85th Legislative Session (+ 1 Special Session): Health Care Update

Jennifer Banda, J.D.
Vice President, Advocacy and Public Policy
Texas Hospital Association
jbanda@tha.org
www.tha.org
512-465-1046

The Texas Legislative Session

- Citizen Legislature
- Biennial Regular Session for 140 Days
- Second Tuesday of January
- 85th Session Sine Die = May 29
- Special Sessions called by Governor
  - 85(1) = July 18 – August 16
- Primary Election March 6, 2018
  - Nov. 11 filing opens

140 Days Every Other Year

The average legislative office handles the following during the 140-day session:

- 7,000 + bills
- 6,000 telephone calls
- 5,000 drop-in visitors
- 8,000 letters
- 15,000 emails
- 600 event invitations

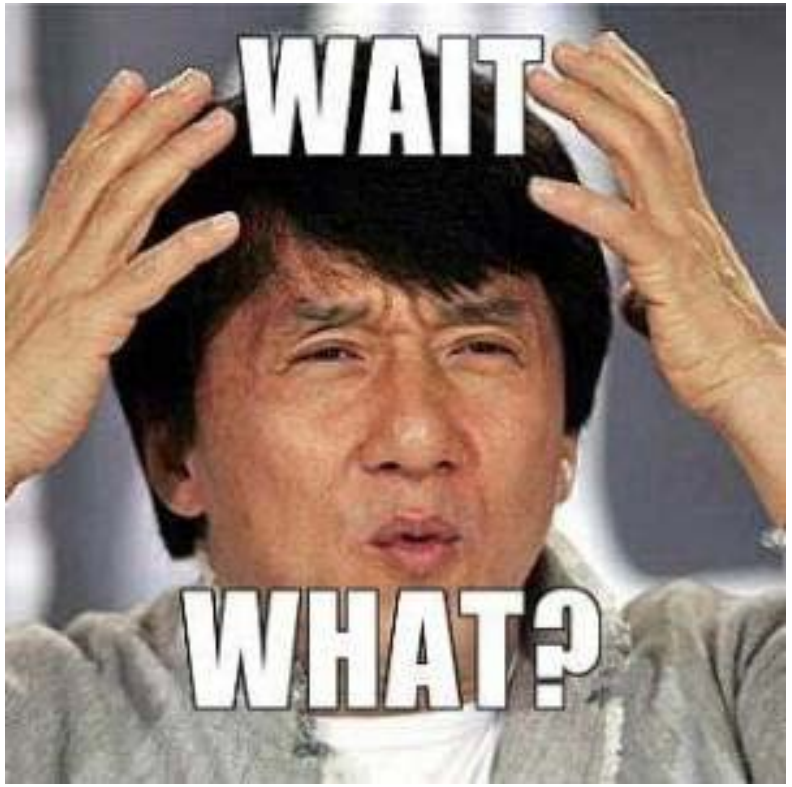
2017 Legislative Session

In a session lasting **140 days**:

- 7,000 bills filed
- THA tracked 1,144
- Affected hospitals'
  - Budget
  - Operation
  - Policy

