



Texas Hospital Association

HEALTH CARE AND THE 88TH TEXAS LEGISLATURE:
OUTCOMES FOR TEXAS HOSPITALS



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A Message From THA President/CEO John Hawkins

You can be as ready as ever – and still be surprised. That was the Texas hospital industry during the 2023 regular session of the Texas Legislature.

Going into January's kickoff of this session, we knew that THA – along with its member hospitals – faced a tough 140 days ahead. Anti-hospital sentiment seemed to be at a high, driven in part by wildly off-the-mark mistruths about COVID-19's impact on hospitals and the anti-science movement that picked up steam during the pandemic. That's why THA prepared to stand up for hospitals, working with lawmakers throughout the 2022 interim, collecting and distributing data in two groundbreaking pre-session reports that helped illuminate the truth, and spreading that message far and wide. THA also unleashed a hard-hitting news media push before session to blanket the state with information about the ongoing financial plight of Texas hospitals and to remind the general public of hospitals' critical public health role in emergencies and everyday life. We were ready to walk into battle and tell hospitals' story over the five months to come.

And yet, we were still surprised. As a veteran of the advocacy trenches, I know I was. Surprised at just how determined certain groups and lawmakers were to propose and promote legislation that would hurt hospitals' bottom line, be detrimental to patients, force many clinics to close and severely hamper access to care. Surprised at the degree of danger found in those pieces of legislation. And surprised at how the myth persisted that hospitals were thriving financially as the pandemic wound down – despite data from the THA-commissioned Kaufman Hall report that showed almost half of Texas hospitals were operating in the red, and nearly one in 10 was in danger of closure.

But as one – THA and its 600-plus members – we rose to the challenge. We used the truth to fight back, including through an extensive white paper called The Facts that tackled more than a dozen mistruths head-on. We worked the Capitol, walking miles and miles of those stone floors. We stopped countless threats – like multiple government rate-setting bills – one by one, averting certain disaster on several different fronts.

To add to that defensive display, our offense was in full force, too: getting bills passed to protect our workforce, pulling through with big funding increases for the workforce pipeline, rural health care support and improvements to behavioral health, keeping Medicaid fully financed, and continuing our local provider participation funds. We successfully advocated for expanding Medicaid coverage to one year for new mothers. And as you'll see as you peruse this report, we accomplished much more as well.

Simply put, this was a session to look back on with both reverence and relief. We achieved many of the items on our priority list, and we stopped numerous bad bills in their tracks. Our success at both ends of that spectrum, and points in between, is something in which we should all take great pride.

Thank you for making my first session as THA's president one to remember.





EXECUTIVE SUMMARY

THA in the 2023 Session of the Texas Legislature



BIG THA WINS

- **Workforce:** Substantial increases in nursing school budget allocations for faculty, clinicals and preceptorships from \$19 million to about \$47 million, \$25 million for nursing scholarships, and significant investments in physician graduate medical education and loan repayment initiatives. Legislative measures to prevent and address workplace violence, including required workplace violence policies, committees and annual training at hospitals, along with protections for those who report a violent incident; enhancement of the penalty for assaulting a hospital worker to a third-degree felony.
- **Behavioral health:** Budget wins included \$26 million in increased funds for the state's Loan Repayment Program for Mental Health Professionals and funding for nearly 200 new inpatient psychiatric behavioral health beds; required availability of electronic applications for emergency detention orders.
- **Medicaid:** Passage of a bill to increase required continuous postpartum coverage for new mothers from two months to 12 months; overall Medicaid funding remained essentially level; tripling of the rural labor and delivery add-on payment to \$1,500.
- **Hospital operations:** Passed a bill allowing continuation of the federal hospital-at-home program, which helped hospitals manage COVID-19 surge capacity by treating eligible patients at home; long-sought-after improvements to the Texas Advance Directives Act.



BAD BILLS THAT THA STOPPED

- **Proposed ban** on hospital outpatient payments.
- **Proposal to cap** payments for services provided outside of insurance at the lowest contracted commercial rate a hospital has with any health plan.
- **Proposal to appoint** a committee of lawmakers to set a maximum payment rate for four state employee health plans.



THA PRIORITIES THAT DID NOT PASS

- **Emergency care:** Clarifying that coverage should be based on the prudent-layperson standard, not on the final diagnosis.
- **IMD exclusion waiver:** State exemption from federal rule that limits most adult inpatient behavioral health stays for 15 days.
- **Partial hospitalization/intensive outpatient therapy:** Required Medicaid coverage for these behavioral health services.



KEY LEGISLATIVE PRIORITIES

Building a Stronger Hospital Workforce and Safer Workplaces

COVID-19 has waned to the point where, for some time now, most people have talked about “the pandemic” as a past-tense event. But its impact on Texas’ hospital workforce was broad and devastating, and continues today, three-and-a-half years after the pandemic began.

During surges of the virus, hospitals became places of overwhelming stress, leading to burnout, fatigue and attrition in the ranks of nursing and other health care professions. Workplace violence surged during the era of COVID-19, as a THA survey in late 2022 showed. More than 60% of responding hospitals reported an increase in violence severity during the pandemic, and nearly every hospital reported workplace violence had increased or stayed the same. The same survey showed that 64% of hospitals were operating with fewer beds and reduced services because of a shortage in nurse staffing. And even with qualified nursing applicants ready to refill the pipeline, nursing faculty and clinical education capacity shortages have kept that replenishment from becoming reality. Texas nursing schools turned away more than 15,700 qualified applicants in 2021.

With these and other data points in hand, THA turned to the Legislature to help turn around these sobering trends and pave the way for hospitals to rebuild their personnel ranks. Incentives for joining the hospital workforce – like scholarships, grants and loan repayment initiatives – needed a boost, and nurses and other hospital workers needed to feel safe as they went about their caretaking, lifesaving business each day.

The Legislature responded with actions that give Texas hospitals hope of finding strength in numbers once again.

Postsecondary Nursing Support

Getting nurses back in the pipeline required a multifaceted approach, and Sen. Lois Kolkhorst’s (R-Brenham) postsecondary nursing education omnibus measure provides wide-ranging support to that end.

