



**TAHP Legislative Priorities:**  
*85th Texas Legislature*

*Working toward quality, affordable, transparent health care for all Texans*

**TAHP**  
The Texas Association of Health Plans



# Legislative Priorities: 85th Texas Legislature

## Table of Contents:

Session Guide – Commercial..... pages 3-6

Session Guide – Medicaid ..... pages 7-8

Government Mandates a Threat to Affordable Coverage..... pages 9-10

Surprise Medical Billing ..... pages 11-12

Freestanding ERs..... pages 13-14

Telemedicine ..... pages 15-16

PBMs Negotiate Lower Rx Prices ..... pages 17-18

Prescription for Healthier Medicaid Rx Program ..... pages 19-20

Medicaid Managed Care: Saving Dollars, Saving Lives ..... pages 21-22



*Working toward quality, affordable, transparent health care for all Texans*



# 85<sup>th</sup> Legislature

**TAHP**  
The Texas Association of Health Plans

*Representing health insurers,  
health maintenance organizations,  
and other related health care entities  
operating in Texas.*

## Solutions for Affordable, Quality Health Care for Texans

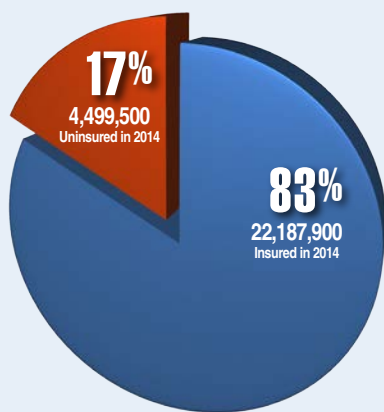
Now more than ever, it is critical that we work together to find meaningful solutions that ensure affordable health coverage and care for all Texans. Health plans play an important role in lowering health care cost through private market competition and negotiation. Despite efforts to hold down premiums, research shows that premiums track directly with underlying health care costs and utilization of services, which have been consistently trending upwards. Soaring drug prices and medical care costs must be addressed. In August 2016, health care costs in the U.S.—from the price of prescription drugs to physician appointments—rose more than any other time since 1984.<sup>1</sup>

**TAHP advocates for a sound and competitive health insurance market that maximizes private market competition, consumer choice, and affordable coverage options.**

### Health Coverage in Texas

Health coverage plays an essential role in ensuring healthy families and healthy communities. As of 2014, 83% of Texans (more than 22 million) had some form of coverage, while 17% (or nearly 5 million) did not have health benefits.

**Texas Health Coverage and the Uninsured in 2014**



People with health coverage are generally healthier individuals who have regular doctors and take advantage of key preventive health care services. Insured individuals are also better insulated from financial hardship and medical debt because their coverage protects them in the event of a serious illness or injury.



**9 out of 10 Insured Adults are Satisfied with Health Plan Networks**

Efforts by health plans to achieve high quality coverage and provider networks are making a positive difference. The Kaiser Family Foundation found that 9 out of 10 insured Americans are satisfied with their choices of doctors and the value of their health plans.

<sup>1</sup> U.S. Labor Department, September 2016



## Government Mandates Pose a Threat to Affordable Coverage

One of the most significant threats to the affordability of health coverage for Texans is the increasing number of government mandates, which directly drive up the cost of health coverage for business and Texans. Government mandates related to provider payments, provider contracting, and benefits result in higher health care costs, while also limiting innovation, private market negotiations, and consumer choice. Mandates shift costs to the private market, where Texas employers are then forced to decide between reducing employer benefits, lowering wages, requiring employers to share more of the cost for their health coverage, laying off employees, or even closing their doors altogether. In an era of skyrocketing health care costs, Texas must be mindful of the unintended consequences of government mandates.

**TAHP Position:** TAHP opposes all government mandates, including payment, contracting, administrative, and benefit mandates, which stifle private market competition, limit consumer choice, and drive up the cost of health care.



## Expand Mediation To Protect Consumers From Surprise Medical Bills

A serious market failure in emergency care in Texas has made Texas ground zero for surprise medical bills and soaring costs for emergency care. Surprise billing occurs when insured patients receive out-of-network care and are billed by a provider for fees that exceed the amount paid by their insurance—charges that can be 10-20 times the going rate. One of the main drivers of surprise billing is government mandates that force consumers and insurers to pay emergency care providers and facilities at these exorbitant rates and incentivize these providers to stay out of network because it is more lucrative for them. Mediation, the most effective option for consumers to challenge surprise medical bills, is working in Texas. It has already saved consumers millions of dollars, but it is limited and needs to be expanded to all emergency services.

**TAHP Position:** TAHP supports protecting consumers from excessive and surprise billing for emergency care by: equipping consumers with more information such as prices and network status; holding bad actors accountable who are exploiting patients and price-gouging; expanding the successful use of mediation to all emergency care facilities and providers; and repealing costly government mandates that have contributed to the growing trend of surprise billing and out-of-network emergency care in Texas.



## Protect Consumers From Exorbitant Medical Bills at Freestanding ERs

Freestanding ERs are rapidly popping up in residential areas throughout Texas. Though freestanding ERs tend to have the same look and feel of urgent care centers, many consumers are unaware that, unlike urgent care centers, these facilities are often out of network and can charge patients up to 10 times more for the same services. Many consumers are confused about the network status of freestanding ERs, which use intentionally misleading language, and are left reeling from exorbitant and surprise medical bills.

**TAHP Position:** TAHP supports enhanced protections for consumers by increasing transparency in advertising, pricing and network status at freestanding ERs. Those engaged in price-gouging or deceptive advertising must be held accountable. In addition, the mediation process should be expanded to include all non-network freestanding ER facilities and provider services. Finally, costly government mandates that are contributing to the growing trend of out-of-network emergency care and surprise billing should be repealed.



## Empower Consumers Through More Transparency

Consumer access to essential health care information, including prices, quality standards, and network status, is currently limited. This hinders their ability to shop for the most affordable and best-suited care and coverage for their unique needs. Additionally, there is a large variation in what out-of-network providers charge for their services, often resulting in surprise medical bills that are 10-20 times the going rate. These “billed charges” often have no connection to market or the real cost of the service. Exorbitant out-of-network charges, coupled with the annual double-digit rise in prescription drug prices, are hindering access to affordable health care for Texas consumers.

**TAHP Position:** TAHP supports efforts to increase transparency and ensure consumers have greater access to prices, quality standards and network status for all health care providers. Increased transparency by physicians, freestanding ERs, hospitals and all providers will assist consumers in planning for their out-of-pocket responsibilities and can lessen the likelihood of unexpected costs and surprise bills.



## Telemedicine: Increased Access to Quality & Affordable Care

Telemedicine offers a personalized and convenient alternative to visiting an emergency room, urgent care center, or doctor’s office for non-emergency medical needs. The use of telemedicine has already proven successful in increasing access to care, achieving cost-savings for consumers, and reducing the number of unnecessary hospitalizations. However, Texas lags behind other states in establishing a supportive regulatory environment for the expansion of telemedicine. In fact, over the last several years, the Texas Medical Board has moved to unnecessarily impose more stringent standards for telemedicine than in-person medical services. These regulations make it more difficult for qualified physicians to use telemedicine to provide care to more Texans. Telemedicine is a delivery model that offers great promise to help our state address the critical issues of health care quality, availability, and affordability. Health plans are looking for ways to expand, not limit, the use of telemedicine in Texas. We need to ensure that our state regulations are not standing in the way of innovation and not creating unnecessary, costly mandates that interfere with private market competition.

