2024 LEGISLATIVE REPORT

TENNESSEE HOSPITAL ASSOCIATION

SESSION OVERVIEW

The 113th General Assembly adjourned sine die on Thursday, April 25, after more than 15 weeks of legislative activity. The 2024 session kicked off in January and was markedly different from recent, previous legislative sessions as the administration and legislative leaders began to grapple with significant decreases in tax revenue growth for the first time in several years.

Despite the negative outlook, financial advocacy remained the top priority throughout the 2024 session of the General Assembly. Once again, hospital leaders throughout Tennessee made their presence felt in a significant way during THA's Legislative Day on the Hill in February and continued to emphasize the importance of the state reassuming full financial responsibility for the TennCare program and the need to modernize the annual hospital assessment.

Thanks to the advocacy of hospitals, THA was able to secure a significant state investment for the second year, totaling $110 million, to allow additional dollars generated by the annual hospital assessment and federal matching funds to provide critical financial support to Tennessee hospitals. This effort and the successful passage of the Annual Hospital Assessment will lead to sizable new funding opportunities.

The Association's advocacy efforts were key in defeating or amending a number of legislative initiatives that could harm hospitals and healthcare in Tennessee.

This report highlights several legislative priorities supported by THA or those that positively impact hospitals. THA has also prepared a comprehensive 2024 Bills of Interest Report, which provides an overview of the status of legislation tracked this year by the Association.

THA LEGISLATIVE AGENDA

HOSPITAL ASSESSMENT

SB1740 by Sen. Ferrell Haile (R-Gallatin)
HB1723 by Rep. Patsy Hazlewood (R-Signal Mountain)

Since 2010, the annual hospital assessment has funded TennCare cuts proposed during the Great Recession. This year's legislation is the most significant change to the assessment since its inception in 2010 and includes language necessary to support the new TennCare recurring supplemental funding program.

With the increased rate of 6%, the assessment will generate $1.6 billion in state funds, which, with the federal match, totals $4.3 billion for the program. This year's legislation also reflects a rebasing to the 2021 Medicare cost report 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 bill has been enacted as Public Chapter 953 and became effective on June 30, 2024, at 11:59 p.m.

FY2024-2025 STATE BUDGET

The approved state budget for fiscal year 2024-2025 includes several significant appropriations for hospitals. These include:

- $97.7 million in nonrecurring, earmarked funds from the TennCare reserve 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.
- $12.3 million in recurring funds for TennCare to buy back proposed cuts to the program, which would have limited Medicare Part A reimbursement to 80% of Medicare rates. This additional buyback creates funding availability that is also eligible for federal matching funds.

HEALTHCARE LIABILITY

SB2253 by Sen. John Stevens (R-Huntingdon)
HB2001 by Rep. Andrew Farmer (R-Sevierville)

In Sep. 2023, the Tennessee Supreme Court ruled in *Crotty v. Flora* that plaintiffs in a medical malpractice claim can seek economic damages up to a provider's billed amount rather than the paid amount, overturning decades of precedence and previous tort reform efforts. The Court also expressed concern about the lack of clarity in the current statute, which required a legislative solution.

Led by the Tennessee Chamber of Commerce and Industry, this THA-supported legislation restores Tennessee's medical malpractice statute to its traditional intent, and will provide more clarity, predictability, and consistency in health care liability cases by expressly abrogating the collateral source rule, a case law evidentiary rule related to the admission of evidence by a plaintiff.

The bill has been enacted as Public Chapter 852 and became effective on May 1, 2024, for all health care liability actions filed on or after September 29, 2023.

PHYSICIAN EMPLOYMENT FREEDOM

SB2919 by Sen. Paul Bailey (R-Sparta)
HB2298 by Rep. Jason Zachary (R-Knoxville)

This session marked the first year of a multi-year effort, led by THA, to eliminate an outdated and obstructive law that limits physicians' employment choices and hinders hospitals' ability to staff their facilities fully. All physicians – including anesthesiologists, emergency physicians, pathologists and radiologists who fall under these restrictive provisions – should have the freedom to establish employment relationships that best suit their professional goals and align with the evolving needs of patient care while retaining independent medical judgment.

Repeal of portions of this antiquated law received strong support in the Senate, passing the Senate Health and Welfare Committee by a vote of seven to two. However, the bill was unable to move out of the House Health Subcommittee. Despite the outcome, this represents the first step in a multi-year advocacy effort to allow hospitals the option to directly employ these specialty groups so patients can benefit from more integrated and comprehensive healthcare services.

The current law, passed in 1970, forces hospitals to contract with outside companies that act as third parties in the arrangement and can drive up costs. Hospitals can and do directly employ many other types of physicians in arrangements that improve quality and care coordination for patients. This legal restriction also negatively impacts patients. The firms employing these physicians may or may not elect to participate with the same insurers as the hospital, creating confusion for patients. The impact on patient care in children's hospitals is exacerbated since these outside companies are often unable or unwilling to meet the need for pediatric specialists in these fields.

THA and hospital physician leaders across the state will continue to strongly support repealing these problematic employment laws, which ultimately contribute to the physician staffing shortage and negatively impact patient access to care.

