

# 80<sup>TH</sup> TEXAS LEGISLATURE

HIGHLIGHTS OF THE NEW HEALTH CARE LAWS  
June 27, 2007

**FULBRIGHT**  
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2007

**SUMMARY OF BILLS THAT DID NOT PASS**

***HB 1094: Health Care Decisions on Advance Directives***

Would have amended HEALTH & SAFETY CODE §§ 166.045 & 166.046. Currently, a physician's decision not to abide by a patient's advance directive to provide life support is reviewable by the facility ethics board. Once the review board decides that life-support is inappropriate, the facility has to make reasonable efforts to transfer the patient to a physician or facility that will provide life-support. The patient is responsible for the cost of life support while the facility attempts transfer, and the facility is not required to give such support beyond 10 days time.

**Practical Effect:** Would have changed the law so that if a physician refuses to follow only advance directives requesting life support (except those for artificial nutrition and hydration), the patient *must* be transferred to a physician or facility willing to sustain treatment and the facility *must* provide life support until a transfer is effected (with the patient bearing the cost). Compare to HB 3474, which also did not pass.

***HB 2877: Office of Inspector General***

Would have given the OIG authority under the bill to investigate fraud, waste, and abuse, among other duties, in the provision of health and human services in Texas. The OIG would have been appointed by the governor to serve two-year terms and he/she would have rulemaking and subpoena authority. The bill also authorized the OIG to commission and employ peace officers.

**Practical Effect:** Would have amended GOV'T. CODE § 531.102 to make the Office of Inspector

General (OIG) an agency that would be administratively attached to the Texas Health and Human Services Commission ("HHSC").

***HB 3281: Recovery of Medical Costs in Civil Actions***

Would have amended CIV. PRAC. & REM. CODE § 41.0105 to clarify that a claimant in a health care liability claim under Ch. 74 may recover medical or health care expenses actually paid or incurred by or on behalf of the claimant. The section would not have applied to a claim for future medical or health care expenses.

**Practical Effect:** The limitation on recovery of damages for medical or health care expenses "paid or incurred" as set forth in the HB 4 Tort Reform provision, is now limited to health care claims only and not all personal injury claims and not to claims for future medical or health care expenses. *Note: Governor Perry vetoed this bill.*

***HB 3474: Advance Directives***

Would have amended HEALTH & SAFETY CODE ch. 166 to narrow the procedures for review of refusal to follow advance directives to only those advance directives given by "qualified, incompetent patients." This bill would have required facilities to appoint "patient liaisons" to assist the patients' representatives (or "surrogates") in proceeding through the review process. Under this bill, if a physician and the ethics committee disagrees with an advance directive to provide life support, the facility must try to transfer the patient to another facility. The facility, however, only has to provide life support for 11 business days after it makes its decision; a court order within the 11 days can extend the time a facility must keep a patient on life support, and the bill sets the process for obtaining such an order. This bill

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specifically requires that a patient awaiting transfer receive treatment to “enhance pain relief and minimize suffering.” Of interest to health systems is the provision holding that “if the patient is readmitted [in the same or worse condition to] another facility in the same health care system within six months from the date” the determination that life support is inappropriate, the facility need not follow any of the procedures laid out above. Compare to HB 1094, which also did not pass.

### ***SB 23: Health Coverage Availability***

Would have added a new chapter 1465 to the INS. CODE to establish TexLink, an office at the Texas Department of Insurance (“DOI”), that would provide information to, educate, and answer queries of major employers, small businesses and citizens about available health insurance plans in Texas. The goal of TexLink was to address the high uninsured rate, particularly among small businesses, which was due to some degree to lack of access to information and assistance with navigating health insurance options. The TexLink office would provide information and assistance in educating the public about the importance of health coverage and about the numerous insurance options.

### ***SB 205: Privacy of Health Information***

Would have removed, altered or added many Texas code provisions allegedly preempted by the Health Insurance Portability and Accountability Act of 1996. This bill would also have imposed different and additional requirements regarding the authorization and destruction of health records, for example: by amending HEALTH & SAFETY CODE to specify how a hospital or agent may charge reasonable fees for providing health care information; to require that covered entities not deny protected health information to an individual or his legal representative if the information is for inspection purposes.

### ***SB 290: Provision of Health Care***

Would have amended OCC. CODE § 105.002 and HEALTH & SAFETY CODE ch. 241, and added HEALTH & SAFETY CODE chs. 65 & 257. This bill touches on niche hospitals, emergency room physician staffing and grants for indigent health care.

Would have changed the patient-type threshold requirements for qualifying as a niche hospital. For example, under this bill, a facility could qualify as a niche hospital if “at least 45 percent of the hospital’s Medicare claims are for cardiac, orthopedic, or surgical services” -- as opposed to requiring that the facility classify two thirds of its patients in not more than two major diagnosis-related areas. This bill would have increased the total allowable number of Medicaid claims per bed per year from 10 to 25.

Would have required that “a hospital emergency department have on duty at all times at least one physician who is board certified in emergency medicine.”

Would have established an “Indigent Care Grant Fund” wherein the Texas Department of State Health Services (“TDSHS”) awards set-aside tax dollars to facilities that provide indigent health care. The bill requires HHSC to determine eligibility and procedures to dispense the awards.

Would have required HHSC to set up a uniform reporting and collection system for hospital and ambulatory surgical center financial and utilization data specified under newly-added HEALTH & SAFETY CODE ch. 257.

### ***SB 380: Disclosures Regarding Certain Out-of-Network Professional Services***

Would have added INS. CODE ch. 1456 to require health benefit plans, health care facilities, and facility-based physicians to disclose, orally and in writing, the possibility of

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balance billing for services provided to patients. This disclosure must be in English and Spanish and given at admission or, in emergency situations, before discharge as appropriate. This bill is substantially similar to failed-bills SB 698 & HB 2665, which Sen. Van de Putte and Congressman Thompson filed in 79(r).

### ELECTRONIC HEALTH RECORDS

#### ***HB 1066: Texas Health Service Authority***

Adds HEALTH & SAFETY CODE ch. 182 to establish the Texas Health Services Authority (“THSA”) which shall be governed by a board of 11 directors appointed by the governor, with the advice of the senate. The board may hire a chief executive.

The THSA may: (1) establish statewide information exchange capabilities; (2) seek funding; and (3) support regional health information exchange initiatives.

**Practical Effect:** Establishes the THSA, a public-private collaborative, in order to “promote, implement, and facilitate the voluntary and secure electronic exchange of health information.”

Effective immediately.

#### ***HB 2042: Electronic Provider Information***

Adds HUM. RES. CODE ch. 32 C, which requires HHSC to establish and administer an electronic, searchable, Internet-based database of providers participating in the medical assistance program.

The database will include information about the practices of participating physicians; physician groups and non-physicians; and whether the provider is accepting new recipients, or has any practice limitations, including specific age range limitations.

**Practical Effect:** Information about individual providers participating in the Texas Medicaid program to be available on-line.

Effective immediately.

#### ***SB 204: Electronic Medical Records***

Amends HEALTH & SAFETY CODE ch. 161, to require that anyone who sells, leases or otherwise provides an electronic medical records software system include in the system the ability to connect to and prepare reports for and from the State Immunization Registry.

HHSC authorized to promulgate rules regarding fields necessary to populate the immunization registry and applicable the data standards compatible with those adopted by Health Information Technology Standards Panel of ANSI and Certification Commission for Healthcare Information Technology.

Attorney General may bring an action to enjoin a violation of this requirement.

**Practical Effect:** Electronic medical records software sold in Texas now required to interface with State Immunization Registry.

Effective immediately.

### HEALTH FACILITIES

#### ***HB 2168: Municipal and County Hospital***

Adds HEALTH & SAFETY CODE §§ 262.037, 262.038, 264.035, 264.036, 285.301 and 285.302; amends HEALTH & SAFETY CODE § 285.091(a).

Municipal and county hospital authorities are authorized by law to construct and operate hospitals for the benefit of the public. The growing trend in health care is for hospitals to enter into joint ventures with physicians to own and operate ancillary health care facilities, such

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as day surgery centers or imaging centers. However, under current law, municipal and county hospitals authorities are not allowed to form or sponsor nonprofit corporations. HB 2168 authorizes hospital authorities and districts to create a nonprofit corporation and to own and operate an ancillary health care facility.

**Practical Effect:** Allows municipal and county hospital authorities (1) to “form and sponsor nonprofit corporations to own and operate all or part of one or more ancillary health care facilities consistent with the purposes of a hospital authority under” chs. 262 & 264, respectively and (2) to “contribute money to or solicit money for the nonprofit corporation” and “directly or through any nonprofit corporation formed by the authority, contract, collaborate, or enter into a joint venture with any public or private entity as necessary to carry out the functions of or provide services to the authority.”

Effective immediately.

## HEALTH INSURANCE

### ***HB 472: Third-Party Administrators***

Amends INS. CODE ch. 4151 to provide that workers’ compensation third party administrators are subject to regulation by the Texas Third Party Administrator Act; prohibits insurers from knowingly referring a claim to an administrator unless the person is licensed under INS. CODE ch. 4151; increases the auditing and reporting requirements of all third party administrators to the DOI; prohibits compensation to administrator based on savings to the plan due to adverse benefits determinations; provides penalties and disciplinary actions’ procedures.

**Practical Effect:** Makes regulation of third party administrators more comprehensive, places a burden on insurers to monitor licensure status of third party administrators and expands the

category of those needing third party administration licenses to include persons who remit premiums or pay claims in connection with worker’s compensation. Because of the increase in regulation and the limited staff in the TPA Division, it will most likely slow down the process for obtaining a third party administrator license.

Effective September 1, 2007, for certain entities, January 1, 2008, for others.

### ***HB 522: Health Benefit Plan IDs***

Adds INS. CODE ch. 1660 to establish an exploratory committee under the DOI to establish a program wherein physicians and patients can more easily and more quickly access private insurance eligibility information. Establishes a county-wide ID card program to test the program.

