

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

March 1, 2012

1:33 p.m.

**MEMBERS PRESENT**

Senator Dennis Egan, Chair  
Senator Joe Paskvan, Vice Chair  
Senator Linda Menard  
Senator Bettye Davis  
Senator Cathy Giessel

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SENATE BILL NO. 190

"An Act relating to activities, including violations and penalties, under the supervision of the Big Game Commercial Services Board; and creating a retired status master guide-outfitter license."

- MOVED CSSB 190(L&C) OUT OF COMMITTEE

SENATE BILL NO. 116

"An Act offering mediation of disputed workers' compensation claims by a hearing officer or other classified employee of the division of workers' compensation and allowing collective bargaining agreements to supersede certain provisions of the Alaska Workers' Compensation Act; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 199

"An Act relating to the vocational and technical instruction funding factor for public school funding."

- MOVED SB 199 OUT OF COMMITTEE

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 168(JUD)

"An Act requiring the amount of the security given by a party seeking an injunction or order vacating or staying the operation of a permit affecting an industrial operation to include an

amount for the payment of wages and benefits for employees and payments to contractors and subcontractors that may be lost if the industrial operation is wrongfully enjoined."

- HEARD & HELD

SENATE BILL NO. 217

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

- HEARD & HELD

#### PREVIOUS COMMITTEE ACTION

BILL: SB 190

SHORT TITLE: BIG GAME COMMERCIAL SERVICES BOARD

SPONSOR(s): SENATOR(s) MENARD

02/08/12	(S)	READ THE FIRST TIME - REFERRALS
02/08/12	(S)	L&C, JUD
02/23/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/12	(S)	<Bill Hearing Postponed>
02/28/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/28/12	(S)	Heard & Held
02/28/12	(S)	MINUTE(L&C)
03/01/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 116

SHORT TITLE: WORKERS' COMP.: COLL BARGAINING/MEDIATION

SPONSOR(s): LABOR & COMMERCE

03/25/11	(S)	READ THE FIRST TIME - REFERRALS
03/25/11	(S)	L&C, FIN
04/05/11	(S)	L&C AT 2:00 PM BELTZ 105 (TSBldg)
04/05/11	(S)	Heard & Held
04/05/11	(S)	MINUTE(L&C)
01/19/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
01/19/12	(S)	Heard & Held
01/19/12	(S)	MINUTE(L&C)
02/21/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/21/12	(S)	-- MEETING CANCELED --
02/23/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/23/12	(S)	Scheduled But Not Heard
02/28/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/28/12	(S)	Scheduled But Not Heard
03/01/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 199

SHORT TITLE: VOCATIONAL EDUCATION FUNDING FACTOR

SPONSOR(s): MEYER

02/17/12 (S) READ THE FIRST TIME - REFERRALS  
02/17/12 (S) EDC, L&C  
02/22/12 (S) EDC RPT 4DP 1NR  
02/22/12 (S) DP: MEYER, THOMAS, FRENCH, DAVIS  
02/22/12 (S) NR: STEVENS  
02/22/12 (S) EDC AT 8:00 AM BELTZ 105 (TSBldg)  
02/22/12 (S) Moved SB 199 Out of Committee  
02/22/12 (S) MINUTE(EDC)  
03/01/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: HB 168

