

Bobby Hillert, Executive Director, TOA
Legislative Update

Bobby Hillert has served as the executive director of the Texas Orthopaedic Association in Austin since 2013. Prior to TOA, Bobby worked for various health care trade associations and also worked on Capitol Hill in Washington, DC, from 2001 to 2008. Bobby is a Dallas, Texas, native who now lives in Austin, Texas.





TEXAS ORTHOPAEDIC ASSOCIATION

Established 1936

Policy Actions Affect Every Aspect of a Practice

.....

Bobby Hillert | September 2023

Bobby@toa.org



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TOA's Objectives

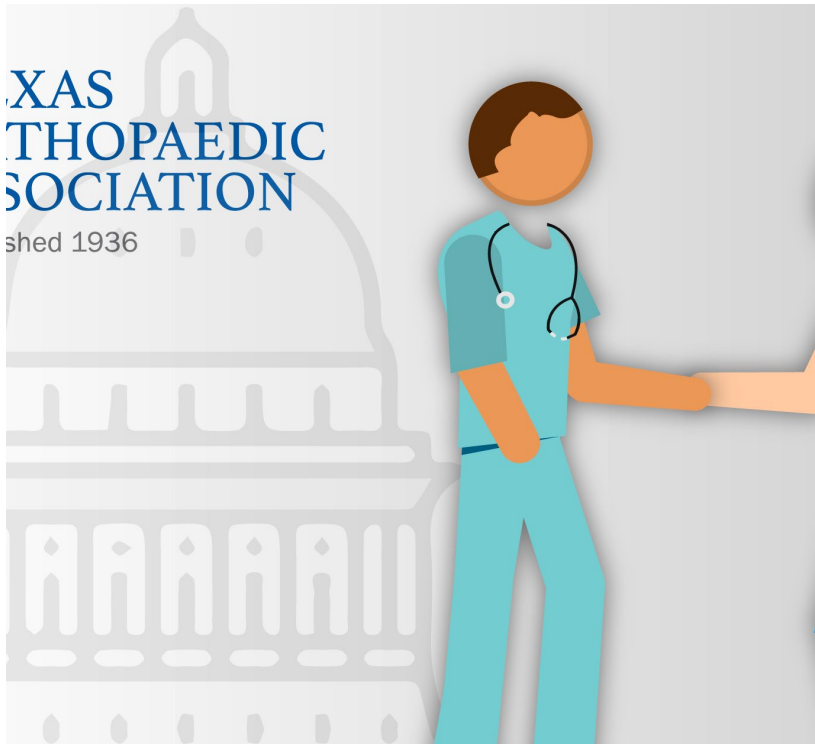
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Stakeholder Voice for Orthopaedic Surgeons

Industry Intel for TOA Members

Cultivating the Orthopaedic Brand in Texas

The Future of Orthopaedics in Texas





The Future

Residents

The 2024 Annual Conference is focusing on PGY-3s.

TOA takes a half dozen residents to Washington every September.

Medical School Students

TOA hosts 60 students at its annual conference every year.

The Pipeline

TSAOG Orthopaedics in San Antonio is building the high school pipeline of future musculoskeletal clinicians.

So

What





TOA's Issues Affect Every Type of Orthopaedic Surgeon

Whether you are in private practice, a hospital employment model or in an academic setting, TOA's issues affect your practice.

In many cases, the compensation that a physician could receive in a private practice is a major consideration when determining a physician's compensation for other types of arrangements.





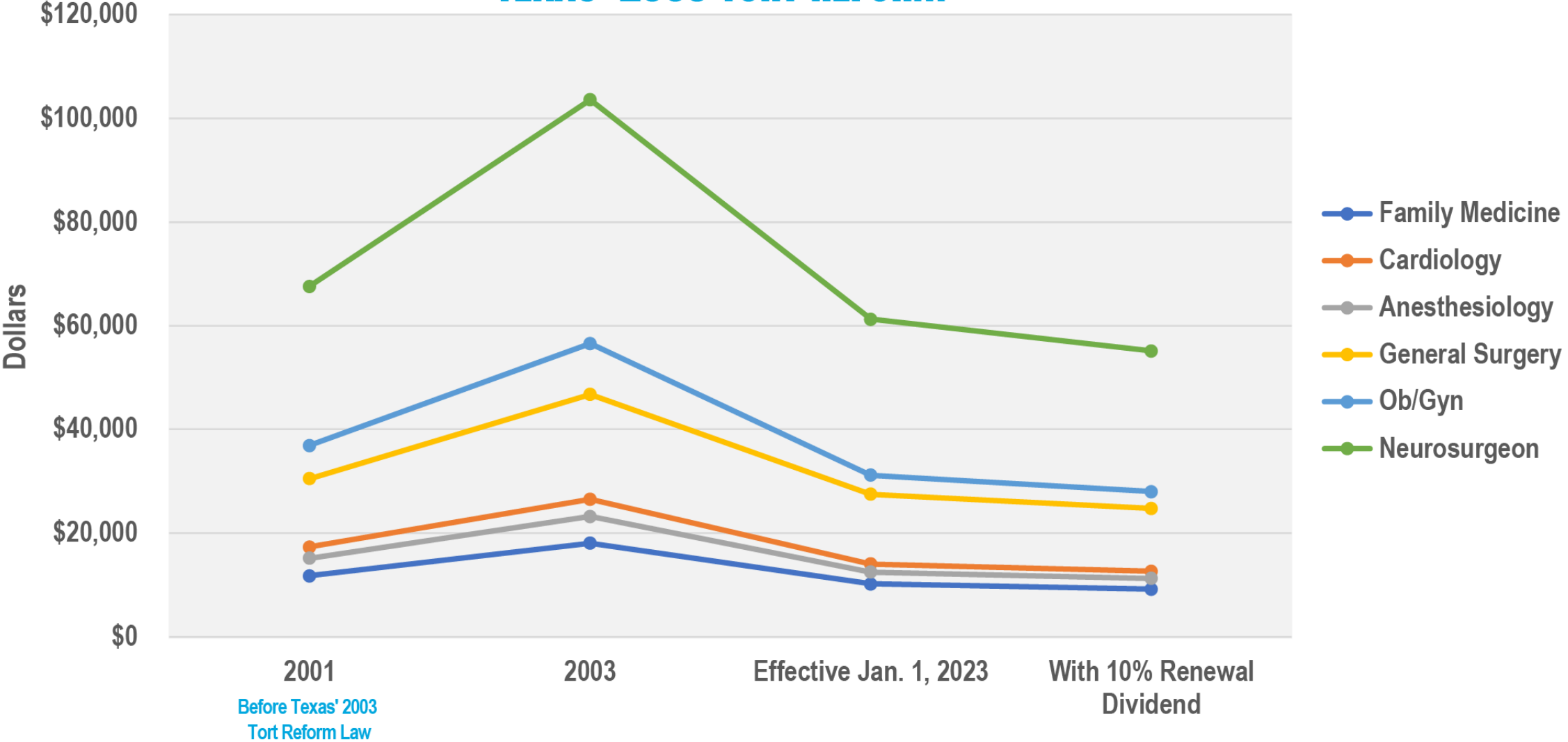
Texas' Monumental 2003 Law

51% - 49%

Caps on Non-Economic Damages

THE IMPORTANCE OF ADVOCACY | PATIENT ACCESS TO CARE

TEXAS' 2003 TORT REFORM





What's the Future Of Orthopaedics?

“Laws and regulations touch every aspect of an orthopaedic practice.

Whether we like it or not, we have to engage in the public policy process. Otherwise, other segments of the health care industry will define musculoskeletal issues on their own terms, and we won't like the consequences.

SUBSTANTIAL CAPITAL

THE COST OF OPERATING AN ORTHOPAEDIC PRACTICE



Capital Equipment

Imaging such as MRIs and x-rays to make a diagnosis; other capital equipment to support the practice.



Clinical Staff

Physician assistants, nurses, physical therapists, athletic trainers and other members of the clinical team.



Insurance

Medical liability insurance, real estate insurance, health insurance for staff and many other insurance policies.



