

Legislative History for Connecticut Act

PA 14-193

SB14

House	6959-6962	4
Senate	2184-2189, 2343-2344	8
<u>Insurance</u>	<u>89-96, 173-178</u>	<u>14</u>
		26

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

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6912 – 7260**

Those absent and not voting 6

DEPUTY SPEAKER GODFREY:

The bill, as amended, is passed.

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

Mr. Speaker, I move that we immediately transmit to the Senate any items waiting further action.

DEPUTY SPEAKER GODFREY:

Without objection, so ordered.

Representative Aresimowicz, I understand we have another Consent Calendar.

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

We are. We are about to list off the bills that will be included in our second Consent Calendar for the evening, sir.

DEPUTY SPEAKER GODFREY:

Proceed, sir.

REP. ARESIMOWICZ (30th):

Thank you very much, Mr. Speaker.

I move -- I'd to add the following to the Consent Calendar. Calendar 426, Calendar 308, Calendar 438, Calendar 488 --

SB281

SB19

SB182

SB330

DEPUTY SPEAKER GODFREY:

Whoa, whoa, whoa.

REP. ARESIMOWICZ (30th):

I apologize, Mr. Speaker. The first number was
427.

DEPUTY SPEAKER GODFREY:

So 427, thank you, sir. Proceed.

REP. ARESIMOWICZ (30th):

Calendar 476, as amended by Senate "A"; Calendar
445, Calendar 514, Calendar 505, as amended by Senate
"A"; Calendar 455, Calendar 456, as amended by Senate
"A"; Calendar 322, Calendar 536, as amended by Senate
"A" and Senate "B"; Calendar 430, Calendar 520, as
amended by Senate "A" and Senate "B"; Calendar 538, as
amended by Senate "A"; Calendar 424, as amended by
Senate "A"; Calendar 439, as amended by Senate "A";
Calendar 482, as amended by Senate "A"; Calendar 325,
as amended by Senate "A."

Calendar 526, as amended by Senate "A"; Calendar
509, as amended by Senate "A"; Calendar 532, Calendar
502, as amended by Senate "A"; Calendar 421, as
amended by Senate "A"; Calendar 431, as amended by
Senate "A"; and Calendar 539, as amended by Senate
"A."

- SB 194
- SB 402
- SB 324
- SB 45
- SB 221
- SB 257
- SB 201
- SB 389
- SB 418
- SB 438
- SB 427
- SB 260
- SB 208
- SB 424
- SB 241
- SB 14
- SB 106
- SB 322
- SB 410
- SB 217
- SB 477
- SB 429

DEPUTY SPEAKER GODFREY:

Is there objection to any of these items being placed on the Consent Calendar? If not, Representative Aresimowicz, would you like to move passage of the Consent Calendar?

REP. ARESIMOWICZ (30th):

Mr. Speaker, I want to remove Calendar 539.

SB429

DEPUTY SPEAKER GODFREY:

Please remove Calendar 539, Mr. Clerk.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I move passage of the bills on the second Consent Calendar of the day.

DEPUTY SPEAKER GODFREY:

The question is on passage of the items on Consent Calendar Number 2.

Staff and guests please come to the well of the House. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll.

The House of Representatives is voting by roll on the second Consent Calendar of the day, House Consent 2. Please report to the Chamber immediately.

DEPUTY SPEAKER GODFREY:

Have all the members voted? Have all the members
voted?

If all the members have voted, the machine will
be locked.

The Clerk will take a tally.

And the Clerk will announce the tally.

THE CLERK:

Consent Calendar Number 2.

Total Number Voting 147

Necessary for Passage 74

Those voting Yea 147

Those voting Nay 0

Those absent and not voting 4

DEPUTY SPEAKER GODFREY:

The items on the Consent Calendar are passed.

(Speaker Sharkey in the Chair.)

SPEAKER SHARKEY:

The House will please come back to order.

Will the Clerk please call Emergency Certified
Bill 5597.

THE CLERK:

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SENATE**

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2014**

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lgg/rd/cd
SENATE

22
May 2, 2014

Those voting Yea 35

Those voting Nay 1

Absent not voting 0

THE CHAIR:

The bill passes.

