

Health Care and the  
84th Texas Legislature:



TEXAS HOSPITAL ASSOCIATION

# Outcomes for Texas Hospitals



# Table of Contents

Message From THA's President/CEO .....	3
THA's Advocacy and Legal Team .....	5

## THA Legislative Priorities: Outcomes and Analysis

▪ Securing Funding for Hospital Payments.....	6
▪ Coverage Expansion the Texas Way .....	7
▪ Preserving Trauma Care Funding.....	7
▪ Funding for GME and Health Care Workforce Education and Training .....	8
– Physician Workforce.....	8
– Nursing Workforce .....	9
▪ Investing in Behavioral Health Care Services.....	9

## Other Key Issues Impacting Texas Hospitals

▪ Behavioral Health .....	11
▪ Designation of Hospital Services .....	12
– End-of-Life Issues .....	12
– Co-Agents .....	13
– Palliative Care.....	13
▪ Health Care Pricing and Payments .....	13
– Disclosure and Pricing .....	13
– Prompt Pay Penalties .....	14
▪ Hospital Operations.....	16
▪ Liability.....	16
▪ Local Hospital Financing .....	16
▪ Managed Care .....	17
▪ Medicaid Reform .....	17
▪ Nurse Licensure and Practice .....	18
▪ Physician Licensure and Practice .....	18
▪ Public Health .....	19
– Texting While Driving.....	19
– Infectious Diseases .....	19
– CMV.....	19
– Immunization Registry .....	20
▪ Regulation of Handguns.....	20
▪ State Agency Operations.....	20
▪ State-Based Health Insurance Exchange .....	21
▪ Taxes .....	22
– Franchise Tax Relief .....	22
– Occupations Tax Repeal and General Revenue-Dedicated Account Reform.....	22
▪ Telemedicine/Telemonitoring.....	22
▪ Women's Health .....	23
– Abortion .....	23
– Victims of Sexual Assault.....	23
– Disposition of Fetal Remains.....	23
– Placenta Removal From Hospitals .....	23

© Copyright 2015  
Texas Hospital Association.  
All rights reserved.

Questions should be  
addressed to John Hawkins,  
senior vice president of  
advocacy and public policy,  
at jhawkins@tha.org or  
512/465-1505.

According to Texas  
Government Code 305.027,  
portions of this material may  
be considered "legislative  
advertising." Authorization  
for its publication is made by  
John Hawkins, Texas Hospital  
Association, 1108 Lavaca,  
Suite 700, Austin, Texas  
78701-2180.

## Message From THA's President/CEO

Another legislative session has come to a close. For five frenzied months, health care had to compete for attention and resources against a number of other high-profile policy priorities, including border security, education, reducing the restrictions on handguns and tax relief. We knew going in that it would be a challenging session. There were more new legislators than ever before, in addition to a new governor and lieutenant governor. The politics had shifted even more to the right, and the prevailing desire was to keep state spending down and return money to taxpayers.



Ted Shaw

Despite the challenges, Texas hospitals had a number of wins.

- ✓ We secured state funding to increase Medicaid rates for rural hospital outpatient services, trauma care and safety net hospitals.
- ✓ We preserved uncompensated trauma care funding.
- ✓ We secured funding for new medical residency slots to increase the number of physicians practicing in Texas and secured funding to reduce the nursing shortage.
- ✓ We achieved meaningful reforms to improve the delivery of behavioral health care.

The Medicaid rate increase included in the state budget for 2016-17 is our most significant victory, and the hospital industry fared better than most other providers. Although the initial base budget bills included no state funds to increase hospital rates and only the Article XI “wish list” of the House budget included any hospital supplemental payments, Texas hospitals eventually secured more than \$220 million in new state funds over the biennium.

By contrast, despite inclusion in the House version of the budget, continuation of the Medicaid and Medicare rate parity provision for primary care providers was not included in the budget. Nursing homes also received no added funding. Similarly, despite being one of Gov. Greg Abbott’s priorities, personal attendants for individuals with disabilities will see a wage increase of just \$1/hour, falling short of the wage sought by disability advocates.

The Texas Hospital Association also succeeded at defeating or improving a number of bills that would have created unnecessary regulations or restrictions on our work or undue hardships for our patients. We staved off end-of-life legislation, for example, that frequently becomes fodder for bitter political battles. A number of potentially harmful and divisive end-of-life bills were introduced but ultimately did not pass. The one bill that did pass is in line with current THA policy on artificially administered nutrition and hydration.

*continued*

We also defeated a bill that would have reduced the penalties imposed on managed care organizations that fail to pay claims on a timely basis. And we defeated a bill that would have repealed the prohibition against carrying guns in hospitals.

Unfortunately, legislative leadership chose to ignore the facts that Texas leads the nation in the number of uninsured residents and Texas hospitals are bearing an unsustainable uncompensated care burden. Despite legislative interest and broad public support, our work to increase the number of Texans with private health insurance was unsuccessful. Nonetheless, through the advocacy efforts of THA and all of our member hospitals, you can be certain that not a single lawmaker is unaware of the Texas Way and the potential it could have had on the number of uninsured in Texas, employers, property taxpayers and the privately insured.

Even though the session is over, the work continues. During the interim, THA will be working hard to ensure that laws are implemented as intended and without undue burden on hospitals. There is also the ongoing work to renew the Medicaid 1115 Transformation Waiver. Renewal or extension of the waiver is paramount to the continued ability of Texas hospitals to provide high-quality care and bend the cost curve.

And of course there is the *King v. Burwell* case pending before the U.S. Supreme Court. The outcome of that case could dramatically change the coverage landscape in Texas. THA will be here to help you unravel the legal judgment and develop strategies to protect access to care.

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

Thank you for all you do,

A handwritten signature in black ink, appearing to read "Ted", written in a cursive style.

## THA's Advocacy and Legal Team

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

### GOVERNMENT RELATIONS



**John Hawkins**  
Senior Vice President  
Advocacy and Public Policy  
512/465-1505  
jhawkins@tha.org



**Elizabeth Sjoberg, J.D., RN**  
Vice President/Associate  
General Counsel  
512/465-1539  
esjoberg@tha.org



**Jennifer Chapman Banda, J.D.**  
Vice President  
Advocacy, Public Policy and HOSPAC  
512/465-1046  
jbanda@tha.org



**Stacy Wilson, J.D.**  
Vice President/Associate  
General Counsel  
512/465-1538  
swilson@tha.org



**Taylor Coffey**  
Vice President  
Federal Affairs  
512/465-1511  
tcoffey@tha.org



**Sharon Beasley**  
Legal/Regulatory Analyst  
Legal and Regulatory Services  
512/465-1030  
sbeasley@tha.org



**Carrie Kroll**  
Vice President  
Advocacy, Quality and Public Health  
512/465-1043  
ckroll@tha.org



### POLICY ANALYSIS

**Richard Schirmer, FACHE**  
Vice President  
Health Care Policy Analysis  
512/465-1056  
rschirmer@tha.org



**Wendy Thomas**  
Manager  
Advocacy and HOSPAC  
512/465-1044  
wthomas@tha.org



**John Berta**  
Senior Director  
Policy Analysis  
512/465-1556  
jberta@tha.org



**Jennifer O'Neil**  
Specialist  
Advocacy, Public Policy and HOSPAC  
512/465-1507  
joneil@tha.org

### COMMUNICATIONS



**Lance Lunsford**  
Vice President  
Strategic Communications  
512/465-1052  
llunsford@tha.org

### LEGAL



**Charles Bailey, J.D.**  
Senior Vice President/General Counsel  
Legal and Regulatory Compliance  
512/465-1038  
cbailey@tha.org



**Stephanie Limb**  
Senior Director  
Advocacy Communications  
512/465-1557  
slimb@tha.org

# THA Legislative Priorities: Outcomes and Analysis

*THA had five main legislative priorities for the 84th Legislature. This section provides an overview of the outcomes of each of these priorities.*

## Securing Funding for Hospital Payments

With local funds providing much of the state's share of disproportionate share hospital payments, THA began the legislative session asking lawmakers to appropriate state general revenue to fully fund the state's share of DSH payments at approximately \$555 million per year. The 83rd Legislature had appropriated approximately \$300 million over the biennium for DSH payments.

