

# Legislative Update: The 86<sup>th</sup> Texas Legislature Has Begun

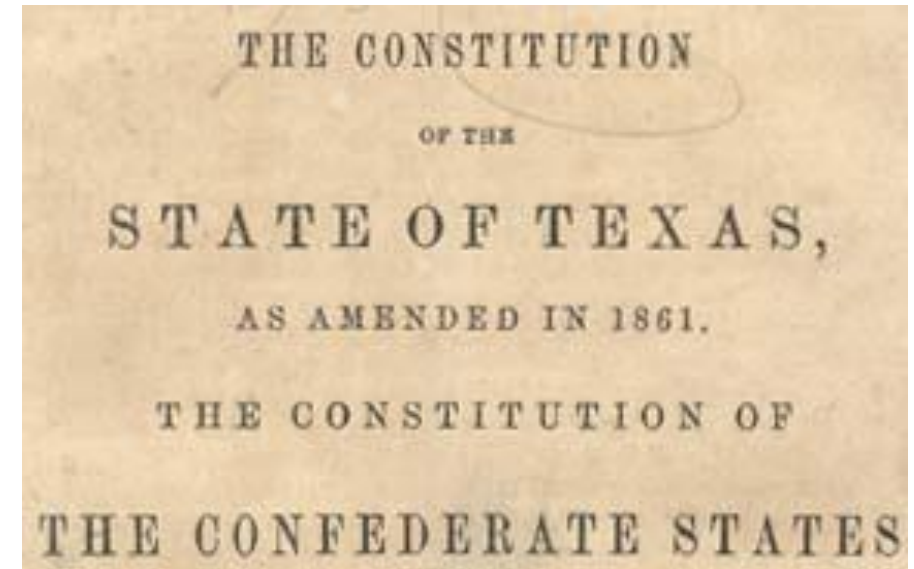


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# The Texas Legislative Session

- Citizen Legislature
- Biennial Regular Session for 140 Days
  - Special Sessions called by Governor
- Primary Election March 6, 2018
- General Election November 6, 2018
- Nov. 11 bill filing opened
- Second Tuesday of January
- 86<sup>th</sup> Texas Legislature = Jan. 8 through May 27, 2019



# 140 Days Every Other Year

The average legislative office handles the following during the 140-day session:

- 7,000 + bills
- 6,000 telephone calls
- 5,000 drop-in visitors
- 8,000 letters
- 15,000 emails
- 600 event invitations



# 2017 Legislative Session

In a session lasting **140 days**:

- **7,000 bills filed**
- **THA tracked 1,144**
- Affected hospitals'
  - Budget
  - Operation
  - Policy

In a 30-day **special session** with 20 issues:

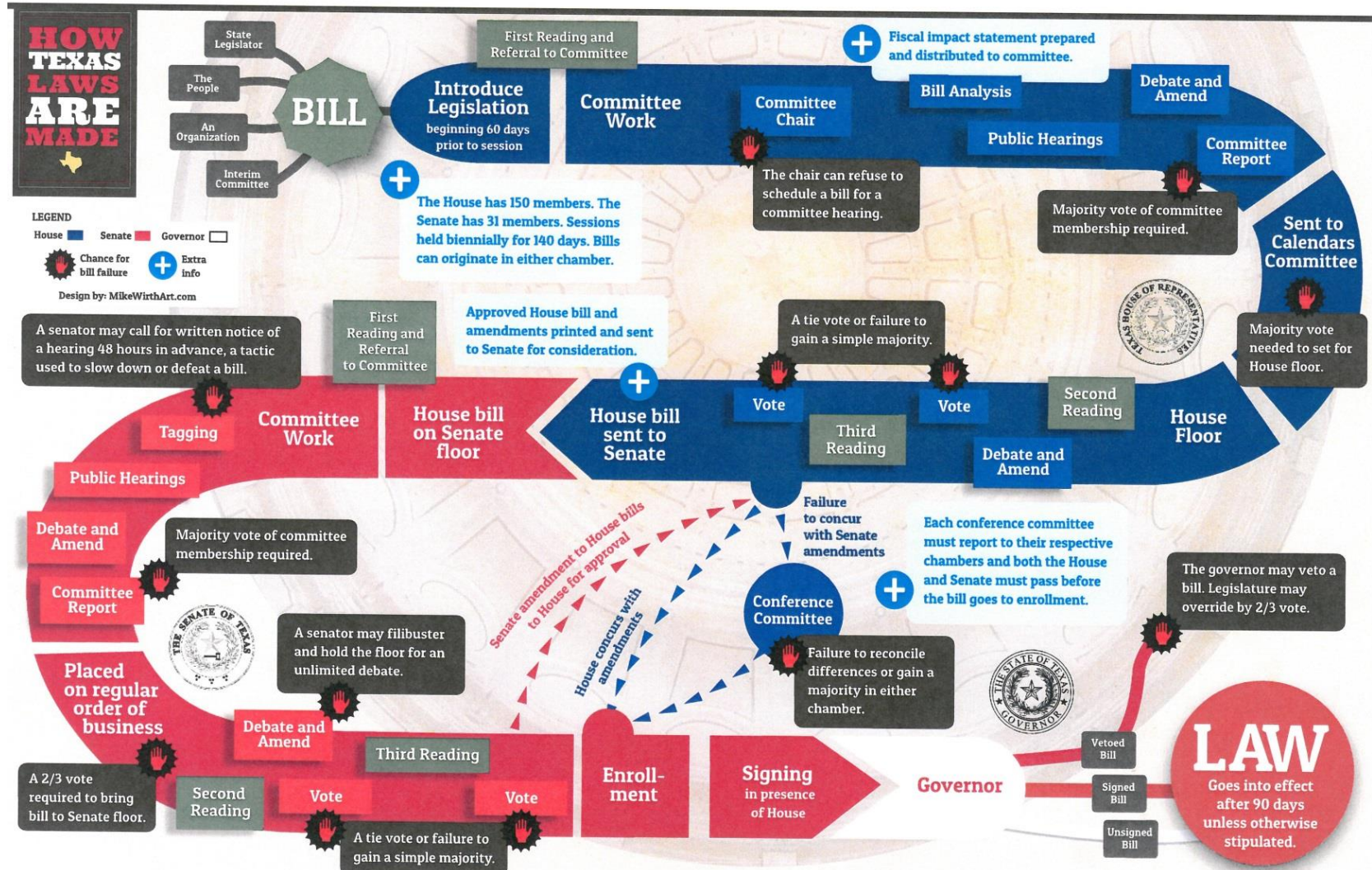
- THA tracked 6 issues, plus others not on call



