

Amend **HB 1951** (house committee printing) by adding the following appropriately numbered ARTICLE and renumbering ARTICLES of the bill accordingly:

ARTICLE ____ . PAYMENT OF CLAIMS TO PHARMACIES AND PHARMACISTS

SECTION ____ .001. Section 843.002, Insurance Code, is amended by amending Subdivision (9-a) and adding Subdivision (9-b) 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.

(9-b) "Freestanding emergency medical care facility" means a facility licensed under Chapter 254, Health and Safety Code.

SECTION ____ .002. 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 the entire claim is payable, pay the total amount of the claim in accordance with the contract between the physician or provider and the health maintenance organization;

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

(3) if the health maintenance organization determines

that the claim is not payable, notify the physician or provider in writing why the claim will not be paid.

SECTION ____ .003. Section 843.339, Insurance Code, is amended to read as follows:

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

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

SECTION ____ .004. Subchapter J, Chapter 843, Insurance Code, is amended by adding Section 843.3401 to read as follows:

Sec. 843.3401. AUDIT OF PHARMACIST OR PHARMACY. (a) A health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization may not use extrapolation to complete the audit of a provider who is a pharmacist or pharmacy. A health maintenance organization may not require extrapolation audits as a condition of participation in the health maintenance organization's contract, network, or program for a provider who is a pharmacist or pharmacy.

(b) A health maintenance organization or a pharmacy benefit manager that administers pharmacy claims for the health maintenance organization that performs an on-site audit under this chapter of a provider who is a pharmacist or pharmacy shall provide the provider reasonable notice of the audit and accommodate the provider's schedule to the greatest extent possible. The notice required under this subsection must be in writing and must be sent by certified mail to the provider not later than the 15th day before

the date on which the on-site audit is scheduled to occur.

SECTION ____ .005. Section 843.344, Insurance Code, is amended to read as follows:

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

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

SECTION ____ .006. Subchapter J, Chapter 843, Insurance Code, is amended by adding Section 843.354 to read as follows:

Sec. 843.354. LEGISLATIVE DECLARATION. It is the intent of the legislature that the requirements contained in this subchapter regarding payment of claims to providers who are pharmacists or pharmacies apply to all health maintenance organizations and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION ____ .007. Section 1301.001, Insurance Code, is amended by amending Subdivision (1) and adding Subdivision (1-a) to read as follows:

(1) "Extrapolation" means a mathematical process or technique used by an insurer or pharmacy benefit manager that administers pharmacy claims for an insurer 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 insurer or pharmacy benefit manager.

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

SECTION ____ .008. Section 1301.103, Insurance Code, is amended to read as follows:

Sec. 1301.103. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except as provided by Sections 1301.104 and [Section] 1301.1054, not later

than the 45th day after the date an insurer receives a clean claim from a preferred provider in a nonelectronic format or the 30th day after the date an insurer receives a clean claim from a preferred provider that is electronically submitted, the insurer shall make a determination of whether the claim is payable and:

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

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

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

SECTION ____ .009. Section 1301.104, Insurance Code, is amended to read as follows:

Sec. 1301.104. DEADLINE FOR ACTION ON [~~CERTAIN~~] PHARMACY CLAIMS; PAYMENT. (a) An [Not later than the 21st day after the date an] insurer, or a pharmacy benefit manager that administers pharmacy claims for the insurer under a preferred provider benefit plan, that affirmatively adjudicates a pharmacy claim that is electronically submitted[~~, the insurer~~] shall pay the total amount of the claim through electronic funds transfer not later than the 18th day after the date on which the claim was affirmatively adjudicated.

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

SECTION ____ .010. Subchapter C, Chapter 1301, Insurance Code, is amended by adding Section 1301.1041 to read as follows:

Sec. 1301.1041. AUDIT OF PHARMACIST OR PHARMACY. (a) An insurer or a pharmacy benefit manager that administers pharmacy claims for the insurer may not use extrapolation to complete the

audit of a preferred provider that is a pharmacist or pharmacy. An insurer may not require extrapolation audits as a condition of participation in the insurer's contract, network, or program for a preferred provider that is a pharmacist or pharmacy.

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

SECTION _____.011. Section 1301.109, Insurance Code, is amended to read as follows:

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

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

SECTION _____.012. Subchapter C-1, Chapter 1301, Insurance Code, is amended by adding Section 1301.139 to read as follows:

Sec. 1301.139. LEGISLATIVE DECLARATION. It is the intent of the legislature that the requirements contained in this subchapter regarding payment of claims to preferred providers who are pharmacists or pharmacies apply to all insurers and pharmacy benefit managers unless otherwise prohibited by federal law.

SECTION _____.013. (a) With respect to pharmacy benefits provided under a contract, the changes in law made by this article apply only to a contract entered into or renewed on or after the effective date of this Act and payment for pharmacy benefits provided under the contract. A contract entered into before the effective date of this Act and not renewed or that was last renewed before the effective date of this Act, and payment for pharmacy benefits provided under the contract, are governed by the law in

effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(b) With respect to payment for pharmacy benefits not provided under a contract to which Subsection (a) of this section applies, the changes in law made by this article apply only to payment for benefits provided on or after the effective date of this Act. Payment for benefits not subject to Subsection (a) of this section and provided before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Sections 843.3401 and 1301.1041, Insurance Code, as added by this article, apply to an audit of a pharmacist or pharmacy performed on or after the effective date of this Act unless the audit is performed under a contract that is entered into before the effective date of this Act and that, at the time of the audit, has not been renewed or was last renewed before the effective date of this Act.