

By: Eiland

H.B. No. 1036

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of pharmacy benefit managers; imposing penalties; imposing and authorizing fees.

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

SECTION 1. Subtitle D, Title 13, Insurance Code, is amended by adding Chapter 4154 to read as follows:

CHAPTER 4154. PHARMACY BENEFIT MANAGERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 4154.001. DEFINITIONS. In this chapter:

(1) "Covered entity" means an entity that issues or provides coverage described by Section 4154.002.

(2) "Covered individual" means a member, participant, enrollee, contract holder, policyholder, or beneficiary of a covered entity who is provided health coverage by the covered entity. The term includes a dependent or other individual who receives health coverage through a policy, contract, or plan for a covered individual.

(3) "Extrapolation" means a mathematical process or technique to estimate audit results or findings for a larger batch or group of claims not audited.

(4) "Pharmacy benefit management" means administration or management of prescription drug benefits provided by a covered entity, including:

(A) retail pharmacy network management;

- 1 (B) pharmacy discount card management;
2 (C) claims payment to a retail pharmacy for
3 prescription medications dispensed to covered individuals;
4 (D) clinical formulary development and
5 management services, including utilization management and quality
6 assurance programs;
7 (E) rebate contracting and administration;
8 (F) auditing contracted pharmacies;
9 (G) establishing pharmacy reimbursement pricing
10 and methodologies; and
11 (H) determining single and multiple source
12 medications.

13 (5) "Pharmacy benefit manager" means an entity that:

- 14 (A) contracts with a retail pharmacy on behalf of
15 a covered entity for the pharmacy to provide pharmacy services to
16 the covered entity; and
17 (B) provides pharmacy benefit management
18 services.

19 (6) "Retail pharmacy" means a pharmacy licensed under
20 Chapter 560, Occupations Code, that dispenses medications to the
21 public, including an independent pharmacy, a chain pharmacy, a
22 supermarket pharmacy, or a mass merchandiser pharmacy. The term
23 does not include a pharmacy that dispenses prescription medications
24 primarily through the mail, a nursing home pharmacy, a long-term
25 care facility pharmacy, a hospital pharmacy, a clinic pharmacy, a
26 charitable or nonprofit pharmacy, a government pharmacy, or a
27 pharmacy benefit manager that is serving in its capacity as a

1 pharmacy benefit manager.

2 Sec. 4154.002. APPLICABILITY OF CHAPTER; EXCEPTION. (a)

3 This chapter applies only to a pharmacy benefit manager that
4 provides pharmacy benefit management with respect to prescription
5 drug benefits provided by an entity that issues or provides a health
6 benefit plan that provides benefits for medical or surgical
7 expenses incurred as a result of a health condition, accident, or
8 sickness, including an individual, group, blanket, or franchise
9 insurance policy or insurance agreement, a group hospital service
10 contract, or an individual or group evidence of coverage or similar
11 coverage document that is offered by:

12 (1) an insurance company;

13 (2) a group hospital service corporation operating
14 under Chapter 842;

15 (3) a fraternal benefit society operating under
16 Chapter 885;

17 (4) a stipulated premium company operating under
18 Chapter 884;

19 (5) an exchange operating under Chapter 942;

20 (6) a health maintenance organization operating under
21 Chapter 843;

22 (7) a multiple employer welfare arrangement that holds
23 a certificate of authority under Chapter 846; or

24 (8) an approved nonprofit health corporation that
25 holds a certificate of authority under Chapter 844.

26 (b) This chapter applies to a pharmacy benefit manager that
27 provides pharmacy benefit management with respect to prescription

1 drug benefits provided by the provider or issuer of group health
2 coverage made available by a school district in accordance with
3 Section 22.004, Education Code.

4 (c) Notwithstanding Section 172.014, Local Government Code,
5 or any other law, this chapter applies to a pharmacy benefit manager
6 that provides pharmacy benefit management with respect to
7 prescription drug benefits provided by a risk pool created under
8 Chapter 172, Local Government Code, that provides health and
9 accident coverage.

