

The 87th Texas Legislature adjourned on May 31, 2021. The legislation summarized below passed the Legislature and is pending action by the Governor unless otherwise noted. Governor Abbott has indicated he will call a special session to consider priority legislation and emergency items that did not pass, and the distribution of American Rescue Plan Act funding.

LeadingAge Texas Priority Legislation Passed

SB 1 Rider 146 - Nursing Home Workforce Report. The Health and Human Services Commission (HHSC), in coordination with the Long-term Care Facilities Council, shall report on the workforce shortage in nursing homes and delivery of care in Texas nursing facilities. In completing the report, HHSC shall:

(a) consult with the following individuals and entities: (1) associations in this state representing: nursing homes; nurses; retired persons; and medical directors; (2) the state long-term care ombudsman; (3) representatives from institutions of higher education; (4) the Texas Workforce Commission; and (5) other stakeholders as appropriate.

(b) evaluate the current workforce shortage and direct care staffing;

(c) develop recommendations for legislation, policies, and short-term and long-term strategies for the retention and recruitment of direct care staff to ensure an adequate workforce is in place to provide high-quality, cost-effective health care including: (1) workforce engagement and advancement models; (2) job supports and incentives; (3) training and educational initiatives; (4) wages and benefits; (5) licensure and certification rules.

(d) examine and develop recommendations for nursing home reforms, including: (1) implementing new care models; (2) optimizing nursing home size and configurations to foster resident wellness and infection control; (3) increasing clinical presence in nursing homes; and (4) appropriate nursing home staffing to meet the needs of the resident population.

Not later than November 1, 2022, HHSC shall submit the report to the Governor, Legislative Budget Board, Lieutenant Governor, and Speaker of the House of Representatives.

SB 6 Pandemic Liability Protections. This vital bill provides liability protection for doctors, healthcare providers, and healthcare facilities during the declared COVID-19 public health emergency. The willful and wanton standard in the Pandemic Liability Protection Bill minors the standard that applies in Good Samaritan law and in Texas' emergency care protections which have been in force in our state since 2003.

SB 6 does not protect bad actors who are grossly negligent, engage in willful misconduct or are consciously indifferent to their patient's welfare and safety. SB 6 immediately begins protections for future pandemics upon the declaration of the Governor or President of the United States.

SB 270 Financial Abuse of NF Resident by Responsible Third Party. Prevents financial abuse of nursing home residents by allowing facilities to pursue debts against responsible payors who have improperly diverted a resident's funds and left them unable to pay for their long-term care and susceptible to discharge and lawsuits.

Legislation Impacting Aging Services Providers

HB 4 Telemedicine and Telehealth - Since March of 2020, the Health and Human Services Commission has allowed additional flexibilities in the use of telemedicine and telehealth to provide services to Medicaid and CHIP recipients. These flexibilities, in addition to the framework put in place by S.B. 670, have been remarkably successful in supporting social distancing and allowing patients to continue to receive services via telemedicine and telehealth during the pandemic.

H.B. 4 proposes to make permanent most of the Medicaid/CHIP waivers that were put in place as part of the state's COVID-19 response while still upholding the standard of care. It also addresses gaps related to the use of technology in delivering services and information to clients that were identified by stakeholders during the COVID-19 pandemic.

HB 797 Allowing Home and Hospice Agencies to Administer Certain Vaccines - Updates the licensing statute of home care and hospice agencies under Section 142.0062 of the Health and Safety Code to grant the agencies a narrow exemption from the Texas Dangerous Drug Act only for a COVID-19 vaccine and other FDA-approved vaccines for communicable diseases. This will allow home care and hospice nurses to finally administer the COVID-19 vaccine under required prescriptive authority of a physician to willing, vulnerable, and elderly Texans safely in their homes.

HB 1423 Inspection Procedures in NFs and ALFs - Ensures the Health and Human Services Commission (HHSC) inspects each facility at least annually and provides for the continuous monitoring of HHSC staffing levels and regulatory capacity. H.B. 1423 amends current law relating to the regulation and inspection procedures of certain long-term care facilities, including a survey of certain facilities' emergency power sources.

HB 1681 Prohibits Construction of New ALFs in a 100 year floodplain in Harris County - Amends current law relating to the construction of new assisted living facilities located within a 100 year floodplain in Harris County. The prohibition does not apply to expansions or renovations of existing assisted living facilities.

