By: Burrows, Oliverson, Frank, Bonnen, Middleton, et al. H.B. No. 2090

A BILL TO BE ENTITLED

AN ACT

relating to health care cost disclosures by health benefit plan issuers and third-party administrators.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Subtitle J, Title 8, Insurance Code, is amended to read as follows:

SUBTITLE J. HEALTH INFORMATION TECHNOLOGY AND AVAILABILITY

SECTION 2. Subtitle J, Title 8, Insurance Code, is amended by adding Chapter 1662 to read as follows:

CHAPTER 1662. HEALTH CARE COST TRANSPARENCY

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 1662.001. DEFINITIONS. In this chapter:

(1) "Billed charge" means the total charges for a health care service or supply billed to a health benefit plan by a health care provider.

(2) "Billing code" means the code used by a health benefit plan issuer or administrator or health care provider to identify a health care service or supply for the purposes of billing, adjudicating, and paying claims for a covered health care service or supply, including the Current Procedural Terminology code, the Healthcare Common Procedure Coding System code, the Diagnosis-Related Group code, the National Drug Code, or other common payer identifier.

(3) "Bundled payment arrangement" means a payment

1 model under which a health care provider is paid a single payment
2 for all covered health care services and supplies provided to an
3 enrollee for a specific treatment or procedure.
4 (4) "Copayment assistance" means the financial
5 assistance an enrollee receives from a prescription drug or medical
6 supply manufacturer toward the purchase of a covered health care
7 service or supply.
8 (5) "Cost-sharing information" means information
9 related to any expenditure required by or on behalf of an enrollee
10 with respect to health care benefits that are relevant to a
11 determination of the enrollee's cost-sharing liability for a
12 particular covered health care service or supply.
13 (6) "Cost-sharing liability" means the amount an
14 enrollee is responsible for paying for a covered health care
15 service or supply under the terms of a health benefit plan. The term
16 generally includes deductibles, coinsurance, and copayments but
17 does not include premiums, balance billing amounts by
18 out-of-network providers, or the cost of health care services or
19 supplies that are not covered under a health benefit plan.
20 (7) "Covered health care service or supply" means a
21 health care service or supply, including a prescription drug, for
22 which the costs are payable, wholly or partly, under the terms of a
23 health benefit plan.
24 (8) "Derived amount" means the price that a health
25 benefit plan assigns to a health care service or supply for the
26 purpose of internal accounting, reconciliation with health care
27 providers, or submitting data in accordance with state or federal

1 regulations.

2 (9) "Enrollee" means an individual, including a
3 dependent, entitled to coverage under a health benefit plan.

4 (10) "Health care service or supply" means any
5 encounter, procedure, medical test, supply, prescription drug,
6 durable medical equipment, and fee, including a facility fee,
7 provided or assessed in connection with the provision of health
8 care.

9 (11) "Historical net price" means the retrospective
10 average amount a health benefit plan paid for a prescription drug,
11 inclusive of any reasonably allocated rebates, discounts,
12 chargebacks, and fees and any additional price concessions received
13 by the plan or plan issuer or administrator with respect to the
14 prescription drug, determined in accordance with Section 1662.106.

15 (12) "Machine-readable file" means a digital
16 representation of data in a file that can be imported or read by a
17 computer system for further processing without human intervention
18 while ensuring no semantic meaning is lost.

19 (13) "National drug code" means the unique 10- or
20 11-digit 3-segment number assigned by the United States Food and
21 Drug Administration that is a universal product identifier for
22 drugs in the United States.

23 (14) "Negotiated rate" means the amount a health
24 benefit plan issuer or administrator has contractually agreed to
25 pay a network provider, including a network pharmacy or other
26 prescription drug dispenser, for covered health care services and
27 supplies, whether directly or indirectly, including through a

