

By: Senator(s) Kirby, Dawkins

To: Insurance

SENATE BILL NO. 2118

1 AN ACT TO AMEND SECTION 83-9-5, MISSISSIPPI CODE OF 1972, TO
2 REQUIRE ACCIDENT AND HEALTH POLICIES TO CONTAIN CERTAIN PROVISIONS
3 ESTABLISHING PROCEDURES FOR THE PROMPT PAYMENT OF CLEAN CLAIMS; TO
4 DEFINE THE TERM "CLEAN CLAIM"; TO AUTHORIZE THE COMMISSIONER OF
5 INSURANCE TO IMPOSE ADMINISTRATIVE PENALTIES WHEN CLEAN CLAIMS ARE
6 NOT PAID IN ACCORDANCE WITH THE PROVISIONS OF THE POLICIES; AND
7 FOR RELATED PURPOSES.

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

9 SECTION 1. Section 83-9-5, Mississippi Code of 1972, is
10 amended as follows:

11 83-9-5. (1) **Required provisions.** Except as provided in
12 subsection (3) of this section, each such policy delivered or
13 issued for delivery to any person in this state shall contain the
14 provisions specified in this subsection in the words in which the
15 same appear in this section. However, the insurer may, at its
16 option, substitute for one or more of such provisions,
17 corresponding provisions of different wording approved by the
18 commissioner which are in each instance not less favorable in any
19 respect to the insured or the beneficiary. Such provisions shall
20 be preceded individually by the caption appearing in this
21 subsection or, at the option of the insurer, by such appropriate
22 individual or group captions or subcaptions as the commissioner
23 may approve.

24 (a) A provision as follows:

25 Entire contract; changes: This policy, including the
26 endorsements and the attached papers, if any, constitutes the
27 entire contract of insurance. No change in this policy shall be
28 valid until approved by an executive officer of the insurer and
29 unless such approval be endorsed hereon or attached hereto. No



30 agent has authority to change this policy or to waive any of its
31 provisions. As used in this section, the term "insurer" means a
32 health maintenance organization, an insurance company or any other
33 entity responsible for the payment of benefits under a policy or
34 contract of accident and sickness insurance.

35 (b) A provision as follows:

36 Time limit on certain defenses:

37 1. After two (2) years from the date of issue of
38 this policy, no misstatements, except fraudulent misstatements,
39 made by the applicant in the application for such policy shall be
40 used to void the policy or to deny a claim for loss incurred or
41 disability (as defined in the policy) commencing after the
42 expiration of such two-year period.

43 (The foregoing policy provision shall not be so
44 construed as to effect any legal requirement for avoidance of a
45 policy or denial of a claim during such initial two-year period,
46 nor to limit the application of subparagraphs (2) (a) and (2) (b) of
47 this section in the event of misstatement with respect to age or
48 occupation.)

49 (A policy which the insured has the right to
50 continue in force subject to its terms by the timely payment of
51 premium (1) until at least age fifty (50) or, (2) in the case of a
52 policy issued after age forty-four (44), for at least five (5)
53 years from its date of issue, may contain in lieu of the foregoing
54 the following provision (from which the clause in parentheses may
55 be omitted at the insurer's option) under the caption
56 "INCONTESTABLE":

57 After this policy has been in force for a period of
58 two (2) years during the lifetime of the insured (excluding any
59 period during which the insured is disabled), it shall become
60 incontestable as to the statements in the application.)

61 2. No claim for loss incurred or disability (as
62 defined in the policy) commencing after two (2) years from the



63 date of issue of this policy shall be reduced or denied on the
64 ground that a disease or physical condition not excluded from
65 coverage by name or specific description effective on the date of
66 loss had existed prior to the effective date of coverage of this
67 policy.

68 (c) A provision as follows:

69 Grace period:

70 A grace period of seven (7) days for weekly premium
71 policies, ten (10) days for monthly premium policies and
72 thirty-one (31) days for all other policies will be granted for
73 the payment of each premium falling due after the first premium,
74 during which grace period the policy shall continue in force.

