

ALASKA STATE LEGISLATURE
SENATE LABOR AND COMMERCE STANDING COMMITTEE

March 27, 2018

1:33 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."

- MOVED CSSB 119(L&C) OUT OF COMMITTEE

PREVIOUS COMMITTEE ACTION

BILL: SB 119

SHORT TITLE: HEALTH CARE COSTS: DISCLOSURE;INSURERS;

SPONSOR(s): SENATOR(s) HUGHES

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|----------|-----|-----------------------------------|
| 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) | -- Public Testimony -- |
| 03/19/18 | (S) | L&C AT 6:00 PM BELTZ 105 (TSBldg) |
| 03/19/18 | (S) | Heard & Held |

03/19/18 (S) MINUTE (L&C)
03/27/18 (S) L&C AT 1:30 PM BELTZ 105 (TSBldg)

WITNESS REGISTER

NATASHA MCCLANAHAN, Staff
Senator Mia Costello
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Reviewed changes between version U and version R of SB 119.

SENATOR SHELLEY HUGHES
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Sponsor of SB 119.

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

POSITION STATEMENT: Provided the sectional analysis for version R of SB 119.

ELISE SORUM-BIRK, Intern
Senator Bill Wielechowski
Alaska State Legislature
Juneau, Alaska

POSITION STATEMENT: Provided information on SB 119.

SARA CHAMBERS, Division Manager
Corporations, Business, and Professional Licensing (CBPL)
Department of Commerce, Community and Economic Development
Juneau, Alaska

POSITION STATEMENT: Testified that the Board of Pharmacy offered no position on incorporating SB 209 into SB 119.

JOEL ALLUMBAUGH, Visiting Fellow
Foundation for Government Accountability
Naples, Florida

POSITION STATEMENT: Testified in support of SB 119.

RICHARD HOLT, Chair
Board of Pharmacy
Eagle River, Alaska

POSITION STATEMENT: Raised concerns about SB 119.

ACTION NARRATIVE

[1:33:38 PM](#)

CHAIR MIA COSTELLO called the Senate Labor and Commerce Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Gardner, Stevens, Micciche, and Chair Costello. Senator Meyer arrived soon thereafter.

SB 119-HEALTH CARE COSTS: DISCLOSURE;INSURERS;

[1:34:13 PM](#)

CHAIR COSTELLO announced the consideration of SB 119 and noted the proposed committee substitute (CS).

[1:34:39 PM](#)

SENATOR MICCICHE moved to adopt the work draft committee substitute (CS) for SB 119, labeled 30-LS0403\R, as the working document.

[1:34:56 PM](#)

CHAIR COSTELLO objected for an explanation of the changes.

[1:35:09 PM](#)

NATASHA MCCLANAHAN, Staff, Senator Mia Costello, Alaska State Legislature, Juneau, Alaska, reviewed the following explanation of changes from version U to version R of SB 119:

- Bill title revised to include new items in the legislation pertaining to pharmacies' disclosure of cost information.
- Changes AS 08.80.297, adding that pharmacies must disclose pharmacy retail price and consumer's cost sharing price when filling a prescription.
- Adds a new section to AS 08.80, directing that pharmacists in the State must, unless directed otherwise by the consumer, charge the lesser of the two prices between the pharmacy retail price and the consumer cost sharing price.
- Stipulates that pharmacies must retain prescription and customer cost information for a period of at least two years.

- A new subsection is added directing the department to inform the public that a provider who chose to pay the maximum penalty in lieu of disclosing their prices, was in violation of this section.
- Sections 8 and 9 of version U are removed and a new section is added requiring the Department of Administration to conduct an analysis of the possible impacts to the state of Alaska and to employees under managed plans should the Department adopt the requirements of AS 18.23.400, AS 18.23.405, and AS 21.96.200-21.96.300.

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SENATOR SHELLEY HUGHES, Alaska State Legislature, Juneau, Alaska, sponsor of SB 119, offered to have Mr. Witt go through the sectional.

[1:37:08 PM](#)

BUDDY WHITT, Staff, Senator Shelley Hughes, Alaska State Legislature, Juneau, Alaska, advised that the CS incorporates legislation by Senator Wielechowski regarding pharmacists. He highlighted the following changes in version R of SB 119:

Sec. 2, Page 1, line 12 - Page 2, Line 2 Adds that a pharmacist must disclose retail and cost sharing information when requested.

Sec. 3, Page 2, Line 3 - Page 3, Line 4 Amends AS 08.80.297 by adding new subsections regarding disclosure of prescription drug pricing to consumers.