# Legislative Process in Theory



# Legislative Process in Reality



# The Politics at Play

- November 6 General Election
  - Legislature – GOP hold majorities in both houses.
  - Congress – Democrats took the House.
- Speaker of the House Dennis Bonnen (R-Angleton)
  - Committees to be appointed
- 1,000 People / Day move to Texas
- Supplemental Budget Passage Required
  - \$2 Billion FY Medicaid Shortfall (to make up for caseload, cost growth)
  - Hurricane Harvey costs
- Texas Budget Must-Pass-Bill (**Two Years** \$217 Billion All Funds)
- Balanced Budget Requirement
- Biennial Revenue Estimate from Comptroller



# Biennial Revenue Estimate for FY2020-21

On Monday, Comptroller Hegar set BRE:

- \$119.1 Billion in state funds available for two year FY20-21 budget.
- Up 8.1% from current budget (\$110.2B)
- Noted need to be cautious because of falling oil prices and uncertainty in economy.
  - 55% of GR-Related Revenue from State Sales Tax
  - ~11% from Oil & Gas Production, Motor Fuel Taxes
- Economic Stabilization Fund (Rainy Day Fund) estimated to hit \$15 Billion.
  - Use for Supplemental Budget (Medicaid, Harvey)?
  - School Finance Reform
  - Cut state services?





# Priorities for 86<sup>th</sup> Legislative Session

## Major Legislative Priorities

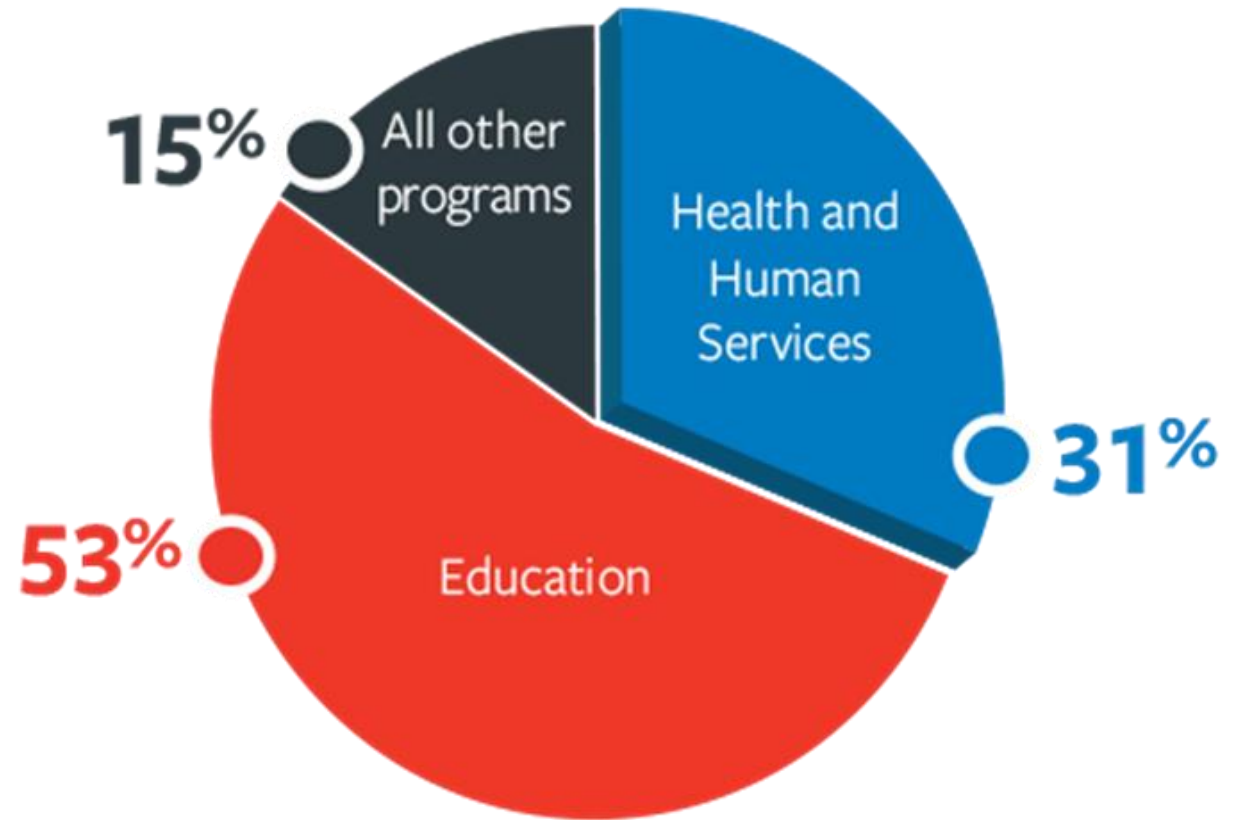
- Protect Health Care Funding in the State Budget
- A Fair and Equitable System of Financing Hospital Payments
- Increase number of Texans with Affordable, Comprehensive Health Insurance
- Support Behavioral Health Funding and Policies that Foster Access to Care
- Preserve Tort Reform, Peer Review and Prompt Pay
- Empower Consumers by Providing Access to Health Care Information

## 1115 Medicaid Waiver Update



# Is Medicaid Eating the State Budget?

- General Revenue spending on HHS / Medicaid is less than GR spending on Education
- Using an All Funds amount includes the dollars from the hospital/IGT-funded portion of the budget
  - \$6.2B in UC and DSRIP
  - \$1.8B in DSH
  - 40% state / 60% federal



