

HPB

508

HOUSE COMMITTEE REPORT

(7)

Date Referred: February 9, 1990

FURTHER REFERRALS:

LABOR & COMMERCE

Date of Committee Action: 3/23/90

The HEALTH, EDUCATION, & SOCIAL SERVICES Committee considered: HB 508

HOUSE BILL NO. 508 REGISTRATION OF OUT OF STATE PHARMACIES

"An Act relating to pharmacies located outside of the state."

RECOMMENDATIONS:

- [] be replaced with CSHB 508 (HESS) [] the same title
- [] have attached amendment(s) [] a new title
- [] do pass
- [] do not pass
- [] no recommendation
- [] individual recommendations
- [] additional referral to the _____ Committee

ADOPTS: House (HESS) letter of intent

ATTACHES NEW FISCAL NOTE(S): _____
(Dept)

APPROVES PREVIOUS: _____
(Date/Dept)

- [] fiscal impact _____
- [] zero fiscal note _____
- [] zero with analysis _____

- [] fiscal note(s) _____
- [] zero fiscal note(s) _____
- [] zero fn/analysis _____

SIGNING DO PASS:

[Signature]
[Signature]
[Signature]

SIGNING:
(Check approp. column)

	Do Not Pass	No Rec	Amend
<u>[Signature]</u>		<input checked="" type="checkbox"/>	
<u>[Signature]</u>		<input checked="" type="checkbox"/>	

[Signature]
Chairman's Signature

QUALITY CENTERS

1341 Fairbanks Street

Anchorage, Alaska 99501

Office Number (907) 277-6639

Fax Number (907) 257-8229

TELECOPY TRANSMITTAL COVER SHEET

DATE: 3-24-90

PLEASE DELIVER TO: Tola
Curt Menards office

THIS TELECOPY IS BEING SENT BY: Bill Larson

NUMBER OF PAGES (INCLUDING THIS COVER SHEET): 4

IF YOU DO NOT RECEIVE ALL PAGES, PLEASE CALL THE CARRS MAIN OFFICE.

MESSAGE: This is a copy of my testimony on HR 508
on Wed March 23, 1990

BILL LARSON
Pharmacy Director

CARRS
QUALITY CENTERS
SUPER FOOD SUPER DRUG

1341 Fairbanks Street
Anchorage, Alaska 99501
(907) 277-6639

My name is Bill Larson, I'm Pharmacy Director for Carrs Quality Centers, an Alaskan owned chain of 14 supermarkets operating pharmacies in Anchorage, Eagle River, Palmer, Wasilla, Kenai, Seward and Fairbanks. I'm also chairman of the Alaska Board of Pharmacy but my comments today are representing myself and Carrs Quality Centers and not necessarily those of the Board. Mail order pharmacy is a difficult and complex issue and I applaud this committee for undertaking the controversial task of trying to regulate the industry.

The idea of sending prescriptions through the mail raises many questions which affect all Alaskans. The State is always looking at ways to create jobs, promote Alaskan industry and local hire yet the Alaska State employees are being encouraged by Union and State officials to have their prescriptions filled out of state taking jobs from Alaskan pharmacists and dollars away from Alaskan businesses. As you are all aware, the costs of doing business are higher in Alaska because of our unique climate conditions, transportation costs and higher wages due to the higher costs of living. In fact, in most State contracts, Alaskan business is allowed a 5% bid preference, yet when the State employees chose mail order pharmacy, Alaskan pharmacies were not even given the chance to bid on the prescription package, much less given a 5% bid preference.

The reasons cited by mail order pharmacy for lower prices are as follows:

1. Mail order is able to buy drugs more inexpensively because of volume purchasing.
2. Mail order uses more low cost generics.
3. Mail order fills with larger quantities and thereby, reduces the number of claims and dispensing fees paid.

Although these are legitimate claims, the fact remains that mail order is not necessarily cheaper and you don't automatically save money using mail order.

1. Chains, cooperatives and independent buying groups are able to purchase in large volume and are able to negotiate discounts with manufacturers and wholesalers, equivalent to the discounts offered mail order pharmacies.
2. All states now have generic substitution laws which govern the dispensing of generics in the respective states. These laws allow pharmacists to substitute generics for the more expensive Brand name drugs. Many instances of mail order savings of 40-60% are the comparison of mail order generics and local Brand name prescriptions, or really comparing apples and oranges.

3. The fact that a mail order pharmacy fills prescriptions for larger quantities, usually 3-6 month supplies, doesn't automatically save money. To get a mail order prescription takes 2-3 weeks to be filled and returned. The usual procedure is to have a 30 day supply filled locally and then the larger quantity filled via mail order. This results in a double dispensing fee and large quantities of drugs being purchased that may be discontinued or changed and ultimately wasted.

Acute medications, antibiotics and pain drugs, etc. need to be filled immediately to begin therapy. The patient can't wait for mail order to deliver his prescriptions and must have them filled locally or risk discomfort, or worse, hospitalization.

I am not convinced that mail order pharmacy significantly reduces prescription prices to patients or third party providers but am concerned that these perceived savings will come from inferior drugs or inadequate patient care.

