



Caring for Patients in a Time of Change

TMA's 2011 Legislative Agenda



Physicians Caring for Texans



Susan Rudd Bailey, MD

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Over the past 18 months, state and national leaders have expressed two goals for health system reform: (1) to provide every American health care while (2) drastically reducing the cost of that care. The question no one can answer is how we can attain these two diverse goals without sacrificing high-quality care.

Physicians and our patients worry how the new Affordable Care Act will impact health care in Texas. Will Medicare, Medicaid, and TRICARE patients have fewer choices about their care and who delivers it? Will the new federal law allow patients to continue to see the doctor of their choice? Will lawmakers choose to — or be forced to — ration care?

That's why our top priority during the 2011 legislative session is to protect the time-honored patient-physician relationship in every aspect of the health care delivery system. To this end, the Texas Medical Association, along with our patients, has developed a five-point roadmap outlining our key concerns. We call on our state leaders to weigh carefully every decision they make this session. It is more important today than ever before that each decision improve patient care in the long term. Texas physicians ask state legislators to help us care for patients in these trying times by using caution at each of these five signposts:

1. **Balance Texas' state budget:** Make smart decisions that protect spending for Medicaid, graduate medical education, and public health, and do not exacerbate future costs
2. **Protect the patient-physician relationship from interference by big corporate systems:** Defend the ban on corporate practice of medicine
3. **Keep patients safe by upholding a single standard of care:** Prevent scope expansions beyond that safely permitted by nonphysician practitioners' education, training, and skills
4. **Improve health care access:** Protect 2003 liability reforms and a fair Texas Medical Board
5. **Improve Texans' health:** Make Texas' public places smoke-free and tackle the obesity epidemic

Texas needs to ensure the new federal health law does not compromise the high quality of health care in this state. Texas patients need a health care system that allows them to receive the care they need when and where they need it.

Respectfully, and on behalf of 45,000 physician and medical student members and more than 20 million Texas patients, here is **TMA's legislative agenda for 2011.**

A handwritten signature in black ink that reads "Susan Rudd Bailey".

Susan Rudd Bailey, MD

President, Texas Medical Association



What Texas patients need and TMA supports

- ✓ Access to high-quality health care provided by a physician of their choice
- ✓ Less interference and red tape so physicians can give patients the time needed to make sound health care decisions
- ✓ More graduate medical education slots so young physicians can stay in Texas
- ✓ Protection of Texas' landmark medical liability reforms
- ✓ More physicians to care for the millions of children and adults who need care
- ✓ A smoke-free Texas
- ✓ Community-based programs to ensure children have safe neighborhoods and access to healthy food

What harms patients and TMA opposes

- ✓ Big hospitals and corporate hospital systems employing *your* doctor and making decisions about *your* care
- ✓ Government, hospital, and insurance company interference in the patient-physician relationship
- ✓ Nonphysicians practicing medicine beyond the scope of their training and expertise
- ✓ Trial lawyers messing with Texas' successful 2003 medical liability reforms
- ✓ Medicaid cuts that push physicians out of the program and force patients into expensive emergency rooms
- ✓ Secondhand smoke
- ✓ Childhood and adult obesity



Patients Care About...

- ✓ Access to physicians and affordable care
- ✓ Physician shortages
- ✓ Access to mental health care services

Protect Texas' Health Care — Make Wise Budget Cuts

TMA understands the budget challenges lawmakers face to balance the 2011 state budget. We understand the need to spend limited state dollars judiciously and the fact that cuts are going to occur. However, every decision made regarding health care funding needs to be evaluated against the long-term and potentially dire consequences to the health and prosperity of Texas,

our patients, and the communities in which we live. Instead of using a cleaver to close the state's budget gap, Texas physicians and our patients urge you to use a scalpel. Investing in a robust primary and subspecialty physician network as well as evidence-based preventive health services will result in much-needed savings down the road.



