

Approved: February 9, 2005

Date

MINUTES OF THE HOUSE HEALTH AND HUMAN SERVICES COMMITTEE

The meeting was called to order by Chairman Jim Morrison at 1:32 P.M. on February 8, 2005, in Room 526-S of the Capitol.

Committee members absent:

Representative Judy Showalter- excused

Committee staff present:

Melissa Calderwood, Kansas Legislative Research Department

Mary Galligan, Kansas Legislative Research Department

Renae Jefferies, Revisor of Statutes' Office

Gary Deeter, Committee Secretary

Conferees appearing before the committee:

Kathy Greenlee, State Long-Term Care Ombudsman

Debra Billingsley, Executive Secretary, Kansas State Board of Pharmacy

Jerry Slaughter, Executive Director, Kansas Medical Society

Others attending:

See attached list.

The minutes for February 7 were approved.

The Chair opened the hearing on **HB 2153**.

Kathy Greenlee, State Long-Term Care Ombudsman, explained that when the nursing home inspections unit was moved from Kansas Department of Health and Environment (KDHE) to Kansas Department of Aging, two ombudsman statutes were overlooked and one reference to the Secretary of KDHE and the Secretary of Social and Rehabilitative Services (SRS) needs to be changed to refer to the Secretary of Aging. (Attachment 1)

Answering a question, a member commented that at one time two surveys were made to nursing homes, one under Medicaid—thus SRS, and the other regarding licensure—thus KDHE.

A motion was made, seconded and passed to work the bill. Another motion was made, seconded, and passed to amend the bill as outlined by the conferee, striking language on page 3 line 3. A third motion was made and seconded allowing the revisor to make any technical amendments and to recommend the bill favorable for passage as amended. The motion passed.

The Chair closed the hearing on **HB 2153** and opened the hearing on **HB 2154**

Debra Billingsley, Executive Secretary, Kansas State Board of Pharmacy, testified that the bill represents a technical change; because the current statute conflicts with the Kansas Administrative Procedures, the

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:32 P.M. on February 8, 2005, in Room 526-S of the Capitol.

language needs to be repealed. (Attachment 2)

There were no questions, and a motion was made, seconded, and passed to recommend the bill favorably and place it on the Consent Calendar.

The hearing on **HB 2154** was closed, and the Chair opened the hearing on **HB 2225**.

Debra Billingsley, Executive Secretary, Kansas State Board of Pharmacy, explained that the bill addresses irrelevant requirements of the Board, saying the proposed legislation removes from statute the authority of the Board to license renal dialysis facilities and provide oversight for on-site pharmacies; she noted that such requirements have never been acted on, since the Board is not a staffing agency. (Attachment 3)

The chair closed the hearing on **HB 2225**

A motion was made and seconded to pass the bill out favorably and place it on the Consent Calendar. During discussion a member noted that most renal dialysis facilities were located in hospitals where a pharmacist was readily available. The motion passed unanimously.

The Chair opened the hearing on **HB 2155**.

Debra Billingsley explained that occasionally a pharmacist is approached on a weekend by a customer who cannot reach his physician to get a refill for a medication. The bill allows the pharmacist to refill a maintenance prescription on a short-term emergency basis if attempts to reach the physician are unsuccessful and if the pharmacist judges it to be in the best interest of the patient's safety and welfare to do so. (Attachment 4) She said that Colorado has a similar law, and her contact with Colorado authorities indicates the law is working well there.

Answering questions, Ms. Billingsley said the seven days allows the pharmacist some discretion in filling the prescription. She said the bill prohibits the pharmacist from refilling Schedule II drugs, but it does allow Schedule 3-5 drugs, which include some narcotics.

Jerry Slaughter, Executive Director, Kansas Medical Society, said the Society has no problem with the intent of the bill except to be concerned about liability to the physician; he suggested an amendment to protect the physician, since the emergency prescription was not directly authorized by the physician. (Attachment 5)

Answering questions, Mr. Slaughter replied that the number of refills depends on the prescription and the judgment of the doctor.

Ms. Billingsley said some pharmacists believe they have legal sanction to provide emergency prescriptions, but the Board does not believe it is allowed under current law.

CONTINUATION SHEET

MINUTES OF THE House Health and Human Services Committee at 1:32 P.M. on February 8, 2005, in Room 526-S of the Capitol.

A member suggested that the 7-day-supply limit might be difficult with asthma inhalers, which are sold only on a month-supply basis. Another member expressed concern about refilling an antibiotic prescription that could create unexpected side effects. Ms. Billingsley said she trusted the pharmacist's judgment to make calls to protect public safety.

