

2023 LEGISLATIVE REPORT



TENNESSEE
HOSPITAL
ASSOCIATION

SESSION OVERVIEW

The first session of the 113th General Assembly convened in Nashville on Jan. 10 and began with the seating and swearing-in of 20 new legislators, 17 representatives and three senators, and the inauguration of Governor Bill Lee for his second term.

While key topics of interest seemed to regularly shift throughout the 2023 session, healthcare and hospitals remained a key issue. In addition to making a historic financial investment in Tennessee hospitals, the legislature passed key priority legislation that recognizes the critical importance of the work of healthcare providers.

Hospital financial advocacy was a top priority throughout the legislative session. Thanks to numerous conversations and meetings between hospital leaders and legislators during this year's THA Legislative Day on the Hill and the work of the advocacy team, a large state investment will now allow dollars generated by the annual hospital assessment and federal matching funds to be used to provide critical financial support to Tennessee hospitals.

The Association's advocacy efforts led to a successful year through passage of four priority bills. Additionally, those efforts successfully defeated or amended legislation viewed as problematic to hospitals and healthcare.

In addition to this report of highlighted legislative priorities, THA has prepared a comprehensive 2023 Bills of Interest Report, which provides an overview of the status of legislation tracked this year by the Association.





THA LEGISLATIVE AGENDA

HOSPITAL ASSESSMENT

SB289 by Sen. Ferrell Haile (R-Gallatin)

HB152 by Rep. Patsy Hazlewood (R-Signal Mountain)

Since 2010, THA has brought the voluntary hospital assessment each year to fund several proposed TennCare cuts. The assessment generates \$691 million in state funds, which, with the federal match, totals \$1.8 billion for the program.

This year's assessment is rebased to the 2019 Medicare cost report, continues at 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 2023 assessment legislation also includes additional funding, in the amount of \$337 million, to offset unreimbursed charity and self-pay care costs. This payment was distributed by TennCare in late March 2023.

The bill has been enacted as [Public Chapter 232](#) and will become effective on June 30, 2023, at 11:59 p.m.

FY2023-2024 STATE BUDGET

The approved state budget for fiscal year 2023-2024 includes several significant appropriations for hospitals. These include:

- \$110 million in nonrecurring, earmarked funds from the TennCare reserves to replace a portion of state dollars typically generated by the hospital assessment to fund core services for the TennCare program. This funding is eligible for federal matching funds.
- \$9.5 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. This additional buyback creates funding availability that is also eligible for federal matching funds.
- \$10 million for two years to fund children's hospital infrastructure grants.

ACCESS TO EMERGENCY TREATMENT FOR PSYCHIATRIC PATIENTS

SB672 by Sen. Shane Reeves (R-Murfreesboro)

HB1051 by Rep. Kevin Vaughan (R-Greeneville)

Legislation seeking to address access to emergency treatment for psychiatric patients has been an ongoing priority for the Association and has been a hot topic among stakeholders during previous years. This year, THA worked with the Tennessee Psychiatric Association (TPA) and Tennessee Medical Association (TMA) on a legislative solution that will allow a physician to complete either the first or second signature necessary for involuntary admission to a psychiatric hospital.

Prior to the enactment of the legislation, state law allowed qualified mental health professionals, including psychiatric advanced practice nurses and physician assistants, to complete and sign the first of two required certificates of need for involuntary emergency admission to mental health hospitals but requires the second certificate to be completed by a physician. This new law allows a qualified psychiatric advanced practice nurse or psychiatric physician assistant to complete the second certificate of need for emergency admission and treatment if the first certificate is completed by a physician.

The bill was enacted as [Public Chapter 199](#) and will become effective on July 1, 2023.



SUNSET OF THE BOARD OF RADIOLOGIC IMAGING AND RADIATION THERAPY

SB1191 by Sen. Paul Bailey (R-Sparta)

HB1388 by Rep. John Ragan (R-Oak Ridge)

In 2016, the Tennessee Board of Radiologic Imaging and Radiation Therapy was created as a stand-alone board to license and regulate operators of radiologic imaging and radiation therapy equipment in all healthcare settings, including hospitals.

