




THE  TEXAS
85TH LEGISLATURE
END OF SESSION REPORT

Texas Pharmacy
Business Council 

The Gold Standard For Texas Independents

News, Insights & Takeaways for the 2017 Session

STAYING THE COURSE

The Momentum of Success Keeps Wins Coming & Future Bright

Success is like gravity. It attracts recognition and allies, strengthens reputation, and — most importantly — builds momentum that drives future success. Our momentum — built on our many previous achievements — is a big factor in our ability to deliver again in what was the most challenging session since I took the TPBC reins in 2012.

We once again won important gains as we continue to chip away at the PBMs' stranglehold on our reimbursement. Passing a clawback ban over the intense opposition of the PBM and managed-care lobbies is a major achievement that is due to our reputation and credibility as much as the grit and determination of our staff and legislative allies. It's a constant, year-round effort to lay the groundwork necessary to win during 140 days of turmoil every other year. It's not enough to have the right resources and the right vision; you still have to outwork everyone else.

The TPBC Team Shines

I am proud of all our consultants for their hard work and resolve. **Stephanie Gibson, Greg Herzog, Jerry Valdez and Rusty Word gave a heroic effort throughout the session and our results show it. They truly deserve your appreciation.**



Michael J. Wright

As always, we thank all the organizations that supported our initiatives — H.E.B., Texas Pharmacy Assn., Texas Federation of Drug Stores, Alliance of Independent Pharmacists, Texas Independent Pharmacists Assn., Texas Medical Assn., Texas Federation of Independent Business, AARP and West Texas Pharmacy Association, to name just a few.

We cooperated whenever possible with other groups without compromising our policy positions or the confidences of our legislative allies. We will always stand firm on the course we see as the best — we will never just “go along to get along.” We will never support a position that compromises our commitment to protect your welfare, no matter how popular that position might be. That's why we were unable to support the effort to implement NADAC pricing in Medicaid managed care. The predictability and transparency of NADAC are greatly desirable, but they must be accompanied by an ironclad guarantee of a dispensing fee north of \$10. **Accepting NADAC with no assurance of an adequate dispensing fee posed an unacceptable (to us) threat to your economic viability.**

I am thrilled at the rapid growth of APRxPAC, which picked up \$25,000+ in new annual commitments at the American Pharmacies Shareholder Retreat in early June. We are now by far the largest pharmacy PAC in Texas and look forward to the continued strong growth of this vital resource.

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 dedication, professionalism and — most of all — results.

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



Hits & Misses

Economic relief remains elusive for Medicaid reimbursements, but Texas retail pharmacy scored a few wins and avoided any calamities in the 85th Session. The biggest positive is TPBC's ban on the highly unethical and costly practice of clawbacks. Scope of practice issues as usual didn't fare well, but NACDS and TPBC did team up to pass a badly needed med synch bill. Pharmacy also avoided egregious mandates in the Prescription Monitoring Program.

More Bills Filed, But Fewer Pass; Strauss-Patrick Standoff Clogs the Gears

The House and Senate filed 55 more bills than during the 84rd session, but passed 112 less. The philosophical tension between moderate Speaker Joe Strauss and ultraconservative Lt. Gov. Dan Patrick spiraled into a standoff late in the session that killed several important bills and triggered the need for a special session that will start July 18. Confronted with such challenging issues as Medicaid, school finance and ethics reform, legislators spent lots of time in divisive squabbles over transgender bathrooms, sanctuary cities, school vouchers. The standoff over bathrooms and vouchers will continue into the special session, whose call as yet includes no pharmacy-related issues.

Victories



- TPBC passed the nation's fourth ban on clawbacks, a prohibition that will collectively save Texas patients and retail pharmacies millions of dollars each year by banning the unethical practice of a small handful of health plans and PBMs.
 - We toughened criminal penalties for breaking into a pharmacy, doctor's office, clinic, warehouse or transport/delivery vehicle to steal dangerous narcotic drugs.
 - TPBC and the National Association of Chain Drug Stores passed a bill requiring health plans to allow the synchronization of medications for patients on multiple maintenance drugs. The bill prohibits a health plans or PBMs from prorating the dispensing fee paid for the partial fills needed to synchronize.
- Despite a hard play by the PBMs, the state's Medicaid formulary will stay in the hands of HHSC through 2023.
 - For the first time, HHSC will be required to directly audit the performance of the PBMs administering prescription benefits in Medicaid managed care (SB 894 by Buckingham).
 - Medicaid MCOs & PBMs will be subject to established clinical standards in implementing step therapy, and must use proven data and review procedures for prior authorizations & formulary changes.

