TEXAS ORTHOPAEDIC ASSOCIATION

Established 1936

Advocacy Issues for Texas Orthopaedic Practices in 2021

September 17, 2021 | Fort Worth

www.toa.org | Bobby@toa.org


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ORTHOPAEDIC
ASSOCIATION
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TOA'S 2021
MEMBER RETREAT
October 2-3
Horseshoe Bay Resort

THANK A TOA MEMBER

TOA is recognized as one of the nation's most successful orthopaedic organizations, and TOA proved that once again in the 2021 Texas Legislature. TOA's success on behalf of its patients and orthopaedic surgeons is only possible due to the support of TOA members.

Thank a TOA member for making this possible.

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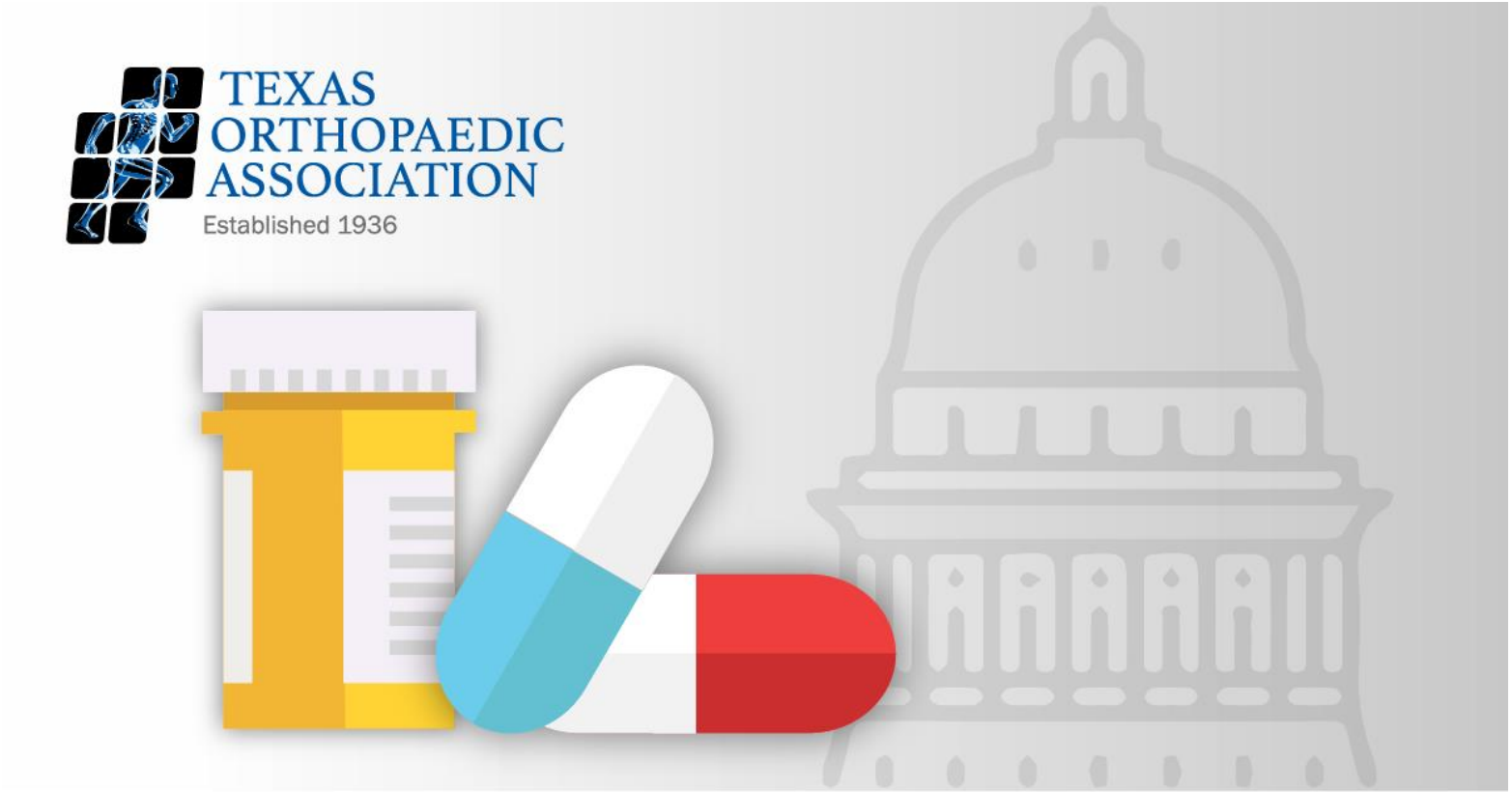
TOA's Online CME Fulfill Opioid Requirement for Licensure



Private Practice vs. Employed Legislative Issues

"The future of private practice affects every type of orthopaedic practice model in Texas: private, hospital employed and academic. Hospitals and academic centers often base salaries on market value, and what the market will pay you in a private practice is an important factor."


TOPAC
TEXAS ORTHOPAEDIC POLITICAL ACTION COMMITTEE

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PRIOR AUTHORIZATION: LEGISLATIVE REFORMS ARE NECESSARY

ACTUAL DENIALS

1%

TSAOG Orthopaedics' prior authorization data from the 2020 calendar year – which included 30,000 order sets related to orthopaedic surgery, imaging and procedures – resulted in a 97-percent approval rate of services that were never denied at any point in the authorization process.

TSAOG Orthopaedics' team determined that an additional 2 percent were ultimately approved after re-examining the denials. As a result, less than 1 percent of the 30,000 services were completely denied.

PRIOR AUTHORIZATION:

Ensure that unnecessary prior authorization hurdles do not stand in between patients and their physicians.

THE BURDEN

5 INTERACTIONS

Despite the relatively low peer-to-peer and denial rates across these order sets, TSAOG Orthopaedics' team still has to create the infrastructure to document and track all of the order sets, on the off chance that only between one to three out of 100 will ever escalate in a significant manner.

It's not just the cost of fighting denials, which requires an average of five interactions for each order, it's the required data provenance that contributes to the overall waste of the vast majority of prior authorizations.

1 WEEK OR MORE
1 IN 5 PATIENTS

For nearly 1 in 5 patients who sought an orthopaedic procedure or surgery through TSAOG Orthopaedics in 2020, insurance requests for additional clinical data routinely delayed a healthcare decision by one week or more.*

Source: Seventeen percent of procedure and surgical authorizations at TSAOG Orthopaedics in 2020 received requests for additional clinical data. The median time to authorization decision was 0.8 days for authorizations without clinical requests, vs. 7.8 days for authorizations where clinical data was requested.

The data are based on TSAOG Orthopaedics' 30,003 prior authorization requests in the San Antonio area during the 2020 calendar year.

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Rutledge v. Pharmaceutical Care Management Association

AAOS Priority Tiers

Tier 1-Active Pursuit

- Reform prior authorization and coverage reviews
- Maintain surgeon/patient primacy in setting of care
- Telemediecine policies that promote equal reimbursement with in-person visits
- Support repealing the ban on physician owned hospitals
- Encourage physician burden relief

Tier 2—Opportunistic Action

Encourage laws that improve network adequacy	Support reforms to Stark laws	Support the Competitive Health Insurance Reform Act of 2019	Encouraging site neutral payments as appropriate
Support repealing certificate of need laws	Support for registries and population-based research based on registry data	Maintain current scope of practice laws Encourage physician burden relief and prevent further scope of practices federally and at the state level	Support efforts to reduce hospital consolidation
Encourage surgeon led value based programs	Support the Good Samaritan Health Professionals Act	Better electronic medical records and interoperability standards	Appropriate payment transparency

Tier 3—Actively Tracking

Quality Reporting	Surgeon autonomy of device selection	Increase diversity in orthopaedics	Support appropriate risk adjustment in value based models	Drug and Device Safety
Increase awareness of policy makers on the different categories of biologics and their utilization in evidence-based MSK care	Increase/maintain federal funding for research in MSK care to strengthen available evidence on specialty MSK care including patient outcomes	Advocate for increased cooperation between FDA and CMS on biologics and biosimilars so that regulations are in line with reimbursements for these therapies	Advocate for increased guidance from the FDA on novel biologics	Increase residency funding for specialties
	National Quality Forum (NQF) reauthorization	Assist in curbing current epidemic of unnecessary opioid use while maintaining physician autonomy in prescribing	Help in reauthorization of the User Fee Acts	

State & Federal Policy Commercial Insurance

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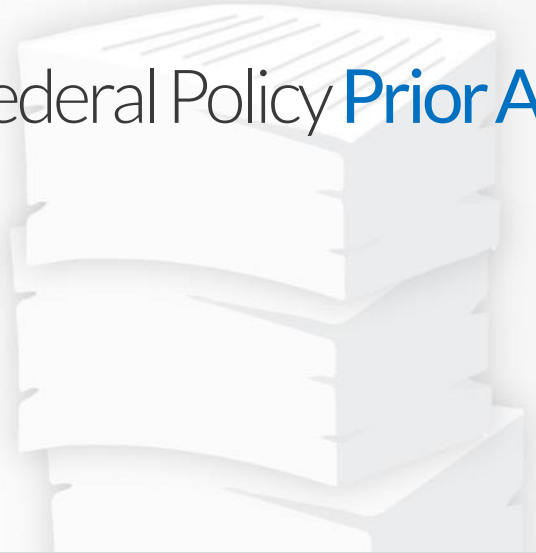

State & Federal Policy Prior Authorization

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HB 3459 in Austin Begins January 1, 2022

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HEALTH & SCIENCE

New Texas Law Removes Medical Procedure Approval Process For Some Doctors

September 1, 2021 · Physicians with a proven track record will be exempt from the prior authorization process, which requires permission from insurers before performing care.

As the new law goes into effect, insurers will now begin evaluating which doctors qualify for gold card status. However, a few provisions in the law might be too troublesome for insurers, Dudensing said. As a result, prior authorization might go away across the system — not just for a group of verified doctors.

"The bill was constructed in such a way that makes it almost impossible to implement," Dudensing said. "So instead of implementing gold carding, it's really likely that most plans are just going to eliminate prior authorizations."

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Gold Card Prior Authorization

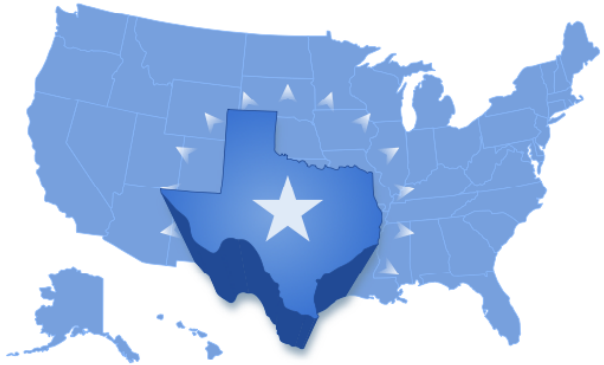
Texas Created the Nation's Model Prior Authorization Law

The 2021 Texas Legislature created the nation's model prior authorization law through HB 3549, which will:

- Prohibit a PPO or HMO regulated by the state of Texas from requiring a prior authorization for a physician who meets certain thresholds.
- If during a prior six-month period a physician was approved for at least 90 percent of prior authorizations for a particular service, that physician will not be subject to prior authorizations for that service for the next six months.
- Once the six-month period ends, the health plan may rescind the physician's exemption if it is documented that the physician did not meet certain medical criteria. The physician would have the opportunity to repeal the decision through an independent process.

TOA Recommends

The U.S. Congress and other state legislatures should pass similar prior authorization legislation to protect patients.



