

Report on the Regular Session of the 83rd Texas Legislature

From a Trauma/EMS Perspective



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Similar to 2011, the 2013 Texas legislative session focused on the budget. The big difference was an \$8.8 billion surplus in 2013, compared to a shortfall of \$27 billion in 2011. With plenty of money to spend, the challenge was to prioritize restoring many of the cuts made in 2011 while addressing challenges to the state's continued growth. Funding to implement the long-range plan to ensure the state has an adequate supply of water for the future and delivering tax relief to businesses were key priorities for state leaders. Many lawmakers also wanted to restore 2011 cuts in public education. House members solidly blocked any attempts to expand Medicaid as part of federal health care reform in 2014, and Medicaid funding flew below the radar screen for much of the session.

Members of the Legislature passed 1,046 bills this session. Gov. Rick Perry has until midnight June 16 to sign or veto bills; if he fails to take action, a bill automatically becomes law without his signature. TETAF followed more than 200 of the 5,875 bills that were filed.

Although lawmakers chose to put trauma funding into Medicaid to obtain federal matching dollars, EMS and trauma advocates were successful in improving emergency care for patients and making workplace improvements. TETAF played an important role in preserving the Driver Responsibility Program which generates money for the Designated Trauma Facility and EMS Account. TETAF also prevented a reduction in the standard of medical care in Level IV trauma facilities. This report highlights most EMS/trauma-related legislation considered during the regular session. Links are provided to the final version of legislation that passed.

State Budget

The only bill the Legislature has to pass is the state budget, and in the final days of the session, they delivered. Lawmakers approved [SB 1](#), the budget for the 2014-15 biennium, and [HB 7](#) and [HB 1025](#) which deliver reductions and supplemental funding for the budget. The \$197 billion all-funds budget represents a significant increase over the \$173 billion all-funds amount appropriated by the 2011 Legislature. The budget appropriates \$59 million per year for uncompensated trauma care, the same amount appropriated for the 2012-13 biennium. A portion of this money goes to EMS and to RACs.

"Despite TETAF's best efforts, lawmakers did not increase the appropriation for trauma. The political battles surrounding the funding of Medicaid and the Disproportionate Share Program were significant and ultimately the opportunity to receive federal matching funds prevailed," said Dinah Welsh, TETAF chief executive officer.

Legislators used some \$138 million from the Designated Trauma Facility and EMS Account 5111 for Medicaid disproportionate share hospital funding for fiscal year 2013. In addition, legislators appropriated almost \$300 million from the dedicated fund for fiscal years 2014 and 2015 to improve Medicaid hospital payments either as DSH or through rate adjustments. Rider 86 directs \$160 million in 2014 and \$140 million in 2015 from account 5111 to pay for the Medicaid hospital supplemental payments.

These appropriations along with the allocation for trauma and graduate medical education will almost totally deplete the balance in the dedicated account by the start of the next legislative session. With TETAF successfully preventing the elimination of Driver Responsibility Program collection, funds will continue to flow into the account allowing for possible appropriations to the trauma system during the next legislative session.

Driver Responsibility Program

Attempts to eliminate the Driver Responsibility Program stalled again this session. HB 104 by Rep. Larry Gonzales (R-Round Rock) would have eliminated the program but the committee substitute instead would have halted collections for the program for two years with authorization to reinstate collections if no alternative funding source was found for the trauma system after two years. Trauma stakeholders from around the state helped keep the bill in the House Calendars Committee where it died. It is anticipated that similar legislation will be filed next session. TETAF will be reaching out to legislative leaders during the interim to seek ways to improve the current program instead of eliminating it as it provides a much-needed funding source for the Texas Trauma System.

Facility Designation

Several bills were filed that would codify systems of care and/or designate facilities for specific types of care. Designation of ST segment elevation myocardial infarction facilities (SB 1177 and HB 2128), establishment of a statewide system for stroke (SB 1687 and HB 3515) and heart attack (SB 1809 and HB 3516) response and treatment, and level of care designations for hospitals that provide neonatal and maternal services were all considered.

[HB 15](#) by Rep. Lois Kolkhorst (R-Brenham) was the only bill that passed and has been sent to the governor. The bill will require the Texas Health and Human Services Commission and the Texas Department of State Health Services to assign levels of care designations for neonatal and maternal services provided at hospitals. Currently,

neonatal units self-report their level of designation, but maternal services have no capability indicators. Hospitals' reimbursement will be linked to designation levels. Designation levels must be completed by Aug. 31, 2017, for neonatal services and by Aug. 31, 2019, for maternal services. The bill sunsets the current neonatal advisory group and creates a Perinatal Advisory Council that will work with THHSC and TDSHS to create the process for developing the designated levels of care.

EMS Requirements

A number of bills were filed to address EMS issues, including detection of fraud, requirements to operate as an EMS provider, EMS certification and the definition of advanced life support.

