Riding the Range of Health Care Finance: Navigating Rising Costs and Potential Solutions

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Healthcare and Hospitals in Texas

- 630 hospitals in Texas
- 288 designated trauma hospitals
- More than 400,000 full and part time employees
- $144 billion annually economic activity generated by Texas hospital jobs
- 1 in 9 U.S. jobs supported directly or indirectly by hospitals
- $7.1 Billion annually in uncompensated care
  - Before DSH and UC payments

What Does THA Do in Advocacy?

THA Mission: Serving Texas hospitals as the trusted source and unified voice to influence excellence in health care for all Texans.

- About 460 member-hospitals in Texas
- Policy Making Structure at THA
  - Boards, Councils, Workgroups to THA Board
  - Hospital Advocacy Group (your GR team)
- Advocacy Team Components
  - Lobby, Policy, Legal, Comms, HOSPAC, CEO
- Lobby Issues = Affect legislation affecting hospitals
- Regulatory Issues = Affect regulation affecting hospitals

THA is most effective when members are engaged in process, policy making, feedback loop.

THA Policy Committees and Councils

Hospital subject matter experts who support the COPD and THA board with the technical aspects of policy development:

- Hospital Insurance Contracting
- Hospital Reimbursement
- Quality and Patient Safety
- Behavioral Health Council
- Hospital Physician Executives
- In-House Counsel Group
- Medicaid Task Force

2025 Federal Legislative Priorities

Federal – Old Budget Issues

- Government funded through 3/14/2025
- Programs Expiring 3/31/2025*
  - Low Volume Adjustment
  - Medicare Dependent Hospitals
  - Telehealth and Hospital-at-Home Waivers
- Medicaid DSH cuts ($24B remain) restart 4/1/2025*

- Advanced Enhanced Premium Tax Credits
- Lowest Quartile Wage Index Adjustment

Federal – New Budget Issues

- Ways & Means – Health Subcommittee
  - Eliminate Medicare Coverage of Bad Debt
  - Medicare Site Neutrality*
  - Prevent Dual Classification for Hospitals Under Medicare
  - Geographic Integrity in Medicare Wage Index
  - Eliminate Inpatient Only List

Federal – New Budget Issues

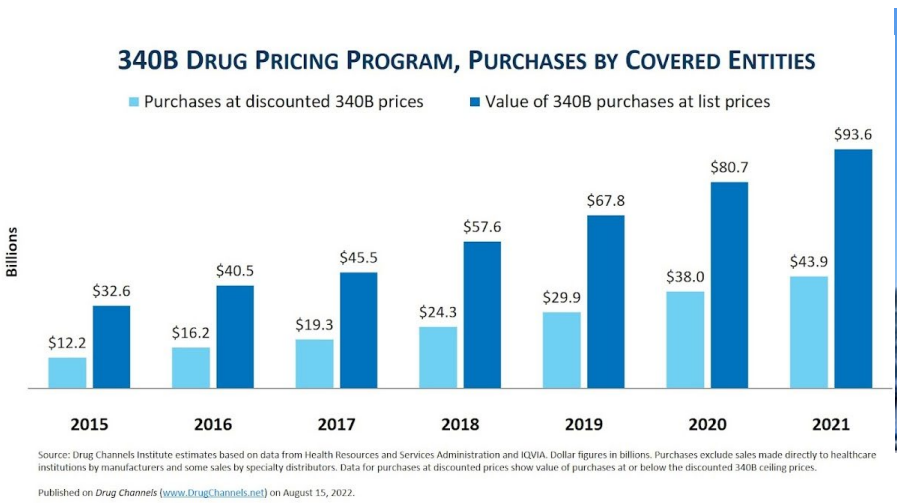
- Energy & Commerce Committee
  - Reverse Executive Expansion of SDPs in Medicaid*
  - Limit Medicaid Provider Taxes*
  - Repeal Biden Administration Finalized Medicaid Eligibility Rule
  - Medicaid per Capita Cap
  - Medicare Site Neutrality*

