

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

March 19, 2018

6:01 p.m.

MEMBERS PRESENT

Senator Mia Costello, Chair
Senator Kevin Meyer, Vice Chair
Senator Gary Stevens
Senator Berta Gardner
Senator Peter Micciche

MEMBERS ABSENT

All members present

COMMITTEE CALENDAR

SENATE BILL NO. 119

"An Act relating to disclosure of health care services and price information; relating to health care insurers; relating to availability of payment information and estimates of out-of-pocket expenses; relating to an incentive program for electing to receive health care services for less than the average price paid; relating to filing and reporting requirements; and providing for an effective date."

- HEARD & HELD

COMMITTEE SUBSTITUTE FOR HOUSE BILL NO. 170 (JUD)

"An Act relating to securities, registration, exempt securities, exempt transactions, broker-dealers, agents, investment advice, investment advisers, investment adviser representatives, federal covered securities, federal covered investment advisers, viatical settlement interests, small intrastate security offerings, Canadian broker-dealers, and Canadian agents; relating to protecting older and vulnerable adults from financial exploitation; relating to administrative, civil, and criminal enforcement provisions, including restitution and civil penalties for violations; relating to an investor training fund; establishing increased civil penalties for harming older persons and vulnerable adults; relating to corporations organized under the Alaska Native Claims Settlement Act; amending Rules 4, 5, 54, 65, and 90, Alaska Rules of Civil Procedure, and Rule 602,

Alaska Rules of Appellate Procedure; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 38

"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."

- HEARD & HELD

PREVIOUS COMMITTEE ACTION

BILL: SB 119

SHORT TITLE: HEALTH CARE COSTS: DISCLOSURE; INSURERS;

SPONSOR(s): HUGHES

04/24/17	(S)	READ THE FIRST TIME - REFERRALS
04/24/17	(S)	L&C, FIN
02/27/18	(S)	L&C AT 1:30 PM BELTZ 105 (TSBldg)
02/27/18	(S)	Heard & Held
02/27/18	(S)	MINUTE(L&C)
02/27/18	(S)	L&C AT 5:00 PM BELTZ 105 (TSBldg)
02/27/18	(S)	-- MEETING CANCELED --
03/19/18	(S)	L&C AT 6:00 PM BELTZ 105 (TSBldg)

BILL: HB 170

SHORT TITLE: AK SECURITIES ACT; PENALTIES; CRT. RULES

SPONSOR(s): LABOR & COMMERCE

03/10/17	(H)	READ THE FIRST TIME - REFERRALS
03/10/17	(H)	L&C, JUD
03/24/17	(H)	L&C AT 3:15 PM BARNES 124
03/24/17	(H)	Heard & Held
03/24/17	(H)	MINUTE(L&C)
03/27/17	(H)	L&C AT 3:15 PM BARNES 124
03/27/17	(H)	Moved HB 170 Out of Committee
03/27/17	(H)	MINUTE(L&C)
03/29/17	(H)	L&C RPT 6DP 1NR
03/29/17	(H)	DP: SULLIVAN-LEONARD, STUTES, WOOL, JOSEPHSON, BIRCH, KITO
03/29/17	(H)	NR: KNOPP
04/07/17	(H)	JUD AT 1:00 PM GRUENBERG 120

04/07/17 (H) Heard & Held
 04/07/17 (H) MINUTE(JUD)
 04/11/17 (H) JUD AT 5:30 PM GRUENBERG 120
 04/11/17 (H) Heard & Held
 04/11/17 (H) MINUTE(JUD)
 04/12/17 (H) JUD AT 1:00 PM GRUENBERG 120
 04/12/17 (H) Moved CSHB 170(JUD) Out of Committee
 04/12/17 (H) MINUTE(JUD)
 04/13/17 (H) JUD RPT CS(JUD) NT 1DP 4NR
 04/13/17 (H) DP: CLAMAN
 04/13/17 (H) NR: EASTMAN, KOPP, KREISS-TOMKINS,
 FANSLER
 04/17/17 (H) TRANSMITTED TO (S)
 04/17/17 (H) VERSION: CSHB 170(JUD)
 05/01/17 (S) READ THE FIRST TIME - REFERRALS
 05/01/17 (S) L&C, JUD
 03/19/18 (S) L&C AT 6:00 PM BELTZ 105 (TSBldg)

BILL: SB 38

SHORT TITLE: PHARMACY BENEFITS MANAGERS

SPONSOR(s): GIESSEL BY REQUEST

01/25/17 (S) READ THE FIRST TIME - REFERRALS
 01/25/17 (S) L&C, FIN
 03/28/17 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)
 03/28/17 (S) Heard & Held
 03/28/17 (S) MINUTE(L&C)
 03/19/18 (S) L&C AT 6:00 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

BUDDY WHITT, Staff
 Senator Shelley Hughes
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Delivered the sectional analysis for SB 119.

SENATOR SHELLEY HUGHES
 Alaska State Legislature
 Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 119.

LORI WING-HEIER, Director
 Division of Insurance
 Department of Commerce, Community and Economic Development
 Anchorage, Alaska

POSITION STATEMENT: Answered questions and provided information on SB 119.

EMILY RICCI, Chief Health Policy Official
Division of Retirement and Benefits
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Stated that DOA did not take a position on SB 119.

MICHELE MICHAUD, Chief Health Official
Division of Retirement and Benefits
Department of Administration (DOA)
Juneau, Alaska

POSITION STATEMENT: Provided information on SB 119.

CRYSTAL KOENEMAN, Staff
Representative Sam Kito III
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Presented HB 170 on behalf of House Labor and Commerce Committee.

LEIF HAUGEN, Acting Chief
Enforcement and Securities
Division of Banking and Securities
Department of Commerce, Community and Economic Development
Anchorage, Alaska

POSITION STATEMENT: Provided information on HB 170.

KRISTY NAYLOR, Acting Director
Division of Banking and Securities
Department of Commerce, Community and Economic Development
Anchorage, Alaska

POSITION STATEMENT: Provided information on HB 170.

DEB ETHERIDGE, Deputy Director
Senior and Disability Services
Department of Health and Social Services (DHSS)
Juneau, Alaska

POSITION STATEMENT: Provided information on HB 170.

KEVIN ANSELM, representing self
Matanuska-Susitna Valley

POSITION STATEMENT: Testified in support of HB 170.

SENATOR CATHY GIESSEL

Alaska State Legislature
Juneau, Alaska
POSITION STATEMENT: Sponsor of SB 38.

SCOTT WATTS, independent pharmacist
Juneau, Alaska
POSITION STATEMENT: Testified in support of SB 38.

BARRY CHRISTENSEN
Alaska Pharmacist Association
Ketchikan, Alaska
POSITION STATEMENT: Testified in support of SB 38.