Mr. Clerk.

THE CLERK:

On page 33, Calendar 45, under Matters Returned from Committee, Senate Bill Number 14, AN ACT CONCERNING PHARMACY AUDITS AND ELECTRONIC FUNDS TRANSFER PAYMENTS TO PHARMACIES. There are amendments.

THE CHAIR:

Good afternoon, Senator Crisco.

SENATOR CRISCO:

Thank you, Madam Governor. Madam Governor, I move for acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark, sir?

SENATOR CRISCO:

Yes, Madam President. Madam President, the Clerk has an amendment, LCO 4333. I ask that it be called and I'll be given permission to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 4333, Senate "A," offered by Senator

Crisco and Representative Megna.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President. Madam President, I move its adoption.

THE CHAIR:

Motion is on adoption. Will you remark, sir?

SENATOR CRISCO:

Yes. Madam President, and members of the circle, LCO 4333 put really structure around practices that PBMs use to audit pharmacies. It delineates when PBMs can audit, how many prescriptions are included and how the appeal process works. In addition it set parameters for recruitment. This -- this amendment has been negotiated by all parties involved, including the PBMs, pharmacies and health plans.

THE CHAIR:

Will you remark further? Will you remark further? Senator Kelly. Senator Kelly.

SENATOR KELLY:

Thank you, Madam President. I have a couple of questions, through you to the proponent of the amendment.

THE CHAIR:

Please proceed.

SENATOR KELLY:

Thank you, Madam President.

With regards to this amendment, what is --

SENATOR CRISCO:

Excuse me, Madam President.

THE CHAIR:

Yes.

SENATOR CRISCO:

I can't hear.

THE CHAIR:

I'm sorry. Will Senate please come to order. Any conversations that you can have please (inaudible) have them outside the chamber right now. There's a dialect going between the two good senators.

Please repeat your question, Senator Kelly, please.

SENATOR KELLY:

Thank you, Madam President. And thank you, Senator Crisco, for asking for the opportunity to speak more clearly.

Through you, Madam President, what is the difference between or how does the amendment enhance the underlying bill?

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you to the good senator, it does several things. As I mentioned in summarizing, it delineates when PMs can audit. Originally, there was no end to what -- when -- specifically when they can audit, how many prescriptions are included, and how the appeal process works. In addition, it sets up

parameters for recruitment. It basically puts a structure around practices that PBMs use to audit pharmacies, so that both parties involved can come to, you know, a working agreement as far as what should be audited. Remember, Madam President, through you to the good senator, we've had these situations where the large box of pharmacies would be paid (inaudible) quite rapidly while the small pharmacies took some time, and so what we've been negotiating -- what has been negotiated for the past months is to give equal footing to the small pharmacy as well as the big pharmacy.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

And have these small pharmacies had the opportunity to participate in the creation of this amendment?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you to the Senator, yes. As I mentioned before, all parties were included, including the PBMs, the pharmacies and even the health plans.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

Another part of the bill in addition to when and by whom the audits were going to be conducted and what the structure and -- and what the methodology would be, another part of this bill was also to allow the small local pharmacy to request in writing that they get paid electronically rather than by check. Does that remain in the underlying bill?

Through you, Madam President.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Madam President, through you to Senator Kelly, yes. That is one of the reasons that we embarked upon the review of this legislation because the large pharmacies were paid electronically and the small pharmacies were not. So now this helps the small pharmacies with their -- their balance, their carrying balance in cash where they don't have to wait for weeks for thousands of dollars of reimbursement.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President, and thank you, Senator Crisco, for your answers regarding the amendment. I have no further questions.

THE CHAIR:

Thank you.

This time will you remark? Will you remark?

If not -- Senator Leone -- oh, I'm sorry. I'm sorry. I will try your minds. All those in favor of Senate "A," please say aye.

lgg/rd/cd
SENATE

27
May 2, 2014

SENATORS:

Aye.

THE CHAIR:

Opposed.

Senate "A" is adopted.

Senator Crisco.

SENATOR CRISCO:

Thank you, Madam President.

As I state before, the reason for the bill is that it provides structure to the appeals process. It sets really reasonable consistent standards for pharmacy audits based upon our Connecticut General Statutes and prohibits contingency fees for auditors. And if there's no objection, Madam President, I request that we put it on the Consent Calendar.

