Adopted
SUBSTITUTE NO 1 FOR AMENDMENT NO 2 TO COMMITTEE AMENDMENT NO 1 PROPOSED TO

House Bill No. 542

BY: Senator(s) Mettetal

1 **AMEND by striking Sections 31 through 35 and substituting in**
2 **lieu thereof the following:**

3 **SECTION 31.** Sections 31 through 35 of this act shall be
4 known as the "Pharmacy Benefit Prompt Pay Act."
5 **SECTION 32.** For purposes of Sections 31 through 35 of this
6 act, the following words and phrases shall have the meanings
7 ascribed herein unless the context clearly indicates otherwise:
8 (a) "Board" means the State Board of Pharmacy.
9 (b) "Commissioner" means the Mississippi Commissioner
10 of Insurance.
11 (c) "Day" means a calendar day, unless otherwise
12 defined or limited.
13 (d) "Electronic claim" means the transmission of data
14 for purposes of payment of covered prescription drugs, other
15 products and supplies, and pharmacist services in an electronic
16 data format specified by a pharmacy benefit manager and approved
17 by the department.
18 (e) "Electronic adjudication" means the process of
19 electronically receiving, reviewing and accepting or rejecting an
20 electronic claim.
21 (f) "Enrollee" means an individual who has been
22 enrolled in a pharmacy benefit management plan.

23 (g) "Health insurance plan" means benefits consisting
24 of prescription drugs, other products and supplies, and pharmacist
25 services provided directly, through insurance or reimbursement, or
26 otherwise and including items and services paid for as
27 prescription drugs, other products and supplies, and pharmacist
28 services under any hospital or medical service policy or
29 certificate, hospital or medical service plan contract, preferred
30 provider organization agreement, or health maintenance
31 organization contract offered by a health insurance issuer, unless
32 preempted as an employee benefit plan under the Employee
33 Retirement Income Security Act of 1974. However, "health
34 insurance coverage" shall not include benefits due under the
35 workers compensation laws of this or any other state.
36 (h) "Pharmacy benefit manager" means a business that
37 administers the prescription drug/device portion of pharmacy
38 benefit management plans or health insurance plans on behalf of
39 plan sponsors, insurance companies, unions and health maintenance
40 organizations. For purposes of Sections 31 through 35 of this
41 act, a "pharmacy benefit manager" shall not include an insurance
42 company that provides an integrated health benefit plan and that
43 does not separately contract for pharmacy benefit management
44 services. The pharmacy benefit manager of the Mississippi State
45 and School Employees Health Insurance Plan or the Mississippi
46 Division of Medicaid or its contractors when performing services
47 for the Division of Medicaid shall not be subject to Sections 31
48 through 35 of this act because of those activities, but, if they
49 are conducting business as a pharmacy benefit manager other than
50 with those agencies, they shall be subject to Sections 31 through
51 35 of this act for those activities only.
52 (i) "Pharmacy benefit management plan" means an
53 arrangement for the delivery of pharmacist's services in which a
54 pharmacy benefit manager undertakes to administer the payment or

55 reimbursement of any of the costs of pharmacist's services for an
56 enrollee on a prepaid or insured basis which (i) contains one or
57 more incentive arrangements intended to influence the cost or
58 level of pharmacist's services between the plan sponsor and one or
59 more pharmacies with respect to the delivery of pharmacist's
60 services; and (ii) requires or creates benefit payment
61 differential incentives for enrollees to use under contract with
62 the pharmacy benefit manager. A pharmacy benefit management plan
63 does not mean any employee welfare benefit plan if preempted by
64 the Employee Retirement Income Security Act of 1974, which is
65 self-insured or self-funded, the Mississippi State and School
66 Employees Health Insurance Plan or the programs operated by the
67 Mississippi Division of Medicaid.

68 (j) "Pharmacist," "pharmacist services" and "pharmacy"
69 or "pharmacies" shall have the same definitions as provided in
70 Section 73-21-73.

71 (k) "Uniform claim form" means a form prescribed by
72 rule by the State Board of Pharmacy, provided however that, for
73 purposes of this act, the board shall adopt the same definition or
74 rule where the State Department of Insurance has adopted a rule
75 covering the same type of claim. The board may modify the
76 terminology of the rule and form when necessary to comply with the
77 provisions of this act.

78 (l) "Plan sponsors" means the employers, insurance
79 companies, unions and health maintenance organizations that
80 contract with a pharmacy benefit manager for delivery of
81 prescription services.

