

# **TEXAS PROMPT PAY ACT (TPPA)**

## **Texas Insurance Code Chapter 1301; 28 TAC 21.2815**

### **HISTORY:**

- Payors habitually paid health insurance claims late, leaving providers and patients with a financial burden.
- The Texas legislature passed the TTPA in 1999 (HB 610) and amended it in 2003 (SB 418) to add caps to payors' penalties.
- Since its passage, payors have implemented more streamlined and timely payment procedures. In 2012-2014, payors paid only 0.35% of claims late (\*per quarterly reports payors filed with the TDI).

### **WHAT TTPA DOES:**

- It applies to payments made under HMO preferred provider arrangements with commercial payors.
- If a provider submits a "clean claim" (a claim with all required information), the payor must correctly pay within 30 days (electronic claim) or 45 days (paper claim) of receipt.
- If the payor fails to correctly pay within 30 days (electronic) or 45 days (paper), the payor must pay a penalty. The penalty varies depending on the lateness of the payment. In general, the penalty ranges from 50% to 100% of the contract discount, capped at either \$100,000 or \$200,000.
- The penalties due to hospitals and institutional providers are paid ½ to the hospital or institutional provider and ½ to the TDI.
- If the payor overpays a provider, the provider must refund the overpayment within 30 days of the payor's request. If the provider does not make timely repayment, the payor may withhold the amount from future payments.
- If a payor pays on time, they are not impacted by TPPA.

### **84<sup>TH</sup> LEGISLATIVE SESSION:**

- HB 1433 and SB 843 proposed to significantly reduce payors' penalties.
  - Changed the calculation of penalty from a percentage of the discount rate to a multiplier of the contract rate
  - Eliminated the penalty and interest for claims paid over 90 days late.
  - Limited the caps to either \$5,000 or \$10,000.
  - Limited a provider's right to recover TTPA penalties, changed the 4-year contractual statute of limitations to 2 years
- A proposed committee substitute bill revised the caps to a range from \$5,000 to \$200,000 depending on the lateness of payment and type of provider (institutional and non-institutional) to adjust penalty payment downward but at a level that would provide reasonable incentive for health plans to continue timely payments to providers without overly fining them for late payments.
- HB 1433 was voted down in the House Judiciary and Civil Jurisprudence Committee and the proposed Committee Substitute bill by Rep Clardy was not accepted by the Chair.
- SB 843 was never heard in committee.

### **85<sup>th</sup> LEGISLATIVE SESSION:**

- In advance of the session, interim charges to the House Insurance and Senate Business and Commerce Committees include review of the Texas Prompt Pay Law.
- Health plans continue to assert that the penalties and payment time line are too high and too soon.
- It is important to note that if health plans pay providers timely they are not subject to or impacted financially by the current law – *"If it ain't broke, don't fix it"*.
- A much needed "fix" to the current law which has not been addressed legislatively is that TDI and courts are now interpreting current law to omit or not include self-funded health plans of which there are a growing number.
- A review of Senate testimony the Bill Analysis of HB 610 and SB 418 clearly show the intention was for the Prompt Pay law to cover all health plans (HMO and PPO) and there was no intent to separate out self-funded plans.

# TEXAS PROMPT PAY ACT

## CURRENT AND PAST PENALTIES WITH CHANGES PROPOSED IN 84<sup>th</sup> SESSION

### HB610 (law effective 8/2000 – 8/2003)

<u>From Date Clean Claim Rec'd Payment Time Requirement</u>	<u>Penalty for Failing to Comply</u>	<u>Penalty Capped at:</u>
Claims paid after day 45	100% of the contract discount	No caps

### SB418 (law effective 8/2003 - present)

<u>Electronic Claims</u>	<u>Penalty for Failing to Comply</u>	<u>Penalty Capped at:</u>
Claims paid day 31 – 75	<i>lesser of: 50% of the contract discount or</i>	\$100,000*
Claims paid day 76 – 120	<i>lesser of: 100% of the contract discount or</i>	\$200,000*
Claims paid after day 120	<i>lesser of: 100% of the contract discount + 18% p/yr or</i>	\$200,000*
<u>Paper Claims</u>	<u>Penalty for Failing to Comply</u>	<u>Penalty Capped at:</u>
Claims paid day 46 – 90	<i>lesser of: 50% of the contract discount or</i>	\$100,000*
Claims paid day 90 – 135	<i>lesser of: 100% of the contract discount or</i>	\$200,000*
Claims paid after day 135	<i>lesser of: 100% of the contract discount + 18% p/yr or</i>	\$200,000*

### HB2064 (law effective 1/2010 – present)

Penalties stay the same as under SB418, however the actual payment to hospitals and institutional providers is reduced by 50% and that half is diverted to the Texas Health Insurance Pool (THIP) and/or TDI.
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### HB1433 & SB843 - Changes Proposed in 84<sup>th</sup> (HB1433 voted down in committee/SB843 not heard)

