

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

March 6, 2012

1:38 p.m.

**MEMBERS PRESENT**

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

**MEMBERS ABSENT**

Senator Cathy Giessel

**COMMITTEE CALENDAR**

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 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)
03/01/12	(S)	Heard & Held
03/01/12	(S)	MINUTE(L&C)
03/06/12	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)

**WITNESS REGISTER**

LIS HAUCHEN, Northwest Regional Director  
National Association of Chain Drug Stores (NACDS)  
Olympia, WA

**POSITION STATEMENT:** Supported SB 217.

MICHAEL CARTIER, Executive Vice President  
Envision Pharmaceutical Services  
Sacramento, CA

**POSITION STATEMENT:** Testified in opposition to SB 217.

CHAD HOPE, Alaskan Pharmacist and Manager  
Medicaid Program  
Department of Health and Social Services (DHSS)  
Anchorage, AK

**POSITION STATEMENT:** Commented on how SB 217 would affect Alaska's Medicaid program.

AMY BRICKER, Senior Director  
Network Auditors  
Express Scripts  
St. Louis, MO

**POSITION STATEMENT:** Opposed to SB 217.

DAVID DEDERICHS, Director  
Department of Government Affairs  
Express Scripts  
State of Minnesota

**POSITION STATEMENT:** Opposed SB 217.

ERIC DOUGLAS  
CVS Caremark  
Chicago, IL

**POSITION STATEMENT:** Opposed SB 217.

RICHARD HOLM, Chair  
Alaska Board of Pharmacy  
North Pole, AK

**POSITION STATEMENT:** Unanimously supported SB 217.

TOM HODEL  
Soldotna Professional Pharmacy  
Soldotna, AK

**POSITION STATEMENT:** Supported SB 217.

DIRK WHITE, Member  
Board of Pharmacy  
Sitka, AK

**POSITION STATEMENT:** Was available to answer questions on SB 217.

MARGARET SODEN  
Alaska Pharmacists Association  
Fairbanks, AK

**POSITION STATEMENT:** Supported SB 217.

MATTHEW DILORETO, Director

State Government Affairs  
National Community Pharmacists Association (NCPA)  
Olympia, WA  
**POSITION STATEMENT:** Stated strong support for SB 217.

**ACTION NARRATIVE**

[1:38:55 PM](#)

**CHAIR DENNIS EGAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:38 p.m. Present at the call to order were Senators Paskvan, Menard, Davis and Chair Egan.

**SB 217-PHARMACY AUDITS**

[1:39:15 PM](#)

**CHAIR EGAN** announced the consideration of SB 217. He said the committee would continue to hear public testimony, but would not take final action on the bill today.

**LIS HAUCHEN**, Northwest Regional Director, National Association of Chain Drug Stores (NACDS), Olympia, WA, noted that she had submitted written testimony. She said of the 88 pharmacies in Alaska, 54 of them are chains. NACDS represents Carrs, Costco, Health Mart Systems, Target, Walgreens and Wal-Mart, all operating in the State of Alaska.

She hit some of the highlights in SB 217 that sets up a standard by which pharmacies are audited and allows for appeal in case of disagreement. She stated that NACDS is not opposed to audits based on fraud, unlawful billing practices and abuse.

She said she would focus her comments on the similarities between SB 217 and a similar bill currently before the Utah State Senate on which CareMark and Express Scripts have both negotiated and agreed to. The notice in the Utah bill (HB 76) is 10 days, whereas the bill before this committee is two weeks. Audits cannot take place without permission from the pharmacy in the first 5 days of the month in Utah compared to the first 7 days in Alaska. The look back period for audits in Utah is limited to 18 months, one of the negotiated points with Care Mark and Express Scripts, versus the 24 month look back as outlined in the Alaska legislation. Neither bill allows for the collection of dispensing fees if the correct person received the correct drug for the correct reason as prescribed. Both bills require a 60-day preliminary audit finding to be submitted to the pharmacy and both bills give 30 days for the pharmacies to respond by either appealing the findings or providing additional

information. Both bills establish an appeals process for appealing the preliminary findings; the Utah bill requires a final audit 120 days after the appeal process, whereas the Alaska bill requires the final audit within 90 days.