82 **SECTION 33.** (1) Reimbursement under a contract to a
83 pharmacist or pharmacy for prescription drugs and other products
84 and supplies that is calculated according to a formula that uses a
85 nationally recognized reference in the pricing calculation shall
86 use the most current nationally recognized reference price or

87 amount in the actual or constructive possession of the pharmacy
88 benefit manager, its agent, or any other party responsible for
89 reimbursement for prescription drugs and other products and
90 supplies on the date of electronic adjudication or on the date of
91 service shown on the nonelectronic claim.

92 (2) Pharmacy benefit managers, their agents and other
93 parties responsible for reimbursement for prescription drugs and
94 other products and supplies shall be required to update the
95 nationally recognized reference prices or amounts used for
96 calculation of reimbursement for prescription drugs and other
97 products and supplies no less than every three (3) business days.

98 (3) (a) All benefits payable under a pharmacy benefit
99 management plan shall be paid within fifteen (15) days after
100 receipt of due written proof of a clean claim where claims are
101 submitted electronically, and shall be paid within thirty-five
102 (35) days after receipt of due written proof of a clean claim
103 where claims are submitted in paper format. Benefits due under
104 the plan and claims are overdue if not paid within fifteen (15)
105 days or thirty-five (35) days, whichever is applicable, after the
106 pharmacy benefit manager receives a clean claim containing
107 necessary information essential for the pharmacy benefit manager
108 to administer preexisting condition, coordination of benefits and
109 subrogation provisions under the plan sponsor's health insurance
110 plan. A "clean claim" means a claim received by any pharmacy
111 benefit manager for adjudication and which requires no further
112 information, adjustment or alteration by the pharmacist or
113 pharmacies or the insured in order to be processed and paid by the
114 pharmacy benefit manager. A claim is clean if it has no defect or
115 impropriety, including any lack of substantiating documentation,
116 or particular circumstance requiring special treatment that
117 prevents timely payment from being made on the claim under this

118 subsection. A clean claim includes resubmitted claims with
119 previously identified deficiencies corrected.
120 (b) A clean claim does not include any of the
121 following:
122 (i) A duplicate claim, which means an original
123 claim and its duplicate when the duplicate is filed within thirty
124 (30) days of the original claim;
125 (ii) Claims which are submitted fraudulently or
126 that are based upon material misrepresentations;
127 (iii) Claims that require information essential
128 for the pharmacy benefit manager to administer preexisting
129 condition, coordination of benefits or subrogation provisions
130 under the plan sponsor's health insurance plan; or
131 (iv) Claims submitted by a pharmacist or pharmacy
132 more than thirty (30) days after the date of service; if the
133 pharmacist or pharmacy does not submit the claim on behalf of the
134 insured, then a claim is not clean when submitted more than thirty
135 (30) days after the date of billing by the pharmacist or pharmacy
136 to the insured.
137 (c) Not later than fifteen (15) days after the date the
138 pharmacy benefit manager actually receives an electronic claim,
139 the pharmacy benefit manager shall pay the appropriate benefit in
140 full, or any portion of the claim that is clean, and notify the
141 pharmacist or pharmacy (where the claim is owed to the pharmacist
142 or pharmacy) of the reasons why the claim or portion thereof is
143 not clean and will not be paid and what substantiating
144 documentation and information is required to adjudicate the claim
145 as clean. Not later than thirty-five (35) days after the date the
146 pharmacy benefit manager actually receives a paper claim, the
147 pharmacy benefit manager shall pay the appropriate benefit in
148 full, or any portion of the claim that is clean, and notify the
149 pharmacist or pharmacy (where the claim is owed to the pharmacist

150 or pharmacy) of the reasons why the claim or portion thereof is
151 not clean and will not be paid and what substantiating
152 documentation and information is required to adjudicate the claim
153 as clean. Any claim or portion thereof resubmitted with the
154 supporting documentation and information requested by the pharmacy
155 benefit manager shall be paid within twenty (20) days after
156 receipt.

157 (4) If the board finds that any pharmacy benefit manager,
158 agent or other party responsible for reimbursement for
159 prescription drugs and other products and supplies has not paid
160 ninety-five percent (95%) of clean claims as defined in subsection
161 (3) of this section received from all pharmacies in a calendar
162 quarter, he shall be subject to administrative penalty of not more
163 than Twenty-five Thousand Dollars ($25,000.00) to be assessed by
164 the State Board of Pharmacy.