Sen. Kolkhorst’s bill, which passed the Legislature with THA’s strong support, removes an annual cap of \$7,000 in loan repayment assistance for nurses who work as faculty in a nursing degree program, instead basing the amount a nurse receives on the proportion of hours the nurse worked as a faculty member to the number of hours worked by a full-time nurse. It also breathes new life into a dormant nursing scholarship fund, which Lt. Gov. Dan Patrick listed as a priority for this session, and expands the eligibility for nurses serving as part-time faculty to apply for loan repayment programs administered by the Texas Higher Education Coordinating Board. Finally, the bill established a clinical site nurse preceptor grant program to ensure that teaching nurses are rewarded for training the next generation. (SB 25)

Stopping Workplace Violence

The driving force of THA’s strategy to prevent and address workplace violence earned lawmakers’ overwhelming approval and was quickly signed into law by Gov. Greg Abbott. The bipartisan measure by Sen. Donna Campbell, MD (R-New Braunfels) and House sponsor Rep. Donna Howard (D-Austin) requires hospitals and other health care facilities to implement a workplace violence prevention policy; maintain a workplace violence committee; and provide workplace violence training at least annually. It also prohibits retaliation or discipline for reporting a violent incident in good faith. Gov. Abbott signed the Senate version into law two weeks ahead of the session’s adjournment.

Greater protection for hospital workers also arrived in the form of a bill by Sen. Royce West (D-Dallas) to enhance the penalty for assaulting a hospital worker. Now, doing so on any hospital property – not just a facility’s main campus

– will result in a third-degree felony charge. Both of these important bills take effect Sept. 1.

THA-supported workplace violence-related measures that didn't pass included bills by Rep. Rafael Anchía (D-Dallas) to prohibit parolees from hospital visitation unless a supervising parole officer pre-approves the visit, and to make it a felony for parolees to remove their required electronic monitoring devices. These measures were prompted by the circumstances of the fatal shooting incident at Methodist Hospital in Dallas in October 2022. (SB 240/HB 112; SB 840/HB 3548; HB 3547/SB 2127; HB 3549)

Crucial Budget Funding

Much of the state support for revitalizing the hospital workforce needed to come through allocations in the state budget, and lawmakers came through with valuable investments in that realm for 2024-25. Among the key workforce numbers in the final budget, House Bill 1, were:

- **Nursing scholarships** – \$25 million total in the base budget, with \$12.5 million for each year of the biennium;
- **Professional Nursing Shortage Reduction Program** – An increase from \$19 million over the current biennium to nearly \$47 million in the next one;
- **Nurse Faculty Loan Repayment Program** – \$7 million over the biennium, a sizable increase from less than \$3 million allocated in the current budget;
- **Graduate Medical Education** – \$233 million over the biennium – an increase of more than \$30 million – to maintain the state's desired ratio of residency slots to medical school graduates, because research shows students who do their residency in Texas are more likely to stay there;
- **Physician Education Loan Repayment Program** – \$35.5 million for the biennium, a \$6 million increase;
- **Family Practice Residency Program** – \$16.5 million for the biennium;
- **Rural Residency Physician Grant Program** – A new program funded at \$3 million for the biennium; and
- **Texas Workforce Commission Programs** – Increases for the commission's skills development program (\$57 million in funding for the biennium) and apprenticeship program (\$38.7 million).



Improving Behavioral Health Care and Access

With the full weight of the Texas hospital industry behind the effort, THA continued a long-standing push for more robust funding for behavioral health care, and to give mental health patients access to the full continuum of services that's generally available to patients in physical care.

Bolstering the state's behavioral health infrastructure took on enhanced importance in a post-COVID-19 world. Research from the Kaiser Family Foundation (KFF) showed that just under one-third of adults reported having symptoms of anxiety and/or depressive disorder in data released in February 2023. In KFF data from fall 2022, 47% of parents reported the pandemic had a detrimental impact on their child's mental health. And out of the U.S.-record number of substance use deaths in 2021 – which totaled more than 106,000 – nearly 5,000 were in Texas.

THA aimed at spearheading ambitious improvements in Texas' behavioral health infrastructure, and state lawmakers heeded much of what they heard about hospitals' needs, particularly in the crafting of 2024-25 budget funding.

Budget Wins

THA undertook an aggressive advocacy effort to educate budget leaders about the state's widespread needs in mental health care, including the critical importance for patients to have access to a full continuum of care. In response, both the House and Senate's initial budget drafts demonstrated a wide-ranging commitment to funding the state's behavioral health needs – such as through a massive boost to the Loan Repayment Program for Mental Health Professionals.

That funding increase made it through to the final budget, and many other allocations for 2024-25 in the mental health realm leave THA optimistic about Texas improving the state of behavioral health care.

Loan Repayment – The mental health loan repayment program, which was funded at \$2 million for the current budget, will receive \$28 million over the 2024-25 biennium – an increase of 1,300%. For THA, the funding bump was a heartening boon for access to care. The mental health loan repayment program – which is open to psychiatrists, psychologists, advance practice nurses certified in mental health training, and others – encourages those professionals to practice in a mental health professional shortage area.

More Beds – Obtaining funding for more psychiatric inpatient beds is always a top priority for hospitals, and budget writers came through on that front as well. A budget rider put more than \$200 million into maintaining existing community psychiatric bed capacity and adding 193 additional state-purchased beds – 70 in rural areas and 123 in urban areas. The same rider included more than \$100 million to contract for 170 competency restoration beds.

