**ALASKA STATE LEGISLATURE**
**SENATE LABOR AND COMMERCE STANDING COMMITTEE**
March 11, 2024
1:33 p.m.

**MEMBERS PRESENT**

Senator Jesse Bjorkman, Chair
Senator Click Bishop, Vice Chair
Senator Elvi Gray-Jackson
Senator Kelly Merrick
Senator Forrest Dunbar

**MEMBERS ABSENT**

All members present

**COMMITTEE CALENDAR**

SPONSOR SUBSTITUTE FOR SENATE BILL NO. 121
"An Act relating to the Board of Pharmacy; relating to insurance; relating to pharmacies; relating to pharmacists; relating to pharmacy benefits managers; relating to patient choice of pharmacy; and providing for an effective date."

- HEARD & HELD

SENATE BILL NO. 203
"An Act relating to business license fees; and providing for an effective date."

- SCHEDULED BUT NOT HEARD

**PREVIOUS COMMITTEE ACTION**

BILL: SB 121
SHORT TITLE: PHARMACIES/PHARMACISTS/BENEFITS MANAGERS
SPONSOR(s): SENATOR(s) GIESSEL BY REQUEST

| | | |
|---|---|---|
| 03/31/23 | (S) | READ THE FIRST TIME - REFERRALS |
| 03/31/23 | (S) | L&C, FIN |
| 02/08/24 | (S) | SPONSOR SUBSTITUTE INTRODUCED-REFERRALS |
| 02/08/24 | (S) | L&C, FIN |
| 02/28/24 | (S) | L&C AT 1:30 PM BELTZ 105 (TSBldg) |
| 02/28/24 | (S) | Heard & Held |
| 02/28/24 | (S) | MINUTE(L&C) |

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|---|---|---|
| 03/06/24 | (S) | L&C AT 1:30 PM BELTZ 105 (TSBldg) |
| 03/06/24 | (S) | Heard & Held |
| 03/06/24 | (S) | MINUTE(L&C) |
| 03/11/24 | (S) | L&C AT 1:30 PM BELTZ 105 (TSBldg) |

**WITNESS REGISTER**

SENATOR CATHY GIESSEL, District E
Alaska State Legislature
Juneau, Alaska
**POSITION STATEMENT:** Sponsor of SB 121 by request.

DAN NELSON, Director of Pharmacy
Tanana Chiefs Conference
Fairbanks, Alaska
**POSITION STATEMENT:** Testified by invitation on SB 121.

MARY STOLL, Founder
Stoll Law Group, PLLC
Advisor to Pacific Health Coalition
Seattle, Washington
**POSITION STATEMENT:** Testified with concerns on SB 121.

GREG LOUDON, Vice President & Account Executive
Parker, Smith and Feek
Anchorage, Alaska
**POSITION STATEMENT:** Testified in opposition to SB 121.

DEREK MUSTO, Organizer and Business Agent
Alaska Teamsters Local 959
Anchorage, Alaska
**POSITION STATEMENT:** Testified with concerns on SB 121.

BRENDA SNYDER, Lead Director
Government Affairs
CVS Health/Aetna
Tacoma, Washington
**POSITION STATEMENT:** Testified in opposition to SB 121.

GARY B. STRANNIGAN, Vice President
Congressional and Legislative Affairs
Premera Blue Cross
Everett, Washington
**POSITION STATEMENT:** Testified in opposition to SB 121.

LAUREE MORTON, representing self
Juneau, Alaska

**POSITION STATEMENT:** Testified in support of SB 121.

**ACTION NARRATIVE**

1:33:08 PM
**CHAIR JESSE BJORKMAN** called the Senate Labor and Commerce Standing Committee meeting to order at 1:33 p.m. Present at the call to order were Senators Gray-Jackson, Dunbar, Merrick, Bishop, and Chair Bjorkman.

## SB 121-PHARMACIES/PHARMACISTS/BENEFITS MANAGERS

1:34:01 PM
CHAIR BJORKMAN announced the consideration of SPONSOR SUBSTITUTE FOR SENATE BILL NO. 121, "An Act relating to the Board of Pharmacy; relating to insurance; relating to pharmacies; relating to pharmacists; relating to pharmacy benefits managers; relating to patient choice of pharmacy; and providing for an effective date."

1:34:25 PM
SENATOR CATHY GIESSEL, District E, Alaska State Legislature, Juneau, Alaska, sponsor of SB 121 by request. She shared a quote from a recent White House discussion on pharmacy benefit managers (PBM):

> I genuinely believe that CEOs do not understand how their healthcare costs work - particularly as it applies to the rebates that you see from their PBMs. They tend to look at rebates as cash paid by drug manufacturers. Nothing could be further from the truth. The reality is the rebates are not paid by the drug manufacturers. The rebates are paid for by these companies sickest and oldest employees.
>
> -Mark Cuban, Cost Plus Drugs

SENATOR GIESSEL expressed her agreement and shared her belief that Alaskan pharmacists will show that the PBM reforms included in SB 121 will allow Alaskans to enjoy cost savings on their health plans. She noted that Idaho recently passed PBM reform legislation that contained many of the same provisions as SB 121. She added that 39 states are considering PBM reform and asserted that there is a reason for this. She said that seasoned Alaskan pharmacists will bring forward the inequities of the PBM business model in Alaska.

1:36:23 PM
SENATOR GIESSEL said that these pharmacists will illustrate that PBM reform will result in cost savings. She stated that change is difficult. She asserted that it is easier for those opposing SB 121 to instill fear of change than it is for them to prove that maintaining the current structure is saving consumers money. However, states that have passed PBM reform have reported millions of dollars in savings. She opined that if the extensive documentation provided in committee packets is considered, it is difficult to deny that PBM reform is desperately needed.

1:37:33 PM
CHAIR BJORKMAN said that individuals who support PBMs have expressed concerns that SB 121 would not allow their insurance plans to provide maintenance drugs via mail order to pharmacy customers. He sought clarification of this issue.

1:38:02 PM
SENATOR GIESSEL answered no. She clarified that SB 121 allows individuals to choose between local pharmacies and mail order.

1:38:14 PM
CHAIR BJORKMAN said he has heard concerns that SB 121 would remove "network" pharmacies - specifically removing the ability for plans to create a group of contract pharmacies that would provide benefits for their plan. He sought clarification of his issue.

