



Physicians Caring for Texans



Wins on Tobacco, Prior Authorization, and More Make for a Successful Legislative Session

Legislation is just one piece of a healthy Texas. But it's a big piece, and when the Texas Medical Association told the lawmakers of 2019 how it should fit, those legislators largely shaped it to what physicians and patients need.

Physicians Stop Bad End-of-Life Bill

Just as, if not more, important as passing good bills, medicine's collective "nay" frequently helped prevent the legislature from enacting bad law.

One major example: Senate Bill 2089 (Hughes) would have required a hospital to continue providing medical interventions to an end-of-life patient until the patient is transferred to another facility – even if the hospital's medical ethics committee process determined that further treatment would harm the patient.

SB 2089 gained troublesome steam toward the end of session. But TMA called on member physicians to rally in opposition to the bill.

Hundreds of Texas physicians took up the call, using TMA's Grassroots Action Center to write their lawmakers.

"I believe the whole thing is motivated by a lack of faith in physicians and a desire to impose one group's political will on everyone else without their say so," Mary Elizabeth Paulk, MD, wrote in an email to her state senator. "This is just wrong."

Dr. Paulk wasn't alone. These and other personal and passionate physician stories contributed to SB 2089's demise.

"SB 2089 takes decisionmaking about dying patients out of the hands of ethicists and physicians who have spent their lives dedicated to training and study so that we understand how best to provide care in exactly these kinds of situations. ... When I think of the amount of suffering this bill is going to cause for patients, families, hospitals, and our health system as a whole, I am overwhelmed with sadness," Faith Holmes, MD, wrote to her state senator.

The bill passed the Senate 22-8 but stalled in the House.

TMA scored on a wide range of goals to improve the state's medical landscape during this year's session of the Texas Legislature. In public health, the House of Medicine convinced lawmakers that raising the age to purchase tobacco to 21 was the right thing for the state's present and future. Medicine also successfully persuaded the legislature and Gov. Greg Abbott to improve insurance network adequacy and directories, which will help with surprise medical bills.

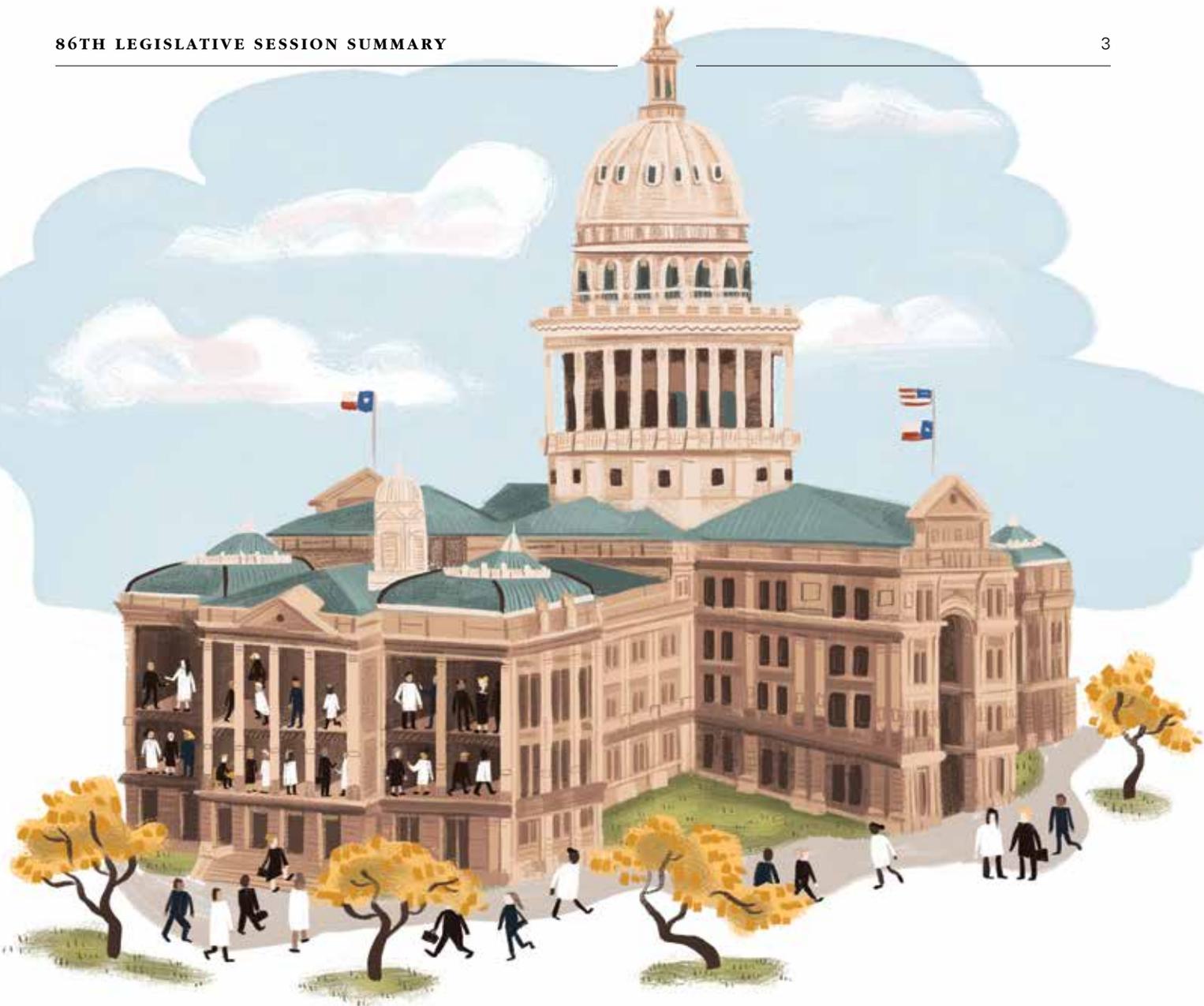
Insurers' prior authorization tactics – which infuriate physicians and delay or derail patients' access to needed services and medications – took several damaging hits in the form of TMA-backed bills that became law. And the 2020-21 budget includes a number of vital funding increases, including a \$68 million increase for women's health programs, an added \$60 million to preserve the state's healthy ratio of graduate medical education (GME) slots to medical school graduates, and \$50 million more for community mental health services.

