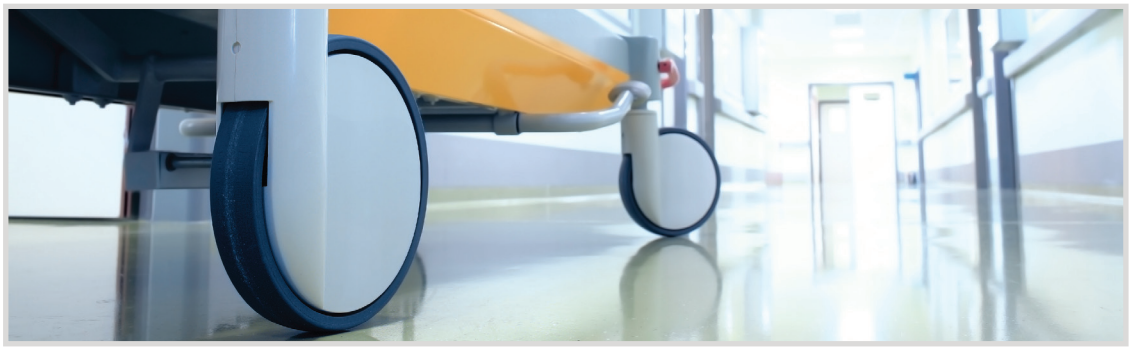
TAHP
The Texas Association of Health Plans

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

Freestanding ERs: The Need for Greater Transparency and More Consumer Protections



What is a Freestanding Emergency Room?

A new type of provider and facility has arrived in Texas and across the country, first introduced in Texas in 2009, and its prevalence is growing at record speed: the freestanding emergency room.

The freestanding ER looks and feels much like the traditional urgent care facility. It is a walk-in medical facility that is structurally separate and distinct from a hospital, but it still receives patients for emergency care. These facilities are often found in commercial shopping centers, close to neighborhoods and residential areas. The owner of a freestanding ER can be an individual (physician or private investor), governmental unit, or a business entity that may include a hospital.

Many consumers are unaware that freestanding ERs are permitted to charge a facility fee, just like a traditional hospital ER. This often results in much higher medical bills than the consumer expected—sometimes up to ten times more than an urgent care center would charge for the same services. Additionally, while a freestanding ER may be an appropriate facility for certain medical conditions, insured consumers are often unaware that a majority of freestanding ERs—and the providers who work at these facilities—are out-of-network for them. This can lead to surprise, expensive, out-of-network charges for consumers and a higher occurrence of "balance billing."

Balance Billing & Out-of-Network Charges at Freestanding ERs

Surprise balance billing often occurs when an insured patient receives out-of-network care in an emergency situation. In these instances, there is no contract between the facility/provider and the health plan, meaning there is no negotiated rate. Therefore, the health plan will pay the out-of-network reimbursement rate to the facility/provider. In most cases, at this point, consumers believe their bill has been paid. But, because there was no negotiated rate, the facility/provider will send a second bill (balance bill) for the difference between what the health plan paid and the facility/provider's "billed charges." Billed charges are the amount a facility or provider sets for their services. There is no legal limit to the price they can set, and these charges often have no connection to underlying market prices, costs, or quality.

Because most freestanding ERs choose to stay out of network, the occurrence of balance billing is exacerbated at these facilities.

Is it an Urgent Care Center or a Freestanding ER?

In the case of freestanding ERs, consumers often confuse them for urgent care centers and can be unaware that the facility and physician who sees them are out-of-network. This often leads to two separate and surprise balance bills for the consumer. Additionally, all freestanding ERs charge a separate "facility fee," which urgent care centers do not charge.

Important to note:

- A majority of freestanding ERs and the physicians who treat patients at freestanding ERs are out-of-network for insured consumers.
- All freestanding ERs charge a facility fee that urgent care centers do not.
- It is common for consumers to receive two balance bills for care received at a freestanding ER: one balance bill for the facility and one for the physician who treated them.
- A majority of freestanding ERs opt to stay out of network because of a financial incentive that exists due to current TDI rules and regulations.
- TDI requires health plans to pay emergency care facilities/providers that are out of network a reimbursement rate that is based on "billed charges," also referred to as the "usual or customary" charge. These are typically higher than negotiated network rates.

