

HOUSE FINANCE COMMITTEE  
February 14, 2018  
1:33 p.m.

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CALL TO ORDER

Co-Chair Foster called the House Finance Committee meeting to order at 1:33 p.m.

MEMBERS PRESENT

Representative Neal Foster, Co-Chair  
Representative Paul Seaton, Co-Chair  
Representative Les Gara, Vice-Chair  
Representative Jason Grenn  
Representative David Guttenberg  
Representative Scott Kawasaki  
Representative Dan Ortiz  
Representative Lance Pruitt  
Representative Steve Thompson  
Representative Cathy Tilton  
Representative Tammie Wilson

MEMBERS ABSENT

None

ALSO PRESENT

Sara Chambers, Acting Director, Alcohol and Marijuana Control Office, Department of Commerce, Community and Economic Development; Representative David Guttenberg, Sponsor; Seth Whitten, Staff, Representative David Guttenberg; Jane Conway, Staff, Senator Cathy Giesel; Michele Michaud, Division of Retirement and Benefits, Department of Administration; Emily Ricci, Division of Retirement and Benefits, Department of Administration; Scott Watts, Ron's Apothecary, Juneau; Will Whitehead, Foodland Pharmacy, Juneau.

PRESENT VIA TELECONFERENCE

Barry Christensen, Alaska Pharmacists Association, Anchorage; Leif Holm, Pharmacy Owner, Chair, Board of Pharmacy, North Pole; Alliejo Shipman, NTPA, Washington DC;

Richard Ponesse, Senior Director, Finance Group, CVS Caremark, Phoenix; Justin Ruffridge, Soldotna Professional Pharmacy, Soldotna; Dirk White, Pharmacist, Sitka; Jerry Brown, Self, Fairbanks; Bill Head, Pharmaceutical Care Management Association, Washington DC; Tom Wadsworth, Self, Eagle River.

SUMMARY

HB 240 PHARMACY BENEFITS MANAGERS

HB 240 was HEARD and HELD in committee for further consideration.

HB 279 EXTEND: REAL ESTATE COMMISSION

HB 279 was REPORTED out of committee with a "do pass" recommendation and with one new fiscal impact note by the Department of Commerce, Community and Economic Development.

Co-Chair Foster reviewed the agenda for the day. He indicated it was his intention to move HB 279 from committee.

#hb279

HOUSE BILL NO. 279

"An Act extending the termination date of the Real Estate Commission; and providing for an effective date."

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SARA CHAMBERS, ACTING DIRECTOR, ALCOHOL AND MARIJUANA CONTROL OFFICE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, explained the updated fiscal note. She elaborated that new fiscal impact note from the Department of Commerce, Community and Economic Development (DCCED) was updated to correct the previously underreported number of board members from 5 to 7 and the appropriation was updated to \$27.9 thousand for travel to board meetings and services that included advertising, training and per diem.

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Representative Wilson thought the fiscal note was only an approximation due to video conferencing availability. She added that the licensees paid the costs. Ms. Chambers agreed that all the 21 boards were working diligently to reduce costs. She explained that the fiscal note reflected the board's spending authority for the fees collected from licensees. She expected the amount expended to be less due to the board's successful use of teleconferencing.

Co-Chair Seaton MOVED to report HB 279 out of Committee with individual recommendations and the accompanying fiscal impact note.

There being NO OBJECTION, it was so ordered.

HB 279 was REPORTED out of committee with a "do pass" recommendation and with and with one new fiscal impact note by the Department of Commerce, Community and Economic Development.

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AT EASE

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RECONVENED

hb#240

HOUSE BILL NO. 240

"An Act relating to the registration and duties of pharmacy benefits managers; relating to procedures, guidelines, and enforcement mechanisms for pharmacy audits; relating to the cost of multi-source generic drugs and insurance reimbursement procedures; relating to the duties of the director of the division of insurance; and providing for an effective date."

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Co-Chair Foster indicated he would hear public testimony on the bill.

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REPRESENTATIVE DAVID GUTTENBERG, SPONSOR, related that the issue of prescription drug costs had been on his mind for many years. The bill related to the relationship between

the pharmacy and the Pharmacy Benefit Managers (PBM). He explained that PBMs were established in the 1970s to negotiate prices with manufacturers and pass the savings on to the beneficiaries of the program. Over the years PBMs evolved into large conglomerates and one PBM (CVS Health Corporation) recently purchased the insurance company AETNA. The pharmacists did not have any recourse to take corrective measures from unreasonable, unfair, or incorrect audit finding. The bill set up a process that designated the state's Director of Insurance to become an administrative hearing officer and negotiate disputes between the pharmacies and the PBMs. He furthered that pharmacies encountered significant problems with PBMs without any resolution.

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JANE CONWAY, STAFF, SENATOR CATHY GIESEL, introduced the PowerPoint presentation: "Pharmacy Benefit Managers:"

And the need for fair and reasonable standards over the practice of auditing pharmacies

HB 240 and SB 38

Establishes Procedures & Guidelines for the Auditing of Pharmacy Records

Requires Timely, Price Updates of Pricing Changes & an Appeals Process

Ms. Conway indicated that SB 38 was the companion bill to HB 240. She related that Senator Giesel and Representative Guttenberg "joined forces" to address the "unchecked auditing practices" the pharmacists faced and bring the information forward.

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Ms. Conway continued with slide 2: " PBM 101 - What's a PBM?" She read Directly from the slide:

- PBMs are multi-billion-dollar middlemen
- Started in 1970 as claims processors, now intertwined in almost every aspect of the pharmaceutical/pharmacy supply chain

- Virtually unregulated, state or federal level  
Today, the top PBMs represent some of the most profitable companies in the nation

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Ms. Conway moved to slide 3: "Examples of PBM's Market Power/Influence." She read directly from the slide:

- CVS/Caremark (AK State Plan Pharmacy Benefit Manager)
- 2017 - 7th most profitable U.S. company in Fortune 500
  - 2017 Revenue: \$177.5 Billion

- Express Scripts Holding
- ESH generated \$100.3 billion in revenue in 2017 - Number 22 ranking

Ms. Conway advanced to slide 4: "State of Alaska Health Care Plan" that contained a picture of the state employees' AETNA health insurance cards.

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Ms. Conway turned to slide 5: "PBMs are designed to:" She read directly from the slide:

- reduce administrative costs for insurers
- validate patient eligibility
- administer plan benefits
- negotiate costs between pharmacies and health plans
- audit pharmacies for fraud

Ms. Conway continued to slide 6: "PBM's Impact on Pharmacy & Patients":

- PBMs develop pharmacy provider networks
- Pharmacies must accept a PBM contract
- Contracts truly are "take it or leave it."
- PBMs influence what drugs are dispensed regardless of what a physician prescribes by using a list of PBM-approved drugs known as "formularies"

- PBMs receive rebates from drug manufacturers for putting their drugs on a given formulary

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Representative Ortiz asked about the fourth bullet point on slide 6. He asked for clarity. Representative Guttenberg responded that if a doctor prescribed a medication that the PBM did not cover the PBM chose a substitution. Representative Ortiz asked whether the patient's doctor would be contacted prior to substitution. Representative Guttenberg referred the answer to pharmacists that would testify later in the meeting.

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Representative Kawasaki asked for the definition of a PBM. He had difficulty understanding what kind of entities PBMs were and how they operated. He wanted to know what PBMs "physically" were. Representative Guttenberg was worried that PBMs would become "vertically integrated" entities. He explained that PBMs were standalone companies or a division of a large corporation with offices and employees where management negotiated discount prices for the most commonly prescribed prescription drugs with pharmaceutical manufacturers. The PBMs determined the price they would reimburse pharmacies for a prescribed drug. He suggested that they operated similarly to an insurance company and acted as a "middleman." Prices were negotiated with drug manufacturers and PBMs did not use an "algorithm." Representative Kawasaki asked whether the PBM was "attached to" the insurance company or the pharmacy. Representative Guttenberg replied that the PBM was hired by the insurance company to negotiate prices. He elaborated that the pharmacy had a "take it or leave it" choice to enter into the contract if they wanted to fill the prescriptions of benefactors of various health care plans. He summarized that PBMs were a "middleman between the patient and the pharmacy."

