

March 1, 2017

The Honorable Mia Costello
Chair, Senate Labor and Commerce Committee
State Capitol, Room 510
Juneau, AK 99801

RE: Senate Bill 38– Relating to Pharmacy Benefit Managers – LETTER IN OPPOSITION

Chair Costello:

CVS Health opposes Senate Bill 38 (“SB 38”) and respectfully requests that the Committee reject this bill. SB 38 seeks to codify two areas of private contractual and financial relationships between a pharmacy or pharmacy’s representative (e.g., Pharmacy Services Administration Organization (PSAO)) and a pharmacy benefit manager (PBM). PBMs provide pharmacy benefit management services to their clients such as health plans, large private employers, Taft-Hartley trusts, the State of Alaska and federal public sector health benefit plans. It’s the PBM’s role to help its clients design cost effective prescription drug benefit options that help make prescription drugs more affordable for consumers.

SB 38 is unnecessary because the areas of private business to business contract law that this bill seeks to codify under state control are presently appropriately managed under contract. These contracts already include many provisions sought in the bill, such as providing for appeals processes for disputed generic drug claim reimbursement, pharmacy audit processes, as well as other standard procedures. Most importantly, we are confident that SB 38’s anti-health plan, anti-managed care and anti-PBM bill provisions, that include establishing a *de facto* no-loss guarantee for generic reimbursement to pharmacies, will result in increased costs to plans, payers and ultimately patients, including the State of Alaska’s employee/retiree plans.

Specifically, we would like to highlight the following concerns for your consideration:

- **Division of Insurance PBM Oversight:** SB 38 would inappropriately allow the Director of the Alaska Insurance Division to be the arbiter of private contract disputes. Not only is this an overreaching grant of legal authority, the Division does not have the resources or expertise in pharmacy benefits management to insert itself into such a process. This bill grants excessive regulatory authority over PBMs that does not exist for any other healthcare entity in Alaska by ignoring existing remedies and inserting the Director into private business contracts.
- **Pharmacy Audits:** SB 38 would have the unintended consequence of promoting fraud, waste and abuse by attempting to dictate private pharmacy audit terms, something that is already addressed today in contract between the pharmacy and the PBM. Some of the problematic provisions of the audit language found in SB 38 include: limiting the days of the month an audit can occur, limiting the number of prescriptions that can be audited, and limiting audits for an individual pharmacy to once per year. Health plans and employers have the right to ensure that the pharmacy claims they are paying for are legitimate. In a time of rising costs, preventing fraudulent activity is an important tool to keep health care costs down. As drafted, this bill would interfere with the use of this important tool.



- **Maximum Allowable Cost ("MAC"):** SB 38 will increase prescription drug costs in Alaska by limiting the use of the MAC reimbursement tool. MAC is the amount a pharmacy will be reimbursed for a generic drug which, unlike branded/patent protected pharmaceuticals, is a commoditized product. Restricting which drugs can be reimbursed using MAC would allow for pharmacies to get overpaid at brand rates for generic drugs, thereby driving up costs. SB 38 will also drive up consumer health care costs by removing the incentive for a pharmacy to purchase the lowest cost generics. In fact, this bill actually creates a perverse incentive toward inefficient purchasing by effectively guaranteeing a profit to a pharmacy regardless of the cost. No business is or should be guaranteed a profit because it takes competition out of the marketplace and ultimately leads to increased costs.

CVS Health is a pharmacy innovation company helping people on their path to better health. Through our 9,600 retail pharmacies, more than 1,100 walk-in medical clinics, a leading pharmacy benefits manager with more than 75 million plan members, a dedicated senior pharmacy care business serving more than one million patients per year, and expanding specialty pharmacy services, CVS Health enables people, businesses and communities to manage health in more affordable and effective ways. Our unique integrated model increases access to quality care, delivers better health outcomes and lowers overall health care costs. We believe that SB 38 contains many provisions that do not support this vision, therefore we respectfully oppose the bill.

On behalf of CVS Health, I thank you for your consideration of our comments in opposition to SB 38.

Respectfully,

A handwritten signature in black ink, reading "Melissa Schulman".

Melissa Schulman
Senior Vice President, Government and Public Affairs
CVS Health