Other key budget allocations (dollar amounts for the biennium) included:

- \$7.4 million for telepsychiatry consultations for rural hospitals;
- Hundreds of millions allocated in the supplemental budget for construction for eight state hospitals;
- \$175 million for a Mental Health Inpatient Facility Grant Program, which will fund the construction of inpatient beds in the Rio Grande Valley, Montgomery County and Victoria County; and
- Nearly \$16 million for a grant program to construct inpatient mental health beds at children's hospitals.
(House Bill 1)

Emergency Detention Orders

THA made it a priority to modernize and create uniformity on elements of the state's behavioral health care system, with the ongoing commitment of THA's Behavioral Health Council to undertake that effort. Though some of THA's items related to emergency detention orders (EDOs) and orders of protective custody (OPC) didn't make it through to passage this session, one of the biggest needs to bring behavioral health into the '20s – the availability to apply for EDOs electronically – did get enshrined into law, thanks to late-session work by THA's

advocacy team. Widespread inconsistency – and outdated processes – surrounding the issuing of EDOs have hampered the speed and efficiency of getting behavioral health care to Texans who need it. THA advocated for electronic applications to be available across the state; in places where it isn't available, waiting for a judge or peace officer to carry out the detention creates slowdowns during a time of mental health crisis for the patient.

THA successfully amended a bill by Sen. Judith Zaffirini (D-Laredo) that requires the Office of Court Administration of the Texas Judicial System to develop a process to electronically apply and receive approval for emergency detention warrants, and for a judge or magistrate to electronically transmit the warrant. The bill also explicitly gives facilities the authority to detain a person once it receives a transmitted warrant. Passage of Sen. Zaffirini's bill salvaged a piece of THA's modernization push, after months of work and multiple other bills by several lawmakers, including Reps. Jacey Jetton (R-Richmond) and Jeff Leach (R-Plano) and Sens. Juan "Chuy" Hinojosa (D-McAllen) and Nathan Johnson (D-Dallas).

THA plans on continuing to advocate for other updates to the state's behavioral health system that didn't earn passage this session, including multiple updates to processes for EDOs and OPCs. (SB 1624; HB 3504/SB 1815; HB 2507/SB 1433)

IMD Exclusion Remains in Place

THA's effort to patch the Medicaid coverage gap for behavioral health patients between the ages of 21 and 64 – one of its top-line priorities for the second straight session – didn't make it into the final budget. Currently, Medicaid policy does not cover patients in that age range for stays at institutions for mental disease (IMD) beyond 15 days. However, states can pursue a federal waiver from the IMD exclusion.

Following the release of the original budget bills for this session – neither of which included the IMD rider – THA successfully lobbied for its inclusion in the House version of the budget, but not the Senate version. When the two chambers convened their conference committee to negotiate the differences between the two budgets, the IMD exclusion was once again left out. Closing this critical coverage gap will be another continued point of emphasis for THA.

PHP/IOT Coverage Push

THA's aggressive push for required Medicaid coverage for partial hospitalization programs and intensive outpatient therapy services (PHP/IOT) also didn't make it to passage, despite encouraging movement on the House vehicle for that coverage and hope in the final days of session. PHP and IOT – both of which allow patients to receive more intensive therapies that can prevent additional hospitalization – are in many cases a viable alternative to round-the-clock inpatient care. Their availability gives Texas patients access to a full continuum of behavioral health services, just like the full range of services available for physical care. The House bill by Rep. Tom Oliverson, MD (R-Cypress) passed out of its originating chamber but stalled after referral to a Senate committee. In the closing days before adjournment, THA was able to get its desired PHP/IOT language added to a bill by Sen. Charles Perry (R-Lubbock), the sponsor of the original Senate version. However, the PHP/IOT language was stripped out before Sen. Perry's bill passed and went to the governor's desk. (*HB 2337/SB 905; SB 1677*)

Improving Health Care Coverage for More Texans

While overall expansion of Medicaid through the Affordable Care Act continues to be a heavy lift in Texas' political climate, THA and other stakeholders entered session advocating for a

more limited – but crucial – form of expansion.

Two years ago, the Legislature passed a measure to extend postpartum Medicaid coverage for new mothers from two months to six months, and Gov. Greg Abbott signed it into law. But the Centers for Medicare & Medicaid Services (CMS) subsequently didn't approve the state's application. CMS told news media earlier this year that the application was still under review.

For THA, taking another run at longer postpartum Medicaid coverage was a priority entering 2023. Medicaid enrollees deliver about half the babies in Texas, and the state's Maternal Morbidity and Mortality Review Committee found that more than a quarter of maternal deaths in Texas happen between 43 days and one year after pregnancy – outside the current two-month coverage window. For 2023, THA and other organizations decided to vigorously pursue one year of postpartum coverage.

Both Gov. Abbott and House Speaker Dade Phelan (R-Beaumont) joined THA in making extended postpartum coverage for mothers a priority for this session, and Rep. Toni Rose (D-Dallas) filed the priority legislation to make it happen. It only earned ultimate passage, however, after a final-week amendment by Sen. Lois Kolkhorst (R-Brenham) prompted a conference committee to shape the final bill, which Gov. Abbott signed into law.

Sen. Kolkhorst's amendment was a statement of legislative purpose, placed into statute, that attempted to clarify women can only receive the extended coverage if they deliver a baby or have a miscarriage, not if they undergo an "elective abortion." The conference committee did not place the legislative purpose statement into statute and finessed the language of the amendment, landing on clarifying the coverage extension is "for mothers whose pregnancies end in the delivery of the child or end in the natural loss of the child." This final language should allow the Texas Health and Human Services Commission to submit a standard state plan amendment to CMS, resulting in a quick and straightforward approval of expanded coverage for Texas moms. (*House Bill 12*)

Maintaining Budget Funding to Protect Both Texans and Hospitals

Texas hospitals came into the session with a great opportunity – and a great deal of hope – as they sought



funding for many of their budgetary goals for 2024-25. A surplus of more than \$30 billion, due in large part to stout oil and gas revenues, gave lawmakers leeway to fund a healthy amount of the state's health care and hospital needs in the next two-year budget.

As its members struggled to find their footing due to workforce depletion and unstable finances coming out of the pandemic, THA's top budget asks included:

- Maintain hospitals' Medicaid reimbursement rates, including payments for safety net hospitals, rural hospitals and trauma care;
- Increasing funding for behavioral health psychiatric beds, while also obtaining the Legislature's direction to pursue a state waiver from a key federal exclusion creating a coverage gap in adult behavioral health;
- Maintaining funding for women's health, including maternal care, family planning, and breast and cervical cancer programs;
- Funding for rural health programs to modernize telemedicine and broadband capacities and maintain access to rural health care; and
- Increasing efforts to combat workforce shortages through nursing and medical graduate loan repayment, grants and scholarship programs, and by developing the state's graduate medical education capacity.

