87th Texas Legislature
–
An Overview

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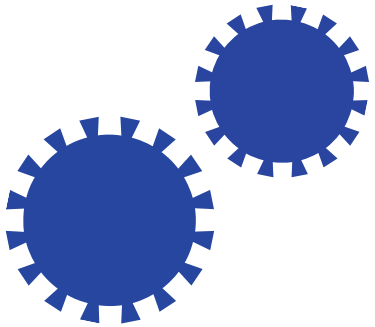
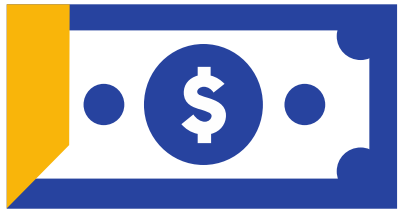
Unique session

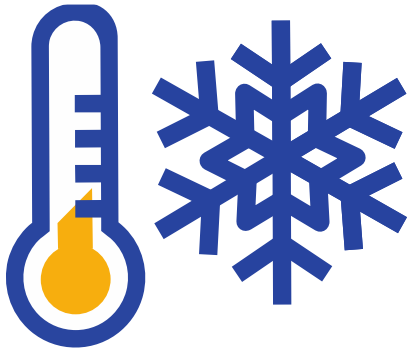


COVID impact

New House leadership



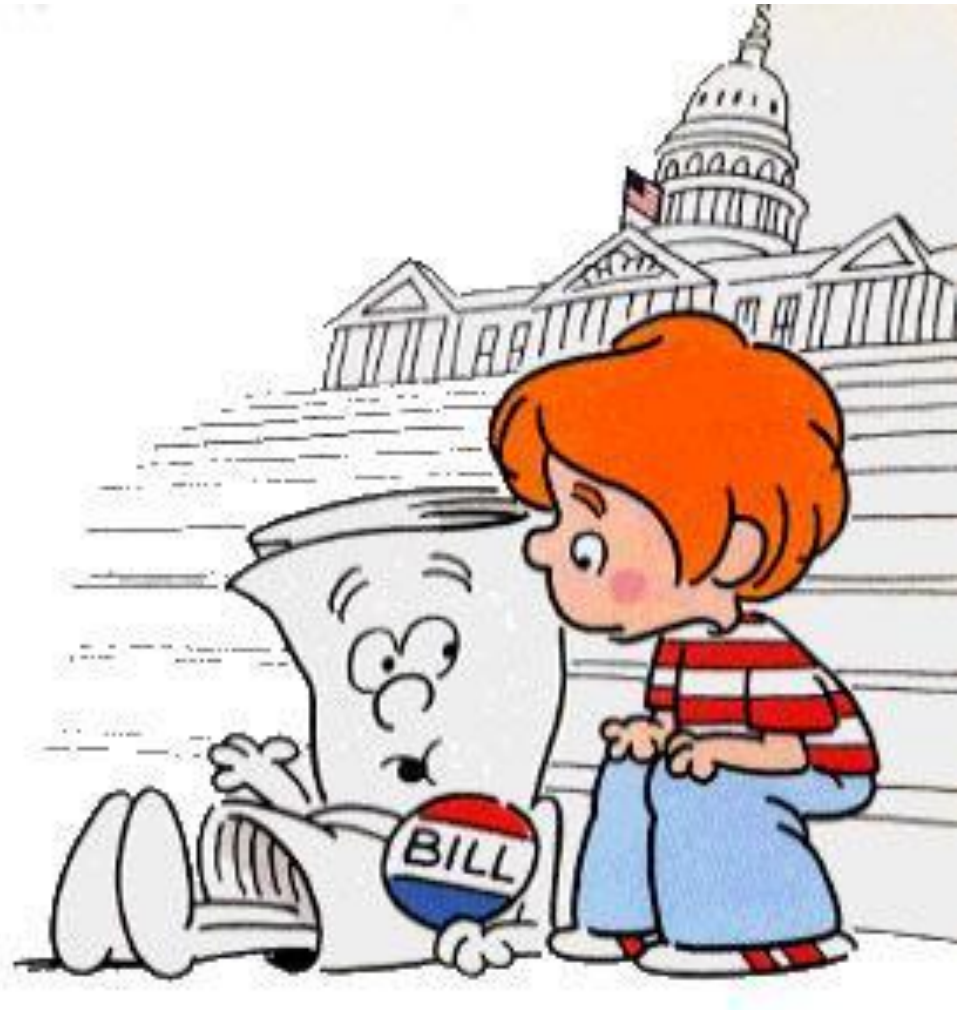
Federal Impact



Winter storm

2021 Legislative Session

- Bills filed = 7,385 (approx.)
- Bills tracked by THA = 1,453
- Bills passed:
  - HBs = 587 (13%)
    - D's = 182
    - R's = 404
  - SBs = 486 (22%)
    - D's = 182
    - R's = 304
- Gov. Abbott
  - Vetoed 21 bills
  - Signed 1034 bills
  - 105 bills filed without signature



2022-2023 Biennial Budget– *How did we get here?*

- March 2020: First confirmed case of COVID-19 in Texas.
- July 2020: Comptroller revised $2.9 billion expected surplus to -$4.6 billion shortfall for 2020-2021 biennium due to COVID-related downturn.
- State agencies asked to reduce budgets by 5%
- Families First Coronavirus Response Act authorized a 6.2% increase to the federal matching assistance percentage (FMAP). Texas receives infusion of federal cash to stabilize budget.
- COVID-19 case counts fall, vaccinations available, economy improves
- 5% reductions stayed in base budget. State agencies and programs left vulnerable despite economic recovery.