Prior to the creation of this board, imaging professionals employed in hospitals were exempt from state licensure requirements due to strict requirements established by the Centers for Medicare & Medicaid Services (CMS) and accrediting bodies such as The Joint Commission (TJC).

The board failed to fulfill its statutory duty to promulgate licensure regulations for Tennessee's imaging professionals. Additionally, the board has been unable to issue licenses required by state law throughout its existence. As a result, there is no state entity with statutory authority to regulate the profession.

This legislation terminates the Board of Radiologic Imaging and Radiation Therapy and returns regulatory authority of imaging professionals to the Board of Medical Examiners' X-Ray Operators Board as it was before the 2016 legislation.

Information collected from hospitals across the state estimated over 1,000 imaging professionals would have been negatively impacted in the absence of such repeal action.

The bill was enacted as [Public Chapter 325](#) and took effect on April 28, 2023.

TENNESSEE'S ABORTION TRIGGER LAW UPDATE

SB745 by Sen. Richard Briggs (R-Knoxville)

HB883 by Rep. Esther Helton-Haynes (R-East Ridge)

THA and a broad coalition of healthcare providers advocated for updates and clarification to Tennessee's abortion law, which became effective soon after the U.S. Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* in June 2022. The original "trigger law," passed in 2019, outlawed most abortions in Tennessee and created an affirmative defense to criminal prosecution for physicians who perform abortions to protect the life and bodily functions of a pregnant woman.

This legislation creates a true exception to prosecution for physicians who perform abortions to prevent serious risk of substantial and irreversible impairment of a major bodily function or the death of a pregnant woman. The bill also exempts procedures to terminate ectopic or molar pregnancies or to remove a dead fetus.

The bill was enacted as [Public Chapter 313](#) and took effect on April 28, 2023.





ENSURE PATIENT ACCESS TO CLINICIAN ADMINISTERED MEDICATIONS

SB502 by Sen. Bo Watson (R-Hixson)

HB916 by Rep. Iris Rudder (R-Winchester)

Hospitals, infusion clinics and other outpatient facilities have been caring for cancer and chronically ill patients for years by providing clinician-administered drugs such as chemotherapy or other infusions that maintain a patient's health and well-being. These services and medications have been safely provided through an established process and without issue until the last several years when many health insurers introduced what are known as "white bagging" policies.

These policies limit the sources from which certain medications administered by clinicians may be obtained. Health 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.

This bill continued a multi-year effort to block these limitations and allow providers flexibility to obtain medications from their preferred pharmacies. This would ensure the most efficient care for patients in keeping with what has been standard practice for decades.

Despite strong opposition from health insurers, the bill received favorable consideration in the House Insurance Subcommittee but was moved to 2024 for further consideration in the Senate Commerce and Labor Committee.

While this delay is a setback, it is common for controversial issues to require multiple legislative sessions for education, discussion, negotiation and debate. 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.



OTHER HOSPITAL PRIORITIES

CERTIFICATE OF NEED AND HCF CLEAN-UP

SB858 by Sen. Shane Reeves (R-Murfreesboro)

HB2500 by Rep. Clark Boyd (R-Lebanon)

Legislation to continue to facilitate the merging of the former Health Services and Development Agency (HSDA) Board and Board for Licensing Healthcare Facilities (BLHCF) into the Health Facilities Commission (HFC) moved through the General Assembly during the 2023 session.