**TAHP Position:** TAHP opposes broad, overly restrictive regulations or contract and payment mandates that impose a one-size-fits-all approach to telemedicine and reduce private market competition. Telemedicine is a constantly evolving technology that is most effective when implemented in a tailored manner that meets individual regions, providers and patients’ needs. TAHP supports free-market principles that allow the telemedicine industry to grow and become a more viable option for Texans to access quality, convenient and low-cost health care services for appropriate medical needs.



## PBMs: A Critical Tool to Negotiate Lower Rx Prices

For the first time ever, insurance costs for prescription drugs have exceeded payments to doctors for physician services. In an era of skyrocketing pharmaceutical costs (Rx costs are 24 percent of every \$1 consumers spend on health insurance), health plans and pharmacy benefit managers (PBMs) use proven private-market negotiation tools to achieve the lowest costs for prescription drugs for those they serve. The scale and clinical expertise that PBMs provide is projected to save employers, unions, government programs and consumers \$654 billion – up to 30% – on drug benefit costs over the next decade, clearly demonstrating that PBMs will remain a necessary agent to achieve savings for their plan sponsors and their beneficiaries.

**TAHP Position:**

TAHP supports health plans’ and PBMs’ use of private market solutions and competitive negotiations to provide affordable drug coverage to Texans and Texas businesses.

TAHP opposes government mandates, including contract mandates, that that undermine competition in the private market and increase the cost of drug coverage for Texans.



## Facing Uncertainties in Federal Health Care Policy

Under the new Administration, it remains to be seen how national health care policy will change and ultimately, what will remain and what will be repealed of the Affordable Care Act. But one thing is certain: Now more than ever, the entire health care community, stakeholders and policymakers must work together to find meaningful solutions to ensure stable, affordable and valuable health coverage for all Texans. Millions of Texans and Americans depend on their current care and coverage, and any solution should include a strong commitment to continuous coverage. Decision-makers must build ample time into any transition implemented to ensure consumers have secure options and are fully informed of any changes. Trends suggest more control will shift back to the states in the coming years, and as it does, states like Texas must be careful not to hinder innovation and affordability with more restrictive government mandates. State leaders should recognize the success and savings achieved through more flexible and innovative approaches such as the managed care model and embrace private-market solutions that allow for competition and negotiation in health care.

**TAHP Position:** TAHP supports a sound and competitive health insurance market that maximizes private market competition and consumer choice, and promotes personal responsibility and affordable coverage options for all Texans.



# 85<sup>th</sup> Legislature

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## Texas Medicaid Managed Care: Saving Lives & Saving Dollars

Texas is a national leader in the use of managed care. Medicaid managed care has dramatically improved the lives, outcomes, and quality of care for Medicaid patients. Hospital admissions are down 20 to 40% for some of the most common and treatable conditions, including asthma, diabetes, pneumonia, and infections. A new study has also found that access and quality for Medicaid health plan enrollees is better than Medicaid fee for service and comparable to private health coverage.<sup>1</sup>

Taxpayer dollars are being saved through better care coordination, private market competition and negotiations, and reductions in fraud, waste and abuse. The managed care approach, which replaced the less efficient fee-for-service model, has saved the state billions. As a result, Texas has some of the lowest per capita Medicaid costs in the country.

“

*“Texas has been very innovative in our policies to ensure Medicaid services are provided in a cost-effective manner through managed care.”*

”

Governor Greg Abbott, September 29, 2015 letter to the federal Centers for Medicare and Medicaid Services

### Benefits of Managed Care

- Provides the state **budget certainty** – Fixed monthly premiums
- **Saves the state money** while delivering quality of care
- **Promotes preventive care and continuity of care** through medical homes
- **Guaranteed access** to a network of providers
- **Promotes innovative solutions** such as value-based purchasing to improve health care access
- **Provides integration of services** through the coordination of patient care

### Texas Medicaid Health Plans by the Numbers

**\$3.8B**

Total Est. Taxpayer Savings Achieved from SFY 2010 - SFY 2015

**\$3.3B**

Total Est. Taxpayer Savings to be Achieved from SFY 2015 - SFY 2018

**\$7.1B**

Total Est. Taxpayer Savings to be Achieved from Under the Managed Care Model, Compared to FFS

<sup>1</sup> Texas Medicaid Performance Study, The University of Texas Health Science Center at Houston, December 2016



## Building on Successes in Texas Medicaid Managed Care

**TAHP Position:** TAHP supports maintaining and strengthening the continued benefits, including:

- **Fostering Innovation:** The continued ability to innovate is critical to ensuring high quality of services and requires a careful balance between necessary regulatory requirements and flexibility to implement innovative solutions.
- **Fully Integrating Medicaid Benefits:** Ensuring Medicaid recipients receive fully integrated benefits will result in further improvements in health outcomes and will reduce Medicaid costs.



## The Prescription for a Healthier Medicaid Rx Program

Texas is moving to a more efficient Medicaid prescription drug program, through Medicaid managed care, that negotiates the most clinically effective and lowest-priced drugs. This will replace the existing program, which: favors expensive brand-name drugs that are up to 5 times more expensive than generics, is not based on standard medical practice, and has become overly cumbersome for Texas physicians.

According to the Texas Medical Association (TMA), more than half of Texas Medicaid physicians say they meet confusion, delays and challenges in prescribing the most appropriate drugs for their patients under the existing state-run drug program.<sup>2</sup>

**TAHP Position:** TAHP supports allowing managed care organizations to fully manage the pharmacy benefit in order to bring down costs and provide more timely access to clinically appropriate medications to Texans in the Medicaid program.

*That's just nuts. It's amazing to me the vendor drug program evolved itself into this mess where a doctor and a patient are penalized for prescribing the generic rather than the brand name. It's foreign to our training to write a generic prescription and have it rejected.*

TMA member and San Antonio pulmonologist  
Dr. John R. Holcomb, M.D., Texas Medicine, July 2016

*No other payer has such a Byzantine pharmacy benefit, thus fueling physicians' reluctance to participate in the program. Making the pharmacy benefit more transparent and easier to use will reduce program hassles for physician practices.*

TMA and Texas Pediatric Society Stakeholder Comments to HHSC, Texas Medicine, July 2016

### Better Care

The existing program poses a number of challenges for patients, including the fact that its drug list is not updated frequently and keeps doctors from being able to prescribe patients the most current, appropriate and effective drug. Delays, denials, and the absence of the right medicines on the state drug list result in more hospital admissions and lower quality of care for Texans. Prescription drug care coordination through managed care will ensure that Medicaid recipients receive fully integrated, high quality of care, resulting in further improvements in the lives and outcomes of Texans. As with previous expansions of managed care, the shift of the Rx benefit to managed care will maintain all current patient protections and include the development of new protections.