75 (A policy which contains a cancellation provision may
76 add, at the end of the above provision, "subject to the right of
77 the insurer to cancel in accordance with the cancellation
78 provision hereof.")

79 A policy in which the insurer reserves the right to
80 refuse any renewal shall have, at the beginning of the above
81 provision, "unless not less than five (5) days prior to the
82 premium due date the insurer has delivered to the insured or has
83 mailed to his last address as shown by the records of the insurer
84 written notice of its intention not to renew this policy beyond
85 the period for which the premium has been accepted.")

86 (d) A provision as follows:

87 Reinstatement:

88 If any renewal premium be not paid within the time
89 granted the insured for payment, a subsequent acceptance of
90 premium by the insurer or by any agent duly authorized by the
91 insurer to accept such premium, without requiring in connection
92 therewith an application for reinstatement, shall reinstate the
93 policy. However, if the insurer or such agent requires an
94 application for reinstatement and issues a conditional receipt for
95 the premium tendered, the policy will be reinstated upon approval



96 of such application by the insurer or, lacking such approval, upon
97 the forty-fifth day following the date of such conditional receipt
98 unless the insurer has previously notified the insured in writing
99 of its disapproval of such application. The reinstated policy
100 shall cover only loss resulting from such accidental injury as may
101 be sustained after the date of reinstatement and loss due to such
102 sickness as may begin more than ten (10) days after such date. In
103 all other respects the insured and insurer shall have the same
104 rights thereunder as they had under the policy immediately before
105 the due date of the defaulted premium, subject to any provisions
106 endorsed hereon or attached hereto in connection with the
107 reinstatement. Any premium accepted in connection with a
108 reinstatement shall be applied to a period for which premium has
109 not been previously paid, but not to any period more than sixty
110 (60) days prior to the date of reinstatement. (The last sentence
111 of the above provision may be omitted from any policy which the
112 insured has the right to continue in force subject to its terms by
113 the timely payment of premiums (1) until at least age fifty (50)
114 or, (2) in the case of a policy issued after age forty-four (44),
115 for at least five (5) years from its date of issue.)

116 (e) A provision as follows:

117 Notice of claim:

118 Written notice of claim must be given to the insurer
119 within thirty (30) days after the occurrence or commencement of
120 any loss covered by the policy, or as soon thereafter as is
121 reasonably possible. Notice given by or on behalf of the insured
122 or the beneficiary to the insurer at _____ (insert the
123 location of such office as the insurer may designate for the
124 purpose), or to any authorized agent of the insurer, with
125 information sufficient to identify the insured, shall be deemed
126 notice to the insurer.

127 (In a policy providing a loss-of-time benefit which may
128 be payable for at least two (2) years, an insurer may, at its



129 option, insert the following between the first and second
130 sentences of the above provision: "Subject to the qualifications
131 set forth below, if the insured suffers loss of time on account of
132 disability for which indemnity may be payable for at least two (2)
133 years, he shall, at least once in every six (6) months after
134 having given notice of claim, give to the insurer notice of
135 continuance of said disability, except in the event of legal
136 incapacity. The period of six (6) months following any filing of
137 proof by the insured or any payment by the insurer on account of
138 such claim or any denial of liability in whole or in part by the
139 insurer shall be excluded in applying this provision. Delay in
140 the giving of such notice shall not impair the insured's right to
141 any indemnity which would otherwise have accrued during the period
142 of six (6) months preceding the date on which such notice is
143 actually given.")

144 (f) A provision as follows:

145 Claim forms:

146 The insurer, upon receipt of a notice of claim, will
147 furnish to the claimant such forms as are usually furnished by it
148 for filing proofs of loss. If such forms are not furnished within
149 fifteen (15) days after the giving of such notice, the claimant
150 shall be deemed to have complied with the requirements of this
151 policy as to proof of loss upon submitting, within the time fixed
152 in the policy for filing proofs of loss, written proof covering
153 the occurrence, the character and the extent of the loss for which
154 claim is made.

