

By: Van de Putte

S.B. No. 1582

A BILL TO BE ENTITLED

AN ACT

relating to payment of claims to pharmacies and pharmacists.

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

SECTION 1. Section 843.002, Insurance Code, is amended by adding Subdivision (32) to read as follows:

(32) "Extrapolation" means a mathematical process of constructing new data points outside a discrete set of known data points used in the payment or audit of claims to providers who are pharmacists or pharmacies. The term includes linear, conic, polynomial, statistical, and electronic extrapolation, as well as any other extrapolation techniques used to estimate payment of claims or audit findings affecting providers who are pharmacists or pharmacies.

SECTION 2. Section 843.338, Insurance Code, is amended to read as follows:

Sec. 843.338. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Sections [~~Section~~] 843.3385 and 843.339, not later than the 45th day after the date on which a health maintenance organization receives a clean claim from a participating physician or provider in a nonelectronic format or the 30th day after the date the health maintenance organization receives a clean claim from a participating physician or provider that is electronically submitted, the health maintenance organization shall make a determination of whether the claim is payable and:

1           (1) if the health maintenance organization determines  
2 the entire claim is payable, pay the total amount of the claim in  
3 accordance with the contract between the physician or provider and  
4 the health maintenance organization;

5           (2) if the health maintenance organization determines  
6 a portion of the claim is payable, pay the portion of the claim that  
7 is not in dispute and notify the physician or provider in writing  
8 why the remaining portion of the claim will not be paid; or

9           (3) if the health maintenance organization determines  
10 that the claim is not payable, notify the physician or provider in  
11 writing why the claim will not be paid.

12           SECTION 3. Section 843.339, Insurance Code, is amended to  
13 read as follows:

14           Sec. 843.339. DEADLINE FOR ACTION ON [~~CERTAIN~~] PRESCRIPTION  
15 CLAIMS; PAYMENT. (a) Not later than the 21st day after the date a  
16 health maintenance organization affirmatively adjudicates a  
17 pharmacy claim that is electronically submitted, the health  
18 maintenance organization shall pay the total amount of the claim. A  
19 health maintenance organization shall pay a pharmacy claim that is  
20 submitted in a nonelectronic format not later than the deadline  
21 provided under Section 843.338.

22           (b) Except as provided by Subsection (c), a pharmacy benefit  
23 manager that administers a pharmacy claim for a health maintenance  
24 organization shall pay the provider through electronic funds  
25 transfer not later than the 14th day after the date on which the  
26 claim was affirmatively adjudicated.

27           (c) If the provider is unable to receive payment of a claim

1 described by Subsection (b) through electronic funds transfer, the  
2 pharmacy benefit manager shall pay the claim not later than the 21st  
3 day after the date on which the claim was affirmatively  
4 adjudicated.

5 SECTION 4. Section 843.340, Insurance Code, is amended by  
6 adding Subsections (f) and (g) to read as follows:

7 (f) A health maintenance organization may not use  
8 extrapolation computations or practices to complete the audit of a  
9 provider who is a pharmacist or pharmacy. A health maintenance  
10 organization may not require extrapolation audits as a condition of  
11 participation in the health maintenance organization's contract,  
12 network, or program for a provider who is a pharmacist or pharmacy.

13 (g) A pharmacy benefit manager who performs an on-site audit  
14 under this chapter of a provider who is a pharmacist or pharmacy  
15 shall provide the provider reasonable notice of the audit and  
16 accommodate the provider's schedule to the greatest extent  
17 possible. The notice required under this subsection must be in  
18 writing and must be sent by certified mail not later than the 15th  
19 day before the date on which the on-site audit is scheduled to  
20 occur.

21 SECTION 5. Section 843.344, Insurance Code, is amended to  
22 read as follows:

23 Sec. 843.344. APPLICABILITY OF SUBCHAPTER TO ENTITIES  
24 CONTRACTING WITH HEALTH MAINTENANCE ORGANIZATION. This subchapter  
25 applies to a person, including a pharmacy benefit manager, with  
26 whom a health maintenance organization contracts to:

27 (1) process or pay claims;

1           (2) obtain the services of physicians and providers to  
2 provide health care services to enrollees; or

3           (3) issue verifications or preauthorizations.