It became clear early in the session, however, that lawmakers, particularly on the Senate side, had little interest in maintaining state appropriations for DSH payments. The Senate's version of the budget included no state general revenue funding for Medicaid DSH payments; the House version included a rider in the Article XI "wish list" for \$250 million. The final budget, HB 1, as approved by the House and Senate, included no state appropriations for DSH.

Faced with hospitals' growing uncompensated care burden and a dwindling likelihood that lawmakers would do anything to reduce the number of uninsured Texans, the THA Board of Trustees made the strategic decision to redirect hospitals' request for state appropriations from DSH payments to a targeted Medicaid rate increase for safety net hospitals. The benefit of increasing Medicaid rates also became apparent in late April after the Centers for Medicare & Medicaid Services and the state of Florida had a public disagreement over renewal of the state's 1115 waiver and low-income pool. CMS told

Florida and multiple other states, including Texas, that Medicaid rate adequacy is one of its guiding principles in evaluating waiver renewal requests. THA, therefore, asked budget conferees to include \$500 million over the 2016-17 biennium to support a targeted Medicaid reimbursement rate increase for safety net hospitals. **The state budget for 2016-17 appropriates \$129 million in state funding for a Medicaid rate add-on for safety net hospitals** – those hospitals that treat high percentages of Medicaid and low-income, uninsured patients. This provision prohibits reimbursement for each hospital from exceeding its hospital-specific limit. However, 10 percent of these funds are set aside to reward high-performing safety net hospitals that exceed quality metrics. With these payments, hospitals may exceed their HSL.

**The budget also appropriates \$67 million for a trauma add-on over the biennium.** These funds are in addition to the annual \$44 million already appropriated as an add-on payment for trauma care.

**Finally, the state budget includes \$25 million to reimburse rural hospital outpatient services at 100 percent of cost.** To qualify as a rural hospital, a facility must 1) be located in a county with 60,000 or fewer residents; 2) be a sole community hospital; or 3) be a critical access hospital.

Of these total appropriations, all but \$5 million of the funds for the rural hospital outpatient rate enhancement come from general revenue-designated trauma funds.

These funds will be matched through the Medicaid program and provide well over \$500 million in all funds for Texas hospitals over the biennium.



**Next steps:** THA will work with the Texas Health and Human Services Commission as the agency develops a methodology for allocating the trauma and safety net hospital add-ons. THA will engage its membership to promote a methodology that is fair and equitable and reimburses those hospitals that provide trauma care and those that serve a disproportionate number of Medicaid and uninsured patients.

## Coverage Expansion the Texas Way

Securing legislation to take advantage of existing federal funds to provide subsidized private health insurance coverage to low-wage working Texans was a priority for THA. Despite leading the nation with the largest number of uninsured residents, Texas has long resisted efforts to increase eligibility for publicly funded health insurance coverage.

THA advocated for a “Texas Way” that would be a private health insurance alternative to Medicaid expansion for uninsured Texans not income-eligible for Medicaid under existing eligibility standards and with incomes below 138 percent of the federal poverty level. The Texas Way included a number of features designed to appeal to conservative lawmakers, including personal responsibility, cost sharing, health savings accounts and incentives for employment.

**Rep. Garnet Coleman** (D-Houston) and **Sen. Jose Rodriguez** (D-El Paso) authored Texas Way bills that would have given the Texas Health and Human Services Commission the authority to negotiate with the Centers for Medicare & Medicaid Services on a coverage solution that

leveraged the strengths of the private insurance market to provide coverage to more than 1 million uninsured Texans. Despite interest from a number of legislators and broad public support, neither bill received a committee hearing.



**Next Steps:** During the interim, THA will continue to promote the need for a coverage solution to reduce the number of uninsured Texans and the growing uncompensated care burden.

## Preserving Trauma Care Funding

Texas’ 284 trauma hospitals depend on funding provided from fines and penalties imposed through the Driver Responsibility Program to partially offset their unreimbursed trauma care. The DRP has provided approximately \$500 million to Texas trauma hospitals since its inception in 2003.

Yet, even before the session officially started, **Sen. Rodney Ellis** (D-Houston) introduced a bill to repeal the DRP without providing for any other source of trauma care funding. SB 93 languished for much of the session as other bills were introduced by **Sen. Kirk Watson** (D-Austin), **Rep. Sylvester Turner** (D-Houston), **Sen. Chuy Hinojosa** (D-McAllen) and others to make changes to how the DRP is administered and its fines and penalties structure while still preserving some trauma funding.

Ellis’ bill, however, was revived late in the session when it received surprising support from two tea party Republican senators, **Sen. Don Huffines** (R-Dallas) and **Sen. Bob Hall** (R-Edgewood). A committee substitute that did not outright repeal the DRP but eliminated most of its enforcement power and revenue passed unanimously out of the Senate Transportation Committee just two weeks before the session ended.

The full Senate then passed SB 93 on a vote of 28 to 3. Voting in support of hospitals and against SB 93 were **Sen. Joan Huffman** (R-Houston),

**Sen. Jane Nelson** (R-Flower Mound) and **Sen. Jose Menendez** (D- San Antonio). SB 93 failed, however, to be set for debate on the House floor despite the fact that **Rep. Joe Pickett** (D-El Paso) considered and passed the bill in an impromptu public hearing on the last day House committees could consider Senate bills.

Legislative efforts to reform the program were also the victim of the legislative calendar. However, edits aimed at improving compliance by decreasing the amount of surcharges levied if individuals establish financial responsibility were a small component of a larger fiscal matters bill by **Rep. Drew Darby** (R-San Angelo). Sen. Ellis again moved his language to weaken severely the enforcement provisions of the DRP by inserting the language on to Darby's bill in a surprise amendment. Fortunately, the fiscal impact of the language was too great, and it was removed when the bill was reconsidered by the full Senate to address non-germane amendments.

Current law governing the DRP and how it assesses fines and penalties will remain.

All legislative attempts to repeal the statute that authorizes the use of red light enforcement cameras also failed.



**Next steps:** THA will continue to educate lawmakers, other stakeholder groups and the public on the importance of the DRP to funding trauma care services in Texas. THA also will work with lawmakers to identify ways to improve the DRP while preserving trauma funding.

## Funding for GME and Health Care Workforce Education and Training

### *Physician Workforce*

Texas has a well-documented shortage of physicians to meet the needs of its rapidly growing population. Increasing the number of medical residents who train in Texas is the most effective way of increasing the number of physicians who practice here. THA's priority for the 84th legislative session was to maintain, at a minimum, the 2014-15 level of funding for physician education.

**Sen. Jane Nelson** (R-Flower Mound) made increasing the number of graduate medical education slots in Texas a top priority, and the Legislature coalesced around the concept of keeping Texas medical school students in Texas to address the acute shortage of physicians across the state. With THA's strong support, the Legislature passed a bill that will increase the number of funded residency slots with the goal of achieving a ratio of one graduate to 1.1 slots. These new slots are funded in the state budget for the biennium at \$53 million. Nelson's bill, SB 18, also establishes a permanent GME account in the treasury and transfers to that account funds from the Joint Underwriting Association that are in excess of their operating revenue. Nelson's bill also simplifies the funding and grant process at the Texas Higher Education Coordinating Board.

Funded at the THECB are programs to:

- Award GME planning and partnership grants to hospitals and medical schools;
- Allow new or existing GME programs to increase their number of first-year residency programs;
- Enable unfilled first-year residency positions to be filled; and
- Award grants to GME programs that received a grant for the New and Expanded GME Program in 2015.

Funding can be prioritized to those specialties experiencing critical shortages.

