

SNOWVIDPOCALYPSE 2021: HEALTH INSURANCE CHANGES in a perfect legislative storm

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Texas Association of Health
Underwriters

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Today's Agenda

- Who's in Charge?
- TAHU's Texas Legislative Priorities
 - Transparency, Cost, Access, Choice
 - Contingent Post-ACA Market Reforms for Texas
- Other Priorities:
 - Association Health Plans – they're back!
 - Agent Licensing – new rules
 - Telehealth payment parity – it's not a thing
- Legislative Session Summary/Details



Turning to Texas...



Who's in Charge?

Governor Greg Lt. Governor
Abbott – R Dan Patrick - R



- Democrats failed to “Flip the House”
 - Senate 18-13; lost one R;
 - House 83-67; no net change
- Senate Business & Commerce Committee:
 - Chair - Kelly Hancock – R returned for 2021R session
 - New Chair – Charles Schwertner – R for 2021(1)+
 - Insurance issues now before Jurisprudence Committee
- House Changes:
 - New Speaker elected – Dade Phelan - R
 - New Insurance Committee Chair – Rep. Tom Oliverson – R
- Still No Commissioner of Insurance



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Senate Business & Commerce

Cmte.

- Chair **Kelly Hancock** (R-North Richland Hills)
- Vice Chair **Robert Nichols** (R-Jacksonville)
 - Republicans: **Campbell** (New Braunfels), **Creighton** (Conroe), **Paxton** (McKinney), **Schwertner** (Georgetown)
 - Democrats: **Menendez** (San Antonio), **Whitmire** (Houston),
– **Johnson** (Dallas)



New Senate B&C Committee

- Chair **Charles Schwertner** (R-Georgetown)
- Vice Chair **Robert Nichols** (R-Jacksonville)
 - Republicans: **Campbell** (New Braunfels), **Creighton** (Conroe), **Paxton** (McKinney), **Kolkhorst** (Brenham)
 - Democrats: **Menendez** (San Antonio), **Whitmire** (Houston),
– **Johnson** (Dallas)



Senate Jurisprudence Committee

- Chair **Joan Huffman** (R-Houston)
- Vice Chair **Juan Hinojosa** (D-McAllen)
 - Republicans: **Creighton** (Conroe), **Hughes** (Mineola),
 - Democrats: **Johnson** (Dallas)



House Insurance Committee

- Chair **Tom Oliverson** (R - Cypress)
- Vice Chair **Hubert Vo** (D - Houston)
 - Republicans: **Paul** (Houston), **Sanford** (McKinney), **Hull** (Houston), **Middleton** (Galveston),
 - Democrats: **Gonzalez** (Dallas), **Israel** (Austin), **Romero** (Ft. Worth)



No New Insurance Commissioner

- Kent Sullivan resigned 9/30 and returned to private practice
- Leading contenders?
 - Doug Slape, TDI Chief Deputy Comm.
 - Melissa Hamilton, OPIC Public Counsel
 - Justice Jeff Rose, former Court of Appeals
 - No replacement expected until after special sessions because confirmation uncertainty



Pink Building Protocols

- Session began January 12, 2021; ends May 31
- Testing tent: fast, easy, free, north side of Capitol
- Negative test & masks required for anyone entering the Chambers or Hearing Rooms
- Individual offices can craft their own protocols on masks, sanitizer, distance, etc.
- Protocols in offices tend to follow party lines



ELEPHANTS IN THE ROOM



- Budget
- Covid-19
- Redistricting
- Winter Storm
- Voter Fraud



TAHU's Legislative Priorities

- **Transparency**
- **Cost**
- **Access**
- **Choice**



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TAHU's Legislative Priorities & Bills Passed

- **TRANSPARENCY - TAHU SUPPORTED:**
 - [All Payor Claims DB & Claim Transparency](#) (HB 2090):
 - Housed at UTHSC for public access with anon data
 - Fed claims trans incorp to TX: web self-serve cost sharing tool estimator, pub detailed cost data
 - Stakeholder Advisory Group – APPLY by 1/1/2022!!
 - [Hospital Price Transparency](#) (SB 1137): codifies CMS rules in Texas
 - Requires hospitals to provide consumer friendly list of standard charges for a set of 300 services including:
 - Payor-specific negotiated charges
 - Discounted cash price
 - De-identified min/max negotiated charges



