

Regular Session, 2004

HOUSE BILL NO. 1468

BY REPRESENTATIVE TOWNSEND

1 AN ACT

2 To enact Part VI-F of Chapter 1 of Title 22 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 22:250.51 through 250.62, relative to health insurance; to provide
4 relative to prompt payment of health insurance claims submitted by pharmacies or
5 pharmacists; to provide with respect to usage of nationally recognized benchmarks
6 to calculate the reimbursement to be paid to pharmacies or pharmacists by health
7 insurance issuers; to provide for definitions; to provide with respect to violations,
8 cease and desist orders, and penalties; to provide for coordination of benefits; to
9 provide for recoupment; and to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Part VI-F of Chapter 1 of Title 22 of the Louisiana Revised Statutes of
12 1950, comprised of R.S. 22:250.51 through 250.62, is hereby enacted to read as follows:

13 PART VI-F. STANDARDS FOR PHARMACY

14 AND PHARMACIST CLAIMS

15 §250.51. Legislative intent

16 The legislature finds that making prompt and correct payment for prescription
17 drugs, other products and supplies, and pharmacist services covered under insurance
18 or other contracts that provide for pharmacy benefits is important to the health and
19 welfare of its citizens. It is the intent of the legislature that payments for covered
20 prescription drugs, other products and supplies, and pharmacist services provided by
21 pharmacists and pharmacies be paid timely and based on payment calculations that
22 reflect nationally recognized pricing references such as average wholesale price
23 (AWP) and maximum allowable cost (MAC). It is the intent of the legislature that
24 the provisions of this Part shall be interpreted to achieve these ends.

1 §250.52. Definitions2 As used in this Part, the following terms shall be defined as follows:3 (1) "Commissioner" means the commissioner of insurance.4 (2) "Department" means the Department of Insurance.5 (3) "Electronic claim" means the transmission of data for purposes of
6 payment of covered prescription drugs, other products and supplies, and pharmacist
7 services in an electronic data format specified by a health insurance issuer and
8 approved by the department.9 (4) "Health insurance coverage" means benefits consisting of prescription
10 drugs, other products and supplies, and pharmacist services provided directly,
11 through insurance or reimbursement, or otherwise and including items and services
12 paid for as prescription drugs, other products and supplies, and pharmacist services
13 under any hospital or medical service policy or certificate, hospital or medical service
14 plan contract, preferred provider organization agreement, or health maintenance
15 organization contract offered by a health insurance issuer. However, "health
16 insurance coverage" shall not include benefits due under Chapter 10 of Title 23 of the
17 Louisiana Revised Statutes of 1950.18 (5) "Health insurance issuer" means an insurance company, including a
19 health maintenance organization as defined and licensed pursuant to Part XII of
20 Chapter 2 of this Title, unless preempted as an employee benefit plan under the
21 Employee Retirement Income Security Act of 1974. For purposes of this Part, a
22 "health insurance issuer" shall not include the Office of Group Benefits.23 (6) "Pharmacist" means an individual currently licensed as a pharmacist by
24 the Louisiana Board of Pharmacy to engage in the practice of pharmacy in this state.25 (7) "Pharmacist services" means the filling and dispensing of prescription
26 drugs or providing products and supplies, drug therapy, and other patient care
27 services provided by a licensed pharmacist with the intent of achieving outcomes
28 related to the cure, prevention, or management of a disease, elimination or reduction
29 of patient's symptoms, or arresting or slowing of a disease process.

1 (8) "Pharmacy" or "pharmacies" means any appropriately licensed place
2 within this state where prescription drugs are dispensed and pharmacist services are
3 provided and any place outside of this state where prescription drugs are dispensed
4 and pharmacist services are provided to residents of this state.

5 (9) "Uniform claim form" shall mean a form prescribed by rule by the
6 department pursuant to R.S. 22:11.

7 §250.53. Nonelectronic claims submission

8 A.(1) Any nonelectronic claim for payment for prescription drugs, other
9 products and supplies, and pharmacist services submitted by a pharmacist or
10 pharmacy within forty-five days of the date of service under a contract for provision
11 of covered benefits with a health insurance issuer shall be paid not more than forty-
12 five days from the date upon which a correctly completed uniform claim form is
13 furnished, unless just and reasonable grounds exist such as would put a reasonable
14 and prudent businessman on his guard.