Budget

Medicaid

Medicaid Funding, 2022-2023

- Total funding: $25.1 billion GR / $68.6 billion AF
- Medicaid rate enhancements fully funded

Enhancement	Funding (AF)	Existing or New?
Trauma	$360 million	Existing
Safety-net	$300 million	Existing
Rural L&D add-on	$16 million	Existing
Rural outpatient	$60 million	Existing
Rural inpatient	$90.4 million	Existing
Additional rural services	***$123.4 million***	***New***

No Medicaid shortfall in current biennium

Budget

Maternal & Child Health

- ***Postpartum coverage extension to 6 months*** ($47.5 million GR / $121.7 million AF, FY 2023 only)
- ***Women's health programs*** ($174 million GR / $353 million AF)
  - Healthy Texas Women
  - Family Planning Program
  - Breast and Cervical Cancer Screening Program
- ***TexasAIM Maternal Safety Initiatives*** ($7 million AF)

Budget

Behavioral Health

- ***Prescription monitoring program*** received base funding of $5 million GR. EHR integration not funded (until Abatement Account kicks-in)
- ***IMD exclusion budget rider*** allows HHSC to seek a federal waiver to eliminate the bar on Medicaid spending for individuals receiving inpatient care at certain facilities only if the waiver would result in net savings to the state.
- ***State hospital construction*** funded at $321.3 million ESF
- ***State hospital operations*** received additional $86 million GR
- ***State-purchased community mental health inpatient beds*** received additional $30 million GR.

Budget

Workforce

- ***Graduate medical education*** expanded to $199 million GR, increase of $42 million GR from previous biennium
- ***Professional Nursing Shortage Reduction Program*** received $19 million GR.

What's next?

Texas received approximately $16 billion in federal American Rescue Plan Act funding for general purpose spending.

Funding goes to the legislature for appropriation. Added to the agenda for 2nd called special session (began Aug. 7, 2021)

Possible exceptional item-like process for agencies to request federal funds.