CYNTHIA LAUBACHER, Senior Director
Express Scripts
Sacramento, California
POSITION STATEMENT: Testified in opposition to SB 38.

LEIF HOLM, independent pharmacist
North Pole, Alaska
POSITION STATEMENT: Testified in support of SB 38.

DIRK WHITE, representing self
Sitka, Alaska
POSITION STATEMENT: Testified in support of SB 38.

MARAL FARSI
CVS Health ("CVS")
Sacramento, California
POSITION STATEMENT: Testified in opposition to SB 38.

CATHERINE KOWALSKI, representing self
Petersburg, Alaska
POSITION STATEMENT: Testified in support of SB 38.

ACTION NARRATIVE

[6:01:00 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 6:01 p.m. Present at the call to order were Senators Stevens, Meyer, Micciche, Gardner, and Chair Costello.

SB 119-HEALTH CARE COSTS: DISCLOSURE;INSURERS;

[6:01:34 PM](#)

CHAIR COSTELLO announced the consideration of SB 119. She noted it is a transparency bill related to health care costs.

6:02:20 PM

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, Alaska, delivered the following sectional analysis for SB 119:

Sec. 1, Page 1, Lines 7-10 Adds the Alaska Health Care Consumer's Right to Shop Act to the uncodified law of the State of Alaska.

Sec. 2, Page 1, Line 11 - Page 2, Line 11 Authorized the Department of Health and Social Services to collect and analyze data relating to health care services and price information.

Sec. 3, Page 2, Line 12 - Page 3, Line 20 Adds a new section to Title 18 for health care services and price information.

a. Health care provider shall compile a list annually by procedure code of the top 25 health care services from each of the six category I CPT code sections.

CHAIR COSTELLO noted that there was some confusion between SB 119 and the transparency bill in the House that Representative Spohnholz introduced. She asked him to clarify that SB 119 addresses the top 150 codes, not the top 50 codes.

MR. WITT confirmed that SB 119 addresses the top 150 codes. He explained that there are six categories of CPT or Current Procedural Terminology codes. The first is for evaluation and management. The second category covers anesthesia. The third category covers surgery. The fourth category covers radiology. The fifth category covers pathology and laboratory services. The sixth category is classified as general medicine. The top 25 from each of those six categories gives a total of 150 codes that are requested in the bill.

CHAIR COSTELLO said she would follow up and ask Ms. Wing-Heier the rationale for picking the top 25 codes in each of those categories. She asked him to talk briefly about the number of codes in each of the categories.

MR. WITT said there are 300 codes within just category one, evaluation and management. That is the lowest of the six. Anesthesiology has 1,949 codes. Surgery has about 60,00 codes. Radiology has over 9,000. Pathology and laboratory has about 9,000, and general medicine is around 8,500. That's about 90,000 codes.

[6:06:14 PM](#)

SENATOR STEVENS asked how many facilities are in Alaska.

MR. WITT said he didn't know, but the bill would apply to all of them.

SENATOR STEVENS asked if this includes hospitals, clinics, and doctors' offices.

MR. WITT said any facility that is registered to provide health care services in the state would fall under the parameters of SB 119.

[6:06:48 PM](#)

SENATOR SHELLEY HUGHES, Alaska State Legislature, Juneau, Alaska, sponsor of SB 119, advised that it's important to understand that the top 25 codes does not mean the most common. It means the codes that a prudent person would consider of value in the management of their own health care affairs, what is most helpful and relevant to the consumer. The price for each service includes any discounts that may be applied. The recommendations for the top 25 codes came from the director of the Division of Insurance.

SENATOR GARDNER said she would assume that most providers routinely do certain basic things, although there may also be some more exotic procedures. She asked if that was accurate.

MR. WITT replied that is his understanding. Some provisions of SB 119 do address how patients would find the cost for specialty procedures. The idea of the 150 codes is that anyone could go to the state website and see the cost differences between providers.

SENATOR HUGHES added that a consumer could get a good faith estimate of what their condition would require. The value of this is a general comparison of costs. The other pieces will help the consumer drill down to know exactly what to expect for costs.

MR. WITT continued the sectional for SB 119.

b. The provider or facility will publish the lists above, by providing it to the department for publishing it on their website, by posting it for public review in the facility or office where the service(s) are performed and by posting it on their website.

c. The health care provider or facility may include a disclaimer noting the price paid may be higher or lower than listing of services due to unforeseen needs or complications.

d. The department shall compile the information provided by the provider or facility and post it on the department's website for public view.

e. If the provider performs less than 25 of the services from each CPT code category, then they will compile a list based upon the total number of services that they provide.

f. Failing to comply with this section will result in a civil penalty of \$50 per day for each day after March 31st that the facility or provider has failed to provide the information. This civil penalty will not exceed \$2,500 annually. An appeal process is allowed under this section.

[6:11:30 PM](#)

CHAIR COSTELLO asked if some may decide to pay the fine rather than comply.

MR. WITT said that could happen.

[6:12:36 PM](#)

Sec. 18.23.405 Page 3, Line 21 - Page 4, Line 28 This section is added to specify the provider and/or facilities responsibility to provide cost information to patients or potential patients who have health insurance coverage.

a. Within five business days of request, a provider must give a good faith estimate of the total charges of the healthcare service requested if the total of the charges exceeds \$250.

b. The estimate of charges must include the network status of the provider under the patient's plan, whether the services of another provider are necessary and if they are, a separate request to that additional provider must be made.

c. If the patient is uninsured, the health care provider must include information about financial assistance that may be available, as well as the internet website that provides information about standard charges for the type of care the patient is seeking.

d. The patient may request the information in writing or electronically.

e. Estimate of charges must represent a good faith effort to provide accurate information, is not legally binding and is not guaranteed due to unforeseen conditions.

f. This section does not apply to emergency medical conditions.

Sec. 18.23.420 Page 4, Line 29 - Page 5 This section gives definitions of terms.

Sec. 4, Page 6 - Page 7, Line 4 Adds healthcare insurance incentive program to the list of items to be included in the director's annual report.

Sec. 5, Page 7, Line 5 - Page 10, Line 19 Adds a new section to AS 21.96. This section establishes new provisions for health care insurance companies to operate in the state of Alaska. This section deals with private health insurance policies not pre-empted by ERISA or any other federal laws.

Sec. 21.96.200 Page 7, Lines 6 - 14 A health care insurer shall establish an interactive online tool so that the covered person may request and obtain information about the amount paid to in-network providers by the insurance company for specific health care services and be able to compare prices among network healthcare providers.