10 (d) Notwithstanding any provision in Chapter 1551, 1575,
11 1579, or 1601 or any other law, this chapter applies to a pharmacy
12 benefit manager that provides pharmacy benefit management with
13 respect to prescription drug benefits provided by the provider or
14 issuer of:

- 15 (1) a basic coverage plan under Chapter 1551;
16 (2) a basic plan under Chapter 1575;
17 (3) a primary care coverage plan under Chapter 1579;

18 and

- 19 (4) basic coverage under Chapter 1601.

20 (e) Notwithstanding Section 1501.251 or any other law, this
21 chapter applies to a pharmacy benefit manager that provides
22 pharmacy benefit management with respect to prescription drug
23 benefits provided by the issuer of coverage under a small employer
24 health benefit plan subject to Chapter 1501.

25 (f) To the extent allowed by federal law, this chapter
26 applies to a pharmacy benefit manager that provides pharmacy
27 benefit management with respect to prescription drug benefits

1 provided by the state Medicaid program or a managed care
2 organization that contracts with the Health and Human Services
3 Commission to provide health care services to Medicaid recipients
4 through a managed care plan.

5 (g) This chapter does not apply to a pharmacy benefit
6 manager that provides pharmacy benefit management with respect to
7 prescription drug benefits provided by:

8 (1) a plan that provides coverage:

9 (A) for wages or payments in lieu of wages for a
10 period during which an employee is absent from work because of
11 sickness or injury;

12 (B) as a supplement to a liability insurance
13 policy;

14 (C) for credit insurance;

15 (D) only for dental or vision care;

16 (E) only for hospital expenses; or

17 (F) only for indemnity for hospital confinement;

18 (2) a Medicare supplemental policy as defined by
19 Section 1882(g)(1), Social Security Act (42 U.S.C. Section 1395ss);

20 (3) a workers' compensation insurance policy;

21 (4) medical payment insurance coverage provided under
22 a motor vehicle insurance policy; or

23 (5) a long-term care policy, including a nursing home
24 fixed indemnity policy, unless the commissioner determines that the
25 policy provides benefit coverage so comprehensive that the policy
26 is a health benefit plan as described by Subsections (a)-(f).

27 Sec. 4154.003. AGENT FOR SERVICE OF PROCESS. (a) As a

1 condition of being authorized to act as a pharmacy benefit manager
2 under this chapter, an applicant must appoint and maintain as agent
3 for service of process a person in this state on whom judicial or
4 administrative process may be served.

5 (b) If an applicant does not appoint or maintain a person in
6 this state as agent for service of process or the agent cannot with
7 reasonable diligence be found, the commissioner may accept service
8 of process and notify the applicant.

9 Sec. 4154.004. RULES. The commissioner may adopt rules and
10 standards as necessary to implement this chapter.

11 [Sections 4154.005-4154.050 reserved for expansion]

12 SUBCHAPTER B. CERTIFICATE OF AUTHORITY

13 Sec. 4154.051. CERTIFICATE OF AUTHORITY REQUIRED. Except
14 as provided by Section 4154.251(b), an entity may not act as or hold
15 itself out as a pharmacy benefit manager in this state unless the
16 entity is covered by and is engaging in business under a certificate
17 of authority issued under this chapter.

18 Sec. 4154.052. APPLICATION. The application for a
19 certificate of authority under this subchapter must be:

- 20 (1) in the form prescribed by the commissioner; and
21 (2) verified by an officer or authorized
22 representative of the applicant.

23 Sec. 4154.053. CONTENTS OF APPLICATION. (a) An application
24 for a certificate of authority under this subchapter must include:

- 25 (1) a copy of the applicant's organizational
26 documents, including the articles of incorporation, articles of
27 association, partnership agreement, trust agreement, bylaws, or

1 other applicable documents;

2 (2) all amendments to the applicant's organizational
3 documents; and

4 (3) a financial statement for each of the two years
5 preceding the date of the application that includes:

6 (A) projected financial statements during the
7 initial period of operation under the certificate of authority;

8 (B) a balance sheet reflecting the condition of
9 the applicant on the date operations are expected to start;

10 (C) a statement of revenue and expenses with
11 expected member months; and

12 (D) a cash flow statement that states any capital
13 expenditures, purchase and sale of investments, and deposits with
14 the state.