HB 3556 by Rep. Lois Kolkhorst (R-Brenham) is the most comprehensive legislation addressing licensing and regulation of EMS providers. The bill strengthens the standards for EMS provider licensure to prevent fraudulent providers from operating in Texas. HB 3556 modifies requirements for a provider license including:

- the applicant, rather than the emergency medical services provider, must have adequate staff to meet staffing standards;
- the applicant, rather than the emergency medical services provider, must offer safe and efficient services for emergency pre-hospital care and transportation of patients;
- the applicant must possess sufficient professional experience and qualifications to provide emergency medical services and has not been excluded from participation in the state Medicaid program; and
- the applicant holds a letter of approval issued by the governing body of the municipality or the commissioners' court of the county in which the applicant is located and is applying to provide emergency medical services.

The governing body may issue a letter of approval only if it determines that another licensed EMS provider would not interfere with or adversely affect the provision of EMS services, would remedy an existing provider shortage and would not cause an oversupply of EMS providers.

The bill also contains letter-of-credit and administrator-of-records requirements, including initial and continuing education. The bill also requires the TDSHS to submit a report to the Legislature every two years providing specified statistics on EMS provider licenses, complaints and fraud convictions for licensed EMS providers.

Language similar to HB 3556 was inserted into **SB 8** by Sen. Jane Nelson (R-Flower Mound). SB 8 is an omnibus bill that addresses Medicaid issues and the prevention of fraud, waste and abuse in that program and others.

The bill ensures that the language in HB 3556 applies to the Medicaid program. In addition to the same applicant requirements in HB 3556, provisions in SB 8 prohibit the TDSHS from issuing new EMS provider licenses between Sept. 1, 2013, and Feb. 28, 2015.

HB 1960 by Rep. Philip Cortez (D-San Antonio) allows for reciprocity for EMS personnel certification for certain U.S. military personnel. An executive order by the executive commissioner of THHSC allows reciprocity for EMS personnel certification to military personnel with EMS credentials. Many military combat medic programs are substantially similar to civilian EMS certification programs, and the same consideration should be given to veterans who have received training under a combat medic program as is given to civilian EMS personnel from other states. HB 1960 creates a statutory basis for such certification reciprocity.

SB 53 by Sen. Judith Zaffirini (D-Laredo) would have modified the definition of advanced life support to include an ALS assessment, as well as the emergency pre-hospital care that uses invasive medical acts. The bill passed the Senate but died in the House Public Health Committee.

Injury Prevention

Current law requires children younger than eight years of age and under a certain height to be secured in a child passenger safety seat system during the operation of a vehicle. However, a person may assert a defense to prosecution for this offense by presenting satisfactory evidence that the person possesses a child passenger safety seat system. **HB 1294** by Rep. Four Price (R-Amarillo) removes this defense and establishes as a defense satisfactory evidence that the defendant, at the time of the offense, was not arrested or issued a citation for violation of any other offense and did not possess a child passenger safety seat system in the vehicle and has since obtained one for each child required to be secured. HB 1294 also amends current law relating to the dismissal of a charge for failing to secure a child in a child passenger safety seat system.

Last session Gov. Perry vetoed legislation outlawing texting while driving. This session several bills again were filed dealing with this problem, and HB 63 by Rep. Tom Craddick (R-Midland) came close to passing. It died in the Senate Transportation Committee. HB 63 would have created an offense for the use of a hand-held wireless communication device for text-based communication while operating a motor vehicle. Opponents cited the difficulty in prosecuting offenses and the dangers incurred when drivers try to hide their texting while driving. The need for better understanding and education of the dangers of distracted driving are needed, and TETAF's 2013-14 injury prevention campaign targets this problem.

A number of bills also were filed to curb intoxicated driving but none passed.

Blood Draws

HB 434 by Rep. Debbie Riddle (R-Houston) adds licensed certified emergency medical technicians- intermediate and paramedic to those allowed to take a blood specimen from a vehicle operator to test for alcohol concentration or other intoxicating substances upon the request of a peace officer. Blood must be drawn in the presence of a peace officer who will receive the specimen to maintain the chain of custody. In addition, the specimen must be taken under a protocol developed by the medical director of the EMT's agency. Similar legislation previously has been filed in multiple sessions, and due to the persistence of a few, compromise legislation finally passed.

Nursing

SB 1058 by Sen. Jane Nelson (R-Flower Mound) changes the Nursing Practice Act to require criminal history background checks for all nursing students. The bill also requires licensed nurses to obtain a minimum of two hours of continuing education on nursing jurisprudence and nursing ethics every six years. Nurses who treat geriatric patients must obtain a minimum of two hours of CE in older adult/geriatric nursing or maintain related certification. The bill also addresses disciplinary actions and impaired nurses, allowing random alcohol and drug screenings in certain circumstances.

Disaster Response

State law provides immunity from civil liability for a person responding to a disaster at the request of an authorized representative of a local, state or federal agency, except in a case of reckless conduct or intentional, willful or wanton misconduct. A recent court case has been interpreted to affirm that immunity, but there is still concern that despite such protections, local officials resist accepting volunteer services while responding to hazardous or dangerous situations because of a fear of being exposed to liability lawsuits based on a volunteer's actions. **HB 487** by Rep. Cecil Bell (R-Magnolia) addresses those concerns by clarifying existing law with regard to a local official's authority to request or accept assistance in a hazardous or dangerous situation and with regard to a person's immunity from liability in providing such assistance. The bill has been signed by the governor and took effect May 24.