I support HR 508 and agree with the sponsors that mail order pharmacy should be required to register with the Alaska Board of Pharmacy and be held accountable for their practice of pharmacy. It would insure the quality of all drugs imported into Alaska and insure they were dispensed legally by licensed pharmacists.

In the past 6 months, the FDA (Food and Drug Administration) has come under fire for its practice of rating generically equivalent drugs, test results were questioned, drugs withdrawn and companies forced out of business by these questionable practices. The Alaskan Legislature considers quality generic drugs so important they passed Statute 08.80.295 in 1972 and have amended it 4 times since.

HR 508 would require toll free phone service 40 hours per week on at least 6 days. This requirement is excellent and would provide customers a chance to obtain additional medical information and get questions answered. But this doesn't go far enough. Local pharmacists provide personal consultation during all business hours. At Carrs, a pharmacist is available 24 hours a day, 7 days a week. They are constantly asked questions about their prescriptions received through the mail. Because of the time difference between Alaska and the continental U.S., the bill should specify the hours the line would be operational, for example, from 10 A.M. to 6 P.M. Monday - Saturday and insure that the person they talk to is a pharmacist.

Another problem I have with HR 508 is if out of state mail order pharmacies are required to register with the Alaska Board to mail prescriptions into Alaska, would that also require the occasional or casual pharmacy to register. For example, Carrs has many customers who winter in Palm Springs or Arizona etc. and we mail their prescriptions to them during the winter. Perhaps we could add a definition to the bill to define who must register or define "mail order pharmacy" to exclude occasional mailed prescriptions.

I've gone on long enough and there are others interested in testifying on this Bill, so I'll conclude by saying I think HR 508 is a definite step in the right direction allowing the State to gain a small

level of control over the mail order industry and insuring the quality of drugs and patient care provided and insuring that everyone plays by the same rules.

Thank you

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES

P.O. BOX V, JUNEAU 99811
(907) 465-3759



*This version
offered in
LTC by
M Handley*

March 23, 1990

LETTER OF INTENT TO

CSHB 508 (HESS)

It is the intent of the legislature that state contracts for pharmaceutical supplies should be granted to Alaskan pharmacies to the maximum extent permissible under state law. State contracts for health insurance and other health programs, which utilize mail order drug prescription services, shall not be limited to pharmacies registered under AS 08.80.158 to the exclusion of Alaskan pharmacies. All state proposals to supply health care must solicit equivalent mail order drug services from Alaskan pharmacies.

Rep. Johnny Ellis, Chair

HEALTH, EDUCATION AND SOCIAL SERVICES COMMITTEE

ALASKA STATE LEGISLATURE
HOUSE OF REPRESENTATIVES



P.O. BOX V, JUNEAU 99811
(907) 465-3759

March 23, 1990

Letter of Intent to
CSHB 508 (HESS)

It is the intent of the legislature that state contracts for health insurance and other health programs which utilize mail order drug prescription services not be limited to pharmacies registered under AS 08.80.158 to the exclusion of Alaskan pharmacies. It is the intent of the legislature that all state proposals to supply health care services be required to solicit equivalent mail order drug services from Alaskan pharmacies.

A handwritten signature in cursive script, appearing to read "J. Ellis".

Rep. Johnny Ellis, Chair

FISCAL NOTE

REQUEST:

Revision Date: _____
 Title: An Act relating to pharmacies
located outside of the state.
 Sponsor: Rep. Menard, Donley, Hanley
 Requestor: House HESS

Agency Affected: Commerce & Economic Dev.
 BRU: Occupational Licensing
 Components: _____

EXPENDITURES/REVENUES: (Thousands of Dollars)

OPERATING	FY 91	FY 92	FY 93	FY 94	FY 95	FY 96
PERSONAL SERVICES						
TRAVEL						
CONTRACTUAL						
SUPPLIES						
EQUIPMENT						
LAND & STRUCTURES						
GRANTS, CLAIMS						
MISCELLANEOUS						
TOTAL OPERATING	0	0	0	0	0	0

CAPITAL						
---------	--	--	--	--	--	--

REVENUE **	0	0	0	0	0	0
------------	---	---	---	---	---	---

FUNDING: (Thousands of Dollars)

GENERAL FUND						
FEDERAL FUNDS						
OTHER						
TOTAL	0	0	0	0	0	0

POSITIONS:

FULL-TIME	0	0	0	0	0	0
PART-TIME	0	0	0	0	0	0
TEMPORARY	0	0	0	0	0	0

ANALYSIS : (Attach a separate page if necessary)

HB 508 creates another pharmacy licensing category by registering outside pharmacies that ship, mail or deliver prescription drugs into Alaska. New funds are not required to implement the bill. **Revenues: A registration fee will be charged however, at this time we are unable to estimate revenues until the number of outside pharmacies affected by the bill is known.

Prepared by: Jennifer Strickler, Administrative Officer Phone: 465-2144
 Division: Occupational Licensing Date: March 20, 1990

Approved by Commissioner: Larry Merculieff Date: 3-20-90
 Agency: Commerce and Economic Development

Distribution (by preparer):

Legislative Finance
 Legislative Sponsor
 Requestor
 Office of Management and Budget
 Impacted Agency(ies)

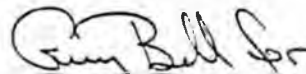
HB 508: An Act relating to pharmacies located outside of the state.

