



Cynthia Laubacher
Senior Director,
Western Region

Medco Health Solutions, Inc.
1100 Kimberly Court
Roseville, CA 95661

tel 916-771-3328
fax 916-771-0438
cynthia_laubacher@medco.com
www.medco.com

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Representative Wes Keller, Chair
House Health & Social Services Committee
Alaska State Capitol
Juneau, AK, 99801

Re: House Bill 259: Oppose

Dear Representative Keller:

Medco Health Solutions regrets that it must respectfully oppose House Bill 259 relating to pharmacy audits. This legislation will negatively impact our ability to audit pharmacies on behalf of our clients for fraud, waste and abuse, as well as recover overpayments paid by and owed to our clients. Medco's clients include public and business plan sponsors who not only expect, but demand that we conduct audits to protect them.

This legislation is unnecessary. Pharmacies in our network are provided a manual with detailed information including the audit process and their rights and responsibilities as a member of our network. House Bill 259, as proposed to be amended, would severely restrict our ability to conduct pharmacy audits. Specifically:

- (1) HB 259 proposes to limit to 75 the number of prescriptions that can be audited at one time for a maximum two year period. Limiting audits to 75 claims prevents us from conducting a valid audit. Using the sponsor's example, for a pharmacy filling 200 prescriptions a day HB 259 would limit our review to 75 out of 72,000 claims in a one year period hardly a representative sample to determine if the pharmacy was overpaid on those claims, or to determine the existence of a pattern of fraud, waste or abuse.
- (2) HB 259 prohibits plan sponsors from recovering dispensing fees even if a prescription is found to be illegal, such as a missing signature log, required patient information, etc.
- (3) HB 259 exempts specified errors from being considered fraud. We appreciate and recognize that honest mistakes occur and the audit and subsequent appeals process addresses those issue. However, if a pattern of errors emerges resulting in overpayments to pharmacies, this may indeed indicate fraud.

- (4) HB 259 prohibits auditors from sharing information. The federal CMS holds a mandatory quarterly meeting specifically for the purpose of sharing this information with them and, by default, every other plan or PBM present.
- (5) HB 259 leaves plan sponsors at risk for potentially hundreds of thousands of dollars by prohibiting auditors from collecting and holding suspect claims. An auditor could find numerous problems totaling tens of thousands of dollars and the pharmacy could disappear the next day, leaving plan sponsors out those funds. This does happen.
- (6) HB 259 sets an unreasonably high standard that will prevent plan sponsors from recovering overpayments or identifying fraud, waste or abuse. Government programs, such as Medicaid and Medicare are exempt from the provisions of the bill. Why should private payers not be afforded the same protections as government payers?

HB 259 contains other problematic provisions. Subsection 17 prohibits auditors from being paid based on a percentage of the amount recovered. Our clients, the plan sponsors, determine how we are paid. On-site audits, in particular, are very expensive to conduct and it should be left to the plan sponsors as to how to cover their costs.

We disagree strongly with the National Community Pharmacists Association assertion that there are no winners or losers from this legislation. The winners are the pharmacies engaged in fraudulent activity which this legislation takes pains to protect. The losers are the payers, including the Alaska state employees program, union trusts, and private employers and health plans who are overbilled or defrauded by pharmacies and would be essentially prohibited from recovering their money.

Medco takes seriously our responsibility to our clients to conduct thorough audits of the pharmacies in our networks and protect them from the costs associated with fraud, waste and abuse. For these reasons Medco must oppose HB 259.

Sincerely,

CYNTHIA M. LAUBACHER
Senior Director, State Government Affairs