PUBLIC TESTIMONY SUMMARY

I-900 STATE AUDITOR'S PERFORMANCE AUDIT:

Department of Labor & Industries Prescription Drugs (May 4, 2011)

As Heard by the Joint Legislative Audit & Review Sub-Committee on I-900 Performance Audits on May 18, 2011

The performance audit being discussed at this hearing was conducted solely and independently by the office of the State Auditor, under the authority of legislation approved by the voters in Initiative 900. The State Auditor is elected directly by the people of the State of Washington and operates independently of the Legislature and the Joint Legislative Audit & Review Committee. Staff to the Joint Legislative Audit & Review Committee prepare a summary of public testimony on State Auditor reports. These summaries are for informational purposes only, and do not serve as an assessment by committee staff of the findings and recommendations issued by the State Auditor nor do they reflect a staff opinion on legislative intent.

Title: Department of Labor & Industries Prescription Drugs

Audit Scope and Objectives:

SAO reports that the purpose of the audit was to answer the following questions:

- Does the Department of Labor and Industries (L&I) Workers' Compensation Program pay a reasonable and appropriate amount for prescription drugs?
- If costs appear too high, what actions could contain costs without compromising quality care, and what would be their likely effects?
- If costs appear reasonable, does the Department have additional opportunities to contain costs without compromising quality care? What would be the likely effects if these options were pursued?

SAO indicates the audit examined L&I prescription drug purchases in fiscal year 2009.

SAO Findings:

The report provides the following five audit results:

- During fiscal year 2009, generic drugs represented nearly 88 percent of all prescription drugs purchased. Brand name drugs were provided for the other 12 percent, mostly when generic equivalents weren't available.

SAO Recommendations:

- L&I should update its reimbursement rates annually.
- The Legislature should revise state law (RCW 69.41.190) to permit physicians to prescribe brand-name drugs only when generic therapeutic equivalents are not available. To accomplish this, lawmakers should modify the carve-out provision so it no longer exempts certain drug classes from the generic requirement, and should modify the "dispense as written" provision so it no longer prohibits pharmacists from substituting less expensive, therapeutically equivalent drugs.

SAO Findings (continued)	**SAO Recommendations** (continued)
• Until fiscal year 2011, L&I had not updated its reimbursement rates for years and was paying more than other state agencies for the same drugs. • L&I currently pays a more reasonable amount for prescriptions than it did in the past, but its rates are still not as low as the Health Care Authority's. • The agency could save more money if it allowed permanently disabled workers to use mail-order pharmacies for long-term prescription refills and if it encouraged pill-splitting. • State law prevents L&I from adopting two other cost-saving practices that would further reduce costs (a provision that prevents pharmacists from dispensing generics for certain classes of drugs if the physician has prescribed a brand-name drug, and a law allowing physicians to write "dispense as written" prescriptions).	• L&I should amend the Washington Administrative Code to allow low-cost mail-order pharmacies to provide 90-day prescriptions for permanently disabled workers who require ongoing prescriptions. The Department should also explore financial incentives as a way to move the prescriptions for permanently disabled workers to mail-order pharmacies. • L&I should encourage pill-splitting when physicians think it is safe and economical to do so. • L&I should exercise its contractual audit authority to verify that its private benefits manager is collecting and remitting all rebates owed and that its fees do not exceed the amounts allowed by contract. L&I may want to partner with the Health Care Authority and the benefit manager's other government customers to reduce the cost of verification.
Agency Responses in Audit Report?	Yes, beginning on page 23.
Legislative Action Requested?	Yes; see the second recommendation on the previous page.

Agencies Testifying:

Department of Labor & Industries (Janet Peterson, Health Services Analysis Program Manager; Jaymie Mai, Pharmacy Manager)

Health Care Authority (Duane Thurman, Director of Prescription Drug Program; Dr. Jeff Thompson, Chief Medical Officer)

Summary of Testimony from Audited Agencies:

L&I welcomed this opportunity to take a hard look at our program, and we found a number of ways to improve it during the course of the audit. Washington is a leader in terms of best practices in its drug purchasing programs, due in part to legislative provisions such as evidence-based medicine and the preferred drug list. L&I is an active partner with the Health Care Authority (HCA). L&I's workers' compensation program shows a much higher percentage use of generic drugs as compared to similar programs in other states. We do not believe that pharmacists view the workers' compensation program as the same business as the HCA program; pharmacists have additional workload and risks associated with filling workers' compensation prescriptions and so are less likely to give L&I the same reimbursement rates they may give to HCA or others.

The HCA and the Medicaid Purchasing Administration have vastly different business models than the workers' compensation program. If the Legislature considers the SAO recommendation to change the dispense-as-written and carve-out provisions of current law, please be aware of the

effects to these other programs as well as factors such as continuation of therapy and pricing across the different business models of the agencies. We believe the law as it is currently written is working well.

Other Parties Testifying:

Dedi Hitchens, Washington State Pharmacists Association

Lis Houchen, NW Regional Director, National Association of Chain Drug Stores

Carolyn Logue, Washington Food Industry Association

Jeff Gombosky, Pharmaceutical Research and Manufacturers of America

Summary of Testimony from Other Parties:

L&I did just lower the fees pharmacists receive. Any potential lowering of the fee schedule is of concern to pharmacists. These fees are now among the lowest in the nation. The repeated comparisons between HCA and L&I are troubling. These agencies are in different lines of business. The audit did not take into account the changes L&I has recently made to the program. The coordination among agencies in Washington on these drug programs could be a model for other states. There are ways for these agencies to monitor prescribers and watch for overuse of dispense-as-written. Before making any changes, please consider the system under which these drugs are being prescribed; the drugs these injured workers are receiving are likely opiates and anti-depressants, not statins. There could be adverse clinical outcomes from implementing the audit recommendations. There could be increased costs to the state from removing the current dispense-as-written statutes. We support the points in the joint letter from L&I and OFM in response to the audit.

There is no mail-order pharmacy in Washington, so mandating the use of mail-order prescriptions would be sending dollars out-of-state. When people come in a store to have a prescription filled, they buy other items as well, supporting the business and providing the state with tax revenue. We do not oppose mail-order as a choice for patients but have concerns about the state mandating it. Potential problems emerge when a person is using mail-order for chronic care and appropriately goes to a local pharmacy for emergent care; the local pharmacist cannot know what medications the person is on via mail-order. Switching to mail-order could mean losing the effectiveness of a number of the leading practices the audit just praised L&I for. An alternative to the mail-order recommendation would be to allow pharmacists to dispense a 90-day supply of a prescription.

We do not think pill-splitting should even be an option. It is a matter of patient safety. There is risk of patients not receiving the correct dosage. Several professional associations such as the American Medical Association and the Food & Drug Administration do not recommend pill-splitting as a practice. The risks to patients from this outweigh the small potential savings.