1:38:36 PM
SENATOR GIESSEL replied that this is something PBMs do in PBM contracts - by mandating which pharmacies can be used by the consumer.

1:38:48 PM
CHAIR BJORKMAN asked for clarification that SB 121 allows for the creation of "network" pharmacies.

1:39:09 PM
SENATOR GIESSEL clarified by offering an example. She said that Optum is the PBM for [the State of Alaska]. She explained that PBM subscribers can use other pharmacies; however, there is a lower cost when the PBM pharmacy is utilized.

1:39:56 PM
DAN NELSON, Director of Pharmacy, Tanana Chiefs Conference, Fairbanks, Alaska, testified by invitation on SB 121. He advanced to slide 2 of his PowerPoint presentation and explained

the pharmacy reimbursement model. He said that the total pharmacy reimbursement amount is made up of the drug product cost and the pharmacy dispensing fee.

1:40:50 PM
MR. NELSON noted that at this time, much of the overall drug spend is weighted on the ingredient cost (99.5 percent was ingredient cost, according to recent Division of Retirement and Benefits (DRB) data). He explained that SB 121 would create a new pharmacy reimbursement model: average acquisition cost (National Average Drug Acquisition Cost (NADAC)) plus the cost of dispensing (both set by a survey of pharmacies and overseen by the Commissioner of the Division of Insurance). He acknowledged that the overall impact would be an increase in the dispensing fee; however, there would be drastic decrease in the ingredient cost-spend. This would result in a net-neutral change with the potential for cost-savings.

1:41:59 PM
MR. NELSON said that he would provide several examples of what has been spent. He noted that these examples are multiple sclerosis drugs which are very expensive and added that this information came from an analysis of DRB data. He advanced to slide three, showing prescription data for methyl fumarate 240 mg - 93 prescriptions filled by Optum Retail, 1 prescription filled by Optum Specialty. For this drug, the state of Alaska paid $410,226 - about $4,400 per prescription. He contrasted this with the $35,746 max cost when using the formula in SB 121 (using an estimated $13.36 dispensing fee) - a savings of over 1000 percent - about $384 per prescription.

1:43:09 PM
MR. NELSON advanced to slide 4 and discussed 32 prescriptions for Copaxone 40mg-ml PFS (filled by Optum). In this case, SOA paid $153,717 - around $4,800 per prescription.

1:43:39 PM
SENATOR DUNBAR asked for clarification on the dispensing cost used in the estimates.

1:43:54 PM
MR. NELSON replied that the calculations in his presentation used a dispensing cost of $13.36.

1:44:12 PM
SENATOR DUNBAR commented that even with a $13 dispensing fee, the cost would be half.

1:44:14 PM
MR. NELSON noted that where a prescription is filled can have a drastic impact on the reimbursement amount. He surmised that some upcoming testimony may claim that "specialty pharmacies" save costs; however, he stated that when the data was examined, utilizing specialty pharmacies increased the fee by over $1,000 per prescription. He asserted the argument that specialty pharmacies save money does not hold.

1:45:03 PM
CHAIR BJORKMAN asked about the difference between a specialty pharmacy and a regular pharmacy.

1:45:16 PM
MR. NELSON answered that the term "specialty pharmacy" was created out of thin air by the PBM industry and there is not a single accepted definition. He said that essentially, it boils down to the expensive nature of the drugs in question. He emphasized that while these drugs account for roughly two percent of the volume of prescriptions filled in the United States (US), they account for over 50 percent of the overall US drug spend. He pointed out that, once generic options become available, drugs are no longer considered "specialty" and asserted that there is nothing special about the drug itself; rather, the costs associated with the drug are what make it a specialty drug.

1:46:37 PM
SENATOR BISHOP asked if Mr. Nelson and his peers have the education and training necessary to handle specialty drugs.

1:47:05 PM
MR. NELSON answered that they absolutely have the necessary training, expertise, knowledge, facilities, and infrastructure to handle specialty drugs. He argued that - especially in Alaska, with its unique geographical landscape - they do a better job. He emphasized that patients receive their medications in a timely manner, and it is not frozen - which is a huge logistical undertaking that requires a great deal of coordination with health aides and patients while utilizing a variety of delivery options. He asserted that when these prescriptions are sent to Alaskan villages from Florida via the United States Postal Service (USPS) or FedEx, 50 percent of them are wasted.

1:48:11 PM

CHAIR BJORKMAN asked how things would change for insurance plans and the insured if there were more specialty pharmacies.

1:48:51 PM
MR. NELSON replied that it depends. He reiterated that the distinction of "specialty" drugs is a made-up term and opined that differentiating between "specialty" and "non-specialty" is unhealthy. He explained that when prescriptions must be filled at different pharmacies, the pharmacist is not aware of other prescription drugs the patient is taking and is therefore unable to take drug interactions into consideration. He asserted that this creates a dangerous situation and provides an inferior level of care. He opined that an increase in specialty pharmacies would be a move in the wrong direction.

1:49:57 PM
MR. NELSON advanced to slide 5, which showed how much the State of Alaska (SOA) paid for the drug Ampyra (10mg ER tablet) in 2022. According to the data, SOA paid nearly $200 thousand - more than 2,400 percent more than what is proposed by SB 121's transparent and fair reimbursement model. Additionally, SOA paid 3 thousand times more for OptumRX mail. He contrasted this with the rates proposed by SB 121, which would be under $8 thousand.

1:51:02 PM
CHAIR BJORKMAN asked if Mr. Nelson was familiar with the Department of Retirement and Benefits (DRB) fiscal note.

1:51:12 PM
MR. NELSON replied yes.

1:51:15 PM
CHAIR BJORKMAN asked if, to his knowledge, this fiscal note used the same formula (NADAC pricing plus dispensing fee).

1:51:31 PM
MR. NELSON replied no and emphasized that there was no way the same formula could have been used.

1:51:35 PM
CHAIR BJORKMAN asked how the fiscal note was created.

1:51:39 PM
MR. NELSON replied that this is a very good question for DRB. He shared his belief that the fiscal note was derived from "on-road" and "off-road" dispensing fees that were offered during

testimony on SB 121. He surmised that these numbers were multiplied by the volume of prescriptions filled by the state in 2022 and then contrasted with the benchmark example - the current maximum of $0.80. He asserted that this calculation is laughable and does not consider that SB 121 would eliminate spread pricing and would decrease ingredient costs.

