

# ***Final Report - 2009 Legislative Session***

TSHP's Lobbyist **Brad Shields** has prepared the following report on **pharmacy** and **other** important legislative issues from the recent session of the Texas Legislature. TSHP's **#1 legislative priority – SB 381**, which allows **pharmacists to sign prescriptions** when working under protocols – **passed**. **HB 1924**, which TSHP took an active role in helping to mold into a piece of **progressive legislation** that deals with pharmacy services in small and rural hospitals also passed in a **compromise version**. TSHP also supported a number of other measures throughout the session, including lowering the **age** of patients who pharmacists can **administer flu** vaccines to **seven**, and an amendment that will require **Medicaid** to **reimburse pharmacists** for the administration of immunizations to the same extent that it reimburses physicians.

## ***New Legislative Leadership....***

The 81<sup>st</sup> Regular Session of the Texas Legislature is over and the deadline for the Governor's vetoes has passed. The beginning of this session welcomed over **20 new legislators** to town as well as a **new Speaker** of the House. **Joe Straus** (R-San Antonio) defeated then Speaker Tom Craddick (R-Midland) prior to the beginning of session in the first real Speaker's race in many years. Speaker Straus' victory can be credited to the support of the House Democrats and 10-12 moderate Republicans. His first duty as Speaker was to make Rep. **Craig Eiland**, a democrat from Galveston the new **Speaker Pro-Tem**. The new committee chairmanships were balanced along party lines, which accurately reflect the makeup of the Texas House of Representatives (76Rs/74Ds).

The Texas Senate did not experience much turnover or change in leadership from previous sessions. **Lt. Governor David Dewhurst** currently oversees a chamber of 19 Republicans and 12 Democrats. The new additions this session were two female Senators, Wendy Davis (D-Ft. Worth) and Joan Huffman (R-Houston).

## ***A Record Number of Bills....***

Approximately **12,226 bills** and resolutions were filed during this regular session. This is almost **2,000 more** than filed in the previous session of **2007** which was a previous record year for filing. New speaker, new committee chairs, and this record number of bills created quite a large challenge for lawmakers in the remaining months of session.

## ***The National Economy impacts Texas....***

At the beginning of the session, Comptroller Susan Combs announced her revenue estimate which resulted in the state having **\$9 billion less** to spend for the upcoming biennium than originally thought. Even with this gloomy outlook, the budget was able to fund \$10 billion in hurricane damages without touching the

"Rainy Day Fund", yet still spending almost 2% less of Texas Taxpayer dollars than last session. The Federal Stimulus funds were kept in a separate article of the budget. This approach limits the use of stimulus money to only one-time purchases and construction projects. This way the Stimulus money cannot be used to fund on-going or recurring services

### ***Major Legislative Issues....***

There were some high profile bills that were able to pass during the regular session. One very important one was **increasing the deduction on the state's business franchise tax to \$1 million**, freeing almost 40,000 taxpayers from that tax. Another was **increasing the tax on smokeless tobacco**; these monies will be used to pay for the business tax cut and to repay student loans of doctors who agree to practice for a period of time in underserved communities. Another success was a major bill setting up a system so that the state's second-tier universities can compete to become Tier 1 schools on par with the University of Texas, Texas A&M and Rice. That same bill has tuition revenue bonds to rebuild university properties lost to Hurricane Ike. Major reforms were also passed to the Texas Windstorm Insurance Association which brings protection to the coastal areas if the state faces another hurricane or wind related disaster.

### ***A Very Slow Pace....***

The session overall had a slow pace which made passing legislation all the more difficult. The **Voter ID Bill** was the largest political debate of the session and resulted in the death of over 300 bills on the House floor. One of the top priorities for the Republican Party was to pass voter ID legislation requiring some type of photo ID in order to vote. Obviously, this is filled with political implications so the Democrats used every tool they could to kill it. The Senate was able to pass the bill by changing their historic "2/3rds" rule and letting this measure only need a simple majority for approval. The House of Representatives was not as successful in passing their version of a Voter ID bill. The House Local and Consent Calendar was turned into a hostage. The House Democrats decided to spend as much time as they could on each local bill. This procedure is called "chubbing" and was used for 5 straight days to delay the progress of the calendar. Due to this tactic, deadlines passed and Voter ID died on the calendar along with hundreds of other "non-partisan" bills.