Those were just a few of the big wins medicine and its friends delivered, and they helped to offset the disappointments, such as the legislature failing to grant the long-overdue Medicaid physician payment increase that TMA requested.

"On the whole, it was a good session for us," said Fort Worth-area pediatrician Jason Terk, MD, who chaired TMA's Council on Legislation throughout the session. "We got a lot of good things done, and we can be proud of our advocacy for the progress we wanted to make in public health, mental health, women's health, and GME funding, just to name a few. I am also very proud of our advocacy defending against bills that would have been harmful to our patients and us, the physicians who care for them."

TMA chief lobbyist Darren Whitehurst emphasized that success at the Capitol starts with medicine's grassroots efforts, including the work physician advocates do during TMA's monthly First Tuesdays at the Capitol. But he stressed that the work continues even after the legislature adjourns.

"Really, we don't have a lot of time to look back. We've got to continue to look forward. We're going to have a busy interim building on the relationships and the work that we did this past session, and looking forward to the next legislative session," Mr. Whitehurst said. "The issues that we face are a lot of the same issues from session to session. We've got to be committed to trying to move forward and to making



sure that our doctors are engaged and are involved as part of a political process.”

Assault on Prior Auth, Bad Networks

TMA went into this session looking to attack insurer network inadequacy and health plans’ use of care-impeding prior authorization demands.

On both fronts, medicine scored solid legislative wins that will make it easier for patients and physicians to know who’s in network, and provide needed transparency on preauthorization requirements. And on surprise billing, medicine turned what could’ve been a disastrous bill into something more palatable.

Senate Bill 1742 (Menéndez), one of medicine’s biggest legislative victories, will require health plans’ directories to clearly identify in-network physicians,

with separate headings required in the directory to categorize physicians in several different types of specialties, including radiologists, anesthesiologists, emergency department physicians, and others.

Dallas cardiologist Rick Snyder, MD, says SB 1742 carries four powerful benefits:

- Simplifies the process for patients to compare different plans,
- Exerts market pressure on insurers to address deficiencies in their networks,
- Makes it easy for patients and family members to make sure all members of a care team are in network, and
- Allows physicians to see whether a specialist needed to co-manage a patient is in network.

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“Initially, we’re starting just with the specialties that are most commonly associated with a surprise-billing event; those are the hospital-based specialties,” Dr. Snyder said. “So if you’re at Presby [Presbyterian Hospital in Dallas], for example, and you’re looking at Blue Cross Blue Shield and you look under ‘anesthesia’ and there’s no physicians in network for anesthesia at that hospital, you might want to look at a different plan. So it empowers the patients when shopping for plans.”

SB 1742 also requires state-regulated health maintenance organizations (HMOs) and insurers offering preferred provider organization (PPO) or exclusive provider organization plans to post any prior authorization requirements on the internet; introduces new requirements for those insurers to post notice of prior authorization changes; creates a joint interim committee to study prior authorization and utilization review during the interim session; and opens the door for utilization reviews to be conducted earlier in the appeal process by a Texas-licensed physician in the same or similar specialty as the physician requesting treatment approval.

