

HFMA Texas Gulf Coast Chapter

Winter Conference

How Congress and the Texas Legislature are Impacting the Health Sector?

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OUR MISSION

Memorial Hermann Health System is a nonprofit, values-driven, community-owned health system dedicated to improving health.

OUR VISION

To create healthier communities, now and for generations to come.

Presentation Outline

Outline

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2021- 22 Interim Legislative Activity

2021-22 Interim Legislative Activity

- **Several Texas Senate and House Standing Committees considered an array of health and human services issues during the legislative interim:**
 - **Use of American Rescue Plan Act (ARPA) funding: determining whether providers were complying with state reporting requirements, including reporting of COVID relief funds received and how they were used**
 - **COVID impacts on the health sector workforce, and mental health; and education deficiencies in Texas public schools**
 - **1115 Medicaid Waiver and supplemental payment programs**
 - **Medicaid eligibility**
 - **Price transparency, competition, and consumer protections within the health insurance marketplace**
 - **Broadband infrastructure, telemedicine and telehealth**
 - **Interim Committee reports, and associated legislative proposals, emerged in the weeks before the beginning of the 2023 state legislative session**

2021-22 Interim Legislative Activity

- **In 2021, Texas House Speaker Dade Phelan introduced a package of health and human services bills, referred to as “Healthy Families, Healthy Texas,” which included Medicaid coverage for postpartum mothers; prescription drug coverage for uninsured Texans; provider pricing transparency; and health insurance proposals.**
- **In 2023, Phelan announced several priority health and human services bills, including Medicaid coverage for postpartum mothers; tax exemptions for “family care items;” and regulation of personal data collection, including personal health information.**
- **Lieutenant Governor Dan Patrick expressed support for significant investment in construction of mental health facilities; and adding several hundred licensed psych beds to the state’s currently inadequate inventory.**
- **Several legislative proposals focused on *Medicaid expansion*, as contemplated in the Affordable Care Act (ACA), failed to advance, as in every session since 2011.**

2021-22 Interim Legislative Activity

- In February 2022, House Speaker Dade Phelan established a *House Select Committee on Health Care Reform*, charged with the following:
 - **Considering the “implications of *excessive* healthcare costs”**
 - **Price Transparency: provider compliance with federal and state reporting requirements (including *No Surprises Act*, “surprise medical billing” statutes)**
 - **Access to healthcare: strategies for capitalizing on the work of the 2021 legislature**
 - **Improving outreach relating to Medicaid and CHIP, and resources for rural communities**

2021-22 Interim Legislative Activity

- **Recommendations of the *House Select Committee on Health Care Reform* included the following:**
 - **Consider *prohibiting providers from engaging in price discrimination* for their uninsured patients; or choosing to *pay cash* for services**
 - **Consider *financial incentives for patients who choose lower-cost services***
 - **Providing *12 months of Medicaid coverage* for *postpartum* mothers (in response to the 2 months of coverage approved by the state legislature in 2021)**
 - **Consider *funding for outreach activities and application assistance* for families with Medicaid-eligible children**
 - **Consider *additional funding* for the Texas HHSC to employ *to identify those who may be Medicaid- or CHIP-eligible***

2021-22 Interim Legislative Activity

- Recommendations of the *House Select Committee on Health Care Reform* included the following:
 - Applying price transparency requirements *uniformly to all categories of providers*
 - ***Prohibiting hospitals from charging “facility fees” for services not provided on a hospital campus***
 - Allowing insurance companies to offer new, “Consumer Choice” plans, without certain, state-imposed mandates and regulations
 - Increase funding for graduate medical education, and health care workforce development initiatives, to address health sector workforce shortages, and increase the number of physicians, nurses, and behavioral health professionals
 - Increase access to telemedicine and telehealth services

2021-22 Interim Legislative Activity

Resulting Legislative Proposals

- Mandating ***Itemized Bills***
- **Prohibiting “Facility Fees”**
- ***Government rate-setting*** for health care services provided to ERS, TRS, UT System, A&M System, etc.
- **Mandating *lowest contracted rate*** for hospital services
- Hospital contracting
- **Prohibiting COVID Mandates**
- **Prohibiting Vaccine Mandates** (multiple bills)
- **End-of-Life/Treat Until Transfer** (*Texas Advance Directives Act*)
- **Abortion** (Reaction to SB 8, “Heartbeat Bill,” passed in 2021); establishing ***affirmative defenses*** for physicians and care teams