15 (2) Any nonelectronic claim for payment for prescription drugs, other
16 products and supplies, and pharmacist services submitted by a pharmacist or
17 pharmacy under a contract for provision of covered benefits with a health insurance
18 issuer more than forty-five days after the date of service or resubmitted because the
19 original claim was incomplete shall be paid not more than sixty days from the date
20 upon which a correctly completed uniform claim form is furnished, unless just and
21 reasonable grounds exist such as would put a reasonable and prudent businessman
22 on his guard.

23 (3) Any other nonelectronic claim for payment for prescription drugs, other
24 products and supplies, and pharmacist services, whether submitted for payment by
25 an insured or enrollee or submitted by a pharmacist or pharmacy rendering covered
26 services that are not otherwise payable to the pharmacist or pharmacy under contract
27 with the health insurance issuer, shall be paid not more than thirty days from the date
28 upon which a correctly completed uniform claim form is furnished to the health

1 insurance issuer, unless just and reasonable grounds exist such as would put a
2 reasonable and prudent businessman on his guard.

3 B.(1) Health insurance issuers shall have appropriate handling procedures
4 approved by the department for the acceptance of nonelectronic claim submissions.

5 Such procedures shall include:

6 (a) A process for documenting the date of actual receipt of nonelectronic
7 claims.

8 (b) A process for reviewing nonelectronic claims for accuracy and
9 acceptability.

10 (2) Such procedures shall assure that all such nonelectronic claims received
11 are reviewed for correct completion within a reasonable period of time.

12 (3) For any nonelectronic claim that is found to be incomplete or otherwise
13 not payable, the health insurance issuer shall provide written notice of the reasons
14 that the claim cannot be processed for payment within two business days from the
15 date of reviewing such claim for completion.

16 C. Health insurance issuers shall establish appropriate procedures approved
17 by the department to assure that any claimant who is not paid within the time frames
18 specified in this Section receives a late payment adjustment equal to one percent of
19 the amount due. For any period greater than twenty-five days following the time
20 frames specified in this Section, the health insurance issuer shall pay an additional
21 late payment adjustment equal to one percent of the unpaid balance due for each
22 month or partial month that such claim remains unpaid.

23 D. Health insurance issuers shall have appropriate procedures approved by
24 the department to assure compliance with this Part. Such procedures shall include
25 but shall not be limited to a plan for the acceptance of nonelectronic claim
26 submissions to document the actual date of receipt and to prevent the loss of such
27 claims.

1 §250.54. Electronic claim submission standards

2 A. Any claim for payment for covered prescription drugs, other products and
3 supplies, and pharmacist services submitted by a pharmacist or pharmacy to a health
4 insurance issuer as an electronic claim that is electronically adjudicated shall be paid
5 not less than the fifteenth day after the date on which the claim was electronically
6 adjudicated.

7 B. Health insurance issuers shall have appropriate handling procedures
8 approved by the department for the acceptance of electronic claim submissions. Such
9 procedures shall include:

10 (1) A process for electronically dating the time and date of actual receipt of
11 electronic claims.

12 (2) A process for reviewing electronic review of transmitted claims for
13 accuracy and acceptability.

14 (3) A process for reporting all claims rejected during electronic transmission
15 and the reason for the rejection.

16 C. Health insurance issuers shall establish appropriate procedures approved
17 by the department to assure that any claimant who is not paid within the time frame
18 specified in this Section receives a late payment adjustment equal to one percent of
19 the amount due. For any period greater than twenty-five days following the time
20 frames specified in this Section, the health insurance issuer shall pay an additional
21 late payment adjustment equal to one percent of the unpaid balance due for each
22 month or partial month that such claim remains unpaid.

23 §250.55. Submission to health insurance issuer

24 A. For purposes of R.S. 22:250.53, a claim shall be deemed to be submitted
25 to the health insurance issuer when a nonelectronic claim is furnished to the health
26 insurance issuer, its agent, or any other party that makes payment directly to the
27 pharmacy or pharmacist, or the insured or enrollee, for the prescription drugs, other
28 products and supplies, and pharmacist services identified on the nonelectronic claim.