# Medicaid in the State Budget

## Texas Medicaid - Enrollees and Expenditures

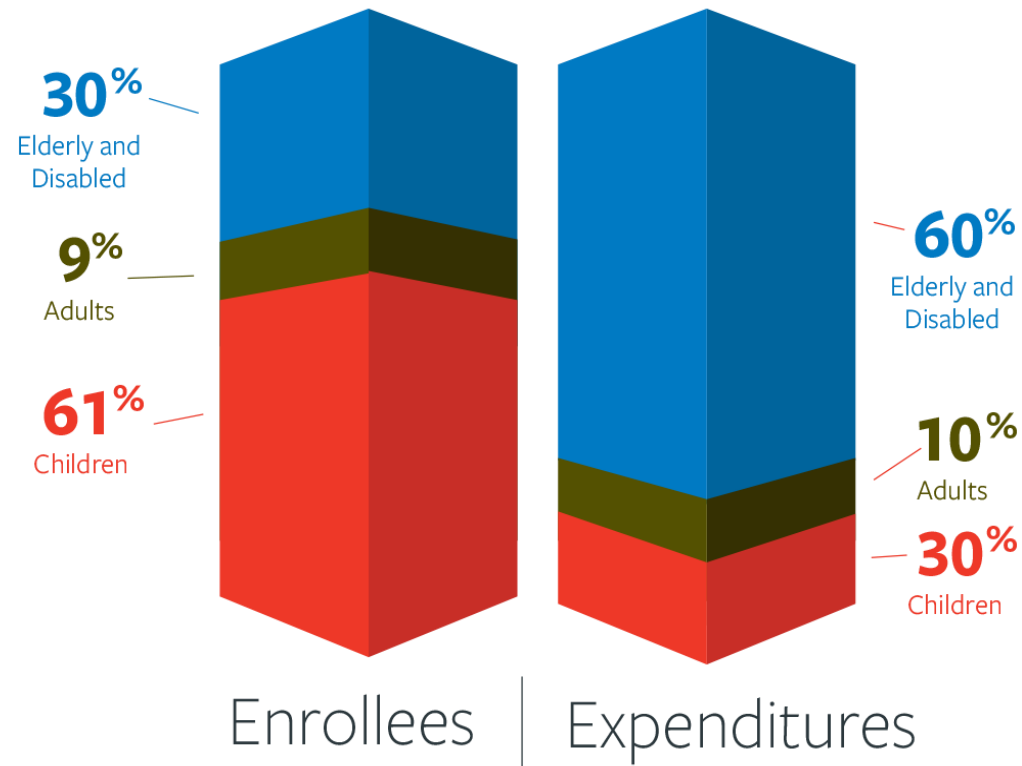
~4.0 million enrolled in Medicaid

3.2 enrolled are children

Increase of 2 million since 2000

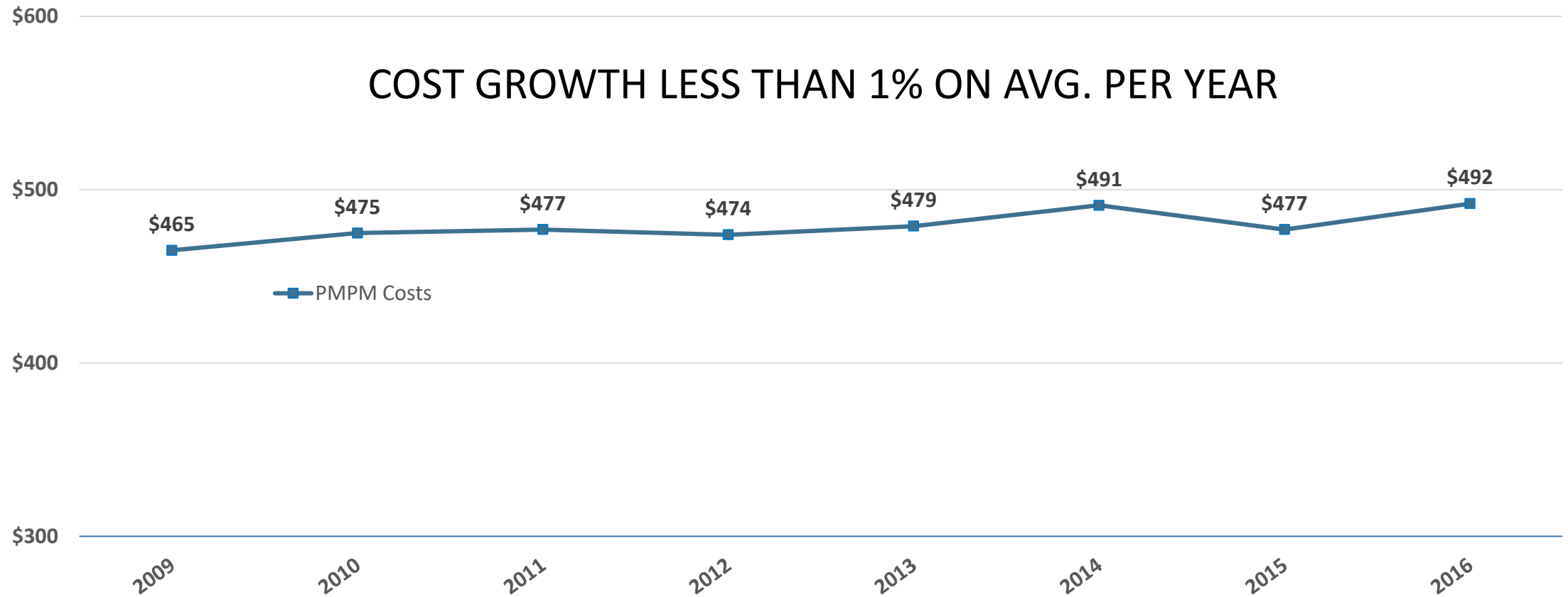
Children are only 30% of expenditures in Medicaid

Elderly & Disabled account for 60% of cost but only 30% of enrollees



# Smart for Texas: Bending the Cost Curve

## Texas Medicaid Acute and Long-Term PMPM Costs: FY09-FY16



# Contains Costs

From 2009-2016,  
Medicaid Per-Capita  
Cost Growth was

**5 TIMES  
LOWER**

than the U.S.

