

**TETAF**

TEXAS EMS TRAUMA &  
ACUTE CARE FOUNDATION

# LEGISLATIVE UPDATE



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## A Message from CEO Dinah Welsh



Dinah S. Welsh

The 2019 Texas legislative session ended on May 27, and Gov. Greg Abbott had until midnight June 16 to veto, sign or allow a bill to become law without his signature. This year, House and Senate members filed 7,324 bills, and 1,429 passed both chambers and were sent to the governor. He signed 1,323 bills and resolutions and allowed 144 bills to become law without his signature. He vetoed 58 bills and resolutions, including one intended to protect children under age two when riding in motor vehicles.

Compared to the previous two sessions, 2019 was relatively calm and orderly. This year, the three leaders worked together to ensure that no major controversies erupted. Bills that divided the House and Senate, and even members within the same party, were largely avoided. For the first time in many years, the Legislature had a healthy budget surplus allowing legislators to think beyond just maintaining funding levels.

Education was the big winner this session, but its success had been a long time coming. For trauma and emergency healthcare advocates, repealing the Driver Responsibility Program and replacing the lost revenue was a significant legislative priority, and **House Bill 2048** replaced the lost funding with new, stable revenue streams. Now a strong conversation about what trauma system needs really are can occur – advocates won't have to fight over DRP funding.

Trauma and emergency advocates came together and worked to pass HB 2048, and they pushed other initiatives forward.

Another big win was in the supplemental appropriations bill where RACs and hospitals received a total of \$17 million in one-time funding to recover from Hurricane Harvey.

Be sure to thank your lawmakers now that they are back in the District. TETAF wants to thank each of you for your participation and support. High fives all around!

Dinah S. Welsh, Chief Executive Officer

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## RACs, EMS See Funding Increase Through DRP Repeal/Replace Bill; Red Light Cameras Repealed

Working closely with Rep. John Zerwas (R-Richmond) and Sen. Joan Huffman (R-Houston), TETAF was successful in securing the repeal of the unpopular Driver Responsibility Program and replacement of the funds it generated for trauma. **House Bill 2048** repeals the DRP, effective Sept. 1, 2019. A multi-level approach is used to replace both trauma and general revenue funding.

### State Traffic Fine Increase (\$30 to \$50)

#### Projected:

- Account 5111 would receive \$75 million
- General Revenue would receive \$175 million

### DWI/DUI Fine Increases

The proposed increases are projected to increase funds to Account 5111 by \$36 million and to General Revenue by \$86 million.

### Additional (\$2) Assessment Fee on Auto Insurance Policies – Automobile Burglary and Theft Prevention Authority (ABTPA)

#### Projected:

- ABTPA would receive \$40 million
- Account 5111 would receive approximately \$120 million
- General Revenue share reduced to \$40 million

Legislation also modified the distribution of the trauma Account 5111 money. Effective Sept. 1, EMS providers and Trauma Regional Advisory Councils each are allocated 1% more of the Account 5111 funding. While the actual appropriations bill does not reflect the increases, TETAF will work with state leaders to direct any additional money that collects in the account as a result of the fee changes to reflect the new distribution percentages: EMS providers, 3% of the Account 5111 distribution; RACs, 2%; hospitals, 94%; and the Texas Department of State Health Services, 1%.

Because the red light camera program also was eliminated in **House Bill 1631** by Rep. Jonathan Stickland (R-Bedford), lawmakers modified the allocation of state traffic fines, changing 80% to general revenue to 70%, and directing 30% of traffic fines to Account 5111 for the trauma system instead of only 20%. Existing red light camera operations may continue until local contracts expire.

“DRP has been a very unpopular program, despite the improvements in the trauma system that have been achieved with the funds it has generated,” said Dinah Welsh, chief executive officer of TETAF. “By repealing the program and replacing the lost general revenue and trauma dollars with a stable source of funding, HB 2048 creates an important marker moving forward,” she said. “Now our energy can be focused on talking about trauma system needs at large,” she added.

## Budget Preserves Trauma Funding Levels; Supplemental Appropriations Has Dollars for RACs

The Legislature approved a budget of some \$250.7 billion in all funds for the 2020-21 biennium. Late in the session, Comptroller Glenn Hegar raised his revenue estimate by \$500 million for the 2020-21 biennium, enabling lawmakers to deliver on their promises of property tax relief and increased funding for public education.

