



BlueCross BlueShield
of Texas

Blue Cross and Blue Shield of Texas

LEGISLATIVE DIGEST

Issue 14 – April 10, 2023

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2024-2025 BUDGET DEBATED IN THE HOUSE

The most important day in each chamber during the session is the day the budget bill, or the General Appropriations Bill, is debated. The legislation is the state’s budget for a two-year period (biennium). For the House, that day is April 6. At the *Digest* deadline, the House budget debate was not concluded but a summary of select [budget items](#) is provided below.

Public School Funding

- Funding of \$60.3 billion is provided for state aid to school districts and charter schools through the Foundation School Program (FSP), which represents a \$12.5 billion increase from the 2022–23 biennium. The FSP funds public schools through a series of formulas prescribed by the Legislature that determines how much local and state funding each school district receives. Districts with low property values require more state support, while districts with higher property values require less.

Medicaid

- Funding for the 2024–25 biennium includes \$79.3 billion. This amount is a decrease of \$5.5 billion overall, but a \$2.5 billion increase in General Revenue Funds, compared to 2022–23 biennial levels. General Revenue Funds include the nondedicated portion of the General Revenue Fund, which is the state’s primary operating fund.
- Less favorable federal medical assistance percentages (FMAP), combined with the anticipated loss of the 6.2-percentage-point increase authorized by the federal Families First Coronavirus Response Act, result in a lower proportion of the program being funded with Federal Funds.
- The 2022–23 biennial amounts for Medicaid assume supplemental funding to address supplemental needs to complete fiscal year 2023 expenditures.

Behavioral Health

- Funding includes \$6.2 billion for non-Medicaid/Children’s Health Insurance Program (CHIP) behavioral health services. Funding supports programs at 27 agencies and includes the following areas:
 - Funding for inpatient client services at state hospitals and community hospitals
 - Outpatient services provided through local mental health authorities and local behavioral health authorities

- Substance abuse prevention, intervention, and treatment services for adults and children
- Mental healthcare and substance abuse treatment for incarcerated offenders
- Mental healthcare services for veterans

Teacher and Retiree Health Benefits

- In addition to active employee health benefits funded by the FSP, active employee health insurance funding of \$875.4 million in General Revenue Funds is provided to maintain TRS-ActiveCare premium increases at 5% per year in the 2024–25 biennium.
- Retiree health insurance funding totals \$960.2 million to provide the required state contribution to TRS-Care of 1.25% of public education payroll. Funding levels are anticipated to be sufficient to maintain current TRS-Care premiums and benefits for the 2024–25 biennium.

State Employee Salary Increase and Health Benefits

- Funding of \$1.8 billion provides for a 5% increase in state employee salaries. The amount includes funding for salaries and benefits.
- Funding of \$4.1 billion provides for the state contribution for group insurance benefits for general state employees, retirees and their dependents. This funding is an increase of \$265.5 million, prompted by assumed active and retired member growth. Funding does not provide a per-member contribution rate increase and instead relies upon spending from the contingency reserve fund, which has achieved historically high fund balances due to health plan contract savings.

Texas has four constitutional limits on spending:

- The balanced budget limit, which is commonly referred to as the pay-as-you-go limit
- The limit on the rate of growth of appropriations from certain state taxes, commonly referred to as the tax spending limit
- The limit on welfare spending
- The limit on tax-supported debt.

In addition, Texas has a statutory limit on the growth of consolidated General Revenue appropriations (CGR), commonly referred to as the CGR limit.

At \$302.6 billion, the two-year proposed House budget comes in well under the amount the Legislature has available to spend. A fact not lost on the House members who pre-filed a staggering [388 amendments](#) the chamber debated on budget day.

HOUSE INSURANCE APPROVES LIMITATIONS ON “WHITE BAGGING”

As the number of hearings remaining in which House committees can hear House bills quickly shrinks, the Insurance Committee considered a full agenda and voted favorably numerous bills of interest to the insurance industry.

Bills voted out of committee heard previously:

- Committee substitute for [House Bill 1647](#) by Rep. Cody Harris, (R-Palestine), limits the prohibition on “white bagging” to clinician-administered drugs and allows health plans to continue the practice in connection with hospitals and facilities. “White bagging” is the distribution of patient-specific medication from a specialty pharmacy to a physician’s office, hospital or clinic for administration.

