



To: Sergio Cavazos, Committee Clerk,
Texas House Committee on Insurance

From: Shannon & Mike Meroney,
On behalf of the Texas Association of Health Underwriters (<https://tahu.org>)
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Date: September 08, 2020

Re: Committee Request for Information regarding Interim Charge #1

Chairman Mr. Cavazos and Committee Members,

Thank you for this opportunity for TAHU to provide input in the form of a written submission on the Interim Charges studied by the Committee. TAHU (Texas Association of Health Underwriters) is a statewide trade organization of licensed health insurance agents. We have over 1,500 members across the State who help people and employers of all sizes find the best health insurance policy for their needs. TAHU’s clients are typically the “mom and pop” small businesses on Main Street in towns all over Texas but they also serve larger companies and individuals. TAHU provides expertise and niche product service to companies who don’t have the resources to staff a large HR Department. Their assistance begins with researching the best plans for each consumer and continues all the way through assisting with claims when needed. This results in TAHU members having their finger on the pulse of the real day to day needs of most Texans when it comes to finding affordable health insurance.

This submission addresses Interim Charge 1: Monitor the agencies and programs under the Committee's jurisdiction and oversee the implementation of relevant legislation passed by the 86th Legislature. Conduct active oversight of all associated rulemaking and other governmental actions taken to ensure intended legislative outcome of all legislation, including the following:

· HB 2536, which requires certain reporting requirements for drug manufacturers, pharmacy benefit managers, and health insurers on certain pharmaceutical practices, including the pricing and availability of insulin. Examine its effect on drug pricing in the market and how to increase transparency in pricing associated with delivery of drugs, such as insulin, to the end user patient.

- TAHU does not offer any comments on House Bill 2536.

SB 1264, which prohibits balance billing (surprise billing) and creates an arbitration system to settle balance bills. Monitor the implementation of the mediation and arbitration programs, including the establishment of a portal on the TDI website through which requests for mediation and arbitration may be submitted. Determine whether the appropriate state agencies are enforcing the prohibition on balance billing. Review the Department's rules implementing the legislation's exception for non-emergency "elective" services to determine whether the rules limit the exception to out-of-network services that a patient has actively elected after receiving a complete written disclosure. Monitor or follow up on TDI's process for selecting the benchmarking database and determine whether the database chosen provides the most accurate available data and its sources are transparent. Evaluate the fiscal impact of the legislation on the Employees Retirement System of Texas and the Teacher Retirement System of Texas. Review costs to the systems and savings to employees and teachers.

TAHU'S COMMENTS:

TAHU conducted a survey of its membership on this and several other issues that are the subject of the Committee's study. We received many responses confirming that surprise billing is still occurring and our clients are asking for a receiving assistance from their agents in responding. Most agents agreed that the patient is less involved in the process and settlement negotiation under the new law.

However, our membership's feedback combined with a review of TDI's Six Month Preliminary Report, published on TDI's website in July, indicates that it is really too soon to tell whether SB 1264 will successfully end surprise billing in Texas for the plans it impacts. Some relevant facts from their report (found here <https://www.tdi.texas.gov/reports/documents/SB1264-preliminary-report.pdf>) include:

- As of June 30, 2020, TDI had received more than 9,000 requests for dispute resolution under the new process. Six months into the implementation of SB 1264, provider complaints about billing disputes have decreased more than 70% from the same period a year ago, and consumer complaints about balance billing have fallen by more than 95%.
- The largest number of requests by far was received in June, and most of these are still in process. In addition, the ban on elective surgeries due to the COVID-19 pandemic may have reduced the number of requests for mediation and arbitration that TDI would have otherwise received for out-of-network providers at in-network facilities.

So while the requests for resolution fell dramatically during the first six months of the law's effective date, we believe this is largely due to a lag time in services rendered after January 1, 2020, going through the billing and payment process before becoming ripe for a dispute resolution request. TDI reports its largest number of requests was in June, indicating the number of requests is still on the rise. The initial lack of requests was also likely a product of the pandemic resulting in patients postponing all medical care possible.

