

STATE ISSUES UPDATE



DON MCBEATH

TORCH

Government Relations

April 10, 2018

PHARMACY BOARD UPDATE

- Pharmacy Board implemented rule late last year requiring that in rural hospitals with part-time pharmacist, all new prescriptions (to be filled by a tech) must be reviewed in advance by a pharmacist.
- TORCH expressed concerns to Pharmacy Board about challenges and expense to comply.
- Rural hospitals support quality/safety but no data to support implementation of the rule.
- Board reversed decision in February.



PHARMACY BOARD UPDATE

- Rural hospital task force created by Board.
- Representing TORCH is Reg Scarborough (Eastland pharmacist) and Jeff Barnhart (Hereford CEO).
- First task force meeting is April 17.
- New dialogue will hopefully help Pharmacy Board better understand rural hospitals – they are not small urban hospitals!
- Expect future efforts by the Board to diminish/ remove rural hospital reduced supervision system.

1115 WAIVER

- Renewed for January 2018 through September 2022.
- Texas rural hospitals will see Waiver payments start reducing in 2020 to as much as \$290 million a year by 2021.
- Medicaid underpayment, bad debt, and other non-payments removed from uncompensated care calculation as of January 2020.
- UC change will cost Texas rural hospitals as much as \$140 million a year starting then.



1115 WAIVER

- CMS position is that it is not their financial responsibility to make up Medicaid underpayments through the waiver – that should come through rates.
- Hospitals need to continue to work to broaden their formal charity care policies as much as possible.
- DSRIP projects phase out across 2020 and 2021 – costing Texas rural hospitals \$150 million a year.
- Hope is that HHSC can work with rural hospitals to develop new rural based DSRIP type projects to help recover some of the lost funds.

RURAL HOSPITAL MEDICAID UNDERPAYMENT

- Annual Medicaid underpayment to Texas rural hospitals of \$60-65 million lingers.



- Underpayment driven mostly by lack of requirements in MCO contracts with the State to pay rural hospitals close to cost and use of 2010 data in rate calculations.
- Three Texas Legislative committees (House Approps, House Human Services, Senate Health and Human Services) are currently looking into HHSC management of Medicaid MCO contracts.

RURAL HOSPITAL MEDICAID UNDERPAYMENT

- TORCH has testified in two of the hearings – third one coming up.
- TORCH contends part of contract insufficiencies include lack of rural hospital payment requirements in MCO contracts.
- TORCH requesting that budget riders regarding rural hospital payments be clarified and strengthened.



RURAL HOSPITAL MEDICAID UNDERPAYMENT

- Stronger directive to HHSC to make sure rural hospitals are paid at cost – and current cost (not using 2010 data).
- Rural hospitals on their own in dealing with MCOs:
 - Review and renegotiate contracts so they reflect correct and separate payment methodology for rural hospitals (TMHP rates).
 - Calculate what correct payment on each Medicaid case should be and appeal any and all underpayments.
 - File complaints with HHSC on MCOs on underpayments.

NEXT LEGISLATIVE SESSION?



NEXT LEGISLATIVE SESSION?

- Same Governor (can't see him losing in Nov).



- Same Lieutenant Governor (bet on it).

- New Speaker of the House (for sure).
- About the same money available.
- Some of the same problems – education funding, Hurricane damage, undoing some of the creative financing.

NEXT LEGISLATIVE SESSION?

- Key to controlling the craziness is the House Speaker.
- Lots of the crazy stuff died in the House last session under the Speaker's direction.
- Won't know until Speaker election is held in the days that follow the start of the 86th Session on January 8, 2019.
- Contenders – Rep John Zerwas (Richmond), Rep Phil King (Weatherford), Rep Tan Parker (Flower Mound).
- Possible – Rep Four Price (Amarillo), Rep Travis Clardy (Nacogdoches).

NEXT LEGISLATIVE SESSION?

- Anybody's guess at this point on Speaker.
- Political wisdom is that neither the tea party far right republicans, the moderate republicans, or the democrats alone have enough votes in their corners to decide who the next Speaker will be.
- Question is who sides with who?
- A moderate Speaker is the best scenario for rural hospitals – especially in the Medicaid arena.

NEXT LEGISLATIVE SESSION?

- Expect resurrection of bathroom bills and property tax caps.
- Greater likelihood of property tax cap bill to pass next session.
- Advice to Hospital Districts – raise your rate up to the rollback every year between now and then to boost reserves – might get two years depending on bill effective date.
- In Texas political climate, it will be almost impossible to raise taxes under the scenarios last session.

NEXT LEGISLATIVE SESSION?

- Likely to see bills filed dealing with balance billing and out of network.
- Expect more bills about posting charges on line, etc.
- Prompt pay issue had been quiet – might see some activity.



NEONATAL DESIGNATIONS

- Hospitals providing OB must have designation in place by September 1 to get paid by Medicaid.
- Applications need to be in to DSHS ASAP.
- 69 rural hospitals (out of 162) report providing OB – about half of those hospitals have been designated or have an application pending.
- Some of the hospitals may still opt out of OB services by then.
- 3 have dropped service since January 1.

OPIOID LAWSUITS

- Déjà vu shades of tobacco lawsuits.
- A growing number of local government entities are filing lawsuits against drug manufacturers claiming the companies promoted excessive prescribing of the drugs filling up jails, court dockets, and hospitals, and tying up law enforcement resources – all costing local taxpayers.
- Upshur County the first Texas county to file a lawsuit.

OPIOID LAWSUITS

- Dozens of Texas counties and cities now filing lawsuits and more plan to join.
- Dallas County, Harris County, Bexar County.
- Wave of hospital lawsuits beginning.
- El Campo hospital one of the first in Texas to file.
- A number of states have also filed lawsuits.
- Momentum is ramping up fast.



THIS, THAT, AND THE OTHER!

- Human trafficking signage now required in the ER.

- Fetal remains requirement still and on hold.



disposal
in litigation

- Hospital Districts now required to provide State Comptroller some additional tax and debt related data.

- Growing media scrutiny in rural hospitals affiliating with third party outside labs.

QUESTIONS??

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