155 (g) A provision as follows:

156 Proofs of loss:

157 Written proof of loss must be furnished to the insurer
158 at its said office, in case of claim for loss for which this
159 policy provides any periodic payment contingent upon continuing
160 loss, within ninety (90) days after the termination of the period
161 for which the insurer is liable, and in case of claim for any



162 other loss, within ninety (90) days after the date of such loss.
163 Failure to furnish such proof within the time required shall not
164 invalidate or reduce any claim if it was not reasonably possible
165 to give proof within such time, provided such proof is furnished
166 as soon as reasonably possible and in no event, except in the
167 absence of legal capacity, later than one (1) year from the time
168 proof is otherwise required.

169 (h) A provision as follows:

170 Time of payment of claims:

171 1. All benefits payable under this policy for any
172 loss, other than loss for which this policy provides any periodic
173 payment, will be paid within twenty-five (25) days after receipt
174 of due written proof of such loss in the form of a clean claim
175 where claims are submitted electronically, and will be paid within
176 thirty-five (35) days after receipt of due written proof of such
177 loss in the form of clean claim where claims are submitted in
178 paper format. Benefits due under the policies and claims are
179 overdue if not paid within twenty-five (25) days or thirty-five
180 (35) days, whichever is applicable, after the insurer receives a
181 clean claim containing necessary medical information and other
182 information essential for the insurer to administer preexisting
183 condition, coordination of benefits and subrogation provisions. A
184 "clean claim" means a claim received by an insurer for
185 adjudication and which requires no further information, adjustment
186 or alteration by the provider of the services or the insured in
187 order to be processed and paid by the insurer. A claim is clean
188 if it has no defect or impropriety, including any lack of
189 substantiating documentation, or particular circumstance requiring
190 special treatment that prevents timely payment from being made on
191 the claim under this provision. A clean claim includes
192 resubmitted claims with previously identified deficiencies
193 corrected.

194 A clean claim does not include the following:



195 a. A duplicate claim, which means an original
196 claim and its duplicate when the duplicate is filed within thirty
197 (30) days of the original claim;

198 b. Claims which are submitted fraudulently or
199 that are based upon material misrepresentations;

200 c. Claims that require a preexisting
201 condition, coordination of benefits or subrogation investigation;
202 and

203 d. Claims submitted more than thirty (30)
204 days after the date of service.

205 Not later than twenty-five (25) days after the date
206 the insurer actually receives an electronic claim, the insurer
207 shall pay the appropriate benefit in full, or any portion of the
208 claim that is clean, and notify the provider (where the claim is
209 owed to the provider) or the insured (where the claim is owed to
210 the insured) of the reasons why the claim or portion thereof is
211 not clean and will not be paid and what substantiating
212 documentation and information is required to adjudicate the claim
213 as clean. Not later than thirty-five (35) days after the date the
214 insurer actually receives a paper claim, the insurer shall pay the
215 appropriate benefit in full, or any portion of the claim that is
216 clean, and notify the provider (where the claim is owed to the
217 provider) or the insured (where the claim is owed to the insured)
218 of the reasons why the claim or portion thereof is not clean and
219 will not be paid and what substantiating documentation and
220 information is required to adjudicate the claim as clean. Any
221 claim or portion thereof resubmitted with the supporting
222 documentation and information requested by the insurer shall be
223 paid within twenty (20) days after receipt.

224 For purposes of this provision, the term "pay"
225 means that the insurer shall either send cash or a cash equivalent
226 by United States mail, or send cash or a cash equivalent by other
227 means such as electronic transfer, in full satisfaction of the



228 appropriate benefit due the provider (where the claim is owed to
229 the provider) or the insured (where the claim is owed to the
230 insured). To calculate the extent to which any benefits are
231 overdue, payment shall be treated as made on the date a draft or
232 other valid instrument was placed in the United States mail to the
233 last known address of the provider (where the claim is owed to the
234 provider) or the insured (where the claim is owed to the insured)
235 in a properly addressed, postpaid envelope, or, if not so posted,
236 or not sent by United States mail, on the date of delivery of
237 payment to the provider or insured.