The state budget also provides \$33 million for the physician education loan repayment program that provides loan repayment in exchange for physicians’ agreeing to practice in a health professional shortage area and provide care to Medicaid and CHIP enrollees.

To better understand the distribution of medical residents statewide, a bill by **Sen. Charles Schwertner** (R-Georgetown) will require the THECB to track residents from initial residency program choices to their primary medical practice.

### Nursing Workforce

The health care workforce shortage in Texas also includes nurses, and THA’s priority was to maintain funding and programming to increase the nurse supply. THA again worked closely with the Texas Nurses Association to continue needed funding to ameliorate the Texas nursing shortage. The state budget for 2016-17 includes almost \$34 million over the biennium for the Professional Nursing Shortage Reduction Program, which provides funds to Texas nursing schools for increasing the number of nursing graduates in the state. With strong THA support, **Rep. Donna Howard’s** (D-Austin) bill also passed to continue through 2019 the allocation of \$10 million in tobacco earnings for nursing school innovation grants focused on recruitment and retention of students and faculty.



**Next Steps:** THA will work with the THECB and the physician community to co-host a GME forum to communicate to member hospitals the upcoming opportunities for the expansion of GME first-year residency slots.

### Investing in Behavioral Health Care Services

Building on the 83rd Legislature’s investment in behavioral health care services was a THA priority. THA’s goal was to ensure that the increased funding was, at a minimum, maintained. The state budget for 2016-17 will

provide new mental health and substance use disorder funding in several categories:

	<b>FY 2016-17</b>
<b>Inpatient Capacity</b>	<b>\$50,000,000</b>
<b>Crisis Services Alternatives</b>	<b>\$31,300,000</b>
<b>Outpatient Capacity/ LMHA Equity for Adults and Children</b>	<b>\$46,486,001</b>
	<b>TOTAL \$127,786,001</b>
<b>Substance Use Disorder Prevention/Intervention/ Treatment</b>	<b>\$9,485,503</b>

The enhanced funding for inpatient capacity is expected to pay for an additional 100 beds in fiscal year 2016 and an additional 150 beds in FY 2017. While this falls short of the number of beds recommended by the House Bill 3793 behavioral health planning workgroup on which THA served, the funding increase is a significant victory in a very conservative legislature.

THA also advocated to increase the behavioral health care workforce to address the severe shortage of behavioral health professionals in Texas. Thanks to the efforts of **Sen. Charles Schwertner** (R-Georgetown), **Rep. J.M. Lozano** (R-Kingsville) and **Rep. Garnet Coleman** (D-Houston), certain mental health professionals practicing in underserved areas and providing services to the Medicaid, CHIP or state prison populations now will be eligible for education loan repayment assistance, as are their colleagues in physical medicine. More than \$2.1 million was appropriated to the Texas Higher Education Coordinating Board for the biennium and is projected to fund about 100 professionals.

THA also prioritized legislation to give hospitals and freestanding emergency medical care facilities the option of allowing their physicians to initiate a temporary hold of a patient who,

due to a mental illness, is a danger to self or others. Under SB 359 passed by **Sen. Royce West** (D-Dallas) and **Rep. Paul Workman** (R-Austin), physicians could initiate this temporary hold only if the governing body of a facility adopts a policy permitting the hold, which can last up to four hours. A physician detaining or not detaining a person under the adopted policy and acting in good faith would not be civilly or criminally liable for that action. Facilities also would not be civilly or criminally liable for either adopting or not adopting a policy that permits the temporary hold. Gov. Abbott, however, vetoed the legislation, citing constitutional concerns about infringement of liberty.



**Next steps:** THA will continue to work with stakeholders to educate lawmakers and the public on the need for a policy that allows physicians to temporarily hold a person with mental illness who is a danger to self or others.

# Other Key Issues Impacting Hospitals

*In addition to the five priorities, THA tracked hundreds of bills throughout the session. A discussion of some of the most significant follows. More detailed information on the bills that became law is included in THA's health law manual, due to be published late summer. For additional bill information, contact the staff listed at the end of each section.*

## Behavioral Health

In addition to the funding and workforce priorities discussed in the previous section, THA tracked a number of bills related to the delivery of behavioral health care.

Many bills addressing the delivery of mental health services to veterans and their families were filed and passed. However, only one bill by **Sen. Jane Nelson** (R-Flower Mound) has significant funding attached. This bill will require the Texas Health and Human Services Commission to establish a grant program to support community mental health services for veterans with mental illness. The program will be a public-private partnership, with the state and a private entity each providing \$20 million over the biennium. (SB 55)

Supported by THA, a bill by **Sen. Sylvia Garcia** (D-Houston) and **Rep. Eliot Naishtat** (D-Austin) will help reduce the number of individuals under a forensic commitment in state hospitals. This bill establishes a new forensic director position at the Texas Department of State Health Services to coordinate and oversee forensic services.

A significant piece of the TDSHS Sunset legislation also was added to this bill: continuing

a behavioral health planning group on which THA serves to recommend a regional allocation of mental health beds and review bed utilization to ensure that beds are being used appropriately. (SB 1507 and HB 2023)

The state budget for 2016-17 eliminates the NorthSTAR program and transitions its functions by Dec. 31, 2016, to a new model administered by two local mental health authorities. (HB 1)

Another bill supported by THA and passed by **Rep. Elliott Naishtat** (D-Austin) will promote continuity of care for juveniles confined in a juvenile justice facility by suspending, rather than terminating, their Medicaid and CHIP eligibility during the detention. (HB 839)

While bills that would have expanded private insurance coverage of certain mental health conditions, including postpartum depression, self-inflicted injuries and eating disorders, did not pass, a rider to the state budget will require the state to make recommendations to increase use of postpartum screening and treatment services in Medicaid as well as services provided by local mental health authorities and to increase continuity of care. (HB 1)

Finally, THA was successful in thwarting several bills that would have adversely impacted hospital operations, including:

- **Requiring private hospitals to pay the court costs of non-indigent patients involuntarily committed to the hospital (HB 1330);**
- **Prohibiting physicians from administering psychotropic medications to a patient under an involuntary medication order during the appeal of that order, leaving patients untreated (HB 2102); and**
- **Limiting the ability of hospitals and physicians to administer medication and of a court to commit a patient if an advance directive prohibited that treatment unless a court found that the individual was incompetent when executing the directive. (HB 2101)**

**Contacts:**

Stacy Wilson, J.D.: [swilson@tha.org](mailto:swilson@tha.org); 512/465-1027  
Sharon Beasley: [sbeasley@tha.org](mailto:sbeasley@tha.org); 512/465-1030

## Designation of Hospital Services

For the third session in a row, the Legislature considered bills related to the operations of neonatal care intensive units. In 2013, to address the growth in the number of NICU beds, legislation passed requiring the Texas Health and Human Services Commission to establish a mandatory state designation process for neonatal care and maternal care. As the Perinatal Advisory Council has developed the rules related to designation, hospitals have raised concerns about the scope and timeline of the process. In response to these concerns, **Rep. J.D. Sheffield** (R-Gatesville) and **Sen. Lois Kolkhorst** (R-Brenham) passed legislation to delay the implementation date of both state designations by one year. A hospital now will be required to have its neonatal designation in place by Sept. 1, 2018, and its maternal designation in place by Sept. 1, 2020. The bill also adds additional rural representation to the Perinatal Advisory Council. (HB 3433)

Legislation by **Rep. Sarah Davis** (R-Houston) and **Sen. Joan Huffman** (R-Houston) will require THHSC, in consultation with the Perinatal Advisory Council, to create a designation for centers of excellence in fetal diagnosis and

therapy. The designation is intended to recognize qualified facilities that are expanding and integrating an advanced fetal care program and advancing long-term follow-up care of congenital anomalies. (HB 2131)

