

ALASKA STATE LEGISLATURE
HOUSE LABOR AND COMMERCE STANDING COMMITTEE

March 26, 2012

3:21 p.m.

MEMBERS PRESENT

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

MEMBERS ABSENT

All members present

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. 218

"An Act prohibiting an insurer from using a drug formulary system of specialty tiers under certain circumstances."

- MOVED CSHB 218(L&C) OUT OF COMMITTEE

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
02/27/12	(H)	Heard & Held
02/27/12	(H)	MINUTE(L&C)
03/16/12	(H)	L&C AT 3:15 PM BARNES 124
03/16/12	(H)	Heard & Held

03/16/12 (H) MINUTE(L&C)
03/26/12 (H) L&C AT 3:15 PM BARNES 124

BILL: HB 218

SHORT TITLE: PRESCRIPTION DRUG SPECIALTY TIERS

SPONSOR(s): HEALTH & SOCIAL SERVICES

03/31/11 (H) READ THE FIRST TIME - REFERRALS
03/31/11 (H) HSS, L&C
02/28/12 (H) HSS AT 3:00 PM CAPITOL 106
02/28/12 (H) Heard & Held
02/28/12 (H) MINUTE(HSS)
03/15/12 (H) HSS RPT 2DP 4NR
03/15/12 (H) DP: KERTTULA, MILLER
03/15/12 (H) NR: MILLETT, SEATON, HERRON, KELLER
03/15/12 (H) HSS AT 3:00 PM CAPITOL 106
03/15/12 (H) Moved Out of Committee
03/15/12 (H) MINUTE(HSS)
03/16/12 (H) L&C AT 3:15 PM BARNES 124
03/16/12 (H) Heard & Held
03/16/12 (H) MINUTE(L&C)
03/26/12 (H) L&C AT 3:15 PM BARNES 124

WITNESS REGISTER

REPRESENTATIVE CATHY MUNOZ

Alaska State Legislature

Juneau, Alaska

POSITION STATEMENT: Testified as bill sponsor of HB 259.

BARRY CHRISTENSEN, Pharmacist

Island Pharmacy, Inc.

Co-Chair, Legislative Committee

Alaska Pharmacists Association (AkPhA)

Ketchikan, Alaska

POSITION STATEMENT: Testified during the discussion of HB 259.

MIKE BARNHILL, Deputy Commissioner

Office of the Commissioner

Department of Administration (DOA)

Juneau, Alaska

POSITION STATEMENT: Testified during the discussion of SB 259.

JON SHERWOOD

Medicaid Special Projects

Office of the Commissioner

Department of Health and Social Services (DHSS)

Juneau, Alaska

POSITION STATEMENT: Testified and answered questions on amendments to HB 259.

LINDA HALL, Director
Division of Insurance
Anchorage Office

Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of 259.

NANCY DAVIS, Executive Director
Alaska Pharmacists Association (APA)
Anchorage, Alaska

POSITION STATEMENT: Testified during the discussion of HB 259.

MICHAEL CARTIER, Pharmacist; Executive Vice President
Envision Pharmaceutical Services (Envision)
San Francisco, California

POSITION STATEMENT: Testified in opposition to parts of HB 259.

LIS HOUCHEM, Northwest Regional Director
National Association of Chain Drugstores
Olympia, Washington

POSITION STATEMENT: Testified during the discussion of HB 259.

JANET OGAN, Staff
Representative Wes Keller
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 218 on behalf of the House Health and Social Services Standing Committee of which Representative Keller is the chair.

SHEELA TALLMAN, Manager
Legislative Affairs
Premera Blue Cross Blue Shield of Alaska [Premera]
Mountlake Terrace, Washington

POSITION STATEMENT: Testified in opposition to HB 218.

LINDA HALL, Director
Division of Insurance
Anchorage Office

Department of Commerce, Community & Economic Development (DCCED)
Anchorage, Alaska

POSITION STATEMENT: Testified and answered questions during the discussion of 218.

ACTION NARRATIVE

[3:21:23 PM](#)

CHAIR KURT OLSON called the House Labor and Commerce Standing Committee meeting to order at 3:21 p.m. Representatives Miller, Thompson, Saddler, Holmes, and Olson were present at the call to order. Representatives Johnson and Chenault arrived as the meeting was in progress.

HB 259-PHARMACY AUDITS

[3:21:46 PM](#)

CHAIR OLSON announced that the first 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."

[3:22:05 PM](#)

REPRESENTATIVE CATHY MUNOZ, Alaska State Legislature, sponsor, stated that the bill would clarify procedures for pharmacy audits. Since the committee last met, the states of Utah and Indiana have passed similar legislation, in fact, the law in Utah is more stringent. Several large employers, including Wal-Mart and Walgreen, and the Alaska Pharmacists Association support the bill. She has four amendments that specifically address issues and Medicaid audit procedures.

[3:23:53 PM](#)

REPRESENTATIVE JOHNSON moved to adopt Amendment 1, labeled 27-LS0675\I.2, Martin, 3/14/12, which read as follows:

Page 2, following line 5:

Insert a new paragraph to read:

"(3) an auditor may not audit more than 75 prescriptions during a single audit;"

Renumber the following paragraphs accordingly.

CHAIR OLSON objected for purpose of discussion.

[3:24:27 PM](#)

REPRESENTATIVE MUNOZ explained that Amendment 1 would limit the number of prescriptions audited during a single audit to 75 prescriptions. She reported according the Academy of Managed Care Pharmacies the number of prescriptions audited typically ranges from 25-125 claims. According the Alaska Pharmacists Association (APA) many states with pharmacy auditing standards limit the number of prescriptions an auditor may cover during a single audit. She related that the organization says that 75 prescriptions per audit is a fair number - based on an Oklahoma pharmacy law that passed last year - especially when a pharmacist often fills on average more than 200 prescriptions a day. This translates into 200 original documents that must be stored along with invoices from wholesalers to prove when the drugs were ordered, received, and billed.

[3:25:44 PM](#)

REPRESENTATIVE SADDLER asked whether there is currently any numerical limit on the scope of audits or if it is unlimited.