**5.8%**

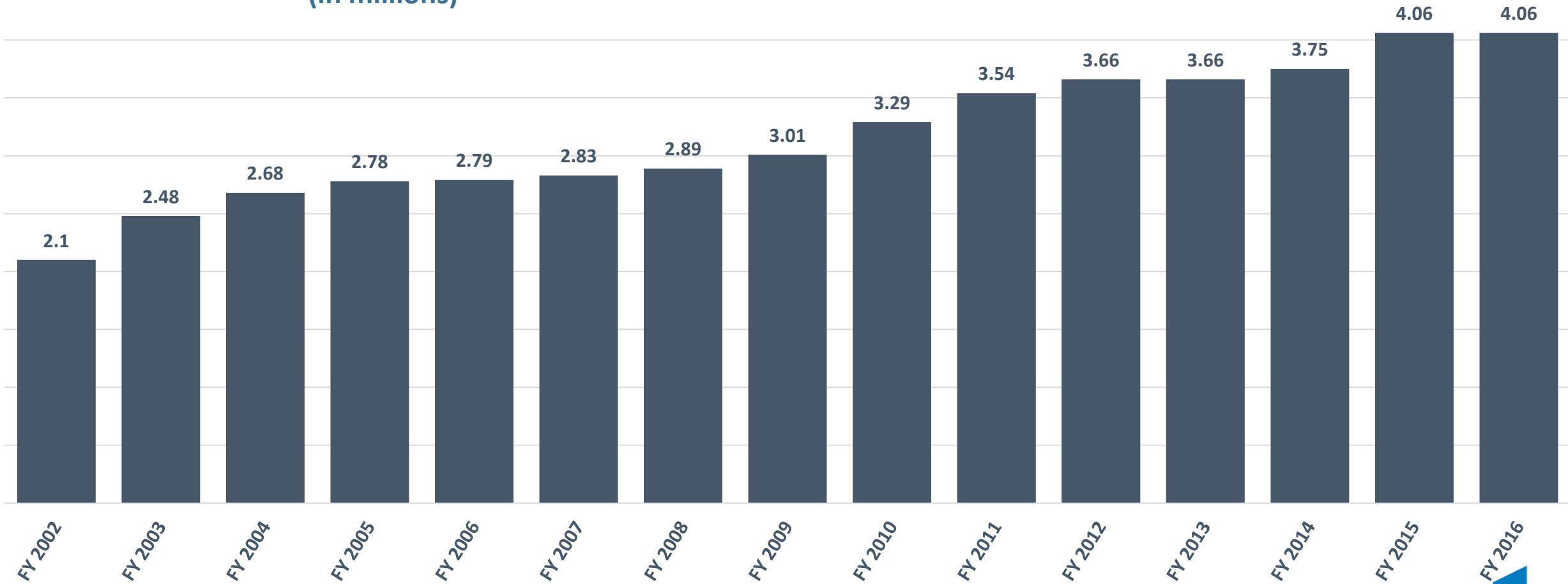
Texas Medicaid  
Per-Capita  
Cost Growth

**30.4%**

U.S. Per-Capita  
Health Care  
Cost Growth

# Medicaid Caseload Growth is the Cost Driver

Texas Medicaid Acute and Long-Term Caseloads: FY02-FY16  
(in millions)



# Protect Health Care Funding in the State Budget

Continue state funding of HHS programs, including adequate Medicaid funding that is closer to the cost of providing health care.

Purpose	Method of Finance	2016-2017	2018-2019	Biennial Difference	
		GAA	GAA		
Funding for Targeted Medicaid Rate Enhancements for Certain Hospitals and for Uncompensated Trauma Care Costs (in Millions)	Uncompensated Trauma Care	Account 5111	\$29	\$29	\$0
	Trauma Add-On	Account 5111	\$153	\$153	\$0
	Rural Add-On	GR	\$5	\$25	\$0
		Account 5111	\$20	\$0	
	Safety-Net Add-On	GR	\$0	\$79	\$0
		Account 5111	\$129	\$50	
	<b>Total</b>	<b>GR &amp; Account 5111</b>	<b>\$336</b>	<b>\$336</b>	<b>\$0</b>



# Protect Health Care Funding in the State Budget

**Maintain a dedicated funding source for the state's network of trauma hospitals.**

Issue: Preserve trauma hospital funding but replace the source of funding.

- Since 2003 passage of Driver Responsibility Program, 77 NEW designated facilities
- Account 5111 funds used for uncompensated trauma care and Medicaid add-ons
- 14 Bills filed on DRP (6 to repeal the program, 8 to tinker with the program) in 2017 Session.
- THA supported legislation passed house but failed in Senate.
- Senate Finance interim study on value of trauma system.
- 5 bills filed so far in 2019.





# Securing the State Trauma Fund to Protect Patient Care

Texas Hospitals Rely on \$327.2 Million in State and Federal Funding Made Possible Because of State's Trauma Fund (Account 5111)



## STATE TRAFFIC FINE

\$26.5 MILLION = 33% OF STATE REVENUE FROM \$30 STATE TRAFFIC FINE



## DRIVER RESPONSIBILITY PROGRAM

\$71.2 MILLION = 49.5% OF FINES AND PENALTIES COLLECTED THROUGH THE DRP



## STATE FUNDS (ACCOUNT 5111)

DESIGNATED TRAUMA FACILITIES & EMERGENCY MEDICAL SERVICES ACCOUNT: \$101.7 MILLION (2019)

\$75.3 MILLION FOR TEXAS TRAUMA HOSPITALS FOR MEDICAID-COVERED SERVICES



MAKES POSSIBLE \$101.1 MILLION IN FEDERAL MEDICAID MATCHING FUNDS

**\$176.4 MILLION FOR TEXAS TRAUMA HOSPITALS**

\$26.4 MILLION FOR TEXAS SAFETY NET HOSPITALS FOR MEDICAID-COVERED SERVICES



MAKES POSSIBLE \$86.5 MILLION IN FEDERAL MEDICAID MATCHING FUNDS\*

**\$150.8 MILLION FOR TEXAS SAFETY NET HOSPITALS**

Medicaid underpays Texas hospitals for medically necessary covered services. On average, Medicaid payments cover approximately 70 percent of the audited allowable costs of providing services. At the same time, designated trauma hospitals incur more than \$320 million in unreimbursed trauma care costs annually.

Since 2015, the Texas Legislature has appropriated funds to increase Medicaid payments for certain particularly high-need hospitals – rural, safety net and trauma hospitals – to offset part of the Medicaid shortfall and unreimbursed trauma care.

State funds for the payment increase for safety net and trauma hospitals come in large part from the state's trauma fund (Account 5111), fed mostly by fines and penalties imposed on drivers for excessive speed, driving while intoxicated or other reckless behaviors, through the Driver Responsibility Program. These state funds leverage federal funds, which combined contribute \$327.2 million to Texas trauma and safety net hospitals.

**Maintaining state funding for Account 5111, whether through the DRP or another source, is critical.**



# Protect Health Care Funding in the State Budget

**Continue state funding for educating and training a workforce of physicians, nurses, behavioral and allied health professionals.**

## **Physicians:**

- Continue to expand GME slots to reach state's goal of having 1.1 slots per Texas medical school graduate.
- Physician Educational Loan Repayment Program.

## **Nurses:**

- Fully fund Professional Nursing Shortage Reduction Program.
- Fully fund nursing faculty loan repayment program.