238 2. Subject to due written proof of loss, all
239 accrued benefits for loss for which this policy provides periodic
240 payment will be paid _____ (insert period for payment
241 which must not be less frequently than monthly), and any balance
242 remaining unpaid upon the termination of liability will be paid
243 within thirty (30) days after receipt of due written proof.

244 3. If the claim is not denied for valid and proper
245 reasons by the end of the applicable time period prescribed in
246 this provision, the insurer must pay the provider (where the claim
247 is owed to the provider) or the insured (where the claim is owed
248 to the insured) interest on accrued benefits at the rate of one
249 and one-half percent (1-1/2%) per month accruing from the day
250 after payment was due on the amount of the benefits that remain
251 unpaid until the claim is finally settled or adjudicated.
252 Whenever interest due pursuant to this provision is less than One
253 Dollar (\$1.00), such amount shall be credited to the account of
254 the person or entity to whom such amount is owed.

255 4. In the event the insurer fails to pay benefits
256 when due, the person entitled to such benefits may bring action to
257 recover such benefits, any interest which may accrue as provided
258 in subsection (1)(h)3 of this section and any other damages as may
259 be allowable by law.

260 (i) A provision as follows:



261 Payment of claims:

262 Indemnity for loss of life will be payable in accordance
263 with the beneficiary designation and the provisions respecting
264 such payment which may be prescribed herein and effective at the
265 time of payment. If no such designation or provision is then
266 effective, such indemnity shall be payable to the estate of the
267 insured. Any other accrued indemnities unpaid at the insured's
268 death may, at the option of the insurer, be paid either to such
269 beneficiary or to such estate. All other indemnities will be
270 payable to the insured. When payments of benefits are made to an
271 insured directly for medical care or services rendered by a health
272 care provider, the health care provider shall be notified of such
273 payment. The notification requirement shall not apply to a
274 fixed-indemnity policy, a limited benefit health insurance policy,
275 medical payment coverage or personal injury protection coverage in
276 a motor vehicle policy, coverage issued as a supplement to
277 liability insurance or workers' compensation.

278 (The following provisions, or either of them, may be
279 included with the foregoing provision at the option of the
280 insurer: "If any indemnity of this policy shall be payable to the
281 estate of the insured, or to an insured or beneficiary who is a
282 minor or otherwise not competent to give a valid release, the
283 insurer may pay such indemnity, up to an amount not exceeding
284 \$_____ (insert an amount which must not exceed One
285 Thousand Dollars (\$1,000.00)), to any relative by blood or
286 connection by marriage of the insured or beneficiary who is deemed
287 by the insurer to be equitably entitled thereto. Any payment made
288 by the insurer in good faith pursuant to this provision shall
289 fully discharge the insurer to the extent of such payment."

290 "Subject to any written direction of the insured in the
291 application or otherwise, all or a portion of any indemnities
292 provided by this policy on account of hospital, nursing, medical
293 or surgical services may, at the insurer's option and unless the



294 insured requests otherwise in writing not later than the time of
295 filing proofs of such loss, be paid directly to the hospital or
296 person rendering such services; but it is not required that the
297 service be rendered by a particular hospital or person.")

298 (j) A provision as follows:

299 Physical examinations:

300 The insurer at his own expense shall have the right and
301 opportunity to examine the person of the insured when and as often
302 as it may reasonably require during the pendency of a claim
303 hereunder.

304 (k) A provision as follows:

305 Legal actions:

306 No action at law or in equity shall be brought to
307 recover on this policy prior to the expiration of sixty (60) days
308 after written proof of loss has been furnished in accordance with
309 the requirements of this policy. No such action shall be brought
310 after the expiration of three (3) years after the time written
311 proof of loss is required to be furnished.

