

* See New (m) and (n)

Sec. 843.342. VIOLATION OF CERTAIN CLAIMS PAYMENT PROVISIONS; PENALTIES.

(a) Except as provided by this section, if a claim submitted to a health maintenance organization is payable and the health maintenance organization does not determine under this subchapter that the claim is payable and pay the claim on or before the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay the physician or provider making the claim the contracted rate owed on the claim plus a penalty in the amount of the lesser of:

- (1) 50 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or
- (2) \$100,000.

(b) If the claim is paid on or after the 46th day and before the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty in the amount of the lesser of:

- (1) 100 percent of the difference between the billed charges, as submitted on the claim, and the contracted rate; or
- (2) \$200,000.

(c) If the claim is paid on or after the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty computed under Subsection (b) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the health maintenance organization was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(d) Except as provided by this section, a health maintenance organization that determines under this subchapter that a claim is payable, pays only a portion of the amount of the claim on or before the date the health maintenance organization is required to make a determination or adjudication of the claim, and pays the balance of the contracted rate owed for the claim after that date shall pay to the physician or provider, in addition to the contracted amount owed, a penalty on the amount not timely paid in the amount of the lesser of:

- (1) 50 percent of the underpaid amount; or
- (2) \$100,000.

(e) If the balance of the claim is paid on or after the 46th day and before the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty on the balance of the claim in the

amount of the lesser of:

- (1) 100 percent of the underpaid amount; or
- (2) \$200,000.

(f) If the balance of the claim is paid on or after the 91st day after the date the health maintenance organization is required to make a determination or adjudication of the claim, the health maintenance organization shall pay a penalty on the balance of the claim computed under Subsection (e) plus 18 percent annual interest on that amount. Interest under this subsection accrues beginning on the date the health maintenance organization was required to pay the claim and ending on the date the claim and the penalty are paid in full.

(g) For the purposes of Subsections (d) and (e), the underpaid amount is calculated on the ratio of the amount underpaid on the contracted rate to the contracted rate as applied to an amount equal to the billed charges as submitted on the claim minus the contracted rate.

(h) A health maintenance organization is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with this subchapter is a result of a catastrophic event that substantially interferes with the normal business operations of the health maintenance organization; or

(2) if the claim was paid in accordance with this subchapter, but for less than the contracted rate, and:

(A) the physician or provider notifies the health maintenance organization of the underpayment after the 270th day after the date the underpayment was received; and

(B) the health maintenance organization pays the balance of the claim on or before the 30th day after the date the health maintenance organization receives the notice.

(i) Subsection (h) does not relieve the health maintenance organization of the obligation to pay the remaining unpaid contracted rate owed the physician or provider.

(j) A health maintenance organization that pays a penalty under this section shall clearly indicate on the explanation of payment statement in the manner prescribed by the commissioner by rule the amount of the contracted rate paid and the amount paid as a penalty.

(k) In addition to any other penalty or remedy authorized by this code or another insurance law of this state, a health maintenance organization that violates Section 843.338, 843.339, or 843.340 in processing more than two percent of clean claims submitted to the health maintenance organization is subject to an

administrative penalty under Chapter 84. For each day an administrative penalty is imposed under this subsection, the penalty may not exceed \$1,000 for each claim that remains unpaid in violation of Section 843.338, 843.339, or 843.340.

(1) In determining whether a health maintenance organization has processed physician and provider claims in compliance with Section 843.338, 843.339, or 843.340, the commissioner shall consider paid claims, other than claims that have been paid under Section 843.340, and shall compute a compliance percentage for physician and provider claims, other than institutional provider claims, and a compliance percentage for institutional provider claims.

~~*~~ (m) Notwithstanding any other provision of this section, this subsection governs the payment of a penalty under this section. For a penalty under this section relating to a clean claim submitted by a physician or provider other than an institutional provider, the health maintenance organization shall pay the entire penalty to the physician or provider, except for any interest computed under Subsection (c), which shall be paid to the Texas Health Insurance Risk Pool. For a penalty under this section relating to a clean claim submitted by an institutional provider, the health maintenance organization shall pay 50 percent of the total penalty amount computed under this section, including interest, to the institutional provider and the remaining 50 percent of that amount to the Texas Health Insurance Risk Pool.

~~*~~ (n) In this section, "institutional provider" means a hospital or other medical or health-related service facility that provides care for the sick or injured or other care that may be covered in an evidence of coverage.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003. Amended by Acts 2003, 78th Leg., ch. 214, Sec. 14, eff. June 17, 2003; Acts 2003, 78th Leg., ch. 1276, Sec. 10A.212, eff. Sept. 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 435, Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 265, Sec. 1, eff. January 1, 2010.