As for balance billing, Senate Bill 1264 (Hancock) initially threatened to give health plans disproportionate control over what physicians would be paid for certain out-of-network care.

But TMA worked with Rep. Tom Oliverson, MD (R-Cypress), to craft an imperfect but improved replacement bill, featuring an arbitration process that takes the patient out of surprise-billing battles while giving physicians a fairer shake on payment.

On a significant issue contributing to balance billing – network shortfalls – House Bill 3911 (Vo and Campbell) requires the state insurance commissioner to examine PPO plans for network adequacy at least once every three years.

Sen. Donna Campbell, MD (R-New Braunfels), said discussions on balance billing during the past few sessions typically have centered on out-of-network practitioners and facilities, without considering the role health plans and network adequacy play. She says with HB 3911, PPOs will be held accountable to the Texas Department of Insurance the same way HMOs have been.

“We pay our insurance premiums every month to get the care that [we] need if we need it. Insurance companies are supposed to pay,” she said.

“Insurance companies have gotten more onerous for providers trying to get paid. This is just a small thing, but if it helps in any big way, then that’s what we need.”

Several other insurance bills important to medicine also reached the governor’s desk. Among them:

- House Bill 170 (Bernal) requires certain health plans that cover a screening mammogram to provide at least the same level of coverage for a diagnostic mammogram.
- Senate bills 747 and 748 (Kolkhorst) collectively provide and set up funding for newborn genetic screening tests. SB 747 requires HMOs to cover newborn genetic screening tests as part of a well-child exam, and also prohibits plans that provide maternity coverage from excluding or limiting coverage for those tests.
- House Bill 2041 (Oliverson) will require freestanding emergency centers to post conspicuous notices that let patients know the facility or the physician may be out of network, and to provide a disclosure statement listing possible observation and facility fees.
- House Bill 3041 (C. Turner) requires health plans to allow a physician to request renewal of a prior authorization at least 60 days before it expires.

STATE BUDGET FUNDS MANY TOP PRIORITIES

The 2020-21 state budget brings in new funding for many of medicine's top priorities. Here are some key figures:*



\$68 MILLION

Increase in **women's health funding**, including \$45 million more for Healthy Texas Women



\$50 MILLION

Increase in funding for community **mental health** services for adults



\$31 MILLION

Increase in state funding for **early childhood intervention**



\$7 MILLION

Increase to reduce **maternal mortality and morbidity**



\$60 MILLION

Funding added to preserve ratio of 1.1 **graduate medical education** slots per medical school graduate



\$99 MILLION

State funding to establish the Texas Mental Health Care Consortium, an effort to increase children's access to **behavioral health services**



\$5 MILLION

Funding to integrate **prescription monitoring program** into EHRs

*Amounts are for combined state and federal funds, except where indicated.

Triumph Over Tobacco

Texas physicians got the kind of huge win on tobacco issues they haven't seen in decades – a law to keep tobacco products away from young people.

The Tobacco 21 measure, or Senate Bill 21, raises the minimum age to purchase tobacco and vape products to 21 years, except for military personnel.

"It's going to be one bite out of the elephant to help eliminate tobacco addiction among some of our youth," said Rep. John Zerwas, MD

(R-Richmond), who carried the legislation with Sen. Joan Huffman (R-Houston).

The law takes the critical step of keeping young people away from tobacco products, Representative Zerwas says. Research shows that about 95% of smokers become addicted to tobacco before age 21, and areas that raise the age for tobacco purchases usually see declines in sales to young people.

Representative Zerwas says the goal of the law, which takes effect Sept. 1, is to prevent teens 17 and younger from smoking because "kids who become addicted

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Rep. John Zerwas, MD

at a very young age have a dismal opportunity for kicking the habit ultimately.”

Texas joins 14 other states and more than 475 cities and counties across the country in raising the age for purchasing tobacco products.

“We're the first major 'conservative' state to pass this for sure,” Representative Zerwas said. “That will help blaze the trail for others to follow suit.”

Representative Zerwas also authored House Bill 39 and House Joint Resolution 12 to help renew the Cancer Prevention and Research Institute of Texas (CPRIT). Since it was founded in 2008, CPRIT has awarded about \$2.2 billion in more than 1,300 grants to promote cancer-fighting efforts.

With the legislature's blessing, Texas voters will decide on Nov. 5 if the state's cancer-fighting agency will be able to issue another \$3 billion in taxpayer-backed bonds for research and prevention.

