

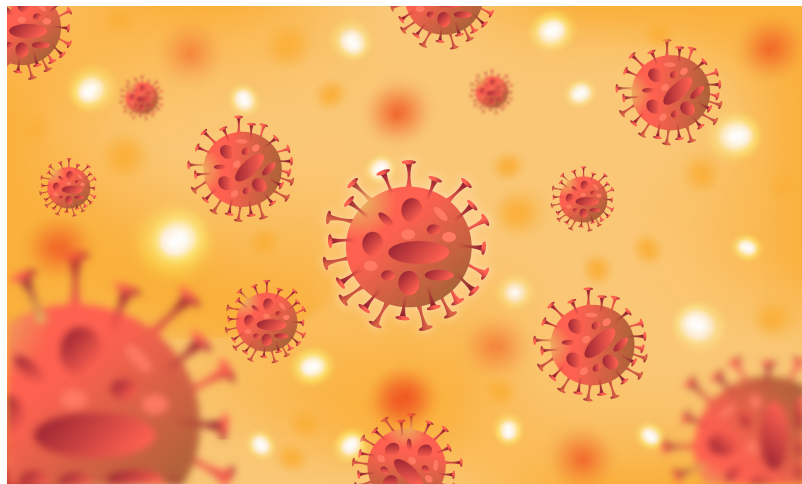


Advocacy Issues for Texas Orthopaedic Practices in 2021

October 30, 2020

TOA Housekeeping Pandemic & Beyond

2022 & Beyond The Pandemic's Lesson Applied to Trade Associations



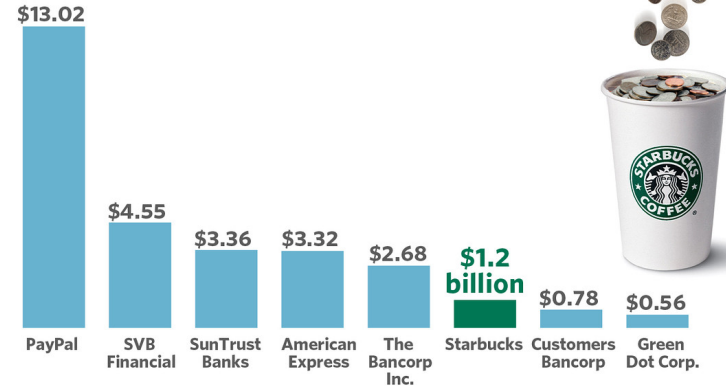
The virus isn't a disruptor, it's an accelerator. It is showing many businesses where their business will be in a decade.

It isn't cyclical, it's structural. Some argue that this is simply a cyclical economic change. It may be a structural change.

2022 & Beyond Structural Changes Accelerated

Where Starbucks stacks up in deposits

Starbucks and PayPal have more consumer cash than many financial institutions, in billions



Source: WSJ and S&P Global Market Intelligence, Starbucks

Starbucks is a bank, not a coffee shop. Starbucks has more money on its most apps than many financial institutions.

Starbucks was prepared for the economic structural changes created by the pandemic through its app and financial operation.

TBA





TOA's Resident Job Networking Dashboard Now Available



TOA's Resident Networking Page Now Available

TOA has created an online networking opportunity for residents in all stages of their residency to notify Texas practices about their potential desire to practice in Texas in the future.

Hide fields Filter Group Sort

	NAME	CV	SPECIALTY	PREFERRED AREA in TX	SUMMARY
1	Dang, Khang		Academic Practice		I will be looking for an academic practice in TX after completing a shoulder and elbow fellowship (Harvard Shoulder & Elbow Fellowship) in Boston, MA this year.
2	De Leon, Jorge Clint (JC)		Trauma, Reconstructive	Dallas, Fort Worth, Houston, San Antonio (any large city)	Hi, my name is Jorge De Leon. I go by J.C. De Leon. I am from Lubbock, TX originally, attended Monterey High School in Lubbock, TX prior to attending Texas A&M for medical school. I attended the University of Texas Health Science Center at San Antonio for medical school and remained at UT Health San Antonio for residency. I am a current PGY-4 resident with plans to pursue an ...
3	Gates, Stephen		Elbow and Shoulder	DFW, San Antonio, Austin, Houston	My name is Stephen Gates. I grew up just outside of San Antonio, where I also attended medical school. Having completed my orthopaedic residency at UT Southwestern June 2020, I have lived in Dallas with my wife (Lauren) and children for the last 5 years. This summer, I am heading to Philadelphia for my fellowship in Shoulder and Elbow Surgery at the Rothman Institute at Thomas ...
4	Haghshenas, Varan		Spine	Houston, Central Texas, Hill Country, Corpus Christi	I'm currently a PGY-3 at Houston Methodist Hospital. I plan on pursuing spine and will be ready to practice in 2023. I've grown up in the Houston area all my life and would like to stay here but I'm interested in central Texas, hill country or corpus christi area. Of course if it comes down to it I would rather stay anywhere in Texas than to have to move away haha. Thank you for setting up ...

TOA's Leadership Presidential Line

Ken Kaminski, MD – President

Azalea Orthopaedics | Tyler, Texas

Luis Urrea, MD – President-Elect

El Paso Orthopaedic Surgery Group | El Paso, Texas

John Hinchey, MD – 2nd President Elect

Ortho San Antonio | San Antonio, Texas

Henry Ellis, MD – 3rd President Elect (Nominated)

Texas Scottish Rite | Frisco, Texas

Christian Balldin, MD – 4th President Elect (Nominated)

TSAOG | San Antonio, Texas

TOA's Newsletter New Policy Began on September 15

Orthopaedic Surgeons

Will receive it once they pay their dues.

Practice Administrators

Will receive it once 100% of their orthopaedic surg

Industry Members

Only TOA's Circle of Champions will receive it in 20

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.



TOA's Circle of Champions 2021 Program for Industry Members

Committed to TOA: Conference or No Conference in 2021

Will receive an invite to TOA's retreat in 2021.

Circle of Champions Branding

Sponsors will receive branding on all of TOA's communications.

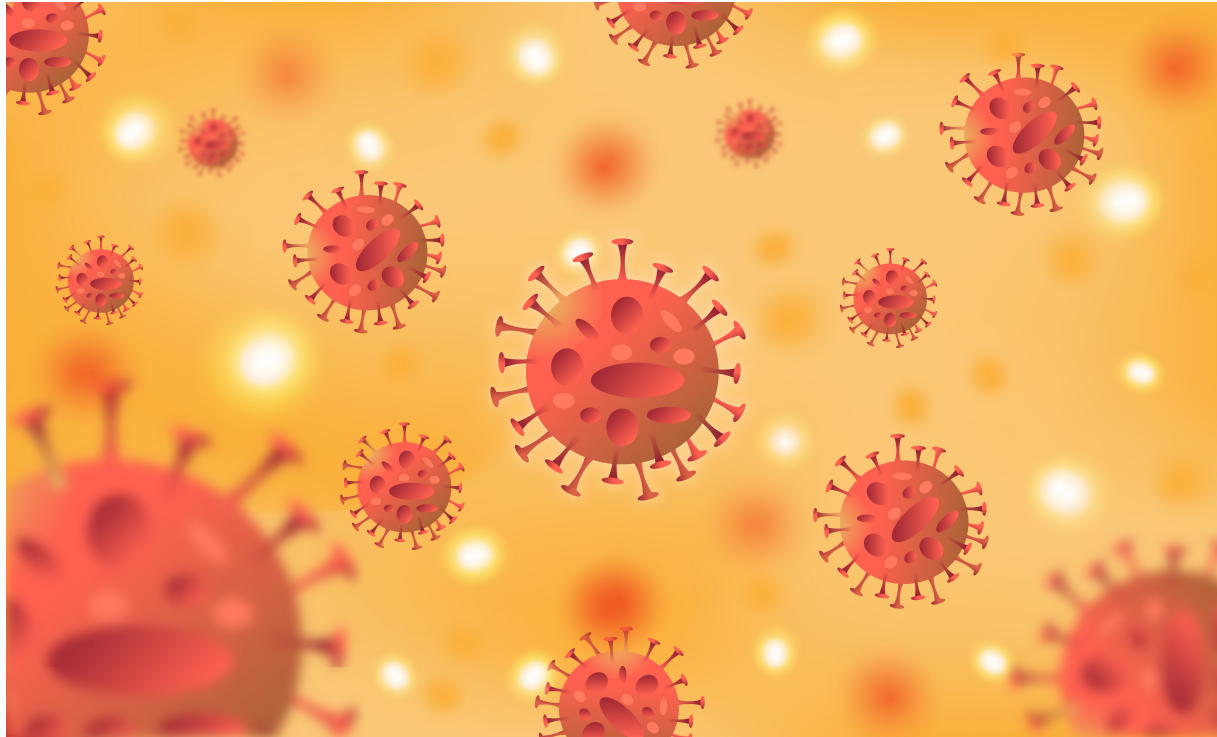
Access to TOA's Newsletter

Only Circle of Champions will receive the newsletter in 2021.