1:52:22 PM
MR. NELSON advanced to slide 6 and discussed spread pricing. He explained that to compile this data, they considered all prescriptions reimbursed for under $1 at a single pharmacy in Alaska in 2022 (a total of roughly 70 thousand prescriptions). He surmised that this low reimbursement amount is why pharmacies across the state are going out of business. Of the 70 thousand prescriptions, 35 thousand were reimbursed at an average of 47 cents per prescription. He explained that the cost for the pharmacy to buy the drugs (not including additional costs related to prescription preparation or business overhead) was over $10 per prescription. The acquisition cost for the 35 thousand prescriptions was $366 thousand. The pharmacy reimbursement amount was only $16 thousand. However, there is reason to believe that the plan was charged $832 thousand for those prescriptions. This results in a spread - which the PBMs kept - of over $816 thousand. He emphasized the drastic difference in these numbers and the negative impact this has on pharmacies.

1:54:38 PM
MR. NELSON advanced to page 7 and emphasized that not all pharmacists are "anti-PBM". He noted that there are some transparent PBMs, including one in Kansas that does not practice spread pricing and does not retain rebates or require a specialty pharmacy. They have a flat, per-prescription/per patient/per month administrative fee. Everything is above-board and this saves municipalities hundreds of thousands - if not millions - of dollars per year. He opined that this type of PBM is possible in Alaska, but the current system needs to be fixed.

1:55:53 PM
SENATOR BISHOP asked how pharmacies interface with PBMs.

1:56:08 PM
MR. NELSON answered that it is a "David vs Goliath" situation. He explained that the PBMs are some of the biggest companies in the world, and noted that Express Scripts, CVS, and OptumRx are all in the top 15 of the Fortune 500 companies. He said that they will periodically receive a fax or email of a contract

(anywhere from 60 to 132 pages long) and requesting a signature for the pharmacy to receive reimbursements from the PBM. He emphasized that any changes - or requests to make changes - to the contract results in rejection of the contract by the PBM.

1:56:45 PM
SENATOR BISHOP asked if they have considered trying to negotiate any of these contracts.

1:56:56 PM
MR. NELSON answered that 3 months ago, he tried to negotiate a contract. The contract he received was laughable and he could not bring himself to sign it without saying something about it. He explained that a Maximum Allowable Cost (MAC) pricing list allows the PBM to set their own costs for various dugs. He pointed out that PBMs do not share their MAC lists with the pharmacies (even though state law requires them to share this information). The contract in question required the acceptance of several MAC pricing lists. He said that in response to this request, he told the PBM that he would accept one MAC pricing list - and he requested that the list be made available (as required by state law). The PBM denied this request. He compared this to the PBM requiring them to sign a blank check. He fought the contract for 3 months before finally breaking down and signing - otherwise they would not have been able to bill anything.

1:58:10 PM
SENATOR BISHOP asked if he would be amenable to sitting down with PBMs to discuss this issue.

1:58:21 PM
MR. NELSON replied yes.

1:58:35 PM
[CHAIR BJORKMAN reopened public testimony on SB 121.]

1:58:34 PM
MARY STOLL, Founder, Stoll Law Group, PLLC, Advisor to Pacific Health Coalition, Seattle, Washington, testified with concerns on SB 121. She said that Pacific Health Coalition (PHC) covers 49 health plans in five states and represents over 250 thousand lives. One hundred ten thousand of those covered live in Alaska. She added that, because 50 percent of Alaska residents are federal program beneficiaries, one in three Alaskan citizens are members of a plan that is a member of PHC.

1:59:40 PM
MS. STOLL posed two questions to the committee and encouraged members to consider them prior to moving SB 121 out of committee:

- Is SB 121 preempted by the Employee Retirement Income Security Act of 1974 (ERISA)?
- Is SB 121 fair and equitable for working families?

MS. STOLL gave a brief history of ERISA and explained its "preemption clause". She then referred to a recent case in Oklahoma where legislation similar to SB 121 was struck down due to restrictions on ERISA fiduciary duties. She explained the role of ERISA fiduciaries and emphasized their importance.

2:01:13 PM
MS. STOLL pointed out that ERISA fiduciaries are held both civilly and criminally liable if they are not utilizing funds and assets for the sole and exclusive benefit of their participants. She opined that they take their duties very seriously as they negotiate PBM contracts. PBM contracts are carefully negotiated as part of the fiduciary's plan design. She noted that the Oklahoma case was decided by a US Circuit Court utilizing US Supreme Court determinations and is the prevailing law. She asserted that, like the Oklahoma legislation, SB 121 violates the Supreme Court determinations by regulating ERISA plan trustees and the fiduciaries' plan design. She opined that trustees take their jobs very seriously and are sophisticated in the contracts they negotiate with the PBMs.

MS. STOLL explained that spread pricing is optional and the inclusion of spread pricing is taken into consideration with the assistance of professional PBM consultants. PHC utilizes audits and Requests for Proposal (RFP) to evaluate cost/spend. She reiterated that trustees take their jobs seriously. She noted that ERISA plans have beneficiaries in multiple states, and it would not be feasible to administer an ERISA plan in multiple states with different laws. This is why ERISA plans fall under federal regulation. She asserted that problems with PBMs should be left to the federal government.

2:03:58 PM
MS. STOLL briefly discussed the Affordable Care Act and taxes on ERISA plan administrators that are then passed to the plan (because this is a federal law it is not preempted). She

asserted that SB 121 is essentially a tax on the health plans - it is not going to hurt PBMs. She opined that it is misguided to think that the cost would not be passed along to the workers who contribute - in many cases through collective bargaining - into their health plan. If money taken from employee paychecks and earmarked for their health benefit plan is then used for other purposes - such as an increased dispensing fee - this is not benefitting the plan participants and is therefore a breach of trustees' fiduciary duty. She noted that the increased dispensing fee would apply to all pharmacies. She questioned whether this would be a fair shift of cost, as it would divert funds from important medical treatments.

2:05:27 PM
MS. STOLL said that fiduciaries have limited levers to pull to address increased plan cost. They can implement cost-containment provisions (e.g. PBM contracts may include aggregate buying to decrease costs), increase contributions (the economy in Alaska does not favor additional contribution), or cut benefits/ increase out-of-pocket costs and deductibles. All of these hurt the hard-working men and women in the state. She urged members to carefully consider the preemption issue, which will apply to all legislation of this kind across the country.

