



2015 Legislative Wrap-up

TAKING CARE OF (YOUR) BUSINESS

Session Wins Validate Our Strategy & Full-Time Focus on Defending Independents

Capitalizing on relationships and respect built over the last four years, TPBC once again had a stellar legislative session, gaining both positive, incremental changes and a bold victory that again sets the standard for state-level pharmacy advocacy. **Our strategic focus, our ethics and our considerable resources continue to deliver results.**

The TPBC Philosophy:

- **Focus on achievable goals you can build on:** It's easy to reach far; it's harder to pass a bill.
- **Take a long-term view:** bridges & alliances built today reap future cooperation & success.
- **Be willing to discuss & negotiate differences** — just saying “no” rarely solves anything.
- **Always honor your commitments.**
- **Give credit to those who help you** — and expect credit from others for your hard work.
- **Advocate the value of your own goals and efforts** rather than attacking others.
- **We are the advocacy leader for Texas independents** — our Board & members expect us to lead.



Michael J. Wright

The level of cooperation in the pharmacy community improved overall this session, with solid unity on issues like physician dispensing, biosimilar substitution, patient safety and transaction fees. But small subsets of independents tried to derail TPBC's MAC bill because they were not included in negotiations and bill drafting started many months ago. TPBC is a year-round advocacy *business*, and our legislative agenda flows from a year-round effort. In the case of SB 332 (MAC reform) and SB 94 (transaction fees) our negotiations and legal preparation started two years ago.

I am disappointed that we continue to experience occasional disconnect between the unity and cooperation that is so often preached at pharmacy group meetings vs. what we experienced at key points during this session. ***Cooperation and integrity are more accurately measured by behavior at the Capitol — where it matters most — than by what is said in the collegial atmosphere of a meeting.***

So many organizations respect our focus and goals and supported our work this session — Texas Pharmacy Assn., Texas Federation of Drug Stores, Texas Independent Pharmacists Assn., Texas Medical Assn., Texas Federation of Independent Business, Texas Assn. of Business, Texas Osteopathic Medical Assn., Texas HHSC, Texas Dept. of Insurance, to name just a few. ***We may not have agreed every step of the way, but they never impeded our efforts to accomplish good for independent pharmacy.***

We are proud of the way we do business and don't apologize for the considerable resources we use on your behalf. Defending independent pharmacy is an immense challenge that requires a full-time effort. If it sounds like a *business*, well, it is. We don't come to life for six months every two years, we work hard for you every single day. ***It is a privilege to be in the full-time business of advancing and protecting your interests. You deserve every effort we make, and we will continue to represent you with focus, professionalism and most of all — results.***

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Texas Pharmacy Business Council is funded by American Pharmacies, the dominant independent group in Texas.



Steady Progress Continues

Medicaid Reimbursement is an Ongoing Challenge for Independents, But Retail Pharmacy Has Plenty to Celebrate From the 2015 Session

Relief is still not in sight for Medicaid reimbursement levels, but Texas retail pharmacy got some badly needed wins and avoided any calamities in the 84th Legislative Session. The biggest positive of the session is the badly needed financial gains for retail pharmacy represented by TPBC's landmark ban on PBM transaction fees, and a reduction in the state franchise tax. Scope of practice issues like expanded immunization authority and medication synchronization didn't fare well, but at least the effort to float physician dispensing once again failed.

Victories



- TPBC passed the nation's first and toughest comprehensive ban on transaction fees assessed by PBMs on the adjudication of prescription claims, a law that will save Texas pharmacies millions of dollars each year in hidden charges.
- We expanded MAC pricing transparency to public & commercial health plans;
- Transfer of the Texas Prescription Program (controlled drugs monitoring) from DPS to the Texas State Board of Pharmacy and elimination of the duplicative state-level registration requirement for pharmacists and physicians.
- Franchise Tax amendments that preserve the current exemption of the first \$1 million of revenue and reduce the subsequent marginal rate by 25%.
- Legislation placing restrictions on operators of prescription discount cards and defining deceptive practices.
- Bills authorizing the dispensing of EpiPens to school districts without a specified patient name and authorizing pharmacists to administer the auto-injectors to individuals in emergency situations.

