



Texas Healthcare & Bioscience Institute  
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By: Julie Haerber – Policy Director  
Will Tyson – Policy Analyst



## **82<sup>nd</sup> Legislative Session End of Session Summary**

On Tuesday, January 11, 2011, the 82<sup>nd</sup> Regular Session of the Texas Legislature convened its 140-day effort with a massive \$27 billion dollar budget deficit, political redistricting and a slew of other hefty issues. The legislative session ended on May 30, 2011 and the governor's veto period expired June 19, 2011—with a total of 24 vetoed bills. The House and Senate jointly filed a total of 5,796 bills statewide and local impact bills – passing 1,379 of those and 142 joint resolutions. This whirlwind session concluded with the passage of a \$172 billion budget and going immediately into a Special Session.

**Legislative Priorities:** The State and Federal Government Relations Committee began meetings in the fall of 2010 to prepare for the session and started creating a list of legislative priorities. The full membership was asked to weigh in and provide suggestions on this priority list as well. The result was a legislative agenda ensuring the best and most efficient use of member and staff resources continuing THBI's goals of growing the Texas life science industry and maintaining an active research and development environment. To that end, THBI supported the following initiatives in the 82<sup>nd</sup> Texas legislative session.

### Access to Innovative Products

- It is critical that all patients fighting disease have access to needed treatment and cures that allow patients to live longer, healthier, and more productive lives. Research and Development is an important component of the drug and medical device innovative process. THBI is committed to safeguarding and preserving timely patient access to new medicines while maintaining the integrity of those who utilize the latest innovations in these products.

### Commercialization

- THBI supports continued funding of the Texas Emerging Technology Fund. The Fund provides critical investments to seed-stage companies in order to successfully develop the next innovations in healthcare. Almost 50% of the commercialization awards have been to life science-related entities. The Fund also provides matching grants to draw down federal funding or private investment to the state and provides grants to help recruit the brightest research minds to Texas.



### Manufacturing

- THBI supports a tax exemption on equipment used by manufacturers in research and development from state sales tax. Manufacturers receive an exemption on equipment used in manufacturing, however many life science and other technology industries do not qualify for the exemption. Equipment is originally purchased for research and then is used as part of the manufacturing process. This legislation would extend the exemption from the state sales tax to manufacturing equipment used in research.

### Higher Education/Research

- Encourage the Legislature to support a consistent transparent mechanism to fund research at Institutions of Higher Education. In addition, we also encourage the Legislature to meaningfully fund research to insure national competitiveness and to improve the ability for our health related Institutions to continue a robust technology transfer system and commercialization process.
- THBI supports the full funding of the Cancer Prevention Research Institute of Texas (CPRIT). CPRIT continues to foster cancer research and prevention in Texas as well as fund commercialization projects.

## **2011: What has THBI been up to?**

**Legislative Tracking Charts:** THBI tracked legislation throughout the session in 15 different categories including:

1. Budget/Taxation/Economic Development
2. County Issues/Health Districts
3. Emerging Technology Fund
4. Ethics and Regulatory
5. Federal Healthcare Reform
6. General Healthcare
7. General Medicaid
8. Higher Education



9. Labor and Workforce
10. Licensing and Regulatory
11. Medical Device
12. Pharmaceutical
13. Stem Cell/Cloning
14. Tort and Liability
15. Uncompensated Care

The increased amount of bills filed and the increased percentage of those bills affecting the life science industry resulted in THBI tracking over 215 bills. In tracking legislation, THBI sent out weekly updates on the progress of these bills. Included in the tracking charts were a summary of each bill which was updated upon amendment or substitution. Additionally, THBI and THBI-secured experts provided numerous testimonies during the session. THBI submitted seven witness cards supporting or opposing legislation.

**Website:** The THBI team created a members only website to access the weekly updates to the 15 THBI legislative charts. This resulted in “ease of use” for our members and established a direct information access point by bill number in a timely efficient manner.

**Coffees at the Capitol:** In a small intimate and informal setting, coffees at the Capitol bring together THBI members and key members of the legislature or agencies and their staff. This format is designed to facilitate both introductions to the industry, THBI members, and the policy priorities of the life sciences industry. These coffees also gave legislators an opportunity to discuss their legislative priorities while gaining a greater understanding of the large role life sciences and biotechnology play in Texas. This session coffees included: Appropriations Article II Subcommittee Chair Representative John Zerwas and Health and Human Services Executive Commissioner Tom Suehs.

**Monthly President’s Call:** Tom Kowalski hosted monthly membership calls to update THBI members on the institute’s legislative topics. The calls were conducted on a “listen only” basis and Mr. Kowalski interviewed key legislators and staff pertinent to the issues.



**Texas Technology Week:** Texas Technology Week 2011 was held the week of February 14<sup>th</sup> through the 18<sup>th</sup>. The week included a full agenda of economic development discussions, a policy conference, legislator interactions, and opportunities to profile the Texas life science industry. THBI again partnered with a host of other industry trade associations, including: TechAmerica Texas, Texas Coalition for Capital, TechNet, and the Metroplex Technology Business Council, for a legislative reception and legislative breakfast. Additionally, Senator Florence Shapiro and Representative Mark Shelton introduced and read Senate Resolution 257 and House Resolution 410 respectively in both the Senate and the House to commemorate the week as Texas Technology Week. This event provides an opportunity for our organizations to showcase the strength of Texas' technology-based businesses. Together we sought support for programs and policies in Texas that bolster job creation in Emerging Technology Fields; we encouraged the adoption of tax policies that spur research & development, innovation, and continued capital investment; and we promoted policies that improve the quality of our educational system, enhance the quality of our workforce, and increase Texas's ability to compete internationally.

