

2011 TEXAS LEGISLATIVE SESSION

2011 Texas Pharmacy Day at the Dome

The TPA organized Texas Pharmacy Day at the Dome was held on March 8th at the Texas Medical Association near the Capitol in Austin. Nearly 60 pre-selected students attended along with 8 practicing pharmacists, legislative advocates. TPA, TPBC, and the TSHP provided speakers for each of the major legislative topics. A practical review of three bills gave a real world experience to the student attendees of pros and cons on Scope of Practice, Medicaid, and TSBP issues.



Representative Chuck Hopson (R) Jacksonville also addressed the students on the 2011 Legislative Session. TPA President Dennis Song and President-Elect Dorinda Martin also attended and lent their vast years of practical experience to the event.

Coordination of Legislative Efforts

The Pharmacy Advocacy Group continues to be heavily engaged at the legislature on a multitude of issues. Members include TPA, TSHP, TFDS, TPBC, Walgreens, United, Brookshire Brothers, Brookshire Grocery, HEB, NACDS and TrueCare.

HHSC fee reductions, Medicaid Managed Care Carve In of Vendor Drug, Advanced Nurse practitioner dispensing, doctor dispensing, E- Prescribing, immunizations, privacy issues, early refills, workers' comp., single boards, are just a few of the many issues facing pharmacy.

The PCAN Group (Pharmacy Choice & Access Now) was a spin-off of the Pharmacy Advocacy Group. The organization was created to combat the Medicaid Managed Care Carve In of Medicaid Vendor Drug. Our joint efforts led to very positive outcomes in the media and gave organized pharmacy a more visible platform for issues germane to our causes. Legislative recognition and acknowledgement of the PCAN network has extensively advanced our agenda.

Communications

TPA provided updates through the special weekly advocacy newsletter - **News from the Dome** – as well as its new legislative website, the Association's routine weekly newsletter – **Rx Notes** - featuring the latest news and its **Call to Action** on pharmacy related bills and actions of the Texas Legislature. More than 200 bills of note were tracked during the 140 days of the legislature.

Summary of Key Legislative Issues

Of major importance, the legislature passed a budget for fiscal years 2012-2013, which will spend \$27 billion less in those years than was spent in 2010-2011. This was accomplished without raising taxes or depleting the state's *rainy day fund*. However, the "fiscal matters" bills that provided the cost savings in public education and Medicaid didn't pass and a special session of the legislature is currently meeting to address those issues. Additional items taken up during the Special Session include Sanctuary Cities, Texas Windstorm Insurance Association.

Pharmacy Related Legislation

The 2011 Texas Legislative Session turned out to be a very active session for pharmacy with numerous issues addressed that will have a dramatic impact on the economics of pharmacy. During a session that was faced with cutting the next budget by more than \$27 billion, Medicaid spending became a big target.

Recommendations to shift the state's pharmacy benefit plan from a state run Vendor Drug Program to a managed care system became financially beneficial once the newly authorized Federal Healthcare Reform Act allowed states to keep drug company rebates AND shift to a managed care delivery system. Estimates from the Texas HHSC Commission indicate that the state will save close to \$200 million by shifting pharmacy benefits to managed care (see side story on this page).

Aside from Medicaid issues, there were a large number of pharmacy bills considered by the legislature this year. The following is a recap of those bills that passed and those that were considered, but did not pass.

Pharmacy bills that passed

Privacy of Patient Health Information

HB 300 by Rep. Kolkhorst (R-Brenham) expands privacy standards for patients protected health information in state law beyond the current provisions of the federal HIPAA laws. New state regulations will:

- ✓ Require covered entities to train all employees in privacy laws every two years,
- ✓ Provide patients with copies of electronic health records within 15 days,
- ✓ Prohibits the sale of an individual's protected health information to a non-covered entity and only may disclose health information to another covered entity for the purpose of treatment or payment,
- ✓ Requires prior authorization from patient before disclosure of information except for treatment or payment purposes,
- ✓ Gives the Texas Attorney General jurisdiction over violations and sets penalties at a maximum of \$1.5 million,
- ✓ Allows the state to request a federal audit of any covered entity, and
- ✓ Creates a Health Information Task Force composed of 11 members appointed by the Attorney General.

