



The Texas Association of Health Plans

**Texas Prompt Pay Act:
The Problem With Hospital Billed Charges**

**Senate Committee On Business and Commerce
May 4, 2016**

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Texas Prompt Pay Act

- The Texas Prompt Pay Act was passed in 2003 (SB 418)
- Health plans must pay a penalty for every late claim and must file quarterly claims statistic reports with TDI for monitoring and enforcement
- Substantiated complaints decreased more than 85% within the first 10 years of the law
- The Texas prompt pay law is considered the most punitive and complex in the nation, because Texas is the only state with a "billed charges"-based penalty versus an interest-based penalty
- Despite the industry's increased compliance with the law, the punitive and overly complex nature of the penalties have resulted in increased costs and litigation
- Recommendation to Simplify Prompt Pay: Shift away from hospital billed charges to an interest-based penalty; keep physician prompt payment penalty system in place

How Prompt Pay Works

- Prompt pay requirements apply to 100% of clean claims
- Every late or underpaid claim results in a separate penalty
- Penalties are based on two factors:
 - How late the claim is paid
 - The difference between the amount the provider bills (billed charges) and the amount that the provider and health plan have negotiated (contracted rate)
- Only applies to fully-insured commercial health insurance regulated by TDI; does not apply to self-funded ERISA plans, indemnity plans, Medicaid, Medicare, Medicare supplement, government and school plans, or CHIP

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:

Pay Bill in 30 Days:

On-Time
Payment:
No Penalty

1-45 Days Late

(Days 31-75 after claim is received)

Penalty is 50%
of the difference
between the
negotiated rate
and the billed
charges.

46-90 Days Late

(Days 76-120 after claim is received)

Penalty is the
difference
between the
negotiated rate
and the billed
charges.

91 Days Late

(Day 121+)

Penalty is the
difference between
the negotiated rate
and billed charges,
plus 18% annual
interest.

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

How Prompt Pay Works

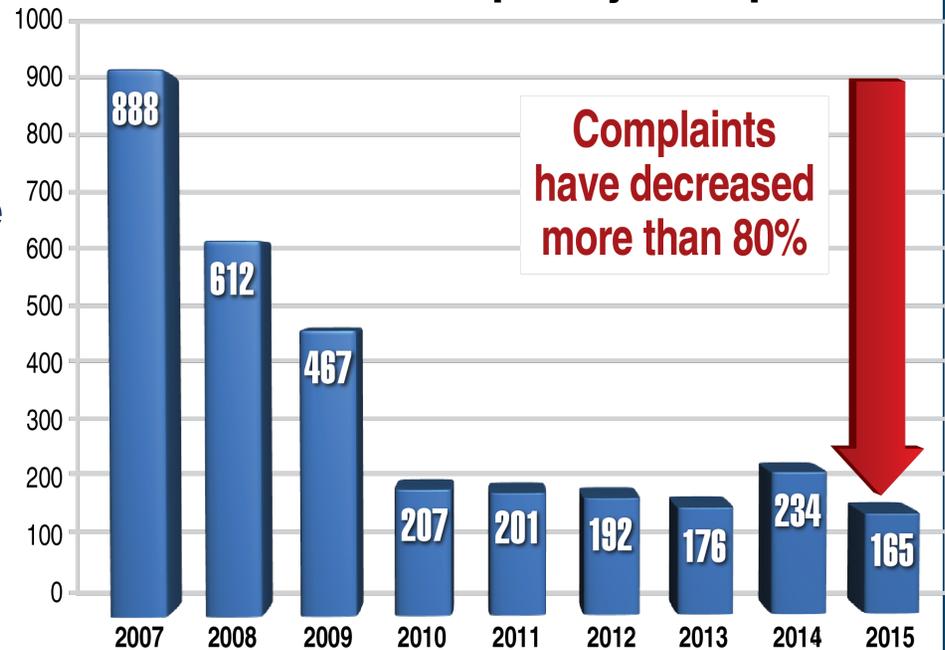
Additional Penalties and Process:

- **Underpayment Penalty:** Same deadline and penalty structure as late payment, except penalty is reduced based on the % of underpayment
- **Administrative Penalty:** 98% compliance rate subject to an additional TDI-enforced \$1K per-day, per-claim penalty
- **Health Care Fraud Exemption:** Texas does not have an exemption if there is evidence of fraud or misrepresentation (more than half of states have this exemption)
- **Attorney Fees:** Only 9 states, including Texas, allow for the recovery of attorney fees

Increased Health Plan Compliance

- Over the last decade health plans have dramatically improved prompt payment to providers
- TDI reported complaints decreased by about 75% and justified complaints have decreased by more than 85% from 2003 to 2010
- *“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.” – Commissioner Mike Geeslin, TDI, Sept. 2010*

Confirmed Prompt Pay Complaints



Increased Health Plan Compliance

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%

Health Plans Process Over 90 million Claims a Year

Claims processed by Texas Health Plans have more than doubled in the past 10 years.