<u>Electronic Claims</u>	<u>Penalty for Failing to Comply</u>	<u>Penalty Capped at:</u>
Claims paid day 30 – 75	<i>lesser of: 50% of the contract discount* or</i>	\$5,000* (95% reduction)
Claims paid day 76 – 120	<i>lesser of: 100% of the contract discount* or</i>	\$10,000*(95% reduction)
<i>HB1433 &amp; SB843 <b>eliminated</b> the existing penalty + interest category for electronic claims paid over day 121</i>		
<u>Paper Claims</u>	<u>Penalty for Failing to Comply</u>	<u>Penalty Capped at:</u>
Claims paid day 46 – 90	<i>lesser of: 50% of the contract discount* or</i>	\$5,000*(95% reduction)
Claims paid day 91 – 135	<i>lesser of: 100% of the contract discount* or</i>	\$10,000*(95% reduction)
<i>HB1433 &amp; SB843 <b>eliminated</b> the existing penalty + interest category for electronic claims paid over day 121</i>		
HB1433 & SB843 also proposed altering Section 16.013, Civil Practice and Remedies Code to dramatically limit a Texas medical provider's right to recover TPPA penalties owed; changing the mandated 4-years granted to all Texan citizens down to 2-years for Texas providers to recover TPPA statutory penalties due.		

**CSHB1433 – Proposed Committee Substitute Bill (informally offered by Rep Clardy but not accepted by Chair)**

**Electronic Claims – NON-Institutional Providers**

	<b><u>Penalty for Failing to Comply</u></b>	<b><u>Penalty Capped at:</u></b>
Claim paid on day 31	<i>lesser of: 10 times the contract rate or</i>	\$5,000
Claims paid day 32 – 76	<i>lesser of: 10 times the contract rate or</i>	\$100,000
Claims paid day 77 – 121	<i>lesser of: 15 times the contract rate or</i>	\$200,000
Claims paid after day 122	<i>lesser of: 20 times the contract rate or</i>	\$200,000

**Paper Claims – NON-Institutional Providers**

	<b><u>Penalty for Failing to Comply</u></b>	<b><u>Penalty Capped at:</u></b>
Claim paid on day 46	<i>lesser of: 10 times the contract rate or</i>	\$5,000
Claims paid day 47 – 91	<i>lesser of: 10 times the contract rate or</i>	\$100,000
Claims paid day 92 – 136	<i>lesser of: 15 times the contract rate or</i>	\$200,000
Claims paid after day 136	<i>lesser of: 20 times the contract rate or</i>	\$200,000

**Electronic Claims – Institutional Providers**

	<b><u>Penalty for Failing to Comply</u></b>	<b><u>Penalty Capped at:</u></b>
Claim paid on day 31	<i>lesser of: 5 times the contract rate or</i>	\$5,000
Claims paid day 32 – 76	<i>lesser of: 7 times the contract rate or</i>	\$100,000
Claims paid day 77 – 121	<i>lesser of: 10 times the contract rate or</i>	\$200,000
Claims paid after day 122	<i>lesser of: 15 times the contract rate or</i>	\$200,000

**Paper Claims – Institutional Providers**

	<b><u>Penalty for Failing to Comply</u></b>	<b><u>Penalty Capped at:</u></b>
Claim paid on day 46	<i>lesser of: 5 times the contract rate or</i>	\$5,000
Claims paid day 47 – 91	<i>lesser of: 7 times the contract rate or</i>	\$100,000
Claims paid day 92 – 136	<i>lesser of: 10 times the contract rate or</i>	\$200,000
Claims paid after day 136	<i>lesser of: 15 times the contract rate or</i>	\$200,000

The Proposed Committee Substitute left existing TX Civil Practice and Remedies cause of action provisions at 4-years rather than cutting it to a 2-year limit (proposed in HB1433 & SB843).

The Proposed Committee Substitute repealed the 50% diversion (HB2064) of all **institutional providers' (hospitals') TPP penalties** and restored the institutional providers TPPA penalties to pre-1/1/2010, after factoring in the total penalty reduction and changes.

Rep. Smithee's HB 1433 also attempted to impose a 180-day TPP appeal time limit; our committee substitute removed this provision.

Rep. Smithee's HB 1433 also added language about vaccination reimbursement, which is somewhat irrelevant and was not opposed.

**The key distinction** between Rep. Smithee's HB1433 and the Proposed Committee Substitute is the Smithee bill calculates penalties based on a percentage of the contract **discount** whereas the proposed committee substitute bill penalty is based on multiples of the contracted **reimbursement rate**.

The payors expressed concerns with calculating penalties off the contract **discount** because they feel if the billed charges are excessively inflated, the contract discount (penalty basis) is also inflated, which is why the proposed committee substitute changed the penalty calculation to multiples of the contract **allowable** rate, which has nothing to do with 'billed charges' unless the contract reimbursement is a percentage of charges rate.