SHORT TITLE: INJUNCTION SECURITY: INDUSTRIAL OPERATION

SPONSOR(s): FEIGE

02/23/11 (H) READ THE FIRST TIME - REFERRALS  
02/23/11 (H) JUD  
02/25/11 (H) BILL REPRINTED 2/24/11  
03/21/11 (H) JUD AT 1:00 PM CAPITOL 120  
03/21/11 (H) Heard & Held  
03/21/11 (H) MINUTE(JUD)  
03/23/11 (H) JUD AT 1:00 PM CAPITOL 120  
03/23/11 (H) <Bill Hearing Canceled>  
03/30/11 (H) JUD AT 1:00 PM CAPITOL 120  
03/30/11 (H) Scheduled But Not Heard  
04/04/11 (H) JUD AT 1:00 PM CAPITOL 120  
04/04/11 (H) Moved CSHB 168(JUD) Out of Committee  
04/04/11 (H) MINUTE(JUD)  
04/05/11 (H) JUD RPT CS(JUD) 3DP 2NR  
04/05/11 (H) DP: KELLER, PRUITT, THOMPSON  
04/05/11 (H) NR: GRUENBERG, HOLMES  
04/07/11 (H) TRANSMITTED TO (S)  
04/07/11 (H) VERSION: CSHB 168(JUD)  
04/08/11 (S) READ THE FIRST TIME - REFERRALS  
04/08/11 (S) L&C, JUD  
02/23/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)  
02/23/12 (S) <Bill Hearing Postponed>  
03/01/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

BILL: SB 217

SHORT TITLE: PHARMACY AUDITS

SPONSOR(s): LABOR & COMMERCE

02/22/12 (S) READ THE FIRST TIME - REFERRALS

02/22/12 (S) L&C, FIN  
03/01/12 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

MICHAEL ROVITO, Chief of Staff  
Senator Linda Menard  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Commented on SB 190.

DANA OWEN, Staff  
Senate Labor and Commerce Committee  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Commented on SB 190 and SB 217 for the sponsor.

DENNIS BAILEY, Legislative Counsel  
Legislative Affairs Agency  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Was available to answer questions on SB 116.

SHARON LONG, Staff  
Senator Cathy Giessel  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Explained amendment to SB 116.

SENATOR KEVIN MEYER  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Sponsor of SB 199.

EDRA MORELEDGE, Staff  
Senator Kevin Meyer  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Available for comments on SB 199 on behalf of the sponsor.

MARGARET SODEN, President  
Alaska Pharmacists Association  
Fairbanks, AK  
**POSITION STATEMENT:** Supported SB 217.

BARRY CHRISTENSEN, Co-Chair  
Legislative Committee,  
Alaska Pharmacists Association  
Ketchikan, AK  
**POSITION STATEMENT:** Supported SB 217.

DIRK WHITE, Vice Chairman  
Board of Pharmacy  
Sitka, AK  
**POSITION STATEMENT:** Supported SB 217.

CINDY LAUBACHER, Senior Director  
Government Affairs  
Medco Health Solutions  
**POSITION STATEMENT:** Opposed SB 217.

SCOTT WATTS, Owner  
Ron's Apothecary Shop  
Juneau, AK  
**POSITION STATEMENT:** Supported SB 217.

REPRESENTATIVE ERIC FEIGE  
Alaska State Legislature  
Juneau, AK  
**POSITION STATEMENT:** Sponsor of HB 168.

**ACTION NARRATIVE**

[1:33:08 PM](#)

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Giessel, Paskvan, and Chair Egan. Senator Menard joined the committee shortly after.

**SB 190-BIG GAME COMMERCIAL SERVICES BOARD**

[1:35:52 PM](#)

CHAIR EGAN announced SB 190 to be up for consideration. [CSSB 190 (), version 27-LS1328\M, was being considered for adoption].

[1:35:59 PM](#)

SENATOR DAVIS joined the committee.

[1:36:07 PM](#)

MICHAEL ROVITO, Chief of Staff for Senator Menard, sponsor of SB 190, related the Big Game Commercial Services Board spent a year working on the changes in this bill.

[1:37:03 PM](#)

SENATOR PASKVAN moved to report CSSB 190( ), [version 27-LS1328\M], from committee with individual recommendations and attached zero fiscal note. Chair Egan removed his objection. There were no further objections and CSSB 190(L&C) moved from committee.

[1:37:32 PM](#)

At ease from 1:37 to 1:38 p.m.

**SB 116-WORKERS' COMP.: COLL BARGAINING/MEDIATION**

[1:38:54 PM](#)

CHAIR EGAN announced SB 116 to be up for consideration.

SENATOR PASKVAN moved to bring CSSB 116 (L&C), labeled 27-LS0549\X, before the committee. There were no objections.