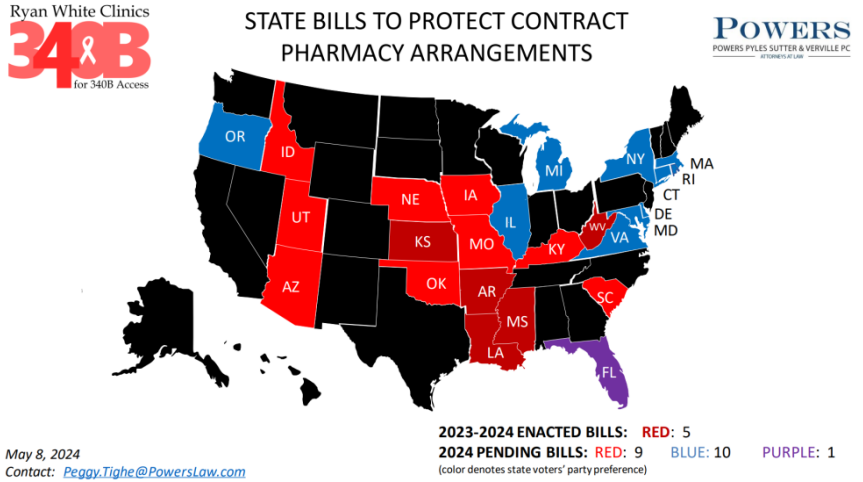
Federal – New Budget Issues

- Committee on Education and Workforce - Subcommittee on Health, Employment, Labor, and Pensions
  - Ban Telehealth and Other Facility Fees*
  - Increase Penalties for Transparency Noncompliance

340B – Federal Issues in the States

- Johnson & Johnson, et al., Rebate Schemes
- Prohibitions on the use of contract pharmacies
- THA strategy





2025 State Legislative Priorities

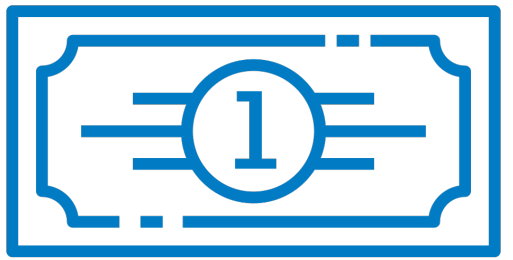
88th Legislative Session (+4…) 2023

- Legislative Majorities were GOP in House and Senate.
- Abbott, Patrick, Phelan returned.
- **Record number 8,520 bills filed**
  - THA tracked 1,644
  - 1,246 sent to Governor
  - Total Bills Vetoed: 76 bills
- Four Special Sessions
  - COVID Vaccine Mandates, Immigration, School Vouchers

89th Legislative Session 2025

- Began January 14
- Nov. 2024 elections showed Texas remains a very red state.
- Legislative Majorities are GOP in House and Senate.
- Abbott, Patrick return - New Speaker elected, Dustin Burrows
- **As of 1/29 @ 8:45 am, 3,143 bills filed**
  - THA is tracking 618
  - Bill filing deadline is March 14 (and can't come soon enough!)
  - Sine Die – June 2

Setting the Scene for the 89th –



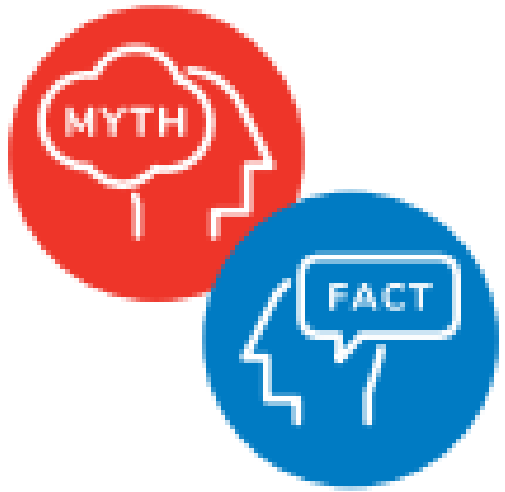
- Must-pass legislation – biennial budget
- Anticipated budget surplus of almost $24 billion driven by inflation in sales tax revenues and oil and gas production taxes.
- Texas spending limits:
  - Balanced budget requirement as determined by Comptroller Hegar, and
  - Constitutional Spending Limits set by Legislative Budget Board (12.3% over current)
    - To “bust the cap” takes record vote of both houses
- Rainy Day Fund approaching $27.1 billion by end of current biennium
- Magic Questions:
  - How will legislators prioritize spending (HB 1)?
  - Will legislators discuss property taxes again?
    - Sept. 4 Senate Finance Interim Hearing included discussion of eliminating all property taxes.

THA State Legislative Priorities

- Support efforts to increase the number of Texans with comprehensive health insurance.
- Support streamlining the enrollment process for children to avoid redundancy in data collection, reduce administrative burden for both state eligibility workers and families, and improve enrollment for eligible children.
- Increase state funding to ensure timely and appropriate access to inpatient and outpatient community-based services and supports for Texans with a behavioral health diagnosis.

