House Insurance Committee:
The Honorable Eddie Lucio III, Chair
The Honorable Tom Oliverson, MD Vice Chair
The Honorable Greg Bonnen, MD
The Honorable Sarah Davis
The Honorable Julie Johnson
The Honorable Stan Lambert
The Honorable Dennis Paul
The Honorable Chris Turner
The Honorable Hubert Vo

September 8, 2020

Honorable Members of the Texas House Insurance Committee,

On behalf of The Texas Association of Freestanding Emergency Centers (TAFEC), we would like to submit the following information for the interim charges related to the information on the COVID-19 Pandemic.

TAFEC is a member-based association representing more than 100 freestanding emergency centers and an industry which employs nearly five thousand Texans. As you may know, Freestanding Emergency Centers (FECs) are fully equipped emergency departments staffed by board-certified, emergency medicine-trained physicians and registered nurses who are on-site 24 hours a day, seven days a week. These facilities are fully equipped for all medical emergencies, are highly regulated by the state and comply with all state EMTALA requirements, which mandate treatment of all patients regardless of their ability to pay.

FECs have been a valuable resource during this national health crisis in treating Texans as well as helping relieve pressure on overburdened hospitals. When COVID-19 first hit Texas, very few facilities or providers were prepared. Many healthcare facilities first opted not to offer COVID-19 testing, leaving FECs, hospitals, and government entities as the lone providers willing or able to take the risk of providing testing and treatment. As the demand grew for testing, it was not uncommon to see patients waiting for many of the government and community testing centers' appointments for 7-14 days after exposure or onset of symptoms, which put pressure on FECs for those patients seeking immediate care.

By providing services to those exposed or fearful of having been exposed to COVID-19, our members are diverting patients from hospitals and other health care providers and helping maintain the capacity of those facilities during the pandemic, all at risk to their own health.

Harlingen Vietnam Veteran Edwin Howell told a local news outlet that he credits a freestanding ER for saving his life after a battle with COVID-19. When Mr. Howell first fell ill with the virus, he called for an ambulance, but was stunned to find out the only way he could get help is if his wife drove him to

the freestanding ER. The FEC told KRGV they tried transferring Mr. Howell to a hospital, but local hospitals were at capacity. They found themselves in a really unique position of providing more definitive long-term care in order to save lives. Mr. Howell's story is one of many that spotlights the vital and important role freestanding emergency centers are playing during this pandemic.

Many FECs have been operating at maximum capacity for months to meet the demand for testing and to care for an overwhelming number of patients. Some of their team members have been taking extraordinary measures for months to prevent exposing themselves and their families to the virus. Sadly, our members and their healthcare workers are falling victim to COVID-19 despite their best efforts. One TAFEC member reported 37 of their healthcare workers contracted COVID-19 and a handful have even lost their lives.

Despite the surge in patients and the costs of treating and testing them, FECs were not eligible to apply for any federal provider relief dollars. TAFEC members at their own expense obtained testing machines, PPE, and supplies at above-market costs to continue to treat both patients with exposure and mildly symptomatic patients. Several TAFEC members report they've spent several hundred thousand dollars and one member even spent more than a million on testing equipment, PPE, and other COVID-19 related supplies. TAFEC member facilities were also forced to secure supplies outside of their standard supply chain and develop new relationships with outside laboratories to process COVID-19 specimens. To continue to meet patient demand, FECs hired extra staff, worked longer hours and changed their operations and intake processes to keep patients and staff safe.

We provide this information to illustrate our members' dedication to the well-being of their communities. Their teams are the healthcare heroes working on the front lines to save lives and fight the pandemic. We welcome the opportunity to answer the Committee's questions and share our members' experiences during this singular public health emergency.