The Chair closed the hearing on **HB 2155**.

A motion was made to amend page 2 line 19 to include "7 day supply or single unit." It was seconded and passed.

A second motion was made to amend the bill by adding language recommended by Mr. Slaughter after line 24 on page 2. The motion was seconded and passed.

A motion was then made and seconded to recommend favorable for passage **HB 2155** as amended. The motion passed.

Staff provided a briefing on **HB 2256**, saying that the bill amended the statute, removing the requirement that an advanced registered nurse practitioner maintain an agreement with a responsible physicians to make diagnoses or prescribe medications. Ms. Calderwood said that some definitions were inconsistent and that the intent of the bill retained an ARNP as a mid-level practitioner.

Answering questions, Ms. Calderwood said the bill was requested by the nurses association, that the intent of the bill was not to allow an ARNP to oversee a physician's assistant, and that under the bill an ARNP could prescribe drugs without the oversight of a physician.

The meeting was adjourned at 2:40 p.m. The next meeting is scheduled for Wednesday, February 9.

**HOUSE HEALTH AND HUMAN SERVICES COMMITTEE
GUEST LIST**

DATE: February 8 2005

NAME	REPRESENTING
Debra Billingsley	Board of Pharmacy
Doug Smith	Ks Academy of Physicians
Amy Salisbury	DOB
Jenny Davis	Conlee Consulting
Brenda Kuder	SRS-HCP/MP
Kristina Hillboldt	Antoin Rep. Watkins
John Statler	KMS
Kris Meier	Hera Law Firm

LANDON STATE OFFICE BUILDING; 900 SW JACKSON, STE. 1041; TOPEKA,
785-296-3017 Fax 785-296-3916 Toll-free 1-877-662-8362 http://t



K A N S A S

KATHY GREENLEE
STATE LONG-TERM CARE OMBUDSMAN

OFFICE OF THE STATE LONG-TERM CARE OMBUDSMAN

TESTIMONY

Health & Human Services Committee

House Bill 2153

By Kathy Greenlee, State Long-Term Care Ombudsman

February 8, 2005

Chairman Morrison and Members of the Committee:

Thank you for allowing me to testify today in favor of HB 2153. This technical clean-up bill has been introduced at the request of the Secretary of Aging and myself.

As you know, the 2003 legislature decided to move the nursing home inspection unit from the Kansas Department of Health & Environment (KDHE) to the Kansas Department on Aging (KDOA) effective July 1, 2003. This inspection unit, also known as the survey unit, now resides at KDOA.

The Office of the State Long-Term Care Ombudsman is required by law to provide information to the nursing home survey unit. We provide information regarding

*Attachment 1
HHS 2-8-05*

volunteer and regional staff visits to long-term care facilities, the types of cases we have worked and any ongoing concerns.

When the survey unit transfer was made, two ombudsman statutes were overlooked. K.S.A. 75-7306 and 75-7310 need to be amended to insert reference to the Secretary of Aging and remove reference to the Secretary of KDHE and Secretary of SRS.

I request that an amendment be made to the bill. On page 3, line 13, the references to the Secretary of KDHE and Secretary of SRS need to be removed. Prior to submitting this language to the legislature, KDHE, KDOA, SRS and the Long-Term Care Ombudsman all concurred with the proposed changes, including the strike through on page 3.

Thank you for your consideration of these technical changes to the current law.

Testimony concerning HB 2154: pharmacists, related to hearings
House Health and Human Services Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
February 8, 2005

Mr. Chairman, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom are appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public.

The Board regulates and licenses pharmacies, pharmacists, pharmacy technicians, drug manufacturers, drug distributors, and retailers who sell over the counter drugs. The Board of Pharmacy is a state agency whose licensing hearing process and proceedings are governed by the Kansas administrative procedure act (KAPA) K.S.A. 77-501 *et seq.* KAPA provides time limits for processing applications and for holding hearings and imposes other procedural rights and duties on the licensee and upon the agency. It provides uniformity in the hearing process for all state agencies. It is modeled after the federal administrative procedure act and our agency does conduct all hearings pursuant to KAPA. This act went into effect July 1, 1985.