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 patient and 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. In some instances, the approach also raises chain of custody and safety concerns.

2024 continued a multi-year legislative effort to block these limitations and allow providers flexibility to obtain medications from a patients' and providers' preferred pharmacies. Despite substantial opposition from health insurers, the bill made significant progress through the legislature this year, passing the House Insurance Committee and Senate Commerce Committee by strong margins. The bill received great support in the full House, passing by a vote of 80-11. However, the bill was unable to garner enough support for full passage in the Senate and was rereferred to the Senate Calendar Committee.

OTHER HOSPITAL PRIORITIES

CERTIFICATE OF NEED REFORM

SB2009 by Sen. Shane Reeves (R-Murfreesboro)
HB2269 by Rep. Clark Boyd (R-Lebanon)

THA was very engaged throughout the legislative session, responding to efforts to repeal and/or make significant changes to the certificate of need (CON) process. Ultimately, the legislation that passed charts a path for changes that will take place over the next five years, leaving intact CON requirements for acute care and rehabilitation hospitals. The new law will allow time to prepare for and approach each of the changes systematically, including the development of licensure criteria focused on issues such as patient safety and care quality.

The CON program helps level the playing field by preventing providers who are not subject to the same regulatory requirements as hospitals from cherry-picking only the most profitable patients and services while still allowing for the orderly development of new healthcare resources when need is demonstrated. It positions hospitals to afford to continue providing less profitable services that are essential to communities and to remain financially viable to serve vulnerable populations, regardless of their ability to pay.

THA remains concerned that some of the changes could create the potential for cherry-picking but was pleased that the legislature included certain requirements that are aimed at reducing that likelihood. These include mileage restrictions on how close free-standing emergency departments can be to existing, unaffiliated hospitals and the expectation for ambulatory surgery centers to provide an amount of charity care comparable to similarly situated hospital-based centers.

THA will work to ensure the hospital perspective is appropriately represented as these provisions are operationalized through licensure requirements and other regulations in the coming months and years.

The legislation, as enacted, makes the following reform and procedural changes:

- Requires a study and reports of the impact of CON; annual reports due Dec. 31, 2026; Dec. 31, 2028; and Dec. 31, 2030.
- Allows CON application filing fees to be applied to a 2nd application for the same project if the initial application is voided because of a defective letter of intent.
- Restates existing appeal provisions, except appeals can be initiated only by an unsuccessful applicant. Opposing parties will no longer have the right to appeal. Continues the requirement under current law that the losing party in an appeal is liable for costs, including the other side's attorney's fees.
- July 1, 2024: Procedural and reporting changes noted above, along with rulemaking authority for the non-hospital ASTCs licensed after Dec. 1, 2027, relative to charity/TennCare requirements.
- July 1, 2025: Removes CON requirements for most services and facilities in counties without a hospital and for satellite EDs that are within 10 mi of the host and more than 10 mi from another hospital or satellite ED.
- December 1, 2025: Moves CON requirements to licensure for burn units, NICU, MRI and PET in counties under 175k.
- December 1, 2027: Moves ASTCs, LTACHs and linear accelerator services from CON requirements to licensure.
- December 1, 2029: Moves open heart surgery from CON requirements to licensure.

The bill was enacted as Public Chapter 985. Varying effective dates are listed above.

DR. BENJAMIN MAUCK ACT – HEALTH CARE VIOLENCE

SB1709 by Sen. Joey Hensley (R-Hohenwald)
HB1628 by Rep. Scott Cepicky (R-Culleoka)

In July of 2023, the Memphis-area healthcare community experienced a tragedy when Dr. Benjamin Mauck, an orthopedic surgeon, was shot and killed at the Campbell Clinic in Collierville, TN. Dr. Mauck, a Lambuth University and University of Tennessee-Memphis graduate, joined the Campbell Clinic in 2022. This event and many others throughout the state are consistent with and demonstrate a troubling trend of increasing violence toward staff in healthcare facilities.

Proposed by the Tennessee Medical Association and supported by THA, the Dr. Benjamin Mauck Act creates the offense of assault within a health care facility and aggravated assault within a health care facility. If convicted of the assault charge, a Class A misdemeanor, an offender would be faced with a mandatory fine of $5,000 and a mandatory minimum incarceration of thirty days. Conviction of an aggravated assault charge, a Class C felony, carries a mandatory fine of $15,000 and a mandatory minimum incarceration of 90 days.

The bill was enacted as Public Chapter 928 and became effective on July 1, 2024.

TENNCARE FOR WORKING ADULTS

SB2791 by Sen. Bo Watson (R-Hixson)
HB2940 by Rep. Tim Hicks (R-Gray)

This legislation creates a TennCare program that will allow working adults with disabilities to purchase TennCare coverage even if the individual exceeds the Medicaid eligibility limits for income and assets. This program, which is like those implemented in 46 other states, will be funded through TennCare's shared savings program, with $9.7 million in recurring funding.