Unfinished Business

HB 1133 by Sheffield | NADAC-Based Reimbursement in Medicaid Managed Care

TPBC was the only independent group to take a neutral stance on this high-stakes bill to replace MAC with actual acquisition cost (NADAC) as the drug reimbursement standard in Medicaid managed care. We did not testify in support of the bill, nor oppose it in any way. We would have supported HB 1133 with an attached appropriation to cover a dispensing fee of \$10.50 or higher, but the bill merely required HHSC to study dispensing costs in Texas and set a fee "based on" that determination, meaning whatever fee it chooses. The bill did not guarantee an adequate dispensing fee, and switching from MAC to NADAC without one could be economically disastrous for Texas retail pharmacy. (Our own study showed no economic improvement with NADAC and a dispensing fee of \$6.)

Incredibly, we were actually told by some of the bill's supporters that the amount of the actual dispensing fee did not really matter, just the increased transparency of NADAC! Transparency is great, but not at the cost of going out of business.





TPBC Passes Nation's 4th Ban on Clawbacks

Gov. Greg Abbott on June 12 signed TPBC's SB 1076 into law, barring Texas health plans and the PBMs that represent them from profiteering by charging arbitrarily high patient prescription co-payments at patient and pharmacy expense.

The hard-fought legislation, which was vigorously opposed by the PBM lobby, was sponsored by Senate Health & Human Services Chairman Charles Schwertner, a longtime TPBC ally. The bill, which takes effect Sept. 1, prohibits a health plan or PBM from charging a co-payment for a covered medication that exceeds the lesser of:

- The standard co-payment;
- The allowable claim amount for the drug; or
- The pharmacy's cash price.



Sen. Charles Schwertner *Rep. Todd Hunter*

The bill had strong bipartisan support and was sponsored in the House by Reps. Greg Bonnen, J.D. Sheffield, Rodney Anderson and Tom Oliverson. It was supported by all the state's pharmacy groups, NCPA, Texas Medical Association, AARP and several other patient and health organizations.

Texas becomes just the fourth state to enact a ban on the practice of clawbacks, following Arkansas, Louisiana and Connecticut. TPBC Executive Director Michael Wright said the prohibition will collectively save Texas patients millions of dollars each year in excessive co-payment charges while freeing pharmacies from being forced participants in the deceptive practice.

The clawback is a practice in which a health plan or PBM establishes a co-payment for a prescription drug that is far higher than the pharmacy's acquisition cost, then reduces future payments to the pharmacy that recoup most of the co-payment, leaving a net reimbursement slightly above or even below acquisition cost. The clawback can occur weeks or even months after a drug is purchased by a patient.

A pharmacist survey conducted by the National Community Pharmacists Association found that 83% of surveyed pharmacists said they experience clawbacks 10 or more times a month. Pharmacies are currently barred under many PBM contracts from offering to sell a drug at a lower cash price and may risk expulsion from the PBM network if they tell a patient that a co-payment exceeds the drug's cash price.

Bill Passed Despite Fierce PBM Opposition



"We overcame tough opposition on this bill because of the perseverance of Senator Schwertner, our House allies and our consultant team, which never gave up the fight," Wright said. "It's probably the fiercest fight we've had on a bill in the last several sessions. The PBM lobby (prescription Care Management Association) even brought in extra lobbying forces to work against the bill, but in the end, the practice was simply indefensible."

After a March 21 hearing in Senate Business & Commerce, the bill was voted out on April 10, then passed the Senate April 19. PBM efforts kept it languishing for three weeks before it was referred to House Insurance, which promptly heard and approved it on May 10. The bill was again held up in House Calendars, where it was bottled up as the session wound down.

Constant lobbying of Calendars Committee members by the TPBC consultant team and the astute leadership and influence of Calendars Chairman Todd Hunter finally prevailed, and the bill cleared Calendars on May 20 and passed the House the next day on a 131-10 vote with about a week left in the session.



TPBC Wins Tougher Penalties for Break-ins

TPBC took a major step to take a bite out of rampant pharmacy crime in Texas with the passage of HB 1178 by Rep. John Kuempel, which sets sentences of 2-10 years for those convicted of breaking into pharmacies (and other specified facilities) to steal dangerous narcotic drugs. The Senate bill was carried by TPBC ally Juan Hinojosa of McAllen. The legislation takes effect Sept. 1.