15 (b) An application for a certificate of authority must
16 include a list of the names, addresses, and official positions of
17 the persons responsible for the conduct of the applicant's affairs,
18 including:

19 (1) each member of the board of directors, board of
20 trustees, executive committee, or other governing body or
21 committee;

22 (2) the principal officer, if the applicant is a
23 corporation;

24 (3) each partner or member, if the applicant is a
25 partnership or association; and

26 (4) other information required by the commissioner.

27 (c) An application for a certificate of authority must

1 include a detailed description of pharmacy benefit management and
2 other services, if any, the applicant will provide.

3 Sec. 4154.054. FEES; EXPENSES. (a) An applicant for the
4 issuance or renewal of a certificate of authority under this
5 subchapter must pay a fee in an amount set by the commissioner on
6 the date the applicant files the application for issuance or
7 renewal.

8 (b) The commissioner may annually assess a fee against all
9 pharmacy benefit managers in this state in an amount necessary to
10 cover the costs incurred in administering this chapter.

11 Sec. 4154.055. DURATION OF CERTIFICATE OF AUTHORITY. A
12 certificate of authority under this chapter is effective until the
13 earlier of:

14 (1) one year from the date the application for the
15 certificate is approved or the certificate is renewed, as
16 applicable; or

17 (2) the date the certificate is suspended, canceled,
18 or revoked.

19 Sec. 4154.056. STREAMLINED PROCEDURES. The commissioner
20 may adopt and implement procedures for streamlining certification
21 under this chapter.

22 [Sections 4154.057-4154.100 reserved for expansion]

23 SUBCHAPTER C. GENERAL REQUIREMENTS AND PROHIBITIONS

24 Sec. 4154.101. AMENDMENT OF CONTRACT TERM. A pharmacy
25 benefit manager may not change a term of a contract with a retail
26 pharmacy, including automatically enrolling or disenrolling the
27 pharmacy from a pharmacy benefit network, without prior written

1 agreement of the retail pharmacy.

2 Sec. 4154.102. CERTAIN TRANSACTION FEES PROHIBITED. A
3 pharmacy benefit manager may not charge a transaction fee for a
4 claim submitted electronically to the pharmacy benefit manager by a
5 retail pharmacy.

6 Sec. 4154.103. PHARMACY NETWORK REQUIREMENTS AND
7 PROHIBITIONS. (a) A pharmacy benefit manager may not require that
8 a retail pharmacy be a member of a network managed by the pharmacy
9 benefit manager as a condition for the retail pharmacy to
10 participate in another network managed by the pharmacy benefit
11 manager.

12 (b) A pharmacy benefit manager may not exclude a retail
13 pharmacy from participation in a network if the pharmacy:

14 (1) accepts the terms, conditions, and reimbursement
15 rates of the pharmacy benefit manager;

16 (2) meets all applicable federal and state licensure
17 and permit requirements; and

18 (3) has not been excluded from participation as a
19 provider in any federal or state program.

20 (c) A pharmacy benefit manager shall establish a pharmacy
21 network that includes sufficient retail pharmacies to ensure that:

22 (1) in urban areas, not less than 90 percent of health
23 plan beneficiaries, on average, live not more than two miles from a
24 network retail pharmacy;

25 (2) in suburban areas, not less than 90 percent of
26 health plan beneficiaries, on average, live not more than five
27 miles from a network retail pharmacy; and

1 (3) in rural areas, not less than 70 percent of health
2 plan beneficiaries, on average, live not more than 15 miles from a
3 network retail pharmacy.

4 Sec. 4154.104. RELATIONSHIP WITH COVERED INDIVIDUALS. A
5 pharmacy benefit manager may not:

6 (1) require that a covered individual use a retail
7 pharmacy, mail order pharmacy, specialty pharmacy, or other entity
8 providing pharmacy services:

9 (A) in which the pharmacy benefit manager has an
10 ownership interest; or

11 (B) that has an ownership interest in the
12 pharmacy benefit manager; or

13 (2) provide an incentive to a covered individual to
14 encourage the individual to use a retail pharmacy, mail order
15 pharmacy, specialty pharmacy, or other entity providing pharmacy
16 services:

17 (A) in which the pharmacy benefit manager has an
18 ownership interest; or

19 (B) that has an ownership interest in the
20 pharmacy benefit manager.

