

By: Van de Putte

S.B. No. 1106

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 (9-a) to read as follows:

(9-a) "Extrapolation" means a mathematical process or technique used by a health maintenance organization or pharmacy benefit manager that administers pharmacy claims for a health maintenance organization in the audit of a pharmacy or pharmacist to estimate audit results or findings for a larger batch or group of claims not reviewed by the health maintenance organization or pharmacy benefit manager.

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) if the health maintenance organization determines

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

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

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

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

13 Sec. 843.339. DEADLINE FOR ACTION ON [~~CERTAIN~~] PRESCRIPTION  
14 CLAIMS; PAYMENT. (a) A [Not later than the 21st day after the date  
15 a] health maintenance organization, or a pharmacy benefit manager  
16 that administers pharmacy claims for the health maintenance  
17 organization, that affirmatively adjudicates a pharmacy claim that  
18 is electronically submitted, [the health maintenance organization]  
19 shall pay the total amount of the claim through electronic funds  
20 transfer not later than the 14th day after the date on which the  
21 claim was affirmatively adjudicated.

22 (b) A health maintenance organization, or a pharmacy  
23 benefit manager that administers pharmacy claims for the health  
24 maintenance organization, that affirmatively adjudicates a  
25 pharmacy claim that is not electronically submitted, shall pay the  
26 total amount of the claim not later than the 21st day after the date  
27 on which the claim was affirmatively adjudicated.

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

3 (f) A health maintenance organization or a pharmacy benefit  
4 manager that administers pharmacy claims for the health maintenance  
5 organization may not use extrapolation to complete the audit of a  
6 provider who is a pharmacist or pharmacy. A health maintenance  
7 organization or a pharmacy benefit manager that administers  
8 pharmacy claims for the health maintenance organization may not  
9 require extrapolation audits as a condition of participation in the  
10 health maintenance organization's contract, network, or program  
11 for a provider who is a pharmacist or pharmacy.

12 (g) A health maintenance organization or a pharmacy benefit  
13 manager that administers pharmacy claims for the health maintenance  
14 organization that performs an on-site audit under this chapter of a  
15 provider who is a pharmacist or pharmacy shall provide the provider  
16 reasonable notice of the audit and accommodate the provider's  
17 schedule to the greatest extent possible. The notice required  
18 under this subsection must be in writing and must be sent by  
19 certified mail to the provider not later than the 15th day before  
20 the date on which the on-site audit is scheduled to 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, a pharmacy benefit manager that administers pharmacy  
16 claims for the health maintenance organization, or another entity  
17 that contracts with the health maintenance organization as provided  
18 by Section 843.344. A complaint must be submitted in writing or by  
19 submitting a completed complaint form to the department by mail or  
20 through another delivery method. The department shall maintain a  
21 complaint form on the department's Internet website and at the  
22 department's offices for use by a complainant.

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

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

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

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

8                   (B) that, on request to the department, the  
9 health maintenance organization and the complainant are entitled to  
10 a hearing conducted by the State Office of Administrative Hearings  
11 in the manner prescribed by Section 843.355 regarding the  
12 determinations made in the order; and

13           (3) a determination of the denial of the allegations  
14 or the imposition of penalties against the health maintenance  
15 organization.

16           (d) An order issued under Subsection (c) is final in the  
17 absence of a request by the complainant or health maintenance  
18 organization for a hearing under Section 843.355.

19           (e) If the department investigation substantiates the  
20 allegations of noncompliance made under Subsection (b), the  
21 commissioner, after notice and an opportunity for a hearing as  
22 described by Subsection (c), shall require the health maintenance  
23 organization to pay penalties as provided by Section 843.342.

24           Sec. 843.355. HEARING BY STATE OFFICE OF ADMINISTRATIVE  
25 HEARINGS; FINAL ORDER. (a) The State Office of Administrative  
26 Hearings shall conduct a hearing regarding a written order of the  
27 commissioner under Section 843.354 on the request of the

1 department. A hearing under this section is subject to Chapter  
2 2001, Government Code, and shall be conducted as a contested case  
3 hearing.