**Practical Effect:** The results of the Advisory Committee and the ID card pilot program could result in extensive and costly technology upgrades to be borne by health plans and insurers which offer commercial products that can be accessed by providers and patients on a real time basis.

Effective immediately.

### ***HB 2252: Disclosure About Health Care Programs***

Amends INS. CODE chs. 541 and 1201 to exempt from the list of violations those instances when HMOs or insurers offer and enroll enrollees in health-related services; makes it not discriminatory for insurers to provide discounts to policy-holders who “participate in programs promoting disease prevention, wellness, and health.”

**Practical Effect:** Authorizes and encourages HMOs and insurers to promote disease prevention, wellness and health through

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disclosure to enrollees and potential enrollees of the availability of additional services and the creation of premium discounts, rebates or other reductions in co-payments, co-insurance or deductibles for an insured who participates in programs promoting disease prevention, wellness and health.

Effective immediately.

### ***HB 2467: Modification of Employer Plans***

Amends INS. CODE § 1501.108 to allow a small or large employer health benefit plan issuer to modify a small or large employer health benefit plan if (1) the modification occurs at the time of coverage renewal; (2) the modification is effective uniformly among all small or large employers covered by that health benefit plan; and (3) the issuer notifies the commissioner and each affected covered small or large employer of the modification not later than the 60th day before the date the modification is effective.

**Practical Effect:** Authorizes modification to large and small employer plans if the modification is uniform and timely effected in connection with renewals; has the effect of changing the guaranteed renewability of such plans.

Effective September 1, 2007.

### ***HB 2548: Limitations in Health Benefit Risk Pools***

Amends INS. CODE 1506.153 to provide that a person is eligible for “pool coverage” who is a part-time employee eligible to participate in an employer plan that provides health benefit coverage (1) that is more limited or restricted than coverage with the pool; and (2) for which there is no employer contribution to the premium, either directly or indirectly; states that an individual is eligible for pool coverage who is eligible for COBRA benefits but did not elect continuation of coverage or whose elected

continuation of coverage lapsed or was cancelled without reinstatement.

Holds that pool coverage for an eligible individual excludes charges or expenses incurred before the expiration of 180 days from the effective date of coverage with regard to any condition for which (1) the existence of symptoms would cause an ordinarily prudent person to seek diagnosis, care, or treatment within the six-month period preceding the effective date of coverage; or (2) medical advice, care, or treatment was recommended or received during the six-month period preceding the effective date of coverage.

**Practical Effect:** Allows part-time employees meeting certain specific conditions to participate in the risk pool coverage for health insurance.

Effective immediately.

### ***SB 1255: Duties of Health Cooperatives***

Amends INS. CODE ch. 1501 to authorize both large and small employers to participate within the same health cooperative; allows members to limit membership in the cooperative employers within a single industry.

**Practical Effect:** Authorizes membership of a health group cooperative to consist of both small and large employers; however, the cooperative may be restricted to small and large employers within a single industry grouping as defined by the US Census Bureau’s North American Industry Classification System.

Effective September 1, 2007.

## HEALTH PROFESSIONS

### ***HB 643: Voluntary Dental Care***

Amends OCC. CODE § 257.002 to permit the Texas Board of Dental Examiners to renew a lapsed dental license without the license holder

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submitting an application for a new license, provided the license holder places his renewed license on retired status and confines his practice to charity care.

**Practical Effect:** Facilitates renewal of lapsed dental license for retired dentists providing charity care.

Effective September 1, 2007.

### ***HB 709: Umbilical Cord Blood Options***

Adds HEALTH & SAFETY CODE §§ 162.018 and 162.019, which require that HHSC, not later than January 1, 2008, prepare, and TDSHS distribute, a brochure based on nationally accepted, peer reviewed, scientific research information regarding stem cells contained in the umbilical cord blood after delivery of an infant and options and costs associated with collection, donation, use and storage of stem cells.

Physicians or other persons permitted by law to attend a pregnant woman during gestation or at delivery should offer the up-to-date brochure, and allow the woman to arrange for umbilical cord stem cell use and storage. **Persons covered by this section are not subject to discipline if they fail to hand out the brochure.**

**Practical Effect:** Increased awareness of options for stem cells contained in umbilical cord blood.

Effective immediately.

### ***SB 29: Collection of Health Information***

Amends HEALTH & SAFETY CODE § 105.003 to require licensing and registration agencies to collect the following information from certain health professionals: (1) full name and the last four digits of the social security number; (2) full mailing address; and (3) educational background

and training. The health professionals affected include: audiologists, chiropractors, licensed professional counselors, licensed chemical dependency counselors, dentists, dental hygienists, pharmacists, physicians and others.

Licensees and applicants shall also be asked to voluntarily disclose other information, such as date and place of birth, sex, and race and ethnicity.

**Practical Effect:** Additional information regarding health professionals to be provided to database maintained by Statewide Health Coordination Council.

Effective March 1, 2008.

### ***SB 36: License to Practice Medicine***

Amends OCC. CODE § 155.056, to permit physicians who hold a physician in training permit (“PIT”) or who have applied for a PIT to satisfy the examination requirements if they: (1) pass all but one part of the examination within three attempts and pass the remaining part of the examination within six attempts; (2) are specialty board certified; and (3) have completed, in Texas, an additional two years of postgraduate medical training approved by the Texas Medical Board.

Physicians who hold a license in good standing in another state and do not have any restrictions, disciplinary orders or probation in the other state may also satisfy the examination requirements if they: (1) pass all but one part of the examination within three attempts and pass the remaining part of the examination within one additional attempt; (2) are specialty board certified; and (3) have completed, in Texas, an additional two years of postgraduate medical training approved by the Texas Medical Board.

**Practical Effect:** Certain physician applicants for a medical license who pass all but one of the licensing exam sections in three tries may

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attempt the remaining section one to three more times, depending on their status.

Effective immediately.

### ***SB 155: Chemical Dependency Counselors***

Amends OCC. CODE ch. 504 to require that work experience required for licensure as a chemical dependency counselor be supervised by a certified clinical supervisor and that documentation be provided to the TDSHS demonstrating that the applicant has access to a peer assistance program. Also, requires all certification information to appear on the face of the license, and outlines numerous disciplinary and administrative procedures.

**Practical Effect:** Enhances requirements for work experience for licensed chemical dependency counselors

Effective September 1, 2007, except sections 504.1521 and 504.2025 take effect September 1, 2008.

### ***SB 199: Convictions Barring Employment***

Amends HEALTH & SAFETY CODE § 250.006 to provide that individuals convicted of certain additional offenses (e.g., indecent exposure, improper relationship between educator and student, improper photography or visual recording, terroristic threat, or online solicitation of a minor) may not take a job involving direct contact with elderly or disabled patients. However, a individual who successfully completes deferred adjudication community supervision and receives a dismissal for any offense listed in § 250.006 may take a job involving direct contact with the above-mentioned protected patients.

**Practical Effect:** Expands the range of criminal offenses which prohibit employment in facilities serving the elderly or disabled.

Effective September 1, 2007.

### ***SB 1832: Anatomic Pathology Services***

Adds OCC. CODE ch. 166 to provide that a person violates ch. 166 if the person: (1) does not directly supervise or perform anatomic pathology services for a patient; and (2) fails to disclose in her bill, (a) the name and address of the physician or laboratory that provided the anatomic pathology services, and (b) the net amount paid or to be paid for each anatomic pathology service provided to the patient by the physician or laboratory.

Persons violating this chapter are subject to disciplinary action and penalties consistent with rules as-yet-unwritten by the Texas Medical Board.

**Practical Effect:** Supervision and disclosure required when providing anatomic pathology services – histopathology; cytopathology and hematology.

Effective September 1, 2007.

## IMMUNIZATIONS

### ***HB 1059: Immunizations Education and Awareness***

Amends ED. CODE § 38.001 to require the TDSHS to prepare and make available in English and Spanish a list of the immunizations required under section 38 for admission to public schools and of any additional immunizations the department recommends for school-age children.

**Practical Effect:** Requires the TDSHS to prepare an annual list of required, as well as recommended, immunizations for school-aged children and make the list available in a manner that allows school districts the ability to post the list on the districts' internet websites. Any school district that maintains an internet website

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must prominently post: (1) a list of immunizations required by the TDSHS for admission to public school; (2) immunizations that are not required for admission, but are recommended by either TDSHS or the district school board, which must include the influenza vaccine, unless TDSHS requires such vaccine for admission; and (3) to the extent known, a list of health clinics in the district that offer the influenza vaccine. Specifically provides immunity to school districts for any injury received by a student due to administration of required or recommended vaccines by a district employee or volunteer.

Effective immediately.

### ***HB 1098: Prohibiting HPV Immunization From Being Required For School Admission***

Amends ED. CODE § 38.001 such that immunization against human papillomavirus is not required for a person's admission to any elementary or secondary school.

**Practical Effect:** This bill was adopted to overturn Governor Perry's executive order mandating that all female children be vaccinated against human papillomavirus ("HPV"). Grants authorization to the executive commissioner of the HHSC, rather than the Texas Board of Health, to modify, delete, or require certain immunizations for admission to any elementary or secondary school with some exceptions and provides that immunization against HPV is not required for admission to any elementary or secondary school.

Effective immediately.

### ***SB 811: Vaccines for Children Influenza Selection***

Amends HEALTH & SAFETY CODE ch. 161 to require the TDSHS to allow each health care provider participating in the Vaccines for Children Program to select certain influenza

vaccines and to use both the trivalent influenza virus and live, attenuated influenza vaccines -- as opposed to using the least expensive vaccine obtained from TDSHS.

**Practical Effect:** Requires the TDSHS to allow health care providers participating in the Vaccines for Children Program (which provides free influenza vaccine to providers participating in exchange for abiding by certain federal laws) to select certain influenza vaccines and to use both the trivalent influenza virus and live, attenuated influenza vaccines, rather than having TDSHS select the brand.

Effective immediately.

## LIABILITY/TORT REFORM

### ***HB 2005: Voluntary Physical Therapy***

Amends CIV. PRAC. & REM. CODE § 84.003(5) to clarify that physical therapists, physical therapist assistants, occupational therapists, and occupational therapy assistants are within the definition of volunteer health care provider for purposes of the Charitable Immunity and Liability Act.

