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

Texas Prompt Pay Act:

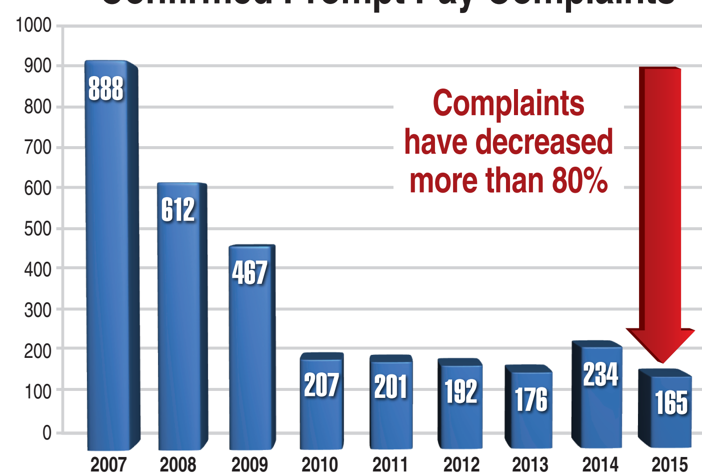
The Problem With Billed Charges & The Need For Simplification

Health plan prompt pay laws, which exist in states across the country, were introduced to ensure health insurance companies pay claims submitted by medical providers, such as physicians and hospitals, within set time limits or face penalties. These laws vary widely from state to state, but Texas' prompt pay law is the most stringent and punitive in the nation.

Strong Health Plan Compliance

In 2003, the Texas Legislature adopted the current Texas Prompt Pay Act to ensure that health plans pay claims correctly and on time to their Texas network providers. More than 10 years later, Texas health plans have demonstrated a strong commitment to the law, yielding more accurate and prompt payments to Texas providers. From 2003 to 2015, the Texas Department of Insurance (TDI) reported that provider complaints decreased by 75% and justified complaints decreased by more than 85%. Additionally, of the total number of complaints reported, less than 1/3 of them have been confirmed or justified by TDI. *"Since the passage of SB 418 in 2003, the Department continues to see a downward trend in the number of complaints received, reflecting increased carrier compliance for timely payments to providers."*— TDI Commissioner Mike Geeslin, September 2010[1]

Confirmed Prompt Pay Complaints



Source: Prompt Payment Handout, Texas Department of Insurance, House Committee on Insurance Hearing, March 30, 2016.

Unintended Consequences: Lawsuits & Increased Health Care Costs

Despite the health insurance industry's rigorous compliance with the law and its demonstrated improvement in prompt payment to providers, the punitive nature of Texas' prompt pay penalties have resulted in extensive costs and litigation. For the last two years, one large health plan paid nearly a quarter of all its national penalty costs in Texas alone, even though Texas penalties only accounted for 6% of the number of that plan's total penalty payments nationwide. Though Texas is largely known for its business-friendly environment, including fewer regulatory burdens and limits on excessive litigation, when it comes to prompt pay penalties on the health insurance industry, Texas far outpaces states like California, New York, and New Jersey.

> *Texas healthcare prompt-pay statutes are among the most punitive in the nation in that they allow substantial penalties when an insured fails to pay a claim timely, even if by only a single day. Texas law also allows recovery of attorney fees for lawsuits brought by health care providers to recover payment for services, which when coupled with the putative nature of the statutes, appears to encourage plaintiff lawyers to solicit clients to pursue prompt-pay litigation.*
>
> Texans for Lawsuit Reform, 2016[2]

The Culprit: Hospital Billed Charges

Excessive litigation and costs have been the unintended consequences of Texas' prompt pay law. When compared to other states, Texas is experiencing more prompt pay penalty lawsuits and higher costs because Texas is the only state that ties these penalties to "billed charges," or the charges set by providers and hospitals for their services.[3] Similarly, health insurance is the only form of insurance in Texas where penalties are tied to billed charges. In other states, and in other lines of insurance in Texas, prompt pay penalties are a simple interest rate penalty on the unpaid amount of the claim.

The problem with using billed charges to calculate provider penalties is that they are self-determined by the providers and generally much higher than payments accepted in the market. In most instances, average hospital billed charges in Texas are more than two-to-three times what is generally paid and accepted in the market and more than five times higher than what is usually paid by Medicare.[4] Hospitals do not expect to collect full billed charges from insurers and HMOs, and it is rare for anyone to pay the full charges billed by hospitals.