### Lower Prices: Millions in Savings

Managed care organizations will also negotiate significantly lower net prices for prescription drugs – reducing the average net price of a drug. HHSC estimates this will result in roughly \$40 million in GR savings and \$100 million in AF savings for Texas and taxpayers annually. The full transition to managed care will result in improved care for Medicaid patients and a streamlined system for Texas physicians.

<sup>2</sup> 2014 Texas Medical Association Survey of Physicians





# Government Mandates Pose a Threat to Affordable Coverage

One of the most significant threats to health coverage affordability is the increasing number of government mandates that drive up the costs of health coverage for Texas consumers and businesses. Government mandates related to provider payments, provider contracting, and benefits not only drive up the costs of health care but also limit innovation, private market negotiations, and consumer choice.

In an era of skyrocketing health care costs, Texas must be mindful of the unintended consequences of government mandates.

While often well-intended, government mandates typically have adverse effects on health insurance costs, which lead directly to higher premiums for consumers. When the government mandates something in health care, a small population may benefit from the particular mandate, but premiums go up for everyone. While a single mandate can increase premiums as a little as 1%, a 1% increase in premiums has a large financial impact on families and employers. Every 1 percent increase in premiums costs consumers and employers an estimated \$230 million a year in the fully insured market.

Mandates shift costs to the private market, where Texas employers are then forced to decide between reducing employer benefits, lowering wages, requiring employees to share more of the cost for their health coverage, laying off employees, or even closing their doors altogether.

## Curbing Costly Government Mandates

**TAHP Position:** TAHP opposes all government mandates, including payment, contracting, administrative, and benefit mandates, which stifle private market competition, limit consumer choice, and drive up the cost of health care.

TAHP supports:

- The ability of health plans to competitively negotiate contracts with health care providers in the private market without restrictive government mandates that limit competition.
- Health plans having the freedom to competitively contract with the highest-value and quality providers and pharmacies available in order to provide consumers with enhanced access to quality, cost-effective health care.
- Effective, efficient regulations and transparency requirements that protect consumers and providers without driving up costs.

## Government Mandates:

- **Limit or eliminate private market competition**
- **Increase the cost of health care premiums**
- **Stifle innovation**
- **Reduce consumer choice of affordable coverage options**



## Types of Mandates

### *Any Willing Provider or Contracting Mandates*

Any Willing Provider mandates restrict private market negotiations by forcing health plans to contract with any health care provider regardless of whether that provider meets quality standards, whether there is already sufficient patient access, or whether it will increase the cost of health care for consumers and businesses. An Any Willing Pharmacy mandate, promoted by the Obama Administration but ultimately abandoned, would have increased Medicare costs for taxpayers by \$21.3B over 10 years. Consumers have seen anywhere from 6 to 21% higher premiums as a result of Any Willing Pharmacy mandates.

*Any Willing Provider laws...can limit competition by restricting the ability of insurance companies to offer consumers different plans...these restrictions on competition may result in insurance companies paying higher fees to providers, which, in turn, generally result in higher premiums and may increase the number of people without coverage.*

Federal Trade Commission August 2011

### *Payment Mandates or Government Price-Setting*

Instead of allowing for private-market negotiations, government payment mandates require private health plans to pay providers at a government-determined rate. When government sets privately negotiated rates at “billed charges” or “usual and customary charges,” it creates perverse incentives in the market and often results in negative consequences. Currently in Texas, there is no legal limit to what providers can set as their billed charges, and no state agency regulates providers for billing excessive amounts. Billed charges (or provider prices) have little or no connection to underlying market prices, quality, or actual health care costs, and these amounts are usually not what is accepted and negotiated in the market. These billed charges are often 10 to 20—even 100—times what Medicare pays for the same services.

These mandates incentivize providers to remain out of network, significantly increase health care costs, increase consumer out-of-pocket costs and lead to more expensive health insurance premiums for employers and consumers.

### *Benefit Mandates*

A health benefit mandate requires carriers to offer additional benefit coverage for specific health care services, types of providers and types of enrollees and dependents. Nationally, there are an estimated 2,200 or more state mandates requiring insurance companies to cover, for example, the cost of treatments such as acupuncture, fertility treatment, or substance abuse programs. These mandates can increase the cost of health care anywhere from 10 to 50 percent. Texas ranks 6th in the nation for the highest number of mandates. New health benefit mandates were responsible for as much as 23 percent of all premiums from 1996-2011.

The Affordable Care Act further increased benefit mandates by requiring health plans to cover the “essential health benefits” package for health insurance coverage starting on or after January 1, 2014, including benefits such as ambulatory patient services, emergency services, hospitalization, and more.

### *Administrative Mandates*

Administrative mandates are often disguised as “standardization” and “transparency” efforts, but tend to prohibit standard business operations or mandate standardization of business operations in the private market. Like all mandates, administrative requirements always complicate private business operations and add costs to the system. Administrative mandates include prohibiting standard payment options such as credit card payment or mandating when and how a plan can require copayments. TAHP supports reasonable government oversight to protect consumers. However, forcing all insurers into the same narrow box stifles innovation and ensures that increased operational costs are passed on to employers and consumers without corresponding value being added into the system.



# Surprise Medical Bills: Serious Market Failure for Texas Emergency Care

A serious market failure in emergency care in Texas and across the country has resulted in a growing problem for consumers—surprise medical bills. Texas has become ground zero for this growing problem, as it is home to the majority of the nation’s freestanding ERs and has some of the highest emergency care costs and rates of surprise billing in the country. While many have pointed to individual parties such as doctors, insurers or facilities, a recent major study in the New England Journal of Medicine (NEJM) concluded that the growing trend of surprise medical billing is a direct result of a market failure in emergency care. One of the main drivers of surprise billing is government mandates in Texas that force consumers and insurers to pay emergency care providers, including freestanding ERs, up to 10-20 times the going rate for emergency care services. These mandates make it more lucrative for providers and facilities to remain out of network and charge consumers and health plans exorbitant prices for their services. As a result, Texans are getting hit with surprise bills (also called balance bills) for hundreds, even thousands of dollars, at a time when health care costs are skyrocketing and already sending many families into debt.

