

**ALASKA STATE LEGISLATURE**  
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**

April 1, 2010

1:38 p.m.

**MEMBERS PRESENT**

Senator Joe Paskvan, Chair  
Senator Joe Thomas, Vice Chair  
Senator Bettye Davis  
Senator Kevin Meyer

**MEMBERS ABSENT**

Senator Con Bunde

**COMMITTEE CALENDAR**

SENATE BILL NO. 38

"An Act relating to insurance; removing references, definitions, and confidentiality of information provisions relating to managed care entities, substituting health care insurers in the former role of managed care entities, and amending the definitions of 'covered person,' 'managed care plan,' and 'utilization review,' as those terms relate to the administration of managed care insurance plans; authorizing persons to act as pharmacy benefits managers subject to oversight by the division of insurance; and amending the definition of 'health care insurer' as it relates to health care insurance."

- HEARD AND HELD

SENATE BILL NO. 303

"An Act relating to a subcontractor's, contractor's, and project owner's liability for workers' compensation, to sole proprietors and partnerships without employees, and to managers or managing members of limited liability companies, and excluding certain persons from liability for securing the payment of workers' compensation benefits to employees; and providing for an effective date."

- MOVED SB 303 OUT OF COMMITTEE

SENATE BILL NO. 304

"An Act adopting the Alaska Entity Transactions Act; relating to changing the form of entities, including corporations,

partnerships, limited liability companies, business trusts, and other organizations; amending Rule 79, Alaska Rules of Civil Procedure, and Rules 602(b)(2), 602(c), and 605.5, Alaska Rules of Appellate Procedure; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 38

SHORT TITLE: PHARMACY BENEFITS MANAGERS; MANAGED CARE

SPONSOR(s): SENATOR(s) ELTON

01/21/09	(S)	PREFILE RELEASED 1/9/09
01/21/09	(S)	READ THE FIRST TIME - REFERRALS
01/21/09	(S)	HSS, L&C, FIN
04/03/09	(S)	HSS AT 1:30 PM BUTROVICH 205
04/03/09	(S)	Moved SB 38 Out of Committee
04/03/09	(S)	MINUTE(HSS)
04/06/09	(S)	HSS RPT 3DP 1AM
04/06/09	(S)	DP: DAVIS, ELLIS, PASKVAN
04/06/09	(S)	AM: DYSON
04/01/10	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 303

SHORT TITLE: WORKERS' COMPENSATION AND CONTRACTORS

SPONSOR(s): LABOR & COMMERCE

03/08/10	(S)	READ THE FIRST TIME - REFERRALS
03/08/10	(S)	L&C, JUD
03/25/10	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
03/25/10	(S)	Heard & Held
03/25/10	(S)	MINUTE(L&C)
04/01/10	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

SENATOR FRENCH

Alaska State Legislature

Juneau, AK

**POSITION STATEMENT:** Sponsor of SB 38.

BARRY CHRISTIANSON, pharmacist

Co-Chair, Alaska Pharmacists Association

**POSITION STATEMENT:** Supported SB 38.

DIRK WHITE, pharmacist  
Member, Alaska Pharmacists Association  
Sitka, AK  
**POSITION STATEMENT:** Supported SB 38.

GERRY PURCELL  
Pharmacy Partners  
Atlanta, GA  
**POSITION STATEMENT:** Supported SB 38.

PAT SHIER, Director  
Division of Retirement and Benefits  
Department of Administration (DOA)  
**POSITION STATEMENT:** Answered questions SB 38 and related how the  
division was managing health care.

LINDA HALL, Director  
Division of Insurance  
Department of Commerce, Community and Economic Development  
(DCCED)  
Juneau, AK  
**POSITION STATEMENT:** Answered questions on SB 38 issues and said  
she would continue working with the sponsor on it.

ROSE KALAMARIDES, Administrator  
Alaska Teamster Trust Fund  
Anchorage, AK  
**POSITION STATEMENT:** Opposed SB 38.

DAVE DEDERICHS  
Express Scripts  
St. Louis, MI  
**POSITION STATEMENT:** Opposed SB 38.

CYNDI LAUBACHER, Senior Director  
State Government Affairs  
Medco Health Solutions  
**POSITION STATEMENT:** Opposed SB 38.

GREG LOUDON, Employee Benefits Consultant  
Parker Smith & Veeck  
Representing the Alaska Association of Health Underwriters  
Anchorage, AK  
**POSITION STATEMENT:** Opposed SB 38.

SALLIE STUVEK, Director  
Human Resources

Fairbanks North Star Borough  
Fairbanks North Star Borough school districts  
**POSITION STATEMENT:** Opposed SB 38.

TRENA HEIKES, Director  
Division of Workers' Compensation  
Department of Labor and Workforce Development (DOLWD)  
Juneau, AK  
**POSITION STATEMENT:** Answered questions on SB 303.

KEITH MONTGOMERY  
Alaska Regional Council of Carpenters (ARCC)  
Anchorage, AK  
**POSITION STATEMENT:** Supported SB 303.

SCOTT HANSEN  
Alaska Regional Council of Carpenters (ARCC) Local 1281  
Anchorage, AK  
**POSITION STATEMENT:** Supported SB 303

CHRIS GREGG, Business Manager  
Painters and Allied Trades  
Anchorage, AK  
**POSITION STATEMENT:** Supported SB 303.

#### **ACTION NARRATIVE**

[1:38:23 PM](#)

**CHAIR JOE PASKVAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:38 p.m. Present at the call to order were Senators Meyer, Thomas, and Paskvan.

#### **SB 38-PHARMACY BENEFITS MANAGERS; MANAGED CARE**

[1:39:25 PM](#)

CHAIR PASKVAN announced SB 38 to be up for consideration.