The bill makes several technical changes to the agency's statute:

- Changes references to the "Commissioner of the Department of Health" to the "Executive Director of the Health Facilities Commission."
- Allows the HFC to meet "as needed, at least eight times a year" instead of "monthly" to ensure compliance with the law in the event a meeting must be cancelled for lack of a quorum.
- Allows the Commission to use screening panels that are smaller than the whole board for disciplinary actions to permit more efficient meetings and summary action cases.
- Allows the Commission to promulgate rules with the Tennessee Department of Mental Health Services and Substance Abuse (TDMHSAS) permitting dual licensure of acute care and mental health hospitals.
- Allows the executive director of the Tennessee Commission on Aging and Disability (TCAD) to appoint a designee on the Commission.
- Allows the Commission to promulgate rules for the CMP Reinvestment Program.
- Allows the Commission to promulgate rules regulating Assisted-Care Living Facility Administrator licenses.
- Allows HFC to promulgate rules to recognize and designate hospitals that meet Centers for Medicare & Medicaid Services (CMS) requirements as rural emergency hospitals (REHs).

THA anticipates further legislative activity related to CON during the 2024 legislative session and will continue to engage with hospital members, HCF and the legislative CON working group throughout the remainder of 2023.

The bill was enacted as [Public Chapter 466](#) and sections one through 16 of the bill will become effective on July 1, 2023. Sections 17-76 will become effective on July 1, 2024.

IMPLEMENTATION OF NO SURPRISES ACT

SB1345 by Sen. Bo Watson (R-Hixson)

HB1503 by Rep. Kevin Vaughan (R-Collierville)

Activity surrounding the federal *No Surprises Act* continued during the 2023 legislative session. This legislation originally sought to create a state-specific process for independent dispute resolution (IDR), but an amendment to the bill removed this provision, maintains the federal IDR system and calls for a study by the Tennessee Department of Commerce and Insurance (TDCI). The report issued by TDCI will include recommendations for state-level solutions, challenges, and regulatory changes to implement the *No Surprises Act*.

The legislation also includes the following provisions:

- A requirement for insurance companies to report material changes to their networks (a material change is a 10 percent or more reduction of specific providers in a market).
- A requirement that insurance companies provide a report on the percentages of contracted specialty providers at specific hospitals (updating provider network listings quarterly).
- Includes new considerations for TDCI to determine if a network is sufficient for consumers.
- Creates appeals process for providers, facilities and consumers to request a review of network adequacy by TDCI.

The bill was enacted as [Public Chapter 352](#). The bill became effective on May 5, 2023, for the purpose of carrying out administrative duties and rulemaking. Section one of the bill will become effective on July 1, 2023. The remainder of the legislation will take effect on Jan. 1, 2024.



PRIOR AUTHORIZATION FAIRNESS ACT

SB666 by Sen. Shane Reeves (R-Murfreesboro)

HB885 by Rep. David Hawk (R-Greeneville)

This legislation seeks to create efficiencies and consumer-friendly processes for health insurance prior authorization decisions. The bill contains a number of requirements for utilization review organizations when making determinations for prior authorization:

- Non-urgent prior authorization reviews must occur within seven calendar days of the request;
- Urgent prior authorization reviews must occur within 72 hours of the request, plus one additional business day, if applicable;
- Prior authorization adverse determinations and appeal decisions are to be made by a physician or healthcare professional with the same or similar specialty as the healthcare professional requesting the prior authorization;
- All determination appeals are to be reviewed by a U.S. licensed healthcare professional;
- Prohibits a health carrier from requiring prior authorization for emergency services and prescription drugs used to treat opioid use disorder;
- Prior authorizations remain valid for at least six months;
- Health carriers are to maintain a complete list of healthcare services that require prior authorization and outline clinical criteria for prior authorization requests and submissions;
- Allows health carriers or utilization review organizations to review and change prior authorization requirements annually; and
- Provides regulatory authority to the Tennessee Department of Commerce and Insurance

The bill was enacted as [Public Chapter 395](#). The bill became effective on May 11, 2023, for the purpose of rulemaking. The remainder of the legislation will take effect on Jan. 1, 2025.





QUESTIONS?

Lacey Blair

Vice President, State Government Affairs

lblair@tha.com

Zack Blair

Senior Director of Advocacy

zblair@tha.com