

- SUBJECT:** Regulating pharmacy audits
- COMMITTEE:** Insurance — committee substitute recommended
- VOTE:** 8 ayes — Smithee, Eiland, G. Bonnen, Creighton, Muñoz, Sheets, Taylor, C. Turner
- 0 nays
- 1 absent — Morrison
- WITNESSES:** For — Denise Davis, Prime Therapeutics; Amanda Fields, Texas Pharmacy Business Council; (*Registered, but did not testify:* Audra Conwell, Alliance of Independent Pharmacists of Texas; Duane Galligher and Chris Shields, Texas Independent Pharmacies Association; Michael Harrold, Express Scripts; Allen Horne; David A. Marwitz, Texas Pharmacy Association; Nathan Rawls; Karen Reagan, Walgreen Co.; Brad Shields, Texas Federation of Drug Stores, Texas Society of Health System Pharmacists; Jaime R. Solis; Dennis Wiesner, HEB; Morris Wilkes, United Supermarkets; Mike Wright, Texas Pharmacy Business Council)
- Against — None
- On — (*Registered, but did not testify:* Debra Diaz-Lara, Texas Department of Insurance)
- DIGEST:** CSHB 1358 would implement procedures and policies for health benefit plan and pharmacy benefit manager (PBM) audits of pharmacists and pharmacies.
- Procedures.** The bill would require that health benefit plan issuers and PBMs accommodate a pharmacy’s schedule when conducting on-site audits. Unless the auditing entity had reason to suspect a pharmacy of fraud or intentional misrepresentation, it would provide at least 14 days written notice of the audit and include in the notice the claims subject to auditing.
- Contracts between pharmacies and auditing entities would be required to include detailed audit procedures, and pharmacies would have to be

notified of any change made to them within 60 days of the change.

CSHB 1358 would require that at the conclusion of an audit, the health plan benefit issuer provide to the pharmacy a summary of its findings and allow the pharmacy to respond. The auditors would have 60 days to submit a preliminary report, followed by a 30-day period in which the pharmacy may challenge any findings. Within 120 days of submitting the preliminary report, the auditors would submit their final report of the audit results, including the amount of recoupments claimed after considering the pharmacy's response.

**Pharmacy protections.** CSHB 1358 would prohibit unintentional clerical errors from being used as evidence of fraud. They could also not be used as a basis for payment recoupment unless they resulted in actual financial harm to a patient or health plan issuer.

The bill would prohibit on-site auditors from entering the pharmacy area unless escorted by a person authorized by the pharmacist or pharmacy.

Auditing entities would not be allowed to use "extrapolation," the use of a sample of audited claims to estimate results for a larger batch of claims, either in contracts or to determine payment owed.

CSHB 1358 would prohibit auditors from receiving compensation based on the amount recovered as a result of the audit. Audits requiring a pharmacist's professional judgment would require consultation with a licensed pharmacist.

Among other provisions, CSHB 1358 would:

- limit the size to 300 claims if random sampling were used to select claims for the audit;
- give a one-year deadline for health benefit plan issuers and PBMs to complete a claim's audit;
- allowed pharmacies to use legal prescriptions and written delivery records to validate a prescription or prescription delivery; and
- provide audited pharmacies at least 20 days to submit requested documents.

NOTES:

The companion bill, SB 591 by Van de Putte, was passed by the Senate by a vote of 30-0 on April 25.