



July 11, 2007

Dear HAT member,

During the 2007 legislative session, much attention was focused on raising the sales tax on cigarettes, lowering the sales tax on grocery foods and overhauling the funding formula for state spending on education.

On behalf of Tennessee's not-for-profit hospitals, HAT worked diligently to provide input to legislators and administration officials on seven key action areas important to not-for-profit hospitals: Disproportionate Share Hospital Payments, TennCare and Charity Care, Tax Exemptions, Fair Marketplace, Community Benefit and Mission, Tort Reform and Health Care Policy and Regulations.

These issues served as the focus of HAT's legislative agenda designed to protect the viability of Tennessee's not-for-profit hospitals in an environment of increasing pressure due to the rising cost of uncompensated care and the loss of revenue from competition from other types of providers and physicians.

The \$28 billion state budget approved in mid-June included funding to support hospitals with high levels of unreimbursed TennCare and charity care, as well as a new source of ongoing funding to help compensate for unreimbursed care provided by the state's trauma care network.

HAT also worked cooperatively with the Tennessee Hospital Association to effectively and efficiently deliver our message on a number of issues of common interest. This collaboration included enhancing the oversight and regulation of office-based surgery by physicians, revising the definitions for bad debt, charity care and indigent care used in the Joint Annual Report by Hospitals and allowing for an increase in the fees for copying and mailing medical records.

This year marks HAT's 25th anniversary. Since its inception in 1982, HAT's strong presence on Capitol Hill has advanced sound public policy and promoted the importance and value its members as the foundation of health care services in Tennessee.

HAT's success is due directly to your support and involvement. Thank you for your continued commitment to our collective efforts to communicate our message to legislators and other state officials on issues that impact not-for-profit hospitals.

Sincerely,

A handwritten signature in cursive script, appearing to read 'Paige'.

Paige L. Kisber
President

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2007 LEGISLATIVE SUMMARY

DISPROPORTIONATE SHARE HOSPITAL PAYMENTS

Position: HAT will work cooperatively with THA, the administration and elected officials to seek to restore a permanent Medicaid disproportionate share hospital (DSH) payment to be in place when the current TennCare waiver expires in 2007.

HAT/THA Legislation: HJR 119 (S: Haynes; H: Briley) – This legislation was introduced by the hospital associations to urge the United States Congress to reinstate a permanent DSH payment to Tennessee comparable to that received by other states. *(Adopted by the House on April 2, 2007; Adopted by the Senate on April 26, 2007.)*

Comments: Every state except Tennessee receives disproportionate share hospital (DSH) payments to help offset some of the costs providers incur caring for charity and Medicaid (TennCare) patients. In 1998, the state began distributing essential access hospital (EAH) payments in recognition of the lack of a permanent DSH payment. However, due to the massive TennCare disenrollment and the rising number of uninsured and uninsurable Tennesseans, not-for-profit hospitals continue to absorb a larger amount of charity care and bad debt. While these losses have an impact on all hospitals, they have had a more acute effect on the safety net hospitals, the trauma care network and many rural hospitals. HAT advocated for HJR 119 and stressed the urgency of this issue due to the unprecedented levels of uncompensated care provided by the state's hospitals. In 2005, the combined costs of unreimbursed TennCare, charity care, bad debt and medically indigent care amounted to \$1.2 billion.

TENNCARE AND CHARITY CARE

Position: HAT will assess the impact of TennCare, health care safety net and Cover Tennessee on not-for-profit hospitals, give input to the administration and the General Assembly on legislative and regulatory issues and initiate legislation as needed.

HAT Legislation: SB 557/HB 1624 (S: McNally; H: Overbey) – This is a caption bill relative to TennCare to be used as a vehicle if legislative action to address a TennCare issue is deemed necessary. *(Assigned to the General Subcommittee of the Senate Commerce, Labor and Agriculture Committee. Caption bill held on House clerk's desk.)*

Comments: HAT represented the interests of not-for-profit hospitals during meetings with the governor, administration officials and legislators on funding for essential access hospital and additional charity care payments, restoration of a permanent Medicaid disproportionate share hospital (DSH) payment, health care safety net measures, and Cover Tennessee.

In February, HAT coordinated a meeting between the Board of Directors and Tennessee Department of Finance and Administration Commissioner Dave Goetz to discuss issues and concerns related to CoverTN, the administration's new limited benefit insurance program for low-income workers.

The final state budget included \$100 million for essential access hospital payments and an additional \$25 million in non-recurring supplemental payments for hospitals with high levels of charity care and \$5 million for critical access hospitals. Other health-related budget items included \$34.6 million for the development of the state health plan and to fund the governor's e-health initiative to improve efficiencies of health care data exchange; \$97 million for the Cover Tennessee program, \$15 million for tobacco prevention and \$9 million for grants to community and faith based clinics and federally qualified health centers to help cover the costs of visits by uninsured patients.