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Representative Kawasaki referred to the second bullet on slide 6 and ask what happened if the pharmacy did not accept the contract. Representative Guttenberg answered that if a pharmacy did not enter into the contract the patient would have to pay in cash.

Representative Wilson surmised that the issue was not with the pharmacy's ability to obtain the drug, but whether the insurance company would pay for the drug. Representative Guttenberg indicated that she was correct. Representative Wilson initially thought that the state would be intervening in contracts, but she deduced that the pharmacies and the PBMs were not engaging in contract negotiations. She asked if her statement was accurate. Representative Guttenberg reiterated that the contracts were a "take it or leave it deal" and the audits were unreasonable. He recounted that the number of independent pharmacies in the state had dramatically decreased from 74 to 14 because of the PBMs "dominating the relationship." Representative Wilson inferred that the problem was not in the "structure" of a PBM but in the audit and appeals process "rather than the contract itself." Representative Guttenberg agreed with her statement. He indicated that one part of the bill dealt with the relationship between the PBM and the pharmacy and the audit process. The other part of the bill related to the costs for generic drugs embedded in the contract that were hidden; the negotiated prices, costs, and rebates between the manufacturer and PBM and insurer, and rates of reimbursements were unknown to the pharmacists. The pharmacists, reimbursement rates were often changed without notice. He relayed hearing pharmacists testifying that it cost more for the pharmacist to fill a certain prescription under a contract than the reimbursement amount. The committee would hear testimony from pharmacist later in the meeting.

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Co-Chair Seaton asked about the state formulary for Alaska Care and whether it was the same formulary as the PBM for AETNA. Representative Guttenberg did not know the answer. Co-Chair Seaton requested more information on how PBMs were paid. He indicated that the state had a "formulary set up" and published prices. He wondered whether the PBM received a percentage. He wondered how PBMs made money by denying coverage for "pills that were sold." He inquired how the process affected the state's position and "how the PBM made money." Representative Guttenberg replied that the process was complex. He detailed that the state via AETNA hired a PBM who negotiated a price with the pharmaceutical companies. The state did not know the negotiated price, or the reimbursement prices paid to the pharmacies. He voiced that there was a reason the PBMs were on the top of the

Fortune 500 list. He detailed that rebates were paid to PBMs by manufacturers for purchasing their product. The PBMs did not disclose how or if rebates were factored into the pharmaceutical contracts. The process was not transparent and how costs and benefits were distributed among the PBM's recipients were completely unknown.

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Representative Tilton mentioned previously looking at the pharmaceutical costs within the Pioneer Homes and whether the costs could be reduced by using generic drugs. She was unaware of the generic rebate issue and thought the lack of transparency left open the question of whether the state was getting the best prices for the patient. Representative Guttenberg responded that Medicaid and Medicare costs were established under the federal system. He only knew of two actions the federal government implemented regarding prescription drug costs; they ensured that drugs distributed through the Veteran Affairs Administration (VA) were the "cheapest" and drug prices could not be negotiated across state lines. He affirmed that the rebates were not transparent.

SETH WHITTEN, STAFF, REPRESENTATIVE DAVID GUTTENBERG, clarified that the rebates occurred between the PBMs and the plan sponsor; the Alaska Care Plan and the PBM would negotiate the percentages. He deferred to the Department of Administration (DOA) to answer the question of where the rebates were going. He noted that pharmacies do not receive rebates.

Representative Ortiz asked if PMB's were created because it would otherwise be impossible for pharmacies to negotiate with all the different drug manufacturers. Mr. Whitten responded in the affirmative.

Ms. Conway advanced to slide 7: "PBM's Impact on Pharmacy & Patients":

- PBMs dictate how much pharmacies will be paid for the drugs they dispense regardless of the pharmacies' acquisition costs
- PBMs have free reign to dictate what pharmacies are permitted to do in a given network thereby driving patients to particular pharmacy options

- PBMs operate their own mail-order pharmacies and can incentivize or mandate that customers obtain their medications only through the mail-order option
- PBMs audit pharmacies and in most cases, there are no defined rules or regulations over what can be considered a recoupable offense.

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Ms. Conway informed committee members that the third bullet point regarding mail-order prescriptions was a huge problem for rural pharmacies that were prohibited under contract from mailing prescriptions to patients.

Ms. Conway reviewed slide 8 that described the mechanics of the relationship between the payer, PBM, and pharmacy. Slide 8 as follows:

- The Payer pays \$100 to the PBM, the amount agreed upon in their contractual plan.
- The PBM negotiates the \$100 price for the drug with the pharmaceutical company and receives a rebate of \$50 for the drug. The PBM then pays \$50 to Pharmacy to dispense the drug, via their contract with the pharmacy. The remaining \$50 stays with the PBM as its profit. This is known as the spread.
- Pharmacy buys its drugs from a drug wholesaler at best price they can find, pays \$60 for the drug. PBM only pays them \$50, and then the pharmacy loses \$10 on that prescription.

Representative Wilson understood that the pharmacy had to purchase drugs at the best rate they could find but did not know whether the price was a good deal or not until they were reimbursed by the PBM. Representative Guttenberg responded that her statement was correct. Representative Wilson deduced that the lack of transparency by the PBM caused the situation. Representative Guttenberg responded in the affirmative. He added that she would hear similar testimony from pharmacists. Representative Wilson was trying to understand the "players." She asked whether the pharmacists were given a list of reimbursed prices or if the prices changed so frequently without notification the

pharmacist could not rely on the list. Representative Guttenberg in the affirmative and added the bill contained provisions mandating when the PBM must notify the pharmacy price changes.

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Representative Kawasaki pointed to a flow chart titled "The Role of PBMs in the Flow of Money and Prescription Drugs" on a separate handout (copy on file). He deduced that the pharmacy negotiated discounted dispensing fees with the PBMs and sent electronic claims to PBMs for the dispensed drugs the pharmacy also negotiated discounted drug prices with wholesalers or directly with pharmaceutical manufactures for less than the PBM reimbursement amount. He asked whether he was correct. Mr. Whitten responded that the pharmacy did not purchase drugs directly through the manufacturer, only through the wholesaler. The PBM negotiated prices with the manufacturer.

Representative Guttenberg added that multiple pharmacies organized and purchased their drugs in bulk.

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Co-Chair Seaton was trying to follow the flow diagram. He asked how the payer benefited. He did not find any monetary advantage to the payer. He did not think the system made sense for the payer. Representative Guttenberg agreed with the statement.

Ms. Conway moved to slide 9: "HB240/SB 38 - What Does a Fair Audit Bill Do?":

- Brings fairness to the unregulated and expanding practice of pharmacy audits
- Does not allow audits during the first seven calendar days of each month because of the high patient volume, unless the pharmacy and auditor agree otherwise
- Prevents the targeting of minor clerical or administrative errors where no fraud, patient harm, or financial loss has occurred

- Establishes submission of data/medical record standards to allow for clarification where discrepancies are identified
- Establishes a reasonable time frame for the announcement of an audit to allow proper retrieval of records under review

Ms. Conway elaborated that an audit could take days and significant resources for a small pharmacy and notice of an impending audit was fair.

Mr. Whitten interjected that the provisions in the bill were not applicable if there was suspicion of fraud. He added that PBMs played an "important role" in detecting fraud and the bill did not impede their ability to do so.

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Ms. Conway moved to slide 10: "What Does a Fair Audit Bill Do? - cont.":

- Establishes an audit appeals process for pharmacies
- Establishes guidelines for PBMs to follow regarding patient confidentiality
- Prohibits extrapolation in assessing fees/penalties
- Allows Alaska pharmacists to provide mail-order service to their customers without penalization
- Local mail-order service keeps Alaska dollars in Alaska
- Legislation does not prevent the recoupment of funds where fraud, waste, and abuse exist

Ms. Conway specified that extrapolation happened when a PBM discovered an audit discrepancy and extrapolated the number of times it occurred instead of using actual data.