**Tech Week Breakfast:** THBI and the other Tech Week hosts held a Legislative Breakfast on the morning of February 16, 2011 in the Texas Medical Association Building's auditorium. Over 75 participants listened to short statements by House Committee on Economic & Small Business Development Chairman John Davis; and Technology Chairman Aaron Pena.

**Tech Week Reception:** THBI joined other Tech Week hosts in holding a legislative reception at the Four Seasons Hotel celebrating Texas Technology Week. The well-attended reception included Legislators and their staffs and corporate executives from around the state.

**THBI Fly-In:** During Tech Week, THBI members participated in a legislative fly-in, walking the halls of the Texas Capitol to speak with Legislators and legislative staff about priority pieces of legislation, the budget for the life science industry, as well as the industry's development in their respective regions. In total, THBI members made over 85 office visits and left behind materials listing issue priorities. THBI members did a fantastic job of speaking to the priorities of the industry and highlighting how strong the life sciences are in Texas. The priorities discussed during these visits included:

**1. Research & Development** - The need to **maintain** research funding at Texas' Health-Related Institutions;



**2. Commercialization** - A request to keep unexpended balances and liquidity events in the Emerging Technology Fund and Texas Enterprise Fund;

**3. Manufacturing** - A request to pass legislation by Representative Genie Morrison (R-Victoria) that would implement an R&D sales tax exemption. Fly-in participants additionally discussed the need for the Legislature to authorize funding for the Cancer Prevention and Research Institute, and the potentially disastrous effects the passage of state level sales and marketing legislation could have on the growing life science industry in the state.

**RCIC Fly-In:** THBI helped coordinate a strategic fly-in centered around the Emerging Technology Fund with the Leadership of the Regional Centers of Innovation and Commercialization to visit with members of the Legislature.

**THBI Luminary Dinner:** THBI hosted its fourth annual Luminary Dinner and honored Texas Tech Chancellor Kent Hance as the 2011 THBI Luminary Award recipient. The February 15, 2011 event featured a lengthy list of over 25 Legislators serving as honorary hosts. State Senator Robert Duncan (R-Lubbock), introduced Chancellor Hance to a full room of attendees at the Four Seasons Hotel in Austin. Hance was chosen for his efforts to lead an organization that fosters medical advancements through research and innovation, benefiting the state's economy through job creation. Members of the Texas Legislature, higher education leaders from across the State, and Texas life science and healthcare industry leaders attended the 2011 Luminary Dinner.

**BIO 2011 in Washington, DC:** This year THBI joined **BIO** in Washington D.C. to call on the Texas congressional delegation in support of national issues affecting the life science industry. Our thanks to those individuals who joined us in walking the halls of D.C.

**JEC Hearing on Innovation and Job Growth in the Life Sciences Industry:**

On Wednesday, May 25<sup>th</sup>, 2011, Tom Kowalski provided testimony before the U.S. Congress Joint Economic Committee (JEC) on exploring innovation and job growth in the life science industry. The (JEC), chaired by Senator Bob Casey (D-PA) held a hearing, titled "Driving Innovation and Job Growth through the Life Sciences Industry," which focused on the key role the life sciences industry plays in enabling innovation and job creation in our country.

Additionally, the hearing explored new policy actions that can incentivize additional Research & Development (R&D) in the life sciences industry and examine the role the federal government plays in supporting R&D.



**State/Federal Relations Committee:** The State and Federal Government Relations Committee began meeting in the fall of 2010 after legislative profiles started. Starting in January the committee held weekly meetings and updates on THBI's legislative priorities and bills in at the Capitol. During the course of the 82<sup>nd</sup> legislative session, we tracked over 215 different pieces of legislation in fifteen different areas with the potential to affect Texas biotechnology, life sciences, and higher education. Those of you who participated know who you are and THBI appreciates your efforts.

**The 2012-2013 Budget Deficit:** Every session is dominated by the budget – as this is the only bill by law that has to pass, but this one seemed like one for the history books. The 82<sup>nd</sup> session began with a budget shortfall of nearly \$27 billion. House and Senate budget negotiators approved a \$172.3 billion budget proposal, which reduced state spending by 8% over the next two years and raised no new taxes. The 2012-2013 budget, was approved in the House by a vote of 97-53 and in the Senate 20-11, and now goes to Governor Rick Perry, who commended lawmakers for (again) not raising taxes or tapping the state's \$9 billion Rainy Day Fund. However, it's been established that a portion of the Rainy Day Fund (\$3.4 billion) will only be used to balance the budget in the **current** biennium. The budget cuts public school funding by \$4 billion dollars and only funds Medicaid for the first 20 months of the state's 24-month budget cycle. The general revenue (GR) and GR-dedicated total is \$86.9 billion, compared to \$88.5 billion in 2010-11 which marks a 2% decrease. The All Funds total is \$54.2 billion for health and human service programs, compared to \$65.5 billion in 2010-11 (a 17% decrease).

**Fiscal Matters, a Filibuster, and Special Session:** SB 1811, Regular Session, by Sen. Robert Duncan (R-Lubbock) and Rep. Jim Pitts (R-Waxahachie), related to state fiscal matters and was needed to make the state budget balance with \$5 billion in cost savings and formulas for school finance funding for the next two-years. (It became SB 1 in Special Session.) At 10:45pm on May 29, Senator Wendy Davis (D-Fort Worth) stood before the Texas Senate and began speaking against SB 1811. An old fashioned filibuster, Davis spoke until after midnight effectively killing the measure.



