

2022 LEGISLATIVE REPORT



TENNESSEE
HOSPITAL
ASSOCIATION

SESSION OVERVIEW

The second session of the 112th General Assembly convened in Nashville on Jan. 11, following a special legislative session on COVID-19 that was held less than three months earlier.

Despite action taken during that special session, COVID-19-related issues were a central focus of the 2022 legislative session, along with a host of other topics of relevance to hospitals. All of this activity was in addition to the defined priorities for THA, which included a focus on payer policies, workforce staffing and stabilization, telehealth, the annual hospital assessment, hospital visitation and liability protection as it relates to COVID-19.

While not all hospital priorities saw favorable outcomes, the Association enjoyed another largely successful year at the legislature. This success included ensuring positive outcomes on nearly 30 pieces of legislation that could have been problematic for hospitals.

This report highlights these policy topics and actions taken during the 2022 session. In addition, THA has prepared a comprehensive 2022 Bills of Interest Report, which provides an overview of the status of all legislation tracked this year by the Association.





THA LEGISLATIVE AGENDA

HOSPITAL ASSESSMENT

SB1956 by Sen. Ferrell Haile (R-Gallatin)/HB1985 by Rep. Patsy Hazlewood (R-Signal Mountain)

Since 2010, THA has brought the voluntary hospital assessment each year in order to fund a number of proposed TennCare cuts. The assessment generates \$602 million in state funds, which, with the federal match, totals \$1.7 billion for the program.

This year's assessment continues the rate at 4.87 percent and prevents the following reductions from taking effect:

- 7 percent reduction in reimbursement for services provided by health facilities and professionals.
- Elimination of funding for graduate medical education.
- Elimination of essential access hospital payments.
- Limits on patient hospitalizations, outpatient visits and physician office procedures.
- Limits on patient lab and x-ray procedures.
- Elimination of disproportionate share payments to hospitals.
- Total elimination of reimbursement for physical therapy, occupational therapy and speech therapy.
- Reduction in reimbursement for non-emergent services for children aged 12 to 24 months.

The assessment also implements the directed payment program to hospitals, which helps offset unreimbursed care costs for services provided to TennCare enrollees.

The bill has been enacted as [Public Chapter 898](#) and will become effective on June 30, 2022, at 11:59 p.m.

REMOVE TELEHEALTH PAYMENT PARITY SUNSET

SB2453 by Sen. Ken Yager (R-Kingston)/HB2655 by Rep. David Hawk (R-Greeneville)

In 2020, the General Assembly passed updates to state law regarding the delivery of telehealth services. One action of that new law was to reimburse telehealth services at the same rate as if the services were provided in person. This provision – commonly referred to as “payment parity” – was set to expire on April 1, 2022.

THA-supported legislation was passed this year to remove the sunset date from current law and enable payment parity to continue in perpetuity beyond the expiration date. Maintaining this policy ensures hospitals and other providers can most effectively continue to leverage the benefits of telehealth in caring for patients.

The bill was enacted as [Public Chapter 766](#) and took effect on April 1, 2022.

REQUIRE COVERAGE AND PAYMENT FOR EMERGENCY SERVICES IN ACCORDANCE WITH PRUDENT LAYPERSON STANDARD AND NOT FINAL DIAGNOSIS

SB2386 by Sen. Bo Watson (R-Hixson)/HB2855 by Rep. Sabi Kumar (R-Springfield)

New and evolving policies by insurers limit or restrict reimbursement for emergency department visits that are deemed non-emergent based on final diagnosis. This practice has impacted revenue for hospitals while placing patients in a position where their visit to the emergency room may or may not be covered, regardless of the symptoms that bring them to the hospital.

Prior state law required coverage of emergency services and acknowledged a “prudent layperson’s” understanding of health in determining whether symptoms constitute an emergency. While the intent of the law seemed clear to include payment for such services, THA believed it was necessary to clarify the law in order to block adverse policies and practices by insurers.