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2019 Texas Legislature & SB 1742 Prior Authorization Law

Provider Directory

Prior Authorization

Utilization Review

Interim Study in 2020

2021 Texas Legislature & Health Plans "Medical Management"

TAHP recommends that the Legislature oppose unnecessary new administrative mandates that would limit a health insurance provider's ability to use medical management tools and formularies that provide access to safer and more valuable care for their members.

TAHP
The Texas Association of Health Plans

Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
www.tahp.org

October 1, 2020

House Select Committee on Statewide Health Care Costs
via email to Clerks Samantha Durand and Brigitt Hartin

Chairman Bonnen and Committee Members,

The Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurance providers, health maintenance organizations, and other related health care entities operating in Texas. Our members provide health and supplemental benefits to Texans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

The COVID-19 pandemic has reminded us about the value of affordable health insurance coverage and the peace of mind it brings to Texans and their families. The COVID-19 crisis poses unprecedented challenges to Texas and our nation, touching every facet of American life. Since the beginning of the pandemic, health insurance providers have been fully committed to helping solve this crisis. Every American deserves affordable, comprehensive coverage that provides them with access to safe and convenient care, and no one should hesitate to get tested or treated for COVID-19 because of concerns about costs.

In the face of these challenges, Texas health insurance providers are taking decisive actions to help patients and curb the spread of the virus, including proactively eliminating patient cost sharing for COVID-19 diagnostic testing and treatment, waiving cost sharing for telehealth services and expanding telehealth programs, and fully covering the doctor visits and treatments needed to recover from this disease.

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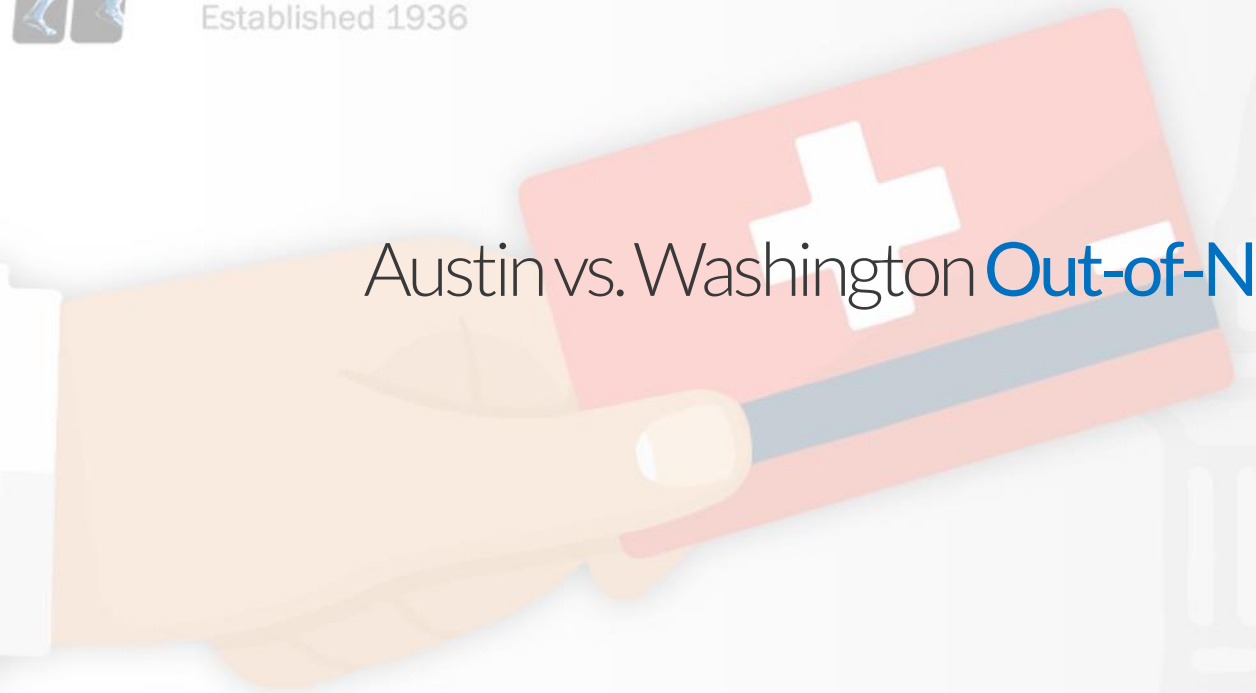
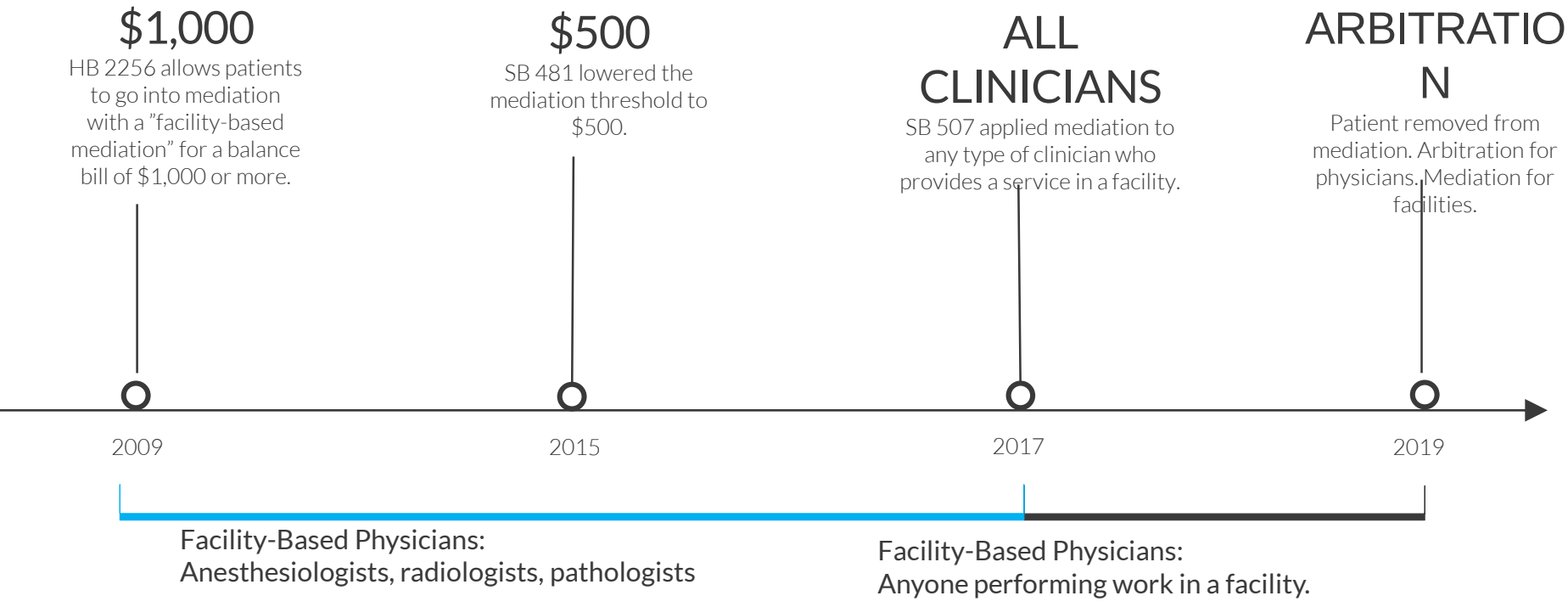


Austin vs. Washington Out-of-Network Billing

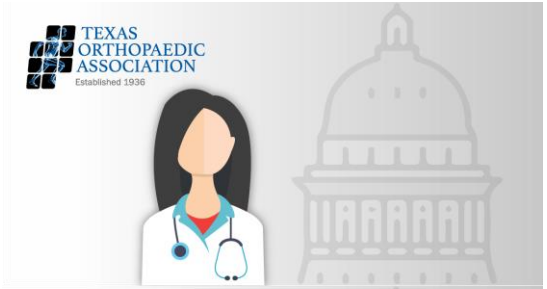
Austin & Out-of-Network Law Ban on Surprise Billing in 2019

Plans Regulated by the Texas Department of Insurance

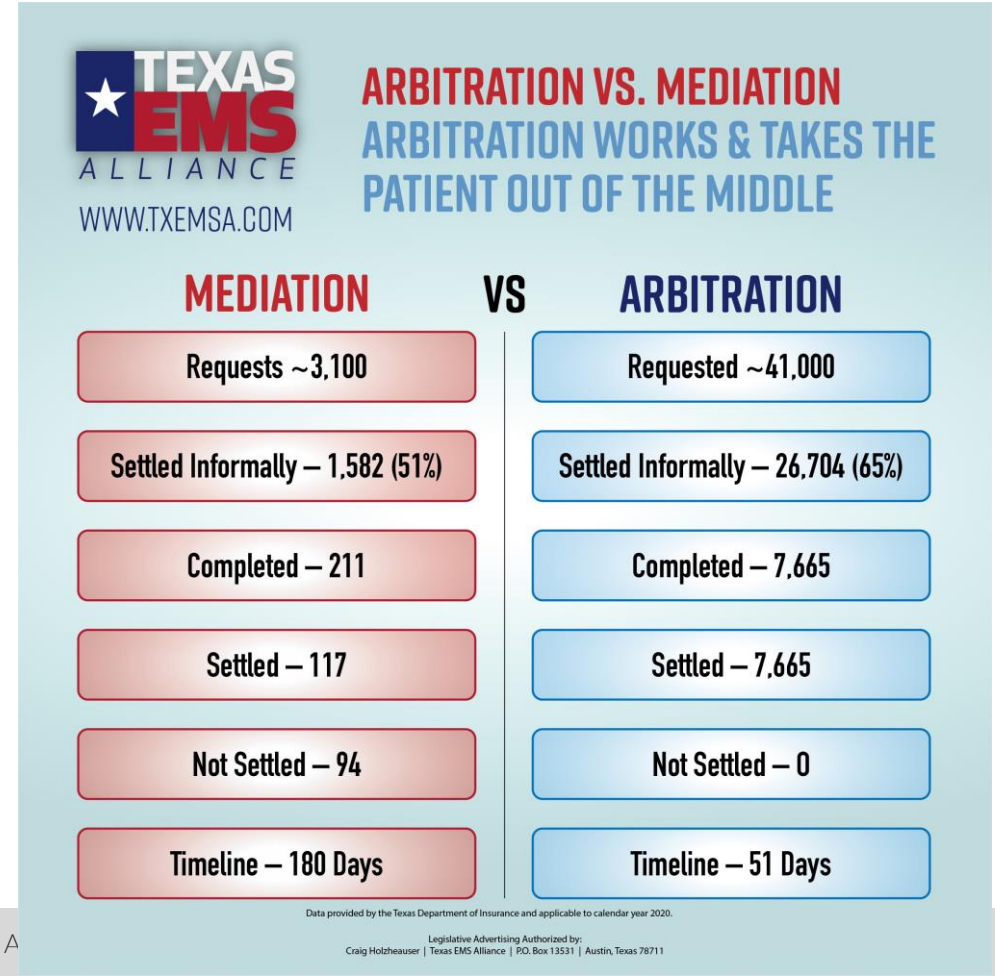


Texas Mediation

Texas Arbitration



Mediation vs. Arbitration Texas Results



SB 1264 Overview

Bans Balance Billing for Emergency Care

- Affects health plans that are regulated by the Texas Department of Insurance: Individual market, small group market, state employees, etc.
- Bans surprise billing for out-of-network care.

Creates a Balance Billing Option for Elective Care

- Patients must agree to financial disclosures.

Creates Baseball-style Arbitration for Physician Payment Disputes

- Based on New York state's model.