Medicaid and Rural Health

The state's final appropriations for Medicaid offered welcome investments: a total appropriation of just under \$81 billion for 2024-25, a \$12.1 billion increase over the previous biennium. That includes more than \$30 billion in state funding, nearly \$50 billion in federal funding and \$0.6 billion from other sources.

Hospitals fought for and maintained ground on key Medicaid reimbursements. After initial projections of a COVID-19-driven shortfall in the state's dedicated emergency medical services and trauma funding account, budget writers plugged in extra dollars to hold funding for trauma add-on payments level to that of the 2022-23 budget, at \$180 million annually. Safety-net hospital add-on payments also stayed level at \$150 million annually.

The pre-session, THA-commissioned Kaufman Hall report highlighted hospitals' financial struggles, which are exacerbated in rural settings. Showing an understanding of the funding

needs in those settings, the Legislature allocated \$66 million annually for rural outpatient payments – a \$36 million annual increase that will align rural hospitals' Medicaid payments to current costs.

The money secured for rural labor and delivery add-on payments – \$47 million over the biennium – will triple those add-on payments, from \$500 per delivery in the current budget to \$1,500 per delivery, helping to shore up access to maternal care in rural areas.

Rural behavioral health also benefited from an investment of more than \$7 million in telepsychiatry consultations for rural hospitals. For more information on budget allocations and wins and losses in behavioral health, as well as for workforce, see separate sections on these topics in Key Policy Priorities: Outcomes and Analyses.

Women's and Maternal Health

While the THA-supported passing of extended postpartum Medicaid coverage for new mothers (see separate section in Key Policy Priorities: Outcomes and Analyses) may have been this session's headlining achievement in the realm of maternal and women's health, it was far from the only one. THA's advocacy on the budget helped secure vital funding for the state's women's health programs and for combating maternal mortality and morbidity.

The Healthy Texas Women program received \$129 million



in funding for 2024 and just under \$140 million for 2025. The Family Planning Program – historically underfunded in past budgets – received \$145 million over the biennium (\$74.7 million in 2024 and \$70.3 million in 2025), almost doubling the program’s appropriations for 2022-23. The Breast & Cervical Cancer Program received \$11.3 million for each year for a biennial total of more than \$22 million.

The Legislature also demonstrated its commitment to tackling the state’s maternal mortality and morbidity problem with a fully funded allocation of \$3.5 million per year to the TexasAIM initiative, a collaboration that originated with the state, THA and the Alliance for Innovation on Maternal Health that helps hospitals and clinics implement projects for maternal safety. An additional \$10.9 million went toward implementing the Maternal Health Quality and Improvement System and Maternal Mortality Review Information Application Replacement.

Last-Minute Add: Study Approved on Hospital Finances

A last-minute budget insertion reflected the heightened scrutiny hospitals endured during this session as they worked to defeat ill-advised legislation to prohibit hospital outpatient payments and institute government rate-setting.

Budget writers appropriated \$5 million directing the Texas Health and Human Services Commission (HHSC) to perform a study of charity care and hospital transparency, with a resulting report due by Dec. 1, 2024.

That report will include:

- Recommendations on improving hospital reporting and transparency;
- A “summary of all revenue streams and their value” by facility and hospital system, which includes patient revenue both private and public, “all supplemental state or federal funding sources,” research grants and local tax revenue; and
- The value of charity care by facility and hospital system, as well as bad debt expense and unreimbursed cost of care.

For the study, HHSC must contract with a third-party vendor that does not own or operate a hospital. THA will urge selection of a reputable vendor that is familiar with the Texas hospital market and related data. THA will also be as involved as possible, closely monitoring the study’s progress, weighing in on measurements and assisting members with participation in the study.

Successfully Beating Back Bad Bills

Heading into the session, THA undertook extensive efforts to educate legislators about the significant challenges facing hospitals, the absence of “enrichment” hospitals had supposedly experienced during the pandemic, and their considerable need for support. Despite those efforts, taking whacks at hospitals’ reimbursements and their ability to serve patients became a widespread effort on both sides of the Capitol.

The momentum behind the worst of these anti-hospital measures – heavily supported by forces in the health insurance lobby – was considerable, especially in the face of insurers collecting record pandemic-era profits. As Kaufman Hall demonstrated in a THA-commissioned report released in late 2022, Texas hospitals were in opposite straits: nearly half of all hospitals were ending the year with negative operating margins, one in 10 was at risk of closure, and the closure risk spiked to 26% for rural hospitals. And THA’s COVID-19 Impact Report detailed how the pandemic had precariously positioned hospitals not only economically, but on a human level, as hospital employees worked around the clock to protect public health.

But those realities were often questioned or downplayed, and THA and its members had to fight strenuously against bills – some proposed by particularly powerful lawmakers – that, if passed, would weaken hospitals, negatively impact patient care and remove facilities’ ability to recoup the cost of care.

Hospital advocates were up to the challenge, and their resistance averted what could’ve been a disastrous session.

Facility Fees and Rate-Setting: The Terrible Three

Along with boots-on-the-ground lobbying, advocacy alerts from THA to its members – which, at THA’s urging, resulted in members sending thousands of messages to lawmakers – helped stop the three most damaging, misguided initiatives that members of either the House or Senate put forward this session. Those included:

- Companion bills by Rep. James Frank (R-Wichita Falls) and Sen. Kelly Hancock (R-North Richland Hills) that attempted to ban all hospital outpatient payments, defined by the legislation as “facility fees.” These measures took on several iterations – all bad – as THA and its

members continued their vehement opposition. At one point, the Senate version focused on barring hospitals from collecting any payment whatsoever for telemedicine and telehealth services. Before that, a committee substitute for the House version banned facility-fee payments for both inpatient and outpatient care for “preventive” services, a devastatingly broad list if applied using federal law. Ultimately though, thanks to tireless work by determined THA staff and membership, the bills suffered total defeat. (*House Bill 1692/ Senate Bill 1275*)