DANA OWEN, staff to the Senate Labor and Commerce Committee, said this CS clarifies issues that were raised in the previous hearing of the bill and adds one item that was not discussed. He said the title was expanded to add, "An Act authorizing employers and employees to mediate disputed workers' compensation claims and to negotiate a collective bargaining agreement that offers mediation and mandates arbitration..." The remainder of the title stays the same. Section 1 remains the same.

He said the changes begin in Section 2, collective bargaining agreements. Subsection (a) expands language in (a)(1) of the previous bill and provides more details of the appeals process. Changes begin on line 28 where the bill establishes a process for resolving disputes through mediation, arbitration or both. The parties must agree before a particular dispute may be submitted to mediation. Then if mediation fails, it provides for arbitration.

[1:42:27 PM](#)

MR. OWEN pointed out that lines 2 and 3 of page 2 specify that the arbitration will be conducted under AS 09.43. Title 9 is the code of civil procedure and chapter 43 is arbitration; the sections that are cited, 300 to 595, constitute Article 3, the Revised Uniform Arbitration Act. In the last meeting they heard there was some confusion over how the arbitration was to take place. The drafter suggested that it would be most direct to establish the arbitration as taking place under AS 09.43 because

attorneys and courts are familiar with it; everyone involved should be familiar with it.

1:43:58 PM

He also said that placing it under AS 09.43 implies a different appeals process than the Workers' Compensation Act where there is an appeal to the Workers' Compensation Commission. This will obviate that as appeals will no longer go to the Workers' Compensation Commission (the original intent of the bill).

MR. OWEN said the bill clarifies that mediation or arbitration will govern the dispute resolution process under this chapter. It also says the dispute resolution process must result in findings of fact, award in a final order or decision by the arbitrator and that award order or decision has the same force and effect as a finding of fact, award order or decision of a hearing officer under AS 23.30.005 (Workers' Compensation Board). This means the arbitrator's ruling under a collectively bargained agreement will have the same effect and force as an order of the board.

Subsection (b) on page 2, line 25, of the bill guarantees that benefits under Chapter 23.30 (Workers' Compensation Act) cannot be bargained away. It further clarifies that the agreement and processes negotiated under this law cannot themselves be considered a reduction of benefits.

1:45:39 PM

Subsection (c) on line 30 insures that physicians can meet and communicate with parties to a negotiation in the process of establishing lists of physicians who are the exclusive medical providers in a collectively bargained agreement. Currently, physicians are prevented by law from collaborating on contracts, fees and things like that. Alaska has a very narrow exception carved out in statute and this would be the only other exception. Currently physicians are allowed to do that only if they are negotiating a managed benefits organization. This would allow physicians to talk to one another if they were going to try and get on to the list that would be established under a collectively bargained agreement under this statute.

1:47:20 PM

DENNIS BAILEY, drafting attorney, Legislative Affairs Agency, Alaska State Legislature, said he was available to answer questions on SB 116.

SENATOR GIESSEL said as a health care provider her overarching concern is patients' choice in one of the most intimate aspects of their lives. She invited her staff to explain her proposed amendment.

[1:48:32 PM](#)

27-LS0549\X.1  
Bailey

**A M E N D M E N T**

OFFERED IN THE SENATE BY SENATOR GIESSEL  
TO: CSSB 116(L&C), Draft Version "X"

Page 3, lines 13 - 15:  
Delete all material.

Reorder the following paragraphs accordingly.

Page 3, line 26, following "not":  
Insert "(1)"

Page 3, lines 26 - 27:  
Delete ". For purposes of this subsection"  
Insert "; for purposes of this paragraph"

Page 3, line 29, following "chapter":  
Insert "; or  
(2) identify health care providers who are the exclusive source of medical treatment provided under this chapter; in this paragraph, "health care provider" has the meaning given in AS 09.55.560"

Page 3, line 30, through page 4, line 4:  
Delete all material.

Reletter the following subsection accordingly.

SHARON LONG, staff to Senator Giessel, directed them to page 3 of the amendment where lines 13-15 were deleted to show up later. The second change begins on line 26 and inserts "1" after "not" and deletes "for the purposes of this subsection" and inserts "for the purposes of this paragraph." On line 29, "2" is inserted after "chapter." The language that was deleted from lines 13-15 is inserted after "chapter."