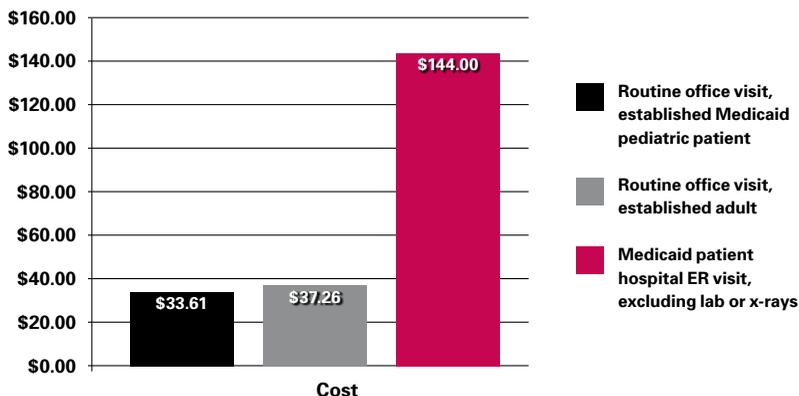
Adequate Physician Medicaid Payment Essential for Patient Access

Today Medicaid covers 3.3 million Texans. In 2014, the new health reform law requires states to expand Medicaid to cover more low-income adults, increasing the program's size by 1.2 to 2 million enrollees. And Texas Medicaid is only going to increase as more people move to Texas and our population ages. Most Medicaid enrollees — 69 percent — are babies, children of the working poor, pregnant women, and low-income parents.

Another 23 percent are seniors or patients with disabilities. In fiscal year 2009, Texas Medicaid cost \$20 billion, of which Texas' share was \$7 billion. While most enrollees are children, they account for only about 30 percent of the program's costs. Seniors and patients with disabilities account for 59 percent of the costs.

Medicaid patients must have a physician available to care for them. Physicians want to participate in Medicaid, but they simply cannot sustain the loss as Medicaid payments lag far behind the cost of providing that care. Physicians' practice expenses, like other small businesses', increase about 3 percent each year. If lawmakers cut physicians' rates further or fail to invest in a robust physician network, millions of Medicaid recipients will have a card but fewer physicians to care for them, driving them to more costly emergency rooms. TMA asks lawmakers when balancing the state budget to recognize that providing access to primary and preventive care services saves the state money.

Costs of Treating a Medicaid Patient in the ER vs. the Physician Office



Source: Texas Health and Human Services Commission

Graduate Medical Education Transforms Medical Students Into Physicians



Texas needs more graduate medical education (GME) slots to train the number of physicians required to care for our rapidly growing population, and to reverse our overdependence on other states and countries

for our physician workforce.

It is bad fiscal policy for the state to invest \$200,000 in each Texas medical student over four years, and then force these graduates to leave the state for residency training because of no residency slots. Those new physicians very likely never will return to Texas. TMA calls on the legislature to fund GME slots to keep pace with medical school expansions. We also must restore state appropriations for Medicaid GME, which will allow Texas to obtain additional federal matching dollars.

Mental Health Services Keep Patients out of More Costly State Services

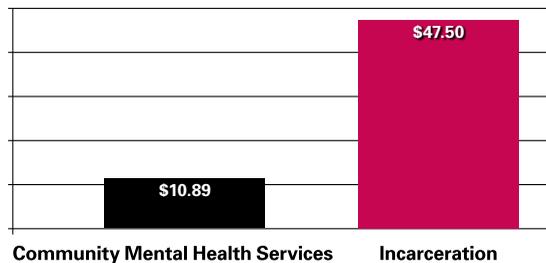
Texas ranks 49th in the nation in how much we spend per person for mental health care. Inadequate state funding puts the burden on local taxpayers, and leads to increased rates of incarceration and higher use of public hospital emergency rooms, homeless shelters, and the foster care system.

Mental illness costs the state and local governments more than \$1.5 billion per year. The state must pay for each person who is repeatedly jailed, hospitalized, or admitted to detoxification centers due to mental illness — and one year in jail alone will cost up to \$50,000.

Cutting mental health services harms patients without achieving any real savings. It also increases costs to county and state taxpayers. Recent legislative appropriations for mental health crisis intervention achieved savings and provided needed care to patients. TMA asks lawmakers to continue funding mental health services so local communities aren't stuck with an even higher price tag to care for these patients. Funding mental health

services helps patients receive the medication and treatment they need so they can become responsible, working members of the community — instead of a chronic burden for taxpayers to support.

Average Daily Cost of Community Mental Health Services vs. Incarceration per Person



Sources: Texas DSHS FY 2012-2013 Legislative Appropriation Strategy Requests, Texas Legislative Budget Board, Criminal Justice Uniform Cost Report (2009)



Patients Care About...