42.7
Million
Claims Received
2005

93.7
Million
Claims Received
2015

99.5%
Despite this Texas Health Plans have achieved a better compliance rate at 99.5% or above for the past 8 of those years.

“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

Unintended Consequences: Lawsuits & Increased Cost

- Despite the industry's improved compliance with the law, the punitive nature of the penalties have resulted in increased costs and a sudden surge of litigation against plans
- The Culprit: Hospital Billed Charges
- Texas is the only state in the nation that ties prompt pay penalties to “billed charges”
- Hospital billed charges often have no connection to underlying market prices, cost, or quality
- The use of hospital billed charges 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

The Problem With Hospital Billed Charges

- Billed charges are self-determined by providers and generally much higher than payments accepted by providers in the market (contracted rates)
- Average hospital billed charges in Texas are more than double-to-triple what is generally paid and accepted in the market and often more than five times higher than what Medicare pays
- Hospitals do not expect to collect full billed charges from health plans, 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 pricing.

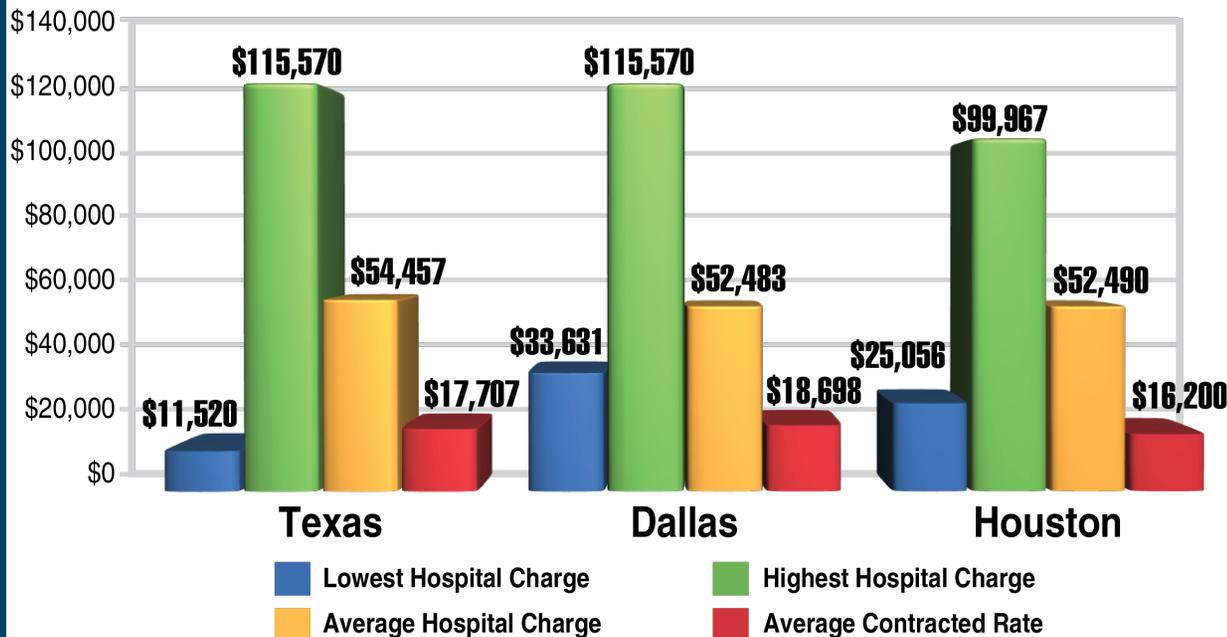
The Problem With Hospital Billed Charges

- Billed charges can have extreme variation, even within same market
- This variation has often has no connection to market forces, cost or quality
- Ex: The hospital charge for a knee replacement in Dallas can vary by 250%, from \$17K to \$62K
- The highest hospital billed charges in Texas are often more than five-to-six times higher than the contracted rate the same providers are willing to accept in the same market

“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.

