

MINUTES OF THE SENATE FINANCIAL INSTITUTIONS AND INSURANCE COMMITTEE

The meeting was called to order by Chairperson Jeff Longbine at 9:30 am on Thursday, February 12, 2015, 546-S of the Capitol.

All members were present except:

Senator Tom Hawk – Excused

Committee staff present:

Ellen Martinez, Kansas Legislative Committee Assistant

Melissa Calderwood-Renick, Legislative Research Department

Whitney Howard, Legislative Research Department

Eileen Ma, Office of Revisor of Statutes

Conferees appearing before the Committee:

Proponents:

Mike Larkin, Executive Director, Kansas Pharmacists Association

Jody Reel, PharmD, Sabetha Health Mart

Douglas Funk, Rph, President, Funk Pharmacies

Dalel Masten, Director of Government Affairs, Genoa, A QoL Healthcare Company (written testimony only)

Brian Caswell, Kansas community pharmacist, Board Member National Community Pharmacists Association (written only)

Opponents:

Bill Sneed, Legislative Counsel, America's Health Insurance Plans

David Root, Senior Director, Prime Therapeutics

Allyson Blandford, Senior Manager, State Government Affairs, Express Scripts

Peter Harty, Government Affairs, CVSHealth

Mike O'Neal, Kansas Chamber CEO (written only)

Others in attendance:

[See Attached List](#)

Hearing on: SB103 — Pharmacy benefits managers limitations on activities.

Senator Longbine opened the hearing. Eileen Ma, staff revisor, gave a brief overview of the bill.

Mike Larken, Executive Director of the Kansas Pharmacists Association testified in support of **SB 103**. Like any Kansas business, a pharmacy should know what is going to be reimbursed for at least the cost of the medications they sell. Most health insurance plans use pharmacy benefits managers (PBMs) which act as middlemen to process payments for prescription medications when a patient picks it up at the pharmacy. They also negotiate drug prices with manufacturers, contract with pharmacies and in many cases act as a pharmacy by utilizing the US mail. Pharmacies must contract with PBMs in order to stay in business, which gives the PBMs considerable market power. Those contracts stipulate that pharmacies will be paid for generic medications using a strategy known as "MAC pricing"- for maximum allowable cost.

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This legislation would: require PBMs to update their price lists every seven days so they remain in line with actual wholesale costs, require PBM contracts to be clear about how MAC pricing is calculated, give authority to the Kansas Insurance Commissioner to oversee and enforce PBM contracts and require PBMs to document that the drugs on their MAC pricing lists are actually available at the low price for which they are willing to reimburse pharmacies. MAC pricing will benefit Kansas communities by keeping medication available to patients and by keeping local pharmacies in business. ([Attachment 1](#))

Doug Funk, a pharmacist and owner of Funk Pharmacy in Concordia, Kansas, testified in support of **SB 103**. Implementing the provisions of the bill would greatly assist pharmacists throughout the state in their ability to remain viable businesses. PBMs can arbitrarily reimburse the pharmacy whatever they want because the methods they used to establish their MAC prices are hidden from the pharmacy, the payer and the patient.

These same arbitrary pricing methods are also impacting critical access hospitals that have implemented the 340B program. These are hospitals with less than 25 inpatients beds, many in rural areas. Many communities will suffer if pricing methodologies that are currently used are not reined in. Implementation of **SB 103** can help. ([Attachment 2](#))

Jody Reel, Kansas Pharmacists Association and the Sabetha Health Mart, testified in support of **SB 103**. The testimony was similar to previous testimony. By requesting the passage of **SB 103**, they are asking that the pharmacy benefit manager (PBMs) be required to make available the Maximum Allowable Cost (MAC) price charged to the plan sponsor and reimbursed to the pharmacy in a timely fashion. The bill would significantly improve the viability of pharmacies in the state of Kansas and keep local businesses open for their communities.