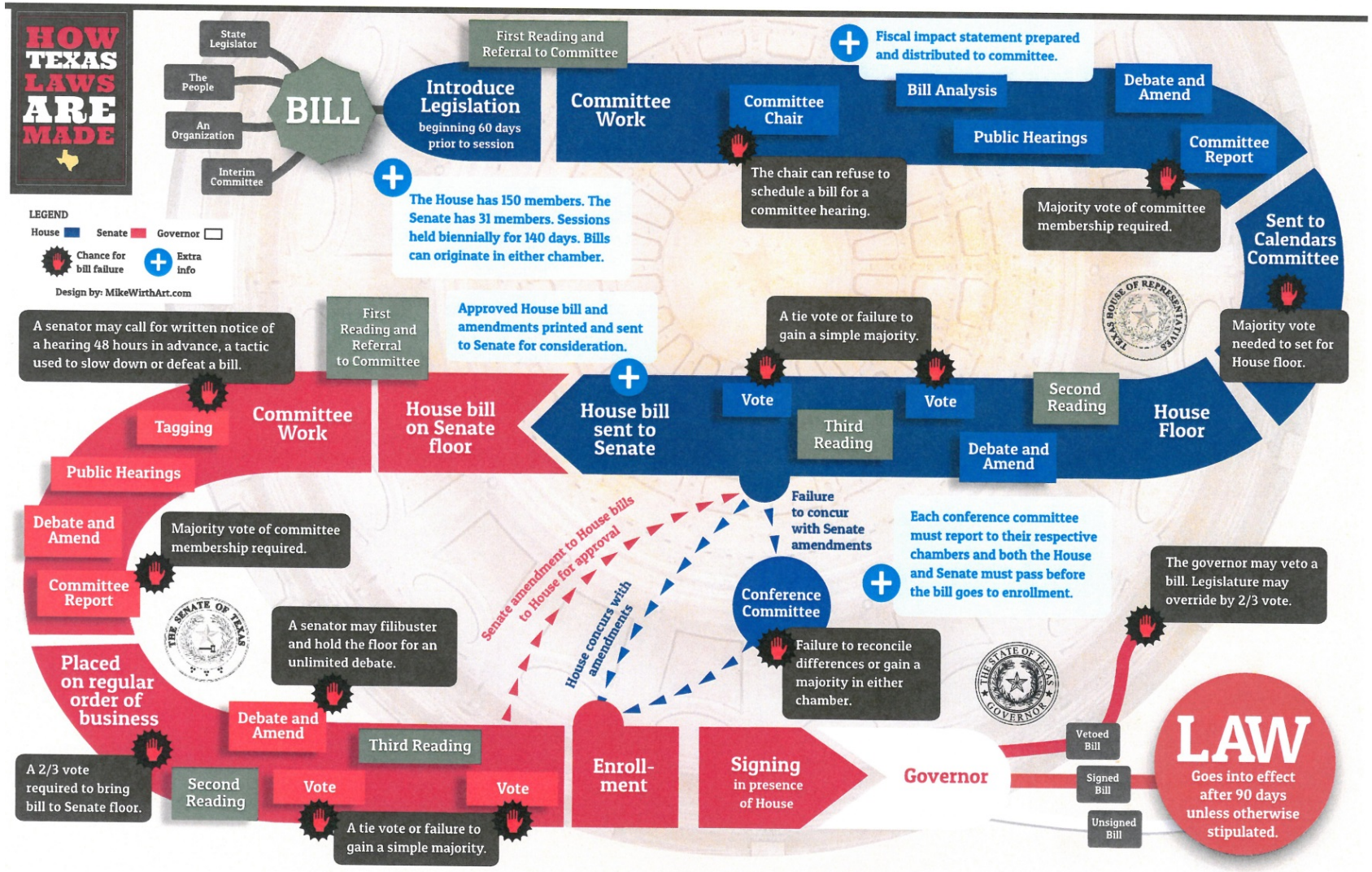
In a 30-day **special session** with 20 issues:

- THA tracked 6 issues, plus others not on call



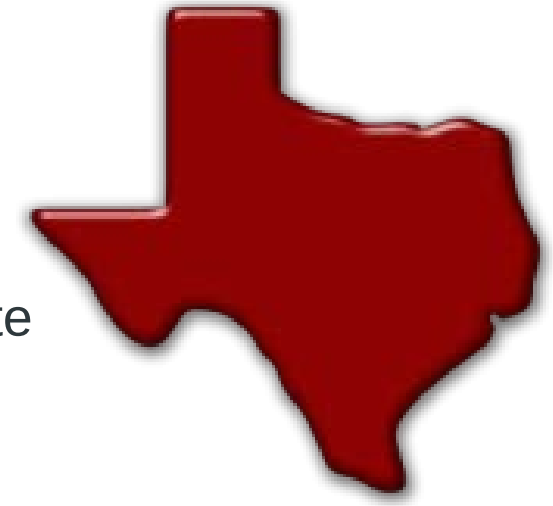
Legislative Process in Theory

Legislative Process in Reality



Major Issues for State Leaders Today

- Economic growth puts pressure on infrastructure
  - 1,000+ people moving to Texas each day
- Political pressure to remain fiscally conservative
  - Decreased Oil and Gas Revenue decreases available revenue
  - Pass a Balanced Biannual State Budget
  - Honor the constitutional spending cap & Biennial Revenue Estimate
  - Protect the Rainy Day Fund ($12 billion balance)
- Promised to Cut Taxes
- Focus on Water, Roads, Education
- Struggling with costs for Medicaid, ERS, TRS, CPS, State Debt, Public Education, Higher Ed Tuition Deregulation, Transportation
- FY18-19 Biennial Revenue Estimate Available Funds = $2 Billion Less than FY16-17



