

- SUBJECT:** Removing ERISA self-funded health plans from audit exemptions
- COMMITTEE:** Insurance — favorable, without amendment
- VOTE:** 8 ayes — Oliverson, Vo, J. González, Hull, Israel, Middleton, Paul, Sanford
- 1 nay — Romero
- WITNESSES:** For — Miguel Rodriguez, Texas Pharmacy Business Council; (*Registered, but did not testify*: Michael Wright, American Pharmacies; Austin Holder, H-E-B Pharmacy; John McCord, NFIB; Cameron Duncan, Texas Hospital Association; Duane Galligher, Texas Pharmacy Association; KeShana Odom, Texas Society of Health-System Pharmacist; John Hickman; Steve Hoffart)
- Against — Carl Isett, Texas Association of Benefit Administrators; Bill Hammond, Texas Employers for Insurance Reform; (*Registered, but did not testify*: Patricia Kolodzey, Blue Cross Blue Shield of Texas; Melodie Shrader, Pharmaceutical Care Management Association; Jay Thompson, Talhi; Jamie Dudensing, Texas Association of Health Plans; Jennifer Cawley, Texas Association of Life and Health Insurers)
- On — (*Registered, but did not testify*: Jenny Blakey, Office of the Public Insurance Counsel; Luke Bellsnyder, Texas Department of Insurance)
- BACKGROUND:** Insurance Code ch. 1369, subch. F governs procedures for health benefit plan and pharmacy benefit manager (PBM) audits of pharmacies and pharmacists. Sec. 1369.252 specifies that the subchapter does not apply to a health plan under or a PBM administering pharmacy benefits under:
- the state Medicaid program;
  - the federal Medicare program;
  - the state Children's Health Insurance Program (CHIP) or the health benefits plan for certain other children;

- the TRICARE military health system;
- a workers' compensation insurance policy; or
- a self-funded health benefit plan as defined by the Employee Retirement Income Security Act of 1974 (ERISA).

ERISA is a federal law that sets minimum standards for most voluntarily established retirement and health plans in private industry to provide protection for individuals in these plans.

**DIGEST:** HB 2787 would remove a self-funded health benefit plan under the Employee Retirement Income Security Act from the list of audit procedure exemptions in current law.

The bill would take effect September 1, 2021.

**SUPPORTERS SAY:** HB 2787 would increase uniformity in existing audit requirements by removing a self-funded health benefit plan's exemption under current law.

The Employee Retirement Income Security Act (ERISA) preempts state laws that "relate to" employee benefits. Courts have struggled to define "relates to," but have previously upheld ERISA as pre-empting most state health care laws addressing health benefits, including prescription drug benefits. Pharmacy benefit managers (PBMs) for years successfully argued in court that various PBM-reform laws are preempted by ERISA and that states have little power to regulate PBM practices.

The U.S. Supreme Court recently issued a ruling that narrows the range of state regulations preempted by ERISA, which does not include the regulation of pharmacy benefit managers' audit practices. Additionally, neither a health plan nor its PBM intermediary should be exempted from the fair and reasonable audit standards defined in current law simply because the plan is self-funded under the ERISA definition. The bill is necessary to help limit abusive audit practices by PBMs and health plans.

**CRITICS SAY:** HB 2787 could increase employers' costs by removing an essential audit exemption for self-funded health plans, which already are regulated under

the Employee Retirement Income Security Act (ERISA). By removing the audit exemption for ERISA self-funded health plans, the bill could discourage businesses from relocating to Texas as regulations increase for employer-provided health plans.