THE CHAIR:

No -- are there any questions on the bill? No more questions on the bill? Are there -- is -- seeing no objections, so ordered, sir.

Mr. Clerk.

THE CLERK:

Also on page 33, Calendar 98, Senate Bill Number 191, AN ACT CONCERNING HEALTH INSURANCE COVERAGE OF ORALLY AND INTRAVENOUSLY ADMINISTERED MEDICATIONS, favorable report of the Committee on Insurance and Real Estate.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

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THE CHAIR:

Senator McLachlan.

SENATOR MCLACHLAN:

Thank you, Madam President.

THE CHAIR:

Oops, I'm sorry, Senator McLachlan.

Senator Looney, why do you stand, sir?

SENATOR LOONEY:

Thank you, Madam President.

If this item might be passed temporarily. We will return to it shortly but first would ask the Clerk to read the items on the Consent Calendar so that we might proceed to a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On today's Consent Calendar, page 4, Calendar 292, Senate Bill 438; on page 7, Calendar 335, House Bill 5149.

On page 12, Calendar 392, Senate Bill 261; Calendar 400, Senate Bill 155; Calendar 409, Senate Bill 491.

And on page 33, Calendar 45, Senate Bill 14.

On page 34, Calendar 130, Senate Bill 45; also on page 34, Calendar 133, Senate Bill 179; Calendar 100, Senate Bill 55.

On page 37, Calendar 195, Senate Bill 61; page 40, Calendar 271, Senate Bill 194; and on page 41, Calendar 285, Senate Bill 464.

lgg/rd/cd
SENATE

182
May 2, 2014

THE CHAIR:

Mr. Clerk, will you call for a roll call vote on the Consent Calendar. The machine is open.

THE CLERK:

Immediate roll call has been ordered in the Senate. Immediate roll call on the first Consent Calendar for the day has been ordered in the Senate.

THE CHAIR:

Have all members voted? All members voted. The machine will be closed.

Mr. Clerk, will you please call a tally on the first Consent Calendar?

THE CLERK:

On today's first Consent Calendar.

Total Number Voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The Consent Calendar passes.

Senator Looney, shall we return to page 42?

SENATOR LOONEY:

Madam President.

THE CHAIR:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**INSURANCE AND
REAL ESTATE
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REP. JOHNSON: There are no savings?

PAUL SMITH: There is no savings. It's costing more.

REP. JOHNSON: It's costing more? Okay, thank you.

Thank you. Thank you, Mr. Chair.

SENATOR CRISCO: You're welcome, (inaudible).

Any other questions?

Thank you so much, Sir. Appreciate it.

PAUL SMITH: Thank you. You're welcome.

SENATOR CRISCO: Keep up the good work. Paul Smith, (inaudible).

Proceeding to getting into electronics, the Senate Bill 14, Act Concerning Pharmacy Audits and Electronic Fund Transfer Payments to Pharmacies.

David Benoit?

DAVID BENOIT: Good afternoon, Senator Crisco, Representative Megna, members of the Committee. My name is David Benoit. I work for a buying group of community pharmacies, independent community pharmacies. The majority of community pharmacies in Connecticut are participating with Northeast Pharmacy Service. You have my written testimony.

In the matter of audits, there is no standard audit to be conducted by a PBM of the processes a pharmacy may use to give the right medicine to the right patient at the right time on the

right day. But we do see across the industry some practices to emulate, largely by the bigger companies that have their own staff, their own training. So, Express Scripts and Caremark do a lot of the right things we're talking about, and we would like to tweak some of the things they do to improve on that and then drag the rest of the industry along so that audits are experienced the same way.

Now, we have before us something to emulate in the new Medicare D prescription plans where CMS says, for all these minor errors which might be a miscalculation of the day of supply or the wrong middle initial or the wrong first name or the wrong doctor from the practice is on the claim, but the patient got the medicine and everything else is right. CMS is saying those administrative errors which have nothing to do with whether or not the patient got the medicine should not be recovered, they should be repaired, they should be corrected. And we believe that where, you know, 80 percent of the cost of providing a prescription is the medicine that it's unfair to take a small error like that and take back the cost of the whole claim and all of the refills.

