

# Health Care and the 87th Texas Legislature:

## Outcomes for Texas Hospitals

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Texas  
Hospital  
Association





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## A Message From THA's President/CEO



The view from the Texas Hospital Association's offices overlooking the Texas Capitol is an inspiring one. In the early days of the 2021 legislative session, however, that view was unlike years prior. Instead of front lawn barbecues and school children's field trips, there were COVID-19 test tents, hand sanitizing stations and fewer visitors than ever. Following a year of uncertainty, stress and burnout in 2020, many of us were hopeful that the 2021 legislative session would be relatively quiet, focus on the important issues and short on political posturing. While the session may have begun that way, tranquility and order rarely last to *sine die*. On top of the many consequences of the COVID-19 pandemic, the state also had to grapple with a less than stellar fiscal outlook and the fallout from Winter Storm Uri and the state's failed power grid. It was among the most difficult sessions many of us have experienced in quite some time. Still, for a session bogged down by some of the state's most significant challenges, I am proud that our team secured a number of impressive policy and funding wins for Texas hospitals.

When the session kicked off, the state had fewer funds available to spend than originally projected. State agencies were asked to cut their budgets and rumors of other across-the-board cuts were rampant. But the state economy quickly turned around over the course of a few months, due in large part to hospitals' statewide COVID-19 vaccination effort. With a new positive balance and coffers filled with federal relief funds, programs like Texas Medicaid, which always is under threat, sustained no cuts this budget cycle. The budget writers appropriated \$361 million to maintain state funding for safety net, trauma and rural hospitals' Medicaid rate enhancements. They even provided new funding to further boost rural hospitals' inpatient Medicaid rates. The budget also includes a number of hospitals' other key priorities, including:

- A path to allow reimbursement for care provided in "institutions for mental disease."
- New funding to extend health care coverage for postpartum moms.
- Funding to support a robust health care workforce.
- Appropriations to ensure access to emergency inpatient behavioral health care.

Outside of hospitals' funding successes, THA also secured liability protections for health care providers acting in good faith during the COVID-19 pandemic and successfully strengthened requirements to ensure dialysis access during emergencies. THA again defended against harmful revisions to the Texas Advance Directives Act that would hinder patients' autonomy and providers' expert medical judgement. Another hard-fought win was preserving hospitals' ability to require staff to be vaccinated against various vaccine-preventable diseases, including COVID-19.

THA's advocacy team deployed a comprehensive grassroots and digital advocacy campaign to encourage health care coverage expansion. This team's boots-on-the-ground efforts at the Capitol and social media contributed to the most extensive coverage expansion discussion the state has seen in nearly a decade. THA was instrumental in garnering the support and interest of many Republican lawmakers who will be critical to future coverage expansion conversations. THA also worked with lawmakers to extend coverage for postpartum moms from 60 days to six months following delivery—a longtime priority for Texas hospitals.

These efforts are just the tip of the iceberg for THA's advocacy team. Following a difficult year for everyone, this group seamlessly balanced hospitals' COVID-19 response needs and representation at the state Capitol. They prioritized COVID-19 vaccination early on so they could be front and center (and safe) while advocating for Texas hospitals over the 140-day session. We supported the state's 10-year Medicaid 1115 Waiver extension and again are working with state and federal partners to address the waiver extension rescission. And we will not stop there.

The COVID-19 pandemic shined a light on the noble work your facilities do each day. With that recognition also came scrutiny over regulatory, funding and policy issues impacting Texas hospitals. While this past Memorial Day marked the end of the 2021 legislative session, we continue to press on. THA's advocacy team is working closely with state agency leaders on rulemaking needed to implement the new laws. And lawmakers are sure to return to Austin for another special session or two. THA's advocacy team will hold the line to defend hospitals' successes this session and ensure no "bad" bills become law.

Our team continuously draws inspiration from the work you all do each day. We are honored to work alongside you in our shared mission to make Texas health care the best it can be for all residents and to be your voice in Austin and Washington.

Thank you for all that you do.





Shot from inside of Texas Hospital Association's Boardroom  
*Courtesy of THA's Photographer Natalie Guillot*



# KEY LEGISLATIVE PRIORITIES

## Protecting Funding for Health Care Programs and Services in the 2022-2023 State Budget

The state's financial outlook heading into the 2021 legislative session was grim. In July 2020, Texas Comptroller of Public Accounts Glenn Hegar (R) forecasted that the current two-year budget cycle would end with a \$4.6 billion shortfall, instead of the \$2.9 billion surplus originally projected. State leadership asked most state agencies to reduce their current operating budgets and budget requests for 2022-2023 by 5%. But with the Pfizer and Moderna COVID-19 vaccines approved for emergency use, Texas hospitals embarked upon an unprecedented statewide vaccination effort, which the comptroller in April credited to a multi-billion-dollar improvement in the state's economic condition. In addition, federal relief dollars flowed to residents and businesses, and the state received a 6.2 percentage point increase in the federal Medicaid matching rate, bringing more federal dollars to Texas. With a sunnier outlook for the state budget, the Texas Hospital Association secured a number of funding wins for Texas hospitals.

This legislative session, THA's budget priorities focused on:

- Maintaining Medicaid funding for hospital payments that better cover the cost of providing health care services.
- Eliminating the bar on Medicaid spending for inpatient services provided to Medicaid eligible individuals receiving care in "institutions for mental disease."
- Continuing funding for health care programs and services to ensure timely access to care.
- Ongoing investment to support a robust health care workforce.

The next biennial budget provides more than \$361 million in state funds for trauma, safety net and rural hospitals' Medicaid rate enhancements. This amount includes funds for existing rate enhancements for trauma, safety net and rural hospitals as well as a new \$48 million general revenue appropriation to further increase rural hospitals' Medicaid rates.

THA secured a budget rider that directs the state health agency to pursue a federal waiver to eliminate the bar on Medicaid spending for individuals receiving inpatient care in institutions for mental disease, also known as the "IMD exclusion." The agency can only pursue the waiver if it nets savings to the state. It is important to note, however, that budget writers acknowledged the potential for the waiver to offset costs by adding it as an option the Texas Health and Human Services Commission may use to meet its required cost containment targets.

Thanks to an influx of federal funds from the 6.2 percentage point increase in federal medical assistance percentage authorized in the Families First Coronavirus Response Act, the state avoided needing to fund a multi-billion-dollar Medicaid shortfall in the current biennium. The approved state budget for 2022-2023 makes no cuts to Medicaid eligibility or payments.

Additionally, the budget invests \$19 million in general revenue for the Professional Nursing Shortage Reduction Program. The budget appropriates a total of \$199 million in general revenue to expand graduate medical education, an increase of \$42 million over the previous biennium to grow the number of first-year physician residency positions.

While federal COVID-19 support and tenacious work by hospitals played a key role vaccinating the community and improving the Texas economy, state agency reductions called for at the outset were not restored, which left certain programs vulnerable to reductions.