MR. WITT pointed out that the bill has covered two entities--the insurance model for in-network providers and the providers

themselves--that can provide all the costs associated with a knee replacement or colonoscopy, for example.

Sec. 21.96.205 Page 7, Line 15 - 31

a. Upon request of a covered person, a health care insurer shall provide within five days a good faith estimate of out of pocket expenses that a covered person will have to pay for a specific covered medically necessary benefit.

b. This section does not prohibit the health insurance provider from imposing fees for unforeseen services or additional costs that come up but were not covered in the estimate provided in Section (a).

c. The health care insurer shall disclose that this is an estimate and the actual cost may be different if unforeseen services or costs arise.

Sec. 21.96.210 Page 8 - Page 9, Line 3

a. The health care insurance company shall set up an incentive plan for a covered person who elect to receive a health care service from a health care provider that charges less than the average in-network price paid by the insurer for that service. At a minimum the health care services that apply to this section shall include:

1. Physical and Occupational Therapy Services
2. OBGYN Services
3. Radiology and Medical Imaging Services
4. Laboratory Services
5. Infusion Therapy Services
6. Dental Services
7. Vision Services
8. Behavioral Health Services
9. Inpatient and Outpatient Surgical Procedures: and
10. Outpatient non-surgical diagnostic tests and procedures

b. The insurer shall provide to the covered person a cash payment based upon the shared savings that result from the covered person choosing the provider whose price falls below the average cost to the insurance company for that service. For those whose insurance is provided as part of a group plan offered by their employer, the shared savings will be split at least equally between the patient, the employer and the insurance company. For those who secured health care

insurance on their own without an employer or some other third party, the cash payment will be calculated with at least 50% of the shared savings going to the policy holder.

[6:17:11 PM](#)

SENATOR COSTELLO asked if he has information about the result this has had in other states. She asked if they are talking about a significant amount of money being paid back.

MR. WITT said similar legislation just passed in Maine with an effective date of January 1, 2019, but major health care insurers rolled out a plan this year for incentive programs. It is too early to tell what the results will be. In New Hampshire this was implemented for state employees in 2014. Within the first two years there was \$12 million in disbursement savings to policy holders, but he was waiting to hear from New Hampshire on what the total savings were for the state.

SENATOR HUGHES said New Hampshire has less than half the state employees that Alaska has, and their overall costs are not as high. She estimated the possible disbursement savings as higher in Alaska.

[6:19:01 PM](#)

SENATOR MICCICHE asked how consumers can figure out when there are negotiated rates.

MR. WITT said the requirement is not for the facility to post the negotiated rate. If the provider is in network that information will be provided to the patient. That isn't public. The information posted publicly is the rack rate, the basic, no-discount rate a provider is offering to a patient. The bill dictates that insurance companies must provide a web tool so that a policy holder can see the prices for an in-network provider.

MR. WITT said the consumer has three ways to gain information.

1. Rack rate.
2. The provider has five days to provide cost information based on in-network status.
3. The insurance company must provide information for the cost of the procedure amongst all in-network providers who perform that procedure.

SENATOR MICCICHE asked what happens if the insured locates an out-of-state clinic that is cheaper.

MR. WITT said a provision in the bill covers that if they are out of network. In-network providers that are out of state are still subject to the provisions in the bill.

SENATOR STEVENS asked the definition of rack rate.

MR. WITT deferred the question to Ms. Wing-Heier.

[6:23:36 PM](#)

MR. WITT continued the sectional for SB 119.

c. The health care insurer will base average price paid to in-network providers within a reasonable period of time, but not to exceed one calendar year.

Sec. 21.96.215, Page 9, Lines 4 - 8 The incentive program will be made available as a part of all qualified plans in the state and will notice it at time of initial enrollment or annual renewal

Sec. 21.96.220, Page 9, Lines 9 - 13 Before offering an incentive program, the health insurance company shall file a description of the program with the Director for approval.

Sec. 21.96.225, Page 9, Lines 14 - 20 If a covered person participates in an incentive program and chooses an out-of-network provider that results in a savings to the health care insurer, the health care insurer will treat the amount paid for the health care service as though it was provided by an in-network provider or facility.

MR. WITT said this addresses Senator Micciche's question regarding an out-of-state provider who is out of network. If a patient goes to a provider out of network and that saves out-of-pocket money for the consumer and saves the insurer money, even if the percentages paid out of network are different, the insurance company must treat that as though it happened in network for the sake of maximum out of pocket. It will not be part of the incentive program.

CHAIR COSTELLO said people go to in-network providers thinking there will be a savings. She asked how this happens.

MR. WITT said the assumption is the in-network providers will provide the best bang for the buck. But without transparency it

is difficult to find those prices in network and out of network. The FGA [Foundation for Government Accountability] developed this piece when they saw small-scale providers not included in networks and their prices could be good for patients. New Hampshire, Maine, and Massachusetts have seen this be of value to patients who were trying to save money.

[6:27:02 PM](#)

MR. WITT continued the sectional for SB 119.

Sec. 21.96.230, Page 9, Lines 21 - 23 The incentive program will not be treated as an administrative expense by the insurer for rate development or rate filing purposes.

MR. WITT explained that if there is a shared savings, the only time the incentive occurs is when the insurance company saves money. They put this provision in, so the insurance company is not using this incentive. That saves the insurance company money as an administrative expense. If there is an overall savings, he said, why put it toward future rate hikes that would happen if they counted this as an administrative expense for rate development purposes.

Sec. 21.96.235, Page 9, Line 24 - Page 10, Line 9

a. Provides instruction for the health care insurance company to provide an annual report concerning the incentive program.

b. Provides instruction for the division of insurance to provide an aggregate report annually to the legislature on health care insurance incentive programs in the state.

Sec. 21.96.300, Page 10, Lines 10 - 19 Establishes definitions for terms in this section.

Sec. 6, Page 10, Lines 20 - 22 Adds Sec. 29.35.142 to the list of home rule powers under AS 29.10.200

Sec. 7, Page 10, Line 23 - Page 11, Line 5 The authority to regulate the disclosure or reporting of price information for health care services is reserved to the state of Alaska.

CHAIR COSTELLO asked what Section 6 means.

SENATOR HUGHES said the state would have preemption, so there would not be a hodgepodge of laws along these lines in various municipalities throughout the state. There is one set statewide.

MR. WITT continued with the sectional for SB 119.

Sec. 8, Page 11, Line 6 - Page 13, Line 22 Health Care Insurance policies obtained by the Department of Administration under AS 39.30.090 must be in compliance with requirements under AS 18.23.400, AS 18.23.405 and AS 21.96.200 - AS 21.96.300.