> *I know of no research or other evidence to suggest that these enormous price differentials reflect different levels of quality or value of services.*
>
> Uwe E. Reinhardt, Princeton economist, discussing hospital prices.

> *There is no method to this madness.*
>
> William McGowan, chief financial officer of the University of California, Davis, Health System and 30-year veteran of hospital financing, discussing hospital pricing practices.

Billed charges set by hospitals and other facilities often have no connection to underlying market prices, cost, or quality. For example, the hospital charge for a knee replacement in Dallas can vary by 250%, anywhere from $17K to $62K, depending on the hospital.[5] Texas hospitals with the highest billed charges have charges that are often more than five-to-six times higher than the contract amounts that the same providers are willing to accept in the same market for the same services.[6] The use of hospital billed charges for prompt pay penalties creates an inequitable penalty system that rewards the highest-cost providers, incentivizes hospitals to inflate billed charges, and creates substantial costs and litigation for health plans.

TAHP Recommendation

The Texas Association of Health Plans, which represents all major health plans in Texas, recommends common sense simplifications of the Texas prompt pay law, including a shift from using billed charges to the use of an interest-based penalty for all hospital claims not paid correctly and in a timely manner. Applying interest-based penalties is the preferred method for all other lines of insurance in Texas and all other states for health insurance. We recommend maintaining the additional administrative penalties currently available under the Texas Prompt Pay Act.

How Does Prompt Pay Work?

The current Texas prompt pay law establishes payment deadlines and penalties to ensure prompt payment claims to providers. The Texas Prompt Pay Act only applies to fully-insured health plans regulated by TDI, including health maintenance organizations (HMOs), exclusive provider plans (EPOs) and preferred provider benefit (PPOs) plans. It does not apply to self-funded plans, often referred to as self-funded ERISA plans. TDI collects two types of prompt pay penalties from Texas health plans: the first is a one-strike "provider and institutional penalty" that is issued per late claim and is paid directly to providers; the second is an overall administrative penalty that is issued if the health plan does not meet TDI's 98% compliance requirement.

Under this law, health plans **must pay**, deny or audit electronic "clean claims" within 30 days and paper "clean claims" within 45 days of receipt. Texas standards for a "clean claim" are set out in the Texas Administrative Code. The vast majority of hospital claims are submitted electronically and processed as clean claims.

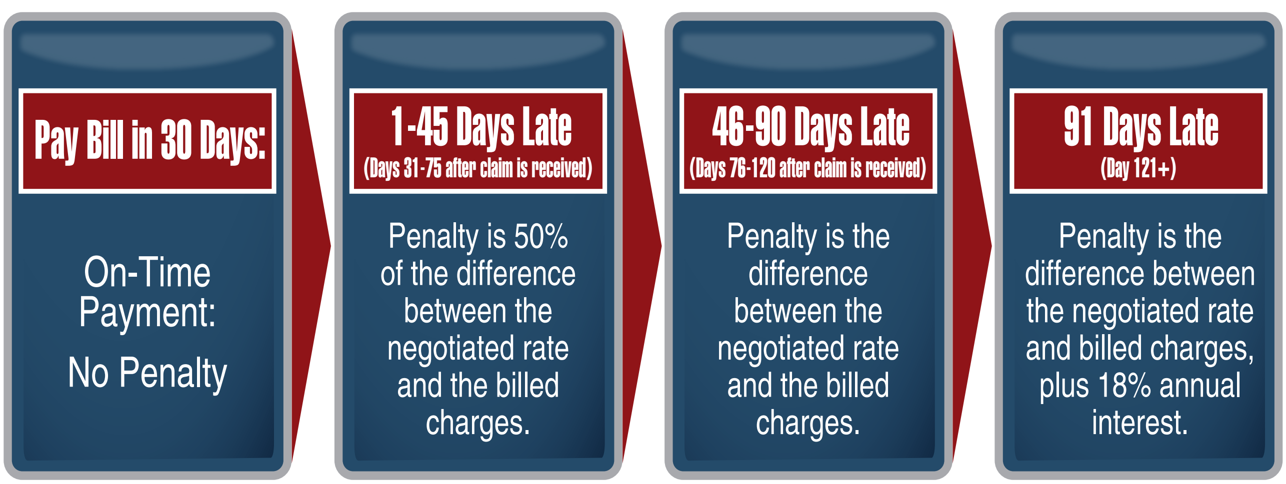
If a health plan cannot make a final determination of a clean claim within the 30 or 45-day statutory time frame, the carrier may "audit" the claim by paying the full amount due under the contract within these deadlines (a health plan may also make one request from the submitting provider for certain types of additional information, creating a new payment deadline of 15 days from receipt of the requested information). A health plan may not "pend" a claim without payment under the Texas prompt pay law.