“I'm very happy that will happen,” said Marian Y. Williams-Brown, MD, chair of TMA's Committee on Cancer and an assistant professor of obstetrics and gynecology at Dell Medical School at The University of Texas at Austin.

She says CPRIT has drastically improved Texas' ability to do cancer research. For instance, the 2018 Nobel Prize in Physiology or Medicine was co-awarded to a researcher brought to Texas using CPRIT funds. And Dr. Williams-Brown herself is one of many physicians participating in screening initiatives paid for by the agency.

“It's through these types of programs that we're able to provide health care to so many people throughout Texas – particularly those who are underserved and might not otherwise have access,” she said.

David Lakey, MD, vice chancellor for health affairs and chief medical officer for The University of Texas System and a member of TMA's Council on Science and Public Health, praised new funding allocated to the Texas Department of State Health Services. “This will allow [DSHS] to address a variety of issues, including support of their lab, tuberculosis control, and extra funding to address maternal mortality and morbidity in Texas,” he said.

Maternal Health Roadblock

One setback for TMA's public health agenda: preventing maternal illness. TMA advocated for extending Medicaid eligibility for new mothers from the current 60 days to 365 days. While the Texas Legislature did not fund this reform, it did approve Senate Bill 750 (Kolkhorst), which directs the Texas Health and Human Services Commission (HHSC) to look for other ways to extend coverage through the Healthy Texas Women program.

Also, House Bill 253 (Farrar) directs HHSC to develop a five-year plan to address postpartum screening and depression, and Senate Bill 749 (Kolkhorst) establishes level-of-care designations for hospitals that provide maternal and neonatal care.

Similarly, there was little movement on childhood vaccines policy. Neither pro-vaccine groups like TMA nor anti-vaccine groups were able to advance their agendas. However, TMA did enjoy success on adult vaccine measures, garnering support for more vaccine information and tracking for first responders in House bills 1418 and 1256 (Phelan).

Texas also built on recent gains in mental health by funding further construction on state mental health facilities in Austin, Rusk, and San Antonio. Also, Senate Bill 11 (Taylor), which is designed to improve school safety, establishes a state Child Psychiatry Access Network, giving pediatricians and other primary care physicians ready access to a greater range of psychiatrists and other licensed behavioral health professionals.

The legislature also passed bills designed to fight obesity. Senate Bill 952 (Watson) requires that child care facilities' physical activity, nutrition, and screen time rules comply with science-based standards. Gov. Greg Abbott vetoed House Bill 455 (Allen), which would have directed school districts to adopt recess policies. The governor said the bill had “good intentions” but was “just bureaucracy for bureaucracy's sake.”

Likewise, the governor vetoed House Bill 448 (C. Turner), which would have required people to transport a child younger than 2 in a rear-facing car seat unless the child met certain height and weight thresholds. The governor said the bill was “an unnecessary invasion of parental rights and an unfortunate example of overcriminalization.”

GME Growth Plan Adopted

Medical education made some gains in the 2019 legislative session, including the statutory approval of two new medical schools – the University of Houston College of Medicine in Houston and Sam Houston State University College of Osteopathic Medicine in Conroe, both of which will open in 2020.

TMA also achieved an important goal with passage of Senate Bill 1378 (Buckingham), which requires new public medical schools to plan for the GME needs of their target class size. Previously, schools had to plan only for their inaugural class size, which is often considerably smaller.

Legislators provided \$762 million over two years to support the education of medical students, an increase of \$12.8 million, and \$98.5 in GME funding, an increase of \$8.4 million. They also asked the Texas Higher Education Coordinating Board to study shortages of physicians and other health professionals.

Other education bill highlights:

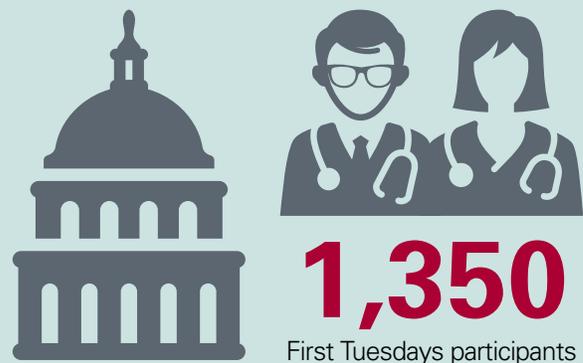
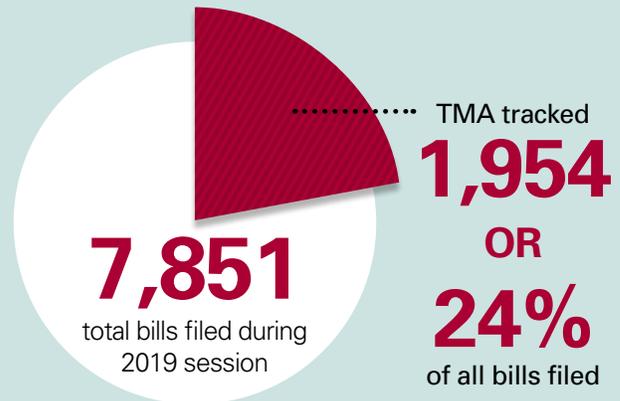
- House Bill 2261 (Walle) increases the Physician Education Loan Repayment Program’s allowable repayment assistance amounts by \$5,000 each year. This raises the total repayment assistance available from \$160,000 to \$180,000.
- House Bill 1065 (Ashby) creates a grant program to develop residency training tracks to prepare physicians for rural and underserved settings. However, lawmakers did not appropriate any funds for the program.