1 third-party administrator or pharmacy benefit manager.
2 (15) "Network provider" means any health care provider
3 of a health care service or supply with which a health benefit plan
4 issuer or administrator or a third party for the issuer or
5 administrator has a contract with the terms on which a relevant
6 health care service or supply is provided to an enrollee.
7 (16) "Out-of-network allowed amount" means the
8 maximum amount a health benefit plan issuer or administrator will
9 pay for a covered health care service or supply provided by an
10 out-of-network provider.
11 (17) "Out-of-network provider" means a health care
12 provider of any health care service or supply that does not have a
13 contract under an enrollee's health benefit plan.
14 (18) "Out-of-pocket limit" means the maximum amount
15 that an enrollee is required to pay during a coverage period for the
16 enrollee's share of the costs of covered health care services and
17 supplies under the enrollee's health benefit plan, including for
18 self-only and other than self-only coverage, as applicable.
19 (19) "Prerequisite" means concurrent review, prior
20 authorization, or a step-therapy or fail-first protocol related to
21 a covered health care service or supply that must be satisfied
22 before a health benefit plan issuer or administrator will cover the
23 service or supply. The term does not include a medical necessity
24 determination generally or another form of medical management
25 technique.
26 (20) "Underlying fee schedule rate" means the rate for
27 a covered health care service or supply from a particular network

provider or health care provider that a health benefit plan issuer or administrator uses to determine an enrollee's cost-sharing liability for the service or supply when that rate is different from the negotiated rate or derived amount.

Sec. 1662.002. DEFINITION OF ACCUMULATED AMOUNTS. (a) In this chapter, "accumulated amounts" means:

(1) the amount of financial responsibility an enrollee has incurred at the time a request for cost-sharing information is made, with respect to a deductible or out-of-pocket limit; and

(2) to the extent a health benefit plan imposes a cumulative treatment limitation, including a limitation on the number of health care supplies, days, units, visits, or hours covered in a defined period, on a particular covered health care service or supply independent of individual medical necessity determinations, the amount that has accrued toward the limit on the health care service or supply.

(b) For an individual enrolled in coverage other than self-only coverage, the term includes the financial responsibility the individual has incurred toward meeting the individual's own deductible or out-of-pocket limit and the amount of financial responsibility that all individuals enrolled in the individual's coverage have incurred, in aggregate, toward meeting the plan's other than self-only deductible or out-of-pocket limit, as applicable.

(c) The term includes any expense that counts toward a deductible or out-of-pocket limit, including a copayment or coinsurance, but excludes any expense that does not count toward a

deductible or out-of-pocket limit, including a premium payment, out-of-pocket expense for out-of-network health care services or supplies, or an amount for a health care service or supply not covered by the health benefit plan.

Sec. 1662.003. APPLICABILITY OF CHAPTER. (a) This chapter applies only to a health benefit plan that provides benefits for medical or surgical expenses incurred as a result of a health condition, accident, or sickness, including an individual, group, blanket, or franchise insurance policy or insurance agreement, a group hospital service contract, or an individual or group evidence of coverage or similar coverage document that is offered by:

(1) an insurance company;

(2) a group hospital service corporation operating under Chapter 842;

(3) a health maintenance organization operating under Chapter 843;

(4) an approved nonprofit health corporation that holds a certificate of authority under Chapter 844;

(5) a multiple employer welfare arrangement that holds a certificate of authority under Chapter 846;

(6) a stipulated premium company operating under Chapter 884;

(7) a fraternal benefit society operating under Chapter 885;

(8) a Lloyd's plan operating under Chapter 941; or

(9) an exchange operating under Chapter 942.

(b) Notwithstanding any other law, this chapter applies to:

(1) a small employer health benefit plan subject to Chapter 1501, including coverage provided through a health group cooperative under Subchapter B of that chapter;

(2) a standard health benefit plan issued under Chapter 1507;

(3) a basic coverage plan under Chapter 1551;

(4) a basic plan under Chapter 1575;

(5) a primary care coverage plan under Chapter 1579;

(6) a plan providing basic coverage under Chapter 1601;

(7) health benefits provided by or through a church benefits board under Subchapter I, Chapter 22, Business Organizations Code;

(8) a regional or local health care program operated under Section 75.104, Health and Safety Code; and

(9) a self-funded health benefit plan sponsored by a professional employer organization under Chapter 91, Labor Code.

(c) This chapter does not apply to a health reimbursement arrangement or other account-based health benefit plan or a workers' compensation insurance policy.

Sec. 1662.004. RULES. The commissioner may adopt rules necessary to implement this chapter.

SUBCHAPTER B. REQUIRED DISCLOSURES TO ENROLLEES

Sec. 1662.051. REQUIRED DISCLOSURE TO ENROLLEE ON REQUEST. (a) On request of a health benefit plan enrollee, the health benefit plan issuer or administrator shall provide to the enrollee a disclosure in accordance with this subchapter.