- Pharmacists shall charge the lower of the two prices of a prescription drugs between the retail prices and the consumers cost sharing price, unless otherwise directed by the consumer.
- The pharmacist must inform the consumer if the retail price is lower than the consumers cost sharing price.
- Pharmacies must post a notice that the consumer may, at the point of sale, request the pharmacists retail price of a prescription.
- No contract or agreement may prohibit a pharmacy from complying with this section.
- Definitions used in this section.

[1:39:32 PM](#)

SENATOR STEVENS noted that on the top of page 2 of the bill it says, "pharmacy retail price" and "consumer's cost sharing." He asked if that should be "price" instead of "cost sharing" because the explanation of changes says, "cost sharing price." He asked if pharmacists only deal with two prices, the consumer cost sharing price and the retail price.

MR. WHITT said his understanding is there are only two prices. One is the price the pharmacy charges on a retail basis and the other is the copay that an insured person would pay.

SENATOR STEVENS asked him to look into whether the language at the top of page 2 should say "consumer cost sharing price."

[1:41:12 PM](#)

At ease

[1:41:41 PM](#)

CHAIR COSTELLO reconvened the meeting. She pointed out that the definition of cost sharing is on page 2, line 17.

[1:42:07 PM](#)

SENATOR MEYER joined the committee.

CHAIR COSTELLO asked Senator Stevens if he wanted further clarification.

SENATOR STEVENS said not if the chair is happy.

[1:42:32 PM](#)

SENATOR GARDNER said it seems the price is set by the retailer and the cost sharing has to do with the insurance, so it's not really a price. She asked the impact of this provision on the pharmacist. They aren't reimbursed sometimes through the insurance process for the actual price they paid. She asked if this provision of requiring the pharmacy to sell at the lower price hurts the bottom line.

MR. WHITT deferred to Senator Wielechowski's staff.

SENATOR GARDNER said she'd hold the question.

[1:44:16 PM](#)

MR. WHITT continued the sectional analysis for SB 119.

Sec. 4, Page 3, Lines 5 - 10 AS 08.80.305 is added instructing pharmacists to maintain pricing and sales information for no less than two years.

Sec. 5 and Sec. 6, Page 3, Lines 11 - 24 These two sections amend AS 08.80.460 to exempt violators of this section from the maximum penalty of a class B misdemeanor and includes them in the civil penalties assessed for violation of the section.

MR. WHITT said pharmacists face severe penalties for violating certain provisions in Chapter 80. They did not want the situation of not providing a piece of paper stating someone may request the retail price to be a violation that resulted in a class B misdemeanor. The language is to clarify that this section alone would not result in a maximum penalty if a pharmacist were in violation.

SENATOR HUGHES said in lieu of paying a penalty, the pharmacist would have the option to refund the difference to the consumer.

MR. WHITT said he would skip to subsection (g) on page 5 to the next substantive change.

Sec. 8, Page 4, Line 8 - Page 7, Line 31 Adds a new section to Title 18 for health care services and price information.

g. Allows the department to disclose to the public that the health care provider or facility is in violation of this section should they choose to pay the maximum penalty in lieu of providing the requested information.

MR. WHITT explained that if a provider chooses to pay the penalty in lieu of providing price information for the top 25 health care services, the Department of Health and Social Services (DHSS) does have the ability to list the fact that the provider is in violation of the requirement to disclose prices.

CHAIR COSTELLO asked if the penalty is \$2,500.

MR. WHITT said that's correct.

MR. WHITT said the rest of the bill is unchanged until Section 13, page 13. This addresses concerns that the Department of Administration (DOA) voiced that implementing such major policy

changes without the ability to thoroughly vet them might have unintended consequences.

Sec. 13, Page 13, Lines 6 - 16 The Department of Administration shall perform an analysis of the possible impacts to the state of Alaska and to the employees under managed plans should the Department adopt the requirements of AS 18.23.400, AS 18.23.405 and AS 21.96.200 - AS 21.96.300.

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SENATOR HUGHES said the department was interested in the concept and what other states have done and whether it might bring savings. For example, just for the retiree health care per year, it is about \$650 million. They were also willing to implement it if it's a benefit to the state. That language isn't in the bill currently, but future committees might want to include that. She is pleased about the report back. It's a step in the right direction.

MR. WHITT said the CS makes no changes after Section 13.

[1:50:48 PM](#)

SENATOR STEVENS said that the pharmacist must keep the record of prescriptions for two years. He asked how onerous this will be for the pharmacist.

MR. WHITT said as the sponsor mentioned, Section 3 asks the pharmacy to keep the information on hand, so they can refund if they charged too much. The price is the price at the point of sale. Retail prices may vary, but the contracted rates with the insurance company are set for a period of time.