BARRY CHRISTENSEN, Pharmacist, Island Pharmacy, Inc.; Co-Chair, Legislative Committee, Alaska Pharmacists Association (AkPhA), noted there is not any limit on the claims that can be audited.

REPRESENTATIVE SADDLER inquired as to whether any other states have a numerical limit.

DR. CHRISTENSEN answered that most states that have passed similar legislation have identified a limit, with 75 as a mid-range number. In further response to Representative Saddler, Dr. Christensen answered he recalled the range of a maximum of 200 and a minimum of 35-40 prescriptions.

[3:27:55 PM](#)

MIKE BARNHILL, Deputy Commissioner, Office of the Commissioner, Department of Administration (DOA), on behalf of the DOA and the Division of Retirement and Benefits, stated that the department is the administrator of a large health insurance plan - the AlaskaCare plan. The retiree portion has close to 40,000 members plus their dependents. The active portion of the plan currently has about 6,000 members. As the plan administrator the DOA manages the prescription spend, which has been steadily increasing at a rather large pace in the past several years. He stated that the DOA's position is that pharmacy audits are important to help manage the expenditures to ensure the plan is

paying the appropriate amount for prescriptions and to ensure contracts are being administered and enforced appropriately.

MR. BARNHILL expressed concern with the present configuration of HB 259 since it appears to unduly limit the DOA's ability to administrator a portion of its responsibilities, but the administration is willing to work with the sponsor and committee on HB 259.

[3:29:30 PM](#)

CHAIR OLSON related his understanding that between the active and retired employees that the state has about 70 percent of the participants statewide.

MR. BARNHILL agreed it is definitely a large number. He expressed concerns with Amendment 1, since it would limit any one audit to 75 prescriptions, especially given that pharmacists are issuing up to 200 prescriptions a day. He said that 75 prescriptions seemed unduly small plus the state's auditors need the ability to order more prescriptions. He pointed out that there is obviously a tension between the best interests of pharmacists and the best interests of the insurance plan. He said, "We'd like to save money. They'd like to make money. I get that and I'm sure the committee does as well, but we still need to be able to manage this on behalf of the people of the State of Alaska who are ultimately paying for this."

[3:30:56 PM](#)

REPRESENTATIVE JOHNSON asked whether another audit could be conducted soon after the first audit.

MR. BARNHILL recalled Representative Saddler also asked a similar question. He responded that he did not believe there is any limit on the number of audits that can be conducted, but he did not understand the reason to arbitrarily limit an audit to 75 prescriptions which could unduly burden the auditor to determine if the plan is prudently managing its resources. He said he did not think this would assist either the pharmacists or the plan. Instead of submitting to one audit an auditor may have to endure three more audits tacked on to get around limit of 75 prescriptions.

[3:31:54 PM](#)

REPRESENTATIVE JOHNSON asked if he could suggest any number that would be better.

MR. BARNHILL answered no, that in fairness an audit should cover what the auditor needs to cover.

[3:32:15 PM](#)

REPRESENTATIVE JOHNSON asked if 75 prescriptions are audited and half are found not to meet the criteria whether that would allow the auditor to go back and audit more.

MR. BARNHILL answered that nothing in HB 259 would allow that to happen. In further response to Representative Johnson, he answered that if auditors did not find any issues that fact alone would potentially give auditors information.

[3:32:51 PM](#)

REPRESENTATIVE SADDLER asked whether any mechanism is in place to protect auditors from enduring five audits in a month which would result in the necessity of having to shut down pharmacy operations to answer questions.

MR. BARNHILL responded the department does not object to a number of provisions in the bill that provide procedural protections. He referred to page 2, lines 3-5, paragraph 2, which protects the first seven days of the month due to high volume. He said that paragraphs 12, 13, 14, 15 also provide also provide procedural protections. He stated that state has no interest in making it burdensome for pharmacists, but merely wants to protect the resources of the plan.

[3:34:15 PM](#)

CHAIR OLSON removed his objection.

REPRESENTATIVE JOHNSON made a motion to table Amendment 1, in order to allow the committee an opportunity to review how the amendments fit together as a whole. There being no further objection, Amendment 1 was tabled.

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 2, labeled 27-LS0675\I.3, Martin, 3/14/12, which read, as follows:

Page 2, following line 23:
Insert a new paragraph to read:

"(11) an auditor may not assess a charge-back, recoupment, or other penalty against a pharmacy based on a prescription that is mailed or delivered by request of a patient as part of a routine business practice;"

Renumber the following paragraphs accordingly.

REPRESENTATIVE HOLMES objected for purpose of discussion.

[3:35:25 PM](#)

REPRESENTATIVE MUNOZ referred to page 2, line 23. She stated Amendment 2 would add a new paragraph to prevent penalizing pharmacies that routinely routine mail prescription by mail. She explained that this routine practice was held against a pharmacist during an audit. She reiterated that Amendment 2 would not allow auditors to negatively impact pharmacists who engage in mailing prescriptions.

[3:36:26 PM](#)

REPRESENTATIVE HOLMES asked whether the intention of the amendment is to prohibit the auditor from auditing solely on the fact that the prescription is by mail. She related her understanding that Amendment 2 would remove any prescription out of the realm of the audit.

REPRESENTATIVE MUNOZ answered that the purpose of Amendment 2 is to ensure against chargebacks or additional recoupment for mail order prescriptions.

REPRESENTATIVE HOLMES acknowledged she was unsure if she understood the terms.

REPRESENTATIVE MUNOZ explained that Amendment 2 would prevent penalizing pharmacies whose practice is to mail or deliver prescription drugs by request of a patient as part of their routine business practice.

REPRESENTATIVE HOLMES agreed with the concept, but was unsure of the drafting of Amendment 2. She said it seems fair to say a pharmacist would not have extra penalties or burdens assessed simply because something was mailed and lots of insurance plans prefer people order prescriptions by mail since buying in bulk often results in cost savings. She cautioned against making it

impossible for an auditor to audit any prescription simply because it was mailed.

REPRESENTATIVE MUNOZ agreed that is not the intent of Amendment 2.