[1:39:37 PM](#)

SENATOR FRENCH, sponsor of SB 38, read the sponsor statement into the record as follows.

SB 38 would regulate and bring transparency to the business practices of pharmacy benefit managers (PBM) in Alaska. Pharmacy benefit managers are the largely unregulated drug middlemen that administer the prescription drug benefit portion of health insurance

plans for governments, private companies, and unions. The three major pharmacy benefit managers are Medco, CVS Caremark, and Express Scripts. Wells Fargo Insurance Services, the State of Alaska's health insurance provider, has a contract with Envision Pharmaceutical Services to administer prescription drug benefits for state employees.

PBMs negotiate with drug manufacturers and pharmacies on behalf of health insurance plans. These negotiations include cash rebates that drug manufacturers pay for drugs placed on lists of approved drugs. The confidential and proprietary nature of these contracts and financial arrangements with drug manufacturers and pharmacies creates the opportunity for PBMs to engage in unfair business practices. PBMs increase profits by accepting incentives from drug manufacturers that are not shared with health plan sponsors, such as the State of Alaska. SB 38 would prohibit pharmacy benefit managers from intervening in the delivery or transmission of prescriptions.

At of the beginning of 2009, 29 states and the District of Columbia have sued Express Scripts and won, resulting in a settlement of \$9.3 million to states and up to \$200,000 to affected patients as of May 2008. Twenty-eight states and the District of Columbia have sued CVS Caremark and won, resulting in a settlement of \$41 million in February of 2008. The federal government and twenty states have sued Medco and won, resulting in a settlement of \$184 million in 2006. The lawsuits were filed under the federal False Claims Act and/or state False Claims Acts and/or statutes.

In addition to lawsuits against PBMs, 16 states as well as the District of Columbia have enacted laws that regulate the business practices of PBMs. Other states have led the way with legislation regulating the business practices of PBMs and it is time for the Alaska Legislature to do the same.

[1:43:03 PM](#)

BARRY CHRISTIANSON, pharmacist and co-Chair, Alaska Pharmacists Association, introduced himself.

DIRK WHITE, pharmacist, Sitka, introduced himself and said he is a member of the Alaska Pharmacists Association.

1:44:31 PM

MR. CHRISTIANSON said this bill has been a priority for the Alaska Pharmacists Association. He said their members work in community pharmacies, hospitals, other government institutions, and places like the Pioneer Homes. He said there are many good reasons to support SB 38. He described PBMs acting as intermediaries between individuals (patients), the plan sponsors, pharmaceutical manufacturers, and pharmacies. PBMs use their large purchasing power to negotiate rates for members who ideally pass those lower costs on to consumers. They do this by managing formularies (obtaining drugs from manufacturers with the best price).

He explained his diagram of a pharmacy supply chain in the U.S. The pharmacy was in the middle with the consumers at the top. He said the pharmacy has to procure its product from somewhere and in most instances it's from the drug wholesaler or distributor. The distributor or wholesaler buys that product from the drug manufacturer. The PBM has contracts with the drug manufacturers to recoup some rebate money and, in turn, they have contracts with both the pharmacy and the employer or health sponsor regarding the payment of the prescription drugs.

MR. CHRISTIANSON said the reason pharmacists are concerned is because the industry has been largely unregulated and has grown quite a bit in the last 10-15 years. PBMs have been able to charge more for their drugs than the pharmacies actually receive for payment from patients. One of the other ways PBMs make money is by operating large mail order operations and switching patients from one drug to another that is sometimes more expensive for the patient but with a larger rebate on the other end.

He said that there are three large PBMs operating in the United States; all of them operate in Alaska and have extremely nice profits. The three PBMs are involved in lawsuits.

MR. CHRISTIANSON said transparency is important because without the plan's sponsor knowing what the drugs cost it would be hard for them to negotiate a good contract.

MR. WHITE continued saying that some opponents to transparency say that would allow the PBM or drug manufacturers to have some collusion and inflate the pharmaceutical prices even more.

Manufacturers would say they would be reluctant to give the discounts if the dollar amounts are actually out there in public. Once the drug pricing is made available the PBMs would have far less bargaining power. However, that hasn't proven to be true in other states that have passed similar legislation.

[1:51:26 PM](#)

MR. WHITE explained that PBMs make an enormous amount off the rebates and the plan sponsors aren't even aware of it. They can "up charge" plan sponsors an average of \$23 more for a single prescription. In other words they can add another \$23 to what a customer paid for a drug and charge the plan sponsor - like the State of Alaska or a union - that extra \$23. Without transparency PBMs also have a financial incentive to encourage the use of more expensive brand name drugs because they might get a higher rebate or other incentives to push those particular drugs rather than less expensive generic drugs. Without transparency the rebates that PBMs negotiate are not necessarily passed on to the plan sponsor who doesn't even know what they amount to.

He related that New York has seen \$50 million in savings, Lear Corporation saved \$1.1 million in a \$3.6 million budget, Sheet Metal Workers International Association saved up to 30 percent, and TRICARE anticipates saving \$1.67 billion by negotiating its own drug prices. Twenty-three other states have enacted this legislative so far; South Dakota is one and they saved \$800,000 in a single year. Wisconsin saved \$30 billion, Texas estimated \$265 million, the California Health Care Coalition found they could save \$3-6 on every prescription with their transparent PBM!

An Alaskan example that they actually have the data on showed a person filling the prescription for 90-day supply of blood pressure medication and the beneficiaries' (pharmacy) co-pay was \$37.50. The state was billed \$187.50 by the PBM. So \$37.50 went to the pharmacy and \$150 went to the PBM. In over a year of filling this prescription the state paid the PBM \$750 for just this one prescription; \$150 went to the pharmacy and \$600 went to the PBM. The pharmacist filled the prescription, made sure the patient was compliant with the medication, followed the medication, knew what the side effects were, and dealt with the patient on a regular basis, and they got paid \$150 over the year and the PBM got paid \$600 for "flipping a switch" and the state was overcharged.