The very next day, May 30, Governor Rick Perry, released a proclamation calling lawmakers back to Austin for a special session which began Tuesday morning. In his call he charged lawmakers to consider legislation relating to fiscal matters necessary for the implementation of HB 1, the 2012-2013 budget, as well as measures to allow school districts to operate more efficiently. He also directed them to consider legislation relating to health care cost containment, access to services through managed care, and the creation of economic and structural incentives to improve the quality of Medicaid services. On Tuesday, May 31, 2011 Governor Perry expanded the call to include congressional redistricting. Since then, Perry has also added operation of the Texas Windstorm Insurance Association, Sanctuary Cities and legislation relating to Security Procedures to the call.

**Cancer Prevention and Research Institute of Texas (CPRIT):** The Texas Legislature fully funded the Cancer Prevention and Research Institute of Texas (CPRIT) at \$600 million for the next two years, or \$300 million per year. In 2007, Texas voters overwhelmingly approved a constitutional amendment dedicating up to \$3 billion over 10 years to invest in groundbreaking research, prevention programs, and services in Texas. In conjunction with fully funding CPRIT, the legislature approved a change in law through HB 2251 (Sunset bill for the Texas Public Finance Authority) requiring the bond funding for CPRIT be issued on an as-needed basis, rather than at the time of the award, as required under the law originally authorizing the creation and operation of CPRIT. This change in law reduces the debt service cost of the cancer bonds over the next two years from more than \$30 million to a little more than \$9 million.

**Emerging Technology Fund Update:** HB 1 allows carry-forward of unexpended balances in the Enterprise Fund and the Emerging Technology Fund and HB 2457 passed the House and Senate and will be sent to the governor. HB 2457 provides that an agreement submitted to the Lt. Governor and Speaker for approval would be deemed disapproved if not approved within 90 days (with a possible 14 day extension; requiring the annual report to include the total number of jobs created and an analysis of the jobs created by each project and would institute claw-back provisions if job targets are not met; requiring the Lt. Governor and the Speaker to each appoint two members to the Texas Emerging Technology Fund Advisory Committee but would not require them to be legislators; requiring committee members to file a financial statements; requiring criminal background checks and credit checks of entities and principals of entities recommended for an award; and requiring regional centers of innovation and commercialization to keep minutes of each meeting.



**82<sup>nd</sup> Session Legislative Staff Appreciation Reception:** THBI members including economic development organizations, biotechnology, pharmaceutical and medical device companies, and other life science industry partners gathered on, June 23<sup>rd</sup>, 2011 at Serrano's Café and Cantina Symphony Square to honor the Texas Legislative Staff on a job well done during the 82<sup>nd</sup> Legislative and Special Sessions.

**BIO International Convention- June 2011- Washington, DC:** The 2011 BIO International Convention, produced by the Biotechnology Industry Organization (BIO) hosted more than 15,626 industry leaders from 48 states and 65 countries. The event was held June 27 – 30, 2011 and took place at the Walter E. Washington Convention Center in Washington, DC. Industry leaders representing 1700 companies participated and more than 15,000 biotechnology industry leaders and public officials gathered for networking, deal-making and high-level sessions.

THBI again managed the BioTexas Pavilion representing Texas for the Governor's Office. The BioTexas Pavilion brought 18 economic development communities and two companies to the convention. These participating communities are as follows: 10-35 Economic Development Alliance, Abilene Life Sciences Accelerator, Allen Economic Development, BioAustin, BioMed SA, BioHouston, Burleson Economic Development, CenterPoint Energy, City of Georgetown, City of Kyle, City of Lufkin, Cancer Prevention and Research Institute of Texas, OneHealth Plus Biocorridor™ at Research Valley, Research Valley Partnership, Round Rock Economic Development Partnership, San Antonio Economic Development Foundation, Temple Economic Development Corporation, and Tyler Economic Development Council. Our two sponsor companies were the Baylor Research Institute and Astrogenetix.

As our community partners have communicated to us, this convention once again emerged as a strong economic development opportunity and as an ideal platform to meet with potential partners from around the country and the world. Many of our economic development leaders participated in the record-breaking partnering sessions which offered one-on-one meeting opportunities. This partnering aspect added a great value to our BioTexas Pavilion attendees.

On Wednesday, June 29<sup>th</sup>, the BioTexas Pavilion hosted a "Texas-sized Happy Hour" which included Margaritas and Mojitos to an overflow crowd of enthusiastic show attendees wanting to learn more about the state and its research and business opportunities.



The 2012 BIO International Convention will take place June 18-21 at the Boston Convention and Exhibition Center in Boston, Mass. For more information, or for participation opportunities in the BioTexas Pavilion, please contact Carolyn Skinner at 512-708-8424 or [carolyn@thbi.com](mailto:carolyn@thbi.com).

***\*The following report on the 82<sup>nd</sup> Legislative Session provides a snapshot of some of the issues of importance to THBI members. It is by no means a total compilation of the session's legislative actions.\****

**Budget/Taxation/ Economic Development:**

Four bills were passed from this track during the regular 82<sup>nd</sup> legislative session: HB 1 by Pitts, HB 4 by Pitts, HB 275 by Pitts, and SB 1421 by Nelson.

HB 1 is the 2012-2013 state budget and was passed during the regular session. Please see the above summary in this document.

HB 4 is the supplemental appropriations bill to close the revenue gap for the current state fiscal year. HB 4 reduced state agency appropriations for fiscal 2011 by \$1.5 billion in all funds from different agencies broken out by article. About \$4.3 million of this amount would be federal funds and the rest general revenue and general revenue-dedicated funds. Together, with HB 275 (the \$4.3B of the Rainy Day Fund) and the estimated revenue adjustments would allow the Legislature to use all the general revenue the comptroller has estimated will be available during the next biennium for the fiscal 2012-13 state budget without the need to offset the holdover shortfall.