The last change deletes lines 30 and 31 on page 3 through line 4 on page 4. This preserves the right currently in statute for injured workers to choose their own health care provider.

SENATOR PASKVAN said he understands that now there are generally exclusive providers designated under plans and asked if that is true and assuming it is, does this prohibit that in the future.

SENATOR GIESSEL replied the main purpose is to allow the patient to choose whatever health care provider they want to: in other words, their private physician or if they are part of a plan that designates a physician. This addresses a collective bargaining agreement not a person who is not part of a collective bargaining agreement.

SENATOR PASKVAN said his belief is if you want to go to a dentist, there are dentists the state has said are on the list and those dentists have agreed with the state of Alaska, for instance, that they will do a cavity for \$100. His question is if this would prohibit the State of Alaska from negotiating with dentists to get a lower collective price for that service.

SENATOR GIESSEL said it wasn't her intent to do that, but the drafter could help answer that.

MR. BAILEY said the focus of the bill allows an employer and their employees in a union to negotiate a mediation and an arbitration process. As part of that process they are allowed to negotiate the selection of health care providers that would be permitted to provide services to the union members (in section 2). The normal operation of the workers' compensation statute that allows employers to negotiate with health care providers to provide services under their workers' compensation coverage isn't affected by this bill. The bill is restricted to the concept of negotiating different terms under the provisions of the collective bargaining agreement.

SENATOR PASKVAN remarked that the short answer is no or he is confused. He rephrased his question; if you allow full choice to the employee who goes to a dentist that charges \$150 instead of a contracted dentist who charges \$100, who pays the \$50?

MR. BAILEY replied under the current workers' compensation statute outside of a collective bargaining agreement the employee who makes a claim can choose his/her health care provider and an alternate. The issue really is choosing who your health care provider is. There may be circumstances where an

employer chooses the health care provider for an employee who makes a claim, but that is limited to employees that don't make their own choice. It may be that the employer could negotiate with a group of physicians to provide that in those circumstances, but the general rule is the employee gets to choose their own physician in workers' compensation. So, the question of negotiating a lower rate is more applicable to a health care plan not within the context of a workers' compensation claim.

SENATOR PASKVAN said he thinks where it talks about "competing physicians may meet and communicate" means with respect to whether they are participants in an exclusive source agreement with an employer. His perception is if you have competitors meeting, you have price fixing and wanted to know what the result of that would be.

MR. BAILEY replied the purpose of allowing physicians to communicate concerning providing services by the group is intended under AS 23.50. In the absence of a provision like that, whoever is negotiating with the physicians could go and negotiate with each physician and pit one against another to negotiate a lower price. It's included in this bill because it provides for a negotiation of who the medical providers are. In that negotiation physicians, presumably, would want to be able to negotiate as a group not individually. That is the purpose of Section (c).

SENATOR GIESSEL said the amendment would remove that section.

MR. BAILEY said the amendment takes out the provision about negotiating who the health care provider is. It says we don't want you to negotiate who the physicians are; we want the existing method that allows an individual to choose their own provider to apply instead.

[2:01:51 PM](#)

MS. LONG said the amendment takes away the ability to bargain away one's right to choose a physician in a bargaining agreement, but it doesn't change the ability of physicians getting together to decide to provide a service through an employer at certain rates. It doesn't take away the provisions of the physicians under AS 23.50.020 outside of a bargaining agreement.

MR. BAILEY added that AS 23.50 allows physicians to negotiate as a group under certain circumstances. The only reason it was

included originally was as it applies to the collective bargaining agreement sections. If you take it out of the collective bargaining agreement context, it does not affect the remainder of AS 23.50 which relates to bargaining by physicians.

SENATOR GIESSEL said Mr. Owen referred to a managed care group and that provision is still there.

2:04:20 PM

SENATOR PASKVAN said the operative term is "competing physicians." If the physicians formed as a group they are not in competition with each other, but the question is if that second group is comprised of competing individuals and how that affects the analysis.