1 (b) A health benefit plan issuer or administrator may allow
2 an enrollee to request cost-sharing information for a specific
3 preventive or non-preventive health care service or supply by
4 including terms such as "preventive," "non-preventive," or
5 "diagnostic" when requesting information under Subsection (a).
6 Sec. 1662.052. REQUIRED DISCLOSURE INFORMATION. (a) A
7 disclosure provided under this subchapter must have the following
8 information that is accurate at the time the disclosure request is
9 made, with respect to the requesting enrollee's cost-sharing
10 liability for a covered health care service and supply:
11 (1) an estimate of the enrollee's cost-sharing
12 liability for the requested service or supply provided by a health
13 care provider that is calculated based on the information described
14 by Subdivisions (4), (5), and (6);
15 (2) except as provided by Subsection (b), if the
16 request relates to a service or supply that is provided within a
17 bundled payment arrangement and the arrangement includes a service
18 or supply that has a separate cost-sharing liability, an estimate
19 of the cost-sharing liability for:
20 (A) the requested covered service or supply; and
21 (B) each service or supply in the arrangement
22 that has a separate cost-sharing liability;
23 (3) for a requested service or supply that is a
24 recommended preventive service under Section 2713, Public Health
25 Service Act (42 U.S.C. Section 300gg-13), if the health benefit
26 plan issuer or administrator cannot determine whether the request
27 is for preventive or non-preventive purposes, the cost-sharing

1 liability for non-preventive purposes;

2 (4) accumulated amounts;

3 (5) the network provider rate that is composed of the

4 following that are applicable to the health benefit plan's payment

5 model:

6 (A) the negotiated rate, reflected as a dollar

7 amount, for a network provider for the requested service or supply

8 regardless of whether the issuer or administrator uses the rate to

9 calculate the enrollee's cost-sharing liability; and

10 (B) the underlying fee schedule rate, reflected

11 as a dollar amount, for the requested service or supply, to the

12 extent that is different from the negotiated rate;

13 (6) the out-of-network allowed amount or any other

14 rate that provides a more accurate estimate of an amount a health

15 benefit plan issuer or administrator will pay for the requested

16 service or supply, reflected as a dollar amount, if the request for

17 cost-sharing information is for a covered service or supply

18 provided by an out-of-network provider;

19 (7) if an enrollee requests information for a service

20 or supply subject to a bundled payment arrangement, a list of the

21 services and supplies included in the arrangement;

22 (8) if applicable, notification that coverage of a

23 specific service or supply is subject to a prerequisite; and

24 (9) notice that includes the following information in

25 plain language:

26 (A) unless balance billing is prohibited for the

27 requested service or supply, a statement that out-of-network

1 providers may bill an enrollee for the difference between a
2 provider's billed charges and the sum of the amount collected from
3 the health benefit plan issuer or administrator and from the
4 enrollee in the form of a copayment or coinsurance amount and that
5 the cost-sharing information provided for the service or supply
6 does not account for that potential additional charge;
7 (B) a statement that the actual charges to the
8 enrollee for the requested service or supply may be different from
9 the estimate provided, depending on the actual services or supplies
10 the enrollee receives at the point of care;
11 (C) a statement that the estimate of cost-sharing
12 liability for the requested service or supply is not a guarantee
13 that benefits will be provided for that service or supply;
14 (D) a statement disclosing whether the health
15 benefit plan counts copayment assistance and other third-party
16 payments in the calculation of the enrollee's deductible and
17 out-of-pocket maximum;
18 (E) for a service or supply that is a recommended
19 preventive service under Section 2713, Public Health Service Act
20 (42 U.S.C. Section 300gg-13), a statement that a service or supply
21 provided by a network provider may not be subject to cost sharing if
22 it is billed as a preventive service or supply when the health
23 benefit plan issuer or administrator cannot determine whether the
24 request is for a preventive or non-preventive service or supply;
25 and
26 (F) any additional information, including other
27 disclosures, that the health benefit plan issuer or administrator