In Texas, 100% of clean claims must be paid on time. A separate penalty is due for each and every clean claim that is not correctly paid on time. The penalties for not correctly paying a claim on time are based on two factors:

1. How late the claim is paid.
2. The difference between the amount the provider bills ("billed charges") and the amount that the provider and health plan have agreed upon for the service ("contracted rate") of the claim.

Health Plan Payment Deadlines and Penalties

Prompt pay requirements apply to 100% of clean claims. There is a separate penalty for every late claim, based on Texas prompt pay deadlines:



Note: The 30-day deadline applies to electronic claims. Non-electronic claims have a 45-day deadline.

Late Payment Penalty

If a claim is paid late but within 45 days of the due date (the due date is 30 days from receipt of an electronic claim), the carrier owes a penalty of 50% of the difference between the contracted rate and the provider's billed charges (with a maximum penalty of $100,000). If the claim is paid between 46 and 90 days late, the carrier owes the full billed charges (the penalty is 100% of the difference between the contracted rate and billed charges, up to $200,000). If the claim is paid more than 90 days late, the carrier owes as a penalty the full billed charges (100% of the difference between the contracted rate and billed charges, up to $200,000), plus an additional 18% interest on that amount.

Underpayment Penalty

For claims that are paid on time but underpaid, penalties are due based on the same above deadlines and penalty structures, except the penalty is reduced based on the percentage of the underpayment.

Administrative Penalty

In addition to the prompt pay penalties to providers, which apply to any claims not correctly paid on time, health plans are also held to an administrative 98% compliance rate. If a health plan pays more than 2% of clean claims late, it is subject to an additional TDI-enforced penalty of up to $1000 per day, per claim.

To better understand compliance rates, consider the following figures: In 2015, TDI reported that Texas health plans processed more than 93 million claims. Texas is home to nearly 27 million residents so this equates to roughly 3 claims per Texas resident. For those 93 million claims, health plans paid nearly 99.8% of them on time, meeting and exceeding the TDI compliance rate requirement of 98%. If we look at the number of claims processed since 2005 and the corresponding compliance rate, we see that the number of claims has more than doubled in 10 years, while the compliance rate has largely remained at or above 99.5% (see chart).

TDI's Verification & Enforcement of Prompt Pay Penalties

Health plans must submit claims payment and information, including claim count data and late payments, to TDI on a quarterly basis. This data is thoroughly reviewed by TDI for accuracy, clarity and consistency. TDI uses this information to determine whether claims are being paid in a timely manner. TDI also tracks complaints associated with prompt pay and uses this data in its market analysis to evaluate which plans may need to be examined. For those plans that do not meet their 98 percent compliance rate, TDI follows up with the individual plan and requests an explanation.

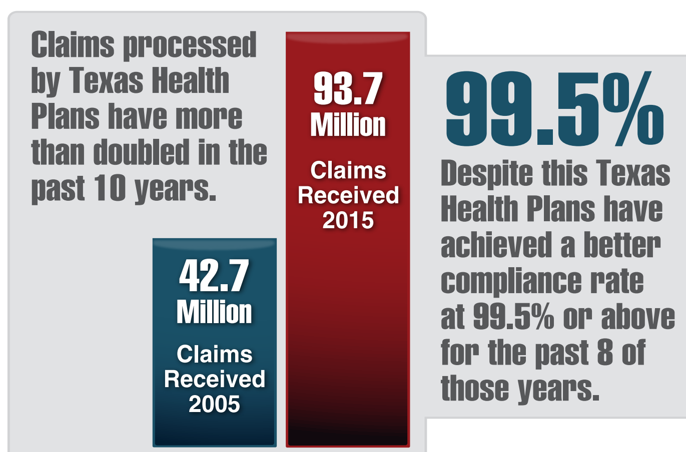
TDI conducts four types of examinations in reviewing claims to ensure their accuracy: Comprehensive Financial Examinations, Market Conduct Examinations, Quality of Care Examinations, and Limited Scope Examinations. During these examinations, TDI staff evaluates the methodology used by the carrier to comply with prompt pay requirements. Staff then reviews a sample of claims to determine the effectiveness of the methodology used.