- ✓ Texas' medical liability reforms
- ✓ Professional standards
- ✓ Safe health care

Ensure High-Quality Health Care for All Texans

Texas has a shortage of physicians, both primary care physicians and specialists. The state currently ranks 42nd out of 50 states and the District of Columbia in the number of physicians per population.

The passage of the 2003 landmark medical liability reforms has helped Texas bring in more than 21,000 new physicians to help take care of Texas patients. However, we still don't have enough physicians to keep up with our robust population growth.

Unfortunately, many seek to fill this void with nonphysician practitioners. Expanding the authority of nonphysician practitioners is not the answer. It does little to enhance access and does not enhance health care services for patients. As the system evolves, additional focus must be on better care coordination, in a team led by physicians.

Protect Texas' Medical Liability Reforms

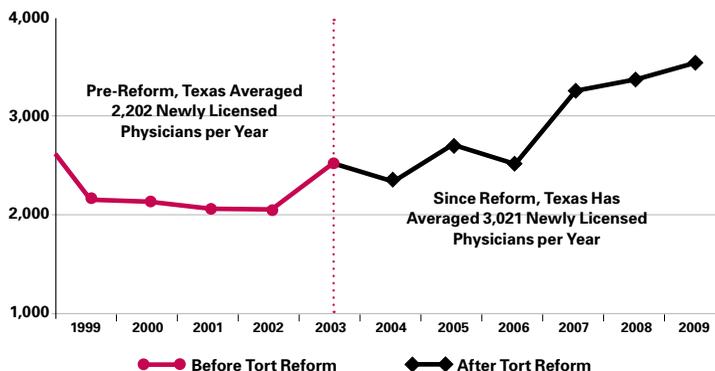
The 2003 liability reforms have worked. They've lived up to their promise. Sick and injured Texans now have more physicians who are more willing and able to give them the medical care they need. Texas has gained more than 21,000 new physicians representing many high-risk specialties such as emergency medicine, neurosurgery, pediatric intensive care, and pediatric infectious disease.

Physicians enjoy lower liability insurance premiums and a more competitive insurance market. It is critical that we protect the 2003 health care liability reforms, especially the caps on noneconomic damages and the emergency care provisions. The emergency care protections have saved lives by helping ensure Texas patients have access to physician services in critical situations.

Strong Medical Board

All Texans must be confident that they are receiving the highest quality of care and that their physicians are qualified, competent, and adhere to the highest ethical and professional standards. In fact, the original Texas Medical Practice Act was written nearly 100 years ago to rid the profession of charlatans and snake oil salesmen. The Texas Medical Board (TMB) is charged with enforcing the Texas Medical Practice Act and ensuring Texas physicians meet these standards. That's why nonphysician practitioners seeking expansion of their scope should be accountable to TMB as well. They should undergo the same scrutiny as a physician to ensure their education, training, and experience are appropriate for the level of care they provide. TMA will continue to advocate for a strong, fair, and accountable TMB to protect the public.

Newly Licensed Texas Physicians Jump by 37 Percent Since 2003 Reforms



Total number of licensees was adjusted to include an estimated 720 new licensees that were processed during fiscal year 2001 but not issued until September 2001, the start of FY 2002, due to lack of funding for an August 2001 board meeting.

Sources: Texas Medical Board and Texas Medical Association



Ensure a Single Standard of Care for All Texans

TMA is committed to a single, high standard of care for all Texans. This means care is centered on each patient's needs, and each patient receives high-quality care by a well-trained team of professionals supervised by a physician. We must protect the safety of Texas patients and ensure they receive the best medical care by the person best trained to deliver that care.

All members of the health care team, working to the fullest extent of their training, provide valuable patient care services. But only physicians have the broad clinical expertise and training to exercise independent medical judgment and serve as the trusted leader of the health care team. Nonphysician practitioners are valuable members of the health care team but are limited by their education, training, and skills to the level of care they can safely provide. Allowing exceptions to — or blurring the lines of — that standard of care in any way is neither a good solution nor good public policy for improving Texans' access to quality health care. There should continue to be a single standard of medical care for all patients under the body responsible for regulating the practice of medicine in the state: the Texas Medical Board.



Patients Care About...