Sec. 9, Page 13, Line 23 - Page 14, Line 2 Language added to AS 39.30.91 providing additional guidance for the Department of Administration for compliance with requirements under AS 18.23.400, AS 18.23.405 and AS 21.96.200 - AS 21.96.300.

MR. WITT said sections eight and nine are an attempt to make the provisions of this bill compatible with health insurance policies attained by the Department of Administration (DOA). In order for the DOA to be compliant with this bill, they need to make additional changes. They are having ongoing conversations with DOA about this. If state employees and the state can see benefits from this bill, they want to do that.

CHAIR COSTELLO said she understands that the plans offered by the state do not meet the definition of health insurer or health care insurance plan. That seems odd to her, but Mr. Witt said they are addressing that.

MR. WITT said conversations are ongoing with DOA about that.

[6:31:04 PM](#)

MR. WITT continued the sectional for SB 119.

Sec. 10, Page 14, Lines 3 - 8 Amended language to the uncodified law of the State of Alaska allowing for the Department of Commerce, Community, and Economic Development to adopt regulations necessary to implement this act

Sec. 11, Page 14, Line 9 Section 10 of this Act takes effect immediately.

Sec. 12, Page 14, Line 10 Except for the provision above, the act has an effective date of January 1, 2018.

CHAIR COSTELLO asked why the Department of Commerce, Community and Economic Development would write the regulations and not the Department of Administration.

MR. WITT said the Division of Insurance falls under commerce.

[6:32:13 PM](#)

SENATOR MEYER noted the Section 3 civil penalty of \$50 per day and not more than \$2,500. He asked who would enforce the penalties.

MR. WITT said this section would fall under the Department of Health and Social Services (DHSS) to implement. Most provisions fall to the Division of Insurance but keeping the list and following through with repercussions falls under DHSS.

CHAIR COSTELLO asked what happens if the department doesn't carry through on its role.

MR. WITT said he didn't know.

CHAIR COSTELLO asked Ms. Wing-Heier to define rack rate and to provide comments on SB 119.

[6:34:00 PM](#)

LORI WING-HEIER, Director, Division of Insurance, Department of Commerce, Community and Economic Development (DCCED), Anchorage, Alaska, explained that the division interprets rack rate in the context of the bill to mean the undiscounted rate that a physician would charge a consumer who is not on any insurance plan. The bill uses that undiscounted rate.

CHAIR COSTELLO said negotiated rates are much different from rack rates. She asked what value there is in knowing the rack rate given that the bill offers the consumer three different routes to gain information about the rates.

MS. WING-HEIER said the division's perspective is that the rack rate will show the consumer what the charges are between the providers. To know what someone will pay as a consumer would require going to the insurer to see what the plan provides. An uninsured person would pay the undiscounted rack rate. Each plan from each insurer has a different network provider and those agreements all have different rates. A consumer will have to go to their insurance company and look at their version of the bill to see how their plan will respond.

CHAIR COSTELLO said it seems that the public information about what the rack rate means will be important because she can imagine a provider who has to post the rack rate knows that the

negotiated rate might be something quite different. She asked how to address the fact that the bill might drive consumers away from something that might be financially beneficial because they got turned away because of the rack rate and went to another provider, not realizing that if someone is covered they have to go to the insurance company.

MS. WING-HEIER said that as they have looked at transparency and health care in general, it is empowering patients to understand what they have available to them and decisions they have to make. If they go to their plan and look at the DHSS website, it will show five providers and five different rates. Somehow this information needs to get to the consumers, with or without this bill, that there is merit in checking what their plan provides, so they do not end up with a huge bill. The only way they will know is to find out how their plan responds.

CHAIR COSTELLO asked if some kind of statement for insured people could be on the state website.

MS. WING-HEIER said a disclaimer could state that "you must or you should look at your individual plan regardless of who your employer is or the individual market to see what is going to be paid in your particular case."

[6:38:28 PM](#)

SENATOR STEVENS asked what will be required of the director that she's not doing now.

MS. WING-HEIER replied gather information for the report and create regulation for guidance to ensure the insurers are complying. The bill will require some procedures to make it work, regulations about how it is implemented, who it applies to, and making sure providers and insurers are complying.

CHAIR COSTELLO asked if she had spoken to anyone in Maine or New Hampshire.

MS. WING-HEIER said no. She was planning to talk to the two commissioners at the next NAIC [National Association of Insurance Commissioners] meeting.

[6:40:48 PM](#)

EMILY RICCI, Chief Health Policy Official, Division of Retirement and Benefits, Department of Administration (DOA), Juneau, Alaska, and Michele Michaud, Chief Health Official,

Division of Retirement and Benefits, Department of Administration (DOA), Juneau, Alaska, introduced themselves.

CHAIR COSTELLO asked if the department has a position on the bill and whether the department is willing to work with the sponsor to include state employees.

MS. RICCI said the department has no position on the bill. The Division of Retirement and Benefits manages the state AlaskaCare Health Plan, which covers retirees from the Public Employees' Retirement System, the Teachers' Retirement System, and the Judicial Retirement System. It also manages the plans for under 6,000 state of Alaska employees. The majority of state employees have coverage through union health trusts, which are ERISA plans not subject to this bill. They are not opposed to exploring an incentive program. They can do that without legislation. Listening to the sponsor's description of how much New Hampshire saved was incredible.

MS. RICCI noted that the health plans administrator is the commissioner of DOA. The commissioner has the authority to determine what is or what is not included in the plan. The health plan has not been subject to regulation by another department or another division, such as is being considered here. The bill has areas that would be difficult to comply to because it doesn't apply to the division, like a rate setting process. They do have the ability to implement without legislation. To be subject to provisions of another division in another department is a little messy.

CHAIR COSTELLO asked why an incentive program hasn't been implemented if it can provide significant savings.

MS. RICCI explained the process to determine if it's feasible.

CHAIR COSTELLO asked if the fiscal note from the department is zero because it does not affect them.

MS. RICCI said it is because the health plans do not meet the definition of an insurer.

[6:45:41 PM](#)

At ease.

[6:48:16 PM](#)

CHAIR COSTELLO reconvened the meeting.

SENATOR MEYER noted that Ms. Ricci said the bill would not be applicable to all state employees because some have different health care providers. He asked how many providers there are.

[6:48:50 PM](#)

MS. MICHAUD answered there are four union health trusts that represent state employees not covered by the AlaskaCare Health Plan. They are the Public Safety Employees Union; Master, Mates and Pilots; Alaska State Employees Association; and Local 71, Labor, Trades, and Crafts.

SENATOR MEYER asked if NEA [National Education Association] has its own health trust.

MS. MICHAUD said they might have a health trust.

SENATOR MEYER asked if there would be savings if all consolidated.