**Practical Effect:** Physical therapists, physical therapist assistants, occupational therapists and occupational therapy assistants can enjoy, as many other health care providers, immunity from certain acts or omissions resulting in injury, damage or death as a result of pro bono medical care if the volunteer was acting in the course and scope of the volunteer's duties and functions.

Effective September 1, 2007.

### ***HB 2117: Liability of Certain Emergency Care Providers***

Amends CIV. PRAC. & REM. CODE § 74.151(a) specifically to exempt volunteers who are first responders -- as the term is defined under

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GOV'T. CODE § 421.095 -- from civil liability for an act performed during the emergency unless the act is willfully or wantonly negligent.

**Practical Effect:** Clarifies that public safety volunteers who are first responders in emergency situations and who in good faith administer emergency care are protected from any liability for civil damages incurred while assisting in the medical emergency situation.

Effective immediately.

### LONG-TERM CARE

#### ***HB 2392: Escrow Fees for Construction***

Adds HEALTH & SAFETY CODE §§ 246.0735 and 246.0736 to provide that the DOI Commissioner may put in place escrow-release requirements distinct from those set out in HEALTH & SAFETY CODE § 246.073 for facilities that obtain a certificate of authority **before** facility construction begins. A facility that meets the new (and as-of-yet not promulgated) rules is not required to satisfy HEALTH & SAFETY CODE § 246.073 to get at its escrowed entrance fees. If, however, the facility does **not** obtain the certificate of authority before the start of construction, it must meet the conditions in HEALTH & SAFETY CODE § 246.073 before the escrow agent may release escrowed entrance fee funds to the Continuing care retirement community (“CCRC”) provider.

In either case, the DOI Commissioner may authorize the escrow agent to **continue** to release escrowed entrance fees for a facility to its provider **without further proof** of satisfying the requirements of HEALTH & SAFETY CODE § 246.073 if: (1) the provider provides a monthly report to the department on marketing activities for living units of the facility; and (2) the provider immediately informs the department of any problems, issues, or irregularities encountered in its marketing activities for the facility. If the provider fails to meet either of

these two conditions, the DOI Commissioner may require the provider to comply with the provisions of HEALTH & SAFETY CODE § 246.073 before authorizing the escrow agent to further release escrowed entrance fees to the CCRC.

**Practical Effect:** Relaxes escrow release requirements for facilities that meet certain requirements.

Effective immediately.

#### ***HB 3473: Consent for Medical Treatment***

Amends HEALTH & SAFETY CODE ch. 313 to include an adult patient of a home and community support services agency who is comatose, incapacitated, or otherwise mentally or physically incapable of communication as a person for whom adult surrogates are authorized to consent to medical treatment on behalf of the patient. The bill makes various minor changes, such as requiring a surrogate decision-maker's consent to medical treatment not made in person to be reduced to writing in the patient's medical record, signed by the agency, hospital, or nursing home staff member receiving the consent, and countersigned in the patient's medical record or on an informed consent form by the surrogate decision-maker as soon as possible.

**Practical Effect:** Adds home and community support services agency facilities licensed under HEALTH & SAFETY CODE ch. 142 to the list of healthcare providers whose communications and actions with regard to comatose patients is regulated by HHSC and who are exempt from liability for these actions.

Effective September 1, 2007.

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### ***SB 344: Health Inspection of Long-Term Care Facilities***

Amends HEALTH & SAFETY CODE chs. 142, 242, 247 and 252 so that at the conclusion of a survey or complaint investigation, TDSHS must fully inform the person in charge of the home and community support services agency of the preliminary findings of the survey at an exit conference and leave a written list of those findings with the agency at that exit conference.

If TDSHS or its representatives find additional violations during review of field notes or in preparation of the official statement of deficiencies, TDSHS must provide an additional in-person exit conference. The conference may not be by telephone, e-mail, or fax.

Requires facilities to submit a plan of correction to the regional director with supervisory authority over the inspector not later than the 10th working day after the date of the facility's receipt of the final **official** statement of violations.

**Practical Effect:** Regarding nursing homes, assisted living facilities, convalescent homes, or any related institution inspections, the bill requires that TDSHS provide additional in-person exit conferences so that facility operators may become fully aware of new violations discovered after the initial visit and exit conference. It sets requirements for notice to certain officers of the facilities.

Effective September 1, 2007.

### **MANAGED CARE**

#### ***HB 1594: Expedited Credentialing for Physicians***

Amends INS. CODE ch. 1452 to require the DOI to develop certain expedited credentialing procedures for physicians in good standing to be credentialed with managed care plans; requires

that the managed care plan determine whether a licensed physician in good standing with the Texas Medical Board who joins an established medical group that has a contract with a managed care plan meets or does not meet the necessary credentials of the managed care plan upon submission of all necessary documentation and information; authorizes a managed care plan to recover the difference between in-network benefits and out-of-network benefits if a physician fails to meet the managed care plan's credentials, but an enrollee in the managed care plan is not responsible and shall be held harmless for the difference between in-network copayments paid by the enrollee to a physician who is determined to be ineligible and the managed care plan's charges for out-of-network services.

**Practical Effect:** Requires HMOs, PPOs and insurance companies to pay a physician who joins an established group as if the physician were already a participating provider upon submission of all documentation required by the plan while the credentialing process is being conducted, although the plan need not list the physician in the provider directory until approved. If credentialing standards are not met, the physician may have to repay the difference between the in-network and out-of-network reimbursement and cannot collect the additional enrollee copayment amounts.

Effective September 1, 2007.

#### ***HB 3064: Discount Health Plans***

Adds HEALTH & SAFETY CODE ch. 76 to make discount health care program operators (operators) and marketers subject to the applicable consumer protection laws under BUS. & COM. CODE ch. 17 in addition to the requirements of the newly-added chapter.

Prohibits any advertisement, solicitation, or marketing material of a discount health care program ("program") from containing false,

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misleading, or deceptive statements; specifically prohibits certain statements set forth in the newly-added chapter. The bill: (1) requires any advertisement, solicitation, and marketing material of a program to clearly and conspicuously state that the program is not insurance; (2) prohibits any advertisement, solicitation, or marketing material of a program from using the term “insurance,” except as a disclaimer of any relationship between the program and insurance, or as a description of an insurance product connected with a program; and (3) prohibits any advertisement, solicitation, or marketing material of a program from using certain terms in a manner that could reasonably mislead an individual into believing that the program is health insurance or provides similar coverage.

Regulates marketing and contracting activities; requires certain disclosures; sets penalties for disciplinary actions; gives Texas Department of Licensing and Regulation (“TDLR”) subpoena power to investigate these organizations and enforcement authority.

**Practical Effect:** Regulates discount card programs by restricting marketing activities, imposing certain disclosure requirements and creating standards with which discount card program operators must comply. Discount card program operators must register with TDLR. TDLR must adopt rules by January 1, 2008. Registration is not required until April 1, 2008.

Effective September 1, 2007.

### ***SB 1391: Health Care in Foreign Countries***

Amends INS. CODE 1215 to prohibit certain health benefit plans, including a consumer choice of benefits plan, from requiring enrollees to travel to a foreign country to receive health care services; applies only to a health benefit plan that is delivered, issued for delivery, or renewed on or after January 1, 2008. A health benefit plan that is delivered, issued for delivery,

or renewed before January 1, 2008, is covered by the law in effect at the time the plan was delivered, issued for delivery, or renewed, and that law is continued in effect for that purpose.

**Practical Effect:** Discourages outsourcing of health care services. A health benefit plan issuer (including HMOs and other insurers) may not issue or offer for sale a group or individual health benefit plan that requires an enrollee to travel to a foreign country to receive a particular health care service under the health benefit plan.

Effective September 1, 2007.

### ***SB 1884: Prompt Payment Penalties***

Amends INS. CODE 843.342 such that for penalty calculations in situations involving prompt payment of providers by MCOs, the computation of the “underpayment amount” must be computed on “the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to an amount equal to the billed charges as submitted on the claim minus the contracted rate;” also extends the time within which the provider must tell the MCO of the underpayment and shortens the time within which the MCO can pay and escape penalty.

**Practical Effect:** Amends the HMO and PPO Acts by changing the calculation for underpaid claims to eliminate a potential provider windfall. The bill increases the period of time that providers have to identify and notify health plans of underpayments from the current 180 days to 270 days. Finally, the bill decreases the amount of time that health plans have to correct an underpayment after notification without being penalized from the current 45 days to 30 days.

Effective September 1, 2007.

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**MEDICAID/MEDICAL ASSISTANCE**

***HB 52: Medicaid and Long-Term Care***

Amends HUM. RES. CODE § 32.024(w) by increasing the personal needs allowance from a minimum of \$45 per month to \$60 per month. Residents of convalescent or nursing homes or related institutions licensed under HEALTH & SAFETY CODE ch. 242, personal care facilities, ICF-MR facilities, or other similar long-term care facilities that receive medical assistance get an increase in personal needs allowance to \$60. Those people who receive the allowance can use it to purchase simple goods and services.

**Practical Effect:** Increases the personal needs allowance for residences of convalescent or nursing homes, personal care facilities, ICF-MR or other similar long-term care facilities from \$45 to \$60 per month.

Effective September 1, 2007.

***HB 109: Children’s Health Insurance Program***

Amends HEALTH & SAFETY CODE ch. 62 relating to the target beneficiaries of CHIP (children who do not have private health insurance and those who do not qualify for Medicaid). The bill will open up eligibility to many currently-ineligible families by taking account of “income offsets” in the same manner as the Medicaid program to determine the family’s income and thus eligibility. The bill sets the *net* income cut-off at 200% of the federal poverty limit, allowing families to own at least \$10,000 of “allowable assets,” including family cars. The bill includes sections that require CHIP to increase awareness of the Program through community outreach programs, school-based health clinics and a toll-free hotline.

The bill extends the eligibility period to 12 months from 6 months and eliminates the 90 day waiting period.

The legislature estimates that the changes will cost approximately \$45,000,000 per year by 2012.