165 (a) Examinations to determine compliance with this
166 subsection may be conducted by the board. The board may contract
167 with qualified impartial outside sources to assist in examinations
168 to determine compliance. The expenses of any such examinations
169 shall be paid by the pharmacy benefit manager examined.

170 (b) Nothing in the provisions of this section shall
171 require a pharmacy benefit manager to pay claims that are not
172 covered under the terms of a contract or policy of accident and
173 sickness insurance or prepaid coverage.

174 (c) If the claim is not denied for valid and proper
175 reasons by the end of the applicable time period prescribed in
176 this provision, the pharmacy benefit manager must pay the pharmacy
177 (where the claim is owed to the pharmacy) or the patient (where
178 the claim is owed to a patient) interest on accrued benefits at
179 the rate of one and one-half percent (1-1/2%) per month accruing
180 from the day after payment was due on the amount of the benefits
181 that remain unpaid until the claim is finally settled or

182 adjudicated. Whenever interest due pursuant to this provision is
183 less than One Dollar ($1.00), such amount shall be credited to the
184 account of the person or entity to whom such amount is owed.
185 (d) Any pharmacy benefit manager and a pharmacy may
186 enter into an express written agreement containing timely claim
187 payment provisions which differ from, but are at least as
188 stringent as, the provisions set forth under subsection (3) of
189 this section, and in such case, the provisions of the written
190 agreement shall govern the timely payment of claims by the
191 pharmacy benefit manager to the pharmacy. If the express written
192 agreement is silent as to any interest penalty where claims are
193 not paid in accordance with the agreement, the interest penalty
194 provision of subsection (4)(d) of this section shall apply.
195 (e) The State Board of Pharmacy may adopt rules and
196 regulations necessary to ensure compliance with this subsection.
197 **SECTION 34.** (1) Each pharmacy benefit manager providing
198 pharmacy management benefit plans in this state shall file a
199 statement with the commissioner annually by March 1 or within
200 sixty (60) days of the end of its fiscal year if not a calendar
201 year. The statement shall be verified by at least two (2)
202 principal officers and shall cover the preceding calendar year or
203 the immediately preceding fiscal year of the pharmacy benefit
204 manager.
205 (2) The statement shall be on forms prescribed by the
206 commissioner and shall include:
207 (a) A financial statement of the organization,
208 including its balance sheet and income statement for the preceding
209 year; and
210 (b) Any other information relating to the operations of
211 the pharmacy benefit manager required by the commissioner under
212 this act.

213 (3) If the pharmacy benefit manager is audited annually by
214 an independent certified public accountant, a copy of the
215 certified audit report shall be filed annually with the
216 commissioner by June 30 or within thirty (30) days of the report
217 being final.
218 (4) The commissioner may extend the time prescribed for any
219 pharmacy benefit manager for filing annual statements or other
220 reports or exhibits of any kind for good cause shown. However,
221 the commissioner shall not extend the time for filing annual
222 statements beyond sixty (60) days after the time prescribed by
223 subsection (1) of this section. The commissioner may waive the
224 requirements for filing financial information for the pharmacy
225 benefit manager if an affiliate of the pharmacy benefit manager is
226 already required to file such information under current law.
227 (5) The expense of administering this section shall be
228 assessed annually by the commissioner against all pharmacy benefit
229 managers operating in this state.
230 (6) The pharmacy benefit manager shall also file a copy of
231 its annual statement with the Mississippi Board of Pharmacy. The
232 board shall notify the commissioner of the failure of a pharmacy
233 benefit manager to file its annual statement.
234 **SECTION 35.** (1) In lieu of or in addition to making its own
235 financial examination of a pharmacy benefit manager, the
236 commissioner may accept the report of a financial examination of
237 other persons responsible for the pharmacy benefit manager under
238 the laws of another state certified by the applicable official of
239 such other state.
240 (2) The commissioner shall coordinate financial examinations
241 of a pharmacy benefit manager that provides pharmacy management
242 benefit plans in this state to ensure an appropriate level of
243 regulatory oversight and to avoid any undue duplication of effort
244 or regulation. The pharmacy benefit manager being examined shall

245 pay the cost of the examination. The cost of the examination
246 shall be deposited in a special fund that shall provide all
247 expenses for the registration, supervision and examination of all
248 entities subject to regulation under this act.

249 (3) The commissioner shall provide to the board a copy of
250 any financial examination conducted or caused to be conducted by
251 him of a pharmacy benefit manager. The commissioner and the board
252 may provide a copy of the financial examination to any person or
253 entity who provides or operates a health insurance plan or to a
254 pharmacist or pharmacy.