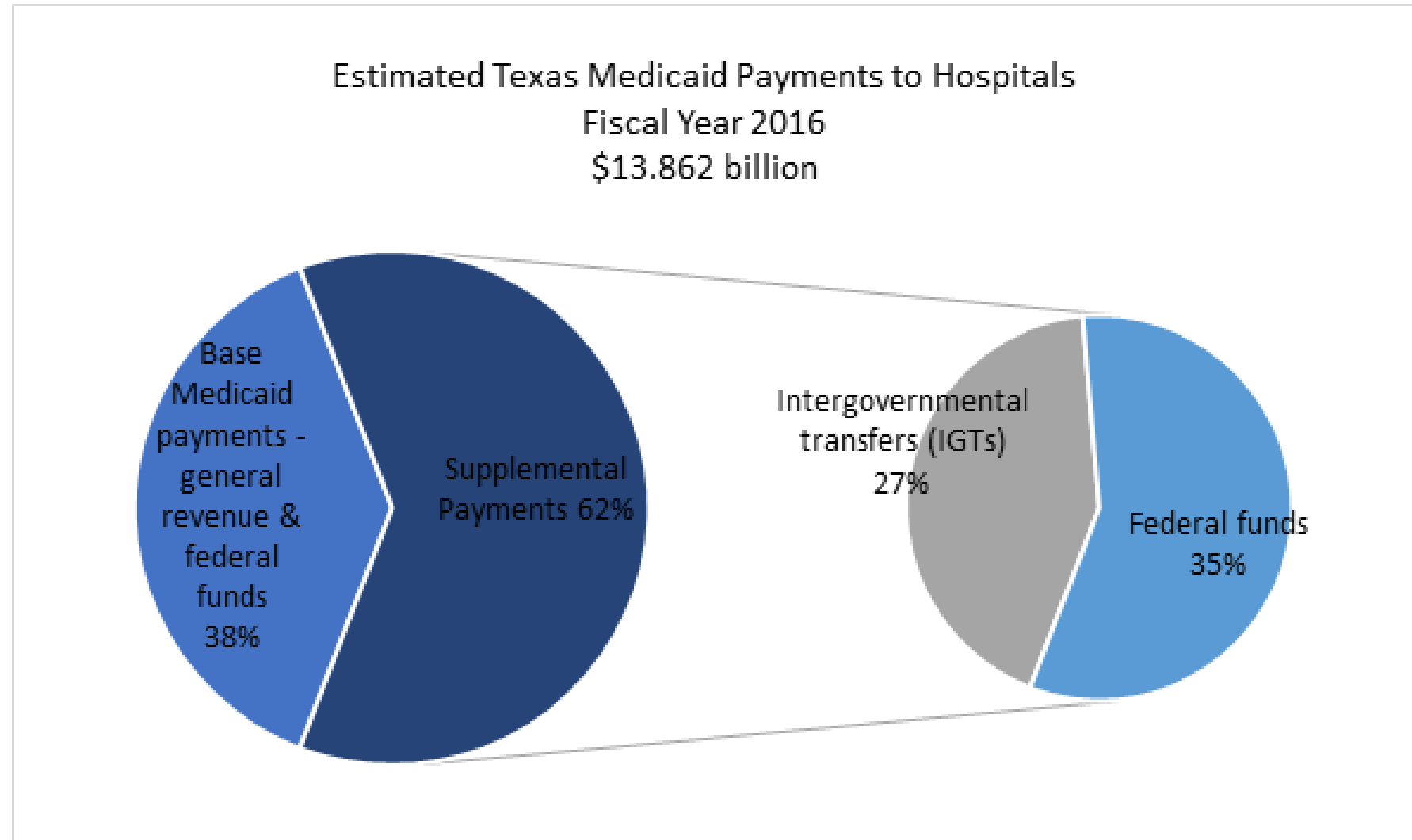
## **Behavioral Health:**

- Loan Repayment Program for Mental Health Professionals (\$2.1M level funding).



