

1 AN ACT

2 relating to payment of claims to pharmacies and pharmacists.

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

4 SECTION 1. Section 843.002, Insurance Code, is amended by  
5 amending Subdivision (9-a) and adding Subdivision (9-b) to read as  
6 follows:

7 (9-a) "Extrapolation" means a mathematical process or  
8 technique used by a health maintenance organization or pharmacy  
9 benefit manager that administers pharmacy claims for a health  
10 maintenance organization in the audit of a pharmacy or pharmacist  
11 to estimate audit results or findings for a larger batch or group of  
12 claims not reviewed by the health maintenance organization or  
13 pharmacy benefit manager.

14 (9-b) "Freestanding emergency medical care facility"  
15 means a facility licensed under Chapter 254, Health and Safety  
16 Code.

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

19 Sec. 843.338. DEADLINE FOR ACTION ON CLEAN CLAIMS. Except  
20 as provided by Sections [~~Section~~] 843.3385 and 843.339, not later  
21 than the 45th day after the date on which a health maintenance  
22 organization receives a clean claim from a participating physician  
23 or provider in a nonelectronic format or the 30th day after the date  
24 the health maintenance organization receives a clean claim from a

1 participating physician or provider that is electronically  
2 submitted, the health maintenance organization shall make a  
3 determination of whether the claim is payable and:

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

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

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

15 SECTION 3. Section 843.339, Insurance Code, is amended to  
16 read as follows:

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

26 (b) A health maintenance organization, or a pharmacy  
27 benefit manager that administers pharmacy claims for the health

1 maintenance organization, that affirmatively adjudicates a  
2 pharmacy claim that is not electronically submitted shall pay the  
3 total amount of the claim not later than the 21st day after the date  
4 on which the claim was affirmatively adjudicated.

5 SECTION 4. Subchapter J, Chapter 843, Insurance Code, is  
6 amended by adding Section 843.3401 to read as follows:

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

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

24 SECTION 5. Section 843.344, Insurance Code, is amended to  
25 read as follows:

26 Sec. 843.344. APPLICABILITY OF SUBCHAPTER TO ENTITIES  
27 CONTRACTING WITH HEALTH MAINTENANCE ORGANIZATION. This subchapter

1 applies to a person, including a pharmacy benefit manager, with  
2 whom a health maintenance organization contracts to:

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

7 SECTION 6. Subchapter J, Chapter 843, Insurance Code, is  
8 amended by adding Section 843.354 to read as follows:

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

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

18 (1) "Extrapolation" means a mathematical process or  
19 technique used by an insurer or pharmacy benefit manager that  
20 administers pharmacy claims for an insurer in the audit of a  
21 pharmacy or pharmacist to estimate audit results or findings for a  
22 larger batch or group of claims not reviewed by the insurer or  
23 pharmacy benefit manager.

24 (1-a) "Health care provider" means a practitioner,  
25 institutional provider, or other person or organization that  
26 furnishes health care services and that is licensed or otherwise  
27 authorized to practice in this state. The term includes a

1 pharmacist and a pharmacy. The term does not include a physician.

2 SECTION 8. Section 1301.103, Insurance Code, is amended to  
3 read as follows:

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

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

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

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

21 SECTION 9. Section 1301.104, Insurance Code, is amended to  
22 read as follows:

23 Sec. 1301.104. DEADLINE FOR ACTION ON [~~CERTAIN~~] PHARMACY  
24 CLAIMS; PAYMENT. (a) An [~~Not later than the 21st day after the date~~  
25 ~~an~~] insurer, or a pharmacy benefit manager that administers  
26 pharmacy claims for the insurer under a preferred provider benefit  
27 plan, that affirmatively adjudicates a pharmacy claim that is

1 electronically submitted[~~, the insurer~~] shall pay the total amount  
2 of the claim through electronic funds transfer not later than the  
3 18th day after the date on which the claim was affirmatively  
4 adjudicated.

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

11 SECTION 10. Subchapter C, Chapter 1301, Insurance Code, is  
12 amended by adding Section 1301.1041 to read as follows:

13 Sec. 1301.1041. AUDIT OF PHARMACIST OR PHARMACY. (a) An  
14 insurer or a pharmacy benefit manager that administers pharmacy  
15 claims for the insurer may not use extrapolation to complete the  
16 audit of a preferred provider that is a pharmacist or pharmacy. An  
17 insurer may not require extrapolation audits as a condition of  
18 participation in the insurer's contract, network, or program for a  
19 preferred provider that is a pharmacist or pharmacy.

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

1 audit is scheduled to occur.

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

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

7 (1) process or pay claims;

8 (2) obtain the services of physicians and health care  
9 providers to provide health care services to insureds; or

10 (3) issue verifications or preauthorizations.

11 SECTION 12. Subchapter C-1, Chapter 1301, Insurance Code,  
12 is amended by adding Section 1301.139 to read as follows:

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

18 SECTION 13. (a) With respect to pharmacy benefits provided  
19 under a contract, the changes in law made by this Act apply only to a  
20 contract entered into or renewed on or after the effective date of  
21 this Act and payment for pharmacy benefits provided under the  
22 contract. A contract entered into before the effective date of this  
23 Act and not renewed or that was last renewed before the effective  
24 date of this Act, and payment for pharmacy benefits provided under  
25 the contract, are governed by the law in effect immediately before  
26 the effective date of this Act, and that law is continued in effect  
27 for that purpose.

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

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

16           SECTION 14. This Act takes effect September 1, 2011.



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President of the Senate

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Speaker of the House

I certify that H.B. No. 2292 was passed by the House on May 13, 2011, by the following vote: Yeas 138, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2292 was passed by the Senate on May 24, 2011, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor