

Kentucky Hospital Association . . .

ONE Powerful Voice

representing Kentucky's hospitals and health systems

KHA Legislative Priorities for the 2020 Kentucky General Assembly

MEDICAID PROGRAM

■ FULLY FUND DISPROPORTIONATE SHARE HOSPITAL (DSH) PAYMENTS

- Each year, Kentucky's hospitals provide millions of dollars in uncompensated care.
- Medicaid expansion has provided coverage to the low income, uninsured population; however, uncompensated care from Medicaid and Medicare shortfalls as well as bad debts and charity continue.
- Medicaid disproportionate share hospital (DSH) payments help to

offset those uncompensated care costs.

KHA POSITION: With a large portion of DSH funds being supplied by hospitals through the provider tax and the ongoing importance of these payments, Kentucky hospitals will seek to assure that Medicaid DSH payments are fully funded in the 2021-2022 biennial state budget

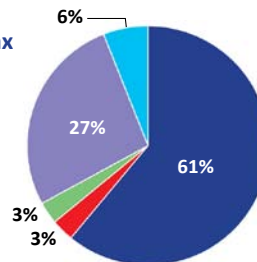
■ MAINTAIN MEDICAID EXPANSION

- The expansion of Medicaid to individuals has significantly reduced the number of uninsured Kentuckians. This has been essential as Kentucky's hospitals continue to face cuts in Medicare and Medicaid payments which, in part, are tied to expanded coverage.

If additional Medicaid funding is needed to cover the costs of expansion, legislators should look to broaden the provider tax to the remaining 13 taxable categories of providers and insurers/MCOs, which do not currently pay a provider tax yet are benefitting from the Medicaid program and the Medicaid expansion.

KHA POSITION: Kentucky hospitals strongly support maintaining the Medicaid expansion and have worked proactively with the Department for Medicaid Services (DMS) on implementation of the Kentucky HEALTH 1115 waiver.

Kentucky Provider Tax by Class



Use of Hospital Provider Tax

- The provider tax is used to fund the state share of Medicaid DSH payments to acute and private psychiatric hospitals
- Hospital DSH payments will decline sharply when federal ACA DSH cuts begin



Kentucky outperforms no-CON states by any number of measures:

- ▶ **ACCESS IS STRONG**
- ▶ **COSTS ARE LOW**
- ▶ **VALUE IS HIGH**

RETAIN CERTIFICATE OF NEED

KHA and Kentucky hospitals strongly support retaining the Certificate of Need (CON) program. The CON law is critical to supporting a more level playing field among providers, especially those serving more vulnerable communities. According to a new study by a national CON expert, **Kentucky outperforms no-CON states by any number of measures.**

KHA POSITION: KHA supports retaining CON for new beds, ambulatory surgery centers, expensive technology or where sufficient volume is needed for good outcomes.

KHA will oppose legislation fully or partially repealing Certificate of Need.

CON repeal would likely cause hospitals to close, costs to rise and access to worsen, particularly in rural communities, eliminating jobs and requiring thousands of patients to travel further for hospital and emergency care.



MEDICAL LIABILITY REFORM

KHA and Kentucky hospitals continue to support the need for medical liability reform in Kentucky. The lack of tort reform creates additional costs for the business community and the health care system in terms of frivolous lawsuits, inflated damages and defensive medicine. KHA and Kentucky hospitals support the following reforms along with a constitutional amendment to permit the General Assembly to evaluate the reforms that have been successful in other states and enact those or similar reforms in Kentucky.

ELIMINATE PHANTOM DAMAGES

- “Billed” charges for medical services – not the “paid” charges– are used to determine economic damages for medical expenses in personal injury litigation.
- Injured patients should be compensated for amounts they or their insurer has actually paid for medical care; when recoveries are calculated using billed charges, “phantom damages” are created.
- Phantom damages are adversely impacting businesses and medical provider liability insurance premiums and are a contributing factor in the rising cost of health care.