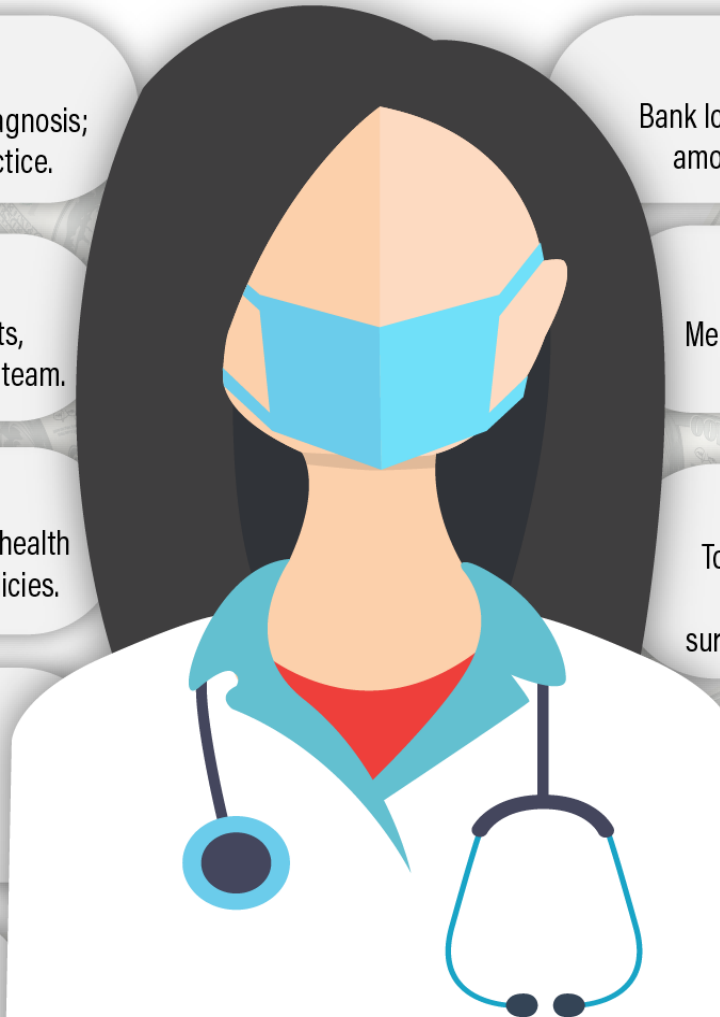
Administrative Staff

Staff to conduct prior authorizations, schedulers, insurance billers, marketing and other members of the administrative team.



Medical Real Estate

Clinic space, ambulatory surgery centers and hospitals.



Finance

Bank loans are often necessary to support the tremendous amount of capital necessary to support one surgeon.



Medical Supplies

Medical supplies are greatly affected by inflation and shortages.



Marketing

To avoid a consolidated market, it is critical for patients to have health care choices, and surgeons must market their practices as a result.



Public Policy Process

Laws and regulations touch every aspect of an orthopaedic practice. As a result, orthopaedic surgeons engage in the public policy process, which requires trade association membership dues, conference attendance and political donations.



EDUCATION & TRAINING:

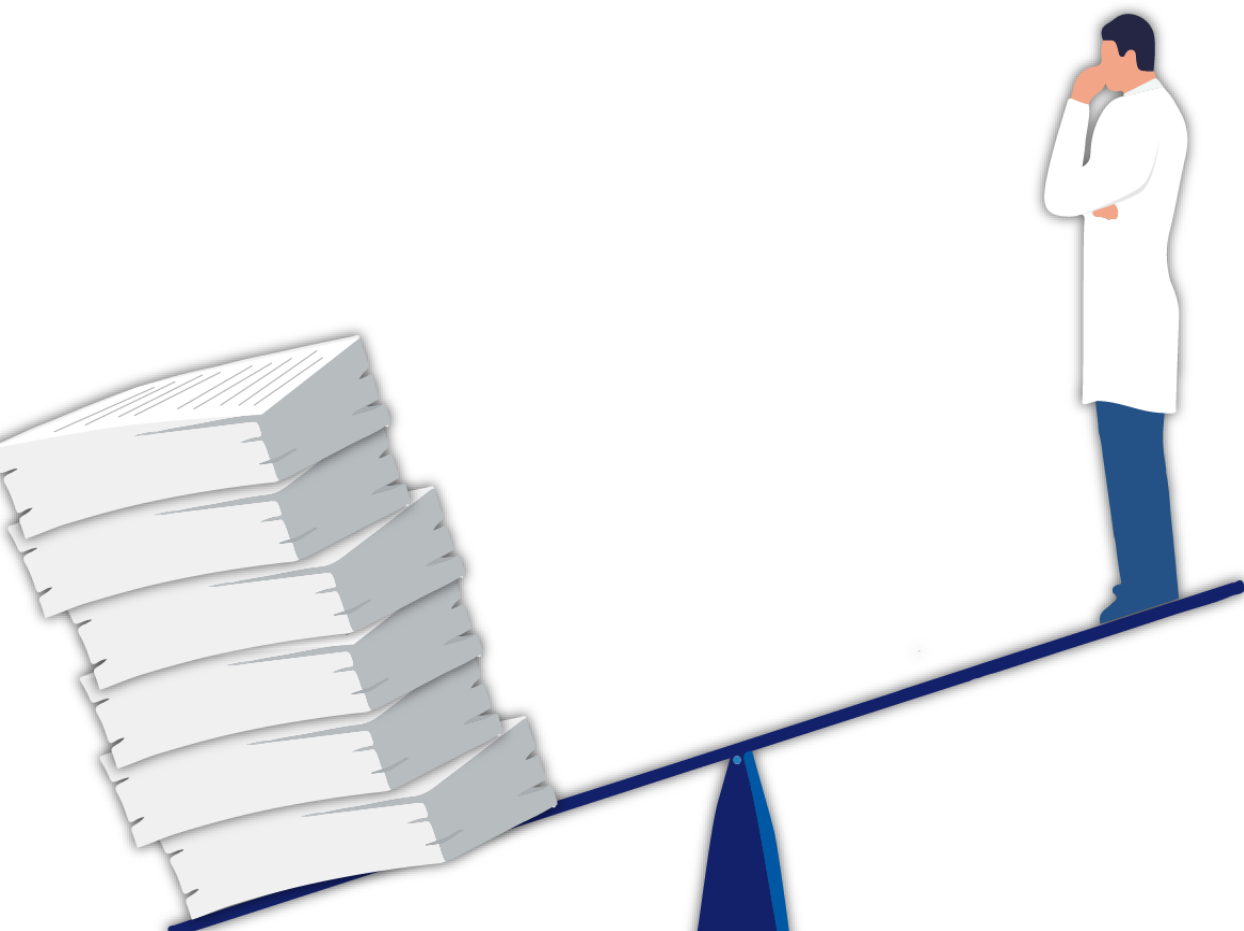
A TYPICAL ORTHOPAEDIC SURGEON'S DEBT

Following undergraduate study, an orthopaedic surgeon completes four years of medical school and five years of an orthopaedic residency. Many orthopaedic surgeons go on to complete an additional year in a fellowship.

Many orthopaedic surgeons accumulate a tremendous amount of debt due to the lengthy training and education.