Clearly, this has been an era marked with significant historic challenges. But while the state faced mounting economic challenges and uncertainties, Texas hospitals secured many victories in the state budget. At the end of the day, the desire to protect patients and fund the significant role of hospitals was top of mind for lawmakers. (*Senate Bill 1*)







## Increasing the Number of Texans With Health Insurance

Following over a year of devastating loss and critical illness caused by the COVID-19 pandemic, the outlook for addressing some of the state's most pressing health care issues was optimistic. Texas hospitals and a broad range of providers and patient advocates strongly supported efforts to increase the number of Texans with comprehensive health care coverage. THA launched a targeted grassroots and digital advocacy campaign to educate state lawmakers and the public on the need for coverage expansion. To maximize reach and influence, THA also coordinated with other provider groups and patient advocates to tailor key messages that appeal to the unique constituencies of Texas residents and lawmakers across the state. Our advocacy was individualized for moderate to conservative residents and lawmakers as well as their democratic and progressive counterparts. Our efforts yielded meaningful progress early in the session.

While many bills were filed to address the state's coverage gap, strong bipartisan support solidified legislation by Rep. Julie Johnson (D-Carrollton) and Sen. Nathan Johnson (D-Dallas) as the clear frontrunner. In addition to the 67 Democrat co-authors, about 10 Republicans signed on to the bill. The legislation would have drawn down billions in federal funding to cover the lion's share of the cost to expand health care coverage for 1.2 million more low-wage working Texans. Despite the strong support, state leadership's resistance to expand coverage meant the legislation was never considered in committee. (*House Bill 3871/Senate Bill 117*)

In lieu of comprehensive health care coverage, newly elected Speaker of the Texas House of Representatives Dade Phelan (R-Beaumont) unveiled a plan to address a number of health care issues in Texas. Legislation to improve coverage for postpartum moms, children and prescription drugs were among the speaker's priorities. At the same time, the federal government announced it had rescinded Texas' 10-year Medicaid 1115 Waiver extension due to concerns that the waiver would disincentivize the state to expand Medicaid. Compounded by state leadership's preexisting hesitation, the federal government's action against the waiver hardened the resolve of conservative lawmakers in both chambers—a vote for coverage expansion would be a vote for a blue and an untrustworthy administration. The targeted coverage bills for postpartum moms, kids and prescription drugs had moved quickly through the House but languished in the Senate.

When the House considered the biennial budget, Rep. Garnet Coleman (D-Houston) proposed an amendment to direct the state health agency to explore with the federal government options to reduce the state's uninsured population. The amendment failed on a near party line vote. Similarly, Sen. Johnson tried and failed to add his coverage expansion bill to a Medicaid managed care bill in the Senate.

As the Senate began to move the speaker's coverage priorities, they were leveraged when the House failed to pass Lt. Governor Dan Patrick's (R) priorities related to transgender kids' participation in school sports, taxpayer-funded lobbying and censorship by social media companies. The Senate never considered for a vote Rep. Phillip Cortez's (D-San Antonio) bill to eliminate burdensome eligibility checks to increase continuous Medicaid coverage for a child for a year, up from six months. On the very last day of bill considerations, however, the language was amended on to Rep. James Frank's (R-Wichita Falls) Medicaid bill that passed to also provide dental benefits for Medicaid beneficiaries with disabilities. Instead of four eligibility checks a year, eligible children in the Medicaid program only will have one every six months. Legislation by Rep. Toni Rose (D-Dallas) that would have increased Medicaid eligibility for postpartum moms from 60 days to 12 months was subsequently reduced to six months. Still, Texas hospitals consider the bill's passage at the 11<sup>th</sup> hour a success, as health care coverage is a key predictor of reduced maternal mortality and morbidity. Both chambers also were able to agree to create a drug savings program that will provide about 3 million uninsured Texans access to discounted life-saving drugs.

THA will continue to educate lawmakers and the public about the need to reduce the state's coverage gap and is coordinating with the Texas Congressional delegation and the state to address the waiver extension. (*House Bill 133; House Bill 290; House Bill 2658; House Bill 18*)

## Ensuring Robust Insurance Networks and Strengthening Access to and Payment for Emergency Room Care

Whether by limiting reimbursement to emergency care, creating networks within networks or failing to honor existing networks, harmful health plan policies are on the

rise. THA worked with state lawmakers to address a number of these issues to ensure hospitals' ability to provide life-saving care and protect patients' access to it.

To preempt "white bagging" issues that have been identified across the nation, THA asked Rep. Eddie Lucio III (D-Brownsville) to file a bill to stop health plans from carving hospital pharmacies out of their network and requiring clinician-administered drugs to be purchased from non-hospital specialty pharmacies. While the bill ultimately died in the Senate, the governor signed a bill by Rep. Tom Oliverson (R-Cypress) to stop pharmacy benefit managers and health plans from prohibiting pharmacies (including hospital pharmacies) from dispensing drugs that they are licensed to dispense. This legislation will help ensure hospital pharmacies can dispense clinician-administered drugs. (*House Bill 1586; House Bill 1763*)

Rep. Oliverson and Sen. John Whitmire (D-Houston) filed legislation for THA that would have strengthened the prudent layperson standard to ensure reimbursement for emergency services provided to patients. The bill worked to ensure that reimbursement is based on a patient's presenting symptoms, rather than their final diagnosis. Although the bill died on a major House deadline in the final days of session, THA had the support of the chair of the House Insurance Committee, which will help interim discussions. (*House Bill 2241/Senate Bill 1037*)

Sen. Charles Schwertner (R-Georgetown) and Rep. Lucio also filed a bill at THA's request to protect consumers by ensuring that health plans honor the provider networks they advertised to their health plan enrollees for the duration of the plan year. The health plans fought hard against this bill and killed it. (*Senate Bill 486/House Bill 1436*)

## Streamlining Access to and Payment for Inpatient Behavioral Health Services

For years, THA has worked closely with its Behavioral Health Council and stakeholders to improve the process, and ultimately, the care provided to individuals experiencing psychiatric crisis. This session, THA worked with Rep. Julie



Johnson (D-Carrollton) and Sen. Joan Huffman (R-Houston) to pass a bill to streamline access to emergency inpatient mental health treatment for individuals experiencing a psychiatric crisis. Under current law, the party requesting an order of protective custody must file with the court in the county where the patient is either "from" or "found." Some counties interpret "found" to only apply to where a patient was apprehended under an emergency detention. The legislation would have clarified that the OPC application may be filed in the county in which the assessing hospital or emergency room is located, avoiding unnecessary delays in obtaining the OPC. After passing the House, the bill was a casualty of 11<sup>th</sup> hour political wrangling in the Senate that resulted in the demise of hundreds of noncontroversial bills set on the final Local and Uncontested Calendar. (*House Bill 2709/Senate Bill 1052*)

In addition, Rep. Steve Allison (R-San Antonio) and Sen. Juan "Chuy" Hinojosa (D-McAllen) filed a bill to hold patients and hospitals harmless for county court costs associated with patients' mental health hearings. The bill would have amended current law so that patients and hospitals no longer incur filing fees or other costs for mental health hearings and court proceedings that are required in order for the hospital to assess and/or provide emergency inpatient mental health treatment to certain individuals experiencing a mental health crisis. The bill did not pass, but productive discussions with the bill author and other stakeholders are intended to keep the focus on the issue in the interim and gather data on the financial impact of the current process on private facilities. (*House Bill 3125/Senate Bill 1398*)