THA Priorities for 85th Legislative Session

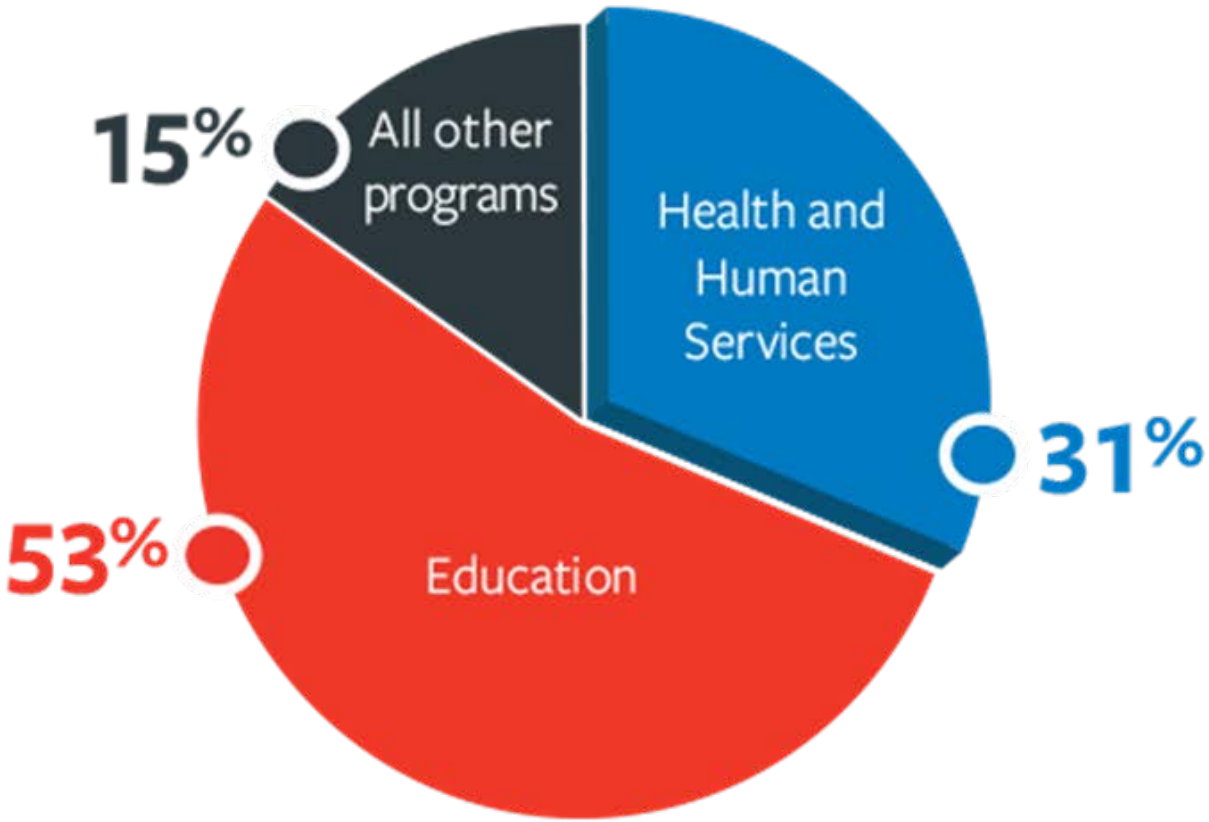
- Medicaid Rates that Reflect Cost of Care, Protect Access to Care and Reduce Reliance on Supplemental Payments
- Maintain funding for the State's Trauma System
- Funding to Support a Strong Behavioral Health Care System
- Continued Funding for Physician, Nurse, Health Care Professionals
- Continue 1115 Transformation Waiver
  - UC and DSRIP Incentive Payments

Hospital Medicaid Rates Today

- Most Texas hospitals are reimbursed at < 60% of inpatient cost and ~ 72% of outpatient cost in the Medicaid program
- Increasing reliance on a shrinking pool of supplemental payments (DSH, UC)
- Health care safety net is straining to meet the needs of a growing population
- DSH and UC are hospital-funded for the state share
- Priority: Medicaid Reimbursement Rates that Reduce Medicaid Shortfall, Reduce Reliance on Supplemental Payments and Protect Access to Care