**Practical Effect:** The goal is to decrease “disenrollment” from the CHIP program.

Effective immediately.

***HB 889: Unlawful Acts Against Medicaid***

Amends HUM. RES. CODE § 36.002 and makes conduct that is considered a violation of the FCA’s anti-kickback provision also a violation of TMFPA. Under the new law, it is a violation of Medicaid to knowingly engage in conduct that constitutes a violation under HUM. RES. CODE § 32.039(b) -- submitting false claims to the Texas Department of Human Services.

**Practical Effect:** This is one in a line of bills meant to bring Texas Medicaid Fraud and False Claims acts into compliance with the (often) stricter Federal Medicaid laws.

Effective September 1, 2007 (with 2/3 vote), applies only to violations committed after the effective date.

***HB 1579: Health Care Services-Medicaid***

Adds GOV’T CODE § 533.01315, which requires HHSC to pay a federally-qualified health center, rural health clinic, or municipal health department’s public clinic for health care services provided to a recipient outside of regular business hours, including on a weekend or holiday, at a rate that is equal to the allowable rate for those services, regardless of whether the recipient has a referral from the recipient’s primary care provider.

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Directs HHSC to implement rules to carry out the new law.

**Practical Effect:** HHSC will have to reimburse health centers and rural health clinics for care provided outside regular business hours to Medicaid recipients without a referral from the patient's primary care provider. These health centers and clinics that remain open outside of regular business hours will be able to take advantage of certain incentives

Effective September 1, 2007.

### ***HB 1633: Eligibility for Medicaid***

Amends HUM. RES. CODE § 32.026 to require HHSC to develop expedited procedures for determining eligibility and enrollment in Medicaid for active-duty armed services personnel.

**Practical Effect:** For active-duty armed-services personnel and their dependents will benefit from expedited enrollment and eligibility determination, as set out in HHSC's rules to be promulgated under the newly-added subsection.

Effective September 1, 2007.

### ***HB 2636: Solvency Standards***

Adds GOV'T CODE § 533.019 to require DOI and HHSC to establish fiscal solvency standards and complaint system guidelines for managed care organizations that serve Medicaid recipients; requires internal guidelines regarding a managed care organization's complaint process be made available to a recipient in an appropriate communication format when the recipient enrolls in the Medicaid managed care program.

**Practical Effect:** Managed care organizations will have to follow solvency standards as well as fulfill more intensive disclosure and compliance

rules regarding the managed care organization's complaint procedures.

Effective April 1, 2009, except Article 3 effective September 1, 2007.

### ***HCR 35: Request to Congress***

Joint resolution urging the United States Congress to eliminate the 24-month Medicare waiting period to save money on future medical costs incurred as the recipients' conditions worsen and ease the burden on Medicaid.

### ***SB 10: Medical Assistance Program***

Revises multiple sections of GOV'T CODE, HEALTH & SAFETY CODE and HUMAN RES. CODE.

Provisions relating to Medicaid patients:

- (1) Rewards Medicaid patients who complete smoking cessation, weight loss and other preventative health programs;
- (2) Encourages Medicaid managed care plans to enroll patients in "value-added" preventative health services;
- (3) Creates customized benefit plans that are tailored to a patient's individual health care needs;
- (4) Creates a pilot program for Health Savings Accounts under Medicaid, which would be completely optional;
- (5) Expands efforts to assist with the cost of premiums for those who are Medicaid-eligible but have access to employer-based plans;
- (6) Allows individuals voluntarily to opt out of Medicaid in exchange for the state paying the employee's portion of premiums for employer-based coverage;
- (7) Requires HHSC to promote patient access to federally qualified health center services or rural health clinic services;

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- (8) Directs HHSC to design a Medicaid Health Savings Account pilot program; and
- (9) Directs HHSC to determine if increased Medicaid reimbursement for certain nursing-home care results in improved health of residents.

### SB 10 provisions relating to Medicaid costs:

- (1) Expands efforts to stop fraud and abuse (commissioning a joint study on the use of technology to combat fraud);
- (2) Authorizes co-pays for non-emergency visits to hospital emergency rooms, providing that there are alternative health care options available;
- (3) Standardizes the way hospitals report uncompensated care to eliminate guesswork involved in the state's cost projections;
- (4) Evaluates possible expansion of integrated care management to areas where it is currently unavailable;
- (5) Requires HHSC start a pilot project to reduce costs associated with Medicaid cost reporting and auditing process for private ICF-MR facilities and home and community-based services waiver program providers
- (6) Requires HHSC, by rule, to adopt cost reporting and auditing processes and guidelines similar to standard business financial reporting processes and guidelines. The rules must:
  - (a) require that cost report forms: not exceed 20 letter-size pages in length, including any appendices; and be distributed to providers at least one month before the beginning of the applicable reporting period;
  - (b) require that a provider summarize information regarding program revenue, administrative costs, central

- office costs, facility costs, and direct-care costs, including the hourly wage detail of direct-care staff;
- (c) allow a provider to electronically submit cost reports;
- (d) require the filing of cost reports in alternating years as follows: in even-numbered years, private ICF-MR facility providers; and in odd-numbered years, home and community-based services waiver program providers;
- (e) allow a provider to request and receive from the commission information, including reports, relating to the services provided by the provider that is maintained by the commission in a database or under another program or system to facilitate the cost reporting process; and
- (f) require that each provider receive a full audit by the commission's office of inspector general at least once during the period the pilot project is in operation.

- (8) Requires HHSC to supervise the administration and operation of the "medical transportation program"; and
- (9) Requires HHSC to develop and implement rules by which hospitals can account for and report uncompensated care to HHSC;

### SB 10 provisions relating to the uninsured:

- (1) Develops a "3-Share" or "Multi-Share" model in which the state can partner with employers and local governments or charitable entities to connect Texans with health coverage;

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- (2) Creates a committee to recommend incentives for more employers to offer health and long-term care insurance; and
- (3) Establishes a low income funding pool that could be used to set aside a portion of federal uncompensated care dollars to connect low-income families with private health care.

**Practical Effect:** Implements changes designed to improve the Medicaid program.

Effective September 1, 2007 (with 2/3 vote), except that the section creating the “Medicaid Reform Legislative Oversight Committee” – SB10 §30 – takes effect immediately.

### ***SB 24: Telemedicine and Medicaid***

Amends GOV'T CODE § 531.0217 to require HHSC to provide Medicaid reimbursement for an office visit provided through telemedicine by a physician who assesses and evaluates a patient from a distant site when: (1) a health professional acting under the delegation and supervision of that physician is present with the patient at the time of the visit; and (2) the medical condition, illness, or injury for which the patient is receiving the service is not likely, within a reasonable degree of medical certainty, to undergo material deterioration within the 30-day period following the date of the visit.

Requires HHSC to develop rules to allocate telemedicine reimbursement between a physician consulting from a distant site and a health professional present with the patient, or by rule to establish a facility fee that said physician is required to pay a health professional present with the patient.

Requires that rules adopted by HHSC reflect a policy to build capacity in medically underserved areas of the state.

**Practical Effect:** Doctors who provide office visits via telemedicine when they are away from

the patient and the patient is with a provider working under this doctor's supervision will be able to receive reimbursement for their remotely-provided services

Effective immediately.

### ***SB 303: Health Care Coverage for Child***

Amends FAMILY CODE ch. 154 by changing several calculations and considerations to be taken into account by a court relating to health care costs and parents' net income when ordering that a child must be enrolled in Medicaid.

As a condition for receiving federal funds for certain child support enforcement programs and welfare programs, states must comply with various mandates under Title IV-D of the Social Security Act. The federal Deficit Reduction Act of 2005 amended certain sections of Title IV-D, including requirements with respect to state laws for medical support.

Amends the medical support provisions in the Family Code to ensure that Texas law complies with federal regulations under the federal Deficit Reduction Act; namely the bill requires the court to determine the manner in which health care coverage for the child is to be ordered in accordance with the following priorities:

(1) if a parent can get health insurance for the child through the parent's employment or membership in a union, trade association, or other organization at reasonable cost to the parent, the court must order that parent to include the child in the parent's health insurance;

(2) if health insurance is not available for the child under (1), above, but the parent can get insurance for the child from another source and at a reasonable cost, the court may order that parent to provide health insurance for the child; or

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(3) if health insurance coverage is not available for the child under (1) or (2), above, the court must order the parent-obligor to pay the parent-obligee, in addition to any amount ordered under the guidelines for child support, an amount, not to exceed nine percent of the parent-obligor's monthly resources, as cash medical support for the child.

Furthermore, the new law requires one of the parents to apply on behalf of the child for state medical assistance if neither parent can get health insurance for the child at a reasonable cost. In case the child enrolls in state-funded health insurance, the obligor-parent must pay the obligee-parent an additional monthly payment as set out in (3), above. Also, if the parent-obligee must or does enroll the child on his or her own health plan or otherwise procures private health insurance for the child under (1) or (2), above, the parent-obligor must compensate the parent-obligee for the increased health-insurance cost.

Finally, the bill redefines "reasonable cost" to include all of a responsible parent's income for purposes of calculating child support payments; courts use "reasonable cost" to determine whether private health insurance is available to a parent.

**Practical Effect:** Amends the law to bring Texas up to speed with the Deficit Reduction Act 2005.

Effective September 1, 2007.

### ***SB 362: Medicaid Fraud Prevention Act***

Amends HUM. RES. CODE ch 36 to allow private parties to continue with Medicaid enforcement actions even if the state discontinues the action; increases the minimum share of the recovery to the private party bringing the action if the state joins the action from 10% to 15%; if the state declines the

action, the private party may recover between 25% to 30%.

**Practical Effect:** Will place more power in the hands of *qui tam* plaintiffs. Creates incentives for plaintiffs to bring such suits by promising larger rewards to *qui tam* plaintiffs and eliminating the chance that the suit will be dismissed for state inaction. Brings Texas law into compliance with the federal Deficit Reduction Act of 2005.

Effective immediately.

