

# State and Federal Update: Legislative, Policy and Politics



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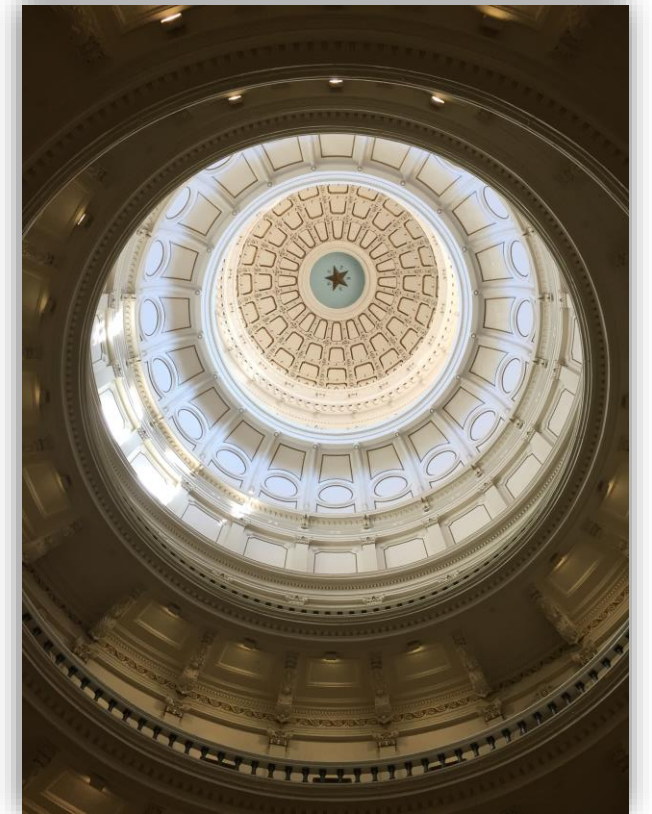
# The 2025 Texas Legislative Session...

## Texas Constitution

- Biennial Regular Session for **140 Days**
  - Second Tuesday in January, of odd years
- Special Sessions only called by Governor

## Runup to the 89<sup>th</sup> Legislative Session

- March 5 - Primary Election Set the Table
- Interim Studies in Texas House and Senate
- November 5 - General Election
- November 11 - Bill Filing for the 89<sup>th</sup> Session
- January 14 - 89<sup>th</sup> Session Begins!



# REWIND: 2023 Legislative Session (+4)

- Legislative Majorities are GOP in House and Senate.
- Record \$32.7B state surplus (oil/gas revenue, COVID relief, sales taxes)
- Abbott, Patrick, Phelan returned.
- **Record number 8,520 bills filed this session**
  - THA tracked **1,644** in the regular session
  - 1,246 sent to Governor
  - Total Bills Vetoed: 76 bills
- Three Special Sessions
  - COVID Vaccine Mandates, Immigration, School Vouchers



# State Legislation Impacting Hospitals

- Hospital Licensure Requirements, Surveys, Inspections and Fees
- Physician, Nurse, Allied Health Provider Education, Training, Licensure
- COVID Visitations, Standards of Care, Vaccine Mandates
- Medical and Nursing Workforce, Education, Staffing
- Telemedicine Standards, Requirements
- Trauma and EMS Standards, Licensure, Requirements
- NICU Regulation, Certification
- Public Health – Vaccines, Car Seats, Texting While Driving, Cigarettes
- Insurance Network Adequacy
- Mental Health Care Delivery, Coverage, Workforce
- Life Cycle: Pregnant Women, Fetal Tissue, Placentas, End of Life, DNR Orders
- Compliance with Public Information Act
- Guns in Hospitals
- Licensed Freestanding Emergency Centers regulation and billing
- Medical Waste Disposal



# #1 Concern for Texas Hospitals: Workforce

Pipeline: Increase funding to increase the health care workforce = critical Texas infrastructure.