Much Work Still to Do for Medicaid Pay Hike

Medicine didn’t get everything it needed from lawmakers for Medicaid, including TMA’s biggest and boldest ask of the 2019 session. Still, progress TMA achieved on managed care reform and other facets of Medicaid will advance physicians’ efforts to care for the most vulnerable Texans.

Those wins collectively softened the impact of one of the session’s greatest disappointments for medicine:

86TH LEGISLATIVE SESSION BY THE NUMBERS



The legislature provided no new funding for Medicaid physician payments. TMA had requested \$500 million in general revenue to give physicians their first meaningful Medicaid increase in decades. Nor did

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Doug Curran, MD

lawmakers follow through on medicine's request to extend comprehensive postpartum coverage

Doug Curran, MD, who was TMA president at the beginning of the session, designated improving physician Medicaid payments as his top priority. He called the legislature's inaction "hurtful to our people" and said medicine must continue advocating for change before the next session.

"Just like a physician who is taking care of a patient and the patient is not doing what they're supposed to be doing ... we must tell our legislators that we've got to reach out and change some of the stuff that's going on in Medicaid, and [with] the underinsured or the uninsured," Dr. Curran said. "If we don't do that, we're going to see the Texas economy begin to suffer. And that's probably going to happen within the next three or four years, especially if we have an economic downturn. We've got to convince our legislators in this interim that they have got to address the issues of lack of access both in Medicaid and [with] the uninsured and the underinsured."

However, following a year in which negative media attention put Texas Medicaid's managed care companies under intense focus, several important reform bills earned passage. Senate Bill 1207 (Perry) introduces new requirements to hold Medicaid managed care organizations (MCOs) accountable for prior authorization decisions. The bill requires MCOs to:

- Provide an explicit clinical reason for a prior authorization denial,
- Provide a specific list of the documentation required to complete a request for prior authorization, and
- Give the requesting physician the chance to speak to a medical director within the same or similar specialty who has experience treating the same population as the patient.

The bill also establishes a process for patients to request an independent review of an MCO's denial of care or reduction of services, and requires MCOs to maintain an up-to-date catalogue of prior authorization requirements on their websites.

Round Rock pediatrician Maria Scranton, MD, chair of TMA's Select Committee on Medicaid, CHIP, and the Uninsured, says the requirement for MCOs to "make it clear exactly what the problem is" for prior authorization was a major victory.

"Part of the problem with Medicaid is that the paperwork and the administrative responsibilities are so high that first of all, you're not getting that much money in the first place," she said. "But now, if you're having to hire people to help you do all of this stuff, then it's really taking away [from patient care]. So if you could eliminate some of the paperwork burden, in some ways that would be like a small raise."

Other promising Medicaid wins:

- Senate Bill 1096 (Perry) will ensure that children who participate in STAR Kids, an MCO model for medically complex and frail children, will have uninterrupted access to established medications by heavily restricting the use of prior authorization for prescription drugs.
- House Bill 25 (Gonzalez) will establish a pilot program to transport pregnant and postpartum women to and from medical appointments, with their children in tow.
- Senate Bill 748 (Kolkhorst) directs the state to expand pregnancy medical home pilots to new sites and to test the use of telemedicine, telehealth, and telemonitoring to improve prenatal and postpartum care.
- In the 2020-21 budget, lawmakers approved more than \$100 million to help rural hospitals, a portion of which is dedicated to helping those hospitals retain labor and delivery services.

PMP Extension Granted

When it came to opioids and pharmacy matters, some of the major pieces of medicine's 2019 agenda came down to something everyone wishes they had more of: time.

Physicians need it to get comfortable with a mandate to check the state's prescription monitoring program (PMP). Patients need it to make sure the pain medications they're prescribed do what the drugs are supposed to do.

