

PART I: SUMMARY OF BILLS SENT TO GOVERNOR (JUNE 2, 2017)
JUNE 23, 2017 UPDATE: All Bills Listed Have Been Signed by the Governor

I. Medicaid-Related: Eligibility, Managed Care, Etc.

HB 3295

Klick: Moves carve-in date of TxHmL into STAR+PLUS from September 1, 2018 to September 1, 2020.

In addition to moving the transition date of TxHmL into STAR+PLUS, as returned from the Senate the bill was amended (and accepted in the House) to require that HHSC:

- Identify and evaluate barriers preventing Medicaid recipients enrolled in the STAR+PLUS Medicaid managed care program or a home and community-based services waiver program from choosing the consumer directed services (CDS) option and develop recommendations for increasing the percentage of Medicaid recipients enrolled in those programs who choose CDS,
- Study the feasibility of establishing a community attendant registry to assist Medicaid recipients enrolled in the community attendant services program in locating providers,
- Conduct a study of the provision of dental services to adults with disabilities under Medicaid program, and
- Submit to the legislature by September 1, 2018 a report on the findings of both studies.

NOTE: The above provisions were added to the bill on the Senate Floor. They were provisions included in SB 1927, a bill that died in the House.

HB 3292

Klick: Relating to temporary continuation of medical assistance (MA) for **certain individuals with IDD**.

[Companion - [SB 1132](#) (Hinojosa) was left pending in committee.]

The bill specifies that an individual who experiences a temporary increase in income of a duration of one month or less that would result in the person being ineligible for medical assistance continues to be eligible for that assistance if the individual: either receives services through an **ICF/IID or a 1915 (c) waiver program (such as HCS) or STAR+PLUS CFC**, and continues to meet the functional and diagnostic criteria for the services. To continue to be eligible for medical assistance, the person must submit an application for medical assistance not later than the 90th day after the date on which the person is determined ineligible. The bill states HHSC is required to implement this Act only if the legislature appropriates money specifically for that purpose, but also notes that if the legislature does not appropriate money specifically for that purpose, HHSC may, but is not required to, implement this Act using other appropriations available for that purpose. See "Notes" below.

NOTES:

- i) Given concerns by the Senate Health and Human Services Committee with the bill's fiscal note, the bill was amended by the committee to state that "the Act takes effect only if a specific appropriation for its implementation is provided by 85th Legislature in the budget." The House rejected the amendment and requested a conference committee. The text highlighted in yellow above reflects the outcome of the conference committee decision.
- ii) As stated in the *April 18, 2017 PPAT Information Notice*, HHSC reported it was currently working on an automated solution to address the loss of eligibility due to a temporary increase in income of a duration of one month or less. It is targeting this summer for implementation of the solution. The Senate amendment is not anticipated to alter HHSC's plans with regard to this matter.

HB 1917

Raymond | Price | Zerwas | Longoria | Davis, S: Relating to contract requirements for prescription drug benefits provided by Medicaid managed care organizations.

The bill amends Chapter 533, Government Code **postponing the date that an MCO** is no longer required to adhere to the state's (HHSC's) drug formulary in operating an outpatient pharmacy benefit

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plan for its enrollees [as specified under Section 533.005 (a) (23) (A-C) below] **from September 1, 2018 to August 31, 2030 2023.**

Section 533.005 (a) A contract between a managed care organization and the commission for the organization to provide health care services to recipients must contain:
(23) subject to Subsection (a-1), a requirement that the managed care organization develop, implement, and maintain an outpatient pharmacy benefit plan for its enrolled recipients:
(A) that exclusively employs the vendor drug program formulary and preserves the state's ability to reduce waste, fraud, and abuse under Medicaid;
(B) that adheres to the applicable preferred drug list adopted by the commission under Section 531.072;
(C) that includes the prior authorization procedures and requirements prescribed by or implemented under Sections 531.073(b), (c), and (g) for the vendor drug program;

NOTE: Towards the end of the session rumors surfaced that the Governor was going to veto the bill once sent to him. While he has not yet signed the bill, we have reason to believe that such concerns are no longer valid.

SB 1922 Schwertner: Relating to prescription drug benefits in the Medicaid managed care program. Unlike HB 1917, SB 1922 preserved the 9-1-18 vendor drug program transfer date from HHSC to MCOs and offered protections to address stakeholder concerns with the transfer. House Human Services substituted the bill with the text in HB 1917. Though the House committee passed SB 1922 as substituted, given Senate passage of HB 1917 there was no need to seek a House vote on SB 1922.