Representative Kawasaki referred to fraud, waste, and abuse. He asked about a fiscal note from DOA, FN2 (ADM) relating to the issue. He read from the analysis on page 2:

The bill may restrict the ability of PBMs to identify waste, fraud or abuse patterns. This may cause the AlaskaCare plans to pay for unnecessary or fraudulent prescriptions.

The bill may restrict the ability of PBMs to recoup overpayments, preventing the AlaskaCare plans from recovering these funds.

Representative Kawasaki voiced that the analysis was "completely contrary" to slides 9 and 10.

Mr. Whitten assured that the bill clearly stated that audit protections were not applicable in the case of fraud.

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Ms. Conway highlighted slide 11 titled: What Does a Fair Audit Bill Do? - cont.

- 41 states have enacted fair audit legislation
- 36 states have enacted Maximum Allowable Cost (MAC) transparency legislation

Bill will also include:

- o Registration of PBMs with the State of Alaska Division of Insurance
- o Set-up guidelines for generic drug maximum allowable cost (MAC) pricing by PBMs
- o Establish a mechanism for a pharmacy to appeal MAC pricing

- Don't audit local pharmacies out of business. Their services are crucial in rural areas.

Ms. Conway emphasized that other states had identified issues with PBMs and acted to mitigate the problems.

Co-Chair Seaton requested more information regarding MAC pricing. Ms. Conway deferred the answer to a future slide.

Ms. Conway addressed slide 12 titled "Fair Pharmacy Audit Legislation in The States" and slide 13 titled "States with Generic Drug Pricing Transparency" that depicted maps of the United States with the applicable states highlighted provided by the National Community Pharmacists Association (NCPA).

Ms. Conway indicated she would skip the next 4 slides that contained real life accounts of unreasonable audits endured by pharmacists and encouraged the committee members to review the slides.

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Ms. Conway skipped to slide 19: "Maximum Allowable Cost (MAC)":

- A "maximum allowable cost" or "MAC" list refers to a payer or PBM - generated list of products that includes the upper limit or maximum amount that a plan will pay for generic drugs and brand-name drugs that have generic versions available ("multi-source brands")
- Essentially, no two MAC lists are alike and each PBM has free reign to pick and choose products for their MAC lists.
- A Formulary is a list of drugs that are covered for a particular insurance plan. Generally, it has no pricing attached to it. However, some drugs are chosen based on the cost of the medication. A formulary will usually contain both Brand and Generic Drugs.
- A MAC list (Maximum Allowable Cost) is a listing of specific prices for each generically available drug. Usually a specific insurance plan has a specific MAC listing issued by the PBM. However, a PBM may have several different MAC lists depending on the plan (i.e. one plan may have a different MAC list even though they utilize the same PBM).

Co-Chair Seaton referred to the maximum amount a plan would pay and asked whether the amount was the maximum paid to the pharmacy. Ms. Conway answered in the affirmative.

Representative Wilson asked who would develop the MAC list or did the bill mandate that the PBMs must distribute the MAC list to provide transparency. Mr. Whitten mentioned that page 5 of the bill discussed the MAC pricing and required the PBM to provide the list to the pharmacies and list updates in a timely manner. Representative Wilson deduced that the state would not monitor the actual cost the PBM paid for the drugs on the MAC list or interfere with that process. Mr. Whitten responded in the

affirmative. He added that the bill stated the "PBM shall use the most up to date pricing data to calculate the reimbursement and for multi-source generics that are sold or marketed in the state for that period." Representative Wilson thought the state was mandating the MAC pricing for the PCMs via the use of formula. She declared that she supported requiring PBMS to provide the pharmacies with a list of MAC pricing but did not support any type of requirement regarding what the pricing should be.

Representative Guttenberg responded that he agreed with Representative Wilson and the bill was not attempting to regulate MAC pricing.

Representative Kawasaki voiced that some of the invited testifiers would help to answer committee member's questions.

Representative Wilson asked whether public testimony would be held over. Co-Chair Seaton answered in the affirmative.

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MICHELE MICHAUD, CHIEF HEALTH OFFICIAL, DIVISION OF RETIREMENT AND BENEFITS, DEPARTMENT OF ADMINISTRATION, provided information regarding the state's AlaskaCare plan. She indicated that the AlaskaCare plan covered slightly less than 50 percent of all state employees; over 15 thousand individuals. In addition, her division administered both the defined benefit and the defined contribution retiree plans covering 86 thousand individuals. She delineated that the state plans were "self-insured", which meant the claims cost were paid directly by the plan and the state bore the risk versus the insurer bearing the risk for costs. The commissioner of DOA was the plan administrator and the division managed the plans. The state contracted with AETNA who subcontracted with CVS. The contract was reviewed periodically, and currently the state was in the procurement process for a PBM starting in 2019.

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EMILY RICCI, CHIEF HEALTH POLICY ADMINISTRATOR, DIVISION OF RETIREMENT AND BENEFITS, DEPARTMENT OF ADMINISTRATION, added that between the two health plans: the retiree and employee plans, the plans filled approximately 1 million

prescriptions and paid \$240 to \$250 million in pharmacy benefits each year. She explained what PBMs did from her perspective. Prescription Benefit Managers negotiated the cost of drugs with the manufacturer and provided a point of sale adjudication system, which electronically coordinated the purchase at the pharmacy to determine the copayment. She informed committee members that the number of state employees covered under AlaskaCare was roughly 6 thousand and the remaining were covered through health trusts; many contracted with CVS Caremark as their PBM. She clarified that the AlaskaCare plans maintained an "open formulary," which was unusual for commercial health plans. The state also received rebates from the PBMs. She was aware of the "black box" in the contracts between the PBM and the drug manufacturer regarding information about the amount of the rebates or negotiated prices. She offered that the division negotiated the percentage of rebates with the PBM and the money went into the retiree plan and the health trust. The state received \$28 million in rebates in the prior year. The state attempted to address concerns when alerted to problems; and the AlaskaCare plan negotiated the elimination of restrictions on pharmacists sending prescriptions to patients outside of their community within the state.

Ms. Michaud expounded that the division negotiated an aggregate rate that discounted a percentage off the average wholesale costs with performance guarantees for the rebates and generic dispensing rates and did not negotiate a per prescription cost. She added that the contract did not include "performance guarantees around MAC pricing." The current contract allowed a "full rebate pass back" to the state receiving 100 percent of the rebate along with a guarantee that stipulated if the rebates fell below a certain amount the PBM would pay additional money.

Ms. Ricci interjected that the state was not privy to the contracts the PBMs had with the pharmacies nor with the drug manufacturers.

Co-Chair Seaton asked if there was any reason why a new contract could not include the other contract pricing information. Ms. Ricci replied that the division requested transparent pricing and identified receiving the pricing information as a goal. The division was soliciting different pricing models in the new bid for PBMs and desired to achieve pricing transparency. Co-Chair Seaton

confirmed that the division wanted to obtain transparent pricing going forward. Ms. Ricci answered in the affirmative but added that the division had to balance its fiduciary responsibility to the plan, therefore the contract differential costs was a factor.

Representative Wilson asked how the division knew it received 100 percent of the rebates if the amount for the rebates the PBMs received were unknown. She responded that the division included contractual guarantees and implemented audits through benefit consultants that were pharmacists who had worked for PBMs and were familiar with how the PBMs typically paid claims. The division utilized the available tools to monitor its contract but the pricing between the PBM and drug manufacturer remained unknown. Representative Wilson ascertained that without the total pricing information it was impossible to know whether the state received 100 percent of the rebates and deduced that the audit was based on random data. Ms. Ricci corrected that the contract required that the state receive 100 percent of the rebates and the division utilized the tools it had to do the "best" it could to ensure full payment. She offered to provide additional information. Representative Wilson did not know "if the PBM was being honest or not."

Representative Kawasaki referenced hearing that the PBM was the subcontractor through AETNA and that the state was in the procurement process for a PBN. He requested clarification. Ms. Ricci answered that one of the changes the state recently made was to "carve out" PBM services and would not be subcontracting the service out moving forward.

