

## Hot Topics in Health Care for Texas' 80th Legislative Session

The Texas 80th Legislative Session begins January 9, 2007, and the following health care issues from the Texas Senate and House Committees Interim Charges and Reports are stirring interest in Austin and for health care providers across the state.

### LONG TERM CARE PLANNING & ADVANCE DIRECTIVES

The Texas Senate Committees on Health and Human Services and State Affairs were given the joint charge to study options for increasing the use of advanced planning tools, such as health care power of attorney and living wills, to ensure more effective decision-making regarding critical end-of-life and other health care decisions. In their recent joint report, the Committees made the following recommendations:

- Create an electronic databank of advanced directives and medical powers of attorney;
- Encourage use of end-of-life planning discussion tools at nursing homes;
- Institute the Physician Orders for Life-Sustaining Treatment program in Texas so that a patient's end-of-life decisions are available in a standard form, facilitating quick review and comprehension by health care providers as the patient moves locations; and
- Clarify that a medical agent may obtain access to the patient's medical records so long as the patient is under a physician's care.

The complete joint report is available at

<http://www.senate.state.tx.us/75r/senate/commit/c610/c570.c610.InterimReport79.pdf>.

The Texas House Committee on Public Health was given the charge to review issues relating to Chapter 166.046 of the Texas Health & Safety Code, and assess if patients and/or their loved ones have a sufficient opportunity to obtain transfer to an alternate facility and subsequent care in end-of-life situations. In its recent report, the committee recommended that the Texas Legislature consider revisions to Chapter 166.046 of the Texas Health & Safety Code, regarding physician refusal to comply with an advance directive. The complete report is available at <http://www.house.state.tx.us/committees/reports/79interim/publicHealth.pdf>.

What the Texas Hospital Association (THA) is Saying. In its recent *2007 Legislative Agenda* publication, THA has recommended that the legislature make procedural modifications to the dispute resolution process for continued life support decisions so that the process will be more understandable and compassionate when families and physicians disagree on the continuation of life support determined to be medically futile.

#### Bills to Watch.

- **SB 26**—Relating to establishing an advance directive registry;
- **SB 27**—Relating to a pilot program to educate nursing home residents about advance care planning; and

- **SB 28**—Relating to transferable physician orders for life-sustaining and related treatment.

## MANAGED CARE & HEALTH INSURANCE

The Texas Senate Committee on State Affairs was given the charge to study the regulation and management of health care plans with respect to:

- Out-of-network claims and balance billing;
- Discounting and waiving co-pays, deductibles, and co-insurance;
- Health care cost transparency;
- Expansion of health plans' reportable data to the Texas Department of Insurance; and
- Mandates to insurance companies for increased coverage for specific illnesses, medical conditions, or diseases

The Committee has not yet published its report or recommendations.

What the Texas Medical Association (TMA) is Saying. " TMA proposals will ensure that health plans are required to maintain adequate networks, and how physicians can better educate patients and employers on this complex issue. Other issues related to appropriate regulation of health insurance contracts and ensuring patients are protected will be included in a legislative package."

### Bills to Watch.

- **HB 139**—Relating to health services provided to health benefit plan enrollees by certain out-of-network health care providers;
- **SB 55**—Relating to registration and regulation of certain discount health plans; and
- **HB 223, SB 54**—Relating to health benefit plan coverage for certain prosthetic devices, orthotic devices, and related services.

## HEALTH CARE FUNDING & THE UNINSURED

The Texas Senate Committees on State Affairs and Finance were given the following charges related to health care funding and the uninsured:

- Develop recommendations on how to provide increased cost-effective coverage, especially to populations with impairments and diseases, as well as the underinsured/uninsured;
- Study and make recommendations regarding the cost drivers of emergency medical services. Make recommendations on how to improve and sustain EMS services for Texas, as well as reduce costs to health care plans, businesses, and individuals;
- Review health care funding, focusing on the Medicaid program, Medicare Part D, hospital reimbursements and trauma and indigent care; and
- Determine the number of commercial and consumer transactions, including wire transfers, that occur in Texas. Determine the amount of monies that are sent internationally from Texas. Study the

feasibility of creating a pilot program in Harris County that captures a percentage of revenues from such transactions, and request an opinion from the Attorney General's office to pursue these revenues as a potential source for health care funding.

The Committees have not yet published their reports or recommendations.

