

## 2025 STATE LEGISLATIVE PRIORITIES

*Representing Kentucky Hospitals and Health Systems*



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

Whether competing in the Olympics, baking a cake, or advancing legislative issues, focus is a crucial element. While there are always multiple issues facing hospitals, KHA always looks at the issues that are most important to the industry and, with the direction of our board, focuses on those top priorities. While individual hospitals may have other matters of concern, our board makes sure the association has clear priorities for the entire industry.

This year KHA will put its efforts and resources toward securing legislation to protect our 340B covered hospitals, as well as continuing to protect the vital HRIP program, and assisting the state trauma system to address the unfunded mandate it faces.

Our other large on-going priorities will be protecting the Certificate of Need program and developing a coalition to address Kentucky's abusive liability system to ultimately seek reasonable reforms to rein in the worst excesses of the tort system while maintaining everyone's rights.

This liability reform work will require support and leadership outside of the health care community, but our hospitals will be key players in shaping the effort. In the near term, KHA will develop a plan and seek the right partners to push the project forward. We will seek legislation to introduce a state constitutional amendment in the coming session of the General Assembly in order to keep the issue in the public eye and underscore to the legislators the need for reasonable reforms for a broken liability system.

The legislative year ahead promises to be busy but KHA will be focused and ready to take on the challenges of both offense and defense of our critical legislative issues.

#### ▶ **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 hospitals' 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 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 or health care provider, to treat any patient coming into the emergency room of the hospital regardless of their 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 operation 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.**

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

## ▶ PROTECTING 340B AT THE STATE LEVEL

Big Pharma is attacking the 340B program and attempting to limit covered entities to no more than one contract pharmacy. Big Pharma hopes to pad its bottom line by limiting patients' access to 340B discounted medications.

Big Pharma has sued states that have passed laws to ensure the delivery of 340B medications to hospitals and contract pharmacies and the drug companies have lost repeatedly in the federal courts.

Protecting Kentucky's 340B program is crucial for our state's safety-net providers. These hospitals depend on savings from the program to offer quality services to low-income communities.

The 340B program plays a major role in strengthening the state's healthcare system. Other states have passed laws to protect the program at the state level and KHA supports doing the same.

Failing to enact such anti-discrimination legislation would allow drug companies to cost-shift to Kentucky hospitals to cover the discounts being offered in other states that already have laws to require delivery of outpatient pharmaceuticals at the federally agreed discount rate. Kentucky needs legislation to ensure that drug companies do not discriminate against Kentucky hospitals and our contract pharmacies.

Protecting  
Kentucky's  
340B program  
is crucial for our  
state's safety-net  
providers.

## ▶ LIABILITY REFORM

In 2024, the American Tort Reform Association placed Kentucky on its Judicial Hellhole Watch List. Lack of tort reform in the Commonwealth is estimated to cost each Kentucky household an average of \$2,608.

The lack of liability reform has resulted in an unpredictable, anti-business legal climate and has caused skyrocketing costs for medical malpractice insurance.

KHA encourages the General Assembly to pursue a constitutional amendment that places reasonable caps on damages and other measures to reduce the threat of frivolous lawsuits.

KHA will work with other groups interested in advancing healthcare and business in our state to pursue action on this important issue.

Finally, pursuing tort reform would help ease the burden of attracting needed health professionals to the state and would protect consumers from unnecessary legal costs.

## ▶ ALL PAYER CLAIMS DATABASE (APCD)

Kentucky's hospitals are opposed to efforts to establish an All-Payer Claims Database (APCD) in Kentucky. This is an expansion of government that intrudes into the private health information of patients and involves duplicative bureaucracy because de-identified all payer claims data is already collected by the state and available for use.

APCDs are being pushed by groups that claim they want to use the data to better understand the health problems facing the state. The real agenda is to have government regulation of health care private sector commercial prices.

Several states are leading in this effort by setting up "cost commissions" to regulate and cap commercial prices that health care providers can be reimbursed. Kentucky hospitals already have some of the lowest commercial prices in the country, ranking 12th lowest nationally by the RAND Corporation's most recent report. Rate regulation of hospital prices is not needed and would only put hospitals in greater financial jeopardy when a 2023 KaufmanHall report found 38% are already at risk of closure.

This kind of new bureaucracy is unnecessary because, by statute, Kentucky already has all-payer claims data spanning over 20 years, collected by the Cabinet for Health and Family Services, from hospitals and ambulatory facilities. It is readily available to researchers and Kentucky's hospitals, who use the data every day to assess the needs of their communities and plan services to address those needs.