- 64% of hospital had reduced services due to staff shortages
- 15,709 qualified applicants turned away from the state's nursing schools in 2021, per Texas Center for Nursing Workforce Studies
- Funding in HB 1:
  - Professional Nursing Shortage Reduction Program for Texas nursing school faculty supplements and clinicals = \$46.8M biennium (+\$27.9M).
  - Nursing Scholarships = new \$25M biennium (tied to SB 25).
  - Nurse Faculty Loan Repayment Program = \$7M biennium (+\$4M).
  - Behavioral Health Loan Repayment Program = \$28M (+\$26M).
  - Maintain GME funds for physicians at 1.1 to 1 ratio = \$233M (+\$34M)
  - Physician Education Loan Repayment Program = \$35.5M (+\$6M)
  - Family Practice Residency Program = \$16.5M (+\$7M)
  - Rural Residency Physician Program created with new \$3M

**A Workforce in Peril: Shortages Threaten Patient Care**

Two years of COVID-19 pandemic care have strained hospital resources and capacity like never before. These extraordinary challenges have acutely impacted the people who provide care inside the walls of hospitals. Burnout and fatigue have plagued the frontlines, and many health care workers have left the field altogether. While health care workforce shortages existed long before COVID-19, staffing costs and other pandemic-related challenges have led to an unsustainable situation that threatens hospitals' ability to care for patients.

Texas hospitals report nursing vacancies in non-COVID-19 units are about double pre-pandemic levels.

**Fewer Staff, Less Care**

Hospitals are able to provide high-quality patient care because of their skilled and sufficient health care workforce. The existing significant shortage of hospital care providers has forced hospitals to compete for contract labor. These skyrocketing labor costs have profoundly impacted hospital finances, pushing many providers toward a financial cliff. As the challenges to find, procure and maintain staff continue, the impacts on hospitals' ability to provide care will continue.

**Pervasive workforce shortages on Texas' health care system could:**

- Reduce essential services, like labor and delivery, surgery, oncology and psychiatric units;
- Force rural and smaller hospitals unable to afford increasing labor costs to close, and
- Limit the guaranteed next-level specialized care for patients.

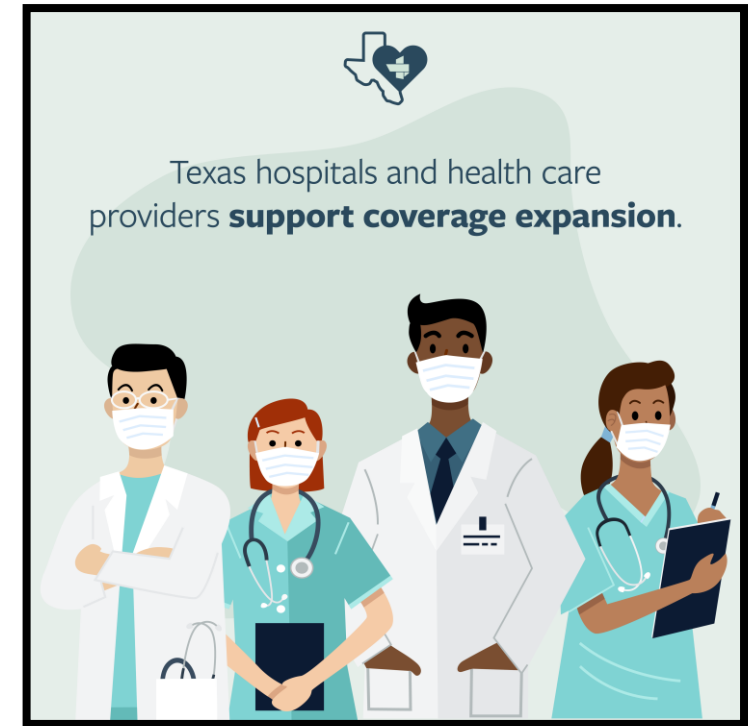
**26,000**

Over the course of the pandemic, THA advocated for much-needed state staffing to help hospitals combat COVID-19 surges. The State of Texas provided more than 26,000 staffed positions to health care facilities over the duration of the pandemic.