HAT/THA Legislation: SB 1010/HB 283 (S: Herron; H: Overbey) – This legislation was introduced by the hospital associations to add inpatient rehabilitation as a covered service under TennCare. (*Public Chapter 409, effective June 19, 2007.*)

Comments: Hospital representatives worked with TennCare officials to reach an agreement to use this legislation as a vehicle to revise TennCare provisions for out-of-network reimbursement for emergency care. With this change, state law would mirror federal guidelines that require Medicaid programs to reimburse out-of-network hospitals at the average contract rate that applies for general acute care hospitals.

HAT/THA Legislation: SB 559/HB 697 (S: McNally; H: McCord) – This legislation revises the definition of “uncompensated care” for purposes of hospital reporting on the Joint Annual Report of Hospitals to use standard accounting principles to classify accounts as bad debt or charity. (*Public Chapter 281, effective June 6, 2007.*)

Comments: The intent of the legislation is to update the definitions for bad debt, charity care and medically indigent used in the Joint Annual Report of Hospitals to be more uniform with Medicare rules and standard accounting principles. As enacted, the legislation sets up criteria for assigning uncollected charges as bad debt and spells out guidelines for determining a patient's indigence or medical indigence.

The hospital associations also engaged in efforts to influence the outcome of measures that sought to mandate statewide charity care policies for hospitals and to change current state law regarding collections from uninsured patients. Hospital representatives worked with the sponsors to accept a proposal that limits charges to an uninsured patient to 175 percent of the cost for the service provided as calculated using the hospital's cost-to-charge ratio in the most recent Joint Annual Report of Hospitals. (*Public Chapter 419, effective July 1, 2007.*)

HAT/THA Legislation: SB 1503/HB 1615 (S: Burchett; H: Overbey) Introduced to provide a funding sources to support Tennessee's trauma care network, this legislation is the continuation of an effort that began in 2005 to seek additional funding to help compensate trauma care centers for losses due to increases in operational costs and adult self-pay admissions resulting from the TennCare disenrollment and the state's uninsured population. (*SB 1503/HB 1613; signed by the governor on June 26, 2007.*)

Comments: The hospital associations worked cooperatively to increase awareness about the services provided by Tennessee's trauma care network and the current operational and financial challenges. Legislators first adopted an amendment that created the structure for the "trauma system", including designated Level I, II and II trauma centers, comprehensive regional pediatric centers and all other acute care hospitals that provide a level of trauma care at least equivalent to a Level III trauma center. However, a second amendment that created a revenue stream through the assessment of various vehicular fees and fines raised concerns. Ultimately, two cents of the 42 cent increase in the sales tax on cigarettes was earmarked to provide additional funding for trauma care.

TAX EXEMPTIONS

Position: HAT will oppose any legislation which threatens the tax-exempt status of not-for-profit hospitals, develop coalitions and assist in efforts to block the movement of any measure which has a negative impact on hospitals' tax exemptions.

HAT Legislation: SB 569/HB 471 (S: McNally; H: Fitzhugh) -- This is a caption bill to protect not-for-profit hospital tax exemptions. (*Assigned to the General Subcommittee of the Senate Finance, Ways and Means Committee. Held in the House Finance, Ways and Means Budget Subcommittee.*)

Comments: Activity around taxes in 2007 centered on increasing the sales tax on cigarettes and decreasing the sales tax on food. Originally proposed by the governor as a 40-cent per pack increase directed primarily toward education funding, the legislature ultimately raised the sales tax to 42 cents, earmarking two cents of the revenues to support trauma care services in Tennessee. Legislators also approved a half-cent decrease in the sales tax of food, citing the measure as a form of tax relief made possible by the state's far better-than-expected revenue growth and over collection of taxes.

Although some legislators indicated an interest in directing revenue from the sales tax increase on cigarettes to health care, HAT maintained a neutral position on the issue. Instead, HAT supported a \$30 million legislative budget amendment for hospital charity care losses that the administration ultimately incorporated into its budget proposal.

FAIR MARKETPLACE

Position: HAT will support legislative and regulatory efforts that enable not-for-profit hospitals to effectively operate in a marketplace that recognizes the value of their commitment to their communities through the charitable services and community benefit programs they provide. This includes preserving the Certificate of Need (CON) process, providing input into the development of a state health plan and opposing efforts to approve investor-owned specialty hospitals and diagnostic clinics (which are not directly owned by members) that would financially undermine full-service hospitals.

