

The Honorable Mike Dunleavy
State Senate
Alaska State Capitol, Room 510
Juneau AK, 99801

March 26, 2013

RE: National Community Pharmacists Association (NCPA) Support of S.B. 8

Dear Senator Dunleavy:

I am writing on behalf of the National Community Pharmacists Association (NCPA) in strong support of S.B. 8. This legislation provides reasonable and common sense protections for pharmacies against abusive PBM pharmacy audit practices at no cost to the healthcare system. NCPA respectfully requests that Alaska join the many states that have previously enacted such legislation into law, or are currently moving legislation favorably through the legislative process. NCPA also requests that the Alaska legislature question the misleading statements made by those opposing this legislation including those statements claiming cost increases or increases in healthcare fraud. Such statements have never proven to be true with regard to fair pharmacy audit legislation.

NCPA would like to take a moment to clarify a few of the above mentioned misleading statements.

NCPA and Alaska pharmacies fully support the need for business audits:

NCPA and Alaska pharmacies do not oppose the audit process in general and in fact recognize that the audit process, when properly and fairly applied, is simply a cost of doing business. Such audits are required to identify those “bad apples” present in any industry. In recognition of this fact, S.B.8 contains specific language that would allow the recoupment of money where true fraud or financial loss exists. S.B.8 simply corrects the imposition of *unfair and abusive* audit practices that the PBMs currently use to generate revenue for only the PBM based on minor, non-substantive errors.

In no state has the support or enactment of fair pharmacy audit legislation increased costs to the healthcare system or increased fraudulent behavior:

Currently, twenty-three states have enacted fair and uniform pharmacy audit legislation into law. Another state has now sent audit legislation to the governor who is expected to sign this bill into law, with the support of the PBM industry. In none of those states has there been reported a corresponding increase in fraudulent claims and resultant costs. Also, to the best of NCPA’s knowledge, no state has “scored” such legislation with any 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.

To the best of NCPA’s knowledge no state union organization has ever opposed similar legislation:

NCPA is aware that PBMs have used similar “scare tactics” to attempt to convince other groups to oppose *other* NCPA priority legislation by suggesting that the legislation would hamper the PBMs’ operations which will then drive up health care costs. However, such organizations opposition has never occurred when referencing fair pharmacy audit legislation. The truth is that this legislation would have no impact to union plans. NCPA has previously submitted 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. There should be no connection between the pharmacy audit process and union organizations operations. Therefore NCPA does not understand how there can be a resulting impact.

The Centers for Medicare and Medicaid Services (CMS) have recently voiced concern about abusive audit practices: NCPA is now pleased to report that 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.

Conclusion:

Rather than legitimately using the audit process to guard and protect against fraud, many PBMs view the pharmacy audit process as a profitable revenue stream for the company. Many PBMs now go well beyond the basic intent of an audit, to catch fraud and abuse, and instead focus on these typographical or administrative errors 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 the prescription *and all refills*—a severe financial penalty that is out of proportion to the gravity of the so called offense.

In conclusion, NCPA urges all members of the Senate Labor and Commerce Committee’s support of S.B. 8—legislation that will provide pharmacies with 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 and have taken measures within this legislation to ensure that audits can still occur for their intended purpose. In fact, audit legislation clearly indicates that where true fraud or financial loss is present, such money can be recouped. NCPA is confident that once you review S.B. 8 you will find it simply sets reasonable standards to ensure that audits continue to be useful for their true intent yet cannot be utilized to only increase PBMs profit margins.

Please feel free to contact me at matt.diloreto@ncpanet.org or 703-600-1223 should you have any questions.

Sincerely,



Matthew J. DiLoreto
Director, State Government Affairs

C.c.: Members of the Senate Labor and Commerce Committee