[3:38:27 PM](#)

REPRESENTATIVE SADDLER asked what is wrong with delivering prescriptions by mail.

DR. CHRISTENSEN answered that some PBMS also own mail order pharmacies and try to put something in contract to prohibit it. As a routine business practice, pharmacists usually have a return receipt or postcard that the patient signs to ensure delivery. He related the pharmacists do not to preclude any prescription from being audited, but would like to ensure that auditors do not hand mail order prescriptions any differently than other prescriptions.

[3:40:03 PM](#)

REPRESENTATIVE SADDLER related his understanding that some people have contractual limitations by mail. He asked whether it would be illegal to do so or if prohibiting mail order prescriptions is a common practice.

DR. CHRISTENSEN answered that mail order prescriptions are a common practice in Alaska. He related a scenario in which a Fairbanks pharmacist mails prescriptions or other goods to rural Alaska residents. He said that he wanted to ensure members are protected since there is not a pharmacy in every community.

[3:40:59 PM](#)

REPRESENTATIVE SADDLER related a scenario in which a pharmacist signs up and agrees in writing to not send prescriptions by mail. He inquired as to whether Amendment 2 would eliminate the necessity to abide by that agreement.

DR. CHRISTENSEN responded that he assumed it would.

REPRESENTATIVE SADDLER suggested Amendment may need to be modified for clarity.

[3:41:35 PM](#)

REPRESENTATIVE THOMPSON mentioned Representative Holmes pointed out earlier that Amendment 2 appears not to allow mail order prescriptions to be audited. He suggested the language should be clear that recoupment could not be assessed solely based on prescriptions mailed to patients.

REPRESENTATIVE HOLMES said that was the direction she was thinking makes the most sense. She agreed with Representative Thompson on Amendment 2.

[3:42:07 PM](#)

REPRESENTATIVE JOHNSON clarified his understanding that when a pharmacy exclusively mailed prescriptions the language would ensure the pharmacy would never be audited. He further understood that an auditor cannot assess recoupment or charge-backs on a mail order prescription. He concluded that a pharmacy would never have to worry about paying penalties for mail order prescriptions.

REPRESENTATIVE SADDLER concurred.

REPRESENTATIVE MUNOZ stated that the intention of Amendment 2 is not to stop auditing on the procedures, but to ensure a pharmacist does not receive a penalty for mailing out a mail-order prescription, which is a common practice in Alaska communities without access to a pharmacy.

REPRESENTATIVE HOLMES said she interpreted Amendment 2 the same way as Representative Johnson, which she did not think was the sponsor's intent so she suggested the Amendment 2 be rewritten.

[3:43:43 PM](#)

REPRESENTATIVE CHENAULT asked for specific penalties on mail order prescriptions. He wondered whether the auditor's issue is the return receipt paperwork or that the prescription is mailed out versus not being mailed out.

DR. CHRISTENSEN suggested Amendment 2 may need to be changed to reflect that it does not intend to exempt mail order prescriptions from being audited. He expressed concern that in one pharmacy member's case an auditor wanted all of the prescription costs reimbursed.

REPRESENTATIVE CHENAULT asked the reason a pharmacist would be penalized for a mail order prescription.

DR. CHRISTENSEN restated his earlier comment that it is because a PBM views it as competition since they own their own mail order pharmacy.

REPRESENTATIVE CHENAULT suggested if the paperwork is filled out properly that there should not be any penalty unless the contract contains a "no mail policy."

MR. BARNHILL answered that the administration has no objection to the intent of Amendment 2, subject to appropriate wordsmithing by the legislative legal attorneys.

REPRESENTATIVE HOLMES removed her objection.

[3:47:04 PM](#)

REPRESENTATIVE JOHNSON made a motion to table Amendment 2 in order to allow the committee an opportunity to review how the amendments fit together as a whole. There being no further objection, Amendment 2 was tabled.

[3:47:22 PM](#)

REPRESENTATIVE JOHNSON made a motion to move Amendment 3, labeled 27-LS0675\I.4, Martin, 3/14/12, which read:

Page 2, line 30, following "provider,":

Insert "documented telephone calls from the prescriber or prescriber's agent,"

CHAIR OLSON objected for purpose of discussion.

[3:47:40 PM](#)

REPRESENTATIVE MUNOZ explained that Amendment 3 would allow pharmacists to use telephone records when responding to a pharmacy audit. She explained substantial documentation occurs after phone calls to a pharmacist or doctor and these communications should be considered part of the prescription record. She related a scenario in which a patient may show up at a pharmacy to pick up a prescription sent by fax for penicillin. The pharmacist may notice the patient is allergic to penicillin, confirm this, and fax the information back to the dentist; however, to expedite the prescription process, the pharmacist calls the dentist and the dentist changes the prescription to another antibiotic. The pharmacist would

document the change on the original fax prescription and the patient receives the proper medication. She concluded that Amendment 3 would sanction this scenario and allow telephone records to be used to document changes to prescriptions.

CHAIR OLSON guessed Amendment 3 was based on a specific case.

REPRESENTATIVE MUNOZ imagined it was based on a specific instance, but elaborated that Amendment 3 would address common practices.

[3:49:22 PM](#)

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REPRESENTATIVE JOHNSON expressed concern about the documentation and how it is defined. He asked whether Amendment 3 would require the documentation be written documentation.

REPRESENTATIVE MUNOZ deferred to Dr. Christensen.

DR. CHRISTENSEN answered that typically any changes would be noted on hard copy of the original prescription. He also hoped that the dentist's office would have a similar record change noted. He recapped by stating everything would generally be written down, including that the pharmacists would note the time, date, and the pharmacist's initials would be written on the prescription.

[3:50:56 PM](#)

REPRESENTATIVE JOHNSON would like Amendment 3 clarified since he interpreted it to mean a phone record could represent documentation.

REPRESENTATIVE SADDLER echoed Representative Johnson's comments that phone record could represent documentation, but would not contain any information on the content, purpose, and originator.

MR. BARNHILL indicated the DOA does not have any objection to Amendment 3. He pointed out that paragraph 13 allows pharmacists to use documentation and telephone calls appear to fall within the scope of documenting any record.