**Contacts:**

Jennifer Banda, J.D.: [jbanda@tha.org](mailto:jbanda@tha.org); 512/465-1046  
Carrie Kroll: [ckroll@tha.org](mailto:ckroll@tha.org); 512/465-1043  
Elizabeth Sjoberg, RN, J.D.: [esjoberg@tha.org](mailto:esjoberg@tha.org); 512/465-1539

## End-of-Life Issues

THA began the session in negotiations with the Texas Catholic Conference, Texas Alliance for Life, Texas Medical Association and others to figure out how legislation could best address the administration of artificial nutrition and hydration as well as the composition of hospital ethics committees. Two bills were filed in response to these conversations by **Rep. Drew Springer** (R-Muenster) and **Rep. Patricia Harless** (R-Spring). Springer's bill mirrored THA policy when filed, addressing nutrition and hydration as ordinary care. Harless' bill focused on ensuring hospital ethics committees do not discriminate against patients and that participating members do not have conflicts of interest; it avoided specifics about ethics committee composition. (HB 3074 and HB 2351)

The debate, as always on issues relating to the care patients receive at the end of life, was long and arduous. Ultimately, Springer's nutrition and hydration bill was edited to gain the support of Texas Right to Life as lawmakers sought to avoid debating a contentious issue on the House floor. Fortunately, these edits were only minor, and the bill passed.

Many other unfavorable bills were filed on the topic, but none received a committee hearing as legislators focused on the agreed-to language in Springer's nutrition and hydration bill. Ultimately, even Harless' ethics committee bill was postponed for this reason.

Throughout the session, THA worked with our legislative champions so that they were ready

to speak on the House floor on any potentially bad end-of-life amendments should they be introduced on any other bills. Legislation to reauthorize and restructure the health and human services agencies via the Sunset process, for example, was vulnerable to amendments as were other bills dealing with hospital regulation. Fortunately, the need for such champions to speak up never arose as there was concerted effort to keep bills clean when they were discussed by the full House.

### Co-Agents

A bill filed on behalf of the probate attorneys by **Rep. Senfronia Thompson** (D-Houston) would have allowed for the assignment of multiple co-agents to make medical decisions for someone who is incapacitated, allowed for more than one approved medical power of attorney form and included confusing language allowing retroactivity of the law based on pre-existing conditions. The bill stalled in the House before moving suddenly in the last weeks of session. However, it never received a committee hearing in the Senate. (*HB 3095*)

### Palliative Care

Under a bill by **Rep. John Zerwas** (R-Richmond), the Texas Health and Human Services Commission will establish a Palliative Care Interdisciplinary Advisory Council. The bill, supported by the American Cancer Society, charges the new advisory council with developing a report on how to educate Texans on the availability and role of palliative care. Texas Right to Life pushed lawmakers to edit the bill, successfully amending it so that the advisory council's report includes, among other things, an analysis of the policies, practices and protocols in Texas concerning patients' rights related to palliative care specific to life-sustaining treatment or advance directives decisions. (*HB 1874*)

#### Contacts:

Carrie Kroll: ckroll@tha.org; 512/465-1043

Elizabeth Sjoberg, RN, J.D.: esjoberg@tha.org; 512/465-1539

## Health Care Pricing and Payments

### *Disclosure and Pricing*

Reflecting a growing interest in transparency, the Legislature considered a number of bills this session to address public concern about the rising cost of health care and the challenges consumers face in determining their financial responsibility for health care services. Just two became law.

The first deals with freestanding emergency medical care facilities. These facilities have proliferated in Texas since legislation in 2009 authorized their licensure. While they have increased access to emergency care, consumers remain confused about the scope of services offered and their pricing. A bill passed by **Rep. Greg Bonnen** (R-League City) and **Sen. Charles Schwertner** (R-Georgetown) will address this confusion by requiring FECs to disclose information to consumers concerning participation in managed care networks and the billing of facility and physician services. THA opposed one provision in the bills that would have required mediation of out-of-network payment disputes; that provision was ultimately dropped. (*SB 425*)

The second deals with mediation of claims. A bill by **Rep. John Smithee** (R-Amarillo) and **Sen. Kelly Hancock** (R-Fort Worth) will amend current law that requires the mediation of claims by certain facility-based physicians practicing in an ambulatory surgical center, birthing center or hospital if the physicians were not in the patient's health plan network and the amount in dispute and owed by the patient exceeded \$1,000. This legislation expands the listing of facility-based physicians to include assistant surgeons and reduces the threshold amount for mediation to \$500. (*SB 481*)

A bill by **Rep. Greg Bonnen** (R-League City) would have authorized the Texas Department of Insurance to designate an independent, nonprofit database provider to compile health care provider charge data and compute the usual and customary charge for services, which was set at the 90th percentile of undiscounted billed charges for a particular service. State regulated health plans would have been required to reimburse out-of-network providers at the usual and customary charge amount calculated by the database provider and the providers would have been required to accept this reimbursement amount as payment in full. The Texas Association of Health Plans and the Texas Association of Business opposed the bill and suggested during the committee hearing that the proposed level of reimbursement would dramatically increase health plan costs and premiums. THA did not formally oppose the bill but raised concerns during the hearing about the difficulty in establishing an appropriate out-of-network reimbursement level for hospital care due to the complexity and variability of hospital services. The bill died in the House committee. (*HB 616*)

In the fall of 2014, the Center for Public Policy Priorities released a report on the balance billing of consumers when there are payment disputes between out-of-network providers and health plans. This report prompted **Rep. John Smithee** (R-Amarillo) and **Sen. Larry Taylor** (R-Friendswood) to file bills that would have required facility-based physicians providing emergency services in a freestanding emergency medical care facility or hospital to arbitrate payment disputes with health plans if the physicians provided services on an out-of-network basis. Neither bill progressed to a floor vote. (*HB 1638* and *SB 1562*)

The new chairman of the House Insurance Committee, **Rep. John Frullo** (R-Lubbock), introduced a bill that would have required hospitals, other types of health care facilities and physicians to provide patients with a disclosure of the amount accepted as payment in full at least three days before a health care service was provided. If the disclosure was not made, the providers would be prohibited from collecting any amount owed by the patient. THA opposed this bill during the committee hearing, emphasizing that hospitals often do not have access to the information necessary to make the required disclosure and that for insured patients the patient's health plan often is a better source for payment information. THA also noted that the required disclosure would delay the delivery of routine services because it must be made before the service was provided. The bill died in the committee. (*HB 3102*)

### *Prompt Pay Penalties*

At the urging of Blue Cross & Blue Shield of Texas, the Texas Association of Business, the Texas Association of Health Plans and the Texas Medical Association, **Rep. John Smithee** (R-Amarillo) and **Sen. Larry Taylor** (R-Friendswood) introduced bills that would have established a two-year statute of limitations on any claims by providers to collect prompt payment penalties from health plans and would have substantially lowered the penalty amount that providers are owed on late payment of claims. THA strongly opposed the bills and testified against **Rep. Smithee's** bill when it was heard in the House Judiciary and Civil Jurisprudence Committee. Thanks to strong grassroots opposition by THA members, the bill was defeated on a 5-4 vote in committee. **Sen. Taylor's** bill never had a hearing. (*HB 1433* and *SB 843*)

#### **Contacts:**

Charles Bailey, J.D.: [cbailey@tha.org](mailto:cbailey@tha.org); 512/465-1038  
John Hawkins: [jhawkins@tha.org](mailto:jhawkins@tha.org); 512/465-1505

## Hospital Operations

Numerous bills were filed to change how hospitals manage and run their facilities and operations. THA successfully opposed or improved several of these bills, and the most far-reaching bills did not pass.