Challenges Posed by Freestanding ERs

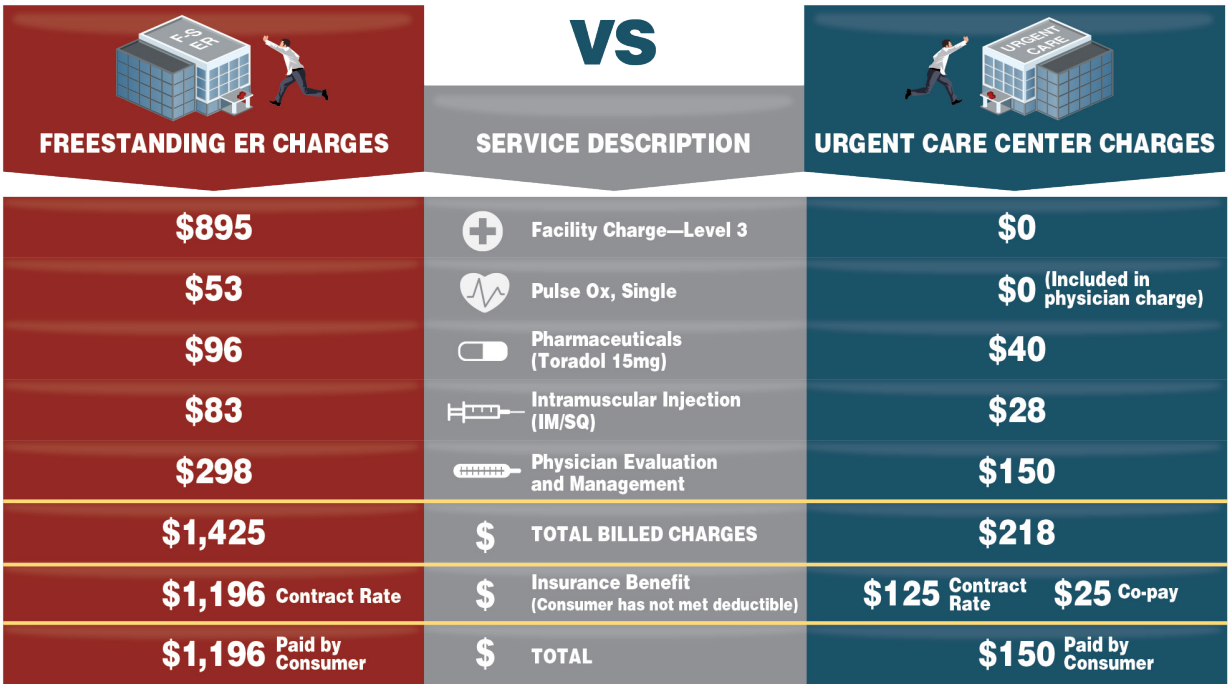
As mentioned, freestanding ERs present consumers with a new alternative to traditional ERs or the doctor's office and have certainly boosted access to medical care for Texans across the state. However, a visit to a freestanding ER often results in surprise medical bills that can be up to ten times the rate charged by urgent care centers for the same services. This includes the freestanding ER's facility fee, which is on top of the physician's fee, and is used to cover the overhead expenses associated with maintaining around-the-clock care.

Many consumers confuse freestanding ERs for urgent care centers because they often appear similar and are both found in commercial shopping areas. But unlike urgent care centers, most freestanding ERs are out-of-network for consumers, charge a facility fee, and result in two separate balance bills for patients. ***A single encounter for routine care at a freestanding ER may end up costing a consumer more than $1,000 out of pocket.***

While certain medical situations may be appropriate for freestanding ERs, studies show that 95-97 percent of consumers treated in freestanding ERs are discharged directly home. For routine care, freestanding ERs often prove to be a much more expensive option than seeking treatment at an urgent care center.

The Real Costs:

A Patient with back pain chooses between a Freestanding ER or an Urgent Care Center to receive in-network care.