## Other Priorities

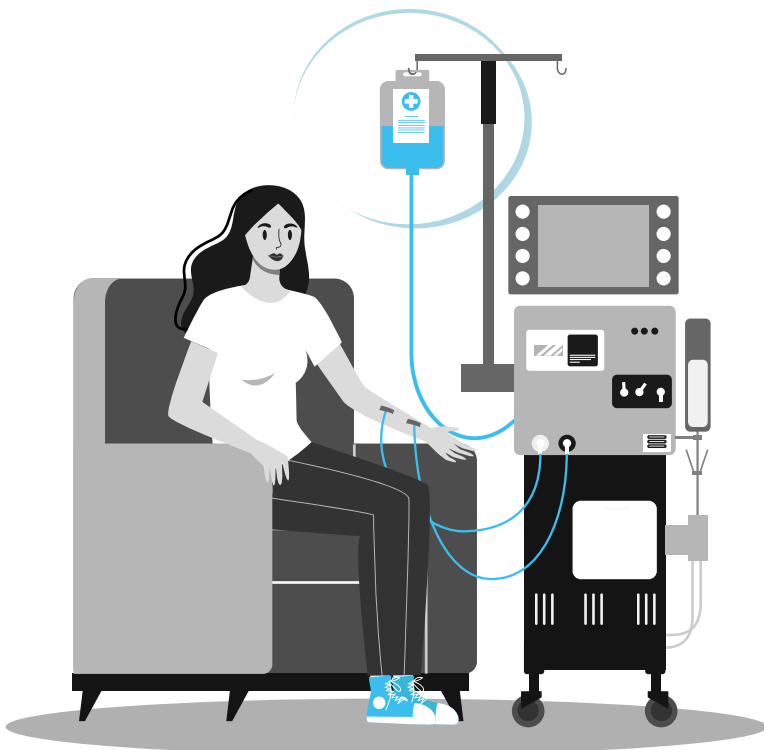
### Dialysis

In February, Winter Storm Uri brought access to dialysis during disasters directly to the foreground – just before the bill filing deadline. THA worked with member hospitals and legislators to draft and file legislation to help patients receive their routine dialysis regardless of adverse weather conditions. During emergencies, many end-stage renal disease facilities close their doors, leaving their patients with missed appointments and lack of access to needed dialysis care. When patients are unable to access their routine dialysis treatment, their conditions worsen, and they are generally forced to seek hospital care. A top priority of THA, the issue was addressed by Sen. Borris Miles (D-Houston) and Sen. Joan Huffman (R-Houston), with a companion by Rep. Tom Oliverson (R-Houston). The legislation, which fairly quickly passed through the Senate and House, strengthens the requirements for end-stage renal disease facilities to help ensure patients seamlessly get the care they need during emergencies. Among other requirements, it calls for facilities to strengthen their emergency plans and to execute contracts with alternate dialysis facilities to provide backup treatments in emergencies. It also requires end-stage renal disease facilities to address ongoing power and water needs by either maintaining generators and water reserves to supply the facility with power and water for at least 24 hours

or executing contracts with outside vendors to supply power and water on demand. Finally, the bill prioritizes power and water restoration to end-stage renal disease facilities and reduces administrative hurdles to transport patients directly to end-stage renal disease facilities during disasters. The bill passed. (*Senate Bill 1876*)

### Investigation

For at least three prior legislative sessions, bills have been filed seeking to make hospital investigations records, inspection reports and other documents public. THA has opposed prior efforts as overly broad. This interim, THA worked with Rep. Stephanie Klick (R-Fort Worth) to craft agreed-upon legislation to make final investigation reports, outcomes and the number of times a hospital has been investigated by the state open to the public. Rep. Klick was ultimately named chair of the House Committee on Public Health. THA supported compromise legislation filed by Rep. Klick, increasing transparency around hospital investigations in a way that is moderate, responsible and would not create unreasonable litigation risk for hospitals. Additionally, the legislation would have ensured a hospital's ability to release health records to a patient, parent, guardian or personal representative (if the patient is deceased), regardless of whether an ongoing investigation is taking place. This would help hold hospitals and the state accountable and improve patient access to investigation information. This ultimately would help people make informed decisions about their medical care. The bill passed the House but died on the final Local and Uncontested Calendar in the Senate. (*House Bill 2052*)







# OTHER KEY ISSUES IMPACTING TEXAS HOSPITALS

In addition to the five priorities discussed in the previous section, THA tracked more than 1,000 bills throughout the 2021 legislative session. A discussion of some of the most significant follows. For additional bill information, contact the staff listed at the end of each section.

## Behavioral Health

If there ever was a time to focus on behavioral health and overall wellbeing, it was this past year, as the world coped with a pandemic that sickened millions of people. Pandemic-induced mental anguish, stress and personal isolation significantly impacted both adults and children. In addition, recent high-profile shootings and police violence created heightened racial trauma and tensions over the past year. Rightfully so, behavioral health is a centerpiece of THA's focus and a priority for hospitals. Approximately 20% of Americans will experience a behavioral health condition each year, and more than two-thirds receive no treatment for their condition. Behavioral health providers face challenges on many fronts: reimbursement, workforce, technology and funding.

One high profile piece of legislation, filed by Rep. Senfronia Thompson (D-Houston), sought to create the Brain Institute of Texas — a formal infrastructure to support mental health, substance use and traumatic brain injury research. Presented at a press conference as part of a health package developed by a bipartisan coalition of House members, Rep. Thompson's bill recognized the impact COVID-19 has had on brain health and underscored the need for more understanding of the brain. The institute would have provided grants to expedite brain research and scientific innovation in the field of brain-related diseases, syndromes, disorders, dysfunctions, injuries, developmental issues, neurological health issues, mental and behavioral health issues, and substance use disorders and other addictions. The bill passed the House but died in the Senate. (*House Bill 15*)

THA also supported a bill by Rep. Four Price (R-Amarillo) that builds on hospitals' work with the lawmaker in 2017 to establish the statewide mental health parity law. This bill strengthens parity in the areas of public education and training and calls for the development of a parity portal to allow enrollees of a health plan to electronically submit related complaints. The bill passed. (*House Bill 2595*)

Rep. Lacey Hull (R-Houston) introduced legislation to help prevent patients who are taking antipsychotics from having to unnecessarily switch drugs due to decisions made by their insurance plans in Medicaid managed care. THA and a broad coalition of stakeholders supported this bill, as it would bolster patients' ability to remain stable and consistent with their medications, thus reducing readmissions. The bill passed. Separately, Sen. José Menéndez (D-San Antonio) championed a similar bill that would have required step therapy protocols for the coverage of prescription drugs for serious mental illnesses, however it did not pass. (*House Bill 2822; Senate Bill 2051*)

THA along with its partners strongly supported a piece of legislation by Sen. Menéndez that calls for a deep dive into the behavioral health technology landscape in terms of readiness, interoperability and digital divides that exist between the groups that serve this population. The bill calls for a survey of the behavioral health technology landscape. Approximately 10 years ago, the federal government created an electronic medical record incentive program that failed to include behavioral health, hampering the field's ability to operationalize this technology with cost being a major barrier. Without an electronic medical records system, behavioral health providers are unable to share data in health information exchanges, and that interoperability is a key component of quality metrics and payment programs. Through the survey, the state will be able to gain a better picture of behavioral health providers' technology needs, which will help pave the way toward lessening the digital divide between physical and behavioral health fields. Christine Bryan, vice president of information technology and public policy for Clarity Child Guidance Center in San Antonio, testified on behalf of THA and her own organization. The bill passed. (*Senate Bill 640*)

