



Texas Association of Health Plans
1001 Congress Ave., Suite 300
Austin, Texas 78701
P: 512.476.2091
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August 11, 2023

Re: Comments on Proposed Rule 23R024

Rules Coordination Office,

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.

We appreciate HHSC's efforts in drafting rules to implement the consumer protections relating to Freestanding Emergency Medical Care Facilities (FSERs). We strongly support the provision in proposed §509.21(c)(4) that confirms that a facility license "authorizes only emergency care services and those procedures that are related to providing emergency care." Chapter 254 clearly defines a FSER as a facility that is structurally separate and distinct from a hospital and that "provides emergency care." There have been multiple attempts by FSERs to expand their authority legislatively, all of which have failed. The rule proposal therefore correctly clarifies that nonemergency services may not legally be provided by or at FSERs.

In addition to supporting the request as drafted, we have a recommendation relating to the enforcement of consumer protection provisions in the Texas Freestanding Emergency Medical Care Facility Licensing Act (the "Act"). Since the passage of the Act in 2009, FSERs have been accused of misleading advertising and excessive billing. In response, the Texas Legislature added important consumer protection disclosure requirements, primarily through HB 2041 (86th Legislative Session). But many freestanding ERs are still not in compliance with the notice and other consumer protection requirements adopted by the Texas Legislature.

In fact, several FSERs appear to be engaging in conduct that violates several provisions of the Act. Specifically, many FSER websites do not include the consumer protection disclosures. Likewise, these websites include statements regarding "accepting" health insurance plans for which they are not actually in-network. Since the effective date of HB 2041, in September of 2021, HHSC reports that fifteen FSERs have been subject to an administrative penalty for



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violating these laws.¹ These disclosure and transparency requirements were adopted by the Legislature to ensure that consumers understand the potential costs of visiting a FSER. Violations of these consumer protection requirements can lead to devastating financial consequences for Texas families, and so it is critical that they be enforced by HHSC.

Therefore, rather than relying on consumer complaints and inspections after the fact, we ask that the agency also amend its application and renewal forms to ensure compliance with these laws on the front end. The application already requires FSERs to submit patient transfer policies, transfer agreements with hospitals, and annual fire inspection reports. It would be extremely helpful to add a checkbox asking whether the FSER is in compliance with Texas Health and Safety Code §§254.155 (relating to Notice of Fees), 254.156 (relating to Disclosure Statement Required), and 254.157 (relating to Certain Advertising Prohibited). By simply reminding FSERs of these requirements on application and renewal forms, FSERs will be more likely to comply, reducing the number of administratively burdensome enforcement actions, and more importantly, leading to fewer unexpected bills for patients.

TAHP and its member plans appreciate the opportunity to comment on this proposal and look forward to working with HHSC on implementation and enforcement of the Act. Please contact me with any questions or to discuss further.

Sincerely,

A handwritten signature in black ink that reads "Jamie Dudensing". The signature is written in a cursive, flowing style.

Jamie Dudensing, RN
CEO
Texas Association of Health Plans

¹ *Health Care Facility Enforcement*, Health and Human Services Commission.
<https://www.hhs.texas.gov/sites/default/files/documents/doing-business-with-hhs/provider-portal/facilities-regulation/freestanding-emergency/femc-enforcement-actions.pdf>