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REPORT OF COMMITTEE ON PHYSICIAN HEALTH AND WELLNESS

CM-PHW 1
2021

Subject: Educational Activities

Presented by: Sejal S. Mehta, MD, MBA, Chair

Background
In 1976, the TMA House of Delegates established the Impaired Physicians Committee and charged it with studying the problem of impairment in Texas. The committee also was to devise mechanisms for the identification, treatment, and long-term follow-up of Texas physicians with diseases and illnesses that compromised their ability to practice medicine. Since that time, the committee’s duties have expanded to include education and prevention of illness. The name was changed to Committee on Physician Health and Rehabilitation in May 1978. In 2013, with advanced understanding of physician health and wellness, the committee’s name was changed to the Committee on Physician Health and Wellness (PHW).

After an extensive evaluation of the program, the program’s charge was revised in 2019 and the committee’s function was outlined as such: 1) to promote healthy lifestyles in Texas to medical students, residents, and physicians, 2) to provide advocacy and support for education on physicians’ wellness, and 3) to promote prevention of potentially impairing conditions.

Live Virtual Presentations and Online CME Courses
PHW activities encourage medical students, resident physicians, and physicians to promote and nurture personal health and wellness, fostering healthy lifestyles in patients. Currently, 26 CME courses are available as live, virtual presentations and online courses. In 2020, 3,469 physicians participated in online education, and 853 physicians watched 16 live and virtual presentations.

In 2018, the PHW committee added free health and wellness presentations for medical students and residents. Since then, 13 presentations have been given, up from one in 2017.

In 2020, the education team reviewed and developed 11 courses, adding COVID-19 related information. In 2021-22, the committee’s education team will review and develop these 12 courses:

- Spirituality, Leadership and Values in The World of Medicine (formerly Spirituality and Medicine)
- Power Reimagined: The Positive Role Women Contribute to Medicine (formerly The Professional Landscape of Medicine)
- Aging and Retirement: Optimizing the Physician Workforce (formerly Aging and Retirement: Practice Dilemmas)
- Building Better Boundaries (formerly Challenges: Professional Boundaries and Patient Encounters)
- Navigating a Healthy Relationship with Anger (new)
- Role of Cultural Competence and Cultural Humility in Achieving Health Equity
- Get Moving! Improve Your Work-Life Balance (formerly Balance for Life)
- Beyond Substance Abuse: Exploring the Other Addictions (formerly Addictive Behavioral Disorders)
- Breathe, Relax, Heal (new)
- Enhancing Communication to Improve Patient Safety and Professional Satisfaction (formerly Effective Communication With Patients)
- Manifest Happiness (formerly Hardwiring Happiness)
Optimal Cultures for Promoting Resilience and Well-Being (formerly Promoting Resilience and Well-Being in Our Work and Learning Environments)

Annual PHW Exchange

The inaugural Physician Health and Wellness Exchange occurred in 2019 at Baylor College of Medicine. Seven medical schools participated in the conference: Baylor, McGovern Medical School, Texas A&M College of Medicine, University of the Incarnate Word School of Osteopathic Medicine, The University of Texas Medical Branch School of Medicine, UT Health San Antonio Long School of Medicine, and UT Southwestern Medical School. Rice University also participated. Educational activities included a Think Tank discussion, CME programming, and a poster session. The 2020 PHW Exchange was canceled because of the pandemic. The next exchange will focus on overcoming obstacles to individual and organizational well-being.

Recent and Upcoming PHW Projects

An “In Memory” resolution was submitted to the Texas Legislature to honor the physicians and other members of the medical community who lost their lives to COVID-19 for reading on National Doctor’s Day, March 30. TMA sought co-sponsorship by the House and Senate physician members and Chairs of House Public Health and Senate Health and Human Services.

PHW will provide a comprehensive professional development CME program for physicians who have received disciplinary orders from the Texas Medical Board (TMB). The committee’s charge includes “prevention of potentially impairing conditions.” Physicians who receive a disciplinary order from the TMB are assessed and evaluated by a qualified team within a physician assessment program. Those who are assessed are not always diagnosed with an impairing condition and/or not always ordered to have an evaluation/assessment; however, the majority are ordered to obtain CME. The committee’s education team will equip physicians with tools and strategies to prevent potentially impairing conditions through small group and individual education sessions.

PHW also will provide cost-effective online therapy services, tailored for physicians, who require a sustainable method of service. The pandemic has intensified the need for mental health care services, and has magnified the disparities and impact on solo and small group practice physicians. They often do not have access to employee assistance programs (EAPs) through their workplace. And if access is provided, the associated cost is included in the overall small practice health care budget. Additionally, EAP fees often are based on the number of employees and/or require a minimum number of participants. Support and implementation of a pay-as-you-go billing method is required to sustain these services; and should be modeled to fit solo physician and small group practice contexts. EAP services often include online therapy by licensed professional psychologists and referrals to medical doctors, but have not progressed to include additional services such as extending counseling/therapy services for family members, providing an alternative to therapy such as individual coaching, and offering more financial health resources.
REPORT OF TEXAS DELEGATION TO THE AMA

TEXDEL Report 1 2021

Subject: AMA House of Delegates Meetings in 2020

Presented by: David N. Henkes, MD, Chair

2020 AMA Special Meeting, June

On Friday April 3, 2020, your American Medical Association Board of Trustees made the very difficult decision to suspend the 2020 Annual Meeting of the House of Delegates.

Pursuant to AMA by-laws §2.12.2 and the action of the Board of Trustees on April 3, a virtual special meeting was held on June 7, 2020, at 2 pm (CT) for the purposes of inauguration, elections, and “essential business” only. By the end of the meeting, the house had installed Fort Worth allergist and TMA past president Susan R. Bailey, MD, as AMA president and Russell W.H. Kridel, MD, a facial plastic surgeon from Houston, as chair of the AMA Board of Trustees.

Elections and Appointments

Larry E. Reaves, MD, of Fort Worth, was appointed to the Council on Ethical and Judicial Affairs.

Cynthia Jumper, MD, of Lubbock, was reelected to the Council on Medical Education.

Business of the House

Business of the house was severely limited to essential business only. This business was approved by the Board of Trustees and included sunset review of polices for the councils on Ethical and Judicial Affairs, Medical Education, Medical Service, Legislation, and Science and Public Health; the annual report; new specialty societies; and AMA dues.

2020 AMA Special Meeting, November

Nearly 700 physicians, residents, and medical students gathered virtually Nov. 13-17 to consider proposals addressing a wide range of clinical practice, payment, medical education, and public health topics.

AMA Adopts Standards for “Public Option”

Addressing what is expected to be a top agenda item for incoming President Joe Biden and his administration, delegates passed policy allowing AMA to advocate that any “public option” proposal to expand health insurance coverage to the nation’s uninsured and underinsured must adhere to a set of standards that include protections for patients and physicians.

But the final decision did not come easily. And for physicians who participated in the fiery Affordable Care Act (ACA) debates on the floor of the AMA House of Delegates meeting a decade ago, the 2020 interim meeting may have felt like déjà vu.

Testimony reflected strong feelings from many delegates, including the Texas Delegation to the AMA, that the complicated issue required more deliberation than a virtual meeting could provide and should have been referred for more study until the AMA’s next annual meeting in June 2021. Seeing that the house had no plans to postpone the vote, Texas physicians got to work and were instrumental in securing at least some, if not all, the changes they asked for to ensure comprehensive guardrails.
TMA policy supports the expansion of affordable health insurance coverage for those with little to no access, and the Texas delegation expressed its support for establishing standards for future health insurance reform discussions.

However, in anticipation of what is expected once again to be a flashpoint in the debate – and to give states like Texas more flexibility in such negotiations – Texas delegates, in collaboration with other state delegations, argued against use of the term “public option.”

Austin ophthalmologist Michelle Berger, MD, proffered an amendment favoring instead use of more general terminology that would allow for various “expanded” health insurance options.

“We in Texas want every American patient and physician to have minimal worries about coverage of their health care,” she testified before the house. But “good sound policy,” she said, should incorporate “expanded and broadened terminology to include any changes in coverage and different points of view so we do not have to keep returning to the House amending our policy for the politically popular program-du-jour.”

Delegates in the end voted to retain the term “public option” by a vote of 308 to 134.

The AMA policy “has some very good guidelines, and we’re not opposed to using those standards,” San Antonio pathologist David Henkes, MD, chair of the Texas Delegation to the AMA, told Texas Medicine.

But the policy still leaves Texas physicians with some concerns, he said. “We felt ‘public option’ was too politically charged to use and best removed,” Dr. Henkes said. “And it’s a term without a definition. It’s a non-specific entity that could be anything from ‘Medicare-for-all’ to all different types of subsidized health care plans.”

However, after five days of meetings that involved hours of passionate debate, deliberation, politicking, and fine-tuning, supporters of the public option concept won their bid for AMA to take a more definitive stand on the issue sooner rather than later.

In addition to political momentum for the concept, delegates expressed concerns that the COVID-19 pandemic continues to expose the shortcomings of the private health insurance market, pointing to the spread of high-deductible plans providing limited coverage, and losses in employer-sponsored coverage.

“The AMA believes that now is the time to build upon the ACA to cover more of the uninsured,” AMA President Bailey said in a statement. “We look forward to being at the table to represent physicians and our patients to ensure that our patients are able to secure affordable and meaningful coverage and access the care that they need. A public option should not be seen as a panacea to cover the uninsured. It should not be used to replace private insurance; rather it can be used to maximize competition. With appropriate guardrails, the AMA will examine proposals that would provide additional coverage options to our patients.”

The new AMA policy states, “The primary goals of establishing a public option are to maximize patient choice of health plan and maximize health plan marketplace competition.” Among the other standards the policy says a public option must follow:

- Eligibility for financial assistance is restricted to “individuals without access to affordable employer-sponsored coverage that meets standards for minimum value of benefits.”
- Physician payments are established “through meaningful negotiations and contracts” and “must be higher than prevailing Medicare rates and at rates sufficient to sustain the costs of medical practice.”
Physicians can choose whether to participate in the public option, and their participation should not be tied to Medicare or Medicaid participation.

The public option should be “financially self-sustaining” and “not receive advantageous government subsidies” compared with other health plans.

In states that don’t expand Medicaid, the public option must be available to uninsured individuals who fall into the “coverage gap,” meaning those individuals who earn too much money to qualify for Medicaid but not enough to qualify for subsidies in the ACA exchanges.

The AMA policy also lays out standards for auto-enrolling uninsured individuals who have other coverage options available to them – such as Medicaid or the ACA exchanges – but do not take advantage of them. Those standards include allowing patients to opt out; not penalizing them for auto-enrollment in plans they are not eligible for; notifying patients of any cost-sharing; and incentivizing health plans to offer predeductible coverage, including for physician services.

Despite efforts to the contrary, supporters of the public option concept also won their bid to keep the option open to people who already have access to employer-sponsored insurance but find it unaffordable, rather than restricting the public option to those without access to any kind of health coverage.

As in past reform debates, testimony was split over whether a public option that was too broad would crowd out employer-sponsored insurance alternatives from the private market. There was significant concern from the Texas delegation and others that the move could discourage employer coverage altogether and, in turn, reduce physician payments because employer plans tend to pay higher rates.

The House did, however, ultimately incorporate changes that Dr. Henkes said will “give AMA flexibility and discretion [in negotiations] if elements other than standards listed turn out to be not so good for patients and doctors.”

Delegates also approved the stronger language that Texas physicians helped craft to ensure adequate physician payments.

When all was said and done, AMA Speaker of the House Bruce Scott, MD, recognized the “strong emotions on both sides” of the public option issue but praised the house for “the collegial nature of that debate.”

Medicine Opposes Racism, Recognizes It As a Public Health Threat

The nation’s physicians confronted racism by adopting several policies that recognize it as a public health threat; commit AMA to dismantling racist policies and practices throughout health care; and recognize race as a social construct, not an inherent biological trait.

“Racism is detrimental in all its forms. This has been extensively researched,” said Luis Seija, MD, an internal medicine and pediatrics resident in New York who studied at the Texas A&M College of Medicine. “It’s time for our AMA to recognize that Black lives matter.”

Specifically, a policy approved calls on all physicians, residents, and medical students nationwide to oppose racism in all forms, and for AMA to take steps to combat racism.

Delegates also voted to recognize police brutality as a manifestation of structural racism that disproportionately affects minorities. They directed AMA to work with state and local medical groups, like the Texas Medical Association and county medical societies, to support eliminating excessive use of force by law enforcement.
Debate was at times intense, particularly over a section of a resolution that would have urged an end to the use of ketamine and similar medicines by first responders for nonmedically indicated law enforcement purposes. That part of the resolution was ultimately referred to the AMA Board of Trustees for future action.

COVID-19 Vaccine Skepticism, Future Pandemics
The COVID-19 pandemic permeated activities at the AMA meeting, culminating in passage of two public health measures designed to help contain the disease.

With the support of the Texas delegation, the house voted to create a program that educates both physicians and the public about COVID-19 vaccines.

At this writing, two vaccines – one produced by Pfizer and one by Moderna – were reportedly at least 90% effective in preventing COVID-19. However, public opinion polls showed widespread public skepticism about the vaccines.

The new policy calls on AMA to form a coalition of medical and public health organizations – including groups representing physicians, nurses, hospitals, and public health – to develop and implement an education program promoting facts about the COVID-19 vaccines.

The measure also calls on AMA to continue monitoring the COVID-19 vaccines to ensure evidence supports their ongoing use.

Delegates, including the Texas delegation, also directed AMA to champion improved public health programs to prepare for pandemics and find solutions to ongoing health inequities. The measure, which mirrors TMA’s priorities for the 2021 session of the Texas Legislature, also called on AMA to study and recommend the best ways to improve public health nationwide.

Yet another policy the house adopted calls on AMA to advocate for policies that prevent evictions and the shutoff of utilities during public health emergencies.

Anmol Gupta, a student at Baylor College of Medicine in Houston, argued in favor of the resolution, pointing out some of the difficulties Houstonians faced in September from flooding caused by Tropical Storm Beta.

“While some of us were cleaning up debris, restocking essentials, or managing a day or two without power, 600 Houstonians in that week alone were on the court docket to be evicted,” he testified during a reference committee meeting. “Thousands more were at risk of getting their utilities shut off for good once the state’s moratorium on utilities [expired] on Oct. 1.”

Expanding Telemedicine, Financial Relief Programs
As telemedicine expands because of the COVID-19 pandemic, delegates approved a measure that called for telemedicine’s use to continue beyond the national public health emergency.

At the urging of the Texas delegation, the measure includes language that supports increased funding and planning for infrastructure, such as broadband internet, to ensure more patients can receive health care via telemedicine.

“We feel every American deserves access to physicians, and the only way to achieve that is through broadband access,” Beaumont anesthesiologist Ray Callas, MD, testified.
The measure also calls for uniform state and federal laws, policies, and regulations and policies regarding telemedicine, including ensuring that devices contain “appropriate privacy and security protections.”

“Telemedicine is the practice of medicine … so we’re trying to make telemedicine another tool in a physician’s toolbox,” Dr. Callas said during his testimony. “Telemedicine should be the choice of patient and physician.”

TMA had pushed for an amendment that would call for all insurers to pay the contracted rate for a covered service provided to an enrolled patient. However, that amendment was referred to the AMA board for its decision at a later date.

**24/7 Prior Authorization Processing**

The AMA house once again tackled onerous, care-impeding prior authorization requirements. This time, delegates discussed and passed policy that advocates for insurers and benefit managers who require prior authorization to have staff available to process those approvals 24 hours a day, year-round, “including holidays and weekends.”

One proposed amendment, ultimately rejected, would have curbed the policy to targeting only “urgent/emergent clinical/administrative” prior authorizations. San Antonio internist Jayesh Shah, MD, was one of several house members to speak against that amendment.

“We have the statistics that prior authorization delays proper care, causes harm, and my patients suffer every day because of inadequate work by these insurance companies,” Dr. Shah testified. “Insurance companies make enough money, and they can provide this 24/7 service. It should not be just limited to urgent and emergent. It should be for every prior authorization. They should provide 24/7 care, period.”

**End National Clinical Skills Exams for U.S. Medical Students**

In discussions on medical education, delegates called on AMA to urge the speedy end to the clinical skills part of the United States Medical Licensing Examination (USMLE) Step 2 and Comprehensive Osteopathic Medical Licensing Examination (COMLEX) Level 2 for U.S. medical students.

The exams have been suspended during the pandemic and are not scheduled to restart before June 2021.

The clinical skills exams have been unpopular with medical students and faculty since their inception because of the financial and time pressures placed on students. Opponents also pointed to exceptionally high passage rates of 97% to 98% and questioned the need for the exams.

During debate, supporters of the exams argued they are an independent assessment of clinical skills using a national standard. But Galveston endocrinologist Kevin McKinney, MD, speaking on behalf of the Texas delegation, argued that medical schools are capable of teaching and evaluating students’ clinical skills. He is a professor at The University of Texas Medical Branch School of Medicine.

Medical students “tell us when they go take the exam that our [school’s] exam is just as hard if not harder than the one they’re taking [for the USMLE Step 2],” Dr. McKinney testified.

The directive also urged AMA to work with the Educational Commission for Foreign Medical Graduates to advocate for an equivalent, equitable, and timely pathway for international medical graduates to demonstrate clinical skills competency.
In a related move, delegates also called on AMA to advocate for all U.S. medical students or residents who took and failed any part of the USMLE or the COMLEX between March 1, 2020, and May 31, 2021, to be reexamined at no charge to the student or resident.

Cannabis Still a “Serious Public Health Concern”
As more states relax marijuana use and possession laws, delegates voted to clarify AMA policy to say that the association “believes that cannabis is a dangerous drug and as such is a serious public health concern.”

The policy also was amended to clarify that sale of cannabis should not be legalized; that physicians should discourage its use, particularly among youth and pregnant and breast-feeding women; and that “states that have already legalized cannabis (for medical or adult use or both) should be required to take steps to regulate the product effectively in order to protect public health and safety.”

Other policy amendments include requiring “meaningful and easily understood units of consumption” on packaging, and requiring “that for commercially available edibles, packaging must be child resistant and come with messaging about the hazards about unintentional ingestion in children and youth.”

Delegates also recommended “AMA study the expungement, destruction, and sealing of criminal records for legal offenses related to cannabis use or possession.”

In other debates, the house endorsed the use of home injections and/or infusions of certain drugs approved by the Food and Drug Administration – such as antibiotic therapy – only if recommended and supervised by a physician. The measure also calls for the Centers for Medicare & Medicaid Services and private payers to provide adequate physician payment for such treatments.

Other Business of the House
- Establish a Private Practice Physicians Section.
- Continue to advocate for payment to physicians for extra expenses incurred during the COVID-19 public emergency.
- Work on alternative methods to reimburse physicians and hospitals for the cost of Medicare Part B drugs, including vaccines.
- Support increases in states’ federal medical assistance percentages or other funding during significant economic downturns to allow state Medicaid programs to continue serving Medicaid patients and cover rising enrollment.
- Acknowledge that racism and unconscious bias in medical research and health care harm marginalized communities.
- Support developing policy to combat racism and its effects.
- Identify current best practices among health care facilities, practices, and academic medical centers that recognize, address, and mitigate the effects of racism.
- Prevent and combat racism and bias in innovative health technologies.
- Address physician wellness, burnout, and suicide by advocating that “physicians, medical students and all members of the health care team maintain self-care, and are supported by their institutions in their self-care efforts.” That support should include “access to affordable health care, including mental and physical health care,” as well as access to out-of-network care “in person and/or via telemedicine.”
- Help develop workplace policies designed to prevent and address bullying in medicine.
- Support policies that facilitate compassionate release for incarcerated patients on the basis of serious medical conditions and advanced age.
- Work toward reducing physical threats and violence directed at health care professionals and to educate the public about the prevalence of this problem.
Work toward prioritizing vaccinations for people who are incarcerated – and the workers who oversee them – while also improving their access to personal protective equipment (PPE) and quarantines.

Initiate several steps designed to improve physician access to PPE.

Encourage the Centers for Disease Control and Prevention to study and issue guidance on the most effective strategies to reduce the spread of influenza in hospitals.

Support restarting the suspended Medicare advance payment program.

Support expanding eligibility for the federal Provider Relief Fund.

Work to reform the Paycheck Protection Program to ensure greater flexibility in how the funds are spent and lengthening the repayment period.

Pursue loan forgiveness for medical school debt.

Actively oppose policies limiting physician access to hospital services based on quantity and type of referrals, number of procedures performed, their use of hospital services, or employment affiliation.

Recognize that credentialing, physician onboarding, and peer review should “not be tied in a discriminatory manner to hospital employment status.”

Oppose the diversion of any funding away from graduate medical education (GME) funding programs.

Monitor progress on concerns about continuing board certification programs.

Examine the role of corporate entities in GME.

Outline ways to protect residents and GME positions in the event of a sudden hospital or training program closure.

Delegates also approved new policies aimed at mitigating the negative effects of high-deductible health plans. Those measures call on AMA to encourage “ongoing research and advocacy to develop and promote innovative health plan designs”; push employers to give patients “robust education” to help them make good use of their plan benefits; and encourage state and national medical associations and specialty societies “to actively collaborate with payers” in innovative plan designs.

Elections and Appointments

Several Texas residents and students nabbed AMA leadership positions. For the AMA Resident and Fellow Section: Theresa Phan, MD, of Austin, was reelected as the section’s speaker; Jerome Jeevarajan, MD, of Houston, was elected as the section’s delegate in the AMA House of Delegates; and Michael Metzner, MD, of San Antonio, was elected as alternate delegate.

For Region 3 of the AMA Medical Student Section, which represents Texas, Oklahoma, Kansas, Arkansas, Louisiana, and Mississippi: Chris Wong, a third-year student at Baylor College of Medicine; Swetha Maddipudi, a third-year student at UT Health San Antonio Long School of Medicine; Abhaishak Dharan, a third-year student at Texas Tech University Health Sciences Center Paul L. Foster School of Medicine; and Whitney Stuard, who is in the medical scientist training program at UT Southwestern Medical School.

Elected as regional alternate delegates: Brittany Ikwuagwu, a third-year student at McGovern Medical School at UTHealth; and Alyssa Greenwood Francis, a second-year student at the Foster School of Medicine.

Members Leaving the Delegation

Brad Butler, MD, submitted his letter of resignation due to his military service obligations. Arlo Weltge, MD, and David Fleeger, MD, finished their last term as delegates and were recognized for their years of service and commitment to the Texas delegation.
REPORT OF TEXAS DELEGATION TO THE AMA
TEXDEL Report 2 2021

Subject: AMA Membership, Representation, and Delegation Leadership
Presented by: David N. Henkes, MD, Chair

As of Jan. 24, American Medical Association membership in Texas totaled 19,900 compared with 19,081 at year-end 2019, an increase of 819 members.

Representation in AMA
Twenty physician delegates represent Texas in the AMA House of Delegates. Numerous Texas physicians and medical students hold positions of leadership within the AMA organizational structure:
Susan R. Bailey, MD, was installed as president; Russell W.H. Kridel, MD, was installed as chair of the Board of Trustees; and Larry Reaves, MD, was appointed to the Council of Ethical and Judicial Affairs.
Lyle Thorstenson, MD, completed eight years on the Board of Directors for AMPAC, serving from 2018-2020 as chair. Texans serving as ex officio members of the AMA House of Delegates are AMA past presidents J. James Rohack, MD, and Nancy W. Dickey, MD.

Additional Texas physicians holding elected or appointed positions on AMA entities are:
- Michelle Berger, MD, member, Council on Long Range Planning and Development
- John T. Carlo, MD, member, Council on Science and Public Health
- Jose M. de la Rosa, MD, immediate past chair, Academic Physician Section
- Hilary Fairbrother, MD, immediate past chair, Young Physicians Section
- Diana Fite, MD, member, House of Delegates Compensation Committee
- John G. Flores, MD, member-at-large, Organized Medical Staff Section Governing Council
- Gary Floyd, MD, member, Council on Legislation
- Greg Fuller, MD, member-at-large, Integrated Physician Practice Section
- Cynthia A Jumper, MD, PhD, Council on Ethical and Judicial Affairs
- Ken Mattox, MD, member, Senior Physicians Group Governing Council
- Monique A. Spillman, MD, Council on Medical Education
- Chris Wong, a third-year student at Baylor College of Medicine;
- Swetha Maddipudi, a third-year student at UT Health San Antonio Long School of Medicine;
- Abhaishhek Dharan, a third-year student at Texas Tech University Health Sciences Center Paul L. Foster School of Medicine; and
- Whitney Stuard, a student in the medical scientist training program at UT Southwestern Medical School.
Elected as regional alternate delegates were:

- Brittany Ikwuagwu, a third-year student at McGovern Medical School at UTHealth; and
- Alyssa Greenwood Francis, a second-year student at Foster School of Medicine.

In addition to the delegates and alternate delegates representing the Texas Medical Association in the AMA House of Delegates in 2020, many other Texas physicians serve in the AMA house as specialty society delegates and alternate delegates:

- C. Bob Basu, MD, alternate delegate, American Society of Plastic Surgeons
- Donna Bloodworth, MD, alternate delegate, American Academy of Pain Medicine
- Emily Briggs, MD, alternate delegate, American Academy of Family Physicians
- Ankita Brahmaroutu, MD, alternate delegate, American Academy of Neurology
- Sue Bornstein, MD, delegate, American College of Physicians
- Sarah G Candler, delegate, American College of Physicians
- Tilden L. Childs III, MD, delegate, American College of Radiology
- Ronald J. Crossno, MD, delegate, American Academy of Hospice and Palliative Medicine
- Gary Dennis, MD, alternate delegate, National Medical Association
- Daniel Dent, MD, delegate, American College of Surgeons
- Seemal Desai, MD, alternate delegate, American Academy of Dermatology
- John Early, MD, delegate, American Academy of Orthopaedic Surgeons
- Hilary E. Fairbrother, MD, delegate, American College of Emergency Physicians
- Melissa J. Garretson, MD, delegate, American Academy of Pediatrics
- Osvaldo Steven Gigliotti, MD, alternate delegate, Society of Cardiovascular Angiography and Interventions
- Robert C. Kramer, MD, alternate delegate, American Society for Surgery of the Hand
- Rashmi Kudesia, MD, delegate, American Society for Reproductive Medicine
- Keagan H. Lee, MD, alternate delegate, United States & Canadian Academy of Pathology
- Jonathan D. Leffert, MD, delegate, American Association of Clinical Endocrinologists
- David Lichtman, MD, delegate, American Society for Surgery of the Hand
- Alnoor Malick, MD, delegate, American College of Allergy, Asthma & Immunology
- G. Sealy Massingill, MD, delegate, American College of Obstetricians and Gynecologists, and Council on Long Range Planning and Development
- Samer Mattar, alternate delegate, American Society for Metabolic and Bariatric Surgery
- Hernando J. Ortega Jr., MD, MPH, delegate, Aerospace Medical Association
- Ray D. Page, DO, delegate, American Society of Clinical Oncology
- Harry Papaconstantinou, delegate, American Society of Colon and Rectal Surgeons
- Mary Dale Peterson, MD, alternate delegate, American Society of Anesthesiologists
- Carlos J. Puig, DO, delegate, International Society of Hair Restoration
- Craig Rubin, delegate, American Geriatrics Society
- Divya Srivastava, MD, alternate delegate, American College of Mohs Surgery
- Susan M. Strate, MD, alternate delegate, College of American Pathologists
- David Teuscher, alternate delegate, American Academy of Orthopaedic Surgeons
- Crystal C. Wright, MD, alternate delegate, American Society of Anesthesiologists

2021 Officers

At the Texas Delegation’s Jan. 29 meeting, David N. Henkes, MD, was reelected chair; Michelle A. Berger, MD, and Gary W. Floyd, MD, were reelected co-vice chairs; and Ray Callas, MD, and Gregory M. Fuller, MD, were reelected as at-large members of the Delegate Review Committee.
The International Medical Graduate (IMG) Section was established by the House of Delegates to provide a direct means for international medical graduates to participate in the activities of the association. Its purpose is to enhance TMA outreach, facilitate communication and exchange with IMGs, promote TMA membership growth, enhance the ability of IMGs to provide their perspective to TMA and the House of Delegates, and facilitate the development of information and educational activities on topics of interest to IMGs.

**Section Activities**

The IMG Section meets two times annually, during TMA Winter Conference and TexMed. Additionally, the section hosts a mixer at Winter Conference the evening prior to its business meeting.

The section has taken a keen interest in increasing international medical graduate membership and member involvement within the section. During the meeting at Winter Conference, section members discussed recruitment, retention, and involvement activities.

One of the projects the section initiated to help with recruitment was to meet with other international physician organization across Texas. The purpose of these meetings is to build connections with these organizations and encourage participation within the TMA-IMG section. So far, the section has met with physician leaders from the Association of Physicians of Pakistani Descent of North America, and the Female Doctors of Austin of Indian Origin. Additional meetings have been put on hold due to demands on physician time due to COVID-19. However, section leadership plan to resume these meetings in late 2021.

Prior to Winter Conference, the section held a joint section educational program along with the Medical Student Section, Resident and Fellow Section, and Young Physician Section. The program, “Advocacy 101: The Relationship,” was provided to help section members understand the importance of legislative relationships. Section members learned how to craft effective messaging, identify their personal stories, conduct legislative visits, and build long-lasting relationships. Participating physicians were offered the opportunity to obtain 1 *AMA PRA Category 1 Credit*™ with Ethics.

The section hosted a very successful Winter Conference business meeting. During this meeting, section members heard from TMA Vice President of Advocacy, Dan Finch. Mr. Finch outlined medicine’s legislative priorities and how to get involved in the 2021 Texas legislative session on behalf of medicine.

During Winter Conference, the section also hosted American Medical Association-IMG Section chair, Deepak Kumar, MD, and AMA-IMG Section staff, Carolyn Carter-Ellis, who joined the meeting to discuss the AMA’s current activities supporting IMG physicians, and how to get involved on the national level. Dr. Kumar encouraged participants to join the AMA, if they are not already members, explaining the more IMG physicians the AMA represents, the more power IMG physicians will have to influence federal legislation.
Looking Ahead
The section will continue to focus on increasing IMG membership, engagement, and meeting participation. The section also plans to provide educational programming relevant to its members. The section will elect new governing council members during their business meeting at TexMed 2021.
The Medical Student Section (MSS) was established by the House of Delegates to shape the future of medicine in Texas by active medical student involvement in the affairs of the various Texas county medical societies, the Texas Medical Association, and the American Medical Association. Their purpose is to foster dialogue between individuals and organizations within medicine, promote and aid in programs which may serve to unify and give direction to health-related activities at all levels of education, and provide a good and useful service to the medical students in Texas.

**Membership**

Medical student membership has reached an all-time high. As of Dec. 31, 2020, student membership in TMA was 7,660 – an increase of 515 students or 7.2% from 2019. These numbers include 13 of the 15 medical school chapters who joined TMA at 100% membership. TMA is anticipating medical school growth within Texas to reach 16 schools by 2021.

**Leadership**

With the continued addition of new medical schools in Texas, the section has seen tremendous growth in student participation and interest in leadership positions. In 2020, this was evident when more than 80 students applied for approximately 60 TMA Board, Council, and Committee positions.

Due to COVID-19, the section business meeting for 2020, which was to be held in conjunction with TexMed, was cancelled. The section was able to reschedule these elections during a virtual meeting in July. The following students were elected for a term of one year:

- **Chair:** Sarah Miller, MS4, The University of Texas Rio Grande Valley School of Medicine;
- **Vice Chair:** Swetha Maddipudi, MS3, UT Health San Antonio Long School of Medicine;
- **Reporter:** Ryan Wealther, MS3, UT Health San Antonio Long School of Medicine;
- **TMA Delegate Co-Chairs:** Alyssa Greenwood Francis, MS2, Texas Tech University Health Sciences Center Paul L. Foster School of Medicine, and Aman Narayan, MS3, UT Southwestern Medical School; and
- **AMA Delegate Co-Chairs:** Amier Haidar, MS3, McGovern Medical School at UTHealth, and Kate Holder, MS2, Texas Tech University Health Sciences Center School of Medicine Lubbock.

During their Executive Council meeting at TMA’s 2021 Winter Conference, members appointed the following two executive council positions for a one-year term which begins after the conclusion of TexMed:

- **Alternate Delegate, Texas Delegation to the AMA:** Alwyn Mathew, MS1, San Houston State University; and
- **Board of Trustees Student Representative:** Swetha Maddipudi, MS3, UT Health San Antonio Long School of Medicine.
At the AMA November 2020 meeting several Texas students were elected to serve at the national level, including:

- Region 3 Chair-Elect: Natasha Topolski, McGovern Medical School;
- Region 3 Delegates: Abhishek Dharan, Texas Tech University Health Sciences Center Paul L. Foster School of Medicine, Chris Wong, Baylor College of Medicine, Swetha Maddipudi (UTHSA), and Whitney Stuard, UT Southwestern;
- Region 3 Alternate Delegates: Alyssa Greenwood Francis, Texas Tech University Health Sciences Center Paul L. Foster School of Medicine, and Brittany Ikwuagwu, McGovern Medical School.

Along with positions listed above, several students from Texas were also appointed or elected to leadership positions in various AMA-MSS Standing Committees, as well as other state and national specialty societies.

During the virtual meeting in July 2020, the section recognized 14 members as part of the Leadership Honor Society, which recognizes fourth-year medical students that have actively participated in Texas organized medicine.

**Advocacy**

MSS Delegates from across the state collaborated on 45 resolutions submitted to the House of Delegates at TexMed 2020. These were tabled when TexMed 2020 was postponed. However, four were referred for action during TMA Fall Conference 2020. Twenty-eight of the tabled resolutions from TexMed 2020 were resubmitted for consideration at TexMed 2021, alongside several new resolutions. Resolution topics include: caps on insulin copayments, support for postpartum depression services, social media ethical guidelines, support for increased digital access, telemedicine payment parity, skin of color representation in medical education, addressing burnout, and several others.

**Section Mentors**

To continue improving the guidelines for student authorship of resolutions, physician delegate mentors connected with student resolution authors to offer suggestions and guide the sections’ resolution work. Furthermore, section leaders have introduced an urgency filter to streamline and improve resolutions submitted for consideration by the HOD. Leaders also hosted a section-wide call during which authors sought feedback from the section at-large. These improvements are the first of many designed to further strengthen MSS-authored resolutions. Section leadership anticipates these changes will increase the success of MSS resolutions submitted.

Region 3, which includes Texas, had the highest number of resolutions that were authored and sent to the MSS Assembly and/or the AMA HOD at the AMA November 2020 Meeting. Region 3 has been known to be one of the most active regions within the MSS and the strong Texas presence plays a role in that.

**Awards**

The MSS Executive Council recognized several award winners including: Texas Tech University Health Sciences Center School of Medicine Lubbock as the 2021 Chapter of the Year; Whitney Stuard, UT Southwestern, as Student of the Year; and Ashley Sturgeon, MD, Lubbock as the recipient of the 2021 C. Frank Webber, MD, Award for providing outstanding service to the TMA-MSS. These awards will be officially presented during TexMed 2021.

**Chapter Service**

Multiple chapters coordinated community outreach programs during the year, many of which were focused on ways medical students could provide local services during the pandemic, including PPE.
collection and distribution. Other chapters have established a telemedicine program to provide free care to
clinic patients, conducted vaccine drives, and created programs to deliver letters and cards to lift the
spirits of nursing home residents who have been isolated during the pandemic. Chapters have also hosted
virtual educational and networking events to keep members engaged.

Multiple grants were awarded by the TMA Foundation to chapters for the work they have implemented
within their community, including:

- Patient Navigator Program for Individuals Experiencing Homelessness (UT Southwestern);
- STEM Education and Empowerment Course (UT Southwestern);
- Take Control: Home Blood Pressure Monitoring in Virtual Care (Baylor);
- Fifth Annual HOPE Health Fair (The University of Texas Medical Branch School of Medicine);
- Alliance Refugee Health Fair (Baylor); and
- Reducing Healthcare Disparities in Underserved Populations: Breast Cancer Screening in
  Colonias (Texas Tech University Health Sciences Center Paul L. Foster School of Medicine).

The Foundation also awarded UT Southwestern the 2021 John P. McGovern Champion of Health Award
for their work on the Patient Navigator Program for Individuals Experiencing Homelessness.
REPORT OF RESIDENT AND FELLOW SECTION

RFS Report 1 2021

Subject: Resident and Fellow Section Update

Presented by: Collin Juergens, MD, Chair

The Resident and Fellow Section (RFS) was established by the House of Delegates to encourage participation in shaping the future of medicine in Texas through involvement in county medical societies, the Texas Medical Association, and the American Medical Association. This participation fosters dialogue between individuals and organizations within medicine; promotes and supports programs that may unify and direct health-related activities at all levels of education; and provides a useful service to residents and fellows in Texas.

Membership

Resident membership in the Texas Medical Association has reached an all-time high. As of Dec. 31, 2020, resident membership was 7,858 physicians, an increase of 1,383, or 21%, over 2019. The increase can be attributed to the number of residency programs now participating at 100% membership, which provide rosters and contact information to TMA.

Section Activities

The RFS typically meets three times annually in conjunction with TMA meetings. Because of the COVID-19 pandemic, the regular 2020 RFS business meeting did not take place, as it was to occur in conjunction with TexMed, which was cancelled. The section rescheduled elections during a virtual meeting in July 2020. The following residents were elected for a one-year term:

- Chair-Elect: Patrick Crowley, DO
- Secretary: Amir Ahmadian, DO
- TMA Delegates: Mai-Anh Dam, MD; Zahra Ali, MD; Pruthali Kulkarni, DO; Matthew McGlennon, DO; Ahmed Mohsen, MD; and Vin Shen Ban, MD

In the months since the virtual meeting, the following residents expressed interest in and filled the remaining TMA delegate positions: Apeksha Agarwal, MD, and Phuong Trinh, MD.

During its Winter Conference meeting, the RFS discussed supporting a non-compete clause resolution introduced by TMA members Craig King, MD, and Glenn A. McDonald, MD. The section also hosted TMA Director of Legislative Affairs, Michelle Romero, to discuss TMA’s agenda during the 2021 Texas Legislature. Finally, the section held elections for two executive council positions: Abdul Abid, MD, as Board of Trustees resident representative, and Matthew McGleenon, DO, as resident AMA Alternate Delegate position on the TMA delegation. The one-year term for these positions will begin after the conclusion of TexMed 2021.

The section also hosted multiple educational programs. TMA Practice Consultant, Yvonne Mounkhoun, spoke to resident members about the business of medicine including practice start-up costs, compensation, vendor contracts, and more. The RFS also hosted a joint section educational program, Advocacy 101: The Relationship, with the Medical Student Section and Young Physician Section to explore the importance of legislative relationships. Section members learned how to craft effective messaging, identify their personal stories, conduct legislative visits, and build long-lasting relationships.
Three TMA RFS section members secured positions in the AMA RFS during the AMA’s 2020 Special Meeting of the HOD. Myphuong “Theresa” Phan, MD, MPH, was re-elected as section speaker; Jerome Jeevarajan, MD, was elected as a section delegate, and Michael John Metzner, MD, was elected to as a section alternate delegate.

Planned activities
TMA provides free early career education for residents to help navigate contracts, develop negotiation skills, and more. TMA also is in the process of turning these into online modules.

The section plans to continue its business meetings in conjunction with regularly scheduled TMA meetings, offer virtual educational speakers throughout the year, and work to increase attendance and engagement.
REPORT OF YOUNG PHYSICIAN SECTION

YPS Report 1 2021

Subject: Young Physician Section Update

Presented by: Samuel Mathis, MD, Chair

The Texas Medical Association Young Physician Section (TMA-YPS) met virtually twice in 2020-2021. The first meeting was held in September 2020 to hold elections, and the second was in conjunction with TMA Winter Conference. Engagement in virtual meetings has been high, with lively discussion and member participation. The fall meeting began with the opening of virtual elections on Sept. 15, 2020 and concluded with the final election results on Sept. 21, 2020. The Winter Conference meeting featured a legislative update from TMA advocacy staff and new AMA-YPS delegates were elected to one-year terms.

The section also hosted a joint section educational program along with the Medical Student, Resident and Fellow, and International Medical Graduate Sections. The program, “Advocacy 101: The Relationship,” was offered to help section members understand the importance of legislative relationships and provide tools to establish and build upon this foundation. Section members learned how to craft effective messaging, identify their personal stories, conduct legislative visits, and build long-lasting relationships.

