Mental Health Care and the 87th Texas Legislature
Outcomes for Psychologists

by Jessica Magee, Executive Director
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Message from TPA’s President

Dear Colleagues,

The 87th Texas Legislative Session wrapped up at the end of May, 2021. We are awaiting the beginning of the Special Session promised by Governor Greg Abbott. At this time, we do not know for certain what will be on the agenda for the Special Session, but it is unlikely that those items that were Legislative priorities for TPA in January, that were not passed by the end of May, will be on deck for a second shot in 2021.

That said, TPA went into this session without great expectations for what we might accomplish during a pandemic and following a state-wide disaster that left many Texans without power during freezing weather for days. To our delight we made more progress than we had anticipated. Medicaid now covers audio-only mental health services, which became one of our priorities due to COVID. The other COVID related priority was expanding parity in private insurance coverage for telehealth payments. There was significant support for this expansion among providers and legislators and we are hopeful that the governor may provide some clarifying language to the insurance rules to enact this change.

TPA was able to pass the indemnity from lawsuit bill for mental health providers reporting dangerousness of clients. This was our third attempt to pass this bill and it was accomplished easily in both the House and the Senate. Though none of TPA’s other bills were passed, we did find some good legislative support for prescriptive authority, sex offender treatment licensure, and custody bills, and identified some avenues to pursue during the interim to build momentum to enact these priorities during the 88th session.

All of these successes were due to tremendous teamwork on the part of many TPA members and staff. The Legislative process is complicated and fast moving. It requires constant vigilance and a nimble response to stay on top of the action and modify strategy, identify resources, and take advantage of relationships.

Our Legislative Committee worked diligently to review relevant filed legislation and to determine strategies for supporting bills favorable to psychology and to work against those bills that would encroach on psychology’s scope of practice or result in discriminatory practices against some of our most vulnerable clients. Our Grassroots Committee went into action when we needed to find psychologists to testify for or against bills at committee hearings, and to activate the Grassroots network in targeted letter writing to committee members to support or to kill a bill.

Our Government Relations wonder, Kevin Stewart, reviewed all of the nearly 7,000 bills filed to identify those relevant to TPA and bring them to the attention of the Legislative Committee. He was instrumental in getting our liability bill and our SOTP bill heard in committees. Our Executive Director, Jessica Magee, guided and organized us all and shared her extensive knowledge of the Texas legislative process to focus and sharpen our strategy. We started to implement Voter Voice during this session and we have hopes that it will become an essential tool in upcoming sessions.
The support of TPA members was also crucial during the session. We heard from so many of you expressing encouragement for our efforts. The report you are about to read gives much greater detail about the scope of our efforts. Many thanks to Jessica and Kevin for pulling together this summary.

As always, we welcome your questions, comments, and feedback about the session. Your input is the only way that we can stay aware of what is important legislatively to TPA members. Thank you for your continued support of TPA.

Sincerely,

Fran Douglas, Psy.D.
TPA President
Coming in 2022

NEW Mental Health Care Laws From the 87th Texas Legislature

Edited by Ollie J. Seay, PhD; J. Ray Hays, PhD, JD; and Carl N. Edwards JD, PhD

This comprehensive sourcebook captures new statutes relevant to the practice of psychology and Attorney General Opinions, in addition to other relevant statutes.

Home study professional development credits will also be available.

For more information, Call (888) 872-3435
Or visit https://www.texaspsyc.org/store/

Stay Up to Date on TPA’s Advocacy Priorities

Texas psychologists rely on TPA as the only state psychological association advocating for mental health policy priorities directly impacting psychologists and their clients. In these rapidly changing times, TPA Members have an added benefit to stay current on what’s happening in Austin by accessing TPA’s Action Center. A Members-only benefit, our Action Center allows Members to track and view every bill impacting psychologists, as well as sign up for action alerts.