“

*Surprise out-of-network billing is problematic for two reasons. It prevents markets from functioning, as they should. And the bills can amount to thousands of dollars.*

”

New England Journal of Medicine, November 2016

## Solutions to Better Protect Consumers

The Texas Association of Health Plans, along with a number of consumer and business groups in Texas, is advocating to protect consumers from excessive and surprise billing for emergency care:

- Equip consumers with more information: Increase transparency of prices and network status, and notification of surprise billing
- Hold bad actors accountable who are exploiting patients, using deceptive advertising, and price-gouging in an emergency situation
- Strengthen surprise billing protections by expanding the use of mediation to all emergency care facilities and providers: Allows consumers to challenge surprise bills and removes them from the dispute
- Repeal costly government mandates that have contributed to the growing trend of surprise billing and out-of-network emergency care in Texas

## Texas is Facing an Emergency Care Cost Crisis

- **Texas has some of the highest emergency care prices in the country:** Out-of-network emergency physicians in Texas charge an average of nearly 200-800% higher than the going rate for the same services.
- **Texas is Ground Zero for emergency care surprise medical billing:** Texas has some of the highest rates of surprise medical billing in the country – 89% of emergency visits in McAllen, Texas, resulted in surprise billing.<sup>1</sup>
- **Texas has some of the highest rates of out-of-network emergency providers in the U.S.:**<sup>2</sup>
  - Up to 56% of hospitals in Texas that are in-network with the three largest insurers in the state have no in-network emergency physicians.<sup>3</sup>
  - Texas’ three largest insurers had an average of 41-68% of emergency room physicians’ charges billed out-of-network at in-network hospitals.<sup>4</sup>
  - A majority of the nation’s freestanding ERs are located in Texas, are out of network. Nearly 70% of out-of-network claims in Texas stem from freestanding ERs.

## Texas is Facing an Emergency Care Cost Crisis (cont.)

- **Confusion for patients:** Nearly 7 in 10 of Americans with unaffordable out-of-network bills did not know the provider was not in their plan's network, at the time they received care.<sup>5</sup>

*“Patients have no choice about which physician they see when they go to an emergency room, even if they have the presence of mind to visit a hospital that is in their insurance network.”*

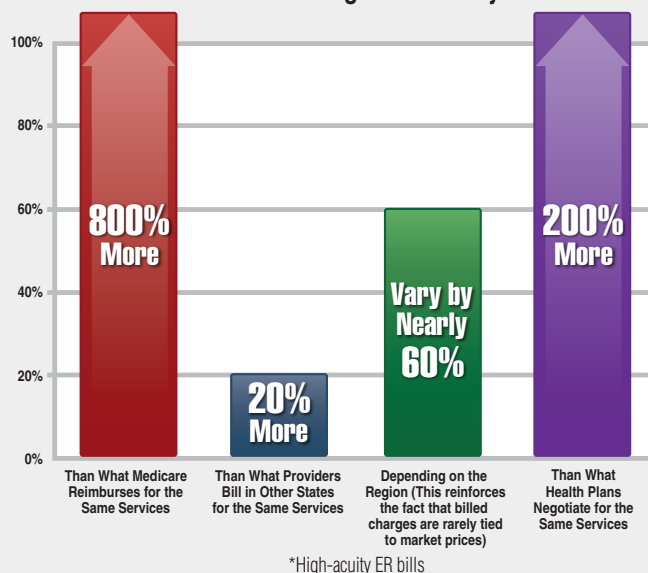
New York Times, September 2014

- **Medical bills are crippling family budgets:** 1 in 5 insured Americans has difficulty paying medical bills and nearly half say their medical bills have had a major impact on their families. Nearly 3 in 5 Americans have cut back on food and household spending in order to afford their medical bills.<sup>6</sup>
- **Mediation is working but limited in Texas:** The process of mediation, which allows consumers to challenge surprise medical bills, is already working in Texas but is only available on a limited basis. It does not currently apply to all emergency care services.

## Government Payment Mandates are Part of the Problem, Not the Solution

A large number of freestanding ERs and emergency care physicians have adopted a business model of not being in any health plan networks because of a Texas mandate requiring consumers and insurers to pay them substantially higher payments out of network. The Texas ER payment mandate is more severe than a similar Obamacare mandate and one of the most excessive payment mandates in the country. When consumers receive out-of-network emergency care, their health plans have been mandated by TDI to pay out-of-network providers a rate that is based on “billed charges.” These billed charges have no legal limits and little to no connection with underlying market prices, quality, or actual health care costs. As a result, health plans and consumers are being forced to pay substantially higher payments than what is usually negotiated and accepted in the market. This type of mandate creates perverse incentives for providers to avoid joining networks. This has led to higher premiums, higher out-of-pocket costs for consumers, surprise billing and larger numbers of ER providers choosing to stay out of network.

Texas Providers' Billed Charges for ER Physician Services



*“Ultimately, surprise out-of-network billing is the result of a market failure: the lack of a competitively set price for physician services.”*

NEJM

<sup>1</sup> “Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise,” New England Journal of Medicine, November 2016

<sup>2</sup> “Out-of-Network Emergency-Physician Bills — An Unwelcome Surprise,” New England Journal of Medicine, November 2016

<sup>3</sup> “Surprise Medical Bills Take Advantage of Texans,” Center for Public Policy Priorities, September 2014

<sup>4</sup> “Surprise Medical Bills Take Advantage of Texans,” Center for Public Policy Priorities, September 2014

<sup>5</sup> “Surprise Medical Bills,” Kaiser Family Foundation, March 2016

<sup>6</sup> Kaiser Family Foundation/New York Times Medical Bills Survey, January 2016

# Reining In Freestanding ERs: *Unsustainable Costs, Consumer Confusion, and Surprise Billing*

Though freestanding emergency rooms (ERs) may look like urgent care centers, many consumers are unaware that freestanding ERs are often out of network and can charge up to 10<sup>1</sup> times what urgent care centers charge for the same services. Many consumers are confused about the network status of freestanding ERs and left reeling from exorbitant and surprise medical bills following their visits.

## Solutions To Better Protect Consumers

The Texas Association of Health Plans, along with a number of consumer and business groups in Texas, is advocating to protect consumers from excessive and surprise billing as well as misleading information associated with freestanding ERs:

- Equip consumers with more information: Increase transparency of prices and network status at freestanding ERs
- Hold bad actors accountable who are exploiting patients, using deceptive advertising, and price-gouging
- Strengthen surprise billing protections for consumers by expanding the use of mediation to all non-network freestanding ER facilities and provider services: Allows consumers to challenge surprise bills and removes them from the dispute
- Repeal costly government mandates that have contributed to growing trend of surprise billing in Texas

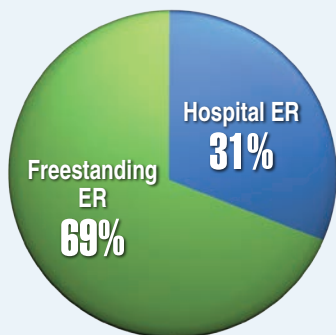
## Freestanding ERs Create Confusion & Excessive Costs for Texas Consumers & Employers

**Texas has the largest freestanding ER problem in the U.S.:** Over 50 percent of the 360 freestanding ERs nationally are located in Texas.<sup>2</sup>

**Same prices as traditional hospital ER but not as equipped:** Freestanding emergency rooms are ill-equipped to treat major emergencies and often must transfer patients to a hospital-based emergency room for treatment.<sup>3</sup>

**Source of the largest out-of-network problem:** Most out-of-network emergency claims for Texas ER facilities occur at freestanding ERs – 69 percent.<sup>4</sup>

### Out of Network Emergency Facility Claims: 2015



**Driving up health care costs and health insurance premiums:** For the largest health plan in Texas, total costs for freestanding ERs increased nearly 500 percent from 2012 to 2015, including a nearly 650 percent increase in costs for out-of-network locations.

