

## DEFINITIONS

- **Balance billing** is the practice of physicians or facilities charging patients for the portion of medical expenses not covered by the patient's insurance, beyond usual charges such as co-pays. While some balance billing is to be expected, in many cases, these bills are a complete surprise.
- **Surprise billing** most commonly occurs with emergency departments, freestanding emergency rooms (FSERs), or when a facility-based physician or other practitioner does not have a contract with the same health plans that have contracted with the facility in which they practice. An enrollee who is admitted into one of these facilities for a procedure or an emergency often becomes ultimately responsible for an unexpected bill.

## TIMELINE

- **2009:** HB 2256, (81R), a bipartisan measure authored by then-Representative Kelly Hancock, passed. This legislation established a mediation process for patients who received surprise balance bills of more than \$1,000.
- **2010:** The Texas Department of Insurance (TDI) began accepting mediation requests and saw a gradual increase in these requests over time as more patients and providers became aware of the program. (Note: Most mediation requests are settled informally once the patient triggers mediation.) ***TDI's surprise billing webpage is: <https://www.tdi.texas.gov/consumer/cpmmediation.html>***
- **2015:** SB 481 (84R) by Senator Hancock expanded options for mediation by reducing the claim threshold from \$1,000 to \$500. The legislation also added assistant surgeons to the list of providers subject to mediation. The list also includes facility-based radiologists, anesthesiologists, pathologists, ER physicians, neonatologists and assistant surgeons. The bill also strengthened the required notifications to patients that mediation is an available option to resolve a balance billing dispute. Providers are responsible for notifying patients that mediation is a protection available to them on the balance bill.  
***According to TDI, surprise bill mediation has saved Texas patients nearly \$40 million in out-of-pocket healthcare costs since 2015, when the agency began tracking this data. (\*As of 4/30/19)***
- **2017:** SB 507 (85R) by Senator Hancock expanded mediation protections to address all emergency providers, including freestanding emergency departments, and all out-of-network providers working at a network facility.

The legislation also:

- Expanded disclosure requirements regarding network status and balance billing by insurers, facilities and other health care providers including the requirement that the following statement be included on balance bills: *"You may be able to reduce some of your out-of-pocket costs for an out-of-network medical or health care claim that is eligible for mediation by contacting the Texas Department of Insurance..."*
- Directed health plans to include similar disclosures in explanation of benefits (EOBs) sent to consumers.
- **Present Day:** Mediation requests at TDI have skyrocketed. More and more patients are becoming aware of the recourse available through mediation and taking action to trigger this assistance. However, surprise billing continues to be a significant problem, particularly in situations **when patients have no real choice** (e.g. emergencies) about which doctors they see or which facilities they go to. *In these cases, there is no free market for consumers. The market exists only between health plans and physicians or facilities, and the average Texan is getting caught in the middle... confused, frustrated, and holding a big bill.*

## BILL ANALYSIS - CSSB 1264 (86R)

The legislation includes the following provisions:

- Requires health plans, including preferred provider organizations (PPOs), exclusive provider organizations (EPOs), and health maintenance organizations (HMOs), to pay usual and customary or agreed-upon rates to out-of-network emergency care and facility-based providers.
- **NEW PROVISION:** Allows providers to dispute payment amounts through baseball-style arbitration, a type of binding arbitration in which the arbitrator will consider the initial amount billed by the provider and the initial payment from the health plan. The arbitrator then selects one of these amounts

as the final settlement, which encourages both parties to offer reasonable and fair charges and payments from the beginning. The bill also allows the arbitrators to use benchmark data to determine the most reasonable reimbursement rate. The dispute resolution time limit for arbitration is 45 days after the informal teleconference call which begins the process.

- **NEW PROVISION:** Gives the Attorney General and agencies that regulate the parties to arbitration enforcement authority under this bill. AG enforcement relates to intentional statute violations.
- Prohibits all non-network facility-based providers at network hospitals and all non-network emergency care providers from sending surprise balance bills to consumers. In other words, in situations where the consumer has no choice over who provides their care, they cannot be surprise-billed.
- **NEW PROVISION:** Prohibits surprise billing of consumers for out-of-network lab work and imaging.
- Maintains patients' responsibility for their applicable co-pay, coinsurance, and deductible amounts. Clarifies that a patient is not liable for any additional amounts after the insurer determines their cost-sharing.
- **NEW PROVISION:** Requires health plans to provide notice to the provider for the amount the provider is able to bill the enrollee.
- **NEW PROVISION:** Instructs the Texas Department of Insurance (TDI) to provide quarterly data calls to study the implementation of the legislation.

**Provisions in filed version removed by Committee Substitute:**

- Allows federally-regulated, self-funded health benefit plans (which make up at least 40% of the Texas health insurance market) to opt into the strong state protections afforded under the bill.
  - *Note:* This protection is now in a stand-alone bill, SB 1530 by Hancock / HB 3299 by Lucio III.
- Prohibits a consumer credit reporting agency from reporting information on a medical collection from surprise balance bills.
  - *Note:* This provision is no longer necessary as surprise billing would not be allowed in the first place, and the revised version of the bill contains strengthened enforcement provisions.

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