II. Program-Related

SB 547

Kolkhorst: Relating to a schedule of support services (and applicable fees) a SSLC may provide. [Companion: **HB 3409** (Lambert). Though placed on House Calendar on May 8, it was never heard; House was waiting for Senate version to be received.]

As directed in the bill, the following provisions became effective immediately upon passage of the bill and signature of the Governor which occurred on May 29, 2017: Requires HHSC to establish, maintain, and modify a fee schedule of services SSLCs may provide to certain individuals in the community. It further specifies that in creating a schedule of fees for the services, HHSC shall: (1) use the reimbursement rate for the applicable service under the Medicaid program; or (2) modify that rate with a written justification for the modification and after holding a public hearing on the issue of the modification.

The bill further allows a SSLC, based on negotiations between the SSLC and a MCO, to charge a fee for a service other than the fee provided by the schedule of fees created by HHSC.

NOTE: As stated in various past *PPAT Notices* since last summer (and unless its plans have changed over the last several months), DADS intends to pilot the initiative, limiting services initially to only dental. If successful, other services that could be made available would include medical, behavioral health, and other specialized services. The bill is in accordance with the 2015 Sunset Advisory Commission report on DADS which found SSLCs could be better utilized as a provider of services.

HB 1642

Bell: Relating to reporting requirements for investigations of abuse, neglect, or exploitation against residents of certain health facilities. ['Facilities' defined as: an institution as that term is defined by Section 242.002 (**nursing home**); an **assisted living facility** as that term is defined by Section 247.002; and a **prescribed pediatric extended care center** as defined by Section 248A.001.]

The bill seeks to eliminate DADS requirement to submit to local law enforcement a complete final written report of every regulatory investigation of alleged abuse, neglect, or exploitation (ANE) at certain facilities

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by requiring DADS to submit the report and recommendations to the appropriate law enforcement agency if DADS determines the ANE report is substantiated at the conclusion of the investigation.

HB 3296

Klick: Related to persons required to establish nursing peer review committees (NPR) amending current statute to read as follows:

A person shall establish a NPR to conduct nursing peer review under this chapter and Chapter 301: (1) for vocational nurses, if the person regularly employs, hires, or contracts for the services of **eight [40]** or more nurses; and (2) for professional nurses, if the person regularly employs, hires, or contracts for the services of **eight [40]** or more nurses, at least **four [five]** of whom are registered nurses.

HB 3934

Bell: Relating to training and continuing education requirements for **ICF/IID, NHs & ALs.**

Current law requires DADS/HHSC to require a surveyor to complete a basic training program before the surveyor inspects, surveys, or investigates a long-term care facility and that such must include observation of the operations of a LTC facility unrelated to the survey, inspection, or investigation process for a minimum of 10 working days within a 14-day period. **As passed**, the bill amends current law to permit DADS/HHSC to waive the aforementioned requirement for a surveyor who has completed in the two years preceding the inspection, survey, or investigation one year of full-time employment in a nursing facility in this state as a: nursing facility administrator; LVN; RN; or social worker.

HB 284

Springer: Authorization for certain facilities to secure residents with wheelchair self-release seat belt.

Applies To:

- a general residential operation, including a state-operated facility, serving children with IDD
- an **ICF-IID licensed by DADS** under Chapter 252 or operated by that department;
- a mental hospital or mental health facility, as defined by Section 571.003;
- nursing homes
- assisted living facility; or
- treatment facility, as defined by Section 464.001.

Note: *Section 322.055, Health and Safety Code, states a **Medicaid waiver provider, when providing supervised living or residential support, shall comply with this chapter and related adopted rules.***

Bill Summary

Subsection (a): **As passed by House** requires that a facility to which the law applies shall allow a resident to use a wheelchair self-release seat belt while the resident is in the resident's wheelchair if:
(1) the resident demonstrates the ability to release and fasten the seat belt without assistance;
(2) the use of the wheelchair self-release seat belt complies with the resident's plan of care; and
(3) the facility receives written authorization signed by the resident or the resident's legal guardian for the resident to use the wheelchair self-release seat belt.