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Representative Kawasaki asked for verification that the state would maintain a separate bid for the insurer. Ms. Ricci replied in the affirmative. She detailed that the division would require the insurer to work with the state's PBM. Representative Kawasaki wondered whether the division had information regarding the other state employee health trusts contracts with PBMs and how they compared with AlaskaCare's. Ms. Ricci responded that she could not speak to the health trust's contractual relationships. Representative Kawasaki asked if legislation was necessary for the division to directly contract with PBMs and enforce the terms of the contract or whether it could be

accomplished contractually through the procurement code. Ms. Ricci answered that the department did not take a position on the bill and would utilize the contract to protect the state's interest.

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Representative Ortiz understood that the administration did not take a position on the bill. He related that [read from a statement] the administration previously "indicated if MAC pricing repeal legislation was passed the price of generically available medications would go up because wholesalers serving Alaskan pharmacies would automatically increase prices. This would assume that there is or would be collusion between the wholesale drug industry if they all raised prices." He asked whether the statement was fair. Ms. Ricci stated that her fiscal note or analysis had never used the word collusion. She indicated that division attempted to determine any possible fiscal impacts by reviewing other state's fiscal notes and provisions in the bill. In addition, the division asked the state's actuaries to perform an analysis to better understand what other states had experienced relative to adopting similar type of legislation. She expected the completed analysis soon. Representative Ortiz thought that some of the pharmacist's support for HB 240 was motivated by not being reimbursed for at least the cost of some medications. He asked whether she agreed with the statement and felt that pharmacist should be fully reimbursed. Ms. Ricci answered that the division wanted to ensure that the plan reimbursed fairly and was efficient and effective with state dollars, which "sometimes required striking a delicate balance." She reported that the division engaged in discussions with independent pharmacists since November 2017, specifically related to MAC pricing and were working with the PBMs to identify where the pricing was low and what the recourse was for claims paid before November. She noted that the PBM adjusted prices on January 10, 2018 in response. The division also wanted to figure out how to reimburse pharmacies more directly. She related that entering the "pharmaceutical reimbursement negotiation space" was "difficult" at the division level. The division was pursuing pilot projects to find a way to directly reimburse pharmacists in recognition of their "unique value to the plan" and to benefit the plan's members. She qualified that the later approach would take time.

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Representative Guttenberg referenced an earlier question by Co-Chair Seaton. He asked for clarification regarding the state formulary and wondered what plans applied. Ms. Michaud responded that each PBM had multiple formularies depending on the plan and the state's plan had an open formulary, which meant there was no restriction on the drugs covered. She could not speak to other plan's formularies. Representative Guttenberg asked about the formulary for the Department of Health and Social Services (DHSS). Ms. Ricci responded that the formulary DHSS used was different.

Representative Ortiz asked that whether the impact would be different for the state versus the Alaska State Employees Association Local 52 (ASEA) Health Trust if the bill passed. Ms. Ricci indicated that it would vary depending on the plan, negotiated prices and several other factors. She hesitated to speak to other plans.

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Co-Chair Foster opened the discussion to invited testimony.

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BARRY CHRISTENSEN, ALASKA PHARMACISTS ASSOCIATION, ANCHORAGE (via teleconference), thanked the sponsors for their help in moving the bill forward. He spoke in support of the bill. He relayed that his father had started the pharmacy in Ketchikan 44 years ago, had state license number 67, and was still working and his daughter was attending pharmacy school. He relayed that he was the Co-Chair of the Alaska Pharmacists Association (ACPA) and mentioned that HB 240 was the associations priority. He began by refuting some arguments that PBMs frequently held. The PBMs contended that they were not insurers therefore, should not be regulated. He maintained that they were part of the insurance system and should be regulated and registered. He referenced the take it or leave it nature of the contract between the pharmacies and the PBMs. He noted that there were roughly 100 PBMs, which was why the state needed to establish universal "sidebars and guidelines" for PBMs to follow. He agreed that the bill did not limit PBMs authority to detect fraud, waste, and abuse. He related that he received 30-day notice from the Internal Revenue

Service (IRS) of an impending audit and felt that the 10-day notice the bill provided was the barely sufficient. He reported the PBMs complained that MAC pricing transparency would increase costs and cited a letter from the National Community Pharmacists Association (NCPA) (copy on file) that refuted the narrative. He reminded members that community pharmacists were "real Alaskans" involved in their communities and were "serving Alaskans."

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Representative Ortiz asked whether independent pharmacists viewed passage of HB 240 as essential for the survival of their businesses into the future. Dr. Christensen responded affirmatively. He emphasized that passage of the bill was the associations top legislative priority.

Representative Wilson thought Dr. Christensen had mentioned regulating and registering PBMs. She did not view the bill as regulating PBMs. She wondered whether he meant to say registering and if the bill did regulate PBMs in any manner she wanted to know how. Dr. Christensen responded that he meant registering and did not advocate for the regulation of PBMs but wanted set guidelines for audits and transparency for generic drug pricing.

Representative Ortiz mentioned that the number of independent pharmacists were declining. He asked whether the potential negative impacts of losing access to pharmacies in rural Alaska would be greater than in urban areas. Dr. Christensen replied in the affirmative and stressed that in rural areas pharmacists were relied on for healthcare advice and services like flu shots.

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SCOTT WATTS, RON'S APOTHECARY, JUNEAU, spoke in favor of the legislation. He agreed with the previous speaker that the bill was a top priority for independent community pharmacies around the state. The bill established sideboards to help the pharmacist "survive." He brought up the mail order provision and the fact that many contracts prohibited community pharmacist from sending prescriptions within the state via mail or small commuter airlines. He applauded the state for allowing the practice but noted that hundreds of other contracts prohibited shipping and the bill standardized allowing the practice. He moved to

the MAC pricing issue and voiced that the pharmacies were being reimbursed below the purchase price, which represented a straight loss to the small pharmacy. He alerted that in October 2017, Caremark PBM severely decreased its maximum allowable costs, which represented most of the pharmacies business and resulted in the loss of thousands of dollars in revenue each month. He shared that the administration heard their request for help, but corrective action moved slowly, and pharmacies continued to lose money. He pointed out that PBMs lacked an appropriate appeals process for pharmacies to dispute incorrect MAC prices and obtain proper payment. He reported that effective January 10, 2018 CVS instituted major price increases on 1,590 generic product identifiers that reflected their current understanding of the market conditions but currently, there was no appeals process for the four months of reduced pricing and reimbursement. He added that the pharmacists did not know they were losing money on a prescription due to the point of sale system and only had two options to either fill the prescription and lose money or turn the patient away. HB 240 would provide an appeals process. He offered that he had followed up with the PBM and sent 500 hundred appeals. Currently only three price adjustments were made. The PBM representative informed Mr. Watt's that the adjustments were not retroactive. He requested information on how to purchase the drugs with the new pricing and was told that the information was only given to pharmacies in states that had a law requiring pricing information distribution, which precluded Alaska. He believed that if the PBMs operated fairly the laws would be unnecessary. He argued for a level playing field and voiced that pharmacists needed fair standards. He thanked the committee for its support.

Representative Wilson did not understand the appeals process. She asked if the appeals process would award adjustments if the pharmacist could prove they were underpaid. Dr. Watts answered in the affirmative. He offered that the appeals process allowed the pharmacist to show that they could not purchase the medication below the maximum allowable cost, but if the PBM had data countering that the drug was available in the state under the MAC price then the price stood, and the pharmacist would need to find out how to obtain the drug at a lower cost. Representative Wilson asked if a third party adjudicated the appeals process. Mr. Watt responded that if the initial

appeals process was rejected the third party would adjudicate.

Representative Kawasaki referred to page 6, subsection (a), subsection (b), and subsection (C) of the bill that described the multi-source drug appeals process. He read directly from page 6, line 22, subsection (c) of the bill:

(c) A pharmacy benefits manager shall grant a network pharmacy's appeal if an equivalent multi-source generic drug is not available at a price at or below the pharmacy benefits manager's list price from at least one of the network pharmacy's contracted wholesalers who operate in the state. If an appeal is granted, the pharmacy benefits manager shall adjust the reimbursement of the network pharmacy to equal the pharmacy acquisition cost for each paid claim included in the appeal.