HB 275 states that an amount of \$4,273,557,000 is appropriated from the economic stabilization fund (Rainy Day Fund) to the comptroller of public accounts for the purpose of depositing that amount to the credit of the general revenue fund as money available for Texans during the state fiscal year ending August 31<sup>st</sup>, 2011, to make expenditures previously authorized by appropriations from general revenue for the state fiscal biennium ending August 31<sup>st</sup> 2011.

SB 1421 states that the oversight committee of the Cancer Prevention and Research Institute of Texas (CPRIT) shall establish standards that require all grant awards to be subject to an intellectual property agreement that allows the state to collect royalties, income, and other



benefits including interest or proceeds resulting from the securities and equity ownership, realized as a result of projects undertaken with money awarded.

#### **County Issues/Health Districts:**

Two Bills from this chart were passed by the 82<sup>nd</sup> legislature, HB 123 by Veasey and SB 303 by Nichols.

HB 123 deals with state assistance in the creation and operations of an adult diabetes program in hospital districts with populations greater than 100,000 people.

SB 303 states that hospital districts may recover an amount equal to the value of any fraudulently obtained health care services provided to a person.

#### **Emerging Technology Fund:**

Two bills from this track were passed by the 82<sup>nd</sup> legislature: HB 2457 by John Davis, and SB 1047 by Jackson.

HB 2457 made several changes to administration of the Texas Enterprise Fund and the Emerging Technology Fund including providing that an agreement submitted to the Lt. Governor and Speaker for approval would be deemed disapproved if not approved within 90 days with a possible 14 day extension; requiring the annual report to include the total number of jobs created and an analysis of the jobs created by each project and would institute claw-back provisions if job targets are not met; requiring the Lt. Governor and the Speaker to each appoint two members to the Texas Emerging Technology Fund Advisory Committee but would not require them to be legislators; requiring committee members to file a financial statements; requiring criminal background checks and credit checks of entities and principals of entities recommended for an award; and requiring regional centers of innovation and commercialization to keep minutes of each meeting.

SB 1047 states that a "Research Institution" means: a public institution of higher education; or an innovation and commercialization organization associated with the Lyndon B. Johnson Space Center of the National Aeronautics and Space Administration.



### **Ethics and Regulatory:**

Four bills from this chart were passed by the 82<sup>nd</sup> legislature: HB 300 by Kolkhorst, HB 396 by Gonzales (SB 156 by Huffman), SB 158 by Williams, and SB 187 by Williams.

HB 300 dealt with the privacy of protected healthcare information, establishing guidelines for the storage, transmission, and protection of protected health care information. In its originally filed form, the bill would have prohibited the transfer or sale of PHI for direct or indirect remuneration. This would have had a severe negative effect on biomedical research and clinical trials within the state. However, with thoughtful navigation through the legislative process, a version of the bill was adopted that satisfied the concerns of the industry and provided a carve-out for research. SB 622 by Nelson was a semi-companion to this bill. Summaries of both bills and their progressive versions can be found on our website.

HB 396(SB 156) deals with the healthcare data collected by the Department of State Health Services and access to confidential patient information within the department. It would authorize the DSHS to share data collected that was not included in the public use data with any program within DSHS if the disclosure were reviewed and approved by the department's institutional review board.

SB 158 establishes an offense if a person uses misrepresentation, fraud, forgery, or deception to obtain their drugs. Schedule 1 & 2 drugs are a second-degree felony, schedule 3 & 4 are a third degree felony, and schedule 5 is a class A misdemeanor.

SB 187 establishes an informed consent document to inform a person making a gift of a decedent's body or anatomical specimen for purposes of education or research of the risks and benefits associated with donation.

### **Federal Healthcare Reform:**

HB 335 by Shelton was the only bill in this track to pass during the regular session. The bill stated that a state agency may not implement a provision of a federal health care reform law unless the state agency submits a report describing all expenditures that require a person or an employer to buy or provide health insurance, expand eligibility for state Medicaid services, and create a health insurance mandate.



HB 5 by Kolkhorst, which would have established an interstate healthcare compact, did not pass in the regular session but passed in the special session. The compact would allow each state to regulate its own health care and will allow states to suspend by legislation the operation of all federal laws, rules, regulations, and orders regarding health care that are inconsistent with the laws and regulations adopted by the state.

### **General Healthcare:**

Four bills from this chart were passed by the 82<sup>nd</sup> legislature: HB 114 by McClendon, HB 531 by McClendon, SB 510 by Van de Putte (HB 727 by Gutierrez), and HB 2312 by Coleman.

HB 114 related to designating April as Minority Cancer Awareness Month.

HB 531 stated that emergency medical services personnel who are providing emergency pre-hospital care to a person are not required to review, examine, interpret, or honor a person's out-of-hospital DNR order.

SB 510 created an electronic diabetes mellitus registry to track glycosylated hemoglobin levels of each person who has a laboratory test to determine that level performed at a clinical laboratory in the participating district.

HB 2312 creates a sickle cell disease program to identify other efforts related to the expansion and coordination of education, treatment, and continuity of care programs for individuals with sickle cell trait and sickle cell disease.

### **General Medicaid:**

Five bills were passed from this track during the 82<sup>nd</sup> legislature: HB 710 by Walle, SB 688 by Nichols, HB 1983 by Kolkhorst, SB 420 by Deuell, and SB 796 by Nelson.

