

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

February 27, 2012

3:47 p.m.

**MEMBERS PRESENT**

Representative Kurt Olson, Chair  
Representative Craig Johnson, Vice Chair  
Representative Mike Chenault  
Representative Dan Saddler  
Representative Steve Thompson  
Representative Bob Miller

**MEMBERS ABSENT**

Representative Lindsey Holmes

**COMMITTEE CALENDAR**

HOUSE BILL NO. 259

"An Act establishing procedures and guidelines for auditing pharmacy records; and providing for an effective date."

- HEARD & HELD

HOUSE BILL NO. 300

"An Act relating to geographic cost-of-living salary adjustments for justices of the supreme court and judges of the superior and district courts; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: HB 259

SHORT TITLE: PHARMACY AUDITS

SPONSOR(S): REPRESENTATIVE(S) MUNOZ, P.WILSON

01/17/12	(H)	PREFILE RELEASED 1/13/12
01/17/12	(H)	READ THE FIRST TIME - REFERRALS
01/17/12	(H)	L&C, FIN
02/27/12	(H)	L&C AT 3:15 PM BARNES 124

**WITNESS REGISTER**

REPRESENTATIVE CATHY MUNOZ

Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as a joint prime sponsor of HB 259.

CHRISTOPHER CLARK, Staff  
Representative Cathy Munoz  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified during the discussion of HB 259.

REPRESENTATIVE PEGGY WILSON  
Alaska State Legislature  
Juneau, Alaska

**POSITION STATEMENT:** Testified as a joint prime sponsor of HB 259.

BARRY CHRISTENSEN, Pharmacist  
Island Pharmacy;  
Legislative Committee Co-Chair  
Alaska Pharmacists Association  
Ketchikan, Alaska

**POSITION STATEMENT:** Testified in support of HB 259.

MATTHEW DILORETO, Director  
State Government Affairs  
National Community Pharmacists Association (NCPA)  
Alexandria, Virginia

**POSITION STATEMENT:** Testified in support of HB 259.

TOM HODEL, Pharmacist  
Soldotna Professional Pharmacy  
Soldotna, Alaska

**POSITION STATEMENT:** Testified in support of HB 259.

ERIC DOUGLAS, Director, Government Affairs  
CVS Caremark  
Chicago, Illinois

**POSITION STATEMENT:** Testified in opposition to HB 259.

GERALD BROWN, Independent Pharmacist  
Prescription Center Pharmacy  
Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 259.

MARGARET SODEN, Past President  
Alaska Pharmacists Association (APA)

Fairbanks, Alaska

**POSITION STATEMENT:** Testified in support of HB 259.

**ACTION NARRATIVE**

[3:47:40 PM](#)

**CHAIR KURT OLSON** called the House Labor and Commerce Standing Committee meeting to order at 3:47 p.m. Representatives Thompson, Miller, Saddler, and Olson were present at the call to order. Representatives Johnson and Chenault arrived as the meeting was in progress.

**HB 259-PHARMACY AUDITS**

[3:47:59 PM](#)

CHAIR OLSON announced that the only order of business would be HOUSE BILL NO. 259, "An Act establishing procedures and guidelines for auditing pharmacy records; and providing for an effective date."

[3:48:16 PM](#)

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, introduced herself.

The committee took a brief at-ease.

[3:49:56 PM](#)

REPRESENTATIVE MUNOZ explained that HB 259 is about establishing common courtesy guidelines for pharmacy audits and was requested by the Alaska Pharmacists Association (APA). She related some major components of the bill. This bill would give pharmacists time to prepare for an audit and adequate notice of one. It would also prevent pharmacists from being accused of fraud when they commit a small clerical, recordkeeping, or typographical error. She related a scenario in which a pharmacist had filled a 30-day prescription and due to a clerical error, the client received a 31-day prescription. When the pharmacy was audited, the pharmacist was denied reimbursement for the entire prescription due to the clerical error. She characterized the process as an unfair process. This bill would also prevent extrapolation, which is a method of projecting the cost of one mistake over several cases or extrapolating over a timespan. She offered an example, such that if a pharmacist filled a

prescription which resulted in a \$.25 error, the audit could add a \$.25 on each prescription filled. She indicated that this recently happened to an Alaskan pharmacist, who was given a bill of over \$7,000. She said HB 259 would also ban the practice of auditors receiving compensation based on a percentage of what they recover from pharmacists. She offered her belief that this is just wrong since payments should not be driven by audit recovery costs, but should be based on facts.