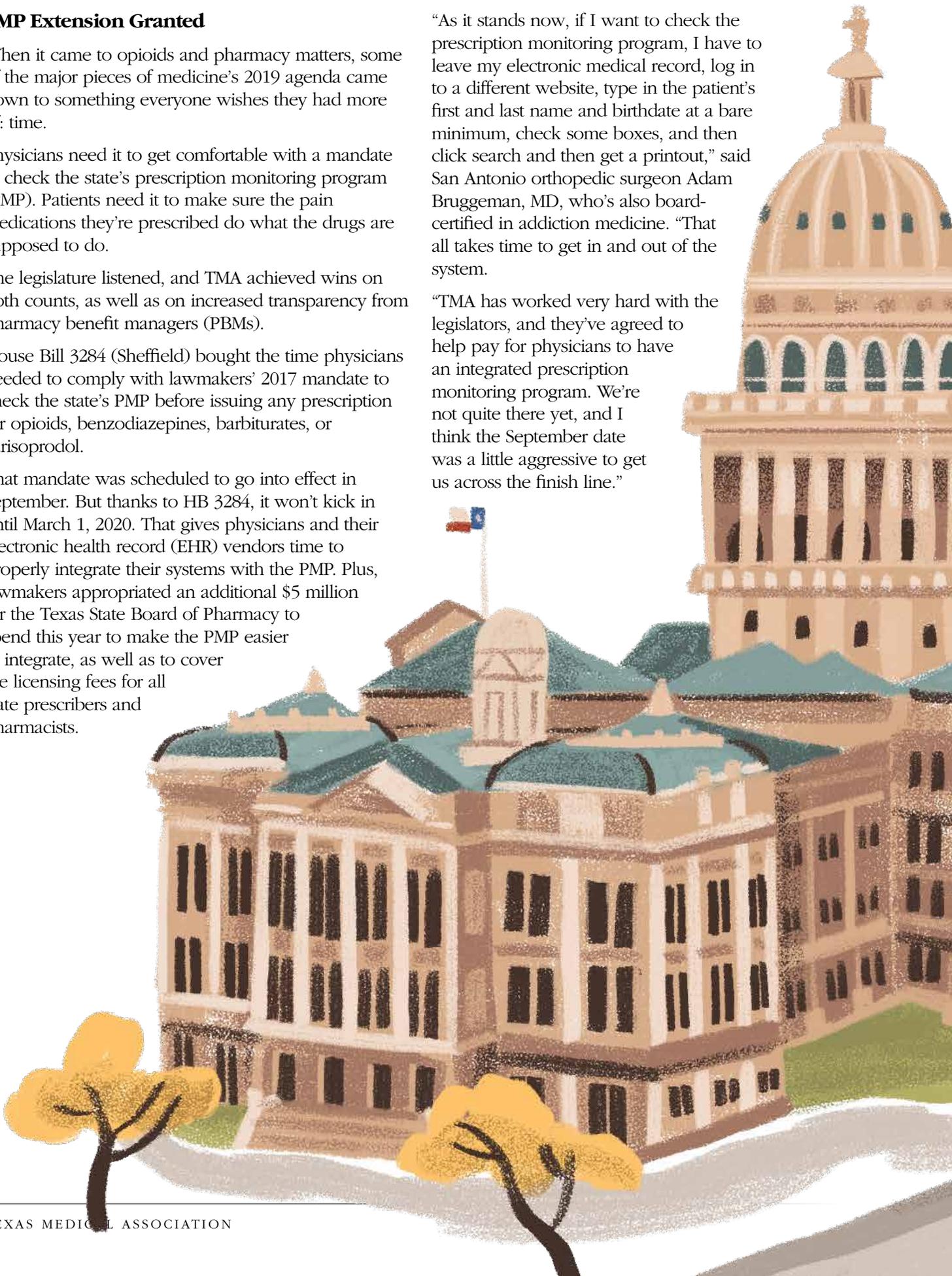
The legislature listened, and TMA achieved wins on both counts, as well as on increased transparency from pharmacy benefit managers (PBMs).

House Bill 3284 (Sheffield) bought the time physicians needed to comply with lawmakers' 2017 mandate to check the state's PMP before issuing any prescription for opioids, benzodiazepines, barbiturates, or carisoprodol.

That mandate was scheduled to go into effect in September. But thanks to HB 3284, it won't kick in until March 1, 2020. That gives physicians and their electronic health record (EHR) vendors time to properly integrate their systems with the PMP. Plus, lawmakers appropriated an additional \$5 million for the Texas State Board of Pharmacy to spend this year to make the PMP easier to integrate, as well as to cover the licensing fees for all state prescribers and pharmacists.