[3:52:21 PM](#)

REPRESENTATIVE MILLER assumed an auditor would confirm both ends of the documentation, including the pharmacist and the dentist in the earlier scenario. He inquired as to whether as this

pertains to a physical audit or just a phone call by the auditor.

CHAIR OLSON reiterated the question is if this pertained to physical audits on premise.

DR. CHRISTENSEN answered the issue could arise with a paper audit, in which a PBM requests copies of the front and back of prescriptions or an in pharmacy audit. He highlighted that by law, a pharmacist can currently take a verbal prescription from a provider so long as the pertinent information is documented. He explained the intent of Amendment 3 is to ensure during the course of an audit that these documented phone records are considered valid. He related a scenario in which during a paper audit the pharmacist submits the documented phone record, but the auditor could chargeback on that item. He envisioned that it would be up to the pharmacist to provide proof in the event of an appeal. The pharmacist would obtain the proof and also need to provide confirmation from the dental office for the auditor.

[3:54:45 PM](#)

CHAIR OLSON withdrew his objection to Amendment 3.

REPRESENTATIVE JOHNSON made a motion to table Amendment 3, in order to allow the committee an opportunity to review how the amendments fit together as a whole. There being no further objection, Amendment 3 was tabled.

[3:55:16 PM](#)

REPRESENTATIVE JOHNSON made a motion to adopt Amendment 4, labeled 27-LS0675\I.5, Martin, 3/14/12, which read, as follows:

Page 3, lines 15 - 16:

Delete all material and insert:

"(b) This section does not apply to
(1) a criminal investigation; or
(2) an investigation or audit by a
governmental agency, including state Medicaid
programs."

CHAIR OLSON objected for the purpose of discussion.

[3:55:32 PM](#)

REPRESENTATIVE MUNOZ explained Amendment 4, which would exempt those programs from the requirements of the law.

[3:56:18 PM](#)

JON SHERWOOD, Medicaid Special Projects, Office of the Commissioner, answered that Medicaid is governed by federal and state law. There are specific state audit statutes that govern Medicaid under AS 47.05.0200. He stated that Amendment 4 would clearly remove any conflict with federal law or other state audit statutes and allow enable them to use consistent audit standards across their program and would also enable both the department and the pharmacists to have a clear understanding of what rules apply to Medicaid instead of trying to parse which statute applies in each situation.

CHAIR OLSON related his understanding that one effect of Amendment 4 is to zero out the fiscal note.

MR. SHERWOOD answered yes.

[3:57:49 PM](#)

REPRESENTATIVE HOLMES commented anything that clarifies the Medicaid audit sounds good. She noted concerns were previously expressed about the DOA's ability to audit. She inquired as to whether the language in Amendment 4 would allay the department's concerns or if the amendment would need further work.

MR. BARNHILL would be very happy if the language in Amendment 4 applied to DOA.

[3:59:09 PM](#)

REPRESENTATIVE JOHNSON asked if the Division of Retirement and Benefits is a governmental agency.

MR. BARNHILL answered yes.

REPRESENTATIVE JOHNSON answered that he thought the division was covered.

[3:59:29 PM](#)

REPRESENTATIVE SADDLER asked Dr. Christensen whether dual enforcement causes any problems.

DR. CHRISTENSEN responded that if the state's plan is administered by a prescription benefit manager (PBM) so he would like clarification that it does not apply to the state's insurance program.

[4:00:24 PM](#)

REPRESENTATIVE SADDLER asked him to repeat.

DR. CHRISTENSEN answered that since the state's insurance plan is administered - the state's prescription benefits portion - by a prescription manager he envisioned that the state would also need to abide by this bill.

REPRESENTATIVE MUNOZ answered the intent of Amendment 4 is that all PBMs would fall under the procedures established in the bill. Further, the intent of Amendment 4 is to exempt Medicaid programs and criminal investigations.

[4:01:28 PM](#)

REPRESENTATIVE HOLMES interpreted that the Division of Retirement and Benefits would be exempt.

REPRESENTATIVE MUNOZ reiterated that the purpose of the bill is to have PBMs, whether they represent the state or other organizations, to fall under the bill, but HB 259 does not include Medicaid or other federal audits.

[4:02:06 PM](#)

CHAIR OLSON removed his objection.

REPRESENTATIVE JOHNSON made a motion to table Amendment 4 in order to allow the committee an opportunity to review how the amendments fit together as a whole. There being no further objection, Amendment 4 was tabled.

CHAIR OLSON agreed the amendments need some additional work and staff has been taking notes.

[4:03:18 PM](#)

LINDA HALL, Director, Division of Insurance, Anchorage Office, Department of Commerce, Community & Economic Development (DCCED), stated it was interesting to reread bill. The division has also found some issues with audits in other areas of health

care providers and with insurers performing audits approximately a year ago. The division adopted regulations that are not as specific or all-encompassing as HB 259 since they generally do not deal with overpayment recoveries, which is the thrust of this bill. She pointed out some similar provisions that conflict in timeframes. The division requires a 30-day notice before an insurer can seek recovery. The auditor should be able to identify the specific claim and reason, which she indicated gets at extrapolation issue. The division has a narrower timeframe - 365 days. The division has observed some things generally in the health care/health insurer practice in general, not dealing with PBMs, but generally the audit of bills, whether for a chiropractor, medical, or pharmacist's office.

[4:04:54 PM](#)

MS. HALL expressed some concerns about HB 259, such that it could create such an onerous environment and PBMs may not want to do business here. She identified the market as a small market. The division has observed that some insurers decide to use their resources elsewhere and PBMs may decide that, too. She recalled today's discussion about contracts between the PBM and an insurer or plan sponsor. She related that contracts are designed for specific needs and goals of the parties and expressed concern over any loss of flexibility or ability of the parties to negotiate the terms of these contracts. She offered her belief that PBMs general provide oversight for cost savings. She pointed out that these proposed changes do not affect the DOI's title; however, she does share concern about the cost of health care, which directly correlates with premium rates. She reported that the division regulates rates which are based on health care costs. She pointed out that if anything causes health care costs to go up premiums will also increase. She expressed her general concern with the bill since the state has the highest health insurance premiums in the country.

