



Good News, Bad News on Texas' Surprise Billing Law

Description

by Blake Hutson

TDI's new biennial [report](#) on the state's surprise billing law shows that Texas patients are being protected from surprise billing, but that some physicians groups are misusing the law with overuse of arbitration and excessive billed charges.

Background: In 2019, the Texas Legislature passed SB 1264 protecting patients from surprise medical bills in emergencies and situations where they couldn't select the provider. These protections covered about 20% of Texans who are in state-regulated plans. As of Jan. 1, 2022, other insured Texans are protected through the federal No Surprises Act.

The good news: The laws have taken patients out of the middle of disputes between providers and health plans.

- Patient reports of surprise billing were reduced by 98% from the first half of 2019 to the first half of 2022
- Patients have been protected from more than \$1.3 billion in surprise billing disputes

The bad news: The state's dispute resolution process for settling on a final payment for providers is creating opportunities for abuse and overuse. Some providers are choosing to remain out-of-network and use the arbitration process for seemingly every claim—betting that the arbitration process will land them higher payments because it leans on the physician's unilaterally set billed charges.

- Texas experienced much higher levels of arbitration than what was expected. This has continued to grow every month since 2020 – from under 700 per month in early 2020 to nearly 12,000 each month in the first part of 2022.
- Too many arbitrations means wasting limited health care dollars. Keep in mind that arbitrations cost \$1,257 on average and all these costs get passed down to consumers.

More on billed charges: When Congress passed the No Surprises Act, they expressly prohibited using those physician set billed charges to determine an arbitration outcome. That's because research shows that doing so creates inflationary pressure on prices and leads to increasingly higher arbitration awards. Texas missed this protection and is now seeing the result. While consumers are protected upfront, they're now facing higher prices.

- Average billed charges in arbitration shot up from \$1,707 in early 2020 to \$5,806 in 2022. That's an over three fold increase in physician prices.
- As a result, final judgment amounts followed suit, going from \$672 to \$1,440 in the same period.

Can we fix it?: The state should adopt the protections from abuse, including in the No Surprises Act. Specifically, Texas should:

- **Eliminate billed charges:** The state dispute resolution process allows providers to factor in billed charges for consideration of the final settlement. The No Surprises Act banned using billed charges because those prices don't reflect what anyone actually pays and can be set to

any number without accountability.

Numerous [studies](#) found that using billed charges inflates final payments.

Instead, the dispute resolution process should use prices that actually reflect market forces and the value of service.

- **Limit overuse and abuse:** Since 2020, dispute resolution has resulted in over \$75 million million in arbitration costs alone. A “cooling off period” similar to that in the federal No Surprises Act will encourage parties to negotiate in-network agreements for timely payments instead of avoiding networks in order to take advantage of an unbalanced dispute resolution process.

Go deeper: In addition to the required [biennial report](#), TDI produced a [six-month preliminary report](#) in July 2020 and a midyear report in July 2021 to help monitor implementation of the new law.

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