

# THE ROOT

YOUR SOURCE FOR DENTAL LEGISLATION, REGULATION, AND ADVOCACY | *Sine Die*, 2017

## Legislatively Speaking

### **“How Can I Miss You When You Won’t Go Away”—Dan Hicks and The Hot Licks**

The legislature adjourned sine die on May 29, 2017, and went home without finishing at least one important Sunset item—reauthorizing the Texas Medical Board. The final 24 hours of the session saw a short filibuster in the Senate, a protest against the sanctuary cities bill in the House gallery, and a scuffle on the House floor that may have involved one member threatening to kill another. Good times for all.

Overall, TDA fared very well in the 85th. The Association’s strong advocacy efforts resulted in passage of SB 313, reauthorizing the Texas State Board of Dental Examiners (TSBDE). The TSBDE’s Sunset review was the TDA’s top priority during this legislative session. Additionally, the TDA was able to delay mandatory querying of the state’s prescription monitoring program (PMP) every time a dentist writes a prescription for a controlled substance until September 1, 2019.

We are now in what is known as “the veto period,” the 20-day span of time (from adjournment until June 18, 2017) during which the governor can sign or veto legislation. After that, any bill not signed or vetoed will become law without his signature. Most governors take their full allotment of time to ponder their ultimate decisions on questionable bills, so prepare to see lots of “Father’s Day Massacre” leads in the press when the final list of vetoes is released.

Almost as soon as the Regular Session of the 85th Legislature ended, Governor Greg Abbott decided to get his dysfunctional legislative family back together for a special session on July 18, 2017. Although, the Texas Constitution states that special sessions may last a maximum of 30 days, it does not limit the number of sessions that can be called. We could be looking at 1 or multiple special sessions. The initial call is for continuation of the Texas Medical Board and sunset legislation to keep several other state agencies alive. After that bill passes the Senate, there are 19 additional items added to the call. Items include bathroom legislation, school finance reform, municipal annexation reform, and preventing cities from regulating what property owners do with trees on private land.

As for what can happen during a special session, the safe answer is: Anything goes. Special sessions are initiated by the governor for those issues that he designates “in the call” for that session, but contrary to what you may have been led to believe, other legislation unrelated to those topics can still be filed, considered, and passed by the legislature during that 30-day period. Although it is easier to kill bills not “in the call,” if no legislator raises an objection on the floor, anything can pass.

As always, the TDA will be working hard at the Texas Capitol to protect you, your profession, and your patients

## Breaking News

### **The Budget**

The Texas State Board of Dental Examiners met on June 2, 2017. During that meeting, the board decided to cancel its August meeting and reschedule it for September 22, 2017. This will give the board needed time to draft initial rules to implement the Sunset bill. TDA will be tracking this process very closely and will update members in future issues of *The Root*.



## Capitol Chatter

### **The Budget**

On June 1, 2017, Comptroller Glenn Hegar announced certification of the state's 2018-19 biennial budget—SB 1. The bill is now on its way to the desk of Governor Abbott. SB 1 appropriates \$216.8 billion in total spending for the state's budget during the 2018-19 biennium.

Additionally, the legislature authorized the Texas Tech University Health Sciences Center at El Paso to begin curriculum design, development and accreditation of a 4-year dental school. However, no state budget money has been dedicated to this effort.

TDA supports the mission of state-funded, university-based dental schools which is to educate students to serve their patients and communities. With the creation of any new dental school, the historical legislative support, including financial support, should be maintained for the existing dental schools in Texas.

### **TSBDE Sunset Bill Passes Texas Legislature**

On May 29, 2017, Governor Abbott signed into law the Texas State Board of Dental Examiners' (TSBDE) Sunset bill—SB 313.

TDA worked with lawmakers and stakeholders throughout the session to amend the bill to address problematic sections. The resulting bill strengthens the dental board's anesthesia regulations, streamlines dental assistant certifications, provides clear enforcement tools, and increases stakeholder input on rule proposals. TDA efforts ensured the legislation was data-driven and prevented the bill from becoming a vehicle for special interest efforts.

More detailed information can be found in TDA's summary of the 85th Regular Session of the Texas Legislature that will be mailed to all Texas-licensed dentists at the end of June.

### **Prescription Monitoring Legislation**

TDA joined the Texas Medical Association and other stakeholders to advocate for data-driven solutions to reduce opioid abuse in Texas. This effort led to successfully delaying the implementation date for mandatory querying of the PMP to September 1, 2019 (HB 2561).