The members of the Executive Council are listed below along with applicable terms:

Officers (one-year terms):
- Chair: Samuel Mathis, MD
- Chair-Elect: Justin Bishop, MD
- Immediate Past Chair: Gates Colbert, MD

TMA Delegates (two-year staggered terms):
- Eman Attaya, MD (2019-2021)
- Gates Colbert, MD (2019-2021)
- Stephen Herrmann, MD (2020-2022)
- Angelica Knickerbocker, MD (2020-2022)
- Jason McKnight, MD (2019-2021)
- Aliza Norwood, MD (2020-2022)
- Jacob Stetler, DO (2019-2021)
- Colleen Yard, MD (2020-2022)

TMA Alternate Delegates (two-year staggered terms):
- Ashley Bailey-Classen, DO (2020-2022)
- Justin Bishop, MD (2020-2022)
- Ann Hughes Bass, MD (2019-2021)
- Samuel Mathis, MD (2020-2022)
- Kanchan Phalak, MD (2019-2021)
- Joshua Reed, DO (2019-2021)
- Elizabeth Seymour, MD (2020-2022)
AMA-YPS Delegates (one-year terms):

- Gates Colbert, MD
- M. Brett Cooper, MD
- Marcial Oquendo, MD
- Elizabeth Seymour, MD

AMA-YPS Alternate Delegates (one-year terms):

- Ashley Bailey-Classen, DO
- Angelica Knickerbocker, MD
- Samuel Mathis, MD
- Evan Perez, MD

TMA Board of Trustees YPS Representative:

- M. Brett Cooper, MD

TMA Foundation Board of Trustees YPS Representative:

- Gates Colbert, MD

In 2021-22, the YPS will continue partnering with the other sections for educational offerings and utilizing virtual platforms like Zoom to increase attendance at meetings and provide opportunities for networking and socialization between formal meetings.
The Texas Medical Association Women Physicians Section (WPS) was established by the TMA House of Delegates to strengthen engagement and representation of female physicians in organized medicine through the development of relevant policies, programming, and services. The WPS provides female physician members an effective means to participate in TMA activities and influence association policy through access to and representation in the TMA House of Delegates.

Though originally organized as the Women in Medicine Section, the House of Delegates approved the section’s operating procedures and name change to Women Physicians Section during its virtual session on Sept. 12, 2020.

Elections
The WPS conducted elections virtually and announced results during its Sept. 12, 2020, meeting. The following executive council was elected to terms that will conclude at TexMed:

- Chair: Elizabeth Rebello, MD
- Chair-Elect: Tina Philip, DO
- Secretary: Vani Vallabhaneni, MD
- TMA Delegate: Deborah Fuller, MD
- TMA Alternate Delegate: Ruhi Singh Soni, MD
- AMA-WPS Associate: Sejal Mehta, MD
- AMA-WPS Alternate Associate: Anastasia Ruiz, MD

Priorities
During the executive council’s first meeting on Sept. 28, 2020, members affirmed the top three priorities and corresponding strategies for their term of office.

1. Empower women physicians to take an active role in organized medicine
   - TMA board, council, and committee leadership training
   - Advocacy training
   - Providing support for physician involvement in the American Medical Association Women Physicians Section

2. Create diverse paths to leadership for women physicians
   - Mentoring and sponsorship training
   - Negotiation skills
   - Career path planning

3. Encourage systemic culture change throughout medical and professional settings related to gender equity
   - Gender pay parity
   - Implicit (unconscious) bias in the workplace
   - Parental leave policies
Workgroup
The chair appointed a workgroup to explore potential resolutions on behalf of the section. The workgroup drafted a resolution supporting paid parental leave (Resolution 418) which was tabled for consideration by the House of Delegates until TexMed 2021.

Engagement
Engagement for women physicians has steadily increased during the past two years. The number of women physician members who regularly participate in TMA activities has grown from 55% in 2018 to nearly 59% at the end of 2020. Among women physicians in employed settings, the increase was more pronounced, up to more than 52% participating in 2020 from slightly more than 44% in 2018.

Section Activities
A series of virtual events, hosted by the section, are helping keep members engaged and connected throughout the ongoing COVID-19 pandemic:

1. The Equity Equation, Sept. 12, 2020 (now a webinar in the TMA Education Center)
2. Strengthening Medicine Through Advocacy, Nov. 9, 2020
3. Making Your Mark in Medicine, Jan. 30 (now a webinar in the TMA Education Center)
4. Maternal Health Equity in Texas: How Can We Get There? March 9

Implicit Bias Training
The WPS selected Unconscious Bias in Medicine, an enduring CME program offered by Stanford University School of Medicine, as a training program to address gender disparity in the physician workforce and promote greater diversity in medicine. The program is open to all TMA members and can be accessed at www.texmed.org/wps.

Next Steps
The section is committed to providing opportunities for women physicians to engage and grow professionally. Virtual programs will be scheduled throughout the remainder of 2021, and the section will elect new governing council officers to be announced at TexMed 2021. Virtual networking opportunities and section awards are being investigated.
REPORT OF COUNCIL ON HEALTH CARE QUALITY

C-HCQ 1 2021

Subject: Council on Health Care Quality

Presented by: Chelsea I. Clinton, MD, Chair

The Council on Health Care Quality oversees and supports the direction for the Texas Medical
Association’s policy and advocacy on quality improvement, patient safety, performance measurement,
and clinical effectiveness. The council has been active in several strategic activities summarized below.

**Centers for Medicare & Medicaid Services’ (CMS’) Quality Payment Program (QPP)**

In response to CMS’ proposed rules for the 2021 QPP performance year, and as part of TMA’s ongoing
advocacy and policy analysis, staff from the TMA Medicare Access and CHIP Reauthorization Act
(MACRA) Task Force, with input from the councils on Health Care Quality and Socioeconomics and the
Committee on Health Information Technology, composed a 25-page TMA comment letter to recommend
improvements to QPP governing policies. It is important to note TMA supports voluntary participation in
the Merit-Based Incentive Payment System (MIPS) and advanced payment models (APMs), and
advocates for fair and ethical program policies and appropriate risk levels for advanced APMs. Given that
an overwhelming majority of Texas physicians are required to participate in the program, TMA places a
strong emphasis on weighing in annually on CMS’ QPP proposed rules in accordance with TMA policies
265.017 Pay-for-Performance Principles and Guidelines, 195.038 Improving the QPP and Preserving
Patient Access, 195.033 Medicare Payment Incentives and Penalties, 118.002 Health Information
Technology – Electronic Health Records and Personal Health Records, 115.015 Accountable Care
Organizations, 195.032 Federal Physician Compare Website, and adopted resolutions by the House of
Delegates, such as Resolution 316-A-19 Determinants of Health. TMA also includes its physician survey
data as part of the narrative in comment letters to support advocacy positions.

**QPP Education and Resources**

Due to the complexity of the QPP along with annual federal updates to the program, developing physician
education and resources to help physicians learn about and stay abreast of program requirements remains
an ongoing priority of the council. All information is located on the TMA MACRA Resource Center.
This website provides the following for physicians:

- Free CME,
- Access to customized on-site assistance by TMA Practice Consulting,
- Free access to a separate MACRA QPP Resource Center,
- Access to free QPP education and technical assistance by the TMF Health Quality Institute (TMF),
- A list of MACRA resource centers by national specialty societies,
- A list of federally funded initiatives that offer education and technical assistance to help physicians
  transition to MIPS or APMs at no or low cost, and
- TMA services for physician-led accountable care organizations/APMs.

**TMF Health Quality Institute**

In 2019, CMS awarded the TMF Health Quality Institute a new five-year contract to serve as the state’s
Quality Innovation Network-Quality Improvement Organization. Under this contract, the following TMF
networks provide Texas physicians no-cost technical assistance and education on quality improvement
and patient safety topics: nursing homes and skilled nursing facilities; community coalitions; patients, families, and caregivers; quality improvement initiative; and Medicare’s QPP. Of note, TMF has a robust QPP network and works with physicians and clinicians to help them transition to MIPS and successfully advance through the program’s performance categories by providing technical assistance, education, outreach, and distribution of learning modules at no cost. At the council’s urging, TMA continues to collaborate with and promote services provided by TMF, connecting members to free assistance that helps them improve patient and quality outcomes as well as navigate Medicare requirements to avoid payment penalties and maximize value-based payments.

TMA Resolutions Referred to the Council


Resolution 108-A-19, Initial Assessment and Treatment Recommendation by Specialists, resolved that TMA recognize that the best practice of patient care dictates the physician is responsible for developing the diagnosis and treatment in a patient’s initial evaluation, while acknowledging that under limited circumstances a nurse practitioner or physician assistant may conduct an initial evaluation. The resolution was referred for study and report back. The council along with the Interspecialty Society Committee discussed the resolution at fall and winter meetings, and the resolution was referred for further study to the council and Interspecialty Society Committee with a report back at TexMed 2021. After thorough review and discussion, the council voted to recommend not adopting Resolution 108-A-19 due to a lack of consensus and legal concerns. For details, see the report in Handbook for Delegates.

Resolution 213-A-19, Complying with Value-Based Care Quality Measures for Medication Adherence, resolved that TMA work with payers to identify standard methodologies that address quality measure requirements for medication adherence in response to marketplace influences beyond the physician/provider control. Following discussion, the council recommended advocacy letters. TMA sent formal letters to the following advocating for standard methodologies and improvements to value-based care quality measures for medication adherence: U.S. Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Medicare and Medicaid Innovation, National Committee on Quality Assurance, Blue Cross and Blue Shield of Texas, UnitedHealthcare, Aetna, Humana, and Cigna. TMA further urged all payers and organizations to adopt formal policy that ensures the use of only those quality measures that physicians can reasonably influence and control, and that accurately reflect the quality of care they provide to their patients.

Resolution 316-A-19, Determinants of Health, resolved that TMA (1) educate physicians about the social determinants of health (SDOH) to help them better understand SDOH impact on patient health outcomes and well-being; (2) educate state and federal policymakers, business leaders, and governmental and commercial payers about the influence of SDOH on overall health care quality and health care costs; (3) collaborate with innovative public and private partnerships on policies to address SDOH and advocate for their adoption by state policymakers; and (4) advocate that governmental and commercial payers modify existing performance and quality programs to reflect the higher expected health care utilization and costs in populations at greater risk of exposure to SDOH, and appropriately risk adjust physician compensation to reflect these higher costs.

The council and TMA have undertaken numerous initiatives related to social determinants of health, including (1) developed a TMA resource webpage; (2) partnered with The Physicians Foundation and The Health Initiatives to conduct a study on SDOH; (3) advocated that CMS adopt policies to implement risk adjustment methodologies related to SDOH and account for social risk factors in QPP and Medicare payment; and (4) advocated that Texas Medicaid pursue a federal waiver to broadly implement SDOH
initiatives within the Medicaid program, including payment for physicians and health systems that implement strategies to address SDOH. TMA plans to testify where needed before multiple state legislative and interim hearings on the need to better address SDOHs as part of Texas’ efforts to improve health outcomes while lowering health care costs. Over the next year, SDOH advocacy and education will remain a high priority.

Subcommittee on Quality Programs and Clinical Measures
At TMA Winter Conference 2019, the council formed the Subcommittee on Quality Programs and Clinical Measures. The subcommittee’s vision is to establish TMA as a meaningful and influential player in value-based care delivery in Texas. Its goals are to (1) create stronger relationships with both the employer community and the medical directors of health plans in Texas; (2) explore the health purchasing goals of large Texas employers; (3) learn and educate physician members about existing quality programs and value-based models used in health plans, Medicare, and Medicaid; (4) distinguish between the types of measures used to assess health care quality and make recommendations based on measures that are most important in improving health status; (5) evaluate and recommend opportunities to streamline and reduce duplicative clinical measure sets; and (6) advocate for quality health care for all patients. This includes attention to methodology of performance measurement programs.

Following up on the employer panel meetings conducted in 2019, a survey was created in collaboration with the Texas Business Group on Health and sent to employers. The survey goal was to obtain employer insights on value-based purchasing, gain a deeper understanding of employers’ expectations of physicians and the type of data they seek, and how TMA can best collaborate with them to achieve the shared goal of improving the health of all patients. The was deployed survey in February 2020 but had a low response rate. Due to the urgent needs of the COVID-19 pandemic and the changes in strategic direction, further action on this activity was terminated.

After exploring approaches to standardizing measures, the subcommittee evaluated the Core Quality Measures Collaborative (CQMC) and met with a representative from America’s Health Insurance Plans (AHIP) about the collaborative. The council believed TMA’s presence in the collaborative would give the association a crucial seat at the table to select quality measures, align quality measures across payers, and reduce physician burden. Upon approval of the TMA Board of Trustees, TMA became a member of CQMC with nonvoting status, making TMA the first state medical association to join the collaborative.

Core Quality Measures Collaborative
TMA began participation in CQMC after Winter Conference 2020. CQMC is a broad-based coalition of health care organizations convened by AHIP; membership includes CMS, National Quality Forum, health insurance providers, national medical associations (e.g., the American Medical Association, American Academy of Family Physicians, American College of Physicians), consumer groups, purchasers and employer group representatives, and other quality collaboratives to recommend core sets of measures by clinical area to assess American health care quality. CQMC aims are to (1) identify high-value, high-impact, evidence-based measures that promote better patient outcomes and provide useful information for improvement, decisionmaking, and payment; (2) align measures across public and private payers to achieve congruence in the measures being used for quality improvement, transparency, and payment purposes; and (3) reduce the burden of measurement by eliminating low-value metrics, redundancies, and inconsistencies in measure specifications and quality measure reporting requirements across payers.

Due to the COVID-19 pandemic, meetings for the CQMC workgroup were postponed until midsummer. Upon the resumption of activities, CQMC’s representative and executive director for clinical performance and transformation for AHIP has met with the council to provide updates and information on participating in existing and new workgroups. The council has invited all TMA members to partake in this activity.
Teledicine and Telemedicine Quality Outcomes
The COVID-19 pandemic has created an opportunity to expand telemedicine, due to the need for social distancing to reduce the spread of the virus and manage vital resources like personal protective equipment. Physicians have turned to telemedicine as an alternative to seeing patients in person so they can reduce exposure to the virus and increase access to care. The council met during the COVID-19 pandemic with TMA lead staff for the Health Information Technology Committee to receive telemedicine updates. The council reviewed literature published in 2020 on quality in telehealth implementation during the COVID-19 pandemic. Based on this limited literature review, it was determined further research is needed to assess the patient health outcomes and physician experiences with telehealth. In addition, data specifically on Texas physicians’ experience and quality outcomes with telemedicine during the pandemic are limited but will likely grow in the future. Furthermore, payment parity, regulatory reform, physician guidelines for the use of telemedicine, and ongoing research on health outcomes are needed. The council next plans to survey large group practices in Texas to understand what data they are collecting on telemedicine quality outcomes that can support advocacy of payment parity for telemedicine services.

CMS Qualified Entity – The Health of Texas
In 2017, CMS approved The University of Texas School of Public Health (UTSPH) in Houston to establish a qualified entity (QE) to research claims data from Medicare and other payers to evaluate physician performance and regional variations in Texas. Council member Marina C. George, MD, served on the QE’s physician workgroup to provide physician input and guidance for the QE’s ongoing research and will keep the council apprised of QE updates and solicit physician feedback, as needed. Cecilia Ganduglia-Cazaban, MD, DrPH, co-director of the UTSPH Center for Health Care Research Data, and her staff routinely present at council meetings on the QE’s research progress and to gather feedback. UTSPH is finalizing data for the new The Health of Texas website to make research data accessible to physicians and the public. TMA will inform membership of the new website through TMA communication channels. The council will continue to support this activity.

TMA Publications on Health Care Quality
Council members regularly contribute to articles published in Texas Medicine on health care quality and value-based care, stemming from topics discussed at council meetings. During 2020-21, several council members were interviewed for topics on Medicare’s MIPS facility-based measurement policies, QPP experience report, unfair quality measures on medication adherence, and the QPP proposed and final rules. A Texas Medicine article specific to health care quality was “A Social Shift: COVID-19 Disparities Prompt Emphasis on Value-Based Care.”

TexMed 2021 Quality Track
The council plans to host quality activities at TexMed 2021. Due to the COVID-19 pandemic, the quality track will take place on a virtual platform and will consist only of a one-hour keynote speaker presentation that will provide 1 hour of CME credit at no cost to attendees. Dr. Clinton will chair the quality track. Some potential topics are social determinants of health and their implications on health outcomes, an initiative to align quality measures across payers, Texas Medicaid and value-based care initiatives, value-based purchasing by employers, and practice strategies for successful participation in innovative health care delivery models.

Review and Resolution Services Quality Outcomes
The council is interested in understanding quality issues as they relate to TMA’s Reimbursement Review and Resolution Services (formerly the TMA Hassle Factor Log). The council is to meet with TMA staff overseeing these activities to understand the current issues and determine the best course of action.
REPORT OF COMMITTEE ON CONTINUING EDUCATION

CM-CE Report 1 2021

Subject: Texas Medical Association Continuing Medical Education Program Update

Presented by: Larry C. Driver, MD, Chair

Update on CME Providers in TMA’s Intrastate Accreditation Program

In 2020, 13 organizations received accreditation decisions. Twelve providers were granted full accreditation for four years; and one received accreditation with commendation for six years. The organization receiving accreditation with commendation was the Texas Department of State Health Services. TMA’s Subcommittee on Accreditation, a team of 12 physicians and CME professionals, conducted the surveys and submitted reports to the committee for accreditation decisions.

Medical Center Hospital, Odessa, voluntarily dropped CME accreditation from TMA. The organization stated in their letter of withdrawal “there have been too many critical circumstances within our institution that have prevented us moving forward.”

TMA’s current roster of CME-accredited organizations includes 51 organizations. The breakdown for type of organization is as follows: 38 hospitals or hospital systems; one physician group; three state specialty societies; one state agency; two regional health education centers; one university student health center; one quality improvement organization; one hospice; one regional medical staff organization for emergency services; one county medical examiner’s office; and one regional advisory council in emergency preparedness.

Standards for Integrity and Independence in Accredited Continuing Education Released in December 2020

The Standards for Integrity and Independence in Accredited Continuing Education were released in December 2020, replacing the Standards for Commercial Support: Standards to Ensure Independence in CME Activities℠, which were first adopted in 1992 and updated in 2004. The new standards have been adopted by accrediting bodies representing multiple health professions – Accreditation Council for Continuing Medical Education; Accreditation Council for Pharmacy Education; American Academy of Family Practice; American Nurses Credentialing Center; Association of Regulatory Boards of Optometry’s Council on Optometric Practitioner Education; and Joint Accreditation for Interprofessional Education. All providers in the Accreditation Council for Continuing Medical Education (ACCME) System (ACCME-accredited, state-accredited, or jointly-accredited) are expected to comply with the new standards by Jan. 1, 2022.

New Standards at a Glance:

Structure

• New name to reflect the scope and intent of the standards.
• Preamble to explain the principles and purpose of the standards and the role of accredited continuing education providers in ensuring that accredited education serves the needs of patients.
• Eligibility Section includes updated definitions and lists of organizations that are eligible and ineligible for accreditation, and clarification about how corporate structure (parent and subsidiary companies) affects eligibility.
• New structure beginning with standards applicable to all accredited continuing education, followed by the standards applicable to education that is commercially supported and education that includes ancillary activities.
Policies have been integrated into the standards to provide all relevant requirements in one document.
Definitions have been simplified and integrated into the standards.
Brief introductions to each standard describe its overall purpose and when it is applicable.

New Terms
- Eligible organizations: Organizations that are eligible to be accredited in the ACCME System.
- Ineligible companies: Organizations that are not eligible for accreditation. These organizations were referred to as commercial interests in the Standards for Commercial Support. The new term is intended to clarify that eligibility for accreditation is not based on whether an organization is for-profit or nonprofit but is based on its primary mission and function. Please note the definition as well as the term for ineligible companies has been updated from the Standards for Commercial Support.
- Mitigate: The term mitigate replaces resolve, in guidance related to relevant financial relationships, to clarify that accredited providers are expected to mitigate the potential effect of these relationships on accredited continuing education. The expectation hasn’t changed, only the term used to describe it.
- Accredited continuing education: The term accredited continuing education replaces continuing medical education to be inclusive of all health professions.

ACCME Data Report Shows Steady Growth in Accredited Continuing Medical Education – 2019
In July 2020, the ACCME released their annual ACCME Data Report. The annual report includes data from a community of 1,720 accredited (ACCME-accredited, state-accredited, and jointly accredited) organizations that offer physicians, other health care professionals, and health care teams an array of continuing education resources to promote high-quality, safe, and effective care for patients. Here are ACCME’s five key takeaways from the report:
- More than 1,700 accredited continuing medical education (CME) providers offered nearly 190,000 educational activities in 2019.
- The number of activities, hours of instruction, and interactions with learners have increased, despite some consolidation among CME providers, continuing a 10-year trajectory of growth.
- This education comprised approximately 1.3 million hours of instruction and approximately 37 million interactions with health care professionals.
- Since 2018, the number of educational events has increased 5%, hours of instruction have increased 6%, and the number of learner interactions increased 2%.
- This is the second year that other learner interactions have surpassed physician interactions. (Other learners are nonphysician health care professionals such as nurses and pharmacists).

Texas CME Professional Development Conference
TMA offers an annual two-day conference for physicians and staff who plan and implement continuing medical education activities. The conference provides updates on CME issues, trains CME providers to meet accreditation requirements, and provides networking opportunities for CME providers. Due to the coronavirus pandemic, the 2020 Texas CME Professional Development Conference scheduled for June 17-19 at the Embassy Suites San Antonio Landmark has been postponed until June 2021. In place of the conference, TMA provided a three-part virtual meeting series addressing accredited providers’ most burning questions related to virtual meetings. Sessions included best practices for moving live CME online, virtual meetings and exhibits – a how-to guide, and lessons learned going virtual.

TMA will survey TMA-accredited providers and ACCME-accredited providers in Texas to gather information to help determine plans for the 2021 conference.
Subject: Activities of the Council on Socioeconomics

Presented by: Rodney B. Young, MD, FAAFP, Chair

At 2020 Winter Conference, TMA staff gave updates on resolutions before the council. The council discussed items to present at TexMed 2021 including a resolution to study banning restrictive covenants and to educate residents on starting a private practice. Staff provided an update on TMA’s work done in the last legislative session. The council learned that TMA had established a task force on prior authorization and that the February TMA survey would cover this topic. Council members were urged to provide input on preauthorization issues. The council heard a report on opposition to a federal public charge definition, about which the Select Committee on Medicaid, CHIP, and the Uninsured submitted comments. The council also heard a report from the Committee on EMS and Trauma.

During an August 2020 meeting, the council heard another presentation on prior authorization as well as a presentation on the upcoming 87th legislative session. Highlights reported from TMA’s prior authorization survey were:

- 87% of Texas physicians reported that prior authorization-associated burden has increased over the past five years. This result nearly mirrors that of a 2018 American Medical Association survey (88%).
- Texas physicians reported an increase over the past five years in the number of prior authorizations required for prescription medications (85%) and medical services (80%).
- 48% of practices in Texas have staff working exclusively on prior authorizations, while the AMA national survey reported 36%.

The council also heard an overview of state Senate Bill 1264 (2019), the Texas surprise billing/arbitration bill, and related issues that need further evaluation. The council then heard a presentation on the Texas Department of Insurance’s (TDI’s) biennial report and recommendations to the legislature.

During a September 2020 meeting, the council heard a presentation on the proposed 2021 Medicare Physician Fee Schedule, notably with a discussion about the 2021 conversion factor and evaluation and management coding changes. Staff promoted a related TMA webinar on the fee schedule. The council discussed whether the proposed telehealth code additions are appropriate.

During the October 2020 call, staff discussed the value-based workgroup and its efforts to bring together perspectives of different TMA committees and councils. A presentation was given on price transparency and data collection in Texas. The council also discussed the all-payer claim database and TDI’s surprise billing arbitration process, and reviewed sunset policies.

During the December 2020 call, the council heard a legislative update, particularly the federal surprise billing efforts. Staff discussed letters to Texas Sens. Ted Cruz and John Cornyn and upcoming meetings in the U.S. House of Representatives. The council also discussed UnitedHealthcare’s (UHC’s) credentialing and recredentialing policy changes. In a response to TMA, UHC said it would postpone the policy until further notice.

The council also heard a presentation by Harris County Medical Society on its efforts with Blue Cross/Sanitas Medical Group, Humana, Humana/Iora Health, and Aetna and UnitedHealth Group and their subsidiaries UnitedHealthcare and Optum Care. The council then discussed an AMA resolution.
regarding Healthcare Effectiveness Data and Information Set scores. Staff presented on a memo to private payers urging they extend 2020 annual patient deductible renewals that would occur at the first of the year, where legally permissible and not disadvantageous to the beneficiary.

The council discussed a letter about Ambetter (the Superior Exchange Plan), which was denying payment for all well visits, claiming “overuse of modifier 25.” In addition, the council discussed UHC copay accumulators, and efforts to ban copay accumulators. Finally, the council again discussed sunset review policies assigned it.

During the January 2021 call, the council completed its review of sunset recommendations regarding committees and policies. Staff gave presentations on telehealth and TMA’s role in launching the Telehealth Initiative to help physicians start telehealth care, and on Medicaid telemedicine issues and TMA’s efforts to retain favorable policy changes made during the public health emergency. The council heard an update on the audit trail report for the Committee on Rural Health as it pertains to looking at alternatives to areas unable to sustain rural hospitals. The council also heard highlights of the projected Medicaid budget and discussed the Texas Medicaid 1115 Transformation Waiver. The council identified hospital transparency as a possible area to explore in 2021.

During the February 2021 call, the council discussed a tort-reform-related resolution and voted unanimously to adopt it as amended. Staff then gave a detailed presentation comparing the state and federal surprise billing laws. The council was reminded to enter HIPAA-compliant prior authorization nightmares into a TMA portal designed for this purpose. A brief discussion occurred regarding UHC’s policy change to discontinue the ability for nonphysician practitioners to bill incident to a physician’s service.
The Patient-Physician Advocacy Committee presents the following informational report regarding the committee’s recent activities.

Texas Medical Board

In furtherance of its role as the association’s liaison with the Texas Medical Board (TMB), the Patient-Physician Advocacy Committee (PPAC) met with TMB representatives at each of the committee’s regular meetings in 2020 and at the 2021 Texas Medical Association Winter Conference. During these meetings, PPAC had an engaging dialogue with TMB representatives concerning a wide variety of TMB regulatory efforts and updates. Among the topics discussed were: (1) the TMB’s response to the pandemic; (2) recent TMB rule adoptions (e.g., opioid-related rules and CME); (3) complaints filed with the TMB related to SB 1264 (Texas’ surprise billing law); (4) continuing physician concerns, brought to TMA’s attention over the last few months, about pharmacies filling pain prescriptions for fewer days than the number prescribed by the physician; and (5) the new e-prescribing mandate for controlled substances.

Amicus Curiae “Friend of the Court” Brief Vetting

The committee reviewed and provided input on various amicus curiae (“friend of the court”) brief requests. These requests were received from physicians seeking TMA briefs in support of their lawsuits on a variety of topics, ranging from alleged defamation issues to licensure revocation issues and the alleged retroactive application of TMB rules. The committee provided recommendations to TMA’s Office of the General Counsel (OGC) for use in OGC recommendations to the chair of the TMA Board of Trustees.

More specifically, in 2020, PPAC reviewed the case of a physician requesting that TMA submit an amicus curiae “friend of the court” brief in support of his position that the district court should overturn the TMB’s decision to revoke his license. PPAC voted to recommend that the chair of the TMA Board of Trustees support TMA filing an amicus brief in his case on the issue of the TMB’s alleged retroactive application of a TMB rule. TMA submitted its amicus curiae brief in June of 2020. TMA’s amicus brief argued that the TMB’s decision: (1) has serious implications for Texas physicians; and (2) was arbitrary and capricious, unconstitutional, and incorrect in that it applied a rule to a physician’s conduct that occurred before the rule was adopted. On October 6, 2020, the trial court ruled in favor of the TMB. The plaintiff physician has appealed.

In 2020, PPAC also continued to monitor and support TMA amicus curiae involvement in a case originally brought to PPAC in 2014 and 2015 involving a physician who was in litigation against a former employer involving allegations that the facility defamed the physician (along with claims of business disparagement, tortious interference, and restraint of trade claims). The physician sought key documents, but the facility alleged that the documents were protected under a peer review privilege. TMA previously filed an amicus brief (after receiving a supportive recommendation from the committee and approval by the TMA Board of Trustee’s chair) arguing that the privilege did not apply because the case was anticompetitive in nature. That issue came before the Texas Supreme Court and was decided in agreement with TMA’s position. The physician eventually won a significant judgment on the issue. The case was appealed by the hospital to the court of appeals and TMA filed another amicus brief. That appeal was not
successful, so the hospital appealed to the Texas Supreme Court. TMA filed an amicus curiae brief, once again, in support of the physician, in early March 2021.

Input into Association Policy and Legislative Efforts
The committee also recently: (1) reviewed six TMA sunset policy review items to make recommendations to the House of Delegates; (2) had a legislative preview discussion with TMA’s Vice President of Advocacy; and (3) continued to recommend that the House of Delegates adopt new policy (tabled in 2020) that PPAC developed related to overturning and vacating certain temporary suspensions or restrictions of an individual’s medical license by the TMB.
The worldwide COVID-19 pandemic has changed almost every aspect of our daily lives, and our Texas Medical Association physicians have become local heroes to all. Thousands of businesses, associations, and PACs have seen a dramatic decline in sales, membership renewals, and contributions. Thankfully, through TMA’s extensive personal protective equipment distribution and other COVID-19 resources, TMA and TEXPAC have managed to continue in a positive direction. TEXPAC is beyond grateful to all the TMA members who have continued to contribute to the PAC during this trying time.

Many aspects of campaigning have changed during the pandemic including TEXPAC’s involvement in key races. During any other election year, TEXPAC staff will travel 2,500-5,000 miles across the state to help secure victories for the TEXPAC-endorsed candidates. This election cycle, TEXPAC was not able to travel safely nor were in-person events allowed. TEXPAC adapted, using the digital market. Over the 2020 election season, TEXPAC contributed $1.2 million, an all-time high, to TEXPAC-endorsed candidates. These contributions included monetary, advertising, and campaign mailer contributions. Some of the key races and endorsed candidates TEXPAC focused on for this election were:

- House District (HD) 54 – Rep. Brad Buckley (R-Salado);
- HD 64 – Rep. Lynn Stucky (R-Sanger);
- Open seat, HD 96 – David Cook (R-Mansfield);
- HD 108 – Rep. Morgan Meyer (R-Highland Park);
- HD 113 – Rep. Rhetta Bowers (D-Mesquite);
- HD 114 – Rep. John Turner (D-Dallas);
- HD 121 – Rep. Steve Allison (R-Alamo Heights);
- HD 130 – Rep. Tom Oliverson, MD (R-Cypress); and

TEXPAC was successful in 97% of the races in which it endorsed a candidate. The biggest loss for TEXPAC was Rep. Sarah Davis, who unfortunately was defeated by her Democratic challenger, now-Rep. Ann Johnson. TEXPAC was fortunate to have Representative Davis as medicine’s advocate, and now we are confident we can find a friend in Representative Johnson. TEXPAC did prevail in hindering some candidates deemed not friendly to medicine from claiming victory.

TEXPAC ended the 2020 dues cycle having raised nearly $800,000 – the highest amount raised in the past decade. TEXPAC also surpassed past-year membership counts with more than 5,000 members by the end of the dues year, thanks to group practices, returning members, and new members joining the PAC. The goals for the 2021 dues year, as set by the PAC board, are to reach 5,500 members and raise $850,000. The TEXPAC board has tasked each board member with recruiting at least five new members to contribute to the PAC as well as seek other group practices to contribute on their staff’s behalf.

TEXPAC’s current number of members is more than half our 2021 goal, and TEXPAC will continue to work on this challenge.
In addition to the November general elections, a few special elections were called for newly vacated legislative seats. In Senate District 30, Sen. Pat Fallon (R-Frisco) decided to run for an open seat in Congress, District 4, in East Texas. Among those who filed to run for his vacated state Senate seat were Rep. Drew Springer (R-Muenster) and Shelley Luther (R-Pilot Point). Ms. Luther gained notoriety in April 2020 when she publicly violated the governor’s lockdown orders by opening her hair salon.

Ultimately, five candidates filed for the open seat, with Representative Springer and Ms. Luther pushed into a runoff. The special election runoff was held Dec. 19; Representative Springer claimed victory and was sworn into the Senate in January. His victory led to another special election to fill his House seat in District 68. Five candidates filed for the race, with the initial election on Jan. 23. The top two candidates, David Spiller (R-Jacksboro) and Craig Carter (R-Nocona), faced each other in a runoff election held Feb. 23, with Mr. Spiller claiming victory (62%-38%). TEXPAC endorsed Mr. Spiller in this runoff election as he has an extensive background in medicine in his role as attorney for county hospitals. Gov. Greg Abbott ordered a May 1 special election to succeed the late U.S. Rep. Ron Wright (R-Arlington). Candidates must file with the secretary of state by March 3. At least 17 candidates have taken formal action towards running, and four have officially filed to run.

After a year of COVID-19 restrictions and lockdowns, TEXPAC has continued to hold its head high. Medicine is the No. 1 issue in the eyes of Texans, and TEXPAC is ready to respond. The Texas legislative chambers can be successful only if TEXPAC is successful in electing candidates who will support physicians and medicine’s legislative agenda. Despite the challenges before us, TEXPAC will continue to grow in members and contributions and be a top player in Texas state and congressional campaigns.
REPORT OF TEXAS MEDICAL ASSOCIATION FOUNDATION

Subject: 2020 Texas Medical Association Foundation Annual Report

Presented by: Susan M. Pike, MD, President, TMAF

Grants Support 2020 Programs
The generosity of donors, plus investment earnings from endowments, enabled the Texas Medical Association Foundation to support the following 46 programs carried out in 2020 for a total of $789,724 in grant support. The supported programs reflect the TMA population health, science, medical education, and quality-of care-priorities. TMA’s vision, to improve the health of all Texans, is realized through the trusted leadership of TMA physicians who join with TMA Alliance members and others who guide and carry out these programs to improve the health of people in their community. Attachment A lists these programs by grant category.

Grants awarded to TMA’s 2020 programs totaled $514,629. This means for every $1 TMA provides in support of TMAF, the foundation and donors provide TMA more than a five-fold benefit in community health improvement and positive physician image.

New in 2020 was TMAF’s creation of an opportunity for TMA county medical societies to apply for a grant of up to $12,000 for their physician health and wellness activities, which are described in Attachment A.

TMA Programs
- Ernest and Sarah Butler Awards for Excellent in Science Teaching
- Hard Hats for Little Heads
- Minority Scholarship Program
- Walk With a Doc Texas
- History of Medicine “Courage and Determination” traveling exhibit
- History of Medicine “Art of Observation” traveling exhibit
- Texas Two Step CPR
- Be Wise – Immunize℠
- Health Alliance for Austin Musicians for “Stay Home” public service announcement

Caring for Physician Healers: Mental Health and Wellness Resources During COVID-19 Grants
- Bell County Medical Society: Women in Medicine Physician Health and Wellness
- Dallas County Medical Society: Emotional PPE Project
- Ector County Medical Society: Yoga – Building Self-Regulation and Higher Consciousness
- Lubbock County Medical Society: Physicians Connecting and Contributing
- McLennan County Medical Society: LifeBridge
- Smith County Medical Society: Physician Wellness Program
- Travis County Medical Society: Physician Wellness Program

County Medical Society/Alliance/Medical Student Grants
- Anderson-Leon County Medical Society: Grapeland Immunization Project
- Bexar County Medical Society Alliance: Campaign to Reduce Bullying and Build Self-Esteem
• Lamar Delta County Medical Society: Drive Thru, Prevent Flu
• Lubbock County Medical Society Alliance: Pneumonia Vaccine for the South Plains Food Bank
• Nueces County Medical Society Alliance: Battling Opioid Misuse in Nueces County
• Smith County Medical Society: Northeast Texas Public Health District Health on Wheels
• Tarrant County Medical Society: Project Access Tarrant County
• Tarrant County Medical Society Alliance Foundation: Immunization Collaboration of Tarrant County
• Baylor College of Medicine/Medical Student Chapter: Alliance Refugee Wellness Fair
• Baylor College of Medicine/Medical Student Chapter: Healthy Minds, Healthy Bodies
• Baylor College of Medicine/Medical Student Chapter: Refugee Resettlement Needs Assessment
• Dell Medical School/Medical Student Chapter: Flu Crew
• Texas A&M Health Science Center College of Medicine/Medical Student Chapter: Feed My Sheep Mobile Pediatric Clinic
• Texas A&M Health Science Center College of Medicine/Medical Student Chapter: Community Week
• Texas Tech University Health Sciences Center El Paso: Breast Cancer Screening in Underserved Populations
• Texas Tech University Health Sciences Center Lubbock/Medical Student Chapter: Smoking Cessation Program at The Free Clinic
• The University of Texas Health Science Center at Houston McGovern Medical School/Medical Student Chapter: UTHealth Cares Third Annual Health Fair
• The University of Texas Health Science Center at Houston McGovern Medical School/Medical Student Chapter: Frontera de Salud
• UT Southwestern/Medical Student Chapter: Implementing a Smoking Cessation Program in a Dallas Homeless Population
• The University of Texas Rio Grande Valley School of Medicine/Medical Student Chapter: COVID-19’s Impact on Medical Students’ Well-Being and Residency Choices

TMAF 2020 John P. McGovern Champion of Health Award
• Health for All by the Health for All Clinic, Bryan
• Cornerstone Assistance Network’s Cataract Procedure Center, Fort Worth

TMAF Family of Funds Grants
• The TMAF Hispanic Nursing Scholarship Trust Fund of Dr. Roberto J. and Agniela (Annie) M. Bayardo supported two grants for seven scholarships awarded by the Harris County Medical Society Alliance and the Travis County Medical Society Alliance.
• The TMAF Medical Student Scholarship and Grant Trust Fund by Dr. Roberto J. and Agniela (Annie) Bayardo supported the Lubbock, Midland, and Travis county medical societies with two scholarships each matching those awarded by their own scholarship programs.
• The TMAF Hispanic Medical Student Scholarship Fund of Dr. Roberto J. and Agniela (Annie) Bayardo supported the Midland and Travis county medical societies with two scholarships each matching those awarded by their own programs.

Funds Raised
The TMA Foundation raised $946,257 in 2020, exceeding its fundraising goal for 2020 by $15,257 or 1.64%. This achievement is thanks to generous gala donors who allowed TMAF to retain their purchases despite gala cancellation, in addition to more than 1,200 other donors who supported programs and the mission of TMAF.
Included in this total raised is the grant from The Pfizer Foundation to address the health and wellness needs of physicians during the COVID-19 pandemic.

**Additional Achievements**

- In 2020, TMAF had the greatest number of individuals donating (1,434) and greatest number of new donors (506) in the past six years, as well as the greatest number of institutions donating (74) since 2017.
- TMA’s 2021 programs supported by TMAF are in Attachment B. New for this year is Vaccines Defends What Matters, which replaces Be Wise – Immunize.
- Members of the board who joined in 2020 are Abdul Abid, MD, Resident and Fellow Section representative; Gates B. Colbert, MD, FASN, Young Physician Section representative; and Helen Schafer, Medical Student Section representative.
- Sixteen individuals became new or upgraded Major Donors and were recognized at TMA Winter Conference. They join 249 other Major Donors on the digital display in the TMA building and on the TMAF website. Attachment C lists all 259 TMAF Major Donors who individually or as a couple have donated $10,000 and more cumulatively to TMAF.

**First TMAF Virtual Gala – Superheroes: Meeting the Challenge**

TMAF’s 28th annual gala will honor medicine’s trusted leadership and other health care team superheroes on May 14 as part of TMA’s TexMed annual meeting. Co-chairs are David Fleeger, MD, and his wife, Jamie, and Belda Zamora, MD, and her husband, F. Javier Otero, MD, all of Austin. Susan Rudd Bailey, MD, Fort Worth, president of the American Medical Association, is honorary chair.

The lead sponsor for the event is H-E-B. Confirmed sponsors from the $30,000 level to the $3,500 level as of Feb. 10, 2021, are H-E-B; St. David’s HealthCare and St. David’s Foundation; Texas Medical Liability Trust; Baylor Scott & White Health; TMA Insurance Trust; Prudential; Texas Health Resources; Travis County Medical Society; Austin Ear, Nose & Throat Clinic; Catalyst Health Network; Dallas Nephrology Associates; Harris County Medical Society/Houston Academy of Medicine; Luther King Capital Management; Carla F. Ortique, MD, and Morris Overstreet; The Quantitative Group at Graystone Consulting; Rudd and Wisdom, Inc; TMF Health Quality Institute; Texas Scottish Rite Hospital for Children; TTUHSC SOM, Dean’s Office; Texas Oncology; University of the Incarnate Word School of Osteopathic Medicine; UTMB Health; UT Southwestern Medical Center; and Vaughan Nelson Investment Management, LP.

Livestreaming from the TMA building, the event begins at 6:30 pm with a preshow. The main event runs from 7 to 8:15 pm and includes an online silent auction, prerecorded messages from special guests, and Austin musicians providing entertainment.

The event is the single largest fundraising effort of TMAF and makes TMA health improvement, science, and quality-of-care programs possible.

