

SENATE FINANCE COMMITTEE

April 20, 2018

9:12 a.m.

[9:12:47 AM](#)

CALL TO ORDER

Co-Chair MacKinnon called the Senate Finance Committee meeting to order at 9:12 a.m.

MEMBERS PRESENT

Senator Lyman Hoffman, Co-Chair
Senator Anna MacKinnon, Co-Chair
Senator Click Bishop, Vice-Chair
Senator Peter Micciche
Senator Donny Olson
Senator Gary Stevens
Senator Natasha von Imhof

MEMBERS ABSENT

None

ALSO PRESENT

Representative David Guttenberg, Sponsor; Seth Whitten, Staff, Representative David Guttenberg; Cindy Laubacher, Express Scripts, Juneau; Michelle Vaughn, President, Alaska Pharmacists Association, Juneau; Scott Watts, Ron's Apothecary, Juneau; Barbara Huff Tuckness, Teamsters, Juneau; Jason Tapley, Self, Juneau; Lori Morton, Self, Juneau; Lori Wing-Heier, Director, Division of Insurance, Department of Commerce, Community and Economic Development.

PRESENT VIA TELECONFERENCE

Barry Christensen, Alaska Pharmacists Association, Ketchikan; Leif Holm, Vice Chair, State Board of Pharmacy, North Pole; Bill Head, Pharmaceutical Care Management Association, California; Richard Holt, Chair, Alaska Board of Pharmacy, Fairbanks; Sue Seggerman, Self, Soldotna; Barry Christensen, Alaska Pharmacists Association, Ketchikan; Catherine Kowalski, Self, Petersburg; Jerry Brown, Self, Fairbanks; Tom Hodel, Alaska Pharmacists

Association, Soldotna; Tom Wadsworth, Pharmacist, Wasilla; Justin Ruffridge, Self, Soldotna.

SUMMARY

CSHB 240 (FIN)

DRUG PRICING; PHARMACY BENEFITS MANAGERS

CSHB 240 (FIN) was REPORTED out of committee with a "do pass" recommendation and with one Statement of Zero Fiscal Impact by the Office of the Governor for the Department of Administration and the Department of Commerce, Community and Economic Development.

Co-Chair MacKinnon informed that Senator Micciche was on other state business in another committee.

#hb240

CS FOR HOUSE BILL NO. 240 (FIN)

"An Act relating to prescription prices available to consumers; relating to penalties for certain pharmacy or pharmacist violations; 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."

9:13:21 AM

Co-Chair MacKinnon read the title of the bill.

REPRESENTATIVE DAVID GUTTENBERG, SPONSOR, explained that the bill would drive down the cost of prescription drug prices. He said that the bill would create a fair and equitable process for pharmacists to appeal in disagreements with pharmaceutical drug managers. He stated that the bill worked to ensure that communities had access to local pharmacies.

Senator Olson noted that Alaska had one of the highest healthcare costs in the nation and the price of medications was a significant driver. He thought the bill was admirable. He considered that pharmaceutical companies were

bearing the cost of developing medication. He thought that drug research and the development of new drugs was an important factor to consider. He mentioned drug-resistant diseases. He asked for the sponsor's comment on the issue.

Representative Guttenberg asserted that the world of medical delivery in the country was complex and costly; Alaska was the most expensive state for medical care in the country with the highest medical costs in the world. He wanted to ensure that every entity could make a living and get a return on the dollar. He believed that the bill focused on a fair process. He said that the bill focused on streamlining medical delivery.

[9:17:19 AM](#)

SETH WHITTEN, STAFF, REPRESENTATIVE DAVID GUTTENBERG, discussed the Sectional Analysis (copy on file):

Section 1. Prohibits contracts from establishing 'gag clauses' that prevent providers from informing a patient of a less costly alternative for a prescription drug, device, or supply.

Section 2. Requires pharmacists to notify a patient if a less costly alternative for a prescription drug, device or supply is available.

Sections 3 and 4. Establish that a pharmacist who knowingly fails to notify a patient of a less costly alternative for a prescription drug, device or supply may be punished by a civil fine set by the Alaska Board of Pharmacy.

Section 5.: Adds a new section, Article 10, concerning Pharmacy Benefits Managers.