Non-Binding Mediation for Facilities

- The Texas Hospital Association chose a non-binding mediation model for facility payment disputes.

2021's Mid-Year Report Texas Department of Insurance

- **Arbitration requests in 2021 have increased.** The first half of 2021 witnessed more than 50,000 arbitration requests, compared with just under 45,000 in the first 10 months of 2020. More than 35,000 of the 2021 requests came from emergency physicians.
- **$883 vs. $967.** Arbitration cases in the first half of 2021 resulted in an average payment of $883, compared with 967 in the first 10 months of 2020.

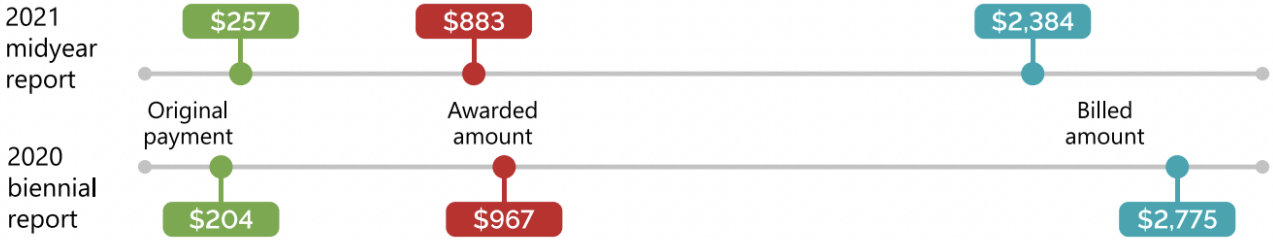
https://www.tdi.texas.gov/reports/documents/SB1264-2021-midyear-update.pdf

2021's Mid-Year Report How's It Going in Texas?

https://www.tdi.texas.gov/reports/documents/SB1264-2021-midyear-update.pdf

Arbitration requests settled in informal teleconference

Decided by an arbitrator



No Surprises Act (Washington) Overview

Bans Balance Billing for Emergency Care

- Goes into effect on January 1, 2022.
- Waiting for regulatory rules from the U.S. Department of Health and Human Services.

Creates a Balance Billing Option for Elective Care

- Patients must agree to financial disclosures.

Creates Baseball-style Arbitration for Physician Payment Disputes

- Features an independent dispute resolution process.

September 7 Comment Deadline

- TOA and other stakeholders submitted comments.

Austin vs. Washington Surprise Billing

2019 Texas Law	2020 Federal Law
State-regulated PPO, EPO and HMO Plans. ERS/TRS state employee plans.	Covers ERISA plans.
Usual and customary is the initial payment.	The plan determines the initial payment.
Arbitration for physicians (mediation for facilities): • The parties split fees. • Bundled claims up to $5,000. • Arbitrator must consider the 80th FAIR Health database's billed charges.	**Arbitration for physicians.** • **Loser pays.** • **Bundled claims allowed; rulemaking to determine more details.** • **Arbitrator must consider the median in-network rate.**
Exemption for elective surgery.*	Exemption for elective surgery.*

Plans Affected Texas Law vs. Federal Law

Texas Law

- State-regulated PPO, HMO and EPO plans (Texas Department of Insurance is on the patient's card).
- State plans: ERS and TRS.

Federal Law

- Self-funded ERISA plans.
- Comprehensive individual and small group plans.
- Fully-insured plans sold through individual and group markets.

Bundles for Dispute Resolution Texas Law vs. Federal Law

Texas Law

- Disputes of up to $5,000 in bundles may be disputed.
- Must be limited to the same provider and plan.

Federal Law

- Limited to services provided to patients under the same plan, treatment of similar conditions and furnished by the same provider or facility.
- The Secretary may develop exceptions.
- The rule-making process will help define bundles.

Dispute Resolution Factors to Consider Texas Law vs. Federal Law

Texas Law

- 10 factors.
- Whether there is a gross disparity between the fee billed and payments made for similar services/providers.
- Level of training, education and experience.
- Out-of-network provider's usual billed charge for comparable services.
- Complexity circumstances.
- Individual enrollee characteristics.
- The 80th percentile of all billed charges in the same geozip (FAIR Health).
- The 50th percentile of rates paid (FAIR Health).
- History of networking contracting between the parties.
- Historical data for the two FAIR Health factors.
- An offer made during informal settlement.

Federal Law

- Waiting for regulatory rules.
- Offers by both parties.
- Qualifying payment amount in the same region.
- Circumstances, such as training, market shares of parties, patient complexity and good faith efforts to contract and contracting history.
- For 2022: The median in-network rate will serve as the qualifying payment amount (based on January 31, 2019, and it will be increased for the price index for all urban consumers).
- For 2023: Based on previous year + CPIU. The Secretary will determine methodology for new plans.

Dispute Resolution & What Can't Be Considered Texas Law vs. Federal Law

Texas Law

- Factors are exclusive.

Federal Law

- The IDR cannot consider usual and customary charges or the provider's billed charge.
- Government rates cannot be considered.

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Austin vs. Washington Other Commercial Insurance Issues

New Insurance Products Created by the 2021 Texas Legislature

Texas Farm Bureau – HB 3924

- Allows the Texas Farm Bureau to offer plans.
- Exempts these plans from the definition of insurance.

Texas Mutual Insurance Company – HB 3752

- Allows TMIC to offer commercial health products to its members with fewer than 250 employees (Beginning on September 1, 2023).
- TMIC must submit a report to the Legislature regarding the feasibility of the product by September 1, 2022.

New Law: Price Transparency 2021 Texas Legislature

Federal Hospital Rule – SB 1137

- Codifies the Trump administration's hospital price transparency rule (state law).

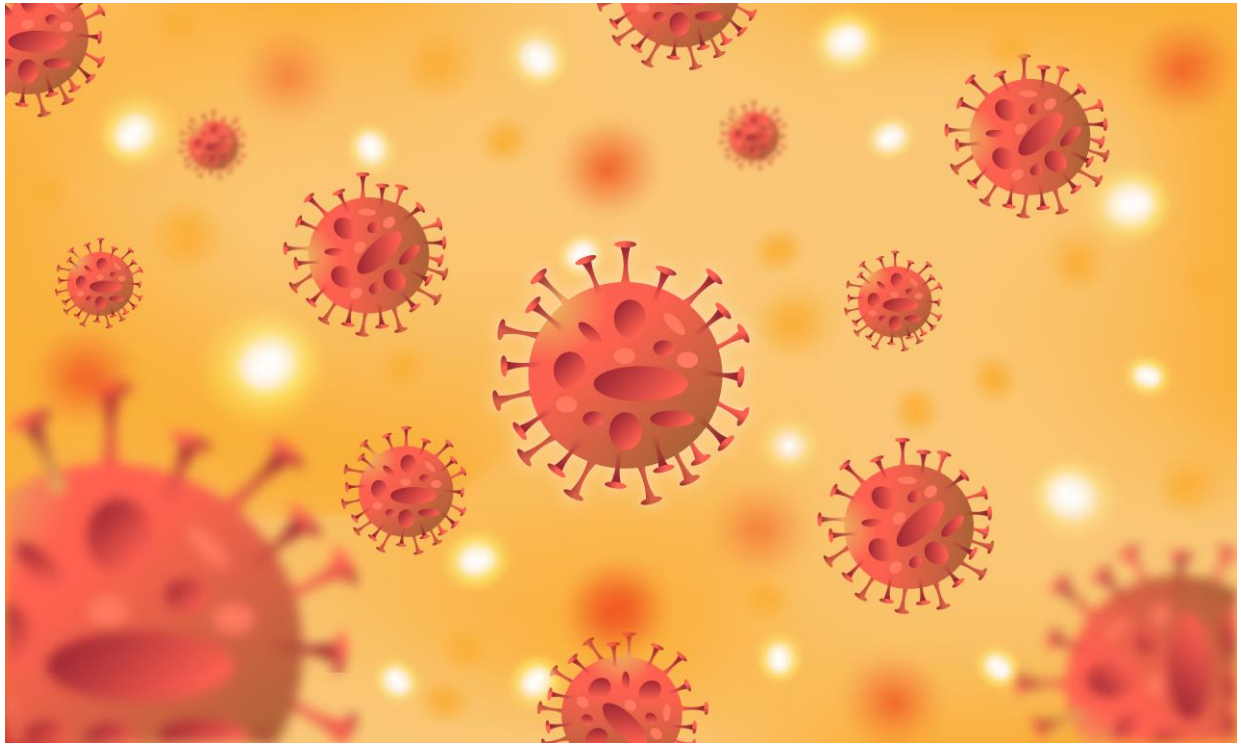
Transparency & Co-Sharing Payments – HB 2090

- Insurers will be required to provide real-time, provider-specific prices through an app.
- The patient's out-of-pocket costs will also have to be disclosed.

Creation of an All-Payer Claims Database

- Next slides.

Covid Funding Law for Hospitals 2021 Texas Legislature



2021 Texas Legislature All-Payer Claims Database

Summary of Health Cost Containment and Efficiency Strategies– Collecting Health Data: All–Payer Claims Databases

State/Private Sector Examples	Strategy Description	Target of Cost Containment	Evidence of Effect on Costs
Colorado, Kansas, Minnesota, Tennessee, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, Utah and Vermont All-payer Claims Databases were in operation by 2010.	A statewide repository of health insurance claims information from all health care payers, including health insurers, government programs and self-insured employer plans.	Inability to identify and reward high quality/lowcost providers. Lack of data to enable consumers to compare provider prices and care quality.	It is too early to determine whether all-payer claims databases can help states control costs.

States that have been **implementing APCDs** more recently include Connecticut, Nebraska, New York, Virginia and West Virginia. States that have had **existing voluntary efforts** to maintain an APCD include Virginia, Washington and Wisconsin.

All-Payer Claims Database? The Options

All-Payer Claims Database

- The Texas Academy of Family Physicians' "Marshall Plan."
- Colorado, Kansas, Minnesota, Tennessee, Maine, Maryland, Massachusetts, New Hampshire, Rhode Island, Utah, and Vermont.