1 determines is appropriate provided that the additional information
2 does not conflict with the information required to be provided
3 under this section.
4 (b) A health benefit plan issuer or administrator is not
5 required to provide an estimate of cost-sharing liability for a
6 bundled payment arrangement in which the cost sharing is imposed
7 separately for each health care service or supply included in the
8 arrangement. If an issuer or administrator provides an estimate for
9 multiple health care services or supplies in a situation in which
10 the estimate could be relevant to an enrollee, the issuer or
11 administrator must disclose information about the relevant
12 services or supplies individually as required by Subsection (a).
13 (c) If a health benefit plan issuer or administrator
14 reimburses an out-of-network provider with a percentage of the
15 billed charge for a covered health care service or supply, the
16 out-of-network allowed amount described by Subsection (a) is that
17 reimbursed percentage.
18 Sec. 1662.053. METHOD AND FORMAT FOR DISCLOSURE. A health
19 benefit plan issuer or administrator shall provide the disclosure
20 required under this subchapter through an Internet-based
21 self-service tool described by Section 1662.054, a physical copy in
22 accordance with Section 1662.055, or another means authorized by
23 Section 1662.056.
24 Sec. 1662.054. INTERNET-BASED SELF-SERVICE TOOL. (a) A
25 health benefit plan issuer or administrator may develop and
26 maintain an Internet-based self-service tool to provide a
27 disclosure required under this subchapter.

1 (b) Information provided on the self-service tool must be
2 made available in plain language, without a subscription or other
3 fee, on an Internet website that provides real-time responses based
4 on cost-sharing information that is accurate at the time of the
5 request.
6 (c) A health benefit plan issuer or administrator shall
7 ensure that the self-service tool allows a user to:
8 (1) search for cost-sharing information for a covered
9 health care service or supply by a specific network provider or by
10 all network providers by inputting:
11 (A) a billing code or descriptive term at the
12 option of the user;
13 (B) the name of the network provider if the user
14 seeks cost-sharing information with respect to a specific network
15 provider; or
16 (C) other factors used by the issuer or
17 administrator that are relevant for determining the applicable
18 cost-sharing information, including the location in which the
19 service or supply will be sought or provided, the facility name, or
20 the dosage;
21 (2) search for an out-of-network allowed amount,
22 percentage of billed charges, or other rate that provides a
23 reasonably accurate estimate of the amount the issuer or
24 administrator will pay for a covered health care service or supply
25 provided by an out-of-network provider by inputting:
26 (A) a billing code or descriptive term at the
27 option of the user; or

1 (B) other factors used by the issuer or
2 administrator that are relevant for determining the applicable
3 out-of-network allowed amount or other rate, including the location
4 in which the covered health care service or supply will be sought or
5 provided; and
6 (3) refine and reorder search results based on
7 geographic proximity of network providers and the amount of the
8 enrollee's estimated cost-sharing liability for the covered health
9 care service or supply if the search returns multiple results.
10 Sec. 1662.055. PHYSICAL COPY OF DISCLOSURE. (a) A health
11 benefit plan issuer or administrator shall make the disclosure
12 required under this subchapter available in a physical form. A
13 disclosure under this section must be made available in plain
14 language, without a fee, at the request of the enrollee.
15 (b) In providing a disclosure under this section, a health
16 benefit plan issuer or administrator may limit the number of health
17 care providers with respect to which cost-sharing information for a
18 covered health care service or supply is provided to no fewer than
19 20 providers per request.
20 (c) A health benefit plan issuer or administrator providing
21 a disclosure under this section shall:
22 (1) disclose any applicable provider-per-request
23 limit described by Subsection (b) to the enrollee;
24 (2) provide the cost-sharing information in a physical
25 form in accordance with the enrollee's request as if the request was
26 made using a self-service tool under Section 1662.054; and
27 (3) mail the disclosure not later than two business

days after the date the enrollee's request is received.

Sec. 1662.056. OTHER MEANS OF DISCLOSURE. If an enrollee requests the disclosure required by this subchapter by a means other than a physical copy or the self-service tool described by Section 1662.054, a health benefit plan issuer or administrator may provide the disclosure through the requested means if:

(1) the enrollee agrees that disclosure through that means is sufficient to satisfy the request;

(2) the request is fulfilled at least as rapidly as required for the physical copy; and

(3) the disclosure includes the information required for a physical copy under Section 1662.055.