** PBM means "pharmacy benefit manager" in this sectional

Sec. 21.27 .901. Registry of pharmacy benefit managers; scope of business practice. Requires that PBMs register as third-party administrators under 21.27.630 and describes the parameters under which they may contract with an insurer or network pharmacies, set the cost of multi-source generic drugs and allows for an appeal process.

Sec. 21.27.905. Renewal of registration. Establishes a bi-annual renewal of a registration fee for a PBM as set by the director.

Sec. 21.27.910. Pharmacy audit procedural requirements. Describes the procedural and time requirements required of the PBMs for an audit and defines who conducts an audit and what records can may be provided by the pharmacy.

Sec. 21.27.915. Overpayment or underpayment. Indicates that a PBM shall base a finding of overpayment or underpayment on the actual payment and not a projection of patients served by similar circumstances. It also designates the dispensing fee limitations.

Sec. 21.27.920. Recoupment. Establishes how a PBM shall base the recoupment of overpayments from a pharmacy. It prohibits extrapolation to calculate recoupment or penalties.

Sec. 21.27.925. Pharmacy audit reports. Establishes time frames for when preliminary and final audit reports shall be delivered to a pharmacy and the response time for any discrepancies found in the audits.

Sec. 21.27.930. Pharmacy audit appeal; future repayment. A written appeals process shall be established by a pharmacy benefits manager. It also states that future repayment of disputed funds or other penalties imposed on a pharmacy shall occur only when all appeals have been exhausted.

Sec. 21.27.935. Fraudulent activity. Defines what may not be considered fraud by the PBM. Defines "fraudulent activity."

Sec. 21.27.940. Pharmacy audits; restrictions. Adopts restrictions on the requirements of the entire Section 1 when applied to an audit in which intentional or suspected fraud is demonstrated in a review of the claims data. In addition, the requirements do not apply to any claims paid for under the medical assistance program (Medicaid) found in AS 47.07.

Sec. 21.27.945. Drug pricing list; procedural requirements. The methodology and sources used to determine the drug pricing list (the "MAC" list) will be provided to each network pharmacy at the beginning of their contract term and updated weekly by the PBM. Basic contact information shall also be provided by the PBM.

Sec. 21.27.950. Multi-source generic drug appeal. Establishes a process by which a network pharmacy may appeal the reimbursement for a multi-source generic drug and procedures if their appeal is denied. It also sets the limitations on the PBM and the insurance division director as to how many days they have to resolve an appeal or a request for review.

Sec. 21.27.955. Definitions. Defines all selective wording as used in Section 5.

Section 6. Adds a new section on Applicability as it applies to audits of pharmacies as conducted by PBMs.

Section 7. Adds a new section granting authority to Division of Insurance for adopting regulations.

Section 8. Adds a new section stating the Reviser's instructions for statute reference changes.

Section 9. Effective date clause for Bill section 7 is immediate.

Section 6. Effective date clause for this Act is July 1, 2019.

[9:20:56 AM](#)

Co-Chair MacKinnon reminded the committee that it had heard the companion bill in committee.

Senator Stevens asked for clarification about the "gag clause". He wondered why it existed and how it was enforced.

Mr. Whitten referenced Sections 1 through 4 on pages 1 and 2, of the bill. He said that the intention of the provision was to simplify the pharmacist's procedures and allow the patient to receive the lowest cost for their prescription.

[9:22:56 AM](#)

Co-Chair MacKinnon stated that currently pharmacy benefit managers engaged in contracts with individual pharmacists.

Mr. Whitten agreed.

Co-Chair MacKinnon thought some of the contracts had stipulation that medications would be found by lowest costs for patients.

Mr. Whitten answered in the affirmative.

Co-Chair MacKinnon asked whether the bill asked for the ability to allow pharmacists to inform recipients of lower prices.

Mr. Whitten answered in the affirmative. He qualified that if a patient could achieve a lower cost paying outside of their insurance, a pharmacist would notify them of that information.

[9:24:02 AM](#)

Senator Stevens surmised that there was a contractual arrangement between the pharmacy and the Pharmacy Benefit manager (PBM).

Mr. Whitten stated that there was a contractual issue between the two. He shared that he had heard from pharmacists that the contracts were non-negotiable and restricted patient information.

Representative Guttenberg stated that the bill would not negate the contracts but would strike the "gag order" from future contracts.

