



EXPRESS SCRIPTS®

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March 26, 2013

Mike Dunleavy

Senator ~~Mike Dunleavy~~, Chair
Senate Labor & Commerce Committee
Alaska State Capitol
Juneau, AK, 99801

Re: SSSB 8: Oppose Unless Amended

Dear Senator Dunleavy:

I am writing to inform you that Express Scripts respectfully must take a position of oppose unless amended on Senate Second Substitute Bill 8. This legislation seeks to restrict our ability to conduct audits of pharmacies on behalf of our clients. Express Scripts administers prescription drug benefits on behalf of employers, health plans, unions and government health programs. We provide integrated pharmacy benefit management services including pharmacy claims processing, home delivery, specialty benefit management, benefit-design consultation, drug-utilization review, formulary management, medical and drug data analysis services, as well as extensive cost-management and patient-care services.

Our clients look to us to manage increasing drug costs while providing value and quality care to patients by making prescription drugs safer and more affordable. As such, it is critical to our clients that we have an effective pharmacy audit program in place. Such a process is designed to detect fraud, such as false claims, waste, such as unplanned errors, and abuse, such as unsound practices, and to recover overpayments paid by our clients to pharmacies.

Each pharmacy in our network is given a provider manual that details the audit process and the pharmacy's rights and responsibilities under it. The manual is part of the contract with the pharmacy. Our clients want to be sure that their money is spent wisely. They want to minimize the number of inaccurate prescription claims, stop waste, fraud and abuse, and ensure that providers are meeting requirements under the contract. The audit process is a critical tool to help us meet those goals for them.

Earlier this year we met with legislative staff and representatives of the Alaska Pharmacists Association to discuss their concerns with pharmacy audits. It was a productive meeting and agreements were reached on a variety of issues which are reflected in SSB8. However, we continue to have five major concerns with the legislation and as such must oppose unless we can reach agreement on amendments.

Section 1(a)

We request the provisions of the bill be limited to on-site audits. There are two types of pharmacy audits: on-site, in which our auditor physically visits the pharmacy and claims are evaluated against the pharmacy's prescription records; and desk audits, a daily targeted review of point of sale claims for potential errors in the quantity submitted. Desk audits make up the vast majority of audits conducted. They enable us to resolve problems early and quickly, as well as identify patterns of potential fraud, waste and abuse. The provisions of the bill do not make sense in the context of a desk audit and, therefore, we request an amendment to P. 1, line 5 to specify (a) When an onsite audit of records..."

Section 1(a)(3)

This language prohibits an audit within 90 days of an audit in which no errors were found. As proposed SSSB8 would prohibit desk audits, opening up the potential for fraud, waste and abuse to occur. The language prohibits audits within a 90-day period in which no errors were found and while restricting our ability to identify errors. We request this section be stricken in its entirety.

Section 1(a)(10)

This prohibits our clients from recovering payments to pharmacies for prescriptions that are mailed or delivered as a routine business practice. We understand the unique circumstances in Alaska and we do allow prescriptions to be mailed or delivered, but only under certain circumstances, e.g., not normal business practice, the pharmacy followed the rules in the contract, the client contract doesn't restrict mail service to a contracted mail service pharmacy, and the pharmacy followed state law with regard to mailing of prescriptions, proof of member receipt and normal prescription submission and billing requirements.

Additionally, the language, as proposed, provides no protections to consumers against being charged a shipping or delivery fee by the pharmacy, a cost that is covered when they receive their prescriptions through the contracted mail service pharmacy.

We offered the following alternative language as a compromise:

(10)(a) The auditor may not assess a charge-back, recoupment or other penalty against a pharmacy solely because a prescription is mailed or delivered at the request of a patient, under the following conditions:

- (i) Mailed prescriptions cannot exceed one-percent of their total prescription volume;
- (ii) The pharmacy is in compliance with state law requirements for mailing prescriptions;
- (iii) The pharmacy has proof of receipt from the member;
- (iv) The pharmacy complied with contractual prescription submission and billing requirements; and
- (v) Mailing of a prescription does not violate benefit plan rules including a requirement for patients to receive prescription drug refills through the benefit plan contracted mail pharmacy.

(b) Pharmacy benefits manager, health plans, health insurers or any other public or private payor are not required to reimburse the pharmacy for any additional shipping costs associated with mailing a prescription to a patient.

Section 1(a)(17)

This subsection prohibits plan sponsors from paying for audits based on the percentage of the amount recovered. Plan sponsors require us by contract to conduct audits of our network pharmacies and it is they who determine how they want to pay for that service. Express Scripts conducts all pharmacy audits with our own employees. We do not compensate our employees based on a percentage of the amount recovered for our clients. We understand the proponents concern to eliminate incentives to find problems and offered alternative language:

(17) the auditor may not pay the agent or the employee who conducts the actual audit based on a percentage of the amount recovered.

Section 1(a)(19)(b)

As mentioned, we reached agreement on a number of issues, including providing pharmacies with two weeks notice of an audit, limiting the look-back period to two-years, and requiring pharmacies have a written appeals process. However, a key provision missing from SSSB 8 is language that sets-aside the notice and other provisions in cases of suspected or alleged fraud, willful misrepresentation. Imposition of notice requirements and limits on the records that can be reviewed when there is suspected fraud, willful misrepresentation or abuse make it impossible to protect our clients. It is critical that the following language be included:

(19) (b) This section does not apply to:

- (1) Any audit, review or investigation that is initiated based on or involves suspected or alleged fraud, willful misrepresentation or abuse;
- (2) a criminal investigation; or
- (3) state Medicaid or federally funded programs.

We remain open to further discussions on these matters, but for now must remain oppose unless amend. Thank you for the opportunity to provide comments on this proposal.

Sincerely,

CYNTHIA M. LAUBACHER