### ***A Special Session this Summer....***

As predicted, Governor Perry has indicated he will be calling a special session with **speculation** that it will be in **early July**. It will be necessary to deal with the sunset date on the **Texas Department of Transportation** and the **Texas Department of Insurance** sunset bills that did not pass. We are unsure whether the special session will last a few days or last all summer.

## ***Pharmacy Related Bills That Passed.....***

**HB 19 by Rep. Leibowitz/Sen. Zaffirini**

Requires a prescription dispensed by a Class A or Class E pharmacy to include expiration dates on the label if not dispensed in the manufacturer's original packaging and allows the State Board of Pharmacy to adopt rules requiring a label to include "Do not flush unused medications or pour down a sink or drain."

**HB 448 by Rep. Hopson/Sen. Carona**

Requires the health department to implement a provider choice system for the children's vaccine program.

**HB 1138 by Rep. Shelton/Sen. Davis**

Requires that additional information to be included on a pharmacy benefit identification card and requires certain information to be located on the front of the card.

**HB 1357 by Rep. Isett/Sen. Deuell**

Licenses and regulates freestanding emergency medical care facilities.

**HB 1409 by Rep. Hopson/Sen. Nichols**

Authorizes a pharmacist to administer an influenza immunization to a child age seven years of age or older without a physician's authorization, according to protocols established by the Texas Medical Board.

**HB 1924 by Rep. Heflin/Sen. Seliger**

Defines a "rural hospital" as fewer than 75 beds and located within a county of less than 50,000 people and allows a RN access to the pharmacy after hours. Increases the duties of a technician when a pharmacist is accessible and allows the pharmacy board to adopt rules allowing a tech-check-tech program in Class C pharmacies. HB 1924 also allows the pharmacy board to adopt rules relating to prospective and retrospective reviews after September 1<sup>st</sup>, 2011.

**HB 1966 by Rep. Davis/Sen. Nelson**

Requires the Health and Human Services Commission to develop an electronic prescribing implementation plan under the vendor drug program for Medicaid and the children's health insurance program (CHIP) to improve patient safety and standardize electronic prescribing systems used in the program.

**HB 2030 by Rep. Zerwas/Sen. Deuell**

Requires the HHSC to take specific steps to strengthen the Medicaid Drug Utilization Review Program and requires HHSC to implement additional retrospective drug use reviews, improve the evaluation of program activities, and monitor and publish certain prescription drug data. The bill prohibits members of the Medicaid Drug Utilization Review board from having a contractual relationship, ownership interest, or other conflict of interest with a pharmaceutical manufacturer or labeler or with an entity engaged by HHSC to assist in the administration of the Medicaid Drug Utilization Review Program.

**HB 2163 by Rep. Turner/Sen. Uresti**

Requires a study regarding the provision of certain psychotropic medications through the Medicaid vendor drug program to children younger than 16 years of age.

**HB 2808 by Rep. Thompson/Sen. West**

Prohibits a licensing agency from considering a person to have been convicted of an offense if the person has completed deferred adjudication.

**SB 291 by Sen. Nelson/Rep. McReynolds**

Specifies that a rule requiring a hepatitis B vaccination for students may apply only to students enrolled at an institution of higher education in a course of study involving potential exposure to human or animal blood or bodily fluids.

**SB 347 by Sen. Nelson/Rep. Kolkhorst**

Authorizes the state DSHS to exchange immunization records stored in ImmTrac, the state's immunization registry, with other state and local health departments during disasters or emergencies involving evacuations or relocations.

**SB 381 by Sen. Van de Putte/Rep. Hopson**

Authorizes a physician to delegate the implementation or modification of a patient's drug therapy, including the authority to sign a prescription drug order for dangerous drugs, to a qualified pharmacist in a hospital or clinic affiliated with a hospital or academic institution. The bill requires the Texas State Board of Pharmacy to provide on its Internet website a list of pharmacists authorized to sign prescriptions and the name of the pharmacist's delegating physician.

**SB 531 by Sen. Patrick/Rep. Zerwas**

Requires HHSC, if cost-effective and feasible, to contract to expand the acute care Medicaid billing coordination system to process claims for all other health care services provided through the Medicaid program in the manner claims for acute care services are processed by the system. An **amendment** was added to require that pharmacists be reimbursed by Medicaid for the administration of immunizations to the same extent that Medicaid reimburses physicians.

