



**TAHP**

The Texas Association of Health Plans

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

**JAMIE DUDENSING, CEO**

## 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 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 and dramatic improvement in prompt payment, the punitive nature of the penalties have resulted in increased costs and litigation
- Recommendation: Shift away from hospital billed charges to an interest-based penalty

## 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 that provider complaints have 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



85%  
Reduction  
in Provider  
Complaints

*“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 cost 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 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.

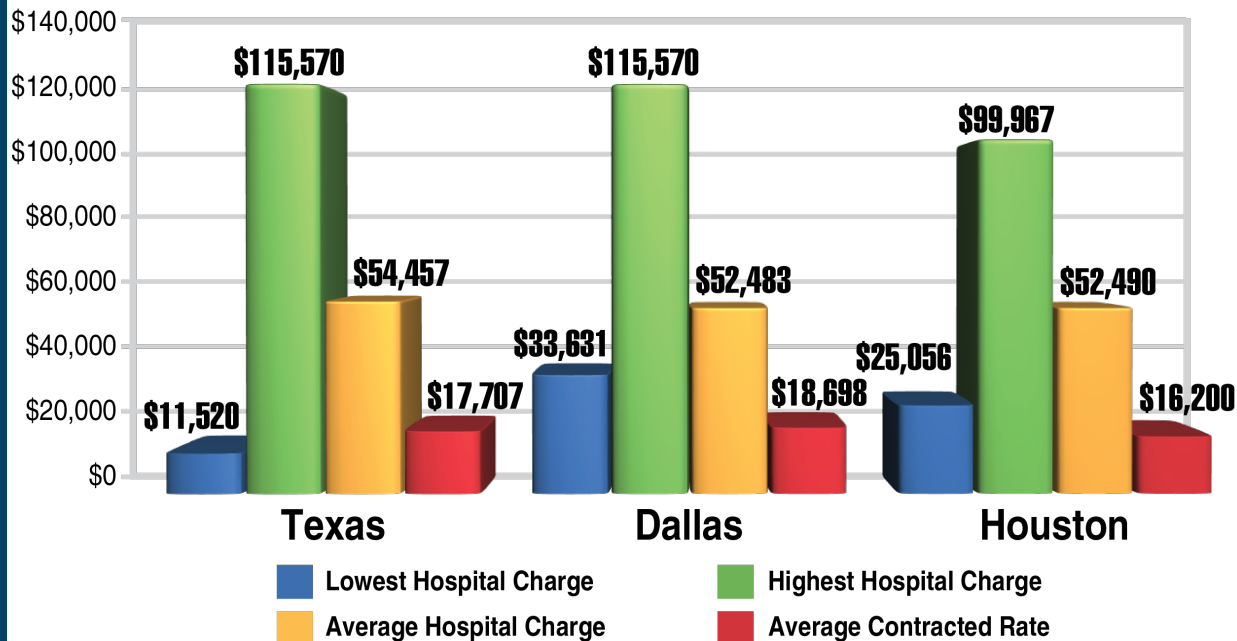
## The Problem With Hospital Billed Charges

- 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

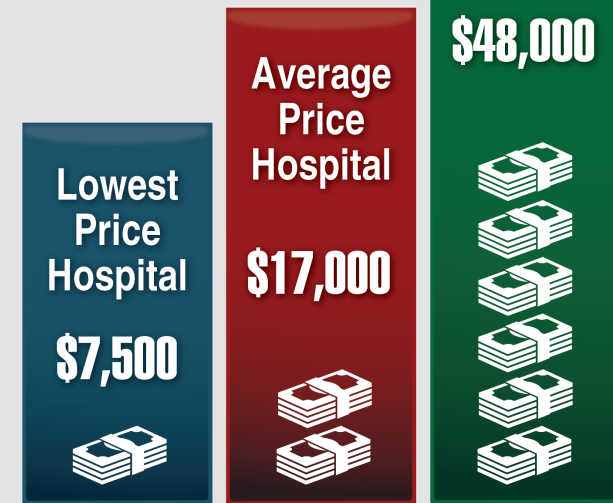


- More than 900% price difference in Texas
- More than 250% price difference in Dallas
  - Average charges almost 3x higher than contracted rates
  - Highest charge more than 6x higher than contracted rates
- Ex: Penalty for 1 day late (Dallas):
  - Lowest Price Hospital: \$7.5K
  - Averaged Price Hospital: \$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-price 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, is 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	32 States: 12%-18% Annual Interest  15 states: 10% or Below Annual Interest Rate	18% Annual Interest Rate

## Concerns and Recommendations

- **Despite increased health plan compliance with prompt pay, the law in its current form is creating excessive costs and litigation**
- **Prompt payment should not be tied to hospital billed charges, which are arbitrary & not based on market forces**
- **Recommend Texas shift to an interest rate penalty for all hospital late claims**
- **The statutes and experience of other states indicate that a fair and successful prompt payment penalty can be achieved through a sufficient penalty interest rate**
- **Additionally, TAHP recommends that the current administrative penalty enforced by TDI, which is also the strictest in the country, remain in effect**