



## Coalition for Nurses in Advanced Practice - CNAP

83<sup>rd</sup> Texas Legislature – Update #10

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**SB 406.** The Senate passed SB 406 on March 13, and the House of Representatives received the bill on March 14; however, it has not yet been referred to a House Committee. This is not all that unusual given this point in the session and each Chambers' end-of-session rules start in early May. The House is more focused on passing House Bills right now, as the Senate is in passing their own bills. There is a natural tension between the Chambers and a delay in referring and hearing the other Chamber's legislation is part of the dynamic that makes up any legislative session. In fact, the House has not yet referred all of the bills filed by House members. Once that is finished, focus will turn to dealing with what the Senate has already sent across the Rotunda.

Given that, much work is being done behind the scene on SB 406 to address some of the outstanding issues that remained when the bill left the Senate. Lobbyists for the nursing groups have been meeting with TMA and TAFP, as well as ongoing work with key legislative staff members. All of this work will help resolve the remaining issues so that when the bill passes the House and goes back to the Senate, both sides will know the issues to be resolved by a joint conference committee.

As reported earlier, Senators Nichols, Rodriguez and Patrick signed on as co-authors before the bill left the Senate. Senate Bill 406's companion bill is HB 1055 (Kolkhorst), and Representative Rob Orr (R-Burleson) and Representative Elliott Naishtat (D-Austin) have signed on as co-authors to this bill.

**Newborn hearing screenings.** Legislation filed in both the House and Senate is attempting to address an issue that arose with legislation on newborn hearing screenings adopted in 2011. House Bill 411 (2011) required a birthing facility to perform, either directly or through a transfer agreement, a hearing screening for the identification of hearing loss on each newborn or infant born at the facility before the newborn or infant is discharged unless the parent declines the screening, the newborn or infant is transferred to another facility before the screening is performed, or the screening has previously been completed. The bill expanded the list of facilities that are considered birthing facilities for such purposes and specifies that a midwife is not

required to offer the parents of a newborn a hearing screening for the newborn, but is required to refer the parents to a birthing facility or a provider participating in a certified newborn hearing screening, tracking, and intervention program.

Birthing centers operated by midwives typically do not have the screening equipment and do not perform the screenings. The hearing screening is to be conducted when the infant is 10 hours old, but most women and newborns leave the birthing center after about six hours. House Bill 411 allowed birthing centers to use a “transfer agreement” as an indirect option to comply with the requirement to conduct the newborn hearing screening. The term “transfer agreement” typically applies to emergency situations and is not applicable to midwife-operated birthing centers.

Senate Bill 793 (Deuell – R-Greenville) was heard by the Senate Health & Human Services Committee on Tuesday, March 26. Senate Bill 793 substitutes “referral” for the term “transfer agreement” to make it easier for birthing centers operated by midwives to comply with the required newborn hearing screening. The bill received only one no vote (Senator Schwertner – R-Georgetown) when the Committee voted to recommend the bill to the Senate Local & Uncontested Calendar.

At last week’s hearing of the House Committee on Public Health, the House companion to SB 793, House Bill 1471 (Laubenberg – R-Parker), was left pending.

**SB 7** – On Monday, March 25, the Texas Senate unanimously approved Senator Jane Nelson’s (R-Flower Mound) overhaul of the state’s Medicaid program by adopting SB 7. The bill attempts to improve program delivery and provide more direct care to Texans with intellectual and developmental disabilities while saving the state an estimated \$8.1 million while serving an additional 12,000 individuals. The goals of SB 7 are to:

- Provide Medicaid services to more individuals in a cost-effective manner by providing the type and amount of services most appropriate to the individuals’ needs;
- Improve individuals’ access to services and supports by ensuring that the individuals receive information about all available programs and services, including employment and least-restrictive housing assistance, and how to apply for the programs and services;
- Improve the assessment of individuals’ needs and available supports;
- Promote person-centered planning, self-direction, self-determination, community inclusion, and customized gainful employment;
- Promote individualized budgeting based on an assessment of an individual’s needs and person-centered planning;
- Promote integrated service coordination of acute care services and long-term services and support;
- Improve acute-care and long-term care services and support outcomes, including reducing unnecessary institutionalization and potentially preventable events;
- Promote high quality care;
- Provide fair hearing and appeals processes in accordance with applicable federal law; and,

- Ensure the availability of a local safety net provider and safety net services.