312 (l) A provision as follows:

313 Change of beneficiary:

314 Unless the insured makes an irrevocable designation of
315 beneficiary, the right to change the beneficiary is reserved to
316 the insured, and the consent of the beneficiary or beneficiaries
317 shall not be requisite to surrender or assignment of this policy,
318 or to any change of beneficiary or beneficiaries, or to any other
319 changes in this policy.

320 (The first clause of this provision, relating to the
321 irrevocable designation of beneficiary, may be omitted at the
322 insurer's option.)

323 (2) **Other provisions.** Except as provided in subsection (3)
324 of this section, no such policy delivered or issued for delivery
325 to any person in this state shall contain provisions respecting
326 the matters set forth below unless such provisions are in the



327 words in which the same appear in this section. However, the
328 insurer may, at its option, use in lieu of any such provision a
329 corresponding provision of different wording approved by the
330 commissioner which is not less favorable in any respect to the
331 insured or the beneficiary. Any such provision contained in the
332 policy shall be preceded individually by the appropriate caption
333 appearing in this subsection or, at the option of the insurer, by
334 such appropriate individual or group captions or subcaptions as
335 the commissioner may approve.

336 (a) A provision as follows:

337 Change of occupation:

338 If the insured be injured or contract sickness after
339 having changed his occupation to one classified by the insurer as
340 more hazardous than that stated in this policy or while doing for
341 compensation anything pertaining to an occupation so classified,
342 the insurer will pay only such portion of the indemnities provided
343 in this policy as the premium paid would have purchased at the
344 rates and within the limits fixed by the insurer for such more
345 hazardous occupation. If the insured changes his occupation to
346 one classified by the insurer as less hazardous than that stated
347 in this policy, the insurer, upon receipt of proof of such change
348 of occupation, will reduce the premium rate accordingly, and will
349 return the excess pro rata unearned premium from the date of
350 change of occupation or from the policy anniversary date
351 immediately preceding receipt of such proof, whichever is the most
352 recent. In applying this provision, the classification of
353 occupational risk and the premium rates shall be such as have been
354 last filed by the insurer prior to the occurrence of the loss for
355 which the insurer is liable, or prior to date of proof of change
356 in occupation, with the state official having supervision of
357 insurance in the state where the insured resided at the time this
358 policy was issued; but if such filing was not required, then the
359 classification of occupational risk and the premium rates shall be

360 those last made effective by the insurer in such state prior to
361 the occurrence of the loss or prior to the date of proof of change
362 in occupation.

363 (b) A provision as follows:

364 Misstatement of age:

365 If the age of the insured has been misstated, all
366 amounts payable under this policy shall be such as the premium
367 paid would have purchased at the correct age.

368 (c) A provision as follows:

369 Relation of earnings to issuance:

370 If the total monthly amount of loss of time benefits
371 promised for the same loss under all valid loss of time coverage
372 upon the insured, whether payable on a weekly or monthly basis,
373 shall exceed the monthly earnings of the insured at the time
374 disability commenced or his average monthly earnings for the
375 period of two (2) years immediately preceding a disability for
376 which claim is made, whichever is the greater, the insurer will be
377 liable only for such proportionate amount of such benefits under
378 this policy as the amount of such monthly earnings or such average
379 monthly earnings of the insured bears to the total amount of
380 monthly benefits for the same loss under all such coverage upon
381 the insured at the time such disability commences and for the
382 return of such part of the premiums paid during such two (2) years
383 as shall exceed the pro rata amount of the premiums for the
384 benefits actually paid hereunder; but this shall not operate to
385 reduce the total monthly amount of benefits payable under all such
386 coverage upon the insured below the sum of Two Hundred Dollars
387 (\$200.00) or the sum of the monthly benefits specified in such
388 coverages, whichever is the lesser, nor shall it operate to reduce
389 benefits other than those payable for loss of time.

