



Physicians Caring for Texans

# Meeting With Your Legislators About Surprise Billing/Network Adequacy Before Sept. 30, 2016

## KEY COMMITTEES TO CONTACT

### House Insurance Committee

#### Chair:

Rep. John Frullo

#### Vice Chair:

Rep. Sergio Muñoz Jr.

#### Members:

Rep. Greg Bonnen, MD

Rep. Bobby Guerra

Rep. Morgan Meyer

Rep. Dennis Paul

Rep. Kenneth Sheets

Rep. Hubert Vo

Rep. Paul Workman

### Senate Business and Commerce Committee

#### Chair:

Sen. Kelly Hancock

#### Vice Chair:

Sen. Brandon Creighton

#### Members:

Sen. Rodney Ellis

Sen. Don Huffines

Sen. Charles Schwertner, MD

Sen. Kel Seliger

Sen. Larry Taylor

Sen. Kirk Watson

Sen. John Whitmire

## 1. Why is it important for me to meet with my legislator on this issue during a nonsession year? Can't it wait until a First Tuesday in 2017?

The answer is a profound and deafening **"NO"!** **THIS CAN'T WAIT! AND THIS IS WHY:**

The enactment of the Affordable Care Act (ACA) has caused a political shift. Consumer groups, once allies of physicians and providers on matters of insurance and network adequacy, have aligned themselves with insurers in an effort to ban, in certain circumstances, physician balance billing for out-of-network services. If they succeed, some consumers — your patients — would be responsible only for their copay, deductible, and coinsurance when they receive services out of network.

The Centers for Medicare & Medicaid Services (CMS) has failed to demonstrate in its recent regulations any desire to proactively regulate insurer networks. Instead, CMS prefers to let states decide how to handle the problem. In other states, health plans and consumer groups have supported and successfully passed legislation that *prohibits*, in certain circumstances, balance billing by out-of-network physicians. In addition, these laws often classify balance billing as an illegal and deceptive trade practice, create an arbitration process by which the insurer and out-of-network physician are to come to some resolution, and absolve the patient of any further obligation to participate in the process. We don't want to see this replicated in Texas.

## 2. What do I need to do?

Texas legislators will be looking at this very approach here. The legislators listed at left are currently members of the key committees that would hear legislation in 2017 to address balance/surprise billing. If your legislator(s) is listed, TMA urges you to meet with that legislator so he or she can put a face to you and understand how this issue affects you as a voter in his or her district (see No. 3 for how to obtain contact information). These legislators are a priority to schedule meetings with.

***IMPORTANT: Even if your legislators are not members of these committees, they still need to hear from you. They need to be informed about how this issue affects you. You want them to understand Texas physicians' perspective of the issue because all legislators will cast votes on any bill heard on the House and Senate floor.***

## 3. How do I determine my voting district and legislator(s) so I can schedule a meeting to discuss balance billing and network adequacy concerns related to me, my group, or my solo practice?

Go to Texas Legislature Online at [www.capitol.state.tx.us/](http://www.capitol.state.tx.us/) and click on "How do I contact my legislator?" Or use the Who Represents Me? system at [www.fyi.legis.state.tx.us/Home.aspx](http://www.fyi.legis.state.tx.us/Home.aspx). You can enter your ZIP code, city, or street address to find your House member and senator, and see all their office contact information. Be

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sure to find out who represents you at your home address, as well as who represents the district where your office or facility where you provide services is located. This is important because the legislators who represent you where you live may not be the same ones who represent your patients who live in the district of the legislator where you work.

#### 4. How do I schedule an appointment with my senator and my legislator?

Call the Capitol office number provided per the links above and ask to speak with the scheduler. He or she can assist you with scheduling an appointment. You may be directed to contact the legislator’s district office staff to schedule a meeting in the legislator’s district. This may be preferable to both you and your legislator(s), since the legislature is not in session, and the legislators aren’t traveling to Austin on a regular basis during this interim.

#### 5. How do I describe to the scheduler what I want to meet with the legislator about?

Simply state that there has been considerable press and TV coverage, primarily from the patient’s point of view, regarding “surprise bills” and balance billing. You would like the opportunity to sit down and discuss the physician’s perspective and experience with the issue. In addition, you would like to provide insight about your or your group practice’s contracting/negotiating experience with the various health plans in the state and why that is a key to the “problem” of balance billing, especially when you want to be in network, but the plan doesn’t want you.

#### Coordination and Reporting of Meetings With Your Legislators

Your local county medical society government relations staff as well as your outside specialty lobby consultant, if you have one, also can assist you in arranging individual meetings with your legislator(s). Or, you might invite a legislator to one of your local county medical society meetings to discuss this issue as part of your society’s agenda for that evening.