MR. WHITE said SB 38 will level the competitive playing field for local pharmacists in dealing with PBMs, protect patients from unauthorized drug substitutions by the PBMs, provide some pricing transparency and would save plan sponsors and patients a lot of money.

[1:55:17 PM](#)

SENATOR THOMAS supposed that the PBM never touches the drug and that they are an entity that is supposedly negotiating a better price for pharmacists, but getting an extremely good benefit for themselves as well. He asked if that is what happens in all cases and if transparency would give people the ability to know exactly the entire transaction - the bulk prices maybe to a union or to the state versus an arrangement with them because they say they are going to do good things for you and ultimately the state ends up paying all of the bills without any real knowledge of exactly how the money is being parceled out.

[1:56:26 PM](#)

MR. WHITE answered yes that is correct. PBMs own no inventory and have no stock whatsoever in the pharmaceuticals that he dispenses. He explained that he purchases his pharmaceuticals from his drug wholesaler, he pays the bills for those medications, and then he gets paid that \$37.50 (that particular case was a co-pay, so the patient actually paid that). In some cases, there may be that co-pay plus a little bit of money that is sent to him through the PBM's system and then they turn around and up charge a higher price to the state or whoever.

SENATOR THOMAS asked if someone could explain the difference between them and a third-party administrator (TPA) and if a third-party administrator is still involved.

MR. WHITE answered that this bill would make the PBM at TPA; currently they are not. Currently, the plan sponsor would be considered the TPA.

[1:58:11 PM](#)

CHAIR PASKVAN asked him to explain the pricing for mail order pharmacies and how prices can become inflated through repackaging.

MR. WHITE answered that every prescription bottle has a national drug code (NDC). The first four or five numbers are who the manufacturer and/or packager is; the next two or three numbers are specific to the product (penicillin 500 mg tablets, for instance), and the last numbers signify the package size. So if

he is buying a package of 28 tablets from his wholesaler, which is a unit of use they would dispense (if you take one tablet 4Xday for 7 days=28 tablets), that would have a specific NDC. Every NDC number has an average wholesale price (AWP) assigned to it. The person who packages or manufacturers it gets the NDC number and then they put the AWP on the product. In mail order houses they found that the NDC numbers are from repackaged drugs. The PBM could buy a train load of 500 mg penicillin tablets from the manufacturer and then repackage it into those same small little 28-count bottles. The PBM would apply for its own AWP and get a price of \$100, but his AWP for the product he buys from his wholesaler, AmerisourceBergen, may be \$10. So, you can have two of the same bottles with the same tablets, but they can have two totally different prices. When the PBM says they are going to "discount the price" by 50 percent; that's 50 percent of \$100 and they still make a lot more money than he would dispensing the same tablets at his usual and customary price.

[2:00:36 PM](#)

SENATOR DAVIS joined the committee.

[2:01:18 PM](#)

CHAIR PASKVAN asked if there is an ownership overlap between any of the mail order pharmacies and the PBMs.

MR. WHITE answered that usually PBMs do own a mail order house.

CHAIR PASKVAN asked if there is the potential at that level to provide discounting to the mail order pharmacy (buying volume essentially from themselves) that he never has access to.

MR. WHITE answered "yes" would be the simple answer. He added Medco that was once owned by Merck would have access to raw materials from Merck to make the tablets, capsules or whatever the dosage form is and then move it to their mail order house and from the mail order house it would move to the consumer. So, they would have a direct line from raw materials to final consumer; then they would have the control loop for the cash flow as well.

CHAIR PASKVAN said he wanted to focus on the potential for price manipulation because Mr. White's business can't buy directly from any of the pharmaceutical companies; he has to buy through intermediaries. What kind of price disadvantage would he have?

MR. CHRISITIANSON responded that there are two separate pricing issues. There would be the acquisition or what it costs for the drug and then there is the AWP. It's the manipulation of the AWP that is the biggest problem.

MR. WHITE added that up until 1995 or so he and his wife had contracts to buy directly from Lily and Merck and they were able to save. The reason they were doing those direct purchases is because they were paying the freight which saved them about 2 percent. But he didn't know of a single drug manufacturer anymore that will sell to an independent pharmacy; so they have to go through one of the three national drug wholesalers: AmerisourceBergen, McKesson and Cardinal.

CHAIR PASKVAN said now the business structure is that the pharmacies have to go through the PBMs.

MR. CHRISTIANSON answered that since the early 90s they have seen more and more prescriptions being processed through the PBM networks. Nationally it's 85-90 percent.

[2:06:18 PM](#)

CHAIR PASKVAN asked what the risk is to the individual pharmacist if they complain about the PBM pricing structure, because he has heard stories about them exercising their superior economic resources.

MR. CHRISTIANSON answered that PBMs carry a lot of weight; he and Mr. White are just small pharmacies. Pharmacies in Alaska and the Lower 48 have been subject to "heavy-handed" audits, which SB 38 addresses.

[2:07:31 PM](#)

GERRY PURCELL, Pharmacy Partners, Atlanta, Georgia, supported SB 38. He said he is testifying without any compensation. This has been his area of expertise nationally for the last 15 years, the first five years of which he was working as a national sales director for a PBM that conducted a number of contracts with state and taxpayer entities. For the last 10 years he has been recognized as a national functional area expert on PBM practices and has personally briefed over a dozen attorneys general in both blue and red states. He usually testifies three to five times annually before committees such as this.