TOA's Online CME Fulfill Opioid Requirement for Licensure



Pandemic Codes 99072





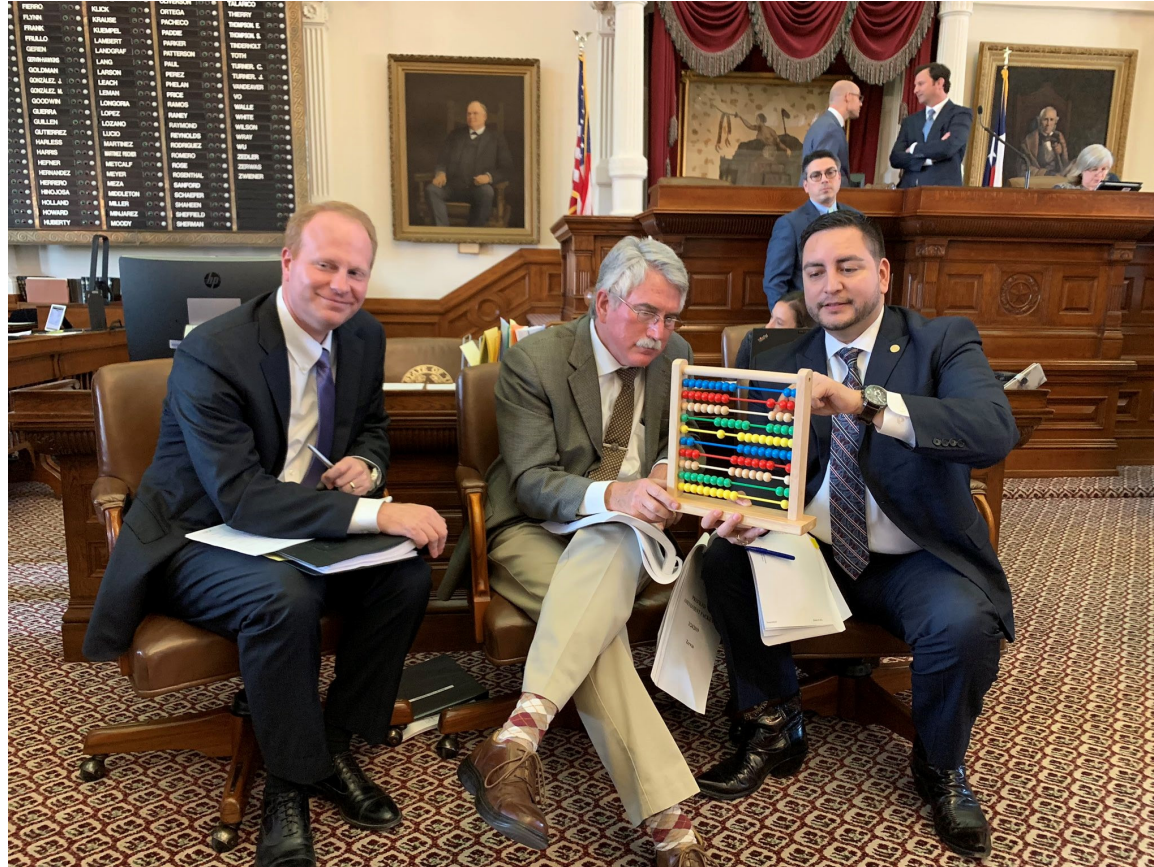
Austin Public Policy Issues



2021 Texas Legislature What Will It Look Like?



The Budget The Legislature's Only Requirement




Texas House Who Will Be the Speaker?

Texas Ethics Commission P.O. Box 12070 Austin, Texas 78711-2070 (512) 463-5800 1-800-325-8506

DECLARATION OF SPEAKER CANDIDACY

FORM SPK-DEC

		1 Total pages filed: <u>1</u>	
2	SPEAKER CANDIDATE NAME	MS / MRS / MR FIRST MI	Acct. # <u>20791</u>
		NICKNAME LAST SUFFIX	OFFICE USE ONLY
		Thompson	Date Received
			RECEIVED
			OCT 23 2020
			Texas Ethics Commission
3	SPEAKER CANDIDATE RESIDENCE OR BUSINESS STREET ADDRESS	ADDRESS / PO BOX, APT / SUITE #, CITY, STATE, ZIP CODE	HDPM
		4828 Loop Central Drive, Ste. 600 Houston, Texas 77081	Email <u>10/23/2020</u>
4	SPEAKER CANDIDATE PHONE	AREA CODE PHONE NUMBER EXTENSION	Date Processed
		(713) 817-6212	PROCESSED OCT 23 2020
5	LEGISLATIVE SESSION TO WHICH THIS DECLARATION APPLIES	87th	Date Imaged
6	SPEAKER CANDIDATE SIGNATURE	I am aware that this declaration of speaker candidacy terminates on the earlier of (1) the date I file a written statement with the Texas Ethics Commission stating that I have terminated my speaker candidacy or (2) the date a speaker is elected for the legislative session in connection with which I have filed this declaration.	
		 Signature of Speaker Candidate	
		10/23/2020	Date Signed

Printed on recycled paper

Revised 11/21/2003
American LegalNet, Inc.
www.USCourtForms.com

①

D 101240641

Texas House What Happens on November 3?



Dave Wasserman ✓ @Redistrict · 7h

New: Denton and Williamson counties in TX just became the second and third in the nation after Hays (to my knowledge) to surpass their *total* 2016 votes cast. And there's still a week of voting left.

143

1.2K

5.8K



Dave Wasserman ✓ @Redistrict · 4h

Yup. Here are your top TX early voting counties as a share of the '16 vote, *adjusted for registration growth since '16:*

1. Denton 82%
2. Galveston 82%
3. Hays 82%
4. Collin 82%
5. Brazoria 81%

9

25

93



Dave Wasserman ✓ @Redistrict · 4h

Here are the top TX counties by '16-'20 voter registration growth (statewide growth was +12%):

1. Hays +26%
2. Williamson +26%
3. Comal +25%
4. Rockwall +24%
5. Parker +22%
6. Denton +22%
7. Kaufman +21%
8. Collin +21%
9. Fort Bend +19%
10. Guadalupe +19%

Texas Senate Little Changes



Texas Executive Branch **Nothing Changes**



Texas Legislature **Limbo** Until November 4



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

North Carolina Teeth Whitening SB 1995 From Texas



North Carolina Teeth Whitening SB 1995 From Texas

North Carolina State Board of Dental Examiners v. FTC

From Wikipedia, the free encyclopedia

North Carolina State Board of Dental Examiners v. Federal Trade Commission, 574 U.S. ____ (2015), was a [United States Supreme Court](#) case on the scope of immunity from [US antitrust law](#). The Supreme Court held that a state [occupational licensing](#) board that was primarily composed of persons active in the market it regulates has immunity from antitrust law only when it is actively supervised by the state. The North Carolina Board of Dental Examiners had relied on the [Parker immunity doctrine](#), established by the Supreme Court case *Parker v. Brown*, which held that actions by state governments acting in their sovereignty did not violate antitrust law.^[1]

Contents [\[hide\]](#)