- [House Bill 895](#) by Rep. Sergio Munoz, (D-Mission), prohibits the use of extrapolation or sampling to determine contractual underpayments and overpayments to participating physicians or health care providers.
- [House Bill 468](#) by Rep. Shawn Thierry, (D-Houston), extends current hearing aid and cochlear implant mandate for children from age 18 to age 25.
- Committee substitute for [House Bill 755](#) by Rep. Julie Johnson, (D-Carrollton), prohibits a health plan from requiring more than one prior authorization annually for a prescription drug to treat an autoimmune disease or hemophilia or other blood-related disease. TAHP is neutral on the committee substitute.
- [House Bill 1592](#) by Rep. Tom Oliverson, M.D., (R-Cypress), allows self-insured or self-funded plans to opt-in to the out-of-network dispute resolution process enacted in 2019 as part of [Senate Bill 1264](#).

Among the bills considered by the committee and left pending:

- [House Bill 1073](#) by Rep. Lacey Hull, (R-Houston), expands use of value-based contracting between health plans and health care providers, including PPOs and multiple employer welfare arrangements (MEWAs).
- [House Bill 3414](#) by Rep. Oliverson expands the entities that would have access to the data in the Texas All Payor Claims Database (APCD). The governor would appoint the 12 members of the APCD advisory group, rather than the Center for Healthcare Data at The University of Texas Health Science Center at Houston (Center). As the database administrator, the Center designs, builds and secures the database infrastructure and determines the accuracy of the data submitted for inclusion.
- [House Bill 3848](#) by Rep. Oliverson directs TDI to set minimum access standards for nonemergency transport services provided by an emergency medical services provider. HMOs and insurers will not be able to deny nonemergency care because it was provided by an emergency medical care provider, however, it does not preclude coverage denials. TAHP is opposed to the bill as filed but would be neutral with the addition of surprise billing protections and assurances that network adequacy waivers would be available if contracting at affordable market rates is not possible.
- [House Bill 2414](#) by Rep. James Frank, (R-Wichita Falls), expands the availability of value-based contracting between health plans and health care providers. The bill permits value-based risk sharing contracts between self-funded employee welfare benefit plans and providers. It allows HMOs and health plans to use cost-sharing incentives for the use of certain providers. TAHP testified in support of HB 2414 as an important step to encouraging patients to shop for high-value health care services.
- [House Bill 4367](#) by Rep. Phillip Cortez, (D-San Antonio), requires health plans and HMOs — except in instances where a provider has materially misrepresented or substantially failed to perform the proposed services — to not deny or reduce payment for preauthorized services based on:
 - Medical necessity or appropriateness, or
 - Eligibility or coverage if the service is provided before the 31st day after preauthorization

An HMO or health plan may not require that a provider request verification. TAHP is opposed to the bill as filed.

HEALTH CARE REFORM COMMITTEE TAKES UP MEDICAID BILLS

The House Health Care Reform Committee considered two major Medicaid bills at its April 6 hearing. These were the only bills on the agenda. Both were left pending.

- [House Bill 1283](#) by Rep. Oliverson repeals the sunset date for the Medicaid prescription drug list (PDL) in current statute and allows the Health and Human Services Commission (HHSC) to remain in control of the vendor drug program. Medicaid MCOs and PBMs would continue to operate as they do today. TAHP testified as neutral on the bill but is discussing its concerns with the bill author.
- [House Bill 3286](#) by Rep. Stephanie Klick, (R-Fort Worth), establishes a process for requesting exceptions to step therapy protocol for Medicaid MCO members like those in the commercial market. According to HHSC, the bill could result in a reduction of federal and supplemental rebates due to a shift towards higher net cost nonpreferred drugs. Step therapy protocol requires a patient to use a prescription drug/sequence of drugs covered by the plan before an MCO will cover a drug recommended by the physician that isn't covered. Exceptions include when the drug:
 - Is contraindicated
 - Will likely cause an adverse reaction
 - Is expected to be ineffective
 - Was previously prescribed and caused a reaction, was ineffective or had a diminished effect

There are also exceptions if the drug is not in the best interest of the member or if the member is stable on the drug. MCOs must respond to provider exceptions within 72 hours or 24 hours if the drug required by step therapy is expected to cause harm or serious death of the member. Finally, the bill requires MCOs to post their preferred drug lists online. TAHP testified in support of the bill.