MR. PURCELL said he had done extensive work in reviewing state contracts and, in particular, a great deal of work in the state of Texas (that was mentioned as having the \$265 million

savings). He has a unique understand of the various transparency triggers that they put into place through legislation and contracting. He noted that \$265 million in savings is only one of four Texas state plans. By the time they have fully implemented their transparency bill the savings will likely exceed a half billion dollars.

He said historically the problem has been in understanding the complex mystery of PBM practices. In the late 90s, PBMs had literally 30-40 different ways of making money and only a very few of those ways were actually disclosed to the clients. PBMs call themselves managers, but they actually make money when the clients' costs go up in sort of a reverse incentive - and not because they are managing the cost of the plan.

MR. PURCELL said his efforts have been in creating environments where transparency is required. It would be very unusual for him to go into any situation where there is a lack of transparency and not be able to save that taxpayer entity somewhere 10-25 percent of their first year drug expenditures. Those savings become increasingly significant to state budgets and are often in the millions and billions of dollars.

[2:11:06 PM](#)

He liked four areas especially of SB 38. The first one was registering PBMs. The idea is not to punish PBMs but to put them on a level playing field with everyone else. Every other medical and health care industry in Alaska and most states including insurance companies third party administrators who administer both medical, dentists, optometrists, pharmacists, and physicians are all required to register. The only exception in many states, however, is the PBM. So, requiring them to simply register just levels the playing field - and they do fit the classic definition of a third-party administrator. While TPAs do different things, some of them process dental and vision claims; their core function is that they do process claims and administer payment of them. In that sense the PBM is not different from any other TPA that provides that core functionality.

[2:12:37 PM](#)

The challenge is that in many cases experts don't know how many PBMs are even operating within a state. Some have estimated as low as 80 and a most recent estimate of over 230 different PBMs are operating in the United States. He said settlements have been very favorable to the consumers in most states and which ones are operating in Alaska should be known.

Secondly, he said the area of disclosure needs changing. Before the 27-state attorneys general settlement occurred in 2003, they had no idea how much money the PBMs were keeping in the way of rebates. After that settlement it was learned that they were retaining over 55 percent of the rebate dollars. The classic Black's Law Dictionary definition of a rebate is something that is to the benefit of the payer, but in this scenario those benefits were primarily to the middle man, a classic arbitrage scheme where they were taking they payers' money and leveraging it (without great expenses or infrastructure costs) for high margins and then retaining the majority of those margins without disclosing in some cases even the nature of the margin and certainly not the amount.

MR. PURCELL said SB 38 makes sure that the State of Alaska will continue to benefit from total disclosure, not only of rebates but of things like spread pricing using AWP's that was described earlier. Spreads also occur in retail pharmacies where the PBM may be charging you a number but reimbursing your local pharmacy a different number and keeping the difference. He thinks because that is your money that you ought to at least be aware that it is occurring and how much it is.

MR. PURCELL said New Jersey that will save \$500 million over five years is a recent good example of what can happen when transparency requirements are put out to bid in contracts that were no bid previously.

[2:15:40 PM](#)

The third area of SB 38 he liked is the way it deals with pharmacy audits. He explained that the practice of extrapolation occurs if a PBM audits a pharmacy and finds a single prescription that was administered wrong (often it is not a prescribing error; it could just be one wrong number). He related how a pharmacy was charged for years for an ibuprofen prescription (actually prepared by a Texan physician who was a Senator) that was incorrectly dispensed. It was an 800 mg prescription for ibuprofen. The PBM in this case went back five years and identified every ibuprofen prescription and charged that incorrect but highest amount back to the pharmacist on the next invoice without any appeal process in place at all and no statute of limitations. It came to \$8000! He said it is not uncommon for these audits to go back anywhere from four to seven years. They are often done without notice, and they are almost always done without any meaningful appeals process, meaning if the pharmacist objects to it, there is no time frame for which they have to respond before the PBM takes the money out of their

account - and it's usually on the next cycle. This bill corrects that problem.

In his judgment, Mr. Purcell said, extrapolation should not be allowed. "Every claim should stand on its own merit and should be audited as such on a by-claim basis." He said nobody argues that, but there is a problem when the PBM makes an assumption that affects five to seven years of business for every identical or similar type prescription. Sometimes the word "retaliation" was used as it relates to pharmacy audits. He could share, probably for several hours, anecdotal examples of exactly that type of practice or what would appear to be at the surface some type of retaliation where local pharmacists testify or complain and they show up on an audit list. In this economy he said audits are on the increase and the local pharmacist has very little of the protection that would be normal in other industries.

[2:18:37 PM](#)

The fourth thing he liked about SB 38 is how it deals with the timing of prices. He explained that prices are very dynamic in the drug manufacturing marketplace and typically PBMs receive nightly downloads from data sources that update those prices. The problem over the last decade is that they will often make the change in the price to affect the payer, but they won't make the change at the same time to affect the pharmacies - thereby creating arbitrage or a spread that is hidden. The net effect of this over a year, even though they may be talking about pennies worth of difference for each script, literally adds up to millions of dollars of arbitrage activity. All he is saying here is that the timing should be close to identical; the bill calls for 24 hours. This just eliminates one of those 40 different spread practices PBMs use to enjoy high margins of profitability. However, he hastened to add that his argument doesn't have anything to do with their profitability. Health care has high operating margins, disproportionate to any other industry, at 40-65 percent, but the problem is how they arrive at it - and they arrive at it typically with your money. He fully supported SB 38.

[2:20:30 PM](#)

SENATOR THOMAS said he thought pharmaceutical manufacturers had the highest operating margins.