This legislation, which passed unanimously in both chambers, explicitly includes payment with the existing coverage requirement and a prohibition on denial of emergency claims based on final diagnosis.

The bill was enacted as [Public Chapter 784](#) and took effect on April 8, 2022.



ALLOW SECOND SIGNATURE FOR ADMISSION TO MENTAL HEALTH FACILITIES BY QUALIFIED NURSE PRACTITIONERS AND PHYSICIAN ASSISTANTS

SB2137 by Sen. Shane Reeves (R-Murfreesboro)/HB2250 by Rep. Kevin Vaughan (R-Collierville)

Current state law allows qualified psychiatric advanced practice nurses (NPs) and physician assistants (PAs), among many other mental health professionals, to serve as the first of two required signatures on certificates of need for involuntary admission to mental health hospitals.

THA sought to also allow qualified NPs and PAs to serve as the second signature for involuntary admission. Such action would be subject to follow-up review by the supervising psychiatrist or physician as soon as practicable but within no more than 24 hours.

Making this change in law is consistent with similar functions already performed by these clinicians. By allowing for greater flexibility and efficiency, patients in crisis are able to more quickly begin care and treatment while adhering to Tennessee's well-established collaborative practice structure for physicians, NPs and PAs.

This approach further helps manage an ongoing shortage of psychiatrists in the state by leveraging the skills and training of qualified, supervised advanced practice nurses and physician assistants.

The legislation was opposed by the Tennessee Psychiatric Association and Tennessee Medical Association. After extensive lobbying and grassroots outreach by all parties and lengthy testimony and debate in the House Health Subcommittee, a motion was made to send the bill to summer study, which the committee adopted on a voice vote. This action ended the measure's consideration for the year.

A formal study of the issue is expected later in 2022.

MAINTAIN FLEXIBLE, PATIENT-FRIENDLY POLICIES FOR OBTAINING CLINICIAN-ADMINISTERED MEDICATIONS

SB2459 by Sen. Ferrell Haile (R-Gallatin)/HB2233 by Rep. Iris Rudder (R-Winchester)

In recent years, many insurers have introduced policies that limit the sources from which certain medications that are administered by clinicians may be obtained. These plans have sought to require purchase through an insurer's preferred specialty pharmacy – as opposed to a pharmacy chosen by a provider – which then is shipped to the provider's office for administration.

This process can delay treatment due to transport times and the variability of dosing needed for patients at the point of administration. The approach also raises chain of custody and safety concerns in some instances.

THA sought to block these limitations and allow providers flexibility to obtain medications from their preferred pharmacies. This would ensure the most efficient care to patients in keeping with what has been standard practice for decades.

A hotly contested issue with strong opposition from health insurers, THA's lobbying team and member hospitals pushed for support of the measure for several weeks.

But as committee meetings to hear the bill approached, it became increasingly clear there were insufficient votes to secure passage of the bill in either chamber. Working with the respective sponsors, the decision was made to take the bills off notice in lieu of losing the committee votes with the intent to continue to pursue the issue in the future.

While this outcome is a setback for a top priority issue for THA, the need for resolving the matter continues. Like other controversial issues, it is not uncommon for multiple sessions of education, discussion and debate to be necessary to pass more complex legislation.

THA will continue to work with hospital members, the Government Affairs Council and Board of Directors to plan and prepare for continued pursuit of this issue in the future.



EXTEND COVID-19 LIABILITY PROTECTION

***SB2448 by Sen. Dawn White (R-Murfreesboro)/
HB2671 by Rep. Andrew Farmer (R-Sevierville)***

Originally passed in a 2020 special session, state law provides liability protection to hospitals and healthcare, along with a host of other businesses, institutions and individuals, from civil lawsuits for damages arising from COVID-19. Under the law, a plaintiff must prove gross negligence or willful misconduct in order to bring suit.

As passed in 2020, the law was set to expire on July 1, 2022. However, after differing versions of an extension bill passed the House and Senate, lawmakers agreed to a full one-year extension of the law through July 1, 2023, in the final days of session.