Disappointments

SB 322 by Schwertner | HB 778 by Bell – TPBC's Any Willing Pharmacy Legislation

Would have required TDI to enforce the law requiring Texas health plans to allow any pharmacy to participate in the plan's provider network if the pharmacy is willing to accept its terms, conditions and reimbursement provisions. *This issue remains a tough challenge — intense MCO/PBM opposition kept either bill from making it out of committee.*

SB 480 by Perry | SB 785 by Hinojosa

Would have expanded pharmacists' immunization authority for patients 8 and older without physician referral. Physician opposition remains intense and the bill never got a hearing. *It's time for a new approach on this issue.*

Bullet Dodged



HB 1483 by Zerwas: Like a bad case of malaria that flares up every two years, this intrusive bid for physician dispensing of aesthetic drugs surfaced again, but didn't get as far as the bill that was vetoed in 2013. The bill would have allowed physicians and therapeutic optometrists to dispense 11 aesthetic drugs for profit with few restrictions. HB 1483, which died in the House Calendars Committee, was more troublesome for the physician encroachment into dispensing than for any real economic harm it posed for retail pharmacy.

TPBC joined all Texas pharmacy groups in opposing the bill every step of the way, testifying against it and twice sending out statewide action alerts by fax and email. **A major key to the bill's demise was a late-session meeting between TPBC, Texas Pharmacy Association and Calendars Committee Chair Todd Hunter, who kept the bill bottled up until it expired.** The issue resurfaced when the main provisions of HB 1483 were inserted into SB 202 on the House Floor, after which the House passed the amended bill. The physician dispensing amendment was subsequently stripped from the bill by a House-Senate conference committee, with all pharmacy groups again in opposition. *This is an issue that is simply not going to disappear.....*

Bills Down Overall; Headline Issues Dominate

The House filed 6% more bills than during the 83rd session, but passed 12% more. The Senate filed 8% more bills, but passed 29% fewer than in 2013 — a drop of 201 bills! With a new lieutenant governor at the helm and several high-profile issues hogging the Capitol spotlight — open carry, tax cuts, border security, school finance, ethics reform — the Senate bogged down at times. *TPBC did extremely well to claim two of the 504 bills the Senate passed!*

Prohibition of MCO/PBM Transaction Fees

Groundbreaking TPBC Bill Creates Nation's Strongest Ban

TPBC broke major new ground this session with the passage of landmark legislation that specifically and comprehensively bans transaction fees assessed by PBMs on the adjudication of prescription claims. SB 94, sponsored by Sen. Juan Hinojosa of Mission, is the first of its kind in any state and gives Texas retail pharmacies the nation's strongest protections against the often-hidden charges. **The bill was signed into law by the governor on May 15 and will take effect Sept. 1.**

"This is a landslide win for retail pharmacies in Texas," TPBC Executive Director Michael Wright said. "These fees have collectively cost retail pharmacies millions in hidden costs in recent years. We've already heard from individual pharmacies that have identified hundreds of thousands they will save each year."

The House companion (HB 255) was sponsored by Rep. Bobby Guerra of McAllen, who skillfully guided it through the House Insurance and Calendars Committees to the House floor, where he substituted SB 94 for his own. Hinojosa sped his bill through the Senate despite PBM opposition; it cleared the Business & Commerce Committee March 31 and passed the Senate April 9 on a 29-2 vote.



Sen. Juan Hinojosa



Rep. Bobby Guerra

"This is the culmination of more than two years of hard work by TPBC," Wright said. "We developed a very strong bill and got it passed unchanged with the outstanding efforts of Sen. Hinojosa, Rep. Guerra and all our bipartisan cosponsors."

A National First

TPBC can find no evidence that any other state has a statute prohibiting PBM transaction fees. We believe this a first in the nation and is a bill that will be used as a model in other states, much as our MAC transparency legislation from 2013 has been copied in several other states.

What SB 94 Does

- Adds pharmacies to the list of health-care providers that cannot be assessed a transaction fee.
- Specifically prohibits the assessment of fees for network management services, inclusion in a network, services related to the adjudication of a claim, services related to processing a claim, services related to transmitting a claim, or for developing a claims processing and adjudication network.
- Gives Texas Department of Insurance (TDI) stronger enforcement capabilities.

Transaction fees were first prohibited by Sen. Jane Nelson's SB 418 in 2003. Texas Health and Human Services Commission accordingly considers the fees illegal and prohibits their assessment in Medicaid managed care. TDI is responsible for enforcing the law, but says PBMs use loopholes in the law to disguise transaction fees by creatively coding them as other charges.

TPBC started aggressively pursuing the end of transaction fees in 2013, working closely with TDI officials to identify enforcement challenges and persuading HHSC officials to prohibit the fees in Medicaid through MCO contract amendments.