Texas Health Plans Meet & Exceed TDI's 98% Compliance Rate Requirement

Year	Total Claims	Clean Claims	Claims Paid Late	Percent of Statewide Compliance
2005	42,683,164	20,890,192	620,313	97.03%
2006	60,818,504	40,897,211	170,813	99.58%
2007	57,493,234	27,643,578	160,749	99.42%
2008	57,158,284	28,257,174	128,949	99.54%
2009	59,099,158	46,790,174	98,517	99.79%
2010	61,053,595	53,052,511	57,892	99.89%
2011	59,013,295	51,119,534	70,890	99.86%
2012	53,795,651	46,342,525	167,847	99.64%
2013	72,726,643	60,560,541	256,165	99.58%
2014	81,138,659	73,049,474	365,879	99.50%
2015	93,680,373	89,587,242	211,999	99.76%

Source: Prompt Payment Handout, Texas Department of Insurance, House Committee on Insurance Hearing, March 30, 2016.

While the number of claims has more than doubled in 10 years, Texas health plans are achieving a compliance rate at or above 99.5%.



Source: Prompt Payment Handout, Texas Department of Insurance, House Committee on Insurance Hearing, March 30, 2016.

In enforcing prompt pay penalties, TDI uses a number of enforcement tools, including management conferences, warning letters, commissioner orders with restitution to policyholders, fines, emergency cease and desist orders, and revocation of a plan's certificate of authority.

Health Care Fraud Exemption

While most states have an exemption if there is evidence of fraud or misrepresentation, Texas does not have a health care fraud exemption for prompt pay penalties.

Attorney Fees

Only nine states, including Texas, provide for the recovery of attorney fees.

The Problem With Billed Charges

As mentioned, Texas is the only state that ties the prompt pay penalty to billed charges,[7] which are the charges submitted on a provider's claim to the insurer or HMO, representing the fee the provider customarily charges for the services. As a reminder, hospital billed charges are usually much higher than the prices actually paid and accepted in the market, are self-determined by hospitals, and have large variation within communities and across Texas. Texas' prompt payment penalties are based on these often arbitrary amounts.

Texas law does not limit or restrict billed charges.

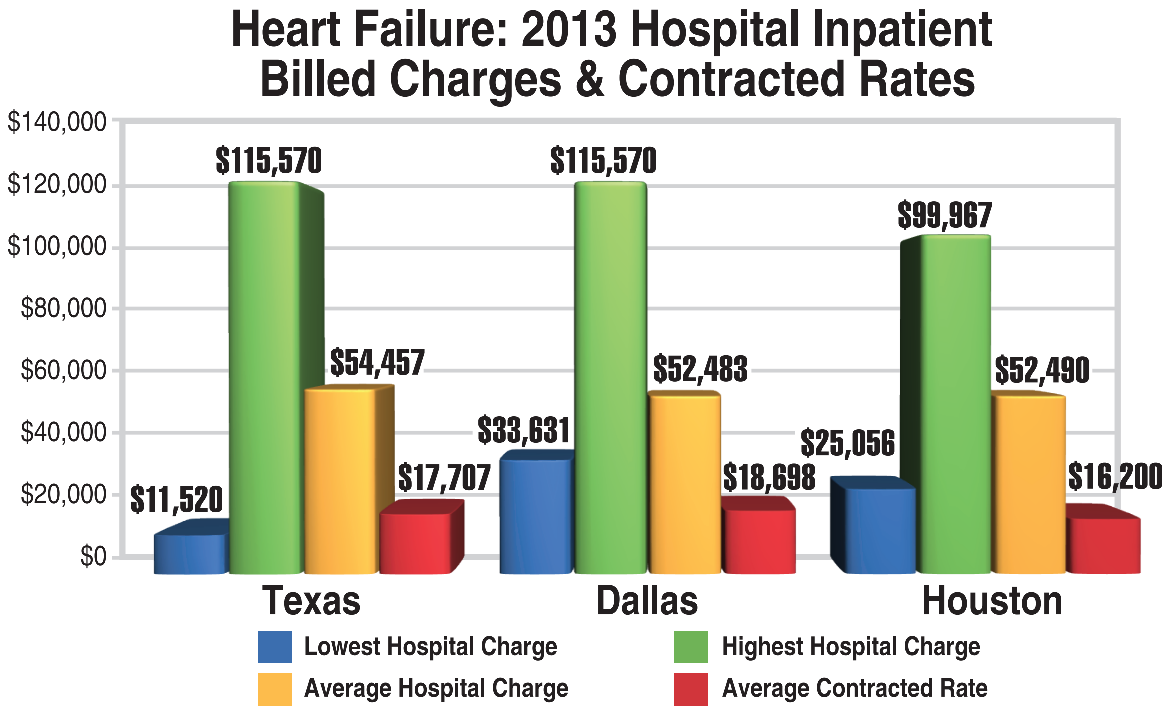
Through Self-Determined Charges, Providers Also Set Penalties

