

**PRESENTATION OF THE
BOARD OF PHARMACY**

TO THE SENATE COMMITTEE ON HEALTH
AND
TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION

TWENTY-EIGHTH LEGISLATURE
Regular Session of 2015

Friday, February 6, 2015
1:15 p.m.

TESTIMONY ON SENATE BILL NO. 1244, RELATING TO PHARMACY AUDITS.

TO THE HONORABLE JOSH GREEN, CHAIR,
TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEES:

My name is Lee Ann Teshima, Executive Officer for the Board of Pharmacy (“Board”). I appreciate the opportunity to testify on Senate Bill No. 1244, Relating to Pharmacy Audits, which would establish procedures for audits of pharmacies conducted by a health care provider, insurance company, third-party payor, the Department of Health, or any entity that represents such companies, groups, or the Department of Health.

I would like to preface my testimony by informing you that the Board has not had an opportunity to review this bill. The Board did reschedule its February meeting to next Thursday, February 12, 2015 at which time it will be holding a discussion on this measure.

In the meantime, please note that although this bill relates to pharmacies, it is designed to govern those entities conducting audits of pharmacies and not the pharmacies themselves. The Board’s jurisdiction is limited to its licensee population

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and it has no oversight or enforcement authority over entities not licensed by the pharmacy board. As such, the bill should make clear how it will be administered and enforced. Also, to the extent disputes that arise relating to pharmacy audits may trigger a review of pharmacy operations, it would be untenable for the pharmacy board to have a regulatory role over both parties to the audit.

Thank you for the opportunity to testify on Senate Bill No. 1244.



February 5, 2015

The Honorable Josh Green
Chair
Senate Committee on Health
Hawaii State Capitol, Room 407
Honolulu, HI 96813

The Honorable Rosalyn H. Baker
Chair
Senate Committee on Commerce and Consumer Protection
Hawaii State Capitol, Room 230
Honolulu, HI 96813

RE: Senate Bill 1244

Dear Senators Green and Baker:

The Academy of Managed Care Pharmacy (AMCP) has one major concern with Senate Bill 1244 relating to audit contracts with pharmacy providers. AMCP fully supports audit procedures that minimize risk of fraud, waste and abuse; however, we believe that parties to a contract should continue to negotiate their own terms without government intervention.

AMCP is a national professional association of pharmacists and other health care practitioners, including 13 members in Hawaii, who serve society by the application of sound medication management principles and strategies to improve health care for all. The Academy's nearly 7,000 members develop and provide a diversified range of clinical, educational, and business management services and strategies on behalf of the more than 200 million Americans covered by a managed care pharmacy benefit.

The auditing of pharmacy claims serves two main purposes: 1) detecting fraud, waste and abuse and 2) validating data entry and documentation to ensure they meet regulatory and contractual requirements. As you know, auditing is a necessary business function and has proven to be an effective tool to reduce fraud and abuse in the health care system. Audits remain the primary means that a health benefit plan ("carrier") uses to determine network pharmacy compliance and to identify fraud, waste and abuse involving the prescription drug benefit, which have been widely recognized as contributing to the rising cost of health care.

Generally, we do not support government intervention in private contracts; however, the majority of the provisions in this legislation are consistent with best practices in the industry. Our major concern is with Section 461 (g) which states that each pharmacy shall be audited under the same standards and parameters as other similarly situated pharmacies audited by the agency or entity. This provision is problematic because each pharmacy should be audited according to the terms of its contract with the agency or entity. Each pharmacy contract stands alone, and we cannot support a requirement that would override a negotiated contract agreed upon by both parties. We cannot support this provision and respectfully request that it be stricken.

Finally, we have 3 minor suggested amendments:

- Page 2, lines 10-12, section (e) allows 30 days after an onsite audit or receipt of the preliminary report to produce documentation. Page 4, lines 1-2, section (i) allows for 30 days following receipt of the preliminary report to produce documentation. It seems that only one of these sections is needed. We would suggest that one reference be deleted.
- Page 4, line 7, section (k), we suggest that the word “on-site” be inserted before audit to make it clear that the reference is to an onsite audit.
- Page 5, line 16, section (p), we suggest that following if applicable, the words “or requested” be inserted. This section refers to the arrangement between the agency or entity conducting the audit and the agency or entity requesting the audit be given a copy. The decision to provide a copy of the report or, perhaps, give a summary of the report should be between the two parties and should not be a government requirement.

We recognize that the audit process can be a contentious issue; however, audits are an important business function. So there must be a balance between a pharmacy provider’s desire to minimize payments as a result of an audit and an agency or entity’s ability to recoup over payments and minimize fraud, waste and abuse. Even though we do not support government intervention in private contracts, we believe with the removal of Section 461 (g) that this legislation can strike that balance.

We appreciate the opportunity to share our views on Senate Bill 1244. If you have any questions, you may contact AMCP’s Vice President of Government Affairs, Lauren Fuller, at (703) 683-8416 or lfuller@amcp.org.