Representative Kawasaki asked who the network pharmacy's contracted wholesalers in the state were. He surmised that the word shall mandated an appeal regardless of the circumstances. He asked for Mr. Watts to comment. Dr. Watts answered that a contracted wholesaler was a drug wholesaler with the ability to sell within the state of Alaska. Representative Kawasaki asked if there were many wholesalers in the state. Mr. Watts responded that only one major wholesaler operating within the state and other wholesalers resided outside the state.

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Representative Kawasaki asked for further clarification about the word shall. Dr. Watts provided an example. He related that he had dispensed a medication with an \$88.00 loss. He submitted the appeal to the PBM stating that the MAC price was set too low for the Alaskan market. If the PBM determined that the drug was available in Alaska for at or below the MAC price he was not entitled to the adjustment. Representative Kawasaki asked how an independent pharmacy made money. Mr. Watts relayed that if he didn't have a pharmacy license he would not want to currently own a pharmacy. He stated that "it was not a good business model at this time." He hoped that he would be able to sell the medication above his purchase price.

Representative Guttenberg asked what other audit findings cost pharmacists money besides drug price differences. Dr. Watts responded that findings related to the correct days supply and clerical issues causing the PBM to "take back" the entire amount paid for the prescription when the error only related to one day.

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Representative Guttenberg asked for clarification. Mr. Watts answered that the PBM initially paid for the prescription, but the audit result called for recoupment of some of the funds, but the entire cost of the prescription was taken.

In response to a question by, Co-Chair Seaton, Mr. Watts restated the scenario that caused the recoupment of funds. He relayed that payment was made to the pharmacy for a filled prescription and after the audit, the money was recouped back to the PBM, but he did not know whether the money was returned to the plan. Co-Chair Seaton wanted to determine whether the PBM was acting as if no prescription was filled because they recouped the entire amount and the PBM "did not pay for the drug at all." He wondered what the PBM did with the funds and whether they repaid the plan and made any profit from the scenario.

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AT EASE

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RECONVENED

WILL WHITEHEAD, FOODLAND PHARMACY, JUNEAU, spoke in favor of the bill. He stated that HB 240 was not only about protecting Alaskan pharmacies but also shed light on how PBMs operated so the health care plans could make well informed decisions. He voiced that PBMs had no oversight and had a "conflict of interest" because they owned the mail order service; the PBM was administering and filling prescriptions under the plan. He provided an example. He had recently filled a prescription for a generic medication for an AlaskaCare member. The patient had a \$45.02 copay that represented 20 percent of what AlaskaCare paid for the prescription that totaled \$225.10. The pharmacy only received the copay amount and no other reimbursement amount. The pharmacy paid \$35.07, therefore the PBM made

\$180.08 and the pharmacy made \$9.95. He emphasized that the MAC price was set by the PBM and they could change or adjust it at any time. He stated that the PBMs manipulated the price to overcharge plans. He shared that he had filled the exact same prescription in the same day for one active state employee and one state retiree. The PBM "increased the MAC price on the active employee in order to get the copay amount up to the minimum level so they [PBM] could do this upcharge and spread."

Representative Pruitt asked why PBMs existed. Mr. Whitehead replied that the PBMs served an important role in a complex system. He expounded that the PBM negotiated rebates from the manufacturers for pharmacy networks because it would be difficult for insurance companies to negotiate with pharmacies individually.

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Representative Pruitt referred to an article [no source stated] that concluded that PBMs no longer served a purpose. He asked whether Mr. Whitehead felt PBMs still had a purpose. Mr. Whitehead indicated that PBMs were necessary for contracting purposes. Representative Pruitt related that a similar situation existed in other industries. He felt that the legislature was placed "in the middle of two separate entities that had almost a feud amongst themselves..." He asked whether there were aspects of the bill both sides agreed on. Mr. Whitehead was unable to answer for the PBMs. Representative Pruitt asked whether there had been an attempt to get the issue resolved without legislative intervention. Mr. Whitehead stated that the PBMs did not respond to requests for negotiations. Representative Pruitt maintained that he was not an expert on the issue and was expected to mediate the issue as a legislator. He wanted the two parties to work out the issues amongst themselves.

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LEIF HOLM, PHARMACY OWNER, CHAIR, BOARD OF PHARMACY, NORTH POLE (via teleconference), spoke in support of the legislation. He relayed that he owned a pharmacy and was the chair of the Board of Pharmacy in Alaska. He reported that he owned three pharmacies in Fairbanks and North Pole and expanded as a "telepharmacy" in a rural community. He voiced that he was testifying from two positions: as an

independent community pharmacy owner and board chair. He hoped that the telepharmacy model would extend pharmacy services to underserved rural communities. However, current PBM practices threatened the model and the existing community pharmacies all over Alaska. He felt that the legislation was not complex but how PBMs operated and its affect on pharmacies was complicated. He recounted that the bill provided for fair audit practices and took steps in creating a pricing structure that was more transparent and favorable to the pharmacists' purchase price. He believed that the bill would curb negative reimbursements that devastated community pharmacies. In addition, the bill created a fairer reimbursement process that called for an independent third-party review. He turned to his role as the pharmacy board chair. He relayed that the board's mission was to provide for the safety of Alaskans regarding medications. The PBM's activities threatened access to patient care if community pharmacies could not sustain themselves due to the control the PBMs exert over them. He was uncertain that his telepharmacy could remain open for a year. He addressed previous comments he had heard during the meeting. He emphasized that there was no opportunity for contract negotiations with PBMS, appeals were typically 99 percent denied, and pricing lacked transparency. He dealt with many reputable wholesalers and could not find a price that met the reimbursable amount, which was time consuming. He reiterated that the bill did not interfere with finding fraud. He reported that the state spent \$250 million on medications and included the costs for the mail order pharmacy prescriptions owned by the PBMs. He stressed that most of the millions paid to the PBMs were located out of state. He commented that he still had many difficulties with the state's plan. He declared that no other business was expected to sell products at the same price paid for it. He related a situation where he purchased a medication for \$29,000 made \$50 on the transaction and waited weeks for payment. He mentioned receiving negative reimbursements. He believed the model was flawed and "completely unsustainable." He thanked members for their support of the bill.

Representative Wilson asked whether PBMs were always able to fill prescriptions or if the practice evolved over time. Dr. Holm reported that the practice evolved over time. Representative Wilson asked whether the pharmacy board had reached out to the PBMs within in the parameters allowed. Dr. Holm responded in the negative and added that

reimbursements were not addressed by the board. He communicated the board was concerned over patient access impacts related to PBM practices.

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Co-Chair Seaton queried whether posting the MAC prices daily would mitigate some issues. Dr. Holm responded that the listing would be beneficial. He reported that generic drug prices often took dramatic swings overnight and that "any transparency would help." Co-Chair Seaton asked whether prohibiting PBMs from the mail order business would alleviate the pricing problems. Dr. Holm thought that would be difficult to legislate because PBM mail order business had become a "juggernaut". He noted that mail order pharmacies do not work well in Alaska. Many of his customers were either getting too much or not enough of their medication and it lacked responsiveness to patients needs. He shared that many of his customers would prefer to deal with the community pharmacy, but the insurance companies prohibited the pharmacies from sending out prescriptions.

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Co-Chair Foster OPENED Public Testimony.

[3:36:05 PM](#)

ALLIEJO SHIPMAN, National Community Pharmacy Association, WASHINGTON DC (via teleconference), stated the association strongly supported the legislation. She read from a prepared statement:

Good afternoon Mr. Chairman and members of the committee.

My name is Allie Jo Shipman, and I am speaking on behalf of the National Community Pharmacists Association in strong support of House Bill 240. NCPA represents the interests of America's community pharmacists, including the owners of more than 22,000 independent community pharmacies across the United States and in Alaska. NCPA has long championed the need for greater oversight of pharmacy benefits managers (PBMs) and many of their questionable

business practices due to the problems our members and their patients encounter.