- Median debt: **\$190,000.**
- Share of graduates with debt: **74.2 percent.**
- Share with debt of **\$200,000 or more: 27 percent.**

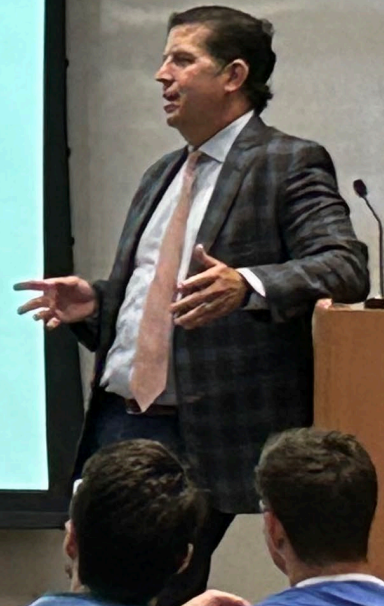
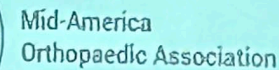
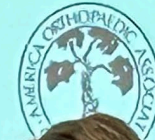
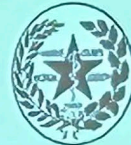
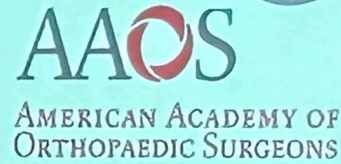
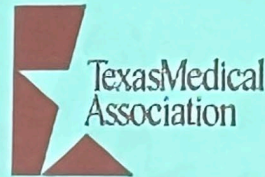
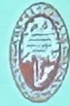
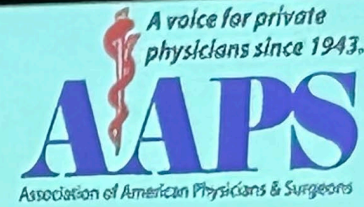
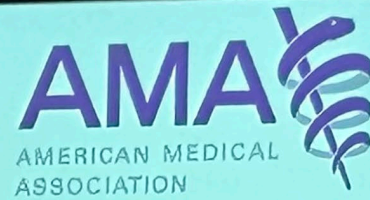
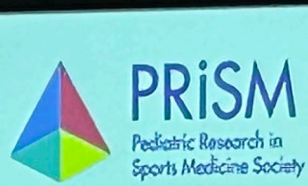


The New York Times

February 14, 2023

According to Medical Guidelines, Your Doctor Needs a 27-Hour Workday

Some doctors say that however reasonable guidelines may seem, their cumulative burden causes “constant frustration” to medical practice.



base #:
24-8912



What Is Effective Advocacy?

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ADVOCACY & ORTHOPAEDICS



When your state and federal lawmakers make a decision about musculoskeletal care, ensure that they rely on your expertise.



Contact Your Lawmakers

Participate in your medical society's grassroots outreach to lawmakers.



Develop a Personal Relationship With Health Aides

Reach out to your lawmakers' health care aides via e-mail and develop a personal relationship.



Go to Events

Attend your lawmakers' town halls or fundraisers to meet them in person.



Site Visits

Invite lawmakers to visit your clinic, ASC or hospital to witness how laws and regulations affect every aspect of an orthopaedic practice and facility.



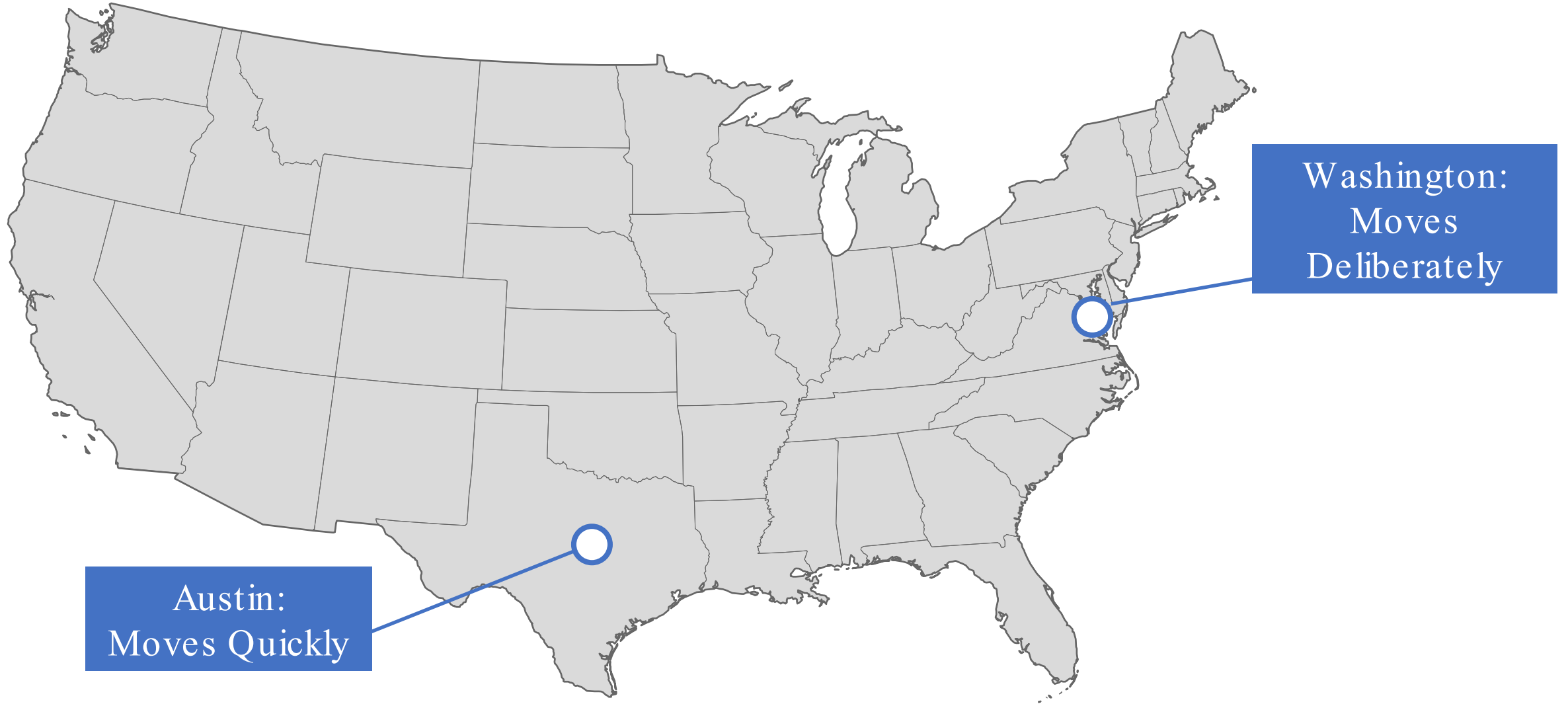
Run for Office

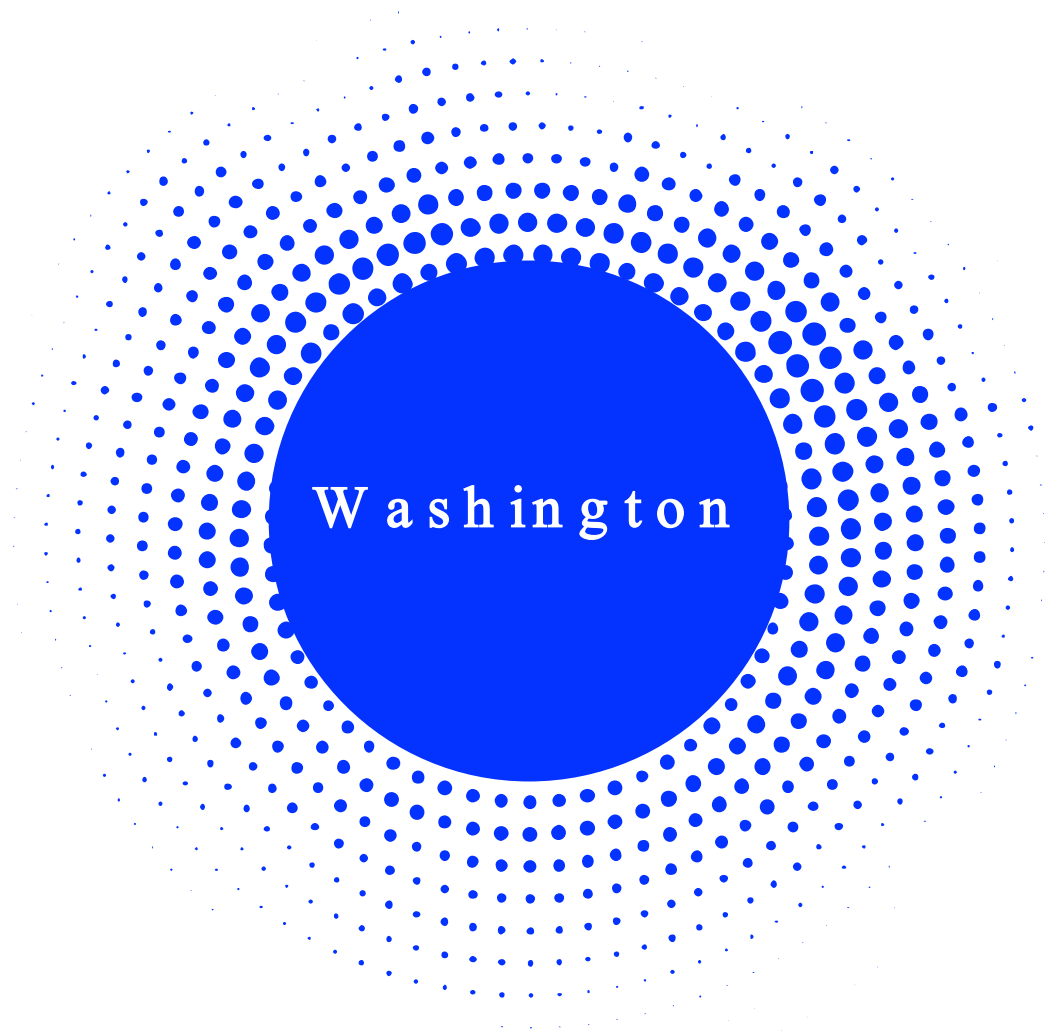
Both Congress and state legislatures feature orthopaedic surgeons who are lawmakers.