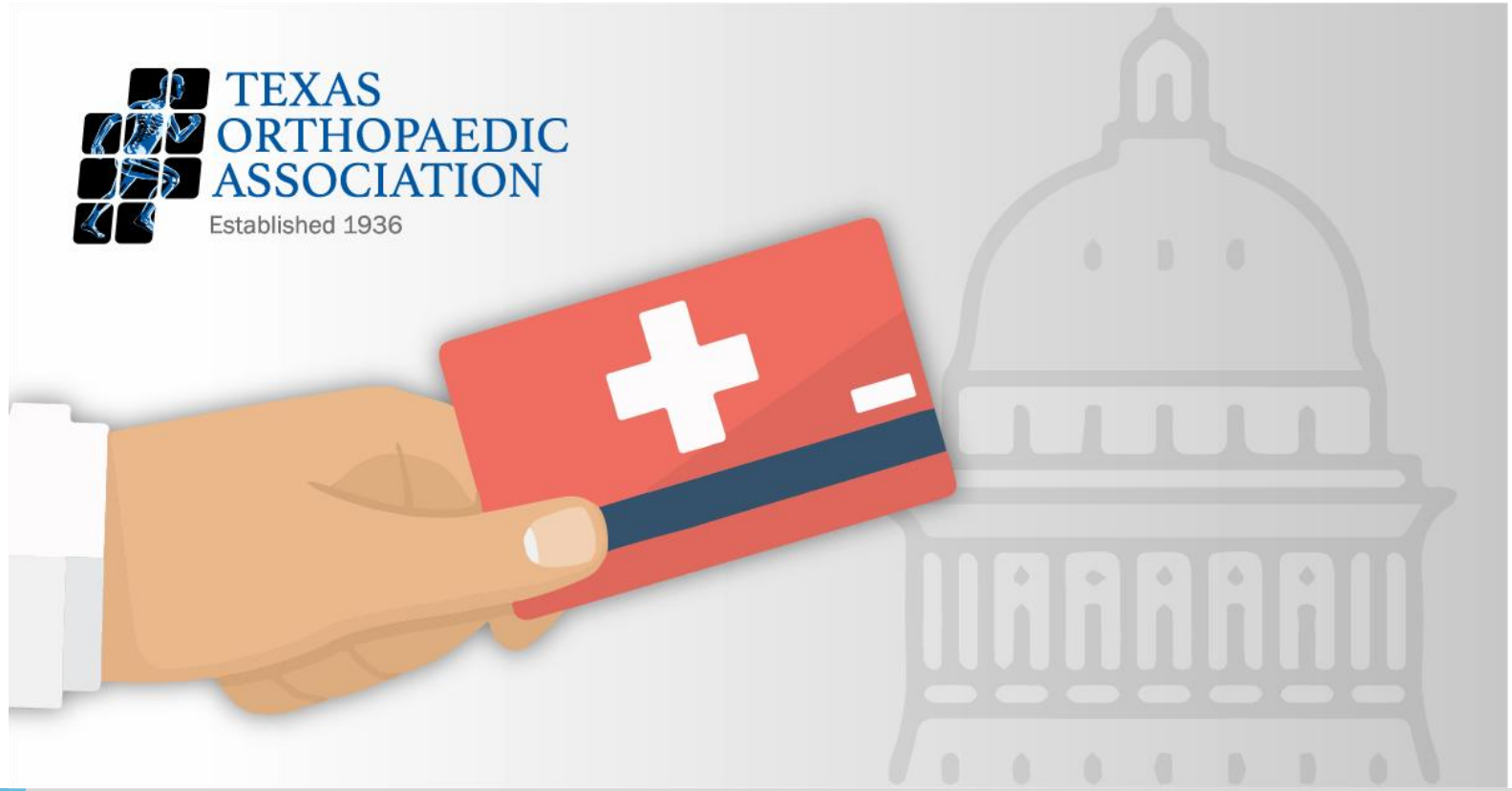
FAIR Health

- Texas arbitration law.

University of Texas

- UT School of Public Health – Houston Center for Health Care Data.
- Collects health care utilization data for 80 percent of the state's population.

Medical Billing Tax Eliminated in 2021 Legislature



Telemedicine Overview of Texas Laws/Regulations

Telemedicine in Texas Laws & Pandemic

Coverage Parity – 2017 Law (SB 1107)

- Health plans must pay for telemedicine visits for a covered service.
- However, the law does not mandate payment parity.
- Telemedicine is defined as "a health care service delivered by a physician licensed in this state, or a health professional acting under the delegating and supervision of a physician licensed in this state, and acting within the scope of the physician's or health professional's license to a patient at a different physical location than the physician or health professional using telecommunications or information technology."

Platform of a Physician's Choice – 2019 Law (HB 3345)

- The 2019 law allows a physician to use a telemedicine platform of her choice.
- The law also updated SB 1107 from 2017 to ensure that all state-regulated plans are covered under the payment policy.

Public Health Emergency – Texas Department of Insurance

- Mandated payment parity for telemedicine during the emergency.

Public Health Emergency - CMS

- "All beneficiaries across the country can receive Medicare telehealth and other communications technology-based services wherever they are located."
- June Senate letter.

Telemedicine in Texas 2021 Legislation

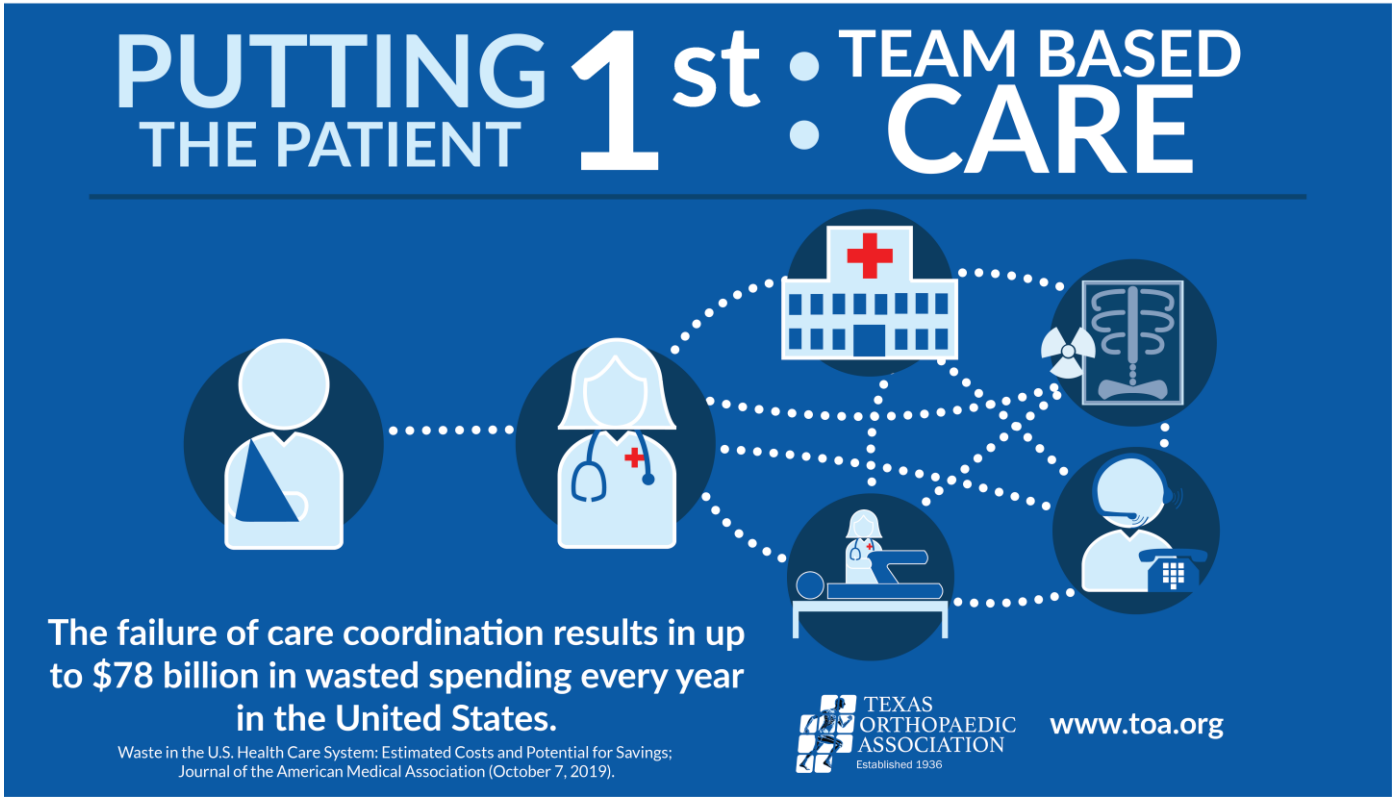
HB 4 – Top Priority & Signed into Law

- Medicaid. It would codify many of the pandemic regulations.

SB 992 – Out-of-State Physicians; Failed

- Opposition from organized medicine.

Bundled Payments 2021 Texas Legislature & ERS



Military & Civilians San Antonio Region

MILITARY TREATMENT FACILITIES

Medical Lawsuits Texas Legislature

January Supreme Court Case

2021 Texas Legislature – Personal Injury Cases

Paid & Incurred – Texas Supreme Court January 5, 2021

FILED
19-1022
11/15/2019 5:24 PM
tex-38552853
SUPREME COURT OF TEXAS
BLAKE A. HAWTHORNE, CLERK

No. _____

In the
Supreme Court of Texas

In re K & L Auto Crushers, LLC and Thomas Gothard, Jr.,

Relators

Original Proceeding from the 160th Judicial District of Dallas County, Texas,
the Honorable Aiesha Redmond, Presiding, Cause No. DC-18-07502,
and the Fifth Court of Appeals, No. 05-19-01061-CV

PETITION FOR WRIT OF MANDAMUS

Paid & Incurred 2021 Legislation in Austin

TEXANS *for* LAWSUIT REFORM

TLR

POLITICAL ACTION COMMITTEE

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Paid & Incurred – Personal Injury Cases 2021 Legislation in Austin

Data Points for the Judges and Juries to Consider

- The original legislation offered Medicare, Medicaid, Workers' Comp and commercial contracts.
- TOA offered the FAIR Health database.

Unnecessary Discoveries

- Physicians and hospitals combined to ask for an elimination of unnecessary discoveries.
- The current legislation does not address that.

Counter Affidavit

- SB 207's latest draft would allow any individual (no matter their level of expertise) to challenge a physician's bill.

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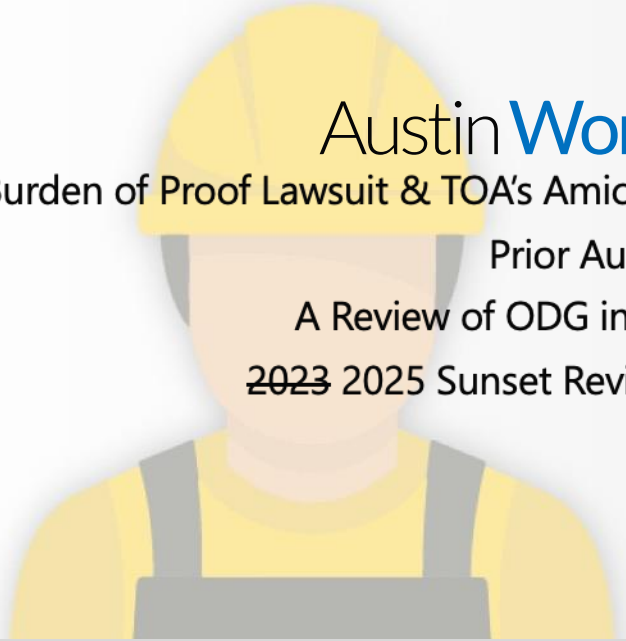

Austin Workers' Comp

Burden of Proof Lawsuit & TOA's Amicus Brief – 10.29.20 Supreme Court Case

Prior Auth & IROs

A Review of ODG in the 2021 Legislature

~~2023~~ 2025 Sunset Review – Open to Any Issue

~~2023~~ 2025 Texas Sunset Commission Workers' Comp

Texas Supreme Court – October 29 TOA's Amicus Brief

September 16, 2019, Brief

No. 19-0533

IN THE SUPREME COURT OF TEXAS

PATIENTS MEDICAL CENTER,
Petitioner,

V.
FACILITY INSURANCE CORPORATION, Respondent.

On Petition for Review from the Third Court of Appeals, Austin, Texas
Appeal No. 03-17-00666-CV

BRIEF OF AMICUS CURIAE, TEXAS ORTHOPAEDIC ASSOCIATION
IN SUPPORT OF PETITIONER

ANDREA SCHWAB, JD, CPA
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ATTORNEY FOR AMICUS
TEXAS ORTHOPAEDIC ASSOCIATION