2:07:09 PM
SENATOR DUNBAR asked if PHC would be giving a presentation.

2:07:29 PM
MS. STOLL replied that Greg Louden would be giving a presentation on behalf of PHC.

2:07:30 PM
SENATOR DUNBAR asked if the legislation in Oklahoma was struck down in its entirety and, if specific provisions were struck down, which ones are analogous to SB 121.

2:07:46 PM
MS. STOLL replied that the prohibition on preferred network and specialty pharmacy networks and the prohibition on mandated maintenance drug mail order. She added that the 10th Circuit Court remanded the case back to the Federal District Court to determine what portions of the law are severable from the preempted issues. She agreed that a state has the right to license, audit, and provide for administrative remedies for any business operating within its jurisdiction. She shared her belief that provisions in the bill relating to these issues would be upheld, as it is appropriate for a state to do this.

She reiterated that the legislation went wrong by requiring the ERISA plans to administer different laws in different states.

2:09:18 PM
SENATOR DUNBAR asked for clarification that the ERISA concerns arise from the in-network issue and the mail order issue.

2:09:34 PM
MS. STOLL replied yes, along with the specialty pharmacy restrictions.

2:09:42 PM
SENATOR DUNBAR referred to earlier testimony that SB 121 does not disallow mail order maintenance drugs and asked if this distinguishes SB 121 from the Oklahoma case.

2:09:58 PM
MS. STOLL offered her understanding that SB 121 does not allow companies to mandate mail-order drugs. She explained that mail-order maintenance drugs are usually optional and benefit the participant by ensuring they maintain their health routine - and there is generally no out-of-pocket cost. While it is not a common practice, some plans mandate mail-order maintenance prescriptions because there is a big cost savings. She opined that this is better for the participant because there is no out-of-pocket cost.

2:10:36 PM
SENATOR DUNBAR commented that an amendment allowing mail-order maintenance drugs might address this concern.

2:10:47 PM
MS. STOLL suggested that it would be better to consider this question from the preemption perspective, which states that this question should be left up to the fiduciaries when they are deciding the plan terms. It is the fiduciary's responsibility to determine whether the plan terms include that a certain medication, taken regularly, will be sent via mail-order because it is much less expensive for the plan (thus saving money to treat life-threatening diseases, support wellness programs, etc.).

2:11:16 PM
SENATOR DUNBAR commented that Alaska is a unique state when it comes to the mail system and temperatures. For instance, many people do not have mailboxes for their mail to go to. He asked for clarification that, if a plan mandated mail-order for a drug

that was known to spoil when being shipped to rural areas in Alaska, there is nothing that can be done about this.

2:11:43 PM
MS. STOLL replied that there is something that the plan can do about this. She stated that PHC's PBMs do not ship environmentally sensitive drugs (like insulin) to environmentally rough places like Alaska. She asserted that PHC's mail-order program has never shipped insulin and had it freeze on someone's doorstep. She reiterated that PHC serves 1 in 3 Alaskans and said that over the last two years there were two instances when mail-order drugs did not arrive timely. In those instances, a manual override was done and those prescriptions were filled at a retail pharmacy.

2:12:34 PM
CHAIR BJORKMAN asked for clarification that PHC covers 110 thousand lives in Alaska.

2:12:45 PM
MS. STOLL replied yes.

2:12:48 PM
CHAIR BJORKMAN stated that this translates to 1 in 7 Alaskans.

2:12:52 PM
MS. STOLL replied that this is correct; however, in addition to this, 50 percent of Alaskans are enrolled in federal programs such as Indian Health Services (IHS).

2:13:19 PM
SENATOR BISHOP asked Ms. Stoll to provide information regarding her work with PHC and her work history.

2:13:31 PM
MS. STOLL briefly shared her education and work history and offered an overview of her work for PHC.

2:14:20 PM
SENATOR BISHOP asked if this includes day-to-day negotiations between PBMs and the trusts.

2:14:28 PM
MS. STOLL replied that this is why the PBM contract is managed by a PBM consulting firm - National CooperativeRx. This firm has the aggregated clout that allows them to negotiate on an even basis with PBMs.

2:14:52 PM
SENATOR BISHOP commented that he is a 50-year member of Operating Engineers Local 302 and has some experience with these kinds of negotiations. He asked how they can be sure that the trustees are getting accurate information from the PBMs.

2:15:49 PM
MS. STOLL answered that National CooperativeRx reports their investigation, audit, and RFP findings PHC. Member plans have access to this information. She expressed confidence that PHC receives the information needed but acknowledged that she does not agree with all decisions made by PBMs and added that there are some transparency problems. She noted that these transparency concerns are being addressed at a federal level, which is where this issue belongs, as it relates to a federal law.

2:16:49 PM
CHAIR BJORKMAN asked for more information on the Supreme Court decision in Rutledge v Pharmaceutical Care Management Association (PCMA).

MS. STOLL explained that this was an Arkansas law that dealt with the relationship between the PBM and the pharmacy and involved an additional cost (which would have been passed down to the health plans). In this case, the court stated that because the proposed cost (imposed though a third-party vendor to the health plan) was not mandating changes to the plan design, it was not preemptive. Instead, it was considered an ancillary cost to the plan.

CHAIR BJORKMAN asked for clarification that, according to this interpretation, a dispensing fee increase would be allowed but mandating delivery would not.

MS. STOLL replied that this is correct and added that the latter would be considered "plan design" and would therefore fall under the purview of the plan fiduciaries.

2:19:02 PM
CHAIR BJORKMAN referred to the Supreme Court Case New York State Conference of Blue Cross & Blue Shield Plans et al. v Travelers Insurance Co. et al., which related to ERISA plans and differing hospital fees, and asked how this would speak to PBMs having different price structures for in-network vs out-of-network pharmacies.

2:19:33 PM
MS. STOLL replied that the aforementioned case dealt with the tax on hospital in New York - it did not deal with a pricing issue between the PBMs and the plan. She reiterated that the plans contract with the PBMs and SB 121 is a PBM bill - however, the net effect is to drive and mandate plan design changes by ERISA plans.

2:20:00 PM
MS. STOLL referred to the dispensing fee and PHC plans and stated that SB 121 would increase the yearly cost by $2.7 million. Currently, PHC dispensing fees are $4 - a $9.36 difference from the fee proposed by SB 121. She restated her earlier questions related to preemption, fairness, and equity and asked why those who are setting money aside via collective bargaining should be required to fund a private entity at a level that is higher than what they have already negotiated.