Subsection (b): **As amended by Senate**, specifies that a facility that advertises as a restraint-free facility is not required to comply with the above provision if the facility:

- (1) provides to current and prospective residents a written disclosure stating the facility is restraint-free and is not required to comply with a request under Subsection (a); and
- (2) makes all reasonable efforts to accommodate the concerns of a resident who requests a seat belt.

The bill further:

- Requires HHSC to adopt rules as soon as practicable after bill effective date, but not later than 1/1/18
- Specifies the law applies only to use of a wheelchair self-release seat belt **occurring on or after 1/1/18**, and that use of such occurring before that date is governed by law in effect immediately before effective date of HB 284, and that law is continued in effect for that purpose.

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NOTE: As returned from the Senate, the House did not concur with the amendment noted above and requested a conference committee. The outcome of the conference committee's decision was to leave the bill as returned from the Senate. In other words, the bill as amended in the Senate prevailed.

III. EMPLOYMENT & EDUCATION

SB 2027

Rodríguez: Relating to a study to evaluate by region training and employment opportunities in this state for individuals with an intellectual disability.

[Companion [HB 3341](#) - Moody. Left pending in committee.]

The bill requires that the study must determine: (1) regions in this state where the training programs should be improved or expanded; and (2) strategies for placing trained individuals with intellectual disabilities into fulfilling jobs using existing or improved training programs.

It further requires HHSC submit a report on its findings to the legislature not later than December 1, 2018.

SB 719

Zaffirini: Relating to requiring the Texas Higher Education Coordinating Board (THECB) to collect and study data on the participation of persons with intellectual disabilities in workforce education.

Background: In 2015, SB 37 required the THECB to collect and study data regarding the participation of persons with in IDD in undergraduate and graduate level course work at public institutions of higher education, including data regarding applications, recruitment, admissions, retention, graduation, and professional licensing at the undergraduate and graduate levels. SB 37, however, did not explicitly require THECB to track or collect data related to persons with IDD participating in workforce continuing education programs at institutions of higher education.

As passed, SB 719 requires THECB to collect and maintain data relating to the participation of persons with IDD workforce continuing education programs eligible for state funding, and to develop, in consultation with public junior college districts, and implement a pilot program to develop minimum reporting language for financial and instructional cost information, including information on instruction of students with IDD. Junior college districts participating in the pilot program would, in consultation with the LBB, study best practices for reporting such information. THECB and junior college districts participating in the program would report to the LBB information in a template developed as part of the program.

IV. OTHER

SB 1021

Nelson: Relating to reports on the consolidation and certain functions of the HHS system, including advisory committees, and the re-creation of the Texas mental health system of care framework.

[Companion: [HB 2446](#) (Price); left pending in committee.]

Already signed by the Governor, the bill requires:

- HHSC, not later than July 31, 2018, to include in its report to the Transition Legislative Oversight Committee regarding its progress in transferring and consolidating administrative support functions of the HHS agencies: (1) the latest information available on its progress in transferring and consolidating the administrative support services functions of the HHS system; and (2) recommendations on whether to abolish each statutory advisory committee that considers issues related to the HHS system, and, for an advisory committee for which abolishment is recommended, whether to reestablish it by rule, consolidate it with another advisory committee, or permanently discontinue it in any form.
- HHSC to implement a system of care framework to develop local mental health systems of care in communities for minors who are receiving residential mental health services and supports or inpatient mental health hospitalization, have or are at risk of developing a serious emotional disturbance, or are at risk of being removed from the minor's home and placed in a more restrictive environment to receive

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mental health services and supports, including an inpatient mental health hospital, residential treatment facility, or facility/program operated by DFPS or agency part of juvenile justice system.

- Not later than December, 2018, the Transition Legislative Oversight Committee to review HHSC's recommendations regarding the need to continue DFPS and DSHS as state agencies separate from HHSC, unless a determination on their continuation is made before that date.

SB 377

Perry: Relating to the Texas Achieving a Better Life Experience (ABLE) Program.

Already signed by the Governor, the bill amends current law to allow beneficiaries to open an account in any state program that accepts out-of-state residents (a result of a change made to the federal law) and to allow the state to participate in a multi-state consortium agreement or contract with another state for plan manager services, including delegation of certain investment management activities.

SB 1764

Zafirini: Relating to termination of a guardianship of the estate for a ward who is the designated beneficiary of a Texas Achieving a Better Life Experience (ABLE) Program account.