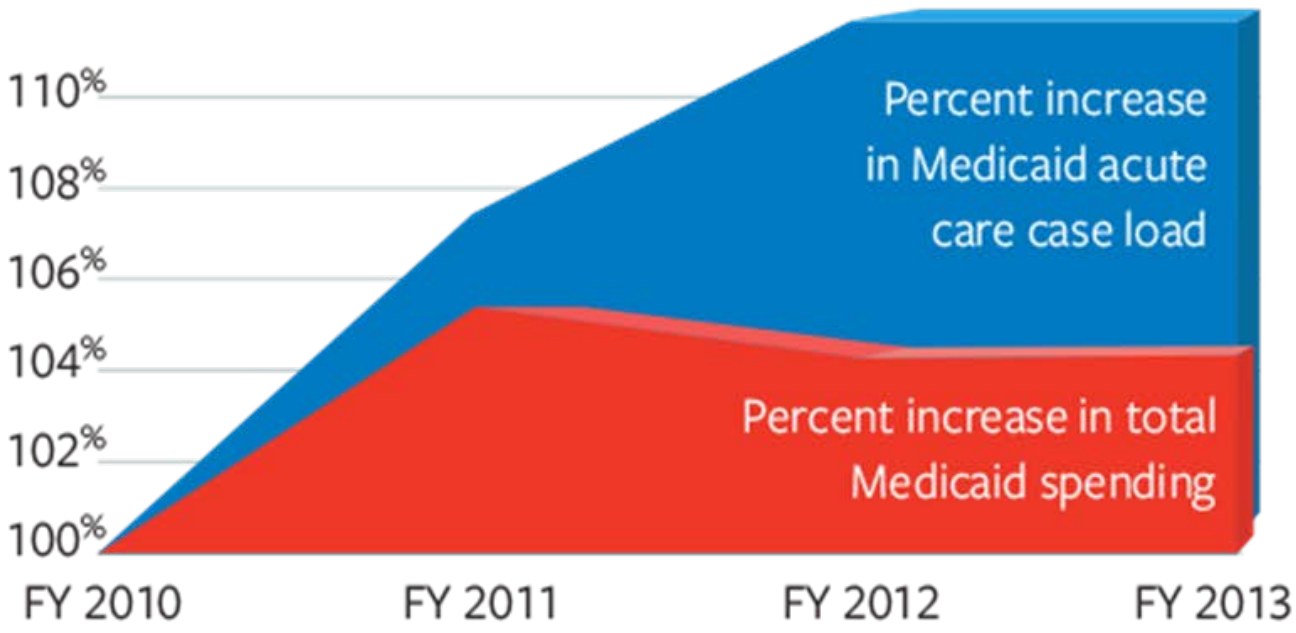
Is Medicaid Eating the Budget?

- General Revenue spending on HHS / Medicaid is less than GR spending on Education
- Using an All Funds amount includes the dollars from the hospital/IGT-funded portion of the budget
  - $6.2B in UC and DSRIP
  - $1B in DSH
  - 40% state / 60% federal



Growth in Medicaid is Caseload

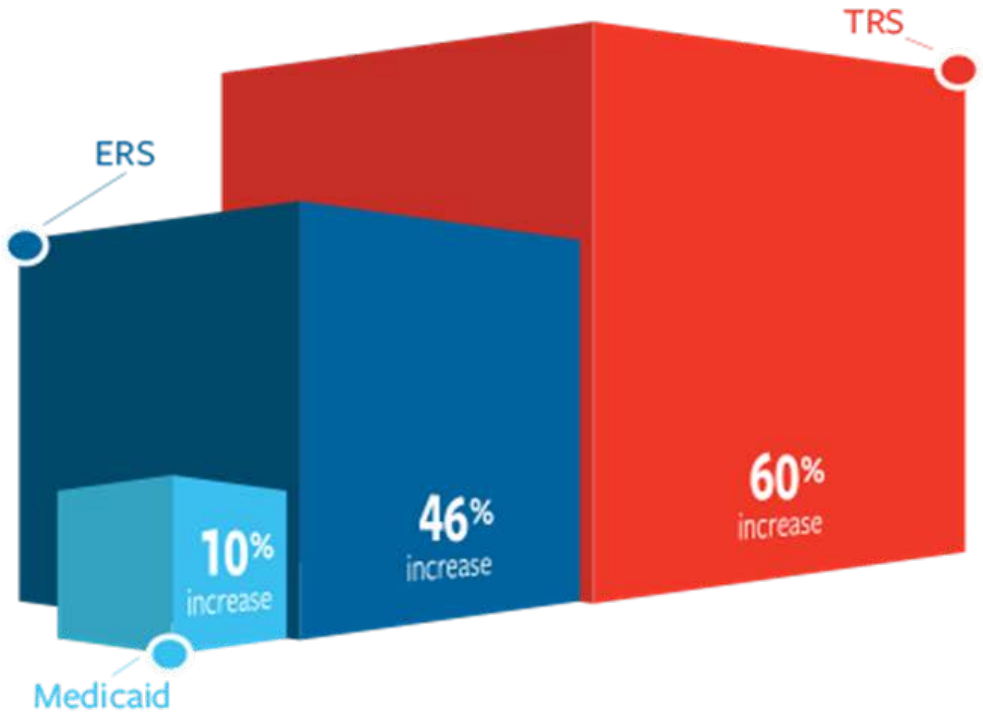
- 4.2 million enrolled in Medicaid
  - 3.1 enrolled are children
  - Increase of 2 million since 2000
  - Children are only 30% of expenditures in Medicaid
    - Elderly & Disabled account for 60% of cost but only 30% of enrollees