Dr. Reel pointed out that the only unregulated entity in the pharmacy transaction is the Pharmacy Benefit Manager. The only requirement for them is to simply register with the Insurance Commissioner's office to do business in the state of Kansas. Neither the Insurance Commissioner, nor anyone else has any authority to pursue complaints against PBMs currently. ([Attachment 3](#))

Proponents with written testimony only:

Dale Masten, Director of Government Affairs, Genoa, QoL Healthcare Company ([Attachment 4](#))

Matthew Deloreto, Senior Director, State Government Affairs, NCPA ([Attachment 5](#))

Brian Caswell, Kansas Pharmacist, Board member National Community Pharmacists Association ([Attachment 6](#))

Bill Sneed, Legislative Counsel for America's Health Insurance Plans, testified in opposition to **SB 103**. Under the Affordable Care Act, every health insurance policy must include a comprehensive "essential health benefits" package covering ten categories of services, including prescription drug coverage. "Maximum Allowable Cost" (MAC") pricing is used for determining reimbursement. A MAC list

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creates a standard reimbursement amount for identical generic products and is a common cost management tool that is developed from a pharmacy benefit manager's (PBM) proprietary survey of wholesale prices existing in the marketplace. The purpose of the MAC list is to ensure that the pharmacy and its buying group are always motivated to seek and purchase generic drugs at the best and lowest price in the marketplace. The MAC list ensures the the PBM is paying a pair price for widely available generic drugs. MAC pricing is used by 86.6% of private employer prescription drug plans for retail generic prescriptions. Forty six state Medicaid programs now use MAC lists.

Restrictions on MAC pricing increase costs for employers, unions and the state. Restrictions on MAC pricing have an impact on any plan that uses a PBM to manage its drug costs or any employer that manages drug benefits for its employees.

Restrictions on MAC pricing increase costs for generic drugs. Once a drug loses its patent, these proposed restrictions will not allow a MAC price to be used during the generic exclusivity period, even if there are multiple sources of immediate generic savings in the marketplace. Restrictions on MAC pricing make it more expensive to manage the cost of generic drugs on behalf of the stand and employers. ([Attachment 7](#))

David Root, Senior Director, Prime Therapeutics, testified in opposition to **SB 103**. Prime Therapeutics is an independent pharmacy benefit manager owned by 13 not-for-profit Blue Cross and Blue Shield plans and Prime serves more than 370,000 residents of Kansas.

The purpose of a MAC list is to incentivize pharmacies to negotiate more competitive purchase prices for generic drugs from manufacturers and wholesalers in order to keep overall prices down for both the payers of the benefit and consumers. Pharmacies cannot turn consumers away simply because they do not like the reimbursement rate for a specific drug. The language in this bill attempts to limit the number of drugs that can be placed on a MAC list. By limiting the number of drugs able to by MAC'ed it allows the pharmacy to buy the drug at any wholesale price but be reimbursed by the plan at a retail price. This increase in cost paid to the pharmacy is covered by consumers in the form of higher premiums and increased co-pay costs for the drug benefit. ([Attachment 8](#))

Allyson Blandford, Sr. Manager, State Government Affairs, Express Scripts, testified in opposition to SB 103. This bill attempts to limit the types of generic drugs that are reimbursed at generic rates. by limiting what drugs can be included in a MAC list, costs will increase and pharmacies will unnecessarily profit from higher reimbursements. **SB 103** would also impose monetary penalties on PBMs for noncompliance and provide additional authority to the Insurance Commissioner to revoke certificates of registration. Our private contracts with retail providers currently included a process for arbitration. This bill would be the first to attempt superseding existing arbitration capabilities giving to pharmacies ([Attachment 9](#)) .

Peter Harty, Government Affairs, CVSHealth, testified in opposition to **SB 103**. The intent of this bill is

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to minimize the effectiveness of the MAC list pricing tool. The MAC list constraints in this bill will lead to increase costs for businesses, health plans and citizens of Kansas. The legislation seeks to limit the number of drugs subject to placement on a MAC list. Not allowing a drug to be placed on a MAC list unless there are at least three generics is an unreasonable standard that is not commonly used. Limiting MAC drugs would greatly increase costs as this allows pharmacists to purchase drugs at a generic rate while forcing payors to reimburse pharmacists at a branded rate. This testimony was similar to previous testimony. ([Attachment 10](#))

Mike O'Neal, Kansas Chamber CEO (opponent written only) ([Attachment 11](#))

There being no further testimony, Senator Longbine closed the hearing at 10:24 A.M.

Senator Longbine reminded the committee that he planned to work the bill late next week. There being no further business, he adjourned the meeting at 10:25 A.M.