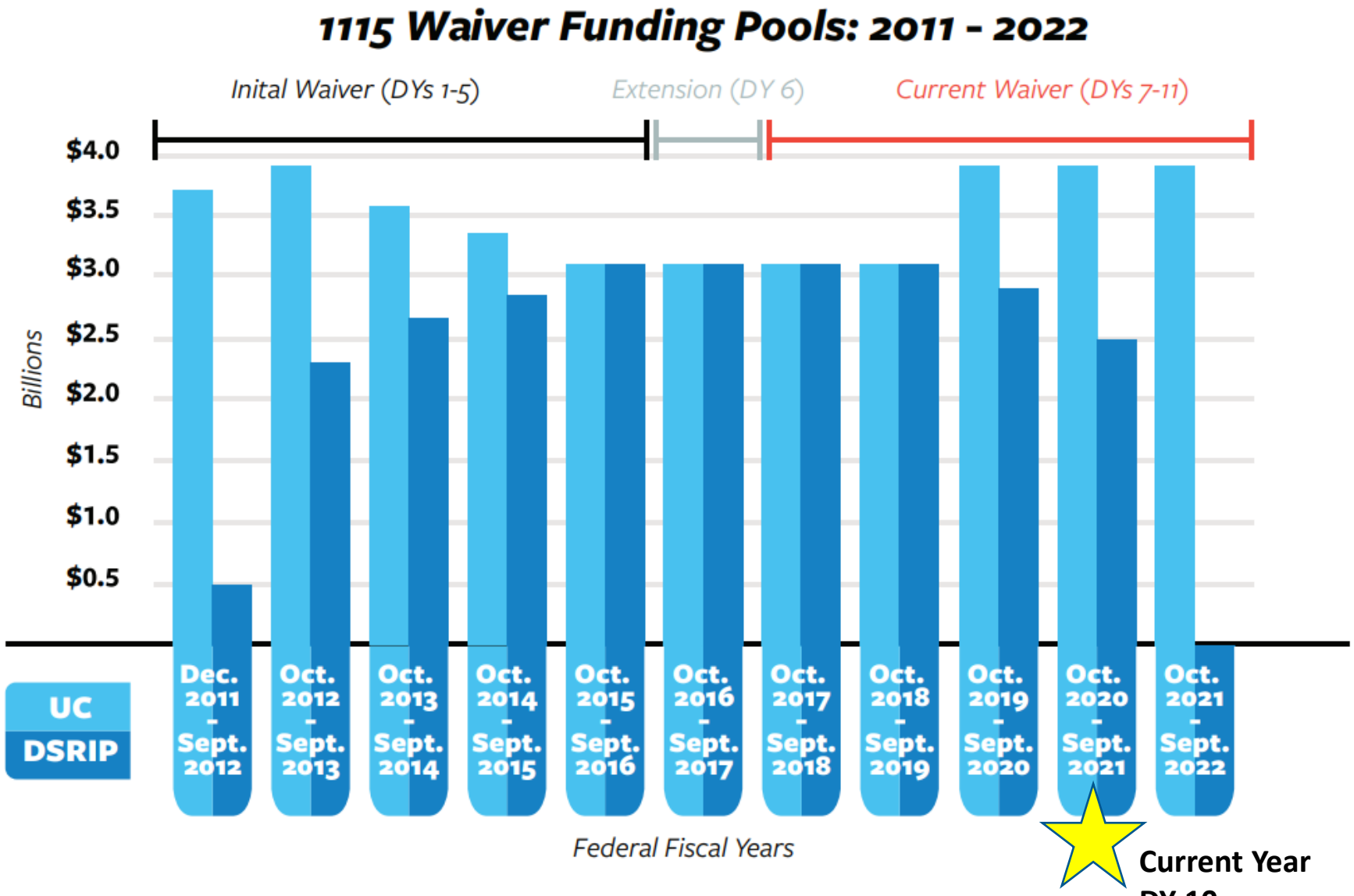
1115 Waiver Update

Where are we in current 1115 waiver?

1115 Waiver Extension Reapplication

DSRIP Transition to Directed Payment Programs (DPPs) including recent CMS action

Where are we in current 1115 waiver?



CMS approved a 10-year extension of Texas' current 1115 waiver on January 15, 2021.

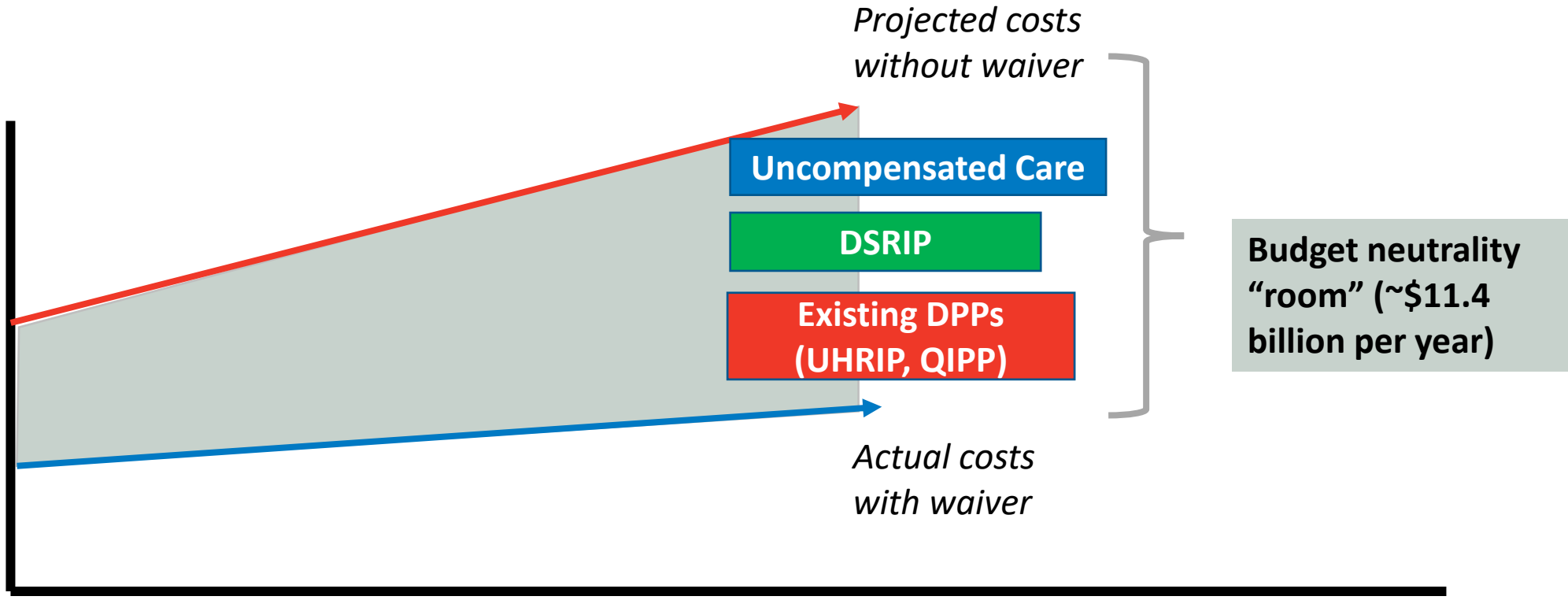
New extension set budgetary terms for:

- Transitioning DSRIP into new state directed payment programs (DPPs) valued at $7.0 billion per year
  - *DPPs are subject to approval outside of waiver*
- New charity care pool for community mental health & public health providers (PHP-CCP) valued at $500 million per year
- $3.9 billion per year for payments for uncompensated care
- Average $11.4 billion per year above base expenditures
- ***Saves an estimated $10 billion for taxpayers over the life of the waiver.***