1 B. For purposes of R.S. 22:250.54, a claim shall be deemed to be submitted
2 to a health insurance issuer when it is electronically submitted to the health insurance
3 issuer, its agent, or any other party that makes payment directly to the pharmacy or
4 pharmacist for the prescription drugs, other products and supplies, and pharmacist
5 services identified on the electronic claim.

6 §250.56. Thirty-day payment standard; limitations on claim filing and audits

7 A. A health insurance issuer may elect to utilize a thirty-day payment
8 standard for compliance with R.S. 22:250.53 by providing written notice to the
9 commissioner. Such notice shall be in a form prescribed by the commissioner and
10 shall remain in effect until withdrawn in writing as may be required by the
11 commissioner. Any health insurance issuer electing to utilize a thirty-day payment
12 standard shall continue to meet all other requirements of this Part.

13 B. Health insurance issuers that limit the period of time that a pharmacist or
14 pharmacy under contract for delivery of covered benefits has to submit claims for
15 payment under R.S. 22:250.53 or 250.54 shall have the same limited period of time
16 following payment of such claims to perform any review or audit for purposes of
17 reconsidering the validity of such claims.

18 §250.57. Prescription drugs, products, and supplies; use of index

19 A. Reimbursement under a contract to a pharmacist or pharmacy for
20 prescription drugs and other products and supplies that is calculated according to a
21 formula that uses a nationally recognized reference in the pricing calculation shall use
22 the most current nationally recognized reference price or amount in the actual or
23 constructive possession of the health insurance issuer, its agent, or any other party
24 responsible for reimbursement for prescription drugs and other products and supplies
25 on the date of electronic adjudication or on the date of service shown on the
26 nonelectronic claim.

27 B. Health insurance issuers, their agents, and other parties responsible for
28 reimbursement for prescription drugs and other products and supplies shall be
29 required to update the nationally recognized reference prices or amounts used for

1 calculation of reimbursement for prescription drugs and other products and supplies
2 no less than every three business days.

3 C. Any health insurance issuer, agent, or other party responsible for
4 reimbursement for prescription drugs and other products and supplies that does not
5 comply with the requirements of Subsections A or B of this Section shall be subject
6 to the late payment adjustment provisions of R.S. 22:250.54(C) to the extent of any
7 amount not paid in accordance with the requirements of this Section.

8 §250.58. Coordination of benefits

9 A. Coordination of benefit requirements adopted by health insurance issuers
10 shall, at a minimum, adhere to the following requirements:

11 (1) No plan shall contain a provision that its benefits are "always excess" or
12 "always secondary" except in accordance with rules adopted by the commissioner
13 pursuant to this Part.

14 (2) A coordination of benefit provision may not be used that permits a plan
15 to reduce its benefits on the basis of any of the following:

16 (a) That another plan exists and the covered person did not enroll in the plan.

17 (b) That a person is or could have been covered under another plan, except
18 with respect to Part B of Medicare.

19 (c) That a person has elected an option under another plan providing a lower
20 level of benefits than another option that could have been elected.

21 B. The commissioner shall be authorized to adopt such reasonable
22 regulations as necessary for determining the order of benefit payments when a person
23 is covered by two or more plans of health insurance coverage.

24 §250.59. Recoupment of health insurance claims payments

25 A. As used in this Section, "recoupment" shall mean a reduction, offset,
26 adjustment, or other act to lower or lessen the payment of a claim or any other
27 amount owed to a pharmacy or pharmacist for any reason unrelated to that claim or
28 other amount owed to a pharmacy or pharmacist.

1 B. Prior to any recoupment unrelated to a claim for payment of prescription
2 drugs, other products and supplies, and pharmacist services provided by a pharmacy
3 or pharmacist or any other amount owed by a health insurance issuer to a pharmacy
4 or pharmacist, the health insurance issuer shall provide the pharmacy or pharmacist
5 written notification that includes the name of the patient, the date or dates of
6 provision of prescription drugs, other products and supplies, and pharmacist
7 services, and an explanation of the reason for recoupment. A pharmacy or
8 pharmacist shall be allowed thirty days from receipt of written notification of
9 recoupment to appeal the health insurance issuer's action and to provide the health
10 insurance issuer the name of the patient, the date or dates of provision of prescription
11 drugs, other products and supplies, pharmacist services, and an explanation of the
12 reason for the appeal.