HB 710 states that agencies shall discontinue using electronic fingerprint imaging or photo imaging of applicants for and recipients of financial assistance, benefits or food stamp benefits.

SB 688 (HB 1332) makes Medicaid fraud a felony.



HB 1983 relates to certain labor inductions performed on recipients under the Medicaid program.

SB 420 relates to determining eligibility in the Temporary Assistance for Needy families-Medicaid program.

SB 796 states that HHSC shall prepare a report that identifies the commission's top priorities for addressing diabetes within the Medicaid population. See chart for more details.

SB 7 initiates going to a pay-for-performance system, creating incentives for providers who develop efficient and better quality care, and penalizes wasteful providers and patients. These penalties include reduced payments for patients readmitted for preventable diseases and co-payments for avoidable emergency room visits.

SB 8 would establish the Texas Institute of Health Care Quality and Efficiency, abolish the Health Care Policy Council, establish a statutory framework for the regulation and operation of health care collaboratives, establish a statewide patient risk identification requirement, establish a recognition program for certain health care providers, and amend requirements related to health care provider reporting and the disclosure of data that are not public use data. It did not pass during the regular session; however it is expected to pass during the 1<sup>st</sup> special session as part of SB 7 (composite bill of SB 7, 8, 23, & 1177 from the regular session).

#### **Higher Education:**

HB 1380 by Truitt passed during the 82<sup>nd</sup> legislative session and relates to graduate medical training requirements for certain foreign medical school graduates applying for a license to practice medicine in Texas. The bill would require two years of graduate medical training approved by the board of the US or Canada.

#### **Labor and Workforce:**

SB 304 by Nichols amends subchapter C, chapter 61 of the Health and Safety code to add that a public hospital or hospital district may establish procedures consistent with those used by the



Health and Human Services Commission under Chapter 31, human Resources Code, for administering an employment services program and requiring and applicant or eligible resident to register for work with the Texas Workforce Commission.

**Licensing and Regulatory:**

No pertinent bills in this track were passed.

**Pharmaceutical:**

Six bills in this tract were passed by the 82<sup>nd</sup> legislature: HB 438 by Thompson, HB 597 by Madden, HB 1137 by Darby, HB 2069 by Naishtat, SB 594 by Van de Putte, and SB 1273 by Williams.

HB 438 states that a benefit plan that provides coverage for cancer treatment must provide coverage for a prescribed, orally administered anticancer medication as well as intravenously administered cancer medications that are covered as medical benefits by the plan. If an orally administered drug is prescribed, the out of pocket cost to the patient may not exceed that of the IV drug.

HB 597 adds certain synthetic cannabinoids to Penalty Group 2 of the Texas Controlled Substances Act.

HB 1137 requires a person to display a form of government-issued identification to purchase ephedrine, pseudoephedrine, and norpseudoephedrine. It also requires the store to make a record of the sale (name, DOB, Address of the purchaser, date/ time of purchase). The bill also establishes guidelines for real time transmission of sales date to prevent abuse of the above listed medications.

HB 2069 states that a pharmacist may dispense up to a 90-day supply of a dangerous drug following certain restrictions and prescriptions.



SB 594 allows for the use of electronic prescriptions for schedule II controlled substances, it outlines procedures for electronic prescriptions and outlines procedures for prescriptions sent by mail.

SB 1273 states that a person shall provide the department with the person's federal drug enforcement administration number no later than the 45<sup>th</sup> day after the director issues a registration to the person.

HB 3678 by Fred Brown did not pass, but would have implemented cost-containment strategies to shift from brand name prescription drug use to generic prescription drug use to achieve a four percent or greater increase in generic prescription drugs. This was one of the bills that THBI felt was detrimental to the citizens of Texas, as it would limit access to care and interfere with decisions being made by physicians with regard to the wellbeing of their patients. The savings listed in the bill were already created and accounted for in HB 1, the budget.

#### **Stem Cell/ Cloning:**

No pertinent bills in this track were passed.

#### **Tort and Liability:**

HB 118 by McClendon was the only bill that passed in this track and states that a hospital shall provide a written notice to a patient that the hospital may authorize the disposal of medical records relating to the patient on or after the periods specified.

#### **Uncompensated Care:**

HB 871 by Yvonne Davis states that a county shall, in accordance with department rules provide the following basic health care services: primary and preventative services, inpatient and outpatient hospital services, rural health clinics, laboratory and x-ray services, family planning services, physician services, payment for up to three prescription drugs, skilled nursing facility services.



## 82<sup>nd</sup> 1<sup>st</sup> Called Special Session End of Session Summary

With healthcare and Medicaid reform front and center in Gov. Rick Perry's special session call, THBI immediately began tracking several key health measures that didn't pass during the regular session, and have been given new life in the Special Session. Please read our summaries below:

### **Fiscal Matters:**

SB 1 by Duncan (Pitts) sets out certain statutory changes necessary to comply with assumptions made in H.B. 1, 82nd Legislature, Regular Session (the General Appropriations Act), respond to state fiscal concerns, and address certain fiscal matters. The bill implements selected Texas State Government Effectiveness and Efficiency recommendations and makes adjustments to current law in order to facilitate the administration of the state's financial resources. The bill is effective September 1, 2011.

SB 2 by Duncan (Pitts) CSSB 2 would make appropriations to several state agencies for fiscal years 2012-13, most contingent on the enactment of legislation during the first called session of the 82nd Legislature, including the funding for public education. The bill would have a two-year, net cost to general revenue related funds of \$29.3 billion through the end of fiscal 2013. These appropriations would be in addition to the amounts appropriated in the contingent appropriations for fiscal 2012-13. The bill would take immediate effect.