MR. PURCELL responded that pharmaceutical manufacturers will typically make 14-18 percent, and that would be a very healthy year for them. A typical Blue Cross/Blue Shield plan would be

happy with 4-6 percent. But PBMs operate with adjusted margins of somewhere between 40-65 percent and much of that comes from mail order (about 55 percent of their total margin). You can begin to see a pattern of inherent conflict. Obviously they want to try to drive traffic away from retail businesses by using different average wholesale price mechanisms or different packaging mechanisms that would disadvantage the local pharmacy and highly advantage them. Every time they move a retail script over to a mail order script, there is a ten-times exponential factor in terms of their margin. Specialty drugs is another big area of concern of his lawsuit, because it's the fastest growing business. PBMs not only have their own mail order facilities but they also own their own specialty mail order facilities and those drug margins are even higher with a typical retail of \$2000 per drug and a margin of \$400-500 per prescription.

[2:22:36 PM](#)

SENATOR THOMAS asked if the new US health care plan curbs some of this activity and what kind of impact would state action have on pharmaceutical costs to consumers across the United States.

MR. PURCELL answered the long term impacts on PBM practices are unclear in the health care reform that was just passed, but greater transparency will be required. The problem is with the effective date of 2014 and beyond and the uniformity of the application. The exchange model that they foresee for every region, depending on how the compacts are set up, will have some discretion as to how the vendors are selected and how prices will be regulated. But they are talking about millions of dollars of savings a year; so states should put things in place that will protect people in the interim. If the reconciliation bill goes into effect fully, you haven't lost anything; you've just protected yourself in the interim years as its being implemented.

[2:25:07 PM](#)

PAT SHIER, Director, Division of Retirement and Benefits, Alaska Department of Administration (DOA), introduced himself.

CHAIR PASKVAN asked him to comment on where the state was on this issue and where it best be going.

MR. SHIER responded that last year the state talked about transitioning to its new third-party administrator with Wells Fargo Insurance Services. Some questions raised by some of the people in this room in 2008 actually helped the department write a much better RFP. One change they demanded was not scoring the

programs based on shared drug and medical discounts which used to be common practice in the medical community. He explained that both the state's active and retiree plans are self insured under Alaska Care that currently has an arrangement with a pure TPA (not an insurance company) to pay claims on a per member/per month basis. He said the state has a similar partnership with Envision/Costco. There is no spread pricing, no rebate, which is hidden and kept by the PBM, he assured. Any rebates that arise during the tenure of their relationship flow directly to the state. The state pays the TPA on a per member/per month basis to manage its PBM and is in a much better place now than back in 2008.

[2:27:32 PM](#)

CHAIR PASKVAN thanked him and said the state plan covers a large percentage of Alaskans, but what percentage is not covered under this new system.

MR. SHIER answered that the state serves 72,000-74,000 individuals including members and dependents; of those about 52,000 are retirees. About 40 percent of those folks are outside the State of Alaska. The state has a total of 15,000 active individuals.

CHAIR PASKVAN asked him for suggestions on what statewide policy could be more broadly applied to protect all Alaskans.

MR. SHIER answered that the legislature is the policy maker and he would bring them any information they would need. He had provided materials and met with some of the independent pharmacists in the room and had very good discussions yesterday afternoon. He said he would look into their concerns and had asked Buck Consultants to also refresh their analysis. Overall, when they look at 19.6 percent increase in medical plan spend for the coming fiscal year and anticipating another 19.6 percent after that, they want to provide the best information they can and be as helpful as possible in the future.

[2:29:35 PM](#)

SENATOR THOMAS asked after today if he thinks the state needs to go back and revisit their last RFP.

MR. SHIER answered the state is in very good shape now. Envision Costco, under the leadership of Wells Fargo Insurance Services, is directed to negotiate those contracts. He was very pleased when their initial efforts expanded the number of in-network pharmacies. That is the long way of saying the state is in a

pretty good place and very transparent. They prefer per member/per month model, both for the medical plan and the drug plan. The department is always looking for ways to improve services to its members, but they have no incentive to even approach a renegotiation.

SENATOR THOMAS asked if a PBM is involved anywhere in the chain with the state's prescription plan.

MR. SHIER answered the state's partnership with Envision Costco is taking the role of a PBM. Envision is the PBM and is a fairly unique model in the industry that charges only a flat per member/per month fee to manage. They provide a 24/7 call center for members which has been very popular. The Costco partnership portion delivers the mail order pharmacy piece, which is about a third or less of the total number of scripts that are filled for the Alaska plan.

SENATOR MEYER remembered that under the new Wells Fargo plan, you can both go to your pharmacy or do mail order.

MR. SHIER answered absolutely.

SENATOR MEYER asked if mail order is where the problems occur.

MR. SHIER replied that under the old PBM process he had heard complaints from pharmacists, in particular, about mail order pricing, but Buck Consultants have consistently told him that the mail order option can be very valuable on average is very valuable to a lot of state employees even though it might not be the cheapest alternative in every case. He was asking for that to be reviewed again.

[2:33:51 PM](#)

SENATOR MEYER asked if going non generic could save the state money.

MR. SHIER answered that the plan has steerage to generic drugs and retirees have done a great job of increasing their generic substitution rate. The active employee plan has a lower co-pay incentive for generics if it is okay with the doctor.

[2:35:28 PM](#)

LINDA HALL, Director, Division of Insurance, Alaska Department of Commerce, Community and Economic Development (DCCED), quipped this is one of the few hearings she didn't bring her pie chart to. She explained that that she regulates 23 percent of the

industry; a large chunk of the chart represents self insurers, the un-insureds, the Medicaid/Medicare populations. The total self insured population is probably 40 percent, significantly higher than the regulated piece of the private insurance market.