Other relevant excerpts include:

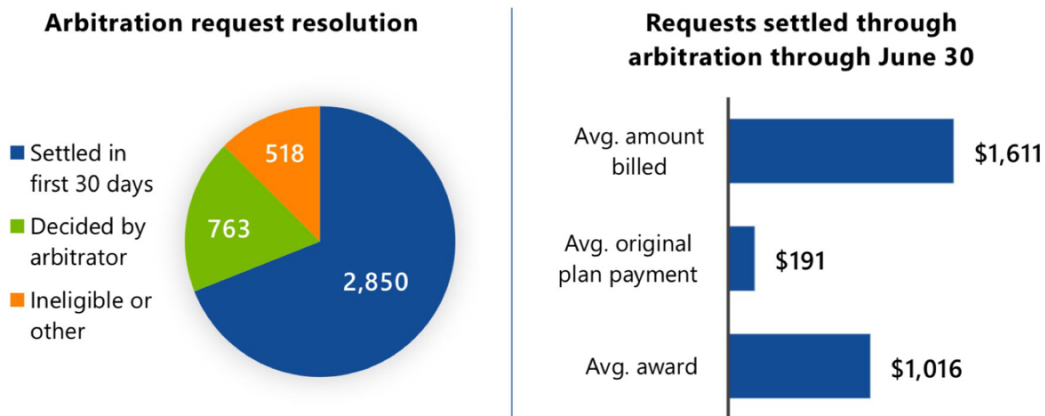
- We're seeing a higher proportion of requests related to emergency services than in the previous mediation system. The elective surgery ban may be a factor in this difference.

| Specialty | SB 1264 submissions through June | 2019 mediations under prior system |
|----------------------|----------------------------------|------------------------------------|
| Emergency physicians | 85% | 10% |
| Anesthesiologists | 4% | 33% |
| Assistant surgeons | 1% | 0.6% |

- The final payment agreed to during informal settlement discussions appears similar to those decided by arbitrators based on a look at requests involving a single claim for emergency physician services. TDI does not have information on the services, or CPT codes, included in the requests for dispute resolution so we cannot compare how the decisions differ on specific services.

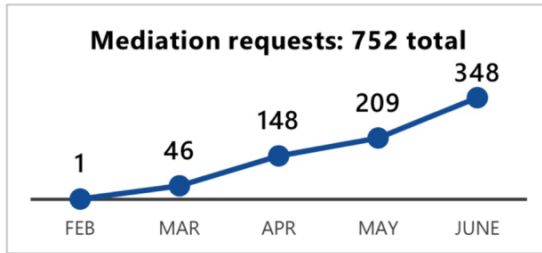
| Requests with single claim for ER physician | Informal settlement | Decided by arbitrator |
|---------------------------------------------|---------------------|-----------------------|
| Original bill | \$1,497 | \$1,699 |
| Original payment | \$144 | \$229 |
| Final amount | \$612 | \$688 |

The above chart would indicate that arbitrators so far are tending to award more than the cases have settled for in terms of the original bill and also more than the original payment as judged by the same factor. This would seem to indicate that the arbitration favors the providers to date and the same holds true in the below chart.