2023 State Legislative Session Dynamics

2023 Texas Legislative Session - Dynamics

- ***Dynamics impacting health care providers and those who represent them:***
 - **Determining the impact of the inevitable **wind-down of federal funding (*Federal Medical Assistance Percentage, or FMAP*)**, originally tied to the national **Public Health Emergency (PHE)**:**
 - > **The initial PHE declaration occurred in March 2020, and was subsequently renewed every 90 days by the Trump and Biden Administrations; President Biden pledged to give states at least 60 days notice in advance of the cessation of the declaration.**
 - > **States benefitted from 6.2% increase in federal funding (FMAP) during the PHE.**
 - > **As a result, among other significant benefits, Texas did *not* have a Medicaid budget shortfall in 2021.**
 - **Monitoring the array of waivers and flexibilities relating to the federal and state public health emergency declarations**
 - > **Lawmakers pursued various COVID-related legislative proposals, making some waivers permanent.**

2023 Texas Legislative Session - Dynamics

- *Dynamics impacting health care providers and those who represent them:*
 - In his *State of the State* address, Governor **Abbott declared “ending COVID restrictions forever” as an “emergency item,”** including prohibiting vaccine and mask mandates; and prohibiting governmental bodies from closing any business or school because of COVID.
 - **The national public health emergency (PHE) declaration ended May 11; Abbott’s state public health disaster declaration ended on June 15;** Texas was the second-to-last state to end its public health emergency declaration.
 - **Abbott allowed the disaster declaration to continue, pending passage of legislation prohibiting local governments from imposing mask and vaccine mandates; closing schools and businesses, in response to the pandemic; Abbott signed the legislation, which took effect September 1, 2023, prohibiting local governments from enacting more restrictive regulations than already exist in state law.**
 - **Abbott added consideration of proposals prohibiting private employers from imposing COVID vaccine mandates to the “charge” of the 3rd special legislative session, which began October 9.**
 - > **COVID vaccine prohibition legislation: Senate Bill 7 (Middleton); and House Bill 7 (Leach)**

2023 Texas Legislative Session - Dynamics

- ***Dynamics impacting health care providers*** and those who represent them:
 - ***Perception*** that health care providers became enriched by **COVID funding** (CARES Act and ARPA funding);
 - ***Perception*** of poor health care provider compliance with federal and state price transparency mandates and **COVID reporting requirements**;
 - **Health care providers were *viewed negatively*** for requiring **COVID vaccines, masks, limiting visitors**
 - ***Misperception*** of health care providers' fiscal health, as characterized by recent reports originating from advocacy organizations, often funded by the insurance industry: exs.:
 - > National Academy for State Health Policy (NASHP)
 - > Arnold Ventures
 - > Texas 2036
 - > Texas Public Policy Foundation

Public Health Emergency (PHE)

2023 Texas Legislative Session – *End of the Public Emergency (PHE) Declaration*

- **The national public health emergency (PHE) declaration ended May 11, 2023.**
- **Impact of the end of the PHE declaration on state Medicaid enrollment:**
 - Initial PHE required states to maintain their Medicaid rolls as they existed in March of 2020. With the end of the PHE, the Texas HHSC estimated 850,000 - 1.5 million current Texas Medicaid recipients estimated to lose coverage;
 - **April 1, 2023:** states began determining whether those added to Medicaid rolls during the pandemic were still eligible.
 - **April 2023 initial HHSC estimate indicated a minimum of 885,000 current enrollees will lose coverage; by December 2023: 1.7 Million, including 1 Million children**
 - Health systems established work groups, in response to the looming end of the PHE, implementing transition plans to ensure compliance with federal and state regulatory requirements once the PHE ends
 - **Texas HHSC plan for wind-down of additional 6.2% in federal funding tied to the PHE (Federal Medical Assistance Percentage, or FMAP):**
 - > **6.2% through March 31; 5.0% beginning April 1; 2.5% beginning July 1; 1.5% beginning October 1, 2023**

State Budget Highlights

2023 Texas Legislative Session: Budget Highlights

- **Texas had the *most robust state treasury in history*; creating favorable conditions for state budget funding requests and targeted programmatic spending increases.**
- Texas now has the 8th largest economy in the world.
- 1300 people moving to Texas *every day*.
- State Comptroller Glenn Hegar's biennial revenue estimate (BRE) revealed a record \$188.2 Billion in available revenue, for general purpose spending for the 2024-25 biennium; **reflecting a 26.3% increase over the previous biennium.**
- **The state treasury reflected a \$32.7 Billion carryover balance (“surplus”) from the previous biennium.**
- The state's Economic Stabilization Fund (aka “Rainy Day Fund”) was estimated to total more than \$14 Billion by the end of the state biennium.