TAHU's Legislative Priorities & Bills Passed

- **TRANSPARENCY - TAHU SUPPORTED:**
AMBULANCE & AIR AMBULANCE SURPRISE BILLING REFORM (SB 790)
 - Allows counties and cities to accept partial pay
 - TDI study on ground: prices & network factors

UNAUTHORIZED INSURANCE PRODUCTS (SB 1809)
-Strengthens TDI enforcement auth by revising C&D procedures, remove deadlines, max penalty \$25K



TAHU's Legislative Priorities & Bills Passed

- **TRANSPARENCY - TAHU SUPPORTED:**

- Rx DRUG TRANSPARENCY (HB 1033)**

- Updates law from last session (HB 2536) requiring price increase disclosure by manuf
 - Reporting annual (was within 30 days) with DSHS
 - Sets admin fee with each report
 - Requires reports on drugs with acquisition cost of \$100 for 30 day supply increased 40%+ over 3 years of 15%+ in 1 year



TAHU's Legislative Priorities & Bills Passed

• COST – TAHU SUPPORTED

INSULIN COPAY CAPS (SB 827)

- Caps monthly cost-sharing at \$25 per Rx
- Requires plans to include at least one insulin from each therapeutic class in formulary
- Applies only to formulary Rx on commercial plans, ERS, TRS 1/1/22

FSER PRICE GOUGING PROHIBITED (SB 2038)

- Requires price disclosure for tests/vaccines
- Prohibits facility or observation fee for drive-thru
- Prohibits unconscionable (>200% avg facilities same county) price or higher price based on coverage
 - Increases penalties unless good cause shown:
 - 1st violation = \$10,000, 2nd = \$50,000 + 30 day susp, 3rd = perm license revocation
- Allows cash discounts



TAHU's Legislative Priorities & Bills Passed

- **COST – TAHU SUPPORTED**

- TDI RATE REVIEW** (SB 1296)

- Allows Texas review of "reasonable" rate increases, rather than federal
 - Remedies a premium misalignment across different Exchange tiers, allows better affordability
 - Effective 1/1/2023

- HIGH RISK POOL REAUTH** (SB 874)

- Allows TDI to recreate the pool if ACA invalidated



TAHU's Legislative Priorities & Bills Passed

- **COST** – **TAHU NEUTRAL**
 - **"TEXAS CARES ACT" Rx coverage (HB 18)**
 - Creates a state trust fund at HHSC to provide uninsured access to Rx drugs at post-rebate cost
 - **NEW COVERAGE BENEFIT MANDATES – eff 2022**
 - Ovarian Cancer Screening - any FDA approved
 - Colorectal Cancer Screening - any exams, services, lab tests grade A or B by US Preventative Task Force; app small group & MEWA & limited benefit
 - Diag Mammo - expand to ultrasound & MRI



TAHU's Legislative Priorities & Bills Passed

- ACCESS – **TAHU SUPPORTED**

TELEDENTISTRY (HB 2056)

- Adds dentists to telemedicine statute & insurance coverage mandates

INTERSTATE MEDICAL LICENSURE (HB 1616)

- Expands telemedicine to out of state doctors who apply to practice in multiple states
- Ensures they are subject to the laws of each state they practice in



TAHU's Legislative Priorities & Bills Passed

- ACCESS – **TAHU OPPOSED**
PRIOR AUTH EXEMPTION (HB 3459)
 - Creates a "Gold Card" PA exemption for docs whose service requests are approved 90% of cases in prior six month period
 - Applies to IN and OON providers
 - Mandates payment unless fraud or non perform
 - No PA denials without Tx MD same specialty rev
 - Plans must evaluate every provider once every six months and notify within 5 days
 - Plans must notify provider if they request PA and are already exempt



TAHU's Legislative Priorities & Bills Passed

- **ACCESS – TAHU OPPOSED**

- PRIOR AUTH EXEMPTION, CONT'D**

- Rescission requirements:

- Only permitted during Jan or June
 - Require Tx physician review – same specialty
 - Must show lower than 90% approval for random sample of 5-20 claims
 - Must provide 25 days notice, provide samples used and allow appeal
 - Without appeal exempt for 30 days from notice
 - With appeal, exempt until 5 days after IRO affirms
 - No retro denial on basis of rescission
 - Doc allowed IRO review of rescission



TAHU's Legislative Priorities & Bills Passed

- **ACCESS – TAHU OPPOSED**
PHARMACY CONTRACT RESTRICTIONS (HB 1763)
 - Prohibits Value Based Contracting - no reduction of claims payment by aggregate effective rate, QA program, renum fee
 - Requires payment parity for nonaffiliated
 - Prohibits Specialty Pharm accreditation
 - Prohibits PBM/plans from restricting delivery or mailing S/H fees if disclosed
 - Prohibits pharmacy delivery fee to PMB/HP unless agreed



TAHU's Legislative Priorities

- ACCESS – **TAHU OPPOSED**

PHARMACY CONTRACT RESTRICTIONS (cont)

- Requires PBM disclosure of fee schedule
- Prohibits PBM retaliation (termination, audits, late pay) without fraud allegation
- PSAO member pharm allowed copy of contract; applies new/renew 9/1/21

PHARM STEERAGE PROHIBITION (HB 1919)

- Prohibits PBM/HP steerage to affiliated
- Prohibits lower cost share with affiliated
- Prohibits oral, written or online rec to affil
- Requires enrollee's written consent to Rx xfer



TAHU's Legislative Priorities & Bills Passed

- **CHOICE - TAHU SUPPORTED**

- Tx Farm Bureau Alternative Coverage (HB 3924)

- Allows sale of exempt coverage with written notice to FB members and signed ackn "not insurance"
- Requires payment at U&C rate (allowed amount per their master benefit plan docs); subjects some non-network claims to dispute resolution at TDI
- TFB currently creating plan options and sales rules; referral fees allowed in other states



TAHU's Legislative Priorities & Bills Passed

- **CHOICE - TAHU SUPPORTED**
 - Tx Mutual Alternative Coverage (HB 3752)
 - Allows a TMI sub to sell health insurance or offer a limited benefit plan to individ, small biz (>250) or TMI policyholders or employees
 - Prohibits WC policies that provide liability covers to nonsubscriber employers
 - Requires TMI to explore and emphasize:
 - Increasing competition
 - Innovation that improves quality/lowers costs
 - Ensuring adequate benefits, access & non-discrim of those with pre-x
 - Leveraging fed tax credits to increase affordability
 - Ensuring transparency of cost and coverage
 - Decreasing medical debt/uncompensated care
 - Ensuring equity between genders
 - Requires report on proposed offerings by 9/1/22; plans 9/1/23



COVID Specific Bills

- **Broadband Expansion (HB 5)**
- **Liability Protections (SB 6)**
 - Retro protection H/C workers unless "knowingly" failed to warn/remediate or comply with government standards
 - Retro protection for H/C, schools, product liability with attempt to follow govt standards unless:
 - Reasonable opp & ability to remediate or warn and knowing failure likely to expose OR
 - Knowingly failed to comply with protocols with reas opp/refusal to do so
 - Claimant must show reliable scientific evidence failure was cause in fact of contracting disease



Covid Specific Bills, cont'd

- **WC Coverage (SB 22)** - Creates presumption for 1st responders "within course and scope"
 - Prevents subro from HPs if service otherwise covered by WC
 - Effective immediately to claims pending or filed
- **Epidemic Health Institute (SB 1780)** - to coordinate efforts to protect public health/support pandemic preparedness
 - Based on National Guard with mult specialists



Bills that Died...and may come back

- Health Sharing Ministry Regulation (HB 573) - Created registration/finance disclosure
- Telemed Payment Parity (HB 980)- would have mandated office visit/telemed \$ parity
- APRN Scope expansion (HB 2029)
- Deceptive HP Marketing Bill (HB 2118) – required recording of all calls, agent compliant
- Limited Benefit Plan Disclosures (HB 2761) – would have added 9 new req'd forms
- MEWA Expansion (HB 3923) – groups of 1



Questions?

There are no dumb questions!

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