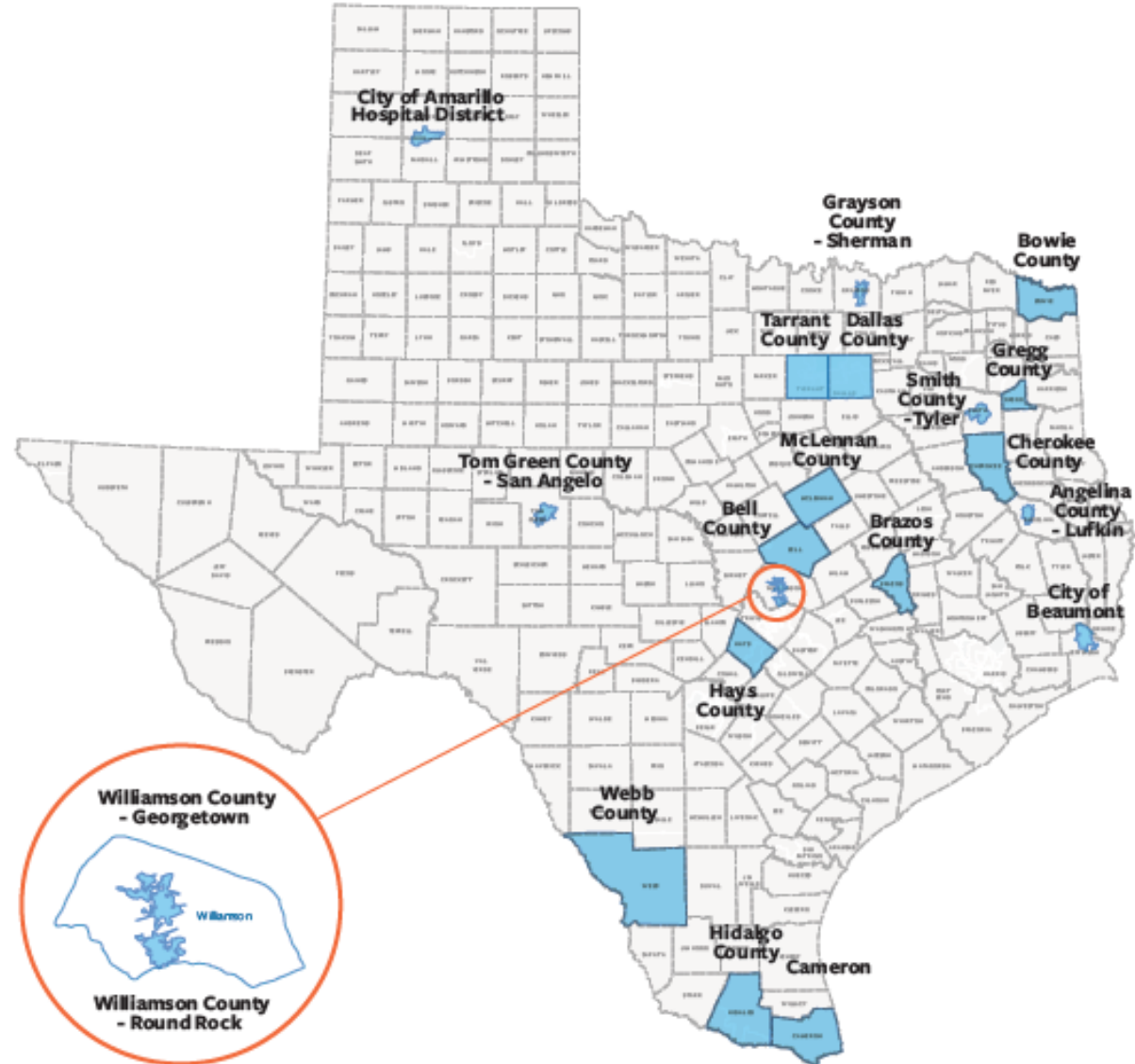
# Financing Hospital Payments

- Continue the current property tax structure and oppose limiting local jurisdictions ability to generate revenue for essential services.



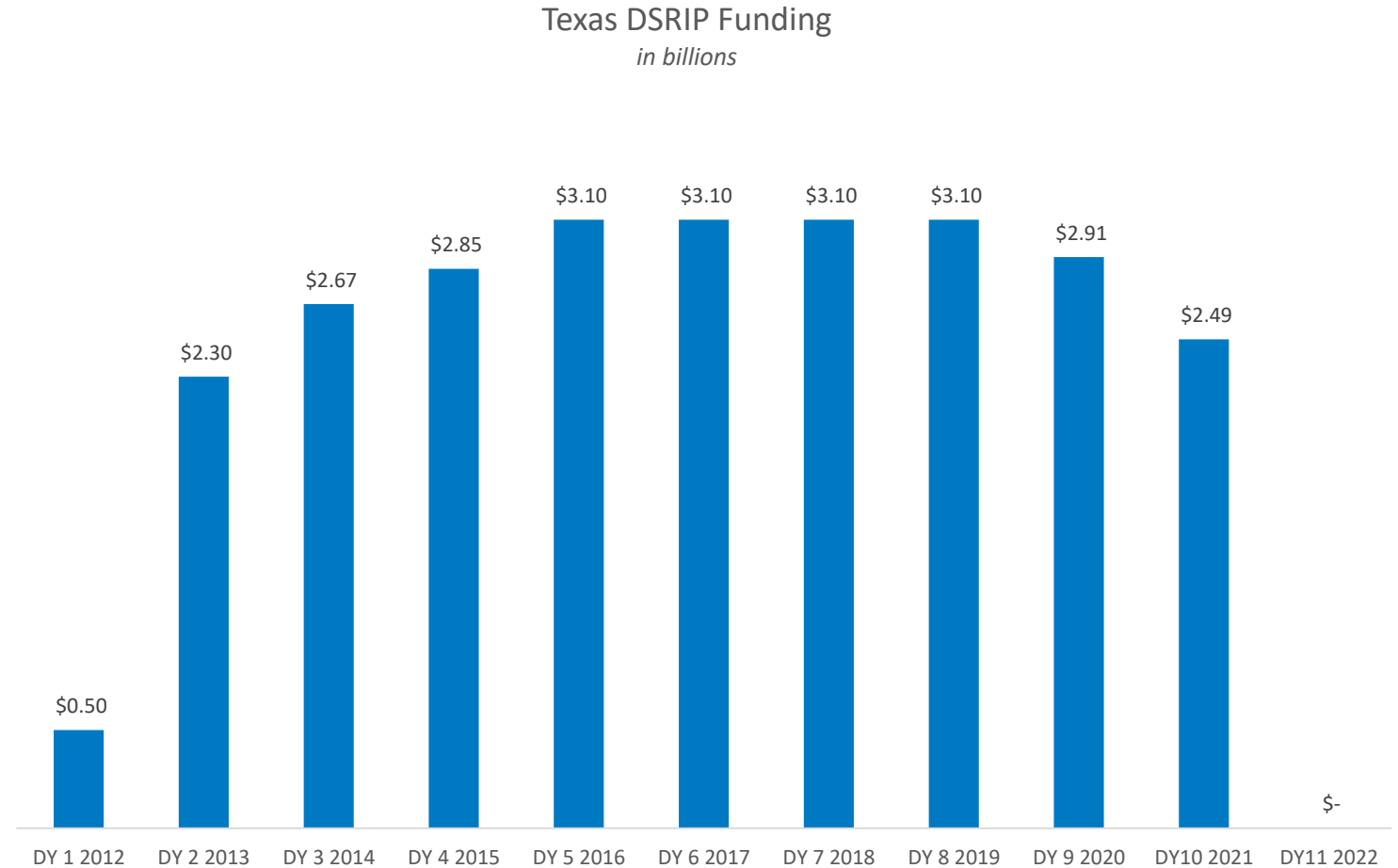
# Financing Hospital Payments

- Support locally generated solutions, including local provider participation funds, to generate the required non-federal share of Medicaid supplemental payments and increased hospital reimbursement rates.



# Financing Hospital Payments

- Supporting maintaining DSRIP supplemental payments within the hospital financing system while working with stakeholders to develop a payment model that supports access to care and good health outcomes.



# Support Behavioral Health Funding and Policies that Foster Access to Care

- Increase state funding for inpatient and outpatient services, including state-funded hospital beds and community-based services.
- Grow the behavioral health care workforce, including funding the mental health loan repayment program.
- Allow physicians, in addition to law enforcement, to temporarily detain a patient deemed a danger to self or others for the purpose of conducting a thorough psychiatric evaluation.
- Lessen use and abuse of opioids.



# Increase Access to Affordable, Comprehensive Health Insurance

## Background:

Texas has the highest number and highest percentage of uninsured residents in the US.

- Uninsured rate rose in 2017 compared to 2016, from 4.5 million to 4.8 million uninsured residents and from 16.6 percent to 17.3 percent (U.S. Census Bureau)
- Support Enrollment of all uninsured Texans who are eligible for coverage in the federal health insurance marketplace.
- Support development of a private market solution for low-wage working Texans to purchase affordable, comprehensive health insurance.



