

# 2023 KHA Legislative Priorities for the Kentucky General Assembly

*Representing Kentucky Hospitals and Health Systems*



## *The Patient's Health is Job One*

### ▶ **MORE WORKERS ARE REQUIRED TO TEND THE VINEYARD**

Most people in Kentucky are familiar with the biblical story of the call for workers to tend the vineyard. While that story is quite ancient, Kentucky's hospitals face the same kind of call for more workers today. Although the biblical story is concerned with spiritual matters, the need for more health care workers to heal the body and mind is a current physical reality for our patients.

Surveys indicate shortages of doctors, nurses, therapists of all sorts, laboratory specialists, and mental health workers exist throughout the state and the country. In Kentucky alone, last year, hospitals reported more than 13,000 vacancies across twelve professional areas.

With the giant Baby Boom generation hitting full-on retirement and Generation X not far behind, the current crisis is likely to worsen before it improves. There is an urgent need, not caused by, but exacerbated by, COVID-19, which requires a concerted effort by hospitals, employers, educators, and policymakers to meet the challenge.

We must work to build a better pipeline to attract and educate students for jobs of all sorts but particularly for health care. We know that all of us will need to call upon the services of our health care system at some point and we all want the best care possible when we need it.

**The Kentucky Hospital Association is taking a leading role in tackling this complex and thorny issue and calls on Kentucky policymakers to partner with us for the good health of our people.**

**Baby Boom generation hitting full-on retirement and Generation X not far behind.**

### ▶ **HOSPITALS MUST DO WELL TO DO GOOD**

In order to attract, train, and retain staff, hospitals must have resources adequate for the job. The financial results of the pandemic have been devastating for hospitals and KHA is most appreciative of the support from Kentucky policymakers during the crisis. Without the funds from the Hospital Rate Improvement Program (HRIP) many hospitals simply could not have continued to operate and serve the health care needs of their communities.

**The cost for traveling nurses has skyrocketed by more than 450%**

HRIP provided crucial funding at no cost to the state treasury just when hospitals needed the funds most desperately. The cost for traveling nurses has skyrocketed by more than 450% since the start of the pandemic and premium pay to retain staff has grown in a similar fashion. It is simple economics: less supply and greater demand equals higher cost.

Hospitals want to work with policymakers to further expand HRIP, again at no cost to the state, to make sure that all hospitals, rural and urban, large and small, have the resources needed to provide the best compassionate care to our patients.

- continued -

## HOSPITALS MUST DO WELL TO DO GOOD - CONTINUED

HRIP funds are tied to on-going improvements in quality and having those funds means having the resources to implement constant quality improvements. HRIP funding means Kentucky hospitals can compete for resources including the most skilled workers in health care.

**KHA calls on policymakers to support expansion of HRIP and opposes any cuts to payment programs, tax increases, or mandates that would lessen the hospitals' ability to serve our patients.**

---

### ▶ EXPANSION OF THE HOSPITAL RATE IMPROVEMENT PROGRAM FOR OUTPATIENT SERVICES

The current Hospital Rate Improvement Program (HRIP) applies to in-patient discharges covered by the Medicaid program. HRIP allows hospitals to draw down additional federal funds to be reimbursed at an amount near the commercial rate of pay rather than the standard Medicaid rate, **which does not cover the cost of care**. Like the current version of HRIP, the expansion would come at **NO COST TO THE STATE**.

**HRIP expansion  
would come at  
NO COST TO THE  
STATE.**

HRIP requires the hospitals to pay an assessment to the state to administer the program and the program must be reapproved annually by the Centers for Medicare and Medicaid Services in Washington, D.C. Participation by the hospitals **requires them to continually improve their quality measures**. Failure to meet those increasing quality measures would forfeit a portion of the funding.