"As it stands now, if I want to check the prescription monitoring program, I have to leave my electronic medical record, log in to a different website, type in the patient's first and last name and birthdate at a bare minimum, check some boxes, and then click search and then get a printout," said San Antonio orthopedic surgeon Adam Bruggeman, MD, who's also board-certified in addiction medicine. "That all takes time to get in and out of the system.

"TMA has worked very hard with the legislators, and they've agreed to help pay for physicians to have an integrated prescription monitoring program. We're not quite there yet, and I think the September date was a little aggressive to get us across the finish line."



With opioids generating bleak national headlines on a regular basis, lawmakers seemed focused on limiting opioid prescriptions for acute pain to a seven-day supply. But House Bill 2174 (Zerwas) establishes a 10-day limit instead.

“It is somewhat of an arbitrary thing to put a particular maximum amount of time for opioid prescriptions,” said Dr. Terk. “We felt like 21 days is probably too long and doesn’t respect the concern about how long it takes for an individual to become dependent on these medications. But the [TMA Council on Legislation] reasoned that [a limit of] 10 days was reasonable for most post-operative and post-trauma patients.”

HB 2174 also requires electronic prescribing for opioids beginning in 2021 (when a similar requirement from Medicare takes effect) plus two hours of CME for opioid-prescribing, and generally prohibits prior authorization for medication-assisted treatment for opioid use disorder.

Increasing drug-pricing transparency from PBMs was another priority for TMA in this session, and House Bill 2536 (Oliverson) made a big dent in that problem. The bill requires PBMs to submit a detailed disclosure report when a drug costing at least \$100 for a 30-day supply increases in price by 15% or more in one year, or by 40% or more over three years.

Telemedicine Opportunities Expanded

In 2017, legislators ended a long-running standoff over telemedicine in Texas by passing a TMA-backed bill that removed the requirement for having an in-person meeting to establish a patient-physician relationship. Instead, it mandates that physicians meet the same standard of care as that required for an in-person visit.

New laws passed with TMA’s support this year will make telemedicine even more attractive to physicians. One of the most significant was House Bill 3345 (Price), which allows physicians to choose the platform for providing services to their patients via telemedicine rather than having health plans dictate the platform.

“We’re really excited about that, because it allows the [physicians] to say, ‘This is what I want to put my patients on,’” said Ogechika Alozie, MD, an El Paso infectious disease specialist who is vice chair of TMA’s Committee on Health Information Technology.

Other significant telemedicine bills that passed in 2019 with TMA’s support are:

- Senate Bill 670 (Buckingham), which requires Medicaid to cover telemedicine services;
- House Bill 1063 (Price), which requires Medicaid to cover home telemonitoring for specific pediatric patients;
- House Bill 3285 (Sheffield), which permits telehealth treatment for substance use;
- Senate Bill 749 (Kolkhorst), which allows on-call physicians to use telemedicine, if needed;
- House Bill 871 (Price), which allows telemedicine to be used in rural counties and communities to contact an on-call physician who specializes in emergency medicine; and
- SB 11, which establishes a telemedicine program through the Child Psychiatry Access Network.

Scope Expansion Shot Down

When it comes to shooting down dangerous attempts to expand nonmedical practitioners’ scope of practice, TMA’s advocacy army once again proved to be expert marksmen in 2019.

Medicine trained its scope on bills that would have allowed nurse practitioners, chiropractors, and optometrists, among others, to wade into the practice of medicine. Those and other bad bills fluttered to the ground in heaps of feathers, thanks to the House of Medicine reminding lawmakers there are certain practices only a physician is trained to do.

Take House Bill 2733 (Stephenson). That measure would have expanded the practice of chiropractic beyond its current scope – defined in the law as the musculoskeletal system – and introduced the possibility of chiropractors treating the “neuromusculoskeletal” system; in other words, giving chiropractors the authority to treat the nervous system as well.

Austin neurologist Sara Austin, MD, says keeping nervous system treatment as the practice of medicine is a matter of patient safety.

Adding the nervous system to the scope of chiropractic “has the effect of being really confusing to patients,” Dr. Austin said. “There’s chiropractors now who like to call themselves ‘neurochiropractors.’ No one knows what that means, what their training is or anything, and they’re actually not supposed to be practicing neurology. But they do it anyway. ... The public just assumes that means they can take care of the nervous system, which is not true.”