Not a member? JOIN TPA TODAY!

https://www.texaspsyc.org/page/MembershipBenefits

FOR MORE INFORMATION ON TPA’S ADVOCACY EFFORTS, VISIT HTTPS://WWW.TEXASPSYC.ORG/PAGE/ADVOCACY
## TPA’s Legislative Committee

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<th>Federal Advocacy Coordinator</th>
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<td>Robin Burks, PhD</td>
<td>Alice Ann Holland, PhD, ABPP</td>
<td>David Hill, PsyD</td>
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<td>Kirk Coverstone, PhD</td>
<td>Cheryl Hall, PhD</td>
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<td>Kennetha Frye, PhD</td>
<td>Sophia Tani, PhD</td>
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<td>Jacob Wella</td>
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<td>Carol Grothues, PhD</td>
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<td>Stephanie Robertson, PhD</td>
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*Chair must be president or president-elect.

**DIRECTIVES:**

- Develop the coming year’s legislative agenda for full BOT approval.
- Work to implement the present year’s legislative agenda.
- Guide and support the Grassroots Committee’s work to advance the legislative agenda.
- Make decisions regarding TPA’s action (or inaction) on filed bills outside of the legislative agenda with possible relevance to the practice of psychology and/or mental health in Texas.
- Participate in weekly calls during session conducted by TPA’s Government Relations Consultant and assist with securing witnesses when requested.
- During the interim, review interim charges and assist with securing witnesses, as needed.

**STAFF LIAISONS** – Jessica Magee, Kevin Stewart
How Does TPA’s Legislative Process Work?

1. Legislative Committee requests priorities from Divisions
2. Legislative Committee reviews and recommends priorities to BOT
3. BOT sets TPA’s Legislative Priorities
4. Government Relations identifies weekly filed bills that have an impact on psychologists
5. Pre-filing begins
6. Legislative Committee meets weekly to discuss and vote on the identified bill list
7. Calls to action are made to TPA Members as needed
8. Weekly legislative updates are emailed once action on bills begins

Mental Health Care and the 87th Texas Legislature: Outcomes for Psychologists
TPA’s Legislative Priorities

This section details the outcomes of all TPA’s priorities for the 87th Regular Session of the Texas Legislature. Priorities are identified by TPA’s Legislative Committee and approved by TPA’s Board of Trustees.

Telehealth Parity

The use of telehealth for mental health services has skyrocketed in Texas, with clients and providers alike highly satisfied with their quality of care. Recognizing the importance of telehealth as an efficient way to access care, last session the Legislature passed HB 3345, requiring health plans to provide coverage parity for telemedicine and telehealth service to the same extent as in-person visits. It also prohibited providers from being locked into a telehealth platform. However, the Texas Department of Insurance (TDI) interpreted the law as not including behavioral health services. Several bills this session sought to address this error:

- **HB 515** by Rep. Oliverson
- **HB 522** by Rep. Julie Johnson
- **HB 980** by Rep. Fierro
- **SB 228** by Sen. Blanco

While those bills did not pass, TPA worked with the agency and other stakeholders in hopes that the agency would reinterpret the law. Most recently, the agency issued a bulletin noting that behavioral health services are included in the existing parity laws.

Medicaid Audio-Only Telehealth

Telehealth is an important step in increasing mental health access, but it is not the only step. Only 65% of Texas households have broadband access. The coverage of audio-only services by Medicaid throughout the pandemic has proven to be a vital strategy to mitigate the spread of COVID-19, and it will be important to maintain even after the pandemic to ensure our most vulnerable Texans have equal access to care.

**HB 4** by Rep. Price and sponsored by Sen. Buckingham (filed an identical bill), in part, requires Health & Human Services Commission (HHSC) to implement a system by which Medicaid and CHIP beneficiaries can receive behavioral health services by audio-only platform. HB 4 is effective immediately, but the HHSC Executive Commissioner can delay implementation if they determine a waiver or authorization from the federal government is necessary.