Regular individual tickets are $275 each, and special VIP tickets are $375. Tickets may be purchased through midnight May 12. Individuals may sponsor a table of eight for $2,500. For more information and to purchase tickets, contact TMA Foundation at (800) 880-1300, extension 1466 or (512) 370-1466.
TMA GRANTS – In support of TMA’s population health and science priorities

TMA’s Be Wise – Immunize: This public health initiative increases immunization rates by providing educational materials, grants, and infrastructure to physicians, TMA Alliance members, and medical student members (Family of Medicine) so that they can (1) counter vaccine hesitancy, (2) provide needed immunizations, (3) carry out vaccination education events in collaboration with others, and (4) support the Texas Department of State Health Services in physician outreach related to the Texas Vaccines for Children and Adult Safety Net programs. Since its beginning in 2004, Be Wise – Immunize has provided nearly 360,000 vaccinations to Texas children, adolescents, and adults.

TMA’s Hard Hats for Little Heads encourages safe exercise and prevention of life-altering or fatal brain injuries in Texas children engaged in wheeled sports. Since its inception in 1994, more than 350,000 free helmets have been given to youths aged 14 and younger at community events such as bicycle safety rodeos and health fairs. TMA and TMA Alliance members and community collaborators educate parents and children about the importance of wearing a properly fitted helmet when bicycling, inline skating, skateboarding, or riding a scooter.

TMA’s Ernest and Sarah Butler Awards for Excellence in Science Teaching: TMA is committed to elevating the importance and credibility of science in our modern society by recognizing and rewarding outstanding science teachers in elementary and junior and senior high schools. Since 1990, TMA has helped increase science literacy by providing cash awards to winning teachers and their schools to enhance their science curriculum.

TMA’s Minority Scholarship Program: Established in 1998, this program was designed as a unique means to fill a gap brought about by the Hopwood ruling barring public medical schools from offering minority-specific scholarships. In Texas, minority groups underrepresented with regard to population-to-physician ratios are Hispanic, Black, and Native American. Annually, a qualified student entering each of Texas’ medical schools is selected to receive a $10,000 scholarship.

Walk With a Doc Texas engages physicians, their patients and the community in healthy physical activity to reverse the consequences of a sedentary lifestyle, especially obesity. TMA members lead virtual walks that engage patients in walking with them at least once a month for 12 months. When live walks resume, participants enjoy a healthy snack and a brief health-related presentation before each 45-90-minute walk.

History of Medicine Banner Program/Two Exhibits: This program enables TMA’s History of Medicine Committee to offer seven banner exhibit sets to schools, libraries, and other venues to educate the public on a range of health and medical subjects, enhance the image of physicians, and encourage the pursuit of research and science education. The banner exhibits promote TMA’s patient health advocacy goals through education and historical content. With TMAF support, recent museum exhibits “Art of Medicine” and “Courage and Determination: Pioneering African American Physicians in Texas” have been added to the catalog of available banner exhibits.

Texas Two Step CPR: Texas Two Step provides skills training to Texans in how to act quickly in the event of cardiac emergencies following two easy steps: (1) call 911 and (2) initiate hands-only CPR. The project has trained more than 27,800 individuals on how to save lives with hands-only CPR. It was
established by Texas medical students, the Texas College of Emergency Physicians, and HealthCorps and in 2018 expanded from Texas-only to a national scale.

MENTAL HEALTH AND WELLNESS RESOURCES DURING COVID-19

Spurred by the demands and circumstances of delivering care during the COVID-19 pandemic, TMA established its Caring for Physician Healers: Mental Health and Wellness Resources During COVID-19 Fund with support from The Pfizer Foundation.

**Women in Medicine Physician Health and Wellness/Bell County Medical Society:** This program provides leader training in the Finding Meaning in Medicine program and facilitates virtual meetings throughout Bell County. Driven by the Bell County Medical Society Women in Medicine Physician Health and Wellness Task Force, the program will use gender-specific group interaction to reduce burnout and improved retention and engagement for female physicians.

**Emotional PPE Project/Dallas County Medical Society:** This program is a collaboration between Dallas County Medical Society and the national Emotional PPE Project. The Emotional PPE Project is a robust, nationally built-out program that addresses the mental health crisis among health care workers that has been exacerbated due to COVID-19. The project has volunteer mental health counselors mobilized nationwide with capacity to serve any health care worker, free of charge, anywhere in the country. As of Sept 1, health care workers in 21 states have accessed the service and received counseling.

**Yoga – Building Self-Regulation and Higher Consciousness/Ector County Medical Society:** This 90-minute, biweekly yoga session with experienced instructors is offered to address physicians’ well-being and reduce stress during the pandemic. Classes will be conducted via Zoom to teach various stress management techniques, breathing exercises, and balance poses.

**Physicians Connecting and Contributing/Lubbock County Medical Society:** This program consists of weekly meetings of four physicians each. A certified life coach will cover a different topic at each session including finances, relationships (family and colleagues as well as staff and workplace), compulsions, self-care, mentoring/leadership, and compassion.

**LifeBridge/McLennan County Medical Society:** This program provides a resource for handling stress and anxiety in a safe and positive environment. The LifeBridge Program offers an outlet for physicians experiencing burnout, chronic stress, depression, addiction, distress by making available up to four counseling or coaching sessions with a licensed therapist per year at no cost to the physician.

**Physician Wellness Program/Smith County Medical Society:** This program will cast a broad safety net over physician members by helping with awareness and improvement of their mental health and well-being. The program will (1) introduce health and wellness topics via an annual video conference, and provide monthly instruction on meditation, exercise, and yoga practices; (2) provide online educational resources; and (3) provide a confidential counseling and coaching program to member physicians.

**Physician Wellness Program/Travis County Medical Society:** The Physician Wellness Program is designed to be a safe harbor for physicians to address normal life difficulties in a confidential and professional environment by providing a confidential counseling/intervention service to physicians in need and opportunities for physicians to share experiences in small groups and participate in educational events including the nationally recognized Finding Meaning in Medicine monthly video conference.
COUNTY MEDICAL SOCIETIES AND ALLIANCE CHAPTERS – Medical Community Grants

Grapeland Immunization Project/Anderson-Leon County Medical Society: This project provides flu vaccinations to Grapeland (in Houston County) school students during flu season. Volunteers will give flu shots to students who lack local access to health care so they stay healthy and avoid missing school.

Campaign to Reduce Bullying and Build Self-Esteem/Bexar County Medical Society Alliance: This campaign aims to reduce bullying and build self-esteem among children with craniofacial deformities and birth defects of the face or head such as a cleft palate. The program educates children and their families when they undergo treatment for this medical condition. Outreach to the patients’ peers addresses teasing and social exclusion, which can lead to depression and low self-esteem.

Drive Thru, Prevent Flu/Lamar Delta County Medical Society: The Paris-Lamar County Health District partnered with the Lamar-Delta County Medical Society and other community groups to provide an efficient method for 400 citizens, aged 18 or older, to receive the influenza vaccine. The “drive-thru” shot clinic is an easy-access option for both the elderly and a vast majority of the rural community who find it difficult to visit a regular, walk-in clinic.

Pneumonia Vaccine for the South Plains Food Bank/Lubbock County Medical Society Alliance: The South Plains Immunization Network in partnership with the Lubbock County Medical Society Alliance decreased the incidence of pneumonia in this underinsured population. Prevnar 13 was offered to clients of the South Plains Food Bank who qualify for the vaccine during the annual flu vaccine clinic at the food bank.

Battling Opioid Misuse in Nueces County/Nueces County Medical Society Alliance: Opioid misuse has become a public health crisis, and the Nueces Alliance raised awareness through a series of public service announcements and a symposium. Messaging stressed that opioids can be addictive and dangerous, how to prevent the start of opioid misuse, and how to support those already struggling.

Northeast Texas Public Health District Health on Wheels/Smith County Medical Society: The Northeast Texas Public Health District will bolster existing community health programs and services to residents of 21 East Texas counties with a donated Mobile Coach from Carter BloodCare. Among the outreach efforts will be the provision of mobile immunization services for children and adults in Wood County and rural Smith County.

Project Access Tarrant County (PATC)/Tarrant County Medical Society: Project Access Tarrant County is a community collaboration that provides compassionate specialty care for Tarrant County’s uninsured. A network of volunteer TMA member physicians collaborates with hospitals (by donating ancillary services), charitable community clinics, and providers to serve the target population, the uninsured working poor. To date, PATC has enrolled more than 1,300 patients and has provided more than $11.5 million in donated care this population otherwise would have been unable to obtain.

Immunization Collaboration of Tarrant County (ICTC)/Tarrant County Medical Society Alliance Foundation (TCMSAF): With a membership of more than 35 organizations including TCMSAF, this program provides (1) low-cost vaccine events that provide more than 7,000 eligible children and adults annually with required vaccines for kindergarten, seventh grade, and college school registrations; (2) vaccine education for parents, the community, health care workers, and providers through a website and social media channels so ICTC becomes a go-to source for information about the importance and safety of immunizations; and (3) vaccine advocacy collaboration with TMA and The Immunization Partnership leading to science-based vaccine policies.
TMA MEDICAL STUDENT CHAPTERS – Medical Student Community Leadership Grants

Funding for these grants is made possible by the TMAF Medical Student Scholarship and Grant Trust Fund of Dr. Roberto J. and Agniela (Annie) M. Bayardo.

Alliance Refugee Wellness Fair/Baylor College of Medicine: This annual event provides direct medical and preventive health services, education about health and well-being, and access to medical care resources to the underserved refugee population that has resettled in Harris County. In partnership with several area not-for-profit refugee resettlement agencies, the fair provides refugees with culturally competent resources to navigate the Harris Health System.

Healthy Minds, Healthy Bodies/Baylor College of Medicine: This after-school education program for elementary students at an underserved school in Houston covers physical health and mental health. Students educate a primarily underserved community about holistic well-being and healthy habits, while simultaneously inspiring and encouraging interest in STEM fields and higher education.

Refugee Resettlement Needs Assessment/Baylor College of Medicine: This project is a collaboration among Baylor College of Medicine faculty and medical students and refugee communities in Houston to identify unmet needs of recently resettled refugees and explore social determinants of health. The results are used to strategically organize future initiatives and address specific community needs.

Flu Crew/Dell Medical School: The Dell Medical Students Flu Crew provides free vaccinations and vaccine education at community events to help keep Travis County residents healthy. The program also provides interprofessional, community-based learning opportunities for medical students.

Feed My Sheep Mobile Pediatric Clinic/Texas A&M Health Science Center College of Medicine: Feed My Sheep is a volunteer-based mobile clinic that provides health care to medically underserved children in Central Texas, with a primary focus on the uninsured. Students take a care van to low-income areas of the community to serve children with limited transportation and financial resources.

Community Week/Texas A&M Health Science Center College of Medicine: Community Week is a six-day event in collaboration with the colleges of Nursing and Pharmacy, the School of Public Health, and others to provide information, care, and services to the uninsured of Brazos County. The final day features an all-day health fair where community members learn about health and medicine and connect with people and local resources.

Breast Cancer Screening in Underserved Populations/Texas Tech University Health Sciences Center (TTUHSC) El Paso: The Medical Student Run Clinic of the Paul L. Foster School of Medicine currently serves the Sparks Colonia in rural El Paso County, providing free care including regular clinic visits, sports physicals, and breast cancer screening services. This program will expand to offer breast health education and mammography services to the Agua Dulce Colonia in El Paso County. TTUHSC El Paso medical students and physicians volunteer their time for this effort.

Smoking Cessation Program at the Free Clinic/ Texas Tech University Health Science Center Lubbock: This four-week class helps patients relearn the meaning of addiction, habit, and support. The program motivates patients to reflect on their personal reasons for quitting, become more aware of their smoking triggers, and understand how to separate their triggers from smoking, and it equips them with the tools and resources they need to quit.
UTHealthCares Third Annual Health Fair/The University of Texas Health Science Center at Houston – McGovern Medical School: This student-led interprofessional organization at McGovern Medical School serves the members of the Eastex-Jensen community of Houston. The primary service, an annual community health fair, is supplemented by monthly events. Attendees leave the health fairs with educational information and tools to create impactful changes to their health.

Frontera de Salud/The University of Texas Health Science Center at Houston – McGovern Medical School: This student-run community health project addresses health disparities in the Rio Grande Valley by providing medical students the opportunity to practice exam and communication skills through free health screenings and education for people in medically underserved communities. Collaborating with the Cameron County Health Department, the students screen 200-400 residents yearly and connect uninsured and high-risk attendees with local low-cost clinics and health services.

HOPE Health Fair/The University of Texas Medical Branch: This collaborative event provides vaccines, health screenings, and a meal to homeless and uninsured individuals in Galveston. The UTMB Family Medicine Interest Group and Gold Humanism Honor Society work with St. Vincent’s Student-Run Clinic to host the second annual HOPE (Helping Others Through Partnered Empowerment) Health Fair. In 2018, more than 200 vaccines were provided to this community, and in 2019, HOPE expects to serve at least 250 individuals.

Implementing a Smoking Cessation Program in a Dallas Homeless Population/UT Southwestern: UT Southwestern medical students address tobacco use by homeless people at a local shelter, Union Gospel Mission, through support groups, pharmacotherapy, and health education. This immersive educational opportunity for medical students in preventive and community medicine teaches building a future commitment to these communities by interacting with vulnerable populations and gaining knowledge about health disparities and cultural competency.

FAMILY OF FUNDS

The Family of Funds is the umbrella for TMAF funds and endowments that support the charitable health improvement and education goals of TMA and TMA Alliance members and the related efforts of TMA county medical societies and TMA Alliance and medical student chapters.

TMAF Hispanic Nursing Scholarship Trust Fund of Dr. Roberto J. and Agniela (Annie) M. Bayardo: This trust provides eight $10,000 scholarships annually for nursing students in Harris and Travis counties and is administered by the Harris County Medical Society Alliance Philanthropic Fund and the Travis County Medical Society Alliance Foundation.

TMAF Medical Student Scholarship and Grant Trust Fund of Dr. Roberto J. and Agniela (Annie) M. Bayardo: TMA county medical societies and alliance chapters that have a medical student scholarship program may apply for one scholarship grant up to $5,000 that matches the amount of the county medical society or alliance scholarship. In 2020, Lubbock, Midland, and Travis county medical societies each were granted two $5,000 scholarships to award through their programs. This fund also supports TMAF community health grants to TMA medical student chapters.

TMAF Hispanic Medical Student Scholarship Fund of Dr. Roberto J. and Agniela (Annie) M. Bayardo: This fund provides scholarships to Hispanic individuals accepted to or attending a Texas medical school. Grants are based on TMAF board-approved funding requests from TMA county medical societies or alliance chapters that have a medical student scholarship program and meet the fund
requirements. In 2020, Midland and Travis County Medical Societies each were granted two $5,000 scholarships to award through their programs.

*Be Wise – Immunize is a service mark of the Texas Medical Association*
**TEXAS MEDICAL ASSOCIATION FOUNDATION**  
**FUNDED 2021 PROGRAMS**

**Attachment B**

**TMA GRANTS - In support of TMA’s public health and science priorities**

**Vaccines Defend What Matters (VDWM)** is TMA’s integrated, multimedia education and advocacy effort to overcome vaccine hesitancy and increase vaccination rates in Texas. This message is especially critical now that there are approved COVID-19 vaccines. While people are hearing mixed messages about the safety of vaccines, VDWM sends a strong message from today’s medical heroes that choosing to be immunized against COVID-19 and other infectious disease safeguards good health, jobs, schools, and the Texas economy.

VDWM replaces TMA’s Be Wise – ImmunizeSM community education and outreach program after a 16-year run. VDWM will educate leaders and policymakers about the importance of vaccines, physicians on how to counter vaccine hesitancy in their patients, and the public on the impact immunization can have on their lives. VDWM will support individual county medical societies and TMA Alliance and medical student chapters that want to bring the campaign’s message into their communities through outreach that can be supported with a grant, including sharing the information with their members and the public via social media.

**TMA’s Hard Hats for Little Heads** encourages safe exercise and prevention of life-altering or fatal brain injuries in Texas children engaged in wheeled sports. Since inception in 1994, more than 350,000 free helmets have been given to youths aged 14 and younger at community events such as bicycle safety rodeos and health fairs. TMA and TMA Alliance members and community collaborators educate parents and children about the importance of wearing a properly fitted helmet when bicycling, inline skating, skateboarding, or riding a scooter.

**TMA’s Ernest and Sarah Butler Awards for Excellence in Science Teaching:** TMA is committed to elevating the importance of science in our modern society by recognizing and rewarding outstanding science teachers in elementary and junior and senior high schools. Since 1990, TMA has helped increase science literacy by providing cash awards to winning teachers and their schools to enhance their science curriculum.

**TMA’s Minority Scholarship Program:** Established in 1998, the program was designed as a unique means to fill a gap brought about by the Hopwood ruling barring public medical schools from offering minority-specific scholarships. In Texas, minority groups underrepresented regarding population-to-physician ratios are Hispanic, Black, and Native American. Annually, a qualified student entering each of Texas’ medical schools is selected to receive a $10,000 scholarship and named a “Bayardo Scholar” after Dr. and Mrs. Roberto Bayardo, who established an endowment that provides major support for this program.

**Walk With a Doc Texas** engages physicians, their patients, and the community in healthy physical activity to reverse the consequences of a sedentary lifestyle, especially obesity. During the pandemic, the program has shifted primarily to virtual “walks.”

**TMA Alliance Texas BookShare:** The BookShare program promotes healthy habits in children of all ages by supplying them with books on topics like the importance of physical activity, growing fruits and vegetables, and maintaining a healthy diet. County chapters partner with local pediatricians and family doctors to distribute the books to young patients, and each book includes a personal message from an alliance member written inside.
History of Medicine Banner Program: This program enables TMA’s History of Medicine Committee to offer the seven banner exhibit sets to schools, libraries, and other venues to educate the public on a range of health and medical subjects, enhance the image of physicians, and encourage the pursuit of research and science education. The banner exhibits promote TMA’s patient health advocacy goals through education and historical content.

Be Wise – Immunize is a service mark of the Texas Medical Association
# Attachment C

## TMA FOUNDATION MAJOR DONORS

### Visionaries ($1,000,000+)

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- Dr. and Mrs. Ernest C. Butler

### Innovators ($500,000-$999,999)

- Pon Satitpunwaycha, MD

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6 Dr. Paul and Mrs. D’Anna* Wick
7 Courtney Williams, MD
8 Mr. and Mrs. Clarence* Woliver
9 Dr. Dale and Mrs. Mertie L. Wood
10 * Deceased
REPORT OF TMF HEALTH QUALITY INSTITUTE

TMFHQI Report 1 2021

Subject: TMF Health Quality Institute Annual Report

Presented by: Gary W. Floyd, MD, Chair, TMF Board of Trustees

TMF Health Quality Institute has worked with Texas physicians for 50 years to help improve the health of Texans and health care in our communities.

TMF is recognized for our expertise and successes in delivering measurable improvements in the quality and delivery of health care, which derives from the strength of our relationship with Texas physicians.

As the Centers for Medicare & Medicaid Services (CMS) Quality Innovation Network-Quality Improvement Organization (QIN-QIO) for Texas, Arkansas, Mississippi, Nebraska, Puerto Rico, and the U.S. Virgin Islands, TMF conducts various health care initiatives. These initiatives include assisting the health care community with increasing screening for behavioral health issues; increasing the number of practitioners effectively implementing and providing chronic care management services to patients; helping communities improve coordination of health care for patients to reduce unnecessary hospital readmissions and adverse drug events; and reducing infections and injuries in addition to improving antibiotic stewardship programs in nursing homes.

Our QIN-QIO contract also provides new guidance on patient and family engagement in the patient’s health care. Through classes and various other outreach efforts, TMF is empowering patients and their family caregivers to be more confident participants in their health care. They are encouraged to be more open, informative, and helpful to their physicians to get the best care, and to be more inquisitive about the self-management of their health.

In our ongoing efforts to engage patients, caregivers, physicians, health care providers, advocates, and other stakeholders in a collaborative community, TMF continues to enhance our online Learning and Action Networks, which include thousands of U.S. and international users. These networks provide a forum for positive interaction, learning, and sharing of resources and best practices.

TMF is helping to improve health care in our communities through a variety of other state and federal contracts. We are increasing vaccination rates for children across Texas, training community health workers on chronic disease, and providing various health care facilities with data to help them self-audit to stay in compliance with Medicare regulations. Since TMF began working to promote childhood immunizations more than 15 years ago, we have successfully managed and completed more than 38,500 provider site reviews in multiple states.

Through the CMS Civil Money Penalty (CMP) Reinvestment Program, TMF was awarded CMP contracts to support the continued improvement of dementia care in Texas nursing homes, provide resident-focused assessment training in Texas nursing homes, and improve oral hygiene for nursing home residents in Louisiana and Mississippi.

TMF also is providing support for small medical practices in the CMS Quality Payment Program. Through this program, TMF provides Texas practices with technical assistance and services. This technical assistance brings direct support to thousands of MIPS-eligible clinicians in small practices with 15 or fewer clinicians, including small practices in rural locations, Health Professional Shortage Areas and Medically Underserved Areas. The direct technical assistance is free to all Merit-Based Incentive
Payment System (MIPS) eligible clinicians and delivers support for up to a five-year period. TMF is also supporting physicians who are part of this program in Arkansas, Colorado, Kansas, Louisiana, Mississippi, Missouri, Oklahoma, and Puerto Rico. This program concludes Feb. 15, 2022.

We are honored to partner with the Texas Medical Association (TMA) and the Texas Osteopathic Medical Association (TOMA) in offering the Texas Physician Practice Quality Improvement Award Program. Due to the public health crises of COVID-19, the awards program is on hold. Once the program resumes, TMF will update the award program website, https://award.tmf.org/, and distribute more information to practices that may qualify to participate.

We are grateful to TMA and TOMA for their foresight in setting up TMF Health Quality Institute. Together, we are in the best position to help Texas physicians and their patients realize outstanding health care in an ever-changing health care environment.
REPORT OF TEXAS MEDICAL ASSOCIATION ALLIANCE

TMAA Report 1 2021

Subject: Texas Medical Association Alliance Activities and Accomplishments

Presented by: Martha Vijjeswarapu, TMAA president

**TMAA’s Successful Virtual Year**

The Texas Medical Association Alliance started 2020 with visits to West Texas county alliances and county medical societies to learn more about their challenges and how TMAA could help bolster their membership. Additional trips planned around the state were put on hold in March because of the pandemic.

TMAA quickly pivoted its efforts to a virtual format (Zoom), which already was used regularly with the TMAA Board of Directors.

The alliance had its annual business meeting and president’s installation virtually in May 2020 to great success, garnering greater participation across the state. Since then, all business meetings have occurred virtually, with better response than TMAA in-person meetings because of the convenience.

The alliance also built bridges between its county chapters and TMAA leadership through free virtual programming including: (1) monthly county leadership listening sessions; (2) a Monthly Enrichment Series featuring speakers on such topics as dealing with uncertainty during the pandemic, managing conflict, financial planning, and building resiliency, as well as learning about the challenges and successes TMA President Diana Fite, MD, encountered as a mom, spouse, and physician; and (3) an online fitness challenge to encourage members’ improved physical and mental health.

The alliance also started two initiatives aimed at resident and early-career spouses: Allies in Medicine (AIM), and a Resident Emergency Fund. The AIM program links seasoned alliance members with young resident or early-career spouses to welcome them to organized medicine and provide support. The Resident Emergency Fund provides up to $1,000 for resident families who are in crisis.

**Legislation/Political Action**

In August 2019, the Alliance, in conjunction with TMA’s advocacy division, launched its newest grassroots advocacy program – First Tuesdays at the Capitol. The program encourages physicians, alliance members, and medical students to schedule short, informal visits with local legislators and their staff to build or maintain meaningful relationships.

Bell, Bexar, Big Country, Dallas, Harris, Hidalgo-Starr, Lubbock, Jefferson, Nueces, Tarrant, and Travis county medical societies and alliance chapters embraced the program and customized it to fit their advocacy needs.

In March 2020, the program changed from in-person to Zoom visits with even greater success. Because of the ease of coordinating and hosting virtual meetings with elected officials and the Family of Medicine, more than 120 meetings occurred in 2020. Two or three meetings were held each week during the fall involving physicians, alliance members, and medical students. The meetings provided a relaxed, informal atmosphere to discuss TMA’s legislative agenda, share physicians’ stories, and strengthen relationships.
TMA Foundation

TMAA applied for and received a grant of $12,000 to expand the Texas BookShare to five new county chapters and to sustain the program in four chapters. Texas BookShare promotes early literacy and health during wellness visits for children who live in underserved communities. Alliance chapters provide books to local physicians, who then prescribe the books to promote language development, healthy habits, and that help every child in Texas read.

Additionally, three local chapters applied for and were awarded TMAF grants: $7,500 to Tarrant CMS/Tarrant CMS Alliance to fund the Immunization Collaboration of Tarrant County; $2,500 to Bexar CMS Alliance for a campaign to reduce bullying and build self-esteem; and $5,000 to Nueces CMS Alliance for a project promoting literacy and healthy habits in a Title I school. Despite the COVID-19 pandemic, several alliance chapters participated in TMA’s Hard Hats for Little Heads, Walk With a Doc Texas, and Be Wise – Immunize℠ programs, all funded by TMAF with cumulative grants of $234,334.

For the fourth year, two alliance chapters (Travis and Harris) received grants to provide Hispanic nursing scholarships, thanks to a fund established by Roberto Bayardo, MD, and his late wife, Agniela. Scholarships are $10,000 each.

The TMAA Holiday Sharing Card was repeated in 2020, raising $3,190. Currently, Angela Donahue, Sunshine Moore, and Debbie Pitts represent TMAA on the TMA Foundation Board of Trustees. Hundreds of TMA Alliance members and their spouses are TMAF donors, helping make programs such as Hard Hats for Little Heads, Vaccines Defend What Matters, and Walk With a Doc Texas possible.
Six new medical schools have opened in Texas in the past five years, increasing the state total to 15. The new matriculants (first-year enrollments) combined with enrollment expansions at existing schools resulted in an increase of 449 (24.8%) in the state’s composite class size, raising the total to 2,262 for the 2020-21 academic year. When the Paul L. Foster School of Medicine opened at Texas Tech University Health Sciences Center in El Paso in 2009, it was the first new medical school in Texas since 1971. During that same 38-year span – 1971-2009 – Texas grew by 13.4 million residents or 116%. The next new medical school didn’t open until 2016. The recent opening of six medical schools is a delayed response to the robust population growth experienced in the state in recent decades. Without enrollment growth, Texans would have less opportunity to go to medical school in their home state, and Texas would have fewer homegrown physicians.

TMA has policy (185.018) in support of expanded medical school enrollments and aligning graduate medical education (GME) capacity with these expansions to help retain graduates who want to train in the state and to prepare physicians in the specialties most needed for Texas.

Texas, California in second place

With 15 medical schools, Texas now ties with California for second place in number of medical schools. California and Texas are ranked first and second in population, while New York, ranked fourth in population, leads the country in the number of medical schools with 17.

TMA supports study for projected need of more medical schools

Another medical school is coming. The University of Texas System recently announced the development of a school in Tyler, for a planned opening in 2023 with an initial 30 to 35 students. TMA adopted policy in 2019 that supports a study of the projected need for additional medical schools.

200.058 Projected Need for More Medical Schools in Texas: TMA recognizes that medical schools require extraordinary resources to meet national accreditation standards and to maintain educational excellence. With the increasing number of medical schools under development in Texas, it is in the best interest of the state for the Texas Higher Education Coordinating Board to commission a comprehensive study to be done on the projected need for additional medical schools. TMA supports the board’s use of the study in evaluating future proposals for the establishment of new medical schools in the state. (CME Rep. 4-A-19) (Emphasis added.)

To demonstrate the pace of growth at medical schools in Texas, Figure 1 shows the historical trend for matriculants. Starting with the oldest data available, 1990, and projecting to 2023, matriculants are projected to double from 1,220 to 2,471. To obtain matriculant projections, TMA surveyed Texas medical school deans in December 2020.
In 2002, the Association of American Medical Colleges encouraged U.S. allopathic medical schools to increase enrollments by 30% by 2015 to boost the national physician workforce. The Texas response was enthusiastic, and the number of matriculants exceeded the 2015 goal, growing by 35%. In a year-by-year comparison, the council learned the highest level of growth occurred more recently.

The biggest single-year increase in medical school matriculants occurred in 2020, with a jump of 187, as shown in Figure 2. For the 22-year period of 2002 to 2023, Texas had an average annual growth of 53 matriculants (including projections). That means the jump in 2020 was 3.5 times the annual average for this period.

Despite the high rate of growth, Texas ranks 37th in the number of medical students per capita in national state rankings (third quartile), with 28.3 medical students per 100,000 population. In comparison, the U.S. per-capita number is 36.8.

(Matriculant numbers shown for 1990, 2000, 2010, 2020, and 2022 Numbers for 2021-22 are projections.)

Sources: Texas Higher Education Coordinating Board and TMA survey of Texas medical school deans.
Prepared by TMA.
The jump in number of matriculants in 2020 resulted from the opening of two medical schools and growth at several others, including an increase of 54 at Texas A&M University, as shown in Table 1.

### Table 1

<table>
<thead>
<tr>
<th>Medical School</th>
<th>Matriculants 2019</th>
<th>Matriculants 2020</th>
<th>Net Difference</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sam Houston State Univ. Osteopathic Medical School, Conroe <em>(Opened in 2020)</em></td>
<td>0</td>
<td>75</td>
<td>75</td>
</tr>
<tr>
<td>Texas A&amp;M Univ.</td>
<td>123</td>
<td>177</td>
<td>54</td>
</tr>
<tr>
<td>Texas Tech Univ. Health Sciences Center El Paso</td>
<td>104</td>
<td>110</td>
<td>6</td>
</tr>
<tr>
<td>Univ. of Houston <em>(Opened in 2020)</em></td>
<td>0</td>
<td>30</td>
<td>30</td>
</tr>
<tr>
<td>Univ. of North Texas Health Science Center</td>
<td>230</td>
<td>247</td>
<td>17</td>
</tr>
<tr>
<td>Univ. of Texas Health Science Center at San Antonio</td>
<td>211</td>
<td>219</td>
<td>8</td>
</tr>
</tbody>
</table>

Recent enrollment increases have created a greater demand for clinical training sites. At the same time, Texas medical schools are competing with several out-of-state medical schools that are sending students to Texas for clinical rotations. Competition for clinical sites is further exaggerated by training needs for many other health professionals such as nurses, advanced practice registered nurses, physician assistants, physical therapists, and podiatrists. Concerns about out-of-state medical schools seeking clerkship sites in
Texas motivated the Texas Higher Education Coordinating Board to form a workgroup in February 2021 composed of Texas academic health center representatives. The workgroup is evaluating the coordinating board’s current process for approving out-of-state medical school students for clinical training in Texas.

To ensure Texas medical students have access to clinical training in Texas, the following TMA policy was amended in 2020 to include medical schools in other states. The policy was initially focused only on medical schools in the Caribbean and Mexico.

200.047 Clinical Training Resources for Texas Medical Students: TMA adopted the following principles as policy regarding clinical training resources for Texas Medical Students: …

3. TMA opposes extraordinary payments by any medical school for access to clinical rotations.
4. Texas medical students should not be displaced from clinical clerkship positions at Texas health care facilities by students from medical schools outside of Texas, including other states and countries, or by other health care professionals seeking clinical clerkship training. Top priority for clinical clerkship training in the state should be given to Texas medical students followed by other health care professionals enrolled in Texas programs (CME Rep. 3-A-12, amended C-ME Rep 4 2020).

GME positions growing, need funding
Like medical school enrollments, the number of residents physicians in the state is also at historic levels, with 7,953 residents at 648 residency programs (American Medical Association, 2019). Texas GME programs had higher growth rates than U.S. totals over the past decade, with an increase of 23% in the number of residents and 29% more residency programs. In a 2019 national ranking of states by the ratio of residents per capita, Texas ranked 25th (second quartile) with a ratio of 29.9 residents per 100,000 population, well below the U.S. total of 41. Texas had a better state ranking for residents per capita (25th) than for medical students per capita (37th).

Recent additions to medical school enrollments will put greater demands on the state’s GME capacity, and TMA has placed a high priority on getting this message out. TMA created a legislative one-pager to inform lawmakers during the 2021 state legislative session of the need to protect GME programs from potential cuts in the 2022-23 state biennial budget. Cuts of about 5% are proposed to the state’s GME funding programs.

Similar to the single-year jump in medical school matriculants in 2020, Texas also saw a historic jump in first-year GME positions in the past year, as shown in Figure 3. GME positions rose by 161 (8.1%) from 2019 to 2020, twice the annual average change for the past decade.
Net Annual Change in Texas First-Year GME Positions
Offered in Annual Match(s), 2011-20

Note: Data are not available for offered first-year residency positions in Texas for 2017 American Osteopathic Association Match; this year was omitted from the graph. Source: Results and Data 2020 Main Residency Match® National Resident Matching Program, Washington, DC; American Osteopathic Association Match. Prepared by TMA.

Will Texas maintain the 1.1 to 1 target ratio in the near future?
A target ratio of 1.1 to 1 first-year residency positions per Texas medical school graduate is defined in state policies, and TMA has policy in support of this target (185.024). An additional 10% first-year GME capacity is planned beyond the number of graduates to allow for graduates of medical schools in other states and other countries to train in the state, and physician retraining.

The council monitors how the state is doing in meeting this target ratio and recognized that the ratio was met for the first time in 2018 and maintained in 2019 and 2020, as seen in Figure 4. To assist TMA in advocacy, the council ran projections for this ratio through 2027. Ratios of the number of first-year GME positions per Texas medical graduate are shown in Figure 4 for 2016 to 2027. Actual ratios are shown for 2016 to 2020 and projected for 2021 to 2027.

Projected ratios for 2021 through 2027 are intended to demonstrate what COULD happen if there is no change in the number of first-year GME positions after 2020. The ratio is projected to drop below 1.1 to 1 beginning in 2024 and continue declining through 2027, even to below a ratio of 1 to 1.
Expanding GME growth to meet medical school enrollment presents a challenge

The council calculated the number of additional first-year GME positions needed to maintain the ratio of 1.1 to 1 in the near future. As shown in Table 2, Texas needs to create 250 first-year GME positions between 2020 and 2024, an additional 300 by 2025, 400 more by 2026, and 475 more by 2027. These projections reflect the expected increase in medical school graduates. The three medical schools that opened since 2019 will each graduate their first class by 2024.

Table 2: Projected Deficit in First-Year GME Capacity for Projected Texas Medical School Graduates if No Change in GME Capacity from 2020 (Projected to 2027)

<table>
<thead>
<tr>
<th>Academic Year</th>
<th>Projected # Texas Graduates</th>
<th>First-Year GME Capacity in 2020</th>
<th>Projected Deficit in First-Year GME Capacity IF NO CHANGE FROM 2020</th>
</tr>
</thead>
<tbody>
<tr>
<td>2024</td>
<td>2,402</td>
<td>2,148</td>
<td>-254</td>
</tr>
<tr>
<td>2025</td>
<td>2,457</td>
<td>2,148</td>
<td>-309</td>
</tr>
<tr>
<td>2026</td>
<td>2,542</td>
<td>2,148</td>
<td>-394</td>
</tr>
<tr>
<td>2027</td>
<td>2,624</td>
<td>2,148</td>
<td>-476</td>
</tr>
</tbody>
</table>

Sources: Texas Higher Education Coordinating Board and TMA survey of Texas medical school deans; 2017 American Osteopathic Association Match; 2017 was omitted. Sources: Texas Higher Education Coordinating Board and TMA survey of Texas medical school deans; Results and Data 2020 Main Residency Match® National Resident Matching Program, Washington, DC; and American Osteopathic Association Match. Prepared by: TMA.
A 2017 state law requires new medical schools to formulate a plan to meet the GME needs of their future graduates. The two public medical schools that opened in 2020, University of Houston and Sam Houston State University, will be the first schools affected by this law, and the council will monitor the law’s impact. These schools will graduate their first students in 2024. TMA policy supports this requirement for public medical schools and voluntary participation by private schools:

200.052 Aligning Future Graduate Medical Education Capacity With Target Enrollments of New Texas Medical Schools: … TMA believes it is in the best interest of the state that any medical school operating in the state, public or private, should plan for the GME needs of its graduates and that its plans should focus on the GME capacity needed for the school’s target class size, with an emphasis on expanding care for patients by creating new GME positions rather than displacing GME programs already in existence. (CME Rep. 3-A-18)

Family medicine leads in new GME programs offered in 2020
As part of the monitoring of the state’s GME capacity, the council wanted to gain a better understanding of the kinds of residency programs opened in 2020. A total of 37 new residency programs in 19 medical specialties participated in the Texas National Resident Matching Program (NRMP) for the first time in 2020, with a total of 161 new positions, as shown in Table 3. The council learned that the largest number of new residency programs were in family medicine, with a gain of 43 first-year residency positions at seven new residency programs. The second largest was transitional with 39 new positions across three programs, and the third largest was internal medicine with 20 positions at one new residency program. Two out of three new positions were filled on Match Day in 2020 (65%), and 13 of the 19 specialties filled 100% of offered positions. Most specialties with new programs (11 of 19) offered fewer than five positions.
Table 4 shows that Houston and Tyler had the largest number of positions among the new residency programs, with 45 and 23, respectively. Cities that did not gain new residency programs were Amarillo in the Panhandle, Wichita Falls in far north Texas, and Corpus Christi and Laredo in the south central regions of the state. Fort Worth was the only metro area with population over 1 million that did not have new programs.

HCA Gulf Coast Education Consortium in Houston had the largest number of new residency positions (41). For accuracy in reporting, Texoma Medical Center’s family medicine residency program...
participated in the NRMP for the first time in 2020 but was not a new program. This program participated in the American Osteopathic Association’s Osteopathic Match in previous years. Accreditation of osteopathic residency programs transitioned to the Accreditation Council for Graduate Medical Education in 2020, and there is now a single national residency program accreditation system and a single annual residency match.

<table>
<thead>
<tr>
<th>Table 4: New Residency Programs in 2020 Texas NRMP by City and Sponsoring Institution</th>
<th># Pos. Offered</th>
<th># Pos. Filled</th>
<th>% Filled</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>ARLINGTON</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medical City Arlington</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Medicine</td>
<td>18</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>General Surgery</td>
<td>7</td>
<td>5</td>
<td>71%</td>
</tr>
<tr>
<td><strong>Total (2)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>AUSTIN</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UT Austin Dell Medical School</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dermatology</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td><strong>DALLAS</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UT Southwestern Medical Center</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Neurology, Child/Neuroscience</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Pathology/Research</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Pediatrics-Preliminary/Neurodevelopmental Diseases</td>
<td>1</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Vascular Surgery</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Total (4)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>DENISON</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Texoma Medical Center</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Medicine</td>
<td>8</td>
<td>8</td>
<td>100%</td>
</tr>
<tr>
<td><em>(Note: participated in osteopathic Match in previous year)</em></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>EDINBURG</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UT Rio Grande Valley Med School/Doctor’s Hospital</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Renaissance</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Surgery-Preliminary</td>
<td>4</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td><strong>EL PASO</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Las Palmas Del Sol Healthcare</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Transitional</td>
<td>13</td>
<td>9</td>
<td>69%</td>
</tr>
<tr>
<td><strong>GALVESTON</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>UT Medical Branch</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dermatology</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Medicine-Preliminary/Ophthalmology</td>
<td>4</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td>Medicine-Preventive Medicine/Aerospace Medicine</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Radiology-Diagnostic</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Surgery-Preliminary</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td><strong>Total (8)</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>New Texas Residency Programs in 2020 NRMP Match by City and Sponsoring Institution</td>
<td># Pos. Offered</td>
<td># Pos. Filled</td>
<td>% Filled</td>
</tr>
<tr>
<td>---------------------------------------</td>
<td>---------------</td>
<td>--------------</td>
<td>----------</td>
</tr>
<tr>
<td>HARLINGEN: UT Rio Grande Valley Medical School</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Obstetrics/Gynecology</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>HOUSTON: Baylor College of Medicine</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Medicine/Research</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Physical Medicine &amp; Rehab</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Total (2)</td>
<td>2</td>
<td>2</td>
<td>100%</td>
</tr>
<tr>
<td>HCA Gulf Coast Education Consortium</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Medicine</td>
<td>10</td>
<td>3</td>
<td>30%</td>
</tr>
<tr>
<td>Obstetrics/Gynecology</td>
<td>5</td>
<td>5</td>
<td>100%</td>
</tr>
<tr>
<td>Transitional (2 programs with 13 positions at each)</td>
<td>26</td>
<td>6</td>
<td>23%</td>
</tr>
<tr>
<td>Total (4)</td>
<td>41</td>
<td>14</td>
<td>34%</td>
</tr>
<tr>
<td>Methodist Hospital</td>
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</tr>
<tr>
<td>Neurology</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>UT Health Science Center at Houston</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Dermatology</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Surgery-Preliminary</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Total (2)</td>
<td>2</td>
<td>2</td>
<td>100%</td>
</tr>
<tr>
<td>HOUSTON Total (9)</td>
<td>46</td>
<td>19</td>
<td>41%</td>
</tr>
<tr>
<td>LUBBOCK: Texas Tech Univ Health Sciences Center</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Emergency Medicine</td>
<td>8</td>
<td>8</td>
<td>100%</td>
</tr>
<tr>
<td>Medicine-Preliminary/Ophthalmology</td>
<td>4</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td>Total (2)</td>
<td>12</td>
<td>12</td>
<td>100%</td>
</tr>
<tr>
<td>MIDLAND: Texas Tech Univ Health Sciences Center</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Family Medicine</td>
<td>4</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td>ODESSA: Family Medicine/Rural (2 programs with 1 position at each)</td>
<td>2</td>
<td>0</td>
<td>0%</td>
</tr>
<tr>
<td>Note: The two rural training tracks in Odessa are part of a regional consortium. They will start in Texas in the first year and transfer to New Mexico for second and third years.</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>PECOS: Family Medicine/Rural</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>SAN ANTONIO: UT Health Science Center at San Antonio</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Anesthesiology</td>
<td>1</td>
<td>1</td>
<td>100%</td>
</tr>
<tr>
<td>Medicine-Preliminary/Ophthalmology</td>
<td>4</td>
<td>4</td>
<td>100%</td>
</tr>
<tr>
<td>Radiology-Diagnostic</td>
<td>2</td>
<td>2</td>
<td>100%</td>
</tr>
<tr>
<td>Total (3)</td>
<td>7</td>
<td>7</td>
<td>100%</td>
</tr>
</tbody>
</table>
TMA supports rural training track funding

Table 4 lists three rural training track programs in the West Texas cities of Midland, Odessa, and Pecos, developed by Texas Tech University Health Sciences Center-Permian Basin. TMA has policy that recognizes the important role of rural training tracks in preparing physicians for rural practice, including the following:

185.023 Support of Rural Residency Training and State Grant Program for Promoting Rural Training Tracks: … Recognizing the well-established linkage between where a resident trains and where he or she enter practice, it is important to institute residency training programs in rural areas with the resources to support such training. TMA recognizes the documented benefits of rural training track programs to rural communities and in preparing physicians for rural practice, as supported by research studies. …(CME Rep. 4-A-17, amended C-ME Rep 1 2020).