Austin vs. Washington Apples & Oranges





Not Much in 2023...

Major Medicare packages aren't expected in Congress in 2023.

Medicare Cuts in 2024...

Primary care vs. specialists.

Physician-Owned Hospitals

Continued discussion in Washington.

The “House” Issues

Consolidation, site neutral, transparency and prior authorization.

AUSTIN
100%

**All 31 of the Texas State
Senators voted to pass prior
authorization reform (HB 3549)
in the 2021 Texas Legislature.**

WASHINGTON
40%

**Approximately 40 percent of the Texas
Congressional Delegation signed a
letter (October 2021) urging
Congressional leadership to stop
Medicare's 10 percent payment cuts,
which are scheduled for January 2022.**



THE HARMS OF HEALTH CARE CONSOLIDATION

Both the Biden and Trump administrations indicated that competition in each health care market is critical for patients, physicians, hospitals and ASCs.



Congressman Michael Burgess

Hospitals can own doctors, but doctors can't
own hospitals.

Why is that?



End ObamaCare's Ban on Physician-Owned Hospitals

A little-known Affordable Care Act provision stifles competition and drives Medicare costs up.

By James Lankford and Brian J. Miller

Feb. 20, 2023 6:09 pm ET

Providers ▾Health Tech ▾PayersRegulatoryFinanceSpecial ReportsFierce 50

PAYERS

Experts push to remove barrier to physician-owned hospitals

By Frank Diamond · Feb 28, 2023 05:05pm

Physician-Owned HospitalsdoctorsAmerican Medical AssociationU.S. Federal Trade Commission

Restrictions on physician-owned hospitals hinder quality care

LEAD By Jesse M. Ehrenfeld, MD, MPH, President

OPINION BLOG

OPINIONS ARE THEIR OWN AND NOT THE VIEW OF THE HILL

Proposal to reform our health care system

By (Jesse M. Ehrenfeld, MD, MPH, President of the American Medical Association), OPINION CONTRIBUTOR - 02/28/23 4:45 PM ET

Government antitrust officials consider letting physician-owned hospitals expand

By John Wilkerson Feb. 27, 2023

Exclusive Content

Letting a comeback for physician-owned hospitals

Goldman, author of [Axios Vitals](#) 2023

Is the Tide Changing?

.....

Physician-Owned Hospitals & Congress

Podiatric Assn @TXOrthoAssn · Jul 28
TOA was pleased to join @AAOS1 @AmerMedica
@texmed and dozens of other state and national
on Congress to lift the arbitrary ban on physician-o

1 of 2...

PHL PHA @physicianhosp · Jul 28

Eight-five national and state medical societies joined a co.
to urge Congress to lift the restrictions on physician-led hos

Learn more:
physiciansled.com/eighty-five-na...

PHYSICIAN-LED.
PATIENT PREFERRED



TOA & 84 Medical Societies

[July 2023 Letter Calling on Congress to End the Ban on Physician-Owned Hospitals](#)

TOA, AMA, AAOS and others.

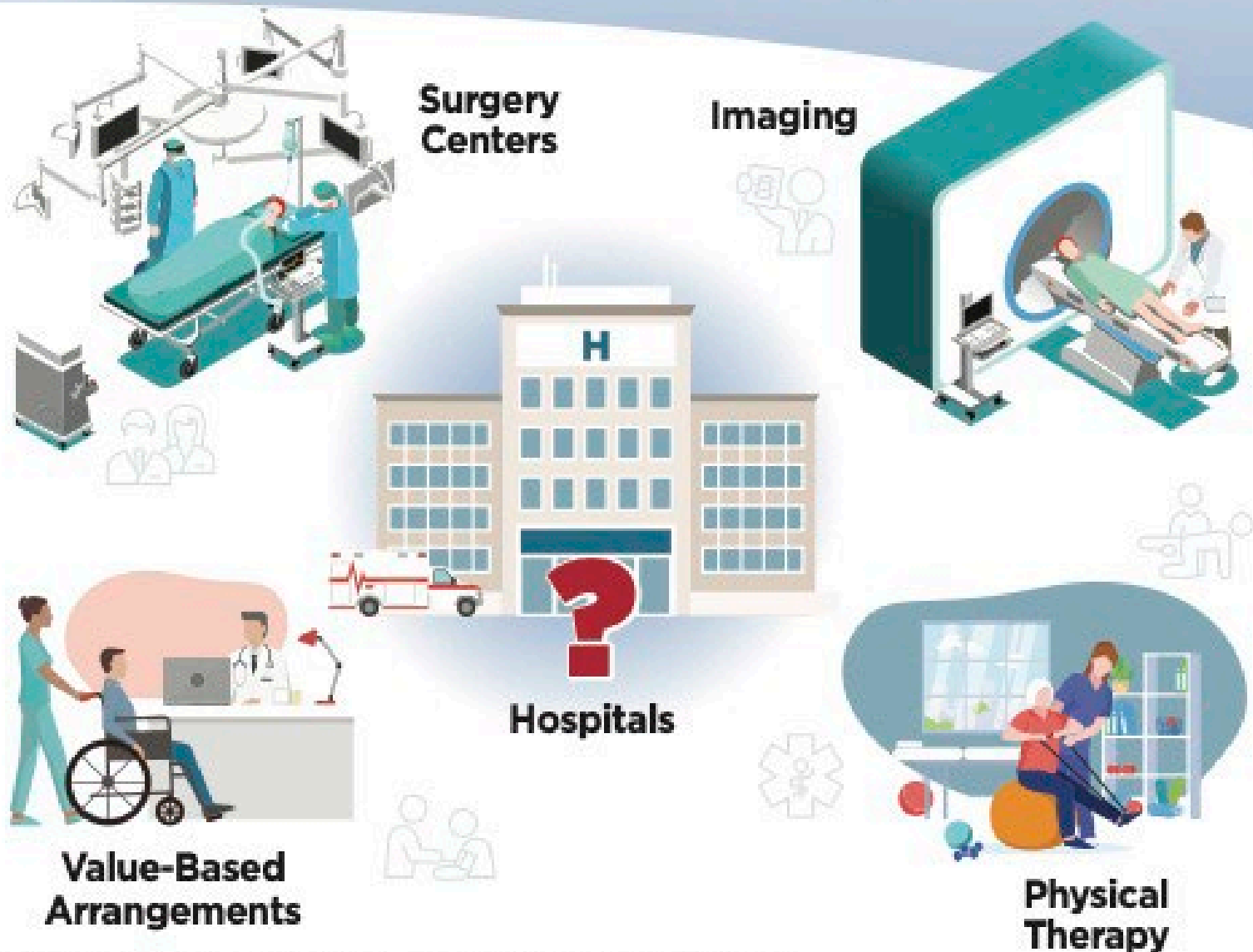


no it's the 13 year
anniversary of doctors not
being able to own
hospitals

Piece in the Healthcare System

Coordination of care, higher quality and efficiency are outcomes of physician-led care, which is why the federal government has created numerous exceptions to its ban on physician ownership to ensure that patients have access to this high level of care.

One of the most important segments of the healthcare system – the hospital – continues to be denied a physician ownership exception. An anti-competitive provision by special interest groups included an arbitrary provision in the ACA that halted competition from physician-led hospitals.