### ***SB 1694: Criminal Offenses to Medicaid***

Amends GOV'T CODE ch. 531 to require the Medicaid Fraud Enforcement divisions at the AG and all licensing organizations to share information regarding an investigation of a licensed entity alleging Medicaid fraud and abuse; allows MFCU and licensing agencies to provide evidence of Medicaid fraud to each other unless barred by another law; the agencies must get written permission from the providing agency before using the information in a licensing or enforcement action; confidential information shared remains subject to the same confidentiality requirements and legal restrictions on access to the information that are imposed by law on the participating agency that originally obtained or collected the information.

Amends HUM. RES. CODE § 32.039(b): It provides that a person commits a violation if the person provides, offers, or receives an inducement in a manner or for a purpose not otherwise prohibited by HUM. RES. CODE 32.039 (Damages and Penalties), or by OCC. CODE 102.001 (Soliciting Patients; Offense), to or from a person, including a recipient, provider, employee or agent of a provider, third-party vendor, or public servant, for the purpose of influencing or being influenced in a decision regarding: selection of a provider or receipt of a good or service under the medical assistance program; the use of goods or services provided

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under the medical assistance program; or the inclusion or exclusion of goods or services available under the medical assistance program.

Amends HUM. RES. CODE § 32.0391(a) to include HUM. RES. CODE § 32.039(b) (mentioned above) as a section the violation of which constitutes an offense.

Also amends PENAL CODE § 32.46(c-1), to provide that an offense described by PENAL CODE §§ (b)(1)-(6) and (c) (regarding punishments for the offenses involving the securing of the execution of documents by deception) is increased to the next higher category if the offense involves the state Medicaid program. Amends (by increasing) certain other criminal penalties.

**Practical Effect:** Though confidentiality from extra-governmental parties is the same as current law, this opens up investigated entities to additional investigation due to heightened sharing obligations among government parties. Other amendments to current law will increase penalties for anti-kickback and other violations.

Effective September 1, 2007.

### MENTAL HEALTH

#### ***HB 2439: Mental Health and Mental Retardation Authorities***

Amends HEALTH & SAFETY CODE ch. 533 to set forth certain parameters within which a local mental retardation authority is authorized to provide ICF-MR (intermediate care facility for the mentally retarded) and related waiver programs, establishes provider capacity limitations, and requires the Department of Aging and Disability Services (“DADS”) to review the ability of the authority to provide services in its area; sets forth certain parameters for a local mental health authority’s provision of services as a “provider of last resort,” requires said authority to develop local network

development plans, and requires the TDSHS to review these plans

Requires TDSHS and DADS to take certain actions, respective to each entity, relating to the support and advisement of local mental health and mental retardation authorities; requires HHSC to adopt certain rules regarding the roles and responsibilities of a local mental retardation authority; repeals statute that requires biennial review of the appropriateness of mental health and mental retardation centers and that certain actions be taken toward the privatization of those centers’ services.

**Practical Effect:** Clarifies the roles and responsibilities of the local MHMR authorities to stabilize the operating environments of the authorities and ensure open access for both consumers and private providers.

Effective immediately.

### MISCELLANEOUS

#### ***HB 1412: Emergency Medical Dispatch***

Amends HEALTH & SAFETY CODE ch. 771 to establish a statewide program to use emergency medical dispatchers located in regional emergency medical dispatch resource centers to provide life-saving or other emergency medical instruction to persons awaiting the arrival of emergency medical personnel; authorizes the appropriation of money in the 9-1-1 services fee fund and other state funds to The University of Texas Medical Branch at Galveston on behalf of the center to fund the program.

**Practical Effect:** This provision expands the Emergency Medical Dispatch Center pilot program to establish a permanent program utilizing emergency medical dispatchers in a resource center in areas with particularly prolonged response times. This type of assistance is vital to positive outcomes for those

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in emergency situations where help may be a considerable time and/or distance away.

Effective September 1, 2007.

### ***SB 760: Telemedicine Medical Service***

Amends GOVT. CODE ch. 531 to require HHSC to encourage all health care providers in Texas (as opposed to a limited number) to participate in telemedicine and clarifies the definition of remote and hub sites.

**Practical Effect:** The current shortage of telemedicine providers will be relieved. Terms used by Medicaid and Medicare relating to telemedicine are clarified for ease of use and interoperability.

Effective September 1, 2007.

### ***SB 1731: Consumer Access to Health Care***

Adds HEALTH & SAFETY CODE ch. 324, which requires TDSHS to make available on its website the "Consumer Guide to Health Care." This guide shall include information concerning pricing practices and average charges at ambulatory surgery center, birthing centers and hospitals licensed by the TDSHS ("facilities"). In addition, facilities are required to create and maintain billing policies, and conspicuously post the policies as well as disclose the policies to patients.

Amends OCC. CODE ch. 101 to require that certain physicians develop, implement, and enforce written billing policies.

Amends INS. CODE ch. 38 to require that DOI create a new data collection program to collect certain reimbursement rates that health plans pay to insurers and to provide this information to TDSHS for inclusion in the Consumer Guide to Health Care. (Otherwise, the collected reimbursement data is confidential.)

Amends INS. CODE ch. 843.155 and 1301.009 to require that HMOs and PPOs include in their annual report (and make the report publicly available on DOI's website) a statement of: (1) an evaluation of enrollee satisfaction; (2) an evaluation of quality of care; (3) coverage areas; (4) accreditation status; (5) premium costs; (6) plan costs; (7) premium increases; (8) the range of benefits provided; (9) copayments and deductibles; (10) the accuracy and speed of claims payment by the organization; (11) the credentials of physicians of the organization; and (12) the number of providers.

Insurers will have to prepare and submit substantially similar annual reports for publication on the DOI website.

Adds INS. CODE ch. 1456 to require that health plans that provide health care through a provider network provide notice to enrollees regarding out of network providers and that such providers may balance bill the enrollee. Similarly, a facility-based physician that provides out of network services to an enrollee must send a billing statement that informs patients of the out-of-network provider's right to balance bill.

**The bill is similar to SB 1738 & HB 2224, which were filed but not passed in 79(r). The 79(r) bills would have required posting the chargemasters. It does not appear that SB 1731 requires the chargemasters be posted.**

**Practical Effect:** Disclosure of information regarding pricing, average charges, billing policies, including balance billing for out of network services required of health plans and providers.

Effective September 1, 2007, with various rulemaking deadlines.

## NURSING

### ***SB 289: Nursing Shortage Reduction***

Amends ED. CODE § 61.9623(a) to grant funds from the professional nursing shortage reduction program to efforts towards identifying, developing, or implementing innovative methods to make effective use of certain resources, including using preceptors or part-time faculty to provide clinical institution in order to address the need for qualified faculty -- as opposed to reducing the number of new faculty -- to accommodate increased student enrollment in professional nursing programs.

**Practical Effect:** Encourages nursing schools to utilize part-time or adjunct faculty to address shortage issues by requiring grant funds from the professional nursing shortage reduction program to be used towards preceptor or part-time faculty to provide clinical instruction, thus allowing schools to recruit nurses to serve as faculty who wish to remain in clinical practice while teaching.

Effective immediately.

### ***SB 992: Grants for Nursing Education***

Amends ED. CODE § 63.202(f) to continue the current dedication of a portion of the tobacco lawsuit settlement funds to support nursing schools.

**Practical Effect:** Extends the time for dedication of a portion of the tobacco lawsuit settlement funds to support nursing schools for four more years (i.e., to the state fiscal biennium ending on August 31, 2009 (rather than 2005) and the fiscal biennium ending on August 31, 2011 (rather than 2007)).

Effective immediately.

### ***SB 993: Regulation of Nursing Practice***

Amends OCC. CODE § 301.002 to amend the Nursing Practice Act by adding new definitions for “Chief nursing officer” and “Patient safety committee;” removes the limitation on the authority of the Board of Nurse Examiners (“BNE”) to require that all the hours of continuing education required for license renewal be from approved programs; replaces “grounds for reporting” terminology with “conduct subject to reporting” and defines the latter; relocates the definitions “minor incident,” “nursing educational program,” and “nursing student” from other sections of the Nursing Practice Act; provides that reporting a nurse to nursing peer review committee satisfies the requirement to report to the BNE; defines the content of a nursing peer review’s report to the BNE, and states when a nursing peer review committee is required to report a nurse to the BNE; limits the role of the nursing peer review committee to a review of a termination incident to determine the extent external factors contributed to any deficiency in care; provides that a state agency’s reporting to a nursing peer review committee for evaluation satisfies a requirement to report the nurse to the BNE; requires the BNE to report back to a facility whenever it finds a deficiency in care was the result of factors beyond the nurse’s control; amends the Nursing Peer Review Code; adds a definition of “patient safety committee”; states when organizations are required to have a nursing peer review; authorizes a nursing peer review committee to share information with patient safety committees within the facility without compromising confidentiality; requires a nursing peer review committee to report to a patient safety committee within the facility when the nursing peer review committee finds that a deficiency in care was the result of factors beyond the nurse’s control.

Provides an option for nurses to report substandard care or failure to meet practice standards by a facility, agency, or licensed

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health care practitioner to the appropriate licensing board or accrediting body. A nurse may also report to his or her employer or another entity where the nurse is entitled to practice, any situation that the nurse believes exposes patients to risk or fails to conform to minimum practice standards. Provides immunity from suspension or termination for nurses reporting under this provision.

Requires a nursing peer review committee that determines that a nurse has engaged in reportable conduct to submit a report to the BNE that includes recommendations as to disciplinary action, the basis for the recommendation, and a description of the reportable conduct.

Requires an employer that is required to establish a nursing peer review committee and who suspends, terminates or takes other substantive disciplinary action against a nurse for conduct subject to reporting to submit a copy of the report to the nursing peer review committee. The peer review committee must determine if the deficiency in care was the result of a factor beyond the nurse's control and, if so, report the conduct to the patient safety committee or the chief nursing officer.

Sec. 301.413 provides additional protections for nurses refusing to engage in certain conduct or for requesting a good faith peer review determination and allows a cause of action against a person who suspends, terminates, disciplines or discriminates against such a person. Increases the cap on damages under this provision to \$5,000.