- ✓ Third-party intrusions
- ✓ Unethical business practice
- ✓ Prescribed medications

Protect the Patient-Physician Relationship

Physicians are the first to tell you — the more time they can spend with their patients, the better the diagnosis and outcome. It wasn't too long ago that physicians and their patients had detailed and candid discussions about the patient's health care, treatment plan, and financing. Today, that is not the case. Each year, more barriers stand between patients and their physicians. Hospitals, insurance companies, and governments are making many health care-related decisions based on their bottom line.

Physicians and their patients need a champion to slash away at paperwork, hassles, and intrusions into patient care by nonessential tasks such as pre- and post-authorizations, hours spent haggling over payment, and fighting with insurance company clerks about the appropriate treatment for a patient. Physicians call on state lawmakers to take steps needed to preserve the cornerstone of good health care — the patient-physician relationship.



Protect Patients From Corporate Interference

Texas law prohibits the corporate practice of medicine — essentially it is illegal for big corporations, hospitals, or anyone who is not a licensed physician to employ physicians. The reason for this prohibition is simple. The direct employment of physicians by big corporate hospital systems and Wall Street business entities — outside the jurisdiction of the Texas Medical Board — threatens to overrule physicians' independent medical judgment and hurt patient care.

Direct employment of physicians by corporations is divisive to local medical communities by setting up dynamics that favor the business interests of the corporation over the medical needs of the community. Physicians should work for the patient not the insurance company, hospital, or anyone else who might have incentives contrary to

the patient's best interests. Tools currently exist for counties to recruit physicians to their communities without compromising the physician's independent medical judgment or eliminating the private practice of medicine. These include (1) the formation of a nonprofit health care organization, where physicians, and only physicians, supervise medical care and physician services, and (2) the physician loan repayment program, which encourages physicians to practice in medically underserved and rural communities by helping them repay their staggering medical school loans.

TMA calls on legislators to oppose efforts that will allow employment of physicians by nonphysician entities or that will threaten the patient-physician relationship.



Regulate Preferred Provider Organizations

A “silent” preferred provider organization (PPO) is not insurance. Instead, it is a “rental network” that uses the physician’s contract rates without authorization from, or often, knowledge of the physician. This practice amounts to theft of service.

When silent PPOs steal the physician’s contracted rate, or pay some arbitrary rate that was not agreed to or may no longer exist, patients end up spending more money out of pocket for the unpaid balance. This is not fair to patients. Eighteen states have taken steps to regulate this illegal activity. Texas should, too.

Help Patients Get Their Prescribed Medications

Only physicians have the authority to write prescriptions for their patients. Often, a physician determines over time that a patient responds best to a specific drug. The physician and patient have learned that neither the generic version of that drug nor a medication in another therapeutic class works best for the patient. Rather than allow the pharmacist to dispense the specifically prescribed drug, some health plans and pharmacy benefit managers (PBMs) engage in a practice known as “therapeutic substitution” to save the health plan and PBM money. Pharmacists are instructed by the health plan or PBM to dispense a drug different from the one the physician prescribed — sometimes without the patient’s or physician’s consent. This is wrong and could harm the patient — especially patients who are elderly, medically fragile, or have mental health conditions.

Patients and their physicians have a right to know up front what prescriptions the health plan allows — not after the patient fills the prescription. Greater transparency is needed. Legislators need to take steps to ensure patients get the prescription that best fits their treatment plan.



Patients Care About...

- ✓ Obesity
- ✓ Cancer research, detection, and prevention
- ✓ Tobacco smoke in their face
- ✓ Better immunization rates

Public Health Saves Lives and Money — Protect It

Texas ranks poorly in the nation for child and adult obesity, diabetes, and adult physical inactivity — in fact, Texas ranks seventh for most obese children and 13th for most obese adults. Obesity is an expensive disease. This year, obesity will cost Texas \$15.6 billion. Obesity-related diseases such as diabetes and hypertension also are increasing and contribute to rising health care costs for the state.

Smoking and secondhand smoke also cost the state money. Texas businesses and taxpayers spend more than \$20.4 billion annually on health-related costs attributed to smoking. This includes

direct health care costs, workplace productivity losses, and premature death. Put a different way, the average price for a pack of cigarettes in Texas is \$5.52. But the real price to Texas' patients and economy is \$21 per pack of cigarettes.