In response to problems that arise in the deployment of health practitioners during devastating natural disasters and because of the lack of uniformity in state laws regarding the scope of practice and licensing of such practitioners, the Uniform Law Commission has developed a model uniform law to regulate volunteer health practitioners providing services during emergencies. The goal is to provide a system so that health practitioners in any state can be deployed

to health care facilities and disaster relief organizations in another state in which an emergency is occurring and can follow a clearly understood protocol in meeting the needs of the volunteers and relief agencies while ensuring the delivery of quality care to disaster victims. **HB 746** by Rep. Trent Ashby (R-Lufkin) amends current law relating to the registration of volunteer health practitioners. The bill follows the UCL's model law defining the services of volunteer health practitioners during disasters.

HB 1090 by Rep. Mando Martinez (D-Weslaco) creates a Texas Task Force 1 Type 3 Rio Grande Valley as a program of the Texas A&M Engineering Extension Service to provide training and assistance in search, rescue and recovery efforts. The bill was filed due to concerns that no regional response task force currently is located in the Rio Grande Valley, and the area is vulnerable to hurricanes. A disaster could isolate the Valley and its residents, seriously complicating search and rescue efforts.

Trauma Facilities

SB 830 by Sen. Charles Schwertner (R-Georgetown) would have allowed Level IV trauma facilities located in counties of populations of 50,000 or less to use telemedicine services in place of physicians to meet the physician requirement for designation. TETAF testified on this bill sharing concerns about lowering the standard of care for trauma patients in these areas. While the bill was reported favorably by the Senate Health and Human Services Committee, trauma advocates were able to help stall the bill from being considered by the full Senate.

CPR Education

HB 897 by Rep. John Zerwas (R-Simonton) was named after the late Rep. Edmund Kuempel who sustained a heart attack in the State Capitol in May 2009. Rep. Kuempel was revived with the aid of an automatic external defibrillator located in the Capitol that was quickly and expertly administered. **HB 897** will require the Texas State Board of Education to require instruction in cardiopulmonary resuscitation and the use of an external defibrillator for students in grades 7 through 12.

Emergency Vehicles

Several bills were filed and passed dealing with the definition of emergency vehicles. **HB 567** by Rep. Wayne Smith (R-Baytown) expands the definition of an "authorized emergency vehicle" to include vehicles that are not ambulances but are used for first response to medical emergencies, particularly when a regular ambulance is not immediately available or when additional emergency personnel are necessary. Since these vehicles were not included within the statutory definition of an "authorized

emergency vehicle,” they have had to comply with certain traffic laws and parking restrictions when responding to an emergency call and could not operate with certain emergency lighting and sound equipment.

HB 802 by Rep. Toni Rose (D-Dallas) also expands the definition of an authorized emergency vehicle by allowing county owned or leased emergency management vehicles to be classified as emergency vehicles. Increasingly, urban areas are hiring professional emergency managers who may be highly trained in incident command and response but because they are not law enforcement officers, firefighters or health personnel, must mix with regular traffic when rushing to a disaster site. Current statutes do not recognize emergency managers among those authorized to use lights and sirens. HB 802 authorizes these vehicles to operate with red and blue lights and sirens.

Vehicles operated by the Texas Department of Emergency Management currently are not authorized to be used as “emergency vehicles” during a local or state disaster, so these emergency responders are prohibited from using lights or sirens on their vehicles and are not granted immediate access to priority areas. **SB 223** by Sen. Kirk Watson (D-Austin) amends current law to designate certain TDEM vehicles as authorized emergency vehicles.

Freestanding ERs

HB 1376 by Rep. Lois Kolkhorst (R-Brenham) prohibits freestanding emergency centers from advertising as an urgent care facility when their charges are similar or the same as the rates charged by a hospital emergency room. The bill also requires hospital-operated freestanding emergency centers to post a notice that the facility is an ER and charges rates comparable to a hospital ER.

TDSHS’s freestanding emergency medical care facility rules currently limit the scope of services provided to those that are defined as purely “emergency services.” SB 413 by Sen. Robert Deuell (R-Greenville) would have included physical examinations, flu shots and other vaccinations, and intravenous injections for treating certain conditions to be provided in freestanding emergency centers. However, the bill was left pending in committee.

Protection for ER Personnel

HB 705 by Rep. Donna Howard (D-Austin) enhances the penalty for assaulting an emergency room nurse or other ER personnel. If the person who commits the assault knows that the nurse or other individual works in the ER, a conviction results in a third-degree felony. The legislation was filed in response to the increase in violent attacks on nurses and other emergency medical personnel nationwide.

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Cover photo: EMS and trauma advocates gathered in Austin on Feb. 26 for EMS/Trauma Day at the Capitol. Gov. Rick Perry, front row center, posed with the group on the steps of the Capitol.

For more information regarding the legislative session and/or specific bills, please contact:

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TETAF already is working to prepare for the next regular session of the Texas Legislature, which convenes Jan. 13, 2015.



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