Allows persons required to establish a nursing peer review committee to contract with another entity for the provision of peer review.

Alters the safe harbor provision to include a definition of "good faith" and provides immunity from suspension, termination, other discipline or discrimination for seeking a peer review determination under the safe harbor in

good faith. Employers required to provide a nursing peer review committee determination under the safe harbor must adopt and implement a policy to inform nurses of the right to request such a determination.

Allows nursing peer review committees and patient safety committees established by the same entity to share information and provides a privilege for such information.

**Practical Effect:** The BNE is no longer prohibited from requiring that more than 10 hours of continuing education consist of classroom instruction in approved courses. Deletes "grounds for reporting a nurse" but adds a definition for "conduct subject to reporting" and provides that a nurse may report such conduct to either the BNE or a nursing peer review committee formed in accordance with the Nursing Practice Act. Also provides immunity from suspension or termination of employment for any person who makes such a report without malice.

Effective immediately.

### ***SB 201: Tuition Exemption for Nurse Preceptors***

Amends ED. CODE § 54.222 to allow nurse preceptors and their children to use tuition exemptions within two semesters of the preceptor's service.

**Practical Effect:** Allows both nurse preceptors and their children to claim tuition exemptions for each semester in which the nurse serves as a clinical preceptor and either may claim such exemption within two semesters of the preceptor's service. Children of nurse preceptors are not barred from claiming the exemption just because a parent also received the exemption.

Effective immediately.

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### ***SB 138: Nursing Recruitment and Retention***

Adds ED. CODE § 61.0901 to direct the Texas Higher Education Coordinating Board (“THECB”) to develop rules to promote retention and graduation of nursing students and to recognize programs with a graduation rate of at least 85 percent.

**Practical Effect:** Requires the THECB to consider and develop methods that promote the retention and graduation of professional nursing students and to adopt rules to implement those methods, including recommendations on financial aid. THECB is also required to establish a recognition program for those nursing programs achieving graduation rates of 85 percent or higher.

Effective September 1, 2007.

## PHARMACY & PHARMACEUTICALS

### ***HB 948: Requirements for Labeling Certain Drugs***

Amends OCC. CODE § 502 to require that the Texas State Board of Pharmacy (the “Pharmacy Board”) adopt rules to require information contained on the label and labeling for prescription drugs and the information a pharmacist must provide to a consumer when dispensing a prescription to the consumer for self-administration be (1) in plain language and printed in an easily readable font size for the consumer; and (2) relevant to the prescription.

**Practical Effect:** Goal is to ensure that prescriptions contain understandable information about proper use and side effects.

Effective September 1, 2007.

### ***HB 1676: Public Awareness***

Adds GOV’T CODE § 402.031 to direct Office of the Attorney General (the “AG’s Office”) to

conduct a public awareness campaign to educate consumers about pharmaceutical sales over the Internet; “The public awareness campaign must emphasize the existence of reputable pharmacies and pharmacists that provide services through the Internet and must provide information to assist a consumer in distinguishing a reputable pharmacy or pharmacist from a seller that may be unlicensed or fraudulent.” Requires the AG’s Office to consult with the Pharmacy Board, as well as with trade associations representing the interests of pharmacies and pharmacists, and advocates for consumer protection. Authorizes the AG’s Office to distribute information using brochures; advertisements, articles, or editorials in newspapers or other publications; radio or television public service announcements; the Internet; or other appropriate means. Authorizes the Attorney General to accept gifts, grants, and donations to support the campaign.

**Practical Effect:** Requires the AG’s Office to develop a public awareness campaign to educate consumers concerning solicitations for the sale of prescription drugs that are made using electronic mail or the Internet

Effective September 1, 2007.

### ***SB 625: Transplant Immunosuppressant Drugs***

Amends OCC. CODE ch. 562 to prohibit a pharmacist from exchanging (brand to brand, brand to generic or generic to generic) an immunosuppressant drug or formulation of an immunosuppressant drug for the treatment of a patient following a transplant without prior notification of, and the signed informed consent of, the prescribing physician. Defines “immunosuppressant drug” and “interchange.” A pharmacist dispensing an “immunosuppressant drug” must comply with this legislation.

Establishes the procedures for a pharmacist to document the notification of, and consent of, a

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prescribing physician regarding the interchange of certain drugs. The pharmacist must keep a copy of the communication, and a copy is required to be forwarded to the physician. The documented notification and consent is considered a statement that the prescription is “brand medically necessary” and is considered part of the prescription.

**Practical Effect:** Limits the ability of a pharmacist to interchange immunosuppressant drugs for the treatment of a patient following a transplant without prior notification of and the signed informed consent from the prescribing physician.

Effective September 1, 2007.

### ***SB 943: Licensing and Regulation of Wholesale Distributors of Prescription Drugs***

Amends HEALTH & SAFETY CODE ch. 431 definitions for “pharmacy warehouse,” “normal distribution channel,” “wholesale distribution,” and adds definitions for “drop shipment,” “co-licensed product partner,” “manufacturer,” “manufacturer’s exclusive distributor,” “third-party logistics provider,” and “wholesale distributor.”

Exempts a wholesale distributor that is a manufacturer, a third-party logistics provider on behalf of a manufacturer, or distributor of prescription drugs that are medical gases from certain provisions of the Health and Safety Code.

Modifies the requirements for the contents of an application for a wholesale license in the State of Texas. Requires an applicant or license holder to submit to the TDSHS any change in or correction to the information in the form and manner prescribed by TDSHS.

Prohibits TDSHS from issuing a wholesale distributor license to an applicant unless TDSHS conducts a physical inspection of the place of

business and determines that the designated representative of the place of business meets certain qualifications.

Allows an individual to serve as a designated representative for more than one applicant, if more than one licensed wholesale distributor is located in the same place of business, and the wholesale distributors are members of certain affiliated groups.

Provides a specific exemption to the surety bond requirements, and provides that a single bond is sufficient to cover all places of business operated by a wholesale distributor in Texas.

Requires TDSHS, before the expiration of an issued license, to send to each licensed wholesale distributor a form containing a copy of certain information provided by the distributor, and requires the wholesale distributor to identify and state under oath to TDSHS any change in or correction to the information.

Requires designated representatives to complete continuing training regarding certain laws as required by TDSHS by rule, and provides for the confidentiality of information provided as part of the application process for a wholesale distributor license.

Provides that an expired, damaged, recalled, or otherwise non-saleable prescription drug that is returned to the wholesale distributor may be distributed by the wholesale distributor only to either the original manufacturer or a third-party returns processor. The returns or exchanges, saleable or otherwise, received by the wholesale distributor (including any redistribution of returns or exchanges by the wholesale distributor) are not subject to certain pedigree requirements, if such returns or exchanges are exempt from specified federal pedigree laws and regulations.

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Sets standards for the administration of drug returns and exchanges. Provides an exemption from wholesale licensure for certain entities not covered by this bill. Specifies from whom a manufacturer or wholesale distributor may accept payment, or allow the use of a person's credit to establish an account for purchasing prescription drugs. Further specifies who may establish an account for the purchase of prescription drugs. Provides that a pharmacy or pharmacy warehouse is not prohibited from receiving prescription drugs, where the payment for the prescription drugs is processed through the pharmacy's or pharmacy warehouse's contractual wholesale distributor.

Requires a person who is engaged in the wholesale distribution of a prescription drug (including a repackager, but excluding the original manufacturer) to provide a pedigree for each prescription drug that at any time has left the normal distribution channel and is sold or transferred to any other person. Provides that only a retail pharmacy or pharmacy warehouse that engages in the wholesale distribution of a prescription drug is required to comply with this section of the Health and Safety Code.

Deletes the exclusion for an original labeler of a prescription drug regarding providing a pedigree for certain prescription drugs. The bill excludes the original manufacturer of the finished form of a prescription drug, from the provision that certain persons engaged in the wholesale distribution of a prescription drug must verify before distributing the prescription drug that each transaction listed on the pedigree has occurred.

Provides that a pedigree must include certain identifying information from the manufacturer's third-party logistics provider, co-licensed product partner, or exclusive distributor and modifies the minimum distribution information that must be included. Further provides that if after consulting with certain manufacturers, distributors, and pharmacies, if TDSHS

determines that electronic track and trace pedigree technology is available, then TDSHS is required to establish a targeted implementation date for the technology. The department is authorized to revise the established implementation date, but it may not be earlier than July 1, 2010.

Authorizes the Commissioner of TDSHS to revoke or suspend a license if the holder no longer meets certain qualifications for obtaining a license. Also, prohibits the Commissioner from issuing a cease and desist order against a pharmaceutical manufacturer.

Creates new prohibited acts regarding prescription drugs, including that it is an offense for a person to knowingly or with criminal negligence to engage in certain wholesale distribution of prescription drugs and provides applicable penalties.

Repeals Sections (a-1) and (a-2), Section 431.059, and Subsections (b) and (c), Section 431.412, HEALTH & SAFETY CODE.

Directs the Executive Commissioner of the HHSC to adopt rules necessary to implement these changes made in the law.

**Practical Effect:** Makes changes to prescription drug distribution system in Texas to provide better protections against counterfeit or adulterated drugs. In short, to avoid having to provide a drug pedigree, many parties will have to enter into distribution contracts with manufacturers.

Effective September 1, 2007.

### ***SB 994: Prescriptions for Controlled Substances***

Amends HEALTH & SAFETY CODE § 481.074 to allow a physician to transmit a prescription for a Schedule III, IV or V drug electronically to a patient's pharmacy

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Authorizes a pharmacist to dispense a Schedule III, IV, or V controlled substance under a written, oral, or telephonically or electronically communicated prescription issued by a practitioner, as opposed to requiring a written script only if the pharmacist determines that the prescription was issued for a valid medical purpose and in the course of professional practice. Prohibits a prescription issued under this subsection from being filled or refilled later than six months after the date the prescription. Prohibits a prescription from being refilled more than five times, unless the prescription is renewed by the practitioner. The application of this Act is prospective.