- Government rate-setting in the form of a bill by Rep. Frank – chair of the important House Human Services Committee – that would have forced hospitals to accept a government-set maximum rate for services provided outside insurance, including charity care and prompt pay. Specifically, a hospital would have been forced to accept as payment the lowest contracted rate it had with any commercial health plan – disincentivizing patients from obtaining insurance, as going uninsured would enable them to pay that lowest rate. In addition to the quick work of THA members in responding to a THA alert that went out that went out the weekend before the bill reached the House floor, its ultimate death knell came on the sustaining of a procedural point of order on the floor, leading the author to postpone consideration of the bill until well after session was over. (*HB 633*)
- Yet another rate-setting effort – this one proposed by the chair of the powerful House Appropriations Committee, Rep. Greg Bonnen, MD (R-Friendswood) – would have put payments for certain state health plan systems in the hands of a committee of state legislators. Under the bill by Rep. Bonnen, the 10 lawmakers on that committee would have been able to unilaterally set individual payment rates for hospitals in four state agency health plans: the Employees Retirement System and Teacher Retirement System of Texas, the University of Texas System and the Texas A&M University System. The proposal made it out of a House committee but never reached the floor for a vote. (*HB 5186*)

Insurer Deregulation

While that trio of bills represented the biggest threats for hospitals, they weren't the only insurer-supported measures that required extensive THA energy to short-circuit. Other bills focused on dangerous ways to allow insurers to skirt regulations and offer bare-bones coverage without the state's important consumer protections.

A measure by Rep. Tom Oliverson, MD (R-Cypress) would have generally allowed insurers to seek a waiver from any insurance

law, regulation or requirement if the insurer believed it would stifle innovation, allowing the state insurance commissioner to unilaterally decide whether to grant that waiver. THA testified against the bill in writing, saying it would “give unprecedented discretion to a state official to decide whether the will of the Texas Legislature should be waived.” After clearing committee, the bill stalled.

Rep. Giovanni Capriglione (R-Southlake) put forth another measure that would have created deregulated “consumer choice” health plans, allowing insurers more leeway to offer employees and consumers a greater number of cheap plans with more scant coverage – without the consumer protections that enrollees have come to expect. THA testified in committee that this measure would potentially erode Texas' gains in ensuring comprehensive health coverage. The bill died in committee. (*HB 2017; HB 1001*)

Itemized Billing: Passes Over THA Warnings

One major THA-opposed bill that passed over hospitals' objections was an ill-advised itemized-billing requirement in the name of price transparency. THA supports hospital price transparency, but there are right and wrong ways to go about it – and the bill by Sen. Bryan Hughes (R-Mineola) and Rep. Caroline Harris (R-Round Rock) will create challenges for consumers and hospitals. It requires hospitals and other facilities to provide itemized bills to patients within 30 days of receiving payment from a third party and before collecting payment after care is provided. THA testified about the cost and administrative burden this approach would introduce for hospitals of all stripes, from the small rural facilities to the bigger hospital systems, as well as the confusion it would cause for patients. Nonetheless, the Senate version passed and was signed into law. (*SB 490/HB 1973*)

Many of the attacks on hospitals – and the push to find new legislative routes to enrich insurers at the expense of patients and the health care profession – are likely to be resurrected in 2025. THA is preparing for that inevitable next round of attacks in the interim, creating a sweeping plan to double down on its defense of the hospital industry with an even more robust offense.



OTHER KEY ISSUES IMPACTING TEXAS HOSPITALS

Although the issues and legislation detailed in previous pages emerged as key policy priorities, THA's work during this session included the tracking of more than 1,600 bills, out of more than 8,000 that were filed. Here are some of the most significant pieces of other legislation THA tracked and helped shape.

Hospital-At-Home

Rep. Jacey Jetton (R-Richmond) and Sen. José Menéndez (D-San Antonio) authored a THA-priority bill to continue the pandemic-era federal hospital-at-home program. The bill continues the operation of hospital-at-home programs as long as the facility receives approval from both the Centers for Medicare & Medicaid Services and the Texas Health and Human Services Commission, the latter of which would establish standards similar to the Acute Hospital Care at Home program that helped control patient surges during the pandemic. Rep. Jetton's bill sailed through both houses and was signed into law by the governor in late May. (*House Bill 1890/Senate Bill 1156*)

Hospital Investigation Transparency

After six long years of work, a key THA priority for this session – to increase transparency of state investigations into hospitals – became law. The measure, authored by Rep. Stephanie Klick (R-Fort Worth) and signed into law before session concluded, makes final hospital investigation reports and outcomes public, as well as the number of times the state has investigated a given hospital. Currently, the state posts just one year of enforcement actions on the Texas Health and Human Services Commission website. Those postings include violations by Texas Administrative Code numbers, dates and penalty amounts, but don't include any narrative or details about the investigation. The bill also clarifies that hospitals are permitted to release medical records to patients, the parent or guardian of a patient who is a minor or incapacitated, or the personal representative of a patient who is deceased, regardless of whether there is an active investigation. THA and other stakeholders worked on negotiated language to modernize reporting, and once that was finalized, six years passed before the bill reached this legislative finish line. (*HB 49*)

Insurance Contracting

When it comes to negotiating contracts between providers and health plans, it's already an insurer's world. The industry in which three private insurance companies control 84% of the large-group market doesn't need any more thumbs on the scale in its favor. So along with more direct attempts to disrupt hospital payment systems – such as the defeated bills attempting to institute government rate-setting and ban hospital outpatient payments – THA had to be mindful of legislation that would undercut hospitals' and providers' leverage and ability to pursue fair terms in contract negotiations.

A measure put forth by Rep. James Frank perked up THA's antennae – and initially earned its opposition – by containing a broad set of bans on common types of contract clauses. The bill was based on model legislation from the National Academy of State Health Policy. THA quickly devoted acute attention to Rep. Frank's bill early in session and, through work with the author, successfully lobbied for the most problematic aspects of the original bill to be removed. THA ultimately stood neutral on the final bill, which passed both chambers and became law without the governor's signature.