REPRESENTATIVE MUNOZ acknowledged that pharmacists understand the importance of audits, but sometimes audits may be unreasonable and are used in a manner that deprives pharmacists of fair reimbursement for their services. At times, a pharmacist may prescribe the right drug and dose, but perhaps a clerical error in billing transpired. In those instances the pharmacist will not receive payment for the prescription. She related that HB 259 is aimed at protecting the public from potential abuse while assuring pharmacists face fair, reasonable, and consistent audits. The measure is supported by the APA, the National Community Pharmacists Association (NCPA), and the National Association of Chain Drug Stores (NACDS).

[3:53:45 PM](#)

REPRESENTATIVE P. WILSON, Alaska State Legislature, said auditors have shown gross abuse in conducting audits and have been paid by a percentage of the insurance reimbursement. Therefore, they are nitpicking to the extreme and extrapolate amounts to fill their own pockets, which simply must stop. She characterized auditors' practices as bordering on unethical. She referred to members' packets, to the APA, which includes examples of abuses and noted some pharmacists will testify.

CHAIR OLSON remarked problems are occurring throughout the industry.

[3:56:01 PM](#)

CHRISTOPHER CLARK, Staff, Representative Cathy Munoz, Alaska State Legislature, explained that HB 259 consists of four sections. Section 1 would outline the intent of the bill to help the public understand the purpose of the bill, which is to set standards for pharmacy audits. He pointed out his analysis of the auditor qualifications are in error in the sectional analysis for Section 2. This bill attempts to establish courtesy and flexibility during the audit, such as avoiding scheduling an audit when the pharmacists are unusually busy -

the first of the month or during a special event - yet still allow an audit to be conducted. He referred to paragraph (9), which would ban the accounting practice of extrapolation, as one of the most important aspects of the bill. He suggested pharmacists on line today may better be able to describe the problems they have encountered.

[3:58:55 PM](#)

REPRESENTATIVE JOHNSON asked for a definition of a desk audit.

MR. CLARK explained two types of audits: one is a desk audit in which the auditor requests records and the pharmacist supplies them; the second is an on-site audit is one in which an auditor enters the pharmacy and asks to see records.

[3:59:28 PM](#)

REPRESENTATIVE MILLER referred to page 2, line 13, to paragraph (6), which read, "a clerical error, record-keeping error, typographical error, or scrivener's error may not constitute fraud." He asked for clarification on "may."

MR. CLARK answered that may not equals shall not according to the legal drafter.

[4:00:17 PM](#)

CHAIR OLSON asked for the genesis of the bill.

MR. CLARK answered that the Alaska Pharmacists Association (APA) provided the basic language for the bill. He related his understanding the provisions were derived from reviewing laws in 15-20 other states. He offered that the sponsor has held preliminary meetings with some state agencies, including the Department of Health and Social Services (DHSS), and the Department of Administration (DOA). He related some concerns have been expressed, which he suggested represents a good start on the discourse to provide a system that is fair to pharmacists, yet still will assure the public that compromises will not happen, in terms of detecting fraud or abuse.

[4:01:05 PM](#)

REPRESENTATIVE SADDLER referred to page 2, which read: "(5) each pharmacy shall be audited using the same standards and parameters as other similarly situated pharmacies." He pointed

out that a variety of types of retail establishments exist in Alaska and asked how these businesses are affected.

MR. CLARK deferred to the pharmacists on-line today. He suggested that pharmacists in Anchorage are affected in a manner that is likely similar to ones in Eagle River. He related his understanding that costs would be different for some areas, such as costs in Nome as compared to ones in Eagle River.

[4:02:05 PM](#)

REPRESENTATIVE JOHNSON asked who will pay for the audits.

MR. CLARK deferred to the pharmacists to more fully respond. He related his understanding that the costs are paid for, in part, from the pharmacists and by the entity that hires the auditor for legitimate purposes to ensure no cases of fraud or abuse exist.

[4:02:47 PM](#)

REPRESENTATIVE JOHNSON noted that the finding of an audit must be based on the actual overpayment or under payment. He expressed concern that the language may encourage more audits and more time in the audits. He understood the pitfall in being subjected to extrapolation, but he also understood the auditor would not go through every piece of paper.

MR. CLARK agreed the sponsor would want to avoid being subjected any unintended consequences under the bill. He suggested that the pharmacists may be able to address this issue.