In September 2020, a 911 response to a Harris County boarding home revealed that some 40 people were living together in deplorable conditions in a three-bedroom group home. An investigation concluded that several of the residents had been discharged from local hospitals. In response, Sen. Borris Miles (D-Houston) introduced several pieces of legislation, including a bill that would have required hospitals to discharge to appropriately licensed facilities. THA agrees that the quality of group homes should be raised and that patients should be discharged to the safest location possible. However, if a patient does not want to go to a licensed home or cannot afford the expense, hospitals do not have a way to require it. Additionally, there is not a centralized registry of licensed or permitted homes in Texas. This policy could have resulted in patients being kept in a hospital longer than needed, further stretching bed supply for other patients. THA testified on the bill and worked with Sen. Miles to ensure that hospitals would not be held liable if the patient refuses to go to a licensed facility or if there is no licensed facility available. The bill passed the Senate with those adjustments but died in the House. (*Senate Bill 505*)

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## COVID-19 Pandemic and Winter Storm Uri

When the first case of COVID-19 was confirmed in Texas last year, it triggered the beginning of a year that would push public health and its critical importance into the limelight. A pandemic, coupled with a severe winter storm earlier this year, kept the state — and hospitals — in an urgent and ongoing state of emergency response for months. Public health, emergency response and frontline care had never been more integrated and important to the community at large. As the pandemic continued and the legislative session approached, THA worked behind the scenes to draft and steer legislation that would assist hospitals.

Prompted by the winter storm emergency, Sen. Charles Schwertner (R-Georgetown) filed a substantial bill aimed at strengthening the state's prevention and preparedness efforts. It focuses on consumer protections and strengthening regulatory oversight of electricity operations during a disaster. It codifies specific preparedness steps so water, electric and other industries are better prepared. The bill also calls for

a statewide alert system. The hospital industry was not specifically referenced in this legislation, however nearly every industry that touches hospitals were part of the bill. The legislation passed. (*Senate Bill 3*)

A significant win in the area of liability protection involved a bill passed by Sen. Kelly Hancock (R-North Richland Hills), which provides broad liability protection for health care providers and other businesses acting in good faith during the COVID-19 pandemic. THA has been engaged on this issue for more than a year at both the state and federal levels. For SB 6, THA helped draft the medical provisions and strongly supported its passage along with a coalition of stakeholders. Hospitals have been on the frontlines battling the devastating effects of COVID-19, caring for patients during surges and with limited capacity. They put themselves at risk while treating those in need. SB 6 provides targeted liability protection for health care workers and facilities that provide appropriate medical care to known or suspected COVID-19 patients during the declared public health emergency. The bill also applies to the delivery of other health care services that are subsequently impacted by the pandemic. It does not protect bad actors who are reckless, or who engage in intentional, willful or wanton misconduct. The bill originally sought to also expand the Good Samaritan law, though that part was ultimately deleted because it was beyond the scope of COVID-19. THA expects to continue this work next session with a possible expansion of protection for care provided in response to any emergency or disaster situation. (*Senate Bill 6*)

A bill filed by Rep. Dustin Burrows (R-Lubbock) was the legislature's very clear signal that it wanted to be consulted and more actively involved in future pandemics. The bill would have limited the power of the governor and local government and would have required the governor to call a special session for certain levels of decision-making, such as whether to prohibit non-essential medical procedures during a declared state of disaster and whether to extend a disaster declaration. Despite being a priority bill, in the end lawmakers could not reach a compromise, and it did not pass. (*House Bill 3*)

Sen. Charles Perry (R-Lubbock) filed legislation to ensure hospitals could continue providing non-essential medical procedures during a declared state of disaster. Aware of the significant financial burden that the ban on elective procedures caused for hospitals early in the pandemic, Sen. Perry used the legislative process to prevent future issues.





The bill restricts the Texas Medical Board from adopting a regulation to limit or prohibit a non-essential procedure. It does allow TMB to adopt a regulation that temporarily limits non-essential procedures, if they are reasonably necessary to conserve resources. The temporary limitation is capped at 15 days. The legislation includes criminal and civil liability protection if an individual is acting in good faith. Though Sen. Perry's standalone bill did not move, this language passed as an addition to another bill by Sen. Lois Kolkhorst (R-Breham). (*Senate Bill 1392; Senate Bill 968*)

Also as a result of the pandemic, a bill was moved forward by Rep. Will Metcalf (R-Conroe) regarding visitation policies in hospitals during periods of disaster related to infectious disease. THA worked closely with the legislator's office to work through numerous issues, including keeping patients and staff safe while recognizing the healing nature of in-person contact during times of need. The bill will require at least one visitor be allowed with the patient, but recognizes potential federal restrictions and includes flexibility to require health screenings and other protective measures. It also includes a provision to ensure an attending physician can prohibit visitation of a patient for five-day increments, depending on the issues faced in the facility. The bill passed. (*House Bill 2211*)

Separate legislation related to in-person visitation by religious counselors was filed by Sen. Drew Springer (R-Muenster) and Rep. James White (R-Hillster). Focused on health care facility visits during a public health emergency, the legislation asks the Texas Health and Human Services Commission to develop permanent rules for clergy visits that account for disease mitigation and federal law. It also includes special considerations for end-of-life care. The bill passed. (*Senate Bill 572*)

The plight of frontline workers, particularly nurses, was never more apparent than over the course of the pandemic. A bill filed by Rep. Joe Moody (D-El Paso) on behalf of several nursing organizations prompted a spirited level of debate. The bill said that in workers compensation cases, it must be presumed that any nurse who contracted COVID-19 must have been exposed at the workplace. The bill was particularly problematic in that it would have been retroactive to the beginning of the pandemic and included a \$500,000 death benefit provision. However, a March article from the *Journal of the American Medical Association* indicated that health care personnel working in hospitals did not have higher rates of contracting COVID-19 and that their risk of exposure was higher in the community, as hospitals have rigorous infection control protocols. Citing the article and other information, THA opposed the bill as it made its way through the House, and it ultimately died in the Senate Business & Commerce Committee. (*House Bill 396/Senate Bill 433/Senate Bill 439*)

Finally, Sen. Schwertner filed a bill in response to various shortfalls that became clear during the state's response to COVID-19, particularly related to shortages of personal protective equipment and inclusion of an epidemiologist on the state's Task Force on Infectious Disease Preparedness and Response. The bill will require certain real-time facility data to be reported to each of the state's Regional Advisory Councils in an emergency. THA advocated for a more centralized way of reporting and will continue to pursue ways to streamline any data submission processes for hospitals. Language pertaining to a PPE stockpile was deleted by the House. The bill passed. (*Senate Bill 984*)







## End-of-Life Care

Perhaps some of the most sensitive and politically contentious topics faced by hospitals involve end-of-life care, and once again this became a focus of discussion this legislative session. The ongoing case involving toddler Tinslee Lewis, who has been hospitalized at Cook Children's Medical Center since her birth in 2019, helped keep the topic fully in the spotlight and on the radar of advocates on all sides of the issue. Specifically, several bills sought to revise Texas' current law on advance directives, transfer of patients receiving life-sustaining interventions, do-not-resuscitate orders and other practices related to the end of life. THA stayed heavily in the mix and, along with other stakeholders, was successfully able to stop several bills that would have affected provider rights of conscience and patient autonomy.