2021 Research Agenda TOA's Sep. 2020 Comments

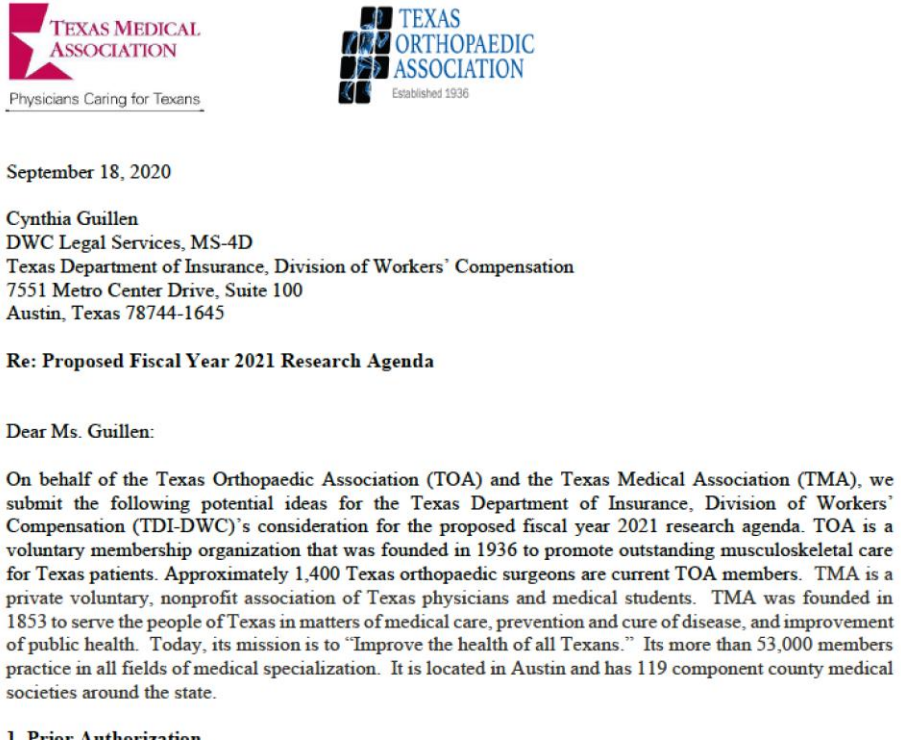
Treatment Guidelines

Which aspects of the treatment guidelines result in the highest level of PA denials?

Prior Authorization

Review the 10 most used MSK codes:

- Which were denied the most on first pass?
- Which were overturned the most by an IRO?
- Which cases were already within the guidelines?



TEXAS MEDICAL ASSOCIATION
Physicians Caring for Texans

TEXAS ORTHOPAEDIC ASSOCIATION
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September 18, 2020

Cynthia Guillen
DWC Legal Services, MS-4D
Texas Department of Insurance, Division of Workers' Compensation
7551 Metro Center Drive, Suite 100
Austin, Texas 78744-1645

Re: Proposed Fiscal Year 2021 Research Agenda

Dear Ms. Guillen:

On behalf of the Texas Orthopaedic Association (TOA) and the Texas Medical Association (TMA), we submit the following potential ideas for the Texas Department of Insurance, Division of Workers' Compensation (TDI-DWC)'s consideration for the proposed fiscal year 2021 research agenda. TOA is a voluntary membership organization that was founded in 1936 to promote outstanding musculoskeletal care for Texas patients. Approximately 1,400 Texas orthopaedic surgeons are current TOA members. TMA is a private voluntary, nonprofit association of Texas physicians and medical students. TMA was founded in 1853 to serve the people of Texas in matters of medical care, prevention and cure of disease, and improvement of public health. Today, its mission is to "Improve the health of all Texans." Its more than 53,000 members practice in all fields of medical specialization. It is located in Austin and has 119 component county medical societies around the state.

1. Prior Authorization

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DWC's Current Utilization Review Study Lower Lumbar

Section III: Scope and Methodology

- Includes insurance carriers or URAs who have prospectively approved spinal lumbar fusions for injured employees:
    - Where the spinal lumbar fusion was billed with Current Procedural Terminology (CPT) codes 22533, 22558, 22586, 22612, 22630, or 22633;
    - Where the spinal lumbar fusion was billed with ICD-10 diagnosis code of M48.061, M48.062, M54.5, M51.36, or M51.9;
    - Where the spinal lumbar fusion was no earlier than 180 days from date of injury; and
    - Where the spinal lumbar fusion was not denied for lack of preauthorization by the insurance carrier.
- Procedures for determining the reasonableness of a doctor's decision and recordkeeping regarding return to work are set forth in Section II of the Medical Quality Review Process, specifically, the adopted return to work guidelines. See also Texas Labor Code §§413.002, 413.013, and 413.05115.

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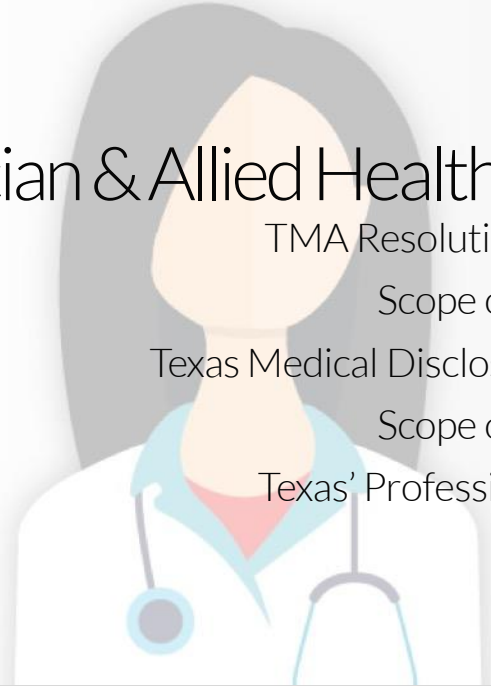
Established 1936



Physician & Allied Health Provider Licensing Issues

TMA Resolution on Mid-Levels

Scope of Practice

Texas Medical Disclosure Panel – New Forms

Scope of Practice

Texas' Professional Liability Law

Physician Interstate Licensing Compact 2021 Law

- HB 1616 by Rep. Greg Bonnen, MD (R-Friendswood).
- Could take years to implement (or months).
- Twenty-nine other states.

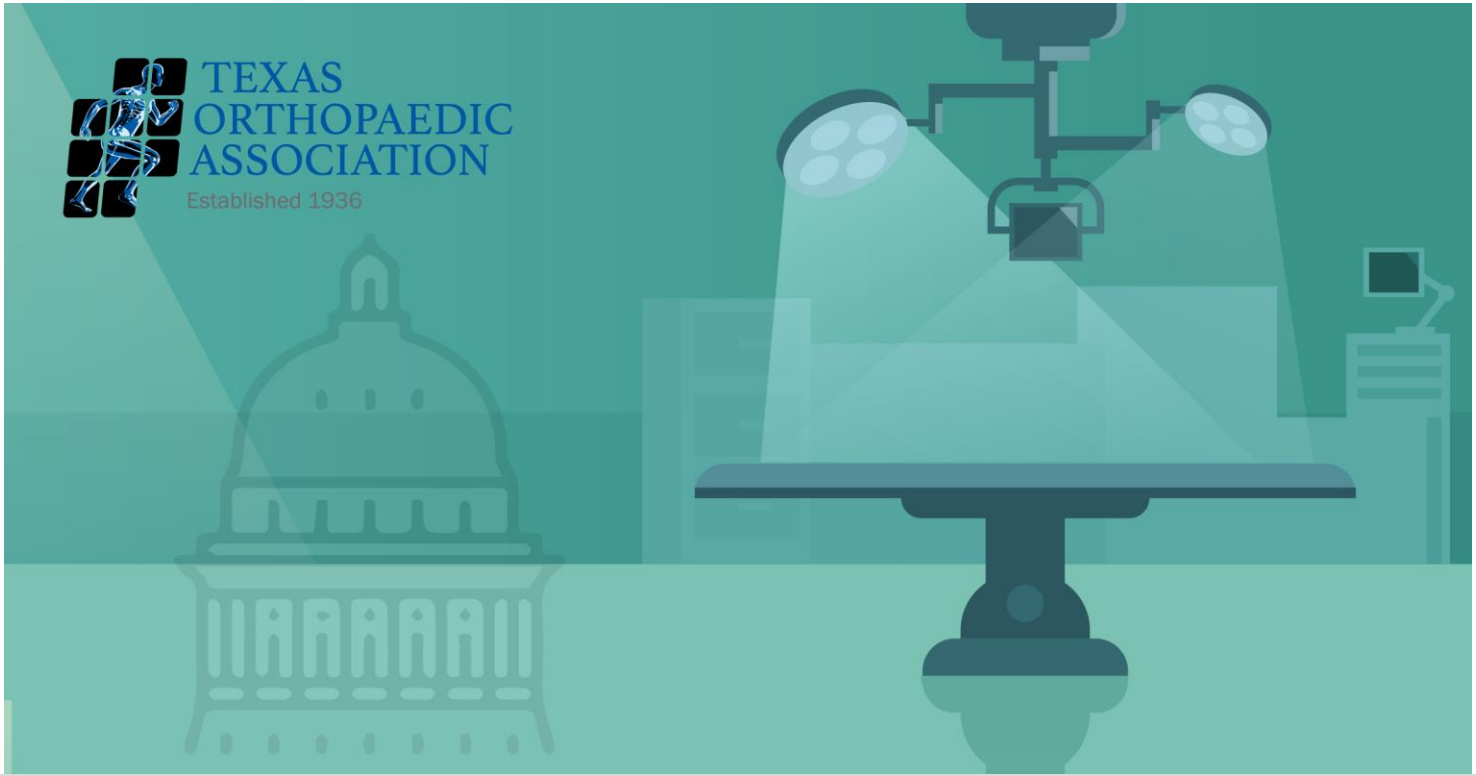
TMA's Tabled Resolution Mid-Levels & Initial Visits

Athletic Trainers 2021 Legislation in Austin

Clarifying their scope of practice – San Antonio Fire Department and physician delegation.

ATCs and LATs training requirements - The legislation would blend the two of them together. (Should they be blended?)

PAs Performing Surgery? 2021 Legislation in Austin



Optometry Surgery & APRNs/CRNAs Major Push

TAHP
TEXAS ASSOCIATION OF BUSINESS
THE TEXAS STATE CHAMBER
University Health System
TORCH
AARP Real Possibilities
AMERICANS FOR PROSPERITY TEXAS
TCCRI Texas Conservative Coalition Research Institute
THE LIBRE INITIATIVE
TEIR Texas Employers for Insurance Reform
EVERY TEXAN Formerly Center for Public Policy Priorities
Texas Public Policy FOUNDATION
THE HEARTLAND INSTITUTE FREEDOM RISING
CTD Coalition of Texans with Disabilities
NAMI Texas National Alliance on Mental Illness
LeadingAge Texas
R Street Free markets. Real solutions.
TEXAS BUSINESS LEADERSHIP COUNCIL
Methodist Healthcare Ministries OF SOUTH TEXAS, INC. "Serving Humanity to Honor God"
THE SILVER-HAIRED LEGISLATURE
TAHU Texas Association of Health Underwriters
NLAC Nursing Legislative Agenda Coalition
PNAA Philippine Nurses Association of America 1979
Texas Association of Benefit Administrators TABA
TEXAS IMPACT people of faith working for justice
APRN Alliance
TNP Texas Nurse Practitioners
CTCNM Consortium of Texas Certified Nurse Midwives
TxANA Texas Association of Nurse Anesthetists
TEXAS NURSES ASSOCIATION

Focus Texas @focustexas · Mar 16

Texas Doctors of Optometry are qualified and ready to provide optometric eye care services to the people of TX. HB 2340/SB 993 would allow ODs to provide more care for the people of TX as the need for services continues to rise! Learn more here: focustexas.org/problem-2

#txlege

TEXAS ORTHOPAEDIC ASSOCIATION Established 1936

Podiatry California & AAOS

2021 Texas Legislature Podiatry

The Issue

Is the Foot Part of the Ankle?
Click here to view an attorney's opinion of the issue based on the law (page 3);

http://toa.org/pdfs/newsletters/TOA-Newsletter-2014-Spring.pdf

LEGAL / POLICY NEWS

UPDATE ON THE STATUS OF THE SCOPE OF PRACTICE OF PODIATRY IN TEXAS

By Andrea I. Schwab, JD, CPA | Andrea@aschwablaw.com

Notice: The information provided in this article is commentary of a general nature. It is not intended to provide specific legal advice, and should not be used as a substitute for the advice of an attorney.