So, last year there was an industry group discussion about the matter of this audit bill. We agreed on many, many things. There was really only one item at the end of the discussion that stood in our way. I hope that we can begin near the same place this year as audit legislation has passed and that matter has been resolved in more than 20 states.

With regard to electronic funds transfer, it's not a fun time on a day like today where our checks should have left St. Louis yesterday, but they were in the weather, and it can't land

here today because we're in the weather. And, so, we're relying on a check that's going to be three or four or five days late before we can handle it. We believe that electronic funds transfers are being conducted by all the PBMs and all the Medicare D prescription programs at the request of a pharmacy. They're equipped to do so with their commercial plans. Little by little, the industry is moving in that direction and we would just like to encourage that to move along more speedily.

SENATOR CRISCO: Thank you, Sir.

Are there any questions? Any questions?

Thank you very much.

DAVID BENOIT: Thank you.

SENATOR CRISCO: Ed? To be followed by Mr. Quigley.

ED SCHREINER: Good afternoon, Senator Crisco, Representative Megna, and members of the Committee. My name is Ed Schreiner. I've been the owner of Stalls Pharmacy for 25 years and counting now down in Waterbury, Connecticut, and I'm also the Chairman of the board for Northeast Pharmacy Service Corp. which, in addition to being the buying group that Mr. Benoit mentioned, we also do offer EFT services to our members for certain third-party prescription drug plans. So, I'm here to request your support today for S.B. 14.

All pharmacies do have written agreements with the plan sponsors and the PBMs that administer the plans. These agreements are take it or leave it. There is no -- little or no negotiating leverage for the individual pharmacy concerning the provisions of the

contract. As far as EFT goes, managing cash flow is the key to success of all small businesses. In my business, I find EFT improves my cash flow by two to four weeks. On the northeast side, we do EFT for our members for certain contracts including an Express Scripts program. We find as a company that it's certainly much more economical and effective for us and it's a time saver for our staff. The EFT provisions of this bill provide a secure, reliable, inexpensive and weatherproof business friendly opportunity for payment options to Connecticut pharmacies, but it doesn't prevent PBMs from mailing checks to those who prefer it that way.

As far as pharmacy audits, I believe I'm the only pharmacy owner here testifying, so, I've been on the other side of the audits numerous times. My testimony has some examples of audits I've had. I'd be more than happy -- if you give me the time, I could give you some anecdotal stories based on my experiences. There are many audits that are fair and reasonable. The larger companies like Express Scripts, very professional, they do a nice job on their audits, but we do see unfair audits from time to time and that seems to have been growing. And frequently the issue is that pharmacies are subject to recoupment for payments due to clerical computer errors or record keeping that had nothing to do with fraud and they do not result in financial harm to the health plan, to PBM, or the plan beneficiary. As Mr. Benoit had referenced earlier, CMS and the Federal plans is saying correct those minor technical bookkeeping errors. Don't recoup the claim and penalize the pharmacy.

The other issue is every PBM has their own

rule. I will finish up quickly. So, it's hard to comply with all the rules unless it's grounded in Connecticut General Statutes, which is not necessarily the case. I think Raised Bill 14, that's reasonable consistent standards for pharmacy audits based on the Connecticut General Statutes passes, passage of this legislation would ensure that audits focus on ferreting out fraud, waste, and abuse, or protecting Connecticut pharmacies from recruitments -- recoupment based on minor technicalities within the current audit systems we're experiencing.

I respectfully ask that you support Raised Bill 14.

SENATOR CRISCO: Thank you very much, Sir.

Are there any questions? Any questions? Yes, Representative Johnson.

REP. JOHNSON: Thank you, Mr. Chair.

Just quickly, do you know of other states that have created some type of regulation that has prevented these type of unfairness?

ED SCHREINER: Certainly. Early in 2013, the National Community Pharmacist Association, which one of our trade associations, put out a report saying that 20 states had implemented audit legislation, and that was at the beginning of the Legislative Session last year. I believe it's up to 27 or 28 states who have local (inaudible) laws on the books now.

REP. JOHNSON: Thank you.

