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March 27, 2013

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

VIA HAND DELIVERY

Re: SSSB 8: OPPOSE UNLESS AMENDED

Dear Senator Dunleavy:

CVS Caremark, as the largest pharmacy healthcare provider in the United States, with integrated pharmacy and health operations nationwide including: Pharmacy Benefits Management, Retail Health Clinics, Specialty, Retail and Mail-Order Pharmacies, including significant business in Alaska, respectfully wishes to convey specific concerns and a position of **OPPOSE, UNLESS AMENDED** to Senate Second Substitute Bill 8. This legislation seeks to restrict our ability to conduct audits of pharmacies on behalf of our clients. CVS Caremark's operations in Alaska include administering prescription drug benefits on behalf of employers, health plans, unions and government health programs, including our premier public sector client in Alaska, the University of Alaska at Fairbanks.

Our clients engage our services to help them manage ever-increasing prescription drug costs. As such, it is critical to our clients that we have the ability to continue with an effective pharmacy audit program. 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.

Every pharmacy contracted to be a part of the CVS Caremark network for a client or a number of clients, is supplied with a provider manual that gives the pharmacy specific detail as to our audit processes and the pharmacy's rights and responsibilities under it. This manual is part of our contract with the pharmacy. Our clients must be afforded the opportunity to minimize the number of inaccurate prescription claims, stop waste, fraud and abuse, and ensure that providers are meeting requirements under the contract or they face the possibility of paying for unnecessary or unlawful charges. Therefore, the audit process is a critical tool to help CVS Caremark meet those goals for our clients in Alaska and all across the United States.

Earlier this year CVS Caremark, Express Scripts and the Teamsters met with legislative staff and representatives of the Alaska Pharmacists Association, the National Association of Chain Drug

Stores and the National Community 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. Unfortunately, we continue to have a few very significant concerns with the legislation and as such must oppose unless we can reach agreement on these. CVS Caremark provided suggested changes to the February 22, 2013 version of SB8 (again outlined below) yet to date, none of these changes have been adopted. We ask that the Committee hold this bill until such time as these changes are made or to oppose the bill and vote "NO" on its passage if such changes are not made to the bill. Below, please find the changes CVS Caremark requests along with a detailed justification as to why the changes are necessary.

LANGUAGE CHANGES NEEDED TO SSSB 8 (EGAN)

2-22-2013 VERSION OF BILL USED FOR THIS DOCUMENT

NOTE: NEW LANGUAGE WILL BE UNDERLINED AND REDACTED LANGUAGE STRUCK

CHANGE #1

ONE OF THESE TWO OPTIONS MUST BE ADOPTED (**NOTE: We can live with either/or, but must have one or the other):

o Page 1, Line 1 change as follows: "An Act establishing procedures and guidelines for on-site auditing of pharmacy records;..."

o Page 1, Line 5 Section 1 (a) change as follows: "When an on-site audit (hereafter "audit") of the records...."

□ Justification: The entire bill is written about the kinds of pharmacy audits which occur on premise or on-site. The terms regarding notice, lookback periods, exclusions and response times, i.e. 120 days here, 30 days there—all are applicable to the kind of audit conducted by audit personnel, physically visiting a pharmacy. However, these are not the ONLY kinds of audits and the bill needs to be clear that it is meant to be applicable to on-site only. To apply these terms/provisions to the other kinds of audits doesn't make any sense. On-site audits are labor intensive and relatively rare (a handful—for AK no more than 10 a year, if that, and in 2012 the number was actually zero. Now if we suspected Fraud of course we would audit immediately because there was suspicious activity but we're talking about a routine 'on-site' audit.). However, there are other kinds of audits that CVS Caremark conducts: e.g. Daily Review Audits and Desktop Audits. Both of these kinds of audits are conducted via computer and in the case of daily review are actually constantly going on via algorithm in the background.

CHANGE #2

o On Page 2, Lines 1-7 Section 1 (a) (3) STRIKE ENTIRE SECTION (all of lines 1 through to the end of Line 7).

□ Justification: First of all, CVS Caremark represents over 2,000 clients (from IBM to McKESSON to AT&T, FEDEX and UPS to The University of Alaska at Fairbanks) and we manage some portion of the prescription drug benefit for these clients. Every client is different and every client has different T&Cs that we must meet in their bid or RFP. Some clients require that we conduct on-site audits more often than others. When we go in and audit a pharmacy with an on-site audit we're conducting that audit on behalf of one or more clients, but we don't conduct an audit on

behalf of ALL 2000+ clients, so to say we cannot go back to a pharmacy for 3 months simply because that pharmacy had no errors makes no practical sense. Moreover, and perhaps even a greater concern is that if I were a bad actor and knew of this bill passing in Alaska with Section 1 (a) (3) intact, I would know all I need do is survive one on-site audit from a particular health plan or PBM and then I have 3 months to perpetrate fraud and likely not get caught. It also encourages sloppiness in terms of meeting recordkeeping, etc.