[4:06:46 PM](#)

CHAIR OLSON inquired as to whether the case pending before the U.S. Supreme Court [on the Patient Protection and Affordable Care Act (PPACA)] could impact the outcome of this bill.

MS. HALL answered that she did not think so since the issues are two very different issues and could certainly impact the state and some of the insurance issues, but she did not see it would affect this issue.

CHAIR OLSON suggested that the state may or may not see federal oversight in areas related to this bill.

MS. HALL asked for clarification. She offered her belief there is current more federal oversight due to the general nature of the health care reform laws, but she did not see the relationship of audit procedures being affected, with the potential exceptions as previously noted by Mr. Sherwood.

[4:07:48 PM](#)

NANCY DAVIS, Executive Director, Alaska Pharmacists Association (APA), read comments from Bernie Klouda, Pharmacist at Bernie's Pharmacy. She also provided some statistics on audits and PBM contracts in the state. She related that in July, August, and September 2011, Bernie's Pharmacy was subject to three PBM audits within 90 days. She identified the three PBMs as CVS Caremark, Express Script, and Medco. She stated that each audit covered two to three year period of time and included 250-300 prescriptions or more. She reported that one was a desk audit and two were on-site audits. The pharmacy had received less than a 30-day notice for each audit, yet the preparation for these audits is extensive and tedious, involving not only the pharmacist and technicians, but also other highly trained personnel. She detailed it would take Bernie's Pharmacy approximately two weeks of intensive work to prepare for an audit, involving a pharmacist, technician, filling person and an information technology (IT) person to capture signature logs and other pertinent data required for an audit.

MS. DAVIS said that the pharmacy uses a human resources person to act as a go between with pharmacy personnel, as well as two pharmacy technicians to pull the hard copies of prescriptions. She pointed out that even with this many people involved the pharmacy still would have a difficult time completing an audit of 300 or more prescriptions within an eight-hour period. Further, the pharmacy must still care for patients during the audit and after an audit must spend many days responding to the results of the audit. She characterized the audit process as one that takes a tremendous physical and emotional toll on their pharmacy's staff. Pharmacists understand the need for audits, but feel that PBMs must give longer notice with a specified timeframe between multiple audits. Once audits have been completed, the pharmacist often must then wait up to one year for the results. She pointed out that their pharmacy has only heard from one of the three PBMs so far on the audits conducted last summer. She offered her belief that it is necessary to

include language in the bill to outline specific timeframes of notice, results, and negotiations of time between multiple audit requests. She noted that Bernie's Pharmacy is located in Anchorage.

[4:11:25 PM](#)

MS. DAVIS, in response to a request by their lobbyist, provided some statistics. She said that of the eight pharmacies from Southeast to Northwest Alaska the audits ranged from one to 100 audits. The PBM contracts can also range from one to 100, as well. After removing the outliers - the high and low - the average audits per year totaled 21 and the PBM contracts numbered approximately 40. She said she is working to obtain some additional statistics from chain pharmacies in Alaska.

[4:12:48 PM](#)

MS. DAVIS noted one pharmacy in Southeast Alaska indicated that audits seem to be increasing, which likely correlates to an increase in prescription use nationwide. The audits for the specific pharmacy increased from 21 in 2010 to 34 in 2011. She noted that two pharmacies had large audits, including Bernie's Pharmacy. Another pharmacy in Southcentral had two large audits over 100 prescriptions. She highlighted that what is very time consuming for pharmacies is the copying for desk audits and even the on-site audits.

[4:13:58 PM](#)

CHAIR OLSON inquired as to whether the prescription copies could be scanned.

DR. CHRISTENSEN answered by law, even if a pharmacy scans or digitalizes prescriptions the pharmacist must have the original hard copy on file. He reiterated that even if the pharmacy keeps an electronic file, the pharmacy must print out the record, including copying the prescription front and back. In further response to Chair Olson, he agreed the signature can be a digital signature.

[4:15:15 PM](#)

REPRESENTATIVE SADDLER recalled the average audit numbered 21. He asked whether that is per pharmacy or association.

MS. DAVIS answered the figure represents the number of pharmacies that responded to her request. She further clarified that the figure represents the average number of audits per year per pharmacy or a total of 21 audits per year.

REPRESENTATIVE SADDLER recalled that the PBM contracts numbered 40. He asked for further clarification on what that figure meant.

MS. DAVIS answered that she took an average of six pharmacies, after removing the two outliers and tallied the total. She said there were an average number of 40 contracts signed per pharmacy.

CHAIR OLSON, in response to a question, clarified that meant there are 40 PBMs per pharmacy.

[4:16:30 PM](#)

REPRESENTATIVE SADDLER related his understanding that on average a pharmacy will contract with 40 PBMs.

MS. DAVIS answered that one pharmacy in Anchorage had 100 contracts with the lowest number for one pharmacy in Southeast Alaska, which had four PBM contracts.

[4:17:05 PM](#)

REPRESENTATIVE SADDLER asked her to identify the single most troublesome aspect of pharmacy audits.

MS. DAVIS answered that it would be the PBMs do not give enough notice to pharmacies. She supported a 30-day notice, which some states have gone to and not having audits occur during the first week of the month since is difficult since doctors are typically busy and fill more prescriptions. She stressed that pharmacists are very busy. She characterized the bill as addressing the matter of fair business practices. She pointed out that extrapolation is an issue. She highlighted that most pharmacists are good business people and she could vouch for them. She acknowledged that there is always some problem, but almost all her members are good business people and she could vouch for them. She identified extrapolation as another huge problem which has resulted in a need for legal counsel. She reiterated audits will not be eliminated and are necessary. She concluded that there just needs to be a fair business practice.

[4:18:47 PM](#)

REPRESENTATIVE SADDLER asked whether the Alaska Pharmacists Association (APA) could rank the 19 provisions in the bill.