HB 508 establishes requirements for pharmacies located outside of Alaska to register with the Alaska Board of Pharmacy, if the pharmacy ships, mails, or delivers prescription drugs into the state.

The out-of-state pharmacy will be required to meet certain criteria established in the bill, including 1) registration of the names and locations of pharmacists who dispense prescription drugs to Alaska residents, 2) proof of maintenance of a current license and active pharmacy inspection in the jurisdiction in which the pharmacy is located, 3) compliance with all laws of the licensing authority within the jurisdiction where the pharmacy is located, and 4) proof that the pharmacy may readily retrieve the records of drugs prescribed to Alaska residents.

Currently, Alaska is not able to monitor or identify the out-of-state pharmacies who distribute prescription drugs to residents within the state. HB 508 will allow the Alaska Board of Pharmacy to require registration of outside pharmacies, thus providing some level of oversight -- albeit minimal -- of their activities in Alaska. The current lack of any review of outside pharmacies that mail, ship or deliver prescription drugs in Alaska raises consumer protection concerns.

Pharmacies located in Alaska are regulated by law to protect the health, safety and welfare of Alaskan consumers. Pharmacies located outside the state who service Alaska residents with prescription drugs should be subject to some degree of regulatory oversight. For this reason, the department supports HB 508.



Larry Mersulieff, Commissioner
Department of Commerce and
Economic Development

Date: 3-20-90

LLM/RPB/JS/wfd2162W
32090a

Island Pharmacy

3235 Tongass Avenue
Ketchikan, Alaska 99901
225-6186

February 19, 1990

Representative Curt Menard
P.O. BOX V
Juneau, Ak 99811

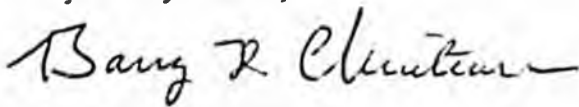
Dear Representative Menard,

Thank you for sending me a copy of the proposed legislation on regulating pharmacies outside the state of Alaska. Additionally, I would like to thank you for taking the time and effort to propose such legislation. In looking over the draft I see no major flaws and it appears to be pretty straight forward. It should be something that any mail order pharmacy should be able to comply with if they wish to do business in Alaska.

If it is possible I would like to be informed of the Bill number when you introduce it into the house so that I may contact the elected officials in my district to urge their support of this viable piece of legislation.

Thank you again for your efforts and Thanks for supporting your family pharmacist.

Very Truly Yours,



Barry D. Christensen
Pharmacist



ALASKA STATE LEGISLATURE

REPRESENTATIVE CURT MENARD

165 E. Parks Hwy.
Wasilla, Alaska 99687
(907) 373-2878

P.O. Box V
Juneau, Alaska 99811
(907) 465-2679



TO: Members of the House Health, Education
and Social Services Committee

FROM: Representative Curt Menard *Curt*

DATE: March 20, 1990

RE: HB 508: "An Act relating to pharmacies located
outside of the state."

A significant consumer protection problem was recently brought to my attention--the growing number of mail order pharmacies doing business in the state who are not fully accountable to their Alaskan customers. To address this problem, and provide some type of reassurance to Alaskan who rely on those services, I have introduced HB 508.

This legislation requires any pharmacy located outside of the state that ships, mails, or delivers prescription drugs into Alaska to register with the Alaska State Board of Pharmacy.

One very important requirement to be met in order to be registered, is the provision requiring the out of state pharmacy to provide a toll free telephone service at least 40 hours per week and at least six days a week. When questions or problems resulting from prescription medication arise, it is imperative that the customer be able to contact the dispensing pharmacist.

This legislation will provide important measures to protect the health, safety and welfare of Alaskan consumers. Your support is greatly appreciated. Thank you.

Representing the
Matanuska-Susitna Borough



Co-Chair
House Resources Committee
Member
Special Committee on Tourism
State Affairs Committee

HOMER PROFESSIONAL PHARMACY, INC.

309 W. FAIRVIEW AVE.
Homer, Alaska 99603



PHONE (907) 235-8393

2/9/90

Representative Cert in encad:

Sir,

I am very much in favor of your proposed bill relating to pharmacies located outside the state of Alaska.

Not only do we need to support those businesses that are located in the state of Alaska, but I almost every day have a patient talk to me with questions about medication filled by a mail order pharmacy which I cannot help them with. Often the tablets are of a different size or color than they are used to and they have no way to verify if it is the correct medication.

I will be glad to assist your effort in any way I can.

Sincerely,
Richard L. Sturdy, RPh.

FRANK G. PRATT, R. Ph.
7446 East 20th Avenue
Anchorage, Alaska 99504
(907) 333-8212
5 February 1990

Rep. Curt Menard
P.O. Box V
Juneau, AK 99811

Dear Curt:

I have received and reviewed your draft of proposed legislation to control mail order pharmacies doing business with customers in the State of Alaska.

I commend you on your actions, Curt. It is far past time that this type of legislation was enacted to protect the citizens of Our Great Land.

I have some misgivings about the Board's ability to actively enforce such legislation with the manpower currently available; but, one step at a time!