**Charge like a hospital but provide mostly routine care:** The top three reasons people visited freestanding ERs in Texas are fever, bronchitis and sore throat – conditions that could be treated for less at an urgent care or traditional doctor’s office. The average cost to treat bronchitis at a Texas freestanding ER is \$2,944, compared to \$136 at a traditional doctor’s office or \$167 at an urgent care center.<sup>5</sup>

**Freestanding ERs charge consumers expensive “hospital-based” facility fees even though they are not a hospital:** Consumers often seek emergency care from freestanding ERs, believing that these facilities will charge the same as look-alike urgent care centers, when in fact, freestanding ERs levy “facility fees” like traditional hospital-based ERs on top of charges for the physician’s services. As a result, consumers who visit freestanding ERs are often **charged up to 10 times what they would have been charged at a traditional doctor’s office or urgent care facility.**

## Freestanding ERs Create Confusion & Excessive Costs for Texas Consumers & Employers (cont.)

**Charge the same or more but have significantly lower overhead than hospital ERs:** Because freestanding ERs are able to collect both a provider fee and a separate facility fee, the breakeven for a small freestanding ER can be as low as 12 patients per day.<sup>6</sup>

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*These free-standing (ERs) do not have to meet the rigorous requirements of our hospital facilities, such as staffing issues that significantly affect costs. It's a frightening disadvantage as our hospitals invest heavily in equipment, technology and clinical talent, while these other facilities are able to service only patients who have an ability to pay, and provide only a fraction of the services to remain financially viable.*

Lance Lunsford, Texas Hospital Association

”

**Not solving an access-to-care problem:** Freestanding ERs in Texas typically do not set up shop in areas where there is reduced access to care. Instead, they are highly concentrated in areas where there are already a greater number of hospital-based ERs and physician offices.<sup>7</sup> Additionally, they rarely serve uninsured and low-income populations that all traditional ERs are required to serve.

**Confusing Consumers:** The majority of freestanding ERs are not transparent about their network status and, in fact, use intentionally confusing and misleading marketing materials and web site language, including using phrases like “we accept all major private insurance plans like Aetna, BlueCross/Blue Shield, United Health Care, Humana and others” even though they are not in network with any of those health plans.



A Fort Worth Star-Telegram investigation discovered patient experiences like that of Daffney Cseke who received a \$1,800 bill in the mail, in addition to her \$100 copay, after visiting a freestanding ER in Plano for a migraine. Her bill totaled \$5,548 for the hour-long treatment of her migraine, which included a CT scan and a pregnancy test. After an unexplained \$1,200 adjustment, Cseke was mailed a \$1,808 bill.

*“I could have gone to the {urgent care center} of Plano two miles away and paid just my \$100 co-pay.”*

Daffney Cseke<sup>8</sup>

<sup>1</sup> “Utilization Spot Analysis: Free Standing Emergency Departments,” Center for Improving Value in Health Care, July 2016

<sup>2</sup> “Where Do Freestanding Emergency Departments Choose to Locate? A National Inventory and Geographic Analysis in Three States”, Annals of Emergency Medicine 2016

<sup>3</sup> “Are freestanding ERs good for patients?” San Antonio Express-News, September 2016

<sup>4</sup> TAHP Out-of-Network Claims Survey and Analysis of Three Large Texas Health Plans: 2015 Claims; May 2016

<sup>5</sup> Health claim data from major insurer in Texas.

<sup>6</sup> “Why Freestanding, physician- or investor-owned emergency departments may be bad for emergency medicine. ACEP Now 2015

<sup>7</sup> “Where Do Freestanding Emergency Departments Choose to Locate? A National Inventory and Geographic Analysis in Three States”, Annals of Emergency Medicine 2016

<sup>8</sup> (Source: Fort Worth Star-Telegram, As Free-Standing ERs’ Business Grows, So Does Backlash, August 2014)



# Telemedicine: Increased Access to Quality & Affordable Care

Telemedicine offers a personalized and convenient alternative to visiting an emergency room, urgent care center, or doctor’s office for non-emergency medical needs. The use of telemedicine has already proven successful in increasing access to care, achieving cost-savings for consumers, and reducing the number of unnecessary hospitalizations. However, Texas lags behind other states in establishing a supportive regulatory environment for the expansion of telemedicine. In fact, over the last several years, the Texas Medical Board has moved to unnecessarily impose more stringent standards for telemedicine than in-person medical services. These regulations make it more difficult for qualified physicians to use telemedicine to provide care to more Texans. Telemedicine is a delivery model that offers great promise to help our state address the critical issues of health care quality, availability, and affordability. Health plans are looking for ways to expand, not limit, the use of telemedicine in Texas. We need to ensure that our state regulations are not standing in the way of innovation and not creating unnecessary, costly mandates that interfere with private market competition.

“

*Telemedicine allows us to achieve the goals of the ‘triple aim:’ enhanced patient care and a better patient experience in a more cost-effective manner.*

”

Natasa Sokolovich, JD, MSHCPM, executive director, Telemedicine at the University of Pittsburgh Medical Center

## TAHP Supports Free-Market Solutions to Expand Telemedicine in Texas

TAHP opposes broad, overly restrictive regulations or contract and payment mandates that impose a one-size-fits-all approach to telemedicine and reduce private market competition. Telemedicine is a constantly evolving technology that is most effective when implemented in a tailored manner that meets individual regions, providers and patients’ needs. TAHP supports free-market principles that allow the telemedicine industry to grow and become a more viable option for Texans to access quality, convenient and low-cost health care services for appropriate medical needs.

### A one-size-fits-all telemedicine mandate is not the right fit for Texas:

- Telemedicine technology is constantly evolving, and flexibility is critical to allow for growth and changes to meet the varying needs of consumers and provide them with the greatest amount of options.
- A one-size-fits-all telemedicine mandate inhibits health plan efforts to provide the highest quality care. Not all telemedicine providers have been vetted or have contracted with health plans, ensuring that they meet stringent internal quality standards. Health plans should be allowed to provide services through the highest-quality and most affordable providers.
- Telemedicine should be made available to Texans without requiring an in-person visit, unless clinically recommended. A prior in-person visit is a layer of red tape not needed if it is determined that high-quality care can be maintained without it.
- Health plans should be allowed to tailor and incorporate the right type and scope of telemedicine technology based on regional, provider and patient needs.
- There are various types of telemedicine that can be used effectively at both authorized clinical sites as well as in non-clinical settings. Applying stringent location requirements may hamper the ability for telemedicine to meet patient needs throughout the State of Texas.
- Similar to traditional doctors’ visits, a telemedicine patient may request additional prescription refills or submit a follow-up question to the provider after being seen. Just as these communications are considered routine services in traditional medicine, so should these be considered routine needs in telemedicine and not subject to separate reimbursement.

## Why Telemedicine Makes Sense in Texas

Due to a number of factors, Texas is a strong market for telemedicine. Chief among them is access to care – a crucial problem in Texas, with the Texas Medical Association reporting there are about 186 physicians for every 100,000 residents. Telemedicine creates efficiencies that allow Texas-licensed physicians to expand their reach into every corner of our vast and diverse state.