**Practical Effect:** Prohibits a person from dispensing certain controlled substances without a written, oral, or telephonically or electronically communicated prescription by a practitioner. Requires a prescription under this subsection to comply with other applicable state and federal laws.

Effective September 1, 2007.

### ***SB 1274: Compounding of a Drug or Device by a Pharmacist***

Adds OCC. CODE 554.056 to give pharmacy board authority to make rules about adding flavoring to commercial drugs.

**Practical Effect:** Authorizes the Texas State Board of Pharmacy to adopt rules governing the procedures for a pharmacist, as part of compounding, at the request of a patient or a patient's representative, to add flavoring to a commercial product.

Effective September 1, 2007.

### ***SB 1879: Regulation of Controlled Substances; Providing an Administrative Penalty***

Amends HEALTH & SAFETY CODE ch. 481 to extend certain Schedule II prescription drug monitoring to Schedule III through V drugs; establishes administrative penalties for noncompliance with such monitoring; makes several changes to the current monitoring program to monitor and hold in compliance all entities in the drug distribution chain.

Authorizes the Director of the Department of Public Safety ("DPS") to charge a late fee for renewal applications received by DPS after the date the registration expires.

Requires a person administering or dispensing a Schedule II controlled substance in an emergency situation, with an orally or telephonically communicated prescription, promptly to write the prescription and include in the prescription's written record the DPS registration number of the practitioner prescribing the substance.

Requires the DPS Director, by rule, and in consultation with the Texas Medical Board and Texas State Board of Pharmacy, to establish the period, after the date on which the prescription for a Schedule II controlled substance is issued, that a person is authorized to fill the prescription (except as regarding the partial filling of such a prescription, as well as the provision of a partially-filled prescription to a terminally-ill patient or patient in a long-term care facility). Deletes existing text prohibiting such a prescription from being filled after the seventh day after the date it is issued.

Requires a prescription for a controlled substance to show the date of birth or age of the patient, and if the prescription is handwritten, the signature of the prescribing practitioner. Clarifies that the DPS number of the prescribing practitioner only has to be provided on the

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prescription if that practitioner is licensed in Texas.

Requires each dispensing pharmacist to send all information required by the DPS Director, including required information to complete the Schedules III through V prescription forms, to the DPS Director by electronic transfer or other form approved by the DPS Director not later than the 15th day after the last day of the month, in which a prescription is completely filled.

Prohibits the DPS Director from permitting any person to have access to information submitted to the DPS Director with certain exceptions.

Requires the DPS Director to design and implement a system for submission of information to the DPS Director electronically or by other means and for retrieval of information submitted to the DPS Director. Requires the DPS Director to use automated information security techniques and devices to preclude improper access to the information.

Requires the DPS Director to consult with the Texas State Board of Pharmacy, and by rule to establish and revise as necessary a standardized database format to be used by a pharmacy, to transmit the information required to the DPS Director electronically or on storage media, including disks, tapes, and cassettes.

Requires the DPS Director to consult with the TDSHS, the Texas State Board of Pharmacy, and the Texas Medical Board and authorizes the DPS Director by rule to remove from, or return to, the official prescription program a controlled substance listed in Schedules II through V on the DPS Director's determination.

Authorizes the DPS Director by rule to permit multiple prescriptions to be administered or dispensed and recorded on one prescription form for a Schedule III through V controlled substance, as well as to establish a procedure to control the release of information as provided in

certain sections of these provisions of the Health and Safety Code.

Authorizes DPS to impose an administrative penalty on a person who violates certain sections or rules or orders under those sections related to the manufacture, distribution, and dispensation of controlled substances, chemical precursors, and chemical laboratory apparatus.

**Practical Effect:** Extends monitoring of prescription drugs.

§§ 481.076, 481.074(q), take effect September 1, 2008.

§ 481.074(b) effective later of September 1, 2007, or after DPS establishes a means to electronically verify registration numbers.

§ 481.074(k), effective the later of September 1, 2008, or after DPS establishes a means to electronically verify registration numbers.

Remainder effective September 1, 2007.

***SB 1658: Authority of a Pharmacist to Fill Certain Prescriptions in the Event of a Disaster***

Amends OCC. CODE § 562.054 to make it so that, in the event of a natural or manmade disaster, a pharmacist may dispense not more than a 30-day supply of a prescription drug, other than a controlled substance listed in Schedule II as established by the commissioner of state health services; provides that the prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug under this section.

Authorizes a pharmacist, in the event of a natural or manmade disaster, to dispense not more than a 30-day supply of a prescription drug (other than a controlled substance listed in Schedule II) without the authorization of the

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prescribing practitioner under certain circumstances.

Amends the OCCUPATIONS CODE and HEALTH & SAFETY CODE to provide that the prescribing practitioner is not liable for an act or omission by a pharmacist in dispensing a prescription drug.

**Practical Effect:** A pharmacist may exercise professional judgment in refilling a prescription for a prescription drug, other than a controlled substance listed in Schedule II, without the authorization of the prescribing practitioner under certain circumstances.

Effective September 1, 2007.

## PUBLIC HEALTH

### ***HB 246: HIV/AIDS Weekly Reports***

Amends HEALTH & SAFETY ch. 81 to require a health authority to report to the TDSHS all cases of diagnosed HIV/AIDS infections on a weekly basis, and requires an infected person's city and county of residence, age, gender, race, ethnicity, and national origin, and the method of transmission to be included in the report.

**Practical Effect:** HB 246 requires health authorities to file weekly reports of all cases of human immunodeficiency virus infection ("HIV") or acquired immune deficiency syndrome ("AIDS") that include an infected patient's name, address, age, gender, occupation, race, ethnicity, national origin, the method by which the disease was transmitted, the date of onset of the disease or condition, the probable source of the infection, and the name of the attending physician or dentist. In addition, the bill requires TDSHS to annually analyze and determine trends in incidence and prevalence of HIV/AIDS by region, city, county, age, gender, race, ethnicity, national origin, transmission category and other factors as appropriate and prepare a report on the analysis of this

information which must be made available to the public. Finally, the bill requires TDSHS to prepare and submit to both houses of the legislature a report that addresses emerging technologies and advancements in HIV/AIDS infection and epidemiology no later than January 1, 2009.

Effective September 1, 2007.

### ***HB 92: Acquisition of Automated External Defibrillators***

Amends HEALTH & SAFETY CODE § 779.007 to require purchasers of automated external defibrillators ("AED") that have not been approved by the United States Food and Drug Administration ("FDA") for over-the-counter sale to ensure that the defibrillator has been delivered by a licensed practitioner or on the prescription of the practitioner. If the purchase is for further purchase or sale, the purchaser has to conform with HEALTH & SAFETY CODE § 483.041.

**Practical Effect:** This bill allows persons or entities to acquire an AED that has been approved by the FDA for over-the-counter sale without a licensed physician's order or prescription.

Effective immediately.

### ***HB 1082: Reporting of Methicillin-Resistant Staphylococcus Aureus***

Amends HEALTH & SAFETY CODE ch. 81 to empower the HHSC to implement a program wherein clinical labs are required to report and exchange information and study the incidence of methicillin-resistant Staphylococcus aureus ("MRSA") in TX.

**Practical Effect:** Requires the executive commissioner of the HHSC to develop a MRSA reporting procedures pilot program. TDSHS must select a health authority to administer the

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pilot program, which must: (1) require certain clinical laboratories to report all cases of MRSA to the pilot program administrator; (2) track the prevalence of MRSA; (3) study the cost and feasibility of expanding the list of certain reportable diseases to include MRSA; (4) develop a methodology for the electronic exchange of information regarding the occurrence of MRSA; (5) collect data and analyze findings on the sources and possible prevention of MRSA; (6) provide for the public reporting by the department information regarding MRSA; (7) compile and make public a summary of infections reported; and (8) make recommendations to TDSHS. In addition, TDSHS must submit to the legislature a report concerning the effectiveness of the pilot program in tracking and reducing the number of MRSA infections within the area served by the health authority by September 1, 2009.

Effective immediately.

***SB 7: Instruction in CPR and the Availability and Use of AEDs at Certain School Campuses and Athletic Events***

Adds ED. CODE § 22.902 to require each school nurse, assistant school nurse, athletic coach or sponsor, physical education instructor, marching band director, cheerleading coach, and any other school employee specified by the commissioner and each student who serves as an athletic trainer to participate in the annual instruction for the use of an AED. Private schools that receive an AED from the agency or funding from the agency to purchase or lease an AED must adopt a policy under which the school makes available to school employees and volunteers instruction in the principles and techniques of cardiopulmonary resuscitation (“CPR”) and the use of an AED. The policy must comply with the requirements prescribed by this section and commissioner rules.

Sets forth requirements for the availability and location of an AED, including requiring each

school district to make at least one AED available at each campus, and other criteria relating specifically to athletic competitions, practices, and activities on and off campus, and the availability of trained personnel to operate the AED. Each school district and participating private school must develop safety procedures to follow in response to a medical emergency involving cardiac arrest.

Provides that specific provisions do not waive any liability or immunity of a school district, its officers, or employees, and do not create any liability for or a cause of action against a school district, its officers or employees.

**Practical Effect:** This bill requires certain school employees and students to participate in instruction on the use of an AED, and specifies instructional requirements applicable to a private school that receives an AED from the Texas Education Agency (“TEA”) or funding to purchase or lease an AED from TEA. The State Board of Education must establish rules to include elements relating to instruction in CPR and the use of an AED as part of the essential knowledge and skills of the health curriculum.

Effective immediately.

***SB 82: Safety Regulations for Certain Extracurricular Events***

Amends ED. CODE ch. 33 to require certain public school employees to take extracurricular-activity safety training and to implement specific safety measures to protect students from heat stroke, asthma attacks and other harms. There is no liability arising out of an act or omission relating to this bill unless the act or omission is willfully or wantonly negligent.