### **Healthcare:**

HB 5 by Kolkhorst (CSHB 5) which has been rolled in SB 7 would amend the Insurance Code to place into law the provisions of an Interstate Health Care Compact and to direct Texas to join the compact with other states to secure from the federal government primary responsibility to regulate and improve health care by its own legislature. A "member state" would be a state that signed the compact and had adopted it under its laws. The bill would define health care to include a wide range of services, including preventive, therapeutic, physical or mental health, pharmacy, and individual or group health plans, except for plans provided by the U.S. Department of Defense and U.S. Department of Veteran Affairs or for Native Americans.



The bill would authorize Texas, as a member state, to suspend by legislation the operation of all federal laws, rules, and regulations that were inconsistent with the state's health care laws and regulations. Federal laws and regulations would remain in effect unless suspended, and Texas would be responsible for funding any unsuspended federal health care law or rule in effect after the compact's effective date.

The bill would provide that Texas as a member state would have the right to federal money up to an amount equal to its federally funded mandatory health care spending in fiscal 2010 and adjusted by factors that took into account changes in the state's average population as determined by the U.S. Bureau of the Census and inflation as measured using a Total Gross Domestic Product Deflator determined by the U.S. Department of Commerce.

The bill would create the Interstate Advisory Health Care Commission, whose membership would be determined by each member state and would be funded as agreed to by the member states. Texas, as a member state, could not appoint more than two members and could withdraw membership at any time. The commission would be required to collect information to assist member states in their health care regulation and to share their information with the member states' legislatures. The commission could study health care regulation issues and make nonbinding recommendations. The commission could have other responsibilities and duties as conferred by the member states' legislatures.

Member states by unanimous agreement could amend the compact, and the amendment would remain in effect unless Congress disapproved the amendment within one year. Texas, as a member state, could withdraw from the compact by adopting a law, but the withdrawal could not take effect until six months after the governor had informed the other member states. The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

The bill provides that Texas would agree that the compact's effective date would be the later of the date the compact was adopted under Texas law or the date the compact was adopted by at least two states and received consent of the U.S. Congress. The compact would not take effect if, in consenting to the compact, Congress altered the compact's fundamental purposes.

HB 7 by Zerwas or better known as SB 7 by Nelson is the omnibus Medicaid reform bill to improve health care quality and efficiency in Texas.



### **What does this bill do?**

SB 7 includes cost-containment measures necessary to achieve the savings assumed in the budget adopted by the 82nd Legislature. It also includes measures designed to improve patient outcomes in Medicaid and the Children's Health Insurance Program (CHIP) and across private health care. SB 7 becomes effective, the 91st day after the last day of the legislative session.

### **Background**

- HB 7 (82(1)) is the combination of three bills that died during 82R:
- SB 7 (Medicaid Healthy Outcomes) – Passed the Senate and House Public Health with no opposition, died in House Calendars. Was also amended to SB 23 (see below).
- SB 8 (Texas Healthy Outcomes) – Passed both the Senate and House. However, Rep. Kolkhorst amended her HB 5 (Health Care Compact) onto SB 8 and the bill died waiting for the House to concur with the conference committee report.
- SB 23 (Medicaid Cost Savings) – Passed both the Senate and House; however, the bill died waiting for the House to concur with the conference committee report (the House ran out of time).

### **Key Provisions**

- Authorizes the Health and Human Services Commission to implement an objective client assessment process for acute nursing services.
- Implements Electronic Visit Verification technology in community care programs and for acute nursing services.
- Repeals the prohibition against managed care in Cameron, Hidalgo, and Maverick counties and agreed upon language by Senator Hinojosa and Rep. Veronica Gonzales for certain protections.
- Requires the Health and Human Services Commission to consider certain factors when awarding managed care contracts, including if a pharmacy benefit manager (PBM) has been convicted of violating state or federal law, committed a breach of contract, or assessed a fine or penalty of \$500,000 or more in the previous three years.
- Allows for the carve-in of prescription drugs into Medicaid managed care while ensuring that existing patient protections under fee for service are maintained:
  - Single state formulary
  - Any willing pharmacy
  - Prohibits mandated mail order
  - Prompt pay for pharmacy claims



- Requires that any person serving as a medical director for a managed care organization to be licensed to practice medicine in Texas.
- Transfers children in the State Kids Insurance Program to the Children's Health Insurance Program.
- Eliminates the electronic finger imaging requirement for the Supplemental Nutrition Assistance Program (SNAP) and Temporary Assistance for Needy Families (TANF) and requires the Commission to implement appropriate technology to prevent duplicative benefits.
- Makes assisted living facility and nursing home licenses renewable every 3 years (instead of every 2 years) and directs HHSC to stagger license expiration dates.
- Directs DADS to conduct utilization reviews of services in all waiver programs and directs HHSC and DADS to explore ways to develop uniform licensing and contracting standards for all waiver programs.
- Exempts DSHS programs from assisted living facility licensure.
- Requires the Commission to study and implement physician incentive programs to reduce emergency room use for non-emergency conditions in Medicaid.
- Directs the Commission to implement copayments for Medicaid recipients who use the emergency room for non-emergency conditions.
- Allows the Commission to expand its existing Medicaid billing coordination system to process claims for other services provided through the Commission or another health and human services agency.
- Establishes the Medicaid/CHIP Quality-Based Payments Advisory Committee.
- Directs the Commission, in consultation with the advisory committee, to develop quality-based outcome measures that focus on reducing potentially preventable events (e.g., preventable hospital admissions, emergency room visits, ancillary services, readmissions, and complications).
- Requires the Commission to use these quality-based outcome measures to adjust Medicaid/CHIP reimbursements across all Medicaid/CHIP payment systems including fee-for-service and managed care.
- Requires HHSC to convert its current Medicaid/CHIP reimbursement systems to a diagnosis-related groups (DRG) methodology that will more accurately classify patient populations and account for the patient's severity of illness and mortality risk no later than September 1, 2012.