What THA is Saying. THA has made the following recommendations for alleviating the uninsured problem in the upcoming session:

- An affordable minimum benefits package that provides preventive and primary care health coverage with a low deductible;
- More affordable health insurance products through regional or statewide pools or cooperatives
- Incentives for businesses to pay a reasonable percentage of an employee's health insurance premium
- Requiring companies receiving state funds to provide adequate and affordable health insurance to their employees;
- Allowing parents to cover adult children on their health insurance policy, regardless of age or student status; and
- Funding state Medicaid and the Children's Health Insurance Program (CHIP) adequately so that the working poor and disabled have access to health care.

#### Bills to Watch.

- **SB 104**—Relating to the imposition of a fee for money transmissions sent to a destination outside the United States and to the use of the revenue for indigent health care purposes;
- **SB 272**—Relating to county responsibility for indigent health care services;
- **SB 108**—Relating to a Medicaid buy-in program for certain children with disabilities;
- **HB 338**—Relating to the collection and reporting of employment information regarding beneficiaries of certain health care services and employee health benefit plan coverage;
- **SB 151**—Relating to the immigration status or nationality of a person needing or receiving certain emergency services;
- **HB 127**—Relating to the requirement that state agencies report the cost of services and benefits provided to unlawful immigrants;
- **SB 23**—Relating to promoting the purchase and availability of health coverage; and
- **SB 39**—Relating to a cancer drug donation program.

## MEDICAID REFORM

The Texas Senate Committee on Health and Human Services was given the charge to monitor state and federal Medicaid reform proposals, including their impact on the Medicaid program in Texas, as well as cost-containment measures in other states, and make recommendations for legislative action, as appropriate. In its recent report, the Committee made the following recommendations:

- Direct the HHSC and the Office of the Inspector General to study and implement methods to increase the use of technology to verify coverage and citizenship;

- Create a "connector" entity within the Texas Department of Insurance (TDI) to increase consumer access to information about insurance plans;
- Explore more transparent and simplified methods of hospital financing to replace the current use of Intergovernmental Transfers (IGTs);
- Increase reimbursement rates for physicians;
- Consider co-pays for non-emergent emergency room usage; and
- Consider Health Opportunity Accounts for recipients to create a more market-based approach to medical purchasing decisions.

The complete report is available at

<http://www.senate.state.tx.us/75r/senate/commit/c610/c610.InterimReport79.pdf>.

What TMA is Saying. "Rates were reduced by 2.5 percent in 2003 and many physicians are being paid less in 2006 than they were in 1993. TMA will work to restore the cuts, and ensure that Medicaid and CHIP patients have appropriate access to medical care."

What THA is Saying. THA has made the following recommendations for Medicaid reform in the upcoming session:

- Maximize federal matching dollars for Medicaid, and use these funds to expand eligibility and access to providers;
- Reinstate the Adult Medically Needy Spend-down Program to provide coverage to low-income adults;
- Update inpatient rates and restore past reductions of inpatient and outpatient rates; and
- Eliminate the \$53 million cost containment intergovernmental transfer intended to be for one biennium only.

#### Bills to Watch.

- **HB 322**—Relating to a study regarding the costs and benefits of providing presumptive eligibility for Medicaid to certain applicants for federal disability benefits;
- **HB 40**—Relating to requiring certain applicants for and recipients of medical assistance to provide proof of citizenship or nationality and of identity;
- **SB 24**—Relating to reimbursement under the state Medicaid program for certain health care services provided through telemedicine;
- **SB 22**—Relating to long-term care insurance and a partnership for long-term care program; and
- **HB 52**—Relating to the personal needs allowance for certain Medicaid recipients who are residents of long-term care facilities.

#### **MEDICAID FRAUD PREVENTION**

On December 21, 2006, the Office of the Inspector General (OIG) for the U.S. Department of Health and Human Services sent a letter to the Texas Attorney General's Office stating that the Texas Medicaid Fraud Prevention

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Act (TMFPA) does not meet the requirements of section 6031(b) of the Deficit Reduction Act (DRA). The DRA provides a financial incentive of a 10% increased share of fraud recoveries for states to enact laws that establish liability to the state for individuals and entities that submit false or fraudulent claims to the state Medicaid program. For a state to qualify for this incentive, the state law must meet certain requirements generally comparable to the federal False claims Act (FCA), as determined by the OIG in consultation with the Department of Justice. The OIG identified the following deficiencies in the TMFPA:

- TMFPA does not permit a *qui tam* relator to pursue a suit if the Texas Attorney General's Office declines to intervene in the action;
- TMFPA permits the relator to recover at least 10%, rather than at least 15%, of the action proceeds;
- TMFPA does not meet the minimum civil penalties of the federal FCA; and
- TMFPA does not have an explicit burden of proof for each element in a *qui tam* suit.