HB 2056 Teledentistry Dental Services. In the 2017 legislative session, the house and senate unanimously passed S.B. 1107, addressing telemedicine and telehealth services; however, dentistry was not included in the legislation. H.B. 2056 amends the current telehealth statute to include teledentistry, dentists, and dental hygienists.

HB 2658 Medicaid Managed Care, NF minimum rate protection extension, and QIPP. Requires the executive commissioner of HHSC (executive commissioner), in addition to the minimum performance standards HHSC establishes for nursing facility providers seeking to participate in the STAR+PLUS Medicaid managed care program, to adopt rules establishing minimum performance standards applicable to nursing facility providers that participate in the program.

Amends the current expiration date of September 1, 2021 to September 1, 2023 where HHSC is responsible for setting the minimum reimbursement rate paid to nursing facilities.

Requires HHSC, using existing resources, to: (1) review HHSC's staff rate enhancement programs to identify and evaluate methods for improving administration of those programs to reduce administrative barriers that prevent an increase in direct care staffing and direct care wages and benefits in nursing homes and develop recommendations for increasing participation in the programs; (2) revise HHSC's policies regarding the quality incentive payment program (QIPP) to require improvements to staff-to-patient ratios in nursing facilities participating in the program by January 1, 2023.

HB 3961 Website Posting of LTC Ombudsman Contact Info for NFs and ALFs. Requires a licensed nursing facility, a licensed assisted living facility, or any other long-term care facility under the jurisdiction of the state long-term care ombudsman to post on the long term care ombudsman office's contact information and information regarding its role as an advocate for residents of long-term care facilities. If the facility does not have a website, then the parent company may comply with the posting. If neither the facility nor parent company have a website, they are not required to comply.

SB 25 Right to Essential Caregiver Visitation in Long Term Care Facilities. Grant a resident of a nursing facility, assisted living facility, intermediate care facility for individuals with an intellectual disability, home and community-based services (HCS) program, or state supported living center, or the resident's guardian or legally authorized representative the right to designate an essential caregiver with whom the facility, center, or program provider may not prohibit in-person visitation. The bill establishes specific guidelines for both facilities and essential caregivers.

SB 271 Background Check Requirements in Assisted Living Facilities. Requires a written statement to be included in employment applications on which applicants must indicate whether they have been convicted of an offense that, under state law, bars the applicant from employment. The bill prohibits a state-licensed assisted living facility from employing at the facility an applicant who fails to indicate in the statement included with their submitted application that the applicant has not been convicted of such an offense.

SB 271 requires an assisted living facility that receives an employment application from an applicant who states in the application that they resided in another state during the five years preceding the application date to conduct a name-based criminal history check in each state in which the applicant previously resided before employing the applicant in a permanent position. If a facility employs a person pending an out-of-state criminal history check, the facility must ensure the person has no direct contact with a resident until the facility obtains the person's criminal history record information and verifies the person is not barred from employment due to conviction of an applicable offense.

SB 383 Alzheimer's Certification Disclosure Requirements for NFs and ALFs. A nursing facility advertising, marketing, or otherwise promoting that the facility provides memory care services shall prepare a written notice disclosing whether the facility is certified or is not certified under Section 242.040 to provide specialized care and treatment for facility residents with Alzheimer's disease and related disorders. Assisted Living Facilities that are not Alzheimer's certified must disclose to each resident that they do not hold the certification.

SB 437 Establishment of PPE Reserve Advisory Committee by TDEM. Requires the Texas Division of Emergency Management (TDEM) by rule to establish guidelines for the procurement, storage, and distribution of personal protective equipment (PPE).

[SB 572](#) Right to In-Person Religious Counselor during Public Health Emergency. Prohibits an applicable health care facility from prohibiting a resident or patient of the facility from receiving in-person visitation with a religious counselor on the patient's or resident's request during a public health emergency except as required by federal law or a federal agency.

[SB 626](#) Guardianships and Management Trusts. Makes technical corrections and clarifications to state law that would improve guardianship proceedings and make related procedures consistent with other law. S.B. 626 is an omnibus bill incorporating those revisions.

[SB 809](#) Reporting of Federal Money Received During COVID-19 Pandemic. Requires a health care institution that receives federal money for assisting health care institutions during the coronavirus disease public health emergency to report the money received to the Health and Human Services Commission (HHSC) on a monthly basis. A health care institution is not required to report federal money received as a loan during the coronavirus disease public health emergency from the U.S. Small Business Administration as part of a paycheck protection program. The bill exempts an institution from the reporting requirement if the institution returned or repaid the money to the federal government.