MS. HAUCHEN respectfully asked the committee to support SB 217 and said she would be happy to answer questions.

1:43:21 PM

MICHAEL CARTIER, Executive Vice President, Envision Pharmaceutical Services, Sacramento, CA, said they are currently providing comprehensive pharmacy services to State of Alaska employees, retirees and dependents and opposed SB 217. He explained that in Alaska they are responsible for the effective administration of the pharmaceutical benefit; that includes the oversight of the pharmacy network including audits. Some colleagues view audits as a time consuming exercise, but they are a necessary contractual requirement by their clients and government payers.

He said Envision is both a pharmacy benefit management (PBM) company and an insurance company licensed in Alaska to provide benefits to Medicare beneficiaries. In that role, they follow their contractual and regulatory requirements explicitly.

Responding to previous anecdotal testimony, Mr. Cartier confirmed that within the scope of an audit they do not receive any additional revenue stream or additional profits. Any monies that are recovered are the property of a client or the government sponsor and are passed back to them in their entirety.

He said Envision does not use any methods where a small sample of claims is extrapolated to an entire claim set to estimate recoveries. They do not pay any auditor based on a percent of audit savings identified or collected. Auditors are employees of Envision. They do not identify minor clerical errors and use them as a means to disqualify an entire claim. A clerical error by itself has no ill intent if no harm is done to any of the parties involved.

MR. CARTIER explained that dispensing fees are a part of the reimbursement for a valid prescription claim and that eliminating them from an audit recovery, if a claim is determined to be invalid, would be a violation of federal guidelines. He suggested the committee review the Academy of Managed Care Pharmacies audit guidelines model for pharmacy

claims; this is a coalition of both insurers and retail pharmacies, most notably the National Community Pharmacists Association, which authored the model legislation in 15 or 20 other states. He thought it was an attempt to try to remove the adversarial relationship that may exist between insurers, PBMs, and retail pharmacies.

[1:47:06 PM](#)

SENATOR PASKVAN asked the shortest notice Envision has given in the last three years.

MR. CARTIER replied Envision had not conducted an onsite audit in Alaska in the last three years, but they had done some desk audits, which are electronic.

SENATOR PASKVAN asked if he opposed the policy of a 14-day notice period.

MR. CARTIER replied, "No. I think there should be a reasonable notice period for both parties." Probably, the most frequently used notice timeframe is 30 days.

SENATOR PASKVAN asked what specific portions of SB 217 Envision didn't advocate for.

MR. CARTIER replied excluding dispensing fees, because in most cases the dispensing fee is part of the reimbursement. Another was requiring that the audit must be conducted by or in consultation with a pharmacist licensed in the state. He also clerical errors should be better defined.

SENATOR PASKVAN asked how much it costs for a California pharmacist to be co-licensed under Alaska law or in more than one state.

MR. CARTIER replied that pharmacists have to take a licensing exam to maintain a license in more than one state. California has its own exam and does not have reciprocity with other states. You could take an exam that has reciprocity for many states and thereby enjoy a joint licensing. It would have a fee and have the costs associated with studying for the test.

SENATOR PASKVAN said he was trying to figure out if Alaska's system is part of a multi-state exam.

MR. CARTIER deferred the question to someone on the Alaska Board of Pharmacy.

1:51:30 PM

SENATOR PASKVAN said Envision is voluntarily providing pharmacy care to the State of Alaska, and he wanted to know what is onerous about a state requiring its auditors to be licensed under the law of the state where they have voluntarily entered to make money.

MR. CARTIER said he didn't know if there were any onerous circumstances.

1:52:47 PM

CHAD HOPE, Alaskan Pharmacist and Manager, Medicaid Program, Department of Health and Social Services (DHSS), Anchorage, AK, stated that the department had no particular position on the bill, but SB 217 would apply to the Medicaid program as well as the PBMs. In that regard, there are some issues and potential conflicts the committee should be aware of. He noted that he submitted testimony in writing.