Sec. 1662.057. OTHER CONTRACTUAL AGREEMENTS. (a) A health benefit plan issuer or administrator may satisfy the requirements of this subchapter by entering into a written agreement under which another person, including a pharmacy benefit manager or other third party, provides the disclosure required under this subchapter.

(b) If a health benefit plan issuer or administrator and another person enter into an agreement under Subsection (a), the issuer or administrator is subject to an enforcement action for failure to provide a required disclosure in accordance with this subchapter.

Sec. 1662.058. COMPLIANCE WITH SUBCHAPTER. (a) A health benefit plan issuer or administrator that, acting in good faith and with reasonable diligence, makes an error or omission in a disclosure required under this subchapter does not fail to comply with this subchapter solely because of the error or omission if the

issuer or administrator corrects the error or omission as soon as practicable.

(b) A health benefit plan issuer or administrator, acting in good faith and with reasonable diligence, does not fail to comply with this subchapter solely because the issuer's or administrator's Internet website is temporarily inaccessible if the issuer or administrator makes the information available as soon as practicable.

(c) To the extent compliance with this subchapter requires a health benefit plan issuer or administrator to obtain information from another person, the issuer or administrator does not fail to comply with the subchapter because the issuer or administrator relies in good faith on information from the other person unless the issuer or administrator knows or reasonably should have known that the information is incomplete or inaccurate.

SUBCHAPTER C. REQUIRED PUBLIC DISCLOSURES

Sec. 1662.101. APPLICABILITY OF SUBCHAPTER. This subchapter applies only to a health benefit plan for which federal reporting requirements under 26 C.F.R. Part 54, 29 C.F.R. Part 2590, and 45 C.F.R. Parts 147 and 158 do not apply.

Sec. 1662.102. PUBLICATION REQUIRED. A health benefit plan issuer or administrator shall publish on an Internet website the information required under Section 1662.103 in three machine-readable files in accordance with this subchapter.

Sec. 1662.103. REQUIRED INFORMATION. (a) A health benefit plan issuer or administrator shall publish the following information:

(1) a network rate machine-readable file that includes the following information for all covered health care services and supplies, except for prescription drugs that are subject to a fee-for-service reimbursement arrangement:

(A) for each coverage option offered by a health benefit plan issuer or administered by a health benefit plan administrator, the option's name and:

(i) the option's 14-digit health insurance oversight system identifier;

(ii) if the 14-digit identifier is not available, the option's 5-digit health insurance oversight system identifier; or

(iii) if the 14- and 5-digit identifiers are not available, the employer identification number associated with the option;

(B) a billing code, which must be the national drug code for a prescription drug, and a plain-language description for each billing code for each covered service or supply under each coverage option offered by the issuer or administered by the administrator; and

(C) all applicable rates, including negotiated rates, underlying fee schedules, or derived amounts, provided in accordance with Section 1662.104;

(2) an out-of-network allowed amount machine-readable file, including:

(A) for each coverage option offered by a health benefit plan issuer or administered by a health benefit plan

1 administrator, the option's name and:
2 (i) the option's 14-digit health insurance
3 oversight system identifier;
4 (ii) if the 14-digit identifier is not
5 available, the option's 5-digit health insurance oversight system
6 identifier; or
7 (iii) if the 14- and 5-digit identifiers
8 are not available, the employer identification number associated
9 with the option;
10 (B) a billing code, which must be the national
11 drug code for a prescription drug, and a plain-language description
12 for each billing code for each covered service or supply under each
13 coverage option offered by the issuer or administered by the
14 administrator; and
15 (C) except as provided by Subsection (b), unique
16 out-of-network billed charges and allowed amounts provided in
17 accordance with Section 1662.105 for covered health care services
18 or supplies provided by out-of-network providers during the 90-day
19 period that begins on the 180th day before the date the
20 machine-readable file is published; and
21 (3) a prescription drug machine-readable file that
22 includes:
23 (A) for each coverage option offered by a health
24 benefit plan issuer or administered by a health benefit plan
25 administrator, the option's name and:
26 (i) the option's 14-digit health insurance
27 oversight system identifier;