Sincerely,



Edith A. Rosato, R.Ph., IOM
Chief Executive Officer

cc: Members of the Senate Committee on Health
Members of the Senate Committee on Commerce and Consumer Protection

Honorable Chair

STRONGLY SUPPORT

Senator Rosalyn Baker

Honorable Vice-Chair

Senator Brian Taniguchi

Hawaii Community Pharmacists Association Urges the legislature to pass SB-1244 concerning Pharmacy Audits. Currently there are no regulations governing pharmacy audits by Pharmacy Benefit Managers or insurance providers. This lack of regulation allows PBM's to unilaterally and unjustly audit and recoup payments as a revenue source and the only remedy is protracted and expensive litigation. PBM's have gone as far as instructing their audit departments to audit and recoup as much as possible because their contract was ending. The purpose of regulation is to prevent abusive audits aimed at reducing consumer access to pharmacy benefits. Rural consumers can be forced into mail order if their brick-and-mortar pharmacy is closed, with the attendant risks the Legislature has already found. Abusive audits can also be employed anti-competitively by PBMs which also own pharmacies. Regulation of audits requiring PBMs and insurers to act reasonably and follow accepted audit standards will protect consumer access and consumer choice, promoting competition and keeping health care costs down.

Please pass SB-1244 for the aforementioned reasons.

Aloha,

Kevin Glick, R.Ph.

Vice-Chair

HCPA

February 4, 2015

TO: The Honorable Josh Green Chair
The Honorable Glenn Wakai, Vice Chair
Senate Committee on Health

The Honorable Rosalyn Baker, Chair
The Honorable Brian Taniguchi, Vice Chair
Senate Committee on Commerce and Consumer Protection

FR: Cynthia Laubacher, Senior Director, State Affairs
Express Scripts Holding Company

RE: Senate Bill 1244: Pharmacy Audits
Hearing Date: February 6, 2015 1:15 p.m.

Express Scripts appreciates the opportunity to provide testimony on Senate Bill 1244, relating to audits of network pharmacies. Express Scripts is one of the largest pharmacy benefit management (PBM) companies in North America and provides services to millions of consumers through thousands of employers, government entities, health plans and union-sponsored benefit plans nationwide. Our clients look to us to manage increasing drug costs while providing value and quality care to patients by making prescription drugs safer and more affordable.

As such, it is critical to our plan sponsors that we have an effective pharmacy audit program in place. Such a process is designed to detect fraud, such as false claims, waste, such as unplanned errors, and abuse, such as unsound practices, and to recover overpayments paid by our clients to pharmacies. Each pharmacy in our network is given a provider manual that details the audit process and the pharmacy's rights and responsibilities under it. The manual is part of the contract with the pharmacy. Our clients want to be sure that their money is spent wisely. They want to minimize the number of inaccurate prescription claims, stop waste, fraud and abuse, and ensure that providers are meeting requirements under the contract. The audit process is a critical tool to help us meet those goals for them.

There are two types of pharmacy audits: on-site and desk. An on-site audit is usually conducted once per year. This is a comprehensive review of claims conducted at the pharmacy. A desk audit is conducted remotely and involves a single that has been flagged because of a potential concern, such as a clerical or other unintentional error. Desk audits enable us to contact a pharmacy to resolve a problem quickly.

We have two recommended clarifying amendments.

- 1) Page 4, line 7. We request amending the language to allow for desk audits to occur during the first 7 days of the month. Again, these are audits that are done remotely with the goal of resolving a problem quickly and preventing future problems. For example, they may have made a mistake in processing a claim. We can contact them to resolve the issue and help prevent them from repeating the mistakes with future claims.
- 2) Page 5, line 16. This section deals with providing copies of the final audit report to plan sponsors, "if applicable." We suggest amending this to clarify "if applicable, or upon request." Plan sponsors determine the parameters for audits. We recommend allowing them to determine whether they want to receive a copy of the final report.

Thank you for your consideration of our requested edits. Please feel free to contact me should you have any questions.

February 5, 2015
Support for SB1244

Dear Members of the Committee,

My name is Keri Oyadomari and I am a community pharmacist here in Honolulu. I would like to testify my support for SB1244 – Relating to Pharmacy Audits. Audits are a very important method to maintain compliance of pharmacies by insurance agencies, state regulatory departments, and any other entity that a pharmacy may service. However, often times in an audit, recoupment occurs due to minor typographical or record-keeping errors that could be easily resolved. It is unfair to recoup payments for errors that were not intended for fraud or those that can be easily resolved. Every pharmacy should have the ability to go back and resolve these minor technical errors in a timely basis. In addition, pharmacies need to be given sufficient notice of an audit, in order to adequately staff the business for the audit day. As a pharmacist for an independent pharmacy, I have seen the way an audit may detrimentally affect a workday if not enough notice is given—the pharmacy ends up understaffed and may lead to those very technical errors that the audit targets in the first place. In addition, the patients do not receive the service they deserve in an understaffed pharmacy. Furthermore, in a pharmacy that staffs only one pharmacist per shift, a lack of notice of an audit severely impacts that day’s workflow if the pharmacist must assist in the audit. I strongly support SB1244 and believe the passage of this bill would benefit all pharmacies and their patients they provide for.

Thank you for the opportunity to testify.

Sincerely,

Keri Oyadomari, PharmD