

SUBCHAPTER J. Physician and Provider Contracts and Arrangements
28 TAC §11.901

1. INTRODUCTION. The Texas Department of Insurance proposes amendments to §11.901 concerning health maintenance organization (HMO) contracting arrangements with participating physicians and providers. These amendments are necessary to implement Senate Bill (SB) 50 enacted during the 79th Regular Legislative Session. Consistent with SB 50, the amendments to §11.901 require that upon request from a preferred provider, an HMO shall include a provision in the physician's or provider's contract providing that the HMO or the HMO's clearinghouse may not deny or refuse to process an electronic clean claim because the claim is submitted in a batch of claims that contains claims that are deficient. The proposed amendment includes the contracting requirement provided by SB 50 and adds further language regarding the meaning of a batch submission. The proposed language clarifies that the reference to a batch submission is a reference to existing federal standardized transactions and provides that a batch submission is a group of electronic claims which are submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. Although the department has, elsewhere in this edition of the Texas Register, proposed language regarding the meaning of batch submissions, HMOs must avoid reading the language of SB 50 and the proposed language too narrowly. The language of the statute and the proposed amendment also apply to clean claims that are submitted "together with" claims that are deficient. This

language is broader than the term "batch submission" and includes groups of claims that may or may not be properly classified as a batch submission for federal standardized transactions. Therefore, HMOs should not inappropriately focus on whether claims that are submitted together are in a batch submission that meets the federal regulatory definition.

The department will consider the adoption of the proposed amendments in a public hearing under Docket No. 2616 scheduled for September 7, 2005, at 10:00 a.m. in Room 100 of the William P. Hobby Jr. State Office Building, 333 Guadalupe Street in Austin, Texas.

2. FISCAL NOTE. Kimberly Stokes, Senior Associate Commissioner for Life, Health and Licensing, has determined that for each year of the first five years the proposed section will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the rule. There will be no measurable effect on local employment or the local economy as a result of the proposal.

3. PUBLIC BENEFIT/COST NOTE. Ms. Stokes has determined that for each year of the first five years the section is in effect, the public benefits anticipated as a result of the proposed section will be the implementation of SB 50, which gives participating physicians and providers the ability to request that an HMO include a provision in the physician's or provider's contract indicating that the HMO will not deny or refuse to

process an otherwise clean claim submitted in a batch of claims that may contain deficient claims. This will give physicians and providers increased notice of the obligations that an HMO has to process clean claims that are submitted in accordance with the process required by the HMO. Any cost to persons required to comply with this section for each year of the first five years the proposed section will be in effect is the result of enactment of SB 50 and not the result of the adoption, enforcement, or administration of this section. Because any potential costs are mandated by the statute and HMOs should be able to include this language in physician and provider contracts at the request of a physician or provider regardless of the size of the HMO, it would be neither legal nor feasible to waive or modify the requirements for HMOs that are small or micro businesses.

4. REQUEST FOR PUBLIC COMMENT. To be considered, written comments on the proposal must be submitted no later than 5:00 p.m. on September 6, 2005, to Gene C. Jarmon, General Counsel and Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. An additional copy of the comment must be simultaneously submitted to Kimberly Stokes, Mail Code 107-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

5. STATUTORY AUTHORITY. The amendments are proposed under the Insurance Code §§843.323 and 36.001. Section 843.323 provides that if requested by a preferred

provider an HMO shall include a provision in the preferred provider's contract providing that the HMO or the HMO's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. Section 36.001 provides that the Commissioner of Insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

6. CROSS REFERENCE TO STATUTE. The following statute is affected by this proposal:

<u>Rule</u>	<u>Statute</u>
§11.901	§843.323

7. TEXT.

§11.901. Required Provisions.

(a) - (b) (No change.)

(c) Upon request by a participating physician or provider, an HMO shall include a provision in the physician's or provider's contract providing that the HMO and the HMO's clearinghouse may not refuse to process or pay an electronically submitted clean claim because the claim is submitted together with or in a batch submission with a claim that is deficient. As used in this section, the term batch submission is a group of electronic

claims submitted for processing at the same time within a HIPAA standard ASC X12N 837 Transaction Set and identified by a batch control number. This subsection applies to a contract entered into or renewed on or after January 1, 2006.

8. CERTIFICATION. This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's authority to adopt.

Issued at Austin, Texas, on _____, 2005.

Gene C. Jarmon
General Counsel and Chief Clerk
Texas Department of Insurance