# Preserve Tort Reform, Peer Review & Prompt Pay

- Oppose increasing the cap on non-economic damages in tort cases (including a tie to the Consumer Price Index).
- Protect the confidentiality of hospitals' physician and nurse peer review processes.
- Support the Prompt Pay Act to ensure hospitals and physicians receive timely and accurate payments for services provided.





# Empower Consumers by Providing Access to Health Care Information

- Support efforts to inform consumers of the licensing and regulatory differences among hospitals, hospital-affiliated freestanding emergency centers, non-hospital-affiliated freestanding emergency centers and urgent care centers.
- Support enhanced disclosure of the ability of FEC to charge facility fees and their participation in insurance networks.



Part of Health Care Safety Net



Must Comply with Federal EMTALA Law



Recognized by Medicare/Medicaid/Tricare



Subject to State Reporting Requirements for Hospitals



# Other Major Issues



# State Legislation Impacting Hospitals

- Hospital Licensure Requirements, Surveys, Inspections and Fees
- Physician, Nurse, Allied Health Provider Education, Training, Licensure
- Nurse Staffing Requirements
- Medical and Nursing Peer Review
- Telemedicine Standards, Requirements
- Trauma and EMS Standards, Licensure, Requirements
- NICU Regulation, Certification
- Public Health – Vaccines, Car Seats, Texting While Driving, Cigarettes
- Insurance Network Adequacy
- Mental Health Care Delivery System, Insurance Coverage
- Life Cycle: Pregnant Women, Fetal Tissue, Placentas, End of Life, DNR Orders
- Compliance with Public Information Act
- Open Carry – Guns in Hospitals
- Medical Waste Disposal



# Interim Studies in House and Senate Committees

- Behavioral Health (6 charges)
- Opioid Usage (House select committee, 5 other charges)
- Budget: Rainy Day Fund and Budget Deferrals
- Medicaid, Managed Care and Quality Payments
- Transparency in Health Care Payments (3 charges)
- Trauma System Funding (SFC)
- Local Property Taxes (7 charges)
- Health Care Reform
- Maternal Mortality and Morbidity (2 charges)
- Application of Public Information Act
- Hurricane Harvey (8 health care related charges)



# 1115 Medicaid Waiver



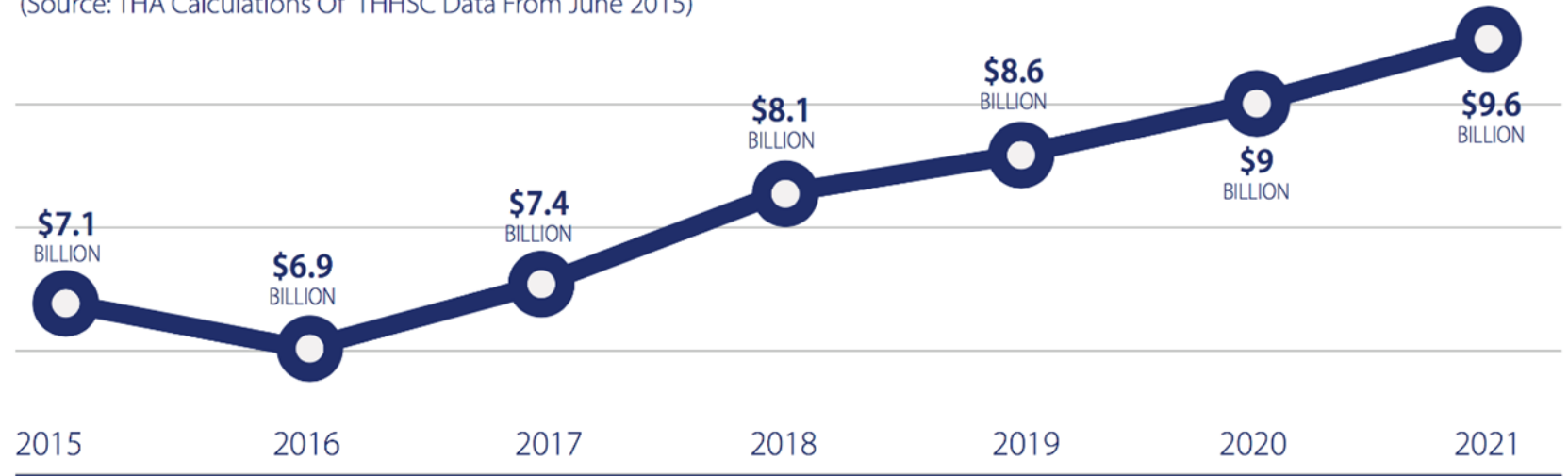
# Uncompensated Care Increasing

## Importance of UC funds in waiver

- Medicaid shortfall remains high
- Texas continues to have highest percentage and number of uninsured in nation.

**Projected Uncompensated Care Costs 2015-2021** (Pre-Supplemental Payment Offsets)

(Source: THA Calculations Of THHSC Data From June 2015)



# Continue the 1115 Medicaid Transformation Waiver

- Redesigned the delivery of health care in Texas
- Saved more than \$8 billion over the five year period
- Directs \$6.2 billion a year in Medicaid managed care savings to Texas hospitals and other health care providers to:
  - offset some uncompensated care costs - Uncompensated Care (UC) Pool
  - support 1,491 projects that improve access to needed services (BH, primary care, specialty care, chronic care) and reduces health care costs - Delivery System Reform Incentive Payment (DSRIP) Pool
- The waiver was extended through December 2017
- **A new five-year waiver was approved on December 21, 2017.**



# New Texas Medicaid 1115 Waiver Approved by CMS

- Level funding for UC and DSRIP for two years.
- Transition to modified S-10 for reporting and calculating UC payments – to take effect 2020.
- Transition out of DSRIP over 5 years - gives the industry and the state time to identify the most effective projects and operationalize them.
- Increases allowable spending amount under “budget neutrality” cap to accommodate other means of increasing hospital reimbursement, such as NAIP, QIPP and the uniform hospital rate increase program (UHRIP).
- Method of finance for the state share of Waiver payments is not addressed in the terms and conditions. Disallowance creating uncertainty.