HB 2154 is asking that K.S.A. 65-1627d, K.S.A. 65-1627e, and K.S.A. 65-1627g be repealed. These statutes were enacted in 1975 and at that time they provided the agency with guidance on filing petitions and holding hearings. KAPA was enacted subsequently and the statutes in the Pharmacy Act were never repealed. They are obsolete and are no longer necessary. They also conflict with KAPA statutes. Therefore, we are respectfully requesting that that these three statutes be repealed.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Attachment 2
HHS 2-8-05

**Testimony concerning HB 2225: renal dialysis facility pharmacist consultant
House Health and Human Services Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
February 8, 2005**

Mr. Chairman, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom are appointed by the Governor. The Board is responsible for regulating the sale and quality of drugs, medicines, chemicals and poisons in the State of Kansas.

The Board has been relegated with the authority to license medicare approved renal dialysis facility pharmacies, pursuant to K.S.A. 65-1661. These facilities may be operated in a variety of ways. Patients may receive treatment at the facility or they may be sent home with drugs. Therefore, the renal dialysis facility stores prescription drugs for patient administration.

The Board of Pharmacy's mission is to promote, preserve, and protect the public health, safety, and welfare regarding the drug delivery system. The Board is asking that the provision mandating that the Board provide a pharmacist consultant, make arrangements, or assist the facility in locating a pharmacist consultant be deleted. This should not be a function of the State Board of Pharmacy. We are not staffed or funded to act as an employment agency. Further, this language could imply that the Board staff a dialysis facility at our expense. The Board is not required to assist any other licensed entity, regardless of its profit or not for profit status and likewise the Board should not be required to assist renal dialysis facilities in this manner. The Board regards this duty as a function that should be assigned to an appropriate and proper employment agency. Therefore, we respectfully request that this statute be amended deleting the requirement that

*Attachment 3
HHS 2-8-05*

the Board
assist renal dialysis pharmacies in what is viewed as an economic issue and not
one related to safety.

Thank you very much for permitting me to testify, and I will be happy to yield to
questions.

Testimony concerning HB 2155: prescription refills
House Health and Human Services Committee
Presented by Debra Billingsley
On behalf of
The Kansas State Board of Pharmacy
February 8, 2005

Mr. Chairman, Members of the Committee:

My name is Debra Billingsley, and I am the Executive Secretary for the Kansas State Board of Pharmacy. Our Board is created by statute and is comprised of six members, each of whom are appointed by the Governor. Of the six, five are licensed pharmacists and one is a member of the general public.

Currently, a pharmacist may only refill a prescription if the prescription instructions state that the prescription may be refilled. Often a patient will not realize that he has no more refills until he goes to the pharmacy over the weekend. If the pharmacist can contact the physician the patient can get his prescription refilled. However, it is often difficult for the pharmacist to make contact with the physician over the weekend. Further, pharmacies often fax refill requests to the physician and they never get returned. Strict interpretation of our law wouldn't allow a pharmacist to dispense without further authorization. This leaves the patient in the precarious position of not having his blood pressure medicine or heart medication over the weekend.

This bill would permit a pharmacist to supply a patient with a small amount of drugs to get the patient through the weekend should the pharmacist be unable to reach the physician. This would only be permitted when the pharmacist knows the patient's drug regimen and believes that it would be necessary for the patient's health, safety and welfare that he not have his maintenance medication discontinued. This would be a provision that would be used on rare occasions and it would place judgmental responsibility on the pharmacist.

This language is law in Colorado and the Colorado Board of Pharmacy reported that they have had no problems with any abuses. It is used sparingly and only in those instances where the patient has been receiving refills of maintenance medication and it would be in the patient's best interest not to go without his drug. We would respectfully request that that this statute be amended to add this additional language as the Board believes it would be in the best interest of their patient's health, safety and welfare.

Thank you very much for permitting me to testify, and I will be happy to yield to questions.

Attachment 4
HHS 2-8-05



To: House Health and Human Services Committee

From: Jerry Slaughter
Executive Director

Re: **HB 2155**; Concerning emergency prescription refills

Date: February 8, 2005

The Kansas Medical Society appreciates the opportunity to appear today on HB 2155, which allows pharmacists to refill and dispense a prescription without the authorization of the prescriber.

Our only concern with the bill is that a physician or other prescriber could incur potential liability if a prescription were refilled without the prescriber's knowledge and authorization. To that end, we would like to urge the Committee to add the amendment below, which makes it clear that if a prescription is refilled without the authorization of the prescriber, he or she will not incur any liability because of the dispensing of the medication. Please insert the following language on line 24, page 2:

“When an emergency prescription is dispensed by a pharmacist pursuant to this section, the prescriber shall not incur any liability for any damage, injury or death resulting from the dispensing of the emergency prescription.”

We would be happy to respond to questions. Thank you.

Attachment 5
HHS 2-8-05