

# TAHP Opposes SB 1298:

Texas lawmakers carefully crafted a deal on surprise medical bills; freestanding ERs want to change the deal and reward their price gouging.

**The Background:** SB 1264 by Senator Hancock from the 86th legislative session built a one-of-kind system to address surprise medical bills and protect patients.

**Freestanding ERs want to Manipulate the Process:** The worst health care actors in Texas are aiming for a special deal to change the surprise billing rules to their benefit.

## Freestanding ERs are Already Abusing the System, accounting for 82% of all Mediation Requests

### Mediation requests by service type

Provider	Jan - June 2020	July - Dec 2020	Jan - June 2021	July - Dec 2021	Jan - June 2022
Ambulatory surgical center	-	22	23	14	16
Birth center	-	-	10	7	9
Diagnostic imaging service	-	-	3	8	4
Freestanding ER	390	1,871	10,322	20,025	30,329
Hospital	362	1,181	3,208	4,090	6,523
Lab	-	-	27	-	5
<b>Total</b>	<b>752</b>	<b>3,074</b>	<b>13,593</b>	<b>24,144</b>	<b>36,886</b>

Texas has passed at least 6 laws now to trying to address misleading advertising, price gouging, and scams at freestanding ERS:

- SB 425 by Schwertner (84th) created out-of-network notice requirements
- HB 3276 by Oliverson (85th) strengthened notice requirements
- HB 2041 by Oliverson (86th) notice requirements and license penalties
- HB 1941 by Phelan (86th) price gouging AG enforcement
- SB 1264 by Hancock (86th) surprise billing protections
- SB 2038 by Menendez (87th) drive through COVID-testing price gouging

**SB 1264 Planned for All Scenarios:** Stakeholders on all sides worked carefully to consider all scenarios. That included a provision that would allow for administrative penalties if a health plan, hospital, physician, or other provider acted in “bad faith” during dispute resolution.

**Freestanding ER Harms:** Throughout the pandemic, these bad actors charged thousands—even \$50,000 in one instance—for COVID-19 testing.

## Mediation is already expensive. Texas should not be layering arbitration on top of it.

### Mediator fees

SB 1264 does not limit the fees charged by mediators. Instead, mediators set their own fixed fees per case. There is no fee to submit a request for dispute resolution or take part in informal settlement discussions. Each party pays half the fee once TDI assigns the case to a mediator.

#### Fees as of June 30, 2022

Median fee:	\$800
Lowest fee:	\$80
Highest fee:	\$5,275
Total fees paid:	\$3.4 million

## Mediation is working: TDI Report shows that the process resolves nearly all claims.

### Mediation request outcomes, January 2020-June 2022



■ Settled in the first 30 days	60,118	76.45%
■ Ineligible or withdrawn	13,378	17.04%
■ Agreement reached after mediation	3,141	4.00%
■ Not settled at mediation	913	1.16%
■ Settled outside mediation	606	0.77%
■ Pending	454	0.58%

## Freestanding ERs are Still the Problem: FSERs operate on the fringes as out-of-network health care providers.

### Percentage of providers billed as out-of-network

Provider	Jan - June 2019	July - Dec 2019	Jan - June 2020	July - Dec 2020	Jan - June 2021	July - Dec 2021	Jan - June 2022
Hospital	4%	3%	3%	4%	4%	4%	3%
Freestanding ER	95%	89%	94%	89%	91%	90%	90%