As with any new TennCare program, the agency will seek approval from the Centers for Medicare & Medicaid Services before the program is fully operational. This legislation was a priority bill for the Tennessee Disability Coalition. Non-urgent prior authorization reviews must occur within seven calendar days of the request;

The bill was enacted as Public Chapter 1002. The bill became effective on May 21, 2024.

HEALTH INSURANCE RECOUPMENT REFORM

SB2328 by Sen. Ken Yager (R-Kingston)
HB2076 by Rep. Brock Martin (R-Huntingdon)

Legislation proposed by the Tennessee Medical Association and supported by THA updated Tennessee's health insurance recoupment statute for the first time in more than two decades. Recognizing the complexity of healthcare billing for both insurance and providers, this legislation provides for the following:

- Allows 15 months for healthcare providers to request corrected payments for a claim.
- Allows 15 months for health insurance carriers to recoup incorrect payments made to a healthcare provider, rather than the 18 months provided in statute prior to this bill's enactment.
- Requires health insurance carriers to provide advanced notice to providers if a carrier intends to recoup payments and specifies what must be included in the notice.
- Prohibits a health insurance carrier from withholding future claim reimbursements to a provider until all appeals related to a recoupment are exhausted.
- Establishes that a recoupment amount can only reflect the amount of an overpayment rather than an entire claim amount.

The bill was enacted as Public Chapter 861 and became effective on July 1, 2024.

LIABILITY FOR CYBERSECURITY EVENTS

In light of recent issues related to cybersecurity, data privacy, and liability, the General Assembly spent considerable time discussing technology-related legislation and its impact on businesses in Tennessee. While these items were not specific to hospitals, both pieces of legislation could have a significant impact on the industry.

SB2018 by Sen. Shane Reeves (R-Murfreesboro)
HB2434 by Rep. Bryan Terry (R-Murfreesboro)

This legislation provides that both private and governmental entities cannot be held liable in a class action lawsuit resulting from a cybersecurity event, defined as "an event resulting in unauthorized access to, or disruption or misuse of, an information system or nonpublic information stored on an information system." The liability protection would not be available to an entity if the cybersecurity event is caused by willful and wanton misconduct or gross negligence.

The bill was enacted as Public Chapter 991. The bill became effective on May 21, 2024.

SB2221 by Sen. Bill Powers (R-Clarksville)
HB1658 by Rep. William Lamberth (R-Portland)

While the main purpose of this legislation relates to the assault of individuals during judicial proceedings, sections two and three of the bill provide exceptions to Tennessee's wiretapping and electronic surveillance law and delete the existing civil cause of action related to wiretapping and electronic surveillance.

Exceptions to the statute include prohibiting restrictions on selecting business vendors and communicating information to those vendors, the development of websites and mobile applications by a business that may allow disclosure of communications to vendors and the use of technology for a business website or mobile application.

The bill was enacted as Public Chapter 1045. Sections two and three of the bill became effective on May 28, 2024.

ADDITIONAL LEGISLATION WITH IMPACT TO HOSPITALS

MEDICAL LABORATORY SUPERVISION FOR RURAL HOSPITALS

SB2230 by Sen. Ed Jackson (R-Jackson)
HB2545 by Rep. Brock Martin (R-Huntingdon)

This legislation allows a medical laboratory supervisor to supervise up to five separate rural hospital-based medical laboratories.

The bill was enacted as Public Chapter 1046 and became effective on May 28, 2024.

HEALTH FACILITIES COMMISSION CLEAN-UP, SURGICAL TECHNOLOGIST

SB2022 by Sen. Shane Reeves (R-Murfreesboro)
HB2650 by Rep. Esther Helton-Haynes (R-East Ridge)

The bill makes several updates to state law governing the Health Facilities Commission including a provision to expand authorization for national organizations that certify surgical technologists.

The legislation is enacted as Public Chapter 932. The portion of the bill related to surgical technologists became effective on May 6, 2024, while the remaining portions became effective on July 1, 2024.

DUTY TO WARN

SB1673 by Sen. Becky Massey (R-Knoxville)
HB1625 by Rep. Jason Zachary (R-Knoxville)

This legislation updates the current law imposing a duty to warn a qualified mental health professional to require notification when a patient communicates either a threat or intent to commit bodily harm toward an identifiable victim or group of people.

This bill was enacted as Public Chapter 783 and became effective on April 23, 2024.

DEATH CERTIFICATE TIMEFRAME CHANGES

SB2398 by Sen. Richard Briggs (R-Knoxville)
HB2371 by Rep. Bryan Terry (R-Murfreesboro)

As enacted, this legislation updates the time to complete the medical certification section of a death certificate from 48 hours after death to two business days after the death of the patient.

This bill was enacted as Public Chapter 648 and became effective on April 4, 2024.

TELEHEALTH IN-PERSON VISIT

SB1881 by Sen. Becky Massey (R-Knoxville)
HB2857 by Rep. Timothy Hill (R-Blountville)

This legislation deletes the current requirement that an in-person visit occur with the patient every 16 months for a provider to receive payment parity for provider-based telemedicine visits.

This bill was enacted as Public Chapter 1027 and became effective on May 28, 2024.

TENNESSEE HOSPITAL ASSOCIATION

QUESTIONS?

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