

State of Alaska
Senate Labor and Commerce Committee
Hearing on Pharmacy Audits
Testimony of the National Community Pharmacists Association
March 1, 2012

Chairman Egan and honorable members of the committee:

On behalf of the National Community Pharmacists Association (NCPA) I wish to thank you for conducting this hearing. NCPA testifies today in strong support of S.B.217 as legislation that provides fair and common sense protections for pharmacies against what are currently abusive audit practices by PBMs. Let me first be clear, this legislation does not prevent audits from occurring for their intended purpose of preventing fraud, waste and abuse. In fact, this legislation specifically states that the standards within S.B.217 do not apply when pertaining to criminal investigation or an investigation by a government agency. NCPA members understand that audits must occur to catch fraud and abuse within the system. However, current PBM audits of pharmacy are in many cases simply being used as a lucrative revenue source

NCPA represents America's independent community pharmacists, including the owners of more than 23,000 community pharmacies, pharmacy franchises and chains. Together, they employ over 300,000 full-time employees and dispense nearly half of the nation's retail prescription medicines. In Alaska alone there are over 39 community pharmacies, which employ a projected 413 residents. The average independent community pharmacy generates \$4 million in annual revenue and employs 10.6 full-time individuals. Alaska's independent community pharmacies generate \$157 million in annual revenue. Also, those community pharmacies support additional revenues to other state businesses in the amount of \$141.2 million annually and support additional full-time employment to other businesses equal to 165 employees.

NCPA has long championed the need for greater oversight of pharmacy benefit managers (PBMs) and many of their questionable business practices due to the problems our members and their patients continue to face. One of the largest problems that NCPA pharmacist members face in today's pharmacy marketplace, is the issue of abusive audit practices. This issue occurs nationwide and many states are taking steps to protect their pharmacists and small business owners. Today about 15 states have implemented some level of fair audit protections. It is not uncommon for these audits to penalize an independent pharmacy tens of thousands or even hundreds of thousands of dollars for nothing more than a clerical or administrative mishap, many of which are not the fault of the pharmacy. Let me be clear, the so called errors I am referring to are instances in which the correct medication was dispensed to the correct person and the correct fee was charged to the patient and plan.

Let me provide you with a recent example of a "minor" audit that an NCPA member went through. This member was penalized \$14,000 for not using a physician's number in their computer system. The catch was that in this case, it was a Certified Nurse Practitioner (CRNP) that wrote the order so there was no physician's number to log in. The prescriber was not a physician! The pharmacist took measures to ensure he was properly compliant and contacted the insurance company who indicated this was not a problem and he should use the CRNP License number. He did this. In addition, he also attached a copy of the CRNP's actual license just so it was clear what he was doing. He then logged the phone call to further protect himself. Even so, when he was audited, the PBM demanded \$14,000 back. After all the steps this pharmacist took to ensure he was acting

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properly, he ultimately settled this issue for \$12,000. The pharmacist was doing exactly what he was told to do by the insurance company and even took additional steps to make sure everything was properly documented. Even so, this pharmacist small business owner took a loss of \$12,000. These stories occur on a regular basis. Similar stories have resulted in pharmacists being fined \$250,000 or even more.

Rather than legitimately using the audit process to guard and protect against fraud, many PBMs now view the process as a profitable revenue stream for the company. In fact, many auditors are incentivized by receiving payment based on a percentage of the money reclaimed. PBMs now go well beyond the basic intent of an audit, to catch fraud and abuse, and instead focus on typographical or administrative errors, or loopholes in the rules and regulations such as the above story as a basis to recoup money from the pharmacy. In many cases, if a PBM auditor identifies an administrative error, he or she will “take back” 100% of the value of that prescription and even all its refills—a severe financial penalty that is out of proportion to the gravity of the offense.

Another egregious practice many PBMs employ in order to “ensure” that discrepancies will be found is to establish elaborate record keeping requirements well in excess of what is required under state or federal law or other PBMs. Pharmacies typically maintain contracts with multiple PBMs. The result is a myriad of conflicting documentation requirements that can make operating a busy pharmacy and providing patient care an even greater challenge.

NCPA is confident that once members review S.B.217 they will see the measures spelled out are reasonable standards to ensure that abuses do not occur. In circumstances where fraud or legitimate errors occur, independent pharmacists understand that steps must be taken to correct these errors and recoup a reasonable sum of money. As business owners, independent pharmacists realize that there are individuals in every profession that may try to work the system. In those cases, we fully support the recoupment of money. These instances are not what is being referred to today.

In conclusion, NCPA urges your support of S.B.217—legislation that will provide pharmacies an understandably needed degree of protection against the overaggressive and far reaching PBM audit practices. Community pharmacists understand that in business there must be audits to identify those instances where true fraud occurs. However, these audits should not be utilized to only increase PBMs profit margins. I thank you for taking NCPA’s concerns into consideration.

I welcome your questions at this time.