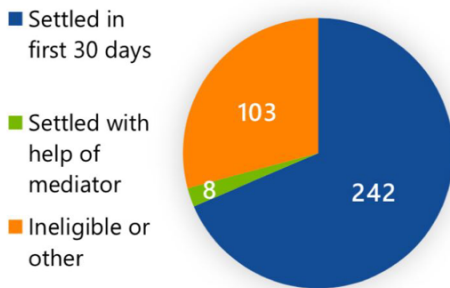


Mediation

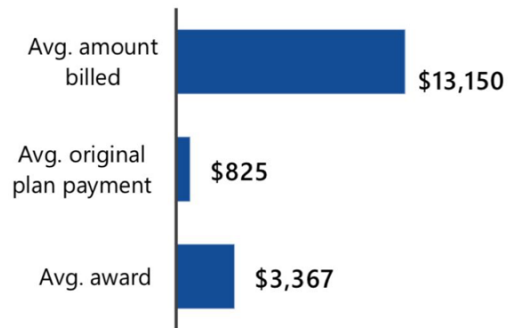
SB 1264 outlines a mediation process for billing disputes between out-of-network facilities and health plans. To date, TDI has received far fewer requests for mediation than for arbitration. At this point the reasons for the difference are unclear. However, unlike arbitration, there is no deadline under the law to submit a mediation request.



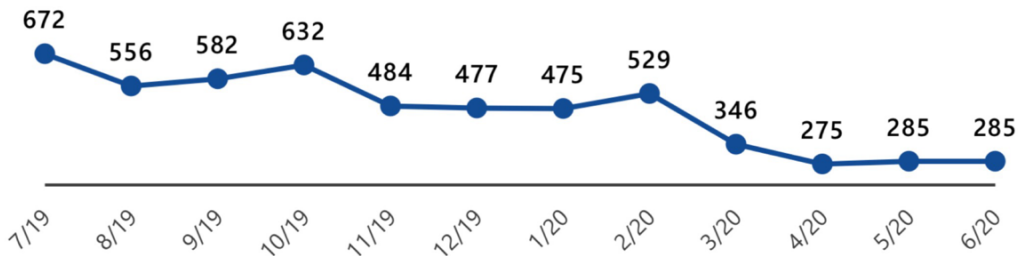
Mediation request resolution



Requests settled with help of mediator through June 30



Mediation requests under previous system



The previous graphs would show that cases settling under mediation tend to favor the carrier much more strongly than the provider. It's unclear what would cause the difference in results between the two systems of dispute resolution.

However, we think the most telling data point is on page two and reads "about 85% of dispute resolution requests are coming from three large physician staffing and billing firms." This seems to show either an abuse of requests by these firms or a lack of knowledge and information among the other firms that are not yet making as many requests. We suggest further inquiries into the details in order to determine whether more enforcement should take place by

the regulatory agents for these firms (or by the payors if they are consistently losing the cases refers).

· SB 1852, which requires certain disclosures for insurers that offer short-term limited duration plans. Study whether similar consumer disclosures and other safeguards are needed for non-traditional health coverage products marketed to individuals or small 28 employers in Texas. Identify any gaps that leave consumers without needed information or consumer protections, including network adequacy and protections from surprise medical bills.

TAHU COMMENTS: TAHU supports adding disclosures for all nontraditional products to assist consumers with understanding their coverage. Agents find that disclosures that are clearly drafted and relevant to the purchased product help consumers to better understand their coverage. However, some TDI required disclosures are written broadly to apply to a large category of policies. They sometimes can cause confusion because it's not immediately clear why the consumer is receiving it. We hope these disclosures can be revised to be more narrowly tailored to the product.

· SB 1940, which extends to August 31, 2021, TDI's authority to revise and administer the temporary health insurance risk pool to the extent federal funds are available. Study ways to foster a competitive market and reduce the uninsured rate, including by exploring flexibility available through federal waivers. Study the impact to health care systems if the Affordable Care Act is ruled unconstitutional, including identifying which mandates, consumer protections, and subsidies will be lost and which have equivalents in state law.

TAHU'S COMMENTS: TAHU supports the continued extension of this authorization now that the Supreme Court has scheduled oral arguments to take place on the constitutionality of the ACA in November. This will likely result in a decision being rendered in mid to late 2021. If the law is held to be unconstitutional, Texas will still likely need to take advantage of this authorization. But as of yet, that hasn't happened.