

Texas Pharmacy Business Council



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Michael J. Wright

November 12, 2014

Via Facsimile Transmission

The Honorable Jane Nelson
Chair, Texas Sunset Advisory Commission

Via Facsimile Transmission

The Honorable Four Price
Vice Chair, Texas Sunset Advisory Commission

Re: Health and Human Services Commission Office of Inspector General

Dear Chair Nelson and Vice Chair Price,

The Texas Pharmacy Business Council (TPBC) is the legislative advocacy arm of American Pharmacies, the largest buying group of independent pharmacists in Texas. TPBC represents the largest coalition of independent pharmacists in Texas in the legislative and regulatory advocacy arena. TPBC's mission is ensuring that Texas patients receive access to quality pharmacy services and ensuring the economic viability and success of the community pharmacy profession.

Our members, who are independent pharmacy owners and pharmacists, regularly undergo audits conducted by the Office of Inspector General (OIG), a division of the Texas Health and Human Services Commission (HHSC) that works to prevent, detect, and pursue fraud, waste, and abuse in the HHSC system. Our members report to us that these audits typically provide little advance notice of the audit and offer little time to gather documentation, respond to, and/or oppose the auditors' findings. OIG audits often employ extrapolation to project findings from a sample of audited claims to all claims in a multiyear period. Through extrapolation, even a small number of claimed discrepancies totaling only a few hundred dollars can result in a recoupment claim for hundreds of thousands of dollars. If the OIG believes fraud is involved, the OIG can place a temporary hold on payments to the pharmacy. As you can imagine, the impact of these audits, extrapolation, and the payment holds can be devastating to a pharmacy, crippling the business or putting it out of business.

For these reasons, due process is extremely critical to our members to ensure that community pharmacists are not denied meaningful due process. A pharmacy that serves high need Texas Medicaid populations and has not been accused of any fraud, should not, as a result of an OIG performance audit, be denied meaningful due process. The pharmacy should not be punished by OIG recouping millions of dollars in payment for prescriptions that the pharmacy:

- properly purchased,
- properly dispensed on a doctor's order, and
- documented in a manner that makes it clear the drug was properly dispensed.

Current state law allows health care providers accused of Medicaid fraud access to the State Office of Administrative Hearings, the Administrative Procedures Act, full legal discovery, and access to state courts. Meanwhile, other state agencies, including the Comptroller of Public Accounts, allow persons audited by the state to appeal audit results and receive due process.

Our members also report inconsistent positions taken by the OIG with respect to the right to an appeal and administrative hearing. In some cases, the OIG takes the position that no right to appeal is afforded to pharmacies for audits under the Vendor Drug Program, citing 1 T.A.C. §354.1891(c). But in other cases, with virtually identical facts, administrative appeals and other due process protections are provided to the Vendor Drug Program pharmacy, citing 1 T.A.C. §371.1719(d). It must be made clear that the due process protections set forth for providers in 1 T.A.C. §371.1719(d) are available to all Medicaid providers subject to an OIG audit.

Therefore, we believe that the Texas Sunset Advisory Commission should recommend that all pharmacies audited by the OIG and not accused of Medicaid fraud be provided due process, including:

- Full civil discovery of the type allowed by the Texas Rules of Civil Procedure;
- Access to a SOAH evidentiary hearing;
- No vendor hold until full exhaustion of appeals; and
- Appeal of disputed audit results to the District Court de novo.

Thank you for your consideration of this matter and please do not hesitate to contact me should you have questions or comments.

Regards,



Michael Wright
Executive Director
Texas Pharmacy Business Council

cc:

Texas Sunset Advisory Commission Senate Members (via facsimile)

The Honorable Brian Birdwell
The Honorable Dawn Buckingham
The Honorable Donna Campbell
The Honorable Juan "Chuy" Hinojosa
The Honorable Charles Schwertner

Texas Sunset Advisory Commission House Members (via facsimile)

The Honorable Cindy Burkett
The Honorable Harold V. Dutton, Jr.
The Honorable Larry Gonzales
The Honorable Richard Pena Raymond
The Honorable Tom Luce

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