A. Industry Update

Presented by:

Rachel Hammon, BSN, RN, Executive Director, TAHC&H
Jess Boston, Director of Government Affairs, TAHC&H
Industry Update

If your in Home Care, your in Politics

November 14, 2022

Legislative Activities
General Legislative Activities

- Interim committees are finalizing their work; interim reports likely released late November through December.
- July 14th, Comptroller Hegar Updated Biennial Review Estimate: *Historic Economic Growth in Texas*
  - $27B Surplus for Fiscal Year ending 8/2023; Previous estimate was $12B
  - $14B Economic Stabilization Fund ("Rainy-Day") Balance; Previous estimate $12B
- Revised estimate is subject to change due to economic factors of rising costs, inflation, supply chain issues, workforce struggles, and global issues

General Legislative Activities

- State Agency Legislative Appropriations Requests (LARs):
  - HHSC LAR: Exceptional Item Placeholders for Community Attendant Wage Increases and PDN
  - Overall state agency requests = 480 Exceptional Items

- Other legislative process issues:
  - Consolidation of Senate Committees
  - Discussion around which Senate committee will have jurisdiction over health insurance policies
  - Changes to the Chair of House Public Health and House Appropriations, Article II, Health and Human Service
Hearing Updates

Interim Hearings and Testimony

- TAHC&H testifies in House Public Health Hearing
- TAHC&H Testifies in LBB Hearing
- TAHC&H Testifies in Health Care Reform Committee

88th Legislative Session
88th Legislative Session –

- New Members and a Learning Curve
- Committee Changes
- Revenue Surplus and Rainy-Day Fund
- Remaining ARPA federal funds
- New Federal Funding
- Property Tax Relief
- Medicaid Shortfall
- Medicaid Coverage (generally)
  - End of Public Health Emergency/Transition
- Border Crisis
- State Related Cost Overruns
- Electricity Reforms
- Water
- Infrastructure
- Broadband
- School Safety
- Firearms
- Mental Health
- Red Flag Laws
- "Disney" Bills
- Foster Care System
- Women’s Health
- Gender Affirming Care

TAHC&H – 88th Legislative Priorities

Budget Issues

Community Care Rate Increase:
- Average of $15.00 for Community Attendant Wages
- Additional 20% for Administrative Operations

Private Duty Nursing Rate Increase & Differential:
- 40% increase to both the RN and LVN rate
- $6 differential for weekends and holidays

Therapy Modifier:
- Change Payment Methodology using a modifier for Home Care Add-on

Community Care Workforce Rider:
- Workforce Shortage reporting rider. Will work in coordination with proposed Comm. Care Advisory Committee
TAHC&H – 88th Legislative Priorities

Policy Issues

- Community Care Payment Advisory Committee
- Managed Care – Care Coordination
- Family Caregiver Program/Lic. Home Health Aide

88th - Legislative Timeline

November 8, 2022 – General Election Day
November 14, 2022 - Prefiling of Legislation
December 13, 2022 – Fundraising Moratorium
January 10, 2023 – Session Begins (140 days)
March 10, 2023 – Bill filing deadline (60th day)
May 30, 2023 – Sine Die
June 19, 2023 – End of the Governor’s Veto Period
Texas General Election Results 2022

Statewide Offices: All statewide offices remained in incumbents’ hands.

- Governor Greg Abbott defeated Beto O’Rourke
- Lt. Gov. Dan Patrick prevailed against Mike Collier
- Attorney General Ken Paxton won against Rochelle Garza
- Sen. Dawn Buckingham beat Jay Kleberg for General Land Office (GLO) Commissioner
- Sid Miller, Agriculture Commissioner prevailed against Susan Hays
- Wayne Christian Railroad Commissioner won his race against Luke Warford
- Glenn Hegar Comptroller was victorious against Janet Dudding
Texas General Election Results 2022

Texas Senate: Every incumbent Senator won re-election. 6 senators did not seek re-election. Currently, Texas Senate is composed of 18 Republicans and 13 Democrats. For 2023, the count is 19 to 12. For the open seats, these are the results:

- **SD 10**: State Rep. Phil King (R-Weatherford) ran unopposed after former State Senator Beverly Powell (D-Burleson) withdrew from the race.
- **SD 11**: Rep. Mayes Middleton (R-Galveston) prevailed was unopposed in the general election.
- **SD 12**: This seat was previously held by retiring Senate Finance Committee Chair Jane Nelson (R-Flower Mound), State Rep. Tan Parker (R-Flower Mound) prevailed over court coordinator Francine Ly (D-Dallas).
- **SD 24**: The central Texas seat was previously held by Sen. Dawn Buckingham (R-Lakeway). It was redrawn to be closer to San Antonio and picked up the hometown of former GOP State Sen. Pete Flores (R-Pleasanton). Flores handily defeated Kathy Jones-Hospod (D-Kerrville) by thirty points.
- **SD 27**: Attorney Morgan LaMantia (D-McAllen) narrowly prevailed against Adam Hinojosa (R-Corpus Christi) for the seat previously held by Senator Eddie Lucio (D-Brownsville).
- **SD 31**: The seat previously held by retiring Senator Kel Seliger (R-Amarillo), oil & gas executive Kevin Sparks (R-Midland) ran unopposed in the general election.

Texas General Election Results 2022

Texas House of Representatives: Current composition is 86 Republicans and 64 Democrats and in January 2023, that number will remain the same. Speaker Dade Phelan (R-Beaumont) will remain comfortably in charge of his House colleagues and the House agenda. He does, however, face an announced challenger in Rep. Tony Tinderholt (R-Fort Worth), a Freedom Caucus conservative who argues there should be no Democratic chairs. Some notable races are as follows:

- **HD 30**: Janie Lopez (R-San Benito) defeted former Senate staffer Luis Villarreal, Jr. (D-Harlingen) in this Valley district, flipping a seat previously held by Democrat Alex Dominguez.
- **HD 70**: In one of the more hotly contested races, Jamee Jolly (R-Plano) was narrowly bested by former House staffer Mihaela Elizabeth Plesa (D-Dallas) by a 50.7%-49.3% margin. This flips a seat previously held by Rep. Scott Sanford (R-McKinney).
ARPA Update

Rate Add-on

- HHSC has updated the ARPA HCBS Provider Retention Payments Compliance List on the HHSC Provider Finance website.

- If you are an eligible provider who is not yet in compliance, please visit the HHSC Provider Finance website to access and complete the attestation and reports.

- Click here to submit the required attestation and initial report.

- The deadline for the attestation and reports is 30 calendar days after the end of the federally-declared novel coronavirus (COVID-19) Public Health Emergency (PHE).
ARPA Update

Senate Bill 8 87(3) Grant

- Home Health Agencies – Projected start date Nov. 1, 2022
- CDS Community Attendants – Projected start date Dec. 1, 2022
- Non-CDS Community Attendants – Projected start date Dec. 1, 2022

Federal Update
Legislative Outlook

October
• PHE renewed Oct. 13 for 90 days

November
• Election day (November 8)
• 60 days before the end of the PHE (November 12)
• Senate in session (November 9-18, 28-30)
• House in session (November 14-18, 29-30)

December
• CR expires (December 16)

January
• PHE expires Jan. 11, 2023

Lame Duck Considerations

- Lagging midterm election results could delay action on an end-of-year Omnibus bill.
- With a likely slim majority in the new Congress, House Republicans may be more inclined to “clear the decks” so they can turn to its agenda, the “Commitment to America” in 2023.
- A year-end package could include:
  - Home health relief (pausing Medicare cuts, reinstating rural add-on payments), policy to avert PAYGO 4% Medicare sequestration, and funding to avert Medicare physician fee schedule cuts.
  - A mental health/SUD treatment package
  - FDA policy riders
## CY 2023 Home Health PPS FR – CY 2023 Payment Update

<table>
<thead>
<tr>
<th>CY 2022 National Standardized 30-Day Period Payment</th>
<th>Permanent Behavioral Assumptions Adjustment Factor</th>
<th>Case-Mix Weights Budget Neutrality Factor</th>
<th>Wage Index Budget Neutrality Factor</th>
<th>CY 2023 HH Payment Update</th>
<th>CY 2023 National, Standardized 30-Day Period Payment</th>
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</thead>
<tbody>
<tr>
<td>Proposed</td>
<td>0.9231</td>
<td>0.9895</td>
<td>0.9975</td>
<td>1.029</td>
<td>$1,904.76</td>
</tr>
<tr>
<td>Final</td>
<td>0.96075</td>
<td>0.9904</td>
<td>1.0001</td>
<td>1.040</td>
<td>$2,010.69</td>
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## CY 2023 Home Health PPS FR – CY 2023 Top line numbers