Liability Protection

Texas currently allows providers to disclose to law enforcement if they believe their patient is a risk to themselves or others. However, Texas law also mandates confidentiality of mental health records. Those two statutes send conflicting messages, making providers less likely to report potentially dangerous patients.

**HB 549** by Rep. S. Thompson and sponsored by Sen. Zaffirini (filed an identical bill) allows, but does not require, a provider to disclose confidential information to mental health personnel if the provider believes
there is a probability of imminent physical injury by the client to the client or others or a probability of immediate mental or emotional injury to the client. HB 549 also prevents civil, criminal, or administrative causes of action for the disclosure of confidential information in accordance with the law and causes of action will be dismissed with prejudice. HB 549 becomes effective September 1.

Exemption from Sex Offender Treatment Licensure

When Texas created a license for persons who treat sex offenders, psychologists were not exempted from the duplicative requirements. To be licensed, a person needs 1000 supervised hours, 40 hours of continuing education, and a $375 application fee. Due to these barriers, many psychologists who had been treating this population chose not to seek the additional license. Currently, there are only about 500 licensed sex offender treatment providers in the state, leaving many potentially dangerous persons without treatment.

**HB 1697** by Rep. Raney exempts psychologists and physicians from the licensure requirements if they have at least 24 hours of training in sex offender assessment and treatment and at least eight hours of continuing education in sex offender assessment and treatment during every 12 months. HB 1697 received a hearing in the House but was not voted out of committee. TPA is committed to continuing its advocacy work on this issue so that properly trained psychologists would not face barriers to providing the treatment that these individuals need.

Prescribing Authority for Psychologists

Six states, including New Mexico and Louisiana, allow psychologists to seek advanced training to prescribe. Over half of Texas counties lack a prescribing mental-health provider, and many primary care providers are reluctant to treat mental health conditions. **HB 1462** by Rep. Goodwin would have allowed properly trained psychologists with prescriptive authority certificates to prescribe, increasing access to care while lowering wait times and costs for patients. Unfortunately, HB 1462 continues to be opposed by the Texas Medical Association and did not receive a hearing this session. TPA’s Psychopharmacology Division will continue its education and advocacy efforts during the interim.

Guardianship

Currently, for a court to create a guardianship, modify a guardianship, or approve an order restoring capacity for an incapacitated person, the court must have a written letter or certificate signed by a physician. Many times, psychologists will perform an examination, evaluate the person’s mental function, but then need a physician to sign the letter. This barrier unnecessarily delays guardianship actions and adds costs for the family. This session, an author could not be secured for this issue, but several legislators expressed interest in examining this issue next session.
Other Key Issues

In addition to the priorities outlined in the previous section, TPA tracked more than 200 bills this 87th Regular Session that impacted the practice of psychology or mental health. This section is not an exhaustive list, but an overview of some of the most significant bills, including bills that did not pass but may return in future sessions. Bills that failed to pass are accordingly labeled. Additionally, the bills outlined below are summarized and do not constitute a full analysis. To read bill and fiscal note text, please visit the Texas Legislature Online at https://capitol.texas.gov.

TPA Members may log onto our website and visit our Action Center to view additional bills reviewed by the Legislative Committee.

Budget and Mental Health Funding

**SB 1** funds the Behavioral Health Executive Council (BHEC) at its requested level. BHEC also requested and received four additional FTE positions. BHEC asked for these positions to help with the complaint and licensure backlog.

*The Loan Repayment Program for Mental Health Professionals* is appropriated funds at its 2020-21 levels. $1,035,938 has been allocated per year. This means that current recipients will continue to receive similar grant awards in the amount they received in 2020, but the appropriated funding in SB 1 does not restore cuts made from previous sessions. There were not sufficient funds to enroll new recipients in September 2020 and no new awards are likely.