Chiefly, Sen. Bryan Hughes (R-Mineola) and Rep. Tan Parker (R-Flower Mound) filed legislation that would have violated a physician's foundational oath of "do no harm" by potentially forcing doctors to provide excessive and medically inappropriate interventions, absent any therapeutic benefit to the patient. The legislation sought to extend the current dispute resolution process for transferring patients under Texas law from 10 days to 90 days. THA advocated strongly against this, calling for true reform of the Texas Advance Directives Act that safeguards both the rights of patients and the conscience rights of health care providers. THA put extensive advocacy power against the bill. The legislation took many twists and turns over the course of session, and the bill was stopped from being heard on the Senate floor and in House Calendars and ultimately died. During the interim, THA will continue to strategize on this issue and work to ensure a bill of this kind is not taken up during the special session. (*Senate Bill 917/House Bill 2609*)

THA supported a bill filed by Rep. James Frank (R-Wichita Falls) that corrected an issue from 2017 that prevents a physician from honoring a patient's do-not-resuscitate wishes if those wishes are communicated separately to the physician. The bill would have bolstered patients' rights to direct their own care, however the bill was left pending in committee. (*House Bill 2943*)

Another related package of legislation that yielded important discussion was filed by Sen. Eddie Lucio Jr. (D-Brownsville) and Rep. Garnet Coleman (D-Houston). THA testified in support of this effort, which in part would have required a hospital's ethics committee to appoint a patient liaison to keep family members informed about ethics decisions, advance directives and end-of-life care options. The bill was left pending in committee. (*Senate Bill 1944/House Bill 3099*)

Rep. John Smithee (R-Amarillo) brought forward legislation to address the lack of statewide end-of-life standards for people under guardianships that may leave people with disabilities vulnerable to decision-making that is not in their best interest. The legislation sought to require private professional guardians to attempt to contact a ward's closest living next of kin before making critical care and end-of-life decisions. THA testified on the bill, expressing concerns about language relating to timing, definitions and medical judgement. Though a major rewrite occurred, the bill did not pass. (*House Bill 3063*)

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## Health Care Pricing and Disclosure

Following a national trend toward increased price transparency in health care, many state lawmakers took the opportunity to campaign on this issue. A number of bills were filed to increase price transparency for all provider types. THA worked with state lawmakers to ease burdensome requirements for hospitals. Sen. Lois Kolkhorst (R-Brenham) and Rep. Tom Oliverson (R-Cypress) filed a bill to codify in state law the recent federal rule requiring hospitals to publicly post their negotiated rates. As filed, the bill would have required facilities to disclose the rates of independent contractor physicians. Later iterations of the



legislation would have required the Texas Health and Human Services Commission to select the “shoppable services” for which hospitals must post prices. It also would have increased penalties for noncompliance for all facilities. THA testified in both the Senate and the House on this bill, spent significant time negotiating with the bill authors and drafted several amendments. Ultimately, THA successfully aligned the bill with the federal rule (including the provision on independent contractor physicians), except for three issues. First, the bill requires HHSC to develop and hospitals to use a template mandated by the agency for the full list of charges that hospitals must post. Second, the bill requires hospitals to submit an updated list of the 300 shoppable services to HHSC annually. Third, the penalties for noncompliance are increased based on hospital revenue. (*Senate Bill 1137*)

Sen. Kolkhorst and Rep. Oliverson passed another bill requiring health care institutions, including hospitals, to monthly report to the HHSC all federal funds received between Jan. 31, 2020 and Aug. 31, 2021 for assisting in the public health emergency. HHSC is required to use the reported data to compile a quarterly written report. The bill exempts federal Paycheck Protection Program loans and any funds repaid to the federal government. An “appropriate licensing authority” may take disciplinary action against a health care institution that violates the reporting requirement. The bill expires Sept. 1, 2023. (*Senate Bill 809*)

Rep. Dustin Burrows (R-Lubbock) passed a bill that codifies the federal price transparency rules related to health plan pricing disclosure and creates a statewide all-payor claims database. Rep. Burrows’ bill originally was limited to a state law codification of a recent federal rule requiring health plans to publicly disclose their negotiated rates. However, it was amended to include language from legislation by Rep. Armando Walle (D-Houston) and Sen. Kolkhorst to create an all-payor claims database managed by the Center for Healthcare Data at The University of Texas Health Science Center at Houston. The database is intended to help increase public transparency of health care data and improve quality of health care in Texas. THA was neutral on this legislation, which is on its way to the governor. (*House Bill 2090; House Bill 1907/Senate Bill 1135*)

Sen. Bryan Hughes (R-Mineola) and House sponsor Rep. James Frank (R-Wichita Falls) offered a bill that would have required physicians and hospitals to send an itemized statement with every request for payment sent to a patient. Compliance with this bill would have generated a significant expense for facilities. A Houston-area hospital system estimated compliance to cost \$3 million - \$5 million a year. Itemized

bills are not useful information for patients because most charges are paid in a bundle. Hospitals are required by law to provide itemized statements upon request but doing so with every bill would be unduly burdensome and uninformative. THA testified on this bill and offered several amendments in the Senate, which were not accepted by the author. THA was forced to firmly oppose the bill. The bill passed the Senate but died in the House Committee on Public Health. (*Senate Bill 2122*)

Rep. Frank also filed a bill that would have prohibited anti-competitive practices by health plans that limit the rates for which a hospital can contract with competing plans. This would have prevented plans from including a “most favored nation” clause in their insurance policies, which are provisions that prevent providers from undercutting negotiated rates with a certain payor. However, the bill also would have capped the facility “cash price” at the lowest negotiated rate, which would have created arbitrary price setting limitations. THA has long opposed government rate setting in the private market and expressed strong opposition of this bill, which ultimately died in the House. (*House Bill 4051*)

Rep. Dennis Paul (R-Houston) filed a bill that would have required a fiscal impact statement for each House or Senate bill or joint resolution that requires a health plan to provide new health benefits, increase payments to health care providers or implement new contractual or administrative requirements. THA opposed the bill because it disregarded the cost savings ultimately passed on to Texans through more comprehensive health care coverage, especially the benefits of preventative care. These metrics are difficult to measure in the short term. Moreover, the legislation only focused on a single segment of the health care system—health benefit plan issuers. The bill died in the House. (*House Bill 2600*)

Rep. Armando “Mando” Martinez (D-Weslaco) filed a bill that would have set limitations on providers’ “extraordinary debt collection actions.” This would have restricted collection actions and credit reporting for medical debt by hospitals, physicians and other providers. THA worked with the bill author to attempt to improve the legislation; however, the bill was not voted out of the House Committee on Business & Industry. (*House Bill 4045*)