### CMS-reported topline numbers (CY 2022 v. CY 2023):

<table>
<thead>
<tr>
<th>Description</th>
<th>CY 2022</th>
<th>CY 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Home health payment update percentage (estimated market basket update of 3.3%, reduced by a 0.4% estimated productivity adjustment)</td>
<td>+4.0%</td>
<td>$725 million increase</td>
</tr>
<tr>
<td>Half of -7.85% permanent behavioral assumption adjustment: -3.925%</td>
<td>-3.5%</td>
<td>$635 million decrease</td>
</tr>
<tr>
<td>Update to the fixed-dollar loss ratio (FDL) used in determining outlier payments</td>
<td>0.2%</td>
<td>$35 million increase</td>
</tr>
<tr>
<td>Aggregate effect on Medicare payments in CY 2023</td>
<td>0.7%</td>
<td>$125 million</td>
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CY 2023 Home Health PPS FR – 
CY 2023 Behavioral Assumptions

<table>
<thead>
<tr>
<th>Year</th>
<th>Original Behavioral Assumptions</th>
<th>Permanent Adjustment</th>
<th>Temporary Adjustment</th>
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<tbody>
<tr>
<td>2020</td>
<td>-4.36%</td>
<td>n/a</td>
<td>n/a</td>
</tr>
<tr>
<td>2021</td>
<td>-4.36%</td>
<td>None applied</td>
<td>None applied</td>
</tr>
<tr>
<td>2022</td>
<td>-4.36%</td>
<td>None applied</td>
<td>None applied</td>
</tr>
<tr>
<td>2023</td>
<td>-4.36%</td>
<td>-3.925%</td>
<td>None proposed, but comments sought on how to reconcile retrospective overpayments of $2,084,076,074 total for 2020 and 2021</td>
</tr>
<tr>
<td>2024</td>
<td>-4.36%</td>
<td>-7.85% (subject to adjustment based on updated data)</td>
<td>Significant negative adjustment (double digit offset 2020-2023 (could be over multiple years))</td>
</tr>
<tr>
<td>2025</td>
<td>-4.36%</td>
<td>-7.85% (subject to adjustment based on updated data)</td>
<td>Significant negative adjustment</td>
</tr>
<tr>
<td>2026</td>
<td>-4.36%</td>
<td>-7.85% (subject to adjustment based on updated data)</td>
<td>Significant negative adjustment</td>
</tr>
</tbody>
</table>

CY 2023 Home Health PPS Final Rule

Telecommunications Technology
- Voluntary Data Collection, starting January 2023
- 3 New G-codes (real time two way comm. Audio and video; telephone and physiologic data)

Updates to the Home Infusion Therapy Benefit for CY 2023
- The final home infusion therapy payment rate update for CY 2023 is 8.7%.

Finalization of All-Payer Policy for the Home Health Quality Reporting Program
- CMS is ending the temporary suspension of OASIS data collection on non-Medicare/non-Medicaid HHA patients.
- CMS did not finalize a phase-in period for January 1, 2025 through June 30, 2025, in which failure to submit the data will not result in a penalty.

Baseline Years in the Expanded Home Health Value-Based Purchasing (HHVBP) Model
- Adding definitions and changing Model Baseline Year
Delay Implementation of CY 23 HH PPS Reductions

- CMS finalized an estimated $635 million payment reduction to home health agencies in 2023, a permanent rate reduction of 7.85% over 2 years, and over $2 billion in future temporary adjustments.
- The House and Senate have pending bipartisan legislation, the **Preserving Access to Home Health Act of 2022** (S. 4605/HR 8581) that would suspend the 2023 rate cut.

**ASK:**
- Urge Texas lawmakers to weigh in with House and Senate Leadership in support of including a one-year delay of CMS’ proposed rate cuts in an end-of-year package in order to give Congress time to address the complex issues presented by the recent transition to a completely different payment model.

