



SB 2038: Opportunity for Governor Abbott to Address FSER Price Gouging

Description

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Throughout the COVID-19 crisis, Texas has seen [a dangerous trend of outrageous bills for COVID-19 testing](#), including numerous bills over \$10,000. Most of these excessive bills are often tied to freestanding emergency rooms. Not only do these facilities overcharge for the test, they often pile on thousands of dollars in physician, facility, and observation fees. In many of these cases, Texas patients received drive-thru testing, where no medical care was delivered other than a simple COVID test.

Senate Bill [2038](#), which passed the Legislature and awaits the Governor's signature, prohibits a freestanding emergency room from charging a facility or observation fee for drive-through testing or vaccinations at any time. Authored by Sen. José Menéndez and carried by Rep. Jay Dean in the House, the bill will also severely penalize a freestanding ER that price gouges consumers during a declared disaster or intentionally charges individuals with health insurance more for services than individuals who pay out-of-pocket.

Health plans are doing their part to help end the Coronavirus crisis by paying for [testing and vaccination without any cost sharing](#) for members. Providers, especially freestanding ERs, should not be taking advantage of this situation to profit even more.

In response to reports of provider abuse, U.S. Health and Human Services Secretary Xavier Becerra [sent a letter](#) this week reminding providers that COVID-19 vaccines and testing must be free without charge to patients. While this is an important protection for patients, excessive fees billed to and paid by insurance companies will ultimately drive up cost and make insurance more expensive for consumers.

Texas freestanding ERs also have a long history of misleading patients about their prices and network status. [According to a 2018 AARP investigation](#), 77% of Texas independent freestanding ERs used confusing language—such as stating they “take” or “accept” insurance—when they were not in network with any major health plan, and 30% of freestanding ER websites did not comply with applicable state network transparency laws.

In each of the past three Legislative sessions, lawmakers have added important consumer protection requirements to the Texas Freestanding Emergency Medical Care Facility Licensing Act. TAHP [formally filed a complaint](#) in January. Citing dozens of examples, our complaint includes evidence of freestanding ER violations of consumer disclosure laws, such as freestanding ER websites including misleading and prohibited statements regarding “accepting” health insurance plans and including prohibited names

and logos of health plans for which they are not actually in-network.

SB 2038 will provide needed consumer protections by requiring Texas HHSC to impose penalties on freestanding ERs who price gouge Texans during a disaster. As it becomes clear that freestanding ERs are demonstrating a pattern of bad behavior, enforcement measures are needed, and SB 2038 helps increase that pressure. We strongly support SB 2038 and look forward to the Governor's final approval of this bill to help freestanding ERs accountably, especially at times when Texas needs fair, reliable medical care most.

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