**Rep. Armando Martinez** (D-San Antonio) passed a bill, with assistance from **Sen. Donna Campbell** (R-New Braunfels), that will allow emergency medical technician-paramedics and licensed paramedics to provide advanced life support in a facility's emergency or urgent care clinical setting (including a hospital ER and a freestanding ER). Initially opposed by emergency nursing groups, the bill garnered their support with compromise language that ensures EMT-paramedics and licensed paramedics' duties are properly delegated and performed under physician supervision. (*HB 2020*)

To help prevent child deaths due to heat exposure in an unattended vehicle, a bill passed by **Rep. Eric Johnson** (D-Dallas) and **Sen. Jose Rodriguez** (D-El Paso) will require hospitals and other health care providers to distribute information on the dangers of heatstroke of a child left unattended in a motor vehicle. The information will be included in the resource pamphlet prepared by the Texas Department of State Health Services that hospitals currently distribute to new parents at the time of discharge. (*HB 2574*)

Based on concerns that hospitals do not adequately address the improvement of potentially preventable adverse events, **Sen. Royce West** (D-Dallas) and **Rep. Toni Rose** (D-Dallas) passed a bill requiring hospitals that have committed a PPE to develop and implement a plan for approval by the Texas Department of State Health Services to address deficiencies that contributed to the event. (*SB 373*)

The content of hospital identification badges was legislated for the second session in a row. At the request of the physician community, **Rep. Sarah Davis** (R-Houston) and **Sen. Donna Campbell** (R-New Braunfels) passed legislation to require the

addition of "plain language" descriptors on hospital badges to purportedly create better transparency in care for the hospital patient. For example, a hospital badge will be required to display "M.D." and "physician." THA fought hard to ensure that a four-year implementation period was included to accommodate hospitals that had already revised their badges in accordance with similar 2013 legislation. (*SB 1753*)

A comprehensive bill by **Sen. Charles Schwertner** (R-Georgetown) to expand the regulatory and enforcement authority of the Texas Department of State Health Services over hospitals ultimately did not pass, but the issue is expected to be reconsidered in the next legislative session. As introduced, the bill would have required all hospitals to obtain a surety bond to cover the costs associated with storage of medical records if the hospital closed or if a court-ordered trustee was appointed to manage the hospital. In addition, all hospitals would have been subject to a state survey every three years. The bill also would have allowed TDSHS to suspend a hospital license on an emergency basis or seek the appointment of a trustee under certain circumstances, and would have allowed the agency to impose an administrative penalty up to \$25,000 for violations of the hospital licensing requirements.

With policy direction from the THA Leadership Policy Council, THA staff negotiated compromise language with **Sen. Schwertner** that would have removed the surety bond requirement and established a perpetual care fund to cover the costs of storage of records or a trustee. In addition, only non-accredited hospitals would have been surveyed by TDSHS every three years with validation surveys performed annually on 10 percent of accredited hospitals. The maximum penalty that could be imposed against a rural hospital with 75 or fewer beds was reduced to \$10,000. (*SB 424*)

THA successfully thwarted attempts by AARP Texas to require designated caregivers as well as

patients to receive education on post-discharge patient care prior to discharge. Bills filed by **Rep. J.D. Sheffield** (R-Gatesville), **Rep. Rick Miller** (R-Sugar Land) and **Sen. Juan Hinojosa** (D-McAllen) all failed. THA opposed the bills citing current comprehensive discharge planning requirements via Medicare participation, hospital licensing laws and national accreditation entities. (*HB 2157; HB 3903 and SB 1952*)

As filed, a bill by **Rep. Chris Turner** (D-Arlington), would have required the Texas Department of State Health Services to post publicly the findings of a hospital inspection, survey or investigation on TDSHS' website. Changes made at the request of THA ensured that only final statements of deficiencies and any related plans of action would be publicly posted. The bill died on the House Calendar. (*HB 2240*)

Legislation that would have allowed public districts to issue revenue bonds to finance the construction of long-term care facilities was introduced by **Rep. Travis Clardy** (R-Nacogdoches). Public hospitals, particularly in rural areas, could have benefited from the legislation because it would have enabled them to participate in the Medicaid nursing facility supplemental payment program. The bill received strong support in the House but failed to pass the Senate Health and Human Services Committee. (*HB 3332*)

There were efforts by multiple health care professionals to create new statutory licensing or practice standards. Legislation filed by **Rep. Eddie Rodriguez** (D-Austin) would have limited the provision of interpreter services for the deaf and hard of hearing only to state-certified interpreters. THA had concerns that the requirements in the legislation would limit the availability of hospital interpreter services, and the bill ultimately died before it could be debated on the House floor. (*HB 1069*)

#### Contacts:

Charles Bailey, J.D.: cbailey@tha.org; 512/465-1038  
John Hawkins: jhawkins@tha.org; 512/465-1505

Jennifer Banda, J.D.: jbanda@tha.org; 512/465-1046  
Carrie Kroll: ckroll@tha.org; 512/465-1043  
Elizabeth Sjoberg, RN, J.D.: esjoberg@tha.org; 512/465-1539

## Liability

Lawmakers filed several bills dealing with liability reform. Only one became law, however. A bill by **Rep. Kenneth Sheets** (R-Dallas) will modify current law to clarify that claims by health care employees (or an employee's surviving spouse or heirs) against their employer are not health care liability claims and would not be subject to the procedural requirements or limitations on damages imposed on health care liability claims. A bill by **Rep. Chris Turner** (D-Arlington) would have had a broader scope and included claims by both non-patients and health care employees. Efforts to further broaden **Rep. Sheets'** bill were defeated. (*HB 1403 and HB 956*)

In an effort to address concerns about increases in litigation resulting from hailstorm claims, property and casualty insurers and various tort reform groups pushed legislation to reduce the frequency of this type of litigation. Bills by **Rep. John Smithee** (R-Amarillo) and **Sen. Larry Taylor** (R-Friendswood) would have established a two-year statute of limitations on property damage claims, required a property owner to provide the insurer with detailed information on the amount of damages and other costs incurred, and allowed the insurer to set up an appraisal process for resolving claims. **Sen. Taylor's** bill passed the Senate but ultimately stalled in the House. (*HB 3646 and SB 1628*)

#### Contacts:

Charles Bailey, J.D.: cbailey@tha.org; 512/465-1038  
John Hawkins: jhawkins@tha.org; 512/465-1505  
Jennifer Banda, J.D.: jbanda@tha.org; 512/465-1046

## Local Hospital Financing

In 2013, the Legislature passed legislation granting certain counties in South Texas the option to create Local Provider Participation Funds. Likewise during this session, several local bills were passed to allow the creation of health care provider participation programs for certain counties and cities in the state that do not have a public hospital.

The programs authorize a county commissioners court or city to collect mandatory payments from nonprofit hospitals to fund intergovernmental transfers to be used by the Texas Health and Human Services Commission as the nonfederal share to draw down Medicaid supplemental payments under the Medicaid 1115 Transformation Waiver. Participating localities include Bowie County (Texarkana), McLennan County (Waco), Bell County (Temple), City of Beaumont, Gregg County (Longview), Hays (San Marcos), Rusk County (Henderson) and Brazos County (Bryan–College Station).

Legislation also was enacted that will allow for the creation of a Hidalgo County Healthcare District to stabilize property taxes supporting the county's indigent care program and to better leverage federal funds through the Medicaid waiver. Creation of the district is contingent on voter approval after an election called by the Hidalgo County Commissioners. The district would be governed by a 10-member appointed board of directors.

**Contacts:**

John Hawkins: jhawkins@tha.org; 512/465-1505

## Managed Care

Unlike prior sessions, the 84th Legislature considered relatively few managed care bills. A bill passed by **Rep. Greg Bonnen** (R-League City) and **Sen. Donna Campbell** (R-New Braunfels) will prohibit an HMO or PPO from terminating physicians or other providers from the health plan's network solely because the providers have informed patients about out-of-network services or providers. Plans also will not be able to terminate an insured from enrollment solely because he or she uses an out-of-network provider. (*HB 574*)

A bill passed by **Rep. John Smithee** (R-Amarillo) and **Sen. Kel Seliger** (R-Amarillo) will require health plans to display information on their websites on their preferred drug formulary and an explanation of coverage, cost-sharing

and prior authorization requirements for each drug. Health plan websites also must include an electronically searchable directory of all health care providers participating in the plan's network. (*HB 1624*)

Over the opposition of consumer groups, a bill by **Rep. J.D. Sheffield** (R-Gatesville) will help physicians, hospitals and other health care providers identify patients who are enrolled in a qualified health plan through the federal health insurance exchange. The bill addresses a gap in federal law that could cause providers to be liable for the cost of services provided to a patient who fails to pay their QHP insurance premium during a 90-day grace period.