What the Bill Does:

- The bill amends Section 30.01 of the Texas Penal Code to increase criminal penalties in Texas for burglaries and thefts that target controlled drugs in pharmacies, clinics, hospitals, nursing facilities, warehouses and wholesaler delivery/transport vehicles.
- It makes theft of a controlled substance in these Texas facilities a third-degree felony (regardless of the value of the stolen drugs) punishable by a minimum prison term of two years with a maximum of 10 years.
- Controlled substances covered by the legislation are defined in Chapter 481.002, Texas Health & Safety Code.



Rep. John Kuempel



Sen. Juan Hinojosa



As detailed on our dedicated website at txopioidcrisis.org, Texas has far more pharmacy break-ins than any other state. According to the pharmacy crime database RxPatrol, Texas pharmacy burglaries accounted for 30% of the national total from 2011-2016: 239 pharmacy burglaries over that span. California ranks #2 with 66. Texas also ranks fourth in pharmacy robberies over the same period.

In many cases, they burglarize the same pharmacy repeatedly, causing extensive property damage and escalating property insurance. One pharmacy in the Waco area suffered six break-ins in an 18-month period. On Dec. 31, 2015, burglars stole \$1 million worth of prescription drugs from a single Eules pharmacy.

TPBC's study of such thefts found that the crimes are rampant in Texas, with an alarming volume of controlled drugs stolen. We found that convicted perpetrators typically receive light punishments. Our tracking of offenders through the criminal justice system shows that many received two years or less of jail time, even though they had previously committed the same crime elsewhere in Texas.

"Criminals who steal prescription drugs should not get off so easily that they are back on the street in short order to break into more pharmacies or clinics," Kuempel said. "The theft of these drugs is not like other property crimes — it feeds deaths, sickness, broken families and economic harm to our state."

HB 1178 sailed through the House, clearing the Criminal Jurisprudence Committee on March 13 without amendments and passing the full House on April 12. The bill stalled a bit in the Senate, but cleared the Senate Criminal Justice Committee on May 15 after a substitute was offered to accommodate the need to extend the bill's scope to drug warehouses and wholesaler transport and delivery vehicles. The committee substitute passed the Senate on May 19 and the House concurred in the Senate amendments two days later. The bill went to the governor on May 25.

"We were fortunate to have two powerful legislators working hard on this legislation," Wright said. "Opioid-driven crime is a huge health and economic problem in our state, and this is a vital step in getting repeat offenders behind bars and reducing the flow of stolen drugs to our streets."

Outcomes of Key Bills Affecting Pharmacy: Many are Culled, But a Few are Chosen

These TPBC-Backed Bills Passed the Legislature

HB 1296 by Frullo | Medication Synchronization

TPBC and the National Association of Chain Drug Stores teamed up to pass legislation requiring health plans to allow pharmacies to synchronize medications for patients on multiple maintenance drugs. The bill prohibits health plans or PBMs from prorating the dispensing fee paid for the partial fills needed to synchronize. Effective Sept. 1

HB 2561 by Thompson | Texas State Board of Pharmacy Sunset

TPBC worked closely with Texas Medical Association and Sen. Schwertner to develop equitable PMP monitoring/reporting standards for prescribers and dispensers. **Effective Sept. 1, 2019, all prescribers (except veterinarians) and pharmacies must check the PMP database before prescribing or dispensing controlled substances. Pharmacists must report the dispensing of such substances within 1 business day.**

The bill creates a remote pharmacy classification (See SB 1633) that allows Class A pharmacies to open telepharmacies staffed by specially trained technicians in medically underserved areas. TPBC worked to limit to 2 the number of telepharmacies that a Class A pharmacy can operate, and to increase the required distance between a telepharmacy and an existing Class A pharmacy from 10 miles to 22 miles. Effective Sept. 1.



HB 3218 by Phillips | Regulation of PBMs by Tx. Dept. of Insurance

Brings PBMs under the direct regulatory scope of TDI and requires their disclosure of operating practices. TDI will now have oversight of PBM credentialing, pharmacy reimbursement & complaints and PA processes. Effective Sept. 1.