MR. HOPE said several provisions of this bill don't conflict with current practices and can reasonably be accommodated, such as giving 30 days' notice to an audit, and accommodating audit schedules with a pharmacy's work flow. The DHSS has an established appeals process and doesn't seek recovery of overpayments until the appeals process has been exhausted, nor does it charge interest on overpayments in that time.

However, he said, a couple of provisions appear to be in conflict with the state's current practices or state or federal law. He said the term "audit" is PMS driven and explained that currently, the Medicaid program is involved with at least four types of audits and the Medicaid Integrity Contractor audits (MIC) for one have another federal component. The Recovery Audit Contractor (RAC) audits established by the Affordable Care Act have yet another function; and then there are audits under the state law in AS 47.05.200 where the Medicaid program itself is conducting the audits through a contractor. Each of these audits has its own objective and wouldn't be able to adhere to the same standards.

MR. HOPE said another section of concern in SB 217 was the limitation on using extrapolation, because that is the most efficient way of conducting pharmacy audits. He explained that pharmacies generate significantly more claims than most provider types and extrapolation allows DHSS to examine a large number of claims without overly burdening the pharmacies or the

department. DHSS is not overly aggressive or abusive in the use of extrapolation and does not apply a single average overpayment to all pharmacy claims. They use what is called the "lower bound of a 90th percentile one-sided confidence interval" statistics rather than a mid-point or an average error factor. In simple terms, it's a much less aggressive approach and extrapolates a lower amount rather than a higher amount. Also, he noted that the prohibition against recouping dispensing fees potentially leads to the Medicaid program having to pay a pharmacy a dispensing fee for a fraudulent claim that was never dispensed to a recipient.

Finally, he said, the recovery audit contractors (RAC) audits is a new type of audit that the Medicaid program is required to conduct and they must by law be paid on a contingency fee basis.

[1:57:05 PM](#)

CHAIR EGAN said the bill drafter believed the bill did not apply to Medicaid and a forthcoming CS would clarify that.

SENATOR PASKVAN asked if he agreed that Medicaid is entitled to supremacy under the U.S. Constitution and federal law as to the application of federal law.

MR. HOPE replied that his knowledge and application of law isn't what it could be; he had been told that the federal audit would potentially not be covered under this, but that state audits in AS 47.05.200 potentially would.

[1:58:26 PM](#)

AMY BRICKER, Senior Director, Network Auditors, Express Scripts, St. Louis, MO, stated opposition to SB 217. She said Express Scripts uses extrapolation as part of the audit process that is required by federal programs. They service the Tri-care benefit for the Department of Defense and represent clients that are on Medicare and Medicaid that exercise the right to extrapolate.

She said they don't conduct clinical audits. The bill mentions that clinical judgment should be determined by an Alaskan pharmacist and that is not part of the scope of their audits. They have found that unintentional errors sometimes develop into a trend or pattern and limiting their ability to audit will limit their ability to identify fraud in the system.

MS. BRICKER said Express Scripts has only audited one-third of one percent of all claims that were processed in Alaska. So this is not onerous or overly burdensome for the pharmacy community.

Express Scripts looks at claims that "stick out" as outliers and leverage their system to identify those claims; they don't pick randomly.

2:01:03 PM

SENATOR PASKVAN asked the shortest notice Express Scripts has given in the last three years.

MS. BRICKER replied they give a two-week notice for traditional audits. If they believe there is fraud or abuse they don't give any notice.

2:01:43 PM

DAVID DEDERICHS, Director, Department of Government Affairs, Express Scripts, MN, testified in opposition to SB 217. He said as a PBM, they administer the prescription drug benefit for over 50 million Americans. Their mission is simply to make drugs safer and more affordable in the prescription sphere.

He said that some of their clients pertinent to Alaska include Fortune 500 companies, labor unions and government entities; Tri-Care with the U.S. Department of Defense is their largest client. All 13 million active and retired military personnel and their families receive their prescription drug benefit through Express Scripts. The reason he mentioned this is because many of those troops are stationed in Alaska.