390 (The foregoing policy provision may be inserted only in
391 a policy which the insured has the right to continue in force
392 subject to its terms by the timely payment of premiums (1) until



393 at least age fifty (50) or, (2) in the case of a policy issued
394 after age forty-four (44), for at least five (5) years from its
395 date of issue. The insurer may, at its option, include in this
396 provision a definition of "valid loss of time coverage," approved
397 as to form by the commissioner, which definition shall be limited
398 in subject matter to coverage provided by governmental agencies or
399 by organizations subject to regulations by insurance law or by
400 insurance authorities of this or any other state of the United
401 States or any province of Canada, or to any other coverage the
402 inclusion of which may be approved by the commissioner, or any
403 combination of such coverages. In the absence of such definition,
404 such term shall not include any coverage provided for such insured
405 pursuant to any compulsory benefit statute (including any workers'
406 compensation or employer's liability statute), or benefits
407 provided by union welfare plans or by employer or employee benefit
408 organizations.)

409 (d) A provision as follows:

410 Unpaid premium:

411 Upon the payment of a claim under this policy, any
412 premium then due and unpaid or covered by any note or written
413 order may be deducted therefrom.

414 (e) A provision as follows:

415 Cancellation:

416 The insurer may cancel this policy at any time by
417 written notice delivered to the insured, or mailed to his last
418 address as shown by the records of the insurer, stating when, not
419 less than five (5) days thereafter, such cancellation shall be
420 effective; and after the policy has been continued beyond its
421 original term, the insured may cancel this policy at any time by
422 written notice delivered or mailed to the insurer, effective upon
423 receipt or on such later date as may be specified in such notice.
424 In the event of cancellation, the insurer will return promptly the
425 unearned portion of any premium paid. If the insured cancels, the



426 earned premium shall be computed by the use of the short-rate
427 table last filed with the state official having supervision of
428 insurance in the state where the insured resided when the policy
429 was issued. If the insurer cancels, the earned premium shall be
430 computed pro rata. Cancellation shall be without prejudice to any
431 claim originating prior to the effective date of cancellation.

432 (f) A provision as follows:

433 Conformity with state statutes:

434 Any provision of this policy which, on its effective
435 date, is in conflict with the statutes of the state in which the
436 insured resides on such date is hereby amended to conform to the
437 minimum requirements of such statutes.

438 (g) A provision as follows:

439 Illegal occupation:

440 The insurer shall not be liable for any loss to which a
441 contributing cause was the insured's commission of or attempt to
442 commit a felony or to which a contributing cause was the insured's
443 being engaged in an illegal occupation.

444 (h) A provision as follows:

445 Intoxicants and narcotics:

446 The insurer shall not be liable for any loss sustained
447 or contracted in consequence of the insured's being intoxicated or
448 under the influence of any narcotic unless administered on the
449 advice of a physician.

450 (3) **Inapplicable or inconsistent provisions.** If any
451 provision of this section is in whole or in part inapplicable to
452 or inconsistent with the coverage provided by a particular form of
453 policy, the insurer, with the approval of the commissioner, shall
454 omit from such policy any inapplicable provision or part of a
455 provision, and shall modify any inconsistent provision or part of
456 the provision in such manner as to make the provision as contained
457 in the policy consistent with the coverage provided by the policy.



458 (4) **Order of certain policy provisions.** The provisions
459 which are the subject of subsections (1) and (2) of this section,
460 or any corresponding provisions which are used in lieu thereof in
461 accordance with such subsections, shall be printed in the
462 consecutive order of the provisions in such subsections or, at the
463 option of the insurer, any such provision may appear as a unit in
464 any part of the policy, with other provisions to which it may be
465 logically related, provided the resulting policy shall not be in
466 whole or in part unintelligible, uncertain, ambiguous, abstruse or
467 likely to mislead a person to whom the policy is offered,
468 delivered or issued.

469 (5) **Third-party ownership.** The word "insured," as used in
470 Sections 83-9-1 through 83-9-21, Mississippi Code of 1972, shall
471 not be construed as preventing a person other than the insured
472 with a proper insurable interest from making application for and
473 owning a policy covering the insured, or from being entitled under
474 such a policy to any indemnities, benefits and rights provided
475 therein.