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## Hospital Operations

### *Hospital Liens*

Following successful negotiations with Rep. Jeff Leach (R-Plano) on changes to the Texas hospital lien law in the 2019 legislative session, Rep. Leach this session passed a bill that undercuts those agreed-to edits. This session's bill amends existing law to allow attorneys' fees and expenses to be deducted from certain amounts an injured patient receives from an at-fault party to recoup the costs of health care provided. THA worked with Rep. Leach last session to ensure hospitals receive fair reimbursement after providing care to an injured patient, no matter where in the hospital the care is provided. A hospital lien is limited to the lesser of 50% of amounts recovered by the injured individual or the amount of the hospital's charges for care provided to the injured individual during the first 100 days of hospitalization. Rep. Leach's bill this session will use some of the hospital reimbursement to cover the patients' attorneys' fees and expenses. THA opposed the bill but was able to improve it in the Senate. (*House Bill 2064*)

### *Taxpayer-Funded Lobbying*

Another holdover issue from last session was the prohibition of taxpayer-funded entities, such as public and county hospitals, from lobbying or being part of organizations that lobby. Sen. Paul Bettencourt (R-Houston) filed a priority bill for Lt. Gov. Dan Patrick (R) that would have significantly impacted public hospitals' ability to educate lawmakers on the key issues that drive health care delivery in Texas. As with the 2019 legislative session, the bill passed in the Senate but ultimately failed in the final days of session in the House. Lt. Gov. Patrick has asked and Gov. Greg Abbott (R) has indicated that the issue will return this summer in the special session related to the failed voting reform legislation. (*Senate Bill 10*)

### *Forensic Material Related to Sexual Assault*

Rep. Donna Howard (D-Austin) and Rep. Victoria Neave (D-Dallas) passed legislation to enact recommendations from the state's Sexual Assault Survivors' Task Force. The portions related to hospitals would improve sexual assault survivors' access to sexual assault forensic exam-ready facilities and include children's advocacy centers in the provider list, clarify the reimbursement process for forensic medical exams and update requirements around electronic tracking of evidence. Sen. Jane Nelson (R-Flower Mound) and Sen. Nathan Johnson (D-Dallas) added a THA amendment to Rep. Howard's bill to clarify ambiguous language currently in statute that required hospitals without emergency rooms to provide forensic medical exams. (*House Bill 2706*; *House Bill 2462*)

### *Medical Billing Tax Exemption*

Rep. Tom Oliverson (R-Cypress) passed a bill to clarify that medical billing services are not taxable insurance services. This bill addresses a recent interpretation by the Texas Comptroller of Public Accounts that medical billing services are taxable. In the interim, THA worked with a large coalition of stakeholders, including the Texas Medical Association, to delay the implementation of the new interpretation until after the legislative session. These stakeholders were successful in supporting legislation to undo the comptroller's policy. (*House Bill 1445*)

### *Increase in Examination Fee for Bond Certification*

Rep. Craig Goldman (R-Fort Worth) filed a bill that would have substantially increased the certification fee for bond issues for both public and private hospitals. The registration fee would have been changed to the lesser of one-tenth of 1% of the principal amount of the public security to which the record of proceedings relates or \$50,000 (previously the amount was \$9,500). The bill was scheduled for a vote by the full House. Faced with significant opposition from numerous industries, Rep. Celia Israel (D-Austin) opposed the bill and helped to successfully revert the bill backward in the legislative process. The bill died in committee and was never considered for a vote by the full House. (*House Bill 4471*)

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## Liability

In addition to the aforementioned liability protections for health care providers related to the pandemic and other future disasters, physician lawmakers Sen. Charles Schwertner (R-Georgetown) and Rep. Greg Bonnen (R-Friendswood) proposed a new law intended to clarify how to determine medical expenses in civil liability cases. THA worked closely with the bill authors to develop language related to reasonable and necessary hospital expense calculations intended to prevent time-consuming and expensive discovery in such civil cases. As the bill was nearing final passage, a Texas Supreme Court opinion was





issued that resulted in a determination by the authors that the bill was no longer necessary, and it ultimately failed to pass. (*Senate Bill 207/House Bill 1617*)

Rep. Julie Johnson (D-Dallas) also filed a bill to require health plans to reimburse hospitals and providers where another party might be responsible for such reimbursement, which is a concern in personal injury cases. In cases involving third-party payors, health insurance often will not immediately reimburse hospitals for services until the at-fault party's insurer makes payment. This bill would have required health insurance to reimburse for care provided under these circumstances. THA supported this policy, but the legislation ultimately was not voted out of committee. (*House Bill 621*)

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## Managed Care

THA supported a bill by Rep. Greg Bonnen (R-Friendswood) that is on its way to the governor to require preauthorization and utilization review for certain health benefit plans. The bill creates a one-year exemption from prior authorizations (a “gold star” process) for providers who have their prior authorization requests approved at least 90% of the time during the previous six months. It also requires health plan utilization review to be performed by a physician licensed in Texas with the same or similar specialty as the physician performing the service. Physicians and providers would be allowed to obtain review of adverse prior authorization decisions by an independent review organization. These provisions were the result of a series of stakeholder meetings THA participated in with the Texas Medical Association and the health plans in 2018. (*House Bill 3459*)

Rep. Cody Harris (R-Palestine) passed a bill to prohibit a health plan issuer or pharmacy benefit manager from requiring or inducing a patient to use an affiliated provider through reduced

cost sharing in order to obtain the maximum benefit from the health plan. THA's language to prohibit the practice of “white bagging” was added to the bill as a Senate amendment but was subsequently removed due to concerns about germaneness. (*House Bill 1919*)

Rep. Jacey Jetton (R-Richmond) filed a bill that would have expanded the amount of unregulated health care cost sharing organizations in Texas. Health care cost sharing organizations would be new products marketed to consumers that resemble health insurance but do not have the oversight and extensive consumer protections of traditional health insurance. THA opposed this bill, which did not make it out of the House Committee on Insurance. (*House Bill 1369*)

Rep. Gary Gates (R-Richmond) filed a bill that would have created a bundled pricing model in the Employees Retirement System of Texas. Hospitals' experience with bundled pricing in other programs has been negative because bundled pricing tends to drastically reduce reimbursement for services, especially when routine procedures require unexpected interventions by additional providers. THA opposed this bill, which died in the House. (*House Bill 571*)

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## Maternal Health

The health of mothers and babies is a priority for hospitals, from preventing maternal mortality and morbidity to screening newborns for potentially devastating genetic disorders. Significant hospital work happens in this space — through the TexasAIM program and other THA partnerships — and the Texas Legislature fully funded women’s health programs this session. However, maternal health was not a sweeping issue this session as it has been in the past. Texas hospitals have long worked with lawmakers and state health agencies to identify needed public policies to improve the health outcomes of Texas moms and babies. It’s critical that the state stays focused on this issue.