Co-Chair MacKinnon was sure that there would be pharmaceutical benefit managers that would testify as to why the clause was beneficial.

Senator Olson asked who enforced the gag order.

Representative Guttenberg stated that the gag order was a contractual obligation between the pharmacists and the PBM.

[9:26:05 AM](#)

Senator von Imhof looked at Page 4, line 18(f):

(f) A pharmacy benefits manager shall audit each pharmacy under the same 19 standards and parameters as other similarly situated pharmacies in a network 20 pharmacy contract in this state.

She wondered where the standards and parameters could be found.

Mr. Whitten deferred to the Division of Insurance but understood that the contracts were confidential.

Co-Chair MacKinnon OPENED public testimony.

[9:28:03 AM](#)

BARRY CHRISTENSEN, ALASKA PHARMACISTS ASSOCIATION, KETCHIKAN (via teleconference), testified in support of the bill. He spoke to work on the issue over the past ten years. He lamented the role of PBM in the demise of pharmacies in the state. He offered an explanation as to why the bill had not been successfully deliberated by the legislature in the past. He said that a 10-day notice of onsite pharmacy audits would be standardized in the bill, as well as prescription mailings to rural Alaskans. He thanked the committee for hearing the legislation.

[9:32:06 AM](#)

LEIF HOLM, VICE CHAIR, STATE BOARD OF PHARMACY, NORTH POLE (via teleconference), spoke in support of the bill. He was a second-generation pharmacist and owner of multiple pharmacies in the state. He related that the environment surrounding pharmacies and PBMs was hostile. He noted that the bill would not eliminate audits or force PBMs to reimburse but would create a fair playing field for guidelines to follow for auditing procedures and to prevent "witch hunts" against pharmacies for clerical errors or staffing problems. He said that the bill would allow pharmacies to better serve their communities through the mail. He asserted that PBM mail order pharmacies were the most wasteful form of prescription dispensing. He asked the committee to help Alaskan pharmacists in the fight against PBMs.

Co-Chair MacKinnon relayed that she had contacted a PBM representative in order to offer a different perspective.

9:36:04 AM

CINDY LAUBACHER, EXPRESS SCRIPTS, JUNEAU, testified in opposition to the bill. She explained that PBMs were healthcare companies that performed pharmacy benefit management services. She said that PBM clients included health plans, labor unions, large employers, and state employee plans. She stated that clients hired PBMs to manage the healthcare benefit, all the details of the management were dictated by the client, and a variety of services was performed based on those requirements. She spoke to a "PBM 101" [Pharmacy Benefit Managers: HB 240 and SB 38, Page 2] offered by Senator Geissel at a previous hearing. She clarified that PBMs were indirectly regulated through health plan contracts; to the extent that the division of insurance had formulary requirements and mandates, they were responsible to be compliant on behalf of their clients. She said that PBMs were regulated through healthcare clients and mail order pharmacies were regulated through the board of pharmacy and were subject to all the rules and regulation under the board. She stated that they were regulated by Medicare and Medicaid through CMS. She quoted Page 8 of the aforementioned presentation:

- PBMs have free reign to dictate what pharmacies are permitted to do in a given network thereby driving patients to particular pharmacy options.

She contended that her clients had the opportunity to determine what their networks looked like and whether or not mail service was used. She refuted the assertion that PBMs could mandate beneficiaries to use PBM mail order. She stated that she suggested that the sponsor engage in a stakeholder meeting but had received no response. She stressed that PBMs did not have a problem with the enactment of reasonable standards for pharmacy audits or maximum of allowable cost (MAC) appeals. She said that she did not oppose Section 1 of the bill but did have recommendations for language that should be changed. She related that the bill in its current form allowed pharmacies to tell a patient if a lower cost alternative drug was available; when pharmacies offered alternative drugs, they needed to first talk to the doctor. She relayed that the language should be changed to say that pharmacies

could tell patients if the price at the pharmacy was less than the co-pay. She stated that the language would also prohibit plans and PBMs from penalizing a pharmacy for sharing such information. She added that the language would ensure that the payment would count against the patient's deductible. She asserted that paying outside of the benefit was not in anyone's benefit. She said that whatever cash price the patient paid should be counted against their deductible. She spoke to the issue of registration. She said that the Express Scripts was already a third-party administrator (TPA) in the state and that the Division of Insurance had jurisdiction over the pharmacy benefit through regulation of insurance plans and could enforce requirements on the plans. She said that her business could not do anything that would bring her client out of compliance with Alaska law.