The bill was enacted as [Public Chapter 1117](#) and took effect on June 1, 2022.

CLARIFY HOSPITAL VISITATION REQUIREMENTS IN CURRENT STATE LAW

***SB2449 by Lt. Gov. Randy McNally (R-Oak Ridge)/
HB2665 by Speaker Cameron Sexton (R-Crossville)***

Following passage of legislation during last October's special session to require patient visitors in hospitals during declared states of emergency, THA sought clarification on the broadly written law, which originally was intended to apply only in end-of-life scenarios.

Early in the legislative session, hospital visitation emerged as a key priority for several lawmakers, with multiple bills filed on the topic. As a result of this political dynamic, THA worked closely with legislative leaders to more broadly address COVID-19 hospital visitation in place of the existing law.

As passed by the General Assembly, the amended law codifies hospital visitation requirements based on federal Centers for Medicare & Medicaid Services' (CMS) conditions of participation.

The law further directs hospitals to not restrict patients from having at least one visitor as long as the visitor agrees to follow all safety protocols. However, hospitals are explicitly permitted to limit or restrict access in areas of the hospital that necessitate a higher level of safety protocols. All provisions are specific to a period when COVID-19 is a health concern.

The bill was enacted as [Public Chapter 1073](#) and took effect on May 25, 2022.

CODIFY REGULATORY FLEXIBILITIES TO SUPPORT HOSPITALS DURING STAFFING SHORTAGES

SB2550 by Sen. Ed Jackson (R-Jackson)/HB2667 by Rep. Kevin Vaughan (R-Collierville)

In light of the ongoing health workforce shortage experienced by hospitals and other providers across the state, lawmakers passed legislation to create a process for the commissioner of the Tennessee Department of Health (TDH) to identify and declare a healthcare staffing crisis as a result of an infectious disease or catastrophic event.

Under a declared healthcare staffing crisis, the TDH commissioner could implement several regulatory flexibilities, including:

- Allowing healthcare professionals licensed in another state to temporarily practice in Tennessee in accordance with the state's licensure rules, regulations and scope of practice.
- Allowing for plans of delegation by hospitals and other facilities for licensed professionals to temporarily practice outside their scope. These plans from hospitals must be submitted by the chief medical officer to the commissioner for approval.
- Allowing students actively enrolled in graduate or undergraduate programs for respiratory care that meet Tennessee licensure requirements to perform supervised tasks within the licensed scope of practice for their particular role. Like the previous action, this activity is subject to a plan submitted by the hospital's chief medical officer to the commissioner for approval.
- Temporarily suspending rules for healthcare facilities in a manner consistent with regulations, or the waiver of regulations, issued by the federal Centers for Medicare & Medicaid Services (CMS).

The commissioner also may place geographic and time limitations on any of these actions.

In addition, the legislation allows graduates of approved licensed practical nursing programs to begin working under the supervision of an actively licensed registered nurse while they await NCLEX-PN testing and licensure. This is similar to a law passed in 2021 for registered nurses.

The bill was enacted as [Public Chapter 954](#) and took effect on April 29, 2022.





OTHER HOSPITAL PRIORITIES

FY2022-2023 STATE BUDGET

The approved state budget for fiscal year 2022-2023 includes several important appropriations for hospitals. These include:

- \$82 million in recurring funds for TennCare to eliminate its dependency on the federal share of certified public expenditures (CPE) claimed from uncompensated care at public hospitals. The reduction of the state's dependency on CPE and elimination of related unfair policies toward hospitals have long been advocacy priorities for THA. This investment also will now allow the federal dollars from CPE claims to go to the direct benefit of the hospitals themselves to further offset uncompensated care losses.
- \$10 million in new recurring state funding for graduate medical education (GME), which will be directed through TennCare to leverage an additional federal match. This approach will grow the state's Medicaid GME program from \$48 million to approximately \$77 million. These funds will be distributed to hospitals based on number of residents and TennCare days to support residency programs.
- \$5 million in new recurring dollars for the state's trauma system fund, which increases the fund's annual availability to an estimated \$12 million.