[6:49:58 PM](#)

MS. RICCI said the state undertook a feasibility study recently and it appears there would be some savings. Implementation is a complex idea that would cost over \$3.5 million in annual expenditures and involve over 200,000 lives. The administration is evaluating options for what a Health Care Authority would look like.

SENATOR MEYER referenced a study done by Commissioner Sheldon Fisher and the potential saving that was over \$100 million.

[6:51:30 PM](#)

SENATOR GARDNER asked about opening the state plan to Alaskans who are not state employees.

MS. RICCI said prior studies looked at that including the Health Care Authority Feasibility Study that DOA did last year. It looked at ways members of the AlaskaCare Health Plan and others could participate in a new entity or new pool. Prior to that, a Hays Group study from four or five years ago looked at opening the AlaskaCare Health Plan participation to teachers. She didn't recall the financial outcome of that study. The state plan has 16,000 covered lives, just under 6,000 employees and their dependents, and that pool isn't large enough to take on additional health risks without potentially increasing premiums. As a self-insured plan, the state is an entity that funds those premiums through employer and employee contributions. Any additional cost to the plan would be passed to the department.

The idea of the state leveraging its volume to allow other groups to benefit is part of what the Health Care Authority Feasibility Study is looking at. The AlaskaCare Health Plan is probably not large enough to accept more risk by opening up participation.

[6:53:54 PM](#)

CHAIR COSTELLO held SB 119 in committee with public testimony open.

[6:54:23 PM](#)

At ease.

HB 170-AK SECURITIES ACT; PENALTIES; CRT. RULES

[6:56:57 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of HB 170. [CSHB 170(JUD) was before the committee.]

[6:57:06 PM](#)

SENATOR MEYER made a motion to clarify that the committee was considering version 0 that passed the House.

CHAIR COSTELLO objected for the sake of discussion.

[6:58:03 PM](#)

CRYSTAL KOENEMAN, Staff, Representative Sam Kito III, Alaska State Legislature, Juneau, Alaska, presented HB 170 on behalf of House Labor and Commerce Committee. She said this was brought to the House Labor and Commerce Committee by the Department of Commerce, Community and Economic Development. It amends the Alaska Securities Act. Security statutes are separated from statutes related to the Alaska Native Claims Settlement Act (ANCSA) to facilitate better understanding of both. It deters investment scams using Alaska entities and harming Alaskans. It helps protect older and vulnerable adults from financial exploitation by requiring financial professionals to report suspected exploitation and giving the reporting professionals immunity. It enhances penalties against those who harm older and vulnerable Alaskans. It also updates entity and law references that currently use notice by telegrams. It is an overall update of the Securities Act.

[6:59:33 PM](#)

KRISTY NAYLOR, Acting Director, Division of Banking and Securities, Department of Commerce, Community and Economic

Development (DCCED), Anchorage, Alaska, said HB 170 is very important to the operation of the division in its regulation of securities in Alaska and also to Alaska consumers. The Alaska Securities Act provides the legal framework for offering or selling securities in Alaska or to Alaskans, including registration of the financial product and sales force, and enforcement action against those who violate the act. It also regulates ANCSA Corporation and shareholder proxy provisions.

MS. NAYLOR said securities is one of 12 statutory programs that the division regulates and is the largest single program area. Just over 95,000 people are licensed to sell securities in Alaska. There are also over 1,200 security firms. The growth over the last few years has been significant.

MS. NAYLOR said HB 170 solves two main problems with current law. First, the current law is outdated and hasn't kept up with the industry. The current Alaska Securities Act went into effect in 1961. The Act has only been changed in any significant way three times in almost 60 years.

MS. NAYLOR said second, consumer protections and enforcement provisions are insufficient. Alaskans have been harmed by people who have violated Alaskan laws and low administrative, civil, and criminal penalties do not serve as a significant deterrent. They are low enough to be seen as the cost of doing business.

[7:02:23 PM](#)

MS. NAYLOR said the bill solves the problem by modernizing current law:

- Updates outdated provisions to better align the law with current industry practices (Current statute refers to entities that no longer exist, federal statutes that have changed over time, and allows notification by telegram.)
- Incorporates the Innovating Alaska Act, which allows intrastate crowdfunding to help grow Alaska businesses
- Eliminates most filings that must be made with the Division
- Separates ANCSA from securities, so the two programs can be regulated separately
- Improves organization

[7:04:07 PM](#)

MS. NAYLOR said the bill enhances consumer protection:

- Increases administrative, civil and criminal penalties, especially for those who harm vulnerable people (Current enforcement provisions allows a maximum civil penalty of \$25,000 per person who commits a violation. The division has recently investigated frauds that involved millions of dollars of losses. The new law would allow a fine of \$100,000 per violation. The fines can be increased if the victim is a senior or vulnerable adult.)
- Allows for bad actors to be barred from the industry
- Requires brokers and advisers to report suspected financial exploitation of seniors and vulnerable adults to the Division and Adult Protective Services
- Improves investor education provisions, allowing for a portion of collected civil penalties to be deposited into a fund that the legislature may allocate for investor education
- Facilitates continuing education for brokers and advisers

[7:06:26 PM](#)

She highlighted the following securities scams in Alaska:

Fortune Oil and Gas, LLC--Texas-based oil and gas scam that resulted in a \$3.1 million loss to Alaskans

J. Randall Gladden--Unregistered salesperson came to Alaska to give financial presentations to local church communities after he had been suspended by federal regulator from acting as a securities agent

Global Arena Capital Corp--Unregistered NY firm and six employees cited for soliciting then selling junk bonds to a retired and ailing Alaskan halibut fisherman

Garden State Securities--agent from Global went to Garden State and attempted to sell risky investments to same customer without a license in Alaska (The firm was licensed in Alaska. They withdrew from Alaska and paid the maximum civil penalty without blinking an eye.)

[7:10:20 PM](#)

SENATOR STEVENS asked why it is necessary to separate ANCSA from other securities.

MS. NAYLOR explained that the regulation of corporate proxy solicitations is a securities function that the SEC [Securities and Exchange Commission] provides for publicly traded corporations. Alaska is the only state that regulates proxy solicitations. Ordinarily the SEC would regulate them. ANCSA corporations are outside of federal regulations and not covered by SEC regulations. It makes sense to separate them and deal with them as a unique Alaska entity. If changes need to be made to either the Securities Act generally or ANCSA provisions, that can be done more appropriately if they are separated.

SENATOR STEVENS asked if they would still be regulated but separately.

MS. NAYLOR said yes.

SENATOR GARDNER noted that when she described the Global Arena Capital Corporation fraud, she mentioned that the division could not order restitution. It had to be a negotiated process. She asked why it had to be negotiated.