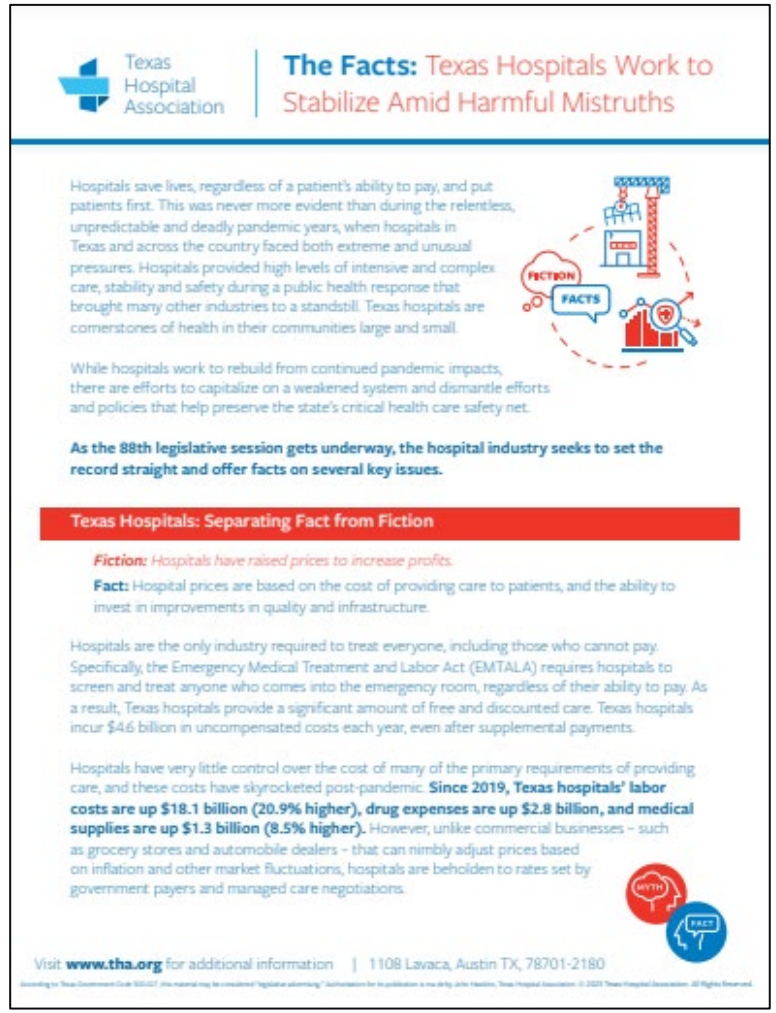
Legislator Quotes from 2023

- State Senator to THA witness: What was the average bonus payment hospitals got for treating a COVID patient?
- House Chairman to THA witness: Hospital are completely on par with insurance companies… There are few hospitals that can't negotiate fairly with an insurance company. Many hospitals are monopolies with an upper hand over insurance companies.
- House Chairman from House Floor: Some hospitals are taking advantage of the uninsured and it needs to stop.
- House Chairman from House Floor: Medicare is considered above cost at 90% of the hospitals in Texas.
- House Chairman in Committee: This bill will take money out of the hospital's pocket, that's the point.



Bills of the 89th Legislative Session

- Hospital Charity Care Policies, Percentages
- Hospital Compliance with Price Transparency
- Challenges with Insurers
  - Prudent Layperson - HB 1635 (Rep. Oliverson), SB 622 (Sen. Schwertner)
  - AI and Utilization Review – SB 815 (Sen. Schwertner)
- Facility Fee Muddle
  - HB 1275 (Rep. Oliverson)
  - SB 392 (Sen. Sparks)



Texas Hospital Association

The Facts: Texas Hospitals Work to Stabilize Amid Harmful Mistruths

Hospitals save lives, regardless of a patient's ability to pay, and put patients first. This was never more evident than during the relentless, unpredictable and deadly pandemic years, when hospitals in Texas and across the country faced both extreme and unusual pressures. Hospitals provided high levels of intensive and complex care, stability and safety during a public health response that brought many other industries to a standstill. Texas hospitals are cornerstones of health in their communities large and small.

While hospitals work to rebuild from continued pandemic impacts, there are efforts to capitalize on a weakened system and dismantle efforts and policies that help preserve the state's critical health care safety net.

As the 88th legislative session gets underway, the hospital industry seeks to set the record straight and offer facts on several key issues.

Texas Hospitals: Separating Fact from Fiction

Fiction: *Hospitals have raised prices to increase profits.*

Fact: Hospital prices are based on the cost of providing care to patients, and the ability to invest in improvements in quality and infrastructure.