**Contacts:**

Charles Bailey, J.D.: cbailey@tha.org; 512/465-1038

John Hawkins: jhawkins@tha.org; 512/465-1505

## Medicaid Reform

Legislation by **Rep. Sergio Munoz** (D-Mission) and **Rep. Ryan Guillen** (D-Rio Grande City) will require the Texas Health and Human Services Commission to ensure transparency of managed care rate setting in Medicaid managed care programs and CHIP by providing additional information in actuarial reports, including a description of methodologies used, data sources, assumptions and actuarial soundness. (*HB 2084*)

A bill passed by **Sen. Charles Schwertner** (R-Georgetown) will require Medicaid managed care organizations to establish provider access standards, set remedies for the failure to meet those standards and require an MCO to create an expedited credentialing process for Medicaid managed care providers. The bill also will require an MCO to post its provider directory online and require the Texas Health and Human Services Commission to monitor an MCO's provider network to ensure compliance with contractual obligations. (*SB 760*)

**Contacts:**

John Hawkins: jhawkins@tha.org; 512/465-1505

## Nurse Licensure and Practice

Following the successful passage of legislation last session to enhance penalties for violence against employees working in hospital emergency departments, hospitals and nurses collaborated this session to pass legislation by **Rep. Donna Howard** (D-Austin) to review workplace violence against nurses employed by hospitals, nursing facilities, home health agencies and freestanding emergency medical care facilities. The Texas Center for Nursing Workforce Studies at the Texas Department of State Health Services will conduct one nursing and facility survey to assess the prevalence and types of workplace violence occurring and strategies successfully preventing workplace violence. (*HB 2696*)

Two other bills relating to mandatory workplace violence training and protocols by **Sen. John Whitmire** (D-Houston) and **Rep. Harold Dutton** (D-Houston) failed. Filed at the request of the nursing union National Nurses United and opposed by THA, neither bill moved through the process. THA also successfully opposed the nursing union's bill by **Rep. Alma Allen** (D-Houston) relating to mandatory safe patient handling processes. (*SB 1160* and *HB 4110*; *HB 3820*)

Eight bills attempting to increase the scope of practice for advanced practice registered nurses failed due to pressure from the physician community. One of the failed bills by **Rep. Garnet Coleman** (D-Houston) would have allowed physicians to delegate to APRNs and physician assistants the limited prescribing of Schedule II controlled substances. **Rep. Coleman's** bill included a provision that THA supported allowing for the delegation of discharge from a hospital. (*HB 2602*)

### Contacts:

Jennifer Banda, J.D.: [jbanda@tha.org](mailto:jbanda@tha.org); 512/465-1046  
Elizabeth Sjoberg, RN, J.D.: [esjoberg@tha.org](mailto:esjoberg@tha.org); 512/465-1539

## Physician Licensure and Practice

Currently, state law is ambiguous about the release of medical records by a physician's office under a court subpoena when a patient is not a party to a case. Legislation filed at the request of the hospital community and passed by **Rep. Andy Murr** (R-Junction) and **Sen. Carlos Uresti** (D-San Antonio) brings the same clarity from hospital-related claims to physician offices. This uniformity will alleviate an administrative burden on physician offices and ensure patient confidentiality is protected in the release of records. (*HB 1779*)

Legislation to open up the complaint process at the Texas Medical Board was filed and failed for the fourth consecutive session. **Sen. Lois Kolkhorst's** (R-Brenham) bill would have required the TMB to provide an unredacted copy of a complaint filed at the TMB to the physician being investigated. THA adamantly opposed the provision to provide a full unredacted copy of a complaint because this would include the mandatory provision of a complaint from a hospital medical peer review committee. THA and hospital members argued that this modification in process would significantly chill physician participation in hospital peer review. Additionally, provision of an unredacted complaint would open up hospital staff who file a complaint to retaliation by the physician. Hospitals worked with the medical and nursing community and held up debate on the bill for an extended period of time. When the bill was finally debated on the Senate floor, THA worked closely with **Sen. Jose Menendez** (D-San Antonio), **Sen. Jose Rodriguez** (D-El Paso) and **Sen. Juan "Chuy" Hinojosa** (D-McAllen) to amend the language in the bill to protect the medical peer review process. When the debate was over, the bill had been watered down with amendments and ultimately never garnered enough votes to pass the Senate. (*SB 1813*)

A similar bill filed by **Rep. Bill Zedler** (R-Arlington) was intended to open the process at the TMB to the physician being investigated.

THA worked with **Rep. Zedler** to find common ground, but ultimately his legislation also failed. (*HB 179*)

Texas will not be participating in the new Physician Interstate Licensure Compact after legislation failed that would have authorized the state to join the compact. The interstate compact will further protect patient safety and address the physician shortage by enhancing portability of a medical license and ensure that physicians are subject to licensing regulations in each state of practice. Two physicians, **Rep. John Zerwas** (R-Simonton) and **Sen. Charles Schwertner** (R-Georgetown), filed the bill, but it was opposed by an ultra-conservative physician organization and died a quick death. (*HB 661*)

In 2011, the Legislature authorized the direct employment of physicians by specified hospitals. That legislation provided specific statutory protections to ensure physician autonomy from the corporate practice of medicine. This session, **Rep. Bryan Hughes** (R-Mineola) filed legislation to apply the same protections to physicians practicing in a 501(a) nonprofit health care organization certified by the Texas Medical Board. The bill failed to make it to the House floor. (*HB 3804*)

#### Contacts:

Charles Bailey, J.D.: cbailey@tha.org; 512/465-1038  
Jennifer Banda, J.D.: jbanda@tha.org; 512/465-1046

## Public Health

### *Texting While Driving*

Ordinances prohibiting texting while driving are in place in a number of Texas cities. Supported by THA, a bill by **Rep. Tom Craddick** (R-Midland) would have made that ban statewide. Texting while driving would have been a misdemeanor, punishable with a fine of up to \$99 on the first offense and \$200 for additional infractions. The bill died in the Senate with **Sen. Judith Zaffirini** (D-Laredo), the bill's Senate sponsor, being one vote shy of bringing the bill up for consideration and debate. (*HB 80*)

### *Infectious Diseases*

In response to the Ebola crisis that gripped Texas in the fall of 2014, **Sen. Charles Schwertner** (R-Georgetown) introduced a bill that would have made changes to the way the state manages and responds to severe infectious diseases. The bill stalled in the House, but **Sen. Schwertner** salvaged provisions related to enforceable control orders, information sharing with appropriate health response professionals and stockpiles of personal protective equipment and amended them to different legislation, which he was sponsoring in the Senate but was authored in the House by **Rep. Garnet Coleman** (D-Houston). Ultimately, too many issues were tacked on to the bill and in the last hours of the legislative session the House and Senate discharged their conferees without finding agreement and without passing the legislation. Individual efforts were successfully passed such as a bill by **Rep. Stephanie Klick** (R-Fort Worth) to continue the Task Force on Infectious Disease Preparedness and Response and a supplemental appropriations bill by **Rep. John Otto** (R-Dayton) and **Sen. Jane Nelson** (R-Flower Mound) that includes dollars for the University of Texas Medical Branch in Galveston's Bio-Containment Critical Care Unit that houses beds for potential Ebola patients. (*HB 2950* and *HB 2*)

### *CMV*

To increase education about congenital cytomegalovirus among women who might become pregnant, expectant parents and parents of infants, a bill by **Sen. Lois Kolkhorst** (R-Brenham) charges the Texas Department of State Health Services, in collaboration with the Texas Medical Board, with developing educational materials on the incidence of the disease, its transmission to pregnant women or women who may become pregnant, birth defects caused by CMV and available preventative measures to avoid infection. TDSHS also is required to establish a program to educate potential parents about the risk and health care providers about the incidence of the disease.