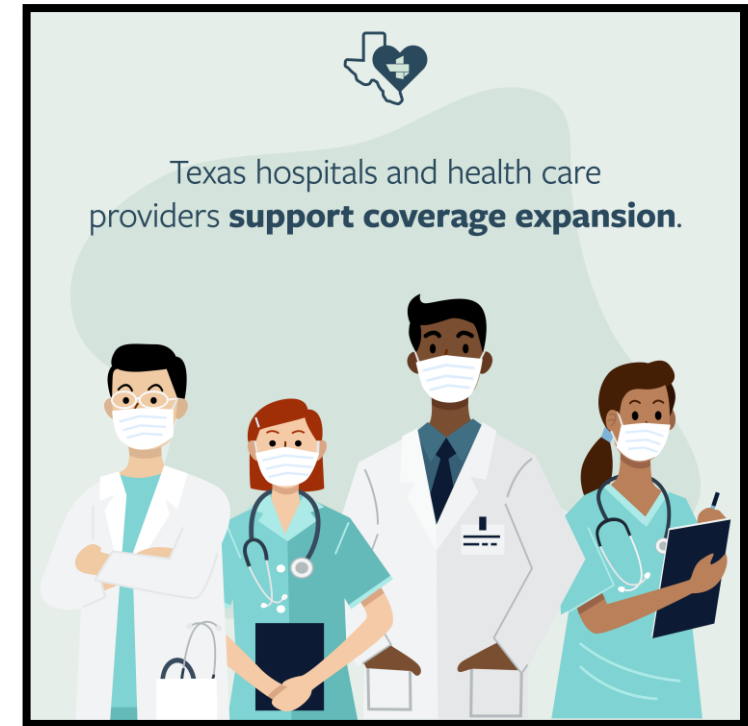
# Increase Health Care Coverage

- Efforts to increase the number of Texans with comprehensive health insurance: *No Medicaid Expansion legislation moved.*
- Texas Colorectal Cancer Care - *\$10 million (GR) over biennium for a pilot program for Texans with incomes at or below 200% FPL.*
- Women's Health Mobile Units - *\$10 million GR to increase mobile units in underserved areas.*



# Increase Health Care Coverage

- Extending postpartum Medicaid coverage for new mothers from 2 months to 12 months:
  - *HB 12 passed, and was implemented on March 1, 2024.*
  - *Eligible individuals: Medicaid or CHIP recipients who were enrolled in Medicaid or CHIP while pregnant or are no longer pregnant but are still within their 12-month postpartum period.*
  - *Does not apply to CHIP-P beneficiaries*
  - *The number of women positively impacted by this extension to currently be 137,000 statewide, and countless future moms will also benefit*



# Behavioral Health

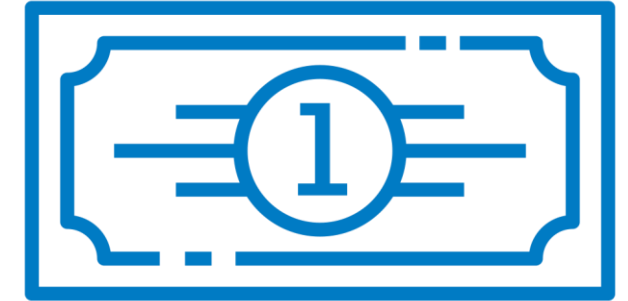
- IMD Exclusion waiver – successfully included in House budget version, but stripped out in conference
- Medicaid coverage of partial hospitalization programs and intensive outpatient therapy services (PHP/IOT) – bill didn't pass, but recruited support
- Children's Mental Health Strategic Plan
- \$7.4M GR for rural telepsychiatry consultations (HHSC Rider 56)
- SB 1624 Streamlining EDO process – requires judges or magistrates to allow physicians to apply for emergency detention orders by email or another secure electronic means, a change from the current permissive standard. Funding not included (estimated cost \$2 million over biennium)