Very sincerely,

A handwritten signature in cursive script, appearing to read "Frank G. Pratt", with a horizontal line extending to the right.

Public Employees Retirement System
Teachers Retirement System
Judicial Retirement System
Elected Public Officers Retirement System
National Guard Retirement System
Territorial Retirement System
Retirees Voluntary Dental Vision Audio Plan
Supplemental Benefits System
Group Health/Life Insurance Benefits
Deferred Compensation Plan
Public Employers Social Security Contributions

DEPARTMENT OF ADMINISTRATION

DIVISION OF RETIREMENT & BENEFITS

PLEASE REPLY TO:

P.O. BOX CR
JUNEAU, ALASKA 99811-0203
PHONE: (907)465-4460

701 EAST TUDOR ROAD, SUITE 240
ANCHORAGE, ALASKA 99503-7445
PHONE: (907) 563-5885

Fax# 465-3086

STEVE COWPER, GOVERNOR

March 19, 1990

The Honorable Curt Menard
Alaska House of Representatives
P.O. Box V
Juneau, AK 99811

Dear Representative Menard:

Your staff requested an analysis from this division of the impact HB 508 would have on the health insurance plan for State of Alaska employees.

The health insurance plan that was negotiated last summer by the Alaska State Employees Association (ASEA) includes a provision for prescription drugs to be obtained through the mail. I have reviewed HB 508 and do not see any provisions that would be at cross purposes with the current negotiated agreement with ASEA or increase the cost of health insurance premiums.

The mail order prescription drug plan is provided by National Pharmacies, Inc. through a subcontract with Aetna, our health insurance carrier. I have also discussed the bill's requirements with Aetna and have been informed that National Pharmacies would currently be able to satisfy these requirements.

Sincerely,



Michael B. Coughlin
Deputy Director

MBC/l-sl

cc: Sally Smith
Director
Division of Retirement and Benefits

Lynn Withrow
Aetna Life Insurance
Seattle, WA 98111

Representative Curt Menard

March 19, 1990

Page 2

cc: (continued)

Frank S. Baxter, CPA
Commissioner
Department of Administration

Gary Bader
Deputy Commissioner
Services to State Agencies
Department of Administration

Sioux Plummer
Special Assistant
Department of Administration

RB90-017

STATE OF ALASKA
THE LEGISLATURE

FOUCH V. STATE CAPITOL
JUNEAU ALASKA 99811
907 463 3810

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 6, 1990

SUBJECT: Pharmacy licensing requirements in other
states (Work Order No. 6-2115)

TO: Representative Curt Menard
Attn: Iola

FROM: John B. Gaguine ^{JBG}
Legislative Counsel

Per your request, I have been looking at the pharmacy licensing requirements in some of the other Western states. In all of the statutes I have examined, a pharmacy can be licensed if it complies with the pharmacy laws, which is essentially the same requirement as is found in AS 18.-80.157. (Sometimes there are minor additional requirements, such as the North Dakota requirement that a pharmacy must possess the standard pharmaceutical reference book to get licensed.) However, the majority of the other statutes I looked at regulate pharmaceutical practices considerably more closely than do Alaska's laws and regulations, and all of them regulate at least as closely as Alaska. For your interest I am enclosing some of the statutes of Nevada (since that is the location of the mail-order pharmacy under the revised state employee health care program) and Washington (since Seattle pharmacies can logically be expected to enter the mail-order prescription drug business).

Incidentally, I found that Wyoming has adopted an out-of-state pharmacy law that is also apparently based on the California statute on which I modeled W.O. 6-2018A. North Dakota, on the other hand, takes a different approach, requiring out-of-state pharmacies doing mail-order business in that state to get a license from the North Dakota board. I am enclosing a copy of the North Dakota statute. I think that the approach taken by the California law is better, since I do not think that the Alaska board (or the North Dakota board, for that matter) would be able to effectively

STATE OF ALASKA
THE LEGISLATURE

HOUSE STATE CAPITOL
JUNEAU ALASKA 99801
907 465 1800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

January 26, 1990

SUBJECT: Out-of-state pharmacies and licensing requirements (Work Order No. 6-2018)

TO: Representative Curt Menard
Attn: Iola Young

FROM: John B. Gaguine *JBG*
Legislative Counsel

You have asked for a bill that would require out-of-state pharmacies doing business within the state (primarily out-of-state pharmacies soliciting and filling mail orders) to meet the requirements of licensing for in-state pharmacies. I am writing this memo to explain that there are essentially no requirements for in-state pharmacies, and that control of out-of-state mail order pharmacies can probably be better achieved through a different bill.

Under AS 08.80, the Board of Pharmacy regulates and licenses both pharmacies and pharmacists. Unlike the stringent requirements for issuance of a pharmacist license, however, there are virtually no requirements for a pharmacy license. AS 08.80.157 provides:

(a) If an applicant furnishes proof satisfactory to the board that the applicant is equipped with land, facilities, and equipment, in fee or leased, necessary to carry on the business described in the application and the applicant complies with this chapter, applicable regulations adopted by the board, and pays fees provided for under AS 08.80.160, the board may issue

(1) a wholesale drug dealer license to an applicant who manufactures or distributes noncontrolled legend drugs to licensed retail pharmacists, dentists, physicians, surgeons, or veterinarians, who may legally purchase noncontrolled legend drugs at a wholesale level, or to government

January 26, 1990

agencies which may legally purchase noncontrolled legend drugs at a wholesale level;

(2) a wholesale drug dealer license to a qualified applicant who is in compliance with the Federal Controlled Substance Act of 1969 as amended;

(3) a license to a retail pharmacy.