A Special Debt to Sen. Jane Nelson



Sen. Jane Nelson

The legislation's chances were strongly boosted by TDI's announcement at House and Senate hearings in March that the state's four largest PBMs had entered into voluntary "Compliance Agreements" with TDI to stop assessing the fees on April 1. **Although the prohibitions in SB 94 are more stringent than the requirements of those compliance agreements, current enforcement activity is possible only because of Sen. Nelson's original legislation from 2003.**

"We owe Sen. Nelson a lot for the passage of SB 94," Wright said. "She gave us a great foundation on which to build the strongest ban in the nation for transaction fees. It fulfills her intent with the original 2003 law."

TPBC also thanks the following groups for their support of the legislation: Texas Federation of Drug Stores, Texas True-Care, Alliance of Independent Pharmacists, Walgreens, HEB, United Drug Stores, Texas Pharmacy Association and Texas Independent Pharmacists Association.

MAC Pricing Transparency & Online MAC List Access Are Expanding Beyond the Medicaid Program

TPBC Brings MAC Transparency to Commercial & Public Plans

SB 332 by Sen. Charles Schwertner expands the consistency and transparency in how PBMs determine pharmacy reimbursements on generic drugs to public and commercial health plans. The bill was signed June 16 and takes effect Jan. 1, 2016. TPBC is already working with Texas Department of Insurance on implementation.

"This is another important advancement for Texas retail pharmacy," TPBC Executive Director Michael Wright said. "Pharmacists need to take advantage of these important safeguards that ensure they can access and appeal MAC prices in commercial health plans."



Sen. Charles Schwertner



Rep. Todd Hunter



As in 2013, TPBC worked closely with health-plan and PBM interests to negotiate the provisions of the bill. As agreed-to legislation, SB 332 sailed through the Senate, clearing the Business & Commerce Committee with no opposition on April 1 and passing the full Senate on April 9. The bill cleared the House Insurance Committee on May 12 and passed the House on May 23. There was only one weak attempt to amend the bill on the House side.

"We were fortunate to have two of the most powerful legislators working hard on this legislation," Wright said. Their skill and influence made our job so much easier. We also appreciate Rep. John Frullo getting SB 332 out of House Insurance so quickly and with no changes."

What the Bill Does:

- Expands to public and private insurance plans the same level of reimbursement transparency and safeguards that govern PBMs in the Medicaid/CHIP Vendor Drug Program. (Does not apply to the Texas Workers' Compensation program or to any insurance plan that is self-funded as defined by ERISA.)
- Requires a PBM to disclose to network pharmacies, at the time they contract or renew a PBM contract PBM, the sources of the data it uses to determine the Manufacturers' Average Cost (MAC) used in reimbursements.
- Requires each PBM to make its MAC list readily accessible to network pharmacies.
- Requires a PBM to update MAC prices weekly as consistent with price changes & availability in its service area.
- Requires each PBM to establish an appeals procedure that allows network pharmacies to challenge a MAC price within 10 days of filing a claim.

SB 332 Does Not:

- Establish generic drug price controls or restrict the MAC prices that a PBM can set.
- Regulate dispensing fees, which are set independently by PBMs in their contracts with network pharmacies.
- Set up HHSC or any other agency as a central appeals channel for MAC pricing disputes.

Thanks to Other Pharmacy Groups

TPBC thanks the following groups for their support of our consensus MAC bill: Texas Federation of Drug Stores, Texas Pharmacy Association and Texas Independent Pharmacists Association.

Ongoing Compliance and Monitoring

As with the 2013 MAC law, pharmacies must work within the system established by each PBM to access MAC lists and updates, and to challenge MAC prices. There is no central coordination of these processes. Each PBM will have its own process for challenging MAC prices. Certain provisions – such as deadlines for replying to a challenge – will be uniform, but other procedural requirements and the forms used will vary per MCO/PBM. **TPBC will monitor the implementation closely to assess overall compliance and will work with TDI as needed.**

How Other Pharmacy Legislation Fared

These TPBC-Supported Pharmacy Bills Passed the Legislature

SB 195 by Schwertner | TPP Program Transfer

TPBC worked closely with Sen. Schwertner, TPA, Texas Association of Business and TMA on SB 195, which transfers control of the Texas Prescription Program (controlled drugs monitoring) from DPS to the Texas State Board of Pharmacy. The bill:

- Authorizes TSBP to enter an interoperability agreement with other states to share information via a central database;
- Eliminates the DPS registration for physicians and pharmacists, which duplicates the DEA registration requirement;
- Enables practitioners to auto-enroll in TPP upon license renewal. **The bill was signed June 16 and takes effect Sept. 1.**