As passed, it bars the use of “anti-steering” clauses in contracts – which prohibit a health insurer from directing enrollees to specific providers, such as through a discount. It also prohibits “anti-tiering clauses” that keep insurers from ranking providers within a network. THA's shift from opposition to neutral came after key amendments that removed a ban on “all-or-nothing” contract clauses – which allow hospitals to negotiate contracts on behalf of every hospital, provider or clinic under its umbrella – and the addition of language saying that if insurers do engage in tiering or steering practices, they must do so as a fiduciary acting for the primary benefit of their enrollees. THA was also successful in negotiating a delayed implementation – through the end of 2023 – for the clause that restricts

anti-tiering and anti-steering terms in existing contracts. That gives hospitals time to attempt renegotiation of any of their contracts containing those types of clauses. Those provisions will prevent the new negotiating restrictions from diluting providers' leverage – and patients' needed care. (HB 711)

End-of-Life Care

Few hospital issues require as sensitive an approach, and as delicate a balancing of factors, as end-of-life care. The rights and wishes of a patient, as may be expressed in an advance directive – or those of a patient's legal decision-maker – must be balanced against care providers' ethical duty to “do no harm.” When a dispute results over requested medical interventions for the patient, hospitals may legally attempt to resolve the dispute over whether that care is appropriate by engaging the facility's ethics committee. Making sure a patient's decision-maker is heard at those committee meetings is paramount to providing ethical care.

THA and other stakeholders set out in the summer of 2022 to craft clarifying legislation for the Texas Advance Directives Act's (TADA's) dispute resolution process, and its 2017 state law governing in-hospital do-not-resuscitate orders. What followed were more than 40 hours of face-to-face negotiations between THA and groups as diverse as the Texas Medical Association, Texas Right to Life, the Texas Alliance for Life and the Texas Catholic Conference of Bishops. That hard work resulted in landmark, agreed-upon legislation by Rep. Stephanie Klick (R-Fort Worth), which easily passed both chambers and was signed into law.

Among its most important changes:

- The person responsible for making a patient's treatment decisions must be notified in writing of an ethics committee meeting to discuss the patient's directive at least seven calendar days in advance, instead of the current two days.
- If a facility ethics committee decides that continuing life-sustaining treatment would not be appropriate, the current 10-day period for a facility to find a transfer destination for the patient before it can withdraw life-sustaining treatment will now be a minimum of 25 days.

While the stakeholder agreement on – and passage of – HB 3162 is a monumental step for clarifying TADA, it also will introduce complicated nuances for hospitals to implement. THA is planning to produce a webinar this summer that will examine the new law's implications in full. (HB 3162)

Hospital Operations

Another area where THA was largely called on to play defense, hospital operations-related legislative measures this session often contained ideas that would have spelled trouble for facilities and patient care alike. THA set about opposing such measures outright, or helping lawmakers to shepherd them into a more palatable alternative before passage – and met with success in doing so.



Noncompete Agreements

THA defended against an attempt to restrict contract terms between private parties – namely providers and the hospital systems that employ them – that the state has historically left alone with minimal intervention. As filed, a measure by physician-legislators Sen. Charles Schwertner, MD (R-Georgetown) and Rep. Greg Bonnen, MD (R-Friendswood) would have limited noncompete agreements for physicians and other practitioners to a one-year time frame, limited geographic restrictions to a 10-mile radius, and capped any buyout provision at one year of the physician's salary. THA testimony warning about the bill's "arbitrary restrictions" didn't prevent the bill from passing the Senate, but THA advocacy helped stall the bill across the Capitol and prevent its ultimate passage. (SB 1534/HB 3411)

Mandatory Podiatrist Privileges

THA opposed companion bills by Rep. Stephanie Klick (R-Fort Worth) and Sen. Juan "Chuy" Hinojosa (D-McAllen) that would not allow hospitals to deny podiatrists privileges "solely on the grounds that the applicant is a podiatrist rather than a physician." During testimony against the House version, THA testified that physicians are treated the same way under the current law – that is, they're subject to patient care-related decisions about their privileges, made by the hospital's independent medical staff and governing body, based on their qualifications. THA's testimony said the bill would undermine the medical staff's and governing body's ability to assess what their facility needs to deliver high-quality care. Although the Senate version made it out of that chamber, neither bill achieved ultimate passage. (HB 1767/SB 730)

Bundled Pricing

Rep. Gary Gates (R-Richmond) authored a measure that would have created a bundled pricing model in the Employees Retirement System of Texas – a pricing model hospitals have had trouble with, THA noted in written committee testimony, because it "tends to drastically reduce reimbursement for services – especially when routine procedures require unexpected interventions by additional providers." With THA's opposition, the bill did not make it out of the House. (HB 840)

Surgical Smoke

Despite negotiations on language between THA, Houston Democrats Rep. Ann Johnson and Sen. Borris Miles, and the Association of periOperative Registered Nurses (AORN), THA and the other parties couldn't clear the air on the lawmakers' proposal to mandate specific surgical smoke evacuation systems in hospitals, resulting in THA's opposition until the bill sputtered to a stop short of the House finish line. THA sought language that would allow medical teams to exercise

their judgment on what equipment is appropriate for their settings and procedures. Neither bill made it out of its originating chamber. (HB 4365/SB 707)

Disciplinary Reporting to TMB

Negotiations by THA improved a measure by Rep. Julie Johnson (D-Farmers Branch) that, as passed, requires a hospital peer review committee to report to the Texas Medical Board any actions that would affect a doctor's privileges for longer than 14 days, instead of the current 30-day standard. THA was initially concerned with the filed bill's reporting requirement not being consistent with National Practitioner Data Bank guidelines, as well as the lack of guidelines on minimum-infraction reporting, which would qualify minor administrative infractions as being reportable. The author addressed the THA concerns sufficiently to shift THA's position to neutral on the bill. It passed both chambers and was signed into law. (HB 1998)