To facilitate the creation of more rural training tracks in the state, TMA initiated House Bill 1065 (Trent Ashby, R-Lufkin) in 2019 that created a state grant program for rural training tracks. This bill was passed by the Texas Legislature but lacks funding, and TMA is advocating for $1 million in the state’s 2022-23 biennial budget to kick-start the state grant program.

Specialty match results: 2020 Match Day

For residency programs that offered at least 10 first-year positions in the 2020 match, only medicine-pediatrics filled 100% of the positions on Match Day with U.S. medical school seniors. In addition to medicine-pediatrics, the following specialties filled more than 90% of offered positions with U.S. seniors (in order by fill rate): dermatology, orthopedic surgery, anesthesiology, obstetrics-gynecology, emergency medicine, neurological surgery, and plastic surgery.

The 2020 match had new programs for four of the eight specialties in high demand by U.S. graduates, as shown in Table 3: dermatology (3 new programs), obstetrics-gynecology (two), anesthesiology (one), and emergency medicine (one). Medicine-pediatrics, orthopedic surgery, neurological surgery, and plastic surgery had no new programs.

Pathology filled the lowest percentage of offered positions on Match Day, at 42%. When match rates for seniors are separated for allopathic and osteopathic schools, pathology had the lowest fill rate of allopathic students (31.1%), followed by family medicine (39%). Family medicine has had a similar fill...
rate for allopathic seniors for some time. The percentage of first-year family medicine positions filled by osteopathic seniors was 24%, with a combined fill rate of 62.8%.

An increasing number of U.S.-citizen seniors/graduates from foreign medical schools are participating in the Texas Match, and most are from schools in the Caribbean or Mexico. In the 2020 Match, 41% of the 384 international medical graduates (IMGs) who matched to a Texas residency program were U.S. citizens. For both U.S.-citizen IMGs and foreign-born IMGs, the top three medical specialties matches were internal medicine (36%), family medicine (18.5%), and pediatrics (10.7%). U.S. citizen-IMGs were three times more likely to match to family medicine than foreign-born IMGs (30% vs. 10%). Foreign-born IMGs were slightly more likely to choose pediatrics (10.7%) than U.S.-citizen IMGs (7.1%).

Number of unmatched Texas medical school graduates dropped
Since 2014, the council has partnered with Texas medical school deans to monitor the number of Texas medical school graduates who do not match to a residency position. An annual average of 36 (2%) Texas medical school graduates were unable to match to a residency position in the year of their graduation during 2014-19. In 2020, there were only 13 unmatched Texas graduates—one-third the average for the prior six years. Why the number dropped so sharply is unclear, but lowering the number of unmatched graduates is a shared goal between the medical schools and the council.

State support has grown GME capacity, more is needed
Texas legislators have shown strong support for expanding and maintaining the state’s GME capacity. In 2015, Texas passed landmark legislation to provide state grants to GME sponsors with the goal of achieving the target ratio of 1.1 to 1. This legislation also established the state’s first-ever state GME permanent fund, seeded with $300 million. The fund provides $11 million a year to the state GME Expansion Grant Program.

Meeting the target ratio of 1.1 to 1 has been championed by Sen. Jane Nelson (R-Flower Mound), the longstanding chair of the Senate budget committee. Since 2014, the state appropriated a total of $321.5 million for GME expansion grants (note: a small state GME grant program preceded the 2015 landmark legislation). These funds enabled the creation of a total of 410 first-year GME positions since 2014 (Table 5). Funds were not available to support new positions in 2018.

Table 5
New First-Year GME Positions Created With State GME Expansion Grants, by Year Filled

<table>
<thead>
<tr>
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<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25</td>
<td>63</td>
<td>71</td>
<td>78</td>
<td>0</td>
<td>38</td>
<td>115</td>
<td>20*</td>
<td>410</td>
</tr>
</tbody>
</table>

*2021 subject to verification.
Source: Texas Higher Education Coordinating Board. Prepared by: TMA.

In addition, grants of $75,000 each were provided in 2020-21 to support an estimated 1,867 second- and third-year GME positions created through the program, for a total of 2,002 supported GME positions (Table 6) with a total of $150.15 million in grants.

Table 6
Total GME Positions (All Post-Graduate Years) Funded With State GME Expansion Grants, by Year Filled

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>25</td>
<td>125</td>
<td>278</td>
<td>458</td>
<td>583</td>
<td>702</td>
<td>895</td>
<td>1,107*</td>
<td>4,173</td>
</tr>
</tbody>
</table>

*2021 subject to verification.
Source: Texas Higher Education Coordinating Board. Prepared by: TMA.
The Texas Higher Education Coordinating Board, which administers the state GME Expansion Grant Program, has placed a high priority on primary care and psychiatry, and this is reflected in the grant awards for 2021, shown in Table 7. Of the total 1,107 GME positions funded through the grant program in 2021, 63% are in primary care, 16% are in psychiatry, and 1% are in a primary care/psychiatry combined program for a combined primary care/psychiatry total of 80%. Only 20% of funded positions were nonprimary care (excluding psychiatry).

<table>
<thead>
<tr>
<th>Specialty Category</th>
<th>2021 # Funded GME Positions</th>
<th>% of Funded GME Positions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Primary Care</td>
<td>698</td>
<td>63%</td>
</tr>
<tr>
<td>Psychiatry</td>
<td>178</td>
<td>16%</td>
</tr>
<tr>
<td>Primary Care and Psychiatry (Medicine-Psychiatry)</td>
<td>5</td>
<td>1%</td>
</tr>
<tr>
<td>Other Non-Primary Care Specialties</td>
<td>226</td>
<td>20%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>1,107</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

*2021 subject to verification.

Source: Texas Higher Education Coordinating Board. Prepared by: TMA

Distribution of the grant funds by specialty for the 2020-21 state biennium is shown in Table 8, in order by amount of funding. Internal medicine received the largest amount of grant funding, followed closely by family medicine. For nonprimary care specialties, psychiatry received the largest distribution, by far.

Although internal medicine is included in the tabulations of primary care residency programs in tables 7 and 8, it is recognized that a portion of physicians who train in internal medicine will likely go on to train in fellowships in nonprimary care specialties. This also applies to pediatrics, to a lesser degree. For this reason, the percentage of residents who ultimately enter primary care practices is likely to be lower than the summaries shown.

Texas has a shortage of primary care physicians, as presented in Report 4 2021 Texas Physician Workforce Update prepared by the TMA Committee on Physician Distribution and Health Care Access. It is also recognized that Texas has a shortage of many other medical specialties, including a maldistribution in many areas of the state.
Table 8
GME Positions Funded with State GME Expansion Grants, by Specialty, in 2020-21
In Order by Total Funding

<table>
<thead>
<tr>
<th>Number of Programs</th>
<th>Program Specialty</th>
<th>Positions Funded 2020</th>
<th>Positions Funded 2021*</th>
<th>Total Funding</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Primary Care</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>19</td>
<td>Internal Medicine</td>
<td>222</td>
<td>293</td>
<td>$38,625,000</td>
</tr>
<tr>
<td>20</td>
<td>Family Medicine</td>
<td>215</td>
<td>258</td>
<td>$35,475,000</td>
</tr>
<tr>
<td>8</td>
<td>Pediatrics</td>
<td>73</td>
<td>80</td>
<td>$11,475,000</td>
</tr>
<tr>
<td>5</td>
<td>Obstetrics/Gynecology</td>
<td>33</td>
<td>41</td>
<td>$5,550,000</td>
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<tr>
<td>3</td>
<td>Internal Medicine-Pediatrics</td>
<td>25</td>
<td>26</td>
<td>$3,825,000</td>
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<td><strong>Primary Care Total</strong></td>
<td></td>
<td>568</td>
<td>698</td>
<td>$94,950,000</td>
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<td><strong>Psychiatry</strong></td>
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<td>14</td>
<td>Psychiatry</td>
<td>135</td>
<td>178</td>
<td>$23,475,000</td>
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<td><strong>Primary Care and Psychiatry</strong></td>
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<td>Internal Medicine/Psychiatry</td>
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<td>5</td>
<td>$750,000</td>
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<td>Combined Program</td>
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<td><strong>Primary Care and Psychiatry Total</strong></td>
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<td>881</td>
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<td><strong>Other Non-Primary Care Specialties</strong></td>
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<tr>
<td>6</td>
<td>Neurology</td>
<td>38</td>
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<td>Emergency Medicine</td>
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<td>Orthopedic Surgery</td>
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<td>Physical Medicine &amp; Rehab</td>
<td>16</td>
<td>16</td>
<td>$2,400,000</td>
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<td>Plastic Surgery-Integrated</td>
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<td>6</td>
<td>$900,000</td>
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<td>Urology</td>
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<tr>
<td><strong>Other Non-Primary Care Specialties Total</strong></td>
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<td>187</td>
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<td><strong>TOTAL All Specialties</strong></td>
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<td>895</td>
<td>1,107</td>
<td>$150,150,000</td>
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*2021 subject to verification.

Source: Texas Higher Education Coordinating Board. Prepared by: TMA.
State budget writers are now working on the biennial state proposals for 2022-23. Both the Senate and the House are proposing $150 million in funding for the state GME Expansion Grant Program. The council recognizes there are tremendous pressures on the state budget; however, it should be noted that this funding level will not allow any grants for the creation of new GME positions in 2022 and 2023. In addition, funds would not be available for grants to support the refilling of GME positions previously created through the program as residents progress to the next year of their training. State authorities estimate an additional $49 million is needed, for a total of $199 million in 2022-23, to sustain the state GME Expansion Grant Program.

Texas legislators also provide funding to other GME programs, such as state formula funding to medical schools, with an overall total of $135 million a year. Cuts of about 5% are proposed for these programs in 2022-23.

To maintain the target ratio of 1.1 to 1, as noted in Table 2 on page 6, Texas needs to create an additional 250 first-year GME positions by 2024, 300 additional by 2025, 400 additional by 2026, and 500 more by 2027. To reach a ratio of at least 1 to 1 (instead of 1.1 to 1) and have a first-year position for each Texas medical school graduate, Texas needs to create 36 additional positions by 2024, 86 by 2025, 163 by 2026, and 237 by 2027.

**Summary**

During the 45 years from 1971 to 2016, only one medical school opened in Texas. Since then, six medical schools opened and another is in development. Considering the high rate of population growth during that considerable time span, the recent opening of new medical schools represents a delayed response to the robust growth in the state’s population. There is strong interest in a study of the future demand for more medical schools in the state to evaluate whether Texas is on track to meet future physician workforce needs and to ensure sufficient clinical clerkship capacity for Texas medical students and clinical training space for other Texas health professional educational programs.

In 2020, both medical school matriculants and first-year GME positions saw a sudden jump in numbers. And, in both cases, the numbers represented historic gains. Through the state’s GME Expansion Grant Program, a total of 410 first-year GME positions have been created since 2014 with a large majority in primary care and psychiatry. Initial 2022-23 state budget proposals of $150 million for this program will not be sufficient to fund grants for the creation of additional GME positions and also are not sufficient to fund residency positions created through the program that become available as residents progress to the next year in their training. State authorities estimate an additional $49 million, for a total of $199 million, is needed to sustain the program in 2022-23.

Unless the state’s GME capacity continues to grow incrementally, the state will fall short of the target 1.1 to 1 ratio and even a 1 to 1 ratio. Texas needs to create 250 additional first-year GME positions by 2024 to maintain the 1.1 to 1 ratio; 300 by 2025; 400 by 2026; and 475 by 2027. Without additional GME growth, there will not be enough first-year GME positions to retain Texas graduates beginning in 2024, and Texas will lose graduates to other states. Given the state’s investment in the education of these physicians and the ongoing physician workforce shortage in the state, this would be a tremendous loss for Texas.

There is a need for continued growth of the state’s GME capacity and sustained state support to achieve that goal. This report was prepared to inform the TMA House of Delegates, TMA’s members, and state policymakers of that need, as demonstrated through recent data analysis and TMA surveys. TMA will continue to place a priority on advocating for growth in the state’s GME capacity during the 2021 state legislative session.
Charles E. Cowles, Jr., MD, lost his life on Dec. 26, 2020, due to a tragic automobile accident while on vacation with his wife and three young sons. His love for medicine began as a young man, when he worked as an EMT and firefighter. With those experiences, he decided to pursue a career in medicine and eventually, to work and teach in anesthesiology.

Dr. Cowles was a devoted son of Houston. He was born at Hermann Hospital on April 19, 1968 and grew up in the Houston area. He earned a bachelor’s degree in sports medicine from the University of Houston, followed by a medical degree and anesthesiology specialty training from The University of Texas Medical School at Houston. And, at the time of his death, Dr. Cowles worked as a neuro-anesthesiologist and a professor at The University of Texas MD Anderson Cancer Center.

Organized medicine was an important part of Dr. Cowles’ life. He joined the Texas Medical Association early in his career, remaining a member for 20 years. He served in multiple leadership positions in the Harris County Medical Society, Texas Society of Anesthesiologists, and TMA. He received the Distinguished Educator in Anesthesiology Award from the American Society of Anesthesiologists. At the time of his death, Dr. Cowles held the position of chair of the TMA Council on Medical Education; was a member of the TMA Interspecialty Society; and served as Secretary-Treasurer of Harris County Medical Society. His prior service included appointments to the TMA Committee on Membership, including tenure as chair, and the TMA Committee on Emergency Medical Services. He was a graduate of the TMA Leadership College. At Harris County Medical Society, he was Vice Chair of the HCMS Delegation to TMA, a member of the Gulf Coast Regional Blood Center Board, and a past member and chair of the Board of Ethics. He also served on the TMA Insurance Trust Board.

Additional information from his obituary:
Charles used his accumulated knowledge and wisdom as a first responder throughout his anesthesia career. He served on multiple institutional safety committees and was ultimately named the chief safety officer for the Anesthesiology Division in 2016. Charles was an international expert in operating room fire safety and traveled worldwide teaching from his unique experience as both a firefighter and anesthesiologist. He served on multiple committees for local, state, and national medical societies. Not wanting to limit his contributions solely to anesthesia, Dr. Cowles also served as the Tactical Medical Director of the Pasadena Police Department and the Local Health Authority for the City of Pasadena during the COVID-19 pandemic.

Inside and outside of work, his family and his faith were essential. He was very involved at First Baptist Church of Pasadena, as a deacon and the medical committee director. He served as a board member of the First Baptist Christian Academy, where his three sons attended elementary and middle school. Charles served on the board of Youth Reach Houston, a home for troubled boys.

Dr. Cowles’ legacy remains with all who were privileged to know him. He left his mark on organized medicine and he will not be forgotten.
Subject: 2020-21 Board Officers and Committees

Presented by: Gary W. Floyd, chair

Texas Medical Association Bylaws provide that the board shall organize by electing a chair, a vice chair, and a secretary, and that the chair shall appoint committees as needed. In September 2020, the board elected Gary W. Floyd, MD, as chair; Richard W. Snyder, as vice chair; and Michelle A. Berger, MD, as secretary. The board approved codifying its executive committee to the following officers: TMA President Diana L. Fite, MD; President-Elect E. Linda Villarreal, MD; Immediate Past President David C. Fleeger, MD; board chair; vice chair; Speaker of the House of Delegates Arlo F. Weltge, MD; and secretary/treasurer for the House of Delegates and Board of Trustees. The board welcomed Kimberly E. Monday, MD, as an at-large member and M. Brett Cooper, MD, as the young physician member for 2020-22.

Board committees for 2020-21 are:

- Finance and Investments (Dr. Berger, chair; Keith Bourgeois, MD; G. Ray Callas, MD; Dr. Fleeger; Bradford W. Holland, MD; Dr. Monday; Dr. Snyder; Dr. Villarreal; Dr. Floyd as board chair liaison; and TMA Foundation liaison Craig Norman, RpH); and
- Educational Scholarship and Loan (Sue S. Bornstein, MD, chair; Dr. Cooper; Dr. Fite; Cynthia A. Jumper, MD; Jayesh B. Shah, MD; Joseph S. Valenti, MD; Dr. Weltge; resident trustee Kayla Riggs, MD; student trustee Vamsi K. Potluri; Dr. Floyd as board chair liaison; Dr. S.E. Thompson Scholarship Fund Trustee John M. Zerwas, MD; Resident and Fellow Section representative Justin W. Holmes, MD; Medical Student Section (MSS) representative Syed Rizvi; MSS alternate representative Brittany Ikwuagwu; and TMA Alliance representatives Pam Abernathy and James P. Davis.

Drs. Bourgeois, Callas, Fite, Fleeger, Floyd, Villarreal, and Weltge represent the board on the TMA/Texas Osteopathic Medical Association/TMF Health Quality Institute Liaison Committee.

Drs. Bornstein, Bourgeois, Callas, Curran, Fite, Fleeger, Monday, Shah, and Valenti represent the board on the TMA/Texas Medical Liability Trust Liaison Committee.

Nancy Foster, MD, chairs the board’s Committee on Physicians Benevolent Fund. Committee members are Sue Bailey; Vickie Blumhagen; Muriel Mendell; Ann Morales; Beverly Ozanne; George Peterkin III, MD; and Shirley Sanders. Dr. Floyd is the board’s liaison to the committee.

J. Marvin Smith III, MD, chairs the board’s History of Medicine Committee. Members are Joel S. Dunnington, MD; Mark J. Kubala, MD; Steve L. Steffensen II, MD; Mellick Sykes, MD; Margaret Vugrin, MSLS, AHP; J. Patrick Walker, MD; and Larry Wilson, MD. J.J. Waller, MD, serves as the TMA Alliance representative.

The TMA board also appoints the Texas Medicine Editorial Board. Chelsea I. Clinton, MD, chairs the board. Members are Jeff Apple, MD; Eman Attaya, MD; Seemal Desai, MD; Troy Fiesinger, MD; Christopher Garrison, MD; Roger Khetan, MD; Gary Ventolini, MD; and Alexi Wiesenthal, MD. Jennifer Fan, MD, serves as the Resident and Fellow Section representative and Pranati Pillutla as the MSS representative.
REPORT OF BOARD OF TRUSTEES

BOT Report 2 2021

Subject: Disclosure of Affiliations

Presented by: Gary W. Floyd, MD, chair

In May 2006, the House of Delegates adopted Board of Trustees Report 18-A-06 as amended to read as follows:

that (1) any candidate for at-large trustee or any office that includes an ex officio seat on the Board of Trustees (president, president-elect, secretary/treasurer, and speaker and vice speaker of the House of Delegates) provide full disclosure of affiliations on a form developed by the speaker of the House of Delegates for that purpose; (2) all members of the Board of Trustees (at-large trustees and officers) provide full disclosure of affiliations each year at the time of the Winter Conference, and that full disclosure be reported to the House of Delegates in the Handbook for Delegates, on the TMA Web site, and by any other method deemed appropriate by the Board of Trustees; and (3) when a health insurance company or HMO requests recommendations for appointment to a physician advisory committee or any other component, the TMA president shall recommend for appointment individuals who best represent TMA’s position, and the names of those individuals recommended by TMA and subsequently appointed by the health insurance company or HMO will be reported to the House of Delegates for information at its next meeting.

At its January 2011 meeting, the Board of Trustees amended the disclosure form to require that those who answer “yes” to the following questions must indicate the type of material financial interest using the letters, A, B, C, or D from the list below:

Do you or an immediate family member hold or plan to hold a material financial interest in any business which furnishes goods or services, or is seeking to furnish goods or services, to TMA or to any member of the TMA Board of Trustees, TMA Executive Vice President, or TMA Chief Operating Officer?

Do you or any immediate family member hold or plan to hold a material financial interest in any health care business, health insurance company, or health care facility, including a private medical practice?

The types of material financial interest to disclose are:

A. a financial ownership interest of 35 percent or more, or
B. a financial ownership interest which contributes materially (5 percent or more) to your income, or
C. a position as proprietor, director, managing partner, or key employee, or
D. any ordinary income, honorarium, or gift (other than dividends from stock) compensation exceeding $1,000 per year in excess of actual expenses.

Attached is a list of affiliations disclosed by all members of the Board of Trustees.
BY ORGANIZATION:

1. AllCare Physicians Group Board of Directors
   G. Ray Callas, MD (D)

2. American Academy of Ophthalmology
   Keith A. Bourgeois, MD

3. American Academy of Pediatrics
   Gary W. Floyd, MD (C and D)

4. American Board of Anesthesiology
   G. Ray Callas, MD

5. American Board of Medical Specialties
   Cynthia A. Jumper, MD

6. American College of Cardiology, Texas Chapter
   Richard W. Snyder, MD

7. American College of Emergency Physicians
   Diane L. Fite, MD
   Arlo F. Weltge, MD

8. American College of Hyperbaric Medicine
   Jayesh B. Shah, MD

9. American College of Physicians
   Sue S. Bornstein, MD
   Cynthia A. Jumper, MD

10. American Medical Response
    Arlo F. Weltge, MD

11. American Society of Anesthesiologists
    G. Ray Callas, MD

12. Anesthesia Associates
    G. Ray Callas, MD (D)

13. Austin Ear, Nose and Throat Clinic
    Michelle A. Berger, MD (D)

14. Bailey Square Surgery Center
    Michelle A. Berger, MD
    David C. Fleeger, MD

15. Baylor University
    Bradford W. Holland, MD
Beaumont Chamber of Commerce
   G. Ray Callas, MD

Blue Cross and Blue Shield of Texas
   G. Ray Callas, MD (D)
   Richard W. Snyder, MD (D)
   Linda Villarreal, MD (D)

Cardiovascular Provider Resources, Inc.
   Richard W. Snyder, MD

Caring for Women, PA
   Joseph S. Valenti, MD

Central Texas Colon & Rectal Surgeons
   David C. Fleeger, MD

CHI Patients Medical Center, Pasadena, Texas
   Kimberly E. Monday, MD

Emerus Community Hospital
   Diana L. Fite, MD

Employees Retirement System of Texas
   Cynthia A. Jumper, MD

Extraco Banks
   Bradford W. Holland, MD

Fish Pond Surgery Center
   Bradford W. Holland, MD (D)

Harris County Hospital District
   Kimberly E. Monday, MD

HeartPlace, PA
   Richard W. Snyder, MD

Houston Community College
   Diana L. Fite, MD
   Arlo F. Weltge, MD

Houston Neurological Institute
   Kimberly E. Monday, MD

Jefferson and Orange County Board of Pilot Commissioners
   G. Ray Callas, MD

Kare Infusion Center
   G. Ray Callas, MD (C and D)

Keith A. Bourgeois, MD, PA
   Keith A. Bourgeois, MD (A, B, C, and D)
Lone Star Alliance Board of Directors
Joseph S. Valenti, MD

Mallinckrodt Pharmaceuticals
G. Ray Callas, MD (D)

Medical Care Advisory Committee
Cynthia A. Jumper, MD

Memorial Hermann Health Care System
Kimberly E. Monday, MD

Memorial Hermann Physician Network
Kimberly E. Monday, MD

Memorial Medical Clinic
E. Linda Villarreal, MD

Mission Trail Baptist Hospital/Tenet
Jayesh B. Shah, MD

Northwest Surgery Center
Michelle A. Berger, MD

PathAdvantage Associated
Sue S. Bornstein, MD

Physicians Foundation Board of Directors
Joseph S. Valenti, MD

South Texas Wound Associates, PA
Jayesh B. Shah, MD

Southwestern Medical Foundation
Richard W. Snyder, MD

Specialty Physician Assurance Company
Richard W. Snyder, MD

St. Joseph Medical Center
Keith A. Bourgeois, MD (D)

Surgicare of South Austin
David C. Fleeger, MD

Tarrant County Emergency Physicians Advisory Board
Gary W. Floyd, MD

Texas Association of Otolaryngology
Bradford W. Holland, MD

Texas College of Emergency Physicians
Diana L. Fite, MD
Texas Department of Licensure and Regulations  
G. Ray Callas, MD

Texas Medical Association PracticeEdge, LLC  
Gary W. Floyd, MD (C and D)

Texas Medical Association Specialty Services, LLC  
Richard W. Snyder, MD

Texas Medical Foundation Health Quality Institute  
Gary W. Floyd, MD (C and D)

Texas Medical Home Initiative  
Sue S. Bornstein, MD

Texas Medical Liability Trust  
Keith A. Bourgeois, MD (D)  
G. Ray Callas, MD (D)  
Joseph S. Valenti, MD

Texas Neurological Society  
Kimberly E. Monday, MD

Texas Pediatric Society  
Gary W. Floyd, MD

Texas Society of Anesthesiologists  
G. Ray Callas, MD (C and D)

Texas Tech University Health Sciences Center-Lubbock  
Cynthia A. Jumper, MD

TIMEO2 Healing Concepts, LLP  
Jayesh B. Shah, MD

McGovern Medical School at UTHealth  
Arlo F. Weltge, MD  
Kimberly E. Monday, MD

UT Southwestern Medical School  
M. Brett Cooper, MD

Waco Otolaryngology, PC  
Bradford W. Holland, MD (C)

Wound Care Alliance  
Jayesh B. Shah, MD

BY MEMBER:

Michelle A. Berger, MD  
Austin Ear, Nose and Throat Clinic (D)  
Bailey Square Surgery Center
Northwest Surgery Center

**Sue S. Bornstein, MD**
- American College of Physicians
- PathAdvantage Associated
- Texas Medical Home Initiative

**Keith A. Bourgeois, MD**
- American Academy of Ophthalmology
- Keith A. Bourgeois, MD, PA (A, B, C, and D)
- St. Joseph Medical Center (D)
- Texas Medical Liability Trust (D)

**G. Ray Callas, MD**
- AllCare Physicians Group Board of Directors (D)
- American Board of Anesthesiology
- American Society of Anesthesiologists
- Anesthesia Associates (D)
- Beaumont Chamber of Commerce
- Blue Cross and Blue Shield of Texas (D)
- Jefferson and Orange County Board of Pilot Commissioners
- Kare Infusion Center (C and D)
- Mallinckrodt Pharmaceuticals (D)
- Texas Department of Licensure and Regulations
- Texas Medical Liability Trust (D)
- Texas Society of Anesthesiologists (C and D)

**M. Brett Cooper, MD**
- UT Southwestern Medical School

**Diana L. Fite, MD**
- American College of Emergency Physicians
- Emerus Community Hospital
- Houston Community College
- Texas College of Emergency Physicians

**David C. Fleeger, MD**
- Bailey Square Surgery Center
- Central Texas Colon & Rectal Surgeons
- Surgicare of South Austin

**Gary W. Floyd, MD**
- American Academy of Pediatrics (C and D)
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- Texas Medical Foundation Health Quality Institute (C and D)
- Texas Pediatric Society

**Bradford W. Holland, MD**
- Baylor University
- Extraco Banks
- Fish Pond Surgery Center (D)
- Texas Association of Otolaryngology
- Waco Otolaryngology, PC (C)
Cynthia A. Jumper, MD
American Board of Medical Specialties
American College of Physicians
Employees Retirement System of Texas
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Arlo F. Weltge, MD
American College of Emergency Physicians
American Medical Response
Houston Community College
McGovern Medical School at UTHealth
REPORT OF BOARD OF TRUSTEES

BOT Report 3 2021

Subject: TMA Insurance Trust, TMF Health Quality Institute, and Texas Medical Liability Trust

Presented by: Gary W. Floyd, MD, chair

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**Texas Medical Association Insurance Trust Board of Trustees**

The TMA Board of Trustees has responsibility to appoint four members of the TMA Insurance Trust (TMAIT) Board of Trustees. In accordance with TMA Insurance Trust’s Amended Agreement and Declaration of Trust, the fifth appointed position is held by the executive vice president of TMA without any term limitation. The TMA board also fills the position reserved for a member of the Young Physician Section. The TMA board offers nominations for the remaining three positions, which are elected by policyholders through the proxy mechanism. Current TMAIT officers are Wendy Parnell, MD, of Dallas (board chair) and Richard Noel, MD, of Houston (secretary). In September 2020, Dr. Noel cast the proxy vote to elect Lan Le, DO, of Fort Worth to fill the open position vacated by the term expiration of Russ Juno, MD (immediate past chair). TMAIT board member Charles E. Cowles Jr., MD, passed away in December 2020. His position on the board will be filled at the next TMAIT Annual Meeting of Subscribers in September.

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**TMF Health Quality Institute Board of Trustees**

The TMF Health Quality Institute (TMFHQI) Board of Trustees comprises physicians, nonphysicians, and consumer (Medicare) beneficiary representatives. The TMFHQI Board of Trustees has up to 15 members, including at least one doctor of allopathic medicine, one doctor of osteopathic medicine, and two consumer representatives. The board may not be composed of a majority of physicians or any other type of practitioner or profession but will include no less than two physicians at all times.

Nominations for positions on the TMFHQI board to be filled by MDs are solicited from TMA. In addition, a general notice is sent to TMFHQI members, who may offer nominations. The election, by those attending and by proxy, is held during the institute’s annual meeting in August.

Currently TMA members on the TMFHQI board are the following: Gary W. Floyd, MD, Fort Worth; Kevin H. McKinney, MD, Galveston; Lisa L. Ehrlich, MD, Houston; Ronald S. Walters, MD, Bellaire; and Erick Santos, MD, PhD, Corpus Christi. In June 2021, the term of one physician serving in a MD position expires, Gary W. Floyd.

The TMA Board of Trustees maintains active liaison with the TMF Health Quality Institute Board of Trustees through its TMA/TMF Liaison Committee.

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**Texas Medical Liability Trust Governing Board**

The Texas Medical Liability Trust (TMLT) Governing Board annually makes nominations to the TMLT board. These nominations are, in turn, submitted to and approved by the TMA House of
Delegates. TMLT policyholders also can nominate other eligible candidates. These nominations are reported to the House of Delegates.

Beginning with elections in 2007, places on the TMLT board are staggered so that only a portion are up for election each year. Each term is for three years, and board members may be reelected for two additional three-year terms for a maximum of nine years of service on the board.

Current TMA members on the TMLT board are the following: Gerald “Ray” Callas, MD, Beaumont; Michelle Harden, MD, San Antonio; Russell Krienke, MD, Austin; Luis M. Benavides, MD, Laredo; A. Compton Broders, MD, Dallas-Fort Worth; William Fleming, III, MD, Houston; Lindsey Harris, MD, Houston; Herb Singh, MD, Austin; and Tim West, MD, Lubbock.
Subject: Medical Student and Resident Physician Loan Funds

Presented by: Gary Floyd, MD, chair

Overview

The medical student and resident physician loan program originated in 1952 with trust donations set up in endowed funds at the Texas Medical Association. Members of the TMA Board of Trustees serve as trustees or as members of the boards of trustees for six loan funds:

- Dr. S. E. Thompson Scholarship Fund,
- May Owen Irrevocable Trust,
- Texas Medical Association Alliance Student Loan Fund (TMA Special Funds Foundation),
- Durham Student Loan Fund (TMA Special Funds Foundation),
- Medical Student Loan Fund (TMA Special Funds Foundation), and
- Patricia Lee Palmer, MD, Memorial Resident Loan Fund (TMA Special Funds Foundation).

The current interest rate of these loans is fixed at 4.4% (with the 0.4% used for a group life policy, as required by the trust documents).

Medical Student Loans

Five student loan funds are available to medical students: Dr. S.E. Thompson Scholarship Fund, May Owen Irrevocable Trust, Texas Medical Association Alliance Student Loan Fund, Durham Student Loan Fund, and Medical Student Loan Fund. From July 1 through Dec. 31, 2020, TMA disbursed 23 loans totaling $118,922 from the five funds, and additional applications remain in process.

Resident Physician Loans

The Dr. S.E. Thompson Scholarship Fund and the Patricia Lee Palmer, MD, Memorial Resident Loan Fund offer loans to resident physicians. Three resident loans totaling $13,000 were disbursed from July 1 through Dec. 31, 2020.

2021-22 Allocation

In January 2021, the board approved allocations for the 2021-22 school year (June 1-May 31) totaling $736,000, including $38,000 for residents. The loan allocations to the 15 medical schools are based on availability of funds, history of each school’s utilization, and the current pandemic reducing borrower needs.
Subject: Minority Scholarship Program

Presented by: Gary Floyd, MD, chair

Since 1998, the Texas Medical Association Minority Scholarship Program has given 164 scholarships to underrepresented minority medical students in Texas for a total of $1,127,500. Fifteen Texas medical schools have received an award. As of Jan. 27, 2021, the TMA Foundation has collected $35,835 in cash and pledges for the 2021 scholarships. All shortfalls will be covered by 2016 donations received from two private donors: Robert J. Bayardo, MD, and Patrick Leung, MD.

The 2021 program will award 15 $10,000 scholarships to students matriculating at:

- Baylor College of Medicine,
- Sam Houston State College of Osteopathic Medicine (new 2020),
- Texas A&M University College of Medicine,
- TCU and UNTHSC School of Medicine (new 2019),
- Texas Tech University Health Sciences Center El Paso Paul L. Foster School of Medicine (new 2013),
- Texas Tech University Health Sciences Center School of Medicine Lubbock,
- The University of Texas at Austin Dell Medical School (new 2016),
- The University of Texas Health Science Center at Houston John P. and Kathrine G. McGovern Medical School,
- The University of Texas Health Science Center at San Antonio Joe R. & Teresa Lozano Long School of Medicine,
- The University of Texas Medical Branch at Galveston School of Medicine,
- The University of Texas Rio Grande Valley School of Medicine (new 2016),
- The University of Texas Southwestern Medical School,
- University of Houston College of Medicine (new 2020),
- University of North Texas Health Science Center at Fort Worth Texas College of Osteopathic Medicine, and
- University of the Incarnate Word School of Osteopathic Medicine (new 2017).

The TMA Office of Trust Fund Administration must have received candidate applications by March 25, 2021. The Board of Trustees’ Educational Scholarship and Loan Committee members review qualified applications and make the selection of winners. Scholarship recipients are notified virtually in April, and recipient information will be shared during TexMed 2021 in May.

Although the U.S. Supreme Court ruling in 2003 allows race to be used in admissions and financial aid processes of academic institutions (subject to certain criteria), recent news articles indicate that Texas medical schools received 700 more applications this year than last – an increase of 33%, according to the Texas Health Education Service. (This does not mean medical schools are accepting more students.) TMA’s scholarship program is one of the few available in the state for underrepresented minority students (as defined by the Association of American Medical Colleges) seeking a career in medicine. TMA’s selected recipients must express interest in practicing in underserved areas and must demonstrate both
community service and leadership. Title VI restrictions generally do not prohibit an organization that is not a recipient of federal financial assistance from directly giving scholarships or other forms of financial aid to students based on their race or national origin.
Funded by a grant from The Physicians Foundation, the Texas Medical Association Leadership College (TMALC) was launched in 2010 as part of TMA’s effort to ensure strong and sustainable physician leadership within organized medicine.

This successful program, now in its 11th year, boasts 238 alumni with numerous graduates serving in TMA leadership via councils, committees, and sections and others representing their county and specialty societies. These physicians serve as thought leaders who can close the divide among clinicians and health care policymakers, and serve as trusted leaders in their local communities. Participants must be active TMA physician members in the first eight years of practice. There is no tuition charge for scholars thanks to a grant from The Physician Foundation, but scholars are responsible for their own travel expenses.

Instruction for the TMALC Class of 2021 has been conducted entirely online this year, with plans to reinstate in-person courses for future classes as soon as possible. The curriculum continues to highlight critical leadership topics including advocacy, media training, communication skills, and team development. In addition, an emphasis on physician wellness and self-care has been incorporated into the course. In 2020, TMA had planned to launch a second cohort of the program known as the Lifelong Leadership cohort, a fee-based option targeting more experienced physicians and advanced leadership topics. However, the launch was delayed because of COVID-19. In its stead, TMA has started the Lifelong Leadership virtual series – quarterly webinars on advanced leadership topics offered to members free of charge. It is hoped the series will generate further interest in leadership development and serve as a springboard for the eventual launch of the second cohort.

In response to concerns regarding the application and selection process, the TMALC Executive Committee passed a series of changes in early 2021 to help ensure a diverse, representative class of scholars and increase transparency in the process for all stakeholders:

- In addition, any candidate ranked as No. 1 by his or her society will receive a bonus point at the increased weight.
- The committee voted to allocate one guaranteed TMALC participant slot for each of the five caucuses, with the understanding that each class has space for 25 participants. Capitation at 25 participants is considered ideal to ensure sufficient resources, staffing, and engagement for all members of the cohort. Candidates for each caucus slot will still be evaluated and scored according to the criteria – as a result, candidates ranked No. 1 by their society may not always be chosen to fill their caucus slot.
- While the Class of 2021 achieved a diverse set of candidates (see attached historical demographic information), the committee agreed to meet following the initial round of scoring to review the makeup
of each proposed class and make any adjustments necessary to ensure a good demographic mix, including geography, specialty, and the like.

- To increase transparency, committee names and roles will be added to the TMA Leadership College webpage. In addition, the descriptions of application criteria on the TMALC website will be revised for clarity prior to soliciting applications for the Class of 2022.
- The committee also requested that year-over-year historical demographic data for TMALC participants be included in its reports to the Board of Trustees moving forward.

**Now Accepting Applications for 2022**

Applications for the 2021-22 program are due by June 11, 2021. Visit [www.texmed.org/Leadership](http://www.texmed.org/Leadership) for more information and to access the online application. For questions, contact Melanie Fossett at melanie.fossett@texmed.org.

**Congratulations Class of 2021!**

Twenty-six scholars are slated to graduate at TexMed 2021 on Saturday, May 2.

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<thead>
<tr>
<th>Scholar</th>
<th>Specialty</th>
<th>Practice Location</th>
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<tr>
<td>Bradley Barham, DO</td>
<td>PD</td>
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<td>Fatimah Bello, MD</td>
<td>IM</td>
<td>Edinburg</td>
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<td>Joy Chen, MD</td>
<td>AN</td>
<td>Plano</td>
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<td>Emily George, MD</td>
<td>PD</td>
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<td>Vijay Giridihar, MD</td>
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<td>Techecia Idowu, MD</td>
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<td>CCM</td>
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<td>Emily Kuo, DO</td>
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<td>Awungjia Leke-Tambo, MD</td>
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<td>Haley Newton, DO</td>
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<td>Evan Perez, MD</td>
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<td>Carolyn Riley, MD</td>
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<td>Nathan Trayner, MD</td>
<td>EM</td>
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<td>Karla Wyatt, MD</td>
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REPORT OF BOARD OF TRUSTEES

BOT Report 7 2021

Subject: Pending Lawsuits Involving Texas Medical Association and Audit Trail

Presented by: Gary W. Floyd, chair

At each of its meetings, the Board of Trustees reviews an audit trail of pending lawsuits involving the association. The following is an updated report, prepared in January, by the Office of the General Counsel.

A. LITIGATION AS PLAINTIFF

1. TMA v. Texas Board of Chiropractic Examiners and Texas Chiropractic Association

(Regarding scope of practice, specifically pertaining to vestibular-ocular-nystagmus (VON) testing)

On Jan. 6, 2010, the Texas Board of Chiropractic Examiners (TBCE) proposed an amendment to §75.17(c)(3), concerning Scope of Practice, to add a new subparagraph (C) to describe training required for doctors of chiropractic to perform VON testing.