- 1 in 4 children live in poverty
- 1000+ a day are moving to

Medicaid in Texas Budget Perspective

- Growth in Costs Per Medicaid Enrollee vs. Growth in Costs Per Enrolled in the ERS & TRS Programs, 2006-2014
- Texas Medicaid 93% managed care
- Texas aggressively manages reimbursements, providers paid below cost
- Significant cost containment
  - e.g. cuts to non-emergent care in ER
- Attention to waste, fraud, abuse



Hospital Funding in State Budget FY18-19

Maintains $307 million in state funds ($715 million in AF) for the biennium for add-on payments for trauma, safety net, and rural hospitals:

- Trauma-designated hospitals: $153 M
  - Includes $29 million for uncompensated trauma care
- Safety-net hospital add-on: $129 M
- Rural hospitals cost reimbursement: $25 M
  - Changed definition of “rural”

Source of funding: $203 million from DRP + $103 million from General Revenue

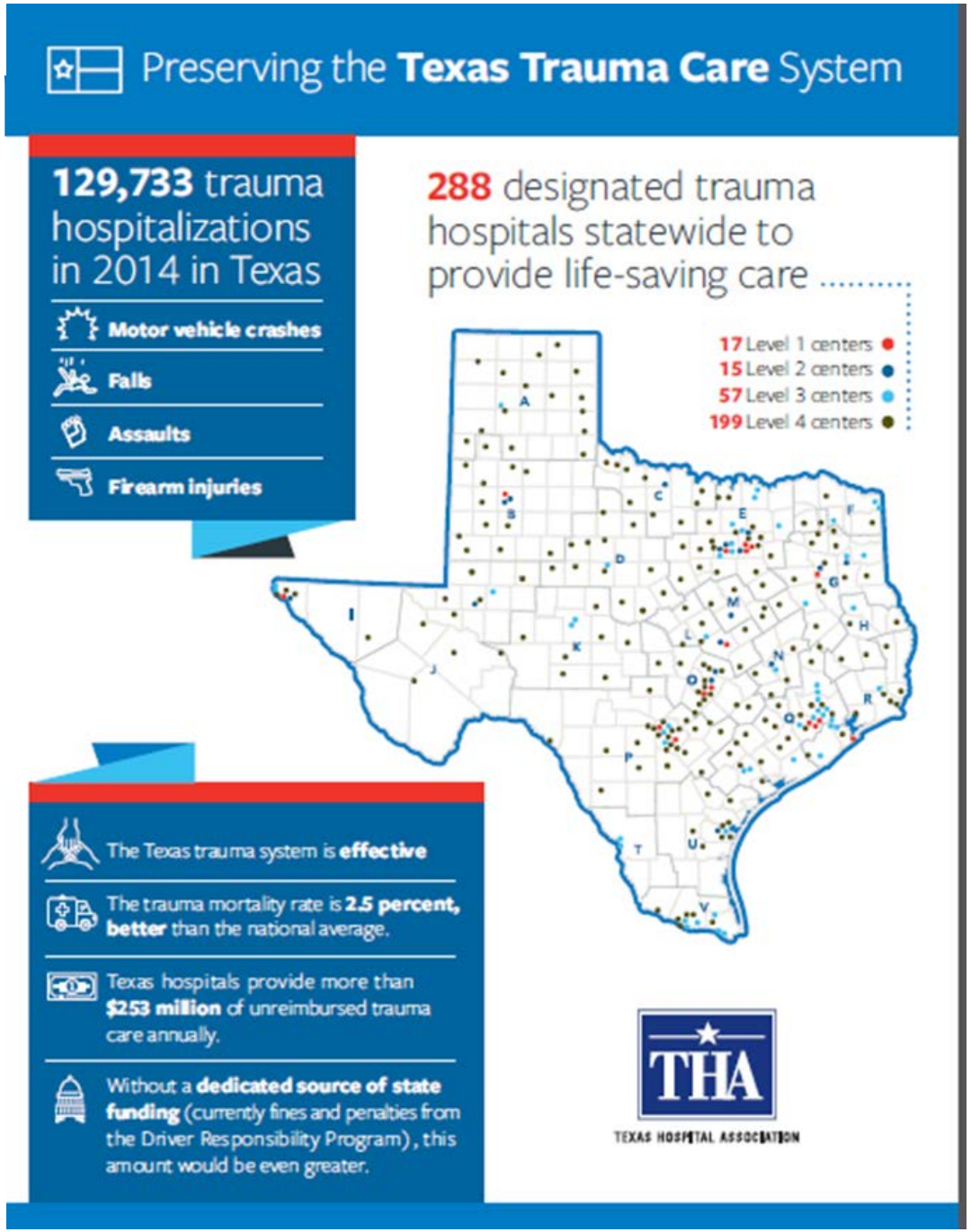
Cost Containment in HHS Budget FY18-19

Adopts $427.1 million GR ($1.0 billion AF) in Medicaid cost containment, including:

- $350 million GR ($830 million AF) in Medicaid funding reductions and cost containment
- $77.1 million GR ($193.7 million AF) in reductions due to decreasing risk margins for Medicaid and CHIP managed care premiums
- Did not adopt “federal flexibility” riders - House “federal flexibility” rider included reduction of $1.0 billion GR ($2.4 billion AF)

Maintain Trauma Fundi

- 288 designated trauma facilities statewide:
  - 17 Level 1 Centers; 15 Level 2 Centers
  - 57 Level 3 Centers; 199 Level 4 Centers
  - 16 currently undergoing the designation process
- Since 2003 passage of Driver Responsibility Program, 77 NEW designated facilities
- $203 Million of DRP funds used for Medicaid hospital rate add-on, uncompensated trauma care
- 14 Bills filed on DRP
  - 6 to repeal the program;



Maintain Trauma Funding

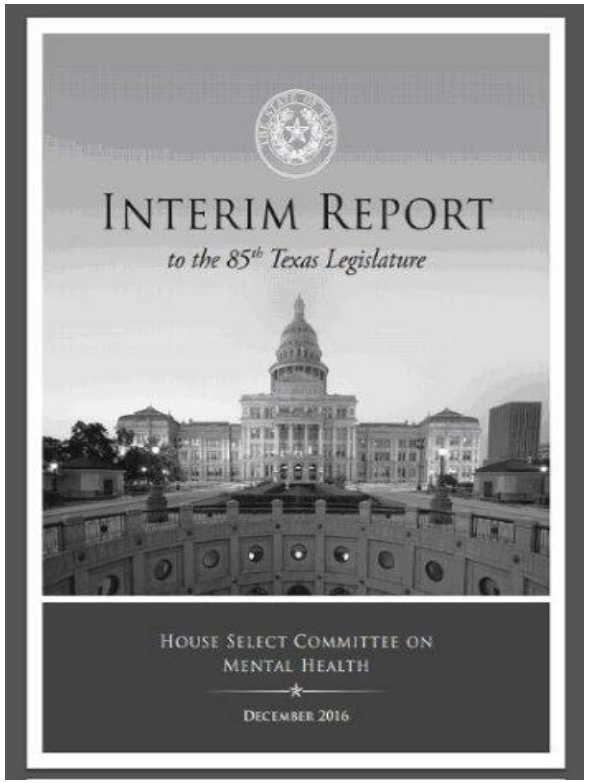
- HB 2068 would have repealed the DRP but maintain funding for Texas trauma hospitals
- Supported by THA and the Texas Association of Counties, Justices of the Peace and Constables Association of Texas, County Judges and Commissioners Association of Texas, Texas EMS Trauma & Acute Care Foundation, Sheriffs Association of Texas, Smart on Crime Coalition, and Texas Association of Business
- HB 2068 would replace DRP with an increase in the state traffic fine for all offenders and strengthen the fines and penalties for DWI offenders and those convicted of driving without auto insurance
- Amendments to the bill in the last days of the session weakened it and split the coalition of supporters, and the bill died

Increase Access to Behavioral Health Care

The impact of an underfunded BH care system is seen in reduced ED capacity, increased hospital readmissions and increased hospital uncompensated care.

Texas hospitals supported:

- HB 3083 grows the substance use provider workforce by adding Licensed Chemical Dependency Counselors to the Mental Health Loan Repayment Program ($2.1 M funded)
- Mental Health Parity – H.B. 10 Increases TDI's oversight of MH parity to ensure health insurance plans offer equal coverage for mental and physical health care, creates an ombudsman position at TDI and requires a study of denial rates for behavioral



Funding to Support Behavioral Health Care

- Appropriated more than $7.5 billion for behavioral health, including $3.6 billion for Medicaid and CHIP behavioral health services
- Of the $4 billion appropriated for non-Medicaid behavioral health services:
  - $10 million to increase maximum security forensic bed capacity
  - $244 million for hospital community-based beds (includes $21 million to purchase additional beds)
  - $63 million will be used to address the current and projected waitlists for community mental health services for adults and children
  - $300 million from the Rainy Day Fund will be used for construction and repairs at state hospitals and other inpatient mental health facilities + $160 million for critical