2023 Texas Legislative Session: Budget Highlights

- **Governor Abbott, Lieutenant Governor Patrick and Speaker Phelan committed half of the surplus, \$16.5 Billion, to “property tax relief.”**
- **Abbott made “reducing property taxes” an “emergency item” in his February “state of the state” address.**
- **Lawmakers addressed competing “property tax relief” proposals during the regular and two special legislative sessions: “tax rate compression” v. “homestead exemption increase.”**
- **Abbott called lawmakers back for two more special legislative sessions, devoted to “school choice” (aka “vouchers”); legislature failed to pass a voucher bill.**

2023 Texas Legislative Session: Budget Highlights

- Texas Senate and House *base budgets* both proposed \$130.1 Billion in state *General Revenue (GR)*, an increase of almost \$12 Billion for the 2024-24 biennium, representing a 10.1% increase over the previous biennium.
- Neither the Senate, nor House base budgets contemplated use of any available *Rainy Day Funds*.
- **Lawmakers also considered a *Supplemental Appropriations* bill, to address biennial state budget shortfalls, for state services which will be provided by the August 31, 2023 end of the biennium; and included \$2.5 Billion for the state's Medicaid budget shortfall.**
- **Lawmakers proposed \$76.9 Billion in aggregate Medicaid spending for the 2024-25 biennium; representing *an additional \$8 Billion* for the biennium.**
- **Senate and House base budgets contained *\$464 Million in Medicaid reimbursement rate increases* (“add-ons”) for safety-net, trauma, and rural hospitals; these add-ons originated in 2013, and represent an increase in base state Medicaid reimbursement from *52 to 58 cents per dollar of cost of care*.**

2023 Texas Legislative Session: Budget Highlights

- Appropriators committed significant **additional funding for *mental health programs and services*, including more than \$250 Million for the 2024-25 biennium**, which will maintain the state's current *inpatient community psychiatric beds*; and for additional state-funded psychiatric beds for targeted urban and rural communities.
- The budget included almost **\$450 Million for *women's health programs***, representing an increase of more than \$160 Million from the previous biennium.
- Lawmakers also committed funding to address ***health sector workforce needs***, including:
 - \$34 Million for additional *Graduate Medical Education (GME) slots*
 - \$28 Million for *Mental Health Loan Repayment Program (an increase of almost \$26 Million over the funding level from the last biennial budget cycle)*
 - \$28 Million for the *Texas Nursing Shortage Reduction Program*
 - \$7 Million for the *Nurse Faculty Loan Repayment Program (doubling the amount appropriated in the previous biennium)*

2023 Texas Legislative Session: Budget Highlights

- **Lawmakers allocated more than \$300 Million for rural inpatient and outpatient healthcare services; and \$15 Million in grants, to be used to *stabilize* rural hospitals, with an emphasis on maternal health.**
- **Established the *Texas Pharmaceutical Initiative Study*, and \$150 Million for a statewide plan for a distribution network for drugs and medical supplies; a statewide PBM program; and to provide advanced pharmaceutical preparation services, strengthening the state's health sector supply chain**

Selected Budget Riders

2023 Texas Legislative Session: Budget Highlights – Selected Riders

- **Budget Riders:**

- **Rider 33 allocates \$16.2 Million, providing a 25% increase in the current Medicaid ground ambulance mileage rate.**
- **Rider 37 directs the Texas HHSC to issue a report on uncompensated trauma care.**
- **Rider 150 maintains the current requirement that the Texas HHSC must report on all COVID-related federal funds allocated to Texas health care providers, through state fiscal year 2025. Texas providers have received minimal funding this past year, and the recent federal debt ceiling negotiated settlement redistributed all unallocated federal COVID funds.**
- **HB 1 (Article IX, Section 17.34) appropriates \$5 Million to the Texas HHSC, for a hospital charity care and price transparency study; HHSC must report to the Texas legislature before the 2025 regular legislative session.**

2023 Legislative Highlights

2023 Texas Legislative Session: Legislative Highlights

• Healthcare Workforce/Staffing

- **SB 25 addresses nursing workplace shortage, by establishing scholarship programs; loan repayment flexibility; and grants:**
 - > extends the current Nursing Innovation Grant Program sunset date
 - > increases Nursing Faculty Loan Repayment Assistance Program funding; makes part-time nurses eligible, as well as full-time nurses
 - > builds a more reliable pipeline for the workforce needs of the future
- **SB 240, addresses health sector *workplace violence* (WPV) programming bills:**
 - > **SB 840 increases criminal penalties for assaults on healthcare facility personnel**