In the 2023 session of the General Assembly, KHA seeks to expand the program to apply the HRIP principles to out-patient services. Under the current system, while all hospitals benefit, the bulk of the benefits have accrued to urban hospitals, which provide more in-patient care. **The proposed expansion would greatly help smaller and rural hospitals, which provide much more out-patient services.**

**Expansion of HRIP to out-patient services could substantially improve the financial viability of our crucial rural hospitals and help to preserve access to care in rural Kentucky**

**KHA calls upon our allies in the General Assembly to pass the proposed HRIP expansion to help ensure continued access to care in all parts of the Commonwealth.**

---

### ▶ WHITE BAGGING PHARMACEUTICALS



White bagging is a process in which a prescription is filled by a third-party specialty pharmacy and then 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 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.**

- continued -

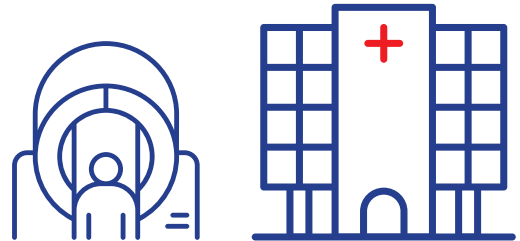
## WHITE BAGGING PHARMACEUTICALS - CONTINUED

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.**

**White bagging poses a threat to patient health and safety.** Kentucky's hospitals support legislation prohibiting insurers from mandating white bagging and related mandates for hospitals with their own specialty pharmacies.

### ▶ RETAIN CERTIFICATE OF NEED

The Certificate of Need program (CON) 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 our 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. Our hospital's prices and costs are among the lowest in the nation and they compare favorably to neighboring states.**

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.

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

The health care regime in the United States is a government driven system largely operating outside of free market principles. **Hospitals do not have pricing power because payment rates are set by federal authorities who run the Centers for Medicare and Medicaid Services (CMS).**

Further, federal law in the form of The Emergency Medical Treatment and Labor Act (EMTALA) requires hospitals, unlike any other business, to treat any patient coming into the emergency room of the hospital regardless of their insurance or ability to pay. This is an unfunded mandate faced by no other business.

The CON program is an acknowledgement that a non-free market requires other government intervention in the operations of health care services.

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

### ▶ WORKFORCE CHALLENGES

**Shortages of trained health care workers of all types and especially of nurses increased the stress on the health care system during the COVID-19 pandemic.** The problem existed prior to the pandemic and remains an issue because of the on-going demographic changes in our society. **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.**



- continued -

## **WORKFORCE CHALLENGES - CONTINUED**

Senate Bill 10 from the 2022 session was an important first step in addressing the need for greater numbers of nursing students and ultimately fully trained nurses to serve patients.

KHA calls on its partners in state and federal government to help provide funding to help alleviate the challenges of the nursing shortages. Funding is necessary to help publicize resources that already exist and to help develop pipelines for students to enter not just nursing but all health care professions.

Kentucky's hospitals are in competition with other states for a limited pool of traveling nurses who are needed to fill the gaps. **The cost for agency nurses has increase more than 450% since 2019** and Kentucky's hospitals are in competition with those from New York, Connecticut, Texas, California, and other wealthier states that can pay the high rate.

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

**KHA asks our partners in the General Assembly to appropriate funds to help address the health care worker shortage and calls on the state educational leadership to work with us to train and retain healthcare workers.**

---

## **LIABILITY REFORM**

KHA and Kentucky hospitals continue to support liability reform. The reforms in SB 5 from the 2021 session of the General Assembly in response to COVID-19 were an important step in the right direction and demonstrated that lawyers were not put out of business nor jury trials denied to anyone because of commonsense limitations on litigation. **Sadly, these protections have lapsed with the end of the state's declaration of the public health emergency. 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.**

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 those of our sister states.**

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 commonsense 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 businesses and health care 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.**

---

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

**JIM MUSSER**, KHA Senior Vice President of Policy/Government Relations at [jmusser@kyha.com](mailto:jmusser@kyha.com) or 502-593-2339