(b) A license under this section may not be issued to a person who has been convicted of a wilful violation of a federal law or a law of any state relating to a drug or controlled substance, or who is addicted to a drug or controlled substance. A license may not be issued to a corporation with a managing officer who has been convicted of a wilful violation of a federal law or a law of any state relating to a drug or controlled substance, or who is addicted to a drug or controlled substance.

The specific requirements listed in subsection (a) - land, facilities, and equipment - obviously would be met by any out-of-state pharmacy capable of filling orders in Alaska. The "no conviction" provision of (b) is likely equally meaningless, as such a provision is likely found in virtually all state licensing acts. (I examined the pharmacy licensing statutes of several states, and they all had such a provision.) The other provisions in AS 08.80 concerning pharmacies, rather than pharmacists, are so vague as to be useless in regulating out-of-state pharmacies; see, e.g., AS 08.80.230 (pharmacy must have proper sanitary appliances and maintain orderly and sanitary premises). Most important, the Board of Pharmacy, which could issue regulations giving some meaning to these vague provisions, has to date not done so, likely because there have been major problems with duty pharmacies.

I would suggest instead an approach along the line of California's, which requires the out-of-state pharmacy to submit proof of compliance with the licensing laws of the pharmacy's state of residence, and also allows the California board to request information. I am enclosing

Representative Curt Menard
Page 3
January 26, 1990

copies of the relevant California statutes. If this approach appeals to you, I can draft a bill based on those statutes (but likely far simpler). Or I can draft a bill along the lines of your request, that an out-of-state pharmacy must meet Alaska qualifications, in the hope that the Board of Pharmacy will someday issue the necessary regulations.

JBG:gc
G13/071

Enclosure

EMENS, HURD, KEGLER & RITTER Co., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

JOHN F. ALLEVATO
JACK A. BJERKE
JOHN P. BRODY
WILLIAM J. BROWN
STEPHEN E. CHAPPELEAR
J. RICHARD EMENS
LAWRENCE F. FEHELEY
JOHN L. GRAY
ALLEN L. HANDLAN
EDWARD C. HERTENSTEIN
THOMAS W. HILL
GENE W. HOLLIKER
DWIGHT I. HURD
CHARLES J. KEGLER
LARRY J. McCLATCHEY
JOHN C. McDONALD
SAMUEL C. RANDAZZO
PAUL D. RITTER, JR.
RCGER P. SUGARMAN
KEVIN L. SYKES
JOHN R. THOMAS
JOHN B. TINGLEY
MELVIN D. WEINSTEIN
BEATRICE E. WOLPER
JEANNE K. WOODRUFF
MICHAEL E. ZATEZALO

CAPITOL SQUARE

SUITE 1800

65 EAST STATE STREET

COLUMBUS, OHIO 43215-4294

TELEPHONE: (614) 462-5400

TELECOPIER: 464-2634

CABLE: LAW EHR

TELEX: 246671

March 3, 1990

MARIE L. APPELBY
ANN L. COLUSSI
DON H. DAO
PETER A. DAUZVARDIS
JASON M. DOLIN
DANIEL E. FOX
MICHAEL J. GALEANO
DONALD W. GREGORY
ROBIN SMITH HOKE
R. KEVIN KERNS
NANCY L. KOERNER
DAVID A. KULWICKI
ANN M. O'CONNELL
MICHAEL G. O'KANE
SHELLEY A. MCBRIDE
HERBERT M. RICHARDSON III
RICHARD P. ROSENBERY
STEVEN R. RUSSI
O. JUDSON SCHEAF III
KARL W. SCHEDLER
RICHARD W. SCHUERMAN, JR.
ROBERT G. SCHULER
MICHAEL E. SCOLIERE
AMY M. SHEPHERD
S. MARTIJN STEGER
TIMOTHY T. TULLIS
NICK J. VIZY

OF COUNSEL
JOHN C. DEAL
ROBERT D. MAROTTA
RONALD L. MASON
S. NOEL MELVIN
JOSEPH M. MILLIOUS

The Honorable Johnny Ellis, Chairperson
House Health Educator & Social Services Committee
Alaska State Legislature
State Capitol Building, Room 106
Juneau, Alaska 99801

Re: State of Alaska Pharmacy Legislation - House Bill No. 508

Dear Chairman Ellis:

I am writing this letter to you in my capacity as Regulatory Counsel for Medco Containment Services, Inc. ("Medco"), to include each of its regionally located mail service pharmacies, all of which provide safe, cost-effective prescription drug therapy to the members and beneficiaries of major corporations, unions and retiree groups, to include many that are Alaska residents. Medco respectfully submits that House Bill No. 508, to the extent it would condition licensure upon compliance, by a non-resident pharmacy, with reasonable standards of disclosure to the Alaska Board of Pharmacy and those statutory provisions presently incorporated in the bill, is a responsible exercise of a state's power to regulate given the various constitutional protections afforded businesses which are engaged in interstate commerce. For these reasons, Medco supports House Bill No. 508.