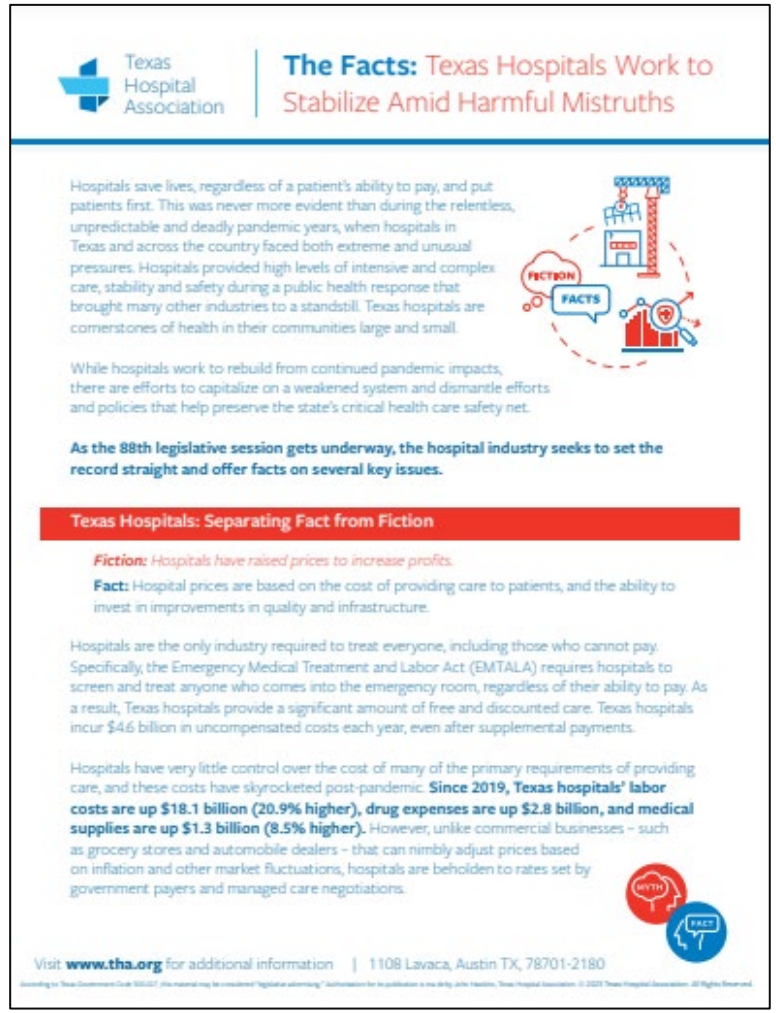
Hospitals are the only industry required to treat everyone, including those who cannot pay. Specifically, the Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals to screen and treat anyone who comes into the emergency room, regardless of their ability to pay. As a result, Texas hospitals provide a significant amount of free and discounted care. Texas hospitals incur $46 billion in uncompensated costs each year, even after supplemental payments.

Hospitals have very little control over the cost of many of the primary requirements of providing care, and these costs have skyrocketed post-pandemic. **Since 2019, Texas hospitals' labor costs are up $18.1 billion (20.9% higher), drug expenses are up $2.8 billion, and medical supplies are up $1.3 billion (8.5% higher).** However, unlike commercial businesses – such as grocery stores and automobile dealers – that can nimbly adjust prices based on inflation and other market fluctuations, hospitals are beholden to rates set by government payers and managed care negotiations.

Visit **www.tha.org** for additional information | 1108 Lavaca, Austin TX, 78701-2180

Bills of the 89th Legislative Session

- Site Neutral Payment Push
  - HB 985 (Rep. Harrison)
- Patient Billing Confusion
  - HB 208 and HB 216 (Rep. Harris Davila), SB 669 (Sen. Hughes)
  - HB 251 (Rep. Harris Davila); HB 1314 (Rep. Hickland)
- Cash Pay Discount
  - HB 1612 (Rep. Frank)
- Fiscal Analysis of Insurance Mandates
  - HB 1906 (Rep. Paul), SB 818 (Sen. Bettercourt)



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Workforce in the 89th Legislative Session

Maintain current funding levels and ensure timely dispersal by THECB

Gain funding for the clinical training programs created by SB25:

- Clinical Site Nurse Preceptor Grant Program
- Clinical Site Innovation and Coordination Program
- Nursing Faculty Grant Program: Part-time Positions
- Nursing Faculty Grant Program: Clinical Training

- Governor's Health Care Workforce Task Force report
- Texas Health Improvement Network Workforce Report
  - Proposal to increase GME funding to achieve 1.3:1 residency position to med school grad ratio