- [Background](#)
- [Opinion of the Court](#)
- [Dissent](#)
- [References](#)
- [External links](#)

Background [\[edit\]](#)

North Carolina Board of Dental Examiners v. Federal Trade Commission



Supreme Court of the United States

Argued October 14, 2014

Decided February 25, 2015

Full case name *North Carolina State Board of Dental Examiners, Petitioner v. Federal Trade Commission*

Docket no. [13-534](#)

Citation [574 U.S. ____ \(2015\)](#)

TMA Resolution Mid-Levels & Initial Evaluation

Whereas, Nurse practitioners and physician assistants can switch “specialties” without any clinical training whatsoever in their chosen “specialty;” and

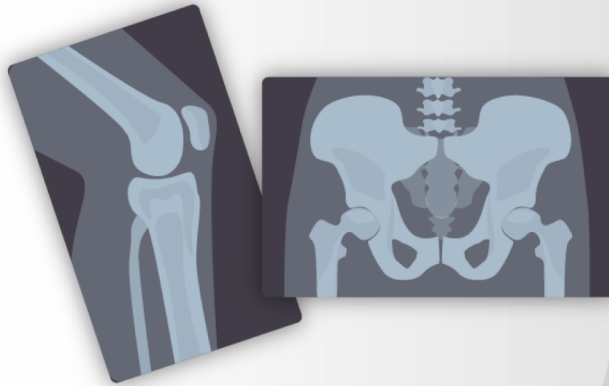
Whereas, A nurse practitioner or physician assistant assessment and treatment plan for an initial evaluation does not provide the level of expertise that primary care physicians seek and patients deserve when patients are referred to a physician specialist; and

Whereas, Optimal patient care can be compromised through delays in diagnosis and treatment resulting from initial evaluations by nurse practitioners or physician assistants rather than specialist physicians; therefore be it

RESOLVED, That Texas Medical Association recognize that the best practice of patient care dictates that it is the responsibility of the physician to develop the diagnosis and treatment in the evaluation of a patient, while it is recognized under limited circumstances that an initial evaluation may be conducted by a nurse practitioner or physician assistant.

Mid-Levels Question Regarding Imaging Delegation

January 2019 Rule Proposal Pulled | September 20, 2019, Proposal Expected



2021 Texas Legislature Podiatry

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.¹ 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).² 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 statute, 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 of

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

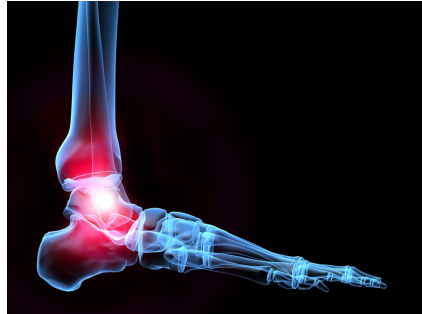
Practicing medicine means the diagnosis, treatment or offer to treat a mental or physical disease or disorder or a physical deformity or injury by any system or method, or the attempt to affect cures of those conditions, by a person who: (A) publicly professes to be a physician or surgeon; or (B) directly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

- Texas Medical Practice Act

Texas Medical Practice Act– There is no inherent 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.

Podiatrists' May 2020 Proposal

Defining the Ankle

05/16/20

Amend §202.001(a)(4), Occupations Code, to read as follows:

- (4) *"Podiatry" means the diagnosis and treatment of or offer to treat any disease, disorder, physical injury, deformity, or ailment of the human foot and ankle by any system or method, including but not limited to (A) evaluation, consultation, and diagnostic studies; (B) non-surgical procedures on the ankle; (C) surgical procedures on the toes, forefoot, and rearfoot; (D) tendo-achilles lengthening; and (E) surgical procedures on (i) myotendonous structures of the leg that insert into the bones of the foot; (ii) the ankle, exclusive of fractures of the tibial shaft; (iii) rearfoot fractures, osteotomies, fusions, and other procedures involving the tibia, fibula, talus, or calcaneus; and (iv) soft tissue at or above the ankle limited to wound care and surgery of peripheral nerves, skin, and subcutaneous soft tissue distal to the tibial tubercle. The term includes podiatric medicine.*

Podiatry California & AAOS



Texas Legislature Optometry Surgical Privileges?

HB 1798, SB 1223 & HB 3505 Failed in the 2019 Texas Legislature



Physical Therapy Direct Access 2019 Law

Three Levels

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

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 September 5, 2019



TSA Governmental Affairs @GovtAffairsTsa · Sep 5

Thank you to [@TXAG](#) [@KenPaxtonTX](#) for recognizing anesthesia is the practice of medicine and CRNAs do NOT practice independently. TX Medical Board can discipline MDs not supervising b/c the nurses can't practice independently. [#anesth19](#)



7



10



TxANA @CrnaTxANA · Sep 5

Regarding whether the TMB has regulatory authority over the delegated act, the opinion only cites the TMB's authority over a physician's decision to delegate, not the performance of the act itself. 3/



1



4



[Show this thread](#)



TxANA @CrnaTxANA · Sep 5

In brief, when CRNAs provide anesthesia care, it is the practice of nursing, not medicine. 2/



1



2



5



[Show this thread](#)



TxANA @CrnaTxANA · Sep 5

AG Paxton sides with TxANA, maintaining the status quo for CRNAs and the patients we serve, ensuring access to anesthesia care. [#txlege](#) 1/



1



6



16



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 Legislature & Regulatory Board Opioids

New Texas Laws



New Opioid Laws in 2019 State of Texas

Opioids: By the Numbers

10

Texas lawmakers created a 10-day limit on opioid prescriptions for acute pain.

3

Three different bills requiring opioid-related CME training were signed into law. The Texas Medical Board will approve the standards.

01.01.21

e-Prescribing for controlled substances will be required beginning on January 1, 2021.

03.01.20

The new date for physicians to check the PMP.

\$

Texas lawmakers secured funding for the TSBP to acquire integration license for EHRs to check the PMP.

3

Three bills related to informed consent for opioids were filed. None of the bills passed.



**TEXAS
ORTHOPAEDIC
ASSOCIATION**

Established 1936

1. TMB Opioid Rules What Happens When 10 Days Expire?

Texas Medical Board's August 30, 2019, Guidance:

“The Texas Medical Board interprets this section to mean a practitioner may write an opioid prescription for up to 10 days without a refill. However, the patient *may see* the practitioner in a follow up appointment and receive another opioid prescription for up to 10 days. The law does not limit how many times this may occur.”

2. TMB Opioid Rules New Acute Pain Definition Proposal

Summer 2020:

“Post-surgical, post-procedure, persistent non-chronic pain – pain that occurs due to trauma caused by the surgery or procedure; or an underlying condition, disease, or injury causing persistent non-chronic pain. These types of pain are treated in accordance with the standard of care and last 90 days or less, but more than 30 days, from the date of initial prescriptions for opioids during a period of treatment.”

3. Prescription Monitoring Program March 1, 2020, Mandate



February 20, 2020, Guidance:

“A copy of the PMP check *may be* placed in a patient’s medical record.”

Statewide Gateway Project Update



“Thanks for delivering what is without a doubt the highest value Ambulatory Epic improvement this year. You can all pat yourself on the back for providing safer, better quality care, much more efficiently, with huge, huge prescriber satisfaction. This is improving patient safety and meeting our regulatory requirements.”