SB 680 by Hancock | Restrictions on Step Therapy

Limits use of step therapy — often guided by financial vs. therapeutic considerations. The bill requires that MCOs & PBMs use accepted clinical data to establish medication effectiveness and prior authorization (PA) guidelines. PBM formulary changes and PA criteria must be based on proven research, studies and practices. Effective Sept. 1.

SB 894 by Buckingham | HHSC Performance Audits of MCOs & PBMs

For the first time, Texas HHSC must prioritize audits of MCOs, document how it selects them for audits and document corrective actions taken to remedy deficiencies. **More critically, HHSC must periodically audit each Medicaid PBM to assess the PBMs' internal controls and compliance with state law/regulations and must develop a monitoring process to ensure that MCOs resolve the negative findings for their PBMs.** Takes effect Sept. 1.

HB 1917 by Smithee | HHSC Control of Medicaid/CHIP Formulary

Continues HHSC control/oversight of the Medicaid /CHIP drug formulary through 2023. The PBMs fought hard for individual formularies (an economic and logistical nightmare for both patients and pharmacies. Takes effect Sept. 1.

Died on the Vine



SB 17 by Bettencourt, Burton, Hall, Huffines & Van Taylor

Would have progressively scaled back and eventually abolished the state franchise tax. The bill sailed through the Senate but was DOA in the House, never getting a hearing.

SB 293 by Hinojosa & Schwertner

Would have required the HHSC commissioner & OIG to define what constitutes significant financial risk to the state and/or threats to Medicaid integrity in determining payment holds in cases of alleged fraud by Medicaid providers. Passed the Senate; stalled in House Calendars.

SB 1606 by Creighton & HB 2420 by Oliverson | Physician Dispensing

Like a bad case of malaria, physician dispensing bills creep up every session. These bills would have allowed physicians and therapeutic optometrists to dispense 11 “aesthetic” drugs with few restrictions. Intense opposition from all pharmacy groups kept them out of hearings.

Kudos to Our Heroes

Sen. Charles Schwertner | Champion of Texas Pharmacy

The most powerful and influential force for pharmacy in the Legislature, the Georgetown M.D./pharmacist was a critical guardian of pharmacy's interests in all legislation passing through his Senate Health and Human Services Committee. Dr. Schwertner authored our SB 1076 barring clawbacks by health plans/PBMs and carried SB 3218, which brings PBMs under direct regulatory oversight of TDI. He was resolute in all discussions on the Texas PMP that prescribers and pharmacists be treated equally in using the PMP. He continued to be a reliable opponent of physician dispensing.

Rep. Todd Hunter | Champion of Texas Pharmacy

The pharmacy stalwart did not carry any of our legislation, but was a pivotal player in passing our ban on PBM clawbacks. With SB 1076 bill stuck in House Calendars, the chairman used all his insight and influence to get the bill on a House calendar.

Rep. John Kuempel | Champion of Texas Pharmacy

The Seguin Republican filed and skillfully brought TPBC's HB 1178 across the goal line, increasing criminal penalties for those breaking in to pharmacies to steal controlled drugs.

Rep. John Frullo

The Lubbock leader carried the medication synchronization bill developed jointly by NACDs and TPBC.

Rep. Greg Bonnen

The Friendswood neurosurgeon was House author of our clawback bill and worked hard to get the Senate bill passed.

Sen. Juan "Chuy" Hinojosa

The Mission veteran carried the Senate version of our bill stiffening penalties for pharmacy break-ins.

Reps. Rodney Anderson, Tom Oliverson & J.D. Sheffield

Co-sponsored our clawback bill.

Reps. Justin Holland, Joe Moody, J.D. Sheffield & John Zerwas

Co-sponsored our pharmacy crime bill.

Pharmacist Heroes

Bill Moore, Sinton: A TPBC Board member and dean of Texas pharmacy advocates, Bill was instrumental in working with Rep. Todd Hunter to get our hard-fought clawbacks bill out of House Calendars and across the finish line. His input and influence are invaluable.

Vance Oglesbee, Fairfield: The American Pharmacies Board member built a crucial relationship with Rep. Byron Cook and twice testified on behalf of TPBC. He is a vocal and enthusiastic PAC supporter who has been a vital spark in the impressive growth of APRxPAC.

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

Jeffery Williams of Houston: The owner of Main Medical Plaza Pharmacy came to Austin to testify for our pharmacy crime bill.

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 critical in getting our clawback bill out of House Calendars.