Billed Charges at Freestanding ERs: The "Usual or Customary Charge " Mandate

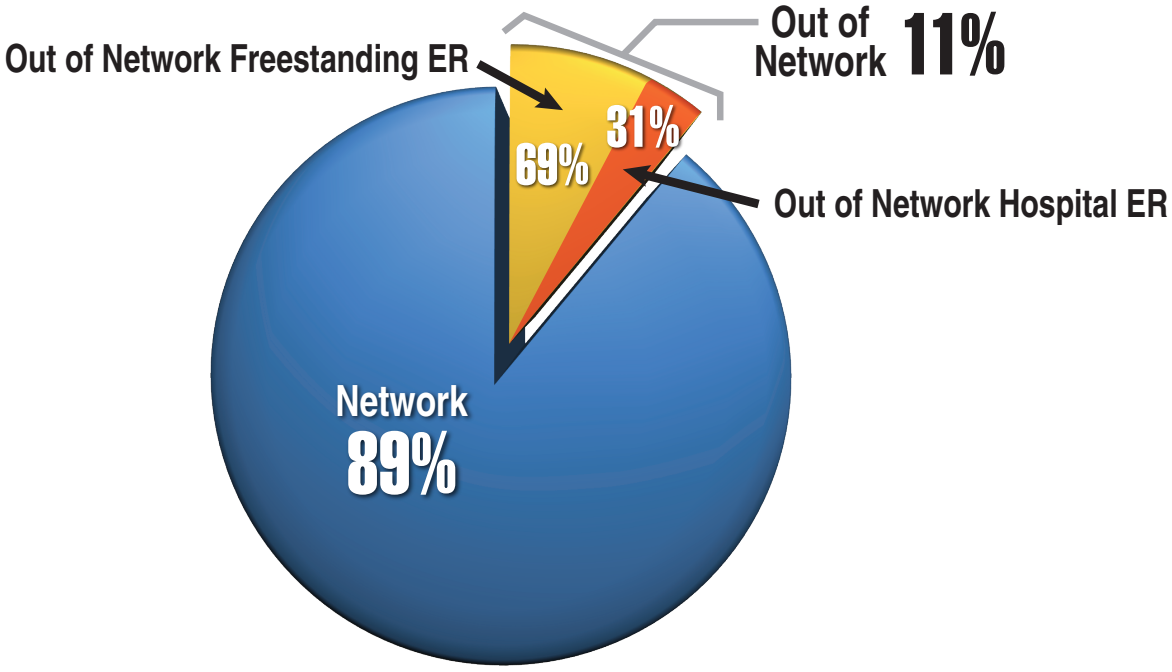
When consumers in emergency situations visit a facility that is not in their insurance network, their health plans are required by law to pay out-of-network providers a rate that is based on "billed charges," or the "usual or customary charge" for the region. This means the State has set reimbursement rates for these situations based on an average of what providers bill in the region—not on the average rate that providers are actually accepting in that same region.

The challenge with basing out-of-network emergency care reimbursements on providers' billed charges is that these charges are self-determined by the provider, have large amounts of variation, and often have no connection to underlying market prices. Additionally, there is no legal limit on what providers can unilaterally set as their billed charges. This provides an incentive for providers to remain out-of-network so they can earn substantially higher reimbursement rates and is especially common among freestanding ERs.

Freestanding ERs are also taking advantage of these higher payments based on billed charges, and most have adopted a business model of not being in any health plan networks. This allows freestanding ERs to balance bill enrollees up to the full amount of their billed charges, and current state law does not provide an opportunity to mediate these claims, even for balance billing amounts that exceed $1,000.

As mentioned, a balance bill is a bill consumers receive for out-of-network provider and facility charges that exceed what their health plan agreed to pay. In the case of freestanding ERs, consumers will often receive two separate balance bills: one for the out-of-network facility and one for the out-of-network provider who treated them. These balance bills are in addition to the facility fee that all freestanding ERs charge.

2015 Emergency Room Facility Claims: Network vs. Out of Network



Source: TAHP Out-of-Network Claims Survey and Analysis of Three Large Texas Health Plans: 2015 Claims; May 2016

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Solutions:
Improving Protections & Enhancing Transparency for Consumers

As Texans encounter a growing occurrence of surprise medical bills and out-of-network charges, there are three main keys to making health care more affordable: increasing transparency, strengthening protections for consumers (expand mediation), and removing financial incentives for emergency care providers to remain out of network.

As it stands, consumers have the opportunity to challenge certain balance bills through the process of mediation, in which the provider or facility negotiates with the health plan to reach market-appropriate reimbursement rates. This removes the consumer from the dispute and helps to ensure that rates are determined through negotiation and not by blanket regulations that may not be suitable for all services or regions. The Texas Association of Health Plans (TAHP) supports expanding the use of mediation for consumers to challenge balance bills, including those issued by freestanding ERs, as well streamlining current TDI mandates for emergency care reimbursement rates.

Just as important, consumers must be armed with more information so they can make the best health care decisions for themselves, their families, and their household budgets.

In 2015, the Texas Legislature adopted Senate Bill 425, which amended the Health & Safety Code to require freestanding ERs to conspicuously disclose the following information:

- The facility is a freestanding ER;
- The facility charges rates comparable to a hospital ER and may also charge a facility fee
- A physician provide care at the facility may not be in the patient's health plan network; and
- A physician providing care at the facility may bill separately from the facility.

While these statutes were a welcome development, some freestanding ER facilities continue to include misleading language on their web sites that may be confusing to some consumers. TAHP advocates for greater oversight of these statutes coupled with continued efforts to increase transparency for all Texas consumers.

Freestanding ER History

Texas Freestanding Emergency Medical Care Facility (FEC) Licensing Act, House Bill 1357, was first enacted in 2009 by the 81st Texas Legislature. HB 1357 also amended the Texas Insurance Code provisions related to emergency services to add freestanding ERs to the types of facilities required to be reimbursed at the in-network level of benefits for emergency care. Subsequently, the Texas Department of State Health Services developed rules that establish minimum standards for licensing procedures; for granting, denying suspending; and revoking a license; for licensing fees; for operation; and for requirements concerning design and construction (25 Tex Admin Code Chapter 131).

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