

2022 KHA Legislative Priorities for the Kentucky General Assembly

Representing Kentucky Hospitals and Health Systems



Our Patients Are Our Priority

THE END OF THE BEGINNING OR THE BEGINNING OF THE END?

Once the Battle of Britain was won, Winston Churchill said it was not the end of the war and it was not the beginning of the end of the war but it was, perhaps, the end of the beginning. Likewise, as Kentucky, the country and the world continue the struggle with the COVID-19 pandemic and the fallout from it, many are left to wonder about where hospitals stand as the next session of the General Assembly begins. Kentucky's hospitals have played a crucial role in saving lives and restoring the health of the people of the commonwealth; thus, KHA calls on the General Assembly to continue to be its partner in Putting Patients First.

Kentucky's hospitals rose to the challenge like those valiant RAF fighters during the Battle of Britain. The hospitals faced devastating losses from the shutdown of surgeries and have not fully returned to their pre-COVID status. The hospitals led the way in the distribution of critical drugs to treat COVID-19, and led the way again when vaccines became available. Battered by more than \$2.6 billion in lost revenue and COVID expenses, but not beaten, the hospitals stand ready to address the continuing effects of the pandemic including a deluge of substance use disorder. KHA asks its allies in the General Assembly to stand with hospitals moving forward to make sure that patients – their constituents – continue to receive the care they need.

KHA opposes any tax increases, mandates or cuts to payment programs that would lessen the hospitals' ability to serve patients.

▶ PATIENT TRANSPORT

There is a statewide challenge in transporting patients to the appropriate level of care. All too frequently, patients suffering from serious injuries, dangerous health conditions and behavioral health problems are left to languish for hours or days before they can be transported to the appropriate level of care.

Health care is an everyday exercise in teamwork and each player must play its role. **Unfortunately, the teammates in charge of transportation too often are unable or unwilling to transport a patient in dire need of a higher level of care.** Patients deserve to be taken expeditiously to the appropriate location for treatment and it cannot be acceptable to simply continue the status quo.

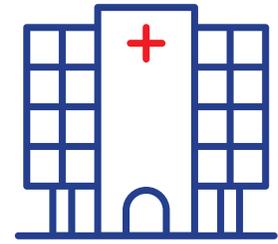
West Virginia, Ohio, Indiana, Illinois, Missouri, Tennessee and Virginia **do not struggle** with the issue of transporting patients to the appropriate level of care. **If all of the neighboring states can do this, Kentucky can too.**

Kentucky's hospitals ask the General Assembly to help address the urgent need to improve patient transport in a manner that puts the patient first.



▶ RETAIN CERTIFICATE OF NEED

The Certificate of Need (CON) program serves a valuable function allowing hospitals to safely invest in expensive plant and equipment needed to treat patients. The CON program also helps to preserve the quality of care for patients by keeping standards high.



While opinions vary about specific aspects of the CON program and the program may require updating from time to time, **the CON program plays a critical role in supporting a level playing field** among providers and is particularly important to those serving vulnerable communities.

Kentucky outperforms non-CON states by a number of measures. The state's hospitals' prices and costs are the 6th lowest in the nation and they compare favorably to neighboring states.

The CON program plays a critical role in supporting a level playing field.

According to various studies, Kentucky ranks better than non-CON states in providing access to care, and total per capita health care costs are less than the national average and superior to nearby non-CON states like Ohio, Indiana and Pennsylvania.

KHA supports retaining CON for new beds, ambulatory surgical centers, birthing centers, expensive technology or where sufficient volumes are needed to insure good outcomes.

▶ WHITE BAGGING PHARMACEUTICALS



White bagging is a process put in place by an insurer in which a prescription must be filled by a third-party specialty pharmacy designated by the insurer and then is administered by the provider rather than making use of the provider's pharmacy. **Typically the specialty pharmacy is owned by the insurer covering the patient.**

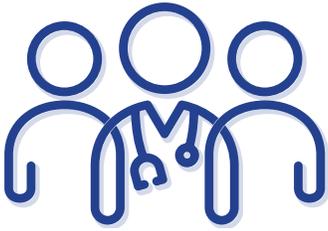
This seemingly minor change of using a third-party pharmacy rather than the provider's pharmacy can increase patient copays and plan sponsor bills, interrupt scheduling and treatment, affect the provider's bottom line, disrupt pharmacy receiving and storage systems, and introduce safety concerns. **It means the insurer is paying its own pharmacy benefit manager (PBM) and pocketing significant profits which are largely non-transparent.**

Safety concerns arise from this practice because it becomes unclear who is accountable for verifying the authenticity and integrity of the drug before administration. **It also raises the question of who is responsible when a delay in therapy, due to a lack of coordination between patient, prescriber and pharmacy, leads to adverse outcomes for patients.**

The medications involved are almost exclusively drugs provided in a hospital setting such as infusion of chemotherapy. **White bagging results in fractionated care, especially for patients who rely on safety net organizations to assist them in paying for these high-dollar therapies.**

Kentucky's hospitals support legislation prohibiting insurers from mandating white bagging and related mandates for hospitals with their own specialty pharmacies.