The legislature now has time to study prescribing and dispensing practices for controlled substances before requiring prescribers to query the PMP each time they write a controlled substance prescription.

## The Political Action

When session ends, the campaigning begins! Although the governor has called a special session, legislators have not let that detract from setting those fundraising dates for the upcoming campaign season.

There are interests groups on both sides of every issue, and as they say, "you can please some of the people all of the time, you can please all of the people some of the time, but you can't please all of the people all of the time." As soon as that gavel strikes its last blow, legislators will be out in droves mending broken fences with some groups while cashing in favors from others. That's why they call it politics, folks.

What does this mean for Texas dentists? The DENPAC phone will soon be ringing off the hook with requests from everyone we know—and don't know—running for office. This is the perfect time to strengthen our grassroots efforts. The DENPAC board will soon be evaluating the campaign landscape and approving contributions for not only our friends but other strong legislative candidates. This monetary support gives member dentists the opportunity to attend fundraisers and/or meet with legislators and candidates in their local districts early in the campaign cycle.

It is a proven fact that lawmakers remember those who give and give early in their campaign, whether they're a seasoned veteran or wide-eyed candidate. And when we say "give," we don't just mean your money, but also your time and support. DENPAC encourages members to volunteer to block walk, make campaign phone calls, or simply display a yard sign in support of a candidate. Small efforts make big impacts on legislators.

If you would like to attend a local fundraiser or request support for a candidate, contact DENPAC manager Leigh Ann Montague at [denpac@tda.org](mailto:denpac@tda.org). Please remember, we can't do what we do without the commitment and support from our members. Contribute today at [denpac.org/join](http://denpac.org/join)!

## TDAid for Medicaid

TDA was able to protect the majority of the state's Medicaid dental funding with only a 2.5% decrease to the Medicaid dental budget. The TDA's Committee on Access, Medicaid & CHIP will now advocate at Texas Health and Human Services (HHS) to try and ensure that the dental managed care organizations (DMOs) absorb the budget reduction and not reduce reimbursement rates for dentist providers.

Two budget riders authorize Texas' HHS to (1) analyze the policies and procedures related to the coordination of sedation services to Medicaid patients; and (2) study the delivery of Medicaid dental services to adults with disabilities.

The legislature also passed other bills that strengthen the state's ability to audit dental managed care organizations and clarify the DMOs role in investigating potential Medicaid waste, fraud and abuse (SB 894 and HB 2379).

## Bill Watch

Included is the final priority bill track for the 85th Regular Legislative Session.

## Stay On Track

### HB 630 – Internet Broadcasts of Open Meetings

**Caption:** Relating to the Internet broadcast and archiving of open meetings of the Health and Human Services Commission, health and human services agencies, and related advisory entities.

**Synopsis:** The bill requires the Health and Human Service Commission, Department of Family and Protective Services, Department of State Health Services, and advisory committees to broadcast open meetings live over the internet and archive broadcasts online for two years. The bill would take effect September 1, 2017, but apply only to open meetings that take place on or after September 1, 2023.

**Current Status:** 05-15-17 Sent to Governor

**Comments:** Support; TDA staff recommendation; TDA put in a card supporting the bill

### HB 1178 – Punishment for Burglary or Theft of Controlled Substances

**Caption:** Relating to the punishment for burglary and theft of controlled substances.

**Synopsis:** The bill amends the Texas Penal Code to include the Health and Safety Code definition for a controlled substance, and makes the intentional theft of controlled substances from a health care provider, hospital, pharmacy, or nursing facility a third degree felony.

**Current Status:** 05-25-17 Sent to Governor

**Comments:** Support; approved by TDA Board of Directors (BOD) February 2017

### HB 1463 – Failure to Comply with State Disability Laws

**Caption:** Relating to procedures for actions alleging failure to comply with certain standards to accommodate persons with disabilities.

**Synopsis:** This bill seeks to eliminate frivolous lawsuits under state law prohibiting discrimination against persons with disabilities. HB 1463 amends Human Resources Code §121.004 to require a notification process prior to a claim being filed for alleged failure to comply with applicable design, construction, technical, or similar standards, including website accessibility guidelines, required by law and designed to accommodate persons with disabilities. A claimant must give notice to an entity of intent to file a claim and provide the entity with an opportunity to correct the violation before judicial intervention.