MS. DAVIS offered to do so after obtaining feedback from members. She highlighted that limiting audit periods to two years could be beneficial since the Alaska Board of Pharmacy does not require pharmacists to keep records beyond two years. She recalled one pharmacy had been audited on records up to four years earlier and needed to go to a storage area to obtain records - and chip ice away to get to the records. She offered her belief that provision seems fair and reasonable. She cautioned that she did not want to minimize anything in the bill, but highlighted things she thinks fall under fair business practices.

CHAIR OLSON indicated that she could pull together information and submit it to his office for distribution to members.

[4:20:01 PM](#)

MICHAEL CARTIER, Pharmacist; Executive Vice President, Envision Pharmaceutical Services (Envision), stated that Envision currently provides comprehensive services to the State of Alaska retirees and dependents, including pharmacy audits in the scope of their services. He said that any money recouped is returned to their client, which is SOA health plan. He indicated that Envision does not receive any revenue or reimbursement for those services. He said he is testifying today in opposition to certain provisions of HB 259. He stated that Envision fundamentally agrees with many of the provisions in HB 259, including requiring adequate notice, audit methodology, prohibition of extrapolation, auditors not being reimbursed based on percentages, and with respect to the appeals process and due process. He offered to bring up some topics not yet discussed today. First, dispensing fees are an important part of the reimbursement formula for a valid prescription claim and he disagreed with eliminating dispensing fees from an audit recovery. He stated when a claim is determined to be invalid or fraudulent that the money is the property of the client or the plan.

[4:21:47 PM](#)

DR. CARTIER stated that secondly, in terms of clinical or professional judgment, the audit must be conducted in

consultation with the pharmacist, which is language in most state statutes and would be an improvement over the current language in bill. Further, the proposed amendment to exclude mail order claims should be rejected since in the event the claim is found invalid or fraudulent that it should not matter whether a prescription is filled by mail or in person.

[4:22:28 PM](#)

CHAIR OLSON asked for comments on the 30-day notice provision.

DR. CARTIER answered that 14 days is the most common notice provision so he would side with 14 days. He related he has heard 30 days mentioned today, which he acknowledged is noticing some other states use.

CHAIR OLSON asked for comments on the provision that would limit the necessity of keeping hard copies for more than two years.

DR. CARTIER responded that hard copies and records would depend on whether the transactions were commercial or governmental, noting Medicaid and Medicare require longer timeframes and the PBM must be in full compliance with those requirements.

[4:23:18 PM](#)

REPRESENTATIVE JOHNSON asked him to restate the language that is more appropriate in terms of clinical and professional judgment.

DR. CARTIER responded that the existing language says during an audit which requires clinical or professional judgment it must be done in consultation with a pharmacist licensed in the state. The vast majority of other states have passed similar legislation to include language such that when clinical or professional judgment is required it is done in consultation with a pharmacist.

REPRESENTATIVE JOHNSON asked whether his only objection is not using a licensed pharmacist in the state.

DR. CARTIER answered that clinical and professional judgment is conferred upon the scope of training, education, fellowships, and residencies and scope of training and is not dependent on location or licensure in certain states but is more a product of education.

REPRESENTATIVE JOHNSON asked whether any auditors are pharmacists.

DR. CARTIER answered yes. He stated that some in his company are pharmacists.

[4:24:44 PM](#)

REPRESENTATIVE JOHNSON asked whether he could consult with himself or herself.

DR. CARTIER answered the consultation would be with the pharmacy or pharmacist that is being audited. Thus the consultation would be professional to professional interaction.

[4:25:08 PM](#)

REPRESENTATIVE SADDLER recalled earlier testimony that one reason a PBM would disallow mail order prescriptions is since the pharmacy would be in competition with other elements of his business. He asked if he would like to respond to the allegation or concern.

DR. CARTIER answered that he guessed it would be more of a contractual requirement between the PBM and the pharmacy. He said it was not Envision's concern. He reiterated that Envision is not worried about competing with retail pharmacies in Alaska.

[4:26:27 PM](#)

LIS HOUCHEEN, Northwest Regional Director, National Association of Chain Drugstores, stated that of the 88 pharmacies in Alaska, 54 are chains. Her organization represents Costco, Healthmart Systems, Carrs/Safeway, Target, Walgreens, and Wal-Mart. She offered to reiterate some high points. She stated that HB 259 would set the standards by which pharmacies are audited and allow for an appeal in case of a disagreement. Pharmacies are not opposed to audits based on suspicion of fraud, unlawful billing practices and abuse. She compared HB 259 with a similar bill signed into law last week in Utah. She stated that notice of audit in HB 259 requires two weeks, but in Utah is 10 days. The first seven days of the month should not be audited under HB 259, but Utah limits it to five days. The look back period is very similar, which is 24 months in HB 259, but is 18-24 months in the Utah law. The number of claims to be audited is 75 claims in Alaska, whereas the Utah law limits the audits to 200

claims. The areas that are the same in HB 259 and in Utah is the no inclusion of dispensing fees in terms of recoupment, a 60-day preliminary audit report, and allows 30 days for pharmacies to respond, and establishes appeals processes.

4:28:40 PM

MS. HOUCHEN stated that Ms. Davis identified what is most important to pharmacists is to set a standard by which audits would be conducted and encompasses the broad piece important to everyone. She related, in terms of the final report, that the final report would be due in 90 days whereas in Utah it is due within 120 days. She highlighted the only initial opposition in Utah was from the three PBMs who met with proponents to work on compromises. She said that she and other members of the APA would be happy to work on possible compromises to keep HB 259 moving.