21 Sec. 4154.105. SALE, RENTAL, OR LEASING OF CLAIMS DATA. (a)
22 Not later than the 30th day before the date a pharmacy benefit
23 manager intends to sell, rent, or lease a covered entity's claims
24 data, the pharmacy benefit manager shall disclose in writing to the
25 covered entity that the pharmacy benefit manager intends to sell,
26 rent, or lease the claims data. The written disclosure must
27 identify the potential purchaser and the expected use of the data.

1 (b) A pharmacy benefit manager may not sell, rent, or lease
2 claims data without the written approval of the covered entity.

3 (c) A pharmacy benefit manager must allow each covered
4 individual to refuse the sale, rent, or lease of that individual's
5 claims data.

6 Sec. 4154.106. TRANSMISSION OF CLAIMS DATA AND CERTAIN
7 OTHER INFORMATION PROHIBITED. A pharmacy benefit manager may not
8 transmit an individual's personally identifiable utilization or
9 claims data to a pharmacy owned by the pharmacy benefit manager
10 unless before each transmission the individual consents in writing
11 to the transmission.

12 [Sections 4154.107-4154.150 reserved for expansion]

13 SUBCHAPTER D. COST PRICING AND REIMBURSEMENT

14 Sec. 4154.151. DEFINITIONS. (a) In this subchapter:

15 (1) "Maximum allowable cost price" means a maximum
16 reimbursement amount for a group of therapeutically and
17 pharmaceutically equivalent multiple source medications that are
18 listed in the most recent edition or supplement of the United States
19 Food and Drug Administration's "Approved Drug Products with
20 Therapeutic Equivalence Evaluations," and for which not fewer than
21 three equivalent medication products are nationally available.

22 (2) "Multiple source medication" means a medication
23 that, with respect to another medication, two or more other
24 products exist that are:

25 (A) rated as therapeutically equivalent in the
26 most recent edition or supplement of the United States Food and Drug
27 Administration's "Approved Drug Products with Therapeutic

1 Equivalence Evaluations";

2 (B) determined by the United States Food and Drug
3 Administration to be pharmaceutically equivalent or bioequivalent;
4 and

5 (C) separately marketed or sold in the United
6 States during a calendar quarter.

7 (3) "Nationally available" means:

8 (A) available for purchase in sufficient supply
9 by or for a retail pharmacy from national pharmaceutical
10 wholesalers; and

11 (B) actively marketed by the manufacturer or
12 labeler, regardless of the product's listing in the national
13 pricing compendia.

14 (b) For the purposes of Subsection (a)(3)(A), a product is
15 not available for purchase in sufficient supply during a period in
16 which the supply of the product is interrupted on a short-term basis
17 or the product is available only inconsistently or intermittently.

18 Sec. 4154.152. ESTABLISHMENT OF MAXIMUM ALLOWABLE COST
19 PRICE. (a) A pharmacy benefit manager may only establish a maximum
20 allowable cost price for a medication that is:

21 (1) a multiple source medication prescribed after
22 expiration of a generic exclusivity period described by 21 U.S.C.
23 Section 355; or

24 (2) a medication with not fewer than three A-rated
25 therapeutically equivalent multiple source medications, as listed
26 in the most recent edition or supplement of the United States Food
27 and Drug Administration's "Approved Drug Products with Therapeutic

1 Equivalence Evaluations," with a significant cost difference among
2 the medications.

3 (b) A pharmacy benefit manager shall establish the maximum
4 allowable cost price under Subsection (a) based on comparable drug
5 prices obtained from multiple nationally recognized comprehensive
6 data sources, including wholesalers, drug file vendors, and
7 pharmaceutical manufacturers of medications that are nationally
8 available and available for purchase locally by pharmacies in this
9 state.