The scope of practice of podiatry has been the focus of recent case rulings at the appellate and district court levels. This article will examine law concerning the scope of practice of podiatry and the impact the recent rulings may have on that scope.

PRACTICE OF MEDICINE IN TEXAS

There is no inherent right to practice medicine in Texas. In Texas, no one is allowed to practice medicine without a license from the Texas Medical Board.[3] By the power of Article XVI, section 31 of the Texas Constitution and the general police power to protect the public health, the Texas Legislature has specifically defined the practice of medicine, and has prescribed rules and regulations governing the practice thereof, under the Medical Practice Act (MPA).[4] The MPA defines the practice of medicine as follows:

"Practicing medicine means the diagnosis, treatment or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to effect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those

PRACTICE OF PODIATRY IN TEXAS

The practice of podiatry in Texas is governed by statue, and that has been the case since 1923.[10] The Texas Legislature has defined podiatry as "the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot any system or method."[11] Also pursuant to Texas statute, the Texas State Board of Podiatric Medical Examiners (TSBPME) adopts rules to govern the regulation of the practice of podiatry.[12] The TSBPME regulation of the practice of podiatry and rule making authority is not without bounds, however. The board *must* act *"consistent with the law regulating the practice of podiatry"* and the law of this state.[13] Its regulation can be challenged in court. One who seeks to challenge the board's rule making actions must bring a declaratory action in a *Travis County* district court.[14] This statutory authorization allowing a person to challenge the validity or

2020 and Beyond

2021 Texas Legislature. The podiatrists' association has proposed:

- How to define the ankle as it relates to podiatry. (See next page for the podiatrists' proposal.)
- If an agreement is made on the definition of the ankle, then the next step would be to determine what training a podiatrist must have to do the ankle.

Podiatry Texas Medical Practice Act

Practicing medicine means the diagnosis, treatment or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to affect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly or indirectly charges money or other compensation for those services.
- Texas Medical Practice Act

Texas Medical Practice Act– There is no inherit right to practice medicine in Texas. The Texas Legislature created the Medical Practice Act (MPA).

MPA & Texas Medical Board Exemption - The Legislature provides in the MPA an exemption – a specific carve-out – for certain individuals. The Legislature has exempted from the regulation of the MPA a "licensed podiatrist engaged strictly in the practice of podiatry as defined by law."

Podiatry History in Texas

1923 – Practice of podiatry in Texas governed by statute as "the treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot any system or method."

2001 – The Texas State Board of Podiatric Medical Examiners proposed a rule that would have defined the foot as including the ankle:

"The foot is the tibia and fibula in their articulation with the talus, and all bones to the toes, inclusive of all soft tissues (muscles, nerves, vascular structures, tendons, by ligaments and any other anatomical structures) that insert into the tibia and fibula in their articulation with the talus and all bones to the toes."

2001 - Then-Texas Attorney General John Cornyn issued an opinion that the podiatry board acted outside its authority by attempting to re-define scope of practice.

2008 - The Third Court of Appeals invalidated the rule and stated that the "rule defining 'foot' impermissibly expanded practice of podiatry beyond treatment of foot." "This is a debate to be had at the Legislature."

2010 – The Supreme Court of Texas declined to review an appellate court's previous decision rejecting the podiatry board's rule that would have allowed podiatrists to treat ankles.

2011 and Beyond – The Texas Legislature has yet to act on the issue.

Physical Therapy Direct Access 2019 Law

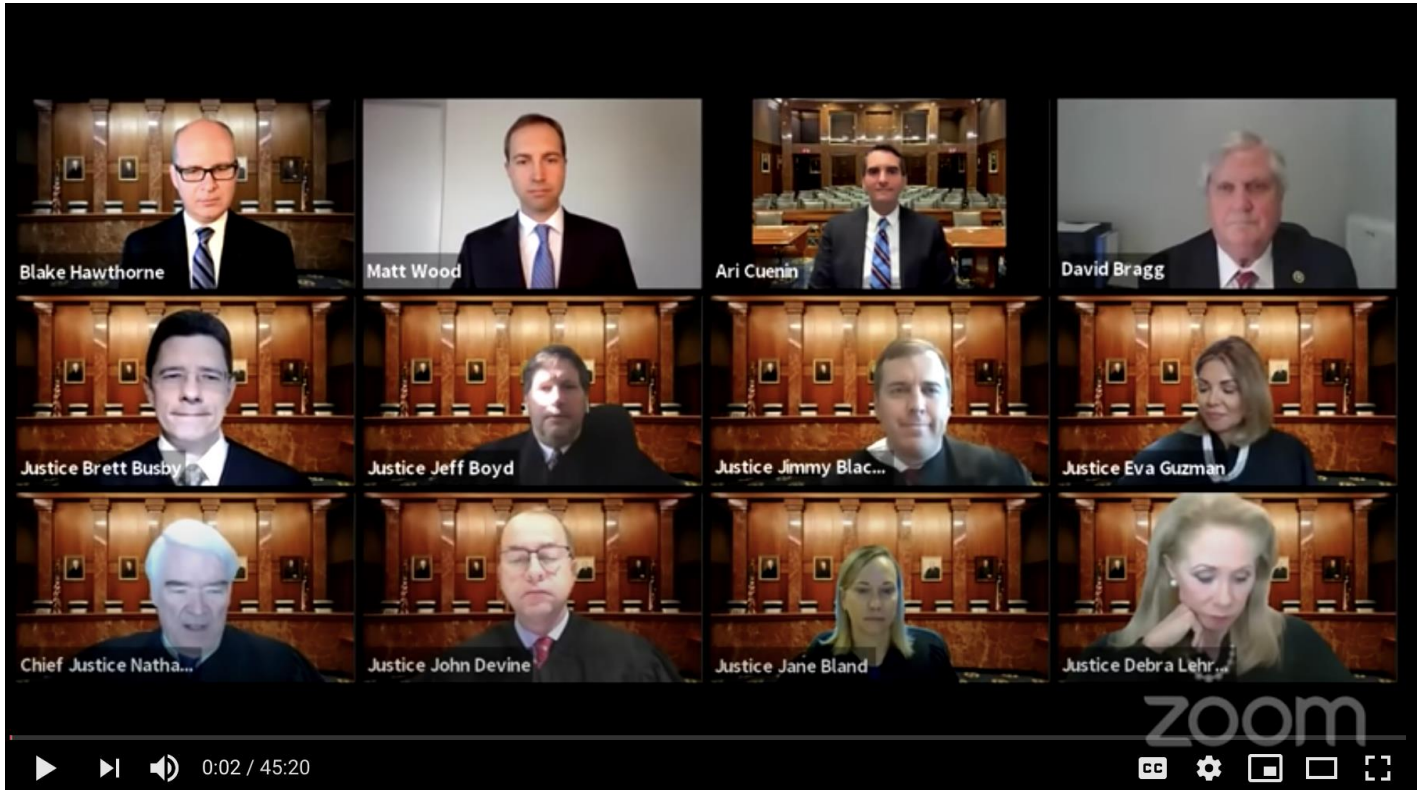
Three Levels

- 15 business days for PTs who have either residency or fellowship training. (PhDs added in 2021.)
- 10 business days for all other PTs.
- A signed disclosure by the patient related to physician diagnosis, imaging, and commercial insurance coverage.

Physical Therapy's 2021 Co-Pay Legislation Died

- The bill would have created co-pay parity for physical therapy and primary care services.
- Zero sum game?

Chiropractors & Neurological Scope September Supreme Court



Texas Medical Board Attorney General Request - Anesthesia

March 26, 2019, Request

1(a). Is providing anesthesia the practice of medicine?

(b). When a physician delegates the providing and administration to a Certified Registered Nurse Anesthetists (CRNAs) does the Texas Medical Board, via the Medical Practice Act, have continuing regulatory authority over a physician's decision and process for delegating that authority to a CRNA?

2. Does the CRNA have independent authority to administer anesthesia without delegation by a physician?

KEN PAXTON
ATTORNEY GENERAL of TEXAS

RQ-0278-KP
Go to:
https://www2.texasattorneygeneral.gov/opinions/opinions/51paxton/rq/2019/pdf/RQ0278KP.pdf

Received: Tuesday, March 26, 2019

Re: Regulatory authority over the administration of anesthesia when delegated by a physician to a nurse anesthetist

Requestor: Sherif Zaafran, M.D.
President
Texas Medical Board
Post Office Box 2018
Austin, Texas 78768-2018

Attorney General Decision February 9, 2021

TSA Governmental Affairs @GovtAffairsTsa · Feb 9

Are you a surgeon who delegates anesthesia to a CRNA who tells you that that have all the liability, not you? The Attorney General just said differently. Make sure you understand your liability! @texmed @TSAPhysicians #txlege

texasattorneygeneral.gov/opinions/ken-p...

5 7 8

TSA Governmental Affairs @GovtAffairsTsa · Feb 9

Tonight, the TX Attorney General affirmed his opinion that CRNAs don't practice independently, delegating physicians remain liable and physicians must supervise any delegated task involving a controlled substance. Great for patient safety! #txlege

texasattorneygeneral.gov/opinions/ken-p...

4 28 45

TSA Governmental Affairs @GovtAffairsTsa · Feb 9

The OAG goes on to say that a physician delegating needs to make a medical decision for each patient whether delegation is appropriate and what level of supervision is necessary and appropriate. Important medical decision for which they are liable.

#txlege

1 8 11

TxANA @CrnaTxANA · Feb 10

(4/4) "Thus, chapter 157 of the Occupations Code does not, by itself, require a physician who properly delegates anesthesia-related acts to a CRNA to supervise the CRNA's performance of those acts." You can read the full AG's Opinion online here: bit.ly/0371-KP #txlege

1

TxANA @CrnaTxANA · Feb 9

(1/3) Texas AG Ken Paxton issued AG Op. No. 0371-KP, re: "whether chp. 157 of the Occupation Code requires a physician to provide any level of supervision to a certified registered nurse anesthetist to whom the physician..." #txlege

1 3 12

TxANA @CrnaTxANA · Feb 9

(2/3)"...has delegated authority, and the potential liability for such delegation." AG Paxton's Opinion states very clearly, "Chapter 157 of the Occupations Code does not, by itself, require a physician who properly delegates anesthesia-related acts to a CRNA to supervise..."

1 3 7

Anesthesia Attorney General Answers

September 2019, Answers

1(a). Is providing anesthesia the practice of medicine? "The practice of medicine includes the provision of anesthesia by a licensed physician. However, pursuant to subsection 301.002(2)(G) of the Occupations Code, when a certified registered nurse anesthetist administers anesthesia pursuant to a physician's delegation, such act falls within the scope of professional nursing."

