Healthcare Industry - Significant State and Federal Policy Changes on the Horizon
35th Annual Health Law Conference
CLE Materials
April 2024

I. **In context**
   a. **Numbers**
      - 2024 Employer healthcare costs anticipated to increase 5.4 % to 8.5% (https://www.reuters.com/world/us/us-employers-see-biggest-healthcare-cost-jump-decade-2024-2023-09-20/)

   b. **Medical Costs Rising in Individual and Group Insurance Markets – 7% Trend Predicted for 2024** - Healthcare trends: PwC - https://www.pwc.com/us/en/industries/health-industries/library/healthcare-trends.html

II. **Pharmacy Benefit Managers**
   a. **Rutledge v. PCMA – Supreme Court opinion - https://www.supremecourt.gov/opinions/20pdf/18-540_m64o.pdf**
   b. **PCMA v. Wehbi (8th Cir) - https://law.justia.com/cases/federal/appellate-courts/ca8/18-2926/18-2926-2021-11-17.html**
   c. **PCMA v. Mulready – 10th Cir. – Appeal - https://www.ca10.uscourts.gov/sites/ca10/files/opinions/010110903570.pdf**
   d. **CMS Medicare Prescription Drug Negotiation https://www.cms.gov/inflation-reduction-act-and-medicare/medicare-drug-price-negotiation**
   e. **CMS Prescription Drug Data Collection https://www.cms.gov/marketplace/about/oversight/other-insurance-protections/prescription-drug-data-collection-rxdc**

III. **340B**
   a. Draft Discussion document for 340B https://www.thune.senate.gov/public/_cache/files/c3a678e3-12a5-4175-8a80-9246b76576ec/75E01A8968B679E3525395E2BB0CE7DB.ss340b-act-discussion-draft-.pdf
   b. https://www.thune.senate.gov/public/index.cfm/2024/2/thune-senate-340b-bipartisan-working-group-release-legislative-discussion-draft
   c. Drugmakers who participate in 340b drug discount program do not have to pay drug discounts to unlimited contract pharmacies: https://www.aha.org/system/files/media/file/2023/01/legal-brief-re-340b-contract-pharmacy-case-sanofi-aventis-us-v-hhs-et-al-january-30-2023.pdf
   d. The U.S. Court of Appeals for the Eighth Circuit upheld an Arkansas law that prohibits manufacturers from imposing restrictions or limitations on 340B covered entities and contract pharmacies.

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https://media.ca8.uscourts.gov/opndir/24/03/223675P.pdf

IV. 88th Texas Legislature Facility Fee Bill SB 1275 -
https://capitol.texas.gov/tlodocs/88R/billtext/pdf/SB01275I.pdf#navpanes=0

V. CMS Draft Managed Care Rules
https://www.federalregister.gov/documents/2023/05/03/2023-08961/medicaid-program-medicaid-and-childrens-health-insurance-program-chip-managed-care-access-finance

VI. CMS Information Bulletin Hold Harmless Arrangements
https://www.medicaid.gov/federal-policy-guidance/downloads/cib021723.pdf

VII. Governor Abbott and 5 other governor's signed letter to protect Medicaid safety net
https://gov.texas.gov/news/post/governor-abbott-fellow-governors-urge-president-biden-to-protect-medicaid-safety-net

VIII. General Appropriation Act - GAA 88th 2024-25 (texas.gov)

Sec. 17.34. Charity Care and Hospital Transparency.
In addition to amounts appropriated elsewhere in this Act, the Health and Human Services Commission (HHSC) is appropriated $5,000,000 in General Revenue in fiscal year 2024. HHSC shall study and report on the financial and utilization data of licensed Texas hospitals that generate revenue from public sources and programs and/or benefit from tax exemptions or the use of public debt. HHSC shall contract with a third party, which may not be an entity that owns or operates a hospital, and the third party must be familiar with the Texas hospital market and data, to assist in the completion of this report. HHSC will evaluate hospital revenue and expenses, as well as public debt and the value of tax-exemptions, and the value of any charity care provided, as applicable by hospital and system. HHSC may coordinate with the Comptroller of Public Accounts, the Bond Review Board, and any other state agency or institution of higher education necessary, as well as use state and federal filings, including IRS Schedule H990 forms for all reporting hospitals, cost and payment data from hospital Medicare Cost Reports, Annual Statement on Community Benefits, community-wide need assessments, and any other data sources available to HHSC or other state agencies. By December 1, 2024, HHSC must publish findings on the external website and report its findings to the Legislature. The report shall include:
(a) Recommendations on ways to improve hospital reporting and transparency, including recommendations on improving hospital reporting on the Annual Statements of Community Benefit Standards and to reduce duplication of reporting requirements to the state;

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(b) A summary of all revenue streams and their value, including patient revenue from private and government sources, all supplemental state or federal funding sources, research grants, medical debt accounts sold to collectors, and locally generated tax revenue when applicable, by facility and hospital system;
(c) The value of charity care, bad debt expense (reporting at cost as calculated using the hospital's cost-to-charge ratio), and unreimbursed cost of health services by facility and hospital system. The report should also identify expenses for Graduate Medical Education, as well as, charity care program details, including number of clients enrolled in the charity care program, number of rejected charity care applications, and the number of medical debt accounts related to as client that applied for charity care but was not enrolled in the charity care program sold to debt collectors by a hospital;
(d) All "nonprofit medical exempt" properties in the state belonging to hospitals, along with the market value of the property, taxable value of the property, and value of each hospitals' tax exemption benefit;
MISCELLANEOUS PROVISIONS (Continued) A99T-FSize-up-9-A IX-115 September 27, 2023 (e) A statewide analysis contrasting hospitals' percentage of operating costs in relation to hospital service area household adjusted gross income range. This analysis should also address the type and volume of community benefit hospitals offer in relation to the type of communities they are servicing. Additionally, the analysis should account for all hospitals' financial assistance admission criteria, including income eligibility, application industry standards in asset evaluation, and the time it takes for hospitals to accept or reject a charity care application; and (f) An assessment of hospital compliance and efficacy with required disclosures under Health and Safety Code, Secs. 311.031.
https://www.lbb.texas.gov/Documents/GAA/General_Appropriations_Act_2024_2025.pdf

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IX. Texas Senate Interim Charges - https://www.ltgov.texas.gov/wp-content/uploads/2024/04/2024-Interim-Legislative-Charges.pdf

X. Federal Agencies – DOJ and FTC

- Inquiry into PBMs
  https://www.ftc.gov/news-events/news/press-releases/2023/05/ftc-deepens-inquiry-prescription-drug-middlemen

- Biden Administration focus on potential monopolization offenses
- Healthcare Transactions and Consolidation
  - Provider and Payor Consolidation
  - "Roll-up" Transactions
  - Integration of insurance companies, providers, PBMs, & Pharmacies

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Also available as part of the eCourse
2024 Health Law eConference

First appeared as part of the conference materials for the
35th Annual Health Law Conference session
"Significant Federal and State Policy Disruptors: Impacts on the Private Healthcare Marketplace"