10 (c) A pharmacy benefit manager shall modify a maximum
11 allowable cost price established under Subsection (a) not less than
12 twice each month to reflect updated information, if any, from data
13 sources described by Subsection (b).

14 Sec. 4154.153. REQUIRED DISCLOSURE AND NOTICE PROVISIONS.

15 (a) A pharmacy benefit manager shall disclose in a contract with a
16 retail pharmacy the data sources from which the pharmacy benefit
17 manager obtains pricing data used in establishing a maximum
18 allowable cost price under Section 4154.152.

19 (b) The contract must require the pharmacy benefit manager
20 to notify a retail pharmacy not less than once a week of a pharmacy
21 benefit manager's substitution, addition, or deletion of a data
22 source from which the pharmacy benefit manager obtains pricing data
23 used in establishing a maximum allowable cost price under Section
24 4154.152.

25 Sec. 4154.154. NOTICE OF PRICE MODIFICATION. A pharmacy
26 benefit manager shall notify a retail pharmacy of a modification of
27 a maximum allowable cost price on the date of the modification.

1 Sec. 4154.155. PRICING CONTEST PROCESS. (a) A contract
2 between a pharmacy benefit manager and a retail pharmacy must
3 establish a process by which a retail pharmacy may contest a maximum
4 allowable cost price established under Section 4154.152.

5 (b) If a retail pharmacy successfully contests a maximum
6 allowable cost price under Subsection (a), any amount due to the
7 pharmacy must be based on the retroactive application of the
8 maximum allowable cost price resulting from the contest.

9 Sec. 4154.156. GENERIC REIMBURSEMENT RATE. (a) The
10 average reimbursement rate for generic medications:

11 (1) may not be calculated solely based on the amount
12 allowed by the covered entity for generic medications; and

13 (2) must be calculated based on all generic
14 medications dispensed, including medications not subject to a
15 maximum allowable cost price under Section 4154.152.

16 (b) A pharmacy benefit manager shall pay to a retail
17 pharmacy an average reimbursement rate for a generic medication
18 calculated based on the actual amount, excluding any dispensing
19 fee, charged for the medication by the pharmacy.

20 (c) A pharmacy benefit manager must disclose in its contract
21 with a retail pharmacy:

22 (1) the average reimbursement rate described by this
23 section; and

24 (2) details of the calculations described by this
25 section.

26 Sec. 4154.157. FINALITY OF ADJUDICATION. (a) A pharmacy
27 benefit manager may not modify, reject, or reverse a positive

1 adjudication of a claim for a prescription that complies with rules
2 adopted by the Texas State Board of Pharmacy based on a subsequent
3 determination that the claim is ineligible for payment under the
4 applicable coverage terms.

5 (b) A pharmacy benefit manager may not modify, reject, or
6 reverse a positive adjudication of a claim for a prescription that
7 complies with rules adopted by the Texas State Board of Pharmacy
8 unless:

9 (1) the claim is fraudulent or duplicated a paid
10 claim;

11 (2) the transaction on which the claim is based is not
12 completed within a reasonable period; or

13 (3) the positive adjudication is based on an
14 unintentional clerical or recordkeeping error, such as a
15 typographical error, scrivener's error, or computer error found
16 during an on-site audit.

17 [Sections 4154.158-4154.200 reserved for expansion]

18 SUBCHAPTER E. ON-SITE AUDIT

19 Sec. 4154.201. NOTICE. A pharmacy benefit manager shall
20 notify a retail pharmacy and the pharmacy's corporate office, if
21 any, in writing of an on-site audit of the retail pharmacy not later
22 than the 30th day before the date the audit is scheduled to begin.

23 Sec. 4154.202. SCHEDULING. (a) Unless the retail pharmacy
24 consents in writing, a pharmacy benefit manager may not conduct an
25 on-site audit:

26 (1) during the first five calendar days of a month; or

27 (2) on the day of, or the day before or after, a

1 federal holiday.

2 (b) Unless the retail pharmacy consents in writing, a
3 pharmacy benefit manager may not conduct an on-site audit of the
4 retail pharmacy more than once annually.