Source: Texas Health & Human Services Commission

1115 Waiver Budget Neutrality – FY 2021

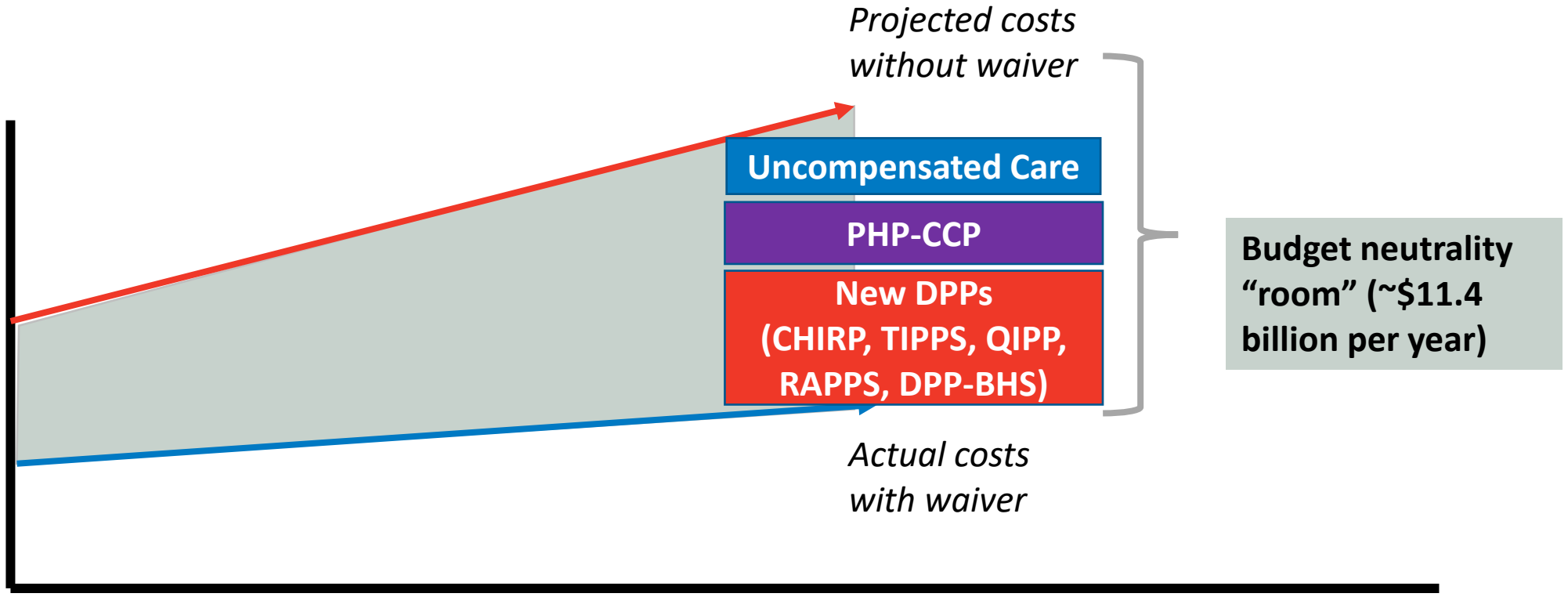
Federal “budget neutrality” requires a state spend no more under its waiver than it would have spent without the waiver.



Source: Texas Health & Human Services Commission

1115 Waiver Budget Neutrality - FY 2022 (proposed)

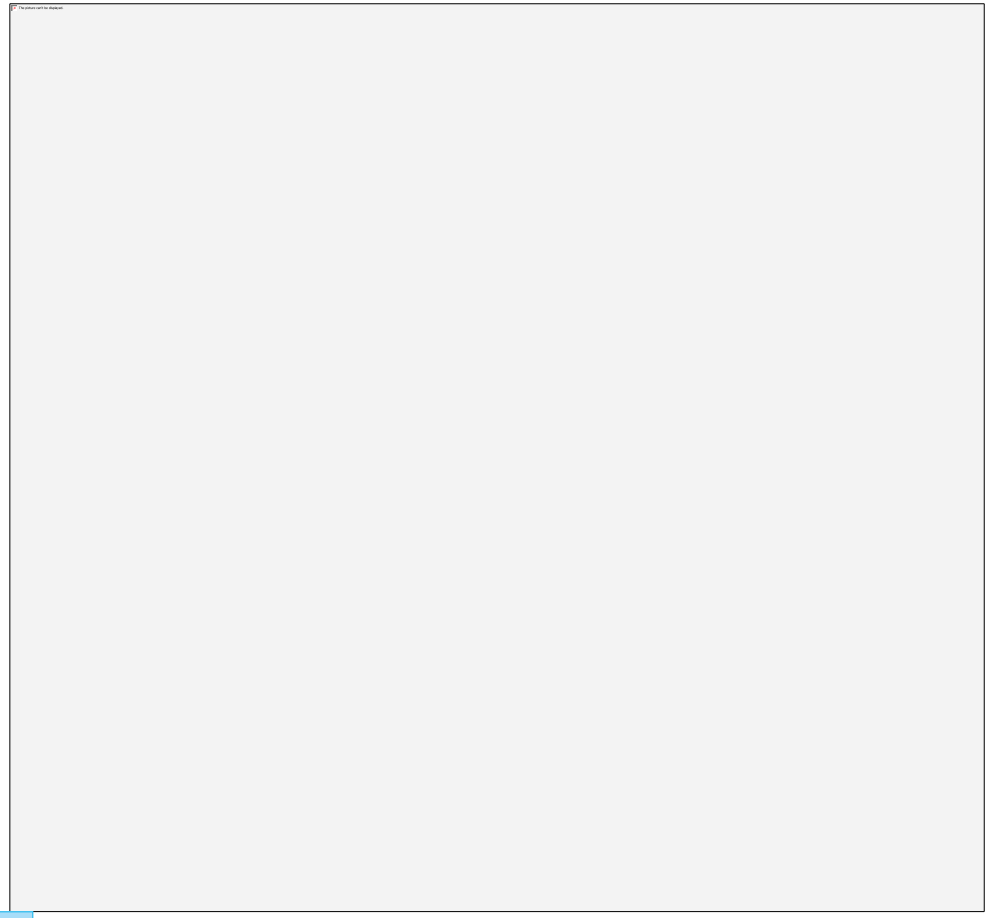
Federal “budget neutrality” requires a state spend no more under its waiver than it would have spent without the waiver.