Other troublesome scope-of-practice bills TMA helped bring down include:

- House Bill 1792 (Klick), which sought full independent practice and prescribing authority for advanced practice registered nurses (APRNs) without physician delegation and supervision;
- House Bill 1798 (Goldman), which would have allowed therapeutic optometrists to perform a number of eye surgeries, including LASIK, and independently manage glaucoma;
- House Bill 1092 (Zedler), which would have granted independent prescribing authority to psychologists; and
- House Bill 927 (White), which would have granted independent practice and prescribing authority to APRNs in health professional shortage areas.

Medical Board Put Back on Track

Two years ago during the 2017 regular session, the legislature put the practice of medicine in the state in serious danger, failing to renew the Texas Medical Board (TMB) and the state's Medical Practice Act. Among other potentially catastrophic side effects, having no medical board and no medical practice act would have meant anyone in Texas could call themselves a physician and practice medicine.

Doomsday was averted that year when Governor Abbott called a special session and lawmakers renewed TMB – but for only two years instead of 12, as is customary following the Sunset Advisory Commission's intensive review of an agency.

This year, fortunately, TMA didn't have to sound the doomsday alarm, as lawmakers got it done in the regular session. House Bill 1504 (Paddie) put TMB

back on the standard 12-year sunset cycle, renewing the board through 2031.

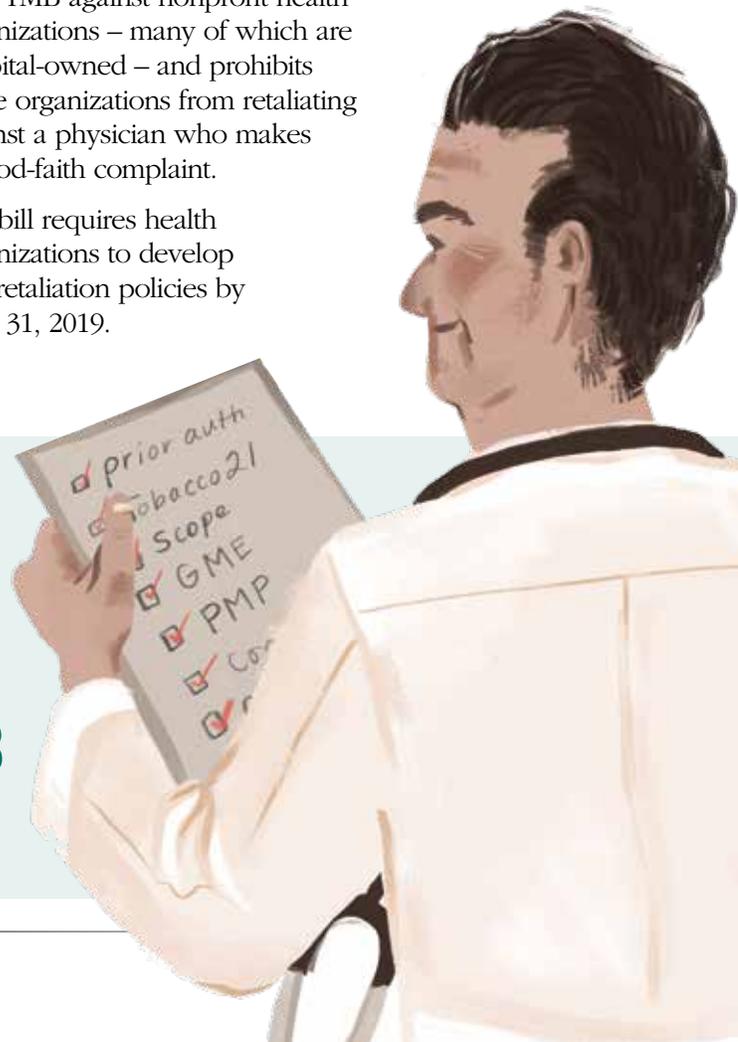
The bill also mandates an expedited licensing process for out-of-state physicians and enforces timely removal of certain negative information from a physician's TMB profile, such as when physicians defend themselves against board discipline. While not perfect, the legislation is still an improvement to existing law.

"There were amendments that we tried to get put on the bill that were unsuccessful, including ones that would require more fairness and transparency," TMA lobbyist Dan Finch said. "Other changes we supported were met with some success, including how information is kept on the TMB website when a physician successfully defends his or her actions. However, the medical board has been reestablished for 12 years, and that in itself is a huge success – not to have it held hostage and not to have to go to special [session]."

TMB procedures were also part of House Bill 1532 (Meyer), which protects employed physicians' independent medical judgment and clinical autonomy by creating a process for them to file complaints with TMB against nonprofit health organizations – many of which are hospital-owned – and prohibits those organizations from retaliating against a physician who makes a good-faith complaint.

The bill requires health organizations to develop anti-retaliation policies by Dec. 31, 2019.

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Physicians Caring for Texans

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