[4:04:17 PM](#)

BARRY CHRISTENSEN, Pharmacist, Island Pharmacy; Legislative Committee Co-Chair, Alaska Pharmacists Association (APA), stated that the association represents pharmacists, pharmacies, and pharmacy technicians in Alaska. He related that APA members work hard in retail pharmacies, hospitals, nursing homes, and medical clinic settings throughout the state. He asked for members' support for HB 259, to help create a level playing field for pharmacists when dealing with pharmacy audits. He remarked that the APA has made this the organization's number one legislative priority. The APA supports the need for audits to ensure that fraud, waste, and abuse activities are checked; however, the audits must be conducted in a fair and balanced manner, allow for a fair appeal process, and payment for all

services performed within the patients' insurance benefit structure. He related that pharmacists are online to describe their experience with audits. He briefly outlined the typical prescription process and how a record is created. He referred to a handout in members' packets titled, "U.S. Commercial Pharmaceutical Supply Chain: How does it Work?" He said pharmacists generally contract with pharmacy benefit managers (PBM) and in turn the PBM sends back authorization for payment in order to fill and bill prescriptions for consumers as part of their health benefit plan. He explained that currently nearly all prescriptions are filled electronically in real time. The pharmacy sends prescription information to the PBM, and in turn the PBM returns authorization for payment and other clinical edits for concern, including high dose, drug interactions, or other pertinent information. The pharmacy is reimbursed the cost of the medication plus a dispensing fee for covering the pharmacy's cost of doing business. He clarified that typically the PBM or the entity contracted by the PBM will perform audits on contracted pharmacies to legitimately protect against fraud and abuse.

[4:07:46 PM](#)

MR. CHRISTENSEN said it has been suggested that pharmacies should be able to address auditing concerns directly with the contracted PBM. He said, "I wish it were this easy." Most Alaska pharmacists have never been able to alter the terms of a contract given to them except perhaps to modify dispensing fees. He characterized the process as a "take it or leave it" offer. He stated that this leads to the reason the pharmacists are asking for standardization in auditing practices, which would be applicable to all plans and pharmacies in the state.

MR. CHRISTENSEN recalled an earlier question about how pharmacy audits are paid. He offered that usually the PBM has an auditing department or will contract with another entity to perform the audit. He suggested that the cost is likely borne by the PBM, but the PBM can recoup the cost from pharmacies.

[4:08:58 PM](#)

REPRESENTATIVE SADDLER asked for clarification on who the PBM works under.

MR. CHRISTENSEN related that the PBM works for the health insurer and provides services, including contracting with the

pharmacy and drug manufacturers, typically for rebates from manufacturers to the PBM and/or the health insurer.

REPRESENTATIVE SADDLER asked for clarification on the chart with respect to the dispensing fee.

MR. CHRISTENSEN answered that typically the dispensing fee would come back from the PBM to the pharmacy, but the cost of the drug would also be included in the fee.

REPRESENTATIVE SADDLER inquired as to the typical dispensing fee.

MR. CHRISTENSEN answered that in Alaska the dispensing fee varies from \$2-\$10, depending on the location and the number of prescriptions. In response to a question by Chair Olson, he answered that the dispensing fee is almost always based on a dollar basis and not a percentage.

[4:10:31 PM](#)

CHAIR OLSON asked for clarification on the current standards for PBMs.

MR. CHRISTENSEN said he would argue there are not any standards. He related his understanding that the contracts that pharmacies sign likely contain provisions on audits and appeal process, but that overall the process is not standardized. In further response to Chair Olson, he agreed that the fees vary based on the major medical carrier, such as Blue Cross, and on the size of the pharmacy. He reiterated that standards do not exist.

[4:11:21 PM](#)

REPRESENTATIVE JOHNSON pointed out the bill requires any underpayments or overpayments must be based on actual payment and asked for clarification on the method.

MR. CHRISTENSEN answered that the bill is a work in progress. He stated that most other states' statutes contain a limit on the number of prescriptions that can be audited, which is currently under consideration.

REPRESENTATIVE JOHNSON expressed concern that as the bill is currently written pharmacists may encounter huge administrative hassles. He suggested that instead of stopping the audit after finding one mistake, the auditor would continue to look for

other errors, instead of extrapolating. He questioned whether any advantage would exist. He reiterated that he envisioned pharmacists would need to spend significantly more time with auditors rather than dispensing drugs. He offered his belief that averages are often used and he suggested the pharmacists may wish to consider a time limit.

MR. CHRISTENSEN understood the concern. He pointed out one thing the bill would do is place a time limitation on the number of years an auditor can audit, which he thought was a good provision. He offered his belief that pharmacists as a group are detail oriented so he envisioned the number of mistakes would be minimal.

[4:14:02 PM](#)

REPRESENTATIVE JOHNSON asked how pharmacists read doctors' writing.

MR. CHRISTENSEN answered that most prescriptions are electronically prescribed; although mistakes can still happen since the prescriber must still key it in correctly and code the prescription correctly. He offered his belief that the industry still faces a computer challenge.

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REPRESENTATIVE SADDLER asked whether any limit exists on how often pharmacists can be audited. He further asked for an estimate on the amount of time a pharmacist spends filling prescriptions and an estimate of the time spent on audit-related activities.

