



# Surprise Medical Bills: Serious Market Failure for Texas Emergency Care

A serious market failure in emergency care in Texas and across the country has resulted in a growing problem for consumers—surprise medical bills. Texas has become ground zero for this growing problem, as it is home to the majority of the nation’s freestanding ERs and has some of the highest emergency care costs and rates of surprise billing in the country. While many have pointed to individual parties such as doctors, insurers or facilities, a recent major study in the New England Journal of Medicine (NEJM) concluded that the growing trend of surprise medical billing is a direct result of a market failure in emergency care. One of the main drivers of surprise billing is government mandates in Texas that force consumers and insurers to pay emergency care providers, including freestanding ERs, up to 10-20 times the going rate for emergency care services. These mandates make it more lucrative for providers and facilities to remain out of network and charge consumers and health plans exorbitant prices for their services. As a result, Texans are getting hit with surprise bills (also called balance bills) for hundreds, even thousands of dollars, at a time when health care costs are skyrocketing and already sending many families into debt.



*Surprise out-of-network billing is problematic for two reasons. It prevents markets from functioning, as they should. And the bills can amount to thousands of dollars.*



New England Journal of Medicine, November 2016

## Solutions to Better Protect Consumers

The Texas Association of Health Plans, along with a number of consumer and business groups in Texas, is advocating to protect consumers from excessive and surprise billing for emergency care:

- Equip consumers with more information: Increase transparency of prices and network status, and notification of surprise billing
- Hold bad actors accountable who are exploiting patients, using deceptive advertising, and price-gouging in an emergency situation
- Strengthen surprise billing protections by expanding the use of mediation to all emergency care facilities and providers: Allows consumers to challenge surprise bills and removes them from the dispute
- Repeal costly government mandates that have contributed to the growing trend of surprise billing and out-of-network emergency care in Texas

## Texas is Facing an Emergency Care Cost Crisis

- **Texas has some of the highest emergency care prices in the country:** Out-of-network emergency physicians in Texas charge an average of nearly 200-800% higher than the going rate for the same services.
- **Texas is Ground Zero for emergency care surprise medical billing:** Texas has some of the highest rates of surprise medical billing in the country – 89% of emergency visits in McAllen, Texas, resulted in surprise billing.<sup>1</sup>
- **Texas has some of the highest rates of out-of-network emergency providers in the U.S.:**<sup>2</sup>
  - Up to 56% of hospitals in Texas that are in-network with the three largest insurers in the state have no in-network emergency physicians.<sup>3</sup>
  - Texas’ three largest insurers had an average of 41-68% of emergency room physicians’ charges billed out-of-network at in-network hospitals.<sup>4</sup>
  - A majority of the nation’s freestanding ERs are located in Texas, are out of network. Nearly 70% of out-of-network claims in Texas stem from freestanding ERs.

## Texas is Facing an Emergency Care Cost Crisis (cont.)

- **Confusion for patients:** Nearly 7 in 10 of Americans with unaffordable out-of-network bills did not know the provider was not in their plan's network, at the time they received care.<sup>5</sup>

*“Patients have no choice about which physician they see when they go to an emergency room, even if they have the presence of mind to visit a hospital that is in their insurance network.”*

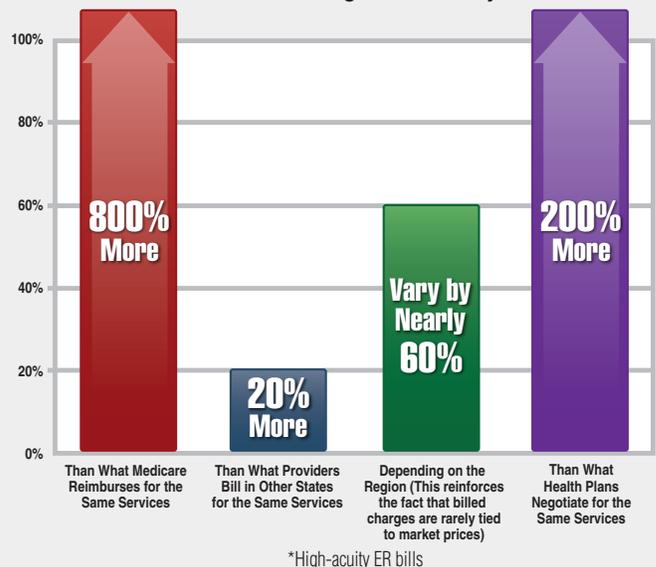
New York Times, September 2014

- **Medical bills are crippling family budgets:** 1 in 5 insured Americans has difficulty paying medical bills and nearly half say their medical bills have had a major impact on their families. Nearly 3 in 5 Americans have cut back on food and household spending in order to afford their medical bills.<sup>6</sup>
- **Mediation is working but limited in Texas:** The process of mediation, which allows consumers to challenge surprise medical bills, is already working in Texas but is only available on a limited basis. It does not currently apply to all emergency care services.

## Government Payment Mandates are Part of the Problem, Not the Solution

A large number of freestanding ERs and emergency care physicians have adopted a business model of not being in any health plan networks because of a Texas mandate requiring consumers and insurers to pay them substantially higher payments out of network. The Texas ER payment mandate is more severe than a similar Obamacare mandate and one of the most excessive payment mandates in the country. When consumers receive out-of-network emergency care, their health plans have been mandated by TDI to pay out-of-network providers a rate that is based on “billed charges.” These billed charges have no legal limits and little to no connection with underlying market prices, quality, or actual health care costs. As a result, health plans and consumers are being forced to pay substantially higher payments than what is usually negotiated and accepted in the market. This type of mandate creates perverse incentives for providers to avoid joining networks. This has led to higher premiums, higher out-of-pocket costs for consumers, surprise billing and larger numbers of ER providers choosing to stay out of network.

Texas Providers' Billed Charges for ER Physician Services



*“Ultimately, surprise out-of-network billing is the result of a market failure: the lack of a competitively set price for physician services.”*

NEJM

<sup>1</sup> “Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise,” New England Journal of Medicine, November 2016

<sup>2</sup> “Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise,” New England Journal of Medicine, November 2016

<sup>3</sup> “Surprise Medical Bills Take Advantage of Texans,” Center for Public Policy Priorities, September 2014

<sup>4</sup> “Surprise Medical Bills Take Advantage of Texans,” Center for Public Policy Priorities, September 2014

<sup>5</sup> “Surprise Medical Bills,” Kaiser Family Foundation, March 2016

<sup>6</sup> Kaiser Family Foundation/New York Times Medical Bills Survey, January 2016