

* See new (k)(1)

Sec. 1301.137. VIOLATION OF CLAIMS PAYMENT REQUIREMENTS; PENALTY. (a)

Except as provided by this section, if a clean claim submitted to an insurer is payable and the insurer does not determine under Subchapter C that the claim is payable and pay the claim on or before the date the insurer is required to make a determination or adjudication of the claim, the insurer shall pay the preferred 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 insurer is required to make a determination or adjudication of the claim, the insurer 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 insurer is required to make a determination or adjudication of the claim, the insurer 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 insurer 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, an insurer that determines under Subchapter C that a claim is payable, pays only a portion of the amount of the claim on or before the date the insurer 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 preferred 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 insurer is required to make a determination or adjudication of the claim, the insurer 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 insurer is required to make a determination or adjudication of the claim, the insurer 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 insurer 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 computed 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) An insurer is not liable for a penalty under this section:

(1) if the failure to pay the claim in accordance with Subchapter C is a result of a catastrophic event that substantially interferes with the normal business operations of the insurer; or

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

(A) the preferred provider notifies the insurer of the underpayment after the 270th day after the date the underpayment was received; and

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

(i) Subsection (h) does not relieve the insurer of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(j) An insurer 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, an insurer that violates Section 1301.103, 1301.104, or 1301.105 in processing more than two percent of clean claims submitted to the insurer 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 1301.103, 1301.104, or 1301.105. In determining whether an insurer has processed preferred provider claims in compliance with Section 1301.103, 1301.104, or 1301.105, the commissioner shall consider paid claims, other than claims that have been paid under Section 1301.105, and shall compute a compliance percentage for physician and provider claims, other than institutional provider claims, and a compliance

~~X~~ percentage for institutional provider claims.

(1) 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 preferred provider other than an institutional provider, the insurer shall pay the entire penalty to the preferred 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 insurer shall pay 50 percent of the 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.

Added by Acts 2005, 79th Leg., Ch. 728, Sec. 11.037(b), eff. September 1, 2005.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 435, Sec. 2, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 265, Sec. 2, eff. January 1, 2010.