MR. CHRISTENSEN answered that he thought the time varies. He agreed that it takes a lot of time to copy records and while most audits are desk audits that it still takes time to compile the record. This bill does not limit the number of audits.

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REPRESENTATIVE SADDLER further asked if he would hazard a guess if the amount would be 5-10 percent of his time or some other percentage.

MR. CHRISTENSEN answered that pharmacists do not receive audit requests every day, but auditors may ask for 20-30 prescriptions at once. He pointed out that pharmacists simply must fit the

requests into their workload. Pharmacies are busy and time spent responding to audits means less time spent on other things. In further response to Representative Saddler, he agreed this adds to the overhead costs.

CHAIR OLSON stated his intention is not to move the bill today.

[4:16:59 PM](#)

REPRESENTATIVE JOHNSON cautioned against creating a bureaucracy or the necessity for pharmacists to designate a specific staff person to manage auditor requests. He expressed his desire in assisting pharmacists and to have the bill move forward. He asked the pharmacists to address his concerns to ensure proper public benefits yet still minimize paperwork pharmacists must process.

MR. CHRISTENSEN answered that approximately 15-20 states have had similar legislation on the books for some time and he has not heard of any problems they have encountered.

[4:18:12 PM](#)

CHAIR OLSON inquired as to whether this bill is modeled after a national model.

MR. CHRISTENSEN responded HB 259 this bill was modeled after model legislation from the National Community Pharmacists Association.

CHAIR OLSON asked how long the model legislation has been in place.

MR. CHRISTENSEN answered about 5-10 years. In further response to Chair Olson, he stated that the law varies from state to state.

[4:18:55 PM](#)

REPRESENTATIVE MILLER asked for clarification on the auditors' employers and how they are engaged. He further asked for brief overview of how an audit is conducted.

CHAIR OLSON mentioned several auditors are online.

[4:19:21 PM](#)

REPRESENTATIVE MILLER noted the bill indicates an auditor may not receive percentage of amount recovered. He said he assumed this is in the bill since some of this currently happens.

MR. CHRISTENSEN answered yes.

REPRESENTATIVE MILLER related that a copy of the audit is provided to the health benefit plan sponsor affected by the audit. He questioned whether the pharmacists, doctors, or patients also receive a copy of the audit.

MR. CHRISTENSEN described the process such that the PBM, the auditing entity, would notify the pharmacy. The language just mentioned is intended to notify the health insurer. He referred to a company, such as Envision Rx Options, which is a PBM that operates for the State of Alaska's employees' plan. He explained that under the bill if a pharmacy is audited by that company, the State of Alaska would be notified of the results of the audit. In further response to Representative Miller, he answered that the doctor or patient would not be notified.

[4:20:46 PM](#)

REPRESENTATIVE SADDLER referred to page 2, line 16, to paragraph (8), which restricts an auditor from providing information to anyone other than the person requesting the audit and the pharmacy. He asked whether security of information has been a problem.

MR. CHRISTENSEN responded that this language would protect the pharmacy from auditors sharing information on which pharmacies should be audited.

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REPRESENTATIVE SADDLER related his understanding that Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires privacy for patients. He inquired as to whether HIPAA would apply.

MR. CHRISTENSEN answered yes, that HIPAA would apply to the patient information, but the specific provision in the bill would apply to the type of error.

[4:22:29 PM](#)

REPRESENTATIVE SADDLER asked whether this type of problem is prevalent.

MR. CHRISTENSEN answered no, but that this language addresses more of a fear of this type of activity might occur. In further response to Representative Saddler, he said he was not aware of any other laws that would protect the pharmacies from this type of activity.

[4:22:49 PM](#)

REPRESENTATIVE SADDLER asked who would financially benefit and who would lose from this bill.

MR. CHRISTENSEN answered with respect to extrapolation, the pharmacy is being charged and the PBM entity would get the funds the auditor extrapolated.

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REPRESENTATIVE SADDLER related his understanding to the extent that pharmacies are being "dinged," that the bill would benefit the pharmacists.

MR. CHRISTENSEN answered that the bill would keep pharmacists whole.

[4:23:52 PM](#)

REPRESENTATIVE JOHNSON asked for the percentage of the three types of audits pharmacists incur for desktop, in pharmacy, and investigative audits.

MR. CHRISTENSEN answered that he was not aware of any documentation, but from an industry practice the desktop audits are much more prevalent for the simple reason that it is less expensive for the auditor to conduct. Auditors typically would ask for copies of records rather than travel to Alaska, and absorbing the auditor's travel costs. He said he assumed it is less expensive to conduct desk audits.

[4:24:58 PM](#)

REPRESENTATIVE JOHNSON inquired as to the reasons to investigate a pharmacy.