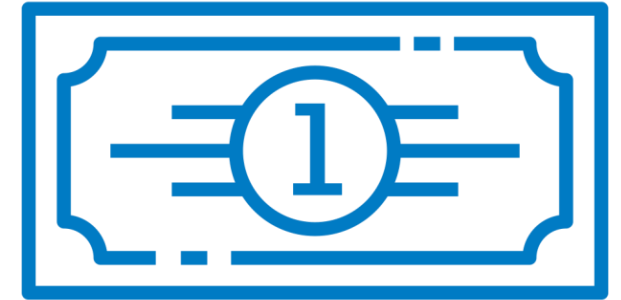
# Hospital Funding in the 2023 State Budget

- **Increased state funding of Medicaid:**
  - All Medicaid funding \$12B increase over previous biennium
  - Trauma, safety net and rural (increased) hospitals add-ons
- **Inpatient Community Psychiatric Beds Increased**
  - \$100.1 million over biennium to contract for 170 competency restoration beds
  - \$206.3 million over biennium to maintain existing capacity and 193 additional state purchased beds (70 rural;123 urban)
  - \$13.7 million for beds in Uvalde
  - Prioritizes 20 beds for DFPS conservatorship.
  - **Total: \$306.4 million over biennium allocated to additional beds.**
- **\$2 Billion for construction and improvements at State Hospitals**



# Hospital Funding in the State Budget cont.

- **Trauma Fund Maintained** at \$226M over biennium
  - + \$3.3M AF more for RACS
  - Rider 37 directs HHSC to report on uncompensated trauma care
- **Rural Hospital Funding Increases:**
  - Inflation adjustment increase of \$213M AF biennium
  - L&D add-on increased to \$1500 from \$500 (\$47M AF)
  - \$50M for rural financial stabilization grants
  - Definition of “Rural” updated post-census



# Legislative Challenges Were Significant in 2023

House Select Committee on Health Care, charged with looking at “excessive health care costs”:

- Legislation banning all hospital outpayment payments, defined as “facility fees”, **died**. Health insurance backed bill. (HB 1692 and SB 1275)
- Legislation forcing hospitals to accept a government-set rate for services provided outside of insurance, despite charity care requirements, **died**. The rate would be set at the lowest commercial contracted rate. (HB 633)
- Legislation requiring a 10-person legislative committee to establish government-set hospital rates for ERS, TRS, UT and A&M plans **died**. This would have superseded existing private market negotiations with health plans for one of 11 Texans with private insurance. (HB 5186)
- Legislation allowing health insurance companies to sell deregulated insurance-like products free from consumer protections existing in law **died**. The bill would have created more uncompensated care. (HB 1001)
- Legislation to create a health insurance think tank to review all health insurance requirements, putting health insurance companies in the driver’s seat of determining regulations and coverage, **died**. (HB 2403 / SB 1581)



# Public Health and Vaccines

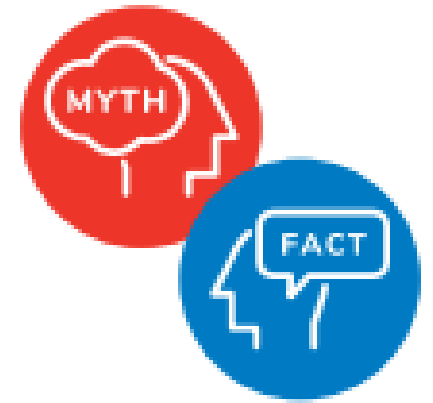
COVID-19 pandemic - hospitals were required by CMS to have COVID-vaccinated or approved-exempted staff. Raised the ire of anti-vaccination proponents at the Capitol.

- In 2023, many bills filed to restrict or limit masking (even in a hospital) and vaccines, including public and higher education vaccine requirements.
  - In third special session, (Oct. 23) Legislation prohibits hospitals from requiring COVID-19 vaccination of their employees. Complaint and administrative penalty process established at the Texas Workforce Commission with reasonableness review conducted by Texas DSHS Infectious Disease Unit. *SB 7 effective 2/6.*
  - Legislation prohibits governmental entities from requiring masks for COVID-19 or COVID-19 vaccines (hospitals exempted if existing CMS requirement). *SB 29 effective 9/1.*
  - Legislation prohibits a Medicaid or CHIP provider from restricting care based solely on immunization status, has exemption for oncology and organ transplant. *HB 44 effective 9/1.*



# Legislator Quotes from 2023

- State Senator to THA witness: What was the average bonus payment hospitals got for treating a COVID patient?
- 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.