TPA and the other mental health professional associations seek to push for additional funding for this program in the 88th Legislative Session. As part of our work on the HHSC Behavioral Health Workforce Workgroup, this interim TPA and the National Association of Social Workers-Texas is collaborating with the Texas Higher Education Coordinating Board to survey recipients to learn more about their demographics and identify gaps in the program that can be improved upon by the legislature next session.

SB 1 is effective September 1 and addresses fiscal years 2022-23.

Child/Adolescent/Schools

**HB 785** by Rep. Allen requires annual review of students’ behavioral improvement plans or behavioral intervention plans as well as require that a student’s plan be reviewed prior to a disciplinary action that recommends more restrictive placements. Finally, the bill requires a report to a student’s parent or custodian if the use of restraints is used. HB 785 is effective immediately but applies beginning to the 2021-22 school year.

**HB 2287** by Rep. S. Thompson allows the Collaborative Task Force on Public School Mental Health Services to request data from school districts, open-enrollment charter schools, regional education service centers, local mental health authorities, and other entities to evaluate school-based mental health programs. The task force previously lacked such authority. The task force is required to report its findings annually until December 1, 2025.
County and Local Mental Health Programs

**HB 3088** by Rep. Coleman expands the eligibility of existing HHSC mental health grant programs to counties with populations over 250,000 from 100,000. These programs include the community mental health grant program, the Texas Veterans + Family Alliance grant program, the mental health grant program for justice-involved individuals, and the grant program for the establishment and expansion of community collaboratives. It is important to note that additional funding was not provided with the eligibility expansion. HB 3088 is effective September 1.

**SB 454** by Sen. Kolkhorst and sponsored by Rep. Lambert (filed an identical bill) requires local mental health authority (LMHA) groups to meet at least quarterly to collaborate on planning and implementing regional strategies to reduce (1) costs to local governments of providing services to persons experiencing a mental health crisis, (2) costs of transportation to mental health facilities, (3) the incarceration of persons with mental illness in county jails, and (4) visits by persons with mental illness at hospital emergency rooms. SB 454 is effective immediately. Beginning December 1, 2022, HHSC is required to make available online the updated plans of each LMHA group of their actions taken and strategies identified.

**SB 476** by Sen. Nelson requires each county to establish a sexual assault team. Counties with populations less than 250,000 may partner to form multicounty response teams. Each team must at least consist of the sheriff or designee; a prosecutor; the police chief or designee; the chief administrator of the program or designee; a behavioral health services provider; and a sexual assault nurse examine, forensic examiner, or a representative from the largest healthcare provider in the county. SB 476 is effective September 1. Each sexual assault team must develop a written protocol by December 1, 2022.

Criminal Justice

**HB 686** by Rep. Moody and sponsored by Sen. Lucio (filed identical bill), in part, expands parole eligibility for inmates under the age of 18. The bill requires a parole panel to assess the growth and maturity of an inmate, taking into consideration specific factors. The bill also requires the Board of Pardons and Paroles to establish a policy for comprehensive mental health evaluations conducted by experts qualified in adolescent mental health issues to be considered by a parole panel. HB 686 becomes effective January 1, 2022.

**HB 2831** by Rep. White creates an advisory committee for the Commission on Jail Standards (TCJS) to make recommendations on matters related to the confinement in county jail of persons with intellectual or developmental disabilities (IDD). The advisory committee will include one representative who is a mental health professional with a focus on trauma and IDD. The advisory committee must submit a report to the Legislature every December 1 of even-numbered years, leading into session. TCJS will be required to update the intake screening form for county jails periodically based on feedback from the advisory committee.

With the assistance of the advisory committee, TCJS must also monitor the intake processes in county jails to assess each county jail's ability to properly identify persons with IDD and assist county jails in improving the intake processes with respect to persons with IDD.