In Texas, unlike any other state, the severity of the penalty is dictated more by the difference between the contracted rate and billed charges than on the extent of the payment delay or the contractual amount actually owed for the services.

> *Consequently, under Texas law, the amount of the penalty an insurer will pay is established not by statute as in other states, but instead, is within the control of the person who provided services and receives the penalty.*
>
> Texans for Lawsuit Reform, 2016[8]

Variations in Billed Charges in Texas

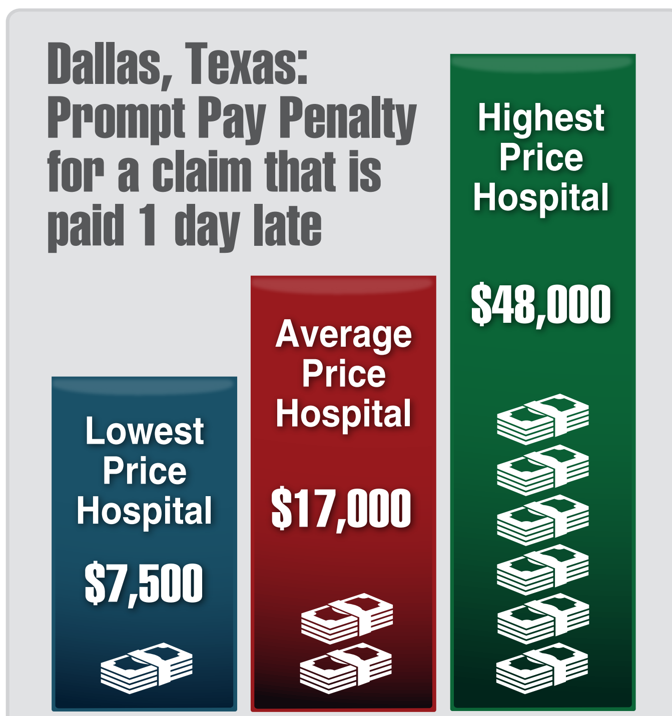
The huge variations and extreme "markup" of hospital billed charges have created severe penalties that are often substantially higher than the original amount due on the claim and an inequitable penalty system that rewards the highest-priced providers. For example, there is a more-than 900% variation in hospital billed charges in Texas for inpatient stays related to heart failure, commonly received services.



Source: Analysis of Inpatient Prospective Payment System (IPPS) Provider Summary for the Top 100 Diagnosis-Related Groups (DRG)-FY 2013 and Data From a Large Texas Health Plan – 2013 PPO. DRG Code: 291 Heart Failure & Shock with Major Complication & Comorbidity

This same problem with billed charges exists even within the same markets in Texas. In Dallas there is a 250% difference between the lowest price hospital ($33.6K) and the highest price hospital ($115.5K) for heart failure stays. Average hospital billed charges ($52.4K) are almost three times higher than the average contract rates accepted in the market ($18.6K) and the highest hospital charge ($115.5K) is more than six times higher.