SB 66 by Hinojosa | Dispensing EpiPens to School Districts

Authorizes the prescribing and dispensing of EpiPens to school districts without the name of a specific patient and the administration of epinephrine autoinjectors on a person experiencing an anaphylactic reaction on a school campus or at or in transit to or from an off-campus school event. **The bill took effect May 28**

HB 751 by Zerwas | Substitution of Biosimilar Drugs

This bill restricts substitution of biologic drugs, requires the TSBP to develop rules for dispensing biologics and requires direct pharmacy reporting to physicians only if a generically equivalent or interchangeable biological product is substituted. **The bill was signed June 19 and takes effect Sept. 1.**



HB 1550 by Zerwas | Pharmacist Administration of Epinephrine Auto-Injectors (TPA)

Authorizes pharmacists to administer epinephrine through an auto-injector to a patient in an emergency situation under rules adopted by the Texas State Board of Pharmacy. **The bill was signed June 20 and takes effect Sept. 1.**

SB 460 by Schwertner | TSBP Cleanup Bill

This regulatory clean-up bill for the Texas State Board of Pharmacy contains a provision granting TSBP nominal access to the financial records of physician-owned pharmacies. **The bill was signed June 16 and takes effect Sept. 1.**

HB 3028 by Frullo | Regulation of Prescription Discount Cards (TFDS)

Defines deceptive practices and places restrictions on operators of prescription discount cards. **The bill was signed June 16 and takes effect Sept. 1.**

Died on the Vine



SB 480 by Perry | Expansion of Pharmacist Immunization Authority

New session, same story. Never got a hearing.

HB 2618 by Muñoz

An omnibus bill to place PBMs & 3rd party administrators under TDI regulation, bar transaction fees and define pharmacy network standards. Never cleared committee.

HB 3146 by Lozano | Pharmacist Provider Status

Would have amended the Texas Occupations Code to further define pharmacists as health-care providers. Never got a hearing. **Note:** *Texas pharmacists already have legal status as health-care providers via the provider definitions in HB 2292, TPBC's prompt pay and audit reform bill passed in 2011.*

HB 3246 by Crownover | Pharmacist Dispensing of Tobacco Cessation Drugs

Never got a hearing.

HB 3366 by Sheffield | HHSC Study of Medicaid Dispensing Cost

Would have required HHSC study of dispensing cost in Medicaid managed care & use of NADAC to set cost of goods. Cleared the House Public Health Committee, but never made it to House floor.

SB 1176 by Eltife; HB 2479 by Guerra | PSAO Regulation & Protection

Would have codified right of PSAOs to represent pharmacies in negotiations/interactions with PBMs. Left pending in committee.



We Could Not Have Accomplished What We Did This Session Without the Legislators & Pharmacists Who Went the Extra Mile for Community Pharmacy.

Sen. Juan “Chuy” Hinojosa

The Mission Democrat authored the single-most important retail pharmacy bill of the session – TPBC’s groundbreaking ban on PBM transaction fees. The veteran lawmaker also passed SB 66 to authorize the dispensing of EpiPens to public schools and their use at school or school-sponsored events.

Sen. Charles Schwertner

Another stellar session for the M.D./pharmacist legislator: he authored our MAC expansion bill, passed a bill moving the controlled drug monitoring program from DPS to the Texas State Board of Pharmacy, and the TSBP clean-up bill. He got two major franchise-tax bills through the Senate and negotiated a 25% cut in the tax as one of 10 House-Senate budget conferees.

Rep. Todd Hunter

The longtime pharmacy stalwart carried the companion bill (HB 1778) for TPBC’s MAC Bill through the House and got SB 332 through the Legislature a few days before adjournment. He also helped safeguard TPBC’s transaction fees bill while it was in House Calendars and kept the physician dispensing bill from making it to the House floor.

Rep. Bobby Guerra

Carried the House companion (HB 255) for our transaction fees bill (SB 94) and was instrumental in getting his bill out of House Calendars and substituting the Senate bill for his on the House floor.

Rep. Sergio Muñoz Jr.

A consistent pharmacy ally, Muñoz co-authored HB 255, the House version of our transaction fees bill and HB 1775, our House MAC companion, and worked hard as Insurance vice-chair to get SB 94 to the House floor. He also carried an omnibus bill to put PBMs under TDI regulation, bar transaction fees and define pharmacy network standards.



Rep. John Frullo

He presided supportively over several pro-pharmacy bills as House Insurance Chair. At a key juncture, he quickly ushered TPBC’s MAC bill, (SB 332) through his panel with no changes. He also authored HB 3028, which defines deceptive practices and places restrictions on operators of prescription discount cards. That bill takes effect Sept. 1.