Monthly Reports on Suspected Child Abuse Cases

THA opposed a bill by Sen. Bob Hall (R-Edgewood) that would have introduced onerous new burdens on hospitals in the realm of their existing requirement to report suspected child abuse. Sen. Hall's bill would have required hospitals to submit a monthly report to the state containing several pieces of information, including its number of reports to the state that month regarding alleged or suspected child abuse, exploitation or neglect. A committee substitute for the bill added a requirement for the monthly report to contain a signed affidavit from each agent or employee of the hospital who made such a report. THA noted that the legislation would likely have a chilling impact on the reporting of suspected child abuse and emphasized that a monthly reporting process would be overly burdensome, hindering the immense responsibility hospitals already have to report abuse. The bill died in committee. (SB 1197)

Onsite Physician Requirement

Requiring every hospital – even the ones in sparse, rural areas – to have a physician present onsite at all times isn't workable, and it would likely force rural facilities with staffing struggles to close. But a committee substitute for a bill by Sen. Charles Schwertner, MD (R-Georgetown) sought to make having an onsite physician a requirement, and also would have allowed hospital patients to request that a physician perform all health care services. In opposing the bill, THA noted that the legislation would undermine existing law that allows Level 4 trauma facilities in sparse counties to use telemedicine to satisfy the onsite physician requirement. The bill didn't make it out of committee. (SB 1193)

Physical Exam Prior to Psychiatric Admission

With less than a month to go in the session – well after the bill filing deadline, due to the Senate’s rules that allow for such surprises – Sen. Donna Campbell, MD (R-New Braunfels) filed a measure that would prohibit inpatient admission at a mental health facility unless the patient had undergone a physical examination. THA opposed the bill and noted in committee testimony that many psychiatric facilities do not have physicians available 24 hours a day. Also, THA noted, existing law requires an initial assessment by a “qualified person” and a physician exam within 24 hours. After passing the Senate, the bill died in the House. (SB 2628)

Allowing Treatment by an Outside Physician

Sen. Bob Hall (R-Edgewood) proposed a measure requiring hospitals to grant a patient’s request for a physician “who is not a member of the hospital’s medical staff” to treat the patient. The strongly THA-opposed measure appeared to be a response to hospitals refusing COVID-19 patients’ requests to combat the disease with unproven treatments, such as ivermectin. The bill didn’t make it out of committee. (SB 299)

Abortion Clarification

After the U.S. Supreme Court ruled in June 2022 that a constitutional right to abortion didn’t exist in *Dobbs v. Jackson Women’s Health Organization*, Texas hospitals asked the state’s leadership for clarifications to be made in the multiple state statutes on the provision of abortion care. While an overhaul did not occur, a bill by Rep. Ann Johnson (D-Houston) and Senate sponsor Sen. Bryan Hughes (R-Mineola) was filed and quietly amended to provide civil, criminal and regulatory clarifications around physicians’ use of reasonable medical judgment for ectopic pregnancies and pregnancies involving premature rupture of membranes, as well as pharmacy dispensing. THA worked behind the scenes to help pass that legislation. Gov. Abbott signed the bill into law. (HB 3058)

COVID-19 Public Health Measures

The anti-science movement didn’t dissipate with the waning of COVID-19; in fact, during this session, it influenced dozens of pieces of legislation taking aim at prohibiting vaccinations and other public health measures.

THA focused on pursuing appropriate exemptions – also known as carve-outs – from these measures so that hospitals could continue requiring vaccinations, masking and other public health measures as appropriate to keep facilities and patients safe. That approach proved extremely successful, as hospitals were carved out of the anti-vaccination and

anti-masking legislation that passed, and even out of many of the bills that ultimately died. A bill from Sen. Brian Birdwell (R-Granbury) that was signed into law prohibits governmental entities – local or state – from imposing face-covering or vaccine mandates to control COVID-19. But government-owned hospitals are exempted entirely from the face-covering mandate prohibition, and the anti-vaccine mandate language did not apply to hospital staff subject to the federal Medicare vaccine requirement for COVID-19 (which has since been withdrawn by the Centers for Medicare & Medicaid Services, effective in August 2023). THA also lobbied for and won an exemption for oncology care and organ transplant services from a bill by Rep. Valoree Swanson (R-Spring) prohibiting denial of services to a Medicaid or Children’s Health Insurance Plan recipient “based solely on the recipient’s or enrollee’s refusal or failure” to be vaccinated “for a particular infectious or communicable disease.” That bill also was signed into law.

THA also expended considerable advocacy capital to exempt hospitals from a bill by Sen. Lois Kolkhorst (R-Brenham) that broadly sought to prohibit COVID-19 preventive measures. Sen. Kolkhorst’s bill morphed into multiple iterations, ending its run as part of legislation by Rep. Four Price (R-Amarillo) before dying. (SB 29/HB 44/SB 1024/HB 1105)



Network Adequacy

Supporting a push to hold health insurers accountable for skirting network adequacy standards, THA backed a broad measure by Rep. Greg Bonnen, MD (R-Friendswood) that would increase transparency on the reasons why health insurers request waivers from compliance with those standards. The bill, which was signed into law, also establishes time and distance standards for network adequacy modeled after Medicare, and clarifies that post-stabilizing care provided after an emergency condition is subject to the protections of Texas' law generally banning balance billing, a position THA has supported since the passage of that law in 2019. Rep. Bonnen's adequacy bill, THA said in written committee testimony, "is designed to ensure that insurance companies are selling insurance products that will adequately meet the needs of their enrollees when they need it most." (*HB 3359*)

Prudent Layperson Standard

THA supported a bill by Rep. Tom Oliverson, MD (R-Cypress) to strengthen the prudent layperson standard for emergency care coverage, which clarifies that coverage must be determined by the patient's presenting symptoms and a prudent layperson's understanding of medicine, not the final diagnosis. THA worked extensively with Rep. Oliverson and the author of the Senate companion, Sen. Charles Schwertner, MD (R-Georgetown) to ensure the prudent layperson standard was codified into the definition of the bill. Unfortunately, the

bill was weakened by a health plan-backed amendment on the House floor and did not make it through the Senate after the Senate author stripped out that amendment. (*HB 1236/SB 1139*)

Gender-Affirming Care

On the heels of an early 2022 opinion issued by state Attorney General Ken Paxton – which asserted that gender-affirming care performed on minors constituted child abuse under existing state law – the Legislature dove into that hot-button cultural issue. Senate Bill 14 by Sen. Donna Campbell, MD (R-New Braunfels) sought to codify the central piece of General Paxton's opinion, putting forth a ban on gender transition/sex reassignment surgery or the use of puberty-blocking medication on children under 18.