[9:44:09 AM](#)

Ms. Laubacher addressed the subject of audits. She reiterated that she was not opposed to fair and reasonable audit legislation. She agreed with the 10-day notice. She said that many of the issues were drafting issues, such as the definition of "fraudulent activity" on Page 6, lines 13 through 18. She argued that similar language could not be found in any other auditing bill in the country, the language mixed up the issues of fraud and clerical errors. She continued to the issue of extrapolation. She said that PBMs did not practice extrapolation, which was predominately done by Medicaid and not PBMs. She said that how she was paid for audits should be at the direction of the client. She objected to language that prohibited or set limits on how best to cover the cost of required audits.

Ms. Laubacher felt that the most contentious part of the bill involved the MAC portion. She explained that MAC was how pharmacies were reimbursed for generic prescriptions that they dispensed; MAC had been created by the federal government under the Medicaid program in the attempt to curb skyrocketing pharmacy costs. She said that the bill would take reimbursement decisions and hand them over to the Division of Insurance, which was concerning. She shared that the division would accept appeals and claims for review and determination in changes in reimbursement. She felt that the process was significant and wondered why there was not fiscal note for the change. She noted that the bill would take part of the insurance code and overlay

MAC appeals into the system, which would be problematic and costly. She said that taking that authority away from her clients and giving it to the state to make reimbursement decisions was problematic. She noted that the language in the bill did not consider confidentiality provisions.

[9:50:22 AM](#)

Ms. Laubacher stated that she would be required to provide MAC lists to pharmacies, which were highly proprietary and should not be shared between pharmacies. She said that community pharmacies were a critical component to the benefit she provided to her clients. She asserted that there was not a client existing that did not want independent community pharmacies in their networks. She related that 85 to 90 percent of the drugs that were dispensed in the United States were through community pharmacies.

[9:51:42 AM](#)

Co-Chair MacKinnon requested a copy of Ms. Laubacher's testimony.

Vice-Chair Bishop asked whether Express Scripts was a nationwide company.

Ms. Laubacher answered in the affirmative.

Vice-Chair Bishop asked whether passage of other similar bills had affected profits and made by the company.

Ms. Laubacher thought the laws PBMs had negotiated for audit practices had made things easier. She considered that many of the problems expressed in public testimony pertained to Medicaid audits. She did not know whether the MAC laws had helped or hindered the industry. She said that the issue of having divisions of insurance review appeals had been problematic for all involved. She said that in Washington State she had found that all of her appeals had been upheld because all of the appeals for Express Scripts had been for claims outside of the state's jurisdiction. She said that the level of confusion in the community pharmacy community as to which scripts were subject to the law and which were not had led to numerous appeals.

[9:55:04 AM](#)

Senator von Imhof asked why MAC lists were not standard across the state.

Ms. Laubacher replied that multiple MAC lists were normal and varied based on the client. She said that the development of the pricing was a highly proprietary system that would not tolerate collusion by pharmacy sharing MAC information. Sharing of MAC list prices would create conflicts of interest and potential for collusion.

Co-Chair MacKinnon asked whether Ms. Laubacher was in favor of the bill.

Ms. Laubacher said that she had serious concerns with the current bill version. She believed that work could be done in the next year that would lead to a bill everyone could agree on.

[9:58:38 AM](#)

Co-Chair MacKinnon asked Ms. Laubacher to submit her ideas for language changes.

Senator Olson asked about the potential impact of the bill to the cost of the end payer.

Ms. Laubacher stated that the potential impact would primarily occur through the MAC portion of the bill, as it allowed pharmacies to file their reimbursement appeals with the Division of Insurance and then give the division sole authority to make the decision about what the reimbursement should be.

Senator Micciche thought that industry regularly tried to kill bills of this nature. He believed that if industry was serious about negotiating to craft a bill that all parties could agree on, it would have happened long ago.

Co-Chair MacKinnon reiterated her request that Express Scripts provide their recommendations in writing.