Example of Hospital Billed Charges: Heart Failure

Heart Failure: 2013 Hospital Inpatient Billed Charges & Contracted Rates



- More than 900% price difference in Texas
- More than 250% price difference in Dallas
 - Average charges almost 3x higher than contracted rates
 - Highest charge more than 6x higher than contracted rates
- Ex: Penalty for 1 day late (Dallas):
 - Lowest Price Hospital: \$7.5K
 - Averaged Price Hospital: \$17K
 - Highest Price Hospital: \$48K

Penalty Disparities

- Unlike any other state, the severity of the penalty is dictated more by the difference between contracted rates and billed charges than the extent of the payment delay
- The significant mark-up and variation of hospital charges create large variation in prompt pay penalties
- Penalties often cost more than the market rate for the service
- For 1 day late, the penalty for the highest-priced provider is easily more than double the contracted rate
- The disparity and amount of penalties is not based on market forces and instead is based on an amount self-determined by the providers (which has no limit)

**Dallas, Texas:
Prompt Pay Penalty
for a claim that is
paid 1 day late**



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

Billed Charges Are NOT a Common Standard

- **Tying prompt pay penalties to billed charges is not a common standard**
- **Texas is an outlier among the nation's prompt pay statutes and range of penalties**
- **Most states use the sole penalty of an accrual of interest on the unpaid claim, most often at an effective annual rate of between 10% and 18%**
- **Texas penalties for other lines of insurance, including homeowner and auto coverage, are also an 18% annual interest rate**
- **Common Standard: "What you owe, plus an interest penalty on that amount"**

Prompt Pay Regulatory Penalties: Billed Charges Are NOT a Common Standard

TX Health Insurance	Medicaid	Medicare	TX Workers Comp	Health Insurance In Other States	Other Lines of TX Insurance
Based On Billed Charges	18% Annual Interest Rate	2.5% Annual Interest Rate	4.19% Annual Interest Rate	<p>32 States: 12%-18% Annual Interest</p> <p>15 states: 10% or Below Annual Interest Rate</p>	18% Annual Interest Rate

Concerns and Recommendations

- Despite increased health plan compliance with prompt pay, the law in its current form is creating sudden excessive costs and litigation
- The use of hospital billed charges creates an inequitable penalty system that rewards the highest-cost providers, incentivizes hospitals to inflate billed charges, and creates substantial cost and litigation for health plans
- Prompt payment should not be tied to hospital billed charges, which are arbitrary, not based on market forces, cost or quality
- Recommend Texas simplify the hospital prompt payment penalties by shifting to a more uniform interest rate penalty for all hospital late claims
- The statutes and experience of other states indicate that a fair, uniform, and successful prompt payment penalty can be achieved through a sufficient penalty interest rate
- This recommendation would maintain the strongest “hammer,” the current administrative penalty enforced by TDI (\$1k per day per claim), which is also the strictest in the country