SENATOR STEVENS clarified they have not received feedback from pharmacists that this would be difficult to do.

MR. WHITT said the sponsor's office has not heard that it will be onerous.

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SENATOR GARDNER said she believes it might be fairly complicated to figure out the steps on each order. She would like to hear from pharmacists about what this might entail.

MR. WHITT said this is retail, not wholesale. His understanding is that information and the consumer cost sharing price are kept on file and readily available.

SENATOR HUGHES said she appreciates the question. This changes things, but they are trying not to make this onerous. The retail price is set every day of the year. For the most part the retail price will be readily available [through the software used].

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SENATOR MEYER asked if this pertains to physician providers in Alaska only. He asked if telehealth outside the state would be impacted.

MR. WHITT said he would get clarification, but his understanding is every health care provider licensed in Alaska would be privy to the policy.

SENATOR MEYER asked if each physician in a multiple-physician practice would need to post prices.

MR. WHITT said he would need to check and follow up with the answer.

SENATOR MEYER asked if physician assistants or nurse practitioners working with physicians would need to post prices as well.

[1:59:41 PM](#)

At ease

[2:00:53 PM](#)

CHAIR COSTELLO reconvened the meeting.

[2:01:03 PM](#)

MR. WHITT said his assumption is that the bill addresses all providers and all health care facilities. He read the language in Section 8 pages 4 and 5. It's purposefully broad language to capture as much information as possible.

SENATOR HUGHES added that a primary care clinic that has the same price list for all the providers would need to have just one list.

SENATOR MEYER asked if they also put the prices on their or the department's website.

MR. WHITT said in Section 8 language on page 4, says that a list is turned in to DHSS for posting on the website and is posted in

a reception area of the facility and on a website, if the facility has a website.

SENATOR MEYER commented that the onus is for the department to put it on the website, not the doctor's office.

MR. WHITT restated that the provider facility must post the list on a website if the provider has a website.

[2:04:24 PM](#)

SENATOR MICCICHE said section 8, page 7, has a definition of health care facility and health care provider.

[2:04:44 PM](#)

CHAIR COSTELLO removed her objection; finding no further objection, version R was adopted.

[2:05:25 PM](#)

ELISE SORUM-BIRK, Intern, Senator Bill Wielechowski, Alaska State Legislature, Juneau, Alaska, said generally this would be a benefit to pharmacists.

SENATOR GARDNER asked if she has discussed this provision with pharmacists.

MS. SORUM-BIRK said they have one letter from a pharmacist organization. They support the idea of the bill but are hesitant that the onus is on the pharmacist. They would rather it be put on the pharmacy benefit manager.

SENATOR GARDNER said she would like to hear from a pharmacist or someone who could tell how this would apply.

CHAIR COSTELLO said no pharmacists were signed in to testify.

SENATOR GARDNER reiterated that she would like to hear from pharmacists.

[2:08:35 PM](#)

At ease

[2:09:25 PM](#)

CHAIR COSTELLO reconvened the meeting.

[2:09:30 PM](#)

MS. SORUM-BIRK said subsection (e) on page 2, line 14, would be beneficial to pharmacists because they often now have a gag

order in contracts. Without that gag order, they would be able to talk more openly about pricing to the consumer.

CHAIR COSTELLO asked if the administration has a position on the bill.

[2:11:30 PM](#)

SARA CHAMBERS, Division Manager, Corporations, Business, and Professional Licensing (CBPL), Department of Commerce, Community and Economic Development (DCCED), Juneau, Alaska, said the Board of Pharmacy looked at SB 209, Senator Wielechowski's initial bill, but declined to offer a position. The thought from the board is it's not dramatically different. The division is reaching out to the board to ensure the chair is aware of the changes in the bill.

CHAIR COSTELLO asked if she foresees the fiscal note changing from zero.

MS. CHAMBERS said CBPL hasn't submitted a fiscal note and hasn't done the analysis on this bill at this time.

[2:13:33 PM](#)

CHAIR COSTELLO turned to public testimony.

[2:13:51 PM](#)

JOEL ALLUMBAUGH, Visiting Fellow, Foundation for Government Accountability, Naples, Florida, testified in support of SB 119. He said the foundation is a nonpartisan think tank. He also owns and operates an employee benefits business. He lives with the regulatory choices made. The foundation has been interested in aligning patient incentives with meaningful transparency as a simple way to lower health care spending. They support the efforts of SB 119. What is common across states is widely variable costs with no tie to quality. Shopping alone won't solve the problem, but it is part of the low hanging fruit. He asked them to imagine the possible savings to patients by choosing lower-cost services and to think of the impact of the delivery service as providers respond to incentives, just like patients do. He gave an example of how implementing a similar program for New Hampshire state employees lowered costs for a certain treatment.