Source: Texas Health & Human Services Commission

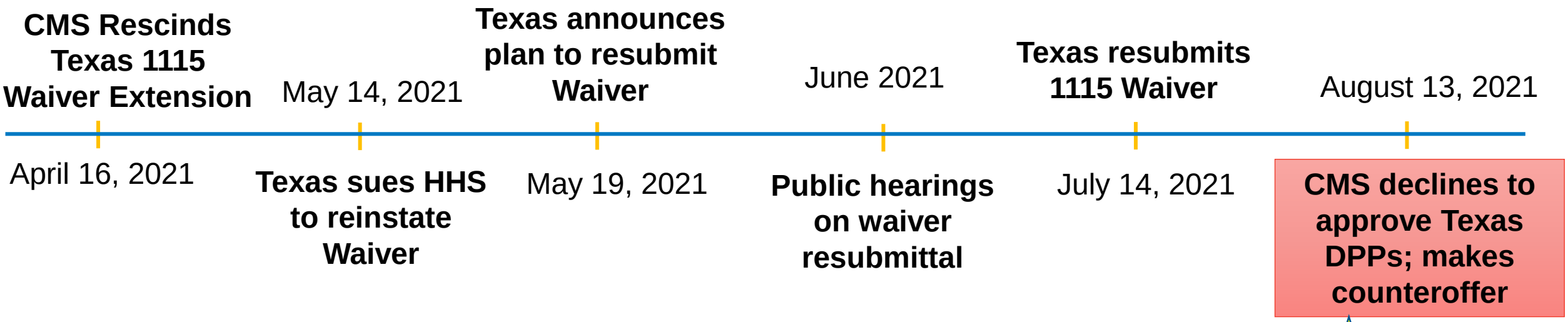
The waiver and coverage expansion should work together

- If Texas expanded Medicaid, the need for a large uncompensated care pool would not diminish.
- Current and proposed UC pool = $3.9 billion per year
- Even after base Medicaid payments, Medicare, UC, and directed payments, Texas hospitals still incurred **$4.6 billion** in uncompensated care in 2020 alone.



THA and BSWH have provided written and oral testimony in favor of the waiver and state directed payment programs.

After CMS rescinded Texas' waiver extension due to lack of federal comment period, Texas reapplied under identical terms.



Key Future Steps →

1. Federal comment period (open until Aug. 30)
2. Federal review of comments
3. State-Federal negotiations
4. Development of special terms and conditions, implementation guides, etc.