WHO CAN OWN A NEW HOSPITAL?



**Private
Equity**



Insurance Company

Lawyer



**Any
Corporation**



The Government



ANSWER: ANY INDIVIDUAL EXCEPT PRACTICING PHYSICIANS

Washington

2024 PFS Proposed Rule

Medicare Cuts

January 1, 2024

Split (Shared)

“Substantive Portion” Delay

Appropriate Use Criteria

“Permanent” Delay

Complexity Add-on

G2211



RE CUTS: ASING PATIENT ACCE

barrage of Medicare payment
or many physicians, Medicare
vest payer, and increasing
enging to cover the
f and capital costs that are
te a practice.

*oices, and it is critical for
gress to ensure that
e resources necessary to see*

3.34%

American College of Surgeons: Budget Neutrality

66
Much of the proposed cut is due to
the establishment of a separate
payment for add-on code G2211 to
account for visit complexity
associated with certain
office/outpatient E/ Ms. The G2211 code
predominately aids primary care and
was originally proposed three years
ago.



Washington

2024 OPPS Proposed Rule

Inpatient Only List

No Proposed Removals

PRO-PM

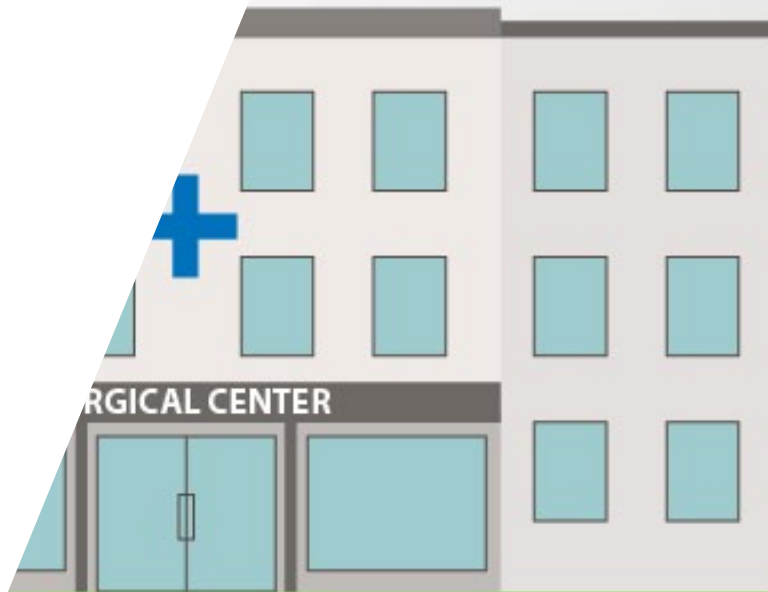
THA- TKA in HOPD

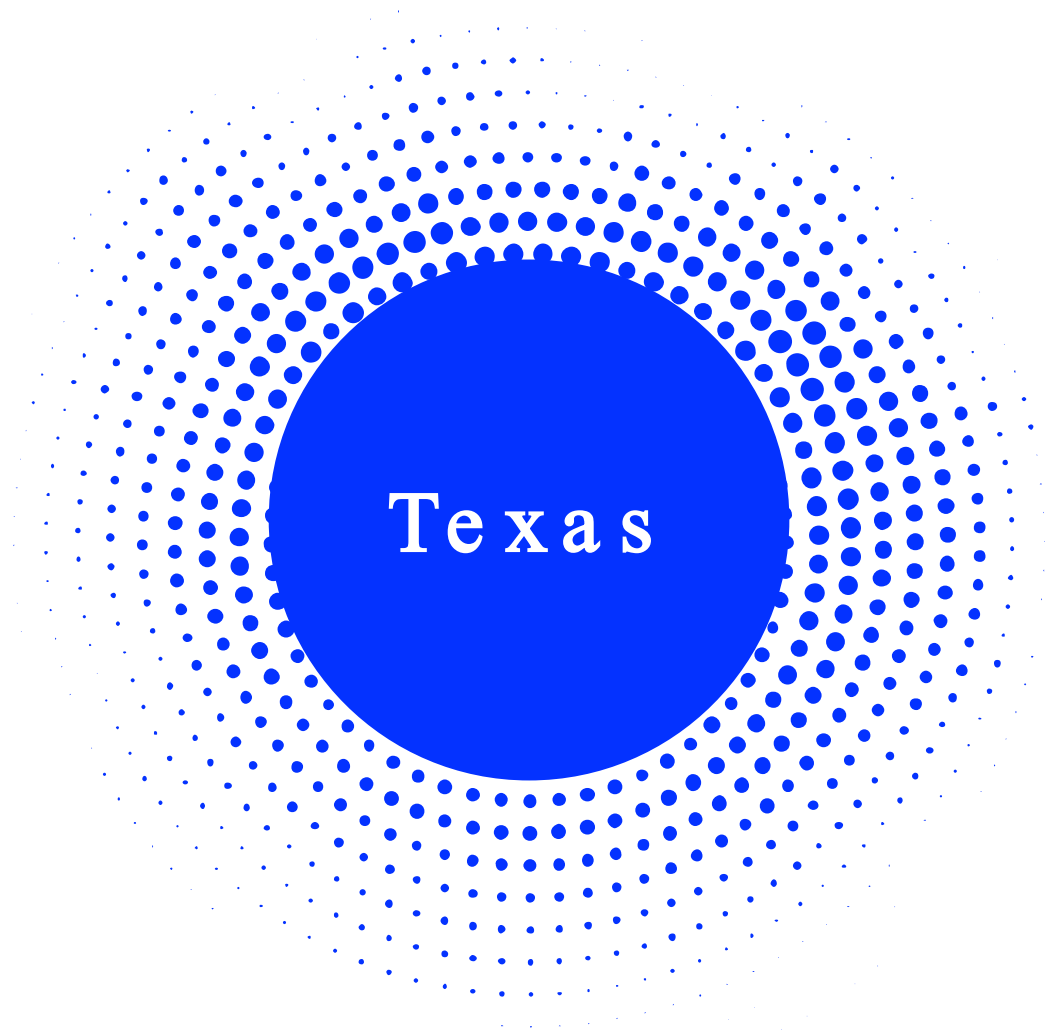
Hospital Standard Charges

AAOS Support

Pre-Authorizations

No 2024 Proposals





MSK Gatekeeper

Are orthopaedic surgeons the musculoskeletal experts?

Scope of Practice

New adventures.

Consolidation

New twists.

Site Neutral Payments

Continued debate.