[10:01:23 AM](#)

BILL HEAD, PHARMACEUTICAL CARE MANAGEMENT ASSOCIATION, CALIFORNIA (via teleconference), echoed the previous

testifier. He said that his organization was against gag clauses. He said that his association was ready to work with legislators and stakeholders on the issue of audits and gag orders.

[10:02:57 AM](#)

RICHARD HOLT, CHAIR, ALASKA BOARD OF PHARMACY, FAIRBANKS (via teleconference), spoke in support of the bill. He stated that the board was in support of the bill. He said that given the logistical challenges of the state it was important to preserve access to pharmacies. He hoped that pharmacies would be preserved in the state. He felt that it was necessary to assure that all Alaskans had access to good quality healthcare.

[10:05:20 AM](#)

Senator Stevens asked whether the board represented independent and corporate pharmacies.

Mr. Holt answered in the affirmative.

[10:05:49 AM](#)

AT EASE

[10:06:16 AM](#)

RECONVENED

SUE SEGGERMAN, SELF, SOLDOTNA (via teleconference), testified in support of the bill. She believed that the bill was necessary in placing checks and balances on PBMs. She stated that independent pharmacies were a great benefit to small communities.

[10:08:00 AM](#)

MICHELLE VAUGHN, PRESIDENT, ALASKA PHARMACISTS ASSOCIATION, JUNEAU, spoke in support of the bill. The association represented over 250 pharmacies and pharmacy technicians across the state. She stated that independent pharmacies had been under pressure by the mandates imposed by PBMs. She felt that the bill allowed for a mechanism by which the state could intervene, as of now there was no regulation of PBMs.

Co-Chair MacKinnon asked about the issue of confidentiality and the assertion about sharing and inappropriate list of data.

Ms. Vaughn thought that an earlier testifier had referred to proprietary pricing and the concern that information would be shared amongst pharmacies. She differed the question to Barry Christensen.

[10:11:19 AM](#)

BARRY CHRISTENSEN, ALASKA PHARMACISTS ASSOCIATION, KETCHIKAN (via teleconference), thought the concept of pharmacies sharing MAC lists was irrelevant. He said that the intent was to be paid the price that the pharmacy was paying for the drug. He did not believe that the bill addressed the issue of pharmacies sharing MAC lists as a negotiating arm.

[10:12:22 AM](#)

Senator von Imhof had heard from a testifier that everything in the PBM contracts was dictated by the client. Another testifier had asserted that there was a "take it or leave it" contract. She requested further clarity.

Ms. Vaughn considered that Ms. Laubacher had been disingenuous in her comment. She said that the state relied on the PBM to create and set the details in the contracts.

[10:14:02 AM](#)

SCOTT WATTS, RON'S APOTHECARY, JUNEAU, testified in support of the bill. He spoke to prescriptions by mail. He relayed that under certain plans a prescription could be filled for a client in Juneau, but when that client went home Gustavus, the pharmacy was unable to fill the prescription in Juneau and mail it to Gustavus. He asserted that MAC prices were needed in the pharmaceutical environment but when the MAC set prices were below what was attainable in the marketplace pharmacies ended up losing money on the prescriptions. He stated that an appropriate appeals process was necessary. He too exception to the PMB being dictated by the client and said that there were situations where the PMB operated on their own regarding MAC pricing. He said that he had been working on the issue of MAC

pricing but that PBMs would not operate fairly without legislation.

[10:17:56 AM](#)

Senator von Imhof asked how many wholesalers were available to purchase from; how often did pharmacies buy drugs; how often did pharmacies negotiate with wholesalers and whether it was the PBMs fault if pharmacies were weak negotiators.

Mr. Watts stated if the price was above the MAC price, pharmacies did have access to cheaper choices. He said that all he was asking in the appeals process was that PBMs show the variety of prices.

Senator Olson asked whether the prices were per pill.

Mr. Watts replied that the prices were per prescription. He offered an example of one PMB in which the pharmacies claim totaled \$12,542 under invoice costs.

[10:20:40 AM](#)

Senator Stevens referenced an earlier comment about a fair playing field. He wondered how the term "which hunt" had been used.

Mr. Watts stated that when he received MAC pricing with unattainable prices, it was a slow bleed resulting in business closure.