The bill establishes the Intellectual and Development Disability System Redesign Advisory Committee (Redesign Committee) to advise the Health & Human Services Commission (HHSC) and the Department of Aging and Disability Services (DADS) on the implementation of the acute-care and long-term care services and support services redesigned by the bill.

The members of the Redesign Committee are appointed jointly by the HHSC executive commissioner and the commissioner of DADS no later than October 1, 2013. Members of the Redesign Committee are to include stakeholders from the intellectual and developmental disabilities community. The Redesign Committee is to meet quarterly and is subject to the state's open meetings laws. The HHSC executive commissioner is responsible for appointing the chair of the Redesign Committee.

Some of the other provisions of SB 7 include:

- Establishing 24-month pilot programs to test managed care strategies based upon capitation. DADS is charged with identifying private service providers to develop a service delivery model based on capitation and to test the model on Medicaid long-term care services and supports in pilot programs.
- Requiring HHSC and DADS to implement successful pilot programs no later than September 1, 2016.
- Requiring HHSC and DADS to compute the costs of program delivery through the pilot programs and compare with the costs of program delivery services prior to the establishment of the pilot programs.
- Requiring HHSC and DADS to provide persons with intellectual or development disabilities with individualized, person-centered outcomes that drives the development of the individualized budget.
- Requires HHSC to implement the most cost-effective option for the delivery of basic attendant and habilitation services for individuals with intellectual and developmental disabilities under the STAR + PLUS and STAR Kids Medicaid managed care programs that maximizes federal funding for the delivery of services across those and other similar programs.
- Establishes the STAR + PLUS Nursing Facility Advisory Committee to advise HHSC or an agency operating part of the state Medicaid managed care program, as appropriate, to provide benefits under the medical assistance program to recipients who reside in nursing facilities through the STAR + PLUS Medicaid managed care program.
- Establishes a mandatory STAR Kids capitated managed care program tailored to provide medical assistance benefits to children with disabilities.
- Requires DADS, in consultation with the Redesign Advisory Committee to establish a prior authorization process for requests for supervised living or residential support services available in the home and community-based services (HCS) Medicaid waiver program.
- Requires HHSC's executive commissioner to adopt or amend rules as necessary to allow for the development of additional housing supports for individuals with

intellectual and developmental disabilities in urban and rural areas, including a selection of community-based housing options.

- Requires DADS to develop and implement specialized training for providers, family members, caregivers, and first responders providing direct services and supports to individuals with intellectual and developmental disabilities and behavioral health needs that are at-risk of institutionalization.

Chair Nelson worked with disability advocacy groups to address some concerns raised in the bill's public hearing to allow people currently enrolled in Medicaid waiver programs to either stay in those programs or to choose a managed care program and to stay in programs close to their homes. Here is a link to SB 7:

<http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=83R&Bill=SB7>.

**State budget** – On March 20, the Texas Senate approved its proposed \$195.5 billion budget for the 2014-15 biennium on a 29-2 vote on Senate Bill 1. The next day, the House Committee on Appropriations approved its substitute for SB 1 (CSSB 1) by approving a smaller proposed state budget of \$193.8 billion. Here are links to the House Committee Substitute for SB 1 and its summary tables from the Legislative Budget Board:

[http://www.lbb.state.tx.us/Appropriations\\_Bills/83/House\\_CSSB1.pdf](http://www.lbb.state.tx.us/Appropriations_Bills/83/House_CSSB1.pdf)

[http://www.lbb.state.tx.us/Appropriations\\_Bills/83/House%20Summary%20HCSSB1.pdf](http://www.lbb.state.tx.us/Appropriations_Bills/83/House%20Summary%20HCSSB1.pdf)

The House of Representatives will take up CSSB 1 on Thursday, April 4. Typically, the House considers hundreds of pre-filed amendments to the budget in a marathon session lasting all day and well into the night. House members wanting to amend the proposed state budget had to pre-file their amendments by 5 p.m., on Thursday, March 28, and a total of 267 amendments were pre-filed.