While the initial budget would have resulted in reduced funding for RACs and EMS in the 2020-21 biennium, the final budget maintains 2019 funding levels for each year of the next biennium for Trauma Regional Advisory Councils and EMS providers.

The final supplemental appropriations bill, **Senate Bill 500**, uses some \$6.1 billion from the Economic Stabilization Fund (Rainy Day Fund). This allowed the Legislature to direct \$17 million to the Texas Department of State Health Services for trauma capacity and response infrastructure, including \$2 million for grants to RACs to help them recover from recent disasters, and \$15 million for hospitals. The hospital money is allocated as follows:

- 40% to hospitals impacted by Hurricane Harvey;
- 40% for establishment of a Level 1 trauma facility in the Rio Grande Valley; and
- 20% to trauma hospitals, un-allocated (available to any hospital in the state presumably).



## Telemedicine Use for Level IV Trauma Center Designation Approved

**House Bill 871** by Rep. Four Price (R-Amarillo) directs the Texas Health and Human Services Commission to modify its criteria for Level IV trauma designation to allow the use of telemedicine to meet certain requirements. The change in the law, effective Sept. 1, 2019, applies to facilities located in a county with a population of 30,000 or less. Signed by the governor on May 28, the bill requires THHSC to adopt rules by Dec. 31, 2019, that allow the requirement for the physical presence or physical availability of a physician who has special competence in the care of critically injured patients to be met through the use of telemedicine.

Sponsored in the Senate by Sen. Charles Perry (R-Lubbock), the bill states that “an on-call physician who has special competence in the care of critically injured patients” may provide “patient assessment, diagnosis, consultation, or treatment or transfers medical data to a physician, advanced practice registered nurse or physician assistant located at the facility.” This bill is intended to preserve access to trauma care in rural areas where the volume of patients is low and does not offset the costs associated with maintaining designation status.

While telemedicine may not be used to meet the designation criteria until Jan. 1, 2020, hospitals should be aware that this change in the rules is coming. Hopefully this change will enable low-volume hospitals to maintain Level IV designation.

## Legislature Modifies NICU/Maternal Designations Requirements

On June 10, the governor signed **Senate Bill 749** by Sen. Lois Kolkhorst (R-Brenham), and it took effect immediately. The bill establishes contingency surveys, a waiver process and an appeals process for maternal level of care certifications. The bill also extends the date for hospitals to complete maternal designation until Aug. 31, 2021. The bill also clarifies that the rules regarding the use of telemedicine by Levels I, II and III facilities must be made in consultation with physicians, hospital associations, the Texas Department of State Health Services and other “appropriate interested persons.”

House sponsor Rep. Four Price (R-Amarillo) secured the addition of two provisions. One requires the hospital to give notice of its intent to seek a waiver to the hospital’s medical staff members who practice in a specialty service area affected by the waiver. The second clarified that the department can determine the waiver is justified after considering the expected impact on the accessibility of care in the geographic area served by the hospital if a waiver is not granted, and quality of care and patient safety.

The deadline for hospitals to have a level of maternal care designation was extended until Aug. 31, 2021. The requirement of a hospital having a maternal level of care designation to obtain Medicaid reimbursement was extended until Sept. 1, 2021. The bill allows hospitals to pursue designation before the deadlines, and to amend any application filed prior to the effective date of the bill, if necessary to comply with new provisions



in the law. Texas Perinatal Services already has conducted several surveys and has many others scheduled.

The bill makes the Texas Perinatal Advisory Council subject to sunset review in conjunction with the evaluation of the Texas Department of State Health Services. In consultation with the PAC, the agency must conduct a strategic review of the practical implementation of the rules for NICU and maternal care designation, identifying barriers to a hospital obtaining its requested level of care designation. The review also must look at requirements for a level of care designation that relate to gestational age; and if designation determination should consider the hospital’s geographic location or the number of patients of a particular gestational age treated by the hospital and the hospital’s capabilities in providing care to patients of a particular gestational age. Based on the findings, the review also would include recommendations for modification of the rules to improve the process and methodology of assigning levels of care designation.

A written report on the review of neonatal care must be submitted to the Legislature by Dec. 31, 2019, and one on the review of maternal care by Dec. 31, 2020.