As shown above, the significant mark-up and variations of hospital-billed charges create large variations in prompt pay penalties and penalties that often cost substantially more than the market rate accepted for the services (contracted rate). For example, on a claim paid one day late, the prompt pay penalty for the highest price hospital is easily more than double the average contacted rate, or the average rate negotiated in the market, for heart failure inpatient stays. Therefore, not only is the insurer paying the negotiated/contract rate for the services, it is also paying a one-day late claim penalty that is more than two times that amount. The disparity and amount of prompt payment penalties appears to lack any rational basis, is not based on market forces, and instead is based on an amount self-determined by the provider.



Based on the service of inpatient stay for heart failure at the contracted rate of $18,698.

Texas Prompt Pay Penalties Are The Same For Most Lines of Insurance

Tying prompt pay penalties to billed charges is not a common standard. Texas is an outlier among the nation's prompt pay statutes in the size and range of penalties. Most states use as the sole penalty mechanism an accrual of interest on the unpaid claim, most often at an effective annual rates between 10% and 18%. In Texas, the penalty for almost all other lines of insurance, including penalties to consumers for late claims under homeowners and auto coverage, is 18% annual interest rate (see Tex. Ins. Code 542.060).[9]

Prompt Pay Regulatory Penalties: Billed Charges Are NOT a Common Standard					
Texas Health Insurance	**Medicaid[10]**	**Medicare[11]**	**Other Lines of Texas Insurance[12]**	**Health Insurance In Other States[13]**	**Texas Workers Comp[14]**
Billed Charges	18% Annual Interest Rate	2.5% Annual Interest Rate	18% Annual Interest Rate Ins. Code 542.060	32 States: 12%-18% Annual Interest Rate 15 States: 10% or Below Annual Interest Rate	4.19% Annual Interest Rate

Providers have argued that Texas' punitive front-loaded penalty system provides a "hammer" to compel health plans to speedily process claims. However, the statutes and experience of all other states indicate that a fair and successful prompt payment penalty structure can be achieved through a sufficient interest rate penalty. The additional administrative penalties enforced by TDI, which are the strictest in the country, would remain in effect.

Path Forward

The Texas Association of Health Plans recommends common sense simplifications of the Texas prompt pay law, including a shift from the use of billed charges to the use of an interest-based penalty for all late hospital claims, which is the preferred method for all other lines of business in Texas and all other states for late health insurance claims. We recommend maintaining the administrative penalties currently in the Texas Prompt Pay Act and maintaining the current penalty system for physician practices.

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[1] "Technical Advisory Committee on Claims Processing Report on Activities, Sept. 2010, Texas Department of Insurance
[2] "An Interstate Comparison of Healthcare Prompt-Pay Laws", Jan. 31, 2016, Texans For Lawsuit Reform Foundation
[3] "An Interstate Comparison of Healthcare Prompt-Pay Laws", Jan. 31, 2016, Texans For Lawsuit Reform Foundation
[4] Analysis of Inpatient Prospective Payment System (IPPS) Provider Summary for the Top 100 Diagnosis-Related Groups (DRG)- FY 2013 and Data From a Large Texas Health Plan – 2013 PPO.
[5] "A Study of Coast Variations for Knee and Hop Replacement Surgeries in the U.S.", Jan. 21, 2015, Blue Cross BlueShield, Blue Health Intelligence
[6] Analysis of Inpatient Prospective Payment System (IPPS) Provider Summary for the Top 100 Diagnosis-Related Groups (DRG)- FY 2013 and Data From a Large Texas Health Plan – 2013 PPO.
[7] "An Interstate Comparison of Healthcare Prompt-Pay Laws", Jan. 31, 2016, Texans For Lawsuit Reform Foundation
[8] "An Interstate Comparison of Healthcare Prompt-Pay Laws", Jan. 31, 2016, Texans For Lawsuit Reform Foundation
[9] "An Interstate Comparison of Healthcare Prompt-Pay Laws", Jan. 31, 2016, Texans For Lawsuit Reform Foundation
HHSC Managed Care Manual, Chapter 2, sec. XI Interest Payment
[11] 31 U.S.C., sec. 3902
[12] Texas Ins. Code 542.060
[13] "An Interstate Comparison of Healthcare Prompt-Pay Laws", Jan. 31, 2016, Texans For Lawsuit Reform Foundation
[14] Texas Labor Code, Sec. 401.023; 28 TAC 134.130

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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The Texas Association of Health Plans

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