MR. CHRISTENSEN answered that an investigation would likely happen after a tipoff. He explained since prescription records are submitted electronically that any irregularity to the PBM or insurance company would be visible, such as one pharmacy dispensing substantial amounts of a type of expensive medicine when other pharmacies are not dispensing similar amounts.

[4:25:40 PM](#)

REPRESENTATIVE JOHNSON asked for an indication of problem with audits since the number of audits conducted is unknown.

MR. CHRISTENSEN suggested that listening to upcoming testimony should illustrate the problems pharmacists have, noting at least one pharmacist will indicate it is a big problem. He reiterated that the pharmacists do not have any means of tracking these figures since the PBMs in Alaska are not regulated.

REPRESENTATIVE JOHNSON asked whether it would be helpful to add reporting language to the bill.

MR. CHRISTENSEN pointed out that doing so would likely mean more paperwork for someone to submit.

[4:26:41 PM](#)

CHAIR OLSON related a scenario and asked what would happen during an audit in the event a couple has two major medical policies, with one policy as the primary and the other as the co-payment. He asked whether one company would notify the other in case of any discrepancies.

MR. CHRISTENSEN answered no, not typically. He clarified the question, that if there was a problem with a claim, whether an auditor who represented the secondary insurance would notify the primary insurance company. He answered that he did not believe so. He agreed, in response to a remark, that the drug might be expensive.

[4:27:56 PM](#)

CHAIR OLSON remarked that the industry has no standards in terms of audits.

MR. CHRISTENSEN emphasized that there are an unknown number of PBM companies with numerous contracts containing a variety of

terms. He said he did not believe any of the contracts require adhering to the same audit standards.

CHAIR OLSON inquired as to whether any other states hold PBMs to the same standards.

MR. CHRISTENSEN answered yes.

CHAIR OLSON suggested using their approach might address some of these issues.

MR. CHRISTENSEN answered yes. He pointed out that his association has tried to pursue legislation to address the issue, but dropped it due to the substantial opposition.

[4:28:58 PM](#)

CHAIR OLSON inquired as to the number of states with audit standards.

MR. CHRISTENSEN answered about 20 states. He suggested that other testifiers should be able to provide national statistics.

[4:29:19 PM](#)

REPRESENTATIVE SADDLER asked whether the audit cycle spans a year. He further asked about similarly-situated pharmacies.

MR. CHRISTENSEN related his understanding that an audit cycle would cover a set number of claims during a set period of time. He suggested it may be a request for 50 prescriptions spanning January to January.

[4:30:02 PM](#)

REPRESENTATIVE SADDLER asked whether that would constitute the cycle or if an auditor would subsequently request additional prescriptions.

MR. CHRISTENSEN deferred to the National Community Pharmacists Association, who has assisted other states with these issues.

[4:30:49 PM](#)

REPRESENTATIVE SADDLER asked how many classes of pharmacies in Alaska would be considered similarly situated.

MR. CHRISTENSEN answered that some pharmacists specialize in compounding, which might be considered an old-fashioned pharmacy in which the pharmacist takes medications and makes them into products patients can use. Another type of pharmacist would be the IV home-infusion pharmacy, which is a pharmacy that prepares IVs for home use. Finally, standard retail pharmacies would include independent pharmacies and chain pharmacies.

REPRESENTATIVE SADDLER answered that a Native health clinic or big city hospital would not fall under similarly situated pharmacies.

MR. CHRISTENSEN responded that pharmacies of that nature would be outside the ones he mentioned and would be considered in their own category of similarly-situated pharmacies.

[4:32:02 PM](#)

REPRESENTATIVE SADDLER reiterated the types of pharmacies would include compounding, IV home infusion, and retail pharmacies.

MR. CHRISTENSEN offered that additionally it could include some clinics, but he thought hospital pharmacies would not likely be included since they would be separate.

[4:32:26 PM](#)

CHAIR OLSON asked how doctors that repackage would be affected by the bill.

MR. CHRISTENSEN surmised that if these doctors bill third-party insurance they could theoretically be considered a class and could also be audited.

[4:32:42 PM](#)

REPRESENTATIVE MILLER noticed the language mentions underpayments. He related a scenario in which an audit is conducted that discloses underpayments. He recalled the bill limits the disclosure of this information to the PBM. He assumed that a doctor or patient who has overpaid is not notified. Thus patients are not protected, but rather the audits are conducted to ensure that the pharmacies are performing due diligence to the PBM.

MR. CHRISTENSEN agreed.