[2:18:59 PM](#)

RICHARD HOLT, Chair, Board of Pharmacy, Eagle River, Alaska, said he wanted to give his personal perspective as a licensed pharmacist. The first big impact of the committee substitute

would be providing consumers with cost sharing data. He won't know the copay until he enters all the information about the prescription into the computer system. Until he sends all that information via computer to the insurance company he will have no idea what the consumer will pay or if it is covered. Second, there is the retail or cash price and a consumer cost sharing defined in the bill. Another price is through discount cards, which also affect prices. It doesn't look like they are a part of this process, but many patients use discount cards, especially those who do not have insurance.

MR. HOLT said Senator Gardner had excellent points about Section 3 and the onus on pharmacists. To have to manually look up each claim when processing hundreds of prescriptions a day and thinking about clinical concerns, is onerous. He is not a computer programmer, but it is not user friendly. Regarding posting notices, patients don't pay attention. He asked why there is an onus imposed on in-state pharmacies versus out-of-state pharmacies.

[2:25:15 PM](#)

SENATOR STEVENS asked him to reflect on Section 4 and maintaining costs for two years.

MR. HOLT said it won't be a large burden because most records are electronic.

[2:26:12 PM](#)

At ease

[2:27:34 PM](#)

CHAIR COSTELLO reconvened the meeting. Finding no one else who wanted to comment, she closed public testimony on SB 119.

[2:28:03 PM](#)

MR. WHITT said he and the sponsor appreciate Mr. Holt giving his view of the bill. He pointed out that the sponsor did meet with every stakeholder they could think of. He will respect Mr. Holt's view on the bill.

MR. WHITT said that Section 3 of the bill doesn't change the way a prescription is filled. The bill assumes that everything that happens is after the prescription is filled. It is simply letting the consumer know if one of the two prices is lower, so the consumer can make a purchasing decision. They are asking for transparency and information for consumers when they fill a

prescription. Second, the bill does not require pharmacists to give information about cost over the phone.

[2:30:42 PM](#)

SENATOR GARDNER said subsection (b) says, "A pharmacist shall, unless directed otherwise by the consumer charge a consumer the applicable cost sharing or the current pharmacy retail price for a prescription medicine, whichever is less." That means a pharmacist must figure out for every prescription which is less, so they must complete the submission through the insurance company for that calculation and check the other price. That is a lot of work.

SENATOR HUGHES said she is willing to work with Mr. Holt and others. Her experience is once pharmacists bring up her name the information is available instantly. It is the point of sale, not phone requests. Her understanding is that software can accommodate that. She wants to allow consumers to have the information they need and ensure consumers are not overcharged and also make it the least amount of work for pharmacists.

[2:32:57 PM](#)

SENATOR GARDNER said she appreciates that. She wants to support that, but even if someone gets the same prescription filled all the time, pharmacists have to check the price every time with insurance companies. Sometimes people are not employed any longer or filling prescriptions early. It's another step that is rather laborious. It's a concern and pharmacists not here to speak about it.

[2:34:08 PM](#)

SENATOR MICCICHE asked if there could be an interstate commerce problem with subsection (e) in Section 3.

MR. WHITT said based on his research, legislation like this has been passed in Connecticut, Georgia, North Dakota, Louisiana, and is in committee in Massachusetts. As it relates to the federal commerce clause, this would be a policy that the state would enact for pharmacists who are licensed in the state of Alaska. Those concerns have been addressed in other states and Legislative Legal hasn't expressed concern with that section.

SENATOR MICCICHE said he's not convinced even though other states have passed similar legislation. He didn't know how a state could legislate an out-of-state supplier contract. It seems problematic and an important consideration.

CHAIR COSTELLO said the bill has a Finance referral and those concerns can be brought up there.

SENATOR MICCICHE said he would request hearing from affected parties in Finance.

[2:37:51 PM](#)

SENATOR MEYER moved to report the CS for SB 119, version R, from committee with individual recommendations and attached fiscal note(s).

[2:38:05 PM](#)

CHAIR COSTELLO found no objection and CSSB 119(L&C) moved from the Senate Labor and Commerce Standing Committee.

[2:38:31 PM](#)

There being no further business to come before the committee, Chair Costello adjourned the Senate Labor and Commerce Standing Committee meeting at 2:38 p.m.