The regulation of out-of-state drug outlets, and particularly mail service pharmacies, has been the subject of frequent, and often emotional, debate over the last several years. There can be little doubt that the debate has been fueled by the rapid growth of mail service pharmacy. Medco, along with those pharmacies operated by the Veterans Administration and the AARP Pharmacy Service, have been at the forefront of this growth. The lines of debate are well-drawn: some sectors of the retail pharmacy community seek licensure restrictive in nature for the singular purpose of precluding the operation of a mail service pharmacy on an interstate basis and thereby eliminating a competitive force in the marketplace. Licensure of this nature is often argued in the guise of health and safety concerns,

REC'D MAR 7 1990

Jim

EMENS, HURD, KEGLER & RITTER CO., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Johnny Ellis, Chairperson

March 3, 1990

Page 2

concerns which are not supported by an informed knowledge of mail service pharmacy and particularly when mail service pharmacy is evaluated in the context of total pharmacy practice. On the other hand, those engaged in the practice of mail service pharmacy, when denied the opportunity for meaningful, objective dialogue, have correctly relied upon the various constitutional arguments which preclude such restrictive licensure. These constitutional arguments are several, but revolve primarily around the Commerce Clause of the Constitution of the United States of America. The constitutional arguments become all the more meaningful in light of the extensive state and federal regulation applicable to the practice of pharmacy, to include mail service pharmacy. Moreover, in addition to licensure as a community or retail pharmacy in the state where the pharmacy is located and licensure at the federal level, mail service pharmacies have established an historical record, in terms of the public health and safety, which simply does not support the need for restrictive licensure.

On the contrary, those reports which have been published by responsible, objective reviewers over the years have found no documented, credible evidence which compromises the health and safety record of mail service pharmacy or otherwise justifies restrictive licensure. In addition to favorable reports from the Federal Trade Commission, the American Medical Association, and various state legislative studies, a December, 1989 report issued by the State of Maine is particularly relevant to House Bill No. 508. Specifically, the Joint Standing Committee on Business Legislation of the Legislature of the State of Maine conducted hearings to review, among other issues, the safety impact of mail service pharmacy. In adopting Cost Containment for Prescription Drugs (December, 1989), the Committee concluded, in pertinent part as follows:

The Committee found no evidence that there was any difference in safety between having a prescription filled by mail and through an in-state pharmacy.

To the extent a state would have the power to regulate in this area, House Bill No. 508 closely parallels the form of a California statute now adopted in a number of other states. Commonly known as the California Disclosure Legislation, this statute, supported during the legislative process by Medco and the AARP Pharmacy Service, regulates mail service pharmacy in a manner consistent with constitutional and professional practice standards. Therefore, Medco respectfully urges you to support House Bill No. 508.

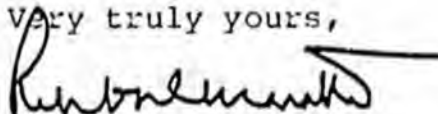
EMENS, HURD, KEGLER & RITTER Co., L.P.A.

ATTORNEYS AND COUNSELORS AT LAW

The Honorable Johnny Ellis, Chairperson
March 3, 1990
Page 3

If you have any questions relative to this matter, or desire further information, please do not hesitate to contact me.

Very truly yours,



Robert D. Marotta

RDM/trj

Attachment - California Disclosure Legislation

cc: House Health Education & Social Services Committee, Members

Gordon S. Harrison, Director
Legislative Research Agency
Alaska State Legislature

Medco Containment Services, Inc.

Senate Bill No. 2213

CHAPTER 1424

An act to amend Section 4084.6 of, to add Sections 4050.1 and 4383 to, and to add and repeal Section 4350.6 of, the Business and Professions Code, relating to pharmacy, and making an appropriation therefor.

[Approved by Governor September 26, 1988. Filed with Secretary of State September 27, 1988.]

LEGISLATIVE COUNSEL'S DIGEST

SB 2213, Craven. Pharmacy.

Under existing law, it is unlawful for any person to, among other things, sell or dispense any prescription of a medical practitioner unless the person is a registered pharmacist under specified provisions of the Business and Professions Code. The law requires an out-of-state pharmacy which conducts the business of selling or distributing drugs in this state to be licensed by the Board of Pharmacy.

This bill would require any pharmacy, as specified, located outside this state which ships, mails, or delivers any controlled substances or dangerous drugs or devices into this state to register with the board, disclose specified information to the board, and meet other conditions.

The bill would authorize the board to deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with specified provisions of California law and, until January 1, 1992, for conduct which causes serious bodily or psychological injury to a resident of this state if the regulatory agency in the state where the pharmacy is located fails to initiate an investigation into the matter within 45 days of being notified by the board.

The bill also would prohibit specified advertisements with regard to unregistered, nonresident pharmacies.

Existing provisions of the Business and Professions Code continuously appropriate the moneys in the Pharmacy Board Contingent Fund. Because this bill would increase the amount of moneys in the fund, it would constitute an appropriation.