Behavioral Health in the 89th Legislative Session

- IMD Exclusion Waiver
  - HB 154 (Raymond)
- Intensive Outpatient Program and Partial Hospitalization Program
  - HB 2036 (Oliverson)
- Mental and Physical Health Payment Parity
  - HB 1142 (Oliverson), SB 636 (Sen. Johnson)
- Efforts to promote EHR and interoperability solutions in BH hospitals
  - HB 1621 (Lujan), SB 151 (Sen. Menendez)

- SB 1 Goal - Increase to contracted bed rates

Medicaid/CHIRP - Finance

CHIRP – SFY 2025

- Payments to MCOs began in December, hospitals should be getting paid
  - ACR is now calculated specifically for STAR and STAR+

DPP rule changes:

- CHIRP – Commercial room calculation
- DSH – Rural hospitals get deemed DSH status
- Uncompensated Care – Increase HICH pool and pay first

Medicaid/CHIRP - Quality

HHSC proposed measure specifications for FFY 2026 with very few changes

- All Cause Readmissions
  - HHSC had previously used crude rates
  - THA commented that the CMS methodology was more appropriate
  - HHSC agreed and finalized change
- Partial Credit for High Achievers
  - HHSC previously required hospitals to continuously improve
  - THA commented that maintaining high performance should be rewarded
  - HHSC is allowing half of potential points for maintenance of high performance

Legal and Regulatory Update

Alienage Executive Order

- Executive Order GA-46
  - Requires reporting costs associated with treatment of persons not lawfully present in the U.S.
  - Information collection began 11/1/24
  - Reporting of costs begins 3/1/25
  - Applies to acute care hospitals enrolled in Medicaid **or** the Children's Health Insurance Program (CHIP)
  - Not limited to hospitals owned or operated by a unit of government
    - Despite language in the caption and press release referencing "public hospitals"
  - How to calculate "cost of care"?
    - Not defined in EO or HHSC Guidance

FTC Ban on Non-Compete Agreements

- Proposed July 2022, final rule that would amount to a near total nation-wide ban on non-compete agreements issued 4/23/24
  - Original effective date 120 days after publication (9/4/24)
- Exceptions
  - Exceptions for non-compete agreements related to sale of business or sale of individual ownership interest.
  - Does not apply to customer non-solicitation or employee non-solicitation clauses that are not "overly broad" or "onerous."
  - Does not apply to "senior executives" in "policymaking positions" who earn more than $151,164 annually.
- August 20, 2024: U.S. District Judge Ada Brown (N.D. Tex.) issues ruling striking down rule
  - FTC has "some authority" to impose rules "to preclude unfair methods of competition"
  - But...lacks authority to create "substantive rules"
  - FTC rule was "arbitrary and capricious"
  - Rule is "unreasonably overbroad" and imposes a "one-size-fits-all approach with no end date"
- Notice of Appeal to the 5th Circuit filed 10/18/24

Loper Bright and the End of *Chevron* Deference

- *Chevron* Deference required courts to defer to an administrative agency's reasonable interpretation of a silent or ambiguous federal statute on a particular challenged issue
  - Federal agencies are in the executive branch and have responsibility to enforce laws enacted by Congress
  - One way the agencies go about their work is by issuing regulations through a public notice-and-comment process
  - Generally, courts applied Chevron deference only to final agency regulations (but not other types of subregulatory guidance)
- *Loper Bright* (6/28/24): federal courts must exercise independent judgment when determining the best interpretation of a statute and cannot simply defer to agency interpretations, even when they are reasonable
  - Expect more legal challenges to federal agency rulemaking and increased court scrutiny of federal agency regulations

Minimum Staffing Standards for Long-Term Care Facilities

- Final Rule published in April
- “Central to this final rule are new comprehensive minimum nurse staffing requirements, which aim to significantly reduce the risk of residents receiving unsafe and low-quality care within LTC facilities.”
- Total nurse staffing standard of 3.48 hours per resident day (HPRD)
  - must include at least 0.55 HPRD of direct registered nurse (RN) care and
  - 2.45 HPRD of direct nurse aide care
- Facilities may use any combination of nurse staff (RN, licensed practical nurse [LPN] and licensed vocational nurse [LVN], or nurse aide) to account for the additional 0.48 HPRD needed to comply with the total nurse staffing standard.
- Enhanced facility assessment requirements and a requirement to have an RN onsite 24 hours a day, seven days a week, to provide skilled nursing care.
- Staggered implementation timeline
- Suit filed on 5/23/24 by American Health Care Association, Leading Age, Texas Health Care Association, and others to block rule (currently pending)

Thank you. Questions?

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