- Requires the Commission to use quality-based outcome measures to base a percentage of the premiums paid to managed care organizations participating in Medicaid/CHIP on the organization's performance.
- Requires HHSC to make information regarding managed care organizations' performance available to Medicaid/CHIP enrollees in managed care before they choose their managed care plan.
- Requires HHSC, when awarding contracts to managed care organizations, to give preference to an organization that implements quality-based payment initiatives or meets quality of care and cost-efficiency benchmarks.
- Allows HHSC to develop quality based payments, including shared savings, for Medicaid/CHIP providers who serve as a "health home" for recipients and provide high quality, efficient care.
- Requires HHSC to provide hospitals with a report regarding their performance on potentially preventable complications (Last session HHSC was required to give hospitals a report on potentially preventable readmissions).
- Adjusts (rewards or penalizes) Medicaid/CHIP payments to hospitals based on a hospital's performance on potentially preventable readmissions and complications after hospitals have received performance reports for at least a year.
- Allows health care providers and facilities to submit proposals to HHSC for payment initiatives that improve quality and efficiency of Medicaid/CHIP and allows HHSC to implement initiatives that are feasible and cost-effective.
- Makes clean-up changes to the nursing facility pay-for-performance initiative passed last session.
- Directs DADS to study the feasibility of expanding the existing nursing facility pay-for-performance program to other long-term care services (e.g., ICF/MRs, home and community-based services).
- Allows a public hospital or hospital district that provides indigent care to a sponsored alien to recover the costs of the health care services from the sponsor.
- Allows the Commission to recover the costs of benefits (Medicaid, CHIP, food stamps, cash assistance) provided to a sponsored alien from the sponsor.
- Requires electronic submission for durable medical equipment under Medicaid.
- Creates tiers for family planning funding to ensure providers of comprehensive care are prioritized.
- Continues the women's health program prohibition currently in statute against funding abortion providers.



- Establishes a state action doctrine to provide certified health care collaborative safe harbor from state and federal anti-trust laws.
- Establishes the Texas Institute of Health Care Quality and Efficiency (administratively attached to HHSC) to improve health care quality, efficiency, accountability, education, and cost containment in this state by encouraging health care provider collaboration, effective health care delivery models, and coordination of health care services.
- Requires the Institute to complete an assessment of all health-related data currently collected by the state, and make recommendations for consolidating this data and improving health care transparency to the public.
- Requires the Institute to study the feasibility of establishing an "all payor" claims database.
- Abolishes the Texas Health Care Policy Council and transfers all unexpended balances to the Institute.
- Prohibits mandatory coverage under a health care collaborative.
- Establishes a governance structure for health care collaborative (board will be a physician majority).
- Requires a collaborative to have a compensation advisory committee.
- Creates a "Health Care Collaborative" certification process at the Texas Department of Insurance.
- Requires the Attorney General's office to review applications for certification and either concur or not concur with the Department of Insurance's decision to grant a certificate.
- Requires a collaborative to renew its certificate annually.
- Requires a collaborative to have a complaint system in place to resolve complaints by patients and health care providers.
- Requires due process for a physician who is either not chosen to participate in a collaborative or de-selected from participation.
- Requires the Department of Insurance to collect application and renewal fees from the collaboratives (offsets costs of certification and regulation).
- Allows the Insurance Commissioner to suspend, revoke, and impose sanctions and penalties on a collaborative who is non-compliant with the requirements for collaboratives.
- Allows a public hospital or hospital district to create a health care collaborative.
- Requires the Department of State Health Services to coordinate with hospitals to develop a statewide patient wristband protocol based on patient medical characteristics (e.g., DNR, allergies).



- Clarifies that the Department of State Health Services may designate the federal National Healthcare Safety Network for statewide healthcare-associated infections reporting and preventable adverse events and makes reporting frequency consistent with federal requirements (this change is needed to implement SB 288, Nelson).
- Requires the Department of State Health Services to publicly report hospital rates of potentially preventable readmissions and complications.
- Requires the Department of State Health Services to study and make recommendations on reporting potentially preventable adverse health conditions that occur in long-term care facilities.
- Requires the Department of State Health Services, in consultation with the Institute, to study how a recognition program that recognizes exemplary health facilities could be implemented.
- Allows the Department of State Health Services to share health-related data within the department and with the Health and Human Services Commission.
- Repeals rural hospital reporting exemption beginning September 1, 2014.
- Requires hospitals and health care facilities to develop and implement a policy to protect its patients from vaccine preventable diseases.
- Establishes the Texas emergency and trauma care education partnership program.

#### **Carve-In Prescription Drugs into Managed Care**

- Currently, prescription drugs are carved out of the managed care model, meaning the state continues to administer this benefit. This bill would make health maintenance organizations (HMOs) responsible for arranging for the provision of prescription drugs for their Medicaid members.
- The federal government only recently began allowing states to carve prescription drugs into Medicaid managed care and retain supplemental rebates at the same time.