Thank you, Mr. Chair.

SENATOR CRISCO: You're welcome. Anything else?

Thank you so much.

Mr. Quigley? Mr. Quigley, such nice things are said of Express Scripts. What could you say?

BRIAN QUIGLEY: I know. I'm just here to thank all those kind words.

SENATOR CRISCO: And Mr. Bradley sends his regards.

BRIAN QUIGLEY: For the record, I am Brian Quigley representing Express Scripts, a pharmacy benefit manager, here to indicate our opposition to Senate Bill 14 in its current form. As David Benoit indicated, we negotiated long and seriously last year and we hope to continue those negotiations so that we can reach resolution on the remaining issues. I got from my principal at Express Scripts late last night our concerns with the bill, and they're not very many. One of them is fairly significant on the trigger for recoupment, but I hope we can all get to the same place.

The concern that we as Express Scripts have is obviously to the extent we can be consistent across the state in setting up system to do this that makes the expense to our customers that much less. The bill that I am most familiar with that passed last year was New Hampshire, and Anthem is a participant in New Hampshire, as is CIGNA and Aetna and United Healthcare. So, they all signed off on that bill and we would look to that as the example. And we discussed that with the pharmacy associations last year and hope to continue that discussion.

Be happy to answer any questions.

SENATOR CRISCO: Thank you, Mr. Quigley. If you could expedite that as quickly as possible, we would appreciate that.

Any questions for Mr. Quigley? Any questions?

Thank you so much.

BRIAN QUIGLEY: Thank you.

SENATOR CRISCO: Marghie?

MARGHIE GIULIANO: Good afternoon, Senator Crisco, Representative Megna, and members of the Committee. My name is Marghie Giuliano. I'm the executive vice-president of the Connecticut pharmacists association and I'm here to speak in support of S.B. 14.

The proposed legislation is really asking for fair treatment of pharmacies during the audit process. The legislation is needed to really address some of the current abuse of audit practices that are in play by the PBMs that adversely impact our pharmacies. And currently there are actually 29 states that have passed audit legislation and many other states where it's being introduced.

I wanted to stress to the Committee that we're not here trying to protect those who are committing any fraud. We understand that the purpose of an audit is really to help detect some of those fraudulent practices, and if a pharmacy is committing fraud we certainly support the appropriate action being taken. But an audit should not provide an open forum to recoup funds when a pharmacy has provided medication for a patient in good faith, and those are the type of issues that we're trying

to address with this legislation.

The proposed bill is very similar to what was introduced last year. You know, we have -- since then we've been participating in the stakeholders group of concerned parties to discuss our areas of concern, and the hope is that we can come to some consensus to support meaningful legislation and eliminate any of the harmful anti-small business practices. My testimony has not been handed out, okay, so I've gone to certain sections where we have some concerns that we are actually looking at with the stakeholder group and I won't go into detail on those at this time.

Just in conclusion, we certainly support the electronic fund transfer portion of the bill as well. We believe that certainly the technology is there for PBMs to electronically transfer funding. And in conclusion, we hope to continue to participate in the stakeholders group and work through some of these areas of concern and bring some meaningful legislation to (inaudible).

SENATOR CRISCO: Thank you, Ms. Giuliano.

MARGHIE GIULIANO: Thank you.

SENATOR CRISCO: Any questions? Any questions?

Thank you so much.

Proceeding to House Bill 5023, an act concerning portable electronic insurance.

Paul?

PAUL FASSBENDER: Thank you, Senator Crisco, Representative Megna, and members of the



Insurance & Real Estate Committee

**Raised Bill 14, An Act Concerning Pharmacy Audits and
Electronic Funds Transfer Payments to Pharmacies**

February 18, 2014

Senator Crisco, Representative Megna, and the Distinguished Members of the Insurance and Real Estate Committee:

My name is David Benoit. I am here to testify in support of **Raised Bill 14, An Act Concerning Pharmacy Audits and Electronic Funds Transfer Payments to Pharmacies**. I am a pharmacist and currently am employed as Vice-President of Patient Care Service for Northeast Pharmacy Service Corporation, a buying group (GPO) representing the majority of independent pharmacies in Connecticut. I have been involved with contracts for prescription drug programs for nearly twenty years. I have been involved with numerous audit disputes. And while many are fair and reasonable, the ones that are not can be outrageous. There are many good reasons why this legislation is a good idea and will result in more fair and equitable audits. According to the National community Pharmacists Association, twenty states have rules governing pharmacy audits by prescription benefit managers (PBMs).