4           SECTION 6. Subchapter J, Chapter 843, Insurance Code, is  
5 amended by adding Sections 843.354, 843.355, and 843.356 to read as  
6 follows:

7           Sec. 843.354. DEPARTMENT ENFORCEMENT OF PHARMACY CLAIMS.

8           (a) Notwithstanding any other provision of this subchapter, a  
9 dispute regarding payment of a claim to a provider who is a  
10 pharmacist or pharmacy shall be resolved as provided by this  
11 section.

12           (b) A provider who is a pharmacist or pharmacy may submit a  
13 complaint to the department alleging noncompliance with the  
14 requirements of this subchapter by a health maintenance  
15 organization or an entity that contracts with the health  
16 maintenance organization as provided by Section 843.344. A  
17 complaint may be submitted in writing or by submitting a completed  
18 complaint form to the department by mail or through another  
19 delivery method. The department shall maintain a complaint form on  
20 the department's Internet website and at the department's offices  
21 for use by a complainant.

22           (c) After investigation of the complaint by the department,  
23 the commissioner shall determine the validity of the complaint and  
24 shall enter a written order. In the order, the commissioner shall  
25 provide the health maintenance organization and the complainant  
26 with:

27           (1) a summary of the investigation conducted by the

1 department;

2 (2) written notice of the matters asserted, including  
3 a statement:

4 (A) of the legal authority, jurisdiction, and  
5 alleged conduct under which an enforcement action is imposed or  
6 denied, with a reference to the statutes and rules involved; and

7 (B) that the health maintenance organization and  
8 the complainant are entitled to a hearing before the State Office of  
9 Administrative Hearings regarding the allegations; and

10 (3) a determination of the denial or imposition of  
11 penalties against the health maintenance organization.

12 (d) If the department investigation substantiates the  
13 allegations of noncompliance made under Subsection (b), the  
14 commissioner, after notice and an opportunity for a hearing as  
15 described by Subsection (c), shall:

16 (1) require the health maintenance organization to pay  
17 penalties as provided by Section 843.342; and

18 (2) impose administrative penalties under Chapter 84  
19 in an amount not to exceed \$1,000 per day for each claim that  
20 remains unpaid in violation of this subchapter.

21 Sec. 843.355. APPEAL TO STATE OFFICE OF ADMINISTRATIVE  
22 HEARINGS. (a) The State Office of Administrative Hearings  
23 acquires jurisdiction over an enforcement action by the department  
24 in regard to allegations of violations of this subchapter by a  
25 health maintenance organization when the department, the  
26 complainant, or the health maintenance organization requests a  
27 hearing after issuance of the commissioner order under Section

1 843.354.

2 (b) On request for a hearing under Subsection (a), the State  
3 Office of Administrative Hearings shall notify the parties of the  
4 date, time, and place of the hearing. After a case has been placed  
5 on the docket, any party, including the department, the  
6 complainant, or the health maintenance organization, may move for  
7 appropriate relief, including discovery and evidentiary rulings,  
8 continuances and settings, request for a mediated settlement  
9 conference, mediation, or arbitration.

10 (c) If it appears to the department, the complainant, or the  
11 health maintenance organization that a person or entity is engaging  
12 in or is about to engage in a violation of a final order or decision  
13 by the State Office of Administrative Hearings, the department, the  
14 complainant, or the health maintenance organization may bring an  
15 action for judicial review in district court in Travis County to  
16 enjoin or restrain the continuation or commencement of the  
17 violation or to compel compliance with the final order or decision  
18 by the State Office of Administrative Hearings.

19 Sec. 843.356. LEGISLATIVE DECLARATION. It is the intent of  
20 the legislature that the requirements contained in this subchapter  
21 regarding payment of claims to providers who are pharmacists or  
22 pharmacies apply to all health care plans and pharmacy benefit  
23 managers unless otherwise prohibited by federal law.

24 Sec. 843.357. SEVERABILITY. If any provision or clause of  
25 this chapter or its application to any person, entity, or  
26 circumstance is held invalid, including Section 843.356, the  
27 invalidity does not affect other provisions or applications of this

1 chapter that can be given effect without the invalid provision or  
2 application and without being inconsistent with the intent of this  
3 chapter, and to this end the provisions of this chapter are declared  
4 to be severable.