(b). When a physician delegates the providing and administration to a Certified Registered Nurse Anesthetists (CRNAs) does the Texas Medical Board, via the Medical Practice Act, have continuing regulatory authority over a physician's decision and process for delegating that authority to a CRNA? "The Legislature authorized the Texas Medical Board to take disciplinary action against a physician who delegates professional medical acts to a person whom the physician knows or should know is unqualified to perform the acts. Thus, the Board possesses regulatory authority over a physician's desire to delegate the providing and administration of anesthesia to a certified registered nurse anesthetist."

2. Does the CRNA have independent authority to administer anesthesia without delegation by a physician? "A certified registered nurse anesthetist does not possess independent authority to administer anesthesia without delegation by a physician."

TEXAS ORTHOPAEDIC ASSOCIATION
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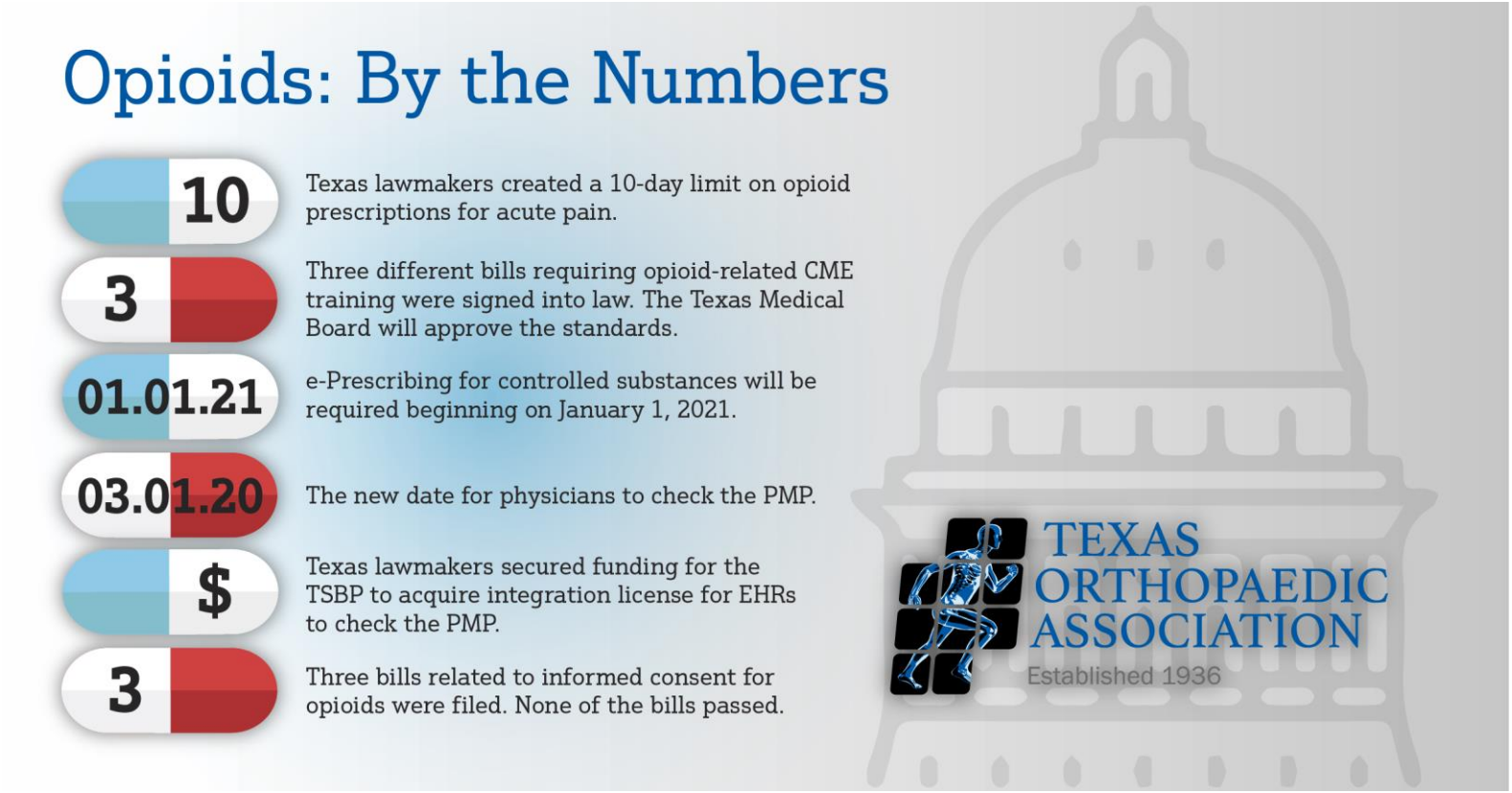
Texas Legislature & Regulatory Board Prescription Drugs

No New Opioid Laws in 2021

Direct Dispensing by Physicians

PBMs

New Opioid Laws in 2019 State of Texas



Schedule II & PAs/NPs Past Legislative Efforts

HOSPITAL FACILITY-BASED CARE

Section 157.0511(b-1)(1) of the Medical Practice Act relates to prescribing to patients while in a hospital facility-based practice under Section 157.054. This language allows a properly authorized PA or APRN, consistent with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws, to issue a Schedule II controlled substance prescription as long as the prescription is filled at the in-hospital pharmacy for a patient who is either admitted to the hospital for an intended length of stay of at least 24 hours or is receiving services in the emergency department of the hospital.

May a PA or an APRN prescribe Schedule II prescriptions to the patient as part of the hospital's discharge process?

The law does not allow Schedule II prescriptions to be written by PAs or APRNs with the intent that the prescription be filled outside of the hospital facility-based practice setting. In order for such a prescription to be lawful, it must be filled at the hospital's facility-based pharmacy. PAs and APRNs who issue Schedule II prescriptions upon discharge must educate patients regarding the requirement to have the prescription filled at the facility-based pharmacy in order to avoid disruption of care. If a Schedule II prescription is to be filled anywhere outside the hospital facility-based setting, the prescription must be completed by a licensed physician.

In accordance with Section 157.054(a-1) of the Medical Practice Act and Board Rule §193.2(6), a hospital facility-based practice setting does not include free standing clinics—including clinics located on hospital grounds, but not physically attached to the hospital's main structure—community health centers, or other medical practices associated with or owned and operated by the hospital.

HOSPICE CARE

Section 157.0511(b-1)(2) of the Medical Practice Act allows for PAs and APRNs to write Schedule II controlled substance prescriptions as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider. Under this section, Schedule II prescriptions written by a PA or APRN may not be for any other purpose than hospice care being provided to a patient.

Informed Consent Did Not Pass in 2019 & 2021

"11 Point" Requirement

HB 2811 from the 2019 Texas Legislature:

- The risk of addiction with the drug prescribed, including any risk of developing an addiction or a physical or psychological dependence on the drug.
- The risk of taking the drug in a dosage greater than the dosage prescribed.
- The danger of taking the drug with benzodiazepines, alcohol, or other central nervous system depressants.
- The reasons why the prescription is necessary.
- The responsibility of the patient to safeguard all drugs in a secure location.
- Methods for safely disposing of an unused portion of a controlled substance or dangerous drug prescription.
- The patient's diagnosis.
- The proposed treatment plan.
- Any anticipated therapeutic results, including realistic expectations for sustained pain relief and improved functioning and possibilities for lack of pain relief.
- Therapies available in addition to or instead of drug therapy, including non-pharmacological therapeutic modalities or psychological techniques.
- Potential side effects and techniques for managing the side effects.
- Possible adverse effects, including the potential for tolerance and withdrawal.
- The potential for impairment of judgment and motor skills.

Physician Dispensing Lawsuit

- Legislation failed again.
- *Michael Garrett, MD, and Kristin Held, MD, Appellants, v. The Texas State Pharmacy Board, et al., Appellees. On Appeal from the 98th Judicial District, Travis County District Court, Cause No. D-1-GN-19-003686.*

Prescription Drugs Price Increases

HB 2536: 2019 Texas Legislature

- Requires drug manufacturers to report WAC of all drugs sold in Texas.
- Reports on price increases if they exceed a certain threshold.

HB 1033: 2021 Texas Legislature

- Cleans up the 2019 law.

PBM Legislation 2021 Texas Legislature

HB 1763

- Curtails the ability of PBMs to assess retroactive fees and payment reductions.
- *Rutledge v. Pharmaceutical Care Management Association* – Arkansas PBM law is not preempted by ERISA.

HB 1919

- Prevents pharmacies' concerns of PBMs referring patients to their own specialty pharmacies.
- A patient's right to use the pharmacy of his or her choice.

Medical Cannabis A Toned-Down Version

- HB 1535 was signed into law.
- Greatly limits what can be done.

Washington, DC 2020 & 2021

Washington Advocacy Meetings September 28, 2021

Washington, DC The Past 12 Months

Medicare's Annual Summer Payment Proposals

- ASCs
- HOPDs
- Physician Fee Schedule

Surprise Billing & ERISA

- Congress ended 2020 with a new law.

E/M Cuts

- Congress provided a 3.75% increased in Medicare PFS payments for CY 2021.

Sequester Relief:

- Moratorium on the 2% cuts through the end of 2021.

Washington, DC The Rest of 2021

Ten Percent Cuts?

- Total orthopaedic cuts could total 10 percent on January 1, 2022.
- Two-percent sequestration (temporarily on hold due to the pandemic).
- Four-percent additional sequestration to pay for the American Rescue Plan.
- Sunset on the temporary physician Medicare payment increase.
- Elimination of the temporary E&M bump. (3.75 percent.)

Surprise Billing & ERISA

- The ban begins on January 1, 2022.

Reconciliation – September 15

- Health care initiatives.

Surgical Care Coalition

Action Alert

Protect access to specialty care

TAKE ACTION NOW

Medicare Cuts Set for 2022 Without Congressional Action

Orthopaedic surgeons, along with much of the physician community, are facing imminent cuts to Medicare payment stemming from the following factors...

- Budget neutrality requirements in the Medicare Physician Fee Schedule
- Federally mandated Medicare sequester cuts
- Pay-As-You-Go budgetary restrictions triggered by passage of large legislative packages in 2021

TEXAS ORTHOPAEDIC ASSOCIATION
Established 1936

Medicare's Physician Fee Schedule **Final Rule: November 2021**

- Looking Back at E/M
- Global surgical packages
- Telemedicine

10 Percent Medicare Cuts? January 1, 2022

Medicare's Conversion Factor

- A 3.75 percent cut may go back into place on January 1, 2022. (2022 PFS rule proposal.)
- Temporarily removed by legislation at the end of 2021 ("fix" the E/M issue).

American Rescue Plan Act of 2021

- PAYGO rules = 4 percent cuts?

Medicare Sequester

- The pandemic delayed the automatic 2 percent Medicare sequestration cuts.
- The latest pause will expire on January 1, 2022.

E/M Codes in 2019 Final Outcome

CMS Finalized E/M Visit Codes; Failed to Extend Updates to Global Surgical Codes

E/M Overhaul – Three Levels:

- Level 1 remains.
- Level 5 remains.
- Levels 2-4 are collapsed into one code.

AXIOS

Driving the news: The Centers for Medicare & Medicaid Services said in a 2,378-page final rule yesterday that instead of collapsing 4 office visit codes into 1, it will collapse 3 codes into 1, and keep the highest-paying code.

- Doctors would get paid $130 for most new patient visits and $212 for the most complex new patient visits.
- Doctors would get paid $90 for returning patient visits and $149 for the most complex returning patient visits.
- Those rates could be higher if doctors attach a special "add-on" code.
- However, this will not go into effect until 2021 — giving doctors 2 years to ease into — or try to kill — the new rules.
- When asked whether the agency would consider scrapping the rule before it goes into effect, CMS Administrator Seema Verma told reporters in a conference call: "No."

