

By: Van de Putte

S.B. No. 1211

A BILL TO BE ENTITLED

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 1213.005, Insurance Code, is amended to
16 read as follows:

17 Sec. 1213.005. CERTAIN CHARGES PROHIBITED. A health
18 benefit plan or pharmacy benefit manager may not directly or
19 indirectly charge or hold a health care professional, health care
20 facility, or person enrolled in a health benefit plan responsible
21 for a fee for the adjudication of a claim.

22 SECTION 8. Section 1301.001, Insurance Code, is amended by
23 amending Subdivision (1) and adding Subdivision (1-a) to read as
24 follows:

25 (1) "Extrapolation" means a mathematical process or
26 technique used by an insurer or pharmacy benefit manager that
27 administers pharmacy claims for an insurer in the audit of a

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

4 (1-a) "Health care provider" means a practitioner,
5 institutional provider, or other person or organization that
6 furnishes health care services and that is licensed or otherwise
7 authorized to practice in this state. The term includes a
8 pharmacist and a pharmacy. The term does not include a physician.

9 SECTION 9. Section 1301.103, Insurance Code, is amended to
10 read as follows:

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

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

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

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

1 SECTION 10. Section 1301.104, Insurance Code, is amended to
2 read as follows:

3 Sec. 1301.104. DEADLINE FOR ACTION ON [~~CERTAIN~~] PHARMACY
4 CLAIMS; PAYMENT. (a) An [Not later than the 21st day after the date
5 an] insurer, or a pharmacy benefit manager that administers
6 pharmacy claims for the insurer under a preferred provider benefit
7 plan, that affirmatively adjudicates a pharmacy claim that is
8 electronically submitted[~~, the insurer~~] shall pay the total amount
9 of the claim through electronic funds transfer not later than the
10 18th day after the date on which the claim was affirmatively
11 adjudicated.

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

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

20 Sec. 1301.1041. AUDIT OF PHARMACIST OR PHARMACY. (a) An
21 insurer or a pharmacy benefit manager that administers pharmacy
22 claims for the insurer may not use extrapolation to complete the
23 audit of a preferred provider that is a pharmacist or pharmacy. An
24 insurer may not require extrapolation audits as a condition of
25 participation in the insurer's contract, network, or program for a
26 preferred provider that is a pharmacist or pharmacy.

27 (b) An insurer or a pharmacy benefit manager that

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

9 SECTION 12. Section 1301.109, Insurance Code, is amended to
10 read as follows:

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

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

18 SECTION 13. Subchapter C-1, Chapter 1301, Insurance Code,
19 is amended by adding Section 1301.139 to read as follows:

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

25 SECTION 14. (a) With respect to pharmacy benefits provided
26 under a contract, the changes in law made by this Act apply only to a
27 contract entered into or renewed on or after the effective date of

1 this Act and payment for pharmacy benefits provided under the
2 contract. A contract entered into before the effective date of this
3 Act and not renewed or that was last renewed before the effective
4 date of this Act, and payment for pharmacy benefits provided under
5 the contract, are governed by the law in effect immediately before
6 the effective date of this Act, and that law is continued in effect
7 for that purpose.

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

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

23 SECTION 15. This Act takes effect September 1, 2011.