Reps. Cecil Bell, J.M. Lozano, J.D. Sheffield, John Raney, Eddie Lucio III | Sen. Jane Nelson

Bell, Lozano and Sheffield coauthored HB 1778, our AWP bill; Sheffield also coauthored HB 1778, our MAC bill. Raney and Lucio were among the House cosponsors on transaction fees (HB 255). Nelson coauthored SB 94, our transaction fees bill.

Pharmacist Heroes

Bill Moore, Sinton | TPBC Board member: the dean of Texas independent pharmacist advocates, Bill was instrumental in getting Rep. Todd Hunter to carry our MAC House companion bill, getting SB 94 out of House Calendars and in helping to kill the physician dispensing bill. *As always, his leadership, influence and connections were invaluable in the session.*

Valley Pharmacist Danny Vela: The McAllen pharmacy owner delivered highly effective testimony for TPBC in support of our transaction fees bill and on behalf of our Any Willing Provider bill. He also supported our position on biosimilar substitution in direct consultation with Rep. Bobby Guerra.

Magnolia Pharmacist Steve Hoffart: The American Pharmacies/TPBC member persuaded Rep. Cecil Bill to carry our AWP bill in the House and provided valuable input on pharmacy issues to Bell and other legislators throughout the session.

TPBC Board Chairman Bruce Rogers of Victoria: made numerous phone calls to the governor and legislators, wrote several letters on behalf of TPBC-supported legislation, and conducted valuable Board-to-Board communications with other pharmacy groups in support of the TPBC agenda.

Austin Pharmacist & Advocacy Leader Rene Garza: The American Pharmacies/TPBC member was a strong activist on behalf of the TPBC agenda throughout the session and participated in valuable Board-to-Board dialogue as a member of other pharmacy organizations to enable our success.

All pharmacists who took time to call, e-mail or visit their legislators in support of TPBC legislation: The input of informed, engaged constituents is a powerful force, and it was a vital contributor to the successful session that TPBC enjoyed.

ALWAYS STAND BY YOUR FRIENDS



TPBC — and by extension, Texas retail pharmacy — have experienced unprecedented legislative success the past two sessions. A large part of that success derives from the deep, productive relationships TPBC enjoys with some of the state's most powerful and effective leaders. These lawmakers worked hard on your behalf to help us deliver major gains for you in 2013 and 2015. With the session now over, it is critical that we collectively stand by our allies and financially support their re-election.

GPAC is the political action committee of American Pharmacies. Contributions to GPAC are used to advance the political power of Texas independent pharmacy. GPAC funds are used by Texas Pharmacy Business Council to:

- Financially aid legislators and candidates who understand community pharmacy's vital role and support our issues.
- Help elected leaders understand how their decisions affect the economic and competitive welfare of independent pharmacy.
- Hold events to recognize and support the legislative friends of Texas community pharmacy.
- Educate APRx members and other community pharmacists about the impact of the political process on our business model.

With GPAC, You Leverage The Power of Your Donations

There are many independent pharmacy groups with PACs that support them. **Only one group — Texas Pharmacy Business Council — has proven that it has the resources, strategic focus and values to consistently win at the Capitol.** In the last three sessions, we have delivered the nation's first ban on PBM transaction fees, MAC transparency reform for Medicaid and commercial health plans, plus the nation's strongest audit regulations and prompt-payment laws.

When you support GPAC, you support the state's most powerful and effective advocacy force for independent pharmacy and the legislators who have enabled our many successes. American Pharmacies and TPBC are the proven leaders in advocacy for Texas independent pharmacies. **It's time that we have the #1 Pharmacy PAC to support our efforts on your behalf.**



It's Easy to Contribute to GPAC

Just fill out and detach the pledge form on the next page to make your contribution to GPAC today. You can contribute immediately by check or credit card, or specify a donation amount to be withheld from your annual APRx shareholder dividend/rebate payment.

However you pay, you'll be doing your part to ensure the economic viability of independent pharmacy by steering your PAC dollars to the organization that has proven it has the best strategy and resources to succeed.

DONATE WISELY

SUPPORT GPAC & MAKE YOUR PAC DONATION COUNT

Join the Political Fight For Independent Pharmacy

GPAC is the political action committee of American Pharmacies. GPAC donations are used to advance the political power of Texas independent pharmacy. Contributions to GPAC are used for political campaigns and are not deductible for federal tax purposes.



**To contribute by credit card, complete this card and fax it to 512-992-1391.
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5. I understand that if I elect monthly contributions or annual dividend deduction, that designated contribution will continue on a recurring basis until such time that I instruct GPAC in writing to halt those contributions.