**COVID-19 PANDEMIC QUESTION 1: How prevalent is price gouging related to COVID-19 testing? What are state agencies doing in order to monitor price gouging associated with COVID-19 testing?**

TAFEC encourages any accusation of price gouging be sent to the Attorney General's office. HB 1941 passed during the 86th Legislative Session, which allows for the AG's office to take action if the agency determines the charges for any medical care meets the new definition of unconscionable. TAFEC supports the legislation and believes the AG's office, not the health insurance industry, is the appropriate avenue to ultimately determine when price gouging takes place in Texas.

**COVID-19 PANDEMIC QUESTION 2: What steps are being taken in order to prevent surprise medical billing associated with COVID-19 treatment? What steps can consumers take in order to avoid these surprise medical bills?**

Freestanding emergency centers (FECs) have striven to be a resource for patients requiring emergency care during this crisis and are proud to have served thousands of patients as the surge of COVID-related hospitalizations has occurred in Texas. TAFEC and our members have kept patients' needs at the forefront during this time, requesting and receiving a waiver from the federal Centers for Medicare/Medicaid Services (CMS) to allow FECs to be reimbursed for treating Texans in need of care who are Medicare beneficiaries.

As you are aware, recent federal legislation mandates COVID-19 testing be provided to patients at no cost, a directive our members have adhered to conscientiously. FECs are not simply COVID-19 testing sites, however, but rather, fully equipped emergency medicine facilities that are regulated accordingly.

In order to be able to provide lower-cost COVID-19 testing and assist in vaccine administration, TAFEC requested a waiver from Texas Health and Human Services Commission to be able to provide outpatient or non-emergent services. Discussions requesting a waiver were initially requested in March and to date we have not received a response.

TAFEC has worked to ensure our members have appropriate guidance when it comes to billing COVID-19-related charges. To clarify the host of billing questions that arose along with the pandemic, TAFEC issued COVID-19-related billing guidance to our membership, providing best practices, recommendations and making plain the federal and state mandates with which they must comply.

**TAFEC Issues Billing Guidance to Members**

Early on in the pandemic when TAFEC members and other FECs began to offer COVID-19 testing to the public, TAFEC quickly recognized the need for guidance for the industry. COVID-19 is new territory and brought new challenges no one anticipated. One challenge quickly realized was billing and coding for care associated with testing and treatment of COVID-19. The CARES Act and Families First Act mandated that health plans and payors may not impose cost-sharing requirements for COVID-19 diagnostic testing, or for items and services which are related to COVID-19 testing as part of the same visit. They also required plans and payors to pay providers an amount equal to the cash price posted on the provider's website, or another negotiated rate. While the actual COVID-19 test is required to be covered by insurance, current state regulations require FECs to code within their emergency room license.

Through their state and national advocacy partners, freestanding emergency centers are regularly educated on issues related to federal compliance, as well as state requirements regarding disclosure of chargemasters online; state EMTALA requirements pertaining to those exams; prohibitions on balance billing; compliance with the prudent layperson standard, and state "unconscionable charges" provisions. Specifically, TAFEC provided to its members guidance around COVID-19-related billing to ensure they were informed that:

1. Providers must clearly publicize the cash price of a COVID test on their websites, or be subject to civil monetary penalties for up to $300 per day while in violation;
2. If there is one before the pandemic, the negotiated rate is applicable during the duration of the public health emergency;
3. If the provider does not have a negotiated rate with the insurer, the insurer must reimburse the provider the equivalent of the cash price listed on the provider's website. The insurer and provider may negotiate a rate less than the listed cash price.
4. Addressed what is the scope of an appropriate medical screening exam for a COVID-19 patient
5. Best practices on for COVID-19 assessments provided at an FEC
6. Recommendations that a-symptomatic patients should not include facility claims

It is important to note that our centers are licensed and required to provide emergency care, and under the "prudent layperson standard" must evaluate and stabilize a medical condition of recent onset and severity, including severe pain, that would lead a prudent layperson possessing an average knowledge of medicine to believe that the person's condition or sickness is of a nature that failure to get immediate medical care could result in placing the person's health in serious jeopardy. A patient presenting with COVID-related conditions may have an insurance claim for a facility and professional fee. These charges reflect the considerable fixed costs of emergency-related personnel and infrastructure that are available 24/7 at an FEC and not available at a physician's office, urgent care center or other testing site.