While there is a wealth of information I could provide in support of the provisions included in House Bill 240, my testimony today will focus on information related to the fiscal impact of the bill on the state.

The PBM industry continues to claim that requiring greater transparency and reporting of generic drug prices will result in increased costs to the state and the overall healthcare system. NCPA asserts that reporting of such information would not increase costs, and we offer the following information from independent and reputable sources as support:

The U.S. Center for Medicare and Medicaid Services, or CMS, has said the following about generic drug pricing transparency:

- "Updating maximum allowable cost prices for drugs at least every 7 days generally should have a downward pressure on overall drug costs."

- "We [CMS] do not agree with the commenters that the requirement will necessarily increase costs"

Consumers Union has said the following:

- "Audits and industry analysts have found some PBMs pocketing 50 percent or more of the price difference between what the PBM actually pays a pharmacy for prescriptions and what they charge their clients - the employer and consumer."

- "...today's complex and opaque contract arrangements and pricing spreads increase costs to employers and health plan enrollees and can lead to formulary designs that inappropriately incentivize consumers toward or away from certain medication choices."

The U.S. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center of Health Statistics, has said the following:

- "Approximately 10 percent of our nation's health spending is for outpatient prescription drugs and clear, transparent information about clinical effectiveness and pricing are paramount in ensuring that we spend this money wisely. But ... the opaque business practices that are commonplace in the PBM industry can result in unfair arrangements between employers and PBMs. Lacking a ready ability to audit these business practices, the arrangements can drive

up costs for both employers and consumers and has the potential to put the wrong prescription drugs into consumers' hands."

None of these comments are pharmacy funded or biased, yet all conclude that increasing transparency for generic drug pricing or contracting would NOT result in a cost increase, but instead that the current non-transparent system is resulting in millions of dollars blindly going to PBMs.

Also, to our knowledge, none of the 34 states that have already enacted similar legislation have reported a negative fiscal impact or repealed the law due to costs. In fact, several of those states have decided to STRENGTHEN provisions in the laws they already have.

In conclusion, we believe House Bill 240 would not drive up costs for the state. We believe it would simply allow for a reasonable degree of transparency and reporting so that Alaska's small business owners and health care providers have access to pricing lists that accurately reflect current marketplace figures.

Thank you.

Representative Pruitt restated his question regarding whether there were provisions in the legislation that the association and the PBMs could agree on. Ms. Shipman related that the drastic price reductions that Alaskan pharmacist had previously alluded to happened in most other states. When the association attempted to contact the PBMs in response to the price incident or any other they did not receive a response. She reported that the association had worked with the Centers for Medicare & Medicaid Services (CMS); who required a MAC pricing update every seven days for Medicare. She commented that it was often difficult to reach PBMs on a national level but stated that it was sometimes possible on a state to state level.

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Representative Pruitt deemed that the bill was before the committee because of unreconcilable differences. He asked whether PBMs would come to an agreement or compromise on issues addressed in the bill now that the problems were being discussed in the legislative arena. Ms. Shipman answered that she could not speak to conversations or negotiations between Alaska pharmacies and PDMs. She

believed the question would be better directed to ACPA. She had not been part of the conversation in Alaska. She was aware that her experience in other states was that once a bill was introduced PBMs were more willing to find negotiated compromises.

Representative Wilson asked whether the association was more concerned that PDMs were making too much money or if the issue was transparency. Ms. Shipman replied that the issue related to fairness. She offered that pharmacists engaged in good business practices by purchasing drugs at the lowest possible cost. The inadequate reimbursement practices led to an unsustainable business model for pharmacists. She concluded that the issue was about transparency, fairness, and creating a level playing field for pharmacists. Representative Wilson surmised that Ms. Shipman accepted the PBMs making huge profits providing the pharmacist knew the reimbursement costs and recouped profit. She asked if a pricing list was published and a fair audit and appeals process was established, the two requirements would be "game changers." Ms. Shipman could not speak to the level of profits that PBMs made. She communicated that she wanted to ensure that the provisions in the bill resulted in the pharmacies receiving fair treatment.

[3:46:45 PM](#)

RICHARD PONESSE, SENIOR DIRECTOR, FINANCE GROUP, CVS CAREMARK, PHOENIX (via teleconference), related that had been in the business for over 25 years. He asserted that PBMs were an "important part of the healthcare delivery system," lowered net plan costs, assisted private, state, and federal employer's affordable healthcare, and provided coverage for as many people as possible. He believed that PBMs delivered "the lowest net plan costs with the best health outcomes." He argued that PBM's played an important aspect in the delivery of drugs through drug utilization review programs. He contended that the independent pharmacies were critical to PBMs by adding enough pharmacies to the network to provide services to the plans members. He indicated that he oversaw the entire CVS MAC team and was not afraid of fair MAC laws that addressed some of the issues. He purported that some PBMs "did not always play by the rules." He was concerned when there were certain provisions in MAC bills that would increase costs. He was not in favor of third party involvement in the

appeals process or granting an award if a pharmacist can prove the reimbursement price was lower than an obtainable purchase price. He had heard from pharmacists that there was only one major wholesaler in Alaska, He believed that such a law would drive up wholesale drug prices across the board. He shared that major wholesalers frequently operated using several different wholesaler price lists. He maintained that it was "impossible" for PBMs to know all the wholesale prices. He used his industry knowledge and information provided by wholesalers to set MAC prices at a reasonable reimbursement rate to provide the lowest net plan cost and a profit for pharmacies. He explained that MAC Lists existed because when a drug's patent expired multiple manufacturers entered the market and charged different prices for the same drug. The MAC pricing structure was created to establish the best buying practices across the industry. He averred that he should not be forced to raise reimbursement rates, impacting plan costs because one pharmacist was not able to purchase drugs "as aggressively" as possible. He agreed that PBMs were not without fault. He did not disagree with every MAC law. He reiterated that he supported fair MAC laws and was always in compliance with the laws. He opposed certain provisions that increased reimbursement rates based on pharmacists' drug invoices. He maintained that pharmacist received rebates from wholesalers. He relayed that manufacturers' pricing varied with pharmacies pricing method preferences. He announced that there was not a monolithic price list that showed what everyone paid for a drug within the industry. He was aware the industry was complex and no one law could address the issue. He contended that the provision would increase costs.

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Representative Wilson was glad Mr. Ponesse was prepared to work with pharmacists. She inferred from his testimony that he would willingly provide a drug list. Mr. Ponesse responded that he already provided the MAC list via a portal that any pharmacist could access and find the reimbursement rates. Representative Wilson assumed that the list was kept current daily. Mr. Ponesse replied in the affirmative and stated that he changed his MAC list weekly. He also had a portal for the appeals process. Representative Wilson asked whether the "audit procedures and penalty matrix" was the same for every pharmacy. Mr. Ponesse was not an expert on audits and could not answer

the question. Representative Wilson asked for follow up on the question. She requested information on the number of appeals received and how many were granted. Mr. Ponesse agreed to provide the answers.

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Representative Ortiz referred to Mr. Ponesse's testimony in support of independent pharmacies. He cited testimony that reported the significant decrease in independent pharmacies and noted that the pharmacists supported the bill as a partial anecdote to the decline. He asked whether he disagreed that the bill could mitigate some of the pharmacist's problems or was he aware of other reasons for the decline in independent pharmacies. Mr. Ponesse was not familiar with the data and did not know if the information regarding the decrease in pharmacies was accurate. He had current data that showed an increase in independent pharmacies in his network over the last 7 years and other data to suggest that the number of independent pharmacies had grown in other states. Representative Ortiz asked Mr. Ponesse to point out the specific points he disagreed with in HB 240. Mr. Ponesse responded that he disagreed with the provisions relating to the appeals process and setting up an independent board that overruled the appeal denial based on a pharmacist's invoice that showed insufficient cost recovery. He believed that the provisions increased plan costs and incentivized wholesalers to increase their costs.