CHANGE #3

- o On Page 2 beginning at Line 29 Section 1 (a) (10) Change as follows: “(10) (a) the auditor...”
- o On Page 2 beginning at Line 31 Section 1 (a) (10) Change as follows: “request of a patient ~~as part of a routine business practice of the pharmacy~~; under the following conditions:
 - o (i) Mailed prescriptions cannot exceed one-percent of their total prescription volume;
 - o (ii) The pharmacy is in compliance with state law requirements for mailing prescriptions;
 - o (iii) The pharmacy has proof of receipt from the member;
 - o (iv) The pharmacy complied with contractual prescription submission and billing requirements;
 - o (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 managers, 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.

o Justification: Retail pharmacies are not mail-order pharmacies. This is a completely different class of pharmacy (different licensing rules, pharmacist to technician ratio rules, pricing, etc). The language contained in Subsection (10) is acceptable to a point, but the language “as part of a routine business practice of the pharmacy” must go. Why? Well, mailing prescriptions should not be a “routine business practice”—mailing prescriptions should be rather rare. We’re not saying we don’t see that in Alaska there is a legitimate business need to mail prescriptions from time-to-time, but if a pharmacy is mailing all of its prescriptions its acting as a mail-order pharmacy. This language must be taken out and we’ve added in T&C’s that a retail pharmacy needs to meet in order for us to have a certain comfort level that this won’t become an abused practice, or something advertised that they do for everyone. If a pharmacy wants to become a licensed mail-order pharmacy, then that’s one thing but if they want to be allowed to mail prescriptions and not have the occasional mailed prescription get recouped on audit, then the pharmacists need to meet us halfway here and meet the T&C’s that are clearly and reasonably outlined. IF the pharmacies are willing to do that we will meet hem halfway and will make a broad exception for Alaska retail pharmacies. We see this as a reasonable give and take. but we need to come together and each give the other something to work with, otherwise a bad actor can come in and abuse the system/take advantage of language that is too broad. Thanks.

CHANGE # 4

On Page 3 beginning at Line 22 Section 1 (a) (17) Change as follows: “~~(17) the auditor may not receive compensation based on the percentage of the amount recovered by the auditor;~~ the auditor may not pay the agent or employee who conducts the actual audit based on a percentage of the amount recovered;

o Justification: The primary concern pharmacies have that this subsection attempts to rectify are with 3rd party "bounty hunting" firms. These are firms that are hired to conduct pharmacy audits and they only get paid on a contingency fee basis. This would address those kinds of audit firms because they are not the "auditor" but the "agent" of the auditor. We have no problem putting that down on paper but we don't like the language we redacted out because it doesn't get to the root of the problem at all and also would potentially prohibit a client from paying us for conducting an audit or make more difficult for them to do so. Finally, the language we have suggested has been accepted by pharmacy associations elsewhere. Thanks.

CHANGE #5

On Page 3 beginning at Line 30 Section 1 (a) (19) Change as follows: "(2) state Medicaid, or federally funded programs; or"

"(3) any audit, review or investigation that is initiated based on or involves suspected or alleged fraud, willful misrepresentation or abuse."

o Justification: Programs such as Medicare Part D are exempt under this act as are all federal programs and as Medicaid is specifically called out, so should federal programs be listed. The language added under (3) is common language in almost every audit law across the United States—and all of them that have passed in the last couple of years have this provision. This isn't just a "nice to have" it is a must. We have to have a broad exemption for Fraud. We have provided examples of fraud so you can see what we're talking about. As with any criminal though, if they find they have legal protections they will absolutely use them to skip town and keep our client's money.

If we can get these five changes we have an agreed-to bill and we can remove opposition and pass an Audit bill in Alaska. Thank you for your time.

Therefore, for the aforementioned reasons, CVS Caremark respectfully asks that you hold SSSB8 until our requested changes are adopted or, if the changes are not adopted that the Committee reject SSSB8 and vote "NO" as to its passage. Thank you for your consideration. If you have any questions, please contact me at 847.559.3422 or eric.douglas@cvscaremark.com.

Respectfully,



Eric P. Douglas
Senior Director, Government Affairs
CVS Caremark Corporation

cc: Senator Micciche, Vice-Chair
Senator Olson
Senator Stedman
Senator Ellis
Senator Egan