4:29:23 PM

MR. BARNHILL emphasized that the DOA has concerns since the state has a very large plan and manages upwards of 46,000 members, their dependents, and beneficiaries. The state spends a large amount on pharmacy costs each year. He referred to a document in members' packets titled AlaskaCare Drug Spend - July 2006 thru December 2011 that details expenses per year. He tallied the total costs by quarter and stated as follows the fiscal year totals: in FY 07 - \$98.3 million, FY 08 - \$119.8 million, FY 09 - \$126.4 million, FY 10 - \$131.5 million, and in FY 11 - \$141.6 million. Thus over the past five and one-half years, the state is approaching \$700 million in prescription drug spend for AlaskaCare Drug Spend for retirees and active employees. He pointed out that this represents nine percent per year growth rate. The state shares the concerns that Ms. Hall noted earlier, which is the cost of health care in Alaska is growing at an astounding rate and is unsustainable. He referred to the next chart in members' packets titled, "State of Alaska Health Care Expenditures," and read totals for FY 01 at \$885.7 million, which has increased to over \$2 billion in FY 11. He reported that the average annual growth rate per member ranges between five and six percent, which is double the rate of inflation in Alaska over this time period. He concluded that this has resulted in the state having \$11.1 billion in unfunded liability costs. He stated that it is incumbent upon the state's Division of Retirement and Benefits to prudently manage its health care expenditures, in particular, for prescription costs since they are increasing at such a great rate.

4:32:14 PM

MR. BARNHILL pointed out that one way the state does this is by conducting pharmacy audits. The state needs to continue to have the appropriate tools to do so; however, the state does not want to put pharmacies out of business in Alaska. He said that this is not the state's intention. The state wants all of the medical providers to have healthy businesses. The state must achieve the situation in which medical business is sustainable for the providers and for the state. He predicted that the path the state is currently on in terms of health care cost expenditures is increasing at double or triple the rate of inflation, which is not sustainable. He emphasized that the state needs the tools to rein prescription drug costs in.

MR. BARNHILL asked to discuss the DOA's concerns with the bill. He pointed out a number of procedural protections contained in the bill. He suggested that audits or investigations are entitled to certain protections, which he deemed as fair. He stated that the procedural protections are contained in paragraphs 12 through 15. He said, "Those are fine."

4:33:53 PM

MR. BARNHILL stressed that even without HB 259 the state would insist the PBM should be fair when auditing a pharmacy. He added that paragraphs 1 and 2 are also procedural.

MR. BARNHILL listed the division's concerns some of which have already been covered. He referred to page 2, lines 6-7 to paragraph 3, which would limit audits to two years. He explained that the state's PBM enters into contracts with periods specified longer than two years. He recommended the committee let the contracts control this process.

MR. BARNHILL stated limiting audits that include clinical professional judgment to be conducted in consultation with a pharmacist licensed in Alaska is particularly concerning. He stated there has been a disturbing trend towards a consolidation of providers and whenever consolidation happens the prices also increase dramatically. He hoped this would not happen, but if pharmacists band together in the state and resist audits this provision would eliminate the ability of the PBMs to prudently audit.

4:35:34 PM

MR. BARNHILL referred to paragraph 6 to how clerical errors are handled. He stated that as a matter of law clerical errors that are discovered and allowed to proceed may actually constitute fraud.

MR. BARNHILL referred to paragraph 7, relating that an auditor conducting an audit may only have access to previous audit reports prepared by the auditor, which seems too broad. He stated that all PBMs should have the ability to review previous audits.

MR. BARNHILL referred to paragraph 8. He was unsure how this would coincide with Amendment 4. He said that under this provision an auditor may only provide information to the person requesting the audit and the pharmacy being audited. He highlighted if an audit uncovers criminal misconduct that the PBM has an obligation to refer that to the Department of Law for review.

MR. BARNHILL referred to paragraph 11. He related that dispensing fees were previously discussed. He stated that dispensing fees come out of the state's trust to pay the pharmacist. He emphasized that if the prescription has been filled in error he did not understand why the pharmacist should keep the fees. He said that applies to paragraph 16, as well.

MR. BARNHILL referred to paragraph 18 with respect to interest fees which may not accrue during an audit period. Again, these are funds that the trusts or the state has paid. He stated when a claim is paid in error the interest charged is simply the time value of money and it seems to him that interest should accrue.

MR. BARNHILL referred to Section 4, the immediate effective date. This bill will require massive adjustment of all the contracts, which is time consuming and the state would ask for a transition period.

[4:37:58 PM](#)

REPRESENTATIVE JOHNSON asked how much the state has recovered through audits.

MR. BARNHILL said he did not know. He offered to provide the information to the committee.

[4:38:17 PM](#)

REPRESENTATIVE JOHNSON asked whether the audits are similar to the threat of IRS to keep people honest or if they are a revenue source.

MR. BARNHILL responded that the point of audits is to keep honest people honest. More importantly, the audits provide a tool the PBM need to prudently govern and monitor the amount spent on prescriptions.

REPRESENTATIVE SADDLER asked for clarification on whether he said the audits were tools to monitor the amount being spent or that does not need to be spent.

MR. BARNHILL answered that audits provide a tool the state can use to prudently monitor how the state is spending money on prescription drugs.

[4:39:40 PM](#)

REPRESENTATIVE MUNOZ asked whether he has analyzed whether PBMs actually add costs to prescription medications.

MR. BARNHILL answered no.

CHAIR OLSON brought up extrapolation.

MR. BARNHILL stated he did not object to provisions in HB 259 related to extrapolation. He stated he believes there is a fairness element to that provision and he has no objection to limiting it.

CHAIR OLSON mentioned this provision means a great deal to the people who have contacted his office.

[4:40:36 PM](#)

REPRESENTATIVE MUNOZ inquired as to whether he had any objection to the 30-day notice prior to an audit.

MR. BARNHILL answered that he did not have any objection to providing 30-days' notice prior to an audit. He said it seems fair.

[4:40:52 PM](#)

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 259.

[HB 259 was held over.]

[4:41:10 PM](#)

The committee took an at-ease from 4:41 p.m. to 4:43 p.m.

HB 218-PRESCRIPTION DRUG SPECIALTY TIERS

[4:43:29 PM](#)

CHAIR OLSON announced that the final order of business would be HOUSE BILL NO. 218, "An Act prohibiting an insurer from using a drug formulary system of specialty tiers under certain circumstances."