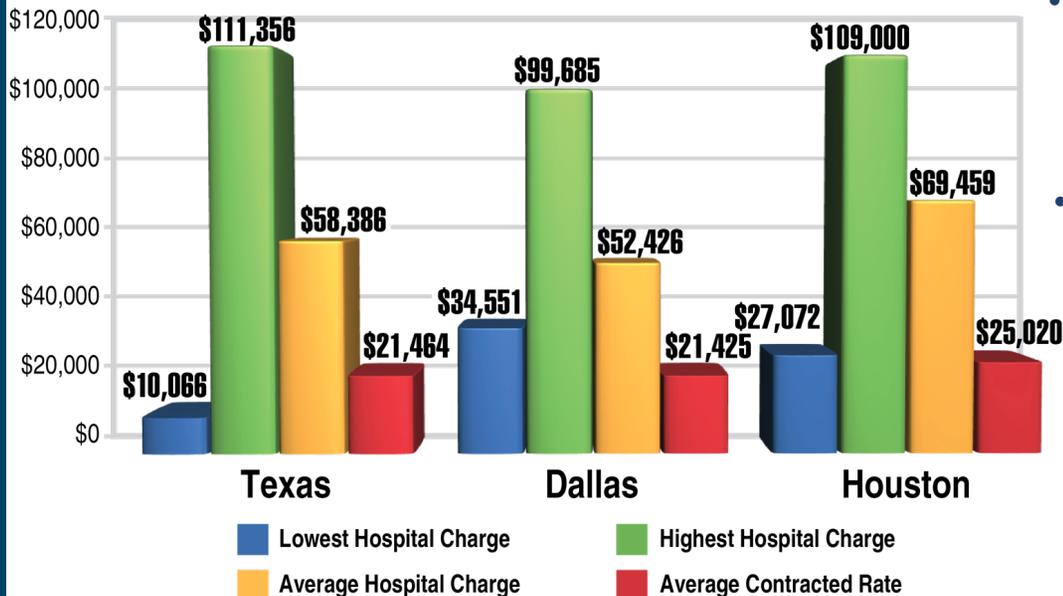


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Appendix: Example of Hospital Billed Charges and Contracted Rates

Example of Hospital Billed Charges: Pneumonia

Pneumonia: 2013 Hospital Inpatient Billed Charges & Contracted Rates



- More than 1000% price difference in Texas
- Almost 200% price difference in Dallas
 - Average charge 2.5x higher than market rates
 - Highest charge more than 3.5x higher than market rates
- Penalty for 1 day late for an \$2.4K service
 - Lowest Price Hospital: \$6.5k
 - Averaged Price Hospital: \$15.5K
 - Highest Price Hospital: \$39K

Dallas, Texas:
Prompt Pay Penalty for a claim that is paid 1 day late, pneumonia

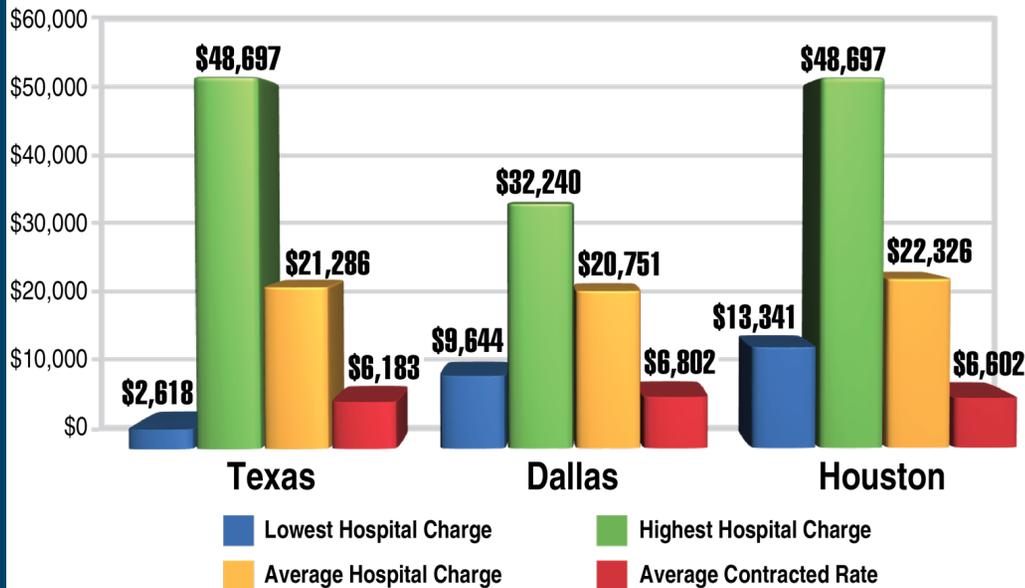
Lowest Price Hospital \$34,551	Average Price Hospital \$52,426	Highest Price Hospital \$99,685
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Based on the service of inpatient stay for pneumonia at the contracted rate of \$21,425.

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:193: Simple Pneumonia & Pleurisy with Major Complication & Comorbidity

Example of Hospital Billed Charges: Chest Pain

Chest Pain: 2013 Hospital Inpatient Billed Charges & Contracted Rates



- More than 1500% price difference in Texas
- Almost 200% price difference in Dallas
 - Average charge almost 3x higher than market rates
 - Highest charge more than 4.5x higher than market rates
- Penalty for 1 day late for an \$6.8k service:
 - Lowest Price Hospital: \$1.4K
 - Averaged Price Hospital: \$7K
 - Highest Price Hospital: \$12.7K

Dallas, Texas: Prompt Pay Penalty for a claim that is paid 1 day late, chest pain