# Art. IX Hospital Study Rider in State Budget

In H.B. 1, Article IX the Texas Legislature appropriated to HHSC \$5 million to contract with a third party to study and report on hospital finances and utilization. The report, due to the Legislature by **December 1, 2024**, will include:

- **Transparency Reporting:** Recommendations on ways to improve hospital reporting and transparency, including reducing duplicate reporting requirements.
- **Hospital Revenue including Supplemental Payment Programs:** A summary of all hospital revenue streams and their value, to include public revenue streams.
- **Charity Care and Community Benefit Compliance:** An examination of the value of charity care, bad debt expenses, unreimbursed costs and other community benefit information.
- **Tax-Exempt Status Values:** Information indicating the value of tax-exempt status, including a roster of all “nonprofit medical exempt” properties in the state belonging to hospitals and market and tax data relevant to these properties.
- **Operating Cost and Financial Assistance Information:** A statewide analysis of hospital operating costs, service area characteristics, and financial assistance practices.
- **Compliance with Charity Care Reporting:** An assessment of hospital compliance with required charity care disclosures and notices.



# Ongoing Scrutiny of Hospitals

- Hospital Charges
- Hospital Charity Care Policies, Percentages
- Hospital Medicaid Supplemental Payments
- Medicare Pays Above Cost of Care
- Hospital Compliance with Price Transparency
- Facility Fees are Hidden Fees
- Site Neutral Payment Push
- Hospital Consolidation Drives Up Costs
- Patient Billing Confusion



**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 \$4.6 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.



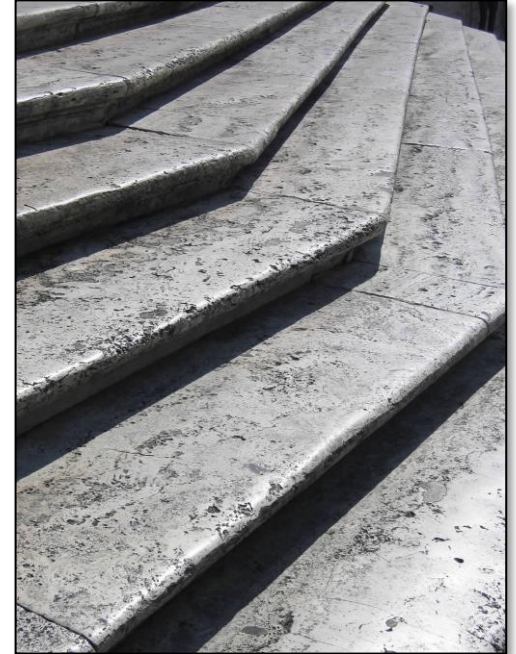
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# Anticipate Challenges

- Educate on Hospital Hot Button Issues
- Charity Care 2022 – 100% state law compliance
- Cost Report Reviews – *Worksheet S-10 Reference Guide for Texas Hospitals*
- State Transparency Compliance – THA outreach to hospitals not in compliance
  - Respond to HHSC emails!
- THA & TNA Workplace Violence Toolkit – Download on THA's website. **In effect on Sept 1, 2024.**
  - <https://www.tha.org/wp-content/uploads/2023/12/Workplace-Violence-Toolkit-2023.pdf>





# Interim Studies: Establishing 2025 Priorities

Study, evaluate, monitor, recommend:

- **Access to primary and mental care.** Could regulatory and licensing flexibilities improve access to care, particularly in medically underserved areas of Texas (Senate HHS).
- **State health insurance market** and alternatives to employer-based insurance. Identify barriers Texans face when navigating a complex health insurance market (Senate HHS).
- **Children's mental health** care (Senate HHS). Monitor mental health funding and services (Senate Finance).
- **Workforce shortage funding** implementation (Senate HHS).
- **COVID vaccine employer prohibition.** (Senate HHS).
- **Medicaid managed care** oversight and accountability (Senate HHS, House Human).
- **Reimbursement rates.** (House Appropriations).
- **Emergency detention** of a person with mental illness (House Public Health).
- **Closures of obstetrics units in rural areas** and the attendant effects on births and infant and maternal mortality. Make recommendations to facilitate convenient access to prenatal and obstetrical care (House Public Health).
- Use and development of **AI** (Senate B&C / House Special Cmte).



# End of PHE – Medicaid Unwinding

- Medicaid continuous enrollment provision of the PHE on March 31, 2023 and states could resume Medicaid disenrollments April 1
- Between April 2023- April 2024, Texas reviewed Medicaid eligibility for approx. 5.9 million Texans
- More than 2 million Texans lost Medicaid coverage
  - 1.4 million were “procedurally denied” and most were children
- Now, there is a backlog of over 200,000 Medicaid applications and wait times average 3-4 months for processing
- HHSC eligibility workforce issues being addressed, but system and technology changes needed



# Meanwhile in Washington, D.C.

- Hospitals Challenges Persist in DC:
  - Site Neutral for Drug Administration, Etc.
  - Increased Penalties, Requirements for Transparency Compliance
  - Hospital Merger and Acquisition Scrutiny
  - Charity Care Scrutiny
  - 340B Scrutiny, Proposals to “Contain” Funding
- DSH Cuts Delayed To Jan. 1 2025 (\$800M)
- Medicare Dependent and Low Volume now expire end of year
- Telehealth Flexibilities & Hospital at Home expire end of year
- CMS Rule on Provider Financed Payments
  - Effective in 2028, Texas lawsuit injunction in place.



# Medicare Advantage

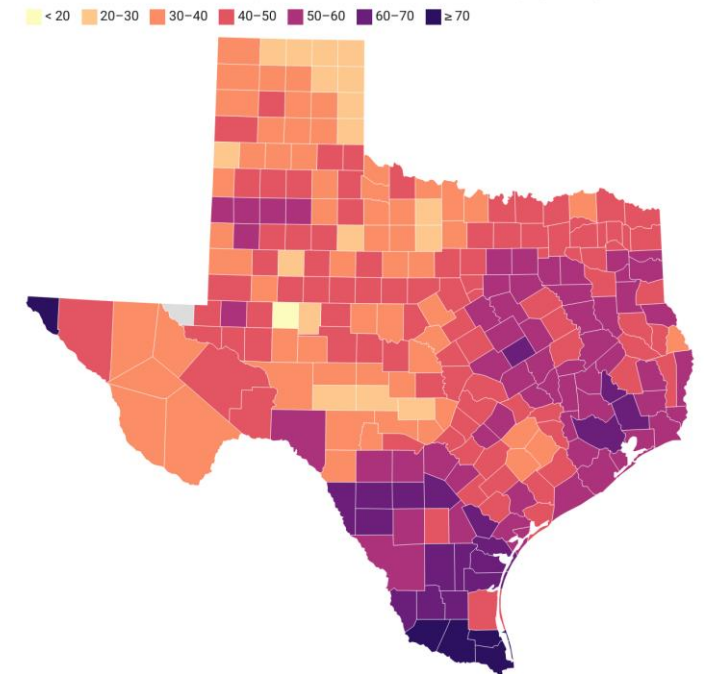
## Ongoing Advocacy:

- CMS Comment / Response Letters
  - CY 24 Plan Year (CMS-4201)
  - Prior Auth and Interoperability (CMS-0057)
  - Ways & Means Rural RFI
  - Response to House Budget Committee RFI
- Working with Ways & Means members on draft bill to bring CAHs back to cost-based payments