Audit abuses abound. The most troublesome audits occur on site. An auditor, who should have provided at least two weeks' notice of the audit and information about the claims to be reviewed, should appear on time, as scheduled. The pharmacy should have made preparations for the audit including preparing the claims of interest, the signature logs, other requested documentation, and be certain to have extra staff. You can see that when the pharmacy cannot adequately prepare, much expense and resources are wasted. This can also lead to frivolous findings

Every pharmacy transaction has a very "real" cost of goods. The medicines themselves cost a lot of money. In a typical 30-day prescription, the medicine itself is over 75% of the transaction. In the case of maintenance medications and 90-day supplies, the cost of medication can be more than 90% of the transaction. Recovery of the whole transaction and all of the refills should be set aside for serious infractions only. Audits should be administrative endeavors designed to detect and prevent fraud, waste, and abuse.

When recoveries are ultimately made, they should be reported and returned to the plan sponsor who paid for the claims in the first place. Audits should not be a new revenue stream for the PBM, its audit department, or their subcontractors. Arbitrary audit



recoveries ultimately cost Connecticut jobs and tax revenue as proceeds are removed from its economy.

PBMs should not be allowed to decide what is a legitimate prescription; this is the State's prerogative and should remain exclusively so. For instance, both state and federal governments encourage electronic prescribing of prescription medications. It is widely agreed that electronic prescriptions provide superior quality and safety over handwritten prescriptions. Yet, there are PBM audits, which have challenged the validity of electronic prescriptions, insisting that only paper prescriptions are acceptable. This finding alone can put a pharmacy in the position of having to defend themselves against tens of thousands of dollars in a potential audit recovery

As pressure has mounted for pharmacies to provide prescription drugs on ever more competitive reimbursements, pharmacies have become busier and busier places. It is not always easy for the pharmacy to make time to talk to patients, as many of you know. It is easy to make clerical errors and typos when hundreds of prescriptions are being filled for patients the pharmacists may know well. Prescriptions come in on pieces of paper, by fax, by phone, electronically from the doctor to the pharmacy, from the nursing home on Medication Administration Records, as transfers from and to other pharmacies – and more.

The point is that the patients get the right medicine almost every time despite all the confusion and chaos that surrounds the pharmacy. The PBMs and auditors should not be able to profiteer on pharmacies and create additional arbitrary requirements to increase the chaos. There should be a reward for providing medications to patients in the midst of this administrative hubbub. The country's largest prescription drug payer, CMS on behalf of Medicare D has many rules about making certain that the patient gets medicine even when the details are not complete. Further, CMS requires that the claims be corrected, not recovered.

In addition, CMS has required EFT payments to any pharmacy that requests electronic payments. It is time to move beyond a time when the "check was in the mail." EFT payments are reliable, secure, inexpensive, modern, and weather and location –proof.

Why can't that be the law across the board? Patients should come first. That deserves a reward. It shouldn't be a mechanism to enrich public corporations that administer prescription drug programs.

The Prescription Benefit Management companies are very powerful and many of the terms of their contracts are not negotiable. Legislation is needed to "fix" some important flaws. There should be consistency across PBMs for audits and payments.

Please vote favorably on Raised Bill 14, An Act Concerning Pharmacy Audits and Electronic Funds Transfer Payments to Pharmacies.

Insurance and Real Estate Committee

Raised S.B. No. 14**An Act Concerning Pharmacy Audits and Electronic Funds Transfer Payments to Pharmacies**

Senator Crisco, Representative Megna and the Distinguished Members of the Insurance and Real Estate Committee

My name is Edward Schreiner. I am a resident of 36 Pineridge Drive, Oakville, Ct. As a registered pharmacist, I have owned and operated Stoll's Pharmacy in Waterbury, Ct since 1988. I am also the Chairman of the Board of Directors for Northeast Pharmacy Service Corporation, a group purchasing organization (buying group) with approximately 275 participating community pharmacies throughout New England including the majority of independent pharmacies in Connecticut.

