Allow Health Plans to Address Fraud

TAHP Opposes HB 1635

TAHP
The Texas Association of Health Plans

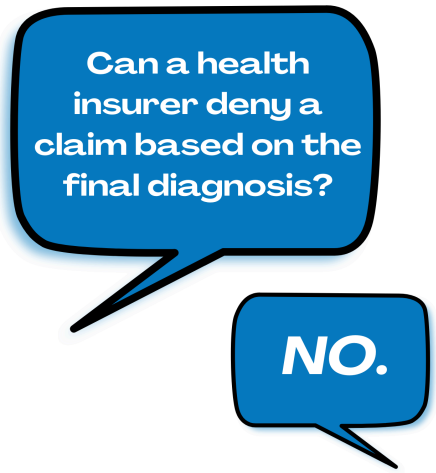
TAHP opposes HB 1635 because it **undermines** prudent layperson safeguards, encourages ER overuse, and blocks standard fraud detection—ultimately increasing premiums for all Texans.

What Does HB 1635 Do? HB 1635 changes the prudent layperson standard to prohibit *any use* of a final emergency care diagnosis to identify potential fraud patterns. That doesn't align with federal law or policies of other states.

Prudent Layperson 101: Under the "prudent layperson standard," if a reasonable individual believes it meets the "prudent layperson standard," the visit qualifies as an emergency.

Recent federal rules: In 2021, new rules clarified the prudent layperson standard, how it applies to emergency care coverage, and what rules health plans have to follow:

- **The rules further explain** that the plan or issuer must cover emergency services without limiting what constitutes an emergency medical condition **solely on the basis of diagnosis codes.** This is the big difference with HB 1236 as filed and how it can be fixed.
- **Bottom line**: Texas law and TDI guidelines prohibit denying a claim if the final diagnosis wasn't a true emergency, but they do allow plans to check that diagnosis for potential fraudulent or abusive billing.



TAHP supports the federal prudent layperson standard

It protects patients and allows insurers to investigate fraud. These bills strip away the investigative function and are inconsistent with federal law. TAHP opposes any change to the prudent layperson standard that prohibits health plans from holding providers accountable for fraud and abuse.

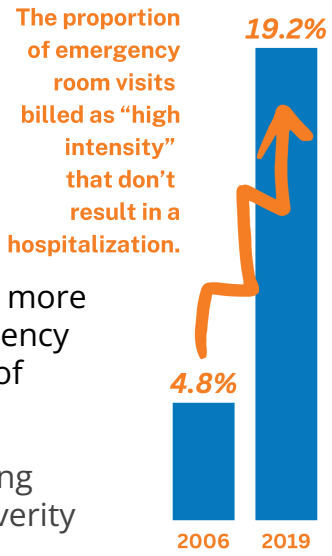
- HB 1635 prohibits health insurers from investigating fraud based on a pattern of non-emergency final diagnosis codes, such as "upcoding" and other abuses.
- Federal law doesn't prevent this type of fraud protection and Texas is ground zero for fraudulent emergency care claims through freestanding ERs.
- Health plans today comply with federal and state prudent layperson laws and can still detect fraud. If a health plan sees a pattern of potential fraud they can investigate on a case-by-case basis, as required by federal law.

TAHP
The Texas Association of Health Plans

What's "upcoding" and why does it matter?

Upcoding is a type of billing abuse that happens when an emergency care staffing company falsely claims a higher severity code for a patient than what is appropriate.

- ER firms have a choice of 5 levels of severity to apply to a patient's bills. The highest severity codes should only be used for the most complicated patients and are reimbursed at significantly higher rates.
- The proportion of emergency room visits billed as "high intensity" that don't result in a hospitalization grew from 4.8% in 2006 to 19.2% in 2019.



- By 2021, Level 4 was the most common level and accounted for more than one third (35%) of claims. Level 5 claims increased in frequency from 8% of emergency department claims in 2004 to a quarter of claims by 2021.
- A December 2024 analysis in Health Affairs showed that upcoding accounts for two-thirds of the growth in heightened hospital severity billing.
- Freestanding ERs routinely apply Level 5 ER codes for simple, arguably even non-emergency care, like asymptomatic COVID-19 testing.

Fraud detection is critical in Medicaid and Medicare:

- **Texas Medicaid has used diagnosis codes** to stop this bad behavior and save taxpayer dollars for years. In 2021, a "data led initiative" by the OIG resulted in nearly $20 million in fines for inappropriate ER billing.
- **Medicare ER fraud is also rampant:** In 2022, "all 11 defendants implicated in the $300 million Spectrum/Reliable healthcare fraud have pleaded guilty, announced U.S. Attorney for the Northern District of Texas.

Bottom Line:

- HB 1635 undermines health plans' ability to combat non-emergency ER use and inflated billing.
- Texans already have robust protections, ensuring a final diagnosis alone can't deny coverage.
- Removing the last check on abusive charges encourages higher costs for everyone.