– Dr. Jeffrey Hall, BSW Health

Top 5 requestors:

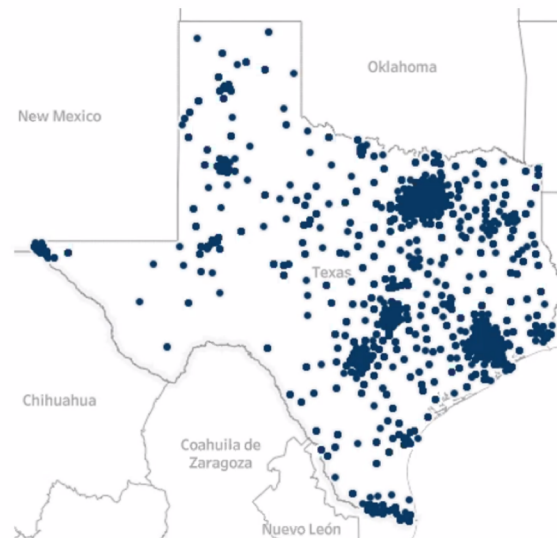


Statewide Gateway Project Update



Key Metrics:

- Individual facilities that are live with Gateway: **9,987**
- Health Care Entities (HCEs) that have active requests for integration (in progress): **1,671**
- June 2020 Gateway requests from TX: **14,266,295**
- June 2020 Gateway requests to TX from other states: **6,390,936**



Active Gateway locations

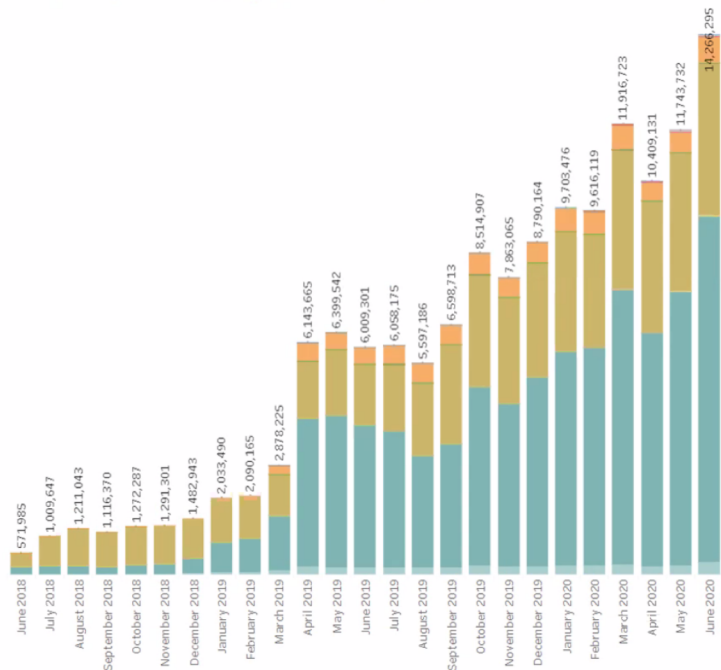
Source: PDMPworks.org

PMP Data – Appriss Health July 20, 2020, Update

Statewide Gateway Project Update



PDMP Integration Request/Responses by Requester Role



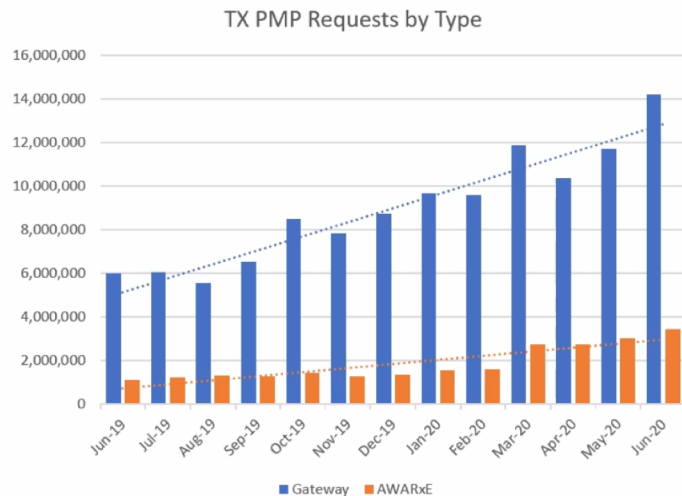
Roles with highest amount of searches are from users with role Physician and Pharmacist, followed by Nurse Practitioners and Physician Assistants.

- Dentist
- Medical Intern with pr..
- Medical Resident with ..
- Naturopathic Physicia..
- Nurse Practitioner
- Optometrist with pres..
- Other - Non Prescriber
- Other Prescriber
- Pharmacist
- Pharmacist with presc..
- Pharmacist's Delegate ..
- Physician
- Physician Assistan...
- Prescriber Delegat...
- Prescriber Delegat...
- Psychologist with ...

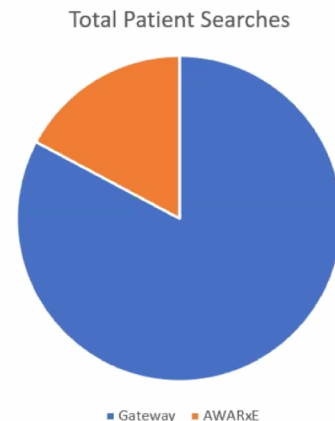
Appriss Health Confidential

PMP Data – Appriss Health July 20, 2020, Update

Statewide Gateway Project Update



Gateway requests are increasing much more rapidly than direct PMP requests



Nearly four-fifths of all Patient Requests in TX are made via Gateway

PMP Data – Appriss Health July 20, 2020, Update

Enhancements Update: Clinical Alerts



- Opioid/Benzo Combination alert went live on 6/6/20
- June statistics:
 - 164,194 total alerts sent
 - 18,149 individual prescribers received alerts
- Other alerts available:
 - Prescriber & Dispenser Threshold
 - Daily Active MME Threshold
 - Daily Active Methadone Threshold
 - Opioid Consecutive Days Threshold

My Dashboard

Patient Alerts

PATIENT ALERTS

Patient Full Name	DOB	Alert Date	Alert Letter
DAVE PATIENT	01/01/1985	11/08/2017	Download PDF

Recent Requests

RECENT REQUESTS

Patient Name	DOB	Status	Request Date	Delegate
test one	01/01/1901	Complete	11/28/2017 5:08 PM	Jordan Delegate
DAVE PATIENT	01/01/1985	Complete	11/27/2017 4:16 PM	
test patient	01/01/1900	Complete	10/31/2017 2:23 PM	James Delegate
test testpatient	01/01/1900	Complete	10/31/2017 2:10 PM	
test jor	01/05/1941	Complete	10/27/2017 2:08 PM	

[View Requests History](#)

Delegates

DELEGATES

Delegate Name	Status	Request Date
James Delegate	pending	12/01/2017
Jordan Delegate	approved	04/25/2017

My Favorites

[RxSearch - Patient Request](#)

PMP Announcements

Message for Physicians 10/13/2017

Test announcement

Exciting changes are coming to AutoRx! 08/29/2017

We are pleased to announce that later this year, we will be performing a systemwide update on AutoRx.

When you log in to AutoRx, [more](#)

[View all Announcements](#)

Quick Links

[PMP Support](#)

4. New CME Requirement Free Through TOA

Began for Licenses Beginning on September 1, 2020:

At least two CME hours in a two-year cycle must include:

- Best practices, alternatives treatment options, and multi-modal approaches to pain management that may include physical therapy, psychotherapy, and other treatments.
- Safe and effective pain management related to the prescription of opioids and other controlled substances, including education regarding: standards of care, identification of drug-seeking behavior in patients, and effectively communicating with patients regarding the prescription of an opioid or other controlled substances.

5. Informed Consent Did Not Pass in 2019

“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.

6. e-Prescribing Mandate January 1, 2021

HB 2174 From the 2019 Texas Legislature

- All controlled substances (CII-CV).
- Waivers will be reviewed annually.
- Texas Medical Board indicated in October that it will issue waiver guidance by December 2020.

Austin *Workers' Comp*

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

Prior Auth & IROs

2023 Sunset Review – Open to Any Issue

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
LAW OFFICE OF ANDREA I SCHWAB, PLLC
4601 Spicewood Springs Road
Building 1, Suite 200
Austin, Texas 78759
Telephone: 512.229.6010
Facsimile: 512.532.6540
ATTORNEY FOR AMICUS
TEXAS ORTHOPAEDIC ASSOCIATION

2021 Research Agenda TOA's September 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?



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

2023 Texas Sunset Commission **Workers' Comp**



Medical Lawsuits **Texas Legislature**

January Supreme Court Case

2021 Texas Legislature – Potential Legislation

Professional Liability 2019 Texas Legislature

Exceptions to the Willful and Wanton Standard

HB 2362 by Rep. Moody (D-El Paso) and Rep. Price (R-Amarillo).