I am here today to voice my support for Raised Bill No. 14: An Act Concerning Pharmacy Audits and Electronic Funds Transfer Payments to Pharmacies. All pharmacies participating in third party drug plans operate under a written agreement with the plan sponsor and/or pharmacy benefit manager (PBM) that administer their pharmacy benefit. Over the years, health plan sponsors and PBMs have unilaterally created and enforced pharmacy audit programs and fund payments to their pharmacy network providers. Pharmacies have little or no negotiating leverage with respect to these contract provisions.

Impact of Electronic Fund Transfers (EFT)

Managing cash flow is the key to the success or failure of community pharmacies and all small businesses. When receiving payment by check, PBMs reimburse local community pharmacies anywhere from four to eight weeks after the prescription is filled. We most commonly pay our suppliers on terms of 15 to 30 days. This dichotomy between paying our bills and receiving reimbursement for our services puts a great strain on cash flow. It is critical that pharmacies receive regularly scheduled payments from PBMs in a predictable reliable manner.

Payments received by check are anything but predictable or reliable. I have received checks from other pharmacies stuffed in the envelope containing my check. I have had checks delivered to my neighbors address. Calling a PBM to inquire after missing payments is often time consuming and met with inadequate explanation or resolution. I had one check held for over 6 months by a PBM because the total amount due was under \$100. When we realized the payment was missing, it took 3 long phone calls to get the PBM to admit that their internal policy was to hold small checks because it was too expensive to mail them. I was finally able to get them to release the payment when I learned that the one plan they were processing claims for in my area was no longer their client.

CMS requires PBMs to offer EFT payments for all prescriptions paid for under Medicare Part D yet many PBMs still refuse to extend EFT payment to commercial programs. Electronic banking is commonplace in today's society and online bill paying is much preferred over the traditional printing and mailing of paper checks by most people. It makes sense that a secure, reliable, inexpensive, and weather-proof EFT payments procedure is a much more efficient process than mailed checks. This bill

provides the business-friendly option of EFT for Connecticut's pharmacies but does not prevent PBMs from mailing checks to those that prefer them.

Pharmacy Audits

Pharmacy audits were originally intended to detect and deter fraud, waste and abuse involved with third party prescription drug programs. While many audits continue to be fair and reasonable, the frequency of unfair audits has grown tremendously over the years.

In many instances PBMs pay auditors a percentage of their findings as their fee for performing the audits. This practice incentivizes the auditor to create as many "findings" as possible so as to increase their own financial gain. When recoveries are made, there is no guarantee that this money is reported and returned to the health plan that paid the claim originally. In this case the audit becomes another revenue stream for the PBM. These two issues create a powerful incentive for auditors and PBMs to perform abusive audits that recover legitimate payments made to pharmacies for services rendered and drugs consumed by patients, often in the name of "fraud" where no fraud has occurred.

Every PBM has their own set of audit requirements. PBMs often decide what a "legitimate" prescription is and use self-defined criteria that may be applicable in other states, but have no foundation in Connecticut's general statutes. Pharmacies must comply with numerous variations of audit and appeals practices by different health plans. This variation forces pharmacies to spend numerous hours and thousands of dollars in employee salaries to address audits in an effort to keep revenue they are legitimately owed. Pharmacies need at least two weeks' notice of the audit and should be provided information about the claims to be audited. This time is necessary to gather the required documentation to substantiate the claim in a calm and orderly manner without abusive pressure from auditors to present this information in the abbreviated time frame of an on-site audit

Frequently, pharmacies are subject to recoupment of payments due to clerical, computer, or recordkeeping errors that have nothing to do with fraud and do not result in financial harm to the PBM, the health plan or the plan beneficiary. Abusive audits recoup thousands of dollars from Connecticut pharmacies every year even when the correct medication is dispensed to the correct patient for the correct price.