MS. NAYLOR said no provision in the enforcement section of the current law allows the division to order someone to pay restitution. HB 170 has a provision to allow them to order restitution.

SENATOR GARDNER asked how a securities agent differs from a stockbroker or investment advisor.

MS. NAYLOR said they're the same.

SENATOR MEYER said he was looking for a definition of securities in the bill but might have missed it. He assumes securities are stocks, bond, life insurance, and banking CDs.

MS. NAYLOR directed attention to page 103 of the bill. They include stocks, bonds, limited partnership interests, certificates of deposit. It's a long list. It's the same as in current law.

SENATOR MEYER asked if the state has jurisdiction over the internet or if that is a federal issue.

MS. NAYLOR said they have jurisdiction over offers and sales of securities over the internet. Anything coming or going into the state would be within their jurisdiction.

SENATOR MEYER asked if he can report an internet solicitation to invest in an oil well in Russia.

MS. NAYLOR said yes.

[7:16:40 PM](#)

SENATOR MICCICHE referred to the civil penalties on page 83, line 20. He asked why there isn't a percentage of the damages when there could be millions in losses. He asked how far the bill can go in recovering those losses.

MS. NAYLOR said the \$100,000 is the civil penalty that the bad actor would pay the state for violating the statute. Adding in a restitution provision means they could order up to 100 percent restitution of the loss.

SENATOR MICCICHE observed that the statutory civil penalty can range from \$100,000 to \$300,000 and the restitution could include 100 percent of the loss.

MS. NAYLOR said that's correct.

[7:19:35 PM](#)

LEIF HAUGEN, Acting Chief, Enforcement and Securities, Division of Banking and Securities, Department of Commerce, Community and Economic Development (DCCED), Anchorage, Alaska, provided the following sectional analysis for HB 170:

Article 1. General Provisions - p. 15

Same as current law. Securities must be registered before offer or sell, unless federally covered or exempt.

Article 2. Exemptions from the Registration of Securities - p. 15

- Incorporates the current statute regarding small intrastate security offerings that are known as crowdfunding.
- Adds provisions allowing the division to prohibit persons who have committed crimes or regulatory violations from using exemptions from registration and provides the administrator the authority to waive or change exemption requirements.

Article 3. Registration of Securities and Notice Filing of Federal Covered Securities - p. 30

- Changes would require registration statements to be on file with the administrator for 20 days.

- Increases fees for late filings.
- Explains the joint regulations of viatical settlement interests by the Securities and Insurance statutes.
- Requires the administrator to establish regulations explaining what conduct may be fraud upon purchasers.

SENATOR GARDNER referred to Article 3 Section 45.56.305, "registration statement must be on file with the Administrator for 20 days (may be reduced by regulation)." She questioned putting something in statute that may be reduced in regulation.

MR. HAUGEN acknowledged that was not taken into consideration.

[7:21:12 PM](#)

At ease.

[7:21:24 PM](#)

CHAIR COSTELLO reconvened the meeting.

SENATOR GARDNER said maybe someone could answer that in due course.

[7:21:44 PM](#)

MR. HAUGEN continued the sectional for HB 170.

Article 4. Broker-dealers, Agents, Investment Advisers, Investment Adviser Representatives and Federal Covered Investment Advisers - p. 42

Firm, salesperson, and adviser registration (licensing) provisions are reorganized into one article, making it more user-friendly than current law.

- Includes a new exemption for broker-dealers and agents, as well as investment advisors and representatives, to facilitate on-going broker-customer relationships with customers who have established a second or other residence in other states.
- Changes annual renewal to December 31 from December 1 for easier state and firm processing.
- Adds a provision that exempts merger and acquisition brokers from registration.
- Includes, within Article 4, the types of business covered regarding agent registration requirement and exemptions instead of in the definition section.

- Includes investment adviser registration requirement and exemptions mirroring a broker-dealer agent requirements in Article 4.
- Extends time, unless the registration is denied, for automatic registration of broker-dealers, agents, investment advisers, and investment adviser representatives.
- Clarifies process for an organizational change for broker-dealers and investment advisers.
- Requires that broker-dealers or investment advisers file a notification of termination of employment of agent or representative with the administrator.
- Extends time of the effective date of registration withdrawal.
- Adds provision allowing filing fees to be established by regulation.
- Adds provision allowing the administrator to set continuing education requirements by regulation.
- Adds provision adding model legislation to protect vulnerable adults from financial exploitation.
- Adds provision allowing the administrator to bar a person or firm from registration including for actions taken by other regulators.
- Increases civil penalty for registrants from \$2,500-\$10,000 per violation to up to \$100,000 per violation.

[7:23:22 PM](#)

Article 5. Fraud and Liabilities - p. 70

- Allows administrator to define prohibited conduct by regulation.
- Adds a citation to affirmative defense in criminal law regarding the evidentiary burden.
- Clarifies that registered persons are not liable to other registered persons, under state defamation laws, for statements contained in disclosure records required to be filed with the administrator for purposes of licensing and potential discipline.

Article 6. Administration and Judicial Review - p. 72

- Adds a new provision allowing the administrator to develop and implement investor education initiatives and accept grants or donations for investor education.
- Requires the administrator keep records according to a retention schedule and outlines publicly disclosable documents.

- Clarifies and specifies record confidentiality.
- Expands opportunity for coordination with governmental units, regulatory organizations for collaborative efforts including regulation and enforcement to reduce the burden of raising capital by small business.
- Creates an investor education and training fund within the general fund.
- Combines existing AS 45.55.950 and 45.55.970 and clarifies that GAAP compliant financial statements may only be required as allowed by federal law.
- Separates out and clarifies administrative, civil, and criminal enforcement provisions.
- Increases to 30 instead of 15 the number of days respondents can request to review a final order.

[7:24:45 PM](#)

SENATOR GARDNER asked what "registered persons are not liable to other registered persons under state defamation laws for statements contained in disclosure records required to be filed with the administrator for purposes of licensing and potential discipline" in Article 5 meant.

MR. HAUGEN said FINRA [Financial Industry Regulatory Authority] has a system called CRD (Central Registration Depository), where the division reviews the registrations of all agents seeking registration in Alaska. In other states firms felt they couldn't be candid about an agent termination or investigation of an agent. California and New York have adopted absolute immunity. This would give qualified immunity to disclose so other firms will know before hiring an agent and the state will know as well.

SENATOR STEVENS asked for the definition of a vulnerable adult.

[7:26:51 PM](#)

DEB ETHERIDGE, Deputy Director, Senior and Disability Services, Department of Health and Social Services (DHSS), Juneau, Alaska, said they are seniors and adults with disabilities who lack the capacity to protect themselves from harm.

SENATOR MICCICHE observed that both are defined in statute.