4 (b) After receipt of a proposal for decision issued by the  
5 State Office of Administrative Hearings after a hearing conducted  
6 under Subsection (a), the commissioner shall issue a final order.

7 (c) If it appears to the department, the complainant, or the  
8 health maintenance organization that a person or entity is engaging  
9 in or is about to engage in a violation of a final order issued under  
10 Subsection (b), the department, the complainant, or the health  
11 maintenance organization may bring an action for judicial review in  
12 district court in Travis County to enjoin or restrain the  
13 continuation or commencement of the violation or to compel  
14 compliance with the final order. The complainant or the health  
15 maintenance organization may also bring an action for judicial  
16 review of the final order.

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

23 SECTION 7. Section 1301.001, Insurance Code, is amended by  
24 amending Subdivision (1) and adding Subdivision (1-a) to read as  
25 follows:

26 (1) "Extrapolation" means a mathematical process or  
27 technique used by an insurer or pharmacy benefit manager that

1 administers pharmacy claims for an insurer in the audit of a  
2 pharmacy or pharmacist to estimate audit results or findings for a  
3 larger batch or group of claims not reviewed by the insurer or  
4 pharmacy benefit manager.

5 (1-a) "Health care provider" means a practitioner,  
6 institutional provider, or other person or organization that  
7 furnishes health care services and that is licensed or otherwise  
8 authorized to practice in this state. The term includes a  
9 pharmacist and a pharmacy. The term does not include a physician.

10 SECTION 8. Section 1301.103, Insurance Code, is amended to  
11 read as follows:

12 Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except  
13 as provided by Sections 1301.104 and ~~[Section]~~ 1301.1054, not later  
14 than the 45th day after the date an insurer receives a clean claim  
15 from a preferred provider in a nonelectronic format or the 30th day  
16 after the date an insurer receives a clean claim from a preferred  
17 provider that is electronically submitted, the insurer shall make a  
18 determination of whether the claim is payable and:

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

22 (2) if the insurer determines a portion of the claim is  
23 payable, pay the portion of the claim that is not in dispute and  
24 notify the preferred provider in writing why the remaining portion  
25 of the claim will not be paid; or

26 (3) if the insurer determines that the claim is not  
27 payable, notify the preferred provider in writing why the claim

1 will not be paid.

2 SECTION 9. Section 1301.104, Insurance Code, is amended to  
3 read as follows:

4 Sec. 1301.104. DEADLINE FOR ACTION ON CERTAIN PHARMACY  
5 CLAIMS; PAYMENT. (a) An [Not later than the 21st day after the date  
6 an] insurer, or a pharmacy benefit manager that administers  
7 pharmacy claims for the insurer under a preferred provider benefit  
8 plan, that affirmatively adjudicates a pharmacy claim that is  
9 electronically submitted, [the insurer] shall pay the total amount  
10 of the claim through electronic funds transfer not later than the  
11 14th day after the date on which the claim was affirmatively  
12 adjudicated.

13 (b) An insurer, or a pharmacy benefit manager that  
14 administers pharmacy claims for the insurer under a preferred  
15 provider benefit plan, that affirmatively adjudicates a pharmacy  
16 claim that is not electronically submitted, shall pay the total  
17 amount of the claim not later than the 21st day after the date on  
18 which the claim was affirmatively adjudicated.

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

21 (e) An insurer or a pharmacy benefit manager that  
22 administers pharmacy claims for the insurer may not use  
23 extrapolation to complete the audit of a preferred provider that is  
24 a pharmacist or pharmacy. An insurer may not require extrapolation  
25 audits as a condition of participation in the insurer's contract,  
26 network, or program for a preferred provider that is a pharmacist or  
27 pharmacy.



1       (f) An insurer or a pharmacy benefit manager that  
2 administers pharmacy claims for the insurer that performs an  
3 on-site audit of a preferred provider that is a pharmacist or  
4 pharmacy shall provide the provider reasonable notice of the audit  
5 and accommodate the provider's schedule to the greatest extent  
6 possible. The notice required under this subsection must be in  
7 writing and must be sent by certified mail to the preferred provider  
8 not later than the 15th day before the date on which the on-site  
9 audit is scheduled to occur.