Other Priority Legislation

**Choose Home Care Act of 2021 (S. 2562/H.R. 5514)**
- Sens. Stabenow (D-MI) and Todd Young (R-IN):
- Rep. Henry Cuellar (D-TX-28) introduced the House companion bill (H.R. 5514) along with Rep. James Comer (R-KY-01)

- Creates an add-on to the existing Medicare home health benefit allowing certain Medicare patients to receive post-hospital services in their homes.
Other Priority Legislation

Home Health Emergency Access to Telehealth (HEAT) Act (S. 1309/H.R. 3371)
- Sens. Cardin (D-MD), Collins (R-ME), Marshall (R-KS), and Shaheen (D-NH)
- Reps. Arrington (R-TX), Sewell (D-AL), Kelly (R-PA), and Thompson (D-CA)

FY 2023 Hospice Final Rule
- On July 27, CMS released the FY 2023 Hospice Payment Rate Update Final Rule which proposes a 3.87% ($825 million) increase in hospice payments. TAHC&H submitted a detailed comment letter on the proposed rule.
- Establishes a permanent, budget neutral 5% cap on any decrease to a geographic area’s wage index, so that a geographic area’s wage index would not be less than 95% of its wage index calculated in the prior FY regardless of the circumstances causing the decline.
- Updates beta testing and derivatives that the Hospice Outcomes and Patient Evaluation (HOPE) tool plans to achieve, including additional outreach efforts planned after beta testing during the adoption process.
FY 2023 Hospice Final Rule

- Includes an update on quality measures within the HQRP based on HOPE, including HOPE-based process measures and hybrid quality measures.

- Announces a future update to the CAHPS Hospice Survey and the experiment that tested the impact of adding a web-based model to the survey.

Key Takeways from 2022 Midterms

- The results of the 2022 midterm elections currently appear to be closer to the status quo than most pundits and pollsters expected.

- **For Democrats:** They avoided being drowned out by a huge electoral wave, with the most likely scenario resulting in a narrow Senate majority and a closely-divided House under a splintered GOP majority. Even with a Republican Senate majority, tight margins will ensure Democrats remain relevant.

- **For Republicans:** They still have room to win the House and possibly the Senate but their margins will be narrow, resulting in significant governance challenges for House Republican Leader Kevin McCarthy (R-CA) and Senate Republican Leader Mitch McConnell (R-KY).

- **Senate:** A GA run-off may be pivotal to determining which party controls the Senate.

- **House:** The majority remains in flux, with Republicans likely wrestling control. That said, Democrats still have an extremely narrow path to House maintaining their majority and, at the very least, a significant platform to derail Republican efforts to pass any legislation.

If Republicans ultimately take either the House or the Senate, divided government will require compromise from both parties in order to secure any major legislative wins.
Texas Congressional Delegation Updates

There are 7 new TX Members in the 118th Congress:

- Nathaniel Moran (R-1)
- Keith Self (R-3)
- Morgan Luttrell (R-8)
- Monica De La Cruz (R-15)
- Jasmine Crocket (D-30)
- Greg Casar (D-35)
- Wesley Hunt (R-38)

The following TX Members sit on Committees of Jurisdiction:

- Rep. Lizzie Fletcher (D-TX-07), New Member of House Energy and Commerce Committee
- Rep. Dan Crenshaw (R-TX-02), New Member of House Energy and Commerce Committee
- Rep. Marc Veasey (D-TX-33), Energy and Commerce
- Rep. Michael Burgess (R-TX-26), Energy and Commerce
- Rep. Lloyd Doggett (D-TX-35), Chairman, Health Subcommittee, Ways and Means
- Rep. Kevin Brady (R-TX-08), Ranking Member, Ways and Means - RETIRING
- Rep. Henry Cuellar (D-TX-28), Appropriations
- Rep. Kay Granger (R-TX-12), Ranking Member, Appropriations
- Rep. Tony Gonzales (R-TX-23), New Member of House Appropriations Committee

Texas will have 38 U.S. House of Representatives seats in the 118th Congress beginning in 2023.

Advocacy Update

TAHC&H Advocacy Tools

• TAHC&H has created a form on its website where you can share the details about your meeting with your Representative.
  • Tell TAHC&H about a Legislative Visit

  Legislative Meeting Form
  Please let TAHC&H know about your meeting with your legislator:
  Date of visit
  First Name:  Last Name:  Agency:
  Work Address:

• Send TAHC&H’s Action Alert on the bill to your Member(s) of Congress.

  TAHC&H Action Alert
  Preserving Access to Home Health Act of 2022

  Urge Your Members of Congress to Prevent Destabilizing Cuts to Home Health Services by Co-Sponsoring the Preserving Access to Home Health Act of 2022

Thank You!