The bill initially required newborns who fail their hearing screen to be further screened for CMV, but that language was removed after medical professionals and the March of Dimes objected that the disorder does not fall on the Recommended Uniform Screening Panel developed by the U.S. Health and Human Services Secretary's Advisory Committee on Heritable Disorders in Newborns and Children. (SB 791)

### Immunization Registry

A bill by **Rep. J.D. Sheffield** (R-Gatesville) will amend current law to allow Texas youth for whom consent has been provided to be able to keep their records in the state's immunization registry until they turn 26 unless they opt out of having their data maintained in the registry. Under current law, immunization records are deleted from ImmTrac, the state's immunization registry, when an individual turns 18. The bill requires the Texas Department of State Health Services to make a good faith effort to contact individuals after their 18th birthday to notify them that consent was previously received and that their data will be maintained until their 26th birthday unless they choose to have their data removed. (HB 2171)

#### Contacts:

Carrie Kroll: ckroll@tha.org; 512/465-1043  
Elizabeth Sjoberg, RN, J.D.: esjoberg@tha.org; 512/465-1539

### Regulation of Handguns

With a more conservative Legislature, there was heightened interest this session in loosening the restrictions on carrying handguns. Open carry (allowing concealed handgun license holders to carry a handgun openly) and campus carry (allowing CHL holders to carry handguns on college campuses) generated political fireworks and public attention; both passed in the final days of the session.

Open carry bills were introduced by **Rep. Larry Phillips** (R-Sherman) and **Sen. Craig Estes** (R-Wichita Falls). After considerable legislative debate, **Rep. Phillips'** bill passed, but, importantly, the bill did not eliminate the current prohibition

against carrying handguns into churches, hospitals, nursing homes and other facilities. Bills by **Sen. Brian Birdwell** (R-Granbury) and **Rep. Allen Fletcher** (R-Tomball) will allow CHL holders to carry concealed handguns on the grounds of a publicly operated technical institute, college or university. However, this legislation does not permit a CHL holder to possess a handgun on the premises of a hospital operated by these public institutions of higher education. Legislation also was passed by **Rep. Ryan Guillen** (D-Rio Grande City) and **Sen. Donna Campbell** (R-New Braunfels) to address concerns by handgun owners that certain governmental entities were inappropriately posting signs that handguns were not allowed on governmental property. Governmental entities will now be subjected to civil penalties and other legal action by the attorney general if an unauthorized sign is not removed. (HB 910 and SB 17; SB 11 and HB 937; SB 73)

Opposed by THA, a bill by **Rep. Drew Springer** (R-Muenster) would have repealed the current prohibition on the carrying of a handgun on the premises of hospitals, nursing facilities and certain other types of property. THA testified against the bill during the hearing before the House Homeland Security & Public Safety Committee, and hospital security staff from two THA members also provided testimony on why the possession of handguns in hospitals creates additional and unnecessary risk to patients, visitors and hospital staff. The bill was approved by the House committee but failed to pass the House. (HB 308)

#### Contacts:

Charles Bailey, J.D.: cbailey@tha.org; 512/465-1038  
Carrie Kroll: ckroll@tha.org; 512/465-1043

### State Agency Operations

The Sunset Commission's review of the five health and human services agencies was the most significant agency-related work this session. The Sunset bill by **Sen. Jane Nelson** (R-Flower Mound) will:

- Continue the Texas Health and Human Services Commission until Sept. 1, 2027;

- **Abolish the Texas Department of Assistive and Rehabilitative Services and the Texas Department of Aging and Disability Services and transfer their functions to THHSC;**
- **Continue the Texas Department of Family and Protective Services and the Texas Department of State Health Services until Sept. 1, 2023, but transfer some of their functions to THHSC;**
- **Maintain TDFPS and TDSHS as separate agencies to perform non-transferred functions, including child and some adult protective services at TDFPS and public health and the Texas Health Care Information Collection at TDSHS. THCIC is continued until 2023;**
- **Consolidate the functions of the state's health and human services agencies in two phases by 2017; and**
- **Require THHSC to streamline Medicaid provider enrollment and credentialing, coordinate major quality initiatives and create a pilot program for incentive-based provider payments in Medicaid managed care. (SB 200)**

The TDSHS Sunset bill by **Rep. Four Price** (R-Amarillo) stalled in the House due to some controversial amendments, which required its Senate companion by **Sen. Jane Nelson** (R-Flower Mound) to be narrowed to address only the transfer of certain regulated professions. As a result, pieces of **Rep. Price's** and **Sen. Nelson's** bills were attached to other bills. Those provisions addressed primarily behavioral health, EMS and vital records. Two public health provisions were attached to the budget: TDSHS must (1) establish statewide priorities for improving the state's public health system and create a public health action plan and (2) compile a comprehensive inventory of public health services. (*HB 2510* and *SB 202*)

The Legislature significantly modified the operations of the Office of Inspector General, as recommended by the Sunset Commission, including requiring the OIG to undergo special review in six years. The bill by **Sen. Juan Hinojosa** (D-McAllen) will require the OIG to establish priorities to guide its investigation processes, change the timelines for different phases of the investigation process, define the OIG's role in managed care oversight, subject the OIG to quality assurance reviews and require a peer review of sampling methodology used in its investigative process. (*SB 207*)

**Rep. Susan King** (R-Abilene) has long sought to improve the confidentiality and reporting requirements tied to the Texas Health Care Information Council. Her bill this session will require a provider to give written notification to a patient whose data is being collected and submitted to THCIC for health care purposes. THA successfully secured language to require TDSHS to edit an existing form for this purpose and make it available on its website. The bill also prohibits THCIC from charging any health and human service agency a fee for the use of data and requires an annual report be compiled outlining the security measures taken to ensure the data housed within THCIC is protected. The report must include a summary of any breaches of data or attempted/successful cybersecurity attacks that may take place. (*HB 764*)

The Texas Health Services Authority, a public-private partnership charged with coordinating the implementation of health information exchange in the state, is reauthorized until September 2021 under a bill by **Sen. Jane Nelson** (R-Flower Mound). The bill will change the composition of the THSA board and require THSA to collaborate with the Texas Department of Insurance in applying for federal funding related to medical record privacy. (*SB 203*)

#### Contacts:

John Hawkins: jhawkins@tha.org; 512/465-1505  
Jennifer Banda, J.D.: jbanda@tha.org  
Stacy Wilson, J.D.: swilson@tha.org  
Carrie Kroll: ckroll@tha.org; 512/465-1043

## State-Based Health Insurance Exchange

Uncertainty over how the U.S. Supreme Court would rule in *King v. Burwell* hung over the legislative session. Whether Texans would still be eligible for tax credits to purchase private health insurance through the federal health insurance exchange hinges on the Supreme Court decision, expected in late June. Consistent with the general opposition to anything that could be tied to the Patient Protection and Affordable Care Act, there was little legislative interest in creating a state-based exchange. **Rep. Chris**

**Turner** (D-Arlington) introduced legislation that would have directed the Texas Health and Human Services Commission and the Texas Department of Insurance to create a state-based exchange in the event of a Supreme Court ruling in favor of *King* that eliminates tax credits for Texans enrolled in the federal exchange, but the bill was never scheduled for a public hearing. (*HB 817*)

**Contacts:**

John Hawkins: jhawkins@tha.org; 512/465-1505

## Taxes

The Legislature made tax relief one of its signature priorities for the 84th legislative session. The final budget includes a significant franchise tax cut for businesses and a \$10,000 increase in the homestead exemption for property owners.