**TETAF and Texas Perinatal Services will be very involved in the rulemaking process as SB 749 is implemented.**

## Legislature Approves Study of Postpartum Depression

**House Bill 253** by Rep. Jessica Farrar (D-Houston) takes effect Sept. 1. The bill requires the Texas Health and Human Services Commission to develop a five-year strategic plan to improve access to postpartum depression screening, referral, treatment and support services. The plan must provide strategies to:

- **increase awareness about the prevalence and effects of postpartum depression among state-administered program providers who serve women at risk;**
- **establish a referral network of community-based mental health providers and support services addressing postpartum depression;**
- **increase women's access to formal and informal peer support services, including certified peer specialists who have received additional training related to postpartum depression;**
- **raise public awareness of and reduce the stigma related to postpartum depression; and**
- **leverage sources of funding to support existing community-based postpartum depression screening, referral, treatment and support services.**

In developing the strategic plan, the Texas Health and Human Services Commission is required to coordinate with the Texas Department of State Health Services, the statewide health coordinating council, the office of mental health coordination and the statewide behavioral health coordinating council. This group must annually review the strategic plan and update it as needed.

## Bill Directs Better Maternal Care for Medicaid Recipients

Authored by Sen. Lois Kolkhorst (R-Brenham), **Senate Bill 750** is a comprehensive package of strategies to improve maternal/infant care for Medicaid managed care recipients. Effective as of June 10, the bill expands services in the Texas Healthy Women Program to Medicaid-covered women with opioid use disorder during pregnancy and postpartum. It requires the Texas Health and Human Services Commission to ensure continuity of care for women making the transition from one program to the other.

The legislation requires THHSC to develop and implement cost-effective, evidence-based and enhanced prenatal services for high-risk pregnant women covered under the medical assistance program, and to extend postpartum services for up to 12 months. Development of a postpartum depression treatment program is required by Medicaid managed care organizations and Texas Healthy Women Program providers. Medicaid managed care organizations are required to develop or enhance programs to improve the quality of maternal care, including both prenatal and postpartum care, and THHSC must report back to the Legislature on its activities and outcomes.

The bill creates a 17-member Texas Maternal Mortality and Morbidity Review Committee, with 15 designated slots to be appointed by the THHSC commissioner, plus two state agency representatives. The committee is to work



with the Texas Perinatal Council to offer recommendations for reducing maternal deaths and severe morbidity. With input from the committee, the Texas Department of State Health Services is required to develop and disseminate to physicians and others treating pregnant women a guide regarding best practices for verbally screening a pregnant woman for substance use and verbally screening a pregnant woman for domestic violence using a validated screening tool; a list of substance use treatment resources and domestic violence prevention and intervention resources in each geographic region of this state; and review and promote the use of educational materials on the consequences of opioid drug use and on domestic violence prevention and intervention during pregnancy.

The legislation requires hospitals, birthing centers, etc., to provide medical records of patients suffering severe morbidity or maternal deaths for review, and protects the confidential information provided.

A report on the work of the review committee, its findings and its recommendations must be submitted by Dec. 1 of even-numbered years.

## Bill Requires Study to Improve Care for Opioid Dependent Moms, Infants

**Senate Bill 436** by Sen. Jane Nelson (R-Flower Mound) requires the Texas Department of State Health Services to work with a task force to develop and implement initiatives to improve maternal health and obstetrical care for women with opioid use disorder. Effective with the governor's signature on June 7, the bill requires a report to the Legislature by Dec. 1, 2020, that includes how to improve screening to better identify women with opioid use disorder, improve their continuity of care, optimize health care for pregnant women with opioid use disorder and their newborns, increase access to medication-assisted treatment for addicted women during pregnancy and the postpartum period, and how to prevent the disorder by reducing the number of opioid drugs prescribed before, during and following delivery.

The bill allows TDSHS to conduct a limited pilot program in one or more geographic areas of the state in hospitals with expertise in caring for newborns with neonatal abstinence syndrome or a similar condition.

The bill also requires TDSHS to use existing resources to promote and facilitate the use among health care providers of maternal health informational materials, including tools and procedures related to best practices in maternal health to improve obstetrical care for women with opioid use disorder.

## Two Bills to Improve Maternal Care Die in Final Days of Session

While numerous bills were filled to improve maternal and child care this session, many did not advance beyond committee. Two bills that nearly made it to the finish line died in the waning days of the session.