By December 1, 2022, TCJS is also required to submit to the Legislature a report discussing any deficiencies in the intake processes that have been identified and recommendations to improve county jail practices regarding identifying persons with IDD.
Finally, by January 1, 2022, TCJS is also required to establish a training program for county jailers that consists of at least 4 hours of education and training on interacting with a person with an IDD who is confined in a county jail, including techniques to assess a person for an IDD.

HB 2831 is effective September 1.

Eating Disorders

SB 184 by Sen. Johnson requires the Department of State Health Services (DSHS) to prepare a report on the prevalence of eating disorders and eating disorder-related deaths in Texas. The report must be submitted to the Legislature no later than December 1, 2023. SB 184 also requires DSHS to prepare a report on the prevalence of eating disorders among youth in this state and submit the report to the Legislature no later than December 1, 2024.

Law Enforcement

SB 64 by Sen. Nelson requires the Texas Commission on Law Enforcement (TCOLE) to create a peer support network for law enforcement officers by January 1, 2022. TCOLE may contract the development of the network out to an institution of higher education.

SB 1359 by Sen. Hughes requires law enforcement agencies to adopt a mental health leave policy for peace officers who experience traumatic events. Law enforcement agencies are encouraged but not required in the policy to provide a list of local mental health services available. SB 1359 becomes effective September 1 and law enforcement agencies are required to develop a policy as soon as practicable after the effective date.

LGBTQ

More anti-LGBTQ bills were filed this session and heard than in previous sessions combined. TPA opposed any legislation that criminalized or discharged the recommendation or provision of appropriate gender-affirming care. This included HB 68 by Rep. Toth, relating to the definition of abuse of a child; HB 1399 by Rep. Krause, relating to professional liability insurance coverage for and prohibitions on the provision to certain children of procedures and treatments for gender transitioning, gender reassignment, or gender dysphoria; and HB 1424 by Rep. Oliverson, relating to a health care provider's right to object to participation in a medical procedure that violates the provider's ethical, moral, or religious beliefs.

Decisions about whether to seek gender-affirming care, and what specific services to utilize, must be made between a provider, patient, and the patient’s parents or guardians. Such decisions are relative to the youth’s individual clinical situation.

Medicaid

HB 706 by Rep. Moody and SB 909 by Sen. Powell establish reimbursement rates for LMFT associates, LMSWs, LPC associates to deliver Medicaid covered services to Medicaid recipients. It also requires HHSC to provide Medicaid reimbursement to LCSWs, LPCs, and LMFTs at a rate equal to the reimbursement rate established for a licensed psychiatrist or LP for providing the same service. Finally, it also requires HHSC to reimburse LMFT associates, LMSWs, and LPC associates at a rate equal to 70 percent of the reimbursement rate established for a licensed psychiatrist or LP for providing the same service.

With reimbursement rate proposals matching or exceeding those of psychologists, TPA strongly opposed these bills this session, also asking TPA Members via VoterVoice to email their representatives and
encourage them to vote against HB 706 in committee (SB 909 did not receive a hearing). However, for reasons unknown, of the 200 psychologists whose representatives sit on the House Human Services Committee who received our call to action and sample email, only 1 psychologist emailed their representative.

HB 706 and SB 909 failed to pass.

HB 2822 by Rep. Hull and sponsor Sen. Buckingham (filed an identical bill) prohibits HHSC from requiring prior authorization for an antipsychotic drug prescribed to an adult under the following circumstances: if a 14-day trial of another approved drug was ineffective, if the drug was previously prescribed and is now being used for titration, or if this is a modification of a prescription that was previously prescribed for a same treatment. These changes to the Medicaid Vendor Drug Program apply to both Medicaid fee-for-service and managed care. HB 2822 is effective September 1.