476 (6) **Requirements of other jurisdictions.**

477 (a) Any policy of a foreign or alien insurer, when
478 delivered or issued for delivery to any person in this state, may
479 contain any provision which is not less favorable to the insured
480 or the beneficiary than the provisions of Sections 83-9-1 through
481 83-9-21, Mississippi Code of 1972, and which is prescribed or
482 required by the law of the state under which the insurer is
483 organized.

484 (b) Any policy of a domestic insurer may, when issued
485 for delivery in any other state or country, contain any provision
486 permitted or required by the laws of such other state or country.

487 (7) **Filing procedure.** The commissioner may make such
488 reasonable rules and regulations concerning the procedure for the
489 filing or submission of policies subject to the cited sections as
490 are necessary, proper or advisable to the administration of said



491 sections. This provision shall not abridge any other authority
492 granted the commissioner by law.

493 (8) Administrative penalties.

494 (a) If the commissioner finds that an insurer has
495 failed during any calendar year to process and pay one hundred
496 percent (100%) of all clean claims received from all providers
497 during that year in accordance with the provisions of subsection
498 (1)(h) of this section, the commissioner may levy an aggregate
499 penalty not to exceed One Thousand Dollars (\$1,000.00). If the
500 commissioner finds that an insurer has failed during any calendar
501 year to process and pay ninety-five percent (95%) of all clean
502 claims received from all providers during that year in accordance
503 with the provisions of subsection (1)(h) of this section, the
504 commissioner may levy an aggregate penalty not to exceed Ten
505 Thousand Dollars (\$10,000.00). If the commissioner finds that an
506 insurer has failed during any calendar year to process and pay
507 eighty-five percent (85%) of all clean claims received from all
508 providers during that year in accordance with the provision of
509 subsection (1)(h) of this section, the commissioner may levy an
510 aggregate penalty in an amount not less than Ten Thousand Dollars
511 (\$10,000.00) nor more than One Hundred Thousand Dollars
512 (\$100,000.00). If the commissioner finds that an insurer has
513 failed during any calendar year to process and pay fifty percent
514 (50%) of all clean claims received from all providers during that
515 year in accordance with the provisions of subsection (1)(h) of
516 this section, the commissioner may levy an aggregate penalty in an
517 amount not less than One Hundred Thousand Dollars (\$100,000.00)
518 nor more than Two Hundred Thousand Dollars (\$200,000.00). In
519 determining the amount of any fine, the commissioner shall take
520 into account whether the failure to achieve the standards in
521 subsection (1)(h) of this section were due to circumstances beyond
522 the control of the insurer. The insurer may request an
523 administrative hearing to contest the assessment of any



524 administrative penalty imposed by the commissioner pursuant to
525 this subsection within thirty (30) days after receipt of the
526 notice of assessment.

527 (b) Examinations to determine compliance with
528 subsection (1)(h) of this section may be conducted by the
529 commissioner or any of his examiners. The commissioner may
530 contract with qualified impartial outside sources to assist in
531 examinations to determine compliance. The expenses of any such
532 examinations shall be paid by the insurer examined.

533 (c) Nothing in the provisions of subsection (1)(h) of
534 this section shall require an insurer to pay claims that are not
535 covered under the terms of a contract or policy of accident and
536 sickness insurance.

537 (d) An insurer and a provider may enter into an express
538 written agreement containing timely claim payment provisions which
539 differ from, but are at least as stringent as, the provisions set
540 forth under subsection (1)(h) of this section, and in such case,
541 the provisions of the written agreement shall govern the timely
542 payment of claims by the insurer to the provider. If the express
543 written agreement is silent as to any interest penalty where
544 claims are not paid in accordance with the agreement, the interest
545 penalty provision of subsection (1)(h)3 of this section shall
546 apply.

547 (e) The commissioner may adopt rules and regulations
548 necessary to ensure compliance with this subsection.

549 **SECTION 2.** This act shall take effect and be in force from
550 and after July 1, 2002.