KHA POSITION: KHA and Kentucky hospitals support legislation to bring fairness to the calculation of damages by limiting medical expense damages to the amounts actually paid to health care providers. This will help reduce the cost of litigation and liability insurance without depriving plaintiffs from recovering legitimate reimbursement for their care.

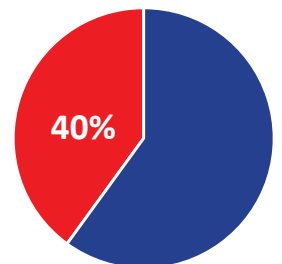
ATTORNEY FEES

- Twenty-eight states have limitations on attorney fees, with 12 states having sliding fee schedules.
- Contingency fees are typically forty percent of a total award.
- A sliding scale helps to direct a greater portion of the award to the plaintiff and removes some incentive for lawyers to seek excessive jury awards.

KHA POSITION: KHA and Kentucky hospitals support legislation to enact reasonable limits on contingency fees on a sliding scale basis. Additionally, contingency fees should be clear, fair and transparent.

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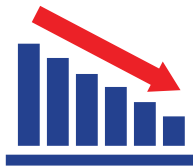




APRN COLLABORATIVE AGREEMENT

- Current law requires that an advanced practice registered nurse (APRN) have a collaborative agreement with a physician in order to prescribe controlled substances.

KHA POSITION: As current law does not contain specific prescribing or oversight requirements, KHA recommends outlining specific standards to be met before an APRN could be released from the agreement. These changes will benefit patients by assuring a level of competency is met before an APRN would independently prescribe controlled substances and, particularly, opioids.



AMBULATORY FACILITY DATA REPORTING

- In the 2018 legislative session, **HB 444 eliminated certain ambulatory facilities from certificate of need and licensure. An unintended consequence was their removal under laws requiring facilities to report data to the state.**
- Continued data reporting is needed to evaluate changes in service utilization as well as for consumers to have comparative price data in all outpatient settings.

KHA POSITION: KHA and Kentucky hospitals support the passage of legislation to correct this oversight and maintain the Cabinet's authority to require the reporting of data.

MEDICAL MARIJUANA



- A recent study showed that states with medical marijuana laws had average rates of opioid overdose deaths that were nearly 23 percent higher than those without these laws
- Researchers concluded that marijuana availability does not reduce fatal opioid overdoses.

KHA POSITION: KHA and Kentucky's hospitals do not endorse legislation to legalize medical marijuana.

Clinical Researchers have expressed there is no scientific evidence to support the benefits of medical marijuana as a standard of care; and, in the absence of such evidence, legalization could exacerbate the state's existing substance abuse problems.

TAXATION OF VAPING DEVICES



- Kentucky has both the highest cancer rate and the highest smoking rate in the nation.
- **Tobacco-related illnesses and second-hand smoke cost Kentucky nearly 9,000 lives and \$1.92 billion in health care expenditures each year.** Nearly one-third of those costs are covered by Medicaid.
- E-cigarettes, which contain nicotine and flavoring, are the most commonly used form of tobacco among youth in the United States.

KHA POSITION: KHA and Kentucky hospitals support legislation to extend the state's existing tobacco tax to e-cigarettes.

MEDICAL PAYMENTS UNDER PERSONAL INJURY PROTECTION (PIP)

To address concerns with perceived overutilization of certain services, auto insurers have sought legislation to reduce payment to all medical providers under Personal Injury Protection (PIP) to match the workers' compensation fee schedule. This broad brush approach is ill-advised for hospitals because:

Lowering PIP payments could reduce hospital payments

\$216 million annually.

- 92 percent of all inpatient cases billed under PIP came through the emergency department (ED); 83 percent of outpatient claims billed to an auto carrier had ED services.
- The workers' compensation fee schedule for hospitals pays only slightly above cost and was not designed for automobile accident victims who access care through the ED and more often involve trauma care, which is costly to treat.

KHA POSITION: KHA and Kentucky hospitals urge that any legislation reducing payment under PIP should exempt hospitals entirely, or at a minimum, all inpatient cases and any hospital outpatient service that has ED services as part of the claim.