Medicaid Managed Care for Pharmacy Benefits

From the beginning of 2011, the legislature has been dealing with a \$27 billion deficit for the next biennium and Medicaid has been identified as one state program that has grown rapidly and needs to be contained. The first step was to expand the current managed care system for medical services into the previously exempted Rio Grande Valley. In addition, the Texas Commission on Health and Human Services also recommended shifting Medicaid pharmacy benefits from the current state run Vendor Drug Program to a managed care contract with regional MCOs and PBMs. The Medicaid program anticipates a saving of nearly \$200 million by collecting both drug company rebates AND premium taxes paid by the MCOs. Drug costs and dispensing fees will be established by the managed care entities and selective contracting will limit the number of pharmacies who can participate.

The associations representing retail pharmacy have been active during these discussions and have been successful in getting legislators to include certain safeguards. The provisions included in the Medicaid Cost Containment bill being considered in this special session, which have been agreed to by the leadership include any-willing provider, prohibition of mandatory mail-order, PBM transparency, and prohibitions of exclusive contracting for MCO owned specialty pharmacies, and contractor integrity.

Legislative and regulatory coordination of advocacy efforts by the TPA-formed **Pharmacy Advocacy Group (PAG)** – consisting of TPA, TPBC, NACDS, TFDS, TSHP, HEB, Walgreens, United, Brookshire Grocery, Brookshire Brothers, TrueCare - have been extensive. A spinoff group - Pharmacy Choice & Access Now (PCAN) - was formed and funded by Walgreens to deal specifically with moving the Medicaid Vendor Drug Program to managed care.

Once the special session is over and the Medicaid bills have passed, there will be months of activities relating to managed care RFPs and contracting, as well as extensive rule making. The HHSC will also need to apply for waivers from the federal government to make many of the anticipated changes.



Accelerated Refills

HB 2069 by Rep. Naishtat (D-Austin) authorizes a pharmacist to dispense a 90 day supply of a maintenance drug (without prior approval) when the prescriber writes a 30 day supply with two or more refills.

E-Prescribing of Schedule II Drugs

SB 594 by Sen. Leticia Van de Putte (D-San Antonio) follows recent changes to federal rules that now allows a prescriber to transmit an e-prescription for schedule II drugs.

Orally Administered Anti-Cancer Drugs

HB 438 by Rep. Thompson (D-Houston) requires a health benefit plan that provides coverage for cancer treatments to provide coverage for a prescribed, orally administered anticancer medication to the same extent that intravenously administered drugs are covered.

DPS# on Prescriptions

SB 1273 by Sen. Williams (R-The Woodlands), *also amended onto SB 594*, still requires prescribers of schedule II drugs to obtain a DPS registration number, but the current requirement that the DPS number be included on prescriptions written for controlled substances is removed. The new law also requires prescription data that is currently sent to DPS by the 15th day of the preceding month will now be sent to DPS by the 7th day.

Workers Compensation “voluntary networks”

HB 528 by Rep. Solomons (R-Carrollton) allows workers' compensation carriers to continue to have contractual fee discounts for pharmaceutical services and to use a voluntary or informal network to provide pharmaceutical services. Those networks can be exempt from mandatory fee guidelines established by the Texas Workers' Compensation Commission.

Synthetic Marihuana

SB 331 by Sen. Shapiro (R-Plano) adds synthetic cannabinoids (marihuana) to the Texas Controlled Substances Act.

Meningitis Vaccinations

SB 1107 by Sen. Davis (D-Fort Worth) extends the requirement for first time college students living in dormitories to receive a vaccination for bacterial meningitis to all students attending public, private or independent institutions of higher learning.