TAFEC does not control, direct or coordinate billing among our members, who are independent businesses that make their own decisions regarding pricing and fees. TAFEC complies with applicable antitrust regulations and does not facilitate member coordination or collusion on matters of pricing, charges and fees.

**CMS wavier allowed FECS to serve Texas' Medicare Patients**

To date, much of TAFEC's pandemic-related efforts focused on improving patient access to emergency care and alleviating overcrowding in hospitals during the Public Health Emergency. In particular, we worked with CMS, the Texas Congressional delegation and other healthcare stakeholders to secure and implement the April 21, 2020 1135 waiver, which created a pathway for FECs to be reimbursed for the care of Medicare beneficiaries. This waiver enables Texas and the federal government to leverage all resources available to assist patients and tap an extra 1,550 beds, equivalent to three major hospitals with an infrastructure cost valued at over $1.5 billion.

**TAFEC Seeks Ability to Lower Healthcare Costs**

TAFEC sent a letter to The Texas Health and Human Services Commission on July 28, 2020, requesting the ability for its members to allow them to provide non-emergent services and testing. If allowed to offer non-emergent care, our members and FECs in general would be able to lower the cost to the healthcare system of COVD-19 testing and treatment. Despite opposition to our request from the insurance industry, TAFEC would like to reiterate that this industry is requesting the ability to offer COVID-19 services using non-emergent codes. The need for FECs to provide non-emergent care during this crisis will be even more crucial when a vaccine becomes available. FECs are open 24 hours, which is key in administering the vaccine to help slow the spread of COVID.

This regulatory request mirrors HB 1278 from the 86th legislative session. Representative James White authored House Bill 1278 which would have allowed freestanding emergency medical care facilities the ability to offer outpatient acute care services. The bill was voted unanimously out of House Public Health Committee but never made it out of Calendars. If House Bill 1278 had made it into law, it would have allowed state licensed FECs to offer non-emergent care during this pandemic.

**FECs Direct A-Symptomatic Patients to Other Testing Sources**

Since FECs are currently required to code for emergent medical needs only, until such time as the requested HHSC waiver is granted allowing them to provide outpatient services during the pandemic, TAFEC has suggested that FECs adopt policies of encouraging patients who do not have COVID-19 symptoms seeking COVID-19 tests to avail themselves of testing services at another facility. This will allow FECs to fulfill their intended purpose – treating critically ill patients rather than providing testing to seemingly healthy patients, keep costs to insurers and patients as low as possible and minimize potential exposure.

**COVID-19 PANDEMIC QUESTION 4. What is the anticipated impact of the COVID-19 pandemic on health insurance premiums and the health insurance market moving forward?**

If HHSC were to grant TAFEC's request for a waiver enabling FECs to provide non-emergent or outpatient services, we anticipate healthcare costs will go down. Ironically, the health insurance industry is actively opposing this waiver request which would enable FECs to code certain COVID-19 services at a lower level. At the same time, the health insurance industry has sought to characterize FECs as over-charging for testing services. One can't have it both ways. There appears to be a coordinated effort by the insurance industry to pass responsibility for rising healthcare costs to FECs and other healthcare providers who are risking their lives to serve the public.

The United States House Committee on Energy and Commerce recently launched an investigation into health insurance companies' business practices following reports that many of the companies are recording record profit margins during the COVID-19 pandemic. According to the NY times article, insurers benefiting from this pandemic are now having to address how much they owe back to consumers.

We applaud our state's strong leadership and tremendous work during this challenging time. Thank you for your time and attention to these important matters.

Sincerely,

Brad Shields
On behalf of the Texas Association of Freestanding Emergency Centers (TAFEC)