Indexing the Non-Economic Damage Cap

HB 765 by Rep. Wu (D-Houston). Retroactive to September 1, 2013, the bill would increase the non-economic damage cap by 36 percent from \$250,000 to \$339,899.

Willful and Wanton The Filed Legislation

HB 2362 would remove the existing emergency care willful and wanton standard in the following scenarios:

- When the patient arrives in either the hospital's emergency department or obstetrical unit in stable condition regardless of whether the patient later suffers an emergency.
- When the patient has been stabilized or is capable of receiving non-emergency treatment even if the patient later suffers an emergency.
- When a patient is treated in an obstetrical unit for a non-obstetric emergency.
- When the patient's treatment is unrelated to the original medical emergency.
- If the patient's emergency is caused, in whole or in part, by a health care provider, regardless of how insignificant the contribution is to the overall emergency.

Paid & Incurred – Personal Injury Cases Potential 2021 Legislation

Potential legislation would add additional evidence:

- Reveal Medicare, commercial, and Workers' Comp rates for the physician.
- Average amounts paid by the payers.

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

Commercial Insurance **Austin & Washington**

Telemedicine
UHC

Out-of-Network: Austin & Washington

Prior Authorization

Telemedicine Overview of Texas Laws/Regulations



Telemedicine in Texas Overview of State Policy

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.

All-Payer Claims Database? 2021 Texas Legislature

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.

Texas & Washington Prior Authorization or “Medical Management”



PRIOR AUTHORIZATION:

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



2019 Texas Legislature New Prior Authorization Law

Created by SB 1742 in the 2019 Texas Legislature

Provider Directory

- SB 1742 focused on provider directory requirements.
- Prior authorization and utilization review provisions were amended to SB 1742.
- Led by Rep. Julie Johnson (D-Dallas) and Sen. Jose Menendez (D-San Antonio).

Prior Authorization (PA)

- PA requirements and information must be posted publicly on health plan websites on January 1, 2020.
- Written in plain language that is easily understood by enrollees, provider, and the general public.
- Detailed description of the PA process and procedures.
- Accurate and current list of the health care services for which PA is required.
- A list or description of any supporting documentation that the plan requires from the physician.
- The applicable screening criteria.
- Statistics regarding PA approval and denial rates:
 - Physician or provider type.
 - Indication offered.
 - Reasons for request denial.
 - Denials overturned on internal appeal.
 - Denials overturned by an IRO.
 - Total annual PA requests, approvals, and denials for the service.

2019 Texas Legislature New Prior Authorization Law

Created by SB 1742 in the 2019 Texas Legislature

Utilization Review

- A Texas-licensed physician must review UR plans and direct UR programs.
- The previous versions would have required all physicians who handle UR to be licensed in the state of Texas.
- Effective September 1, 2019.

Interim Study

- The Texas Legislature will review the prior authorization and utilization review laws with a report to the Legislature by December 1, 2020.

2019 Texas Legislature Who Made Prior Authorization Laws Happen?

SB 1742

Sen. Jose Menendez (D-San Antonio)

Sen. Dawn Buckingham, MD (R-Austin)

Sen. Charles Schwertner, MD (R-Georgetown)

Rep. Greg Bonnen, MD (R-Friendswood)

Rep. Julie Johnson (D-Dallas)



UHC Imaging Prior Authorization Requirements

July 2020



July 6, 2020

Russell H. Amundson M.D. FAANS
Senior Medical Director, MSK/Radiology
Value Creation Team
UnitedHealthcare Clinical Services
P.O. Box 1459
Minneapolis, MN 55440-1459

Dr. Amundson,

On behalf of over 34,000 orthopaedic surgeons and residents represented by the American Association of Orthopaedic Surgeons (AAOS), we would like to respond to new commercial medical policy imaging requirements requested by UnitedHealthcare. As mentioned in the UnitedHealthcare Frequently Asked Questions (FAQ) document, these policies would apply to dates of service on or after April 1, 2020, for most states.

Specifically, we are writing to express our serious concern that this policy will impede timely patient care and care continuity, and shift time away from patients and towards unnecessary administrative tasks. Based on a review of UnitedHealthcare literature, it is our understanding that for several procedures, providers are now required to send clinical images, such as photographs, magnetic resonance imaging (MRI) scans, computed tomography (CT) scans, X-rays or bone scans to justify a clinical intervention. This would apply to the following procedures:

- Surgical Treatment for Spine Pain
- Knee Replacement Surgery (Arthroplasty), Total and Partial
- Total Artificial Disc Replacement for the Spine
- Hip Resurfacing and Replacement Surgery (Arthroplasty)

Texas Legislature Committee on Health Care Costs

Rep. Greg Bonnen, MD (R-Friendswood) | September 2020



September 30, 2020

The Honorable Greg Bonnen, M.D.
Select House Committee on Statewide Health Care Costs, Chair
Texas House of Representatives
P.O. Box 2910
Austin, Texas 78768-2910

Re: Musculoskeletal Issues and Health Care Costs

Dear Chairman Bonnen:

I am writing on behalf of the Texas Orthopaedic Association (TOA) to respond to the Select House Committee on Statewide Health Care Costs. 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.

Thank you in advance for the opportunity to provide comments, which can be found on the following pages.

Sincerely,

A handwritten signature in black ink, appearing to read "K. Kaminski".

Kenneth J. Kaminski, MD
President, Texas Orthopaedic Association

Texas Legislature TAHP Recommendations

- Eliminate regulatory barriers that prevent APRNs from practicing at the “top of their license”
- Limit excessive consolidation and anti-competitive mergers in the health care system
- Increase transparency of provider market power and of private equity’s influence in health care
- Expand the Attorney General’s authority to protect Texans from health care price gouging
- Require state licensing boards to take disciplinary action against providers with egregious or abusive billing patterns
- Require providers to create price transparency for consumers
- Eliminate incentives that encourage an out-of-network billing model
- Eliminate the use of billed charges as a payment standard
- Increase transparency in provider cost and quality

2021 Texas Legislature & Health Plans “Medical Management”



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

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.

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.

TEIR

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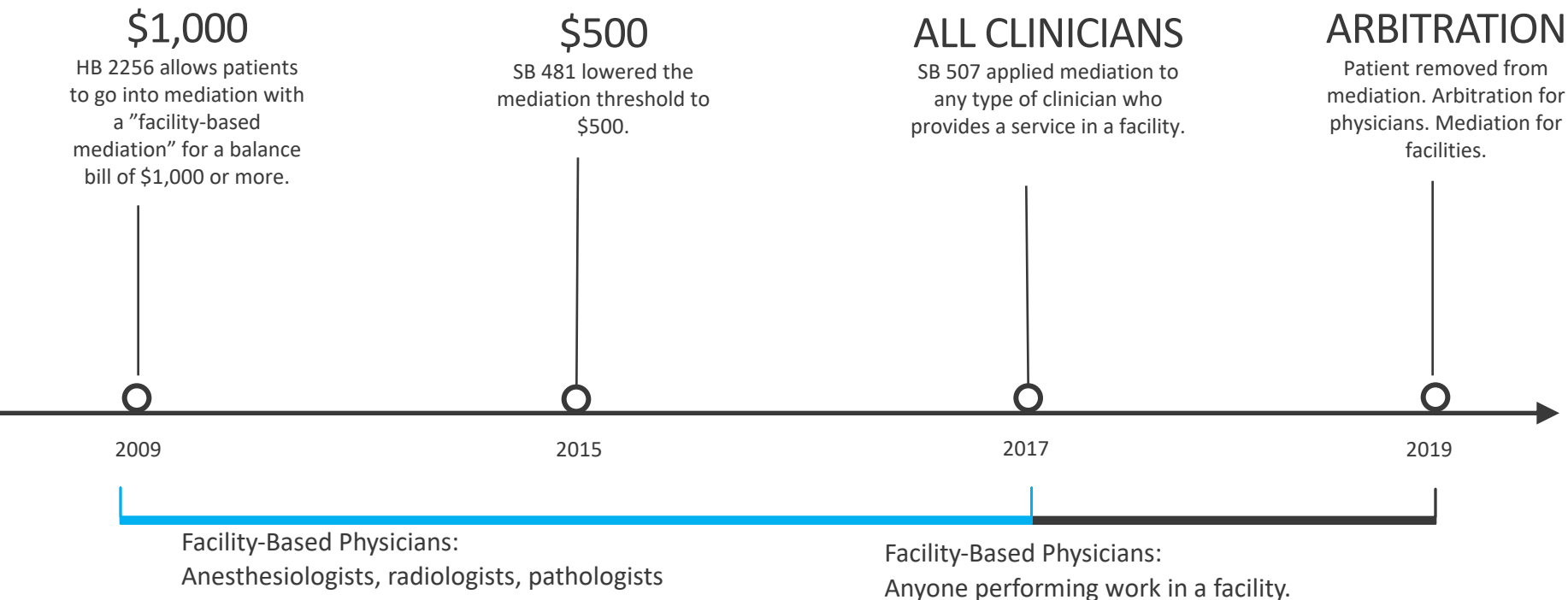
[OPINION](#)