#### **Managed Care in South Texas**

- This bill repeals the prohibition of managed care in South Texas and expands STAR and STAR+Plus into the Rio Grande Valley. The bill also contains several of the protections Senator Hinojosa amended to the bill in committee during the regular session. The bill will allow the state to improve health care quality while addressing the specific needs of the South Texas region. This proposed strategy includes managed care expansion into counties that currently have a statutory restriction



against implementation of managed care for Medicaid (Cameron, Hidalgo, and Maverick counties).

#### **Abolish the State Kids Insurance Program**

- Historically, the federal government would not pay federal matching funds for children of state employees enrolled in CHIP. Therefore, when CHIP was created in Texas, the Legislature created a program at ERS called SKIP that helped state employees meeting CHIP income eligibility requirements pay for their children's health premiums.
- Federal law recently changed and now allows states to file an exemption to the restriction regarding children of state employees.
- Texas meets the new requirements in federal law and has submitted a state plan amendment to federal CMS for approval to begin drawing federal match for these children currently served in the state-only funded SKIP program.
- This estimate assumes that children currently covered under the ERS SKIP program will enroll in CHIP.

#### **Finger Imaging**

- This provision passed during the 82nd regular session (HB 710 by Rep. Walle). It was included in the final Conference Committee Report in SB 23 and because the veto period had not expired at the time of passage, it was decided to keep this provision in the bill.
- This provision discontinues the use of finger imaging in SNAP and replaces this practice with a requirement that HHSC prevent duplicative benefits by utilizing the most cost effective technology.
- This change is needed to allow clients to start accessing services online, which will be much more cost effective.

#### **Electronic Visit Verification**

- This provision implements electronic visit verification statewide in DADS' community care programs and in HHSC's acute nursing services programs.
- This is a fraud detection tool that electronically verifies that service visits occur and documents the precise starting and ending times.
- This is typically a telephone and/or computer based system.



### **HB 7 Medicaid Healthy Outcomes**

#### **Who will be on the Medicaid/CHIP Quality-Based Payment Advisory Committee?**

- The Commissioner will appoint members of the advisory committee.
- The committee must consist of health care providers, representatives of health care facilities, representatives of managed care organizations, and other stakeholders interested in health care services provided in this state.
- At least one member of the committee must be:
  - A physician with clinical practice experience in obstetrics and gynecology
  - A physician with experience in pediatrics
  - A physician with experience in internal medicine or family medicine
  - A physician with experience in geriatrics
  - A consumer representative; and
  - A member of the Advisory Panel on Health Care-Associated Infections and Preventable Adverse Events

#### **What will the Advisory Committee's role be?**

- The Commission has already established a Medicaid/CHIP Quality-Based Payments Advisory Committee because this is such a key issue facing our state health programs. SB 7 would simply formalize that advisory committee in statute.
- This committee will advise the Commission on:
  - Reimbursement systems that reward high-quality, cost-effective health care
  - Standards and benchmarks for quality performance, quality of care outcomes efficiency, and accountability by health care providers and managed care organizations
  - Programs and reimbursement policies that encourage high quality, cost-effective health care delivery models that increase provider collaboration, promote wellness and prevention, and improve health outcomes
- All of the advisory committee's discussions and development of recommendations will be done in a transparent manner.



## **SB 8 Texas Healthy Outcomes- Institute of Health Care Quality and Efficiency**

### **What role will the Institute of Health Care Quality and Efficiency play?**

- The Institute will serve as the ultimate stakeholder group on improving health care quality and efficiency in Texas.
- The Institute will create a forum for payers, providers and regulators to discuss and make recommendations on how to promote the use of best practices, improve coordination of services and development of quality-based payment systems that will help align incentives and improve the quality and efficiency of health care services provided.

### **How does this work with cost-savings initiatives in SB 7?**

- Both bills are striving to pay for health care differently – based on quality and efficiency rather than quantity.
- SB 8 will allow providers, including those that participate in Medicaid, to use innovative delivery models to improve quality and reduce costs.

HB 13 by Kolkhorst which has also been rolled in SB 7 would require the Texas Health and Human Services Commission (HHSC) to seek a waiver from federal Medicaid requirements and modifications in the federal funding formula. The objectives of the waiver would be to:

- provide flexibility in income eligibility and benefit design; encourage the use of private versus public health benefits
- create a culture of shared financial responsibility by establishing
- copayments for eligible people and by promoting the use of health
- savings accounts and vouchers
- consolidate related federal funding streams, including funds from disproportionate share hospitals and the upper payment limit supplemental payment programs
- allow flexibility in the use of state funds to draw federal matching funds
- empower uninsured people to purchase health coverage by promoting cost-effective models using a sliding scale and fees for service; and
- allow the redesign of long-term care services and supports to increase access to patient-centered care



In pursuing federal funding modifications, the bill would require HHSC to work with the Texas delegation to the U.S. Congress and CMS and other federal agencies to achieve a federal match formula that accounted for population size and growth and the percentage of people below the federal poverty level. The commission also would have to try to obtain additional federal Medicaid funding for services for illegal immigrants.

The bill also would create an eight-member Medicaid Reform Waiver Legislative Oversight Committee to facilitate the waiver design and a smooth transition from the existing system to the new one. The committee would have to submit a report to the lieutenant governor and the speaker by November 15, 2012, that identified the issues related to the transition and to the effectiveness and impact of recommended Medicaid changes. The bill would abolish the committee and the requirement to seek federal funding modifications on September 1, 2013.

The bill would take immediate effect if finally passed by two-thirds record vote of the membership of each house. Otherwise, it would take effect on the 91st day after the last day of the legislative session.

**The 82<sup>nd</sup> 1<sup>st</sup> called Special Session adjourned Sine Die on Wednesday, June 29<sup>th</sup>, 2011.**