## Rules & Reports:

- AHA Analyses of MA Plans Defying Rule, AHA Letter
  - <https://www.aha.org/lettercomment/2023-11-20-aha-urges-cms-swiftly-correct-medicare-advantage-plan-policies-appear-violate-cy-2024-rule>
- OIG Report on Inappropriate Denials of Services and Payments in MA
- Discussion at state level as examples on managed care challenges

% Medicare Advantage Penetration by County (2024)



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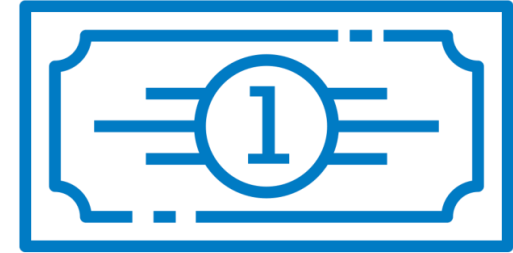


# Effectively Addressing Cost Drivers

- **Increase the Texas health care workforce** to ensure providers can provide care, staff vacant beds, and balance continued workforce cost challenges;
- Ensure nurses and all **health care providers are safe at work** by developing strong plans to prevent workplace violence, which endangers patients and staff and increases staff turnover and staffing costs;
- Improve access to care and **increase health care coverage**, including post-partum care for mothers and access for inpatient behavioral health patients, which will decrease Texas hospitals' uncompensated care;
- Increase resources for **behavioral health care** with increased bed capacity statewide, more BH workforce, and increased access and coverage leading to less hospitalizations;
- Balance individual rights and the needs for safety within hospitals, ensuring a **strengthened public health system** and fewer sick patients.



# Setting the Scene for the 89<sup>th</sup> –



- Must-pass legislation – biennial budget
- Anticipated budget surplus of \$22-\$24 billion driven by inflation in sales tax revenues and oil and gas production taxes. Comptroller Hegar will provide an updated revenue estimate in early Jan. 25
- 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 \$19 billion
- 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.



# Elections Impact Policy

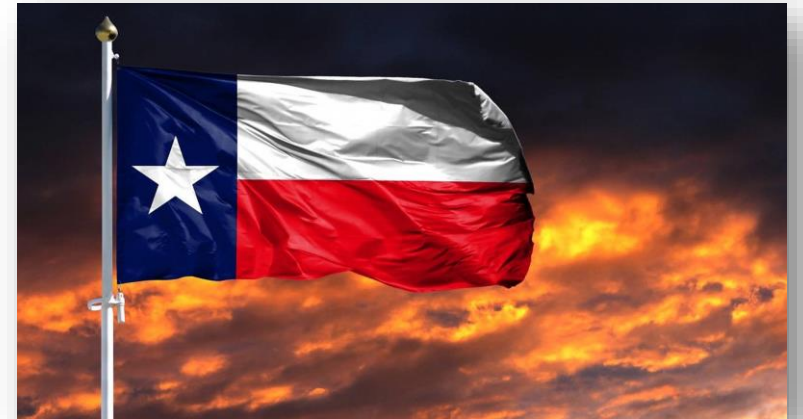
On the ballot November 5:

- Ted Cruz up for re-election, all U.S. congressional seats, ½ of the Texas Senate and all Texas House districts are on the ballot
- Republican majorities in Texas House and Senate will remain
- Abbott, Patrick return. Who will be Speaker? Four candidates have filed (as of 9/4) including Speaker Dade Phelan.
- The House will look vastly different. 24 sitting Republican legislators will NOT return in 2025 having lost their primary elections



# Eyes on 2025

- House and Senate Interim Hearings ongoing with interim reports due by end of year –NEW Senate interim charges released recently (an usual move for this late in the year)
- LBB Hearings Set – State agencies present their Legislative Appropriations Request which include Exceptional Items
- THA Finalizing 2025 State Policy Priorities
- November 2024 elections followed closely by bill filing
- All other required reports will be submitted this fall, IE the Bonnen rider on hospital financing, trauma funding
- MEANWHILE... THA staff actively getting to know all the new candidates running for office







**Thank you.**

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