HAT Legislation: SB 749/HB 1623 (S: McNally; H: Overbey) – This is a caption bill to preserve the existence of the certificate of need process. (*Assigned to the General Subcommittee of the Senate Government Operations Committee. Referred to the House Government Operations Committee.*)

Comments: HAT opposed legislation (SB 1283/HB 1268) introduced this session to repeal the Tennessee Health Services and Planning Act of 2002 and eliminate the Health Services and Development Agency, the entity that regulates the health care industry in Tennessee through the certificate of need program. Although the House sponsor offered an amendment rewriting the bill to require the HSDA to report to the General Assembly on its activities and requiring publicly-owned facilities to report expenditures to apply for and/or oppose a CON application, the House Government Operations Committee sent the bill out with no recommendation and the House Health Care Facilities Subcommittee gave the bill a negative recommendation.

Legislation: SB 1209/HB 1056 (S: Kurita; H: DeBerry, L.) – Introduced by the Tennessee Hospital Association, this legislation addressed office-based surgery to enhance public safety by establishing specific criteria required to conduct this type of surgery. (*Public Chapter 373, effective October 1, 2007.*)

Comments: HAT worked cooperatively with THA to support negotiations between state officials, legislators and physician representatives that ultimately resulted in an agreement that placed additional patient health and safety requirements on physicians that perform Level III surgeries in their offices beyond those already adopted by the Board of Medical Examiners.

COMMUNITY BENEFIT AND MISSION

Position: HAT will oppose any legislative or regulatory proposals that challenge the value and role of not-for-profit hospitals.

HAT Legislation: SB 1992/HB 1886 (S: McNally; H: Overbey) -- This bill requires hospitals to include community benefits in patient statistical reports given to the Department of Health. (*Referred to the General Subcommittee of the Senate State & Local Government Committee. Referred to the House Health Care Facilities Subcommittee.*)

Comments: Introduced each year by HAT as a defensive measure against efforts to challenge not-for-profit tax exemptions, this legislation was not advanced this year due to the absence of any efforts to impose new taxes on not-for-profit hospitals.

HAT Legislation: SB 556/HB 1904 (S: McNally; H: Rinks) -- This bill makes some revisions to the Public Hospital Sales and Conveyance Act of 2006. (*Assigned to General Subcommittee of the Senate Commerce, Labor & Agriculture Committee. Referred to the House Health Care Facilities Subcommittee.*)

Comments: In 2006, the General Assembly enacted legislation introduced on behalf of HAT to add more oversight to the sale or conveyance of a public benefit hospital. The

Public Hospital Sales and Conveyance Act increased the authority of the attorney general to conduct a thorough and complete review open to public comment and scrutiny in order to preserve and protect the charitable assets of a public benefit hospital during a sale or conveyance to another entity or person.

As the attorney general's office incorporates the changes enacted by this law into its review process, HAT is holding this legislation as a means to further refine the process to address any issues that may arise as a result of the new provisions.

TORT REFORM

Position: HAT will work collaboratively with the Tennessee Hospital Association, Tennessee Medical Association and the State Volunteer Mutual Insurance Company on broad tort reform bills introduced this session.

Comments: HAT and other members of the Coalition for Medical Liability Reform, supported a broad tort reform bill (SB 2001/HB 1993) that addressed caps on non-economic damages, frivolous lawsuits, plaintiff attorney fees and other issues. The issue gained much momentum this year after diligent efforts by the House and Senate sponsors to craft a compromise measure. In April, the Senate approved an amended version of the bill that focused on reducing the filing of frivolous lawsuits and streamlining the disclosure of medical records.

A version that closely mirrored the Senate bill but would have allowed a statewide locality rule for medical experts reached the House floor but was referred back to the House Judiciary Committee by the sponsor after the locality rule change was deleted out of the bill. Due to the inability of the various parties to reach an agreement, the bill remained in the committee which had ended its work for the session.

HAT monitored and provided support for other measures to address medical liability reform. SB 309/HB 301 was introduced to clarify issues related to confidentiality in regard to access by hospitals to entries made in hospital patient medical records. A narrow and specific exception to the *Given's* case ruling for hospitals and hospital records, the intent of the legislation was to allow for quality assurance reviews and to permit hospitals to converse with treating physicians regarding entries made during a patient's hospital stay. The final version of the bill declared the public policy implications of effective communications between providers, addressed the issue of implied covenant of confidentiality, established procedures for noting changes or modifications to the patient's hospital records and addressed HIPPA requirements. (*Public Chapter 391, effective July 1, 2007.*)

HAT opposed legislation to increase governmental tort liability limits to cover medical expenditures for care for injuries that exceeded the current limits. The Senate sponsor presented as a model the catastrophic injury pool developed by the Tennessee Municipal League that covers medical costs up to \$1 million and allows the \$250,000 cap to be applied toward compensation for pain and suffering and economic damages. Due to the financial implications for local governments, including city or county-owned hospitals, legislators decided they needed more input on this legislation.