A violation of those provisions of the Business and Professions Code constitutes a misdemeanor.

This bill would impose a state-mandated local program by creating or revising a crime.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this

act for a specified reason.

Appropriation: yes.

The people of the State of California do enact as follows:

SECTION 1. (a) The Legislature finds and declares that the practice of pharmacy is a dynamic, patient-oriented health service that applies a scientific body of knowledge to improve and promote patient health by means of appropriate drug use and drug related therapy.

(b) The Legislature recognizes that with the proliferation of alternate methods of health delivery, there has arisen among third-party payers and insurance companies the desire to control the cost and utilization of pharmacy services through a variety of mechanisms, including the use of mail order pharmacies located outside the State of California.

(c) As a result, the Legislature finds and declares that to continue to protect the California consumer-patient, all out-of-state pharmacies that provide service to California residents shall be registered with the board, disclose specific information about their services, and provide pharmacy services at a high level of protection and competence.

SEC. 2. Section 4050.1 is added to the Business and Professions Code, to read:

4050.1. (a) Any pharmacy located outside this state which ships, mails, or delivers, in any manner, controlled substances or dangerous drugs or devices into this state shall be considered a nonresident pharmacy, shall be registered with the board, and shall disclose to the board all of the following:

(1) The location, names and titles of all principal corporate officers and all pharmacists who are dispensing controlled substances or dangerous drugs or devices to residents of this state. A report containing this information shall be made on an annual basis and within 30 days after any change of office, corporate officer, or pharmacist.

(2) That it complies with all lawful directions and requests for information from the regulatory or licensing agency of the state in which it is licensed as well as with all requests for information made by the board pursuant to this section. The nonresident pharmacy shall maintain, at all times, a valid unexpired license, permit, or registration to conduct the pharmacy in compliance with the laws of the state in which it is a resident. As a prerequisite to registering with the board, the nonresident pharmacy shall submit a copy of the most recent inspection report resulting from an inspection conducted by the regulatory or licensing agency of the state in which it is located.

(3) That it maintains its records of controlled substances or dangerous drugs or devices dispensed to patients in this state so that the records are readily retrievable from the records of other drugs

dispensed.

(b) Any pharmacy subject to this section shall, during its regular hours of operation, but not less than six days per week, and for a minimum of 40 hours per week, provide a toll-free telephone service to facilitate communication between patients in this state and a pharmacist at the pharmacy who has access to the patient's records. This toll-free number shall be disclosed on a label affixed to each container of drugs dispensed to patients in this state.

(c) The registration fee shall be the fee specified in subdivision (a) of Section 4116.

(d) The registration requirements of this section and Sections 4350.6 and 4383, shall apply only to a nonresident pharmacy which only ships, mails, or delivers controlled substances and dangerous drugs and devices into this state pursuant to a prescription.

SEC. 3. Section 4084.6 of the Business and Professions Code is amended to read:

4084.6. No out-of-state manufacturer, wholesaler, or pharmacy doing business in this state who has not obtained a certificate, license, permit, registration, or exemption from the board and who sells or distributes drugs in this state through any person or media other than a wholesaler who has obtained a certificate, license, permit, registration, or exemption pursuant to the provisions of this chapter or through a selling or distribution outlet which is licensed as a wholesaler pursuant to the provisions of this chapter, shall conduct the business of selling or distributing drugs in this state without obtaining an out-of-state drug distributor's license from the board or registering as a nonresident pharmacy.

Applications for an out-of-state drug distributor's license or a nonresident pharmacy registration, under this section shall be made on a form furnished by the board. The board may require such information as the board deems is reasonably necessary to carry out the purposes of the section.

The board may deny, revoke, or suspend such out-of-state distributor's license for any violation of this chapter or for any violation of Division 21 (commencing with Section 26001) of the Health and Safety Code. The license or nonresident pharmacy registration shall be renewed annually on or before the first day of January of each year.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to change or affect the tax liability imposed by Chapter 3 (commencing with Section 23501) of Part 11 of Division 2 of the Revenue and Taxation Code on any out-of-state manufacturer, wholesaler, or pharmacy.

The Legislature, by enacting this section, does not intend a license or nonresident pharmacy registration, issued to any out-of-state manufacturer, wholesaler, or pharmacy pursuant to this section to

serve as any evidence that such out-of-state manufacturer, wholesaler, or pharmacy is doing business within this state.

SEC. 4. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. (a) The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

(b) The board may deny, revoke, or suspend a nonresident pharmacy registration for conduct which causes serious bodily or serious psychological injury to a resident of this state if the board has referred the matter to the regulatory or licensing agency in the state in which the pharmacy is located and the regulatory or licensing agency fails to initiate an investigation within 45 days of the referral. The board shall obtain and maintain a record of referrals pursuant to this subdivision and any action taken thereon and shall report its findings to the Legislature on or before March 31, 1991.

This section shall be operative until January 1, 1992, and as of that date, is repealed unless a later enacted statute deletes or extends the date.

SEC. 5. Section 4350.6 is added to the Business and Professions Code, to read:

4350.6. The board may deny, revoke, or suspend a nonresident pharmacy registration for failure to comply with any requirement of Section 4050.1 or 4383 or for any failure to comply with Section 11164 of the Health and Safety Code.