# 1115 Waiver Uncompensated Care Funds

- **With a new Medicaid 1115 Waiver approved for Texas, hospitals' uncompensated care (UC) funding will change beginning in 2020:**
- Total UC funding available and individual hospitals' UC payments will be based on charity care costs for uninsured patients reported on a modified 2017 Worksheet S-10.
- For children's and specialty hospitals that do not use the S-10, allowable costs will come from cost reports.
- UC funding no longer will include costs associated with hospitals' bad debt or Medicaid shortfall (difference between the cost of providing a service and Medicaid reimbursement for that service).
- Allowable UC costs for pool sizing purposes will not include costs from non-hospital providers, although UC payments can be made to qualifying non-hospital providers, including physician practice groups, government ambulance providers and government dental providers.
- UC payments will be distributed based on reported UC costs without regard to a provider's intergovernmental transfer payment.



# Medicaid 1115 Waiver Next Steps

- **To ensure the financial stability of Texas hospitals and their continued ability to serve all Texans, the Texas Hospital Association is:**
  - Evaluating potential changes to mitigate differences in UC payments among classes of hospitals.
  - Working with the Texas Health and Human Services Commission to ensure that Texas hospitals' UC cost data are incorporated and accounted for in the UC pool calculation.
  - Representing all Texas hospitals at ongoing HHSC stakeholder workgroup meetings.
  - Working with HHSC and state leadership to determine next best steps in identifying the state share of supplemental payments.



# THA Resources: [www.tha.org](http://www.tha.org)

The screenshot shows the homepage of the Texas Hospital Association (THA) website. The browser address bar displays <https://www.tha.org>. The website features a blue header with the THA logo and navigation links: Home, Public Policy, Services, Publications, THA Foundation, About, and Contact. Below the header, contact information is provided: 512/465-1000 and [info@tha.org](mailto:info@tha.org), along with a Login link.

The main content area is dominated by a large banner for "THA Townhalls". The banner includes the text: "THA Townhalls", "Get prepared for the 2019 legislative session by attending a Legislative Preview Townhall meeting", and a red button that says "Sign up today! >>". The banner also features a photograph of a hand holding a pen over a document and the text "2018 THA TOWNHALLS".

Below the banner, there are three columns of content:

- Advocacy:** Represented by a megaphone icon. The text states: "From the capitol to regulatory agencies, THA represents the interests of its member hospitals/health systems. With in-depth knowledge of issues that matter most to Texas hospitals, THA is frequently asked to provide expert testimony and help craft rules to implement recently passed legislation. THA also provides Texas hospitals with a presence in Washington, D.C." Below this text are two red buttons: "Read More >>" and "2017 Legislative Session >>".
- Education:** Represented by a graduation cap icon. The text states: "THA offers hospital administrators and staff a broad range of continuing education focused on enhancing hospital operations and performance. In the health care industry, change is constant. With this in mind, THA develops programs to help members strategize and meet head-on the challenges of frequent changes in regulations and obligations. Use the [Event Calendar](#) to find upcoming educational opportunities." Below this text is a red button: "Read More >>".
- Conference:** Represented by an exclamation mark icon. It features a promotional image for the "HGC2018 HEALTHCARE GOVERNANCE CONFERENCE" with the text "TEXAS HEALTHCARE TRUSTEES". Below the image is a red button: "Read More >>".

The bottom of the screenshot shows a Windows taskbar with the search bar and various application icons. The system tray on the right indicates the time as 4:48 PM on 7/24/2018.





# Texas Hospital Financing

## MEDICAID'S ROLE IN HOSPITAL FINANCING

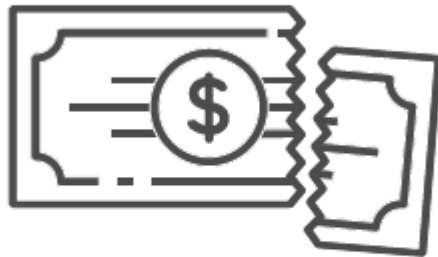


The Medicaid program, a state and federal partnership, has a complex and vital role in how Texas hospitals are paid. It includes both:

- **Reimbursement** for health care services delivered to those insured through the Medicaid program.
- **Supplemental payments** that partially offset the costs of caring for Texans without health insurance and the lower-than-cost Medicaid reimbursement.

All Medicaid payments to hospitals – whether reimbursement or supplemental payments – require a non-federal contribution of funds. In Texas, depending on the payment, this non-federal contribution comes from state general revenue, local property tax revenue or hospital net patient revenue.

### Medicaid Reimbursement



For delivering Medicaid-covered services to approximately 4.5 million Medicaid beneficiaries, most general acute care hospitals in the state are reimbursed at 70 percent, on average, of audited allowable costs. This underpayment creates a **shortfall** for Texas hospitals of **\$2.7 billion each year**.

### Texans Without Health Insurance



**4.5 MILLION  
Uninsured  
Texans**



**\$4.5 BILLION  
cost to Texas  
HOSPITALS TO  
care for the uninsured**

Texas leads the nation in the number of uninsured residents. Approximately 17 percent of, or **4.5 million**, Texans have no health insurance. Yet, state and federal law require Texas hospitals to treat anyone who seeks it, regardless of their insured status or ability to pay. This obligation creates a **financial burden for Texas hospitals of \$4.5 billion each year**.



# Texas Hospitals' Public Policy Priorities to Support Healthy Hospitals, Patients and Communities for 2019-2020



Leading the nation in population and job growth, Texas has one of the country's strongest economies. Yet, no other state has more residents without health insurance, and no other state has experienced more hospital closures in rural communities.

**A strong economy depends on healthy residents and communities. And that requires a strong health care infrastructure.**

To support a strong health care infrastructure, Texas hospitals advocate for the following:

**1. A state budget that protects funding for health care programs and services to meet the physical and behavioral health care needs of a growing population.**



- Continue state funding of health and human services programs and services, including adequate Medicaid funding that supports hospital payments that are closer to the actual costs of providing health care services.
- Maintain a dedicated funding source for the state's network of trauma hospitals to compensate for some of their unreimbursed costs of providing life-saving trauma care.
- Continue state funding for educating and training a workforce of physicians, nurses, behavioral health professionals and allied health care professionals in numbers sufficient to care for the state's large, growing and aging population.

**2. A fair and equitable system of financing hospital payments.**



- Continue the current property tax structure and oppose limiting local jurisdictions' ability to generate revenue for essential services.
- Support locally generated solutions, including local provider participation funds, to generate the required non-federal share of Medicaid supplemental payments and increased hospital reimbursement rates.
- Support maintaining Delivery System Reform Incentive Program supplemental payments within the hospital financing system while working with stakeholders to develop fair and equitable value based payment models that support access to care and good health care outcomes.



# Questions?

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