**Current Status:** 05-25-17 Sent to Governor

**Comments:** Support; TDA staff recommendation; TDA signed on to a support memo with the Texas Civil Justice League

### HB 2007 – Military Volunteer License

**Caption:** Relating to the licensing and regulation of certain military dentists and dental hygienists who provide voluntary charity dental or dental hygiene care.

**Synopsis:** The bill creates limited charitable dental and dental hygiene licenses for military personnel. Applicants have to be in good standing and authorized to treat enlisted personnel in the armed forces or veterans. Licensees under this section may only practice at clinics treating indigent patients and may not receive compensation for their services.

**Current Status:** 09-01-17 Earliest Effective Date

**Comments:** Support; TDA staff recommendation

## HB 2379 – Office of Inspector General

**Caption:** Relating to the provision of legal services to the office of inspector general of the Health and Human Services Commission.

**Synopsis:** The bill clarifies which legal services are performed by Texas' Health and Human Services (HHS) and the Office of Inspector General (OIG), respectively. Further, HHS' chief counsel is the final authority on all legal interpretations related to statutes, rules, and commission programs and policies. The OIG shall prepare final reports on every audit, inspection, or investigation. The bill clarifies that other technology in addition to neural networks may be used to identify and deter fraud in Medicaid throughout Texas. Managed care organizations discovering fraud or abuse in Medicaid or CHIP must immediately submit written notice to the OIG using a form created by the agency. The notice must include a detailed description of the fraud or abuse and each payment made to the provider as a result of the fraud or abuse. If the amount to be recovered exceeds \$100,000, the managed care organization can't begin recovery efforts until approved to do so by the OIG. The managed care organization may keep one-half of the recovered funds with the remainder being remitted to the OIG for distribution into the state's general revenue fund.

**Current Status:** 05-19-17 Sent to Governor

**Comments:** Support; Committee on Access, Medicaid & CHIP (CAMC) reviewed original legislation—SB 1787

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## HB 2561 – Prescription Monitoring Program

**Caption:** Relating to the continuation and functions of the Texas State Board of Pharmacy.

**Synopsis:** Delays implementation of mandatory querying of the prescription monitoring program (PMP) by practitioners and dispensers before each controlled substance prescription until September 2019. The Senate Health and Human Services Committee will conduct an interim study on the prescribing of controlled substances in Texas and submit a report to the legislature by January 1, 2019. The pharmacy board will consult with the regulatory agencies to develop indicators and guidelines for potentially harmful prescribing and dispensing patterns and drug divergent behavior. The board will use the indicators and guidelines to create and send electronic "push out" notifications to prescribers, dispensers, and regulatory agencies when drug diversion or harmful prescribing may be occurring. Each regulatory agency will promulgate prescriber guidelines for responsible prescribing of opioids, benzodiazepines, barbiturates, or carisoprodol.

**Current Status:** 05-30-17 Sent to Governor

**Comments:** Support; TDA staff recommendation

## SB 894 – Health and Human Services Audit Resources

**Caption:** Relating to the Health and Human Services Commission's strategy for managing audit resources, including procedures for auditing and collecting payments from Medicaid managed care organizations.

**Synopsis:** The bill addresses deficiencies that exist with HHS' audit coverage of MCOs and DMOs. CSSB 894 requires HHS to implement a strategy for improving overall management of audit resources used to verify the accuracy of program and financial information reported by MCOs/DMOs. The committee substitute makes clear that the provisions of the bill do not apply to the OIG.

**Current Status:** 05-30-17 Sent to Governor

**Comments:** Monitor; under TDA staff review

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## SB 1565 – Consent for Dental Treatment in State Facilities

**Caption:** Relating to the procedure for ordering medical or dental services for certain persons admitted to or committed to care at certain state facilities.

**Synopsis:** The bill changes the number of physicians and dentists required for consent to medical and dental treatment of facility patients needing immediate care or patients not having guardians or responsible relatives able to consent to treatment. For dental treatment, it changes the consent requirement from 1 Texas-licensed dentist and 2 Texas-licensed physicians to 2 Texas-licensed dentists and 1 Texas-licensed physician.

**Current Status:** 05-23-17 Sent to Governor

**Comments:** Support; CAMC reviewed the bill

## Questions

If you have questions regarding legislative or regulatory issues, please contact TDA Senior Policy Manager Diane Rhodes at 512-443-3675 or [diane@tda.org](mailto:diane@tda.org). If you have questions regarding political action or dental advocacy, please contact DENPAC Manager Leigh Ann Montague at 512-443-3675 or [lmontague@tda.org](mailto:lmontague@tda.org).