New research by the Texas Association of Business (TAB) indicates Texans are eager to have greater access to telemedicine:

- **70%** of Texans favor the use of telemedicine to diagnose common medical conditions.
- **25%** of Texans have used an emergency room to treat such common conditions – a much more costly and time-consuming alternative to telemedicine.
- **51%** of Texans believe that access to health care providers has gotten more difficult.
- **24%** of rural Texans have to drive 30 minutes or more to get to the doctor's office.
- **23%** of Texans have to wait 14 or more days to see their doctor.

## Telemedicine: Saves Time, Saves Money, Increases Access

For those with more simple, routine health care needs, telemedicine offers a valuable alternative that reduces the need for unnecessary follow-up visits or hospitalization, offers dramatically shorter wait times, and results in lower out-of-pocket costs for the consumer. Just as important, telemedicine offers a faster alternative for patients, many of whom cannot afford to miss work for a long doctor's appointment, are home with multiple children, or have to travel long distances to visit a doctor.

Telemedicine also opens the door to health care services to those who may otherwise go without care. As physician shortages grow across the country and especially in Texas, which has 425 designated Health Professional Shortage Areas, access to health care is becoming a chief concern.

### Time-Saver

- Telemedicine eliminates nearly **1 in 5** ER visits
- **90%** of telemedicine visits require no additional care by a primary care physician
- To the contrary, **13%** of all traditional doctor's office visits and **20%** of all trips to the ER require a follow-up visit

### Time-Saver

- Average wait time to get an in-person doctor's appointment: **20 days**
- Average wait time to get an in-person appointment with a specialist: **18 days**
- Average wait time in the doctor's office prior to being seen: **84 minutes**
- Average wait time to get a telemedicine visit: **2 minutes**

### Cost-Saver

- Average cost of an ER visit: **\$2,168**
- Average cost of an urgent-care visit: **\$150**
- Average cost of first-time visit at traditional doctor: **\$82**
- Average cost of a telemedicine visit: **\$40**

### Increases Access

Consider the figures for one large national provider of telemedicine services; many of the patients who used their services may have not otherwise seen a provider:

- **34%** of telemedicine visits occur on weekends and holidays
- More than **20%** of patients had not seen a health care provider in the prior year





# PBMs: A Critical Tool to Negotiate Lower Rx Prices

The rising cost of prescription drugs is unsustainable not only for Texas families but for Texas businesses and our state's economy. For the first time ever, the amount insurance companies pay for prescription drugs outweighs what they pay doctors for their services. Prescription drug spending is growing faster than any other part of the health care dollar (currently accounts for 24 percent of every \$1 a consumer spends on health insurance). As the issue of skyrocketing pharmaceutical costs continues to be debated at the federal and state level, one critical tool that

must be strengthened to keep prescription costs low is the use of pharmacy benefit managers (PBMs).

A PBM is a third-party administrator that manages the prescription drug benefit of individual health plans, employer-sponsored plans, and government-sponsored health plans such as Medicaid and Medicare. PBMs aggregate the buying clout of millions of enrollees, enabling plan sponsors and individuals to obtain lower prices for their prescription drugs.

*The scale and clinical expertise that PBMs provide is projected to save employers, unions, government programs and consumers \$654 billion – up to 30% – on drug benefit costs over the next decade.*

## TAHP Supports PBM Efforts to Negotiate Lower Rx Prices

TAHP supports health plans' and PBMs' use of private market solutions and competitive negotiations to provide affordable drug coverage to Texans and Texas businesses.

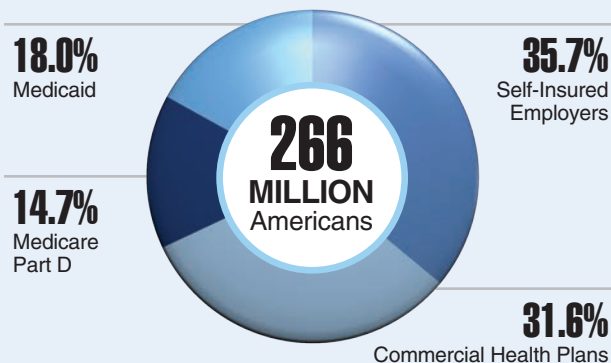
TAHP opposes government mandates, including contract mandates, that undermine competition in the private market and increase the cost of drug coverage for Texans:

- **Any Willing Provider or Pharmacy Laws (AWP)** – Force health plans to contract with any willing provider or pharmacy regardless of whether it is the highest quality candidate available, whether there is already enough patient access, or whether adding the pharmacy will increase the cost of health care for consumers and businesses. Health plans and PBMs use the leverage of preferred provider or pharmacy networks to negotiate lower prices for consumers. AWP mandates remove that negotiation tool, and according to the Federal Trade Commission (FTC), “result in higher health care expenditures” and reduced competition.
- **Proposals to Limit Mail-Order Pharmacies** – Highly efficient mail-order pharmacies save an average of 16% on prescription costs compared to retail pharmacies. Not only are they more affordable, mail-order pharmacies also increase medication adherence for consumers, which leads to stronger health outcomes and helps prevent hospital and ER admissions. Limiting the use mail-order pharmacies limits affordable options for Texans.
- **Proposals to Limit Specialty Networks** – Health plans and PBMs establish and manage specialty pharmacy networks to track highly advanced specialty drugs, which can cost tens of thousands of dollars and are being used more and more in place of traditional pills, capsules and elixirs. Specialty networks are an effective means of controlling costs and ensuring the safety and integrity of specialty drugs.
- **Proposals That Obstruct Competitive Bidding** – A healthy marketplace allows for competition to ensure that the highest-quality and most affordable entities succeed. Health plans and PBMs are increasingly using competitive bidding to negotiate better deals with drug makers. Proposals that stand in the way of these negotiations result in higher prices for consumers. Recent research has shown that restrictions to MAC lists could increase the cost of generic prescriptions by 31% to 56%, increasing national expenditures by \$5.5 billion annually.

## PBMs Keep Prescription Drug Coverage Affordable for Consumers and Employers

- PBMs save consumers and payers up to **30% on average on the cost of prescription drugs.**
- PBMs will save employers and consumers **\$654 billion on prescription drugs over a decade** (2016-2025).
- Employers can create **20,000 jobs for every 1%** PBMs save in prescription drug costs.
- PBMs' use of mail-order pharmacies will save employers and consumers more than **\$60 billion over a decade.**
- PBMs' use of specialty pharmacies will save employers and consumers more than **\$250 billion over a decade.**

More than **266 million Americans** receive pharmacy benefits provided through PBMs



## PBMs' Time-Tested Tools

Health plans and PBMs use a number of drug management tools to reduce drug costs and keep prescription drug coverage affordable for consumers and employers.