[10:21:55 AM](#)

BARBARA HUFF TUCKNESS, TEAMSTERS, JUNEAU, spoke in opposition to the bill. She said that the job of PBMs was to reduce costs. She relayed that her organization was expected to pay over \$1 million in pharmaceutical costs under its health and welfare plan, the cost of which could only be covered by the reduction of benefits for members. She said that if a PBM was not reducing costs as expected under the Teamsters health and welfare trust the organization would rebid for another PBM. She wanted assurances that the PBMs hired by the would be able to continue to do their work. She believed that the auditing issue in the bill should be considered further.

[10:25:12 AM](#)

Senator Olson said that attempts to keep healthcare costs down were not being rewarded and that healthcare costs in the state were rising at an alarming rate. He gave an example of his experience buying prescription drugs at a local pharmacy where the cost was \$100 per pill. He thought those rates were extreme.

[10:26:57 AM](#)

JASON TAPLEY, SELF, JUNEAU, spoke in support of the bill. He was a pharmacist at Southeast Alaska Regional Health Consortium in Juneau (SEARHC). He offered several examples of pharmacies attempting to negotiate PBM contracts and the restrictions involved. He informed that SEARHC worked mostly with Native Alaskans. He spoke to patients filling prescriptions from their insurance benefits. He said that the legislation would allow pharmacists to provide clients' money saving information pertaining to the cost of drugs.

Senator von Imhof understood the concept of giving the customer a choice. She appreciated the example provided by the testifier.

[10:30:56 AM](#)

Senator Olson asked Mr. Tapley how the bill would affect Alaska Native beneficiaries.

Mr. Tapley stated that the bill would assist the pharmacy should it be audited by insurance companies that provided someone else being seen at SEARHC, which would remove dollars that could be used for the purchase of medications for Native Alaskans.

[10:31:54 AM](#)

CATHERINE KOWALSKI, SELF, PETERSBURG (via teleconference), testified in support of the bill. She said that her family's pharmacy had served the city of Petersburg for generations. She lamented that her business could no longer afford to operate without some form of PBM legislation. She said that prescription drug prices had increased along with the power allowed to PBMs at the expense of pharmacies. He stated that 40 other states had passed similar legislation without appeals.

[10:35:28 AM](#)

JERRY BROWN, SELF, FAIRBANKS (via teleconference), spoke in support of the bill. He echoed the concerns of previous testifiers. He lamented the negative revenue for pharmacies because of the PBM contracts. He said that his pharmacy lost 10 to 15 percent on each inhaler sold because of the prices set by the PBM.

[10:39:11 AM](#)

TOM HODEL, ALASKA PHARMACISTS ASSOCIATION, SOLDOTNA (via teleconference), testified in support of the bill. He believed that bill addressed the issues between pharmacies and PBMs. He said that the effort of dealing with PBMs had forced him into early retirement. He said that dealing with audit requests had hindered his ability to provide quality care to customers.

[10:40:38 AM](#)

TOM WADSWORTH, PHARMACIST, WASILLA (via teleconference), testified in support of the bill. He related his history as a pharmacist in the state. He echoed the remarks of previous testifiers. He said that all pharmacists currently working in the state had been trained outside of Alaska. He worried that the attractiveness of the profession was hindered by the sustainability of businesses in rural areas because of the reimbursement strategies deployed by PBMs. He believed that PBMs engaged in backroom practices such as spread pricing, negotiating and keeping manufacturing drug rebates, requiring patient co-pay claw-backs, and reimbursing pharmacies below acquisition costs. He added that PBMs could expel pharmacies from their network at any time with no explanation. He believed that these practices had diminished patient access by pushing small businesses into closure. He said that students in the state that are interested in serving small areas were concerned about sustainability. He expounded on the many areas in which pharmacists benefitted communities.

[10:46:29 AM](#)

JUSTIN RUFFRIDGE, SELF, SOLDOTNA (via teleconference), testified in support of the bill. He worked in an independent pharmacy. He stated that independent pharmacists in Alaska worked in the community in different and positive ways. He disagreed with previous testimony that suggested collusion and conflict would be a result of

the legislation. He thought that the idea that transparency would lead to collusion was erroneous. He related that the MAC pricing appeal would remain the same under the legislation. He categorized the proprietary algorithms that created MAC pricing as an arbitrary method that created prices "out of thin air." He concluded that the loss of local pharmacy business was bad for the state's economy.