Sorry Works!, was presented again this year as a pilot project to provide an alternative approach to medical liability reform that would allow health care providers to promptly apologize for mistakes and offer fair settlements. HAT, along with other health care provider groups, urged legislators to concentrate on more comprehensive medical liability reform measures. The House and Senate sponsors opted to not move SB 1347/HB 1334 this year, leaving it in the committee system to be available for action in the 2008 legislative session.

HEALTH CARE POLICY AND REGULATION

Position: HAT will cooperate with the Tennessee Hospital Association to develop a unified legislative agenda on issues of common interest to the members of both organizations.

Comments: Among the bills filed on behalf of THA supported by HAT was a measure to revise to the Joint Annual Report of Hospitals to require hospitals to report for a full 12-month period unless the facility operated less than 12 months. (*Public Chapter 92, effective May 15, 2007.*)

The hospital associations also advocated for a change in the law governing civil penalties of up to \$10,000 that could be levied against health care providers for collecting payments in excess of the worker's compensation medical fee schedule. Discussions focused on a proposed amendment that would allow providers and Department of Labor and Workforce Development officials to develop new guidelines to determine how and under what circumstances these penalties may be assessed.

Although the parties did not reach an agreement on the language of the legislation, hospital representatives will continue to work with state officials on guidelines to determine when and how a notice of overpayment should be given a provider. (*Assigned to the General Subcommittee of the Senate Commerce, Labor & Agriculture Committee. Taken off notice by the House Employee Affairs Subcommittee.*)

HAT also worked with THA to represent the interests of hospitals on a number of bills that impacted clinical or professional practice, including a pilot project involving hospitals in Middle Tennessee to evaluate pulse oximetry monitoring of newborns (*SB 1164/HB 237, signed by the governor on June 27, 2007*); training and employment requirements for surgical technologists (*Enacted as Public Chapter 208, effective May 7, 2007, and Public Chapter 252, effective May 10, 2007*); and to allow for an increase in the fees for copying and mailing hospital medical records. (*Public Chapter 424, effective July 1, 2007.*)

The hospital associations provided input on legislation that would require hospitals to perform hearing screenings on all newborns and mandate insurance coverage for the testing. Hospital representatives testified that hospitals currently screen 95 percent of newborns and are working to reach a goal of 100 percent. Ultimately, the legislation failed to receive passing votes in Senate and House committees.

OTHER LEGISLATION OF INTEREST

HAT monitored legislation introduced on behalf of other entities that had the potential to impact not-for-profit hospitals. Although HAT did not take an official position on these bills, HAT representatives provided input to legislators as needed when these measures were considered.

Comments: The Tennessee Medical Association introduced legislation to address the silent PPO issue by prohibiting commercial insurance carriers from using reimbursement rates that are lower than the medical fee schedule when paying health care providers for worker's compensation claims in the absence of a contract between the carrier and the provider. The final version of the bill established disclosure and notification requirements for contracting agents that sell, lease, assign, transfer, or convey its list of contracted healthcare providers and their contracted reimbursement rates to a workers' compensation payer or another workers' compensation contracting agent and required an explanation of benefits to the entity having direct contracts regarding the discount. (*SB 445/HB 454; signed by the Governor on June 26, 200.*)

HAT closely monitored legislation introduced to allow individual physicians, physician practices and other health professionals to enter non-compete agreements to restrict a former employee's right to practice. The measure sought to address a 2005 Tennessee Supreme Court ruling that said most non-compete covenants are not enforceable against physicians, except for restrictions specifically provided for by Tennessee's corporate practice of law statute. The final version of the bill exempted emergency room physicians and radiologists and limited the covenants to no more than two years and to an area no greater than a 10-mile radius from the primary practice site or to only the facility where the individual works. The covenants would not be binding on the health care provider after six years of employment with the contracting or employing entity. (*Public Chapter 487, effective January 1, 2008.*)

HAT worked with the other health care provider groups, the TennCare Bureau and Tennessee Department of Health to oppose legislation introduced to allow the driver of a motorcycle who is 21 or older to be exempted from the current state law that mandates the wearing of a "crash" helmet. Opponents argued this exemption would lead to a higher number of deaths and serious injuries and could have a fiscal impact of \$1.9 million on state or local health plans from trauma services for uninsured motorcyclists. Although the measure passed in the Senate and was approved by the House Transportation Committee, the bill did not get scheduled for a hearing by the House Finance, Ways & Means Committee. (*Passed by Senate on April 9, 2007; Referred to the House Finance, Ways & Means Committee.*)

Legislation that sought to assess civil penalties on hospitals that fail to admit or otherwise accommodate each patient that arrives by ambulance within 30 minutes generated considerable discussion before being amended to create an advisory committee to study the issue in Shelby County. The advisory committee of hospitals, EMS providers, local government, and legislators was charged with recommending strategies to increase cooperation and efficiency of emergency care in Shelby County. (*Re-referred to the Senate Calendar Committee; Passed by the House on June 12, 2007.*)