### Franchise Tax Relief

The bill passed by **Rep. Greg Bonnen** (R-League City) and **Sen. Jane Nelson** (R-Flower Mound) reduces the franchise tax on Texas businesses by 25 percent, increases the revenue threshold for businesses to use the E-Z rate from \$10 million to \$20 million and reduces the E-Z rate from .575 percent to .331 percent. It is estimated to provide \$2.56 billion in tax relief to businesses over the biennium. (*HB 32*)

### Occupations Tax Repeal and General Revenue-Dedicated Account Reform

Repeal of occupations taxes under a bill passed by **Rep. Drew Darby** (R-San Angelo) and **Sen. Jane Nelson** (R-Flower Mound) will provide approximately \$250 million in tax relief. Their bill also reduces the state's reliance on general revenue-dedicated accounts for budget certification, increasing transparency in the budget process and ensuring fees are spent on intended purposes. (*HB 7*)

**Contacts:**

John Hawkins: jhawkins@tha.org; 512/465-1505

## Telemedicine/Telemonitoring

Although more than 10 telemedicine or telehealth bills were filed this session, only one by **Rep. Jodie Laubenberg** (R-Parker) passed. **Rep. Laubenberg's** bill will require Medicaid reimbursement for telemedicine services provided by a Medicaid-enrolled physician to a child in primary or secondary school, regardless of whether the physician is the patient's primary care physician, as long as a health care professional is present and a parent has consented. (*HB 1878*)

Several bills also addressed the current expiration date for Medicaid reimbursement of home telemonitoring. That program was scheduled to expire on Sept. 1, 2015, but has been extended until Sept. 1, 2019. (*HB 2641*)

Filed bills that failed would have:

- Created a pilot program to provide telemedicine medical services in rural areas through use of telemedicine between ambulances and trauma centers and a pilot program to provide telemedicine medical services to patients with an autism spectrum disorder; (*HB 2004; SB 1119*)
- Permitted dental hygienists to use telemedicine to expand access to dental care; (*HB 1940 and SB 787*)
- Created a telemedicine program for children with chronic or complex medical needs; (*HB 2082 and SB 1886*) and
- Permitted telemedicine medical services to be delivered to consenting patients at their residence, including their home, a nursing home, a convalescent home or a residential unit. (*HB 3476*)

A few bills unsuccessfully attempted to address the on-going litigation between Teledoc and the Texas Medical Board over the use of telemedicine. A bill by **Rep. John Smithee** (R-Amarillo) would have allowed insurance coverage of telemedicine services without a pre-existing physician-patient relationship established through a face-to-face visit. Another bill by **Rep. Jodie Laubenberg** (R-Parker) would have prohibited the Texas Medical Board from requiring a face-to-face visit prior to receiving telemedicine services. (*HB 2172; HB 3444*)

**Contacts:**

Stacy Wilson, J.D.: swilson@tha.org; 512/465-1027

## Women's Health

### Women's Health Program and Funding

Prior to the legislative session, the Texas Sunset Commission reviewed the structure of the state's women's health care programs and recommended consolidation of the various programs under the Texas Health and Human Services Commission. In addition to the consolidation, the Texas Women's Health Program will now be called Women's Health Services. The Legislature appropriated \$50 million additional dollars to women's health programs over the coming biennium.

Riders to the state budget also addressed women's health issues, including:

- A requirement for the Texas Department of State Health Services to implement expeditiously program policies to increase access to long-acting contraceptives, a policy that THA supported;
- Restrictions on use of family planning funding if sexual health or family planning instruction is provided by abortion providers or their affiliates;
- Limiting breast and cervical cancer service providers to those who qualify under the strict Women's Health Program criteria, which exclude Planned Parenthood clinics, unless a sufficient numbers of providers is not available in a region; and
- A requirement that TDSHS use claims data in addition to birth certificate data in determining the rate of early elective deliveries in the Medicaid program and eliminating publication of those rates on the TDSHS website, both of which THA supported. (HB 1)

### Abortion

While there was a great deal of discussion about further limiting access to abortion, only one substantive bill, by **Rep. Debbie Riddle** (R-Tomball) and **Sen. Donna Campbell** (R-New Braunfels), passed, and it does not apply to hospitals. Their bill requires licensed abortion facilities and certain ambulatory surgical centers to educate and train their employees, volunteers and contractors in human trafficking. There were discussions about expanding the bill to require mandatory training for all hospital

employees, but THA was successful in fending off that expansion. (HB 416)

### Victims of Sexual Assault

A bill by **Rep. Tony Dale** (R-Cedar Park) and **Sen. Jose Rodriguez** (D-El Paso) expands the uses of the Texas Crime Victims Compensation Fund to reimburse certain alleged sexual assault victims for the reasonable costs of hospital forensic medical exams. An amendment by **Sen. Joan Huffman** (R-Houston) created the Governor's Program for Victims of Child Sex Trafficking. The program will coordinate state and local law enforcement agencies, state agencies and service providers to identify victims of child sex trafficking who are eligible to receive services under the program. (HB 1446)

### Disposition of Fetal Remains

In response to a request from constituents, **Rep. Four Price** (R-Amarillo) passed a bill that will require hospitals to release fetal remains upon a parent's request. THA staff worked with **Rep. Price's** office to clarify the bill to ensure that requested fetal remains are not classified as pathological waste. (HB 635)

### Placenta Removal From Hospitals

To address the issue of women wanting to take their placentas home directly from the hospital without going through a funeral director or obtaining a court order, the Legislature passed a bill by **Rep. Kenneth Sheets** (R-Dallas) and **Sen. Kirk Watson** (D-Austin) to require hospitals and birthing centers to permit a woman (or her spouse in some instances) to take her placenta from the hospital if certain conditions are met. THA worked closely with **Rep. Sheets** to revise the filed bill to ensure the public's health and safety and to protect hospitals from liability. (HB 1670)

#### Contacts:

Jennifer Banda, J.D.: [jbanda@tha.org](mailto:jbanda@tha.org); 512/465-1046  
 Stacy Wilson, J.D.: [swilson@tha.org](mailto:swilson@tha.org); 512/465-1027  
 Carrie Kroll: [ckroll@tha.org](mailto:ckroll@tha.org); 512/465-1043  
 Elizabeth Sjoberg, RN, J.D.: [esjoberg@tha.org](mailto:esjoberg@tha.org); 512/465-1539



Join your colleagues in supporting **HOSPAC** – our voice in Austin and Washington, D.C. for good hospital and health care policy.

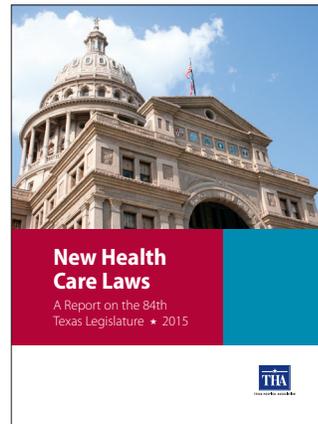
Contact Wendy Thomas at [wthomas@tha.org](mailto:wthomas@tha.org) or 512/465-1044 to join or for more information.

[www.hospac.org](http://www.hospac.org)

## COMING SOON!

### *New Health Care Laws: A Report on the 84th Texas Legislature*

Written by THA's legal and advocacy staff, this reference provides a summary of all legislation that impacts hospitals as well as insights about how hospitals will be affected.



For more information, call 512/465-1000 or visit [www.tha.org](http://www.tha.org).



# Thank You for Your Advocacy!

Your advocacy and legal team at THA extends its **heartfelt appreciation to everyone who testified on bills** in Austin this session. Your presence, stories, experiences and expertise were invaluable in conveying the importance of good health care policy to lawmakers.

Thanks also to all of you who sent messages to lawmakers through THA's **VoterVoice system. Together, you sent nearly 400 messages** on legislation of importance to Texas hospitals and our patients.

## ADVOCACY WORKS!