The Texas Chiropractic Act defines the practice of chiropractic as using “objective or subjective means to analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body,” or performing “nonsurgical, nonincisive procedures, including adjustment and manipulation, to improve the subluxation complex or the biomechanics of the musculoskeletal system.” The performance of VON testing does not, in any way, fall within the scope of practice as defined in section 201.002(b) of the Texas Occupations Code, and therefore exceeds the rulemaking authority of the board.

VON testing is a purely diagnostic neurological test intended to diagnose a problem of the brain, inner ears or eyes. It includes tests of vestibular function which are designed to evaluate the inner ear (vestibular apparatus) and the neural connections between the inner ear and the parts of the brain that control eye movement. Symptoms that would prompt VON testing are dizziness, imbalance, and vertigo. These symptoms must be diagnosed rapidly as they may be caused by something as benign as a viral infection of the inner ear, or something as ominous as a brain tumor or an impending brainstem stroke.

Ears and eyes are not part of the spine and musculoskeletal system of the human body. Furthermore, disorders affecting the biomechanical condition of the spine and musculoskeletal system of the human body do not cause vestibular system pathology. As VON testing does not fall within the statutory scope of practice of chiropractic, TMA contends that the board’s adopted rule exceeds the practice of chiropractic as defined by law, and impermissibly attempts to permit chiropractors to practice medicine without a license issued by the Texas Medical Board.

TMA submitted comments, containing its strong objections, to the proposed rule. TBCE withdrew those proposed rules, based on the comments it had received. In its place, the board...
proposed a revised amendment to §75.17(c)(3)(C), with an increased requirement that, in order
to administer this test, a licensee must have received a diploma in chiropractic neurology and
successfully completed an additional 150-hour post-graduate specialty course in vestibular
rehabilitation. In the preamble to the proposed rule, TBCE wrote the following interesting
statement, pertaining to diagnosis: “A vestibular and oculomotor functional assessment can
provide a neurologically trained doctor of chiropractic with a baseline for treatment of a patient
as well as the information necessary for a differential diagnosis and development of a plan for
treatment.”

TMA again submitted its strong objections in a comment letter on July 19, 2010. TBCE held a
rule hearing pertaining to the rule on Aug. 6, 2010. At that rule hearing, neurologist Sara Austin,
MD, testified on behalf of TMA. TBCE voted to adopt the rule, without any debate whatsoever.
The final rule has been formally adopted.

Incidentally, at that TBCE hearing, the TBCE president stated that any discussion pertaining to
scope of practice should be sent to one member through email, and not to all the board members,
in order to avoid the “open meetings” rule. In light of that statement, on Aug. 25, 2010, TMA
sent TBCE a Public Records Request under the authority of the Government Code, Section
552.021, for copies of all policy statements or interpretations of the law or rules that have been
adopted, published, or issued by the Texas Board of Chiropractic Examiners, or emails or other
writings relating to scope of practice for chiropractors. TBCE produced some documents and
withheld others, seeking an attorney general opinion pertaining to the documents withheld. TMA
prepared a response letter to the attorney general, and the attorney general has ruled in TMA’s
favor. TBCE has since produced the documents it sought to withhold, which contain some
information that is quite contrary to TBCE’s position and very favorable to TMA’s position.

TMA’s main concern is with the vestibular testing rule adopted by TBCE, as VON testing should
not be performed by chiropractors, regardless of any additional chiropractic education or training
they may obtain pertaining to the test. TMA believes the proposed rule 75.17(c)(3) exceeds the
rulemaking authority of the board and is unconstitutional pursuant to Article XVI, section 31 of
the Texas Constitution.

The TMA Board of Trustees authorized TMA to proceed with a lawsuit. David Bragg was
retained to file the suit. The lawsuit was filed on Jan. 31, 2011.

The case was assigned to the 353rd Judicial District Court of Travis County, Texas. The judge
was Rhonda Hurley. Both parties designated their testifying expert. All depositions of expert
witnesses were taken. TBCE experts that were deposed include Frederick Carrick (“chiropractic
neurologist”) and Dr. Brandon Brock (“chiropractic neurologist”). TMA presented Bridgett
Wallace and Richard Kemper, MD, for deposition, and both did an excellent job testifying.

The parties filed cross motions for summary judgment and the court held a hearing on the
motions on Dec. 5, 2011. The court’s order essentially granted TMA all relief it sought in the
lawsuit and on Mar. 15, 2012, TBCE filed its Notice of Appeal, and filed its Appellant’s Brief on
oral arguments and set the case for submission on briefs on Oct. 2, 2012.
On Nov. 21, 2012, the Court of Appeals issued its opinion reversing the trial court’s ruling, which had granted TMA’s Motion for Summary Judgment. The appellate court also remanded the case back to the trial court to determine what VON testing is. According to the appellate court, questions of fact existed regarding whether VON testing is solely a medical test, and whether the test can be used for chiropractic purposes. In summary, the appellate court reversed on a technicality – a Motion for Summary Judgment is a purely legal (not factual) finding, and because the appellate court felt there are factual issues to decide (what is VON), it determined that the Motion for Summary Judgment ruling was improper.

On remand, TMA filed its First Amended Original Petition on Sept. 13, 2013. In its amended petition, TMA added the following arguments for the court’s determination: the rules improperly define “musculoskeletal system” to include nerves, and also define that term with a functional context (“that move the body and maintain its form”), which implies that anything that affects movement of the body or maintenance of its form would be included in the musculoskeletal system; the rules improperly authorize certain chiropractors to perform “technologically instrumented vestibular-ocular-nystagmus” testing, which is unrelated to the biomechanical condition of the musculoskeletal system or the spine; and the rule improperly defines “subluxation complex” as a “neuromusculoskeletal condition,” which exceeds the scope of authority conferred on chiropractors by the Chiropractic Act. TMA also amended discovery responses to TBCE’s request for disclosure to reflect the new issues contested in the First Amended Original Petition.

TBCE filed a Brief in Support of a Plea to the Jurisdiction on Feb. 28, 2014, with respect to the issue of whether or not it is within the scope of practice for chiropractors to make a medical diagnosis. After hearing arguments, the Court denied the Plea and interlocutory appeal immediately followed on April 3, 2014. On December 8, 2014, the Third Court of Appeals court affirmed denial of the Plea, and on February 23, 2015, the Third Court of Appeals overruled TBCE’s Motion for Panel Rehearing and/or En Banc Rehearing. After petitioning for review with the Supreme Court of Texas, the petition was denied.

On June 16, 2016, TBCE filed a Motion for Partial Summary Judgment relating to the diagnosis issue, which the court denied. Accordingly, the case proceeded to trial from Aug. 2-3, 2016. TMA argued that as VON testing reveals nothing about the biomechanical condition of the spine or musculoskeletal system, it is not included in the definition of chiropractic. Since the Texas Legislature included only the musculoskeletal system and spine in the definition of chiropractic, TMA argued, the VON testing rule exceeds the scope of chiropractic. The TBCE claimed that problems with the vestibular system can affect the musculoskeletal system and therefore are within the purview of chiropractic. As directed by Judge Hurley, written closing arguments were filed by all parties on Aug. 13, 2016.

On Oct. 19, 2016, Judge Hurley issued a Final Judgment declaring:

- The authorization for chiropractors to perform “Technological Instrumented Vestibular- Ocular-Nystagmus” exceeds the scope of chiropractic and is therefore void;
- The definition of “musculoskeletal system” to include “nerves” exceeds the scope of chiropractic and is therefore void;
The definition of “subluxation complex” as a “neuromusculoskeletal condition” exceeds the scope of chiropractic and is therefore void; and

The use of the term “diagnosis” as used by TBCE in its Scope of Practice Rule exceeds the scope of chiropractic and is therefore void.

On Oct. 25, 2016, TBCE asked the court to file findings of fact and conclusions of law. These were drafted by TMA’s outside counsel, David Bragg, and signed by Judge Hurley. TBCE requested additional findings of fact and conclusions of law. On Dec. 6, 2016, TMA filed its response to TBCE’s request for additional findings of fact and conclusions of law and made its own request for the same. On Dec. 7, 2016, Judge Hurley signed supplemental findings of fact and conclusions of law.

In Jan. 2017, TBCE filed an appeal with the Third Court of Appeals. In its appeal, TBCE argued three main points:

1. That nerves are associated with subluxation complexes and are an integral part of chiropractic treatment and correction of biomechanical problems affect nerves, which means that the rule’s references to “nerves” or “neuro” are consistent with the statutory scope of chiropractic.

2. TMA did not prove that the VON testing provision is invalid because TMA did not demonstrate that VON testing was intended to be used exclusively to diagnose disease of the brain, ear, or eye, whereas TBCE contends they offered uncontradicted evidence that VON testing is useful in chiropractic evidence. And,

3. The term “diagnosis” in the challenged rule was within the statutory scope of chiropractic practice and that the issue has already been decided and may not be relitigated.

TMA filed its brief in response to TBCE’s brief on Sept. 11, 2017. The case was heard before the appellate court on Feb. 28, 2018.

On November 21, 2018, the Third Court of Appeals issued a Memorandum Opinion (Justice C. Bourland) affirming the trial court’s judgment in part and reversing in part:

1. The Third Court overruled TBCE’s first point on appeal. The fact that nerves are affected by disorders in or treatment of the musculoskeletal system does not mean that the nervous system or the nerves themselves fall within the scope of chiropractic. The statute contains a limitation to evaluation of the “biomechanical condition of the spine and musculoskeletal system” citing 201.002(b).

2. The Third Court noted that although VON testing may be a useful tool to chiropractors, the evidence establishes that VON testing helps in the diagnosis of vestibular issues, and that such disorders do not fall within the ambit of chiropractic.

3. Finally, the Third Court noted that effective Sep. 1, 2017, Section 201.002 of the Occupations Code was amended to provide that a person practices chiropractic if she, among other things, “uses objective or subjective means to diagnose, analyze, examine, or evaluate the biomechanical condition of the spine and musculoskeletal system of the human body.” Thus, because the term “diagnose” is expressly included in the Occupations Code itself, it is valid to include it in rule (although limited to the biomechanical condition of the spine and musculoskeletal system).
On Dec. 31, 2018, TCBE filed a Motion for En Banc Reconsideration on Points 1 and 2 contending that the Third Court did not apply the proper de novo review in the statutory interpretation case and instead applied a sufficient evidence analysis. TCBE further argued that VON testing is within the scope of chiropractic treatment as it helps chiropractors rule out other nonvestibular signs of dizziness and refer to other providers. Finally, TCBE challenges TMA’s standing to file suit in this particular cause under the Administrative Procedures Act. On or about Dec. 28, 2018, TCBE filed a Petition for Review to the Supreme Court of Texas with briefing filed on February 27, 2019. On Jan. 10, 2019, the Court denied TCBE’s Motion for En Banc Reconsideration. TMA filed its Response to the Petition for Review on Mar. 26, 2019.

The court requested additional briefing as to whether it should grant the Petition for Review. On August 21, 2019, TCBE filed its brief, and TMA filed its response on September 25, 2019. On March 13, 2020, the court granted the petition for review. Oral argument was heard on September 16, 2020. As of January 2021, the court has not released a decision.

B. LITIGATION AS DEFENDANT

No pending litigation at this time.

C. AMICUS CURIAE BRIEFS

1. Gomez v. Memorial Hermann

(Regarding whether the Supreme Court of Texas should grant the petition for writ of mandamus to produce records from a medical peer review proceeding.)

This case was brought by Miguel Gomez, MD, a heart surgeon, against Memorial Hermann Hospital System (MH); Michael Macris, MD; and Keith Alexander (CEO of MH) in their official capacities. Dr. Gomez alleges tortious conduct on the part of MH and that anticompetitive actions were taken by the defendants.

Dr. Gomez seeks documents that purport to measure his quality and efficiency as compared to other doctors in the MH system. Allegedly, these were improperly compiled by another cardiovascular surgeon (Dr. Macris) and spread using MH’s wholly owned nonprofit health corporation (MHMD) to other physicians who likely would refer patients to Dr. Gomez and the rumor mill at MH. This allegedly was done after MH learned that Dr. Gomez had applied for privileges at a competing facility that was being constructed a few miles from MH’s Memorial City facility. After Dr. Gomez refused to accept a proposed monitoring of his practice without the benefit of peer review by the hospital medical staff’s peer review committee, attempts to restrict the privileges of Dr. Gomez through the MH Memorial City’s medical staff peer review committee failed. Subsequently, the defendants started an alleged rumor mill in an attempt to affect Dr. Gomez’s referrals adversely, thereby affecting patient choice. Some evidence of this, including the testimony of former MH executives now employed with another health care system, is in the case record.

The TMA Patient Physician Advocacy Committee (PPAC) reviewed numerous briefs and other documents authored by both sides of the case and spent several hours with presenters from each side of the issue at its meeting held May 1, 2014, in conjunction with TexMed 2014. Since that
time, the Supreme Court of Texas has asked for briefing from Dr. Gomez on the issue of whether
or not the court should accept the case.

Defendants, MH, Dr. Macris, and Mr. Alexander are seeking a writ of mandamus from the
Supreme Court of Texas, which would order the trial court to withdraw its order mandating the
discovery of certain medical peer review records. The defendants seeking the writ have already
filed briefs with the court, arguing that the court should take the case, grant oral argument, and
reverse the trial court’s determination that certain documents relevant to the allegation of
anticompetitive conduct are discoverable and must be disclosed to the plaintiff. The trial court’s
order came after the trial court judge reviewed the documents in camera and made a judgment on
each document’s relevance to the allegation of anticompetitive conduct.

Some of the stipulated medical peer review documents were determined to be related to the
alleged anticompetitive conduct by the defendants. Under the anticompetitive exception to peer
review protection provided by the Texas Occupations Code, discovery of documents is permitted
if the peer review records and proceedings requested are relevant to an anticompetitive action or
to a federal civil rights proceeding.

The trial court determined that the Texas Occupation Code’s peer review provisions applied,
rather than the medical committee protections found in the Texas Health and Safety Code. This
determination was based upon the reasoning that the more specific statute controlled. (TMA
drafted the original peer review bill and supported the resulting medical peer review language,
which was passed in 1987 to adopt the protections in the federal Health Care Quality
Improvement Act of 1986 and to shore up the Texas peer review protections that had been
eroded by the Texas appellate courts.) The Texas Hospital Association also supported the bill.
The 1987 Texas law protections prohibiting discovery of peer review minutes and proceedings
had two exceptions: an anticompetitive action and a civil rights proceeding. These provisions
remain unchanged today.

At the meeting of the PPAC, both sides requested that TMA file a brief in support of their
respective positions. The defendants argued that the anticompetitive action exception did not fit
this case because it did not reach the threshold of an antitrust action, as only one physician was
allegedly discriminated against. The market for patients to choose a heart surgeon allegedly was
not affected. Also, the defendants argued that the Texas Health and Safety Code medical
committee provision keeping medical committee records and proceedings confidential should
apply. There is neither an anticompetitive nor a civil rights exception included in that medical
committee provision.

On June 19, 2014, TMA filed an amicus curiae brief in the case. TMA’s brief argued that the
plain language of the statute provides an exception to the confidentiality and privilege associated
with peer review when a judge makes a preliminary finding that a proceeding or record of a
medical peer review committee is relevant to an anticompetitive, not antitrust, action.

TMA’s brief also argued that the legislative history of, and public policy behind, this exception
indicates that the facts alleged in this case are precisely those meant to be addressed by this
statute. The record reflects that the trial judge in this case made the required preliminary finding
and ordered production of some of the proceedings and records of the medical peer review
committees involved, as required by the statute. The record also indicates that the judge was presented evidence outside of the contested peer review records and proceedings, which provided an extra check to the potential overuse of the exception. Therefore, there is no need to exercise court’s jurisdiction in this case and grant the petition.

On June 27, 2014, the court requested briefing on the merits. MH’s brief was filed on Aug. 27, 2014. Dr. Gomez’s brief was filed on Oct. 27, 2014. MH’s reply brief was filed on Nov. 26, 2014. Oral arguments were made on Feb. 25, 2015. TMA was in attendance. Dr. Gomez filed a post submission brief on Mar. 10, 2015. MH filed a response to that brief on Mar. 20, 2015.

On May 26, 2015, the court issued an opinion. The court adopted the logic TMA put forward in its amicus brief and held that the anticompetitive action exception is broader than an antitrust claim such that an individual physician can pursue a claim against a hospital.

Interestingly, the court went on to discuss how confidentiality would work if a committee was both a “medical committee” and a “medical peer review committee”: “records and proceedings of a dual medical committee and medical peer review committee do not enjoy any greater confidentiality under section 161.032(a) than they do under section 160.007(b).” Therefore, doctors in future lawsuits of this nature will have the benefit of the broader anticompetitive action claim no matter which peer review confidentiality section the hospital claims applies.

A jury trial in the case was held from March 17--27, 2017. The jury deliberated for two days and delivered its verdict on Mar. 29, 2017. The jury found that MH defamed Dr. Gomez and awarded Dr. Gomez $6.4 million, including $1 million in punitive damages. In May 2017, the state district court judge, who presided over the trial, affirmed the jury verdict by entering an order in Dr. Gomez’s favor that awarded over $6 million in damages. A notice of appeal was filed on Aug., 10, 2017. A post-judgment mediation was unsuccessful.

After appeal to the First Court of Appeals, TMA submitted its amicus brief on October 23, 2018. In the brief, TMA noted practical concerns on health care facilities abusing qualified privilege to engage in anti-competitive and retaliatory behavior against physicians. TMA further pointed out to the appellate court that MH’s defamatory statements are not privileged or subject to any qualified privilege. Finally, the brief reiterated the point that the jury found evidence of actual malice, which defeats any privilege defense. The parties presented oral argument on October 30, 2018.

After oral argument and all briefs were submitted, the First Court of Appeals issued its opinion on Aug. 15, 2019 in favor of Dr. Gomez, upholding the trial court’s judgment and finding no reversible error. On Dec. 2, 2019, MH filed a Petition for Review with the Texas Supreme Court. Dr. Gomez filed a response on March 11, 2020, and MH filed a reply on April 27, 2020. On May 29, 2020, the Court requested the parties submit briefing on the merits. MH’s brief was filed on Aug. 28, 2020, Dr. Gomez’s response was filed Nov.18, 2020, and MH’s reply is due Feb. 3, 2021. The TMA Board Chair has authorized the filing of a third brief in this case now before the Texas Supreme Court. The Petition for Review is still pending.
2. *Noel Dean v. Darshan Phatak, MD*

(Regarding whether a physician who met the standard of care, but later changed his autopsy finding, can be held liable for the earlier finding.)

This is a civil rights case against a physician practicing as a medical examiner in Harris County. Darshan Phatak, MD, is employed as an assistant medical examiner with the Harris County Institute of Forensic Sciences, which contracts to provide autopsy services in Harris County and performed the autopsy of a certain deceased woman and determined the cause of death to be “homicide” by gunshot wound. Following this determination, the deceased’s husband was arrested and tried for murder. The accused’s murder trial ended in a hung jury. After the trial, the chief deputy medical examiner, in reevaluating the evidence, performed another additional test in relation to the decedent and the gun wound – a gun-to-wound examination – and as a result, the medical examiner’s office changed the cause of death determination in the autopsy report from “homicide” to “undetermined.” Because of this change, the prosecutor dropped the charges, and the accused filed a civil rights suit in federal court against, among others, Dr. Phatak in his individual capacity.

The basis for the lawsuit is that, pursuant to the Fourth, Sixth, and Fourteenth Amendments to the U.S. Constitution, the accused had a right to be free from an intentionally falsified autopsy report, and the accused is asserting just that: that Dr. Phatak intentionally falsified the autopsy report. This assertion is based on the alleged fact that Dr. Phatak allowed a detective to influence the autopsy determination; that he failed to fully consider that the deceased had suicidal thoughts; and that he failed to perform a gun-to-wound comparison. Dr. Phatak has maintained that he did not conspire with detectives to falsify the report and has also maintained that nothing in his examination was extraordinary or unusual – he claims he followed protocol.

The federal district court has refused to recognize the defense of qualified immunity to which Dr. Phatak, a governmental employee, should be entitled. In an order on a motion for summary judgment, the court found that, viewed in the light most favorable to the plaintiff, a reasonable juror could conclude that a “reasonable medical examiner would have understood that intentional fabrication of evidence violated a defendant’s right to be free of a wrongful prosecution that cause his pretrial arrest and other deprivations of liberty.” The trouble is that the court’s articulation of the clearly established right – to be free from intentional fabrication of evidence – is far too broad and thus interferes with Dr. Phatak’s right to exercise his medical judgment. It is undisputed that Dr. Phatak followed the protocols of the medical examiner office. The fact that Dr. Phatak relied on reasonable medical judgment and medical standards offered no protection according to the court. Essentially, the court imposed a higher “standard of care” with its holding.

TMA gathered the support of the American Medical Association, the National Association of Medical Examiners, the College of American Pathologists, and the Texas Society of Pathologists and together filed a joint amicus brief to the U.S. Fifth Circuit Court of Appeals. The brief discussed the importance of medical examiners and that, because of their important function, they should not be held to a higher standard of care than what is ordinarily required of physicians.
On Dec. 6, 2017, the Fifth Circuit held oral arguments. On Dec. 20, 2018, the Fifth Circuit issued a decision vacating the district court’s denial of qualified immunity based on a procedural technicality.

Specifically, the Fifth Circuit determined that the district court’s order and analysis cites allegations in the pleadings (written statements) but did not reference actual “evidence” in the record. Without identification of summary judgment evidence, the Fifth Circuit determined it could not make a reasoned decision to affirm or deny qualified immunity. Accordingly, the Fifth Circuit remanded the case to the district court to reconsider the motion and instructed the district court to specifically reference summary judgment evidence in its order. As of January 2021, no new decisions have been issued by district court.


(Regarding whether a physician’s debt collection action against a law firm falls under the Texas Citizens Participation Act)

Mark D’Andrea, MD, is a radiation oncologist who practices in Harris County and has privileges at many facilities, including the University Cancer Center (“UCC”). In connection with a 2010 benzene-exposure lawsuit against BP, the Pinkerton Law Firm (the “Firm”) entered into a letter of protection (“LOP”) agreement with UCC to provide certain health care services at UCC for the Firm’s clients related to the benzene exposure. An LOP is a letter sent to a medical professional by a personal injury lawyer representing a person injured in an accident, such as an auto accident, work injury, or fall. An LOP guarantees payment for medical treatment from a future lawsuit settlement or verdict award.

The Firm entered into an LOP with UCC to provide health care services for the Firm’s clients who had allegedly been exposed to the cancer-causing agent “benzene” during a massive release of toxic chemicals at a BP Refinery outside of Houston. The Firm agreed to pay a $40 fee to UCC per client referred for his services and entered into a global LOP for each client for the cost of the services provided. In return, the Firm would use the medical records from UCC to support its case against BP.

Ultimately, the suit with BP settled. The Firm, however, did not honor the LOP with UCC. In August 2018, UCC filed a lawsuit against the Firm for failure to honor the LOP, asserting claims for breach of contract and *quantum meruit*.

The Firm filed a motion to dismiss UCC’s claims under the Texas Citizen’s Participation Act (the “TCPA”), which is an anti-SLAPP statute – “SLAPP” is an acronym for “strategic lawsuit against public participation.” The TCPA provides a mechanism for early dismissal of lawsuits based on a party’s exercise of the right to free speech, right of association, and right to petition the government. The purpose of the TCPA, like other anti-SLAPP statutes, is to honor first amendment constitutional protections, including the right to petition, the right to association, and the right of free speech while also protecting the rights of a person to file a meritorious lawsuit. If the TCPA applies (which the Firm argues it does), the plaintiff has to meet a higher evidentiary threshold to avoid dismissal of his case.
In its motion to dismiss, the Firm argued several reasons that the TCPA should apply to UCC’s claims. First, the Firm argued that the LOP involved the Firm’s right to petition. Specifically, the Firm claimed the LOP “pertains to” a judicial proceeding, i.e., the Firm’s participation in litigating the BP case. Second, the Firm claimed that the UCC’s case relates to the Firm’s exercise of free speech. Free speech in the context of a TCPA motion to dismiss has been defined to mean “a communication made in connection with a matter of public concern.” A “matter of public concern” has been defined as an “issue related to” a “health and safety concern,” “economic well-being,” or a “service in the marketplace.” The Firm argued that the UCC’s breach of contract and quantum meruit claims against it – claims that relate to the provision of health care services – relate to matters of public concern, including “health and safety concerns,” “economic well-being” concerns, and “services in the marketplace.”

UCC responded to the Firm’s motion to dismiss. Regarding the TCPA claim, UCC argued that this is a debt collection matter, which falls within the commercial dispute exemption of the TCPA. Neither UCC providing services under the LOP, nor UCC’s lawsuit, involved protected speech by the Firm intended to reach the Firm’s clients – instead, it was just a commercial transaction between the parties.

Ultimately, the trial court agreed with UCC, dismissing the Firm’s motion to dismiss. The Firm appealed the trial court’s decision to Houston’s First Court of Appeals.

On Jun. 3, 2019, TMA filed its amicus brief in support of UCC. There has been substantial criticism on the unfair expansion of the TCPA to matters that were not intended to be the subjects of a TCPA motion to dismiss. TMA urged that this case is another example where someone is arguing to improperly expand the TCPA. This would leave physicians vulnerable financially when they accept LOPs from attorneys and provide health care services. Specifically, TMA argued that a debt-collection action is not “based” on a “communication” as defined in the TCPA and that the business dispute falls under the commercial speech exemption from the TCPA.

On Aug. 9, 2019, the court informed the parties that it would not hear oral argument, and the case would be submitted before a panel consisting of Justice Lloyd, Justice Goodman, and Justice Landau on Sept. 17, 2019. On Jan. 9, 2020, the court of appeals issued a decision in favor of UCC, affirming the lower court decision to deny the Firm’s motion to dismiss. On March 26, 2020, the Firm filed a motion with the Texas Supreme Court requesting an extension of time to file a petition for review, which the court granted. On May 4, 2020, the Firm filed its petition for review. UCC filed its response to the petition on July 31, 2020. On Aug. 17, the Firm filed its Reply. On October 2, 2020, the Texas Supreme Court denied the Firm’s petition for review.

4. Patients Medical Center v. Facility Insurance Corporation

(Regarding which party bears the burden of proof when appealing a workers’ compensation Medical Fee Dispute Resolution Finding)

Petitioner, Patients Medical Center, provided inpatient surgical services for an injured worker in September 2009. Petitioner was later reimbursed $2,354.75 by Respondent, Facility Insurance Corporation, which was an amount below the rate prescribed by the Texas Department of Insurance, Division of Workers’ Compensation (DWC) Outpatient Hospital Fee Guideline.
Respondent contended that an informal network contract was applicable (which is an alternative manner to determine fees if appropriately agreed to by the parties – here it was not), and its claim adjuster applied network discounts. Petitioner determined no informal network contract was applicable to the underlying claim and it timely filed a request for Medical Fee Dispute Resolution with the DWC to determine proper payment.

On March 13, 2013, DWC issued its Medical Fee Dispute Resolution Findings and Decision. The DWC found the Respondent had failed to provide the required notice of its intent to access an informal or involuntary network. It accordingly reviewed the claim and determined reimbursement under the DWC Outpatient Hospital Fee Guideline. DWC determined Petitioner was entitled to additional reimbursement in the amount of $20,495.78. Dissatisfied with the DWC’s decision, Respondent demanded a contested-case hearing at the State Office of Administrative Hearings (SOAH) before an administrative law judge (ALJ) to challenge the DWC order. The SOAH judge found that Respondent had the burden of proof in the contested case, and after a hearing, the SOAH judge found that Respondent failed to meet its burden of proof and affirmed the DWC order.

Respondent appealed to Travis County district court. The court found that Decision and Order of the ALJ was supported by substantial evidence and affirmed the SOAH decision, consequently affirming the DWC order. Respondent appealed again to the Third Court of Appeals, Austin, Texas.

The Third Court of Appeals reversed the trial court’s decision and remanded the case back to the trial court for another hearing on the matter, ruling that the ALJ should have placed the burden of proof on the Petitioner. On Aug. 23, 2019, Petitioner filed a petition for review with the Supreme Court.

On November 6, 2019, TMA filed its amicus brief in support of Patients Medical Center, making two arguments. First, the Third Court failed to show a justification for overturning the ALJ’s decision to assign the burden of proof to the Respondent. Second, the Third Court’s ruling creates bad public policy by giving insurance companies significantly more power in DWC’s medical reimbursement dispute process. By placing the burden on appeal on the practitioner even if the practitioner agrees with DWC’s findings, the practitioner will bear the cost and initial burden of the insurance company’s appeal at each stage. This may deter practitioners from seeking fair reimbursement through DWC’s process and encourage insurance companies to continually under-reimburse providers for their services. Ultimately, the workers’ compensation system itself, and Texas’s patients in the system, may suffer because practitioners choose not to participate.

On Jan. 17, 2020, though noting that the petition for review was still under consideration, the Supreme Court requested that the parties file briefs on the merits. On March 13, Patients Medical Center filed its brief. Respondent filed its brief on April 23, 2020. On May 29, 2020, the court granted the petition for review. Oral argument was held on Oct. 27, 2020. As of January 2021, the court has not released a decision.
5. **Lewis v. Cook Children’s Medical Center**  
   *(Regarding the Texas Advance Directive Act)*

Ms. Lewis is the mother of a ten-month old girl, who was born premature and suffers from a host of medical conditions, including a rare heart defect known as Ebstein’s anomaly. Among the many complications caused by her conditions, the most significant is that she cannot properly get oxygen from her lungs into her bloodstream. She has spent her entire life hospitalized in Cook Children’s cardiac intensive care unit. She requires full mechanical ventilator support to breathe, as well as constant sedation to ensure she does not interfere with the support. Cook Children’s doctors have concluded that she has no hope of recovery and there are no possible surgical interventions that would improve her condition or ease her suffering.

Cook Children’s has informed Ms. Lewis of its physicians’ conclusion that continued medical intervention is inflicting pain on the child without any corresponding therapeutic benefit. Ms. Lewis has stated that she disagrees and believes the girl will recover. Cook Children’s has contacted dozens of doctors and hospitals across the country, and none have disagreed with Cook Children’s conclusion or been willing to accept the girl as a patient.

Pursuant to the Texas Advance Directive Act (TADA), Cook Children’s submitted the issue to its ethics committee, which concluded that there was no medical benefit to continuing treatment. To alleviate the girl’s suffering, it would be in her best interest to cease medical intervention and allow her to die naturally.

Ms. Lewis was informed of the ethics committee decision on October 30, 2019, and the girl was scheduled to be removed from the ventilator on Nov. 10, 2019. On that date, a temporary restraining order was issued to delay the removal.

On Dec. 11, 2019, TMA with Texas Alliance for Life, Texas Catholic Conference of Bishops, Texans for Life Coalition, Coalition of Texans with Disabilities, Texas Alliance for Patient Access, Texas Osteopathic Medical Association, Texas Hospital Association, LeadingAge, and the Tarrant County Medical Society, filed an amicus brief in support of TADA, setting forth how it provides families and physicians with a framework for resolving difficult end-of-life decision.

On Jan. 2, 2020, Ms. Lewis’ request for an injunction was denied in Tarrant County district court. Ms. Lewis appealed to the Second Court of Appeals in Fort Worth. On Jan. 3, 2020, the court ordered Cook Children’s to not withdraw treatment during the pendency of the appeal. Ms. Lewis filed her brief on January 16, 2019, Cook Children’s filed its response on Jan. 22, 2019. The joint amicus brief, in which TMA joined the Texas Alliance For Life, Texas Catholic Conference of Bishops, Texans for Life Coalition, Coalition of Texans with Disabilities, Texas Alliance for Patient Access, Texas Osteopathic Medical Association, Texas Hospital Association, LeadingAge Texas, and Tarrant County Medical Society, was filed on Jan. 29, 2020.

The Second Court of Appeals released its decision on July 24, 2020, reversing the trial court’s denial of an injunction. The court of appeals decision was based on finding that Cook Children’s is a “state actor”, for purposes of Ms. Lewis’s claim of violation of due-process rights under 42 U.S.C.A. § 1983 (“§ 1983”). One justice dissented on finding that medical decisions were state
actions, explaining that the “treatment decision regarding [the patient] turned on professional medical judgments made by private parties, which were not dictated by standards established by the state.”

On Aug. 20, 2020, Cook Children’s filed a petition for review to the Texas Supreme Court. The petition argued that the Second Court of Appeals’ decision is contrary to binding U.S. Supreme Court and Fifth Circuit precedent. Under this precedent, medical judgment by private actors does not qualify as state action. As such, the requested injunction fails to meet the requirements of a § 1983 claim. On Aug. 31, 2020, TMA and fellow amici filed a brief in support of Cook Children’s petition. On Oct. 16, 2020, the Texas Supreme Court denied Cook Children’s Petition for Review.

On Nov. 10, 2020, Cook Children’s filed a Petition for Writ of Certiorari with U.S. Supreme Court. TAPA, the AMA, and several other organizations that joined to file the amicus briefs at the district court, court of appeals and/or Texas Supreme Court, filed a supporting amicus brief on Dec. 14, 2020. On Jan. 11, 2021, the U.S. Supreme Court denied the petition. The case has been returned to the district court for final disposition.

6. **Regent Care of San Antonio v. Robert Detrick**

(Regarding awarding periodic payments of future medical expenses for a health care liability claim)

In 2013, Respondent Robert Detrick was admitted to Petitioner Regent Care, a skilled nursing facility, to receive treatment for a rash that was preventing surgery. He left suffering from permanent paraplegia and incontinence, resulting from a tumor on his thoracic spine that caused a compression fracture and neurological injury. A jury found that Regent Care’s nurses were negligent in failing to notify Detrick’s treating physicians of a change in his condition, resulting in a delay in the diagnosis and treatment of the spinal tumor.

The jury awarded Detrick $3,000,000 for future medical expenses. Initially, the court declined to order that any portion of the future medical expenses be paid be in installments. It subsequently modified its judgment, ordering that $256,358 of the award for future medical expenses be paid in periodic payments.

Regent Care appealed to the Fourth Court of Appeals San Antonio. It argued, *inter alia*, that the trial court abused its discretion in ordering that only $256,358 of the $3,000,000 in future medical expenses be paid in periodic payments. In November 2018, the court of appeals rejected this argument. In support of awarding the bulk of the award as a lump sum, the court cited the plain language of the periodic payment statute and a similar case decided by the Houston Court of Appeals.

In affirming the evidentiary basis of the $3,000,000 award for future medical expenses, the court of appeals noted that Respondent’s expert had opined that his life expectancy was 6–8 years, and that his annual medical expenses would be around $350,000. Petitioner died two weeks after the court of appeals decision.
Regent Care then filed a Petition for Review to the Texas Supreme Court, which was granted in November 2019. On Jan. 20, 2020, TMA joined an amicus brief with Texas Alliance for Patient Access, Texas Hospital Association, TMLT, Texas Osteopathic Medical Association, and ProAssurance Corporation in support of Regent Care. The brief argued that the periodic payment amounts are to be based on the evidence of future medical expenses presented at trial, and that burden of proof on providing these damages belongs to the claimant.

Oral argument was heard by the Texas Supreme Court on Jan. 29, 2020. On May 8, 2020, the court issued a decision in favor of Respondent Detrick. The court agreed in part with the TMA’s joint amicus brief in that the amount of periodic payments must be based on evidence at trial or post-trial, and that the $256,358 for periodic payments was not supported by the evidence at trial. However, the court ruled that the party requesting periodic payments bears the burden of identifying to the trial court the evidence supporting the periodic payments. The court found that Regent Care had failed to do so. Therefore, although the trial court’s $256,358 in periodic payments was not supported by the evidence, it was not reversible because Regent Care had not identified what should have been allocated instead. On May 22, 2020, Regent Care filed a motion for rehearing, which the Texas Supreme Court denied on Oct. 2, 2020.

7. Van Boven v. Freshour

(Regarding TMB notification of the NPDB when a physician prevails at SOAH)

This case arises from an ultra vires dispute between Robert Van Boven, MD, and Texas Medical Board (TMB) officials. Dr. Van Boven sued the Board Chair, Sheriff Zafran, MD, Board members Margaret McNeese, MD, and Timothy Webb, as well as attorney employees Scott Freshour, Amy Swanholm, and Chris Palazola. They are being sued in their individual capacities as officers of the Board (the “officers”). Dr. Van Boven argues that these officers acted without legal or statutory authority.

In February 2016, a three-person disciplinary panel of the Board issued an Order of Temporary Restriction (OTR) against Dr. Van Boven’s medical license, following a Temporary Suspension and Restriction Hearing (TSRH). The suspension arose from an alleged retaliatory complaint filed in bad faith by a hospital owner/board manager of a financially imperiled, private, for-profit hospital after Dr. Van Boven reported incidents of patient deaths and harm. (These incidents were independently verified by federal and state investigators as violating state and federal law.)

After the TSRH, TMB reported the OTR against Dr. Van Boven to the National Practitioner Data Bank (“NPDB”).

TMB’s case was heard before the State Office of Administrative Hearings (SOAH). After a five-day trial, the ALJ issued a proposal for decision (PFD) on October 18, 2017. The PFD found that TMB failed to meet its burden to prove Dr. Van Boven committed any violations. Subsequently, TMB issued a Final Order finding that Dr. Van Boven was not subject to any sanctions. The Final Order dismissed the matter, “superseding” the OTR.

TMB subsequently filed a Revision-to-Action Report (RTAR) with the NPDB. A RTAR, however, does not remove the initial adverse report of the OTR, but updates the initial adverse report. Dr. Van Boven claims that TMB should have filed a “Void Report,” which would have voided the reported initial adverse action and eliminated any mention of the matter at the NPDB.
A Void Report carries out the Final Order superseding the OTR, whereas, as Dr. Van Boven claims, the RTAR has the effect of a sanction and is not the proper corrective action (the RTAR leaves the complaint and OTR information on the NPDB website).

Dr. Van Boven alleged that TMB’s actions harm his reputation as a physician and interfere with his ability to practice medicine, including participating in payer networks, obtaining hospital medical staff privileges, obtaining employment, and attracting patients and patient referrals. Consequently, Dr. Van Boven filed suit. On October 26, 2018, Dr. Van Boven filed his second amended petition against certain Board officers claiming that they acted *ultra vires*, or without legal authority. TMB officers filed a Plea to the Jurisdiction challenging the trial court’s jurisdiction over all of Dr. Van Boven’s claims. Ultimately, the trial court granted in part, denied in part, the Plea to the Jurisdiction regarding its jurisdiction over certain officers, and also denied Dr. Van Boven’s request for a temporary injunction.

Defendants Scott Freshour, Dr. McNeese, Mr. Webb, and Dr. Zaafran appealed the trial court’s ruling denying their Plea to the Jurisdiction. In relevant part, TMB officers alleged the trial court’s decision finding that it has subject matter jurisdiction over Dr. Van Boven’s *ultra vires* claim was incorrect.

Plaintiff Dr. Van Boven cross-appealed based on, in relevant part, the trial court’s ruling granting in part Defendants’ Plea to the Jurisdiction and denying Dr. Van Boven’s *ultra vires* claims against TMB officers (attorneys) Mr. Palazola and Ms. Swanholm.

On January 9, 2020, the Third Court of Appeals rule in favor of the Board officers. The court reversed the trial court’s denial of Freshour, McNeese, Webb, and Zaafran’s Pleas to the Jurisdiction, and affirmed the dismissal for Palazola and Swanholm. In finding that Dr. Van Boven’s claims did not fall within the *ultra vires* exception to sovereign immunity, the court reasoned that there was not clear authority requiring TMB to submit a Void Report instead of a RTAR.

Dr. Van Boven filed a petition for review to the Texas Supreme Court on May 8, 2020. TMA filed an amicus brief in support of Dr. Van Boven’s petition on June 10, 2020. On Oct. 2, 2020, the Supreme Court requested that the parties provide briefs on the merits. On Dec. 2, 2020, Dr. Van Boven filed his brief on the merits. TMB’s response brief is due Jan. 21, 2021, and Dr. Van Boven’s reply is due Feb. 5, 2021.

8. **Leonard v. Texas Medical Board**  
   (Regarding the retroactive application of a Texas Medical Board rule)

On June 15, 2018, the Texas Medical Board (TMB) entered a final order against Philip J. Leonard, MD, revoking his medical license based on a boundary violation and his drug prescribing and documentation practices involving one male patient. Dr. Leonard maintains that the patient filed his complaint with TMB because Dr. Leonard refused to prescribe the schedule II drugs the patient demanded. Dr. Leonard believes the patient had access to the previous order of the TMB and knew how to get him in trouble.
The TMB decision to revoke Dr. Leonard’s medical license was based, in part, on findings that he violated the applicable standard of care, found under 22 Texas Administrative Code §170.3 (Minimum Requirements for the Treatment of Chronic Pain). However, much of the language used to establish the standard of care in §170.3 did not exist at the time of the treatment at issue (May 2011 through May 2015). The rule was initially adopted in 2007. It was later amended in August 2015 and July 2016. The 2007 version of the rule – the version in existence at the time the services at issue were rendered – was viewed more as guidelines (i.e., what a physician should do). In the 2015 amendment, the title was changed, over a dozen uses of the word “should” were replaced with “must”, and the following language in subsection (b) was deleted:

“(b) It is not the board’s policy to take disciplinary action against a physician solely for not adhering strictly to these guidelines if the physician’s rationale for the treatment indicates sound clinical judgment documented in the medical records. Each case of prescribing for pain will be evaluated on an individual basis. The physician’s conduct will be evaluated by considering:

(1) the treatment objectives, including any improvement in functioning,
(2) whether the drug used is pharmacologically recognized to be appropriate for the diagnosis as determined by a consensus of medical practitioners in the State or by recognized experts in the field for which the drug is being used,
(3) the patient’s individual needs, and
(4) that some types of pain cannot be completely relieved.”