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Representative Pruitt wanted to better understand Mr. Ponesse's testimony. He reiterated his question regarding both sides finding agreement on some provisions in the bill. He surmised that Mr. Ponesse thought that certain aspects of the bill went "too far." Mr. Ponesse responded in the affirmative. He supported legislation that required PBMs to operate on a level playing field, allowed pharmacists to see pricing before a claim was adjudicated, and to respond to an appeal within a certain number of days. He opposed provisions that he was certain would increase costs. Representative Pruitt asked whether he had spoken with a representative for the independent Alaskan pharmacists and discussed the issues. Mr. Ponesse responded in the negative. Representative Pruitt thought there was still an opportunity for the parties to come to an agreement. He was concerned about the pharmacists'

testimony regarding a lack of appeals process. He wondered if he or someone else from CVS could help address and remedy the appeals issue. Mr. Ponesse agreed to ask the CVS retail network staff and auditors to talk with the independent pharmacists to access the issues and try to address the audit provisions in a manner that worked for both parties.

[4:02:32 PM](#)

Representative Guttenberg had heard pharmacist testimony relating that PBMs did not offer phone representatives to help address the pharmacists' concerns. He asked if Mr. Ponesse was aware of the issue. Mr. Ponesse answered in the affirmative and added that CVS could not address the issues in such a manner nor handle the volume of calls. Representative Guttenberg asked whether Mr. Ponesse thought that offering phone assistance might have solved the problems. Mr. Ponesse responded in the negative.

Representative Ortiz referred to slide 12 that highlighted states that adopted fair pharmacy audit legislation and reported that most of the states were represented. He suggested that HB 240 was similar to legislation other states had adopted. He wondered whether PBMs had been negatively impacted by the legislation adopted in other states. Mr. Ponesse was unable to answer the question.

[4:05:34 PM](#)

JUSTIN RUFFRIDGE, PHARMACIST, SOLDOTNA PROFESSIONAL PHARMACY, SOLDOTNA (via teleconference), supported the legislation. He stated that he owned a pharmacy in Soldotna and the Juneau Drug Company. He wanted to respond to some of the testimony that he had heard from Mr. Ponesse. He compared the process of pharmacists calling PBMs to patients trying to find problem resolution via phone calls to their health insurance company but occurring daily multiple times each day. He declared that pharmacists were not offered access to the PBMs. He emphasized that the issues were "not a disagreement between equal parties." The small pharmacists were "in a take it or leave it agreements" with the PBMs. He stressed that the issues would not exist today nor would the necessity for legislation if the parties were equal and issues were addressed by the PBMs. He voiced that "in so many ways the pharmacists have become the subservient parties in the

negotiations." He referred to Mr. Ponesse's statement regarding PBMs reviewing clinical outcomes and he "had never seen that happen." He declared that pharmacists addressed clinical outcomes every day. He reported that he helped people daily with a variety of health issues from hospice care to asthma. He only wanted fair and transparent cooperation with PBMs. He stated that costs did not increase in other states that enacted similar legislation and wondered why legislation was necessary to access price information. He believed that competition created lower prices and not artificially created MAC pricing that completely controlled the system. He did not feel the situation was the proper way to provide medicine for the country. He turned to his prepared testimony. He currently had worked in the state for 10 years after graduating from college and returning home. He believed that independent pharmacists were unique and "wanted to be an integral part of their communities." He listed all the ways the pharmacists serve their communities in their jobs and through volunteer efforts. He voiced that "pharmacy had always been about community." However, the independent pharmacists "new normal" was spending more time on audits and "worrying whether they could stay in business." He relayed that the PBMs "incessantly" send notices and requests to pharmacies and in the current week, he had sent 60 pages of audits to three PBMs. He acknowledged that audits played an important role in discovering fraud and that there were bad actors. He emphasized that the pharmacists that testified were not the ones committing fraud and abuse. The pharmacists were asking for transparency and fairness in the process. Audits were necessary and a structure for how, why, and when they occurred was also imperative. He reported that PBMs often used audits to question "high dollar claims." He relayed from his experience receiving an audit request that went back 3 years. The PBM flagged 20 prescriptions out of 1,000 and all were claims for medications costing greater than \$1,500. He thought the incident exemplified that the audits were not "fair or random." He shared that the CVS portal for MAC pricing required a lot of information input before the price was revealed. He emphasized that despite the MAC price he dispensed the medicine because he wanted to help people. He commented that the legislation allowed pharmacies to appeal prices that were below their acquisition prices and created a method to balance the scale. No one knew how the MAC prices were generated and they were not "based on reality." He believed the PBMs

applied "pressure" on the independent pharmacists and used MAC pricing as a tool. Most PBMs currently offer nationwide prescription distribution in the form of large centrally located mail order pharmacies. However, the service was not comparable to the service community pharmacies provided. He stressed that losing local pharmacies was bad for the state's economy and the communities they serve. He urged members to put the legislation in place to protect local pharmacies, encourage fair and just audit practices, and enforce transparency in the pricing of medication.

[4:14:04 PM](#)

Representative Wilson deduced that the larger issue was the pharmacy not being reimbursed for at least the cost of the medication due to lack of access to lower prices. Dr. Ruffridge responded in the affirmative. He offered that it would be "absurd" for pharmacists to purchase drugs at their highest price; they always sought the lowest prices. He commented that when he used the portal to find a reimbursement cost and it was lower than his purchase price he still dispensed the medication and "he did it all day, every day." He reported that 19 percent of the medications he dispensed did not return his costs. He reiterated that his appeals were left completely unanswered. He was discouraged by the situation. In response to Mr. Ponesse's testimony he pointed out that the bill was not about just producing one invoice and demanding more reimbursement. He interpreted the provision as gaining information regarding where he could purchase the drugs at a lower cost. He emphasized that pharmacists did not want to raise the cost of health care. He reiterated that it was impossible to determine where the MAC pricing came from.

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Representative Wilson was trying to understand if PBMs were able to get prescriptions to Alaskans at lower costs through mail order. Dr. Ruffridge answered that it was an excellent question. He characterized drug pricing as a "mess." In some cases, PBMs that operated a large centrally located mail order pharmacy would "in appearance" offer medications at a lower cost to incentivize the use of the mail order pharmacy; PBMs charged a higher copay if the patient used a retail pharmacy. However, the cost of the medication did not change because they were purchased from wholesalers of PBMs that had shareholder stakes in

wholesaler companies with a few exceptions. The acquisition of drugs came from wholesalers who might offer a large PBM a slightly lower rate but would not offer the rate to smaller pharmacies. The PBM's profit margin came from the discount rates. He referenced articles in the New York Times, Washington Post, and other outlets that delineated how PBMs profited.

[4:19:42 PM](#)

DIRK WHITE, PHARMACIST, SITKA (via teleconference), spoke in support of the bill. He shared that he and his wife were both pharmacists in Sitka and employed 30 people between two pharmacies. He previously served two terms on the Board of Pharmacy, one as Chairman. Their son was currently in pharmacy school. He relayed that many states had passed similar legislation and subsequently "tightened up" the statute. He surmised that if there had been increases in health and prescription costs the legislation would be modified instead of tightened. He mentioned the MAC reimbursement rate. Alaska was unique because pharmacists paid air freight for their drug deliveries versus pharmacies in the contiguous states that received same day ground deliver. The Alaskan pharmacists were carrying more inventory and paying more freight costs not factored into their reimbursement costs. He spoke to member's calls for negotiations. He relayed that in a prior year numerous lengthy teleconference discussions took place between PBMs and pharmacists related to an audit bill. The pharmacists thought agreement had been reached but ultimately, none of the PBMs had changed their position on the bill and they were all against it. The conversations had been unproductive.