- **Establishing Competitive Networks:** PBMs establish a network of pharmacies—including mail-order pharmacies—that compete to be in a health plan's network. Pharmacies agree to negotiated discounts for health plan members in order to be in a network. Nationally, PBM networks include nearly all chain pharmacies, and the majority of PBMs contract with 90% of pharmacies in the regions they serve. This allows patients the ability to fill their prescriptions at a wide choice of pharmacies.
- **Encouraging the Use of Generics:** PBMs encourage the use of lower cost generic drugs to keep prescription drug coverage affordable. Generic drugs on average cost 85% less than identical brand-name counterparts. Generic drugs make up nearly 90% of the prescription drug volume but only 28% of total prescription spending, saving the U.S. health care system \$254 billion in 2014.
- **Negotiating Rebates and Savings:** PBMs help achieve additional cost-savings by negotiating rebates and savings from drug manufacturers. Manufacturers compete for placement on a health plan or PBM's covered formulary (a list of drugs the health plan covers) by offering rebates and discounts that reduce the net cost of the drug. A health plan's formulary in turn steers patients to the best value and least costly medications that are clinically effective for treating their health condition.
- **Reducing Waste and Improving Adherence:** PBMs use drug utilization review programs to improve quality and safety by preventing drug duplication, drug interaction, and drug overuse. PBMs also use tools to increase appropriate utilization through improved adherence to drug therapy for chronic diseases, including dispensing prescriptions that last 90 days, instead of 30 days.



# The Prescription for a Healthier Medicaid Rx Program

Texas is a national leader in the use of managed care. Managed care has dramatically improved the lives, outcomes, and quality of care for Medicaid patients in Texas.

Texas is moving to a more efficient Medicaid prescription program, through Medicaid managed care, that negotiates the most clinically effective and lowest-priced drugs. This will replace the existing program that favors expensive brand-name drugs that are up to 5 times more expensive than generics, is not based on standard medical practice, and has become overly cumbersome for Texas physicians. According to the Texas Medical Association (TMA), more than half of Texas Medicaid physicians say they meet confusion, delays and challenges in prescribing the most appropriate drugs for their patients under the existing state-run drug program.<sup>1</sup>

*“That’s just nuts. It’s amazing to me the vendor drug program evolved itself into this mess where a doctor and a patient are penalized for prescribing the generic rather than the brand name. It’s foreign to our training to write a generic prescription and have it rejected.”*

TMA member and San Antonio pulmonologist  
Dr. John R. Holcomb, M.D., Texas Medicine, July 2016

*“No other payer has such a Byzantine pharmacy benefit, thus fueling physicians’ reluctance to participate in the program. Making the pharmacy benefit more transparent and easier to use will reduce program hassles for physician practices.”*

TMA and Texas Pediatric Society Stakeholder Comments to HHSC, Texas Medicine, July 2016

## Better Care

The existing program poses a number of challenges for patients, including the fact that its drug list is not updated frequently and keeps doctors from being able to prescribe patients the most current, appropriate and effective drug. Delays, denials, and the absence of the right medicines on the state drug list result in more hospital admissions and lower quality of care for Texans. Prescription drug care coordination through managed care will ensure that Medicaid patients receive fully integrated, high quality of care, resulting in further improvements in their lives and outcomes.

## Lower Prices: Millions in Savings

Managed care organizations will also negotiate significantly lower net prices for prescription drugs – reducing the **average net price of a drug**. HHSC estimates this will **result in roughly \$40 million in GR savings and \$100 million in AF savings for Texas and taxpayers annually**. The full transition to managed care will result in improved care for Medicaid patients and a streamlined system for Texas physicians.

*The Texas Association of Health Plans supports allowing MCOs to fully manage the pharmacy benefit in order to bring down costs and provide more timely access to clinically appropriate medications to Texans in the Medicaid program.*

## Improving Prescription Drug Care Through Managed Care

As a result of the managed care model's proven track record of improving patient care and generating Medicaid savings, the Texas Legislature adopted the full expansion of managed care statewide in 2011, including the integration of prescription drug coverage. This puts Medicaid in step with the rest of the health care market in Texas – health plans already manage the prescription drug benefit successfully in Medicare, Tricare, ERS/TRS, and the private market. The transition for fully integrating drug coverage into managed care is a two-step process, with the final step scheduled for August of 2018.

### Full Prescription Drug Care Coordination Under Managed Care

- **Improves Quality of Care:** Ensures that Medicaid patient receive fully integrated, high quality of care, resulting in further improvements in the lives and outcomes of Medicaid patients.
- **Lowers Prices of Medicaid Drugs:** Managed care organizations will negotiate significantly lower net prices for prescription drugs – reducing the average net price of a drug.
- **Generates Taxpayer Savings:** Uses health plan leverage and experience to achieve millions in savings annually.
- **Protects Consumers:** As with previous steps in this transition, the shift of the Rx benefit to managed care will maintain all current patient protections and include the development of new protections.
- **Creates a Simpler System for Texas Doctors:** Texas doctors prefer prescribing lower-cost and easier-to-access generic prescription drugs for their patients. However, the current state-run drug program favors expensive brand-name drugs, is not based on standard medical practice, and is cited as a barrier to physicians accepting Medicaid patients. The shift to managed care will result in a simpler system for doctors and more cost-effective program for Texans.
- **Creates Continuity of Care:** Texas Medicaid patients who under the current system cannot find or afford the expensive brand-name drugs the system favors if they leave Medicaid, will now be able to easily locate and afford their medicines if they leave the program.

## Delaying This Transition Protects Drug Company Profits, But Hurts Texas Doctors, Patients & Taxpayers

- PHARMA is requesting a delay to this transition to a more efficient Medicaid drug program in hopes of protecting the pay-to-play rebate system that allows them to profit from a costly, brand-name dominated system. The full transition of Texas Medicaid to managed care has already been delayed once—putting quality of care at risk and foregoing significant savings for Texas taxpayers.
- PHARMA's justification for this delay is their claim of \$1.5 billion in rebates they pay the state to maintain the state's high-cost, brand-name drug program. In reality, the State of Texas only negotiates roughly \$50-\$100 million in supplemental rebates each year. TAHP supports full integration, as scheduled by the Legislature, in 2018.