**SB 532 by Sen. Patrick/Rep. Coleman**

Expands delegated prescriptive authority for physician's assistants and nurse practitioners. The bill also increases the distance allowed, from 60 to 75 miles, between an alternate site and a delegating physician's primary residence or practice site. The bill authorizes the Texas Medical Board to waive limitations on the number of physician assistants or advanced practice nurses, mileage, and on-site supervision requirements.

**SB 646 by Sen. Van de Putte/Rep. Kolkhorst**

Many states have begun exploring data mining, or the buying and selling of patient-identifiable and practitioner-identifiable information. S.B. 646 relates to a study regarding the confidentiality of prescription information.

**SB 704 by Sen. Nelson/Rep. Kolkhorst**

Increases PBM transparency & mail order parity by requiring a state agency on request of another state agency to disclose information relating to the prices charged in connection with pharmacy benefit manager services.

**SB 904 by Sen. Williams/Rep. McReynolds**

Authorizes a prescribing practitioner to issue multiple prescriptions for up to a 90-day supply of a Schedule II controlled substance under certain conditions.

**SB 911 by Sen. Williams/Rep. Hamilton**

Prohibits a pain management clinic from operating in Texas unless the clinic is certified. The bill requires the Texas Medical Board to adopt certain rules to ensure quality of patient care and personnel requirements for the clinic, including requirements for a physician who practices at a clinic.

**SB 1127 by Sen. Van de Putte/Rep. Hopson**

Provides that all reports, formulas, and test results of samples of products compounded by pharmacies obtained by the board are confidential and are not public information, but authorizes the board to disclose the confidential information under certain circumstances.

**SB 1645 by Sen. Van de Putte/Rep. Hopson**

Requires the Health and Human Services Commission to study the feasibility of establishing separate reimbursement under the Medicaid vendor drug program for certain patient care services provided by specialty pharmacies. **An amendment was added** to make changes to the state's current "pedigree" law regulating the normal distribution channel of prescription drugs.

**SB 1853 by Sen. Van de Putte/Rep. Hopson**

Amends current law relating to disciplinary actions regarding a pharmacy technician or pharmacy technician trainee to make that authority consistent with standards for pharmacists.

**SB 2423 by Sen. Deuell/Rep. Gonzalez-Tourelles**

Amends current law relating to the definition of "discount health care program" and "discount health care program operator" to include a program or operator who has access to patient information in an effort to protect the information of patients and providers during prescription processing in certain discount health care programs. **An amendment was added** to add increased regulation and disclosure of PBMs.

***Pharmacy Related Bills that Did-Not Pass***

HB 96      Brown, Fred    Relating to compounded prescription drugs dispensed by a pharmacist.

HB 506     Howard, D.      Relating to the establishment and implementation of a

		school-based influenza vaccination pilot program.
HB 519	Giddings	Relating to the establishment of a school of pharmacy in the city of Dallas by the University of North Texas System.
HB 844	Martinez	Relating to health benefit plan coverage for certain prosthetic devices, orthotic devices, and related services.
HB 991	Alvarado	Relating to disclosure by a pharmacy of a list of prescription drug retail prices.
HB 2293	Gattis	Relating to the delivery of prescription drugs for certain state health plans by mail order.
HB 3465	Keffer	Relating to persons considered practitioners for purposes of prescribing certain drugs and devices. Would have added Acupuncturists, Chiropractors, LPC's and Psychologists to the definitions of practitioners who may prescribe and administer dangerous drugs.
HB 3667	Hopson	Relating to allowing health care providers to provide services across state lines in catastrophic circumstances.
HB 3719	King, Susan	Relating to preferred drug lists, including confidentiality, supplemental rebate, prior approval and publication requirements.
HB 4393	Farias	Relating to the creation of a pilot program to provide electronic prescribing tools to rural physicians.
SB 151	Ellis	Relating to the disclosure of certain expenditures by prescription drug manufacturers.
SB 296	West	Relating to the disclosure of certain payments or other transfers of value by manufacturers of prescription drugs, medical devices and medical supplies.
SB 2422	Deuell	Relating to the dispensing of drugs by physicians. Would have allowed a physician to dispense all dangerous drugs and controlled substances and charge the patient for the drugs.