



**Texas Association of Health Plans**  
1001 Congress Ave., Suite 300  
Austin, Texas 78701  
P: 512.476.2091  
www.tahp.org

April 12, 2023

Dear Senator Kolkhorst & Members of the Senate Committee on Health & Human Services,

Re: Oppose SB 1298

The Texas Association of Health Plans (TAHP) is the statewide trade association representing health insurers, health maintenance organizations, and other related health care entities operating in Texas. Our members provide health and supplemental benefits to Texans through employer-sponsored coverage, the individual insurance market, and public programs such as Medicare and Medicaid.

SB 1264 by Senator Hancock from the 86th legislative session was thoroughly negotiated to create dispute resolution processes for surprise medical bills. Since the inception of SB 1264, the law has resolved more than \$1.3 billion in medical billing disputes. **TAHP opposes SB 1298 as the legislation goes against a carefully negotiated requirement of the state's surprise billing law related to good-faith participation.**

Importantly, SB 1264 created two different dispute resolution processes—mediation for facilities and arbitration for providers. However, both dispute resolution systems require an “informal settlement teleconference” prior to entering into mediation or arbitration. That’s an important requirement, as the overwhelming majority of disputes can be resolved in an informal conference without an expensive dispute resolution process. Further, the legislation sets out specific requirements on what constitutes bad faith participation in the informal conference, mediation, or arbitration.

The Insurance Code specifically states, “The following conduct constitutes bad faith participation:

- failing to participate in the informal settlement teleconference under Section 1467.084(d) or an arbitration or mediation under this chapter;
- failing to provide information the arbitrator or mediator believes is necessary to facilitate a decision or agreement; or
- failing to designate a representative participating in the arbitration or mediation with full authority to enter into any agreement.”



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The Insurance Code states that bad faith participation is “grounds for imposition of an administrative penalty” and that “on a report of a mediator and appropriate proof of bad faith participation” TDI may “impose an administrative penalty.”

Instead of providing fair and honest billing and attempting to reach in-network agreements, freestanding ERs continue to harm patients and are now asking for special treatment that goes against SB 1264. In fact, these entities continue to overwhelm our dispute resolution processes.

More than 80% of mediation requests come from FSERs. These companies have hired vendors to go back years to find more claims to take to mediation. But even with this volume of claims, more than 90% are resolved with an informal phone call and just 1% of claims remain unresolved after mediation. For those very small numbers of claims that go unresolved, SB 1264 allowed providers to pursue a civil action.

SB 1264 painstakingly envisioned all scenarios, including bad-faith mediation. This legislation supersedes that law to reward freestanding ERs, which have continuously price gouged for basic health care services, including \$10,000 COVID-19 tests.

Sincerely,

*M. Blake Hutson*

Blake Hutson  
Texas Association of Health Plans