MS. ETHERIDGE said that's correct.

[7:28:47 PM](#)

MR. HAUGEN continued the sectional for HB 170.

**Article 7. Miscellaneous and Additional General Provisions
(includes definitions) -p. 93**

- Expands recovery of expenses from current AS 45.55.915 to cover all examination expenses including staff time, travel and per diem.
- Facilitates filing of electronic records and signatures.
- Contains new definitions.

[7:29:20 PM](#)

CHAIR COSTELLO opened public testimony on HB 170.

[7:29:31 PM](#)

KEVIN ANSELM, representing self, Matanuska-Susitna Valley, said she is a former director of the Division of Banking and Securities. She related that one of the primary reasons for passing HB 170 is to separate ANCSA provisions from other securities provisions. Much of the current Alaska Securities Act does not apply to ANCSA issues and when any changes are proposed there is concern that there will be unintended consequences. The bill also modernizes the statutes, lessens the burden of dual state and federal regulations, streamlines the registration, and protects investors.

[7:33:52 PM](#)

CHAIR COSTELLO closed public testimony on HB 170 and held the bill in committee.

SENATOR MEYER asked who would opposed the bill.

MR. HAUGEN said other than scammers nobody is opposed to it.

SENATOR MICCICHE asked if it's clear when fraud is committed.

MR. HAUGEN said the fraud the division has seen involves someone approaching the investor and the investor doesn't see the return promised. Upon investigation, the division has discovered that there was no product or investment. The division has tools to identify when fraud has occurred as opposed to when an investment was a poor choice.

[HB 170 was held in committee.]

[7:36:23 PM](#)

At ease.

SB 38-PHARMACY BENEFITS MANAGERS

[7:38:29 PM](#)

CHAIR COSTELLO reconvened the meeting and announced the consideration of SB 38. It was heard once last session and public testimony was open.

[7:38:59 PM](#)

SENATOR CATHY GIESSEL, Alaska State Legislature, Juneau, Alaska, sponsor of SB 38, said this bill was offered in 2013 and 2014. She began carrying it in 2015 and this was the fourth year the bill was before the committee. It is a consumer protection bill that will protect Alaska health care professionals. This year her focus has been on restraining the cost of health care. Twenty percent of the cost of health care is in pharmaceuticals.

SENATOR GIESSEL directed the committee's attention to slide 2 of the *Pharmacy Benefit Managers and the Need for Fair and Reasonable Standards over the Practice of Auditing Pharmacies* presentation. She said the topic is complex and she wanted to go over terms.

She said pharmacy benefit managers (PBMs) were created in 1970 to help insurance companies and large employers manage the claims and benefits for their insured employees. Over time they have massively expanded into middlemen that stand between the consumer, the pharmacy, the insurance companies, and pharmaceutical manufacturers. In each of those transactions the PBMs capture money. That has driven them to the top of the lists of Fortune 500 companies.

She said three PBMs control 80 to 90 percent of the pharmaceutical market. Alaska is only one of four states that does not oversee or regulate these entities.

She said PBMs enforce the reimbursement rates for pharmacies. She referred to slide 19 in the presentation, which addresses 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 usual 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).

SENATOR GIESSEL explained that a pharmacy shops around with wholesalers for the lowest costs for drugs. The PBMs have established the MAC which may or may not cover the costs of the drugs for the pharmacy. She noted that one of the pharmacies in Juneau lost \$20,000 on unreimbursed costs in three months.

SENATOR GIESSEL advised that the packets have quite a lot of national information on PBMs. One example of the loss to pharmacies is through the sale of Tamiflu. Pharmacies can appeal, but that takes an excessive amount of time, and the majority of appeals are declined. Pharmacies are being purchased by PBMs. They negotiate rebates with pharmaceutical manufacturers that go to the PBMs, not the consumer or pharmacy. Again, they are the middlemen capturing huge amounts of money.

SENATOR GIESSEL said another feature of the PBMs is that they are prohibiting pharmacies from mailing prescriptions to their customers. A pharmacy in Juneau cannot mail a prescription to someone in Hoonah. If that person wants a drug mailed, that person must go through the PBM warehouse through the lower 48. That moves Alaska revenue to the lower 48.

SENATOR GIESSEL said the PBM contracts are take it or leave it. There is no appeal and they allow egregious audits. Alaska's independent pharmacies are going away because this is an unsustainable business model. The number of independent pharmacies has decreased by 60 to 70 percent. These are typically in small, rural areas. She described the PBMs as mega

monopolies and getting bigger by the day. It's to the point that Congress has taken an interest in PBMs.

SENATOR GIESSEL said SB 38 will allow some regulation and oversight through the Division of Insurance. It will address audits, making them something pharmacies know are coming so they can prepare. There would be an appeal process and more transparency about the maximum allowable cost. She asked, "Where could a pharmacy get the prescription at the cost the PBM says they can get it at?"

[7:49:33 PM](#)

SENATOR GARDNER said that she is infuriated as she learns more. There are parallels with SB 76 which has to do with alcohol licensing and use in Alaska. There's a clear delineation between the manufactures, the wholesalers, and retailers and who can sell to whom. She asked if it makes sense to say that a PBM cannot also be a retailer.

SENATOR GIESSEL replied PBMs fall under federal jurisdiction of the Interstate Commerce Clause.

SENATOR STEVENS asked if the 60 to 70 percent decrease in independent pharmacies is in Alaska or nationwide.

SENATOR GIESSEL said that is in Alaska.

[7:51:58 PM](#)

CHAIR COSTELLO continued public testimony on SB 38.

[7:52:56 PM](#)

SCOTT WATTS, independent pharmacist, Juneau, Alaska, testified in support of SB 38. He said it is a critical issue for community pharmacy in Alaska. This bill doesn't try to do away with audits or PBMs; it is setting a fair playing field. They are in dire straits. The mail order provision is particularly important in Alaska. MAC pricing is needed to encourage lowest-cost purchasing of medications, but when they are unrealistically low, the pharmacist loses money or turns the business away. That is just the cost of the medication, not including the cost of dispensing. He provided an example that may be good news in Alaska. A memo stated that Alaska market conditions were not understood in 2017. MAC pricing went up but not retroactively. He received an outreach call from a PBM agent about an appeal. When he questioned the MAC pricing on a drug, he was told that information about what wholesaler sells the drug at that price would only be released to pharmacies in

states with laws on the books that require it. SB 38 is setting a fair standard.

7:58:16 PM

BARRY CHRISTENSEN, Alaska Pharmacist Association, Ketchikan, Alaska, testified in support of SB 38. He is a second-generation pharmacist and his daughter is in pharmacy school. She asks why Alaska is treated differently. This is the association's top legislative priority. It is something they have been working on for a while. Their small, independent pharmacies are hurting. It sets up guidelines that are in place for almost all the other states.