Austin & Washington

Commercial Insurance

Out-of-Network Arbitration

Austin & Washington

Prior Authorization

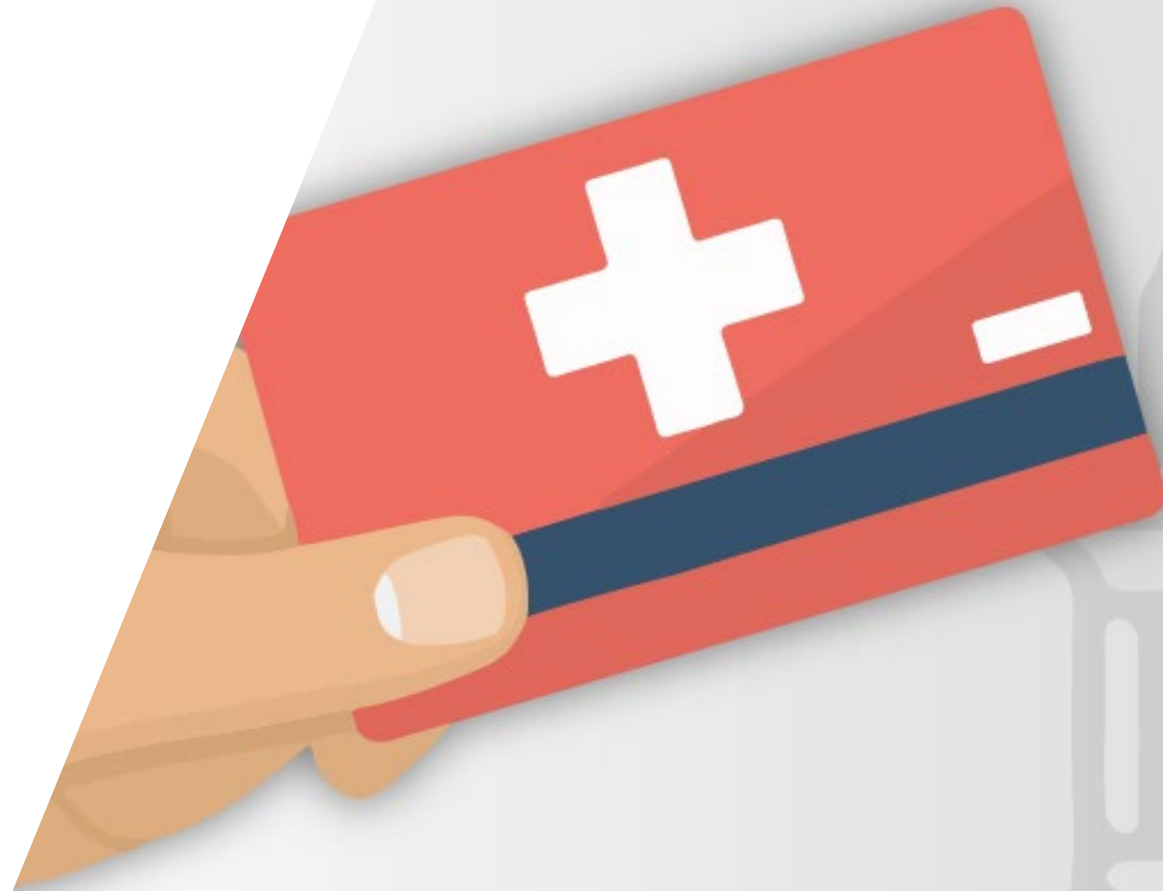
Austin & Washington

Bundles

Primary Care as Quarterbacks?

Steerage

2023 Texas Legislature



Calendars Support: HB 1073, HB 2414, & HB 3351



State Health Insurance Laws are Out of Date
These Bills Modernize Health Plans

Texas is Behind, a Trio of Bills Help Us Catch Up: Three bills moving in the House update insurance laws to offer high value benefit designs becoming the standard in health care.

HB 1073 by Representative Lacey Hull, modernizes the insurance code to remove restrictions on value based health coverage.

- This bill is supported widely by primary care doctors, business groups, and health care experts.
- Texas laws, written decades ago, limit payment and benefit design innovation.
- HB 1073 will allow health plans and physicians to develop and test innovative, value-based payment and delivery models in the commercial market.



ways to address health care ability crisis

Innovative approaches to creating healthy markets are being debated now.

2023 TX Legislature

HB 2414

Address health care crisis

Steerage

Steering Patients to Health Plans' Preferred Providers, No Matter the Quality

Senate

Died in the Final Days

Texas 2036

Business Community Support

Innovative approaches to creating healthy markets are being debated now.

... health care has become unaffordable — to the point of being unattainable. Barriers are keeping Texans from accessing needed care, contributing to unhealthy outcomes and high costs. To address this challenge, the Texas Legislature is discussing ways in which our state can address this m

2023 TX Legislature

HB 633



Price Fixing?

Removed

Major Hospital Challenge

Eventually Defeated



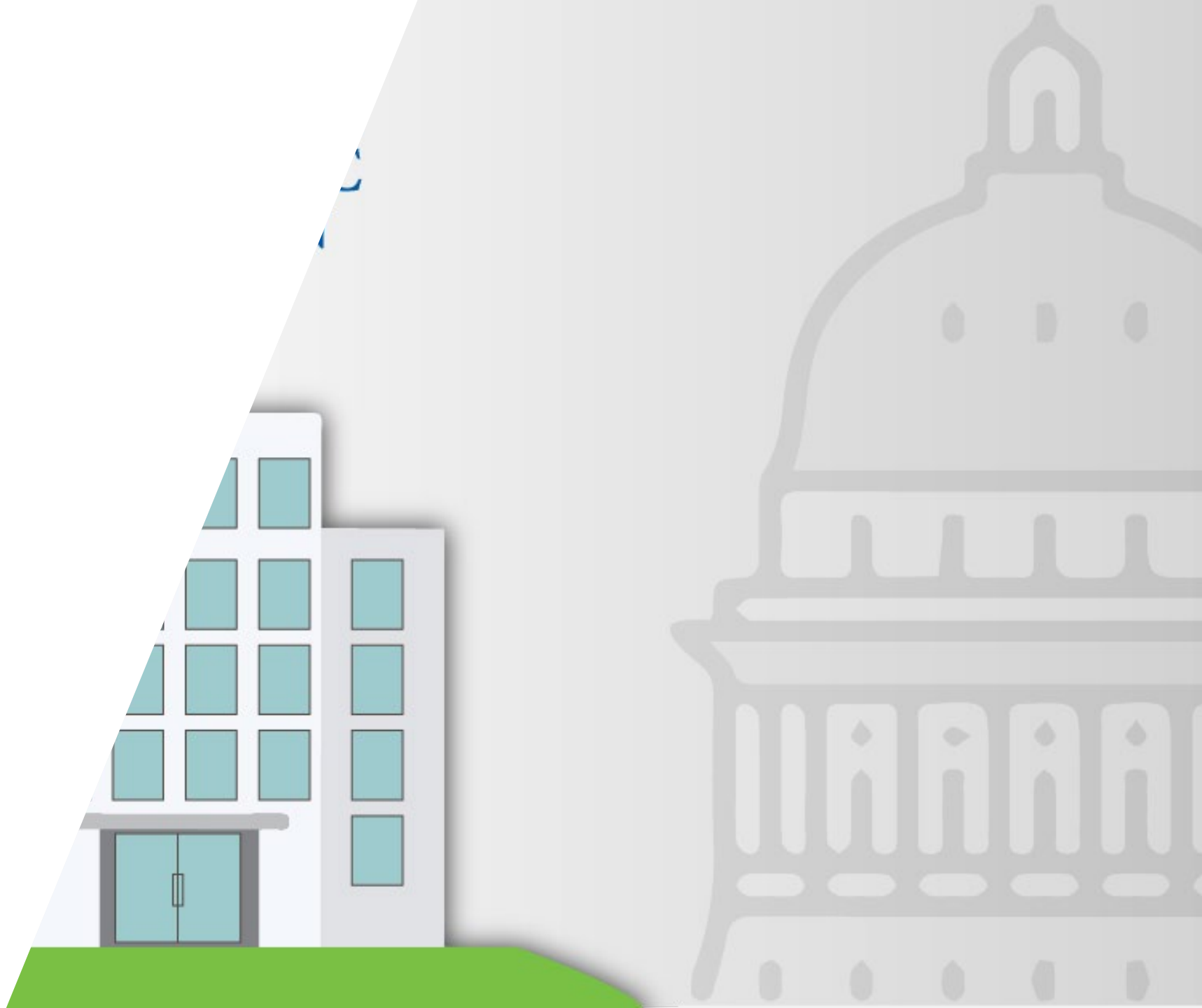
2023 TX Legislature

HB 711



All-or-Nothing Contracts

Final Outcome



2023 TX Legislature

Non-Competes

What's Next?

Legislation Failed



2023 TX Legislature

HB 3351

Ranking & Tiering

Undo Protections for Physicians

Health Plan Priority

Died

Harris removes barriers to providing patients with information without related quality concerns.

HB 3351 removes barriers to providing patients with pricing information without a barrier to services.

HB 3351 reduces those barriers and updates them to be more accessible.