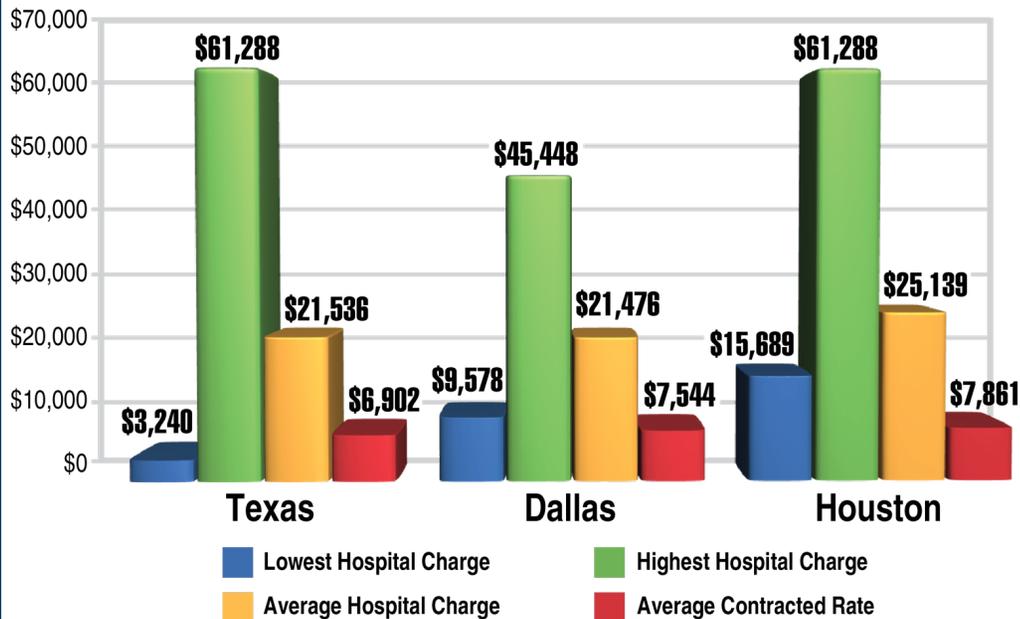
Lowest Price Hospital \$9,644	Average Price Hospital \$20,751	Highest Price Hospital \$32,240
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Based on the service of inpatient stay for chest pain at the contracted rate of \$6,802.

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: 313 Chest Pain

Example of Hospital Billed Charges: UTI & Kidney Infection

Kidney & Urinary Tract Infection: 2013 Hospital Inpatient Billed Charges & Contracted Rates



- More than 1500% price difference in Texas
- Almost 400% price difference in Dallas
 - Average charge almost 3x higher than market rates
 - Highest charge more than 6x higher than market rates
- Penalty for 1 day late for an \$7.5k service:
 - Lowest Price Hospital: \$1K
 - Averaged Price Hospital: \$7K
 - Highest Price Hospital: \$19K

Dallas, Texas:
Prompt Pay Penalty for a claim that is paid 1 day late, UTI & kidney infection

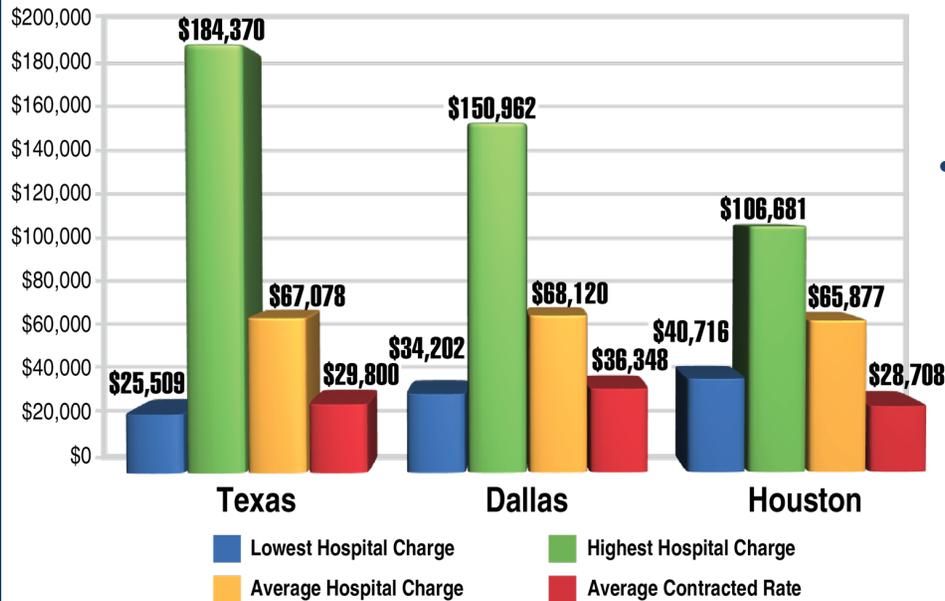
Lowest Price Hospital \$9,578	Average Price Hospital \$21,476	Highest Price Hospital \$45,448
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Based on the service of inpatient stay for UTI & kidney infection at the contracted rate of \$7,544.