2:20:41 PM
CHAIR BJORKMAN commented that this is an interesting question. He pointed out that the parties present disagree on the facts, emphasizing the 3,000 percent difference in the numbers presented. With respect to negotiated agreements and collective bargaining, he commented that if he was paying money from his check monthly, he would want to know that the cost of the benefits being negotiated actually are less - and that the arrangements made are actually saving him money. He stated that, if even 10 percent of what the pharmacists have shared during their testimony is true, he would have questions about what union dues are worth. He said that he would be unlikely to continue paying dues if he did not receive great answers.

MS. STOLL expressed her agreement.

CHAIR BJORKMAN emphasized the importance of considering the data and understanding the differences between the numbers reported - why they exist and what they are. He added that until he receives a rational answer for the difference between the NADAC prices and what the plans pay out - he will have a hard time believing testimony that insists plan members are getting a good deal.

MS. STOLL said that Greg Loudon, who is a PHC consultant, would provide additional documentation to support this claim.

2:23:05 PM

GREG LOUDON, Vice President & Account Executive, Parker, Smith and Feek, Anchorage, Alaska, testified in opposition to SB 121. He said that he is an employee benefit consultant for PHC. He explained that PHC provides group contracting for self-insured health plans and he assists PHC to contract with PBMs, hospitals, and primary care providers, among others. PHC works to aggregate volume of beneficiaries and then negotiates on behalf of a much larger group.

2:24:06 PM
MR. LOUDON directed attention to a presentation titled "SB 121" and advanced to slide 2:

[Original punctuation provided.]

**Who is the Pacific Health Coalition?**

- Alaska based non-profit coalition representing self-funded health plans
- Public entities and labor/management trusts.
- Primary goals
    - Lower costs and increase quality for members
- Global membership is 49 plans and 250,000 lives
- Alaska membership is 29 plans and 110,000 lives

2:24:26 PM
MR. LOUDON advanced to slide 3:

[Original punctuation provided.]

**Why we oppose this bill**

- SB 121 increases costs to our members.
- Reduces our ability to:
    - Manage costs
    - Steer members to high quality pharmacies
    - Trade increased volume for reduced rates

MR. LOUDON emphasized the importance of trading increased volume for reduced rates. He stated that PHC represents hard-working families who have recently been faced with unprecedented inflation and wages have not been able to keep up. Workers trade compensation for benefits packages and now these benefits are being diminished to benefit one group.

2:25:27 PM
SENATOR DUNBAR asked for clarification of what is meant by "steer members to high quality pharmacies" and if independent Alaskan pharmacies - pharmacies that are in support of SB 121 - are not considered "high quality".

2:25:49 PM
MR. LOUDON suggested that there likely are some pharmacies that are not "high quality". He indicated that PHC has had negative interactions with some pharmacies that did not provide the quality, oversight, and value that PHC expects for its members.

2:26:15 PM
SENATOR DUNBAR requested more information on what is meant by "high quality" - and specifically how the practices of a "high quality" pharmacy would differ from those of a "low quality" pharmacy.

2:26:27 PM
MR. LOUDON replied that the Tanana Chiefs Conference pharmacy - which actively manages specialty products and adjusts practices to meet unique geographical needs, offers blood testing to determine whether a medication is working, etc. - is one example of a "high quality" pharmacy. He stated that smaller pharmacies - e.g. those run by one or two people in rural locations - do not have the capacity to provide the necessary services and oversight. He explained that, in addition to negotiating discounts, PBMs ensure that providers utilize best practices.

2:27:25 PM
MR. LOUDON advanced to slide 4:

[Original punctuation provided.]

**Why we oppose this bill**

- Complicated relationship with PBMs
    - PBMs provide a needed and valuable service but we don’t always like them
    - Consider vendors like cell phone companies, cable TV, car dealerships
    - Health plans cannot contract with every pharmacy directly
- Our plan sponsors hire, fire, and manage the services provided by the PBMs

MR. LOUDON emphasized both the complicated relationship PHC has with its PBMs and the importance of the service they provide.

2:29:37 PM
SENATOR BISHOP asked if SB 121 could be adjusted in a way that would satisfy all parties and stated the importance of finding common ground.

2:30:18 PM
MR. LOUDON replied that PHC could come up with some good recommendations; however, SB 121 in its totality is difficult for PHC and it would be difficult to suggest amendments that would make it palatable. He explained that PHC - along with other private entities - were caught off guard by the lack of discussion with stakeholders and implied that discussions would have resulted in provisions for SB 121 that would have benefited all involved. He opined that many things have been taken out of context and acknowledged that disputed facts make it difficult for the legislature to make sound decisions.

2:31:11 PM
MR. LOUDON spoke to points on slide 5:

[Original punctuation provided.]

**How has the PHC engaged to contract with PBMs**

- PHC formed a relationship with a larger non-profit coalition focused solely on PBM services
    - National Cooperative Rx
    - 315 Health plans and 480,000 lives
    - Independent auditing
    - Pricing guarantees and 100 percent return of rebates
    - Pharmacist team to evaluate clinical programs and recommend cost containment programs

MR. LOUDON gave a brief history of PHC's experience negotiating PBM contracts and shared how they began working with National Cooperative Rx. He briefly explained the contract negotiations. He pointed out that, contrary to previous testimony, PHC receives a 100 percent return on rebates. He said cost containment programs are evaluated to determine who they will most benefit.

2:33:31 PM
SENATOR DUNBAR expressed his understanding that the 100 percent return on rebates mandated by SB 121 would not impact PHC because they are already doing this. He surmised that PHC would therefore not oppose this portion of the bill an asked if this is correct. He suggested that others may not be getting this same return on rebates and asked if this is possible.

2:34:23 PM
MR. LOUDON replied that it is possible. He clarified PHC opposes this provision in SB 121 because it removes a cost-containment tool. He commented that spread-pricing factors into this and explained that spread-pricing is a contract tool, and as such is neither good nor bad.

MR. LOUDON explained that contracts can be transparent - sharing dispensing fees and ingredient costs at a particular pharmacy - or the contract can be generic - offering guaranteed discounts off of a national rate sheet for ingredient costs and a set number for dispensing fees. In a spread-pricing contract, this can be made up in rebates - some employers enter into contracts with either their health insurer or their PBM to give up part of the rebates. This way, there is no separate administration cost.