As a result of abusive audits, twenty states have implemented legislation governing pharmacy audits according to the National Community Pharmacists Association. Raised Bill No 14 sets reasonable, consistent standards for pharmacy audits, based upon Connecticut General Statutes. Passage of this legislation would ensure that pharmacy audits focus on ferreting out fraud, waste and abuse while protecting Connecticut's pharmacies from abuses based upon minor technicalities within the current audit system operated by PBMs and health plans. In conclusion, I strongly urge you to support passage of Raised Bill No 14.

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Quality is Our Bottom Line

**Insurance Committee Public Hearing
Tuesday, February 18, 2014**

Testimony in Opposition to

SB 14 AAC Pharmacy Audits and Electronic Funds Transfer Payments to Pharmacies.

The Connecticut Association of Health Plans respectfully opposes SB 14.

Prescription drug prices are one of the fastest growing components of health care costs today. The Health Insurance Association of America predicts that spending on prescription drugs will increase annually an average of 10 to 13%. The reasons for such staggering increases are varied: faster FDA approval of new drugs, an increasingly aging population, aggressive marketing practices by the pharmaceutical industry and the cost of new high tech sophisticated drugs all play a role.

Understandably, employers who generally pay the bulk of health insurance premiums have looked to their health insurers and pharmacy benefit managers (PBMs) for tools to help manage the escalating costs. Just as the State of Connecticut undertakes audits to assure that Medicaid and other taxpayer dollars are being expended appropriately and within the rules applicable, employers through their PBMs should be afforded the same ability. Health care costs continue to escalate, but bills like SB 14 erode the ability of health plans and PBMs to control these costs.

With respect to payment transfers, such matters should be dealt with among and between the contracted parties as opposed to requiring in statute specific provisions regarding "the electronic transfer of funds."

Thank you for your consideration.



Statement Before
The Insurance & Real Estate Committee
Tuesday, February 18, 2014

Re: **SB 14: An Act Concerning Pharmacy Audits and Electronic Funds Transfer Payments to Pharmacies**

Good Afternoon Senator Crisco, Representative Megna and members of the Insurance Committee. My name is Margherita Giuliano and I am both a pharmacist and the Executive Vice President of the Connecticut Pharmacists Association. The Connecticut Pharmacists Association is a professional organization representing 1000 pharmacists in the state of Connecticut. I am here today to speak to **SB 14: An Act Concerning Pharmacy Audits and the Electronic Funds Transfer Payments to Pharmacies**.

This proposed audit legislation is asking for fair treatment of pharmacies during the audit process conducted on behalf of Pharmacy Benefit Managers (PBMs) or plan sponsors. This legislation is needed in order to take the powers of prosecutor, judge, and jury out of the hands of PBMs when it comes to pharmacy audit practices, and standardizes a currently unregulated business practice that is adversely impacting pharmacies all across Connecticut, as well as across the nation. Currently there are 22 states that have passed audit legislation and many other states where legislation is being introduced.

I want to be very clear so that the Committee understands that Pharmacists are **not** here asking for more money and we definitely are not here to protect those who commit fraud, waste or abuse. If a pharmacy is committing fraud, waste or abuse, we fully support turning them over to the appropriate regulatory board and action must be taken.

What we are asking is for you to pass legislation like many others states have already done – or are doing. PBM Audit Practices have become so predatory that national companies have been formed to help pharmacies with audits. One company, Pharmacy Audit Assistance Service (PAAS), has helped pharmacies recover more than \$74 million in inappropriate audit charge backs.

The proposed bill is similar to what was introduced last year. Since then, CPA has participated in a stakeholder's group to review and discuss areas of concern. The hope is that we can come to consensus to support meaningful legislation and eliminate this harmful anti-small business practice.

In reviewing this proposed language, we were very happy to see that it includes several substantive components. I have outlined a few areas that we would like to encourage discussion.

Section 1 should include a definition for fraud. Suggested language: Fraud means an intentional act of deception, misrepresentation, or concealment in order to gain something of value

Section 1(3)(b)(1) should be deleted.

Section 1 (3)(b)(2) should be modified to read: "Except as required by state or federal law an entity conducting an audit may have access to a pharmacy's previous audit report only if the previous audit report was prepared by that entity." An entity conducting an audit for a PBM or Plan sponsor should only have access to the information that they are there to review. They should not have access to previous audit reports of a pharmacy. This should have no bearing and should be removed from the language.