

Delegation Actions that Resulted in State or Federal Action

2023 – Appropriate communication of test results

Federal law requires patient portals make test results available directly to patients, however, this can cause problems when publication of such results does not allow clinicians enough time to review test results and discuss them with their patients. The federal law does allow for modification by the states. A 2023 resolution called for the TMA to ask the Texas Legislature to provide relief by defining timely electronic release in an EHR to be no less than three days. The Texas Legislature passed a law requiring a three day hold for patient portals to publish sensitive test results, but Gov. Abbott vetoed the bill for purely political reasons.

2022 - 2023 – The State should pay the cost for required integration of the Prescription Monitoring Program (PMP) with a physician’s electronic health record (EHR)

Beginning in March 2020, prescribers were required to check the Texas PMP before prescribing or dispensing controlled substances. Physicians would have to pay to connect their EHRs to the state database. A 2022 resolution from an HCMS physician, called for the TMA to advocate for appropriate physician payment to cover the required expense of connecting to the PMP to prescribe controlled substances. In 2023, through TMA’s advocacy, the state budget allocates funds to cover the cost of PMP integration for FY 2024 and 2025.

May 2018 – June 2021 - Prior authorization and additional liability protections

Based on a 2017 resolution from HCMS the HoD adopted policy to recommend increased regulations on the use of prior authorizations including:

- Compensating physician practices for work required to follow up on prior authorizations
- Full disclosure of all prior authorization requirements and restrictions
- Full disclosure of approval and denial rates
- Requirement to accept standard electronic prior authorization

HoD approved HCMS resolution stating that medical necessity decisions should be considered the practice of medicine in Texas.

In 2019, the governor signed into a law a bill stating that medical decisions and reviews by Texas licensed health plans must be performed by a physician licensed in the state and of the same or similar specialty.

In 2021 a new law was passed that physicians who participate in state-regulated commercial health plans will be eligible for “gold carding” on a rolling six-month basis if 90% or more of their prior authorizations have been approved in the previous six months. This is on a procedure-by-procedure, health plan-by-health plan basis. In another significant win for medicine, utilization reviews must now be conducted by a Texas-licensed physician in the same or similar specialty.

Following Hurricane Harvey, HCMS offered a resolution calling for TMA to advocate for language providing liability exemptions for medical health workers volunteering in a declared disaster.

In 2019, the governor signed into law additional liability protection for physicians who are volunteering their services to patients in times of disaster.

2016 – Guns in hospitals and MOC

In 2015, the Legislature passed the Open Carry law that had potentially serious unintended consequences. An artifact of the law allowed people to carry their firearms into state mental hospitals; much to the horror of the psychiatric community. In 2016, HCMS authored a resolution to eliminate that provision and TMA worked with lawmakers to successfully pass an amendment to the law in 2017.

For several years now, physicians have been concerned by the abuse of the Maintenance of Certification (MOC) process, both by the national boards that create the tests and set the prices and by the hospitals and health plans that use MOC as a means of economic credentialing. In 2016 two physicians drafted separate resolutions that called for the elimination of the monopolistic MOC process as a means of credentialing physicians. The physicians took different approaches to this problem and the HoD adopted both resolutions in a combined format. The result was new TMA policy that required legislative attempts to address the problem in Texas, irrespective of what the national boards might say or do.

As a result of this new TMA policy, a new law was passed in 2017 that prohibited health plans and most hospitals from using MOC as a credentialing criteria unless the medical staff approved it.

2014 – Epi-pens and GME funding

In 2014, HCMS had two members identify serious problems in Texas they wanted to see corrected. Dr. Louise Bethea saw a desperate need for schools to be able to stock epinephrine auto-injectors on campus and train people to use them on campus or at off campus events.

Her resolution passed the TMA HoD and became a top legislative priority for TMA during the 2015 session during which it was passed into law.

In the same year, Dr. Robert Jackson expressed his frustration that GME funding always seemed to be a prime victim to the fluctuations in state revenue. He argued in a successful resolution that TMA should ask the legislature to establish a stabilization fund for GME programs so that residency programs and residents had a more certain future.

In 2015, TMA worked with state Sen. Jane Nelson to establish a \$300 million permanent endowment program for GME funding. Sen. Nelson also established a stated goal of 1.1:1 residency slots for medical school graduates.

2012 -Drug shortages

HoD approved an HCMS resolution that TMA (1) work with the AMA and the FDA to: (1) classify certain classes of drugs and biologics as critical for the practice of medicine; create a mechanism, either by stockpiling certain drugs and biologics, or reducing regulatory hurdles that lead to the likelihood of sudden shortage; require manufacturers to provide six months' advance notice of planned interruptions and prompt notification of unplanned disruptions; and (2) work with the AMA in reviewing the drug regulations of the FDA and other federal regulatory agencies that potentially create wholesale shortages of critical drugs and biologics, and require that a plan be in place to address that shortage prior to these regulations being implemented.

The AMA House adopted Policy H-100.956, National Drug Shortages. The U.S. Congress adopted a bill addressing drug shortages, antibiotic development (s.3187), Jan. 3, 2012. It became law 7/9/12.

2011 – texting while driving and fracking

HoD adopted an HCMS resolution that TMA (1) adopt a firm stance against the use of hand-held electronic communication devices while driving; and (2) urge the Texas Legislature to prohibit the use of hand-held electronic communication devices while driving.