After the House finishes its work on the state budget, work to craft a budget moves to the all-important 10-member Conference Committee chaired by Senator Tommy Williams (R-The Woodlands) and co-chaired by Representative Jim Pitts (R-Waxahachie). The budget is typically one of the last bills adopted during a legislative session because any other legislation that spends any revenue must be included in the general appropriations act.

**Welfare benefits & drug screens/tests.** There are several bills this session attempting to change state law so that recipients of state financial assistance programs for unemployment benefits or temporary assistance for needy families (TANF) have to pass drug screenings or drug tests or they will lose those benefits. These bills include: SB 11 (Nelson-R-Flower Mound); SB 21 (Williams-R-The Woodlands); HB 249 (Laubenberg-R-Parker); HB 1281 (Creighton-R-Conroe); HB 1582 (Riddle-R-Houston); and HB 3171 (Bohac-R-Houston). Senate Bill 21 and HB 1281 are companion bills.

Though very similar in their efforts to instill more responsibility and accountability for recipients of welfare benefits, all of these bills change different sections of statutes and have been referred to numerous legislative committees in the House and Senate for review and consideration. Senate Bill 11 and HB 3171 affect TANF benefits; SB 21 and HB 1281 affect unemployment benefits; and the other two bills address “financial assistance” recipients. Both Senate Bills were heard earlier in either the Senate Health & Human Services Committee or Senate Economic Development Committee. Two of the House Bills (HB 249 and HB 1582) have been scheduled for a public hearing on Tuesday, April 2, in the House Committee on Human Services.

In general, these bills require applicants or current beneficiaries of these state assistance programs to undergo drug screenings and if there is reasonable suspicion that they are using drugs they must undergo a more rigorous drug test. If the drug test is failed, the applicants are denied benefits and current recipients lose their benefits and cannot reapply for a specified period of time. Some of the bills have a “three-strikes, you’re out” provision that permanently bar someone from receiving benefits if a person fails a drug test three times.

A couple of the bills (HB 294 and the committee substitute for SB 11) establish an “effective payee” program so that children are not penalized for a parent’s continued failure of drug tests. This allows any cash benefit to bypass the offending parent and go to another designated responsible party on behalf of the children. Although these bills have all been filed by Republican office holders, some Democrats have voiced support in committee hearings because the bills are trying to get people off drugs and into treatment programs while trying to maintain benefits for the most needy.

Some additional details are yet to be worked out but it seems almost certain that something will definitely pass this session to strengthen the accountability and responsibility of recipients of state financial assistance programs. The Senate Health & Human Services Committee unanimously approved SB 11 on March 26, setting up the bill for a debate by the full Senate sometime in the near future.

The good news is that SB 11 and HBs 249, 1582, and 3171 refer to “presence in the person’s body of a controlled substance not prescribed for the person by a **health care practitioner**” (emphasis added). Unfortunately SB 21/HB 1281 refer to a “substance that was prescribed by a physician as medically necessary.” The CNAP bill readers’ assessment of these bills has allowed us to send letters to and talk with Senator Williams’ and Representative Creighton’s offices to try to get this changed to more inclusive language.

**Waiver of Sovereign Immunity. HB 581 (Howard).** Representative Donna Howard (D-Austin) filed HB 581 to protect nurses employed by public institutions. These nurses currently are not protected from lawsuits regarding participation in patient advocacy initiatives as nurses who are employed in private institutions. Today, publically employed nurses cannot sue their employer for damages or lost wages as a result of illegal retaliation; privately employed nurses can recover wages resulting from retaliation. The bill would amend the Texas Nursing Practice Act (Occupations Code,

Chapter 301) to give publically employed nurses the same benefits as privately employed nurses to waive sovereign immunity in lawsuits where a nurse employed by state or local government-operated hospital alleges unlawful retaliation. CNAP filed a witness affirmation form in support for HB 581, at its public hearing (03/25) before the House Committee on Judiciary and Civil Jurisprudence.