Magnolia Pharmacy owner & PIC Steve Hoffart, PharmD, (left) received TPBC's 2017 Advocacy Leadership Award from Executive Director Michael Wright. Hoffart, a TPBC Board member who has a strong relationship with Rep. Cecil Bell, provided vital intelligence on the clawback issue and twice came to Austin to testify for the bill.

THEY STOOD UP Now It's Your Turn

Support APRxPAC & Invest in a Winning Advocacy Team



All Texas pharmacy advocacy groups have PACs. **But only one — Texas Pharmacy Business Council — wins at the Capitol.** In the last four sessions, we have delivered a prohibition on clawbacks, the nation's first ban on PBM transaction fees, MAC transparency reform for Medicaid and commercial health plans and franchise tax relief, plus the nation's strongest audit regulations and prompt-payment laws. The other groups? They've barely passed a single bill.

When you support APRxPAC, you support an advocacy force that has achieved powerful wins benefitting the regulation and economics of your business model. A major part of that success derives from the deep, productive relationships we enjoy with some of the state's most powerful and effective legislators. **These lawmakers have worked very hard on your behalf to help us bring you major gains. With the 2017 session now over, it is critical that we collectively stand by them and financially support their re-election.**

PAC DONORS STEP UP BIG AT SHAREHOLDER RETREAT



Encouraged by a great legislative session for TPBC and a Yeti cooler promotion, **APRxPAC picked up more than \$25,000 in new or increased pledges at the 2017 Shareholder Retreat in San Antonio.** All new donors received 20-oz. Yeti Rambler cups, and three full-size Yeti coolers were given away by drawing at an evening PAC reception at La Cantera's City View Terrace.

APRx Board Member Vance Oglesbee of Fairfield tripled his annual contribution, as did Director Lynn Everett and brother Steve Everett of Waco. Doubling up at the reception were Carlos Solis of Edinburg, Chris Alvarado of San Antonio, Benjamin McNabb of Eastland, Tom Neale of Waco and APRx Director Alton Kanak of Katy. TPBC Director Steve Hoffart of Magnolia, Brad Martin of Tyler, Mark Peippo of Pottsboro and Nick Harrell of Kingsville also significantly increased their donations.



New donors included Bill Swail of Austin, Ruben Garcia of Corpus Christi, Jessica Haney of Palestine, Sabrina and Calvin Luck of Kerrville, Scott Frishman of San Antonio, Chuck Eubanks of Tyler and James and Carol Martin of Crockett.



Above, new donor Juliet Garcia of San Antonio visits with Champion level donors Lynn Everett (left) & Laird Leavoy, APRx Sr. VP of Sales & Operations. Lewis won the blue Yeti cooler (shown above) in the drawing. At right, donors listen to a report on PAC funding & goals.



Join the growing APRx members standing up for our political action committee in our quest to double its size! Funds are used to advance the political power of Texas independent pharmacy. Contributions are not deductible for federal tax purposes.

To pay by credit card, fax completed form to **512-992-1391**.

Please make checks payable to "APRxPAC" and mail with this completed form to:
823 Congress Ave., Suite 650 | Austin, TX 78701

YES! I Want to Support APRxPAC Now

Donations to APRxPAC continue on a recurring basis until cancelled in writing.

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Position: _____ **Home Address:** _____

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CREDIT CARD PAYMENTS: Visa MC AMEX

Monthly Contribution of: \$250 \$100 \$50 Other Amount: _____

Annual Contribution of: \$5,000 \$2,500 \$1,000 \$500 \$365 (\$1 a Day)

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QUARTERLY OR ANNUAL DEDUCTION:

I authorize American Pharmacies to deduct the contribution elected below from my rebate payment:

Annual Deduction of: \$5,000 \$2,500 \$1,000 \$500 \$365 (\$1 a Day)

Quarterly Deduction of: \$1,000 \$ 750 \$ 500 \$250

Note: Contributions made by rebate deduction are considered taxable income and you must report them to the IRS under your SSN, not your pharmacy's tax ID number.

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Please Check This Box to Verify The Following:

1. I am making this contribution with my own **personal** funds. **(Corporate contributions are not allowed.)**
2. I am a U.S. citizen or legal resident and I am not a federal contractor.
3. I am not being reimbursed or compensated for making this contribution.
4. I understand that my contribution is subject to the provisions of state and federal campaign finance laws.
5. I understand that my contributions will continue on a recurring basis until such time that I instruct APRxPAC in writing to halt those contributions.