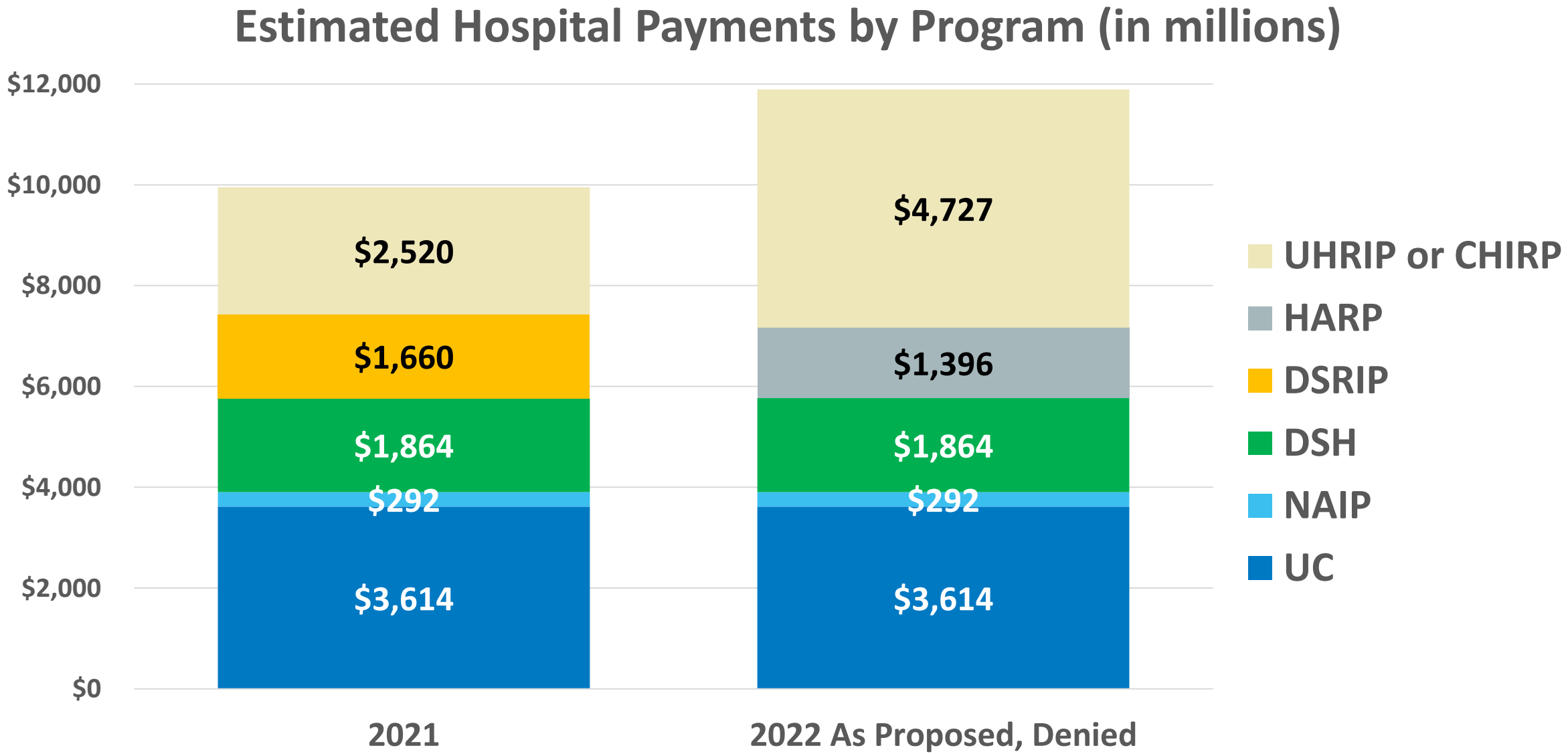
DSRIP Transition to DPPs in FY 2022

What did Texas propose?

Requested Program	Benefitting	Estimated Size (annual)
Comprehensive Hospital Increased Reimbursement Program (CHIRP)	Hospitals	$5.02 billion
Quality Incentive Payment Program (QIPP)	Nursing facilities	$1.1 billion
Texas Incentives for Physicians and Professional Services (TIPPS)	Physician groups	$600 million
Rural Access to Primary and Preventive Services (RAPPS)	Rural health clinics	$18.7 million
DPP for Behavioral Health Services (DPP-BHS)	Community mental health centers	$166 million
Ambulance Average Commercial Reimbursement Program (A-ACR)	Public ground ambulance providers	$150 million
	TOTAL	**$7.0 billion**

DPPs operate under separate statutory authority from the waiver, but pool sizes are tied to the waiver's budget neutrality upper limit. DPPs are subject to annual CMS approval.

How would the payment landscape change?



Source: Texas Health & Human Services Commission

Assumes CHIRP and HARP are approved for all hospitals as proposed.

On Aug. 13, CMS declined to approve proposed DPPs

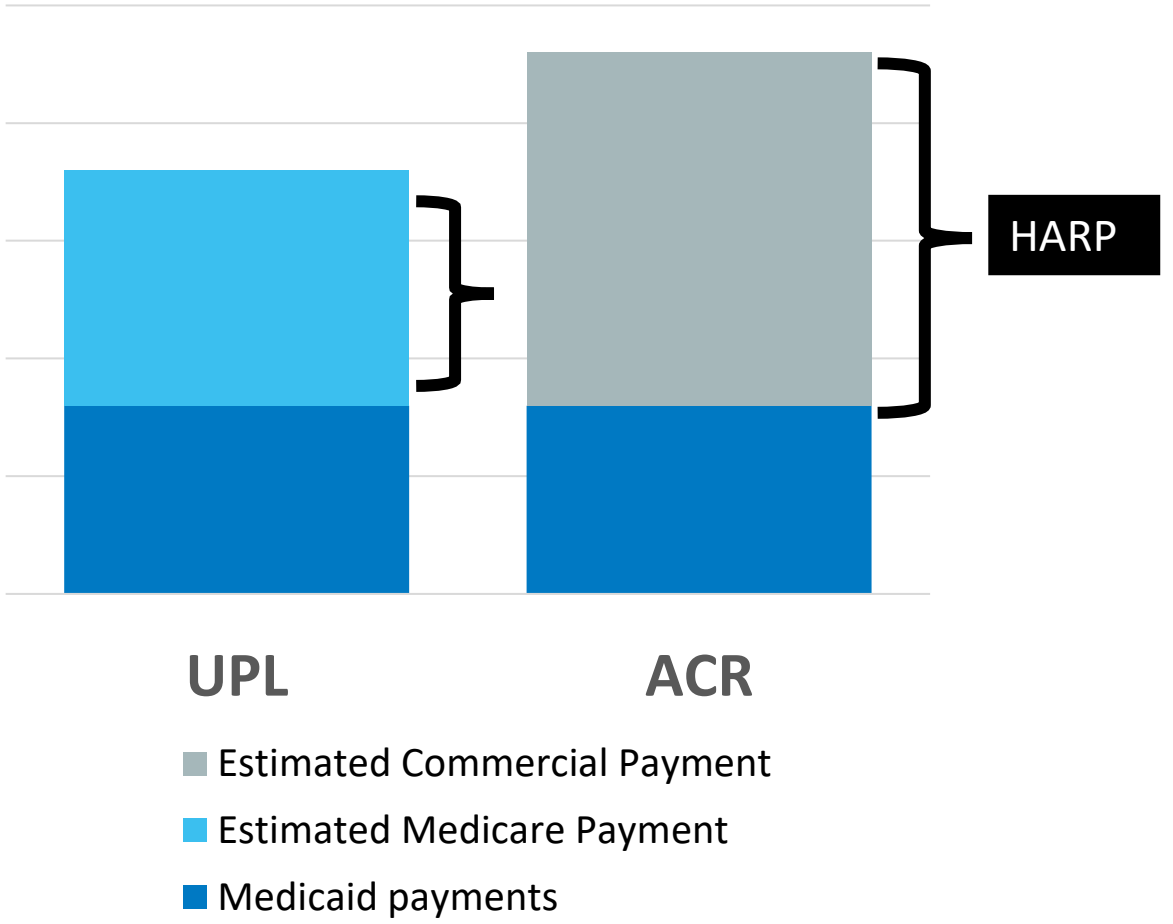
Instead, CMS is offering:

1. **Reapproval of a one-year, $2.49 billion extension of DSRIP** through Sep. 30, 2022 contingent upon adding 5-10 new health equity measures.
   - 20% of DSRIP payments would be tied to these measures
2. **Two options for Texas to secure DPP approval**:
   a. Renew directed payments currently in place for one year at SFY 2021 funding levels (QIPP and only the UHRIP component of CHIRP). Withdraw new directed payment programs (TIPPS, RAPPS, BHS); **OR**
   b. Submit new proposals for all five directed payment programs addressing several CMS issues in denial letter.

HHSC's next steps are pending.

Hospital Augmented Reimbursement Program (HARP)

- On Jul. 16, 2021 HHSC proposed to establish HARP, a Medicaid fee-for-service supplemental payment program outside the 1115 Waiver.
- Would reimburse hospitals up to **the higher of** their ACR (commercial) **or** UPL (Medicare) limit on Medicaid fee-for-service claims, capped at statewide UPL gap.
- Public hospitals serve a larger share of the state's Medicaid fee-for-service clients
- HHSC applying to CMS on two separate state plan amendments.
- Expected to start Oct 1, 2021.



Increasing Insurance Coverage

More than 60 bills were filed this session related to Medicaid expansion, including 27 bills that fully expanded Medicaid as prescribed under the Affordable Care Act. There was strong bipartisan support for one bill by Rep. Julie Johnson (D-Carrollton) and Sen. Nathan Johnson (D-Dallas). In addition to the 67 Democrat coauthors, about 10 Republicans signed on to the bill, which would have drawn down billions in federal funding to cover the lion's share of the cost to expand health care coverage for 1.2 million more low wage working Texans. Despite the strong support, state leadership's resistance to expand coverage meant the legislation was never considered in committee and a budget resolution was defeated after only 20-minutes of debate.

Legislation by Rep. Toni Rose (D-Dallas) increased Medicaid eligibility for postpartum moms from 60 days to six months. THA, considers the bill's passage at the eleventh hour a success, as health care coverage is a key predictor of reduced maternal mortality and morbidity.

COVID-19
&
Winter
Storm Uri

Senate Bill 6—liability protections

- Broad liability protection for health care providers and other businesses acting in good faith during the COVID-19 pandemic.
- Hospitals engaged on this issue for more than a year at both the state and federal level; THA helped draft the medical provisions, and strongly supported its passage along with a coalition of stakeholders.
- Targeted liability protection for health care workers and facilities that provide appropriate medical care to known or suspected COVID-19 patients during the declared public health emergency, and may also apply to delayed care affected by the COVID-19 public health emergency.
- Does not protect bad actors who are reckless, or who engage in intentional, willful, or wanton misconduct.

COVID-19
&
Winter
Storm Uri

House Bill 2211—hospital visitation

- Visitation policies for hospitals during periods of disaster related to infectious disease.
- Hospitals worked through numerous issues that impact hospitals during a pandemic to keep patients and staff safe, and to recognize the healing nature of in-person contact in times of need.
- Require at least one visitor be allowed with the patient, but recognizes potential federal restrictions and includes flexibility to require health screenings and other protective measures and includes a provision to ensure an attending physician could prohibit visitation of a patient for five-day increments, depending on the issues faced in the facility.

COVID-19
&
Winter
Storm Uri

Senate Bill 809

- Requires health care institutions to report federal monies received as a result of COVID-19 from CARES, the CAA of 2021, or the American Rescue Plan on a monthly basis.
- These quarterly reports must be provided to the lieutenant governor, the Speaker, LBB, and the standing committees of the legislature with primary jurisdiction over state finance and public health.
- Licensing Agency may take disciplinary action against a health care provider should the requirements of this bill not be followed.

End of Life Care

Senate Bill 917/House Bill 2609

- Sought to extend the current dispute resolution process for transferring patients under Texas law from 10 days to 90 days.
- Hospitals advocated strongly against this, calling for true reform of the Texas Advance Directives Act that safeguards both the rights of patients and the conscience rights of health care providers.
  - HB 2943—Correcting an issue from 2017 that may prevent a physician from honoring a patient's do-not-resuscitate wishes if those wishes are communicated separately to the physician, and would have bolstered patients' rights to direct their own care, but the effort died in Committee.
  - SB 1944—Require a hospital's ethics committee to appoint a patient liaison to keep family members informed about ethics decisions, advance directives and end-of-life care options but the effort died in Committee.

Hospital Operations

House Bill 2064

- Amends existing law to allow attorneys' fees and expenses to be deducted from certain amounts an injured patient receives from an at-fault party to recoup the costs of health care provided.
- THA worked last session to ensure hospitals receive fair reimbursement after providing care to an injured patient, no matter where in the hospital the care is provided.
- Might use some of the hospital reimbursement to cover the patients’ attorneys’ fees and expenses.
- Hospitals opposed the bill but was able to improve it in the Senate.