8:00:26 PM

CYNTHIA LAUBACHER, Senior Director, Express Scripts, Sacramento, California, testified in opposition to SB 38. She said they are committed to meeting with stakeholders in Juneau as they did in 2013. They have a few concerns with the bill. The standard for fraudulent activity audit findings is extremely high. The MAC section has a number of problems. It would set up a system where they would reimburse pharmacies at invoice cost. Everyone would pay a higher cost. They cannot force a wholesaler to sell a medication to a local pharmacy at a particular price.

SENATOR GARDNER asked if Express Scripts is a PBM.

MS. LAUBACHER said yes, serving 80 million Americans worldwide.

SENATOR MICCICHE asked how many Alaskans they serve.

MS. LAUBACHER said she didn't know. TRICARE is part of their network, which serves people with the Department of Defense.

SENATOR MICCICHE asked how many times she has offered to come to Alaska and how many meetings she has had. He related that one of the finest humans he knows owned a pharmacy. This is a huge issue to that person, who has since sold to a larger outfit and retired. Something doesn't seem right. He is very interested in the question he just asked. He's heard the PBMs talk about meetings and explaining things to folks. It is a little patronizing to Alaskans. He asked her to explain the other side of the story to him.

MS. LAUBACHER said she has been to Juneau a number of times. There was a stakeholder meeting in 2013 and nothing came of it. It has been a standing offer, but no one has reached out. They consider pharmacists partners.

8:06:08 PM

LEIF HOLM, Independent Pharmacist, North Pole, Alaska, testified in support of SB 38. He said he wants to reiterate everything that's been said in support of SB 38. Alaska pharmacies are losing the fight at a rapid pace. Express Scripts is the largest PBM in the country. These practices are detrimental to a rural state like Alaska. Since more than 40 states have passed similar legislation, the committee should consider the sincerity of PBMs like the one they just heard from.

8:08:11 PM

DIRK WHITE, representing self, Sitka, Alaska, testified in support of SB 38. He said he and his wife are pharmacists and they strongly support SB 38. They have 38 employees, over half of whom have retirement and health care benefits. They are looking at downsizing because the benefit costs are high and PBMs have cut their margins to the bone. In the states that have passed this legislation, if costs went up they would have amended or repealed the law. That hasn't happened. He said the mail order requirements do not fit Alaska. TRICARE forces everyone to go mail order after the first prescription is filled. Sitka has a Coast Guard station and they can't serve that clientele after the first prescription. He urged the committee to pass the bill, so they can stay in business.

8:11:00 PM

MARAL FARSI, CVS Health ("CVS"), Sacramento, California, testified in opposition to SB 38. She stated that CVS Health is a pharmacy in Alaska and a PBM. As a PBM they work in the interests of the State of Alaska to manage the cost of prescription drugs. They also provide services to large employers and Taft-Hartley Trusts in the state. CVS contracts are with the payers that are seeking some prescription drug benefit management.

MS. FARSI said after listening to what has been said about PBMs, she is compelled to clarify some things. One is that SB 38 does not exist in any state across the country. There are PBM laws that exist in various forms, but in its totality SB 38 is not a law that exists anywhere. The provisions of this bill are cost drivers, specifically the provisions that would limit the ability to audit pharmacies, like what the IRS does for businesses or individuals. As a PBM, CVS is auditing for fraud and abuse. Most of the monitoring for waste happens telephonically. They try not to be intrusive, but audits are a standard part of most business models.

MS. FARSI also clarified that they are seeing significant growth in the number of pharmacies in Alaska. Over the last five years, CVS Health network has seen an increase of 14 percent with the majority of those pharmacies being local and independent. She said it is frustrating to hear that PBMs are promoting the use of opioids. This could not be further from the truth. CVS's PBM is doing a lot and is out front in defaulting their clients to limit the first-time fills that patients get on acute conditions. They are trying to follow the CDC guidelines in only recommending a seven-day fill and a physician can override that easily, but they are not in the business of promoting opioids in any way.

MS. FARSI said they are hearing a lot about the negative margins, but they are not hearing about the positive margins that pharmacies see in MAC reimbursements. Maximum Allowable Cost (MAC) rates fluctuate and much of that is due to marketplace conditions that currently exist with pharmaceutical manufacturers. They have all heard of the drug prices that escalate 600 percent overnight. CVS is doing its best to keep on top of those types of changes and make sure that their pharmacists are adequately reimbursed. She agreed with the testimony from Express Scripts that independent pharmacies are needed in the network. Decisions that are made regarding mail order pharmacy for chronic medication are made by the client. Clients choose different methods for how they set up their benefits because it is cost-advantageous to them. CVS cannot serve an adequate network to Alaskans without local independent pharmacies.

MS. FARSI said they would like to work with the pharmacists in Alaska and come up with a solution that works for Alaska. They've done it in other states. It always occurs through a stakeholder process. Everybody comes to the table and figures out what works. CVS Health is willing to make that happen given the opportunity.

[8:15:31 PM](#)

SENATOR GARDNER shared that when the IRS audited her, it was by appointment and she knew beforehand what the agency would look at. It was not a surprise and there was flexibility in scheduling, so it did not interfere with the normal flow of business. She pointed out that the pharmacists she has met and those who testified said they don't oppose being audited, but they wanted parameters for when and how and that the presumption

of wrongdoing was problematic. She didn't believe there was a presumption of wrongdoing on IRS audits.

MS. FARSI said they schedule audits. Clients expect no waste or abuse from pharmacies. They would like to figure out parameters with pharmacists.

8:17:25 PM

CATHERINE KOWALSKI, representing self, Petersburg, Alaska, testified in support of SB 38. She said it is extremely important for pharmacies across the state. She and her sister run the pharmacy her father started and employ 15 and work with the hospital and assisted living facility. This bill is important to hold PBMs accountable and maintain jobs. The business model does not fit Alaska. PBMs have affected her practices. She would like to provide more patient-centered services but ends up chasing negative revenues and training staff to assist with those pursuits. Responding to the CVS representative, she said it seems that everyone is eager to meet, but in the past, it hasn't worked out. They talk and then move to kill the bills. They argue they aren't insurance companies, but they should be registered. If they were playing fair, they wouldn't be here. Since the PBMs fight so hard against the bill, it is clear the stakes are high. Accountability and transparency will decrease costs, increase savings, and provide guidelines for better business practice in the state. She enjoys making Petersburg her home and is committed to serving the community as long as she can.

8:21:33 PM

CHAIR COSTELLO closed public testimony and held SB 38 in committee.

8:22:01 PM

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 8:22.