4:34:17 PM

MATTHEW DILORETO, Director, State Government Affairs, National Community Pharmacists Association (NCPA), on behalf of the National Community Pharmacists Association (NCPA), thanked members for conducting this hearing. He stated that NCPA strongly supports HB 259. He offered to read his testimony, and read [original punctuation provided]:

This legislation would provide some fair and common sense protections for pharmacies against what are currently abusive audit practices by the CBMs. 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, [subsection] (b) of this legislation specifically states standards within HB 259 do not apply when pertaining to criminal investigation or an investigation by a government agency. On a side note, I just want to let you know that's fairly common language, not word for word, but in other states as well.

NCPA's members understand that audits must occur to catch fraud and abuse within the system. However, current PBM audits of a 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, franchises and chains. Together, they employ over 300,000 full-time employees and dispense nearly half of the nation's retail prescription medicine. 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 revenue to other state businesses in the amount of \$141 million annually and support additional full-time employment to other businesses equal to 155 employees.

4:36:45 PM

MR. DILORETO continued to read his statement, as follows [original punctuation provided]:

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 abuse of 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 audit protection. Another side note I'd like to make - about 23 states also have some level of PBM regulation or transparency legislation. I heard that being discussed earlier. It is not uncommon for these audits to penalize an independent pharmacy tens of thousands or even - and this is not an exaggeration - hundreds of thousands of dollars for nothing more than a clerical or administrative mishap, many of which are not the fault of a pharmacy. Let me be clear: the so called errors I'm referring to are instances in which the correct medicine was dispensed to the correct person and a correct fee was charged to the patient and the plan. Let me provide you with a recent example of a quote unquote minor audit that an NCPA member went through. This member was penalized \$14,000 for not using a physician 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 number to log in the system. The prescriber was not a physician. The pharmacist took measures to ensure he was properly compliant and even contacted the insurance company to indicate that this was not a problem and he should just use the CRNP license number and he did this. In addition, he also attached a copy of the CRNP's actual license to the file prescription 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 for this prescription. After all the steps the 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's small business took a \$12,000 loss.

[4:39:01 PM](#)

MR. DILORETO continued to read his statement, as follows [original punctuation provided]:

These stories occur on a regular basis. Similar stories have resulted in pharmacists being fined \$250,000 or more and I can vouch for that specifically - previous to my current position I was the director of government relations in Pennsylvania and the \$250,000 story actually happened to one of our members.

Rather than legitimately using the audit practice to guard and protect against fraud, many PBMs now view the process as a possible revenue stream for the company. In fact, many auditors are incentivized by receiving payment based on the percentage of money they've reclaimed. PBMs now go well beyond the intent of an audit, to catch fraud and abuse, and instead focus on typographical or administrative errors for small loopholes in the rules and regulations such as the basis to recoup money from pharmacy. In many cases, if a PBM auditor identifies an administrative error, he will "take back" 100 percent of the value of that prescription and every single refill that came with it - a severe financial penalty that is out of proportion to the gravity of the offense.

[4:40:06 PM](#)

MR. DILORETO continued to read his statement, as follows:

Another egregious practice many PBMs employ in order to "ensure" that discrepancies will be found is to establish recordkeeping requirements well in excess of what is required under the 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 patients' care an even greater challenge.

NCPA is confident that once members review HB 259, they will see the measure spelled out are reasonable standards to ensure that abuses do not occur. In circumstances when fraud or legitimate errors occur, independent pharmacists understand steps must be taken

to correct these errors and recoup a reasonable sum of money. As business owners, independent pharmacists realize 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 are being referred to today. In conclusion, NCPA urges your support of HB 259, legislation that will provide pharmacies an understandably needed degree of protection against the overaggressive and far reaching PBM audit practices. We 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.

[4:41:47 PM](#)

TOM HODEL, Pharmacist, Soldotna Professional Pharmacy, stated that he has owned Soldotna Professional Pharmacy for 28 years. He provided an overview of a recent audit that his pharmacy is still currently involved in attempting to resolve. He explained that he has had several audits over the years with little adjustment in payments. However, in the spring of 2011, his pharmacy was notified by an audit firm that they would be performing a desk audit on over 100 prescriptions issued in 2008. He explained that he copied the prescriptions and signatures for each of them, which took a great deal of time since some of the records were three years old. He mailed the information timely. Several months later he was advised the audit firm had scheduled an on-site audit for June. On the scheduled date two staff members arrived and as the pharmacist he spent the day pulling records. He pointed out that these two auditors were from out of state. He remarked he was astonished on the lack of knowledge and terminology concerning the practice of pharmacy these auditors possessed.