The committee voted favorably on numerous bills including:

- [House Bill 2180](#) by Rep. Cody Harris requires a member's prescription drug cost-sharing amount be calculated at the point-of-sale and the rebate used to reduce the amount the member pays at checkout. The bill applies to all group and individual health benefit plans, including small group coverage. TAHP opposes HB 2180 because the mandate limits how employers and health plans can use rebate savings to lower costs for everyone. As a result, it would increase the overall cost of prescription drug coverage. The vote was six in favor, one opposed and four absent.
- Committee substitute for [House Bill 3317](#) by Rep. Frank creates federally qualified health center (FQHC) primary care access programs. The programs would provide primary health care services to employees of participating employers who are located in the service area of an FQHC and other uninsured or underinsured groups.

BILLS OF INTEREST

- Committee substitute for [House Bill 1599](#) by Rep. John Bucy, III, (D-Austin), was passed by the House on April 4 and sent to the Senate. The bipartisan bill requires HHSC to establish an "express lane" option for determining a child's eligibility for CHIP or Medicaid. HHSC may rely on findings made by an express lane agency, defined as a governmental entity that determines eligibility for assistance under one of the following state public assistance programs:

- CHIP
- Medicaid
- Temporary Assistance for Needy Families (TANF)
- Nutritional assistance programs, including SNAP, or
- any other such programs identified by HHSC
- [Senate Bill 1275](#) by Sen. Kelly Hancock, (R-North Richland Hills), was considered by the Senate Health and Human Services (HHS) Committee on April 5. Sen. Hancock stated that there is a committee substitute. The committee substitute prohibits health care providers from charging "hospital facility fees" for services not performed on a hospital campus. Free-standing emergency rooms may not charge a facility fee for non-emergency-related services. The bill was left pending.
- Also considered in Senate HHS, [Senate Bill 622](#) by Sen. Tan Parker, (R-Flower Mound), requires disclosure of a health plan's list of covered generic and brand-name prescription drugs, the member's eligibility, cost-sharing information and applicable utilization review requirements. The bill specifies that the health plan must respond to requests in real time and cannot restrict a prescribing provider from communicating information about the drug or penalize a provider for disclosing or prescribing lower cost alternative drugs.

TIDBITS

- Two bills that would do away with a loophole that benefits long-serving legislators have been voted out of their respective committees. [Senate Bill 1509](#) and [House Bill 3493](#) repeal a provision passed in 2021 that allowed state employees and the elected class who have greater than 43.5 years of service, are over the age of 60 and have reached 100% of their annuity to increase their annual pay by \$140,000 by dipping into their pension while continuing to draw a state salary.
But both the Senate and House version of the bill would “grandfather” in lawmakers who have already opted into the benefit. Only three legislators currently qualify for the benefit — Rep. Tom Craddick, (R-Midland), Rep. Senfronia Thompson, (D-Houston) and Sen. John Whitmire, (D-Houston) — though it is unknown if any of them have done so.
- For the first time, the Comptroller's office, in the 2024-25 Biennial Revenue Estimate (BRE), projects that the [Economic Stabilization Fund](#) — commonly referred to as the “Rainy Day Fund” — in 2025 will hit the upper limit on its balance, which in each biennium can be no more than 10% of the amount of certain revenue deposited into the General Revenue Fund during the previous biennium. Record growth in tax revenue collections in 2022 contributed to a projected \$32.7 billion ending balance in 2022-2023, aided by an economic rebound after pandemic restrictions were lifted, increases in energy prices and increased inflation.
- In its own version of a “March Madness” championship bracket, the magazine *Texas Monthly* [pitted Texas brands](#) against each other and asked readers to vote to determine which one came out on top. Divided into four categories — restaurants, products, stores and wild cards — the “final four” came down to Whataburger, which beat out Dairy Queen; H-E-B bested Buc-ee's; Blue Bell held off Dr Pepper; and Southwest Airlines came out ahead of Schlitterbahn.

The ultimate Texas brand? H-E-B! It wasn't even close. H-E-B iced the runner-up, Blue Bell. Voters preferred the supermarket by a margin of more than two to one. The grocer fried Whataburger by nearly as much and out-beavered Buc-ee's by almost three to one.

TIMETABLE

Important dates related to the 88th legislative session:

- Jan. 10, 2023 88th Legislature convenes at noon
- May 23, 2023 Last day for House to pass most Senate Bills on second reading
- May 24, 2023 Last day for the Senate to pass bills
- May 28, 2023 Last day for both chambers to adopt conference committee reports or accept the amendments from the other chamber
- May 29, 2023 Last day of 88th Regular Session
- June 18, 2023 Last day governor can sign or veto bills passed during regular session
- Aug. 28, 2023 Bills without specific effective dates or immediately effective become law