Funding for Health Care Workforce

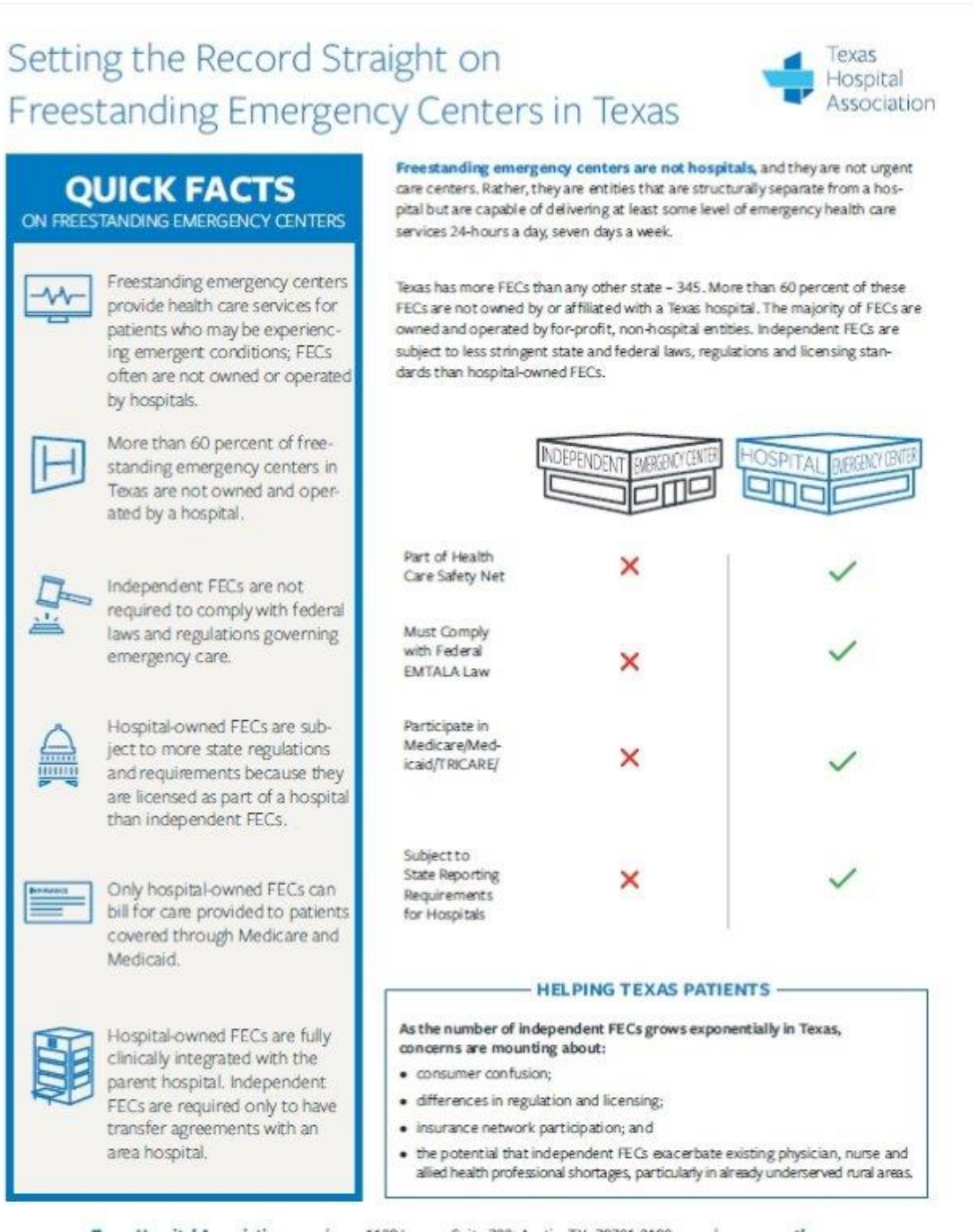
- **Continue to fund Graduate Medical Education to ensure we keep Texas educated physicians practicing in Texas.**
  - $90 million to continue the same level of state funding for current GME programs and add funding for new programs at UT Austin and UT RGV
  - $35 million in hold harmless funding to address decreased formula rates at all institutions
  - $97 million – an increase of $44 million over the prior biennium - to expand GME planning, and new and unfilled slots

- **Nursing shortage continues, exacerbated by lack of nurse faculty. Support continued funding of Professional Nursing Shortage Reduction Fund to allocate upfront money to schools with high graduation rates.**
  - $20 million - a decrease of nearly $14 million

And……

Regulation of Freestanding Emergency Centers:

- Importance of differentiating Hospital Based v. Licensed
- 8 bills, 2 budget riders
- And, MUCH DISCUSSION
- H.B. 3276 – notice of health benefit plan provider network status provided by certain freestanding emergency medical care facilities



Setting the Record Straight on Freestanding Emergency Centers in Texas

Texas Hospital Association

QUICK FACTS
ON FREESTANDING EMERGENCY CENTERS

Freestanding emergency centers provide health care services for patients who may be experiencing emergent conditions; FECs often are not owned or operated by hospitals.