2023 Texas Legislative Session: Legislative Highlights

- **Renewal of several regional charity care agreements: *Local Provider Participation Funds (LPPFs)***
- **Mental Health – lawmakers provided funding in the biennial appropriations bill for mental and behavioral health services, and community mental health grants. Includes funding for inpatient psych beds; state hospital staff salaries; and an expansion of the network of stepdown housing.**
- **SB 29 requires ongoing monitoring, reporting and responding to ongoing COVID impacts**
 - **Includes monitoring of the wind-down of federal and state COVID funding, and the impact of the termination of waivers and other flexibilities**

2023 Texas Legislative Session: Legislative Highlights

- **Infrastructure:**

- **SB 28 and SJR 75 provides funding for strengthening the state’s water infrastructure**
 - > **Establishes the New Water Supply for Texas Fund, and the Texas Water Fund, funding new water supply projects; and addressing deteriorating water infrastructure, be providing grants to cities; some funding is subject to voter approval of the related constitutional amendment in November, 2023**
- **HB 9 & HJR 125 establishes the Broadband Infrastructure Fund (BIF), providing \$1.05 Billion in state funding, also pursuant to voter approval of the related constitutional amendment in November 2023.**

2023 Texas Legislative Session: Legislative Highlights

- **SB 14 prohibits gender transition care for minors**
- **HB 3058 establishes “affirmative defenses” for OB/GYNs, physicians and care teams treating women with problematic pregnancies**
- **SB 1249 creates the Living Donor Education Program**
 - **Senator Kelly Hancock’s personal story**
- **HB 3162 modifies the Texas Advance Directives Act (TADA), addressing end-of-life, “treat until transfer” time period**

2023-24 Interim Legislative Activity

2023-24 Legislative Interim Activity - Dynamics

- **Special legislative sessions in June and July resulted in property tax relief package; Texas voters considered and approved Proposition 4 on the November 7, 2023 ballot**
- **Governor Abbott added consideration of proposals prohibiting private employers from imposing COVID vaccine mandates to the 3rd special session “charge”**
- **Four special legislative sessions and the Paxton impeachment trial consumed the remainder of 2023; coupled with presidential election cycle, lawmakers will only have 6 months to complete interim assignments; interim charges will likely not emerge until the end of the March of 2024.**

2023-24 Legislative Interim Activity - Dynamics

- On October 5, 2023, Comptroller Hegar released the Certification Revenue Estimate (CRE) for the 2024-25 state biennium: he estimates General Revenue (GR) available for the biennium at \$195 Billion, representing an *increase of nearly 25%* over the current biennium; and an anticipated *surplus* of more than *\$18 Billion*; the state economy continues to outperform the national economy; Hegar reports “recession unlikely.”
- Will Speaker Phelan continue the House Select Committee on Health Care Reform?
- The impact of the **2024 primary election cycle** remains unknown:
 - December 11, 2023 end of filing period revealed retirements of a number of veteran House members.
 - **House Republicans who voted for Paxton impeachment, and who oppose “vouchers” will be targeted.**
 - **Speaker Phelan faces a serious primary challenge, due to impeachment and voucher dynamics; appointing Democrats as committee chairmen.**

Federal Legislative Update

Federal Legislative Update

- **This has been the *least productive US Congress in recent memory.***
 - **US House Speaker’s race kept the chamber at a standstill for almost a month in the Fall of 2023, following the ouster of Kevin McCarthy.**
 - **New Speaker Mike Johnson presides over a razor-thin majority, following McCarthy George Santos’ expulsion; and former Speaker McCarthy’s resignation.**
 - **US Senate productivity remains well below recent legislative cycles; only 40 bills passed by the end of 2023, as contrasted with 130 at the same point of the last Congress.**
- **The current, temporary federal spending bills (“continuing resolutions” or *CR*) expire March 1 and 8, respectively; ongoing CR/budget negotiations *ensure considerable anxiety for hospitals and health care providers*; and concern that reimbursement rate reductions, other policy initiatives negatively impacting providers, will be used as offsets (“pay-fors”): exs., Medicaid DSH cuts, SNP, 340 B.**

Federal Legislative Update

- **US Senate and House remain divided over funding for Ukraine, Israel, Taiwan, and border security.**
- **Senate and House leaders remain in jeopardy: Cruz among senators calling for Republican Leader Mitch McConnell to step aside; House Freedom Caucus members threaten “motion to vacate the chair” and remove Speaker Johnson; a single member can make the motion to vacate.**
- **Texas congressional delegation continues to reinforce hospitals’ pushback against CMS “bulletin” relating to state supplemental payment programs (Medicaid Fiscal Accountability Rule, aka *MFAR*).**

2024 Election Cycle

2024 Election Cycle

- **Presidential**
- **Congressional**
- **Texas Legislature**

Questions

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