

To: Labor & Commerce Committee

From: Rose Kalamarides  
Administrator of Alaska Teamster-Employer Trust Funds

Date: March 16, 2012

Re: HB 259

The Teamsters oppose this bill because it is not well defined and is not revenue neutral.

Plans, such as ours, hire a pharmacy benefit manager (the PBM), which provides all pharmacy services to our members and helps us control pharmacy costs. Part of the role of the pharmacy benefit manager is to audit the claims for our members.

This bill clearly goes to protect the pharmacies but does little for the consumer (our member) who is the payer. This is not a revenue neutral bill. This would require state oversight which is duplicitous and unnecessary. The bill is so poorly written that it would be onerous for the state to administer.

When a PBM contracts with a pharmacy, their contracts cover a litany of issues which this bill duplicates. For example, the notice requirements are covered in these contracts. While we have no problem with these, they are unnecessary and an issue to the contracting parties.

We take particular issue with several of the requirements:

Subparagraph 3 requires the audit of a claim shall occur within two years. Medicare and Medicaid require 10 years.

Subparagraph 4 is vague and not well written. In reading it, I'm not even sure what supposed problem they are attempting to address.

Subparagraph 5 is vague and not well written. Who will decide the standards and parameters? What is the definition of a "similarly situated pharmacy?" The contracts between the PBM and the pharmacy already cover the auditing standards.

Subparagraph 6 is the most objectionable in the proposed law. One of the major benefits of an audit is for a consumer to find fraud. For example, if a pharmacy is committing fraud by marking up prescriptions by \$1, this subparagraph could hinder the auditor's authority to name it what it is—fraud.

Subparagraph 7 is vague and not well defined.

Subparagraph 8 is objectionable. There are several parties involved in a prescription benefit plan, including the member, the fund, the consultant, the attorney, the PBM and the pharmacy. There are already confidentiality agreements imbedded in the contracts between the PBM and the pharmacy so these reports can only be distributed to interested parties under the contract terms.

Subparagraph 9 and 10 are objectionable. Extrapolation is used in most audits. When you have volume claims, it is not possible to audit every claim, so extrapolation is a reasonable method to determine the amount the pharmacy should pay if errors are found.

Extrapolation is used in all forms of audits. Besides, if the error rate is high, the auditor will continue to expand the sample until they establish a pattern. This is clearly an attempt by pharmacies to limit their financial exposure which is unfair to those who are paying these claims.

Subparagraph 11 doesn't make sense. Dispensing fees are not the only revenue the pharmacy receives. They may claim this, but they make money on the drug too. There is a lot of revenue built into the dispensing fee and is paid by the plan and should be part of the overall claim.

Subparagraph 12 is unnecessary. This is covered in the contracts with the pharmacy and they generally allow for 90 days.

Subparagraph 13 is interesting. In the prior paragraph, the auditor must deliver the audit "within 60 days" and in this paragraph, the pharmacy has "at least 30 days to respond. Clearly this entire piece of legislation is tilted in favor of the pharmacy and away from the consumer.

Subparagraph 14 is vague and could only create problems and costs for the state who will be expected to administer such a provision.

Subparagraph 15 is confusing. Doesn't a final appeal come after a final audit report? 14 and 15 appear to create an unending circle. Again, this is too vague to administer.

Subparagraph 16 is unnecessary. This is covered in the contract between the parties. Again, dispensing fees should not be excluded from the final analysis of an audited claim.

Subparagraph 17 is objectionable. How we pay our auditors should not be something the pharmacy dictates. The pharmacies do not pay for these audits. Plans like ours do. There

are many different manners in which auditors may be paid. Restricting the consumers freedom to contract with auditors on their own terms is objectionable.

Subparagraph 18 is objectionable. If we have overpaid a pharmacy, why should they have had the use of our revenue without refunding us, plus interest?

We have no objection with subparagraph 19.