5 SECTION 7. Section 1301.001, Insurance Code, is amended by  
6 amending Subdivision (1) and adding Subdivision (12) to read as  
7 follows:

8 (1) "Health care provider" means a practitioner,  
9 institutional provider, or other person or organization that  
10 furnishes health care services and that is licensed or otherwise  
11 authorized to practice in this state. The term includes a  
12 pharmacist and a pharmacy. The term does not include a physician.

13 (12) "Extrapolation" means a mathematical process of  
14 constructing new data points outside a discrete set of known data  
15 points used in the payment or audit of claims to providers who are  
16 pharmacists or pharmacies. The term includes linear, conic,  
17 polynomial, statistical, and electronic extrapolation, as well as  
18 any other extrapolation techniques used to estimate payment of  
19 claims or audit findings affecting providers who are pharmacists or  
20 pharmacies.

21 SECTION 8. Section 1301.103, Insurance Code, is amended to  
22 read as follows:

23 Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except  
24 as provided by Sections 1301.104 and [Section] 1301.1054, not later  
25 than the 45th day after the date an insurer receives a clean claim  
26 from a preferred provider in a nonelectronic format or the 30th day  
27 after the date an insurer receives a clean claim from a preferred

1 provider that is electronically submitted, the insurer shall make a  
2 determination of whether the claim is payable and:

3 (1) if the insurer determines the entire claim is  
4 payable, pay the total amount of the claim in accordance with the  
5 contract between the preferred provider and the insurer;

6 (2) if the insurer determines a portion of the claim is  
7 payable, pay the portion of the claim that is not in dispute and  
8 notify the preferred provider in writing why the remaining portion  
9 of the claim will not be paid; or

10 (3) if the insurer determines that the claim is not  
11 payable, notify the preferred provider in writing why the claim  
12 will not be paid.

13 SECTION 9. Section 1301.104, Insurance Code, is amended to  
14 read as follows:

15 Sec. 1301.104. DEADLINE FOR ACTION ON [~~CERTAIN~~] PHARMACY CLAIMS;  
16 PAYMENT. (a) Not later than the 21st day after the date an insurer  
17 affirmatively adjudicates a pharmacy claim that is electronically  
18 submitted, the insurer shall pay the total amount of the claim. An  
19 insurer shall pay a pharmacy claim that is submitted in a  
20 nonelectronic format not later than the deadline provided under  
21 Section 1301.103.

22 (b) Except as provided by Subsection (c), a pharmacy benefit  
23 manager that administers a pharmacy claim for an insurer under a  
24 preferred provider benefit plan shall pay the provider through  
25 electronic funds transfer not later than the 14th day after the date  
26 on which the claim was affirmatively adjudicated.

27 (c) If the provider is unable to receive payment of a claim



1 described by Subsection (b) through electronic funds transfer, the  
2 pharmacy benefit manager shall pay the claim not later than the 21st  
3 day after the date on which the claim was affirmatively  
4 adjudicated.

5 SECTION 10. Section 1301.105, Insurance Code, is amended by  
6 adding Subsections (e) and (f) to read as follows:

7 (e) An insurer may not use extrapolation computations or  
8 practices to complete the audit of a provider who is a pharmacist or  
9 pharmacy. An insurer may not require extrapolation audits as a  
10 condition of participation in the insurer's contract, network, or  
11 program for a provider who is a pharmacist or pharmacy.

12 (f) A pharmacy benefit manager who performs an on-site audit  
13 under this chapter of a provider who is a pharmacist or pharmacy  
14 shall provide the provider reasonable notice of the audit and  
15 accommodate the provider's schedule to the greatest extent  
16 possible. The notice required under this subsection must be in  
17 writing and must be sent by certified mail not later than the 15th  
18 day before the date on which the on-site audit is scheduled to  
19 occur.

20 SECTION 11. Section 1301.109, Insurance Code, is amended  
21 to read as follows:

22 Sec. 1301.109. APPLICABILITY TO ENTITIES CONTRACTING WITH  
23 INSURER. This subchapter applies to a person, including a pharmacy  
24 benefit manager, with whom an insurer contracts to:

- 25 (1) process or pay claims;  
26 (2) obtain the services of physicians and health care  
27 providers to provide health care services to insureds; or

1 (3) issue verifications or preauthorizations.

