

State of Alaska
Senate Labor and Commerce Committee
Hearing on Pharmacy Audits
Testimony of the National Community Pharmacists Association
March 28, 2013

Chairman Dunleavy 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. 8 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. 8 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 40 community pharmacies, which employ a projected 424 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, 23 states have implemented some level of fair audit protections and an additional recently sent audit legislation to the governor who is expected to sign this bill into law. It is not uncommon for these PBM pharmacy 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.

To the best of NCPA's knowledge, no state has ever "scored" fair pharmacy audit legislation with a fiscal impact to the state or healthcare system. NCPA has been closely involved during the enactment of almost every one of the instances and in fact, many of these states crafted their legislation based on NCPA model language. The claims made by those opposing this legislation are simply scare-tactics used to delay favorable movement of this legislation. In addition; none of the twenty three states that have already passed audit legislation have reported a correlating increase in costs following the passage of such legislation. In response to reports of concerns relative to cost increases, NCPA sent a letter to Alaska's Teamsters Union requesting clarification as to

how this bill would increase their costs, and offering to discuss such concerns with the organizations representatives. Over the month since that letter was sent, we have received no reply.

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 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. 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.

As recently as late February 2013, the Centers for Medicare and Medicaid Services (CMS) released a report stating they found that pharmacy audits in the Part D program were not focusing on their intended use to identify fraud and financial harm but instead were *targeting “routine clerical errors”* and that such targeting *“may be related to the incentives in contingency reimbursement arrangements with claim audit vendors.”* CMS’s findings continued by stating *“therefore, we believe full claim recoupment should only take place if the plan learns that a claim should not have been paid under Part D at all; for example, because it is fraudulent.”* NCPA is pleased that CMS has now formally stated the message we are now conveying to the Alaska Senate Labor and Commerce Committee. That message is that in many cases, audits are not targeting fraud or abuse but are instead targeting simple, honest “errors” where no fraud or financial loss was intended or occurred.

NCPA is confident that once members review S.B. 8 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. 8—legislation that will provide pharmacies an understandably needed degree of protection against the overaggressive and far reaching PBM audit practices. I thank you for taking NCPA’s concerns into consideration.

I welcome your questions at this time.