MR. BAILEY replied that you have to keep it in the context of this bill that relates to collective bargaining for mediation (to decide who the health care providers are for the union employees). When a collective bargaining agreement allows for (it's not mandated) designating a certain group of physicians to provide medical services, then the provisions of (c) apply. So, by taking that section out, you're saying that it doesn't apply here because a particular physician isn't being chosen to provide services.

SENATOR PASKVAN stated that lines 13-17 of the amendment say the agreement may not identify health care providers who are the exclusive source of medical treatment, but the inference is that there is a list of exclusive source and you can't give it to the employee. Is that a misunderstanding?

MS. LONG replied that she didn't understand the question.

SENATOR PASKVAN asked why put an amendment in that says they cannot identify the list if they never put a list together.

SENATOR GIESSEL said this bill deals with a disputed works claim issue (collective bargaining agreements) that would have a list of exclusive health care providers. The injured worker would now be confined to an exclusive list that might or might not include their own personal healthcare provider. That is the piece the amendment removes. It would allow them to go to their own healthcare provider.

CHAIR EGAN stated that he wanted to make sure the committee had enough time to get answers to the questions before passing this bill.

MR. BAILEY said the amendment removes negotiation of medical providers under the collective bargaining agreement.

[2:11:51 PM](#)

SENATOR PASKVAN clarified that it has no one with which to negotiate reduced prices.

SENATOR DAVIS said she would feel comfortable acting on the bill if Mr. Bailey could answer the question.

MR. BAILEY said the amendment does one thing: it removes the negotiation of medical providers under the collective bargaining agreement. The results of the provisions of the existing workers' compensation statute, which allows you to choose your own treating physician in a claim would continue to apply as they normally do. Section (c) (about competing physicians negotiating) doesn't apply anymore because there wouldn't be any specified physicians under the collective bargaining agreement.

SENATOR PASKVAN remarked so this removes any negotiation between an employer and physicians with respect to providing services, and asked if it also means that the employer has no one with whom they can negotiate reduced prices as a package for their employees.

MR. BAILEY replied that the employer and the employee under the existing bill without the amendment negotiate that. If that section is removed, there isn't going to be a negotiation under the collective bargaining agreement for selecting particular employees. So the employer would not be in a position to negotiate with physicians about what they provide or what the costs of their services are.

SENATOR PASKVAN agreed that no price negotiation follows, but pointed that out as a potential loss to the employees when the employers' superior bargaining strength might be able to obtain a discounted price.

MR. BAILEY said there is no negotiation by the employer for the cost of paying for the employee's physician and that wouldn't change if the amendment is adopted. If it doesn't pass, then both the employer and employee negotiate that already in the collective bargaining agreement.

SENATOR GIESSEL said the strength of having a person being able to choose their own health care provider is that they will be

continuing to see that person and that healthcare provider knows their physical condition both before the injury and after, how they are progressing through it, family history and things like that.

CHAIR EGAN said he would hold SB 116 for a future meeting.

#### **SB 199-VOCATIONAL EDUCATION FUNDING FACTOR**

[2:16:20 PM](#)

CHAIR EGAN announced consideration of SB 199.

[2:16:24 PM](#)

SENATOR KEVIN MEYER, sponsor of SB 199, said he and Senator Joe Thomas introduced SB 84 last year that created a separate funding factor for vocational education programs for grades 9-12. Voc-Ed funding was 1 percent of the base student allocation (BSA) and since this bill was signed, the school districts have said it was a good program. The only problem is that it didn't include middle school. So, SB 199 expands the program to include middle school.

[2:17:46 PM](#)

EDRA MORELEDGE, staff to Senator Meyer, had nothing further to add.

[2:18:03 PM](#)

SENATOR PASKVAN moved to report SB 199 from committee with individual recommendations and attached fiscal note. There were no objections and it was so ordered.

[2:18:42 PM](#)

At ease from 2:18 to 2:20 p.m.