Texas Employers for Insurance Reform

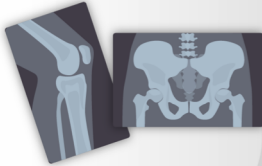
TEIR will advocate at the legislature and state agencies for measures that drive down the cost of health insurance.

Austin & Out-of-Network Law **Ban on Surprise Billing Under SB 1264**

Plans Regulated by the Texas Department of Insurance



Mediation



Arbitration



Surprise Billing Exception Texas Law



Surprise Billing Exception Texas Rule Finalized in June 2020

New § 21.4903 clarifies that, for purposes of the exceptions to the balance billing prohibitions, an enrollee's election is only valid if the enrollee has a meaningful choice between an in-network provider and an out-of-network provider, the enrollee was not coerced by another provider or their health benefit plan into selecting the out-of-network provider, and the enrollee signs a notice and disclosure statement at least 10 business days before the service or supply is provided acknowledging that the enrollee may be liable for a balance bill and chooses to proceed with the service or supply anyway. Only an out-of-network provider that chooses to balance bill an enrollee is required to provide a notice and disclosure statement to the enrollee. The out-of-network provider may choose to participate in SB 1264's claim dispute resolution process instead of balance billing an enrollee.

July 2020 Initial Results From Texas' Arbitration

Arbitration/Mediation Since January 1, 2020

- 9,496 arbitration requests (91% ER physicians). Other 8% = anesthesiologist, assistant surgeon/surgical assistant, CRNA and surgeon.
- 783 mediation requests (hospitals/ASCs/freestanding EDs).
- June 2020 witnessed the greatest amount.

Arbitrators/Mediators

- 96 arbitrators in Texas - \$975 median fee.
- 219 mediators in Texas - \$750 median fee.

Provider Side Often Successful

- Out of 965 arbitration cases, 643 ruled in favor of the provider side.



Tarrant County Medical Society

@TarrantCMS

Follow



BAD BILL ALERT: #Physicians, we are calling on you to tell Senator Hancock you **OPPOSE** SB 1264. This bill is bad for both patients and physicians. Find out more info here:
votervoice.net/TMA/campaigns/ ...
 @texmed @KHancock4TX

12:16 PM - 20 Mar 2019



Robert Rogers @choirdoc · Mar 20



Chairman, you are a small business owner, just like many of the docs in Texas. I'm certain you understand how disruptive and expensive the mediation process is. The health plans can offer as low a payment as they want. This seems very unbalanced.

1



2



Kelly Hancock @KHancock4TX · Mar 20



Actually, many of the doctor groups we are discussing are not small business owners but have become large corporations that maintain exclusive contracts with hospitals that leave consumers with no options. The mediation is NOT expensive and most only take a phone-call

2



Kelly Hancock @KHancock4TX · Mar 20



Replying to @TarrantCMS @texmed

Actually, the legislation is a significant improvement in protecting patients from the egregious practice of surprise medical bills. A practice that's supported by those opposing the bill.

2



5



Tarrant County Medical Society @TarrantCMS · Mar 20



We support a completely different approach to preventing surprise bills. That legislation, Senate Bill 1591, would establish a fair arbitration process for payment disputes, and it wouldn't let insurance companies off the hook for their inadequate networks.

1



5



Kelly Hancock @KHancock4TX · Mar 20



SB 1264 is focused on the patients. It's the patients we want to stay focused on and not provider or insurance revenues.

2



6



Robert Rogers @choirdoc · Mar 20



I just finished reading the bill - can certainly see why those who profit from working for health plans love it. I encourage all Tarrant County physicians to read it - you can find it here: capitol.texas.gov/tlodocs/86R/bi...

2



6



2021 Legislature Health Plans' Recent Tweets



Texas Association of Health Plans @txhealthplans · Sep 17

TAHP fully supported SB 1264 at the time of its passage and fully supports it today — the law is one of the strongest surprise billing consumer protections in the country. Since the bill passed, new evidence shows that using inflated billed charges in the arbitration process 1/2



4



1



Texas Association of Health Plans @txhealthplans · Sep 17

drives up health care costs for everyone. Congress should pass the same ban and continue to refine the dispute resolution process to ensure that it does not drive up costs. 2/2



2



Texas Association of Health Plans @txhealthplans · Sep 17

Thank you to @NoSurpriseBills for hosting this forum! It was a pleasure to be part of the discussion alongside @FrederickIsasi, @LorenAdler, and @Avik. #NoSurpriseBills

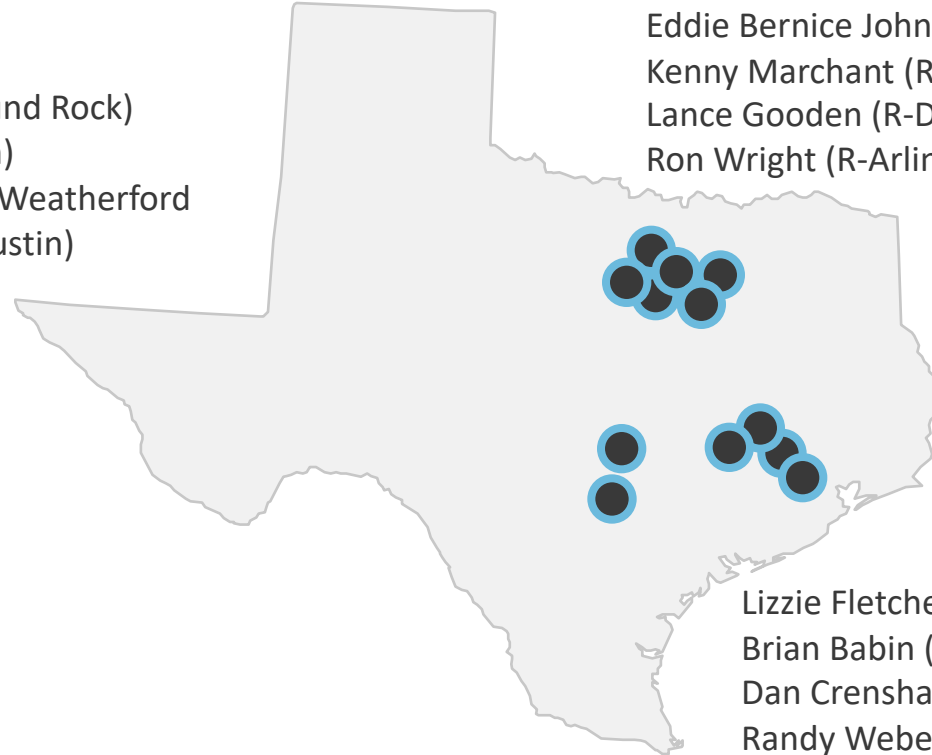


Surprise Billing in Washington: HR 3502 14 Texas Co-Sponsors

110 Across the Nation (01.31.20)

John Carter (R-Round Rock)
Bill Flores (R-Bryan)
Roger Williams (R-Weatherford)
Mike McCaul (R-Austin)

Van Taylor (R-Plano)
Colin Allred (D-Dallas)
Eddie Bernice Johnson (D-Dallas)
Kenny Marchant (R-Dallas)
Lance Gooden (R-Dallas)
Ron Wright (R-Arlington)



Lizzie Fletcher (D-Houston)
Brian Babin (R-Woodville)
Dan Crenshaw (R-Houston)
Randy Weber (R-Friendswood)



**END SURPRISE BILLS:
THE CORRECT WAY**

H.R. 3502 | TAKE THE PATIENT OUT OF THE MIDDLE

www.toa.org



Washington, DC 2020 & 2021

NOLC 2020 Zoom Meetings August & September



**TEXAS
ORTHOPAEDIC
ASSOCIATION**
Established 1936

#NOLC2020
Texas Orthopaedic Surgeons Engaging Congress 2020
August 17-20 | August 24-27
www.toa.org

Washington, DC Current Overview *

Subject to change at any minute

Medicare's August Proposed Rules for 2021 Payment Policy

- ASCs
- HOPDs
- Physician Fee Schedule

Surprise Billing

- President Trump is pushing for a solution by Congress before December 31.