We simply cannot let these two public health crises continue. We must take significant steps today to prevent more children or adults from growing obese or starting to smoke. Investing in obesity and tobacco prevention is a wise decision. A few dollars put toward these programs today could save billions tomorrow.

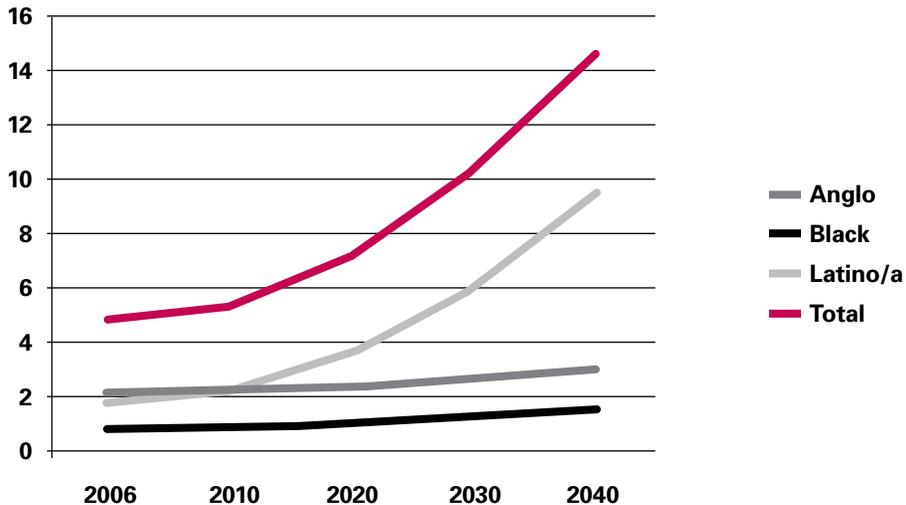


Stop Texas' Obesity Crisis

Obesity threatens Texas' physical and fiscal health. More than 5 million Texans are obese. And this number is expected to double over the next 20 years, which means by 2040, three out of every four Texans will be overweight. This has stunning implications for the state's health care system. It will cost Texas more than \$39 billion in health care and lost productivity each year by 2040. Texas simply cannot bear the burden of an obesity epidemic — especially in these trying economic times. State lawmakers must take steps to fight obesity before it consumes us. TMA calls on lawmakers to continue funding community-based grants that ensure children have access to healthy foods and safe neighborhoods for exercise.

Projected Increase in Number of Obese* Adults in Texas, 2006-40

(in millions)