2 SECTION 12. Subchapter C-1, Chapter 1301, Insurance Code,  
3 is amended by adding Sections 1301.139, 1301.140, and 1301.141 to  
4 read as follows:

5 Sec. 1301.139. DEPARTMENT ENFORCEMENT OF PHARMACY CLAIMS.

6 (a) Notwithstanding any other provision of this subchapter, a  
7 dispute regarding payment of a claim to a provider who is a  
8 pharmacist or pharmacy shall be resolved as provided by this  
9 section.

10 (b) A provider who is a pharmacist or pharmacy may submit a  
11 complaint to the department alleging noncompliance with the  
12 requirements of this subchapter by an insurer or an entity that  
13 contracts with the insurer as provided by Section 1301.109. A  
14 complaint may be submitted in writing or by submitting a completed  
15 complaint form to the department by mail or through another  
16 delivery method. The department shall maintain a complaint form on  
17 the department's Internet website and at the department's offices  
18 for use by a complainant.

19 (c) After investigation of the complaint by the department,  
20 the commissioner shall determine the validity of the complaint and  
21 shall enter a written order. In the order, the commissioner shall  
22 provide the insurer and the complainant with:

23 (1) a summary of the investigation conducted by the  
24 department;

25 (2) written notice of the matters asserted, including  
26 a statement:

27 (A) of the legal authority, jurisdiction, and

1 alleged conduct under which an enforcement action is imposed or  
2 denied, with a reference to the statutes and rules involved; and

3 (B) that the insurer and the complainant are  
4 entitled to a hearing before the State Office of Administrative  
5 Hearings regarding the allegations; and

6 (3) a determination of the denial or imposition of  
7 penalties against the insurer.

8 (d) If the department investigation substantiates the  
9 allegations of noncompliance made under Subsection (b), the  
10 commissioner, after notice and an opportunity for a hearing as  
11 described by Subsection (c), shall:

12 (1) require the insurer to pay penalties as provided  
13 by Section 1301.137; and

14 (2) impose administrative penalties under Chapter 84  
15 in an amount not to exceed \$1,000 per day for each claim that  
16 remains unpaid in violation of this subchapter.

17 Sec. 1301.140. APPEAL TO STATE OFFICE OF ADMINISTRATIVE  
18 HEARINGS. (a) The State Office of Administrative Hearings  
19 acquires jurisdiction over an enforcement action by the department  
20 in regard to allegations of violations of this subchapter by an  
21 insurer when the department, the complainant, or the insurer  
22 requests a hearing after issuance of the commissioner order under  
23 Section 1301.139.

24 (b) On request for a hearing under Subsection (a), the State  
25 Office of Administrative Hearings shall notify the parties of the  
26 date, time, and place of the hearing. After a case has been placed  
27 on the docket, any party, including the department, the

1 complainant, or the insurer, may move for appropriate relief,  
2 including discovery and evidentiary rulings, continuances and  
3 settings, request for a mediated settlement conference, mediation,  
4 or arbitration.

5 (c) If it appears to the department, the complainant, or the  
6 insurer that a person or entity is engaging in or is about to engage  
7 in a violation of a final order or decision by the State Office of  
8 Administrative Hearings, the department, the complainant, or the  
9 insurer may bring an action for judicial review in district court in  
10 Travis County to enjoin or restrain the continuation or  
11 commencement of the violation or to compel compliance with the  
12 final order or decision by the State Office of Administrative  
13 Hearings.

14 Sec. 1301.141. LEGISLATIVE DECLARATION. It is the intent  
15 of the legislature that the requirements contained in this  
16 subchapter regarding payment of claims to providers who are  
17 pharmacists or pharmacies apply to all health care plans and  
18 pharmacy benefit managers unless otherwise prohibited by federal  
19 law.

20 Sec. 1301.142. SEVERABILITY. If any provision or clause of  
21 this chapter or its application to any person, entity, or  
22 circumstance is held invalid, including Section 843.356, the  
23 invalidity does not affect other provisions or applications of this  
24 chapter that can be given effect without the invalid provision or  
25 application and without being inconsistent with the intent of this  
26 chapter, and to this end the provisions of this chapter are declared  
27 to be severable.

1           SECTION 13. The change in law made by this Act applies only  
2 to a claim submitted by a provider to a health maintenance  
3 organization or an insurer on or after the effective date of this  
4 Act. A claim submitted before the effective date of this Act is  
5 governed by the law as it existed immediately before that date, and  
6 that law is continued in effect for that purpose.

7           SECTION 14. This Act takes effect September 1, 2007.