The current version now states that a “physician’s treatment of a patient’s pain will be evaluated by considering whether it meets the generally accepted standard of care and whether the following minimum requirements have been met: […]” (emphasis added).

Dr. Leonard appealed the TMB’s decision to the Travis County District Court, arguing that the TMB improperly applied newer, more stringent rules defining the standard of care for pain management to him retroactively. On June 10, 2020, TMA filed an amicus brief in support of Dr. Leonard. TMA’s amicus brief argues that TMB’s decision has serious implications for Texas physicians, as well as being arbitrary and capricious, unconstitutional, and incorrect in that it applied a rule on a physician’s conduct that occurred before the rule was adopted.

On Oct. 6, 2020, the trial court denied Dr. Leonard’s appeal. Dr. Leonard then appealed to the Third Court of Appeals in Austin, which transferred the case to the Eighth Court of Appeals in El Paso. As of January 2021, the court of appeals has not set a briefing schedule for the parties.

9. R.J. Reynolds Tobacco Co. v. United States Food and Drug Administration
(Regarding warning images and text on cigarette packs and cartons)

Plaintiffs are tobacco manufacturers, distributors, sellers, and advertisers. Plaintiffs challenge the First Amendment constitutionality of a U.S. Food and Drug Administration (“FDA”) rule that requires placement of warning language and images on cigarette packs and cartons.
On Aug. 16, 2019, the FDA issued a proposed rule requiring cigarette packs and cartons to display one of 13 images, paired with one of 12 textual warnings (one of the textual warnings can be paired with two images).

FDA released the final rule on March 18, 2020. On April 3, 2020, Plaintiffs filed a Complaint in the U.S. District Court for the Eastern District of Texas, in Tyler. The Complaint requested that the district court declare the Final Rule unconstitutional and enter an injunction enjoining its enforcement.

The Campaign for Tobacco-Free Kids requested that TMA join its amicus brief in support of the constitutionality of the FDA’s Final Rule. On July 17, 2020, the amicus brief was filed, supported by TMA and 16 other organizations, including the AMA. On Dec. 11, 2020, the district court heard the parties’ competing motions for summary judgment. As of January 2021, the district court has not released a decision.

10. **Folosade Ojo, MD, v. James Mason**
(Regarding the duty owed by a physician to third parties living with the physician’s patient)

This is a professional liability claim brought against a physician by a homeowner for injuries and damages caused by a fire. The fire was set accidently by the physician’s patient, who lived with the homeowner.

In 2015, AMed-Health Inc. (AMed) and its medical director, Folasade Ojo, MD, provided hospice care to Charles Vance. The care was provided to Mr. Vance in the home of James Mason and several of his relatives, with whom Mr. Vance lived. Mr. Vance’s treatment included narcotic pain medications and receiving oxygen. Because of the risk of fire, Vance, a longtime smoker, was admonished by AMed staff and Mr. Mason to not smoke indoors. However due to cold weather, one night Vance decided to smoke indoors and forgot to turn off the oxygen. In the ensuing fire, the Masons home and personal possessions were damaged, and Mr. Vance and Mr. Mason sustained burns requiring medical treatment.

The Masons and Mr. Vance sued AMed and Dr. Ojo for medical negligence and gross negligence. They claimed that AMed and Dr. Ojo breached the duty of care owed to them by failing to properly educate them about the dangers of smoking while on oxygen, and that Dr. Ojo deviated from the standard of care by not offering a nicotine replacement.

At the trial court, both AMed and Dr. Ojo moved for summary judgment. They argued, inter alia, that they owed no duty to the Masons. The trial court granted both motions, disposing of all claims. On appeal, the First Court of Appeals in Houston reversed the trial court. Among other reasons for reversal, the court of appeals held that AMed and Dr. Ojo had a duty to warn the Masons of the dangers posed by the oxygen and to lessen their risks, such as by providing a nicotine substitute to Vance.

On Nov. 15, 2019, AMed and Dr. Ojo filed petitions for review to the Texas Supreme Court. On March 13, 2020, the court requested the parties submit briefs on the merits of the case. AMed then settled its case with the Masons and Mr. Vance. On June 12, 2020, Dr. Ojo filed her brief on the merits. Vance and the Masons’ response was filed on August 3, 2020. Dr. Ojo’s reply brief
was filed Aug. 18, 2020. On Oct. 27, 2020, TMA and fellow amici filed a brief in support of Dr. Ojo. The brief argues that Texas law generally does not impose a duty to control one person’s conduct to prevent harm to third parties, and imposition of such a duty on physicians would result in an impossible burden.

As of January 2021, the Texas Supreme Court has not released a decision.

11. Columbia Valley Healthcare v. A.A., by and through his mother, Anna Ramirez

(Regarding the evidence that must be considered in determining a lump sum award under the periodic payment statute)

This is a health care liability claim brought against a hospital as result of injuries suffered during childbirth. In 2014, Anna Ramirez was hospitalized at defendant Columbia Valley’s hospital prior to giving birth to her son, plaintiff A.A. During the hospitalization, when A.A.’s heart rate began deaccelerating, Columbia Valley’s nurses did not call the obstetrician. Half an hour later, after the nurses could not detect A.A.’s heartbeat, they called the obstetrician, who arrived and ordered a c-section be performed. When A.A. was delivered, the obstetrician observed the umbilical cord wrapped around A.A.’s neck, resulting in oxygen and blood loss to his brain. A.A. was later diagnosed with cerebral palsy and requires 24-hour care.

In 2018, a jury returned a verdict in favor of A.A., finding that the hospital’s nurses were negligent in not calling the obstetrician when A.A.’s heart rate deaccelerated, and that the delay in calling the obstetrician caused A.A.’s injuries. The jury awarded A.A. $62,000 in past health care expenses; $9,060,000 in future medical expenses until A.A. is 18 years old; and $1,208,000 for medical expenses after age 18, for a total award of $10,330,000 in medical expenses.

Prior to the 2018 trial, Columbia Valley requested that the court order the medical expenses be paid in periodic payments. After the trial, the judge ordered the award be paid in one lump sum payment of $7,310,000, plus five years of $604,000 periodic payments ($3,020,000 total).

Columbia Valley appealed the verdict and award to the Thirteenth Court of Appeals in Corpus Christi. On appeal, Columbia Valley argued, inter alia, that the trial judge erred in applying the periodic payment statute, Civil Practice and Remedies Code §74.503, in two ways. First, that the trial court erred in not allowing the question of A.A.’s life expectancy to be submitted to the jury. Second, that the trial court abused its discretion by ordering a lump sum payment amount that was not supported by the evidence. Columbia Valley argued that any ambiguity in §74.503 be interpreted as requiring the jury to consider life-expectancy and for the judge’s lump sum determination be supported by the evidence.

On July 30, 2020, the Court of Appeals released a decision affirming the verdict and judgment of the trial court. On Oct 29, 2020, Columbia Valley filed a petition for review to the Texas Supreme Court. The TMA Board Chair has authorized TMA to join TAPA and other amici in a brief supporting Columbia Valley’s petition.


(Regarding the amount of billing information a personal-injury defendant can subpoena from the plaintiff’s treating physicians)
This case involves a discovery dispute over access to medical billing records in a personal injury lawsuit. It is currently pending before the Texas Supreme Court.

The driver and passenger of one of the vehicles involved in an automobile crash (the “Plaintiffs”) filed a personal injury lawsuit against the other driver and its employer, (the “Defendants”). One of the Plaintiffs filed billing affidavits from several physicians and physician practices (collectively referred to herein as the “Physicians”) as proof of damages from medical services. The treatment was provided under Letters of Protection, which guarantee payment for medical bills from any settlement or other recovery, as specified by the attorney and the physician or practice (versus billing insurance or the patient directly).

Defendants served nonparty subpoenas on the Plaintiffs’ treating Physicians to obtain certain additional billing information. Specifically, the subpoenas sought to obtain, among other things:

- The amounts charged private insurance companies, generally, for the services and materials listed in the Physicians’ bills as of the billing dates for the last 10 years;
- The amounts charged federal insurance programs (i.e., Medicare and Medicaid), for the last 10 years, for the services and materials listed in the Physicians’ bills as of the billing dates;
- The amounts billed to the Physicians or paid by them to the manufacturers, sellers and distributors of the materials/devices charged for in the Physician’s bills;
- 10 years of documents regarding billing pursuant to a letter of protection;
- 10 years of documents relevant to amounts charged to self-pay patients for the services/devices provided to one of the plaintiffs;
- 10 years of documents that evidence write-offs;
- Documents showing the selling of accounts receivable for 10 years; and
- Documents revealing how charge master rates are set.

The Physicians’ attorney filed a motion to quash the subpoenas, objecting to the subpoenas as overly broad, unduly burdensome, and as seeking irrelevant and/or confidential information (including physician-patient privileged materials, trade secrets, and other state and federal privacy laws protecting the documents). Plaintiffs also filed objections, arguing that, in part, the Defendants did not need the discovery because Defendants filed counter-affidavits from their own medical experts. Defendants responded the discovery was proper under In re North Cypress Medical Center.

In North Cypress, the Texas Supreme Court in a 6-3 majority decision ruled that certain billing information, including negotiated contracts with insurers and Medicare/Medicaid reimbursement rates for certain devices and services, were discoverable to demonstrate whether emergency room charges were reasonable based on a statute that expressly states a valid hospital lien may not secure charges that exceed a reasonable and regular rate.

At the hearing on the Motion to Quash the subpoenas, among other things, the Physicians’ attorney and Plaintiffs argued North Cypress does not apply to personal injury cases and that the objections asserted stand. The trial court ultimately granted the Physicians’ and Plaintiffs’ Motions to Quash the subpoenas.
Defendants motioned for the trial court to reconsider certain requests: (1) what all other private and government insurance providers might hypothetically pay for medical services provided to other patients under different circumstances; and (2) all agreements and communications with and payments made to the manufacturers, sellers, and distributors of various medical devices and equipment used in Plaintiffs’ treatment. The trial court denied the motion.

On Sept. 3, 2019, the Defendants filed a Petition for Writ of Mandamus – an order from a higher court finding that a lower court abused its discretion in its decision making – to the Fifth Court of Appeals. The court of appeals denied the petition on Oct. 29, 2019. Defendants then filed a Petition for Writ of Mandamus with the Texas Supreme Court. The Texas Supreme Court granted the petition on Oct. 2, 2020.

On Dec. 27, 2020, TMA and the Texas Hospital Association (THA) filed a joint amicus brief (prepared by TMA) in favor of the Physicians. TMA and THA’s brief argued that the trial court did not abuse its discretion in applying North Cypress and in finding that the information requested was irrelevant to the personal injury case. Oral argument was held on Jan. 5, 2021. As of January 2021, the court has not released a decision.

D. COMMENTS TO ADMINISTRATIVE AGENCIES


In April 2018, the Health and Human Services Commission (HHSC) released and solicited comments on draft rules intended to implement Senate Bill 1107, regarding telemedicine. Like the Medicaid benefits policy on telemedicine published one month prior, these draft rules made many changes to reflect the intended expansion under SB 1107. Some parts of the draft rules, however, did not accurately follow the provisions of the bill.

TMA, along with the Texas Association of Obstetricians and Gynecologists, the Texas Academy of Family Physicians, and the Texas Pediatric Society, commented that the rules should adhere to the bill’s provisions. TMA’s comments included again reiterating that Texas statute requires HHSC to pay for telemedicine under Medicaid for services that otherwise satisfy applicable requirements. The comments also stated that there should be greater clarity regarding patient site restrictions and that notice to a patient’s primary care provider is conditional upon that patient’s consent to do so.

As of January 2021, HHSC has not officially proposed these rules. TMA staff will continue to monitor the progress of these rules.

*Texas Health and Human Services Commission, Office of Inspector General Solicitation for Feedback on the IG’s Determination of Administrative Actions or Sanctions, 1 Tex. Admin. Code § 371.1603*

In May 2018, the Texas Office of the Inspector General (IG) published a solicitation for feedback regarding its current rules relating to the criteria the IG uses to determine administrative sanctions or actions to impose provider violations, as found in 1 Tex. Admin.
Code § 371.1603(f)-(h). In June 2018, TMA provided comments for improvements that could be made to those considerations. Generally, TMA’s comments focused on making the process more fair and ensuring that all relevant considerations would be made in imposing sanctions against a provider.

TMA’s comments included clarifying already listed considerations that were ambiguous, following statutory language, adding consideration of mitigating factors, and limiting consideration of aggravating factors in a way that ensures only relevant aggravating factors are considered.

In 2019, the IG proposed draft rules relating to administrative actions and sanctions, including criteria the IG uses to determine administrative actions or sanctions to impose for alleged provider violations. TMA provided a comment letter in response and met with the IG’s office in August 2019. The OIG was favorable to many of TMA’s comments and suggestions. As of August 2019, formal proposed amendments have been published relating to this rule. TMA staff is monitoring any further development of these rules. See below for further information on TMA’s comment letter to the OIG following its 2019 proposed draft rules.

1. **TMA Comments to the Texas Medical Board Regarding the Corporate Practice of Medicine and Unauthorized Practice of Medicine**

In conjunction with the Texas Medical Board’s public comment period in association with its December 2018 full board meeting, TMA submitted written comments relating to violations related to the prohibition on the corporate practice of medicine and the unauthorized practice of medicine. Specifically, TMA wrote to encourage and facilitate discussion regarding the ability of a physician to submit complaints relating to a nonprofit health corporation’s (NPHC) violation of certain laws prohibiting interference with a physician’s professional judgment. TMA noted that there is a complaint form for licensees, but there appears to be no avenue for a complaint against an entity like an NPHC. TMA further encouraged TMB to clarify on TMB’s website and complaint form that the Board has cease and desist authority to enforce unauthorized practice of medicine.

During the 2019 legislative session, TMA supported successful legislation to require the changes urged in TMA’s earlier letter (H.B. 1532). As of January 2021, TMB has not yet taken steps to implement the legislation. On the TMB website, the complaint form only contemplates a complaint about a practitioner. As of January 2021, the TMB has not responded to TMA’s comments. Also, TMB has neither proposed nor adopted rules on this subject.

2. **Joint Comments to Health and Human Services Commission Relating to Medicaid Reimbursement for Telemedicine Medical Services**

In January 2019, TMA along with the Texas Association of Health Plans, the Texas Hospital Association, the Texas Association of Community Health Plans, and the Texas Pediatric Society submitted joint comments to the Health and Human Services Commission to encourage the commission to update its billing policies relating to telemedicine.
The joint comments grew out of a series of summit meetings among the organizations to identify ways to improve the Medicaid program. TMA and the other organizations encouraged HHSC to bring its telemedicine reimbursement policies in line with state law by allowing reimbursement for all services that could be provided through telemedicine. TMA staff had been told by HHSC that it was reviewing each service one at a time to examine its compatibility with telemedicine. TMA encouraged HHSC instead to identify only those codes that could not be compatible with telemedicine in order to avoid stifling the increased access to services that telemedicine could afford.

During the 2019 legislative session, TMA advocacy resulted in new legislation directing HHSC to expand the number of telemedicine medical services for which Medicaid fee-for-service and Medicaid MCOs will be able to pay. Other reforms included removing burdensome and unnecessary administrative prerequisites for Medicaid payment of telemedicine medical services. As of January 2021, HHSC has not proposed rules to implement this legislation.

**Texas Medical Board Proposed Rules Relating to Reporting of Unregulated Professionals and Delegation of Radiological Procedures, 22 Tex. Admin. Code §§ 193.5 and 193.21**

In January 2019, the Texas Medical Board (TMB) proposed rules relating to a physician’s delegation of authority. In the first set of changes, TMB proposed rules that would impose a reporting requirement on a physician who delegates an act to an individual who is otherwise unregulated (i.e., who does not have an occupational certification or license issued by a state agency). TMA expressed strong opposition in response to these proposed rules on the basis that the proposed rules are not in compliance with statutory authority, leave many questions unanswered, lack an adequate framework, and may have unintentional consequences.

TMA explains in its comments that compliance with the rule proposal would be extremely difficult because it was unclear exactly what TMB expected these physicians to do. The proposed rules state only that a physician delegating an act to these unregulated professionals have a responsibility to “report” the professionals. The rules do state that the reporting obligation would be relating to discipline or termination of the professional, but it is not clear whether this is the only thing that is to be reported, nor is it clear what type of discipline should be reported. TMA further explains that because the proposed rule would impose such a significant burden, that it would have the consequence of either discouraging disciplining these professionals, or discouraging the delegation in the first place. TMA encouraged TMB to withdraw the proposed rules and hold a stakeholders meeting.

The proposed rules also related to delegation of radiological procedures to midlevel providers. Here again, the intent of TMB’s proposed rules was not clear and TMA commented to encourage the TMB to hold a stakeholders meeting to ensure that the proposed rules would not disrupt collaborative team-based practice.

As of March 2019, TMB has not finalized these proposed rules. Prior to the submission of TMA’s comments, TMB did notify TMA that it would be holding a stakeholders meeting on the second set of rules relating to delegation of radiological procedures. The Board held a stakeholders meeting on Jun. 4, 2019. After the stakeholders meeting, the Board republished the rules for comments. TMA submitted another comment letter in response on Jun. 10, 2019.
response to TMA’s letter and other feedback, the Board withdrew the proposed rules in Aug. 2019.

TMB held another stakeholder meeting on Sept. 20, 2019, and formal proposed rules were published on Nov. 8, 2019. TMA responded with a comment letter in December 2019. TMA’s comments noted several issues with the proposed rules. Among other things, that the rules are unnecessary in light of existing delegation rules, would increase physician liability, add to existing administrative burdens, and are confusing in their language regarding levels of training and scope of practice. On May 8, 2020, TMB withdrew these rules.


In March 2019, the Department of State Health Services (DSHS) published draft rules that would address the prescription and use of epinephrine auto-injectors in institutions of higher education. Similar rules were already in existence relating to epinephrine auto-injectors in school districts and open-enrollment charter schools. The underlying statutes for the prescription and use of epinephrine auto-injectors in institutions and higher education and school districts are very similar, but contained one pertinent distinction with respect to who could issue the prescription. While the underlying statute permits health professionals other than physicians to issue prescriptions epinephrine auto-injectors to school districts and open-enrollment charter schools (as long as they have been delegated prescriptive authority under Chapter 157, Occupations Code), the applicable underlying legislation (Senate Bill 1367) requires that public institutions of higher education get prescriptions for epinephrine auto-injectors from only physicians.

In its draft rules, the Department of State Health Services failed to note this distinction. TMA submitted brief comments to encourage the department to ensure that its rules were in accordance with applicable state law. The draft rules were never published as official proposed rules.

During the 2019 session, the Legislature passed House Bill 4260, allowing a physician, or individual with delegated prescriptive authority, to prescribe to a private or independent institution of higher education. On Nov. 29, 2019, DSHS published proposed rules to implement SB 1367 and HB 4260. In January 2020, TMA submitted comments proposing a clarification to reflect the respective prescriptive authority under SB 1367 and HB 4260.

On March 20, 2020, DSHS published the adopted rules. In response to TMA’s comment, DSHS declined to make the proposed clarification. The agency stated that the prescriptive authority under SB 1367 could be read to include those who have been delegated prescriptive authority by a physician.

3. Texas Medical Association Comments to the Centers for Medicare & Medicaid Services Regarding Due Process Protections in the Conditions of Participation

The Texas Medical Association submitted comments to the Centers for Medicare & Medicaid Services to encourage amendment of the Medicare Conditions of Participation to allow for greater due process protections for physicians practicing in hospitals. TMA promoted changes in
response to three specific issues: (1) the hospital bearing the burden of proof and persuasion in proving up charges regarding privilege decisions for physicians on the medical staff; (2) physicians having an appeal mechanism to a physician board to challenge adverse privilege recommendations; and (3) a prohibition on waiving due process in any contract.

In June 2019, CMS responded to TMA’s comments directly, stating that similar issues have been raised in the past and after thorough consideration and examination, it determined that there is insufficient evidence that addressing TMA’s issues would directly or adversely impact the health and safety of patients and the quality of care provided in the hospital. CMS invited TMA to submit any peer-reviewed literature or evidence that would indicate that these factors would have a negative impact on health or safety in hospitals, upon which time it would reconsider the issue. TMA is in the process of providing a reply to CMS.


The Texas Health and Human Services Commission, Office of Inspector General (HHSC-OIG) published draft rules in June 2019. The draft rules were the next step in making amendments to sections of rule that govern how the office determines appropriate administrative penalties following a Medicaid overpayment. Previously, the office had solicited input on how the rules could be improved, and TMA submitted comments in May 2018 (See D.2).

The draft rules reflected many improvements in the regulations as suggested by TMA. In its comments in response to the draft rules, TMA noted and expressed support for the improvements, and made further suggestions as to how the rule could be improved. These further suggestions included allowing any provider enter into an installment agreement for repayments, adding consideration of good cause for failing to make certain payments, clarifying parts of the rule that are ambiguous, adding consideration of certain mitigating factors, and maintaining mentions of certain due process protections in the rule.

On December 13, 2019, HHSC-OIG published proposed rules for §§371.1603 and 371.1715. Among other changes, the proposed rules add provisions setting forth interest and penalties for repayment plans, additional remedial measures that may be considered as mitigating factors, and statutory due process protections.

TMA submitted comments on the proposed rules on Jan. 13, 2020. In general TMA, requested that HHSC-OIG provide the specific statutory authority for the proposed rules and to clarify potentially unclear language. TMA also commented on specific proposed provisions. For the proposed repayment plan interest and penalties, TMA recommended clarifying that these additional payments only apply in the event of late or missed payments, and that HHSC-OIG include the possibility of a good cause exception. For the HHSC-OIG’s sanctions and factors considered, TMA recommended that HHSC-OIG not exceed the statutory authority contained in Government Code § 531.102 and Human Resources Code § 32.039.

On May 15, 2020, HHSC-OIG published the adopted rules without changes.
4. Texas Department of Insurance Solicitation for Comments on Issues for Discussion Regarding Senate Bill 1264 and Subsequent Rulemaking

In June 2019, the Texas Department of Insurance (TDI) distributed notice of a series of issues it identified for discussion at a stakeholder meeting regarding the recently enacted Senate Bill 1264. The issues the department identified included the nonemergency disclosure exception to the bill’s prohibition on balance billing, the procedural fairness of the deadline for arbitration decisions, the use of access plans to ensure consumers are protected from balance billing that results from gaps in a health plan’s network, and benchmarking. The department further asked whether additional issues needed to be considered in the implementation of SB 1264.

On July 15, 2019, TMA, along with eight specialty societies, jointly filed a 15-page comment letter in response to TDI’s stakeholder meeting notice/information request. Regarding the disclosure exception, TMA commented on the timing of the advance notice, the information that should be included in the notice, and whether a disclosure would ever be provided under duress. In response to the arbitration issue, TMA provided some information on the arbitration system in New York and provided comments on opportunities to rebut information in arbitration and on arbitrator fee issues. TMA continued to comment that HMOs should hold enrollees harmless in situations resulting from gaps in its coverage. TMA also contended that the department should develop rules requiring health plan issuer/administrator submission of claims to the benchmarking database selected by the commissioner, and also that make it clear that TDI is responsible for providing data points from the benchmarking database to the arbitrator. Finally, TMA also recommended that TDI consider bundling of claims, exclusivity of arbitration factors, and global billing factors.

On July 29, 2019, TMA representatives attended the stakeholder meeting to discuss the issues described above. TMA President David Fleeger, MD, provided oral testimony. Following up with the stakeholders meeting, on Aug. 8, 2019, TMA submitted additional briefing to the TDI arguing that TDI did not have jurisdiction or authority to regulate the practice of medicine but must refer any alleged physician-billing violations to the Texas Medical Board.

On Sept. 27, 2019, TDI proposed rules implementing the following components of SB 1264: (1) the arbitration and mediation processes under SB 1264; (2) TDI’s complaint resolution process; (3) explanation of benefit requirements under SB 1264; and (4) requirements related to benchmarking under SB 1264. On Oct. 28, 2019, TMA (as well as 11 other societies) submitted a joint 71-page letter, expressing general concerns that the Department’s rule proposal: (1) omitted details necessary to make the arbitration and meaningful and workable process for Texas’ physicians and (2) included language that would unnecessarily increase the costs/burdens of arbitration and/or reduce access to the arbitration process. Additionally, TMA’s joint comment letter contained numerous specific objections to the rule proposal language and offered alternative language. On Oct. 23, 2019, TMA Council on Legislation Chair Debra Patt, MD, provided testimony at the TDI hearing on the formal SB 1264 rule proposal.

On Dec. 3, 2019, TDI filed an adoption order for its previously proposed rules. In its adoption order, TDI made some changes/clarifications recommended by TMA (e.g., TDI: (1) clarified that the arbitration process is a document-review process – not an in-person process – and (2) removed its proposed requirement to use best efforts to resolve a claim dispute payment through
a health benefit plan issuer’s internal appeal process before a party requests arbitration.

However, the rules as adopted continue to contain much problematic language (e.g., requiring payment of arbitrators upon assignment by TDI and imposing a 20-day waiting period after initial payment before arbitration may be initiated). The rules as adopted also omit TMA-recommended language that would have promoted access to the arbitration process. For example, TDI declined to adopt language regarding reasonable arbitrator fees.

On Dec. 18, 2019, TDI issued an emergency adoption for its rules implementing SB 1264’s exception to the prohibition on balance billing. This emergency rule and the related form are effective Jan. 1, 2020. This rule and related form were published for formal notice and comment on Jan. 10, 2020.

On Dec. 18, 2019, the TMB issued “TMB Guide Statement on TDI Rules Related to Senate Bill 1264,” which explains, among other things, that “Physicians and practitioners, under the authority and oversight of TMB, who seek to exercise the exceptions to the prohibitions against balance billing must comply with all provisions of SB 1264, including as interpreted by TDI rules.” The TMB Guidance Statement also explains the TMB’s enforcement authority related to violations of SB 1264 and notes that the “TMB will work on development of rules consistent with TDI’s rules.”

On Feb. 10, 2020, TMA, the American College of Obstetricians and Gynecologists District XI, the Texas Society for Gastroenterology and Endoscopy, and the American College of Physician Services, Texas Chapter, submitted joint comments to TDI on the emergency rules.

At the outset, the joint letter reiterated TMA’s prior comments on the lack of TDI’s authority to adopt rules on SB 1264’s out-of-network disclosure exception and its prohibition on balance billing. TDI’s authority to implement SB 1264 is limited to those provisions regulating the arbitration process and health benefit plan issuers and administrators (TDI’s traditional scope of regulation). It does not include regulating the practice of medicine, which is the purview of the TMB.

For section 21.4903 as a whole, the comments noted several inconsistencies between the rule’s language and the statute; the comments recommended that the rules use language consistent with the statute. The comments also recommended that the rules reflect that for the election of treatment by an out-of-network provider, that language reflect that this choice may be made by the enrollee’s legal representative or guardian.

For subsection 21.4903(b)(1), the joint comment letter noted that for SB 1264’s exception for permissible balance billing, TDI’s inclusion of a “meaningful choice” requirement adds an additional condition not supported by the statute. The satisfaction of this condition would also be dependent on parties outside of the out-of-network provider’s control, such as the health plans or health facility. The language of subsection (b)(1) – particularly “a meaningful choice” – is also vague and as such could lead to unintentional violations of the rule. Due to these issues, the joint comments proposed that subsection (b)(1) be omitted from the rule.

For subsection 21.4903(b)(2), the joint comments opposed the inclusion of certain language invalidating the permissible balance billing exception if the patient is “coerced by a provider or health benefit plan issuer or administrator when making the election.” The reasons for opposing
this language were similar to those raised for (b)(1). First, as the “coerced” language is
overbroad and vague, a provider could have difficulty knowing what conduct is proscribed.
Second, as the coercion may be by the health benefit plan, the satisfaction of the condition is
again outside of the control of the of out-of-network provider.

For subsection 21.4903(c), the comments noted that the proposed requirement to provide the
notice and disclosure prior to scheduling the procedure is not supported by the statute. It would
also be difficult for indirect access physicians, such as radiologists and pathologists, who
generally would have little or no interaction with the patient prior to scheduling the procedure.
TMA proposed that if TDI does go forward with this provision, it be tied to a timeframe after the
scheduling of the procedure (three business days).

Additionally, for subsection (c)’s 10-business-day requirement, the comments noted the potential
negative impacts on patient care and patient freedom of choice. While recommending that the
10-day requirement be removed altogether, the comments suggested that if the requirement
remains, it be shortened to three days. Similarly, the five business days for the patient to rescind
acceptance should be shortened to one day. The comments also recommended that TDI add two
exceptions to the day requirement, for where the patient expressly waives the requirement, or in
urgent care scenarios.

For subsection 21.4903(d), the joint comments noted several issues with the responsibility for
maintaining the signed notice and disclosure form. First, that the current rule could be construed
to require an out-of-network provider to personally maintain a copy of the signed documentation,
which is inconsistent with the rule’s other language that allows other requirements to be satisfied
by the out-of-network provider’s agent or assignee. Second, that the current language of the rule
could be read to require the out-of-network provider to retain a copy of the form even if the
procedure is not ultimately performed, an unnecessary administrative burden. Third, that the rule
requires the out-of-network provider to provide the enrollee with a copy of the signed notice and
disclosure on the date it is signed, which may not be within the provider’s control.

To address these concerns, the comments recommended adding language to allow maintenance
of the documentation by an agent or assignee, limiting the subsection’s applicability to when
balance billing occurs, and allowing a signed copy to be provided to the enrollee as soon as
practicably possible. The comments also recommended adding language to the subsection to
indicating that failing to meeting its requirements does not disqualify an out-of-network provider
from balance billing.

For subsection 21.4903(f), the comments noted concerns regarding the absolute prohibition of
utilizing the independent dispute resolution process if the out-of-network provider obtained a
signed notice and disclosure form. This language does not take into account situations where the
enrollee signs the form but is ultimately not balance billed by the out-of-network provider. The
comments also noted subsection (f) is very broadly drafted and not limited to the services and
supplies for which an out-of-network provider balance bills.

The comments recommended that the language in subsection (f) be amended to reflect that the
disqualification from the dispute resolution process be based on the provider having balance
billed the enrollee – not obtaining the signed documentation – and the language be appropriately
narrowed to apply to the services or supplies for which an out-of-network provider balance bills. The comments also recommended adding a subsection (g), which would allow a provider to participate in the independent dispute resolution process if the out-of-network provider obtained the disclosure statement in good faith but the documentation is later determined to be defective due to the actions of another person.

For section 21.4904, the comments noted issues with the cost information a party – out-of-network provider or health benefit plan – is required to provide to the enrollee, relative to their access to that information. The proposed rule imposes demanding obligations on the out-of-network provider, without a corresponding obligation for the health benefit plan. However, the latter determines its payment and coverage information. To address this imbalance, the comments recommended additional language for the proposed rule, requiring the health benefit plan to facilitate the out-of-network provider’s completion of the notice and disclosure form by providing its coverage and payment information, as well as an estimate of the enrollee’s total financial responsibility. The comments also recommended that an exception for the out-of-network provider’s obligation to provide cost information where the provider has made a good faith attempt to obtain the benefit plan payment information but was unable to do so.

Lastly, for the TDI Proposed Notice and Disclosure Statement Form, for areas corresponding to TDI’s proposed rules, the comments recommended changes to the form consistent with the comments’ recommendations for the corresponding proposed rules. The comments also recommended removing language indicating that the enrollee is waiving his or her legal rights, as the enrollee is exercising an exception set forth in the underlying statute. The comments also recommended changes to the form to reflect that information supplied by the out-of-network provider is estimated based on the scheduled services and supplies and that the actual date and costs may vary.

The initial expiration date for TDI’s emergency rule was April 30, 2020. On April 17, 2020, citing to authority under of Government Code §2001.034(c), TDI renewed the rule for 60 days to June 28, 2020.

On June 19, 2020, TDI published its adopted rules (28 Tex. Admin. Code §§21.4901-4904). Sections 21.4901, 21.4902, and 21.4904 were adopted without substantive changes. TDI also declined to make any changes to the Proposed Notice and Disclosure Statement Form. In §21.4903, TDI adopted changes to subsections 21.4903 (d) and (f) in line with TMA’s recommended changes. For subsections (b) and (c) though, TDI declined to make any changes from the original proposed language.


In October 2018, TMA, the Texas College of Emergency Physicians, the Texas Neurological Society, and the Texas Society of Anesthesiologists (collectively, Associations) provided joint comments to the Texas Department of State Health Services (DSHS) on draft rules regarding stroke facility designation requirements. In August 2019, DSHS put forth a second round of draft rules for comment. On Sept. 9, 2019, the Associations jointly responded, thanking DSHS for
incorporating several of the 2018 recommendations, and urging that the draft rules be amended
to include the remaining 2018 recommendations.

On June 23, 2020, the Texas Department of State Health Services (DSHS) held a webinar
stakeholder meeting to discuss stroke facility designation rules. TMA, the Texas Society of
Anesthesiologists, the Texas College of Emergency Physicians, and the Texas Neurological
Society submitted joint follow-up comments on July 10, 2020. The comments thanked DSHS for
making certain changes consistent with the 2018 and 2019 recommendations, though noting that
several of the addressed concerns still remained. The comments also made several
recommendations regarding drafting errors, surveyor conflicts of interest, notification
requirements for a facility experiencing a temporary interruption in its capabilities, and public
advertising and communication. As of January 2021, DSHS has not officially published
proposed rules for § 157.133.

Texas Medical Board Guidance Letter Regarding House Bill 2174’s 10-day Limit on Opioids

In August 2019, the Texas Medical Board (TMB) offered initial guidance related to the state’s
new 10-day limit on opioid prescriptions for acute pain, which was created by House Bill 2174
in the 86th Texas Legislature. On Sept. 21, 2019, TMA submitted jointly with the Texas
Orthopaedic Association a request for additional clarification to TMB. While noting that TMB’s
guidance was helpful in that it answered the question as to whether or not a follow-up
prescription could be written for an episode of care, it also implied that a follow-up prescription
could only be written if the patient sees the physician in person, contradicting HB 2174. TMA
again noted this issue in the Feb. 28, 2020 joint follow-up letter to the February TMB
stakeholder meeting, discussed below. As discussed more fully below, on April 3, 2020, TMB
published proposed rules amending the Pain Management definitions in 22 Tex. Admin. Code
§170.2, which were adopted on July 10, 2020. The amendments added to the definition of “acute
pain”, limiting its duration to no more than 30 days from the date of the initial opioid
prescription.

As of January 2021, TMB has not published additional proposed rules or guidance on this
subject.

6. Texas Department of State Health Services Request for Feedback on Informal Rule
Proposals regarding MEDCARES Grant Program, 25 Tex. Admin. Code, Ch. 36.

In September 2019, the Texas Department of State Health Services (DSHS) requested
stakeholder feedback on draft rules for the MEDCARES Grant Program. On Oct. 7, 2019, TMA
jointly responded with the Texas Pediatric Society. The joint comments notes that the draft rules
(1) conflict with scope of practice laws in Texas; (2) are not well-tailored to the use of the grant
outlined in the underlying statute and a related legislative report; and (3) contain terms that are
confusing or are inconsistent with the statute and report. As of January 2021, DSHS has not
published proposed rules or otherwise responded to the comments.
7. **Texas Board of Chiropractic Examiners Proposed Rule Relating to Questions About Scope of Practice, 22 Tex. Admin. Code § 78.10**

On October 4, 2019, the Board of Chiropractic Examiners (TBCE) published proposed rules allowing the Board to provide informal letter opinions about scope of practice. TMA responded with a comment letter on Oct. 24, 2019, objecting to the proposed rule, based on it conflicting with statute. Specifically, sections of the Occupations Code setting forth TBCE’s rulemaking role in clarifying scope of practice, which the legislature passed to stop the TBCE practice of issuing informal opinions. On April 6, 2020, the proposed rule was withdrawn.

8. **Texas Medical Board, TMA Comments on Topics Discussed at Oct. 9, 2019, Opioid Workgroup**

On Oct. 9, 2019, the Texas Medical Board (TMB) held an Opioid Workgroup meeting, which TMA representatives attended. Following the meeting, on Oct. 24, 2019, TMA submitted its recommendations, in three areas: (1) recommendations on defining acute, chronic, and post-operative pain; (2) recommendations on interpreting and enforcing the Prescription Monitoring Program (PMP) checks and e-prescriptions; and (3) recommendations on interpreting and enforcing opioid CME legislation.

For the opioid CME requirements, TMB released initial guidance on February 6, 2020, and proposed rules on March 27, 2020. As discussed more fully below, TMA submitted comments on May 26, 2020, and TMB published the adopted rules on July 3, 2020. For the PMP check requirements, TMB released initial guidance on Feb. 7, 2020, updated guidance on Feb. 21, 2020, and proposed rules on April 3, 2020. On that date, TMB also released proposed rules addressing definitions for the types of pain. As discussed more fully below, for the pain definitions and PMP requirements, TMA submitted comments on May 28, 2020, and TMB published the adopted rules on July 10, 2020.


On Nov. 8, 2019, the Texas Medical Board (TMB) published proposed rules amending § 193.5, Physician Liability for Delegated Acts and Enforcement, and § 193.13, Certified Registered Nurse Anesthetists. TMB also proposed a new § 193.21, Delegation Related to Radiological Services.

TMA submitted a comment letter on Dec. 2, 2019. For § 193.13, TMA noted that the proposed language about a physician “ensuring” and being “ultimately responsible” is inconsistent with the underlying statute and the recent Attorney General opinion that was a basis for the revisions. For §§ 193.5 and 193.21, TMA opposed the proposed rules and requested their withdrawal, for four main reasons. First, Chapter 157 of the MPA already provides clear language on supervision and delegation. Second, the rules impose unnecessary documentation requirements. Third, the rules contain inappropriate liability language. Lastly, the rules contain confusing language that blurs scope lines and fails to clearly articulate the responsibility of the physician. On May 8, 2020, TMB withdrew the proposed rules.

On Nov. 8, 2019, the Texas Medical Board (TMB) published proposed rules amending § 193.17, Nonsurgical Medical Cosmetic Procedure. The expressed purpose behind the amendment was to add language clarifying the responsibilities of delegating physicians and providers while providing non-surgical cosmetic procedures in medspas. TMA and the Texas Society of Plastic Surgeons (collectively, Associations) responded jointly on Dec. 6, 2019. Though thanking TMB for holding several stakeholder meetings on different informal versions of the proposed rules, the Associations noted their concern that the proposed language still contains several ambiguities, drafting errors, and potential scope of practice conflicts that require further stakeholder feedback, as well as additional clarity in the language. Accordingly, the Associations asked TMB to withdraw its proposed rule and continue to seek feedback from stakeholders to better clarify the physician’s responsibilities and notification requirements, refine the definitions to prevent unintended scope of practice conflicts, and carefully review the rule to correct drafting errors. On May 8, 2020, TMB withdrew the proposed rules.

10. **Texas Department of State Health Services State Plan for Alzheimer’s Disease 2019 – 2023, and Stakeholder Meeting**

On Nov. 19, 2019, the Department of State Health Services (DSHS) held a meeting to present its recently released Texas State Plan for Alzheimer’s Disease 2019 – 2023 (State Plan) and receive stakeholder input. TMA representatives attended the meeting, and TMA submitted a comment letter on Dec. 19, 2019. TMA raised its concerns with the language in the State Plan regarding “best practices,” “validated standards” and stakeholder responsibility for implementation of the State Plan. TMA also noted that 2019 Legislature set forth specific instructions for the State Plan, which the State Plan does not include or contradicts.

On Jan. 21, 2020, DSHS responded to TMA’s concerns. Though not addressing the effect of the 2019 legislation, DSHS explained that the current State Plan had been developed based upon stakeholder feedback gathered in 2018, of which TMA had been provided the opportunity to participate.

11. **Texas Department of Insurance, Division of Workers’ Compensation Proposed Amendment for Work Status Reports, 28 Tex. Admin. Code § 129.5**

On Oct. 11, 2019, the Texas Department of Insurance, Division of Workers’ Compensation (DWC) proposed amendments to conform § 129.5 to the changes made by House Bill387 (86th R.S.). HB 387 allows a treating doctor to delegate authority to complete, sign, and file a work status report to a licensed advanced practice registered nurse. TMA provided comments on Dec. 19, 2019, requesting the DWC clarify an introductory clause. Specifically, to clarify whether the authorization of the delegation is governed the licensing statute of the physician or the delegate.