**House Bill 1111** by Rep. Sarah Davis (R-Houston) would have created a study on the use of telemedicine to improve maternal care in the Medicaid program. The bill also would have created a pilot program to study the impact of pregnancy medical homes on women in the Medicaid managed care program. The bill also would have created a Newborn Screening Preservation Account using revenue from any unexpended and unencumbered money from Medicaid reimbursements collected by the department for newborn screening services during the preceding state fiscal year.

While originally placed on the Senate Intent Calendar for May 21, the bill was not placed on the May 22 calendar and ultimately died. However, Rep. Davis was successful in amending Sen. Lois Korkhorst's **Senate Bill 748** to include key components of this bill. SB 748 requires the Texas Health and Human Services Commission to study and report on the benefits and costs of permitting Medicaid reimbursement of prenatal and postpartum care through telemedicine. The pregnancy medical home pilot program and a high-risk maternal care coordination pilot also were included in SB 748.

**Senate Bill 2150** by Sen. Lois Kolkhorst died when a conference committee failed to produce a timely report. The bill required the reporting of maternal deaths and severe morbidity to the Texas Department of State Health Services by hospitals, birthing centers, etc., for use by the Texas Maternal Mortality and Morbidity Review Committee. It also allowed voluntary reporting regarding complications from pregnancy, etc., by other providers, such as physicians and nurses. Although this bill died, the reporting provisions were included in **Senate Bill 750**, which did pass. An amendment was added to SB 2150 in the House that allowed the Midland County Hospital District to assess a sales and use tax. However, the Senate refused to concur with changes made in the House, and a conference committee report was not submitted before the deadline.

## More Transparency Required Of Free-Standing Emergency Centers

**House Bill 2041** by Rep. Tom Oliverson (R-Cypress) attempts to protect patients from potentially misleading advertising or insufficient disclosures regarding the network status of freestanding emergency centers. The legislation is very prescriptive regarding posting notices to patients about the facility's status as an in-network or out-of-network provider, effective Sept. 1. The legislation stipulates that a written disclosure statement be provided to patients that lists the observation and facility fees that may be charged, and lists the health benefit plans in which the facility is a network provider or states that the facility is an out-of-network provider for all health benefit plans. Penalties are provided for violations of the advertising and other provisions.





## Bills Approved Related to First Responders, EMS

Effective Sept. 1, **House Bill 1090** by Rep. Cecil Bell (R-Magnolia) broadens the definition of a “first responder” to include an emergency response operator or emergency services dispatcher who provides communication support services for an EMS agency and other emergency response personnel employed by an agency. Emergency response operators, emergency services dispatchers and other emergency response personnel providers offer critical and often life-saving services for the public and various agencies, and may encounter stressful and potentially traumatic events and experiences in the course of exercising their duties. While these personnel provide essential services to the community, they are not considered first responders under applicable state law and, as a result, are not afforded the same benefits and protections under state law as those who are. HB 1090 reclassifies certain of these personnel as first responders.



The governor has signed **House Bill 1418** by Rep. Dade Phelan (R-Beaumont), which is intended to enhance EMS personnel's safety by requiring disease prevention and preparedness information to be provided. Specifically, the Texas Department of State Health Services must notify each EMS applicant for certification or recertification if his/her immunization history is in the state registry. If the immunization history is not in the registry, then the applicant must be informed of the specific risks to EMS personnel when responding rapidly to an emergency that may involve exposure to and infection by a potentially serious or deadly communicable disease that an immunization may prevent.

**House Bill 1477** by Rep. Four Price (R-Amarillo) died in the Senate where it did not receive a hearing. The bill would have created an Emergency Medical Services Scholarship Program and would have provided grants to EMS providers and RACs and provided funds to develop the curriculum for EMS training. It would have created a dedicated account in the state budget and would have diverted a portion of state traffic fines from general revenue to the newly created account. The fiscal note was estimated at \$7.5 million per year.

## Bills Address Disaster Situations

The governor has signed **Senate Bill 752** by Sen. Joan Huffman (R-Houston). Effective Sept. 1, the bill provides liability protection for a volunteer health care provider acting in good faith within his/her scope of practice in a disaster. A health care institution also is immune from civil liability for an act or omission by a volunteer health care provider delivering care, assistance or advice at the institution's facility or under the institution's direction if no payment is expected, except for the reimbursement of costs associated with the care.