She said SB 38 is in her title and her division would regulate and enforce it if it is enacted. The first 12 pages, which she worked on with the bill's sponsor, Senator Elton, merely make a terminology change by substituting "health care insurer" for "managed care entity" - making it consistent with the rest of the state's health insurance regulations. It doesn't change any provision. So they should start their concentration on the bottom of page 12.

MS. HALL said it's appropriate to do "some oversight" of PBMs. A registration system is the way that should be done and not through a licensing process that they do with certain regulated entities. Much of the bill is modeled using third-party administrators. She was able to say that there are several PBMs who are actually registered as TPAs in Alaska; so some are following that model already.

[2:39:11 PM](#)

A number of provisions in the bill need work Ms. Hall said. The reporting requirements, for instance, go beyond what is useful. She didn't want to have to approve the contracts between the PBMs and whoever it may be, and she said she thought they were missing a big segment of who the PBMs serve and she was referring to health insurers. The focus of most of today's presentation has actually been on self insured plans, governmental agencies. But PBMs also work on behalf of health insurers, which is probably what she is more familiar with.

MS. HALL said she didn't think it appropriate for the division to approve contracts between the PBM and the entity when in all other cases the state only sets the standards for what can be in agreements between health insurers and providers - between TPAs and those for whom they may facilitate claims payments. TPAs have standards now. If she had to approve contracts, she would need to prepare a fiscal note.

She agreed that disclosure forms particularly to the end user, the consumer who gets a prescription, are fine. The consumer has a right to know there is another person in this equation; however, the bill provides that each of those signed disclosure forms come to the Division of Insurance - and she really doesn't want all that paper. A copy of the generic disclosure form would

be adequate or maybe an approved disclosure form. She said they have actually done that for prescription forms, because nobody else seemed to want to - so it fell to her.

SB 38 has an amount of record-keeping that is not efficient or cost effective, she said. Some of the pieces in the legislation duplicate processes that already exist, like the complaint process. The division actually has a whole complaint section that deals with consumer complaints. They have formal processes by which complaints can be filed and heard. Fees and penalties are already in statute.

MS. HALL said she didn't think it was efficient for any agency to set up a whole new way to regulate any individual piece. The division regulates thousands of individuals and already has methods in place to regulate and it doesn't need to set up a new one just for PBMs. She planned to work with the bill sponsor on those issues.

[2:43:37 PM](#)

ROSE KALAMARIDES, Administrator, Alaska Teamster Trust Fund, said she had worked in this capacity since 1996 and opposed SB 38. She had submitted a letter outlining some of their concerns. She explained that the Teamsters was one of the first large groups in the state to hire a PBM in 1994; so they have been through all the "gyrations."

All the things that the pharmacists have described today have a lot of truth in them, Ms. Kalamarides said. In 2006 they put an RFP out for a transparent contract. They had five respondents and two runner ups. Envision Costco was the second runner up only because their network hadn't been expanded enough in the state. Their current transparent contract is working well she reported, and they don't see the need for this legislation that would only increase costs for their participants.

SENATOR THOMAS asked how it would increase costs for her members.

MS. KALAMARIDES answered that it looks like the "any willing provider" legislation that was introduced a few years ago for medical services. She said 10 percent of their pharmaceuticals go through their mail order service and they save a lot of money because of that. Their retirees who live outside love the service and it looks like they wouldn't have any kind of control if a participant wanted to go to a pharmacy to get the same pricing. It looks like it would just shift money into the local

pharmacies' pockets. She related that the Teamster Trust Fund is pays its PBM not on a per member/per month, but a per script fee and then pays the acquisition prices. SB 38 would force them to do business differently and it looks like it is trying to regulate some of the programs they already have in place, like their step therapy and formularies. It messes with their private business and she didn't think that was the state's job.

2:47:03 PM

DAVE DEDERICHS, Express Scripts, said they are a PBM based out of St. Louis, MI and they manage the prescription drug benefit for 750 million Americans across the country. Their clients include health insurers, Fortune 500 companies, labor unions, state governments, and the federal government. In fact, their largest contract is with the US Department of Defense. He explained that they "drive out waste in the health care industry." They actually make money when their clients save money and that stands in direct contradiction to most of today's testimony.

First and foremost they try to promote generics, he said. Express Scripts is FDA approved and it is AMA endorsed. They are significantly cheaper than brand name pharmaceuticals. In fact a few years ago a study said the average cost of a brand name drug was \$120 and for the same generic the average cost was \$34.

He said it's "absolutely false" that they switch brand name drugs into peoples' prescriptions so they can get money back on the rebates. In fact, of the 750 million prescriptions they will process this year, over 68 percent of them will be with generic drugs. Mr. Dederichs said Express Scripts is a for-profit company and it makes more money by using generic drugs.

He said it was also important to understand that they also negotiate discounts with brand manufacturers and this function goes in direct contradiction to the disclosure requirements in this bill. When a pharmacy and therapeutics committee determines which drugs should possibly be included on their formulary, they will give them a list with no financials on it. It is a list of drugs to be evaluated for efficacy and efficiency. The whole list is sent to all the different brand name drug manufacturers to get their best price for their formulary. Since Express Scripts supplies 750 million Americans, there is a pretty strong incentive to get their best price. Disclosing all this financial information will destroy incentives to get better prices. It doesn't allow the free market to help dictate what contract terms are.

MR. DEDERICHS said he had five separate letters written by the Federal Trade Commission on disclosure legislation that has been heard in New Jersey, California, the District of Columbia, Virginia, and Albany, New York. They say that disclosure requirements destroy competition; they allow for collusion among brand name manufacturers to increase their prices and will hurt consumers.