13 C.(1) When a pharmacy or pharmacist fails to respond timely and in writing
14 to a health insurance issuer's written notification of recoupment, the health insurance
15 issuer may consider the recoupment accepted.

16 (2) If a recoupment is accepted, the pharmacy or pharmacist may remit the
17 agreed amount to the health insurance issuer at the time of any written notification
18 of acceptance or may permit the health insurance issuer to deduct the agreed amount
19 from future payments due to the pharmacy or pharmacist.

20 D.(1) If a pharmacy or pharmacist disputes a health insurance issuer's written
21 notification of recoupment and a contract exists between the pharmacy or pharmacist
22 and the health insurance issuer, the dispute shall be resolved according to the general
23 dispute resolution provisions in the contract.

24 (2) If a pharmacy or pharmacist disputes a health insurance issuer's written
25 notification of recoupment and no contract exists between the pharmacy or
26 pharmacist and the health insurance issuer, the dispute shall be resolved as any other
27 dispute under Civil Code Article 2299 et seq.

28 E. If the recoupment directly affects the payment responsibility of the
29 insured, the health insurance issuer shall provide at the same time a revised

1 explanation of benefits to the pharmacy or pharmacist and the covered person for
2 whose claim the recoupment is being made. Unless the recoupment of a health
3 insurance claim payment directly affects the payment responsibility of the insured,
4 such recoupment shall not result in any increased liability of an insured.

5 F. For purposes of this Section, a health insurance issuer shall include, in
6 addition to the health insurance issuer, its agent or any other party that makes
7 payment directly to a pharmacy or pharmacist for prescription drugs, other products
8 and supplies, and pharmacist services identified on a claim.

9 §250.60. Violations; cease and desist orders; penalties

10 A. Whenever the commissioner has reason to believe that any health
11 insurance issuer is not in full compliance with the requirements of this Part, he shall
12 notify such issuer and, after notice and opportunity for hearing pursuant to Part XXIX
13 of this Chapter, subject to Chapter 13-B of Title 49 of the Louisiana Revised Statutes
14 of 1950, the commissioner shall issue and cause to be served an order requiring the
15 health insurance issuer to cease and desist from any violation and order any one or
16 more of the following:

17 (1) Payment of a monetary penalty of not more than one thousand dollars for
18 each and every act or violation, not to exceed an aggregate penalty of one hundred
19 thousand dollars. However, if the health insurance issuer knew or reasonably should
20 have known that it was in violation of this Part, the penalty shall be not more than
21 twenty-five thousand dollars for each and every act or violation, but not to exceed an
22 aggregate penalty of two hundred fifty thousand dollars in any six-month period.

23 (2) Suspension or revocation of the certificate of authority of the health
24 insurance issuer to operate in this state if it knew or reasonably should have known
25 it was in violation of this Part.

26 B. Any health insurance issuer who violates a cease and desist order issued
27 by the commissioner pursuant to this Section while such order is in effect shall, after
28 notice and opportunity for hearing, be subject at the discretion of the commissioner
29 to any one or more of the following:

1 (1) A monetary penalty of not more than twenty-five thousand dollars for
2 each and every act or violation, not to exceed an aggregate of two hundred fifty
3 thousand dollars.

4 (2) Suspension or revocation of the certificate of authority of the health
5 insurance issuer to operate in this state.

6 §250.61. Regulations

7 The commissioner may promulgate such rules and regulations as may be
8 necessary or proper to carry out the provisions of this Part. Such rules and
9 regulations shall be promulgated and adopted in accordance with the Administrative
10 Procedure Act.

11 §250.62. Applicability

12 The provisions of Part VI-D of this Chapter, R.S. 22:250.31 et seq., shall not
13 apply to this Part.

14 Section 2. This Act shall become effective on January 1, 2005.

SPEAKER OF THE HOUSE OF REPRESENTATIVES

PRESIDENT OF THE SENATE

GOVERNOR OF THE STATE OF LOUISIANA

APPROVED: _____