**Senate Bill 982** by Sen. Lois Kolkhorst (R-Brenham) requires the Texas Department of State Health Services to develop an emergency plan for special needs populations during a disaster. Effective Sept. 1, the bill requires increased access to and coordination of local volunteer networks and volunteer mobile medical units in each public health region. A task force on disaster related issues of the elderly and disabled is created to study and provide recommendations to improve disaster evacuation and sheltering. The task force report must be submitted by Dec. 1, 2020.

The governor also has signed **House Bill 2305** by Rep. Geanie Morrison (R-Victoria). The bill establishes a work-group to study and make recommendations to enhance the training and credentialing of emergency management directors and coordinators, and other emergency management personnel on the state or local level to effectively oversee the response to and recovery from a disaster. The study should consider whether the differences in geography, population and critical infrastructure between emergency management directors' or emergency management coordinators' jurisdictions warrant different levels of training and credentialing; if training and credentialing are required before the individual is allowed to oversee the response to and recovery from a disaster; and if training is required, should it include information on disaster finance, damage assessment, disaster contracting, debris management and other skills needed to participate in federal emergency management. The report, due to the Legislature by Nov. 1, 2020, also should recommend sources of funding to finance any training required.

## Legislation Moves Oversight of State Emergency Management to A&M

**House Bill 2794** by Rep. Geanie Morrison (R-Victoria) moves the state's Division of Emergency Management from the Texas Department of Public Safety to the Texas A&M University System as a distinct state agency similar to the Texas A&M Forest Service, Texas A&M AgriLife Extension, Texas A&M Engineering Experiment Station and the Texas A&M Engineering Extension Service. These agencies exist in support of the land grant missions assigned to the Texas A&M System. The TDEM move will consolidate and unify disaster response and recovery efforts for Texas. While effective June 10, the actual transfer of administration of TDEM and employees must be accomplished by Sept. 1, after a Texas Department of Public Safety and TAMU memorandum of understanding is executed.

Moving TDEM was the top recommendation in the "Eye of the Storm" report that was issued by the Governor's Commission to Rebuild Texas following Hurricane Harvey. Texas A&M University System Chancellor John Sharp oversaw the commission that authored the report. The chief of the TDEM division at Texas A&M would be appointed by the governor. The division will manage and staff the state operation center under contract. The CEO will continue to be accountable to the public, and will prepare an annual financial report and a legislative appropriations request for review by the governor and Legislature.

## Bill Adds Members to GETAC

Effective with the governor's signature on June 14, **House Bill 1869** by Rep. Stephanie Klick, RN (R-Fort Worth) modifies the composition of the Governor's EMS and Trauma Advisory Council by adding two registered nurses — one to be appointed from a list of names recommended by a statewide professional association of emergency nurses and the second would be required to have trauma expertise. The Senate added two additional positions, including one for a stand-alone EMS agency and another for a paramedic.

GETAC has more oversight and input into EMS operations and personnel requirements than it does for hospitals and physicians, yet has very few EMS-related positions. The Senate amendment is intended to increase representation for EMS providers/paramedics.

These additions bring the total number of GETAC members to 19.

## Stop the Bleed Kits Bill Passes Senate with Amendments

A much-amended **House Bill 496** by Rep. Barbara Gervin-Hawkins (D-San Antonio) will require the development of bleed control stations in all public and charter schools, and these areas must include "stop the bleed kits" that contain specific supplies. In addition, staff must be appropriately trained in use of the bleeding control station and its equipment. Immunity from liability for these schools and their employees who use the bleed control station is provided as long as they are acting in "good faith."



The legislation was amended in the Senate to require each public and open-enrollment charter school to develop a traumatic injury response protocol by Jan. 1, 2020.

The bill was signed June 14 and takes effect immediately.

## Bill to Enhance Child Seat Safety Vetoed

**House Bill 448** by Rep. Chris Turner (D-Grand Prairie) would have created a citable offense for a driver who did not secure a child two years of age and younger in a backward-facing car seat safety system. Gov. Greg Abbott vetoed the bill on June 16, stating that it was an "invasion of parental rights" and an example of "over-criminalization." He pointed out that children under age eight must be restrained in car seats, and that HB 448 was "micro-managing" the requirement.