Over-The-Counter Sale of Pseudoephedrine

HB 1137 by Rep. Darby (R-San Angelo) requires a business establishment before completing an over-the-counter sale of a product containing ephedrine, pseudoephedrine, or norpseudoephedrine to transmit the record to a real-time electronic logging system. The administration of the electronic logging system must be free of charge to business establishments and law enforcement agencies.

Prompt Payment of Pharmacy Claims

HB 2292 by Rep. Hunter (R-Corpus Christi) requires an HMO or PBM to pay electronic claims within 18 days, and non-electronic claims within 21 days. HMOs and PBMs also may not use extrapolation to complete the audit of a pharmacy and shall provide the pharmacy reasonable notice of the audit and accommodate the pharmacy's schedule to the greatest extent possible.

Pharmacy Recovery Network/TSBP Disciplinary Panel

SB 1438 by Van de Putte (D) San Antonio and Hopson (R) Jacksonville will improve efficiencies in the disciplinary process for impaired pharmacists.

Pharmacy Bills that DID NOT Pass

Physician Dispensing

SB 546 by Sen. Deuell (R-Greenville) would have allowed all physicians to dispense (sell) any non-schedule drugs directly to patients. The bill only asked physicians to comply with state and federal labeling and recordkeeping requirements and did not address storage or security issues and did not restrict who in a physician's office may access the drug supply.

SB 1081 by Sen. Van de Putte (D-San Antonio) would have allowed dermatologists or therapeutic optometrists to dispense (sell) directly to patients any pharmaceutical with an aesthetic purpose which is defined as any drug that "enhances a patients appearance."

Prescriptive Authority for Advanced Nurse Practitioners

Numerous bills were filled that would have expanded the scope of practice for ANP's. Those bills removed the requirement to practice under the supervision of a physician and would have granted unrestricted prescriptive authority and non-controlled prescription dispensing for nurse practitioners.

Health Licensing Agency Consolidation

HB 3426 by Rep. Zedler (R-Arlington) would have consolidated the licensing boards for physicians, dentists, nurses, pharmacists, chiropractors, podiatrists, acupuncturists, optometrists, PT/OT's, psychologists, and veterinarians into a new health professions licensing board.

Immunizations by a Pharmacist

HB 574 by Rep. Truitt (R-Keller) would have allowed a pharmacist to administer all immunizations required for public school attendance to patients without a prescription. Negotiations between pharmacy representatives and pediatricians did not result in compromise legislation.

Physician's Assistants in Hospitals

SB 1750 by Sen. Uresti (D-San Antonio) would have allowed a physician to delegate to a PA prescriptive authority for schedule II controlled substances in hospitals and other health facilities.

Drug Substitution

SB 1756 by Sen. Uresti (D-San Antonio) would have prohibited a pharmacist from substituting a generic for a tamper-resistant opioid analgesic drug.

Drug Donations

HB 89 by Rep. Cook (R-Corsicana) would have established a drug donation program in the Texas Dept. of Health Services with standards for participating pharmacies and physicians.

Technician Representation on the Board of Pharmacy

SB 1262 by Sen. Van de Putte (D-San Antonio) would have added one registered pharmacy technician and one additional public member to the State Board of Pharmacy.

Audits of Mail Order Pharmacies

HB 3266 by Rep. Miller (R-Stephenville) would have required the state auditor to conduct a biennial audit of claims data for prescriptions for a 90-day supply of drugs to verify parity between retail and mail order pharmacies.

Abortion Drugs

SB 1790 by Sen. Patrick (R-Houston) would have only allowed a physician to sell prescription abortion-inducing drugs.

Is it over? No, not yet!

The 2011 Texas Legislative Session adjourned on June 1, having met for the 140 consecutive days as allowed in the Texas constitution. When the legislature convened last January, it faced a \$27 billion shortfall for the 2011-2013 budget, the political challenge of redistricting and the inexperienced enthusiasm of 38 freshmen legislators. Despite that, much was accomplished. Members redrew the lines of the House and Senate districts according to the new census population numbers; passed legislation requiring voters to show a photo ID; prohibited texting while driving; implemented loser-pays tort reform and "addressed" the budget.

**And now . . .
a special session is in place!**