MR. DEDERICHS said that retail pharmacies are integral to the success of their company. They contract with over 56,000 pharmacies across the country to provide as much access as possible to clients and ultimately their beneficiaries. They adjudicate 750 million prescription transactions each year and over 90 percent of those occur at the retail pharmacy level. Pharmacies are a critical partner and Express Scripts' audits of them are not capricious or random.

He said auditing is part of their clients' contractual requirement to make sure they aren't paying for any unnecessary pharmacy claims, whether that is through fraud, waste or abuse. Sophisticated systems and algorithms are used to look for "outlier crank claims" that can be found pretty easily in pharmacy transactions. He said that 100 percent of recovered funds go directly back to their clients and that Express Scripts has an internal audit department and doesn't contract at all with outside consultants. Audits are not a money generating mechanism for them.

MR. DEDERICHS said their auditors are pharmacists and they understand that pharmacists at the retail level are busy working transportation, stocking shelves, filling orders and doing HR work in addition to conducting their very important business. Finally, he said SB 217 mandates contract terms which would be more appropriately negotiated at a contracting table.

He clarified that in reference to an earlier comment Express Scripts does not support Utah's audit bill and doesn't do extrapolation as a company, but some of their federal programs require them to do it. It is not done arbitrarily.

2:05:36 PM

ERIC DOUGLAS, CVS Caremark, Chicago, IL, noted that he had submitted written testimony and didn't support SB 217. He said CVS does not extrapolate under any circumstances and their contracts have a thorough appeals process for every pharmacy during the audit process. They do not collect interest on audited claims and onsite audits are always conducted by a licensed pharmacist. Their argument against having pharmacists licensed in the State of Alaska conducting audits in Alaska is that those pharmacists aren't filling prescriptions or dispensing in Alaska when they are conducting an audit; therefore, making them be licensed in Alaska isn't necessary. If they were an actively practicing pharmacy, that would be the case. In the instance where a mail order pharmacy is mailing prescriptions into Alaska the pharmacists absolutely are licensed by the Alaska Board of Pharmacy (because in that case they are practicing pharmacy).

He noted that CVS Caremark opposed the bill as originally drafted, but the only incorrect statement he heard from any CVS was about the number of months allowed for an audit look back. Utah uses a 24-month look back, but that provision was parsed out, and 24 months is what all the other states' that have passed audit laws use. The reason Utah parsed it out differently was because the author wanted it that way. Express Scripts, Medco and a couple of other PBMs still have issues with the Utah bill, and to his knowledge, CVS Caremark is the only PBM that has signed off on that bill.

SENATOR PASKVAN asked his thoughts generally on Alaska establishing its own procedures and guidelines for auditing pharmacy records.

MR. DOUGLAS answered that generally CVS Caremark's position is that these provisions are better served for contracts rather

than being dictated by statute. He said he was always open to discussing any provisions, but at this point CVS couldn't support the bill.

2:09:41 PM

RICHARD HOLM, Chair, Alaska Board of Pharmacy, North Pole, AK, stated that the board, at its February 17 meeting, unanimously supported SB 217. The board felt that this is an industry that has been too unregulated for too many years; there is very little transparency in the way they operate. Envision currently administers the state's pharmaceutical benefit, but it could be a different company next year. For instance, from the state's standpoint, these companies can tell you that all of the funds they recover in an audit go back to the client, but there is no way to check on that, and the state would like to be able to see if the funds are truly being recovered. He said a lot of states are moving in that direction.

2:12:00 PM

TOM HODEL, Soldotna Professional Pharmacy, Soldotna, AK, stated support for SB 217. He described an audit he'd been going through for the last year. In February 2011, he received notice of a desk audit on over 100 prescriptions from the year 2008. This letter came from a contracted firm hired by one of the PBMs. After many hours of evening and weekend work, he pulled all of the information and sent it into the audit company. A few months later he was notified that they would also be performing an onsite audit of his records. So in October, two auditors arrived and he spent the entire day pulling records for them. He was amazed at their lack of knowledge concerning pharmacy and said they certainly weren't pharmacists.