<sup>1</sup> 2014 Texas Medical Association Survey of Physicians

## Medicaid MCOs are a Proven Cost-Effective Delivery Model

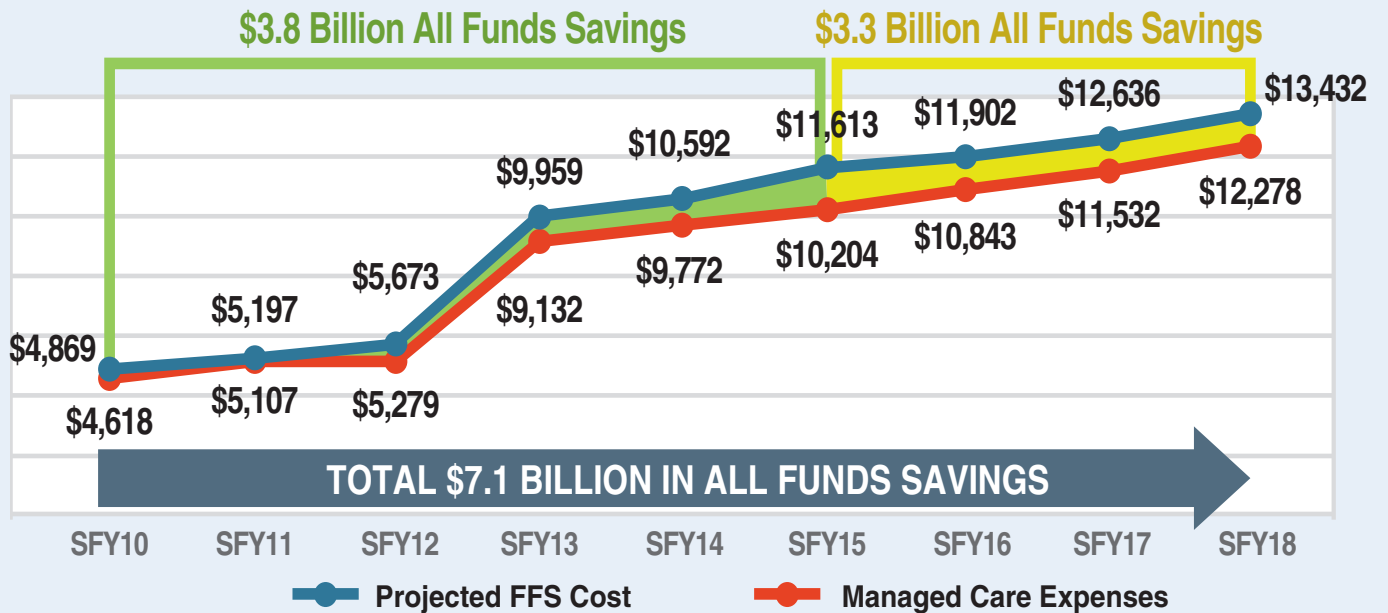
Texas is a national leader in the use of managed care. Medicaid managed care has dramatically improved the lives, outcomes, and quality of care for Medicaid patients. Hospital admissions are down 20 to 40% for some of the most common and treatable conditions, including asthma, diabetes, pneumonia, and infections. A new study has also found that access and quality for Medicaid health plan enrollees is better than Medicaid fee for service and comparable to private health coverage.<sup>1</sup>

## Medicaid Managed Care Cost Savings

Taxpayer dollars are being saved through better care coordination, private market competition and negotiations, and reductions in fraud, waste and abuse. The managed care approach, which replaced the less efficient fee-for-service model, has saved the state billions. As a result, Texas has some of the lowest per capita Medicaid costs in the country.

Between FY10 and FY 15, independent actuaries estimate that Medicaid managed care **reduced costs by 7.9%**, compared to the fee-for-service (FFS) model. Texas Medicaid MCOs have saved the state **\$3.8 billion in AF** since 2010 and are expected to save another \$3.3 billion AF through 2018 when compared to FFS. Medicaid dental managed care has **reduced costs by 28.4%** since FY13.

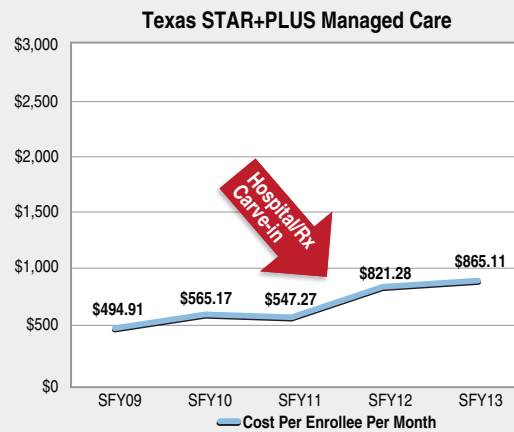
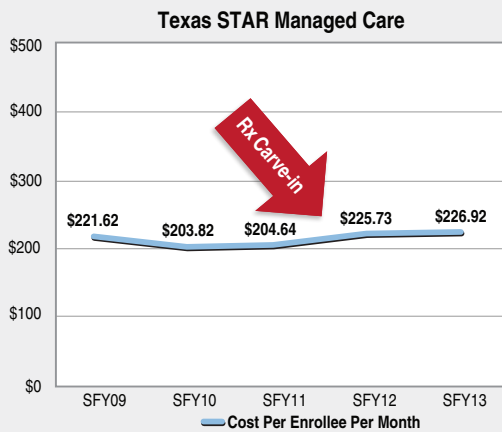
**Managed Care vs. Fee for Service**  
(Dollars in Millions)



Source: Texas Medicaid Managed Care Cost Impact Study. Milliman. February 2015.

## Medicaid MCOs Contain Costs for Texas Taxpayers

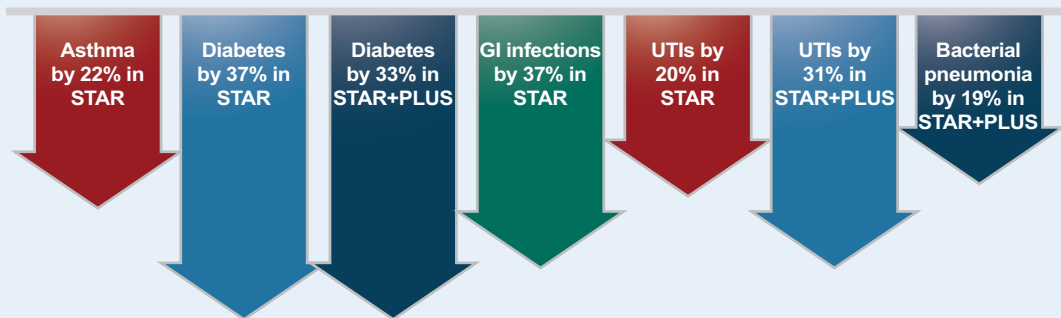
MCO premiums, including all health care and drug costs in the premium, have stayed relatively flat unlike FFS or general health care inflation. In the STAR program—Texas Medicaid’s largest managed care program, with 2.7 million consumers—costs grew only 2.2% from 2009 to 2013 while national health care costs grew nearly seven times as much, or 15%, over the same period of time.



## Medicaid MCOs have dramatically improved the lives, outcomes and quality of care for Medicaid consumers

### MCOs Improved Quality of Care

Between 2009 and 2011, MCOs reduced hospital admissions for:



## Texas Has the Strongest MCO Protections in the Country

- Texas is the only state that prescribes a limit on health plan administrative costs and defines which costs can be included in the administrative portion of the rate (MCO care management is considered administrative).
- Texas is one of only two states that have placed limits on health plan profits by requiring profit sharing with the state.
- Texas is one of a few states that have a one-way risk corridor that puts MCOs at full-risk for all costs and potential losses.
- Texas places the largest amount of MCO premium (4%) at risk based on performance and quality of care.

<sup>1</sup> Texas Medicaid Performance Study, The University of Texas Health Science Center at Houston, December 2016



## About TAHP

The Texas Association of Health Plans (TAHP) is the statewide trade association representing private health insurers, health maintenance organizations, and other related health care entities operating in Texas. As the voice for health plans in Texas, TAHP strives to increase public awareness about our members' services, health care delivery benefits and contributions to communities throughout the state.

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Page 23 of 23