The Texas Legislature may amend the Texas Medicaid Fraud Prevention Act in the upcoming session to correct these deficiencies identified by the OIG. No bills have been filed yet that address the deficiencies.

## LASERS

The Texas House Committee on Public Health was given the charge to evaluate the need for regulation of laser hair removal facilities in Texas and the need for certification of individuals performing laser hair removal procedures. The Committee has not yet completed its recommendations for the charge, but the current report is available at <http://www.house.state.tx.us/committees/reports/79interim/publicHealth.pdf>.

Bill to Watch. → **HB 174**—Relating to the regulation of laser hair removal facilities.

## SCOPE OF PRACTICE

The Texas House Committee on Public Health was given the charge to examine the selected scope of practice issues related to health professions which maintain the safety of patients through demonstrated competency and education, and balance improved cost efficiency within the health care system. In its recent report, the Committee recommended that the legislature develop both policy and budgetary initiatives in order to meet the changing demographics and pressing healthcare needs of Texas. The complete report is available at <http://www.house.state.tx.us/committees/reports/79interim/publicHealth.pdf>.

What TMA is Saying. “Every year, at least one of the allied health provider groups looks to expand the array of services they perform on patients in Texas. TMA is working to perform an-depth analysis of the training, experience, and expertise of limited license providers. This research will help us better assess and make recommendations regarding their legal scope of practice and ensure that patient safety is not compromised.”

## HOSPITAL ACQUIRED INFECTIONS

The Texas House Committee on Public Health was given the charge to study emerging practices for the prevention of hospital-acquired infections (HAI), and develop effective policies for incorporating these best practices

into the delivery of health care in Texas. In its recent report, the Committee recommended that requirements for reporting HAI should:

- Take into account best practices in infection identification and reporting;
- Utilize data that is verifiably accurate; and
- Include infections that are associated with substantial cost, morbidity and mortality.

The complete report is available at  
<http://www.house.state.tx.us/committees/reports/79interim/publicHealth.pdf>.

## PHARMACY BENEFIT MANAGERS

The Texas Senate Committees on Health and Human Services and State Affairs were given the joint charge to examine and make recommendations, if necessary, regarding the state's role in regulating pharmacy benefit managers in the interest of consumer protection. In their recent joint report, the Committees made the following recommendations:

- Limit unreasonable dispensing delays associated with cost containment practices such as drug interchange and prior authorization; and
- The legislature should consider legislation precluding the use of extrapolation in calculating payments owed by or to providers resulting from claims payment errors.

The complete joint report is available at  
<http://www.senate.state.tx.us/75r/senate/commit/c610/c570.c610.InterimReport79.pdf>.

## VACCINES

The Texas Senate Committee on Health and Human Services was given the charge to study and make recommendations for improving vaccination rates and ensuring an adequate vaccination supply in the state. In its recent report, the Committee made the following recommendations:

- Increase the reimbursement amounts to providers for administering state vaccines;
- Prioritize health care facilities for receipt of seasonal influenza vaccines; and
- Require vendors selling electronic medical record systems in Texas to provide automatic record uploading and downloading capabilities for providers who serve the vaccine registry population.

The complete report is available at  
<http://www.senate.state.tx.us/75r/senate/commit/c610/c610.InterimReport79.pdf>.

## OTHER BILLS OF INTEREST

- **HB 146**—Relating to human papilloma virus education and immunization.
- **HB 161**—Relating to providing language interpreter services to certain health care providers.

- **HB 246**—Relating to quarterly reports on cases of acquired immune deficiency syndrome and human immunodeficiency virus infection.
- **HB 276**—Relating to a risk assessment for Type 2 diabetes.
- **HB 288**—Relating to enforcement of licensing requirements of certain assisted living facilities.
- **HB 405**—Relating to emergency apprehension and detention of a person believed to have a mental illness.
- **HB 414**—Relating to the removal of certain violations from a physician's medical board profile.
- **HB 420**—Relating to fetal and infant mortality review and health warnings related to fetal and infant mortality.
- **HB 437**—Relating to the establishment of pain management guidelines for physicians.
- **SB 30**—Relating to the eligibility of certain aliens for a license to practice medicine in this state.
- **SB 32**—Relating to a registry of allied health professionals.
- **SB 40**—Relating to electronic health information.

Complete information on bills filed for the upcoming session is available at <http://www.capitol.state.tx.us/>. If you would like more information regarding the upcoming legislative session, please contact one of the attorneys listed below in the Haynes and Boone Health Care Practice Group.

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