Another month went by and he received their report. Out of the over 100 prescriptions worth over \$100,000 in claims they had an issue with 4 prescriptions with a total of \$85. He then got to the last page and found out that they used an extrapolation formula and that \$85 turned into \$7,300. He said one \$40 error was legitimate and he appealed the other three, because they were "very nitpicky." They also rejected that.

MR. HODEL related that now, a few weeks ago, he received a letter requesting him to send them a check for \$7,300 in "so-called over payments" by March 8, so he hired a lawyer to appeal using the extrapolation method for this audit. Using it is totally unfair as there has never been a pattern of sustained high payment. He asked for their support of SB 217 that would bring standards and fairness to the audit procedure.

DIRK WHITE, Member, Board of Pharmacy, Sitka, said he was available to answer questions on SB 217.

2:14:51 PM

MARGARET SODEN, Alaska Pharmacists Association, Fairbanks, AK, said she previously testified in support of SB 217 and had submitted a letter describing an experience she had with an audit. She said sometimes pharmacy audits are a little bit complicated and require getting a lot of records that in Fairbanks often means going out in the cold winds, and having the 14-day notice would be helpful to Fairbanks pharmacists. {

2:16:20 PM

MATTHEW DILORETO, Director, State Government Affairs, National Community Pharmacists Association (NCPA), Olympia, WA, stated strong support for SB 217. He said NCPA represents about 23,000 community pharmacies nationwide and about 40 community pharmacies in Alaska that are responsible for about \$157 million in revenue. He stated that NCPA is not against auditing businesses; they fully understand that audits need to occur to catch fraud, waste and abuse. But that is not what this legislation is about; rather it's about PBMs that are over aggressive in their auditing of community pharmacies and pharmacies in general.

MR. DILORETO said it's their position that audits are a moneymaker for the PBM industry that deals with major corporations; for example, CVS Caremark in 2011 was a \$97 billion industry. He said if they look into the real life stories of community pharmacies they would see examples of what is being discussed. One is the story of an NCPA member, a small business owner, who was penalized \$14,000 for not using a physician's number in his computer system. The catch was that this particular prescription was from a certified nurse practitioner; so there was no physician number. The NCPA member contacted his insurance company and was told everything was okay, that he could use the RMP number. He also attached the nurse practitioner's license to the prescription and documented the phone call. Even after going through all these additional steps, he was still hit with the audit and he had to settle for \$12,000. He said there are many other stories, and he had personally dealt with audits up to \$255,000 for nothing more what is being called an administrative clerical error. That is really what this legislation is about, fair and reasonable standards on an audit practice.

One thing that is brought up frequently is the notice to prepare for an audit and he said even the IRS gives a person two-week's notice for their audits. This is definitely being discussed in other states, and Utah is one of them; 15 states currently have passed fair legislation. Two other states contacted him today to strengthen their audit provisions.

He pointed out that NCPA sat on a committee that someone had said they developed some other guidelines that could possibly be looked at by Alaska, but that is inaccurate. NCPA was involved, but had strong concerns with what was presented at the end of that report and felt it didn't go far enough in addressing the issues.

CHAIR EGAN, finding no questions, said that completed public testimony and the he would take action when legislators returned from their conferences.

[2:22:10 PM](#)

SENATOR DAVIS said she had no problems with that, but she didn't have enough information to make a decision. A number of people are opposed to it and no one has said what is wrong with it or what changes should be made. She thought the two sides should get together and share their concerns; the pharmacies have already done that but she hadn't heard from the other side.

SENATOR PASKVAN observed that his perception is that these are adhesion contracts where there is no negotiation but a take it or leave it proposition. There is unequal bargaining strength between pharmacies and PBMs. He hadn't heard what the PBMs don't like, only that they didn't want this legislation passed.

CHAIR EGAN reiterated that public testimony was complete and announced he would hold SB 217.

[2:24:08 PM](#)

There being no further business to come before the committee, Chair Egan adjourned the Senate Labor and Commerce Standing Committee meeting at 2:24 p.m.