BPCI-A vs. CJR Pandemic Relief

The Trump Administration was helpful to CJR. But it was not as helpful to BPCI-A. A future TOA newsletter will cover this topic.

Three Legislative Vehicles Remain in 2021

- Covid-19 relief package.
- Continuing resolution/end-of-year omnibus package “lame duck.”
- Health care extenders package for Medicare.

Medicare's Physician Fee Schedule **Final: November 2020**

- E/M
- Global surgical packages
- Telemedicine

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.



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.

Global Surgical Packages Medicare's CY 2019 Proposal in 2018

Extensive Commentary from CMS in the Summer of 2018

- **10-Day.** Orthopaedics did not feature many 10-day global procedures. Dermatology and physician assistants featured the most. “Given the very small number of postoperative visits reported using CPT code 99024 during 10-day global periods, we are seeking comment on whether or not it might be reasonable to assume that many visits included in the valuation of 10-day global packages are not being furnished, or whether there are alternative explanations for what could be a significant level of underreporting of postoperative visits.”
- **90-day.** Orthopaedics led this category.

“Future survey-based data collection may cover post-operative visits and non-face-to-face services associated with a broader range of procedures with 10-day and 90-day global periods.”

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 2021 PFS Proposal

Other Issues

Add-on Code GPC1X

- “AAOS urges CMS to discontinue the implementation of the add-on code GPC1X as it is no longer necessary given the updated levels for outpatient E/M cods as finalized in 2020.”

Valuation of THA and TKA Codes

- CMS is proposing RUC-recommended work RVU of 19.60 for 27130 and 19.60 for 27447. “AAOS, in conjunction with the AAHKS maintains that the work RVUs (20.72) and minutes finalized for CY 2014 are still appropriate.”
- “Furthermore, AAOS believes that the stakeholder request to review codes 27130 and 27447 is problematic given the request was made by a large for-profit managed care health insurance company.” (Added to the list of potentially misvalued codes via stakeholder nomination.)

Arthroplasty Pre-Optimization Work

- “AAOS, in alignment with AAHKS, believes that the best path forward is the creation of a new G code to account for arthroplasty pre-optimization work.”

Medicare's 2021 PFS Proposal

Other Issues

99072

- “AAOS strongly urges CMS to accept the reimbursement rate of \$6.57 for code 99072 as determined from the data received for these additional PE costs, as well as allow reporting of code 99072 retroactively to March 1, 2020, as was allowed with other reporting flexibilities during the PHE.”

Scope of Practice: Supervision of Diagnostic Tests

- “The public health emergency has proven that this flexibility is necessary to alleviate some of the demands on physicians as they lend their medical expertise in response to the COVID-19 pandemic. AAOS strongly urges CMS to maintain these flexibilities.”

Therapy Assistants Furnishing Maintenance Therapy

- “AAOS encourages CMS to make permanent the Part B policy for maintenance therapy services to allow PTs/OTs to oversee and assign duties to PT Assistant or OT Assistant for the performance of physical and occupational therapy services as clinically appropriate.”

Medicare's 2021 PFS Proposal Other Issues

AUC for Advanced Imaging

- Educational and operations testing period extended through CY 2021.
- “However, the current implementation test period for this requirement is proving to be very burdensome for small and solo practices with requirements for additional investments in technology.”

Medicare's 2021 PFS Proposal AAOOS Telehealth Recommendations

- Allow the use of audio-only equipment for office/outpatient E/M codes 99212-99215 and 99202-99205.
- Maintain acceptance of telephone E/M services, CPT codes 99441-99443, including continued reimbursement as similar services rendered in person.
- Expand online digital E/M services (e-visits), CPT codes 99421-99423 to both new and established patients.
- Expand virtual check-in services (HCPCS codes G2010 and G2012) to both new and established patients.
- Telehealth services continue to be reimbursed at the same rate as if services were finished in-person.
- Allow physical therapy and occupational therapy services to be performed virtually with two-way audio/visual capabilities and maintain reimbursement as if rendered in person.
- Waive the requirement that out-of-state physicians and non-physician practitioners, be licensed in the state where they are providing telehealth services, as long as they are licensed in another state.



Bundled Payments BPCI-A vs. CJR

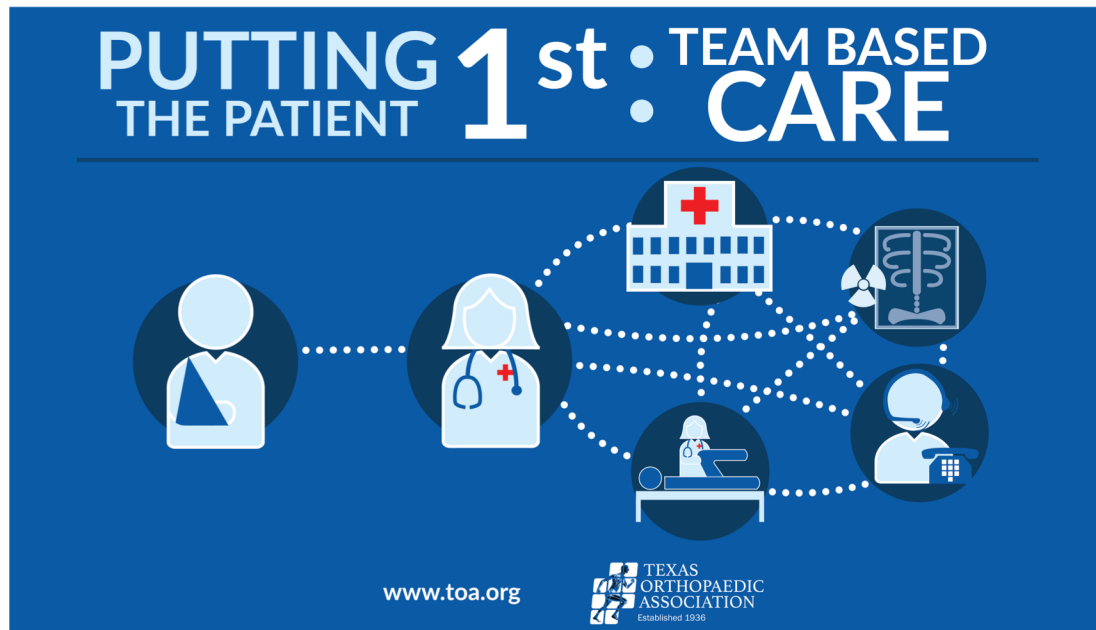
Medicare's 2021 PFS Proposal BPCI-A vs. CJR