▶ WORKFORCE CHALLENGES



Shortages of trained health care workers of all types, and especially of nurses, have increased the stress on the health care system during the ongoing COVID-19 pandemic. Even once the pandemic has passed, the problem will remain. Americans, including Kentuckians, are retiring in record numbers, which means at the very time more demand is being created for nursing care, more nurses are retiring and an insufficient number are being trained to replace them.

In the short term, KHA calls on its partners in state and federal government to help provide funding for staffing during the course of the pandemic to help alleviate the challenges of the nursing shortages. **Kentucky's hospitals are in competition with other states for a limited pool of traveling nurses who are needed to fill the gaps.** The national rate for these nurses can range from \$150 to \$200, or more, per hour. **Kentucky's hospitals are in competition with those from New York, Connecticut, Texas, California and other wealthier states that can pay the high rate.**

Nurses are retiring and an insufficient number are being trained to replace them.

One-time grants from American Rescue Plan Act (ARPA) funds or other funds could be tapped to help hospitals that lack resources to bring in crucial nurses.

In the longer term, Kentucky must rethink its educational policies so that more nurses of all types and other health care workers are trained and retained.

KHA asks its partners in the General Assembly to appropriate funds to help address the nursing shortage during the pandemic and calls on the state educational leadership to work with hospitals to train and retain health care workers.

▶ LIABILITY REFORM

KHA and Kentucky hospitals continue to support medical liability reform. The reforms in **SB 5 in response to COVID-19 were an important step in the right direction.** However, these protections will lapse as soon as the pandemic is declared over. The lack of such protection will force already financially stressed hospitals into an even more difficult position at a time in which they are facing billions of dollars in losses.

Beyond COVID-19, the lack of tort reform creates additional costs for the business community, including hospitals, in terms of meritless lawsuits, inflated damages and defensive medicine.

Costs for liability insurance are lower in neighboring states, which have adopted liability reforms, and that puts Kentucky at a disadvantage in recruiting and retaining physicians.

Because repeated attempts have been made to change the tort laws only to see the new laws struck down as unconstitutional, **Kentucky's hospitals call on the General Assembly to pass a constitutional amendment addressing the Jural Rights Doctrine which has been an impediment to updating Kentucky's legal system to keep it in line with sister states.**

Reform the laws so that paid charges are used to calculate damages rather than billed charges for medical services.

Liability Reform - continued

Upon adoption of such a constitutional amendment, **Kentucky should reform the laws so that paid charges are used to calculate any damages rather than billed charges for medical services.**

The General Assembly should also **reform the tort laws regarding the calculation of attorneys' fees.** With **28 states placing a cap on attorneys' fees and another 12 using a sliding-scale fee schedule,** Kentucky is in a small minority of states that do not set reasonable limits on fees.

These common sense reforms remove a number of incentives for inflated claims and excessive jury awards and insure a greater portion of the award goes to the client without depriving the attorney of a just fee.

KHA supports a constitutional amendment to modify and update the Jural Rights Doctrine, legislation to modernize medical liability and tort laws to protect providers from meritless suits, eliminate false incentives that inflate claims and jury awards and insure that a larger portion of any jury award actually goes to the plaintiff.

MEDICAL MARIJUANA

Kentucky hospitals do not support legislation to legalize medical marijuana. There is no clinical research or scientific evidence to support medical marijuana as a standard of care. In the absence of such evidence, more harm than good could result from legalization and could exacerbate the state's already substantial substance use problem.



Proper research and clinical trials must be in place prior to legal authorization of marijuana as a medicine. At this time, there is no clear standard regarding the efficacy and safety of marijuana. Questions abound such as what constitutes a dose and what interactions the drug has with other medications.

KHA opposes legalization of marijuana for medicinal purposes without the appropriate medical studies and trials for safety and efficacy.

For more information about KHA's legislative priorities, contact:

JIM MUSSER

KHA Vice President of Policy/Government Relations

jmusser@kyha.com or 502-593-2339