COVID-19 VACCINE EXEMPTIONS

SB1823 by Sen. Jack Johnson (R-Franklin)/HB1867 by Rep. Jason Zachary (R-Knoxville)

Early in the legislative session, a bill was introduced to require hospitals to grant all requests for medical or religious exemptions to requirements of healthcare workers to receive the COVID-19 vaccine, which is required under federal law. As introduced, the legislation would have conflicted with the Centers for Medicare & Medicaid Services (CMS) conditions of participation for healthcare worker vaccination, posing a significant threat to hospital reimbursement.

THA worked with the bill's sponsors and House leadership during the early weeks of session on an amendment that mitigates the risk created by the original legislation and ensures federal compliance while making clear the intent of state lawmakers for healthcare workers to be able to receive medical and religious exemptions to the mandate in accordance with CMS guidance.

As amended, the legislation requires facilities impacted by the CMS requirement to grant medical or religious exemptions in accordance with federal guidance. When an employee submits a request for exemption that is in line with the requirements prescribed by CMS, the exemption must be granted. A request that does not follow the federal guidance would remain subject to rejection.

The bill was enacted as [Public Chapter 644](#) and took effect on March 11, 2022.

FATAL OVERDOSE REPORTING

SB1891 by Sen. Joey Hensley (R-Hohenwald)/HB1905 by Rep. Clay Doggett (R-Pulaski)

Through this legislation, lawmakers sought to support law enforcement efforts to identify and mitigate drug-related criminal activity that is contributing to Tennessee's continued growth in drug overdoses. As originally drafted, the legislation would have required reporting of all overdoses to law enforcement and presented significant concerns for hospitals as it relates to patients seeking care, as well as federal privacy requirements for certain drug and substance abuse treatment providers.

As amended and passed, the legislation resolves these concerns and will require reporting of only fatal drug overdoses in the same manner as cases of poisoning and suffocation, which already are required under law. THA worked closely with the Tennessee Departments of Health (TDH) and Mental Health and Substance Abuse Services (TDMHSAS) on the amendment.

The bill was enacted as [Public Chapter 1094](#) and will take effect on July 1, 2022.



HSDA/BLHCF MERGER AND CERTIFICATE OF NEED CLEAN-UP

SB2466 by Sen. Shane Reeves (R-Murfreesboro)/HB2500 by Rep. Clark Boyd (R-Lebanon)

The merger of the Health Services and Development Agency (HSDA) with the Board for Licensing Health Care Facilities (BLHCF), which was first contemplated in 2021 as part of certificate of need (CON) reform, is initiated through this legislation.

The bill updates and replaces numerous references in current law to the HSDA, BLHCF and Tennessee Department of Health (TDH) with references to the new Health Facilities Commission. This new commission will jointly fulfill the current duties of the HSDA and BLHCF, with the intent to reshape and reconstitute those respective boards and their committees in the coming years.

The legislation also makes further clarifications – or “clean-ups” – to current CON law, which were supported by THA, including:

- Requiring the Governor to appoint alternates for board members who must recuse themselves from certain applications due to conflicts of interest.
- Strengthening language related to CON exemptions for limited relocations of certain services.
- Clarifying the applicability of provisions related to economically distressed counties.
- Eliminating an annual reporting requirement for several CON-covered services.
- Revising the “use it or lose it” provision for implementation of approved CONs to two years.
- Clarifying provisions related to attorneys’ fees in appeals of contested cases that an applicant that was approved for a CON and had that decision appealed and reversed by an opponent to the initial application would not be subject to paying the other party’s attorneys’ fees.

The bill was enacted as [Public Chapter 1119](#) and will take effect on July 1, 2022.