2:35:25 PM
SENATOR DUNBAR pointed out that PHC does not do this, since they get 100 percent of the rebates.

2:35:29 PM
MR. LOUDON agreed that PHC gets 100 percent of the rebates.

2:35:37 PM
CHAIR BJORKMAN stated that one of the goals of SB 121 is that members would no longer pay unknown costs. He surmised that PHC has access to the data and could easily make a comparison for the committee or for plan members who requested it. Specifically, PHC could provide data to show the difference between what the plan paid and the NADAC pricing for a particular prescription. He shared his understanding that members could potentially pay NADAC pricing - or pay based an unknown list of costs - the details of which are only available to certain people.

2:37:00 PM
MR. LOUDON replied maybe, though he is not an expert on pricing. He stated his belief that earlier testimony regarding the

pricing for multiple sclerosis drugs was taken out of context. He acknowledged that there may be examples like this - even in PHC contracts - where costs may be extremely high compared to other drugs because a different drug is favored over the one in question. He briefly explained how "preferred pricing" works.

2:37:45 PM
CHAIR BJORKMAN commented that while he cannot say whether this information is true or not, he is interested to know the runs for the prescription costs for the past year. Specifically, what is the difference between what the plan paid - what came out of members' pockets - and the NADAC pricing that the plan would have paid if SB 121 had been in effect.

2:38:34 PM
MR. LOUDON advanced to slide 6:

[Original punctuation provided.]

**How much do we spend**

- National Cooperative Rx is an option for PHC member plans
    - 10 Alaska based groups with 24,481 lives participate
    - Including our lower 48 based PHC members that utilize National Cooperative Rx – we spend **$43.5 million per year** on prescriptions dispensed in Alaska

2:39:29 PM
MR. LOUDON advanced to slide 7:

[Original punctuation provided.]

**How will SB 121 affect our Rx costs?**

MR. LOUDON stated that SB 121 will have a negative financial impact on private industry and emphasized the belief that this legislation holds no benefit for PHC.

2:39:40 PM
MR. LOUDON spoke to points on slide 8, displaying a bar graph titled, "Specialty Pharmacy Contract Loss," depicting current exclusive pharmacy plans (marked at $140,000) and all PHC specialty spend in Alaska (marked at $750,000):

[Original punctuation provided.]

**Specialty Pharmacies Lost opportunity**

- Only 5 of our plans use an exclusive specialty pharmacy
    - They save 2 percent of their specialty Rx spend for a savings of **$140,000 per year**

MR. LOUDON explained that utilizing specialty pharmacies results in an overall cost savings for members. He indicated that while only 5 plans currently use an exclusive specialty pharmacy, SB 121 would preclude all PHC plans from utilizing exclusive specialty pharmacies. This would result in a lost opportunity.

2:40:28 PM
MR. LOUDON responded to earlier comments related to the need for - and validity of - specialty pharmacies, he acknowledged that "specialty drugs" are more expensive drugs. These drugs require special dosage, handling, administration, and storage. They may need to be injected often or infused and are used to treat complex, chronic, and/or rare conditions such as cancer, HIV/AIDS, multiple sclerosis, or rare genetic disorders such as hemophilia. He explained that most specialty pharmacies have departments dedicated to helping patients find financial assistance to help pay for their prescriptions. He briefly discussed plan design, noting that a plan sponsor may choose spread-pricing over transparency because they want to limit a single component - e.g. an administrative cost. Specialty pharmacies are another way for plans to impact member savings. Some plans limit total out-of-pocket costs while others offer a savings for a percentage of the drug cost. This can be a large sum for those who are taking expensive drugs.

2:42:10 PM
SENATOR DUNBAR commented that some states have already made changes similar to those in SB 121. He asked if states that have banned the mandated use of specialty pharmacies have seen a significant increase in costs.

2:42:30 PM
MR. LOUDON replied that he does not know. He suggested that it is too early to say.

2:42:46 PM
SENATOR DUNBAR asked why only five plans use an exclusive specialty pharmacy.

2:42:54 PM
MR. LOUDON replied that they made different choices. He added the choice to give members the choice of utilizing a specialty pharmacy - or exclusively using a specialty pharmacy - should be left to the employer and/or plan sponsors. He said that some plans value choice over cost. He returned to an earlier comment regarding the Tanana Chiefs Conference pharmacy and suggested that this is a specialty pharmacy. He explained that while he does not utilize this pharmacy, he is an IHS beneficiary and his pharmacy options are limited as a result.

2:44:14 PM
MR. LOUDON advanced to slide 9, displaying a bar graph titled, "Mail Order Pharmacy Contract Loss," depicting exclusive mail order marked at just under $30,000:

[Original punctuation provided.]

**Mail Order Pharmacies Lost opportunity**

- Only 1 of our plans has exclusive mail order
    - They save 2 percent of their total Rx spend for a savings of $28,850 per year

MR. LOUDON explained that while only one plan has exclusive mail order requirements, disallowing this would impact other plans because it would not allow plans to negotiate these agreements in the future. He shared his understanding that SB 121 would also restrict the ability for plans to influence members to go to a mail order pharmacy. Therefore, plans could not increase the cost when members choose more expensive local retail pharmacies or lower the cost when members choose mail order.

2:45:35 PM
MR. LOUDON advanced to slide 10, displaying a bar chart titled, "Increased Dispensing Fees," displaying 'PHC's/Nat Coop Rx Ak' marked at $2.7 million, 'All PHC Alaska Plans' marked at $7.8 million, and 'All Alaska Commercial Plans and Cash Payers' marked at $27.5 million. He said that this is the largest negative financial impact to PHC plans. He said that while the fiscal note utilized a range of dispensing fees, these calculations used the lowest fee given in the fiscal note, $13.26. The average dispensing fees paid by commercial contract in Alaska are $4. The net increase per prescription is $9.30. Calculated out, this gives a dispensing fee increase of $2.7 million. When extrapolated out to the members of PHC who do not

participate in PBM contracts (using the average number of prescriptions per person), this gives an estimate of $7.8 million in increased dispensing fees.