He said Express Scripts also creates networks of retail pharmacies and manages formularies for their clients. About 10 percent of the scripts they dispense are mail order and it is only for maintenance medications. Mail order is a good way to save money on drugs, because you can get a 90-day supply for two co-payments instead of paying three co-payments for three 30-days supply at the retail pharmacy. So, they are incentivizing people to pay less to get a bigger supply. Studies also show that when a customer gets a 90-day supply of mail order medications his adherence rate goes up; so overall health improves.

[2:52:48 PM](#)

MR. DEDERICHS said it's categorically untrue that PBMs are unregulated. They are regulated by the Alaska State agency in charge of Medicaid; they are registered with the Alaska State Board of Pharmacy and regulated by them. They are also subject to regulation from the State Division of Insurance, the Federal Trade Commission, the US Department of Labor, the Centers for Medicare and Medicaid Services and the US Department of Health and Human Services.

It was said that drug spending has increased rapidly, but that isn't true either, Mr. Dederichs said. People's overall medical spend has increased in the past couple of decades and a lot of it is medical, but because tools like drug utilization review, using generics, and getting people to take mail order services have been used drug spend has actually decreased.

He said they had heard that transparency is important for plan sponsors but there is not one single plan sponsor, health insurer or employer in the room today in support of this bill; only the pharmacists. This is because their clients are very sophisticated purchasers. Mr. Shier, the labor unions, the Fortune 500 companies hire consultants to negotiate these contracts. There are over 60 PBMs in this country and it is very competitive. If they don't meet the terms and conditions set out for them by clients in the RFP process they simply won't get

their business. Their contracts are for three years, so they would see a higher turnover if they are not meeting specific demands. This bill is riddled with mandates for contracts they would rather see regulated by the free market, he said. Each one of their clients has a unique set of people with their own unique medication needs and they would not necessarily be helped by this type of legislation.

[2:55:50 PM](#)

MR. DEDERICHS submitted there was no need for legislation that requires transparency if the market is already dictating it, and their company and ones like it probably wouldn't submit RFPs with those kinds of contract demands. He also informed them that they are a non resident mail order pharmacy and do ship drugs into Alaska.

CYNDI LAUBACHER, Senior Director, State Government Affairs, Medco Health Solutions, said Medco is one of the top three PBMs and has approximately 60 million members across the country and approximately 155,000 in the state of Alaska. She said Mr. Dederichs covered most issues very well, but she wanted to touch on a few things based on questions from committee members. First of all Mr. Purcell made her case on the phone for why this bill is unnecessary. The state of New Jersey recently awarded Medco the new PBM contract. It is a transparent contract. Mr. Purcell said that state would save \$500 million, but the state of New Jersey didn't pass this legislation to do it. It just wasn't needed in order to get the kinds of savings they were looking for.

[2:58:13 PM](#)

It's also incorrect that 23 other states have transparency laws. Only two states have passed it, Maine and the District of Columbia where it is being litigated. Maine's was upheld and the large PBMs are no longer writing in that state. The bottom line is that clients can ask for anything they want; that is what the RFP process is for. No two clients want the same thing. In that regard this bill is unnecessary.

MS. LAUBACHER said she was particularly concerned about what some were saying their margins are and that the SEC would be interested in their figures. Medco is required to report their profits quarterly to the SEC and their numbers show profits are 2 percent or less.

[2:59:09 PM](#)

Regarding federal health care reform, Ms. Laubacher said, Medco prides itself on being a transparent company. They support transparency and supported the Senate language that was recently enacted and signed into law by the President.

CHAIR PASKVAN asked her to provide the committee with the SEC filing she talked about and asked Mr. Dederichs to provide the letters he talked about.

[3:00:25 PM](#)

GREG LOUDON, Employee Benefits Consultant, Parker Smith & Veeck, Anchorage, Alaska, said he was here on behalf of the Alaska Association of Health Underwriters, a consumer protection and trade group for brokers and agents. They opposed SB 38 because they think it is an unnecessary restraint to trade. It eliminates a number of cost containment options for their clients, both insured and self insured. He said PBMs provide a valuable service.

[3:01:31 PM](#)

SALLIE STUVEK, Director, Human Resources, Fairbanks North Star Borough, said she has oversight for both the borough and the school district's self insured health insurance plans. She said both the borough and the school district are active members in the Health Care Cost Management Corporation of Alaska (HCCMCA). As a result they have seen strong savings in health care costs to all of their members their negotiated agreements and they would like to be able to continue those arrangements. SB 38 appears to jeopardize their ability to continue those cost savings relationships that they would need in order to continue managing the health claim costs.

She said they are especially concerned about the section restricting the ability of employers or group of employers to work together to negotiate discounts. The PBM provides a valuable service to their health plans by reducing those costs not only to the employer-sponsored health plans, but also to the employees. They have estimated a savings of \$3 million per year.

CHAIR PASKVAN closed public testimony and set SB 38 aside.

### **SB 303-WORKERS' COMPENSATION AND CONTRACTORS**

[3:04:13 PM](#)

CHAIR PASKVAN announced SB 303 to be up for consideration. He recapped that SB 303 was originally addressed a week ago and he hoped the committee members had the opportunity to review the

bill that is "just an undo of what was done a number of years ago." The state had a system that adequately operated from statehood for approximately 45 years and then the system was changed in what he thought was an improper manner.

He said he thought SB 303 was the right policy for the State of Alaska. He noted a Legal Services memo that indicated the extent of the injustice - even if someone operated with a gross deviation from the standard of care they would be immune from responsibility or accountability for their conduct as the law is now written. Generally, when people hear that someone could be criminally negligent in their conduct and not be accountable for it they are troubled.

[3:06:31 PM](#)

TRENA HEIKES, Director, Division of Workers' Compensation, Department of Labor and Workforce Development (DOLWD), said she would answer questions.