Data Collection 2016 Global Surgical Packages

Medicare's 2017 Physician Fee Schedule Proposal – July 2016 Release

- **New G codes.** CMS is proposing new G codes to report visits furnished during a global period in order to create a better valuation of global packages. AAOS and TOA asked orthopaedic surgeons to complete a survey in August 2016. Texas is exempt – December 2016 decision.
- **CMS tried to eliminate 10- and 90-day bundles in 2015.** Congress quickly restored the bundles in the MACRA legislation in spring 2015.

Medicare's 2021 PFS Proposal Orthopaedic E/M Cuts

Budget neutrality could lead to cuts of up to 13 percent due to:

1.) updating the values of office/outpatient E/M visits and
2.) moving forward with the unjustified add-on code will result in negative payment adjustments of up to 13% and will have devastating effects on specialty physicians and their patients.

Medicare's 2022 PFS Proposal Checklist

Conversion Factor
- 3.75 percent cut.

Physician Assistants
- Physician payment proposal for split/shared visits.

AUC for Advanced Imaging
- Penalty phase beginning on January 1, 2023?

Physician-Owned Distributorships
- Attempt to create a definition for PODs.

Global Codes Update
- Apply the RUC-recommended changes to the global codes?

Telehealth
- Proposal to retain services listed in Category 3 (temporary code during the PHE) until the end of CY 2023.

Medicare's 2022 PFS Proposal Checklist - Telehealth

Telehealth – Category 3

- Proposal to retain services listed in Category 3 (temporary code during the PHE) until the end of CY 2023.
- Not enough clinical evidence for these services yet.

Audio Only & Telephone CPT Codes

- "[AAOS commends] CMS for permanently allowing reimbursement for audio-only telehealth services, [and] AAOS recommends that CMS work with the CPT Editorial Panel to editorially revise telephone CPT codes 99441 – 99443 so that these CPT codes may be consistently reported by all payors."

Telehealth Flexibility & the PHE

- "As in our comments on the CY 2021 MPFS, we again urge CMS to continue the current PHE flexibilities for telehealth on a permanent basis."

Modifier for Audio/Video Communications?

- "AAOS supports the development of a CPT modifier to indicate when a service is provided via an audio-only technology (primarily via telephone)…"

Medicare's 2022 PFS Proposal Quality Payment Program

Creation of a Subgroup
- Voluntary and beginning in 2023.

MIPS Cost Measure Development
- CMS proposed a new process for cost measure development, which would lead to to more cost measures.

MIPS Value Pathway Delay?
- CMS proposed to delay it again until January 1, 2023.
- "AAOS appreciates acknowledgement of the time needed to develop meaningful, clinician-led MVPs, but we would be remiss if we did not highlight the impact to our members who are ready now and need an alternative to reporting traditional MIPS."

Proposed Introductory MVPs for 2023 Performance Period
- Improving Care for Lower Extremity Joint Repair.

Candidate MVPs Not Considered for 2023
- AAOS provided: Improving Rotator Cuff Repair Outcomes.

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Established 1936

Medicare's ASC/HOPD Annual Payment Proposal

MEDPAC 2013 Site Neutral Preview

Orthopaedics – MedPAC's initial report on the subject indicated that orthopaedic specialty hospitals would take the greatest hit.

Cardiology – "In 2013, Medicare pays 141 percent more for a level II echocardiogram in an OPD than in a freestanding physician's office."

66 services reduced to physician office levels – MedPAC identified 66 services (mostly diagnostic services with a few procedures) that could save Medicare $900 million on an annual basis:

- Bone density: axial skeleton (APC 288)
- Level II neuropsychological testing (APC 382)
- Level II echocardiogram without contrast (APC 269)
- Level II extended electroencephalography (EEG), sleep, and cardiovascular studies (APC 209)

12 groups reduced to an ASC payment rate – MedPAC identified 12 groups that could save Medicare $600 million on an annual basis:

- Nine eye procedure groups.
- Two nerve injection groups.
- On skin repair group.

Looking Back at 2014 Medicare's Future

Prior Authorizations for HOPD

- Congressman Kevin Brady (R-The Woodlands) introduced legislation to create prior authorization for blepharoplasty and eyebrow lift surgeries.

Global Payments

- "End to Global Payments a Nightmare."

Medicare A Big Year for ASCs in 2018

Major Shift by Medicare

- Medicare payment parity.
- Services shifting to ASCs.
- Prior authorization for certain hospital services.
- ASC vs. HOPD pricing transparency tool.
- Transfer agreements.
- Lower device intensity threshold.

The Widening Payment Gulf Parity … Finally: Medicare's 2019 Payment Proposal

2019 Through 2023; CPI-U vs. OPPS Market Basket Update

	ASC	HOPD
Inflation update factor	2.8%	2.8%
Productivity reduction mandated by the ACA	0.8% percentage points	0.8 percentage points
Additional reduction mandated by the ACA	N/A	0.75 percentage points
Effective update	2%	1.25%
Conversion factor	$46.500	$79.546

Prior Authorization for HOPD 2022 Proposal

New (7.1.21)

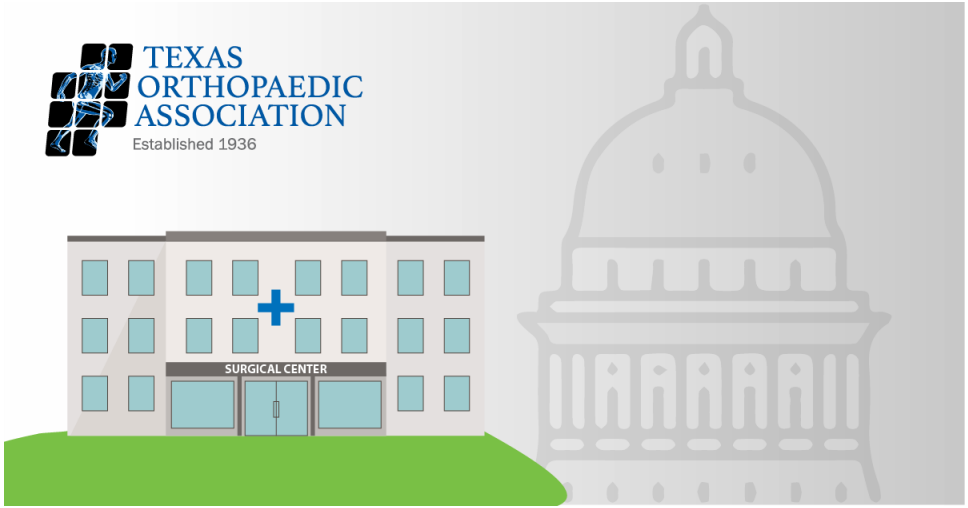
- Cervical fusion with disc removal (CPT 22551 and +22552 only]
- Implanted spinal neurostimulators (CPT 63650 only)

Removed

- CPT 63685 (Insertion or replacement of spinal neurostimulator pulse generator or receiver)
- 63688 (Revision or removal of implanted spinal neurostimulator pulse generator or receiver)

Previously Added (7.1.20)

- Blepharoplasty
- Botulinum toxin injection
- Rhinoplasty
- Panniculectomy
- Vein ablation



Prior Authorization for HOPD in 2022 AAOS Comments

"AAOS has serious concerns with the continuation of prior authorization in the outpatient setting. These concerns were previously raised in our comments on the 2020 and 2021 OPPS proposed rule and remain at present given that this year's proposed rule while not expanding prior authorization requirements did not withdraw the program. We are concerned that the continued use of these requirements will supersede physician autonomy, increase administrative burden, and negatively impact patient care. AAOS is concerned that requiring prior approval from a third-party removed from clinical decision-making erodes the doctor-patient relationship, and the ability to make decisions that are in the best interest of the patient."

AAOS' September 2021 Stakeholder Comments

Medicare's 2022 Annual Payment Proposal HOPD/ASC

Resumption of the Inpatient Only List

- The 2021 final rule would have eliminated the MSK IPO list.

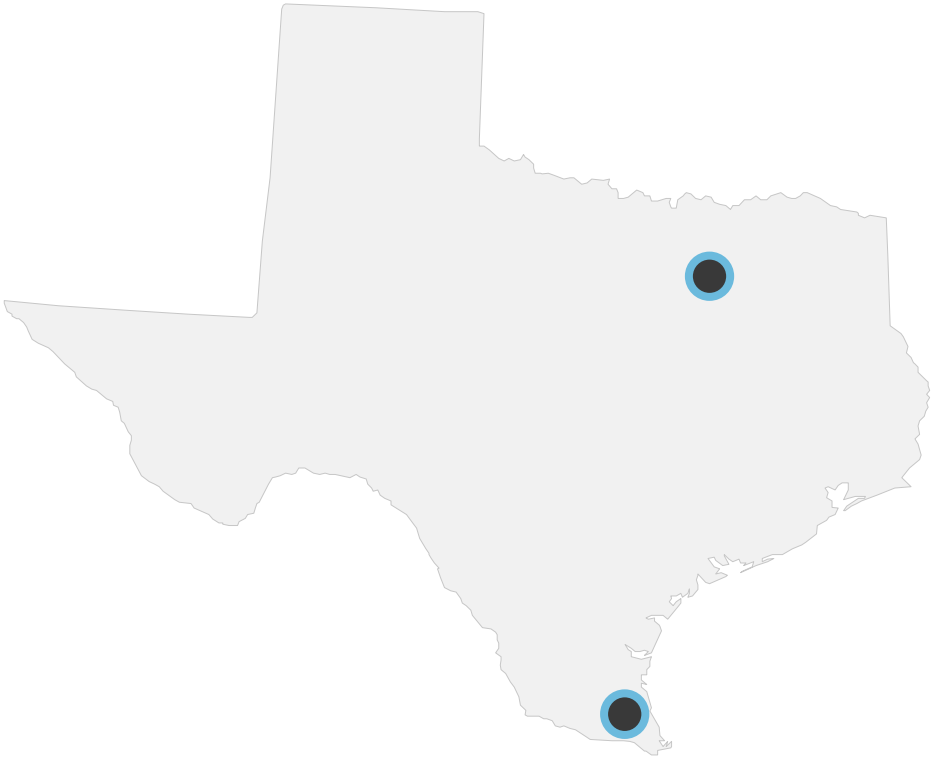
AAOS Encourages the Removal from the IPO List…

- Total shoulder arthroplasty and total ankle arthroplasty for the outpatient setting.
- 27702 *"Under Repair, Revision, and/or Reconstruction Procedures on the Leg (Tibia and Fibula) and Ankle Joint"*
- 26556 *"Under Repair, Revision, and/or Reconstruction Procedures on the Hand and Fingers"*

AAOS Encourages These to Stay on the IPO List…

- 27888 *"Amputation of Foot at Ankle"*
- 28800 *"Amputation of Midfoot"*
- G0415 *"Open Treatment of Posterior Pelvic Bone Fracture…"*
- G0414 *"Open Treatment of Anterior Pelvic Ring Fracture.."*

Medicare's 2021 Annual Payment Proposal POHs



THANK A TOA MEMBER

TOA is recognized as one of the nation's most successful orthopaedic organizations, and TOA proved that once again in the 2019 Texas Legislature. TOA's success on behalf of its patients and orthopaedic surgeons is only possible due to the support of TOA members.

Thank a TOA member for making this possible.

TEXAS ORTHOPAEDIC ASSOCIATION
Established 1936


TOPAC
TEXAS ORTHOPAEDIC POLITICAL ACTION COMMITTEE


TEXAS
ORTHOPAEDIC
ASSOCIATION
Established 1936
TOA'S 2021
MEMBER RETREAT
October 2-3
Horseshoe Bay Resort