5 Sec. 4154.203. AUDIT PERIOD. A pharmacy benefit manager
6 conducting an on-site audit of a retail pharmacy may not audit a
7 prescription claim initially submitted to the pharmacy benefit
8 manager more than two years before the date the audit begins.

9 Sec. 4154.204. UNIFORM STANDARDS. (a) The commissioner
10 shall establish uniform standards for a pharmacy benefit manager's
11 on-site audit of similarly situated retail pharmacies.

12 (b) An on-site audit must be conducted:

13 (1) in accordance with:

14 (A) generally accepted accounting principles,
15 standards, and procedures; and

16 (B) generally accepted auditing principles,
17 standards, and procedures; and

18 (2) using the uniform standards established under
19 Subsection (a).

20 (c) Similarly situated retail pharmacies must be audited in
21 a uniform manner under uniform terms and with uniform documentation
22 requirements.

23 Sec. 4154.205. EXTRAPOLATION PROHIBITED. During an on-site
24 audit, a pharmacy benefit manager may not use extrapolation to
25 calculate a recovery amount or penalty. A finding of overpayment or
26 underpayment must be based on the actual overpayment or
27 underpayment and may not be based on a projection based on the

1 number of:

2 (1) covered individuals with a similar diagnosis; or

3 (2) orders or refill orders for a similar medication.

4 Sec. 4154.206. AUDITOR EXPERTISE. (a) If an on-site audit
5 involves the exercise of the clinical or professional judgment of a
6 pharmacist, the audit must be conducted:

7 (1) by a pharmacist; or

8 (2) in consultation with a pharmacist.

9 (b) An on-site audit that does not involve the exercise of
10 the clinical or professional judgment of a pharmacist may be
11 conducted by a field agent who possesses pharmacy practice
12 expertise.

13 Sec. 4154.207. ERRORS. (a) An unintentional clerical or
14 recordkeeping error, such as a typographical error, scrivener's
15 error, or computer error, found during an on-site audit is not prima
16 facie evidence of fraud and may not be the basis of a criminal
17 penalty without proof of intent to commit fraud.

18 (b) A pharmacy benefit manager may recover from a retail
19 pharmacy a payment made by the pharmacy benefit manager based on an
20 error described by Subsection (a) only if the error resulted in
21 financial loss to a covered individual or covered entity.

22 Sec. 4154.208. METHODOLOGY. (a) Except as provided by
23 Subsection (b), validation of the dosage and days' supply of a
24 medication must be based on the manufacturer's guidelines and
25 definitions.

26 (b) Validation of the dosage and days' supply of a topical
27 or titrated medication must be based on:

1 (1) the clinical or professional judgment of the
2 pharmacist conducting the audit or being consulted in connection
3 with the audit; and

4 (2) information obtained from the patient or
5 prescriber by the pharmacist conducting the audit or being
6 consulted in connection with the audit.

7 (c) During an on-site audit, a pharmacy benefit manager
8 shall calculate reimbursement for compounded medications based on
9 the retail pharmacy's usual and customary price for compounded
10 medications, unless provided otherwise in the contract between the
11 pharmacy benefit manager and the retail pharmacy.

12 Sec. 4154.209. VERIFICATION STANDARDS. (a) A pharmacy
13 benefit manager may not require a retail pharmacy to maintain
14 documentation that the pharmacy is not required by law to maintain
15 in order to validate a prescription medication claim.

16 (b) During an on-site audit, a pharmacy benefit manager may
17 not require a retail pharmacy to verify a prescription medication
18 claim with any documentation that the pharmacy is not required by
19 law to maintain.

20 (c) Notwithstanding Subsection (b), a written record of a
21 hospital, physician, or other authorized practitioner of the
22 healing arts, regardless of the means of communication, may be used
23 to validate a record of a legend or narcotic drug, a medication, or
24 medicinal supplies.