2:47:03 PM
MR. LOUDON explained that utilizing the 2019 numbers from the Kaiser Family Foundation for commercial and cash payers results in a $27.5 million increase in dispensing fees. He pointed out that this does not include Medicare, Medicaid, and any other federal plans. He went on to say that the $2.7 million increase estimated for PHC plans is a 6 percent increase in total prescription drug spend. He pointed out that dispensing fees apply to all drugs and contrasted this with the earlier presentation of the costs of multiple sclerosis drugs (he offered to provide the NADAC pricing at a later time) which are "low frequency" drugs that are not dispensed regularly or in large quantities.

2:48:02 PM
MR. LOUDON advanced to slide 11:

[Original punctuation provided.]

**Other local protection analogies**

- State government is concerned about local grocery stores.
    - Add a $9.36 per meal fee on to groceries purchased by restaurants and households
- Concerned about local gas stations
    - Add a $9.36 per fill-up fee to trucking companies and car owners
- Concerned about local hardware stores
    - Add a $9.36 per purchase fee to every purchase of hardware goods

MR. LOUDON opined that no one would want to pay these fees. He stated that while the fees may help struggling businesses, they would also help the large multi-national firms that operate in Alaska. In addition, they would increase costs to the end user. He suggested that this is not an "injection of cash" into the local economy but is the government confiscating money from employees and redistributing it to large and small pharmacy owners.

2:49:28 PM

SENATOR BISHOP repeated his earlier request for ideas that would result in savings for hard-working Alaskans.

2:50:00 PM
MR. LOUDON said that PHC would be happy to work on some ideas.

2:50:04 PM
CHAIR BJORKMAN reiterated that looking back at one year of NADAC pricing compared to what plans spent on drugs would be helpful. He emphasized that if plan members are getting a good deal, they should be shown this information. If they are not getting a good deal, other options should be considered.

2:51:03 PM
DEREK MUSTO, Organizer and Business Agent, Alaska Teamsters Local 959, Anchorage, Alaska, testified with concerns on SB 121. He referred to previous testimony offered by Senator Giessel relating to the complicated nature of the PBM business model and the difficulty in peeling back the opaque layers of this business model. He expressed his agreement with the statement; however, he disagreed that SB 121 is the proper vehicle to address this issue.

MR. MUSTO stated that he wears dual hats as a labor trustee and labor trustee and shared examples of his responsibility to both. He shared that his organization has a PBM consultant who assists with contract negotiations. These contracts allow Alaska Teamsters Local 959 (AK Teamsters) to audit, control, and reduce pharmacy spend. He acknowledged that some PBMs refuse to accept transparent terms but emphasized that a number of PBMs will agree to these terms.

2:53:03 PM
MR. MUSTO shared that he has attended trainings around the country and has heard pharmacists who have advocated for these kinds of controls and cost-saving recommendations. He explained that trustees are civilly and criminally liable for their actions - plan assets must be used for reasonable costs for administering and providing benefits under the plan. He emphasized that he takes his responsibilities seriously and shared the ways in which he assists his organization in seeking out plan design. He asserted that SB 121 would put a strain on Alaska's health trust and other Alaskan plans by stripping important cost-saving mechanisms and adding mandatory dispensing fees. He pointed out that these additional costs do not provide a benefit to plan members and their families.

2:54:27 PM
MR. MUSTO expressed concern that changes made by SB 121 would negatively impact the plan and plan members. He stated that this legislation includes measures that would negatively impact the ability to establish PBM design and use preferred or exclusive pharmacy networks, and it would remove access to programs that directly benefit plan members. He added that this directly conflicts with his trustee responsibilities. He listed a variety of cost controlling measures that benefit plan participants. He asserted that mail order pharmacies provide a cost savings and have improved outcomes. He shared information about a recent study that illustrated the benefits of utilizing mail order pharmacies. He stated that, while he is a proponent of supporting local businesses, these negotiations must consider what will be of most benefit to plan participants.

2:56:12 PM
MR. MUSTO asserted that SB 121 would subsidize local pharmacies at the expense of Alaskans and their families and would likely result in increased deductibles and other cost-saving measures that put the burden on plan participants. He opined that this legislation would increase costs with little to no benefit to the Alaskan economy. In addition, it would require plans to utilize plan assets for unreasonable costs, thus preventing plans from utilizing proven cost-savings mechanisms to subsidize local pharmacies.

2:57:00 PM
MR. MUSTO shared his belief that the state should not divert negotiated dollars to support private businesses. He opined that the state should use urban development dollars or other tools to help local pharmacies rather than increasing the revenue to all pharmacies (including large chain pharmacies like Walmart, Fred Meyer, and Walgreens).

2:57:39 PM
CHAIR BJORKMAN referred to Mr. Musto's testimony that SB 121 would increase costs for plan members and asked if he knows the difference between the NADAC costs plus dispensing fees (as laid out in SB 121) and his organization's plan spend was on prescription drugs for the past year.

2:58:00 PM
MR. MUSTO replied that he defers to the plan professionals when it comes to spread pricing. He shared that his organization recently completed an RFP process and expressed confidence that this resulted in the best benefit possible for plan members. He

noted that they use the coalition when this is a superior option. He added that he would be willing to have a follow-up conversation that included the PBM consultant.

2:58:54 PM
CHAIR BJORKMAN expressed his understanding that the answer to his question was "no". He pointed out Mr. Musto's fiduciary duty to plan members and encouraged him to take a year lookback at what was spent on prescription drugs under the current system and apply the SB 121 model to the plan experience. He requested that Mr. Musto report back whether participants would have saved money with the changes made by SB 121 or if they saved money by allowing the contract to be negotiated under the current system. He opined that plan members would be interested in this information, particularly if the claim that SB 121 would increase costs is accurate. He stated that he cannot support this claim at this time due to the disparate understanding of the data. However, if the aforementioned information (prescription drug costs and NADAC pricing for 2023) is available, this would provide the answer.

3:00:38 PM
BRENDA SNYDER, Lead Director of Government Affairs, CVS Health/Aetna, Tacoma, Washington, testified in opposition to SB 121. She asserted that this legislation would significantly increase prescription drug costs in Alaska. She explained that employers, insurers, and governments choose to contract with PBMs. She briefly explained this process.