This section shall become operative on January 1, 1992.

SEC. 6. Section 4383 is added to the Business and Professions Code, to read:

4383. It is unlawful for any nonresident pharmacy which is not registered pursuant to Section 4050.1 to advertise its services in this state, or for any person who is a resident of this state to advertise the pharmacy services of a nonresident pharmacy which has not registered with the board, with the knowledge that the advertisement will or is likely to induce members of the public in this state to use the pharmacy to fill prescriptions.

SEC. 7. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs which may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, changes the definition of a crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

STATE OF ALASKA
THE LEGISLATURE

LEGISLATIVE AFFAIRS AGENCY
LEGISLATIVE REFERENCE LIBRARY

POUCH Y - STATE CAPITOL
JUNEAU, ALASKA 99811
907-465-3800

Copies of minutes listed below were originally included in this file. The minutes are available on the STAIRS database CMPR. In order to save space copies of minutes have not been left in the files.

Mary Van Nimwegen

H. HESS 3-21-90

H. HESS 3-23-90

Original sponsor(s): REP. MENARD, Donley, Hanley, Collins, Jacko

1 IN THE HOUSE

BY THE HESS COMMITTEE

2 CS FOR HOUSE BILL NO. 508 (HESS)

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 SIXTEENTH LEGISLATURE - SECOND SESSION

5 A BILL

6 For an Act entitled: "An Act relating to pharmacies located outside of the
7 state."

8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 * Section 1. AS 08.80 is amended by adding a new section to read:

10 Sec. 08.80.158. REGISTRATION OF PHARMACIES LOCATED OUTSIDE OF
11 STATE. (a) A pharmacy located outside of the state that ships,
12 mails, or delivers prescription drugs into the state shall register
13 with the board.

14 (b) A pharmacy registering with the board under (a) of this
15 section shall furnish to the board annually

16 (1) the location, names, and titles of all principal corpo-
17 rate officers and of all pharmacists who are dispensing prescription
18 drugs to residents of the state;

19 (2) a copy of a current valid license, permit, or registra-
20 tion to conduct operations in the jurisdiction in which it is located,
21 and a copy of the most recent report resulting from an inspection of
22 the pharmacy by the regulatory or licensing agency of the jurisdiction
23 in which the pharmacy is located;

24 (3) a sworn statement indicating that the pharmacy complies
25 with all lawful directions and requests for information from the
26 regulatory or licensing authority of the jurisdiction in which the
27 pharmacy is licensed; and

28 (4) proof satisfactory to the board that the pharmacy
29 maintains its records of prescription drugs dispensed to persons in

1 the state so that the records are readily retrievable from the records
2 of other prescription drugs dispensed by the pharmacy.

3 (c) A pharmacy subject to this section shall, during its regular
4 hours of operation, provide a toll-free telephone service to facili-
5 tate communication between persons in the state and pharmacist at
6 the pharmacy who has access to records concerning the dispensing of
7 prescription drugs to persons in the state. The toll-free number and
8 the hours that the service is available shall be disclosed on a label
9 affixed to each container of drugs dispensed to persons in the state.
10 The telephone service shall be available at least 40 hours a week and
11 at least six days a week.

12 (d) The board may, after a hearing, deny, revoke, or suspend the
13 registration of a pharmacy located outside of the state if the phar-
14 macy fails to comply with the requirements of this section, AS 17.-
15 20.080 - 17.20.135, or AS 17.30.020 - 17.30.080, or if the license,
16 permit, or registration of the pharmacy is denied, revoked, or sus-
17 pended by the licensing or regulatory agency of the jurisdiction in
18 which the pharmacy is located.

19 (e) A pharmacy located outside of the state that is not regis-
20 tered with the board under this section may not ship, mail, or deliver
21 prescription drugs into the state and may not advertise its services
22 in the state.

23 (f) A pharmacy subject to this section shall appoint a regis-
24 tered agent in the state who is empowered to accept, on behalf of the
25 pharmacy, process, notice, and demand required or permitted by law to
26 be served upon the pharmacy. If the pharmacy fails to appoint an
27 agent under this subsection, if the registered agent cannot with
28 reasonable diligence be found at the registered office, or if the
29 registration of the pharmacy is suspended or revoked, the commissioner

1 of commerce and economic development is an agent upon whom process,
2 notice, or demand may be served. Service is made upon the commis-
3 sioner in the same manner as provided for corporations under AS 10.-
4 06.175(b), except that for the purposes of AS 10.06.175(b)(2)(A), the
5 address shall be the last registered address of the pharmacy as shown
6 by the records of the board.

7 * Sec. 2. AS 08.80.160 is amended by adding a new paragraph to read:

8 (14) registration of a pharmacy located outside of the
9 state.

10 * Sec. 3. AS 08.80.480 is amended by adding new paragraphs to read:

11 (19) "pharmacy located outside of the state" means a phar-
12 macy that prepares or mixes prescription drugs outside of the state,
13 regardless of the location at which those drugs may be shipped, mail-
14 ed, or delivered to the consumer;

15 (20) "prescription drug" means a drug other than a nonpre-
16 scription drug.