[10:50:48 AM](#)

LORI MORTON, SELF, JUNEAU, spoke in support of the bill. She was a consumer of medication. She stated that CareMark did try and mandate that patients purchase medications at their in-house pharmacy via their mail services. She believed that this drove customers away from using local pharmacies. She said that she intentionally sought local pharmacies for her drug needs. She felt that the peace of mind that came from working with a local pharmacy outweighed the savings from using a mail order option from a corporate entity. She expressed concern that in the bill hearing process, people had used language in a way that had been disingenuous about the intent of the legislation.

Co-Chair MacKinnon CLOSED public testimony

[10:54:52 AM](#)

Vice-Chair Bishop discussed the Statement of Zero Fiscal Impact:

The following agencies request no funding for this legislation for FY2019 through FY2024; they anticipate absorbing any increases in workload (using existing staff and resources) without fiscal impact. This includes capital and supplemental appropriations. Additionally, no impact to state revenue is projected and the bill will not result in regulation changes.

Department of Administration

Centralized Administrative Services

Health Plans Administration (OMB Comp Num 2152)

Approved by: Leslie Ridle - 04/04/18

Department of Administration

Updated to reflect changes to the CS.

Department of Commerce, Community and Economic Development

Corporations, Business and Professional Licensing
Corporations, Business and Professional Licensing (OMB
Comp Num 2360)

Approved by: Catherine Reardon, Director - 04/06/18
Division of Administrative Services, DCCED
Insurance Operations

Insurance Operations (OMB Comp Num 354)

Approved by: Catherine Reardon, Director - 01/19/18
Division of Administrative Services, DCCED

Updated to 2018 fiscal note form.

Co-Chair MacKinnon informed the committee that floor session would be delayed by 15 minutes.

LORI WING-HEIER, DIRECTOR, DIVISION OF INSURANCE, DEPARTMENT OF COMMERCE, COMMUNITY AND ECONOMIC DEVELOPMENT, spoke to the bill. She acknowledged that the bill was lengthy and complex. She spoke to Senator von Imhof's question about contracts. She stated that there were two contracts; the PBM would contract with the state or a large employer, or with an insurer. The contract terms were negotiated much like insurance policies. Secondly, the PBM would negotiate with pharmacists and she understood that those contracts were less than flexible. She stressed that no one was interested in raising the cost of healthcare. She said that her division had investigated the issue of appeals. She said that after discussions with the Office of Administrative Hearings (OAH) it had been determined that there would not be enough appeals to warrant a fiscal note. She said that she had worked closely with the State of Washington, which had implemented similar legislation, about their appeals process. She said most appeals in that state had been settled for less than \$300.

[10:57:40 AM](#)

Ms. Wing-Heier thought that the law itself had led to some appeals going back and forth between PBMs and pharmacists without having to go to a third party such as OAH.

[11:00:32 AM](#)

Senator von Imhof discussed auditing standards and wondered whether there was a set of such standards that were understood by all parties involved.

Ms. Wing-Heier assumed that she was speaking of the audit between the pharmacists and the PBM. She said that she did not know was the nature of the standards.

Senator Olson referenced the State of Washington, and the fact that they were approaching \$1 billion in appeals. He wondered how the zero fiscal note was justified.

Ms. Wing-Heier informed that much of the fiscal note from the State of Washington legislation was for the platform that had been built to handle the appeals. She said that additional staff had also been hired. She reiterated that the appeals had not manifested.

Co-Chair MacKinnon solicited further discussion of moving the bill without the amendment process.

Senator Micciche stated that he supported the bill as written.

Co-Chair MacKinnon wanted to see the language suggested by those in opposition of the current bill version.

Vice-Chair Bishop MOVED to report CSHB 240(FIN) out of Committee with individual recommendations and the accompanying fiscal note. There being NO OBJECTION, it was so ordered.

CSHB 240(FIN) was REPORTED out of committee with a "do pass" recommendation and with one Statement of Zero Fiscal Impact by the Office of the Governor for the Department of Administration and the Department of Commerce, Community and Economic Development.

[11:03:33 AM](#)

AT EASE

[11:05:47 AM](#)

RECONVENED

Co-Chair MacKinnon discussed housekeeping.

#

ADJOURNMENT

[11:06:10 AM](#)

The meeting was adjourned at 11:06 a.m.