For the second session in a row, Rep. Shawn Thierry (D-Houston) filed legislation to create a workgroup to analyze the creation of a maternal care data registry. In recent years, concerns have been raised about the lack of accurate data about the number of Texas mothers who die after childbirth. Data is critical to understand how to prevent maternal deaths and improve maternal health care, particularly given the disparities that exist in this area and that many of the deaths are preventable. The bill never made it to the floor and ultimately died. (*House Bill 136*)

In an effort to specifically address placenta accreta spectrum disorder, Rep. Tom Oliverson (R-Cypress) filed a bill to create placenta accreta treatment Centers of Excellence. THA

expressed concern that a center focused on a singular maternal complication would undermine the work being done by the Texas Health and Human Services Commission, Texas hospitals and the state’s Perinatal Advisory Council through the maternal levels of care designation process. THA highlighted that 98% of Texas’ birthing hospitals voluntarily are participating in the TexasAIM program to reduce preventable maternal mortality and morbidity. THA worked closely with the bill author to secure a number of improvements to the bill. Instead of creating a separate center of excellence, the bill passed with THA’s negotiated language for facilities with a maternal level of care designation to implement specific placenta accreta education and training. (*House Bill 1164*)

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## Medicaid

Sen. Charles Perry (R-Lubbock) passed a bill to clarify that single-case agreements are allowable for children with special needs in the Texas Medicaid STAR Kids program and their specialist, regardless of whether the provider



is in network. THA supported the addition of a provision that requires that the Texas Health and Human Services Commission to provide medical assistance reimbursement for preventative dental services, including reimbursement for at least one preventative dental care visit per year for an adult recipient with a disability who is enrolled in STAR+PLUS Medicaid. (*Senate Bill 1648*)

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## Method of Finance

State lawmakers filed a number of bills to support hospitals' ability to finance the non-federal/state share of supplemental Medicaid payments through local provider participation funds. Rep. Garnet Coleman (D-Houston) and Sen. Borris Miles (D-Houston) passed a bill to extend the term of the Harris County LPPF for two years. Rep. Abel Herrero (D-Robstown) and Sen. Juan "Chuy" Hinojosa (D-McAllen) passed a bill to remove the December 2021 sunset date of the Nueces County LPPF. Rep. Coleman and Sen. Hinojosa also filed legislation that would have created a new statutory code construction with authority over each state LPPF to simplify the need to update LPPF statutes in the future. Those bills failed to pass. (*House Bill 1338; House Bill 1456; House Bill 3085/Senate Bill 1328*)

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## Public Health

### Vaccines

Understandably, vaccines have been a focal point of the general public as well as lawmakers, with several significant bills that made their way through the process this session. Most notably, at the 11<sup>th</sup> hour, major efforts were underway by Sen. Lois Kolkhorst (R-Brenham) to prohibit employers from requiring employees to be vaccinated against COVID-19. After much wrangling, additional language was brought forward by Rep. Stephanie Klick (R-Fort Worth). The language was better but not ideal in that it would allow hospitals to vaccinate employees but would require hospitals to allow a conscientious exemption for staff. By way of background,

hospitals have long been able to require vaccination of their staff. The law allows for medical and religious exemptions and says hospitals may allow an exemption based on reasons of conscience. Conscience exemptions are broad and not necessarily based on any moral, ethical or other personal beliefs. A required conscience exemption could expose patients to staff who opted out of vaccination against measles, mumps, rubella, hepatitis, flu, COVID-19 and other vaccine-preventable diseases. THA opposed this effort and, in the end, was successful in preserving the ability for hospitals to be able to require vaccination of staff. That said, the legislation signaled to the health care industry that there is a growing anti-vaccination sentiment in Texas and at the Capitol. THA will stay on top of these issues during the interim. (*Senate Bill 968, House Bill 4272*)

As referenced above, Rep. Klick's vaccination efforts included a bill that addresses the state immunization registry. THA supported the bill to improve the registry, which has been widely known to be burdensome for providers and patients. The bill would have standardized consent requirements, streamlined communication between the registry and hospital electronic medical records and established a secure online portal to make it easier to exclude an individual's immunization records from the registry. The bill ultimately did not pass. (*House Bill 4272*)

Prompted in part by the ongoing COVID-19 pandemic and efforts to vaccinate Texans statewide, efforts to track immunizations were once again front and center. Legislation introduced by Rep. Donna Howard (D-Austin) and Sen. Judith Zaffirini (D-Laredo) sought to streamline the collection of vaccination data by requiring patients to opt-out of sharing data, rather than the current opt-in system. THA wholly supported the bill, and THA board chair Marc Boom, M.D., FACHE, president and CEO of Houston Methodist, spoke for the bill during the lawmakers' press conference announcing the bill filing. Despite heightened attention on the issue, the legislation did not pass. (*Senate Bill 468/House Bill 325*)

Another related bill by Sen. Bob Hall (R-Edgewood) sought to prohibit discrimination based on vaccination status and enforce penalties for vaccine mandates. The bill would have prevented health care facilities and providers from withholding service to people based on vaccination status. THA testified against this legislation. This bill was left pending in committee and did not pass. (*Senate Bill 1669*)



### Health Equity

During the pandemic, health disparities were at the forefront of conversations about COVID-19 illnesses, deaths and vaccinations. It was clear that health disparities remain a persistent and challenging problem in Texas, and the pandemic only underscored their need to be addressed further. Rep. Garnet Coleman (D-Houston) put forward legislation that would have created a new Office for Health Equity at the Texas Health and Human Services Commission to research and report on existing health disparities across the state and work with local health departments to reduce them. The bill aimed to maximize the state's resources to address the racial and ethnic inequities, particularly with regard to health care and coverage and social determinants of health. The bill was part of the House's health care package and was supported by THA but unfortunately did not pass. (*House Bill 4139*)

### Handgun Possession

Hospitals are simply no place for guns, and THA is always on the lookout for any movement to lift the state's long-standing prohibition of guns in hospitals. This session, several bills were brought forward to adjust Texas laws related to carrying weapons in hospitals and health-related settings. With regard to constitutional carry, Rep. Matt Schaefer (R-Tyler) introduced legislation that would allow any person who was not barred from possessing a handgun, for example due to a felony conviction, to carry a handgun without first getting a license from the state. Early versions of the bill did not impact existing law related to places where handguns are prohibited even by licensed carriers. A late amendment changed the bill to require oral or written notice to be given personally to a person carrying a handgun in a prohibited place before the person would be considered to have committed a criminal offense. THA advocated for preserving existing law that only requires signage at building entrances. The bill passed with the THA changes, preserving the ability of hospitals to prohibit handguns through signage rather than personally confronting individuals who carry handguns on hospital property. (*House Bill 1927*)

Another bill filed by Rep. Ryan Guillen (D-Rio Grande City) sought to create an exception to the prohibition against carrying guns in hospitals. The route to do this was by creating an "at-risk" designation for people who are threatened and are being protected under certain types of family violence orders. These at-risk individuals would have their application for a license to carry a handgun be expedited, and the filed version would have allowed them to carry a handgun into a place

where it would otherwise be prohibited, including a hospital. THA testified against the part of the bill that would have allowed a person to carry a handgun into a hospital, and the bill was amended to remove that provision. The bill passed. Note, with the passage of House Bill 1927 referenced in the previous paragraph, the process contained in this bill is mostly unnecessary. (*House Bill 2675*)

With regard to allowing certain people to carry a handgun without a license, Rep. Tom Oliverson (R-Cypress) and Sen. Drew Springer (R-Muenster) introduced legislation that would have paved the way for people to carry a handgun into a place where it would be otherwise prohibited, including a hospital. THA testified against the part of the bill that would have allowed a person to carry a handgun into a hospital, and the bill was amended to remove that provision. The bill ultimately died in committee. (*House Bill 1094/Senate Bill 545*)

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## Rural Hospitals

Rep. Jay Dean (R-Longview) filed a bill that would have required a rural hospital to provide at its governing body's request training on the governing body's powers and duties. Although THA successfully amended the bill to ensure that the Texas Healthcare Trustees could continue to provide this training for rural hospitals, the bill ultimately was never voted out of committee. (*House Bill 3661*)

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## State Budget for 2022-2023

State lawmakers provided full funding for the state's Medicaid program in 2022-2023. In addition to hospitals' legacy Medicaid rate enhancements and new rate enhancements for rural hospitals, the state also made substantial investments in behavioral health, maternal health, infection control and the health care workforce.