DR. HODEL stated that a few weeks later he received a preliminary report. He stated that out of 100 prescriptions for over \$100,000 in claims reviewed, the auditors had an issue with four prescriptions totaling less than \$90 in claims. He said he was satisfied with this small amount even though he believed three of the four claims were absurd. He acknowledged one claim was a result of the pharmacy's error in the amount of \$40. He subsequently read the back page of the report and discovered that the \$85 error had become a total of \$7,300. He explained the firm used a term called a one-sided confidence interval formula to extrapolate the actual error total to a ridiculous

sum. He related he sent in documentation on three of the errors that he did not think were appropriate, but the documentation was rejected. A few weeks ago he received a letter requesting he remit \$7,300 in overpayments by March 8. He has since hired an attorney and is in the process of appealing this decision. He said it would likely cost him more in the long run to appeal the decision, but he feels the actions are blatantly unfair. He offered his belief that extrapolation methods should only be used in instances of patterns of abuse. He emphasized that his pharmacy has not had that happen. He stressed that pharmacists try every day to take care of their patients amongst an ever changing and complicated billing system. He agreed that audits are an important method to monitor pharmacies and ensuring safe practice; however, these audits also need to be standardized and performed in a way that does not interfere with the health care services being provided by pharmacists. He thanked members for their support of HB 259.

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REPRESENTATIVE SADDLER recalled the pharmacist has experienced several audits. He asked him to speculate on how widespread the problems are in terms of abusive auditing practices.

DR. HODEL answered that that desk audits regularly occur, typically for 3-5 prescriptions. He offered that onsite audits of his pharmacy are conducted once or twice a year from Blue Cross or other firm. He pointed out that the logistics of traveling to Alaska tend to limit the onsite audits.

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REPRESENTATIVE SADDLER questioned whether there are any limits on the number of audits that can be conducted.

DR. HODEL answered no.

[4:46:24 PM](#)

ERIC DOUGLAS, Director, Government Affairs, CVS Caremark, spoke in opposition to HB 259. He explained that the four sections in HB 259 cover numerous audit practices and procedures which are overly prescriptive and would hinder the CVS Caremark's ability to conduct audit functions on behalf of their clients. He provided background information, including that CVS Caremark is not only a large PBM, but is also the largest chain pharmacy in the U.S., with about 7,400 CVS pharmacies in 47 states. He

offered that CVS has about 66,000 pharmacies in its network that contract with an insurer or through the CVS to help manage prescription benefits for employees of government agencies, clients. The function CVS serves in terms of conducting an audit is to ensure that claims being filed are filed properly and represent valid claims. When CVS recoups monies, the monies are not recouped for CVS, but for their clients. He referred to a section in the bill with respect to not recouping a dispensing fee. He stated that the dispensing fee is part of overall payment. He surmised that proponents would say the reason they want to keep the fees is because the pharmacists have filled the prescriptions. However if the pharmacists have incorrectly filled prescriptions or the pharmacists cannot provide the prescription records during an audit, the CVS not only recovers the cost of the drug, but the fees the pharmacists were paid to dispense the drugs. He concluded that this money does not belong to CVS or the pharmacy, but to the client who paid for the prescription. Thus, provisions in the bill hinder the ability for PBMs to continue to operate.

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MR. DOUGLAS recalled testimony in which a very small error was committed and the entire claim was recouped. He said he couldn't speak to that specifically, but he could say CVS Caremark does not recoup or extrapolate monies for clerical errors or scribes errors. CVS Caremark does not take the practice of reviewing 100 records, discovering 4 mistakes and extrapolating sums that some "bad actors" or PBMs may do. He said that most often the groups engaged in that type activity would be "rack auditors" and not PBMs. The rack auditor only audits. These businesses are subcontracted out typically because an insurer or PBM cannot conduct the audit so they hire someone to work on a contingency fee basis. These subcontractors have a vested interest in maximizing the number of errors they find since they are paid to discover them. He assured members that CVS Caremark does not employ those types of practices.

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MR. DOUGLAS offered his belief that the specific problem with HB 259 is that it harms the valid methodologically used to keep fraud, misuse, abuse, and overpayments out of the system that helps curb costs and reimburse incorrect payments. The bill focuses on the situations and problems rack auditors use that need to be addressed, but in the process of doing so adversely

affect the PBMs who use good practices. He emphasized that as the reason that CVC opposes the bill. He acknowledged that 15 states with audit laws, including other types of PBM laws. He reiterated that 15 states have audit laws that vary; however, many are similar to this bill. He clarified that the model language is an association's model language, but it is not model language based on what the majority of states that have passed audit laws considered as model language. He stated that typically when a bill of this nature has been introduced, based on model legislation, that no one has approached CVS Caremark to discuss the issue.

