federal Register / Vol. 86, No. 88 / Monday, May 10, 2021 / Proposed Rules

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 412, 413, 425, 455, and 495

[CMS-1752-P]

RIN 0938-AU44

Medicare Program; Hospital Inpatient Prospective Payment Systems for Acute Care Hospitals and the Long-Term Care Hospital Prospective Payment System and Proposed Policy Changes and Fiscal Year 2022 Rates; Quality Programs and Medicare Promoting Interoperability Program Requirements for Eligible Hospitals and Critical Access Hospitals; Proposed Changes to Medicaid Provider Enrollment; and Proposed Changes to the Medicare Shared Savings Program

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

repeal the collection of market-based rate information on the Medicare cost report and the market-based MS-DRG relative weight methodology, as finalized in the FY 2021 IPPS/LTCH PPS final rule.

We are proposing to establish new requirements and revise existing requirements for eligible hospitals and critical access hospitals (CAHs) participating in the Medicare Promoting Interoperability Program. We are also providing estimated and newly established performance standards for the Hospital Value-Based Purchasing (VBP) Program, and proposing updated policies for the Hospital Readmissions Reduction Program, Hospital Inpatient Quality Reporting (IQR) Program, Hospital VBP Program, Hospital-Acquired Condition (HAC) Reduction Program, and the PPS-Exempt Cancer Hospital Reporting (PCHQR) Program, and the Long-Term Care Hospital Quality Reporting Program (LTCH QRP). Additionally, due to the impact of the COVID-19 PHE on measure data used in our value-based purchasing programs, we are proposing to suppress several measures in the Hospital VBP, HAC Reduction, and Hospital Readmissions

suppliers for purposes of processing claims for Medicare cost-sharing liability for services furnished to Medicare-Medicaid dually eligible individuals in order to alleviate a long-standing problem related to claiming Medicare bad debt.

Additionally, we are proposing to amend the Medicare Shared Savings Program regulations to allow eligible accountable care organizations (ACOs) participating in the BASIC track's glide path the opportunity to maintain their current level of participation for performance year (PY) 2022.

DATES: To be assured consideration, comments must be received at one of the addresses provided in the **ADDRESSES** section, no later than 5 p.m. EDT on June 28, 2021.

ADDRESSES: In commenting, please refer to file code CMS-1752-P. Because of staff and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

Comments, including mass comment submissions, must be submitted in one of the following three ways (please choose only one of the ways listed):

1. *Electronically.* You may (and we

Thank You