#### **SB 217-PHARMACY AUDITS**

[2:20:34 PM](#)

CHAIR EGAN announced consideration of SB 217.

DANA OWEN, staff to the Senate Labor and Commerce Committee, sponsor of SB 217, said the issue of pharmacy audits has been brought forward numerous times by local pharmacists, and an identical bill was introduced into the other body. He said Alaskan pharmacists are being bombarded with audits from the pharmacy benefits management companies (PBM), insurance companies and other state health care providers. SB 217 attempts to standardize the audit process in order to allow pharmacists

to spend less time on paperwork and focus more time on patient health.

Additionally, this legislation seeks to bring fairness to the unregulated and expanding practices of pharmacy audits by ending abusive practices that have harassed and harmed pharmacy businesses. While audits are necessary and even a welcome part of a good business practice, pharmacy audits have become unduly burdensome and, in many cases, predatory. So acute has this problem become that national companies have been formed to help pharmacists with audits recover millions of dollars of inappropriate audit charge backs.

SB 217 will ease the burden on pharmacists by requiring uniform common sense standards and criteria for all pharmacy audits, requiring written notice of at least two weeks before an on-site pharmacy audit, requiring that an on-site audit not interfere with the health care services being provided by pharmacists by banning audits during the first seven calendar days of each month when patient volume is highest unless the pharmacy and auditor agree otherwise.

MR. OWEN said that SB 217 will further eliminate the highly questionable practice of extrapolation as justification for taking back claim money. It will eliminate the unfair take back of money in cases of simple typographical errors when no financial harm has occurred to the plan's sponsor, the PBM or the patient. It will further require that audits involving clinical or professional judgment be conducted by or in consultation with a pharmacist licensed in the state.

For small pharmacies, especially, audit practices that have become common are much more than mere nuisances. The time and money lost can threaten the very viability of these businesses, and SB 217 seeks to bring fairness and predictability back to the practice of pharmacy audits.

SENATOR PASKVAN moved to bring SB 217, version 27-LS1411\A, before the committee for discussion purposes.

CHAIR EGAN objected.

[2:25:44 PM](#)

MARGARET SODEN, Alaska Pharmacists Association, said she is mostly retired as a community pharmacist in Fairbanks. She supported SB 217. When she started being a pharmacist 45 years ago, most patients paid cash for their prescriptions. Now the

majority of prescriptions are billed to third parties and along with that has come audits of prescription records. SB 217 just brings some standardization and fairness into the audit process. The provisions of this bill allow pharmacists time to comply with this audit request but cause less disruption to patient care that pharmacies provide every day.

[2:26:43 PM](#)

BARRY CHRISTENSEN, Co-Chair, Legislative Committee, Alaska Pharmacists Association, Ketchikan, supported SB 217. He said their members work hard every day in retail pharmacies, hospitals, nursing homes and medical clinic settings throughout the state. This legislation would help create a level playing field for pharmacists when dealing with pharmacy audits. Their membership has made this their number one legislative priority. They support the needs for audits to ensure that fraud, waste and abusive activities are checked, but they must be conducted in a fair and balanced manner allowing for a fair appeal and payment for all services performed within the patient's benefit structure.

He said pharmacies generally contract with PBMs in order to fill and bill for consumers as part of the health benefit plan. PBMs are names like Express Scripts, Medco and Caremark. Nearly all prescriptions are filled electronically in real time. That is, the pharmacy sends prescription information to the PBM and in turn it sends back authorization for payment and other clinical edits of concern like high dose warnings, drug interactions et cetera. Pharmacies are reimbursed back for the cost of medication plus a dispensing fee that covers the pharmacy's cost of doing business. Typically, either the PBM or an entity contracted by the PBM will perform audits on contracted pharmacies to legitimately protect against fraud and abuse.

MR. CHRISTENSEN said it has been suggested by some that pharmacies should be able to contractually deal with their auditing concerns directly with a PBM, but most Alaskan pharmacists have never been able to alter the terms of the contract given to them except for the dispensing fees. It is usually a take it or leave it offer. That is why they are asking for some standardization in auditing practices to be applicable to all plans and pharmacies in the state.