Source: Office of State Demographer, Moderate Projection *BMI \geq 30



Enhance Cancer Research, Detection, and Prevention

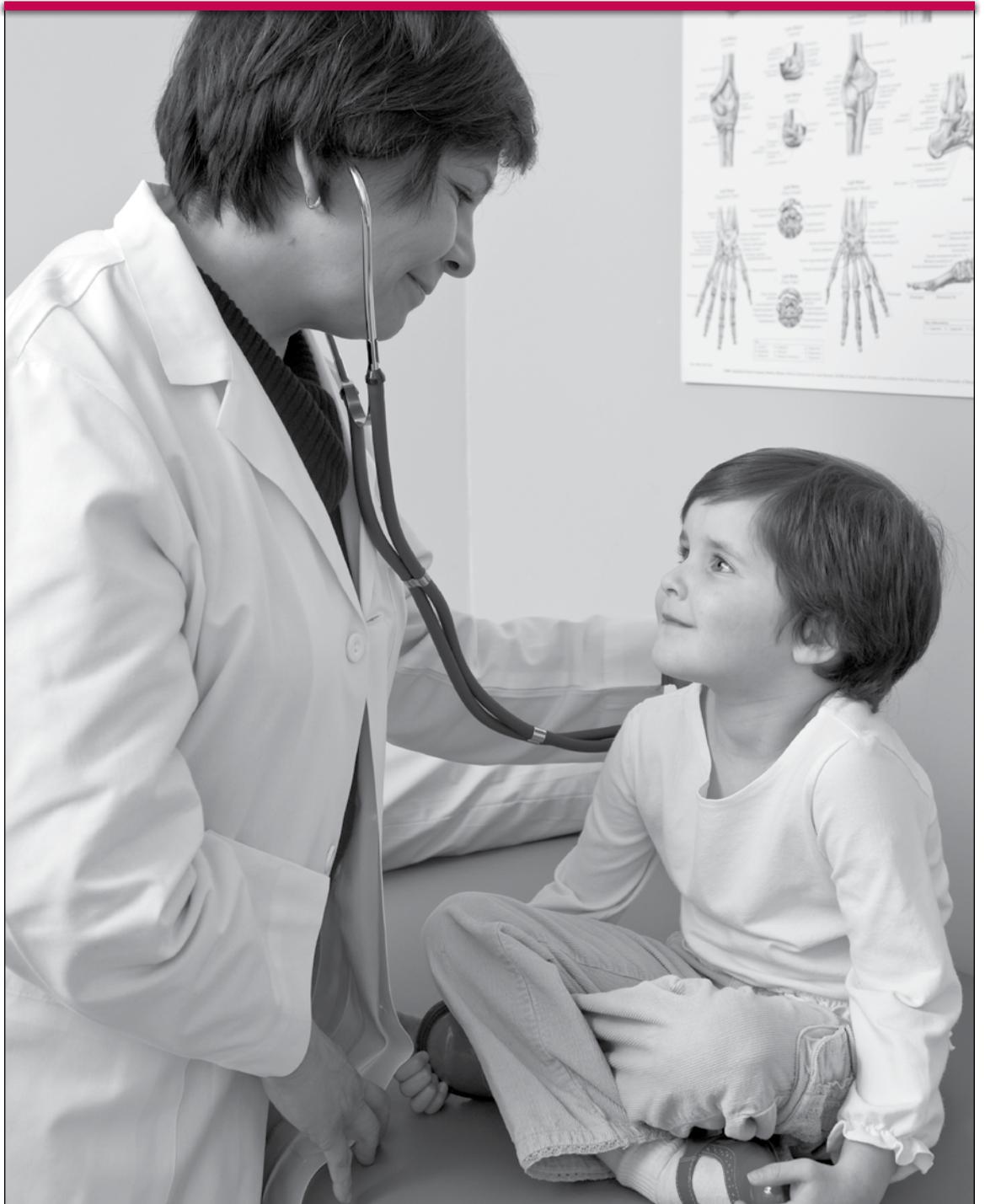
Texas has chosen to fight cancer head on. In 2007, Texas voters spoke loudly by passing a constitutional amendment to create the Cancer Prevention and Research Institute (CPRIT). It authorized up to \$3 billion over 10 years to fund cancer research. To date, CPRIT has invested in Texans' quality of life by funding \$216 million annually in cancer research and prevention right here in Texas. And, every dollar invested in cancer research returns about \$16 in medical cost savings. Plus, it helps to create jobs and economic development in Texas. That's why TMA asks legislators to follow the will of Texas voters and fully fund the Cancer Prevention and Research Institute. Much more needs to be done to prevent more than 100,000 Texans from being diagnosed each year with cancer. Funding invested in cancer prevention, detection, and screening is crucial to ensuring Texans receive the best care possible — and to stopping cancer before it ever strikes.

Make Texas Smoke-Free

Secondhand smoke is dangerous. In fact, a recent study found that no level of smoking or exposure to secondhand smoke is safe. That's why banning smoking in public places is one of the easiest, simplest, and fastest steps Texas could take to improve health. Thirty states now prohibit smoking in workplaces. TMA believes it is time for Texas to join these ranks. We are asking lawmakers to pass a statewide ban on smoking in workplaces and public areas.

Better Immunization Tracking

Vaccination is the safest and most cost-effective way to protect young children and adults in Texas from preventable and potentially fatal diseases. Texas has taken concerted steps to improve immunizations among children, adolescents, and adults (especially for the flu). However, we must remain vigilant. In 2009, more than 8,500 cases of these diseases were reported in Texas, primarily chicken pox and whooping cough — all of which are preventable by vaccination. And, as we know from history, a natural disaster or pandemic can happen at any time. It is critical that the state maintain good data on who has been vaccinated and when. To date, ImmTrac, the state's vaccination registry, tracks only children's vaccinations and only if parents opt in. This means the state has sketchy vaccination data. TMA asks legislators to make ImmTrac an opt-out system and to include all adult vaccinations.





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