1 (ii) if the 14-digit identifier is not
2 available, the option's 5-digit health insurance oversight system
3 identifier; or
4 (iii) if the 14- and 5-digit identifiers
5 are not available, the employer identification number associated
6 with the option;
7 (B) the national drug code and the proprietary
8 and nonproprietary name assigned to the national drug code by the
9 United States Food and Drug Administration for each covered
10 prescription drug provided under each coverage option offered by
11 the issuer or administered by the administrator;
12 (C) the negotiated rates, which must be:
13 (i) reflected as a dollar amount with
14 respect to each national drug code that is provided by a network
15 provider, including a network pharmacy or other prescription drug
16 dispenser;
17 (ii) associated with the national provider
18 identifier, tax identification number, and place of service code
19 for each network provider, including each network pharmacy or other
20 prescription drug dispenser; and
21 (iii) associated with the last date of the
22 contract term for each provider-specific negotiated rate that
23 applies to each national drug code; and
24 (D) except as provided by Subsection (b),
25 historical net prices, which must be:
26 (i) reflected as a dollar amount with
27 respect to each national drug code that is provided by a network

1 provider, including a network pharmacy or other prescription drug
2 dispenser;
3 (ii) associated with the national provider
4 identifier, tax identification number, and place of service code
5 for each network provider, including each network pharmacy or other
6 prescription drug dispenser; and
7 (iii) associated with the 90-day period
8 that begins on the 180th day before the date the machine-readable
9 file is published for each provider-specific historical net price
10 calculated in accordance with Section 1662.106 that applies to each
11 national drug code.
12 (b) A health benefit plan issuer or administrator shall omit
13 information described by Subsection (a)(2)(C) or (a)(3)(D) in
14 relation to a particular health care service or supply if
15 compliance with that subsection would require the issuer to report
16 payment information in connection with fewer than 20 different
17 claims for payments under a single health benefit plan.
18 (c) This section does not require the disclosure of
19 information that would violate any applicable health information
20 privacy law.
21 Sec. 1662.104. NETWORK RATE DISCLOSURES. (a) If a health
22 benefit plan issuer or administrator does not use negotiated rates
23 for health care provider reimbursement, the issuer or administrator
24 shall disclose for purposes of Section 1662.103(a)(1)(C) derived
25 amounts to the extent those amounts are already calculated in the
26 normal course of business.
27 (b) If a health benefit plan issuer or administrator uses

1 underlying fee schedule rates for calculating cost sharing, the
2 issuer or administrator shall disclose for purposes of Section
3 1662.103(a)(1)(C) the underlying fee schedule rates in addition to
4 the negotiated rate or derived amount.

5 (c) The applicable rates, including for both individual
6 health care services and supplies and services and supplies in a
7 bundled payment arrangement, that a health benefit plan issuer or
8 administrator must provide under Section 1662.103(a)(1)(C) must
9 be:

10 (1) except as provided by Subdivision (2), reflected
11 as dollar amounts with respect to each covered health care service
12 or supply that is provided by a network provider;

13 (2) the base negotiated rate applicable to the service
14 or supply before an adjustment for enrollee characteristics if the
15 rate is a negotiated rate subject to change based on enrollee
16 characteristics;

17 (3) associated with the national provider identifier,
18 tax identification number, and place of service code for each
19 network provider;

20 (4) associated with the last date of the contract term
21 or expiration date for each health care provider-specific
22 applicable rate that applies to each covered service or supply; and

23 (5) indicated with a notation where a reimbursement
24 arrangement other than a standard fee-for-service model, including
25 capitation or a bundled payment arrangement, applies.

26 Sec. 1662.105. OUT-OF-NETWORK ALLOWED AMOUNTS. (a) An
27 out-of-network allowed amount provided under Section

1662.103(a)(2)(C) must be:

(1) reflected as a dollar amount with respect to each covered health care service or supply that is provided by an out-of-network provider; and

(2) associated with the national provider identifier, tax identification number, and place of service code for each out-of-network provider.

(b) This subchapter does not prohibit a health benefit plan issuer or administrator from satisfying the disclosure requirements described by Section 1662.103(a)(2)(C) by disclosing out-of-network allowed amounts made available by, or otherwise obtained from, an issuer, a health care provider, or other party with which the issuer or administrator has entered into a written agreement to provide the information if the minimum claim threshold described by Section 1662.103(b) is independently met for each health care service or supply and for each plan included in an aggregated allowed amount file.