On Feb.28, 2020, DWC published adopted rule § 129.5. Though the adopted language remained the same as proposed, the agency’s comments accompanying the adopted rule clarified that authorization of the delegation is governed by the licensing statute of the physician.
12. **Centers for Medicare & Medicaid Services Proposed Amendments to the Stark Law**

In October 2019, the Centers for Medicare & Medicaid Services (CMS) published proposed rules amending the physician self-referral law (Stark Law). The stated purpose of the changes is to adapt the rules to healthcare’s shift to coordinated care and alternative payment models. In December and January, TMA submitted comments on the proposed amendments, joining letters submitted by the Partnership to Empower Physician-Led Care (PEPC) and the Physicians Advocacy Institute (PAI), and submitting its own letter on the proposed rules relating to health information technology. In general, PEPC, PAI, and TMA’s comments encouraged CMS to adopt requirements that would be complementary to existing requirements in federal health law, and thus avoid adding to physicians’ existing regulatory burdens. CMS’ final rule was published on Dec. 2, 2020. The main result of the rule amendments is to except “value-based arrangements” from the Stark Law’s prohibition on physician self-referrals.


In October 2019, the Health and Human Services Office of Inspector General (HHS-OIG) published proposed rules amending the Anti-Kickback Statute (AKS). The stated purpose of the changes is to adapt the rules to healthcare’s shift to coordinated care and alternative payment models. In December and January, TMA submitted comments on the proposed amendments, joining letters submitted by the Partnership to Empower Physician-Led Care (PEPC) and the Physicians Advocacy Institute (PAI), and submitting its own letter on the proposed rules relating to health information technology. In general, PEPC, PAI, and TMA’s comments encouraged HHS-OIG to adopt requirements that would be complementary to existing requirements in federal health law, and thus avoid adding to physicians’ existing regulatory burdens. As of August 2020, HHS-OIG has not published adopted rules. HHS-OIG’s final rule was published on Dec. 2, 2020. The main result of the rule amendments is to create “safe harbors” from AKS enforcement for “value-based” arrangements.


On Jan. 27, 2020, the Texas Health and Human Services Commission (HHSC) released draft standards for HHSC’s review and approval of the human trafficking training courses required by House Bill 2059. On Jan. 31, 2020, TMA submitted informal comments. TMA recommended that the review process include notifying the submitter of a training course of any deficiencies that resulted in disapproval, so that the deficiencies could be addressed and the course resubmitted.

Sometime in April or May of 2020, HHSC’s website was updated to include a document that sets forth the training course review process (titled “HHSC Human Trafficking Training Review Process”). The review process set forth therein includes TMA’s recommendation that if a submitted training course is denied, HHSC will provide the submitter with a detailed explanation of the denial reasons.
15. **Texas Health and Human Services Commission Draft Rules on Human Trafficking**

   **Training Requirements, 26 Tex. Admin. Code § 370.1**

On Jan. 8, 2020, the Texas Health and Human Services Commission (HHSC) released draft rules for human trafficking training required by House Bill 2059. TMA submitted informal comments on Jan. 21, 2020. TMA’s comments recommended the draft rule be amended to be consistent with the underlying statute. Specifically, that physicians be excluded from HHSC’s training requirements. TMA noted that H.B. 2059’s amendment of the Chapter 156 of the Occupations Code placed training in human trafficking prevention within a physician’s CME requirements, and thus this training fell within the purview of the Texas Medical Board, not HHSC. TMA also requested clarification of the “identification” and “assessment” components in the training courses to ensure that they did not exceed the scope of practice of some of the course’s intended participants.

On Aug. 14, 2020, HHSC published its proposed rule for §370.1. TMA submitted comments on Sept. 4, 2020, again recommending that HHSC amend the proposed rule to be consistent with the rulemaking framework established by the legislature in House Bill 2059, 86th R.S. (2019), with the Texas Medical Board having authority over physician training, not HHSC. TMA also recommended that § 370.1 be amended to clarify the breadth of the “identification” and “assessment” components of a training course, to avoid unintended scope expansion.

HHSC published the adopted rule on Nov. 27, 2020. The adopted rule reflected TMA’s recommendation that physicians be excepted from HHSC’s course requirements. However, the adopted ruled did not incorporate TMA’s suggested revisions regarding the rule’s required training course components.

16. **Texas Department of Licensing and Regulation Proposed Rule on Opioid Prescription Limits to Treat Acute Pain, 16 Tex. Admin. Code § 130.59**

On Jan. 3, 2020, the Texas Department of Licensing and Regulation (TDLR) published a proposed rule for podiatrists to prescribe opioids. The proposed rule was nearly identical to Health and Safety Code § 481.07636, and the former included the latter’s exception for prescriptions for treatment of substance abuse. On Jan. 30, 2020, TMA submitted comments to TDLR on the proposed rule. TMA’s letter noted that treatment of substance abuse addiction contemplated by § 130.59(c) is outside of a podiatrist’s scope of practice and recommended that this language be removed to avoid confusing a podiatrist’s appropriate scope of practice.

On June 26, 2020, TDLR published adopted rules, stating that it agreed with TMA’s comment and deleting subsection (c).


On Jan. 8, 2020, the Texas Department of State Health Services (DSHS) released draft rules that would repeal the current rules in Texas Administrative Code Title 25, Chapter 37, Subchapter S in their entirety in order to propose a new framework for operation of the newborn screening program. On Jan. 23, 2020, TMA responded with informal comments to DSHS. In the comment
letter, TMA noted that there are areas of the draft rules that differed from the structure and terminology of the previous rules and underlying statute. TMA’s letter recommended that DSHS holding a stakeholder meeting followed by an opportunity for additional comment could help address these concerns.

On Aug. 7, 2020, DSHS published proposed rules, on which TMA submitted comments on Sept. 4, 2020. TMA recommended amendments to the proposed rules in three areas. First, that the required reporting section be amended to account for when a parent does not consent to disclose personally identifying information. Second, that the section addressing sharing clinical results be amended to ensure that this information will ordinarily be provided to the patient’s primary care physician. Lastly, that the language on the timeframes for proving the follow-up screening and diagnostic evaluation be amended to reflect that appointment scheduling and attendance is outside of the practitioner’s control.

DSHS published adopted rules on Dec. 18, 2020. DSHS addressed TMA’s first recommendation – regarding reporting when a parent declines to consent to disclosure – by modifying the language of the applicable subsection. DSHS did not make any changes in response to TMA’s second and third recommendations.


On March 10, 2020, the Texas Health and Human Services Commission (HHSC) held a public stakeholder meeting on psychoactive medication consent requirements for hospitals. Representatives from TMA attended the meeting. At the meeting, two differing interpretations of the rules were put forward, with various stakeholders interpreting the rules to only apply to psychiatric hospitals or licensed mental health units within hospitals, and HHSC interpreting the rules to apply to hospitals generally.

TMA submitted a follow-up comment letter on March 25, 2020. TMA’s comment letter noted that TMA’s physician members uniformly disputed the proposed rule’s separate process or promulgated form for consent to treatment with psychoactive medication outside of inpatient mental health settings. The letter explained that the draft rules could complicate informed consent conversations between physician and patient, delay patient care, introduce excessive administrative burden, and inappropriately stigmatize mental health treatment.

As of January 2021, HHSC has not responded to TMA’s comments or published proposed rules.

19. **Texas Medical Board, February Opioid Workgroup Meeting**

On Feb. 18, 2020, the Texas Medical Board (TMB) held a stakeholder meeting, which representatives from TMA attended. On Feb. 28, 2020, TMA, the Texas College of Emergency Physicians, the Texas Orthopaedic Association, and the Texas Academy of Family Physicians jointly submitted follow-up comments.

The joint letter made recommendations in two areas. First, for a 10-day prescription for acute pain, the letter recommended that the TMB allow a post-operative follow-up visit be conducted
via telecommunications, as set forth in Chapter 111 of the Texas Occupations Code. Second, the letter recommended that TMB implement two prior recommendations on opioid CME requirements: (1) that the rules be tailored to the types of physicians specified by the underlying legislation; and (2) that the rules clarify that physicians need not to take the same course each time.

For the opioid CME requirements, TMB released initial guidance on Feb. 6, 2020, and proposed rules on March 27, 2020. As discussed more fully below, TMA submitted comments on May 26, 2020 and TMB published the adopted rules on July 3, 2020.

Also discussed more fully below, on April 3, 2020, TMB published proposed rules amending the Pain Management definitions in 22 Tex. Admin. Code §170.2, which were adopted on July 10, 2020. The amendments added to the definition of “acute pain”, limiting its duration to no more than 30 days from the date of the initial opioid prescription.

20. Texas Department of State Health Services, Draft Rule on Maintenance and Administration of Asthma Medicine, #20R019, Title 25, Chapter 40, Subchapter D

On March 9, 2020, the Texas Department of State Health Services (DSHS) released draft rules on the maintenance and administration of unassigned asthma inhalers at schools. TMA submitted informal comments on March 31, 2020. TMA’s comment letter recommended that DSHS amend the draft rules to clarify the responsibilities for obtaining a renewed prescription and for issuing the standing order. Specifically, that the rules clarify (1) which practitioner is responsible for providing the standing order, and (2) that is the responsibility of the campus—not the prescribing physician—to obtain the annual prescription.

On Oct. 16, 2020, DSHS published proposed rules, which incorporated TMA’s recommended revisions. As of January 2021, DSHS has not published the adopted rules.

Texas Department of State Health Services, Draft Rule on Control of Communicable Diseases, #20RO59, Title 25, Chapter 97, Subchapter A

On April 8, 2020, the Texas Department of State Health Services (DSHS) released draft rules amending its rules on the identification and reporting of communicable diseases and notifiable conditions. TMA submitted an informal comment letter on April 18, 2020. TMA’s letter supported the inclusion of “syphilis infection in pregnant women” as beneficial to addressing Texas’s increase in congenital syphilis morbidity. Also, TMA’s comments recommended that a multidrug-resistant bacteria not be removed from the notifiable conditions list, and that DSHS consider adding more multidrug resistant organisms to the list. Additionally, given the current pandemic, TMA stressed the importance of current reporting requirements related to significant respiratory pathogens. Lastly, for the draft rule’s deletion of “practitioner name” in the minimal reporting requirements, TMA requested that DSHS provide an explanation of its rationale for removal and remedy the potential inadvertent removal of “name.”

On Sept. 11, 2020, DSHS published proposed rules, which addressed TMA’s concern regarding the draft rule’s deletion of “practitioner name,” but did not change the diseases added and removed. DSHS published the adopted rules on January 1, 2021, without substantive changes.
Texas Department of State Health Services, Draft Rule on Informed Consent for
Investigational Stem Cell Treatment, Draft Rule #20R014, Title 25, Chapter 1, Subchapter
V, Section 1.462

Pursuant to House Bill 3184 (86th, 2019), on April 22, 2020, the Texas Department of State
Health Services (DSHS) released draft rules amending the informed consent form rule for
investigational stem cell treatment. TMA submitted an informal comment letter on May 1, 2020.
TMA’s comments encouraged DSHS to clarify the intent and language of draft §1.462 (as well
as the draft DSHS informed consent form). TMA also requested that DSHS hold a stakeholder
meeting to discuss the proposed rules and consent form prior to formal publication of the
proposal in the Texas Register. Such a stakeholder meeting would (1) foster a better
understanding of DSHS’s intended operation of the draft rules and form; and (2) enable more
meaningful comments at the formal rulemaking stage.

On Sept. 11, 2020, DSHS published proposed rules. The proposed rules addressed some but not
all of the issues raised in TMA’s informal comment letter. On Oct. 9, 2020, TMA submitted
comments on the proposed rules, again recommending changes for the proposed rule and draft
consent form to make clearer the requirements of the proposed rule and underlying statute
(Chapter 1003 of the Texas Health and Safety Code), as well as again requesting a stakeholder
meeting. As of January 2021, DSHS has not responded to TMA’s letter or published adopted rules.

Texas Medical Board, Proposed Rule on Prescription of Controlled Substances, 22 Tex.
Admin. Code §§ 170.2, 170.3, and 170.9

On April 3, 2020, the Texas Medical Board (TMB) published proposed rules amending 22 Tex.
Admin. Code §§ 170.2 (Definitions), 170.3 (Minimum Requirements for the Treatment of
Chronic Pain), and new rules in 170.9 (Prescription Monitoring Program (PMP) Check). The
rulemaking preamble indicated that the proposed rules incorporated stakeholder input from the
October 2019 and February 2020 opioid workgroup meetings (discussed above).
TMA, Texas Pain Society, Texas Society of Anesthesiologists, Texas Academy of Physicians,
Texas Chapter of the American College of Physician Services, American College of
Obstetricians and Gynecologists, Texas Association of Obstetricians and Gynecologists, and the
Texas College of Emergency Physicians submitted joint comments on May 28, 2020. The joint
comments noted the lack of consensus and other issues regarding the pain definitions in § 170.2
and requested the TMB reconvene the opioid workgroup to continue discussions on the issue.
The joint comments also recommended changes to §§ 170.2 and 170.3 to be consistent with
other statutes and rules. This included striking mandatory PMP review documentation and
making an integrated electronic health record system to conduct PMP checks automatically
compliant. Lastly, the joint comments proposed several minor drafting revisions to § 170.9.

TMB published adopted rules on July 10, 2020. Sections 170.2 and 170.3 were adopted without
any changes. For § 170.9, TMB incorporated the joint comment’s suggested drafting revisions
into the adopted rules.

On March 27, 2020, the Texas Medical Board (TMB) published proposed amendments to 22 Tex. Admin. Code §§ 166.2 (Continuing Medical Education) and 172.13 (Conceded Eminence). TMA submitted comments on May 26, 2020.

For §166.2, TMA’s comments included six recommendations. First, that the CME requirements apply only to prescribing and direct-patient-care physicians. Second, that TMB permit extra opioid CME credit hours to roll over to the next renewal period. Third, that TMB extend the new CME deadline to be consistent with TMB’s extension on license renewals (due to the COVID-19 Disaster). Fourth, TMA recommend adding language to clarify the ability to dually use opioid and human trafficking CME required hours for the medical ethics and/or professional responsibility requirement. Fifth, that TMB clarify unclear and possibly mistaken language in §166.2(d)(1). For §172.13, TMA recommended that TMB consider whether some portion of the 10-year practice requirement occur in the U.S., as well as several recommendations addressing inconsistent, unclear, and/or possibly unintended language throughout the proposed rules.

TMB published adopted rules on July 3, 2020, adopting both with non-substantive changes consistent with several of TMA’s recommendations.

Texas Department of Insurance, Comments on Reporting Requirements under SB 1264 (i.e., Tex. Ins. Code § 38.004)

On March 26, 2020, the Texas Department of Insurance (TDI) held a webinar meeting for input on data reporting requirements in Senate Bill 1264. Per TDI’s request, TMA and the Texas Society of Anesthesiologists submitted written comments in advance on March 25, 2020. For data collected by TDI, the joint comments included several recommendations regarding the breadth, applicability, accuracy, verification, and sources of data collected by TDI. The joint comments also requested clarification of two similarly worded reporting requirements in the statute. Lastly, the joint comments requested the opportunity provide supplemental comments after completion of the webinar to address a Draft SB 1264 Data Reporting Form released by TDI on the morning of March 25, 2020.

On April 3, 2020, TMA, Texas Society of Anesthesiologists, Texas College of Emergency Physicians, Texas Radiological Society, and Texas Society of Pathologists submitted joint comments addressing the draft Data Reporting Form released by TDI on March 25, 2020. Similar to the earlier comments, the April 3 joint comments raised several general concerns regarding the data reporting. The comments noted that the Data Reporting Form, as currently drafted, appears to be reliant solely on health plan reported data without any clear mechanism for vetting the data. Also, the data reporting form is not accompanied by a directions sheet that would clearly explain the terms and categories/columns in the form in order to ensure that health plans are submitting data uniformly. Additionally, that the data breakdown is too generalized to provide meaningful data for the purposes of evaluating the impact of SB 1264.

On July 7, 2020, TDI released a Commissioner’s Bulletin to all health benefit plan issuers and administrators, issuing a mandatory data call under § 38.004. The data call directed health
benefit plan issuers to a revised Reporting Form, available on TDI’s website. The revised Reporting Form reflected changes to address some of the issues raised by TMA’s joint comments in March and April. For example, complaints regarding balance billing are collected through a separate report form from licensing boards, not health benefit plans. However, the revised Reporting Form, and accompanying FAQ, do not fully address TMA’s concerns about the source, accuracy, and verification of the data collected by TDI.

As of January 2021, TDI has not released additional information on the data reporting requirements under § 38.004.

**Texas Department of Insurance, Informal Comments on Draft Rule on Consumer Choice of Benefit Plan Disclosure Rules**

On July 1, 2020, the Texas Department of Insurance (TDI) released an informal working draft and request for informal comments on consumer choice benefit plan disclosure rules. TMA submitted comments on July 14, 2020. Generally, TMA’s comments supported changes that would increase consumer information about the plans being purchased. TMA opposed changes that would decrease or impede consumer access to plan information, allow plans to create their own disclosure forms instead of the standardized TDI form, and reduce requirements for plan reporting on costs and coverage.


**Texas Department of Insurance, TMA Recommendations for Biennial Report**

On June 1, 2020, the Texas Department of Insurance (TDI) invited submissions of suggested statutory changes, to be considered for inclusion in TDI’s biennial report to the Texas Legislature. TMA submitted seven recommendations. First, amend Tex. Ins. Code §1455.004 to enact telemedicine coverage and payment parity policies, like those found in emergency rule 28 Tex. Admin. Code §35.1. Second, amend Tex. Ins. Code Subchapter B, Chapter 541 to add specific violation and enforcement measures against a health benefit plan that violates the prudent layperson standard for emergency care. Third, amend Tex. Ins. Code §1467.084(e)(1) to increase the statutory limit on bundling claims for arbitration under Senate Bill 1264. Fourth, amend Tex. Ins. Code §1467.082 to ensure SB 1264 arbitrator fees are reasonable. Fifth, amend Tex. Ins. Code Chapters 843, 1301, and 4201 to give TDI explicit statutory authority to audit health plans’ compliance with prior authorization timeframes. Sixth, amend Tex. Ins. Code §4201.206 to require a peer-to-peer discussion, with a Texas-licensed physician of the same or similar specialty, before a utilization review agent issues an adverse determination. Seventh, amend Tex. Ins. Code Chapter 4201 to create an automatic approval, on an individual physician basis, that waives prior authorization requirements for a specific procedure/service that is ordinarily approved for that physician.

In December 2020, TDI released its biennial report to the Texas Legislature. The report did not include any of TMA’s recommended statutory changes.
Texas Health and Human Services Commission, Informal Comments on Standards of Care and Treatment in Psychiatric Hospitals, Draft Rule #20R008, Title 26, Chapter 568

On June 25, 2020, the Texas Health and Human Services Commission (HHSC) released draft rules on standards of care and treatment in psychiatric hospitals. TMA submitted informal comments on July 7, 2020. TMA’s comments recommended that HHSC reconsider proposed “face-to-face” training requirement in draft §568.490(a)(1), given that the ongoing COVID-19 pandemic and that the underlying statute does not contain an in-person requirement. TMA also suggested several technical corrections for consistency with Texas statutes.

On Jan. 1, 2021, HHSC has published proposed rules, which reflected TMA’s recommended technical corrections, but did not alter the “face-to-face” training requirement.

Texas Health and Human Services Commission, Informal Comments on Preadmission Screening and Resident Review (PASRR), Draft Rule #20R049, Title 26, Chapter 303

On June 12, 2020, the Texas Health and Human Services Commission (HHSC) released draft rules on screening and review of individuals with intellectual and developmental disabilities. TMA and the Federation of Texas Psychiatry jointly submitted informal comments on June 24, 2020. The joint comments made four recommendations including: recommending that HHSC remain cognizant of scope of practice issues when revising the rules; requesting that HHSC explain or remove the additional training requirements for licensed practitioners of the healing arts than for providers with lower qualification levels; for background purposes and to inform any future comments at the formal rulemaking stage, the comments noted that it would be helpful if HHSC further elaborated on the impetus for the changes it its draft rules. As of January 2021, HHSC has not published proposed rules.

Texas Office of the Governor, Comments on Regulatory Compliance Division Proposed Rules, 1 Tex. Admin. Code §§ 5.201-5.213

On April 24, 2020, the Office of the Governor (OTG) released proposed rules related to its review of certain state agencies’ proposed rules’ effects on market competition, 1 Tex. Admin. Code §§ 5.201-5.213. TMA submitted comments on May 24, 2020. First, for §5.204(a)(2), TMA recommended adding “has reason to believe” language for consistency with the underlying statute. Second, for §5.213’s provisions regarding rule information publicly available on OTG’s website, TMA recommended that the rule specify that any submission memorandum attachments or supplemental documentation be available as well. Lastly, for an agency claiming exigent circumstances to waive §5.208’s 30-day comment period, TMA recommended at least a 10-day comment period in those circumstances.

On Oct. 9, 2020, OTG published adopted rules. OTG revised the adopted rules in accordance with TMA’s recommendations regarding the addition of “has reason to believe” language and a 10-day minimum comment period, but declined to revise its website rule to include the availability of attachments or supplemental materials.
Texas Health and Human Services Commission Proposed Rules for Child Care Regulation,  
Title 26, Part 1, Chapters 744, 746, and 747  

On Nov. 20, 2020, the Texas Health and Human Services Commission (HHSC) published proposed rules regulating family homes, before and after-school programs, childcare centers, and childcare homes. TMA submitted a comment letter on Dec. 18, 2020. TMA’s comments recommended that the meal substitution provisions in proposed 26 Tex. Admin. Code §§ 744.2411, 746.3311, and 747.3111 be amended to remain consistent with the nutrition standards of the federal Child and Adult Care Food Program (CACFP), specifically, that any meal substitution for a child with a disability be supported by written approval from a physician or other health care professional with prescriptive authority. As of January 2021, HHSC has not published adopted rules.

Texas Department of Insurance Proposed Amendments and Repeals Regarding Preferred Provider Benefit Plans (PPBPs), Exclusive Provider Benefit Plans (EPBPs), and Health Maintenance Organizations (HMOs)  


TMA submitted comments on Oct. 26, 2020. The comments noted that TMA supported TDI’s intent of incorporating the requirements of House Bill 3911 and Senate Bill 174— which TMA supported during the last legislative session – into the proposed rules. However, TMA opposed the proposed rules’ elimination of certain network adequacy requirements for a benefit plan written by an insurer or HMO for a contract with the Health and Human Services Commission to provide services under CHIP, Medicaid, or with the State Rural Health Care System. TMA’s comments also offered technical corrections to various portions of the proposed rule. As of January 2021, TDI has not published adopted rules.

Texas Department of Pharmacy Proposed Rules Regarding Mandatory E-Prescribing Exceptions and Waivers, 22 Tex. Admin. Code §315.3  

On Oct. 2, 2020, the Texas State Board of Pharmacy (Pharmacy Board) published proposed amendments to 22 T.A.C. § 315.3, pertaining to the implementation of the exceptions and waivers for mandated e-prescribing in House Bill 2174 (86th R.S. 2019).

TMA submitted comments on Oct. 30, 2020, addressing two areas of the proposed rules. First, that there are seven additional exceptions in the underlying statute (Health and Safety Code §481.0755) that are not included in subsection (c)(2) of the proposed rule. To prevent potential confusion, TMA requested the Pharmacy Board either list all of the exceptions or cross reference the relevant statutory provisions. Second, TMA urged the Pharmacy Board to use its discretion to add three additional waivers: (1) for physicians who prescribe fewer than 100 controlled substances a year; (2) for compound medications; and (3) based on a reasonable request by a
patient. TMA’s letter also noted that HB 2174 requires the Board to define emergency situations where electronic prescribing may not be appropriate.

The Pharmacy Board published adopted rules on Dec. 11, 2020. For TMA’s first issue, the Pharmacy Board added a reference to in the adopted rule to the additional exceptions in Health and Safety Code §481.0755. For the second issue, the Pharmacy Board declined to add the additional waivers, on the grounds that it lacked the discretion to do so. The Pharmacy Board did not address TMA’s comments regarding defining emergency situations.

**Texas Department of Insurance, Division of Worker’s Compensation, Proposed Rules**

*Regarding Electronic Submission of Requests for Medical Fee Dispute Resolution, 28 Tex. Admin. Code § 133.307*

On Oct. 9, 2020, the Texas Department of Insurance, Division of Worker’s Compensation (TDI-DWC), published proposed amendments to 28 Tex. Admin. Code §133.307. Currently, the methods of submitting a request are limited to mail, hand-delivery, and fax. The proposed rule amendments would allow requests to be submitted electronically.

On Nov. 4, 2020, TMA and the Texas Orthopaedic Association submitted joint comments, expressing support for the proposed amendments, which would ease the administrative burdens associated with mail and personal delivery. As of January 2021, TDI-DWC has not published adopted rules.


On Oct 23, 2020, the Texas Department of Insurance (TDI) published proposed rules regarding utilization review for health care provided under a health benefit plan or health insurance policy. TMA submitted comments on Nov. 23, 2020. The comments noted that TMA had strongly supported the underlying legislation – Senate Bill1742, House Bill1584, and House Bill 3041 – and offered several technical comments and recommendations for the proposed rules.

As of January 2021, TDI has not published adopted rules.

**Texas Medical Board Proposed Rules Regarding the Implementation of the Memorandum of Understanding between the Board and the Texas Physician Health Program, 22 Tex. Admin. Code §161.11.**

On Nov. 6, 2020, the Texas Medical Board (TMB) published a proposed a new rule, 22 T.A.C. §161.11, pertaining to the implementation of the Memorandum of Understanding between the Board and the Texas Physician Health Program (TXPHP).

TMA submitted comments on December 4, 2020, addressing two areas of the proposed rule. First, for legal counsel provided to TXPHP by a TMB attorney under proposed 161.11(b)(5), TMA expressed concern regarding access to TXPHP information of physician under TMB investigation. TMA recommended that TMB develop internal safeguards to preserve
Confidentiality of TXPHP materials. Second, TMA requested that TMB modify proposed § 161.11(e)(2) to be consistent with the underlying statute. Specifically, that the TXPHP’s reporting of information relating to physician impairment is permissive, not mandatory.

TMB published adopted rules on Dec. 25, 2020, declining to make any changes for either issue. However, for the first issue, the Board’s response to TMA’s comment stated that “TMB general counsel has protections in place to ensure that TXPHP information remains separate and confidential from TMB information.”


On Nov. 12, 2020, the Texas Medical Board (TMB) published proposed amendments to 22 T.A.C. §170.10, pertaining to the implementation of the exceptions and waivers for mandated e-prescribing in House Bill 2174 (86th R.S. 2019).

TMA submitted comments on Dec. 4, 2020, addressing three areas of the proposed rules. First, that proposed rule preamble only addresses the e-prescribing waivers and but not the automatic exception. As the latter are also included in the rule (in subsection (b)), their omission from the preamble could confuse readers into thinking that a waiver is required for the automatic exceptions. Second, that there seven additional exceptions in the underlying statute (Health and Safety Code §481.0755), which are not included in subsection (b). To prevent potential confusion, TMA requested TMB to either list all of the exceptions or cross reference the relevant statutory provisions. Third, TMA urged TMB to use its discretion to add three additional waivers: (1) for physicians who prescribe fewer than 100 controlled substances a year; (2) for compound medications; and (3) based on a reasonable request by a patient.

TMB published adopted rules on Dec. 25, 2020. For TMA’s first and second issues, the Board modified the adopted rule preamble language and added a reference to the additional exceptions in Health and Safety Code §481.0755. For the third issue, TMB declined to add the additional waivers, on the grounds that the Board lacked the discretion to do so.

Texas Board of Nursing Proposed Rules Regarding Balance Billing Dispute Resolution (SB 1264), 22 Tex. Admin Code § 217.23

On Nov. 27, 2020, the Texas Board of Nursing (BON) published proposed rules regarding balance billing dispute resolution. TMA submitted comments on Dec. 24, 2020. The comments noted that TMA supported the proposed rules tracking the corresponding rule language used by the Texas Department of Insurance. However, for one exception in the proposed rules where BON added an additional term to the underlying statutory definition, TMA requested BON provide the basis and intent for this change.

As of January 2021, BON has not published adopted rules.
Texas Department of Insurance Proposed Rules Regarding Required Notices for Consumer

On Dec. 4, 2020 the Texas Department of Insurance (TDI) published proposed rules, which
amended and repealed provisions of Chapter 21 relating to the required notices for consumer
choice health benefit plans. TMA submitted comments on Jan. 4, 2021, which addressed
multiple aspects of the proposed rules. Generally, TMA opposed changes in the proposed rules
that would reduce the information plans would be required to disclose to consumers, or that
could make that information more difficult for consumers to understand. TMA also opposed
changes in the proposed rules that would reduce the information carriers must provide to TDI.

As of January 2021, TDI has not released adopted rules.

E. LETTER BRIEFS TO THE TEXAS ATTORNEY GENERAL

1. Representative White’s Opinion Request to the Office of Attorney General Regarding
Exclusion of Unimmunized Students during an Epidemic, Educ. Code § 38.001 and 25
Tex. Admin. Code § 97.62

On July 17, 2020, State Rep. James White requested an Attorney General Opinion on the
immunized due to reasons of conscience – who normally are exempt from school immunization
requirements – the statute and rule allow for the exclusion of these students “in times of
emergency or epidemic” declared by the Commissioner of the Department of State Health
Services. The Opinion Request asked for clarification on whether the lack of vaccination must be
related to the declared epidemic for the exclusion to apply.

On August 7, 2020, TMA submitted a letter brief to the Attorney General. The brief noted that
during an epidemic, public health considerations, as well as the language of the statute and rule,
support allowing the exclusion of students who – for reasons of conscience – lack a required
immunization, even if the disease causing the epidemic is not one for which immunization is
required. As of January 2021, the Attorney General has not released an opinion.

2. Texas Department of Insurance Public Information Act Request Regarding Outcomes of
Mediations and Arbitrations Authorized by Senate Bill 1264

On Oct. 22, 2020, a reporter with San Antonio News 4 submitted a Public Information Act (PIA)
request to the Texas Department of Insurance (TDI). The request asked for TDI’s information on
the outcomes of arbitrations and mediations authorized under Senate Bill 1264’s dispute
health plans, physicians, and other providers that their records fell within the request and that
they had the right to submit arguments to the Office of the Attorney General (OAG) against the
release of their information. On Nov 19, 2020, TMA submitted arguments to OAG, explaining
that the dispute resolution information provided to TDI under SB 1264 is confidential, pursuant
to two sections of the Texas Insurance Code. As such, it falls within the “confidential by law”
extinction to disclosure under the PIA. Finding otherwise would contravene the Texas
Legislature’s intent, be inconsistent with TDI’s prior comments during the rulemaking process, and discourage participation in SB 1264 dispute resolution process.

As of January 2021, OAG has not released a decision.

3. **Texas Medical Board’s Request for Opinion on Chapter 157 of the Occupation Code Regarding Supervision and Delegation of a Certified Registered Nurse Anesthetist**

On Aug. 12, 2020 the Texas Medical Board (TMB) submitted an opinion request to the Texas Office of the Attorney General (OAG). The Board requested two opinions regarding the Texas Medical Practice Act (MPA):

1. Does the Texas Occupation Code, Chapter 157 et. seq. require any level of physician supervision of a certified registered nurse anesthetists (CRNA)?
2. Is the liability of the delegating physician limited solely to the determination of competency to initially delegate to CRNA under Section 157.060, or does it include liability for all delegated medical acts under Section 157.001?

TMB’s position on the first question is that supervision is required. On the second question, TMB’s position is that both Section 157.060 and Section 157.001 apply to CRNA delegation.

TMA submitted a brief on September 14, 2020. On the first issue, TMA generally agreed with TMB’s position that the MPA requires some level of supervision for medical acts delegated to a CRNA. The level of required supervision is flexible, and the level of physician involvement is based on the physician’s professional judgment in light of other relevant federal and state laws, facility policies, medical staff bylaws, and ethical standards.

TMA also generally agreed that both Section 157.060 and Section 157.001 apply to CRNA delegation. TMA’s brief noted, however, that a physician’s liability in Section 157.060 for certain delegated acts to a CRNA is limited: the physician cannot be held liable for delegated acts based solely on the delegated order unless the physician had reason to believe the CRNA lacked competency to perform the act.

The deadline for OAG to release its opinion is February 2021. As of January 2021, the Attorney General has not released an opinion.

**F. LETTERS TO LEGISLATIVE COMMITTEES**

1. **House Insurance Committee Interim Charge RFI, Interim Charge No. 1**

On Aug.11, 2020, the Texas House of Representatives, House Committee on Insurance (Committee) requested written submission from interested parties and the public regarding Interim Charge No. 1. Interim Charge No. 1 provides that the Committee will “oversee the implementation of relevant legislation passed by the 86th Legislature” and “[c]onduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation.”
On Sept. 8, 2020, TMA and 16 other medical associations (Associations) submitted joint written testimony on four of the bills addressed by the Committee’s Interim Charge No.1:

- House Bill 2536 (requiring certain reporting requirements on certain pharmaceutical practices for drug manufacturers, pharmacy benefit managers, and health insurers);
- Senate Bill 1264 (prohibiting balance billing and creating a dispute resolution system to settle balance bills);
- Senate Bill 1852 (requiring certain disclosures for insurers that offer short-term plans); and
- Senate Bill 1940 (extending to August 31, 2021, TDI’s authority to revise and administer the temporary health insurance risk pool to the extent federal funds are available).

For HB 2536, the Associations recommended that the Committee study the effect of prior authorization on patient access to prescription drugs, as well the potential increase in the practice of “brown bagging” and “white bagging” related to cancer care. For SB 1264, the Associations’ comments emphasized the importance of data collection in evaluating the law’s effect and expressed support for the selection of FairHealth as the benchmarking database. Additionally, to increase access to SB 1264’s dispute resolution system, the Associations recommended legislation to raise the statutory bundling cap for arbitrating multiple claims in one proceeding and to authorize the Texas Department of Insurance (TDI) to set a maximum arbitrator fee by rule. For SB 1852, the Associations recommended insurers offering short-term be required to provide the required disclosures to consumers in writing prior to purchase of a plan. For SB 1940, the Associations recommended pursuing federal 1332 and Medicaid 1115 waivers to reduce the number of uninsured in Texas.

In December 2020, the Committee released its Interim Report (Report). The Report’s recommendations included several of the recommendations included in the Associations’ Sept. 8, 2020 letter. For SB 1264, the Report recommended the Legislature work to improve data collection, as well as providing the TDI with the authority to set a maximum arbitrator fee.

For SB 1852, the Report recommended the expansion of strong up-front disclosure requirements to consumers. And for SB 1940, the Report recommended that the Legislature consider a reinsurance program through a 1332 waiver in order to help reduce the cost of health coverage for Texans. The Report also recommended that the legislature consider the benefits that could be achieved by expanding Medicaid in Texas.

2. House Insurance Committee Interim Charge RFI, COVID-19 Pandemic Questions

On Aug. 11, 2020, the Texas House of Representatives House Committee on Insurance (Committee) requested written submission from interested parties and the public on interim charges relating to the COVID-19 pandemic. On Sept. 8, 2020, TMA and 16 other medical associations (Associations) submitted joint written testimony on four of the interim charges:

- Interim Charge 1: How prevalent is price gouging related to COVID-19 testing? What are state agencies doing in order to monitor price gouging associated with COVID-19 testing?
3. **Senate Committee on Business and Commerce Interim Charge RFI, Senate Bill 1264**

In September 2020, the Texas Senate Committee on Business and Commerce (Committee) published a request for information regarding the implementation of Senate Bill 1264. On Oct. 1, 2020, TMA and 16 other medical associations (Associations) submitted joint written testimony. The Association’s comments emphasized the importance of data collection in evaluating the law’s effect. Additionally, to increase access to SB 1264’s dispute resolution system, the Associations recommended legislation to raise the statutory bundling cap for arbitrating multiple claims in one proceeding and to authorize the Texas Department of Insurance (TDI) to set a
maximum arbitrator fee by rule. On Jan. 11, 2021 the Committee released its Interim Report, which concluded that the Committee should continue to monitor the data around surprise medical bills.

4. **House Committee on Public Health Interim Charge RFI on the Continuation of the Texas Medical Board**

On Oct. 5, 2020, the Texas House Committee on Public Health (Committee) released a request for information (RFI) pertaining to implementation of House Bill 1504 (86th R.S., 2019), which continues the Texas Medical Board (TMB) until Sept. 1, 2031. Per the RFI, the committee is to “review and identify any challenges related to the processing of complaints, including due process concerns and the independence of the (Texas Medical) Board. Make recommendations for additional modifications to address these challenges.”

TMA responded on Oct. 16, 2020, asking the Committee to consider TMA’s concerns and recommendations for four areas. First, to allow an expedited licensing process for out-of-state physicians who meet certain parameters. Second, that information on physician’s public profile relating to a complaint be removed promptly when the complaint is dismissed. Also, if TMB reported information related to a complaint to an external entity, and that information was later required to be removed, TMB should be required to inform the entity that the previous information has been voided. Third, for remedial plans, TMA recommended that TMB should be required to remove information about the remedial plan from the physician’s profile if the remedial plan is for a one-time violation that does not involve the delivery of health care. Fourth, TMA asked that legislation be passed requiring TMB, prior to a hearing on a contested case, to share any exculpatory evidence in its possession with the license holder.

As of January 2021, the Committee has not released a report addressing these issues.

5. **Joint Legislative Committee on the Use of Prior Authorization and Utilization Review Processes RFI**

On Dec. 7, 2020, the Texas Legislature Joint Committee on the Use of Prior Authorization (PA) and Utilization Review (UR) Processes (Committee) invited submission of written testimony. On Dec. 17, 2020, TMA and 19 other medical associations (Associations) submitted joint written testimony. The Associations noted changes resulting from legislation in the previous session were important first steps towards improving the PA and UR process in Texas, but additional review and reform is still needed. PA still often imposes an excessive administrative burden that delays access to medically necessary care and negatively affects continuity of patient care. The Associations recommended nine specific PA and UR reforms. The Associations also recommended that the Committee consider the potential increase in the practice of “brown bagging” and “white bagging” related to prescription drugs for cancer care.

As of January 2021, the Committee has not released a report addressing these issues.
REPORT OF BOARD OF TRUSTEES

BOT Report 8 2021

Subject: Audit of 2019 Financial Statements and 2020-21 Operating Budgets

Presented by: Gary W. Floyd, MD, chair

Audit of 2019 Financial Statements

The Audit of 2019 Financial Statements report was presented to the Texas Medical Association Board of Trustees at its Oct. 11, 2020, meeting. Independent auditor Holtzman Partners, LLP, determined the consolidated financial statements “present fairly, in all material respects, the consolidated financial position of Texas Medical Association and Texas Medical Association Board Administered Organizations… in accordance with accounting principles generally accepted in the United States of America.” Copies of the audit report are available in the association’s offices for review by any TMA member.

The Audit of 2020 Financial Statements report by Holtzman Partners, LLP, will be completed and presented to the Board of Trustees at its 2021 spring meeting. The board will present the audit report to the House of Delegates in 2022.

2020 Operating Budget

For 2020, operating income was $25,479,920, and operating expenses were $25,183,046. At year-end, total actual operating income for the year was below budgeted operating income by $1,493,080 (5.54%). Total actual operating expenses were under budget by $1,847,454 (6.83%), resulting in an actual net operating surplus of $296,874. This actual net operating surplus exceeded the budgeted net operating deficit by $354,374. An unaudited report on 2020 operations is attached.

2020 Non-Operating Expense

2020 non-operating expense includes $418,986 of compensation and benefits expense for Louis Goodman in his role as EVP emeritus and a $650,000 payment to the estate of Louis Goodman for past contractual obligations.

2020 Net Investment Gain

Net investment gain includes realized investment gains of $295,360, unrealized gains on investments of $3,107,019, and other losses on disposal of assets of $9,239.

2021 Operating Budget

In December 2020, the Board of Trustees approved a 2021 operating budget projecting an income of $25,391,740 and expenses of $25,391,740, with a 2021 capital expenditure budget of $413,000. The operating budget will be presented to the house by Board of Trustees Chair E. Linda Villarreal, MD. The board also approved direct financial support of related organizations in 2021 as follows: TEXPAC request for support totaling $332,570; TMA Alliance request for support totaling $215,000; TMA Foundation request for support totaling $115,000; and Association Management Services request for support totaling $1,104,010. Offsetting these expenses are projected 2021 Association Management Services fees totaling $1,120,860; corporate contributions of $75,000 to TEXPAC; and $15,000 in grant revenue received for TMA Foundation programming.