Hospital Operations

Senate Bill 1137

- Codifies federal price transparency requirements into state law with multiple key differences:
  - “Formatted in a manner prescribed by the commission,” but similar to CMS
  - Accessible to a common commercial operator of an Internet search*
  - Must be displayed in a prominent location on the home page of the facility’s publicly accessible Internet website
  - Requires the facility submit the machine-readable format and shoppable service list to the state annually.
  - CMPs vary based on total gross revenue*

*=now being proposed in federal regulations

Public Health

Senate Bill 968

- Restricts government's ability to limit nonelective procedures.
- Prohibit vaccine passports and employers from requiring employees/ to be vaccinated against COVID-19.
  - Edits were made, but the language was not ideal in that it would allow hospitals to vaccinate employees but would require hospitals to allow a conscientious exemption for staff; current law allows for medical and religious exemptions and says hospitals may allow an exemption based on a conscientious objection.
  - Hospitals opposed this effort and, in the end, was successful in preserving the ability for hospitals to be able to require vaccination of staff.
- Limits placed on length of public health emergencies and disaster powers by executive branch.

Public Health

Senate Bill 969

- Requires hospitals to report to DSHS and RACs all information required by these agencies during public health emergencies.
  - CMP of $1,000 on a health care facility for each failure to submit a report
  - DSHS will publish monthly compliance that will include instances of non-compliance.
- Requires DSHS to collaborate with local health authorities, hospitals, laboratories, and other persons who submit information to DSHS during a public health disaster or in response to other outbreaks of communicable disease to plan, design, and implement a standardized and streamlined method for sharing information

Public Health

Senate Bill 1669

- Sought to prohibit discrimination based on vaccination status and enforce penalties for vaccine mandates.
- Would have prevented health care facilities and providers from withholding service to people based on vaccination status.
- THA testified against this legislation.

Firearms

House Bill 1927

- Several bills attempted to modify Texas laws related to carrying weapons in hospitals and health-related settings.
- Legislation that would allow any person who was not barred from possessing a handgun, for example due a felony conviction, to carry a handgun without first getting a license from the state.
- A late amendment changed the law to require oral or written notice to be given personally to a person carrying a handgun in a prohibited place before the person would be considered to have committed a criminal offense.
- THA advocated for preserving existing law that only requires signage at building entrances.
- The bill passed with THA's changes, preserving the ability of hospitals to prohibit handguns through signage rather than personally confronting individuals who carry handguns on hospital property.

Telehealth

House Bill 4; House Bill 5

- Two key bills that will help expand access to telemedicine and telehealth services across the state.
- Will make permanent the telemedicine flexibilities that were put in place during the pandemic to ensure access to care for Medicaid and CHIP clients.
  - Legislation implementing payment parity failed (X4) failed to get out of Committee.
- Expands access to reliable broadband internet services to support access to telemedicine.

Workforce

House Bill 1616

- Texas joins the Interstate Medical Licensure Compact.
- A voluntary, expedited pathway to licensure for qualified physicians who wish to practice in multiple states.
- The bill was a response to the COVID-19 pandemic and ensures that physicians are still subject to the laws and licensing regulations of each state in which they deliver care.

Successful Legislation

- HB 2357—allows a medical examiner to release a copy of an autopsy report of a deceased person to hospitals.
- SB 3—Focuses on consumer protections and strengthening regulatory oversight of electricity operations during a disaster.
- HB 1338—extension of Harris County LPPF.
- HB 1456—removal of Nueces County LPPF Sunset date.

Unsuccessful Legislation (1)

- SB 2122—itemized billing for all patients, with plain language description and billing codes: passed Senate and referred to House Public Health Committee.
- HB 4051—allowed plan members to opt-out of insurance and instead pay the lowest negotiated rate as the cash price: came out of House Insurance Committee but never received full House vote.
- HB 1254—raised the emergency detention period to 72-hours and added “gravely disabled” to those who can be taken into custody under an emergency order failed: never made it out of House Public Health Committee.
- HB 2092/SB 915—full independent practice authority for APRNs: failed to make it out of their respective Chambers’ Committees.

Unsuccessful Legislation (2)

- HB 325—change the current opt-in immunization registry system to opt-out, and retained pediatric records: failed to receive a hearing in the House Human Services.
- HB 396—workers compensation cases; presumption that any nurse who contracted COVID-19 must have been exposed at the workplace with $500,000 death benefit retroactive to start of PHE: passed House, but failed to receive hearing in Senate B&C.
- SB 207/ HB 1617—clarify how to determine medical expenses in civil liability cases: Passed Senate, but when received in house SCOT released opinion obviating need for legislation.
- HB 3085/SB 1328—statewide LPPF cleanup bill would have protected local funding mechanisms in the wake of MFAR
- HB 1424--enact the Texas Health Care Conscience Protection Act and expand conscience protection: passed House Public Health Committee, but failed to receive full House vote.

Next Steps

Special Sessions—July 8, 2021 and August 7, 2021

- Health Care—staffing/capacity, testing, vaccine administration, LTCF, PPE, etc.
- Bail reform
- Election integrity
- Use of federal COVID-19 funds
- Redistricting later this year

Looming executive actions

- Withdrawal of emergency waivers (??)
- Transgender surgeries
- Implementation of 87th-R laws

Questions?

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