Background: Currently, a person who is incapacitated or the person's LAR can create an ABLE account. Nothing in the Texas Property Code or the Texas Estates Code, however, allows a guardian to establish and fund an ABLE account for an incapacitated person. Moreover, a judge is not authorized to terminate a guardianship of the estate when an ABLE account could serve as a less restrictive alternative to guardianship.

As passed, and given the above matters, SB 1764 authorizes: i) a guardian to create an ABLE account on behalf of a person under guardianship; ii) a guardian ad litem to deposit the proceedings of a lawsuit in an ABLE account for the benefit of the person with an incapacity; and iii) a judge to terminate a guardianship of the estate and establish an ABLE account in lieu of the guardianship of the estate.

HB 1463

Smithee: Procedures for asserting claims under Americans with Disabilities Act; providing a civil penalty.

Already signed by the Governor, in brief, requires a claimant filing an action alleging a violation of statutory prohibitions against discrimination based on a person's disability and alleging a failure to comply with applicable requirements and standards, including website accessibility guidelines, to accommodate persons with disabilities to give written notice of the claim to the respondent not later than the 60th day before the date the action is filed. The bill specifies the required contents of the written notice, and prohibits the notice from demanding a sum of damages, requesting settlement, or offering to settle the claim without a determination of whether a condition stated in the notice is excused by law or may be remedied.

NOTE: Bill was amended on House Floor to address concerns of advocates of disability services that the bill would obstruct legitimate ADA violation claims.

HB 1290

Roberts: Relating to required repeal of a state agency rule before adopting a new state agency rule.

The bill amends the Government Code to restrict a state agency from adopting a proposed rule for which the fiscal note for the notice of the proposed rule states that the rule imposes a cost on any regulated person, including another state agency, a special district and a local government, unless on or before the effective date of the proposed rule the state agency repeals a rule that would decrease total costs on the person in an amount equal to or greater than the cost imposed by the proposed rule, or the agency amends a rule which would decrease the total costs on the person in an amount equal to or greater than the costs from the proposed rule.

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The bill would apply the restriction to a "state agency" that is a department, board, commission, committee, council, agency, office, or other entity in the executive, legislative, or judicial branch of state government. [As specified in the bill, "State agency" would not include an agency under the authority of an elected officer of the state.]

The bill further states that **the law would NOT apply to rules that are:**

- related to state agency procurement;
- amended to: reduce the burden or responsibilities imposed on regulated persons by the rule; or decrease the persons' cost for compliance with the rule;
- adopted in response to a natural disaster;
- **necessary to receive a source of federal funds or to comply with federal law;**
- necessary to protect water resources of this state as authorized by the Water Code;
- **necessary to protect the health, safety, and welfare of the residents of this state;**
- adopted by DFPS, Department of Motor Vehicles, Public Utility Commission, Texas Commission on Environmental Quality, or Texas Racing Commission;
- adopted by a self-directed semi-independent agency; or
- **necessary to implement legislation, unless the legislature specifically states this law applies to the rule.**

The bill further requires a state agency to prepare a government growth impact statement for a proposed rule, and specifies the information to be included in the impact statements.

The bill requires: a) the Comptroller of Public Accounts to adopt rules relating to the impact statements not later than October 1, 2017; b) **a state agency is not required to incorporate the impact statement into the notice of the proposed rule**, and c) the government growth impact statements are ONLY required on proposed rules for which a notice is required and filed on or after November 1, 2017.

NOTE: As the session neared conclusion this bill was presumed dead in the Senate. Upon receipt from the House, it was initially referred to Senate Business & Commerce; on May 19. It was then re-directed to Senate Administration, chaired by Senator Kolkhorst (whose SB 210, which was similar to HB 1290 had died in the House). On May 22nd a meeting of this committee was called during which the bill was passed as amended and sent to Senate Floor where it was amended again.

SB 402

Zaffirini: Relating to notice provided to persons with disabilities regarding the eligibility of persons with disabilities to use certain public transportation services.

The purpose of the bill was to address concerns raised regarding a lack of awareness among individuals with disabilities of a certain entitlement to use the services of a public transportation provider outside of their home area. **The bill states** that "To the extent practicable within available resources, a provider shall notify individuals who are certified by the provider as eligible to use the provider's services that the individuals are entitled to use another provider's service for not more than 21 days without an additional application."