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MR. DOUGLAS emphasized that CVS Caremark firmly objects to the idea that all PBMs are bad. He recalled the point that PBMs are not regulated; however, that is not true. He agreed it is fair to say that PBMs are not regulated by a state agency in Alaska, but PBMs must comply with numerous existing regulations and laws. The PBMs are licensed as third-party administrators, preferred provider organizations, utilization review organizations, resident and nonresident pharmacies, including mail order facilities. He pointed out that if CVS is mailing prescriptions to Alaska, these pharmacists are registered with the Board of Pharmacy, and the CVS pharmacist is licensed in the state. Thus to state that PBMs are a wholly unregulated industry is not true. He stated that his written testimony has been submitted for inclusion in the record. He thanked members for the opportunity to testify.

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REPRESENTATIVE SADDLER asked how long CVS Caremark has been in business.

MR. DOUGLAS answered that CVS Pharmacy and Caremark merged in 2007.

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REPRESENTATIVE SADDLER questioned whether audit collections have gone up, down, or stayed the same.

MR. DOUGLAS answered that to the extent that CVS Caremark has grown that he would assume recoupments from audits have grown since they have more clients; however, CVS Caremark is not auditing more often or recouping more per audit; however if

their business expands by 25 percent, they will likely have more recruitment.

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REPRESENTATIVE MILLER questioned whether the 25 percent increase in business would be the result of profit margin or dispensing more pharmaceuticals.

MR. DOUGLAS related his comments were hypothetical and he did not mean that CVS Caremark has increased its business by 25 percent. However, if they did it would be reflected to the extent that more pharmacies are opened would dispense more prescriptions, or if the PBM gains additional clients it would result in more business. He offered his belief that the number of businesses using PBMs is fairly finite and the business is a pretty competitive business. He acknowledged that there are three major PBMs; however, 50 PBMs exist that are very competitive on a regional basis throughout the country.

[4:57:15 PM](#)

GERALD BROWN, Independent Pharmacist, Prescription Center Pharmacy, spoke in support of HB 259. He emphasized currently the pharmacists have no protection against PBMs and PBM audits. He stated that the fines can be quite onerous and the audits are conducted at any time for any timeframe. He pointed out that pharmacists are so inundated with work it is difficult to find time available to respond to audits. He remarked that the audits can be punitive. He offered his belief that this bill is a great start. He further emphasized the importance of obtaining more transparency in terms of how PBMs perform. He related his understanding that PBMs receive a lot of money from drug companies in the form of rebates, yet pharmacists dispensing fees are \$2. He pointed out that works for drugs whose value is \$2-\$20. He related a scenario in which the pharmacy paid \$7,500, with a dispensing fee \$2, but the audit indicated it would remove the \$7,500 for punitive action. He wondered how a pharmacy could exist or how a pharmacist could justify a bank loan to become a pharmacy. He acknowledged that this bill doesn't answer all the questions, but it prevents pharmacists from undergoing undue audits and penalties.

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REPRESENTATIVE THOMPSON asked how many audits he has had over past 5 years.

DR. BROWN estimated that he has four to six desk audits each quarter, but has not had any onsite audits during the past three to four years. He pointed out that the logistics typically affect the number of onsite audits. He also noted his pharmacy has clean records and works to ensure they do not set themselves up for audits, which is another reason for so few audits.

REPRESENTATIVE THOMPSON asked if the pharmacy has 20 desk audits a year, whether the auditor would audit 25 prescriptions each time or if the auditors limit the audit to five different prescriptions.

DR. BROWN answered the desk audits typically consist of 5-20 prescriptions per audit and the audits typically come from various third parties looking for any error. He explained staff must pull the prescription, photocopy the original, remit to the auditor to justify the prescription was filled and that the patient signed for the prescription. He reiterated the pharmacy has about 4-6 desk audits per quarter consisting of 10-15 prescriptions per request.

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REPRESENTATIVE THOMPSON suggested that it sounds like the auditors are on a fishing expedition. He asked for the number of errors the desk audits have discovered.

DR. BROWN answered none.

[5:03:32 PM](#)

MARGARET SODEN, Past President, Alaska Pharmacists Association (APA), stated she is a retired community pharmacist. She thanked members for hearing their concerns. She urged members to support HB 259. She explained when she started out as a pharmacist 45 years ago most prescriptions were to patients who paid for the prescriptions, but now the majority of prescriptions are billed to third parties and along with that third-party billing comes the audit of the pharmacy records. This bill is intended to bring standardization and fairness into the audit process. She explained that the provisions of this bill will allow pharmacists' time to comply with an audit request and cause less disruption to patient care pharmacists provide. She highlighted that the main reason pharmacists are in business is to fill prescriptions for patients, ensure they get the right drugs, the right dose, for the right period of

time. She concluded that audits then to take away pharmacists' time from their patients and from patients getting the best care pharmacists can provide for them.

[HB 259 was held over.]

[5:05:37 PM](#)

**ADJOURNMENT**

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 5:05 p.m.