From the outset, THA's interest in the bill was the pursuit of exception language in the proposed ban in order to avoid troubling disruptions in continuity of care. Specifically, THA sought for the bill to allow for children who are legally transitioning in their home state, and visiting Texas, to be able to continue receiving their normal, daily medication regimen if they must be hospitalized in Texas. As THA explained in written testimony on the House companion to the bill in March, "Abruptly discontinuing puberty suppression/blocking medications for a child undergoing gender transition could actually do harm to the child." At one point, SB 14 did include THA's desired language to preserve continuity of care, but the Senate stripped that language out after loud backlash from the Texas Republican Party before sending the bill to the House, and the bill passed without it. However, the bill signed into law did include narrow exception language that allows Texas children who had begun gender transition-related medication by June 1, 2023, to wean off the medication "over a period of time and in a manner that is safe and medically appropriate and that minimizes the risk of complications."

Additionally, Rep. Tom Oliverson, MD (R-Cypress), the House sponsor of the legislation, and Rep. Donna Howard (D-Austin) engaged in a back-and-forth conversation on the House floor outlining legislative intent when it comes to SB 14's impact on continuity of care. That conversation occurred at THA's request to assist hospitals and physicians as they interpret the updated law. (*SB 14/HB 1686*)



Method of Finance

Continued reauthorization of the state's local provider participation funds (LPPFs) – the building blocks for combined state and federal financing of Texas Medicaid supplemental payments – is essential to providing care for the state's most vulnerable populations. LPPFs in seven jurisdictions were slated to expire in either 2023 or 2024 if not renewed, but separate legislation passed to renew each one: Bexar, El Paso, Harris, Jefferson, Nacogdoches, Travis and Wichita counties. Also passed was a measure to reauthorize these seven LPPFs statewide, which Rep. Trent Ashby (R-Lufkin) filed. The statewide bill was signed by the governor and became effective immediately. (*Statewide renewal: HB 3456*)

White-Bagging

Texas hospitals were staunchly in support of a prohibition on the insurer practice known as “white bagging” as laid out in a bill by Rep. Cody Harris (R-Palestine) and the companion bill by Sen. Charles Schwertner, MD (R-Georgetown). As filed, the bills would have banned insurance companies from requiring drugs to be purchased through specialty pharmacies for patients undergoing life-threatening conditions. However, under pressure from insurance companies, a committee substitute cut hospitals out of the white-bagging ban on both the House and Senate sides. THA urged bill authors to put hospitals back into the bill during testimony, to no avail. Sans hospitals, the House version of the bill made it through to the governor's desk and was signed into law. (*HB 1647/SB 1138*)

Guns and Hospital Safety

Working to keep the presence of firearms on hospital grounds to a minimum, THA initially opposed a bill by Rep. Briscoe Cain (R-Deer Park) to repeal the criminal offense for not heeding signs prohibiting firearms on the premises of businesses. THA worked with Rep. David Spiller (R-Jacksboro) and the author to amend the legislation on the House floor to carve out private mental health hospitals and acute care hospitals, resulting in THA taking an ultimately neutral position. The bill did not pass, stalling in the Senate. (*HB 2960*)

Information-Blocking

THA was pleased by early support of a bill that would have ensured that limited “sensitive test results” could not be immediately disclosed to a patient electronically – reducing the chance that a patient would receive distressing or complex results before consultation with a physician or provider. The bill by Sen. Kelly Hancock (R-North Richland Hills) would have prohibited electronic disclosure of certain sensitive results before the third day after the results are finalized. The bill was ultimately vetoed by the governor. (*SB 1467*)

Biomarker Testing Coverage

A bill driven by one of the preeminent hospital systems in Texas – MD Anderson Cancer Center – will require insurance coverage for biomarker testing. Gov. Abbott signed the THA-supported measure by Sen. Joan Huffman (R-Houston), which generally requires coverage for whole genome sequencing, single analyte tests and multiplex panel tests. These tests search for certain proteins, genes or other molecules that could be indicators of cancer. (*SB 989*)





GOING FORWARD: STAY ATTUNED, STAY INVOLVED

While in common parlance, most people think of the Texas Legislature as only meeting “every two years” or “every odd-numbered year,” that isn’t strictly the case.

What happens between those regular sessions – as legislative committees meet in the even-numbered years to examine interim charges – is just as important as the nitty-gritty work that happens when the Legislature is in session to consider bills. The groundwork for the next regular session is laid in that period, and hospital advocates need to continue building relationships with their elected officials, letting them know – on a continuing basis – what challenges hospitals face. And of course, major elections occur every two years, including the contesting of every seat in the Texas House of Representatives.

As such, we can collectively work together to:

- Maintain the ears of all our elected state officials. Let them know that the attacks hospitals faced during the 2023 regular session were unfounded, and that any resurrection in 2025 of the multiple dangerous initiatives hospitals beat back this year will be ill-advised.
- Push back on the anti-hospital sentiment that continues to circulate among lawmakers and the general public. Double down on work to offer broad education on the critical role of hospitals in Texas communities – and engage local leaders and digital channels to air this perspective and help control the narrative.
- Advocate for issues we know will again be a priority in the 2025 session. It’s never too early to talk about issues such as the state waiver from the federal institutions for mental diseases exclusion in Medicaid, or the prudent layperson standard for emergency care.
- Engage with elected officials and candidates through HOSPAC, THA’s political action committee. HOSPAC identifies, endorses and donates to candidates at both the state and federal levels who have a willingness to discuss difficult issues and believe in good health care and hospital policy. Elevating those candidates into elected office is a prerequisite for realizing the legislation that hospitals need.




The Texas Hospital Association's 2023 Advocacy Team



Health Care and the 88th Texas Legislature: Outcomes for Texas Hospitals

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