Pandemic Relief for CJR

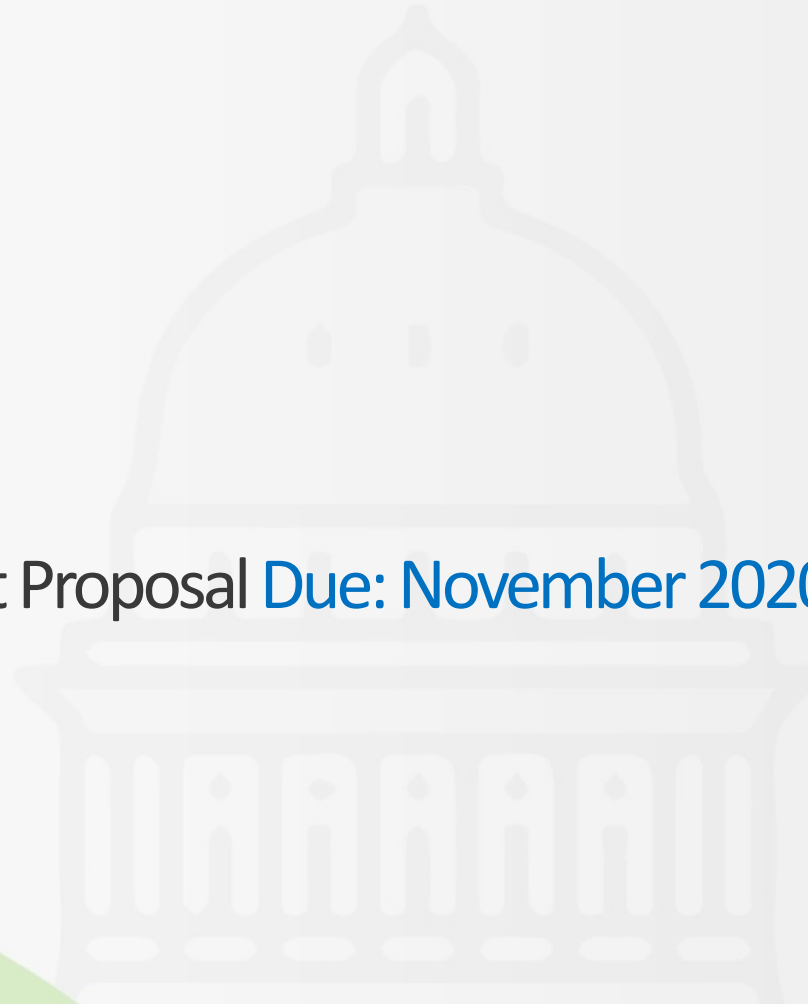
- CMS is waiving repayment responsibility if episode costs increase and allowing for shared savings if episode costs are reduced.

BPCI-A Requires One of Two Options

- Remove both downside risk and upside risk.
- Keep both downside risk and upside risk but allow for exclusions for Covid-19 diagnosis.



Medicare's ASC/HOPD Payment Proposal **Due: November 2020**



Medicare's 2021 Annual Payment Proposal HOPD/ASC

Elimination of Inpatient Only List

- Beginning with MSK on January 1, 2021
- “Yet we are mainly concerned by the removal of certain procedures that do not have data to support the appropriateness of their performance in the outpatient setting.”

Two Midnight Rule

- “AAOS is also concerned that the Two Midnight Rule will remain in effect as IPO changes are implemented.”

ASC Covered Procedures List – THA

- 27130.
- AAOS: More complex ASC procedures require a higher APC level.

Prior authorization for certain services in the HOPD (vs. ASC).

- 22551 and 22552 – Cervical Fusion with Disc Removal.
- 63650, 63685, and 63688 – Implanted Spinal Neurostimulators.

Medicare's 2021 Annual Payment Proposal POHs



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. OPPI Market Basket Update

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

“This change will also help to promote site-neutrality between hospitals and ASCs and encourage the migration of services from the hospital setting to the lower cost ASC setting.”

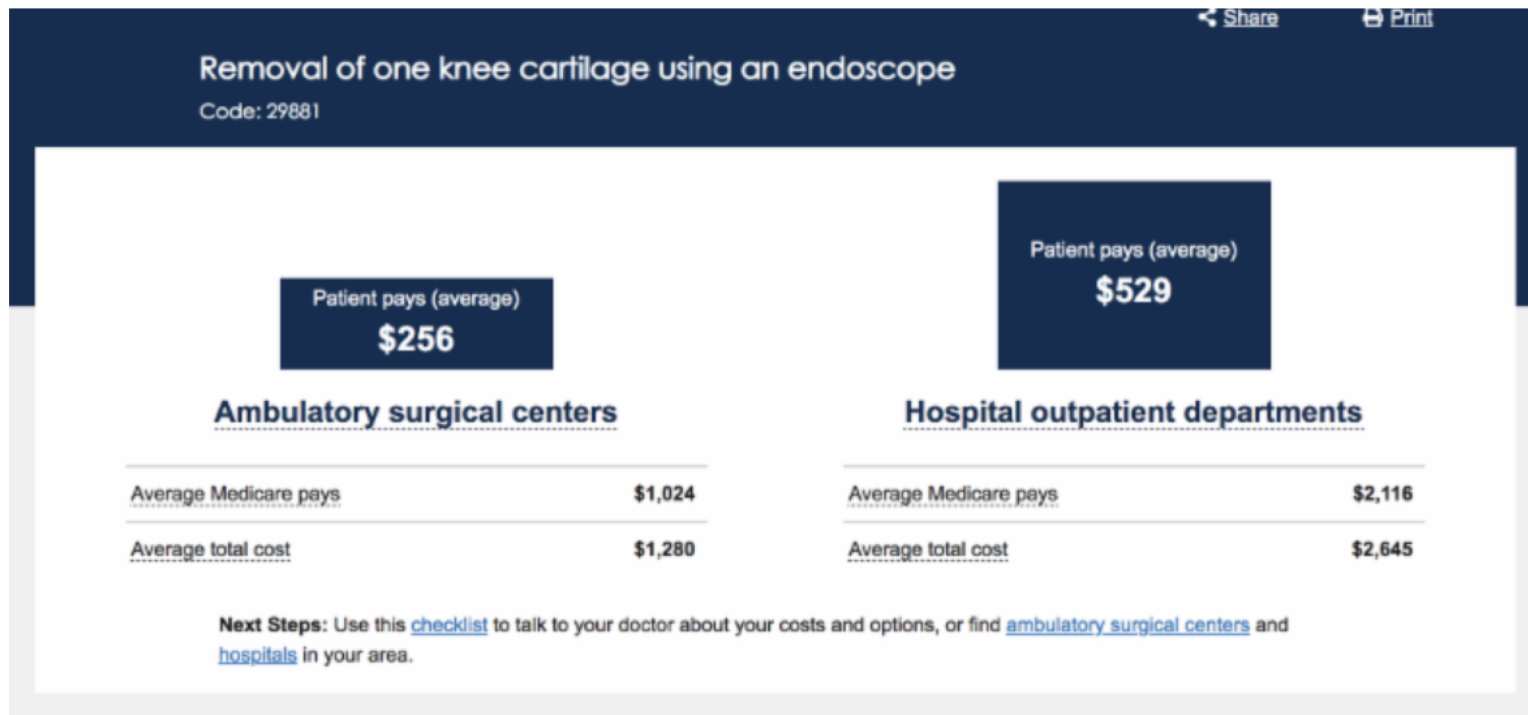
- Medicare's commentary in the CY 2020 rule proposal.

Lower Device Intensity Threshold Medicare's 2019 Proposal

ASCs

- Proposed to be lowered to 30 percent (from 40 percent).
- Orthopaedic services would witness the greatest effect.

Medicare's ASCs vs. HOPD Price Comparison Tool 21st C. Cures Act



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.

2015 Site Neutral Payments

November 2, 2015 Congressional Budget Deal

- November 2, 2015 budget deal created a site neutral Medicare payment policy for any new off-campus, provider-based department after this date. (Practices that are at least 250 yards away from the parent hospital's campus.)
- Existing off-campus PBDs were grandfathered. CMS proposed additional guidance in July 2016.
- Dedicated freestanding emergency departments are exempt.



July 17, 2020 Court Ruling

Site Neutral Payments

Appeals Court: CMS Can Reduce Pay For Off-Campus Hospital Sites

The DC federal appeals court on Friday (July 17) ruled CMS has the authority to reduce reimbursement rates for outpatient clinic visits at certain off-campus hospital facilities in order to control the volume of services provided, reversing a lower court's ruling that sided with hospitals in their challenge to the so-called site-neutral policy.

READ MORE

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.