[2:30:25 PM](#)

DIRK WHITE, Vice Chairman, Board of Pharmacy, Sitka, said he also serves on the Legislative Committee for the Alaska Pharmacists Association. He supported SB 217. At their February

meeting they voted unanimous support for the House bill on this issue. He said the audits are onerous and emphasized that there are no errors on these prescriptions. They are valid prescriptions, and the patient has received it from their physician and brought it to the pharmacist who has filled it; it has been legally transposed and complies with the patient, pharmacist and physician triad working together to improve the health of the patient.

He said the PBMs, on their own, have come up with arbitrary reasons for bringing these errors up, and a lot of times it's fishing expeditions for more money for them. It doesn't apply just to pharmaceuticals; he and his wife, who works with him as a pharmacist (and providing durable medical equipment), received a bench audit for information on two wheel chairs from 2008. One of them was \$3,500 and the other was \$3,800. These prescriptions came from a physician; they measured and got the wheel chair; the patients received the wheel chair and they received wonderful benefit from them. Now if he cannot produce all the paperwork that the PBM wants, they will take that money back. It may very well close down that portion of his business because they made only about \$500 on each one of those wheel chairs.

SENATOR PASKVAN asked if there is any regulation or control on how much of the savings is passed on to the employer/consumer when they negotiate prices. How transparent is that?

MR. WHITE said he didn't know if any of that money even goes back to the insurance companies. It's not transparent to him.

SENATOR GIESSEL asked how many other states have these kinds of sidebars on an audit process.

MR. WHITE replied 15 other states.

SENATOR MENARD said she personally thought two weeks' notice before the audit is too little time and asked what other states are doing.

MR. WHITE answered that he was speculating, because this is model legislation that came from the National Community Pharmacy Association. He would think that it's fairly similar. He agreed with her.

CHAIR EGAN said he assumed it's no time now.

MR. WHITE responded that they generally try to give some notice; it could be an hour or two.

SENATOR MENARD asked him to clarify what happens if the prescription is for 30 pills but at some point you give 31 because a person might be traveling or something.

MR. WHITE replied that they might have been talking more about the number of days' supply. A pharmacist may put it down as a 31 day supply or the physician has written a prescription for just a 30 day supply and the patient has asked for more because he would be gone longer. In that case, he would call the physician and explain and ask for an extra week or so. For whatever reason the PBMs might not like that.

SENATOR MENARD thanked him for that clarification. She missed the step that the physician is directing him that he may add one or two pills.

MR. WHITE said taking it upon himself to do that would be a violation of the Board's rules and regulations.

2:37:08 PM

CINDY LAUBACHER, Senior Director of Government Affairs, Medco Health Solutions, opposed SB 217. She said Medco is one of the PBMs they have been hearing about this afternoon. They currently manage the pharmacy benefit for approximately 20 percent of the residents of Alaska. They are here today because they have a responsibility to their clients who rely on them to protect them from fraud, waste and abuse that may occur within the pharmacy network they contract with Medco to use. The auditing of prescription claim reimbursement is a necessary component of participation in that prescription drug program. Their plan sponsors, which include labor unions, health plans, state and federal governments require them to perform a number of services including monitoring of prescription claim reimbursements, conducting audits of prescription claims and the recovery of overpayments to the pharmacy by the plan's sponsor.

She said they are required to audit not only to the State Board of Pharmacy rules but also to the plan requirements. That includes Medicare Part B and maybe 30 other clients. Their pharmacy audit program focuses on a number of activities including on-site and desk audits, patient and physician analysis of Medicare Part B claims and claims analysis to identify potentially aberrant trends. Their clients demand that they minimize the number prescriptions claims that are

inaccurate, involve fraud, waste or abuse or are not in accordance with plan requirements. An effective audit program helps to protect the financial integrity of the pharmacy network by identifying those claims that resulted in overpayments and recovering overcharges where appropriate. She emphasized, "When we recover, we're recovering on behalf our clients; the money doesn't go to us. This is money owed to our clients."