25 Sec. 4154.210. ELECTRONIC RECORDS. (a) During an on-site
26 audit, a pharmacy benefit manager shall accept as equivalent to
27 paper documentation an electronic record, including an electronic

1 beneficiary signature log, an electronic tracking of a
2 prescription, an electronic prescriber prescription transmission,
3 an electronic image of the prescription, an electronically scanned
4 store or patient record maintained at or accessible by the retail
5 pharmacy, and any other reasonably clear and accurate electronic
6 documentation.

7 (b) Point-of-sale electronic register data is a form of
8 proof of delivery to the covered individual.

9 Sec. 4154.211. AUDIT OF PAPER DOCUMENTATION. A pharmacy
10 benefit manager may, in connection with the audit of a particular
11 claim, review a retail pharmacy's paper signature log, if any,
12 dated only until the earlier of the 14th day after the date the
13 pharmacy dispensed the medication or the date the transaction was
14 completed.

15 Sec. 4154.212. PAYMENT OF AUDITOR. A pharmacy benefit
16 manager may not pay an auditor for conducting an on-site audit based
17 on a percentage of the amount the pharmacy benefit manager is
18 entitled to recover based on the on-site audit.

19 Sec. 4154.213. PRELIMINARY AUDIT REPORT. Unless the retail
20 pharmacy subject to an on-site audit agrees in writing otherwise, a
21 pharmacy benefit manager shall deliver a preliminary audit report
22 to the retail pharmacy and the pharmacy's corporate office, if any,
23 not later than the 30th day after the date the audit is completed.

24 Sec. 4154.214. APPEAL PROCESS. (a) A pharmacy benefit
25 manager shall establish a process under which a retail pharmacy may
26 submit to the pharmacy benefit manager an appeal, wholly or partly,
27 of a preliminary audit report.

1 (b) The appeal process described by Subsection (a) must be
2 disclosed in the contract between the pharmacy benefit manager and
3 a retail pharmacy.

4 (c) An appeal described by Subsection (a) must be commenced
5 not earlier than the 30th day after the date the pharmacy receives
6 the preliminary report and not later than the 60th day after that
7 date.

8 (d) The commissioner by rule may establish reasonable
9 criteria for the process described by Subsection (a).

10 Sec. 4154.215. FINAL AUDIT REPORT. (a) If the retail
11 pharmacy does not appeal the preliminary audit report under the
12 process described by Section 4154.214, a pharmacy benefit manager
13 shall deliver the final audit report to the retail pharmacy and the
14 pharmacy's corporate office, if any, not later than the 61st day
15 after the date the pharmacy received the preliminary audit report.

16 (b) If the retail pharmacy appeals the preliminary audit
17 report under the process described by Section 4154.214, a pharmacy
18 benefit manager shall deliver the final audit report to the retail
19 pharmacy and the pharmacy's corporate office, if any, not later
20 than the 45th day after the date the appeal process concludes.

21 Sec. 4154.216. SETTLEMENT OF ACCOUNTS AFTER AUDIT. (a) A
22 pharmacy benefit manager may recover from a retail pharmacy an
23 amount based on the final audit report delivered under Section
24 4154.215.

25 (b) A pharmacy benefit manager may recover an amount due, if
26 any, based on the final report delivered under Section 4154.215 by
27 submitting to the retail pharmacy an invoice for payment.

1 (c) A pharmacy benefit manager may not deduct a recovery
2 amount from an amount otherwise owed to a retail pharmacy unless the
3 retail pharmacy:

4 (1) agrees in writing that the pharmacy benefit
5 manager may deduct the recovery amount from an amount otherwise
6 owed to the retail pharmacy; or

7 (2) fails to timely pay the invoice before the later of
8 the due date imposed by the invoice or the due date imposed by the
9 retail pharmacy's contract with the pharmacy benefit manager.

10 [Sections 4154.217-4154.250 reserved for expansion]

11 SUBCHAPTER F. DISCIPLINARY ACTIONS; PENALTIES

12 Sec. 4154.251. GROUNDS FOR DENIAL, REVOCATION, SUSPENSION,
13 OR RESTRICTION OF CERTIFICATE OF AUTHORITY. (a) The department may
14 deny an application for a certificate of authority under this
15 chapter or revoke, suspend, or restrict a certificate of authority
16 issued under this chapter:

17 (1) if the department determines that the applicant or
18 certificate holder violated state or federal laws or regulations;
19 or

20 (2) on other grounds as determined by the commissioner
21 by rule.