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:690 Kidney & Urinary Tract Infections w/o MCC

Example of Hospital Billed Charges: Joint Replacement

Major Joint Replacement: 2013 Hospital Inpatient Billed Charges & Contracted Rates



- More than 600% price difference in Texas
- More than a 300% price difference in Dallas
 - Average charge almost 2x higher than market rates
 - Highest charge more than 4x higher than market rates
- Penalty for 1 day late for an \$36K service:
 - Lowest Price Hospital: <\$1K
 - Averaged Price Hospital: \$15.9K
 - Highest Price Hospital: \$57.3K

Dallas, Texas:
Prompt Pay Penalty for a claim that is paid 1 day late, joint replacement

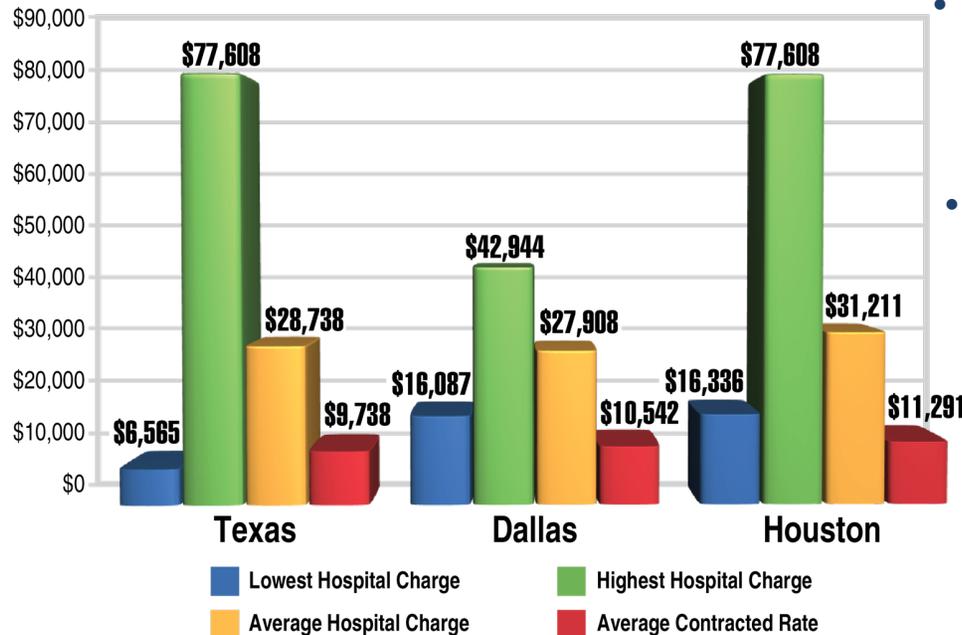
Lowest Price Hospital \$34,202	Average Price Hospital \$68,120	Highest Price Hospital \$150,962
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Based on the service of inpatient stay for joint replacement at the contracted rate of \$36,348.

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:470 – Major Joint Replacement of Lower Extremity W/O MCC

Example of Hospital Billed Charges: Kidney Failure

Kidney Failure: 2013 Hospital Inpatient Billed Charges & Contracted Rates



- More than 1000% price difference in Texas
- Almost 200% price difference in Dallas
 - Average charge more than 2x higher than market rates
 - Highest charge more than 4x higher than market rates
- Penalty for 1 day late for an \$10.5K service:
 - Lowest Price Hospital: \$2.8K
 - Averaged Price Hospital: \$8.7K
 - Highest Price Hospital: \$16.2K

Dallas, Texas: Prompt Pay Penalty for a claim that is paid 1 day late, kidney failure

Lowest Price Hospital \$16,087	Average Price Hospital \$27,908	Highest Price Hospital \$42,944
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Based on the service of inpatient stay for kidney failure at the contracted rate of \$10,542.

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:683 – Kidney & Urinary Tract Infections with Complication and Comorbidity