**Outpatient Mental Health Services. HB 2212 (Naishtat).** Representative Elliott Naishtat (D-Austin) filed HB 2212 that had a lengthy public hearing before the House Committee on Public Health on Wednesday, March 27. The bill amends the Health and Safety Code relating to court-ordered outpatient mental health services. Under the provisions of the bill, within 24 hours after detention begins, a physician must evaluate the patient regarding the risk of serious harm to the patient or others.

A committee substitute was laid out before the Committee on Wednesday night that added a section that a patient is not compelled to comply with the treatment ordered by the court and what steps the court can do if the patient does not comply. The bill sets up an “assisted out-patient treatment” (AOT) program so the patient receives more monitoring and coordination to ensure compliance with the court-ordered treatment plan.

Travis County probate and mental health judge, Guy Herman, testified in support of the bill saying that the new structure better coordinates efforts by the court, mental health workers and law enforcement to help the patient stay on track and avoid in-patient commitments. Judge Herman went on to say that some patients just cannot follow the court-ordered treatment plan without additional support and attention.

The committee substitute states that a judge can order treatment but cannot compel performance with the treatment plan. If the patient is not complying with the treatment plan ordered by the court, it can set a modification hearing and issue an order for temporary detention. The committee substitute says that a patient’s failure to comply with the court’s order is not grounds for finding that the patient is in contempt of court.

Though several people testified in support of the committee substitute, concerns were raised by disability rights groups saying that the bill violates their rights. One witness, Lee Spiller, policy director, Citizens Commission on Human Rights, said the bill allows the court to commit people who are not dangerous and his group does not support involuntary out-patient treatment. More people submitted witness affirmation forms opposing the bill than supported the bill. House Public Health Committee chair, Lois Kolkhorst (R-Brenham), left the bill pending and encouraged the bill’s author to continue working on the bill.

A Senate similar bill, SB 646 (Deuell-R-Greenville) is scheduled for a public hearing in the Health & Human Services Committee on Tuesday, April 2. CNAP has been talking with Rep. Naishtat’s and Senator Deuell’s offices about trying to amend these bills to include broader language. CNAP believes it is reasonable to include expert psychiatric nurse practitioners and to allow non-psychiatric physicians to make these decisions

about mental health care. Limiting the managing providers to physicians restricts practice and limits a patient's choice of providers.

**Task Force on Maternal Mortality and Morbidity. HB 1085 (Walle).** House Bill 1085 (Walle-D-Houston), that creates a task force to study maternal mortality and severe maternal morbidity, also was heard in this week's House Committee on Public Health hearing. The bill would require the Department of State Health Services (DSHS) to establish the Maternal Mortality and Morbidity Task Force. The agency would be required to determine a statistically significant number of cases of pregnancy-related deaths and maternal morbidity for task force review, and to establish and maintain an electronic database to track the cases.

Additionally, DSHS and the task force are required to submit a joint biennial report to the legislature by September 1, 2014, on best practices to help reduce the incidence of pregnancy-related deaths and maternal morbidity. The bill was left pending because it had a fiscal note of almost \$700,000 over the next biennium. Representative Walle told the Committee that he was working to reduce the fiscal note and hoped to have their favorable consideration soon. CNAP filed a witness affirmation form in support of HB 1085.

**Bill readers.** The next few weeks will be very intense and hectic for bills moving through committees. If you are a bill reader, please return the bills sent to you as quickly as possible. There have been several times this session when bills have been scheduled for public hearings, but CNAP has not been able to take a position because the Client Response Form had not yet been returned.

**April 10<sup>th</sup> – next Capitol visits.** There are more Capitol visits planned for Wednesday, April 10<sup>th</sup>. Please e-mail Trish Conradt, CNAP Public Policy Director, at [trish@cnaptexas.org](mailto:trish@cnaptexas.org) if interested in visiting elected officials at the Capitol. Activities at the Capitol will be in high gear as members push to get their bills passed before mid-May deadlines start to kick-in and bills start dying at every turn. Your presence and voice are needed! Make plans now to come advocate in Austin.