22 (b) If an application for a renewal of a certificate of
23 authority under this chapter is denied or a certificate of
24 authority under this chapter is revoked, suspended, or restricted,
25 the commissioner may, as necessary to protect the interests of
26 covered entities, covered individuals, and retail pharmacies,
27 allow the applicant or certificate holder to operate under terms

1 established by the commissioner for a limited time not to exceed 60
2 days after the date the application is denied or the certificate is
3 revoked, suspended, or restricted.

4 Sec. 4154.252. HEARING. If the department proposes to deny
5 an application for a certificate of authority or to suspend,
6 revoke, or restrict a certificate of authority, the applicant or
7 holder is entitled to notice and a hearing conducted by the State
8 Office of Administrative Hearings as provided by Chapter 40.

9 Sec. 4154.253. APPLICATION OF CERTAIN OTHER LAW. An action
10 taken under Section 4154.251 is subject to Chapter 82.

11 Sec. 4154.254. ENFORCEMENT. The commissioner shall take
12 all reasonable actions to ensure compliance with this chapter,
13 including issuing orders and assessing penalties.

14 Sec. 4154.255. BOARD OF PHARMACY REQUESTS. The
15 commissioner shall provide to the Texas State Board of Pharmacy, on
16 the board's request, a copy of any document related to an action
17 taken under Section 4154.251, including:

18 (1) a document submitted by a pharmacy benefit manager
19 to the commissioner;

20 (2) correspondence between the pharmacy benefit
21 manager and the commissioner; and

22 (3) a written notice, finding, or determination, or
23 other document sent by the commissioner to the pharmacy benefit
24 manager.

25 SECTION 2. Section 82.002(a), Insurance Code, is amended to
26 read as follows:

27 (a) This chapter applies to each company regulated by the

1 commissioner, including:

2 (1) a domestic or foreign, stock or mutual, life,
3 health, or accident insurance company;

4 (2) a domestic or foreign, stock or mutual, fire or
5 casualty insurance company;

6 (3) a Mexican casualty company;

7 (4) a domestic or foreign Lloyd's plan insurer;

8 (5) a domestic or foreign reciprocal or interinsurance
9 exchange;

10 (6) a domestic or foreign fraternal benefit society;

11 (7) a domestic or foreign title insurance company;

12 (8) an attorney's title insurance company;

13 (9) a stipulated premium insurance company;

14 (10) a nonprofit legal service corporation;

15 (11) a health maintenance organization;

16 (12) a statewide mutual assessment company;

17 (13) a local mutual aid association;

18 (14) a local mutual burial association;

19 (15) an association exempt under Section 887.102;

20 (16) a nonprofit hospital, medical, or dental service
21 corporation, including a company subject to Chapter 842;

22 (17) a county mutual insurance company; ~~and~~

23 (18) a farm mutual insurance company; and

24 (19) a pharmacy benefit manager.

25 SECTION 3. Section 4003.010, Insurance Code, is amended to
26 read as follows:

27 Sec. 4003.010. CHAPTER NOT APPLICABLE TO THIRD-PARTY

1 ADMINISTRATORS. This chapter does not apply to a certificate of
2 authority issued under Chapter 4151 or 4154.

3 SECTION 4. The change in law made by this Act applies only
4 to a contract between a pharmacy benefit manager and a retail
5 pharmacy entered into or renewed on or after January 1, 2014. A
6 contract entered into or renewed before January 1, 2014, is
7 governed by the law as it existed immediately before the effective
8 date of this Act, and that law is continued in effect for that
9 purpose.

10 SECTION 5. Notwithstanding Chapter 4154, Insurance Code, as
11 added by this Act, an entity acting as, or holding itself out as, a
12 pharmacy benefit manager for purposes of that chapter is not
13 required to hold a certificate of authority under that chapter
14 before January 1, 2014.

15 SECTION 6. This Act takes effect September 1, 2013.