MS SNYDER said that SB 121 contains several concerning provisions that eliminate cost-control measures that plan sponsors utilize. This includes banning insurers from offering lower costs to those managing chronic conditions who receive their medications via mail order pharmacies. She added that mail order pharmacies are particularly important to those with chronic conditions. She explained that many plans offer lower prices to those who choose these options - or may require maintenance drugs to be delivered by mail - which enables plans to offer the lowest possible premium. She stated that SB 121 would prohibit insurers from offering more affordable pharmacy options to those requiring high-cost specialty medications and would effectively ban preferred pharmacy networks, including specialty pharmacy arrangements.

3:02:25 PM
MS. SNYDER briefly explained why plans utilize these options. In addition, SB 121 would prevent insurers from telling patients

about less expensive pharmacy options. She asserted that this is anti-competitive and would harm Alaskan consumers. She stated that SB 121 ignores the long-standing value-benefit plan design and includes mandates that remove this flexibility. She briefly explained the ways this would negatively impact plans and plan members.

3:03:23 PM
CHAIR BJORKMAN asked what lines in SB 121 ban the use of mail order pharmacy for maintenance drugs.

3:03:58 PM
MS. SNYDER answered that SB 121 does not say that mail order pharmacies cannot be used; rather, the use of mail order pharmacies cannot be required. She explained that some plan sponsors choose to require the use of mail order pharmacies in order to reduce costs.

3:04:26 PM
CHAIR BJORKMAN pointed out that the verbiage used in her testimony could be easily misunderstood by a layperson. He commented that a number of people have testified that SB 121 bans mail order delivery for maintenance medications and asked for clarification that Ms. Snyder agrees that this legislation does not, in fact, ban mail order delivery for maintenance drugs.

3:05:05 PM
MS. SNYDER agreed that her earlier statement was unclear and offered an apology. She clarified that SB 121 does not ban mail order delivery but rather eliminates the ability for a plan sponsor to make those determinations and requirements that would provide them with lower cost options.

3:05:32 PM
CHAIR BJORKMAN asked what part of SB 121 eliminates network pharmacies.

3:05:41 PM
MS. SNYDER answered that SB 121 effectively eliminates network pharmacies. She explained that plans negotiate for network pharmacies by agreeing to drive large quantities of business to a particular pharmacy if they agree to lower costs. Allowing any pharmacy into the network - and paying all pharmacies the same amount - removes the incentive for a pharmacy to agree to a lower cost. Thus, the design of preferred pharmacy networks

(reducing the number of pharmacies that plan members can utilize while reducing costs) is obliterated.

3:06:34 PM
CHAIR BJORKMAN asked what part of SB 121 outlaws communication.

3:06:41 PM
MS. SNYDER answered that the provisions regarding steerage do not allow plans to steer patients to lower cost options. She questioned whether plans would be able to tell members about lower cost options without this being considered "steering".

3:06:53 PM
CHAIR BJORKMAN expressed his understanding and opined that a mandate would be needed for something to count as "steering".

3:07:14 PM
GARY B. STRANNIGAN, Vice President of Congressional and Legislative Affairs, Premera Blue Cross, Everett, Washington, testified in opposition to SB 121. He stated that Premera is not owned by -and does not own- a PBM. He added that Premera fully supports transparency and shares the goal of insuring fair compensation for pharmacies. He expressed concern with what Premera considers to be "anti free enterprise" aspects of SB 121, which will increase costs - making healthcare less affordable. He stated that he is willing to discuss amendments if there is receptivity to this. He said the concerning sections include non-affiliated pay parity, anti-mandatory mail order, and anti-steering provisions. He acknowledged that SB 121 does not prohibit mail-order but rather prohibits exclusive mail order design. He noted that Premera does not utilize mandatory mail order but does not see any reason to restrict this cost reduction tool.

3:09:05 PM
MR. STRANNIGAN stated that all businesses purchase products and sell them for more money - which is a simplistic way to look at spread pricing. He acknowledged that the prescription drug supply chain is complicated - and each step in the supply chain takes a spread. He stated his concern that PBMs are the only part of the supply chain impacted by SB 121. He listed several other programs that take a large spread and yet are not impacted by this legislation. He stated that this provision would, in some cases, result in Premera charging a 10 percent increase in premium. With respect to "white bagging" and "brown bagging", he stated that though Premera does not use this in Alaska at this time, it is preferable to have the option for members in the

future. With respect to dispensing fees, he stated that this is government setting a price for what is currently subject to competitive marketplace pricing. He asserted that this would increase healthcare costs.

3:11:26 PM
MR. STRANNIGAN said that Premera utilizes PBMs for their negotiating power when working with (sometimes unscrupulous) drug manufacturers. He expressed concern that the imbalance of SB 121 would increase the power of those manufacturers, allowing them to extract more money from plan members by undermining the PBMs. He expressed his appreciation for the level of engagement and consideration this legislation has received. He emphasized that SB 121 has not been vetted and Premera has not had much time to dig into the proposed changes. He asserted that developing this type of legislation in isolation is problematic insofar as it benefits two constituencies over others. He underscored his appreciation for holding hearings on SB 121 and allowing for balanced testimony - which will allow Alaskans to receive a better product.

3:13:17 PM
CHAIR BJORKMAN encouraged Premera (and others) to show the committee what they paid in prescription drug costs for the last year and compare this with the NADAC average. He noted that the NADAC is a rolling average that is updated every week and compared this to a rolling average that was updated twice a year (which was exploitative). He encouraged consideration of the plan numbers on both the plan and the provider side.

3:14:00 PM
LAUREE MORTON, representing self, Juneau, Alaska, testified in support of SB 121. She said that local pharmacies fill prescriptions while cultivating relationships. She expressed her desire to visit pharmacies where trusted staff can help with non-prescription medications, medical gear, and vaccinations. She also expressed a desire to support local businesses. She stated that she would not mind paying more if this keeps Alaskan businesses open and ensures personalized attention. She opined that it is important to keep business local, regardless of cost. She said that she wants to be able to work with her doctor to choose the best treatment - not a PBM. She emphasized the importance of regulating the regulators and suggested that PBMs need more regulation than the businesses they monitor. She expressed her understanding that the regulatory practices proposed by SB 121 would protect pharmacies and those they serve.

3:17:07 PM
[CHAIR BJORKMAN held public testimony on SB 121 open.]

3:17:10 PM
CHAIR BJORKMAN held SSSB 121 in committee.

3:17:43 PM
There being no further business to come before the committee, Chair BJORKMAN adjourned the Senate Labor and Commerce Standing Committee meeting at 3:17 p.m.