[SB 930](#) Disclosure of Communicable Disease Information in NFs and ALFs. Clarifies that, unless made confidential under other law, the name or location of a nursing home or similar facility in which residents have been diagnosed with a communicable disease and the number of residents diagnosed is not confidential and is subject to disclosure by state agencies or local health authorities under the Texas Public Information Act.

[SB 1856](#) Vocational Nursing Students Service During Public Health Emergency. Services that are provided by a vocational nursing student in a licensed nursing facility and authorized by a contract or other arrangement with the facility are allowed at all times in Texas, including during a declared state of disaster. The bill authorizes a licensed nursing facility to do the following:

- Require a student to comply with the facility's policies regarding health screenings or the use of personal protective equipment; and
- Condition the student's provision of services on compliance with those policies.

The bill applies only to a student who is enrolled in an accredited school or program that is preparing the student for licensure as a licensed vocational nurse and who is participating in a clinical program at a licensed nursing facility.

[SJR 19](#) Constitutional amendment establishing a right for residents of certain facilities to designate an essential caregiver for in-person visitation. On the ballot November 2, 2021.

State Budget for the 2022 – 2023 Biennium

Most providers did not receive a Medicaid base reimbursement rate increase in FY 2022-2023. FY 2023 reimbursement rates for nursing facilities are contingent on the submission of COVID-19 funding reports due December 1, 2021 and June 1, 2022 (see Rider 143 and SB 809). To see major funding items you may view the [SB 1 Summary Report](#).



Summary of the 87th Texas Legislative Session

The COVID-19 temporary rate increase for nursing facilities will be in effect through the federal public health emergency (PHE). On Thursday, April 15, 2021, HHS Secretary Xavier Becerra renewed the PHE for another 90 days due to the COVID-19 pandemic. The Biden Administration has indicated the PHE will be in effect through 2021.

Rider 143 - Reporting Requirement: COVID-19 Funding to Nursing Facilities and Hospitals. The Health and Human Services Commission (HHSC) shall develop a report detailing the total value and uses of COVID-19-related Federal Funds, including Provider Relief Funds, provided directly to nursing facilities and hospitals contracting with HHSC since the beginning of the public health emergency. The report should include any temporary rate increases provided to nursing facilities related to the COVID-19 pandemic. Any facilities that do not provide information requested by the commission necessary to complete the report shall be identified in the report. The first submission of the report shall also include a description of any requirements implemented for nursing facilities in response to the COVID-19 pandemic, the cost to nursing facilities to implement the requirements, and recommendations on whether or not the requirements should be continued after the end of the public health emergency. HHSC shall submit the report to the Governor, Legislative Budget Board, and any appropriate standing committee in the Legislature on December 1st and June 1st of each fiscal year. The format and content of the report shall be specified by the Legislative Budget Board and posted on the HHSC website. Appropriations in Strategy A.2.4, Nursing Facility Payments, for fiscal year 2023 are contingent on the submission of the reports due December 1, 2021 and June 1, 2022.

Rider 147 - Study on Assisted Living Facility Resident Quality of Care and Resident Satisfaction. Out of funds appropriated above in Strategy H.1.1, Facility/Community-based Regulation, the Health and Human Services Commission (HHSC) shall conduct a study of assisted living facility (ALF) residents' quality of care and quality of life. In conducting the study, HHSC shall review at least 30.0 percent of ALFs in the state, and include facilities of various licensed capacities and license types. HHSC shall conduct onsite case reviews of the care of ALF residents and interviews with residents, facility staff, and long-term care ombudsmen. HHSC shall prepare a report that includes an evaluation of facility policies, including policies that relate to residents' rights, and facility disclosure statements. The report will also evaluate preventable occurrences and any adverse outcomes related to issues including medication errors, inappropriate use of antipsychotic medication, falls, inappropriate placement in a locked unit, and healthcare-acquired infections. HHSC shall submit the report to the Governor, the Legislative Budget Board, the Lieutenant Governor, and the Speaker of the House of Representatives not later than December 1, 2022.

Rider 149 - Long-term Care Regulatory Backlog. Included in amounts appropriated in Strategy H.1.1, Facility/Community-based Regulation, and contingent on federal funds being made available for this purpose, is \$2,759,448 in Federal Funds and 31.7 full-time-equivalents (FTEs) in fiscal year 2022 and \$2,520,915 in Federal Funds and 31.7 FTEs in fiscal year 2023 to address a backlog of surveys and intakes for long-term care facilities.

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