Requires students participating in an extracurricular activity to complete a form medical history and acknowledgement of rules forms truthfully and accurately. The bill also prohibits coaches, trainers or sponsor of

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extracurricular athletic activities from encouraging or permitting a student to engage in unreasonably dangerous techniques that could endanger the health of another student, such as using a helmet as a weapon. All coaches, trainers and sponsors must ensure that: each participating student is adequately hydrated; any prescribed asthma medication for a participating student is readily available to the student; emergency lanes providing access to the competition or practice are open and clear; and heatstroke prevention materials are readily available. Students who become unconscious during any activity may not participate in any extracurricular activity without written authorization from a physician.

Under the bill, schools must keep records of compliance with many of these requirements and make them available to the public, and there are penalties for schools that are out of compliance. The bill requires the Commissioner of Education to maintain and prominently display at the administrative offices of a school a phone number and email address to report violations.

Provides that specific provisions do not waive any liability or immunity of a school district, its officers, or employees, and do not create any liability for or a cause of action against a school district, its officers or employees.

**Practical Effect:** SB 82 requires the Commissioner of Education to develop and adopt by rule an extracurricular activity safety training program, which must be completed by the following persons: a coach, trainer, or sponsor for an extracurricular athletic activity; certain physicians who are employed by a school or school district or who volunteers to assist with an extracurricular athletic activity; and a director responsible for a school marching band. The safety training program must include: a certification of participants by the American Red Cross, the American Heart Association, or a similar organization or the University

Interscholastic League; current training in emergency action planning, CPR, communicating effectively with 9-1-1 emergency service operators, and recognizing symptoms of potentially catastrophic injuries. The bill also requires school districts to provide training to students participating in an extracurricular activity about recognizing the symptoms of potentially catastrophic injuries and the risks of using dietary supplements.

Effective immediately.

### ***SB 288: Reporting of Health Care-Associated Infections***

Adds HEALTH & SAFETY CODE ch. 98 to establish the Texas Health Care-Associated Infection Reporting System within the infectious disease surveillance and epidemiology branch of TDSHS, and requires reporting and public accessibility to the reported data and analysis carried out by TDSHS.

Requires health care facilities to report the incidence of surgical site infections for certain procedures, unless the facility does not perform at least an average of 50 procedures per month of the reportable procedures. General hospitals are required to report the incidences of laboratory-confirmed central line-associated primary bloodstream infections occurring in any special care setting in the hospital and respiratory syncytial virus occurring in any pediatric inpatient unit in the hospital. The executive commissioner of the HHSC to consult with the advisory panel to establish the frequency of reporting.

Requires TDSHS to compile a risk adjusted summary of the reported infections by health care facility, including a comparison of the infection rates by facility, and make it available to the public. The executive commissioner must establish a rule to allow a health care facility to provide written comments regarding the information contained in the summary, which

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must be attached to the public report. The published infection rates may not be used in a civil action to establish a standard of care applicable to a health care facility. TDSHS's summary may not contain information identifying a facility, patient, employee, contractor, volunteer, consultant, health care professional, student, or trainee in connection with a specific infection incident.

Requires TDSHS to provide training and education for health care facility staff regarding the chapter. The training is to focus primarily on the implementation and management of a facility reporting mechanism, the characteristics of the reporting system, confidentiality, and legal protections.

**Practical Effect:** SB 288 requires the commissioner of TDSHS to establish an Advisory Panel on Health Care-Associated Infections to guide the implementation, development, maintenance, and evaluation of the reporting system. TDSHS must establish the Texas Health Care-Associated Infection Reporting System to provide for the reporting of health care-associated infections by health care facilities to TDSHS, including the education and training of health care facility staff. The reporting system shall provide a mechanism to collect data, at state expense, through a secure electronic interface with health care facilities. The data reported by health care facilities must contain sufficient patient identifying information to avoid duplicate submission of records, allow TDSHS to verify the accuracy and completeness of the data reported, and allow TDSHS to risk adjust the facilities' infection rates.

Effective immediately.

### ***SB 450: Foster Children Enrollment and Participation in Certain Research Programs***

Amends FAM. CODE ch. 266 to prohibit a person from enrolling a foster child in a drug research program without a court order unless the person

is the foster child's parent. Excepts from the prohibition certain studies including a study regarding the efficiency of an approved drug, a retrospective study based on certain data and medical records, a study based solely on medical records or certain data, or the treatment of a foster child with an investigational new drug that does not require the child's enrollment or participation in a research program.

Authorizes the advocate to conduct an investigation regarding the foster child's participation in a drug research program. The advocate is required to interview the foster child if he/she is four years of age or older, the foster child's parent if entitled to notification, an advocate appointed by an institutional review board, the medical team treating the foster child and the medical team conducting the research program, and any individual who has significant knowledge of the foster child's medical history and condition. The advocate must submit a report to the court presenting the advocate's opinion and recommendation based on this and other information, and if necessary testify regarding the opinion. The court is authorized to render an order approving the enrollment or participation of a foster child in a research program involving an investigational new drug before appointing an advocate if certain conditions exist, if upon a physician's recommendation.

Requires the person conducting the research program to provide certain information regarding expected benefits, side effects, and alternative treatments, and to receive written informed consent to enroll the foster child for participation in the research program before enrolling a foster child who is at least 16 years of age.

**Practical Effect:** This bill prohibits authorizing the enrollment of a foster child or consenting to the participation of a foster child in a drug research program without a court order unless the person is the foster child's parent and has

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been authorized by the court to make medical decisions. Before authorizing a foster child's participation, the court must appoint an independent medical advocate, review the report filed by the advocate, consider whether the foster child was informed of certain information about potential side effects and alternative treatments, and determine whether participation in the research program is in the foster child's best interest.

Effective September 1, 2007.

### WORKERS' COMPENSATION

#### ***HB 724: Disputes Regarding Workers' Compensation***

Amends various sections of LABOR CODE to send medical necessity disputes with a cost lower than \$3,000 and fee disputes with a cost lower than \$2,000 to a contested hearing and sends any disputes above these amounts to an SOAH hearing; changes payout terms of death benefits, requires the death benefits to be paid in equal shares to surviving eligible parents of the deceased if there is no eligible spouse, no eligible child, and no eligible grandchild, and there are no surviving dependents of the deceased employee who are parents, siblings, or grandparents of the deceased.

**Practical Effect:** Gives parties in a fee dispute or medical necessity dispute the due process that was taken away by HB 7 (2005).

Effective September 1, 2007.

#### ***HB 1003: Licensing***

Amends LABOR CODE § 413.031 and INS. CODE § 4202.002 to require an independent review organization that uses doctors to perform reviews of health care services in workers' compensation cases to use only doctors licensed to practice in Texas.

**Practical Effect:** Due to Texas licensing regulations this bill limits the ability of the Division of Workers' Compensation to sanction doctors who perform reviews of health care services in workers' compensation cases for misconduct.

Effective September 1, 2007.

#### ***HB 1005: Timely Submission of Claims***

Adds LABOR § 408.0272 to provide that a health care provider of workers' compensation health care services does not forfeit his or her right to reimbursement if the claim for payment is timely filed, but erroneously filed with the wrong insurer, if the provider corrects the error within 95 days of notification of the erroneous claim. The bill also allows extension of the deadline by agreement of the parties or in catastrophic situations.

**Practical Effect:** Provides additional protection to providers for erroneously submitted claims by giving them more time to file claims with the proper insurer once it is discovered that the original claim was filed with the wrong insurer.

Effective September 1, 2007.

#### ***HB 473: Workers' Compensation Fee Guidelines***

Amends LABOR CODE § 413.011 to authorize an insurance carrier to pay fees to a health care provider that are inconsistent with the fee guidelines adopted by the division of workers' compensation if the insurance carrier, or a network under Chapter 1305 (Workers' Compensation Health Care Networks), INSURANCE CODE, arranging out-of-network services under Section 1305.006 (Insurance Carrier Liability for Out-of-Network Health Care) of that code has a contract with the health care provider and that contract includes a specific fee schedule; requires each informal or voluntary network to be certified as a workers'

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compensation health care network under INS. CODE ch. 1305, not later than January 1, 2011.

**Practical Effect:** Closes the loophole left open by HB 7 (2005) whereby voluntary workers' compensation provider networks avoided having to be certified by the DOI by relying on LABOR CODE Section 413.011(d) language which stated that deviations from the medical fee guideline were allowed as long as a contract existed between the carrier and the provider with a specific fee schedule. The amended language clarifies that a deviation from the fee guideline to treat an individual injured worker in a non-network situation is permitted only if the carrier is having difficulty securing necessary medical treatment within the fee guidelines.

Effective September 1, 2007.

### ***HB 1006: Physician Licensing - Utilization Review***

Amends various sections of LABOR and INS. CODES to require doctors performing utilization review, retrospective review, and peer review to be licensed in Texas; requires commissioner of workers compensation to regulate a person who performs utilization review of a medical benefit provided under LABOR CODE, tit. 5; prohibits a health care provider's charges for providing medical information to a utilization review agent from exceeding the cost of copying records regarding a workers' compensation claim as set by rules adopted by the commissioner of workers' compensation, rather than by the Texas Workers' Compensation Commission.

**Practical Effect:** Creates a prohibition for out-of-state physicians with regards to the performance of utilization review, retrospective review, and peer review by only allowing Texas licensed physicians to perform these type of medical reviews in workers' compensation cases.

Effective September 1, 2007.

### ***HB 2004: Certification of Doctors in Medical Reviews***

Amends LABOR CODE chs. 408 & 413 to require that the reviewing physician in certain reviews of a workers' compensation case be specialized in the area of injury involved in the particular case; extends to a physician, dentist, or chiropractor conducting a peer review, retrospective review, or required examination, in addition to a designated doctor or physician member of the medical quality review panel.

**Practical Effect:** Creates a level of protection for workers' compensation patients from wrongful denials by requiring the reviewing physician, dentist, or chiropractor to be specialized in the area of injury.

Effective September 1, 2007.

### ***SB 458: Medical Benefits for Artificial Limbs***

Amends LABOR CODE § 401.011, INS. CODE § 1305.004 to ensure workers' compensation carriers treat artificial limbs as natural limbs.

**Practical Effect:** Extends workers' compensation coverage to damage done to artificial limbs in a work related accident. This amendment results in an increase in medical coverage for workers' compensation carriers.

Effective September 1, 2007.