COVID-19 VACCINE REQUIREMENTS FOR ORGAN TRANSPLANTATION

SB568 by Sen. Jack Johnson (R-Franklin)/HB702 by Rep. William Lamberth (R-Portland)

In an effort to prevent a patient’s COVID-19 vaccination status from impacting eligibility for organ transplantation, lawmakers passed legislation to restrict the actions that can be taken by covered entities in such circumstances.

As passed, the legislation prohibits hospitals – based solely on an individual’s vaccination status – from:

- Considering an individual ineligible for transplantation.
- Denying medical or other services related to transplantation.
- Refusing to refer an individual to a transplant center or specialist.
- Placing an individual at a position on an organ or tissue waiting list that is lower than where the individual would be placed if not for their COVID-19 vaccination status.

The bill was enacted as [Public Chapter 769](#) and took effect on May 15, 2022.



MINI-STARK LAW UPDATE

SB2218 by Sen. Richard Briggs (R-Knoxville)/HB2447 by Rep. Ryan Williams (R-Cookeville)

Following the 1989 passage of federal Stark Law, which prohibits physicians from referring patients to an entity for certain healthcare services if the physician has a financial relationship with that entity, a number of states adopted “mini-Stark” laws modeled after the federal statute to provide state medical boards a direct pathway for disciplining unethical physician self-referrals in their state. Tennessee adopted its own mini-Stark law in 1993.

To address the continued shift in America’s healthcare system from paying for volume to paying for value, the federal Stark Law and its accompanying regulations have evolved extensively over the last 30 years. Notably, in 2020, President Donald Trump’s administration made significant changes to Stark Law regulations to promote value-based care arrangements. In doing so, however, many state laws – including Tennessee’s – no longer aligned with federal regulation.

This legislation updated Tennessee’s mini-Stark law to clarify that any business arrangement that is or may become permitted under the federal Stark Law also shall be permitted under Tennessee’s mini-Stark law.

The bill was enacted as [Public Chapter 739](#) and took effect on March 24, 2022.

TENNESSEE CENTER FOR NURSING ADVANCEMENT

SB2401 by Sen. Jack Johnson (R-Franklin)/HB2148 by Rep. William Lamberth (R-Portland)

In further response to the healthcare staffing shortage in Tennessee, Governor Bill Lee brought legislation to establish a new nursing workforce research center at East Tennessee State University. The Tennessee Center for Nursing Advancement will work to address issues of nursing workforce needs, including issues of recruitment, retention and utilization of resources within the current scope of practice.

The center, which is set to operate through July 1, 2028, is funded with \$1 million in recurring state dollars and is directed to:

- Develop a strategic statewide plan for nursing manpower.
- Establish and maintain a database on current and future nursing workforce needs.
- Routinely convene nursing professionals, healthcare organizations, business and industry leaders, and other stakeholders.
- Enhance and promote activities for nurses to be recognized, rewarded and renewed.

The bill was enacted as [Public Chapter 885](#) and will take effect on July 1, 2022.

INSTALLATION OF ZERO CLEARANCE AUTOCLAVES

SB1909 by Sen. Jack Johnson (R-Franklin)/HB1904 by Rep. Jeremy Faison (R-Cosby)

Regulations currently in place with the Tennessee Board of Boiler Rules require specified clearance around boilers in the state, which include autoclaves installed in hospitals and surgery centers. These clearance requirements are intended to function as a safety measure and also allow adequate access for regular inspection of the equipment. However, in recent years, some autoclave manufacturers have developed “zero clearance” machines that can be fully inspected from the front of the unit, thereby creating an opportunity for healthcare facilities to conserve space and square footage while maintaining a safe working environment.

The Board of Boiler Rules was resistant to efforts by one autoclave manufacturer to modify regulations to recognize these newer devices, which led to legislation to rectify the matter. As passed, the bill exempts autoclaves from the existing clearance requirements while maintaining any other applicable regulations.

The bill was enacted as [Public Chapter 680](#) and took effect on March 28, 2022.



QUESTIONS?

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