

- SUBJECT:** Adjusting audit procedures for certain health insurance plans and PBMs
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 8 ayes — Lucio, Oliverson, S. Davis, Julie Johnson, Lambert, Paul, C. Turner, Vo
- 0 nays
- 1 absent — G. Bonnen
- WITNESSES:** For — Steven Hoffart and Miguel Rodriguez, Texas Pharmacy Business Council; (*Registered, but did not testify:* Audra Conwell, Alliance of Independent Pharmacists; Chase Bearden, Coalition of Texans with Disabilities; John McCord, NFIB; Bradford Shields, Texas Federation of Drug Stores; Duane Galligher, Texas Independent Pharmacies Association; Michael Muniz, Texas Pharmacy Association; Jerry Valdez and Michael Wright, Texas Pharmacy Business Council; Bradford Shields, Texas Society of Health-System Pharmacists; Morris Wilkes, United Supermarkets; Omar Fuentes; Lee Ann Hampton; Ryan Hoffart; Charles Weaver)
- Against — Melodie Shrader, Pharmaceutical Care Management Association; LuGina Mendez-Harper, Prime Therapeutics
- On — (*Registered, but did not testify:* Jamie Walker, Texas Department of Insurance)
- BACKGROUND:** Insurance Code ch. 1369, subch. F governs the audits of pharmacists and pharmacies. A health benefit plan issuer or pharmacy benefit manager may conduct an audit of a pharmacist or pharmacy.
- DIGEST:** CSHB 1455 would prohibit a health benefit plan issuer or pharmacy benefit manager (PBM) that audits wholesale invoices during an audit of a pharmacist or pharmacy from auditing the pharmacy claims of another health plan or PBM.

The bill would require a health insurance company or PBM to reverse a finding of a discrepancy in its audit if:

- the National Drug Code (NDC) for the dispensed drug was in a quantity that was a subunit or multiple of the drug purchased by the pharmacist or pharmacy as supported by a wholesale invoice;
- the pharmacist or pharmacy dispensed the correct quantity of the drug according to the prescription; and
- the dispensed drug shared all but the last two digits of the drug's NDC reflected on the supplier invoice.

Under the bill, a health insurance company or PBM would have to accept certain documents as evidence to support the validity of a pharmacy claim relating to a dispensed drug. These documents would include reports required by any state board or agency and copies of validated supplier invoices in the pharmacist's or pharmacy's possession, including:

- supplier invoices issued before the date the drug was dispensed and not earlier than 60 days before the first day of the audit period; and
- invoices and any supporting documents from any supplier authorized to transfer ownership of the drug acquired by the pharmacist or pharmacy.

By the fifth business day after the pharmacist or pharmacy made a request, the health insurance company or PBM would have to provide any supporting documents the pharmacist's or pharmacy's suppliers provided to them.

The bill would take effect September 1, 2019, and would apply to an audit conducted on or after that date.

**SUPPORTERS
SAY:**

CSHB 1455 would help to ensure fairness in the auditing process of pharmacies and pharmacists. Pharmacy benefit managers (PBMs) are increasingly auditing pharmacy invoices for purchases from drug wholesalers. These audits can financially penalize audited pharmacies for

technical discrepancies arising from legitimate differences between quantities or drug codes stated on a wholesale invoice and those stated on the dispensed prescription or the submitted claim for that prescription. The bill would reduce these audit practices by requiring health benefit plans and PBMs to accept as evidence certain documentation that shows the quantity of dispensed drugs matches the quantity purchased from wholesalers.

**OPPONENTS
SAY:**

CSHB 1455 could encourage more bad actors to engage in deceptive billing practices. Changing the current wholesale invoice audit procedures could diminish a health benefit plan and pharmacy benefit manager's enforcement mechanism against fraudulent pharmacies that issue claims for drugs that were never dispensed.