[4:43:55 PM](#)

JANET OGAN, Staff, Representative Keller, Alaska State Legislature, presented HB 218 on behalf of the House Health and Social Services Standing Committee of which Representative Keller is the chair, sponsor of HB 218, stated the specialty tier drugs started in 2006 with Medicaid, which was followed by other insurance companies introducing specialty tier drugs, which range from 1 with the lowest copay for tier 1 drugs and the highest coinsurance for tier 4 drugs. She explained that copay is flat fee and coinsurance is a percentage of drug costs. She explained the coinsurance is usually about 30 percent, but it can amount to more than that amount.

[4:45:56 PM](#)

MS. OGAN explained that tier 4 drugs are very expensive to manufacture and are typically used by patients with conditions such as hemophilia, multiple sclerosis, and cancer. She characterized these patients using tier 4 drugs as having chronic conditions or diseases and these drugs have helped patients maintain their life and standard of living. She further explained that most of the drugs are injectible drugs or drugs without a generic alternative. She highlighted that the companies are trying to find a way to bring the cost down. This bill would extend the notification period from 30 days to 90 days to give people who are affected time to research

alternatives, including another plan to allow them to retain their treatment.

[4:46:36 PM](#)

CHAIR OLSON reopened public testimony on HB 218.

[4:46:46 PM](#)

SHEELA TALLMAN, Manager, Legislative Affairs, Premera Blue Cross Blue Shield of Alaska [Premera], expressed concern with the notice requirement. She expressed concern with the 90-day notice requirement for the specialty pharmacy tiers that is duplicative to the existing processes for notices and the federal health care form requirements that start this fall. She related that Premera has done additional work to see how to make this happen. She highlighted that this bill will significantly disrupt the plan renewal processes by doubling the notice timeframe from 45 to 90 days' notice. She explained that the 45-day notice Premera mails out is a comprehensive notice that addresses the changes to benefits and cost-sharing amounts and would include any changes to the specialty pharmacy tier, as well as addressing any additional changes to the pharmacy benefit plan. She explained that the notice is provided with the associated rate change 45 days before the rates apply. These would apply to changes in rates that typically go into effect on an annual basis. She related that the changes to the requirement in the federal health care reform law requires Premera to provide an additional notice to members with the specific information that must be provided in three instances, upon application and enrollment, upon renewal, and upon request by individuals and groups.

[4:49:01 PM](#)

MS. TALLMAN offered any change that impacts the information provided in the summary document triggers a 60-day notification to members. She explained that this requirement will affect all plans, individual and group coverage, as well as self-funded plans. She provided additional background in terms of the changes in Premera's processes. She detailed that the timeframe from 45 to 90 days will double the timeframe and impact the renewal notice Premera currently provides to members and groups about changes in their benefits and rates. She highlighted that this process takes several months to complete, to develop the benefit plan design, submit the plan to the Division of Insurance (DOI) for review, and once the designs and rates are

approved to develop materials for members and brokers, followed by notification to members and groups. Further, with the 90-day notices Premera would have to adjust processes to align to the new requirements. Additionally, in the individual market what may further complicate this is an annual renewal process to make changes to rates and coverage at one but time; however, individual coverage is renewed on a month-to-month basis, meaning that individuals can apply for and change their plan designs every 30 days if they choose to do so. She explained that due to the processes currently in place and the changes to the health care reform requirements, including additional noticing, Premera opposes this bill. Additionally the new noticing requirements in the bill will disrupt the current renewal process, significantly impact groups, and potentially cause disruptions to the market.

[4:50:55 PM](#)

REPRESENTATIVE SADDLER asked whether she has submitted written testimony.

MS. TALLMAN offered to do so.

[4:51:26 PM](#)

CHAIR OLSON asked whether 95 percent of the problems would be eliminated if the effective date of the bill was July 1 since most of the group policies come up for renewal on July 1 or January 1.

MS. TALLMAN answered that most of the plans start on January 1, but groups also start throughout the year. She suggested that Premera would like the 45-day notice requirements since it goes out to all individuals. She indicated that Premera has a 45-day notice for the annual renewal process for individual market and for groups, she was unsure of the month, but each group receives it as they renew.

[4:52:31 PM](#)

CHAIR OLSON offered his belief that most of the plans commence on July 1, the fiscal year, or the calendar year, which would allow Premera four months to get ready for renewals.

MS. TALLMAN answered that if Premera could start this process next year it will give more time to adjust to it, but it significantly lengthens the time frame. Thus, Premera would be

submitting information, developing projects and looking at developing rates much further away. She explained that if the group renewal date is July 1 Premera would need to provide the notice three months prior to the date, noting the demographics might change. Thus Premera would need to begin to rerate them even after they have received notification.

[4:54:07 PM](#)

CHAIR OLSON asked Ms. Hall whether July 1 would be an appropriate date and reduce costs.

MS. HALL asked whether he was referring to July 1, 2012.

CHAIR OLSON stated July 1 is four months away and significantly longer than 45 days.

MS. HALL said one of her recommendations would have been to make the bill effective date on January 1. She explained that all individual Premera policies renew on January 1, but the groups have different renewal times. She offered her belief for the purposes of programming and form coverage that January 1 is a more palatable date to allow adequate preparation time.

[4:55:18 PM](#)

REPRESENTATIVE HOLMES asked if the effective date was January 1, 2013 whether all of the policies that renew on January 1 would still require the 90 day notice.

MS. HALL answered yes, that the notice would need to be done on October 1.

CHAIR OLSON asked whether the sponsor would consider the amendment appropriate.

REPRESENTATIVE KELLER answered that he would accept the change to January 1.

[4:56:13 PM](#)

REPRESENTATIVE JOHNSON moved to adopt Conceptual Amendment 1, to change date to January 1, 2012. There being no objection, Conceptual Amendment 1 was adopted.

CHAIR OLSON, after first determining no one else wished to testify, closed public testimony on HB 218.

[4:56:52 PM](#)

REPRESENTATIVE JOHNSON moved to report HB 218, as amended, out of committee with individual recommendations and the accompanying fiscal notes. There being no objection, the CSHB 218(L&C) was reported from the House Labor and Commerce Standing Committee.

[4:57:34 PM](#)

ADJOURNMENT

There being no further business before the committee, the House Labor and Commerce Standing Committee meeting was adjourned at 4:57 p.m.