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

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

- 15               (1) process or pay claims;
- 16               (2) obtain the services of physicians and health care  
17 providers to provide health care services to insureds; or
- 18               (3) issue verifications or preauthorizations.

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

22       Sec. 1301.139. DEPARTMENT ENFORCEMENT OF PHARMACY CLAIMS.

23 (a) Notwithstanding any other provision of this subchapter, a  
24 dispute regarding payment of a claim to a preferred provider who is  
25 a pharmacist or pharmacy shall be resolved as provided by this  
26 section.

27       (b) A preferred provider who is a pharmacist or pharmacy may

1 submit a complaint to the department alleging noncompliance with  
2 the requirements of this subchapter by an insurer, a pharmacy  
3 benefit manager that administers pharmacy claims for the insurer,  
4 or another entity that contracts with the insurer as provided by  
5 Section 1301.109. A complaint must be submitted in writing or by  
6 submitting a completed complaint form to the department by mail or  
7 through another delivery method. The department shall maintain a  
8 complaint form on the department's Internet website and at the  
9 department's offices for use by a complainant.

10 (c) After investigation of the complaint by the department,  
11 the commissioner shall determine the validity of the complaint and  
12 shall enter a written order. In the order, the commissioner shall  
13 provide the insurer and the complainant with:

14 (1) a summary of the investigation conducted by the  
15 department;

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

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

21 (B) that, on request to the department, the  
22 insurer and the complainant are entitled to a hearing conducted by  
23 the State Office of Administrative Hearings in the manner  
24 prescribed by Section 1301.140 regarding the determinations made in  
25 the order; and

26 (3) a determination of the denial of the allegations  
27 or the imposition of penalties against the insurer.

1       (d) An order issued under Subsection (c) is final in the  
2 absence of a request by the complainant or insurer for a hearing  
3 under Section 1301.140.

4       (e) If the department investigation substantiates the  
5 allegations of noncompliance made under Subsection (b), the  
6 commissioner, after notice and an opportunity for a hearing as  
7 described by Subsection (c), shall require the insurer to pay  
8 penalties as provided by Section 1301.137.

9       Sec. 1301.140. HEARING BY STATE OFFICE OF ADMINISTRATIVE  
10 HEARINGS; FINAL ORDER. (a) The State Office of Administrative  
11 Hearings shall conduct a hearing regarding a written order of the  
12 commissioner under Section 1301.139 on the request of the  
13 department. A hearing under this section is subject to Chapter  
14 2001, Government Code, and shall be conducted as a contested case  
15 hearing.

16       (b) After receipt of a proposal for decision issued by the  
17 State Office of Administrative Hearings after a hearing conducted  
18 under Subsection (a), the commissioner shall issue a final order.

19       (c) If it appears to the department, the complainant, or the  
20 insurer that a person or entity is engaging in or is about to engage  
21 in a violation of a final order issued under Subsection (b), the  
22 department, the complainant, or the insurer may bring an action for  
23 judicial review in district court in Travis County to enjoin or  
24 restrain the continuation or commencement of the violation or to  
25 compel compliance with the final order. The complainant or the  
26 insurer may also bring an action for judicial review of the final  
27 order.

1       Sec. 1301.141. LEGISLATIVE DECLARATION. It is the intent  
2 of the legislature that the requirements contained in this  
3 subchapter regarding payment of claims to preferred providers who  
4 are pharmacists or pharmacies apply to all insurers and pharmacy  
5 benefit managers unless otherwise prohibited by federal law.

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

12       SECTION 14. The change in law made by this Act applies only  
13 to a contract between a pharmacy benefit manager and an insurer or  
14 health maintenance organization entered into or renewed on or after  
15 January 1, 2010. A contract entered into or renewed before January  
16 1, 2010, is governed by the law as it existed immediately before the  
17 effective date of this Act, and that law is continued in effect for  
18 that purpose.

19       SECTION 15. This Act takes effect September 1, 2009.