In addition, the existing Medicaid claims data, and the more than 75 reports filed annually with the state by the Medicaid MCOs, are available to provide a better understanding of the health challenges of the Medicaid population.

Voters strongly oppose having their medical information sent to the government and accessed by people other than their personal physician in addition to their valid privacy and security concerns.

Polling indicates that across the board **all voters strongly oppose having their medical information sent to the government and accessed by people other than their personal physician** in addition to their valid privacy and security concerns.

Finally, an APCD is not required for transparency and would be an inaccurate source of information, given the data would not be audited for errors in payment, which frequently occur, and hospitals are already federally required to make their prices transparent.

**KHA asks the legislature to oppose the creation of this misguided program to expand government and place patient health information at risk of exposure.**

---

### ▶ **TRAUMA**

**Traumatic Injury causes 47% of deaths of those under age 45 in Kentucky and that is one-third higher than in the rest of the country.** Trauma is the number one killer of those in their prime working years from 18-45, but it doesn't have to be. **Trauma is more deadly in rural areas of Kentucky because of a lack of trauma facilities.**

**Quick access to trained trauma providers is the key to saving lives.** The Kentucky Trauma Center seeks to work more closely with rural hospitals to address this challenge to the health of our people and economies of our communities.

**Kentucky law already establishes a trauma system but does not fund it. Most states fund their trauma systems** through general fund appropriations, fees, fines, or some combination. This results in increased survival rates, lower cost of treatment, and improved triage and destination determination for higher levels of care.

**The system is not expensive, and the need can be met for \$750,000 annually. The Trauma System needs a consistent source of revenue in the form of annual appropriations, which KHA supports.**

---



### ▶ **VIOLENT YOUTH / PRTFs**



During the 2024 Regular Session, KHA partnered with psychiatric hospitals, the Cabinet for Health and Family Services, and the Department for Juvenile Justice (DJJ) to prepare legislation (2024 Senate Bill 242) addressing high acuity youth. Such legislation is needed to **focus on the placement and care of high-acuity youth** by establishing a **standardized assessment and placement process to ensure these youth receive proper mental health treatment.**

High acuity youth means a child who has been determined by a clinical professional, following a behavioral assessment, to need an environment and specialized treatment capable of addressing manifest aggression, violence towards persons, or property destruction. **Currently a child charged with a public offense or subject to a court order may be taken to a hospital, which is required to accept and treat the child, even if the child does not meet medical necessity criteria for treatment.**

**Instead of the current process, Kentucky's private psychiatric hospitals support having a process under which a psychiatric hospital can remand a DJJ involved youth to detention when the youth is in the facility and perpetrates violence or incites others to act violently to staff and/or other patients of the facility.**

**Hospitals have stated their willingness to bring outpatient services and partial hospitalization services into detention facilities for youth unable to be treated in hospitals.**

With regard to admission of a DJJ youth into a private psychiatric hospital, a psychiatric hospital, just like every other hospital, must retain the authority to determine which patients are admitted to the facility. **The admission decision is a clinical decision, and must be made by a physician with admitting privileges at the hospital.**

**In order for a patient to be admitted, they must meet medical necessity criteria and the hospital must have the resources to meet the patient's needs.** Hospital clinicians (the psychiatrist and treatment team) currently make admission determinations. **Hospital licensing regulations also make this process clear. Psychiatric hospitals are required to follow the provisions in the acute care hospital regulations regarding the administration and operation of the facility.**

**It would be inappropriate for outside state agencies, such as the Department for Juvenile Justice, to overrule the authority of a private hospital to determine patient admission.** This would violate state regulations and could result in forcing a hospital to admit patients with aggression that they are not equipped to handle, subjecting the hospital to potential liability, property damage, staff injury and loss of staff, and the inability to admit and treat other patients.

**Private psychiatric hospitals are eager to be part of the solution but cannot by themselves solve the problem of an increasing number of aggressive youth in state custody. Legislation, such as 2024 Regular Session Senate Bill 242, is needed in Kentucky.**

---

**For more information about KHA's Legislative Priorities, contact:**

**James C. Musser, Esq.**, KHA Senior Vice President, Policy and Government Relations  
502-593-2339 or [jmusser@kyha.com](mailto:jmusser@kyha.com)