TRANSPARENCY

2023 TX Legislature

APCD

2021 Law

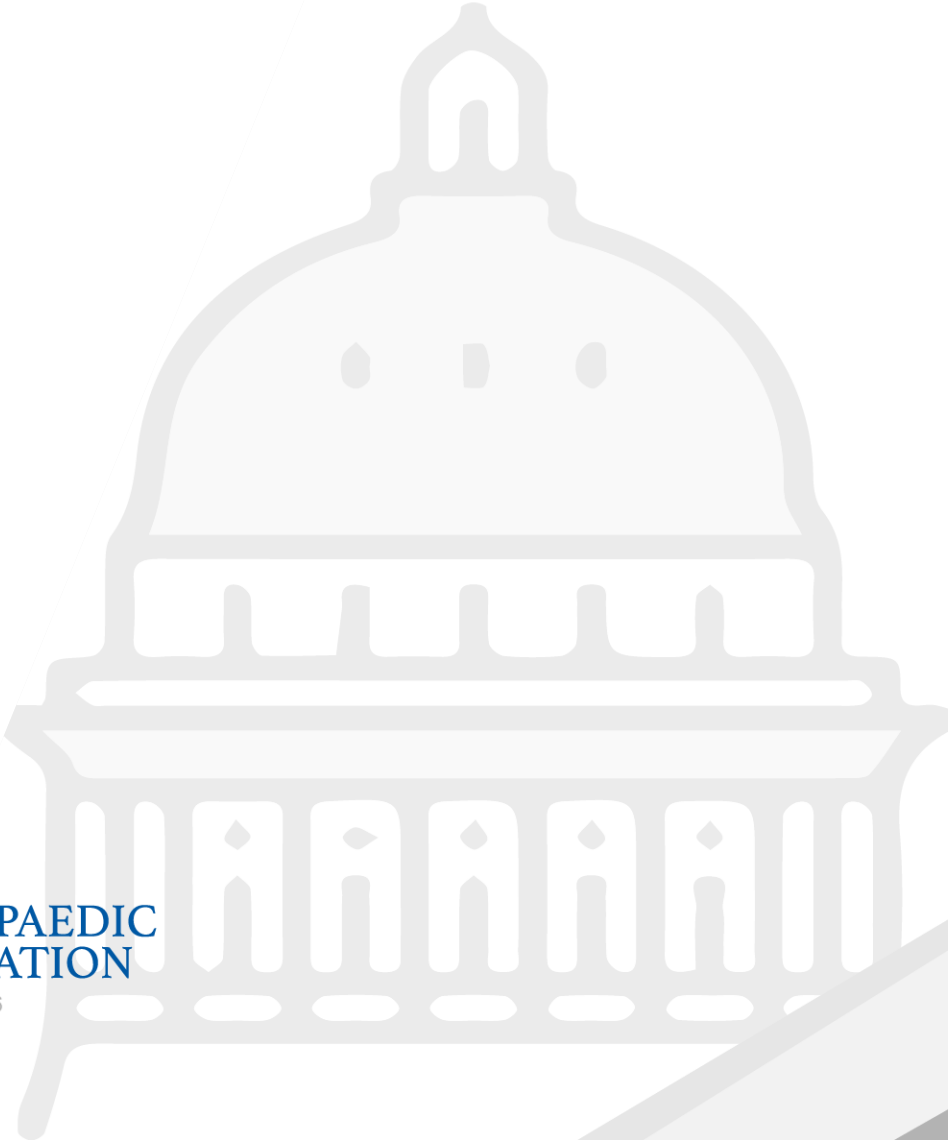
In Effect

2023 Update

More Transparency

AS
HOPAEDIC
OCIATION

shed 1936



2023 TX Legislature

Bundles

Who's the Gatekeeper?
PCP Only?

1st : TEAM BASED
CARE

care coordination results in up
in wasted spending every year
in the United States.

U.S. Health Care System: Estimated Costs and Potential for Savings;
Journal of the American Medical Association (October 7, 2019).



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2023 TX Legislation

Greg Bonnen, MD

Hospital Contracts

2023 Legislation

90% for Physicians

Any Willing Provider?



Half Empty or Half Full?

Texas' prior authorization gold card was the impetus to create the conversation at the national level and in every state.



Thanks to Chris Kean & Jennifer Kinman

Testifying at the Texas Legislature and keeping the issue on the minds of lawmakers.





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PRIOR AUTHORIZATION: LEGISLATIVE REFORMS ARE NECESSARY

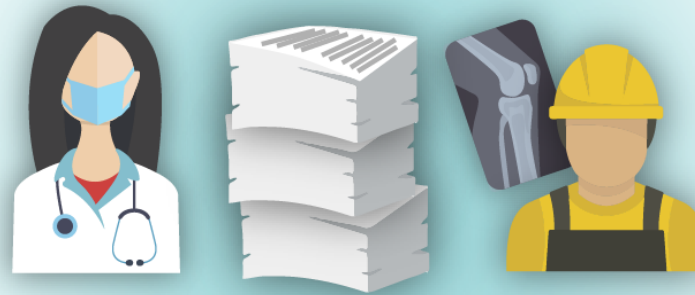
ACTUAL DENIALS

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.

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.

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.*

UNNECESSARY PRIOR AUTHORIZATIONS: THE COST TO PATIENTS & MEDICINE



Some prior authorizations have proven to be nothing more than useless exercises that simply create unnecessary hurdles in the form of delayed or denied care for patients.

Unnecessary prior authorizations also come at a cost to patients and the health care system.

PRIOR AUTHORIZATIONS THE ANNUAL COST TO ONE TEXAS PRACTICE

- **\$525,000** in Capital & Employee Costs
- **9** Full-Time Employees
- **50%** of a Manager's Time



TSAOG Orthopaedics in San Antonio estimates the \$525,000 cost for 2020, which is based on 30,000 order sets related to orthopaedic surgery, imaging and procedures. The practice indicated that the \$525,000 may likely be higher.

TSAOG Orthopaedics indicated that 97 percent of the 30,000 order sets were never denied. TSAOG Orthopaedics' team indicated that the remaining 2 percent were ultimately approved after re-examining the denials. Only 1 percent of the 30,000 claims in 2020 were ultimately denied.

States jump into fight over prior authorization requirements



Arielle Dreher

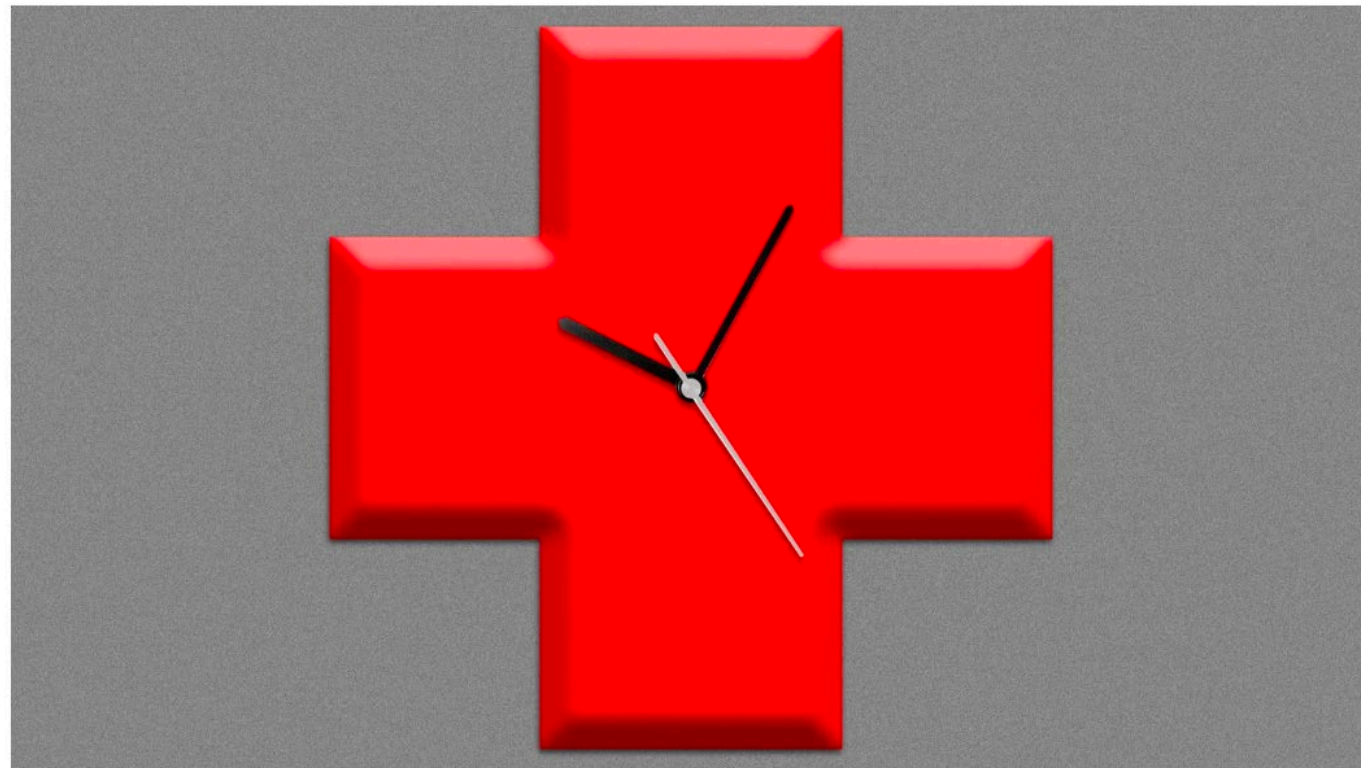


Illustration: Natalie Peeples/Axios

Austin

Workers' Comp

Designated Doctors

2023 activity.