The 2021 expense budget of $25,391,740 represents a decrease of $1,638,760 from the final 2020 expense budget of $27,030,500. Supporting this expense budget is a projected income budget of $25,391,740. This represents a decrease of $1,581,260 from the final 2020 income budget of $26,973,000. As a result, a break-even budget is projected for 2021.
The 2021 budgeting process included a review of all programmatic activities. TMA’s relevance and value to its members were used as benchmarks for evaluating programs and determining which areas to expand or reduce. As containing expenses for approved programs becomes increasingly difficult, programmatic growth must be restrained or new sources of income identified. The 2021 operating budget adopted by the board is attached.
### Income

<table>
<thead>
<tr>
<th>Description</th>
<th>2021 Budget</th>
<th>2020 Budget</th>
<th>Change</th>
<th>% of Budget</th>
</tr>
</thead>
<tbody>
<tr>
<td>Membership Recruitment and Retention</td>
<td>$15,680,000</td>
<td>$16,680,000</td>
<td>($1,000,000)</td>
<td>(6.0%)</td>
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<tr>
<td>Insurance Royalty Income</td>
<td>$2,251,350</td>
<td>$2,226,950</td>
<td>$14,400</td>
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<tr>
<td>Building Operations</td>
<td>$1,803,980</td>
<td>$1,732,220</td>
<td>$71,760</td>
<td>4.1%</td>
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<tr>
<td>Related Organization Support</td>
<td>$1,135,980</td>
<td>$1,167,250</td>
<td>($31,270)</td>
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<tr>
<td>Marketing and Member Services</td>
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<td>$1,195,560</td>
<td>($235,000)</td>
<td>(19.7%)</td>
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<tr>
<td>Communications</td>
<td>$858,700</td>
<td>$924,850</td>
<td>($66,150)</td>
<td>(7.2%)</td>
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<tr>
<td>Organization and Support Activities</td>
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<td>$719,770</td>
<td>$55,870</td>
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<tr>
<td>Conference Management</td>
<td>$416,000</td>
<td>$416,000</td>
<td>$0</td>
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<tr>
<td>Investment Income</td>
<td>$402,000</td>
<td>$685,000</td>
<td>($283,000)</td>
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<td>Education Center</td>
<td>$398,220</td>
<td>$444,400</td>
<td>($46,180)</td>
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<tr>
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<td>$254,000</td>
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<tr>
<td>Continuing Medical Education</td>
<td>$173,150</td>
<td>$201,500</td>
<td>($28,350)</td>
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<tr>
<td>Association Governance</td>
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<td>$151,000</td>
<td>$0</td>
<td>0.0%</td>
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<td>Advocacy and Public Policy</td>
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<td>$138,000</td>
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<td>Legal</td>
<td>$13,350</td>
<td>$28,500</td>
<td>($15,150)</td>
<td>(50.9%)</td>
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<td><strong>Total Income</strong></td>
<td>$25,391,740</td>
<td>$26,973,000</td>
<td>($1,581,260)</td>
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</table>

### Expense

<table>
<thead>
<tr>
<th>Description</th>
<th>2021 Budget</th>
<th>2020 Budget</th>
<th>Change</th>
<th>% of Budget</th>
</tr>
</thead>
<tbody>
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<td>Communications</td>
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<td>($40,590)</td>
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<td>Organization and Support Activities</td>
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<td>$2,379,520</td>
<td>$298,460</td>
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<td>Advocacy and Public Policy</td>
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<td>$1,887,580</td>
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<td>$1,212,490</td>
<td>$1,198,350</td>
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<td>Health Policy - Regulation</td>
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<td>$343,230</td>
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<td>$229,220</td>
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<td>$27,030,500</td>
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### Net Budget Surplus

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<td>Income</td>
<td>Total</td>
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<tr>
<td>--------</td>
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<tr>
<td>Membership Recruitment and Retention</td>
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<td>Legal</td>
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<td><strong>Total Income</strong></td>
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<table>
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<tr>
<th>Expense</th>
<th>Total</th>
<th>Building Fund</th>
<th>Actual</th>
<th>Budget</th>
<th>Variance</th>
<th>% Variance</th>
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<tr>
<td>Organization and Support Activities</td>
<td>$4,416,880</td>
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<td>2,332,970</td>
<td>198,838</td>
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<td>2,340,385</td>
<td>52,520</td>
<td>(2.14%)</td>
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<td>1,865,050</td>
<td>122,086</td>
<td>6.55%</td>
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<td>Related Organization Support</td>
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<td>1,927,000</td>
<td>(212,944)</td>
<td>(11.02%)</td>
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<td>1,676,716</td>
<td>2,270,650</td>
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<td>(26.15%)</td>
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<td>1,333,404</td>
<td>1,474,680</td>
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<td>1,225,800</td>
<td>(36,420)</td>
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<td>Public Health - Quality - Science</td>
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<td>1,131,478</td>
<td>1,111,630</td>
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<td>1.79%</td>
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<td>Conference Management</td>
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<td>(46.17%)</td>
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<td>Health Policy - Regulation</td>
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<td>841,690</td>
<td>954,200</td>
<td>(112,510)</td>
<td>(12.17%)</td>
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<td>Marketing and Member Services</td>
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<td>797,262</td>
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<td>(55,690)</td>
<td>(6.95%)</td>
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<td>472,798</td>
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<td>229,220</td>
<td>32,432</td>
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<td>$53,530</td>
<td>$25,183,046</td>
<td>$27,030,500</td>
<td>$(1,847,454)</td>
<td>(6.83%)</td>
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</tbody>
</table>

Net Operating Income (Loss) $357,535 $60,661 $296,874 $(57,500) 354,374

Non-Operating Expense
EVP Emeritus Compensation and Benefits Expense (418,986) (418,986)
EVP Emeritus Contractual Obligations (660,000) (660,000)
Total Non-Operating Expense (1,068,966) (1,068,966)

Investment Gain (Loss)
Realized Investment Gain (Loss) 295,360 99,449 195,911
Unrealized Gain (Loss) on Investments 3,107,019 407,859 2,699,160
Other Gain (Loss) (8,239) (9,239)
Net Investment Gain 3,363,140 507,306 2,863,832

Net Income $2,681,689 $567,969 $2,113,720
REPORT OF BOARD OF TRUSTEES

BOT Report 9 2021

Subject: Investments

Presented by: Gary W. Floyd, MD, chair

TMA and Separate Fund Investments

Members of the Texas Medical Association Board of Trustees also serve as trustees or as the board of trustees for two library funds, two student loan funds, the Physicians Benevolent Fund, and the TMA Special Funds Foundation. The investment portfolios for TMA, and for the funds for which members of the TMA Board of Trustees serve as trustees or as the board of trustees, are invested by the Board of Trustees by way of designated investment managers. The board acts on recommendations of its Finance Committee, which meets three times a year. The committee and the board review quarterly reports from TMA’s investments monitor, The Quantitative Group at Graystone Consulting. The Quantitative Group is the investment monitor for TMA funds and all funds managed by TMA. The committee and the board review quarterly composite reports prepared by The Quantitative Group and presented by W. Joseph Sammons, The Quantitative Group senior vice president, and Ronald Kern, The Quantitative Group executive director. The board establishes investment performance objectives for the investment portfolios of TMA and six separate funds and sets policy for the mix of investment media (equities, fixed income, alternative mutual funds, and cash equivalents).

The Dec. 31, 2020, net assets of the funds managed by these investment managers were reported as follows: TMA, $37,449,753; Texas Medical Association Library, $3,167,927; Annie Lee Thompson Library Trust Fund, $4,335,330; May Owen Irrevocable Trust, $3,592,333; Dr. S.E. Thompson Scholarship Fund, $7,082,743; Physicians Benevolent Fund, $5,450,694; and Texas Medical Association Special Funds Foundation, $3,225,716.

Dec. 31, 2020, Investment Manager Performance Report

Since Dec. 31, 1993, the composite annualized performance for all equity investments has been 9.05% versus the equity composite index annualized rate of return of 9.68%. The one-year rate of return was 17.42% versus the equity composite index return of 18.15%. Equity investment allocation by manager is approximately 32% at Luther King Capital Management, 64% in iShares blended mutual funds, 2% in Dodge & Cox International Stock Fund, and 2% in the Invesco Developing Markets mutual fund.

The composite annualized performance for all fixed income investments has been 5.31% versus the Barclays Aggregate annualized return of 5.53% for the period of June 30, 1992, through Dec. 31, 2020. The one-year rate of return was 6.08% versus the index return of 7.51%. Fixed income investment allocation by manager is approximately 52% at Vaughn Nelson, 21% in the Metropolitan West Intermediate Bond Fund, 14% in the JP Morgan Strategic Income Bond Fund, and 13% in the FPA New Income Bond Fund.

Alternative mutual fund investments have experienced an annualized return of 7.52% versus the HFRI Fund of Funds Composite Index annualized return of 4.87% for the three-year period through Dec. 31, 2020. The one-year rate of return was 11.89% versus the benchmark return of 10.86%. Alternatives investment allocation by manager is 100% in the FPA Crescent Fund.
Subject: The Term Physician Should Be Used Rather Than Provider, Resolution 104-2020

Presented by: Gary W. Floyd, MD, chair

Resolution 104-2020, introduced by the Harris County Medical Society, was referred to the TMA Board of Trustees for action with a report back to the TMA House of Delegates in 2021.

A resolution referred for action gives the body to which it is referred the full power of the house to act on that item, and may decide to adopt it, defeat it, amend it, refer it to still another body for study, or to dispose of it in any other way, and to implement whatever action is taken.

The resolution resolves that (1) the Texas Medical Association, in its publications, policies, and conferences, shall cease using the term “provider” to describe physicians, substituting “physician,” “resident,” “fellow” or other term that recognizes the education, training, and experience of its members; (2) that TMA encourage physicians, its local components, and the media to use the term “physician” instead of “provider” when describing physicians; and (3) that TMA refer the process of creating a formal position paper for the use of the term “provider” to the most suited committee or council.

The board met Oct. 11 to consider this resolution. In lieu of adopting resolution 104, the board reaffirmed existing TMA policy 245.002, Health Care Provider:

Health Care Provider: The Texas Medical Association recognizes that the term “health care provider” is a generic term that does not communicate the emphasis on education and concern for patients embodied by the traditional term “physician” or “doctor.” Similarly, the term “covered lives” is a dehumanizing phrase that often is used instead of “patients.” Therefore, TMA should refrain whenever possible from the use of such terms as “provider,” “covered lives,” and similar terms in all communications with members, the public, and the media, and “patient” and “physician” should be used in place of these terms.
REPORT OF BOARD OF TRUSTEES

BOT Report 12 2021

Subject: Flu Vaccinations in Immigrant Holding Facilities at the Border, Resolution 329-2020

Presented by: Gary W. Floyd, MD, chair

Resolution 369-2020, introduced by the Medical Student Section, was referred to the TMA Board of Trustees for action with a report back to the TMA House of Delegates in 2021.

A resolution referred for action gives the body to which it is referred the full power of the house to act on that item, and this body may decide to adopt it, defeat it, amend it, refer it to still another body for study, or to dispose of it in any other way, and to implement whatever action is taken.

The resolution resolves that (1) the Texas Medical Association support legislation increasing vaccine availability in immigrant holding facilities; and (2) that our TMA acknowledge the importance vaccinations for the health of immigrants in 33 holding facilities on the border, which can also directly affect the health of Texas citizens.

The board met Oct. 11 and referred this resolution for further study to the Council on Science and Public Health with a report back to the board at Winter Conference. The council further requested feedback from and incorporated the expertise of TMA’s Committee on Infectious Diseases.

At the board’s Winter Conference meeting Jan. 31, the Council on Science and Public Health submitted the following background information with recommendations that the board adopt the second resolve and that the TMA Delegation to the American Medical Association support AMA’s efforts calling for better federal oversight of appropriate infectious disease prevention and control, including vaccinations for immigrants in holding facilities. The board approved these recommendations.

Background

During fiscal year (FY) 2019 (Oct. 1, 2018, through Sept. 30, 2019), the U.S. Border Patrol apprehended 851,508 non-U.S. citizens along the southwest U.S. border. This was a 115% increase from the previous year and the highest number over the past 10 years. The sheer increased volume of immigrants, especially family units (which saw an increase of 340% compared with FY 2018), led to both a humanitarian and a border security crisis that overwhelmed U.S. federal agencies involved in immigrant detainment.

The U.S. Border Patrol falls within U.S. Customs and Border Protection (CBP), which is the primary federal law enforcement agency for border management and control under the U.S. Department of Homeland Security (DHS). Along the southwest U.S. border, CBP agents are typically the ones who begin the initial processing of non-U.S. citizens apprehended by border patrol. CBP is required, “except in the case of exceptional circumstances,” to transfer any detainees within 72 hours to either:

- U.S. Immigration and Customs Enforcement (ICE), which is also under DHS; or
- Office of Refugee Resettlement (ORR), which is within the U.S. Department of Health and Human Services (HHS). ICE is in charge of holding adult detainees processed by U.S. Customs and Border Protection. Alternatively, ORR holds detained children under 18 years of age after CBP processing.

The heavy influx of immigrants stretched resources, prolonged detention, and caused overcrowding, with CBP being unable to adhere to the 72-hour requirement of appropriately transferring detainees to ICE or ORR. In June 2019, the U.S. Office of Inspector General issued a management alert calling on CBP to
address dangerous overcrowding and prolonged detention of children and adults in the Rio Grande Valley. The report listed a number of concerns at some facilities, including both adult and child detainees being held well beyond 72 hours (some more than a month), limited to no access to showers or clean clothes, no hot meals, and standing room only spaces for a week, among others. The report called to attention that CBP is not responsible for long-term detention of detainees and urged for implementation of sufficient measures to address the prolonged detention and overcrowding. Inquiries with TMA physicians at the border indicate the heavy influx and migration decreased significantly during 2020, with detainees no longer being held within CBP facilities for longer than the 72-hour limit.

CBP disclosed to members of Congress that border facilities do not require influenza vaccination for staff nor offer influenza vaccinations to detainees. CBP also issued statements explaining the logistical challenges for its border patrol agency, whose function is law enforcement, to be given the responsibility of implementing a comprehensive detainee vaccination program. This includes complex systems and processes for supply chains, storage, quality control, documentation, and consent, as well as addressing adverse reactions, poor health literacy, language barriers, and mistrust of medical services. Though CBP does not provide vaccinations, the other two agencies that hold migrants for extended periods – ICE and ORR – do provide vaccines. ICE has an annual mass flu vaccination program, where children are offered vaccines “appropriate for their age” and adults are offered varicella vaccinations as needed to avoid chickenpox. ORR also provides vaccinations, including flu shots, according to federal guidelines. Further, under former administration policy, migrants were sent back to Mexico to wait in border camps instead of going to ICE or ORR. CBP has also pointed out the 200 medical personnel (a 10 times increase from the previous year) who were engaged along the border to provide medical care to detainees, including medical personnel on site available 24/7 to provide medical diagnosis and treatment, address infectious disease issues and coordinate referral for further care off site as necessary. With the recent change in federal administration, changes in these immigration policies are highly likely; however, this may result once again in greater influxes of immigrant migration.

Public Health Considerations

Immigrant holding facilities left detainees vulnerable to infectious diseases due to an overcrowded, stressful environment; poor hygiene; and limited access to nutritious food, health care, and other basic needs. Forty-one influenza outbreaks occurred in 13 detention centers from Jan. 1, 2017, to March 22, 2020, and at least three children died of influenza from December 2018 to May 2019 while in the custody of CBP. Other infectious diseases including varicella and mumps were reported, and of all infections, 44.7% occurred in the South Texas Family Residential Center.

The Centers for Disease Control and Prevention (CDC) recommends most people in the U.S. aged 6 months and older receive an influenza vaccination annually, as it is the primary preventive measure against a potentially severe illness. CDC conducted an investigation of respiratory illnesses in CBP facilities and provided recommendations to DHS.

Select CDC recommendations to DHS regarding respiratory illnesses in CBP facilities are as follows:

3. Influenza Vaccination of Facility Staff
   a. We recommend that all staff at all facilities who are not yet vaccinated this season and who have no contraindications to vaccination be offered an age-appropriate influenza vaccine according to current CDC/ACIP [Advisory Committee on Immunization Practices] recommendations. Ideally, influenza vaccination should be offered to staff each season.

8. Influenza Vaccination of Migrants
   a. Annual influenza vaccination for all persons ≥6 months of age is recommended (no influenza vaccines are licensed for children <6 months).
b. In facilities with medical infrastructure, all migrants present for sufficient time for vaccination who do not have contraindications should be offered an age-appropriate influenza vaccine.
   i. All migrants should be presumed unvaccinated unless records indicating vaccination are available.
   ii. For persons with moderate or severe acute illness, with or without fever, due to any cause, vaccination should be deferred until the acute illness has resolved.

c. Priority groups for vaccination include children aged 6 months through 18 years and pregnant women.
   i. All children 6 months to <9 years should receive the first dose of vaccine at the border patrol station and a second dose ≥4 weeks later.

d. Vaccination may be considered for adults >18 years of age if feasible.

AMA sent and published a letter to DHS and HHS in September 2019 calling for asylum seekers to receive all medically appropriate care, including vaccinations:

We believe that the current living conditions facing many children and families detained in CBP custody may aggravate the spread of infectious diseases such as the flu. The flu season will begin shortly, and we believe that it is in the best interest of public health for vaccinations to be given as soon as possible. As you know the flu can be particularly dangerous for very young children, pregnant women, and individuals with chronic medical conditions. Additionally, we believe that providing vaccinations to unaccompanied children as soon as possible will not only help in preventing the spread of flu in the Office of Refugee Resettlement shelters but, will keep our nation healthier as a whole.

Of note, additional considerations regarding influenza vaccination of immigrants in holding facilities include these, among others:

- Infectious disease outbreaks at migrant detention facilities stress both border patrol staff and community medical infrastructure.
- If a detainee was previously immunized, a second administration will have no negative impact on the individual.
- Vaccinating detainees will lead to lower costs associated with care of infected patients. An influenza vaccine costs CDC approximately $1-$2 per dose compared with the cost of an emergency department visit to treat someone who is severely sick with flu.

**Discussion and Recommendations**

Resolution 329 addresses an issue highly relevant to Texas, which is a state that has both the largest border with Mexico and the highest number of immigrant holding facilities in the U.S. The resolution calls for the need to protect migrant populations seeking asylum from preventable and potentially deadly influenza virus. Preventing outbreaks of infectious diseases such as influenza requires appropriate infectious disease prevention and control measures, especially to prevent infectious diseases from overwhelming local health care systems and spreading throughout surrounding communities outside of the facility.

The state of Texas has limited oversight and authority over federal detention facilities and entities. Thus state legislation to address influenza and infectious disease control and prevention within these facilities may be less effective. However, at the federal level, AMA strongly calls for medically appropriate care for asylum seekers, including flu vaccinations. The council supports the stance of both AMA and CDC calling for influenza vaccines to be made available to immigrant holding facility staff and detainees. Further, the cost of vaccine doses at a few dollars per person pales in comparison with the hundreds, if not
thousands of dollars spent on emergency department visits. Therefore the council supports flu vaccine access to migrant detainees not only for the public health of Texas but also for the overall lower economic costs.

The council supports the overarching goal of Resolution 329 and its second resolve for TMA to acknowledge the importance of vaccinations for the health of immigrants in holding facilities on the border, which can also directly affect the health of Texas citizens. For the first resolve, the council believes there may be more effective strategies in support of AMA’s efforts at the federal level to better address the issue.

Conclusion

After careful consideration from the council’s report, in lieu of adopting Resolution 329 in its entirety, the board approved adopting the second resolve of Resolution 329, “That our TMA acknowledge the importance of vaccinations for the health of immigrants in holding facilities on the border, which can also directly affect the health of Texas citizens.”

The board approved also that the TMA Delegation to the AMA support AMA’s efforts calling for better federal oversight of appropriate infectious disease prevention and control, including vaccinations for immigrants in holding facilities.

Related TMA Policy:
135.005 National Vaccine Plan
135.012 Immunization Rates in Texas
135.013 Universal Influenza Vaccination
260.005 Community and Migrant Health Centers
260.088 United States-Mexico Border Health Commission

Related AMA Policy:
H-440.851 Influenza Vaccine Availability and Distribution
D-350.983 Improving Medical Care in Immigrant Detention Centers
H-440.876 Opposition to Criminalization of Medical Care Provided to Undocumented Immigrant Patients
H-350.955 Care of Women and Children in Family Immigration Detention
D-65.992 Medical Needs of Unaccompanied, Undocumented Immigrant Children
H-350.957 Addressing Immigrant Health Disparities
H-60.906 Opposing the Detention of Migrant Children
H-60.905 Mental Health Issues and Use of Psychotropic Drugs for Undocumented Immigrant Children
H-65.955 Oppose Mandatory DNA Collection of Migrants

References:


REPORT OF BOARD OF TRUSTEES

BOT Report 13 2021

Subject: Placing Medicaid Expansion on a Statewide Voting Ballot, Resolution 419 2020

Presented by: Gary W. Floyd, MD, chair

Resolution 419 2020, introduced by the Medical Student Section, was referred to the TMA Board of Trustees for action with a report back to the TMA House of Delegates in 2021.

A resolution referred for action gives the body to which it is referred the full power of the house to act on that item, and this body may decide to adopt it, defeat it, amend it, refer it to still another body for study, or to dispose of it in any other way, and to implement whatever action is taken.

The resolution resolved that the Texas Medical Association (1) advocate for the inclusion of Medicaid expansion initiatives on a statewide ballot to allow eligible Texas voters to decide, and (2) encourage a reopened dialogue on the topic of Medicaid expansion as an avenue to reduce the high rate of uninsured individuals in Texas.

The board met Oct. 11 to consider this resolution. Regarding placing Medicaid expansion on a statewide voting ballot: Texas law does not allow voters to bring ballot initiatives forward for consideration. Instead, the Texas Legislature must pass a constitutional amendment for voters to have the opportunity to consider the question.

Considering these restrictions on statewide ballot initiatives in Texas, the board approved that TMA continue its advocacy on Medicaid expansion, and that Resolution 419 not be adopted.
Resolution 411 2020, introduced by the Bexar County Medical Society, was referred to the TMA Board of Trustees for action with a report back to the TMA House of Delegates in 2021.

A resolution referred for action gives the body to which it is referred the full power of the house to act on that item, and that body may decide to adopt it, defeat it, amend it, refer it to still another body for study, or to dispose of it in any other way, and to implement whatever action is taken.

The resolution addresses the burden and negative impact of prior authorizations. The resolution resolves that the Texas Medical Association work to limit the use of prior authorizations to only treatments not supported by the medical literature.

The board met Oct. 11, 2020, and referred this resolution to the Prior Authorization Task Force.

The task force met twice in 2020 to discuss the need for a wide variety of prior authorization reforms (which encompass issues related to and raised in Resolution 411). The most recent meeting of the task force was on Dec. 1, 2020. At that task force meeting, members:

- Provided and reviewed recommendations for TMA legislative efforts related to prior authorization during the 87th (regular) session of the Texas Legislature (2021);
- Discussed TMA comments on interim charges related to prior authorizations, including the request for information to the Joint Committee on the Use of Prior Authorizations and Utilization Review Processes;
- Reviewed physician survey data collected by TMA and other sources regarding the burden and impact of prior authorization; and
- Recommended strategies and support needed for success in prior authorization reforms.

The task force’s legislative recommendations have been incorporated into TMA’s legislative agenda for the 87th session of the Texas Legislature and into multiple TMA comment letters to the Texas Legislature in response to interim charges:

1. Require health benefit plan issuers to “gold card” certain physicians from prior authorization (i.e., create an automatic approval or exemption, on a physician-by-physician basis, that waives prior authorization requirements if that physician is approved for a specific procedure/service the vast majority – e.g., 80% – of the time);
2. Require the Texas Department of Insurance to audit health plan compliance with statutory prior authorization timelines for approvals and denials;
3. Require health benefit plan issuers and benefit managers that require prior authorizations to have staff available to process approvals 24 hours a day, 365 days a year, including holidays and weekends;
4. Strengthen Texas law to better prevent payment denials once patient care has been approved;
5. Require peer-to-peer discussions under Tex. Ins. Code §4201.206(b) to be with a Texas-licensed physician who is of the same or similar specialty; for example, for a cancer treatment ordered by an
oncologist, a Texas-licensed oncologist should conduct the peer-to-peer call on behalf of the utilization review agent, not a physician in an unrelated specialty.

6. Heighten enforcement and penalties when a health benefit plan issuer or its agent (1) knowingly violates the prudent layperson standard for emergency care; (2) deters enrollees from seeking care consistent with the prudent layperson standard for emergency care; or (3) engages in a pattern of wrongful denials of claims for emergency care, including denials related to application of the prudent layperson standard;

7. Prohibit prior authorization for health care services that are state-mandated benefits: mammography, mastectomy and breast reconstruction or prosthesis, diabetes management, low bone-mass test for osteoporosis prevention, and prostate cancer screenings; as health benefit plan issuers are required to cover these, prior authorization is an unnecessary barrier to patient care and a misuse of physician time better dedicated to patient care; and

8. “Support continuity of care for medical services and prescription medications for patients on appropriate, chronic, stable therapy through minimizing repetitive [prior authorization] requirements.”

The task force and the Council on Legislation are working to move these legislative agenda items forward. TMA Office of the General Counsel staff drafted new bill language on the first five recommendations and drafted bill amendment language and/or reviewed existing bill language to incorporate the last three task force recommendations. TMA Advocacy staff worked to obtain bill authors for the first five recommendations and to get TMA’s recommended language into currently filed or soon-to-be refiled bills for the last three task force recommendations.

Thus, while the task force has not directly pursued the resolve in Resolution 411 (i.e., to limit the use of prior authorizations to only treatments not supported by the medical literature), it has taken a multipronged approach directed at reducing the number and burden of prior authorizations in Texas.

At the board’s Jan. 31 meeting, the board approved that in lieu of Resolution 411, TMA continue to pursue these ongoing legislative reforms formulated by the Prior Authorization Task Force to decrease the burden and negative impact of prior authorization related to state-regulated health plans.
Subject: Interstate Medical Liability Tort Protection for Physicians Treating Patients in Neighboring States, Resolution 416 2020

Presented by: Gary W. Floyd, MD, chair

Resolution 416 2020, introduced by the Medical Student Section, was referred to the TMA Board of Trustees for action with a report back to the TMA House of Delegates in 2021.

A resolution referred for action gives the body to which it is referred the full power of the house to act on that item, and may decide to adopt it, defeat it, amend it, refer it to still another body for study, or to dispose of it in any other way, and to implement whatever action is taken.

The resolution resolves that the Texas Medical Association (1) recognize that the appropriate forum for medical liability suits against physicians is the state in which care is rendered; and (2) that the Texas Delegation to the American Medical Association take this resolution with the added language to the AMA:

That our AMA recognize that access to care for patients seen by out-of-state physicians may be diminished when there is uncertainty about the appropriate legal forum for medical liability claims.

The board met Jan. 31 and referred this resolution to the Council on Socioeconomics with a report back at the March Board of Trustees meeting.

The Council on Socioeconomics convened Feb. 9, 2021 to discuss this resolution. The council discussed how this resolution applies nationally and recommended rewording the language in the second to call on the AMA to take action and create a model bill for other states to consider. The council also recommended rewording the language in the first resolve for readability.

Therefore, the council unanimously recommended to the board that the TMA adopt this resolution as amended:

RESOLVED, The Texas Medical Association recognize that the appropriate legal forum for medical professional liability claims is in the state where the patient received the medical care rendered; and be it further forum for medical liability suits against physicians is the state in which care is rendered; and be it further

RESOLVED, The Texas Delegation to the AMA take this resolution with the added language below to AMA:

That our AMA create model legislation and support corrective legislation to assure that the appropriate legal forum for medical liability claims is in the state where the patient received the medical care rendered. Recognize that access to care for patients seen by out-of-state physicians may be diminished when there is uncertainty about the appropriate legal forum for medical liability claims.
Acting upon the recommendation of the Council on Socioeconomics, the board approved adopting the resolution language as amended.

**Related TMA Policy:**
- [Professional Liability 170.007](#)

**Related AMA Policy:**
- [Health System and Litigation Reform D-435.974](#)
- [Support of Campaigns Against Lawsuit Abuse H-435.974](#)
- [Insurance Coverage Parity for Telemedicine Service D-480.969](#)
- [Established Patient Relationships and Telemedicine D-480.964](#)
REPORT OF BOARD OF TRUSTEES

BOT Report 19 2021

Subject: Incorporating Helmet Safety Education Into Texas Elementary Schools, Resolution 331-2020

Introduced by: Gary W. Floyd, chair

Resolution 331-2020, introduced by the Medical Student Section, was referred to the TMA Board of Trustees for action with a report back to the TMA House of Delegates in 2021.

A resolution referred for action gives the body to which it is referred the full power of the house to act on that item, and that body may decide to adopt it, defeat it, amend it, refer it to still another body for study, or to dispose of it in any other way, and to implement whatever action is taken.

Resolution 331 calls for a modification of current TMA Policy 55.021 on bicycle helmets. The resolution provides support for the proposed resolve with the following statistics and arguments:

- 857 bicyclists were killed in traffic accidents in the U.S. in 2018;
- Children 5-14 years old have the highest rates of bicycle injuries in the U.S.;
- The greatest risk of death and disability to bicyclists is from head injuries;
- 12,789 crashes in Texas from 2007 to 2012 resulted in 12,132 injuries and 297 fatalities, and 27% of the victims were under age 15;
- A meta-analysis of 55 studies between 1989 to 2017 found that wearing a helmet can reduce head injury by 48%, traumatic brain injury by 53%, face injury by 23%, and the total number of killed or seriously injured by 34%;
- Children in states without helmet laws were 3.5 times more likely to not wear helmets consistently;
- According to a survey of schoolchildren, the strongest correlates of not using a helmet were the belief of not needing a helmet and wishing to use a hat instead;
- Children who receive bicycle helmet safety instruction are more knowledgeable on safe bicycling behaviors than those who do not receive instruction and are less likely to be involved in a cycling accident; and
- Children living in suburbs that use a combination of helmet legislation and education reported higher helmet use than children living in suburbs with helmet legislation alone.

The specific language of the resolve is as follows:

RESOLVED, That the Texas Medical Association amend Policy 55.021 Bicycle Helmets to encourage physicians to be informed about the safety of helmet use for elementary school children cyclists, promote awareness, and share with local school health and safety advisory committees evidence-based, best practices regarding helmet safety education for schoolchildren.

The board referred this Resolution 331 to the Council on Science and Public Health with a report back at the March Board of Trustees meeting.

Background
In Texas, from 2010 to 2016, there were 16,807 crashes involving bicycles, resulting in 9,769 injuries and 362 fatalities, out of which more than one-quarter (11%) of cyclists involved in crashes were younger than 15-years-old.¹
TMA has had established policy on bicycle helmets since 1996, with the adoption of TMA Policy 55.021 1
Bicycle Helmets, which currently reads:

55.021 Bicycle Helmets: The Texas Medical Association supports the use of bicycle helmets certified by the U.S. Consumer Products Safety Commission, by Texans of all ages and passage of a law mandating approved helmet use for all cyclists (Substitute Committee on Emergency Medical Services and Trauma and Medical Student Section, p 155, A-96; reaffirmed CPH Rep. 3-A-10; amended CM-CAH Rep. 1-A-14).

The policy has been retained since, reaffirmed in 2010, and amended in 2014.

TMA has also prioritized child helmet use and safety via its Hard Hats for Little Heads program, a helmet giveaway program created to help reduce head injury among Texas children. TMA supports the data that suggests a properly fitting helmet can prevent up to 85% of head injuries, which are the most common causes of disability or death in bicycle crashes. Since the program’s inception in 1994, TMA has given away more than 350,000 helmets to Texas children. The program has also developed bike helmet fitting guides in English and Spanish and educational videos for children on the importance of wearing a helmet while bicycling, skateboarding, inline skating, and riding a scooter. As more Texans get vaccinated in the coming months, TMA encourages event hosts to seek out local events/opportunities in the fall and during the holidays to safely give helmets.

Federal, State, and Local Bicycle Helmet Laws
No federal law requires the use of bicycle helmets, nor does any statewide law in Texas require bicyclists to wear helmets. However, some local jurisdictions in Texas have established helmet safety laws, particularly for children:

Texas Local Jurisdictions with Local Bicycle Helmet Ordinance

<table>
<thead>
<tr>
<th>Jurisdiction</th>
<th>Age (in yrs)</th>
<th>Effective since</th>
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<tbody>
<tr>
<td>Arlington</td>
<td>&lt; 18</td>
<td>1997</td>
</tr>
<tr>
<td>Austin</td>
<td>&lt; 18</td>
<td>1996/97</td>
</tr>
<tr>
<td>Bedford</td>
<td>&lt; 16</td>
<td>1996</td>
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<tr>
<td>Benbrook</td>
<td>&lt; 17</td>
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<td>Coppell</td>
<td>&lt; 15</td>
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<tr>
<td>Dallas</td>
<td>&lt; 18</td>
<td>1996/2014</td>
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<tr>
<td>Fort Worth</td>
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</tr>
<tr>
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<td>&lt; 15</td>
<td>1999</td>
</tr>
</tbody>
</table>

Public Health Considerations
The importance of wearing a helmet while riding a bicycle in preventing head injuries and fatalities has been well documented by the science. Helmets have been found to provide a 63% to 88% reduction in the risk of head, brain, and severe brain injury for all ages of bicyclists. They provide equal level of protection in crashes involving motor vehicles (69%), and facial injuries are reduced by 65%. The Centers for Disease Control and Prevention (CDC) does highlight how bicycle helmet laws are only as effective as the laws’ implementation, and legislation effectiveness is strengthened when in conjunction with education campaigns and supportive publicity. Role modeling through parents is also encouraged, where parents wear a helmet despite the lack of a helmet law for adults. CDC also suggests that promotional events such as free or discounted helmet distribution, parent/child education on helmet fitting...
and the importance of wearing a helmet for every bicycle ride, and school campus helmet requirements all may be effective strategies to encourage greater uptake of youth helmet use.

Regarding the public health costs of helmets versus potential indirect medical costs due to injury, the National Highway Traffic Safety Administration (NHTSA) states that to be effective:

[a] helmet law should be supported with appropriate communications and outreach to parents, children, schools, pediatric health care providers, and law enforcement. NHTSA has a wide range of material that can be used to educate and promote the use of a helmet every ride, demonstrate helmet effectiveness, and educate and demonstrate how to properly fit a helmet. While helmets that meet safety requirements can be purchased for under $20, States may wish to provide free or discounted helmets to some children. When considering the costs of providing helmets, agencies should consider the benefits. A NHTSA summary of helmet laws reported that “every dollar spent on bicycle helmets saves society $30 in indirect medical and other costs”

Discussion and Recommendations
Resolution 331 highlights an opportunity to strengthen TMA’s current bicycle helmet policy. TMA already has strong established policy supporting mandatory bicycle helmet use, and through its Hard Hats for Little Heads program, the association also promotes parent/child education and distributes free helmets to children. TMA’s multifaceted approach to encouraging bicycle helmet use, especially among children, is an effective strategy supported by scientific research. A modification of the current policy would be supportive of the efforts already underway by TMA but would also call for strengthened physician involvement in helmet safety education for schoolchildren in elementary schools.

After careful study and consideration of the resolve of Resolution 331 calling for a modification of current TMA policy, the Council on Science and Public Health recommended to the board amending TMA Policy 55.021 as follows:

Recommendation: Amend as follows:

TMA Policy 55.021 Bicycle Helmets: The Texas Medical Association supports the use of bicycle helmets certified by the U.S. Consumer Products Safety Commission, by Texans of all ages and passage of a law mandating approved helmet use for all cyclists. TMA encourages physicians to be informed about the benefits of helmet use, particularly for elementary school-age cyclists, and to promote evidence-based, best practices regarding helmet safety education to school and community safety advisory committees.

The board reviewed the recommendation of the Council on Science and Public Health in March. Acting upon the council’s report, the board approved amending TMA Policy 55.021 Bicycle Helmets.

Related TMA Policy:
55.019 Comprehensive School Health Education
55.027 Public School Education
260.074 All-Terrain Vehicles

Related AMA Policy:
Bicycle Helmets and Safety H-10.985
Helmets for Riders of Motorized and Non-motorized Cycles H-10.964
Motorcycles and Bicycle Helmets H-10.980
Helmets and Preventing Motorcycle- and Bicycle-Related Injuries H-10.977
Use of Helmets in Bicycle Safety H-10.987
References:
Background
Social media discourse has become more volatile. The Texas Medical Association (TMA) has seen more people on its social media channels posting hostile content about Texas’ elected leaders and/or about TMA. Acknowledging how harmful this content is to constructive dialogue, the TMA Board of Trustees adopted a process for warning and removing these individuals (TMA members and/or the general public) from TMA’s social media channels when its social media policy is not followed. Below is the social media policy and warning process to offenders.

TMA’s Social Media Conduct Policy
The Texas Medical Association is active on various social media channels. These channels are platforms for followers to communicate and interact with TMA members and stakeholders. To maintain a friendly and informative environment, we ask that users of TMA’s social media platforms do not post any links, comments, photos, or videos that:

- Abuse, harass, threaten, or otherwise violate the legal rights of others;
- Are defamatory, indecent, misleading, anticompetitive, or unlawful;
- Violate state or federal privacy laws or rules or show protected health information (PHI);
- Are unkind toward fellow community members;
- Contain spam or are intended to cause disruptions to the page;
- Violate another’s copyright, trademark, or other intellectual property rights;
- Are overtly promotional in nature;
- Are irrelevant to page content; or
- Violate any local, state, federal, and/or international laws or regulations.

We reserve the right to remove any posted content and/or block any user that fails to adhere to these rules.

The views expressed in comments on any of our social media channels are those of the author. Please note that TMA does not endorse opinions or content not posted or originally created by TMA. You are fully responsible for everything that you post.

All content provided is for informational purposes only, and no representations are made as to the accuracy or completeness of any information found on TMA’s social media channels or found by following any link on one of these pages. Further, TMA does not endorse and is not responsible for the content of third-party websites accessed through any of our social media pages.

For questions regarding TMA, you may contact the TMA Knowledge Center at (800) 880-7955.
Warning Process

- TMA has posted its social media policy on its Facebook, Twitter, Instagram, and LinkedIn channels to remind people to be respectful of others when posting their comments.
- If TMA staff identifies someone who is posting disrespectful, mean-spirited comments on a TMA social media channel, TMA will contact that individual via a direct message on that channel. They will be pointed to TMA’s social media policy and be given a warning. TMA staff will notify the appropriate chair of the board, council, committee, or section at that time.
- If the person continues to post harmful content, the appropriate TMA board, council, committee, or section chair will contact the individual via email to say such behavior will not be tolerated and include TMA’s social media policy. The chair also will let the individual know that if such behavior continues, TMA will block them from the social channel where the offense occurred.
- If the individual continues to post negative, mean-spirited content, TMA will block the person from the channel with approval from the chair of the TMA Board of Trustees.

Related TMA Policy:
295.017 Online Communications Policy for TMA Physician Leaders

Related AMA Policy:
Policy on Conduct at AMA Meetings and Events H-140.837
Over the past year, the Committee on Medical Home and Primary Care focused on helping primary care physicians stay informed on the latest COVID-19 resources as well as providing resources to help them improve patient care. The committee collaborated with the Texas A&M Rural and Community Health Institute and Project ECHO to develop and promote CME for primary care physicians seeking to serve rural communities. In addition, the committee is represented on the Steering Committee for the Texas Coalition of Healthy Minds, which promotes the integration of mental health services into the medical home and advocates for parity in the treatment of medical and mental health conditions.

**Pandemic response**

The committee responded to the SARS-CoV-2 pandemic by promoting innovation and collaboration among other TMA components and working to advance and improve primary care. It held three educational events with CME together with the TMA Committee on Rural Health and the Value Based Payment Workgroup to help TMA better identify COVID-19’s impact on primary care physician practice viability and develop potential legislative and regulatory interventions, including new primary care payment models and telemedicine payment parity.

**Texas Primary Care Consortium**

The committee collaborated with the Texas Primary Care Consortium, an organization facilitating communication among primary care leaders and advancing the medical home, to develop its 2021 virtual summit and subsequent report, Making Primary Care Primary: A Prescription for the Health of all Texans. Report recommendations include strengthening the health care safety net, prioritizing value-based care delivery, and optimizing health care spending through investment in primary care.
Subject: Rural Health Activities Update

Presented by: Lucia L. Williams, MD, Chair

Over the past year, the Committee on Rural Health focused on helping rural physicians stay informed on the latest COVID-19 resources and safeguarding the rural facilities in which they serve. The committee collaborated with the Texas A&M Rural and Community Health Institute and Project ECHO to develop and promote training for physicians seeking continuing medical education to serve rural communities.

Pandemic response

The committee responded to the SARS-CoV-2 pandemic by promoting coordination and collaboration to advance and improve rural health. It held three educational events with CME together with the TMA Committee on Medical Home and Primary Care and the Value Based Payment Workgroup to help TMA better identify COVID-19’s impact on practice viability and develop potential legislative and regulatory interventions, including telemedicine payment parity. The committee also expresses interest in virtual networking opportunities for rural physicians to aid in vaccine rollout and pandemic response.

Rural communities and hospitals

In pursuit of the recommendations in the committee’s report, Studying Financial Barriers of Rural Hospitals, adopted by the House of Delegates in 2020, the committee collaborated with the Texas Organization of Rural and Community Hospitals on policy priorities for Texas’ 2021 legislative session. In addition, the committee is involved in discussions to revitalize the Rural Community Health System, an innovative delivery system established by the legislature in 1997.