SENATOR MENARD asked if they act like a collection agency or do they have to pay someone to go through that process.

MS. LAUBACHER replied that their auditors are internal and the auditors are paid pursuant to the contract as set forth by the client.

SENATOR PASKVAN asked what percentage of the audits uncover fraud.

MS. LAUBACHER replied that she would have to get a number for him, but it is a big problem in the Medicaid business. They have a pharmacy network of some 58,000 pharmacies and do quarterly analyses to look for trends.

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SENATOR PASKVAN said he understood this to be draft legislation that has been adopted by a national organization and assumed that this language does not violate Medicare or Medicaid standards.

MS. LAUBACHER didn't agree. The rules under Medicare and Medicaid are much different than what this allows for. This would restrict how far back they can look, but they can go back 10 years for Medicare. This bill doesn't exempt Medicare and Medicaid yet, but it probably will because of that.

SENATOR PASKVAN asked if state law can overrule the federal standard of Medicare and Medicaid.

MR. LAUBACHER answered no. There are typically exemptions in the law for Medicare and Medicaid, but even if there weren't they would argue a claim involving Medicaid or Medicare would not be subject to this statute.

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SENATOR GIESSEL said the sidebars of the audit seem quite reasonable. Certainly, pharmacies are incredibly busy the first

seven days of a month and asked what specifically wouldn't work for Medco.

MR. LAUBACHER replied that the problem with the timeframe is that lots of states are restricting the time for audits. That reduces the amount of time they have to go into all pharmacies by about a week. The amount of notice has to do with preventing fraud. They have had instances where they notify someone that they're coming in to do an audit, and the "bad actors" disappear or cover up by making changes in the "scrips." She wasn't saying that happened in the State of Alaska, however.

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SCOTT WATTS, owner, Ron's Apothecary Shop, Juneau, said he supported SB 217. He explained that contracts they sign with the PBMs are "pretty much take it or leave it." This bill levels the playing field so they can't be taken advantage of by these audits.

CHAIR EGAN said that concluded public testimony on SB 217 for today and that it would be held.

**HB 168-INJUNCTION SECURITY: INDUSTRIAL OPERATION**

[2:48:27 PM](#)

CHAIR EGAN announced consideration of HB 168 [CSHB 168(JUD) was before the committee.].

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REPRESENTATIVE ERIC FEIGE, sponsor of HB 168, said over the past several years a few courts have issued injunctions or stays against companies engaged in the development of resource extraction and other large legally permitted construction projects. These court actions have had the effect of delaying worthwhile projects and curtailing employment within the state of Alaska. In some cases projects have been shut down and employees laid off. More often than not, the litigation has failed or had an extremely limited effect in hand with the stated objectives of the original lawsuit. The overall objective is not often what is stated in the suit but merely to delay a project or prevent it from coming to fruition.

HB 168 seeks to remedy this situation by requiring a party seeking a restraining order, a preliminary injunction or order vacating or staying the operation of permit that affects an industrial operation to give security in an amount the court considers proper. HB 168 asks that part of the court's

deliberation shall take into account payment of wages and benefits for employees and payment to contractors and subcontractors of the industrial operation.

In this legislation an industrial operation is defined to include a construction, energy or timber activity, an oil gas or mineral exploration development and production.

He said that HB 168 parallels the requirements of Alaska Civil Rule 65(c), which already requires a court to require a person seeking an injunction to provide security to protect a person who may be wrongfully restrained or enjoined. It does not prohibit a person who is wrongfully enjoined from relief or otherwise limit the amount that a person may recover in the action. It also does not specify an amount that is required and does not affect the discretion of the judge to determine that amount.

REPRESENTATIVE FEIGE offered his understanding that state courts do not see very many of these cases since most involve federal permits. For those few instances, HB 168 seeks to level the legal playing field without infringing on any parties right to bring a legitimate issue to court.

CHAIR EGAN said public testimony would be taken at the next meeting.

[HB 168 was held in committee.]

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Finding no other business to come before the committee, Chair Egan adjourned the Senate Labor and Commerce Standing Committee meeting at 2:53 p.m.