The legislature passed a bill including TMA-backed language that would outlaw sending or reading emails or text messages while driving. Unfortunately, the bill was vetoed by the Governor.

HoD adopted an HCMS resolution that TMA ask the Texas Legislature, while encouraging natural gas production, to protect our water from the risk of fracking by requiring disclosure of fracking fluid components.

The Legislature passed HB Bill 3328 which requires natural gas drillers to publicly disclose the chemicals they use in hydraulic fracturing. The bill was signed by the Governor and became law effective on September 1, 2011.

2006 – flu vaccines and TMB discipline

HoD adopted an HCMS resolution that (1) TMA, in cooperation with the AMA and other national medical organizations, seek appropriate legislative and/or regulatory action that would be in further compliance with Centers for Disease Control and Prevention (CDC) guidelines in distribution of flu vaccine and the vaccination of high-risk populations; and (2) an efficient and enforceable distribution system be devised so that physicians and other health care professionals who care for high-risk populations may receive priority each year in early shipments of the vaccine.

Policy was also adopted by AMA. AMA conducted several summits with the CDC. Some progress has been made, but it is still an ongoing effort.

Adopted an HCMS resolution that TMA study and monitor the TMB's disciplinary actions, documenting the application of overly harsh punishments – by fine and publicity

– for minor infractions, and suggest alternatives that could be advanced to the board in terms of possible changes in actions that would be more appropriate for minor and administrative violations.

Resulted in several changes by the TMB to be more even handed regarding disciplinary action.

2005 – Health plan transparency

HoD adopted an HCMS resolution that instructed the TMA to support appropriate legislative and regulatory efforts to require proper disclosure by health plans of plan design, limitations on provider referrals, and delineate accurately the scope of their networks to provide medically necessary care to their enrollees.

In the 2007, the state legislature passed a transparency bill that requires health plans to disclose many aspects of their operations.

2002 – Liability protection for charity care

HoD adopted an HCMS resolution that the TMA assess the status of current state charitable immunity statutes for their adequacy in assuring that physicians who volunteer their services in charity care clinics or in their offices are sufficiently protected from lawsuits and that the TMA include charitable immunities as part of its legislative package to address medical liability issues in the Texas Legislature.

State law allows physicians to volunteer for non-profit organization charity clinics. If the physician obtains a waiver from the patient and the clinic maintains liability coverage, the patient's only recourse is to sue the non-profit organization. This statute is being utilized to obtain volunteers for the Gateway to Care Physician Network.

2002 – Response to local disasters

Resolution to (1) investigate how physicians might best respond to community needs in the event of a local disaster including an evaluation of medical legal liability protection, physician roles, support equipment, and coordination and preplanning with local disaster relief organizations to provide reasonable physician support to disaster relief efforts, and (2) investigate TMA's role and ability, in the event of a local disaster, to provide physician volunteer workforce support or coordination to local and community disaster efforts, in conjunction with its local medical societies, the American Medical Association, and other national medical specialty organizations.

Resulting federal legislation created the Medical Reserve Corp which provided liability immunity to physicians responding to a nationally declared disaster. Process worked very well when HCMS physicians helped our Louisiana neighbors after Hurricane Katrina.

2002 – Self policing liability

HoD adopted HCMS resolution that TMA make it a legislative priority to increase funding for the Texas Medical Board to enable them to accept, investigate and act on complaints against physicians.

As part of the 2003 tort reform debate, the Medical Board was given additional authority and more funding.

2000 – Professional Liability

HoD adopted HCMS resolution that the TMA mobilize its resources to: (1) reduce or limit frivolous professional liability claims, (2) continue to examine the causes of increasing claims frequency and justification for increasing premiums, (3) monitor claims data collected by TDI and the Texas Medical Board and make the aggregate data available to the membership, (4) advocate for judicial enforcement of current expert witness and cost bond provisions, (5) allow the right to counter sue, (6) prohibit specialty or geographic discrimination by professional liability carriers, and (7) explore no-fault and self-insured professional liability options.

All these strategies were used to pass the 2003 tort reform legislation and Proposition 12.

1999 – Prompt Pay

HoD approved HCMS resolution that asked TMA to work closely with the Texas Department of Insurance (TDI) to develop rules to implement the Texas Prompt Pay law and to encourage TDI to strictly enforce laws related to prompt payment and to levy substantial fines when warranted.

TMA worked with TDI to develop the position of physician ombudsman to advocate for physician payment. Fines totaled \$8.9 million in the first year, which forced the plans to comply with the law.

November 1999 – Deceptive Trade Practices

HoD passed an HCMS resolution that TMA file complaints against Aetna and other insurance companies for deceptive trade practices for creating reimbursement levels which do not cover the cost of providing state of the art health care which may seriously impede access to that care.

The resolution led to TMA’s participation in the RICO lawsuits against Aetna and other insurance companies. The lawsuits recouped at least \$11 million for physicians.

1995 – Patient Protection Act

HCMS and TMA sued Aetna for terminating Harris County physicians without cause. Although the lawsuit was unsuccessful, Aetna established an appeals process after the suit was filed. All doctors who filed appeals were reinstated.

Data collected during the lawsuit led to HCMS resolution on creating the Patient Protection Act which was passed by the Texas Legislature in 1997 and ultimately became one of the strongest Patient Protection Acts in the country.