

**2021****KHA Legislative Priorities for the  
Kentucky General Assembly***Representing Kentucky Hospitals and Health Systems***► FIRST DO NO HARM**

As the Hippocratic Oath calls upon physicians to help and not harm their patients, the Kentucky Hospital Association calls on the General Assembly to be particularly mindful of the key role the hospitals play both in healing the sick and acting as economic engines in their communities. In the midst of an ongoing pandemic, hospitals and frontline health care professionals need protection so they can continue to serve the people of the commonwealth. **The KHA legislative platform can be summed up in four words: First, Do No Harm.**

**Protect the Health  
of Hospitals; Protect  
Patient Access –  
No cuts to Medicaid  
or DSH, and no tax  
increases**

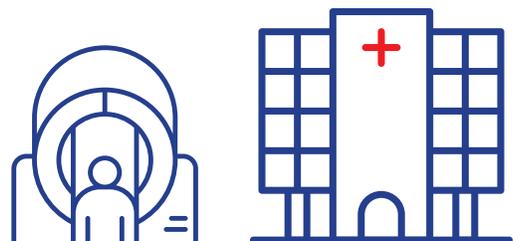
**The response to COVID-19 has placed severe financial strain on Kentucky's hospitals.** With many hospitals already facing financial challenges, the shutdown of elective procedures, which are medically necessary but could be safely postponed for a brief period, caused severe economic losses to hospitals. The increased usage and cost of personal protective equipment, the need to reconfigure hospital space and the requirement to maintain reserve capacity all added to the strain in a significant manner. **Hospital losses through the end of 2020 are expected to amount to \$2.6 billion.** Despite some aid from the federal government, **approximately 60% of the losses are not covered.**

Hospitals cannot withstand cuts to Medicaid or tax increases and continue to keep their doors open. Cuts to payment programs, tax increases or other mandates are likely to cause the loss of hospitals and endanger patient access, especially in rural areas.

**KHA opposes any cuts to payment programs, tax increases or mandates.**

**► RETAIN CERTIFICATE OF NEED**

**The Certificate of Need (CON) program serves a valuable function allowing hospitals to safely invest in expensive facilities and equipment needed to treat patients.** While opinions vary about specific aspects of the CON program and the time may come to update and improve the program, the middle of a pandemic is the worst possible time to distract hospitals from their primary role as institutions of healing and helping the afflicted.



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### Retain Certificate of Need - continued

The CON program plays a critical role in supporting a level playing field among providers and is particularly important to those serving vulnerable communities.

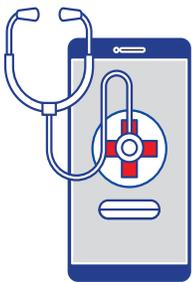
Kentucky outperforms non-CON states by a number of measures. The state's hospital's prices and costs are the sixth lowest in the nation and they compare favorably to neighboring states.

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.

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

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

## ▶ RETAIN TELEHEALTH STANDARDS ESTABLISHED DURING THE PANDEMIC



Patients have benefited dramatically from the access to health care provided by telehealth. During the pandemic, telehealth made it possible for patients to access the health care they could not access in person. This was made possible by the revised telehealth standards at both the state and federal levels. The changes, including allowing audio only access (particularly for mental health), have been crucial for patients. With the reopening of medical offices, many will no doubt be eager to see their providers in person, but for many (especially in rural areas), telehealth will continue to be a valuable option for accessing care.

KHA supports the standards established during the pandemic and urges policymakers at all levels of government to make them permanent.

## ▶ SURPRISE BILLING

Surprise billing continues to be discussed at both the state and federal levels of government. While it is a fairly rare occurrence in Kentucky, the Kentucky Hospital Association believes the issue is best handled by negotiations between providers and insurers while holding the patient harmless for any charges beyond those that are part of the agreed upon co-payment.

In the 2020 session of the General Assembly, the issue was negotiated among the stakeholders and memorialized in SB 150, which was ultimately changed into a response to COVID-19 at the expense of the original provisions.

KHA continues to support the position it established during the 2020 legislative session.

KHA encourages the General Assembly to leave the issue of surprise billing to the private sector and fair negotiations between the providers and the insurance companies.



▶ **LIABILITY REFORM**

**KHA and Kentucky hospitals continue to support medical liability reform.** The reforms in SB 150 in response to COVID-19 were an important step in the right direction. However, hospitals and other providers still need protection from predatory law suits based on the nearly constantly changing standards of care associated with this novel virus. 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.

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

Beyond COVID-19, the lack of tort reform creates additional costs for the business community, including hospitals, in terms of frivolous 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.

**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 legislation to modernize medical liability and tort laws to protect providers from frivolous suits, eliminate false incentives that inflate claims and jury awards, and ensure that a larger portion of any jury award actually goes to the plaintiff.**

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▶ **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.**