Mr. White continued that the pharmacies were required to reimburse prescriptions that were not picked up. He put the inventory back on the shelf and the payment was reimbursed. He shared that three weeks earlier he received a statement from the PBM where they had taken back the copay from the returned inventory, which the patient never paid. The pharmacy technician spent 6 hours on the phone dealing with the PBM over the issue. He emphasized that registration, standardized rules, transparency, and fair reimbursement practices were necessary to create a level playing field, so he can remain in business and pay his employees. He shared that he paid \$12 thousand per month to provide health care benefits for his employees. He spoke in

support for the Division of Insurance to be an arbiter so the pharmacist "had someone to turn to that could be our ombudsman" when dealing with the "nebulous" corporations that "turn a deaf ear" to the pharmacists needs.

[4:25:53 PM](#)

JERRY BROWN, SELF, FAIRBANKS (via teleconference), was speaking on behalf of his wife, Nancy Brown. He shared that they owned the Medical Center Pharmacy in Fairbanks and had been in the industry for 40 years. He relayed that in the 1970's only about 30 percent of insurers covered prescription drugs and currently 95 percent of insurance provided coverage. He voiced that drug costs were approximately 10 percent of the total health care dollars spent and last year total drug costs totaled \$260 million. He reported that the plan sponsor only received a small percent of the rebate and the PBMs kept the remainder possibly up to 35 percent or more of the total cost. The bill aimed at bringing transparency to the situation. He shared that his pharmacy lost over \$33 thousand in negative reimbursements or 25.5 percent of all claims he submitted. He reported that the chain pharmacies were experiencing the same issues but sold large volumes of other items. He stated that the issue was vital to the survival of his small pharmacy. He received between \$0.25 and \$1. in dispensing fees. His business was barely keeping up with the costs of medication. He commented that if he went to a bank with financials showing that 25 percent of the time he made no profit or had negative reimbursements the banker would asked, "Why be in business?" The PBMs were some of the top corporations in the nation. They were not hurting for profit. He quoted that PBMs paid their CEOs \$9 million to \$66 million in bonuses in 2017. He suggested that the profit came from rebates that operated in a Blackbox and a "pay to play" scenario for the drug companies for preferential treatment. He found the system "fundamentally wrong" and that drugs should be chosen because it was in the best interest of the patient not the PBM. He cited Mr. Ponesse's testimony regarding lowering costs to the sponsor. He argued that PBMs had a conflict: they owned the mail order pharmacies. He informed committee members that many state employee plans included a provision that only allowed two Alaskan pharmacy visits, after that the plan would not reimburse or cover the medication from an Alaskan pharmacy. The beneficiary must use the mail order pharmacy to obtain coverage. He noted several states where the mail

order companies were located who profited from the Alaskan plans. He characterized the PBMs mail order business and contract provision as "double dipping" and unfair. The issue was not address in the current bill.

Mr. Brown continued by relating contract issues between pharmacies an PBMs. He communicated that previously the contracts were long detailed documents. He recently received a contract that was "boiled down to one paragraph." He paraphrased that the pharmacist was asked to disregard previous contracts and included language stating that the insurer established the rules, set the reimbursement prices, and the prices could change at any time without notification. He agreed that the contract was a take it or leave it contract. He wondered how the MAC prices were established and speculated they were using data from the lowest priced drugs in the country; VA pharmacies, the federal Department of Defense, chain pharmacies, Indian Health, etc. The MAC prices he received were anywhere from ten cents to fifty cents on the dollar of his purchase price. He delineated that if his cost was \$100 the MAC was \$50. He countered that he never saw a MAC price list and was never told how they developed the prices. He emphasized that the PBMs were not held accountable for an explanation on how they derived the MAC pricing. His appeals were answered by a terse statement that he read: "Price remains on CVS health review of current market price range." He had submitted over 240 appeals in the last four months, and he had not received one change resulting from those appeals; the adjustment still resulted in a negative balance. He noted the difficulty in recouping the lost revenue and expressed much dissatisfaction with MAC pricing and lack of transparency. He referred to the updated MAC list released on January 10, 2018 that was actually released in February with only two adjusted prices and more recent MAC pricing, which only reverted to the June 2017 level, before the MAC pricing took a dramatic drop for four months. He wanted transparency in the process. He maintained that Alaskan retail pharmacies were subsidizing the PBMs who were extremely profitable. He reported that his pharmacy had a loss for every 1 in 4 prescriptions.

Co-Chair Foster invited testifiers to submit written testimony.

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BILL HEAD, PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION, WASHINGTON DC (via teleconference), wanted to clarify "what PBMs do." He maintained that PBMs do not purchase, store, or distribute drugs nor set drug prices. He voiced that PBMs serviced health plans that included employers, unions, government plans, and Medicare Part B. He explained that the health plan determined the benefit package. The contract between the health plan and the PBM was "completely transparent" to the plan. The PBM was audited by the plan to determine whether it was abiding by the terms of the contract. The terms of the contract always required PBMS to conduct audits. He indicated that the current state RPF (request for proposal) called for a "robust fraud and abuse program." The rebates from the manufacturer and savings from fraud detection went to the employer resulting in lower premiums and copays. He pointed out that the cost of prescription drugs had risen dramatically since 2007; a 6 percent to 8 percent increase per year. The PBMs had limited the increase for the plans by 2 percent to 4 percent. He expressed interest in participating in negotiations between the stakeholders. The association had negotiated MAC and audit bills in 40 states. The Alaska bill was unique. He argued that it was disingenuous to say that the bill had guidelines and not regulations. There had not been an audit program that placed the arbiter position in the Division of Insurance. He believed that legitimate concerns were expressed. He countered that transparency lead to collusion and anti-competitive behavior. He relayed that the Federal Trade Commission (FTC) concluded that transparency risked increasing costs for health plans.

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Representative Wilson asked if the incentives were reimbursed to the insurance companies. Mr. Head responded that what was done with the money was decided by the health plan that audited the PBM; the money could not be hidden or misdirected. Representative Wilson asked why they would not want 100 percent refunded. Mr. Head replied that the reasons varied by plan and often benefitted the plans health premium. Representative Wilson asked if he thought the Alaskan pharmacists "had concerns over nothing." Mr. Head apologized if he implied that. He stated that regarding MAC pricing "you can't just pay every pharmacy what they would like to get reimbursed... PBMs were just the servicer for the client..." and indicated that plans costs

would increase. He reiterated that CVS issued a MAC price list every 7 days. He restated that PBMs needed Alaskan pharmacies in the network. Representative Wilson thought it was "pretty disrespectful" to state that Alaskan pharmacists "would take as much as they wanted" when they were merely asking for fair reimbursement. She favored his willingness to negotiate. She requested that he forward information detailing what provisions he favored or opposed in the bill.

[4:52:50 PM](#)

TOM WADSWORTH, SELF, EAGLE RIVER (via teleconference), spoke in favor of the legislation. He relayed that he was the assistant dean for the University of Alaska Anchorage (UAA) Doctor of Pharmacy program and emphasized that he was speaking on his own behalf. He thought similar bills had come before the legislature at least 4 times prior to HB 240. He agreed with all the concerns expressed by the previous pharmacist's testimony. He knew all the previous testifiers and shared that they were stellar members of their communities and "ran competent and caring" community pharmacies. He reported that UAA's pharmacy program was new and in 2020 the first graduating class of 5 pharmacists would be the first Alaskan pharmacist raised and educated in the state. He wanted to graduate competent and caring Alaskan pharmacist that would serve rural and underserved communities in the state. He stressed that due to the current reimbursement policies independent pharmacies were breathing their "last gasps" and would be extinct very soon. He referred to Mr. Ponesse's testimony and speculated that CVS was hoping the legislature would "kick the can down the road" for another year and was not genuinely interested in transparency. He believed that PBMs do serve a purpose, but "it was not hard to see... who was getting fat and who was starving..." He believed the bill was long overdue. He reiterated his support of the legislation.

[4:57:34 PM](#)

Co-Chair Foster indicated he would keep public testimony open. He relayed that the committee was waiting for the actuarial analysis from DOA and its fiscal note would be updated.

[4:58:37 PM](#)

HB 240 was HEARD and HELD in committee for further consideration.

Co-Chair Foster reviewed the agenda for the following day.

#

ADJOURNMENT

5:00:01 PM

The meeting was adjourned at 5:00 p.m.