(c) If a health benefit plan issuer or administrator enters into an agreement under Subsection (b), the health benefit plan issuers, health care providers, or other persons with which the issuer or administrator has contracted may aggregate out-of-network allowed amounts for more than one plan.

(d) This subchapter does not prohibit a third party from hosting an allowed amount file on its Internet website or a health benefit plan issuer or administrator from contracting with a third party to post the file. If the issuer or administrator does not host the file separately on its Internet website, the issuer or

1 administrator shall provide a link on its Internet website to the
2 location where the file is made publicly available.
3 Sec. 1662.106. HISTORICAL NET PRICE. (a) For purposes of
4 determining the historical net price for a prescription drug, the
5 allocation of price concessions is determined by the dollar value
6 for non-product specific and product-specific rebates, discounts,
7 chargebacks, fees, and other price concessions to the extent that
8 the total amount of any such price concession is known to the health
9 benefit plan issuer or administrator at the time of publication of
10 the historical net price under Section 1662.103(a)(3)(D).
11 (b) To the extent that the total amount of any non-product
12 specific and product-specific rebates, discounts, chargebacks,
13 fees, or other price concessions is not known to a health benefit
14 plan issuer or administrator at the time of publication of the
15 historical net price under Section 1662.103(a)(3)(D), the issuer or
16 administrator shall allocate those price concessions by using a
17 good faith, reasonable estimate of the average price concessions
18 based on the price concessions received over a period before the
19 current reporting period and of equal duration to the current
20 reporting period.
21 Sec. 1662.107. REQUIRED METHOD AND FORMAT FOR DISCLOSURE.
22 The machine-readable files described by Section 1662.103 must be
23 available in a form and manner prescribed by department rule. The
24 files must be available and accessible to any person free of charge
25 and without conditions, including establishment of a user account,
26 password, or other credentials, or submission of personally
27 identifiable information to access the file.

1 Sec. 1662.108. FILE UPDATES. A health benefit plan issuer
2 or administrator shall update the machine-readable files described
3 by Section 1662.103 and the information described by this
4 subchapter monthly. The issuer or administrator must clearly
5 indicate in the files the date that the files were most recently
6 updated.
7 Sec. 1662.109. OTHER CONTRACTUAL AGREEMENTS. (a) A health
8 benefit plan issuer or administrator may satisfy the requirements
9 of this subchapter by entering into a written agreement under which
10 another person, including a third-party administrator or health
11 care claims clearinghouse, provides the disclosure required under
12 this subchapter in compliance with this subchapter.
13 (b) If a health benefit plan issuer or administrator and
14 another person enter into an agreement under Subsection (a), the
15 issuer or administrator is subject to an enforcement action for
16 failure to provide a required disclosure in accordance with this
17 subchapter.
18 Sec. 1662.110. COMPLIANCE WITH SUBCHAPTER. (a) A health
19 benefit plan issuer or administrator that, acting in good faith and
20 with reasonable diligence, makes an error or omission in a
21 disclosure required under this subchapter does not fail to comply
22 with this subchapter solely because of the error or omission if the
23 issuer or administrator corrects the error or omission as soon as
24 practicable.
25 (b) A health benefit plan issuer or administrator, acting in
26 good faith and with reasonable diligence, does not fail to comply
27 with this subchapter solely because the issuer's or administrator's

1 Internet website is temporarily inaccessible if the issuer or
2 administrator makes the information available as soon as
3 practicable.
4 (c) To the extent compliance with this subchapter requires a
5 health benefit plan issuer or administrator to obtain information
6 from another person, the issuer or administrator does not fail to
7 comply with the subchapter because the issuer or administrator
8 relies in good faith on information from the other person unless the
9 issuer or administrator knows or reasonably should have known that
10 the information is incomplete or inaccurate.
11 SECTION 3. (a) Subchapter B, Chapter 1662, Insurance Code,
12 as added by this Act, applies only to a health benefit plan
13 delivered, issued for delivery, or renewed on or after January 1,
14 2024, or for a plan year that begins on or after that date.
15 (b) Subchapter C, Chapter 1662, Insurance Code, as added by
16 this Act, applies only to a health benefit plan delivered, issued
17 for delivery, or renewed on or after January 1, 2022, or for a plan
18 year that begins on or after that date.
19 SECTION 4. This Act takes effect September 1, 2021.