SB 640 by Sen. Lucio requires HHSC to conduct a survey reviewing technology readiness, interoperability, and gaps in state supported behavioral health organizations, managed care, and key Medicaid stakeholders. HHSC must also review the rules or processes that create barriers between managed care and providers, and any costs or funding that may be needed to reach a readiness baseline for behavioral health to be included in future incentive plans and 1115 waiver requests. SB 640 takes effect September 1 and the report is due by August 31, 2022. (Rep. Cortez filed an identical bill but was not the House sponsor.)

SB 672 by Sen. Buckingham and sponsor Rep. Bonnen (filed an identical bill) requires HHSC to reimburse Medicaid providers for behavioral health services classified by a CPT code as collaborative care management services, aligning reimbursement practices with Medicaid and private insurance. SB 672 is effective September 1.

SB 1921 by Sen. Lucio requires HHSC to reimburse Medicaid providers for behavioral health services delivered to a Medicaid beneficiary while the beneficiary is enrolled in fee-for-service waiting to be enrolled in a managed care plan. SB 1921 is effective September 1, 2022.

Parity

HB 2595 by Rep. Price enacts recommendations by the Mental Health Condition and Substance Use Disorder Parity Workgroup. The bill designates October as Mental Health Condition and Substance Use Disorder Parity Awareness Month. It also requires TDI to establish a parity complaint portal for health benefit plan enrollees to submit complaints of suspected violations of Texas’ parity laws. TDI will be required to develop educational materials and parity law training sessions for health benefit plans and enrollees. HB 2595 becomes effective September 1. TDI is required to establish the portal as soon as practicable after September 1.

TPA was invited to testify in support of HB 2595 at the request of Rep. Price. HB 2595 serves as an important piece of consumer protection legislation: a vast majority of Texans are not aware of mental health parity laws, even though roughly 1 in 4 individuals receive mental health services.

Reimbursement

HB 2093 by Rep. Cortez adds to the definition of “non-physician mental health professionals” PAs who have expertise in psychiatry or are currently working in a mental health facility. HB 2093 is effective September 1.
In previous sessions, attempts have been made to add all PAs to this statute. TPA and the other mental health professional associations had blocked those bills from passing because they were too broad—most PAs lack the education and supervisory experience required of non-physician mental health professionals. This session, however, PAs narrowly tailored their language, which lead the social workers to be neutral on the bill. TPA maintained its opposition because PAs who simply work in a mental health facility may not have the same expertise as those with expertise in psychiatry. However, given the many years of negotiations between mental health groups, the Legislature felt this was an acceptable compromise.

TPA sent out two calls to action through VoterVoice, collectively sending over 3,000 emails to psychologists. Fewer than 50 psychologists responded.

Scope
Licensed Specialists in School Psychology once again filed legislation to change their professional title to Licensed School Psychologists. HB 3728 by Rep. Button received a hearing in the House but failed to receive an affirmative vote in committee. There was no Senate companion. TPA opposed this bill again this session, and the bill failed to pass.

Suicide
HB 4074 by Rep. Hunter requires the Statewide Behavioral Health Coordinating Council (SBHCC) to include suicide prevention efforts in the statewide behavioral health strategic plan. The bill also establishes a SBHCC subcommittee to focus on suicide prevention efforts. HB 4074 permits public or private entities that collect information on suicide and suicide prevention to provide the data to HHSC for consideration by the subcommittee. HB 4074 is effective immediately.

Veterans
HB 1802 by Rep. Dominguez requires HHSC, in collaboration with Baylor College of Medicine and a veterans hospital or medical center that provides medical care to veterans, to conduct a study on the efficacy of using alternative therapies, including the use of MDMA, psilocybin, and ketamine, in the treatment of veterans who suffer from post-traumatic stress disorder. The report is due to the Legislature no later than December 1, 2024.

HB 3821 by Rep. Hunter requires the Texas Veterans Commission to employ and train mental health professionals to assist HHSC in the administration of the Mental Health Program for Veterans, an existing program which provides peer-to-peer counseling to service members, veterans, and their families through local mental health and local behavioral health authorities. HB 3821 is effective September 1.