Austin & Washington

Hospitals & ASCs

Site Neutral Payments

Austin & Washington

Migration to Outpatient/ASCs

Washington





Texas
Hospital
Association

Texas: Don't Dismantle Outpatient Hospital Care

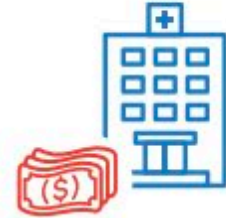
FACILITY FEES ARE THE HOSPITAL PAYMENT. **THEY ENSURE PATIENT HEALTH & ACCESS TO CARE.**

Hospital outpatient payments (so-called "facility fees") are a critical part of paying for a patient's overall care. They keep outpatient clinics open and available to Texans as a lower-cost, convenient option for health care.



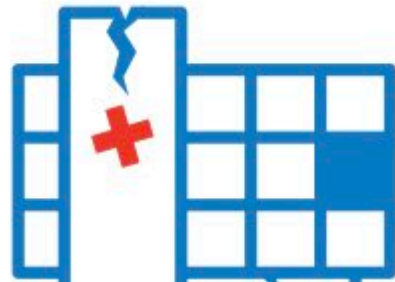
PROFESSIONAL FEE
Pays for the Doctor

Mammograms. Biopsies. ENT Procedures. Lab Work. Colonoscopies. X-Rays. All of those outpatient services – and many others – are offered in outpatient clinics run by Texas hospitals. These outpatient services are at risk of going away under a bill that would eliminate Texas hospitals' ability to collect facility fees.



FACILITY FEE
Pays for Everything Else

Dismantling hospital outpatient payments would dismantle access to care across Texas – particularly for low-income residents, underserved populations, seniors and people in rural communities who rely on outpatient care.



**69% OF TEXAS HOSPITALS
WOULD CLOSE
OUTPATIENT CLINICS IF
THEIR PAYMENTS WERE**

Austin & Washington

Prescription Drugs

DEA Regulation

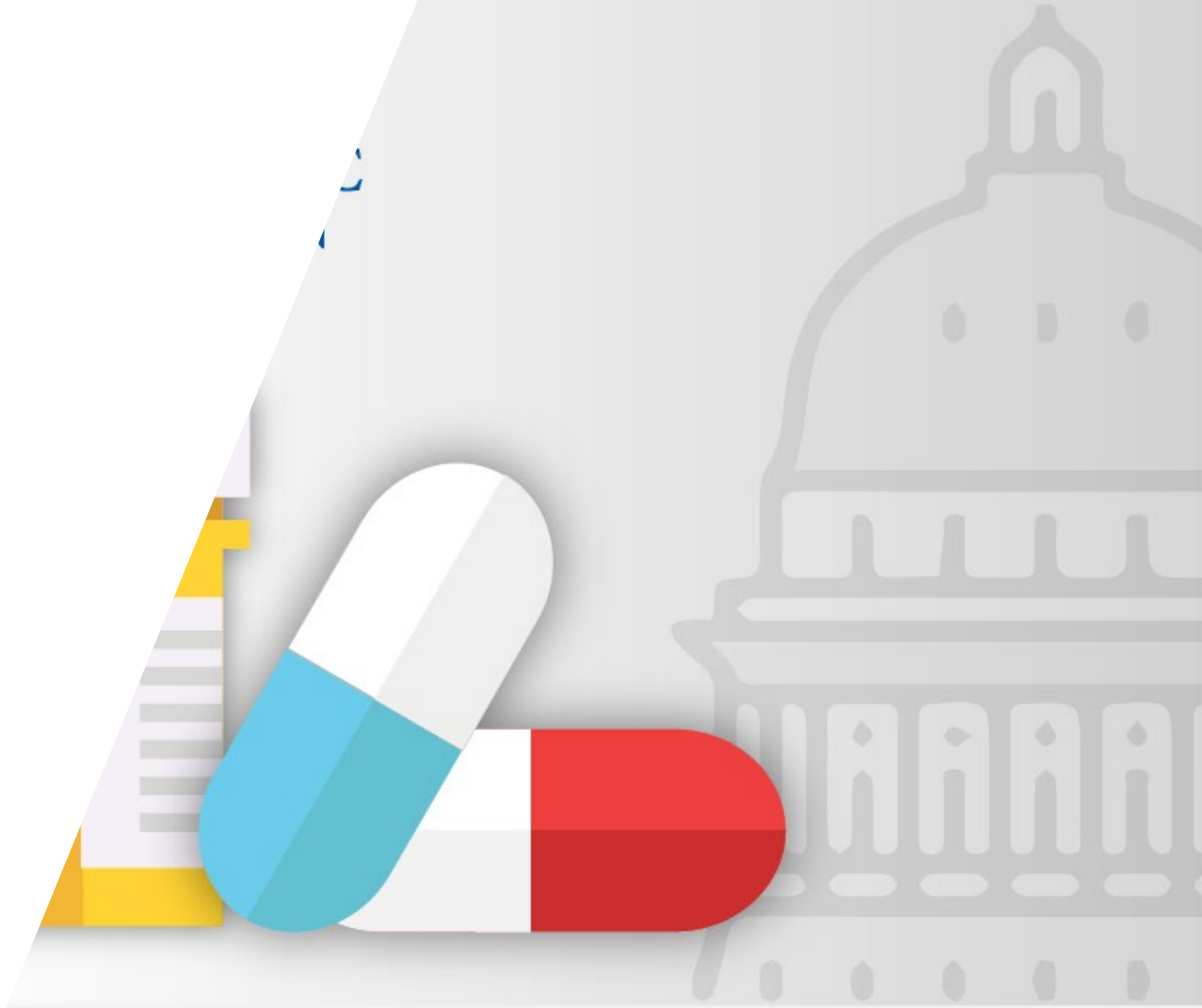
TOA Features Two Hours of CME

PMP Funding

2023 Texas Legislature

Opioid Regulation in Austin

TOA Made the Decisions in 2019



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.



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SPARENCY

Austin & Washington

Transparency

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tempor invidunt ut labore et dolore magna
aliquyam erat, sed diam voluptua. At vero
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AS
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Austin & Washington

Scope of Practice

Podiatry

Ankle: Texas and One Other State

Spine

A Battle Within Medicine?

Physical Therapy

Direct Access

Athletic Trainers

Battles with Physical Therapists





An Orthopaedic Surgeon Physician | MD/DO

- 4 years of medical school. (MD/DO)
- 5-year orthopaedic residency.
- 1-year fellowship completed by most foot/ankle orthopaedic surgeons.

A Podiatrist Not a Physician | DPM

- 4 years of podiatry school. (DPM)
- 3-year podiatric residency. (Recently became a uniform requirement.)

A Podiatrist Is **Not a Physician**

A Podiatrist Is **Not an Orthopaedic Surgeon**

Under Texas law, only an MD or DO is a physician. A physician practices medicine, which is defined by the Medical Practice Act.

A podiatrist (DPM) is not a physician. Instead, the Medical Practice Act features a very narrow carve out for podiatrists, which allows podiatrists to perform services within their scope of practice the foot.



WHAT IS A **DOCTOR**?

WHAT IS A **PHYSICIAN**?



ONLY AN **MD/DO** IS A
PHYSICIAN IN TEXAS



Texas Law: Healing Art Identification Act

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 2023 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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2024 Leadership Conference

April 4-6, 2024 | Omni PGA Frisco Resort