The supplemental budget for 2020-2021 spends \$321 million out of the state's Economic Stabilization Fund, better known as the "Rainy Day Fund," to continue major investments for the construction and renovation of the state's inpatient psychiatric hospitals. The supplemental budget includes \$124 million to complete Austin State Hospital, \$152 million to complete San Antonio State Hospital and \$45 million in planning funds for a new state hospital in the Dallas-Fort Worth area—the only large metro area in Texas without a state hospital. In addition, the 2022-2023 budget provides \$86 million in general revenue to bring online new state hospital beds across the state and an additional \$30 million in general revenue to purchase psychiatric inpatient beds at community hospitals, split evenly between urban and rural areas.

The budget also increases state funding by \$32 million over the previous biennium for substance use disorder prevention,

intervention and treatment. Lawmakers, however, opted not to include an additional \$24 million in funding that would have reduced substance use treatment waitlists for pregnant and parenting women.

Women's health programs were fully funded at \$174 million general revenue (\$353 million all funds), an increase of \$10 million over current spending. These programs include Healthy Texas Women, the Family Planning Program and the Breast and Cervical Cancer Screening Program. The budget also appropriates \$48 million in general revenue (\$122 million all funds) for Medicaid client services to extend Medicaid coverage for women from 60 days to six months postpartum. This appropriation is contingent on enactment of the speaker's priority legislation that was leveraged by the Senate in the final days of session. (*Senate Bill 1; House Bill 2; House Bill 133*)



The state continued its emphasis on public health efforts to reduce maternal mortality and morbidity, repeating its \$7 million investment in statewide maternal safety initiatives, including the TexasAIM program, which THA partners with the state to administer. However, to preserve these programs in the face of the required 5% state agency budget cuts, the Texas Department of State Health Services swapped out general revenue funding for other available funds. This funding swap cut the MedCARES grant program for child abuse recognition, prevention and treatment for children's hospitals and academic medical centers. Efforts to restore MedCARES funding throughout the budget process were unsuccessful.

With public health and infectious disease response a major centerpiece of this year's legislature, the state's investments in treatments for infectious diseases only partially funded the state's needs. The Texas Health and Human Services Commission requested \$47 million in general revenue (\$116 million all funds) to purchase direct-acting antiviral treatments for Medicaid and state hospital patients with Hepatitis C viral infections. Budget writers funded this request at \$21 million in general revenue, less than 50% of the agency's request. DSHS requested \$103 million in general revenue to cover a shortfall in its HIV/STD program due to higher-than-expected costs of HIV medications; lawmakers covered the shortfall at \$35 million in general revenue, about one-third of the agency's request.

Each session, the legislature directs HHSC to achieve an across-the-board biennial savings of a certain amount. For the 2022-2023 biennium, HHSC's cost containment target is \$350 million in general revenue. HHSC is directed to achieve this savings target without adjusting the amount, scope or duration of services or otherwise negatively impacting access to care. Prior to making any changes, HHSC is required to consider stakeholder input, including complying with any statutory requirements related to rulemaking and public hearings. THA will closely monitor HHSC's cost containment initiatives to ensure hospitals are not impacted. In addition, THA's "IMD exclusion" waiver, which directs the agency to pursue a federal waiver to eliminate the bar on Medicaid spending for individuals receiving care in "institutions for mental disease," is listed among initiatives HHSC shall consider as a possible offset to achieve its cost containment targets.

While COVID-19 created an unprecedented challenge for everyone, it certainly impacted the state's budget and the overall outlook for many state agency programs that hospitals

and patients care about. THA will continue to push for funding that hospitals need, at the state and federal levels, and will build the case for relief and additional funding as the industry rebuilds from a historic pandemic. (*Senate Bill 1; House Bill 2*)

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## Telemedicine

THA supported two key bills that will help expand access to telemedicine and telehealth services across the state. Longtime advocate for telemedicine issues Rep. Four Price (R-Amarillo) passed a bill to make permanent the telemedicine flexibilities that were put in place during the pandemic to ensure access to care for Medicaid and CHIP clients. Rep. Trent Ashby (R-Lufkin) passed a bill that expands access to reliable broadband internet services to support access to telemedicine. Both items were priorities for House Speaker Dade Phelan (R-Beaumont). (*House Bill 4; House Bill 5*)

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## Workforce

State lawmakers filed a number of bills to allow health care workers and hospital staff to object to certain medical procedures. Rep. Keith Bell (R-Magnolia) and Sen. Drew Springer (R-Muenster) filed legislation that would have required hospitals to notify every staff person, including non-clinical staff, of their right to object to participate in an abortion procedure. THA worked with the bill authors and stakeholders to amend the bill to instead require a posting of the right to object, but the bill failed to make it through the process. Rep. Tom Oliverson (R-Cypress) filed a bill that would have permitted health care workers to opt out of their basic job duties based on religious, ethical or moral beliefs. The legislation would have required hospitals to have policies to backfill staff who opt out of procedures. THA testified against this legislation and opposed its passage, and it ultimately did not make it through the House process and died. (*House Bill 1291/Senate Bill 573; House Bill 1424*)





Rep. Greg Bonnen's (R-Friendswood) bill that creates the Interstate Medical Licensure Compact, a voluntary, expedited pathway to licensure for qualified physicians who wish to practice in multiple states, will finally become law. Although filed in previous sessions, the bill gained momentum in response to the COVID-19 pandemic and the need to increase physician availability while ensuring those physicians still are subject to the laws and licensing regulations of each state in which they deliver care. Less successful, however, was the bill by Rep. Stephanie Klick (R-Fort Worth) to give advance practice registered nurses full practice authority. While the Texas Nurses Association and Texas Association of Health Plans strongly supported the bill, the physicians fought hard against it. After a contentious hearing in the committee chaired by the bill author, the bill did not have the votes to pass and died in committee. (*House Bill 1616; House Bill 2029/ Senate Bill 915*)

THA supported another bill by Rep. Klick that would have permitted urban teaching hospitals to request an update to their indirect medical education add-on payment. This update was the result of an HHSC report and would more accurately reimburse teaching hospitals and reflect their current number of residency slots. The bill died in the House. (*House Bill 2955*)

Rep. Donna Howard (D-Austin), a former registered nurse, continued her work this session to make health care facilities safer for staff, patients and visitors. THA worked closely with Rep. Howard to develop a bill that would have required all health care facilities to strengthen policies and procedures to prevent workplace violence in their facilities. The bill passed the House but died in the Senate. (*House Bill 326*)

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