More than 60 percent of freestanding emergency centers in Texas are not owned and operated by a hospital.

Independent FECs are not required to comply with federal laws and regulations governing emergency care.

Hospital-owned FECs are subject to more state regulations and requirements because they are licensed as part of a hospital than independent FECs.

Only hospital-owned FECs can bill for care provided to patients covered through Medicare and Medicaid.

Hospital-owned FECs are fully clinically integrated with the parent hospital. Independent FECs are required only to have transfer agreements with an area hospital.

Freestanding emergency centers are not hospitals, and they are not urgent care centers. Rather, they are entities that are structurally separate from a hospital but are capable of delivering at least some level of emergency health care services 24-hours a day, seven days a week.

Texas has more FECs than any other state – 345. More than 60 percent of these FECs are not owned by or affiliated with a Texas hospital. The majority of FECs are owned and operated by for-profit, non-hospital entities. Independent FECs are subject to less stringent state and federal laws, regulations and licensing standards than hospital-owned FECs.

	INDEPENDENT EMERGENCY CENTER	HOSPITAL EMERGENCY CENTER
Part of Health Care Safety Net	✗	✓
Must Comply with Federal EMTALA Law	✗	✓
Participate in Medicare/Medicaid/TRICARE/	✗	✓
Subject to State Reporting Requirements for Hospitals	✗	✓

HELPING TEXAS PATIENTS

As the number of independent FECs grows exponentially in Texas, concerns are mounting about:

- consumer confusion;
- differences in regulation and licensing;
- insurance network participation; and
- the potential that independent FECs exacerbate existing physician, nurse and allied health professional shortages, particularly in already underserved rural areas.

Other Bills in 2017 Impacting Hospitals

- Open Carry – Guns in Hospitals – 114 bills on guns
- Telemedicine Expansion
- Maintenance of Physician Board Certification
- Health Professional Scope of Practice
- Disposition of Fetal Remains
- Application of Texas Open Records Act
- Indexing Med Mal Tort Caps
- Sunset Review of Health Licensing Agencies (TMB*, BON)
- Abortion Prohibitions, Reporting *
- Maternal Mortality and Morbidity Review *
- Local Revenue Caps *

* First Called Special Session

1115 Medicaid Transformation Waiver

- Redesigned the delivery of health care in Texas
- Saved more than $8 billion over the five year period
- Directs $6.2 billion a year in Medicaid managed care savings to Texas hospitals and other health care providers to:
  - offset some uncompensated care costs - Uncompensated Care (UC) Pool
  - support 1,491 projects that improve access to needed services (BH, primary care, specialty care, chronic care) and reduces health care costs - Delivery System Reform Incentive Payment (DSRIP) Pool
- The waiver is currently extended through December 2017
- HHSC requested extension of 21 months (Sept.30, 2019) to allow the new administration and 115th Congress time to make anticipated changes

Uncompensated Care Increasing

Importance of UC funds in waiver

- Medicaid shortfall remains high
- Texas continues to have highest percentage and number of uninsured in nation.

Continue 1115 Medicaid Transformation Waiver

- Budget Neutrality Calculation
- UC Pool Size
- S10 vs HHSC UC Tool / Bad Debt Allowance
- Method of Finance / Disallowance
- DSRIP Continuation / Transition
- Medicaid Shortfall
- Hospital Rates
  - Legislature maintained inpatient and outpatient rates
  - Uniform Hospital Rate Increase Program
  - Local Provider Participation Fees

Federal Health Care Reform: Block Grants, Per Capita Spending Caps or……..

As fundamental changes to the Medicaid program are considered, Texas hospitals encourage the inclusion of:

- A funding baseline that is related to the demand for services and ensured adequate reimbursement for providers
- Protections for states with large low-income populations
- Funding allocations that accounts for supplemental payments and associated method of finance, including local government contributions
- Financial protections for states in the event of an

Questions?

Jennifer Banda, J.D.
Vice President
Advocacy and Public Policy
Texas Hospital Association
jbanda@tha.org
www.tha.org