Once you have met with your legislator, either individually or as part of a medical society meeting, have your medical society or specialty lobby consultant report the meeting and how it went (productive, receptive, liked TMA solutions, better understands, still has concerns, solutions didn’t go far enough) to TMA. The medical society or consultant can send that information to [elizabeth.milam@texmed.org](mailto:elizabeth.milam@texmed.org) in TMA’s Advocacy Division, who will keep track of who has been contacted. The table below provides a snapshot of what to send to TMA.

Legislator’s Name	Date of Meeting	Individual or Medical Society Meeting	Attendees	Summary/Highlights of Meeting

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## Preparing for the Meeting(s) With Your Legislator(s)

TMA can provide you some written materials to share with your legislators. Prior to your meeting with your legislator, you will need to know some pertinent things about your practice.

1. Meet with your billing staff so you are prepared to answer questions from your legislators about how you and/or your group practice decides what to charge for common procedures that you perform on a regular basis.
  - Not knowing how you came up with your charges is NOT what legislators want to hear. They expect you to know that information. Health plans, consumer groups, businesses, and even some of your own physician brethren have incorrectly stated that “physician charges don’t mean anything.” Review the handout, “Physician Charges Do Have Meaning,” that highlights the various costs you incur to run a practice. After all, your practice is a business.
  - It is also important that you be able to discuss why there is price variation in the market for health care services (e.g., why your charge may differ from a physician’s of the same specialty who practices within your community but may not have the same practice and overhead costs). This will come up because the media have highlighted patients being billed what some think are exorbitant charges by some out-of-network physicians, hospitals, and free-standing emergency departments.
  - Use “Physician Charges Do Have Meaning” to assist you when you meet with your office staff to discuss your practice costs and overhead.
2. Meet with your staff who handle health plan negotiations and contracts on your behalf (it might even be you) so you are prepared to answer questions from your legislators about the number of insurers with whom you currently have contracts.

If you are currently contracted with all of the big five insurers (Aetna, Blue Cross and Blue Shield of Texas, Cigna, Humana, UnitedHealthcare), provide that information to your legislator. If you are contracted with only a few insurers, be prepared to tell your legislator why.

Some reasons you may not be contracted with a particular plan are:

- You reached out to a specific insurer to be in its network(s), and it didn’t respond, or it responded and told you it already had enough specialists of your type in its network(s).
- You were contracted with a specific insurer, but it terminated your contract for all its products or for just a few of its products (be able to explain why the termination occurred).
- You terminated your contract with a specific insurer because it imposed too many administrative burdens and/or payment hassles (be able to explain those hassles).
- Your overhead costs increased, and the health plan only decreased your fee schedule for the past “X” number of years; you requested an increase in your fee schedule, but the insurer was unwilling to negotiate or failed to respond to any of your requests.

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## REMEMBER ...

Insurers specifically blame **YOU**, the out-of-network physician, for their inability to build adequate networks. If you are an in-network physician, insurers also like to blame **YOU** for referring to out-of-network physicians. This issue impacts **YOU** regardless of your network status with a health plan. Health plans portray **YOU** as unreasonable and solely responsible for the problem of balance billing. This is especially true when it comes to anesthesiologists, radiologists, emergency department physicians, pathologists, neonatologists, and others who provide both elective and emergency services. These are all services that may be provided by physicians with whom the patient had no opportunity to verify network status prior to treatment. Since the 2015 legislative session, the balance billing issue has broadened to include out-of-network assistant surgeons of any specialty who provide services during either elective or emergency procedures at an in-network hospital.

***Tell your personal in- and out-of-network stories — your legislator can't argue with those.***

## REMIND ...

**your legislators of these SIX key points, often:**

1. You want to help them have all the facts — offer yourself as a key contact for them on the issue.
2. Physicians care; you don't want your patients "surprised" by bills; you don't want your patients to suffer a financial crisis in the wake of a medical crisis.
3. This is a complicated issue. Any legislative solutions should not give any party in this issue an advantage in the market over the other.
4. Insurance company tactics (i.e., coverage design, high deductibles, narrow networks, unwillingness to contract, and low maximum allowables for out-of-network services) are responsible for placing more of the financial risk and burden of surprise bills on the shoulders of your patients.
5. Texas patients must continue to be the ones to initiate Texas' mediation process for the surprise/balance bills they receive that meet the \$500 out-of-network threshold.
6. Regardless of whether the patient's coverage is provided or purchased through the employer or purchased individually in the market or on the exchange, the patient, as the policyholder, should remain part of any mediation discussion that takes place about what the insurer paid for out-of-network services that resulted in a "surprise/balance bill."

**Important Antitrust Cautionary Note: If your meeting with a legislator is at a county medical society or includes physicians who are not part of your financially integrated group, due to antitrust concerns, specific fees and/or charges should NOT be discussed.**

TMA members must adhere to the Texas Medical Association Antitrust Statement. TMA members cannot come to understandings, make agreements, or otherwise concur on positions or activities that in any way tend to raise, lower, or stabilize prices or fees, allocate or divide up markets, or encourage or facilitate boycotts. Individual TMA members must make such business decisions on their own and without consultation with their competitors or TMA.



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