SENATOR MEYER said he still couldn't remember why it got changed and asked if there was some concern and does this bill rectify double dipping by a victim. In other words, can an injured party sue the subcontractor who they are working for and the general who hired the sub-contractor?

MS. HEIKES replied that they could never sue their employer. "The exclusiveness of liability for an employer is still in effect under this bill as it has been since workers' compensation systems were first developed at the turn of the century." There would be no double-dipping vis-a-vis the employer and employee, and if they sued the general their recovery would be offset under AS 23.30.015 by the employer's lien, a lien that is equal to the amount of workers' compensation benefits that the employer has paid less the employer's pro-rata share of attorney's fees, per a Supreme Court decision.

SENATOR MEYER apologized for being so dense, but asked again hypothetically if Senator Paskvan is the general contractor and hires him as the subcontractor, and he was delinquent in providing a safe working environment and an employee that is working for him gets injured, can the employee come back to both him and Senator Paskvan or just to him as the sub-contractor.

MS. HEIKES answered:

If you're insured for workers' compensation your insurance carrier would provide benefits to that injured worker. If you were uninsured, then under that statute as it now reads and as it would read, with [SB] 303, the general contractor would be liable for the workers' compensation benefits. As the statute now reads, if the general contractor was the tort 'feeser,' you couldn't sue the general contractor or the project owner. And you can never sue your employer, period - unless they are uninsured. If they are uninsured for workers' compensation, then you lose, understandably, the benefits of workers' compensation which is the exclusive liability.

SENATOR MEYER asked why a general contractor would hire a sub that didn't have insurance.

MS. HEIKES said that was a good question. As the law now reads, and as it will read if SB 303 were passed, it makes the contractor responsible for making sure subs are carrying workers' compensation, because otherwise their carrier will be on the hook.

SENATOR MEYER said he understood that in the past the sub was able to do the work cheaper because they didn't have the insurance.

MS. HEIKIS answered that was correct. If a subcontractor is not carrying workers' compensation insurance they are at an advantage in a bidding situation because of its expense.

[3:10:45 PM](#)

KEITH MONTGOMERY, Alaska Regional Council of Carpenters (ARCC), Anchorage, said he supported SB 303. He said that this bill is a start to solving a bigger problem that affects the construction industry as a whole. Last year he said he testified on HB 22, and both bills have a piece of puzzle correct, but with many holes and missing puzzle pieces such as independent subcontractors and tier subcontractors. He said the real issue is to close the loophole that will level the playing field and protect the construction industry and Alaskan workers and stop labor brokers that refuse to take personal responsibility for workers that get hurt on jobs.

MR. MONTGOMERY said that he recently spoke to a contractor working on a state construction project who said the reason he tier subcontracted is that they have many levels where these

workers don't provide workers' compensation. Why would a contractor hire these guys? It's because they can come in 30 percent lower on the bid and get the job. So, you have a sub of a sub of a sub that has no workers' compensation; he directs the work and employees of the subcontractor, but each person carries a business license. This contractor said the reason he tier subcontracts in the State of Alaska is because he can get away with it; that Alaska laws are real weak.

3:13:31 PM

SCOTT HANSEN, Alaska Regional Council of Carpenters (ARCC) Local 1281, Anchorage, said in the construction industry the use of subcontracting, independent contracting and tier contracting has become totally out of control. They receive information on a daily basis on tier contracting 3-4 levels deep where the "employees" are not under a workers' compensation policy anywhere past the general contractor or the first level of subcontractor. This is very detrimental to legitimate subcontractors and gives a huge advantage to the subcontractor who in turn hires the independent tier contractors. A high percentage of these independent contractors work as subs to the subs to the subs, but they are truly working within every definition as an employee. They are required to show up and work certain hours and work off of other contractor's equipment, but do not supply any materials and have no risk for loss. General contractors should be scared to death of the possibility of independent contractors working on their jobs.

He said that SB 303 is a start in controlling this situation and will help protect legitimate contractors. It will help the abuse of 1099 issues in the non reporting problem in the prevailing wage reporting, as well.

3:14:47 PM

CHRIS GREGG, Business Manager, Painters and Allied Trades, said he supported SB 303. He said this issue affects his contractors immensely. They have a 2-25 percent bigger disadvantage for providing workers' compensation for their employees. It has become common business practice to subcontract all work to avoid workers' compensation, social security and unemployment insurance. While this bill is not the complete answer, it is a start. If you don't get action on this bill "You can kiss legitimate contracts goodbye they can't compete with this loophole available to unscrupulous business owners who misclassify their employees as owner-operators."

CHAIR PASKVAN thanked them for their comments; he closed public testimony and asked for discussion. He said there is "absolutely no double dipping." If there is a recovery workers' compensation is reimbursed and it's allocation according to fault.

SENATOR THOMAS stated he didn't remember the genesis of the bill, but he did remember that some people were killed on a particular job. He wasn't sure that the subcontractor had workers' compensation or not. It almost sounds like if they did, that would have been the only recovery. He thought something else allowed the owner to be sued because they had been negligent in performance of their duties in preparing the workplace as they had the authority to do. But today, it appears that some subs don't purchase workers' compensation and the generals don't require them to do what they are supposed to which is post the proof of their workers' compensation or at least give them a copy of their binder. So, therefore, in an attempt to make sure that people are protected, including the generals, one of the ways to do it is to implement a law that allows them to be responsible if they are not going to hold their subcontractors responsible for having workers' compensation.

[3:18:33 PM](#)

SENATOR THOMAS moved to report SB 303 from committee with individual recommendations and attached zero fiscal note(s). There were no objections and it was so ordered.

Finding no further business to come before the committee, he adjourned the meeting at 3:20.